THE PROTECTION OF THE MARINE ENVIRONMENT FROM OIL POLLUTION BY SHIPS IN THE ARABIAN GULF AND THE ROLE OF SAUDI ARABIA

A STUDY IN INTERNATIONAL LAW WITH SPECIAL REFERENCE TO ISLAMIC LAW

By

FAHAD M.Z. AL-REFAEI

A thesis submitted in Partial Fulfilment of the Requirements for the Degree Doctor of Philosophy at the University of Portsmouth

2009
DEDICATION

I hereby dedicate this thesis to:

My late father, my mother, my wife, my brothers, my sisters, my daughters, my sons and my friends.
DECLARATION

Whilst registered as candidate for the above degree, I have not been registered for any other research award. The results and conclusions embodied in this thesis are the work of the named candidate and have not been submitted for any other academic award.

Signed................................... (candidate)
Date........................................
ACKNOWLEDGMENTS

The Prophet Mohammed’s Hadith (PBUH), narrated by Abu Horayrah (may God be pleased with him), states that “Those who give no thanks to people, give no thanks to God”; therefore, our Islamic religion urges and motivates us to render thanks to those who are deserving for having done good deeds and rendered service to others.

On the basis of the said Hadith, gratitude, thankfulness and recognition of reality, thanks first have to be extended to Almighty God, who has bestowed on me the blessing of completing this thesis, despite the difficulties of the last four years, during which I have faced many obstacles and painful circumstances in addition to separation from my family and homesickness. Secondly, thanks must be given to my late father (may Allah forgive him), my affectionate mother, my wife, my brothers, my sons and all my relatives for what they have given to my family during my absence.

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I would also like to thank my other supervisors and all those directors, managers, presidents and heads in this esteemed university who have devoted their attention to post-graduates students. In particular, I offer thanks to those who gave me advice, guidance or instruction, who identified a book or drew my attention to a significant concern or issue that had escaped me.

1 Sources of the Hadith of the Prophet Mohammed: Abu Dawood, Sunnah of Kitab Al-Adab 5/157-158; Al-Turmothi, Sunnah 6/68; Al-Imam Ahmed, Sunnah 2/278.
2 These include the death of my father, my grandmother, the father and mother of my wife and my cousin. All are at the mercy of Allah (God bless them all). In addition, my mother has had two operations and my wife, which have had a bad psychological effect on me, caused my absence and left a negative impression.
3 Special circumstances for which my wife and family were unable to accompany me during my study abroad.
I must not forget those who are in charge of the Ministry of Defence and Aviation, including at the top his Royal Highness the Minister of Defence and Aviation, and his assistants. I also thank the Religious Affairs Department of the armed forces and those who work under the Military Attaché in the United Kingdom.

Finally, I cannot pretend to be perfect and right, as indeed fault and imperfection are part of human nature; and once again I offer my thanks to all those who have helped and supported me during the writing of this thesis, which has separated me from my family, relatives, colleagues and country for too many years.
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ABSTRACT

Marine pollution is currently a major and pressing issue, as the world strives to reduce the associated risks and to develop effective and appropriate solutions. Moreover, oil pollution is a major and hazardous source of pollution in the waters of the Arabian Gulf. It is an indisputable fact that the marine environment of the region has suffered greatly since the export of oil began, as a result of the multiple harmful activities associated with that trade, such as the loading of oil, the emptying of contaminated ballast tanks, the various exploration, prospecting and manufacturing processes, in addition to oil pollution incidents resulting from collisions between ships or from fires and explosions that affect ships and marine oil installations. Further environmental damage has been caused by deliberate attacks related to armed conflict in the region during the past few years.

This thesis sets out the most important national and international legal efforts to protect the marine environment in general and that of the Arabian Gulf in particular, giving particular consideration to the relevant Islamic legal provisions.

The role of Islamic Shari’ah in the protection of the marine environment from pollutions by oil is also scrutinised by means of examination of Quranic verses, the saying of Prophet Mohammed (PBUH) and those fundamentals of Islam which have been identified by Islamic scholars as authoritative in the issue of protection of the marine environment. In the investigation of Islamic Shari’ah, it can be seen that many of the relevant sections closely parallel modern international law. It is of particular note and interest that these Islamic legal measures were already in place 14 or 15 centuries ahead of modern international law.

The efforts of the GCC to protect the environment are closely examined whereby it is recognised that the GCC has taken a great many measures towards this end. It has organised a wide range of meetings and conventions and has set up various committees, showing its commitment to these issues, although there is still much that needs to be done.
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UNITs

$ United States Dollar
b/d Barrel per day
bcm Billion cubic metre
KD Kuwait Dinar
Km Kilo metre
M Metre
OR Oman Riyal
Sq.km Square Kilometre
Sq.m Square metre
SR Saudi Riyal
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<td>American Journal of International Law</td>
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<td>BYIL</td>
<td>British Yearbook of International Law</td>
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<td>CDM</td>
<td>Clean Development Mechanism</td>
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<td>CLC</td>
<td>Convention on Civil Liability for Oil Pollution, 1969</td>
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<td>CMND</td>
<td>Command Paper (UK)</td>
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<tr>
<td>CO₂</td>
<td>Carbon dioxide</td>
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<td>COW</td>
<td>Crude Oil Washing</td>
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<td>CRTD</td>
<td>Geneva Convention on Civil Liability for Damage Caused During</td>
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<td>CSCE</td>
<td>Conference on Security and Co-operation in Europe</td>
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<td>Environmental Policy and Law</td>
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<td>Extended Polluter Responsibility</td>
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<td>ERC</td>
<td>Emergency Response Centre</td>
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<td>FIELD</td>
<td>Foundation for International Environmental Law and Development</td>
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<td>FSI</td>
<td>Flag State Implementation</td>
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<td>FUND</td>
<td>International Convention on the Establishment of an International Fund</td>
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<td>GCC</td>
<td>Gulf Countries Council</td>
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<td>GEMS</td>
<td>Global Environment Monitoring System</td>
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<td>GESAMP</td>
<td>Group of Experts on Scientific Aspects of Marine Pollution</td>
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<td>ICJ</td>
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<td>ICLQ</td>
<td>International and Comparative Law Quarterly</td>
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<td>IELMT</td>
<td>International Environmental Legal Materials and Treaties</td>
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<td>IMCO</td>
<td>Inter-Governmental Maritime Consultative Organization</td>
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<td>IMO</td>
<td>International Maritime Organization</td>
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<td>IOPC Fund</td>
<td>International Oil Pollution Compensation Fund</td>
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<td>JEL</td>
<td>Journal of Environmental Law</td>
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<td>JPL</td>
<td>Journal of Public Law</td>
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<tr>
<td>KC</td>
<td>Kuwait Convention</td>
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<td>LBS</td>
<td>Land-based Source</td>
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<td>LDC</td>
<td>London Dumping Convention, 1972</td>
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<td>LOT</td>
<td>Load on Top</td>
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<td>MARPOL</td>
<td>International Convention for the Prevention of Pollution from Ships</td>
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<td>MEMAC</td>
<td>Marine Emergency Mutual Aid Centre</td>
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<td>MEPA</td>
<td>Metrology and Environment Protection Administration</td>
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<td>MEPC</td>
<td>Marine Environment Protection Committee (IMO)</td>
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<td>NCP</td>
<td>National Contingency Plan</td>
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<td>NGO</td>
<td>Non-Governmental Organization</td>
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<td>NOSC</td>
<td>National On-Scene Commander</td>
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<td>NYUELJ</td>
<td>New York University Environmental Law Journal</td>
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<tr>
<td>OECD</td>
<td>Organization for Economic Co-operation and Development</td>
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<td>OEEC</td>
<td>Organization for European Economic Co-operation</td>
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<td>OILPOL 54</td>
<td>International Convention for the Prevention of Pollution of the Sea</td>
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<td>OPA</td>
<td>Oil Pollution Act of 1990 (USA)</td>
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<td>OPRC</td>
<td>Convention on Oil Pollution Preparedness, Response and Co-operation,</td>
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<td>ORB</td>
<td>Oil Record Book</td>
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<td>OSCOM</td>
<td>Commission of the 1972 Oslo Co-operation for the Prevention of</td>
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<td>OSPar</td>
<td>Convention for the Protection of the Marine Environment of the Paris</td>
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<td>PBUH</td>
<td>Peace Be Upon Him</td>
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<td>PCA</td>
<td>Permanent Court of Arbitration</td>
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<td>PCIJ</td>
<td>Permanent Court of International Justice</td>
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<td>PME</td>
<td>Presidency of Meteorology and Environmental</td>
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<td>RCP</td>
<td>Regional Contingency Plan</td>
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<td>RECSO</td>
<td>Regional Clean Sea Organization</td>
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<td>RIIAA</td>
<td>Reports of International Arbitral Awards removal unit</td>
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<td>ROPME</td>
<td>Regional Organization for the protection of the Marine Environment</td>
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<td>SOSC</td>
<td>Supreme On-Scene Commander</td>
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<td>TOVALOP</td>
<td>Tanker Owners Voluntary Agreement</td>
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<td>UKTS</td>
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<td>United Nations Economic Commission for Europe</td>
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UNEP  United Nations Environment Programme
UNGA  United Nations Treaty Series
USA  United States of America
WBAT  World Bank Administrative Tribunal
WICEM  World Industry Conference on Environment Management
WLR  Weekly Law Report
WMO  World Meteorological Organization
WTO  World Trade Organization
CHAPTER ONE

INTRODUCTION AND BACKGROUND

1.1 Introduction

Sea pollution by oil is one of most important and dangerous problems that face the international community because of its harmful effects on the marine environment itself and on those who benefit from it. The pollution of the marine environment by oil is a result of the dependence of the world on oil to satisfy its needs for energy.1

This study focuses on the protection of the marine environment from oil pollution by ships in the Arabian Gulf with particular reference to the role of Saudi Arabia. It looks at relevant international legislation and examines the 1978 Kuwait Convention in depth and also highlights and addresses the Islamic Shari’ah approach to pollution.

A lot of oil spills into seas happen every year during oil transport from producing countries to consuming countries. There are also some spills due to drilling operations, pipeline ruptures and refineries and other related activities.2 The international community made an effort to protect the marine environment because it is a treasure for natural resources and it belongs to all humanity.3 This has been done

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3 Ibid
through many international agreements and conventions which strived to limit marine pollution by oil.

1.2 The Importance of the Topic

The legal system for the protection of the sea environment in the Arabian Gulf forms an essential issue. It is one of the vital issues which forces itself as an international reality or it has already done so. The Arabian Gulf, one of the semi-enclosed seas which have been mentioned in Article 122 of UNCLOS, 1982, plays several essential roles, commercial, cultural, political and militaristic etc. which give it strategic importance and it becomes a focal point.

This is one side, but the other side, the danger of the pollution to which the Arabian Sea is exposed, has a negative effect on its unique position.

There is no doubt that the Arabian Gulf is in danger from different types of pollution. As well as pollution from sewage and industrial waste, oil exploration and

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4 For political reasons. The Iranians use the term 'Persian Gulf' for the Gulf, while Arabs name it the 'Arabian Gulf'. Western writers are divided between the two terms, although more recently the term 'Arabian/Persian Gulf' has become popular among some Western authors. However, the terms 'Arabian Gulf' or 'Gulf' will be used to refer to the Gulf here.

5 All this has happened due to presence of numerous oil carriers sailing throughout the Arabian Gulf. This traffic has increased in recent years, especially after the kingdom of Saudi Arabia joined the international trade organization. As such, intentional or unintentional oil leaks from these carriers occur in significant volume, causing pollution and endangering the Arabian Gulf. What has worsened the situation is that the Arabian Gulf is considered one of the narrowest, shallowest seas, with slow currents which may compound the pollution. Also, the Arabian Gulf still suffers from the lack of proper legal instruments to protect the marine environment from the pollution resulting from oil tankers, and therefore, the Arabian Gulf might benefit from the solutions made by international efforts in this sphere.

6 Article 122 of the 1982 United Nation Convention on the Law of the Sea (UNCLOS) states that, "enclosed or semi-enclosed sea" means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.

7 The special zone means any marine area that is recognised for known technical reasons such as its ecological circumstances or its navigational characteristics. These peculiarities necessitate the adoption of particular measures that prevent marine pollution. These zones are defined in the first and second items of the London Agreement for the Prevention of Pollution from Ships (MARPOL) 1973, which also covers the Arabian Gulf area. See Salamah, A., (1989) Oil Pollution and Marine Environment Protection, *Egyptian Journal of International Law*, vol. 4, p. 117. (In Arabic)

8 There are two main kinds of environmental danger that can be seen surrounding the Arabian Gulf:

1. Direct environmental dangers: Are the dangers threatening human life, caused by untreated or not sufficiently treated sewage waters, chemical substances, nuclear radiations, oils and its derivates. All of which may contribute in increasing the levels of pollution.
productions and the transport of oil in tankers pose an additional threat. This thesis is concentrating on oil pollution from ships, but the topic of all other types of pollution will be touched on.

Research into the proposed topic has been inspired by the realisation of the importance of fighting pollution in the Arabian Gulf and the awareness of the system which has been implemented on the local, national, and international levels and the achievement attained by implementing these systems in protecting the Arabian Gulf environment from oil pollution. It also explains the solutions on the practical level.

At its most imperative, this study represents an attempt to provide a critical analysis and an inclusive assessment of laws, policies and regulations concerning the combating and controlling of marine pollution in the Arabian Gulf, at both national and regional levels. This research contributes to the literature as it has discussed marine pollution from an Islamic Shari’ah point of view, analyzing whether these efforts are consistent with international attempts. The researcher recognizes that similar studies have been considered and researched by others before. However, there is no comprehensive study of the Arabian Gulf that has discussed marine pollution in the way addressed in this research. Furthermore, as the study is new in the region, the materials, scientific researches and studies in the topic have been limited.

It is essential to note that the author has carried out a research trip to the Gulf region to collect data about the relevant laws, policies and regulations concerning the

Indirect environmental dangers: Represent the harms that are caused by pollution and which threaten plant life and the viability sea creatures, sometimes causing their extinction. See, Ali, S. (1996) *The Legal System of the Protection of Marine Environment from Pollution in the Red Sea*, University of Khar Younis Publications, Benghazi, pp. 16-17.


protection of marine environment. However, documents are mostly in Arabic which have been translated into English, while some have an official English translation. These data are gathered from the countries party to the Kuwait Convention.

1.3 Aims of the Research

The aim of this research is to achieve several general and specific objectives which include:

1. To clarify how Islamic Shari‘ah law has protected the marine environment.
2. To be aware of the recent international efforts that aim at protecting the sea from pollution.
3. To explain the efforts that have been made from local, national, regional and international points of view and the role played by the Kingdom of Saudi Arabia in protecting the Gulf from oil pollution.
4. To describe how Saudi Arabia has succeeded in achieving a compromise between its own maritime interests and the interests of the international community.
5. To carry out a critical analysis of the Kuwait Convention and its Protocols and examine their application in the Arabian Gulf.

1.4 The Research Methodology

This study is based on the critical appraisal and analysis of the regulations and the legal procedural efforts made by Saudi Arabia compared to the international efforts to protect the maritime environment.

The study also takes into account the legal documents and writing concerning the marine environment, in general, and that in the Arabian Gulf, in particular. It refers to agreements, announcements, newspapers, and legal journals, which are the main

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12 This research data has been gathered from these sources: Regional Organisation for the Protection of the Marine Environment (ROPME) (Kuwait); Marine Emergency Mutual Aid Centre (MEMAC) (Bahrain); UNEP for West Asia these organisations are in Bahrain; Ministry of Planning (Kuwait); Environmental Protection Committee (Qatar); and Presidency of Metrology and Environment (PME) (Saudi Arabia).
sources of this study. It also explains how Saudi Arabia succeeded in making a compromise between its own maritime interests and the interests of the international community. To achieve the objectives of the study the qualitative approach will be employed in accordance with control methodology using the following:

1. Content analysis of both historical and modern international and regional conventions and treaty texts on marine environmental protection from pollution.
The following conventions were referred to: 1954 OILPOL Convention, 1973 MARPOL Convention, 1982 UNCLOS, 1978 Kuwait Convention.
2. Review of international and regional endeavours to protect the Arabian Gulf environment from pollution.
3. Informal interviews with individuals from competent, influential organizations and government departments involved in marine environmental protection.

1.5 The Research Structure

The following is an outline of the study in terms of which aspects are dealt with in each of the chapters of this thesis.

Chapter One is a general introduction to the Study and it considers the importance of the study and the reasons for choosing the particular topic. It also contains a discussion of the development of laws concerning marine pollution and presents definitions of pollution and the right to a clean environment.

Chapter Two examines the role of Islamic Shari’ah in protecting the marine environment from pollution by oil. This is done through the explanation of Quranic verses, the sayings of Prophet Mohammed (PBUH) and the fundamentals of Islam which Islamic scholars have pinpointed as being authoritative in dealing with the marine environment.

Chapter Three concerns the most important international principles for the protection of the marine environment, such as those of good neighbourliness, good intentions, non-excessiveness, international cooperation, protective measures, responsibility for harm, reporting and consultancy.
Chapter Four is concerned with identifying the relevant authorities which control pollution of seas by oil in light of the 1954 OILPOL Convention, 1958 Geneva Agreement and the 1982 UNCLOS.

Chapter Five sets out the rules of international responsibility towards damage resulting from marine pollution by oil. This is done through an account of the development of the basis for international responsibility and its effects.

Chapter Six examines the national and regional efforts of the Gulf countries concerning the protection of the Arabian Gulf marine environment from pollution by oil.

Chapter Seven examines the legal protection for marine environment in the Arabian Gulf from pollution.

Chapter Eight conclusions and Recommendations.

1.6 Conclusion

This introductory chapter has set out the importance of the present research, the most important objectives, the research aims and the difficulties the researcher faced in conducting such work. It then goes on to consider the methodology and the research structure.

The next chapter goes on to examine how Shari’ah law deals with environmental issues, specifically pollution of the marine environment.
CHAPTER TWO
PROTECTION OF THE MARINE ENVIRONMENT IN ISLAMIC SHARI‘AH

2.1 Introduction

The care of the environment has always been an important subject in Christianity,1 Islam and other religions. In earlier societies proper care of the environment was particularly critical for survival as in those days people lacked the resources to deal with and clean up large-scale pollution, even although it was vital that it be prevented or the level of pollution be reduced as much as was possible.

This thesis is focusing on the Islamic basis of environmental protection.2 At present Islam is the basis of legislation in more than forty countries in the world, especially the GCC countries, and is accepted by the international community as one of the main legal systems in the world and, as such, this topic is one of interest and importance. Moreover, it has been confirmed that Islamic Shari‘ha is the main source of legislation of the constitutional systems in Bahrain,3 Qatar,4 Oman,5 Kuwait6 and the

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1 Gen 1:26: ‘And God said, Let us make man in our image, after our likeness: and let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth’.
2 Gen 2:15: ‘And the LORD God took the man, and put him into the garden of Eden to dress it and to keep it’. The Hebrew word ‘abad’ (translated here as ‘dress’) means to till or cultivate and ‘shamar’ (‘keep’) means exercise great care over.
3 As Muslims scholars have not attempted to arrange judgments into subdivisions, they do not provide marine law with separate provisions. There is no specialised author in this particular area of legislation although many Muslim scholars cover the rules of the laws of the seas in their writings, therefore, Islamic marine law is subject to the general rules of the Islamic legislation. See; Aalia, S. The Introduction to Study of Shari‘ah and Law: a comparative study.
4 Article 2 of the first chapter of Bahrain Constitution which was issued on 14/02/2004.
5 Article 1 of the Qatari Constitution which was issued in 1972.
6 Article 2 of the Oman Constitution which was issued on 6/11/1996.
7 Article 2 of the first chapter of Kuwait Constitution which was issued in 1962.
United Arab of Emirates which is why it is vital to study the Islamic approach to pollution.

The kingdom of Saudi Arabia as an Islamic country derives its laws from Islamic Law. Its leaders’ concern to ensure that this is the source of the country’s laws is expressed clearly in the document of the Consultation Council and the foundation of the Constitution System of 1992. The consistency of such agreements with Islamic Law is maintained by reviewing them before specialized committees therefore, the aim of this chapter is to examine the rules concerning the marine environment in Islamic Shari’ah. The importance of water in Islam is also considered. The main points of this chapter are illustrated with Quranic verses and Hadiths related to the marine environment and with examples of the most important rules accepted by experts in Shari’ah and used in the field of environmental protection. Finally, there is reference to secular and spiritual rewards and penalties that protect the environment from pollution.

Islamic Shari’ah has four main sources for the provision of legislation which are as follows:-

1- The Holy Quran
2- The Prophet’s Sunnah; that is what is narrated of the Prophet (PBUH) whether it is his actual sayings or accounts of his actions.
3- The consensus of Muslim Jurists; these are a last resort if there is nothing clear in the previous two resources.

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7 Article 7 of the first chapter of the United Arab of Emirates Constitution which was issued on 27/01/2009.
8 In his address in 1992 in which he announced on constitutional amendments in the Kingdom of Saudi Arabia in 1992, King Fahhad Bin Abdel Aziz confirmed Islamic Shari’ah as a basis for governance in the Kingdom which is not subject to change or replacement. See, Bullock, J. (1992) Reforms of the Saudi Arabian Constitution, Gulf Centre for Strategic Studies, London.
10 See, Articles 1,5, 6, 8, and 23 of the regulation, which was approved by Royal decree no.A-90 of 01/03/1992. The text of the regulation is published in ibid, p.268.
11 For more information about the main sources see, Abdu ar- Rahman I. Doi, (1984), Shari'ah Islamic Law, revised and expanded by Abdassmad Clarke, Taha Publisher, London, pp.47-120
Chapter Two

4- Analogy (qiyaṣ) which includes application of the specific principles which have been applied in similar precedents relevant to the question or matter under discussion, in the event that there are no clear ruling for such cases in the Quran or Sunnah.

Islamic Law as seen in the Holy Quran and the Prophet’s Sunnah illustrates principles which are characterised by their generalisability and inclusivity and some specific rules. The Holy Quran contains many verses which try to prevent ‘mischief’, and the Sunnah includes various clauses to prevent pollution and the contamination of water. In the Holy Quran the term ‘earth’ applies to the entire environment – the sky, the land, and bodies of water. This gives Islamic jurists and scholars a wide range of possibilities in how to apply these principles and rules to various aspects of human behaviour.\(^\text{12}\)

2.2 The Importance of Water in Islam

Water is an essential element to all living being, it is one of the many bounties which Allah provide to his creatures. Allah\(^\text{13}\) said, “Do you not see that Allah has subjected to you (your) all things in the heavens and on earth, and has made his bounties flow to you in exceeding measures, (both) seen and unseen”\(^\text{14}\) Allah also said that,

“\text{It is Allah who had created the heaven and the earth and sendeth down rain from the skies, and with it bringeth over fruits where with to feed you, it is he who hath made the ships subject to you, that they may sail through the sea by his command; and the rivers (also) hath made subject to you. And he hath made subject to you the sun and the moon; both diligently pursuing their courses; and the night and the day hath he (also) made subject to you. And he giveth you all that ye ask for but if you count the favors of Allah, never will be able to number them. Verily man is given up to injustice and ingratitude.}^{\text{15}}\)

\(^{12}\) Alsadlan, S. (1999) *Islamic Shari’ah and Environmental Protection*, Faculty of Shari’ah Law, United Arab Emirates University, pp. 22-24. (In Arabic)

\(^{13}\) “Allah” and “God” will be used interchangeably in this study.

\(^{14}\) Surat Loqman, 31: 20.

\(^{15}\) Surat Ibrahim, 14:32-34.
In another verse Allah said “We made from water every living being.”\textsuperscript{16} This means that water is essential for every living being. Water is the basis of life. It is the basic element for the stability and prosperity of civilisation. Wherever water is found, there is an aspect of life. Life without water cannot be imagined. The Quranic verse (Ayah) is interpreted in (Al- Muntakhab) - summary- states a scientific fact that has been verified by many disciplines. Living cells confirm that water is a basic component in the structure of the cell and it is the structural unit in every living thing whether it is animal or plant. Biochemistry also affirms that water is basic for all reactions or transformations that take place inside living organisms. It is either a medium, or catalyst for any reaction or it’s by-product\textsuperscript{17}.

According to the saying" Water is the source of life" preserving it from pollution is to be considered one of the basic principles of life in its different spheres which is why according to Islamic principles keeping water as clean as possible is at the heart of the public health. This is the reason why any industrial toxic waste matters should not be dumped in any river, sea or reservoir because this will interfere with the safe use of water. This means that tankers should take all care not to pollute the sea, since Islam bans all the things that cause harm.

The use of water is the common right of all living being and human beings ,this usage should be without panoply, usurpation, despoilment, wastage, or abuse. Ibn Abbas narrated that prophet Mohammed (PBUH) said, “Muslims are partners in three: water, pasture and fire.”\textsuperscript{18} This saying emphasizes that people are partners in the usage of water and pasture. Each individual has the right to benefit from the common resource according to his needs without causing harm to the others or to the

\textsuperscript{16} Surat Al-Anbiya, 21:30. Biologists say that water in the structures of living cells and tissues constitutes 95% of a baby’s weight, 60-80% of a mature man, 95% of a cucumber, 90% of carrots and tomatoes. A man or animal losing 10-20% of body water may die. Al-Odaat, M. & Basah, A. (1985). Pollution and Environmental Protection, Deanship of Library Affairs, King Saud University, Riyadh, p. 35. (In Arabic)

\textsuperscript{17} Al-Muntakhab: Summary of Holy Quran interpretation (1995) Written by Group of Scholars from Azhar University, 3\textsuperscript{rd} edition, Higher Islamic Council for Religious Affairs, Cairo, p. 467. (In Arabic)

\textsuperscript{18} Authenticated by Ibnmaja in Kitab Al-Rihoon (The Book of Mortgages), in chapter on Muslims as partners, vol. 3, p. 81, hadith No. 2472; and Abou-Daoud in his Sunan Abou-Daoud-kitab al-buue (Book of Selling), in chapter on denial of water to a needy person, vol. 3, p.276.
community, he has an obligation to maintain this resource and to repair any damage or destruction he has done to this resource. If anybody tries to pollute water, any other person has the right to prevent him from doing so because all living things and human beings benefit from it.\(^{19}\)

The right of usage should only be used only to achieve the purpose for which it was made. However an individual will invalidate this right if by taking advantage of it he receives benefits but it will causes harm to another or to the community in general.\(^{20}\)

The interests of Islamic law and society as a whole take priority over the interests of individuals and various groups when they cannot be reconciled. Among the juristic principles of Islamic law are “priority is given to preserving the universal common interest over particular interest,\(^{21}\) and “the general welfare takes priority over individual welfare.”\(^{22}\) Ibn Gudamah also reported that if anybody wanted to irrigate his land and the water is from a big river and nobody will be harmed if he does so, then he can irrigate with any means he has because there is no harm to anybody.\(^{23}\) The above saying indicates that Islamic law established the idea of public resources which all individuals have the right to benefit from. These resources include essential water resources which are not owned by individuals e.g. rivers, seas, oceans. Therefore, according to Islamic law all individuals are partners in sharing all the common resources, energy sources, and nature.\(^{24}\)

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\(^{20}\) In Islam, wealth belongs to Allah Almighty; people hold it in trust from him and he will interrogate us on how we spent it on the day of justice. All people equally share sources of water, natural resources and energy resources. See, Shaltoo, M. (1983) *Al-Islam, Belief and Shari'ah*, Alshirouq House Press, Cairo. (In Arabic) See also, Algardawi, Y. (1986) *The General Characteristics of Islam*, Wahba Library, Cairo. (In Arabic)


\(^{22}\) Ibid.


Fourteen centuries ago Islamic law recognised the idea of common natural environmental resources which are not to be monopolised by an individual. Those who are concerned by environmental issues explain that common ownership is a recent idea since it appears in recent international agreements, such as 1982 UNCLOS Article 136 and Article 137/2. If the water is of that importance, people must take care of it, protect and not contaminate it. Water protection is by the following:

2.2.1 Prohibition of Doing ‘Mischief’ or Polluting Water

‘Mischief’ means any harm or damage done to mankind, the earth and its environment caused by human beings resulting from bad behaviour or bad deeds. In this sense mischief is a more general inclusive term than pollution. Looking at Quarnic verses, it can be seen that they include strong statements on the prevention of mischief on earth. Allah said, “..... And do no mischief on the earth after it has been set to order: that will be best for you, if you have Faith.” 25 “Allah almighty blames human beings for polluting the land and sea by their bad behaviour. Moreover, the holy Qur’an emphasises that the earth and all its natural and life components are perfect and healthy; it is man who plays with its perfection and destroys it. Surely, our present world has witnessed the most dreadful kind of corruption on earth and environment. As well as natural destruction which man was enjoined to protect and take care of, Allah creates man from earth as of its components and commands him to protect it.” 26

In the holy Quran Surat Alroom, verse Number 41 Allah said "spoil appear on the land and sea..." in this verse Allah Almighty blames human beings for polluting the land and the sea by their bad behaviour. By doing so, they will definitely affect their lives their health and worsen the quality of their lives.27

25 Surat Al-Ara’f, 7: 56.
27 This verse refers clearly to pollution of the sea through the interference of man in a way that hinders the ecological balance and in confrontation with the environmental laws. The consequence is this damage, which affects man himself in the first place, as a result of his extravagant enjoyment of worldly pleasures, so spoiling the seas by his waste. In another verse Allah said in Surat Al-Baqrah 1-205, “When he turns his back, his aim everywhere is to spread mischief through the earth and destroy crops and progeny but Allah loves not mischief.” The word earth here indicates the general meaning which includes the earth and what is on it like water. To do mischief to water is to do all the harmful deeds which destroy the normal nature of water and its natural characteristics and thus make water unsuitable
Looking at Prophet Mohammed's (PBUH) sayings, it can be found that they also prohibit 'mischief' regarding or pollution of water. Some of these sayings show that:

1. The prophet Mohammed (PBUH) prohibited people from urinating in water.

Abu Huriayrah narrated that the Prophet (PBUH) said that: "Nobody urinate in standing water and then bathe in it."\(^{28}\) Another saying narrated by Jabir Ibn Abdullah, Prophet Mohammed (PBUH) said that: “Nobody urinates in running water.”\(^{29}\) These Hadith make clear that the Prophet recognised the importance of this, and this is something also can be applied to pollution of the marine environment when untreated sewage is discharged directly into the sea. The prohibition is not restricted only to polluting water by urine and faeces but also covers all kind of pollution such as by oil.\(^{30}\) Also it can be deduced from these sayings that Prophet Mohammed (PBUH) prohibited any person from urinating in standing or running water. This prohibition made it forbidden.

As in the science of fundamentals consequently 'mischief' on earth is also forbidden. Some scholars said that all these sayings prohibit pollution of water by urine because urination in water is a dirty deed which may be the source of some epidemic diseases that affect the life of other people. Urination can be compared to other harmful deeds done by human beings to pollute water such as dumping waste from factories, throwing in dead animals and dumping garbage and chemical waste into rivers and canals. The prohibition here is of first degree because of the danger of pollution affecting the life of human beings and all other living creatures.\(^{31}\)

If the sayings of the Prophet prohibit polluting water with urine and faeces, imagine what would be the effects of other materials that are more poisonous and

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\(^{28}\) Bukhari, *Book of Ablution*, hadith No. 239.

\(^{29}\) Al-Tabrani, *the Middle*, vol. 2, hadith No. 1770.


harmful to animate and inanimate objects which is why prohibition in this case is even more important.

2. Prophet Mohammed (PBUH) prohibited pollution of water by other things:

Abi Saeed Al-Humiari narrated that Maa'z Ibn Jabel said that prophet Mohammed (PBUH) had said: "Beware of the three evils: defecating in and around waterways and in the roads and in the shade." It should be noted that Muslims of the first era, led by the best of all people, prophet Mohammed Bin Abdullah (may God bless him) lived in tents around water sources in open desert areas of the Peninsula, with neither utilities nor paved roads. As they were surrounded by virtually limitless open areas of barren and sandy desert which supported no food plants or human population, they were able without risk of causing permanent damage to excrete and urinate wherever they chose. The nature of the climate and the terrain meant that their waste would be hidden or absorbed completely.

However, Prophet Mohammed (PBUH) instructed his people not to excrete on the road or in the shade, in order to protect the small number of people living in that area from contamination and its risks. It then became important to teach later generations, whose land had become more densely populated, how to keep their roads, facilities and environment clean and free from contamination. It is relatively easy for Moslems, who are prevented from polluting the desert, to protect and maintain the environment in a limited area of housing and roads connected with each other, to keep them very clean and to prevent such dangerous pollution.

32 Muslim, Book of Cleanness, vol. 3, hadith No. 278.
34 In addition, Prophet Mohammed (Peace be upon him) was very keen to protect the purity of water, as he said: "If you wake up, do not put your hand in the water container unless you wash it three times; you do not know (while sleeping) where your hand was." This prohibition of putting the hand in the water container before washing it was because the hand may have been polluted with any kind of pollutant during one’s sleep. The observer will find that the majority of Muslims today them are far from applying this approach, as they discharge large quantities of untreated sewerage waters and industrial wastes full of chemical and organic substances and harmful microbes into the seas, ignoring their significant effect upon living organisms. Khinowmie, Z. A. (1990) The Environment in the Islamic Prospective, University of Kuwait, Kuwait, p.43.
3. Prophet Mohammed (PBUH) told Muslims to cover their utensils at home to protect food and drinks from insects and germs that cause disease.

Jabir Ibn Abdullah said that, he heard Prophet Mohammed (PBUH) say: "Cover all containers that have food or water in them; there is a night in a year in which a disease is in it, if it passes over an uncovered container it will drop in it."35

It was scientifically proved that a lot of micro-organisms and parasites which cause a lot of diseases to human beings and other animals spread through polluted water or uncovered foods or drinks.36

The above passages all give weight to the importance which Islam gives to water and to all the various vital functions which it performs.

2.2.2 Prohibition Against Wasting too much Water

Using too much water is not good environmental behaviour and Islam prohibits that because of the harmful effects on environmental resources and on development. This wasting also leads to destruction and agony on earth and in the hereafter. In this regard Allah said: "Then we fulfilled to them our promise, and we saved them and those whom we willed but we destroyed those who transgressed beyond bounds."37 From this it can be said that Islam prohibits wasting too much water and use of water exceeding one's needs because this will lead to depletion of water which is a scarce resource in this part of the world. If we look at Shari'ah texts, it can be said that they have two aspects to this prohibition, a general and a specific one.

1. The general approach:

This is represented by Shari'ah laws which forbid excessive use of resources in general.

35 Muslim, Book of Drinks, vol. 13, p.190, hadith No. 204.
37 Surat Al-Anbiya, 21:9.
2. The specific approach:

This is represented in passages of Shari'ah text that prohibit using water extravagantly. Muslim should be moderate in everything they do. Some of the Prophet's (PBUH) sayings in this regard are as follows: Abdullah Ibn Omar narrated that Prophet Mohammed (PBUH) passed by while Saad was making ablution. He said to Saad: "...do not use too much water even if you are doing ablution from a running river." It is evident that wasting too much water is prohibited even if it is for ablution, drinking or eating, and this prohibition expands to include using too much water for irrigation or in industry or for domestic use.

From what is mentioned previously it can be seen that Islamic Shari'ah (law) in the area of the environment is full of plenty of teachings that inspire people to protect the environment according to their own beliefs and thus the protection will be coming from strong faith and it can be said that the protection of the water environment is a religious duty for every Muslim. All Muslims should take care not to harm or pollute the water environment.

No doubt the call of Islam for moderation and its objection to extravagance is also reflected recently in non Muslim societies in the west and the east and they have started to call for the sound utilization of resources and to avoid their over-utilization now that the environmental resources seem to have become endangered. Today, humanity is in pressing need of adopting the Islamic call for moderation and its objection to extravagance to check the severe strain on and over-utilization of the environmental resources to keep them from being exhausted and to maintain a balanced relation between man and his environment and help put an end to the problems which people are facing today a result of over utilization.

38 In Hanbal, A., Al-Mosnad, hadith No. 7065.
Chapter Two

2.3 Islam and the Right of Humans to a Clean Environment

Islamic Shari’ah has forecast what might happen to the environment due to misuse by man and thus has stated some laws and principles to protect it. These principles include. 39

2.3.1 The Honour of Man and the Creation of what is in the Environment for him and for his Sake

One of the characteristics of Shari’ah is the honour of human beings 40 Allah said, “We have honoured the sons of Adam, provided them with transport on land and sea, given them for sustenance things good and pure, and conferred on them special favours, above a great part of our creation.” 41

Among the honours which Allah has bestowed on man and the provision of good for him is the condition that creation is there to serve man. Allah made the sky for man as a roof, made the earth for man, and also gave him the stewardship of it, to manage it in accordance with nature, to use it for his own benefit and that of other creatures, and in fulfilment of his needs and theirs. He also provided the rivers and streams for mankind and animals to drink from and to irrigate the land to produce food and allowed movement from one place to another by ship. 42

41 Surat Al Baqarah 2:11-12
42 Mursi, M. (1999) Islam and the Environment, op.cit., p. 60. Many Quranic verses also support this: Allah said, “Do ye not see that Allah has subjected to your (use) all things in the heavens and on earth...” (Surat Laqman 31:20). Allah also said, “Seest thou not that Allah has made subject to you (men) All that is on the earth...” (Surat Al Haj 22:65). Another verse states that “it is Allah who has created the heavens and the earth and sendeth down rain from the skies, and with it bringeth out fruits wherewith to feed you, that they may sail through the sea by His command, and he hath made subject to you the sun and the moon. Both diligent by pursuing their courses and the night and the day hath he also made subject to you. And he giveth you of all that ye ask for, but if you count the favours of Allah, never will ye be able to number them.” (Surat Ibrahim 14: 32-34). Allah also said, “It is he who has subjected the sea to you that ships may sail through it by his command, that ye may seek of his bounty, and that ye may be grateful. And he has subjected to you, as from him, all that is in the heavens and on earth, behold in that are signs indeed for those who reflect.” (Surat Al Jathiya 25: 12-13). Allah also said, “It is he who has made the earth manageable for you, so traverse ye through its tracks and enjoy of the sustenance which he furnishes: but unto him is the resurrection” (Surat Al Mulk 67:15) Allah, in Surat Luqman verse 20, said, “Do ye not see that Allah has subjected to your (use) all things in the heavens and on earth and has made its bounties flow to you in exceeding measure, both seen and unseen.” Allah also said, “Or,
These Quranic verses clearly define the relationships between man and the universe. One of the most important relationships is the right of sustainable use, development, preservation, and reclamation of the natural resources of the environment. God has given man the stewardship of the earth, to manage it in accordance with the purpose intended by its creator, to use it for his benefit, for that of other creatures and for future generations. The utilization of these natural resources in Islam is the right and privilege of all people and all species and each generation should make the best use of nature according to its needs without adversely affecting the environment; man has the right to benefit from these resources and to conduct scientific research to discover the characteristics and the secrets of these resources without changing the systems and rules made by God. Allah said, “(such was) the practice (approved) of Allah among those who lived a foretime, no change will thou find in the practice (approved) of Allah....” Allah also said, “are they but looking for the way the ancients were dealt with? But no change wilt thou find in Allah’s way (of dealing). No turning off wilt thou find in Allah’s way of (dealing).... In yet another verse Allah said, “such has been the practice of Allah already in the past; no change wilt thou find in the practice of Allah....”

Allah has prohibited mischief on earth to support the right of man to use the environment and its resources carefully and wisely. Thus, Islam set out this principle of the right of man more than one thousand four hundred years ago. This right is not given who originates creation then repeats it, and who gives you sustenance from heaven and earth (can there be another God besides Allah?) Say, “Bring forth your argument, if you are telling the truth.” (Surat An-Namal 37: 64). In another Surat (Sad 38: 36), God said, “Then we subjected the wind to his power to flow gently to his order whither so ever he willed.”

The Western concept will be discussed in Chapter Three (3-2-9).

Judge Weeramantry emphasized this concept through suspension “The protection of the environment is... a vital part of contemporary human rights doctrine, for it is a sine qua non for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate on this, as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration and other human rights instruments.” Case Concerning the Gabčíkovo Nagymaros Project (Hungary v Slovakia) (1997) ICJ Rep.7, (Judge Weeramantry). See Boyle, 8 YBIEL (1997),13.


Surat Al-Ahzab 33: 62

Surat Fatir 89: 43.

Surat Al-Fat-h 38:23
to man by any civil law written by man or any international agreement, but is one of the rights like other human rights in Islam.\textsuperscript{50} This right of usage is from God, the creator of all beings; thus it is constant in form and nature.

In summary, God has given man the stewardship of the earth and its natural resources, to manage it according to his needs and the needs of other creatures.

2.3.2 The Stewardship of Man on Earth and the Construction of the Universe and the Environment

Allah has given man the stewardship of the earth because of the right of humans to the environment and its resources. God has not created the universe and its environment in vain, but for wisdom and for a special purpose known to him. God said "not without purpose did we create heaven and earth and all between..."\textsuperscript{51} In another Surat, Allah said, "not for (idle) sport did we create the heavens and the earth and all that is between..."\textsuperscript{52} Allah also said "we created not the heavens, the earth and all between them, but for just ends..."\textsuperscript{53} In another verse Allah said, "...and contemplate the (wonders of) creation in the heavens and the earth (with the saying) 'our lord not for naught hast thou created all this. Glory to thee.'..."\textsuperscript{54}

God created heavens and earth for a purpose and created man for a purpose, to make him steward of the universe and the environment. Man is the steward of Allah on the earth and guardian of its resources. Man should use these resources wisely, develop, manage and preserve them, and spread good and happiness on earth.\textsuperscript{55} This stewardship is a great mission for which the angels envied man, but God gave it to man as a test.\textsuperscript{56}

This stewardship proves the right of man to the environment and its resources, to make


\textsuperscript{51} Surat Sad 38: 27
\textsuperscript{52} Surat Anbiyaa 21: 16.
\textsuperscript{53} Surat Al Hijr 15: 85
\textsuperscript{54} Surat Al-Imran 3:191.
\textsuperscript{55} Sheltoot, M. (1983) Islamic Doctrine and Shape, Dar Al Shroog, Cairo, p. 127. (In Arabic)
use of it and manage its resources for his own benefit and that of other creatures and for the fulfillment of his needs and theirs. There are many Quranic verses and sayings of the Prophet Mohammed (PBUH) which support the principle of stewardship of man over the earth and its environmental resources. Concerning the stewardship of Adam, the first human, God said,

“Behold, thy Lord said to the angels ‘I will create a viceregent on earth...........”

Concerning the meaning of “I will create a vicegerent on earth”, all those who have explained this have said that this was intended to tell the angels that Allah had raised man above them and had given him the honor of being His steward on earth. It is a stewardship in which Allah has given man full authority over the earth and its environment, supporting the idea of the right of man to the environment and to the resources of the universe and the earth.

In the Sunnah, Ibn Asakir said that Anas (PBUH) said,

“Prophet Mohammed (PBUH) said that the angels said ‘O Allah, you have created us and the sons of Adam. You have made the sons of Adam eat the food and drink, wear clothes and have wives; they ride animals, they sleep and rest, and you did not give any of the above. You made the universe for them and the hereafter for us.’ Allah said, ‘I will not let the one I created by my hand and put my spirit into him like the one I said be and he was being...’”

In this Hadith there is proof that Allah not only created man by his own hands and put His spirit in him but also made him the heir of all the good and benefits to be found in the universe. Man enjoys the benefits of a good, healthy environment which is balanced because God has created it and furnished it with resources for the continuation

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57 Surat Al Baqarah, 2:30.
58 Saboni, A., Safwat Al Tafaseer, Dar Al Shroog, Beirut, p. 48. (In Arabic)
60 Narrated by Ibn Asakir, Sutee did not talk about it collection Alhadith Iman sutee part 2.
of life, on behalf of his steward on earth, mankind. The stewardship of man on earth
does not only state his right to enjoy these benefits, but also places upon him the duty to
maintain it, ensuring the sustainable use of its resources, its development and
preservation, and the reclamation of the environment. These duties have only recently
been made subject to a new system and regulations drafted by man. 61

The emphasis given in these passages to this concept of Man’s stewardship
indicates its importance within Islam. As can be seen above, water is a vitally
significant resource, thus something which this stewardship should apply to all the
more. In view of the fact that the seas and oceans cover most of the earth’s surface area,
how much more should this be true of the marine environment.

2.3.3 Man’s Stewardship and Duty to the Environment is an Islamic
Principle

The laws and regulations recently made by Man recognize the importance of the
duty and responsibility of both individuals and societies in preventing or controlling
pollution in that they are intended to stop all forms of misuse of environmental
resources, in part by use of the principle that the polluter pays, 62 in other words,
whoever causes oil pollution of the marine environment or pollution with other
substances, shall be held responsible for cleaning it up and restoring the situation to the
condition it was in before either by himself or by bearing the costs for the clean up. 63

Shari’ah did this more than a thousand years ago by stating the idea of
environmental duty, i.e. the price man should pay to prevent harmful effects on the
environment and its resources and that each man also has a responsibility to help care
for it. 64 As mentioned earlier, Islamic law states that man has a right to a clean
environment free of pollution and the right of usufruct of the environmental resources.

presented to the Symposium on protection of the marine environment in the light of the United Nations
Convention, Diplomatic Training Institute, Saudi Arabia)
62 Isaa, I. (2002). Environmental Pollution: the Most Important Problem of the Century and the Solution,
op.cit., pp.117-118.
63 For more information about Polluter Pays Principle see, chapter 3, p. 62.
This usufruct necessitates the duty of sustainable use and conservation of natural resources; right and duty go together.

The utilization of these natural resources in Islam is the right and privilege of all people and all species. It is a joint usufruct, in which each generation uses and makes the best use of nature according to its needs, without adversely affecting the interests of future generations or other creatures.  

Joint usufruct, furthermore, is the right of all nations. Due to the importance of environmental resources to mankind, Islam has prohibited their degradation, exploitation or pollution, which might endanger the existence of life on earth. Islam has encouraged the development of these natural resources and this is at the heart of the concept of the duty of man towards his environment, which is parallel to the idea of the right of man regarding his environment.

The parallels between duty and right concerning the environment, typify one of the aspects of the ‘middle way’ in Islam. Islam recognizes the rights of humans, which should be protected, while at the same time imposes certain duties which have to be fulfilled; for every right there is a corresponding duty.

Returning back to the idea of human stewardship on earth, we find that it is not just usufruct of the natural environment and the wealth created by God but a responsible usufruct, by which man has to develop, conserve and make the best use of nature according to his needs without adversely affecting the interests of future generations. If natural resources are not developed, they will diminish; hence the call for the conservation and development of the earth’s resources. Allah said, “it is he who had produced you from the earth and settled you therein”, referring to the stewardship and settlement of the earth, which requires effort and not just conservation of natural resources, but also the development of these resources through research. It is man who

66 Ibid
68 Surat Hud 11: 61
needs to work as he is responsible, but God may punish him if he fails to do his duty. This is clearly seen in the following verse from Surat Yunis: Allah said, “then we made you heirs in the land after them, to see how ye would behave...”

2.3.4 Islam, the Right of Usufruct and Representation in the Management of the Environment

In Islam, Man has the right to possess some of the natural resources and has the right to use them according to certain principles. Some actions that result in gaining interest may cause harm or damage equal to or greater than the benefits achieved. The legal principle in this regard is that ‘the averting of harm takes precedence over the acquisition of benefits’. The elimination of damage and destruction is the first step towards the achievement and realization of the common good of all.

Another Islamic principle that protects the common interest of the public against the private interest is that ‘severe damage shall be removed by the means of lighter damage’. For example, anyone who uses the seas for special or general purposes must make sure that its use does not pollute or damage the marine environment with any type of pollutants (including oil), and those who use the seas must take the necessary measures to ensure these seas are not harmed, to ensure that gaining any personal benefits shall not be at the expense of the damage caused to others. These Shari’ah principles will curtail or bind the authority of man over environmental resources and will compel him to conserve these resources, even if he has the right of ownership. Islamic principles do not state that a man has full freedom to use his money. Islam prohibits man from doing harm to himself or to the universal good; he has to abide by the limits imposed by shared responsibility in the way he acquires and spends it.

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69 Surat Yunis 10: 14
right of ownership has a social function;\textsuperscript{73} ownership in Islam is the acquisition of a thing in a way in which it is possible for the owner to use it and to enjoy usufruct according to Shari'ah. There is a Shari'ah relationship between man and things which lets the owner of an item to have it in a way that prevents others from using it and allows him to use it accordingly.

It is not an individual right which gives the individual the authority of usufruct or of spending it without being questioned. Although private ownership is protected in Islam, there are important restrictions on its use. An individual will invalidate his right if by exercising that right he would cause harm to another or to the community in general. If this right conflicts with public benefits then the public benefits should be safeguarded. An individual right should not be an obstacle to achieving the common good of all beings. The governing authorities have the right to confiscate an individual’s wealth if he does not adhere to Islamic Shari’ah in using it. This is to safeguard the interests of society and to prevent any harm or injustice to it. If the right of the owner conflicts with a special benefit which has priority over the right of the owner, then the special benefit should be secured and the owner is awarded just compensation.\textsuperscript{74}

As stated by most Islamic scholars, individual ownership of money is not absolute or complete, but is restricted by God and the rights of society. The confiscation of money is possible for the sake of the common good and the owner should be compensated justly.\textsuperscript{75} Islamic Shari’ah principles and regulations that govern the stewardship of man on earth reduce the level of the right of individual ownership, whether of money, benefit, or whatever is owned and saved for use in times of need or is subject to usufruct when in abundance. Rights to enjoy environmental resources are also reduced to the level of the right of usufruct, in which the authority is lower than that of the owner.

This analysis is not strange if account is taken of the fact that some of the scholars of Malikiya said that ownership, in general, is only of benefits, while the actual resources and the wealth of the environment are owned by God. The authority of man is only over benefits, not over matter. Support for this argument comes from the belief that God claims all wealth and money for himself, so that those who have it are mere inheritors of its management. Allah said:

"Believe in Allah and his messenger and spend (charity out of the substance) whereof he has made you heirs." 77 "Ye give them something yourself out of the means which Allah has given to you." 78

"To him belongs what is in the heavens and on earth, and all between them, and all beneath the soil." 79 "To Allah doth belong the dominion of the heavens and the earth, and all that is therein, and it is he who hath power over all things". 80 "To him belongs that which is in the heavens and on earth: for verily Allah, he is free of all wants, worthy of all praise." 81

"To Allah Belongs all that is in the heavens and earth: to Allah do all matters return." 82 "To Allah belong the domains of the heavens and the earth, and to Allah is the return." 83 "Be quite sure that to Allah doth belong whatever is in the heavens and on earth." 84

"He to whom belongs the dominion of the heavens and the earth no son has he begotten, nor has he a partner in his dominion." 85 "Knowest thou not that to Allah (alone) belongeth the dominion of the heavens and the earth." 86

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77 Surat Al Hadid 57: 7
78 Surat Al-Nur 24: 33
80 Surat Al-Maida 5: 120
81 Surat Al hajj 22: 64.
82 Surat Al-Imran 3: 109
83 Surat An-Nur 24:42-64
84 Surat Al-Furqan 25: 2.
85 Surat An-Nisaa 4; 170
86 Surat Al-Imran 3: 26-180
All these verses cited above prove that everything in the universe is owned by Allah, the creator of ownership with the ability to do whatever He wants. This not only proves that man does not actually own the wealth and good things in the universe, but also that this wealth will go back to Allah, its owner and inheritor, after the destruction of life on earth and the death of those who have the right of usufruct. This is contained in the verse: "It is we who will inherit the earth and all beings thereon: to us will they all be returned."

The idea of the right of usufruct of the natural resources looks more acceptable when two points are considered.

a) It is certain that the resources of the environment and its wealth are given by Allah to all people; therefore its usufruct is not restricted to one individual or country or generation. Man’s utilization of the natural resources should also not be at the expense of other created beings. The usufruct must not abuse, misuse or distort the natural resources. We should not cause degradation to the environment or pollute it, because the right to do whatever we want with nature is not for us to grant, but for the true owner, God (Allah).

b) The right of usufruct also entails the temporary nature of the stewardship of man in the universe. This applies to ownership and therefore it upholds the idea of the right of usufruct of the natural environmental resources. The limitation in time is mentioned in the Holy Quran in the verse, "On earth will be your dwelling place and your means of livelihood – for a time."

The temporary nature of the right of usufruct will help in controlling human behaviour towards natural resources. The resources and wealth of nature are not for use by one generation. Thus, in this joint usufruct each generation makes the best use of nature according to its needs without adversely affecting the interests of future

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87 Surat Maryam 19: 40
89 Surat Al-Baqarah 2: 36.
generations.\textsuperscript{90} This requires sustainable use, conservation, the control of pollution and avoidance of excessive exploitation of the resources, so that they can be passed on to the next generation in a productive state which that generation can preserve. The duty of man towards the good things that Allah has given him is to thank Him for them and this should be done through the conservation, maintenance, and wise use of the environment, so that we preserve it for future generations.\textsuperscript{91} The temporary right of usufruct also implies that man is only a representative and entrusted with the management of the environment. If man is not the owner of the natural resources and environmental wealth, as noted above, then from an Islamic point of view he is a representative of the community, exercising responsibility for investing the money he has.\textsuperscript{92}

The maintenance of the continued productivity of environmental resources necessitates modifying the authority of man when dealing with the environment to make him a management authority for the common good of all. As noted by the scholars,\textsuperscript{93} if the ownership of money and other wealth is Allah’s and if it is found in the hands of man, man should keep it, invest it and preserve it from being lost by bad deeds. In other words, if one of the partners is the true owner and the other is a representative of the owner, then the latter should refrain from spending the money in ways of which the true owner does not approve, which would constitute a violation of the relationship between the true owner and the representative.

If the true owner is Allah and the representative is man, then the violation is greater and the punishment will be greater.\textsuperscript{94} It follows from the meaning of stewardship that the relationship between man and environmental resources is one of sustainable use, conservation and management, but not absolute ownership. The idea of representation and trust is clearly manifested in the Quranic verse: "We did indeed
offer the trust on the heaven and the earth, and the mountains, but they refused to
undertake, being afraid thereof; but man undertook – he was indeed unjust and
foolish."  

The trust referred to in this verse includes not only trust in religious duties
but also trust in wealth (money) by keeping it, investing it and spending it in a just way,
taking into consideration Allah’s and the people’s rights to it.

Those who are highly concerned about the environment have coined the idea of
“common heritage of mankind” which is intended to push for the restoration of natural
resources, and stop their overuse and misuse. It is a relatively modern idea but up to
now has not taken its place in contemporary agreements such as UNCLOS, 1982, that
dedicated the idea of common heritage relevant to the resources and wealth existing at
the bottom of the seas and oceans and on the earth outside national sovereignty of each
country or the resources and the wealth that described in the agreement as ‘area’. Part of
Article 136 states that; “The Area and its resources are the common heritage of
mankind”. Article 137 (2) of the agreement reads that; “All rights in the resources of the
Area are vested in mankind as a whole, on whose behalf the Authority shall act. These
resources are not subject to alienation. The minerals recovered from the Area, however,
may only be alienated in accordance with this Part and the rules, regulations and
procedures of the Authority.”

2.4 Good Reward for those who Take Care of the Environment

Islam does not only motivate people to conserve the environment and protect it,
but also promise those who did that they will be rewarded here and in the Hereafter.
Islam has a reward for those who clean the environment from pollution and other
harmful things. Prophet Mohammed (PBUH) said that “Faith is more than seventy
parts or more than sixty parts the best is when you say there is no God but Allah
and the lowest part is when you remove bad things from the road.”

95 Surat al-Ahzab 33: 72.
96 Moslems believe that Allah rewards those who obey Him and keep His commandments both in this
world and in the hereafter. This reward can take a variety of forms – peace of mind, enjoyment of His
blessings and provision in this world, or pardon from sins or better treatment in the next.
97 Bukhari, Book of Faith, hadith No. 3.
Mohammed (PBUH) made removal of bad things from the road is one part of Muslim faith. This can be interpreted to be encouraging people to pay attention to the cleanliness of the environment and its purity and thus it becomes a religious duty. The environment in Islam is the place from which Muslims obtain their food, drink, clothes and which provides them with a place to pray and to live with their family Prophet Mohammed (PBUH) said that: "Guarding one day in Allah's cause is better than what is on all earth."\(^9^9\)

In another example of the reward given by Allah to those who clean the environment is a saying by Prophet Mohammed (PBUH) who said that: "A man walking on the road found a thorny branch, he removed it from the road, Allah thanked him and forgave his sins."\(^1^0^0\) Abu Huriara narrated that Prophet Mohammed (PBUH) said that: "... I have seen a man in paradise because he cut a tree that harm people on the road."\(^1^0^1\) For small deeds, like removing a branch or a tree that harm people, Allah gave big reward, so, how about people who remove or protect the whole environment from pollution of area or water or destruction of crops or sea wealth? The reward will be much bigger. In another saying Prophet Mohammed (PBUH) explained the reward for conservation of the environment. Prophet Mohammed (PBUH) said, "Every Muslim who grow crops, and anything that is eaten by humans, birds or animals or stolen from it, Allah will reward him for it ..."\(^1^0^2\)

Thus retribution in Islamic Shari’ah takes two forms. The first one is reward or recompense in return for commitment to and abiding by Islamic rulings, and the other one is a punishment or guarantee in return for violations while the retribution in man-

\(^9^9\) Bukhari, Book of Jehad, hadith No. 2892.
\(^1^0^0\) Bukhari, Book of Manners, hadith No. 2652.
\(^1^0^1\) Ibid
\(^1^0^2\) Ibn Hanbal, A. Almusnad, vol. 5, p. 85. These hadiths urge and encourage Muslims to farm and plant empty or vacant land. The prophet Mohammed (peace be upon him) has equated this with worship and obedience that a Muslim will be rewarded for in the hereafter. There is no doubt that agriculture is a means of protecting the environment and that it modifies the impact of desertification. The international concern about desertification began only in August 1977 when the UN held a conference in Nairobi to tackle the problem of desertification, which is one of the problems facing the world.
made laws lies in one aspect only which is the punishment and compensation against the violations.

2.5. Punishment for Harming the Environment

Islam declared that harming the environment is worse than bloodshed. Mischief on earth is one way of harming the environment. Environmental pollution may lead to the death of many people due to diseases and epidemics. Pollution of the environment not only kills people but it also destroy crops, animals and every living being.

Allah (describing some people) said: "...when he turns his back, His aim everywhere is to spread mischief through the earth and destroy crops and progeny, but Allah loved not mischief ..." Islam has a heavy punishment for those who harm the environment. Allah said: "The punishment of those who wage war against Allah and His messenger, and strive with might and main for mischief through the land is: execution or crucifixion or the cutting off of hands and feet from opposite sides, or exile from the land: That is their disgrace in this world and a heavy punishment is theirs in the Hereafter." Imam Al-Showkani in his interpretation of this verse said that: ".... the general meaning of this verse is that, mischief on earth is everything bad or harmful done to people or the environment. For example, destruction of buildings, cutting of trees and pollution of rivers is mischief on earth." This Imam included in the general meaning of the verse all kinds of harmful things done to the environment physically and spiritually.

