

THE UNIVERSITY OF HULL

**The Kingdom of Saudi Arabia and the Law of the Sea:
An Analysis of Saudi Arabian Practice within the
Emerging International Oceans Regime**

being a thesis submitted for the Degree of
Doctor of Philosophy in International Law
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by

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بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

هُوَ الَّذِي سَخَّرَ الْبَحْرَ لِتَأْكُلُوا مِنْهُ لَحْمًا طَرِيًّا وَتَسْتَخْرِجُوا مِنْهُ حِلْيَةً تَلْبَسُونَهَا وَتَرَى الْفَلَكَ
مَوَازِيرَ فِيهِ وَلِتَبْتَغُوا مِنْ فَضْلِهِ وَلِعَلَّكُمْ تَشْكُرُونَ}.....(الآية 14 من سورة النحل)

It is He Who has made the sea subject, that ye may eat thereof flesh that is fresh and tender, and that ye may extract therefrom ornaments to wear, and thou seest the ships therein that plough the waves, that ye may seek (thus) of the bounty of Allah and that ye may be grateful.
(Verse 14 : Chapter 16 - The Holy Qur`an)

{وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْوَجْرِ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَى كَثِيرٍ مِمَّنْ خَلَقْنَا
تَفْضِيلًا}.....(الآية 70 من سورة الاسراء)

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.
(Verse 70 : Chapter 17- The Holy Qur`an)

*To all members of my family,
for their support and encouragement*

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List of Abbreviations

ACOPS	Advisory Committee on Pollution of the Sea
AH	of the Hegira
AJIL	American Journal of International Law
ALESCO	Arab League Educational, Cultural and Scientific Organization
ALQ	Arab Law Quarterly
Art.	Article
BFSP	British and Foreign State Papers
BYIL	British Yearbook of International Law
Chapt.	Chapter
CLC	International Convention on Civil Liability for Oil Pollution Damage, 1969
CLR	Columbia Law Journal
CSC	Geneva Convention on the Continental Shelf, 1958
DMS	Department of Military Survey
Doc.	Document
EEZ	Exclusive Economic Zone
EFZ	Economic Fishery Zone
EPCC	Environmental Protection Co-ordinating Committee
EPGD	Environmental Protection General Directorate
FAO	(United Nations) Food and Agriculture Organization
FCC	Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas, 1958
FRG	Federal Republic of Germany
GA	(United Nations) General Assembly
GCC	Cooperation Council for the Arab States of the Gulf
GESAMP	Joint Group of Experts on the Scientific Aspects of Marine Pollution
HILJ	Harvard International Law Journal
HSC	Geneva Convention on the High Seas, 1958
ICJ	International Court of Justice
ICJ Repts.	Reports of Judgements, Advisory Opinions and Orders (International Court of Justice)
ICLQ	International and Comparative Law Quarterly
ICNT	Informal Composite Negotiating Text
IJECL	International Journal of Estuarine and Coastal Law
IJIL	Indian Journal of International Law
IJMCL	International Journal of Marine and Coastal Law
IL	International Lawyer
ILC	International Law Commission
ILC Ybk.	Yearbook of International Law Commission
ILM	International Legal Materials
ILR	International Law Reports
IMCO	(United Nations) Intergovernmental Maritime Consultative Organization
IMO	(United Nations) International Maritime Organization

IUCN	International Union for the Conservation of Nature and Natural Resources
JC	Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment
JEL	Journal of Environmental Law
JENRL	Journal of Energy and Natural Resources Law
JSA	Journal of Social Affairs
JSAMES	Journal of South Asian and Middle Eastern Studies
K.S.A.	Kingdom of Saudi Arabia
KC	Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution
LNTS	League of Nations Treaty Series
LoN	League of Nations
LSB	Law of the Sea Bulletin
MARPOL	International Convention for the Prevention of Pollution from Ships
MEES	Middle East Economic Survey
MEJ	Middle East Journal
MEPA	Meteorological and Environmental Protection Administration
MP	Marine Policy
MPB	Marine Pollution Bulletin
MSD	Military Survey Department
MSR	Marine Scientific Research
n.m.	nautical mile
NCP	National Contingency Plan for Combating Marine Pollution by Oil and Other Harmful Substances in Emergency Cases
NIOC	National Iranian Oil Company
OAPEC	Organization of Arab Petroleum Exporting Countries
ODIL	Ocean Development and International Law
OPEC	Organization of Petroleum Exporting Countries
p.	page
PERSGA	Red Sea and Gulf of Aden Environment Programme
REDI	Egyptian Journal of International Law
Res.	Resolution
RIAA	United Nations Reports of International Arbitral Awards
RMSR	Marine Scientific Research Regulations
ROPME	Regional Organization for the Protection of the Marine Environment
RRS	GCC Seaports Rules and Regulations
RSS	Rules and Regulations for Saudi Arabian Seaports
SCOR	Security Council Official Records
SDLR	San Diego Law Review
Sect.	Section
SLR	Seaports and Lighthouses Regulations
STLR	Stanford Law Review
Suppl.	Supplement
TILJ	Texas International Law Journal
TSC	Geneva Convention on the Territorial Sea and the Contiguous Zone, 1958
UK	United Kingdom

UN	United Nations
UN. Leg. Ser.	United Nations Legislative Series
UNCED	United Nations Conference on Environment and Development, 1992
UNCLOS I	First United Nations Conference on the Law of the Sea, 1958
UNCLOS II	Second United Nations Conference on the Law of the Sea, 1960
UNCLOS III	Third United Nations Conference on the Law of the Sea, 1973-82
UNCTAD	(United Nations) Conference on Trade and Development, 1964
UNEP	United Nations Environment Programme
UNTS	United Nations Treaty Series
US	United States
USSR	Union of Soviet Socialist Republics
VJIL	Virginia Journal of International Law
WMO	World Meteorological Organization

Introduction

The oceans play a most important role in world-wide interdependence. Marine transportation is the key to international trade, and the mineral and petroleum resources of the seabed and the continental shelves, together with the living resources are of interest to most nations¹.

Thus, turning towards the 21st century, no-one can doubt that we are living in the era of oceans. In the last few decades, the international community has shown increased interest in maritime questions in international relations. There are four general reasons, which led to this situation: first, the growing importance of the ocean as a major source of food, with the resulting fisheries disputes among states; second, the impact of advanced marine technology on scientific research and exploration; third, the considerable attention paid to marine environmental issues; and finally, the increasing military uses of the oceans, especially by naval powers².

The increasing importance of the sea has given rise to increasing interest, on the part of the international community, in laying down a general legal framework to govern its use. To this end, four international conferences have been held, i.e. the Hague Codification Conference of 1930, the First Geneva Conference of 1958 (UNCLOS I), the Second Geneva Conference of 1960 (UNCLOS II) and the Third United Nations Conference (UNCLOS III), which was held in Caracas, Geneva, and New York in the period 1973-1982. However, the complexities of maritime questions and conflicts of interest have overshadowed these conferences. The 1930 Conference failed to reach any result. The 1958 Conference, although it succeeded in adopting four conventions³, failed with regard to certain vital issues, specifically, the breadth of the territorial sea and the fisheries limit, and so did the 1960 Conference. However, it was UNCLOS III which succeeded in adopting the 1982 United Nations Convention (LOSC), as the most comprehensive political and legislative work ever undertaken by the United Nations.

Despite the international community's concern about maritime questions and related legal aspects, there have been few systematic studies concerning current national marine policies, particularly with regard to how states formulate

these policies and how they implement them through effective organisational structures. The majority of existing studies are restricted to the major ocean-using states, such as the United States, the United Kingdom, the former Soviet Union, Japan and Canada, while many aspects of most developing countries' marine policies have never been studied, or, at the best, have been the subject of only limited studies. Even where there are marine policy studies, they are open to criticism for their narrow focus on only a segment of the entire ocean policy process⁴.

Saudi Arabia is a maritime country with vital interests, both past and present, in the sea, and has shown its concern with the developments in the law of the sea, having actively participated in the three United Nations Conferences on the Law of the Sea, especially the 1958 and 1960 Conferences.⁵ Despite all this, there have been few studies concerning the Saudi Arabian practice, and those that exist, deal with isolated issues, such as the statutes of the territorial sea, fisheries and some other issues. The only attempt previously made to discuss the Saudi maritime policy was undertaken by Nasser Al-Arfaj in the 1970s, in his work, *Saudi Arabia's Maritime Policy, (1948-1978)*⁶. However, this study focused particularly on the political dimension. Moreover, because the study was concerned with the Saudi maritime policy before 1978, it could not cover all the legal developments that have occurred in the law of the sea since then, whether internationally or at the national level in Saudi Arabia. Thus, it paid little or no attention to the legal developments and Saudi Arabia's position on major recent maritime questions, such as the newly-created regime of the 200 n.m. exclusive economic zone, marine pollution control and marine scientific research. The organizational structure and the process by which Saudi Arabia's marine policy is made were not examined. Nor was the question of sovereignty over the two islands of Tiran and Sanafir addressed. MacDonald's comparative work, *Iran, Saudi Arabia, and the Law of the Sea*⁷, which was also completed in the 1970s, is even less comprehensive, since it is only concerned with comparing the behaviour of the two countries on limited questions in the context of the Arabian Gulf, and in the period of time that preceded the huge recent developments in the law of the sea

in general and the legal developments within the Saudi domestic framework in particular.

The growing importance of the sea for Saudi Arabia makes it necessary to have a comprehensive and systematic study of Saudi Arabia's practices in the law of the sea. This study, then, is designed to meet that need. It will try to assess and evaluate the marine policy of Saudi Arabia in its maritime zones. Moreover, whenever it is appropriate, the policy of neighbouring states with regard to certain aspects of the international law of the sea will be considered, also, with a view to understanding the effects of that law on basic community policies within the Red Sea and the Arabian Gulf. Thus, there will be an attempt to examine and analyse comprehensively Saudi Arabia's policies and practices starting with the policy-making mechanism and the governmental organizations that deal with the oceans. The analysis will include national legislation and all other official documents and plans. It will include also the Kingdom's attitudes, as expressed at the Law of the Sea Conferences, and relevant bilateral and other regional agreements. The study focuses on Saudi Arabia's responses to the new ocean regime and her policies with regard to various issues in ocean affairs. A central focus will be given also to the background and circumstances that have contributed to the formulation and drawing up of these policies. Ultimately, it may be possible to judge, in the light of all those aspects, whether the Saudi marine policy is a success or failure.

This study of Saudi Arabia's behaviour will be conducted in the light of the international ocean regime. Therefore, the reader will find this study has two dimensions. First, light will be thrown on the relevant principles of international law in general and the international legal background of these principles, with particular reference to developments in the Law of the Sea Conferences. Second, Saudi Arabia's practice will be examined within the context of these principles. The discussion in this thesis reflects not the whole law of the sea, but only those areas of it where Saudi Arabia has a particular interest or there is documented Saudi practice. Thus, for example, the reader will find no discussion on topics such as the new LOSC archipelagic regime, nor of the more esoteric provisions relating to such features as atolls, deltas and mouths of rivers, which appear indeed to be of no relevance to Saudi Arabia. The Saudis have been concerned primarily

with the protection of their rights within their maritime zones, and they have paid little attention to those aspects of international law which fall beyond the limits of national jurisdiction, even if such aspects may be of interest to Saudi Arabia in one way or another. Such is the case, for example, with the deep sea-bed mining regime. Saudi Arabia, in its only statement on this topic during UNCLOS III, supported in principle the approach considering the “sea-bed and ocean floor and subsoil thereof beyond the limits of national jurisdiction” as the “common heritage of mankind”.⁹ But apart from that, Saudi Arabia was satisfied with its role through the Group of 77 consisting of nearly 130 developing states which strongly advocated the establishment of a central and strong authority to govern mining in the Area.⁷ Saudi Arabia has passed no legislation claiming deep sea mining rights in the Sea-Bed Area, nor is she a party to any treaty or reciprocating regime on this issue. The case is almost the same with regard to the Saudi attitude towards the exercise of jurisdiction on the high seas. Of the various aspects of this question, the Saudi legislation speaks only of the case where a vessel may have Saudi nationality,¹⁰ and the registration requirements of a ship in Saudi Arabia.¹¹ Nor has the question of jurisdiction on the high seas received attention from the Saudi delegations to the Law of the Sea Conferences.

Conducting research on Saudi Arabia’s practice in the law of the sea is not an easy task. There is a dearth of existing literature, and only a small amount of writing exists in the periodical literature on the subject. In addition, such sources of information as exist are difficult, indeed in some cases, almost impossible to obtain.

In this study, a central focus will be given to those Saudi Government actions that serve the national interest in uses of the oceans. Thus, primary source materials, gathered from the Saudi Government marine-related documents as well as from international legal documents that affect national use of the oceans, will be consulted. The existing literature will supplement these primary sources. Available Saudi statements and viewpoints will be discussed.

The research is organized into seven chapters, followed by general conclusions and recommendations. Since the research is designated to study Saudi Arabia’s practice within the context of the law of the sea, this approach will be

followed in each division, so far as it serves the purposes of the study. Thus, following this introduction, Chapter I provides a brief historical analysis of the law of the sea in general. It then proceeds to present a general geographical, historical and legal background information about Saudi Arabia and its relationship with the sea. Other related maritime questions, such as the way the Saudi marine policy is made and managed, and the legal status of the Arabian Gulf and the Red Sea are also considered.

Chapters II-VII discuss various jurisdictional claims of Saudi Arabia and her attitudes toward certain ocean issues, as mentioned above, in comparison with the provisions of the international law of the sea.

In Chapter II, the present state of the law as to the baselines, internal waters and gulfs and straits is considered. There follows an analysis of Saudi Arabia's policies and attitudes on these regimes.

Chapter III is devoted to the two legal regimes of the territorial sea and the contiguous zone. The juridical nature and extent of these concepts, in addition to the method of delimitation of the territorial sea, are discussed. This discussion is followed by an examination of Saudi Arabia's position and an evaluation of her national policies in this respect against the background of international law.

The first part of Chapter IV is devoted to the concept of the continental shelf and its delimitation under conventional rules and case law. In the second part, an attempt is made to examine the principles upon which Saudi Arabia based her continental shelf claims and her agreements with neighbouring states as to the shelf boundary.

The general legal framework of the regime of the exclusive economic zone established by the LOSC, Saudi Arabia's attitudes toward this regime and marine fisheries in general are dealt with in Chapter V.

Chapter VI examines Saudi Arabia's domestic legal rules with regard to the regime of marine scientific research, against the background of this regime as established in the LOSC.

In Chapter VII, a brief review is first presented of international legal principles governing marine pollution control. This is followed by an examination

of Saudi Arabia's attitudes and policies in this regard, including all approaches followed by Saudi Arabia, nationally, regionally and internationally.

Each chapter is followed by a conclusion, and a general conclusion follows at the end of the thesis. In this general conclusion, Saudi Arabia's practice and marine policies as a whole are assessed and evaluated and some policy recommendations are suggested.

Footnotes are cited at the end of each chapter.

NOTES TO INTRODUCTION

1. Alfred. A. H. Keil, "The USA and the Oceans", 1 *MP*. (1977), pp. 16-25, at p. 16.
2. R. P. Barston and P. W. Birnie, The Maritime Dimension, London, George Allen & Unwin, (1980), p. 103.
3. See *infra*. Chapt. I, pp. 14-15.
4. R. L. Friedheim and R. E. Bowen, "Assessing the State of the Art in National Ocean Policy Studies", 7 *ODIL*, (1979), p. 179, at p. 181.
5. Due to the existence of Israel at the Head of the Gulf of Aqaba, security considerations imposed themselves as major elements in the Saudi participation in UNCLOS I and UNCLOS II. Three questions dominated the Saudi participation in these two Conferences: historic bays, navigation through straits and the breadth of the territorial sea. The determination in the 1958 TSC (Art. 16(4)) of the status of navigation through the straits linking one part of the high seas and another part of the high seas and the territorial sea of another state, on the one hand, and the tendency of the international community to favour 12 n.m. for the breadth of the territorial sea, on the other hand, decreased the momentum of the Saudi participation at UNCLOS III. See *infra* pp. 95-102.
6. N. Al-Arfaj, The Maritime Policy of the Kingdom of Saudi Arabia (1948-1978), Jeddah, Okaz Publications, (1983).
7. C. G. MacDonald, Iran, Saudi Arabia and the Law of the Sea, London, Greenwood Press, (1980).
8. See *infra*, p. 249.
9. With regard to the international sea-bed regime, the controversy of UNCLOS III was over the question "who may exploit the area" and the conditions of exploitation (i.e. rules and regulations governing mining). On the one hand, the Group of 77 sought an international sea-bed authority having the power to engage in sea-bed mining itself, and to control mining by other licencees, who would pay it royalties which, along with its own profits, would be distributed among all states as the "common heritage of all mankind". On the other hand, the developed states proposed initially that the Authority should be little more than a registry of national claims to sea-bed mining sites, having few, if any, powers to interfere with the exploitation of the Area by their companies. However, the two camps agreed eventually upon a compromise providing for the establishment of a "parallel system", under which the Area would be exploited both by the International Sea-Bed Authority and by commercial operators. For further details, see 1982 Convention, Part XI (Arts. 133-91), and R. R. Churchill and A. V. Lowe, The Law of the Sea, 2nd ed., Manchester, Manchester University Press, (1988), Chapter Twelve.
10. In this respect, Art. 166 of the Seaports and Lighthouses Regulations reads:
A ship is not deemed to be of Saudi Nationality unless it is registered in one of the ports of the Kingdom. For the text of the Regulations, see L. A. Glick, Trading with Saudi Arabia, London, Croom Helm, (1980), p. 22.
11. Art. 165 of the Seaports and Lighthouses Regulations provide that: *the conditions required for the registration of ships in the Kingdom are:*
 1. *That the owner of the ship should be a Saudi national.*
 2. *Or that the ship should be owned by a Saudi company, establishment or organization.*
 3. *Or that the ship should be owned by a company, establishment or organization which is registered in the Kingdom, provided that the proportion of the Saudi capital contributing therein should not be less than 51%. Ibid.*

Chapter I

Legal and Historical Background

Introduction

From ancient times, the sea which covers around three quarters of the world's surface has been utilised by man for essential purposes. It has represented a considerable source of food, a protective barrier, and a means of communication and conveying people and transporting goods. The significance of seas, however, has intensified, along with the intensity of the political, strategic, military and economic interests of the modern state. The conflict of such interests between nations has shaped the history of the regime of oceans.

Before giving general background information about Saudi Arabia in Part II, Part I of this chapter considers briefly the historical development of the law of the sea.

Part I: The Law of the Sea: A Historical Survey

The evolution of the law of the sea cannot be viewed separately from international law generally, which is widely seen to have begun with the emergence of the independent states in their present structures¹. According to O'Connell, the law of the sea is a central feature of international law due to the fact that:

the sea is the international arena wherein for centuries states have daily had to regulate their conduct by reference to rules other than of their own making².

In the following pages, light will be thrown upon the historical evolution of the law of the sea. For simplicity, the subject will be divided chronologically into five phases.

1. Pre- the 1930 Hague Codification Conference

In ancient times, the seas were used for communication and commerce. They were common to all nations, but not as a province of influence and domination. The civilized nations, which centred at the time around the Mediterranean, made no effort, as far as is recorded, to establish maritime rules to organize the uses of the sea³.

However, this situation was changed by the changing of the political position in Europe, which led to the emergence of many states therein. Thus, both Denmark and Sweden claimed sovereignty over the Baltic. The Danish expanded their sovereignty to all the northern Seas between Norway, Iceland and Greenland. The Italian city states of Genoa and Pisa attributed to themselves the sovereignty of the Ligurian Sea, while Venice claimed the Adriatic⁴.

These attempts to control the oceans of the world culminated in 1493 when Pope Alexander VI published his celebrated Papal Bulls to partition the oceans, as spheres of influence, between Spain and Portugal. These Bulls, which were given legal effect in the next year (1494) by the Treaty of Tordesillas, were issued as a result of the great voyages of discovery by Columbus and others⁵. The exercise of maritime sovereignty by the said nations was expressed in the following practical actions⁶:

- * maritime ceremonials, whereby a state which claimed sovereignty over a part of the open sea required foreign ships navigating therein to honour her flag, which represented a recognition of her maritime sovereignty;
- * levying of tolls from foreign vessels;
- * interdiction of fisheries to foreigners;
- * control or even prohibition of foreign navigation through the respective part of the ocean.

This right of "sovereignty" was coupled with the duty of preservation of law and order at sea, since it meant states had undertaken to organize navigation and keep the passage of vessels free from the depredations of pirates⁷. Thus, the period of the end of the fifteenth century, coupled with the great voyages of discovery, gave a new importance to the law of the sea and may be taken, according to Smith, as *the starting point of the new law*⁸.

By the second half of the sixteenth century, the monopolist claims over the high seas by the great maritime powers started to be challenged. Thus, the principle of the "enclosure of the oceans" gradually began to shake in favour of the new concept of the "freedom of the high seas". The expansion of the maritime navies, the emergence of new maritime powers, and the flourishing of maritime trade after the discovery of America were the main reasons for this development.

The first clear assertion of the freedom of the seas came from Queen Elizabeth I in 1558 in response to a protest by the Spanish ambassador to London, Mendoza against Drake's voyage in the *Golden Hind* which had been undertaken without previous permission from the Spanish authorities. In her reply, the Queen said:

The use of the sea and air is common to all; neither can any title to the ocean belong to any people or private man, forasmuch as neither nature nor regard of the public use permitteth any possession thereof.

This declaration of Elizabeth was supported, later on, by the Dutch author, Grotius, commonly regarded as the father of modern international law. In his celebrated work, *Mare Liberum*, published in 1609, Grotius criticized the claims of Portugal to exclusive rights of trade with the East Indies. His intention was to vindicate the claims of the Dutch East India Company, by whom he was employed, to commerce in the Far East¹⁰. Grotius justified his argument saying that:

*the sea is common to all, because it is so limitless that it cannot become a possession of any one, and because it is adapted for the use of all, whether we consider it from the point of view of navigation or of fisheries*¹¹.

It is clear that the national interests of the Dutch were the main reason behind the enthusiasm of Grotius in his defence of the freedom of the high seas, since he wanted to assure the right of his nationals to navigate and trade with the Indies.

However, these views of Grotius were attacked by nations whose sovereign interests over the seas had begun to be threatened. These nations called upon their national lawyers to confront the new principle of the freedom of the high seas advocated by the Dutch scholar. Accordingly, Gentilis defended English and Spanish claims in his work, *Advocatio Hispanica* (1613), Welwood defended

English claims in his book, *De Dominio Maris* (1613), and so did Seldon in his book, *Mare Clausum* (1635)¹².

Thus, two contradictory schools emerged; the first called upon the freedom of the high seas and the other adopted the defence of the concept of "enclosure of the oceans". It is quite obvious, however, that national interests were the real motives underlying both theories, or rather what was believed to be in the interests of a nation gave rise to differences in interpretation from one specific area of the freedom to another and from one time to another. Although Queen Elizabeth I. declared for instance, as mentioned above, in 1580 the freedom of the seas for all, her successor, James I, prevented foreigners from enjoying the freedom to fish in the "British Seas" and forced them to apply for fishing licences¹³. As Brown put it:

The notion of freedom is used as an ideological tool where the national interest so requires. Freedom is good when it allows Elizabeth to challenge Spain's and Portugal's "freedom" of monopoly; freedom is bad when it prevents James from excluding the Dutch from the North Sea fisheries¹⁴.

The debate between the two concepts went on for about a century, but at the end of the day, Grotius's argument on the liberty of the seas was destined to triumph and to become the basis of subsequent doctrine on the freedom of the seas.¹⁵

Later, however, the debate came to centre on the much narrower and more practical issue of the extent to which nations might legally claim exclusive rights in the oceans bordering them¹⁶. By the beginning of the nineteenth century, claims to sovereignty over the oceans were everywhere restricted and yet, the freedom of the sea, along with the right of coastal states to sovereignty over the maritime areas neighbouring their shores (territorial waters), gradually crystallized as a general principle of customary international law. Nevertheless, with the exception of those attempts made by certain non-governmental learned societies¹⁷, there was no official attempt by the international community to codify the existing rules. Thus, there has always been some uncertainty and a lack of uniformity with regard to the jurisdictional content and nature of the limits between these two doctrines.

2. The 1930 Hague Conference: Attempts at Codification

Under the auspices of the League of Nations, a Conference for the Codification of International Law met in the Hague from March 13 to April 12 1930 and was attended by about forty states. It was the first of its kind to be held specifically to consider the codification of subjects within international law. Before this, in 1924, the League of Nations had appointed a sixteen-member expert committee for the progressive codification of international law¹⁸.

The question of territorial waters was one of the subjects considered in the Conference¹⁹. A Commission on Territorial Waters was set up, which discussed many legal aspects related to the territorial waters²⁰, such as its breadth, the points from which the territorial sea is to be measured (baselines), the outermost points to which the coastal state may extend her authority to control her customs, sanitary and security regulations (contiguous zone), and the methods whereby the territorial seas of islands and groups of islands are to be determined. The most controversial point was the breadth of the territorial sea and contiguous zone. There were distinct differences of viewpoint among the delegations on this question. Although twenty states²¹ were in favour of the three mile territorial sea limit, proposed at the Conference, a considerable number of states claimed otherwise²². These differences led to the failure of the conference to adopt a convention. Despite that conclusion, the Conference was the first real attempt to codify the rules and customary rules of the law of the sea, and succeeded in focusing the attention of the international community on the serious importance of the subject and paved the way for further meetings. Moreover, the draft articles adopted by the Conference on the legal status of the territorial sea²³ on the one hand and the replies of governments and the reports of some international lawyers submitted to the Committee, on the other, represent important evidence of state practice of the period.

Commenting on the partial success of the conference, Reeves has described the draft produced by the Conference, by saying:

It became, therefore, notwithstanding the fact that it is a draft only, a very important document in the history of international law and a landmark in the long process of codification now begun²⁴.

Indeed the influence of the Hague Conference was apparent in the discussions and meetings that followed.

3. Changes Following World War II

The 1940s witnessed radical changes in international relations which were reflected in international law. The United Nations Organization was established to replace the League of Nations, which collapsed due to the War. By this time, the number of independent states had considerably increased. Most of these states were developing, or of limited technological abilities. On the other hand, technological advances tempted several states to claim sovereignty over maritime areas beyond the territorial sea limits, with the aim of exploiting their natural resources. These two factors, generally speaking, shaped the features of the development of the law of the sea at the time.

1945 witnessed the birth of a new maritime legal regime, when the United States issued the celebrated Truman Proclamation on the Continental Shelf. In this Proclamation, President Truman announced that:

the Government of the United States regards the natural resources of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control²⁵.

The Truman Proclamation was followed in 1949 by similar claims by several states, amongst them Saudi Arabia²⁶ and nine sheikhdoms in the Arabian Gulf under United Kingdom protection²⁷.

The above claim was coupled with claims of another kind by some Latin American states. In 1949, Chile became the first country to assert national sovereignty over a zone of 200 miles from her coasts and offshore islands, including jurisdiction over the resources of her continental shelf and the water column above. In doing so, Chile aimed at the protection of her whaling industry. The neighbouring states of Peru and Ecuador followed Chile in 1947 and 1951 respectively²⁸. Hence, it can be said that the new legal regime known today as the exclusive economic zone has its roots at that period of time²⁹, as a result of the concerns of these states to protect their economic interests in the said areas, from the impact of the growing fleet of technologically advanced states. The rise of

these two concepts (the continental shelf and exclusive economic zone), formed important progressive developments in the long march of the law of the sea.

4. Geneva Conferences on the Law of the Sea

In 1947, the International Law Commission (ILC) was established pursuant to the UN General Assembly (GA) Resolution 174 of November 21, 1947³⁰. Two law of the sea items were selected for codification: the regime of territorial waters and the regime of the high seas. In 1956, the ILC drew up its final report (consisting of seventy-three draft articles) on both regimes, accompanied by a recommendation that the UN convene a general conference on the law of the sea³¹. The GA was not then prepared to hold a single conference on law of the sea questions. However, on February 21, 1957, the GA of the UN called for a conference of its members through its Resolution 1105 (XI)³². The first United Nations Conference on the Law of the Sea (UNCLOS I) was held from February 24 to April 27, 1958, with representatives of 86 countries (amongst which was Saudi Arabia), seven specialized agencies and nine intergovernmental organizations³³.

During the deliberations of the Conference, many controversies and conflicting claims arose, concerning national authority over the territorial waters. While the great maritime powers were, generally, in favour of restricting the coastal state's sovereignty over the nearby areas of the seas, most of the developing countries and the Soviet block, impelled by their security and economic interests, were of the contrary view³⁴. Moreover, the political background, specifically the East-West Cold War, overshadowed the Conference. Nonetheless, the Conference was successful, ultimately, in the codification of many of the customary rules of the law of the sea current at that time. Four conventions were adopted: Convention on the Territorial Sea and the Contiguous Zone (hereafter TSC)³⁵, Convention on the High Seas³⁶ (hereafter HSC), Convention on the Continental Shelf³⁷ (hereafter CSC) and Convention on Fishing and Conservation of the Living Resources of the High Seas³⁸ (hereafter FCC). In addition, UNCLOS I adopted an Optional Protocol of Signature Concerning the Compulsory Settlement of Disputes³⁹ and nine Resolutions⁴⁰. Despite the fact that two fundamental issues had been left

undecided (i.e. the breadth of the territorial sea and exclusive fishery limits), UNCLOS I, by adopting the above-mentioned Conventions, without a doubt constituted a landmark in the codification of international law generally, and the law of the sea in particular.

In a renewed attempt to find a solution for the two problems referred to above, the General Assembly of the United Nations called for the convening of a second conference, by its Resolution 1307 (XII) of December 10, 1958⁴¹. Accordingly, the Second United Nations Conference on the Law of the Sea (UNCLOS II) met in Geneva from March 17 to April 26, 1960, and was attended by the representatives of eighty-eight states⁴². Several proposals were rendered to the Conference, but it failed - in the light of its rules and procedures - to reach agreement on any of these proposals⁴³. Rather, the compromise formula providing for a six-mile territorial sea plus a six-mile fishery zone was defeated by only one vote. Thus, the two questions remained unsettled by the Conference, although its work was very limited in scope compared with UNCLOS I. However, the lack of international agreement in both the Conferences to the breadth of the territorial sea and the associated question of the fishery question did not dim the great result achieved by UNCLOS I, which formed a basic framework for important aspects of the law of the sea.

5. The Third United National Conference on the Law of the Sea (UNCLOS III)

In the wake of the failure of UNCLOS II, countries proceeded to take the law into their own hands⁴⁴. Moreover, the world saw fundamental shifts during the 1960s, at the economic, political and technological levels. These changes were reflected in turn in international law. The absence of an agreement on limits to fishing rights led most states to extend their claims. Thus, the claims of territorial seas (where coastal states have exclusive fishing rights) with a breadth of twelve nautical miles or more tripled from about twenty to sixty during the decade, and many coastal states claimed a so-called exclusive fishing zone of varying breadth⁴⁵. In addition, some South American states held out for their existing 200 mile zones.

The fishing industry represented the most valuable economic use of ocean resources in the 1960s, since the total value of fish taken in 1966 was about \$9 billion, more than twice the value of ocean mineral resources recovered, including petroleum⁴⁶. A further matter of growing concern was that the major fishing nations (about twenty states) harvested four times as much as the rest of the world together⁴⁷. However, although some regional agreements were concluded with the aim of reaching a solution to the overfishing problem, such as the 1964 European Fisheries Convention⁴⁸, and other agreements elsewhere⁴⁹, the scope of the problem was too great for such partial solutions to be sufficient, and it was essential to look for successful measures at international level.

In terms of politics, several developments had taken place on the international scene. Many territories gained independence, especially after the issue of Resolution 1514 (XV), passed by the General Assembly on 14 December 1960⁵⁰. The newly independent states joined the economically weak countries (developing countries) in confronting the rich nations in defence of their interests. This North-South division was obvious from the first meeting of the United Nations Conference on Trade and Development (UNCTAD) in 1964⁵¹. Both East-West contradictions and North-South differences imposed themselves on the subsequent developments in the law of the sea.

Another of the most important characteristics of the time was the rapid development in technology, which produced new fishing techniques, the expansion of marine scientific research, and advances in naval and anti-submarine warfare abilities, and made accessible the enormous mineral resources in and on the seabed⁵². Clearly, the existing rules were inadequate to cope with these scientific discoveries. Thus, questions were raised with regard to the classical rules included in the 1958 Geneva Conventions, dealing with the breadth of the territorial sea, limits of the freedom of the high seas, and legal status of the contiguous zone, continental shelf and fishery zones. Unfortunately, technological advance was accompanied with certain harmful effects, such as marine pollution. This dilemma - with the exception of very limited and general provisions in the 1958 Convention on the High Seas⁵³ - was not dealt with in the Geneva Conventions, which were

supposed to deal with all legal aspects concerning the sea, including the marine environment⁵⁴.

All the above factors deepened the differences between most of the Third World States on the one hand and the Western States on the other. The former group was keen to obtain extensive rights over a 200 mile zone beyond the territorial sea and to establish international control over the deep seabed in order to prevent the technologically-advanced states from being able to extract minerals from this vital and vast source, freely and without political constraint. The Western States' desire was to protect their economic interests through free exploitation of the resources of the high seas and the deep seabed and also to protect their navigation routes by rejecting any attempt to weaken the freedom of passage through international straits in particular⁵⁵.

Thus, under these pressures, it was deemed appropriate to convene a world conference to discuss the fresh developments and review the traditional law of the sea. The official initiative in this direction was taken by Pardo, the Ambassador of Malta to the United Nations, and specifically through the question of the access to the mineral resources of the deep sea⁵⁶. In a famous speech before the General Assembly in 1967, Pardo suggested that there should be drawn up a:

*Declaration and Treaty concerning the reservation exclusively for peaceful purposes of the seabed and ocean floor underlying the seas beyond the present limits of national jurisdiction, and the use of their resources in the interests of mankind*⁵⁷.

In a positive response to the proposal, the General Assembly on 18 December of the same year (1967) established by Resolution 2340 (XXII) an *ad hoc* Committee to study the Peaceful uses of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction⁵⁸. Three years later, a new concept and a new regime known as the "common heritage of mankind" were established. The UN General Assembly by Resolution 2749 (XXV)⁵⁹ declared on December 17, 1970 that:

the seabed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction ... are the common heritage of mankind.

Moreover, the GA declared that the provisions of the new regime *shall be established by an international treaty of a universal character*⁶⁰. In Resolution 2750 (XXV) (paragraphs 2 and 6), the GA required the Committee to prepare draft treaty articles embodying the new international regime of the area lying beyond the national jurisdiction, plus the other regimes of the sea. In accordance with these preparatory works of the Committee, the GA had decided to convene in 1973 a conference on the law of the sea⁶¹. This decision was confirmed by the GA Resolutions 3029 (XXVII) and 3067 (XXVIII)⁶². The latter had expressly stated that:

the mandate of the Conference shall be to adopt a convention dealing with all matters relating to the law of the sea.

The organizational session of the Conference was held in New York 3-15 December, 1973. The Conference involved a very wide range of states and international organizations. Its negotiations lasted for nine years and contained eleven sessions⁶³. After these long years and hard negotiations, the Conference managed finally to adopt the 1982 United Nations Convention on the Law of the Sea (LOSC)⁶⁴. The LOSC made significant innovations, such as the Sea Bed Regime (Part XI) and the comprehensive machinery for settling disputes (Part XV). In addition, the main changes provided for by the LOSC are:

- The adoption of a 12 nautical mile territorial sea limit, (Part II, Article 3) which had remained undetermined since UNCLOS I and II;
- The adoption of a 200 nautical mile exclusive zone (EEZ) for coastal states, within which they enjoy jurisdiction over all natural resources, whether living or non-living (Part V, Articles 56-57); this jurisdiction may extend further, if the continental shelf of a state extends further (Part VI, Articles 76(6), (7) and 77);
- The concept of transit passage through international straits (Part III, Articles 37, 38 and 39);
- The concept of archipelagic states (Part IV);
- Further rights for land-locked and geographically disadvantaged states (Part V, Articles 69 and 70, Part X, Article 125);

- International co-operation in certain questions, such as marine scientific research, and the transfer of marine technology to developing countries (Articles 202, 242, 274);
- A comprehensive system for the protection of the marine environment (Part XII).

In its 320 articles, the Convention repeats verbatim or in essence some of the earlier Geneva Conventions provisions, or elaborates on others. It also codifies customary rules which had arisen since the said conventions, and creates new legal regimes.

The LOSC was opened for signature on 10 December, 1982, and on the first day, it was signed by 119 states⁶⁵. However, it came into force only on 16 November 1994, twelve months after the deposit of the sixtieth instrument of ratification by Guyana, as required by the Convention itself⁶⁶. As of 8 May 1996, ninety states have acceded to or ratified the Convention⁶⁷.

The Convention did not receive general acceptance among the industrialised states and most of the ratifying states at the time of entry into force of the Convention were developed states⁶⁸. The reluctance of developed states to accept the Convention is attributable to their dissatisfaction with the terms of the sea-bed mining regime included in Part XI of the Convention⁶⁹. This situation overshadowed the effectiveness of the Convention, something that led the then Secretary General of the United Nations, Perez de Cuellar, to initiate in July 1990 informal consultations with the object of achieving universal participation in the Convention. In 1992 his successor, Ghali, continued these consultations which ended in July 1994 with the approval by the UN General Assembly of a Resolution⁷⁰, adopting the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982⁷¹. The title of the Part XI Agreement suggests that it is intended to implement the LOSC, but the examination of its provisions shows that it goes far beyond mere implementation and does, in fact, amend the provisions of Part XI of the LOSC and its Annexes quite substantially⁷². The LOSC and the Agreement are, in any case, to be interpreted and applied as a single instrument. In this respect, Article 2 of the Agreement provides that:

the provisions of [the] Agreement and Part XI shall be interpreted and applied together as a single instrument. In the event of any inconsistency between this Agreement and Part XI, the provisions of this Agreement shall prevail.

The Part XI Agreement can thus be seen as a protocol of amendment⁷³. The adoption of the Part XI provisions is aimed at meeting the concerns of the developed countries and providing the means whereby they will feel able to ratify or accede to the LOSC. Indeed, the specific problems voiced by these countries following the adoption of the LOSC, have been satisfactorily addressed, and many of them are now engaged on submitting to both the LOSC and the Agreement to their legislatures with a view to securing consent to ratification or accession. The US Government, for example, has already taken concrete steps in this direction⁷⁴. The British Government, for its part, announced on 20 July 1994 that it would accede to the Convention in due course, once the necessary procedures were complete⁷⁵.

A significant problem that was not satisfactorily resolved in the LOSC is the issue of straddling and highly migratory fish stocks. This problem has resulted from the creation of the 200 mile EEZ regime, placing significant fish resources outside the new coastal regime without providing for their adequate governance in the high seas regime⁷⁶. The issue was recognised by the 1992 UN Conference on Environment and Development (UNCED) to be in urgent need of further elaboration and development⁷⁷. The UN General Assembly accepted the UNCED's recommendations and convened the UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, which held its first substantive session in New York in July 12-30, 1993⁷⁸. The Conference succeeded finally in 1995 in adopting the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks⁷⁹. This Agreement provides specific instructions for both coastal states and distant-water fishing states, on how to deal with some valuable stocks of fish located both within the EEZ and in the high seas⁸⁰. It is to be noted that this 1995 Agreement was preceded by the adoption in 1993 of the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing

Vessels on the High Seas, under the auspices of FAO⁸¹, which confirms the flag state's responsibility in respect of vessel fishing on the high seas, and ensures the free flow of information on high seas fishing operations⁸².

However, in the light of its comprehensive characteristic as a “package deal”, aimed to govern all aspects of the law of the sea, the LOSC is regarded as described by Freestone and Mangone as “unfinished agendas”⁸³. Undoubtedly, the 1982 United Nations Convention, which runs to 320 articles and IX Annexes, along with its recent and future expected amendments, are considered as an exceptional example of internationalism and contribute significantly to the rule of law among nations. Therefore, it is not surprising to find one commentator who compares the adoption of the Convention with the discovery by Columbus of America on 12 October 1492⁸⁴.

In view of what it contains of developed and detailed principles that find their origins in customary and conventional rules, judicial decisions and the writings of publicists, which are seen as a package deal, the LOSC represents the greatest landmark in the codification process of the law of the sea, and a momentous event in the history of international law as a whole.

Part II: Saudi Arabia: General Background

Saudi Arabia was formally founded, carrying the official name of the Kingdom of Saudi Arabia on September 23, 1932, by King Abdulaziz Al Sa'ud and became a member of the United Nations on June 26, 1945⁸⁵. The Kingdom, which has a population of about 17 million (according to the 1991 official census), is divided for administrative purposes into thirteen provinces⁸⁶.

1. Saudi Arabia and the Sea

1.1 Geographical Setting of the Kingdom

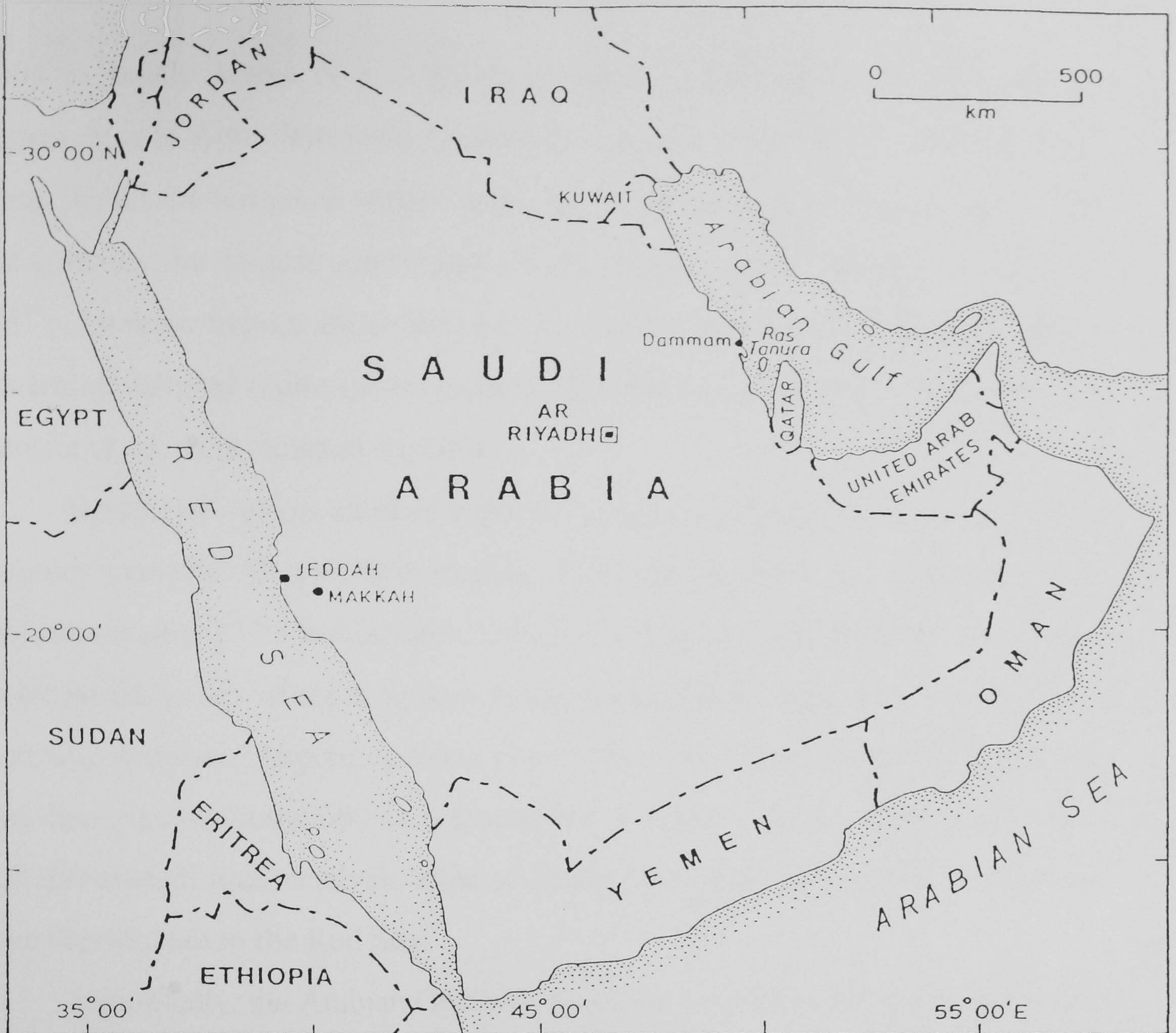
Geographical position is a very important factor in granting power to a state. Throughout history, it has become clear that the great nations are those which overlook oceans and have long coastlines. Mahan identified six conditions which influenced the sea power of states: the location of the state, the nature of its coastline, the length of its coastline, the number of citizens, the national character,

and the quality of government⁸⁷. The first three of these conditions refer to geographical setting. No doubt strategic position gives a state several advantages that cannot be enjoyed by a land-locked state. Thus, a favourable geographical location is one which affords a state access to the oceans and influences the extent to which it can control strategic shipping routes and important natural resources⁸⁸.

As far as Saudi Arabia is concerned, it is located in the south west of Asia, with a land area of 2,240,000 square kilometres (i.e. 865,000 square miles). It is the largest country in the Arabian peninsula, occupying some 80% of the total area⁸⁹. It is bounded by Kuwait, Iraq and Jordan to the north, Yemen and Oman to the south, the Red Sea to the west, and the Arabian Gulf, Oman, the United Arab Emirates, Qatar and Kuwait to the east. The country (as shown in Map 1) has a very distinguished location. On the one hand, it is bordered by two strategically and economically significant seas: the Arabian Gulf to the east and the Red Sea to the west. The latter connects the Indian Ocean with the Mediterranean. On the other hand, the Kingdom represents a link between mainland Asia and Africa. With a coastal length of about 2320 kilometres (1760 on the Red Sea and 560 on the Arabian Gulf)⁹⁰, the Kingdom has many scattered islands, most of which are uninhabited. Among them are Al-Arabyah, Tarat and Hanna in the Gulf and Farasan, Tiran, Sanafir, Sa'ad, Reman, No'aman, Zafer, Wagdah and Lobenah in the Red Sea.

1.2 The Saudi Economy and Marine Resources

Petroleum and its products are the most important industry in Saudi Arabia. Oil was discovered in commercial quantities at Dammam in 1938 by the American firm, Standard Oil Company of California, which had been granted a petroleum concession for exploration in the Eastern Province of the Kingdom on May 29, 1933⁹¹. Saudi Arabia has the world's biggest proven resources of petroleum, officially stated to be 255,000 million barrels in January, 1990. The Kingdom is the biggest petroleum producer within the Organization of Petroleum Exporting Countries (OPEC) (with 27.0% of the organization's output in 1990), and the third biggest producer in the world (with around 10.3% of world output in



Map 1 : The Kingdom of Saudi Arabia, as surrounded by the Red Sea in the west and the Arabian Gulf in the east.

1990)⁹². Saudi Arabia is a founding member of each of the OPEC and the Organization of Arab Petroleum Exporting Countries (OAPEC)⁹³. Most oil fields spread within the territorial waters in the Gulf and opposite to it landwards. This area contains the largest submerged oil field in the world, namely Al-Saffaniah field⁹⁴. All these factors are reflected in the Saudi Arabian marine policy, whether concerning national claims or the method of determining maritime boundaries with opposite or adjacent states in the Gulf.

Besides oil, gas is another important resource in Saudi Arabia. According to a study made by ARAMCO in January 1989, the Kingdom's proven gas reserves were estimated at 177.3 billion cubic feet⁹⁵. Many natural gas fields are also within the territorial waters of the Kingdom in the Arabian Gulf. The country is also rich in mineral deposits. According to the Fourth Five Year Plan (1985-1990), gold has been discovered at some 600 sites around the Kingdom. Other minerals have also been discovered, such as silver, bauxite, copper, iron, lead, tin and zinc⁹⁶. Many of these deposits are in the Red Sea.

Historically, the Arabian Gulf was noted for its pearls. Vattel made special mention of these resources saying in his *Le droit des gens ou principes de la loi naturelle* in 1785:

*Who can doubt the pearl fisheries of Bahrain and Ceylon may be lawful objects of ownership?*⁹⁷

Although commercial pearling is considered now as defunct,⁹⁸ the fishing industry is an important one. In 1988, the Kingdom's total fishing catch was 46,773 tons, an amount which satisfied about one half of the total local demand. The contribution of the agriculture sector (including forestry and fishing) of the gross domestic product was 7.3% in 1989⁹⁹.

Moreover, the waters of the Red Sea and the Arabian Gulf are of special significance to the Kingdom, which has no rivers and suffers a lack of rainwater. In the light of these facts, the waters of the Red Sea and the Gulf, after desalination, are one of the Kingdom's main sources of drinking water, especially for the people of the Western and Eastern areas respectively. In 1995, Saudi daily production of desalinated water was more than 5 million gallons, produced by 22

desalination plants. This quantity, which amounts to some 30% of the world total, is unequalled anywhere else in the world¹⁰⁰.

Finally, the industry of maritime transport is of essential significance to Saudi Arabia. Ninety per cent of the Kingdom's imports, and 95% of her exports are transported via the sea¹⁰¹. In 1994 the trade exchanges of the Kingdom via the sea (excluding crude oil) amounted to more than 83 million tons¹⁰². Some 9,000 tankers and ships arrived in the Saudi ports in 1993¹⁰³. These statistics reflect the great importance of the sea for Saudi Arabia in terms of economy and commerce.

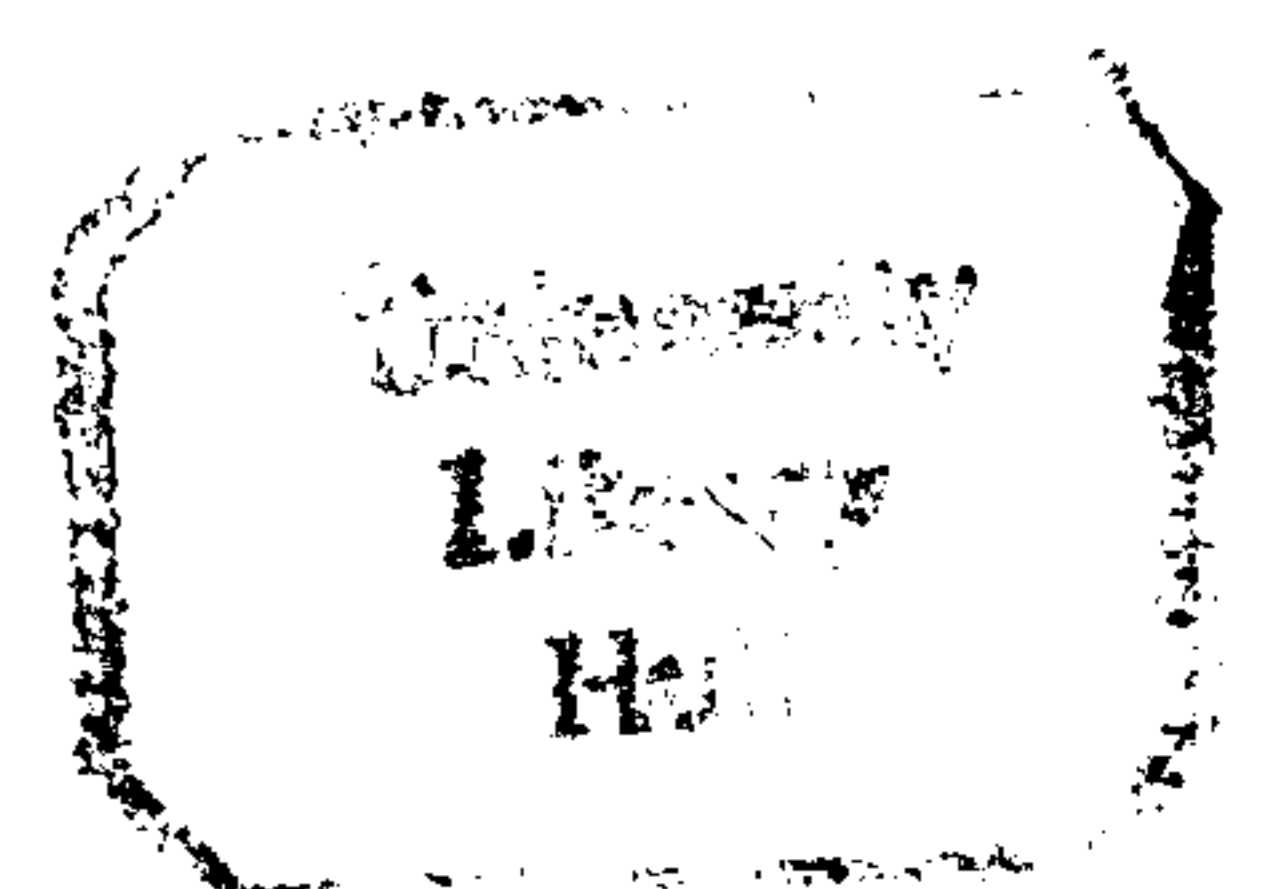
The sea for Saudi Arabia, however, is not significant only in terms of its commercial and economic benefits. Strategically, the Red Sea and the Arabian Gulf have been of exceptional significance throughout the ages, not only to the Kingdom or even to the region, but to the whole international community. The geographic setting, the strategic and economic aspects and legal regimes of both seas, will be separately discussed in the following pages.

2. The Red Sea

The Red Sea, an area of sea resulting from the Great African Fault, separates the Arabian Peninsula from the African Continent. Its area is about 128,000 square nautical miles, and it is connected to the Arabian Sea and Indian Ocean through the Strait of Bab-el-Mandeb¹⁰⁴. In the north, the Red Sea branches into two subsidiary water bodies, the Gulf of Aqaba and the Gulf of Suez, which in turn, is linked with the Mediterranean via the Suez Canal. The length of the Sea from Bab-el-Mandeb to the Gulf of Suez is about 1380 miles and its average breadth is around 170 miles. The Sea is narrow in the north and the south; the greatest distance between its coasts, around 190 miles, is between the Kingdom and Eritrea, but at its narrowest, between Eritrea and Yemen, the Sea is only some 40 miles wide. The waters of the Red Sea are shallow; 10,000 feet at the deepest point. It has eight littoral states (Jordan, Israel, Egypt, the Sudan, Eritrea, Djibouti, Yemen and Saudi Arabia), and about 379 islands¹⁰⁵, of which 144 belong to Saudi Arabia¹⁰⁶.

The predominant bathymetric features of the Red Sea are:

- (a) *a shelf along the shore;*
- (b) *a main fault trough running almost the entire length, within which*



there is:
(c) *a deep axial trough*¹⁰⁷.

The Red Sea is regarded as one of the most important routes in the world. The economic and strategic significance of this sea motivated the great powers to seek to assert a dominant influence over it and the surrounding territories¹⁰⁸. Via the Strait of Jubal (at the entrance to the Suez Canal in the north) and the Strait of Bab-el-Mandeb in the south, the Red Sea has been seen as a communication artery east-west and a main transit route between the Northern and Southern hemispheres, since the Suez Canal was excavated in 1869, reducing the distance from Britain, for example, to Bombay (India), Singapore, and Hong Kong, by 4300, 3300, and 3300 miles respectively¹⁰⁹. Thus, the Red Sea has become the ideal medium for transporting international trade, not only for littoral states, but also for the international community.

Militarily, the Red Sea, which links the Mediterranean with the Indian Ocean, has been an arena of dominion between the two super powers during the Cold War. Also, the existence of Israel since 1948 at the head of the Gulf of Aqaba has created a new strategic dimension for the Red Sea within the context of the long conflict between Israel and the Arab States including Saudi Arabia¹¹⁰. The Red Sea and its straits are of great significance at the regional level, representing a vital source of natural resources, whether living or non-living. Experiments made by scientific research vessels have proved the existence of many kinds of minerals, such as gold, lead, copper, magnesium, iron, nickel, zinc and silver¹¹¹. Moreover, some one thousand different species of fish are known to inhabit the Red Sea. Of these, about one hundred have not been found outside of the Red Sea and are therefore known as Red Sea endemics¹¹².

For several reasons, Saudi Arabia has a particular interest in the Red Sea, in terms of economy and politics. The Red Sea coastal area is the most fertile part of the state. On its coasts, there is the largest dry cargo port of the Kingdom, Jeddah, which is considered also as a passage to the holy places in Mecca and Medina. On the Red Sea, there are also the sea ports of Jizan and Yanbu. The latter contains one of the most important industrial cities in the country. With these three ports, the Red Sea is a key route for Saudi imports and exports. The pipeline from the oil

fields in the Eastern Province has enhanced the Red Sea's importance as a major oil traffic lane. In addition to what the Red Sea contains of natural resources, its waters (after desalination) are, as mentioned earlier, a major resource of drinking water, especially for the people of the western areas.

3. The Arabian Gulf

Beside the Red Sea, the Arabian Gulf¹¹³ represents the other arm of the Indian Ocean. It covers an area of approximately 70,000 nautical miles and has 97% of its periphery occupied by land. It is joined to the Gulf of Oman to the south, by the Strait of Hormuz. The length of the Gulf from this strait to the Shatt-al-Arab (the outermost edge in the north) is approximately 430 nautical miles; while its maximum width is around 160 nautical miles. The narrowest part of the Gulf is in the Strait of Hormuz, which is the only outlet, 20.75 nautical miles wide. The Gulf is a relatively shallow basin with an average depth of less than 40 metres and a maximum depth of about 100 metres¹¹⁴. The Gulf has many coral reefs and more than 130 islands¹¹⁵, some of which are of serious strategic importance in relation to the shipping lanes within the Gulf at the approach to the Strait of Hormuz¹¹⁶. Eight states overlook the Gulf: Bahrain, Qatar, the United Arab Emirates, Oman, Iran, Iraq, Kuwait and Saudi Arabia.

Historically, the Arabian Gulf has played a prominent role. In addition to its geographical position as a transit route of the international trade east-west, the Gulf is regarded as a centre of the ancient civilizations, such as Babylon, Sumer, Akkad and Persia.

Since oil was first discovered in 1908¹¹⁷, the Gulf has been the focal point for much of the superpower competition and conflict throughout the Middle East, North Africa and South Asia. The significance of the Gulf region today, whether for its states or to other powers outside it, is defined largely in terms of oil and gas, with 57% of the world's proven oil reserves and 26% of the world's natural gas reserves in the region¹¹⁸. This particular economic importance of the Gulf was the main reason behind the intensive presence of the military fleets of the superpowers therein during the eight year Iran-Iraq war¹¹⁹. Also, the desire to maintain the free

flow of oil and gas from the region was a major purpose of the international military expedition following the Iraqi invasion of Kuwait in August 1990.

To Saudi Arabia, the Gulf is her second marine lung. The Gulf territorial sea and its adjacent coasts contain, as mentioned earlier, the main sources of gross domestic product, petroleum and its products and natural gas¹²⁰. On the Gulf's coasts are situated Dammam sea port, Saudi Arabia's second most important commercial sea port, and Jubayl sea port, which constitutes the other big industrial city in the Kingdom. Furthermore, its waters, after desalination, are a main source of drinking water for the population of the Eastern Province of the Kingdom. In relation to fisheries, less significant, but growing in importance, is the fishing potential in the Gulf¹²¹. Finally, the Gulf with its pleasant coasts and cities, is an attractive area for tourists.

4. The Legal Status of the Red Sea and the Arabian Gulf as Enclosed or Semi-enclosed Seas

The notion of "enclosed or semi-enclosed seas" was not an international issue until the 1970s. For instance, the Geneva Conventions are silent on the question. The concept of "enclosed or semi-enclosed seas" was raised only in the debates of UNCLOS III, in connection with the concept of the EEZ, and was put on the agenda of the Second Committee of the Conference.

During the deliberations of the Conference there were different views on this question. The discussion focused basically on the definition of the concept, its probable legal status, the preservation of the marine environment in such seas, international navigation through such seas, and the rights of bordering states. The Soviet argument, for instance, was based on its idea of securing recognition of closed or regional seas as a separate concept within the international law of the sea. It was in this context that the delegate of the Soviet Union to UNCLOS III declared:

First: a clear distinction must be made between enclosed and semi-enclosed areas. From a juridical point of view, enclosed seas were comparatively small, had no outlet to the ocean, and did not serve as international shipping routes in the broadest sense. In the case of such seas, the legal regime might include certain peculiarities on the basis of existing international agreements and international custom. Semi-enclosed seas, on the other hand, were large bodies

*of water with several outlets through which passed international waterways. They had never been subject to any special regime. Almost any sea could be called semi-enclosed, and to compare such seas with enclosed seas would be quite unjustified ...*¹²²

In so arguing, however, the Soviet Union wanted some enclosed seas, such as the Baltic Sea, the Black Sea, the Okhotsk Seas and the Sea of Japan as "closed" or "regional" seas, and held that such seas should be governed by a regime established by agreement between the littoral states only¹²³. Several states such as Finland, Denmark, Sweden, France, Greece and Iran shared the same view¹²⁴. Iran, a bordering state to the Arabian Gulf, had this to say on this issue:

*the problems raised by the semi-enclosed seas with regard to the management of their resources, international navigation and the preservation of the marine environment justified granting them a particular status constituting an exception to the general rule.*¹²⁵

Iran held that the said problems of these seas could only be solved within the framework of regional or bilateral arrangements. The likely reason for this was that Iran, as a strong state in the Gulf, wanted to keep her control over navigation through the Strait of Hormuz.

Iraq, on the other hand, the other northern littoral state on the Gulf (with a coastline of only some 10 nautical miles), was of the view that special rules on enclosed and semi-enclosed seas should be incorporated into the Law of the Sea Convention. Although the Iraqi representative described the regional arrangement as :

essential to ensure the implementation of a joint policy for the conservation and management of living resources, pollution prevention and control,

he considered it as:

vital to his country to have free transit through that Strait (Strait of Hormuz) and freedom of navigation in the area as a whole.

Therefore, (according to the Iraqi representative),

*the convention should embody principles regulating the legitimate uses of semi-enclosed seas and the rights of coastal states.*¹²⁶

The other Gulf states including Saudi Arabia, did not participate in this debate during the Conference deliberations. However these states were divided

with regard to the legal status of the Gulf. On the one hand Oman, a state strategically placed at the entrance of the Gulf (in the south) was of the view that the entire waters of the Gulf should be approached within the territorial waters, since such an approach would enable her, along with Iran, to control navigation through the Strait of Hormuz¹²⁷. On the other hand, all the other Gulf states, including Saudi Arabia, were in favour of the traditional status of the Gulf as an open sea for international navigation beyond the territorial waters¹²⁸.

As to the Red Sea, navigation was the most important obsession for the delegations of the states concerned, during the debates of the Conference. Such was the case with Israel and former Democratic Yemen. Having referred to the Red Sea and its straits (Juba and Tiran in the north, and Bab-el-Mandeb in the south), the Israeli representative expressly said:

The freedoms of navigation and overflight must retain their priority in those semi-enclosed seas, especially as they did not affect the consumptive use of the sea and its resources¹²⁹.

In response to this statement (without mentioning the Israeli delegation by name), the representative of the former Democratic Yemen expressed the view that such an approach was unrealistic, for several reasons:

First, the Red Sea was a semi-enclosed sea only in respect of matters relating to pollution. Secondly, the Red Sea was not semi-enclosed in respect of international shipping. ... Thirdly, his delegation could not accept the concept of free passage for all vessels or free overflight for all aircraft in a vital region that was subject to heavy straits traffic. Application of that concept would lead to chaos and would threaten international shipping and the security, political independence and territorial integrity of the coastal states. Fourthly, the question of navigation in the straits must be decided on the principle of innocent passage.¹³⁰

Although Saudi Arabia did not participate in this debate during the Conference, the Saudi practice has been supportive of the idea of allowing innocent passage in the territorial sea¹³¹ and through international straits. The Saudi understanding on the concept of international straits was, until recently, that only those straits which link two parts of the high seas are international straits¹³².

However, the product of UNCLOS III, the 1982 United Nations Convention on the Law of the Sea earmarked Part IX for the question of "enclosed

or semi-enclosed seas". Article 122 defines two categories of sea spaces as enclosed or semi-enclosed seas. The first one is those seas surrounded by more than one state and connected to the open sea by a narrow outlet. As for this category, no specific dimensions are identified; indeed, the issue of size is omitted. The second category is the seas which are limited in area and consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal states, regardless of whether or not they have outlets to the open sea¹³³.

According to this definition and its requirements, both the Arabian Gulf and the Red Sea (in the light of their geographical features mentioned above) fall within the category of enclosed or semi-enclosed seas. In relation to the Gulf, it is connected to the Indian Ocean via the Strait of Hormuz, while its waters consist entirely of the territorial waters and exclusive zones of the littoral zones. The Red Sea is also subject to this status. It is connected to the ocean through the Strait of Bab-el-Mandeb in the south, regardless of the doubts around the Suez Canal (as an artificial outlet) linking it with the Mediterranean. Moreover, like the Gulf, the Red Sea consists entirely of the exclusive economic zones of the littoral states.

However, the description of the Red Sea and the Arabian Gulf as semi-enclosed seas under the LOSC definition (Article 122), not only accords with the geographical features of both seas, but is also in keeping with the historical facts and the essential economic and strategic interests of the littoral states therein as marine outlets for the imports and exports of such states. Turning to the relevant provisions of the LOSC, what is worth noting is that despite the fact that the Convention introduced the new concept of closed and semi-enclosed seas, the legal status of such seas and the rights and duties of littoral states have not been identified in the LOSC. Article 122 was satisfied with defining the term, and the only other article dealing with the concept (Article 123) was content with inviting the bordering states to co-ordinate their efforts concerning the issues of the management of scientific research and living resources, and the protection and preservation of the marine environment. Thus, under the Convention no new rights have been granted to the coastal states, nor have duties been imposed upon a third party. Instead, the LOSC invites the relevant states to co-ordinate and

cooperate in the exercise of their rights and obligations established by the Convention. This, however, represents one of the failed attempts of the Convention to create a more meaningful regime to govern enclosed and semi-enclosed seas.

With respect to the Gulf and Red Sea states, there were some indications of this co-operation, even before the LOSC's invitation. Such indications could be found in the agreements concluded between the coastal states of both regions. In the Arabian Gulf, we find that all the eight Gulf states (Iraq, Iran, Oman, United Arab Emirates, Qatar, Bahrain and Saudi Arabia) are involved in the Kuwait Convention for Co-operation on the Protection of the Marine Environment from Pollution of 1978 and its Protocols¹³⁴. On protecting the environment of the Red Sea, there is the Jeddah Regional Convention for the Conservation of the Marine Environment of the Red Sea and the Gulf of Aden of 1982, and its protocol¹³⁵. The parties to this convention are Jordan, Somalia, Palestine (represented by the Palestine Liberation Organization), Sudan and Saudi Arabia (these are all Arab states). Israel is not a party, since it was not recognized by the Arab states. Egypt and Ethiopia (before the recent independence of Eritrea) were not parties either, because of political disagreements, namely the conclusion of the 1979 Camp David Agreement between Egypt and Israel and the existence of diplomatic relations between Ethiopia and Israel at that time.

Another model of co-operation is represented by the 1974 Agreement between Sudan and Saudi Arabia Relating to the Joint Exploration of the Natural Resources of the Sea-Bed and Sub-Soil of the Red Sea in the Common Zone¹³⁶. It is clear that these forms of co-operation are modest and do not fulfil the requirements of Article 123 of the LOSC. There is no co-operation in the fields of scientific research policies and the management of the living resources of the two seas. What is more, even the collective efforts to protect the marine environment, represented in the said conventions and their protocols, as the clearest form of co-operation, have not been effective and have been affected by the political disagreements between the parties. This was obvious during the eight year war between Iran and Iraq, when both sides resorted to mining the Arabian Gulf waters and bombing each other's oil tankers, which led to pollution of the Gulf water.

This, however, took place, even though both states are parties to the 1978 Kuwait Convention and its protocols. In 1990, a similar thing happened, but in a different way. Some 10-15 million barrels of crude oil from the Kuwaiti oil fields were poured into the Gulf waters¹³⁷. This action was deliberately taken by Iraq, a state party to the Kuwait Convention! Without doubt, disagreements between the region's states have always been the major obstacle in the way of achieving more co-operation in the different fields referred to in Article 123 of the LOSC. Although there are differences among the states of the region with regard to broader political issues, there is no reason why these states should not be persuaded to come together to address the marine issues of the region. Such co-operation has been achieved in many other parts of the world. However, to achieve more co-operation on the various marine issues, the states concerned are invited to undertake to resolve problems of direct relationship to these co-operation issues, such as those related to maritime boundaries.¹³⁸

5. The Legal System of Saudi Arabia

5.1 Islamic *Shari'a* as a Source of Laws

Saudi Arabia is an Islamic state and its laws and regulations are entirely based on the *Shari'a*. For Muslims, the *Shari'a* is a perfect and comprehensive system of life. It is regarded as divine law, taking the form of a communication concerning human behaviour, whether ordering, prohibiting or authorising actions, and moreover, it is viewed by Muslims to be a body of commandments, religious, legal and social, given by Allah (God) through his Prophet Mohammed¹³⁹. The adopting of the *Shari'a* as a source of laws in Saudi Arabia has been time and again mentioned by the Saudi monarchs¹⁴⁰. This principle is also confirmed in the new Basic Regulations of Rule¹⁴¹ of 1992 and the Consultative Council (The Shura Council) Regulations of 1992¹⁴².

Islamic *Shari'a* has four primary sources:

- (i) The "Quran", which Muslims believe to be the very word of God;
- (ii) The "Sunna", which means the sayings and deeds of the Prophet Mohammed;

- (iii) The "Ijmah", or the consensus of scholars. This source is resorted to when there is no specific text in the two previous sources to deal with a specific question:
- (iv) The "Kias", or analogy. This includes the application of specific rules that had been applied in similar previous cases, to the matters in question, in the absence of limited and specific rules in the Quran and the Sunna¹⁴³.

As principal sources of Islamic law, the Quran and the Sunna contain very detailed provisions on questions unchangeable by the passage of time (e.g. personal status, such as marriage, divorce, heritage, legitimacy as well as criminal law etc.). But as a comprehensive system of life, Islamic law does not cover every single human action, in detail, otherwise there would come a time when the Islamic rules would be out of date, which would conflict with the view of the *Shari'a* as a system believed by Muslims to apply to all time and all places. In the light of these dealings, Muslim scholars began to devise guidelines and provisions based on the principles of the *Shari'a*, to cope with recent developments. This led to the emergence of several schools of Islamic law: Hanafi, Maliki, Shafi and Hanbali schools. Differences among these schools, however, are related to the interpretation of some texts of the Quran and the Sunna, and of no antagonistic nature¹⁴⁴. Saudi Arabia officially follows the Hanbali school, which is regarded, by and large, as more conservative. The Organic Instructions of the Hijazi Kingdom of 1926 (as amended in 1932 and 1958) state that the main source of law in Saudi Arabia is the Hanbali school of Islamic jurisprudence¹⁴⁵. Nevertheless, the other schools are not excluded. This was affirmed by King Abdalaziz, the founder of the Kingdom, when he ordered the judges:

*not to be bound by the rules of one school of jurisprudence to the exclusion of all others, even where this would constitute a violation of the rights of a party who expects the decision to be made in accordance with the school of his affiliation*¹⁴⁶.

5.2 The Constitution

It has been stated above that all Saudi regulations are derived basically from the *Shari'a*. However, in the contemporary sense of the term, until recently, Saudi Arabia's constitution was embodied in the Council of Ministers Regulations

of 1958 as amended¹⁴⁷. On March 2, 1992, two major new laws were issued: the Basic Regulations of Rule and the Consultative Council Regulations¹⁴⁸. In addition, the 1958 Council of Ministers Regulations were amended on August 20, 1993¹⁴⁹. These three laws represent the constitutional system of Saudi Arabia¹⁵⁰. Among these, the Basic Regulations of Rule, in its 83 articles, lays down a comprehensive constitutional framework for government. It was stated that these Regulations, as such, did not bring about a completely new constitutional framework, but rather, a mere codification of fragmented constitutional principles which had been adopted and applied in the country and derived mainly from Islamic, traditional and international theories¹⁵¹. This is true, but, in any case, the three aforesaid laws are of major importance, in that, together they form the first contemporary extensive written constitution in the Kingdom.

5.3 The Judiciary

The Saudi judiciary system consists of two kinds of courts:

1. The Shari'ah Courts: The Shari'ah Courts are administered by the Ministry of Justice (established in 1970, subject to the detailed rules laid down in the Judicial Regulations of 1975¹⁵². There are several levels of these courts¹⁵³:
 - (a) Courts of first instance. These courts contain two categories:
 - (i) The lower courts which deal only with minor claims and sit with one judge;
 - (ii) General courts which have universal jurisdiction over all civil and criminal cases.
 - (b) Courts of Appeal. There are two appellate courts, one based in Riyadh and the other in Mecca. Their task is to hear appeals from the lower courts.
 - (c) The Supreme Judicial Council. This Council which is constituted from among the body of Saudi religious scholars, is the highest authority in the system. Its functions are: reviewing all major criminal cases before judgement is executed, interpreting novel points of the *Shari'a*, reviewing cases where the Appeal Court fails to reach the requisite majority in

reassessing existing principles, or where the Minister of Justice withholds his approval, and issuing opinions (*fatawa*) on Shari'a questions at the request of the Minister of Justice.

2. Administrative Tribunals: In addition to the Shari'ah Courts, numerous semi-judicial organs have been established by royal decrees. These specialized tribunals are concerned with secular matters; nonetheless, the *Shari'a* is still the supreme authority in every case¹⁵⁴. Of these tribunals there are¹⁵⁵:

- * the Board of Grievances¹⁵⁶;
- * the Commercial Papers Committee;
- * the Committee for the Settlement of Commercial Disputes;
- * the Commercial Agency Commission;
- * the Saudi Arabian Monetary Agency Committee for Banking Disputes;
- * the Primary and Supreme Commission for Labour Disputes;
- * the Civil Rights Directorate.

In addition to the Shari'ah courts and the specialized tribunals, arbitration is recognized as a means for the settlement of disputes within the Saudi jurisdiction. This system is organized by the Regulations on Arbitration of 1983¹⁵⁷.

It is to be noted, finally, that concerning the international jurisdiction of the Saudi courts, these courts apply the nationality principle, according to which, disputes against a Saudi national can be heard even if his domicile is outside the Saudi territory (Article 23 of the Civil Procedure Rules of the Shari'ah Courts of 1989¹⁵⁸). On the other hand, the Saudi courts' jurisdiction can extend to contain foreigners whose residence is outside the Kingdom under the following circumstances:

- If the subject matter of the dispute is assets located within the Kingdom;
- If the dispute emerges in connection with a contract concluded in the Kingdom;
- If the dispute arises in connection with a contract which specifies the Kingdom as the place of contractual performance;
- If the dispute arises in connection with bankruptcy declared in the Kingdom;
- If there are several defendants, one of whom is domiciled in the Kingdom¹⁵⁹.

5.4 The Executive and Legislative Powers

The executive and legislative authorities are centred in the Council of Ministers headed by the King. Article 19 of the Council of Ministers Regulations of 1993 indicates that ... the Council shall:

prescribe the state's policy on domestic and foreign affairs, finance, the economy, education, defence and all public affairs and shall supervise the implementation thereof. It discusses the resolutions of the Consultative Council. It is invested with the executive power, it is the final authority with regard to financial affairs and all matters concerned with the various ministries of the state and other government departments.

The Council and its individual ministers have also wide powers to enact delegated legislation pursuant to Royal Decrees (Articles 67 of the Basic Regulations of Rule, and 21 and 22 of the Council of Ministers Regulations).

As far as the law-making process is concerned, while traditional spheres of law, such as personal status are, as mentioned above, governed by the provisions of Islamic *Shari'a*, other aspects of law (such as oil, immigration and sea) are subject to the provisions contained in Royal decrees and delegated orders, codes, and by regulations¹⁶⁰. The formal procedure of legislation starts with the competent minister. Under Article 22 of the 1993 Council of Ministers Regulations, each minister has the right to submit draft regulations or a bill relating to his ministry. After that, the draft is to be submitted to the Consultative Council, which is, according to Article 15 of its Regulations, authorised to study the laws and make suggestions and then submit them to the Chairman of the Council of Ministers (the King). Such a draft is studied afterwards according to Article 21, by the Council, whose members then vote on each of the proposed articles, one by one, before the bill is sanctioned finally by the King. However, for those fields of law, where there is not a specific ministry or where there is more than one relevant ministry, a committee of experts in co-ordination with the Council of Ministers is to be entrusted to prepare the draft text of the regulation concerned. The draft is brought before the Council for discussion, and then submitted to the King for approval. This approval, which takes the form of a Royal decree, shall be promulgated in the Official Gazette (*Umm Al-Qura*), and the regulation will come

into force as of the date of promulgation, except where another date has been provided for¹⁶¹.

It should be noted, finally, that the term "law" (*qanun* in Arabic) is not mentioned in the Saudi legislation. Instead, terms such as *Shari'a*, regulation and bill are used. The reason for this is that in the perspective of the conservative Saudi society, the term "law" relates specifically to the positive law or man-made laws, which do not have the same degree of authority that Islamic *Shari'a* has. However, in practice, this difference has no significance because the Saudi legislation, under whatsoever name, has the same force, authority, weight and sanctions as any appropriate legislation would have in any other jurisdiction¹⁶².

5.5 International Treaties in the Saudi Municipal Regulations

Under international law, a state is free to adopt its own constitutional arrangement to exercise its treaty-making power. In Saudi Arabia, the making and amending of treaties is usually entrusted to the competent authorities, but subject to a final approval of the King in the form of a royal decree¹⁶³. Before this approval, the treaty is to be examined by the Council of Ministers¹⁶⁴. As a consultative body, the role of the Consultative Council is limited to studying the agreement in question and making suggestions¹⁶⁵. The constitutional rules on adoption of international treaty to which the Kingdom is party are contained in the Council of Ministers Resolution 1214 dated 23/9/1397 AH, as amended by Resolution 41 dated 12/5/1412 AH. These rules can be summarised as follows:

- (a) The Council of Ministers is the constitutional organ in charge of granting full powers to the person representing the Kingdom¹⁶⁶.
- (b) Unless provided with authorization, the minister or the representative in charge is not entitled even to initial a text of a treaty. Instead, the "initialling *ad referendum*" is the measure that has to be taken by the representative¹⁶⁶.
- (c) The King has the final authority to approve a text of treaty, but before that, the text is considered in the Council of Ministers, which in turn issues a resolution adopting the treaty.

- (d) The Saudi representative shall formulate reservations on the text pending the receipt of necessary directions from the Council of Ministers¹⁶⁸ which has the right to make any amendments or reservations to the text. The representative is to be informed about these amendments and reservations, pursuant to a royal direction¹⁶⁹.

At this stage, the Council shall issue a resolution authorising the representative to sign the treaty, provided that the other party accepts the said amendments and reservations¹⁷⁰. The reservations and amendments of the other party are subject to the acceptance of the Council of Ministers¹⁷¹.

The Kingdom, then, follows monism, since, when a royal decree is issued adopting a text of a treaty, it becomes part of the internal regulation without need to be reissued in the form of internal legislation.

It is clear that Resolution 1214 was simply formulated and deals only with bilateral treaties. There is no mention of multilateral treaties or those which may be concluded with international organizations.

5.6 Management of the Law of the Sea Issues in Saudi Arabia

In view of the diversity of maritime issues, various ministers and governmental authorities supervise one or more aspects of these affairs as follows:

- * The Ministry of Communications has overall responsibility for all public law aspects of shipping.
- * The Ministry of Foreign Affairs is responsible for the formulation of Saudi foreign policies, including the maritime policy.
- * The Ministry of Health is in charge of the necessary procedures to prevent infectious diseases from coming into the country through the sea outlets.
- * The Ministry of Agriculture and Water is responsible for the evaluation, management and development of fisheries (a company known as the Saudi Fisheries Company owned by the Government and a substantial number of private shareholders, has also been established for this purpose).
- * The Ministry of Defence and Aviation, in addition to its classical task as a main governmental body in securing the maritime boundaries against external dangers, practises other roles through:

1. The Meteorological and Environmental Protection Administration (MEPA) in charge of the control of pollution and protection of the environment.
 2. The Military Survey Department (MSD), responsible for drawing maritime maps and regulating the operations of scientific research in the maritime zones of the Kingdom.
- * The Ministry of Petroleum and Mineral Resources oversees the extraction of oil and minerals.
 - * The Ministry of Interior, through the General Department for Frontier and Coast Guard, is responsible for watching and guarding the marine boundaries.
 - * The Ministry of Commerce is of particular importance to shipping; among other responsibilities, it supervises the Committee for Settlement of Commercial Disputes, which is the competent tribunal in most shipping disputes.
 - * The Saudi Seaports Authority is in charge of the administration of the country's ports.
 - * The National Commission for Wildlife is responsible for flora and fauna in both the marine and terrestrial environments.
 - * The Environmental Protection Co-ordinating Committee (EPCC), has the task of co-ordinating the activities of the various government bodies involved in environmental protection.
 - * The Planning Ministry is responsible for formulating national development plans to which the other Ministry's plans must conform.

These are the main ministries and institutions in charge, directly or indirectly, of the Nation's maritime affairs. The existence of this relatively great number of government organs might result in some conflict of interest or overlapping of responsibilities. Therefore it would be very useful if there were a committee (similar to the EPCC), the function of which would be to co-ordinate the activities of all bodies whose responsibilities include maritime issues.

5.7 Saudi Arabia and the Law of the Sea Conventions

As a country with a coastal length of more than 2300 kilometres, Saudi Arabia must be one of the states concerned with the law of the sea. Indeed, the Kingdom participated in the three United Nations Conferences on the Law of the Sea. Nonetheless, the Kingdom (as well as all Arab States with the exception of Tunisia which made reservation on Article 16(4) of the TSC) did not sign the 1958 Geneva Conventions on the Law of the Sea, mainly because of the rejection of the Saudi proposal calling for a twelve mile territorial sea, and the recognition of the right of innocent passage for Israel through the Gulf of Aqaba and its Straits¹⁷².

However, since it is impossible to separate legal positions from political considerations, the perspective of concerned states in the Middle East on certain issues of the law of the sea has started to shift as a result of the climate of peace, which emerged in the area since the visit of Sadat of Egypt to Israel in 1979. Although the TSC principle of innocent passage was reproduced in Article 45 of the Law of the Sea Convention, the Kingdom signed the Convention on 7 December 1984¹⁷³. Some twelve years later (24 April 1996), the Saudi Government ratified the Convention¹⁷⁴, by virtue of the Royal Decree No. M/17, dated 31 January 1996¹⁷⁵. In this Decree, Saudi Arabia has also accepted the provisions of the Part XI Agreement. During the period 1984-1996, the Kingdom, however, did not challenge the Law of the Sea Convention, but rather, she, as a signatory state, refrained from acts defeating the object and purpose of the Convention. In that respect, Saudi Arabia's behaviour was in conformity with Article 18(9) of the 1969 Vienna Convention on the Law of Treaties, which confirms this principle¹⁷⁶. Benefiting from the text of Article 310 of the Law of the Sea Convention¹⁷⁷, Saudi Arabia, when ratifying, issued a number of declarations in which she clarified her position towards certain issues, particularly navigation through the straits and territorial sea of the coastal state¹⁷⁸.

Conclusion

The sea for Saudi Arabia is a matter of life. The economy of the country depends to a large extent on the sea, as a commercial waterway, a source of

desalinated waters, living resources, and more importantly as a source of oil and natural gas. Security considerations have also been present, particularly since the creation of Israel in 1948. Aware of these facts, the Kingdom has given serious attention to the law of the sea and was accordingly an effective participant at the Law of the Sea Conferences. The Kingdom was at the forefront of the Region's countries in issuing its own national legislation identifying and affirming its jurisdiction and sovereignty over its maritime zones. The increased number of marine issues is also evident from the creation and diversification of governmental structures that deal with the oceans. Although, as will be seen below, chronologically, it was accidental in certain cases, Saudi Arabia's practice in the law of the sea has been to some extent in parallel with the development of the international law of the sea itself. This is evident in the recent ratification by the Saudi Government of the Law of the Sea Convention (April 1996), which only entered into force in November 1994.

NOTES TO CHAPTER I

1. It is to be noted that the Peace of Westphalia Treaty (1648), which concluded the Thirty Years War between the European nations, is widely considered the starting point of international law in Western legal literature. Different views, however, have been taken by other jurists. For more details see A. Cassese, International Law in a Divided World, Oxford, Clarendon Press, (1988), pp. 34-38.
2. D. P. O'Connell, The International Law of the Sea, vol. 1, Oxford, Clarendon Press, (1982), at p. 29.
3. H. A. Smith, The Law and Custom of the Sea, 3rd ed., London, Stevens and Sons Limited, (1959), at p. 4.
4. It should be noted, however, that the English claims to the sovereignty of the sea had been made as early as the tenth century, when the English King Edgar the Peaceful styled himself "Sovereign of the Britannic Ocean". See C. J. Colombos, The International Law of the Sea, 6th ed., London, Longmans, Green and Co. Ltd., (1967), pp. 48-49.
5. O'Connell, *op. cit.*, note 2, at p. 9.
6. H. Lauterpacht, Oppenheim International Law, Vol. I., 8th ed., London, New York, Toronto, Longmans, Green and Co. Ltd., (1958), p. 584.
7. Colombos, *op. cit.*, note 4, at p. 48.
8. H. A. Smith, *op. cit.*, note 3, at p. 5.
9. Quoted in *Ibid*, at p. 59.
10. R. R. Churchill and A. V. Lowe, The Law of the Sea, Manchester, Manchester University Press, (1988), p. 3. The views of Grotius were supported later by several jurists such as Bynkershoek in his book, *De Dominio Maris* (1702).
11. See Hugo Grotius, The Freedom of the Seas or the Right which Belongs to the Dutch to Take Part in the East Indian Trade, translated by R. V. D. Magoffin and edited by J. B. Scott, New York, Oxford University Press (American Branch), (1916), at p. 28.
12. See H. Lauterpacht, *op. cit.*, note 6, at p. 585.
13. When the Dutch omitted this requirement in 1636, Charles I imposed a fine of £30,000 upon them. See Colombos, *op. cit.*, note 4, at p. 55.
14. E. D. Brown, "Maritime Zones: A Survey of Claims", in R. Churchill (ed.), New Directions in the Law of the Sea, vol. III, New York, Oceana, (1973), pp. 157-192, at p. 158.
15. See C. J. Colombos, *op. cit.*, note 4, pp. 62-64.
16. O'Connell, *op. cit.*, note 2, at p. 124.
17. Such as The International Law Association, Institute of International Law, the Harvard Law School and the American Law Institute. The main value of these bodies lies in the important collection of state practice during that period of time. See Churchill and Lowe, *op. cit.*, note 10, pp. 11-12.

18. For more details of the Conference, see J. S. Reeves, "The Codification of the Law of the Territorial Waters", 24 *AJIL*, (1930), pp. 486-99; H. Miller, "The Hague Codification Conference", 24 *AJIL*, (1930), pp. 674-93; S. W. Boggs, "Delimitation of the Territorial Sea", 24 *AJIL*, (1930), pp. 541-55.
19. In addition to that, the Conference considered the two subjects of nationality and responsibility of states for damage caused in their territory to the person or property of foreigners.
20. It is to be noted that the Commission has used the term, "territorial sea" instead of the term "territorial waters", which was more common until the beginning of the Conference works.
21. Such as, Japan, Britain, the British Dominions, U.S., Belgium, China, Egypt, Estonia, Germany, Greece, Holland, Poland, France and South Africa. See extract from the Provisional Minutes of the Thirteenth Meeting held on Thursday, April 3, 1930. Annex III, Second Committee, Territorial Waters, in Suppl. to 24 *AJIL*, (1930), pp. 253-57.
22. Thirteen states comprising Cuba, Italy, Columbia, Portugal, Yugoslavia, Turkey, Uruguay, Brazil, Chile, Spain and Romania, were in favour of six miles; Iceland, Finland, Norway and Sweden favoured four miles. *Ibid.*
23. These articles contained provisions on some legal matters relating to the territorial sea, such as the right of innocent passage and the extent of coastal states' rights therein. See Suppl. to 24 *AJIL*, (1930), at pp. 239-47.
24. J. S. Reeves, *op. cit.*, note 18, at pp. 496-97.
25. See the text of the Proclamation at Suppl. to 40 *AJIL*, (1946), pp. 45-48; M.M. Whiteman, Digest of International Law, Vol. 4, Washington, Department of State Publications, (1965), p.756.
26. See *infra*, pp. 170-71.
27. See US Department of State, The Geographer, Limits in the Seas, No. 36, 6th Revision, (1990), pp. 15, 87, and pp. 120, 151.
28. For more details about the claims of Latin American States, see A. Szekely, Latin America and the Development of the Law of the Sea, Part I, London, Rome and New York, Oceana Publications Inc., (1986), pp. 94-102.
29. Anne Hollick, "The Origins of 200 Mile Offshore Zones", 71 *AJIL*, (1977), pp. 494-500. See *infra*, pp. 237-39.
30. This resolution of the General Assembly was in accordance with Article 13 of the U.N. Charter which calls upon the General Assembly to *initiate studies and make recommendations for the purpose of ... and encouraging the progressive development of inter-national law and its codification* For the text, see D. J. Djonovich, (ed.), United Nations Resolutions, Series I, Resolutions Adopted by the General Assembly, Vol. I, (1946-1948), New York, Oceana Publications, Inc., (1973), at p. 296.
31. See Report of the International Law Commission Covering the Work of its Eighth Session, 1956 *ILC Ybk.*, Vol. 2, (1956), at p. 253; 51 *AJIL*, (1957), pp. 154-253. (Abstract in M. M. Whiteman, Digest of International Law, Vol. 4, p. 294.)
32. For the text: see D. J. Djonovich, (ed.), United Nations Resolutions, Series I, Resolutions adopted by the General Assembly, Vol. VI, (1956-1958), New York, Oceana Publications, Inc., (1973), p. 156. The purpose of the Conference, according to the

Resolution, was that the members were to examine the law of the sea, *taking account not only of the legal, but also of the technical, biological, economic and political aspects of the program and to embody the results of its work in one or more international conventions or such other instruments as it may deem appropriate.*

33. See The Final Act of the Conference, U.N. Doc. A/CONF.13/L.52-58; in 52 *AJIL*, (1958), pp. 830-867. For more details on the attendance, composition, procedures and an analysis of some legal aspects of the Conference outcome, see P. C. Jessup, "The United Nations Conference on the Law of the Sea" 59 *CLR*, (1959), pp. 234-268.
34. For a summary of some different attitudes of states, see A. H. Dean, "The Geneva Conference on the Law of the Sea", 52 *AJIL*, (1958), pp. 607-628, at pp. 608-610.
35. U.N. Doc. A/CONF.13/L.52, 52 *AJIL*, (1958), at p. 834. (In force since September 10, 1964.)
36. U.N. Doc. A/CONF.13/L.53, 52 *AJIL*, (1958), at p. 842. (In force since September 30, 1962.)
37. U.N. Doc. A/CONF.13/L.55, 52 *AJIL*, (1958), at p. 858. (In force since June 10, 1964.)
38. U.N. Doc. A/CONF.13/L.54, 52 *AJIL*, (1958), at p. 851. (In force since March, 1966.)
39. U.N. Doc. A/CONF.13/L.57, 52 *AJIL*, (1958), at p. 862. (In force since September 1962.)
40. U.N. Doc. A/CONF.13/L.56, 52 *AJIL*, (1958), pp. 864-67.
41. D. J. Djonovich (ed.), United Nations Resolutions, Series I, Vol. III, (1950-1952), New York, Oceana Publications, Inc., (1974), pp. 148-149. The Resolution reads: *the General Assembly ... decides that a second international conference of plenipotentiaries on the law of the sea should be called for the purpose of considering further the questions of the breadth of the territorial sea and fishery limits.*
42. U.N. Doc. A/CONF.19/SR.13, pp. 9-10, (1960).
43. The Conference worked in two stages, the first in Committee of the Whole and the second in Plenary. To adopt a proposal in Committee of Whole, just a simple majority was required, while a two-thirds majority was required in Plenary, U.N. Doc. A/CONF.19/7, Rules 35 and 49. For more details about the Conference and its debates see D. W. Bowett, "The Second United Nations Conference on the Law of the Sea", 9 *ICLQ*, (1960), pp. 415-35; A. H. Dean, "The Second Geneva Conference on the Law of the Sea: The Fight for Freedom of the Seas", 54 *AJIL*, (1960), pp. 751-89.
44. O'Connell, *op. cit.*, note 2, at p. 24.
45. Arnd Bernaerts, Bernaerts' Guide to the 1982 United Nations Convention on the Law of the Sea, Norwich, Fairplay Publications Ltd., (1988), at p. 5.
46. Anne L. Hollick, U.S. Foreign Policy and the Law of the Sea, New Jersey, Princeton University Press, (1981), at p. 176 and note 72, at p. 447.
47. Arnd Bernaerts, *op. cit.*, note 45, at p. 5.
48. I *ND*, (1973), p.41. The Convention was concluded in London on March 9, 1964 and entered into force on March 15, 1966.
49. Anne L. Hollick, *op. cit.*, note 46, pp. 164-70.

50. In this Resolution, the GA declared, *inter alia*, that: *all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development*; D. J. Djonovich, (ed.), United Nations Resolutions, Series I, Vol. VIII, 1960-1962, Oceana Publications Inc., (1974), pp. 188-189.
51. A. L. Hollick, *op. cit.*, note 46, pp. 170-172. This agglomeration of the developing nations led to the emergence of what is known as "the Group of 77" beside the Western and Communist groups during the negotiations of the Third United Nations Conference on the Law of the Sea.
52. *Ibid.*, at p. 175.
53. Articles 24 and 25 of the Convention.
54. It is to be noted, however, that several important conventions were concluded to deal with the protection of the maritime environment, whether at the international or regional level, but it was necessary and logical for this issue to be dealt with through one instrument that contains all related provisions.
55. M. N. Shaw, International Law, 3rd ed., Cambridge, Grotius Publications Ltd., (1991), pp. 339-40.
56. A. L. Hollick, on her part, finds that the decision to conclude a Third United Conference found its origins in the negotiations on territorial sea, straits and fisheries questions, which began in 1967 between the United States and the former Soviet Union. Hollick, *op. cit.*, note 46, at p. 234.
57. Quoted in Churchill and Lowe, *op. cit.*, note 10, at p. 179.
58. See D. J. Djonovich, (ed.), United Nations Resolutions, Series I, Vol. XI, (1966-1968), New York, Oceana Publications, Inc., (1975), p. 254. The Committee was first composed of thirty-five members and enlarged by the GA Resolution 2750 to ninety members.
59. *Ibid.*, vol. XIII, at p. 240.
60. Paragraph 9 of the Resolution.
61. Paragraph 2 of Resolution 2750 (XXV).
62. D. J. Djonovich, (ed.), United Nations Resolutions, Series I, Vol. XIV, (1972-1974), New York, Oceana Publications Inc., (1978), pp. 257 and 383.
63. On the Conference, see generally A. L. Hollick, *op. cit.*, note 46, Chapter 9; J.R. Stevenson and B.H. Oxman, "The Preparations for the Law of the Sea Conference", 68 *AJIL*, (1974), p. 1; "The Third United Nations Conference on the Law of the Sea: The 1974 Caracas Session", 69 *AJIL*, (1975), p. 1; "The Third United Nations Conference on the Law of the Sea: The 1975 Geneva Session", 69 *AJIL*, (1975), p. 763; B.H. Oxman, "The Third United Nations Conference on the Law of the Sea: The 1976 New York Session", 71 *AJIL*, (1977), p. 247; "The 1977 New York Session" 72 *AJIL*, (1978), p. 57; "The Third United Nations Conference on the Law of the Sea: The Seventh Session 1978", 73 *AJIL*, (1979), p. 1, "The Third United Nations Conference on the Law of the Sea: The Eighth Session", 74 *AJIL*, (1980), p. 1, "The Third United Nations Conference on the Law of the Sea: The Ninth Session 1980", 75 *AJIL*, (1981), p. 211.
64. The Law of the Sea, Official Text of the United Nations Convention on the Law of the Sea with Annexes and Index, Final Act of the Third United Nations Conference on the

Law of the Sea, New York, United Nations Publications, (1983), reprinted in 21 *ILM*, (1982), at p. 1261.

65. *Ibid.*, at p. xxiv.

66. Art. 308.

67. A list of states acceding to or ratifying the Convention was made available to the present writer by Mrs. Higgins (Legal Officer at IMO) on 15 May 1996.

68. For comparative ratification information between the LOSC and the 1958 Geneva Conventions, see D.L. Larson, M.W. Roth, and T.I. Solig, "An Analysis of the Ratification of the UN Convention on the Law of the Sea", 26 *ODIL*, (1995), pp. 287-303. The imbalance between the numbers of developing and developed countries can be noticed through the list of ratifying and non-ratifying countries shortly after the entry into force of the Convention. As of 20 January 1995, 72 states became parties to the Convention. The geographical distribution of these states is as follows:

- Africa : 30 states (out of 53);
- Asia : 15 states (out of 52);
- Latin America and the Caribbean : 19 states (out of 33);
- Eastern Europe : 3 states (out of 200);
- Western Europe and others : 5 states (Australia, Germany, Iceland, Italy and Malta). See D.H. Anderson, "Legal Implications of the Entry into Force of the UN Convention on the Law of the Sea", 44 *ICLQ*, (1995), p. 313, at p. 314.

69. The position of the UK Government, for example, was expressed by the then Under-Secretary of State for Foreign and Commonwealth Affairs in the House of Commons on 2 December 1982. Mr. Malcolm Rifkind said: *...the provisions relating to deep seabed mining including the transfer of technology are not acceptable.* See The Parliamentary Debates, House of Commons, Official Report, Session 1982-83, Vol. 33, Column 404. The US position was expressed through the Statement by the President in US Policy and the Law of the Sea, January 29, 1982, in *US Department of State Bulletin* (March 1982) pp. 54-55. It was said in the Statement: *while most provisions of the draft convention are acceptable and consistent with U.S. interests, some major elements of the deep seabed mining regime are not acceptable.*

70. GA Res. 48/263 (July 28, 1994). The Resolution was adopted by the General Assembly at its forty eighth session by a vote of 121 in favour, none against, and 7 abstentions. For the text, see 33 *ILM*, (1994), at p. 1311.