In Islam there is also punishment in the Hereafter for those who pollute the environment. Prophet Mohammed (PBUH) said that: "Anyone who cuts (a useful) tree, Allah will put his head in Hell." Islamic Shari’ah rewards and punishments both in this life and in the Hereafter Life, and this is what distinguishes the Islamic Shari’ah from positive Law. The Islamic Shari’ah gives Hereafter retribution as well as retribution in

103 Surat al-Baqarah 2:205.
104 Surat A-Almaida, 5:33.
This life. The Hereafter retribution is more powerful than the retribution in this world for it has a great effect on drawing the attention of human souls to the necessity of performing the teachings of Islam, and following its commandments and avoiding its prohibitions.

Even though the above examples are not directly related to pollution of the marine environment, the general principle can be applied to it, the marine environment being part of the earth in the broader sense of the word, as used in the Quran.

### 2.6 Principles of Islamic Law Governing Procedures and Measures for the Protection and Conservation of the Environment

Islamic Law contains a series of rules and principles extracted by Islamic scholars from the general Islamic provisions mentioned in the Book and Sunnah which, when complied with, control human beings in dealing with their terrestrial and marine environment. These rules specifically require people to act as custodians of the environment; among their stipulations are the following principles.

The first principle is: "Damage shall be removed"\(^{107}\) this principle says that for any work that results in harm to the environment, this harm must be removed.

Some scholars say: "This principle is the basis for the guarantee of things damaged. The person who did the damage to the environment must compensate for that particular damage; this principle is the basis for many Shari’ah laws."\(^{108}\) The use of this

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\(^{107}\) Article No 20 from, *Journal of Justice Laws*. The *Journal of Justice Laws* is a set of rules taken from law books which were acknowledged by Abdul Najum and truthful sayings from the Hanafi doctrine which were put down in writing in 1851. References are acknowledged by the Committee of Excellent Scholars under the charge of the Principal Justice of the Ottoman Empire. In 1872 a report was approved by the Sublime Porte to be formed as civil law, to avoid conflict in rules. These rules of justice were seen recently in Iraq, Syria, Libya and Jordan, and published with explanatory comments as follows: By Salem Ristom, Beirut (1898), Second Edition. By Momin Algadi, in Alsyrian and Alame, Baghdad (1947) Comments in *Justice Rule Magazine*, by Arif Al Sawidi Al Bassi, El Flah Print, Baghdad (1922). *Justice Rule Magazine*, prepared by Mohd Saeed Mourad and Yossif Alissa, Alameryah Print, Beirut (1923).

fiqh principle should prevent any damage of this sort against the balance of the water environment, or deeds that cause damage or harm to the water environment. From the Shari’ah point of view, this damage or harm must be removed. Any person who practises an activity that pollutes water should be ordered to stop this activity or to take the necessary precautions to prevent water pollution. If he is unable to remove the damage done to the water environment, he should be asked to compensate for the damage done by paying for the same thing damaged or by paying its value.109

Muslim scholars use the term “guarantee” instead of “compensation”.110 They say, “The reasons for guarantee are three: contract, unauthorized use and damage.”111

Scholars of Islamic Shari’ah explained that for every damage inflicted there is compensation, so that no inflicted damage goes without punishment, the scholars say that everyone who has caused damage is responsible even if the person is not an aggressor.112 This is according to the justice principle “The person responsible for the damage shall pay in kind or value for that damage even if he did not do it intentionally.”113

This principle is comparable with the modern ‘the polluter pays principle’114 of international law, which means that anyone who damages the marine environment in any way, must be held responsible for cleaning up the damage should pay to cover the cost of cleaning.

The second principle is “there should be no damage and no infliction of damage.”115 This principle prohibits damage and infliction of damage. A right should be exercised only for the achievement of the ends for which that right was created, and a

110 In the Journal of Justice Laws, article (416) defines the guarantee as replacing the thing damaged or paying its value.
114 For more information please see chapter 3, p.62.
person invalidates his right if by expressing it he intends to cause damage to another, or if its exercises does not result in any benefit to him but result in damage, even unintentional, to another, or if in spite of bringing benefit to him, its exercise results in excessive damage to another or in general, damage to the community and the environment.¹¹⁶

This principle derived from the Prophet’s (Peace be upon to him) saying which is narrated by Abi Saeed Alkodri: “No damage and no infliction of damage.”¹¹⁷ This principle means that everybody is prohibited from doing harmful things like water pollution and is also prohibited from inflicting damage or harm and any person who did the harm will be asked to repair the damage. What is meant by inflicting damage is to cause damage to someone who did damage to you and this is prohibited in Islam.¹¹⁸

The third juristic principle “the Averting of harm takes precedence over the Acquisition of benefits”. This juristic principle means that any action leading to pollution must be avoided, even this avoidance leads to missing an opportunity. Definitely pollution leading to violating the balance of the aquatic environment varies, so prevention is extremely important. The application of this principle is the first step towards the achievement and realization of the common good by averting the harm and stopping the action even if they bring benefits to the individual.¹¹⁹ The harm done to the water environment has great consequences and so its prevention takes priority in Islam.

This principle and its concept totally agree with contemporary international principles relevant to the precautionary and the preventative action principles. The preventative action principle requires that states take the correct measures to prevent anything from taking place which could potentially cause environmental damage,¹²⁰ while the precautionary principle applies in cases where there is no conclusive or

¹¹⁷ Narrated by Ibn Majah, hadith No. 2341.
¹¹⁹ Al-Suitty, J., Al-Ashbah, wa Al-Nathair, In the Principles and Branches of Shafieh Fiqh, op.cit., p. 87.
¹²⁰ For more information see chapter 3, p.56 and 58.
overwhelming evidence as to whether environmental damage could occur as a result of certain actions but there are strong indications that it could do so.\textsuperscript{121} In any case, the state needs to verify that the activities, inside or outside of its jurisdiction, will pose no potential or proven threat to the environment, and when adverse effects have taken place, the country will be restrained from continuing with these activities.\textsuperscript{122}

Some good activities like exploring for oil, pearl diving, or navigation by ships bring benefits to people but sometimes they do harm by polluting the water. There should be measures to prevent this damage to the water environment. If it is impossible to avert damage, these activities must be stopped according to the juristic principle "\textbf{the Averting of harm takes precedence over the Acquisition of benefits.}" That to say, the prevention of damage and mischief is a priority over any interest, when utilizing the environment.

In the 1970s the West began to realise that the idea of the Environmental Impact Assessment (EIA) was an important tool in the preservation and maintenance of the environment, when environmental resources were being utilised. The idea is that it is necessary to assess the impact of any project on the environment. If that project could have bad effects on aspects of the environment in any way, socially, health-wise or economically, it should be modified to avoid them, otherwise it should be cancelled, because the preservation of the environment is a priority over the economic interest which is after all temporary so, the preservation of the success. The idea of the EIA reflects the above mentioned Islamic jurisprudence rule and is another indication of the modernity of Islamic thinking in the field of the preservation and maintenance of the environment.

The fourth juristic principle: "\textbf{The beneficiary should compensate for the damage he did}" this is in accordance with basic social justice and the balance between benefit and damage. According to this juristic principle anyone who is practicing an

\begin{itemize}
\item \textsuperscript{121} For more information see chapter 3, p.58.
\item \textsuperscript{122} Hashim, M. S. (1991) \textit{International Responsibility for Marine Environmental Safety}, Saeed Rafat Printing Company, Egypt, p. 516. (In Arabic)
\end{itemize}
activity that causes pollution to the water environment and he is benefiting from it, should pay the cost of decontamination or prevention of pollution and should compensate for any damage he has done to the water environment.

After the awareness of the basic principles of environmental protection which are borrowed by scholars from the science of law, and these principles encourage general protection of the environment with especial attention to water resources. It can be said clearly that Islam represented by The Holy Book and the Sunnah of Prophet Mohammed, (peace and blessing be upon him), and the interpretation of scholars that it explained the Islamic position towards environment, who to treat it and who to preserve it.

It can be seen that Islam parallels all the great legal efforts which are carried by contemporary legal scientists for the protection of marine environment. However these Islamic principles are general and not detailed, as are modern legal principles. Therefore, it can be seen that Muslim scholars need to put more efforts into detailing these principles and elaborating on how they can be put into practice and applied in different areas.

The second issue is that, in accordance with the international rules which concern with marine environment protection, it can be found that they are in agreement with the general Islamic legal principles. There are no contradictions between international and Islamic laws. The international rules represent detail description to general Islamic law which accentuate environment at protection.

It can be seen that Islamic Laws represented in Holy Quran, the Prophet’s Sunnah and inferences of Islamic scholars from general principles, are all very concerned with the environment in general and the marine environment in particular and illustrate human beings’ rights and duties regarding the environment.

123 That was ensured by holding many conferences on environment based on Islamic view. That is according to the decision of the Islamic Summit Conference in its ninth round on the Islamic view on the environment, for example:
1- The First Islamic Conference held in Jeddah on 10.6.2002 attended by 57 ministers of the different Islamic countries, see Alsharg Alawsat journal on 11.6.2002 No 8596.
The obligations laid down in Islamic Law on the conservation of the marine environment are in accordance with contemporary international efforts at the protection of the marine environment, an example is stated in Article 192 of UNCLOS 1982 and also in the second principle of Rio de Janeiro Declaration.

The human right to live in a clean environment is referred to by many acts of law; it is stated clearly in the Stockholm Principles, 1972, and in the first of the Rio de Janeiro Principles. That shows a general consensus between modern legal efforts and Islamic Shari’ah related to the human right to live in a clean environment.

2.7 Conclusion

From what is mentioned above, we can see that Islamic Shari’ah represented in Holy Quran, Prophet’s Sunnah and the extrapolation of scholars all illustrate the rights and duties of man towards natural resources and clarify the spectrum of these duties, specifically forbidding spoiling the earth and its environment, resources and wealth. Also the order to preserve these resources and repair them which illustrates the concept of man’s obligation to take care of the earth, also determines a range of activities including banning the misuse and overuse of water.

Islamic Shari’ah also illustrates the human right to live in a clean and unpolluted environment. God has made Man his representative on earth to manage it and to keep it in good condition. To repair it is mandatory. It also refers to the right of humans to possess natural resources, and thus have the right to use them abiding by Islamic jurisprudence.

This chapter has also referred to the important Islamic principles that have been extrapolated by Islamic scholars from the Quran and the Prophet’s Hadeeth on the relationship of man with natural resources and his duty to preserve it.

3- The Third Islamic Conference of Environment Ministers held in Ribat/Morocco under the auspices of Arab Organisation for Education, Culture and Science in cooperation with General Head Quarter of Metrology and Environment Protection on 29-31/10/ 2008.
It is important to note that although Islamic jurisprudence have not yet produced a comprehensive set of rules and principles to control and prevent pollution, it does however include many general principles which can be a good basis for the establishment of such a set of rules and principles.

In general it can be said that Islamic Shari’ah Law and modern international law have many similarities regarding the protection of the marine environment.

The next chapters will go on to discuss local and international efforts to protect the marine environment in general and the Arabian Gulf in particular.
3.1 Introduction

The purpose of this chapter is to illustrate and study the major principles of international law with reference to protection of environment in general and the marine environment in particular, as revealed in international environmental instruments. These principles are pertinent because of their universal application and thus, their implication is reflected in the mounting requirements to include them into appropriate national and international legal instruments and policies.

This chapter will consider the protection of the marine environment under the following ten governing principles of pollution control:

3.2 The Governing Principles of Pollution Control

3.2.1 Good Neighbourliness Standards

Good neighbourliness is one of the main bases of international relationships. Legally, it means that countries should exercise their sovereignty and power within their territory, provided that their activities do not cause any significant loss or damage to other countries, areas or regions.\(^1\) International law in respect of neighbourliness is based on international conventions. Countries should consistently apply these in relations between them and consider them as binding. Indeed, this idea is given prominence in the preamble to the United Nations Charter: “All should live together in

peace as good neighbours”\(^2\) and this is supported by the international courts in cases such as:\(^3\)

1. Trail Smelter Award,\(^4\) which says: “under the principles of international Law, as well as of the law of the U.S., no state has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.”

2. In the International Court of Justice it was stated in respect of the Corfu Channel issue on 09.04.1949 that Albania had come to know that there were mines laid inside its territorial waters in sufficient time so as to direct a warning to other countries and their citizens. The court stated that no country should allow any other country to use its lands to commit anything that contradicts another country’s rights.

3. It was confirmed in the arbitration court resolution on Lac Lanoux,\(^5\) concerning the conflict between France and Spain, that countries shall be responsible for all activities occurring in their regions which may cause harm or damage to the environment of another country.

The above resolutions and rules indicate the applications of the principle on pollution, as pollution may extend beyond geographically neighbouring areas and

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\(^3\) Also the following two cases are relevant to this point:

1. The International Court of Justice (ICJ) judgment issued on 22.06.1973, regarding the conflict between France and Australia over atomic trials in the South Pacific, stated that the French government should stop and refrain from carrying out atomic trials which cause radioactive fallout in the Australian region, and the court issued the same judgement on the same date in regard to the conflict between New Zealand and France.

2. Paragraph 27 of The Award of International Arbitral Tribunals concerning the issue of San Laurence, issued on 17.07.1986, states that while the concept of neighbouring is used, in general, to indicate the status of geographical proximity, it will be used specifically in the valid law to describe a situation where a threat to excite continuous conflict or to disrupt co-operation by the citizens or public authorities in two countries shows that their activities interfere or overlap in one geographical area.

\(^4\) 35 *AJIL*, 1941, P.684.

\(^5\) 24 *ILR* (1957), p.119.
contamination may reach many states whether or not these are geographically neighbouring in the strictest sense. They are nevertheless neighbouring countries, and those which are located in one geographical area are mostly subject to pollution. Thus, neighbouring countries must cooperate.

The clauses and rules that concern the good neighbourliness principle are as follows:

1) Principle 21 of the Stockholm Declaration on the Human Environment issued in 1972, which includes a clause requesting that countries should undertake not to cause any harm or loss to other countries' environments while carrying out any activities in their territory.⁶

2) Article 2 of the Rio Declaration (1992), in respect of environment and development, states that countries shall be responsible for guaranteeing that the activities carried out in their area do not cause any harm or loss or environmental contamination to other countries or to areas outside their national sovereignty.⁷

Para (2) of Article (194) of the UNCLOS must be mentioned which states that:

"States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention."

The previous wording in the marine environment field may be completed by the wording of Article (195) which states:

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⁶ "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction."

"In taking measures to prevent, reduce and control pollution of the marine environment, States shall act so as not to transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution into another."

The states' commitments are not limited to refraining from polluting the environment of neighbouring states and taking the necessary measures for that, but it extends to the preventive side represented in informing and warning about the possibility of damage occurrence and to preventing damage to common resources. Article 198 of the Law of the Seas states upon that:

"When a State becomes aware of cases in which the marine environment is in imminent danger of being damaged or has been damaged by pollution, it shall immediately notify other States it deems likely to be affected by such damage, as well as the competent international organizations."

Further, in regard to protection of the marine environment from pollution, it is prohibited for every country to dump toxic and nuclear substances in marine waters, in manners, which cause damages in marine environment of the neighbouring countries. 8

Some scholars 9 assert that customary international law confirms an obligation on the country to prohibit individuals from using its territory in a manner which may inflict damage of pollution in another country's region. This obligation does not include guarantee against all damages, but it covers damages which reach specific degree of volume. In this latter situation, the country which does not exert the needed concern and does not take appropriate measures in the suitable situations for the prevention of the damage, shall be held accountable for remedying that damage, and it cannot plead not guilty by saying it lacks sufficient monitoring and lacks means, because it is obliged to be equipped with legislative, administrative, and legal systems in order to

8 Art. 25 of 1958 High Sea Conservation Convention; Art. 210 (1), (3), (4), (5) and (6) of 1982 UNCLOS; 1972 Osloo Convention, Art. 4. 1978 Kuwait Convention, Art. 5.
preserve the system and respect its international obligations, putting into consideration the development situation in the country.

Thus, the principle of good neighbourliness is considered as a set of stable and fixed rules of international law, requiring that countries should practise their rights in a way not to cause any loss or damage to other countries' interests; and this is an irrevocable matter in any legal regulation.

If the effects of pollution extend beyond the sovereign territory of any country, such extension has to be considered as a clear violation of the good neighbour principle.

3.2.2 Sovereignty

State sovereignty, one of the oldest principles of international law, means that states have sovereignty right over their natural resources; and states must not cause damage to the environment beyond their borders. These objectives are set out:

The sovereign rights of states include exclusive jurisdiction over their resources. Article 21 of the Stockholm Declaration (1972) states, that in accordance with the United Nations rules and international law, each country shall have in practice a sovereign right to exploit its natural resources according to its environmental policies in pursuing its obligations towards protecting the marine environment and its surveillance.

A country's right to carry out all activities in its territory arises from its power over its own natural resources. The principle, which is widely accepted in the field of environmental agreements, has a great effect on the national policies of Third World

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13 Natural wealth found in the national territory, whether solid, gas or liquid. It may be found on the land surface or under it, or on the sea bottom, or in the atmosphere as chemical, and includes all minerals of various kinds, including oil and energy sources, gas and water. See Y.U.N. *General Aspects of Economic Development* (1952) p. 387.
countries and its effect is reflected in international programmes of environmental protection. This is referred to in Article 193 of the 1982 UNCLOS, which restates the principle that countries have a right to exploit their natural resources following their particular environmental policies in accordance with their obligations toward protecting the marine environment and its surveillance.

The principle also gave rise to the NGA declaration of permanent sovereignty over natural wealth, No. 1314 issued on 02.12.1958 and No. 1803 issued on 14.12.1962, and both include the right of a country to practise its territorial authority and power over its natural wealth, whether these resources or wealth are on dry land or on the continental shelf, but the right of the country to exploit its resources should not be a reason to interfere with other countries' rights.

Problems may arise when the use by a country of natural resources within its boundaries has a significant impact on another country, for example when a river runs through two or more countries. Difficulties may also crop up when developing nations (for example 'oil rich' smaller states) want to use their natural resources in a way they think fit in order to improve the standard of living of their citizens. It is therefore a delicate matter to balance the fundamental independence of each sovereign state with the innate fundamental interdependence of the environment.

Principle 21 of the Stockholm Declaration and Principle 2 of the Rio Declaration are fundamental in this area. Principle 21, which is now widely accepted to reflect customary law, reads:

"States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to

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ensure that activities within their jurisdiction or control do not cause damage to
the environment of other States or of areas beyond the limits of national
jurisdiction.\textsuperscript{18}

Principle 2 builds on this but goes further by expanding to include
'developmental policies'.\textsuperscript{19}

The second part of Principle 2\textsuperscript{1} can be seen to limit states’ rights with regard to
activities which take place within their territory or under their jurisdiction but which
may cause damage to the environment in areas outside of its actual territory.\textsuperscript{20}

Lastly, a question might be raised about the legitimacy of states' intervention in
emergency situations of marine pollution, taking into consideration the principle of
freedom to navigate the high seas. The answer is that the state which faces an
emergency case of pollution shall take all the necessary measures to combat pollution
and to correct the situation according to the rules of the Brussels Convention of 1996.
Intervention in emergency cases of pollution can be justified on the basis of the
necessity principle,\textsuperscript{21} and the principle of self defence,\textsuperscript{22} which are included in the
rights of a country subject to eminent threat or danger. The intervention shall be to
supply a remedy proportionate to the significance of the threatened rights, this principle
being approved by the UN Convention in its Article 22\textsuperscript{1}.

\begin{flushleft}
\textsuperscript{18} Ibid, P.235\textsuperscript{19} Ibid, P. 236\textsuperscript{20} Ibid, P.241\textsuperscript{21} The principle of necessity also says: "The circumstances in which necessity may excuse the non-observance of the duties imposed by international law..... are those in which ..... the rights of an innocent state are infringed." See: Bowett, D.W. (1985) Self-Defence in International Law, Manchester University Press, Manchester, p. 9.
\textsuperscript{22} Emphasizing the right of self-defense, Bowett says: The essence of self-defence is a wrong done, a breach of a legal duty owed to the state action in self-defence. This element is predominant in the writings of the early jurists and is clearly essential if self-defence is to be regarded as a legal concept. The breach of duty violates a substantive right for example the right of territorial integrity, and gives rise to the right of self-defence. Ibid.
\end{flushleft}
According to the Kuwait Protocol, a country which faces a marine emergency situation shall take all the necessary appropriate measures to combat pollution and correct the situation. In addition, this country shall inform other countries either directly or through MEMAC of the procedure it is taking or intends to take, consulting other members in the centre on the subject.

3.2.3 Prohibition of Abuse of Right

In simple terms, the abuse of rights is the arbitrary exercise of a right by a state with the lack of an acceptable motivation for action in conducting activities which prejudice others. It is related to the principle that states are obliged to show consideration for the interests of other states as can be seen in Principle 21 of the Stockholm Declaration and Principle 2 of the Rio Declaration. In this regard, there is a school of thought which says it is not irrational to consider the term 'abuse of rights' as a general principle of international law, but it is a principle which must be used with studied restraint. This notion could be recognized as one which limits the use of rights in bad faith. Therefore, this principle has been applied in certain situations such as, the duty to negotiate and consult in good faith. It is referred to in Lac Lanoux arbitration and the Icelandic Fisheries cases.

On the other hand, there is another perspective that treats abuse of rights as a way of devising a principle of reasonableness or a balancing of interests. Accordingly, it can be said that abuse of rights is part of the law of the sea, as many scholars have

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23 Kuwait Protocol Concerning Co-operation in Combating Pollution by Oil and Other Harmful Substances in Cases of Emergency (Kuwait) 23 April 1978, in force 1 July 1979; 17 ILM 526 (1978) (Kuwait Emergency Protocol)
27 24 ILR (1957), p.119
considered the Trail Smelter\textsuperscript{29} arbitration as symptomatic of and implied abuse of rights doctrine.\textsuperscript{30}

Furthermore, Article 2 of the Geneva Convention on the High Seas (1958), states that the free use of the high seas shall be according to the terms and conditions mentioned in the agreement items and in the rules of international law, in ways that do not cause any abuse in using rights. Further, Article 300 of the UN Convention on the Law of the Sea (1982) states that "Rights, authorities and freedoms confessed in this agreement are practised in a way not to cause any abuse in using the right". Whilst, in general, pollution has certain spatial limits, it can spread extremely wide and cause damage to people and their property in neighbouring countries, at which point it becomes an international problem, having a negative effect on the life and habitat of creatures from both sides. Furthermore, it affects the coming generations.\textsuperscript{31} For example rare and endangered species may become completely extinct.

However, in terms of application of the abuse of rights, for instance, Lauterpacht\textsuperscript{32} observed that in the comparative absence of solid rules and prohibitions of international law, abuse of rights presented a general principle from which judicial bodies might create an international tort law in accordance with the needs of interdependent states. But there is a limitation on abuse of rights if this is to be applied because the present rules require a balancing of interests. Hence, abuse of rights is the failure to fulfil, not an independent principle, but an expression of the limits intrinsic in the establishment of certain rights and obligations which now form part of international law.\textsuperscript{33} This rule is applied in cases of damage resulting from sea pollution from another state or from activities which are under a state's supervision,\textsuperscript{34} although it is difficult to define the wrong in order to decide the punishment to be applied to the responsible

\textsuperscript{29} AJIL (1939), p.182.
\textsuperscript{31} Ibid, p. 92.
\textsuperscript{34} Younis, M. (1996) \textit{Protection of the Marine Environment from Pollution in International General Law}, Dar Al Nahada, Cairo, p. 52. (In Arabic)
state. Based on what has been stated above, it can be seen that the importance of the non-abuse principle in using rights within the scope of international conduct to ensure respect of the rights of all countries and not to cause harm.

3.2.4 Good Faith Principle

Good faith is one of the most important pillars of international relations but is also one of the most difficult to define. O'Connor judged it to be based on 'honesty, fairness and reasonableness'. However 'fairness' and 'reasonableness' can be rather subjective terms as they are moral concepts and can vary according to the individual's perception.

O'Connor then came up with a more useful definition and proposed that the 'principle of good faith in international law is a fundamental principle' from which other legal rules 'directly related to honesty, fairness and reasonableness' originate. He went on to say that how the rules are applied depends on 'the compelling standards of honesty, fairness and reasonableness prevailing in the international community' at a particular time.

Good faith can then be seen as a general principle of law or of customary international law which is revealed in various obligations on states. For example states should attempt to settle disputes and to negotiate in good faith. They should not in any way attempt to obstruct a treaty which they have endorsed before ratification, and after ratification they should try to put it into effect in good faith and not try to hinder its object and purpose. They should endeavour to interpret treaties in context and according to their original object and intention. States should also fulfil in good faith any

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obligations which result from any sources of international law and should exercise their rights in good faith.\textsuperscript{39}

In deliberating on environmental issues in cases where a state is abusing a right which it enjoys under international law, the ICJ and arbitral tribunals have applied the general principles of good faith. In the ‘Fur Seal Arbitration’ the President of the Tribunal found that the exercise of a right only to cause injury to another (abuse of rights) is not permitted. In the ‘Trail Smelter’ case the award was an attempt to find a balance between a state’s rights and obligations and ‘recognition of the interdependence of a person’s rights and obligation’.\textsuperscript{40} In its conclusion in the Nuclear Tests case in which the legal effect of the French unilateral declaration that it would put an end to atmospheric nuclear tests was examined, the ICJ depended on the good faith principle.\textsuperscript{42} It acknowledged that even if unilateral declarations were not made ‘within the context of international negotiations’ but were ‘given publicly, and with an intent to be bound’, they could result in binding legal obligations.\textsuperscript{43}

Good faith is deemed to be a precondition of confidence, reliability and legal security, on the basis that to exclude or put aside an instance of bad faith or an evil when fulfilling international obligations will be deemed binding due to stable legal relations.\textsuperscript{44}

In international law there are many clauses referring to or stating the good faith principle, which may be summarised as follows:

- Article 5 of the UN Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil Thereof (1971) states that all


\textsuperscript{40} Cheng, B. (1953) \textit{General Principles of Law}, op.cit., p. 130.


\textsuperscript{43} See Nuclear Tests Cases (1974) ICJ Reports 267, 268).

\textsuperscript{44} Abu Alwafa, A. (1989) \textit{International Law of the Sea in the Light of Judgements of International and National Courts, the Behaviour of Countries and the Convention of 1982}, Dar Alnahda, Cairo, p. 43. (In Arabic)
member countries signing the treaty undertake to continue negotiations in goodwill in respect of other arrangements in field of disarmament to prevent a seabed arms race.\textsuperscript{45}

- Principle 27 of the Rio Declaration on Environment and Development (1992) states that all countries and peoples should co-operate in good faith and in a spirit of sympathy, to improve international law in the field of permanent development.\textsuperscript{46}

- The Arbitration Court in the case of Lano Lake issued a judgement on 16.11.1957 requiring the parties to hold negotiations in accordance with the rules of good faith.\textsuperscript{47} Furthermore, the Court required the country occupying the upper part of the watercourse to act in accordance with the rules of goodwill in order to balance its own interests with those of the downstream countries.\textsuperscript{48}

This principle also can be applied by the Gulf States in negotiation leading to agreements or in dispute settlement under the umbrella of the Kuwait Convention. It is also relevant in the conclusions of international and regional agreement or in implementation of agreements.

\textsuperscript{48} United Nations General Assembly (1993) Rotation (45) of International Law Committee, document No. A/cn, 4/450, 5 April, p. 33; Also the following cases are relevant to the point; First, Clause 2 of Art. 2 of the United Nations Convention states that members, so as to ensure for themselves all rights, should carry out all obligations in goodwill. See, March 1995 – DPI/511 Reprint 5M-93251. See also Abu Haif, A. (1990) \textit{International General Law}, 12\textsuperscript{th} edition, Menshaat Al-Maarf, Alexandria, p. 925 (In Arabic); Second, art. 26 of the Vienna Convention on the Law of Treaties (1969) states that each treaty shall be binding on its members, who must carry out the treaty terms and conditions in goodwill, See Allwan, M. (1978) \textit{International General Law}, Jordan University, Amman, p. 25 (In Arabic); Third, Article 157/4 of the 1982 Convention on the Law of the Sea states that all members of the authority shall fulfil all obligations in order to secure or ensure the enjoyment of all rights and advantages resultant from membership in goodwill. Also, article 300 refers to the principle of the same agreement, stating that all parties to the agreement shall fulfil, in goodwill, all obligations under its terms and conditions.
3.2.5 International Co-operation Principle

Cooperation with other countries is an obligatory matter according to general international law\textsuperscript{49} and has therefore been necessary in the process of the protection of the environment as whole. In this regard it requires states to work collectively within their territorial jurisdictions and beyond their boundary limits. This principle has been reflected in Principle 24 of the Stockholm Declaration.\textsuperscript{50}

Principle 24 of the Stockholm Declaration 1972 states that:

"International matters concerning the protection and improvement of the environment should be handled in a cooperative spirit by all countries, large and small, on an equal footing. Cooperation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres in such a way that due account is taken of the sovereignty and interests of all states".

The wide concept of international cooperation is inclusive of humanitarian, political, social, military and security matters, all of which reflect international public interest compounded with nationalism and general welfare to make a balance and apply justice and general welfare to all mankind.\textsuperscript{51} It also offers protection from pollution to the marine environment, based on the principle of international cooperation, and serves as an active instrument which is suitable for international rules for the protection of the environment from pollution. It thus becomes a general rule, having expression in different forms including some compulsory rules and others which are not compulsory, in covenants, international conventions and regional conventions.\textsuperscript{52}

\textsuperscript{49} For example, 1933 London Convention, Art. 12 (2); 1940 Western Hemisphere Convention, Art. VI; 1991 Alpine Convention, Art. 2 (1).


\textsuperscript{52} Birnie, P, and Boyle, A, \textit{International Law and the Environment}. op.cit.
It is appropriate here to refer to some other important rules apart from Principle 24 which have been included in the declarations and constitutions of various international bodies.

The Rio Declaration 1992 (Principle 9) also insists on cooperation to strengthen endogenous capacity-building for sustainable development, by improving scientific understanding through the exchange of scientific and technological knowledge and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative ones, while Article 7 calls on all countries to cooperate internationally to observe and protect human health and peace on earth.53

The basis of the MOX case is the obligation to cooperate, as is demonstrated in Ireland's claim in its application to start arbitration proceedings according to the 1982 UNCLOS that the United Kingdom had not cooperated according to the obligations set out in Articles 123 and 197 of UNCLOS. It had either responded to communications and appeals for information very sluggishly or not at all. It had also not provided Ireland with the environmental information which it had asked for and had also declined to make ready a supplementary environmental statement.54 The ITLOS asserted in its Provisional Measures Order that:

"The duty to co-operate is a fundamental principle in the prevention of pollution of the marine environment under part XII of the Convention and general international law and that rights arise therefrom which the Tribunal may consider appropriate to preserve under Article 290 of the Convention."

The disputing parties were instructed to co-operate and to immediately commence consultations in order to: firstly exchange further information regarding possible outcomes in the Irish Sea resulting from the opening of the MOX plant, next to observe threats or the consequences of the MOX plant's operations for the Irish Sea and

lastly to come up with suitable means of avoiding any potential pollution of the marine environment due to the MOX plant's operations.\textsuperscript{55}

The Tribunal declared in Para. 82 of its order that "the duty to co-operate is a fundamental principle in the prevention of pollution of the marine environment, according UNCLOS part 12 and in general international law, and that rights arise therefrom which the tribunal may consider appropriate to preserve under Article 290 of the convention". However, Judge Wolfrum's separate opinion questioned whether the customary international obligation to cooperate on environmental protection creates corresponding legal rights, but he did not find that UNCLOS creates a legally protected right to cooperation for its contracting parties.\textsuperscript{56}

These rules come in response to the natural problems that face all mankind, so that no country can solve them individually or in small groups; thus, we have to deal with them at the international level, which means we are in need of an ideal model of international cooperation, discussion and participation among nations to solve such problems in the economic, political and safety fields.\textsuperscript{57}

\textsuperscript{55} Provisional Measures Order, 3 December 2001, para. 83.
\textsuperscript{57} See the report of the academic seminar on Care of the Environment under Islamic Law, arranged by the College of Islamic law, Al Ain University, United Arab Emirates, 2000, p.38. Although many developed countries have all the tools and equipment to reduce pollution and risks around their coasts, all their efforts cannot solve the problems of pollution and the risks which threaten the marine environment of all countries in general, because much of this pollution comes from the high seas or the coasts of poor countries which cannot effectively fight pollution at source. Therefore, to address this threat all states need to coordinate and cooperate at an international level to strengthen local and regional efforts with the aim of protecting the marine environment from all risks of pollution whatever the source may be. Such considerations led to the holding of the Geneva Convention 1958, whose article 123 calls on coastal countries to cooperate amongst themselves to practise their rights according to rules, directly or through regional organizations. It also mentions many matters to do with cooperation, such as:-

- To coordinate the marine resources management of living creatures, to observe, discover and use the wealth of the sea.
- To coordinate policy on scientific study and on participation in programmes of scientific research in the area.
- To invite all those concerned with these matters, such as international organizations, to cooperate with each other to carry out and support the rulings of this article.

This invitation came because all acknowledged the necessity of international environmental cooperation to protect oceans, seas, rivers, natural resources and the air from pollution.

It will be seen that the marine environment had found broad international support for protection from pollution and that cooperation played an important role in this matter. So article 197 of UNCLOS
To promote cooperation within the Gulf area, the IMO and UNEP helped set up the Marine Emergency Mutual Aid Centre (MEMAC) in Bahrain with the remit of coordinating technical support and financial assistance for governments.  

An example of successful cooperation under the auspices of MEMAC is that which happened between Saudi Arabia and Bahrain, when in 2003, oil spilled off the Bahrain coastline and reached a situation that required a quick response to contain it. Saudi Arabia intervened and worked with the Bahrainis and their cooperation resulted in transferring large quantities of oil from the Kingdom of Saudi Arabia to Bahrain within seven hours.  

### 3.2.6 Principles of Declaration and Consultation

Sharing information about pollution is considered as a general rule of environmental good practice, so that the new international rule dictates the need for all countries to divulge to each other information about any probable accident that may happen suddenly or any accident that may cause damage to the environment, and to supply all necessary details about emergency cases. The basis of this principle old general international law mentioned by the ICJ in the case of the Corfu Channel in 1949, when it was noted that Albania did not inform other countries about the presence of mines in her territorial waters, which would have allowed British warships to take appropriate precautions. The court said that this rule could be derived from some definitions of general rules and others known to all humanity.

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60 Kiss, A. and Shelton, D. (2004) *International Environmental Law*, op. cit., p. 58. Exchanging information or consultation has been stipulated in many international conventions in the field of the environment, such as in Article 2 of the Biological Convention 1992, Article 9H (9/2) and Articles 10, 13 and 16 of the Helsinki Convention 1992 on the protection and use of transborder waterways and lakes.
61 For more information, see: Srahan, A. (1986) *The Role of the International Court of Justice in Solving International Conflicts and in fixing and applying international general law to the problem of the Middle East*, 2nd edition, Dar Al Nahda Arabia, Cairo, p. 50.
Many rules refer to the necessity of sharing information, starting with the rules of the OECD, including some other rules related to fighting cross-border pollution and ending with the rule of shared resources, acknowledged by UNEP, which states that it is compulsory for any country to inform other countries immediately in the following cases:

- If any accidents happen resulting from the use of shared natural resources which may cause immediate or lasting harm to the environment.
- If any suddenly natural incident happens to the shared resources and this accident causes damage to the environment of those countries.

Providing information about any environmental problem which had developed was also addressed by UNCLOS in Article 198, which comes into several conventions related to marine pollution in general and more specifically to territorial seas, according to which, when any country knows or has information indicating that the environment may face danger, threat, harm or damage resulting from pollution, it must immediately inform all other countries which may be affected by this pollution, as well as the relevant international specialist organizations.

The question here is about how countries must offer support or assistance to one another in case of environmental emergency or accident, especially as the law in this matter is not clear, because assistance generally includes operations happening on the territory of a foreign state, which would require special steps between the countries concerned. This will sometimes be of importance to countries, because it includes areas of doubt and may seem to some others like intervention. So Article 199 of UNCLOS addresses this situation, stating that in case of an imminent risk or an actual instance of pollution to the marine environment, the countries which are in the area of the accident and will be affected must cooperate, according to their abilities and with the help of

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63 Principle 9 (1) UNEP shared resources principle, p.21
64 Ibid.
specialized international organizations, to remove the influence of this pollution and to prevent or reduce damage. Success in this task requires all countries to strengthen their emergency plans against such pollution of the marine environment.\textsuperscript{66}

Nevertheless, the UNEP focuses, in paragraphs 22-38 of Agenda (21), on some priorities, such as offering help in cases of environmental accidents. In practice, there are many steps and precautions to be taken in these emergency cases, the first of which are those conventions whose aim is to prepare emergency aid and to cooperate in fighting oil spills or nuclear accidents, like the 1969 Bonn Agreement on Cooperation against North Sea Oil Pollution.

Some other conventions stipulate how signatories must inform others. For example, the Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution (1978) has a condition in Article 11 to spread information concerning the effects of planned activities. It also confirms the rule whereby they must inform any other countries which may be affected by emergency cases, under principle 18 of the Rio Declaration. There is a similar rule in the 1992 Biological Diversity Convention and in the 1992 Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes.\textsuperscript{67}

This section has shown that consultation is considered the responsibility of countries which cause cross-border pollution, who must cooperate to protect the environment. This is confirmed in Article 5 of the 1979 Geneva Convention on Long-range Transboundary Air Pollution, which requires consultation between any state causing such air pollution and any country on whose territory pollution occurs. The next section considers the precautionary principle.

\textsuperscript{66} Art. 199 of the (1982) UNCLOS.
\textsuperscript{67} Articles 9 (2) (h), 10, 13 and 16 of KC.
3.2.7 Principle of Preventative Action

Preventing damage to the environment is one of the requirements of the international law, hence the duty of prevention emerges from the international responsibility not to cause substantial harm to the environment extra-territorially, including the marine environment.68 However, the requirement of prevention is complicated due to the range of legal instruments in which it is found. A precondition of the principle is the prior assessment of potentially harmful activities. States are obliged to exercise due diligence by reacting rationally and in good faith and to regulate all activities under their control which might cause damage to the environment.69 Meanwhile, the threshold of likely harm required to trigger such an obligation is not clear.70

As such, the preventative principle not to cause harm to the environment may not be absolute, but requires states to reduce environmental damage by exercising due diligence.71 Hence, the principle is considered a deterrence method. Therefore, it requires states to take appropriate preventative measures to avoid environmental damage; measures such as appropriate regulations, proper administrative methods72 and quick actions at early stages rather than confining themselves to remedial actions after harm has occurred.73

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69 See Rio Texts: Principle 17, Chapter 22 of Agenda 21, Article 8 (b) of the statement on Forests, and article14 (1) (a) and (b) of the Biodiversity Convention treat both the national and international aspects of the issue. Also, Article (206) Convention on the Law of the Sea (Dec.10,1982) states, "When states have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessment".
71 The Principle does not include a minimum threshold of harm, because the obligation is one of conduct (due diligence), not of result, ibid., p.38.
73 Gabčíkovo-Nagymaros case, the ICJ noted that it was 'mindful, that, in the field of environmental protection, vigilance and prevention are required on account of the often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage': (1997) ICJ Reports7 at 78.
The main aim of the preventative principle seeks to evade damage irrespective of whether or not there are transboundary impacts. As such, the preventative principle has to be supported by various mechanisms and measures, such as legislative bodies, adoption of national and international environmental standards, environment information centres, and the conducting of regular environmental impact assessment. 74

Moreover, Article 22 of the UN Convention on the Law of the Non-Navigational Uses of International Watercourses, demands that states in which there are available watercourses carry out every indispensable measure to prevent the introduction of species into watercourse which causes significant damage to other states waters. 75

Furthermore, the principle can be applied in various ways including the application of internationally agreed minimum standards, prior assessment of environmental damage, licensing 76 or in some cases, specific setting conditions for eliminating, reducing, or controlling pollutants, 77 or the use of the best available techniques. 78

Although the preventative principle concentrates on the reduction and control of environmental damage as a prime objective, and for this objective to be accomplished, the preventative principle obliges states to take all practicable ways to prevent, reduce or control environmental harm under their jurisdiction. 79 This includes their economic zones and areas that are outside the direct control of sovereign states. 80

The prevention of marine environment from pollution has been supported by many conventions. For example, the MARPOL Convention, the 1972 London Dumping

76 For example Annexes I-5 of the 1973/78 MARPOL Convention.
77 See for example Articles 4-7 and Annexes I-III of the 1972 London Convention; Helsinki Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on the Reduction of Sulphur Emissions or their Transboundary Fluxes by at least 30 percent, July 8, 1985, 27 ILM 707 (1988).
80 Ibid., p.91.
Convention\textsuperscript{81} and all the UNEP Conventions on regional marine environmental protection. Hence many states have shown their own obligations to prevent and control the disposal of toxic wastes in the seas.\textsuperscript{82}

Moreover, Article 192, UNCLOS stated that 'States have the obligation to protect and preserve the marine environment...'. Similarly Article 3 (A) of the Kuwait Convention deals with the issue of avoiding and tackling pollution of the marine environment.

3.2.8 Precautionary Principle\textsuperscript{83}

The precautionary principle has been used in domestic legal systems and by the mid-1980s had begun to appear in international legal instruments. It aims to provide guidance in the development and application of international environmental law where there is scientific uncertainty. It also provides the basis for early international legal action to address highly threatening environmental issues, such as, ozone depletion and climate change.\textsuperscript{84} The precautionary principle calls for taking actions to stop severe damages. Moreover, the precautionary principle simply means that activities and substances that may be harmful to the environment are to be regulated and possibly prohibited, even if no conclusive or overwhelming evidence is available as to the harm or likely harm they may cause to the environment.\textsuperscript{85} Thus, it is obvious that precautionary measures necessitate an expert report containing an objective quantitative risk assessment, and the precautionary principle can be thought as the most developed type of prevention that remains the broad basis for environmental protection measures. In sum, it simply means getting ready for possible, uncertain threats in situations where

\textsuperscript{81} See Article 4 and Annexes 3 of the MARPOL Convention.
\textsuperscript{83} Or the precautionary approach, as the US and some others prefer to call it. EC practice considers that the two expressions are equivalent. The variations in terminology may also reflect a degree of uncertainty or controversy surrounding the contents and requirement of the principle. Notably, the 1991 Bamako Convention calls precaution both a principle and an approach. Kiss, A. & Shelton, D. (1986) System Analysis of International Law: A Methodological Inquiry, op.cit., p. 210. The USA rejected this rule during the special negotiations for the environment conventions, reasoning that it would damage progress, while Europe adopted it widely. See: Sands, P. (2003) Principles of International Environmental Law, op.cit., p. 277.
\textsuperscript{84} Ibid, p. 267.
\textsuperscript{85} Ibid.
there is no irrefutable evidence that harm will take place. In this respect, some of the applications of the precautionary principle can be seen in the Regulations on Prospecting and Exploration for Polymetallic Nodules (Mining Code), which the International Seabed Authority approved on July 2000, and which reads that "in order to ensure effective protection for the marine environment from harmful effects which may arise from activities in the area, the Authority and sponsoring States shall apply a precautionary principle". However, as there is no single understanding of the term between countries, but in general most agree, when they come to take decisions related to activities and substances that may possibly have a harmful effect on the environment, that they should regulate, limit or prohibit these activities, even when there is no evidence to show that they will indeed damage the environment, so that the onus of proof in taking such decisions is on proving that they will not cause harm. Thus, no country has the right to release potentially polluting substances within or outside their own region, unless they can prove that these materials will not have a negative effect on the environment.

This concept has found wide acceptance from all countries because all agree not to cause damage to the environment. This rule was confirmed in the Bergen Declaration (1990), which stated that a lack and shortage in perfect scientific sureness must not be used as reason to delay procedure to prohibit damage to environmental.

Ireland maintained that the United Kingdom had neglected to act preventively regarding the Irish Sea in the decision-making process regarding direct and indirect results of the activities of the MOX plant and the transportation of radioactive materials related to it. At the provisional measures phase Ireland referred to this to back up its

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89 "In order to achieve sustainable development, policies must be based on the precautionary principle. Environmental measures must anticipate, prevent and attack the causes of environmental degradation. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation," Bergin Declaration, principle 7, May 15, (1990); 20 E.P.L 200 (1990).
90 Ireland's Statement of Claim, 25 October 2001, para. 34 (the precautionary principle is a rule of customary international law which is binding upon the United Kingdom and relevant to the assessment of the United Kingdom's actions by reference to UNCLOS'.
assertion that the United Kingdom had the burden to show that discharges from the MOX plant or any other results of its operations would cause no harm and to notify the Tribunal of how urgently any necessary measures were. On the other hand, the United Kingdom made the case that, as there was no evidence demonstrating a real risk of harm, taking precautions did not involve limiting the rights of the United Kingdom to operate the plant, although recognizing the relevance of issues of prudence and caution in gauging the amount of risk involved. The Tribunal did not instruct the United Kingdom to suspend the operation of the plant as Ireland wished but instructed the parties to co-operate and start consultations to exchange further information regarding possible outcomes in the Irish Sea resulting from the commissioning of the MOX plant, and to come up with suitable methods of avoiding any potential pollution of the marine environment due to the MOS plant's operations. This order had as its basis considerations of 'prudence and caution'.

According to the 1992 Maastricht Treaty, precaution is also one of the bases of the European Union's environmental policy, but the term is not defined by the treaty. In February 2000, the European Commission produced a Communication to inform all EC institutions and member states of the manner in which the Commission intended to apply the principle when faced with risks of environmental harm.

92 UK response, 15 November 2001, para.89 (1).
93 Order of 3 December 2001, para.150.
94 Ibid., para. 84.
95 “Community policy on the environment shall aim at a high level of protection ... it shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source...”.

In the same year as Maastricht, the precautionary principle was adopted in the Rio Declaration on Environment and development 1992, whose authors considered it an important tool to provide guidance to individual countries and to the international community in developing rules to protect the environment. Article 15 invites countries to apply the precautionary principle as widely as they are able, confirming that if any danger of environmental harm is apparent and there is no way to change its direction, that countries should not use a lack of scientific certainty as a reason for failing to take suitable active steps to prevent such damage, and this gave the principle the status of a general rule.

Many other conventions had adopted the principle before Maastricht and Rio. For example, the 1985 Convention for Protection of the Ozone Layer (Vienna) was one of the first conventions to...
Tribunals have also adopted the precautionary principle, applying it to environmental risks that pose dangers to human health. The ECJ held that the European Commission had not committed manifest error in banning the export of beef during the BSE crisis. Furthermore, both the WTO and GATT have agreed that in cases where it is not possible to conduct a proper risk assessment, Article 5 (7) of the Sanitary and Phytosanitary (SPS) Agreement allows members to adopt and maintain a provisional or precautionary SPS member.

As for ITLOS, in the 1999 Southern Bluefin Tuna Case, it seemed to view the precautionary principle even more favourably than the WTO or other tribunals. In this case even though there was ‘scientific uncertainty’ regarding how best to protect the southern bluefin tuna stocks, the Tribunal ordered the parties to discontinue any experimental fishing programmes.

This section has shown that the precautionary principle has been approved and applied in several special rules included in conventions, and can be considered as one of the accepted measures to protect the environment, although it leads to a limiting of the authority of the state. Thus, Kiss describes it as a general principle of international law, because it is so often repeated in international agreements, and the researcher agrees with this opinion, because it clearly serves the general interest of all nations and their people.

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3.2.9 Polluter-pays Principle

The polluter-pays principle (PPP)\textsuperscript{103} developed within the framework of the OECD and the EEC in the 1970s, aims to internalize external costs and avoid the distortions of competition in its Guiding Principles concerning International Economic Aspects of Environmental Policies.\textsuperscript{104} This principle is not a direct principle of prevention, but is of indirect bearing. To sum it up, basically the party responsible for pollution has to pay the cost of maintaining the environment "in an acceptable state. In other words, the cost of these measures should be reflected in the cost of goods and services which cause pollution"; and distorting subsidies are not allowed.\textsuperscript{105} It is considered the most effective way of meeting the cost of the measures taken by public authorities to deal with pollution as they are internalised and will be reflected in the final price of the product.\textsuperscript{106} The Convention on the Establishment of an International Fund for Compensation for Oil Damage 1971, stated that the economic cost of oil pollution damage should be borne by shipping businesses and oil cargo interests.\textsuperscript{107}

In more concrete terms, most economic activities (goods as well as services) involve various environmental impacts at the stages of producing, transporting, consumption or disposal. According to the PPP, the costs generated by these environmental impacts have to be borne by the entities responsible for the environmental impact caused at each stage of the product's life. One way of doing this is to internalise the environmental costs into the costs of activities and their market prices, but problems arise in assessing where the responsibility of each actor in the product's life starts and ends.\textsuperscript{108}

\textsuperscript{104} OECD, Guiding Principles on the Environment (72) 128, with Annex, 11 ILM (1972) 1172. OECD/GD (92) 81, The Polluter Pays Principle, Environment Directorate, 1992 (hereinafter OECD PPP 1992). The recommendations also include the use of environmental quality and emission standards as a controlling device.
\textsuperscript{107} The preamble of the 1971 Fund Convention, see, UKTS 95 (1978), Cmmnd. 7383; 11 ILM (1972), 284.
\textsuperscript{108} Indeed, it is essential that the principle of shared responsibility is well implemented in a proportionate and non-discriminatory manner. This principle has not received the same degree of support or attention accorded over the years to the principle of preventive action, or the attention more recently accorded to
The PPP can be implemented by various means, requiring producers or resource users to meet the cost of implementing environmental standards or technical regulations, or by introducing liability regimes, taxes, charges and levies, in particular concerning liability, the use of economic instruments and the application of the rules relating to competition and subsidy.\(^\text{109}\) However, the application of the principle coincided with some shortcomings, such as it having an unclear meaning, and uncertainty in the degree of economic implications,\(^\text{110}\) difficulties in determining the polluter, and the charges for pollution concerning certain pollution activities, for example, its abatement.

In shipping which is a multifaceted industry it is no simple matter to decide who to hold responsible for pollution if a vessel should sink. It could be the operator of an oil or chemical tanker, or, as the cargo caused the damage, the cargo owner, or the shipowner as he insures the vessel. A third party such as a harbour pilot or a navigation authority can be to blame. Because it is hard to decide who is responsible, it can make be difficult for plaintiffs to recover any compensation, hence the decision to treat the ship’s owner and the cargo owner as being jointly responsible.\(^\text{111}\)

Another problem is the matter of the amount of compensation which is paid out. In the shipping industry insurance is the main source of the shipowner’s liability funding. However maritime liability treaties limit this liability and even exclude other types of loss, which means that it may not be possible to pay all the claims for death or injury, or loss of property, economic loss, or harm to the environment, so that losses may have to be prioritized or paid pro rata or excluded.\(^\text{112}\)

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\(^{112}\) Ibid, pp. 384-5.
In 1974, the OECD published its recommendations on the implementation of the PPP, followed in 1989 by further recommendations concerning the application of the PPP to accidental pollution and its prevention. It appears in the Rio Declaration as Principle 16.

Prior to the United Nations Conference on Environment and Development (UNCED), the PPP was included in different EC documents such as the 1986 Single European Act, the 1992 Maastricht Treaty (Art. 130 R (2)) and the successive Programmes of Action on the Environment. The Convention on the Protection of the Marine Environment of the Baltic Sea Area states the principle as an obligatory norm, while the 1992 Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes includes it as a guiding principle.

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113 OECD Council Recommendation C (74) 223 (1974); for the text see ILM 14 (1975), NNEX Title C, Para. 4. The recommendation confirmed the main postulations of the earlier ones. All subsidies provided by any government should be selective and only distort international trade and the environment to a minimal degree. Other members of the OECD should be notified about any such assessment. It further specified that the polluter should bear costs of pollution notwithstanding the sources of costs, whether they came though direct regulations, taxes or permits, etc.

114 C (89) 88 (final), 28 ILM1320 (1989); Appendix: Guiding Principles Relating to Accidental Pollution, para 4; see also Sands, P. Principles of International Environmental Law, p. 282. The operator of a hazardous installation should bear the cost of reasonable measures to prevent and control accidental pollution from that installation which are introduced by public authorities in Member countries in conformity with domestic law prior to the occurrence of an accident in order to protect human health or the environment.

115 “National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.”

116 Feb 17, 1986.

117 Helsinki, Apr 9, 1992, Art. 3 (4).

118 Mar 17, 1992, Art. 2 (5).

119 The ECJ applied the principle in the Standly Case, when the English High Court asked for a preliminary ruling on Directive 91/676/EEC of December 12 1991, concerning the protection of waters against pollution caused by nitrates from agricultural sources. Farmers argued that the directive violated the PPP because they were asked to bear the cost of reducing the concentration of nitrates in watercourses below the threshold level, even though agriculture is only one source of nitrates. See, C-293/97. Standly and others, Judgment of Apr. 29, 1999, (1999) ECRI-2603. The PPP, or variations thereof, as stated in the OECD and EC instruments, has also been referred to or adopted in other environmental treaties, including the 1985 ASEAN Convention, Art. 10 (d). ASEAN Agreement on Transboundary Haze Pollution (Kuala Lumpur, June 10, 2002), the 1991 Alps Convention, Art.2(1) (the parties respect the polluter pays principle), the 1992 UNECE Transboundary Waters Convention, Art.2(5) (b) (“the parties shall be guided by the polluter-pays principle by virtue of which costs of pollution prevention, control and reduction measures shall be borne by the polluter”), the 1992 OSPAR Convention, the 1992 Baltic Sea Convention, Art.3(4) (the parties 'shall apply the polluter-pays principle'). See also 1993 Lugano Convention, preamble; 1994 Agreement on the Protection of the River Meuse, Art. 3 (2)(d),34 ILM 851 (1995); 1996 Protocol to the 1972 London Convention, Art.3(2); the 1994 Danube Convention, Art. 2 (4); and the 1990 Oil Pollution Preparedness Convention Art.2(2)(b)).
In conclusion to this section, it may be said that increased attention being paid to the polluter-pays principle results, in part, from the greater consideration being given to the relationship between environmental protection and economic development, as well as recent efforts to develop the use of economic instruments in environmental protection law and policy.  

### 3.2.10 Sustainable Development Principle

The close relationship between development and environment was recognised during the United Nations Conference on the Human Environment in Stockholm in 1972, which decided the main basis for sustainable development was the creation of equality in quantity and quality of life for the present generation without causing shortages for future generations; this formulation was adopted by the Rio Conference in 1992. The first principle of the Rio Declaration places people “at the centre” of sustainable development and entitles them to “a healthy and productive life in harmony with nature”. The Rio Conference also confirmed the purposes of development agreed by the Stockholm Conference, defining it as a way of using natural resources in order to increase human wellbeing or at least to maintain it, so that it becomes clear that environmental and developmental aims complement each other.

The Brundtland definition of sustainable development states that it “meets the needs of the present without compromising the ability of future generations to meet their own needs”.

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122 The conference decided to study the economic and societal aspects, because behind that were several environmental problems which needed to be solved. (2002, August 5). Environment and development, Seminars for judges and prosecutors. Industrial Abatement. Egyptian Pollution Abatement Project (EPAP) Newsletter, pp. 2-3.
125 The Brundtland Committee, which was led by a former Prime Minister of Norway, issued a report called Our Common Future, presented to UNGA at the end of 1987. The United Nations approved the report. It also adopted ‘The Visible Environment until 2000’ and after that programme work directed to
In the 1989 Lomé Convention, the fundamental concepts acknowledged by the Brundtland Report\textsuperscript{127} to define ‘sustainable development’ were brought into a legal framework albeit without mentioning the term itself. The idea of ‘sustainable development’ has indeed become a part of international customary law, which has resulted in the necessity of handling various aspects of international law in an integrated way.\textsuperscript{128} The ICJ referred to the concept with regard to the way forward for the parties in the \textit{Gabcikovo-Nagymaros} case.\textsuperscript{129}

The Stockholm Declaration also upholds human rights and their relation to the environment, by confirming the human right to a clean environment\textsuperscript{130} and to development,\textsuperscript{131} emphasising the need to keep an economic and social balance while protecting the environment for present and future generations.\textsuperscript{132} The sustainable development concept has become an essential element in the formulation of international instruments which have environmental, social and economical character. Consequently, it has been considered an international legal concept in which four governments, to produce a United Nations programme for the environment, including conclusions which were made in the reference report, in the field of national work and international cooperation for sustainable development.

\textsuperscript{126} (1987). \textit{Report of the World Commission on Environment and Development -the Brundtland Report.} (Report No. 43). It contains within it two key concepts: a) The concept of the ‘needs’, in particular, the essential needs of the world’s poor, to which overriding priority should be given. b) The idea of limitations imposed by the state of technology and social organisation on the environment’s ability to meet present and future needs.


\textsuperscript{128} 3 Yearbook of UN Law 389 (1999).

\textsuperscript{129} To quote the ICJ: Throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past this was often done without consideration of the effects upon the environment. Owing to new scientific insights and to a growing awareness of the risks for mankind – for present and future generations – of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed [and], set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities, but also when continuing with activities begun in the past. This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development. For the purposes of the present case, this means that the Parties together should look afresh at the effects on the environment of the operation of the Gabcikovo power plant. In particular they must find a satisfactory solution for the volume of water to be released into the old bed of the Danube and into the side-arms on both sides of the river. (1997) ICJ Reports. 78 para.140.

\textsuperscript{130} See the first principle of Stockholm Declaration on the Human Environment, in \textit{Rights Magazine,} op cit., pp. 80-88.

\textsuperscript{131} Ibid

\textsuperscript{132} Principles 14 and 15 of Stockholm Declaration.
recurrent factors are of note: intergenerational equity; sustainable use; equitable use; and integration.  

A United Nations report on the environment makes reference to one of the most serious difficulties facing sustainable development, which is the loss of biological diversity, recognised as a huge environmental problem at the start of the new century. Other environmental problems mentioned include the growth in waste production and its transport around the world, especially in the case of hazardous chemicals; marine pollution, especially along coasts; and a shortage of fresh water. The report states that despite many efforts being made on all sides, the management of marine resources has had little success in sustainable development, so that coastal resources are threatened in many parts of the world, which in turn damages human rights and sustainable development.

The concept of ‘sustainable development’ is relevant to the sustainability of fish stocks and other marine living resources. The need to limit their exploitation to ‘maximum sustained’ levels has led to commitments being made internationally to restrict their exploitation as is the case with tuna, North Pacific fish, and living resources in the EEZ.

With regard to marine pollution, there are many regional treaties on environment which support the idea of creation of an integrated approach in areas of social, economic and environmental development, as well as in decision making.

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134 See the report rule, A/ cont, 151 / 26/ Rev. 1 (vol. 1). pp.250-270
135 Ibid, 250.
136 The final report of the UNCED refers to the need to establish a responsive policy-making system, so that people can participate in taking decisions on sustainable development, noting that most political organizations are far from meeting this objective. Work for Environment, United Nations Role, Environment Voice, op. cit, 2.
137 1949 Tuna Convention, Preamble; 1966 Atlantic Tuna Convention, Art. 4 (2) (b).
138 1952 North Pacific Fisheries Convention, Preamble and Art. 4 (1) (b) (ii).
139 1982 UNCLOS, Art. 61 (3). See also 1995 Straddling Stocks Agreement.
140 See Paris Agreement of 1974, Article 6(2)(d) and Article 4 and 34 of Lome Convention 1989; and the Preamble of Catagena de Indias Protocol of 1983; and Jeddah Agreement of 1982 Article 1(1)
The preamble of the Kuwait Convention declares “the need to develop an integrated management approach to the use of the marine environment and the coastal areas which will allow the achievement of environmental and development goals in a harmonious manner”. Without referring to sustainable development in so many words, the text puts the principle of integration into a legal framework and introduces the idea of a mutually supportive relationship between economic development and environmental conservation, which should therefore be treated as one discipline.141

3.3 Conclusion

This chapter has discussed the most important principles and legal foundations applicable to the field of the protection of the marine environment from pollution. It has been shown that the application of the principle of good faith helps to avoid threats to the environment and to ensure a speedy response to pollution and its harmful effects. While emphasis has been placed on the sovereign right of each country to exploit its natural resources, it has also been shown that the principle of good neighbourliness makes a major contribution to the resolution of legal problems related to the marine environment by ensuring that no country allows its activities to cause loss or damage to the territory or interests of another.

The principle of non-abuse of rights is central to problems of the marine environment and can provide a dependable legal basis. International cooperation has become an effective tool to protect the environment and is now considered a general principle which is expressed in non-mandatory texts, in covenants and in international, regional and bilateral conventions. Many international conventions can be seen to depend on the principles of reporting, consultation and the sharing of information that are part of such cooperation. Concerning the principle of the preventive approach, it has been shown how this has been adopted in the special provisions of many treaties and

141 Sustainable development as a concept does not specify how the management of marine and coastal resources can be made sustainable; nevertheless, integrated management systems must clearly have enough flexibility to accommodate these requirements. Humankind must combat environmental damage and all its causes in order to make progress in development. We must also apply simple controls to development, without threat to the law or to the benefit of the needy; nor must barriers to development be constructed. At the same time, polluters must not be allowed to break the law, since experience shows that environmental damage is ultimately inimical to development. Shahta, A. (2001) My Advice to My Country: Mental Works, Egyptian General Body for Books, Cairo, p. 333. (In Arabic)
that it should be considered one of the key measures to protect the marine environment. The chapter concluded by showing that the fundamental human right to live in a clean and healthy environment has recently been enshrined in international law.

Unfortunately, these principles are often ignored by many countries, including those in the Arabian Gulf, recently affected by wars and assaults on the marine environment, where countries have failed to notify each other of actual and potential damage caused by pollution. Thus, while all countries approve the above principles, there is little real evidence of support for these principles in practice.

This chapter has attempted to assess the extent to which certain governing principles can and do contribute to combating pollution, having been approved by international law (customary and conventional) and supported by court rulings that countries should assume all the legal obligations on them to protect the marine environment in the Arabian Gulf by working to reduce, combat and control pollution. As it is not always possible for any international body to put these principles into effect, it is necessary for local bodies to also deal with cases of pollution. The next chapter looks at the various regional bodies responsible for the control of marine pollution by oil.
4.1 Introduction

The international legal system has not yet reached an advanced level in creating the necessary national and international organs to exercise the judicial and executive powers to deal with cases of pollution of the environment in general and the marine environment in particular. Therefore, it is left to the state itself to take on this role unless there are agreements otherwise.

The objective of this chapter is to identify the authority concerned with the execution of the laws and systems for protecting the marine environment from pollution coming from ships and the limitations to these competences and restrictions on the execution.

4.2 Competence of the Coastal State

4.2.1 Internal Waters

Within internal waters, a coastal state exercises its sovereignty to the ultimate extent. There is no obligation for a state to permit foreign vessels to enter its internal waters, other than in cases of distress, and, as an exception, where drawing straight baselines surround waters which up till now have not been considered as such, when the right of innocent passage applies LOSC Article 8 (2). Apart from these exclusions, coastal States may limit or impose requirements regarding entry into internal waters and into ports, and in fact there are several international conventions which insist on states stopping un-seaworthy vessels entering their ports. 

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As soon as a foreign vessel enters internal waters, it is subject to the domestic legislation of the coastal state and other legislation or agreements according to the coastal state's wishes. This means that the coastal state may require vessels which come into its internal waters or ports to comply with international CDEM standards, and it is permitted to examine vessels to ascertain whether they are complying with international CDEM standards, whether the vessel's flag state has signed up to the conventions or not. Under MARPOL 73/78 the coastal state may even keep an unseaworthy vessel in port until it has been repaired.²

When the vessel enters a port, the fact that the so-called port state can stop it from leaving puts it in a very strong position to take enforcement action against the vessel. This increased "port state jurisdiction" over vessels is one striking facet of modern-day law, especially in the case of vessels which have broken health and safety regulations or are guilty of discharging pollutants outside the territorial sea of the port state.³ Under the LOSC coastal states were given the authority to act against a vessel which had been involved in pollution incidents which took place beyond their territorial waters.⁴ Usually however States restrict the enforcement of local laws regarding incidents which occur on board foreign vessels in port, only intervening in cases such as the violations of customs laws, or activities which may severely disturb the peace, for example murder,⁵ which is much more serious than scuffles between members of the crew. On the other hand states will exercise their jurisdiction in cases which involve non-crew members, or may do so at the captain's request. This is a manifestation of the fact that the vessel is only in the port on a temporary basis and that the flag state of the vessel also has the right to exercise jurisdiction, and in fact it may also be more fitting for it to do so.⁶

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4.2.2 Territorial sea

The prevailing view is that a coastal State’s jurisdiction inevitably extends into its territorial waters, which logically means that all of its laws will also apply in the area. However international law restricts this in some areas, for example in the case of vessels exercising the right of innocent passage. It was nonetheless not clear whether coastal states were allowed to bring into force more rigorous national standards so the LOSC attempted to strike a happy medium by limiting coastal states to prescribing only CDEM standards in their territorial seas although they were allowed to stipulate national discharge and navigation standards. It was also required that regulations within the territorial sea should be publicised and that they should be unbiased and should not hinder innocent passage of foreign vessels. This restriction to CDEM standards was to avoid coastal states imposing varying construction or design specifications for ships merely travelling through their territorial seas and not using their ports.

Under Article 220 of the LOSC, the authority of the coastal country in monitoring and executing the rules and procedures related to prevention of pollution Article 220 differentiates between numerous hypotheses:

The hypothesis of the presence of the ship in one of the ports or within the territorial sea:

In this hypothesis the authority of the coastal state varies between opening a legal case, or carrying out an the inspection with the opening of a legal case.

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7 Territorial waters, or a territorial sea, as defined by the 1982 United Nations Convention on the Law of the Sea, is a belt of coastal waters extending at most twelve nautical miles from the baseline (sea) (usually the mean low-water mark) of a coastal state. The territorial sea is regarded as the sovereign territory of the state, although foreign ships (both military and civilian) are allowed innocent passage through it; this sovereignty also extends to the airspace over and seabed below.


If the ship is present voluntarily inside one of the coastal state ports, or in one of its final sea stations near to the coast, the state can open a legal case if two conditions are found:

1- Its approved laws and systems or the applied international rules and measures concerning the prevention of pollution from ships and reducing and controlling it have been violated according to this agreement.

2- This violation has been carried out in the territorial sea or the exclusive economic zone.\(^{10}\)

Nevertheless, the ship has to be sailing in the territorial sea of that state and there must be clear evidence of violation of its stated laws and systems. As such the coastal country has two authorities: first, to inspect the ship by carrying out material inspection relating to that infringement, second, the legal case shall be carried out, if the evidences are strong to justify this, and the coastal country has the rights to restrain the ship. This is with consideration to the technical restrictions included in section 7 of the agreement.\(^{11}\)

The hypothesis of the ship sailing in the territorial sea or the exclusive economic zone:

If the ship is sailing in the territorial sea or in the exclusive economic zone of the coastal country, and clear reasons are present for considering that it has violated applied international rules and measures for the purpose of preventing pollution from ships and reducing and controlling it, as such the coastal country has three authorities:

First, it can ask the ship to provide information about its identity, its registration port, its last visited port, its next visiting port, and other related information to

\(^{10}\) The First Para. of the Article 220. Under the United Nations Convention on Law of the Sea (UNCLOS), the exclusive economic zone or EEZ is covered by Articles 56, 58 and 59. The EEZ is defined as that portion of the seas and oceans extending up to 200 nautical miles in which coastal zone States have the right to explore and exploit natural resources as well as to exercise jurisdiction over marine science research and environmental protection. Freedom of navigation and over-flight, laying of submarine cables and pipelines, as well as other uses consented to on the high seas, are still allowed.

\(^{11}\) See Article 220 (2)
determine whether or not the violation has been carried out, Article 220 (3). Second, a material inspection of the ship can be carried out.

The coastal country has the authority to do so:

1- If the ship refused to provide the previously stated information or if the given information clearly differs from the real current situation, and the circumstances of the case justify carrying out of inspection.

2- If the violation has lead to a large discharge which causes significant pollution or threatens a significant pollution occurrence in the marine environment.

Third, legal action shall be taken including apprehending a ship. This authority is linked to the presence of various conditions:

1- The presence of clear evidence that the ship has violated the applied international rules and measures.

2- A violation has occurred which could lead to a discharge which could causes severe damage, or threaten to cause severe damage, to the coasts of the coastal state or its related interests or to any of its territorial sea resources or its exclusive economic zone.\(^\text{12}\)

Concerning this second hypothesis it can be observed that numerous issues - the authority of material inspection, taking legal action and apprehension of the ship, are limited to descriptive violation cases, which involve a large discharge of harmful substances from ships into the marine environment and in a manner that causes severe damage or threatens the coast of the coastal state or its interests in the territorial sea or exclusive economic zone.

On the other hand, these two authorities cannot be implemented unless the infringement has occurred in the exclusive economic zone of the coastal country.

\(^\text{12}\) See para. (6) of Article 220
Generally speaking, concerning the authority of the coastal country in the proceeding hypotheses, the coastal state shall consider as far as appropriate what measures have been put in place either through concerned international organisations or according to what has been agreed upon by any other means, and through which surety or appropriate financial guarantee have been ensured. The coastal country shall, if the ship has complied with the stated procedures, allow the ship to sail its way.\(^{13}\)

In effect it is indeed not always practicable to apply all aspects of the law. Hence States will only enforce domestic law on a restricted basis within its territorial waters.\(^{14}\)

States will enforce criminal law over vessels within their territorial waters only in cases in which criminal law would have been used in their internal waters. According to LOSC Article 27 (1) States should only investigate or arrest anyone suspected of offences carried out on board a vessel within its territorial waters if such an offence will have repercussions in the coastal state. LOSC Article 27 (1) (a)–(d) lists circumstances when such intervention may take place: when an incident could disturb the peace of the country or the good order of the territorial sea, when assistance has been requested, or for the suppression of traffic in illegal drugs. LOSC Article 27(2) allows the State more leeway if the vessel has just exited its internal waters. However, in choosing whether to make an arrest, and in deciding how to do so, the coastal State must at all times exercise 'due regard to the interests of navigation'. This applies to the State's criminal jurisdiction. There are also further limitations regarding civil matters. For example a vessel may not be detained in order to exercise jurisdiction over an individual rather than because of the vessel's actual activities LOSC Article 28.\(^{15}\) Lastly, and as would be expected, coastal States are not allowed to arrest a warship or any other vessel from another State which is being used for governmental purposes,\(^{16}\) although in this case the vessel might be 'required' to depart from the territorial seas without delay (LOSC Article 30), in which case the implication is that force may be used if necessary.\(^{17}\)

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\(^{13}\) Article 220 (7)


\(^{15}\) Ibid.


4.2.3 Contiguous Zone

By tradition, the high seas began and the laws of the coastal state no longer applied where the territorial sea ends. On the other hand, unlike boundaries on dry land, it is easy to move from one maritime zone to another, making policing them quite problematic. It is a simple matter for a vessel which has committed an offence within the territorial sea to evade arrest by shifting its position just over the border into international waters. A solution to this predicament is that coastal states are allowed to arrest vessels, even though they are in international waters, in connection with offences that have either been committed within their territorial seas or in a case where there is the suspicion that an offence is going to be committed.

The coastal state may ‘prevent’ and ‘punish’ infringements of certain of its laws, namely those regarding ‘customs, fiscals, immigrations or sanitary laws and regulations’, within an area of up to twenty-four miles from the baselines under LOSC Article 33 and following a compromise first agreed upon in the 1958 TSC Article 24.

The UK and USA and various other states have gradually introduced legislation specifically to curb smuggling and thus have increased powers to enforce customs regulation outside their territorial waters. In effect a state with a three mile territorial zone may have an adjoining zone of up to another twenty-one miles. There is a tendency in this direction as such a contiguous zone is very advantageous, although not all have states have followed this trend.

The fact that the state may ‘punish’ means that it is allowed to arrest a vessel which has committed an offence within the state’s territory, even after the vessel has left its waters, and the state’s power to ‘prevent’ means that it may stop a vessel from

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18 A zone of the sea beyond the territorial waters of a nation, over which it claims exclusive rights. Under the terms of the UN Convention on the Territorial Sea and the Contiguous Zone (1958) Article 24, the contiguous zone extends between 12 and 24 nautical miles from the coastline, but it seems that, in international law, this definition has very little force.
22 At present approximately seventy states have such contiguous zones, although not all are in compliance with the LOSC. Most of these zones are of twenty-four miles.
entering its territorial seas when it suspects that such an offence might then be committed. However this considerable broadening of the coastal state's powers is open to abuse and sometimes results in states claiming jurisdiction over a larger scope of issues than was in the original list.\textsuperscript{23}

A balance must be struck between coastal states' insistence on their jurisdiction in their territorial seas and the international community's desire to keep the seas open to navigation.\textsuperscript{24} Over time the regimes on navigation within waters over which coastal states exercise sovereignty have developed, particularly that regarding innocent passage through the territorial seas and the way in which a balance is struck between opposing interests. In addition other changes have necessitated the development of entirely new regimes of passage.\textsuperscript{25}

4.3 Competence of the Flag State

The importance of the role granted to the flag country is such that if the procedures are executed in the optimum way it will retain authority, and indeed must exercise authority, over all vessels navigating the seas, for the purpose of pollution prevention. This is regardless of whether the measures concerned have been developed by the competent international organization, the IMO, by a diplomatic conference or by the flag state itself, and regardless of wherever the vessel is.\textsuperscript{26} Thus, control is maintained concerning the prevention of pollution of the marine environment.

The first duty of the flag state in this regard is the commitment to develop laws and systems for all vessels under its flag or registered by it, to address pollution of the marine environment, to reduce and control it, provided that these regulations are not less effective than the international regulations and criteria in general which have been developed by the IMO or diplomatic conferences.\textsuperscript{27}

\textsuperscript{25} Ibid, pp. 570-72.
\textsuperscript{26} See Article 217/1 of the UNCLOS Convention.
\textsuperscript{27} Article 211/2 of the UNCLOS Convention.
However, this matter is not limited to the development of laws and systems. The flag country should practice actual control, inspecting the application of these laws by the vessels carrying its flag, wherever and whenever. It is also liable to take legal action and make the required administrative arrangements to maintain this application. These arrangements include not allowing any vessel to sail from its ports, except after ensuring its validity, and that all safety requirements regarding its operation and the capability of the crew are satisfied in accordance with the international standards. Thus, the flag state must provide each vessel with the certificates and documents required under the international conventions as evidence as to whether the vessel meets the required international standards, whether in terms of design, construction, equipment or the training of its crew, under periodic inspection performed by the flag country for the satisfaction of these requirements.

All of these require the captain and crew of the vessel to be aware of the international standards applicable in relation to the safety of lives at sea, preventing collisions, and the prevention, reduction and control of marine pollution.

The flag States shall be liable for the investigation of and execution of penalties for any violation by any vessel which bears its flag, regardless of the place of violation or of pollution. This investigation should be conducted immediately after the occurrence of the violation or detection of pollution, or upon the request of another country or of the IMO. If the investigation reveals evidence of a violation, the vessel shall be prosecuted in accordance with the laws of the flag country. Any other country concerned shall be notified, as shall the IMO, of the proceedings of litigation and the result, giving the opportunity to the other countries to follow the proceedings and actions taken in this regard. The penalties mentioned for the punishment of violators

28 LOSC Art.217 (2).
29 LOSC Art.217 (3). Note that the documents and certificates issued by the flag country shall be accepted by the other country as evidence of the state of the vessel, to satisfy the safety requirements and validity for navigation, on the level of evidence issued by its authorities of similar documents and certificates, except if there are clear reasons to believe that the state of the vessel is not compatible with the data given in the certificates. In this case, a report shall be prepared and notice given to the flag state to take the required action (Article 94/6); Amer, S. (1983) The New Sea Law Study: the Important Judgements of The UN International Sea Law, Dar al-Nahdah Al-Arabi, Cairo, pp. 514-515.
30 Article 94/4C.
should be appropriate to the deterrence of whoever may think of committing similar acts, regardless of the place.\textsuperscript{31}

However the LOSC does not include any provisions to review the enforcement of the above measures by the flag state, nor does it impose any penalties on it for not fulfilling its obligations. This means that flag states are still not greatly motivated to prescribe and implement measures to control pollution.\textsuperscript{32}

Certain provisions in the LOSC also give the flag state the right to pre-empt any action on the part of the coastal or the port state. Under Article 228 if the flag state begins proceedings with respect to a vessel which is guilty of committing a pollution offence beyond its territorial seas, any proceedings of a coastal state will be suspended. This however does not apply in cases of major damage to the coastal state, or if no proceedings have been instituted within six months of the coastal or port state taking action, or if the flag state has `repeatedly disregarded its obligation to enforce effectively' the relevant international rules and standards.\textsuperscript{33}

It is indeed a problem that when a flag state has claimed jurisdiction under Article 228, there is no assurance that it will follow through and bring the matter to an effective or satisfactory conclusion.\textsuperscript{34} Experience has shown on innumerable occasions that flag states fail to carry out their obligations under international conventions in the field of pollution regarding the operation of ships, and that they do not exert the necessary efforts in this respect. Likewise, frequent cases of neglect by flag states to criminally prosecute the owners or operators of ships which have committed violations is a matter that has incited much concern and criticism. In order to avoid such neglect, calls have been made to enlarge the jurisdiction of coastal states to fight pollution. These calls are in line with the general recent trends in international marine law to enlarge the jurisdiction granted to the coastal states.

\begin{thebibliography}{9}
\bibitem{31} Arti. 217, para 4-8 of the LOSC.
\bibitem{33} LOSC, Art. 228/1
\end{thebibliography}
4.4 Competence of the Port State

In general the port states have been given more powers than coastal states with regard to taking action against vessels which are suspected of having committed various offences or to be violating CDEM standards. This is mainly because inspecting a vessel when it is already in port presents less of a hindrance to navigation and can be carried out more easily than if it were still at sea. Moreover port states have more of a 'vested (economic) interest' in making sure that vessels are detained in the port for as little time as possible.35

UNCLOS Article 218 gives the port state jurisdiction over discharge violations which may have occurred some distance away, on the high seas or in another state's territorial water. However, there are certain problems which make it difficult to put this into effect with respect to pollution of the marine environment. A port state may be reluctant to act as it may be difficult to prove a link between a case of pollution and a particular vessel, and shipowners and charterers can claim compensation from the port state for losses due to improper or disproportionate actions. Additionally port or coastal states are not permitted to detain vessels internationally bonded against violations. Finally, and probably most important of all, a port state does not want to be considered to be overenthusiastic in enforcing pollution standards and therefore one to be avoided by international vessel traffic.36

On the other hand inspections for CDEM deficiencies are a lot more viable and easier to implement as such violations remain with the ship in port. Port states in developed countries now tend to not only examine the vessel's certificates but also to conduct actual physical inspections in the shape of walks through the ship. This is an effective way to control and root out sub-standard shipping, a more likely source of marine pollution. It is to be predicted that such practices will spread in the years to come.37

37 Ibid, p. 221.
Article 218 of the 1982 UNCLOS explains the competence of the port state in considering the claims for drainage system violations, outside the regional competence, wherever they happen.

When a ship is willingly found in the port of another state, or any of its marine stations near to its shores, the state has the right to conduct an investigation in the matter and make a claim if clues prove that a violation regarding any drainage from the ship has occurred outside its internal waters or territorial sea, or its exclusive economic zone, that is considered a violation of the international rules and criteria whether set by an international organization or a general diplomatic conference.\(^\text{38}\)

The second paragraph stipulates not making a claim concerning a drainage violation in the internal waters of another country, its territorial sea or its exclusive economic zone except upon the demand of that country, the flag country, or the country affected by the damage or threatened with it as a result of that violation, or if the violation causes or is likely to cause pollution in the internal waters of the country that makes the claim, or in its territorial sea or its exclusive economic zone.\(^\text{39}\)

The port state should respond to the demands, from any country, for investigating any drainage involving a violation of the laws and international criteria, according to paragraph 1, if that drainage is believed to have happened in the internal waters of the country making the demand, or in its territorial sea or exclusive economic zone, or if it causes harm or exposes it to damage. The port country also has to respond to any demands made by the flag country or the coastal state during the investigation of such a violation regardless of the place where it happened, that all documents of the investigation should be referred to the flag state or the coastal state, according to the provisions of this article. It is also possible upon the demand of the coastal county to stop any claim the port country establishes upon the basis of that investigation, in the case that the violation happened in the internal waters, territorial sea, or economic area

\(^\text{38}\) Art. 218 (1).
\(^\text{39}\) Art. 218 (2). Of LOSC.
of that country. All matters should then be referred to the coastal state which would then prevent the continuation of the consideration of the claim by the port state.⁴⁰

Some restrictions are imposed on the port state and the coastal state in the administration of the claims.

A claim made by the port country or the coastal country regarding a violation committed by a foreign ship outside the borders of the territorial sea of the country making the claim must be stopped as soon as a claim is made by the flag country to impose similar penalties against the ship provided this is within 6 months from when making the claim was first made.

The claim should not be stopped, if the claim made by the coastal country or the port county related to a serious harm affecting the coastal state, or if the flag country fails to fulfil its international obligations concerning her ships' violations effectively more than once.

The agreement also imposes other restrictions on the authorities of the port country and the coastal country in exercising its competences for the good of international navigation and making it easier.

Article 225 of the 1982 UNCLOS states the obligation not to expose navigation to danger or a ship to danger or lead it to an unsafe port, or cause an unacceptable danger to the marine environment. Only the formal officials of states are allowed to exercise their authority against foreign ships, nor against warships or military planes or other permitted ships and planes that carry signs showing that permission according to Article 224 of the 1982 UNCLOS.

It is, also, not allowed to impose penalties against foreign ships later than three years from the date of the violation or if a claim has been made already by another country according to Article 228 (2) of the 1982 UNCLOS. However, only financial

⁴⁰ Art.218 (4).
penalties are allowed to be imposed against the foreign ships for violations beyond the borders of the territorial sea or within the borders of the territorial sea with respect to the marine environment pollution according to Article 230 of the 1982 UNCLOS. The country which conducts the execution, should inform the flag country of the proceedings it takes against the ship, and the flag country should present all the reports related to these procedures. This obligation does not apply to the proceedings which the coastal country takes regarding violations her territorial sea except in the case of pursuing a claim according to Article 231 of the 1982 UNCLOS.

Finally, the provisions of the Convention on the Law of the Sea concerning the protection and preservation of the marine environment do not apply to warships or the marine units or other ships and planes owned and operated by another country, and whose use is restricted, at that time, to governmental service, according to Article 236 of the 1982 UNCLOS.

4.5 Competent Authorities in Combating Marine Pollution outside the Regional Competence

The 1982 UNCLOS decided to set international rules, criteria, practices and procedures to prevent marine environment pollution in the Area from various activities, to minimise and control it, and provided that these rules, criteria, practices and procedures should be reconsidered from time to time according to the need. In Part 11, Article 145 assigns international authority to set the rules, orders, and procedures with respect to activities in the Area to guarantee effective protection of the marine environment from harmful effects resulting from these activities.

Among such measures are:

Prevention of pollution and other dangers which threatens the marine environment, including the coast, prevention of ecological imbalance of the marine environment, payment of special attention to all kinds of hazards in the area such as: drilling, holes, waste dumping, setting up and maintenance of establishments, pipelines, and other devices related to these activities, in addition the protection and maintenance
of the natural resources of the area and prevention of any damage to the botanical and animal resources in the marine environment.

In order to enable the authority to do its task of the protection of the marine environment, the functions are divided between two organs:

**The first organ is the council** with two commissions:

2. Legal and technical commission.

They are empowered with appropriate powers relating to the protection of marine environment.

The Technical Commission, whose members should possess the required qualifications, is assigned to discover the mineral resources and utilize them and maintain the protection of the marine environment by preparing assessments of the environmental effects of the activities going on in the Area and delivering recommendations to the council about the protection of marine environment. The Commission of Economic Planning is assigned to propose measures for executing the decisions related to the activities in the area, according to this agreement, and on the demand of the council, according to Article 264 of the convention. All that is according to the provisions of the paragraph 12 of Annex 4 of the LOSC, and it determines the scope of the rules, orders, and procedures. It states that these procedures, rules, and orders not only cover the protection of marine environment against the harmful effects created by the exploration and investment operations, but they also cover the refining and processing operations taking place on board ships.

**The second organ is the assembly**, the legislative corporation of the authority. It takes responsibility for approval of the rules, orders, procedures and amendments, upon the direction of the council. Either it approves them or turns them over to the council to reconsider them, in the light of the ideas proposed by the commission. It also
approves the rules, orders, and procedures of the authority and any amendments to them, which are approved by the council and are related to exploration, utilization and extraction in the area..., etc. According to Article 260 of the agreement, it is obvious from the above, that the agreement assigns the commission international authority for the seas and the sea bed to set international regulations to control pollution resulting from activities of exploration and investment in the international Area.

The rules which deal with the competent authority, which sets the rules and criteria governing the operations of exploration and investment of the seas and sea bed, are characterized with being clear and precise to draw up the sand policy for the protection of marine environment from pollution.

However, these rules ignore the role of international non-governmental organizations concerned with environmental affairs, which can play an effective role, and in the activities of the international authority for the sea bed, and in setting the rules and orders and the environmental assessment and activities.41

4.6 Conclusion

It is obvious from the above that the international agreements on environment pollution lay the competence of trial and punishment for violating the rules and criteria of pollution which is characterized by a criminal nature (i. e. the competence) on the flag state. There is an exception to this general rule provided for by the International Convention on Civil Liability for Oil Pollution Damage (1969 CLC), concerning the civil liability. The agreement states that the compensation claims for harms of pollution which affect the regional waters of any contracting country should be raised before the contracting country or countries according to Article 9 of the Convention. The decisions of the courts of any member country should be recognized and applicable in all member countries according to Article 10 of the agreement.

41 IMCO is one of the specialized consultancy agencies of the United Nations which has to tackle different aspects of navigation at sea. The United Nations Environment Programme has given a consultancy role to non-government organizations which are concerned with environmental affairs.
All these agreements are criticized for not explaining the range of imposed penalties and what they are, regarding the violation of the rules and the criteria of marine environment pollution.

The next chapter examines in further detail the subject of international responsibility and liability for environmental damage, along with the various methods for obtaining the settlement of environmental disputes by negotiation, conciliation and arbitration and for compensation.
CHAPTER FIVE

INTERNATIONAL RESPONSIBILITY FOR HARM DONE TO THE MARINE ENVIRONMENT, ITS EFFECTS AND LIMITATIONS

5.1 Introduction

The rules of liability and compensation for damage to the marine environment can establish an incentive to prevent harm and also may require restoration. Several instruments have been adopted to establish the rules of liability in relation to pollution or damage to the marine environment. However, the liability rules are still evolving and are in need of further development.¹

This chapter will explore the subject of international responsibility for damage to the marine environment. It begins with the development of the principal aim, i.e to protect the environment in general. It focuses on the protection of the marine environment and shows its importance by considering two topics: the concept of international responsibility for environmental damage and the development of the relevant international legal rules.

5.2 Development of International Responsibility for Environmental Damage

There has been a clear and tangible development in the rules of international responsibility for environmental damage through international law, as many conventions and international treaties have laid down rules of international responsibility; some of these have recognised the necessity of the development of rules of international responsibility to be aligned with developments in other fields.

So as to allow these rules to become more effective, to ensure that they are applied and obeyed, compromise is necessary in any dispute arising between countries according to the rules of international responsibility and other international laws. Thus, Article 22 of the declaration issued by the United Nations Conference on the Human Environment in Stockholm 1972\(^2\) and Article 13 of the Rio Declaration on the Environment and Development 1992 call for the development of an international responsibility rule and compensation for damage to the environment. The international legal committee depended on that when they decided to advance the special argument concerning international responsibility for environment damage, which had reached a good stage of development and still needed continuous progress so as to fulfill current needs and to allow for compromise in all complicated environmental problems.

There was a call for the development of the international rules of responsibility which were established by UNCLOS in 1982 and by some other agreements. The third paragraph of Article 235 of UNCLOS provides that:

"With the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, States shall cooperate in the implementation of existing international law and the further development of international law relating to responsibility and liability for the assessment of and compensation for damage and the settlement of related disputes, as well as, where appropriate, development of criteria and procedures for payment of adequate compensation, such as compulsory insurance or compensation funds."

Article 10 of the 1972 London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter provides that:

\(^2\) Article 22 stipulates: “States shall cooperate to develop further the international law regarding liability and compensation for the victims of pollution and environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction.” See this rule and the declaration in the Legal Magazine, 1985 No. 2, pp. 80-88. Kuwait: Legal College, Kuwait University.
"In accordance with the principles of international law regarding States' responsibility for damage to the environment of other States or to any other area of the environment, caused by dumping of wastes and other matter of all kinds, the Contracting parties undertake to develop procedures for the assessment of liability and the settlement of disputes regarding dumping".

Article 13 of the 1978 Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution states:

"The Contracting States undertake to co-operate in the formulation and adoption of appropriate rules and procedures for determination of: (a) Civil liability and compensation for damage resulting from pollution of the marine environment, bearing in mind applicable international rules and procedures relating to those matters; and (b) liability and compensation for damage resulting from violation of obligations under the present Convention and its protocols".

This rule was included verbatim in Article 13 of the Jeddah Convention of 1982 concerning the protection of the Red Sea and the Gulf of Aden.

Although the provisions of the Kuwait Convention oblige the party States to draft suitable subjective and procedural rules of civil responsibility and compensation individually or collectively, they also request that consideration be given to the rules and procedures in force at the international level. The purpose is to see that the new rules and procedures should not be of less efficacy and protection to the victims of pollution than those established at the international and domestic levels. However, the call for development of rules of civil responsibility for environmental damage should receive a response from all States, not only for the protection of the victims of environmental damage, but also for the protection from pollution of the environment itself. The rules are both remedial and preventive; they curb activities that damage the environment and achieve a general deterrence in dealing with the environment.
The designated principles signify two important matters:

First: The established rules of international law concerning international responsibility require amendment to deal with the deficiency of the traditional rules of responsibility, which are not in themselves sufficient and suitable for the settlement of disputes concerning environmental damage.

Second: The framing of such rules is a duty for every state in order to maintain full and just compensation to the victims of pollution. States may do this individually or with other states. Thus, they may enact domestic laws to codify the rules of responsibility for environmental damage or make international agreements to the same end.

5.3 The Legal Basis of Liability for Environmental Damage

The following three subsections will consider the basic rules and theories, in order to establish the true nature of developments towards care of the environment for human use and of the marine environment in particular.

1) Theory of Fault as the basis of international responsibility for environmental damage.
2) Theory of Breach of Statutory Duty
3) Theory of Risk as the basis of international responsibility for environmental damage.

5.3.1 Theory of Fault as the Basis of International Responsibility for Environmental Damage

Due to different possible uses of the word, it can be confusing when the law of state responsibility is explained using the concept 'fault'. Some international doctrines of material decision-making attempt to establish international responsibility for

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environmental damage based on fault, using the word in its objective sense as an act which is in breach of an international obligation. This contrasts with the subjective use of the word meaning harmful actions by one country towards another which were done intentionally, recklessly or out of carelessness. The latter usage faces several objections, most commonly that it is not sufficient when used in international environmental law, as ‘fault’ in this sense is not generally the source of responsibility in environmental disputes. One possible exception is that of avoidable carelessness which causes environmental damage as in the case of atmospheric nuclear tests.

5.3.2 Theory of Breach of Statutory Duty

This theory does not allow for the occurrence of error to absolve a party from responsibility for damage. It is sufficient that the party responsible has violated legal obligations and this has resulted in damage to others being caused. Generally there is no responsibility unless a failure to observe legal regulations has resulted in damage. Violating the commitment imposed by these results in legal responsibility for the violator with respect to the violation which caused damage to the other parties.

Stopping or preventing an activity which is legal and which requires compensation for the result of the damage, nonetheless, only as far as the commitment necessitates this, whatever, the source of this commitment whether legislation rules or the general principles of the law.

What is meant by the ‘unlawful activity’ is any activity or prohibition which violates an existing commitment according to the agreed rules of international law, customary law or general principles.

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8 Ibid.
If the presence of international commitment regarding the protection of the marine environment from pollution is previously justified, such a violation is considered unlawful activity, hence Article 145 of the UNCLOS which states that:

Necessary measures shall be taken in accordance with this Convention with respect to activities in the Area to ensure effective protection for the marine environment from harmful effects which may arise from such activities. To this end the Authority shall adopt appropriate rules, regulations and procedures for \textit{inter alia}:

(a) the prevention, reduction and control of pollution and other hazards to the marine environment, including the coastline, and of interference with the ecological balance of the marine environment, particular attention being paid to the need for protection from harmful effects of such activities as drilling, dredging, excavation, disposal of waste, construction and operation or maintenance of installations, pipelines and other devices related to such activities;
(b) the protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment.

Moreover, the UNCLOS states in Article 192 that 'States have the obligation to protect and preserve the marine environment'.

Both the proceeding statements impose commitments which should be implemented and fulfilled by the state and say that if it does otherwise, then such actions are unlawful internationally, and it is not fulfilling its international responsibilities. This is what has been stated in Article 235(1) which reads:
States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment. They shall be liable in accordance with international law.

5.3.3 Theory of Risk as a Basis of International Liability for Environmental Damage

Activities have increased more than usual and caused much damage and risk, leading responsible persons to search for another basis for responsibility, arising from the concept of fault, and to develop the theory of risk, or what was called absolute responsibility, in order to establish international liability, which depends on the basis of damage only and which creates a commitment to compensation. The theory of risk has gained legal force through its application in important general rulings, which gives it legal force in international law, according to Article 38 of the statute of the International Court of Justice. 10

Absolute liability means that the person who is responsible for any hazardous activity is also liable for any resulting damage, without the need to prove fault on his part. 11 Absolute liability has found many applications, such as the peaceful use of nuclear power, oil exploration activities and activity in outer space. 12

This theory is considered as an objective approach to responsibility which does not rely on personal measures to create international liability by requiring a link to be

10 Article 38.
1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
   a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
   b. international custom, as evidence of a general practice accepted as law;
   c. the general principles of law recognized by civilized nations;
   d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.
2. This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto. See. http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0
made between any damage which occurs and any one person who engages in a risky activity causing damage. Thus, experienced international lawyers have referred to decisions of international courts to seek firm rules of absolute legal liability and they offer suitable ideas in this field, especially from famous cases, such as arbitration in the cases of Trail Smelter, Lac Lanoux and Corfu Channel.

The theory of absolute liability is based on being satisfied that harm has resulted from an incident and the verification of the proportional relation between it and the activities that led to the harm. A mistake or an illegal action is not part of the pillars of the responsibility. Any work or act that causes harm to another requires the actor to compensate the victim. The responsibility is based on the two available pillars; the harm and the causal relation between the harm and the action of the accused.

Regarding marine pollution theory, it is often easy and just to base the system of compensation for harm caused by marine pollution on objective responsibility. It will be sufficient for the affected party to prove he has been harmed. The condition however is always that an illegal act and a mistake should have occurred, which will lead to a decrease in the number of incidents where a party can be held responsible in cases of damage caused by marine pollution. Such cases are always the result of a state’s right of execution or are due to a state’s legitimate activities. Thus illegitimacy should not be the sole basis of proof of the state’s responsibility for damage due to pollution. The idea is that absolute responsibility should be proved merely looking at the causes of the pollution regardless of whether a mistake or negligence has occurred.

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15 ICJ Reports, 1949, pp.4-22.
Some international agreements have decided frankly to choose this theory in the field of marine pollution. One of these agreements is the Brussels’ Agreement 1992 which stated in Article 3 (1):

Except as provided in paragraph 2 and 3 of this Article, the owner of a ship at the time of an incident, or, where the incident consists of a series of occurrences, at the time of the first such occurrence, shall be liable for any pollution damage caused by the ship as a result of the incident.

It can be seen that absolute liability fulfils two functions:¹⁹

- Precautionary: It prevents risky activities which cause harm to the environment.
- Payment of compensation for damage resulting from cross-border activities.

From the proceeding it is obvious that each theory has an area of application, nonetheless one theory is not a sufficient basis for the responsibility in all cases. Nevertheless, each theory shall be applied according to the circumstances of each case on its own.

As such, the application of the absolute responsibility theory does not mean not questioning the suspect about the activities which were carried out on the basis of a mistake or illegal action. As such, if the mistake or illegal action is proved to have happened, the questioning shall be conducted on the basis of any of this. If they are not proved to have happened, the absolute responsibility theory shall be followed.

5.4 Influence of International Liability for Environmental Damage

Evaluation of international law for the environment in general depends on implementation and how to deal with commitments without breaking the rules. The best protection for the environment is to oblige states to restore what has been lost or spoiled. Hence it is clear that there are two main outcomes concerning responsibility:

preventive commitments, to prohibit pollution or to reduce it, and curative commitments, aiming to repair the damage and offer compensation in money or resources.  

In this section it shall be explained that the results arising from international liability for environment damage fall under two headings:  

- Commitments to prevent and reduce environmental damage.  
- Commitments to repair environmental damage.  

5.4.1 Commitments to Prevent and Reduce Environmental Damage  

There are joint steps which must be taken as a commitment between countries to prevent environmental pollution, through national legislation related to any activities which are likely to cause damage to the environment.  

Such a commitment also extends to stopping or prohibiting activity which has harmful effects on the environment, for example by finding alternative means of the production of critical chemical substances, or imposing a ban on the disposal of radioactive wastes in specified marine areas. This commitment must therefore include a definition of the level or degree of damage which will be caused by an activity, the passing of technological laws which will reduce the effects of pollution, and a request from the affected country for the pollution to be dealt with from an economic perspective.  

It appears essential to confirm the commitment to reduce pollution through legal conventions, although countries are not ready always to acknowledge fixed commitments which are imposed by those conventions and related to the matters mentioned. Article 11 of the Helsinki principles of international law calls on countries to desist from those activities which cause pollution. If they fail to reduce pollution, and

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this is a moral duty as well as a legal one, then they must adopt suitable measures to reduce it.

This caused the International Law Association concern and has led them to explain it by saying that the general rule for reducing damage may also cause unnecessary difficulties. In some cases the polluting country may cause damage to another country in a way that is not equivalent to the benefit that the polluting country may gain, so that there must be a rule to oblige those countries which are causing the problem to desist from these activities.\textsuperscript{22}

At this point it must be mentioned the accident involving the oil tanker the Torrey Canyon,\textsuperscript{23} which was wrecked south-west of Britain. Approximately 117,000 tons of crude oil leaked from the tanker, forming a slick about 35 miles in length and about 18 miles wide. Strong winds then helped to drive the slick ashore in an area used for fishing in the United Kingdom. Dutch people tried to empty the ship but were unable to do so, upon which the United Kingdom began to bomb the oil tanker in an attempt to sink it and to set fire to its cargo of oil so that it would not spread. Many different detergents and dispersants were poured into the sea to counteract the effects of the oil. However despite all these efforts a huge oil slick also reached the French coast.\textsuperscript{24}

The situation was complicated by the fact that the tanker was registered with one country (Liberia), the crew came from another (Italy), and a British company was hiring it. That resulted in problems over who could be held responsible. On top of this


\textsuperscript{23} The tanker the Torrey Canyon, which was registered in Liberia, was carrying between 118,000 and 285,000 tons of cargo. All its crew were Italians and the ship was being rented by one of Britain's oil companies. It struck rocks on 18 March 1967, about 16 miles from the British coast, causing an environmental disaster which killed many fish and did great damage to Britain's coast at a cost of about 8 million dollars, as is mentioned in many works of references. See: Goldi, L.F.E. (1969) Book review, \textit{J.M.L.\& C.}, vol. 1, p. 158; see also, Cormack, D. (1999) \textit{Response to Marine Oil Pollution - Review and Assessment}, Kluwer Academic Publishers, the Netherlands, p. 2.

\textsuperscript{24} For more information about this pollution, its technical aspects and principles, see Salama, A. 'Oil pollution and marine environmental protection', a study presented to the Egyptian Scientific and Legal Conference (25-26 February 1992) p.13 ff.
the accident had occurred outside of Britain’s territorial waters which led to another problem as, at the time of the accident, by international law only the flag state was actually allowed intervene, even if it was absolutely imperative that immediate steps be taken to prevent or reduce pollution.25

This accident showed the world that legislation was needed to better prepare it to face such environmental disasters in the future and to make them less likely to be repeated. The Convention on Civil Liability for Oil Pollution Damage was signed in Brussels in 1969 and made the owner strictly liable for damage caused by oil pollution originating from a ship and for the cost of preventive measures. The shipowner had to take out insurance for such claims but liability was limited except when a shipowner was actually to blame.26 The same convention also allowed parties to ‘take such measures as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat of pollution of the sea by oil’ in the case of maritime incidents which might be ‘reasonably expected to result in major harmful consequences’.27

The commitment to prohibition of damage does not target stopping the damage activity, but concentrates on protection from the results of this damage and on reducing it to as low a level as possible.

Accidental oil spills involving gigantic carriers entail the obligation for states to take precautions and to reduce their damaging effects. Nonetheless, this commitment does not lead to the prohibition of transportation of oil by sea.

Moreover, the commitment to prevent the damage does not involve restrictions to avoid its occurrence but requires the introduction of specific or general changes in the approach to and administration of applications of this activity, or changes in the methods or materials used in order to prevent the occurrence of damage or its reduction.

As such the agreements to prevent pollution from ships contain primary obligations which include some of the procedures which target the prevention of damage occurrence or its reduction.

In the wording of the MARPOL Convention\(^{28}\) there are statement on certain general obligations which assist in filling potential gaps in the levels of marine environment protection, such as the parties’ commitments regarding the construction and renovation of ships, and port facilities being maintained at levels which permit the provision of a sufficient degree of marine environment protection.\(^{29}\)

Some articles of the UNCLOS contain general obligations which help prevent the occurrence of environmental damage and reduce it to as minimum a level as possible. They are based upon measures to prevent marine environment pollution and to reduce and control it \(^{30}\) which imposed on its parties the duty of not transferring the damage or the danger, or transforming one type of pollution into another type. \(^{31}\) It also urges states to monitor and record the dangers and effects of pollution \(^{32}\) and to publish prime reports of records of results to inform the concerned international organisations. \(^{33}\) The convention also contains detailed instructions regarding regional and international rules, and national legislations, and on prevention of marine environmental pollution and on reducing and containing it.\(^{34}\) The Convention also organised how to execute these rules in a manner which guarantees prevention of marine pollution from all sources.\(^{35}\)

5.4.2 Commitments to Make Reparation for Environmental Damage

From the fixed principles of international law, any breach or failure to meet commitments must be rectified by the countries as part of their international

\(^{29}\) Annex I of MARPOL Convention.
\(^{30}\) Articles 194 and 196
\(^{31}\) Article 195 (Z)
\(^{32}\) Article 204
\(^{33}\) Article 205
\(^{34}\) Articles 207 and 212
\(^{35}\) Articles 213 and 222.
responsibility.\textsuperscript{36} It is now commonly recognised that anyone who perpetrates an internationally wrongful act is obliged to make reparation for the results.\textsuperscript{37} In its judgement in the Chorzow Factory case, the PCIJ stated:

\begin{quote}
The essential principle contained in the actual notion of an illegal act is that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.\textsuperscript{38}
\end{quote}

In the case of harm to the environment, it is often simply impossible, not practical or economically sound to restore it to the state that it was in before and in these cases compensation must be sought.\textsuperscript{39} Environmental damage can be compensated in two ways: through the payment of money or by providing resources, both of which are important to increase the power of prohibition. Although the payment of money is not always sufficient for the affected country to return its environment to its original condition, it still represents disciplinary action against countries which repeat harmful actions.\textsuperscript{40}

\begin{quote}
This attitude can now be seen in the ILC Articles on State Responsibility (2001) which suggests that restitution, compensation, and satisfaction is the correct way to make reparation for harm resulting from an internationally wrongful act.\textsuperscript{41}
\end{quote}

The following subsections discuss two aspects of reparation.

\textsuperscript{36} See Amair, S. (2000) International Law of the Sea, a study of the more important rules of UNCLOS 1982, Dar Al Nahada, Cairo, p. 530. This refers to article 1/235 of UNCLOS 1982 and can be applied in any other field.
\textsuperscript{38} (1927) PCIJ Ser. A. No. 17, at 47.
\textsuperscript{40} The reporter Arangio believes that the state which did the illegal act can be obliged according to circumstances to offer compensation when the act done caused great loss or damage which cannot be repaired with either financial or restitution compensation; see, Gaetano Arangio-Ruiz, Second Report on State Responsibility, UN Doc. A/CN.4/425, 23-30, paras. 77-105 (1989).
5.4.2.1 Commitment to offer Restitution

Restitution: this is the obligation for the responsible state to return the situation to its previous state, or to the state it was in before the action which caused the pollution occurred. The ILC has a very restricted definition of restitution as 're-establishment of the situation that existed before the wrongful act was committed'. Hence, the state is obliged to clean up all the effects of pollution or to end the activities or operations which caused pollution.

However no consideration is made of what the situation could have been if the wrong had not taken place, nor does it take into account any profit made by the wrongdoer as a result of the wrong.

In some cases the responsible state may not fulfill its obligations in returning the situation to what has been before because of financial or practical considerations. Damage may have occurred which cannot be repaired or actual changes in the nature of the environment may have taken place. In the case of pollution of the marine environment with toxic or radioactive materials, the living organisms will die and the characteristics of the water will change. It might also be too much of a financial burden. In cases where it is simply physically impossible or impractical to restore the environment to the state that it was in before there are no options left for the state other than to choose financial compensation.

5.4.2.2 Commitment to Offer Financial Compensation

Financial compensation: this occurs where damage resulted from pollution has actually occurred, and it is not possible to repair it by means of non-material

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42 In the ILC Articles on State Responsibility (2001), Part I, Chapter II, Art.35, The intention of restitution is to re-establish the state of affairs prior to the wrongful act, inasmuch as this possible and does not 'involve a burden out of all proportion to the benefit deriving from restitution instead of compensation'.


46 In the ILC Articles on State Responsibility (2001), Part I, Chapter II, Art 36, The aim of compensation is to cover damage that has not been made good by restitution and it needs to take care of 'any financially assessable damage including loss of profits insofar as it is established.'
compensation. In this instance the state is obliged to pay financial compensation to help repair this damage.\footnote{Hashim, S. M. (1991) \textit{International Responsibility for Marine Environmental Safety}, op.cit., pp. 336-337} This is according to the permanent concept as laid down by the International Court of Justice in the case of Chorzow Factory in 1927.\footnote{PCIJ, Ser. A., No. 8/9 (1927),31.} In this it was stated that: the repairing of damage means the results of the illegal action being cleaned up to some extent.\footnote{Sands, P. (2004) \textit{Principles of International Environmental Law}, op.cit., p. 882.}

As has been stressed in the previous section, in the case of environmental pollution it is almost always no longer possible to restore the environment to its previous state and hence restitution is not a viable option. At such times, compensation plays a very central role and becomes the main method used to make good environmental damage.\footnote{Birnie, P. & Boyle, A. (2002) \textit{International Law and the Environment}, op.cit., p. 192.} It is to be made for damage which has not been covered by restitution and should also include loss of profit as much as these can be estimated.\footnote{Sands, P. (2004) \textit{Principles of International Environmental Law}, op.cit., p. 883.}

Therefore, the role of financial compensation is limited to what is laid down in international dealings. It is described as financial compensation for the damage which requires the repair of the damage.\footnote{Hashim, S. M. (1991) \textit{International Responsibility for Marine Environmental Safety}, op.cit., p. 337.}

5.5 Obstacles to Applying International Liability for Environmental Damage

5.5.1 Production and Division

There are many difficulties in applying international liability resulting from environmental damage, because of the special nature of such damage and because there is no rule for compensation concerning this matter. Specific laws related to responsibility for compensating damage.

These difficulties can be discussed under the following headings:-
1. Difficulties resulting from natural environmental damage.
2. Responsibility for treating the environmental damage and the protection of victims of pollution.

5.5.2 Difficulties Resulting from Natural Environmental Damage

Environmental damage is often a result of pollution from many different sources, where substances may react with each other, causing unexpected effects to arise later. These cases are different from those of pollution from individual sources, so that it may be difficult or impossible to determine the true relationship between each particular activity and the effects which may result. The most important difficulties are as follows:

1. Difficulties in identifying the party responsible for the damage according to legal standards. The cause of the pollution may be known but it may arise from many different sources, so it is difficult to differentiate between single sources and groups of sources at the same time; indeed, it is sometimes impossible to distinguish these. This applies to transboundary marine pollution which causes damages to the marine environment and its components in other countries. The problem is how to determine who carried out the damaging activity and the level of the share in responsibility if there are proved to be a number of participants in pollution incidents causing damage to states or individuals.

2. The damage resulting from marine environment pollution could be indirect, as it might not directly affect human or financial resources, but might have another kind of effect. In this case, the damage which is caused because pollution of the sea by oil discourages people from visiting the shore and the beach must be estimated.

3. There is a lack of appropriateness in the methods of repairing the damage. According to the rules of civil liability or international responsibility, the existence of responsibility elements require proven commitment by the state to repair the inflicting damage, and require that damage be repaired in one of two ways - firstly by returning the situation to the state it was in before the damage occurred and this in tangible compensation, the second is by paying tangible compensation for the victim.  

4. Assuming that the above difficulties have been resolved, evaluation of the damage is required so as to take a case to court and assess the level of compensation. The best way to do this is to restore the situation as it was before, but this is usually impossible, especially when the environment is endangered by widespread damage. According to references, financial compensation must be estimated. The implementation of these rules is suitable for damages which have been inflicted on persons or materially in normal circumstances. However it does not suit the nature of damage resulted from environment pollution, and the destruction of ecological systems. Even though damage to humans can be repaired and made good by paying a specific amount, the damage which was inflicted on the environment can only be repaired by returning the situation to the state it was in before.

5.5.3 Compromise in International Environmental Disputes

5.5.3.1 Introduction

Because there are no clear rules on responsibility and liability for marine pollution, this results in considerable problems in determining the blame for damages. Naturally this lack of clarity leads to many disputes between states as to who is responsible and who should deal with the results of pollution. There are two methods of resolving such disputes – firstly, by means of a diplomatic settlement, or secondly, the

57 The theory of cash compensation in the field of responsibility for environment damage is unpopular among doctrinal lawyers, who see it as a barbaric theory, because money cannot compensate for the loss of a person who has been killed by pollution, or for the disappearance of archaeological sites. See; Salama, A., Protection of Environment Law, op.cit., p. 350.
judicial route. In this section, the most important diplomatic and judicial means will be discussed.

5.5.3.1.1 Negotiation

Negotiation is considered one of the oldest means of settling international disputes. As it has wide support and may be useful in reaching reconciliation between the disputing parties,\textsuperscript{59} it is the fastest and most efficient way to settle international disputes and is included in many conventions and agreements.\textsuperscript{60} Most countries seek to negotiate at the diplomatic level,\textsuperscript{61} but may do so at other levels too, so that it often involves the direct and indirect participation of several persons, agencies and groups.\textsuperscript{62}

In dealing with disputes, the emphasis in environmental treaties is on parties making use of diplomatic channels such as negotiation or conciliation before resorting to other more formal avenues.\textsuperscript{63} Indeed negotiation is used more often than all other methods for settling international disputes put together and is often the only one utilised as time and again it is the first tried and is usually successful.\textsuperscript{64} However because negotiations on environmental matters always take place in private, it is not always possible to know when a successful outcome has been achieved.\textsuperscript{65}

\textsuperscript{59} This requires that it should not to be used to impose rights which are not owned by a particular party, or to grasp the rights of the other party, or another third party absent from the negotiating process, see in this, Abu Al Wafa, A. (1998) Mediation in International General Law, op.cit., p. 596.

\textsuperscript{60} 1973 CITES, Art. 18; MARPOL 73/78, Art. 10; 1972 Space Liability Convention, Art. 9; 1974 Baltic Convention, Art. 18(1); 1979 LRTAP Convention, Art. 13; 1985 Vienna Convention, Art. 11(1) and (2); Climate Change Convention, Art. 14; 1992 Biodiversity Convention, Art. 27(1).

\textsuperscript{61} It has made some provisions of the International court of using up the diplomatic means, even if they are not dictated in an international agreement, a condition that must be available before bringing the suit before the International court. See in this, Sarhan, A. The Settlement of International Disputes. p.1.

\textsuperscript{62} There are two kinds of negotiation: direct negotiation between the parties, or between them and a third party, whether the said party is exerting efforts to bring their views closer, or the negotiations are conducted under the third party’s supervision, as happens when negotiations are conducted under the auspices of the UN. The role of the third party may extend to proposing solutions or settlements that may or may not be taken by the two parties. As negotiation is intended to be flexible and to lead to some kind of compromise, parties are expected to show goodwill and the necessary flexibility to reach a solution, but this does not mean it is imperative to reach a solution. See Shihab, M. International negotiation: Science and art. Paper given at a seminar on international negotiation, Riyadh (13-16 February 1993), Diplomatic Studies Institute, p. 211.


Considering the increasing importance of negotiation as a mechanism for solving conflicts, it is not surprising that the UNCLOS makes special reference to negotiation as a voluntary means to resolve disputes relating to the interpretation of agreements. Article 283/1 of the UNCLOS provides that if a dispute arises between the state parties relating to the interpretation of the Convention or its application, the said parties shall immediately exchange opinions about its settlement by negotiation or by any other peaceful means.\(^{66}\)

The International Convention Related to Intervention on the High Seas permits any parties in cases of pollution by oil to seek to resolve the matter through its procedures. If it is felt that one of the contracting parties has broken the terms of the Convention, they have to form a special committee with authority to manage meetings in cases of dispute and to give their recommendations. All parties then have the right to reject these and to use other conventions, such as the Tashad Committee and the River Niger Committee, in the reconciliation field.

Negotiation is a very appealing means to resolve conflict as no third parties are involved which allows the states themselves to stay in control. However in cases where either party questions the other party's standing or legitimacy, it may be problematic, so that initially at least, only relatively minor issues will be discussed. In this way, the United Kingdom reached an Interim Agreement with Iceland during their fishing dispute.\(^{67}\)

Negotiation can also be seen as an option which can be utilised alongside other processes, for example litigation, as in the Aegean Sea Continental Shelf case.\(^{68}\) Some treaties may in fact also provide for matters to be referred to third party mechanisms should negotiations run into difficulties\(^{69}\) and in fact tribunals may intervene to point out other issues which negotiating parties should also take into account as was the case.

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\(^{66}\) Ibid, p. 1015.
\(^{68}\) See Aegean Sea Continental Shelf, Judgment, ICJ Reports 1996, p 3, para. 29.
in the North Sea Continental Shelf cases. It is generally held that when parties are obliged to negotiate, then they are also obligated to negotiate in such a way as to reach a final agreement.

There is also a negative side to negotiations, in that it can be difficult to encourage an exchange of views to reach an agreement between parties, especially in cases where the parties are not equal in authority and power, in which case the agreement may not be fair.

Lastly, it can be said that settlements through negotiation cannot be used to strengthen or develop international environmental law, especially when negotiators follow Bilder’s advice concerning how to avoid legal solutions and obligations.

5.5.3.1.2 Conciliation

Conciliation is a peaceful means of settling disputes handled by a committee composed of specialists who discuss the dispute and submit a report comprising the proposal for solution. It must be stressed that such reports are indeed proposals and are hence not binding decisions.

Conciliation is often incorporated into provisions on dispute settlement but is seldom used as a means of conflict dispute settlement. However it is of value for various reasons. It often plays a part in deterring states from making unreasonable

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70 See the North Sea Continental Shelf cases, ICJ Reports, 1969, pp. 3, 53-4; 41 ILR, pp. 29, 83.
claims. Conciliation is an extremely flexible measure and can go a long way to clarify issues and examine various options and hence open the door to further negotiation between the parties involved.

It is also of great use in cases where the main issues are legal but where the parties are in fact trying to come up with a compromise which is acceptable to both sides. This was the case in the dispute between Iceland and Norway over the continental shelf delimitation between Iceland and Jan Mayen Island. Here it was again stressed that the question was the subject of continuing negotiations and that the Commission's report was not binding. The Commission's suggestion for a joint development zone was one which was not likely to have been made by any judicial body which would have merely considered the legal rights of the parties, thus again demonstrating the unique advantages of the conciliation process.

Conciliation is the second mechanism referred to by the UNCLOS relating to selection of the means for solution of disputes and the UNCLOS in fact specifies a quite elaborate system for the settlement of disputes and lists in detail the steps in the conciliation process.

Annex 5 states the two detailed procedures to be followed in the conciliation to settle a dispute relating to the interpretation or application of the Convention. Article 2 of the said annex provides for the powers of the Secretary General of the UN to make a list of conciliators. Every state in the dispute has the right to nominate four from those contained in the list. Article 3 of the same annex deals with the manner of forming the

79 Ibid, p. 1024.
80 Article (284) provides: Conciliation
1. A State Party which is a party to a dispute concerning the interpretation or application of this Convention may invite the other party or parties to submit the dispute to conciliation in accordance with the procedure under Annex 5, section 1, or another conciliation procedure. 2. If the invitation is accepted and if the parties agree upon the conciliation procedure to be applied, any party may submit the dispute to that procedure.
3. If the invitation is not accepted or the parties do not agree upon the procedure, the conciliation proceedings shall be deemed to be terminated.
4. Unless the parties otherwise agree, when a dispute has been submitted to conciliation, the proceedings may be terminated only in accordance with the agreed conciliation procedure.
81 Article 2 of Annex 5 provides:
conciliation committee of five persons. The party who initiates the procedure appoints two conciliators, the other party appoints two more, then the four conciliators choose from the list the fifth, who assumes the chairmanship of the committee. 82

It is worth mentioning here that although conciliation is included in the list of the voluntary peaceful means of solution of international conflicts, we see that Article 297 of the Convention provides for specific disputes to be referred for mandatory conciliation, although Conciliation Committee reports on disputes are not mandatory in the strict sense towards the disputing parties. 83 Any party in the dispute may move the conciliation procedures by submitting a written notice to the other party (or parties) in the dispute, which is bound by the conciliation procedures as per Article 11 of Annex 5 of the Convention. The failure of a party or parties to respond to the said notice or to accept the conciliation procedures as binding does not constitute an obstacle to proceeding according to Article 12 of the annex.

The Conciliation Committee decides on any dispute within its jurisdiction by examining the matter according to Article 13 of Annex 5. Article 6 specifies the functions of the committee in hearing the parties, examining their allegations and objections with a view to submitting proposals to them for reaching an amicable settlement. Article 5 of the annex authorizes the Conciliation Committee to call the attention of the parties to any arrangements that may facilitate reaching an amicable solution to the dispute. The Committee must submit, according to the provisions of Article 7, a report within 12 months from its formation containing any solution reached. If no solution has been reached, it has to state the conclusions which it has reached on all the relevant issues of fact or law in the dispute. The report must be deposited with the UN Secretary General, who then submits it to the parties. The second paragraph of

"A list of conciliators shall be drawn up and maintained by the Secretary-General of the United Nations. Every State Party shall be entitled to nominate four conciliators, each of whom shall be a person enjoying the highest reputation for fairness, competence and integrity. The names of the persons so nominated shall constitute the list. If at any time the conciliators nominated by a State Party in the list so constituted shall be fewer than four, that State Party shall be entitled to make further nominations as necessary. The name of a conciliator shall remain on the list until withdrawn by the State Party which made the nomination, provided that such conciliator shall continue to serve on any conciliation commission to which that conciliator has been appointed until the completion of the proceedings before that commission."