71. *Ibid.*, at p. 1313. For the preparation of the Agreement and the consultations that preceded its adoption, see generally, L.D. Nelson, "The New Deep Sea-Bed Mining Regime" in 10 *IJMCL*, (1995), pp. 189-203, particularly pp. 189-92; D.H. Anderson, "Efforts to Ensure Universal Participation in the United Nations Convention on the Law of the Sea", 42 *ICLQ*, (1993), pp. 654-64; L.B. Sohn, "International Law Implications of the 1994 Agreement", 88 *AJIL*, (1994), pp. 696-705.

72. For further details on these amendments, see generally, E.D. Brown, "The 1994 Agreement on the Implementation of Part XI of the UN Convention on the Law of the Sea: Breakthrough to Universality", 19 *MP*, (1995), pp. 5-20; L.D. Nelson, *op. cit.* note 71; M. Hayashi, "The 1994 Agreement for the Universalization of the Law of the Sea Convention", 27 *ODIL*, (1996), pp. 31-39.

73. L.D. Nelson, *op. cit.*, note 71, at p. 193.

74. In this respect, see the texts of the Submittal Letters, from the Secretary of State to the US President (23 September, 1994), and the Transmittal Letters, from the President to

- the US Senate (7 October, 1994), in which the President called upon the Senate to "give its advice and consent to accession to the Convention and to ratification of the Agreement". Both letters are reprinted in 34 *ILM*, (1995), at pp. 1396-97. See also W.F. Doran, "An Operational Commander's Perspective on the 1982 LOS Convention", 10 *IJMCL*, (1995), pp. 335-47; G. Galdorisi, "The United States and the Law of the Sea: A Window of Opportunity for Maritime Leadership", 26 *ODIL*, (1995), pp. 75-83.
75. Written Answer WA 31, in The Parliamentary Debates, House of Lords, Official Report, Vol. 557, (1993-94). Germany and France acceded on 14 October 1994, and 24 April 1996 respectively, see note 67 above.
76. On this issue, see D. Freestone "The Effective Conservation and Management of High Seas Living Resources: Towards a New Regime?", 5 *CLR*, (1994), pp. 341-62; J.M. Van Dyke, "Modifying the 1982 Law of the Sea Convention: New Initiatives on Governance of High Seas Fisheries Resources: the Straddling Stocks Negotiations", 10 *IJMCL*, (1995), pp. 219-27; D. Balton, "Strengthening the Law of the Sea: The New Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks", 27 *ODIL*, (1996), pp. 125-52; Barbara Kwiatkowska, "The High Seas Fisheries Regime: at a Point of No Return?", 8 *IJMCL*, (1993), pp. 327-58.
77. Agenda 21, Chapt. 17, Para. 17.50.
78. The Conference was authorised by UN General Assembly Resolution 47/192, adopted on December 22, 1992. Reprinted in 32 *ILM*, (1993), at p. 263.
79. 34 *ILM*, (1995), at p. 1547.
80. Art. 2 of the Agreement.
81. 33 *ILM*, (1994), at p. 969.
82. Arts. III, V and VI. For a brief analysis, see G. Moore, "The Food and Agriculture Organization of the United Nations Compliance Agreement", 10 *IJMCL*, (1995), at p. 412. A copy of this agreement text is attached to the said Moore's article.
83. D. Freestone and G. Mangone, "The Law of the Sea Convention: Unfinished Agenda and Future Challenges", 10 *IJMCL*, No. 2, (1995), pp. IX-XIII. At the time of writing the issue of land-based sources of marine pollution was addressed in a UN Conference held in Washington November 1995, see D. Freestone, *op. cit.*, note 76, at p. 342.
84. L.B. Sohn, "Settlement of the Law of the Sea Disputes", 10 *IJMCL*, (1995), pp. 205-17, at p. 205.
85. The Royal Decree concerning the accession of the Kingdom to the International Organization, is published in the Saudi official Gazette (*Umm Al-Qura*), No. 1075, 12 October 1945. For a brief history of the Kingdom, see N. J. Rashid and E.I. Shaheen, Saudi Arabia and the Gulf War, Missouri, International Institute of Technology (1992), Chapter 1.
86. This division was reaffirmed by the recent Regulations of Provinces (as amended), endorsed by Royal Decree of September 16, 1993. Archives of the Council of Ministers.
87. Cited in J. R. V. Prescott, The Maritime Political Boundaries of the World, London and New York, Methuen, 1985, at p. 2.
88. *Ibid.*

89. The Middle East and North Africa, 1992, London, Europa Publications Limited, (1992), at p. 772, see also The Cambridge Encyclopaedia of the Middle East and North Africa, Cambridge, Cambridge University Press, (1988), pp. 402-403.
90. A. S. Al-Shareef, Geography of the Kingdom of Saudi Arabia, Vol. 1 (in Arabic), Riyadh, Dar Al-Mareekh Publications, (1987), pp. 12-13.
91. Fouad Al-Farsy, Saudi Arabia, A Case Study in Development, London, KPI Limited, (1986), at p. 45.
92. The Middle East and North Africa 1992, *op. cit.*, note 89, at p. 783.
93. OPEC was established in September, 1960, while OAPEC was established in January 1968. For further details about the two organizations and the Kingdom's membership of them, see F. Al-Farsy, *op. cit.*, note 91, pp. 53-61.
94. M. Abu Al-Ala, Geography of the GCC States (in Arabic), Kuwait, Maktabat Al-Falah, (1988), at p. 261.
95. Fouad Al-Farsy, Modernity and Tradition, the Saudi Equation, Channel Islands, Knight Communications Ltd., (printed in England by Clays Ltd.), (1992), at p. 2.
96. *Ibid.*, at p. 2.
97. Cited in C. G. MacDonald, Iran, Saudi Arabia and the Law of the Sea, London, Greenwood Press, (1980), p. 26 and note 6, p. 58.
98. On this subject, see R. L. Bowen, Jr., "The Pearl Fisheries of the Persian Gulf", 5 *MEJ*, (1951), pp. 161-180.
99. The Middle East and North Africa, 1992, *op. cit.*, note 89, pp. 782-83.
100. *Okaz*, No. 10377, January 5, 1995, at p. 15.
101. A. Al-Turki, "The Current Situation of the Maritime Transport in the Kingdom, and the Ministry's Achievements in Developing the Saudi Fleet" (Arabic text), paper submitted to the Seminar on Maritime Transport held in Jeddah between 20-22 March 1990, in the Ministry of Communications, The Seminar on Maritime Transport, (1990), p. 17, at p. 23. It is to be noted that the said percentage does not include crude oil and cattle.
102. The 1994 Annual Report of the Saudi Seaport Authorities, at p. 44. This figure does not include crude oil.
103. The 1993 Annual Report of the Saudi Seaport Authorities, at p. 14. This figure does not include oil tankers.
104. L. M. Alexander, "Regionalism and the Law of the Sea: The Case of Semi-enclosed Seas", 2 *ODIL*, (1974), p. 151, at p. 181; A. Y. Jerges, The Red Sea and its Straits (in Arabic), Cairo, Ghareeb Publications, (no date), pp. 9-13.
105. B. A. Al-Shaikh, "The Interests of Arab States in the Red Sea and the New Law of the Sea" in The New Law of the Sea and the Arab Interests (Arabic text), Tunisia, Arab League Educational, Cultural and Scientific Organization, (1989), pp. 514-15.
106. See A. Al-Sultan, The Red Sea and Arab-Israeli Conflict: Competition between Two Strategies (Arabic text), Beirut. The Centre for Arab Unity Studies, pp. 28-33.

107. W. L. Griffin. "International Legal Rights to Minerals in the Red Sea Deeps", in E. T. Degens and D. A. Ross. Hot Brines and Recent Heavy Metal Deposits in the Red Sea. New York, Springer-Verlag. (1969), pp. 550-56. at p. 551.
108. For more discussion on this subject, see A. Y. Jerges. *op. cit.*, note 104, Chapters 2 and 4.
109. H. M. Al-Swailem. "The Red Sea and National Arab Security", 6 *Diplomatic Studies* (in Arabic), Riyadh. Institute of Diplomatic Studies. (1990), p. 57. at p.69.
110. A. Al-Sultan. *op. cit.*, note 106, pp. 34-35.
111. See N. Al-Arfaj. The Maritime Policy of the Kingdom of Saudi Arabia (1948-1978) (in Arabic). Jeddah, Okaz Publications. (1983), pp. 18-19.
112. P. Vine. The Red Sea. London and Jeddah, IMMEL Publishing. (1985), at p. 85.
113. For political reasons, the Iranians used to 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 the "Gulf" will be used to refer to the Gulf here.
114. See C. G. MacDonald. *op. cit.*, note 97, pp. 25-26.
115. H. N. Husain, The Strategic Significance and the Legal Regime of the Navigational Route in the Arabian Gulf (Arabic text), Iraq, Dar Al-Rasheed Publications, (1980), pp. 21-29; L. M. Alexander, *op. cit.*, note 104, pp. 158 and 180.
116. Such as the islands of Greater Tumb, Lesser Tumb and Abu Mossa which altogether belong to the United Arab Emirates, but have been occupied by Iran since 1971 in the case of the first two and since 1992 in the case of the latter.
117. H. N. Husain. *op. cit.*, note 115, at p. 49.
118. D. L. Larson and M. W. Roth, "The Law of the Sea and Maritime Strategy". 13 *MP*, (1989), p.193, at pp. 200-201.
119. For further discussion, see *Ibid.*, pp. 201-205.
120. By the end of 1989, reserves of the Kingdom amounted to 254.96 billion barrels of oil and 183.5 million cubic feet of natural gas. Most, if not all, of these amounts are in the Gulf waters and the surrounding areas. *Attaawan* (in Arabic) No. 28, published by Department of Information, The Secretariat General of the GCC, Riyadh, (1992), pp. 184 and 187.
121. C. G. Macdonald, *op. cit.*, note 97, p. 26.
122. UNCLOS III, Official Records, vol. II, (1975), at p. 277.
123. For more discussion, see W. E. Butler, The Soviet Union and the Law of the Sea, Baltimore and London, (1971), pp. 116-133.
124. *Ibid.*, pp. 273-79.
125. *Ibid.*, pp. 273.

126. *Ibid.*, at p. 276. Other states shared Iraq's view, such as Algeria, former German Democratic Republic, Turkey and Thailand. The delegate of Thailand declared in this respect that: *Special consideration should therefore be given by the enclosing states and by the convention itself to the right of free passage for the enclosed states through the waters of the enclosing states, on the same lines as the right of free transit for land-locked states through the territories of coastal states.* *Ibid.*, at p. 275.
127. See S. H. Amin, "The Iran-Iraq War, Legal Implications", 6 *MP*, (1982), pp. 193-218, at p. 208.
128. *Ibid.*, at p. 209.
129. UNCLOS III, Official Records, vol. II, (1975), at p. 274.
130. *Ibid.*, at p. 277.
131. This principle has been affirmed in the Saudi national legislation. See *infra*, pp. 95-102, pp. 134-42, pp. 190 and 193.
132. See *infra*, pp. 95-101.
133. It is to be noted that Lewis Alexander identified specific conditions for a sea to be regarded as a "semi-enclosed sea":
1. A sea must have an area of at least 50,000 square nautical miles;
 2. It must be a "primary" sea, rather than an arm of a larger semi-enclosed water body;
 3. At least 50% of its circumference should be surrounded by land;
 4. The width of the connector between the sea and the open ocean must not represent more than 20% of the sea's total circumference. Lewis M. Alexander, *op.cit.*, note 104, at p. 155.
134. See *infra*, pp. 352-78.
135. See *infra*, pp. 352-69.
136. See *infra*, pp. 216-19.
137. R. Sen Gupta, "Gulf Oil Spill and India", 22 *MPB*, (1991), pp.423-24.
138. It is known that in the Arabian Gulf there remain some maritime boundary questions undecided, such as the Shatt Al-Arab (Iraq and Iran), Worbah and Bobian Islands (Iraq and Kuwait), and the boundaries between Saudi Arabia and Qatar in Dohat Salwa. In the Red Sea, the only boundary accord that had been concluded is the 1974 Agreement between Sudan and Saudi Arabia, but this accord is not a maritime boundary delimitation as such. Many boundary agreements therein are pending negotiations. See *infra*, pp. 196-219.
139. N. Saleh, "The Law Governing Contracts in Arabia", 38 *ICLQ*, (1989), pp. 761-87, at p. 761.
140. In his speech announcing the recent constitutional reforms of 1992, King Fahad of Saudi Arabia identified the code of Islam as one of the foundations of the Islamic programme which are not subject to change or alteration. See John Bullock, Reforms of the Saudi Arabian Constitution, London, Gulf Centre for Strategic Studies, (1992), at p. 31.

141. These Regulations were endorsed by Royal Order No. A/90 on March 1, 1992 (Shaaban 27, 1412 AH). For English text, see *Ibid.*, pp. 38-53; 8 *ALQ*, (1993), pp. 258-70. In this respect, Art. 1 reads: *The Kingdom of Saudi Arabia is an Arab Islamic State, having full sovereignty; its religion is Islam and its constitution is the Book of God and the Sunna of his Apostle*, see also Arts. 5, 6, 7, 8 and 23.
142. These Regulations were endorsed by Royal Order No. A/91 on March 1, 1992 (Shaaban 27, 1412 AH). For English text, see 8 *ALQ*, (1993), pp. 52-56; John Bulloch, The Shura Council in Saudi Arabia, London, Gulf Centre for Strategic Studies, (1993), pp. 48-64. Art. 2 of the Statute, which forms, beside the Basic Law of Rule and the Council of Ministers Regulations, the constitution of the country, provides that: *The Consultative Council is based on clinging to the commandments of God, venerating Him and observing piety and on an obligation to observe the sources of Islamic legislation*.
143. For more details on the sources of Islamic Law, see M. Cherif Bassiouni, "Sources of Islamic Law, and the Protection of Human Rights in the Islamic Criminal Justice System" in M. Cherif Bassiouni, (eds.), The Islamic Criminal Justice System, London, Rome and New York, Oceana Publications, Inc., (1982), pp. 3-43, at pp. 8-10; Taymour Kamel, "The Principle of Legality and Its Application in Islamic Criminal Justice", in M. Cherif Bassiouni, pp. 149-69, particularly pp. 151-57.
144. A. Haberbeck and Mark Galloway, Saudi Shipping Law, Coulsdon, Fairplay Publications, (1990), at p. 4. It should be noted that these schools belong to the Sunnis; other sects have their own schools.
145. W. M. Ballantyne, Commercial Law in the Arab Middle East, the Gulf States, London, Lloyds of London Press Ltd., (1986), pp. 27-28.
146. *Umm Al-Qura*, No. 141, dated 26 August, 1927 (28 Safar, 1346 AH).
147. The Council of Ministers was established in 1953, and regulated by the Council of Ministers Regulations endorsed by Royal Decree No. 38 dated May 11, 1958. For further details on the very beginning of the Council, see Charles W. Harrington, "The Saudi Arabian Council of Ministers", 12 *MEJ*, (1958), pp. 1-19.
148. See *supra*, notes 141 and 142.
149. See *Okaz*, No. 9880, dated 21 August, 1993 (4 Rabi Awwal, 1414 AH).
150. A. M. Tarazi, "Saudi Arabia's New Basic Laws: The Struggle for Participating Islamic Government", 34 *HILJ*, (1993), pp. 258-75, at p. 258.
151. Ali M. Al-Mehaimeed, "The Constitutional System of Saudi Arabia: A Conspectus", 8 *ALQ*, (1993), pp. 30-36, at p. 30. For further discussions on law reforms in Saudi Arabia, see G. N. Sfeir, "The Saudi Approach to Law Reform", 36 *AJCL*, (1988), pp. 729-59; R. Aba-Namy, "The Recent Constitutional Reforms in Saudi Arabia", 42 *ICLQ*, (1993), pp. 295-331.
152. Royal Decree No. M/64 (1975). Archives of Ministry of Justice.
153. See S. H. Amin, Middle East Legal System, Glasgow, Royston Ltd., (1985), pp. 319-21; A. Haberbeck, *op. cit.*, note 144, Chapter Five.
154. Solaim Al.-Solaim, "Saudi Arabia's Judicial System", 25 *MEJ*, (1971), pp. 403-407, at p. 407.
155. See Nancy B. Turek, "Dispute Resolution in Saudi Arabia", 22 *IL*, (1988), pp. 415-43, at pp. 419-31.

156. For further detailed explanations of this organ, see Hassan Mahassni and Neal F. Grenley. "Public Sector Dispute Resolution in Saudi Arabia: Procedures and Practices of Saudi Arabia's Administrative Court", 21 *IL*, (1987), pp. 827-44, at pp. 831-44.
157. Passed by Royal Decree No. M/46 on April 25, 1983. For an English translation of the Regulations, see S. H. Amin, *op. cit.*, note 153, pp. 223-25.
158. Endorsed by Royal Decree No. M/1 of 1989. Archives of the Council of Ministers.
159. *Ibid.*, Art. 25.
160. S. H. Amin, *op. cit.*, note 153, at p. 314.
161. Articles 71 of the Basic Regulations of Rule and 23 of the Council of Ministers Regulations. It should be noted, however, that the Consultative Council has the right to study the regulations, observe the implementing of rules and make suggestions (Art. 15 of the Consultative Regulations).
162. See S. H. Amin, *op. cit.*, note 153, p. 313.
163. Arts. 20 of the 1993 Council of Ministers Regulations, and 70 of the Basic Regulations of Rule.
164. *Ibid.*
165. Arts. 15(6) and 18 of the Consultative Council Regulations.
166. Art. 2 of Resolution 1214.
167. Paragraph 1 of Resolution 41. It is to be noted that before this amendment, Art. 1 of Resolution 1214 entitled the Saudi representative to initial a text of a treaty before it is submitted to the King.
168. Paragraph 1 of Resolution 41.
169. Art. 4(c) of Resolution 1214.
170. *Ibid.*
171. Art. 4(d) of Resolution 1214.
172. See *infra*, pp. 95-101, and pp. 130-34.
173. US Department of State. The Geographer, Limits in the Seas, No. 36, 6th Revision, (1990). at p. 126.
174. See *supra*, note 68.
175. Ministry of Foreign Affairs. Archives of the Institute of Diplomatic Studies.
176. 8 *ILM*, (1969), at p. 679.
177. According to Art. 310, every state when signing, ratifying or acceding to the Convention is allowed to make declarations or statements provided that such declarations or statements do not purport to exclude or to modify the legal effects of the provisions of the Convention to the said State.
178. See *infra*, pp. 103-104 and pp. 141-42.

Chapter II

Baselines, Inland Waters and Gulfs and Straits

Introduction

This chapter is divided into two parts. Part I will discuss the question of baselines from which all maritime zones are measured. Light will be thrown upon their geography and the evolution of their drawing, through juristic opinion, judicial decisions, international custom and conventional rules. This will be followed by an analysis of the Saudi Arabian practice, which will be assessed in the light of international standards. Part II will examine first the development of the legal regime of internal waters, including ports, bays and straits. Afterward, the Saudi policy and attitudes on the internal waters will be discussed. At UNCLOS I, Saudi Arabia claimed the Gulf of Aqaba as an internal closed Arab sea, and denied the application of the principle of non-suspendable innocent passage as to the Strait of Tiran linking the Gulf of Aqaba with the Red Sea. At UNCLOS III, Saudi Arabia raised the question of straits connecting two parts of the high seas or EEZs (such as the Strait of Bab El-Mandeb and the Strait of Hormuz), along with that of straits linking one part of the high seas with another part of the high seas or the territorial sea of another state. Thus, these issues, in addition to the impact of the 1979 Camp David Peace Treaty between Egypt and Israel over the Saudi position, and the question of sovereignty over the two islands of Tiran and Sanafir, will be examined in Part III of this chapter, against the provisions of international law.

Part I: Baselines

In the international law of the sea, the term "baseline" has an essential importance, since it represents the line from which the outer limit of the maritime legal regimes (the territorial sea, contiguous zone, exclusive economic zone and continental shelf) are measured. Claims of national jurisdiction over coastal waters have varied through the ages. Nevertheless, there is consensus among jurists that

such claims should be measured from a common base point¹, at which land and water meet the coast². For legal purposes, the term "coast" is controversial and no constant meaning is attributable to it³. In many instances, this expression has been used in terms of the land, but it can also include the waters adjacent to the land, though it is questionable whether it includes offshore features⁴. In the legal sense, there is also a division of opinion, whether the "coast" means the line where the mainland meets the salt water, or the line representing the general trend of the mainland, excluding indentations⁵. However, in the Alaska Boundary case, the Anglo-American Arbitral Tribunal found that the term "coast" used in the Anglo-Russian Treaty of 1825 was not intended to include either the fringe of offshore islands or the continental mainland⁶.

In practice, the geographical nature of the coast has great influence on the coastal state's marine policy. The coastal topography determines a state's baseline which, as mentioned above, is used for determining the claims to different maritime zones. For instance, coastlines which are deeply indented, such as the fjord coasts of Norway and Southern Chile, or which have a chain of islands in the vicinity of the coast, are entitled to draw straight baselines and convert the landmark waters to internal waters. A state with a wide offshore continental margin may claim more natural resources found on or beneath the continental shelf. Moreover, the use of offshore areas will be influenced by the coast's characteristics and by the nature of the offshore waters and atmosphere⁷.

The "coast" was established in the legal sense by the mid-nineteenth century, as there was general consensus among states that the "sinuosities of the coast" should be followed in order to draw the baseline from which the maritime zones are to be drawn⁸. In reality, the use of the "coast" for the said purpose is not so easy, but is surrounded by difficulties. There are numerous reasons why the meeting-point of sea and land varies over time. Some of these reasons are predictable, but others are random. Most of the variations in the location of the coastline are due to movements of the sea surface produced by several factors, such as tidal forces, meteorological conditions(e.g. winds and air pressure), and oceanographical conditions(e.g. water temperature or current velocities). Sea level rise, for example, is one of the more likely consequences of global warming and for

coastal areas. it will certainly be one of its most important impacts⁹. A small but extremely significant long-term change in sea level is caused by the melting of glaciers, thus increasing the total volume of water. Besides, random oceanic and atmospheric forces, such as storm surges, earthquakes, landslides, human interventions and climatic changes affect the constructure of the coast. Other changes may take place as a result of movements of the land surface¹⁰.

Despite all these problems, the "coast" in a legal sense has been established, but a question has arisen over the geographical points on the coast that may be used to draw the baseline, an issue which will be discussed in the following section.

1. Baselines under International Law

Under international law, two kinds of lines are adopted: the low-water line¹¹ and the straight baseline.

1.1 The Low-Water Line (Normal Baseline)

The low-water mark was first pointed to in the Fishery Convention of 1839 between Great Britain and France¹², and was reaffirmed as a practical standard in the North Sea Fishery Convention of 1882¹³. The question was also discussed in the International Hydrographical Conferences of 1919, 1926 and 1952¹⁴. States have always favoured this concept, rather than the high-water mark or the average level of all vertical movements, since the further the baselines are placed from the coast the greater the area of sea under coastal state sovereignty as the outer limit is also extended¹⁵.

In terms of codification, the history of baselines has generally paralleled that of the territorial sea. With regard to low-tide mark, the first co-ordinated attempt to codify customary rules at the international level, saw the light of day in 1926. In its Report of 1926, the Sub-Committee appointed by the League of Nations Committee of Experts (established in 1924), declared that:

*the general practice of states, all projects of codification, and the prevailing doctrine agree in considering that the baseline should be the low-water mark along the coast*¹⁶.

At the 1930 Hague Codification Conference, the question was discussed and the discussion on the topic provided that the low-water line along the entire coast was

the appropriate baseline, except where particular configurations required deviations from the main coastline¹⁷. Although efforts to reach agreement on a common definition of the concept failed, the preparatory work at the Conference shaped the ground on which the International Law Commission based its work when it was required to consider the topic of the territorial sea again in the early 1950s.

The most decisive effect on the low-water mark as a baseline, was achieved by the ICJ in the Anglo-Norwegian Fisheries case of 1951. The Court was mainly required to decide whether the straight baseline method used by the Norwegians to define their territorial sea was within international law. The Court held that:

*it had no difficulty in finding that, for the purpose of measuring the breadth of the territorial sea, it is the low-water mark as opposed to the high-water mark, or the mean between the two tides, which has generally been adopted in the practice of states. This criterion is the most favourable to the coastal state and clearly shows the character of territorial water as appurtenant to the land territory*¹⁸.

This judgment gave a very important impetus to the customary rule of adopting the low-water line as the base from which to measure the breadth of the territorial sea and subsequently the other maritime zones.

In the codification context, the efforts of the International Law Commission resulted in the adoption of Article 3 of the 1958 Territorial Sea Convention, which provides that:

the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal state.

This text, which has been reproduced in Article 5 of the LOSC, points to the low-water line as the "normal baseline". Describing the rule as "normal" reflects the extent to which it has been accepted by states. Clearly, the wording reflects the national interests of the coastal states, since the adoption of the low-water line rather than the high-water line, means in reality, pushing the outer limit of the maritime zones(including the territorial sea) farther seawards and yet enclosing larger areas of the sea within the state internal waters, especially on coasts where there is an extensive tidal range¹⁹. But, it should be noted on the other hand that the expression "low water mark" may have different meanings. As noted by the International Law Commission:

the traditional expression "low-water mark" may have different meanings; there is no uniform standard by which states in practice determine the line ... various states used at least the following different standards: the 'mean low-tide spring tide'; 'the line of low tide at spring tides'; 'the line of lower low tide'; and the 'lowest-water mark'²⁰.

Moreover, on the ground, the application of the low-tide line in whatsoever form, is not always an easy task, since the geographical offshore features are not always "normal", but contain in some cases, bays, islands, deep indentations, low-tide elevations, reefs or harbour installations. Such circumstances cast doubt as to whether the low-tide rule can be generally applied with success. Having recognized this fact, the Law of the Sea Convention in Article 14 entitles the coastal state to:

determine the baseline in turn by any of the methods provided for ... to suit different conditions.

Given the fact that the low-tide mark method does not serve as a baseline in some geographical situations, it became a matter of urgent necessity to have rules on baselines which may deal with a wide variety of geographical features. Thus, the concept of straight baselines has emerged.

1.2 The Straight Baseline

The employment of the straight baselines principle to measure the breadth of the territorial sea and other maritime zones gained significant support in the judgment of the International Court of Justice in the Anglo-Norwegian Fisheries case of 1951. This method finds its origins in the national legislation of certain states. In the French Fisheries Act of 1888²¹, France adopted the straight baseline system on the Mediterranean Coast between Marseilles and Menton, to enclose within her jurisdiction all sinuosities and offshore islands. In the 20th century, several states have followed, such as Iran in 1934²², Finland in 1939²³, Brazil in 1940²⁴, and Saudi Arabia in 1949²⁵. The concept was also adopted in The Aaland Islands Convention of 1921, ratified by eight states²⁶. To define the Islands, Article 2 of the Convention referred to lines linking nominated geographical points in order to enclose the islands, islets and reefs of the archipelago.

However, as mentioned above, it was the 1951 Anglo-Norwegian Fisheries case which had a major influence on the sanction of the straight baselines principle. In this case, Norway, pursuant to its Decree of 1935, had departed from employing the normal baseline (low-tide mark) for the delimitation of her fisheries zone. The Norwegians constructed a series of straight baselines connecting the outermost parts of the land running along the 'skjaergaard' or rampart of rocks and islands which fringes much of the Norwegian coastline. As a result, some parts of what would normally have been the high seas - if the low-tide line had been used - were enclosed within the Norwegian territorial water limits. This situation led to a series of incidents involving British fishing vessels. The United Kingdom brought the case before the International Court of Justice asking for compensation for what was considered by the British authorities as interference by Norway with the British fishing boats. The British Government denied the validity of the straight baseline method adopted in the 1935 Royal Decree of Norway on the grounds that:

*the baseline must be low-water mark on permanently dry land which is a part of Norwegian territory, or the proper closing line of Norwegian internal waters*²⁷.

When the United Kingdom in 1949 took the case to the ICJ in order to decide whether the straight baseline principle adopted by the Norwegian Royal Decree of 1935 for the delimitation of the fisheries zone, was within the recognized rules of international law²⁸, the reply of the Court to the question was clear and crucial. It concluded that:

*The Norwegian Government in fixing the baselines for the delimitation of the Norwegian fisheries zone by the 1935 Decree has not violated international law*²⁹.

The Court mentioned three ways of effecting the use of the low-water mark principle:

*the trace parallel (i.e. drawing the outer limit of the territorial sea by following the coast in all its sinuosities), the coastline tangent (i.e. drawing arcs of circles from points along the low-water line) and straight baselines, where the coast is deeply cut into or fringed by islands*³⁰.

The Court found that the trace parallel method was not applicable in this case, in view of the extreme indentations and irregularity of the Norwegian coast, which

would make the charting process very complicated³¹. Affirming that the straight baseline method is a customary rule, the Court pointed out that despite the fact that Norway had been applying the rule over many years, the UK had not protested against such practice until much later³². Rather, the said method, according to the Court:

*had been consolidated by a constant and sufficiently long practice, in the face of which the attitude of governments bears witness to the fact that they did not consider it to be contrary to international law*³³.

Hence, the Court confirmed the validity of the straight baselines as a principle of international law, but at the same time, the application of the principle was subject to a number of qualifications by the Court. The lines drawn in such a way should not depart to any appreciable extent from the general direction of the coast³⁴; the lines should be drawn in a manner that makes the sea area lying within them sufficiently closely linked to the land domain to be subject to the regime of internal waters³⁵, and finally, the Court gave special consideration to certain economic interests peculiar to a region, the importance of which to the coastal state is evidenced by long usage, when drawing the straight baselines³⁶.

It is clear that the Court has laid down, as a condition of use of the straight baseline method, that such a line must not depart from the general direction of the coast, but the concept is ambiguous. However, in what seemed to be an attempt to remove this ambiguity, Judge Hsu Mo, who described the concept as: *one of Norway's own adoption*³⁷ made it clear in an individual opinion, that the coastal state should follow the configuration of the coast and not cause distortion to the overall outline of the coast³⁸. On the other hand, it is noted that there was a strong element of the progressive in the Court's emphasis upon the "legitimate interests" of the coastal state, but this, according to O'Connell:

*looks less imaginative today than it did when the Court's judgment was given*³⁹.

This is so, however, due to the creation by the LOSC of the new regime of the EEZ, recognising the right of the coastal state to living and non-living resources within 200 n.m. from the baselines.

It is worth mentioning finally, that although the Court, as pointed to above, allowed the coastal state to choose the baseline that suits the geographical features of her coast, on the one hand, and recognized, on the other hand, her discretion to delimit her maritime areas⁴⁰, it indicated that:

*the delimitation of sea areas always had an international aspect and could not be dependent merely upon the will of the coastal state as is expressed in its municipal law*⁴¹.

There is no doubt that the Court's judgment, which was described by Lauterpacht as "a daring piece of judicial legislation"⁴² is regarded as a landmark in the history of case law and what confirms this is that the principles adopted by the Court, as will be seen, are incorporated in the Territorial Sea and Law of the Sea Conventions.

1.2.1 Conventional Rules of the Straight Baselines

The rules related to straight baselines, stipulated in each of the Territorial and the Law of the Sea Convention, are mainly based on those of the International Court of Justice in its judgment in the Anglo-Norwegian Fisheries case of 1951. Under both Conventions, a system of straight baselines may be used in localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity. In identical language, the Conventions provide that:

In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baselines from which the breadth of the territorial sea is measured. (TSC, Article 4(1) and LOSC, Article 7(1)).

From the wording of the text, it is obvious that notwithstanding the Convention's recognition of the straight baseline as a distinct method for delimiting the territorial sea, the use of the word "may" means that the coastal state has discretion to resort to another method. In particular, the adoption of the rule, as indicated in the formula, is intended to be applied in the existence of special geographical circumstance: "where the coastline is deeply indented and cut into, or if there is a

fringe of islands along the coast in its immediate vicinity". However, not all coasts are characterised by these features.

On the other hand, both Conventions lay down some conditions that should be observed when employing the straight baseline method. The LOSC has more details on this matter. These conditions are represented in what follows: first, the lines must not depart from the general direction of the coast and should be drawn in such a way that the sea area lying within them is sufficiently closely linked to the land domain to be subject to the regime of internal waters⁴³. In this respect, the Conventions repeat a provision provided for in the above mentioned ICJ's judgment. Second, the lines shall not be drawn to and from low-tide elevations, except if lighthouses or similar installations which are permanently above sea level have been built on them⁴⁴. To this, the LOSC adds:

or except in instances where the drawing of baselines to and from such elevations has received general international recognition.
(Article 7(4)).

Third, the coastal state is not allowed to draw straight baselines in such a way as to cut off from the high seas (or the exclusive economic zone, according to the LOSC) the territorial sea of another state⁴⁵. Finally, the Conventions require the state utilising this system to indicate the lines on charts to which "due publicity" must be given⁴⁶. Similarly to the stipulations of the ICJ in the Anglo-Norwegian Fisheries case, the two Conventions give special consideration to the:

*economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by a long usage*⁴⁷.

It is clear that the law governing the use of straight baselines, whether customary or conventional, is imprecise, something which led to the abuse by states of the straight baseline systems, to the extent that, as stated by Prescott:

*it would now be possible to draw a straight baseline along any section of coast in the world and cite an existing straight baseline as a precedent*⁴⁸.

It is apparent that the customary rules of baselines in general today are reflected in the conventional rules. In this respect, Churchill and Lowe put forward the following arguments: First, the rules in question were adopted in the TSC and

later on in the LOSC with little discussion and some minor additions. Second, the TSC's rules have been incorporated by reference into other treaties, some of the parties to which are not parties to the TSC itself, for example, the 1962 and 1969 amendments to the International Convention of the Prevention of Pollution of the Sea by Oil, (Annex A and Article 2); the 1964 European Fisheries Convention (Article 6), and the 1971 Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and Ocean Floor (Article 2)⁴⁹.

From the previous review, it is apparent that the low-water mark and straight baseline have been established under international law as methods for measuring the various maritime zones. However, it has been recognized that certain offshore geographical features need to be treated in special ways. These facts are reflected in international conventions, as specific rules have been generated to define the base points of measurement in such circumstances.

1.3 Rules Determining Base Points in Special Circumstances

In practice, the question of ascertaining the baselines is not a simple one. That is so due to the diversity of the geographical situations in which these lines may have to be drawn. To deal with a wide variety of geographical circumstances, the Law of the Sea Conventions laid down a number of rules (TSC, Articles 4-11 and LOSC, Articles 6, 7 and 10-13). Of these circumstances, however, the discussion in what follows will be confined to those that have some relevance for Saudi Arabia, or in other words, to those where a Saudi policy exists.

1.3.1 Bays

The controversy surrounding bays has always been whether their waters are regarded as internal, territorial or high seas. In international customary law, bays have been considered as part of internal waters rather than territorial waters; nevertheless, there has not been a legal definition of the term⁵⁰. In the judgment of the Permanent Court of Arbitration in the North Atlantic Coast Fisheries case of 1910⁵¹, the Court held that there was no general principle of international law to describe a bay. However, the Territorial Sea Convention (Article 7) and the Law

of the Sea Convention (Article 10) contain detailed provisions, although these are not without difficulties in their practical application. Having provided a geographical definition of the term⁵², the Conventions specify that for an indentation to be considered as a bay in the legal sense, its area must be at least as large as that of the semi-circle, the diameter of which is a line drawn across the mouth of that indentation⁵³. When a bay meets this condition, the next step is to measure the distance between the low-water marks of the natural entrance points to such a bay. If the distance does not exceed 24 nautical miles, here, the baseline is that connecting the two marks. However, if the said distance exceeds 24 nautical miles, the base points are those between which a straight baseline of 24 nautical miles may be drawn⁵⁴. It should be noted that these provisions do not apply, either to cases where the straight baseline method may be used, or to historic bays or bays bordered by more than one state⁵⁵.

1.3.2 Ports and Roadsteads

Under the Territorial Sea and the Law of the Sea Conventions (Articles 8 and 11 respectively), the outermost permanent harbour works are regarded as forming part of the coast. However, to have this status, such installations should form an integral part of the harbour system. The LOSC, in Article 11, itself excludes offshore installations and artificial islands from the classification of permanent harbour works.

As to roadsteads, under customary international law, roadsteads, which are usually used for loading, unloading and anchoring of ships, were usually regarded as being part of internal waters. This has been affirmed by the Preparatory Committee of the Hague Codification Conference, which proposed giving discretion to the coastal state to demarcate her roadsteads⁵⁶. However, the conventional provisions governing the subject represent a departure from the customary rules. Article 9 of the TSC and 12 of the LOSC provide in identical wording that:

Roadsteads which are normally used for the loading, unloading, and anchoring of ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are included in the territorial sea.

Under both Conventions (Article 9 of the TSC and 16 of the LOSC) the coastal state has to demarcate such roadsteads or, alternatively (according to the LOSC) a list of geographical co-ordinates of points, specifying the geodetic datum, may be substituted. It follows that coastal states, according to the said articles, must give due publicity to such charts and list of points, before depositing them with the Secretary General of the United Nations. It is clear that the conventional rules take a moderate position on the topic. On the one hand, roadsteads are not considered as internal waters, as the position was under customary law, but on the other hand, such roadsteads, if used for loading and unloading of ships, are governed by the regime of the territorial sea, even if situated wholly or partly outside the outer limits of this zone.

1.3.3 Low-tide Elevations

The rules governing the baselines of the maritime zones when there exist low-tide elevations are mainly derived from conventional law, and the role of custom in this respect is uncertain. The Territorial Sea Convention (Article 11) and the Law of the Sea Convention (Article 13), define a low-tide elevation as:

a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide.

For the purpose of specifying the base points, the location of the low-tide elevations in relation to the territorial sea is regarded as the criterion. Thus, according to the Conventions:

where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.

However, where:

a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own⁵⁷.

These provisions clearly entitle the state adopting 12 n.m. for its territorial sea, to have twenty-four miles territorial sea measured from the mainland.

1.3.4 Islands

Under the TSC (Article 10(2)) and LOSC (Article 121(1)), the term “island” is defined as:

a naturally-formed area of land, surrounded by water, which is above water at high tide.

Thus, two criteria have been established, for an elevation to be treated as an island generating a territorial sea: formation must be natural, and the emergence of such an elevation must be at high tide. There is no reference to the island's size or capacity for occupation⁵⁸. The Conventions provide that the territorial sea of an island is measured according to the general rules on baselines (Articles 10(2) of the TSC and 121(2) of the LOSC). The question which may arise, then, is whether these are the baselines for the territorial sea only, or for all maritime zones. Specific mention of the territorial sea is made in the TSC, but by implication it includes also the contiguous zone (Article 24(2)) of the TSC. The LOSC goes further to provide expressly that every island (in the above-mentioned definition) has a territorial sea, contiguous zone, EEZ and continental shelf. However, the LOSC in Article 121(3) excludes rocks which cannot sustain human habitation or economic life of their own, from having an exclusive economic zone or continental shelf, though they still generate a territorial sea and contiguous zone. It has been stated that the exclusion implied in paragraph (3), when properly applied and interpreted, does not affect the major principle set out in paragraph (2) of the same article⁵⁹.

The case of archipelagic states was not expressly dealt with in the 1958 Territorial Sea Convention. However, the Law of the Sea Convention (Article 47) provides that an archipelagic state may draw straight baselines joining the outermost points of the outermost islands and drying reefs of the archipelago, which would then serve as the relevant baselines from which the maritime zones are measured. A number of conditions are set out by the Convention, which must be fulfilled before this may be done⁶⁰.

2. Saudi Arabia's Baseline Position

Baselines are, as it were, the key features for the demarcation of all maritime areas. A baseline is the furthest seaward limit of internal waters and the inner boundary line of the territorial sea. The matter of baselines was first covered in the Saudi legislation by Article 6 of Royal Decree No. 6/4/5/3711 of May 28, 1949 concerning the Territorial Waters of the Kingdom of Saudi Arabia⁶¹. The Kingdom redefined her territorial waters in 1958, but the baselines rules remained unchanged and were reintroduced verbatim in Article 5 of Royal Decree No. 33 of February 16, 1958⁶². Saudi Arabia is one of those states which has adopted two systems for drawing baselines, i.e. the low-tide line and straight baseline.

2.1 Saudi Arabia's Practice on Low-Tide Line

Article 6(a) of the 1949 Decree (Article 5(a) of the 1958 Decree) provides that: *where the shore of the mainland or an island is fully exposed to the open sea, the baseline from which the territorial sea of the Kingdom is measured is the lowest low-water mark on the shore*. In addition, this method has been adopted in certain maritime boundary agreements between Saudi Arabia and some neighbouring states. For example, Article 1 of the 1965 Agreement between the State of Kuwait and the Kingdom of Saudi Arabia relating to the Partition of the Neutral Zone⁶³, reads:

the boundary line between the two sections of the Zone is to be the line which ... begins from a point at the mid-eastern shore on the low-tide line.

Also, Article 1 of the 1968 Agreement concerning the Sovereignty over Al-Arabiya and Farsi Islands and Delimitation of Boundary Line Separating the Submarine Areas between Iran and Saudi Arabia⁶⁴, provides that the twelve nautical mile territorial sea of each of the two islands is to be measured *from the line of lowest low water on each of the said islands*. The low-water line method, as mentioned earlier, was recognised in international decisions, and also in the Law of the Sea Conventions. However, the Conventions do not go further to deal with the technical question of what is to be regarded as the line of low water: the mean low-water at spring tide, the line of low tide at spring tide, or the lowest water mark.

Instead, the Conventions provide a general formula and avoid giving a direct definition of the low-water mark.

This generality in formulation, as is clear, has not been followed in the Saudi legislation, where specific mention of “the lowest low-water mark” was made. By this formulation, the Saudi legislator, first of all, might have desired to take advantage of the vagueness surrounding the definition of the “low-tide mark”, since as noted by the ILC the expression “low-water mark” may have different meanings, amongst which is the “lowest water mark”⁶⁵. Secondly, the Saudi claim did not raise any protest; rather, at the regional level, as mentioned earlier, in the 1968 Agreement between Saudi Arabia and Iran, the expression “lowest low-water mark” was used, while Egypt in its Decree of 15 January 1951 used the same expression when defining the term “island”⁶⁶. Thirdly, it is true the Saudi claim is not identical with the TSC and the LOSC, but from the general formula of the TSC and the LOSC, it may be inferred that it was the intention of the drafters, in the light of the uncertainty of relevant state practice, to place the responsibility for “low-water mark” definition on the accepted practice of each coastal state within a regional context. However, it seems that the difference as to the meaning of the expression “low-water mark” is of little importance. On this ground, the special rapporteur to the ILC and the Commission itself as a whole decided in 1956 not to resolve the existing divergence in practice with regard to low-tide lines⁶⁷.

2.2 Saudi Arabia’s Practice on Straight Baseline

Many parts of the Saudi coast are heavily “indented and cut into” and fringed by islands. These geographical features of Saudi Arabia’s coasts in the Red Sea and the Arabian Gulf required Saudi Arabia to make specific claims to the use of straight baselines. In so doing, Saudi Arabia preceded the decision of the ICJ in the Anglo-Norwegian Fisheries case of 1951, which is regarded as the cornerstone in validation of the use of the straight baselines system⁶⁸. In this regard, detailed provisions have been laid down in the Saudi legislation to deal with bays, shoals, ports and islands.

2.2.1 Bays

In 1949, Saudi Arabia claimed that: *where a bay confronts the open sea, lines drawn from headland to headland across the mouth of the bay are the baselines* (Article 6(b) of the 1949 Decree). This claim was repeated in 1958 (Article 5(b) of the 1958 Decree). It is clear that the Saudi claim is general in formulation, as no closing lines have been explicitly decreed. In other words, the claim contains no reference to the semi-circle test, nor to the length of the bay's entrance. This position reflects the Saudi view that the waters of the bays along the Saudi coasts of the Kingdom of Saudi Arabia are internal waters (Articles 4(a) of the 1949 Decree and 3(a) of the 1958 Decree). In closing off the said bays without referring to the two geometrical conditions included in the Law of the Sea Conventions (TSC, Article 7(1-5); LOSC, Article 10(1-5)), the Saudi claim seems to be incompatible with the Conventions.

However, this claim might have been based on the principle of historic title, although no explicit justification was given when the claim was declared. If that was the case, the Saudi claim could be warranted under international law. There are a number of international decisions which affirm the historic character of certain waters and dwell on the constitutive elements of historic waters. These elements include, as we will see below, the exercise of state authority, long-lasting duration of this exercise, and acquiescence by other states.

In the Anglo-Norwegian Fisheries case, the ICJ held that:

By historic waters are usually meant waters which are treated as internal waters but which would not have that character were it not for the existence of an historic title⁶⁹.

In the Tunisia/Libya case, the Court stated that:

Historic titles must enjoy respect and be preserved as they have always been by long usage ... It seems clear that the matter continues to be governed by general international law, which does not provide for a single "regime" for "historic waters" or "historic bays", but only for a particular regime for each of the concrete, recognised cases of "historic waters" or "historic bays" ... The regime is based on acquisition and occupation⁷⁰.

The "special character" of "historic bays" has been recognised by the Law of the Sea Conventions. These bays have been excluded from the provisions concerning

the definition of a “juridical bay” (TSC, Article 7(b); LOSC, Article 10(6)). However, to comply with the criteria of historic bays, Saudi Arabia should show a sufficiently long-standing claim to the indentations as internal waters. In addition, Saudi Arabia should show the exercise of effective jurisdiction therein, and lastly, she should show that other states have acquiesced in the claim. These conditions do not seem to be difficult for Saudi Arabia to meet. In practice, Saudi Arabia has sufficiently exercised jurisdiction on the waters of the said gulfs for about half a century. Furthermore, the Saudi practice has met with no protest, whether from within or outside the region. The general acceptance of the behaviour of a state is undoubtedly of particular significance to the validity of a claim. As Churchill and Lowe put it:

*In borderline cases - for example, where there is doubt as to whether a state's straight baseline system conforms to all the criteria laid down in customary and conventional law - the attitude of other states in acquiescing in or objecting to the baseline is likely to prove crucial in determining its validity*⁷¹.

Nevertheless, the general claim to a straight baseline remains very difficult to justify under the historic bays doctrine. Those bays which have been recognised as historic are generally large bays, such as the Gulf of Fonseca, bordered by El Salvador, Honduras and Nicaragua.

With regard to the Saudi claim, the responsibility rests on the Saudi authorities to issue an official enactment or statement to reflect the Saudi thinking on the historic characteristics of the bays along her coasts. Until such a statement is issued, the legal status of these bays may be considered as controversial.

2.2.2 Ports

As for ports and harbours confronting the open sea, Saudi Arabia followed the formula adopted in the Report of the Second Committee of the 1930 Hague Codification Conference which provided that:

*In determining the breadth of the territorial sea, in front of ports, the outermost permanent harbour marks shall be regarded as forming part of the coast*⁷².

Saudi Arabia claimed in 1949 that the baseline of ports and harbours confronting the open sea would be:

lines drawn along the seaward side of the outermost marks of the port or harbour and between such marks. (Article 6(d) of the 1949 Decree).

The same claim was repeated in 1958 (Article 5(d) of the 1958 Decree). This provision is parallel to what is included in the TSC (Article 8) and LOSC (Article 11), which each provide that:

For the purpose of delimiting the territorial sea, the outermost permanent harbour marks which form an integral part of the harbour system are regarded as forming part of the coast.

The LOSC excludes offshore installations and artificial islands as being entitled to consideration as basepoints for drawing baselines, while this exclusion is absent in the TSC and the Saudi legislation.

2.2.3 Shoals

Saudi Arabia has made specific claims concerning shoals. The term “shoal” was defined under the Decrees of 1949 and 1958 as:

an area covered by shallow water, a part of which is not submerged at lowest low tide. (Article 2(d) of both Decrees.)

Saudi Arabia has adopted the straight baseline system with shoals. In 1949 (Article 6(c) of the 1949 Decree), and subsequently in 1958 (Article 5(c) of the 1958 Decree), Saudi Arabia claimed that:

where a shoal is situated not more than twelve nautical miles from the mainland or from a Saudi Arabian island, the baselines would be: lines drawn from the mainland or the island and along the outer edge of the shoal.

The 12 n.m. distance condition remained unchanged in the Saudi claim of 1958, although Saudi Arabia extended her territorial sea to 12 n.m. in 1958. Furthermore, Saudi Arabia defined as internal waters:

The waters above and landward from any shoal not more than twelve nautical miles from the mainland or from a Saudi Arabian island. (Articles 4(b) of the 1949 Decree, and 3(b) of the 1958 Decree.)

Comparing these provisions with the corresponding provisions of the Conventions, we find, first, that the Saudi legislator used the term “shoal”, while the term used in the Conventions is “low-tide elevations”. Nevertheless, the definitions of both terms are similar, since the “low-tide elevation” is defined under the Conventions as:

a naturally formed area of land which is surrounded by and above water at low-tide, but submerged at high tide. (TSC, Article 11(1) and LOSC, Article 13(1).)

Secondly, the Saudi legislation is in line with the Conventional law in that they both allow, in principle, the shoal to generate a territorial sea, and they also adopt, in principle, the use of shoals as base points to draw baselines. As to the effect of shoals on the delimitation of the territorial sea, it appears that the Saudi claim, as it stands now, is incompatible with the TSC, but it may be warranted under the LOSC. However, it is worth noting that, at the time of enactment of the Saudi claim in 1949 or subsequently, when it was readopted in 1958, customary international law was not certain on the question⁷³. The Saudi legislation differs from the TSC on two points. First, the Saudi legislation fixes the maximum distance at which a shoal may be entitled to generate a territorial sea of its own to 12 n.m. from the Saudi mainland or a Saudi island. The TSC, on the other hand, does not stipulate a fixed distance for the location of the shoal. According to the Convention, for a low-tide elevation to have a territorial sea, it must be situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island (Article 11), but in an extreme case, the Convention does not allow the coastal state to have more than 12 n.m. territorial sea (Article 24(2)). Second, while the Saudi legislation adopts unconditionally the possibility of using shoals as base points in drawing baselines, the TSC provides that:

Baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them. (Article 3(2).)

However, the LOSC may validate the Saudi claim since, first, the Convention allows the low-tide elevation situated wholly or partly within the territorial sea limits to generate a territorial sea, and at the same time it entitles the coastal state to extend its territorial sea up to 12 n.m.; thus, the doubts about the Saudi adoption of the 12 mile distance for a shoal from the mainland or a Saudi island have been removed. Second, with regard to the use of low-tide elevations as base points, Saudi Arabia may take advantage of the Convention's qualifications to validate her claim. In this regard, Article 7(4) of the Convention provides that:

Straight baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or except in instances where the drawing of baselines to and from such elevations has received general international recognition.

Thus, Saudi Arabia as a party to the LOSC may, in order to remove any doubts concerning her previous claims, construct on the shoals in question, lighthouses or any similar installations, such as towers or any of the navigation aids, or she may rely on the fact that her claim met with no protest from any other state.

2.2.4 Islands and Island Groups

Saudi Arabia has a large number of islands and shoals, both in the Red Sea and in the Arabian gulf. The majority of these islands cannot sustain human habitation. Some of them are grouped so as to form archipelagos. Examples of these archipelagos are the "Farason Archipelago" which confronts the port of Jizan on the Red Sea, and the "Tiran-Sanafir Archipelago", located at the entrance of the Gulf of Aqaba in the Red Sea.

Before examining the Saudi claim with regard to islands and island groups, it would be logical, first, to examine the definition given to the term "island" in the Saudi legislation. In the initial claim of 1949, the term "island" was defined as:

any islet, reef, rock, bar or permanent artificial structure not submerged at lowest tide. (Article 1(c) of the 1949 Decree.)

This definition was repeated in the 1958 Decree (Article 1(c)). The inclusion of “artificial structure” into the definition is obviously a departure from what is stipulated in the Law of the Sea Conventions, which provide that, for an area of land to be treated as an island in the legal sense, it must be “naturally formed” (TSC, Article 10(1) and LOSC, Article 121(11)). However, it is worth noting that this Saudi definition of the term is not without precedent. Consideration of the Report of Sub-Committee II of the Second Commission to the 1930 Hague Conference might help to reveal what was behind the Saudi thinking. In this report, it was stated that:

The definition of the term “island” does not exclude artificial islands, provided these are true portions of the territory and not merely floating marks, anchored buoys, etc.⁷⁴

The geographical features of the Saudi coasts, which have many islands in their vicinity, required Saudi Arabia to make specific claims to the use of straight baselines. Indeed, Saudi Arabia has made detailed and explicit claims regarding the use of straight baselines to delimit the boundary between the internal waters and the territorial sea for islands and island groups. In the Saudi initial claim of 1949 (Article 6 of the 1949 Decree), the following were claimed as the baselines from which the breadth of the territorial sea was to be measured:

- (e) where an island is not more than twelve nautical miles from the mainland, lines drawn from the mainland and along the outer shores of the island;*
- (f) where there is an island group which may be connected by lines no more than twelve nautical miles long, of which the island nearest to the mainland is not more than twelve nautical miles from the mainland, lines drawn from the mainland and along the outer shores of all the islands of the group if the islands form a chain, or along the outer shores of the outermost islands of the group if the islands do not form a chain; and*
- (g) where there is an island group which may be connected by lines not more than twelve nautical miles long, of which the*

island nearest to the mainland is more than twelve nautical miles from the mainland, lines drawn along the outer shores of all the islands of the group if the islands form a chain, or along the outer shores of the outermost islands of the group if the islands do not form a chain.

The same provisions were reintroduced verbatim in the 1958 Decree (Article 5). As for the characteristics of waters enclosed within the said baselines, Saudi Arabia (Article 4(c-d) of the 1949 Decree, Article 3(c-d) of the 1958 Decree) considered as internal waters:

*the waters between the mainland and a Saudi Arabian island not more than twelve nautical miles from the mainland; and
The waters between Saudi Arabian islands not farther apart than twelve nautical miles.*

Before assessing these Saudi claims against modern international law, it should be noted first, that, until recently the utilization of the straight baselines system for islands and island groups has been one of the highly controversial questions in the development of the law of the sea. The most pertinent questions which have been raised include the right of an island to generate a territorial sea, the location of the island as to the mainland, the use of straight baselines to connect islands with the mainland or as a group and the length of these lines and the legal status of enclosed waters.

The examination of the Saudi claims reveals that the Saudi legislator was, in many respects, very much influenced by the conclusions of the 1930 Hague Conference on the one hand and a considerable part of state practice on the other. The Saudi legislation, for example, provided for the island's right to have a territorial sea, the same approach which was adopted in the Report of the Second Commission to the Hague Conference, as it was recognised that *every island has its own territorial sea*⁷⁵. This was also recognised in Article 10 of the TSC and subsequently in Article 121 of the LOSC which expressly stipulates, the entitlement of an island to a contiguous zone, an exclusive economic zone and a continental shelf of its own. The Saudi Arabia's baselines claim also seems to be inspired by the suggestion of the League of Nations Preparatory Committee for the Hague Conference, which reads:

in the case of a group of islands which belong to a single state and if the circumference of the group is not separated from one another by more than twice the breadth of territorial waters, the belt of territorial waters shall be measured from the outermost islands of the group. Waters included within the group shall also be territorial waters.

*The same rule shall apply as regards islands which lie at a distance from the mainland not greater than twice the breadth of territorial waters.*⁷⁶

Nevertheless, the Saudi claim differs from this suggestion in its provision for a fixed distance between the mainland and the nearest island of the island group or between the islands themselves. However, given the considerable disagreement on the breadth of the island's territorial sea and the length of straight lines joining these islands, it was not possible to achieve agreement at the Hague Conference with regard to the question of island groups. The controversy surrounding the question, at the time, was best described by Sir Humphrey Waldock who noted that:

*Unquestionably, there was a marked tendency in 1930 to favour the introduction of a special rule for archipelagos, whether coastal or ocean, but subject to a limit of width (10 miles) between the islands and with a strong reservation by some states against waters being treated as inland waters*⁷⁷.

On the other hand, the Saudi claim might have relied upon a considerable part of the then state practice. Writing in 1951, Sir Humphrey Waldock stated that quite apart from coasts to which a system of straight lines may properly apply, there was a "considerable body of state practice" supporting the principle that under certain conditions, coastal islands may be treated as part of the mainland⁷⁸. However, whether or not Saudi Arabia had applied them properly, the system of straight baselines has been a matter of controversy, since the approach of the international community itself, in relation to the status of off-shore areas adjacent to islands and island groups, was a highly controversial area in the law.

As to the legitimacy of the Saudi claim under the Law of the Sea Convention, it is to be noted that the latter not only readopts the TSC's principle that an island is entitled to have its own territorial sea, but it provides further, that the territorial sea could extend up to 12 n.m. Accordingly, many doubts around the Saudi claim have been removed. In practice, however, a large number of the

Saudi straight baselines do connect points where there is a “fringe of islands” in the immediate vicinity to the coast. Nevertheless, the texts of Paragraphs (f) and (g) of the Saudi claim could suggest that several of the lines may connect isolated islands and rocks off the Saudi coast. This, in turn, may suggest that the Saudi claim, at least in part, is incompatible with the Law of the Sea Convention. The question, then, arises as to whether Saudi Arabia could avail itself of the vague qualification contained in Article 7(5) of the LOSC (Article 4(4) of the TSC, which provides for account to be taken *when determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by a long usage* (emphasis added). No doubt Saudi Arabia might invoke strong inshore fishery interests in such areas to benefit from this vague qualification to the general rule, which makes as a condition for the use of the straight baselines system where there is a fringe of islands along the coast, that such islands should be in its immediate vicinity.

Apart from the question of legitimacy, it is to be noted that the legislation does not address all the issues that should be addressed. For example, the legislation deals only with certain, but not all geographical features of the Saudi coasts. In this respect, the legislation is silent on the effect of coral reefs and roadsteads on the delimitation of the territorial sea. Moreover, the legislation does not speak of the requirements of the “showing on charts/lists of geographical co-ordinates” and “due publicity” for the baselines. In practice, neither baselines charts, nor geographical co-ordinates have been produced in Saudi Arabia, although Article 16 of the LOSC says:

1. The baselines for measuring the breadth of the territorial sea ... shall be drawn on charts of a scale or scales adequate for ascertaining their position. Alternatively, a list of geographical co-ordinates of points, specifying the geodetic datum, may be substituted.

2. The coastal state shall give due publicity to such charts or lists of geographical co-ordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations.

No specific reasons were announced by the Saudi authorities, but it may be thought, that in not producing such charts or lists, Saudi Arabia wanted to leave doors open when negotiating maritime boundaries with its neighbours. These

matters need to be considered by the Saudi marine policy makers, especially now Saudi Arabia has become a party to the LOSC.

Part II: Internal Waters

Internal waters are those waters lying on the landward side of the baseline (TSC Article 5(1); LOSC Article 8(1)). They comprise ports, gulfs, straits, rivers and lakes. Internal waters (otherwise known as national or interior waters) have been treated under customary law as an integral part of the coastal state's mainland, and so they are not subject to detailed provisions in the Law of the Sea Conventions. The coastal state's sovereignty extends also to the bed of the waters and the subsoil beneath them.

1. The Legal Status of Internal Waters

In its internal waters, the coastal state enjoys full territorial sovereignty. therefore, the ships of foreign states, as a general rule, may not exercise the right of innocent passage through these waters. However, there is an exception to this rule. Where straight baselines are drawn along an indented coast, enclosing as internal waters areas which had not previously been considered as such, the right of innocent passage should not be denied by the coastal state⁷⁹.

As far as Saudi Arabia is concerned, she declared in her initial claim of 1949 that:

The territorial waters of Saudi Arabia, as well as the air space above and the soil and subsoil beneath them, are under the sovereignty of the Kingdom, subject to the provisions of international law as to the innocent passage of vessels of other nations through the coastal sea. (Article 2 of the 1949 Decree.)

The "territorial waters" were defined in Article 3 of the same Decree to be: *both the inland waters and the coastal sea of the Kingdom*. Two matters attract attention in this claim. The first concerns the question of terminology. In this regard, Saudi Arabia used the term "territorial waters" to refer to both the "coastal sea", known today as the "territorial sea" and the internal waters. In so doing, Saudi Arabia followed the approach of the international community at that time,

whereby the waters adjacent to a state's territory, whether internal or coastal, were considered as territorial waters. Secondly, Saudi Arabia recognised the right of foreign ships to innocent passage not only in the "coastal sea", but also in her internal waters, a matter in which Saudi Arabia went beyond international law, which imposes the right of innocent passage only in the territorial sea.

However, when Saudi Arabia redefined her territorial sea in 1958, these considerations were taken into account. The terms "territorial waters" and "coastal sea" were omitted in the 1958 Decree. The term "territorial sea" was used. No mention was made as to the right of innocent passage in the internal waters. In that respect, Saudi Arabia is compatible with international law, whether on the question of terminology or the extent of sovereignty. The Saudi legislation does not refer to the exception to the right of innocent passage included in the Conventions; however, this issue was never at any time a matter of discussion by the Saudi authorities⁸⁰.

2. The Right of Access to Ports

The general rule of the non-existence of innocent passage through internal waters, together with the principle of sovereignty of the state over these waters, logically imply the absence of any right in customary international law for foreign vessels to enter a state's ports⁸¹. Nevertheless, Hall in his award of 1958 in a case in which Saudi Arabia itself was involved, Saudi Arabia v. Aramco, said that:

*according to a great principle of public international law, the ports of every state must be open to foreign merchant vessels and can only be closed when the vital interests of the state so require*⁸².

This judgment was based on the 1923 Geneva Convention and Statute relating to the International Regime of Maritime Ports⁸³. Article 2 of the Statute provides that:

every Contracting State undertakes to grant the vessels of every other Contracting State equality of treatment with its own vessels, or those of any other state whatsoever, in the maritime ports situated under its sovereignty or authority as regards freedom of access to the port ...

However, under Article 16, every contracting party is allowed to deviate from these provisions in case of emergency affecting the safety or the vital interests of

such a state. Supporting this view, Colombos finds that an unlimited power of the state to prohibit the use of its ports by foreign nationals:

*would imply a neglect of its duties for the promotion of international intercourse, navigation and trade which customary international law imposes upon it*⁸⁴.

In his comment on Hall's award in the Saudi Arabia v. Aramco case, O'Connell finds that:

*it is questionable whether the rule of international law to which he referred is a rule that ports must be open to trade, or the corollary of a different rule of international law which forbids discrimination among foreign ships using ports ... If a country chooses to close its ports altogether, that would seem to be an act of sovereignty, but if it opens them, it must open them at least to the parties to this Convention [Geneva Convention of 1923], and arguably also to all comers, on a non-discrimination basis*⁸⁵.

On the other hand, Lowe put forward the following argument:

*Clearly, the "great principle of public international law" set forth in the Aramco case had no substantive basis, and customary law establishes no basis for a right of entry into maritime ports. In other words, a coastal state may close its ports to foreign shipping whenever it chooses, subject only to any rights of entry granted under treaty*⁸⁶.

In the light of the previous legal dealings, the latter view, however, seems to be closer to the reality, since it takes into account the right of the coastal state's sovereignty over its territory including its inland waters.

What is unquestionable, in any case, is the right of the port state to lay down conditions for the access of its ports. This conclusion has been supported by the International Court of Justice in the Nicaragua case. The Court said in this regard that:

*by virtue of its sovereignty ... a coastal state may regulate access to its ports*⁸⁷.

The Law of the Sea Conventions are silent on this issue, although a number of treaties, whether multilateral or bilateral, have adopted the entry into ports as a legal right under certain conditions. Examples are the previously mentioned Geneva Convention of 1923 and the 1964 UK-USA Agreement relating to the Use of United Kingdom Ports and Territorial Waters by the Nuclear Ship, *Savannah*⁸⁸.

The Law of the Sea Conventions refer indirectly to the right of the coastal state to set up conditions, by virtue of which, it is entitled to prevent the entry of foreign vessels. With regard to the rights of protection of the coastal state, both Conventions provide that:

*in the case of ships proceeding to internal waters (the LOSC has: or a call at the port facility outside internal waters), the coastal state ... has the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to internal waters (the LOSC has: or such a call) is subject*⁸⁹.

The "necessary steps" referred to here could mean, in my view, the right of states to prohibit the entry of the violating ships to their ports, which can suggest, even if indirectly, that such entry has not been firmly established as a general right under conventional law.

As to Saudi Arabia, the relevant rules on the issue in question are found in three sets of regulations: the Seaports and Lighthouses Regulations (SLR) of 1974⁹⁰, the Rules and Regulations for Saudi Arabian Seaports of 1980 (RSS)⁹¹ and the GCC Seaports Rules and Regulations of 1985 (RRS)⁹². The latter set of Regulations (RRS) is very much influenced by the RSS, and in relation to the access to ports, it repeats the same conditions laid down in the RSS. Under Article 14 of the SLR, the arrival of a ship at any Saudi port or harbour should be notified in advance to the port authorities, either by wireless or through an agent, at least twenty-four hours before the expected time of arrival. Under the RSS and RRS, there are two levels of notification. First, a preliminary notice about the intended arrival time is to be given to the port authorities, again by the wireless or through an agent, at the first sole loading port, before loading commences⁹³. Further notice of the arrival time is to be given 5 days, 2 days and 1 day prior to the arrival at the port⁹⁴. Nevertheless, these provisions are not absolute. According to these sets of legislations, there are a number of exceptions⁹⁵:

1. A ship in a situation of compelled entry;
2. A ship whose entry is rendered necessary by *force majeure*;
3. A ship requiring medical assistance; and finally (the RSS and RRS adds):
4. A ship in danger.

For the entry to a port, the RSS and RRS provide further for the Master of the seagoing vessel to obtain prior permission from the port authorities⁹⁶. The granting of such permission has been left to the estimation of the port authorities in a number of situations⁹⁷.

Undoubtedly, in laying down the said rules, whether those concerning the notification system or those on obtaining entry permission, the Saudi behaviour comes within international law, which as mentioned earlier, by virtue of sovereignty, allows the coastal state to regulate the access of foreign ships to its ports and further to take the necessary measures to prevent any breach of the conditions to which admission of those ships to its maritime ports is subject.

3. Jurisdiction in Internal Waters

The question of jurisdiction in internal waters is not subject to detailed provisions in the Law of the Sea Conventions, due to the fact that these waters form an integral part of the coastal state's mainland, where the coastal state enjoys full sovereignty. However, under international customary law, it is generally recognised that in its internal waters, the coastal state, in the absence of an agreement to the contrary, is entitled to enforce its laws against foreign ships, subject to the rules concerning sovereign and diplomatic immunities.

With regard to the enforcement policy, the practice of states in general, is remarkably consistent despite some differences on the details. States commonly do not exercise local jurisdiction in respect of the internal affairs of foreign ships, although they would be entitled to do so. They usually enforce their laws in cases where their interests are engaged. Thus, the local jurisdiction is usually exercised in the case of an affair affecting the peace or good order of the port. The coastal state will also assert jurisdiction where its intervention is requested by the shipmaster or consul of the flag state or when a non-crew member is involved. Moreover, the coastal state will enforce its laws in cases such as pollution, pilotage and navigation, and may exercise its right in arresting a ship in the course of civil proceedings⁹⁸.

As far as Saudi Arabia is concerned, the Saudi legislation laid down some provisions with regard to the exercise of national jurisdiction in ports. These

provisions are contained in the RSS and RRS. Saudi Arabia allows in principle the right to board and visit a ship in any Saudi port, but this was made subject to special permission from the port authorities. As Article 6.16.1 of the RSS says:

*No person other than a member of the crew or a passenger is to board any vessel in a port without the special permission of the Port Management*⁹⁹.

This right was exclusively given to what are, in the legislation, called “authorised persons”¹⁰⁰, who are entitled to examine the vessels’ documents, and to enter and inspect accommodation rooms, should it be necessary for the maintenance of security and good order¹⁰¹.

In exercising her jurisdiction over foreign ships in her ports, Saudi Arabia’s concern is manifest on matters where her interests are engaged. Article 2.13.2 of the RSS, for example, provides that:

*A vessel is not permitted to leave port before completing all formalities and settling all bills covering services rendered to the vessel and without the necessary permit from the Authorities concerned*¹⁰².

Saudi Arabia makes pilotage compulsory for all vessels entering, navigating within or leaving the pilot zones located within the limits of the Saudi ports¹⁰³. In addition, Saudi Arabia has shown its concern with regard to the question of observance of her national laws by the crew of foreign ships in Saudi ports. As Article 6.14.1 of the RSS says:

*The Master or Owner of every vessel is held directly responsible for the conduct and behaviour of the crew of his vessel while in a port and for the strict observance of the Laws of the Kingdom of Saudi Arabia. Special attention is drawn to those laws concerning the sale, transfer, or consumption of any narcotics or of alcoholic drinks of any kind*¹⁰⁴.

However, the danger of pollution is viewed by the Saudi Authorities as the greatest concern. The Saudi legislation elaborated on this question more than any other question. The Saudi legislation deals with this question through two dimensions: the duties imposed on the shipmaster and the rights of the national authorities to intervene. A number of obligations have been imposed on the shipmaster:

- *The discharge or deposit of any oil, oil-water mixture, rubbish, garbage, carcasses or waste matter is strictly forbidden within the port limits¹⁰⁵.*
- *In the event of any discharge or leakage of oil of any kind or oily mixture into the waters of a port from a vessel, the master must immediately report the circumstances to the Port Management and steps taken to stop or check the discharge or leakage¹⁰⁶.*
- *During bunkering operations or other handling of oil or oil mixtures, all scuppers on deck shall be closed to prevent spillage or leaks into the water¹⁰⁷.*
- *Excessive smoke from the funnels or exhaust gas lines of vessels is prohibited¹⁰⁸.*

In the same regard, the port authorities have been granted the right to supervise vessels visiting the Saudi ports, to inspect the Oil Registers and to enforce the discharge of deleterious materials which may create a risk of accidents or pollution, at the expense of the vessel. To this end, the RSS says:

Vessels visiting Saudi Arabian ports shall be subject to supervision by the appropriate authorities. Any Authorised Person has the right to inspect the Oil Registers required to be kept ... by vessels¹⁰⁹.

The Port Management is entitled to enforce the discharge of any oil, oily mixture, rubbish, garbage or waste matter to special installations or receptacles for the account of the vessel if the accumulation of such materials on board creates a risk of accidents and/or pollution¹¹⁰.

From the above discussion, it is clear that Saudi Arabia has laid down provisions enforcing its jurisdiction only in its ports and on questions which are immediately related to her interests. No mention is made of matters such as the case where a non-crew member is involved or where there is a request for intercession by the captain or consul of the flag state nor to the other areas of the internal waters. Thus, such matters and areas, which have not been included, remain governed by customary international law, which as mentioned earlier, authorises the coastal state to enforce its jurisdiction in its internal waters against

ships and those on board, subject to the normal rules concerning sovereign and diplomatic immunities.

As far as exercise of criminal jurisdiction is concerned, it is noted that the Saudi legislation is silent on this question. Thus, one has to assume that general Saudi criminal law would apply. This, however, would be in conformity with international law and the viewpoint that:

By entering foreign ports and other internal waters, ships put themselves within the territorial sovereignty of the coastal state¹¹¹.

Part III: Gulfs and Straits

The legal regime of gulfs and straits has been the issue dominating the Saudi participation in the Law of the Sea Conferences, by reason of the Israeli presence at the head of the Gulf of Aqaba. At UNCLOS I, Saudi Arabia claimed the waters of the Gulf of Aqaba as internal waters, and she denied the “international character” of the Strait of Tiran. At UNCLOS III, Saudi Arabia maintained its UNCLOS I position but, having in mind the two cases of the Strait of Bab El-Mandeb and Hormuz, the Saudi delegate raised the question of straits linking two parts of the high seas or EEZs, alongside with the question of straits connecting one part of the high seas or an EEZ with the territorial sea of another state. In the following pages, the Saudi Arabian position on these issues will be examined, but before that, the position of international law towards the two regimes of gulfs and straits will be discussed in some detail.

1. Gulfs under International Law

The words “bay” or “gulf” are basically geographical terms, and in this context, they are used to describe penetrations of the coastline, without necessarily being based on the depth of penetration¹¹². Under the terms of the Law of the Sea Conventions, as mentioned earlier, for an indentation to be considered as a bay, it must constitute more than a mere curvature of the coast, and moreover, it must be as large as or larger than, the semi-circle whose diameter is a line drawn across the mouth of that indentation¹¹³. Under international law, there exist three distinct

types of bays: those bordering the shores of a single state, those surrounded by the coasts of two or more states, and historic bays. The "conventional" definition mentioned earlier, however, is confined to the first category¹¹⁴; the second and third categories of bays are not even dealt with by either the 1958 Territorial Sea and Contiguous Zone Convention or the 1982 Law of the Sea Convention. Controversy has existed for a long time, regarding the legal description of waters enclosed within bays. Disagreements have focused on the legal status of such waters and when they are to be treated as internal waters, territorial sea, or part of the high seas. Customary international law had no precise rules on the two criteria of bays stipulated in the Law of the Sea Conventions: the size of the indentation and the maximum length of the closing line across the entrance of the bay. In the North Atlantic Coast Fisheries case between Great Britain and the United States, the Permanent Court of Arbitration stated that:

*... no principle of international law recognizes any specified relation between the concavity of the bay and the requirements for control by the territorial sovereignty ...*¹¹⁵

With regard to the criterion of the "maximum length", the International Court of Justice, on the occasion of its reply to the British argument implying that the Norwegians had departed from the customary ten-mile rule, in the Anglo-Norwegian Fisheries case, held that such a rule had not yet acquired *the authority of a general rule of international law*¹¹⁶. According to O'Connell the relevant rules of the TSC and LOSC pertaining to the enclosure of bays are *a piece of legislation and not a codification*¹¹⁷. However, as for the bays, the coasts of which belong to a single state, the waters enclosed by the closing line drawn between the low-water marks of the natural entrance point are regarded as internal waters, if the distance between such points does not exceed twenty-four miles¹¹⁸. Otherwise, the internal waters are those enclosed landward by a straight baseline of twenty-four nautical miles, drawn within the bay¹¹⁹.

As mentioned above, bays which are surrounded by the shores of more than one state are not dealt with by the Law of the Sea Conventions, although there are over forty such bays in the world; therefore, their legal regime remains governed by customary international law¹²⁰. In relation to territorial sovereignty over these bays, the matter is not free from controversy and authors are divided on the

question. Some find that the coastal states may, by common agreement among them, acquire sovereignty, either *pro diviso* or *pro indiviso*, and yet the territorial sea is to be measured from straight baselines. Others, on the other hand, reject such an appropriation¹²¹ and thus, a strong tendency has manifested itself according to which the territorial sea is to be measured from low-water mark¹²². However, the states bordering such bays may, replying on the principle of “historic title”, prove that the position is different. Such is the case with the Gulf of Fonseca bordered by Nicaragua, Honduras and El Salvador. In the El Salvador v. Nicaragua case of 1917, the then Central American Court of Justice held that the said Gulf is *an historic bay possessed by the characteristics of a closed sea*¹²³. The Court further added that the three countries were co-owners of the Gulf’s waters except as to the littoral marine league which was the exclusive property of each¹²⁴. In the Case Concerning the Land, Island and Maritime Frontier Dispute of 1992¹²⁵, the Chamber of the ICJ endorsed the 1917 decision concerning the Gulf of Fonseca and described it as *a valid decision of a competent Court*¹²⁶. The Chamber took the said 1917 Judgment *into account as a relevant precedent decision*¹²⁷, and held that:

*The opinion of the Chamber on the particular regime of the historic waters of the Gulf parallels the opinion expressed in the 1917 Judgement of the Central American Court of Justice. The Chamber finds that the Gulf waters, other than the 3-mile maritime belts, are historic waters and subject to a joint sovereignty of the three coastal states*¹²⁸.

Historic bays do exist and may not be eliminated. Such bays could be within the confines of single state, or they could be surrounded by more than one state (pluri-state bay). The existence of “historic bays” in the legal sense and the sovereignty rights of the coastal state/states over such bays have been recognised time and again. In addition to the above mentioned Judgments, the Permanent Court of Arbitration, for example held in the 1910 North Atlantic Coast Fisheries case that:

*... conventions and established usage might be considered as the basis for claiming as territorial those bays which on this ground might be called historic bays, and that such claim should be held valid in the absence of any principle of international law on the subject*¹²⁹.

In the Anglo-Norwegian Fisheries case (1951), the International Court of Justice held that:

*by historic waters are usually meant waters which are treated as internal waters, but which would not have that character were it not for the existence of an historic title*¹³⁰.

In the Tunisia Libya case of 1982, the ICJ stated that:

*Historic titles must enjoy respect and be preserved as they have always been by long usage*¹³¹.

The concept of “historic bays” is recognised in the legal literature¹³² and also in the Law of the Sea Conventions (TSC, Article 7(6); LOSC, Article 10(6)).

Nevertheless, the legal definition of the concept of “historic bays” is today more confused than ever¹³³. A suggested definition of “historic bays” is:

*waters over which the coastal state, contrary to the general applicable rules of international law, clearly, effectively, continuously, and over a substantial period of time, exercises sovereign rights with the acquiescence of the community of states*¹³⁴.

The criteria included in this definition for the establishment of an historic title are similar to those of the 1962 UN Secretariat’s study on the question¹³⁵. The criteria of “acquisition and occupation” were recognised by the ICJ in the Tunisia/Libya case¹³⁶. In the Case Concerning the Land, Island and Maritime Frontier Dispute, the ICJ, having concluded that the Gulf of Fonseca is an “historic bay”, stated that:

*The reasons for this conclusion, apart from the reasons and effect of the 1917 decision of the Central American Court of Justice are the following: ... the consistent claims of the three coastal states, and the absence of protest from other states*¹³⁷.

However, despite the general agreement on the above mentioned criteria, there is a great deal of controversy with regard to their interpretation. Thus, it remains with the coastal state to prove the historic characteristics of a bay.

2. Straits under International Law

Geographically, a strait means:

*a narrow passage of water connecting two larger bodies of water*¹³⁸.

From a legal viewpoint, the term is defined, in addition to the geographical criterion, in the light of its fitness to be used as an international waterway serviceable for international navigation. In this respect, O'Connell finds that:

*not every strait so described by geographers is a strait in law, that is a waterway susceptible of some autonomous rule of law. Only straits significant to international maritime traffic have fallen within the scope of such a rule*¹³⁹.

The Law of the Sea Conventions do not give a direct definition of the term. However, the criterion for a body of water to be considered as a strait, in the legal sense, has been stated by the ICJ in the Corfu Channel case (1949):

*in the opinion of the Court, the decisive criterion is rather its geographical situation as connecting two parts of the high seas and the fact of its being used for international navigation*¹⁴⁰.

Apart from the definition of the term, the legal regime governing straits has been a matter of controversy. The legal treatment of the issue by the international community has, like any other vital issue of the law of the sea, been influenced by the political, economic and security interests of states. These have left their impression on the evaluation of the legal status of straits.

2.1 Customary International Law and Passage through Straits

A legal regime that takes into account the freedom of navigation through, over and under international straits, on the one hand, and the legitimate safety and environmental concerns of straits states, on the other, is of fundamental importance in ocean law¹⁴¹. The first decisive attempt to codify what constitutes a strait in a legal sense was carried out by the Institute de Droit International between 1894-1912 and similar attempts followed by the International Law Association (1895-1910), the Hague Peace Conference (1907), the Codification Conferences (1924-1929), and the Hague Codification Conference (1930)¹⁴². Despite these efforts, with the exception of straits regulated by special agreements such as, the Danish

Straits¹⁴³, the Turkish Straits¹⁴⁴, the Straits of Aaland Islands¹⁴⁵, and the Strait of Magellan¹⁴⁶, there was no agreed general principle concerning passage through straits. Nevertheless, the ICJ in the Corfu Channel case (1949) confirmed the existence of a customary rule and unveiled this rule, as it held that:

it is, in the opinion of the Court, generally recognized and in accordance with international custom, that states in time of peace have a right to send their warships (and yet, a fortiori, merchant ships) through straits used for international navigation between parts of the high seas without the previous authorization of a coastal state, provided the passage is innocent¹⁴⁷.

The Court, on the other hand, recognized the right of the strait state, in exceptional circumstances, to issue regulations in respect of the passage of warships through the strait¹⁴⁸. The Court was, however, silent as to whether the flag state has to notify to the strait state its passage in the strait in advance, in such circumstances. From that, it may be concluded that customary international law accords only a non-suspendable right of innocent passage through straits connecting two parts of the high seas, and only in time of peace.

2.2 Position under the 1958 Territorial Sea Convention

The previous conclusion, based originally on the Corfu Channel case judgment, influenced the discussions of the International Law Commission (ILC) related to the right of passage through international straits¹⁴⁹. In its 1956 draft report to the General Assembly covering the work of the eighth session, the International Law Commission laid down a new paragraph, Paragraph 4 of Article 18¹⁵⁰ (Paragraph 4 of Article 17) in the final draft¹⁵¹ which provides that:

there must be no suspension of the innocent passage of foreign ships through straits normally used for international navigation between two parts of the high seas.

Comments on the above draft were received by the ILC from several states, amongst which was Israel, bordering the Gulf of Aqaba at the head of the Red Sea. The Israeli argument¹⁵² included first that the provisions governing the straits should be included as a separate chapter within those regarding the high seas. In that respect, Israel found that the interests of the international community had to take precedence over those of the littoral states whose territorial waters had to be

traversed in making for a given harbour, and yet passage through such straits (Israel had in mind the Strait of Tiran leading to the Gulf of Aqaba) was assimilated to the high seas themselves. Secondly, the word "normally" should be deleted, as its use, according to the Israeli Government, went beyond the law made by the ICJ in the Corfu Channel case. Having pointed out that Israel had intended, by that comment, the Gulf of Aqaba, the Special Rapporteur, on the occasion of his reply to the Israeli suggestion, indicated that the said provision related to straits linking two parts of the high seas rather than those open to the high seas at one end, and giving access to a harbour belonging to one state, at the other¹⁵³.

However, despite the noticeable opposition to the Israeli position, the Israeli theory was incorporated into the outcome of the First Conference on the Law of the Sea of 1958, (i.e. the 1958 Convention on the Territorial Sea and Contiguous Zone)¹⁵⁴. The Commission's phrase "normally used for international navigation" was dropped, making the rule of more general application and avoiding the arguments in relation to the amount of traffic through the strait in each particular case. Article 16(4) of the Convention extends the law in the Corfu Channel case by including the right of passage not only in straits connecting two parts of the high seas, but also between one part of the high seas and the territorial sea of a foreign state:

there shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign state.

It is clear, then, that the last part of the paragraph is "innovatory legislation", which was intended to cope with the geographical situation of the Strait of Tiran connecting the Gulf of Aqaba and the Red Sea. As was stated by Churchill and Lowe:

... in extending the Article [16(4) of the TSC] to include not only straits connecting two areas of the high seas with the territorial sea of another state, the Conference was moving beyond mere codification. It is clear that Article 16(4) was primarily intended to secure the right of access to the Israeli port of Eilat, situated at the end of the Gulf of Aqaba, through the Straits of Tiran, which were then under Arab control¹⁵⁵.

Paragraph 4 of Article 16 of the TSC was adopted at the Geneva Conference of 1958 by a majority of one vote: thirty-one votes in favour, thirty against (including Saudi Arabia) and nine abstentions¹⁵⁶. The addition of the said provision reflects the fact that problems related to a particular strait may occasion the formulation of a general rule¹⁵⁷.

2.3 At UNCLOS III

Passage through international straits was a central issue in the negotiations of the Third United Nations Conference on the Law of the Sea¹⁵⁸. As expected, two major factors overshadowed the negotiations relating to the topic: (a) the conflict between the various interests of the strait states, on the one hand, and the navigational interests of the superpowers on the other; (b) the common acceptance by states of a twelve mile territorial sea limit, which led to the enclosure of greater expanses of waters as territorial waters, which had formerly been high seas governed by the regime of innocent passage.

At the second session of UNCLOS III, four strait states (Malaysia, Morocco, Oman and Yemen), jointly submitted a set of draft articles on navigation through the territorial sea, including straits used for international navigation¹⁵⁹. According to this draft, passage of foreign ships is generally guaranteed, even in straits lying within the limit of the territorial sea, but as to warships, the draft entitled the strait state to require prior notification subject to its laws and regulations, for such passage. On the other hand, proposals submitted by other states, such as the United Kingdom, the socialist states, Denmark and Finland¹⁶⁰, and the United States¹⁶¹ demonstrated clear desire to freedom of navigation for all ships and of overflight for all aircraft through and over straits.

The extension of the breadth of the territorial sea to a maximum of twelve miles at UNCLOS III, was a matter of serious concern with respect to international straits. When two opposite strait states each claim a 12 nautical miles territorial sea, this means the waters of the strait will constitute a territorial sea of both states, if the breadth of such a strait is 24 miles or less. As a result, there will be no high seas/EEZ corridor therein. Of 265 international straits, only 60 have been identified as being greater than 24 miles in width, thereby giving rise to the

existence of a corridor of high seas/EEZ through them. 52 straits were found to be less than 6 miles in width, while the other 153 straits were found to have a breadth of between 6 and 24 miles. Most of them would, accordingly, be closed off by overlapping territorial seas if the surrounding states claimed 12 nautical miles territorial sea¹⁶².

This situation of conflict of interests between the strait states, on the one hand, and the maritime states, on the other, together with the lack of the existing rules, whether customary or conventional, influenced the final outcome of the UNCLOS III, concerning the straits used for international navigation (Part III of the 1982 United Nations Convention on the Law of the Sea). Thus, a new legal regime for international straits, known as "transit passage" was created. This new regime, proposed by the UK¹⁶³ represents a compromise between the two opposing positions mentioned above, in that it does not grant the same freedom of navigation on the waters of straits than is applicable on the high seas, while at the same time, allowing the strait state less control over ships enjoying passage than does the regime of innocent passage. Article 38(2) of the Convention defines this right of passage as:

the exercise in accordance with this Part of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone.

This right, the practice of which does not require prior notification to or authorization from states bordering states, is according to Article 38(1), to be enjoyed by *all ships and aircraft, and shall not be impeded.*

To ensure safe passage and the security of the strait states such states on the one hand and foreign ships and aircraft on the other, have certain rights and are subject to some duties towards each other (Articles 39-44). What is to be noted, however, is that while the LOSC has re-adopted the "innocent passage" regime (Article 45) and the criterion of "utility" recognized by international custom and the 1958 Geneva Convention, it has extended the scope of application of the strait regime to include straits connecting an area of the high seas or EEZ and another area of the high seas or EEZ¹⁶⁴. The creation at UNCLOS III of the transit

passage regime was largely at the insistence of the superpowers, but with the knowledge and support of other coastal states¹⁶⁵. However, whether it is a part of international custom is a matter of controversy. Some states such as the US and UK consider the regime as such¹⁶⁶. This opinion is shared by some writers, such as Langdon¹⁶⁷ and Mahmoudi¹⁶⁸. On the other hand, Churchill and Lowe are of the view that as a general right in customary international law, the transit passage has not yet become established¹⁶⁹. However, it is suggested that this right represents further codification and development of customary international law, set forth in the judgment of the ICJ in the Corfu Channel case¹⁷⁰.

Turning to the regime of straits established under Part III of the LOSC, we find that the Convention distinguishes between several categories of straits:

1. Straits not used for international navigation:
2. Straits which have a high seas/EEZ route through them; and
3. Straits subject to their own long-standing regimes. These straits are not subject to Part III, and the rules applicable in such situations may be found in Part II in respect of those areas in such straits which are territorial sea, and Parts V, VI and VII (concerning the EEZ, the continental shelf and the high seas respectively) in the case of sea areas beyond the territorial sea.
4. Straits used for international navigation, but not covered by (2) or (3):
 - (a) Straits linking two parts of the high seas/EEZ, apart from those excluded in Article 38(1). Here the transit passage regime applies.
 - (b) Straits linking the high seas/EEZ and the territorial sea of a foreign state, and
 - (c) Straits formed by an island of a state bordering the strait and its mainland, where there is seaward of the island a route through the high seas or through an exclusive economic zone of similar convenience concerning navigational and hydrographical characteristics.

In the case of the last two types of straits, the non-suspendable innocent passage regime applies¹⁷¹.

Thus, the LOSC elaborated on the question of straits and created the new regime of “transit passage”. However, as to what concerns Saudi Arabia,

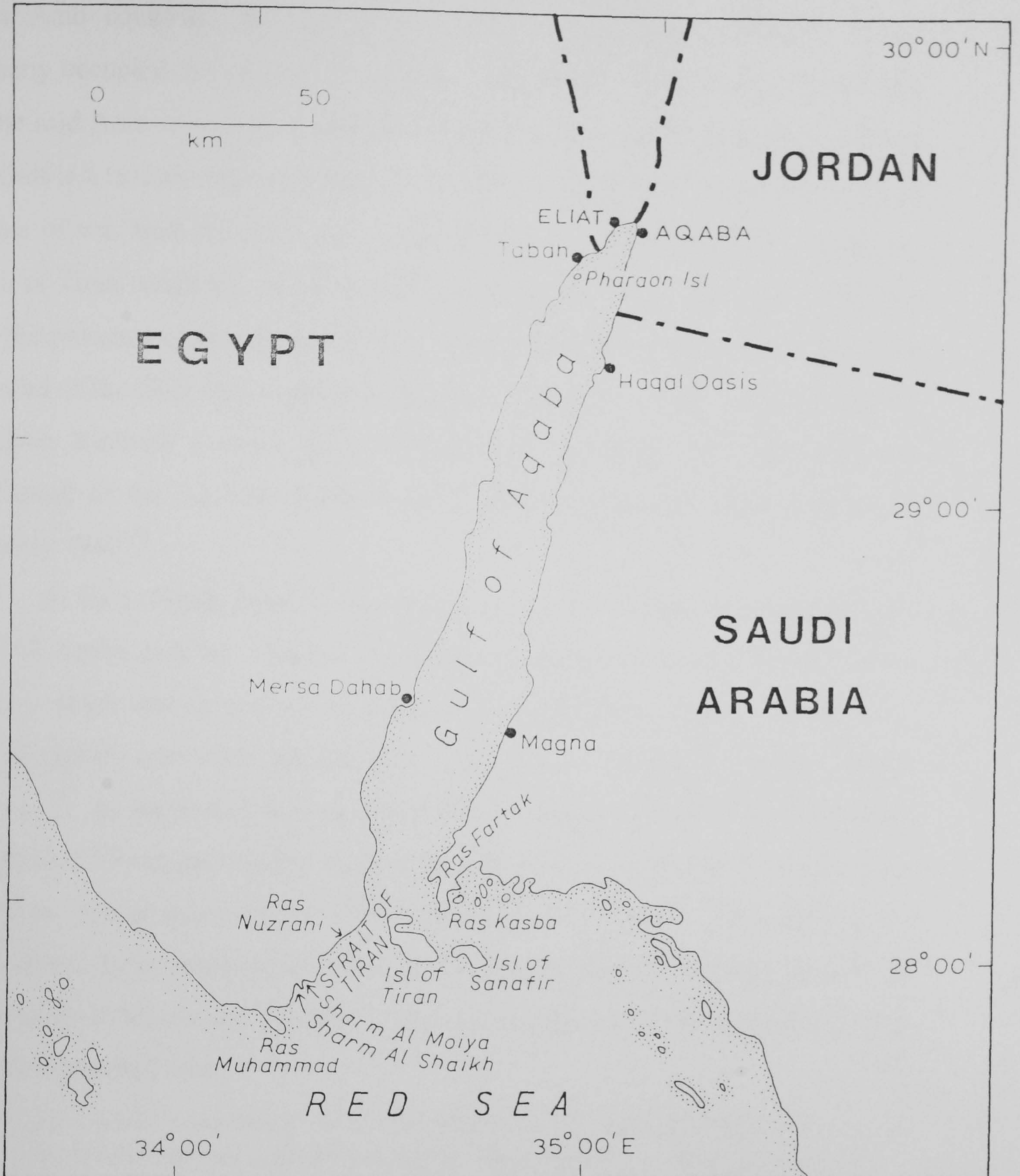
specifically on the question of the Strait of Tiran, the LOSC repeated the regime of innocent passage, included in Article 16(4) of the TSC.

3. **The Question of the Gulf of Aqaba and the Strait of Tiran**

The Gulf of Aqaba is one of the two arms of the Red Sea (the other being the Gulf of Suez) on the western side of Saudi Arabia. It is about a hundred miles long and an average of fifteen miles wide. The coasts of the Gulf amount to about 230 nautical miles, and are occupied by Saudi Arabia (96 miles), Egypt (124 miles), Jordan (4 miles) and Israel (5 miles). The entrance of the Gulf does not exceed nine nautical miles, and therein, there exist a number of islands, the biggest of which are Tiran and Sanafir, belonging to Saudi Arabia, although still under Egyptian control¹⁷². At the junction between the Gulf of Aqaba and the Red Sea, there is the Strait of Tiran. The principal navigation route lies between Tiran island and the Egyptian Sinai Peninsula shore. It is approximately four miles in breadth and has two channels, Enterprise Passage and Grafton Passage. The former is the main and safer shipping channel into the Gulf. A series of reefs separate the two passages from each other. The eastern entrance to the Gulf passes between the two islands of Tiran and Sanafir and the Saudi Arabian coast, but navigation therein is risky, especially for big ships¹⁷³ (see Map 2).

3.1 **The Legal Regime of the Gulf and the Strait: Two Conflicting Positions**

Controversies on the status of the Gulf of Aqaba and the Strait of Tiran must, of necessity, be viewed in the context of the Arab-Israeli conflict. Much has been written and said on this question¹⁷⁴. There would seem to be little value in reviewing here everything that has been said or written on the subject, especially since the conflicting parties have already moved somewhat from the position they held in the fifties and sixties, in the light of the new climate of peace between the Arab countries and Israel. However, initially, the position of the Arab states bordering the Gulf of Aqaba (i.e. Egypt, Saudi Arabia and Jordan) over passage in the Gulf and through the Strait of Tiran lying at its entrance can be summarized as follows: The Gulf of Aqaba is an internal, closed, Arab sea, belonging to these



Map 2: The Gulf of Aqaba, Strait of Tiran and the Islands of Tiran and Sanafir. Source: Charles B. Selak, "A Consideration of the Legal Status of the Gulf of Aqaba", 52 *AJIL*, (1958), at p. 661.

three Arab countries, the natural successors of the Ottoman Empire, which formerly occupied the region. The waters of the Strait of Tiran were also viewed by the said Arab states as historic, and had no international characteristics. Since the Gulf is a historic bay, according to the Arab point of view, Israel which was in a state of war with the Arab states had no right to sail therethrough, nor in the Strait of Tiran which has no international characteristic. That is so due to the fact that the presence of Israel (regardless of the existence of Israel itself as a state), at the head of the Gulf was illegal and took place as a result of the Israeli occupation of Umm Rashrash (known today as Eilat) on 10 March 1949, following the conclusion of the Egyptian-Israeli Rhodes General Armistice Agreement of 24 February 1949¹⁷⁵.

As far as Saudi Arabia is concerned, she started to clarify her claims in the Gulf of Aqaba and the Strait of Tiran due to the presence of Israeli warships therein, which was viewed by the Kingdom as an obvious threat to her security. The Kingdom expressed her fears in a number of complaints to the United Nations¹⁷⁶. In support of her argument that the waters of the Gulf of Aqaba and the Strait of Tiran are historic rather than international waterways, Saudi Arabia issued an official statement on 17 March 1957, to that effect, asserting that the Gulf used to be a natural passage for the caravans of Muslim pilgrims going to the holy places in Mecca and Medina¹⁷⁷. In a subsequent statement in March 31, the Kingdom asserted that:

*the straits separating these two islands (Tiran and Sanafir) are under the control and jurisdiction of the Kingdom of Saudi Arabia ... the straits of the Gulf of Aqaba may be by no means considered open seas ...*¹⁷⁸

The Saudi statement invoked Article 10(3) of the 1888 Constantinople Convention Respecting the Free Navigation of the Suez Maritime Canal¹⁷⁹, the conclusion of which:

*aimed at leaving the Gulf of Aqaba and its straits outside the scope of the order of the free passage defined for the Suez Canal ... is an asserted recognition that the Gulf of Aqaba is a locked Arab Gulf without any international character ...*¹⁸⁰

The issue was also raised by the Saudi Arabian representative to the United Nations, Ahmad Shukairy on 2 October 1957 during the Twelfth Session of the

General Assembly¹⁸¹ and also in 1959, a year after the conclusion of UNCLOS I¹⁸². Practically, Saudi Arabia in anticipation of the conclusion of the First United Nations Conference (eight days before the beginning of the Conference actions), redefined its claim to offshore authority. By the Royal Decree No. 33 dated 16 February 1958¹⁸³, the Kingdom, as mentioned earlier, extended her territorial sea to 12 nautical miles, and moreover, the provision permitting innocent passage of foreign ships through its territorial waters¹⁸⁴ (according to the Royal Decree of 1949)¹⁸⁵ was omitted.

Indeed, the "security interests" imposed themselves as a crucial factor on Saudi Arabia, as a result of which the questions of "navigation through international straits" and "historic bays" dominated the Saudi participation in the works of UNCLOS I. These two connected questions were put forward at the Conference by the Saudi delegation in the context of the issue of innocent passage in the territorial sea and its demands to enlarge the breadth of the territorial sea to twelve nautical miles¹⁸⁶. Rejecting the "three-power" proposal amending the draft Article 17 of the draft Convention¹⁸⁷, the Saudi representative stated that:

*the amended text no longer dealt with the general principles of international law, but had been carefully tailored to promote the claims of one state*¹⁸⁸.

Israel, on the other hand, maintained that it was a legitimate littoral state of the Gulf of Aqaba and that the capture of Umm Rashrash (Eilat) by Israel was not a violation of the Egyptian-Israeli General Armistice Agreement of 4 February 1949. Israel argued further that neither the Mixed Armistice Commission nor the U.N. Security Council¹⁸⁹ had ever stated that this action of Israel was illegal. Thus, according to the Israeli view, the Straits of Tiran are international waterways, therefore, navigation between the coasts of the Gulf of Aqaba and the Red Sea, through the Strait should be respected and safeguarded under international law¹⁹⁰. This Israeli position was supported by a number of states, led by the United States. In an *Aide-Memoire* handed to the Israeli Ambassador to the US on 11 February 1957, the American Government stated that:

with respect to the Gulf of Aqaba and access thereto - the United States believes that the Gulf comprehends international waters and that no nation has the right to prevent free and innocent passage in the Gulf and through the Straits giving access thereto ..., the

*United States ... is prepared to exercise the right of free and innocent passage and to join with others to secure general recognition of this right*¹⁹¹.

The granting of international character to the Straits of Tiran was also recognized by the UN Security Council. Following the break-out of the hostilities between Arabs and Israel in what is known as the “Six Day War”, the Council issued its Resolution No. 242 on 22 November 1976, in which it was called for:

*guaranteeing freedom of navigation through international waterways in the area*¹⁹².

However, under customary law, the Strait of Tiran does not have international character to be used for international navigation, since, first, for a strait to be regarded as an international one, it should connect two parts of the high seas; the ICJ reached this conclusion, as mentioned earlier, in the Corfu Channel case of 1949. This argument was also dominant at the ILC debates. Concentrating on the position of the Israeli Government that the Strait is international, and hence the right of free passage therethrough should be guaranteed, Francois, the Special Rapporteur of the ILC stated that the Corfu Channel case doctrine:

*related to Straits between two parts of the high seas, and so did not apply to the Gulf of Aqaba which, though open to the high seas at one end, merely gave access to a port at the other*¹⁹³.

In that, he was commenting on the position of the Israeli Government, seeking a free passage through the Strait of Tiran. Secondly, the volume of traffic crossing the Strait of Tiran did not support the Israeli argument on the international nature of the Strait, especially in the period between 1948 (the creation of Israel as a state) and 1958 (the conclusion of UNCLOS I)¹⁹⁴, and further, the Strait did not serve any except the littoral states, i.e. the traffic through the Strait was not destined for ports other than those of the coastal states. Therefore the Strait did not fulfil the criteria of an international strait. Writing in 1947, on the factors affecting the degree of importance of the particular strait to international sea-commerce, Brüel says:

How extensive and how deeply rooted this interest should be, cannot be determined by any hard and fast rule, but is a question of fact, depending upon such facts as f.i. the number of ships passing through the strait, their total tonnage, the aggregate value of their cargoes, the average size of the ships, and especially,

*whether they are distributed among a greater or smaller number of nations - all of which seem to give good guidance, no single factor, however, being decisive ...*¹⁹⁵

In the same regard, Baxter states:

*... international waterways must be considered to be those rivers, canals, and straits which are used to a substantial extent by the commercial shipping or warships belonging to states other than the riparian nation or nations*¹⁹⁶.

Of this view is also O'Connell, who noted that:

*when it is said, then, that a strait in law is a passage of territorial sea linking two areas of high sea, this is not to be taken literally, but rather construed as meaning a passage which ordinarily carries the bulk of international traffic not destined for ports on the relevant coastlines*¹⁹⁷.

Despite all that, however, the TSC included a provision mainly designed to cope with the situation of the Strait of Tiran and the Gulf of Aqaba. Article 16(4) of the Convention reads:

There shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign state.

This conclusion led Saudi Arabia and other Arab States (with the exception of Tunisia, which made reservations on signing the Convention) to refuse to sign any of the 1958 Geneva Conventions on the Law of the Sea.

At UNCLOS III, Saudi Arabia maintained its previous position on the definition of international straits and stressed that the regime of straits should be strictly confined to those connecting two parts of the high seas. The Saudi representative, Al-Shahail, stated that:

*the Kingdom supported free passage in international straits connecting different parts of the high seas ...*¹⁹⁸

This view was further expressed by the Kuwaiti delegate to the Conference, Al-Sabah, who was speaking on behalf of six Arab States, including Saudi Arabia. Al-Sabah said that:

the term 'straits used for international navigation' should be strictly confined to straits which connected two parts of the high seas. Because of that the Governments on whose behalf he was

*speaking had not acceded to the Convention on Territorial Sea and Contiguous Zone of 1958 ... which treated all straits alike*¹⁹⁹.

On 7 August 1974, a group of Arab states (including Saudi Arabia) submitted a proposal, in which they suggested a definition of the term “straits used for international navigation”, as follows:

*any strait connecting two parts of the high seas and customarily used for international navigation*²⁰⁰.

Through these statements, it is clear that the said states had also in mind the two straits of Hormuz and Bab El-Mandeb. The former connects the EEZs in the Arabian Gulf with the high seas in the Gulf of Oman, and the latter connects the Red Sea EEZs with the high seas in the Gulf of Aden. Saudi Arabia supported the application of the free navigation regime in those straits which lead to Saudi ports on the Red Sea and the Arabian Gulf. Thus, the Saudi position was that straits should not be treated alike. To this end, Saudi Arabia with the other Arab states rejected the proposals submitted by the UK²⁰¹ and socialist states²⁰², both of which provided for the non-suspended innocent passage through the straits linking one part of the high seas and the territorial sea of a foreign state. They preferred the application of merely the innocent passage regime which is applied to the waters of the territorial seas.

Israel, for its part, rejected the said proposals, but on a different ground. It was of the view that all straits without discrimination (including the Straits of Tiran linking one part of the high seas with the territorial seas of Saudi and Egypt) must be open to free navigation and overflight i.e. transit passage²⁰³.

The LOSC has adopted what seems to have been viewed by the Saudis as a compromise as to the question of straits as a whole. In straits connecting one part of the high seas or an exclusive economic zone and a territorial sea of a foreign state, the Convention repeated in its Article 45 the provisions of Article 16(4) of the TSC adopting the right of non-suspendable innocent passage, while the regime of ‘transit passage’ would apply in straits linking one area of the high seas or an EEZ and another area of the high seas and an EEZ. The latter provision satisfied the Saudi demands in the Straits of Hormuz and Bab El-Mandeb.

What should be noted here is that the LOSC had readopted the right of non-suspendable innocent passage, in straits connecting one part of the high seas with another part of the territorial sea of a foreign state. The general acceptance of the Convention by the international community may suggest that the provisions of Article 45 of the LOSC (Article 16(4) of the TSC) have now passed into customary international law, something which means that these provisions have to be observed even by the states which did not accede to the LOSC. However, by the conclusion of the 1979 Peace Treaty between Egypt and Israel, a new dimension was given to this question, though, as will be seen below, Saudi Arabia has nothing to do with the terms of that Treaty.

3.2 The Legal Implications of the Egyptian-Israeli Peace Treaty of 1979

The right of passage through the Strait of Tiran was one of the issues that received special attention in the peace process between Egypt and Israel. Article V(2) of the Treaty of Peace concluded at Washington, on 26 March 1979, reads:

*the Parties consider the Straits of Tiran and the Gulf of Aqaba to be international waterways open to all nations for unimpeded and non-suspendable freedom of navigation and overflight. The Parties will respect each other's right to navigation and overflight for access to either country through the Strait of Tiran and the Gulf of Aqaba*²⁰⁴.

As to the interpretation of this text, there are two conflicting approaches. On the one hand, there is the view that the Peace Treaty has created a liberal regime of freedom of navigation which prevails over the generally-accepted rules of international law governing passage in straits²⁰⁵. On the other hand, there is the view that the intention of the parties (Egypt and Israel) was to establish a regime that goes beyond the regime of innocent passage prescribed by the Law of the Sea Conventions, for the Strait of Tiran, but that falls short of the freedom of navigation and overflight applicable in the high seas²⁰⁶. However, without going further into these debates, which seem to be of little significance for Saudi Arabia, it is clear that the Egyptian position towards the question of passage in the Strait of Tiran and the Gulf of Aqaba has shifted to go beyond the long-established regime of innocent passage recognized by the Law of the Sea Conventions. The Treaty expressly describes the Gulf of Aqaba as “international waterways”, where the

principle of “non-suspendable freedom of navigation and overflight applies²⁰⁷. Nonetheless, under international law, this new regime remains binding only on the parties of the Treaty, i.e. Egypt and Israel, and does not concern Saudi Arabia. According to Article 34 of the Vienna Convention on the Law of Treaties (1969)²⁰⁸:

a treaty does not create either obligations or rights for a third state without its consent.

Even if the Parties of this Peace Treaty intended to impose the obligation of freedom of navigation through the Strait of Tiran and the Gulf of Aqaba, on the Kingdom, the country bordering the Gulf and the Strait, the latter from a legal point of view, would be free from such an obligation. In this respect, Article 35 of the Vienna Convention on the Law of Treaties provides that:

an obligation arises for a third state from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third state expressly accepts that obligation in writing.

Accordingly, on the part of Saudi Arabia, as a state party to the LOSC, navigation of foreign vessels in the Gulf and Strait remains governed by the terms of the LOSC, as the principle of non-suspendable innocent passage applies in the Strait while the right of innocent passage is enjoyable in Saudi Arabia’s territorial sea in the Gulf of Aqaba.

Apart from the complications of navigation, there is still the problem of sovereignty over the two islands of Tiran and Sanafir, located at the entrance of the Strait. These islands, as will be seen below, are under Egyptian control, although they belong to Saudi Arabia. Given the friendly relationship currently prevailing between Saudi Arabia and Egypt, it is likely that direct negotiations would lead to the resolution of this question, although neither party has so far taken any practical steps in this direction.

Aware of her status as a side not affected by or concerned with the Egyptian-Israeli Peace Treaty, Saudi Arabia, when ratifying the Law of the Sea Convention, took the opportunity to declare that:

... the ratification of the Convention by the Kingdom does not include any kind of recognition as to the maritime claims of any State which signs or ratifies it, when such claims are opposed to

*the provisions of the Law of the Sea Convention, and violate the sovereignty and jurisdiction of the Kingdom in its maritime areas*²⁰⁹.

In a clear reference to the relevant provisions of the Egyptian-Israeli Peace Treaty, Saudi Arabia, further, declared that:

*The Government of the Kingdom of Saudi Arabia is not committed to any international treaty or agreement, which contains provision opposed to the Law of the Sea Convention, and includes violations of the sovereignty and jurisdiction rights of the Kingdom in its maritime areas*²¹⁰.

With regard to the question of straits linking one part of the high seas or an EEZ and another part of the high seas or an EEZ, the Kingdom, through another declaration, has demonstrated its understanding of the transit passage regime, as to islands connected to these straits or located in their vicinity. The Declaration states that:

*The Government of the Kingdom of Saudi Arabia considers that the provisions of the Convention concerning the application of the regime of transit passage in the straits used for international navigation, and which connect one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone, apply also to navigation in between the islands in vicinity of these straits or connected to them, especially, when the waterways, used to enter into or to go out of the strait, and which are designated by the competent international organization, are located in the vicinity of these islands*²¹¹.

In so doing, the Kingdom, clearly, has in mind the Straits of Bab El-Mandeb and Hormuz which represent vital channels for the Saudi seaborne trade, and where there is a number of islands within them and at their entrances²¹².

3.3 The Question of Sovereignty over Tiran and Sanafir Islands and the 1979 Egyptian-Israeli Peace Treaty

The two uninhabited islands of Tiran and Sanafir are located at the entrance of the Gulf of Aqaba (see Map 2). The geographical location of these two islands in the context of the Gulf, has been described as follows:

Tiran Island, in the approach, is separated from the Egyptian coast by the Strait of Tiran, about 3 miles wide; it lies about 4½ miles south of Ras Fartak; Sanafir Island lies about 1½ miles east of Tiran, with a reef in between. The north-west, north and east

coasts of these islands are fronted by drying coral reefs. About midway between the west side of Tiran Island and the Sinai coast, westward, a line of drying coral reefs lies diagonally across the strait, forming on the west, the Enterprise Passage and, on the east, the Grafton Passage. The former has a minimum breadth of 1,300 yards, and the latter a minimum breadth of 950 yards between the central reefs and those extending from the coasts. Both these passages are deep. East and north of Sanafir and Tiran islands, there would appear to be a tortuous channel between the coral reefs in to the Gulf, with a least depth of 9 fathoms and a width of less than half a mile²¹³.

These islands have been put under the Egyptian sovereignty since 1950 with the acceptance of Saudi Arabia, as a reaction to the occupation of Israel of what used to be Umm Rashrash (known today as Eilat) in 1949. This “oral” accord between Saudi Arabia and Egypt was aimed at enabling the Egyptian side to control the entrance of the Straits of Tiran and close it in the face of Israeli shipping when necessary. The content of this accord was informed by the Egyptian Government to the Governments of the UK and US respectively on 30 January and 23 February 1950, through two separate memorandums, as it was stated that:

- 1. Taking into consideration velleities which have manifested themselves recently on the part of Israel authorities on behalf of the islands of Tiran and Sanafir in the Red Sea at the entrance of the Gulf of Aqaba, the Government of Egypt acting in full accord with the Government of Saudi Arabia has given orders to occupy effectively these two islands. This occupation is now an accomplished fact.*
- 2. In doing this, Egypt wanted simply to confirm its right (as well as every possible right of the Kingdom of Saudi Arabia) in regard to the mentioned islands which by their geographical position are at least 3 marine miles of the Egyptian side of Sinai and 4 miles approximately off the opposite side of Saudi Arabia, all this in order to forestall any attempt on or possible violation of its rights²¹⁴.*

As to the sovereignty over the two Islands, this wording is not without ambiguity, and some phrases may indeed raise questions about the real intentions of Egypt. From the references to the Egyptian rights and the “possible” Saudi rights over the said islands, and to the fact that the Islands are at 3 n.m. off the Egyptian coast and 4 n.m. off the Saudi coast, it may be inferred that Egypt did not want, at least, to establish any “self-barriers” when deciding to claim the title over

the Islands. However, it was not long before the Egyptian position on the question became very clear. On 15 February 1954, the Egyptian representative declared before the UN Security Council that:

the records of the Second World War contain official evidence that Egyptian units had been using these two islands as part of the Egyptian defensive system during that war...they (the Islands) were occupied...in 1906. At that time, it had been found necessary to delimit the frontiers between Egypt and the Ottoman Empire..., and it is an established fact that from that time on they have been under Egyptian administration.
*....they (the Islands) form an integral part of the territory*²¹⁵.

Saudi Arabia, for its part, has maintained its sovereignty rights over the Islands. On 31 March 1957, the Saudi Government addressed a circular note to the missions of “friendly Governments” in Jeddah, in which it was emphasized that the Islands “are Saudi Arabian property”²¹⁶. As mentioned earlier, the Saudis have also repeated their claim through a memorandum attached to a letter dated 12 April 1957, from the Permanent Representative of the Kingdom to the United Nations, addressed to the Secretary General, as it was stated that *these two islands are Saudi Arabian*²¹⁷.

In recent years, the question has not been raised by either side. Nevertheless, Saudi ownership of the Islands is not in question. First of all, the Saudi title over the Islands before the Egyptian occupation was never disputed, as no side, including Egypt, claimed sovereignty thereover. Egypt itself recognized this fact, since in its memorandum to the UK and US Governments, the Egyptian Government, as mentioned earlier, expressly stated that the Egyptian occupation of the Islands was “in full accord with the Government of Saudi Arabia”. There would have been no need for any justification, if such was not the case. Moreover, in the memorandum, Egypt did not totally reject the Saudi title over the Islands, as it stated that by the occupation action, it wanted, *inter alia*, to confirm “every possible right of the Kingdom of Saudi Arabia in regard to the mentioned islands”.

Second, there is no evidence that Saudi Arabia ceded its title in the Islands in 1950 or even abandoned its claim in the years that followed. The Saudi interim cession was through an oral accord and in order to provide the Egyptian army with wider strategic geographical positions in the face of what was described in the said

memorandum as “certain velleities which have manifested themselves recently on the part of Israel authorities on behalf of the Islands of Tiran and Sanafir”. In other words, it is illogical to suppose that it was the intention of the then Saudi Government to cede the Islands, since it is not expected that such territorial concessions between states would occur without a written agreement, or in return for nothing.

Third, the Saudi title over the Islands at least until 1949 is recognized in the Egyptian literature. That is what was pointed out by Abdulaziz Fodah, one of the Egyptian commentators who participated in the meeting of the Egyptian Society of International Law, which was held in 1967 with the aim of discussing the legal aspects of the Gulf of Aqaba and the Strait of Tiran²¹⁸. Writing in 1983, Salah Addien Amer also stated that in the entrance of the Gulf of Aqaba there are some 30 islands, all of which, including Tiran and Sanafir islands “were” under the Saudi sovereignty²¹⁹. Other Egyptian writers go further to assert the Saudi ownership of the two Islands. Of these, there are, for example, Amr Khaleel²²⁰ and Mohammed Saleim²²¹.

It is to be noted that in the Egyptian 1990 straight baseline claim²²², no reference was made to the Islands. But it is not clear whether this means that Egypt has abandoned its claim over the Islands, or whether the legislation was carefully formulated so as to avoid provoking any of the parties concerned, particularly Saudi Arabia and Israel, something which may have been intended by the Egyptian side to help in making the Middle East peace process a success. However, Saudi Arabia has not abandoned its claim concerning the Islands, and this can be inferred from its declaration when ratifying the LOSC, as the Kingdom rightly rejected the legal implications of any treaty apart from the LOSC itself.

Conclusion

From the foregoing analysis, it is obvious that Saudi Arabia applies two methods of drawing baselines for the measurement of her maritime zones, i.e. the low-water mark and the straight baseline, both of which are justifiable under international law. In its application of the latter system, the Saudi legislation followed international custom, but preceded the conventional rules. Before the

adoption of the LOSC, there were some doubts with regard to some aspects of the Saudi claims on baselines and internal waters. However, the accession of Saudi Arabia to the Convention which contains significant developments of direct effect to the questions of the baselines and internal waters, has removed many of these doubts. Nevertheless, the broad definition given to the term “island” to include “artificial islands” should be reviewed by the Saudi legislator. In addition, Saudi Arabia has to show clearly the legal justifications with regard to the use of closing lines for the bays along her coasts, the claim which seems to have been made on “historic basis”. The Saudi baseline claim does not refer to coral reefs and roadsteads, nor does it meet the requirement of “adequate publicity”, something which should be considered by the Saudi legislator.

As to the question of navigation through straits, it is to be noted that the regime of “non-suspendable innocent passage” applicable to the Straits of Tiran, and “transit passage” applicable to the Straits of Hormuz and Bab El-Mandeb, have now both become part of international law. Most relevant states have ratified the LOSC; thus they are under obligation to observe its provisions²²³. Other parties, which have not yet acceded to the Convention, have to observe the said provisions, since the general acceptance of the Convention, as a whole²²⁴, by the international community suggests that these provisions have passed now into international customary law. This matter could also explain why Saudi Arabia shifted her position to accept the provision of Article 16(4) of the TSC (Article 45(1) of the LOSC). However, with regard to the question of navigation in the Straits of Tiran and the Gulf of Aqaba, it seems that it will be finally decided in the light of the political negotiations between Israel and the Arabs, which commenced in the Madrid Conference of 1992²²⁵.

NOTES TO CHAPTER II

1. W. M. Reisman and G. S. Westerman, Straight Baselines in International Maritime Boundary Delimitation, Houndmills, Basingstoke, Hampshire and London, The Macmillan Press Ltd., (1992), at p. 1.
2. S. W. Boggs, "Delimitation of Seaward Areas under National Jurisdiction", 45 *AJIL*, (1951), pp. 240-66, at p. 240.
3. This was affirmed by Lord Alverstone in the Alaska Boundary case, 15 *RIAA*, (1903), p. 481, at 496.
4. O'Connell, *op. cit.*, Chapt. I, note 2, at p. 170.
5. *Ibid.*, p. 171.
6. *Supra*, note 3, at p. 498. In this case, the Arbitral Tribunal was asked to give an interpretation to the term "coast" used in the Anglo-Russian Treaty of 1825.
7. For further discussion, see J. R. V. Prescott, *op. cit.*, Chapt. I, note 87, pp. 1-35.
8. L. M. Alexander, "Baseline Delimitations and Maritime Boundaries", 23 *VJIL*, (1982-83), pp. 503-36, at 505.
9. D. Freestone, "International Law and Sea Level Rise" in R. Churchill and D. Freestone (eds.), International Law and Global Climate Change, London, Graham and Trotman, (1991), p. 109, at p. 109.
10. I. Aurrocoechea and J. S. Pethick, "The Coastline, its Physical and Legal Definition", 1 *IJECL*, (1986), pp. 29-42, at pp. 29-30.
11. On the other theories that competed with the low tide mark theory for a time, see O'Connell, *op. cit.*, Chapt. I, note 2, at p. 172.
12. *Ibid.* For the text of the Convention, see 27 *BFSP*, p. 983.
13. *Ibid.* For the text of the Convention, see 73 *BFSP*, p. 39.
14. *Ibid.*, pp. 176-77.
15. R. P. Barston and Patricia Birnie, The Maritime Dimension, London, George Allen & Unwin Ltd., (1980), p. 15; I. Aurrocoechea and J. S. Pethick, *supra*, note 10, at p. 31.
16. See the Report of the Sub-Committee in Suppl. to 20 *AJIL*, (1926), p. 63, at p. 79.
17. M. S. McDougal and J. W. T. Burke, The Public Order of the Ocean, New Haven, New Haven Press, (1987), p. 232. For further discussion on the proposals of delegates and the view of the technical experts, see W. Michael Reisman and G. S. Westerman, *op. cit.*, note 1, pp. 11-18; Boggs, note 2.
18. *ICJ Repts.*, (1951), p. 116, at 128.
19. Churchill and Lowe, *op. cit.*, Chapter I, note 10, at p. 27.
20. See M. M. Whiteman, 4 Digest of International Law, Washington, Department of State Publications, (1965), at p. 141.

21. *UN. Leg. Ser., ST/LEG/SER.B 6.* (1957), p. 497. See also O'Connell, *op. cit.*, Chapt.I, note 2, pp. 199 and 373.
22. Act of July 19, 1934 relating to the Breadth of the Territorial Waters and Zone of Supervision, in *Ibid.*, p.24. *UN. Leg. Ser., ST LEG.SER.B/6*, p. 24.
23. Customs Regulations of 8 September 1939, in *Ibid.*, p. 14.
24. Regulations concerning Port Officers Annexed to Decree No. 5796 of 11 June, 1940, in *Ibid.*, p. 79.
25. Suppl. to 43 *AJIL*, (1949), p. 154.
26. 9 *LNTS*, p. 213.
27. *ICJ. Repts.*, (1951), p. 116, at p. 128. For further discussion, see H. M. Waldock, "The Anglo-Norwegian Fisheries Case", XXVIII *BYIL*, (1951), pp. 114-71.
28. *ICJ. Repts.*, (1951), p. 116, at p. 125.
29. *Ibid.*, P. 132.
30. *Ibid.*, pp. 128-29.
31. *Ibid.*
32. *Ibid.*, p. 138.
33. *Ibid.*, p. 139.
34. *Ibid.*, p. 133.
35. *Ibid.*
36. *Ibid.*
37. *Ibid.*, p. 154.
38. *Ibid.*, pp. 155-56.
39. O'Connell, *op. cit.*, Chapt. I, note 2, at p. 205.
40. *ICJ. Repts.* (1951), p. 133.
41. *Ibid.*, p. 132.
42. O'Connell, *op. cit.*, Chapt. I, note 2, at p. 205.
43. TSC, Art. 4(2); LOSC, Art. 7(3).
44. TSC, Art. 4(3); LOSC, Art. 7(4).
45. TSC, Art. 4(5); LOSC, Art. 7(6).
46. TSC, Art. 4(6); LOSC, Art. 16).
47. TSC, Art. 4(4); LOSC, Art. 7(5).

48. J. R. V. Prescott, "Straight and Archipelagic Baselines" in G. Blake, Maritime Boundaries and Ocean Resources, London, Croom Helm, (1987), pp. 38-51, at 38.
49. R. R. Churchill and A. V. Lowe. *op. cit.*, Chapt. I, note 10, p. 45.
50. *Ibid.*, p. 33.
51. North Atlantic Coast Fisheries Case, XI *RIAA*, (1910), p. 167; Scott, Hague Court Papers, (1916), p. 14; 4 *AJIL*, (1910), p. 948.
52. According to TSC (Art. 7(2)); LOSC (Art. 10(2)), a bay is defined as: *a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a mere curvature of the coast.*
53. TSC (Art. 7(4)); LOSC (Art. 10 (4)).
54. TSC (Art. 7(5)); LOSC (Art. 10(5)).
55. See Churchill and Lowe. *op. cit.*, Chapt.I, note 10, pp. 36-38.
56. O'Connell. *op. cit.*, Chapt. I, note 2, at p. 219.
57. TSC (Art. 11); LOSC (Art. 13). For a fuller discussion, see Geoffrey Marston, "Low-tide Elevations and Straight Baselines", XLVI *BYIL*, (1972-73), pp. 405-23.
58. See D. W. Bowett. The Legal Regime of Islands in International Law, Dobbs Ferry, New York, Oceana Publications, Inc., (1979), pp. 1-9.
59. Andreas J. Jacovides, "Three Aspects of the Law of the Sea, Islands, Delimitation and Dispute Settlement". 3 *MP*, (1979), p. 278, at 283.
60. See Art. 47 of the Convention.
61. For English text, see Suppl. to 43 *AJIL*, (1949), p.154. The Arabic text of the Decree was officially published in the Saudi Official Gazette of *Umm Al-Qura*, Supplement No. 1263 of 2 Sha'ban, 1368 AH (corresponding to May 29, 1949). The Decree will be referred to hereinafter as the Royal Decree of 1949.
62. *UN. Leg. Ser. ST/LEG./SER.B/15*, (1970), p. 114. For Arabic text, see *Umm Al-Qura*, No. 1706, Sha'ban 1377 AH (corresponding to February 21, 1958); Ministry of Foreign Affairs, The Maritime Documents of the K. S. A., Dar Al-Bilad, p. 11. The Decree will be cited hereafter as the Royal Decree of 1958.
63. For English translation of the text of the Agreement, see 60 *AJIL*, (1966) at p. 744. For Arabic text, see *Umm Al-Qura*, No. 2132, 18 Rabi'Thani, 1386 AH (corresponding to August 5, 1966); Ministry of Foreign Affairs, Series of Treaties and Conventions, vol. 2, Jeddah, at p. 163. The Agreement took effect on 25 July, 1966; for further details, see pp. 204-206.
64. The English text of the Agreement is reprinted in S. Oda, The International Law of the Ocean Development, Basic Documents, Vol. I, Leiden, Sijthoff, (1972), pp. 415-17. For the Arabic text, see Series of Treaties and Conventions, *op. cit.*, note 63, at pp. 15-18. For further details, see *infra*, pp. 209-13.
65. See *supra*, pp. 57-58.
66. The Royal Decree concerning the Territorial Waters of the Kingdom of Egypt, dated 15-1-1951, in US Department of State, Limits in the Seas, No. 22, (1970).

67. See *supra*, pp. 57-58.
68. In this respect, R. Young, who beside Judge Hudson prepared the Saudi claim of 1949, stated in a private interview on 23-4-1976 that they were following the developments of the Anglo-Norwegian Fisheries case and based the Saudi rules concerning straight baselines on the Norwegian legislation. Cited in C. G. MacDonald, *op. cit.*, Chapt. I, note, 97, at 113.
69. *ICJ Repts.*, (1951), p. 116, at p. 130.
70. *ICJ Repts.*, (1982), p. 18, pp. 59-60.
71. Churchill and Lowe, *op. cit.*, Chapt. I, note 10, pp. 46-47.
72. M. M. Whiteman, *op. cit.*, note 20, p. 261.
73. Churchill and Lowe, *op. cit.*, Chapt. I, note 10, p. 40.
74. M. M. Whiteman, *op. cit.*, note 20, p. 293.
75. *Ibid.*
76. *Ibid.*, p. 289.
77. See H. Waldock, *op. cit.*, note 27, p. 144.
78. *Ibid.*, p. 142.
79. TSC, Art. 5(2); LOSC, Art. 8(2).
80. See further Chapt. III, pp. 134-43.
81. Churchill and Lowe, *op. cit.*, Chapt. I, note 10, at 52.
82. 27 *ILR*, (1963), p. 117, at 212. In this dispute the tribunal was asked to give an interpretation of the concession accord of 1933 between Saudi Arabia and the company known today as the Arabian American Oil Company (ARAMCO). Aramco contended that the 1954 agreement between Saudi Arabia and Mr. A. S. Onassis and his company (Satco), by virtue of which, the latter was given a thirty years "right of priority" for the transport of Saudi Arab oil, conflicted with its prior concession accord of 1933.
83. *UN Leg. Ser.*, ST/LEG/SER.B/6, (1957), pp. 706-708.
84. C. J. Colombos, *op. cit.*, Chapt. I, note 4, at p. 176.
85. O'Connell, *op. cit.*, Chapt. I, note 2, at p. 848.
86. A. V. Lowe, "The Right of Entry into Maritime Ports in International Law", 14 *SDLR*, (1977), pp. 597-622, at p. 621.
87. *ICJ Repts.*, (1986), p. 14, at p. 111.
88. II *DN*, p. 654. For the conditions laid down by the British Government, see Annex 1 to the Agreement.
89. TSC, Art. 16(2) and LOSC, Art. 25(2).

90. Endorsed by the Royal Decree No. M/27, on 19 April 1974, and published in *Umm Al-Qura*, No. 260, dated 9 November 1975; reprinted in The Maritime Documents of the K.S.A., *op. cit.*, note 62.
91. Saudi Arabian Ports Authority, Rules and Regulations for Saudi Arabian Seaports (Parts 1-4), June 1980.
92. Corporation Council for the Arab States of the Gulf, Rules and Regulations for Seaports, March 1985.
93. Part 1, Arts. 2.1.1. of both sets of regulations.
94. *Ibid.*, Arts. 2.1.4 of both sets of regulations.
95. *Ibid.*, Arts. 2.7, and 16 of the SLR.
96. *Ibid.*, Art. 2.3.
97. According to Arts. 2.3.1 of both sets of regulations, these include:
- a) *[the Master] arrives before or after the given time;*
 - b) *the vessel is in danger of sinking;*
 - c) *the vessel or the cargo is on fire or if there is the possibility of a fire, or if after a fire, it is uncertain whether it is completely extinguished;*
 - d) *the vessel is a tanker;*
 - e) *if an account of the vessel's size or construction its movements or that of any other vessels or the port operations are endangered, hindered or impeded;*
 - f) *if an account of the condition of the cargo, the vessel is dangerous;*
 - g) *if the vessel arrives under tow;*
 - h) *if the vessel is over-loaded;*
 - l) *if the vessel has any person or animal on board suffering from an infectious or contagious disease, or if the presence of such infection, contagious or epidemic disease is suspected on board;*
 - j) *if the vessel is powered by nuclear energy. The arrival of such a vessel must be notified in accordance with the requirements as prescribed in 2.1;*
 - k) *if the vessel carries deck cargo which extends beyond her side.*
98. See Churchill and Lowe, *op. cit.*, Chapt. I, note 10, pp. 54-57.
99. This provision is repeated verbatim in Art. 6.16.1 of the RRS.
100. An authorised person is defined under Art. 1.5.3 of the RSS as:
- any person authorised by the Government of the Kingdom of Saudi Arabia, the Ports Authority, or the Port Management to exercise the powers or perform the duties in respect of which the expression is used.*
101. Art. 1.6.1 of the RSS. Similar provision is found in Art. 1.6.1 of the RRS.
102. The same provision is also contained in Art. 2.13.2 of the RRS.
103. Arts. 3.1 of the RRS and RSS.
104. Similar provision is found in Art. 6.14.1 of the RRS.
105. Arts. 6.9.1 of the RRS and RSS. Similar provision is found in Art. 333 of the SLR.

106. *Ibid.*, Arts. 6.9.2 of both sets of regulations. Similar provision is found in Art. 322 of the SLR.
107. *Ibid.*, Arts. 6.9.4 of both sets of regulations.
108. *Ibid.*, Arts. 6.9.7 of both sets of regulations.
109. *Ibid.*, Arts. 6.9.3 of both sets of regulations. Similar provision is found in Art. 323 of the SLR.
110. *Ibid.*, Arts. 6.9.6 of both sets of regulations.
111. Churchill and Lowe, *op. cit.*, Chapt. I, note 10, at p. 54.
112. According to some lexicographic definitions, the term "bay" is applied to indentations of the coastline wider than the depth of penetration, while a gulf is characterized by deeper penetration, see L. J. Bouchez, The Regime of Bays in International Law, Leyden, A. W. Sythoff, (1964), pp. 16 *et seq.*, and M. P. Strohl, The International Law of Bays, The Hague, Martinus Nijhoff, (1963), pp. 78, *et seq.* In a memorandum of the United Nations on historic bays, it has been pointed out that the term "gulf" refers to a large indentation, while a "bay" is a small indentation, UN Doc. A/Conf. 13/1, para. 6.
113. Arts. 7(2) and 10(2) of the TSC and LOSC.
114. *Ibid.*
115. The North Atlantic Coast Fisheries case (1910), Scott, Hague Court Reports, (1916), p. 14, at pp. 183-84.
116. *ICJ Repts.*, (1951), p. 116, at p. 131.
117. O'Connell, *op. cit.*, Chapt. I, note 2, pp. 389-90.
118. TSC, Art. 7(4), LOSC, Art. 10(4).
119. TSC, Art. 7(5), LOSC, Art. 10(5).
120. See Churchill and Lowe, *op. cit.*, Chapt. I, note 10, at p. 38.
121. See, for example, Ruth Lapidot, "The Strait of Tiran, The Gulf of Aqaba, and the 1979 Treaty of Peace between Egypt and Israel", 77 *AJIL*, (1983), p. 84, at p. 86.
122. L. J. Bouchez, *op. cit.*, note 112, at p. 173.
123. 11 *AJIL*, (1917), p. 674, at 693.
124. *Ibid.*, at p. 694.
125. *ICJ Repts.*, (1992), p. 351. For comment, see Malcolm Evans, "International Court of Justice Recent Cases - Case Concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras) - The Nicaraguan Intervention", 41 *ILCQ*, (1992), P. 896; Malcolm Shaw, "International Court of Justice: Recent Cases, Case Concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua Intervention), Judgment of 11 September 1992", 42 *ILCQ*, (1993), p. 929 (edited by Malcolm Evans).
126. *Ibid.*, Para. 402.

127. *Ibid.*, Para. 403.
128. *Ibid.*, Para. 404; see also Para. 432. It is to be noted that Judge Oda, one of the Chamber's members, dissented from this part of the judgment. He considered that:
The Gulf of Fonseca is not a "bay" as conceived in the law of the sea, since the concept of a "pluri-state bay" which the Chamber employs to characterize the Gulf has no existence as a legal institution. Neither does the Gulf of Fonseca actually fall into the category of an "historic bay", despite what the Chamber assumes. See Ibid., "Dissenting Opinion of Judge Oda", at p. 733. It should be noted, however, that in this case, the Court refused to describe the waters inside the Gulf closing line as "internal waters", as it held that:
There are some difficulties in using [the] term [internal waters] which is apt to a single-state historic bay, but is not free from complications when applied to a pluri-state historic bay. Since the practice of the three coastal states still accepts that there are the littoral maritime belts subject to the single sovereignty of each of the coastal states, but with mutual rights of innocent passage, there must also be rights of passage through the remaining waters of the Gulf, not only for historical reasons, but because of the practical necessities of a situation where those narrow Gulf waters comprise the channels used by vessels seeking access to any one of the three coastal states. Accordingly, these rights of passage must be available to vessels of third states seeking access to a port in any one of the three coastal states ... (Para. 412).
129. 4 *AJIL*, (1910), p. 948, at p. 981.
130. *ICJ Repts.*, (1951), p. 116, at p. 130.
131. *ICJ Repts.*, (1982), p. 18, pp. 59-60.
132. See, for example, L. Bouchez, *op. cit.*, note 112, at p. 199; Z. Hashim, "Rationale of the Theory of Historic Bays, with Special Reference to the International Status of the Gulf of Aqaba", 25 *REDI*, (1969), p. 1, pp. 14-23.
133. T. Scovazzi, "Bays and Straight Baselines in the Mediterranean", 19 *ODIL*, p. 401, at p. 403.
134. Bouchez, *op. cit.*, note 112, at p. 281.
135. See Churchill and Lowe, *op. cit.*, Chapt. I, note 10, pp. 36-37.
136. *ICJ Repts.*, (1982), p. 18, pp. 59-60.
137. *ICJ Repts.*, (1992), p. 351, Para. 405.
138. D. Stamp and A. Clark, A Glossary of Geographical Terms, London and New York, Longman, (1979), at p. 462.
139. O'Connell, *op. cit.*, Chapt. I, note 2, at p. 299.
140. *ICJ Repts.*, (1949), p. 4, at p. 28.
141. J. N. Moore, "The Regime of Straits and the Third United Nations Conference on the Law of the Sea", 74 *AJIL*, (1980), p. 77, at pp. 78-9.
142. For further details, see O'Connell, *op. cit.*, Chapt. I, note 2, pp. 301-6.
143. Passage through these straits is regulated by the 1857 Treaty of Copenhagen between Denmark and the United States, see W. L. Schachte, "International Straits and Navigational Freedom", 24 *ODIL*, (1993), p. 179, at 189-92.

144. Regulated by the multilateral Montreux Convention of 1936. see *Ibid.*
145. Regulated by the 1921 Geneva Convention on the Non-Fortification and Neutralization of the Aaland Islands. between Sweden and Finland. see *Ibid.*
146. Regulated by the Buenos Aires Boundary Treaty of 1881. between Argentina and Chile. see *Ibid.*
147. *ICJ Repts.*, (1949), p. 4. at p. 28.
148. *Ibid.*, p. 29.
149. For further details. see Office for Ocean Affairs and the Law of the Sea. United Nations. The Law of the Sea. Straits Used for International Navigation. vol. 1, New York. United Nations. (1992). pp. 4-20.
150. *ILC Ybk.* vol. II. Document A 2934. Chapt. III. Sect. II.
151. UNCLOS I, Official Records. vol. III. (1958). p. 210.
152. *ILC Ybk.* vol. 2. (1956). p. 59.
153. *Ibid.*, paras. 89 and 96.
154. A number of states espoused Israel in its position. See, for example. the joint proposal presented by Netherlands. Portugal and United Kingdom of Great Britain and Northern Ireland: Document A/Conf.13/C.1/L.7/ in UNCLOS I, Official Records, vol. III. (1958), p. 231.
155. See *infra*. pp. 95-102.
156. UNCLOS I, Official Records. Vol. III, at p. 100. See, further. C. B. Selak. "A Consideration of the Legal Status of the Gulf of Aqaba", 52 *AJIL*, (1958), pp. 660-98; L. Gross. "The Geneva Conference on the Law of the Sea and the Right of Innocent Passage through the Gulf of Aqaba". 53 *AJIL*, (1959), pp. 564-94.
157. K. L. Koh, Straits in International Navigation. Contemporary Issues, London, Rome, New York. Oceana Publications, Inc., (1982), at p. 37.
158. For full discussion and details on the negotiations in the Conference see, J. N. Moore, *op. cit.*, note 141; W. Michael Reisman, "The Regime of Straits and National Security: An Appraisal of International Lawmaking", 74 *AJIL*, (1980), pp. 48-76; A. Harlow. "UNCLOS III and Conflict Management in Straits", 15 *ODIL*, (1985), pp. 197-208.
159. UNCLOS III, Official Records, vol. III. Doc. A/CONF. 62/C. 2/1/16, pp. 192-95.
160. *Ibid.*, Docs.(A/CONF.62/C/2/L.3), (A/CONF.62/C.2/L.11) and (A/CONF.62/C. 2/L.15), at pp. 183, 189 and p. 191, respectively.
161. Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 21, Annex IV.
162. Lewis M. Alexander, "Exceptions to the Transit Passage Regime: Straits with Routes of Similar Convenience", 18 *ODIL*, (1987), p. 479, at pp. 480-81. For detailed information about these straits. see David L. Larson, "Security, Disarmament and the Law of the Sea". 3 *MP*, (1979), p. 40. at pp. 56-58.

163. The proposal was submitted by the UK to the United Nations Committee on the Peaceful Uses of the Sea-bed and Ocean Floor beyond the Limits of National Jurisdiction., Doc. A/CONF.62/C.2/L.3.
164. For further details, see S. N. Nandan and D. H. Anderson, "Straits Used for International Navigation: A Commentary on Part III of the United Nations Convention on the Law of the Sea 1982". *LX BYIL*. (1989), pp. 159-204.
165. David L. Larson, "Innocent, Transit, and Archipelagic Sea Lanes Passage", 18 *ODIL*. (1987), p. 411, at 414.
166. R. R. Churchill and A. V. Lowe, *op. cit.*, Chapt. I., note 10, pp. 93-4. See the statement of the British Government spokesman in the debate on the bill extending the British territorial sea to 12 nautical miles in D. J. Harris, Cases and Materials on International Law, 4th ed., London, Sweet & Maxwell, (1991), p. 388. For the note of the US to the Iranian Government on navigation in the Arabian Gulf, see 78 *AJIL*, (1984), pp. 884-85.
167. J. Langdon. "The Extent of Transit Passage", 14 *MP*, (1990), p. 130, at 130.
168. Supporting his argument for regarding the right of transit passage as customary law, Mahmoudi finds that this is partly due to the inseparable link of the right with other customary rules whose force is derived from the prevailing belief that such a link exists, and partly due to its delicate scale in keeping the balance of interests under the imperatives of the consensus rule and package deal mechanism. See Said Mohmoudi, "Customary International Law and Transit Passage", 20 *ODIL*, (1989), p. 157, at p. 167.
169. R. R. Churchill and A. V. Lowe, *op. cit.*, Chapt. I, note 10, at p. 94.
170. See also David L. Larson, *op. cit.*, note 165, at 415.
171. S. N. Nandan and D. H. Anderson, *op. cit.*, note 164, at p. 165.
172. See *infra*. pp. 104-107. Generally, for further historical and geographical details, see Alexander Melamid, "The Political Geography of the Gulf of Aqaba", 4 *Annals of the Association of American Geographers*, (1957), pp. 231-240.
173. *Ibid*.
174. See for example, Leo Gross, *op. cit.*, note 156; Alexander Melamid, "Legal Status of the Gulf of Aqaba", 53 *AJIL*, (1959), pp. 412-3; Charles B. Selak, *op. cit.*, note 156; Mohamed El-Baradei, "The Egyptian-Israeli Peace Treaty and Access to the Gulf of Aqaba: A New Legal Regime", 76 *AJIL*, (1982), pp. 532-54; Ruth Lapidoth, *op. cit.*, note 121; Ruth Lapidoth, International Straits of the World. The Red Sea and the Gulf of Aden, The Hague/Boston/London, Martinus Nijhoff Publishers, (1982), pp. 119-27 and pp. 172-83; Ali A. Al-Hakim, The Middle Eastern States and the Law of the Sea, Manchester, Manchester University Press, (1979), Chapt. IV; Zaki Hashem, *op. cit.*, note 132. For Arabic texts, see for example, H. Sultan, Public International Law in Peace Time, Cairo, Dar Al-Nahdhah Al-Arabiyyah (1969), pp. 639-99; Salah Addein Amer, The New International Law of the Sea, Cairo, Dar AL-Nahdhah Al Arabiyyah, (1983), pp. 168-99; Ibraheem El Anani, The Law of the Sea, vol. 1, Cairo, Dar Al-Feker Al-Arabi, (1985), pp. 168-73; Ibraheem El-Anani, "The Legal Regime of Navigation through the Arab Straits", 69 *Sh'oun Arabiyyah*, (1992), p. 134, at pp. 141-44.
175. 42 *UNTS*, No. 654, p. 251.
176. See Letter from the Permanent Representative at Saudi Arabia to the Secretary General, which includes "Memorandum Registering the Saudi Arabia Government: Legal and Historical Rights in the Straits of Tiran and the Gulf or Aqaba", UN Doc. A/3575, April

15. 1957. The matter was also brought before the Security Council of the United Nations in the form of letters to the President of the Council, by the Permanent Saudi Representative, see Letters from Permanent Representative of Saudi Arabia to the President of the Security Council dated 7 and 27 May, 5, 19 and 24 June, 2 and 10 July, 1957 (UN Docs. S/3825, S.3833, S 3835, S/3841, S/3843, S/3846 and S 3849 respectively).
177. The statement was issued in *Al-Bilad Al-Saudiyah* of March 17, 1957.
178. Circular Note of the Saudi Arabian Government Addressed to Missions of "Friendly Governments" in Jeddah, 31 March, 1957, see Selak, *op. cit.*, note 156, at p. 677.
179. For text of the Convention, see 3 *AJIL*, Official Documents (1909), p. 123. Paragraph 3 of Art. 10 of the Convention provides that: *it is likewise understood that the provisions of the four articles aforesaid shall in no case occasion any obstacle to the measures which the Imperial Ottoman Government may think it necessary to take in order to insure by its own forces the defence of its other possessions situated on the eastern coast of the Red Sea.* The Convention was signed by Great Britain, Austria-Hungary, France, Germany, Russia, Italy, The Netherlands, Spain, and Turkey.
180. See *supra*, note, 178. Art. 1 of the Constantinople Convention reads: *The Suez Maritime Canal shall always be free and open, in time of war as in time of peace. The Canal shall never be subjected to the exercise of the right of blockade.*
181. General Assembly, 12th Session, Official Records, 697th Plenary Meeting (A/P.V.697), October 2, 1957, at p. 233. See also Selak, *op. cit.*, note 149.
182. Ahmed Shukairy, Chairman of the Saudi Arabian Delegation to the United Nations, "On the Question of the Regime of Historic Waters, Including Historic Bays", an address before the United Nations Sixth Committee, 30 November, 1959.
183. See *supra*, note 62.
184. It should be noted that under Art. 2 of the 1949 Decree, the term "territorial waters" includes both the inland and the coastal sea of the Kingdom. See *infra*, pp. 134-36.
185. See *supra*, note 61.
186. For further details, see *infra*, pp. 134-147.
187. These powers include: Netherlands, Portugal and United Kingdom of Great Britain and Ireland. The proposal reads: *there shall be no suspension of the innocent passage of foreign ships through straits or other sealanes which are used for international navigation between a part of the high seas and another part of the high seas or the territorial waters of a foreign state.* See Doc. A/CONF.13/C.I/L.71 in UNCLOS I, Official Records, vol. III, (1958), at p. 231.
188. *Ibid.*, at p. 96.
189. See Quincy Wright, "The Middle East Problem", 64 *AJIL*, (1970), pp. 270-281.
190. See Ruth Lapidoth, International Straits of the World...., *op. cit.*, note 174, pp. 123-24 and pp. 174-78.
191. United States Policy in the Middle East, Sept. 1956-June 1957, Documents, p. 290. (Department of State Publications 6505). cited in Leo Gross, *op. cit.*, note 156, at p. 576.

192. D. J. Djonovich, United Nations Resolutions, Series II, Resolutions and Decisions of the Security Council, vol. VI, 1966-67, New York, Oceana Publications, Inc., (1989), at p. 42.
193. *ILC Ybk.*, Vol. 1, (1956), at p. 202.
194. It has been indicated that between 1949, the year of occupation of Umm Rashrash (Eilat) and the Suez Crisis of 1956, fewer than ten ships called the Israeli port of Eilat. See Ali El-Hakim, *op. cit.*, note 174, at p. 164.
195. E. Bruel, International Straits, A Treatise on International Law, Vol. 1, London, Sweet & Maxwell Ltd., (1947), pp. 42-43.
196. R. R. Baxter, The Law of International Waterways, Cambridge and Massachusetts, Harvard University Press, (1964), at p. 3.
197. B. P. O'Connell, International Law, Vol. 1, London, Stevens & Sons, (1970), at p. 497.
198. UNCLOS III, Official Records, Vol. 1, (1975), at p. 144.
199. *Ibid.*, Vol. II, at p. 139. The said states were: Iraq, the United Arab Emirates, Libya, Galar, Saudi Arabia and Kuwait.
200. Doc. A/CONF.62/C.2/L.44 in *Ibid.*, Vol. III, at p. 221. These States included: Algeria, Bahrain, Iraq, Kuwait, Libya, Gatar, Syria, Tunisia, the United Arab Emirates and Saudi Arabia.
201. Doc. A/CONF.62/C.2/L.2 in *Ibid.*, at p. 183.
202. Doc. A/CONF.62/C.2/L.II, in *Ibid.*, at p. 189.
203. UNCLOS III, Official Records, Vol. II, at p. 137.
204. Treaty of Peace between the Arab Republic of Egypt and the State of Israel, For the full text of the Treaty and the Protocols annexed to it, see 18 *ILM*, (1979), pp. 362-93.
205. See for instance, R. Lapidoth, International Straits of the World, *op. cit.*, note 174, pp. 178-83.
206. See for instance, M. El-Baradei, *op. cit.*, note 174, at p. 551.
207. According to one commentator, the term "freedom of navigation", included in Art. 2 of the 1958 Convention on the High Seas is comprehensive in intention including movement, observation, inspection, manoeuvres, tests, and so forth, carried out above on, and below the surface. See W. M. Reisman, *op. cit.*, note 158, at p. 57.
208. 8 *ILM*, (1969), at p. 679; 63 *AJIL*, (1969), at p. 875.
209. The Declarations of the Kingdom of Saudi Arabia attached to Royal Decree No. M/17 of January 31, 1996 concerning Saudi Arabia's Ratification of the 1982 United Nations Convention on the Law of the Sea. Declaration No. 1. This piece of declaration is translated from the original Arabic text by the present writer.
210. *Ibid.*, Declaration No. 2. This piece of declaration is translated from the original Arabic text by the present writer.
211. *Ibid.*, Declaration No. 4. This piece of declaration is translated from the original Arabic text by the present writer.

212. The Strait of Hormuz lies between Iran on the north and north-west and Oman on the south, while the Strait of Bab El-Mandeb is bordered by the Republic of Yemen to the west, and Djibouti and Eritrea to the east. For more information on the physical features of these straits, see Ali El-Hakim, *op. cit.*, note 174, pp. 11-20.
213. See the paper which was prepared by Commander R. H. Kennedy at the request of the Secretariat of the United Nations: A Brief Geographical and Hydrographical Study of Straits which Constitute Routes for International Traffic. Doc. A/CONF.13-6 and Add. I in UNCLOS I, Official Records, Vol. I, (1958), pp. 198-243, at p. 208.
214. Quoted in L. M. Bloomfield, Egypt, Israel and The Gulf of Aqaba in International Law, Toronto, The Carswell Company Limited, (1957), at p. 9.
215. UN, *SCOR*, Ninth Year, 659 meeting, 15 February 1954, Paras. 60, 132 and 133 at pp. 10 and 25.
216. See *supra*, note 178.
217. See *supra*, note 176.
218. Minutes for the Meeting of the Egyptian Society of International Law Related to the Discussion of the Legal Aspects of the Gulf of Aqaba and the Strait of Tiran, in 23 *REDI*, (1967), (Arabic Section), pp. 21-61, at p. 34.
219. Salah Addien Amer., *op. cit.*, note 174, at p.169.
220. Amr A. Khaleel, The Strait of Tiran under International Law and the Peace Treaty, (Arabic text), Cairo, Public Egyptian Corporation of the Book (1980), at p. 85.
221. Mohammed S. M. Saleim, "Major Arab Islands: The Environment Circumstances and the Possibility to Develop their Uses" (Arabic text), in 16 *Al-Mostagbal Al-Arabi*, (1980), pp. 112-126, at p. 117.
222. Decree No. 27 (1990) Concerning the Baselines of the Maritime Areas of the Arab Republic of Egypt, 9 January 1990, *LSB*, No. 16, (1990), at p. 3.
223. On the Red Sea (the Straits of Tiran and Bab El Mandeb), it is to be noted that of the relevant States, Egypt acceded to the Convention on 26 August 1983, Yemen 21 July 1987, Djibouti 8 October 1991; on the Arabian Gulf (the Strait of Hormuz) Oman acceded on 17 August 1989. See *supra*, Chapt. I, note. 67.
224. At the time of writing, 90 states have ratified, acceded or succeeded to the Convention, *Ibid.*
225. As is known, the state of war between Egypt and Israel was finished by the conclusion of the 1979 Peace Treaty between the two sides. With the Palestinians, the Washington Israeli-Palestine Liberation Organization Declaration of Principles of 13 September 1993, states in its Preamble, that Israel and the Palestinians: *agree that it is time to put an end to decades of confrontational conflict* (32 *ILM*, 1993, at p. 1525). Between Jordan and Israel, the state of war officially ended by virtue of the Washington Declaration of 25 July 1994, which was followed by the conclusion of the Israel-Jordan Treaty of Peace of 26 October, 1994, in which both sides recognized each other (see 34 *ILM*, 1995, at p. 43).

Chapter III

Territorial Sea and Contiguous Zone

Introduction

Having discussed in the past chapter the two regimes of baselines and internal waters, we now move seaward to examine the two regimes of the territorial sea and the zone adjacent to it, i.e. the contiguous zone. Part I will discuss all legal aspects related to the territorial sea, its evaluation, legal status, breadth, the right of innocent passage within it, and its delimitation. This will be followed by an examination of the Saudi practice with respect to the aforesaid aspects. Part II, in the same way, will examine the regime of the contiguous zone, in terms of the development of the concept and its legal status. The discussion will be based on analysis of international practice, teachings of jurists, judicial decisions and the provisions of relevant international conventions. The discussion of each part will be followed by analysis of the Saudi Arabian practice in the said two areas of the sea, with the aim of recognizing the Saudi contribution in these two fields and further, ascertaining the extent to which Saudi practice is consistent with the law of the sea.

Part I: The Territorial Sea

1. The Judicial Nature of the Regime

The term “territorial sea”, otherwise known as the maritime belt, marginal sea, or territorial waters, is employed to indicate that part of the sea extending for an uncertain number of miles, beyond the land territory and internal waters of the coastal state. The development of the regime is a good case study of customary conventional and consensual law¹. Despite the fact that the concept of the

territorial sea dates back to the Middle Ages. its juridical nature has been a matter of controversy throughout the ages, whether among writers or in state practice. The extent of the state's rights over the waters adjacent to its coasts has been subject to a number of theories, such as the theories of "property", "sovereignty", "servitude" and "competence"².

However, by the beginning of the twentieth century, the trend in doctrine was steadily towards recognition of a coastal state's sovereignty over its territorial sea. This view was taken by a number of authorities amongst whom was Faucille, who found that a state is sovereign where it can impose its authorities, and the territorial sea is a place where a state can impose such authorities³. The state practice has also shown a marked tendency towards the sovereignty doctrine. The Paris Convention for the Regulation of Aerial Navigation (1919)⁴, for example, stated in its first article that:

every Power has complete and exclusive sovereignty over the air space above its territory, which includes the national territory, ... and the territorial waters adjacent thereto.

This text goes further since it affirms the sovereignty doctrine not only over the territorial sea, but also over its superjacent air space.

In the domestic sphere, the same principle has been also established. The expression is found in some municipal laws, such as the British Postal Regulations of 1908⁵ and the UK Air Navigation Act of 1920⁶. There were also some implied and indirect references to the doctrine in case law, namely by the Permanent Court of Arbitration in the Grisbadarna case (1909) over the maritime boundaries between Norway and Sweden⁷ and the North Atlantic Coast Fisheries Arbitration (1910)⁸. Thus, support for the principle of coastal state sovereignty over the territorial sea was growing and started to crystallize during the first decades of the twentieth century. As noted by O'Connell:

after 1900 the controversy about the juridical nature of the territorial sea waned, and scarcely any author took issue with the notion that the territorial sea is subject to sovereignty⁹.

Under the League of Nations, the "territorial waters" question was among the subjects considered for discussion by the Committee of Experts appointed in

1924 by the League itself, and one of the three topics¹⁰ the preparations of which were entrusted to a Preparatory Committee in the Hague Codification Conference of 1930. The first point of the Bases of Discussions prepared by the Committee says that:

*... it would seem possible to take as the point of departure the proposition that the state possesses sovereignty over a belt of sea around its coast ... it has legislative authority over all persons, power to make and apply regulations, judicial authority, power to grant concessions and so forth*¹¹.

The doctrine of sovereignty over the territorial sea including its bed, subsoil and air space gained considerable support by the states in the Conference, as was clear from the replies of governments to the Schedule of Points passed through before the Conference¹². However, the final text included this meaning, as it stipulates in its first article that:

*the territory of a state includes a belt of sea described in this Convention as the territorial sea. Sovereignty over this belt is exercised subject to the conditions prescribed by the present Convention and the other rules of international law*¹³.

Article 2 enlarged the extent of sovereignty to include *the air space above the territorial sea, as well as the bed of the sea, and the subsoil*¹⁴. In the Report of the Second Committee, the task of which was to study the Bases of Discussions, it was stated that the view that the territorial sea forms part of the territory of the state stems from the fact that *the power exercised by the state over this belt is in its nature in no way different from the power which the state exercises over its domain on land*¹⁵. On the preference to employ the term “territorial sea” rather than “territorial waters” in the text, it was stated that the latter is more general and confusing, and could also be used to indicate inland waters¹⁶. However, the text was not adopted and the Conference itself met no success, mainly because of the difference on the question of the breadth of the territorial sea. Nevertheless, what was achieved was an important step towards establishing the doctrine of the coastal state’s sovereignty over its territorial sea, throughout the ILC debates and the circles of the law of the sea conferences and their productions.

In his first report of 4 April 1952 submitted to the ILC, the Special Rapporteur, Francois indicated that:

... it follows from the sovereignty over the territorial sea, stated in Article 2 (of the 1930 draft) that the territory of the coastal state includes ... the soil covered by the territorial sea, as well as the subsoil. Although there are some contrary views among writers, the practice of a certain number of states accepts this sovereignty¹⁷.

Indeed, the number of states supporting the theory of “sovereignty” considerably increased in the 1950s. These tendencies of states were reflected in their participation in the Law of the Sea Conferences. The matter of sovereignty was usually discussed in the context of the right of innocent passage. In similar wording, Article 1 of the 1958 Geneva Convention on Territorial Sea and Contiguous Zone, and Article 2 of the 1982 United Nations Convention on the Law of the Sea provide that:

the sovereignty of a state extends, beyond its land territory and internal waters and, (in the case of an archipelagic state, its archipelagic waters, the LOSC adds), to an adjacent belt of sea, described as the territorial sea.

Moreover, the sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil (TSC Article 1(2), LOSC Article 2(3)). Thus, these two important global conventions have fixed only the term “territorial sea” and dismissed the other terms, and further, established the sovereignty notion not only over the territorial sea but also over the air space above the territorial sea, the bed and subsoil.

Apart from the Law of the Sea Conventions, the notion of sovereignty was established by other international instruments, such as the Convention on International Civil Aviation of 7 December 1944 (Articles 1 and 2)¹⁸. It may be added that most twentieth century writers, such as Oppenheim¹⁹, Colombos²⁰, O’Connell²¹, Hall²², and Westlake²³ assert the coastal state’s sovereignty over coastal waters.

The view that the coastal state has sovereignty over its territorial sea came to prevail in state practice in the twentieth century, but nevertheless, the lack of agreement on a precise meaning of the term is evident in the national legislations of states. The territorial sea has been classified, for example, as the public domain by Peru and Ecuador in 1969 and 1970 respectively²⁴, and before that by Dominican

Republic in 1947²⁵, or as national property as Spain claimed in its Article 1(3) of Coasts Act of 1969²⁶. In other cases, the right of “sovereignty”²⁷ or “complete and exclusive sovereignty”²⁸, has been affirmed, but without reference to the essence of such concepts, while others claimed “sovereignty”, but subject to the provisions of international rules, as Saudi Arabia, for example, did in 1958 (Article 2 of the 1958 Royal Decree)²⁹.

Turning back to the principle of “sovereignty” of the coastal state, adopted in the Law of the Sea Conventions, the extent of the concept should be understood in connection with the rights and restrictions granted to and imposed upon the coastal state, on the one hand, and foreign nationals and vessels, on the other. The coastal state has extensive powers to control matters of security, customs, fiscal, immigration and economic interests, and in return, the fundamental restriction upon the sovereignty of the coastal states remains the right of other nations to innocent passage through its territorial sea³⁰. However, it should be noted finally, that although international law concedes that the territorial sea may be included within the national boundary, it is solely municipal law which decides the extent of effect that the term “sovereignty” has, and some states, even if parties to the TSC or LOSC or both, may not wish to benefit from the extent of powers permitted by international law³¹.

2. The Breadth of the Territorial Sea

2.1 Early Trends

The question of how far a coastal state could extend its territorial sea, has been a matter of controversy for centuries. The starting point of this disagreement was in the sixteenth century as a result of the emergence of the two contradictory ideas, i.e. *Mare Liberum* v. *Mare Clausum*³². Early practice in the sixteenth and seventeenth centuries showed the employment of vague criteria, such as the “range of visual horizon”, which was referred to in the 1682 Treaty between Great Britain and Algiers and in the 1691 Treaty between Great Britain and Holland³³. In the eighteenth century, two rules appear to have become prevalent: first, the cannon-shot rule, which was recorded and recommended by Bynkershoek³⁴, and was also

adopted in a number of bilateral agreements³⁵; and secondly, the four-mile “league”, mainly exercised by the Scandinavian states³⁶.

However, the uncertainty that accompanied the cannon-shot doctrine necessitated having a clearer criterion of a fixed distance. Although there were some passing references to a three-mile coastal sea in the late 1600s and early 1700s³⁷, the Italian Diplomat, Galiani, is widely regarded as the first author to equate cannon range with three miles in 1782, when he was writing of the American War of Independence. The idea was based on the fact that the average cannon range at the time was three miles. It was not long before until the rule received general acceptance in state practice and in case law. By issuing the Neutrality Act of 5 June 1794³⁸, the United States became the first state to adopt the rule in its municipal law. In English jurisprudence, the three-mile standard was introduced by Lord Stowell in his decisions on the cases of Twee Gebroeders (Alberts, Master) (1800)³⁹, and The Ann (1805)⁴⁰ concerning the capture of certain ships by British vessels. In treaty law, the rule was first established in the 1818 Convention Respecting Fisheries, Boundary, and the Restoration of Slaves, between Great Britain and the United States⁴¹. This practice of Great Britain and the United States was followed by other countries, such as Argentina⁴², Chile⁴³, Ecuador⁴⁴ and El Salvador⁴⁵. Among the important multi-party conventions that affirmed the application of the three-mile limit were the Hague Convention for the Regulation of the Police of Fisheries in the North Sea Outside the Territorial Waters of 1882 (Article 11)⁴⁶, and the Constantinople Convention Respecting the Free Navigation of the Suez Maritime Canal of 1888 (Article 4)⁴⁷. Thus, the rule began to gain considerable acceptance as a customary rule.

2.2 Under Conventional Rules

By the beginning of the twentieth century, the positions of certain nations towards the three-mile rule started to shift, especially following World War I, in favour of enforcing a claim to more than three miles of territorial sea. The disputing views on the matter were reflected in the debates of the Hague Conference of 1930, which led eventually to the failure of the Conference⁴⁸.

The diversity of international practice went on during the decades that preceded UNCLOS I. In 1958, for instance, the claims of some states were noted as follows: Australia 3 miles, Finland 4, Cambodia 5, India 6, Mexico 9, Albania 10, Saudi Arabia and Ethiopia 12, Chile 50 (kilometres), and El Salvador 200 miles⁴⁹. This, in turn, was reflected in the debates of the ILC during the 1950s and its provisional proposals⁵⁰. The replies of governments to the provisional articles presented by the ILC to the General Assembly undoubtedly indicated the lack of enthusiasm among states to reach agreement on the breadth of the territorial sea in the UNCLOS I. Thus, the Conference failed to decide the question.

At UNCLOS II, the conflict over the issue went on, between two camps, one led by the United States favouring a six-mile limit and the second, led by the former Soviet Union, favouring 12 miles. These conflicts caused the Conference to close without deciding the problem⁵¹.

The 1960s marked the trend of states towards broader claims. By the beginning of UNCLOS III works, 56 states claimed 12 n.m. territorial sea, one, 18 n.m.; three, 30 n.m.; one, 50 n.m.; one, 100 n.m. and one, 150 n.m.⁵². This new accomplished fact imposed itself on UNCLOS III debates. Ecuador, for instance, proposed 200 n.m.⁵³, Nigeria proposed 50 n.m.⁵⁴. However, the general tendency, especially among the great maritime powers, such as the United States⁵⁵, the United Kingdom⁵⁶ and former European block states including the Soviet Union⁵⁷, was in favour of a twelve mile limit to the territorial sea. In May 1975, the latter approach received a general consensus in the circles of the Conference⁵⁸, and was finally codified in the 1982 United Nations Convention on the Law of the Sea. Putting an end to a long history of controversy over the territorial sea breadth question, and reflecting the clearly dominant trend in state practice the LOSC (Article 3), as a first global convention provides that:

every state has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles.

In view of the overwhelming majority of states adopting this rule, it can be considered an international customary one. In 1989, for example, 107 states claimed a 12 mile territorial sea, while only 13 states, mostly Latin American, claimed 200 miles, 4 states claimed 6, 2 states claimed 4 and 11 states claimed 3

miles⁵⁹. However, such claims will not be accepted, except between states making similar claims. Furthermore, states claiming narrower territorial seas would not be bound by the 12 mile limit⁶⁰, although it is generally regarded as customary law.

3. Innocent Passage within the Territorial Sea: A Classical Exceptional Right to the Coastal States Sovereignty

Under Article 19(1) of the LOSC (TSC Article 14(4)), the passage of foreign ships within the territorial sea of another state *is innocent so long as it is not prejudicial to the peace, good order or security of the coastal state*. It includes travelling of ships through the territorial sea to or from internal waters (LOSC Article 18(1); TSC Article 14(3)). It has been stated that it is difficult to define precisely the terms “passage” and “innocent”, both of which were kept somewhat vague in order to reconcile the legitimate security and other interests of the coastal state with the inclusive right of other states to “pass” through territorial waters⁶¹. However, in order to recognize the exact meaning of “innocent passage”, the definition given in Article 19(2) of the LOSC ought to be read in connection with Paragraph 2 of the same article, which enumerates a number of situations where passage is not regarded as innocent⁶².

As a legitimate right, firmly established in international law, the right of innocent passage, in general, has its origins in international custom supported by the writings of famous publicists, such as Gentili and Vattel in the seventeenth and eighteenth centuries⁶³, and, more recently, the twentieth century commentators, such as Jessup, Gidel, and Lauterpacht⁶⁴. During the late 1800s and early 1900s, several proposals of the learned societies and bodies of experts affirmed the existence of this right as part of international custom⁶⁵, which made it ripe to be codified in the Hague Codification Conference of 1930. Indeed, despite the failure of the Conference, its Draft Convention (Articles 3 and 4)⁶⁶ reaffirmed the right. The doctrine was elaborated in Article 14 of the TSC which prohibits the hampering of innocent passage or levying charges from foreign ships when exercising such a right (Articles 15 and 18(1)) and, on the other hand, obliges the coastal state to publicise any dangers to navigation in the territorial sea of which it is aware (Article 15(2)). At UNCLOS III, the subject was of particular interest, as

there were two disputing views, i.e. the expanding claims to territorial sea by the developing countries, and that of maritime nations who were concerned to provide firmer outlines for the right. However, the Law of the Sea Convention contains more detailed provisions than those of the TSC, especially in terms of the rights and duties of the coastal state concerning innocent passage (Articles 21-25).

The right has been expressly recognized by case law. In the Compania De Navegacion Nacional (Panama) v. United States Arbitration of 1933, Van Heeckeren, Presiding Commissioner, and Root, Commissioner, indicated that:

*... this qualification [the right of innocent passage], forbids the sovereign actually to prohibit the innocent passage of alien merchant vessels through its territorial waters ...*⁶⁷.

In the Corfu Channel case of 1949, although the ICJ did not discuss the question of passage in the territorial sea, except in international straits, and in particular of warships, it affirmed the existence of this right *without the previous authorization of a coastal state, provided that passage is innocent*⁶⁸.

However, although the passage of merchant ships is consensually accepted as a customary rule, the case is different with warships, a subject which has been a matter of controversy for a long time. Some authors, such as Hall⁶⁹ and Root⁷⁰, deny such a right, while others, such as Oppenheim⁷¹ and Colombos⁷² recognize it in time of peace when passage in the territorial waters is necessary for international traffic. The Final Text of the Hague Codification Conference (Article 12) adopted this right without a previous authorization or notification to be required by the coastal state⁷³.

The debates of the International Law Commission preceding UNCLOS I centred on the question of whether passage should be subject to prior authorization or notification, the principle which was secured to the coastal state in the formulation adopted by the Commission in its eighth session⁷⁴. At the Conference itself, the gap between those states demanding previous authorization or notification (the Communist and Third World states) and those rejecting it (mainly the Western states), was so wide⁷⁵, that the TSC contains no express provision on the subject. Under the heading, "Rules Applicable to All Ships", Article 14(1) of the Territorial Sea Convention provides, with somewhat vague wording, that:

subject to the provisions of those articles, ships of all states, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea.

From this formula, it is clear that the Convention emphasizes the right of “all states whether coastal or not” to innocent passage, but on the means whereby a state exercises such a right, i.e. vessels, the Convention, seemingly deliberately, was satisfied to mention “all ships” without specifying whether warships are meant by this provision! This ambiguity of the rule led to a number of contradictory opinions among commentators. Some of them, such as Jessup⁷⁶ and Fitzmaurice⁷⁷, held that warships by implication have a right to innocent passage. Others, such as Tunkin⁷⁸, deny such a right.

However, due to the considerable growth in their naval capacity, the attitudes of the former Soviet bloc countries on the passage of warships in the territorial sea shifted in the debates of UNCLOS III⁷⁹. Moreover, the former Soviet Union has expressly recognized since 1984 the right of foreign ships to innocent passage⁸⁰ and reaffirmed its new position by issuing, with the United States, a joint “Uniform Interpretation of the Rules of International Law Governing Innocent Passage”⁸¹, which entitles warships to innocent passage. On the other hand, a number of Third World nations maintained their demands concerning previous authorization or notification requirements⁸². As a result, the question was left, under the 1982 United Nations Convention, without a clear answer, as it was in the 1958 Territorial Sea Convention, except for a statement in Article 30 (of the former) that a warship is under obligation to leave the territorial sea “immediately”, if it does not comply with the laws and regulations of the coastal state. In any case, the disagreement on the question does not concern the passage *per se*, it only concerns the way such passage is conducted, therefore, as O’Connell concluded:

*while minesweeping would not be allowed, the passage of ships cleared for action, but with armament in a stowage position, would be*⁸³.

4. Delimitation of the Territorial Sea

Most disputes that arise within the field of the Law of the Sea concern maritime boundaries. Nevertheless, the problems resulting from the delimitation of the territorial sea, whether between adjacent or opposite states, remain by and

large limited, if compared with those concerning other maritime areas. This is due to the fact that the territorial sea is limited in surface, and accordingly, the conflicting interests are correspondingly limited in nature⁸⁴. There is more than one method for delimitation, and the choice of method has been significantly influenced by the geographical relationship of the coasts abutting the ocean areas at issue, characterized in terms of oppositeness or adjacency, or mixed oppositeness and adjacency⁸⁵.

4.1 Between Opposite States

It is well known that all maritime zones, including the territorial sea, are measured from baselines⁸⁶. As is the case with identifying these lines, deciding the outer limit of the territorial sea is not without difficulties in the case of opposite states, especially where the distance between the two coasts of such states are within less than double their territorial sea claims. In such a situation, there exist three methods, a common median zone, the “thalweg”, and the median line.

The first method is based on the idea that each of the opposite states is entitled to sovereignty to the complete extent of its territorial sea, and the overlapping zone is common to both of them⁸⁷. In practice, this method was implemented in the division of the Bay of Figueroa between France and Spain⁸⁸.

The “thalweg”, on the other hand, means the middle line of the deepest or most navigable channel passing between the two shores⁸⁹. The idea behind the use of this method is to take account of the depth and navigability of waters. This solution, which finds its origins in river law, was employed in a number of treaties such as the 1928 Agreement between Great Britain and the Sultan of Johore concerning the Johore Strait⁹⁰, the 1913 Agreement between Great Britain and Germany⁹¹, and the 1891 Agreement between Zaire and Angola concerning the River Congo⁹².

As to the median line theory, i.e. equidistance from the nearest points of the coasts of the opposite states, it traces back to Pufendorf who found it inappropriate for states bordering a bay or a strait to extend their national boundaries to the centre⁹³. This rule of demarcating the territorial sea, which is more common in use than the two previous ones, was put forward by the Preparatory Committee of the

Hague Codification Conference⁹⁴. It was resorted to in treaty practice, to determine the water boundaries of Austria, Germany, and Switzerland on Lake Constance⁹⁵ for instance, and more recently in 1976 between Colombia and Panama⁹⁶. Many states have incorporated this technique in their national legislations following its adoption in Article 12 of the TSC⁹⁷.

4.2 Between Adjacent States

La Predelle identified two methods to delimit the territorial sea of adjacent states. The first was the projection of the land boundary seawards on a great circle continuing the landward boundary, while the second was to draw a line perpendicular to the general tendency of the coast⁹⁸. The second technique was favoured by the Permanent Court of Arbitration in the Grisbadarna case of 1909 between Norway and Sweden⁹⁹, as the Tribunal was asked to decide whether the boundary line between the two countries had been fixed by the Boundary Treaty of 1661, and if it had not, to fix it taking into account the circumstances of the fact and the principles of international law. Recent treaty practice has also adopted this method, such as the Delimitation Protocol of 1958 between Poland and the Soviet Union¹⁰⁰, and the 1972 Brazil-Uruguay Agreement on the Chuy River Bank and the Lateral Sea Limit¹⁰¹.

In justifying his rejection of both methods, Boggs indicated that in relation to the first one, the land boundary is usually accidental in direction and has no relation to the necessities of delimiting the sea boundary, while, as to the second, in most cases it is hard to determine the general direction of the coast¹⁰². Instead, he suggested that a point at five miles distance (i.e. the supposed extent of the territorial sea of both nations) is to be taken and connected to the land boundary. Where a straight line does not serve, he proposed that the boundary should probably constitute a series of straight lines, the last of which should end at the normal high sea terminus¹⁰³. Boggs's method is embodied in the principle of equidistance adopted in Article 12 of the TSC with the qualification that equidistance is related to the baseline constituted by the possibility of the use of straight baseline doctrine¹⁰⁴.

4.3. Delimitation of the Territorial Sea under Conventional Rules

In the ILC, the delimitation of the territorial sea question was introduced by the special Rapporteur Francois, in 1952¹⁰⁵ and 1953¹⁰⁶, in the case of straits of unequal width¹⁰⁷. However, the formula for territorial sea boundary in straits and between opposite and adjacent states were merged and submitted to the governments in UNCLOS I for reply¹⁰⁸. The formula adopted finally in the Conference, reflected this form. Article 12(1) of the Territorial Sea Convention reads:

Where the coasts of the two states are opposite or adjacent to each other, neither of the two states is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two states is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two states in a way which is at variance with this provision.

It is clear from this wording, that the Convention favours, as an initial choice, agreement on the question between the states concerned. But since such a solution is not always possible, the boundary line the Convention adopts the “median line” rule. However the lack of a “decisive” principle for deciding the question is obvious in the last clause of the text which excludes the evidence of “historic title” and “special circumstances” from the application of this criterion. The general and imprecise reference to these two concepts creates more difficulties and controversies in interpretation and application. Commenting on the median line approach adopted in the above text, O’Connell correctly describes the impression that this solution will resolve the question of the criterion for the delimitation of the territorial sea as “deceptive”, since:

this solution is not to apply where it is necessary, by reason of historic title or other special circumstance, to delimit the territorial seas of two states in a way which is at variance with the provisions of Article 12. If “special circumstances” is to have in this context the enlarged meaning which it has acquired in the comparable provision relating to the delimitation of the continental shelf ..., then other possible solutions are available to some extent or other in almost every situation of controversy¹⁰⁹.

In the Third Conference on the Law of the Sea, it was not difficult for the Negotiating Group 7, which was charged with the arrival of a consensus for the delimitation questions, to reach an agreement on the territorial sea delimitation criteria in the light of the widespread support for the retention of the TSC formulation¹¹⁰. Indeed, the previous provisions were repeated almost verbatim in Article 15 of the 1982 United Nations Convention on the Law of the Sea, with the same degree of generality and flexibility.

5. Saudi Arabia's Position on the Territorial Sea

From the previous analysis it is clear that each state is entitled, in accordance with established international rules, to claim, subject to the “innocent passage” right of foreign ships, “full sovereignty” over a twelve nautical mile “territorial sea”, measured from the “baselines” seaward, and the delimitation of which between adjacent and opposite states is to be decided by the “median line” rule, failing agreement, taking into account the “historic title” and “special circumstances”. Saudi Arabia, as a maritime nation, was one of the first countries in the region to lay down her own rules governing almost all legal aspects of the territorial sea regime. In what follows, we will examine these rules in connection with those of international law.

5.1 The Juridical Nature of the Saudi Territorial Sea

The initial claim of the Kingdom over the waters adjacent to its coasts was declared more than five decades ago through the Regulations of Mussels and Fishing within the Coasts of the Red Sea¹¹¹. The claim was confined to fishery rights, rather than the territorial sea in its wider framework. The fishery limit was defined to 4 n.m. from the coasts of the Red Sea (Article 4) and in this area, fishing was prohibited, except by virtue of licence (Articles 5 and 10).

However, following the offshore concession of 10 October 1948, between Saudi Arabia and Aramco¹¹², according to which the latter was entitled to extract oil from the eastern region of the Kingdom, the Saudi Government was initially interested in establishing its claim over the submerged areas off the eastern coasts for the purpose of oil exploitation. On legal advice from Hudson and Young, the

international law experts who were required to lay down the rules governing the Saudi Arabian jurisdiction over those submerged lands¹¹³, the Kingdom, for the first time, defined its territorial waters by issuing the Royal Decree No. 6/4/5/3711 of 28 May 1949¹¹⁴. The Decree defined the Saudi Arabian territorial sea as embracing *both the inland waters and the coastal sea of the Kingdom*¹¹⁵. These waters, as well as the air space above and the soil and subsoil beneath them were claimed to be:

*under the sovereignty of the Kingdom, subject to the provisions of international law as to the innocent passage of vessels of other nations through the coastal sea*¹¹⁶.

The examination of these texts reveals a number of observations:

- (a) To describe the territorial sea, the Kingdom used the term “coastal sea”, which, besides the internal waters, form the Saudi “territorial waters”.
- (b) By adopting sovereignty rights over the territorial waters, air space above, and the soil and subsoil beneath them, the Kingdom clearly adopted the sovereignty theory.
- (c) Through this claim, Saudi Arabia recognised, without discrimination, the right of innocent passage in her coastal sea, and on the limits of this right, she asserted the ‘provisions of international law’ as the criterion. The legislation avoided making a direct reference to the question of the passage of warships. However, it is not expected that a state of great security concerns, such as Saudi Arabia, would expressly impose on itself such legal obligations in an area of law, which has long been one of the most controversial issues in the law of the sea¹¹⁷.

On 16 February 1958, the Kingdom repealed the 1949 Decree and redefined its claims to offshore authority by virtue of the Royal Decree No. 33¹¹⁸. In contrast to the Decree of 1949, the making of which was mainly based on economic considerations (specifically oil exploitation) in the Arabian Gulf on the east, the security factor concerning specifically the Israeli presence at the head of the Gulf of Aqaba in the Red Sea to the west, was the major motivation behind the issue of the new Decree and the timing of its issue. Article 2 of the Decree provides that:

The territorial waters of the Kingdom of Saudi Arabia, as well as the air space above and the territorial sea-bed and the subsoil beneath them are under the sovereignty of the Kingdom, subject to the established provisions of international law.

Article 4 provides that:

The territorial sea of the Kingdom of Saudi Arabia lies outside the inland waters of the Kingdom ...

The 1958 Decree then contains the following amendments:

- (a) The term “coastal sea” was omitted and replaced with the more commonly used term, “territorial sea”.
- (b) The 1958 Decree repeats the 1949 claim to the concept of “sovereignty” over the territorial sea, but it is noted that the reference to the right of innocent passage of other nations therein is omitted, and instead, the Saudi legislator was satisfied with the phrase *subject to the established provisions of international law*¹¹⁹.

By these amendments, it is clear that Saudi Arabia desired to bring her policies on the juridical nature of the territorial sea into line with the generally accepted international standards. First, as to terminology, the ILC preferred the term “territorial sea” to “territorial waters” and used it in Article 1 of its final draft submitted to the General Assembly¹²⁰. In its commentary on this question the Commission stated that:

The Commission preferred the term “territorial sea” to “territorial waters”. It was of the opinion that the term “territorial waters” might lead to confusion, since it is used to describe both internal waters only, and internal waters and the territorial sea combined. For the same reason, the Codification Conference also expressed a preference for the term “territorial sea”¹²¹.

The term was finally used in the 1958 Territorial Sea Convention and also, later on, in the 1982 Law of the Sea Convention. Secondly, the 1958 Decree repeated the formulation of 1949 as to the claim of “sovereignty” and its extent which includes the air space above and the soil and subsoil beneath the territorial sea. In so doing, Saudi Arabia followed the preference of the ILC, which incorporated this provision into its draft of 1956 to the GA¹²². The same provision, as seen earlier, was

included in the TSC and LOSC. Thirdly, with regard to limitations of sovereignty, it can be said that the omission by the 1958 Decree of the reference to “innocent passage”, included in the Decree of 1949 does not mean that it was the intention of the Saudi legislator to reject the principle of innocent passage in the Saudi territorial sea in as much as it was his desire to model the claim on the more common formulation tending to subjugate the exercise of the coastal state’s sovereignty in its territorial sea to the “provisions of international law”, the approach which was followed in the 1930 Hague Codification Conference and supported in the ILC debates before the 1958 Geneva Conference and was finally adopted in Article 1(2) of the TSC¹²³.

These Saudi national policies, which were approved only eight days before the commencement of the 1958 Geneva Conference on the Law of the Sea, were enthusiastically defended by the Saudi delegation to the Conference which witnessed an active Saudi participation. At the Thirteenth Meeting of the Conference First Committee, the Saudi representative, Shukairi, welcomed the ILC choice of the term “territorial sea” and referred to the adoption of this term by the Saudi Decree of 1958¹²⁴. He also:

*applauded the Commission’s wisdom in defining the juridical status of the territorial sea as well as in asserting the coastal state’s sovereignty over the air space above it and over the seabed and subsoil beneath it, in a manner consonant with existing international law, as formulated in the text adopted at the Hague Conference of 1930 and numerous international conventions*¹²⁵.

The question of innocent passage in the territorial sea, because of its relevance to the presence of Israeli warships in the Gulf of Aqaba and Strait of Tiran, was of particular importance to Saudi Arabia at the Conference. Being more concerned with her security, Saudi Arabia was, unlike certain maritime powers (specifically the US and UK), not interested in the right of innocent passage through the territorial sea or straits connecting one part of the high seas and another part of the high seas or the territorial sea of another state. In his comment on the statement of the UK representative on this question¹²⁶, Shukairi said:

In regard to the right of innocent passage, he agreed with the United Kingdom representative that it was analogous to a right of way but disagreed with that representative’s conclusion since,

*under every system of law the exercise of a right of way must be subject to law. Thus, an aggressor had no right of way through the property of his victim, and a state found guilty of a breach of the peace, a violation of international law or defiance of the United Nations Charter, was not entitled to a right of way through the territorial sea of a state directly affected by its actions. The right of innocent passage must be subject to the security of the state, since that was the basis of international law*¹²⁷.

In this statement, the Saudi representative's position was that Israel, as an aggressor, should not be allowed to enjoy the right of innocent passage in the Saudi Arabian territorial waters in the Gulf of Aqaba and the Strait of Tiran on the grounds that the Israeli presence in the Gulf of Aqaba was illegal¹²⁸. To this end, Saudi Arabia proposed an amendment to the US proposal which included that:

*passage is innocent so long as it is not prejudicial to the security of the coastal state. Such passage shall take place in conformity with the present rules*¹²⁹.

The Saudi amendment to the US proposal included the following:

*Passage is innocent if it is not prejudicial to the security of the coastal state. Such passage is not innocent when it is contrary to the present rules or to other rules of international law*¹³⁰.

Jointly with Burma, the Saudi delegation also repropounded another amendment, the wording of which differed only slightly:

*Passage is innocent unless it is prejudicial to the security of the coastal state or contrary to the present rules or to other rules of international law*¹³¹.

From the wording of the said proposals, it is clear that the US proposal was satisfied with the subjugation of the innocent passage regime to the "present rules", i.e. the rules which would have been included into the TSC, while the Saudi proposals added "or to other rules of international law". In that, the Saudi side appeared to have in mind what was established as a customary rule in the Corfu Channel case, according to which such a right is only allowed through the straits linking two parts of the high seas, an interpretation, which would entitle the Saudi authorities to suspend the passage of Israeli warships threatening the Kingdom's security in the Strait of Tiran connecting the Saudi territorial sea in the Gulf of Aqaba with the high seas in the Red Sea. At the Twenty-Ninth Meeting of the

Committee. Shukairi defended the inclusion of the phrase “or to other rules of international law” to Article 15 of the draft articles, saying that:

*Freedom of navigation was not an absolute right; sovereignty itself was not absolute. Both had to be exercised in accordance with international law, and the International Law Commission had felt it necessary to make that fact clear in the fundamental articles dealing with sovereignty over the territorial sea and with the meaning of the right of innocent passage*¹³².

Saudi Arabia has also connected the exercising of the right with the breadth of the territorial sea. In this regard, Shukairi said at the Twenty-Second Meeting of the Committee:

*The question of innocent passage ... could only be decided in the light of the breadth of the territorial sea. The conditions to which a state would subject the right of innocent passage would naturally depend on whether the territorial sea was wide or narrow*¹³³.

The extreme sensitivity of Saudi Arabia towards the question of innocent passage in the territorial sea was clearly reflected in the strong Saudi objection to the three-power amendment to Paragraph 4 of the Draft Article 17, which provided that:

*There shall be no suspension of the innocent passage of foreign ships through straits or other sealanes which are used for international navigation between a part of the high seas and another part of the high seas or the territorial waters of a foreign state*¹³⁴.

In his response to this proposal, Shukairi said:

*... Paragraph 4 was a most important provision; accordingly the amendments to it should be very carefully considered before they were put to the vote The right of innocent passage could be exercised only in recognized international seaways. ... The three-power amendment ... should be rejected, as it was in direct conflict with the accepted principles of international law ... His government's participation in the final act of the Conference would be conditional, among other things, on the rejection of the amendments to Article 17 ...*¹³⁵.

The Saudi representative strongly expressed his protest to the said amendment by further saying:

... the amendment text no longer dealt with general principles of international law, but had been carefully tailored to promote the

*claims of one state. His delegation would be unable to support a text that covered only one specific case*¹³⁶.

As to the innocent passage of warships in the territorial sea, Saudi Arabia rejected the complete freedom of such passage and connected it with the obtaining of prior permission. The Saudi representative, Shukairi, thus said at the Committee's Forty-Second Meeting:

*Authorities as respected as Oppenheim and Colombos were agreed that the waters of territorial straits were on the same footing as national waters, and it was clear that the presence of a foreign warship in any such strait could constitute the gravest of threats. In those circumstances, it would be unthinkable to permit warships to traverse such areas without authorisation*¹³⁷.

Citing Jessup on this question, Shukairi further argued that:

*The argument that warships should not enjoy complete freedom of passage was fully supported by Jessup, who compared the transit of such vessels through the territorial sea with the movement of any army across a foreign State's land territory*¹³⁸.

However, the final result of the long debates on these questions was that the three-power amendment, which became Article 16(4) of the TSC was finally adopted by 31 votes to 30 with ten abstentions¹³⁹, while the reference to the "right of innocent passage for warships" was omitted.

Having seen that the provisions of Article 16(4) of the TSC do not protect the Saudi security interests in the Strait of Tiran and the Gulf of Aqaba, the Kingdom refused to sign the Convention. The content of Paragraph 4 was described by the Saudi representatives as:

*mutilation of international law, containing ideas foreign to the principles of international law*¹⁴⁰.

The legal developments at UNCLOS I represented, on the one hand, by the adoption of Article 16(4) of the TSC and, on the other, by the failure to reach a resolution over the question of the territorial sea's breadth, influenced the Saudi Arabian position in UNCLOS II. The Saudi delegation strongly supported a 12 n.m. limit. Such an action was apparently seen by Saudi Arabia as very related to the question of innocent passage in the territorial sea¹⁴¹.

At UNCLOS III, despite the fact that Saudi Arabia did not abandon its previous claims over the territorial sea regime, it is noted that the Saudi position was less enthusiastic, particularly on the question of the breadth, perhaps because of the general acceptance that the 12 n.m. limit had started to gain in the circles of the Conference. Nevertheless, the Kingdom's worries as to the Israeli presence at the head of the Gulf of Aqaba were apparent in the Saudi position on the question of passage through straits. The point of view of Saudi Arabia was, as indicated in Chapter II¹⁴², that straits should not all be treated alike and that there should be a distinction between straits connecting two parts of the high seas, and those connecting one part of the high seas and another part of the territorial sea of a foreign state.

The outcome of UNCLOS III, in any case, was a compromise as to the Saudi claims. The LOSC, while re-adopting the non-suspendable innocent passage in straits connecting one part of the high seas or an EEZ and another part of the territorial sea of a foreign state (the case of the Strait of Tiran), adopted the regime of transit passage in straits connecting two parts of the high seas (the case of the Straits of Bab El-Mandeb and Hormuz), and further, the Convention allows the coastal state to extent its territorial sea up to 12 n.m. from the baselines.

These conclusions, although not fully satisfying Saudi Arabia, nonetheless, seemingly have been considered as to some extent "reasonable" by the Saudi side. Therefore, the Kingdom has recently ratified the LOSC, which means the acceptance without discrimination of all its provisions. The Kingdom, when ratifying the Convention, however, made two general declarations with regard to the question of innocent passage in its territorial sea. First, the Kingdom declared that:

*the Government of Saudi Arabia considers that the regime of innocent passage does not apply to the territorial sea of the Kingdom if there exists, seaward a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics*¹⁴³.

At first sight, it may appear from this declaration that the Kingdom sought to escape its commitments towards innocent passage in its territorial sea. However, that is not the case, since first, the Saudi authorities, when ratifying the

Convention, must have been aware of the content of its Article 309 which prohibits any reservations or exceptions being made to its provisions. Secondly, the Kingdom, elsewhere, has expressly declared its full commitment to the Convention, but rather she rejected any claims of any side which are in contradiction with the Convention's provisions¹⁴⁴. Thirdly, this declaration reflects the Saudi understanding of the purpose for which the principle of innocent passage in the coastal state's territorial sea has been accepted. That purpose is logically suggested to be to facilitate international navigation rather than merely to create a right for foreign states in a state's territory. Clearly, this declaration reflects the continuing attention paid by the Kingdom to its security interests, whether in the Red Sea or in the Arabian Gulf.

This factor, together with environmental considerations, lay behind the issue of another declaration on the innocent passage of foreign nuclear-powered ships and ships carrying nuclear or other dangerous or noxious substances. Having referred to Articles 22(2)¹⁴⁵ and 23¹⁴⁶ of the LOSC, Saudi Arabia declared that:

... the Kingdom of Saudi Arabia obliges the ships referred to, to obtain prior permission before entering to the territorial sea of the Kingdom until the international agreements, referred to in Article 23 are concluded, and the Kingdom accedes to them. In all cases, the flag state is liable for all losses or damages resulting from the innocent passage of these ships in the territorial sea of the Kingdom of Saudi Arabia¹⁴⁷.

The provisions of this declaration can be viewed as a sort of regulation allowable under the LOSC. Article 21 of the Convention entitles the coastal state to adopt regulations relating to innocent passage through the territorial sea, with regard to, *inter alia*,:

- *the safety of navigation and the regulation of maritime traffic;*
- *the protection of navigational aids and facilities and other facilities or installations;*
- *the protection of cables and pipelines;*
- *the conservation of the living resources of the sea; and*
- *the preservation of the environment of the coastal state and the preservation, reduction and control of pollution thereof.*

According to Article 25(3) of the LOSC:

The coastal state may, without discrimination in form or in fact among foreign ships, suspend temporarily in specified areas of its

territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security. ... Such suspension shall take effect only after having been duly published.

It is clear, then, from the foregoing discussion, that the Saudi practice as to the juridical nature of the territorial sea has been based on international standards. First, in relation to terminology, the Kingdom used the term "territorial sea", the term which was preferred by the ILC and adopted finally by the TSC and LOSC. Secondly, the Kingdom claimed "sovereignty" over her territorial sea, air space above, and soil and subsoil beneath them, a theory which was, as indicated above, accepted as a customary one and codified in the Law of the Sea Conventions. Thirdly, the Kingdom recognized the right of innocent passage of foreign vessels in her territorial sea. In that regard, the Kingdom at the start connected such recognition with what was acknowledged as a customary rule respecting specifically free navigation through straits linking two parts of the high seas or EEZs, rather than those linking one part of the high seas or an EEZ and another part of the territorial sea of a foreign state. However, when the law of the sea, as crystallized in the LOSC, became more balanced to take account of the interests of the international community as a whole, including the coastal states, the Saudi position, in the ratification of the LOSC, shifted to reflect the standards, although these standards, specifically on the question of straits, represent a departure from international custom.

5.2 The Extent of the Saudi Territorial Sea

As indicated earlier, the breadth of the territorial sea has been throughout the development of the law of the sea, one of the most controversial questions. It was the main reason for the failure of the 1930 Codification Conference. The First and Second UN Conferences on the Law of the Sea tried to agree upon a limit, but without success. That was mainly due to the instability of international state practice, since in many cases the practice of an individual state changed from time to time in accordance with the change of circumstances and interests. That is the case with Saudi Arabia. In her first claim over offshore areas, the Kingdom defined a fishery limit of 4 n.m. from the coasts of the Red Sea¹⁴⁸, but this claim was confined to fishery rights rather than the territorial sea in its wider conception.

However, on 28 May 1949, the Kingdom expressly defined her “coastal sea”, as it was then called, as extending six nautical miles beyond its internal waters¹⁴⁹. In 1958, and as mentioned above, for security considerations related, in the first place, to the Israeli presence at the head of the Gulf of Aqaba, Saudi Arabia changed her previous position and extended the territorial sea to twelve nautical miles¹⁵⁰.

The twelve mile limit for the territorial sea was strongly supported by the Saudi delegation to the 1958 Geneva Conference on the Law of the Sea. The Saudi delegate criticised the positions of the UK and US, who were against a 12 mile limit¹⁵¹, and described the position of the latter as *an insult to the intelligence of those who knew United States jurisprudence*¹⁵². The Saudi representative submitted his amendment to Article 3, formulated by the ILC on the breadth of the territorial sea, as he sought to insert the phrase “*save in historic waters*”¹⁵³ in any proposal for Article 3 which the ILC might eventually adopt. Clearly, the Saudi representative, by this amendment, had in mind the Gulf of Aqaba, considered then by Saudi Arabia as a historic one¹⁵⁴. The Saudi contention in this field was based on the fact that if the twelve mile limit was adopted in the Conference, this would mean that the Gulf of Aqaba waters (about 15 miles wide) would be Arab territorial seas. The adoption of such an approach, along with that rejecting international navigation through straits connecting one part of the high seas with another of the territorial sea of a foreign state, a view which was unsuccessfully supported by the Kingdom, would legally entitle the Saudi authorities to suspend the passage of Israeli warships through the Strait of Tiran and the Gulf of Aqaba, since Israel was in a state of war with the Kingdom, and the passage of its warships undoubtedly would prejudice the peace, good order and security of the Kingdom. In case agreement was not reached on a twelve mile extent, the Saudi delegation put forward an alternative resolution¹⁵⁵, by virtue of which, it was to be recognized, *inter alia*, that:

1. *international law does not permit an extension of the territorial sea beyond twelve miles; as well as,*
2. *the extension by a state of its territorial sea to a twelve mile limit is not a breach of international law.*

However, as known, neither agreement was reached on the territorial sea breadth question. Nevertheless, the Saudi Arabia arguments over the twelve mile limit and her proposal that such an extent “is not a breach of international law”, seem to have been taken into account by the ILC whose draft Article 3 provided that:

*the Commission consider that international law does not permit an extension of the territorial sea beyond twelve miles*¹⁵⁶.

At UNCLOS II, which was mainly concerned with the question of the breadth of the territorial sea, Saudi Arabia upheld her previous stance in challenging the position of certain maritime powers, namely the US and UK, which were against a 12 n.m. limit for the territorial sea. The importance of this question to the Saudis was apparent through the intensive participation of the Saudi delegation to the Conference. Shukairi, who headed the Kingdom’s delgation, expressed the Saudi viewpoint at the First Meeting of the Committee of the Whole (21 March 1960) by saying:

... the breadth of the territorial sea was the key to the entire question of the law of the sea, in times of peace as in times of war
...¹⁵⁷.

He elaborated on the issue and to support the 12 n.m. limit, he cited a number of western precedents and the works of western jurists¹⁵⁸. Among those whom he cited was Lauterpacht, who concluded that:

*With regard to the breadth of the maritime belt, various opinions have in former times been held and quite exorbitant claims have been advanced by different states, such as a range of sixty or a hundred miles ...*¹⁵⁹.

Having cited at length, the American Jefferson, who enumerated the extent of the territorial sea to be three miles, nine miles and twenty miles¹⁶⁰, Shukairi stated that:

*Thomas Jefferson seems to live, to argue, to advocate with us in this Conference, pleading for all draft resolutions based on twelve miles. The position he explained in 1793 is the same position that prevails in the Conference now in 1960. Thomas Jefferson spoke of a friendly conference. We are now in a Conference - friendly we wish it to be. He spoke of the law being unsettled, and that is why we met in the past at the Hague, why we meet at present now in Geneva, and why we might perhaps meet in the future*¹⁶¹.

Together with seventeen other states, Saudi Arabia introduced the so-called “The eighteen-power proposal”, which provides in its Article 1 that:

*Every state is entitled to fix the breadth of its territorial sea up to a limit of twelve nautical miles measured from the applicable baseline*¹⁶².

This proposal was rejected by 39 votes to 36, with 13 abstentions. On the other hand the US, through a joint proposal with Canada, resubmitted the six-mile formula¹⁶³. In his comment on this proposal, the Saudi representative said:

*The joint proposal was designed to override the interests of other states, and primarily to defeat the efforts of those which advocated a twelve mile limit. The six mile formula had been conceived as part of the cold war between the major powers, and the rest of the world had no choice in the matter*¹⁶⁴.