82 Article 3 of Annex 5 sets out the method for setting up the conciliation committee.
83 Article 297.
Article 7 makes it clear that the report and its recommendations shall not be considered binding on the parties. Article 8 of the annex provides for the termination of the conciliation procedures in case a settlement has been reached, or in case of the acceptance by the parties of the recommendations in the report, by submission of a written notice to the UN Secretary General, or after expiry of three months from the date of reference of the report to the parties without reply from them.

5.5.3.1.3 Arbitration and Judicial Compromise

5.5.3.1.3.1 Arbitration

Arbitration is considered the oldest judicial methods of resolving disputes in domestic and international law, and its roots extend to international general law. It was used by Greek cities as a means of resolving their disagreements. Arbitration is defined in Article 37 of the Hague Convention 1907 as having 'for its object the settlement of disputes between states by judges of their own choice and on the basis of respect for the law. Recourse to arbitration implies an engagement to submit in good faith to the award'.

Arbitration is traditionally considered a method which is acceptable to all countries, because it is flexible; the disputing countries have the right to choose the members of the arbitration body, the rules by which it can settle the dispute, and whether the parties are to be bound by it. Those involved can choose their own arbitrators which may lead to initial delays but is more likely to result in a successful outcome as the dispute is being decided by a tribunal which the parties have confidence in.

The Trail Smelter case is considered a classic case of arbitration, where the two parties formed an arbitration body, which applied the rules and international practices that users in America recognised in addition to international law.

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85 Annex 7, Article 1.
88 33 AJIL (1939), p.182.
Though important, arbitration has significant limitations. States prefer to keep matters in their own hands as is the case with negotiation or other diplomatic solutions. Another disadvantage is that sometimes the losing party refuses to abide by the decision of the Tribunal although in fact this is not often the case.\textsuperscript{90}

Despite the existence of international arbitration decisions regarding environmental issues,\textsuperscript{91} many international conventions rely on arbitration as the primary means to settle disputes if negotiations between the disputing parties have proved futile.\textsuperscript{92} In fact UNCLOS\textsuperscript{93} gives a great deal of importance to arbitration as a means to settle disputes.\textsuperscript{94}

5.5.3.1.3.1.1 The General Rules of Arbitration in UNCLOS

UNCLOS made arbitration one of the most important means of settling disputes peacefully. In this respect, the provisions of the Convention and its annexes do not differ in principle from the general principles recognized in international law.\textsuperscript{95}

The seventh annex of the Convention deals with the provisions concerning arbitration procedures. Article 1 of the Annex allows any party in a dispute to resort to arbitration to resolve the dispute as long as the other parties have accepted the same, that is by submitting a written notice to the other party or parties in the dispute. The notice shall be accompanied by a statement of the subject of the allegation and the basis which supports it.\textsuperscript{96}

\textsuperscript{91} The arbitration decision issued in 1956, in the case of Lac Lanoux, which Spain brought as a lawsuit against France, because the Bayonne Convention was breached, and the annex, confirming the existence of an international obligation to avoid water pollution. See details of the case in Bilder, R. B. (1975) Settlement of Disputes in the Field of International Law of Environment, op. cit., pp. 174 - 176.
\textsuperscript{93} Along with the 1992 Stockholm Convention on Conciliation and Arbitration within the CSCE and the World Trade Organisation in its dispute settlement system.
\textsuperscript{95} Sohn, L. B. (1983) The Role of Arbitration in Recent International Multilateral Treaties, Virginia Journal of International Law, vol. 23 (No. 2)
\textsuperscript{96} Article 113 of Annex 7 of the Convention allows other entities including natural persons, legal persons and governmental organizations to be parties in the arbitration.
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Article 3 of Annex 7 contains the rules for setting up the arbitration court. It conforms, in fact, with the general rules in the field of international arbitration, except for one addition stated in Article 2 of the Annex, relating to the number of arbitrators who are chosen by the parties, whether in respect of the arbitrator who is chosen by each party or of the remaining three, who are chosen by agreement of the two parties. The award made by the arbitration tribunal shall be restricted to the content of the issue which is the subject of dispute, along with the reasons upon which the award is based, the names of the members who participated in the issuing of the award and the date of issue. Any member is entitled to state in the said award a separate opinion or dissenting opinion according to Article 10 of the annex.

The award shall be considered decisive and not susceptible to appeal unless the parties have agreed previously to appeal. The parties shall respect the award of the arbitration court according to Article 11 of Annex 7. Any party to the dispute may submit to the court of arbitration which issued the award any dispute arising between the two parties concerning the interpretation of the award or its execution. For this reason, any vacancy occurring in the Court may be filled according to the provisions of the original appointment of its members. Also, any dispute of this kind may be submitted to another court consented to by the disputant parties as per Article 287 of the Convention and Article 12 of Annex 7.

5.5.3.1.3.1.2 Special Arbitration

Annex 8 of the Convention prescribes detailed rules for the special arbitration which may be accepted by the states according to Article 287/1-d of the Convention and which do not differ from those of the arbitration tribunal or the general arbitration referred to earlier, except in terms of the disputes which may be subjected to special arbitration, the list of arbitrators and some other rules.

97 See Article 3 of Annex 7 of UNCLOS.
98 See Article 2 of Annex 7 of UNCLOS.
Article 1 of Annex 8 specifies those disputes which may be referred to special arbitration as including any dispute relating to the interpretation and application of the Convention concerning fishing areas, protection of the marine environment and its safeguarding, marine scientific research, navigation, including pollution arising from ships, and the dumping of waste. As these issues are of scientific character in general, Article 2 of the said annex refers to the necessity of choosing experts to resolve such disputes. Article 3 of Annex 8 clarifies the rules for setting up the Special Arbitral Tribunal, which also conforms in essence with the provisions of Article of Annex 7 of the Convention concerning special arbitration, except that each party to special arbitration possesses the right to appoint two members, while it has the right to appoint only one member in general arbitration. In case of disagreement on the appointment of an arbitrator, whether an individual or a state, the President of the International Tribunal on the Law of the Sea or the person who acts on his behalf shall make the appointment in respect of the General Arbitration Tribunal, while Article 3 of Annex 8 refers this role to the Secretary General of the United Nations in respect of the Special Arbitral Tribunal.

There are numerous international agreements which refer parties to other bodies when there are disagreements about interpretation or implementation, for example the

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99 Article 2 of Annex 8, on the subject of expert lists, provides as follows:

1. A list of experts shall be established and maintained in respect of each of the fields of (1) fisheries, (2) protection and preservation of the marine environment, (3) marine scientific research, and (4) navigation, including pollution from vessels and by dumping.
2. The lists of experts shall be drawn up and maintained, in the field of fisheries by the Food and Agriculture Organization of the United Nations, in the field of protection and preservation of the marine environment by the United Nations Environment Program, in the field of marine scientific research by the Intergovernmental Oceanographic Commission, in the field of navigation, including pollution from vessels and by dumping, by the International Maritime Organization, or in each case by the appropriate subsidiary body concerned to which such organization, program or commission has delegated this function.
3. Every State Party shall be entitled to nominate two experts in each field whose competence in the legal, scientific or technical aspects of such field is established and generally recognized and who enjoy the highest reputation for fairness and integrity. The names of the persons so nominated in each field shall constitute the appropriate list.
4. If at any time the experts nominated by a State Party in the list so constituted shall be fewer than two, that State Party shall be entitled to make further nominations as necessary.
5. The name of an expert shall remain on the list until withdrawn by the State Party which made the nomination, provided that such expert shall continue to serve on any special arbitral tribunal to which that expert has been appointed until the completion of the proceedings before that special arbitral tribunal.

1973 MARPOL Convention Article 10, Brussels Convention of 1969 section two of its attached complement, and the 1974 Paris Convention Article 18(2) which states that if the parties are not able to settle their dispute through negotiations or to reach mutual agreement, they are subject to a special arbitration court or to a permanent arbitration court. 1954 OILPOL Convention in its Article 13 should also be referred to.

5.5.3.1.3.2 International Judicial Compromise

5.5.3.1.3.2.1 The International Court of Justice (ICJ)

The ICJ is considered the main judicial tool of the United Nations and a fundamental part of its charter. A brief analysis of its role in environmental cases shows that judicial compromise is the guiding rule of the ICJ, so it judges international affairs according to the wishes of countries to bring their disputes before it.101 Originally its judgements were optional,102 because binding decisions need the specific agreement of the countries, as indicated in the text of Article 36/2 of the constitution of the Court.103

Article 36/2 includes several environmental conventions that encourage contracting parties to bring their disputes to the ICJ as the last resort. These include the International Convention to Prohibit Pollution of the Sea by Oil, 1954, which creates a firm commitment to do that within the scope of the convention, but the later conventions which incorporate this text express it as an optional supplement freely reflecting the nature of the dispute and emphasising the importance of the secondary court in all environmental disputes.104

102 Article (36/1) dictate from basic rule for the International Court of Justice, "The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force." (In document) DP 1/511 reprint, 88251 March 1995 – 5M.
103 "The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:
   a. the interpretation of a treaty;
   b. any question of international law;
   c. the existence of any fact which, if established, would constitute a breach of an international obligation;
   d. the nature or extent of the reparation to be made for the breach of an international obligation."
In June 1993 the ICJ formed a chamber from seven members because of developments in the field of environmental law to settle all environmental cases with reference to Article 26/1 of the rules of the main court. This is a measure of the importance placed by the ICJ on its role in handling matters of environmental protection. When this chamber was formed there were two cases before the court which needed to be settled although the chamber itself has yet to be used. The first of these cases, which concerned phosphate mining, was Nauru v Australia in May 1989. It concerned international responsibility for environmental damage to the soil of Nauru, which had been ruled by Australia. Nauru sought compensation to repair the damage done to the land by the mining of phosphates before Nauru achieved independence. In 1968, in addition to asking for tax to be paid and the moral damage be evaluated, Nauru confirmed in its lawsuit that general international law obliged a state which governed a region not to cause any change in the region’s status or to do any damage that could not be repaired.

On 26th June 1992 the court agreed to examine the case, although the environmental damage had happened 70 years earlier, before 1968; but the case was settled by the parties out of court.

Advisory opinions: As laid down in the UN Charter Art. 96 (1), the General Assembly or the Security Council is permitted to ask the ICJ to offer an advisory opinion on any legal question, and other organs of the UN and specialised agencies linked to the General Assembly are also permitted to request advisory opinions from the ICJ Art. 96 (2) on legal questions that fall within their rubric. Although advisory opinions are not legally binding for the requesting body, the body will accept them and take action accordingly.

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105 ICJ, Communique 93/20, 19 July 1993. The Chamber was established under Art.26 (1) of the Statute of the ICJ.
107 International Court of Justice, Communique No. 201/93 - of July 19, 1993
108 An advisory opinion on the legality of the use of nuclear weapons in consideration of their effects on public health and the environment was given by the ICJ in July 1996. See (1996) ICJ Report 242, para 33.
5.5.3.1.3.2.2 The International Tribunal for the Law of the Sea ITLOS\textsuperscript{109}

The International Tribunal for the Law of the Sea (ITLOS) was set up as a dispute settlement mechanism according to Part 15 of UNCLOS and has already played an important role in the area of maritime environmental law.\textsuperscript{110} It is made up of twenty-one independent experts in the law of the sea who are known to be fair and to have a high level of integrity. Further ad hoc judges and scientific or technical experts can also be appointed to sit on the tribunal, although the experts have no votes.\textsuperscript{111}

A wide discussion and controversy arose during the third UN Conference on the Law of the Sea as to the efficacy of establishing a special tribunal for maritime law. Some were of the opinion that the issue could be solved by establishing a separate circuit within the International Court of Justice concerned with maritime legal disputes, rather than establishing an independent court with additional costs, for which there was said to be no need. Others sought the establishment of a new international tribunal concerned with issues relating to marine law. The result of the discussion was support for the latter opinion, for legal and political reasons, in that the ICJ is a judicial body before which the right to bring litigation is restricted to sovereign states. Even an international organization which has acquired a legal international personality cannot litigate before the International Court of Justice and its role is restricted to requesting consultations or legal opinions concerning certain issues, while the new Convention on the Law of the Sea allows several entities, which may be states, companies or individuals, to enter into any of the activities relating to the exploitation of resources and their utilisation in international waters. It is likely that legal disputes between these companies and individuals on one side and the authorities on the other will arise in the future, which means that these entities will be parties to disputes before the new tribunal, whether as plaintiff or defendant. On the other hand, the International Court of Justice reflects, in the opinion of the developing countries, the interests of the most powerful states above their own. Finally, the prevailing opinion was that which called

\textsuperscript{109} The International Tribunal for the Law of the Sea is the central forum established by the United Nations Convention on the Law of the Sea for the peaceful settlement of disputes. Its seat is at the Free and Hanseatic City of Hamburg, Germany. The Tribunal may sit and exercise its functions elsewhere whenever it considers this desirable.
for the establishment of a tribunal concerned with maritime law and having jurisdiction primarily to decide on all disputes and all applications referred to it according to UNCLOS and all issues provided for in an exact manner in any other agreement, where jurisdiction should be given to the new tribunal.\textsuperscript{112}

The International Tribunal for the Law of the Sea differs from the ICJ in that the latter has authority to issue formal legal opinions and consultative opinions requested by states, UN agencies and specialized bodies associated with the United Nations, such as the FAO and UNESCO, while the jurisdiction of the International Tribunal for the Law of the Sea is purely legal and has nothing to do with giving formal legal opinions or consultative opinions to states and other entities related to activities on the seabed. In other words, the consulting role and the issuing of opinions in the field of marine law has been assigned to the Seabed Disputes Chamber in addition to its juridical jurisdiction.\textsuperscript{113}

Article 191 of UNCLOS provides that the Chamber shall issue consultative opinions in those legal issues that are within its jurisdiction when the Assembly or the Council requests this. These opinions should be issued promptly. The text makes it clear that a request for a consultative opinion from the Seabed Disputes Chamber is restricted to the Assembly and the Council of the Authority. Therefore, there is no right for the states parties to the Convention, or the General Secretary of the Authority, or public or private companies, or international organizations to request such consultative opinions from the Chamber. ITLOS is also dependent on States designating it as the body to which they wish to turn.\textsuperscript{115}


\textsuperscript{113} UN Charter, Art. 96 (1). and UNCLOS part 9 section 5 Art. 191.

The provisions concerning the International Tribunal for the Law of the Sea are set out in Annex 6 and in a number of articles of the Convention, particularly in the fifteenth part relating to the settlement of disputes.

A number of disputes have been brought before ITLOS which include the Southern Bluefin Tuna Case between Australia and New Zealand against Japan\textsuperscript{116} and the Mox Plant Case (Ireland v. United Kingdom).\textsuperscript{117} In these two cases ITLOS prescribed provisional measures until the matter could be brought before an arbitral tribunal.\textsuperscript{118}

Criticisms Directed against Judicial Compromise and Arbitration

1. Experts in international environmental law\textsuperscript{119} have made a number of criticisms of the use of arbitration and judicial compromise as tools to resolve disputes. Many of these arise from the few cases of arbitration before the ICJ and are considered below.

2. There is a basic rule in international law that if a certain state brings a lawsuit against another country, it should be clear that her protectorate has been damaged lawfully.\textsuperscript{120}

3. This rule means that for a country to be held responsible a high level of damage needs to happen, and these levels of damage are impossible to prove in cases of multiple environmental damage. This makes it very difficult to present a lawsuit on behalf of international interests or the general good, such as in the protection of the oceans from marine pollution when the damage to the interests of one country cannot be proven. However, the work of the International Law Committee provides support for scientific evidence of several kinds of damage which can be caused by pollution.\textsuperscript{121}

4. It is possible for the basic rules applied to arbitration or by a judicial body, and confirming the official sources of international law, to exert pressure on

\textsuperscript{117} Ibid, p. 341
\textsuperscript{120} Abu Al Wafa, A. (1998) \textit{Mediation in International General Law}, op.cit., pp. 158 – 161
the judiciary to define the rights and duty of countries, making countries unwilling to bring their disputes before these bodies, which are difficult to control or to direct. This was confirmed when Canada refused to permit the ICJ to hear disputes related to its legislation to prohibit pollution in Arctic waters and defended its resolution to link reservations related to pollution matters with its declared acceptance of the compulsory judgements of the ICJ. Canada justified this position with reference to the paucity of international environmental rules.\textsuperscript{122}

5. Performance of judicial procedures tends to be complex and long, at a time when environmental problems require rapid solutions, because collecting the necessary information and preparing legal positions takes time.

6. Environmental problems always seem to be technical,\textsuperscript{123} to the degree that judges may face difficulty in understanding them if they are not experienced in this field. This has become a real problem, so the ICJ has established a chamber for sea-bed disputes, according to the branch four from the sixth attached for the basic rule chamber to international court for law of the sea, the fifth section from part 11\textsuperscript{124}, from convention of UNCLOS, gives flexible guidance to countries to choose the most suitable context in which to solve their disputes.

Although many criticisms are directed at this kind of compromise, it provides a fundamental tool to further international protection of the environment. To make this rule more effective they have to re-examine the acceptance of suits in cases presented by non-government organizations and normal persons, because these NGOs have played an important role in protecting the environment from pollution; and this requires modification of the constitution of the ICJ to accept such cases, to make it easy for these organizations to bring their environmental cases to the ICJ.

\textsuperscript{122} The Prime Minister of Canada said about this subject "at the time which international practicing are on progress in the field of protection and supervision pollution so there are enough rule to protect the environment".


\textsuperscript{124} See Art 14 of the sixth attached to United Nations Convention on the Law of the Sea.
5.6 Conclusion

From the proceeding it is apparent that the violation of obligations or commitments concerning the protection of the environment necessitates questioning who has violated internal law and international law, and forcing that person to repair the damage resulting from that violation.

It is apparent that there are no specific rules regarding responsibility for environment damage in general and marine pollution in particular, at which international law stops short in transferring them into recognizable general rules concerning civil liability.

In spite of that international documents still confirm that the issue of international responsibility for pollution damages has not yet reached maturity and conclusion, as issues such as the identification of the nature, jurisdiction and basis of the responsibility, procedures to estimate the damage and name of the organization ending the legal actions, settlement of disputes, and the guarantee of receiving quick and sufficient compensation to cover of the resulted damages, are all considered to be some of the main problems the international community faces.

The rules of civil liability in the general rules of international law concerning liability do not seem sufficient to deal with the huge amount of damages resulting from marine pollution, a matter which requires the exertion of other efforts in order to develop the liability rules. This development shall contribute in one way to protect the victims of marine pollution, and in another shall contribute to preserving and protecting the marine environment. As such the liability rules do not carry out a remedial function only, but also restrain the activities which cause damage to the environment. They therefore act as a wide-ranging preventative measure in dealing with the environment in general and the marine environment in particular. It can be seen that the various methods of settling international disputes relating to the Law of the Sea can be divided into diplomatic and judicial methods. If parties cannot settle their disputes using diplomatic options, then they have to turn to judicial methods. However there is a wide
range of options open to disputing parties which makes it very easy for them to find one which they can use to arrive at a solution which is agreeable to them all.

In the next chapter efforts will be made to appraise the legal regime concerning the protection of the marine environment in Saudi Arabia. In this respect focus will be made on the efforts of the government departments and other relevant bodies as well as the internal regulations. The chapter also touches on Saudi Arabia’s cooperation with international bodies regarding the protection of the marine environment.
6.1 Introduction

One of the aims of this study is to identify the efforts of the Kingdom of Saudi Arabia in protecting the marine environment. This chapter considers the most important local, national and international efforts exerted by the Kingdom in the field of protection of the marine environment from oil pollution. This will be done by discussing the general environmental policies and practical arrangements which address such concerns and by illustrating and analyzing the Kingdom's formal position.

In the early 1970s the Kingdom of Saudi Arabia witnessed a quick development as a result of high oil revenues. Many sectors showed a big leap in development such as industry, transportation, communication, health, education and infrastructure. This quick development has an environmental cost like many other countries in the world in which development has a negative impact on the environment.  

Although the first priority was given to improving people's way of life, protection of the marine environment also took a great deal of attention from the Saudi government. This is for three most important reasons. Which are as follows:

4) The Kingdom of Saudi Arabia lies on both the Red Sea and the Arabian Gulf.
5) The Kingdom of Saudi Arabia has 1500 nautical miles as a coastline on the Red Sea and the Arabian Gulf. The length of the coastline on the Red Sea in 1125 nautical miles. Protection of these coastlines from pollution is the responsibility

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of Kingdom and all other countries in the Red Sea basin and in the Arabian Gulf.

6) To limit the adverse effects of marine pollution on life resources like fish or the pollution of marine water that specially affects cleanliness of water or the usage of seas (in recreation and swimming).

The policy and interest of the Kingdom in clean environment is basically based on the teachings and the principles of Islamic Shari‘ah as explained earlier.

There are three main policies by which the government of the Kingdom of Saudi Arabia takes care of the environment:¹

1. Issuing of laws and internal regulations regarding the marine environment. These laws are to be implemented inside the Kingdom and its territorial waters, (Internal factor).
2. Signing international treaties and agreements regarding the use and exploitation of international seas, (international element).
3. Invoking the rules of international law established in the framework of the International Law of the Sea (the element of general rules of international law)

¹Ibid
6.2 Protection of Marine Environment in the Internal Regulations of the Kingdom of Saudi Arabia:

The international efforts for protecting the marine environment are not sufficient, but it needs the support of the internal legislation and regulations. This support should take different shapes e.g. understanding the legislations and regulations by the international bodies and to accept it internally in the system, i.e. the internalization process.

From other point of view of the instigation, new rules and regulations must be applied to avoid the breaching of some international rules regulations. This breach is not deliberate, since the legislators cannot deal with the inclusive parts of the agreement or may be deliberately dropped due to the special nature of a particular environmental issue.

On the other hand, arrangements and executive regulations must be made arising from the international agreements. This may be necessary to enable the State to carry out its agreed obligations, because there would be no justification thereafter to cite the deficiency of its domestic legislations to evade the said obligations.

The Kingdom of Saudi Arabia has issued many internal rules and regulations to protect the marine environment. These internal rules and regulations are to be implemented in marine regions under the Kingdom's jurisdiction. The law of ports was issued in 1975. In this law there are certain rules and regulations regarding prevention of marine pollution by oil, ships waste or domestic waste. It can be summarised that the most important points in this law as follows:

6.2.1 From an Objective Point of View:

The rules and regulations protect the marine environment from pollution resulting from:

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5 The Marine Documents of the Kingdom of Saudi Arabia, Ministry of Exterior. Dar Al- Alblad, Riyadh.
chapter six

- Oil (crude oil, diesel oil and lubricating oil).\(^6\)
- Oil mixture. Oil in mixture should be 100 parts or more in every million parts of the mixture.
- Dumping of waste, food remains or ships waste.\(^7\)

The sources of pollution to marine environment is more that the above mentioned so the regulation does not take into consideration other sources of pollution like land sources, or pollution from airplanes.

### 6.2.2 Location-wise:

The rules and regulations prohibited oil tankers of capacity of 500 tons or more from dumping oil, or oil mixture in a distance of 100 nautical miles from the coastal.\(^8\) Saudi Arabian tankers of 150 tons capacity or more and ships of capacity 500 tons or more are prohibited from discharging oil, or oil mixture, in the seas, or in areas mentioned in the international agreement to prevent pollution of seawater by oil, according to the 1954 agreement as revised in 1964.\(^9\) The rules and regulations also prohibited dumping of waste food remains or ships waste in ports, navigation routes or territorial waters of the Kingdom to a distance not less than 12 nautical miles from the coast.\(^10\)

### 6.2.3 Ships\(^11\) that are under Rules and Regulation:\(^12\)

Military ships were exempted from these rules and regulation but they should take the necessary precautions not to pollute marine environment. This means two things:

a) All ships except the military ships should abide by these rules and regulations.

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\(^6\) Seaport and lighthouse regulations, Article 312.
\(^7\) Ibid
\(^8\) Ibid, Article 313.
\(^9\) Ibid, see Article 314.
\(^10\) Ibid, Articles 333, 335.
\(^11\) A ship is defined as “Any object floating in the sea which is used for sea transportation according to the relevant international regulations”. Seaport and lighthouse regulations, Article 1 (11).
\(^12\) Ibid, Article 332.
b) Military ships should take the necessary precautions to prevent pollution to sea water.

This text has a parallel in many international agreements, such as Article 3 of the MARPOL Convention, Article 4 of the Helsinki Agreement, Article 236 of the 1982 Convention, the 1979 Kuwait Agreement and Article 11-B of the protocol attached to the 1967 Barcelona Convention on the protection of the marine environment from pollution caused by dumping from ships and planes. It can be seen that Saudi law follows international law closely in this area.

6.2.4 Means of Implementing these Rules and Regulations:

There should be means and ways to implement these rules and regulations in order for them to be effective. We will deal with this in four areas:

6.2.4.1 Procedures which should be taken by Ships or Port Administration.

All ships should keep an oil record of the amount of oil taken, a moment stored or discharged. In all the Kingdom ports that export oil or ports where there are ships dockyards, or those ports equipped to furnish fuel oil for ships, there should be equipments, instruments and facilities to remove oil pollution from water or port establishments. 13

6.2.4.2 The Possibility of Restraining Disobedient Ships.

Rules and regulations 14 state that all concerned parties from coastal guards to border guards should monitor ships during stay in ports or during passage through territorial waters and they should report any violations to the port authority. The port authority may prevent the ship from sailing. From this we can say that there are three conditions to implement this rule:

1. The violating ship is stopped when it pollutes sea water with oil. This means that the ship cannot be stopped if the pollution is from other sources.

13 Ibid, Articles 320, 329, 328.
14 Ibid. Art.322.
2. The violating ship is stopped only when it pollutes sea water while it is in the port or in territorial waters only. This stoppage from sailing is not implemented if the pollution happened in the contiguous zone, in the EEZ or on the High Seas.

3. The restraining of ships from sailing is not mandatory but a matter subjective to administrative authority.\textsuperscript{15}

\textbf{6.2.4.3 Responsibility for Pollution}

Saudi legislation contains a specific reference to the identification of the responsibility for oil spills in sea ports and harbours: Article 325 of the Marine Ports and Terminals Regulations states that the bodies responsible for the supervision of the Kingdom’s oil ports and offshore facilities (for example, pumping processes and oil extraction) have responsibility for oil leakage from such facilities and ports, and hence are responsible for cleaning up the pollution and providing reasonable compensation for any damage. The importance of this rule is that it is considered to be the first in Saudi national legislation which mentions pollution of the marine environment arising from activities carried out in deep waters or beneath the sea.

The establishment by the Saudi legislator of the principle of compensation and responsibility for damage caused by marine pollution should be recognised as corresponding to one of the measures required under Article 214 of the United Nations Convention, by which signatory countries committed themselves to establishing mechanisms and laws, and taking other measures including the setting of rules and similar international measures through specialized international organisations or diplomatic conferences, for the prevention, reduction and control of marine pollution in their jurisdictions due to activities in the deep seas or things related to these activities, encompassing artificial lakes, institutions and installations in their jurisdictions.

\textsuperscript{15} Ibid, Article 324.
6.2.5 Exceptions to the Rules and Regulations

There are some exceptions to these rules and regulations because some pollution may happen due to unforeseen reasons or the pollution may not have a profound effect on the marine environment.

These exceptions are:

6.2.5.1 Oil or Oily Mixture may be Discharged in the Sea if the Ships Meet the Following Conditions\(^\text{16}\)

A. It is a must for all ships except oil tankers.
   - The ship must be sailing.
   - The rate of oil discharge, or mixture of oil should not exceed 60 litres per one mile.
   - The percentage of oil in the oil mixture should be less than 100 parts or more in every million parts of the mixture.
   - The discharge should be distant from the coast.

   It should be noted here that these regulations correspond to the provisions of paragraph 1 of OILPOL 1954, Article 3.

B. In the case of oil tankers:
   - It should be sailing.
   - The rate of discharge of oil, or oil mixture, should not exceed 60 litres per one mile.
   - The total quantity of discharge during sailing should not exceed 1/15000 to its total capacity.
   - The tanker should be at a distance of at least 50 miles from the nearest land.

   Rules and regulations also permitted the discharge of water of cleaning or discharge of oil or oil mixture if there will not be any trace of it on water surface.

\(^\text{16}\) Ibid, Articles 315, 316 and 317.
Identical provisions are provided in Article 111 of the OILPOL convention as amended in 1969.

6.2.5.2 In Case of Emergency:17

Emergency situations may lead to lifting of rules and regulations if damage is done. The rules and regulations stated two situations in which it is permissible to discharge oil or oil mixture in emergency situations:18

- The oil, or oil mixture, may be discharged for the ship's safety, prevention of damage to ships contents or to save human lives.19

- The discharge of oil or oil mixture, happened due to damage to the ship, or for reason beyond control of the operator. In this regard all necessary precautions should be done to prevent further pollution. The ship's captain should tell the port authority about any accidental discharge of oil or oil mixture in the Kingdom's ports or territorial waters and should tell the conditions which led to the accident and the precautions taken to stop the discharge or to limit it.20

These exceptions are necessary so that rules and regulations can be flexible to take into consideration any uncontrollable situation.21

6.2.6 Approaches and Methods of Application

The Saudi approach approved numerous methods of implementation, with the aim of achieving the principal goal of the system, to prevent the discharge of oil and oil mixtures in forbidden areas. These methods comprise the keeping of logs to record oil

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17 The Protocol Concerning Regional Co-operation in Combating Pollution by Oil and other Harmful Substances in Cases of Emergency Article 1/2 makes it clear that 'Marine Emergency' means "any casualty, incident, occurrence or situation, however caused, resulting in substantial pollution or imminent threat of substantial pollution on the marine environment by oil or other harmful substances and includes, inter alia, collisions, strandings and other incidents involving ships, including tankers, blow-outs arising from petroleum drilling and production activities, and the presence of oil or other harmful substances arising from the failure of industrial installations."

18 This is in line with the 1954 London Convention, Article 4.

19 Article 321, of the Seaports and Legislations Regulations.

20 Ibid.

21 Ibid, Article 322.
leaks, the investigation of these records, the monitoring of ships and reporting of pollution cases, and the imposition of sanctions and penalties.

6.2.6.1 Keeping of Special Records

According to Article 320 of the Seaports Legislations Regulations, any Saudi tankers which carries 150 tonnes or more must keep special records; this also applies to Saudi ships of 50 tonnes or more. The Saudi system differs from the OILPOL agreement in the nature of data to be recorded and in the distinction between oil carriers and other ships. Regarding carriers, the data covered by Article 320 is the following:

- The loading of oil tankers
- The transfer of oil from one tanker to another at sea
- The unloading of oil
- The filling of oil tanks with water
- The cleaning of oil tanks
- Discharging water which contains oil
- The discharge of oil residues
- Discharging water which has been used to cool the engines and which contains oil, and the method of discharge.

For other ships, the records include the following:

- Filling the oil tanks with water and the cleaning of these tanks
- Discharging ballast or cleaning water which contains oil from the fuel tanks.
- Discharging water which contains oil and which has accumulated in the engine-room, and the method of discharge.

These are the same requirements as those of Article 9 of the OILPOL agreement and its attachment (Form of Oil Record Book), except that the agreement adds the requirement to mention the name of the ship or carrier and the total quantity of its load. In addition to the oil record, the Saudi legislation requires the keeping of a special record in lorries and containers which transport fuel to ships in the ports, where the following data has to be recorded:
6.2.6.2 Inspection of the Oil Record

To guarantee that the required data is recorded, Article 323 of the Saudi legislation gives the inspection authorities the right to inspect the oil records of all Saudi and foreign ships in the Kingdom's ports. These provisions reflect those of Article 9 (4) of OILPOL (1969), but the latter goes further in its explanation of how the inspection process can be conducted on the ship itself and that the provisions of the Convention have been met. Therefore, Saudi Arabia can apply this right as a signatory to OILPOL and not based on its internal legislation.

On the other hand, the provisions of the Saudi legislation regarding the inspection of ships find their basis in UNCLOS, Article 227, which ensures that there is no discrimination against foreign ships in exercising their rights and carrying out their duties concerning the protection and conservation of the marine environment; this has been agreed upon by Saudi legislation, as stated earlier.

Article 226 of the Convention gives the coastal country the right to inspect whatever documents are required to be carried by a ship, such as certificates, records and other related material according to generally accepted international measures and provisions, or any other documents the ship carries. The Convention approves the conducting of a more physical inspection of the ship, when:

- There are clear reasons for believing that the situation of the ship or its equipment does not correspond exactly to the documents which it carries.
- The content of these documents is not adequate to confirm or reject the suspected violation.
- The ship does not carry certificates and proper records.
However, the Convention goes further, by stating that when there are obvious reasons to consider that a ship sailing in the territorial sea of a country has violated during its journey the laws and regulations of that country, which have been endorsed by the Convention or similar international measures and rules for the prevention, reduction and control of pollution from ships, then the country has the right, without misinterpretation of other related rules of section 3 of the second part, to conduct a physical inspection of the ship concerning the violation. It also has the right as far as the evidence justifies this to apply the rules of section 7 by restraining the ship. From this it is obvious that the authority given to the coastal country according to UNCLOS is broader than that according to OILPOL or under Saudi legislation and this is a factor which should alleviate any worries concerning the adherence of the Kingdom to these two conventions.

6.2.6.3 Alert and Monitoring Systems

Article 324 of the Maritime Ports and Harbours Regulations creates a monitoring system in which the port authorities in cooperation with the relevant bodies in the Territorial Army and the Coastguard monitor ships while they are in port or sailing through the territorial waters of the Kingdom. Any pollution of water by oil is reported to the port authorities, which have the right to restrain the violating ship. The system does not give a definition of the concept of violation, but logically it can be said to mean the breaking of rules or laws protecting the maritime environment from pollution. These principles have been affirmed in the United Nations Convention, which gives the coastal country the right to restrain any ship which breaks the rules, not only in the territorial sea, but even when the violation occurs in its own economic area. In practice, there can be no effective monitoring system without an efficient information system, so the Saudi Legislator has approved through the maritime ports and harbours system of regulation the establishment of a specialised centre in the Ministry of Transport, with the aim of receiving specific information about pollution in the Kingdom’s seaports, under Article 331.

22 Art. 220 (6).
6.2.6.4 Penalties

The Saudi legislation establishes a system for punishing violators of the Saudi regulations concerning the protection of the marine environment from pollution, differentiating between four types of violation:

1: The discharge of oil and oil mixture from oil carriers or other ships in prohibited areas. Here, the ship’s crew or its owner face imprisonment for a period of not more than one year and a charge of no more than 20,000 Saudi riyals (SR) or equivalent plus compensation for the cost of cleaning up the pollution; and the authorities have the right to restrain the ship until payment has been made.23

2: If a ship does not keep an oil record, its crew faces a fine of no more than 3000 SR or equivalent.24

3: If a ship’s crew prevents the authorities from inspecting the oil record or refuses to show the oil record to the authorities, they may be imprisoned for a period of not more than six months and face a maximum fine of 3000 SR.

4: Violation of Article 321 of the Saudi regulations, which requires oil leakages or emergency discharges to be noted in the oil record. In this instance the ship’s crew faces a fine of no more than 5000 SR.25

This account of the system of penalties specified by Saudi legislation allows a number of observations to be made. First, the penalties are subject to a great deal of flexibility, as in each case the maximum penalty is given but not the minimum term; and it can be seen that the authority has the freedom to choose between more than one penalty and thus can exercise its discretion regarding the level.

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23 Article 385.
24 Article 386.
25 Article 388.
Secondly, the rules generally lack accuracy in their wording, as Article 386, for instance, imposes a fine of no more than 3000 SR for a violation of Article 320 of the same regulation, which refers to the obligation on each oil carrier or ship to keep an oil record in which data about specific processes has to be recorded. A number of questions might be raised concerning the violation of this Article: Does it refer to the oil record not being kept, or to the data not being recorded in full? If the latter is the case, then how much data would have to be missing for the penalty to be applied? The Saudi legislation also stipulates penalties for discharging oil and oil mix in prohibited areas, but it does not mention any fixed figures regarding the quantity of oil or mix discharged which would trigger the application of these penalties.

The third observation is that the above-mentioned financial penalties are considered to be outdated and so no longer fit for purpose, as the value of the riyal (or any other currency) is considerably less than in 1975, the year in which the regulations were issued.

Finally, the regulations lack consistency in determining the subject of penalties for some violations. This applies to the first case, concerning the discharge of oil or oil mix in protected areas, as the regulation refers to the possibility of imposing a penalty on either the crew or the owner of the ship, but no means is specified by which the responsible agency can decide precisely upon whom the penalty should be imposed.

In comparing the Saudi legislation with references in the international conventions to the issue of penalties, it can be seen that OILPOL and UNCLOS both affirm the punishment principle. According to the OILPOL convention, failure to abide by the rules of the conventions preventing the pollution of marine waters by oil and which require the keeping of an oil record on the ship or the carrier is regarded as a violation which deserves punishment according to the law of the country in which the ship was registered. In this respect, Article 6 of the amended Convention of 1962 states that the penalty applied should be heavy enough and that it will not in any case be less than that imposed by the laws of the country concerned with the violation if it happened in its territorial seas. These rules are free from any misinterpretation, hence the severity
of the penalties set out above are not identified by specific measures, which could lead to variation in interpretation between the coastal/port country on one hand and the flag country on the other. These rules and principles, with this confusion, are repeated in Article 217 (8) of UNCLOS, which states that the laws and regulations of member countries should apply to ships which carry the flags of these countries, to the extent that this restrains them from committing violations, regardless of where they might occur.

6.3 National Plan for Combating Pollution of the Marine Environment by Oil and other Harmful Substances in Cases of Emergency 26

This plan was made in 1984 by The Environmental Protection Coordination Committee.27 It is a contingency plan and can be considered as executive administrative guidance, which addresses specific departments responsible for particular functions which all serve the main targets of the plan.28

It was adopted in the light of the UNCLOS (1982)29 and the Kuwait regional agreement and its protocols for 1978, on cooperation for the protection of the marine environment form pollution.30 It also comes in accordance with Jeddah Regional agreement and its protocol, 1982 for the conservation of the Red Sea and the Gulf of

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26 Article 199 of UNCLOS 1982 reads: “In cases referred to in Article 198, states in the area affected, in accordance with their capabilities, and the competent international organizations shall co-operate to the extent possible, in eliminating the effects of pollution and preventing or minimizing the damage. To this end, states shall jointly develop and promote contingency plans for responding to pollution incidents in the marine environment.”

27 See page 157.

28 The declaration of this plan was decided by the Liaison Committee for Environmental Pollution in 1984. The plan, which consists of nine subjects and a supplement, was agreed after Saudi Arabia had joined the Kuwait Regional Agreement and the Cooperation Protocol for Fighting Environmental Pollution by Oil and Other Dangerous Substances, which are supplements of the agreement. See articles 56(A and B), 58 (3) of the United Nations Agreement.

29 Article 9 (a) of the Kuwait Convention provides that “the contracting states shall individually and or jointly take all necessary measures including those to ensure that adequate equipment and qualified personnel are readily available to deal with pollution emergencies in the sea Area, whatever the cause of such emergencies and to reduce or eliminate damage resulting therefrom.

30 The 1982 Jeddah Convention calls on states “to co-ordinate their national plans for combating pollution in their marine environment by oil and other harmful substances in a manner that facilitates full co-operation in dealing with pollution emergencies.”
Aden environment. Each of them calls on the member of states to adopt environmental measures for the protection of the marine environment from pollution in emergency cases.

The plan consists of nine articles and one appendix article one provides for the definitions of “plan pollution” and administration. The plan was criticized for not giving definitions of the key words such as oil and harmful substances. Therefore a question may be raised about the terms “oil” and “harmful substances.”

The plan is expected to create an efficient system to protect Saudi coastal area and jurisdiction zone from pollution and to coordinate with other states to effectively employ technology to respond to marine pollution.

The Presidency of Meteorology and Environmental (PME) undertakes to determine the national response plan and outline the necessary measures to deal with the pollution of Saudi Marine environment. PME is authorized to ensure Saudi Arabia’s fulfilment of its obligation provided for in the international agreements (of which K.S.A. is a member).

In this section, the writer examines the main parts of the national plan. For the implementation of the plan, Article 8 provides for the formation of a national committee for combating pollution of the marine environment. The committee is composed of the PME Head (to be the chairman of the committee) and the representatives of other related ministries.

The main functions of the committee are:

- approval of the plan
- supervision and monitoring of the implementation procedures

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31 Article 2 (b) of National Plan for Combating Pollution of the Marine Environment by Oil and other Harmful Substances in Cases of Emergency.
32 Ibid, Article 3 (a).
33 Ibid, Article 8.
34 Ibid, Article 8.
35 Ibid, Article 3(b) (c).
By approving this plan it is clear that it contains rules and regulations which represent local executive directives to protect the marine environment from pollution from ships. Thus, the Kingdom has fulfilled its commitment under the (UNCLOS) Article 199 and the Kuwait Agreement Article 2-3 of the Protocol.

The plan, with all its rules, has ambiguous clauses, especially concerning the geographic specialization of the government agencies which are responsible for responding to any threat. This may cause a delay in the activities of protection and conservation following any pollution accident. In addition, the plan makes no provision for coordination and cooperation with other contracting parties in the agreement or even with MEMAC in case of emergency, despite the fact that the agreement calls for the necessary cooperation and coordination between member countries to deal with any pollution accident that may happen through the Regional Organization and its General Secretariat. Furthermore, the implementation of the plan in an appropriate way depends on the availability of well trained persons and of suitable instruments and equipment. This will necessitate the provision of a suitable place for such trained personnel and their equipment.

The plan should be updated from time to time. Practical steps should be taken to ensure its suitability and to fill in any gaps in its provisions.

Regional operation committees will be formed in the following regions:

- Saudi coastal areas in the Red sea and the Arabian Gulf. Each regional committee will be formatted of various ministerial agencies. Each agency shall make a local plan for cases of emergency.36 All the requirements should be provided to each agency to enable it to respond efficiently to marine pollution (in cases of emergency).37

- The regional operation committee will finally make a regional response plan combining the local plans in that region. The regional committee and PME will cooperate to protect the marine environment and combat the marine

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36 Ibid, Article 5.
37 Ibid, Article 5.
pollution when it occurs. PME undertakes to deal with the marine pollution if it occurs within a Saudi jurisdiction zone beyond the coastal area.\textsuperscript{38} In major marine pollution cases in a Saudi jurisdiction zone PME may seek the assistance from any other national or international body to deal with them.\textsuperscript{39}

- The regional operation committee shall produce evidence against any one accused of the marine pollution. However, the national committee for combating pollution of the marine environment shall determine the polluter and take the necessary procedures to obtain the satisfactory compensation.\textsuperscript{40}

These clauses, in the writer’s view, seem very vague. There is no reference to procedures for compliance control. Procedures regarding liability for damage are also not clear. Harmful substances and oil should be clearly defined. The authorities to implement the plan should be clearly identified.

6.3.1 Organisational Framework of the Plan

The Plan classifies incidents of pollution by oil and other harmful substances into three levels: national, local and regional.\textsuperscript{41} Within this framework different government agencies have been involved in the approval and revision of policies and national systems in ways identified by the plan, as follows.

A. The National Committee to Control Marine Environment Pollution

The Committee comprises representatives of numerous government bodies, including the Ministry of the Interior, the Ministry of Petroleum and Mineral Resources, the Ministry of Rural and Urban Affairs, the Ministry of Finance and National Economy, the Ministry of Industry and Electricity, the General Corporation of Ports, the General Institute for Salt Water Treatment, the Royal Commission for Jubiel and Yaenboa, the Ministry of Defence and Aviation (represented by the Presidency of Meteorology and Environment) and the President of the Committee.\textsuperscript{42}

\textsuperscript{38} Ibid, Article 7.
\textsuperscript{39} Ibid, Article 6 (f).
\textsuperscript{40} Ibid, Article 8 (b).
\textsuperscript{41} Art. 3 of the plan.
\textsuperscript{42} Art. 8 of the plan.
The Committee has the power to invite any agency related in any way to act as consultant or observer. The numerous representatives on the Committee are all concerned directly or indirectly with the work of each agency in protecting the marine environment. The Committee has the following tasks:\textsuperscript{43}

- Revision of policy concerned with controlling harmful substances
- Revision of the Plan
- Approval of the area Plan
- Monitoring and administering the procedures for executing the Plan
- Revision of the Plan budget
- Setting recommendations to buy equipment
- Revising the training programmes under the Plan
- Discussion of issues related to marine pollution
- Identification of those responsible for causing pollution and taking compensation measures against polluters.

B. Presidency of Meteorology and Environment as a Central National System

The PME is responsible for planning, coordination and control of activities related to oil pollution in the Kingdom, especially in emergency cases at the national level. To this end the agency has the following duties:

- Setting special policy to control the marine environment in the kingdom.
- Working in accordance with protocols concerning regional cooperation to control pollution.
- Conducting surveys, monitoring and the necessary studies to identify oil spills and pollution damage.
- Administration of the Plan and the coordination of its execution procedures.
- Identification of the equipment needed to implement the Plan.\textsuperscript{44}

\textsuperscript{43} Art. 8 of the plan.
\textsuperscript{44} Art. 3 (1) of the plan.
C. The Area Operation Committee

Article 3 (B) of the Plan refers to the creation of two operational committees, for the Red Sea and the Arabian Gulf. Each committee has as members representatives from the ministries of the Interior, Petroleum and Mineral Resources, Rural and Urban Affairs and from the General Corporation of Ports, with the Presidency of Meteorology and Environment acting as area president and coordinating the system.

The area operation committees are responsible for the planning and coordination of response operations in cases of pollution in the Red Sea and Arabian Gulf, besides other duties, including:

- Studying the local emergency plans of institutions concerned with maritime and coastal affairs.
- The identification of needs (such as human resources, equipment and other facilities) for conservation.
- Supervision of the execution of the Plan.
- Following up reports of pollution cases in the area.
- Monitoring and evaluation of conservation equipment.
- Monitoring the training of workers in conservation practices.
- Ensuring medical care for people affected by pollution incidents.
- Preparation and development of a comprehensive emergency plan for the area.

The comprehensive emergency plan covers executive actions in response to pollution cases which require a response at area level, including:

- Collation of local plans in the area.
- A system of surveys, monitoring and reports of water and coastal pollution cases in Saudi Arabia.
- A system of campaigns for the Area Operation Committee.
- Guidelines concerning the responsibilities and duties of individuals in conducting operations in the area.

45 Art. 3 (B) of the plan.
46 Ibid.
47 Art. 4 (A) of the plan.
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- Identification of local agencies with links to pollution response operations.
- Assessment of capacity to respond to pollution incidents.
- Communication actions to assist in containing the direct danger of pollution.
- Identification of the best methods to control pollution.
- Keeping a log of information and instructions regarding pollution cases.

D. Other Government Systems

In the case of pollution incidents, all other government bodies will be affected, as mentioned in Article 3 (G). However, Article 5 states that cleaning operations are the responsibility of the agency in whose area the incident occurs.

The government bodies which collectively comprise the organisational structures concerned with the execution of the Plan will participate in the execution of the various activities related to emergency responses to pollution incidents. Here, the central role of coordinating the efforts of these agencies is played by the PME, which is able to call on the Ministry of Petroleum and Mineral Resources, the General Corporation of Ports, the Civil Defence Command and the Territorial Army to assist in conducting surveys, recording and monitoring in the economic zone of the Kingdom, according to arrangements agreed between the PME and these agencies. These surveys include the monitoring of the sea, air and coast, remote sensing, monitoring the records in ships (military and civilian) and aircraft, and any other scientific means.

The Plan confirms that the above-mentioned government bodies which are responsible for installations, marine or coastal facilities have a duty to provide the appropriate protection for these installations and facilities (human resources, tools and equipment), and that the equipment must be kept up to date and ready for immediate use in the case of a pollution incident. They are also responsible for the control processes within their territory and the provision of the necessary equipment and human resources; these processes are to be carried out according to measures to be identified by agreement between the Corporation and other related agencies. Outside these areas, the Corporation is responsible for conducting control measures, while the Territorial Army provides the necessary assistance based on its capabilities under Article 5 of the Plan.
Article 5 confirms that the authorities have responsibility for clean-up processes in their areas, ensuring the availability of the necessary equipment and human resources, according to measures to be identified in agreement between the Corporation and the agencies concerned. In the case of incidents outside their territories, the Corporation and the municipalities concerned must each take responsibility for part of the cleaning, while the Territorial Army provides the necessary assistance based on its capabilities.

However, decisions concerning the location and the appropriate methods for the disposal of oil are to be determined by the Meteorology and Environment Protection Corporation, in consultation with the government bodies concerned. The Corporation also carries out appropriate scientific research in cooperation with universities, while the national research centres have relations with the above-mentioned activities.

6.3.2 Execution Procedures

There are five phases in the execution of the Emergency Operational Plan in response to pollution incidents, which begins with the receipt of a declaration and ends with its documentation.\(^{48}\)

6.3.2.1 Declaration

There is no central body that is responsible for issuing a pollution declaration; rather, all bodies concerned with the sea, whether directly or indirectly, are responsible for this. All such bodies share the same responsibility, whether they are concerned with the sea and coastal affairs or conduct activities at sea, e.g. the Coastguard, the Royal Navy, fishery companies and the crews of ships and aircraft. A declaration is made through the area coordinator or PME, who are responsible for passing it on in accordance with Article 6, Para 1 of the Plan.

\(^{48}\) Art.6 of the plan.
6.3.2.2 Evaluation

The evaluation phase begins when a declaration about an urgent case is received by the Area Coordinator. There will then be a meeting of the Area Committee to evaluate the case. In accordance with Article 6, paragraph 2, the evaluation comprises four steps:

- The pollution has to be classified according the Plan attachment. 49
- The extent of the containing and cleaning processes required is assessed.
- The feasibility of different substitute processes for containing and cleaning is considered.
- The necessary actions are taken to start the controlling process according to the Area Plan.

6.3.2.3 Containment and Preventive measures

This represents the first actual step in directly dealing with the pollution and includes:

- Making efforts to stop the pollution at its source.
- Erecting containment barriers and stopping the spread of oil in order to protect installations and sensitive areas.
- Taking necessary measures to reduce pollution damage.
- Using the dispersants and other substances held by the PME which have been agreed upon with the agencies concerned, as specified in Article 6 (3).

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49 Article 6 (2) of the plan. According to the attachment to the plan, pollution incidents are classified into two types:

- Limited pollution incidents, which fall under the jurisdiction of the authorities responsible for controlling the pollution and which possess marine and coastal services, and can be contained and controlled using the resources available to these authorities.
- Serious pollution incidents, which fall under the jurisdiction of the stated authorities, but because of their volume require measures exceeding the capabilities of the responsible agency or authority, in which case assistance is sought via regional coordination.
6.3.2.4 The Cleaning and Disposal Processes

In this step the response teams in the local areas use suitable equipment such as excavators and absorbent materials, following the Area Plan, Article 6(4), in order to identify the priority areas for cleaning and disposal.

6.3.2.5 Documentation

The documentation process is the final step, which begins after the cleaning and disposal of oil and other substances has been completed. In this phase, the Area Operation Committee and the responsible bodies undertake the collection of data and assembly of the documents necessary to identify those responsible for the pollution, to evaluate the efficiency of the control measures, to assess the cost and to undertake studies of the environmental impact. This documentation will include information from many sources, in the form of films, photographs, witness reports, information forms, letters, messages, contracts, field reports, communication reports, etc. Article 6 (5) of the Plan.

Within 30 days of the completion of the documentation procedures and thus of the response to the environmental pollution incident, the Area Coordinator will send comprehensive reports to the PME explaining how the incident developed, what procedures were followed to deal with it, the resources used, the financial cost and any obstacles facing the response, according to Article 6 (5) of the Plan.

The above explanation indicates how the Saudi National Plan for the Prevention of Pollution of the Marine Environment by Oil and Other Harmful Substances provides a system to control marine pollution when it occurs, as well as precautionary measures to prevent it. The Plan focuses on the Saudi coastal area, territorial sea and contiguous zone, but there is no reference to any oil spill which may have a transboundary effect; nor does it lay down procedures for informing, notifying or warning other states in the Arabian Gulf or Red Sea regions. The implementation of the National Plan would be more effective if it were accompanied by comprehensive national legislation addressing marine pollution control, taking into account general international law, including
regional and international agreements. Thus, the Saudi rules and regulations would be such that the Kingdom would be seen to fulfil its obligations regarding Article 199 of UNCLOS, which states that countries should work collectively in the drawing up and enforcement of emergency plans to face pollution incidents in the marine environment.

6.4 Organizations Responsible for the Application of Environmental Rules and Regulations in the Kingdom of Saudi Arabia

6.4.1 Presidency of Meteorology and Environment

As a significant proposal to deal with marine pollution, to protect the environment and to meet the requirements of the Kuwait Convention, a central organization called the Administration of Meteorology was established in 1981; it was later renamed the Presidency of Meteorology and Environment (PME). This change coincided with the establishment of a body called the Environment Protection and Coordination Commission (EPCC), responsible for coordination between various Saudi government ministries and agencies which share concerns regarding different environment issues. The EPCC is headed by an Inspector General and has among its members the Second Deputy Prime Minister and the Minister of Defence and Aviation.

A. PME regulations and measures for the protection of the environment came into force on 20/08/1982. They include environmental specifications of the quality of the air, water and soil in their natural state.

The objective of these specifications is to find the basis for correcting and regulating the industrial and construction activities in the Kingdom and to assist in planning and implementing and usage of facilities which will be constructed in a

50 Source of information, the administration of and Environment protection: Role and principal duties in the age of environmental protection. Unpublished Report.
51 The Meteorology and Environment Protection Agency (MEPA) was established in accordance with Royal Decree No.7/M-8903 of April 21, 1981 for the protection of the environment and combating pollution. Its general duties are to formulate new standards and policies to combat various kinds of land, air and water pollution and to coordinate with other Saudi ministries and agencies to control all kinds of pollution.
way to prevent the harmful effects on the health and safety of human being and which will lead to the development of his economic and social lives and to protect the environment of the Kingdom in general.

B. The PME at the first meeting in (1984) of the Coordinating Committee of Environmental Protection made some recommendations to the Council of Ministers.

Some of these recommendations are:

- No party should make earth embankments on the coastal areas or dispose of solid wastes in territorial waters of the Kingdom without permission from the concerned authority.
- Coastal Guards to coordinate with the PME to monitor and prevent unlawful activities in the protected areas and islands.
- Approval of the national plan for Oil Pollution Control and harmful materials in emergency situations.

The Objectives of the National Emergency Plan are as follows:

- To put forward an immediate response system and its coordination to protect the marine Environment of the Kingdom Coast from the effects of Oil Pollution and harmful materials. This is done by making full usage of the available resources which include mobilization and coordination of all available capabilities including equipments, manpower and necessary expertise to face pollution situations.
- To implement these objectives the plan specified levels of responses for pollution accidents at the national, regional and local levels.

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53 Source of information, the administration of Metrology and Environment protection: Role and principal duties in the age of environmental protection. Unpublished Report. p.10
Chapter Six

The PME is responsible for Planning and Coordination of responses to control Pollution by soil and harmful materials at the national and regional levels. (Arabian Gulf Region and the Red Sea Region).

The plan committed the parties responsible for coastal or marine facilities to put forward local plans which specify responsibility for responses to any accidents and to protect its own facilities. In this plan the number of personnel and quantity of equipment should be known and ready for use if need arises. This is done according to plans already set. These plans will limit the time and effort needed to face an emergency situation.

However, the PME has very general objectives which are not easily achieved and this is the main criticism made of it. Under Article 6 (5) of the PME plan, the most important parties on the East coast responsible for the protection and control of marine pollution are those discussed in subsections 6.2.2 to 6.2.12.

6.4.2 The General Corporation for Ports (Ministry of Transportation)\textsuperscript{56}

The General Corporation for Ports plays an important role in the control of pollution. The Corporation is concerned with all marine matters, such as representing the Kingdom in conferences, organisations and bodies that have links with marine issues at the regional and international levels. In addition, it has a role in reviewing and applying national decisions related to plans for marine development, the safety and security of marine transport and preserving the marine environment. It acts in accordance with the Kingdom’s regional role as a coastal, port and flag country. The Corporation makes two main contributions to the control of pollution:\textsuperscript{57}


\textsuperscript{57} Ibid.
1- Issuance of regulations specific to ports, which guarantee the protection of the environment around the ports or the environment of the ports themselves. These regulations were accepted by the Gulf States and were taken as a base to consolidate and verify all regulations in the Gulf States. This was approved in 1985 during the third meeting and it was decided to implement these verified regulations in all Gulf States.58

These regulations were issued under the name "Bases & Regulations of Marine Ports". The third part which is concerned with safety regulations includes a chapter about safety from tankers. It includes the necessary precautions to be taken during loading and unloading and ways and means to get rid of ship's wastes especially the water buoyancy water (balance water). This chapter also includes irregularities and fines which should be imposed on tankers and ships not complying with these regulations that aim at protecting the marine environment.59

2- In response to the directives of the PME regarding setting local plans to include implements and Manpower if need arises. Each part has its own local plan according to the circumstances surrounding it but the plans are similar in their general framework.60

The Corporation is considered as one of the Executive Principal Branches in controlling pollution accidents that happen on coastal areas of the Kingdom as it happened during the Iraq-Iran War when an accident occurred on 27 January 1983 in the Nowruz Field.61 In this case between two and four million barrels of oil were released in the Gulf over a period of more than a year. Most of the oil from this spill drifted south reaching the Kingdom of Saudi Arabia, depositing tar balls over the beach area, especially along the southern coast of Kuwait.62

59 Bases and Regulations for Seaports for Gulf Arab States (1985), GCC Press, pp. 231-261.
61 MEPA, National Report on Oil and Air Pollution, presented by the Kingdom of Saudi Arabia to the Extraordinary Session of ROPME Council, Nairobi, Kenya, (May 1991) p. 2.
The Corporation established a Centre for control of Pollution in King Fahd Port of Jubail in 1983. This Centre has a good reserve of equipments which has the ability to act against all sorts of pollution accidents in addition to a trained staff to operate these equipments. This centre works on a 24 hours basis, seven days a week, 365 days a year. The industrial port of Jubail is the only port equipped with facilities that can receive balance water at platform No.61 and 51, if a need arises to discharge this polluted water.\(^63\)

### 6.4.3 Coastguard (Ministry of Interior)\(^64\)

The Coastguard participates in controlling marine pollution by discovering pollution accidents and reporting them because of the nature of its job of monitoring territorial waters. This will help in discovering in the marine environment and thus will report it accordingly.

### 6.4.4 Ministry of Industry

Ministry of Industry regulates the permission of building industrial facilities and thus the ministry has a role in preventing pollution by emphasizing the importance of prevention of pollution by using the necessary equipments and instruments that minimize pollution of the environment. The ministry will emphasize the following of regulations put forward by the Administration of Meteorology and Environment Protection. In this regard, the role of the Ministry of Industry is restricted to the protection of the marine environment from pollution by the provision of certain basic equipment, the preparation of reports which determine the extent of pollution, and assistance in the provision of technical support such as advice and coordination.