The Saudi position, then, was that political considerations should be kept away from legal matters and due regard paid to the security considerations of all parties, without discrimination. To this end, Shukairi concluded that:

*The concern of the United States Government, and of any other Government, for its country's security was laudable and legitimate; what he objected to was the attempt to harness the entire Conference to the interests and fears of a certain group of states without the slightest regard for the equally legitimate interests and apprehensions of other states*¹⁶⁵.

However, the result of the Second Conference was the same as that of the first, as all proposals submitted to the Conference were defeated, and no agreement on the question of the territorial sea breadth was reached.

At UNCLOS III, the position dramatically shifted since by the closing stages of the Conference, the great majority of states claimed, as mentioned earlier¹⁶⁶ territorial seas of 12 n.m. or even more. Thus, the trend towards the adoption of the 12 n.m. limit seemed irresistible. These considerations overshadowed the activeness of the Saudi delegation in the Conference. The Saudi representative, Al-Shuhail, was satisfied, on this question, with the indication that:

*Saudi Arabia had set a 12 mile limit for its territorial waters*¹⁶⁷.

From the above analysis, it is obvious that the Saudi practice on the territorial sea limit was greatly influenced by its security interests. She adopted a

12 n.m. limit for her territorial sea just days before the opening of UNCLOS I. In so doing, Saudi Arabia probably wanted to make quite clear her position on what she considered as a vital question for her security, i.e. the breadth of the territorial sea, which was still, then, a highly controversial area of law. Moreover, the Saudi Government seemingly wanted to strengthen its negotiating position at the Conference, especially since as was pointed out in Chapter II, all indications suggested that there would be strong opposition to the approach of a 12 n.m. limit for the territorial sea, as indeed proved to be the case. Saudi Arabia defended her policy at both UNCLOS I and UNCLOS II, and in that, she invoked western sources and legal precedents. The Saudi practice on the territorial sea limit has undoubtedly contributed to the development of international law on this question which has, until recently, been a major obstacle in the development of the law of the sea.

5.3 The General Principles in Delimiting the Saudi Territorial Sea

The delimitation of the maritime zones, whether between adjacent or opposite states, because of the potential problems to which it could lead, received, as indicated above, a great deal of discussion in the Law of the Sea Conferences. As to the territorial sea, this matter gains serious importance when two states make claims to waters which overlap. That is the case between Saudi Arabia and certain opposite states. In the Arabian Gulf, the distance between the two coasts of the Kingdom and Bahrain ranges between nine and fifteen miles¹⁶⁸. With Qatar, the distance diminishes the more we head towards the southern maritime boundary point, where the two states (Saudi Arabia and Qatar) become adjacent rather than opposite. On the Red Sea, the Gulf of Aqaba, situated between Saudi Arabia and Egypt, is about fifteen miles in width¹⁶⁹. Hence, there is, inevitably, overlapping between the territorial seas of the Kingdom and these three states, i.e. with Qatar and Bahrain, in the Gulf¹⁷⁰, and Egypt in the Red Sea, which in 1958¹⁷¹ has redefined her territorial sea as 12 n.m.

This situation has been taken into account by the Saudi legislator. Repeating what was previously adopted under Article 8 of the 1949 Decree, Article 7 of the 1958 Decree states that:

if the territorial sea ... be overlapped by the waters of another state, boundaries will be determined by Our Government in agreement with that state in accordance with equitable principles.

Thus, the Saudi legislation considers “reaching an agreement” as the first choice in deciding an overlapping territorial sea case. However, international law goes further by mentioning expressly the “median line” rule as an alternative, resorted to in the absence of agreement between the states concerned, which becomes inapplicable in the existence of historic title or other special circumstances¹⁷². The Saudi approach, on the other hand, goes further than conventional rules, by referring explicitly to the ground on which a maritime boundary agreement should be based, i.e. “equitable principles”. In so doing, the Saudi claim leaves the door open for any acceptable political solution, including the “median line”. Nevertheless, the latter method, in any case, was expressly stipulated in the 1965 Agreement between the Kingdom and Qatar (Article 3)¹⁷³ and more recently the Saudi Foreign Ministry Declaration of 1974 concerning the Limits of the Exclusive Fishing Zones of Saudi Arabia in the Red Sea and the Arabian Gulf¹⁷⁴. However, the application of the median line rule itself would have to be a subject of agreement, in the light of the problems likely to arise from the baseline methods applied by either states concerned¹⁷⁵. The Kingdom has concluded several maritime boundary agreements with certain states in the region, such as Iran, Bahrain, Qatar, Kuwait and the UAE. These agreements will be discussed in Chapter IV¹⁷⁶. With Yemen, both parties are currently involved in serious negotiations in order to settle their land-maritime boundaries¹⁷⁷. The Kingdom, however, still has to negotiate agreements with Eritrea, Sudan, and Egypt. With the latter, the Kingdom, as mentioned in Chapter II, has to negotiate further agreement to settle the problem of Tiran and Sinafir islands, located in the Saudi territorial sea in the Gulf of Aqaba, both owned by Saudi Arabia, but still controlled by Egypt¹⁷⁸.

In conclusion, it should be emphasised that despite the fact that the Saudi practice is in general agreement with the international standards concerning the various legal aspects of the territorial sea, including its delimitation, it is noticeable that the Kingdom still needs to enact supplementary bills to her regulations. Such bills should comprise precise definitions of the rights and duties of the Kingdom

over her territorial seas and the vessels passing through them in the Gulf and the Red Sea, a precise definition of the innocent passage concept, the conditions which foreign ships (especially warships) should fulfil to enjoy it, and sea lanes and traffic separation schemes in the territorial sea of the Kingdom, taking into account the provisions of international law.

Part II: The Contiguous Zone

The contiguous zone is an area of sea contiguous to the territorial sea, in which the coastal state exercises certain limited and defined competence, mainly administrative and police functions necessary to prevent and punish the infringement of its fiscal, sanitary, customs and immigration regulations¹⁷⁹. The zone is now firmly established in the law of the sea, but like many other legal regimes, it was not until 1958 that the contiguous zone took its form as an international legal concept. In what follows, there will be an attempt to examine the development of this concept and its legal status.

1. The Development of the Concept

1.1 Early Trends

The modern contiguous zone, argues Lowe, is the result of the coming together of distinct kinds of claims of maritime jurisdiction identifiable in state practice¹⁸⁰. The concept finds its origins in the series of so-called “Hovering Acts”, enacted by Great Britain throughout the eighteenth and nineteenth centuries¹⁸¹. Under these Acts, which were mainly made for the purpose of facing the problem of smuggling to and from the British shores, the extent of seaward jurisdiction was not uniform, since it ranged between two leagues¹⁸², three leagues¹⁸³, four leagues¹⁸⁴ and one hundred leagues¹⁸⁵.

Similar “Hovering Acts” were adopted elsewhere, but the US practice in this respect was the most prominent. In order to prevent smuggling to her coasts, the US passed her first act on 2 March 1799¹⁸⁶, in which a four-league (twelve-mile) limit was enforced. This approach was supported by the US Supreme Court in certain cases which were brought before it, such as the 1804 Church v. Hubbart case¹⁸⁷ and the 1810 Hudson v. Guestier case¹⁸⁸. Through the Tariff Act of

1922¹⁸⁹, the US gave further thrust to the enforcement of the said limit¹⁹⁰. Around the same time, other states claimed a zone beyond the territorial sea in which they exercised the right of policing for customs and security purposes. Such was the case with Chile in 1855¹⁹¹, Ecuador in 1857¹⁹², El Salvador in 1860¹⁹³, Argentina in 1869¹⁹⁴, Cuba in 1901¹⁹⁵ and Honduras in 1906¹⁹⁶. However, on the question of jurisdiction beyond the three mile limit, state practice in the period that preceded the Hague Codification Conference was not uniform. But a wider extent of territorial jurisdiction found support from some jurists, such as Fiore¹⁹⁷ and Oppenheim, who found that coastal states had a right, under customary law, to protect their revenue and sanitary laws by imposing certain duties on vessels bound for their ports, although not yet within the maritime belt¹⁹⁸.

1.2 In the Law of the Sea Conferences

By 1930, state practice tended to agree upon certain aspects; thus, Basis No. 5 of the Basis of Discussion, prepared before the 1930 Codification Conference contained a provision giving the coastal state the right to prevent infringements of customs, sanitary or security laws in a zone adjacent to its territorial sea¹⁹⁹. At the Conference itself, some maritime powers, such as the US, UK, and Japan opposed this idea²⁰⁰. The disagreements on the question included the nature of the rights exercised in the proposed zone²⁰¹. Thus, no agreement was reached on the question in the Conference.

The years that followed the 1930 Conference witnessed more tendency in state practice towards the adoption of the contiguous zone as a regime distinguished from the territorial sea, and for various purposes. In 1931, Colombia claimed an extended customs zone of 20 kilometres²⁰². Ecuador claimed in 1934 a fishery zone of 6 miles²⁰³ and 15 miles concerning the Colony Archipelago in 1938²⁰⁴. In 1934, France claimed jurisdiction over a zone of 6 miles for defence purposes²⁰⁵, and of 20 kilometres in Indo-China in 1936²⁰⁶. A twelve mile zone was established by Argentina in 1943²⁰⁷, Chile in 1941²⁰⁸, and Cuba in 1942²⁰⁹. A six mile zone was claimed by other states, such as Saudi Arabia in 1949²¹⁰, and Egypt in 1951²¹¹. In 1958, Iraq claimed an indeterminate contiguous zone²¹².

The evident increasing desire on the part of states to adopt the concept of the contiguous zone made the atmosphere conducive to accepting the regime at UNCLOS I. Thus, the preparatory works and deliberations of the Conference on the subject of the contiguous zone focused upon the limits of interests that could be protected within the zone, rather than the very adoption of the regime itself. In its Commentary on Article 66 of the final draft text adopted in 1956 which provided for the establishment of the zone, the ILC stated that:

*Many States have adopted the principle that in the contiguous zone, the coastal State may exercise customs control in order to prevent attempted infringement of its customs and fiscal regulations within its territory or territorial sea, and to punish infringements of those regulations committed within its territory or territorial sea. The Commission considered that it would be impossible to deny to States the exercise of such rights.*²¹³

Article 66 of the final draft text of the Commission provided for the establishment of a 12 mile zone to prevent and punish infringements of customs, fiscal and sanitary regulations of the coastal state, but no fishing, security or immigration rights were recognized as being protected within the zone²¹⁴. However, later on, a proposal submitted by Ceylon, envisaging control of immigration was adopted²¹⁵. As a first treaty law, the 1958 Geneva Convention on the Territorial Sea stipulates in its Article 24 that:

1. In a zone of the high seas contiguous to its territorial sea, the coastal State may exercise the control necessary to:

(a) prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea;

(b) punish infringement of the above regulations committed within its territory or territorial sea.

2. The contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured.

The regime, however, was preserved in the 1982 United Nations Convention on the Law of the Sea (Article 33), but with certain changes. First, the status of the zone is no longer a part of the high seas in the light of the creation of the new regime of the exclusive economic zone (EEZ), which is superimposed on

it. Second, the farthest permissible extent of the zone has been doubled from 12 to 24 miles. This alteration appears to have come as a result of the accepted twelve miles territorial sea limit. Thirdly, the provision governing the delimitation of zones between the states of opposite or adjacent coasts which was included in Article 24 of the TSC, was omitted from the corresponding article of LOSC (i.e. Article 33).

2. The Legal Status of the Zone

The language used in both Article 24 of TSC and 33 LOSC shows that the right of the coastal state to claim a contiguous zone is of a permissive, rather than an obligatory nature. Accordingly, no state is under obligation to claim the zone, and countries which do so, are not obliged to claim the maximum extent permissible. However, for the legal regime of the zone, there has been some difference between the approaches of the two Conventions. Under the TSC, the contiguous zone is regarded as an area of the high seas adjacent to a state's territorial sea, and over which the riparian state may exercise particular rights, specially to enforce certain territorial sea laws. Such rights in the contiguous zone do not amount to sovereignty²¹⁶. The status of the zone as being part of the high seas has serious implications, as the rights permitted to be exercised by the state are non-exclusive and non-proprietary, but only limited to control and policing rights derived from international law rather than its national law²¹⁷. Therefore, it has been said that exclusive fisheries rights in the high seas cannot derive from or constitute any general international principle²¹⁸.

However, under the 1982 United Nations Convention, the legal status of the contiguous zone has changed, by the creation of the exclusive economic zone regime, although the list of purposes has been preserved. Article 33 of the LOSC does not describe the zone as an area of the high seas, but solely as an area contiguous to the territorial sea. If we read this provision in connection with Article 55 which describes the EEZ as an area beyond and adjacent to the territorial sea, we find that where an EEZ is claimed, the contiguous zone (if claimed) falls within it and not the high seas. As a result, any presumption against the coastal state jurisdiction is removed and where a dispute arises concerning a

claim by a coastal state to jurisdictional rights not expressly granted under the LOSC, the question is to be decided, argue Churchill and Lowe:

*on the basis of equity ... taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole*²¹⁹.

However, in the absence of a claim to an EEZ, the areas concerned are to be considered, in the light of the provisions of Article 24 of TSC and 86 of LOSC, as part of the high seas.

To this, it is to be added finally that from within the contiguous zone, the coastal state is entitled to undertake hot pursuit of a foreign ship which violates its laws regulating the rights for the protection of which the zone was established, and such pursuit may be continued providing it has not been interrupted²²⁰.

3. Saudi Arabia's Position on the Contiguous Zone

In 1949, Saudi Arabia, for the first time claimed a contiguous zone separate from the existing breadth of the territorial sea and extending for a distance of six nautical miles from the outer limit of her respective six mile "coastal sea". It was stated under Article 9 of the 1949 Royal Decree²²¹ that the purpose of establishing this "surveillance" zone was:

to assure compliance with the laws of the Kingdom relating to security, navigation, and fiscal matters.

From examination of these provisions, the following remarks can be made:

- (a) The Decree did not refer to the zone as part of the high seas, but as a zone "outside the coastal sea", and this is what has been stipulated, as indicated earlier, in the LOSC.
- (b) The rights stipulated to be included by supervision in the zone were security, navigation and fiscal rights. Comparing this list with that adopted under Articles 24 and 33 on the TSC and LOSC respectively, it appears that the Saudi legislation put aside the customs and sanitary matters from such supervision, but on the other hand, it included navigation and security interests as subject to the Kingdom's jurisdiction;
- (c) The Saudi Decree claimed a six miles contiguous zone, to be added to a six miles territorial sea. In so doing, it appears that the Saudi legislation is in line

with the provisions of Article 24 of TSC, but it does not amount to that limit permitted by the LOSC, which stipulated in its 33 Article a maximum extent of twenty-four miles for both the territorial sea and contiguous zone, measured from the baselines.

In 1958 by virtue of the Royal Decree No. 33²²², the Kingdom extended her territorial sea to twelve miles, but the six miles contiguous zone claim was left unchanged. Article 8 provides that:

With a view to assuring compliance with the laws of the Kingdom relating to security, navigation, fiscal and health matters, maritime surveillance may be exercised in a contiguous zone outside the territorial sea, extending for a distance of six nautical miles ...

Examining these provisions, it is to be observed that:

- (a) On the question of breadth, the Saudi legislation does not grant the Kingdom the legitimate limit recognized by the LOSC, since, as mentioned above, under the latter, the breadth of the territorial sea and contiguous zone altogether could amount to twenty-four miles, and consequently, when a state claims a three mile limit territorial sea, it may legitimately claim a contiguous zone of up to twenty-one miles. In the Saudi legislation, this distance has been fixed at six miles.
- (b) As to the nature of functions exercised within the zone, the right of supervision over security, navigation and fiscal matters has been retained. Further, the right to supervise “health matters” has been added to the said list. But, on the other hand, there is no reference to the jurisdiction over immigration and customs matters, referred to in the Law of the Sea Conventions.

Thus, these provisions which confirm the supervision right of the Kingdom over both the fiscal and health matters, are in agreement with international rules, but the Saudi legislator, unjustifiably, put aside, where he should not do so, the two issues of customs and immigration from the right of national jurisdiction. In return, he restated the jurisdiction claim over the two issues of navigation and security. On the question of security in particular, Saudi Arabia followed the 1930 Codification Conference, where the right of the coastal state to “prevent interference with its security by foreign ships” was proposed in the Bases of Discussions, along with the right of control over customs and sanitary issues²²³. At

UNCLOS III, this position changed, as the security function was omitted. Jointly with a number of states, the Kingdom proposed that:

in an area within the economic zone ... the coastal state may exercise the control necessary to:

(a) *Prevent infringement of its customs fiscal, immigration or sanitary regulations within its territory or territorial sea ...*²²⁴,

the formulation, which was adopted previously in the TSC, and subsequently in the LOSC. However, in practice, the Kingdom, which has just recently ratified the LOSC, has to reflect her tendency as marked at UNCLOS III. In other words, the claim to jurisdictional rights in her contiguous zone should be omitted as to security and navigation and included with regard to customs and immigration matters. The Kingdom is also invited to take advantage of the relevant LOSC provisions allowing the coastal state to enlarge her contiguous zone six miles further, something which will guarantee her full enjoyment of all rights permitted to be exercised in the zone²²⁵.

Conclusion

From the foregoing analysis of the international rules concerning the two regimes of the territorial sea and the contiguous zone, and the Saudi Arabian practice as expressed both in the Saudi national legislation and through the Saudi participations to the Law of the Sea Conferences, it is clear that the Kingdom's claims are generally established to cope with the international standards as reflected first in the majority of state practices and as formulated later, in international conventions. The Kingdom, in her practice, appears to be aiming at full agreement with the internationally accepted criteria, although she is not a party to any of the 1958 Geneva Conventions on the Law of the Seas, and has ratified the LOSC only very recently. In this respect, the Kingdom has made some amendments to her claims in conformity with the international preference. In 1958, for instance, the terms "territorial waters" and "coastal sea" were replaced by "territorial sea". Also the territorial sea has been extended from six miles (in 1949) to the internationally

accepted breadth of twelve miles. Further, the Kingdom at UNCLOS III joined in submitting a proposal by virtue of which it appears that she abandoned her claim to include “security” and “navigation” within the list of rights permitted to be supervised in the contiguous zone. In fact, the Saudi claim in some cases is less than that permissible by international standards. That is the case with the contiguous zone, claimed to be six miles in the Saudi regulations, although it is permitted, together with the territorial sea, to reach up to twenty-four miles. Thus, it is time for the Saudi legislation to be reviewed in such a way as to enable the Kingdom on the one hand to enjoy all rights granted by international law, and on the other, to express explicitly, through its national legislation, the conformity between her own regulations and the international practice as reflected Law of the Sea Convention.

NOTES TO CHAPTER III

1. David L. Larson. "Conventional, Customary, and Consensual Law in the United Nations Convention on the Law of the Sea". 25 *ODIL*, (1994), p. 75, at p. 81.
2. For further details on this issue, see O'Connell, *op. cit.*, Chapt. I, note 2, pp. 60-123.
3. *Ibid.*, pp. 71-75.
4. For the text, see II *LNTS*, p. 174. The Convention was ratified by thirty-eight states, but it terminated in 1947.
5. 106 *BFSP*, at p. 967.
6. 10 and 11 George 5, The Law Reports, (1920), Chapt. 80, at p. 540.
7. The Court held that a cession of land territory automatically carried with it a cession of the appurtenant maritime territory. See 4 *AJIL*, (1910), p. 226, at p. 231.
8. The Court declared, *inter alia*, that: *the marginal strip of territorial waters based originally on the cannon-shot was founded on the necessity of the riparian state to protect itself from outward attack, by providing something in the nature of an insulating zone*. See XI *RIAA*, p. 167, at p. 205..
9. D. P. O'Connell. "The Juridical Nature of the Territorial Sea". XIV *BYIL*, (1971), p. 303, at p. 343.
10. The others are: state responsibility and nationality.
11. LoN Doc., C. 74, M. 39, (1929), V. It is to be noted that the Rapporteur of the Preparatory Committee had a different view. In his report of 1927 he found that: *the only valid theory is that of the right of dominion of the coastal state over the territorial sea ...*, see LoN Doc., C 196, M. 70, (1927), pp. 31, 32. See O'Connell, *op. cit.*, Chapt. I, note 2, pp. 75-76.
12. See the replies of Governments in LoN Doc. C. 74. M. 39., (1929), V, pp. 18-21; O'Connell, *ibid.*, at p. 76.
13. Suppl. to 24 *AJIL*, (1930), at p. 239.
14. *Ibid.*, at p.240. For further details on the sovereignty question over the bed and subsoil of the territorial sea, see G. Marston, "The Evolution of the Concept of Sovereignty over the Bed and Subsoil of the Territorial Sea", XLVIII *BYIL*, (1976-77), pp. 321-32.
15. *Ibid.*, at p. 239.
16. *Ibid.*, at p. 240.
17. *ILC Ybk.*, vol. 2, (1952), at p. 28.
18. Article 1 of the Convention confirms that *every state has complete and exclusive sovereignty over the airspace above its territory*, while Art. 2 defines the state's territory as *the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such state*. For the text of the Convention, see, McNair, The Law of the Air, 3rd ed., London, Stevens & Sons, (1964), Appendix 2 at p. 402; Suppl. to 39 *AJIL*, (1945), at p.122.
19. H. Lauterpacht, *op. cit.*, Chapt. I, note 6, at p. 487.

20. C. J. Colombos, *op.cit.*, Chapt. I. note 4, at p. 91.
21. O'Connell, *op. cit.*, Chapt. I. note 2, at p. 59.
22. W. E. Hall, A Treatise on International Law, 8th ed., Oxford, Clarendon Press, (1924), at p. 190.
23. J. Westlake, International Law, Part I, Cambridge, Cambridge University Press, (1904), at p. 183.
24. See O'Connell, *op. cit.*, Chapt. I. note 2, p. 82.
25. Constitution of the Dominican Republic of 1947 (as amended), *UN Leg. Ser. ST/LEG/SER.B/6*, (1957), at p. 11.
26. *Ibid.*, B/16, at p. 28.
27. See, for instance, Art. 1 of the Argentina Law No. 17, 094-M24 of 29 December 1966. in *Ibid.*, B/15, at p.45.
28. See, for instance, Art. 6 of the Constitution of the Republic of Costa Rica of 7 November 1949 in *Ibid.*, B/6, at p.6.
29. *Op. cit.*, Chapt. II, note 62.
30. TSC, Arts. 1 and 14-23, LOSC Arts. 2 and 17-32.
31. O'Connell, *op. cit.*, Chapt. I. note 2, p. 83.
32. See *supra*, pp. 9-11.
33. See C. Colombos, *op. cit.*, Chapt. I, note 4, pp. 92-94.
34. See Sayze A. Swarztrauber, The Three-Mile Limit of Territorial Seas, Maryland, Naval Institute Press, (1972). pp. 23-35; W.L. Walker, "Territorial Waters: The Cannon Shot Rule", XXV *BYIL*, (1945), pp. 210-31.
35. *Ibid.*, pp. 24-33.
36. See B.G. Heinzen, "The Three Mile Limit: Preserving the Freedom of the Seas", 11 *STLR*, (1958-59), p. 597. pp. 605-12.
37. W.L. Walker, *op. cit.*, note 34, pp. 214-18; S.A. Swarztrauber, *op. cit.*, note 34, pp. 51-52.
38. Act of June 4, 1794, in I Statutes, Chapt. 50, 6, (1845), p. 384. The statute provided that: *the district courts shall take cognizance of complaints by whomsoever instituted, in cases of captures made within the waters of the United States, or within a marine league [i.e. three miles] at the coasts or shores thereof.* Quoted in B. G. Heinzen, *op. cit.*, note 36, at p. 615.
39. In this case, Lord Stowell indicated that the capturing vessel was *lying in the Eastern branch of the Eems, within what may I think be considered as a distance of three miles, at most, from East Friesland ... I am of the opinion, that the ship was lying within those limits, in which all direct hostile operations are by the law of nations forbidden to be exercised.* See K.R. Simmonds ed., Cases on the Law of the Sea, vol. I, Dobbs Ferry, New York, Oceana Publications, Inc., (1976), p. 1, at p. 3.

40. The award of the Court delivered by Lord Stowell provided that: *...since the introduction of the fire arms, that distance has usually been recognized to be about three miles from the shore. Ibid., p. 51, at p. 66.*
41. 6 *BFSP*, p.3. In this convention, the United States renounced any liberty *enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in America.*
42. Art. 2340 of the Civil Code of 29 September 1869, for the text, see *UN Leg.Ser. ST/LEG/SER.B/1*, (1951), at p. 51.
43. Art. 593 of the Civil Code of 14 December, 1855, in *Ibid.*, at p.61.
44. Art. 582 of the Civil Code of 21 November, 1857, in *Ibid.*, at p. 67.
45. Art. 574 of the Civil Code of 1860, in *Ibid.*, p. 71. For further details on the evolution of the three-mile limit in the early twentieth century, see S.A. Swarztrauber, *op. cit.*, note 34, pp. 108-30.
46. For text, see Papers Relating to the Foreign Relations of the United States, Washington, Government Printing Office, (1988), at p. 438. The Parties of the Conventions were: UK, Germany, Prussia, Belgium, Denmark, France and the Netherlands.
47. See *supra*, Chapt. II, note 179. For further details see S.A. Swerztrauber, *op. cit.*, note 34, pp. 64-88.
48. See the Report of the Second Committee and the various views of states attending the Conference in Suppl. to 24 *AJIL*, (1930), pp. 234 and 253.
49. S. A. Swarztrauber, *op. cit.*, note 34, at p. 209.
50. In his first report submitted to the fourth session of the ILC in 1952, Francois proposed a territorial sea maximum width of 6 n.m., and shifted his proposals to 12 n.m. in 1953 and 1954. *ILC Ybk.* Vol. 2, (1952), p. 28; *ILC Ybk.*, vol. 2 (1953), p. 59; *ILC Ybk.*, vol. 1, (1954), p.2.
51. For further details, see A.H. Dean, *op. cit.*, Chapt. I, note 43, pp. 751-89, particularly, pp. 772-86.
52. D.L. Larson, *op. cit.*, note 1, p. 75, at p. 82.
53. UNCLOS III, Official Records, vol. III, Doc. A/CONF.62/C.2/L.10, at p. 89.
54. *Ibid.*, at p. 190.
55. In his statement in the 38 plenary meeting of the Caracas Second Session, the American representative, Mr. Stevenson indicated that his country: *was prepared to accept ..., as apparently were the majority of delegations, general agreement on a 12 mile outer limit for the territorial sea ... Ibid.*, vol. 1, at p. 160.
56. *Ibid.*, vol. III, Doc. A/CONF.62/C.2/L.3, p. 183. By the Territorial Sea Act 1987, which came into force on 1 October 1987, the UK extended her territorial sea from three to twelve miles. For the text, see 3 Current Law Statutes, (1987), Chapt. 49.
57. *Ibid.*, Doc. A/CONF.62/C.2/L/26, p. 203. Having referred to the general acceptance of the 12 n.m. limit by most states, the Soviet representative stated in the 22nd plenary meeting of the Second Caracas Session declared that: *Embodying it (the 12 mile limit)*

in an international convention would mean that a widely accepted international practice would become international law. Ibid., vol. I, at p. 68.

58. UNCLOS III, Informal Single Negotiating Text, UN.Doc. A/CONF.62/WP.8/Part II, (1975).
59. R. W. Smith, "Global Maritime Claims", 20 *ODIL*, (1989), p. 83, at pp. 100-101.
60. Churchill and Lowe, *op. cit.*, Chapt. I, note 10, at p.67.
61. F. Mgantcha, The Right of Innocent Passage and the Evolution of the International Law of the Sea, London and New York, Printer Publishers, (1990), at p. 56.
62. It should be noted that the LOSC in Art. 19(2) has developed the notion of innocent passage contained in Art. 14(4) of the TSC by the addition of examples of prejudicial passage. Having enumerated eleven cases of non innocent passage, the Convention concluded: *any other activity not having a direct bearing on passage*. The addition of the last paragraph reflects, the great concern with the innocence of passage in the territorial sea of the coastal state during the discussion of the question in UNCLOS III.
63. See Colombos, *op. cit.*, Chapt. I, note 4, at p. 132.
64. See A. D. Pharand, "Innocent Passage in the Arctic", VI *CYIL*, (1968), p. 3, at pp. 4-6.
65. See F. Mgantcha, *op.cit.*, note 61, pp. 40-41.
66. See 24 *AJIL*. (1930), pp. 240-41.
67. W. W. Bishop, International Law: Cases and Materials, 2nd ed., Boston and Toronto, Little, Brown and Company, (1962), p. 512, at 513.
68. *ICJ Repts.* (1949), p. 4, at 28.
69. W.E. Hall, *op. cit.*, note 22, at p. 198.
70. Arguing on behalf of the Government of the United States in the North Atlantic Fisheries case of 1910, E. Root said that: *warships may not pass without consent into this zone, because they threaten*. quoted in Phanand, *op.cit.*, note 64, at p. 8.
71. H. Lauterpacht, *op. cit.*, Chapt. I, note 6, at p. 494.
72. C. J. Colombos, *op. cit.*, Chapt. I, note 4, at p. 133.
73. See 24 *AJIL*, (1930), p. 246.
74. *ILC Ybk.*, vol. 2, (1956), pp. 276-77.
75. See, for example, the joint proposal submitted by Bulgaria and Soviet Union in UNCLOS I, Official Records, vol. III, (1958), Doc. A/CONF.13/C.1/L.46, p. 223, and see also the arguments of the Soviet and British representatives to the Conference at 78, 94, 130, and 133.
76. In this regard, Jessup says: *the implication is that warships do have the right of innocent passage*, see P. C. Jessup, *op. cit.*, Chapt. I, note 33, at 248.
77. Gerald Fitzmaurice, "Some Results of the Geneva Conference on the Law of the Sea", 8 *ICLQ*. (1959), p. 73, at 102.

78. See Tunkin. "The Geneva Conference on the Law of the Sea", 7 *International Affairs* (Moscow), (1958), p. 47, at 49.
79. The draft articles, submitted by Bulgaria, German Democratic Republic, Poland, and the Soviet Union contained no reference to prior notification or authorization requirements. see UNCLOS III, Official Records, vol. III, Doc. A/CONF.62/C.2/L.26, p. 203, Art. 26, at p. 205. See also Shao Jim. "The Question of Innocent Passage of Warships after UNCLOS III", 13 *MP*, (1989), pp.56-67.
80. Art. 8 of Rules For Navigation and Sojourn of Foreign Warships in the Territorial and Internal Waters and Ports of the U.S.S.R., in 24 *ILM*, (1985), p. 1715.
81. Art. 2. For the text, see 84 *AJIL*, (1990), p. 239; 21 *ODIL*, (1990), pp.114-15. See L. Juda. "Innocent Passage by Warships in the Territorial Sea of the Soviet Union: Changing Doctrine", 21 *ODIL*, (1990), pp. 111-16, and B. Kwiatkowska. "Innocent Passage by Warships: A Reply to Professor Juda", also in 21 *ODIL*, (1990), pp. 447-50.
82. See the joint draft articles, submitted by Malaysia, Morocco, Oman, and Yemen in UNCLOS III, Official Records, Vol. III, Doc. A/CONF.62/C.2/L.16, p. 192, art. 15(3), at 194.
83. O'Connell, *op. cit.*, Chapt. I, note 2, at p. 292.
84. E. Somers. "The Problem of the Wielingen: The Delimitation of the Belgian Territorial Sea with Respect to the Netherlands", 3 *IJECL*, (1988), p. 19, pp. 19-20.
85. L. Legault and B. Hankey, "Method, Oppositeness and Adjacency, and Proportionality in Maritime Boundary Delimitation" in J. I. Charney and L. M. Alexander, International Maritime Boundaries, Vol. I. Dordrecht/Boston/London, Martinus Nijhoff Publishers, (1993), pp. 203-41, at p. 215.
86. See *supra*, pp. 54-66.
87. O'Connell, *op. cit.*, Chapt. I, note 2, at p. 659.
88. *Ibid.*, pp. 659 and 667.
89. The word "thalweg" is a German one, composed of two separate words, "thal" i.e. a valley, and "weg" i.e. way. See J. I. Charney, "The Delimitation of Lateral Seaward Boundaries between States in a Domestic Context", 75 *AJIL*, (1981), p. 28, at pp. 46-48; P. Bravender-Coyle, "The Emerging Legal Principles and Equitable Criteria Governing the Delimitation of Maritime Boundaries between States", 19 *ODIL*, (1988), p. 171, at pp. 179-80.
90. Art. 1 of the Agreement. For the text of the Agreement, see 18 & 19, George 5, The Law Reports, (1928), Chapt. 23, at p. 182.
91. 106 *BFSP*, at p. 782.
92. 83 *BFSP*, at p.916.
93. O'Connell, *op. cit.*, Chapt. I, note 2, at p. 659.
94. LoN Doc. C.74M.39.(1929).V., Basis of Discussion No. 16.
95. See D.J. Padwa, "Submarine Boundaries", 9 *ICLQ*, (1960, p. 628, at 633.

96. Art. I (A)(1) of the 1976 Agreement between Colombia and Panama on Delimiting Maritime Boundaries in the Caribbean Sea and the Pacific Ocean, VIII *ND*, (1980), p. 88.
97. For more information, see O'Connell, *op. cit.*, Chapt. I, note 2, at p. 673.
98. *Ibid.*, at p. 661.
99. 4 *AJIL*, (1910), p. 226, at pp. 235-36.
100. Protocol concerning the Delimitation of Polish and Soviet Territorial Waters in the Gulf of Gdansk in the Baltic Sea (1958). For text, see 340 *UNTS*, at p. 94.
101. Agreement between the Oriental Republic of Uruguay and the Federative Republic of Brazil on the Final Establishment of the Chuy River Bank and the Lateral Sea Limit (1972). For text see V *ND*, (1977), at p. 9.
102. S. W. Boggs, *International Boundaries*, Columbia University Press, New York (1940), p. 189, cited in O'Connell, *op. cit.*, Chapt. I, note 2, at p. 661.
103. *Ibid.*
104. *Ibid.*, at p. 662.
105. *ILC Ybk.* (1952), Vol. 2, at p. 37.
106. *Ibid.*, (1953), Vol. 2, at p. 70.
107. See *supra*, pp. 89-95; O'Connell, *op. cit.*, Chapt. I, note 2, pp. 676-77.
108. The territorial sea delimitation in straits and between the opposite states were emerged at a suggestion of the special Rapporteur, Francois, (*ILC Ybk.*, (1956), Vol. 1, at p. 197), while the emergence of the adjacent countries questions was proposed by Norway (UNCLOS I, Official Records, Vol. III, p. 189).
109. O'Connell, *op.cit.*, Chapt. I, note 2, pp. 677-78.
110. See Report by the Chairman of Negotiating Group 7 on the Work of the Group, in Renate Platzoder, IX Third United Nations Conference on the Law of the Sea: Documents, Dobbs Ferry, New York, Oceana Publications, Inc. (1986), at p. 425.
111. Regulations of Mussels and Fishing within the Coasts of the Red Sea, (1932), Riyadh, Government Press, (1383 AH).
112. This agreement was held for the purpose of reformulation of the financial conditions between the two sides in the offshore areas in east of the Kingdom laid down initially according to the original Agreement of 29 May, 1933. For texts, see Agreements between the Saudi Arab Government and Arabian American Oil Company, 2nd ed., Mecca Government Press, (1964), at pp. 5-18 and pp. 48-51.
113. See C. G. MacDonald, *op. cit.*, Chapt. I, note 97, p. 104.
114. See *supra*, Chapt. II, note 61.
115. Art. 3.
116. Art. 2.

117. See I. Brownlie, Principles of Public International Law, 4th ed., Oxford, Clarendon Press (1990), pp. 197-98; Churchill and Lowe, *op. cit.*, Chapt. I, note 10, pp. 74-76.
118. See *supra*, Chapt. II, note 62.
119. Art. 2.
120. *ILC Ybk.*, Vol. 2, (1956), at p. 256.
121. *Ibid.*, at p. 265.
122. *Ibid.*, at p. 256.
123. See O'Connell, *op. cit.*, Chapt. I, note 2, p. 81. Art. 1(2) of the TSC reads: *This sovereignty is exercised subject to the provisions of these Articles and to other rules of international law* (emphasis added).
124. UNCLOS I, Official Records, Vol. III, at p. 35.
125. *Ibid.*, at pp. 35-36.
126. *Ibid.*, at pp. 9-10.
127. *Ibid.*, at p. 36.
128. See *supra*, pp. 95-102.
129. Doc. A/CONF.13/C.1/L.28/Rev.1, in UNCLOS I, Official Records, Vol. III, at p. 216.
130. Doc. A/CONF.13/C.1/L.66, in *Ibid.*, at p. 230.
131. Doc. A/CONF.13/C.1/L.75, in *Ibid.*, at p. 231.
132. UNCLOS I, Official Records, Vol. III, at p. 85.
133. *Ibid.*, at p. 71.
134. Doc. A/CONF.13/C.1/L.71, in *Ibid.*, at p. 231. The three powers were Netherlands, Portugal and UK.
135. UNCLOS I, Official Records, Vol. III, at p. 94.
136. *Ibid.*, at p. 96.
137. *Ibid.*, at p. 129.
138. *Ibid.*, at p. 130.
139. *Ibid.*, at p. 100.
140. *Ibid.*, Vol. II, at p. 65.
141. See *infra*, pp. 143-47.
142. See *supra*, pp. 95-102.
143. *Supra*, Chapt. II, note 209, Declaration No. 5. This passage is translated by the present writer from a copy of the original Arabic text.

144. See a passage of one of the relevant declarations of the Kingdom on this question on p. 104.
145. Art. 22(2) at the LOSC reads:
In particular, tankers, nuclear powered ships and ships carrying nuclear or other inherently dangerous or noxious substances or materials may be required to confine their passage to such sea lanes [lanes designated by the coastal state for the regulation of the passage of the said ships].
146. Art. 23 provides that:
Foreign nuclear powered ships and ships carrying nuclear or other inherently dangerous or noxious substances shall, when exercising the right of innocent passage through the territorial sea, carry documents and observe special precautionary measures established for ships by international agreements.
147. *Supra*, Chapt. II, note 209, Declaration No. 6. This passage is translated by the present writer from a copy of the original Arabic text.
148. See *supra*, note 111.
149. Art. 5 of the 1949 Royal Decree.
150. Art. 4 of the 1958 Royal Decree.
151. UNCLOS I, Official Records, Vol. III, p.135.
152. *Ibid.*, Vol. II, at p. 36.
153. Doc. A/CONF.13/C.1/L.152, in *Ibid.*, Vol. III, at p. 135, Para. 9.
154. See *supra*, pp. 95-102.
155. Doc. A/CONF.13/C.1/L.153, in UNCLOS I, Official Records, Vol. III, at p. 251.
156. *Ibid.*, at p. 209.
157. UNCLOS II, Official Records, Summary Records of Plenary Meetings and of Meetings of the Committee of the Whole, at p. 37.
158. See UNCLOS II, Official Records, Committee of the Whole, pp. 1-13, and pp. 385-403.
159. *Ibid.*, at p. 7; Lauterpacht, *op. cit.*, Chapt. I, note 6, at p. 490.
160. *Ibid.*, at pp. 385-387.
161. *Ibid.*, at p. 397.
162. Doc. A/CONF.19/C.1/L.2/Rev.1, in UNCLOS II, Official Records, Summary Records of Plenary Meetings and of Meetings of the Committee of the Whole, at p. 165. These States included, beside Saudi Arabia: Ethiopia, Ghana, Guinea, Indonesia, Iran, Iraq, Jordan, Lebanon, Libya, Mexico, Morocco, Philippines, Sudan, Tunisia, United Arab Republic, Venezuela and Yeman.
163. Doc. A/CONF.19/C.1/L10, in *Ibid.*, at p. 169.
164. *Ibid.*, at p. 16.
165. *Ibid.*

166. See *supra*, p. 127.
167. UNCLOS III, Official Records, Vol. 1, at p. 144.
168. N. Al-Arfaj, The Maritime Policy ... *op. cit.*, Chapt. I, note 111, at p.65.
169. *Supra*, at p. 95.
170. It is to be noted that in 1992, Qatar defined its territorial sea as 12 n.m. (Decree No. 40 Defining the Breadth of the Territorial Sea and Contiguous Zone of 16 April 1992 in *LSB*, 1993, No. 23, p. 22), and so did Bahrain in 1993 (Decree No. 8 on Territorial Sea and Contiguous Zone, 20 April 1993, in *LSB*, No. 24, 1993, at p. 5.)
171. According to the Royal Decree concerning the Territorial Waters of the Kingdom of Egypt of 15 January 1951, the Egyptian territorial sea was defined at six nautical miles, but by virtue of the Presidential Decree of 17 February 1958, it was amended to twelve n.m. For the texts see US Department of State, Limits in the Seas, No. 22, 22 June 1970, see also abstracts of the amendments in Office for Ocean Affairs and the Law of the Sea (United Nations), The Law of the Sea, National Claims to Maritime Jurisdiction, New York, United Nations Publications, (1992), at p. 42.
172. Arts. 12 and 15 of the TSC and LOSC, respectively.
173. Agreement between the Kingdom of Saudi Arabia and Qatar relating to the Delimitation of Land and Maritime Boundaries, 1965. No English text of the Agreement was published. For Arabic text, see Series of Treaties and Conventions, Vol. 2, Jeddah, Ministry of Foreign Affairs.
174. For an English translation of the text, see A. El-Hakim, *op. cit.*, Chapt. II, note 174, at p. 204.
175. See *supra*, pp. 54-66.
176. See *infra*, pp. 198-219.
177. See *infra*, p. 219.
178. See *supra*, pp. 104-107.
179. TSC, Art. 24; LOSC, Art. 33.
180. A.V. Lowe, "The Development of the Concept of the Contiguous Zone", 52 *BYIL*, (1981), pp. 109-69, at p. 110. For full details on the evolution of this concept, see further S. Oda, "The Concept of the Contiguous Zone", 11 *ICLQ*, (1962), pp. 130-53; J. Symonides, "Origin and Legal Essence of the Contiguous Zone", 20 *ODIL*, (1988), pp. 203-11.
181. Churchill and Lowe, *op. cit.*, Chapt. I, note 10, at p.112. The first of this series of acts was The Act for Granting to Her Majesty New Duties of Excise and upon Several Imported Commodities ...", issued in 1709. For text, see 8-12 Anne, The Statute at Large, Vol. XII, (1764), Chapt. 7, Sect. XVII, pp. 17-18. The issue of these acts followed in succession before being eventually repealed in 1876 by virtue of the Act to Consolidate the Custom Law. For the text to the latter, see 39 and 40 Victoria, The Law Reports, (1878), Chapt. 36, at p. 171. For further details on the conditions and circumstances that led to the enactments, amendments and repeals of these acts, see W.E. Masterson, Jurisdiction in Marginal Seas, New York, The MacMillan Company, (1929), Part I.

182. "An Act for Indemnifying Persons Who Have Been Guilty of Offences Against the Laws Made for Securing the Revenues of Customs and Excise, and for Enforcing Those Laws for the Future". issued in 1736. For text, see 9-15 George II, The Statute at Large, vol. XVII, (1765), Chapt. 35, Sect. XXII.
183. "An Act for More Effectually Preventing the Mischiefs Arising to the Revenue and Commerce of Great Britain and Ireland, from the Illicit and Clandestine Trade to and from the Isle of Man". For text, see 5 George III, The Statute at Large, vol. XXVI, (1764), Chapt. 39, 4 Sect. VII.
184. "An Act for the More Effectual Prevention of Smuggling in This Kingdom". 22-24 George III, The Statute at Large, vol. XXXIV, (1784), Chapt. XLVII, at p. 660.
185. "An Act for the More Effectual Prevention of Smuggling". For text, see 45 George III, The Statute at Large, vol. XLV, (1805), Chapt. CXXI, at 1232.
186. The Act to Regulate the Collection of Duties on Imports and Tonnage. For text, see Special Suppl. to 23 *AJIL*, (1929), at p. 343.
187. Cases Argued and Decided in the Supreme Court of the United States, 2 Cranch 187, New York, the Lawyers Co-operative Publishing Company, (1917), cited in W.E. Masterson, *op. cit.*, note 181, pp. 197-99.
188. *Ibid.*, 4 Cranch 241, cited in W. E. Masterson, *op. cit.*, note 181, pp. 200-201.
189. See abstracts of the Act in 23 *AJIL*, (1929), pp. 345-46.
190. Due to the strong protests from other states against these acts, several conventions were concluded between the US and these states, with the aim of easing their conditions, such as the Sweden-US, Convention for the Prevention of Smuggling of Intoxicating Liquors of 22 May 1924 (in *UN Leg. Ser. ST/LEG/SER.B/1*, (1951), at p. 172), and the UK-US Convention for the Prevention of Smuggling of Intoxicating Liquors of 23 January 1924 (in *UN Leg. Ser. ST/LEG/SER.B/1*, (1951), p. at 174).
191. Civil Code of 14 December 1855 (Art. 593), in *UN Leg. Ser. ST/LEG/SER.B/1*, (1951), p. 61.
192. Civil Code of 21 November 1857 (Art. 582), in *Ibid.*, at p.67.
193. Civil Code of 1860 (art. 574), in *Ibid.*, at p. 71.
194. Civil Code of 29 September 1869 (Art. 2340), in *Ibid.*, at p. 51.
195. Customs Regulations of 22 June 1901 (Art. 9), in *Ibid.*, at p. 64.
196. Civil Code of 8 February 1906 (Art. 621), in *Ibid.*, at p. 80.
197. See A.V. Lowe, *op. cit.*, note 180, at pp. 140-41.
198. H. Lauterpacht, Oppenheim International Law, *op. cit.*, Chapt. I, note 6, (Vol. 1, 1st ed., 1905), pp. 245-46.
199. Basis of Discussion Drawn up for the Conference by the Preparatory Committee, reprinted in the Suppl. to 24 *AJIL*. (1930), p. 9, at p. 29.
200. The Report of the Second Committee, Annex III in *Ibid.* , pp. 253-57.
201. *Ibid.*

202. Customs Law No. 79. 19 June 1931. (Art. 363), in *UN Leg. Ser. ST/LEG/SER.B/1.*, (1951), at p. 63.
203. Regulations concerning Maritime Fishing and Hunting (Art. 129), enacted by Decree No. 607. 29 August 1934. in *Ibid.*, p. 68.
204. Fishing Regulations, enacted by Presidential Decree No. 80, 2 February 1938 (Art. 2). *Ibid.*
205. Regulations concerning the Conditions of Access to, and Sojourn in the Anchorages and Ports of the Coast of France, of Colonies, and at other Regions, Defence of which is in Charge of France, by Ships Other Than French Warships in Time of War (Art. 2). 1 October 1934. in *Ibid.*, pp. 73-74.
206. Presidential Decree Determining the Extent of the Territorial Waters of Indo-China for the Purposes of Fishing (Art. 1), 22 September 1936. in *Ibid.*, at p. 75.
207. Fishing Regulations (Art. 4), enacted by Decree No. 148. 119. 19 April 1943. in *Ibid.*, at p. 51.
208. General Regulations concerning the Police of the Seas, Rivers and Lakes (Art. 17). 14 June 1941, in *Ibid.*, at p. 61.
209. Organic Law of the Army and Navy (Art. 36). approved by Decree - Law No. 7. 27 January 1942. in *Ibid.*, at p. 65.
210. Art. 9 of the 1949 Royal Decree. See *supra*. Chapt. II. note 61.
211. Decree concerning the Territorial Waters of the Kingdom of Egypt (Art. 9). 15 January 1951, in *UN Leg. Ser. ST/LEG/SER.B/1.*, (1951), at p. 307.
212. Republican Ordinance No. 435 of 15 November 1958 (Art. 4) in *UN Leg. Ser. ST/LEG/SER.B/15*, (1970), pp. 89-90.
213. *ILC Ybk.*, Vol. 2, (1956), pp. 294-95.
214. *Ibid.*
215. Doc. A/CONF.13/C.1/L.44, in UNCLOS I, Official Records, Vol. III, at p. 182.
216. I. Brownlie, *op. cit.*, note 117, at p. 201.
217. Gerald Fitzmaurice, *op. cit.*, note 77, at pp. 111-112.
218. *Ibid.*, pp. 119-120.
219. Art. 59 of the LOSC. See, however, Churchill and Lowe, *op. cit.*, Chapt. I, note 10, pp. 116-18.
220. HSC, Art.23; LOSC, Art. 111.
221. *Supra*, Chapt. II, note 61.
222. *Supra*, Chapt. II, note 62.
223. LoN, Bases of Discussion, No. 5, C. 351(b).M.145(b).130.V., p. 179.

224. UNCLOS III, Official Records, vol. III, Doc. A/CONF.62/C.2/L.78, "Draft Article on the economic and contiguous zone", p. 239. The other states were: Egypt, Honduras, India, Iran, Kuwait, Liberia, Libyan Arab Republic, Mexico, Morocco, Oman, Qatar, United Arab Emirates and Yemen.
225. It is known that the Kingdom, in which the Muslim holy places are situated, is a destination of Muslim pilgrims who come annually from all over the world in hundreds of thousands. Many of them arrive by sea. In addition, the process of extensive development in the country has resulted in the immigration of hundreds of thousands of workers into the Kingdom, and also from the Saudi ports, millions of barrels of oil and its produces are exported daily. All these activities and others affect the security, fiscal, immigration, navigation and sanitary matters of the Kingdom. Consequently, the accuracy of control by the Saudi authorities becomes a vital matter. The extension of the contiguous zone six nautical miles further would help very much in this respect.

Chapter IV

Continental Shelf

Introduction

As has been seen in Chapters II and III, in the early part of this century the rights of the coastal state in adjacent waters were subsumed under three concepts: internal waters, in which the coastal state enjoyed full sovereignty, the territorial sea, in which the coastal state enjoyed sovereignty subject to the right of innocent passage, and the contiguous zone, in which the coastal state enjoyed certain limited jurisdictional rights¹. However, there was a clear tendency among states to extend their jurisdiction seaward, which resulted in the adoption, *inter alia*, of the continental shelf concept. The creation of this concept was nothing more than a reflection of the international community's desire to assert rights over offshore mineral resources, particularly oil, in the light of the gradual depletion of its land-based reserves on the one hand, and that engineering progress had made possible the extraction of oil below the waters of the continental shelf on the other. The regime of the continental shelf, especially in the Arabian Gulf, received great attention from Saudi Arabia, in view of the great quantities of oil, contained therein on which the country's economy largely depends. The present chapter, therefore, discusses this concept in terms of its development, definition, legal regime, and its delimitation between adjacent and opposite states. Afterwards, Saudi Arabia's position on the continental shelf and its policy regarding the shelf's oil resources will be examined, with the aim of determining the degree of conformity between Saudi Arabia's practice, whether through its national legislation or through its bilateral agreements with neighbouring states, and the standards and practices of international community, and also of examining the Kingdom's contribution to this relatively newly established regime.

Part I: Continental Shelf in International Perspective

1. Genesis of the Concept in the Legal Sense

In a legal context, the first reference to the concept, though not to the term “continental shelf” itself, may have been made by Vattel in his book, *The Law of Nations* (1834)².

In treaty law, it was the 1942 Treaty between the UK and Venezuela³, in which a mention was first made of the concept in a legal sense, although there was no specific reference to the term itself. In this treaty, the submarine areas of the Gulf of Paria were defined as:

the sea-bed and subsoil outside of the territorial waters of the High Contracting Parties to one or the other side of certain lines drawn as provided in the Treaty.

This formula reflects the concern of the Parties with delimiting the continental shelf, even before the legal concept was established.

Three years later (i.e. in 1945), the concept was reflected in what is known as the “Truman Proclamation”⁴. This instrument made by President Truman of the US was described by the International Court of Justice as the starting point of the positive law on the subject⁵. The Proclamation declared, *inter alia*, that:

... the Government of the United States regards the natural resources of the subsoil and sea-bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control.

As is clear, the act used, for the first time, the term “continental shelf” in a legal sense and for the purpose of asserting sovereign rights over the natural resources of the said areas. No definition of the concept was given in the Proclamation, but a White House press release issued on the same day indicated that the term referred to submerged lands contiguous to the coasts which are covered by no more than 100 fathoms (600 feet) of water⁶. In the Proclamation itself, it was manifested that the claim was legally based on the principles of contiguity, reasonableness and justice⁷, rather than on international legal principles. The US was followed by certain other states, mainly in Latin America and the Arabian Gulf⁸. Nevertheless, the status of the continental shelf doctrine was not firmly established in customary

international law, at least until the early 1950s, a view confirmed by certain jurists, such as Lauterpacht⁹, and Gidel¹⁰, and by the Arbitrator, Lord Asquith, in the Abu Dhabi Arbitration of 1951¹¹. However, the increasing claims of states in the late 1950s and early 1960s, asserting sovereignty over the natural resources of their shelves confirm the legal status of the continental shelf as a customary principle. Writing in 1963, Brierly says:

*... it is possible even today for new customs to develop and to win acceptance as law when the need is sufficiently clear and urgent*¹².

Indeed, this approach clearly applies, to the continental shelf and its resources.

The concept of the continental shelf was considered extensively by the International Law Commission (ILC) between 1950 and 1956. In July 1950, the Commission indicated the right of the coastal state to:

*exercise control and jurisdiction over the sea-bed and subsoil of the submarine areas situated outside its territorial waters with a view to exploring and exploiting the natural resources*¹³.

While this wording of the Commission indicates the rights of the coastal state to exercise “control” and “jurisdiction” over the natural sources of the submarine areas, there is no other reference to any fixed depth. However, these issues were subject to the discussions of the ILC, the efforts of which in the years 1951-56¹⁴ led eventually to the adoption of an independent convention on the subject at UNCLOS I, i.e. the Geneva Convention on the Continental Shelf of 1958 (CSC)¹⁵, whose first three articles, as observed by the ICJ:

were then regarded as reflecting, or as crystallising, received or at least emergent rules of customary international law relative to the continental shelf...¹⁶.

The continental shelf also received great attention by the ILC through its preparatory works to UNCLOS III and through the negotiations of the Conference itself. Its legal regime was laid down in a separate section in the 1982 United Nations Convention on the Law of the Sea (i.e. part VI (Articles 76-85)).

2. Definition of the Continental Shelf

It is thought that the term “continental shelf” was first used in 1887 by Mill¹⁷. The concept is of purely geological, geographical and oceanographical origins¹⁸. Geographically, going from the shore towards the sea, the sea-bed slopes gently away from the coast to a certain extent (around 200 metres in most cases) before it plunges steeply down to the great ocean depths. The isobath of the said figure forms an edge. The sloping part covered by shallow water and located between the shore and this edge is called the continental shelf¹⁹.

The emergence in law of this concept, which was derived originally from other sciences, raises a delicate question of definition. This matter was of major concern in the debates of the ILC that preceded the 1958 Geneva Conference on the Law of the Sea.

Article 1 of the CSC defines the shelf as:

(a) the sea-bed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the sea-bed and subsoil of similar submarine areas adjacent to the coasts of islands.

With the exception of the reference to islands, this formula is exactly the same as that of Article 67 of the 1956 ILC’s draft Articles, submitted to the General Assembly of the United Nations²⁰. Clearly, in this definition, the Convention put aside geographical considerations, and relied upon the two criteria of adjacency and exploitability²¹, for the continental shelf to be considered as such in a legal sense. This, in any event, created considerable ambiguity since it was, even by that time, technically possible to exploit resources at depths greater than 200 metres and yet, the outer limits of the shelf subject to the coastal state jurisdiction remained uncertain. As to the criterion of exploitability, one commentator put it as follows:

*Was it to be read literally, or did it include considerations of economic feasibility? Did it refer to the potential of the particular coastal state claiming the shelf area, or was there an objective test of exploitability? ...*²²

The ICJ emphasised in the North Sea Continental Shelf cases of 1969 the physical criterion of “natural prolongation” as a basis for the identification of the continental shelf and for the legal foundation of the entitlement of coastal states to sovereign rights over their continental shelves. In this respect, the Court stated that:

... the submarine areas concerned may be deemed to be actually part of the territory over which the coastal state already has dominion in the sense that although covered with water, they are a prolongation or continuation of that territory, an extension of it under the sea²³.

The Court was also careful to stress the relationship between the legal regime of the shelf and the physical criterion by declaring that:

the institution of the continental shelf has arisen out of the recognition of a physical fact; and the link between this fact and the law, without which that institution would never have existed, remains an important element for the application of its legal regime²⁴.

In the 1979 Anglo-French Continental Shelf arbitration, the Tribunal endorsed the ICJ’s conclusion in the 1969 Judgment that the continental shelf of any state must be the natural prolongation of its land territory and must not encroach upon what is the natural prolongation of the territory of another state²⁵.

The 1982 United Nations Convention for its part, retained the shelf despite the overlapping EEZ and provided a distinct legal definition for it. The two criteria of the 200 metres depth and exploitability were set aside. According to Article 76(1) of the Convention:

The continental shelf of a coastal state comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines ... where the outer edge of the continental margin does not extend up to that distance.

In cases where the continental margin²⁶ extends beyond 200 miles, geographical factors are to be considered, but in any event, the outer limit shall not exceed either 350 miles from the baselines or 100 miles from the 2500 metre isobath²⁷. In establishing this definition, obviously, the Convention was influenced by the then newly created regime of the exclusive economic zone, the claim to

which would create two legal bases for the entitlement of the sea-bed rights, i.e. the doctrine of the continental shelf and the concept of the EEZ²⁸.

The shelf definition as formulated in Article 76(1) of the LOSC was considered by the Arbitration Tribunal in the Guinea/Guinea-Bissau case of 1985²⁹. The Tribunal noted that there is neither priority nor precedence between the two rules of determining the shelf, contained in the said definition (i.e. natural prolongation and distance rules)³⁰. Nonetheless, in the Tribunal's view, the latter rule reduced the former's scope by substituting it in certain circumstances envisaged in the said Article³¹. The 200 mile distance criterion was supported by the ICJ in the Libya/Malta Continental Shelf case of 1985³². The concepts of natural prolongation and distance were not, as observed by the Court, as opposed, but complementary *and essential in the juridical concept of the continental shelf*³³. However, despite this fact, it is to be noted that the recent developments on the subject, whether in treaty law or in case law, have shown increasing tendency to attach the concept of the continental shelf to legal principles and to detach it from its physical origins.

3. The Rights of the Coastal State over the Shelf

The nature and extent of the coastal state's rights over its continental shelf were subject to long debate in the discussion of the ILC and in the Fourth Committee of UNCLOS I³⁴. The discussions of the delegations at the Conference which were reflections of their practices, showed considerable divergency of views on the question of the nature and extent of the coastal state's rights over the shelf. One group of states including Argentina³⁵, Uruguay³⁶, Peru³⁷, Mexico³⁸, and Chile³⁹ claimed complete sovereignty for the coastal state, while the other group which was in the majority, was in favour of limited sovereignty.

In its first draft of 1951 on the subject, the ILC followed the Truman Proclamation's wording as it referred to the continental shelf as:

*subject to the exercise by the coastal state of control and jurisdiction for the purposes of exploring and exploiting its natural resources*⁴⁰.

In its final draft of 1956, the ILC omitted the expression "control and jurisdiction"⁴¹ and replaced it with "sovereign rights", an approach incorporated in

Article 2(1) of the CSC. The CSC went further to assert that the said rights are “exclusive”, in the sense that no state is entitled to enjoy them without the express consent of the coastal state and moreover, they do not depend on occupation, effective or national, or on any express proclamation⁴². Thus, by adopting the *ipso jure* principle as a basis for exploration and exploitation of the natural resources of the shelf, the Convention departed from the Truman Proclamation, which appears to have been based on the concept of occupation. By the use of the term “sovereign rights” instead of either “sovereignty” or “jurisdiction and control” it seems that the ILC wanted to safeguard the character of the superjacent waters and the air-space above them, on the one hand, and to confirm on the other hand, the full right of the coastal state to explore and exploit the shelf’s natural resources. However, the usefulness of this course of the ILC was doubtful, since the use of the term “sovereignty” if it was adopted, would not entitle the coastal state to interfere unjustifiably with the freedoms of international navigation for the high seas in the superjacent sea of the shelf, the principle which was expressly confirmed in the CSC⁴³; nor does the use of the term “sovereign rights”, with the description of the said rights in Article 2(2) of the CSC, as “exclusive”, appear to add any legal effect to the full right of the coastal states over its shelf’s natural resources.

The *ipso jure* doctrine was given further impetus by the ICJ in the often quoted North Sea Continental Shelf cases of 1969, as the Court stated that:

*The rights of the coastal state in respect of the area of continental shelf that constitutes a natural prolongation of its land territory into and under the sea exist ipso facto and ab initio, by virtue of its sovereignty over the land and as an extension of it in an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources. In short, there is here an inherent right*⁴⁴.

As far as the resources’ capability of exploitation are concerned, it is to be noted that the CSC extends the Truman concept of such resources, which referred only to mineral resources, to include organisms belonging to sedentary species⁴⁵. In addition, the coastal state may construct and maintain installations and other devices necessary for exploration on the shelf and may also establish safety zones around such installations to a limit of 500 metres. Within such zones, the state concerned is authorised to take necessary measures for their protection⁴⁶.

The *ipso jure* theory over the shelf entitlement has been recognised by the 1982 Convention, which repeats without significant change the wording of Article 2 of the CSC. But, as to the scope of the coastal state's rights in the shelf, the LOSC went further, not only in terms of extending the continental shelf up to 350 miles from the baselines, but also with the emergence of the EEZ regime, whereby the coastal state in its EEZ (geographically overlapping with the continental shelf) has sovereign rights to exploit, conserve and manage the natural resources, whether living or non-living⁴⁷. Hence, the LOSC, in contrast with the CSC, does not exclude any living resources whatsoever from being subject to exploration and exploitation. Moreover, the LOSC established a system for payments and contributions regarding the exploitation of the continental shelf beyond 200 miles⁴⁸. It has been said that such a system is not only beneficial to developing countries (including landlocked countries), but also creates a global interest in the legitimacy and exercise of coastal state jurisdiction over the continental margin, despite the disproportionate benefits conferred on certain large and prosperous coastal states⁴⁹. It is clear, then, that the LOSC contains two legal bases for coastal state rights in the sea-bed. The first is the classical concept of the continental shelf as formulated in the CSC and international custom. The second is the newer concept of the EEZ⁵⁰.

However, it should be added finally that the characterisation of the continental shelf rights is a matter of controversy. Expressing his hesitation to make a distinction between the interests of a state in the territorial sea and the continental shelf, O'Connell stated that:

*it seems to be impossible to distinguish in strict jurisprudence between the interest a state has in territorial waters, and that which it claims to have in the continental shelf*⁵¹.

4. **The Delimitation of the Continental Shelf**

Maritime delimitation must, inevitably, be a painful process, since it implies a reduction of the area which each of the states involved could hope to appropriate if it faced the oceans on its own⁵². Many international disputes have arisen in recent decades over the question of maritime boundaries, and most of them were concerned with the continental shelf delimitation in particular. Such disputes,

which are made more complicated by the existence of certain political, economic and geographical circumstances⁵³ are, however, the price coastal states have to pay for the extension of their zones of national jurisdiction⁵⁴. The occurrence of such disputes is more likely in marine areas, such as the Arabian Gulf and the Red Sea, where several adjacent and opposite states share boundaries, potential sources of conflict are available, unless there is a high level of co-operation.

As to the continental shelf, the delimitation may arise as noted by the Arbitration Tribunal, in the Anglo-French Continental Shelf case:

*in situations where the territories of two or more states abut on a single continuous continental shelf, [which] may be said geographically to constitute a natural prolongation of the territory of each of the states concerned*⁵⁵.

4.1 Sources of Delimitation Law

Since the regime of the continental shelf, as a whole, in the legal sense, is of relatively recent origins, the rules governing its delimitation are also of the same character. As is the case with other aspects of the law of the sea, the rules governing the delimitation of the continental shelf are found in international custom, international conventions and case law.

4.1.1 Customary Law

The customary firm rule in delimiting the continental shelves between states is that such a process is the object of an agreement based on “equitable principles”. This was confirmed by the ICJ, which concluded in the North Sea Continental Shelf cases that such principles:

*have from the beginning reflected the opinio juris in the matter of delimitation*⁵⁶.

This approach was first followed in the 1942 Treaty between the UK and Venezuela, as to the submarine areas of the Gulf of Paria⁵⁷, and later on in the Truman Proclamation of 1945, in which it was stated that:

*in cases where the continental shelf extends to the shores of another state, or is shared with an adjacent state, the boundary shall be determined by the United States, and the states concerned in accordance with equitable principles*⁵⁸.

In a survey on published state practice completed by Brown in 1982, it was noted that the great majority of legislation enacted after the Truman Proclamation until the conclusion of the CSC in 1958 made no provision at all for delimitation, but where specific provision was made, the formula usually included reference to “equitable principles”⁵⁹. During the period in which the law of the sea was under consideration, the majority practice ignored the issue⁶⁰, while the 1960s witnessed the influence of Article 6 of the CSC giving some role to the “equidistance principle”⁶¹. Brown’s survey shows also that the period 1969-1982 (i.e. the period between the ruling of the ICJ in the Continental Shelf cases and the conclusion of the LOSC) witnessed more extensive national legislation on the delimitation of the continental shelf and the EEZ, and more influence for the formula of Article 6 of the CSC⁶². A recent survey completed by Brown shows that the behaviour of states in the period after 1982, reflects an apparent preference to rely on agreement and equidistance as the principal elements of delimitation provisions, while the influence of the LOSC formulation remained limited⁶³.

On the other hand, analysis of bilateral delimitation agreements reveals a major role for the equidistance principle. Since 1946, over 130 maritime boundaries have been settled by bilateral agreements⁶⁴. It was found that of a total of 134 boundary delimitation instances, the equidistance method (whether strict, simplified or modified) was followed in 103 boundaries, while methods other than equidistance were used in some 42 cases⁶⁵. Despite the predominance of “equidistance” in state practice, judicial and arbitral determinations tended to disregard the implications of such practice. Commenting on the arguments of Denmark and the Netherlands, seeking to consider the application of the principle of “equidistance”, the ICJ in the Continental Shelf cases said:

*It simply considers that they are inconclusive, and insufficient to bear the weight sought to be put upon them as evidence of such a settled practice, manifested in such circumstances, as would justify the inference that delimitation according to the principle of equidistance amounts to a mandatory rule of customary international law ...*⁶⁶.

The Court reiterated this position in the Libya/Malta case, when it expressly stated that:

*Yet that practice ... falls short of providing the existence of a rule, prescribing the use of equidistance, or indeed of any method, as obligatory*⁶⁷.

This divergence between the evidence of state practice and the international tribunals' decisions, could be attributed to the following reasons:

- (1) A negotiated agreement is not necessarily of legal obligation, but it could result from other factors, such as political and economic considerations;
- (2) In many delimitation agreements, the rules and methods applicable are not proclaimed, or not explicitly stated in the text of the agreement, or the reason behind the adjustment of the equidistance list is not explained;
- (3) State practice has a restricting effect since, as seen above, the ICJ has relied upon the principle of equity. In doing so however, the Court appears to tend to preserve a virtually unfettered discretion in identifying the relevant factors that would satisfy its sense of justice. Thus, the Court would not wish to recognize any substantive rule of delimitation, even if it was deriving its legal force from state practice⁶⁸.

4.1.2 Conventional Law

4.1.2.1 The 1958 Continental Shelf Convention

Article 6 of the CSC (Article 72 of the final draft of the International Law Commission)⁶⁹ declared that in the absence of agreement and unless another boundary line was justified by special circumstances, the boundary should be determined by the:

application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each state is measured.

Through this formula, the Convention obviously prefers, in the first place, that boundary questions be decided by agreement. Failing agreement and in cases where special circumstances exist, it proposes a boundary justified by those special circumstances. As a last resort, the Convention adopts the median line principle (i.e. the principle of equidistance). However, these provisions are not without ambiguity. First of all, although reference has been made to “reaching agreement” as a first choice, which means that the parties concerned are under obligation to

enter into negotiations as between them, the content and framework of such a negotiation have not been clarified. Secondly, although the Convention referred to “special circumstances” which should be considered, it did not clarify the meaning of such circumstances, or even provide exemplification. In other words, there is no guidance about when the median line should be waived in favour of equitable principles. Thirdly, the Convention does not include any specific provision about the influence of the presence of islands on the delimitation process⁷⁰.

4.1.2.2 The 1982 United Nations Convention

At UNCLOS III, the delimitation of maritime boundaries was one of the most complicated issues that faced the Conference, and was entrusted for settlement to Negotiating Group 7. As to the delimitation of the continental shelf (and the exclusive economic zone), there were two main interest groups, i.e. the “Median Line Group”⁷¹, and the “Equitable Principles Group”⁷². The conflict between the two groups was such that the Conference appeared likely to fail in adopting any rule on the subject⁷³. However, in the final stages of the Conference, and under increased pressure to find a solution, an uneasy agreement was reached, as the President of the Conference introduced his proposal which was incorporated into the text of the LOSC (Articles 74(1), 83(1)) with a reference to Article 38 of the Statute of the International Court of Justice⁷⁴. Article 83(1) of the LOSC reads as follows:

The delimitation of the continental shelf between states with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

The Convention then maintained the process of “agreement” to achieve the goal of “equitable solution”, but it has expressly omitted the reference to the principle of “equidistance” included in Article 6 of the CSC and invented the phrase “on the basis of international law as referred to in Article 38 of ...” for reaching an equitable solution. This vague instruction to adjudicators to achieve an equitable settlement was subject to criticism by a number of commentators. Oxman described the said text as:

*introducing unnecessary language and avoiding recognised terminology associated with the jurisprudence and scholarship on the subject*⁷⁵.

In a separate opinion in the Libya-Malta Continental Shelf case (1985) the LOSC formula of “equitable solution” was described as *uninstructive as it is all-embracing*⁷⁶. Judge Oda in his dissenting opinion in the Tunisia-Libya Continental Shelf case (1982), described the “equitable principle” as the “principle of nonprinciple”⁷⁷. In his dissent in the Gulf of Maine case (1984), Judge Ginos expressed his doubts whether international justice could long survive an equity measured by the judge’s eye⁷⁸, in other words, to an excessive degree of judicial discretion based upon a conception of equity which:

*lacks all general doctrine and varies from case to case ... in accordance with whatever the judge may choose to dub an equitable result*⁷⁹.

There is undoubtedly some validity to these observations. The law as stated in the recent decisions of the ICJ and other international tribunals lacks precision and suffers from an excess of equitable discretion⁸⁰. Indeed, the major disadvantage in the concept of “equitable principles” is the absence of any precise criterion, in accordance with which the term can be defined, since what is equitable to one state may not be equitable to another. Thus, this provision of the LOSC, which was expected to find a solution to the question of continental shelf delimitation, could result in more complications. However, despite the omission of the term “median line” which was described once as *the best solution for delineating water areas between sovereignties*⁸¹, the principle of equidistance is likely to be utilised in many cases as the basic principle, with consideration given to the special circumstances of each case. As mentioned earlier, it was, on the one hand, adopted in the CSC, which is still valid even with the recent entrance into effect of the LOSC, and on the other hand it was taken into account by the World Court in the Libya/Malta Continental Shelf case (1985)⁸², and in the Gulf of Maine case (1984)⁸³, both of which were decided following the adoption of the LOSC in 1982.

4.1.3 Case Law: The Primacy of “Equitable Principles”

International adjudications represent a significant addition to the body of law relating to the delimitation of the continental shelf. On the one hand, they contribute to the interpretation of the relevant rules as established in customary and treaty law, and on the other, they create specific criteria that give the law at least some degree of substantive content and predictability.

In a number of judgments, the ICJ did not accept the rules contained in Article 6(2) of the CSC, as giving some role to the principle of “equidistance”, as part of international custom. The Court insisted on reliance on “equitable principles” as a customary rule. Therefore, the Court found in the Continental Shelf cases that Article 6(2) of the CSC was not binding on the Federal Republic of Germany (FRG), which had not ratified the said convention⁸⁴. The same approach was followed by the Court in the Tunisia-Libya case of 1982⁸⁵, as neither state was party to the CSC. In this case, the Court declared that:

... the Court considers that it is bound to decide the case on the basis of equitable principles The equitableness of a principle must be assessed in the light of its usefulness for the purpose of arriving at an equitable result⁸⁶.

The Court stated further that:

... equidistance is not, in the view of the Court, either a mandatory legal principle, or a method having some privileged status in relation to other methods⁸⁷.

The same position was taken by the ICJ in the 1985 Guinea/Guinea Bissau arbitration⁸⁸ and the 1992 Canada/France Maritime Boundary case⁸⁹.

However, in spite of the “toning down” of the significance attached to the equidistance principle at the hands of the World Court, the principle was not quite dead, notwithstanding its disappearance from the LOSC⁹⁰. In the Anglo-French Continental Shelf case of 1977, the Tribunal regarded the equidistance-special circumstances rule contained in Article 6 of the CSC, as expressing a general norm based on equitable principles⁹¹. In the Libya/Malta Continental Shelf case of 1985⁹², a great reliance was also placed upon the equidistance-special circumstances rule by the ICJ this time. In order to achieve an equitable result, the Court’s approach in that case (which provided the first substantive judicial

discussion of the implications of the new 200 n.m. zone regime), was to apply the median line rule⁹³. In the most recent case concerning Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway) (1993), the ICJ, having approved the said Tribunal's dictum, equated Article 6 of the CSC completely with international customary law. In this respect, the Court stated that:

If the equidistance-special circumstances rule of the 1958 Convention is, in the light of [the] 1977 Decision, to be regarded as expressing a general norm based on equitable principles, it must be difficult to find any material difference - at any rate in regard to delimitation between opposite coasts - between the effect of Article 6 and the effect of the customary rule which also requires a delimitation based on equitable principles⁹⁴.

However, the circumstances which are to be taken into account in a delimitation case remain wide and might be variously named and grouped as the case demands. As Evans put it:

Naturally, the weight assigned to such circumstances will vary between the stages: a circumstance of great relevance to one aspect of a delimitation might be of a comparatively minor influence on another⁹⁵.

Such circumstances were identified by the ICJ in the Libya/Malta case as:

- 1. the general configuration of the coasts of the Parties, their oppositeness, and their relationship to each other within the general geographical context;*
- 2. the disparity in the lengths of the relevant coasts of the Parties and the distance between them;*
- 3. the need to avoid in delimitation any excessive disproportion between the extent of the continental shelf areas appertaining to the coastal state and the length of the relevant part of its coast, measured in the general direction of the coastlines.⁹⁶*

Similar circumstances were enumerated by the Court in the North Sea cases⁹⁷. The geographical configuration was expressly recognized by the ICJ in the Tunisia/Libya case⁹⁸ and the Gulf of Maine case as a special circumstance⁹⁹, while geographical features were considered by the Arbitral Tribunal in the Canada/France case, to be *at the heart of the delimitation process*¹⁰⁰.

The factor of socio-economic interests in drawing a maritime boundary line received no support in case law. The ICJ described these factors in the Tunisia/Libya case as:

*virtually extraneous factors since they are variables which an unpredictable national fortune or calamity ... might at any time cause to tilt the scale one way or the other*¹⁰¹.

The same position was taken by the Court, for example, in the Libya/Malta case¹⁰², and, more recently, in the Greenland-Jan Mayen case of 1993, although in the latter case, the ICJ recognised the relevance of the need *to ensure equitable access to the capelin fishery resources for the vulnerable fishing communities concerned*¹⁰³. The unity of deposits, lying on both sides of the line dividing a continental shelf between two states, has been given special regard, however. In localities where there is an overlapping of deposits, the ICJ recommended in the North Sea cases that such a problem may be resolved:

*either by agreement, or failing that, by an equal division of the overlapping areas, or by agreements for joint exploitation, the latter solution appearing particularly appropriate when it is a question of preserving the unity of a deposit*¹⁰⁴ (emphasis added).

The Court recognized in the Tunisia/Libya case the existence of oil-wells in an area to be delimited as an element to be taken into account in the process of weighing all relevant factors, but such recognition was connected with the facts of the case¹⁰⁵.

As far as the factor of proportionality¹⁰⁶ is concerned, it was referred to in a number of awards. It was, as mentioned above, listed as a “special circumstance” in the North Sea Continental Shelf cases. In the Anglo/French award, the notion of proportionality was employed as a test:

*in appreciating the effects of geographical features on the equitable or inequitable character of delimitation, and in particular of a delimitation by application of the equidistance method*¹⁰⁷.

The notion was considered by the ICJ in the Tunisia/Libya case as a fundamental principle of *ensuring an equitable delimitation between the states concerned*¹⁰⁸. It was also applied in the Guinea/Guinea-Bissau case¹⁰⁹, the Libya/Malta case¹¹⁰, and the Greenland-Jan Mayen case. In the latter case, the ICJ held that:

There are, however, situations - and the present case is one such - in which the relationship between the length of the relevant coasts, and the maritime areas generated by them by application of the equidistance method, is so disproportionate that it has been found necessary to take this circumstance into account in order to ensure an equitable solution¹¹¹.

The role of islands in the delimitation of the shelf has been one of the most questionable issues, giving rise to debate as to whether or not they are to be treated as mainland, and the elements, which are to be considered, such as distance from the mainland, size, population and isolation. In the Anglo-French case, the delimitation process was mainly affected by the location of the Channel Islands, while the median line method, proposed by the UK was rejected¹¹². In the same case, the Scilly Islands, located on the UK side (some 21 miles distant from the mainland) were taken into account, as part of the coastline of the UK, but they were given only “half-effect”¹¹³. The same approach was also applied by the ICJ in the Tunisia/Libya case, as the Kerkennah Islands (lying some 11 miles from the Tunisian town of Sfax, and their size is some 180 square kilometres) were given “half-effect”¹¹⁴.

Security and defence considerations were taken into account, but they received less support. In the 1977 Anglo-French case, the Tribunal concluded that these factors *may support and strengthen*¹¹⁵, but it did not consider them as exercising a decisive influence and emphasized that:

... they cannot negative, any conclusions that already indicated by the geographical, political and legal circumstances of the region which the Court has identified¹¹⁶.

The Court, in the Libya/Malta case recognised the fact that security interests were relevant circumstances, but the Court noted that:

the delimitation which will result from the application of the present judgment is ... not so near to the coast of either party as to make questions of security a particular consideration in the present case¹¹⁷.

In the Greenland-Jan Mayen case, the ICJ recognised, in principle, that security considerations were relevant to the delimitation of all maritime zones, and with regard to the delimitation of the continental shelf in particular, the Court held that

the application of security considerations is a *particular application ... of a general observation concerning all maritime spaces*¹¹⁸.

From the previous discussion, it is clear that case law has contributed considerably in the development of the continental shelf delimitation rules. This contribution may be summarized in the following:

- (1) the assertion of the principle of “settlement by agreement” as a primary rule of international law;
- (2) giving a strong impetus to the “equitable” solution in any delimitation, whether agreed or determined by a third party;
- (3) lessening the importance of the “equidistance” principle and subjecting its role in many situations, to what leads to an “equitable” result;
- (4) giving a great significance to the “circumstances” surrounding each individual delimitation case, in achieving an “equitable” solution. The circumstances which have come to predominate are geographical factors, proportionality and the presence of islands in the delimitation area, while other factors, such as economic, security and defence factors have been given less weight.

Part II: Saudi Arabia and the Continental Shelf

As pointed out above, the Truman Proclamation was followed by similar claims on the part of many other states, among which was Saudi Arabia. The Saudi initial claim in this respect was in the form of a Royal Pronouncement on 28 May 1949 (cited hereafter as the Royal Pronouncement of 1949)¹¹⁹. The claim, which was the first of its kind in the region, was designed for the respective areas in the Arabian Gulf only, and there was no mention at all of the Red Sea. The reason for the confinement of the Pronouncement’s provisions to the Arabian Gulf was exclusively economic. Petroleum having been discovered in the Gulf area, the Saudi Arabian Government granted in the 1930s and 1940s a number of concessions to certain international companies, with the aim of exploration of petroleum in the Eastern Province of the Kingdom, which is known to contain the world’s largest petroleum reserves. On 29 May 1933, for example, Saudi Arabia signed a 60-year concession with the Standard Oil Company of California¹²⁰. The

area covered by this concession included islands and territorial waters¹²¹. In the Supplemental Agreement signed on 31 May 1939¹²², the Company's concession area was enlarged to cover, *inter alia*, exploration and exploitation rights in the Saudi Government's half of the Saudi Arabia-Kuwait Neutral Zone, including islands and territorial waters¹²³. On 10 October 1948, an agreement (known as the Offshore Areas Agreement) was signed between Aramco (Arabian American Oil Company) and the Saudi Government¹²⁴. Following this concession, the Kingdom found itself compelled to define her jurisdiction over the said areas, a matter which was translated to reality on 28 May 1949. However, despite the reasonableness of the Saudi move that led to the issue of the 1949 Royal Pronouncement (being the discovery of oil in the submerged areas contiguous to the Saudi coasts in great commercial quantities), the confinement of the claim to the Arabian Gulf without the Red Sea was unjustifiable, especially in view of the certain existence of non-living resources in the Red Sea. The Saudi continental shelf in the Red Sea remained undefined until 7 September 1968, when Royal Decree No. M/27 was issued, endorsing the Regulations relating to the Ownership of the Red Sea Resources (cited hereafter as Royal Decree of 1968¹²⁵). These two instruments will be separately examined in the context of considering the concept of the Saudi continental shelf in the Arabian Gulf and the Red Sea.

1. **The Saudi Continental Shelf in the Arabian Gulf**

1.1 **The Concept of the Shelf in the Gulf**

The Arabian Gulf is, as mentioned earlier, a relatively shallow basin with a maximum depth of about 100 metres¹²⁶. The shallowness of the waters has led certain authors to deny the existence of a continental shelf in the Arabian Gulf in the technical or geological sense. Of this view is Young who stated that:

*as a factual matter, no continental shelf exists in the Persian Gulf, which is merely a basin much less than 100 fathoms on the Asian continental mass*¹²⁷.

In a similar opinion, Lauterpacht said:

*... in the Persian Gulf there is nowhere either a rapid drop or a depth of 600 feet. To these areas the geographical concept, even in its general connotation, of the continental shelf does not seem to be applicable at all*¹²⁸.

In support of this argument, Lauterpacht cited the non-existence of any reference to the continental shelf in the proclamations issued by the Rulers of the Sheikdoms in the Gulf¹²⁹. However, the minimum depth of 200 metres is not a precondition for considering certain submarine areas as part of the continental shelf. The whole Gulf could be considered as a continental shelf, not only in the legal sense, but in the technical meaning of the term. In the UNESCO Secretariat Memorandum on “Scientific Considerations relating to the Continental Shelf”¹³⁰, a Committee of experts indicated that shallow seas, such as the Gulf of Paria, the Arabian Gulf and the North Sea *incontestably form parts of the continental shelf*¹³¹. The same conclusion was reached by the ICJ in the North Sea Continental Shelf cases, as to the North Sea, the depth of which does not exceed 200 metres, except in a small area, known as the Norwegian Trough¹³². The Baltic Sea, a shallow sea with an average depth of 55 metres, was stipulated to be *a continuous continental shelf* under Article 1 of the joint Declaration of 23 October 1968 issued by the former German Democratic Republic, Poland and USSR¹³³. As to the absence of any reference to the term “continental shelf” in the proclamations of the Gulf’s Sheikdoms, this should not be taken as evidence of the non-existence of a continental shelf in the Gulf, for these Sheikdoms were at the time under UK protection, and the practice of the latter was in favour of employing the term “submarine areas” rather than “continental shelf”. That is apparent in the 1942 Treaty between UK and Venezuela relating to the division of sovereignty over “the submarine areas of the Gulf of Paria”¹³⁴. Moreover, Iran¹³⁵ and Oman¹³⁶, two littoral states in the Gulf, have specifically adopted the continental shelf theory in their claims over the submarine areas of the Gulf. The question which may arise here is that, assuming that other Gulf states redefine their claims using the term “continental shelf”, would this in itself constitute evidence of the existence of the continental shelf in the Gulf, in a geological sense?

It is noted that this matter was present in the debates of the International Law Commission. For the continental shelf, as a legal concept, the exploitability test, rather than that of a strict physical configuration, was adopted in the Commission’s proposal of July 1950¹³⁷. The indication of the Commission asserting the criterion of exploitability, was clear in Article 1 of the Continental

Shelf Convention of 1958¹³⁸. Furthermore, the new definition of the continental shelf, adopted in Article 76 of the LOSC, removes any doubts that may arise around the description of the submarine areas in the Arabian Gulf as continental shelves in the legal sense. First, the LOSC had adopted the criterion of “natural prolongation of the land territory”, which applies to the sea-bed and subsoil of the submarine areas of the Gulf. Secondly, reference to the 200-metre depth of waters was omitted. Besides, under the LOSC, coastal states are entitled to exercise sovereignty over the natural resources of the said areas, not only by virtue of the continental shelf regime, but also in accordance with the newly established regime of the EEZ (LOSC, Article 56).

It can be concluded, therefore, from the analysis above, that the characteristics of the submarine areas of the Gulf do not affect the legitimacy of the claims of the region’s states (including Saudi Arabia) in relation to the resources of the said areas, even before the adoption of the LOSC. However, the adoption in the latter of a new definition for the continental shelf, in addition to the creation of the 200 n.m. EEZ, have added new legal dimensions to this issue. According to Article 76 of the LOSC, Saudi Arabia could, regardless of the controversial physical features of the sea floor of the Arabian Gulf, claim a 200-mile continental shelf concurrently with the right to claim a 200-mile EEZ (Article 57 of the LOSC), subject, of course, to claims by other adjacent and opposite states, including rights over the living and non-living resources of the sea floor and sea-bed.

1.2 The Saudi Arabian Claim in the Gulf - Royal Pronouncement of 1949

The Kingdom was the first state in the region to proclaim its jurisdiction and control over the resources of the sea-bed and subsoil lying under the seas contiguous to its territorial sea in the Gulf by the Royal Pronouncement of 28 May 1949¹³⁹. By examining this Pronouncement, the following observations may be made:

- (1) The Pronouncement, in its formulation, is apparently influenced by the Truman Proclamation. Nevertheless, while the latter used the term

“continental shelf”, the Saudi claim avoided that. Instead, the Kingdom declared:

*The subsoil and sea-bed of those areas of the Persian [Arabian] Gulf seaward from the coastal sea of Saudi Arabia but contiguous to its coasts ... appertain to the Kingdom of Saudi Arabia and [are] subject to its jurisdiction and control (emphasis added).*¹⁴⁰

Thus, the Saudi claim was based on the imprecisely-defined concept of “contiguity”, a concept which found its way finally to Article 1 of the CSC:

- (2) In justification of the claim, emphasis was placed on:
- (a) the need for the greater utilisation of the world’s natural resources and the desirability of encouraging efforts to discover and make available such resources;
 - (b) the technological capability to utilise these resources;
 - (c) the reasonableness and justice of exercising jurisdiction over the resources with the knowledge of neighbouring nations; and
 - (d) the adjacency of the said areas and the concern for the urgency of conserving and prudently utilising their natural resources. Those justifications are similar to those of the Truman Proclamation, but rather in certain circumstances, more precise wording was used¹⁴¹.
- (3) The outer limits of the areas concerned were not specified. Instead it was provided that:

the boundaries of such areas will be determined in accordance with equitable principles ... in agreements with other states having jurisdiction and control over the subsoil of sea-bed of adjoining areas; and finally,

- (4) The Saudi Pronouncement, while designed to validate the legitimacy of the national jurisdiction over the resources of the submarine areas of the Gulf, recognised Saudi Arabia’s duties towards the international community and neighbouring states by declaring that:

the character as high seas of the waters of such areas, the right to the free and unimpeded navigation of such waters and the air space above those waters, fishing rights in such waters, and the traditional freedom of pearling by the peoples of the Gulf, are in no way affected.

It is to be noted that, as to the character of the waters of the said areas and the right of free navigation therein, the Pronouncement used the same wording as the Truman Proclamation. However, the express recognition of such rights refutes the allegations that the Saudi claim contains a broader assertion, and is not limited, as was the Truman Proclamation, to the natural resources of the subsoil and seabed¹⁴².

2. The Saudi Continental Shelf in the Red Sea - Royal Decree of 1968

Physiographically, the Red Sea was described as follows:

The bed of the Red Sea is an inner shelf because it is a fault depression in the Arabian-Nubian shield. The length of the depression at sea level is about 1,875 km from the Sinai Peninsula to the Strait of Bab-el-Mandeb. The width of the depression at sea level varies from about 200 km in the north to about 360 km in the south. The width of the Red Sea is substantially the same as the width of the depression, except at the extreme southern end where the sea begins to funnel into the Strait¹⁴³.

Unlike the Arabian Gulf, in the Red Sea, the existence of the continental shelf concept in the geological sense, therefore, has not been a matter of controversy.

As to the Saudi policy in the Red Sea, on 7 September 1968, 19 years after the issue of the 1949 Pronouncement, the Royal Decree No. M/27 was issued¹⁴⁴. This Saudi Decree was apparently enacted in order to face the increasing activities carried out by a number of research vessels in the Red Sea during the period 1963-1966. These scientific exploration voyages proved the existence of mineral-rich brines in the Red Sea¹⁴⁵. As a result, an American marine resources firm applied on 15 February 1968 to the United Nations for a 38.5 square-mile exclusive mineral exploration lease to survey thermal sea floor springs in the middle of the Red Sea. In justification of this application, the firm stated that no national claimed sovereignty over the area, and the firm wished to have the United Nations' approval to sample and map mineral deposits over a three-year period, to determine their economic significance¹⁴⁶. However, the United Nations replied that it had no authority to grant mineral rights in the Red Sea floor¹⁴⁷. Thus, Saudi Arabia found it necessary to forestall outside commercial companies' attempts to reach the Red Sea deposits, by issuing the Royal Decree of 7 September 1968

endorsing the Regulations Relating to the Ownership of the Red Sea Resources¹⁴⁸. In this regard, the then Saudi Oil Minister declared in an interview with the *Middle East Economic Survey (MEES)*, just before the publication of the Decree, that:

*There are vast mineral resources in the Red Sea area west of Jeddah, between Saudi Arabia and the Sudan. This area is not considered as falling within the continental shelf of the Kingdom of Saudi Arabia and has attracted several companies from distant countries who are laying claim to the ownership of these resources*¹⁴⁹.

In justification of this claim, the Saudi Minister stated that:

*This development is analogous to what happened in the US under President Truman's Administration, when the US declared title to the hydrocarbon resources in its offshore areas. Several nations followed the example of the US and it has now become an established international rule that every nation has the right to exercise sovereignty over the subsoil resources of the Continental Shelf. This time it is Saudi Arabia that is taking the lead in establishing another fair and equitable rule in international law*¹⁵⁰.

Further justification was given in an "Explanatory Note"¹⁵¹ accompanied to the Regulations. In this Note, it was emphasised that initial studies proved the existence of great amounts of mineral resources on the sea-bed and subsoil of the Red Sea in the areas located between the Kingdom and the Sudan, which are not included in the continental shelf of any of the two countries, and those resources attracted the attention of foreign states. The Kingdom, therefore found it necessary, as a precautionary measure in the face of these attempts, to issue the said regulations asserting the Saudi title to the natural resources of the Red Sea bed contiguous to the Saudi continental shelf and extending seaward.

By examining these regulations, the following insights may be derived:

- (1) Unlike the Royal Pronouncement of 1949, the present Decree uses the term "continental shelf". Nevertheless, the Saudi jurisdiction over its continental shelf in the Red Sea, was affirmed only by implication. What has been expressly asserted is the Saudi jurisdiction over the area extending below the high sea and contiguous to the Saudi continental shelf. In this respect, Article 1 stipulates that:

the Saudi Arabia Kingdom owns all the hydrocarbon materials and minerals existing in the strata of the sea-bed, and this is in respect to the zone extending in the Red Sea

bed adjacent to the Saudi continental shelf (emphasis added).

- (2) The present instrument referred to the jurisdiction of Saudi Arabia over “the hydrocarbon materials and minerals”, and did not use the confusing expression used in the Royal Pronouncement of 1949, which referred to the Saudi jurisdiction over “areas ... of the Arabian Gulf”.
- (3) Unlike the 1949 Royal Pronouncement, this Decree contains no clear criterion for the outer limits of the areas concerned, whether for the continental shelf or the areas extending beyond it. However, in what appears to be an acceptance of “equitable principles”, Article 3 is satisfied with providing that:

... the Government of the Kingdom of Saudi Arabia may exercise its rights in exploring or mining these “resources” and exploiting them by way of sharing with the neighbouring governments, which have similar rights recognised by the Government of the Saudi Arabia Kingdom in common zones (emphasis added).

- (4) The claim asserted the exclusive right of the Kingdom over the “resources” concerned (Article 3). In reference to the non-legitimacy of the international companies’ activities in the Red Sea, Article 4 of the Decree reads:

These “resources” shall not be owned by possession or prescription and the rules of limitation by lapse of time shall not apply to the ownership of the state thereto.

- (5) The Decree explicitly provides in Article 6 that the implementation of its provisions shall not affect the status of the high seas and the right of navigation therein, within the limits prescribed by the established rules of public international law.

3. Appraisal

In the Saudi Arabian claims to continental shelf, whether in the Arabian Gulf or in the Red Sea, two matters may call for immediate attention. First, the Saudi claim of 1949 in the Gulf was based on the concept of “contiguity” rather than the continental shelf theory. Secondly, the Saudi claim of 1968 in the Red

Sea was based on the continental shelf concept, and also on the concept of “contiguity” in the form of “adjacent to the Saudi continental shelf”. The question which arises here is whether these claims are justifiable under international law.

In relation to the Saudi claim in the Gulf, it is true, there is no reference to the term “continental shelf”, but this does not, however, mean the non-existence of “shelf” therein. In the light of the legal evidence, mentioned earlier¹⁵², it can be concluded that the Arabian Gulf has a continental shelf. However, even if the fact is not so, from the legal perspective, one reason for the existence of the continental shelf rights is that the shelf represents a national prolongation of the coastal state’s land territory. This conclusion was set out by the ICJ in the North Sea cases¹⁵³. In the Libya/Malta case, the ICJ regarded the distance criterion, alongside with the natural prolongation as complementary and *essential elements in the judicial concept of the continental shelf*¹⁵⁴. The emphasis on the natural prolongation concept is found in Article 76 of the 1982 United Nations Convention on the Law of the Sea¹⁵⁵, which is expressly stated to prevail over the 1958 Geneva conventions¹⁵⁶.

Another legal reason for enjoying the continental shelf rights, is the capability of the coastal state to explore and exploit the shelf’s natural resources. This position was taken by the ILC¹⁵⁷, and was reaffirmed in Article 1 of the 1958 Geneva Convention on the Continental Shelf¹⁵⁸. It is clear, then, that the development of the law of the sea in this regard has witnessed a tendency to attach the continental shelf concept to legal considerations at the expense of physical considerations, whether geological or geomorphological. Therefore, given these dealings, it can be concluded that the sea-bed of the Arabian Gulf falls within the legal definition of the continental shelf as adopted in treaty and case laws.

As regards the use of the “contiguity” concept by Saudi Arabia, it is to be noted, first of all, that, in doing so, the Kingdom followed the precedent of the Truman Proclamation, which asserted the jurisdiction and control of the United States over the natural resources of the subsoil and sea-bed of the continental shelf beneath the high seas, but contiguous to the coasts of the US¹⁵⁹. Moreover, this concept was also adopted in Article 1(a) of the CSC, which provides that:

the continental shelf is used as referring to the sea-bed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea ... (emphasis added).

However, apart from this, it can be said that in the absence of any protests, the Saudi practice, along with the practices of the other Gulf states, have already now passed into customary law, which means that the Saudi claim over its continental shelf in the Arabian Gulf is legitimate not only under conventional law or case law, but also as a matter of international custom¹⁶⁰.

With regard to the Saudi claim in the Red Sea, obviously, it was influenced by claims made elsewhere much earlier. This was confirmed in the Explanatory Note accompanying the 1968 Decree. Of these, specific mention was made of the 1858 UK Cornwall Submarine Mines Act¹⁶¹, where it was stated that:

*All mines and minerals lying below low-water mark under the open sea adjacent to, but not being part of the County of Cornwall ... are vested in Her Majesty the queen in right of her Crown as part of the soil and territorial possessions of the Crown.*¹⁶²

The Note also cited Colombos who found that:

*... the subsoil under the bed of the sea may be considered capable of occupation, as the same reasons, based on the principle that no obstacles should be made to the freedom of communication and trade on the high seas, do not apply. It would therefore be unreasonable to withhold recognition of the right of a littoral state to drive mines or build tunnels in the subsoil, even when they extend considerably beyond the three-mile limit of territorial waters, provided that they do not affect or endanger the surface of the sea.*¹⁶³

Despite that, it should be said that in this claim, Saudi Arabia undoubtedly went beyond the continental shelf regime as established in the 1958 Geneva Convention on the Continental Shelf. This fact was recognised by Saudi Arabia herself in the said Explanatory Note, but Saudi Arabia did not sign the Convention. However, the inclusion into the LOSC of a new legal definition for the continental shelf norm removes any doubts about the Saudi claim. By the adoption of the 200 n.m. distance criterion, it is clear that the sea-bed and subsoil of the Red Sea, the average breadth of which is only about 170 miles¹⁶⁴, fall within the legal definition of the continental shelves of littoral states. Furthermore, Saudi Arabia may legitimize her claim in the Red Sea, not only relying upon the continental shelf

regime as established in the LOSC, but also in accordance with the newly established regime of the EEZ.

Through both claims, Saudi Arabia, however, has expressly bound itself not to affect the legal status of the superjacent waters as high seas and not to obstruct navigation therein, as well as, not to affect the air space above the said waters¹⁶⁵. These provisions fulfil the requirements contained in Article 3 of the CSC and Article 78 of the LOSC¹⁶⁶. Thus, it may be concluded, therefore, that the Saudi Arabian practice on the continental shelf, whether as to the degree of authority exercised, or the duties towards the international community, is now in general agreement with international standards of the regime. Nevertheless, the Saudi legislation is, in the present author's view, in need of reformulation, to be in full agreement with the conventional texts, not only in content but also in form.

4. The Delimitation of the Saudi Arabian Continental Shelf

The existence of offshore oil deposits in the Arabian Gulf makes the question of maritime boundaries one of extreme importance to Saudi Arabia. The Kingdom, as mentioned earlier, shares its 2320 km maritime boundaries with nine countries: Yemen, Eritrea, Sudan, Egypt, Jordan, Qatar, Bahrain, Kuwait and Iran¹⁶⁷. In what follows, the Saudi policy relating to the offshore boundaries will be examined, first, through the principles laid down in the Saudi national legislation, and second, through the practical applications of such principles in the bilateral delimitation agreements, concluded between the Kingdom and some neighbouring states.