### 6.4.5 Ministry of Rural Affairs

Through municipalities, clean shorelines are maintained in and near cities, and the best ways are found to dispose of waste, instead of dumping it at sea. On the other

\(^{63}\) Ibid.

\(^{64}\) *The Present Situation of Pollution in the Kingdom of Saudi Arabia* (2000) Ministry of Defence and Aviation: Centre for Forecasting and Environmental Preservation, Saudi Arabia, p.34.
hand the Department of Water and Sewage has a role in formulating Projects and studies to get rid of liquid wastes. It is responsible for operation and maintenance of sewage system networks with all its constituents especially stations and the development of its operations to prevent any pollution and to lessen the harms done to the marine environment which receives these sewage wastes.

6.4.6 Ministry of Health

According to Article 334 of the Saudi Ports Regulations, the Ministry of Health is responsible for issuing instructions for each port to be provided with the necessary facilities for the collection of rubbish, food and by-products from ships while they are in port.

6.4.7 King Abdul Aziz City for Science and Technology

The King Abdul Aziz City for Science and Technology is responsible for the support and encouragement of applied research in the environmental field, in terms of participation in the diagnosis of emergency cases and providing the bodies concerned with the information and technical support they need. The findings of these studies are then executed at the Saudi universities and the institute of natural resources and environment which belong to the city.

6.4.8 Ministry of Planning

It is responsible for defining the objectives of economic, social and environmental development for the kingdom through the fifth plan while taking account of environmental concern in these plans. Furthermore, the Ministry of Planning assists in the preparation of feasibility studies when cases of oil pollution occur in the economic and administrative areas.

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65 Ibid, 34.
66 Ibid
67 Ibid
6.4.9 Ministry of Petroleum and Mineral Wealth

Due to the contribution of petrol in its different stages from exploration, production, storage export and industry to pollution of marine environment, the Ministry of Petroleum and Mineral Wealth has its role in lessening of the dangers of accidental discharge of oil to the marine environment through its agencies which supervises especially the oil companies working in the Eastern Saudi Arabia namely Saudi Aramco, Aramco Gulf Operation Company, Saudi Arabian Chevron. In this regard the ministry has set up a special department which is concerned with the protection of the environment in each of the three companies.

The three companies have local plans for the control of pollution which the Presidency of Meteorology and Environment had called for. These plans specify the team which is committed to control and also specify the regions included in the plan. Also the plan includes classification of accidents according to the quantity of oil spilled from it.

The degree of response depends on the quantity of oil spilled. The plan also takes into consideration the procedures which should be taken against the source of oil spill whether it is local or outside the region. Also the plan has forms to fill in with all the necessary information about the accident so that it will be easy to refer to it later. Also, the plan asks for enumeration of equipments, instruments and people and it also asks for assistance from regional organizations. Also, oil companies have to make necessary arrangements to avoid marine pollution. For example, the Arabian American Oil Company (Aramco), which produces more than 90% of the Kingdom's oil, is heavily involved in setting up various regional and international bodies concerned with issues related to environmental protection and conservation, such as the control of oil spills. The company has a department that takes care of the environment. The role of this department is the appraisal of industrial projects and estimation of the effects of pollution on the general health. In addition, the department is also responsible for development of standards and systems which are adaptable to the local situations and

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68 The Present Situation of Pollution in the Kingdom of Saudi Arabia (2000) op.cit., p. 33.
which will aid in the protection of the environment in a way suitable with the requirements of the company. The department then seeks the approval of the company's administration for these standards and measurements. In 1963 Aramco issued its environmental conservation policy, under which many programmes have been created to observe possible oil discharges or spills to the marine environment.\textsuperscript{70} To achieve this, Aramco requires that its operations should cause harm neither to the environment nor to human health, and as such they should be carried out with consideration to the protection of the land, water and air from any type of pollution.\textsuperscript{71} Globally, the company has established plans for responding to and combating marine pollution wherever it occurs.\textsuperscript{72} For example, it participated in cleaning and dealing with large oil spills during the 1991 Gulf war, when 6 to 8 million barrels of oil from damaged Kuwaiti oil wells flowed into the water. An Aramco team, in cooperation with specialised government agencies, successfully extracted more than one million barrels of the spilled oil, and contained to a large extent the damage to the coast.\textsuperscript{73}

Other important efforts made by the Company to protect the environment include setting up stations to monitor and record levels of chemicals which could affect the environment, drawing up comprehensive plans to deal with oil spill emergencies, review of equipment and instruments and suggestions on their development, studies on the most efficient, environment-friendly methods of chemical and oil disposal, drawing up plans to pool manpower\textsuperscript{74} and resources for a quick response to accidents and taking precautions to prevent oil pollution during all Aramco's activities.

\textsuperscript{71} Saudi Arabia National Reports on the implementation of Agenda21: information from the Government of the Kingdom of Saudi Arabia to the United Nations commission on Sustainable development, fifth session, 7-25 of April 1997 New York.
\textsuperscript{74} A talk by the Department of Environmental Affairs to the participants in the Summer Programme (1985) ARAMCO, (1) pp. 1-6.
These precautions are very important in light of the dangers of oil spills to the marine environment, in addition to the heavy volume of petroleum activities on the Saudi side of the Gulf which is supervised by Aramco Company.

All these matters require the utmost care in providing all the necessary precautions to reach the maximum safety for the marine environment; from the time of drilling to the time that tankers depart from the port.

For example, when drilling first planning and arrangements are done also for inspection of all equipments, provision of all geological data needed in addition to the supply of skilled manpower which guarantees that drilling operations are done safely. Producing wells are under constant supervision and are maintained regularly. Although this is an expensive operation to build it is less expensive than the dangers that will arise if a well is exploded and its subsequent harmful effects on the environment. Aramco Company also takes care of loading operations of the tankers. The necessary equipments for loading were provided which facilitate this operation. Using modern loading equipments by Aramco Company lowered the risk of oil spilling during this operation. Also the company inspects the ships and tankers and inspects their captains and their credentials and their certificates of seamanship.75

Also the company maintains the discharge of balance water and the tankers should stick to the ratios specified. The company conducts a lot of research about the marine environment and the effects of soil pollutants on it. The company cooperates in this regard with Institute of Research of King Fahd University for Petroleum and Minerals and with the Royal Commission for Jubail and Yanbu and Saudi Corporation for Measurements and Standards.

It can thus be seen that Saudi Aramco leads the way in the Gulf area as it devotes millions of dollars a year to developing and maintaining measures for

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environmental protection\textsuperscript{76} and it uses the optimum and cleanest production techniques that can be found.

6.4.10 The Saudi Royal Commission for Jubail and Yanbu\textsuperscript{77}

The Royal Commission for Jubail and Yanbu (RCJY) takes great care in the prevention of pollution. To control pollution it issued the specific instrument regarding the monitoring of pollution and specified the levels allowable to be water of minerals and solid materials allowed to be discharged from factories or sewage water.\textsuperscript{78} The Royal Commission erected many monitoring stations to constantly monitor the level of the Royal Commission. The stations monitor any environmental changes and thus give preliminary indicator of any changing circumstance and this which allows the specialized authorities to take the necessary actions. Also the Royal Commission does a lot of research on pollution and its harmful of effects on marine life.\textsuperscript{79}

The role of RCJY focuses on the protection of the marine environment through the control of the quality of the Gulf waters and through cooperation with the concerned authorities in the protection of the marine environment from pollution as a national duty.

6.4.11 The Research Institute of the King Fahad University for Petroleum and Minerals\textsuperscript{80}

Scientific and research activities in the area of pollution and marine environment reflect other aspects of the interest in combating marine pollution at the practical level. These research projects help the country to remain abreast of what is new in the field of conservation of the marine environment and to reduce the dangers of pollution.

\textsuperscript{76} Saudi Arabia Environmental Issues, United States Energy Information Administration web site: http://www.eia.doe.gov/emeu/cabs/Saudi_Arabia/Background.html, 29/03/2009.
\textsuperscript{77} The Present Situation of Pollution in The Kingdom of Saudi Arabia (2000) op.cit, p. 34.
The Research Institute of the King Fahad University for Petroleum and Minerals (KFUPM) plays a major role in this regard. It implements many research projects along the Arabian Gulf coastal area of the Kingdom. The main objectives of these studies is to evaluate the effects of marine pollution on plants and marine organisms, to evaluate hidden pollution in the Gulf and to identify toxic minerals present in marine deposits.

The most important achievement of the Institute has been the research programme which started in the 1980s into combating oil slicks resulting from the discharge of oil in the Gulf. The institute developed mathematical models with the objective of predicting the passage of oil expected at any point in the Gulf at any time of the year. The first mathematical model to be completed specified the passage of oil slicks depending on wind speed and direction in different seasons of the year, in addition to the movement of the tides, temperature differences and their effects on sea currents.\(^{81}\)

This model, the first to be developed locally, took into consideration all characteristics of the local marine environment and proved its effectiveness when applied to accidents that happened in the Gulf.

The Institute is still developing and improving this model as new information becomes available and is also trying to use other models which may contribute to combating pollution. It held a three-day seminar in October 1983 to discuss the possibility of developing marine mathematical models within the framework of the Kuwait action plan. This was attended by many international experts in marine pollution and representatives of the Arabian Gulf countries, who discussed the aspects of marine modelling which can be applied to the Gulf region, given the local circumstances, including the degree of water mixing.\(^{82}\)

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The Institute has the capability to implement research projects, thanks to the research facilities available to it. The financing of these projects will come from the authorities concerned. The General Presidency for Meteorology and Environmental Protection depends on the Research Institute as a consultant agency to provide assistance in addressing scientific and technological problems.

The Institute plays a major role when an oil discharge happens by forming a research team from scientists and researchers to study the effects of oil on marine systems. The scientific team monitors oil slicks and analyzes the data from satellites. All these activities contribute significantly to facilitating the operation of combating oil pollution in the Gulf.

Finally, despite the fact that the Institute focuses its work on the scientific aspects, it has a large indirect role in the legal aspects, through the participation of government committees in the consideration of the environmental legislations relating to the seas, reviewing them and giving advice about them.

6.4.12 Ministry of Exterior

It is responsible for the formulation of Saudi foreign policies, including the maritime policy.

6.4.13 Ministry of Defence and Aviation

It considers one of the most important aspects, which care about maintaining the environment, since its daily activities include direct deal with the environment and may affect it in the negative. On the other hand, the armed forces play an important role in preparing the national plans to protect the environment and to organize the marine scientific research process in Saudi marine areas and issuing the marine maps through the Military Surveying Administration. According to Article 5 (G) of the National Contingency Plan the role of the ministry focuses on providing the necessary technical devices, the reporting of incidents and surveys by aircraft during the pollution.
After looking at the role of all these bodies, it can be seen that in all cases, several government agencies are responsible for controlling marine pollution. Therefore, it was considered essential to establish a specialized agency to coordinate the different efforts made to control pollution and in 1981 the Environment Protection Coordination Commission was formed, as explained above in subsection 6.2.1. The EPCC includes in its membership undersecretaries or their equivalents from the following ministries or government agencies:

- Interior Ministry
- Ministry of Planning
- Ministry of Petroleum and Mineral Resources
- Ministry of Agriculture
- Ministry of Commerce
- Ministry of Health
- Ministry of Communications
- Ministry of Water and Electricity
- Ministry of Municipal and Rural Affairs
- King Abdul-Aziz City for Science and Technology
- National Commission for Conversation and Development (NCWCD)
- Royal Commission for Jubail and Yanbu
- General Organization of Ports
- General Presidency of Meteorology and Environment

The tasks of the Commission include coordination of environmental activities among the various national agencies, adoption of instructions that should be approved by the government agencies in different parts of the Kingdom, and supervision of activities relating to the environment in the various government sectors.83

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83 It can be said that during recent years the Kingdom of Saudi Arabia has intensified its interest in environmental issues. At the 1992 UN Conference on Environment and Development in Rio De Janeiro its delegation was presided over by the Minister of Petroleum and Mineral Resources, who urged the international community to shoulder its responsibility to protect the environment and save marine organisms from threats to their existence, particularly from the dangers of military disputes. In this regard, the Saudi Minister said: The environment is exposed to dangers from the military disputes. This requires serious efforts from the international community to save it and rehabilitation of the same. Likewise, a serious look should be given to developing the international law in the field of military
In addition, a special ministerial committee was established in 1990, as the highest environmental reference body at the national level and headed by the Minister of Defence and Aviation. The committee aiming at coordination and following up of the environmental activities in the Kingdom, establishing environmental strategy and policy at the national level and formulating the Kingdom's position regarding global environmental problems.

This committee is made up of the ministers from the same ministries or government agencies as the members of the Environment Protection Coordination Commission are drawn from. In addition, the head of the General Presidency for Meteorology and Environmental Protection, as the General Secretary of the Committee, facilitates its work.

A preparatory committee was established under the chairmanship 1990 of the Assistant Minister of Defence and Aviation and a membership consisting of undersecretaries of the Ministries concerned, in addition to the head of the King Abdul Aziz City for Science and Technology, the General Secretary for the Protection of Natural Life and the head of the General Presidency for Meteorology and Environmental Protection, as General Secretary to this committee. The role of this committee is to prepare studies, memoranda and views regarding the subjects to be presented to the Ministerial Committee for the Environment, which has studied many agreements and protocols related to the environment.

dispute to avoid recurrence of intentional crimes to the environment as the one which the Gulf area was exposed to lately. The concern of Saudi Arabia for the environment is seen in Article 32 of its Constitutional Law, which provides that the State should keep the environment safe, protect it, develop it and prevent pollution. This responsibility is reflected in recent development plans and policies. This was confirmed by the Planning Ministry in its statement published after the announcement of the sixth five-year development plan 2000-2005 where the targets foreseen - inter alia - are the following:

1- To adopt state-of-the-art environmental measures to avoid pollution and choose the right way of using primary resources at all stages of design, construction and operation of industries.
2- To issue national regulations to correct environmental effects and to run the different development projects in the Kingdom wisely, especially agricultural and industrial ones.
3- To make and complete the integrated collection of measurements and environmental criteria, updating them when necessary. This has actually happened. The Metrology and Environment Protection Administration has set standards and criteria for the protection of the environment and the control of hazardous waste.

The committee prepared the views of the Kingdom in participating in or signing such accords as the Agreement on Biological Diversity, the Desertification Agreement, the Framework Agreement on Climate Change, the Protocol on Climate Change and the Montreal Protocol regarding the ozone layer.

The approval of the general organization of the Presidency has played a major role in enabling the Presidency to effectively implement and execute the responsibilities and duties assigned to it, especially in areas of formulating rules, regulations and standards to protect the environment. It has also enabled other governmental agencies to develop their organizational structures, to ensure their participation in the efforts of the Kingdom towards protecting the environment and achieving sustainable development, and to implement the general policies and the higher directives of the country in the protection of environmental resources from all kinds of pollution and environmental deterioration.

In general, it can be said that despite the levels of effectiveness and efficiency of coordination reached between these agencies, the field remains open for more flexibility in the monitoring of rapid developments in marine environment law. Because so many different agencies and organisations are involved, it can be difficult to implement suggestions or take practical steps to combat pollution and can be a time-consuming process. Hence, it seems appropriate to review the institutional system through which the Kingdom’s marine policy is made and administered, leading to the following recommendations.

It would be better to have two specialized government systems, the first at ministerial level, having an executive character and being supported by the necessary qualified legal, scientific and technical personnel, which should be responsible for drawing up the Kingdom’s marine policy at all levels: internally, regionally and internationally and in case of emergency. In this way there would be an executive body which would have the authority to take decisions quickly without having to refer to any other agencies.
The second system should take a consultative form and act to support the first. It would take the name of ‘National Corporation’ or ‘National Council’ and be responsible for providing advice on various marine issues. If such a body were to be formed, it would be expected to participate in the necessary task of harmonising the activities of the various government agencies in the field. Furthermore, it would assist in the coordination of the marine policies of these agencies and in putting the Kingdom in a better situation to monitor the development of marine law.

6.5 The Participation of Saudi Arabia in International Organizations and Agreements Regarding the Control of Marine Pollution

The purpose of this section is to identify the extent of the contribution of the Kingdom of Saudi Arabia to organizations and regional and international conventions concerning the protection of the marine environment, and examine the effects of this contribution on the development of the national systems.

6.5.1 Participation of Saudi Arabia in International Organizations Regarding the Control of Marine Pollution

6.5.1.1 At the International Level

6.5.1.1.1 The International Maritime Organization

The International Maritime Organisation (IMO) is based in London and was established in 1948, but did not receive sufficient ratifications for entry into force until 1958.\textsuperscript{85} It is a specialized United Nations agency which aims to promote co-operation between member states regarding marine affairs and to provide technical coordination and organization at the international level, in order to facilitate trade between nations.\textsuperscript{86} IMO activities relating to marine pollution are mainly carried out through the Legal Committee and the Marine Environment Protection Committee (MEPC), established by


\textsuperscript{86} Constitution, Art. 1 (a), as amended.
the IMO assembly in 1975.\footnote{Assembly Resolution A.358 (1975)} The main objective of the Organization is to ensure the safety of international shipping, in part by adopting the best means to control pollution from shipping, including oil tankers.\footnote{Constitution, part IX, Arts. 38-42.}

The IMO currently has more than 164 members, of which 40 belong to the Council.\footnote{Worham, J. The IMO and its activities with particular reference to the prevention and control of marine pollution (Report No. 44). IMO ROPME UNEP., Rep. stud. No. 44, p.270.} The Kingdom of Saudi Arabia has been elected as a member more than three times. The Ministry of Transportation has many working contacts with the IMO bodies, for example through the Committee for Marine Safety, the MEPC and the Council. The IMO also issues many international agreements and submits them for ratification by the Saudi Government; when the Kingdom joins such agreement, the agency certifies full compliance by visiting Saudi ports. This is to ensure the effectiveness of the agreements concerned and the safety of the seas.\footnote{Steps and Accomplishments (1986) Ministry of Transportation; Saudi Arabia, pp. 35-36.}

The IMO has supported the negotiation and conclusion of a number of important environmental treaties, for which it provides secretariat functions. These relate to oil pollution,\footnote{International Convention for the Prevention of Pollution of the Sea by Oil 1954; High Seas Intervention Convention 1969 (and 1973 Protocol).} pollution from ships,\footnote{MARPOL 73/78.} civil liability and compensation for oil pollution damage,\footnote{CLC 1992, Fund Convention 1992, HNS Convention and Bunker Liability Convention 1996.} and emergency preparedness.\footnote{Oil Pollution Preparedness Convention 1990, Protocol on Preparedness, Response and Co-operation on Incidents of Pollution by Hazardous and Noxious Substances 2000.} However, following the disaster of 1967, in which the supertanker Torrey Canon has leaked much of its oil, IMO actively engaged in developing a process in order to present mechanisms for cooperation between governments in the area of governmental regulation and practices concerning procedural issues affecting shipping engaged in international trade; to support and assist the general adoption of the highest feasible standards in matters about maritime safety, effectiveness of navigation and control and prevention of marine pollution from ships. The IMO also played a prominent role in the development of international agreements regarding the control and management of ships ballast water and sediments, as well as in partnerships with others in the development of a pilot project about removing of
barriers which applied in the port of Khark island in Iran.\textsuperscript{95} In the meantime, notable regional developments were occurring to prohibit or regulate activities previously beyond the scope of international law.\textsuperscript{96} Therefore, the IMO acts as a main regulatory and supervisory institution in order to ensure that better safety standards are upheld, thus reducing the threat to the marine environment posed by shipping accidents. However, despite this undertaking, the IMO has some shortcomings; for example, it has no process for dealing effectively with non-compliance issues, such as the persistent failure of some states to provide the port discharge facilities required by MARPOL, beyond the adoption of further resolutions. IMO also has little power or incentive to police or receive reports from flag states.\textsuperscript{97}

Saudi Arabia joined the IMO in 1979 and has attended its meetings and diplomatic conferences regularly. Experts from Saudi Arabia have studied thoroughly the various conventions which the IMO has published, such as MARPOL and OILPOL and its amendments and others. This has improved the level of knowledge of these experts and others regarding environmental protection from oil pollution. They have then tried as much as possible to put some of the measures and principles from these conventions into effect on a national level.\textsuperscript{98}

\textbf{6.5.1.1.2 United Nations Environment Programme (UNEP)}

The United Nations Environment Programme (UNEP) was established after the Stockholm Conference on the Human Environment in June 1972. UNEP’s headquarters is in Nairobi, Kenya. UNEP’s mission is to provide a leadership and promote partnership in caring for the environment by stirring, informing and enabling countries and people to improve their quality of life without compromising that of future generations.\textsuperscript{99} Furthermore for UNEP’s to fulfil its mission it sets these objectives by

\begin{itemize}
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putting forward an action plan for the human environment to include all the elements of a basic understanding of the monitoring and control of pollution.  

The main objectives of the programme are to:  

- Determine, study and evaluate the most important environmental problems and suggest means of combating them.  
- Develop and review programmes, plans and suggestions concerned with the environment.  
- Ensure the co-operation of all countries in the environmental programme.  
- Concentrate on aspects of the programme concerned with the protection of the marine environment and sources of natural and marine wealth as a complementary part of economic and social development.  

UNEP is especially interested in the marine environment, taking the oceans and coastal areas as priorities for study. The programme facilitates the provision of technical assistance in case of ocean pollution at the international level; it also assists countries in holding international conferences and in the application of suitable international policies for the protection and management of marine resources.  

UNEP also gives emergency technical assistance regarding the marine environment and coastal pollution problems. In 1974 the programme emphasized the regional cooperation of coastal countries. In this regard it drew up action plans suitable for the regions included in the programme or required by member countries. Most of these action plans make provision for environmental assessment, management, legislation, and institutional and financial arrangements. They are of significance for developing states in facilitating co-operation and the provision of assistance in the management of marine pollution problems in regions where expertise and facilities may be lacking. However, although these plans aim at the monitoring and control of pollution to protect marine life and water resources; they were designed to make connections between the quality of the marine environment and the causes of damage to  

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it. The regional seas programme includes seven regions and 120 coastal states. It is obvious that most of the UNEP regional agreements are thus capable in many respects of conforming to Agenda 21 requirements; only the Red Sea and the Western African Conventions have remained little more than bare framework regimes, limited to pollution, and with little evidence of further activity. In general, the more successful programmes appear to be those with a strong treaty basis and the political will to ensure the continued evolution of action plans, protocols and institutions. The least successful are those where the financing and infrastructure are weak.103

UNEP cooperates with other international organizations, e.g. the World Health Organization (WHO), the Food and Agriculture Organization (FAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Development Programme (UNDP) and the International Organization of Meteorology to fulfil its objectives and contribute to the preparation and implementation of its plans for the regions, demonstrating the real value of international and regional experience. However, despite this cross-organisational cooperation, UNEP cannot dictate; it can only advise. This has nevertheless been changed into a situation in which UNEP has some say in the overall system of international regulation of the environment. Potentially more important, however, is that UNEP should also have a voice in the negotiation of non-environmental agreements, such as those adopted by the WTO, to try to ensure compatibility and coherence across all sectors of international regulation.104 The main mission of regional plans is to foster cooperation through joint programmes and the application of similar principles for the protection of the marine environment in extended geographical areas.

When UNEP plans are ratified by member states, their governments become responsible for the protection of the marine environment and its conservation by adopting what they consider to be the best means of implementing the agreed measures. The general principle of the monitoring of marine pollution states that every country should have its own legislation to protect the environment and to punish violators.

103 Ibid.
104 Ibid, p. 56
6.5.1.2 At the Regional Level

6.5.1.2.1 Gulf Area Oil Companies Mutual Aid Organization (GAOCMAO)\(^{105}\)

Marine pollution by oil companies working in the Arabian Gulf area was increasing,\(^{106}\) so in 1972 they established an organization to improve their capacity to combat pollution and to implement the principle of mutual cooperation in time of need.\(^{107}\) The organization was established when the oil companies realised the importance of an agreement to combat the dangers of marine pollution by oil, particularly during accidents that happen in the Gulf. The fracturing of a pipeline at Tarot Gulf in Saudi Arabia have opened the eyes of the oil companies to the dangers of pollution. Although Aramco was capable of combating the pollution caused by this accident, it revealed the shortcomings of the oil companies working in the Gulf regarding their response to such accidents.\(^{108}\)

The Arabian Gulf is the centre of the oil industry and oil fields extending from land into the sea. In addition, there is a constant movement of tankers and the expansion of loading operations. All these factors necessitate readiness to face any pollution threat from accidents. The importance of cooperation in this field was emphasized by the response of Aramco and the Iran Oil Company. The first meeting between the two companies took place in December 1970 on Kharj Island, after which the idea of cooperation grew quickly among oil companies working in the Gulf. GAOCMAO now counts about 20 companies working in the western part of the Arabian Gulf as members, including the companies working in Saudi Arabia. In 1972 Aramco, the Arabian Oil Company and the GT Dor Oil Company joined the organization.\(^{109}\)


\(^{106}\) The Mutual Aid Organization among Oil Companies in the Gulf Area has been established from oil companies operating in the area. The organization was established as a special structure of those companies. It was not one of organizational systems established under the Kuwait Agreement on Protecting the Arabian Gulf from Pollution 1978.


6.5.1.2.2 Regional Organization for the Protection of the Marine Environment (ROPME)

The governments of the eight Gulf oil countries – Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia and UAE – in co-operation with UNEP, convened the Kuwait Regional Conference of Plenipotentiaries on the Protection and Development of the Marine Environment and Coastal Areas in Kuwait from 15 to 24 April 1978, which resulted in the Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution and its protocol concerning Regional Co-operation in Combating Pollution by Oil and Other Harmful Substance in Case of Emergency, giving rise to the establishment of the Regional Organization for the Protection of the Marine Environment (ROPME) in 1979.10

6.5.2 The Participation of Saudi Arabia in International Agreements Regarding the Control of Marine Pollution111

The protection of the environment from pollution is a recent concern which has arisen as a result of many accidents having happened in the seas and oceans that have led to serious pollution of the marine environment with oil or oil mixture, such as the Torrey Canyon,112 the Amoco Cadiz113 and the Exxon Valdez.114 These exemplify the scale and potential severity of such accidents, whose seriousness derives mainly from the volume of oil or other pollutants released in one place.115 In this regard it will discuss the examples of the Kingdom’s participation in international and regional efforts to protect the marine environment from pollution:

10 For more information see chapter 7 p187.
6.5.2.1 At the International Level

At the international level, the Kingdom of Saudi Arabia has joined several international agreements and treaties such as OILPOL Convention 1954, MARPOL Convention 1973 and International Convention on Civil Liability for Oil Pollution Damage 1969 and its protocols of 1976. However the Kingdom has not joined the Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1992) even though this and the International Convention on Civil Liability for Oil Pollution Damage are complementary to each other in terms paying for damages for oil pollution victims as the Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage can be called on to handle costs for damages which exceed the limit of the International Convention on Civil Liability for Oil Pollution Damage. Furthermore, the Kingdom is also a member of UNCLOS 1982.

Even though, the Kingdom has not joined several agreements, for example the 1958 Geneva Conventions on the law of the sea and the 1969 International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, the Saudi legislator should put this under consideration. It is engaged in setting up national systems to bridge these gaps in Saudi legislation, and is currently developing available systems to be consistent with the rising concerns of the Kingdom regarding environment issues in general and marine pollution in particular.

Saudi Arabia has enthusiastically participated in international conferences and symposiums on the protection of the marine environment. This has had a significant impact on the protection of the marine environment from pollution in the Kingdom, as the country has followed advances in international law. This has also helped reinforce previous efforts made and has led to significant developments.
6.5.2.2 At the Regional Level

Cleaning and protecting the marine environment is not limited to the international efforts but it also includes the regional efforts. Some of the countries which have one marine or geographical border agreed to strengthen all the necessary ties of international base to protect the environment. The principles must be very strong and inclusive to maintain good protection to the marine environment. If the area that needs protection is closed or semi-closed, the chance of pollution is great because the substance that causes pollution exceeds the capacity of the closed sea or changing it to harmless substance.

The recommendation 86 from the United Nation Conference in Stockholm insists on the necessity to strengthen the observation of the closed and a semi-closed sea.

Two examples for the participation of the Kingdom in regional protection of the marine environment are Kuwait Regional Agreement for the Protection of Marine Environment from Pollution (1978) and Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment (Jeddah) (1982).¹¹⁶

6.6 Conclusion

The importance of controlling marine pollution nowadays cannot be overemphasized. This is manifested in a lot of national rules and regulations and a lot of regional and international agreements that protect the marine environment from pollution and its harmful effects.

The Kingdom of Saudi Arabia has played a major role with other countries in controlling marine pollution. In this regard it has done at three levels:

¹¹⁶ *National Plan for Combating Pollution of the Marine Environment by Oil and other Harmful Substances in Cases of Emergency* (1984) op.cit.
At the national level: The Kingdom issued a lot of national rules and regulations to protect the marine environment, for example the laws, rules and regulations of the ports.

At the regional level: the Kingdom participated in the regional efforts to control pollution in the marine regions like the Gulf and the Red Sea. An example of this is the Kuwait Agreement 1978 and the Jeddah Agreement to control pollution in the Red Sea and Aden Gulf Strait (1984).

At the international level: The Kingdom implemented all the principles in the international agreements. An example of this is the 1954 international agreement to prevent pollution of sea water by oil. (1954). This agreement was revised many times. Also the Kingdom signed up to the London Agreement (1972) concerning pollution by ships. The protocol of this agreement was revised in 1978.

It is noticed that these three aspects complement each other. Also it is noticed that the Kingdom in 1958 had established its regional sea as 12 nautical miles and this helped in controlling pollution in the regional areas under its domain and also in seeking compensation if any harm was done to the marine environment in the specified marine area. Having appraised the legal regime in Saudi Arabia, the next chapter attempts to investigate into the situation in the Arabian Gulf area (i.e GCC) along with the efforts of various regional bodies and conventions which have helped towards progress in the area of protection of the marine environment.
CHAPTER SEVEN

LEGAL PROTECTION FOR MARINE ENVIRONMENT IN THE ARABIAN GULF FROM POLLUTION

This chapter aims at examining the existing system governing marine pollution control established under the Kuwait Convention and its protocols; analysis of the practical implications of existing system in terms of its effectiveness, efficiencies and implementation by state parties.

7.1 Background and Preparation of the Convention

The increasing levels of pollution of the marine environment in the Arabian Gulf have become a subject, requiring serious actions to be taken not only by Gulf States (Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates), but also by the oil companies operating in the region. Of these actions, the efforts carried out by oil companies to find a solution to this problem, and how these oil companies came to establish a regional oil industry co-operation organization, and for this purpose, two meetings were held in Bahrain in June 1971 and in the summer of 1972. Accordingly, the fruits of these initiatives resulted in the establishment of the Gulf Area Oil Companies' Manual Aid Organisation (GAOCMAO), with the major objective of combating marine pollution in the Gulf.1

In this respect, the countries in the Gulf area recognized that this action was not sufficient and there was a call for having an agreement between themselves. This action encouraged Kuwait to put forward, in 1973, to the United Nations Environment Programme (UNEP) to call upon an intergovernmental gathering of the countries of the region in order to co-ordinate and develop a collective action on the issue.2

Chapter Seven

In 1976, the Governing Council of UNEP, at the end of its fourth session, agreed the Kuwaiti action to convene a regional conference to protect the Gulf marine environment against pollution.\(^3\) Thereafter, a draft action plan was formulated\(^4\) as the result of several meetings which took place in 1976 under the auspices of UNEP.

Additionally, the Kuwait Convention has held in April 1978, a Regional Conference of Plenipotentiaries on the Protection and Development of the Marine Environment. Many regional and international organizations participated in the conference, such as, the United Nations Economic Commission for Western Asia, UNEP, the United Nations Department of Economic and Social Affairs, UNESCO, FAO, and the United Nations Industrial Development Organisation. The Conference adopted several themes, such as:

- A Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution
- An Action Plan for the Protection and Development of the Marine Environment and the Coastal Areas
- A Protocol about Regional Co-operation in Combating Pollution by Oil and other Harmful Substances in Emergency Situations\(^5\)

The Kuwait Action Plan was developed to achieve following objectives:\(^6\)

- Measuring the management of those actions which have an impact on the quality of environment in terms of protection and use of renewable resources.
- Appraisal of the environmental situation, together with social and economic development actions associated to the quality of the environment, together with the needs of the region in order to help governments to properly manage the environmental inconveniences, mainly those relating to the marine environment.

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\(^3\) Ibid.

\(^4\) Ibid., p. 2


• Supporting processes, like national and regional institutional mechanisms and structures needed for the successful implementation of the action plan.  

• Setting up legal instruments in order to provide the legal foundation for cooperative efforts to foster the creation of well protection and development of the region on a sustainable basis.  

The Convention encompasses a preamble and thirty articles. Four additional protocols were adopted afterwards: Protocol 1 - Regional Co-operation in Combating Pollution by Oil and other Harmful Substances; Protocol 2 about regulation of marine pollution resulting from exploration and exploitation of the continental shelf; Protocol 3 concerning the protection of the marine environment against pollution from land-based sources; and Protocol 4 - Control of Marine Transboundary Movements and Disposal of Hazardous Wastes and Other Wastes.  

7.2 Location and Natural Geography of the Arabian Gulf  

The environment of the Arabian Gulf is characterized by distinguishable geographical, hydrological and environmental characteristics which make it sensitive and to be affected with pollutants more than other marine area, as it has been stated in the preamble of the Kuwait Regional Convention. Geographically the Arabian Gulf is considered semi -closed sea; it represents marginal arm of water in the Indian Ocean between the Arab Peninsula and Iran, in an area about 240,000 square Km, square miles, and its length from its head in Arab shore(Shut) until its entrance in the Hormuz strait is about 430 mile. Nonetheless, it is width it does not exceeds 160 miles at its wider area in its basin. The volume of its water is about 8500 Quebec km. Generally it is described by shallow water and deepest point is about 100m.  

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7 Ibid.  
8 Art.4 of Action Plan.  
9 The Protocol is not yet in force See text in the publication of Regional Organisation for the Protection of the Marine Environment.  
The average of its deepness does not exceeds 40m and its deepest areas are found in it is lower section, and through the extend of mountain coast of Iran. And in the other side on the extend of Arabian coast which is the lower in its deepness.  

Hormuz Strait is considered as a narrowest part in gulf, it's northern part border is near to Iranian coast which includes many islands nearer to the shore like Gashim, Hinjam and Lark in Peninsula of Missndum. And there are small islands called Security and his girls (Slama and Bnatah) or Goira which are located in the strait and about 9 miles far from Peninsula of Misdum.

There are eight countries in the Arabian Gulf these are: Iran, Iraq, Kuwait, Saudi Arabia, Bahrain, Qatar, United Arab Emirates and Oman. In making a comparison between the importance of the Arabian Gulf with the Red Sea, it can be found that the Red Sea formed water canal and gave a helpful hand to the Indian Ocean and Arab Sea, but its importance is less than the Arabian Gulf. This is because of the short distances of journey for the trading ships from Asia crossing the Gulf. it can be found also natural carriers in the Gulf facing and making trouble to marine navigation. This is clearly have been seen in the era of old trading relationships with India through to recent increase and double of trading with India by using the Red Sea.

The strategic geographical location has increased the importance of the Arabian Gulf because it is suitable for the sea rules. This is because there are several Gulfs that offer immense facilities to hide ships, and as such in Arabian Gulf control the rules is possible, it is also nearer to international struggle in the Indian Ocean and the Middle East. Owing to this, it becomes one of the international attractions in the area because it is considered one of the most important natural gateway to Arabian World.

In general, the Arabian Gulf is very quiet all the years and suitable for navigation, also it was and still nowadays the best area for people who live near the coast to study the art of navigation and build ships, as the Arabs have been famous since

the past in arts of navigation, and they have controlled the ways of navigation between East Africa and India.

From what has been mentioned above it can be said that the good geographical location gives importance to Arabian Gulf, and due to this there was great local struggle and international struggle since the past time.

7.3 Regional Co-operation between the Gulf States to Conserve the Arabian Gulf Environment

In spite of the importance of the national legislations and environmental policies to protect the marine environment from pollution, nevertheless limiting it may not achieve the intended goal in an area with special characteristics, such as the Arabian Gulf. This is due to the fact that marine pollution does not know boundaries to its effects, but diffuses in all parts of the marine environment. This is in addition to the restricted measures which have been taken individually by the coastal countries that may lead to the transfer of the pollutant effects from the areas of their jurisdictions to other areas in the Gulf environment, and here the national measures enlarge the problem. Hence, regional cooperation from within the Arabian Gulf Countries it comes out.

7.3.1 The Importance of Regional Organization in Protecting the Marine Environment and the Reason for Implementation

The importance of regional co-operation in protecting marine environment stems from the fact that individual countries cannot give effective protection or effective solutions to environmental pollution as the pollution does not recognize and is not confined within national borders. These problems are not international in nature, but have certain regional characteristics that make regional co-operation a must in solving these problems. Regional co-operation will also encourage social relations between the countries of the region. For these reasons many authors stress the importance of regional co-operation as a means of effectively controlling pollution in marine areas that have
certain environmental problems. IMCO council stressed the need for regional cooperation, construction of regional systems to provide specialized manpower and necessary equipments and scientific consultation to combat marine pollution caused by the discharge of oil or other harmful materials. It also stressed the need to establish an authority responsible for investigating the incidents of discharge of pollutions into the sea or land.

All these recommendations found application in diverse waterways, such as the Baltic Sea, the Mediterranean Sea, the North Sea and the Arabian Gulf. Many regional agreements that were the bases for regional organization were signed. There are three primary types of reasons for regional cooperation.

First, the difference in the sources of pollution, the concentration of pollutants, the degree of sensitivity of different marine areas to pollutants and the difference in environmental conditions and geographical locations, necessitated the use of different ways and means to control pollution. As a direct consequence, regional cooperation and organization becomes an effective way to control pollution in areas which have special characteristics.

Second, regional cooperation and organization leads to the enhancement of resources, facilities and technical equipment through the collective efforts of all participating partner countries. Pollution control requires advanced technological equipment and involves such a high expenditure that one country alone may not be able to finance it. The marine environment in the Gulf requires such co-operation because of its unique nature. These special characteristics increase the risk of major pollution accidents. The Arabian Gulf countries lack the advanced technology and the specialized

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personnel necessary to contain and control big pollution accidents. All developing countries lack equipment and instruments that control explosions in oil wells, discover oil spots and accurately locate the sources of pollution. However, in this respect, Saudi Arabia, as one of the developing countries, possesses some equipment but not the technologically advanced equipment the developed countries have to combat and control various pollution incidents. These developing countries also lack the means to destroy tankers that were sunk. Furthermore, they do not have equipment that scrapes oil from the water's surface. Equipment and instruments of this type require a high degree of technological knowledge in both operation and maintenance, as well as a substantial amount of financial resources, all of which when taken together emphasize the importance of regional cooperation.

For example, in the case of Torrey Canyon disaster, the environmental damage caused by huge oil spills from the carrier would not have happened if Britain had taken quick emergency measures, which it was known that Britain had the technological capabilities for doing so. Then how to imagine what would happen if the problem happened in countries lacking these technological capabilities.

Third, regional co-operation and organization help fill in gaps in the international organizations. Problems resulting from the jurisdiction a flag country can exercise over its ships or the weakness of supervision in many countries are examples of some of the basic disadvantages of international organization. There is greater effectiveness when a group of regional countries agree not to give facilities or assistance in their ports to ships that do not take pollution control seriously or the ships that raise the flag of a country that does not obey such measures. The effects of this regional organization on the shipping interests of countries geographically removed from the countries in the area of regional organization may encourage these countries to sign up to regional agreements. This will extend the areas of influence and commitment of these regional agreements.

Thus, it seems that there are good reasons that lie behind the regional organization's deserving of particular attention in its role in curbing marine pollution more effectively than either the wider international and/or individual country approaches. However, that does not mean the cancellation of the international origination efforts in this regard; instead, it puts forward the minimum standards and rules in this respect, leaving the regional organization with the task of laying down the elaborate rules and standards that meet the peculiarities and the circumstances of different maritime areas, as well as determining the relationship between these standards and the international ones.

7.4 The Analysis of Kuwait Regional Convention for Co-operation in the Protection of the Arabian Marine Environment from Pollution

7.4.1 Definition of Marine Pollution

Marine pollution is defined as "the Introduction by man, directly or indirectly, or any substances or form of energy into the marine environment resulting or likely to result in such deleterious effects as harm to living resources, hazards to human health, hindrance to activities including fishing, impairment of quality for use at sea and reduction of amenities".21 This definition contains the same elements of the definition which was worded by the United Nations Group of Experts on the Scientific Aspects of Marine Pollution, (GESAMP).22 The same formula is similar to that was contained in the regional conventions.23 In addition to that observable in the case of many other international and regional conventions, the Kuwait Convention has set two conditions in order for the definition to be consistent with marine pollution concept. The first

21 KC. Article 29. See page 19-21.
22 Their definition of marine environment is:
the introduction by man, directly or indirectly, of substances or energy into the marine environment (including estuaries) resulting in such deleterious effects as harm to living resources, hazards to human health, hindrance to marine activities including fishing, impairment of quality or use of sea water, and reduction of amenities.
This definition was employed by the 1972 United nation Conference on the Human Environment, it was also used by a number of multilateral conventions, such as the 1974 Art 2 Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area, the 1974 Art 1 Paris Convention for the Prevention of Marine Pollution from Land-Based Sources, the 1976 Art 2 (a) Bercelona Convention for the Protection of the Mediterranean Sea against Pollution.
23 Such as 1982 Regional Convention for the Red Sea and Gulf of Aden
condition is the pollution must be manmade, and therefore, since the pollution is the result of natural causes this definition does not fit them. The second condition represents the necessity to reflect or possibly reflect, the introduction of these stated damages reaching the situation stated in the definition.

The inclusion of a sentence in the definition like or they possibly reflect, represents a precautionary measure from the parties to the agreement toward the marine environment protection and conservation. But the definition does not set a definite time during which the probable pollution damages might rise.

In comparing this definition with the LOSC definition, it has been found that the latter includes new elements, it mentioned in its definition of the pollution the "marine life" and "the permissible usage aspects of the seas". These additions have no sense, as the Kuwait convention covers all these additions.

7.5 Implementation Range Convention

7.5.1 Geographical Scope

The provisions of the convention apply to all marine zones in the Arabian Gulf, but do not cover the interior zone waters of countries outside the region. It includes territorial waters, contiguous zones, and EEZ bringing it into line with the Helsinki

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24 According to Article 2(1) of the Convention, it applies geographically to the marine area stretching from Dharbat Ali at 39°16' North, 30°53' East, then to 16.00° North, 25°53' East, then to 17.00° North, 35°56' East, then to 20°30' North, 60.00° West, then to Fastaha Head, at 4°25' North, 25°61' West.

25 Without doubt the source of much marine pollution is the internal waters; it is not from land sources alone. Some of it is due to partial discharge of ships or dumping of waste on the coast. There are two ways to solve this problem. The first is to include in the agreement something about its application to internal waters in general, with a possibility of the presence of some exceptions in protocols or appendixes. Three of the agreements applied in this way are the London Agreement 1954 (International Convention for the Prevention of Pollution of the Sea by Oil), the Helsinki Agreement 1974 and the Paris Agreement 1974 (the Convention for the Prevention of Marine Pollution from Land Based Sources). The second way is one which says that international waters should be included in protocols or appendixes specific to the types of sources of pollution of the sea. The Barcelona Agreement 1976 took this approach in Art. 2(1): "The Mediterranean region does not include the internal waters of contracting countries except when it says otherwise in any protocol attached to this agreement". It is clear that the Kuwait Agreement 1978 followed the Barcelona Agreement 1976 in this regard.

26 KC, Art. II.
Convention (1974), the Barcelona Convention (1976), the Oslo Convention for the Prevention of Marine Pollution by Dumping from Ship and Aircraft (19730) and the 1954 London Agreement.

As with the other conventions, the Kuwait Convention made sure that its rules in this regard did not affect or contravene the existing international laws concerning nature and expansion control to coastal countries, but unlike the Helsinki Convention it did not specify or dictate. The Kuwait Convention’s provisions for fighting pollution in the Gulf did not apply to other areas outside marine zone gulf and in this regard, it looks like the Barcelona Convention (1976).

In addition, the Convention does not place significant importance on the Gulf entrance at the Strait of Hormuz, which is not only ‘overcrowded’ and potentially hazardous because of the number of gigantic ships, but is also considered as a regional sea for Iran and Oman.

27 Art. 4 (3).
28 Art. 1 (2).
29 For the text, see II ND, 1973, p.670.
30 For the text, see II ND, p.557.
31 KC. Art. 2/3.
32 Art 1(2).
33 Considering the geographical position of the Strait of Hormuz, it is clear that the Strait, which was traditionally part of the high sea, is subject to the transit passage regime established by the customary law, the Geneva Convention on the Territorial Sea and Contiguous Zone, Art. 16 (3); the 1982 UNCLOS Art.38 (2) and Art.39 (1) (c). This regime applies to Straits that are used for international navigation between one part of the high sea or an exclusive economic zone and another part of the high sea or an exclusive economic zone. Also, the Kuwait Convention confirms in its Article 15 that:
Nothing in the present Convention shall prejudice or affect the rights or claims of any Contracting State in regard to the nature or extent of its maritime jurisdiction which may be established in conformity with international law. Therefore, the member’s demands concerning the different marine areas, with regard to external territories of regional sea, or the continental expansion, or the pure economic region shall be verified according to the provisions of international law. For more information about Strait of Hormuz, see, Ramazani,R.K. (1997), The Persian Gulf and the Strait of Hormuz, (Sjijtoofnoordhoff p.20; Amin. S. H. (1981) The Regime of International Straits, Legal Implications for the Strait of Hormuz, Journal of Maritime and commerce, vol. 12, p. 392; UN.DOC A Conf. 62/1.2/L.16;UNCLOS III, Official Records, vol. 3. pp. 194-195; UNCLOS III, Official Records, vol. 2, p. 273.
34 The coastal countries of the Baltic Sea invited the IMCO members to the Helsinki Conference, which acknowledged the Convention of Marine Environment Protection for the Baltic Sea Area in 1974, to adopt special recommendations and rules concerning navigation at the entrance of the Baltic Sea. The conference recognised in its rules the necessity of IMCO rules for compulsory guidance services and the specification of special electronic equipment. See Annex B, Decision 3, attached to the Convention.
Regarding the specific geographical scope, only the eight neighbouring states were invited to participate in and sign the Kuwait Convention. This is the opposite approach to that taken at other regional conventions, which opened their doors to all countries that would agree to carry out the Convention rules, without placing restrictions on geographical location. In fact, not opening the door for all countries to join the Convention can affect several foreign countries that may raise their flag in the waters covered by the Convention, as by not making it possible for these countries to join the Convention, their cooperation may be lost and with it the opportunity to strengthen it and make countries whose ships use the Gulf waters more effectively apply the Convention’s rules.

7.5.2 Personal Scope

The Kuwait Convention provided a general rule, followed by an exception. The general rule applies to non-government ships and airplanes, including ships and airplanes owned by individuals, while, the exception does not apply to ships and airplanes owned or managed by states for non-trading purposes. This exception is similar to that which has been provided by UNCLOS, MAARPOL, The Protocol of Dumping, attached to the Barcelona (1976) and Helsinki (1974) conventions. In spite of this exception, the countries to which these ships and non-commercial planes belong to, should ensure, through approval of appropriate measures which do not fall short in capabilities and operations of these ships and non-commercial planes they possessed or operated, observance of these ships and non-commercial planes to the convention rules concerning the protection of the marine environment in the Arabian Gulf.

35 Art. 26-27.
37 Art (236)
38 Art 3 (3).
40 Art. 4 (4).
7.5.3 General Obligations

Article 3 (A) of the Kuwait Convention states that the member countries shall commit to take all suitable measures according to the convention's rules and its attached protocols, to protect the marine environment, and to reduce and control pollution. This wording has used the Helsinki Convention\(^{41}\) and Barcelona Convention.\(^{42}\)

The Convention obliges the contracting parties to cooperate in the wording and endorsing of other protocols which contain the necessary measures, procedures, mechanisms in putting their rules under execution.\(^{43}\) The convention also obliges parties to set the necessary national laws, regulations of the marine environment protection and harmonise their national policies. It also named the national authority for this purpose.\(^{44}\)

There is another principal obligation enforced by this Convention in which member countries shall exert their utmost efforts to ensure that the execution of their rules should not lead to transformation of one form or type of the pollution into another form or type which may result in more damages in the environment.\(^{45}\) It is the same obligation that has been affirmed in the Helsinki Convention Article 3 (2), Paris Convention Article 7 and UNCLOS in its Article 195.

From this rule, it can be said that the Kuwait Convention has participated in the maintaining of the international customary rules which includes the process of not allowing the country to use its region in a manner which could cause damage to others. From the obligations also what have been imposed by the Convention on its members to take all appropriate measures to prevent, reduce, and control the marine pollution derived from the intentional or unintentional discharges from ships;\(^{46}\) the pollution derived from throwing of rubbish from the ships and airplanes;\(^{47}\) the pollution from the

\(^{41}\) Art. 3 (1)  
\(^{42}\) Art. 4 (1)  
\(^{43}\) Art. 3 (B)  
\(^{44}\) Art. 3 (C)  
\(^{45}\) Art. 3 (E)  
\(^{46}\) Art. 4  
\(^{47}\) Art. 5
land sources including outfalls and pipelines, and pollution which comes from the exploration and exploitation on the ocean bed of the territorial sea or under it and on the continental shelf; and lastly, the pollution derived from other human activities such as land reclamation along with suction dredging and coastal dredging.

In addition to the proceedings, the Convention obliged its members to take all necessary measures, including the provision of the qualified personnel, the appropriate equipment needed to counter emergency pollution cases in the marine environment, whatever their causes, cleaning, prevention of the pollution, and any contracting party learned any pollution case should consult the corporation or the regional organisation, as well as alert through the General Secretary the contracting party which may subject to be affected by this an emergency case. The Convention has followed in this rule Barcelona Convention Article 9, and also the UNCLOS.

7.5.4 International Responsibility

The Kuwait Convention affirms in its statement on responsibility and compensation principle about the damage caused by marine environment pollution, or due to violation of the commitments affirmed in the convention and its attached protocols. Even though, detailed rules have not been established concerning the responsibility and compensation about the damages. Kuwait Convention really entered the rule of responsibility about the damage happening due to breaking rules of the convention, and rule of responsibility from the damage resulting from pollution. It does not, however, define a certain rule to that responsibility, but it said that it is necessity to have cooperation between contract countries to put down rules, to acknowledge these rules to define citizen responsibility and to pay for penalty due damage from marine pollution, considering the rules and the international steps applied. Since the Convention does not mention the kind of responsibility, it is unclear who is actually

48 Art. 6
49 Art. 7
50 Art. 8
51 Art. 9
52 Art.198.
responsible, the individuals, the special establishments or to all of them together. But this may become clearer in the future from details from another protocol concerning responsibility and compensation from the damage resulting from pollution, which will be acknowledge and apply later on.\textsuperscript{54}

One of the functions of the Ministerial Council is the observation and supervision of the countries to carry out rules, applying rules of responsibility and compensation by assisting the juridical committee. The reports prepared between the summit countries should be submitted to the General Secretary for convention implementation.

The same principle has been included in both the Barcelona\textsuperscript{55} and Helsinki conventions,\textsuperscript{56} now the Kuwait Convention points out the necessity to observe the relevant international provision and rules. This indicates the commitment of the member countries of the agreement in considering the rules of international law regarding responsibility and compensation, and when they apply in their own systems and laws. In addition, the rules indicated here, were those affirmed by the Civil Liability convention of 1969 and its signed protocols of 1976.

The Convention rules concerning responsibility and compensation are literally copied from the Barcelona Convention (1976),\textsuperscript{57} but the Barcelona conference was more ambitious than Kuwaiti conference, because it asked the government committee to make warranty box, its function to offer compensation to the countries which face damage from pollution.

In the end it can be said that despite these consistent and honest efforts by all, there is still a lot to be done by member countries to reinforce the organizational endeavors so that it can achieve its objectives in protecting the environment. Moreover, it is evident that political problems and wars have had a negative impact in hindering, or sometimes blocking, the efforts made by the organization.

\textsuperscript{54} Para. 24, (5) of work plan.  
\textsuperscript{55} Art.12.   
\textsuperscript{56} Art.17   
\textsuperscript{57} Art. 912
Therefore, efforts should be intensified to find the most appropriate solutions to face these problems in order to protect marine environment from pollution in general, and from oil pollution in particular.

7.6 Convention Implementations

Regional Organization for the Protection of the Marine Environment (ROPME), which has its headquarters permanently located in Kuwait and is comprised of three organizations, the council, secretary and judicial committee.

7.6.1 The Objective of ROPME

ROPME's main objective is to coordinate the efforts and activities of its member countries in the direction of protection and preservation of the quality of Gulf waters, to protect the marine environment ecosystems, and to abate any type of pollution caused by activities of all kinds.

7.6.2 The Council

Under normal circumstances, the Council holds one meeting per year. Apart from this annual meeting, however, a special meeting can be held at the request of at least one of the contracting parties or of the Secretary General. In the first case, it must be supported by one contracting country, and in the second by two members at least. The same provision is provided for in the Barcelona Convention (1976), Article 14, MARPOL Convention, Helsinki Convention, Protocol 1967, and UN Convention.

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58 The governments of eight countries – Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia and UAE – in co-operation with the United Nations Environment Programme (UNEP), convened the Kuwait Regional Conference of Plenipotentiaries on the Protection and Development of the Marine Environment and the Coastal Areas in Kuwait from 15 to 24 April 1978, which resulted in the Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution and its protocol concerning Regional Co-operation in Combating Pollution by Oil and Other Harmful Substance in Case of Emergency, giving rise to the establishment of the Regional Organization for the Protection of the Marine Environment (ROPME) in 1979.
60 Art. 17. (A)
The chairman is selected by periodical rotation between all members according to their name in alphabetical order, and for one year term.\textsuperscript{61} The position of chairman means that the post holder cannot be representative of his country during his period in office. Each country has only one chance to nominate. Judgement issued in fundamental matters is reached by a consensus of all present subscribers in voting, with a three-quarters majority required in voting on procedural matters.\textsuperscript{62}

The function of the Council is to follow-up in regular basis the implementation of action plans and protocols of the Convention, and to reassess the situation of the marine environment, adoption of other amended conventions and protocols, commissioning and receiving reports from members and the regional organization and international competent. The council is also responsible for media relations and the approval of all external communication, including press statements, briefings and protocols and their summaries. Other responsibilities of the Council include studying the reports from contract countries and secretary about matters concerning the Convention and to make recommendations for issuing additional protocols (this needs consensus of all vote in diplomatic conference), construction of secondary branches and temporary teams work to look into any matters concerning the convention and its attaché and to appoint the Executive Secretary. The Executive Secretary role includes carrying out periodic revision of the Council’s management, administration and operation, making regular reports as requested by the Council in relation to the work of the committee judicial and to carry out supervision on work centre of the support regional exchange in marine emergency status which script to make a protocol.\textsuperscript{63}

7.6.3 The Secretariat \textsuperscript{64}

The Secretariat is made up of the Executive Secretary, who is appointed by the Council and some other persons been chosen by the Executive Secretary to perform their duty in the office. The Executive Secretary is the head of the organization office.

\begin{itemize}
\item[\textsuperscript{61}]{Art. (17 (B)).}
\item[\textsuperscript{62}]{Art. 17 (D).}
\item[\textsuperscript{63}]{Article 17 (8).}
\item[\textsuperscript{64}]{See Article 18 (A&B), 18 (A 1-3).}
\end{itemize}
His duty is to direct the Convention's affairs and Secretariat’s work, together with other duties given to him by the Council.65

The Secretariat's other functions include: convening and preparing (in terms of place, invitation, et cetera) for the meeting of the Council, its subsidiary bodies and special working groups. The Secretariat is also the source of information; such as sending notifications and reports from and to the contracting parties in matters concerning the Convention and other related protocols. The Secretariat is also responsible for distribution of the members' national laws about protection of the marine environment to the parties, making presentations and giving technical support if the contracting parties request it to prepare legal documentation to carry out the dictates of the Convention and to service other works committees of the Council.66

7.6.4 Judicial Commission

The Judicial Commission was set up by the Executive Committee in 1989 and is made up of representatives from six member states, Iran, Iraq, Kuwait, Qatar, Saudi Arabia and the United Arab Emirates. Each representative serves a term of five years. The statutes of the Judicial Commission list its responsibilities:

1. The settlement of disputes between contracting parties about various aspects of the Convention and its Protocols, including the general obligations laid down in Article 3, the fulfilment of the obligations listed in the action plan and the instruments available to apply the Convention.

2. Disputes to determine civil liability and compensation for environmental damage also come under the jurisdiction of the Judicial Commission.

3. The Judicial Commission also has the power to offer, if the Council requests, an advisory opinion on how to interpret treaties on marine pollution control; how to apply rules of international law regarding marine pollution control; questions of liability which might represent a breach of rules of international obligation

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65 Article 18 (A&B).
66 CK. Art. 18(A) 1-9.
apropos the protection of the marine environment; how to interpret the rule and procedures of ROPME; and other issue which the Council may refer to it. 67

It can be seen from the organisational structure of ROPME, that the institutional structure and dispute settlement mechanisms of the Kuwait Convention differ from those in other UNEP regional regimes, except for the 1982 Jeddah Convention.68 The Kuwait Convention provides a formal commission where the ROPME secretariat acts for the member states,69 as opposed to what is seen in UNEP where there is institutional supervision and the contracting parties regularly come together.70

Unlike provisions under UNEP, a special judicial commission is specifically set up under the Kuwait Convention for dispute settlement. In the event that the parties are unable to come to an agreement through negotiation, UNEP modules make available arbitration for dispute settlement.71

7.7 Marine Emergency Mutual Aid Centre (MEMAC)72

The contracting parties have been conscious of the importance of mutual cooperation in emergency cases of marine pollution. Hence, in the signed protocol of the Convention on 24 April, 1978. Article 3 of the protocol urges the establishment of the Marine Emergency Mutual Aid Centre (MEMAC).73

67 Art. 24 (3) of the KC.
68 See Article XVI of the 1982 Jeddah convention for the conservation of the red sea and gulf of ADEN Environment
70 For Example Article 13 of the 1976 Barcelona Convention for the protection of the Mediterranean sea against pollution provides: “the contracting parties designate the United Nations Environment Programme as responsible for carrying out Secretariat functions...”.
7.7.1 The Aim of the Centre

The aim of the Centre is to strengthen the capabilities of the member states through effective cooperation to fight pollution caused by oil and other harmful substances in emergency situations. The centre was also established to support contracting parties, if required, to control pollution and to smooth the progress of information exchange, and cooperation in technical and training areas. Moreover, the Centre may also initiate proposals for fighting oil pollution\textsuperscript{74} and other harmful substances on the region. However, in other words, the purpose of the Centre is to provide co-operative and effective measures to deal with marine emergencies which result in marine pollution by oil and other harmful substances.

7.7.2 The Functions of the Centre

The Centre collects and distributes information about issues covered in the protocol to member countries. These includes legislative declarations which pass laws by member countries and its special authorities in these matters, and the private information regarding methods of special research to fight pollution in emergency cases and preparation of a list of expertise, available tools for possesses purpose by member countries. His duty also includes helping the members when they make requests to prepare rules, plans for this purpose and cooperate in training programs to develop information collection systems. It also creates proper links with other regional organizations by attending international meetings, and the preparation of periodic reports\textsuperscript{75}.