4.1 The Rules of Delimitation in the Saudi National Legislation

The geographical characteristics of the Arabian Gulf and the Red Sea made the overlapping of claims inevitable¹⁶⁸. The Saudi legislator was apparently aware of this fact at the time of formulating the Kingdom's claims over her continental shelf. Therefore, no specific seaward limits for the continental shelf were identified. Instead, the Royal Pronouncement of 1949, having asserted the jurisdiction of the Kingdom over the sea-bed and subsoil areas contiguous to her coasts in the Gulf, provides that:

The boundaries of such areas will be determined in accordance with equitable principles by Our Government in agreements with other states having jurisdiction and control over the subsoil of seabed of adjoining areas¹⁶⁹ (emphasis added).

The Decree of 1968 does not deal expressly with the delimitation question. Nevertheless, by inference, it can be said that the Decree has adopted the “equitable principles” rule. In this respect, Article 3 provides for the possibility to explore, mine and exploit the stated “natural resources”:

by way of sharing with the neighbouring governments which have similar rights recognised by the government of the Saudi Arabia Kingdom in common zones (emphasis added).

Turning back to the provisions adopted in the 1949 Royal Pronouncement, it is to be noted that Saudi Arabia followed the Truman Proclamation which provided for boundaries to be determined on the basis of “equitable principles”, without indicating a specific method of delimitation that could lead to the sought equity. The Saudi claim, however, adds the phrase “in agreement with other states ...”, but it is silent as to the situation of failure to reach agreement. The adoption of “equitable principles by agreement” to determine the continental shelf boundaries with adjacent or opposite states reflects the flexible position of the Kingdom, tending to leave doors open for settlement by negotiation. Thus, due to the fact that “equitable principles” represent general principles of law that might be applied in a number of different ways, Saudi Arabia could seek to rely on various factors, e.g. natural configuration of the coast, economic considerations, unity of boundary deposits, and any other relevant circumstances, in order to produce an equitable solution. In practice, Saudi Arabia, as will be seen, was confronted with the problems associated with the “equitable principles” concept¹⁷⁰.

In adopting the framework of “agreement in accordance with equitable principles”, Saudi Arabia has followed the approach of international courts. In the North Sea cases, for example, the ICJ said:

These two concepts, of delimitation by mutual agreement and delimitation in accordance with equitable principles, have underlain all the subsequent history of the subject. They were reflected in various other state proclamations of the period, and after, and in the latter work of the subject¹⁷¹.

The same position was also taken by the Court in the Tunisia/Libya case¹⁷², and by the tribunals in the Anglo/French, Guinea/Guinea Bissau, and Canada/France Maritime Boundary arbitrations¹⁷³. On the other hand, the Saudi legislation appears to be in partial accord with the approach of the ILC¹⁷⁴ and the CSC¹⁷⁵ as to preference for reaching “agreement”, but it departs from them, in that the former contains no reference to the more specific concept of “equidistance” and the use of a “median line”, the concept which was emphasised by the ILC and adopted in the CSC¹⁷⁶. The Saudi approach is, however, closer to that adopted in the LOSC which provides that the delimitation of the continental shelf:

*shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice in order to achieve an equitable solution*¹⁷⁷

Nonetheless, it is to be noted that the provisions of the LOSC, unlike the Saudi procedure, contain a reference to “international law as referred to in Article 38 of the ICJ’s statute”¹⁷⁸. The LOSC goes further to oblige the states concerned, while negotiating agreement, to enter *into provisional arrangements of a practical nature*¹⁷⁹. If no agreement can be reached within a “reasonable period of time”, the LOSC adds that the states concerned are obliged to resort to the dispute settlement procedures provided for in Part XV of the Convention¹⁸⁰. It should be noted, finally, that although there is no mention of the “equidistance” principle in the respective Saudi claims, this principle was adopted elsewhere in the Saudi legislation, but in relation to the delimitation of the exclusive fishing zones of the Kingdom¹⁸¹.

4.2 Agreements on Delimitation of the Continental Shelf with Neighbouring States

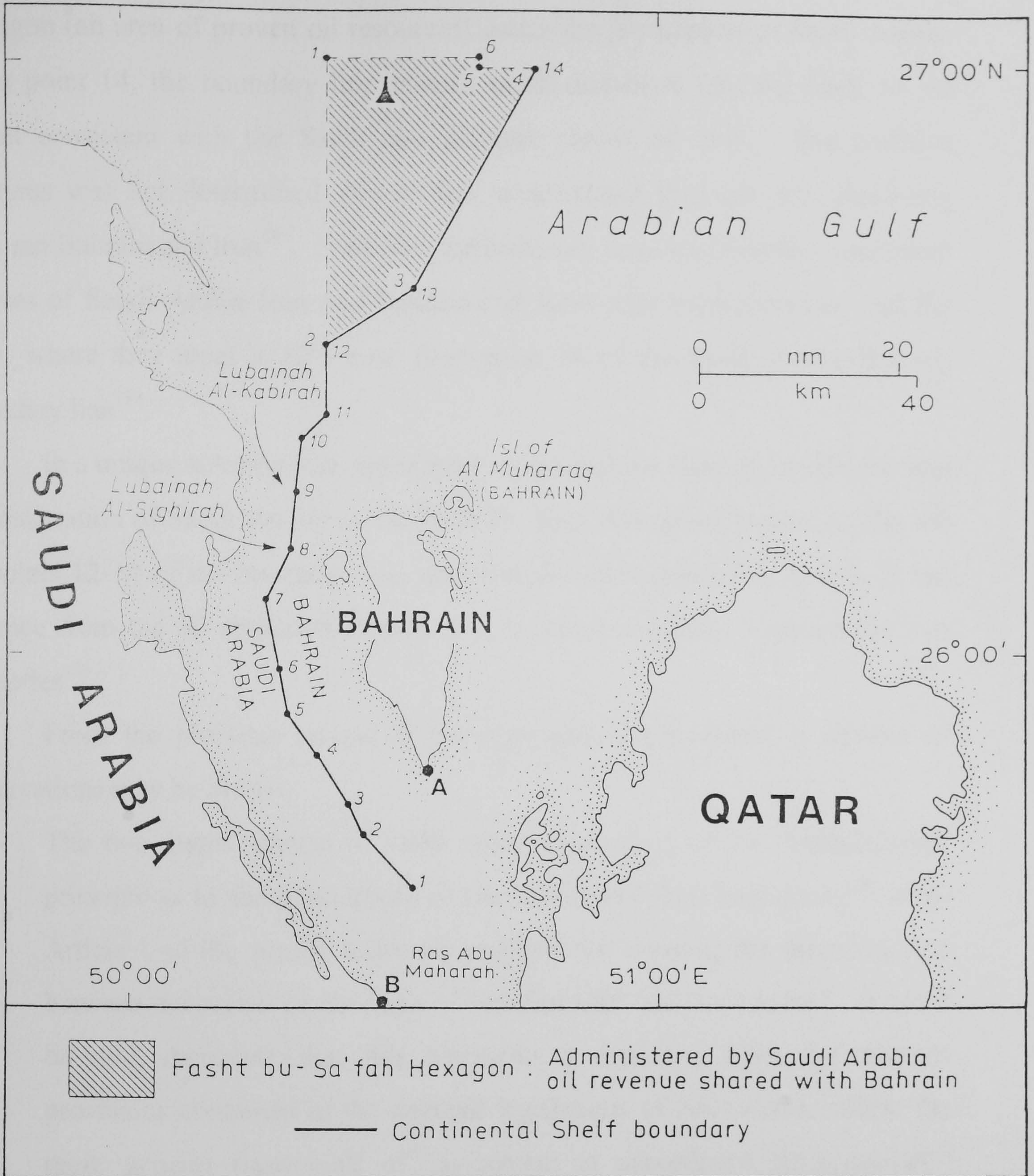
Usually, the provisions of delimitation agreements represent a practical application of those contained in national legislation. Settlement of Saudi Arabia’s maritime problems with neighbouring states was attained by agreements reached at different times and never by judicial or arbitral procedures. The discovery of oil and gas in the Gulf in great commercial amounts caused the region’s states to enter promptly into bilateral boundary agreements with the aim of avoiding the probable disputes over these resources. Thus, although the Kingdom overlooks the Red

Sea and the Arabian Gulf, most maritime boundary agreements were concluded with the neighbouring states in the Gulf rather than the Red Sea. These agreements will be examined in the following section.

4.2.1 Saudi Arabia-Bahrain Agreement of 1958

The Saudi Arabia-Bahrain Continental Shelf Boundary Agreement of 22 February 1958¹⁸² was the first offshore boundary agreement to be concluded in the Arabian Gulf region. It aimed to define the boundary line extending for 98½ n.m.¹⁸³ between Saudi Arabia and the opposite island state of Bahrain.

Reference having been made, in the preamble, to the relevant pronouncements of the Kingdom and Bahrain¹⁸⁴ of 28 May 1949 and 5 June 1949, respectively, concerning the exploitation of the sea-bed, Article 1 of the Agreement states that the boundary line between the two countries is delimited *on the basis of the median line*. This line consists of straight lines connecting 14 points on the boundary, the locations of which are based on either “predetermined landmarks” on both the Saudi and Bahraini land territory, or on specific longitudes and latitudes (see Map 3). It begins at point 1 situated at the midpoint of the line connecting the southmost extremity of Bahrain(A) and Ras Abu Maharah(B) on the Saudi coast. From point 1 the line proceeds northwards, linking all 14 points. It has been indicated that points 1-4 and 7 represent midpoints between landmarks and their location was determined independent from small islands in the vicinity, while points 5, 6, 10, and 11 represent true midpoints between the coasts, as there are no small islands that could be utilised to alter the location of the points involved¹⁸⁵. The Agreement provided a solution to the dispute over the two islands of Lubainah al-Sagirah and Lubainah al-Kabirah, which represented points 8 and 9, respectively, on the boundary line. Neither island, however, generates a territorial sea. All areas lying to the left of the line belong to the Kingdom, while those to the right belong to Bahrain¹⁸⁶. Points 12-14 are determined by reference solely to geographical co-ordinates apparently to include the Fasht Bu Saafa



Map 3 : Saudi Arabia - Bahrain Continental Shelf Boundary. Modified from J. I. Charney and L. M. Alexander, *International Maritime Boundaries*, Vol. II , (1993), at p. 1489.

Hexagon (an area of proven oil resources) under the jurisdiction of Saudi Arabia. From point 14, the boundary line extends north-eastwards into the Gulf, to the extent consistent with the Saudi and Bahraini claims of 1949. The northern terminus was not determined, due to the jurisdictional disputes then prevailing between Bahrain and Iran¹⁸⁷. However, the boundary lines between the continental shelves of Saudi Arabia-Iran and Bahrain-Iran have now been delimited and the point where they meet is 12¼ n.m. from point 14 of the Saudi Arabia-Bahrain boundary line¹⁸⁸.

In a unique solution, the Agreement recognised the right of jurisdiction and administration of Saudi Arabia in the Fasht Bu Saafa Hexagon, located to the left of points 12-14 of the boundary line, and demarcated according to Article 2, but revenue from the oil resources therein is to be divided equally between the two countries¹⁸⁹.

From the previous review of the Agreement's provisions, a number of observations may be drawn.

1. The two states' claims of 1949 make no mention of the "equidistance" principle as to the delimitation of the continental shelf boundaries¹⁹⁰ while Article 1 of the accord expressly provides for drawing the boundary line between the parties on the basis of "median line" and "midpoints". It could be said, therefore, that this represents a departure from the relevant provisions contained in the national legislations of both states, where the more general framework of "agreement in accordance with equitable principles" was adopted. However, this is not the case, since neither state sets aside, in its national claims, the "equidistance" method. Secondly, the 1949 claims of both parties provided for "agreement leading to equitable principles" to decide the outer limits of their sea-bed and submarine areas. Thus, the "median line" accordingly is one method available, among others, that could be agreed upon in order to achieve an equitable solution. In the Anglo/French case of 1977, the Tribunal stated that:

*the combined "equidistance-special circumstances rule", in effect gives particular expression to a general norm that, failing agreement the boundary between states abutting on the same continental shelf is to be determined on equitable principles*¹⁹¹.

In the case of Saudi Arabia and Bahrain, however, not only were the continental shelf boundaries agreed upon between the two sides, but also, it was emphasised that the said agreement was concluded in the light of *the spirit of affection and mutual friendship* between the two countries¹⁹².

2. The present Agreement was ratified before the adoption of the Geneva Convention on the Continental Shelf. Neither country subsequently acceded to the latter. Nevertheless, both parties have, undoubtedly, been aware of the debates relating to the process of maritime boundary delimitation that took place in the ILC. Hence, the boundary came, to a large extent, on the basis of the median line, the principle which was adopted in Article 6 of the CSC.
3. Although the Agreement provided for the median principle, in practice, there exist certain legal deviations from this method. First, some small islands near the coasts were not given weight in the process. Such was the case with points 1-4 and 7, the locations of which were determined, irrespective of the small islands in the vicinity. This approach, however, was recognised by the ICJ in the North Sea cases of 1969. The Court indicated that ignoring the presence of islets, rocks and minor coastal projections, the disproportionately distorting effect of which can be eliminated by other means, a median line must effect an equal division of the particular area involved¹⁹³, a view which was supported by certain authorities, such as Lauterpacht¹⁹⁴, Gutteridge¹⁹⁵, McDougal and Burke¹⁹⁶ and Mouton¹⁹⁷. Secondly, at points 8 and 9, located respectively on the westernmost tip of the Lubainah al-Sagirah island, and easternmost tip of the Lubainah al-Kabirah island, the median line was adjusted in such a way that Bahraini sovereignty was recognised over the former and Saudi sovereignty over the latter. In doing so, the two sides managed to resolve the long-standing dispute over the two islands. Thirdly, in determining points 12-14, the median line was obviously abandoned in favour of agreed geographical co-ordinates. This joint desire of both parties was in order to preserve the unity of Fasht Bu Saafa oil field, the division of which would have been inevitable if the median line principle had been applied¹⁹⁸.

In accepting this solution, the parties were very likely influenced by the views of some delegates to UNCLOS I, who preferred the unity of oil deposits¹⁹⁹. Emphasising that the existence of a common deposit would scarcely seem to constitute a “special circumstance”, entitling a coastal state to demand a deviation from the median line, El-Hakim finds that there seems to be no reason why points 12-14 of the boundary line between Bahrain and Saudi Arabia should not be located on the basis of the median line. He further argues that the parties could have agreed a joint exploitation or profit-sharing in the Fasht Bu Saafa oil field²⁰⁰. However, the Saudi Arabia-Bahrain Agreement over the Fasht is justified under international law. Having regarded the unity of deposit as a factual element which it is reasonable to take into account in the course of negotiations for a continental shelf delimitation²⁰¹, the ICJ in the North Sea Continental Shelf cases, stated that where the continental shelf areas of certain states overlap, such a problem may be resolved:

*either by agreement, or failing that, by an equal division of the overlapping areas, or by agreements for joint exploitation, the latter solution, the Court continues, appearing particularly appropriate when it is a question of preserving the unity of a deposit*²⁰².

Not only does this rule of the Court confirm the legitimacy of the Saudi-Bahrain Agreement concerning the Fasht Bu Saafa Hexagon, but, indeed, it is very likely that this Agreement was one of the precedents that was taken into account by the Court before expressing its previous view. Thus, the Saudi Arabia-Bahrain continental shelf boundaries were determined in accordance with “agreement”. This Agreement, in light of the existence of some “special circumstances”, was based on a modified rather than a strict equidistant line, which led one author to say that the said Agreement does not apply the principle of “equidistance”²⁰³. The Agreement was, further, based on sharing of the Fasht Bu Saafa oil revenues. These grounds reflected the perspective of both sides in order to achieve “equitable settlement” of the question of the continental shelf delimitation between them.

4.2.2 Saudi-Arabia-Kuwait Partition Agreement of 1965

The Neutral Zone, a land area of about 2,000 square miles between Saudi Arabia and Kuwait, was established as a result of the 1922 Conference held at the port of Al-Uqair²⁰⁴. In the Conference, the Boundary Agreement between Kuwait and Najd was adopted. The Agreement provided that:

*the Governments of Najd and Kuwait will share equal rights until, through the good offices of the Government of Great Britain, a further agreement is arrived at between Najd and Kuwait ...*²⁰⁵.

Indeed, another agreement relating to the partition of the Zone was subsequently signed by Kuwait and Saudi Arabia (including Najd), on 7 July 1965. According to this convention, officially known as the 1965 Agreement between the State of Kuwait and the Kingdom of Saudi Arabia relating to the Partition of the Neutral Zone²⁰⁶, the zone in question was equally divided between the two parties, as the northern half of the mainland was annexed to Kuwait and the southern to Saudi Arabia²⁰⁷. Nevertheless, provision was made for joint exploitation of natural resources of the Partitioned Zone as a whole²⁰⁸, and a permanent committee for that purpose was established²⁰⁹. As to the legal implications of this agreement, it was pointed out that the Neutral Zone, established under the Al-Uqair Agreement of 1922, ceased to exist as a result of its division into two parts under the 1965 Agreement²¹⁰. According to another view, which seems to be closer to truth, the partition of the Zone under the latter agreement is of no more than administrative nature, and by no means incorporates either part into the exclusive sovereignty of the respective country²¹¹.

Although the 1965 Agreement is mainly a land boundary one, the division decision had also its legal effects on the opposite maritime zones of the Arabian Gulf. Both parties agreed that the territorial waters which adjoin that part of the Partitioned Zone of the respective state are to be annexed to its territory, and therein the state has full right to exercise the same rights as exercised over the part annexed to its mainland²¹². No outer limits for the territorial waters were specified. It was further stipulated that for the purpose of exploiting the natural resources in the Partitioned Zone, not more than 6 n.m. of the sea-bed and subsoil adjoining the Zone are to be annexed to the mainland of the Zone²¹³. Beyond that 6 n.m. limit, presumably within the shelf appertaining to the Zone, the parties

agreed to enjoy equal rights by means of joint exploitation²¹⁴, but again, no outer limits for this area were specified. That is because, at the time, the maritime boundary between Kuwait and Saudi Arabia, on the one hand, and Iran, the opposite state on the Gulf, on the other, had not been determined²¹⁵.

The 1965 Agreement did not also provide for the territorial sea boundary between the two sides, although such action was stipulated in Article VII of the Agreement. This may have been because there were no practical difficulties arising out of the exercise of equal rights, as was the case within the Neutral Zone²¹⁶.

In implementation of Article 1 of the 1965 Agreement, the land boundary line was subsequently precisely defined by virtue of the Supplemental Agreement approving the Demarcation of the Median Line of the Saudi Kuwait Neutral Zone²¹⁷, but the boundaries of the offshore areas remain undefined, and yet, the provision for joint exploitation for the natural resources of the Zone is still valid. Nonetheless, it has been pointed out that despite the fact that the southern offshore boundary of the Neutral Zone, between the Zone and Saudi Arabia, has not yet been formally determined throughout its length, the segment nearer the shore, which runs through the Safaniya and Khafji offshore oil-fields, has been established *de facto* for a number of years²¹⁸.

In any case, the offshore boundaries between Kuwait and Saudi Arabia have not yet been settled, due to a dispute over the two islands of Qaru and Umm Al-Maradim, which lie off the shore of the Partitioned Zone. These islands are claimed by Kuwait, but are regarded by Saudi Arabia as having the same legal status as the Neutral Zone before its division in 1965, i.e. joint sovereignty²¹⁹. This question is one of the outstanding problems with regard to offshore boundaries in the region.

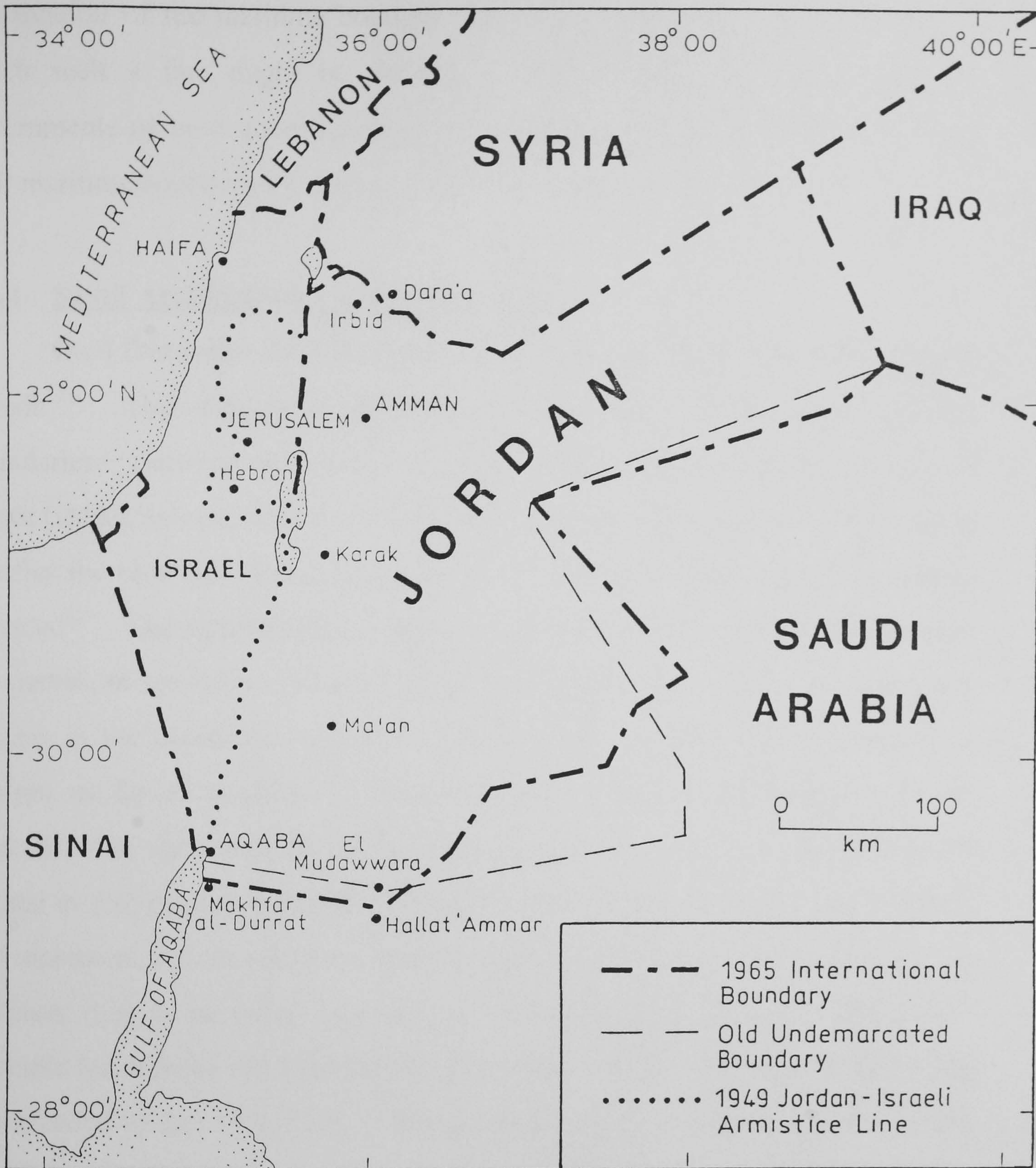
It is interesting to note that through the Partition Agreement of 1965, the Kingdom agreed to be entitled to exploit the natural resources of submerged areas adjoining the Zone for a distance no more than 6 n.m. even though the Royal Decree of 1958, as indicated before, had stipulated a 12 n.m. territorial sea, in which the Kingdom has the right to exercise its sovereignty over its waters, as well as the air space above and the territorial sea-bed and the subsoil beneath them²²⁰. The territorial sea of Kuwait, the other party of the Agreement, was never

officially defined until 17 December 1967²²¹. Thus, the rights of the Kingdom in the given areas appeared to have fallen short of the Saudi claim. However, the acceptance of this provision accords with the Saudi Arabian tendency, preferring always to resolve offshore boundary problems in accordance with the principle of “agreement”.

It is clear, therefore, that the 1965 Agreement between Saudi Arabia and Kuwait adopted the “equidistance” principle as to the partition of the land area of the Neutral Zone. It further provided for “equitable” principles regarding the joint exploitation of the submerged areas beyond the 6 n.m. limit of the Zone. However, the offshore boundary line, as mentioned earlier was not identified, and moreover, the question of Qaru and Umm al-Maradim islands has not yet been settled. In this respect the governments of both countries, however, have recently entered into various negotiations, and officials of both sides have expressed their satisfaction with these negotiations. The Saudi Minister of Interior stated in interview that *contacts on this subject are on their proper track and there are no obstacles*²²². The Kuwaiti Minister of Foreign Affairs has been reported to have declared that *the demarcation of the Saudi-Kuwait maritime boundaries is going to be achieved shortly*²²³. Given the warm relationships between the two countries, it seems to be only a matter of time before the maritime boundary line between them is demarcated.

4.2.3 Saudi-Arabia-Jordan Agreement of 1965

The Boundary Agreement between the Kingdom of Saudi Arabia and the Hashemite Kingdom of Jordan was reached at Amman on 9 August 1965²²⁴. This agreement was concluded mainly with the aim of defining the land boundary line between the two countries. According to the Agreement, both sides exchanged land, as Saudi Arabia ceded around 4,375 square miles of its territory to Jordan, while the latter ceded around 3,750 square miles to Saudi Arabia²²⁵. On the coast of the Gulf of Aqaba, the land boundary between the two sides meets at a point the geographical location of which is latitude 29° 21'05 north and longitude 34° 57'08 east²²⁶. This situation gave advantage to the Jordanian side, since Jordan managed to gain some 10 n.m. of the Gulf's coast to be added to its original 3.5 n.m. coast²²⁷ (see Map 4). However, the Agreement does not provide for the



Map 4 : Saudi Arabia - Jordan Boundaries. Modified from XXII *MEJ*, (1968), at p. 348.

demarcation of the maritime boundary line, nor for the principles according to which such a line might be defined, a matter which necessitates that the governments of both countries enter into serious negotiations in order to settle their maritime boundaries along the lines of their land boundaries.

4.2.4 Saudi Arabia-Qatar Agreement of 1965

On 4 December 1965, the Saudi-Qatar Boundary Agreement was signed in Riyadh²²⁸. The Agreement aimed to determine both onshore and offshore boundaries. Between the coasts of the two countries, there exists the Bay of Salwa (Dohat Salwa). This waterbody, surrounded by the mainlands of both sides, satisfies the tests for closing lines, and could be described as deeply cut into or indented²²⁹. The Agreement provided for the division of the Gulf in half between the parties, in accordance with the principle of equidistance, and where there exist zigzags in the coastline, the median line is to be used, but this line should be straight as far as possible²³⁰. This provision, which is the only one in the Agreement to deal with the maritime boundaries between the two countries, is limited in scope, since it has no reference to the closing line at the Gulf's mouth, and moreover, it does not cover other maritime areas than the Gulf of Salwa. In addition, it is to be noted that the Agreement provides for the "equidistance" principle for drawing the boundary line in the Bay of Salwa, although neither party has acceded to the 1958 CSC. This apparently reflects the parties' view of this principle as a customary one.

However, in reality, the Agreement has not been implemented. Indeed, its implementation seemed to be in question in late 1992, following friction between the boundary safeguard forces of the two countries. In the wake of those events, Saudi Arabia, for its part, confirmed its commitment to the Agreement's provisions and advocated a prompt application of Article 3 which, *inter alia*, provides for surveying and specification of the boundary points on land and boundary lines from these points, referred to in Article 2, by a specialist world company²³¹.

In the Saudi-Qatari Joint Statement, issued at Al-Madinah Al-Monawarah on 20 December 1992 following a meeting involved the Heads of both countries, the following points were emphasized:

- * the implementation of the 1965 Agreement and the drawing of a boundary map to be signed by both sides;
- * for the implementation of the Agreement, the statement provided for the establishment of a joint Committee, which may in accordance with Article 3 of the Agreement, seek the assistance of a specialist surveying company; and
- * the Committee should accomplish its task within one year of the signing of this statement²³².

However, unfortunately, it took both sides more than three years to give the green light to the establishment of the said Committee. Not until 8 April 1996, was it reported that the two countries have agreed to take practical measures to demarcate their boundary line in accordance with the 1965 Agreement²³³.

It should be said that the sensitive circumstances of the Gulf region, which suffered two disastrous wars in the 1980s and early 1990s, are such that the area cannot afford further conflicts. Therefore, it is necessary for Saudi Arabia and Qatar to reach a final settlement to their land and maritime boundaries. This will contribute to the stability in the region as a whole and within the Gulf Cooperation Council, to which both countries belong.

4.2.5 Saudi Arabia-Iran Agreement of 1968

The Agreement concerning the Sovereignty over Al- Arabiyah and Farsi Islands and Delimitation of Boundary Line Separating Areas between the Kingdom of Saudi Arabia and Iran was signed on 24 October 1968 following years of difficult negotiations, and entered into force on 29 January 1969²³⁴. The continental shelf boundary dispute between the two countries started as early as 1 April 1963, following the publication of an announcement by the National Iranian Oil Company (NIOC), in which the Company declared that certain offshore areas would be opened for international bidding²³⁵. Saudi Arabia, for its part, issued a statement on 15 June 1963 protesting at the NIOC announcement, on the grounds that it constituted an infringement of legitimate Saudi rights in the area opposite Saudi Arabia's territorial waters or the territorial waters of the Saudi-Kuwait neutral zone, and that the concession previously granted by Iran to Pan-American Petroleum Corporation overlapped the concession of 1948 granted by Saudi

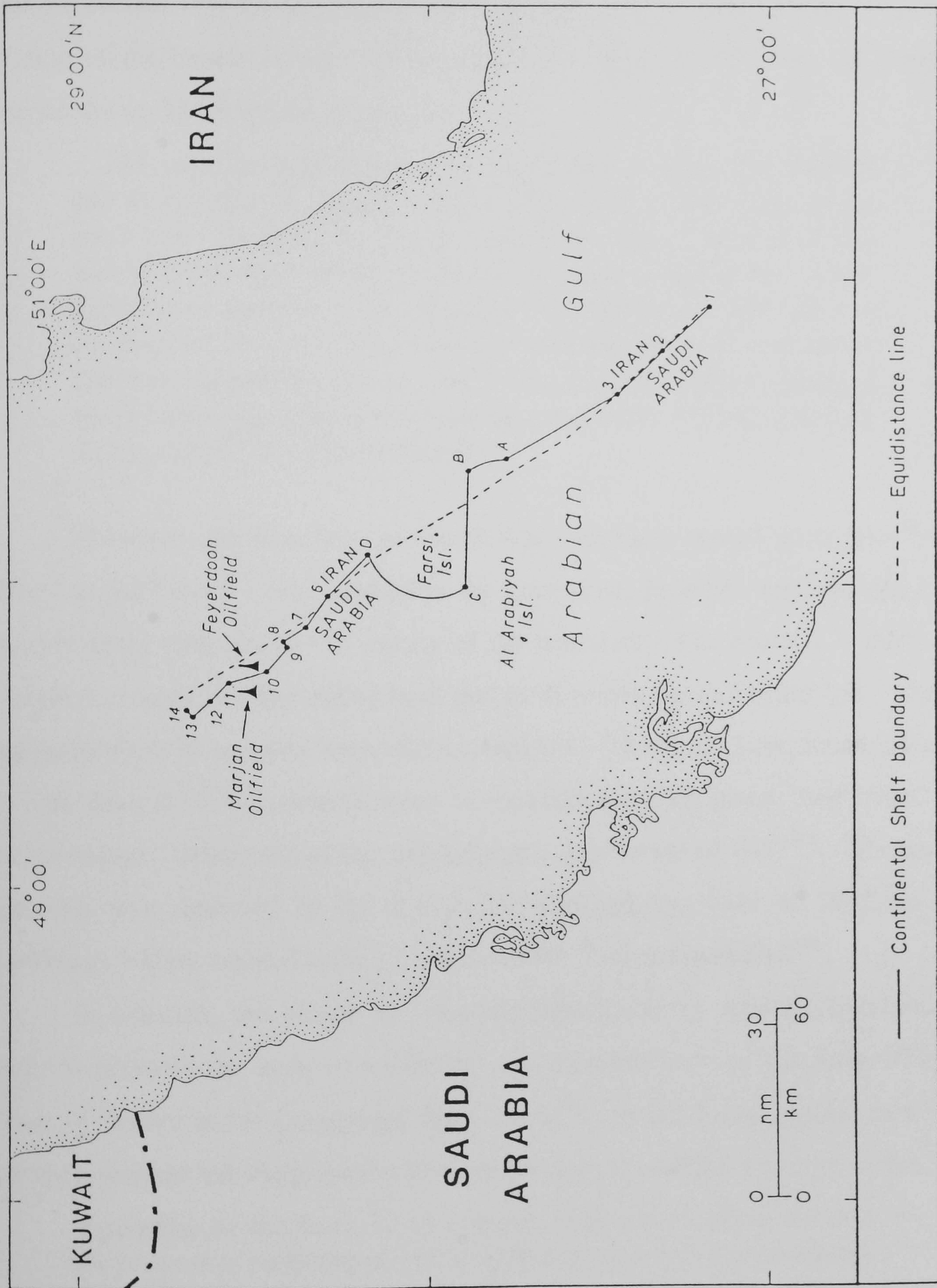
Arabia to Aramco²³⁶. This development forced the two countries to enter serious negotiations. On 13 December 1965, they, indeed, initiated a median line agreement, but the Iranian side refused to ratify it, following the discovery by the Iranian concessionaire of a petroleum structure in the Marjan-Feyerdoon region, situated largely on the Saudi side of the boundary delimited by the said agreement. After further negotiations, the two states managed, three years later, to reach agreement on the offshore boundary question between them. The 1968 Agreement gave Iran a slight net gain in sea-bed area, but presumably a substantial increase in its share of estimated oil reserves²³⁷. In an interview with *MEES*, the then Saudi Oil Minister commented on the 1968 Agreement by saying that:

*this was an example of how long-standing disputes between neighbouring and friendly states could be solved, and he hoped that it would provide a good start for the settlement of all similar boundary disputes in the Gulf*²³⁸.

The boundary between the two countries is the longest single continental shelf boundary in the Arabian Gulf, extending approximately 139 n.m.²³⁹. According to the 1968 Agreement, the boundary line is divided into three distinct sectors, involving some 16 points (see Map 5). The southern segment runs from point 1, the intersection point of the shelf boundary between Saudi-Arabia-Iran, Saudi Arabia-Bahrain, and Iran-Bahrain, and ends at point A at the vicinity of Al-Arabiyyah island. Here, according to the points specified in Article 3(a), the boundary is essentially a median line between the opposite mainland coasts.

In the central sector, involving the islands of Al-Arabiyyah and Farsi, the former was placed under Saudi sovereignty, and the latter under Iranian sovereignty²⁴⁰. The Agreement recognised a 12-mile territorial sea for both, and where these two belts of waters overlap, something which cannot be avoided, an equidistant boundary line is to be drawn from the lowest low water lines on each island. This solution led the boundary line to constitute an S shape, as it deviates sharply towards the Saudi coast before returning eastwards to reach a point approximately equidistant from the mainlands of the two states²⁴¹.

The delimitation of the northern segment, extending beyond the area surrounding the said islands, was the most difficult, and the source of the most disagreement between the two countries, in terms of oil deposits and the presence



Map 5 : Saudi Arabia - Iran Continental Shelf Boundary. Source: J. I. Charney and L. M. Alexander, *International Maritime Boundaries*, Vol. II, (1993), at p. 1519.

of Iran's island of Kharg (referred to sometimes as Khark). some 17 n.m. offshore and 3 by 4 n.m. in area²⁴². During the negotiations. Iran insisted that the island of Kharg should have full effect, i.e. be treated as part of the Iranian mainland. It is noteworthy that this Iranian negotiational position was in contradiction with the position of the Iranian delegate to UNCLOS I. At the Conference, the Iranian representative. Mr. Rouhani, stated that:

... The question that arose, however, is how to trace the median line in relation to islands. It was clear that, if they were to be taken into account, serious complications would arise and the benefit of having adopted the median line rule would be lost by the difficulty of applying it. It is because such difficulties were always encountered that the Delegation believed that the most convenient and most equitable solution was ... not to permit islands situated much further out than the territorial sea to have any influence on the boundary²⁴³ (emphasis added).

However, the boundary line which was eventually agreed upon gave "half effect" to the Island²⁴⁴, and adopted at the same time, equitable apportionment of the petroleum structure in the vicinity of the boundary. The result is a series of straight line segments that zigzag back and forth across the half-effect line. These conclusions are in harmony with international law. The Scilly Isles, located some 21 n.m. from the UK mainland, were, as mentioned earlier, given "half-effect" in the subsequent judgement of the Anglo/French Arbitration of 1977²⁴⁵. The same approach was followed by the ICJ in the Tunisia/Libya case of 1982, as to Kerkennah Island, situated some 11 n.m. from the Tunisian mainland²⁴⁶.

In addition, the choice of "reaching agreement for joint exploitation in order to preserve the unity of a deposit" was recommended by the International Court of Justice in the Continental Shelf cases²⁴⁷. In the Tunisia/Libya case the Court considered that the presence of oil-wells in an area to be delimited, could:

*depending on the facts, be an element to be taken into account in the process of weighing all relevant factors to achieve an equitable result*²⁴⁸.

It should be noted that the existence of Kharg island and the oil deposits in the northern sector, plus the existence of Al-Arabiya and Farsi islands in the central section of the boundary which, altogether, gave rise to the deviation of the

boundary line from the median line towards the Saudi coast, are what is meant by the “particular circumstances” referred to in the preamble of the Agreement.

It is interesting also to note that the Agreement prohibits oil drilling operations within 500 metres of the boundary²⁴⁹. In an accompanying exchange of notes dated the same day as the Agreement, this provision was interpreted by both parties to apply to exploitation not only from installations within the zone, but also from those outside it, with the exception of wells for conservation of observation purposes jointly agreed upon²⁵⁰.

From the above consideration of the Saudi Arabia-Iran Agreement, it is clear, that the delimitation was essentially based on the principle of “equidistance”, especially in the south, where the boundary line was a reflection of the opposite relationship of the parties’ mainland coasts. In the central segment, the median line was adjusted to take account of the sovereignty of both countries over the islands of Farsi and Al-Arabiya and their 12 n.m. territorial sea limits. Further adjustment to the median line took place in the northern segment, where the boundary was delimited in a way representing a broad application of “equitable principles” in dividing oil resources therein. The behaviour of both parties when dealing with the islands of Al-Arabiya and Farsi, located many miles from their mainland coasts, and the Iranian island of Kharg situated not far from the mainland, plus the employment of a modified median line to draw the boundary line, altogether represent a valuable contribution of this bilateral agreement to the international law of maritime boundaries. Such precedents, as noted earlier, were further supported in international decisions and in the Law of the Sea Convention of 1982.

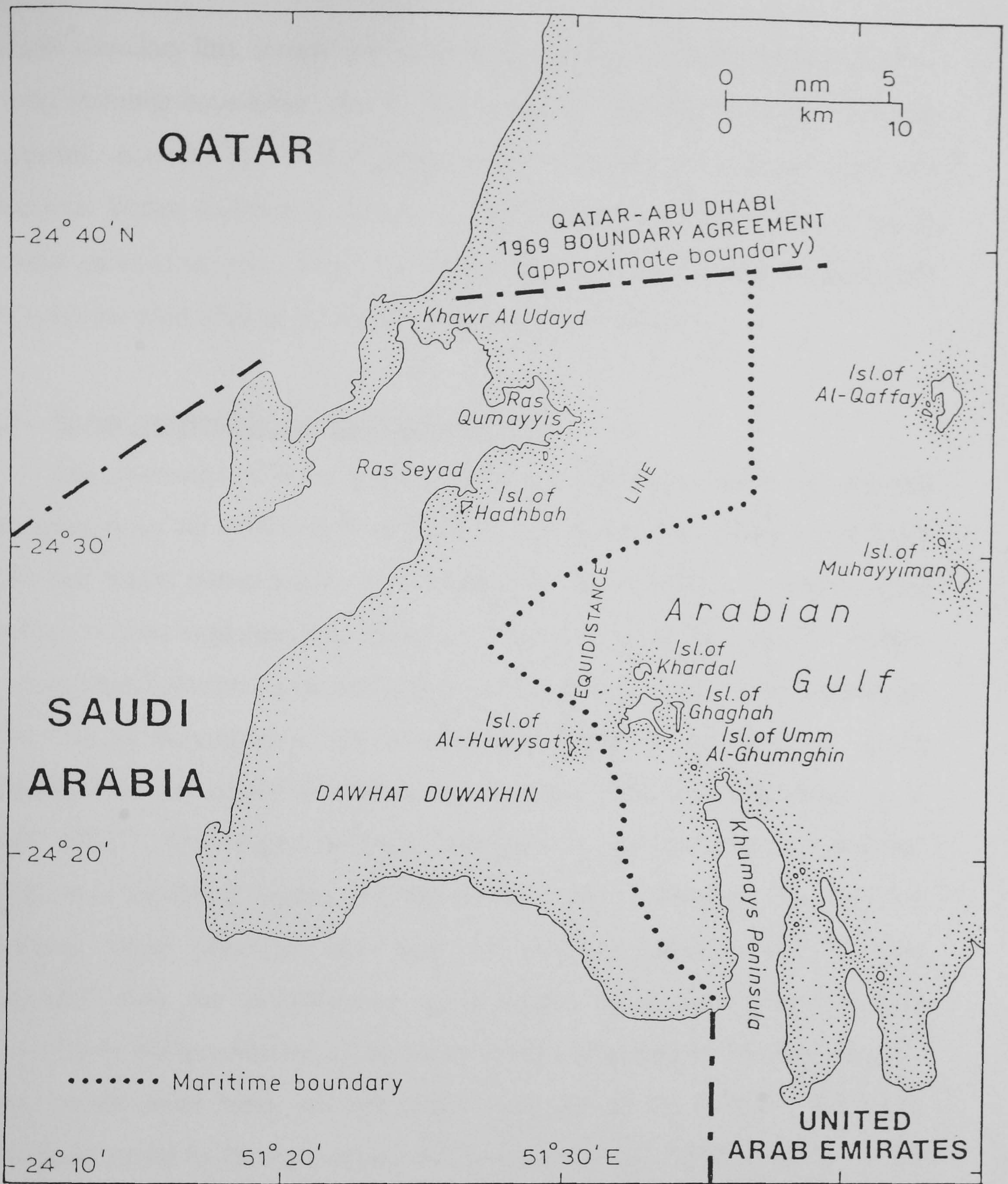
4.2.6 Saudi Arabia-UAE Agreement of 1974

The Boundary Agreement between the Kingdom of Saudi Arabia and the United Arab Emirates was signed at Jeddah City on 21 August 1974, and entered into force on the same day²⁵¹. The Agreement, which has not been published until recently, provides not only for definition of the maritime boundary, but also for the settlement of the long standing land boundary dispute between the two countries

over Wahat Al-Buraimi. The general features of the Agreement over the maritime boundaries can be summarised as follows (see Map 6):

- (1) The Agreement provides for land-maritime territorial exchanges²⁵². The Kingdom's concessions were in land, in return for maritime concessions on the part of the UAE. This situation also enabled the Kingdom to gain access to the Gulf's water at the east of Qatar, which had not been available before;
- (2) Huwysat island and the other two Dowhat Duwayhin islands were put under Saudi sovereignty, while another seven islands²⁵³, including the islands of Ummal-Ghumaghim, Ghaghah, Khardal, Al-Qaffay and Makasib, were agreed to be put under the sovereignty of the UAE. However, on the two UAE islands of Al-Qaffay and Makasib, the Kingdom has the right to establish any installations²⁵⁴;
- (3) The huge oil field of Shaybah-Zerarah, located to the north of the boundary line was expressly stated to be under the sovereignty of Saudi Arabia²⁵⁵. However, when a hydrocarbon material field is located on both sides of the boundary line, the Agreement provides that such a field is to be owned by the country which embraces the greatest part of the field²⁵⁶;
- (4) As to defining the boundary line, provision was made for the application of the "equitable principles"²⁵⁷, which entitles the Kingdom, according to the Agreement, to enjoy joint jurisdiction with the UAE, only in terms of navigation in the latter's territorial waters leading to the high seas²⁵⁸.

It is clear, then, from this 1974 Agreement that the maritime boundary problem between Saudi Arabia and the UAE was settled in accordance with "agreement", based on "equitable principles", an approach which, as seen earlier, was established both in the Saudi national legislation and in the international law of the sea. The Agreement is unique in granting the Saudi side certain rights on the UAE side of the boundary, such as the right to establish installations on the islands at Al-Qaffey and Makasib, and the right of access to the high seas through the UAE territorial sea. The Agreement also adopts the principle of "unity of deposits", which was pointed out by the International Court of Justice as one of the circumstances that may be taken into account in the delimitation process²⁵⁹. However, the most distinguished aspect of the Agreement is that in defining the



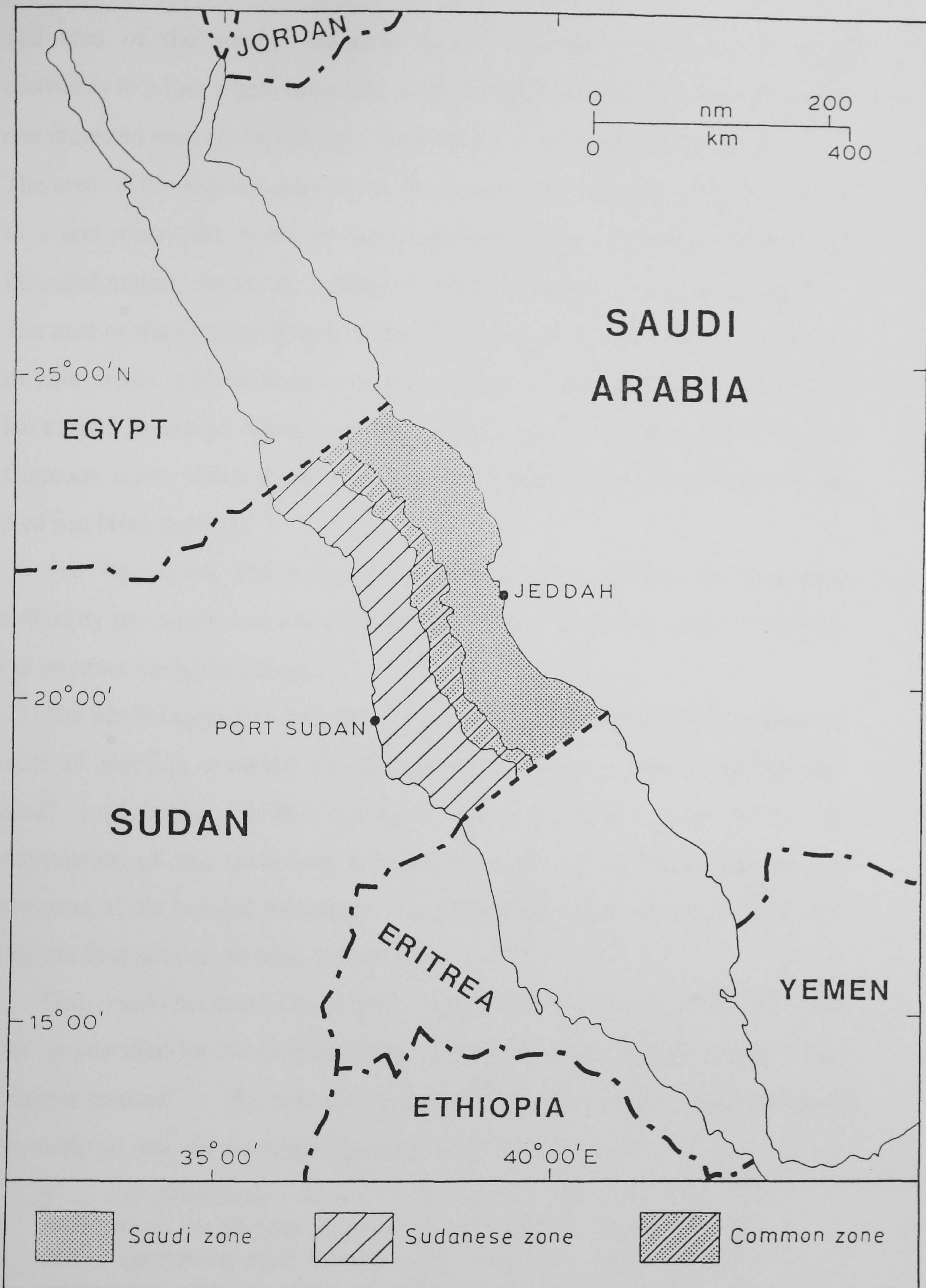
Map 6 : Saudi Arabia - United Arab Emirates Maritime Boundary. Modified from F. M. Al-Muwaled, Maritime Boundary Delimitation of the Kingdom of Saudi Arabia : A Case Study in Political Geography, an Unpublished Ph.D. Thesis (University of Durham), 1993, (Index of Maps).

maritime boundary line, it took into account one factor which has nothing at all to do with maritime boundaries, that is, the dispute of the two countries over land boundaries, as under the 1974 Agreement, the Kingdom gave up her territorial claims over Wahat Al-Buraimi (which is widely known to be rich in oil), in return for some gains in the sea. Thus, the Agreement established a valuable precedent for the delimitation of other offshore boundaries in the region.

4.2.7 Saudi Arabia-Sudan Agreement of 1974

The discovery of brine deposits of great economic value in the sea-bed areas lying along the axial trough of the Red Sea between the coastlines of Saudi Arabia and Sudan persuaded the Governments of both countries to negotiate the possibility of joint exploitation of those deposits between the two sides²⁶⁰. Indeed, the Agreement between Sudan and Saudi Arabia relating to the Joint Exploitation of the Natural Resources of the Sea-Bed and Subsoil of the Red Sea in the Common Zone was signed at Khartoum on 16 May 1974, and took effect on 26 August 1974²⁶¹. On the part of Saudi Arabia, the Agreement came as a practical translation of the Royal Decree of 1968 relating to the Ownership of the Red Sea Resources, which provided, *inter alia*, for joint enjoyment to the Red Sea “resources” *with the neighbouring governments which have similar rights recognised by the government of the Saudi Arabia Kingdom in common zones*²⁶². Sudan, on the other hand, had not enacted any law on the Red Sea resources, although as stated in the Agreement, the Sudanese Government has given on 15 May 1973, exploration licences to Sudanese Minerals Limited and the West German Company of Preussag²⁶³.

However, the Agreement is not a delimitation accord as such. It is merely, as its title suggests, an “agreement on joint exploitation in a common zone”. The Agreement can also be viewed as a “joint measure” promoted by the attempts of foreign commercial companies to claim the Red Sea deposits. In this accord, Sudan and Saudi Arabia, the two opposite countries on the Red Sea, agreed to specify their respective sovereign rights in the sea-bed and subsoil of the submarine areas lying between their coasts. In this respect, the said areas were divided into three parts (see Map 7):



Map 7: The Common Zone between Saudi Arabia and Sudan, according to the 1974 Agreement. Source: Z. Nawab and A. Dabbagh; "Atlantis II : Exploration and Economic Potential". Z. Nawab, Papers and Interviews on the Red Sea between 1979 -1989.

1. The area of the sea-bed adjacent to the Sudanese coast and extending eastwards to a line where the depth of the superjacent waters is uninterruptedly one thousand metres. In this area, Sudan has exclusive sovereign rights²⁶⁴.
2. The area of the sea-bed adjacent to the Saudi coast and extending westwards to a line where the depth of the superjacent waters is uninterruptedly one thousand metres. In this area, Saudi Arabia has exclusive sovereign rights²⁶⁵.
3. The area of the sea-bed lying between the two areas defined above is common to both states, and referred to as the Common Zone, where the two parties have equal sovereign rights to exploit all the natural resources therein²⁶⁶. The Common Zone, which is approximately 2,100 metres depth, includes the main Red Sea brine deposits²⁶⁷.

The Agreement provided that its application should not, to the extent prescribed by the established rules of international law, affect the status of the high seas or obstruct navigation therein²⁶⁸.

The parties agreed to provide for the establishment of a Joint Commission the seat of which is in Jeddah (Saudi Arabia), in order to ensure “prompt and efficient” exploitation of the Common Zone’s natural resources²⁶⁹. In implementation of this provision, a Saudi-Sudanese Joint Commission for the Exploitation of the Natural Resources of the Common Zone was established, and met for the first time on 10 May 1975 in Khartoum²⁷⁰.

This Saudi-Sudanese Agreement is the first of its kind in the Red Sea region. It provided for the division of the submarine areas between the two states in a unique manner²⁷¹. The principles adopted in this division are clearly inspired by international law. In the North Sea cases, the ICJ stated that:

*If ..., the delimitation leaves to the Parties areas that overlap, these are to be divided between them in agreed proportions or, failing agreement, equally, unless they decide on a regime of joint jurisdiction, user, or exploitation for the zones of overlap or any part of them*²⁷².

In practice, it is noted that research and exploitation activities commenced in the Common Zone soon after the conclusion of the Agreement. However, these activities and generally the concerns of both parties started to wane in the mid 1980s. The Agreement is still in operation, but a question arises about the

effectiveness of this agreement especially after the adoption in the 1982 Law of the Sea Convention of a new legal definition for the continental shelf. This significant legal development undoubtedly removes any fears of “foreign exploitation” in the region, since the submarine areas between the two countries fall according to the LOSC (Article 76) under the regime of the continental shelf where the coastal state has “inherent” rights to explore and exploit its natural resources. Indeed, the LOSC has weakened the Agreement and brought its importance and effectiveness into question.

It should be noted, however, that in addition to Sudan, Saudi Arabia shares maritime boundaries in the Red Sea with four other countries (Yemen, Jordan, Egypt and Eritrea). The Kingdom has not yet delimited her offshore boundaries with any of these states. The 1974 Agreement with Sudan is not on delimitation accord as such in as much as it is a special accord providing for joint exploitation of the natural resources in a common zone. Thus, the Kingdom still has to negotiate maritime boundary delimitation agreements with the said states.

With Yemen, however, serious efforts in this direction have indeed been initiated as both parties signed on 26 February 1995 a Joint Understanding Memorandum²⁷³, which was concerned with both land and offshore boundaries.

In order to conduct negotiations over defending the maritime boundary line, which starts where the land boundaries meet on the coast of the Red Sea, the Memorandum provided for the establishment of joint commissions²⁷⁴. In the Memorandum, no specific principles as to the delimitation process were laid down, but it was stated in general, that the offshore boundaries should be decided “in accordance with international law”²⁷⁵. It was recently reported that the boundary negotiations between the two countries have entered a “crucial stage”²⁷⁶, but in view of the secrecy surrounding the negotiations, it is not possible to assess the extent to which these negotiations have progressed. However, compared with the land boundaries, it is expected that the offshore boundaries do not represent a significant obstacle, though the known desire of both sides to achieve a final and lasting settlement of the boundary problem, both on land and at sea may, to some extent, delay this goal.

Conclusion

From the foregoing analysis of the continental shelf regime, it is clear that this regime has mainly crystallised through the Truman Proclamation and the similar state claims that followed, the 1958 Geneva Convention on the Continental shelf, international adjudications, and the 1982 United Nations Convention on the Law of the Sea.

The initial Saudi Arabian claim of 1949 to the resources of the sea-bed and subsoil of the areas contiguous to the coast in the Arabian Gulf came four years after the Truman Proclamation, which is regarded as the real starting point on the continental shelf regime, and it was formulated similarly to the latter. The Saudi claim, however, contained no mention of the term “continental shelf”, although, as concluded earlier, it could do so. Instead, it emphasised the principle of “contiguity”, referred to in the Truman Proclamation. The setting aside of strict physical configuration of the submerged areas, lying beyond the territorial sea was subsequently supported by the ILC as it proposed in July 1950 the criterion of “exploitability”, and by most of the Gulf states, the practices of which on the continental shelf are considered as significant in forming international custom on the subject. Further support was received for the criteria on which the Saudi claim was based, in the CSC and LOSC. The Saudi claim of 1968 in the Red Sea was based on the principle of continuity, but it was concerned with the areas “adjacent” to the continental shelf. Therefore, it was beyond the CSC, to which Saudi Arabia has not been a party. However, the legitimacy of this claim is not in doubt, now in the light of the new criteria of the regime found in the LOSC, since Saudi Arabia is party to the Convention.

As one of the foremost states to declare its authority over offshore resources, Saudi Arabia, can be said without reservation, to have contributed significantly to the development of the continental shelf concept. However, Saudi Arabia’s contribution to the legal regime of continental shelf is most manifest in her practice concerning the delimitation of the shelf, whether through her national legislation or through bilateral agreements with opposite and adjacent states in the Gulf. In this respect Saudi Arabia, despite the complicated geographical structure of the Gulf and the Red Sea has adopted a systematic approach to the negotiation

of her continental shelf boundaries. To this end, the Saudi continental shelf boundaries so far determined were generally based on a mixture of: agreement, equitable principles, equidistance and special circumstances, particularly the presence of islands and oil deposits around the boundary lines. The practices of Saudi Arabia and her neighbours set significant international precedents that were subsequently supported and followed by international multilateral conventions and the judgements of international courts and tribunals. Indeed, in case of disagreement over the delimitation process, as was the case with Iran, the Kingdom has rendered some concessions to ease access to peaceful settlement of matters in dispute, an approach called upon in Article 279 of the LOSC. In brief, not only does the practice of Saudi Arabia on the continental shelf, which was motivated by her respective economic interests, correspond with international standards, but it has contributed considerably to the development of the concept's international rules, despite the fact that Saudi Arabia has only very recently ratified the LOSC.

NOTES TO CHAPTER IV

1. Research Centre for International Law, (University of Cambridge), International Boundary Cases: The Continental Shelf. Vol. 1, Cambridge, Grotius Publications Limited, (1992), p. 1.
2. According to Vattel, States could claim areas of the sea adjacent to their own coasts, and to: *convert their own profit, an advantage which nature had so placed within their reach as to enable them conveniently to take possession of it, in the same manner as they possessed themselves of the dominion of the land they inhabit*. See E. DE Vattel, The Law of Nations, Chitty, J. (ed.), (1834), at p. 127.
3. Great Britain-Venezuela Treaty relating to the Submarine Areas of the Gulf of Paria, 26 February 1942, in 5 *LNTS*, p. 295. See further, M.L. Jewett, "The Evolution of the Legal Regime of the Continental Shelf", Part I of XXII *CYIL*, (1984), p. 153, at pp. 162-63. and Part II in XXIII *CYIL*, (1985), p. 201, at pp. 204-206.
4. For text, see Suppl. to 40 *AJIL*, (1946), pp. 45-46; M.M. Whiteman, *op.cit.*, Chapt. II, note 20, at p.756.
5. North Sea Continental Shelf cases, *ICJ Repts.*, (1969), p. 3, at p. 32.
6. For text, see M.M. Whiteman, *op.cit.*, note 4, at p. 757. See further O.L. Stone, "United States Legislation relating to the Continental Shelf", 17 *ICLQ*, (1968), pp. 103-17.
7. Para. 4 of the preamble of the Proclamation.
8. See M.L. Jewett, Part I, *op. cit.*, note 3, pp. 159-64.
9. H. Lauterpacht, "Sovereignty over Submarine Areas", XXVII *BYIL*, (1950), p. 376, at pp. 367, 394, 418, 419, 423, and pp. 431-32.
10. In 1951, Gidel pointed out that the doctrine is not a development of any pre-existing international norm, but a completely new development; cited in J.L. Kunz, "Continental Shelf and International Law: Confusion and Abuse", 50 *AJIL*, (1956), p. 828, at p. 830.
11. In the said case, Lord Asquith concluded that: *there are ... so many ragged ends and unfilled blanks, so much that is merely tentative and exploratory, that in no form can the doctrine claim as yet to have assumed hitherto the hard lineaments or the definitive status of an established rule of international law*. Petroleum Development Ltd. v. Sheikh of Abu Dhabi, 18 *ILR*, (1951), p. 144, at p. 155.
12. J.L. Brierly, The Law of Nations, sixth ed., Oxford, Clarendon Press, (1963), at p. 62.
13. *ILC Ybk.*, Vol. 2, (1950), at p. 384.
14. See E.D. Brown, The Legal Regime of Hydrospace, London, Stevens and Sons, (1971), pp. 1-10; S.V. Scott, "The Inclusion of Sedentary Fisheries within the Continental Shelf Doctrine", 41 *ICLQ*, (1992), p. 788, at pp. 789-91.
15. *Supra*, Chapt. I, note 37.
16. North Sea Continental Shelf cases, *ICJ Repts.*, (1969), p. 3, at p. 39.
17. M.W. Mouton, The Continental Shelf, The Hague, Martinus Nijhoff, (1952), at p. 6.
18. *Ibid.*

19. *Ibid.*
20. *ICL Ybk.*, Vol. 2, (1956), pp. 253 and 296.
21. For further details on the definition of the continental shelf, see M.M. Whiteman, *op.cit.* Chapt. II, note 20, pp. 814-42, see also J.A. Gutteridge, "The 1958 Geneva Convention on the Continental Shelf", XXXV *BYIL*, (1959), p. 102, at pp. 106-110.
22. S. Vasciannie, "Landlocked and Geographically Disadvantaged States and the Question of the Outer Limit of the Continental Shelf", LVIII *BYIL*, (1987), p. 271, at p. 273.
23. *ICJ Repts.*, (1969), at p. 31. The Court, in these cases, was requested to decided what principles and rules of law were applicable to the delimitation of the continental shelf in the North Sea between the Netherlands, the Federal Republic of Germany and Denmark.
24. *Ibid.*, at p. 51.
25. XVIII *ILM*, (1979), p. 397, Para. 79. For further discussion on the outer limit of the shelf, see D.N. Hutchinson, "The Seaward Limit to Continental Shelf Jurisdiction in Customary International Law", LVI *BYIL*, (1985), pp. 111-88.
26. The continental margin is defined in Art. 76(3) as comprising the shelf, the slope and the rise and excluding the deep oceanic floor with its oceanic ridges.
27. LOSC, Art. 76(4), (5), (6), (7), (8) and (9), see also Annex II to the Final Act. It is to be noted that the maximum 350 mile limit of the Continental Shelf was adopted as a compromise between the Irish proposal which took into account the natural and geographical consideration and the Soviet formula which was in favour of not exceeding 100 miles from the outer limit of the EEZ. See B.H. Oxman, "The Third United Nations Conference on the Law of the Sea: The Seventh Session (1978)", *op. cit.* Chapt. I, note 63, at pp. 19-22, and for the same author, see also, "The Third United Nations Conference on the Law of the Sea: The Eighth Session (1979)", *op. cit.*, Chapt. I, note 63, at pp. 19-22.
28. Churchill and Lowe, *op. cit.*, Chapt. I, note 10, at p. 123. For a useful discussion on the relationship between the EEZ and the continental shelf, see Malcolm D. Evans, "Delimitation and the Common Maritime Boundary", LXIV *BYIL*, (1993), p. 283, at pp. 286-93.
29. 25 *ILM*, (1986), p. 251.
30. *Ibid.*, pp. 299-300.
31. *Ibid.*, at p. 300.
32. *ICJ, Repts.*, (1985), p. 13, at p. 33.
33. *Ibid.*
34. See UNCLOS I, Official Records, Vol. VI, pp. 1-31.
35. See the statement of the Argentinian delegation in *Ibid.*, p. 203.
36. *Ibid.*, p. 5.
37. *Ibid.*, pp. 10-11.
38. *Ibid.*, pp. 14-15.

39. *Ibid.*, p. 16.
40. *ILC Ybk.*, Vol. 1. (1951) at p. 267.
41. *ILC Ybk.*, Vol. 1. (1956), pp.141 and 143.
42. CSC, Art. 2(2), (3).
43. CSC, Arts. 3, 4, and 5.
44. *ICJ Repts.*, (1969), p. 3, at p. 22.
45. CSC, Art. 2(4).
46. *Ibid.*, Art. 5(2), (3). The said installations are not to be treated as islands. This, however, means that they have no territorial seas of their own, and their presence has no effect on the delimitation of the territorial sea of the coastal state (Art. 5(4)).
47. LOSC, Art. 56.
48. LOSC, Art. 82.
49. J.R. Stevenson and B.H. Oxman. "The Future of the United Nations Convention on the Law of the Sea", 88 *AJIL*, (1994), p. 488, at p. 496.
50. *Supra*, note 28.
51. D.P. O'Connell. "Sedentary Fisheries and the Australian Continental Shelf", 49 *AJIL*, (1955), p. 185, at pp. 199-200.
52. P. Weil, The Law of Maritime Delimitation - Reflections, (translated from the French by MacGlasham), Cambridge, Grotius Publications Limited, (1989), at p. 5.
53. See J.R.V. Prescott, *op. cit.*, Chapt. I, note 87, at pp. 88 *et seq.*
54. R. Lagoni, "Interim Measures Pending Maritime Delimitation Agreements", 78 *AJIL*, (1984), p. 345, at p. 345.
55. XVIII *ILM*, (1979), p. 397, at p. 423.
56. *ICJ Repts.*, (1969), at pp. 36-37, pp. 43-44, and pp. 46-47.
57. See *supra*, p. 170.
58. Suppl. to 40 *AJIL*, (1946), p. 45, at p. 46.
59. E.D. Brown, Sea-Bed Energy and Mineral Resources and the Law of the Sea, Vol. 1, the Areas within National Jurisdiction, Oxford, The Alden Press, (1984), 1.6 13.
60. *Ibid.*, 1.6 14.
61. *Ibid.*, 1.6 26.
62. *Ibid.*, 1.9 2 - 1.9 6.
63. E.D. Brown, Sea-Bed Energy and Minerals: The International Legal Regime, Vol. 1, the Continental Shelf, London, Martinus Nijhoff Publishers, (1992), p. 317, cited in A.

Elferink, The Law of Maritime Boundary Delimitation: A Case Study of the Russian Federation, Dordrecht, Nijhoff Publishers, (1994), pp. 44-45.

64. J. Charney and L. Alexander (eds.), International Maritime Boundaries, Vol. 1. London, Martinus Nijhoff Publishers, (1993), p. xxvii.
65. L. Legault and B. Hankey, *op.cit.*, Chapt. III, note 85, at p.214-15. It is to be noted that percentages do not add up to 100 percent, since according to Legault and Hankey, in certain instances, the equidistance method (strict, simplified or modified) is used for a substantial portion of a boundary, while a non-equidistance method is used for a different and substantial portion of the same boundary. In such cases the boundary is classified under more than one method.
66. *ICJ Repts.*, (1969), p.3, para. 79.
67. *ICJ Repts.*, (1985), p.13, para. 44.
68. F.A. Ahnish, The International Law of Maritime Boundaries and the Practice of States in the Mediterranean Sea. Oxford, Clarendon Press (1993), pp. 119-21.
69. Text of the Articles and Final Clauses Adopted by the Fourth Committee, UNCLOS I, Official Records, Vol. VI, Doc. A/CONF.13/L.12, annex, p. 43. For details on the formulation of Art. 6 of the Convention and the debates of the state delegations to the 1958 Conference on the Law of the Sea, see UNCLOS I, Official Records, Vol. VI, pp. 93-98.
70. On this issue, Iran proposed that: *where an island or islands exist in a region which constitutes a continuous continental shelf, the boundary shall be the median line and shall be measured from the low-water mark along the coasts of the States concerned*. However, the proposal was rejected by the Fourth Committee. For the text, see UNCLOS I, Official Records, Vol. VI, Doc. A/CONF.13/C.4/L.60, at p. 142.
71. In their Informal Suggestions Relating to Paragraphs 1, 2 and 3 of Articles 74 and 84 of ICNT, the 24 countries participating in Group 7 proposed that: *The delimitation of the Exclusive Economic Zone/Continental Shelf between adjacent or opposite states shall be effected by agreement employing, as a general principle the median or equidistance line, taking into account any special circumstances, where this is justified*, Doc. NG7/2/Rev.2, in Renate Platzoder, *op. cit.*, Chapt. III, note 110, at p. 394.
72. The Informal Suggestion of the 30 Countries Participating in Group 7 provided that the delimitation of the two said areas *shall be effected by agreement, in accordance with equitable principles taking into account all relevant circumstances and employing any methods where appropriate, to lead to an equitable solution*, Doc. NG7/10/Rev.2, in *ibid.*, p. 404.
73. This situation was highlighted in the Report by the Chairman of Negotiating Group 7 on the Work of the Group, Doc. NG7/21, in *ibid.*, p. 425. See, however P. Allott, "Power Sharing in the Law of the Sea", 77 *AJIL*, (1983), pp. 1-30, particularly pp. 19-27.
74. Art. 38 of the Statute, which is regarded as a guidance to the sources of international law lists these sources in international conventions, international custom, general principles of law as recognized by civilized nations.
75. Oxman was a member of the US delegation to UNCLOS III. See B.H. Oxman, "The Third United Nations Conference on the Law of the Sea: The Tenth Session (1981)", 76 *AJIL*, (1982), p. 1, at p. 15.

76. Libyan Arab Jamaluriya v. Malta case, separate opinions of judges Ruda, Bedjaoui, and Jimenez de Arechaga, *ICJ Repts.*, (1985), p. 13, at p. 90.
77. *ICJ Repts.*, (1982), p. 18, at p. 157.
78. *ICJ Repts.*, (1984), p. 246, at p. 385.
79. *Ibid.*
80. L.A. Willis, "From Precedent to Precedent: The Triumph of Pragmatism in the Law of Maritime Boundaries", *XXIV CYIL*, (1986), p. 3, at p. 5.
81. R. Hodgson and L. Alexander "Toward an Objective Analysis of Special Circumstances", Occasional Paper No. 13, Law of the Sea Institute, April 1972, quoted in M.R. Shyam, "Extended Maritime Jurisdiction and Its Impact on South Asia", *10 ODIL*, (1982), p. 83, at p. 99.
82. *ICJ Repts.*, (1985), p.13, at p. 47.
83. *ICJ Repts.*, (1984), p. 246, at p. 325.
84. *ICJ Repts.*, (1969), p.3. On these cases, see generally, W. Friedmann, "The North Sea Continental Shelf Cases - A Critique", *64 AJIL*, (1970), pp. 229-40. In these cases, the FRG demanded a "just and equitable share" of the continental shelf, while the Netherlands and Denmark sought the application of the equidistance principle. For a brief review of the most outstanding cases with regard to the delimitation of the continental shelf in general, See, Research Centre for International Law, *op. cit.*, note 1, pp. 10-33; A. Elferink, *op. cit.*, note 63, pp. 47-111.
85. *ICJ Repts.*, (1982), p. 18. In this case, the Court was requested by both countries to decide what principles and rules were applicable to the delimitation of the continental shelf in the Mediterranean Sea adjacent to their coasts, and to clarify the practical method for the application of these rules and principles.
86. *Ibid.*, at p. 59.
87. *Ibid.*, at p. 79.
88. *25 ILM*, (1986), p. 251, at pp. 289 and 294. In this case, the Tribunal was requested to determine the course of a single boundary dividing the three zones of the territorial waters, continental shelf and exclusive economic zone, between the two adjacent states of Guinea and Guinea-Bissau.
89. *31 ILM*, (1992), p.1145, at pp. 1160, 1166 and 1169. In this case the Tribunal was requested to delimit the maritime space under the jurisdiction of Canada and France in the area south of Newfoundland and the French islands of Saint Pierre and Miquelon. For further discussion of this arbitration, see L. Fayette, "The Award in the Canada-France Maritime Boundary Arbitration", *8 IJMCL*, (1993), pp. 77-103; G. Politakis, "The French-Canadian Arbitration Around St. Pierre and Miquelon: Unmasked Opportunism and the Triumph of the Unexpected", *8 IJMCL*, (1993), pp. 105-34.
90. R. Hsu, "A Rational Approach to Maritime Boundary Delimitation", *13 ODIL*, (1984), p. 103, at p.107.
91. *19 ILM*, (1979), p. 397, Para. 70.

92. *ICJ Repts.*, (1985), p. 13. In the said case, the *ICJ* was requested to decide the continental shelf boundaries between Libya and Malta according to customary law, since Libya was not a party to the CSC.
93. *ICJ Repts.*, (1985), p. 13. at pp. 52 and 57.
94. *ICJ Repts.*, (1993), p. 38, Para. 46.
95. Malcolm D. Evans, Relevant Circumstances and Maritime Delimitation, Oxford, Clarendon Press, (1989), at p. 63.
96. *ICJ Repts.*, (1985), p. 13. at p. 57.
97. *ICJ Repts.*, (1969), p. 3. Para. 101.
98. *ICJ Repts.*, (1982), p. 18, at p. 88.
99. *ICJ Repts.*, (1984), p. 246, at pp. 299-300.
100. 31 *ILM*, (1992), p. 1145, at p. 1160. See generally, Malcolm D. Evans, *op. cit.*, note 95. Chapters 5-9.
101. *ICJ Repts.*, (1982), p. 18, at p. 77.
102. *ICJ Repts.*, (1985), p. 13, at p. 41. For further details, see Malcolm D. Evans, *op. cit.*, note 95, Chapters 13, 14 and 15.
103. *ICJ Repts.*, (1993), p. 38, Para. 75.
104. *ICJ Repts.*, (1969), p. 3, Para. 99.
105. *ICJ Repts.*, (1982), p. 18, at pp. 77-78.
106. The term “proportionality” is generally used for conferring areas of the sea-bed upon the states concerned in the ratio of the lengths of their respective coastlines (North Sea Continental Shelf cases, *ICJ Repts.*, (1969), p. 3, at p. 54).
107. 18 *ILM*, (1979), p. 397. at p. 427.
108. *ICJ Repts.*, (1982), p. 18, at p. 75.
109. 25 *ILM*, (1986), p. 251, at p. 301.
110. *ICJ Repts.*, (1985), p. 13, at pp. 53-55. See further, Malcolm D. Evans, *op. cit.*, note 95, Chapter 18.
111. *ICJ Repts.*, (1993), p. 38, Para. 65.
112. 18 *ILM*, (1979), p. 397. at pp. 444-45.
113. *Ibid.*, p. 455.
114. *ICJ Repts.*, (1982), p. 18, at p. 189.
115. 19 *ILM*, (1979), p. 397. at p. 442.
116. *Ibid.*

117. *ICJ Repts.*, (1985), p. 13, Para. 51.
118. *ICJ Repts.*, (1993), p. 38, Para. 81. For further details on security and defence considerations, see Malcolm D. Evans, *op. cit.*, note 95, Chapter 11.
119. Royal Pronouncement concerning the Policy of the Kingdom of Saudi Arabia with respect to the Subsoil and Sea-Bed of Areas in the Persian (Arabian) Gulf Contiguous to the Coasts of the Kingdom of Saudi Arabia, dated 28 May 1949. For the text, see *UN Leg. Ser. ST/LEG/SER.B/1*, (1951), at p. 22. For Arabic text, see *Umm Al-qura*, Suppl. No. 1263, dated 29 May 1949.
120. Agreement between the Saudi Arabian Government and Standard Oil Company of California (29 May 1933) in Agreements between the Saudi Arab Government and the Arabian American Oil Company, 2nd ed., Mecca, Government Press, (1964), at pp. 5-18.
121. *Ibid.*, Art. 2.
122. Supplemental Agreement between the Saudi Arab Government and California Arabian Standard Oil Company, (31 May, 1939). in Agreements between the Saudi Arab Government *op.cit.*, note 120, p. 24.
123. *Ibid.*, Art. 4 and Part 3.
124. See *supra*, Chapt. III, note 112. For further details on the development of the contractual relationship between the Saudi Government and Aramco, see Y. Al-Samaan, "Evolution of the Contractual Relationship between Saudi Arabia and Aramco" 12 *JENRL*, (1994), pp. 257-68.
125. For text, see 8 *ILM*, (1969), at p. 606. The Arabic text is found in The Maritime Documents of the K.S.A., *op. cit.*, Chapt. II, note 62, at pp. 17-19.
126. See *supra*, p. 27.
127. R. Young, "Saudi Arabian Offshore Legislation", 43 *AJIL*, (1949), p. 530, at p. 531. However, Young regards the Gulf as a whole as continental shelf in the legal sense and appertaining to the littoral states, see R. Young, "Equitable Solutions for Offshore Boundaries: the 1968 Saudi Arabia-Iran Agreement", 64 *AJIL*, (1970), p. 152. at p. 152.
128. H. Lauterpacht, *op. cit.*, note 9, at p. 384.
129. *Ibid.*
130. UNCLOS I, Official Records, Vol. 1, pp. 39-42.
131. *Ibid.*, p. 40, para.12.
132. *ICJ Repts.*, (1969), p. 3, Para. 14. The Court stated that: *The waters of the North Sea are shallow, and the whole seabed consists of continental shelf at a depth of less than 200 metres ...*
133. See E. Franckx, "Baltic Sea Maritime Boundaries" in J. Charney and L. Alexander. *op.cit.*, note 64, p. 345, at p. 346. For the text of the Declaration, see German Democratic Republic-Poland-U.S.S.R. Declaration on the Continental Shelf of the Baltic Sea, October 23, 1968, in VII *ILM*, (1968), pp. 1393-94.
134. See *supra*, note 3.

135. Law of June 19, 1955 concerning the Continental Shelf. in I *ND*, (1973), pp. 307-308.
136. Decree of 17 July, 1972 concerning the Territorial Sea, Continental Shelf and Exclusive Fishing Zones of the Sultanate of Oman, in *U.N. Leg. Ser. ST/LEG/SER. B/16*, (1974), pp. 23-24. (see Art. 3 in particular).
137. *ILC Ybk.*, Vol. 2, (1950), p. 384. The Commission stated, *inter alia*, that: *a littoral state could exercise control and jurisdiction over the sea-bed and subsail of the submarine areas situated outside its territorial waters with a view to exploitng and exploiting the natural resources there. The area over which such a right of control and jurisdiction might be exercised should be limited; but, where the depth of the waters permitted exploitation, it should not necessarily depend on the existence of a continental shelf.*
138. See *supra.*, p. 172-73.
139. *Supra*, note 114. Similar actions, however were taken in June 1949 by the Trucial states of the Arabian Gulf which were under British protection (Bahrain, Quatar, Abu Dhabi, Kuwait, Daudi, Sharjah, Ras Al-Khaimah, Ajman and Umm Al-Qaiwain): For the texts, see *U.N. Leg. Ser. ST/LEG/SER.B/1*, (1951), pp. 23-30. Iran followed in 1955 (*supra.* note 130), Iraq in 1957 (See *U.N. Leg. Ser. ST/LEG/SER.B/15*, (1970), pp. 368-69), and Oman in 1972 (*Supra.* note 131).
140. *Supra*, note 119.
141. *Supra.* note 4.
142. See R. Young, *op. cit.*, note 127, "Saudi Arabian Offshore Legislation" at p. 531.
143. W.L. Griffin, *op.cit.*, Chapt. I, note 107, at p. 551.
144. Royal Decree No. M/27 relating to ownership of Red Sea Resources, September 7, 1968. *supra*, note 125.
145. For further details on these activities, see J.C. Swallow, "History of the Exploratiopn of the Hot Brine Area of the Red Sea: Discovery Account"; G. Dietrich and G. Krause. "The Observations of the Vertical Structure of Hot Salty Water by R.V. Meteor"; A.R. Miller, "Atlantas II Account", in E.T. Degense and D.A. Ross, *op. cit.*, Chapt. I, note 107, pp. 3, 10 and p. 15, respectively.
146. W.L. Griffin, *op. cit.*, Chapt. I, note 107, at p. 550.
147. *Ibid.*
148. See *supra*, note 125.
149. XI *MEES*, No. 50, 11 October 1968, at pp. 1-2.
150. *Ibid*, at p. 2.
151. A copy of this Note was obtained from the Archives of the Saudi Ministry of Petroleum and Mineral Resources.
152. See *supra*, pp. 187-89.
153. See the passage from the judgement quoted at p. 173 above.
154. *ICJ Repts.*, (1985), p. 13. Para. 34, at p. 33. See also *supra*, at p. 174.

155. See the text at p. 173 above.
156. Art. 311(1).
157. See *supra*, note 137.
158. See *supra*, pp. 176-77.
159. See the passage from the Proclamation above, at p. 170.
160. See I. Brownlie, *op. cit.*, Chapt. III, note 117, at pp. 5-11, where he lists the elements necessary before a general practice can be accepted as law, as duration, a degree of uniformity and consistency, and a sense of legal obligation (*opinio juris*).
161. 21 and 22 Victoria, The Statutes at Large, (1858), Chapt. 109, at p. 246.
162. *Ibid.*, Art. II.
163. C.J. Colombos, *op.cit.*, Chapt. I, note 4, at p. 69.
164. See *supra*, pp. 25-27.
165. The text of the Royal Pronouncement of 1949 and Art. 6 of the 1968 Royal Decree.
166. Art. 78 of the LOSC, for example provides that:
1. The rights of the coastal state over the continental shelf do not affect the legal status of the superjacent waters or of the air space above those waters. 2. The exercise of the rights of the coastal state over the continental shelf must not infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other states as provided for in this Convention.
167. See *supra*, pp. 21-22.
168. See *supra*, pp. 25 and 27.
169. See the text of the Pronouncement.
170. See, for example, *infra*, pp. 209-213.
171. *ICJ Repts.*, (1969), p. 3, Para. 47. See also para. 101.
172. See the passage of the judgement at p. 182 above.
173. See *supra*, p. 182. In the Anglo/French case, for instance, the Tribunal stated that: *The choice of method or methods of delimitation in any given case ... has ... to be determined in the light of those circumstances and of the fundamental norm that the delimitation must be in accordance with equitable principles* (18 *ILM*, (1979), p. 397, at pp. 426-27).
174. Art. 7 of the Draft Articles on the Continental Shelf, in *ILC Ybk.*, Vol. 2, (1953), at p. 213.
175. Art. 6.
176. *Ibid.* See also *supra*, note 174.
177. Art. 83(1) of the LOSC.

178. For the text of the Statute, see 39 *AJIL*, (1945), p. 215; D. Harris, Cases and Materials on International Law, 4th ed., London, Sweet & Maxwell, (1991), at p. 990.
179. Art. 83(3) of the LOSC.
180. Art. 83(2) of the LOSC.
181. Art. 1 of the 1974 Declaration concerning the Limits of the Exclusive Fishing Zones of Saudi Arabia in the Red Sea and the Arabian Gulf (referred to hereafter as the Declaration of 1974). For the text, see *supra*, A. Al-Hakim, Chapt. II, note 174, at p. 204. For Arabic text, see The Maritime Documents of the K.S.A., *op. cit.*, Chapt. II, note 62.
182. For text, see *V ND*, (1977), pp. 207-9. For Arabic text, see Series of Treaties and Conventions, *op. cit.*, Chapt. II, note 63, at p. 131. The Agreement took effect on February 26, 1958.
183. *Ibid.*, p. 209.
184. Proclamation with respect to the Sea Bed and the Subsoil of the High Seas of the Persian (Arabian) Gulf, 5 June 1949, in *UN. Leg. Ser. ST/LEG/SER. B/I*, (1951), p. 24.
185. *V ND*, p. 209.
186. Art. 1(16).
187. See R. Young, "Equitable Solutions...", *op. cit.*, note 127, at p. 153.
188. A. El-Hakim, *op. cit.*, Chapt. II, note 174, at p. 88.
189. Art. 2.
190. In the Bahraini Proclamation with respect to the Sea Bed and the Subsoil of the High Seas of the Persian Gulf, of 5 June 1949, it was provided that the boundaries of the seabed and subsail lying beneath the high seas of the Gulf, contiguous to the Bahraini territorial waters and extending seaward *are to be determined more precisely as the opportunity calls ... on just principles ... after consulting with the neighbouring States ...* See *U.N. Leg. Ser. ST/LEG/SER. 13/1*, (1951), pp. 24-25.
191. 18 *ILM*, (1979), p. 397, at p. 421.
192. See the Preamble of the Agreement.
193. *ICJ Repts.*, (1969), p. 3, at p. 36.
194. H. Lauterpacht, *op. cit.*, note 9, at p. 410.
195. J.A. Gutteridge, *op. cit.*, note 21, at p. 120.
196. M.S. McDougal and W.T. Burke, *op. cit.*, Chapt. II, note 17, at pp. 436-37.
197. M.W. Mouton, *op. cit.*, note 17, at p. 420.
198. It is to be noted that during the negotiations between the two parties, and before the adoption of the present solution the division of the Fasht was accepted, but there were differences over the division criterion. See H. Al-Baharna, The Arabian Gulf States: Their Legal and Political Status, Their International Problems, 1st ed., Manchester, Manchester University Press, (1968), at pp. 308-309.

199. See the remarks made at UNCLOS I. by each of Mr Kennedy (UK), and Mr Carbajal (Uruguay) in UNCLOS I, Official Records, Vol. VI, pp. 93 and 95.
200. A. El-Hekim, *op. cit.*, Chapt. II, note 174, at p. 91.
201. *ICJ Repts.*, (1969), p. 3, Para. 97.
202. *Ibid.*, para. 98.
203. D.J. Padwa, "Submarine Boundaries", 9 *ICLQ*, (1960), p. 628, footnote 8, at p. 630.
204. The Conference was held at the invitation of the then British High Commissioner for Iraq, Sir Percy Cox. It was aimed at settling Kuwait's frontiers with her neighbouring countries which were the successors of the Ottoman Empire. The members of the Conference were Najd (now part of Saudi Arabia), represented by King Abdulaziz Ibn Saud, the founder of the Kingdom, Iraq, represented by its Ministers of Communications and Works, and Kuwait, a British Protectorate at the time, represented by the British Political Agent. See, S.M. Hosni, "The Partition of the Neutral Zone", 60 *AJIL*, (1966), p. 735, at pp. 735-37.
205. Done on 2 December 1922. This accord is also widely known as the Al-Uqair Protocol. For the text, see M.T., El-Ghoneimy, "The Legal Status of the Saudi-Kuwaiti Neutral Zone", 15 *ICLQ*, (1966), p. 690, at pp. 696-97.
206. For an English translation of the text, see 60 *AJIL*, (1966), p. 744. For Arabic text, see Series of Treaties and Conventions, *op. cit.*, Chapt. II, note 63. The Agreement took effect on July 25, 1966.
207. Arts. I and II.
208. Art. IV.
209. Art. XVII.
210. S.M. Hosni, *op. cit.*, note 204.
211. Of this view, M.T. El-Ghoneimy, *op. cit.*, note 205, at p. 716; H.M. Al-Baharna, "A Note on the Kuwait-Saudi Arabia Neutral Zone Agreement of July 7, 1965 relating to the Partition of the Zone", 17 *ICLQ*, (1968), pp. 730-35.
212. Art. VII.
213. *Ibid.*
214. Art. VIII.
215. The continental shelf boundaries between Saudi Arabia and Iran were determined (see below pp. 209-213), but between Kuwait and Iran the boundary is still undetermined. See D.M. Johnson and P.M. Saunders, Ocean Boundary Making, London/New York/Sydney, Croom Helm, (1988) at p. 216.
216. See S.M. Hosni, *op. cit.*, note 204, at p. 243.
217. Done in Kuwait on 18 December, 1969. For text, see Suppl. to *MEES*, Vol. XIII, No. 32, dated 5 June, 1970.
218. R. Young, "The Persian Gulf", 3 *ND*, (1973), p. 231, at p. 233.

219. See A. El-Hakim, *op. cit.*, Chapt. II, note 174, pp. 109-10.
220. Art. 2 of the Decree.
221. In 1967, the breadth of the Kuwaiti territorial sea was defined to be 12 n.m. in accordance to Art. 1 of the Decree of 17 December 1967 regarding the Delimitation of the Breadth of the Territorial Sea of the State of Kuwait. See *U.N. Leg. Ser. ST/LEG/SER. B/15*, (1970), pp. 96-98.
222. *Okaz*, No. 10568, dated 20 July 1995, at p. 6.
223. *Asharq Al-Awsat*, No. 6265, dated 23 January 1996, at p. 4.
224. An English translation of the Agreement appears in 22 *MEJ*, (1968), at p. 346. For Arabic text, see Series of Treaties and Conventions, *op.cit.*, Chapt. II, note 63, pp. 93-98.
225. F.M. Al-Muwaled, Maritime Boundary Delimitation of the Kingdom of Saudi Arabia, a Study in Political Geography, an unpublished Ph.D. Thesis, University of Durham (1993), at p. 192.
226. *Ibid.*
227. *Ibid.*
228. No English text of the Agreement was published. For Arabic text, see Series of Treaties and Conventions, *op. cit.*, Chapt. II, note 63, at p. 465.
229. J. Prescott, *op. cit.*, Chapt. I, note 87, at p. 171.
230. Art. 1.
231. So far, this has not been achieved. In protest at what was described as the non-reply of the Saudi Government to the Qatari inquiries concerning Qatar's allegation that some armed accidents had occurred on the land boundaries between the two sides, the Qatari Interior Minister did not attend a meeting for the GCC Interior Ministers held in Riyadh on 27-28 November, 1994. In an Official Statement, the Saudis, however, denied the Qatari allegations. See *Okaz*, No. 10344, dated 3 December, 1994.
232. The Statement was issued following a summit concluded between King Fahad of Saudi Arabia and the former Emir of Qatar, Sheik Khalifah Al-Thani. See *Asharq Al-Awsat*, No. 6341, dated 8 April 1996, at p. 4.
233. *Ibid.* pp. 1 and 4. Indeed, on October 10, 1996, both sides signed a contract with a French Company for the delineation of both land and maritime boundaries. See *Al-Yaum*, No. 8536 of October 28, 1996, at p. 1.
234. *V ND*, (1977), at p. 216; S. Oda, The International Law of the Ocean Development, Basic Document, Sijthoff/Leiden, (1972), at p. 415. For Arabic text, see Series of Treaties and Conventions, *op.cit.*, Chapt. II, note 63, at p. 15.
235. See Report No. 7-7 on Maritime Boundaries, prepared by R.F. Pietrowski, Jr., in J. Charney and L. Alexander, Vol. II, *op.cit.* Chapt. III, note 85, pp. 1519-24, at p.1520.
236. *Ibid.*
237. R. Young, "Equitable Solutions for Offshore Boundaries ...", *op. cit.*, note 127, at p. 155.

238. *MEES*, Vol. IX, No. 10, dated 7 January 1966.
239. R.F. Pietrowski, *op. cit.*, note 235, at p. 1519.
240. These two islands are located neatly in the middle of the Gulf, but Al Arabiyah is closer to the Saudi coast and Farsi is closer to the Iranian coast.
241. Arts. 1 and 3 (b).
242. R.F. Pietrowski, *op. cit.*, note 235, at p. 1522.
243. UNCLOS I, Official Records, Vol. VI, Para. 2, p. 96. See also the Iranian proposal in this respect, Doc. A/CONF.13/C.4/L.60, at p. 142. The proposal, however was rejected by 33 votes to 2, with 21 abstentions.
244. The half-effect line is that line constructed so as to divide equally the area between (1) a line equidistant from the Saudi Arabian mainland and the island of Kharg (full effect), and (2) a line equidistant from both the mainland of Iran and Saudi Arabia: Kharg (no-effect), that is, when Kharg is given full effect it is considered to be part of the mainland, and when Kharg is given no-effect, it is ignored in determining the equidistant line. See *V ND*, (1977), at p. 218.
245. 18 *ILM*, (1979), p. 397, at pp. 444-45.
246. *ICJ Repts.*, (1982), p. 18, Para. 129.
247. See the passage of the judgement, *supra*, p. 184.
248. *ICJ Repts.*, (1982), p. 18, Para. 107.
249. Art. 4.
250. For texts of the Notes, see J. Charey and L. Alexander, Vol. II, *op. cit.*, Chapt. III, note 85, pp. 1528-32.
251. A copy of the Arabic text of the Agreement was obtained from the Archive of the Saudi Council of Ministers. The Agreement was signed by the then King Faisal of Saudi Arabia for the Saudi side and the current president of the UAE, Sheik Zaid Al-Nahyyan for the UAE.
252. Art. 2.
253. Art. 5(1). See also F. Al-Muwalad, *op.cit.* note 225, at p. 92.
254. Art. 5(2).
255. Art. 3.
256. Art. 4.
257. Art. 5(3).
258. *Ibid.*
259. See *supra*, p. 184.
260. The extensive scientific programmes have resulted in the discovery of several deeps in the central part of the Red Sea. Some of these deeps are characterized by the presence of

hot (61-65° C), and highly-concentrated brines and bottom sediment layers, enriched with metals. The largest of the known deeps is the ATLANTIS II Deep which covers an area of about 60 km² at an average depth of about 2,100 m. See Z.A. Nawab, "Introductory Speech. Red Sea Commission Day" in Z.A. Nawab (eds.), Papers and Interviews on Red Sea between 1979-1989, at pp. 1-6.

261. For text, see V *ND*, (1977), at p. 393.
262. Art. 3 of the Decree.
263. Art. XIII.
264. Art. III.
265. Art. IV.
266. Arts. V and VI.
267. Z.A. Nawab, *op.cit.*, note 260, at p. 1.
268. Art. XV.
269. Arts. VII and XI.
270. On the activities of the Commission, see Z. Nawab and A. Dabbagh, "Atlantis II Deep: Exploration and Economic Potential", in Z.A. Nawab, Papers and Interviews..., *op.cit.*, note 260, pp. 2-14, particularly, pp. 5-13.
271. There have been similar agreements, however, elsewhere. For further information, see generally, M. Miyoshi, "The Basic Concept of Joint Development of Hydrocarbon Resources on the Continental Shelf, with Special Reference to the Discussions of the East-West Centre Workshops on the South-East Asian Areas". 3 *IJECL*, (1988), pp. 1-18.
272. *ICJ Repts.*, (1969), p. 3, at p. 53.
273. For the text, see *Okaz*, No. 10430 of 27 February 1995; *Asharq Al-Awsat*, No. 5935 of 27 February 1995.
274. Art. 4 of the Memorandum.
275. *Ibid.*
276. *Asharq Al-Awsat*, No. 6265 of 23 January 1996, at p.1.

Chapter V

Exclusive Economic/Fishery Zones

Introduction

The creation of the EEZ regime comes as one of the most important legal developments in the law of the sea, with regard to the distribution of the ocean resources. Officially the regime is considered as one of the most important innovations of the 1982 Convention. This concept was originally proposed and endorsed by the Third World Countries, but opposed by the developed countries, such as the US, the former Soviet Union and Japan. Since the late 1970s, it has received universal approval and many states have declared their own EEZs. Saudi Arabia is one of the littoral states which have not yet established an EEZ, although she set up her own fishery zone in 1974. In this Chapter, there will be an attempt, first to trace the evolution of the EEZ concept, to examine its legal framework, particularly with regard to the rights and duties of the coastal state in the zone, and then to discuss its delimitation rules, whether through the 1982 Convention, or case law. In the second part of the Chapter, an attempt will be made to discuss the Kingdom's position on the EEZ concept, the expected reasons behind the reluctance to proclaim an EEZ, and Saudi's marine fisheries policy, including her perspective on the delimitation of her fishery zone.

Part I: Exclusive Economic Zone in International Perspective

The introduction of a 200-mile Exclusive Economic Zone (EEZ) is one of the most significant contributions of the Third United Nations Conference on the Law of the Sea. Indeed, it has been described as the most significant development in the law of the sea since Grotius wrote his celebrated work, *Mare Liberum*¹. The creation of the EEZ concept has had a tremendous impact on mankind's uses of the ocean. With 200-mile maritime zones in effect, approximately 28.5 million square miles (out of 105.3 million square miles) of ocean space has come under coastal states' jurisdiction. The total size would increase to about 31.9 million

square miles if all coastal states were to claim the zones². This means that 90 per cent of the living resources would be under single nation jurisdiction³.

1. The Definition and Development of the EEZ

Under the LOSC, the EEZ is the marine area (including the water-column and the subjacent sea-bed and subsoil), beyond and adjacent to the territorial sea, extending up to 200 nautical miles from the baselines, used for measuring the breadth of the territorial sea, and within this area, the coastal state has sovereign rights to explore and exploit, conserve and manage the natural resources; also to exercise jurisdiction respecting artificial islands, installations and structures, marine scientific research and the protection and preservation of the marine environment subject to the rights of other states⁴.

The zone itself is a relatively recent concept and has its origins in the concept of the exclusive fishing zone and the doctrine of the continental shelf, as it combines and develops the two regimes⁵. The emergence of the EEZ can be traced to the Truman Proclamation of 28th September 1945, in which the US Government expressly declared its right to:

*establish conservation zones in those areas of the high seas contiguous to the coasts of the United States wherein fishing activities have been or in the future may be developed and maintained on a substantial scale*⁶

This Proclamation was followed by similar claims by a number of Latin American states such as Argentina⁷ and Panama⁸ in 1946, Chile⁹, and Peru¹⁰ in 1947, and Honduras¹¹ and El Salvador¹² in 1950, all of which made claims to the natural resources of their epicontinental seas. At a tripartite conference in August 1952 at Santiago, Chile, Ecuador and Peru sought to enforce their sovereignty rights to 200 miles by an international declaration¹³.

The failure of the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone to reach agreement on the creation of fishing zones, or even to give exclusive fishing rights in the contiguous zone (Article 24), prompted a number of states to claim fishing zones of widely varying widths. By 1972 the concept of the EEZ crystallised in a pragmatic form as a “patrimonial sea” extending up to 200 n.m., by the Caribbean countries through the Declaration of Santo Domingo¹⁴.

The first occasion the term “EEZ” was specifically introduced was in January 1971, by Njenda, Kenya’s representative to the Asian-African Legal Consultative Committee, which in turn, supported this suggestion¹⁵. In 1972, at the Geneva Session of the UN Seabed Committee, the idea was brought up by Kenya in the form of “Draft Articles on an Exclusive Economic Zone beyond the Territorial Sea”¹⁶. At the Third United Nations Conference on the Law of the Sea, there was widespread support for the concept of a 200-mile economic zone, especially by the developing countries in Asia, Latin America, and Africa, clearly because the creation of such a regime would help them obtain greater control over the economic resources of their coasts and narrow the gap between the poorer and richer countries¹⁷.