The Protocol forced the member countries to provide the Centre and the rest of the members with information relating to its laws, plans, systems and working establishments in the field of the subject of the protocol. It also ordered them to force their employers to request from the ships' captains, pilots and labourers who work in submerge zone in field of marine environment, limited only in that specialization

\textsuperscript{74} Article (3) of Kuwait Protocol.
countries, to report any unexpected happenings in marine area. The report should be submitted to the international authority and to the centre. The person receiving this report has to inform the centre and members, give notice to the country that owns the vessel and make a report according to a form attached with the convention. The Centre has to immediately declare and spread the information, including the report, as it may not have been distributed to all member countries by the country submitting it.

It is also has the duty to motivate the member countries to construct a special international authority for implementing the rules according to the protocol by cooperating with the centre and with international systems similar in member countries.

According to Dr. Abdulrahman Alawadi, "In fact, many precautionary procedures have been taken by the member states, either individually or collectively under the MEMAC umbrella, to avoid oil spill accidents in the region and to protect ROPME Sea Area from oil pollution. Several programmes and projects have been executed in this context and some of them are still in progress. The member states have been playing an important role in this field. However, more cooperative efforts are needed to safeguard this very vital body of water in our region."

### 7.8 Regional Organization for the Protection of the Marine Environment (ROPME 1979) Protocols

ROPME Protocols have been developed in accordance with the recommendations of the Legal Component of the Kuwait Action Plan (KAP). These Protocols have made the mandate of the Kuwait Regional Convention more specific and have had an important role in harmonizing the policies of Contracting States concerning the protection of the environment under the national jurisdiction of each State and that of the Region. Meetings of regional/international experts are convened regularly to

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76 The Protocol Concerning Regional Co-operation in Combating Pollution by Oil and other Harmful Substances in Cases of Emergency (1978) at pp. 19-20.
77 Art. 3 (3) of Kuwait Protocol.
78 Silver Jubilee Report, loc. cit. and p.10.
79 Executive Secretary of ROPME.
80 Ibid.
examine the status of implementation of various programmes in order to ensure that the provisions of the Protocols are complied with.

7.8.1 The Protocol Concerning Regional Co-Operation in Combating Pollution by Oil and Other Harmful Substances in Cases of Emergency

This protocol is made up of 13 Articles. It applies not only to the 'Sea Area', specified in the convention, but also to internal waters, including ports, harbours, estuaries, bays and lagoons, which may be treated as part of the 'Sea Area'.81 A "marine emergence" is, according to the protocol, any casualty, incident, occurrence or situation which produces substantial pollution of the marine environment by oil or other harmful substances. The actual cause is irrelevant. It can be due to incidents with tankers, blowouts, or the presence of oil resulting from the failure of industrial installations.82

As "substantial pollution" is an imprecise term and is not defined in practical terms this means that there are considerable problems in actually fulfilling this obligation. Nevertheless this general obligation would seem to be valid for all marine pollution in emergencies regardless of the origin, whether a result of incidents involving vessels, offshore exploration or exploitation of marine resources, or land-based activities.

Article 2 of the Protocol requires the co-operation of various states in taking the appropriate, effective measures when there is any threat of pollution to the marine environment, or when there is a threat to the interests of one or more of the states due to oil or other harmful substances originating from marine emergencies.

Contingency plans need to be put into place to deal with marine emergencies. This can be either on an individual basis or through bilateral or multilateral cooperation. It is also necessary that contingency plans be promoted either individually, or through

81 Art. 4 of Protocol 1 to the Kuwait Convention.
82 Ibid., Art. 1 (2).
bilateral or multilateral co-operation, and the means of combating pollution (equipment, ships, aircraft and manpower) are maintained and can be made available at short notice.

After the Marine Emergency Mutual Aid Centre (MEMAC) had been set up, five member states (Bahrain, Kuwait, Oman, Qatar, and Saudi Arabia) issued national oil spill contingency plans, and the United Arab Emirates issued a contingency plan for their national oil company which covers the five petroleum loading ports.  

In the case of a marine emergency, the State party involved needs to consider the nature and range of the marine emergency and the appropriate coordinated actions need to be taken in cooperation between the affected states and MEMAC. An appropriate body charged with the task of putting the Protocol into effect must be set up and maintained by State. The relevant authorities of the contracting States need to focus on co-operating and co-ordinating efforts in the following areas:

- Distribution and allocation of materials and equipment; training of personnel;
- Surveillance and monitoring of activities; methods of communication;
- Facilitation of the transfer of personnel, equipment, materials and other resources covered by the Protocol.

It is essential for State parties to disseminate information on the appropriate responsible national authority and on national laws, regulations and other legal measures regarding the application of the Protocol and putting into practice national marine emergency contingency plans. Any marine emergency in the ‘Sea Area’ must be reported to the relevant national authority and to MEMAC by masters of ships, pilots of aircraft, and persons in charge of offshore platforms and other similar structures operating in the marine environment.

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84 Article 10 of Protocol I to the Kuwait Convention.
85 Ibid., Article 12.
86 Ibid., Article 5.
87 Ibid., Article 7.
Chapter Seven

The contracting parties should do their utmost to provide assistance requested by any other party in a marine emergency. The parties involved may call on the Centre’s facilities to co-ordinate the response to any marine emergency. In the case of a special emergency, the Centre may demand the activation of the resources which the parties have provided.88

Lastly it is to be said that this protocol would be more efficient in serving its objectives if MEMAC was given authority to carry out operations to combat pollution by oil and other harmful substances at the regional level without having to get any decisions ratified by the council of the regional organisation, as is laid down in Article 3(2) (G) of the protocol.

7.8.2 The Protocol Concerning Marine Pollution Resulting from Exploration and Exploitation of the Continental Shelf89

This protocol is one of the earliest and was the first to be adopted under the auspices of the UNEP and gives detailed regulations, specifically regarding offshore exploration and exploitation activities. In some ways it parallels the 1992 UNEP guidelines on the prevention of pollution from offshore mining and drilling.90 It covers a wide range of areas among which are preventive measures prior to starting offshore operations, preventive measures while they are in process, abandonment measures, licensing, and specific measures on the regulation of discharges.

The Protocol is valid for the ‘Sea Area’ as defined in paragraph (a) of Article 1 of the KUWAIT Convention, as well as parts of the contiguous continental shelf. In effect the Protocol applies to the whole of the sea bed area divided amongst the littoral Gulf States.

88 Ibid., Art. 11.
89 On 29 March 1989, the protocol was signed by member states, and entered into force on 17 February 1990. The Protocol was adopted in accordance with Articles III (b) and VII of the Kuwait Convention. The protocol consists of fifteen articles.
In Article 1 (13) of the Protocol, offshore operations is taken to mean any operations conducted in the Protocol Area for the purpose of exploring oil or natural gas, including any treatment before transport to shore and any transport of the same by pipeline to shore. It includes construction, repair, maintenance and inspection, or similar operation incidental to the main purpose of exploration or exploitation.

‘Offshore installation’ is defined in Article 1 (12) of the Protocol as any structure, plant or vessel in the Protocol Area, whether floating or fixed to or under the seabed, which is used in connection with offshore operations. This covers any tankers in the area, treatment or storage plants or facilities to control the crude oil flow; and includes any integral part of the structure, plant, equipment or vessel, attached lifting gear or safety mechanisms, and other parts of equipment specified by the contracting state as being part of it.

It is required that State Parties ensure that all appropriate measures are taken to prevent, abate and combat any marine pollution which are an effect of the exploration and exploitation of the bed of the territorial sea and its sub-soil and the continental shelf. However they must consider what is the best available economically feasible technology. Further additional, appropriate steps must be taken by the contracting states to combat such marine pollution, whether individually or collectively.\(^{91}\)

A company that plans to operate offshore must comply with the relevant laws and regulations and must apply to the competent state authority for the necessary license.\(^{92}\) An environmental impact statement must be sent to the appropriate agency demonstrating that the operation will not involve any unacceptable environmental damage.\(^{93}\)

ROPME stipulates that environmental impact statements (EIS) must include information on the type of operation, and need to describe the way in which it could

\(^{91}\) Art. 2 of the 1989 Kuwait Protocol
\(^{92}\) Ibid., Art. 3.
\(^{93}\) Ibid., Art. 4.
possibly create a significant risk of pollution. The competent state authority should follow up on the EIS. The operator also needs to provide ROPME with a summary which needs to be sent out to other contracting states within four days so that they can make any representation, which needs to be taken into consideration by the competent state authority before they can issue a license. Alternatively, a survey of the potential risk of pollution to the marine environment and aquatic life can be carried out by or under the supervision of an independent approved body. Article 9 (3) goes on to require the operator to conduct surveys of environmental conditions around his offshore installation, which can either be periodically or at the request of the competent state authority. These surveys can be used to remove any debris resulting from their operations which might interfere with lawful fishing.

However, the Protocol does not give any guidelines or procedures for the assessment of how debris in offshore structures or pipeline may interfere with lawful fishing. It would indeed have been preferable if the regulations had been extended to apply to debris which affects or is likely to affect the marine environment itself as does for example Article 5 (2) of Annex 3 to the 1992 OSPAR Convention which stipulates that "no such permit shall be issued if the disused offshore installation or disused offshore pipeline contains substances which result in or are likely to result in hazards to human health, harm to living resources and marine ecosystems, damage to amenities or interference with other legitimate uses of the sea".

Materials released into the sea can be divided into two types: discharges contaminated by oil, and general waste and sewage. Below are the measures prescribed for disposing of either group:

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95 Ibid., Art. 4 (C)
96 Ibid., Art. 4 (2)
97 Ibid., Art. 4 (3)
98 Ibid., Art. 4 (2)
99 See OSPAR 92.
Discharges contaminated by oil:

- Within the "Special Area"\(^{100}\) of the Protocol, no discharges of machinery space drainage from an offshore installation are allowed, unless the oil content does not exceed 15 mg per litre undiluted.
- Except for ones resulting from drilling operations, discharges from offshore installations should not have an average oil content of more than 40 mg per litre per calendar month or of 100 mg per litre at any one time.
- Oily wastes should only be released well below the surface of the sea.
- Operators must take all necessary precautions to keep losses of oil into the sea from oil and gas collected or flared from well-testing to a minimum.
- The use of oil based drilling fluids is only allowed with permission from the competent state authority. Apart from exceptional circumstances, such permission will normally be given. If oil-based drilling fluid is used, the drill cuttings need to be properly treated to reduce the oil content before disposal and wash waters shall not be discharged in a place where they may be carried to mix with the same drill cuttings. The discharge point for the cuttings shall, as appropriate, be well below the surface of the water.
- The contracting parties may not discharge any oil based drilling fluid to any parts of the Protocol Area.
- Water-based drilling mud discharged from offshore operations must not contain any persistent systemic toxins which might continue to pose environmental threat.
- If the concentration of oil in a discharge is greater than the permitted levels, the operator must prove that it is the result of an accident or due to circumstances beyond his control.

General waste and sewage:

- Practicable measures should be undertaken to prohibit the disposal of all plastics, including, but not limited to, synthetic ropes, synthetic fishing nets and

\(^{100}\) Special Area means the part of the Sea Area Located North-West of a Rhomb Line between Ras Al Hadid (22o30'N, 59o48'E) and Ras Al Fasheh (25o04'N, 61o25'E), Article I (18) of the 1989 Kuwait Protocol.
plastic garbage bags; all other garbage, including paper products, rags, glass, metal, bottles, crockery, drainage lining and packing materials.

- Food wastes should be discarded into the sea as far as practicable from land, in any case not closer than 12 nautical miles from land.

- When garbage is mixed with other discharges which have differing disposal or discharge requirements, the more severe requirements shall apply.

- Sewage from an installation with a permanent staff of ten or more may not be discharged into the Protocol Area without being disinfected with an approved system and may not be discharged closer than four nautical miles from land. Alternatively it may be discharged at least twelve nautical miles from the nearest land or must have passed through a treatment plant approved by the competent state authority. In no case may the discharge produce visible floating solids or discolouration of the surrounding water.\(^{101}\)

- States must put in place an adequate system for collecting and properly disposing of general garbage, must provide instruction on its use, and must exact penalties for its improper disposal.\(^{102}\)

Precautionary Plans and Abandonment Measures:

Before the use of chemicals during offshore activities operators, a detailed ‘Chemical Use Plan’ which complies with national regulations must be drawn up and presented to the national authorities.\(^{103}\) This must be approved by a competent state authority which can prohibit, limit or regulate the use of certain chemicals and can impose conditions on storage and use, taking into consideration the guidelines issued by ROPME.\(^{104}\) Only in cases of emergency as specified in Article 9 1(a) may any

\(^{101}\) Art. 10 of the 1989 Kuwait Protocol.

\(^{102}\) Ibid., Art. 12

\(^{103}\) ‘Chemical Use Plan’ means a plan drawn up by the operator of an offshore installation which shows: (a) the chemicals he intends to use in his operations; (b) the purpose or purposes for which he intends to use the chemicals; (c) the maximum concentrations of the chemicals he intends to use within any other substances, and maximum amounts he intends to use in any specified period; (d) the area within which the chemical may escape into the marine environment; provided that where there is no known danger of a chemical escaping into the marine environment, it need not be included in the plan, ibid., Article I (3).

unauthorised substance be used without prior notification. An approved contingency plan must be in place, which can be made effective and fully operational to deal with any possible eventuality which may cause significant pollution to the marine environment. Clear definitions of the respective roles and powers of the industry and the authorities concerned with offshore operations need to be incorporated. Operators must develop a contingency plan which is in harmony with existing national and local contingency plans and any other plan prepared by MEMAC. This obligation helps advance action plans for emergency cases of offshore operations and also increases coordination between oil companies and national authorities. However what these measures can achieve and the effectiveness of such co-operation remain to be seen.

Operators are required by Article 7 of the 1989 Kuwait Protocol to maintain equipment and devices on their offshore installation in good order and available at all times in accordance with relevant industry practice so as to minimize the risk of accidental pollution and to facilitate a prompt response to a pollution emergency. The equipment and devices are to be periodically examined and to be approved by the competent State Authority, in accordance with good oilfield or other relevant industry practice.

The Protocol requires that contracting parties ensure that no offshore operations interfere unjustifiably with lawful navigation, fishing or other activities carried out under bilateral or multilateral agreements or on the basis of international law. When setting up such installations, existing pipelines, cables and specially protected areas need to be taken into consideration.

Disused or abandoned offshore platforms and other sea-bed apparatus must be removed in whole or in part by the operator who is required to have sufficient

105 Art. 11 of the 1989 Kuwait Protocol.
106 Ibid., Art. 8
107 Ibid., Art. 5
108 Ibid., Art. 13 1(b). This provision is inspired by Article 60 (3) of the 1982 UNCLOS, which made reference to offshore abandoned or disused structures. It reads: “any installation or structures which are abandoned or disused shall be removed to ensure safety of navigation taking into account any generally accepted international standards established in this regard by the competent international organization. Such removal should also have due regard to fishing, the protection of the marine environment and the rights and duties of other states. Appropriate publicity shall be given to the depth, position and
resources to do so at his disposal\textsuperscript{109} so as to guarantee safe navigation and fishing. The contracting states who have interests in fishing need to agree on a common policy on removing installations and on how to determine whether or not installations must be removed, taking into consideration ROPME’s guidelines. Whether to be removed or not, all pipelines must be thoroughly rinsed out to remove residual pollutants.\textsuperscript{110}

The regulations in the 1989 Protocol on applying the licensing system are more detailed and stringent as are those regarding best available and feasible technology, EIS, contingency planning and potential pollution caused by chemicals offshore activities and the disposal of garbage and sewage.

The requirement to partially or completely remove abandoned or disused offshore units and associated structures that may interfere with navigation or affect the fishing industry is completely new and is found in the provision that “no offshore installation which in use has floated at or near the sea-surface, and no equipment from an offshore installation, shall be deposited on the sea-bed of the continental shelf when it is no longer needed”\textsuperscript{111}

It is of significant benefit to the Arabian Gulf area that marine environmental protection regulations for offshore platforms and structures have been set out in more detailed and concrete form and may also help to advance international conventional law for offshore operations and possibly help shape the pattern to be followed by other UNEP regional seas programmes.

On the other hand to what extent the states comply with the requirements of the Protocol is debatable. Indeed, only some state parties to the Protocol fulfil their reporting obligations. In 1990 the national focal point in Qatar alone provided the

\textsuperscript{109} Ibid., Art. 13 (b)
\textsuperscript{110} Ibid., Art. 13 (2).
\textsuperscript{111} Ibid., Art. 13 (3).
Secretariat of ROPME with outlines of two action plans from the Qatar General Petroleum Corporation for changes to existing offshore installations.\textsuperscript{112}

A meeting of experts was held in October 1997 to look into the status of implementation of the Protocol concerning Marine Pollution resulting from Exploration and Exploitation of the Continental Shelf. At this meeting a regional action plan was developed and elements agreed on to be used in the preparation of national action plans for the implementation of the Protocol.\textsuperscript{113} However it is hard to gauge how effective the Protocol is by means of information submitted to the Secretariat without actual facts about what is happening in practice.

From the above it is obvious that this protocol of 1989 has approved most of the necessary measures and procedures for the protection and preservation of the marine environment from pollution resulting from the exploration and exploitation of the continental extension, nonetheless, it does not mentioned the civil responsibility and compensation for the damages, and this despite the fact that the Kuwait Convention article 13 has approved a general provision which obliges the member states to endorse the rules and lays down the appropriate procedures to identify the compensation and the responsibility for the violation of the commitments which are contained in the Kuwait Convention and its protocols. This does not undermine the value and importance of the protocol at regional and international levels.

At the regional level the protocol plays an important role in the protection of the marine environment from pollution resulting from the exploration and exploitation of the continental expansion of the Gulf Area which has witnessed a massive number of such activities. At the international level it can be seen as a legal episode through which the Gulf States provide a valuable contribution and a considerable addition to international environmental law.


7.8.3 Protocol on the Protection of the Marine Environment against Pollution from Land Based Sources\textsuperscript{114}

The Protocol for the Protection of the Marine Environment from Land-Based Sources was adopted on 21 May 1990 as an implementation of Articles 3 (B) and 6 of the Kuwait Convention and entered into force on 2 January 1993.\textsuperscript{115}

The Protocol followed UNEP guidelines, consists of a preamble, sixteen articles and three technical annexes and was adopted on the basis of Articles 207, 201 and 213 of the 1982 UNCLOS and the 1985 Montreal Guidelines\textsuperscript{116} for the Protection of the Marine Environment against Pollution from Land-Based Sources.\textsuperscript{117}

The area to which the Protocol applies is the ‘Sea Area’ as defined in Article 11, paragraph (a) of the Convention as well as the waters on the landward side of the baseline from which the breadth of the territorial sea of the contracting states is measured, and, in the case of watercourses, goes up to the freshwater limit and includes inter tidal zones and salt-water,\textsuperscript{118} - in other words the internal waters of members states are also included. This is in response to the fact that harmful substances can often be carried into the marine environment by internal waters.

Land-based sources are defined in Article 1 (8) and Article 3 to mean: “Municipal, industrial or agricultural sources, both fixed and mobile on land, discharges from which reach the Marine Environment” within the territories of the contracting states, in particular:

- Outfalls and pipelines which discharge into the sea;


\textsuperscript{115} See text in the publication of the Regional Organisation for the Protection of the Marine Environment, (Kuwait: ROPME, 1990).

\textsuperscript{116} 24 May 1985, UNEP/GC/DEC/13/1811.

\textsuperscript{117} Preamble of Protocol 3 of the Kuwait Convention for the Protection of the Marine Environment Against Pollution from land-based sources, (hereinafter the 1990 Kuwait Protocol).

\textsuperscript{118} Art. 2 of the 1990 Kuwait Protocol.
• Rivers, canals or other watercourses, including those underground;
• Fixed or mobile offshore facilities for purposes other than exploration and exploitation of the sea bed, its subsoil and the continental shelf;\(^{119}\) and
• Any other land-based sources within the boundaries of the contracting states, whether pollution is carried via water, the atmosphere\(^{120}\) or directly.\(^{121}\)

All types of point and non-point sources of land-based marine pollution are covered by the Protocol. A broader view of pollution of the marine environment is taken, which can be seen in the extent that pollution associated with man-made structures in the Gulf which are not used for petroleum drilling activities and indirect pollution (via water or the atmosphere) is also dealt with. Radioactive waste as a consequence of armed conflict and radioactive leakage from nuclear reactors in the region could have a serious effect on the environment.\(^{122}\)

The 1992 OSPAR Convention contains an extended definition of pollution from land-based sources and it would be prudent for the definition in the general obligation of Article 3 (d) to be extended as a future precautionary measure.\(^{123}\)

The Protocol applies to all sources of marine pollution discharge from land-based sources in the coastal zones of member states, and is very much aware of the threats posed by untreated, insufficiently treated or inadequately disposed of domestic and industrial waste being discharged into the coastal zones.\(^{124}\)

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\(^{119}\) Article 1(e) and 1(i) of the 1992 Convention from its definition of land-based sources offshore activities, which are used for the purposes of the exploration, appraisal or exploration of liquid and gaseous hydrocarbons.

\(^{120}\) Article 6 of the Kuwait Convention stipulates water-borne and air-borne as types of land-based sources covered by the convention. It provides: “The contracting states shall take all appropriate measures to prevent, abate ad combat pollution caused by discharges from land reaching the Sea Area whether water borne, air borne or directly from the coast including outfalls and pipelines”

\(^{121}\) Article III of the Kuwait Protocol. Similar Provisions with slight differences are found in Article 4 (1) 1980 of the Athens Protocol, Article II of the 1983 Quito Protocol.

\(^{122}\) See S. Tell, Personal Communication with UNEP, 1996; GEO-1 Chapter 2: Regional Perspectives: West Asia Major Environmental Concern.

\(^{123}\) Article 1(e) of the 1992 OSPAR Convention recognises the problem of disposing of radioactive waste in repositories constructed in bedrock under the seabed.

\(^{124}\) Preamble to the 1990 Kuwait Protocol.
As is sketched out in Annex 1, State parties are obligated by the Protocol, individually or jointly, to develop and put into effect action programmes and measures based on source control. The states need to formulate programmes and measures and lay down a timetable for their implementation, which must be fixed and periodically reviewed and revised.\textsuperscript{125}

Small industrial operations often have problems in treating their effluents because of technical or economic limitations. In order to not restrict the development of such new industries, industrial location planning programmes are outlined in Annex 2 to the Protocol.\textsuperscript{126} This reflects the necessity of considering the needs of small industries, where a certain amount of land-based pollution must be tolerated.\textsuperscript{127} The contracting parties need to lay down regional guidelines and criteria, along with programmes and measures and schedule their implementation in order to reduce pollution from land-based sources through joint, and/or combined effluent treatment which should be periodically reviewed and revised.\textsuperscript{128}

There should be cooperation with the competent regional and international organisations to develop and adopt as appropriate:

- Regional guidelines, standards or criteria, regarding sea water quality where it is used for specific purposes necessary for the protection of human health, living resources and ecosystems
- Stricter local regulations for waste discharge and/or degree of treatment for specific sources based on local pollution problems.\textsuperscript{129}

The local ecological, geographical, and physical characteristics and the existing pollution in the marine environment must all be considerations when developing such

\textsuperscript{125} Article 4 of the 1990 Kuwait Protocol. Article 6 (1) of the 1992 Baltic Convention and Article 3 Annex 1 regulation 1 of the 1992 OSPAR Convention require states parties to prevent and eliminate pollution from land-based sources by using best available techniques and best environmental practice.

\textsuperscript{126} Article 5 (1) of the 1990 Kuwait Protocol.


\textsuperscript{128} Art. 5 (2) of the 1990 Kuwait Protocol.

\textsuperscript{129} Note that Article 6 of the 1990 Kuwait Protocol and Annex 3 (1) of the 1990 Kuwait Protocol prefers adaptation of strict local measures for the quality of sea water for the intended use rather than reliance on more general regulations which may be hard to implement.
regulations. The cost of the measures involved, the potential for modification of the existing installations, the economic capacity of the contracting states, and their need for sustainable development need to be given due weight.\footnote{130}{Art. 6 (1) (2) to the 1990 Kuwait Protocol.}

An independent inspectorate is needed to assess the economic capacity of each individual state party to prevent state parties being able to avoiding their obligation which would be the case if they were to exercise ultimate discretionary authority.

In order to discharge land-based pollutants, polluters must apply to the relevant state authority for a permit.\footnote{131}{Criteria governing the issue permits are contained in Annex 3. See regulation 2 of Annex 3 to the 1990 Kuwait Protocol.} Guidelines, standards, criteria, and regulations, programmes and measures are to be adopted and developed in keeping with the provisions of Article 14 of the Protocol and must be reviewed every two years and updated, if necessary.\footnote{132}{Art. 6 (4) to the 1990 Kuwait Protocol.} This is an important provision since it ensures that the measures are appropriate for current conditions.\footnote{133}{Procedures, measured and programmes should be developed as outlined in Annex 3 Regulation 1(d) for the following types of wastes: ballast water, slops, bilges and other oily discharges generated by land land-based reception facilities and ports, brine water and mud discharges, emissions, effluents and toxic effluents from petroleum installation, oily and toxic sludges from crude oil and refined products storage facilities, waste generated from coastal development activities, sewage and solid waste.}

Measures for monitoring activities and data management are set out in Article 7 which obliges parties to undertake the collection of data concerning the natural conditions of the 'protocol area', data on inputs of substances or energy that cause, or potentially cause, pollution from land-based sources and the levels of pollution within their internal and territorial waters, and to evaluate the effectiveness of measures undertaken to implement the Protocol.\footnote{134}{Art. 7 1(a) (b) (c) (d) to the 1990 Kuwait Protocol.}

The parties must also set up joint or collective comparable monitoring programmes and analytical quality control programmes.\footnote{135}{Ibid., Art. 7 (1) (2).} In other words, the parties are to be held responsible for the establishment and control of monitoring activities. However the extent to which these monitoring programmes can be effectively
implemented without scrutiny from an independent national or regional body is not clear. The services of such an independent body could also be expanded to include the provision of scientific, educational (training programmes) and technological assistance to state parties to help deal with all land-based sources of marine pollution.

Article 9 requires states to co-operate in putting the Protocol into effect, if discharges that may result in pollution to the ‘Protocol Area’ originate in their territories. However no party can be held responsible for pollution stemming from the territory of a non-contracting state but states need to co-operate to bring about a complete application of the Protocol.

Article 8 of the Protocol lays out the requirements for a prior Environmental Impact Assessment (EIA) during the planning and implementation stages of development projects in the coastal areas which are likely to result in considerable risk of pollution to the ‘Protocol Area’.

Technical guidelines for EIAs for development projects must be developed by parties, taking the following into account:

- The geographical location and the ecological state of the marine environment and the coastal areas;
- The nature, aims and scope of the proposed activities;
- Proposed methods, installations and other means to be used; and
- The likely direct and indirect, long- and short-term effects of activities on the marine environment.

Proposed measures for a reduction in risk of pollution must be recorded in a statement. A prior written authorization from the competent state authorities should be obtained, stating the outcome of the EIA and the findings or results of the assessment need to be distributed to all contracting states via the Regional Organisation so that states apt to bear the brunt of the environmental impact will be able to consult

136 Ibid., Art. 11 (1). See also Article 6 (4) of the 1992 Baltic Convention.
137 Ibid., Art. 11 (2). Similar provision is found in Article 1 of the 1980 Athens Protocol.
138 Article 8 (1) (2) of the 1990 Kuwait Protocol.
139 Ibid., Art. 8 (3)
with other concerned parties.\textsuperscript{140} As most contracting states do in fact have industries in the coastal region, this is significant, though it is as yet unclear as to how great a difference this will make.

Contracting states should co-operate in and coordinate scientific and technological research regarding land-based sources of pollution sources and should also exchange scientific and technical information.\textsuperscript{141}

There should be provision in accordance with the national legal systems for prompt and adequate compensation for environmental damage caused by natural or juridical persons under national jurisdiction. State parties must formulate and adopt appropriate procedures for liability cases concerning harmful damage due to land-based sources of pollution, and must make certain that compensation can be awarded according to their legal system.\textsuperscript{142}

The measures do include a general obligation that permit the adoption of different measures by the member states, ie. member states are not required to develop uniform criteria or measures. However contracting states do not seem to have developed such procedures.

Member states should communicate with each other and exchange information on what steps they have taken and their effects and on any problems they come across in putting the Protocol into effect.\textsuperscript{143}

Among its other duties, the Council will also:

- Assess the effectiveness of methods being used and advise as to whether other methods should also be introduced;
- Modify any Annexes to the Protocol;

\textsuperscript{140} Ibid., Art. 8 (4)
\textsuperscript{141} Ibid., Art. 9
\textsuperscript{142} Ibid., Art. 13 (1).
\textsuperscript{143} Art. 12 (1) of the 1990 Kuwait Protocol. Art. XII (2) of the said Protocol specifies the kind of data to be exchanged between the contracting states.
• Prepare, accept, and go over the regional guidelines, standards, programmes and measures called for by the Protocol;

• Devise procedures for exchange of information;

• Execute any role necessary as required for the successful application of the Protocol; and

• Put into place any mechanism needed for the Protocol to be fully executed.\textsuperscript{144}

It is required that contracting states put into effect the Protocol’s Annexes unless otherwise agree.\textsuperscript{145}

Embracing Protocol 3 of the Kuwait Convention has gone a long way towards tackling the problem of pollution from land-based sources. It is of significance that it applies to all such sources as there is a concentration of industrial development in the coastal areas of most of the member states. Requiring an Environmental Impact Statement demonstrates the Protocol’s emphasis on a precautionary approach.

In 1995, the ROPME Council’s Regional Programme of Action for the Protection of the Marine Environment from Land-Based Sources went a long way towards meeting the terms of the Washington Declaration, and the 1995 Global Plan of Action for the Protection of the Marine Environment from Land-Based Activities.\textsuperscript{146}

This programme had 2 phases – the first including an update of surveys of source categories, their effect and capabilities, the second going on to the formulation of guidelines, standards and criteria for their management. The surveys were aimed at identifying resources which were at risk and land-based sources of pollution in the ‘ROPME Sea Area’. Additionally, a programme was designed aimed at managing the

\textsuperscript{144} Ibid., Art. 14, this Article is similar to Article 14 of the Mediterranean Protocol.

\textsuperscript{145} Ibid., Art. 15

\textsuperscript{146} The 1995 Global Plan of Action (GPA) called on countries to develop national and regional programmes of action to protect human health, environment and to prevent, reduce and control land-based activities that contribute to the degradation of the marine environment. Land-based activities affecting the health of the world’s oceans include the following source categories: sewage, heavy metals, persistent organic pollutants, radioactive substances, oils/hydrocarbons, litter, destruction. See text in UNEP (OCA)/LBA/IG.2/7.
major rivers of the region, all of which carry a sizeable quantity of pollution to the sea area. Apart from the ROPME member states, Turkey and Syria are also implicated.\footnote{ROPME Secretariat, personal communications, 1996, see GEO-1, Chapter 3: Policy Responses and Directions, West Asia: Regional Initiatives, Report of the Secretary General (1998), United Nations General Assembly, Fifty-third session, Agenda item 38 (a) Oceans and the law of the sea: law of the sea.}

In spite of all the above actions, some areas still need modification. More regulations on best environmental practice and best available techniques would make the Protocol more inclusive. The Protocol is marked by a lack of or only ineffective cooperation in tackling land-based marine pollution, as is also the Kuwait Convention. Other areas such as the Mediterranean and the South-East Pacific have been much more successful in this.\footnote{Alan E. Boyle, "Land-Based Sources of Marine Pollution: Current Legal Regime", 16 Marine Policy 35 (1992). The coastal states in the Mediterranean region have launched positive steps towards protecting the Mediterranean environment through co-operation. See Chirop, A. E. (1992) The Mediterranean Sea and the Quest for Sustainable Development, Ocean Development and International Law, vol. 23, p. 17.} It could be useful to draw on the experience gained in these regions.

**7.8.4 Protocol on the Control of Marine Transboundary Movements and Disposal of Hazardous Wastes and Other Wastes**

In 1989 in co-operation with UNEP, the ROPME secretariat produced the first draft of this protocol. This was examined in three further legal-technical expert meetings and by the secretariat of the Basel Convention, ELI/PAC of UNEP and IMO who made further amendments. The final draft was brought before the Fourth Legal/Technical Expert Meeting in Tehran in December 1997 and the Protocol was finally signed on behalf of the six member states at the plenipotentiaries’ meeting in Tehran on 17 March 1998.\footnote{Hereinafter the 1998 Kuwait Protocol. See text in the publication of the Regional Organisation for the protection of the Marine Environment, (Kuwait: ROPME, 1999).} However, to this present time, the Protocol is still not yet in force.

The intention is to establish a regional regime which will control international trade in waste in the Gulf marine environment and contains most of the elements of the
Basel Convention with only slight variations.\textsuperscript{150} With the exception of Iraq, all the contracting parties are also parties to the Basel Convention.\textsuperscript{151}

The Protocol focuses only on substances which have been disposed of, are intended for disposal, or which national law requires to be disposed of.\textsuperscript{152} Even though this is a broad definition, in effect it only applies to household and hazardous wastes.\textsuperscript{153} Hazardous wastes characterised by the Protocol are the sort recorded in Annex 1 other than ones with the qualities in Annex 3 and other types are recorded in Annex 2. Although radioactive wastes and wastes produced by offshore installations are not included in the Protocol,\textsuperscript{154} radioactive wastes are within the scope of both the Bamako and Lome Conventions\textsuperscript{155} and if fact Article 4(2) of the Bamako Convention even extends its scope to include a ban on dumping and incineration of wastes in the marine areas and on the high seas.

As long as transboundary movements and disposal of hazardous wastes and other wastes do not affect the marine environment, the 1998 Kuwait Protocol does not apply.\textsuperscript{156} It is applicable only to transboundary movements and it is left to the discretion of the member states as to how hazardous wastes are disposed of and how other wastes are regulated, or prohibited.

It is noteworthy that the Protocol is the only one of the basic legal instruments pertaining to the hazardous waste export issue that does not explicitly include the prohibition or regulation of transboundary movements of hazardous and other wastes, overland or airborne. In fact the Bamako Convention even requires member states to

\begin{footnotes}
\item[150] Adoption of the Protocol has been in line with the requirements of the 1989 Basel Convention. The Preamble of the Protocol provides “taking into account Article 11 of the Basel Convention, and adhering to the spirit of that Convention”.
\item[151] The countries that ratified the Basel Convention were Bahrain (13.01.93), Kuwait (09.01.94), Oman (09.05.95), Qatar(07.11.95), Saudi Arabia (05.05.92) and the United Arab Emirates (15.02.93).
\item[152] See Art. 2(1) of 1998 Kuwait Protocol. The same definition is incorporated in Article 1(c)(d) of 1996 Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Waste and Their Disposal (hereinafter, the 1996 Mediterranean Protocol); Article 2(1) of the Basel Convention and Article 1(1) of the Bamako Convention.
\item[153] Art. 1, 2(1) of the 1998 Kuwait Protocol. See also A. Boyle.
\item[155] Art. 2(2) of the Bamako Convention and Article 39(3) of the 1989 Lome Convention.
\item[156] Art. 1(4) of the 1998 Kuwait Protocol
\end{footnotes}
apply the Convention to aircraft registered in their territory and reads “Each Contracting Party shall prohibit Vessels flying its flag, or aircraft registered in its territory from carrying out activities in contravention of this Convention”.157

The area of application is the ‘Sea Area’ as outlined in Article II of the Convention along with the waters on the landward side of the baselines as well as watercourses up to the fresh water limit which means that the parties’ internal waters are also included.

In the Protocol, transboundary movements are taken to include any movement of wastes, hazardous or otherwise, being transported from the area under the authority of one state to or through the area either under or not under the authority of another state insofar as at least two states are included.158 Disposal also takes in landfill, release into watercourses, the sea, or seabed incineration as well as permanent storage or recycling.159

Under the Protocol state parties are required to cut down to the minimum that social, technological and economic factors allow, the quantity of hazardous wastes and other wastes released. The preamble acknowledges that reduction or eliminate at source of waste, is the most effective way to reduce risk to human health and the environment160 or, where this is not feasible, these should be disposed of in an environmentally sound way at or near the place of origin. However how to achieve this in practical terms is not tackled.161

157 Art. 11(3) of Bamako Convention
158 Ibid., Art. 2(3). Identical definitions can be found in Art. 2(3) of the Basel Convention, Article 1(4) of the Bamako Convention and Art. 1(f) of the 1996 Mediterranean Protocol.
159 Art. 2(13) and Annex IV of the 1998 Kuwait Protocol
161 Note that Art. 8(8) of the 1998 Kuwait Protocol requires parties to Endeavour to promote sound environmental management of hazardous wastes or other wastes in accordance with the Regional Technical Guidelines. These guidelines may further elaborate on the reduction and elimination processes.
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The export of hazardous wastes or other wastes to other parties that forbid the import of such wastes is also not allowed.\textsuperscript{162} It is required that State Parties manage hazardous and other wastes to be exported in an environmentally sound manner, during all stages of the process\textsuperscript{163} hence the export of hazardous wastes depends upon its correct management wherever its destination.

Persons engaged in the management of hazardous wastes and other wastes must take all proper measures to avoid pollution, and if such pollution does occur, they should take proactive measures to minimize the effects.\textsuperscript{164} Hazardous wastes and other wastes must be packaged, labelled, and transported in conformity with generally accepted and recognized international rules and standards during transboundary movement.\textsuperscript{165} "Generally accepted and recognized international rules and standards" is taken to mean those included in the 1973/78 International Convention for the Prevention of Pollution from Ships and its Protocol, MARPOL, and the 1972 International Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter Convention whose 1996 Protocol as recognized in the Preamble to the 1998 Protocol.

It is also requested that such hazardous wastes be accompanied by a moving document from the origin to the point of disposal.\textsuperscript{166} Parties are also obliged to monitor the effects of management of hazardous wastes and other wastes on human health and the environment\textsuperscript{167} and must declare illegal traffic in hazardous wastes as criminal.\textsuperscript{168}

\textsuperscript{162} Art. 4(13) of the 1998 Kuwait Protocol.
\textsuperscript{163} Ibid., Art. 4(7). It should be noted that Article 2(4) of the 1998 Kuwait Protocol provides “Environmentally sound management of hazardous wastes or other wastes’ means taking all practicable steps to ensure that hazardous wastes or other wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes”. See also Article 1(10) of the Bamako Convention and Article 2(8) of Basel Convention. However, the 1996 Mediterranean Protocol differs slightly to include the phrases “...are collected, transported and disposed of (including after-care of disposal sites)...”
\textsuperscript{164} Art. 4(13) of the 1998 Kuwait Protocol.
\textsuperscript{165} Ibid., Art. 4(4).
\textsuperscript{166} Ibid., Art. 4(5).
\textsuperscript{167} Ibid., Art. 4(8).
\textsuperscript{168} Ibid., Art. 4(10).
In each contracting state, a competent authority must be set up that will be responsible to oversee the execution of the Protocol's obligations. The Protocol will not affect in any way the sovereignty of contracting states over their territorial sea, exclusive economic zones, continental shelves and navigational rights and freedoms as provided for by international law. Additionally, contracting states may impose further requirements insofar as they are in conformity with the provisions of the Protocol and in accordance with the Basel Convention and the rules of international law.

Imports of wastes from non-contracting states into or through the 'Protocol Area' to any other contracting state are prohibited although transboundary movements of hazardous wastes and other wastes for resource recovery, recycling, reclamation, direct re-use or alternative uses may be authorized from a non-contracting state if the state of import possesses the facilities and technical capacity to be capable of managing the wastes in an environmentally sound manner if the state of export does not have the proper facilities necessary for the disposal of the hazardous wastes and other wastes in an environmentally sound manner and if the movement of wastes is consistent with all relevant international instruments and national laws.

Disposal of wastes may only take place if they are destined for operations specified in Annex 4 section B. All ships must have adequate waste receiving facilities on-board prior to discharging wastes to national/regional reception facilities, and adequate national or regional facilities must be provided for such wastes produced in ports. Other wastes can only be disposed of with prior permission from the competent authority in each contracting state.

Hazardous wastes or other wastes can be exported by a state party to a non-contracting state party if the state concerned has been notified by the state of export, the state of import has the facilities needed to manage the hazardous wastes and other wastes in an environmentally sound manner, and the movement is consistent with the

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169 Ibid., Art. 4(12).
170 Ibid., Art. 4(14).
171 Ibid., Art. 12.
172 Ibid., Art. 5
173 Ibid., Art. 6.
requirements of the Basel Convention and other relevant international agreements and national laws.\footnote{Ibid., Art. 7.}

Contracting states are allowed to export hazardous wastes and other wastes between themselves insofar as the requirements set forth in Annex 4 section B are met, or if Regional Technical Guidelines have been adopted by the Council, the state of import has the facilities and technical capacity to manage the hazardous wastes, and other wastes in an environmentally sound manner and if the state of export does not possess the capacity, facilities or suitable sites for their disposal in accordance with the Regional Technical Guidelines.\footnote{Ibid., Art. 8(1).}

The parties involved must be advised in writing by the state of export of the proposed movement of the hazardous wastes or other wastes. All the information specified in Annex 5 section A must be sent to all member states concerned.\footnote{Ibid., Art. 8(3).} The importing state then must respond, either giving its agreement with or without conditions, denying permission or asking for additional information. Only when the state of export has received the written consent of the state transit may any transboundary movement be initiated.\footnote{This provision specifically requires the 'prior written consent' of the state of import and the state(s) of transit within thirty days which has to be party to the Protocol. This is probably because Transboundary movements are destined to take place within the maritime area of the member states in the Gulf. Article 6(3) of the 1996 Mediterranean Protocol does not indicate whether or not, the transit state has to be party to the Protocol.} However if no response has reached the exporting state within thirty days, the state of export may allow the export to proceed through the state of transit.\footnote{Art. 8(4)(5) of the 1998 Kuwait Protocol. The prior written consent' of the state of import and the state(s) of transit is also required in Article 6(1) of the Basel Convention and Article 6(1) of Bamako Convention.} A copy of the movement documents as laid down in Annex 5 section B must be sent to the Organisation and to the importing state, and any transit state may insist on the wastes being covered by insurance, bond or other guarantee.\footnote{Ibid., Art. 8 (6) (7)}
In the case of a third party using port facilities, the contracting state that has national jurisdiction over port facilities used in the export of hazardous wastes and other wastes, and which may or may not permit the use of such facilities, shall be considered the state of export.\textsuperscript{180}

Illegal traffic\textsuperscript{181} is taken to be any transboundary movements of hazardous wastes and other wastes which are not in accordance with the provision of the Protocol or the general provisions of international law. In cases of illegal traffic as the result of the conduct of the exporter or generator, the state of export shall ensure that the wastes in question are taken back by the exporter or the generator, or take back such wastes itself. Where this is not practicable, such wastes shall be disposed of in accordance with the provisions of the Protocol within thirty days from the time the state of export has been informed about the illegal traffic,\textsuperscript{182} Alternatively the states concerned may agree on any other period of time, but may not hinder or prevent the return of those wastes to the state of export. Similar conditions apply where illegal traffic results from the conduct of the importer or disposer.\textsuperscript{183}

In the case of it not being possible to complete the transboundary movement of hazardous wastes and other wastes under the terms of the contract, and if alternative arrangement cannot be made for their disposal in an environmentally sound manner, it is required that the exporter re-import the wastes back into the exporting state within thirty days from the time the importing state informed the state of export and the organization.\textsuperscript{184} Neither the state of export nor any state of transit may impede the return of the wastes in question to the state of export.\textsuperscript{185}

\textsuperscript{180} Ibid., Art. 9. 
\textsuperscript{181} Both Article 10(1) of the 1998 Kuwait Protocol and Article 9 of the 1996 Mediterranean Protocol have similar definitions of “illegal traffics”: “for the purposes of Protocol, any transboundary movement of hazardous wastes and other wastes in contravention of the Protocol and of general provision of international law shall be deemed to be illegal traffic”. No definition of illegal traffic is included either in the Basel Convention or the Bamako Convention.
\textsuperscript{182} Similar provisions can be found in Article 9 (2) of the Basel Convention and Article 9 (3) of the Bamako Convention. 
\textsuperscript{183} Art. 7 of the 1998 Kuwait Protocol.
\textsuperscript{184} Art. 7 of the 1996 Mediterranean Protocol obliges the state of export to re-import the hazardous waste and does not allow for alternative arrangements to be made.
\textsuperscript{185} Art. 11 of the 1998 Kuwait Protocol. Similar provision can be found in Article 8 of the Basel Convention and Article 8 of the Bamako Convention. The only difference is that the later conventions
This Protocol gives ROPME a quite detailed list of tasks. It must communicate with the competent authorities as regards the application of the Protocol, train national experts, provide legal and technical assistance, enhance capabilities and networks to exchange data and information and maintain a register of disposal facilities in member states which can manage hazardous wastes in an environmentally sound manner. It shall also establish a unified monitoring system for the movement of hazardous wastes, facilitate the establishment of reception facilities in the contracting states, report on states’ progress in applying the Protocol and establish and maintain contact with the secretariat of the Basel Convention and other relevant regional and international organisations. In addition it shall also carry out any other functions which the Council may request.

Tasks given to the council by to the Protocol are to review the implementation of the Protocol and to consider whether the measures adopted are effective and if others are needed, to adopt, review and amend any annexes and the Regional Technical Guidelines as necessary, and to perform any other functions required to implement the Protocol. It remains to be seen how effective the Council’s supervision will be as the Protocol is not yet in force.

It can be seen that the 1998 Kuwait Protocol shares many features with the Basel Convention. It is also to be said that it has two distinctive characteristics. Firstly, as is true of the Basel Convention, it does not ban the transboundary movement of hazardous waste but instead attempts to minimise their generation. It also proceeds from the idea that if the production of hazardous wastes and other wastes cannot be prevented, then they must be disposed of or managed in an environmentally sound manner, regardless of their final destination. However in reality the states involved may be subjective in what they consider environmentally sound management and in how they assess the risks in transboundary waste movements. Secondly, export or import of hazardous wastes between parties or between parties and non-parties is permitted only if they can be

have a period limit of 90 days (30 days in the Kuwait Protocol) for the exporter to return the wastes is no other time limit has been agreed upon between the concerned states.

managed or disposed of in an environmentally sound manner in the state of destination, inasmuch as the state where such wastes originated lacks these facilities.

The main challenge facing member states trying to comply with the Protocol’s requirements is that there is little in the way of regulatory infrastructure and technical and administrative facilities. More regulations regarding the provision of information to the public and public participation and access to the decision-making process would considerably increase the Protocol’s effectiveness.

7.9 Kuwait Action Plan

The Kuwait Action Plan was declared in the Kuwait regional conference of 1978. The second Article determined the main objective of the Work Plan for the Protection and Development of the Marine Environment and Coastal Areas of Bahrain, Iran, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates. Therefore, the Kuwait Work Plan emerged as an answer to the issue of the development and protection of the marine environment and coastal areas in the regions of State Parties to the Convention, to preserve the interests of present and future generations. In order to attain this, a framework for a comprehensive and sound environmental approach was set to develop the coastal areas in a manner to be specifically compatible with the rapid growth and evolution of this region. Between the fourth Article of the Kuwait Work Plan, the approaches for achieving the plan goal are as follows:

- **Assessment of the state of the environment**, including social and economic development activities related to environmental quality and the needs of the region to assist governments in facing environmental problems in a proper way, especially those problems related to the marine environment.

- **Setting up principles for the management of activities**, which have an impact on the environmental quality or on the exploitation and protection of renewable marine resources on a sustainable manner.

- **Drawing up legal documents**, which constitute the legal basis of the common

187 Action Plan for the Protection of the Marine Environment and the Coastal Areas of Bahrain, Iran, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates, 17 ILM. (1978). p.501
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efforts for the protection and development of the region on a permanent basis.

- **Supporting procedures**, including the establishment of national and regional organizational structures and organs that are required for the successful implementation of the work plan. 188

Article 6 of the Kuwait Work Plan affirms that all of its constituent elements are interrelated and form a framework for an important comprehensive effort to ensure the continued development and protection of the environment of the region, so that none of these elements by itself can be considered a target.

It is stated in Article 7 of the Kuwait Work Plan that protection of the environment has a priority in the work plan, whose goal is to establish procedures to protect and develop the marine environment and coastal areas in the interests of human health and its prosperity. Thus, the Kuwait Work Plan confirms that the protection of the marine environment must not be at the expense of development in these countries, particularly in the coastal areas, in recognition of the prevailing conditions in this region, which is still in the early stages of economic development.

Other goals of the Kuwait Work Plan include facing the environmental needs of the region and enhancing its environmental potentialities. To execute these goals, it is necessary to coordinate national and regional activities with the preparation of an intensive training programme in the early stages. 189 To this end, the first Ministerial Council of the Regional Organization for the Protection of the Marine Environment (ROPME), which is the highest authority in the region, adopted a special budget for preparation of many programmes to organize training courses for the nationals of the State Parties to the Convention of Kuwait in 1978. 190 On the other hand, the preamble of

188 Ibid.
189 The Regional Organization for the Protection of the Marine Environment (ROPME) held, between its inception in 1982 and September 1987, more than 50 meetings, symposiums and workshops in all areas of protection of the marine environment. Of these, 16 were training courses for the nationals of the Member States, where 583 people were trained to work in the field.
190 Paragraph (b) of article 16 states that the main organs of ROPME are the following:

1- A ministerial council comprising the Contracting States which performs the tasks set out in paragraph (d) of article 17.
the Convention confirms the special responsibility of the concerned states in the marine region towards the protection of the marine environment and the recognition of these states of the importance of cooperation and coordination on a regional basis in order to protect the marine environment of the region for the benefit of all concerned parties and future generations. To fulfil this sincere desire for regional cooperation among the states bordering the Arabian Gulf, the eight states agreed to adopt the Convention of Kuwait in 1978 with the Protocol Concerning Regional Co-Operation in Combating Pollution by Oil and other Harmful Substances in Cases of Emergency (later referred to as the Convention of Kuwait of 1978 and the Emergency Protocol of 1978).

Meanwhile, the Kuwait Action Plan has four main areas of concern: environmental assessment, environmental management, institutional and financial arrangements, and the legal aspect. However, the action plan called for adoption of additional protocols and conventions (MARPOL), which include areas such as:

- Various types of pollution for example (pollution from land, oil exploration);
- Technical and scientific cooperation; and
- Other conservation and development activities related to marine environment.

2- A secretariat (or secretary) who performs the tasks set out in paragraph (a) of article 18 and is based in the State of Kuwait.

3- A judicial committee for the settlement of disputes between States on the application and interpretation of the Convention in accordance with paragraph (b) of article 25 of the Convention. The sixth Ministerial Council of 1988 approved its main statutes and set a budget to supervise its operations after the completion of its formation.
7.10 Regional Contingency Plan for the Marine Area of the Regional Organization for the Protection of the Marine Environment

7.10.1 Introduction

7.10.1.1 The Marine Environment

The Regional Organization for the Protection of the Marine Environment was been set up to uphold the safety of the marine area from all sorts of pollutants, particularly pollution by fuel, as this is the most prevalent type in the region. An effective regional plan is required to handle cases of pollution which may take place for any unanticipated reasons. The Regional Contingency Plan (RCP) aspires to promote co-operation between all member countries to handle emergencies marine situations resulting from environmental pollution by fuel and other harmful substances. The Kingdom of Saudi Arabia, Bahrain, Kuwait, Oman, and Qatar do already have their own National Contingency Plans (NCPs). However, the existence of an (RCP) does not mean the redundancy of these. The RCP can be described as the general framework under which all other national plans function. Listed below are a number of essentials that have to be taken into account when making contingency plans.

7.10.1.2 The Purpose and Objectives

The RCP aims to set up a mechanism for reciprocal assistance in which the competent national authorities of Bahrain, Iraq, Iran, Kuwait, Oman, Qatar, Saudi Arabia, and the UAE shall co-operate and co-ordinate their efforts. The general objectives of the Plan are to recognize a prompt and effective response to major oil spills affecting or likely to affect the responsibility zone of the concerned individual

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192 Ibid, p.11
member country or more, and to facilitate co-operation in preparedness for and response to pollution by oil.\textsuperscript{193}

To be more specific,\textsuperscript{194} structures of command and liaison have been set up, responsibilities assigned and procedures laid down on how to transfer responsibility between member countries. The RCP contains specification about financial conditions, managerial modalities and arrangements for ships and aircraft from one member country to operate within the zone of responsibility of other member countries as well as procedures for one country to request assistance from another.\textsuperscript{195}

To achieve these objectives, appropriate measures and effective methods for detecting and reporting incidents of pollution must be developed. Regional co-operation in prevention, control and clean-up must be promoted as well as measures to limit spread and minimise the risk posed by oil spills. Other measures include developing and executing a programme of training courses and practical courses in preventing and combating oil pollution.

\textbf{7.10.2 Policy and Responsibilities}

\textbf{7.10.2.1 Basis for the Plan}

The oil spill response planning framework of the ROPME Sea Area simply means that each member country should have its own National Contingency Plan (NCP), and should also provide sufficient resources to respond to maritime oil spills in the waters and coastline under its control. The RCP has been set up to present a framework and procedures to strengthen other international response operations in situations when a member country has been exposed to disastrous oil pollution and its own resources are not enough or are unsuitable to bring it under control. The country at risk may call for support from other members and will normally be responsible for organizing the joint response operation.\textsuperscript{196}

\textsuperscript{193} Ibid
\textsuperscript{194} Ibid.
\textsuperscript{195} Ibid.
\textsuperscript{196} See, Regional Oil Spill Contingency Plan, p. 15.
7.10.2.2 Exchange of Information

Each member country must designate its competent authorities, and inform other members through MEMAC of their identity along with various other details including the identity of designated national Emergency Response Centres (ERC) and National On-Scene Commanders (NOSC), inventories of pollution response equipment and products (i.e. vessels and aircraft) and directories of trained personnel.

7.10.2.3 Meetings of National Response Officers Responsible for the Implementation of the Plan

The Response Officers meet regularly to discuss issues concerning the implementation of the RCP and to share information about response to pollution cases. MEMAC is responsible for the preparation of the agenda and issues the formal report of every meeting.

7.10.2.4 Joint Training and Exercises

The ROPME Council is responsible for setting up the time, duration and content of the training and exercise activities, which are carried out on a rotational basis. MEMAC may also assist Member States to organize national training courses and exercises if required.

7.10.3 Response Elements and Planning

7.10.3.1 Mechanism for Activating the Plan

The operational authority of one of the member countries can activate the plan when pollution occurs in the territorial waters or EEZ of that particular individual

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197 Ibid, p.16.
198 Ibid, p.16.
199 Ibid.
member and threatens to affect or has already affected the responsibility zone of another member, or when it is too severe for the member to deal with.\textsuperscript{200}

The member country should first consult with MEMAC and the other members affected or potentially affected. However, if this is not possible, the RCP may be activated by the affected country without prior consultation. When a member state is affected by a pollution event which has occurred in the territorial waters or EEZ of another member state and this country or countries have not responded properly, the member state may activate the RCP after consulting with MEMAC and the other member state concerned.

7.10.3.2 Assumption of the Role of the Lead State\textsuperscript{201}

The operational authority of the member country who activated the RCP takes on the lead role although this role will be transferred from one member to another, according to movement of the pollution. The lead state is responsible for initiating the response, for the assessment and surveillance of the movement of the spill and regular reporting on the situation to the other member states. It also exercises operational command over joint response operations.

7.10.3.3 National On-Scene Commander (NOSC) / Supreme On-Scene Commander (SOSC)\textsuperscript{202}

The operational authority of each member state nominates an officer to be in control of all response operations. After plan activation and during the joint response operations, the National On-Scene Commander (NOSC) of each member state is responsible for keeping information up-to-date at all times. The Supreme On-Scene Commander (SOSC) is the designated officer from the lead state and has overall responsibility for all decisions and actions taken in order to combat the pollution and to mitigate its consequences and for the co-ordination of joint response operations.

\textsuperscript{200} Marine Environment Magazine, Issued by the Regional Organization for the Protection of the Marine Environment. 70(Oct-Dec), pp.7-12; See, Regional Oil Spill Contingency Plan, p. 19.
\textsuperscript{201} Regional Oil Spill Contingency Plan, p. 20.
\textsuperscript{202} Ibid.
7.10.3.4 Support Teams

A national support team shall be set up in each individual member country, comprising representatives from all concerned authorities. It shall provide assistance and advice to the NOSC/SOSC on various areas including oil pollution. It also liaises with and keeps informed the public authorities.\(^{203}\)

7.10.3.5 Response Planning

The SOSC shall decide the planning of specific operations and response strategy to be applied in each particular pollution incident. Nevertheless, all members shall keep each other informed of the relevant sections of their NCP's to facilitate the smooth running of joint response operations.\(^{204}\)

7.10.3.6 Response Strategy

In applying their response strategy, the operational authorities of the member states must take into consideration the position of the incident and the type and amount of oil. Other important factors are potential health hazards, risk of fire and explosion and the toxicity of the released pollutant. Potential damage to fisheries and natural resources and damage which could have serious economic consequences are also of great significance. The NCP must be activated when appropriate and MEMAC and other member states notified. Assistance will be requested if necessary.\(^{205}\)

When the RCP is in action, the available and required response resources must be evaluated and appropriate response methods selected and then implemented, using national resources and resources from assisting member states. Throughout the time the RCP is in effect the situation must be re-assessed and response actions modified if necessary.\(^{206}\)

\(^{203}\) Ibid, pp. 21-22.
\(^{204}\) Regional Oil Spill Contingency Plan, p. 24.
\(^{205}\) Regional Oil Spill Contingency Plan, p. 29.
\(^{206}\) Ibid
7.10.4 Response Operations

7.10.4.1 Response Phases

The RCP divides its operations into ten steps\(^{207}\) although entire phases or parts of phases may take place concurrently.