The concept was considered by the ICJ in the Fisheries Jurisdiction case (United Kingdom of Great Britain and Northern Ireland v. Iceland) of 1974¹⁸, in the context of the coastal state’s fishery rights. In this case, although the Court avoided taking a position on the validity of Iceland’s extension of its fishery limits up to 50 miles under international law¹⁹, it asserted the validity of the coastal state’s fishery rights over the waters adjacent to its coast. It declared that:

*Two concepts have crystallised as customary law in recent years arising out of the general consensus revealed at that Conference [Geneva Conference of 1960]. The first is the concept of the fishery zone, the area in which a state may claim exclusive fishery jurisdiction independently of its territorial sea; the extension of that fishery zone up to a 12-mile limit from the baselines appears now to be generally accepted. The second is the concept of preferential rights of fishing in adjacent waters in favour of the coastal state ...*²⁰

Thus, by describing the exclusive fishing zone as an “area in which a state may claim exclusive fishing jurisdiction independently of its territorial sea”, the ICJ confirmed the tendency of the international community to depart from the relevant provisions of the 1958 Conventions on the Law of the Sea designating the area beyond the territorial sea, as high seas, in which all states enjoy equal rights, with respect to, among other things, the right to exploit the fishery resources²¹. The Court, in doing so, developed and prompted the concept of fishing rights, which led to the adoption of the relevant provisions in the LOSC.

However, in the light of the increasing tendency among states at UNCLOS III, the Conference succeeded in producing a comprehensive 200-mile exclusive

economic zone regime. Although the LOSC provides a legal basis for the establishment of an EEZ by coastal states, state practice, nevertheless, demonstrates that the establishment of the zone does not necessarily depend on the LOSC, which has just recently entered into force²². This was confirmed by the ICJ in the Tunisia/Libya case of 1982, as it pointed out that:

*the concept of the exclusive economic zone ... may be regarded as part of modern international law*²³.

That the EEZ is part of international custom was confirmed by the ICJ in the Libya/Malta case of 1985, as the Court declared that:

*It is in the Court's view incontestable that ... the institution of the exclusive economic zone, with its rule on entitlement by reason of distance, is shown by the practice of states to have become a part of customary law*²⁴.

Despite the fact that the EEZ has passed now into customary law, few states have enacted detailed legislation claiming all the rights and recognising all the duties included in Parts V and XI of the LOSC. The result, therefore, has been as described by Freestone as:

*a "pick and mix" selective approach to the 1982 UNCLOS regime, in which certain powers and duties have been specifically claimed but others ignored*²⁵.

However, both in customary law and under the LOSC, the zone is optional and its existence depends upon an actual claim.

2. The Exclusive Economic Zone in the LOSC

The 1982 Convention has devoted Part V (Articles 55-75) to the new concept of the EEZ. These 21 Articles lay down the legal framework governing the zone. In what follows, the legal aspects of the zone will be discussed, to a degree, however, commensurate with the purposes of this research.

2.1 The Rights and Duties of the Coastal State in the EEZ

As it evolved in the LOSC, the EEZ is a zone *sui generis*, situated between the territorial sea and the high seas, and being part of neither of them. In terms of the degree of authority granted to the coastal state in its EEZ, Article 56 of the LOSC, in broad terms, distinguishes three categories of rights.

First, for the purposes of exploring and exploiting, conserving, and managing the natural resources, living and non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, the coastal state has “sovereign rights”²⁶. It is to be noted that with the exception of the provisions concerning “conservation and management”, which apparently refer to the “living resources”, the rights of the coastal state in the sea-bed area are the same as those provided for under the 1958 Geneva Convention on the Continental Shelf²⁷ and customary international law²⁸. Similar sovereign rights are also granted to the coastal state with regard to other economic activities for the exploitation and exploration of the zone, such as the production of energy from water, currents, or winds²⁹.

Second, the coastal state has “jurisdiction” over three identified matters: the establishment and use of artificial islands, installations and structures, marine scientific research, and protection and preservation of the marine environment³⁰. It is noteworthy that for exercising the first category of rights, the LOSC in Article 56 grants the coastal state “sovereign rights” rather than “sovereignty”, the approach used in Article 2(1) of the 1958 Geneva Convention on the Continental Shelf. In so doing, the LOSC tends to confirm the legal nature of the EEZ as a *sui generis* institution, different from either the territorial sea, in which the coastal state’s sovereignty is recognised subject to the right of innocent passage³¹, and the high seas, where all states, whether coastal or landlocked, enjoy on the same footing, various freedoms³². On the other hand, the change in terminology by using the formulation of “jurisdiction” in the case of the second category of rights, reflects the tendency of the LOSC to give the coastal state less authority in the zone with regard to the respective rights.

Thirdly, in addition to those rights mentioned above, states can enjoy other rights that may arise from other provisions of the Convention³³. However, it is evident that the rights referred to here, mainly contain those exercisable in the contiguous zone³⁴, and the right to hot pursuit as provided for in the LOSC³⁵.

In return for exercising its EEZ rights, the coastal state has some duties to perform. Under the LOSC,

*the coastal state shall have due regard to the rights and duties of other states and shall act in a manner compatible with the provisions of this Convention*³⁶.

The Convention, through this clause, does not clarify the intended duties, perhaps due to the complex structure of the Convention itself. However, no doubt, the rights of the other states in the coastal state's EEZ can be viewed as duties imposed upon the coastal state. Thus, the latter should, in its EEZ, allow other states to enjoy the freedom of navigation and overflight and of laying of submarine cables and pipelines³⁷. Other states are also granted the right to participate in the zone's surplus stocks of living resources, but within the allowable catch, determined by the coastal state³⁸, a measure which was intended to prevent overexploitation of the living resources of the zone³⁹. The coastal state should "in normal circumstances" grant its consent to foreign states and competent international organizations to conduct marine scientific research in its EEZ and such consent is not to be delayed or denied unreasonably⁴⁰. Furthermore, the coastal state, in exploiting its natural resources, has a duty to protect and preserve the marine environment⁴¹. These provisions, however, are not without ambiguity. The absence of precise criteria, for example, for the granting of permission to conduct marine scientific research in the zone, created various views on the real nature of this regime, ranging from the position that it provides the coastal state with complete discretion to deny access to the foreign researcher as it pleases, to the view that the Convention provides a reasonable assurance that a *bona fide* researcher will get permission without unnecessary difficulty⁴².

2.2 The Content of the Fisheries Regime in the EEZ

2.2.1 General

Until recently, the principle of free and open access to fisheries beyond the territorial sea was widely accepted among nations. The failure of the two United Nations Conferences of 1958 and 1960 on the question of fishing limits, on the one hand, and the improvement in the technology of finding, catching, storing and marketing fish, together made the world's harvest of fish continue to expand until the 1960s⁴³. This was undoubtedly at the expense of developing states suffering technological backwardness. The 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas, which was described as a "dead letter"⁴⁴, did not address the problem. Instead, it was satisfied with requiring states parties to adopt, or to co-operate in adopting measures for the conservation of the living

resources of the high seas⁴⁵, and in limited circumstances, the Convention gave the coastal state the right unilaterally to adopt conservation measures for areas of the high seas adjacent to its territorial seas⁴⁶. Under the 1958 Geneva Convention on the Continental Shelf, coastal state control of fisheries beyond the territorial sea was limited to sedentary species of the continental shelf⁴⁷. However, practice in the 1960s-1970s developed towards the acceptance of the coastal state's right to a 12-mile fishing zone, a rule which was confirmed by the International Court of Justice in the 1974 Fisheries Jurisdiction case, as a customary one⁴⁸.

2.2.2 UNCLOS III: More Discretionary Powers for the Coastal State

The strong pressure exercised at UNCLOS III, mostly by all developing states, succeeded finally in providing wider exclusive national fishery zones and in terminating the traditional freedom to fish in nearshore waters, and preventing overfishing⁴⁹. The 1982 Convention is a great departure from the 1958 Geneva Conventions on the Law of the Sea, in giving singular rights and responsibilities for the coastal state in relation to the management and conservation of the living resources in the EEZ, without, however, forgetting the fisheries interests of other states.

As mentioned earlier, the coastal state, under the LOSC has sovereign rights for the exploitation, conservation and management of the living resources of the EEZ⁵⁰. In exercising these sovereign rights, the coastal state is to “promote the objective of optimum utilisation” of those resources⁵¹, and to this end, it is to determine the allowable catch⁵², and to determine also its own harvesting capacity in the EEZ⁵³. As the coastal state may not have the capacity to exploit all the allowable catch, it is to give other states through agreements or other arrangements access to surplus of the allowable catch, having particular regard in this respect to landlocked and geographically disadvantaged states⁵⁴. If the surplus is to be allocated to foreign states, the coastal state shall take into account all relevant factors which, include, *inter alia*:

the significance of the living resources of the area to the economy of the coastal state concerned and its other national interests, the provisions of Articles 69 and 70 [earmarked for landlocked and disadvantaged states], the requirements of developing states in the subregion or region in harvesting part of the surplus and the need to minimise economic dislocation in states whose nationals have

*habitually fished in the zone or which have made substantial efforts in research and identification of stocks*⁵⁵.

The conservation and management of anadromous and catadromous stocks are also recognised for the coastal state⁵⁶.

This regime of fisheries in the EEZ which, as seen, gives the coastal state a preeminent role in the conservation of the living resources is not, however, in practice without difficulties and the Convention is ambiguous on many subjects. In the first place, no mention is made of subjective criteria for the conservation, utilisation and management of the living resources, entrusted to the coastal state. In other words, the Convention fails to provide specific limits for the powers and responsibilities as between the coastal state and other states in the EEZ. Under the Convention, it is the coastal state, for example, which determines the allowable catch, but even if one assumes good faith in the state concerned, the scientific and technical criteria that could be resorted to in the estimation process, tend to be complex to handle. The Convention, once again confirms the 'objective' criterion, for the coastal state solely to determine its capacity to harvest the entire allowable catch of the EEZ living resources.

In the light of this dealing, it is difficult to imagine how any coastal state will declare its incapacity to harvest the allowable catch in its EEZ, an assumption which was pointed to in Article 62(2) of the Convention. That is due to the fact that even though the coastal state might not wish to use the catch for the local consumption, it is free, if it is, for example, short of scientific, technical and economic means, to introduce such means from foreign nations or foreign enterprises it chooses to engage in fishing activities through agreements, and to secure the maximum of the total allowable catch for itself⁵⁷. Yet it is hard (although not impossible) to imagine the other states' access to the living resources of one coastal state. This wide discretionary power of the coastal state regarding its EEZ fisheries, which culminates in the dispute settlement system established by the LOSC⁵⁸ (Article 297), led one commentator, Burke, to conclude that under the Convention the coastal state is given absolute discretion to determine whether or not to allow foreigners to fish in its EEZ⁵⁹. Furthermore, while the Convention enumerates a number of considerations that should be taken into account by the coastal state once it allows foreign state fishing in its EEZ, such an enumeration is

not exhaustive and does not constitute a list of clear priorities to which states with a fishery surplus must strictly adhere⁶⁰. In addition, it is difficult to appreciate the real weight of the said factors, in the absence of any specific criterion. Thus, as Oda observed, one cannot but wonder:

*how can the coastal state take these relevant factors into account, and with what “other states”, and what “agreements or other arrangements” is the coastal state going to have?*⁶¹

He rightly concludes:

*It is surely hard to imagine that a coastal state that “does not have the capacity to harvest the entire allowable catch” will be ready and able to engage in so complex an exercise*⁶².

2.3 The Delimitation of the EEZ between Opposite or Adjacent States

According to the LOSC, the identification of the inner limit of the EEZ does not represent a problem, and it is the baseline from which the territorial sea's breadth is measured⁶³, with the knowledge that the EEZ regime is only applicable beyond the territorial sea⁶⁴. For the outer limits of the zone, it is the coastal state which decides its EEZ breadth, on the understanding that, as provided for in the LOSC, it “shall not extend beyond 200 nautical miles”⁶⁵. However, the issue of delimitation does not arise in the case of nations facing the open ocean, where the EEZ may extend to the full limit of 200 miles, but it is to be raised as between opposite states, such as those bordering on the Arabian Gulf, the Red Sea or the Mediterranean, which at no point is 400 miles across, as well as between adjacent states. Thus, in such cases, the overlapping of states' claims to EEZs is inevitable.

The 1982 Convention addressed the subject by adopting the same approach adopted for the delimitation of the continental shelf. Article 74 of the Convention, which follows exactly, *mutatis mutandis* the wording of Article 83, provides that the delimitation of the EEZ between opposite and adjacent states shall be effected by agreement based on international law, as referred to in Article 38 of the ICJ's statute, in order to achieve an “equitable solution”⁶⁶. If such an agreement is not possible “within a reasonable period of time”, the Convention provides for referring the matter to the dispute settlement mechanism set out in Part XV of the Convention⁶⁷, unless a special accord covering the matter is in force between the states concerned⁶⁸, which in turn, are obliged to make every effort to enter into

provisional arrangements of a practical nature⁶⁹. The Convention, then, reaffirms the common principle of delimitation, that such an action is in no way unilateral, but, to be valid under international law, it should be decided by the consent of the states concerned.

However, as is the case with the continental shelf boundary delimitation, already discussed in Chapter IV⁷⁰, the Convention provisions on the EEZ boundary delimitation are also ambiguous. Article 74 stipulates that the delimitation must produce an “equitable solution”, but it does not clarify what constitutes such a solution, and what methods can lead to it. Instead, the Convention refers, in general terms, to international law, as referred to in Article 38 of the Statute of the ICJ, on the approach, which is practically unhelpful, in practice, and could result in different views and various interpretations.

It should be noted that despite the identical wordings of Articles 74 and 83, concerned respectively with the delimitation of the EEZ and continental shelf between adjacent and opposite states, and despite also the intimate relationship between the two regimes resulting from their overlapping, their outer limits do not always coincide, although this could occur, as stated by Jimenez de Arechaga, in his separate opinion in the 1982 *Tunisia/Libya* case, *at least in the large majority of normal cases*⁷¹. The ICJ observed, in the 1985 *Libya/Malta Continental Shelf* judgement that despite the intimate link between the two institutions of the continental shelf and the EEZ, in modern law, this does not mean that the former has been absorbed by the latter, but rather, the Court adds:

*it does ... signify that greater importance must be attributed to elements, such as distance from the coast, which are common to both concepts*⁷².

By and large, as Brownlie pertinently noted, when the coasts involved are less than 400 miles apart, it may be assumed that the principles of delimitation are similar, although there will be some differences in the balancing up of equitable elements, particularly when the EEZ areas in question are significant in terms of fisheries rather than oil and gas⁷³. But as mentioned earlier, the coastal state may, under the LOSC, extend its shelf beyond 200 n.m. throughout the *natural prolongation of its land territory to the outer edge of the continental margin*⁷⁴. Thus, in such a situation, there will be no room to talk about an EEZ/continental shelf common boundary.

In case law, however, there have been, so far, no international tribunal decisions concerned solely with EFZ or EEZ boundaries⁷⁵. In the Gulf of Maine case, the Chamber of the ICJ was faced with having to delimit a single boundary⁷⁶ between the continental shelves and EFZs of the USA and Canada in the Gulf of Maine. In this case, the Chamber described the symmetry of the wording of Articles 74 and 83 of the LOSC relating to the delimitation of the EEZ and the shelf as “most interesting” in the case where a single boundary line is to be drawn⁷⁷, which may mean that the Chamber was in favour of this approach, but it emphasized the difference of relevant factors in each case by saying:

*the fact that the criteria ... were ... found equitable and appropriate for the delimitation of the continental shelf does not imply that they must automatically possess the same properties in relation to the simultaneous delimitation of the continental shelf and the superjacent fishery zone*⁷⁸.

The Chamber, having reviewed the rules of international law on maritime delimitation, asserted that:

*delimitation is to be effected by the application of equitable criteria and by the case of practical methods capable of ensuring, with regard to the geographical configuration of the area and of other relevant circumstances, an equitable result*⁷⁹.

In weighing the “relevant factors”, the Court, to achieve equity of delimitation for the seaward limits of the zones in question, relied upon the geography of the coast⁸⁰. In return, the Chamber rejected the parties’ arguments⁸¹ with regard to the fisheries of Goerges Bank, where each party claimed the relevancy of its historical fishery rights therein before EEZs were claimed⁸². In the 1985 Guinea/Guinea-Bissau arbitration, where the Tribunal was requested to trace a single line of delimitation for the territorial sea, the continental shelf and the EEZ of the parties⁸³, the above principles were reflected, as the Tribunal stressed the principle of equitable solution, having regard to the relevant circumstances⁸⁴. In this respect, the Tribunal considered the configuration and direction of the parties’ coastlines as an important factor, and disregarded natural prolongation, economic and security factors⁸⁵. Fisheries factors then were paid no attention when determining a single continental shelf and EFZ/EEZ boundary.

But in the Greenland-Jan Mayen case, where the ICJ was concerned with drawing boundaries for each of the fishery zones and continental shelves of

Greenland and Jan Mayen, “access” to the fisheries was given prominence. In the southern part of the delimitation, the area between the median line and the 200 mile limit was equally divided in such a way as to allow both parties (Denmark and Norway) *equitable access to the fishery resources of this zone*⁸⁶.

In any case, in practice, the application of a single maritime solution is logical and more easily administered, especially where no continental shelf boundary was traced. Nevertheless, in the light of the differences between the two regimes of the continental shelf and the EEZ, the equitable factors are accordingly different in each case. It follows, in my view, that the mere correspondence in the language of the relevant provisions of the LOSC has no significance, respecting the “equitable criteria” principle, firmly established in international law, whether for a single or separate boundary line. Despite the fact that the coincidence of shelf and EEZ boundaries are very practical and more easily administered, the reality is as Bowett put it, if the drafters at UNCLOS III *had intended the EEZ and the Shelf boundaries to be identical, it would have been a simple drafting matter to say so*⁸⁷.

2.4 The Basis of Title to the EEZ Rights

Unlike the continental shelf, over which the rights of the coastal state, obviously, do not depend either on occupation or any express proclamation⁸⁸, the language used in the 1982 Convention may raise inquiry regarding the legal basis of the coastal state’s rights in the EEZ. The relevant provisions in the LOSC make no mention of this issue. Article 56(1) is satisfied for the coastal state to have certain rights in the EEZ, but it does not contain any reference to the coastal state’s right in establishing an EEZ. The question could therefore arise as to whether this formulation may be interpreted to mean that the EEZ rights exist *ipso facto* and *ab initio*, without having to make an express claim to the areas concerned, in a manner similar to the continental shelf. In other words, do the EEZ rights have the same innate nature as shelf rights, even if they are not in reality exercised? However, the judgement does not seem to be positively in favour of such an argument. First, it does not appear that the LOSC drafters intended the inherency of the coastal state rights in the EEZ, otherwise it would have been a simple drafting matter for them to make this clear, as was the case with the shelf. Second, in the 1982

Tunisia/Libya case, the ICJ by implication asserted this approach. In its dealing with the question of historic fishing rights, raised by Tunisia, the Court, noting that Tunisia's historic rights and titles are more nearly related to the concept of the exclusive economic zone⁸⁹, expressly stated that:

*the notion of historic rights or waters and that of the continental shelf are governed by distinct legal regimes in customary international law*⁹⁰.

The Court added that:

*the first regime is based on acquisition and occupation, while the second is based on the existence of rights "ipso facto and ab initio"*⁹¹

Third and last, an examination of the relevant state practice in the 1970s shows, as noted by Attard, that the large majority of EEZ claimants consider an express proclamation necessary in order to enjoy EEZ rights⁹².

There has been rapid evolution in state practice, accepting, or rather, establishing the 200 mile EEZ. This was clear in the circles of UNCLOS III, where the concept gained a considerable support. In practice, many states claimed EEZs, and the claimants come from all the major geographical regions of the world, though the great majority of the claimants were developing states. An official publication reveals that between 1974 and the date of adoption of the 1982 Convention, 51 states established a 200 mile EEZ⁹³. The number had increased to 69 states by November 1986, while 20 states had claimed an EFZ of the same breadth⁹⁴. As of 15 January 1993, 87 states had proclaimed an EEZ, a further 15 states claimed a fishery zone of 200 miles, and 4 states a fishery zone between 12 and 15 miles⁹⁵. Taking into account that there are more than 55 landlocked and geographically disadvantaged states in the world⁹⁶, these indications obviously reveal that the widespread assertions of 200-mile jurisdiction by states, have considerably contributed to the acceptance of the EEZ as an international legal regime not only as a conventional concept, but as part of customary international law. In 1982, the same year the LOSC was opened for signature, the ICJ stated that:

*... the exclusive economic zone ... may be regarded as part of modern international law*⁹⁷ (emphasis added).

Three years later, the same Court found no difficulty in declaring expressly and without any hesitation that:

It is in the Court's view incontestable that ... the institution of the exclusive economic zone, with its rule on entitlement by reason of distance, is shown by the practice of states to have become a part of customary law⁹⁸.

From the above indications, it can be concluded that the rights exercised in the EEZ do not exist *ipso facto* and *ab initio*, but the EEZ concept has passed now into international customary law⁹⁹. Yet, the right of a coastal state to establish an EEZ is not necessarily dependent upon the LOSC. Therefore, any state, even if not party to the Convention, is entitled to claim an EEZ. Saudi Arabia, then, could have claimed an EEZ, even before her recent ratification of the LOSC.

Part II: Saudi Arabia's EEZ/EFZ

1. The Saudi Position on the EEZ Regime

Although it has not yet declared a 200-miles exclusive economic zone, Saudi Arabia at UNCLOS III, like many other developing states, was one of the supporters of the EEZ concept. Drawing a connection between the Saudi perspective on the legal status of the area beyond the national jurisdiction and the EEZ regime (both of which were in process of debate at the time), Al-Shuhail, the Saudi representative to the Conference stated that:

his country supported the declaration in General Assembly resolution 2749(XXV) that the sea-bed and ocean floor, and the subsoil thereof beyond the limits of national jurisdiction, as well as the resources of the area, were the common heritage of mankind, provided that the Conference adopted the concept of an exclusive economic zone of 200 miles¹⁰⁰.

The Saudi delegate subsequently added that:

It [Saudi Arabia] had ... believed that every coastal state was entitled to extend its exclusive economic zone up to 200 miles on the basis of the freedom of navigation and overflight in that area¹⁰¹.

From these two statements, the only official statements of the Saudi delegate on the EEZ, the Kingdom's position on the concept can be summarised as follows: Firstly, while Saudi Arabia believes in each coastal state's right to establish

a 200 mile EEZ, the Saudi representative to UNCLOS III linked such a move with the necessity of regarding the area beyond the limits of “national jurisdiction” as a “common heritage of mankind” area, as he considered the adoption of the former as a precondition for the acceptance of the latter. In so doing, Saudi Arabia seemingly wants to make a balance between its own economic interests as an independent entity, and the interests of the developing countries, to which it belongs. In other words, the adoption of a 200-mile EEZ would, on the one hand, confirm the legitimacy of the previous Saudi claims, the last of which was the establishment of an EFZ, made just over two months before the above statements were produced¹⁰², and, on the other hand, would place what used to be part of the high seas in the Arabian Gulf and the Red Sea, under the “national jurisdiction” of the coastal states concerned, including, of course, Saudi Arabia itself. Thus, in the said two seas, there would be no room for the implementation of the regime of “common heritage of mankind”, a regime from which the Kingdom, as a country, suffering lack in “self-technology” and with no distant-water fishing fleets, is undoubtedly one of the greatest beneficiaries.

Secondly, as far as the width of the EEZ is concerned, Saudi Arabia maintains that a coastal state’s outer limit of the zone may not, in maximum, exceed 200 miles from the baseline of the territorial sea¹⁰³. Saudi Arabia, therefore, supported the aspirations of the states able to exercise jurisdiction up to 200 nautical miles, although it is itself unable to enjoy an EEZ up to this extent, owing to the lack of sufficient space both in the Gulf and the Red Sea, each of which at no point is as much as 400 miles across¹⁰⁴. There is no reference to the minimum extent of the zone, and this implies that the coastal state, based on its geographical and geological conditions, its natural resources, and its needs of national economic development, has the right to define its own EEZ.

Thirdly, by recognising the right of the coastal state to have up to 200 n.m. EEZ, Saudi Arabia supported the view that the EEZ is a concept *sui generis*. Nevertheless, the Saudi Arabian delegate did not elaborate on the legal implications of the regime. In other words, no mention was made of the possible rights and duties of the coastal states or the other states in such a zone, with the exception of a passing reference to the foreign state’s right to “navigation and overflight” therein¹⁰⁵. In practice, the Kingdom, as discussed in Chapter IV proclaimed its

jurisdictional rights over the subsoil and sea-bed of those areas of the Gulf contiguous to its coasts¹⁰⁶, as well as over the natural resources of the Saudi continental shelf and the area adjacent to it in the Red Sea¹⁰⁷. Saudi Arabia, moreover, declared its fishery rights in both seas¹⁰⁸. In return, the Kingdom - in general terms - obliged itself to respect the rules of international law, especially as regards navigation and overflight¹⁰⁹. However, the rights and duties contained in the Saudi local legislation fall short of those exercisable in the EEZ as stipulated in the LOSC. In relation to rights, the Saudi legislation is only concerned with natural resources, living and non-living, while the EEZ regime grants the coastal state rights not only with living and non-living resources, but also with regard to artificial islands, installations and structures, marine scientific research and the marine environment. As to duties, the Saudi legislation refers always to the “rules of international law”, but specific mention is only made of navigation, overflight and fishing merely in the Gulf, while under the EEZ regime, the coastal state, as mentioned earlier, is obliged to respect the freedoms of navigation, overflight, laying of submarine cables and pipelines and other internationally lawful uses of the sea related to these freedoms.

2. Reluctance to Claim an EEZ

Of the 13 countries bordering the Red Sea and the Arabian Gulf, nearly half of them have established EEZs of their own. The initiative, in this respect, was taken by Qatar in 1974¹¹⁰, and was followed by Yemen in 1977¹¹¹, Djibouti in 1979¹¹², United Arab Emirates in 1980¹¹³, Oman in 1981¹¹⁴, Egypt in 1983¹¹⁵, and Iran in 1993¹¹⁶. As far as Saudi Arabia is concerned, despite the fact that it was the first country in the region to make a claim to its Gulf continental shelf resources through the Royal Pronouncement of 1949, followed by the Royal Decree of 1968 concerning the resources of the Red Sea, and the 1974 Declaration of the Ministry of Foreign Affairs concerning fishery rights beyond the limits of the territorial sea in the Red Sea and the Gulf, and despite the Saudi Arabian position supporting the right of the coastal states to establish a 200-mile zone at UNCLOS III, and finally despite the recent accession of Saudi Arabia to the 1982 United Nations Convention on the Law of the Sea, she has not yet declared an EEZ of her own. Saudi Arabia’s support for the EEZ legal regime of 200 miles has not changed;

thus, the question arises, why is there this disinclination to create an EEZ? There has been no official statement on the matter, but it is thought that the reason is related to one or more of the following considerations.

First of all, it is well known, as mentioned earlier¹¹⁷ that the EEZ finds its roots in the concept of the exclusive fishing zone and the doctrine of the continental shelf. Saudi Arabia, for its part, has defined its coastal rights concerning its continental shelf and set up a fishery zone beyond the limit of the territorial sea. Thus, these already existing claims could have been viewed by the planners of the Saudi marine policy as equivalents of the EEZ, something that may lead to a conclusion that having an EEZ would add little if anything to the Kingdom's existing powers.

Another consideration which may contribute to an explanation of the non-establishment of an EEZ by the Kingdom may be represented in the geographic position of Saudi Arabia as a state bordering two semi-enclosed seas, i.e. the Red Sea and the Arabian Gulf and in what follows that concerning the demarcation of the EEZ boundaries as between the states concerned. As is known, Article 122 of the LOSC defines an enclosed or semi-enclosed sea as:

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.

In an attempt to give a more precise definition, Alexander stated that the term refers to:

an area of at least 50,000 square nautical miles and [be] a "primary" sea, rather than an area of a larger semi-enclosed water body. At least 50 per cent of its circumference should be occupied by land and the width of the connector between the sea and the open ocean must not represent more than 20 per cent of the sea's total circumference¹¹⁸.

The Red Sea and the Arabian Gulf, according to their geographical and hydrographical characteristics, are designated within the above category of seas. Consequently, in these two bodies of waters, neither of which in breadth exceeds 200 miles at any point¹¹⁹, no state may claim an EEZ extending seaward from its baselines without encroaching upon the potential claims of other states¹²⁰. In such a case, delimitation necessitates agreement with the adjacent and opposite

countries, a matter which will create more problems, especially for Saudi Arabia, which has not yet agreed on EEZ boundaries with any of her neighbours. The dispute over the ownership of certain islands (such as the islands of Qarue and Umm Al-Maradin with Kuwait, and Tiran and Sanafir with Egypt) will not ease settlement of the maritime boundaries in the region. Moreover, the inter-relationship between the EEZ and the continental shelf will undoubtedly make the EEZ delimitation more complicated, since relevant circumstances which should be taken into account to reach an equitable solution in continental shelf boundaries are different from those applicable to EEZ boundaries. For instance, Evans, citing various decisions of the ICJ, which touch on the issue of economic dependence of a coastal population, suggests:

*This is more likely to arise in the context of fishing and thus could have greater significance for a "pure" EEZ delimitation, where greater emphasis might be placed upon such factors.*¹²¹

Associated with these difficulties, is the case where the continental shelf has already been delimited as is the case with Bahrain and Iran. The difficulty here is for the states concerned to decide whether the factors considered as relevance when the old continental shelf boundary was determined are still relevant with regard to their new EEZ boundaries. Given these difficulties, the declaration of an EEZ, could be viewed by the Saudi marine policy makers as raising maritime boundary problems to be added to those of seas and land, existing as between the states of the region. Accordingly, they may have considered that it would be preferable to leave things as they are, than to raise boundary problems, the like of which have already caused suffering to the countries of the region. This approach, is not, however, the ideal one, since, if correct, it may lead, by the changing of circumstances in the future, to more complex problems.

A further reason for the Saudi Arabian failure to declare an EEZ could be attributed to the viewpoint of Saudi Arabia towards some provisions of the 1982 Convention, especially in what concerns Article 45, which prevents the coastal state from suspending innocent passage of foreign ships through straits connecting

a part of the high seas or an exclusive economic zone and the territorial sea of that state¹²².

In any event, neither of the above mentioned considerations seems to be justifiable. First of all, the rights to be exercised in the EEZ are not confined to the living and non-living resources of the area, but as indicated earlier they exceed that to cover other economic resources, such as the production of energy from the water, construction of artificial islands and installations, marine scientific research and marine pollution¹²³. Secondly, the issue of delimitation will one day be raised and, whether it takes a short or a long time, a solution will, at the end of the day, be reached. Undertaking to negotiate maritime boundaries with neighbouring states is the proper approach to achieve a final settlement. Postponement will not help stabilise the relationships between the Kingdom and her neighbouring states. Thirdly, if the last consideration relating to the disagreement of the Kingdom's view with some provisions of the LOSC is correct, such a reasoning seems to be unjustifiable, since regardless of the recent ratification of the 1982 Convention, Saudi Arabia has been a signatory party to the Convention since 1984. Moreover, however, the assumed dissatisfaction of Saudi Arabia with some provisions of the LOSC does not justify the non-declaration of an EEZ, as these two factors appear to be irrelevant. In this respect, there exist certain maritime powers, such as the United States¹²⁴ and the former Soviet Union (succeeded by the Russian Federation)¹²⁵, which have declared EEZs, although they had not acceded to the LOSC, as a result of their dissatisfaction with the LOSC's newly created regime for the deep sea-bed. Thus, the proclamation of an EEZ would not be "costly" for the Saudi authorities. Taking such an action cannot, then, be excluded in the future, and yet it seems to be just a matter of time before the Kingdom declares an EEZ.

3. Saudi Arabia and Fisheries

It is estimated that the fishing resources in the Red Sea and the Arabian Gulf are the most important resources after the hydrocarbon materials and minerals in the former and oil and gas in the latter. The marine life of these two seas are remarkably rich, and many of the fish are able to tolerate wide extremes of temperature and salinity. The richness of the marine life is reflected in the large

number of species seen in Saudi Arabian fish markets, as over 180 different species in the Red Sea coast markets and over 110 in the Gulf coast markets were recorded¹²⁶. However, these represent only a small proportion of the actual species, since there are many more fish in the Saudi territorial waters which never appear in the markets either because they are inedible, too small, or not yet exploited by Saudi fishermen¹²⁷.

The real concern of Saudi Arabia over the fishing industry started from the mid 1970s by the establishment in 1976 of the Saudi Arabia Fisheries Development Programme in co-operation with the British White Fish Authority. The year 1980 witnessed an important event in this context, by the establishment of the Saudi Fisheries Company¹²⁸. In addition to fishing, processing and local marketing, the Company conducts the activities of exporting, importing and making local purchases. In 1991 and with the aim of meeting local shortages and giving the consumer adequate variety, the Company's imports of fish and shrimp were 12,830 tonnes, the exports were 635 tonnes, while the local purchases from local fishermen in the auction markets totalled 2046 tonnes¹²⁹.

Fish is a popular food in Saudi Arabia, and it was estimated to be 13% of the total consumption of animal protein¹³⁰, while the potential harvest was estimated at 32,000 tonnes a year¹³¹. The Kingdom's catches of fish have increasingly risen. The statistics published by FAO reveal that the Saudi total catch beyond the inland waters was estimated to be 33,000 and 45,523 metric tonnes in the years 1982 and 1986 respectively. The number went up to 53,391 metric tonnes in 1989¹³². As a result of what is widely known as the Gulf Crisis, caused by the Iraqi occupation of Kuwait, the total Saudi Arabian catch of fish descended to 46,427 metric tonnes in 1990, and 43,251 in 1991¹³³. The internal waters' catch was estimated to be 1,427 metric tonnes in 1990, rising to 1,982 metric tonnes in 1991¹³⁴, while the catch of all marine fishing areas was estimated to be 45,517 metric tonnes in 1986 and 52,190 in 1989, descending to 45,000 and 41,269 metric tonnes in 1990 and 1991 respectively¹³⁵. However, despite the noticeable growth in the Saudi fishing industry, the amount of catch satisfied only less than one half of total local demand¹³⁶, which means that the industry is in need of more development and efforts to provide a better contribution to the gross domestic product¹³⁷.

3.1 Saudi Arabia's Policy on Marine Fishery

The features of Saudi Arabia's fishery policy can be recognised through her national legislation and her participation at the Law of the Sea Conferences, especially the first and second ones. In order to protect its fishery resources, Saudi Arabia issued, very soon after her establishment, i.e. in 1932 (1351 AH), the initial regulations on fishery catch within the coasts of the Red Sea (Regulations of 1932)¹³⁸. The very early constitution of a fishery zone title (some 17 years before the Kingdom in 1949 defined its territorial waters and its sovereignty rights over the Gulf continental shelf resources), apparently reflects the Kingdom's concern to protect her fishery interests. Article 4 of the 1932 Regulations defined the outer limits of the area concerned to be 4 miles from the Saudi coasts (with the exception of bays), plus the areas where the Government used to permit fishing outside the said zone. The Regulations, however, did not even contain any reference to the term "territorial sea" or "territorial waters", which was not claimed by the Saudi authorities until 1949¹³⁹. Instead, the term "coasts of the Red Sea" was employed. Moreover, the effects of the Regulations were confined to the Saudi coasts in the Red Sea, and there was no reference to the Arabian Gulf. This, however, could be attributed to the fact that the 1930s witnessed the discovery of oil, in the eastern province of the Kingdom and her coasts in the Arabian Gulf, in commercial quantities. This position considerably increased the activities of search and drilling in the area at the expense of the activities relating to fisheries. Nevertheless, it would not have been costly for the coasts of the Arabian Gulf to be included. The main goal of these Regulations, however, was to protect the Saudi fishery interests within 4 miles from the Red Sea Saudi coasts, and for that, fishing therein was prohibited unless a catch licence was obtained from the competent authorities, represented in the Coasts Safeguards¹⁴⁰. The Regulations allowed foreigners to fish within the area but such an action had to be permitted in advance. The licence was to be obtained from the Saudi representative in the foreigner's country, and if there was no representative, it was to be obtained from the nearest Saudi Coasts Safeguards Office¹⁴¹.

The 1932 Regulations were abolished in 1988 by virtue of Royal Decree No. M/9, which endorsed, instead, the Regulations of Fishing, Investment, and Protection of Living Resources in the Territorial Waters of the Kingdom of Saudi

Arabia (referred to hereafter as Regulations of 1988)¹⁴². According to the latter Regulations, the Ministry of Agriculture and Waters was allocated as a central governmental body, in charge of the Kingdom's fishing matters within her territorial waters regarding organization, development, investment and protection, in co-ordination with the National Commission for Wildlife, Conservation and Development¹⁴³. Article 2 of the Regulations prevents fishing in the Saudi territorial waters without permission, to be obtained from the Ministry of Agriculture and Waters. As to foreign fishermen, they are not allowed to fish therein unless they obtain a licence from the said Ministry, approved by the Head of the Council of Ministers¹⁴⁴.

The Kingdom's title to living resource of her territorial sea, was obviously declared, for the first time in 1949 through the Royal Decree No. 6/4/5/3711 of 28 May 1949¹⁴⁵. Article 2 of that Decree provides that:

The territorial waters of Saudi Arabia, as well as the air space above and the soil and subsoil beneath them, are under the sovereignty of the Kingdom ...

In the same Decree, the territorial sea of the Kingdom was defined to be 6 n.m. seaward from the baselines¹⁴⁶. No direct reference was made in this Decree to Saudi fishing rights. However, the language, used in Article 2, mentioned above, read in conjunction with the last clause of Article 9, which stipulates that nothing in this Article shall be deemed *to apply to the rights of the Kingdom with respect to fishing*, and also with Article 4 of the 1932 Regulations, according to which, the fishery zone scope was limited to 4 miles from the Saudi coasts, all indicates the intention of the Saudi legislator to establish exclusive access to the fish stocks in the 6 n.m. territorial sea of the Kingdom. In 1958, Saudi Arabia redefined its territorial sea¹⁴⁷, extending it to 12 n.m. Thus, the Saudi Arabian fishery zone automatically extended from 6 to 12 n.m.

At UNCLOS I, Saudi Arabia's position on the coastal state jurisdictional fishery rights was expressed in the context of her position supporting a 12-mile territorial sea limit. The Saudi representative to the Conference, Shukairi, emphasised the sovereignty of the coastal states over their coasts and fisheries. In this respect, Shukairi said:

The crucial change that had occurred since the Conference for the Codification of International Law held at The Hague in 1930, which had been attended by forty-two as opposed to the eighty-

*seven delegates participating in the present conference, was that the number of sovereign states had almost doubled and that incient peoples which had now acquired statehood had become masters over their coasts and fisheries*¹⁴⁸.

In his reply to the UK representative that a twelve-mile limit would adversely affect the food supply available for the population and his country's balance of payments, Shukairi described this argument as a "weighty one", supporting the proposal for a twelve-mile limit¹⁴⁹, since, according to Shukairi:

*... other coastal states emerging from a condition of poverty in Asia, Africa and Latin America also had to feed many millions and to balance their economics; they surely had prior rights to exclusive fishing off their coasts*¹⁵⁰.

At UNCLOS II, the same positions were repeated. The great maritime powers, particularly the US and the UK were against a twelve-mile limit for the coastal state's territorial sea. In his reply to the UK representative's argument that distant water fishing was of serious importance, and that the loss of the fish it produced would be a cruel blow to the UK economy¹⁵¹, the Saudi representative emphasised the needs of the coastal peoples, particularly those of under-developed countries, for the:

*food that the fish of their coastal waters would give them, and they needed to catch and process their own fish, and build up their own fishing industry, so that they would not have to reimport fish at great expense*¹⁵².

Saudi Arabia reaffirmed its perspective over the coastal state's fishery rights in a joint proposal¹⁵³, submitted to the Conference on 6 April, 1960, with 15 other states¹⁵⁴. Having asserted in its Article 1 the coastal state's right to fix the breadth of its territorial sea up to a maximum of 12 miles measured from the baselines, the proposal in Article 2 stated that the coastal state claiming a territorial sea of less than 12 n.m. in breadth:

has the right to establish a fishing zone contiguous to its territorial sea extending to a maximum of 12 miles measured from the applicable baseline.

Under Article 3 of the said proposal, it was stipulated that the coastal state has in the prescribed zone:

the same rights of fishing and of exploitation of the living resources of the sea as it has in its territorial sea.

On 11 April, 1960, Mexico and Venezuela joined Saudi Arabia and the other previous group of states in submitting to the Conference a proposal¹⁵⁵ containing the same provisions as mentioned above as to the limits of the coastal state fishery jurisdictional rights. As is well known, the Conference failed to reach an agreement on the two questions of the breadth of the territorial sea and the limits of the fishery zones. As a result, Saudi Arabia with nine other states¹⁵⁶ produced shortly before the end of the Conference, a draft resolution¹⁵⁷ in which they requested all states participating in the Conference to abstain from extending the breadth of their territorial sea, pending consideration of the question by the UN General Assembly. However, regarding the fishery question, the said countries maintained their position, calling for a coastal state's right of up to a 12 n.m. limit fishery zone, where such a state may exercise *the same rights in respect of fishing and the exploitation of the living resources of the sea as it has in its territorial sea*¹⁵⁸. Obviously, the Saudi Arabian fishery debates at the Law of the Sea Conferences of 1958 and 1960 were in support of its pre-existing claim of 16 February 1958, according to which the Kingdom extended the outer limit of its territorial sea to 12 miles, measured from the baselines, and therein the Saudi sovereignty was declared.

From the above discussion, it is clear that the focal point of the Saudi marine fishery policy was that the coastal state is entitled to exercise its fishery jurisdictional rights in its territorial sea, which should, from the Saudi perspective, be extended up to 12 n.m. from the baseline. In other words, the Kingdom at that time was not in favour of the extension of the fishing zone beyond a 12 mile outer limit. This situation continued until 1974. By then, however, Saudi Arabia realised that the 12 n.m. limit territorial sea was inadequate for the protection of its fishery interests. Having noticed the international practice, tending to create wider fishery zones beyond the limits of the territorial sea, Saudi Arabia established its own EFZ in 1974 through a declaration issued by the Ministry of Foreign Affairs¹⁵⁹. In justification of this measure, the preamble of the declaration mentioned the following considerations:

- (a) The importance of the fish resources as a principle diet for the people of Saudi Arabia, and a vital factor for its social and economic progress;

- (b) The significance of jurisdiction over those fish resources for their protection and prudent exploitation;
- (c) The affirmation of jurisdiction by other states, over the fish resources in the areas adjacent to their territorial seas.

By its reference to “other states”, the Kingdom apparently wanted to confirm the legal basis of its claim, represented in international custom. On the other hand, the timing of the claim suggests that the competent authorities in the Kingdom may have been aware of the debates in the ICJ over the Fisheries Jurisdiction case (1974). In this case, as discussed earlier, the Court declared that:

the concept of the fishery zone, the area in which a state may claim exclusive fishery jurisdiction independently of its territorial sea [has] crystallised as customary law¹⁶⁰.

At the regional level, it seems that Saudi Arabia, in declaring an EFZ, was influenced by Oman¹⁶¹ and Iran¹⁶², which unilaterally proclaimed in 1972 and 1973 respectively an exclusive fishing zone of 50 n.m. (in 1977 Oman extended its exclusive fishing zone to 200 n.m.)¹⁶³.

By the Declaration of 1974, which applies to the Saudi Arabian coasts in the Red Sea and the Arabian Gulf, the Kingdom asserted exclusive fishing jurisdiction in:

those areas contiguous to the coasts of the Kingdom and the coasts of its island, from the coastal sea of the Kingdom towards the high seas¹⁶⁴.

The outer limits of the zone were not, however, stipulated, but it was stated that:

if the fishing zones, measured from the baselines ... be overlapped with those of another coastal state, the boundary shall be the median line every point of which is equidistant from the baselines from which the territorial sea is measured¹⁶⁵.

Thus, the EFZ outer limits coincide with the median line. The silence of the Saudi legislator on the issue of specifying the EFZ outer limits does not represent ambiguity in the text, in as much as, it reflects, on the one hand, his intention to extend the Kingdom’s fishing authority areas seaward as far as possible, bearing in mind the debates at UNCLOS III, which were in favour of accepting 200 n.m. EEZ, and on the other hand, the geographical characteristics of the Red Sea and the Arabian Gulf, which at no point exceed 200 n.m. in breadth. Besides, the 1974 Declaration provided that no fishing or any related activities were to be exercised

by non-Saudis in the said zone, unless prior permission was obtained from the Saudi Government¹⁶⁶. In addition, however, the Declaration asserted the Kingdom's duty towards the international community, by recognising the legal status of the fishing zones as part of the high seas subject to the "established principles of international law"¹⁶⁷. Thus, although no mention was made of specific duties within the zone, the general language used in the Declaration reflects the Kingdom's readiness to respect "all" duties, on the understanding that they are within international law.

This examination of the wording of the 1974 Declaration reveals that the Saudi claim, whether as to its justifications or its other legal aspects, is mainly based on international precedents and standards. The justifications given for the Truman Proclamation of 28 September 1945, by virtue of which, the US asserted its authority over fisheries in "areas of the high seas contiguous to its coasts", were that:

*fishery resources have a special importance to coastal communities as a source of livelihood and to the nation as a food and industrial resource, ..., the progressive development of new methods and techniques contributes to intensified fishing over wide sea areas and in certain cases seriously threatens fisheries with depletion, ... [and that] there is an urgent need to protect coastal fishery resources from destructive exploitation, ...*¹⁶⁸.

In the Anglo-Norwegian Fisheries case of 1951¹⁶⁹, the ICJ, which was considering the use of straight baselines in the delimitation of the territorial sea, declared, on the occasion of discussing the question of whether certain sea areas lying within the chosen baselines are sufficiently closely linked to the land domain to be subject to the regime of internal waters, that:

*... there is one consideration not to be overlooked, the scope of which extends beyond purely geographical factors: that of certain economic interests peculiar to a region, the reality and importance of which are clearly evidenced by a long usage*¹⁷⁰.

In the 1958 Convention on Fishing and the Conservation of Living Resources of the High Seas, it was provided that:

*... any coastal state may, with a view to the maintenance of the productivity of the living resources of the sea, adopt unilateral measures of conservation appropriate to any stock of fish or other marine resources in any area of the high seas adjacent to its territorial seas ...*¹⁷¹

In the Fisheries Jurisdiction case of 1974, the ICJ asserted two concepts: the customary legal status of the EFZ's establishment and the coastal state's preferential rights of fishing in "adjacent waters"¹⁷².

Finally, the 1982 United Nations Convention established a 200 n.m. exclusive economic zone adjacent to the territorial sea. In this zone, the coastal state's sovereign rights, were recognized, as seen earlier, among other things:

*for the purpose of exploring, conserving and managing the natural resources, whether living or non-living ...*¹⁷³.

Compared with these significant developments in the legal history of fisheries, it is quite clear that the Saudi Arabian fishery policy has been, since the issue of the initial relevant regulations in 1932, in general conformity with the principles set forth in the international law of the sea. Saudi Arabia, as has been seen, has declared an exclusive fishery zone, the concept which was established in the 1982 Convention. In doing so, the Kingdom based its claim on the "contiguity" norm, i.e. the special relationship between her offshore areas and the mainland recognized both under conventional rules and case law. Further, while the Kingdom's claim was justified in terms of economic interests, the Saudi national legislations have confirmed the need for the conservation and prudent utilisation of fishery resources. However, since the protection of fish resources from depletion and exploitation has been set forth, as indicated in the Saudi legislation, as a main goal of the Saudi policy, it appears that the Kingdom, which has not yet concluded any accord with any of her neighbouring states, is in need to negotiate such agreements with the aim of organising this matter, especially since, as will be seen in the following section, the Kingdom recognises, in principle, the right of foreign fishermen to fish in her fishing zones.

3.2 Saudi Arabia's Regulations on Foreign Fishing

Through her national legislations, Saudi Arabia has recognised foreign fishing not only in her exclusive fishery zone, but in her territorial waters. This right was first recognised in the Regulations of 1932, which provided for obtaining a licence as a precondition for fishing in the Red Sea Saudi Arabian "coastal waters"¹⁷⁴. According to Article 20 of the said Regulations:

each foreign comer has to obtain the said licence from the Saudi representative in that comer's country if there is any, otherwise he

should get the licence from the nearest competent authority in the nearest Hijazi port.

The Kingdom reiterated her obligation in 1949 through the Royal Pronouncement concerning the Saudi Policy as to the Subsoil and Sea-Bed of the Gulf Areas Contiguous to her Coasts¹⁷⁵. After asserting the Saudi Arabian jurisdiction over the said areas, it emphasised that:

*the character as high seas of the waters of such areas, the right to the free and unimpeded navigation of such waters and the air space above those waters, fishing rights in such waters, and the traditional freedom of pearling by the peoples of the Gulf, are in no way affected*¹⁷⁶ (emphasis added).

It is noteworthy here that Saudi Arabia expressly recognizes the right of the “region’s peoples” to free pearling and fishing in the waters superjacent to its Gulf continental shelf (known as the exclusive fishery zone in the contemporary sense), though such recognition by Saudi Arabia came nearly a quarter of a century before she established her own exclusive fishery zone in 1974.

In the Foreign Affairs Ministry Declaration of 1974, a provision was made for fishing and all related activities by non-Saudis in the Saudi EFZ, but prior permission from the Saudi Government is a precondition for exercising such activities¹⁷⁷.

In the Regulations of 1988, Saudi Arabia maintained, in principle, the right of foreign fishing in her territorial sea, but after obtaining permission from the Minister of Agriculture and Waters, approved by the Head of the Council of Ministers¹⁷⁸. There is no indication of the qualifications and conditions required to get such permission; therefore, it is left to the competent authorities to decide. The confinement of the permission authorization to the highest level in the country’s executive authority suggests that foreign fishing in the Saudi territorial waters will be very limited. Nevertheless, the mere acceptance of this practice, even if in principle, is unjustifiable, since under these regulations, Saudi Arabia allows the exercise in her territorial sea of foreign fishing rights which are not recognised even by international law itself!

With regard to enforcement measures, Saudi Arabia applies a system of fines and imprisonment to enforce her fishery zone. Under Article 69 of the 1932 Regulations, anyone who exercises fishing in the Saudi coastal waters without

being licensed was to be punished by expropriation of the entire catch or a fine of between a quarter of a Riyal and 10 Riyals. Under Article 9 of the 1988 Regulations, which replaced those of 1932, whoever violates any of the provisions contained in the Regulations (including of, course, fishing without permission) is to be sentenced to jail terms of no more than 6 months, a fine of no more than 10,000 Riyals, or both punishments. The said penalty, however, is to be applied for each offence.

Under the LOSC, access of foreign states to a state's EEZ fishery is recognised, but the coastal state has been given a very broad discretion to regulate this access. Although access of the fishermen of other states to the surplus of the allowable catch in a state's EEZ is permitted (in principle), when the coastal state does not have the capacity to harvest the entire allowable catch, it is the coastal state which determines this allowable catch (Article 61(1)). Moreover, it is the coastal state which decides its own capacity to harvest the EEZ living resources (Article 62(2)). This broad discretion is asserted in Paragraph 3 of Article 62, which provides that, in giving access, the coastal state:

shall take into account all relevant factors including, inter alia, the significance of the living resources of the area to the economy of the coastal state concerned and its other national interests, the provisions of Articles 69 and 70, the requirement of developing states in the subregion of region in harvesting part of the surplus and the need to minimize economic dislocation in states whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks.

In practice, this, plus the fact that the coastal state is excluded from the Convention procedures (contained in Article 287) regarding compulsory settlement of disputes, including those arising from failure to determine total allowable catch and harvesting capacity, as well as the fact that the coastal state can prescribe and enforce conditions to govern the access, when allowed, makes the access of other states (with the exception of land-locked and geographically disadvantaged states) to a coastal state's EEZ fisheries very difficult, if not impossible.

On the other hand, under the 1982 Convention enforcement system, the competent authorities of such a state may board, inspect, arrest, and proceed, but arrested vessels and crews are to be released promptly when reasonable bond is posted. Violation of fishery laws in the EEZ entitles the coastal state to impose a

financial penalty only rather than imprisonment or any other form of corporal punishment, in the absence of agreement to the contrary¹⁷⁹. However, in the absence of any international criteria for such financial penalties, the degree of these penalties would fall within the domestic jurisdiction of the coastal state concerned, unless otherwise provided for in international law¹⁸⁰.

It should be noted that Saudi Arabia's above-mentioned system of penalties is designated only for foreign fishing in the territorial sea. The 1974 Declaration, although it makes obtaining prior authorisation a precondition to fish in the Saudi EFZ, is unjustifiably silent on the violation of such condition by foreign fishermen. Therefore, there is no scope for comparing the EEZ enforcement provisions, contained in the LOSC, with those included in the Saudi legislation, since the latter, represented in the 1988 Regulations, speak only of fishing in the territorial sea, the area where the coastal state has full sovereignty¹⁸¹, and yet it is entitled to impose penalties consistent with the conception of this sovereignty, including the imprisonment punishment.

The LOSC makes a special mention of landlocked and disadvantaged states. Under the Convention, these two categories of states have the right to:

participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal states of the same subregion or region, taking into account the relevant economic and geographical circumstances of all the states concerned and in conformity with the provisions of [these articles] and of Articles 61 and 62¹⁸².

The terms and modalities of this participation are to be established by the states concerned through bilateral, subregional, or regional agreements, taking into account *inter alia*:

- (a) the necessity to avoid effects detrimental to fishing communities or the fishing industry of the coastal state;
- (b) the extent to which disadvantaged and landlocked states are participating or are entitled to participate under existing bilateral, subregional or regional agreements in the exploitation of living resources of the EEZ of other coastal states;

- (c) the extent to which other landlocked states and geographically disadvantaged states are participating in the exploitation of the living resources of the coastal state's EEZ and the consequent need to avoid a particular burden for any single coastal state or a part of it.
- (d) the nutritional needs of the populations of the states concerned¹⁸³.

The language of the said provisions leads to various interpretations by the respective states and leave many questions without answers. For example, who decides the equity of the participation basis? And who decides that a part of the surplus is appropriate? Who decides to take account of relevant economic and geographical circumstances? And what is meant by economic and geographical circumstances? What is the definition of regional and subregional agreements? Who decides the extent to which the geographically disadvantaged and landlocked states are participating in the exploitation of living resources of the EEZ of other coastal states? And likewise, who will decide the extent to which other landlocked and geographically disadvantaged states are participating in the exploitation of the living resources of the coastal state's EEZ? And finally, who will estimate the nutritional needs of the population of the respective states? Indeed, all these questions, which have been left without answers, throw doubts upon the effectiveness of the said provisions.

As to Saudi Arabia, the Saudi legislation, as seen earlier, does not provide for preferential rights of landlocked and geographically disadvantaged states, nor for the exclusion of these rights, in the Saudi EFZ. At UNCLOS III, apart from recognition of their right to transit access¹⁸⁴, no specific statement was made by the Saudi delegation with regard to the said states. However, the numerous qualifications imposed on the fishery rights of these two categories of states give opportunity to the coastal states, including Saudi Arabia, to minimize greatly the fishery participation in their EEZs/EFZs.

3.3 The Delimitation of Saudi Arabia's EFZ

Owing to the particular geographical characteristics of the Red Sea and the Arabian Gulf will undoubtedly lead to an overlapping of the EEZ/EFZ boundaries between the region's states whether opposite or adjacent. As mentioned

previously, a number of these two seas' states, such as Saudi Arabia, Qatar, United Arab Emirates, Oman, Iran, Egypt, Yemen and Djibouti, have established either an EEZ or EFZ. It is to be observed that if similar actions are to be taken by the other coastal states, the entire waters of the Red Sea and the Gulf will be closed off, covered by the exclusive jurisdictions of the coastal states. Hence, all these states, including Saudi Arabia, should reach an agreement among themselves, otherwise the validity of the outer limits of their EEZs/EFZs will be challenged, as the Chamber of the ICJ in the Gulf of Maine case of 1984 asserted the general principle in this regard by indicating that:

*No maritime delimitation between states with opposite or adjacent coasts may be effected unilaterally by one of those states. Such delimitation must be sought and effected by means of an agreement, following negotiations conducted in good faith and with the genuine intention of achieving a positive result*¹⁸⁵.

Saudi Arabia has not yet delimited its EFZ with any of its neighbours, although, as discussed in Chapter IV, it has defined its continental shelf boundaries with Iran and Bahrain. However, Saudi Arabia has laid down the general rule for delimiting its EFZ. Article 2 of the 1974 Declaration provides that:

... if the fishing zones, measured from the baselines referred to in Article 5 of the Royal Decree concerning the territorial waters ..., be overlapped with those of another coastal state, the boundary shall be the median line every point of which is equidistant from the baselines from which the territorial sea is measured.

Thus, the Kingdom adopts, for its EFZ delimitation, the same criterion, used in the bilateral agreements of the continental shelf boundary delimitation with each of Bahrain, Qatar, and Iran¹⁸⁶, i.e. the median line rule. Compared with the other opposite or adjacent states which established EEZs or EFZs, it is to be noted that Qatar, in its Declaration of 1974¹⁸⁷ asserted the outer limits of the Qatari continental prolongation, or the median line as a “determining fact” in defining the outer limits of its EEZ, unless a particular agreement provides to the contrary¹⁸⁸. With slight differences, Iran, in its Proclamation of 1973¹⁸⁹ established two criteria for the determination of its EFZ in the Arabian Gulf. First, in the area where Iran had delimited its continental shelf with the states concerned, here the outer limit of Iran's EFZ is that of its continental shelf. Second, where no agreement had been achieved, the median line was provided for, to be the outer limit of the EFZ¹⁹⁰. In

its Act of 1993, Iran, however adopted the single boundary concept for the continental shelf and the EEZ, unless otherwise determined in accordance with bilateral agreements¹⁹¹. In the Declaration of 1983, made on ratifying the 1982 Convention, Egypt, a bordering state of Saudi Arabia on the Red Sea, accepted, for its part:

*to establish the outer limits of its exclusive economic zone in accordance with the rules, criteria and modalities laid down in the Convention*¹⁹².

In other words, Egypt applies the criterion laid down in Article 74 of the Convention, the core of which is reaching:

agreement on the basis of international law, as referred to an Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

Saudi Arabia has not yet delimited its EFZ boundaries any of the region's states, and apart from Bahrain and Iran, the continental shelf boundaries as between Saudi Arabia and its neighbours have not been defined either¹⁹³. Thus, the boundaries need to be determined by means of agreement following negotiations, since the claims of the region's states to EFZs or EEZs will not be valid, according to the International Court of Justice, in the absence of an agreement¹⁹⁴. As to the boundary with Bahrain and Qatar, no problem is likely to arise, since the agreements concluded with these two states have provided not only for delimiting the submerged areas, but also for the delimitation of the superjacent waters of such areas. As discussed in Chapter IV, the Saudi boundary with Bahrain has been delimited since 1958¹⁹⁵, and with Qatar, as is well known, the 1965 Agreement has not yet taken effect, but the reasons for that concern the land boundary, and have nothing to do with the maritime boundaries, as both sides agreed, under the said Agreement, upon the utilisation of the median line rule for the division of the Bay of Salwa lying between the coasts of the two countries¹⁹⁶. Thus, in light of the above-mentioned criteria adopted by Saudi Arabia and Qatar, the boundary may be assumed to correspond.

The case with Iran and Sudan, however, is different. As seen in Chapter IV, with Iran, the continental shelf boundary was settled by virtue of the 1968 Agreement, while with Sudan, agreement was reached in 1974 on the division of the natural resources of the sea-bed area located between the Saudi-Sudanese

coasts in the Red Sea¹⁹⁷. Iran, as mentioned earlier, supports a single maritime boundary for the EEZ and the continental shelf. Thus, according to the Iranian approach, the outer limit of the Saudi-Iranian EFZs or EEZs will be the outer limit of their continental shelves, as provided for in the 1968 Agreement. It should be noted, however, that the said Agreement was based on a “modified” median line, as the boundary line witnessed some deviations towards the Saudi side in the northern sector of the delimited areas. The Kingdom’s acceptance of Iran’s boundary claim, therefore, will mean some concessions on the part of Saudi Arabia in her superjacent fishery zone, similar to those of the continental shelf. Saudi Arabia, however, is silent on this Iranian approach.

From an international legal perspective, the coincidence of the EEZ and continental shelf boundary could occur; rather, it may occur, as stated by Judge Jimenez de Arechaga in his separate opinion in the 1982 *Tunisia/Libya* case *at least in the large majority of normal cases*¹⁹⁸. The Chamber of the ICJ, in the *Gulf of Maine* case of 1984 validated the possibility of drawing a single boundary for different jurisdiction, and affirmed that:

*there is certainly no rule of international law to the contrary, and in the present case, there is no material impossibility in drawing a boundary of this kind*¹⁹⁹.

Nevertheless, the ICJ’s decisions appear to support the autonomy of the two regimes of the EEZ and the continental shelf²⁰⁰.

The 1982 Convention, for its part, appears, as pointed out earlier, to support this tendency²⁰¹, but the relevant provisions relating to the role of the pre-existing continental shelf boundary in the EEZ boundary delimitation is unhelpful.

Article 74(4) of the 1982 Convention reads:

where there is an agreement in force between the states concerned, questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement.

The ambiguity of the text lies in the phrase “where there is an agreement in force between the states concerned”. The question here is what is intended by such an agreement? Does the clause refer to an old continental shelf boundary agreement, if there is any? Or does it imply the case where there are differences over an existing EEZ boundary agreement between the parties concerned? In all cases, it

seems that the Convention establishes a legal basis for the use of an old shelf boundary line as a relevant factor in delimiting the exclusive economic or fishery zones of two adjacent or opposite states.

As far as Saudi Arabia and Iran are concerned, despite the fact that the Iranian Act of 1993 adopting a single boundary both for the EEZ and the continental shelf is of a unilateral nature, reflects only the standpoint of Iran on the issue and does not, by the nature of things, oblige Saudi Arabia, it seems that the adoption by the latter of the median line method, together with its silence and its non-comment on the Iranian claim, suggest that the Kingdom, at least, does not object to the approach of a single continental shelf/EEZ boundary with Iran. However, the acceptance of the “modified median line” criterion, previously utilised in delimiting the continental shelf between the two countries, although it will slightly lessen the Saudi fisheries share, especially in the northern sector of the boundary, will, on the other hand, avoid the difficulties of implementing two separate boundaries. Negotiation of a single maritime boundary, which may not escape the influence of political factors, is more feasible than that of separate boundaries. Further, assuming two separate boundaries may lead to a clash of jurisdiction within the same maritime area, but the application of a single boundary for both the shelf and the superjacent waters will result in the avoidance of such jurisdictional problems²⁰².

With Sudan on the Red Sea, the Kingdom, as mentioned above, concluded an agreement in 1974²⁰³ for the purpose of exploiting the natural resources of the sea-bed and subsoil areas located between their coasts in the Red Sea, though the Agreement was merely confined to “natural resources” which comprise according to its Article 1(2):

the non-living substances including the hydrocarbon and the mineral resources.

In other words, the accord has nothing to do with the living resources of the prescribed areas. Unlike Saudi Arabia, Sudan has not yet declared an EEZ. Thus, until such an action is taken, it still remains to be seen how matters will be solved.

However, due to the fact that Saudi Arabia has not yet determined its EEZ with any of its neighbours, whether in the Arabian Gulf or in the Red Sea, and in view of the expected hardship for many Saudi fishermen and those who belong to

the other states, if their usual fishing waters are placed in foreign territory and thus off-limits, it would be in the interest of all states concerned to enter into fisheries arrangements and agreements in which they take into account their jurisdictional limits and allow the continuation of the traditional fishing patterns in these two seas. Although such an approach has been provided for since 1960²⁰⁴ by a number of the region's states, it has not yet seen the light of day.

3.4 Saudi Arabia's EFZ and the Concept of the EEZ

As seen previously, Saudi Arabia has not yet declared an EEZ, but established an EFZ, in 1974. The economic considerations rooted in the special dependence of coastal inhabitants upon the resources of the coast are central to the basic purpose of Saudi Arabia's claim relating to the EFZ. The question arises here, however, as to the extent to which Saudi Arabia's EFZ claim reflects the regime of fishery as part of the more comprehensive concept of the EEZ.

An examination of the 1974 Declaration of the Ministry of Foreign Affairs shows the existence of certain legal elements, similar to those in the concept of the EEZ, which indicates that the EFZ of Saudi Arabia serves as a functional equivalent to the EEZ concept. First of all, amongst the justifications given to the issue of the Declaration was the importance of the fish resources as a principal component of the diet of the Saudi Arabian people, and as a vital factor for its social and economic progress, and further, the need for the protection and prudent exploitation of these resources. These considerations are included in the 1982 United Nations Convention. Article 61(2) of the Convention, which is devoted to the "conservation of the living resources", reads:

the coastal state ... shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation.

In addition, Paragraph 3 of the same Article stipulates that the said measures shall aim to:

maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing states (emphasis added).

Thus, both the LOSC and the Saudi Declaration of 1974 emphasise the role of the coastal state in conserving and maintaining the living resources of the EEZ or the EFZ from over-exploitation, and further, both instruments recognise the importance of the fish resources for the economic progress of the coastal fishing communities. Secondly, Saudi Arabia, via the 1974 Declaration, maintains her sovereign rights over fishing as it provides that:

*fishing and all related activities by non-Saudis in the exclusive fishing zone are prohibited unless prior permission is obtained from the Government of the Kingdom of Saudi Arabia*²⁰⁵.

Although the Declaration does not include terms, such as exploring, conservation, and management, nevertheless, it seems that its adoption of the phrase “all related activities”, which are subject to Saudi Arabia’s exclusive sovereign rights, might include some or all activities, such as exploring, exploiting, management and conservation of living resources in the Saudi EFZ. These provisions are similar to those contained in the LOSC, under which, the coastal state in its EEZ is entitled to have sovereign rights for the purpose of exploiting, exploring, managing and conserving the living natural resources²⁰⁶. Thirdly, according to the previous text, it is clear that Saudi Arabia recognises, in principle at least, foreign fishing in her EFZ, but she makes obtaining permission from the Saudi government a pre-condition. These provisions could be viewed as being in line with those included in the LOSC, which entitle the coastal state to determine the allowable catch of its EEZ living resources²⁰⁷. Finally, the Declaration provides for non-prejudice of the fishing zone status as high seas *in accordance with the established principles of international law*²⁰⁸. Thus, the Declaration does not mention the requirements of such status, but the inclusion of the phrase “in accordance with the established principles of international law” could be interpreted as containing the various freedoms referred to in Article 87 of the LOSC, which include the freedom of navigation, freedom of overflight, freedom of laying submarine cables and pipelines, freedom of the establishment of artificial islands, installations and structures, freedom of fishing and the freedom of scientific research.

Commenting in 1978 on the claims of Iran (1973), Saudi Arabia (1974), and Qatar (1974), MacDonald said:

*such actions represent, in effect, the establishment of exclusive economic zones in the Persian Gulf, and parallel the developments at the Third United Nations Conference on the Law of the Sea*²⁰⁹.

Of this view also is El-Hakim, who rightly stated that:

*the said states are actually asserting claims which fall into line with the exclusive economic zone concept ...*²¹⁰.

In the light of the above discussion, it may be concluded, therefore, that although Saudi Arabia has not declared an EEZ, and instead an EFZ was established, she, in practice, and for fishing purposes, exercises a form of EEZ jurisdiction, as provided for under the LOSC exclusive economic regime, without formal establishment of an EEZ.

3.5 The Significance of the EEZ for the Kingdom

As seen previously, Article 56 of the 1982 Convention gives the coastal state sovereignty over living and non-living resources in the EEZ. The coastal state also has jurisdiction over the construction of artificial islands and installations, marine scientific research, and pollution control. It also has other rights, which principally are concurrent with those of the contiguous zone (Article 33), and the right of hot pursuit (Article 111). On the other hand, Saudi Arabia, as discussed earlier, proclaimed her sovereignty rights over the resources of submarine areas, in 1949 as to the Arabian Gulf, and in 1968 as to the Red Sea²¹¹. The Kingdom also established, as mentioned, an EFZ since 1974. The question arises, then, as to the significance of establishing an EEZ for Saudi Arabia, a country which, although supporting the EEZ concept and having supported, in terms of distance, what was to become an irreversible trend, has not as yet made any formal extensive claims to one herself. In other words, will the establishment of an EEZ add anything to the already existing Saudi rights relating to the continental shelf and the fishery zones?

The answer to that question is: yes. As has been concluded earlier, although the EEZ concept has passed now into international customary law, the rights exercised in the EEZ do not exist *ipso facto* and *ab initio*²¹². This means that by establishing an EEZ, Saudi Arabia, within the limits of this zone, will, first, have sovereign rights with regard to all activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and wind. She will also have jurisdictional rights with regard to the establishment and use of artificial islands, installations and structures, marine scientific research and over the protection and preservation of the marine environment.

Second, in declaring an EEZ, Saudi Arabia will create another legal basis for her previous claims concerning living and non-living resources, and yet all doubts about those claims, especially with regard to her claim over the natural resources of the Red Sea, will be removed.

Third, such an action would place the country on the same footing as its maritime neighbours, Qatar, Egypt, Yemen and Iran all of which have declared EEZs, and moreover, it would make the nation in conformity with the current general state practice.

Fourth, it is expected that such an action may prompt the other states in the region, which have not yet declared EEZs to take similar actions, which hopefully would accelerate the negotiation for delimitation of boundaries between these neighbouring states. Such an action would not only be concerned with the delimitation of the fisheries zones, as is the case under the present claim of 1974, but it would also provide for the limits of the other jurisdictional areas, such as those concerning marine pollution and marine scientific research.

Fifth, the creation of an EEZ would be a suitable chance for the Kingdom to correct the legal status of its EFZ which is considered, under Article 3 of the 1974 Declaration as part of the “high seas”, while under the 1982 Convention, the EEZ is regarded as a separate functional zone of a *sui generis* legal character, situated between the territorial sea and the high seas²¹³. Finally, declaring an EEZ would accelerate enactment of regulations which show, in detail, the rights and duties of the Kingdom, as well as the rights and duties of the other states in the area. In any case, the establishment of an EEZ, even if not beneficial, will not be harmful. Therefore, it seems to be, just a matter of time before the Kingdom declares an EEZ.

Conclusion

The foregoing analysis leads to the conclusion that as to fishing, Saudi Arabia, in her maritime zones, recognises certain rights for others, which are not even stipulated by international law itself. Such is the case with foreign fishing in the Saudi territorial sea, where, according to international law, Saudi Arabia as a coastal state has exclusive sovereign rights including sovereignty over fishery

resources. In establishing an EFZ, Saudi Arabia recognises the vital economic importance of the area for the coastal state. The Saudi EFZ regulations conform to almost all the fishery provisions of the EEZ laid down in the LOSC. The justifications of the Saudi claim of 1974 are similar to those included in the LOSC. The Saudi claim confirms the sovereignty rights of the Kingdom not only over fisheries, but also over “related activities” which may include, by implication: exploring, exploiting, management and conservation, the activities expressly stipulated in the LOSC. Moreover, Saudi Arabia conforms to the LOSC in recognising foreign fishing in her EFZ. Indeed, she goes further by recognising that even in her territorial sea. Finally, in her EEZ, Saudi Arabia (in a general formulation) recognises all the rights of the international community (according to international law), something which means recognition of all freedoms of the high seas contained in Article 87 of the LOSC.

On the delimitation question, without any doubt, the geographical characteristics of the Red Sea and the Gulf will inevitably lead to overlapping of claims. The inter-relationship between the continental shelf and the EEZ will lead to more complexity if Saudi Arabia chooses to declare an EEZ. However, to avoid such difficulties, it is advisable for the Kingdom and its neighbouring states to follow the single maritime boundary concept for the shelf and the EEZ/EFZ. The same approach is advisable to be followed even when an old continental shelf boundary exists, as is the case with Bahrain and Iran.

The Kingdom’s support for the EEZ concept suggests that she is on her way to declaring her own. However, when doing so, Saudi Arabia will have to re-examine the adequacy of her regulations on fishing. In particular, the permission of fishing in the Saudi territorial sea would have to be confined to local fishing. It should take into account the needs of the fishing industry and should maximise economic benefits in favour of the Saudi people. Proper management of the EEZ would also require the monitoring of all activities in the zone, such as entry, commencement of fishing, cessation and departure. In brief, Saudi Arabia should lay down detailed rules, which show its rights and duties, as well as the rights and duties of the others in its EEZ, taking into account the provisions of the 1982 Convention. All these considerations are relevant when negotiating such bilateral

or international fishing agreements as will become necessary in the event of a Saudi proclamation of an EEZ.

NOTES TO CHAPTER V

1. Om Parkash Sharma, "Enforcement Jurisdiction in the Exclusive Economic Zone - The Iranian Experience", 24 *ODIL*, (1993), p. 155, at p. 155.
2. R. W. Smith, Exclusive Economic Zone Claims: An Analysis and Primary Documents, Boston, Martinus Nijhoff Publishers, (1986), at p. 3.
3. P. A. Driver, "International Fisheries" in R. P. Barston and P. Birnie (eds.), The Maritime Dimension, London, George Allen & Unwin, (1980), p. 27, at p. 44.
4. Articles 55-58.
5. There is a substantial body of literature on the development and the various legal aspects of the EEZ. See for examples B. Kwiatkowska, The 200 Mile Exclusive Economic Zone in the New Law of the Sea, Dordrecht/Boston/London, Martinus Nijhoff Publishers, (1989); F. O. Vicuna, The Exclusive Economic Zone, Regime and Legal Nature under International Law, Cambridge, Cambridge University Press, (1989); D. J. Attard, The Exclusive Economic Zone in International Law, Oxford, Clarendon Press, (1987); J. I. Charney, "The Exclusive Economic Zone and Public International Law", 15 *ODIL*, (1985), pp. 233-88; L. Juda, "The Exclusive Economic Zone: Compatibility of National Claims and the UN Convention on the Law of the Sea", 16 *ODIL*, (1986), pp. 1-58; L. Juda, "The Exclusive Economic Zone and Ocean Management", 18 *ODIL*, (1987), pp. 305-31; R. R. Churchill and A. V. Lowe, *op. cit.*, Chapt. I, note 10, pp. 133-52; J. C. Phillips, "The Exclusive Economic Zone as a Concept in International Law", 26 *ICLQ*, (1977), pp. 585-618; A. L. Hollick, "The Origins of 200-Mile Offshore Zones", *op. cit.*, Chapt. I, note 29.
6. Proclamation by the President with respect to Coastal Fisheries in Certain Areas of the High Seas, in Suppl. to 40 *AJIL*, (1946), pp. 46-47. The justification given to the issue of the Proclamation was the pressing need to conserve and protect the US fisheries from foreign fleets; nevertheless, it was never actually implemented.
7. Decree No. 14,708 concerning National Sovereignty over Epicontinental Sea and the Argentine Continental Shelf, 11 October 1946, in *UN. Leg. Ser. ST/LEG/SER.B/1*, (1951), pp. 4-5.
8. Decree No. 449, for the Regulation of Shark Fishing by Foreign Vessels in the Waters under the Jurisdiction of the Republic, 17 December 1946, (Art. 3), in *Ibid.* at p. 16.
9. Chile was the first state to claim a 200 mile zone by virtue of a Presidential Declaration concerning the Continental Shelf, 23 June 1947, *Ibid.*, pp. 6-8.
10. Peru followed Chile in claiming a 200 mile zone. See Presidential Decree No. 781, concerning Submerged Continental or Insular Shelf, 1 August 1947, *Ibid.*, pp. 16-18.
11. Congressional Decree No. 102, amending the Political Constitution, 7 March 1950, in *Ibid.*, pp. 11-12.
12. The Constitution of El Salvador of 7 September 1950 (Art. 7) in M. M. Whiteman, *op. cit.*, Chapt. II, note 20, pp. 801-802.
13. Declaration of Santiago on the Maritime Zone, signed on 18 August 1952, *Ibid.*, pp. 1089-91.
14. Declaration of Santo Domingo, 9 June 1972, in *XL ILM*, (1972), pp. 892-93. See Articles 1 and 3 under Patrimonial Sea.
15. R. P. Anand, "The Politics of a New Legal Order for Fisheries", 11 *ODIL*, (1982), p. 265, at p. 278.

16. Doc. A/AC.138/SC.11/1.10 of 7 August 1972, in 12 *ILM*, (1973), pp. 33-35. It should be noted that the Council of Ministers of the Organization of African Unity adopted the Kenyan's proposal in its Declaration on the Issues of the Law of the Sea of June 1974, see Doc. A/CONF.62/33 in UNCLOS III, Official Records, Vol. III, pp. 63-65.
17. In his indication of the EEZ's appeal to the developing countries, and the benefit of the regime to certain problems in the law of the sea, Brown said: *originating in the developing world catering for the interests of developing coastal states, it is nevertheless formulated with moderation and based on a realistic appreciation of political feasibility. If handled diplomatically and in a spirit of reasonable flexibility, it may well prove to be the key to a solution of not only the problem of the breadth of the territorial sea, but also those of fishery limits, pollution zones and even of the delimitation of the continental shelf*, see E. D. Brown, *op. cit.*, Chapt. I, note 14, at p. 167.
18. *ICJ Repts.*, (1974), p. 3
19. Pointing out the uncertainty about fisheries limits in the discussions of the then Third United Nations Conference on the Law of the Sea, the Court said: *The Court as a court of law, cannot render judgement, sub specie legis ferendae, or anticipate the law before the legislator has laid it down*, *ibid.*, Para. 53.
20. *Ibid.*, Para. 52.
21. Arts. 1 and 2 of the 1958 Geneva Convention on the High Seas, and Art. 1 of the 1958 Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas.
22. See *supra*, p. 19.
23. *ICJ Repts.*, (1982), Para. 100. In his separate opinion in the same case, Judge Jimenez De Arechaga stated that: *The proclamation by 86 coastal states of economic zones, fishery zones, or fishery conservation zones made in conformity with the text of the Conference [UNCLOS III], constitutes a widespread practice of states which has hardened into a customary rule, an irreversible part of today's law of the sea*, see Para. 54.
24. *ICJ Repts.*, (1985), p. 13, Para. 34.
25. D. Freestone, "Some Institutional Implications of the Establishment of Exclusive Economic Zones by EC Member States", 23 *ODIL*, (1992), pp. 97-114, at p. 97.
26. Art. 56(1)(a).
27. Art. 2(1).
28. R. R. Churchill and A. W. Lowe, *op. cit.*, Chapt. I, note 10, p. 137.
29. Art. 56(1)(a).
30. Art. 56(1)(b). The coastal state may create special areas within the EEZ, i.e. safety zones not to exceed a breadth of 500 metres for artificial islands, installations, and structures (Art. 60(4)(5)). It should be noted that under Art. 60(1),(2), the coastal state has over the artificial islands, installations and structures in the zone, exclusive jurisdiction to the extent that it shall be entitled not only to construct, but also to authorise and regulate the construction operation and use.
31. See *supra*, pp. 128-30.

32. Art. 87 of the LOSC.
33. Art. 56(1)(c).
34. Art. 33 of the LOSC, see also *supra*, pp. 152-53.
35. Art. 111. These rights have been conveniently summarised by Oxman, see B. H. Oxman, "The Third United Nations Conference on the Law of the Sea: The 1976 New York Session", *op. cit.*, Chapt. I, note 63, at pp. 261-62.
36. Art. 56(2).
37. Art. 58(1).
38. Art. 61(1).
39. Art. 61(2).
40. Art. 246.
41. Arts. 193, 208, 210(5), and 211(5).
42. J. I. Charney, *op. cit.*, note 5, at p. 251.
43. P. H. Pearce, "From Open Access to Private Property: Recent Innovations in Fishing Rights as Instruments of Fisheries Policies", 23 *ODIL*, (1992), p. 71, at p. 72. As noted by Juda, the 1960s and 1970s were marked by rapid growth in the world marine fisheries harvest from a level of some 33.6 million metric tons to 61.4 million metric tons per year, see Lawrence Juda, "World Marine Fish Catch in the Age of Exclusive Economic Zones and Exclusive Fishery Zones", 22 *ODIL*, (1991), p. 1, at pp. 1-2.
44. R. R. Churchill and A. W. Lowe, *op. cit.*, Chapt. I, note 10, at p. 230.
45. Art. 1(2).
46. Arts. 6 and 7.
47. Art. 2(4).
48. *ICJ Repts.*, (1974), p. 3, Para. 52.
49. For further details on fishing negotiations at UNCLOS III, see R. L. Friedheim, "Fishing Negotiations at the Third United Nations Conference on the Law of the Sea", 22 *ODIL*, (1991), pp. 209-47.
50. Art. 56(1)(a).
51. Art. 62(1).
52. Art. 61(1).
53. Art. 62(2).
54. Arts. 62(2), 69, and 70.
55. Art. 62(3).
56. Arts. 66 and 67.

57. S. Oda. "Fisheries under the United Nations Convention on the Law of the Sea", 77 *AJIL*, (1983), p. 739, at p. 744.
58. See Art. 297(3).
59. W. Burke. "U.S. Fishery Management and the New Law of the Sea", 76 *AJIL*, (1982), p. 24, at p. 29.
60. L. Juda. "The Exclusive Economic Zone: Compatibility of National Claims...", *op. cit.*, note 5. at p. 21.
61. S. Oda. *op. cit.*, note 57, at p. 745.
62. *Ibid.*
63. Art. 57. For the methods of drawing the baselines and the factors affecting the process. see *supra*, pp. 56-66.
64. Art. 55 of the LOSC.
65. Art. 57.
66. Art. 74(1).
67. Art. 74(2).
68. Art. 74(4).
69. Art. 74(3).
70. See *supra*, pp. 176-86.
71. *ICJ Repts.*, (1982), p. 18, Para. 56. Attard has also noted that most of the maritime boundaries agreements adopted a common sea-bed/superjacent waters boundary, D. J. Attard, *op. cit.*, note 5, pp. 250-3.
72. *ICJ Repts.*, (1985), p. 13, Para. 33. For further discussion on the relationship between the EEZ and continental shelf and the concept of a common maritime boundary, see generally, Malcolm D. Evans, *op. cit.*, Chapt. IV, note 28.
73. I. Brownlie, *op. cit.*, Chapt. III, note 117, pp. 230-31.
74. Art. 76(1).
75. R. R. Churchill, "Fisheries Issues in Maritime Boundary Delimitation", 17 *MP*, (1993), p. 44, at p. 51.
76. The term "delimitation by a single line" was put by the ICJ in the said case to mean: *a delimitation, which has to apply at one and the same time to the continental shelf and the superjacent water column*, *ICJ Repts.*, (1984), p. 246, Para. 194.
77. *Ibid.*
78. *Ibid.*, Para. 192.
79. *Ibid.*, pp. 299-300.
80. Para. 195.
81. Paras. 233 and 234.

82. Para. 237.
83. 25 *ILM*, (1986), p. 251, Para. 42.
84. *Ibid.*, Para. 88.
85. *Ibid.*, pp. 300-303.
86. *ICJ Repts.*, (1993), p. 38, Para. 92.
87. D. W. Bowett, *op. cit.*, Chapt. II, note 58, at p. 189.
88. Art. 2(2) of the 1958 Continental Shelf Convention, and Art. 77(3) of the LOSC. The International Court of Justice, in the Continental Shelf cases of 1969 has taken a similar position, see *ICJ Repts.*, (1969), p. 3, Para. 39.
89. *ICJ Repts.*, (1982), p. 18, Para. 100.
90. *Ibid.*
91. *Ibid.*
92. D. J. Attard, *op. cit.*, note 5, pp. 56-57.
93. *LSB*, No. 2, March 1985.
94. *Ibid.*, No. 8, November 1986, p. 28.
95. United Nations, (Division for Ocean Affairs and the Law of the Sea), The Law of the Sea, National Legislation on the Exclusive Economic Zone, New York, United Nations Publications, (1993), at p. III.
96. At UNCLOS III, to promote what they perceived to be a common cause, 29 landlocked states, and 26 states considering themselves as geographically disadvantaged joined in an alliance to form an interest group, see L. Caflish, "What is a Geographically Disadvantaged State?", 18 *ODIL*, (1987), pp. 641-63; S. P. Subedi, "The Marine Fishery Rights of Landlocked States with Particular Reference to the EEZ", 2 *IJECL*, (1987), p. 227, at p. 228. It should be noted that the number of landlocked states has increased following the emergence of new states following the collapse of some federation states. For example, the collapse of the former Soviet Union led to the emergence of some landlocked states in central Asia; the former Czechoslovakia became two landlocked dependent states; Ethiopia became a landlocked state in the wake of Eritrea's independence. However, while by definition, the landlocked states cannot claim EEZs, the geographically disadvantaged countries seemingly do not associate significant benefits with establishing EEZs.
97. Tunisia/Libya case, *ICJ Repts.*, (1982), p. 18, Para. 100.
98. Libya/Malta case, *ICJ Repts.*, (1985), p. 13, Para. 34.
99. There have been doubts, however, whether the obligations in the LOSC articles relating to fisheries, pollution and scientific research have passed or are likely to pass quickly into customary law. This, however, as stated by Churchill and Lowe: *reflects a tendency for rights to pass more quickly into custom than duties*. See Churchill and Lowe, *op. cit.*, Chapt. I, note 10, at p. 146.
100. UNCLOS III, Official Records., Vol. 1, p. 144.
101. *Ibid.*

102. See *supra*, Chapt. IV, note 181. For the Saudi claims on the continental shelf, see *supra*, pp. 186-96.
103. In his statement, the Saudi representative did not, however, point out to the base from which the EEZ is to be measured, i.e. the baseline of the territorial sea, but this can not, however, be understood to mean otherwise.
104. See *supra*, pp. 25 and 27.
105. *Supra*, note 100.
106. *Supra*, pp. 189-92.
107. *Supra*, pp. 191-93.
108. *Infra*, pp. 259-61.
109. See *supra*, pp. 134-42, pp. 190 and 193, and *infra*, pp. 261-62.
110. Declaration by the Ministry of Foreign Affairs of 2 June 1974. For text, see United Nations, *op. cit.*, note 95, p. 287.
111. Act. No. 45 of 17 December 1977 concerning the Territorial Sea, Exclusive Economic Zone, Continental Shelf and Other Marine Areas, in *Ibid.*, p. 401. This Act, however, was enacted by the former Democratic Yemen (Aden), which merged with Yemen (Sanaa) on 22 May 1990 to form since then a single state, known as the Yemeni Republic.
112. Law No. 52/AN/78 concerning the Territorial Sea, the Contiguous Zone, the Exclusive Economic Zone, the Maritime Frontiers and Fishing, in *Ibid.*, pp. 72-73.
113. Declaration of the Ministry of Foreign Affairs concerning the Exclusive Economic Zone and its Delimitation of 25 July 1980, in *Ibid.*, at p. 384.
114. Royal Decree concerning the Territorial Sea, Continental Shelf and Exclusive Economic Zone of 10 February 1981, *Ibid.*, p. 262. It should be noted that Oman proclaimed in 1972 a fishing zone of 50 n.m., and extended that zone in 1977 to 200 n.m.
115. Declaration upon the Signature of the 1982 United Nations Convention on the Law of the Sea concerning the Exercise by Egypt of its Rights to the Exclusive Economic Zone, in *Ibid.*, at p. 78.
116. Act on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and the Oman Sea (Part III), in *LSB*, No. 24, (1993), p. 10.
117. See *supra*, pp. 237-39.
118. L. M. Alexander, *op. cit.*, Chapt. I, note 104, at p. 155. In a subsequent study, however, Alexander made some modification to the said definition indicating that:
the statistical requirements should be seen as guides, rather than an inflexible limit, with the added condition that the sea is bordered by two or more states. See L. M. Alexander, "Regional Arrangements in the Oceans", 71 *AJIL*, (1977), p. 84, at pp. 90-91.
119. See *supra*, pp. 25 and 27.
120. In a study made by L. Juda in 1988, it was found that of the 66 states which had not then established EEZs, 48 (almost 73 per cent) have coastlines which at least partially border a semi-enclosed sea, L. Juda, "The Exclusive Economic Zone: Non-Claimant States", 19

ODIL, (1988), p. 431 at pp. 432-33. It should be noted, however, that Juda mentioned Saudi Arabia as a state non-claimant to EFZ, although it declared an EFZ in 1974!, see p. 436 at the same Article.

121. Malcolm D. Evans, *op. cit.*, Chapt. IV, note 95, at p. 189.
122. See *supra*, pp. 92-102.
123. Art. 56 of the LOSC, see also *supra*, pp. 239-41.
124. Proclamation 5030, 10 March 1983, by the President of the United States of America, in United Nations, *op. cit.*, note 95, at p. 392.
125. Decree of the Union of Soviet Socialist Republics on the Economic Zone of 28 February 1984, in *Ibid.*, at p. 295.
126. See T. Wray, Commercial Fishes of Saudi Arabia, Dammam, Saudi Fisheries Company, (1979), at p. 10.
127. *Ibid.*
128. By virtue of the Royal Decree No. M/7, dated 25-3-1980.
129. The Annual Report of the Saudi Fisheries Company (1991), pp. 9-11.
130. The National Plan of Fisheries in the Kingdom of Saudi Arabia, the Third Five-Year Development Period (1980-85), at p. 3.
131. *Ibid.*, at p. 11.
132. Food and Agriculture Organization of the United Nations, FAO Yearbook Fishery Statistics, Vol. 72, Rome, (1991), at p. 96.
133. *Ibid.*
134. *Ibid.*, at p. 99.
135. *Ibid.*, at p. 101.
136. The Middle East and North Africa, 1992, *op. cit.*, Chapt. I, note 89, at p. 783.
137. In 1989, it was estimated that agriculture (including forestry and fishing) contributed only 7.3% of gross domestic product in the Kingdom. See *Ibid.*, at p. 782.
138. See *supra*, Chapt. III, note 111.
139. See *supra*, pp. 134-36.
140. Arts. 6, 10, and 19.
141. Art. 20.
142. Regulations of Fishing, Investment and Protection of Living Resources in the Territorial Waters of the Kingdom of Saudi Arabia, Riyadh, Government Press, (1989), endorsed by Royal Decree No. M/9, dated 27/3/1408 AH (1988).
143. Art. 1.
144. Art. 5.

145. See Chapt. II, note 61.
146. Art. 5, see also *supra*, pp. 143-44.
147. By virtue of the Royal Decree of 1958. see *supra*, Chapt. II, note 62.
148. UNCLOS I, Official Records, Vol. III, at p. 134.
149. *Ibid.* at p. 135.
150. *Ibid.*
151. UNCLOS II, Official Records, Summary Records of Plenary Meetings and of Meetings of the Committee of the Whole, p. 120.
152. *Ibid.*
153. *Ibid.*, Doc. A/CONF.19/C.1/L.6, at p. 167.
154. Ethiopia, Ghana, Guinea, Indonesia, Iran, Iraq, Jordan, Lebanon, Libya, Morocco, Philippines, Sudan, Tunisia, United Arab Republic and Yemen.
155. UNCLOS II, Official Records, Summary Records of Plenary Meetings and of Meetings of the Committee of the Whole, at p. 165.
156. Indonesia, Iraq, Lebanon, Mexico, Morocco, Sudan, United Arab Republic, Venezuela and Yemen.
157. UNCLOS II, Official Records, Summary Records of Plenary Meetings and of Meetings of the Committee of the Whole, Doc. A/CONF.19/L.9, at p. 172.
158. Art. 3 of the draft resolution.
159. See *supra*, Chapt. IV, note 181.
160. *ICJ Repts.*, (1974), p. 3, Para. 52.
161. Decree of 17 July 1972 concerning the Territorial Sea, Continental Shelf and Exclusive Fishing Zones of the Sultanate of Oman, *op. cit.*, Chapt. IV, note 136.
162. Proclamation of 30 October 1973 concerning the Outer Limit of the Exclusive Fishing Zone of Iran in the Persian Gulf and the Sea of Oman, in *UN. Leg. Ser. ST/LEG/SER.B/18*, (1976). p. 334.
163. Royal Decree No. 44 of 15 June 1977, in *UN. Leg. Ser. ST/LEG/SER.B/19*, p. 244.
164. Art. 1.
165. *Ibid.*
166. Art. 2.
167. Art. 3.
168. See *supra*, note 6.
169. *ICJ Repts.*, (1951), p. 116.
170. *Ibid.*

171. Art. 7(1).
172. For the relevant text of the Court's statement, see *supra*, at p. 238.
173. Art. 56.
174. Art. 19.
175. *Supra*, Chapt. IV, note 119.
176. *Ibid.*
177. Art. 2.
178. Art. 5. In the same Article, it was provided that if the foreign vessels operate for a national firm or establishment, the permission is to be obtained from the Minister of Agriculture and Waters.
179. Art. 73.
180. Oda, *op. cit.*, note 57, at p. 747.
181. See Arts. 1 of the TSC and 2 of the LOSC.
182. Arts. 69(1) and 70(1).
183. Arts. 69(2) and 70(3).
184. UNCLOS III. Official Records, Vol. I, at p. 144.
185. *ICJ Repts.*, (1984), p. 246, Para. 112.
186. See *supra*, pp. 199-203 and pp. 208-213.
187. *Supra*, note 110.
188. Art. 1.
189. *Supra*, note 162.
190. Art. 1. It is to be noted that Iran, by virtue of its Proclamation of 22 May 1977 concerning the Outer Limit of the Iranian EFZ, extended its EFZ in the Sea of Oman up to the median line, after it had been limited to 50 n.m. in 1973, Proclamation of 22 May 1977, in FAO Legislation Study No. 42/1, (1986), p. 415.
191. *Supra*, note 116, Art. 19.
192. *Supra*, note 115.
193. With Qatar, the Kingdom as mentioned earlier, concluded an agreement in 1965 for the delimitation of maritime boundaries between the two countries, but it has not entered into force, see *supra*, pp. 208-209.
194. Gulf of Maine case. *ICJ Repts.*, (1984), p. 246, Para. 112. For the relevant passage of the Court's rule, see *supra*, p. 267.
195. See *supra*, pp. 199-203.
196. See *supra*, pp. 208-209.

197. See *supra*, pp. 209-13 and pp. 216-19.
198. *ICJ Repts.*, (1982), p. 18, Para. 56.
199. *ICJ Repts.*, (1984), p. 246, Para. 27.
200. Tunisia/Libya case, *ICJ Repts.*, (1982), p. 18, Para. 100; Libya/Malta case, *ICJ Repts.*, (1982), p. 13, Para. 33.
201. *Supra*, pp. 244-47.
202. F. Ahnish, *op. cit.*, Chapt. IV, note 68, pp. 138-39.
203. See *supra*, pp. 216-19.
204. See for example the joint proposal, submitted to UNCLOS II by a number of states, eight of which border either the Red Sea or the Arabian Gulf, Doc. A/CONF.19/C.1/ L.6 in UNCLOS II, Official Records, Summary Records of Plenary Meetings and of Meetings of the Committee of the Whole, p. 167. Article 7 of the proposal provides that: *Nothing in the provisions of this Convention [TSC] shall be construed so as to preclude the conclusion, subject to the established rules of international law, of bilateral or multilateral agreements of a regional character to regulate all matters of fishing amongst states with common interests.* Amongst the region's states, which joined the submission of the said proposals were, besides Saudi Arabia, Ethiopia, Iran, Iraq, Jordan, Sudan, Egypt, and Yemen.
205. Article 2 of the Declaration.
206. Art. 56(1)(a).
207. Art. 61(1).
208. Art. 3.
209. Charles G. MacDonald, "The Roles of Iran and Saudi Arabia in the Development of the Law of the Sea", 1 *JSAMES* (No. 3), (1978), p. 3, at p. 5.
210. Ali El-Hakim, *op. cit.*, Chapt. II, note 174, at p. 29.
211. *Supra*, pp. 189-93.
212. *Supra*, pp. 247-49.
213. Arts. 55 and 86.

Chapter VI

Marine Scientific Research

Introduction

The increasing importance of the ocean to man renders marine scientific research (referred to hereafter as MSR) as a factor of vital significance since it is the means whereby the hidden resources of the sea have been discovered. Adequate and effective scientific research is a basic precondition for the rational exploitation of the sea's resources. It serves a wide variety of purposes. For example, exploitation of offshore oil is possible only where the necessary geological research has been carried out to locate oil fields. The harvesting of a particular stock of fish at levels which do not lead to overfishing can be achieved only if there is constant monitoring of the size of and recruitment to the stock. The study of waves, currents, the seabed and weather helps to make navigation safer. Also, the study of climatic changes, which is perhaps the most "international" issue of our time¹, represents a great help in avoiding the potentially catastrophic impact on the wealth of species and ecosystems in general². MSR is the key to the preservation of the marine environment as a whole. It also helps to tell us more about the earth generally. Furthermore, it may also be more or less directly linked to military uses of the sea, by trying, for example, to improve the ability to detect submarines³. However, despite these facts, MSR has only relatively recently become an area of concern to students and practitioners of ocean law and politics, and until relatively recently, no international legal regulations governed its conduct.

Like many other states, Saudi Arabia has not demonstrated any concern with this aspect of the law of the sea until very recently, perhaps because of the lack of her own capability, as a developing nation, for MSR.

This Chapter is divided into two parts. Part I examines the legal development of the MSR concept, with particular reference to the scope of the

competence to conduct it under the 1982 United Nations Convention. Part II begins by considering the institutional setting of MSR in Saudi Arabia. It then goes on to examine the Saudi Arabian policies regarding MSR, with the aim of finding out the extent of conformity between the Saudi practice and the current international legal regime.

Part I: Marine Scientific Research in International Perspective

1. Definition and Types of MSR

Before examining the legal development of MSR, it is logical to shed light upon the meaning of the term. The 1982 United Nations Convention does not contain a definition of marine scientific research. In a general concept, the term “marine scientific research” is used to refer to scientific investigation, however and wherever conducted, having the marine environment as object⁴. Characterized in terms of its immediate objective, oceanic research has been classified into three broad categories⁵: First: pure research (known also as basic or fundamental). This type was defined by Schaefer in his capacity as an expert at the 1958 First United Nations Conference on the Law of the Sea, as: scientific study intended to add to the sum of human knowledge about the world, regardless of its application⁶. Schaefer defined oceanography as the scientific study of ocean basins, the ocean and its contents. He further subdivided it into four parts: (a) physical oceanography, which deals with waves, tides, currents, magnetism, heat exchange, etc.; (b) chemical oceanography, which involves the study of the chemistry of the complex mixture of substances in the sea’s waters; (c) marine biology, which involves the study of plant and animal organisms in the sea; (d) submarine geology, which includes the geology of the sea bottom, the study of sedimentation processes, etc. Oceanography also includes the study of phenomena outside the oceans, such as meteorology⁷.

The second type is referred to as applied research, which refers to research undertaken primarily for specific practical purposes⁸, motivated by hopes of financial gain⁹.

The third type is military research, the objective of which is strategic. This kind of research will have incidental social and economic implications, if not

immediately, at least in the long term¹⁰. However, it should be noted that activities such as military intelligence, testing of new weapons or military instruments, or the gathering in the marine environment of any other data not related to the marine environment are not considered to be marine scientific research¹¹.

2. Legal Development of MSR

The origins of the age of ocean discovery can be traced back to the second half of the last century, to the famous voyages of the *Challenger* exploration expedition in the Atlantic between 1872-1876¹². The nineteenth-century freedom of the seas eased the marine scientists' task in collecting their data and samples beyond the narrow territorial waters of the coastal state; rather, within the maritime belt and even the internal waters of a foreign state, permission was readily obtained. In many cases the scientists involved reported on their task to their counterparts in the state concerned, rather than to the government of that state¹³. This situation, however, has changed greatly in the present century, particularly since the end of World War II. Thus, freedom to conduct marine scientific research around the world, characterized by the Wilkes expedition, the *Challenger* expedition, the voyages of the *Albatross*, the *Carnegie*, or the *Meteor* has been inexorably reduced as part of the contemporary political and legal phenomenon of coastal states asserting claims to jurisdiction over wide areas of world oceans and the seabed¹⁴. Nevertheless, until the middle of the twentieth century, no legal controls on the conduct of MSR were perceived to be necessary, nor did the law of the sea literature up to that time contain any real mention of it¹⁵. Within the past three decades or so, this situation of "non-regime" has been replaced by increasingly complex national and international regulations. This may be ascribed to a number of reasons, such as the increased capability of making use of the ocean's economic potential; the growing awareness by developing coastal states of the importance of MSR; the expanded scale of research; the new technologies available to carry out research; and the increase in use and utilization of the sea in general¹⁶. These factors necessitated the inclusion of controls on MSR first in the

1958 Geneva Conventions, and more extensively later on in the 1982 United Nations Convention.

The focus of discussion on MSR, whether in the International Law Commission's debates or at UNCLOS I or UNCLOS III, was on the scope of the competence to conduct the research. Generally speaking, there is on the one hand, the group of developed countries, which, with advanced research capabilities, have advocated unrestricted freedom of oceanic research in areas under coastal state jurisdiction. On the other hand, the coastal developing countries, while recognizing their interests in, and importance of marine scientific research, have insisted that it should be subjected to regulation, a view prompted by their suspicions of the underlying motives of developed states¹⁷.

The question was first explicitly dealt with in the 1958 Geneva Convention on the Continental Shelf (CSC), but the relevant provisions therein are limited to conducting MSR on the continental shelf of the coastal state. Demands for international regulation of MSR voiced chiefly by the developing nations, culminated at UNCLOS III. As a result of the demands of these countries, which were concerned about their security and the impact of research by developed countries in their fishing zones, a comprehensive legal regime of MSR was introduced as Part XIII (Articles 238-265) of the LOSC covering all portions of the ocean, including internal waters, territorial sea, EEZ, archipelagic waters, straits used for international navigation, the continental shelf beyond 200 miles, the "Area", and the high seas¹⁸.

3. Scope of the Competence to Conduct MSR under the Current Legal Regime

Under the 1958 Geneva Convention on the High Seas, the high seas are defined as:

*all parts of the sea that are not included in the territorial sea or in the internal waters of a state*¹⁹.

Marine research has generally been considered as one of the high seas freedoms, although it is not mentioned as such under the Convention²⁰. The said freedoms, however, are stated not to be exhaustive. It has been argued that scientific

research is one of the “other freedoms” mentioned in the LOSC, and should be equally recognized and safeguarded, like the other freedoms of the high seas. Furthermore, scientists need maximum access to all parts of the oceans, otherwise, in view of the physical, chemical and biological interactions in the marine environment, scientific research would be incomplete and superficial²¹. In its commentary on what became eventually Article 2 of the High Seas Convention, the ILC mentioned MSR as an example of a freedom not referred to in the Article²². Under the LOSC, the high seas were redefined to include:

*all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a state, or in the archipelagic waters of an archipelagic state*²³.

According to this definition, wide areas of the seas regarded as part of the high seas under the HSC, came under the jurisdiction of the coastal state under the LOSC which, as expressly stated:

*shall prevail, as between States Parties, over the Geneva Conventions on the Law of the Sea ...*²⁴.

Marine research has been explicitly recognized in the new regime as an unrestricted high-sea freedom²⁵.

Within the other maritime zones, the coastal state authority over marine research varies. MSR is restricted or prohibited in the zones closer to the coast, i.e. international waters and territorial sea, and regulated or controlled in the zones receding from the coast, i.e. the continental shelf and the exclusive economic zone.

3.1 Internal Waters

The internal waters comprise those waters which lie within the baselines of the territorial sea²⁶. To many scientists, particularly biologists, the coastal areas are the most interesting part of the ocean²⁷. However, the Law of the Sea Conventions make no mention of marine research in the internal waters. But, as previously discussed in Chapter II²⁸, over these waters, the coastal state has full territorial sovereignty. Only one exception has been imposed, that is with regard to the right of innocent passage, where the use of straight baselines would enclose as internal waters areas which had not been regarded as such previously. Therefore, apart from this exception, access to the internal waters of a coastal state, for

whatever reason, including carrying out marine research, is subject to the consent of such a state.

3.2 Territorial Sea

As is well known, except for the right of innocent passage of third states, the coastal state has full sovereignty on its territorial sea²⁹. The TSC makes no reference to research in the territorial sea, but, as a result of the said rule, it is not surprising that marine research within the territorial sea is totally at the discretion of the coastal state as an expression of its full sovereignty. This principle, however, has been expressly stipulated under the LOSC, which grants the coastal state an exclusive right to regulate, authorize and conduct marine research in its territorial sea³⁰. The question, however, arises whether the exercise of the right of innocent passage includes the right to carry out certain research activities during the passage. The TSC says nothing about the subject, but the wording of Article 14 of the Convention on the definition of innocent passage, suggests that such passage does not include the right to conduct research³¹. The LOSC, for its part, has expressly confirmed the coastal state's authority to conduct research in its territorial sea. Under Article 245, the state is free to authorize, to prohibit, or to impose conditions on any MSR activity, whether by its own nationals or by other states. Unlike the TSC, the LOSC has affirmed the fact that the carrying out of research or survey activities while exercising the right of innocent passage will render such passage as non-innocent³². In this respect, Churchill and Lowe correctly argue that:

*... whatever the form of research it would always take the vessel outside the concept of "passage"*³³.

3.3 Continental Shelf and the EEZ

The continental shelf, together with the EEZ are most important for marine research and are subject to a complex regime³⁴. On the basis of the reported geological and geographical locations, research on and above the shelf is estimated to constitute 50 per cent of all oceanic research³⁵.

Customary international law is rooted in the 1958 Geneva Convention on the Continental Shelf, which contains two specific direct provisions on MSR. The Convention, in Article 5, (1) provides in general terms that:

The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea, nor result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication.

Qualifying the previous words, Paragraph 8 of the same Article reads:

The consent of the coastal state shall be obtained in respect of any research concerning the continental shelf and undertaken there. Nevertheless, the coastal state shall not normally withhold its consent if the request is submitted by a qualified institution with a view to purely scientific research into the physical or biological characteristics of the continental shelf, subject to the proviso that the coastal state shall have the right, if it so desires, to participate or to be represented in the research, and that in any event the results shall be published.

The examination of the said provisions reveals the existence of a number of problems. First, there is no consistency between the wording of the two Paragraphs: 1 and 8 of Article 5. While Paragraph 1 provides for non-interference with research on the continental shelf, Paragraph 8 emphasises the requirement of the coastal state's consent. As noted by Soons, this formulation, it appears, was an attempt at compromise among the different positions and proposals at UNCLOS I³⁶, otherwise, how can it be explained that on the one hand, any interference with research is prohibited, while on the other hand, the coastal state's consent is stipulated as a precondition for research on the continental shelf?

Secondly, it is to be noted that, although the coastal state's consent was put as a precondition for conducting the research, the "physical" scope of such research is not clear. Two interpretations are possible for the phrase "research concerning the continental shelf and undertaken there". One is that the consent is only required where the research both concerns the shelf and is physically undertaken on it, i.e. on the seabed³⁷. Another interpretation is that the said phrase embraces, and hence, the coastal state consent is required for, all research concerning the shelf, whether conducted on the seabed or in the water volume

above the continental shelf. As noted by Soons, the practice of states parties to the CSC, although not conclusive, seems to be in line with the second interpretation³⁸.

Thirdly, the inclusion of the term “normally” in the text is misleading, since no criterion or criteria were adopted, for a request to be considered by the coastal state as normal or otherwise.

Fourth, reference was made to a “qualified institution”, but no guidelines for an institution to be regarded as qualified were given.

Fifth, a reference was made to “pure” research, but the meaning of such research was left vague.

Sixth, the text indicates the coastal state’s right to participate or to be represented in the research, but the nature and limitations of such activities have not been clarified, nor is it clear what kind of results must be published.

However, apart from these ambiguities included in the said provisions, there is an even greater difficulty with regard to the definition given to the term “continental shelf” in the Convention itself. The Convention, as discussed in Chapter IV³⁹, left the limit seaward of the continental shelf in serious doubt. While it specified the seaward limit of the shelf to a depth of 200 metres of water, it added:

*or beyond that limit to where the depth of the superjacent water admits of the exploitation of the natural resources of the said areas*⁴⁰.

Thus, the extent of a state’s continental shelf depends - to a great extent - on its technological capability and the restrictions on the freedom of research on the shelf vary in consequence.

Under the LOSC, more concern has been given to the authority over MSR in the EEZ and on the continental shelf, than in other maritime zones, and there are more detailed provisions in respect of these two zones. The general framework of the LOSC “consent regime” is contained in Article 246. The Convention maintains the consent regime with respect to the conduct of scientific research on the continental shelf and in the EEZ, and such consent can be express or implied⁴¹. Moreover, on the continental shelf and in the EEZ, the coastal state has the right to regulate, authorize and conduct research, but in accordance with the relevant provisions of the Convention⁴². Paragraph 3 of Article 246 provides that:

coastal states shall, in normal circumstances, grant their consent for marine scientific research projects by other states or competent international organizations in their exclusive economic zone or on their continental shelf to be carried out in accordance with this Convention exclusively for peaceful purposes and in order to increase scientific knowledge of the marine environment for the benefit of all mankind. To this end, coastal states shall establish rules and procedures ensuring that such consent will not be delayed or denied unreasonably.

This Paragraph, however, is a source of potential disputes. Several phrases in this context could be subject to different interpretations by the countries concerned. It is not clear, for example, which circumstances are “normal” and which are “abnormal”, and yet what may be regarded as normal in the viewpoint of a researching state, may be treated as abnormal on the part of some coastal state. Thus, the coastal state may deny or delay a foreign country’s request to carry out research on the basis of “special circumstances”, such as national security considerations. It has been argued that the coastal state, for the validity of its refusal to grant consent, *must demonstrate the non-existence of such circumstances*⁴³. However, the language of the LOSC does not provide a great deal of help to the researching state. Article 297(2) of the Convention allows the coastal state to refuse to submit such a dispute to dispute settlement; rather, the coastal state, pending settlement of a dispute, has full right to prevent the state or competent international organization, authorized to conduct the MSR project from commencing or continuing such a project⁴⁴. Even Paragraph 4 of Article 246, which is seemingly intended to be interpretative of Paragraph 3, is not without ambiguity. It provides that normal circumstances may exist, despite the absence of diplomatic relations between the coastal state and the researching state. It has been correctly argued that:

*the absence of diplomatic relations should be a reflection of the existence between the two states involved of political relations of such a nature that the coastal state could not reasonably be expected to grant consent. An obvious example would be a situation of imminent danger of armed conflict*⁴⁵.

Moreover, the phrase “exclusively for peaceful purposes” could be a disputed area of interpretation by the countries concerned. It is not easy to draw a

clear line between research for “exclusively peaceful purposes” and other research. Therefore, it was stated that:

when the project merely has potential military application, however, the determination becomes problematic because the sweeping language of the [said] provision offers no decisional guidelines. Moreover, inclusion of the “peaceful purposes” language in Article [246(3)] is perplexing in light of the general [LOSC] principle prohibiting scientific activities of a non-peaceful nature⁴⁶.

These terms are indeed open to dispute, especially in light of the fact that knowledge in many cases may be used both for peaceful and non-peaceful purposes.

Another difficulty of interpretation concerns the phrase “for the benefit of all mankind” [emphasis added]. In the absence of clear guidance as to how to determine whether the research is beneficial to all mankind, the coastal state may, if unwilling to have a research project conducted in its EEZ or on its continental shelf, argue that such a project is not to the benefit of its people as part of “mankind”. According to Yusuf:

if the criterion for ascertaining pure research is the language of Article [246(3)], that is that the activity seeks to contribute to man’s knowledge of the maritime environment for the benefit of all, then such an ascertainment inevitably becomes highly subjective and imprecise⁴⁷.

A further problem concerning another interpretation question falls in the provision requiring the coastal state to establish rules and procedures which ensure that its consent is not to be “delayed or denied unreasonably”. The question which arises here is, what is the criterion that makes a procedure reasonable or not? In other words, for how long, or for what reason, is it “reasonable” for a research demand to be delayed or rejected?

On the other hand, the 1982 Convention has specifically limited the circumstances under which consent may be withheld to cases where the research is of direct significance for the exploration and exploitation of natural resources within 200 miles from shore; where the research involves artificial islands, shelf drilling, or use of environmentally harmful substances; or the researcher submits inaccurate information⁴⁸. It appears that it is the coastal state which decides the

existence of such circumstances. This position, together with the absence of any guidance, could lead to abuse on the part of the coastal state. For example, there is no criterion upon which it is to be decided which project is of "direct significance for the exploration and exploitation of natural resources", or which substances are harmful and which are not. Similarly, who is to judge, and on what basis, the accuracy or otherwise of the information submitted by the researching state?

However, despite the imprecision of the above provisions, state practice supports the conclusion that the LOSC consent regime for research in the EEZ and on the continental shelf is now part of customary international law⁴⁹. Most marine scientists believe that their research would be facilitated under the LOSC provisions⁵⁰. Nevertheless, it is to be noted that the whole scientific research regime, including the consent regime as laid down in Part XIII of the LOSC, consists merely of general principles, which leave various issues subject to different interpretations, and do not, unfortunately, resolve many problems that may arise over conducting scientific research in the oceans. Therefore, the international community is in need of a special convention on this subject, seeking guidance from the 1982 United Nations Convention.

Part II: Saudi Arabia and Marine Scientific Research

As a developing nation, Saudi Arabia does not have a significant capability for marine scientific research. Nonetheless, the importance of marine research for Saudi Arabia is growing steadily, not only because Saudi Arabia is surrounded by the ocean in two directions, but also because of its great marine resources, particularly oil and gas, and special environmental concerns. The fact that Saudi Arabia has limited facilities for conducting MSR in its own right has meant that foreign nations have featured in researching Saudi waters. In the Arabian Gulf, the scientific activities are associated with the discovery of oil and gas, which began in the early decades of this century. In the Red Sea, these activities are associated with the discovery of the metalliferous sediments, which came following the discovery in 1948 by the Swedish vessel, *Albatross*, of abnormally high-temperatures and salinities in near-bottom water.⁵¹ Saudi statistics show, however, that a few foreign applications were submitted to the competent authorities. In the

last ten years or so, MSR permission was given to seven foreign research cruises, while five other requests were denied⁵². The areas of research in these applications have ranged from fisheries and marine biology to oceanography, geology, and hydrography. Before examining the Saudi Arabian legal position toward MSR, it is instructive first to throw light upon the scientific policies and institutional structures in Saudi Arabia with regard to MSR.

1. Scientific Policies and Institutional Setting

In Saudi Arabia, scientific investigation and research are always associated with national economic and social policies and state plans. In the statement of the Planning Ministry⁵³ released following the announcement of the recent Sixth 5-Year Development Plan 1415-1420 AH [1995-2000], it was stated that one of the Plan's goals is:

The motivating of scientific activity and cultural and information movement to the level of the Kingdom development.

Elsewhere in the Statement, one of the fundamental goals of higher education was said to be:

Playing a positive role in the scientific research arena which directly contributes in the fields of science, technology and arts, and finds suitable solutions for the requirements of economic and social life and its technological directions⁵⁴.

Thus, it is clear that progress in science and technology in Saudi Arabia has been linked with economic and social policies, and it has been highlighted by successive state plans.

In Saudi Arabia, the responsibility for marine investigation is shared among a variety of governmental institutions, agencies, research units, and university laboratories. The most important of these bodies, however, are the Faculty of Marine Sciences (affiliated to King Abdulaziz University)⁵⁵, the Research Institute (affiliated to King Fahd University of Petroleum and Minerals)⁵⁶, the Ministry of Defence and Aviation, represented in the Meteorological and Environmental Protection Administration (MEPA)⁵⁷, the Ministry of Agriculture and Water represented in the Ministry Agency for Fishery⁵⁸, the Ministry of Petroleum and Minerals, and King Abdulaziz Centre for Science and Technology⁵⁹.

Since the founding of Saudi Arabia in 1932, marine scientific research and investigation have been conducted with emphasis, in the early years, on the exploration of oil, gas and minerals, along with fisheries and the protection of the maritime environment in recent years. In the late 1980s and early 1990s, Saudi Arabia's marine scientific research activities have expanded further to include Antarctica and the North Pole. In the period between September 1989 and April 1990, certain Saudi scholars joined others from France, US, the former Soviet Union, UK and China in their journey of exploration to Antarctica⁶⁰. Between 30 July 1990 and 17 August 1990, a Saudi mission joined other missions from Germany, Australia, Canada, the former Soviet Union, Switzerland, France, Finland and US in an exploratory expedition to the North Pole⁶¹. In another instance of international marine scientific co-operation, some Saudi environmental experts have been engaged in the conduct of a number of marine research expeditions, jointly with their counterparts from Japan and the GCC States in the Arabian Gulf following the Iraqi invasion of Kuwait. These activities were aimed at finding out the effects of the oil spill, resulting from the warfare, over marine species⁶². Nevertheless, the great significance of the sea, particularly with regard to the considerations of economy and security, makes it necessary for Saudi Arabia to develop considerably its marine scientific research capabilities and to engage increasingly in co-operative marine scientific research, both at the regional and global levels.

The importance of MSR has increased in Saudi Arabia, and more information regarding various uses of the ocean is required by a variety of governmental bodies. For instance, the Ministry of Petroleum and Minerals needs more information about the Saudi maritime zones in order to conduct offshore oil, gas, and minerals exploration and exploitation activities. In order to help increase fisheries production, the Ministry of Agriculture and Water needs information about fishery resources and fishing grounds. For safer navigation of its ships, the Ministry of Defence needs information about the hydrological conditions of the ocean. In order to help protect the maritime environment in the Arabian Gulf and the Red Sea, MEPA is in need of systematic data and basic information about the sources of marine pollution and the degrees of damage in polluted areas, and so on.

Therefore, Saudi Arabia needs to consider the possibility of acceding to international organizations, directly concerned with marine science, such as the Intergovernmental Oceanographic Commission of UNESCO, International Association of the Physical Sciences of the Ocean, International Hydrographic Organization, and World Data Centre (Oceanography).

2. Saudi Arabia's Legal Position

The Saudi attitude toward the legal regime of marine scientific research was shaped chiefly by the concepts of sovereignty and security. At UNCLOS III, Saudi Arabia did not take an individual position, but her views were collectively expressed through the Group of 77, which was in favour of the requirement of coastal state consent for all marine scientific research conducted in the economic zone and on the continental shelf, and full control to be exercised by the International Seabed Authority over marine scientific research in the international seabed area⁶³.

Within the national context, the Saudi legal position on marine scientific research has only recently been expressed through her own regulations. On 2 February 1993, Saudi Arabia issued, in a relatively late step, the Marine Scientific Research Regulations in the Marine Territories of the Kingdom of Saudi Arabia (referred to hereafter as RMSR), as the latest in the series of legislations related to the law of the sea⁶⁴. As is clear, the Regulations which took effect since the date of issue, have been passed eleven years after the LOSC was opened for signature, but clearly, they were passed in order to give effect to the relevant provisions of the Convention.

2.1 Research Jurisdictional Zones in the Saudi Legislation

Article 1 of RMSR, which speaks of the scope of application, makes no specific mention of the different maritime areas where the Regulations should take effect. Instead, the Article, in general terms, stipulates that the Regulations are to apply to the "maritime zones", which have been defined to include:

*all marine territories under the sovereignty of Saudi Arabia or under its regional jurisdiction in the Red Sea and Arabian gulf, in accordance with the regulations applicable in the Kingdom ...*⁶⁵

However, the employment of the term “sovereignty” is understood to refer inclusively to the areas over which Saudi Arabia claims sovereignty, i.e. the territorial sea⁶⁶, while the term “jurisdiction” refers to the areas of the continental shelf and the exclusive fishery zones, where Saudi Arabia has declared its jurisdictional rights⁶⁷. Although the Kingdom, as discussed earlier in Chapter V, has not declared an EEZ of its own, it is to be noted that the Saudi MSR municipal legislation was drafted in terms similar to those of the LOSC concerning the exclusive economic zone and the continental shelf. This seems to reflect the desire of the Saudi legislator to give effect to the LOSC’s marine scientific research provisions in the continental shelf and exclusive fishery zones, and further, it may suggest the Kingdom is in the process of declaring an EEZ.

2.2 Notification Regime

The RMSR stresses the consent regime when it states that :

1. *Marine scientific research regulations, licensing, processing and controlling it in marine territories are the sole right of the Kingdom;*
2. *No marine scientific reserach shall be conducted in marine territories except by an explicit licence issued in accordance with the provisions of these regulations ...*⁶⁸

Three conditions were laid down for granting such a licence:

- a. *It is intended for peaceful purposes only.*
- b. *No harm is caused to other legal users of seas.*
- c. *Marine scientific research activities in the marine territories shall not form a legal or actual basis of claim for any party of the marine environment or resources*⁶⁹.

Thus, as in the case of some other nations⁷⁰, by the adoption of the “qualified” consent regime, Saudi Arabia follows the spirit of the 1958 regime as constituting customary international law, as well as the updated and more detailed MSR regime in the LOSC⁷¹, except in that the RMSR emphasises the expressness of the permission obtained, without making any reference to the so-called “implied consent” stipulated in Article 252 of the LOSC.

Moreover, the Saudi legislation tallies nearly verbatim with the provisions of Article 246(5), (7) and (8) as to the situations where the coastal state has the right to refrain from granting consent. In this respect, Article 4 of the RMSR requires the Department of Military Survey not to grant its consent for conducting MSR if:

it is proved that the would-be licensee has submitted false information or if such research may entail, for example, any of the following:

- a. Direct effect on the exploration and utilization of live or other natural resources.*
- b. Deep drilling over the continental shelf.*
- c. Use of explosives that may affect live or other resources.*
- d. Introduction of items harmful to the marine environment.*
- e. Construction of artificial islands or permanent installations or facilities.*
- f. Prejudice to the rights of the Kingdom over its marine territories.*

Clearly, when formulating the above provisions, the Saudi legislator considered as guidance the provisions laid down in the LOSC. However, the Saudi legislator has gone beyond the LOSC's provisions by listing the previous cases only as examples. The phrase "for example" included in Article 4(1) of the RMSR is redundant, since the same Article mentions the "breach of the Kingdom's rights over her maritime zones" as one reason for refusal to grant consent. This general wording enables the competent authority to refrain from giving its consent for the conduct of MSR on the grounds that such research would infringe any of the Kingdom's rights in any of her maritime zones. Thus, there is no need for the inclusion of the phrase "for example" in the text.

2.2.1 Process of Application

The mechanics of processing applications in Saudi Arabia is very sophisticated. The governmental body in charge of organizing MSR activities has recently started using a standardised application form of its own devising, which leave no scope for the state making the request to get away with supplying inadequate information. The form contains forty questions to be answered by the applicant. It requires information on all aspects of the research, including the research itself and the body standing behind it, the research area and the Saudi

ports to which access may be needed, the research equipment, the research vessel, the persons participating in the research, the Kingdom's participation in the research activities, and her rights if she wishes to participate. It also makes clear that the Kingdom is to be provided with preliminary reports and with a report on the final results of the research. However, the said application form, is no more than a practical translation of all conditions and requirements laid down in the Saudi legislation and the LOSC.

2.2.2 Channels of Communication

As far as the official channels for processing and considering research applications are concerned, it has been stipulated in the RMSR that:

1. Upon application of the provisions of these regulations on a marine scientific reserach project carried out by foreign governmental vessels or international organizations vessels, all communications shall be made and all applications shall be submitted and notifications shall be served through diplomatic channels⁷².

In practice, however, the system now is that all applications go initially to the Ministry of Foreign Affairs. Thence, they are sent to the competent governmental body, i.e. the Department of Military Survey (DMS)⁷³, which sends them, in turn, to the interested Government departments, such as the Ministry of Petroleum and Minerals, Ministry of Agriculture and Water, MEPA, and so on. All these interested departments and bodies may make observations on an application to the Department of Military Survey, which has the right to make its decision on the matter. The Department informs the Ministry of Foreign Affairs of its decision and the Ministry then sends official notification to the applicant.

As to the body which is authorized to receive research applications, there seem to be contradictions here, since Article 14, on the one hand, requires, as mentioned earlier, that all applications should be submitted through diplomatic channels, which means that the first contact must be through the departments of foreign affairs in both the Kingdom and the applicant's state; while, according to Article 5, on the other hand, the application is to be submitted to the competent authority intended to be DMS. One possible interpretation of this contradiction is that the "competent authority" mentioned in Article 5 refers to the Ministry of

Foreign Affairs, but in Article 2(5), the “competent authority” has been defined as the Department of Military Survey. Another possible interpretation is that the “competent authority” referred to in Article 5 is still the DMS, and yet, the requirement of the period of time, between the research application date and its expected starting date⁷⁴ presumably refers to the time between receipt of the application by the Ministry of Foreign Affairs and the actual starting date of the research.

However, the stipulation in the RMSR that applications should go “through diplomatic channels” complies with Article 250 of the LOSC, which says that:

communications concerning marine scientific projects shall be made through appropriate channels, unless otherwise agreed.

Nevertheless, there is some confusion in the RMSR formula, a matter which has to be taken into account by the Ministry of Defence, the Governmental body authorized to issue interpretations of the RMSR⁷⁵.

On the other hand, the Saudi legislation assumes the possibility of granting consent to conduct MSR in the Kingdom’s maritime zones to states which have no diplomatic relations with her. This can be inferred from Article 14(2), of the RMSR, which provides that:

States which have no diplomatic missions in the Kingdom shall be contacted through the channels that the Ministry of Foreign Affairs may determine proper.

This goes in line with Article 246(4) of the LOSC, which assumes the existence of “normal circumstances” where the coastal state’s consent is granted even in the absence of diplomatic relations between such a state and the applicant state.

2.3 Particular Saudi Requirements for MSR Cruises

In essence, the Saudi Arabian legislation requirements follow very closely the LOSC’s provisions for the most part as to the following aspects.

2.3.1 A Time Limit for Application

On this point the Saudi regulations have laid down more details than are contained in the LOSC. According to the latter, for research in the EEZ and on the continental shelf, applications of a coastal state are required to be submitted:

*not less than six months in advance of the expected starting date of the marine scientific research project*⁷⁶.

The RMSR, on the other hand, distinguish between four cases: the first is when the applicant is a Saudi national, the second is when the applicant is non-Saudi, the third is when the applicant is non-Saudi, but entering into a contract with a Saudi governmental body or a Saudi national, and finally when the research project is intended to be conducted jointly between Saudi nationals and others of a different nationality⁷⁷. The minimum time has been set under the RMSR as follows:

1. The licence application shall be submitted to the pertinent authority at least sixty days prior to the date specified for the commencement of marine scientific research activities if the applicant is holding a Saudi nationality and at least six months if the applicant is a non-Saudi.
2. Non-Saudi persons under contracts with a governmental agency in the Kingdom or with a Saudi person shall submit the licence application through the said governmental agency or Saudi person at least ninety days prior to the date specified for the commencement of research activities.
3. The licence application shall be submitted at least six months prior to the date of commencement of research activities if the proposed marine scientific research is a joint venture between Saudi and non-Saudi persons⁷⁸.

Thus, while the RMSR tally exactly with the initial wording of Article 248 of the LOSC as to the category of non-Saudi applicants, the Saudi municipal legislation, by creating three further categories, has incorporated certain elements which do not exist in the LOSC. The more restrictive Saudi position with regard to foreign applicants reflects the great concern of the Saudi Government over the security factor, since the Saudi legislator seemingly has presumed less security dangers where there is a national element. However, in that, the Saudi practice does not raise a discrimination issue. The “six months rule” is, as seen above, fully respected in the Saudi legislation. The preferential rights granted by Saudi Arabia to certain categories concerning the application time limit fall within its sovereignty as there is no rule of international law that prevents any state from granting preferential rights to whomsoever it desires, as long as such practice does not breach international law.

2.3.2 Saudi Participation in the Research Activities

Article 249(1)(a) of the LOSC provides for the coastal state's participation in the research project on board the vessel or the research installations "when practicable". Benefiting, seemingly, from this position, the Saudi RMSR confirms the nomination of scientists, experts, and technicians to join the research activities in co-ordination with the relevant governmental bodies. It is the responsibility of the participators to submit a report to the DMS about their participation⁷⁹. Elsewhere, it was stipulated, that among the obligations imposed on the applicant for a licence is that such applicant should:

*provide suitable places in the marine scientific research vessel or vessels to receive the person that the pertinent authority may elect to escort the research team*⁸⁰.

The latter Saudi requirement, it could be argued, goes beyond what is set out in the LOSC. According to the latter, the coastal state has full right to:

*participate or be represented in the marine scientific research project, especially on board research vessels and other craft or scientific research installations, when practicable*⁸¹.

From this wording, it is clear that the said coastal state right is not absolute. In addition, the word "practicable" is misleading, since what may be viewed as practicable by the researching state, could be ruled otherwise by the coastal state. However, despite the omission of this phrase, the Saudi legislation is still within the spirit of the LOSC's provisions which grant the coastal state full right to organise MSR in its maritime zones (see Articles 245 and 246).

2.3.3 The Research Project Details

The LOSC requires the research applicant to provide in advance, information on the nature and objectives of the project, the method and means to be used, including the name, tonnage, type and class of vessel, a description of scientific equipment, the precise geographical area, the expected date of first appearance and final departure, and sponsoring institute and the person in charge of the project, and the extent of the coastal state's participation⁸². All these matters were included in the Draft Articles and the Revised Draft Articles

submitted by Colombia and Iraq respectively to UNCLOS III on behalf of the Group of 77, to which Saudi Arabia belongs⁸³. The Saudi legislation has dealt with these issues in further detail. Article 6 of the RMSR reads:

The marine scientific research licence application shall include copies of the research projects intended to be carried out, containing the following information:

- 1. An introduction to the person who will carry out the research along with his previous activities, places of work and foreign parties with which he worked in similar projects.*
- 2. Stating of the agency responsible for the project and sources of funds.*
- 3. Stating names of the research team members and names of assistant technicians along with their specialities, experiences and nationalities.*
- 4. Research project nature, programme, objective and completion period.*
- 5. An accurate geographical demarcation of the marine territories where the research will take place.*
- 6. Scientific and technical methods and means intended to be used in the research activities including accurate descriptions of the vessel or vessels intended to be used including its name, type, nationality, payload, model and class, in addition to full description of scientific research equipment and its nature.*
- 7. Date expected for the first arrival and last departure of the research team and used vessels or for the installation and removal of equipment as the case may be.*
- 8. The extent to which the applicant determines that the Kingdom may participate to be represented in the research.*
- 9. A scientific study of the impacts expected to result from the marine scientific study in the marine territories⁸⁴.*

It is clear, then, that the RMSR go further in requiring further information about the person who will conduct the research, his previous activities and the places where he exercised them and the foreign parties that he dealt with in similar projects. The RMSR further require the research application to contain the names of the research team members and the technicians, their specializations, experience and nationalities. Moreover, the applicant must not only indicate the project's nature and goal, but also its programme and the proposed duration. Finally, Saudi Arabia demands that the applicant submit with his application a scientific study on the expected effects, resulting from the MSR in the Saudi maritime zones. All the

above requirements have been laid down in the special application form which has to be filled in by the applicant. In containing these details, it is noted that the Saudi legislation goes beyond the LOSC provisions. What can be inferred from the elaboration of the Saudi legislator on these matters in any case, is the great concern of Saudi Arabia about the security consideration, and the safety of the maritime environment.

2.3.4 Data and Research Reports

In their proposals, submitted to the Third Committee and Second Committee of UNCLOS III, Colombia and Iraq, who reflected the views of the Group of 77 (including Saudi Arabia), requested researching persons and bodies seeking the coastal state's consent to conduct MSR, *inter alia*, to:

Supply on time all raw and processed data, including the final evaluations and conclusions and samples to the coastal state;

Assist the coastal state in assessing the implications of the said data and samples and the results thereof in such a manner as that state may request;

Undertake that results of scientific research shall not be published without the explicit consent of the coastal state⁸⁵.

The relevant final text of the Conference was incorporated in Article 249 of the LOSC. It requires the researching state to provide preliminary reports "as soon as practicable" to the coastal state, as well as "final results and conclusions after the completion of the research", "access to all data and samples" derived from the research project, and "data which may be copied and samples which may be divided without detriment to their scientific value". The LOSC requires, further, that the coastal state be provided, if requested, with an assessment of such data, samples and results, or assistance in assessing or interpreting them. These requirements, which give the coastal state considerable control over divulgence and ownership of the research data, are now reflected in Article 7 of the Saudi RMSR. Article 249(1) of the Convention contains a general wording which says that the MSR applicant should:

inform the coastal state immediately of any major change in the research programme.

The Saudi RMSR in turn includes a similar text. Paragraph 3 of Article 7, for obtaining research permission obligates the research state to:

immediately notify the pertinent authority of any change in the research programme.

Compared with the LOSC corresponding text, the latter describes the change in the research programme that should be reported as “major”⁸⁶, while the Saudi legislation omits this word. In so doing, the Saudi legislator perhaps wanted to avoid the possible difficulty in interpreting the term “major”, which may occur in the absence of specific criteria for what may be considered as major change and what is not.

2.3.5 Monitoring, Suspension and Cessation of the Research Activities

The RMSR has adopted the principle of a “monitoring system” as to the MSR in the Saudi maritime zones. Article 12 provides that:

1. *The scientific research and related activities shall be under the supervision of inspectors elected by the pertinent authority, ...*
.....
3. *Inspectors shall submit regular reports to the pertinent authority on the methods used in research and other research related activities.*

Paragraph 2 of Article 12 provides that:

when the research licence is given to non-Saudi persons or agencies, supervision shall commence with the arrival of the vessel to the research area and continues until the completion of field-research activities and departure of the vessel from the marine territories and submission of the results.

Again, this exclusion reflects the great concern for security issues. The Saudi legislator apparently assumes greater security danger from foreign researchers. Nevertheless, these provisions are not devoid of ambiguity. While the Saudi researchers have not been excluded from the “monitoring system”, the time limits of such a system are left open, seemingly at the discretion of the monitors themselves. As far as the LOSC is concerned, it does not include provisions on the monitoring aspect, but at the same time it does not provide for the prevention of such procedures by the coastal state. The Convention, as mentioned previously,

authorizes the coastal state to organize MSR in and on its territorial sea, EEZ and continental shelf⁸⁷.

The LOSC, on the other hand, provides for the suspension and termination of the research activities in different situations. In its EEZ and on its continental shelf, the coastal state has the right to suspend MSR activities in two situations: first, if they are not conducted according to the research project details submitted under Article 248 of the Convention⁸⁸; second, if the researching state or organization fails to comply with the duties referred to in Article 249⁸⁹.

A similar observation can be made concerning the possibility of cessation provided for in the LOSC in case of non-compliance with the information communicated, if such deviation amounts to a “major change” in the research project, since Article 248 of the LOSC is once more the point of reference. Moreover, the coastal state may also terminate research activities if any of the two suspension situations, mentioned above, are not rectified within a “reasonable period of time”⁹⁰.

The Saudi municipal legislation, for its part, does not distinguish between the situations of suspension and cessation. In general terms, Article 8 of the RMSR provides for the suspension and cessation of all research activities conducted in the Saudi maritime zones, including its EEZ and continental shelf when violating data and obligations, upon which the research permission has been granted. Accordingly, the decision whether to suspend or terminate research activities, in case of non-compliance with the stipulated duties, is left to the discretion of the DMS. For the termination of research activities, the Saudi legislation, then, provides neither for any violation which may amount to a major change in the research project or activities, nor for non-rectification of any of the research suspension situation within a reasonable period of time. This might have been an attempt by the Saudi legislator to go around the interpretation problems arising from certain phrases in the LOSC, such as “major change in the research project” and “reasonable period of time”. But the general formulation used in the Saudi legislation, particularly with regard to non-discrimination between the cases of suspension and cessation, creates further interpretation problems. The Saudi legislator should have followed the wording of the LOSC, since in the case of any

difference on these issues between the applicant and Saudi Arabia as a party to the LOSC, which unfortunately do not provide much help in this regard. However, with regard to the obligation imposed upon the researcher to suspend or cease the research activities when ordered to do so by the coastal state, as well as the lifting of such a decision when meeting the conditions mentioned earlier, the Saudi legislation followed the LOSC⁹¹.

The Saudi regulations, however, go beyond the LOSC in granting the researcher the right of appeal against the decision of suspension or cessation. According to Article 8(4) of the RMSR, such a right is to be submitted *to the Board of Grievances within sixty days from the date of notification of such decision*. In any case, despite the fact that the 1982 United Nations Convention entitles the coastal state in Article 253 to suspend, and, indeed, require cessation of MSR activities under certain conditions, there is no evidence that Saudi Arabia has yet applied in practice the content of this article.

2.3.6 Research in the Internal Waters and Territorial Sea

It is not surprising that under the LOSC, MSR within the territorial sea is totally at the discretion of the coastal state as an expression of its full sovereignty⁹². The Convention does not speak about research in the internal waters, but, with greater reason, it is within the sovereignty of the coastal state since as mentioned in Chapter II, the internal waters are considered as part of the coastal state's mainland⁹³. Thus, territorial seas and internal waters are - *prima facie* - inaccessible to foreign research vessels. As far as MSR in the territorial sea is concerned, the LOSC deals with the matter through one article only (Article 245), and in a manner which reflects the possibility of research being conducted therein, but the Convention refrains from establishing any rules on this matter. The coastal state is free to authorize, to prohibit or to impose conditions on any MSR activity in the territorial sea, whether by its own nationals or by other states. The same rule must undoubtedly apply to MSR in the internal waters.

Saudi Arabia adopts the possibility of conducting MSR in her territorial sea, and unlike the LOSC, the Saudi RMSR go further to allow the possibility to conduct the research in the Saudi internal waters⁹⁴. However, in both situations,

this has been surrounded by a number of conditions, according to which the competent authority was granted the right:

- a. *To terminate the scientific research activities at any time for any reason as deemed proper by the pertinent authority.*
- b. *To carry out, at any time, without giving prior notice, inspection of the scientific research places and equipment.*
- c. *To control entry and exit of vessels and individuals to and from the scientific research area.*
- d. *To request submission of at least quarterly reports by the researcher on the methods of scientific research in the internal waters or territorial sea and the findings⁹⁵.*

In addition, the DMS has the right to a certain percentage of the revenues of the research in the said areas or the revenues of utilization of findings (Article 9(3)), and to prevent the researcher from giving any information, data or results to any other party except when the research is approved by the DMS itself (Article 7(10)). Clearly, Saudi Arabia, while allowing in principle the conduct of MSR in her internal waters and territorial sea, imposes more restricted conditions than those concerning the other maritime areas, namely the EEZ and the continental shelf. In doing so, Saudi Arabia, in any case, does no more than exercise her sovereignty as a coastal state, confirmed in Article 2 and also in Article 245 of the LOSC, which says that MSR in the territorial sea:

shall be conducted only with the express consent of and under the conditions set forth by the coastal state.

2.3.7 The Requirements concerning the Research Installations and Equipment

Unlike the Saudi legislation, the LOSC deals with installations and equipment in further detail. Having provided in Article 249(G) for the removal of research installations and equipment on conclusion of the research activities (unless otherwise agreed), the Convention has devoted Section 4 of Part XIII to this matter. The central provision of the LOSC is Article 258, which reads:

The deployment and use of any type of scientific research installations or equipment in any area of the marine environment shall be subject to the same conditions as are prescribed in this Convention for the conduct of marine scientific research in any such area.

If read in conjunction with other respective articles of the Convention (60, 80, 245 and 246 for example), the main implications of these rules will be that in the territorial sea and internal waters, the deployment and use of the said installations and equipment is subject to the express consent of the coastal state. In the EEZ and on the continental shelf, the coastal state is to grant consent in normal circumstances and it may refuse when the installations and equipment are used for activities covered by Paragraph 5 of Article 246⁹⁶. Article 259 provides that installations and equipment may not be treated legally as islands. Thus, it repeats what has been stipulated in Article 60(8) and 80, as to installations in particular⁹⁷.

The LOSC also entitles, but does not obligate the coastal state to establish safety zones of no more than 500 metres in breadth around the research “installations”⁹⁸. The research equipment is not included in this provision. The reason for this, as stated by Soons, is that the installations, because of their dimensions, may present a danger to navigation or other uses of the sea, and moreover, they need protection against damage caused by other users of the sea because of the value they represent or to ensure the safety of persons on board them⁹⁹.

The Saudi Arabian municipal regulations are silent on the above mentioned issues concerning installations and equipment of MSR. The Saudi legislator has dealt with the subject through three aspects: the removal of them following the ending of the research activities, the existence of identification markings and warning signals on such installations and equipment, and their interference with shipping routes. In this respect, Article 7(4) puts as a condition for granting a research licence the obligation of the researcher to:

remove research installations or equipment immediately after completion unless otherwise agreed.

The RMSR then follows exactly Article 249(G) of the LOSC. Article 10(2) of the Regulations provides further that the use of the MSR installations and equipment *shall not obstruct international marine navigation routes*. Paragraph 1 of the same Article stipulates that:

The marine scientific research installations and equipment shall carry identity signs showing the country of registration of the international proprietor and shall be equipped with suitable

internationally recognised warning signals for safe marine and air navigation.

These provisions are mentioned nearly verbatim in the LOSC¹⁰⁰. The confinement of the Saudi regulations to only the said two aspects, in dealing with research installations and equipment, reflects the concern of Saudi Arabia with her commitments toward the international community as to the issue of ensuring international navigation, as well as the significance of identification markings and warning signals, which was described by one commentator just before the adoption of the LOSC, as follows:

Especially in cases of unmanned installations and equipment such markings will help to locate the owner or operator of a particular installation or of equipment which was involved in an accident (perhaps necessitating salvage operations or resulting in liability for damage), or which was found after having been lost at sea. Identification markings may also help coastal states to verify if marine scientific research involving the deployment of such installations and equipment in areas under their jurisdiction is carried out in accordance with the provisions of the Draft Convention and of their national legislation¹⁰¹.

The silence of the Saudi legislation on some issues concerning research installations and equipment, particularly with regard to their deployment and use, their legal status and safety areas around them, should not, it is suggested, be understood to indicate that the Saudi legislator was not concerned with such matters. Saudi Arabia may have been satisfied with what has been mentioned on the said aspects under Articles 60 and 80 of the LOSC as to the legal status of these installations and equipment, according to which such objects do not have the status of islands, nor do they affect the delimitation of maritime zones¹⁰². It is true that the Saudi regulations do not embody these issues directly, but the generality used in formulating certain texts in the RMSR suggests that the Saudi legislator has not been neglectful of these matters. In this respect, Article 7(7) of the RMSR stipulates, in general terms, that for the research permission to be granted, the researcher must commit himself to:

respect applicable marine regulations in accordance with the Kingdom's regulations and international law rules¹⁰³ (emphasis added).

2.3.8 Other Research Requirements

Apart from what has been mentioned previously, the Saudi RMSR laid down certain additional conditions for obtaining consent to conduct MSR. First, under Article 7(5) of the Regulations, the research applicant is under an obligation to:

take necessary measures to protect the maritime environment against any pollution or harm that may result from the research activities.

This provision is included in the LOSC concerning research in the EEZ and on the continental shelf¹⁰⁴. Moreover, under Article 7(6) of the RMSR, the research organ is also under an obligation not to:

cause any harm to the activities related to exploration and utilization of live or other resources in marine territories carried out by the Kingdom or licensed to be carried out on its behalf.

This repeats verbatim the stipulation of Paragraph 5(a) of Article 246 (the “consent” article) of the LOSC. It is provided further under the RMSR for the protection of objects of an archaeological and historical nature found at sea and for the competent authority (DMS) to be notified of their location¹⁰⁵. Such a provision is not, however, included in Part XIII of the LOSC designated for MSR, but it is stipulated as a “general provision” in Article 303(1) of Part XVI.

It is clear, then, from the above discussion, that Saudi Arabia fully accepts the provisions concerning MSR in her maritime zones, as incorporated in the LOSC.

2.4 Responsibility and Liability

As to the LOSC, the provisions on international responsibility and repair of damage are included in Article 263. The Article reads as follows:

- 1. States and competent international organizations shall be responsible for ensuring that marine scientific research, whether undertaken by them or on their behalf is conducted in accordance with this Convention.*
- 2. States and competent international organizations shall be responsible and liable for the measures they take in contravention of this Convention in respect of marine scientific*

research conducted by other states, their natural or judicial persons or by competent international organizations, and shall provide compensation for damage resulting from such measures.

3. *States and competent international organizations shall be responsible and liable pursuant to Article 235 for damage caused by pollution of the marine environment arising out of marine scientific research undertaken by them or on their behalf.*

By examining the above rules, two observations may be made: first, Paragraph 1 stipulates the responsibility to ensure the conduct of MSR, while from a logical point of view, the responsibility should concern the ensuring against damage resulting from the conduct of MSR, rather than the conduct of the research itself. Secondly, according to Paragraph 2, reparation is limited only to compensation, and there is no mention of any other relief, such as satisfaction or restitution. As far as Saudi Arabia is concerned, the provisions of responsibility and liability are included in Article 16 of the RMSR. In general terms, the Article confirms the right of Saudi Arabia to:

seek international legal liability against any state or international organization whose acts of scientific research in marine territories are considered a violation of the rules of international law and the rights of the Kingdom and its international obligations.

Before that, however, the Saudi legislation went beyond the LOSC in laying down certain rules in relation to the violation of the RMSR. Paragraph 1 of Article 15 provides that:

without prejudice to any severe penalty established by the Islamic Shari'a (laws) or regulations applicable in the Kingdom and without prejudice to the provisions of international law, any violation of these regulations shall entail a penalty of imprisonment for a period not more than two years and a fine not less than two hundred thousand Saudi Riyals or either penalty.

The difficulty in categorizing the violations which may arise when conducting MSR, is reflected in the formulation of the above provisions. Imprisonment is mentioned in terms of its maximum duration (no more than two years). The financial fine, on the other hand, is stated in terms of its minimum (no less than two hundred Saudi Riyals). Further, the competent authority is not under obligation to

apply both penalties, since it may be satisfied with applying either. Under Paragraph 2 of Article 15:

The research vessels and equipment may be subject to confiscation in case of serious violation of the provisions of these regulations.

This provision is, however, arguable since no criteria have been laid down to clarify the meaning of the term “serious” used in the text.

As far as the reparation of damage concerned, the Saudi legislation, unlike the LOSC gives priority to “restitution”, rather than “compensation”. Paragraph 3 of Article 15 obliges anyone breaching the RMSR and what has been agreed upon with the competent authority, to rectify all damage resulting from such breach within thirty days from the date of notification by the DMS. However,

if he fails to do so within thirty days from the date of notification by the pertinent authority, the Kingdom shall have the right to remove the violation at the expense of the violating party¹⁰⁶.

In other words, Saudi Arabia adopts the principle of reparation for any damages resulting from the conduct of marine scientific research activities in the Saudi maritime zones, in the form of rectification as a first option or compensation as an alternative¹⁰⁷.

Conclusion

The importance of, and interest in, marine scientific research is constantly being felt. Advances in technology have made research increasingly sophisticated. Historically, the legal regime of marine scientific research has been accorded little attention at the international level. It was the 1982 United Nations Convention, however, which dealt comprehensively with the matter and the provisions dealing with MSR in the Convention, although merely general principles, form a definite contribution to the development of the law of the sea and provide a significant improvement on the Geneva Conventions. Saudi Arabia is not an exception, since it was not until 1993, that she issued her first regulations on MSR. The above analysis shows that Saudi Arabia is one of those states, which have legislated on MSR in line with the LOSC, accepting the benefits and the burdens. Only on some

minor points of these technical and detailed rules can differences be discerned with respect to a combined reading of the 1993 RMSR, which constitute the Saudi legislation on the question. Even where the Saudi legislation had to lay down certain detailed rules, these do not seem to have gone far beyond the Convention's spirit. Clearly, the LOSC consent regime, which grants the coastal state very wide powers to permit and organize MSR in its maritime zones has gained the approval of the Saudi competent authorities, leading to the incorporation of most of its provisions into the Saudi national legislation.

NOTES TO CHAPTER VI

1. D. Tolbert, "Global Climate Change and the Role of International Non-Governmental Organizations", in R. Churchill and D. Freestone (eds.), International Law and Global Climate Change, London, Graham & Trotman, (1991), pp. 95-108, at p. 95.
2. For further discussion on these issues, see P. Slinn, "Development Issues: The International Law of Development and Global Climate Change"; D. Freestone, "International Law and Sea Level Rise"; M Bowman, "Global Warming and the International Legal Protection of Wildlife", in R. Churchill and D. Freestone, *op. cit.*, note 1, at pp. 75-94, 109-25, and 127-45 respectively.
3. R.R. Churchill and A.V.Lowe, *op.cit.*, Chapt. I, note 10, at p. 288; see also Alfred H.A.Soons, Marine Scientific Research and the Law of the Sea, Deventer/Netherlands. Kluwer Law and Taxation Publishers, (1982), pp. 11-16.
4. For further discussion on the definition of marine scientific research, see Alfred H.A. Soons. "Marine Scientific Research provisions in the Convention on the Law of the Sea: Issues of Interpretation", in E.D. Brown and R.R. Churchill, The UN Convention on the Law of the Sea: Impact and Implementation, Honolulu, The Law of the Sea Institute (University of Hawaii), (1987), p. 365 at pp. 366-67.
5. P.K. Mukherjee, "The Consent Regime of Oceanic Research in the New Law of the Sea", *5 MP*, (1981), pp. 98-113, at pp. 99-100.
6. UNCLOS I, Official Records, vol. VI, at p. 89.
7. *Ibid.*
8. Alfred Soons, *op. cit.*, note 3, at p. 6.
9. P.K. Mukherjee, *op. cit.*, note 5, at p. 100.
10. *Ibid.*
11. Alfred Soons, *op. cit.*, note 3, pp. 7-8.
12. United Nations, (Office for Ocean Affairs and the Law of the Sea), The Law of the Sea, Marine Scientific Research, A Guide to the Implementation of the Relevant Provisions of the United Nations Convention on the Law of the Sea, New York, United Nations Publications, (1991), at p. vii.
13. Alfred Soons, *op. cit.*, note 3, at p. 1.
14. G.J. Mangone, "The Effect of Extended Coastal State Jurisdiction over the Seas and Seabed upon Marine Science Research", *9 ODIL*, (1981), p. 201, at p.202.
15. Churchill and Lowe, *op. cit.*, chapt. I, note 10, pp. 288-89.
16. *Ibid.*
17. W.S. Scholz, "Oceanic Research, International Law and National Legislation", *4 MP*, (1980), p. 91, at pp. 93-95. See further, H.T. Franseen, "Developing Country Views of Sea Law and Marine Science" and M.N. Franseen, "Oceanic Research and the Developing Nation Perspective", in W.S. Wooster (eds.), Freedom of Oceanic Research, New York, (1973), at pp. 137-77 and 179-200, respectively. For further information on the concepts of freedom of research from these two different points of view, see Gisele

- Ringear. "Scientific Research: from Freedom to Deontology", 1 *ODIL*, (1973-74), p. 121, particularly pp. 125-33.
18. For further details, see R. Winner. "Science, Sovereignty, and the Third Law of the Sea Conference", 4 *ODIL*, (1977), pp. 297-342.
 19. Art. 1.
 20. These freedoms are listed in Art. 2 of the Convention, to include, *inter alia*:
 - (a) freedom of navigation:
 - (b) freedom of fishing:
 - (c) freedom to lay submarine cables and pipelines:
 - (d) freedom to fly over the high seas.
 21. See W.S. Wooster, *op. cit.*, note 17, at p. 153; R.K. Dixit, "Freedom of Scientific Research in and on the High Seas", 11 *IJIL*, (1971), pp. 1-8.
 22. *ILC Ybk.*, vol. 2, (1956), at p. 287.
 23. Art. 86.
 24. Art. 311.
 25. Art. 87. It should be noted that under the LOSC, the area of sea-bed and subsoil of the high seas beyond the continental shelf is regarded as international sea where conducting scientific research is a common right for all states on the understanding that it is conducted exclusively for peaceful purposes and for the benefit of mankind as a whole (Art. 143(1)).
 26. Art. 5 of the TSC, and Art. 8 of the LOSC.
 27. J.A. Knauss, "Development of the Freedom of Scientific Research Issue of the Third Law of the Sea Conference", 1 *ODIL*, (1973-74), p. 93, at p. 97.
 28. See *supra*, p. 78.
 29. Arts. 1 and 14 of the TSC; 2 and 17 of the LOSC. See also *supra*, pp. 128-30.
 30. Art. 245.
 31. Article 14(2) of the TSC defines passage only to include navigation through the territorial sea and only for traversing it or proceeding to or from internal waters.
 32. Art. 19.
 33. Churchill and Lowe, *op. cit.*, Chapt. I, note 10, at p. 289.
 34. Alfred H. Soons, *op. cit.*, note 4, at p. 366.
 35. Conrad H. Cheek, "Law of the Sea: Effects of Varying Coastal State Controls on Marine Research", 1 *ODIL*, (1973-74), p. 209, at p. 210.
 36. Discussed in detail in Alfred Soons, *op. cit.*, note 3, pp. 55-67.
 37. This interpretation is supported by the United States, see M. Redfield, "The Legal Framework for Oceanic Research", in W.S. Wooster, Freedom of Scientific Research, *op. cit.*, note 17, pp. 41-95, at p. 54. Of this interpretation, there is also Brown, see G.D.

- Brown, "Freedom of Scientific Research and the Legal Regime of Hydrospace", 9 *IJIL*, (1969), p. 327, at p. 355.
38. Alfred Soons, *op. cit.*, note 3, pp. 68-72.
 39. See *supra*, p. 172.
 40. Art. 1.
 41. Arts. 246(2) and 252.
 42. Art. 246(1).
 43. A.A. Yusuf, "Toward a New Legal Framework for Marine Research: Coastal State Consent and International Coordination", 19 *VJIL*, (1979), p. 411, at p. 418.
 44. Art. 265.
 45. Alfred Soons, *op. cit.*, note 4, pp. 370-71.
 46. A.A. Yasuf, *op. cit.*, note 43, at p. 419.
 47. *Ibid.*
 48. Art. 246 (5, 6).
 49. See Churchill and Lowe, *op. cit.*, Chapt. I, note 10, at p. 295.
 50. E.L. Richardson, "The Politics of the Law of the Sea", 11 *ODIL* (1982), p. 9, at p. 22.
 51. E. Blissenbach and Z. Nawab, "Metalliferous Sediments of the Seabed: The Atlantis-II-Deep Deposits of the Red Sea", *Ocean Yearbook* 31, (1982) reprinted in Z. Nawab, Papers and Interviews..., *op. cit.* Chapt. IV, note 260.
 52. These statistics have been obtained from the Archives of Military Survey Department. It is to be noted that J. Fenwick mentioned that in the period 1972-90 four U.S. clearance requests were submitted to the Saudi authorities, one of which was denied. See J. Fenwick, International Profiles on Marine Scientific Research - National Maritime Claims, MSR Jurisdiction, & U.S. Research Clearance Histories for the World's Coastal States, Woods Hole, Woods Hole Oceanographic Institution, (1992), at p. 128.
 53. Statement of the Planning Ministry on the Sixth Development Plan, published in *Okaz*, No. 10554, dated July 6, 1995.
 54. *Ibid.*
 55. Before becoming a specialized faculty, it was first established in 1974 as the Department of Oceanography within the Faculty of Sciences. In 1978, the Department was expanded and became the Marine Science Institute of King Abdulaziz University. In 1981 the Faculty of Marine Sciences was established to succeed the Institute. The Faculty is engaged both in teaching and research in the major branches of Oceanography: Marine Physics, Marine Chemistry, Marine Geology and Marine Biology. See Permanent Committee for Curriculum Development, The Developed Curriculums of the Faculty of Marine Sciences, Jeddah, Scientific Publishing Centre (King Abdulaziz University), (1990), pp. 1-2.
 56. The Institute was founded in 1976, as an integral part of the University in organization, but in operations, it is semi-autonomous. The Institute maintains six technical divisions,

one of which is the Water Resources and Environmental Division, which, consists, in turn of the Environment Protection Section, Water Resources Development Section, Oceanography Centre, and the Waste Treatment Centre. See Annual Progress Report of the Research Institute, (1993), pp. 8-9, and pp. 37-40, see also an information leaflet published by Water Resources and Environment Division, (without date), pp. 1-2.

57. In 1981, what was known as the General Directorate of Meteorology was renamed to become the Meteorology and Environmental Protection Administration (MEPA). The first function of MEPA was stated to be to: *conduct environmental surveys to define problems and recommend environmental standards and measures*. See the Meteorology and Environmental Protection Administration, The State of Environment in the Kingdom of Saudi Arabia, vol. 2, Jeddah, (1989), pp.3 and 5.
58. The Agency was established in 1993 (1413 AH). It consists of a number of divisions and sub-divisions, amongst which are Jeddah Fishery Research Centre, Kateef Fishery Research Centre, Saline Water Research Branch, and Environment Research Branch. See The Ministry of Agriculture and waters, the Organizational Guide of Fishery Sector, issued in 1993.
59. The Centre was first established by virtue of Royal Decree No. M/60, dated 18/12/1397 AH (1977), carrying the name of the National Centre for Science and Technology. Nine years later, its name was changed to King Abdulaziz Centre for Science and Technology under Royal Decree No. M/8, dated 19/4/1406 AH (1986). The fundamental function of the Centre is supporting and encouraging scientific research for applied purposes, and also the coordination of the activities of the scientific research centres in the Kingdom in line with development requirements. This information has been made available for the present writer through a letter from Mr. A. Al-Eide, one of the Centre's staff, dated 30 July 1996.
60. *Okaz*, No. 10157, dated May 30, 1994, at p. 36.
61. *Ibid.*
62. The said investigation expeditions were carried out by the Japanese research vessel *Yometa Komaru*, see *Okaz*, No. 10055, dated February 12, 1994, at p. 19, and No. 10284, dated October 4, 1994, at p. 32.
63. See the two draft articles submitted to the Conference by both Colombia and Iraq on 22 August 1974 and 21 April 1975 on behalf of the Group of 77, in UNCLOS III, Official Records, vols.111 and IV Docs. A/CONF.62/C.3/L.13/ p. 254, and A/CONF.62/C.3/L/13/Rev.2, pp. 199-200 respectively.
64. The Regulations were approved by the Royal Decree No. M/12, on February 2, 1993 (corresponding to Sha'ban 11, 1413 AH). An English translated copy of the Regulations was obtained from the Archives of the Department of Military Survey.
65. Art. 1 of RMSR.
66. Arts. 2 and 2 of Royal Decrees of 1949 and 1958, (*supra*, Chapt. II, notes 61 and 62). See also above, pp. 134-136.
67. See for example the Preamble of the 1974 Foreign Ministry Declaration concerning the Limits of the Exclusive Fishing Zones of Saudi Arabia in the Red Sea and the Arabian Gulf, (*op. cit.* Chapt. IV, note 181), and the 1949 Royal Pronouncement concerning the Policy of the Kingdom of Saudi Arabia with Respect to Subsoil and the Sea Bed of Areas in the Arabian Gulf Contiguous to the Coasts of the Kingdom of Saudi Arabia, (*op. cit.*, Chapt. IV, note 119).

68. Art. 3.
69. *Ibid.*
70. See Churchill and Lowe, *op.cit.*, Chapt. I, note 10, at p. 295.
71. Articles 5(8) of the CSC and 240, 245, and 246 of the LOSC.
72. RMSR, Art. 14.
73. *Ibid.*, Art. 2(5).
74. See *infra*, pp. 306-307.
75. Art. 17.
76. Art. 248.
77. Art. 5.
78. *Ibid.*
79. Art. 11.
80. Art. 7(1).
81. Art. 24(1)(a)
82. Art. 248.
83. See *supra*, note 63.
84. Art. 6.
85. *Supra.*, note 63.
86. Having referred to the difficulty in indicating in general terms which kinds of changes are to be considered as "major" for the purpose of the above text, Soons finds that: *those changes as a result of which the research project in question come within the scope of Paragraph 5 of Article 246 (the categories of research for which coastal states may refuse consent in their discretion) must be considered major changes. Perhaps also shifting the research to an entirely different geographical area or change of date may be regarded as such.* See Alfred Soons, *op. cit.*, note 3, at p. 190.
87. Arts. 245 and 246.
88. See *supra*, p. 306.
89. See *supra*, p. 308.
90. Art. 253.
91. Arts. 253(4) and (5) of the LOSC and 8(2) and (3) of the RMSR.
92. Art. 245.
93. See *supra*, p. 78.

94. Art. 9 of the RMSR.
95. *Ibid.*, Art. 9(1).
96. See *supra*, pp. 296-97.
97. Paragraph 8 of Art. 60, for example provides that: *Artificial islands, installations and structures do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.*
98. See also Art. 60(4)(5) of the LOSC.
99. Alfred Soons, *op. cit.*, note 3, at p.235.
100. Arts. 261 and 262.
101. Alfred Soons, *op. cit.*, note 3, at p. 237.
102. Article 259 of the LOSC reads: *The installations or equipment referred to in this section [section 4 of Part XIII] do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.*
103. The following paragraph of the same article (i.e. Paragraph 8) emphasises the "respect of the Kingdom's internal regulations". However, this addition is without significance. for the previous paragraph already includes this idea.
104. Art. 246(5)(b).
105. Art. 7(9).
106. Art. 15(3).
107. For further details as to types of reparation, see Ian Brownlie, *op. cit.*, Chapt. III, note 117, p. 457 *et seq.*

Chapter VII

Control of Marine Pollution

Introduction

Environmental problems in general, are today the subject of international concern. Protecting the environment is viewed as a human issue, and yet, responsibility to future generations in this regard, should be not merely a matter of moral duty, but of law¹. This idea, however, has already been introduced into international law². Little or no attention was given to the development of international environmental law prior to the Stockholm Conference of 1972; indeed, the Conference itself was intended merely to discuss technical and scientific aspects rather than legal questions³. As part of the universal environment, the protection of the marine environment is a global priority today since, as stated by Freestone:

... the health of marine ecosystems and marine life forms is at least as important to life on the planet as that of terrestrial systems⁴.

Thus, marine pollution comes as a major concern both for states and for concerned organizations.

As a consequence of the geographical location of Saudi Arabia, bordering two of the busiest international waterways in the world (the Red Sea and the Arabian Gulf), the Saudi coastal areas are among those most subject to pollution, especially oil pollution. Recognising this fact, Saudi Arabia has been paying increasing attention to the preservation of the marine environment in recent years.

The purpose of this chapter is to explore Saudi Arabia's attitude and policy toward the legal regime of marine pollution. The chapter is divided into two parts. In the first part, there will be a brief review of the definition and development of the legal regime of marine pollution. In the second part, an attempt will be made to examine Saudi Arabia's policy regarding the control and prevention of marine

pollution at all levels, locally, regionally and internationally, in the light of accepted standards of international law.

Part I: Marine Pollution in International Perspective

Despite the fact that the sea provides an important source of human food and an attractive environment for recreation, sea water contains a wide variety of agents, biological as well as organic and inorganic, all of which can be hazardous to human health⁵. Marine pollution, including pollution from land-based sources⁶, ships⁷, sea-bed activities⁸, activities in the Area⁹, dumping¹⁰, and pollution from or through the atmosphere¹¹, was not an issue in the public eye three decades ago and the turning point was during the 1960s when the effects of pollution became apparent, and major catastrophic incidents were reported by the world press¹². With the growing awareness of the seriousness of the marine pollution problem and the remarkable technological progress concerning the exploration and exploitation of the oceans, an international legal regime of pollution began to develop. This was further motivated by the occurrence in the 1960s and 1970s of serious pollution accidents at sea such as the 1967 *Torrey Canyon* incident, which was described as “the catastrophe of the century”¹³. It was followed by similar disasters in the late 1970s, such as the 1977 blow-out of the Ekofisk oil field¹⁴, the 1978 *Amoco Cadiz* oil spills¹⁵, and the 1979 Ixtoc I blow-out in the Gulf of Mexico¹⁶.

The international community's first serious attempt to cope with the increasing scale of marine pollution was the conclusion of the 1954 International Convention for the Prevention of Pollution of the Sea by Oil¹⁷. Since then, a number of multilateral (global and regional) treaties regarding the prevention of marine pollution have been concluded. The development of international environmental law over the last three decades or so demonstrates that one of its most dynamic branches has been the law of marine pollution¹⁸. Since the adoption of the United Nations Convention on the Law of the Sea in 1982, global environmental problems have become more acute, and global environmental awareness more expansive¹⁹. Indeed, today, environmental questions, in general, dominate both national and international discussions in a way undreamed of before

the last decade²⁰. However, before going further in discussing the evolution of the legal regulation of marine pollution, it would be desirable first to try to elucidate the meaning of the term.

1. Definition of Marine Pollution

The fact is that the term “pollution” is a word whose precise meaning in law, particularly international law, is not easily discerned²¹. Various descriptions of pollution can be found in earlier legal instruments. However, they are descriptions, not definitions, and whether they can be said to include defining criteria, and yet be useful for purposes of litigation, is a matter of controversy²². By and large, historically, there might be distinguished the period prior to 1972 (no definitions), the period between 1972 and 1974 (implied definitions), and the period from 1974 (express definitions)²³. However, the most widely used definition of marine pollution today is probably that agreed upon in 1970 by the United Nations Group of Experts on the Scientific Aspects of Marine Pollution (GESAMP)²⁴. Their definition of marine pollution 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 Nations Conference on the Human Environment²⁵. With certain amendments, it was also used by a number of multilateral conventions, such as the 1974 Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area²⁶, the 1974 Paris Convention for the Prevention of Marine Pollution from Land-Based Sources²⁷, the 1976 Barcelona Convention for the Protection of the Mediterranean Sea against Pollution²⁸.

The definitions found in other regional conventions, such as the 1978 Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution (hereafter KC)²⁹, and the 1982 Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment (hereafter JC)³⁰ contain important amendments since they consider the introduction of

substances, which are “likely to result” in deleterious effects to living resources, as marine pollution in the legal context.

A very similar formula to that of the two latter Conventions is found in the LOSC:

pollution of the environment” means the introduction by man, directly or indirectly, of substances or energy into the marine environment including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities³¹.

It may be noted that the basic difference between the two definitions of the 1972 United Nations Conference and the LOSC is that the former is based on an established cause-effect relationship, while the latter contemplates the establishment of such a relationship as well³². However, it is clear that neither definition is aimed at preventing all substances being added to the sea - many substances being harmless or rapidly rendered so by the sea - but only those which have deleterious effects. Therefore, the definitions were subject to criticism for not taking sufficient account of the need to prevent changes in the marine environment as such, and apart from any immediate deleterious effects³³.

2. Development of Marine Pollution Regime - An Overview

International environmental law has today become a major branch of international law, and yet, as stated by Freestone, it exists, states make it and they follow it, but like most other laws, on some occasions, they break it³⁴. The fundamental law making processes for international environmental law, developed by the international community are principally twofold: treaties and customary international law³⁵. As far as marine pollution control is concerned, international custom does not offer much guidance. International law in this area is predominantly treaty law³⁶. The discussion that follows consists of two parts. The first section will review the development of international customary law applicable to marine pollution while the second section will analyse the development of treaty law.

2.1 International Custom

In the absence of binding standards either of general or particular applicability, the concept of “territorial sovereignty” is the principal starting point in the consideration of principles of state responsibility for conduct entailing extraterritorial environmental effects upon other states³⁷. This principle is derived from the Roman maxim “*sic utere tuo ut alienum non laedas*”. It means: use your own property so as not to harm others³⁸. This principle has been embodied in a number of international decisions. In the Trail Smelter arbitration (1938-41), where a smelter located on Canadian territory caused damage to property in the neighbouring USA, the arbitral tribunal stated that:

*... under the principles of international law, as well as of the law of the United States, 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 ...*³⁹.

In the Corfu Channel case (1949), in which the ICJ was asked to decide the responsibility of Albania for damage suffered by British warships and their crews when the ships struck mines while passing through an international strait in the Albanian territorial sea, the Court confirmed:

*... every state's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other states*⁴⁰.

The *sic utere tuo* principle has been further espoused in the Lake Lanoux case between France and Spain. The case concerned a claim by Spain that Spanish consent was a precondition for the French who wanted to divert the waters of Lake Lanoux, since it would affect the flow at a river originating from the said lake running into the Spanish territory. The arbitration tribunal stated that:

*It could have been argued that the works would bring about a definitive pollution of the waters of the Canal or that the returned waters would have a chemical composition or a temperature or some other characteristics which could injure Spanish interests. Spain could then have claimed that her rights had been impaired. (emphasis added)*⁴¹.

The principle finds further support in the 1958 Geneva Convention on the High Seas, the provisions of which have been stated to be “as generally declaratory

of established principles of international law". Article 2 of the Convention provides that the freedoms of the high seas:

shall be exercised by all states with reasonable regard to the interests of other states in their exercise of the freedom of the high seas.

The principle of prohibition of the injurious use of territory has been amplified by the principle of "good neighbourliness", which is, according to Kuwabara:

one of the fundamental principles of international environmental law [and] implies a more positive obligation for co-operation⁴².

It is clear, then, from the foregoing discussion that the customary rule which has crystallised under international custom is that, states are obliged to prevent any harmful activity within their sovereignty and territory which could cause injuries to the interests of other states. This rule is too vague to provide an effective framework for the protection of the marine environment. The deficiency of international customary law is apparent, in the outputs of the 1972 Stockholm United Nations Conference on the Human Environment⁴³. However, it was the 1992 United Nations Conference on Environment and Development, concluded in Rio de Janeiro, which gave a significant thrust to international environmental law as a whole. In the Conference, a number of pre-existing principles of soft law, of uncertain status, passed into rules of treaty. The repetition of these principles in the outputs of the Conference⁴⁴, has strengthened the argument that they are, or are on the point of becoming, rules of customary law binding on all states⁴⁵. In any case, the current world environmental problems are such that customary international law cannot be said to have sufficient strength to cope with them⁴⁶.

2.2 Treaty Law

Given the deficiencies of customary international law, along with the need for a more comprehensive approach for the protection of the marine environment, the international community has looked for other sources through the conclusion of numerous conventions at various levels, multilateral, regional and bilateral. Indeed, the greatest part of the international marine pollution regime is contained in these treaties, the first of which was adopted in 1954 (International Convention for the

Prevention of Pollution of the Sea by Oil)⁴⁷. At UNCLOS I (1958), the issue of the marine environment was not given much attention. Under Articles 24 and 25 of the HSC, the only two articles that dealt with the question, states are obliged to regulate oil pollution from ships, pipelines and seabed operations, to prevent pollution of radioactive waste, and to co-operate in this respect with competent international organizations. However, these provisions do not go so far as to deal with all sources of marine pollution; moreover, they leave states much discretion as to their application.

Before the beginning of UNCLOS III works, several general multilateral conventions had already been concluded to regulate vessel-source pollution⁴⁸, civil liability for vessel-source pollution⁴⁹, intervention in cases of maritime casualties⁵⁰ and dumping at sea⁵¹. Nevertheless the development of the marine pollution regime prior to UNCLOS III can fairly be described as a “patchwork quilt” affair - *ad hoc* responses to source-specific marine pollution⁵². It was the 1982 United Nations Convention, which represented the first attempt to set out a general framework for the control and protection of the marine environment through its Part XII.

On the other hand, regional approaches to marine pollution control proved to be enormously attractive in the 1970s. The regional concept was applied so late⁵³. According to Recommendation 92 of the 1972 Stockholm Conference Action Plan, the states were called upon to:

*adopt effective national measures for the control of all significant sources of marine pollution, including land-based sources, and concert and co-ordinate their actions regionally and where appropriate on a wider international basis.*⁵⁴

Indeed, it was the United Nations Environment Programme (UNEP) which initiated its Regional Seas Programme in 1974⁵⁵. A number of multilateral regional treaties and Action Plans were concluded under the auspices of UNEP and to a rather more limited extent the International Maritime Organization (IMO)⁵⁶. In certain cases, bilateral agreements were concluded to deal with more specific or local questions of marine pollution⁵⁷. It is clear that while marine pollution is a global concern, its regime does not necessarily have to be a single global entity and

regional approaches can never be dispensed with because, as Schachter and Serwer put it:

*... there has come to be a greater recognition of the need for regional pollution control organs since it is apparent that, although pollution is a global problem, it is not uniformly global*⁵⁸.

The intensity of treaty action, whether at international or regional level, was reflected in the relevant discussions of UNCLOS III, as marine pollution control was a minor, but not insignificant, negotiation topic⁵⁹. However, the 1982 United Nations Convention represents, as mentioned earlier, the first comprehensive approach that establishes on a global, conventional basis the obligations, responsibilities and powers of nations regarding marine pollution control. The Convention imposes on coastal states, for the first time, a duty to protect and preserve the environment from pollution from all sources⁶⁰, a requirement to observe this fundamental obligation when exploiting their natural resources⁶¹, and a duty to assume liability for ensuring that these responsibilities are met⁶². The states are also obliged - for the first time - to co-operate globally and regionally in formulating rules and standards, giving notification of imminent or actual damage, and undertaking research and the exchange of information⁶³. The Convention stipulates also obligations to provide technical and scientific assistance to developing states⁶⁴ and to conduct monitoring and environmental assessments⁶⁵. The Convention, further, goes beyond just the obligation of pollution control. Article 192 of the Convention recognizes a general obligation to *protect and preserve the marine environment*. Article 194(5) expressly requires that:

*the measures taken in accordance with this Part (Part XII) shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life*⁶⁶.

What should be noted, however, is that while the Convention constitutes a general framework for the protection of marine environment depending on existing standards and organizations, it does not create such organizations and standards, nor does it specify mechanisms for their implementation. Nor does the Convention develop an effective approach concerning the responsibility of states for the fulfilment of the said obligations, since whereas Paragraph 3 of Article 235

recognises the “failing of international law relating to responsibility and liability”. we find that Paragraph 1 emphasises, in general terms, the liability of states for the fulfilment of their respective obligations “in accordance with international law”⁶⁷.

The LOSC, as is known, has come into force. This factor, plus the fact that the Convention’s provisions relating to the protection of the marine environment were adopted by consensus, leaves no doubt that the obligation to prevent marine pollution has become now an obligatory general rule of international law.

Part II: Saudi Arabia and Marine Pollution Control

In the Arabian Gulf and the Red Sea, pollution can result from many sources, such as industrial waste, sewage, desalination plants, sea-bed activities, etc. However, oil pollution is the most conspicuous of these hazards, made so by reason of extensive offshore production operations in the Gulf, on the one hand, and the heavy maritime traffic of oil tankers within these two relatively narrow-water bodies, on the other.

Before examining the legal position of Saudi Arabia with regard to the protection of the marine environment, it would be beneficial, first, to present a general review of the state of the environment of the Red Sea and the Gulf, as well as Saudi Arabian environmental policies and institutional setting.

1. The State of the Marine Environment

The Arabian Gulf and the Red Sea have been subjected to serious pollution. The Gulf, in particular, has suffered massive oil pollution in the last decade and in the beginning of the current decade. It is one of the most heavily-travelled tanker routes in the world. It has 26 oil terminals served by between 20 and 100 tankers passing via the Strait of Hormuz every day⁶⁸. It has been indicated that at least 80% of oil pollution originates from tanker and ship traffic (spills and routine discharges) and offshore production⁶⁹.

The two worst pollution accidents witnessed so far by the Gulf were, unfortunately, carried out deliberately by man himself. The Iraq-Iran war (1980-88), and the 1991 Gulf War both had disastrous impacts on the Gulf’s marine environment. According to a report prepared by MEPA, more than 500 tankers

and ships were attacked during what is known as the “Tanker War” between Iraq and Iran in the period 1984-1988. Oil was released from some 10% of this number⁷⁰. On 27 January, 1983, a massive release of oil occurred in the Iranian oil field of Nowruz. The Nowruz spill was a chronic and long-running spill that continued unabated for more than a year, releasing an estimated 1.5 million barrels of oil into the Gulf waters⁷¹.

However, the magnitude of the 1991 Gulf War oil spill exceeded by far all earlier spills including the Nowruz. Due to hostilities during that war, inputs of crude oil released into the Gulf waters are estimated to have been between 6 and 8 million barrels, affecting more than 500 kilometres of coastline in Saudi Arabia⁷². This substantial oil release, which is perhaps the largest in human history, polluted a sizeable stretch of the Southern Kuwaiti and Saudi coasts, as well as killing large quantities of seabirds⁷³. It also had harmful effects on water, sediments, coral reefs, seagrass, algae mats, and other intertidal habitats⁷⁴. The hugeness of the Gulf War oil spill compelled the Saudi authorities to mobilise all local expertise, and further to seek international assistance to face the threat posed by the oil. Indeed, the MEPA was designated as a National Oil Spill Co-ordinator. In addition, two organizations were established, the National Oil Spill Co-ordinating Committee and the Scientific Subgroup, which contained a number of foreign states’ agencies⁷⁵. International assistance was co-ordinated through the IMO⁷⁶. However, despite the great success of the Gulf’s clean-up efforts, the pollution dangers in the Gulf remain as a legacy of the War. It was recently reported that more than 26 oil tankers are still sunk in the Gulf, amongst them, the *Amariyah* which has on board up to 100,000 tons of crude oil⁷⁷. In recent years, oil pollution accidents continued to be the problem affecting the marine environment in the Gulf. A report prepared by MEPA reveals that in 1993, 8 oil pollution accidents were reported in the Saudi maritime zones, 1 chemical, 3 biological, and 4 oily accidents, releasing more than 1600 barrels of oil into the Gulf waters⁷⁸.

However, oil is not the only source of pollution in the Arabian Gulf. Apart from natural phenomena there exist a number of human activities that affect the Gulf’s environment. These include: disposal of urban and industrial waste waters, development of coastal areas, manipulation of hydrological cycles, land use

practices, disposal of contaminated sediments, mine tailings and industrial wastes, disposal of solid matter, exploitation of living and non-living marine resources, war-related pollution, and radioactive pollution⁷⁹.

The Red Sea is no less sensitive to pollution than the Arabian Gulf. The huge movement of oil transporting tankers makes it one of the seas most subjected to pollution, and oil pollution in particular. It is estimated that over 100 million tons of oil are transported through the Red Sea annually⁸⁰. This high volume of transport traffic results in chronic marine pollution as the result of discharges of oily ballast water and tank washings from vessels, operational spills from foundered vessels, and leaks from vessels in transit⁸¹. In 1993, 28 pollution accidents were reported to MEPA, 8 biological, 3 running aground and 17 oily⁸². However, shipping is not the only source of oil pollution in the area. A study conducted in 1984 indicated that more than 700 tons/year of discharged crude oils are released to the coastal waters of the main Saudi seaport on the Red Sea, Jeddah City, as a result of Petromin Oil Refinery processes⁸³. In addition, the Red Sea is exposed to other types of pollution. Of land-based pollution, there are municipal waste water discharges⁸⁴ and industrial effluents. There is also the possibility of pollution resulting from dredging and filling, and inadequately planned construction in the coastal zones⁸⁵. There is, further, the danger of radioactive pollution, especially with the possession of nuclear weapons by Israel, one of the states bordering the Red Sea, and the attempts of some of the region's states to use atomic energy for, at least, peaceful purposes.

Thus, from the above review, it is clear that unlike most seas, the Arabian Gulf and the Red Sea are more vulnerable to oil pollution than other sources. In addition, it is expected that the status of the marine environment in the said seas, in normal circumstances is worse than what has been mentioned. Full and precise information in this respect is not available. That is what has been stated by ROPME. According to the Report to the 8th Meeting of the ROPME Council, held in Kuwait, 27-28 October 1993, the secretariat reported that two attempts to prepare proper regional reviews had been made in 1989 and 1990, but both failed to reflect the regional state of the marine environment⁸⁶. The position in the Red Sea region is worse, however, basically due to lack of funds, as only some

ecological survey projects have been conducted on the coasts of Saudi Arabia and Yemen, in addition to certain workshops, training courses, and the publication of the Red Sea Bibliography on Oceanographic and Marine Environment⁸⁷. In brief, a more effective information system seems to be an urgent necessity, since without that, all efforts and means to combat marine pollution will suffer inadequacy.

2. Environmental Policies and Institutional Setting

2.1 Policies

Saudi Arabia has been dealing seriously with the problem of marine pollution since the mid-1970s. Before that, no attention was paid to the issue of protecting the environment in general, despite the fact that the Kingdom started its activities on the exploration and exploitation of oil in the Arabian Gulf area in the 1930s, with concomitant damage to the marine environment!

Saudi Arabia's concern for environmental issues has coincided with that of the international community as a whole. In 1975, three years after the holding of the 1972 UN Stockholm Conference on the Human Environment, Saudi Arabia issued its first major legislation on the marine environment. Part 12 (Articles 311-335) of the Seaports and Lighthouses Regulations (hereafter referred to as SLR) was designed for the protection of the marine environment from oil pollution and from the operational discharges of ships⁸⁸. This was followed by the adoption in 1984 of the National Contingency Plan for Combating Marine Pollution by Oil and Other Harmful Substances in Emergency Cases⁸⁹ (hereafter referred to as NCP) by the Environmental Protection Co-ordinating Committee (hereafter referred to as EPCC)⁹⁰.

At the regional level, Saudi Arabia played an effective role in building up and activating regional efforts to face the dangers of marine pollution. In this respect, the Kingdom took part in formulating the 1978 Kuwait Action Plan⁹¹. She is an active party to the 1978 Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution⁹² and the three protocols supplementary to it: the 1978 Protocol concerning Regional Co-operation in Combating Pollution by Oil and other Harmful Substances in Cases of Emergency⁹³, the 1989 Protocol concerning Marine Pollution resulting from

Exploration and Exploitation of the Continental Shelf⁹⁴, and the 1990 Protocol for the Protection of the Marine Environment against Pollution from Land-Based Sources⁹⁵. The Kingdom also hosted in Jeddah, between 13-15 February 1982, the Plenipotentiary Regional Conference which led to the adoption of the Jeddah Action Plan⁹⁶, the Regional Convention for the Conservation of the Red Sea and Gulf of Aden(JC)⁹⁷, and the Protocol concerning Regional Co-operation in Combating Pollution by Oil and other Harmful Substances in Cases of Emergency⁹⁸.

At the international level, Saudi Arabia is a party to a number of conventions, such as the 1954 International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL) and its amendments of 1962, 1969 and 1971⁹⁹ and the 1969 International Convention on Civil Liability for Oil Pollution Damage and its Protocol of 1976¹⁰⁰.

In recent years, the Saudi Arabian concern with regard to environmental issues has intensified as part of the international community's concern as a whole. She was one of the participants to the United Nations Conference on Environment and Development (UNCED), held in Rio de Janeiro (Brazil) in June, 1992. The Saudi delegation to the Conference was headed by the then Minister of Petroleum and Mineral Resources, Mr Nazer. Having given a brief review of the Kingdom's efforts in facing environmental problems in general, Mr Nazer, in his address to the Conference, called upon the international community to protect the environment, rescue marine life from the dangers of armed conflicts, and to develop international law in facing armed conflicts and their disastrous effects on the environment. In this respect, he said:

The dimensions of the threats to the environment inherent in armed conflicts call for sustained efforts untiring endeavours of the international community to protect the environment, rescue marine life, reconstruct and rehabilitate the environment. It calls for a serious review of the provisions of international law applicable to armed conflicts with a view to preventing the recurrence of the international crimes against the environment similar to those experienced in the Gulf region¹⁰¹.

Elsewhere in the Address, the Minister emphasised the adverse impacts of nuclear energy on the environment by saying:

*It is important to ensure that conclusions reached by this Conference should not be used to promote environmentally unsafe technology or energy sources. It is unacceptable to promote means that have been proven to generalise and deepen well-established environmental problems such as nuclear energy ..*¹⁰²

In the National Report, submitted to the Conference, a comprehensive review was presented of the state of the environment in the Kingdom, with particular reference to the damages caused to the environment by the Gulf War hostilities¹⁰³.

The Saudi Arabian commitment to protect the environment was reflected at the highest levels in the Saudi legislation. Article 32 of the newly issued Basic Regulations of Rule (1992)¹⁰⁴ reads:

The state shall do its utmost to maintain, protect and develop the environment and to avoid contamination.

Moreover, the responsibility for the protection of the environment in Saudi Arabia in recent years, has always been associated with national economic and social policies and state plans. Concern about the environment is clearly present in the statement of the Planning Ministry, released following the announcement of the recent Sixth 5-Year Development Plan 1415-1420 AH [1995-2000]¹⁰⁵. It was stated that one of the Plan's goals is:

*the conservation, development, and the protection of the environment from pollution*¹⁰⁶.

Among the achievements, aimed to be carried out, the Plan mentioned, *inter alia*:

- (a) The employment of modern technological instruments, which take environmental considerations into account in order to avoid pollution;
- (b) The adoption of national regulations for the assessment of environmental impacts. Such regulations are to be implemented by all concerned projects, especially industrial, agricultural and urban sectors;
- (c) The adoption of a comprehensive set of environmental standards¹⁰⁷. Pursuant to that, the Kingdom indeed issued, in 1993, its Environmental Protection Standards for the Control of Disastrous Wastes¹⁰⁸.

Furthermore, the Kingdom has just recently (9-12 October, 1995) hosted in Jeddah, the Sea to Sea Regional Conference on Sustainable Use of the Marine Environment, where a group of experts participated in discussing ways of providing better means to protect the environment of the Red Sea and the Arabian Gulf¹⁰⁹.

These, then, are the features of the Saudi policies regarding the protecting of marine environment. It is clear that the Kingdom has been dealing seriously with the problem of pollution, including marine pollution. However, whether the Saudi policies are effective enough to deal with the marine environmental problems remains to be seen when we discuss the Kingdom's legal attitude towards such a problem¹¹⁰.

2.2 Institutional Setting

The crucial step in control of marine pollution was taken by the Saudi Government in 1981, with the inclusion of the function of pollution control within the responsibilities of what had formerly been known as the General Directorate of Meteorology and was now renamed to become the Meteorology and Environmental Protection Administration (MEPA), by virtue of Royal Decree No. 7/2/8903¹¹¹. The establishment of MEPA and granting it the power to enforce various regulatory measures, came in a response to increased public concerns over pollution. Within MEPA, there is the Environmental Protection General Directorate (EPGD), as an entity responsible for environmental protection matters. The Marine Environment Unit is one of the units affiliated to EPGD, and responsible for all marine environmental matters. Also affiliated to the EPGD are two Oil Spill Response Centres, one in Jeddah (on the Red Sea), and the other based in the Eastern Province of the Kingdom (on the Arabian Gulf). Beside these, there is the National Commission for Wildlife Conservation and Development, established on 12 May 1986, amongst whose objectives is to develop and implement plans and projects to conserve wildlife and wildlife habitats of the Kingdom on land and in the sea¹¹².

Of the governmental bodies which have direct relationship with marine pollution, there are The Ministry of Communications and the Saudi Port

Authorities, both of which have a special section for monitoring and helping in combating marine pollution. There is also the Saudi Arabian Royal Navy. However, MEPA remains the central governmental body for pollution control, but as is known, a marine pollution incident will affect many different interests both within and outside the Government. Therefore, the Environmental Protection Co-ordinating Committee was established in 1981, with the aim of co-ordinating the activities of government bodies involved in environmental protection¹¹³. The President of MEPA is the Secretary General of the Committee, which is headed by the Second Deputy Prime Minister and Minister for Defence and Aviation and Inspector General¹¹⁴. In its membership, the Committee includes the deputy ministers (or equivalent), in each of¹¹⁵:

- Ministry of Interior (Local Authorities, Coast Guard and Civil Defence);
- Ministry of Planning;
- Ministry of Petroleum and Mineral Resources;
- Ministry of Agriculture and Water;
- Ministry of Commerce (Saudi Organization for Standards);
- Ministry of Health;
- Ministry of Communications;
- Ministry of Industry and Electricity;
- Ministry of Municipal and Rural Affairs;
- King Abdulaziz Centre for Science and Technology;
- National Commission for Wildlife Conservation and Development;
- Port Authorities; and
- MEPA.

In addition, there is the Environmental Ministry Committee, which was established in 1990. This Committee is viewed as the highest environmental organization at the national level. Its objectives are to lay down national environmental strategies and policies, as well as to express the Kingdom's points of view with regard to environmental matters, whether regionally or internationally¹¹⁶. The Committee is headed by the Second Deputy Prime Minister and Minister for Defence and Aviation and Inspector General, and includes in its membership¹¹⁷:

- The Minister of Interior;

- The Minister of Foreign Affairs;
- Deputy Minister of Defence for Civil Aviation;
- The Minister of Planning;
- The Minister of Finance and National Economy;
- The Minister of Petroleum and Mineral Resources;
- The Minister of Agriculture and Water;
- The Minister of Municipal and Rural Affairs;
- The Minister of Health;
- The Minister of Industry and Electricity;
- The President of King Abdulaziz Centre for Science and Technology.

The President of MEPA has been assigned as the Secretary General of the Committee¹¹⁸.

Apart from these governmental organizations, there are certain organizations which, although not under direct supervision by the Government, are greatly involved in pollution control due to the nature of their work. These include the Royal Commission for Jubail and Yanbu, and the Saudi ARAMCO. The two organizations have good capabilities, especially with regard to oil pollution, and they participated effectively in combating the Gulf War oil spill¹¹⁹.

These, then, are the relevant Saudi national environmental organizations currently in existence. At the regional and international levels, however, Saudi Arabia is a party to a number of regional and international organizations. She is a member of the Regional Organization for the Protection of the Marine Environment (ROPME) in Kuwait, as well as the Programme for the Environment of the Red Sea and Gulf of Aden. Internationally, the Kingdom has also been a member of IMO (previously IMCO), since 25 February 1969. She is actively involved in the governing bodies of UNEP, the International Union for the Conservation of Nature and Natural Resources (IUCN), the World Meteorological Organization (WMO), and the Advisory Committee on Pollution of the Sea (ACOPS)¹²⁰.

It is clear from the above review, that in Saudi Arabia, there are many organizations involved in preventing and combating pollution. However, the

effectiveness of such organizations depends undoubtedly on the degree of coordination among them when facing a pollution incident.

3. The Legal Position of Saudi Arabia

The Saudi Arabian concern and response to marine pollution problems have come as a reflection of the concern of the international community as a whole, especially in terms of timing, as the Saudi concern about these issues became obvious since the mid-1970s. As with most states, the Kingdom's approach to protecting and preserving the maritime environment has consisted of three types of action: multilateral conventions and proposals, regional accords, and unilateral action.

3.1 International Approach

At the international level, the Saudi legal position may be assessed through the general statements made by the Saudi officials and representatives to relevant international conferences, especially UNCLOS III, on the one hand, and through the observance of international standards and rules, by the accession or the desire to accede to relevant international conventions, on the other.

3.1.1 The Position at UNCLOS III

At the 35th meeting of the second session of UNCLOS III (10 July 1974), the Saudi delegate addressed marine pollution problems in a general statement. Mr Al-Shahail said in this respect:

Since Saudi Arabia had 122 nautical miles of coastline in waters subject to extensive marine pollution, it had been an active member of the Inter-Governmental Maritime Consultative Organization since 1969. It was party to the 1954 International Convention for the Prevention of Pollution of the Sea by Oil and as the country with the highest output of oil in the world, had taken fundamental steps in this respect¹²¹.

It is to be noted, however, that while this statement reflects the Saudi concern about marine pollution in general, the Saudi representative had in mind oil pollution in particular. When he said *...Saudi Arabia had 122 nautical miles of coastline in waters subject to extensive marine pollution...*, he was talking about

the Arabian Gulf, wherein most operations of oil exploration and extraction occurred. This fact was expressly confirmed in the last part of the statement. In addition, by referring to the “fundamental steps”, Mr Al-Shuhail meant the Seaports and Lighthouse Regulations¹²², which had just been endorsed. However, from this statement, the Saudi Arabian legal position towards certain aspects of marine pollution was expressed collectively, either as a member at the Arab States Group or as a member of the Group of 77.

The responsibility and liability of states to protect the marine environment was a “cornerstone” for the Arab States’ representatives at UNCLOS III. According to Article 41 of Part III of the Informal Single Negotiating Text¹²³, (Article 236 of the Internal Composite Negotiating Text), the state was considered as responsible for activities under its jurisdiction or control. This situation, however, is not in the interest of the Arab States, which are regarded as coastal states rather than flag states. Therefore the Arab delegates attempted, from the beginning, to improve the formula of the said text, which was subject to extensive discussions before it became Article 235 of the LOSC¹²⁴. Initially, the text adopted the responsibility of the state regarding any damage to the marine environment resulting from activities under its jurisdiction¹²⁵. Expressing their dissatisfaction with the situation, two Arab countries i.e. Egypt and Morocco submitted jointly two proposals on 23 April and 14 September of 1976 respectively, with the aim of amending the said Article 41, which became Article 44 of the Revised Single Negotiating Text¹²⁶. In these proposals, the state causing a damage to the marine environment shall be considered as responsible and compensation shall be required. As a result, under Article 236 of the Informal Composite Negotiating Text, the responsibility of the state concerning activities under its jurisdiction was omitted, but still Article 236 was not without its ambiguity in the view of the Arab Group.

Thus, the other Arab states (including Saudi Arabia), and also Portugal joined Egypt and Morocco in submitting on 2 May 1978, an informal suggestion that Article 236 be amended¹²⁷. This suggestion was based mainly on the proposals of Egypt and Morocco. In this collective proposal, it was provided for a “claim for compensation” for any damage to the marine environment. It was suggested that the state’s responsibility should be based on the rules of

international law in cases where the state causing pollution had carried out an act of sovereignty, and in accordance with private international law in other cases. It is clear that it was the goal of the suggestion to burden the state causing the environmental damage with the responsibility for such an act, whether or not the activity causing pollution was regarded as a sovereign act.

The Arab proposal provided also for the obligation to provide the injured party with recourse to national courts or authorities, in order that such party might obtain compensation or the repair of the damage. In addition, it was suggested that financial and technical institutions be established at the regional and international levels to which compensation or reparation claims may be submitted when the party responsible for the damage is unknown or is unable to pay compensation or make reparation. Provision was finally made in the said proposal for co-operation in the development of international law relating to the protection of the marine environment, and to the assessment of damage, the payment of compensation and the settlement of related disputes.

As a result of the pressures exercised by industrial states and certain flag of convenience states, the Arab Group submitted on 5 April 1979 another informal proposal containing slight amendments to the previous one¹²⁸. The latter proposal confirmed the liability of the state causing damage to the marine environment, whether under international law or the private law, and the right of the injured party to compensation.

However, comparing Article 41 of the Informal Single Negotiating Text, which was the first formulation to be put forward on responsibility and liability concerning the damage to the marine environment, with Article 235 of the LOSC, devoted to the same purpose¹²⁹, it is to be noted that the latter was influenced to some extent by the proposal of the Group of Arab states. Under Article 235, the obligation of the coastal state as to the protection and preservation of the marine environment was relieved. Secondly, the recourse to national remedies for compensation became available. Thirdly, the idea of developing international law related to responsibility and liability for the assessment of and compensation for damage and the settlement of disputes, was also included. This idea is the cornerstone of the Arab proposal, on the ground of the inadequacy of the then

international rules for the protection of the marine environment. Fourthly, depending on the Arab proposal, Article 235 contains the idea of developing the criteria and procedures for payment of adequate compensation, such as compulsory insurance or compensation funds.

The Arab Group and Portugal submitted on 2 May 1978 a similar proposal concerning responsibility and liability for damage to the marine environment, resulting from marine research activities¹³⁰. This Arab position led to certain amendments in the formulation of Article 34 of Part II of the Informal Single Negotiating Text¹³¹. Article 263 of the LOSC, on responsibility of damage resulting from the conduct of marine research, contains a reference to Article 235 related to responsibility in respect of marine pollution in general¹³². This led to the unification of the legal basis of responsibility and compensation for damage caused to the marine environment, including that caused by marine scientific research activities.

Apart from responsibility and liability, at UNCLOS III, there were two conflicting positions regarding the standards used for the protection and preservation of the marine environment and allocation of enforcement power. On the one hand, there were the developed maritime powers. From the point of view of these powers, the establishment of “international standards” or “global measures” through competent international organizations, such as IMO, was necessary for the protection and preservation of the marine environment. Moreover, in the name of freedom of navigation and out of fear of awkward coastal regulations, the developed countries preferred the enforcement power to be given mainly to flag states and international organizations¹³³. On the other hand, the Group of 77 (to which Saudi Arabia belongs), strongly opposed these views, arguing that the coastal states should have the power to enforce anti-pollution rules and standards, not only in their territorial seas, but also in areas adjacent to them. They argued that because of such vague concepts as “international standards” and “global measures”, the coastal state’s jurisdiction in the prevention and control of marine pollution was seriously weakened. The Group of 77 also believed that uniform international pollution standards would not meet the developing coastal

states' needs in terms of protecting their marine environment. In this respect, they called for states' co-operation on a global basis or on a regional basis to:

*conclude treaties, and formulate rules, standards and recommended practices and procedures consistent with [the] convention for the prevention of marine pollution, taking into account characteristic regional features, the economic capacity of developing countries and their need for economic development*¹³⁴.