7.10.4.1.1 Notification and Consultation

Notification and verification of the initial information concerning pollution incidents shall be carried out at the national level.\(^{208}\) The operational authority of the member state in whose responsibility zone the pollution incident has occurred shall immediately inform MEMAC who will inform the operational authorities of the other Member States.\(^{209}\) If the operational authority considers that it might be necessary to activate the Plan, it shall immediately consult with MEMAC and the operational authorities of the member states.\(^{210}\)

7.10.4.1.2 Assessment of the Situation

On receiving notification of a spill that may require activation of the RCP, the support team or MEMAC will run the model to identify the potential direction of oil movement and the waters and coastal area most likely to be affected. This information will be passed on by fax, as soon as possible, to member states. MEMAC will also request that the ROPME satellite receiving station is mobilized to obtain the latest information on the spill.\(^{211}\)

Initially the surveillance of the spill and its movement, and the transmission of relevant reports to the other member states is the responsibility of the member state in

\(^{207}\) Ibid, p. 29
\(^{208}\) Regional Oil Spill Contingency Plan, p. 29.
\(^{209}\) Ibid.
\(^{210}\) Ibid.
\(^{211}\) Regional Oil Spill Contingency Plan, pp. 29-30.
whose national waters or EEZ the pollution incident has occurred. Following the activation of the RCP this responsibility rests with SOSC.212

7.10.4.1.3 Activation of the National Contingency Plan

The operational authority of the member state affected by the incident or likely to be affected first will activate the NCP and its own NOSC, ERC and support team. The NOSC, the operational authority and the support team will together formulate the strategy for dealing with the incident and will initiate the national response and evaluate the need for assistance from other member states. The NOSC will discuss with the operational authority of any member states affected or likely to be affected by the incident as to whether the RCP should be activated.213

7.10.4.1.4 Activation of the Regional Contingency Plan

After taking the decision to activate the RCP, the operational authority of the member state concerned shall assume the role of the lead authority and shall notify MEMAC and the other member states that the RCP has been activated.214

The lead state can request assistance from other member states which may take the form of trained response personnel (particularly strike teams), specialised pollution combating equipment and pollution treatment products. Other items such as vessels or aircraft may also be requested.215 It is the duty of the member state or member states to offer this assistance to the requesting member state with the shortest possible delay, taking into consideration that it should not deplete its own national resources beyond a reasonable level of preparedness.216

212 Ibid
214 Ibid.
215 Ibid
216 Ibid.
7.10.4.1.5 Initiate the Operational Response

The main objectives of the joint response operations at sea are to stop or minimize the spillage at the source, to restrict its spread and movement and to remove as much pollutant as possible from the sea surface before it reaches the shores of one of the member states.\textsuperscript{217} On shore, the main aim is to protect environmentally sensitive coastal areas and other vulnerable socio-economic resources from the impact of the pollutant and to remove the pollutant which has reached the shore. This phase also includes treatment and final disposal of recovered oil and contaminated beach material.\textsuperscript{218}

7.10.4.1.6 Preparation of the Incident Action Plan

Once the initial actions have been taken, the SOSC in conjunction with the support team and the NOSCs of the assisting member states will prepare a detailed incident action plan for the next operational period\textsuperscript{219} which will identify and prioritise resources at risk. It will also confirm or modify the response strategy and as well as identifying any additional resources required.

7.10.4.1.7 Managing the ongoing response

The lead state shall be in full charge of joint response operations.\textsuperscript{220} Response units from the assisting member states shall execute their tasks and duties following the decisions of the SOSC, under the direct operational control of their NOSCs and the tactical command of their respective team leaders and unit commanders. During joint response operations, the SOSC shall assume overall operational command and be specifically responsible for coordinating the actions of its own national resources with those of the assisting member states.\textsuperscript{221}

\textsuperscript{217} Ibid., p.32.  
\textsuperscript{218} Regional Oil Spill Contingency Plan, p. 32.  
\textsuperscript{219} Ibid.  
\textsuperscript{220} Ibid, pp. 33-34.  
\textsuperscript{221} Ibid.
7.10.4.1.8 Termination of Joint Response Operations and Deactivation of the Plan

When the pollution response measures have been finalised and the pollutant is no longer a threat, following discussion with the NOSCs of the assisting member states and MEMAC, the SOSC shall terminate the joint response operations and immediately inform the other member states. The lead state must be able to successfully finalise the response activities and must have determined that continuing clean-up operations will themselves cause more damage than the remaining oil. All personnel, equipment, unused products and other means which were involved in the joint response operations shall return or be returned to their respective operational authorities unless otherwise agreed.

7.10.4.1.9 Consultation of Costs and Cost Recovery

Following the completion of response operations, cost reports must be compiled and claims for re-imbursement of costs submitted and costs recovered. Recommendations for post-spill monitoring should be reasonable.

7.10.4.1.10 Debrief and reporting

Following the conclusion of response operations the SOSC will conduct an operational review of the response with the response team and the NOSCs and liaison officers of the assisting member states. The strengths and weaknesses of the response will be analysed and recommendations made to improve future responses and to modify the plans.

Information, documentation and evidence for a final operations report shall be provided. The report shall include descriptions of the pollution incident and development of the situation, of the response measures taken and of assistance rendered by the other member states. It shall also contain a review of the response as well as an

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222 Regional Oil Spill Contingency Plan, pp. 34-35.
223 Ibid.
224 Ibid, pp. 35-36.
analysis of strengths and weaknesses and recommendations for future improvements.\textsuperscript{225} An account of costs incurred by each member state and an estimate of environmental and economic damage shall also be incorporated, and the report then circulated to all member states.\textsuperscript{226}

From the proceeding presentation of the regional plan, including its rules and regulations, for the protection of the marine environment from pollution, it seems obvious a great deal of consideration has been given to the concept, policies and practice of environmental protection in the Gulf. The regional plan itself contains many important elements and some good mechanisms that help with the unification of the individual and coordinated efforts of member states.

Nevertheless, there needs to be more regular training and practical developments until all vacuums which the Plan currently does not remedy are filled. Furthermore, the success of the Regional Plan depends on the success of the implementation of the local and national plans. It also depends upon the provision of the physical resources for combating of pollution and requires, in the first instance, early provision of the physical resources, such as, equipment, ships, airplanes, et cetera, all of which are necessary to control the dangers of imminent pollution. Other critical areas include the preparation of qualified and trained human resources for combating pollution and the establishment of robust legal and efficient administrative mechanisms for the coordination of all the other elements. In endorsing this Plan, the organization has fulfilled its obligations under the United Nations Convention for Marine enforced by Kuwait Protocol in its Article 2(1).

7.11 Conclusion

The Kingdom of Saudi Arabia has played an important role in promoting the adoption of the Kuwait Convention by encouraging meetings and discussions among representatives of the various Gulf States. On a regional basis, in the years since 1982, the adoption of the Kuwait Convention and the four protocols, together with the establishment of the Regional Organisation for the Protection of the Marine

\textsuperscript{225} Ibid. p. 24.
\textsuperscript{226} Ibid, pp. 34-35.
Environment (ROPME) and the Marine Emergency and Mutual Aid Centre (MEMAC) in Kuwait, along with the creation of a national focal point in each member state have been major steps forward towards enhancing marine environmental protection in the Gulf region.

The role of ROPME in tailoring global agreements and action plans to fit programmes relevant to the region by setting goals and action planning has made it a success in the field of marine environmental policy. Its activities have been essential for the implementation of the convention.

Based on the preceding analysis of the provisions of the Kuwait Convention, the following lacks in environmental provisions become apparent: concepts such as 'environment assessment', 'dumping' or 'ships' are not defined, there are no explicit liability provisions for damage, nor are any monitoring and enforcement measures included. In addition the convention does not cover the marine environment outside the 'ROPME Sea Area'

It is clear that the contribution of the Convention to the actual protection of the marine environment of the Gulf region depends greatly on co-operation between ROPME and other parties and co-ordination of their efforts. Currently, the enforcement and implementation of the Convention and its Protocols are inadequate. The Council's primary role is information gathering and dissemination hence there is no efficient built-in enforcement system. There is no centralized mechanism for monitoring the parties' performance so often the reporting requirements are not fully complied with - parties may not fulfil their reporting obligations or may not submit anything on certain aspects of the Convention or the Protocols, and sometimes the information in the reports is unclear or incomplete.

\textsuperscript{227} For instance Article 2(4) of the 1992 OSPAR Convention reads: contracting Parties shall apply the measures they adopt in such way as to prevent an increase in pollution of the sea outside the maritime area or in other parts of the environment". Also Article 4(2) of the 1983 Cartagena Convention reads: "The Contracting Parties shall, in taking the measures referred to in paragraph 1, ensure that the implementation of those measures does not cause pollution of the marine environment outside the Convention area."

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In order to enable ROPME to more effectively implement the Convention it is necessary to restructure or strengthen the national mechanism for implementation in every individual state, to strengthen co-operation between ROPME and other national environmental institutions, and to increase co-ordination of their efforts. It is also important that environmental institutions both at the national and regional level be given adequate authority in environmental decision-making processes and that they be provided with administrative resources, managerial and technical expertise, budgets and financial resources needed to bring into being a more effective decision-making process and greater efforts towards raising public awareness.

It is also essential that ROPME draws on the experience and advice of other more advanced regimes, by for example establishing links with international and regional organizations, including specialized agencies, with relevant expertise and responsibilities. 228

ROPME should also revise the existing Convention or adopt a new one taking into consideration current development in international environmental law and emerging trends, and applying principles and concepts such as the sustainable development concept, the polluter pays principle and the precautionary principle.

The next and the final chapter sums up all the findings of the thesis and concludes with some recommendations as a way forward.

228 See Art. 41(a) of the Global Action Programme for the Protection of the Marine Environment from Pollution against Land-Based Sources.
It may be concluded from this study that the legal system for the protection of the marine environment of the Arabian Gulf operates in two main ways: protectively and remedially. It must also be noted that the Arabian Gulf is an area with very distinctive characteristics which increase the threat of pollution. The Gulf is a centre for the world’s oil production and is also a semi-closed sea which means that the Gulf environment is endangered by many pollutants. This pollution risk cannot be addressed merely by participating in international environmental bodies and conferences or by joining international agreements (regional or international), whether they are general agreements which consider the Gulf as one of its areas of implementation such as the International Convention for the Prevention of Pollution of the Sea by Oil (London, 1954), the 1972 Oslo Convention, MARPOL 73, UNCLOS 1982 and others, or special agreements for the Arabian Gulf, such as the Kuwait Agreement 1978 and its protocols. Indeed, it is very important and necessary to implement a whole set of principles and international commitments which will lead to a comprehensive legal framework governing international activities related to the protection of the marine environment in general and the environment of the Arabian Gulf in particular.

Therefore, an effective mechanism should be established for the prevention and control of pollution. This should be done through individual and group intervention to protect the marine environment and its conservation, which requires both national initiatives and wider (international and regional) cooperation.

The most important findings are the following:

In Islam, environmental protection is a legal duty and this appears through the Quranic verses and the prophetic sayings (i.e the Hadith) that prohibit corruption and
waste and call for mediation and moderation. As well as unanimity among Muslim jurists on the sanctity of the environment as seen in the jurisprudential rules that they apply to the protection of the environment, it is shown that the preservation of the marine environment from pollution requires responsible people to obey regulations concerned with protection of the marine environment.

Islam has called for protection of the marine environment from pollution throughout its existence. It is stipulated in Quranic verses, in the sayings of the Prophet as well as in the general principles mentioned by Islamic scholars, that protection of the environment is a responsibility required by faith and because of the fact of living on earth. The attitude of Islam is in harmony with the principles of international law as regards the precautionary and the preventive principle as well as the 'polluter pays' principle. However Islamic scholars need to work on developing practical applications of the general principles of Islam.

Examining marine pollution on a global level, it can be seen that pollution originating from ships has been an area of public concern and consideration due to the rising number of accidents which cause pollution, for instance the Torrey Canyon (1967) described as the disaster of the century, the Amoco Cadiz (1978) and the Exxon Valdez etc. Serious attempts have been made to combat marine pollution through the signing of international agreements to prevent marine pollution by oil such as OILPOL, 1954, and MARPOL, 1973. The concerns to find a system for combating marine environment pollution were reflected in the deliberations of the UN Conference on the Law of the Sea, during which this subject received a great deal of attention, resulting in Section 12 of UN Convention of the Law of the Sea for combating marine pollution. These conventions and agreements contain many principles (for example co-operation, 'polluter pays' principle, the preventive and the precautionary principles, and sustainable development) which can play an important role in the protection of the marine environment from pollution if they are implemented effectively.

In regards to identifying the party responsible for combating pollution, the UN Convention has achieved a balance between the coastal country, the flag country and the
port country, nonetheless giving the port country the right to implement the international rules and measures concerning pollution that either relate to the discharge of pollutant substances or which are concerned with ships’ design, construction and preparations etc. This guarantees to a larger extent an effective protection of the marine environment. This also helps the coastal state avoid some of the difficulties it was facing, and helps reduce some of the financial costs it bears due to having to carry out implementation procedures in wider marine areas. There are also different responsible agencies or bodies to make the case which results in easier containment of pollution and its control.

It can be seen that it is necessary to create an international system which would provide specific competencies with the aim of implementing rules and measures to control pollution, and would put mechanisms in place to carry out inspections and to control violations of the rules. This would bring about numerous benefits in the protection of the marine environment, and its effective implementation would reduce the possibility of discrimination against various countries on the part of the coastal country or the port country.

Despite the efforts of the ILC and other international law instruments, there are no international rules of general application governing state responsibility and liability for environmental damage. Therefore, it is very important that the rules for liability and compensation need to be developed. As it is extremely difficult to identify the basis of the responsibility and to estimate the amount of damage caused. Even when this is done, there is no guarantee of receiving quick and sufficient compensation to cover the resulting damages.

In regard to settling disputes related to the Law of the Seas the methods of settling international disputes are varied, and do not move away from the general framework of international disputes settlement. As such there are non-compulsory methods of dispute settlement and there are also compulsory methods in situations where the parties fail to settle their dispute according to the non-compulsory method. It can be seen that most of the principles in the International Law of the Seas have been
derived from the basic principles of the International Court of Justice and the rules of arbitration, but the diversity of and differences in these methods make it easy for the disputing parties to select the shortest and easiest paths and procedures.

The Kingdom of Saudi Arabia has joined several international agreements and treaties such as OILPOL Convention 1954, MARPOL Convention 1973 and International Convention on Civil Liability for Oil Pollution Damage 1969 and its protocols of 1976. However the Kingdom has not joined the Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1992) even though this and the International Convention on Civil Liability for Oil Pollution Damage are complementary to each other in terms paying for damages for oil pollution victims as the Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage can be called on to handle costs for damages which exceed the limit of the International Convention on Civil Liability for Oil Pollution Damage. Furthermore, the Kingdom is also a member of UNCLOS1982.

Even though, the Kingdom has not joined several agreements, for example the 1958 Geneva Conventions on the law of the sea and the 1969 International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, the Saudi legislator should put this under consideration. It is engaged in setting up national systems to bridge these gaps in Saudi legislation, and is currently developing available systems to be consistent with the rising concerns of the Kingdom regarding environment issues in general and marine pollution in particular.

At regional level the Kingdom has played an effective role in the arrangement of Kuwait Regional Conference, in which the Kuwait Convention and its attached protocols were drawn up, and at which the Regional Organisation for Protection of Marine Environment (ROPME) and the Marine Emergency Mutual Aid Centre (MEMAC) were created. It has played a central role in endorsing the Convention and its protocols and continues to enjoy the benefits. Despite the importance of this agreement and the obligations for the contracting parties which it contains, these obligations do not seem to be effective enough, because the convention lacks the element of strict
obligation. The phrasing of the convention includes sentences such as 'the possible sources', 'appropriate measures' and 'applicable measures' etc.

Saudi Arabia has established a central government body responsible for examining and addressing the problems of the marine environment, the Presidency of Meteorology and Environment. It is intended to turn this into a ministry in the near future, because of the large number of agents involved in the management of the various economic activities affecting the sea. This step if taken will contribute significantly to creating the necessary harmony between the different activities performed by the various government bodies and will place the Kingdom in a better position to follow the successive developments in maritime law which will make Saudi maritime policy more creative and effective and will put it in a better position in terms of response to and interaction with these developments.

On the legislative side, Saudi concerns are focused on pollution originating from ships, hence the passage of the Sea Ports and Lighthouses Regulations (1974). The Presidency of Meteorology and Environment also issued the National Contingency Plan for Combating Marine Pollution by Oil and Other Harmful Substances in Emergency Cases (1984).

The maritime policy of the Kingdom has without doubt achieved great success in the field of protection of the marine environment at the national, regional and international levels, yet it seems that there is an urgent need to update some regulations and to draft new regulations with the necessary interpretative clauses to make them commensurate with the contemporary international legal norms. There is also an urgent need to establish a central executive or government body backed by a consultative system that consists of experienced people to assume responsibility to oversee all maritime matters in general and marine oil pollution issues in particular, as well as to make clear the need to sign up to the international conventions in the field of protection of the marine environment which the Kingdom has not yet joined. This would encourage the other countries of the region to expand protection of the marine environment.
Looking at the Gulf countries in general, it can be seen that since the end of the seventies there has been a strong desire on their part both as a group and as individuals to put into practice marine environmental protection. This can be seen in the eagerness of these countries to effectively participate in regional and international symposiums and conferences, and in their ratifications of various regional and international conventions concerning the protection of the marine environment from pollution and in the incorporation of these conventions into their national laws.

One of the most useful of these conventions is MARPOL which can be considered an important sample of organisational effort, and which represents the compilation of many conventions into one convention. The Kuwait Convention, its protocols and the Regional Contingency Plan all go a long way to help the Gulf Cooperation Countries improve the protection of the marine environment from pollution. However the environmental objectives of the Kuwait Convention need to be further strengthened and enhanced. This can be achieved by reviewing and developing the Convention through the adoption of modern concepts and principles relevant to international environmental law, such as the ‘polluter pays’ principle, sustainable development, and the precautionary principle, because doing so can provide a firm basis for controlling and combating environmental pollution.

Furthermore, the Convention and its protocols lack an effective monitoring system and enforcement procedures. Cooperation of the member countries among themselves, and cooperation between the member countries and ROPME also need to be better supported and strengthened. Another area in need of attention is that of the exchange information among member states. All of these matters demand more efforts to be exerted regionally and internationally.

The following steps might assist in improving the situation:

- Supporting the ROPME by giving it an adequate budget and more competencies through greater backing from the Gulf Cooperation Council.
• Establishing an independent inspectorate agency to monitor the behaviour of state(s) regarding protecting the marine environment from pollution, and whose responsibility it is to draw up laws and determine measures to protect the marine environment from pollution, and with monitoring the effective implementation of the Kuwait Convention.

• Establishing an information centre to be provided with modern technological equipment. The function of this centre is to distribute and exchange information regarding marine pollution among the member countries.

• Supporting the Regional Plan for protection of the marine environment from pollution, and drawing on all means and methods of the member countries to implement the plan and ensure its success. The effective implementation of such a plan could help to large extent to protect the marine environment before, during, and after pollution incidents.

To sum up, it can be said that there have been a great many efforts internationally, regionally and nationally to protect the marine environment in the Arabian Gulf. There is a large body of legislation, however further development is needed and the implementation needs to be improved. The researcher would like to say that what he offers here is no more than an initial examination that may need revision, addition or adjustment in the year ahead in light of development in the field. It is to be hoped that this modest research will provide a motive for specialized researchers who care about the environment to direct their best efforts to the protection of the environment, its problems, its challenges and the contribution that legislation can play in resolving these issues.
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- Interview Mr. Abdulrahman Al Ateyah, the Secretary General of the Gulf Cooperation Council of the Arab Gulf States, on a number of questions concerning the role played by the Council of Cooperation in protecting the environment in general and the marine environment in particular.

- A meeting was held in Riyadh with Prince Dr. Bandar Bin Salman Bin Muhammad Al Saud, Advisor for the Custodian of the Two Holy Mosques, King Abdullah Bin Abdul Aziz and Chairmen of the Saudi Arbitration Team.

- A meeting was held in Kuwait with Dr. Abdul Rahman Al Awadi, the Executive Secretary of the Regional Organization for Marine Environmental Protection in the Arabian Gulf Area.

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Annex
INTRODUCTION

This publication contains the texts of the two legal instruments that were adopted in 1978 for the protection and development of the marine environment and coastal areas of the Kuwait Action Plan Region (Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates).

On the initiative of the States of the Region, the Kuwait Regional Conference of plenipotentiaries on the Protection and Development of the Marine Environment and the Coastal Areas was convened in Kuwait from 15-23 April 1978. The Conference on 23 April adopted the Action Plan for the Protection and Development of the Marine Environment and the Coastal Areas, the Kuwait Regional Convention for co-operation on the Protection of the Marine Environment from Pollution, and the Protocol concerning Regional Co-operation in Combating Pollution by Oil and other, Harmful Substances in Cases of Emergency.

On 30 June 1979, the Convention entered into force after the deposit of five instruments of ratification in accordance with para. (a) of Article XVIII of the Convention. Accordingly, the Regional Organization for the Protection of the Marine Environment (ROPME) was, established in 1979 consisting of three organs i.e. Council, secretariat and the Judicial Commission. ROPME Secretariat was established in January 1982. Until then, ROPME programmes were carried out by the Interim Secretariat under the supervision of the United Nations Environment Programme (UNEP).

The First Meeting of the ROPME Council (Representatives of Contracting States at ministerial level) was convened in April 1981. In accordance with the decision of the First Meeting of the ROPME Council; the, Marine Emergency Mutual Aid Centre (MEMAC) was established in August 1982 in Bahrain in order to strengthen capabilities of the Contracting States and to facilitate co-operation between them in order to respond to marine pollution emergencies.

The Kuwait Regional Convention is a comprehensive, umbrella agreement for protection of the marine environment. It identifies the sources of pollution which
require control, such as pollution from ships, dumping, land-based sources, exploration and exploitation of the sea-bed, and pollution from other human activities. It also identifies environmental management issues for which co-operative efforts are to be made, such as combating pollution in cases of emergency, environmental impact assessment and scientific and technological cooperation. There are also provisions dealing with technical assistance, and liability and compensation in case of pollution of the Sea Area.

By ratifying Protocols, the States of the Region accept more specific obligations to control pollution from a discrete source, or to co-operate in a specific aspect of environmental management. This realistic approach to control pollution of the marine environment has led ROPME to adopt two more Protocols i.e. Protocol concerning Pollution resulting from Exploration and Exploitation of the continental Shelf, and Protocol for the Protection of the Marine Environment against Pollution from Land-Based Sources. These two Protocols which were signed by the Plenipotentiaries of Member States in March 1989 and February 1990 and entered into force on 17 February 1990 and 2 January 1993 respectively, will strengthen the provisions of the Kuwait Regional Convention to protect the marine environment against pollution resulting from land-based sources and offshore oil exploration/exploitation activities.

In addition, ROPME Secretariat is in the process of finalizing a Protocol concerning Control of Transboundary Movement of Hazardous Wastes in the Sea Area. Another Protocol for Designation of Protected Areas in the Marine and Coastal Environments, shall soon be prepared to be reviewed and further developed by legal/technical experts for adoption by the ROPME Council in the future.
KUWAIT REGIONAL CONVENTION FOR CO-OPERATION ON THE PROTECTION OF THE MARINE ENVIRONMENT FROM POLLUTION

The Government of the State of Bahrain,
The Imperial Government of Iran,
The Government of the Republic of Iraq,
The Government of the State of Kuwait,
The Government of the Sultanate of Oman,
The Government of the State of Qatar,
The Government of the Kingdom of Saudi Arabia,
The Government of the United Arab Emirates,

Realizing that pollution of the marine environment in the Region shared by Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates, by oil and other harmful or noxious materials arising from human activities on land or at sea, especially through indiscriminate and uncontrolled discharge of these substances, presents a growing threat to marine life, fisheries, human health, recreational uses of beaches and other amenities,

Mindful of the special hydrographic and ecological characteristics of the marine environment of the Region and its particular vulnerability to pollution,

Conscious of the need to ensure that the processes of urban and rural development and resultant land use should be carried out in such a manner as to preserve, as far as possible, marine resources and coastal amenities, and that such development should not lead to deterioration of the marine environment,

Convinced of the need to ensure that the processes of industrial development should not, in any way, cause damage to the marine environment of the Region, jeopardize its living resources or create hazards to human health,

Recognizing the need to develop an integrated management approach, to the use of the marine environment and the coastal areas which will allow the achievement of environmental and development goals in a harmonious manner,
Recognizing also the need for a carefully planned research, monitoring and assessment programme in view of the scarcity of scientific information on marine pollution in the Region,

Considering that the States sharing the Region have a special responsibility to protect its marine environment, Aware of the importance of co-operation and co-ordination of action on a regional basis with the aim of protecting the marine environment of the Region for the benefit of all concerned, including future generations, Bearing in mind the existing international conventions relevant to the present Convention,

Have agreed as follows:

Article I
DEFINITIONS

For the purpose of the present Convention:

(a) "Marine pollution" means the introduction by man, directly or indirectly, of substances or energy into the marine environment resulting or likely to result in such deleterious effects as harm to living resources, hazards to human health, hindrance to marine activities including fishing, impairment of quality for use of sea-water and reduction of amenities;

(b) "National Authority" means the authority designated by each Contracting State as responsible for the co-ordination of national efforts for implementing the Convention and its protocols;

(c) "Organization" means the organization established by the Contracting States in accordance with article XVI;

(d) "Secretariat" means the organ of the Organization established in accordance with article XVI;

(e) "Action Plan" means the Action Plan for the Development and Protection of the Marine Environment and the Coastal Areas of Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates adopted at the Kuwait Regional Conference of Plenipotentiaries on the Protection and Development of the Marine Environment and the Coastal Areas, convened from 15 to 23 April 1978.
Article II

GEOGRAPHICAL COVERAGE

(a) The present Convention shall apply to the sea area in the Region bounded in the south by the following rhumb lines: from Ras Dharbat Ali (16° 39' N, 53° 3' 30" E) to a position 16°00' N, 53°25' E; thence through the following positions: 17° 00' N, 56°30' E and 20° 30' N, 60° 00' E to Ras Al-Fasteh (25° 04' N, 61° 25' E). (Hereinafter referred to as the "Sea Area").

(b) The Sea Area shall not include internal waters of the Contracting States unless it is otherwise stated in the present Convention or in any of its protocols.

Article III

GENERAL OBLIGATIONS

(a) The Contracting States shall, individually and/or jointly, take all appropriate measures in accordance with the present Convention and those protocols in force to which they are party to prevent, abate and combat pollution of the marine environment in the Sea Area.

(b) In addition to the Protocol concerning Regional Co-operation in Combating Pollution by Oil and other Harmful Substances in Cases of Emergency opened for signature at the same time as the present Convention, the Contracting States shall co-operate in the formulation and adoption of other protocols prescribing agreed measures, procedures and standards for the implementation of the Convention.

(c) The Contracting States shall establish national standards, laws and regulations as required for the effective discharge of the obligation prescribed in paragraph (a) of this article, and shall endeavour to harmonize their national policies in this regard and for this purpose appoint the National Authority.

(d) The Contracting States shall co-operate with the competent inter, national, regional and subregional organizations to establish and adopt regional standards, recommended practices and procedures to prevent, abate and combat pollution from
all sources in conformity with the objectives of the present Convention, and to assist each other in fulfilling their obligations under the present Convention.

(e) The Contracting States shall use their best endeavour to ensure that the implementation of the present Convention shall not cause transformation of one type of pollution to another which could be more detrimental to the environment.

Article IV
POLLUTION FROM SHIPS

The Contracting States shall take all appropriate measures in conformity with the present Convention and the applicable rules of international law to prevent, abate and combat pollution in the Sea Area caused by intentional or accidental discharges from ships, and shall ensure effective compliance in the Sea Area with applicable international rules relating to the control of this type of pollution, including load-on-top, segregated ballast and crude oil washing procedures for tankers.

Article V
POLLUTION CAUSED BY DUMPING FROM SHIPS AND AIRCRAFT

The Contracting States shall take all appropriate measures to prevent, abate and combat pollution in the Sea Area caused by dumping of wastes and other matter from ships and aircraft, and shall ensure effective compliance in the Sea Area with applicable international rules relating to the control of this type of pollution as provided for in relevant international conventions.
Article VI
POLLUTION FROM LAND-BASED SOURCES

The Contracting States shall take all appropriate measures to prevent, abate and combat pollution caused by discharges from land reaching the Sea Area whether water-borne, air-borne, or directly from the coast including outfalls and pipelines.

Article VII
POLLUTION RESULTING FROM EXPLORATION AND EXPLOITATION OF THE BED OF THE TERRITORIAL SEA AND ITS SUBSOIL AND THE CONTINENTAL SHELF

The Contracting States shall take all appropriate measures to prevent, abate and combat pollution in the Sea Area resulting from exploration and exploitation of the bed of the territorial sea and its subsoil and the continental shelf, including the prevention of accidents and the combating of pollution emergencies resulting in damage to the marine environment.

Article VIII
POLLUTION FROM OTHER HUMAN ACTIVITIES

The Contracting States shall take all appropriate measures to prevent, abate and combat pollution of the Sea Area resulting from land reclamation and associated suction dredging and coastal dredging.

Article IX
CO-OPERATION IN DEALING WITH POLLUTION EMERGENCIES

(a) The Contracting States shall, individually and/or jointly, take all necessary measures, including those to ensure that adequate equipment and qualified personnel are readily available, to deal with pollution emergencies in the Sea Area, whatever the cause of such emergencies, and to reduce or eliminate damage resulting therefrom.
(b) Any Contracting State which becomes aware of any pollution emergency in the Sea Area shall, without delay, notify the Organization referred to under article XVI and, through the secretariat, any Contracting State likely to be affected by such emergency.

**Article X**

**SCIENTIFIC AND TECHNOLOGICAL CO-OPERATION**

(a) The Contracting States shall co-operate directly, or, where appropriate, through competent international and regional organizations, in the field of scientific research, monitoring and assessment concerning pollution in the Sea Area, and shall exchange data as well as other scientific information for the purpose of the present Convention and any of its protocols.

(b) The Contracting States shall co-operate further to develop and coordinate national research and monitoring programmes relating to all types of pollution in the Sea Area and to establish in co-operation with competent regional or international organizations, a regional network of such programmes to ensure compatible results. For this purpose, each Contracting State shall designate the National Authority responsible for pollution research and monitoring within the areas under its national jurisdiction. The Contracting States shall participate in international arrangements for pollution research and monitoring in areas beyond their national jurisdiction.

**Article XI**

**ENVIRONMENTAL ASSESSMENT**

(a) Each Contracting State shall endeavour to include an assessment of the potential environmental effects in any planning activity entailing projects within its territory, particularly in the coastal areas, which may cause significant risks of pollution in the Sea Area.

(b) The Contracting States may, in consultation with the secretariat, develop procedures for dissemination of information on the assessment of the activities referred to in paragraph (a) above.
(c) The Contracting States undertake to develop, individually or jointly, technical and other guidelines in accordance with standard scientific practice to assist the planning of their development projects in such a way as to minimize their harmful impact on the marine environment. In this regard international standards may be used where appropriate.

**Article XII**

TECHNICAL AND OTHER ASSISTANCE

The Contracting States shall co-operate directly or through competent regional or international organizations in the development of programmes of technical and other assistance in fields relating to marine pollution in coordination with the Organization referred to in article XVI.

**Article XIII**

LIABILITY AND COMPENSATION

The Contracting States undertake to co-operate in the formulation and adoption of appropriate rules and procedures for the determination of:

(a) Civil liability and compensation for damage resulting from pollution of the marine environment, bearing in mind applicable international rules and procedures relating to those matters; and

(b) Liability and compensation for damage resulting from violation of obligations under the present Convention and its protocols.

**Article XIV**

SOVEREIGN IMMUNITY

Warships or other ships owned or operated by a State, and used only on government non-commercial service, shall be exempted from the application of the provisions of the present convention; Each Contracting State shall, as far as possible, ensure that its warships or other ships owned or operated by that State, and used only on
government non-commercial service, shall comply with the present Convention in the prevention of pollution to the marine environment.

**Article XV**

**DISCLAIMER**

Nothing in the present Convention shall prejudice or affect the rights or claims of any Contracting State in regard to the nature or extent of its maritime jurisdiction which may be established in conformity with international law.

**Article XVI**

**REGIONAL ORGANIZATION FOR THE PROTECTION OF THE MARINE ENVIRONMENT**

(a) The Contracting States hereby establish a Regional Organization for the Protection of the Marine Environment, the permanent headquarters of which shall be located in Kuwait.

(b) The Organization shall consist of the following organs:

(i) A Council which shall be comprised of the Contracting States and shall perform the functions set forth in paragraph (d) of article XVII;

(ii) A secretariat which shall perform the functions set forth in paragraph (a) of article XVIII; and.

(iii) A judicial Commission for the Settlement of Disputes whose composition, terms of reference and rules of procedure shall be established at the first meeting of the Council.

**Article XVII**

**COUNCIL**

(a) The meetings of the Council shall be convened in accordance with paragraph (a) of article XVIII and paragraph (b) of article XXX. The Council shall hold ordinary meetings once a year. Extraordinary meetings of the Council shall be held upon the request of at least one Contracting State endorsed by at least one other Contracting
State, or upon the request of the Executive Secretary endorsed by at least two Contracting States. Meetings of the Council shall be convened at the headquarters of the Organization or at any other place agreed upon by consultation amongst the Contracting States. Three fourths of the Contracting States shall constitute a quorum.

(b) The chairmanship of the Council shall be given to each Contracting State in turn in alphabetical order of the names of the States in the English language. The Chairman shall serve for a period of one year and cannot during the period of chairmanship serve as a representative of his State. Should the chairmanship fall vacant, the Contracting State chairing the Council shall designate a successor to remain in office until the term of chairmanship of that Contracting State expires.

(c) The voting procedure in Council shall be as follows:

(i) Each Contracting State shall have one vote;

(ii) Decisions on substantive matters shall be taken by a unanimous vote of the Contracting States present and voting;

(iii) Decisions on procedural matters shall be taken by a three-fourths majority vote of the Contracting States present and voting.

(d) The functions of the Council shall be:

(i) To keep under review the implementation of the Convention and its protocols, and the Action Plan referred to in paragraph (e) of article I;

(ii) To review and evaluate the state of marine pollution and its effects on the Sea Area on the basis of reports provided by the Contracting States and the competent international or regional organizations;

(iii) To adopt, review and amend as required in accordance with procedures established in article XXI, the annexes to the Convention and to its protocols;

(iv) To receive and to consider reports submitted by the Contracting States under articles IX and XXIII;

(v) To consider reports prepared by the secretariat on questions relating to the Convention and to matters relevant to the administration of the Organization;

(vi) To make recommendations regarding the adoption of any additional protocols or any amendments to the Convention or to its protocols in accordance with articles XIX and XX;
Appendices

(vii) To establish subsidiary bodies and *ad hoc* working groups as required to consider any matters related to the Convention and its protocols and annexes to the Convention and its protocols;

(viii) To appoint an Executive Secretary and to make provision for the appointment by the Executive Secretary of such other personnel as may be necessary;

(ix) To review periodically the functions of the secretariat;

(x) To consider and to undertake any additional action that may be required for the achievement of the purposes of the Convention and its protocols.

**Article XVIII**

**SECRETARIAT**

(a) The secretariat shall be comprised of an Executive Secretary and the personnel necessary to perform the following functions:

(i) To convene and to prepare the meetings of the Council and its subsidiary bodies and *ad hoc* working groups as referred to in article XVII, and conferences as referred to in articles XIX and XX;

(ii) To transmit to the Contracting States notifications, reports and other information received in accordance with articles IX and XXIII;

(iii) To consider enquiries by, and information from, the Contracting States and to consult with them on questions relating to the Convention and its protocols and annexes thereto;

(iv) To prepare reports on matters relating to the Convention and to the administration of the Organization;

(v) To establish, maintain and disseminate an up-to-date collection of national laws of all States concerned relevant to the protection of the marine environment;

(vi) To arrange, upon request, for the provision of technical assistance and advice for the drafting of appropriate national legislation for the effective implementation of the Convention and its protocols;

(vii) To arrange for training programmes in areas related to the implementation of the Convention and its protocols;
(viii) To carry out its assignments under the protocols to the Convention;
(ix) To perform such other functions as may be assigned to it by the Council for
the implementation of the Convention and its protocols.

(b) The Executive Secretary shall be the chief administrative official of the
Organization and shall perform the functions that are necessary for the
administration of the present Convention, the work of the secretariat and other tasks
entrusted to the Executive Secretary by the Council and as provided for in its rules
of procedure and financial rules.

Article XIX

ADOPTION OF ADDITIONAL PROTOCOLS

Any Contracting State may propose additional protocols to the present
Convention pursuant to paragraph (b) of article III at a diplomatic conference of the
Contracting States to be convened by the secretariat at the request of at least three
Contracting States. Additional protocols shall be adopted by a unanimous vote of the
Contracting States present and voting.

Article XX

AMENDMENTS TO THE CONVENTION AND ITS PROTOCOLS

(a) Any Contracting State to the present Convention or to any of its protocols may
propose amendments to the Convention or to the protocol concerned at a diplomatic
conference to be convened by the secretariat at the request of at least three
Contracting States. Amendments to the Convention and its protocols shall be
adopted by a unanimous vote of the Contracting States present and voting.

(b) Amendments to the Convention or any protocol adopted by a diplomatic conference
shall be submitted by the Depositary for acceptance by all Contracting States.
Acceptance of amendments to the Convention or to any protocol shall be notified to
the Depositary in writing. Amendments adopted in accordance with this article shall
enter into force for all Contracting States, except those which have notified the
Depositary of a different intention, on the thirtieth day following the receipt by the
 Depositary of notification of their acceptance by at least three fourths of the Contracting States to the Convention or any protocol concerned as the case may be.

(c) After the entry into force of an amendment to the Convention or to a protocol, any new Contracting State to the Convention or such protocol shall become a Contracting State to the instrument as amended.

Article XXI

ANNEXES AND AMENDMENTS TO ANNEXES

(a) Annexes to the Convention or to any protocol shall form an integral part of the Convention or such protocol.

(b) Except as may be otherwise provided in any protocol, the following procedure shall apply to the adoption and entry into force of any amendments to annexes to the Convention or to any protocol:

(i) Any Contracting State to the Convention or to a protocol may propose amendments to the annexes to the instrument in question at the meetings of the Council referred to in article XVII;

(ii) Such amendments shall be adopted at such meetings by a unanimous vote;

(iii) The Depositary referred to in article XXX shall communicate amendments so adopted to all Contracting States without delay;

(iv) Any Contracting State which has a different intention with respect to an amendment to the annexes to the Convention or to any protocol shall notify the Depositary in writing within a period determined by the Contracting States concerned when adopting the amendment;

(v) The Depositary shall notify all Contracting States without delay of any notification received pursuant to the preceding subparagraph;

(vi) On the expiry of the period referred to in sub-paragraph (iv) above, the amendment to the annex shall become effective for all Contracting States to the Convention or to the protocol concerned which have not submitted a notification in accordance with the provisions of that subparagraph.

(c) The adoption and entry into force of a new annex to the Convention or to any protocol shall be subject to the same procedure as for the adoption and entry into force of an amendment to an annex in accordance with the provisions of this
article, provided that, if any amendment to the Convention or the protocol concerned is involved, the new annex shall not enter into force until such time as the amendment to the Convention or the protocol concerned enters into force.

Article XXII
RULES OF PROCEDURE AND FINANCIAL RULES

(a) The Council shall, at its first meeting, adopt its own rules.
(b) The Council shall adopt financial rules to determine, in particular, the financial participation of the Contracting States.

Article XXIII
REPORTS

Each Contracting State shall submit to the secretariat reports on measures adopted in implementation of the provisions of the Convention and its protocols in such form and at such intervals as may be determined by The Council.

Article XXIV
COMPLIANCE CONTROL

The Contracting States shall co-operate in the development of procedures for the effective application of the Convention and its protocols, including detection of violations, using all appropriate and practical measures of detection and environmental monitoring; including adequate procedures for reporting and accumulation of evidence.

Article XXV
SETTLEMENT OF DISPUTES

(a) In case of a dispute as to the interpretation or application of this Convention or its protocols, the Contracting States concerned shall seek a settlement of the dispute through negotiation or any other peaceful means, of their own choice.
(b) If the Contracting States concerned cannot settle the dispute through the means mentioned in paragraph (a) of this article, the dispute shall be submitted to the Judicial Commission for the Settlement of Disputes referred to in paragraph (b) (iii) of article XVI.

Article XXVI

SIGNATURE

The present Convention together with the Protocol concerning Regional Co-operation in Combating Pollution by Oil and other Harmful Substances in cases of Emergency shall be open for signature in Kuwait from 24 April to 23 July 1978 by any State invited as a participant in the Kuwait Regional Conference of Plenipotentiaries on the Protection and Development of the Marine Environment and the Coastal Areas, convened from 15 to 23 April 1978 for the purpose of adopting the Convention and the Protocol.

Article XXVII

RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION

(a) The present Convention together with the Protocol concerning Regional Co-operation in Combating Pollution by Oil and other Harmful Substances in Cases of Emergency and any other protocol thereto shall be subject to ratification, acceptance, or approval by the States referred to in article XXVI.

(b) As from 24 July 1978, this Convention together with the Protocol concerning Regional Co-operation in Combating Pollution by Oil and other Harmful Substances in Cases of Emergency shall be open for accession by the States referred to in article XXVI.

(c) Any State which has ratified, accepted, approved or acceded to the present Convention shall be considered as having ratified, accepted, approved or acceded to the Protocol concerning Regional Co-operation in Combating, Pollution by Oil and other Harmful Substances in Cases of Emergency.

(d) Instruments of ratification, acceptance, approval or accession shall be deposited with the Government of Kuwait which will assume the functions of Depositary.
**Article XXVIII**

**ENTRY INTO FORCE**

(a) The present Convention together with the Protocol concerning Regional Co-operation in Combating Pollution by Oil and other Harmful Substances in Cases of Emergency shall enter into force on the ninetieth day following the date of deposit of at least five instruments of ratification, acceptance or approval of, or accession to, the Convention.

(b) Any other protocol to this Convention, except as otherwise provided in such protocol, shall enter into force on the ninetieth day following the date of deposit of at least five instruments of ratification, acceptance or approval of, or accession to, such protocol.

(c) After the date of deposit of five instruments of ratification, acceptance or approval of, or accession to, this Convention or any other protocol, this Convention or any such protocol shall enter into force with respect to any State on the ninetieth day following the date of deposit by that State of the instrument of ratification, acceptance, approval or accession.

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**Article XXIX**

**WITHDRAWAL**

(a) At any time after five years from the date of entry into force of this Convention, any Contracting State may withdraw from this Convention by giving written notification of withdrawal to the Depositary.

(b) Except as may be otherwise provided in any other protocol to the Convention, any Contracting State may, at any time after five years from the date of entry into force of such protocol, withdraw from such protocol by giving written notification of withdrawal to the Depositary.

(c) Withdrawal shall take effect ninety days after the date on which notification of withdrawal is received by the Depositary.

(d) Any Contracting State which withdraws from the Convention shall be considered as also having withdrawn from any protocol to which it was a party.
(e) Any Contracting State which withdraws from the Protocol concerning Regional Co-
operation in Combating Pollution by Oil and other Harmful Substances in Cases of
Pollution Emergency shall be considered as. Also having withdrawn from the
Convention.

Article XXX

RESPONSIBILITIES OF THE DEPOSITARY

(a) The Depositary shall inform the Contracting States and the secretariat of the
following:

(i) Signature of this Convention and of any protocol thereto, and of the deposit
of the instruments of ratification, acceptance, approval or accession in
accordance with article XXVII;

(ii) Date on which the Convention and any protocol will enter into force in
accordance with the provision of article XXVIII;

(iii) Notification of a different intention made in accordance with articles XX and
XXI;

(iv) Notification of withdrawal made in accordance with article XXIX;

(v) Amendments adopted with respect to the Convention and to any protocol,
their acceptance by the Contracting State and the date of entry into force of
those amendments in accordance with the provisions of article XX;

(vi) Adoption of new annexes and of the amendment of any annex in accordance
with article XXI.

(b) The Depositary shall call the first meeting of the Council within six months of the
date on which the Convention enters into force.

The original of this Convention, of any protocol thereto, of any annex to the
Convention or to a protocol, or of any amendment to the Convention, to a protocol or to
an annex of the Convention or of a protocol shall be deposited with the Depositary, the
Government of Kuwait who shall send copies thereof to all States concerned and shall
register all such instruments and all subsequent actions in respect of them with the
Secretariat of the United Nations in accordance with Article 102 of the Charter of the
United Nations.
IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized by their respective Governments, have signed the present Convention. DONE at Kuwait this twenty-fourth day of April, in the year one thousand nine hundred and seventy-eight in the Arabic, English and Persian languages, the three texts being equally authentic. In case of a dispute as to the interpretation or application of the Convention or its protocols, the English text shall be dispositively authoritative.
PROTOCOL CONCERNING REGIONAL CO-OPERATION
IN COMBATING POLLUTION BY OIL AND OTHER HARMFUL
SUBSTANCES IN CASES OF EMERGENCY

The Contracting States

Being Parties to the Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution (hereinafter referred to as "the Convention"),

Conscious of the particular urgency to realize the ever present potentiality of emergencies which may result in substantial pollution by oil and other harmful substances and to provide co-operative and effective measures to deal with them,

Being aware that existing measures for responding to pollution emergencies need to be enhanced on a national and regional basis to deal with this problem in a comprehensive manner for the benefit of the Region, Have agreed as follows:

Article I

For the purposes of this Protocol:

1. "Appropriate Authority" means either the National Authority defined in article I of the Convention, or the authority or authorities within the Government of a Contracting State, designated by the National Authority and responsible for:
   (a) Combating and otherwise operationally responding to marine emergencies;
   (b) Receiving and co-ordinating information of particular marine emergencies;
   (c) Co-ordinating available national capabilities for dealing with marine emergencies in general within its own Government and with other Contracting States.

2. "Marine Emergency" means any casualty, incident, occurrence or situation, however caused, resulting in substantial pollution or imminent threat of substantial pollution to the marine environment by oil or other harmful substances and includes, inter alia, collisions, strandings and other incidents involving ships, including tankers, blow-outs arising from petroleum drilling and production activities, and the presence of oil or other harmful substances arising from the failure of industrial installations;
3. "Marine Emergency Contingency Plan" means a plan or plans, prepared on a national, bilateral or multilateral basis, designed to coordinate the deployment, allocation and use of personnel, material and equipment for the purpose of responding to marine emergencies;

4. "Marine Emergency Response" means any activity intended to prevent, mitigate or eliminate pollution by oil or other harmful substances or threat of such pollution resulting from marine emergencies;

5. "Related Interests" means the interests of a Contracting State directly or indirectly affected or threatened by a marine emergency, such as:
   (a) Maritime, coastal, port or estuary activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned;
   (b) Historic and tourist attractions of the area concerned;
   (c) The health of the coastal population and the well-being of the area concerned, including conservation of living marine resources and of wildlife;
   (d) Industrial activities which rely upon intake of water, including distillation plants, and industrial plants using circulating water;

6. "Convention" means the Kuwait Regional Convention for Cooperation on the Protection of the Marine Environment from Pollution;

7. "Sea Area" means the area specified in paragraph (a) of article II of the Convention;

8. "Council" means the organ of the Regional Organization for the Protection of the Marine Environment established under article XVI of the Convention;

9. "Centre" means the Marine Emergency Mutual Aid Centre established under article III, paragraph 1 of the present Protocol.

Article II

1. The Contracting States shall co-operate in taking the necessary and effective measures to protect the coastline and related interests of one or more of the States from the threat and effects of pollution due to the presence of oil or other harmful substances in the marine environment resulting from marine emergencies.

2. The Contracting States shall endeavour to maintain and promote, either individually or through bilateral or multilateral co-operation, their contingency plans and means
for combating pollution in the Sea Area by oil and other harmful substances. These means shall include, in particular, available equipment, ships, aircraft and manpower prepared for operations in cases of emergency.

Article III

1. The Contracting States hereby establish the Marine Emergency Mutual Aid Centre.

2. The objectives of the Centre shall be:

   (a) To strengthen the capacities of the Contracting States and to facilitate cooperation among them in order to combat pollution by oil and other harmful substances in cases of marine emergencies;

   (b) To assist Contracting States, which so request, in the development of their own national capabilities to combat pollution by oil and other harmful substances and to co-ordinate and facilitate information exchange, technological cooperation and training;

   (c) A later objective, namely the possibility of initiating operations to combat pollution by oil and other harmful substances at the regional level, may be considered. This possibility should be submitted for approval by the Council after evaluating the results achieved in the fulfillment of the previous objectives and in the light of financial resources which could be made available for this purpose.

3. The functions of the Centre shall be:

   (a) To collect and disseminate to the Contracting States information concerning matters covered by this Protocol, including:

      (i) Laws, regulations and information concerning appropriate authorities of the Contracting States and marine emergency contingency plans referred to in article V of this Protocol;

      (ii) Information concerning methods, techniques and research relating to marine emergency response referred to in article VI of this Protocol; and

      (iii) List of experts, equipment and materials available for marine emergency responses by the Contracting States;

   (b) To assist the Contracting States, as requested:
(i) In the preparation of laws and regulations concerning matters covered by this Protocol and in the establishment of appropriate authorities;
(ii) In the preparation of marine emergency contingency plans;
(iii) In the establishment of procedures under which personnel, equipment and materials involved in marine emergency responses may be expeditiously transported into, out of, and through their respective countries;
(iv) In the transmission of reports concerning marine emergencies; and
(v) In promoting and developing training programmes for combating pollution;

(c) To co-ordinate training programmes for combating pollution and prepare comprehensive anti-pollution manuals;

(d) To develop and maintain a communication/information system appropriate to the needs of the Contracting States and the Centre for the prompt exchange of information concerning marine emergencies required by this Protocol;

(e) To prepare inventories of the available personnel, material, vessels, aircraft, and other specialized equipment for marine emergency responses;

(f) To establish and maintain liaison with competent regional and international organizations, particularly the Inter-Governmental Maritime Consultative Organization, for the purposes of obtaining and exchanging scientific and technological information and data, particularly in regard of any new innovation which may assist the Centre in the performance of its functions;

(g) To prepare periodic reports on marine emergencies for submission to the Council; and

(h) To perform any other functions assigned to it either by this Protocol or by the Council.

4. The Centre may fulfill additional functions necessary for initiating operations to combat pollution by oil and other harmful substances on a regional level, when authorized by the Council, in accordance with paragraph 2 (c) above.
Article IV

1. The present Protocol shall apply to the Sea Area specified in paragraph (a) of article 11 of the Convention.

2. For the purposes of dealing with a marine emergency, ports, harbours, estuaries, bays and lagoons may be treated as part of the Sea Area if the concerned Contracting State so decides.

Article V

Each Contracting State shall provide the Centre and the other Contracting States with information concerning:

(a) Its appropriate authority;

(b) Its laws, regulations, and other legal instruments relating generally to matters addressed in this Protocol, including those concerning the structure and operation of the authority referred to in paragraph (a) above;

(c) Its national marine emergency contingency plans.

Article VI

Each Contracting State shall provide to other Contracting States and the Centre information concerning:

(a) Existing and new methods, techniques, materials, and procedures relating to marine emergency response;

(b) Existing and planned research and developments in the areas referred to in paragraph (a) above; and

(c) Results of research and developments referred to in paragraph (b) above.

Article VII

1. Each Contracting State shall direct its appropriate officials to require masters of ships, pilots of aircraft and persons in charge of offshore platforms and other similar structures operating in the marine environment and under its jurisdiction to
report the existence of any marine emergency in the Sea Area to the appropriate national authority and to the Centre.

2. Any Contracting State receiving a report pursuant to paragraph 1 above shall promptly inform the following of the marine emergency:
   (a) The Centre;
   (b) All other Contracting States;
   (c) The flag State of any foreign ship involved in the marine emergency concerned.

3. The content of the reports, including supplementary reports where appropriate, referred to in paragraph 1 above should conform to appendix A to this Protocol.

4. Any Contracting State which submits a report pursuant to paragraphs 2 (a) and (b) above, shall be exempted from the obligations specified in paragraph (b) of article IX of the Convention.

**Article VIII**

The Centre shall promptly transmit information and reports which it receives from a Contracting State pursuant to articles V, VI and paragraph 2 of article VII of this Protocol to all other Contracting States.

**Article IX**

Any Contracting State which transmits information pursuant to this Protocol may specifically restrict its dissemination. In such a case, any Contracting State or the Centre to whom this information has been transmitted shall not divulge it to any other person, Government, or to any public or private organization without the specific authorization of the former Contracting State.

**Article X**

Any Contracting State faced with a marine emergency situation as defined in paragraph 2 of article I of this Protocol shall:

(a) Take every appropriate measure to combat pollution and/or to rectify the situation;

(b) Immediately inform all other Contracting States, either directly or through the Centre, of any action which it has taken or intends to take to combat the pollution.
The Centre shall promptly transmit any such information to all other Contracting States;

(c) Make assessment of the nature and extent of the marine emergency, either directly or with the assistance of the Centre;

(d) Determine the necessary and appropriate action to be taken with respect to the marine emergency, in consultation, where appropriate, with other Contracting States, affected States and the Centre.

**Article XI**

1. Any Contracting State requiring assistance in a marine emergency response may call for assistance directly from any other Contracting State or through the Centre. Where the services of the Centre are utilized, the Centre shall promptly transmit requests received to all other Contracting States. The Contracting States to whom a request is made pursuant to this paragraph shall use their best endeavours within their capabilities to render the assistance requested.

2. The assistance referred to in paragraph 1 above may include:

   (a) Personnel, material, and equipment, including facilities or methods for the disposal of recovered pollutant;

   (b) Surveillance and monitoring capacity;

   (c) Facilitation of the transfer of personnel, material, and equipment into, out of, and through the territories of the Contracting States.

3. The services of the Centre may be utilized by the Contracting States to co-ordinate any marine emergency response in which assistance is called for pursuant to paragraph 1 above.

4. Any Contracting State calling for assistance pursuant to paragraph 1 above shall report the activities undertaken with this assistance and its results to the Centre. The Centre shall promptly transmit any such report to all other Contracting States.

5. In cases of special emergencies, the Centre may call for the mobilization of resources made available by the Contracting States to combat pollution by oil and other harmful substances.
Article XII

1. Having due regard to the functions assigned to the Centre under this Protocol, each Contracting State shall establish and maintain an appropriate authority to carry out fully its obligations under this Protocol. With the assistance of the Centre, where appropriate, the appropriate authority of each Contracting State shall co-operate and co-ordinate its activities with counterparts in the other Contracting States.

2. Among other matters with respect to which co-operation and coordination efforts shall be directed under paragraph I above are the following:

(a) Distribution and allocation of stocks of material and equipment;
(b) Training of personnel for marine emergency, response;
(c) Marine pollution surveillance and monitoring activities;
(d) Methods of communication in respect of marine emergencies;
(e) Facilitation of the transfer of personnel equipment and materials involved in marine emergency responses into, out of, and through the territories of the Contracting States;
(f) Other matters to which this Protocol applies.

Article XIII

The Council shall:

(a) Review periodically the activities of the Centre performed under this Protocol;
(b) Decide on the degree to which, and stages by which, the functions of the Centre set out in article III will be implemented; and
(c) Determine the financial, administrative and other support to be provided by the Contracting States to the Centre for the performance of its functions.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized by their respective Governments, have signed this Protocol.

DONE at Kuwait this twenty-fourth day of April, in the year one thousand nine hundred and seventy-eight in the Arabic, English and Persian languages, the three texts being equally authentic. In case of a dispute as to the interpretation or application of this Protocol, the English text shall be dispositively authoritative.
APPENDIX A

Guide-lines for the report to be made pursuant to article VII of the Protocol

1. Each report shall, as far as possible, contain, in general:
   (a) The identification of the source of pollution (e.g. identity of the ship), where appropriate;
   (b) The geographic position, time and date of the occurrence of the incident or of the observation;
   (c) The marine meteorological conditions prevailing in the area;
   (d) Where the pollution originates from a ship, relevant details respecting the condition of the ship.

2. Each report shall contain, whenever possible, in particular:
   (a) A clear indication or description of the harmful substances involved, including the correct technical names of such substances (trade names should not be used in place of the correct technical names);
   (b) A statement or estimate of the quantities, concentrations and likely condition of harmful substances discharged or likely to be discharged into the sea;
   (c) Where relevant, a description of the packaging and identifying marks; and
   (d) The name of the consignor, consignee or producer.

3. Each report shall clearly indicate, whenever possible, whether the harmful substance discharged or likely to be discharged is oil or a noxious liquid, solid or gaseous substance, and whether such substance was or is carried in bulk or contained packaged form, freight containers, portable tanks, or submarine pipelines.

4. Each report shall be supplemented, as necessary, by any relevant information requested by a recipient of the report or deemed appropriate by the person sending the report.

5. Any of the persons referred to in article VII, paragraph I of this Protocol shall:
   (a) Supplement as far as possible the initial report, as necessary, with information concerning further developments; and
   (b) Comply as fully as possible with requests from affected States for additional information.
ANNEX

Status of the Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution and its Protocol

<table>
<thead>
<tr>
<th>State</th>
<th>Convention</th>
<th>Signature</th>
<th>Ratification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bahrain</td>
<td></td>
<td>24 April 1978</td>
<td>1 April 1979</td>
</tr>
<tr>
<td>Iran</td>
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<td>24 April 1978</td>
<td>3 March 1980</td>
</tr>
<tr>
<td>Iraq</td>
<td></td>
<td>24 April 1978</td>
<td>4 February 1979</td>
</tr>
<tr>
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<td>24 April 1978</td>
<td>7 November 1978</td>
</tr>
<tr>
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</tr>
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</tr>
<tr>
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<td>24 April 1978</td>
<td>26 December 1981</td>
</tr>
<tr>
<td>United Arab Emirates</td>
<td></td>
<td>24 April 1978</td>
<td>1 December 1979</td>
</tr>
</tbody>
</table>

* In accordance with article XXVII (c) of the convention “any State which has ratified, accepted, approved or acceded to the present Convention shall be considered as having ratified, accepted, approved or acceded to the Protocol concerning Regional Co-operation in Combating Pollution by Oil and other Harmful Substances in Cases of Emergency”.
Addendum 1

FINANCIAL ARRANGEMENTS

Table 1: Percentages of Contribution by Member States (adopted by the ROPME Council in April 1978)

<table>
<thead>
<tr>
<th>Country</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bahrain</td>
<td>2.00%</td>
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<tr>
<td>I.R. Iran</td>
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<td>Iraq</td>
<td>12.66%</td>
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<td>Saudi Arabia</td>
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<td>United Arab Emirates</td>
<td>11.73%</td>
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</table>

Table 2: Percentages of Contribution by Member States (adopted by the ROPME Council in April 1978)

<table>
<thead>
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<th>Country</th>
<th>Percentage</th>
</tr>
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<tbody>
<tr>
<td>Bahrain</td>
<td>2.00%</td>
</tr>
<tr>
<td>I.R. Iran</td>
<td>16.00%</td>
</tr>
<tr>
<td>Iraq</td>
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<td>Kuwait</td>
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<tr>
<td>Oman</td>
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<tr>
<td>Qatar</td>
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</tr>
<tr>
<td>Saudi Arabia</td>
<td>20.00%</td>
</tr>
<tr>
<td>United Arab Emirates</td>
<td>14.00%</td>
</tr>
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</table>
Protocol Concerning Marine Pollution Resulting from
Exploration and
Exploitation of the Continental Shelf
INTRODUCTION

Due to technological advancement in the field of exploration and exploitation of the sea-bed and sub-soil of the continental shelf for mineral resources, the environment of the Sea Area suffers from pollution. Offshore operations such as dredging, pipelines, drilling activities, etc. create a lot of environmental problems which disturb the marine environment in many ways. In order to prevent / minimize pollution of the marine environment from such sources, and in implementation of Articles III (b) and VII of the Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution, the ROPME Council acknowledged the necessity to develop a Protocol concerning marine pollution resulting from exploration and exploitation of the bed of the territorial sea and its subsoil and the continental shelf.

In accordance with the Council decision 4.9.2.5 (Fourth Meeting of ROPME Council - April 1985), the ROPME Secretariat contracted a Consultant in July 1985 to prepare a Draft Protocol which was reviewed from time to time by Member States and comments submitted to the Secretariat for further detailed deliberations at the legal/technical meetings. The Secretariat convened four legal/technical meetings (February 1986, April 1987, February and December 1988) at which the Articles of the Draft Protocol were deliberated thoroughly by legal/technical experts from ROPME Member States, as well as Regional and International Organizations, and the pre-final texts of the Protocol were forwarded to Member States for comments and formalization. Accordingly, in conformity with Article XIX of the Convention, a Meeting of the Plenipotentiaries of the Contracting States was convened on 28-29 March 1989 at which a Drafting Committee prepared the final texts of the Protocol in English, Arabic and Persian languages which were signed by the Plenipotentiaries on 29 March 1989.

The present Protocol is to be supplementary to the Kuwait Regional Convention, and to operate alongside the existing Protocol concerning Regional Co-operation in Combating Pollution by Oil and other Harmful Substances in Cases of Emergency. Reference is also made to other relevant obligations under relevant International Conventions, in particular the United Nations Convention on the Law of the Sea (1982),
so as to acknowledge those obligations and to make it clear that there is to be neither derogation from nor conflict with them.

The Protocol, which consists of fifteen Articles, is designed to provide protection as can reasonably be given against marine pollution resulting from exploration and exploitation of the Continental Shelf. Many of the regulations embodied in the Protocol are already in force in individual ROPME Member States. They are nevertheless included in the Protocol to ensure that they become continuing obligation for all the States, and that there should be comprehensive protection throughout the Sea Area at least by the minimum agreed standards.

It is worth mentioning that this Protocol is considered a great achievement for ROPME and the Region, and it will be strengthened by prompt ratification by Member States in accordance with Article XV of the Protocol.

Kuwait, June 1989

Dr. Badria Al-Awadi
Co-ordinator (Tech. & Admin.)
THE CONTRACTING STATES

Being Parties to the Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution and to the Protocol concerning Regional Co-operation in Combating Pollution by Oil and other Harmful Substances in Cases of Emergency;

BEING AWARE of the Articles 76, 197 and 208 of the United Nations Convention on the Law of the Sea (1982);

RECOGNIZING the danger posed to the marine environment and to human health by pollution from exploration and exploitation of the Continental Shelf, and the serious problems resulting therefrom in the Sea Area under their national jurisdictions;

CONSCIOUS of the need for further and more particular measures to prevent and control marine pollution from exploration and exploitation of the sea-bed and its subsoil;

BEING MINDFUL of their existing obligations under International Law; and

PROMPTED by the desire to implement Article III, paragraph (b), Article VII, and Article XIX of the Convention;

HAVE AGREED AS FOLLOWS:
ARTICLE I

For the purposes of this Protocol:

1. "Centre" means the Marine Emergency Mutual Aid Centre established under Article III paragraph 1 of the "Protocol concerning Regional Co-operation in Combating Pollution by Oil and other Harmful Substances in Cases of Emergency".
2. "Certifying Authority" means any person or body of persons authorized by the Contracting State to issue a certificate of safety and fitness for purpose;
3. "Chemical Use plan" means a plan drawn up by the operator of an offshore installation which shows -
   a) the chemicals he intends to use in his operations;
   b) the purpose or purposes for which he intends to use the chemicals;
   c) the maximum concentrations of the chemicals he intends to use within any other substances, and maximum amounts he intends to use in any specified period;
   d) the area within which the chemical may escape into the marine environment; provided that where there is no known danger of a chemical escaping into the marine environment, it need not be included in the plan;
4. "Competent State Authority" means any Government department, Agency or other Authority in the Contracting State designated to exercise the power or discharge the function referred to in this Protocol, with such designation to be formally communicated to the Organization;
5. "Contracting State" means any State which has become a party to this Protocol;
6. "Convention" means the Kuwait Regional Convention for Cooperation on the Protection of the Marine Environment from Pollution;
7. "Council" means the organ of the Organization comprised of the Contracting States and established in accordance with Article XVI, paragraph (b) (i) of the Convention;
8. "Garbage" means kitchen and domestic waste, refuse and solid wastes, other than any for which provision is made by any other Article of this Protocol, save for Article XII;
9. "Guidelines" means only guidelines issued by the Organization and any amendments thereto in each case approved by the Council;

10. "Licence" means a licence, permit including work permit, or authorization, formally issued under the authority of a Contracting State for undertaking an offshore operation;

11. "Marine pollution" shall have the meaning given to it in Article I (a) of the Convention;

12. "Offshore Installation" means any structure, plant or vessel, whether floating or fixed to or under the seabed, placed in a location in the Protocol Area (defined in Item 16 in this Article) for the purpose of offshore operations, including any tanker for the time being moored and used for the temporary storage of oil, and including any plant for treating, storing or regaining control of the flow of crude oil; and for the purposes of certification under Article VI, an installation includes any integral part of the structure, plant, equipment or vessel, any attached lifting gear or safety mechanism, and any other part or equipment specified by the Contracting State as part of the installation;

13. "Offshore Operations" means any operations conducted in the Protocol Area for the purposes of exploring of oil or natural gas or for the purposes of exploiting those resources, including any treatment before transport to shore and any transport of the same by pipeline to shore. It includes also any work of construction, repair, maintenance, inspection or like operation incidental to the main purpose of exploration or exploitation;

14. "Operator" means any natural or juridical person who undertakes offshore operations as defined under item (13) of Article I of this Protocol;

15. "Organization" shall have the meaning given to it in Article I (c) of the Convention;

16. "Protocol Area" means all parts of the Continental Shelf of a Contracting State which fall within the Sea Area as defined. In paragraph (a) of Article II of the Convention and all parts of its Continental Shelf contiguous therewith;

17. "Sewage" means -
   i) drainage and other waste from any form of toilet, urinal or water closet;
   ii) drainage from medical premises such as dispensary or sick bay, via washbasins, wash-tubs and drains located in such premises;
Appendices

iii) other wastewaters when mixed with significant quantities of the drainage defined above;

18. "Special Area" means that part of the Sea Area located north-west of the rhumb line between Ras Al Hadd (22°30'N, 59°48'E) and Ras Al Fasteh (25°04'N, 61°25'E).

ARTICLE II

Contracting States shall require that all appropriate measures are taken to prevent, abate and control marine pollution from offshore operations in those parts of the Protocol Area within their respective jurisdictions taking into account the best available and economically feasible technology. Contracting States acting individually or jointly shall also take all appropriate steps to combat marine pollution from offshore operations within the parts of the Protocol Area under their jurisdiction. Such obligations shall be without prejudice to the more specific obligations accepted under this Protocol.

ARTICLE III

Each Contracting State shall ensure that in the Protocol Area under its jurisdiction any offshore operation shall be conducted under a licence, which may be granted subject to such conditions for the protection of the marine environment and coastal areas as the Competent State Authority sees fit to impose. The Competent State Authority shall require the operator to comply with relevant laws and regulations issued under the authority of the State, and shall have the power to take such measures as are necessary to enforce compliance therewith.

ARTICLE IV

1. Each Contracting State shall take measures to ensure the following:
   a) Before licensing any offshore operation which could cause significant risks of pollution in the Protocol Area or any adjacent coastal area, the Competent State Authority shall call for submission of an assessment of the potential environmental effects thereof. No such operation shall commence until a statement of those effects has been submitted, and no licence shall be granted
until the Competent State Authority is satisfied that the operation will entail no unacceptable risk of such damage in the Protocol Area or any adjacent coastal area.

b) In deciding to call for an environmental impact statement, and in determining its scope, the Competent State Authority shall have regard to the Guidelines issued by the Organization.

c) Whenever a Competent State Authority has called for and received an environmental impact statement, it shall send to the Organization a summary of the potential environmental effects referred to in that statement. The Organization shall, within four days of its receipt, dispatch copies of that summary to all the other Contracting States. The Competent State Authority before granting a licence for the proposed operation shall allow all other Contracting States to submit representations to it through the Organization within a stated time which shall be reasonable taking into account the type of operation and the urgency of the need for a decision. It shall consider any such representations before licensing the said operation.

Notwithstanding the obligation to send a summary to the Organization, the Contracting State shall have the right to withhold information which might prejudice its national security.

2. Whenever a Contracting State does not call for an assessment of the environmental impact of a proposed offshore operation, it shall consider calling for a survey of the marine environment and the aquatic life therein to be made before the start of the proposed operation. The survey is to be carried out by or under the direct supervision of a body independent of the operator and approved by the Competent State Authority.

3. The Guidelines on Environmental Impact Assessment to be issued by the Organization shall contain guidance on the type of operation, and the circumstances in which it would cause significant risk of pollution in the Protocol Area or any adjacent coastal area.
ARTICLE V

1. Each Contracting State shall endeavour to ensure that offshore operations within its jurisdiction shall not cause unjustifiable interference with lawful navigation, fishing or any other activity carried on under a bilateral or multilateral agreement, or on the basis of international law, and that in siting an installation, due regard shall be had to existing pipelines and cables. Regard shall also be had to the need for protecting sites of special ecological and cultural interests.

2. Each Contracting State shall take steps to ensure that, within the area of its jurisdiction, operators of offshore installations survey the sea-bed in the vicinity of their installations, and remove any debris resulting from their operations which might interfere with lawful fishing:
   a) in the case of a pipeline, or other sub-sea apparatus immediately following completion of the work of installation;
   b) in the case of production platform, immediately following its removal;
   c) in any case when the Competent State Authority might reasonably require survey and clean-up.

ARTICLE VI

Each Contracting State shall take all practicable measures to ensure that every offshore installation to be used in that part of the Protocol Area within its jurisdiction is certified by a Certifying Authority or its designee that it is safe and fit for the purpose for which it is to be used so as to ensure that it will not cause accidental damage to the marine environment.

ARTICLE VII

Each Contracting State shall take all practicable measures to ensure the following:

1. Operators shall at all times have available to their offshore installations, in good working order, equipment and devices to minimize the risk of accidental pollution and to facilitate prompt response to a pollution emergency, in accordance with good oilfield or other relevant industry practice.
2. Any such plant or equipment not included as part of an installation for the purposes of Article VI shall be subject to prior examination and approval by or on behalf of the Competent State Authority, and to periodic inspection, in accordance with good oilfield or other relevant industry practice.

3. Blow-out preventers and other safety equipment shall be tested periodically by the operator or on his behalf, and exercises in their operation carried out periodically, in accordance with good oilfield or other relevant industry practice.

4. Offshore installations above sea level shall carry lights and other warning instruments, in accordance with international maritime practice, maintained in good working order, and those lights and instruments shall also be operated in accordance with international maritime practice.

5. All persons engaged in offshore operations shall have had or be given training in accordance with good oilfield practice. Any person employed on an offshore installation for the first time shall undergo an induction course, and shall be given a manual which includes instruction on emergency procedures.

**ARTICLE VIII**

Each Contracting State shall take all practicable measures to ensure the following:

1. No operator shall start work on any stage of his offshore operations within its jurisdiction until he has:
   a) prepared a Contingency Plan to deal with any event which may occur as a result of the operations, and which may cause significant pollution to the marine environment;
   b) had that plan approved by the Competent State Authority;
   c) shown to the satisfaction of that State authority that he has available to him sufficient expertise and resources to put that Plan fully into operation.

2. No Contingency Plan shall be approved unless it can be co-ordinated with any existing national or local Contingency Plans, and any Plans prepared by the Centre, and unless the operator can be required to participate in any exercise conducted in the implementation of such Contingency Plans.
3. Any person conducting offshore operations shall make and maintain arrangements to ensure that when an event occurs as a result of his operations which may cause significant pollution of the marine environment, a full report of that event is sent immediately to the State authority designated to receive such reports.

4. The respective roles and powers of the industry and the authorities shall be fully understood before an oil spill emergency, and shall be clearly defined in the operator's Contingency Plan, and in any national and local Contingency Plans.

ARTICLE IX

1. Each Contracting State shall take all practicable measures to ensure, subject to paragraph 2 below, the following:
   a) In that part of the Protocol Area which is a 'Special Area', no machinery space drainage from an offshore installation shall be discharged into the sea unless the oil content thereof does not exceed 15 mg. per litre whilst undiluted. Any Contracting State may impose a more restrictive level in any area under its jurisdiction.
   b) No other discharge from an offshore installation into the sea within the Protocol Area, except one derived from drilling operations, shall have an oil content, whilst undiluted, greater than that stipulated for the time being by the Organization.
      The oil content so stipulated shall not be greater than 40 mg. per litre as an average in any calendar month, and shall not at any time exceed 100 mg. per litre.
   c) Discharge points for oily wastes shall be well below the surface of the sea as appropriate.
   d) All necessary precautions shall be taken to minimize losses of oil into the sea from oil and gas collected or flared from well testing.

2. Measures passed in compliance with paragraph 1 of this Article may provide that there is no breach of their requirements if, when the oil content of a discharge is greater than the permitted concentrations, that excess was due to some accident or other cause beyond the control of the operator and his employees, and that they
took all reasonable precautions and exercised all due diligence to avoid such excess. Alternatively, a defence of equivalent effect may be provided.

3. Each Contracting State shall ensure that the operator may be required to conduct surveys of environmental conditions in the vicinity of his offshore installation, periodically or on such occasions as the Competent State Authority may reasonably require. The State itself may conduct or have conducted such a survey. If, without apparent reason, the results of that survey show a significant difference from the results of the operator's most recent survey, without prejudice to any other legal action, the State may charge the cost of its own survey to the operator.

4. Each Contracting State shall pass measures necessary to ensure the following:
   a) Oil-based drilling fluids shall not be used in drilling operations in those parts of the Protocol Area within its jurisdiction except with the express sanction of the Competent State Authority. Such sanction shall not be given unless the Authority is satisfied that the use of such fluid is justified because of exceptional circumstances. If such fluid is used, the drill cuttings shall be effectively treated to minimize their oil content before being appropriately disposed off. Any wash waters shall not be discharged at any place from which they may be carried to mix with the same drill cuttings. The discharge point for the cuttings shall, as appropriate, be well below the surface of the water.
   b) No oil-based drilling fluid shall be discharged to any parts of the Protocol Area within its jurisdiction.
   c) Water-based drilling muds discharged from offshore operations must not contain persistent systemic toxins which may continue to pose an environmental threat after the initial drilling fluid discharge.

**ARTICLE X**

1. Each Contracting State shall take all practicable measures to ensure the following:
   a) Disposal into the sea of the following is prohibited:
      i) all plastics, including but not limited to synthetic ropes, synthetic fishing nets and plastic garbage bags;
      ii) all other garbage, including paper products, rags, glass, metal, bottle, crockery, dunnage, lining and packing materials;
b) Disposal into the sea of food wastes shall be made as far as practicable from land, but in any case not less than 12 nautical miles from the nearest land.

c) When the garbage is mixed with other discharges having different disposal or discharge requirements the more severe requirements shall apply.

d) Sewage shall not be discharged into the Protocol Area from an installation permanently manned by ten or more persons unless:
   i) it has been comminuted and disinfected using a system approved by the Competent State Authority and is discharged at a distance of more than four nautical miles from the nearest land; or
   ii) it is discharged at a distance of more than twelve nautical miles from the nearest land; or
   iii) it has passed through a treatment plant approved by the Competent State Authority; and in any case the discharge does not produce visible floating solids or discolouration of the surrounding water.

2. Each Contracting State shall provide at convenient points on its coastline, reception facilities for general garbage from manned offshore installations operating in the area of its jurisdiction.

ARTICLE XI

1. Each Contracting State shall take all appropriate measures to ensure the following:
   a) Each operator of an offshore installation shall prepare, and submit for approval by the Competent State Authority, a "Chemical Use Plan". Application for amendments to the Plan may be submitted subsequently and approved. If at any time he wishes to use a chemical outside the scope of his approved Plan, and that chemical may escape into the marine environment, he shall notify the Competent State Authority, except that in case of emergency to prevent the risk of injury to person or extensive damage to property, the notification need not be given prior to the use of the chemical.

b) The Competent State Authority has a power to prohibit, limit or regulate the use of a chemical or product and to impose conditions on its storage and its use, for the purpose of protecting the marine environment. In exercising that
power, the Authority shall have regard to any Guidelines issued by the Organization.

2. Each Contracting State shall take appropriate measures to ensure that seismic operations in the Protocol Area shall take into account the Guidelines issued by the Organization.

ARTICLE XII

Each Contracting State shall require that, for offshore operations in any part of the Protocol Area within its jurisdiction, the operator shall:

1. Provide adequate system for collection and proper disposal of all unwanted substances or articles;
2. Give proper instructions on their use;
3. Endeavour to provide for penalties for improper disposal.

ARTICLE XIII

1. Each Contracting State shall ensure that the Competent State authority has the power to require the operator of an offshore installation:
   a) in the case of a pipeline -
      i) to flush and remove any residual pollutants from the pipeline, and
      ii) to bury the pipeline, or remove part and bury the remaining parts thereof, so as to eliminate for the foreseeable future any risk of hindrance to navigation or fishing, taking all circumstances into account.
   b) in the case of platforms and other sea-bed apparatus and structures, to remove the installation in whole or in part to ensure the safety of navigation and in the interests of fishing. Each Contracting State shall also take all practicable measures to ensure that the operator has sufficient resources to guarantee that any such requirements can be met.

2. Where Contracting States have a common interest in fishing grounds in the Protocol Area, they shall endeavour to adopt a common policy on the removal of installations. In determining any case whether or not installations must be removed, Contracting States shall have regard to any Guidelines issued by the Organization.
Whether pipelines are removed or not, they shall be flushed to remove residual pollutants.

3. Contracting States shall pass, and take all practicable steps to enforce, measures to ensure that no offshore installation which in use has floated at or near the sea-surface, and no equipment from an offshore installation, shall be deposited on the sea-bed of the continental shelf when it is no longer needed.

**ARTICLE XIV**

1. The provisions of the Convention relating to Protocols shall apply to this Protocol.

2. Procedures for amendments to Protocols and their Annexes adopted in accordance with Articles XX and XXI of the Convention shall apply to this Protocol.

3. The Rules of Procedure and Financial Rules adopted pursuant to Article XXII of the Convention, and amendments thereto, shall apply to this Protocol.

**ARTICLE XV**

1. This Protocol shall be open for signature in the State of Kuwait from 29 March to 26 June 1989 by any State which is party to the Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution.

2. This Protocol shall be Subject to ratification, acceptance, approval or accession by the States parties to the Convention. Instruments of ratification, acceptance, approval or accession shall be deposited with the Government of Kuwait which shall assume the functions of the Depository.

3. This Protocol shall enter into force on the ninetieth day following the date of deposit of at least five instruments of ratification, acceptance or approval of, or accession to this Protocol by the States as referred to in paragraph 2 of this Article.

In WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized by their respective Governments, have signed this Protocol.

DONE AT KUWAIT this twenty-ninth day of March, in the year one thousand nine hundred and eighty-nine in the Arabic, English and Persian languages, the texts being equally authentic.
Protocol for the Protection of the Marine Environment against Pollution from Land-Based Sources

21 February 1990

REGIONAL ORGANIZATION FOR THE PROTECTION OF THE MARINE ENVIRONMENT (ROPME)

KUWAIT
THE CONTRACTING STATES

BEING PARTIES to the Kuwait Regional Convention for Cooperation on the Protection of the Marine Environment from Pollution;

RECOGNIZING the danger posed to the marine environment and to human health by pollution from land-based sources and the serious problems resulting therefrom in coastal waters of many Contracting States, principally due to the release of untreated, insufficiently treated and/or inadequately disposed of domestic or industrial discharges;

NOTING that existing measures to prevent, abate and combat pollution caused by discharges from land-based sources need to be strengthened on a national and a regional basis;

BEING AWARE of Articles 194, 207, 212 and 213 of the United Nations Convention on the Law of the Sea (1982); and the Montreal Guidelines for the Protection of the Marine Environment against Pollution from Land-Based Sources (1985); and

DESIROUS to strengthen the implementation of Article III, paragraph (b) and Article VI of the Convention;

HAVE AGREED as follows:

1 A Meeting of the Plenipotentiaries was held in Kuwait on 21 February 1990 for signing the Protocol concerning the Protection of the Marine Environment against Pollution from Land-Based Sources.
Appendices

Article I

Definitions

For the purpose of this Protocol:
1. "Combined Treatment" means common treatment of industrial effluents along with domestic sewage;
2. "Competent State Authority" means the Authority designated by the Contracting State for the purpose of this Protocol;
3. "Contracting State" means any State which has become a party to this Protocol;
4. "Convention" means the Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution;
5. "Council" means the organ of the Organization as referred to in subparagraph (i) of paragraph (b) of Article XVI of the Convention;
6. "Freshwater Limit" means the place in watercourses where, at low tide and in a period of low freshwater flow, there is an appreciable increase in salinity due to the presence of sea-water.
7. "Joint Pretreatment/Treatment" means common pretreatment/treatment of the effluents from more than one industrial source;
8. "Land-Based Sources" means municipal, industrial or agricultural sources, both fixed and mobile on land, discharges from which reach the Marine Environment, as outlined in Article III of this Protocol;
9. "Marine Environment" means the Protocol Area as defined in Article II of this Protocol;
10. "Organization" means the Regional Organization for the Protection of the Marine Environment established in accordance with Article XVI of the Convention;
11. "Pollution" means "Marine Pollution" as defined in paragraph (a) of Article I of the Convention;
Article II
Area of Application

The area to which this Protocol applies (hereinafter referred to as the "Protocol Area") shall be the Sea Area as defined in Article II, paragraph (a) of the Convention, together with the waters on the landward side of the baselines from which the breadth of the territorial sea of the Contracting States is measured and extending, in the case of watercourses, up to the freshwater limit and including intertidal zones and salt-water marshes communicating with the sea.

Article III
Sources of Pollution

This Protocol shall apply to discharges reaching the Protocol Area from land-based sources within the territories of the Contracting States, in particular:
(a) from outfalls and pipelines discharging into the sea;
(b) through rivers, canals or other watercourses, including underground watercourses;
(c) from fixed or mobile offshore facilities serving purposes other than exploration and exploitation of the sea bed, its subsoil and the continental shelf; and
(d) from any other land-based sources situated within the territories of the Contracting States, whether through water, through the atmosphere or directly from the coast.

Article IV
Source Control

1. The Contracting States undertake to implement the action programmes based on source control as outlined in Annex I to this Protocol. To this end, they shall develop and implement, jointly or individually, as appropriate, the necessary programmes and measures.

2. The programmes and measures and the timetables for their implementation aimed at reducing pollution from land-based sources, shall be fixed by the Contracting States and periodically reviewed and revised, if necessary every two years, in accordance with the provisions of Article XIV of this Protocol.
Article V

Joint and/or Combined Effluent Treatment

1. The Contracting States in their endeavour not to inhibit the Development of new industries, and especially that of small industrial operations, and recognizing the economic and technical difficulties often encountered by such operations in properly treating their effluents individually, undertake to implement, to the extent possible, industrial location planning programmes as outlined in Annex II to this Protocol. To this end, they shall develop and implement, jointly and/or individually, as appropriate, the necessary programmes and measures.

2. The Regional guidelines and criteria along with programmes and measures and the time-tables for their implementation, aimed at reducing pollution from landbased sources through joint and/or combined effluent treatment, shall be fixed by the Contracting States and periodically reviewed and revised, if necessary every two years, in accordance with the provisions of Article XIV of this Protocol.

Article VI

Regional and Local Regulations/Permits for Release of Wastes

1. As outlined in Annex 11110 this Protocol, the Contracting States shall progressively develop and adopt, in cooperation with competent Regional and International organizations as appropriate:

   (a) Regional guidelines, standards or criteria, as appropriate, for the quality of seawater used for specific purposes that is necessary for the protection of human health, living resources and ecosystems;

   (b) Regional regulations for the waste discharge and/or degree of treatment for all significant types of land-based sources;

   (c) Stricter local regulations for waste discharge and/or degree of treatment for specific sources based on local pollution problems and desirable water usage considerations.
Stricter regulations for specific sources serve the purpose of preserving the quality of seawater required for the intended use. In developing such regulations the local ecological, geographical and physical characteristics, as well as, the level of existing pollution in the Marine Environment shall be taken into consideration.

2. The programmes for the implementation of the above measures shall be adopted and shall take into account, for their progressive application, the cost of measures involved, the capacity to modify existing installations, the economic capacity of the Contracting States and their need for sustainable development.

3. Polluters shall be required to obtain a permit to discharge from the Competent State Authorities. Such permits shall allow for review and modification of discharge conditions reflecting the periodic update of, regulations.

4. Guidelines; standards or criteria, as well as, regulations, programmes and measures shall be developed and adopted, in accordance with the provisions of Article XIV of this Protocol and periodically updated, if necessary every two years, to reflect the increasing information through the monitoring programme described in Article VII of this Protocol, the changes in the industrial and other human activities and possible advances in science and the pollution control technologies.

**Article VII**

**Monitoring and Data Management**

1. The Contracting States, within the framework of the provisions of Article X of the Convention, shall carry out monitoring activities, if necessary in co-operation with the competent Regional and International organizations, in order to:
   a) collect data on natural conditions of the Protocol Area as regards its physical, biological and chemical characteristics;
   b) collect data on inputs of substances or energy that cause or potentially cause pollution from land-based sources, including information on the distribution of sources and the quantities of pollutants introduced to the Protocol Area;
   c) assess systematically the levels of pollution within their internal and territorial waters, in particular with regard to the substances that may have a potential significant impact on the Marine Environment. For the selection of the
sampling locations and substances to be measured, information available, _inter alia_, from source inventories, discharge outfalls and marine environment characteristics shall be considered; and.

d) Evaluate the effectiveness of measures under this Protocol in meeting the environmental objectives.

2. Contracting States shall collaborate jointly or collectively to establish comparable monitoring programmes, as well as analytical quality control programmes and to promote data storage, retrieval and exchange.

**Article VIII**

_Environmental Impact Assessment_

1. The Contracting States shall require on priority basis an assessment of the potential environmental impacts during the planning and implementation stages of selected development projects within their territories, particularly in the coastal areas, which may cause significant risks of pollution from land-based sources to the Protocol Area, in order to ensure that appropriate measures are taken to prevent or mitigate such risks.

2. The Contracting States shall develop, with the assistance of the Organization, technical and other guidelines concerning the assessment of the potential environmental impacts of development projects referred to in paragraph 1, including possible transboundary effects. The assessment should, where appropriate, contain _inter alia_ the following:

(a) A description of the geographical location of the activities to be carried out;

(b) A description of the initial ecological state of the Marine environment and the coastal area which may be affected by the activities;

(c) An indication of the nature aims and scope of the proposed activities;

(d) A description of the methods, installations and other means to be used;

(e) A description of the foreseeable direct and indirect long-term and short-term effects of the activities on the Marine Environment, including fauna, flora and the ecological balance;
Appendices

(f) A statement setting out the measures proposed to reduce to the minimum the risk of pollution by carrying out the activities and, in addition, possible process and pollution abatement alternatives to such measures;

(g) An indication of the measures to be taken for the protection of the Marine Environment from pollution during and, as appropriate, at the end of the proposed activities;

(h) Definition of commitments to ongoing environmental management and monitoring;

(i) Cost-benefit analysis as appropriate;

(j) A brief summary of the assessment.

3. The implementation of the selected projects referred to in paragraph 1 should be made subject to a prior written authorization from the Competent State Authorities which takes fully into account the findings of the environmental impact assessment.

4. The Contracting States shall co-operate with the Organization to develop procedures for the dissemination to all Contracting States of the reports on the results of such assessment with a view to enable the Contracting States which may be affected by the environmental impacts of the development projects to consult with the Contracting State concerned.

Article IX

Scientific and Technological Co-operation

The Contracting States, in conformity with Article X of the Convention, shall co-operate in scientific and technological fields related to pollution from land-based sources, particularly research on inputs, pathways and effects of pollutants and on the development of new methods for their treatment, reduction or elimination. To this end, the Contracting States shall, in particular, endeavour to:

(a) exchange scientific and technical information;

(b) co-ordinate their research programmes of common nature.
Article X
Scientific, Technical and Other Assistance

1. The Contracting States shall, directly or with the assistance of the Organization or competent Regional and International organizations, co-operate with a view to formulate and implement programmes of assistance, particularly in the fields of science, education and technology, for the prevention, reduction and control of pollution from land-based sources.

2. Such technical assistance shall include, in particular, the training of scientific and technical personnel, as well as the acquisition, utilization, maintenance and production of appropriate equipment.

Article XI
Watercourses shared by States

1. If discharges from a watercourse which flows through the territories of Contracting States are likely to cause pollution of the Protocol Area, the Contracting States in question, in accordance with the provisions of this Protocol in so far as each of them is concerned, are called upon to co-operate with a view to ensuring its full application.

2. A Contracting State shall not be responsible for any pollution originating on the territory of a non-Contracting State. However, the Contracting State shall endeavour to co-operate with such State so as to make possible full application of the Protocol.

Article XII
Exchange of Information

1. The Contracting States shall inform one another directly or through the Organization of measures taken, of results achieved and, if the case arises, of difficulties encountered in the application of this Protocol. Procedures for the collection and submission of such information shall be determined by the Council.

2. Such information shall include *inter alia:*
(a) Relevant statistical data in accordance with Articles VI and VII of this Protocol;
(b) Data resulting from monitoring as provided for in Article VII of this Protocol;
(c) Quantities of pollutants discharged or emitted from their territories;
(d) Measures taken in accordance with Articles IV, V and VI of this Protocol.

Article XIII
Responsibility and liability for Damage

1. Contracting States shall ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the Marine Environment by natural or juridical persons under their jurisdiction.

2. Contracting States shall formulate and adopt appropriate procedures for the determination of liability for damage resulting from pollution from land-based sources.

Article XIV
Institutional Arrangements

The Council, in accordance with Article XVII of the Convention, shall be responsible for keeping under review the implementation of this Protocol. To this end, the Council shall, inter alia:

(a) consider the efficacy of the measures adopted and the advisability of adopting any other measures, in particular in the form of annexes;
(b) revise and amend any annex to this Protocol, as appropriate;
(c) formulate, adopt and review programmes and measures in accordance with Articles IV, V, VI, VII, IX and X of this Protocol;
(d) adopt Regional guidelines, standards or criteria in accordance with Articles IV, V and VI of this Protocol;
(e) formulate procedures for exchange of information in accordance with Articles VIII and XII of this Protocol;
(f) consider information submitted by the Contracting States under Articles VIII and XII of this Protocol;

(g) discharge such other functions as appropriate for the application of this Protocol; and

(h) establish any such institutional mechanism as deemed necessary for the achievement of the objectives of this Protocol.

**Article XV**
**General Provisions**

1. The provisions of the Convention relating to any Protocol shall apply to this Protocol.

2. Procedures for amendments to Protocols and their Annexes adopted in accordance with Articles XX and XXI of the Convention shall apply to this Protocol.

3. The Rules of Procedures and Financial rules adopted pursuant to Article XXII of the Convention, and amendments thereto, shall apply to this Protocol.

4. The Annexes form an integral part of this Protocol unless expressly provided otherwise thereto.

**Article XVI**
**Final Provisions**

1. This Protocol shall be open for signature in the State of Kuwait from 21 February to 21 May 1990 by any State which is party to the Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution.

2. This Protocol shall be subject to ratification, acceptance, approval or accession by the States parties to the Convention. Instruments of ratification, acceptance, approval or accession shall be deposited with the Government of Kuwait which shall assume the functions of the Depository.

3. This Protocol shall enter into force on the ninetieth day following the date of deposit of at least five instruments of ratification, acceptance or approval of, or accession to this Protocol by the States as referred to in paragraph 1 of this Article.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized by their respective Governments, have signed this Protocol.
DONE AT KUWAIT this twenty-first day of February, in the year one thousand nine hundred ninety in the Arabic, English and Persian languages, the texts being equally authentic.
ANNEXES
Annex I

Pollution Abatement through Source Control

With regard to the issue of pollution abatement through source control referred to in Article IV of this Protocol, consideration should be given to the control and progressive replacement of products, installations and industrial or other processes causing significant pollution to the Marine Environment. In this regard, particular attention will be given, but not limited, to the following factors:

a) Curtailment and/or regulation of import, transportation, manufacturing or processing of certain harmful substances.
b) Change of raw materials.
c) Change of manufacturing processes.
d) Good operating and housekeeping practices.
e) Segregation of waste streams and minimization of pollutant dilution prior to treatment.
f) Recovery, re-use and recycling.

The programmes, measures and the timetables required for the implementation of source control will be developed and priorities allocated on the basis of the results of on-going assessment studies.

Problem areas of Regional interest, where cost effective measures can be implemented, will receive attention for the purpose of establishing general management schemes. Such areas are, for example, the collection, treatment, and proper disposal of spent lubricating oils, blood and paunch from slaughterhouses, the control of fuel combustion processes and the implementation of source control in selected processes within large industries.
Annex II

Promotion of joint and/or combined Effluent Treatment

Without undue prejudice to the multifaceted constraints that often govern the selection of the location of new industries, a programme will be undertaken, as referred to in Article VI of this Protocol, to promote:

a) agglomeration of industries, in a way that enhances the possibility of joint effluent pretreatment and/or treatment, as the need may be;

b) location within the limits of city sewer systems of certain types of industry so as to enhance combined treatment of industrial and domestic wastes.

Promotion of joint and/or combined effluent treatment, if properly planned, could result in greatly reduced treatment, monitoring and enforcement costs as well as in increased treatment reliabilities. To this end, Regional guidelines and criteria will be developed dealing with topics of common interest, such as:

- the compatibility of effluent from different sources;
- pretreatment requirements prior to discharge into domestic and/or industrial sewer systems;
- cost sharing for the construction and operation of treatment plants.

Such guidelines and criteria will assist Contracting States in developing their own specific programmes and measures. While initial plans may deal with the location problem of new industries, the end objective will be the progressive attraction of existing selected small industries as the infrastructure and facilities are developed in the designated areas.

Annex III

Guidelines, Regulations and Permits for the Release of Wastes

1. With a view to guidelines, standards or criteria, as well as to regulations, programmes, measures, and discharge permits for release of wastes referred to in
Article VI of this Protocol, particular attention will be given, *inter alia*, to the following factors:

a) Regional regulations for the waste discharge and/or degree of treatment should be specific for each kind of source and, if necessary, may be different between existing and new sources. Their development should be based on treatment technology, cost and nature of pollutants considerations, as well as on an overview of the state of environment in the Protocol Area.

b) Regional guidelines and, as appropriate, standards or criteria should be developed for the quality of sea water used for specific purposes.

c) For areas where the water quality standards for the intended use cannot be achieved through the implementation of the above Regional regulations, stricter local regulations for the waste discharge and/or degree of treatment should be developed. Such local regulations will apply to the specific sources in the areas under consideration.

d) Regional regulations along with the programmes, measures and the timetables required for the implementation should be developed on a priority basis, *inter alia*, for the following types of wastes:

i) Ballast water, slops, bilges and other oily water discharges generated by land-based reception facilities and ports through loading and repair operations.

ii) Brine water and mud discharges from oil and gas drilling and extraction activities from land-based sources.

iii) Oily and toxic sludges from crude oil and refined products storage facilities.

iv) Effluents and emissions from petroleum refineries.

v) Effluents and emissions from petrochemical and fertilizer plants.

vi) Toxic effluents and emissions from industries such as chlor-alkali, primary aluminium production, pesticides, insecticides, and lead recovery plants.

vii) Emissions from natural gas flaring and desulfurization plants.

viii) Dust emissions from major industrial sources, such as cement, lime, asphalt and concrete plants.

ix) Effluents and emissions from power and desalination plants:
x) Wastes generated from coastal development activities which may have a significant impact on the Marine Environment.

xi) Sewage and solid wastes.

e) As the diagram 1 attached to this Annex illustrates, pollution abatement is an iterative process. Pollution abatement action will start from high priority measures, which will be selected to be pragmatic, cost-effective, while addressing the most. Critical environmental problems as perceived today. The monitoring programme as specified in Article VII of this Protocol, will be providing the necessary feedback for the required corrective action by yielding the database for assessing the effectiveness of implemented programmes, the current state of the environment and its trends. Corrective action, whenever required, will be taken through periodic updates of the regulations, programmes and measures and review of the conditions in discharge permits, in accordance with the provisions of Articles IV and VI of this Protocol.

2. Provisions for establishing criteria governing the issue of permits for the discharging of waste matter in the Marine Environment, should also take into consideration *inter alia* the following:

a) **Characteristics and Composition of Waste**

   i) Type and size of waste source, e.g. industrial process.

   ii) Type of waste (origin, average composition).

   iii) Form of waste (solid, liquid, sludge, slurry).

   iv) Total amount (volume discharged, e.g. per year).

   v) Discharge pattern (continuous, intermittent, seasonally variable, etc.)

   vi) Concentrations with respect to major constituents.

   vii) Properties: physical, e.g. solubility and density; chemical and biochemical, e.g. oxygen demand, nutrients; and biological, e.g. presence of viruses, bacteria, yeast, parasites.

   viii) Toxicity

   ix) Persistence: physical, chemical and biological.

   x) Accumulation and biotransformation in biological materials or sediments.
xi) Susceptibility to physical, chemical and biochemical changes and interaction in the aquatic environment with other dissolved organic and inorganic materials.

xii) Probability of producing taints or other changes reducing marketability of resources, e.g. fish, shellfish, etc.

b) Characteristics of Discharge Site and Receiving Marine Environment

i) Hydrographic, meteorological, geological; biological and topographical characteristics of the discharge site.

ii) Location and type of the discharge (outfall, canal, outlet, etc.) and its relation to other areas, e.g. amenity areas, spawning, nursery and fishing areas, shellfish grounds and exploitable resources.

iii) Rate of disposal per specific period, e.g. quantity per day, per week and per month.

iv) Initial dilution achieved at the point of discharge into the receiving marine environment.

v) Methods of packaging and containment, if any.

vi) Dispersion characteristics such as effects of currents, tides and wind on horizontal transport and vertical mixing.

vii) Water characteristics, e.g. temperature, pH, salinity, stratification, oxygen indices of pollution - dissolved oxygen (DO), chemical oxygen demand (COD), biochemical oxygen demand (BOD) - nitrogen present in organic and mineral form including ammonia, suspended matter, other nutrients and productivity.

viii) Existence and effects of other discharges which have been made in the discharge site, e.g. heavy metal background levels' and organic carbon content.

c) Availability of Waste Technologies

The methods of waste reduction and discharge for industrial effluents as well as domestic sewage should be selected taking into account the availability and feasibility of:

i) Alternative treatment processes;
ii) Re-use or elimination methods;

iii) On-land disposal alternative; and

iv) Appropriate low-waste technologies.

d) General Considerations and Conditions

i) Possible effects on amenities, e.g. presence of floating or stranded materials, turbidity, objectionable odour, discoloration and foaming.

ii) Effects on human health through pollution impact on: Edible marine organisms; bathing waters; aesthetics; etc.

iii) Effects on marine ecosystems, in particular living resources, endangered species and critical habitats.

iv) Possible effects on other uses of the sea, e.g. impairment of water quality for industrial use, underwater corrosion of structure, interference with ship operations from floating materials, interference with fishing or navigation through deposit of waste or solid objects on the sea floor and protection of areas of special importance for scientific or conservations purposes.
Establish Water Quality Criteria, Guidelines and Standards for Various Water Uses Based on Current Information and Perceived State of Environment

Develop Priority Action programmes and Measures

Implementation Action Programmes

Water Quality Goals Achieved? → YES  Continue Monitoring

NO

Modify Regional and/or Local Discharge Regulations as required

Develop Action Programmes and Measures

Diagram 1: Environmental Management Scheme
PROTOCOL ON THE CONTROL OF MARINE TRANSBOUNDARY MOVEMENTS AND DISPOSAL OF HAZARDOUS WASTES AND OTHER WASTES

REGIONAL ORGANIZATION FOR THE PROTECTION OF THE MARINE ENVIRONMENT (ROPME)

KUWAIT 1998
Introduction

Management of hazardous wastes has been one of the major environmental challenges facing Member States in the Region, both in magnitude and rate of increase. The use of older and less efficient manufacturing processes, improper management of wastes produced, poor storage and/or unwise purchasing of chemicals for industry, agriculture and domestic use in quantities greater than needed, contribute towards having high rates of hazardous waste generation. In facing increased risk to human health and the environment associated with the transboundary movement and disposal of hazardous wastes, UNEP introduced the Basel Convention, which was adopted on 22 March 1989. Recognizing that the Basel Convention could be used as a base upon which a more specific legal document could be developed to provide greater degree of protection over the Sea Area surrounded by the eight ROPME Member States, the Secretariat in cooperation with UNEP prepared the first draft of the Protocol in 1989. The draft was reviewed by three legal/technical expert meetings in 1989, 1993 and 1994 respectively.

The text of the revised draft Protocol was sent to the Secretariat of Basel Convention, ELI/PAC of UNEP and IMO for review and comments. The comments received were incorporated and the final draft was presented to the Fourth Legal/Technical Expert Meeting held in Tehran, I.R.Iran during 22-24 December 1997. Finally, the Plenipotentiaries Meeting was held in Tehran, I.R. Iran on Tuesday, 17 March 1998 during which six ROPME Member States signed the Protocol. This Protocol addresses major issues of concern to countries of the Region. It provides maximum protection against marine pollution resulting from
transboundary movements of wastes, operational pollution from ships and dumping of wastes at sea. In the meantime, it promotes regional cooperation to address all aspects of hazardous wastes and to ensure environmentally sound management of wastes. Through such a regional cooperation we will be able to establish and run reception facilities to control the operational pollution from ships. We will be able to establish an effective monitoring and surveillance system to detect and control dumping of wastes at sea. And, we will be able to utilize the existing facilities as well as those to be established in the Region to a fuller capacity to handle wastes in an environmentally sound manner.

Kuwait, December 1998

Dr. Mahmood Y. Abdulraheem
Coordinator (Tech. & Admin.)
PREAMBLE

THE CONTRACTING STATES

BEING PARTIES to the Kuwait Regional Convention for Cooperation on the Protection of the Marine Environment from Pollution, adopted in 1978;

RECOGNIZING the danger posed to human health and the environment of the Protocol Area by the transboundary movements and disposal of hazardous wastes and other wastes, and that such movements and disposal transfer the detrimental effects of such wastes from the place of origin to transit States and States in which the wastes shall be disposed of or stored;

CONVINCED that the most effective way to reduce the risk to human health and the marine environment from the dangers arising from hazardous wastes and other wastes, including their transboundary movements, is to reduce and eliminate their generation, and, where this is not possible, to dispose of them at or near the place of origin in an environmentally sound manner;

FULLY RECOGNIZING that any Contracting State has the sovereign right to ban the entry or disposal of foreign hazardous wastes and other wastes in its territory;

EMPHASIZING the importance of cooperation and coordination of action on a regional basis with the aim of controlling the transboundary movements of hazardous wastes and other wastes among themselves, and of restricting the importation of wastes from non-Contracting States for disposal;

TAKING INTO ACCOUNT Article 11 of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989, and adhering to the spirit of that Convention;

ALSO TAKING INTO ACCOUNT relevant international agreements and actions, especially the 1992 Rio Declaration on Environment and Development and Agenda 21;

DESIROUS to strengthen the implementation of Articles IV and V, and in compliance with Article XIX of the Kuwait Regional Convention.

HAVE AGREED As Follows:
Article 1

SCOPE OF THE PROTOCOL

1. This Protocol shall apply to the following wastes that are subject to transboundary movements to, from or through the Protocol Area and their disposal:
   a) Wastes that belong to any category contained in Annex I shall be hazardous wastes, unless they do not possess any of the characteristics contained in Annex III; and
   b) Wastes that belong to any category contained in Annex II shall be other wastes.
2. Wastes which, as a result of being radioactive, are subject to other international control systems are excluded from the scope of this Protocol.
3. Wastes which derive from offshore installations, as covered by the Protocol concerning Marine Pollution resulting from Exploration and Exploitation of the Continental Shelf, 1989, are excluded from the scope of this Protocol.
4. Nothing in this Protocol shall be construed as prohibiting or regulating the overland or airborne transboundary movements and disposal of hazardous wastes and other wastes, which movements and disposals do not intrude upon the marine environment of the Protocol Area.

Article 2

DEFINITIONS

For the purposes of this Protocol:
1. "Wastes" are substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law;
2. "Management" means the collection, transport and disposal of hazardous wastes or other wastes, including after-care of disposal sites;
3. "Transboundary movement" means any movement of hazardous wastes or other wastes from an area under the national jurisdiction of one State to or through an area under the national jurisdiction of another State or to or through an area not under the national jurisdiction of any State, provided that at least two States are involved in the movement;
4. "Environmentally sound management of hazardous wastes or other wastes" means taking all practicable steps to ensure that hazardous wastes or other wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes;

5. "State of import" means any State to which a transboundary movement of hazardous wastes or other wastes is planned or undertaken for the purpose of disposal therein, or for the purpose of loading prior to disposal in an area not under the national jurisdiction of any State;

6. "State of export" means any State from which a transboundary movement of hazardous wastes or other wastes is planned to be initiated or is initiated;

7. "State of transit" means any State, other than the State of export or import, through which a movement of hazardous wastes or other wastes is planned or takes place;

8. "States concerned" means States which are States of import or transit, whether or not Contracting

9. "Importer" means any person under the jurisdiction of the State of import who arranges for hazardous wastes or other wastes to be imported;

10. "Exporter" means any person under the jurisdiction of the State of export who arranges for hazardous wastes or other wastes to be exported;

11. "Generator" means any person whose activity produces hazardous wastes or other wastes or, if that person is not known, the person who is in possession and/or control of those wastes;

12. "Disposer" means any person to whom hazardous wastes or other wastes are shipped and who carries out the disposal of such wastes;

13. "Disposal" means any operation specified in Annex IV to this Protocol;

14. "Carrier" means any person who carries out the transport of hazardous wastes or other wastes;

15. "Person" means any natural or legal person;

16. "Ship" means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, aircushion vehicles, submersibles, floating craft and fixed or floating platforms;

17. "Protocol Area" means the area as defined in Article 3 of this Protocol;

18. "Contracting State" means any State which has become a party to this Protocol;
19. "Convention" means the Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution, 1978;

20. "Organization" means the Regional Organization for the Protection of the Marine Environment established under Article XVI of the Convention;

21. "Council" means the organ of the Organization comprised of the Contracting States and established in accordance with Article XVI of the Convention;

22. "Competent Authority" means either the National Authority defined in Article I of the Convention, or the authority or authorities within the Government of a Contracting State, designated by the National Authority to be responsible for the fulfillment of the obligations and duties specified in the Protocol;

23. "Regional Technical Guidelines" means the guidelines for the environmentally sound management of hazardous wastes and other wastes, established pursuant to paragraph c of Article 14 of this Protocol;

24. "Regional reception facility" means any facility established on the Regional initiative to receive wastes and provide services to more than one Contracting State;

25. "Illegal traffic" means any transboundary movement of hazardous wastes or other wastes as specified in Article 10 of this Protocol.

Article 3

AREA OF APPLICATION

The area to which this Protocol applies (hereinafter referred to as the "Protocol Area") shall be the Sea Area as defined in Article II, paragraph (a) of the Convention, together with the waters on the landward side of the baselines from which the breadth of the territorial sea of the Contracting States is measured and extending, in the case of watercourses, up to the freshwater limit and including intertidal zones, salt marshes, khores and sabkhas.
Article 4

GENERAL OBLIGATIONS

1. Contracting States shall ensure that the generation of hazardous wastes or other wastes IS reduced to a minimum, taking into account social, technological and economic aspects.

2. Each Contracting State shall prohibit all persons under its national jurisdiction from transporting or disposing of hazardous wastes or other wastes unless such persons are authorized or allowed to perform such types of operations.

3. Each Contracting State shall take appropriate measures to ensure that persons involved ill the management of hazardous wastes and other wastes under its national jurisdiction take such steps as are necessary to prevent pollution due to hazardous wastes or other wastes arising from such management and, if such pollution occurs, to minimize the consequences thereof for human health and the environment.

4. Each Contracting State shall require that hazardous wastes and other wastes that are to be the subject of a transboundary movement be packaged, labelled, and transported ill conformity with generally accepted and recognized international rules and standards.

5. Each Contracting State shall require that hazardous wastes and other wastes be accompanied by a movement document from the point at which a transboundary movement commences to the point of disposal.

6. Contracting States shall ensure the effective control of transport and disposal facilities for hazardous wastes or other wastes including routine inspection and monitoring of environmental effects of these operations.

7. Each Contracting State shall require that hazardous wastes or other wastes, to be exported, are managed in an environmentally sound manner in the State of import or elsewhere.

8. Contracting States shall cooperate in monitoring the effects of the management of hazardous wastes and other wastes on human health and the environment.
9. Contracting States shall cooperate in the development of programmes of technical and other assistance related to the environmentally sound management of hazardous wastes and other wastes.

10. Contracting States shall consider that illegal traffic in hazardous wastes or other wastes is criminal.

11. Each Contracting State shall take appropriate legal, administrative and other measures to implement and enforce the provisions of this Protocol, including measures to prevent and punish conduct in contravention of the Protocol.

12. Each Contracting State shall designate its Competent Authority responsible for the fulfillment of the obligations and duties specified in the Protocol.

13. Contracting States exercising their right to prohibit the import of hazardous wastes or other wastes for disposal shall inform in writing other Contracting States directly or through the Organisation. The Contracting States shall prohibit or shall not permit the export of hazardous wastes and other wastes to those Contracting States which have prohibited the import of such wastes.

14. Nothing in this Protocol shall affect in any way the sovereignty of Contracting States over their territorial sea established in accordance with international law, and the sovereign rights and the jurisdiction which Contracting States have in their exclusive economic zones and their continental shelves in accordance with international law, and the exercise by ships and aircraft of all States of navigational rights and freedoms as provided for in international law and as reflected in relevant international instruments.

**Article 5**

**PROHIBITION ON IMPORTATION**

1. The importation of hazardous wastes or other wastes from non-Contracting States into or through the Protocol Area for the purposes of final disposal by any Contracting State is prohibited.

2. Contracting States may import hazardous wastes or other wastes for the purposes of resource recovery, recycling, reclamation, direct re-use or alternative uses from non-Contracting States through the Protocol Area, provided:
a) The State of import has the facilities and technical capacity to manage the hazardous wastes and other wastes in an environmentally sound manner consistent with the Regional Technical Guidelines and such facilities are registered with the Organization in consultation with the Competent Authority of the State of import;
b) The State of export lacks the technical capacity, the necessary facilities, or suitable disposal sites to dispose of the hazardous wastes and other wastes in an environmentally sound manner; and
c) The transboundary movement of wastes is consistent with all relevant international agreements and national laws.

**Article 6**

**PROHIBITION ON DISPOSAL**

1. Disposal of hazardous wastes in the Protocol Area is prohibited unless they are destined for operations specified in Annex IV Section B.

2. In conformity with relevant international legal regimes all ships must provide adequate waste receiving facilities on-board for subsequent discharge of wastes to national/Regional reception facilities. Adequate national and/or Regional facilities shall be provided for the reception of such wastes and the wastes generated from ports. Contracting States may levy charges for services rendered at the reception facilities towards management of wastes, taking into consideration the national regulations and Regional Technical Guidelines.

3. Disposal of other wastes shall require a prior permit as granted by the Competent Authority of each Contracting State in accordance with the Regional Technical Guidelines.

**Article 7**

**EXPORTATION OF HAZARDOUS WASTES AND OTHER WASTES TO NON-CONTRACTING STATES**

The export of hazardous wastes and other wastes by a Contracting State to a non-Contracting State is allowed provided that:
a) The State of export notifies other States concerned, through the Organization, of its intent to export hazardous wastes or other wastes;
b) The State of import has the facilities and technical capacity to manage the hazardous wastes and other wastes in an environmentally sound manner; and
c) The transboundary movement is consistent with the provisions of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, other relevant international agreements, and national laws.

Article 8

TRANSBOUNDARY MOVEMENT OF HAZARDOUS WASTES AND OTHER WASTES BETWEEN CONTRACTING STATES

1. Except as provided in paragraph 2 below, no Contracting State shall export hazardous wastes and other wastes to any other Contracting State unless:
   a) Regional Technical Guidelines have been adopted by the Council;
   b) The State of import has the facilities and technical capacity to manage the hazardous wastes and other wastes in an environmentally sound manner consistent with the Regional Technical Guidelines' and such facilities are registered with the Organization in consultation with the Competent Authority of the State of import; and
   c) The State of export lacks the technical capacity, the necessary facilities or suitable disposal sites to dispose of the hazardous wastes and other wastes in accordance with the Regional Technical Guidelines.

2. Hazardous wastes or other wastes may be exported by a Contracting State to another Contracting State for operations specified in Annex IV section B.

3. The State of export shall notify in writing the Contracting States concerned, directly or through the Organization, of any proposed transboundary movement of hazardous wastes and other wastes. Such notification shall the declaration and information specified in Annex V A Only one notification needs to be sent to each Contracting State concerned, with a copy to the Organization.
4. The State of import shall respond to the notifier in writing, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. A copy of the final response of the State of import shall be sent to the Competent Authorities of the States concerned, with a copy to the Organization.

5. Each State of transit which is a Contracting State shall promptly acknowledge to the notifier receipt of the notification. It may subsequently respond to the notifier in writing, within thirty days, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. The State of export shall not allow the transboundary movement to commence until it has received the written consent of the State of transit. However, if at any time a Contracting State decides not to require prior written consent, either generally or under specific conditions, for transit transboundary movements of hazardous wastes or other wastes, or modifies its requirements in this respect, it shall forthwith inform the other Contracting States of its decision. In this latter case, if no response is received by the State of export within thirty days of the receipt of a given notification by the State of transit, the State of export may allow the export to proceed through the State of transit.

6. A copy of the movement documents described in Annex V B should be sent to the Organization along with the notification.

7. Any transboundary movement of hazardous wastes and/or other wastes shall be covered by insurance, bond or other guarantee as may be required by the State of import or any State of transit.

8. Contracting States shall cooperate with a view to achieving the objectives of this Article, and shall endeavour to promote sound environmental management of hazardous wastes and other wastes in accordance with the Regional Technical Guidelines.
Article 9

THIRD PARTY USE OF PORT FACILITIES

Whenever port facilities within the Protocol Area are used for the export of hazardous wastes or other wastes, any Contracting State having national jurisdiction over the facilities, and which knowingly allowed or sanctioned such use of the facilities, shall be considered the State of export for purposes of this Protocol.

Article 10

ILLEGAL TRAFFIC

1. For the purposes of this Protocol, any transboundary movement of hazardous wastes and other wastes in contravention of this Protocol and of general provisions of international law shall be deemed to be illegal traffic.

2. In case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the exporter or generator, the State of export shall ensure that the wastes in question are:
   a) taken back by the exporter or the generator or, if necessary, by itself into the State of export, or, if impracticable,
   b) otherwise disposed of in accordance with the provisions of this Protocol, within 30 days from the time the State of export has been informed about the illegal traffic or such other period of time as States concerned may agree. To this end the States concerned shall not oppose, hinder or prevent the return of those wastes to the State of export.

3. In the case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the importer or disposer, the State of import shall ensure that the wastes in question are disposed of in an environmentally sound manner by the importer or disposer or, if necessary, by itself within 30 days from the time the illegal traffic has come to the attention of the State of import or such other period of time the States concerned may agree. To this
end, the States concerned shall co-operate, as necessary, in the disposal of the wastes in an environmentally sound manner.

4. In cases where the responsibility for the illegal traffic cannot be assigned either to the exporter or generator or to the importer or disposer, the States concerned shall ensure, through co-operation, that the wastes in question are disposed of as soon as possible in an environmentally sound manner, either in the State of export or the State of import or elsewhere as appropriate.

5. Each Contracting State shall enact appropriate national/domestic legislation to prevent and punish illegal traffic. The Contracting States shall co-operate with a view to achieving the objectives of this Article.

Article 11

DUTY TO RE-IMPORT

When a transboundary movement of hazardous wastes or other wastes to which the consent of the States concerned has been given, subject to the provisions of this Protocol, cannot be completed in accordance with the terms of the contract, the State of export shall ensure that the wastes in question are taken back into the State of export, by the exporter, if alternative arrangements cannot be made for their disposal in an environmentally sound manner, within thirty days from the time that the importing State informed the State of export and the Organization. To this end, the State of export and the State of transit shall not hinder the return of those wastes to the State of export.

Article 12

ADOPTION OF OTHER RESTRICTIONS

Nothing in this Protocol shall prevent any Contracting State from imposing additional requirements that are consistent with the provisions of this Protocol, and are in accordance with the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, and the rules of international law, in order to better protect human health and the environment.
Article 13

INSTITUTIONAL ARRANGEMENTS

The Organization shall, *inter alia*:

1. Communicate with, Competent Authorities in the Contracting States on the application of the Protocol;
2. Provide for training of national experts particularly for monitoring and enforcement of the provisions of the Protocol;
3. Arrange, upon request, for the provision of legal and technical assistance and advice to the Contracting States for the effective implementation of the Protocol;
4. Enhance the Regional capabilities and networks for the exchange of data and information of relevance to the Protocol;
5. Maintain a special Register, in consultation with the Competent Authorities, of disposal facilities in the Contracting States which have adequate technical capacities to manage hazardous wastes and other wastes in an environmentally sound manner as specified in the Regional Technical Guidelines;
6. Establish a unified monitoring system for the transboundary movement of hazardous wastes and other wastes in the Protocol Area;
7. Facilitate the establishment of Regional reception facilities in close cooperation with Contracting States and relevant regional/international organizations;
8. Prepare reports based upon information received from Contracting States on the application of the Protocol and present them to the Council;
9. Establish and maintain liaison with relevant regional and international organizations, and appropriate private organizations outside the Contracting States, including generators and carriers of hazardous wastes and other wastes;
10. Establish and maintain liaison with the Secretariat of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal; and
11. Perform such other functions as may be assigned to it by the Council for the implementation of the Protocol.
Article 14

FUNCTIONS OF THE COUNCIL

The Council shall perform the following functions:

a) Review the implementation of the Protocol, and consider the efficacy of the measures adopted and the need for any other measures, including the addition of Annexes;

b) Adopt, review and amend as required any Annex to this Protocol;

c) Adopt, revise and amend the Regional Technical Guidelines; and

d) Discharge any other functions as may be appropriate for implementation of this Protocol.

Article 15

GENERAL PROVISIONS

1. The provisions of the Convention relating to any Protocol shall apply to this Protocol.

2. Procedures for amendments to Protocols and their Annexes adopted in accordance with Articles XX and XXI of the Convention shall apply to this Protocol.

3. The Rules of Procedure and Financial Rules adopted pursuant to Article XXII of the Convention, and amendments thereto, shall apply to this Protocol.

4. The Annexes shall form an integral part of this Protocol unless expressly provided otherwise therein.

Article 16

FINAL PROVISIONS

1. This Protocol shall be open for signature in Tehran, the Islamic Republic of Iran from 17 March to 14 June 1998 corresponding to 18 Thulqida 1418 to 19 Safar 1419 of, Hejira by any Contracting State to the Convention.

2. This Protocol shall be subject to ratification, acceptance, approval or accession by the Contracting States to the Convention. Instruments of ratification, acceptance,
approval or accession shall be deposited with the Government of Kuwait which shall assume the functions of the Depository in accordance with Article XXX of the Convention.

3. This Protocol shall enter into force on the ninetieth day following the date of deposit of at least five instruments of ratification, acceptance or approval of, or accession to the Protocol by the States as referred to in paragraph 1 of this Article.

4. After the date of deposit of five instruments of ratification, acceptance or approval of, or accession to this Protocol, this Protocol shall enter into force with respect to any State as referred to in paragraph 1 of this Article on the nineteenth day following the date of deposit by that State of the instrument of ratification, acceptance, approval or accession.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized by their respective Governments, have signed this Protocol.

DONE AT TEHRAN this seventeenth day of March, in the year one thousand nine hundred and ninety eight corresponding to eighteenth day of Thulqida in the year one thousand four hundred and eighteen of Hejira in the Arabic, English and Farsi languages, the texts being equally authentic.