However, in Article 211(4) of the LOSC, stipulation was made regarding the coastal state's right in the exercise of its sovereignty within its territorial sea to *adopt laws and regulations for the prevention, reduction and control of marine pollution from foreign vessels*, provided that innocent passage of these vessels was not hampered. This means that the coastal state may not prevent a foreign vessel threatening pollution from exercising innocent passage in its territorial sea. In the EEZ, the coastal state was granted lesser rights, as according to Paragraph 5 of the same article, it may for the said purpose adopt laws and regulations which should be in conformity with *generally accepted international rules and standards established through the competent international organizations or general diplomatic conference*. Thus, in its EEZ, the coastal state's right as to the protection of the marine environment could be described as "national in shape and international in essence", something which serves the interest of the flag state more than that of the coastal state. Rather, in conferring upon coastal states the right to adopt in certain areas of the EEZ (which are of particular sensitivity to pollution)¹³⁵ national rules and standards, more restricted than those adopted internationally, it was provided that such rules and standards would only be valid subject to certain conditions: first, the submission by the coastal state for that area of a communication to the competent international organizations, submitting supporting scientific and technical evidence and information on necessary reception facilities; secondly, the acceptance of the organization that the conditions in the said area correspond to the mentioned requirements¹³⁶, and thirdly, the publication by the coastal state of the limits of the said area¹³⁷.

Furthermore, the Group of 77, including Saudi Arabia, favoured boarding, inspecting, and detaining vessels violating rules and international standards concerning the protection of the marine environment, whether such an action

occurs in the territorial sea or the EEZ of a state. The industrial states, on the other hand, opposed, in an attempt to maintain the freedom of navigation, the granting of such powers to the coastal state in the EEZ; rather, they called for the granting to the flag state of all powers related to the violations of vessels. However, the relevant texts of the LOSC¹³⁸ tried to balance the interests of the port state, the flag state and the coastal state. Accordingly, the coastal state has the right to carry out a physical inspection of the vessel violating its national laws and regulations related to the protection of the environment in the territorial sea; to require the violating vessel to give information when the violation occurs in the EEZ (however, inspection in this area is permitted for the coastal state only when the violation has resulted in a substantial discharge causing or threatening significant pollution of the marine environment) and to institute proceedings, including detention of the vessel, in accordance with its laws, if in its EEZ, the vessel committed a violation resulting in a discharge causing major damage or threat of major damage to the coastal state's coasts¹³⁹. However, in a subsequent provision, the Convention appeared to put the interests of the flag state above those of the coastal state. According to Article 228(1), proceedings to impose penalties in respect of any violation committed beyond the territorial sea are to be suspended as soon as the flag state institutes proceedings in respect of the same charges or within six months of the date on which proceedings were first instituted, unless there is major damage to the coastal state, or the flag state has repeatedly disregarded its obligation to enforce international rules and standards concerning the violations committed by its own vessels.

It is clear from the above discussion, that apart from the emphasis on the importance of the protection and preservation of the marine environment, Saudi Arabia has not taken any individual position on this matter. Three subjects were raised by the Saudi delegation to the Conference. These were the responsibility and liability concerning the protection of the marine environment, the laying down of rules and standards, and the right to inspect and detain vessels violating such rules and standards. The Saudi position towards these issues was collectively expressed by Saudi Arabia either as a member to the Arab Group or the Group of 77. As a developing country of very limited industrial capabilities, Saudi Arabia,

like the other countries belonging to the said two groups, favoured the interest of coastal states rather than flag states. As a result of the positions and counter positions of these states, the LOSC created a sort of balance in their interests, though, in certain areas, the interests of industrial powers were accorded priority over those of developing countries.

3.1.2 The Position toward International Conventions

Saudi Arabia shares common interest with the international community in the protection of the marine environment. The major international conventions to which Saudi Arabia is a party are the International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL 1954, as amended)¹⁴⁰, the 1969 International Convention on Civil Liability for Oil Pollution Damage (CLC), and its Protocol of 1976¹⁴¹. The OILPOL Convention regulates vessel-source pollution by imposing limitations upon deliberate, “operational” discharges of oil or oily mixtures. The CLC convention seeks to provide compensation to those who sustain damage from oil spills caused by accident and casualties, and to determine liability for such payments.

Saudi Arabia is also a party to the 1971 Treaty on the Prohibition of the Emplacement of Nuclear Weapons and other Weapons of Mass Destruction on the Seabed and Ocean Floor and in the Subsoil Thereof¹⁴². This Convention prohibits the emplacement of such weapons (which could include biological and chemical weapons of mass destruction) and of installations specially designed to store, test or use them, on the seabed beyond twelve miles from the shore. Every party is entitled to verify through observation the compliance of other parties. In addition, the Kingdom, as mentioned earlier, is a party to the 1982 United Nations Convention on the Law of the Sea, and was one of the first countries to sign the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal¹⁴³, which represents the first comprehensive and global attempt to establish uniform obligations and standards for the control of transboundary movements of hazardous wastes. Apart from these conventions, there are other conventions, regarding which discussion has been initiated by the Saudi authorities¹⁴⁴. These include the 1958 Geneva Conventions on the law of the

sea, the 1963 Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water¹⁴⁵, the 1969 International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties¹⁴⁶, the 1973 Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil¹⁴⁷, the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention)¹⁴⁸, and the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter¹⁴⁹.

From the above survey, two remarks may be drawn. First, while Saudi Arabia is a party to the CLC and its protocol, she has not yet acceded to the Fund Convention, although both conventions are regarded as supplementary to each other, in that they attempt to overcome the difficulties which may be faced by the victims of oil pollution. The CLC stipulates the liability of the shipowner when oil escapes or is discharged from a ship and causes damage on the territory, including the territorial sea of a contracting state¹⁵⁰. This is, however, subject to three exceptions: (1) damage resulting from war or acts of God; (2) damage caused wholly by an act or omission perpetrated by a third party with the aim to cause damage; (3) damage caused wholly by the negligence or other wrongful act of any government or other authority responsible for maintenance lights or other navigational aids¹⁵¹. The Fund Convention provides that where the shipowner is not liable by reason of any of the said CLC exceptions, or in cases where the shipowner is financially unable to meet his obligations, or if the damage exceeds the limits of his liability, compensation is to be paid from the International Oil Pollution Compensation Fund¹⁵². The second observation is that Saudi Arabia is not a party to the 1973/78 International Convention for the Prevention of Pollution from Ships (MARPOL Convention)¹⁵³ as amended by the Protocol of 1978¹⁵⁴ although this convention and its annexes would considerably extend the scope of protection against pollution of the sea from ships other than from dumping. Annex I to the Convention is concerned with oil, Annex II with noxious liquid substance in bulk, Annex III with harmful substances carried by sea in packaged forms, Annex IV with sewage, and Annex V with garbage. Moreover, the MARPOL

Convention reintroduces the Red Sea and the Arabian Gulf as *Special Areas*, where the discharge of all types of pollutants is completely prohibited¹⁵⁵.

Saudi Arabia's reservation regarding accession to the MARPOL Convention seems to be based on two points: First, the accession to the Convention will burden the Kingdom with further financial obligations in order to provide more effective reception facilities, as prescribed by the Convention¹⁵⁶. Second, the ratification of the Convention will put the Kingdom under an obligation to prevent tankers, which are not committed to the Convention's provisions, from entering and loading from the Saudi ports and terminals, which would affect the operations of oil marketing, and impose restrictions over the customers, who would, in choosing the tankers, be bound by the Convention's requirements. In other words, perhaps it was viewed that the adoption of international anti-pollution standards had meant increased costs for the oil industry and shipowners.

However, these two considerations, if correct, do not seem to be convincing. The significant importance of protecting and preserving the marine environment, especially in the Red Sea and the Arabian Gulf, is worth paying for, and sacrificing certain commercial benefits. The examination of the Convention shows that it does not put specific qualifications for the reception facilities required. In other words, there are various alternatives, some of which will fulfil the Convention's requirements without imposing great additional financial burdens. Moreover, the Saudi Arabian policy of non-adherence to the MARPOL Convention does not take into account the fact that most of such pollution is caused by foreign or Saudi vessels engaged in the export of oil. Saudi Arabia should subject both national and foreign vessels to the same regime of pollution control. It should be noted that the Convention does not discriminate between foreign and national vessels, so far as the control of pollution by vessels is concerned.

As to the second consideration, it is noted that the Convention has granted enough time for shipowners to adjust to its conditions¹⁵⁷. Hence it can be said that most oil tankers at the current time are in conformity with the standards of safety and marine environment protection, as prescribed by the Convention. Besides, the

tankers carrying Saudi oil are built in accordance to the most recent international specifications, otherwise they would not be allowed to enter the ports of countries in Europe, Asia and America, most of which are parties to the MARPOL Convention. Thus, it would be advisable for the Kingdom to consider her ability to accede to the MARPOL Convention, and to encourage the other states of the region to do so, since in that they would be entitled to greater powers to extend the scope of their marine environment protection against all sources of pollution from ships.

3.2 Regional Approach

In what seems to be a response to calls made in the 1972 United Nations Conference on the Human Environment¹⁵⁸, a number of regional conventions have been concluded¹⁵⁹. These conventions aimed to create a regional co-operative legal framework for the control of marine pollution in the relevant regional seas. Because of its geographical location, as a state bordering two seas, the Arabian Gulf to the east and the Red Sea to the west, Saudi Arabia is a party to two regional conventions, the Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution, or (KC) Kuwait Convention¹⁶⁰, and the 1982 Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment (JC), or Jeddah Convention¹⁶¹. The former instrument was adopted in 1978, in the Kuwait Regional Conference of Plenipotentiaries on the Protection and Development of the Marine Environment and the Coastal Areas, which was convened under the auspices of UNEP¹⁶². Before the adoption of the KC an Action Plan was first agreed on¹⁶³. Furthermore, the Protocol concerning Regional Co-operation in Combating Pollution by Oil and Other Harmful Substances in Cases of Emergency was also adopted in the Conference¹⁶⁴. The Jeddah Convention was adopted in the Jeddah Plenipotentiary Regional Conference (13-15 February, 1982), at the invitation of Saudi Arabia, and under the auspices of the Arab League Educational, Cultural and Scientific Organization¹⁶⁵. Before that, an Action Plan was agreed on¹⁶⁶, and the Protocol concerning Regional Co-operation in Combating Pollution by Oil and Other Harmful Substances in Cases of Emergency was also adopted in the Conference¹⁶⁷.

The Kuwait Convention was followed by the adoption of two protocols in 1989 and 1990 respectively. These are the Protocol concerning Marine Pollution resulting from Exploration and Exploitation of the Continental Shelf¹⁶⁸, and the Protocol for the Protection of the Marine Environment against Pollution from Land-Based Sources¹⁶⁹.

In the following part of the study, there will be an attempt to analyse the general legal framework of these instruments, which lay down the obligations imposed upon the parties to control marine pollution in the areas of the Arabian Gulf, and the Red Sea and Gulf of Aden.

3.2.1 The Conventions

Four years elapsed between the adoption of two Conventions of Kuwait and Jeddah. However, the examination of both instruments shows that the latter was evidently modelled on the former, and that they were both influenced by other regional treaties. It is proposed to examine hereafter the general features of these two Conventions.

3.2.1.1 Participation and Legal Status

The Kuwait and Jeddah Conventions are regarded as “closed” conventions, since membership of each of them is confined to specific states sharing common characteristics, the most important of which is geographical location. The two conventions contain no provision which prevents any party from acceding to any other regional treaty. Thus, Saudi Arabia, as mentioned earlier, because of her geographical setting, is a party to both Conventions. In addition to the Kingdom, seven other Gulf states are parties to the Kuwait Convention (KC): Kuwait, Bahrain, Qatar, United Arab Emirates, Oman, Iraq, and Iran. The Convention was open for signature from 24 April to 23 July, and entered into force on 1 July 1979¹⁷⁰.

The Jeddah Convention (JC), on the other hand, was opened for signature on 14 February 1982 and entered into force on 20 August 1985¹⁷¹. The membership of the Convention is confined to Arab states bordering the Red Sea and the Gulf of Aden¹⁷². Thus, the parties to this convention are Jordan, Somalia, Palestine (represented by the Palestine Liberation Organization), Sudan, the two

former parts of Yemen (known today as the Republic of Yemen), Egypt, and the Kingdom¹⁷³.

Both Conventions contain a withdrawal clause. After the expiry of five years from the date of entry into force of either Convention, any Contracting Party may withdraw from the Convention by giving written notice to the Depository State (Saudi Arabia as to JC, and Kuwait as to KC). Withdrawal becomes valid twelve months after the date on which notification of withdrawal is received by the Depository¹⁷⁴.

3.2.1.2 The Definition of Marine Pollution

The JC and KC provide very similar definitions of the term “marine pollution”. The JC defines the term as:

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 amenities¹⁷⁵.

Compared with the KC definition, it is to be noted that the JC is more restricted and specific. The terms “substance”, “energy”, and “activities”, which are included in both Conventions’ texts are respectively preceded in the JC by the terms “any”, “form of”, and “marine”. However, apart from these slight differences, the said definitions contain the same elements as that formulated by the United Nations Group of Experts on the Scientific Aspects of Marine Pollution (GESAMP)¹⁷⁶. The same formula is also found in a number of regional treaties¹⁷⁷. In addition, it is noted that as is the case with other international and regional conventions, two conditions are to be met for marine pollution to be considered as such under the two Conventions. First, man must be the cause of the pollution; acts of God are not taken into account. Secondly, the introduction of substances must result or be likely to result in deleterious effects, referred to in the definition. The inclusion in the definition of the phrase “or likely to result in”, represents precautionary measures for the protection of the marine environment and reduction of pollution. However, the Conventions do not define the period of time in which the probable damage may appear.

In comparison with the LOSC definition, it is clear that the latter contains new elements, such as references to “marine life” and “other legitimate uses of the sea”. These elements are not found in the KC and JC. However, this does not seem to be of great significance, since the generality of the text could be interpreted to cover the said absent aspects.

3.2.1.3 The Scope of Application

Geographically, the KC applies to the whole maritime zone of the Arabian Gulf, with the exception of the internal waters of the Parties. Thus, these areas are confined to the body of water encompassing the EEZs, contiguous zones, and the territorial seas¹⁷⁸. The JC, for its part, applies to the sea areas and environmental ecosystems of the Red Sea, Gulf of Aden, Gulf of Suez, Suez Canal up to its meeting point with the Mediterranean and the Gulf of Aden¹⁷⁹. As is the case with the KC, the JC excludes the internal waters of the Contracting Parties from the application of the Conventions, unless otherwise stated in the Conventions or in any of their Protocols. This is one of the shortcomings of the Conventions. However, the Jeddah Convention contains an additional provision, according to which, any Party is entitled to request the Regional Organization for the Conservation of the Red Sea and Gulf of Aden Environment¹⁸⁰, to subject the internal waters of those described as applicable, to the Convention and the activities resulting therefrom¹⁸¹.

In confining the geographical scope to the areas beyond the internal waters, the Conventions followed the model of some regional conventions, such as the Helsinki Convention¹⁸², and the Barcelona Convention¹⁸³. The Jeddah and Kuwait Conventions confirm that their provisions do not prejudice or affect the rights or claims of any contracting state as to the nature or extent of its jurisdiction established in accordance with international law¹⁸⁴, yet, jurisdictional claims of wider nature, such as the width of the territorial sea, continental shelf and EEZ are left to international law.

As far as sovereign immunity is concerned, the Conventions do not apply to warships and other ships owned or operated by a state and used only on government non-commercial service. A similar provision is found in the MARPOL

Convention¹⁸⁵, Helsinki Convention¹⁸⁶, the 1976 Protocol of Dumping, attached to the Barcelona Convention¹⁸⁷, and the LOSC¹⁸⁸. Nonetheless, the Kuwait and Jeddah Conventions, as is the case with the other mentioned Conventions, require the Contracting Parties to ensure “as far as possible” the compliance of their exempted ships with the provisions of the Conventions¹⁸⁹.

3.2.1.4 The Obligations

Under the Kuwait and Jeddah Conventions, the obligations for the protection of the marine environment from pollution are similar and expressed in general terms. Much of the detail was laid down in the Protocols which followed. Article 3(1) in each of the Conventions provides that the Contracting Parties should individually and jointly take all the appropriate measures in accordance with the Conventions and the Protocols in force to conserve the marine environment, including the prevention, abatement and combating of pollution. The same formula is included in the Helsinki Convention¹⁹⁰ and Barcelona Convention¹⁹¹. The Conventions further oblige the Parties to cooperate in the formulation and adoption of other protocols prescribing agreed measures, procedures and standards for the implementation of the Conventions¹⁹². Moreover, the Contracting Parties of both Conventions have to establish national standards, laws and regulations as required for the effective discharge of the obligation provided in the first Paragraph of Article 3 to take appropriate measures to conserve the environment¹⁹³. One fundamental duty imposed upon the state Parties is not to transfer any type or form of pollution to each other¹⁹⁴. This approach is also recognised in the two regional Conventions of Helsinki¹⁹⁵ and Paris¹⁹⁶, and in Article 195 of the LOSC. Hence, through the KC and JC, the state Parties help in establishing the customary rule, the content of which is that a state is not allowed to use its territory in such a manner as may cause damage to others¹⁹⁷.

The two Conventions went further to oblige the Parties to take all the appropriate measures in conformity with the Conventions and the applicable rules of international law to prevent, abate and combat pollution from ships¹⁹⁸, pollution caused by dumping from ships and aircraft¹⁹⁹, pollution from land-based sources²⁰⁰, pollution resulting from exploration and exploitation of the bed of the territorial

sea, the continental shelf and the subsoil²⁰¹, and pollution from other human activities²⁰². The concern of the Parties to the two Conventions, with regard to oil pollution, was reflected in the introduction, at the time the Conventions were adopted, of two Protocols for the protection of the marine environment from oil pollution and other harmful substances in cases of emergency. It is to be noted that in the Arabian Gulf area, some of the general obligations mentioned above have been elaborated, as mentioned earlier, by the subsequent introduction in 1989 and 1990 of two protocols: the Protocol concerning Marine Pollution resulting from Exploration and Exploitation of the Continental Shelf, and the Protocol for the Protection of the Marine Environment against Pollution from Land-Based Sources.

In addition to the previous obligations, the Kuwait and Jeddah Conventions impose over the Parties the duty to take, individually and jointly, all the necessary measures to deal with pollution emergencies and to reduce or eliminate damage resulting therefrom. Any Party aware of an emergency must immediately notify the prescribed Regional Organization and the other Parties likely to be affected by such pollution²⁰³. This provision is similar to that adopted in the Barcelona Convention²⁰⁴ and the LOSC²⁰⁵.

3.2.1.5 Liability and Compensation

In identical terms, both the Kuwait Convention and the Jeddah Convention embody the principle of liability and compensation for damage resulting from pollution of the marine environment or from violation of the obligations under the Conventions and their Protocols²⁰⁶. However, no specific rules regarding liability or compensation have been prescribed, although the Action Plans coupled with the Conventions recommended the adoption of an additional protocol on this matter. Instead, the Contracting Parties, for the determination of liability and compensation are to:

*undertake to co-operate in the formulation and adoption of appropriate rules and procedures*²⁰⁷.

In this, the Conventions seem to have followed the formulation adopted under Principle 22 of the 1972 Stockholm Declaration on the Human Environment, which stipulates that:

*states shall cooperate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such states to areas beyond their jurisdiction*²⁰⁸.

This approach is also found in the Helsinki Convention²⁰⁹, and Barcelona Convention²¹⁰. But, it is noted that, unlike these two Conventions, the KC and JC contain a reference to “applicable international rules and procedures”. Thus, the states Parties to Kuwait and Jeddah Conventions, when applying private law rules on the matters of liability and compensation are under obligation to consider international rules and norms. The “international rules and procedures” mentioned here, however, are meant to be those contained in the 1969 Civil Liability Convention and its Protocol of 1976²¹¹. It is to be added, finally, that besides the “enforcement reporting system” adopted by Kuwait and Jeddah Conventions²¹², the Parties of both Conventions, for the enforcement of the Conventions and their Protocols and determination of violations raising liability and compensation, are obliged to lay down appropriate and practicable measures for detection and environmental monitoring, including adequate procedures for reporting and accumulation of evidence²¹³. A similar “monitoring system” is, however, found in the Barcelona Convention²¹⁴.

3.2.1.6 Settlement of Disputes

While both the Kuwait and Jeddah Conventions adopt “amicable mutual methods”²¹⁵ as a means for the settlement of disputes arising from the interpretation or application of the Conventions or their Protocols, they follow different mechanisms when the dispute cannot be resolved by such a means. Under the KC, the matter of the dispute is to be referred directly to the Judicial Commission for the Settlement of Disputes, which forms part of the Regional Organization for the Protection of the Marine Environment²¹⁶. Under the JC, on the other hand, if a settlement is not reached through amicable means, the matter

shall be submitted first to the Council for consideration²¹⁷. If the Council fails to reach a decision to resolve the dispute, then the matter must be referred to the Committee for the Settlement of Disputes whose decision is final²¹⁸. However, the records of neither Convention show any evidence of any dispute between the Parties with regard to the interpretation and application of the Convention's provisions.

Commenting on the nature of the Judicial Commission established under the Kuwait Convention, Al-Ashaal wonders whether the Commission is "a regional tribunal for the protection of the marine environment by the application of international rules ... or it is an arbitration tribunal ..."²¹⁹. However, the Arabic and English texts of the Convention are, it may be suggested, clear enough, since they speak of a "Judicial Commission" rather than an "Arbitral Commission".

Compared with other regional conventions, it is worth noting that all the Conventions are in harmony, in referring first to peaceful means for the settlement of disputes arising from the interpretation or application of their provisions. However, they differ as to the next step, if a peaceful settlement cannot be reached. Under the Paris Convention of 1974, the dispute is to be referred to Arbitration, at the request of any of the Parties concerned²²⁰. Thus, the Convention does not make the "common agreement" of the Parties concerned, a pre-condition for submission of a difference matter to arbitration. The Helsinki Convention of 1974 adopts the principle of arbitration, whether by an *ad hoc* tribunal or permanent arbitration tribunal or even the International Court of Justice²²¹. However, the latter makes it a pre-condition that such procedures must be commonly agreed upon by the Parties concerned²²². The Barcelona Convention, for its part adopts, as a general rule, the possibility of reference to arbitration by the common agreement of the dispute parties²²³. The Convention further adopts the principle of "reciprocity", whereby, according to the Convention:

... the Contracting Parties may at any time declare that they recognise as compulsory ipso facto and without special agreement, in relation to any other Party accepting the same obligation, the application of the arbitration procedure in conformity with the provisions of Annex A²²⁴.

From the above discussion, it may be inferred that it is the desire of the Parties to both the Kuwait and Jeddah Conventions to settle their disputes arising from the interpretation or application of the Conventions under the umbrella of the Regional Organizations concerned. This is seemingly aimed at lessening the importance of possible disputes between the Parties, something which may be expected to improve and increase the effectiveness of the Conventions in protecting the marine environment in the Arabian Gulf and the Red Sea and Gulf of Aden.

3.2.1.7 The Organizational Framework

The effectiveness of any legal instrument remains undoubtedly subject to the implementation of its provisions, a process which usually takes two forms. First, the adoption by the states Parties of measures and procedures stipulated in the instrument. In this respect the KC and JC, as mentioned earlier, oblige the Parties to adopt national laws and regulations. They further provide for co-operation of the Parties to prepare effective research, monitoring and assessment systems, and to develop environmental standards and technical guidelines²²⁵. The second means, is to follow-up the instrument's application through competent institutions, whether national, regional or international. Both Conventions oblige each Contracting Party to establish a national authority, with the aim of harmonising national policies concerning the protection of the marine environment²²⁶. The Conventions also provide distinctly for the establishment of two Regional Organizations for the Protection of the Marine Environment in the two areas of the Arabian Gulf and the Red Sea²²⁷. The permanent headquarters of the Arabian Gulf Regional Organization is located in Kuwait City, while the Red Sea Regional Organization is based in Jeddah, Saudi Arabia. The structure of the organization is similar in both cases. It is composed of a Council, a General Secretariat and a body for the settlement of disputes, called a "Judicial Commission" under the KC, and a "Committee" under the JC.

3.2.1.7.1 The Council

Membership of the two Councils is made up of the Contracting Parties. Similarly, both Conventions provide for the competence of the General Secretariat to call meetings of the Council, which could be held once a year, in the case of ordinary meetings. In relation to extraordinary meetings, according to the KC, such meetings may be held upon the request of at least one Contracting state, endorsed by at least one Contracting Party, or upon the request of the Executive Secretary endorsed by at least two Contracting Parties. A similar provision is found in Article 14 of the Barcelona Convention. Under the JC, the Council Parties extraordinarily, however, meet when the head of the Council finds it necessary or when he receives a request from at least one third of the Contracting Parties. Another difference between the two Conventions is as to the meeting quorum. Under the KC, it is three quarters, while it is two thirds under the JC. The meetings of the Council are to convene in the Organization headquarters, i.e. Kuwait and Jeddah, but they may also be held, under the KC, at any other place agreed upon by consultation amongst the Contracting States or, as provided for under the JC, at any other place determined by the Council's decision. In both Councils, each Party has one vote. Decisions require an unanimous vote on substantive matters and a three-quarters majority of the Contracting Parties present and voting, as to procedural issues, according to the KC, and two-thirds majority of the present and voting Contracting States, under the JC²²⁸.

As to the functions of the Council, it is noted that in the JC, these are more elaborated. The common functions of the Council, stipulated under the two Conventions, are as follows²²⁹:

- to review continuously the implementation of the Conventions and their Protocols and the Action Plans;
- to review and evaluate the state of the marine environment;
- to make recommendations regarding the adoption of any additional protocols or any amendments to the Conventions or their Protocols;
- to adopt, review and amend when required the annexes to the Conventions and to their Protocols;

- to consider the reports submitted by the Contracting Parties and the General Secretariat;
- to establish subsidiary bodies and *ad hoc* working groups, when required, to consider any matters related to the Conventions and their Protocols;
- to appoint the Secretary General; and
- to consider and carry out any additional duties necessary for the achievement of the purposes of the Conventions and their Protocols.

Besides, the JC, as mentioned above, granted the Council further authorities, such as:

- the adoption and conclusion within the aims of the Convention of agreements with states or other similar organizations;
- the settlement of any differences between Contracting States as to the interpretation or implementation of the Convention or its Protocols;
- the adoption of financial rules determining, in particular, the contributions of the Contracting Parties;
- the adoption of the financial budget of the organization;
- the adoption of the projects and budgets of the Organization activities;
- the approval of a report on the work and activities of the Organization for the information of the ALESCO General Conference; and
- the definition and development of relations between the Organization and Arab organizations or bodies.

In addition to the above, the Council in both Regional Organizations is to supervise the activities of the Marine Emergency Mutual Aid Centres, the establishment of which is provided for, as we will see, in special Protocols (Article XIII of Emergency Protocols).

3.2.1.7.2 The Secretariat

Both Kuwait and Jeddah Conventions stipulate the establishment of a “Secretariat”, headed by an Executive Secretary (according to the KC) or a General Secretary (according to the JC). The functions of the Secretariat are similar under both Conventions²³⁰:

- to convene and prepare the meetings of the Council and its subsidiary bodies and working groups;
- to transmit to the States Parties notifications, reports and other information;
- to consider enquiries by and information from the Contracting Parties and to consult with them;
- to prepare reports on matters relating to the Conventions and other instruments and administration of the Organizations;
- to establish, maintain and disseminate an up-to-date relevant collection of regulations of Contracting Parties;
- to provide technical assistance and also advice for the drafting of national legislations for the effective implementation of the Conventions and their Protocols;
- to perform such other functions, as may be assigned to it by the Council, and
- to carry out its functions, in accordance with the Protocols to the Convention (the KC adds). Most of these “secretariat functions” are provided for by the Barcelona Convention, although the latter does not provide for the establishment of a Secretariat, and instead, is satisfied with the designation of the United Nations Environment Programme as a body responsible for the carrying out of the said secretariat tasks²³¹.

3.2.1.7.3 The Bodies for the Settlement of Disputes

As mentioned earlier, both Conventions provide for the establishment of a body for the settlement of disputes. Under the KC, this body is called a “Judicial Commission”, the internal regulations and competence of which were defined in the first meeting of the Council. Under the JC, the body is called the “Committee”, and the authority of this Committee is to be regulated by a separate protocol²³².

3.2.1.7.4 The Marine Emergency Mutual Aid Centres

The establishment of these two centres was provided for by the Protocols, adopted at the same time as the Kuwait and Jeddah Conventions were adopted. In identical language, Article 3 of the Protocols to both Conventions concerning

Regional Co-operation in Combating Pollution by Oil and Other Harmful Substances in Cases of Emergency reads:

The Contracting Parties hereby establish the Marine Emergency Mutual Aid Centre

The Arabian Gulf Region Centre was established in Bahrain in 1982 at the suggestion made by the IMO, before the convening of the 1978 Kuwait Regional Conference. In providing for the establishment of a similar centre in the Red Sea region, the JC Protocol follows the pattern of the KC Protocol and the 1976 Barcelona Protocol²³³, under which a regional centre was established at Malta. The objectives of these Centres are also similar:

- to facilitate co-operation among the Contracting Parties in order to combat pollution by oil and other harmful substances;
- to assist Parties, which so request, to combat pollution and also to facilitate information exchange, training and technological co-operation and assistance; and
- the possibility of initiating operations to combat pollution²³⁴.

In any case, the functions of the Gulf and the Red Sea Centres are wider than those of the Malta Centre. As stated in Article 3(3) of both Protocols, they include the collection and dissemination to the Parties of information concerning matters covered by the Protocols, the co-ordination of training programmes for combating pollution and the establishment of liaison with competent regional and international organizations, particularly the IMO, in order to obtain and exchange scientific and technological data. The Centres are also to render assistance to the Contracting Parties in the preparation of marine emergency contingency plans and in establishing procedures, whereby personnel, equipment and materials involved in marine emergency responses may be expeditiously transported into, out of and through their respective countries.

From the above discussion on the institutional arrangements adopted by the two Conventions of Kuwait and Jeddah, it can be concluded that these two instruments are distinguished for their form which presents a Regional Organization for the Protection of the Marine Environment in the two regions of the Arabian Gulf, and the Red Sea and Gulf of Aden. They are also distinguished

in dividing the works and activities of these Organizations among four separate organs: the Council, the Secretariat, the body for settling disputes, and the Marine Emergency Mutual Aid Centre. Comparing other regional conventions, we find that the Barcelona Convention uses the term “organization” in passing references to mean the United Nations Environment Programme, which was designated as responsible for carrying out certain “secretariat functions”²³⁵. Under the Helsinki Convention, provision was made for the establishment of the Baltic Marine Environment Protection Commission²³⁶. But, apart from the settlement of disputes, a function which was entrusted, as mentioned earlier, to an arbitration tribunal, nearly all the other tasks of the Councils and Secretariats, established under the KC and JC were allocated to the said Commission.

What should be noted finally, however, is that while the Regional Organization for the Protection of the Marine Environment in the Arabian Gulf and its organs were established as accomplished facts and have contributed reasonably successfully to the protection of the Gulf marine environment, we find on the other hand, that the Regional Organization for the Conservation of the Red Sea and Gulf of Aden Environment and its organs have no existence except on paper, despite the fact that the JC has been in force since 20 August 1985. This procrastination in establishing the Organization is probably attributable to the political differences which have been in existence since the adoption of the Convention, and which were behind the non-effectiveness of the Convention as a whole. As mentioned earlier, the membership of the Convention was confined to the Arab states bordering the Red Sea and the Gulf of Aden. In other words, Ethiopia, Israel and Eritrea as non-Arab states are excluded. Egypt acceded to the Convention only after renormalizing its diplomatic relationship with the other Arab states. Djibuti was not enthusiastic even to attend the Jeddah Conference in which the Convention was adopted. These considerations have made the Convention probably the least efficient regional convention for the protection of the marine environment of any of the UNEP regional sea areas. In recent years, however, there has been a glimmer of hope with regard to the establishment of the Organization. In their meeting on 24 November 1993 the Arab Ministers Responsible for Environmental Affairs welcomed the formation of the

Organization with considerable status and confirmed that the Organization, when formed, will be under the umbrella of the Arab League²³⁷. On 26 September 1995, the Organization Council, which consists of the minister concerned with environmental affairs in the States Parties to the JC, met (for the first time!) in Cairo, and declared through the so-called Cairo Declaration²³⁸ the establishment of the Organization. Nevertheless, at the time of writing, no concrete steps have been taken in this direction. However, unless the Organization and its organs are to see the light of the day, the Jeddah Convention and its Protocol will remain merely ink on paper.

3.2.2 The Protocols

Following the authorisation given in the KC²³⁹ and JC²⁴⁰ relating to the adoption of additional protocols four protocols have been adopted. Three of these have been attached to the KC. They include the Protocol concerning Regional Co-operation in Combating Pollution by Oil and Other Harmful Substances in Cases of Emergency(1978)²⁴¹, the Protocol concerning Marine Pollution resulting from Exploration and Exploitation of the Continental Shelf (1989)²⁴², and the Protocol for the Protection of the Marine Environment against Pollution from Land-Based sources (1990)²⁴³. On the other hand, one protocol only was attached to the JC, i.e., the Protocol concerning Regional Co-operation in Combating Pollution by Oil and Other Harmful Substances in Cases of Emergency²⁴⁴. The most important provisions of these Protocols will be examined in the following section.

3.2.2.1 The Protocols concerning Regional Co-operation in Combating Pollution by Oil and Other Harmful Substances in Cases of Emergency

These Protocols were adopted with the Conventions of Kuwait and Jeddah and entered into force alongside them. The JC Protocol follows almost verbatim the KC Protocol.

Under both Protocols, “marine emergency” is defined as:

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 including 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*²⁴⁵.

This comprehensive definition combines the two definitions adopted by the 1969 International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (Brussels Convention)²⁴⁶, and the 1973 Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances Other than Oil (London Protocol)²⁴⁷.

Unlike the Conventions, the Protocols do not confine their geographical scope to the “Sea Area”, described under the Conventions as the areas beyond the internal waters. Their provisions extend to apply to ports, harbours, estuaries, bays and lagoons²⁴⁸. On the other hand, the Protocols, unlike what is stipulated under Article I(2) of the Brussels Convention²⁴⁹, are silent on the sovereign immunity of ships. In other words, they make no mention as to either to the inclusion or the exclusion of warships and other ships owned or operated by a state, and used only on government non-commercial service. However, it is very unlikely to be the intention of the States Parties to both Protocols to exclude such ships from sovereign immunity, since the Protocols themselves work under the umbrella of the Conventions of Kuwait and Jeddah which, as mentioned earlier, provide for the exclusion from their provisions, of warships and other ships owned or operated by a state and used only on government non-commercial service. Saudi Arabia, for example as one of these states, follows, as will be seen below, a policy of restrictive immunity. It appears that when laying down the Protocols’ rules, the legislators had in mind the fact that the marine pollution resulting particularly from oil is usually caused by oil tankers, owned often by private companies.

The Protocols provide, as mentioned earlier, for the establishment of Marine Emergency Mutual Aid Centres, which are designated to deal with emergency cases²⁵⁰. The Parties to both Protocols are also under obligation to cooperate in combating imminent danger to their coastlines or related interests from the presence or threat of oil or other harmful substances²⁵¹. These provisions resemble those adopted by the 1976 Barcelona Protocol concerning Co-operation

in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency²⁵², and the Brussels Convention of 1969 and its Protocol of 1973²⁵³. The Protocols of Barcelona, Kuwait and Jeddah go further, however, to broaden the means used in dealing with the emergency cases to include all available equipment, ships and aircraft²⁵⁴.

There is also a great deal of similarity between the Kuwait and Jeddah Protocols and the Brussels Convention as to intervention action in cases of emergency. Some measures adopted by these three instruments are regarded as exceptions to the exclusivity of the flag state's jurisdiction. Under the Protocols, the state Party faced with a marine emergency situation has the right to take appropriate measures to combat pollution and mitigate its damage²⁵⁵. The state concerned, however, should immediately inform the other Parties, either directly or through the Centre, of its action in this respect, in consultation with the Parties, affected states and the Centre²⁵⁶. A similar approach is included in the 1969 Brussels Convention, but the latter does not stipulate "prior notification or consultation" when the intervention becomes "necessary by the urgency of the situation"²⁵⁷. Moreover, the Brussels Convention provides for the avoidance of "risk to human life" before undertaking the combating measures²⁵⁸ while the Protocols do not. The Protocols, further, lack the provision concerning the "proportionality" between the "measures" and "damage", the principle contained in the Brussels Convention²⁵⁹.

The legitimacy of the intervention of the States Parties to both Protocols in the cases of emergency could be viewed as questionable in terms of the freedom of navigation, especially since, as pointed out above, the geographical scope of the Protocols extends to the high seas. This argument is incorrect, since, first, some states of the two regions of the Arabian Gulf and the Red Sea are parties to the 1969 Brussels Convention, e.g. United Arab Emirates, Oman, Qatar and Kuwait in the Gulf, and Egypt and Yemen in the Red Sea, and yet their right to intervene with the aim of combating pollution and protecting their coastlines will be justified, at least on a conventional basis. Secondly, the coastal states may also justify their intervention on the high seas on the basis of the two customary international

principles of self-defence and necessity. Commenting on the norm of self-defence, Bowett argues:

The essence of self-defence is a wrong done, a breach of a legal duty owed to the state acting 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-defence²⁶⁰.

As to the norm of necessity he states elsewhere:

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 infringed²⁶¹.

By and large, this doctrine of necessity may justify intervention action, if the degree of necessity is evaluated by balancing the interests of the shipowners against those of the state acting on the basis of necessity, on the understanding that the danger to the substantive rights of the coastal state is imminent and the intervention action should be to supply a remedy proportionate to the significance of the threatened rights²⁶². Such an approach is confirmed by the 1982 United Nations Convention on the Law of the Sea, many parts of which reflect pre-existing customary international law. Article 221 of the Convention takes the law further from the 1969 Convention as it provides that:

Nothing in this Part shall prejudice the right of states, pursuant to international law, both customary and conventional, to take and enforce measures beyond the territorial sea proportionate to the actual or threatened damage to protect their coastline or related interests, including fishing, from pollution or threat of pollution following upon a maritime casualty or acts relating to such a casualty, which may reasonably be expected to result in major harmful consequences.

Thus, the right of intervention beyond the territorial sea in a marine emergency situation is ensured to all the states of the Arabian Gulf and the Red Sea, whether on a conventional or customary legal basis.

In sum, these two Protocols would undoubtedly be more effective if the said Marine Emergency Mutual Aid Centres were given full competence in initiating operations to combat marine pollution by oil and other harmful

substances, at the regional level, and without seeking approval by the Council as stipulated under Article III(2)(c) of both Protocols.

3.2.2.2 The KC Protocol concerning Marine Pollution Resulting from Exploration and Exploitation of the Continental Shelf

The Arabian Gulf is known as a region containing the biggest oil reserves in the world. Accordingly, sea-bed activities concerning the exploration and exploitation of oil represent a lasting source of the marine environmental pollution. Aware of this fact, and in a response to the obligations imposed upon them in Articles III(b), VII and XIX of the Kuwait Regional Convention, the States Parties to the Convention signed (in a relatively late step) the Protocol concerning Marine Pollution resulting from Exploration and Exploitation of the Continental Shelf on 29 March 1989. It entered into force on 17 February 1991. Having referred to certain Articles of the LOSC, i.e. Article 76 (on the definition of the continental shelf), Article 197 (on co-operation on a global or regional basis with regards to the marine environment), and Article 208 (respecting pollution from sea-bed activities subject to national jurisdiction), the Preamble of the Protocol highlights its significance in facing:

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 ... national jurisdictions.

Under the Protocol, the term “offshore operations”, which is mainly intended by the Protocol’s provisions, is defined as:

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 exploitation²⁶³.

The application area of the Protocol has been defined to include:

the Sea Area as defined in Paragraph (a) of Article II of the Convention [Kuwait Regional Convention] and all parts of its Continental Shelf contiguous therewith²⁶⁴.

Thus, in the light of the fact that the geographical setting of the Gulf renders its sea-bed area as a whole as a continental shelf divided between the littoral states²⁶⁵, the present Protocol covers all sea-bed areas of the Arabian Gulf.

In its Article II, the Protocol confirms the Parties' basic obligations, previously stipulated under the KC (Article VII), according to which Contracting Parties, individually or jointly, shall take within the limits of their jurisdiction, and without prejudice to the specific obligations accepted under the Protocol, all appropriate measures in order to prevent, abate and control marine pollution resulting from offshore operations. These provisions are inspired by both the Geneva and LOSC Conventions, which together call upon states to avoid both deliberate and accidental sea-bed pollution. Articles 24 of the High Seas Convention, and 208(1) and 214 of the LOSC provide that every state shall draw up regulations to prevent pollution from pipelines or from exploration or exploitation of the sea-bed. Article 5(7) of the Continental Shelf Convention obliges the states to take, in the safety zones around the continental shelf installations, all appropriate measures to protect the living resources of the sea from harmful agents. To that end, the Protocol calls for the employment of the best available feasible technology, but the Protocol is flexible on this requirement, as it connects it with the economic capability of the Parties.

For the achievement of that basic obligation, which represents its major objective, the Protocol enumerated a number of "sub-obligations" or means.

These "sub-obligations" are imposed, through each Contracting Party, upon the operator, which means:

*any natural or juridical person who undertakes offshore operations*²⁶⁶.

The competence of supervision to prevent pollution from sea-bed activities in the Protocol is granted to every single state, separately. In other words, unlike the Kuwait Convention, the Protocol, for example, addresses the States Parties as individual entities and yet the measures for the protection of the marine environment from the said source are to be taken individually rather than jointly. Most of these measures or obligations are to be observed by the operator before the commencement of offshore operations. In this context, no Contracting State

should allow the carrying out of any offshore operation in any of the Protocol areas falling within its jurisdiction, except by virtue of a permission, granted by the competent authority in that state. The granting of such a licence is subject to certain conditions to be met by the operator: the submission of an assessment of the environmental impact, and the satisfaction of the competent authority that the operation will not lead to unacceptable damage in the Protocol Area or any adjacent coastal area²⁶⁷. In the event that the state concerned does not call for such an assessment, it shall consider calling for a survey of the marine environment and the aquatic life therein before the start of the proposed operation²⁶⁸.

As to the survey works in general, the Contracting Party is to ensure the readiness of the operator to conduct surveys on environmental conditions in the vicinity of his offshore installations, whether periodically or on such occasions as the competent authority may reasonably require²⁶⁹, including the case following the completion of a pipeline installation, and the case following the removal of a production platform²⁷⁰.

Aware of the fact that the installation and operation of equipment for drilling and production of oil and gas, represent the main pollution sources, detailed provisions regarding their adequacy and safety are laid down in the Protocol. Under the Protocol, the Parties have to take practical measures to ensure that offshore installations and equipment are licensed by the competent authority, with confirmation that they are designed, constructed, placed, equipped, operated and maintained in a manner that does not cause accidental damage to the marine environment²⁷¹.

Of the precautionary measures that precede the commencement of an offshore operation, the Protocol obliges the operator to prepare two kinds of plans. Firstly, a contingency plan must be made to deal with any event during the operations which may cause serious pollution to the environment. Such a plan should be approved by the competent state authority, and the operator himself has to prove his capability to implement the plan. Furthermore, the plan should be in harmony with the national contingency plans and those plans prepared by the Marine Emergency Mutual Aid Centre, and it must contain clear definitions of the roles and powers of the industry and governmental authorities²⁷².

Secondly, the operator is under an obligation to prepare a “Chemical Use Plan”, which shows the type of chemicals the operator will employ. The plan is subject to approval by the competent state authority, which is authorised to prohibit the use of any particular chemical, for the protection of the marine environment, taking into account the guidelines issued by the regional organization²⁷³.

As regards the obligations of the Parties during offshore operations, the Protocol imposes a number of restrictions over the operator. First, in that part of the Protocol Area, designed as 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*²⁷⁴.

This provision is one of the significant features of the Protocol, since it adopts the same geographical concept of the “Special Area”, as provided by the MARPOL Convention²⁷⁵. Secondly, in the Protocol Area, with the exception of what is derived from drilling operations, no other discharge from an offshore installation into the sea shall have an oil content greater than 40 mg per litre as an average in any calendar month, and shall not at any time exceed 100 mg per litre, except in the cases of accidents or other causes beyond the control of the operator²⁷⁶. Thirdly, discharge points for oily wastes shall be placed below the surface of the sea as appropriate²⁷⁷. Fourthly, the operator should take all necessary measures to minimise losses of oil into the sea from oil and gas collecting or flared from well testing²⁷⁸. Fifthly, the use and discharge of oil-based drilling fluids is prohibited in drilling operations in the Protocol Area except with the consent of the competent state authority²⁷⁹. Sixthly, the operator should ensure that the water-based drilling mud discharged from offshore operations must not contain persistent systematic toxins which may continue as a threat to the environment after the initial drilling fluid discharge²⁸⁰, and finally, the operator should provide an adequate system for collection and proper disposal of unwanted substances, give proper instructions on their use, and provide for penalties for improper disposal²⁸¹.

In addition to what has been mentioned, the Protocol for the protection of the marine environment, did not omit the subject of installations or structures, which are abandoned or disused. In this regard, the operator is to ensure the

flushing and removal of any residual pollutants from pipelines, which should be either buried or removed afterwards, so as not to cause any risk or hindrance to navigation or fishing. For the same reason, all platforms and other sea-bed apparatus and structures are to be removed in whole or in part, but not to be deposited on the sea-bed of the continental shelf²⁸². The latter provision is inspired by Article 60(3) of the LOSC, which stipulates that:

Any installation or structures which are abandoned or disused shall be removed to ensure safety of navigation Such removal should also have due regard to fishing, the protection of the marine environment and the rights and duties of other states.

Thus, the Protocol does not neglect the obligations of the Contracting Parties towards the international community, particularly in relation to the freedoms of navigation and fishing. To that end, Paragraph 1 of Article V, in express language reads:

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.

In this, the Protocol adopts the provisions, found in Articles 5(1) of the Continental Shelf Convention, and 78 of the LOSC. However, such measures are vital to be adopted by the Protocol, since in the Arabian Gulf, there are massive installations and structures, which may interfere with navigation and fishing, whether they are in operation or abandoned.

It is worth noting that although the Protocol is designed to deal with marine pollution resulting from exploration and exploitation of the continental shelf, it singles out one of its articles for pollution by dumping. Article X of the Protocol prohibits all plastics (including synthetic ropes, synthetic fishing nets and plastic garbage bags), paper products, rags, glass, metal, bottles, crockery, dunnage and lining and packing materials from being disposed into the sea. Besides, the Protocol prohibits the discharge of food wastes into the sea within 12 miles from the nearest land. Sewage shall not be discharged into the Protocol Area from an installation permanently manned by ten or more persons, before

comminution and disinfection, and provided that it is discharged at a distance of more than 12 nm from the nearest land, or passed through a treatment plan approved by the competent state authority. The Contracting Party, for its part, is to provide at convenient points on its coastline, reception facilities for general garbage from offshore installations operating in the area of its jurisdiction. Comparing this Protocol with the 1972 London Convention on Dumping, it is noted that the latter contains more details on pollution by dumping²⁸³. However, it is not clear whether the States Parties to the Kuwait Convention will be satisfied with these provisions, which are not strict enough, in facing the pollution of dumping wastes. That seems to be the case, unfortunately, at least in the short term.

The above discussion shows that the Protocol adopts the most relevant international standards for the protection of the Gulf marine environment against pollution resulting from exploration and exploitation of activities on the continental shelf. However, the Protocol is silent on the issue of liability and compensation, although, as mentioned earlier, the Kuwait Convention contains in its Article XIII, a general provision committing its Parties to develop a special regime for the determination of liability and compensation for damage resulting from violation of the obligations under the Convention and its Protocols. Nevertheless, the Protocol remains of considerable significance both regionally and internationally. Regionally, the Protocol is designed to provide such protection as can reasonably be given against marine pollution emanating from exploration and exploitation of the continental shelf in the Arabian Gulf region, where a great deal of oil and gas exploratory and exploitationary drilling activities occur. At the international level, the Protocol, with what it contains of rules and measures, may be viewed as a “legal precedent”, through which the Gulf States render a valuable contribution for the development of this aspect of international law.

3.2.2.3 The KC Protocol for the Protection of the Marine Environment against Pollution from Land-Based Sources

In a response to the obligation imposed upon the States Parties to the Kuwait Regional Convention in its Articles III(b), VI and XIX, this Protocol was

opened for signature on 21 February 1990 in Kuwait, and entered into force on 2 January 1993. In the Preamble of the Protocol, reference is made to relevant obligations under relevant international legal instruments, in particular, the 1982 United Nations Convention on the Law of the Sea, and the Montreal Guidelines of 1985 for the Protection of the Marine Environment against Pollution from Land-Based Sources²⁸⁴, so as to acknowledge those obligations and to make it clear that there is to be neither derogation from nor conflict with them.

Among other legal terms, the Protocol defines Land-Based Sources as:

*municipal, industrial or agricultural sources, both fixed and mobile on land, discharges from which reach the Marine Environment, as outlined in Article III of [the] Protocol*²⁸⁵.

Article III elaborates on these sources to cover discharges from any land-based sources located within the territories of the Contracting States, whether through water, through the atmosphere or directly from the coast, including those from outfalls and pipelines discharging into the sea, those through rivers, canals, or other watercourses (including underground watercourses) and those resulting from fixed or mobile offshore facilities, used for purposes other than exploration and exploitation of the sea-bed, its subsoil and the continental shelf. However, the Protocol does not provide a definition of the term, “fixed or mobile offshore facilities”. In that respect, it is not clear whether the legislator intended to be satisfied with the definition contained in the previously discussed Protocol concerning Marine Pollution resulting from Exploration and Exploitation of the Continental Shelf (Article I(12)). This is one of the defects of the present Protocol.

Back to the Land-Based Sources definition, it is noted that with minor differences in the formulation, the said definition is contained in two previous regional conventions: the 1974 Paris Convention²⁸⁶ and the 1980 Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based sources (the Mediterranean Protocol)²⁸⁷. The two last instruments, however, go further by listing a number of substances, which have been classified in accordance with their toxicity, persistence and bioaccumulation²⁸⁸.

Geographically, the Protocol covers in addition to the Sea Area, defined in Article II of the Kuwait Convention, the waters on the landward side of the baselines and extends in the case of watercourses, up to the freshwater limit and

salt water marshes communicating with the sea²⁸⁹. Thus, this Protocol, as is the case with the Protocols concerning Co-operation in Combating Pollution by Oil and other Harmful Substances in Cases of Emergency, attached to the two Conventions of Kuwait and Jeddah, cures the defect of the Conventions regarding the geographical scope. Again, in that respect, the Protocol follows the patterns of the Paris Convention²⁹⁰ and the Mediterranean Protocol²⁹¹.

Unlike the Paris Convention and Mediterranean Protocol or even the previously discussed Protocols adopted in the Gulf and the Red Sea, the present Protocol does not initial its provisions by emphasising, in a separate article, the general obligation of the Contracting Parties towards the protection of the marine environment against pollution resulting from land-based sources²⁹². Instead, the Protocol, having defined the pollution sources, lays down the practical measures leading to the fulfilment of the said obligation. These measures which should be observed by the Parties are mainly divided into three categories: measures on source control, measures on joint and/or combined effluent treatment and those concerning regional and local regulations and permits for release of wastes. As far as the first category is concerned, Article IV of the Protocol provides, similarly to what is contained in Article 5 of the Mediterranean Protocol, that the Parties are to pledge themselves to implement and develop, jointly or individually as appropriate, the action programmes as outlined in Annex I to the Protocol. The programmes, measures and the timetables for implementation, aimed at reducing pollution from land-based sources, shall be fixed by the Parties, and if necessary, reviewed every two years.

As to the second category of measures, the States Parties are under an obligation to implement, whether individually or jointly, industrial location planning programmes as outlined in Annex II to the Protocol. The regional guidelines and standards, along with the programmes, measures and timetables for implementation with the aim of reducing pollution from land-based sources through joint and/or combined effluent treatment shall be fixed by the Parties, and if necessary reviewed every two years²⁹³.

In addition to the above obligations, the Protocol provides, similarly to the Mediterranean Protocol (Article 7), for the development and adoption, in co-

operation with the competent regional and international organizations in accordance with Annex III to the Protocol, of:

- regional guidelines, standards or criteria, as appropriate, for the quality of seawater used for specific purposes which is necessary for the protection of human health, living resources and ecosystems;
- regional regulations for effluent treatment of land-based sources of pollution;
- national regulations regarding methods of discharging effluent and its treatment. In the development and implementation of the said programmes, certain considerations are to be taken into account, i.e. the cost of implementation, the capacity to modify existing installations, the economic capacity of the Parties and their need for sustainable development²⁹⁴.

It is obvious that the above-mentioned obligations, imposed upon the Parties by the Protocol in its Articles IV, V and VI, and their Annexes I, II and III respectively, represent a practical translation of Article 207 of the LOSC, which provides in its Paragraph 4 that:

States, acting specially through competent international organizations or diplomatic conferences, shall endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control pollution of the marine environment from land-based sources, taking into account characteristic regional features, the economic capacity of developing states and their need for economic development. Such rules, standards and recommended practices and procedures shall be re-examined from time to time as necessary.

Apart from these obligations, the present Protocol follows the pattern of both the Paris Convention²⁹⁵ and the Mediterranean Protocol²⁹⁶ in imposing on the Parties other obligations aiming at the prevention, reduction and control of pollution from land-based sources. These obligations include: co-operation with the competent regional and international organizations concerning monitoring and data management²⁹⁷, environment impact assessment²⁹⁸, scientific and technological co-operation²⁹⁹, co-operation with a view to formulate and implement programmes of scientific and technical assistance³⁰⁰, co-operation with regard to watercourses shared by the Parties³⁰¹ and finally, co-operation in the field of exchange of information³⁰².

Furthermore, the Protocol designates its Article XIII for responsibility and liability for damage. However, on this issue the Protocol does no more than repeat certain general principles contained in both the LOSC and the Kuwait Convention. In identical language to Article 235(2) of the LOSC, Paragraph 1 of the Protocol's Article XIII reads:

Contracting states which 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.

Paragraph 2 of the same Article contains provisions similar to those in Paragraph a of Article XIII of the Kuwait Convention and Paragraph 3 of the LOSC's Article 235. It stipulates the formulation and adoption by the Parties of appropriate procedures for the determination of liability for damage resulting from pollution from land-based sources. The Protocol, however, does not clarify the nature of such procedures, nor does it provide any detailed guidance in this respect. Despite this fact, the Protocol with what it contains of legal principles and norms, represents a landmark in co-operation among the Gulf's states as to the protection of the Gulf's marine environment against pollution emanating from land-based sources. Indeed, the mere adoption of the Protocol in the Arabian Gulf Region is regarded as a legal development of particular significance, and is seen as a turning point as to the concerns regarding control of marine pollution. As is known, in the past few decades, oil pollution used to be the focal point which attracted the greatest concern from the Region's states, while pollution from land-based sources has not been seriously dealt with. However, the responsibility remains with the States Parties to cooperate truthfully and with good will, to develop and implement the provisions of the Protocol both jointly and individually in order to provide an effective management system for control of pollution from land-based sources.

3.2.3 The Action Plans

Two Action Plans were among the legal instruments adopted in both the Kuwait Regional Conference of 1978 and the Jeddah Regional Conference of

1982. These plans, which were first agreed in the two said Conferences, are the Action Plan for Protection and Development of the Marine Environment and the Coastal Areas of Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates³⁰³, and the Action Plan for the Conservation of the Marine Environment and Coastal Areas of the Red Sea and Gulf of Aden³⁰⁴. The two Plans are similar as to their general features, and it is clear that the Jeddah Action Plan, adopted four years after the Kuwait Action Plan, was modelled on the latter. The adoption of both Action Plans by the states concerned obviously has been a sort of interim arrangement in anticipation of the delay which was expected in the ratification and accordingly in the entry into force of the Kuwait and Jeddah Conventions and the simultaneously adopted Protocols. In other words, the Action Plans were intended to be the means whereby the states of both Regions had to realise the objectives of the Conventions and their Protocols pending their entry into force, something which goes in line with the general UNEP Regional Seas approach.

In similar language, the aims of the two Action Plans were defined to be:

- (a) assessment of the state of the environment including socio-economic development activities relating to environmental quality and of the needs of the two Regions, in order to assist Governments to cope properly with environmental problems;
- (b) development of guidelines for the management of activities which have an impact on environmental quality or on the protection and use of renewable marine resources on a sustainable basis;
- (c) preparation of legal instruments which provide the legal basis for co-operation to protect and develop the Regions; and
- (d) the adoption of supporting measures, including the establishment of national and regional institutional structures needed for the successful implementation of the Action Plans³⁰⁵.

The geographical scope of both Action Plans are exactly the same Sea Areas defined by the two Conventions of Kuwait and Jeddah³⁰⁶.

In addition to the introduction, the two Action Plans are similarly divided into four sections: environmental assessment, environmental management,

institutional and financial arrangements and the legal component. Generally speaking, most details included under these headings are found in the Conventions in one form or another. However, three matters in these two Action Plans call for attention. First, on the question of the institutional arrangements, both Plans with the aim of meeting their obligations provide for the establishment of an interim institution until permanent Regional Organizations are established. In the Gulf Region, this task was entrusted to UNEP, and an Interim Secretariat was indeed established and undertook its functions before it was replaced in 1981 by the Regional Organization for the Protection of the Marine Environment (ROPME). In the Red Sea and the Gulf of Aden Region, the Arab League Educational, Cultural and Scientific Organization (ALESCO), represented in the Executive Directorate of the Red Sea and Gulf of Aden Environment Programme was designated as responsible for the purpose of implementing and supervising the Jeddah Action Plan until the establishment of a permanent Regional Organization for the Conservation of the Red Sea and Gulf of Aden Environment³⁰⁷. Thus, at the time of writing, this Executive Directorate is still in charge in the Red Sea and Gulf of Aden Region.

Secondly, both Action Plans recommend the adoption of additional protocols to the Kuwait and Jeddah Conventions as:

- pollution from land-based sources;
- pollution resulting from exploration and exploitation of the continental shelf and the sea-bed and its subsoil;
- scientific and technical co-operation;
- development, conservation, protection and harmonious utilisation of the marine living resources of both Regions;
- liability and compensation for damage resulting from pollution of the marine environment; and
- on other subjects found important to the Region during the execution of the Action Plan (The Jeddah Action Plan adds)³⁰⁸.

In response to this requirement (and also the similar requirements adopted under the Conventions), four Protocols, as discussed earlier, were adopted in both Regions. Being more active, the Gulf States convened three of these while one

only was convened in the Red Sea and Gulf of Aden Area. Although not referred to in the Action Plan, it was reported that the next protocol under development in the Kuwait Regional Organization Area concerns the transboundary movement of hazardous wastes³⁰⁹.

Thirdly, pollution of ships was given special attention in both Action Plans. In this regard, the Plans, in order to give special protection to the two Regions against this kind of pollution, called upon the Governments of concerned states to enhance the measures for protection through ratification and implementation of the relevant international conventions. The Kuwait Action Plan, however, went further by mentioning specifically those conventions which include: the 1954 OILPOL, the 1972 Dumping Convention and the 1973 MARPOL Convention as modified by the Protocol of 1978. Unfortunately, no full response was given by the states as to the latter requirement.

From the foregoing discussion, it can be concluded that the two mentioned Action Plans, alongside the two Regional Conventions of Kuwait and Jeddah and the already adopted Protocols, represent a general framework for regional co-operation with respect to the protection and preservation of the marine environment, of the two semi-enclosed seas, i.e., the Red Sea and the Arabian Gulf. Given the fact that the obligations prescribed in many Conventions' provisions in particular are not clearly absolute or strictly binding, since reference to the obligation is usually accompanied with the phrase "appropriate measures", real co-operation among the Parties remains the only certain guarantee of combating marine pollution, which does not recognise national boundaries. This co-operation, provided for in Article 123(b) of the LOSC, will be rendered more effective through practical translation by the Parties of the said instruments' contents, particularly the elaboration of more specific protocols, and the acceleration of the Red Sea states' efforts to establish a Regional Organization for the Conservation of the Red Sea and Gulf of Aden Environment. Such measures will make these general legal frameworks more comprehensive and efficient.

3.3 National Approach

The main characteristic of marine pollution is its international rather than national nature. However, international and regional approaches for the protection of the marine environment remain insufficient, unless supported by national laws and regulations in each single state. This process is to be achieved in two ways. First, the absorption of international and regional rules into municipal law, whether via transformation or incorporation of the said rules. Secondly, through the adoption of national laws and detailed regulations with the aim of filling any anticipated legal gaps, and laying down the requirements of the international and regional instruments.

The adoption of national laws and regulations has been a central state obligation under international and regional legal instruments concerned with the protection of the marine environment³¹⁰.

In Saudi Arabia, with the exception of very limited references found in some legal instruments, the Saudi municipal regulations for the prevention of marine pollution are mainly set forth in the Seaports and Lighthouses Regulations (SLR)³¹¹, and to a lesser degree in the National Contingency Plan for Combating Marine Pollution by Oil and Other Harmful Substances in Emergency Cases (NCP)³¹². It is clear from the adoption of these two instruments, which deal mainly with oil pollution, that the national policies of Saudi Arabia on matters of marine pollution are dominated by economic considerations, since they are closely linked with the national oil industry. In the following part there will be an attempt to highlight the general features of those instruments.

3.3.1 Seaports and Lighthouses Regulations

According to Article 24 of the 1958 HSC, states are under a fundamental obligation to:

draw up regulations to prevent pollution of the seas by the discharge of oil from ships ... taking account of existing treaty provisions on the subject.

The phrase “existing treaty provisions on the subject”, included in the text refers apparently to the 1954 OILPOL Convention, since at the time the HSC was drafted, that was the only adopted treaty dealing with pollution from shipping.

In Saudi Arabia, the largest single body of codified marine pollution legislation is contained in the Seaports and Lighthouses Regulations. The Regulations, which entered into force on 9 November 1975, consist of 25 chapters (391 Articles), covering many different areas of Saudi maritime law. Chapter 12 (Articles 311-335) was singled out to deal with the protection of the marine environment, particularly against pollution from shipping, and to this end it was divided into two parts: the prevention of pollution of the sea by oil, and disposal of ship waste and refuse.

3.3.1.1 The Prevention of Pollution of the Sea by Oil

Although Saudi Arabia is not party to the 1958 HSC, the first article of Chapter 12 of the SLR provides expressly for the incorporation of the OILPOL conditions as ships into the Saudi statute. Article 311 reads:

The condition prescribed in the International Convention for the Prevention of Pollution of the Sea by Oil, 1954 as amended in the year 1962, shall be applicable to Saudi ships

Indeed, the Saudi legislation commences its provisions by defining the terms “oil” and “oily mixture” in similar terms to those contained in Article I of the OILPOL Convention as amended in 1962. Thus, “oil” is identified in the SLR as: *crude oil, lubricating oil and heavy diesel oil*. OILPOL adds “fuel oil” to this list. “Oily mixture” means: *a mixture with an oil content of 100 parts or more in every million parts of the mixture*³¹³. In what follows, there will be an attempt to examine the general features of this Saudi national legislation.

(a) The Scope of Application

Two articles are laid down in the Saudi legislation to deal with discharge of oil and oily mixtures. According to Article 313 of the SLR:

Oil tankers of a gross tonnage of 150 tons or more and other vessels of a gross tonnage of 500 tons or more shall be prohibited from discharging oil or oily mixture within a distance of 100 nautical miles from the Kingdom’s coasts, measured from the base line of measurement.

Similar provisions are contained in Article 314 as to Saudi oil tankers and other vessels, with the same prescriptions as above, but the prohibited area was extended

in this case to cover all the seas or the prohibited zones of the seas as mentioned in Annex A to the OILPOL Convention. These provisions are found also in the Convention³¹⁴. Annex A to the Convention as amended in 1962 classifies the sea areas of the Red Sea within a distance of 100 miles, measured from the baselines of the littoral states' territorial seas (and the Saudi Arabian area, falling within a distance of 100 miles from the baselines) as Prohibited Zones³¹⁵. The Saudi Regulations are also in line with the OILPOL Convention as amended in 1969 in relation to the exceptions to the said provisions. Article 315 of the SLR regards the discharge of oil and oily mixtures as lawful, subject to specific conditions:

1. For vessels other than oil tankers, if:
 - *the ship is proceeding en route;*
 - *the rate of oil or oily mixture discharge does not exceed 60 litres per mile;*
 - *the oil content of the oily mixture is less than 100 parts per million parts of the mixture;*
 - *the discharge is made as far as possible from the coast.*
 -
2. For oil tankers, if:
 - *the oil tanker is proceeding en route;*
 - *the rate of oil or oily mixture discharge does not exceed 60 litres per mile;*
 - *the total quantity discharged by the tanker on a ballast voyage does not exceed 1/15000 of its total cargo-carrying capacity.*

However, the said conditions do not apply, according to Article 316 of the SLR:

to the discharge of clean ballast water which does not leave any traces of oil on the surface of the water, when the tanker is stationary in calm waters on a clear day.

Identical provisions are provided under Article 111 of the OILPOL Convention as amended in 1969.

In addition to the above mentioned exceptions, there are certain cases where reference to the exclusion is made by implication. Article 321 of the SLR, which imposes the recording in the Oil Recording Book of oil escapes or emergency discharges, enumerates the emergency cases to include:

1. *The discharge of oil or oily mixture for the purpose of securing the safety of the ship, preventing damage to the ship's cargo or saving life (at sea);*

2. *The escape of oil or oily mixture resulting from damage to the vessel or from a cause beyond control.*

However, the port authorities must be notified by the Master of the ship immediately after occurrence of the incident³¹⁶.

These provisions are identical to Article IV of the OILPOL Convention as amended in 1969. Thus, the Saudi legislation and the Convention are similar also in having some ambiguity on these provisions. The Saudi statute, as mentioned earlier, leaves it to the Master of the ship, without laying down any criterion, to take “appropriate and reasonable action” to prevent or minimise the escape of oil. In the same way, the Convention provides, in order to prevent or minimise the escape for “taking all reasonable precautions”, again without stipulating a criterion. It is certain that the wide interpretation of these conceptions may affect the efficiency of both instruments. However, it should be noted that the last group of exceptions are expressly mentioned in the Convention, while in the Saudi legislation, they are referred to by implication. The impression which can be drawn from this, is that while the Saudi regulations allow the discharge of oil and oily mixture in cases of emergency, such discharge is to be at the minimum possible level. This is clear in the text of Article 321 of the SLR, which emphasises the necessity to indicate the:

... reasons for and the circumstances of [emergency] escape or discharge, as well as the precautionary measures taken to reduce or stop the escape.

On the other hand, the Saudi legislation excludes warships from the application of its provisions, though at the same time, such ships have to *take such precautions as may be necessary to prevent pollution of sea water*³¹⁷. A similar approach is found in Article II of the OILPOL Convention as amended in 1962, but the latter adds to naval ships, “ships used as naval auxiliaries”. This addition, however, does not seem of great significance, since ships used as naval auxiliaries are regarded in reality as naval ships. Therefore, it is unimaginable that the Saudi legislator intended to exclude naval auxiliary vessels from the said exemption.

In any case, the exclusion of warships from being subject to the provisions of the Saudi legislation is in full conformity with the 1982 United Nations Convention. The Convention, while confirming the immunity of warships when

enjoying innocent passage in the territorial sea of a coastal state³¹⁸, authorises the latter to adopt laws and regulations for the protection of the marine environment therein³¹⁹, and makes the flag state responsible for any loss or damage to the coastal state resulting from the non-compliance by a warship with the said laws and regulations³²⁰. Furthermore, the Convention provides that in its EEZ the coastal state, as mentioned earlier, is also granted jurisdictional rights to protect the marine environment³²¹, but in so doing, it should observe the sovereign immunity of warships and naval auxiliaries, and any other vessels or aircraft owned or operated by a state and used only on government non-commercial service. However, these categories of ships should, for their part:

*act in a manner consistent, so far as is reasonable and practicable, with [the] Convention*³²².

The adoption of these provisions in the LOSC, without being a matter of controversy at UNCLOS III, reflects their status as general international legal rules, as they were adopted previously in two major international conventions, the OILPOL Convention (Article II) and the MARPOL Convention (Article 3(3)), something which appears to have been taken into account by the Saudi legislator.

(b) Methods of Enforcement

Without an effective implementation system, any legal instrument will remain no more than ink on paper. The Saudi legislation established a number of methods, aimed at the achievement of the fundamental goal represented in the prevention of the discharge of oil and oily mixtures in the prohibited zones. These methods include: keeping record books, inspecting the record books, monitoring ships and the establishment of an information centre and imposing penalties.

1. Keeping Special Record Book

Under Article 320 of the SLR, all tankers and other ships shall carry a special “Oil Record Book”, in which certain operations are to be registered whenever they take place. As is the case with the Convention, the Saudi legislation differentiates between tankers and other vessels. As to oil tankers, the operations which should be registered include:

1. *Loading of the oil shipment.*
2. *Transfer of oil from one tank to another during the voyage.*
3. *Offloading of the oil shipment.*
4. *Filling cargo tanks with ballast water.*

5. *Cleaning of cargo tanks.*
6. *Discharge of ballast water containing oil.*
7. *Discharge of oily residues.*
8. *Discharge of water containing oil from machinery space bilges and the method followed in such discharge.*

With regard to other ships, the operations include:

1. *Filling bunker fuel tanks with ballast water or cleaning such tanks.*
2. *Discharge of ballast water or cleaning water containing oil from bunker fuel tanks.*
3. *Discharge of oily residues.*
4. *Discharge of ballast water containing oil and machinery space bilges, and the method followed in such discharge.*

These details are found in Article IX of the OILPOL Convention and Annex - Form of Oil Record Book as amended in 1954. However, unlike the Saudi legislation, the Convention in the said Annex demands the mentioning of the ship or the tanker's name, and the total cargo carrying capacity in the case of oil tankers. The omission of these "minor" details in the Saudi legislation, although not justified, does not seem to be of great significance.

In addition to the "Oil Record Book", the Saudi legislation goes further to provide for the keeping of a special record in the barges and boats which carry fuel to ships at Saudi ports. The record shall include information on the following operations and the time of their performance: loading of the barge with fuel, quantities discharged to ships, the name of the ship and her anchorage location³²³.

2. The Inspection of the Oil Record Book

In order to make sure that the Oil Record Book, which is expected to be kept permanently on board each ship or oil tanker, contains all the stipulated information, Article 323 of the SLR empowers the marine inspection authorities, in co-operation with the competent agency at the Ministry of Petroleum and Mineral Resources, with

the right to examine the oil record books of all Saudi and foreign ships in the ports of the Kingdom.

Similar provisions are adopted under Article IX(4) of the OILPOL Convention as amended in 1969. But it is to be noted that the Convention goes further in indicating that the inspection process may be conducted on board the ship to which

the Convention applies³²⁴; thus, such a right may be enjoyed by Saudi Arabia as a party to the Convention rather than through her municipal regulations! On the other hand, the Saudi ship inspection rules also find support in the 1982 United Nations Convention. Article 227 of the latter provides for non-discrimination against foreign vessels by the coastal state when exercising rights or performing duties concerning the protection and preservation of the marine environment. The same rule is adopted under the Saudi legislation, as mentioned earlier. Under Article 226, the coastal state is entitled to examine certificates, records or such other documents as the vessel is required to carry by generally accepted international rules and standards or any similar documents which it is carrying. Rather, the LOSC provides for further physical inspection of the vessel when:

- (i) *there are clear grounds for believing that the condition of the vessel or its equipment does not correspond substantially with the particulars of those documents;*
- (ii) *the contents of such documents are not sufficient to confirm or verify a suspected violation; or*
- (iii) *the vessel is not carrying valid certificates and records*³²⁵.

The LOSC goes further, as it entitles the coastal state where there are clear grounds to believe that a ship navigating in its territorial sea or exclusive economic zone has violated the laws and regulations of such a state respecting the protection of the marine environment, to inspect the ship itself³²⁶. Thus, the authorities granted to states are wider, under the LOSC than the OILPOL Convention and the Saudi municipal legislation, a matter which requires reconsideration by the Saudi legislator with regard to the ship inspection issue.

3. **Monitoring and Information Systems**

Article 324 of the SLR establishes a monitoring system, according to which the competent port authorities, in co-operation with the competent agencies of the Frontier Force and Coast Guard, are to observe ships

while at anchor in the Kingdom's ports or during their presence in its territorial waters, and incidents of pollution of water by oil shall be communicated to the port authorities. Port authorities may detain the ship which commits a violation.

No definition or limitations have been given to the term "violation", but, logically, it may refer to the violation of the national regulations concerning the protection of

the marine environment. These principles are stipulated under the 1982 Convention; rather the Convention adopts the coastal state right to detention, not only when the violation occurs in its territorial sea, but also when the violation occurs within its EEZ³²⁷.

Taking into account the fact that there cannot be an effective monitoring system without an effective information system, the SLR provides for the establishment in the Ministry of Communications of a centre, the objective of which is to receive information relating to pollution in Saudi ports and territorial waters.

4. Imposition of Penalties

The contravention of the regulations respecting the prevention of pollution of the sea by oil is punishable under the Saudi legislation. In this respect, the SLR distinguishes among four levels of violation. First, the discharge of oil and oily mixture by oil tankers and other ships, as prescribed above, in the prohibited areas. This will make the captain or owner of the ship

*liable to imprisonment for a period not exceeding one year, and to a fine not exceeding twenty thousand Saudi riyals [around \$5400] or the equivalent thereof, plus reimbursement of the pollution, removal expenses, or to any one of these two penalties. The authorities concerned may detain the ship until payment of the prescribed fine has been effected*³²⁸.

Second, the violation of Article 320 of the SLR which stipulates the necessity to keep an oil record book. Here, the captain of the ship will be liable to:

*a fine not exceeding three thousand Saudi riyals (\$800), or the equivalent thereof*³²⁹.

Third, the case where the shipmaster prevents the competent authorities from inspecting the oil record book or refuses to submit it to the said authorities; here, the punishment is:

*imprisonment for a period not exceeding six months, with a fine not exceeding three thousand Saudi riyals (\$800), or the equivalent thereof, or with any one of the said two penalties*³³⁰.

Fourth, the violation of Article 321 according to which oil escapes or emergency discharges are to be recorded in the Oil Record Book. This will make the shipmaster liable to:

*a fine not exceeding five thousand Saudi riyals (\$1400) or the equivalent thereof*³³¹.

On these sanctions decided in the Saudi legislation, a number of comments may be made. First, there is a great deal of flexibility in these penalties, as in each case the reference is given to the maximum limit rather than the minimum, and further, in certain cases there is room for the competent authorities to choose among more than one penalty. However, this flexibility may be misleading. Article 386, for example, imposes, as mentioned earlier, a fine not exceeding 3000 Saudi riyals on violation of Article 320. But Article 320 provides for keeping an Oil Record Book, in which detailed information should be registered whenever specific activities take place. Thus, it is not clear which action is intended; is it the non-keeping of the record book on board a ship or the non-registration of the said data? Also, if the provision refers to failure to keep the data, the question here is what is the minimum limit to which the said sanction is applicable? The legislation adapts penalties regarding the discharge of oil and oily mixture, but there are no specific criteria for the quantity of discharged oil which deserves the application of the said sanctions. Second, the financial penalties referred to may now be regarded as “out of date”, since the present value of the Saudi riyal (or any other currency) is not what it was in 1974 when the Saudi legislation was issued. Third, the place of penalty is not the same in all cases. With regard to the first kind of infringement, i.e. the discharge of oil or oily mixture in the prescribed areas, the sanction is to be imposed upon either the master of the ship or the owner. No reference has been made to the criterion whereby the competent authorities may decide which of them is to be subject to the penalty. In other cases of violations, the sanctions are to be imposed only upon the master of the ship, rather than the owner.

The OILPOL Convention, for its part, adopts the principle of penalties. The non-observance of the Convention’s provisions preventing the pollution of the sea by oil, and providing for keeping and oil record book, is seen as a violation punishable by the law of the country where the ship is registered. The Convention provides further that the sanctions should be “sufficiently severe”, and in any case not less severe than those sanctions that can be imposed by the law of the country

concerned, regarding similar violations within the limits of its territorial sea³³². These provisions are not without ambiguity, since there is no reference to any guidance as to the degree of severity of the said sanctions, something which results in interpretation dispute between the coastal state and the port state on the one hand and the flag state on the other. The same principles, with the same vagueness, are repeated, unfortunately, in the LOSC, which stipulates in its Article 217(8) that:

penalties provided for by the laws and regulations of States for vessels flying their flag shall be adequate in severity to discourage violations wherever they occur.

However, in comparison with the Saudi legislation there is a big difference as to the body empowered to impose the penalties. According to the Saudi legislation, this body is the Saudi authorities, while under international law, represented in the OILPOL Convention and the LOSC, it is only the flag state, which is authorised to apply the penalties against violating vessels. Thus, the Kingdom as a party to both Conventions has to reformulate its national statute to conform to the provisions of these Conventions.

5. Special Requirements concerning the Construction of Saudi Ships and Ports Facilities

Vessels and tankers are constructed to navigate various oceans and straits of the world. Thus, the agreement of nations on ships' construction specifications and standards becomes a necessity, since, as Henkin rightly states:

*unilateral regulation of tanker construction in particular would make it possible for one state controlling an important passage to prescribe specifications for the whole world.*³³³

The OILPOL Convention is the first global move to reduce chances of sea accidents that result from unregulated construction of ships. Annex C to the Convention as amended in 1971 contains a number of detailed provisions, which cover this issue. According to Article VI bis of Annex I to the Convention, every oil tanker to which the Convention applies is required, within two years after the date of entry into force of the Convention, to comply with the said provisions, if such a tanker falls into any of the following categories:

- (a) a tanker, the delivery of which is after 1 January 1977; or*
- (b) a tanker to which both the following conditions apply:*

- (i) *delivery is not later than 1 January 1977; and*
- (ii) *the building contract is placed after 1 January 1972, or in cases where no building contract has previously been placed, the keel is laid or the tanker is at a similar stage of construction, after 30 June 1972.*³³⁴

The LOSC, for its part, asserted flag states' responsibility to observe international standards with regard to the construction of the vessels flying their flags. Article 217(2) of the Convention reads:

States shall, in particular, take appropriate measures in order to ensure that vessels flying their flag or of their registry are prohibited from sailing until they can proceed to sea in compliance with the requirements of the international rules and standards ..., including requirements in respect of design, construction, equipment and manning of vessels.

Saudi Arabia has clearly expressed its acceptance of the OILPOL Convention conditions with regard to the construction of her own tankers. Article 319 of the SLR reads:

The building specifications of Saudi oil tankers to be registered after the first of January 1977, must comply with the conditions prescribed in Annex (C) of the Convention mentioned above.
(OILPOL Convention)

On the other hand, Saudi Arabia has committed herself to provide her oil-loading terminals and ship repair ports with adequate facilities to receive oily residues and mixtures from tankers and ships. Article 326 of the SLR, provides in this respect that:

In cooperation with the Ministry of Petroleum and Mineral Resources, studies and arrangements shall be made in order to provide oil loading terminals in the Kingdom with adequate facilities to receive oily residues from tankers.

The SLR contains also similar provisions with regard to all the Saudi ports including the ship repair ports³³⁵. Saudi Arabia has also committed herself to provide in her oil loading terminals,

adequate instruments and equipment to eliminate any pollution of the sea water by oil at such terminals or at the facilities attended therefore (Article 328 of the SLR).

The same was stipulated with regard to all Saudi ports including the ship repair ports³³⁶. Such requirements are contained in Article VIII of the OILPOL Convention as amended in 1962. This comes as a response to Article 311 of the SLR, which stipulates, as mentioned above, the application of the Convention's provisions to Saudi ships. Indeed, the said facilities have been provided and proved reasonably successful, especially in combating marine pollution resulting from the Gulf War hostilities.

Apart from ships and oil tankers, but in connection with the prevention of the pollution of the sea by oil, Article 325 of the SLR holds the Saudi agencies which are responsible for the operation of oil loading terminals and offshore floating installations and platforms for oil pumping and producing operations,

responsible for any oil escaping from such installations or terminals to the sea for the elimination of pollution, and shall be liable for appropriate compensation for damages.

The significance of this provision, is the fact that it is the first of its kind in the Saudi municipal regulations to deal with pollution resulting from sea-bed activities. This establishment of liability and responsibility may be seen as one of the measures stipulated in Article 214 of the LOSC, which obliges the states to:

... take ... measures necessary to implement applicable international rules and standards ... to prevent, reduce and control pollution of the marine environment arising from or in connection with sea-bed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction ...

3.3.1.2 Discharge of Ship Waste and Refuse

The second chapter of the SLR is singled out to deal with discharge of ship waste and refuse. In this respect, the following provisions have been laid down.

First, under Article 333,

all ships are prohibited from throwing waste matter, food leftovers and ship refuse in the ports, navigation channels or territorial waters of the Kingdom of Saudi Arabia.

To this end,

Arrangements must be made at each port to collect waste matter, food leftovers and ship refuse from ships lying at anchor in the port, and to dispose of such waste and refuse in accordance with the instructions issued by the Ministry of Health³³⁷.

The violation of this provision by any ship entails punishment by a fine not exceeding 10,000 Saudi riyals (around \$2800), to be imposed on the master of the ship³³⁸. Although Saudi Arabia is not a party to the MARPOL Convention, these provisions are inspired by this Convention, which provides in its Article 4(2) that:

Any violation of the requirements of the present Convention within the jurisdiction of any Party to the Convention shall be prohibited and sanctions shall be established thereof under the law of that Party..

In this text, the MARPOL Convention employs the term “jurisdiction” rather than the “territorial seas”, but the conception of “jurisdiction”, however, includes the territorial sea. The right of the coastal state to prescribe in its territorial sea any legislation relating to pollution (as long as such an action does not hamper the right of innocent passage), is granted under customary and conventional rules³³⁹. Rather, the LOSC grants this right to the coastal state in the EEZ, which extends up to 200 n.m. from the baselines³⁴⁰. Thus, in this regard, the Saudi legislation falls short of international law, since the Kingdom has not yet declared its own EEZ.

Secondly, the SLR singles out Saudi ships with a special article, according to which, these ships are:

*prohibited from releasing waste matter or ship refuse at sea within a distance of 12 miles from the coast*³⁴¹.

Any violation of these provisions renders the master of the ship liable to a fine not exceeding 10,000 Saudi riyals (around \$2800)³⁴². If we compare this with the MARPOL Convention, we find that the Convention goes further than the Saudi legislation. Annex IV to the Convention prohibits the discharge of sewage from ships within 4 miles of land, unless a ship has in operation an approved treatment plant, while between 4 and 12 miles from land, sewage must be comminuted and disinfected before discharge³⁴³. Annex V, dealing with the prevention of pollution by garbage from ships, prohibits the disposal of all plastics. It also specifies minimum distances from land for the disposal of all the principal kinds of garbage, ranging between 3 and 25 miles³⁴⁴. Thus, the Saudi legislation does not seem to be in conformity with these provisions, since the former, as mentioned above,

prohibits without discrimination the discharge from the Saudi ships of all waste matter and ship refuse at sea within a distance of 12 miles from land.

However, Saudi Arabia is not a party to the MARPOL Convention. Moreover, the very slow general acceptance of the provisions of these Annexes to the Convention suggests that such provisions have not yet passed into customary international law. On the other hand, Saudi Arabia has recently acceded to the LOSC, which allows coastal states to establish a 200 n.m. EEZ in which all states are under a duty to comply with the laws and regulations adopted by the coastal state, amongst which are those concerning the protection and preservation of the marine environment³⁴⁵. Thus, the disposal by Saudi ships of waste matter and refuse even beyond 12 n.m. from the baselines of one state will be a violation of the LOSC provisions in the case that such a state has declared an EEZ, something which necessitates the reconsideration of the Saudi regulations. For the Kingdom herself, it is necessary to declare her own EEZ, since this will give her greater power to regulate for the protection of the marine environment beyond the territorial sea. Although it is the MARPOL Convention which allows states to control pollution from vessels, occurring even outside their territorial waters, the LOSC provisions on the EEZ can also be invoked to strengthen coastal states' control of pollution beyond 12 n.m., but within the 200 n.m. EEZ.

3.3.2 The National Contingency Plan for Combating Marine Pollution by Oil and Other Harmful Substances in Emergency Cases (NCP)

This Plan was adopted by the Environmental Protection Co-ordinating Committee (EPCC) in 1984, two years after the adoption of the Jeddah Convention. The NCP, which consists of 9 articles and an Appendix, came as a response to the obligation to which the Kingdom had bound herself under the Kuwait and Jeddah Regional Conventions and their Protocols concerning Regional Co-operation in Combating Pollution by Oil and Other Harmful Substances in Cases of Emergency³⁴⁶. Article 2 of the Plan defines its objectives as follows:

[The] Plan is aimed to formulate a system for responding immediately to, and coordinating the actions required, to protect the Saudi marine and coastal environment from the effects of oil spilled. This will be done by making full use of the available resources, both regionally and internationally. This entails

mobilizing and coordinating all of the available equipment, manpower and expertise necessary to combat spill situations.

The plan also aims to cope with the Kingdom's obligations embodied in the regional and international agreements for the protection of the marine environment and any other relevant agreement to which the Kingdom is party.

In the following part, the general features of the Plan will be highlighted.

3.3.2.1 The Organizational Framework

The Plan identifies three levels of response to incidents of pollution by oil and other harmful substances: national, regional (in the two regions of the Red Sea and the Arabian Gulf) and local levels³⁴⁷. Within this context, many governmental bodies and agencies participate in adopting, reviewing and carrying out national policies and regulations, as laid down in the Plan. These are as follows:

(a) National Committee for Marine Pollution Combating

The Committee consists of representatives for the following agencies: Ministry of Defence (MEPA as chairman and the Royal Navy), Ministry of Interior (represented by the Frontier Forces, Civil Defence Authorities and the General Secretariat for Higher Commission for Industrial Security), Ministry of Petroleum and Mineral Resources, Ministry of Municipality and Rural Affairs, Ministry of Finance and National Economy, Ministry of Industry and Electricity, Saudi Ports Authority, General Organization for Saline Water Distillation and the Royal Commission for Jubail and Yanbu³⁴⁸. The reason behind the selection of these bodies to the membership of the Committee is that the marine environment falls within their competence in one way or another.

The objectives of this Committee have been defined to include:

- *to review the policy for controlling oil pollution and other harmful substances;*
- *to review the plan;*
- *to approve the area plans;*
- *to follow-up the implementation and management of the plan;*
- *to review the expenses of the plan;*
- *to issue recommendations for equipment purchase;*
- *to review the status of the training programme required for the plan;*
- *to discuss matters related to marine pollution; and*

- *to identify the responsibility of the pollutor and take the necessary measures for formulating a claim and follow-up its settlement*³⁴⁹.

The decisions of this Committee are to be approved by the President of the Environmental Protection Co-ordinating Committee³⁵⁰.

(b) MEPA as a Central National Agency

MEPA (the central administration for all environmental activities) was appointed as a body responsible for planning and co-ordinating response activities to control oil pollution in emergency situations at the national level. To this end, it is to:

- *formulate the national policy for oil pollution control in the Kingdom's marine environment;*
- *act in accordance with the protocols of regional cooperation in the area of combating pollution, and any other similar regional or international obligation in the future;*
- *undertake surveillance, monitoring and studies necessary for tracking of oil spills and the determination of oil pollution impact;*
- *manage the plan and co-ordinate implementation procedures;*
and
- *determine the equipment required by the plan*³⁵¹.

(c) Area Operations Committee

Article 3(b) of the Plan provides for the establishment of two Area Operations Committees, one each in the Red Sea and Arabian Gulf regions. The membership of this committee is given to the concerned responsible personnel from the following authorities: Ministry of Defence (represented in MEPA as a Regional Co-ordinator and Chairman of each Committee), Ministry of Interior (represented in the Coast Guard and Civil Defence Authorities), Ministry of Petroleum and Mineral Affairs, Ministry of Municipality and Rural Resources and the Saudi Ports Authority. It is unknown, however, why membership of the said Committee is confined solely to the said authorities, while there are certain authorities which do not enjoy this membership, although they are directly concerned with oil pollution response activities, such as the General Organization for Distillation of Saline Water and the Royal Commission for Jubail and Yanbu.

The Area Operations Committee is responsible for planning and co-ordinating the response activities for pollution situations in the two regions of the Red Sea and Arabian Gulf, where the situation necessitates area-wide efforts³⁵². To this end, it is to study the local contingency plans, identify the necessary manpower and equipment for combating pollution in the concerned areas, follow up reports concerning pollution situations in the area, follow up the training of staff in response activities, provide, in co-operation with the Ministry of Health, medical supervision to those affected by pollution incidents and prepare and develop a contingency plan for the whole area³⁵³. This Area Plan contains all executive procedures and instructions that are necessary for response operations in case of pollution in the relevant areas, including:

- a compilation of local area plans;
- a surveillance and monitoring system for discovery and notification of pollution;
- a command system for alerting the Operations Committee;
- compilation of a manual for the Area Plan;
- identification of local support agencies involved in pollution response;
- inventory of manpower and equipment available for pollution response within the area;
- communication and logistic procedures for the allocation of manpower and equipment;
- identification of areas and water use facilities, which are particularly vulnerable to pollution;
- survey of potential pollution sources and determination of the maximum likely spill from each;
- giving instructions for obtaining oceanographic and marine meteorological data and estimating spill trajectories;
- keeping data records and instructions on the spill event and documentation procedures;
- determination of the preferable methods for the containment of pollution and cleanup and disposal techniques; and

- the assessment of the financial cost of combating any pollution event within the area³⁵⁴.

(d) Individual Government Authorities

Oil pollution, when it occurs, affects in one way or another a number of governmental authorities. These authorities are listed under Article 3(c) of the Plan as follows: Ministry of Defence (MEPA and Royal Navy), Ministry of Interior (Frontier Forces), Ministry of Petroleum and Mineral Resources and associated organizations and companies, Ministry of Industry and Electricity, Ministry of Municipality and Rural Affairs, Saudi Ports Authority, General Organization for Distillation of Saline Water and Royal Commission for Jubail and Yanbu. These authorities all have marine or coastal facilities.

All the governmental bodies, mentioned above, which form the organizational framework of the NCP, participate in carrying out the various activities related to the emergency response operations associated with pollution. The central role, however, is given to MEPA, which is responsible for coordinating all these activities. The Authorities of Ministry of Petroleum and Mineral Resources, Saudi Ports, Civil Defence and Coast Guard, in co-operation with MEPA, undertake the operations of surveillance and monitoring in the Saudi maritime zones. The surveillance and monitoring activities include:

- *coastal surveillance;*
- *remote sensing;*
- *observation reports from military, civil and private aircraft and ships;*
- *any other practical means available (Article 5).*

All governmental authorities which have marine or coastal facilities, in co-ordination with MEPA, should:

provide necessary protection to these facilities including manpower, tools and equipment. Equipment should be operational and read for use in case of any pollution incident (Article 5).

With regard to the combat activities, under Article 5,

all organizations having marine or coastal facilities ... will undertake combat of pollution within their areas and shall provide adequate manpower and equipment. Outside these areas, MEPA

shall be responsible while Saudi Frontier Forces shall extend any necessary capabilities available (Article 5).

The said authorities are also responsible for:

clean up operations within their areas and shall provide adequate equipment and manpower. Outside these areas MEPA and the appropriate municipalities will undertake clean up activities within the scope of the responsibility of each of them; while the Frontier Forces will extend any necessary capabilities available (Article 5).

In consultation with the affected authorities, MEPA is to identify appropriate methods and sites for the disposal of collected oil and oiled debris. Also, MEPA, in co-operation with national universities and research centres, is the body responsible for conducting appropriate scientific studies related to the above-mentioned activities³⁵⁵.

3.3.2.2 Implementation Procedures

Under the NCP³⁵⁶, the implementation procedures followed in response to a pollution incident, are divided into 5 phases, starting with notification and ending with documentation:

(a) Notification

There is no specific organization responsible for this task. All authorities having marine or coastal facilities or marine activities should report any pollution incident to the Area Co-ordinator or MEPA (Article 6(1)).

(b) Evaluation

Following the receipt of emergency notification from the Area Co-ordinator, the Area Operations Committee is to meet to evaluate the situation.

The evaluation includes a number of points:

- 1. Classification of the size of pollution as indicated in the Plan Annex I³⁵⁷.*
- 2. Evaluation of the necessity for containment and clean up operation.*
- 3. Evaluation of the feasibility of various options in containment or clean up operations.*
- 4. Undertaking of relevant actions in commencing combating operations according to the area plan (Article 6(2)).*

(c) Containment and Preventative Measures

This phase represents the first real step in direct dealing with the pollution.

It includes:

- *attempts to stop pollution from its sources;*
- *placement of booms to prevent spread of spill and to protect sensitive installations and locations;*
- *minimizing hazards of the pollution incident;*
- *use of dispersant specified by MEPA and already agreed upon with the concerned authorities (Article 6(3)).*

(d) Cleanup and Disposal

At this stage, the key response figures in the local sites are to use the appropriate means, e.g. skimmers, sorbents, dredgers etc., to collect oil and other harmful substances within their facilities. Afterwards, they must follow the Area Plan to identify the priorities of the areas to be cleaned and the areas for the disposal of aggregated substances. These operations are carried out under the supervision of the Area Operations Committee (Article 6(4)).

(e) Documentation

Following the ending of the cleanup and disposal activities, the next step, which represents the last stage of the implementation procedures, is the collection of data and information on the protection and combating activities, the evaluation of the effectiveness of these activities, the assessment of the costs and the study of environmental impacts. This task is carried out by the Area Operations Committee in co-operation with the key response personnel.

Within 30 days from the completion of the response operations, the Area Co-ordinator has to submit a comprehensive report to MEPA, containing a description of the incident's development, actions taken, resources utilised, financial costs and the problems encountered in the response operations (Article 6(5)).

From the above review, it is clear that with what it contains of organizational and procedural rules, the Plan may be viewed as a local executive guideline for combating oil spill and hazardous substances in emergency cases. By the adoption of the Plan, Saudi Arabia fulfils her duty under the LOSC, which stipulates in its Article 199 that:

... States shall jointly develop and promote contingency plans for responding to pollution incidents in the marine environment.

However, examination of the Plan's provisions gives rise to certain questions. First, at the local level and within the maritime areas belonging to them, the Plan entrusts the response operations to certain governmental authorities, but here, the Plan does not provide specific limits for the said areas, something which may lead to confusion between these authorities and also to some delay in the protection and combating activities. Secondly, despite the fact that the Plan in itself represents a response to the Kingdom's obligations, particularly under the two regional Conventions of Kuwait and Jeddah, it does not contain any reference to "co-ordination considerations", either with the other Contracting Parties to the said conventions, or with the two regional Marine Emergency Mutual Aid Centres, established under the two Protocols to the Conventions concerning Regional Co-operation in Combating Pollution by Oil and Other Harmful Substances in Cases of Emergency. This is despite the fact that both Conventions similarly provide that:

The Contracting Parties shall co-ordinate their national plans for combating pollution in the marine environment by oil and other harmful substances in a manner that facilitates full co-operation in dealing with pollution emergencies³⁵⁸.

3.3.3 Other Scattered Provisions on Marine Pollution Control

Apart from the Seaports and Lighthouses Regulations and the National Contingency Plan for Combating Marine Pollution by Oil and Other Harmful Substances in Emergency Cases, in Saudi Arabia, there is no codified body of municipal regulations dealing with the other aspects of marine pollution. Nevertheless, there exist limited general references, scattered in some regulations. Article 48(d) of the Quarantine Bill³⁵⁹, for example, prohibits the disposal of residues and faecal substances, including stagnant waters at the ship bottom, before disinfection.

The Environmental Protection Standards, issued in 1982, identified specific standards for the permitted disposal of contaminated waters in the Saudi Arabian coastal waters³⁶⁰. The Environmental Protection Standards for the Control of

Disastrous Wastes, issued in 1993³⁶¹, defines disastrous wastes, which should not be discharged into the sea waters, as follows:

- house sewage waters and other wastes passing through the sewage network to the manipulation unit;
- the final discharge of industrial waters and air pollutants emanating from fixed sources;
- returned irrigation waters; and
- mining residuals, remaining in the mines during exploitation operations³⁶².

Moreover, the Regulations of Fishing, Investment and Protection of Marine Living Resources in the Territorial Waters³⁶³, and its Executive Bill³⁶⁴ contain three provisions concerning the protection of the marine environment. Article 6 of the Regulations prohibits coastal dredging and filling operations except with prior permission from the Ministry of Agriculture and Waters in co-ordination with the National Commission for Wildlife Conservation and Development. This approach is also adopted under the Bill³⁶⁵, which further prohibits the residues of laboratories and factories, sewage waters, chemicals, petroleum substances, ship oils, or any other harmful liquids from being dumped in the Saudi maritime zones³⁶⁶. The violation of any of these provisions entails imprisonment for a period of time not exceeding six months, or a fine not exceeding 10,000 Saudi riyals (around \$2800) or both penalties³⁶⁷.

From the foregoing examination of the current Saudi national legislation relating to the marine environment, it is obvious that such legislation, although representing a positive step in the proper direction, needs to be developed to cope with recent legal developments, both of the international and regional levels, while also achieving better protection for the Saudi marine environment.

The present national legal framework is not sensitive enough to the problems of marine pollution, since legislation so far adopted in Saudi Arabia touches only specific aspects of the pollution problem. The Saudi regulations deal basically, as indicated above, with oil pollution and in general terms, discharges from ships. This specific concern about shipping pollution is understandable, as the Arabian Gulf and the Red Sea both suffer heavy traffic of oil tankers. However, at the same time, the Gulf in particular suffers offshore drilling operations, something

which poses a lasting threat of damage to the marine environment , and yet there is no piece of legislation dealing with oil pollution from sea-bed activities. Likewise, other kinds of pollution, such as pollution by dumping, pollution from land-based sources and pollution from other human activities, have not been addressed by the Saudi municipal regulations. Nor are the relevant provisions of the Seaports and Lighthouses Regulations designed specifically to deal with shipping pollution free from deficiencies, since there is no provision prohibiting the throwing of harmful substances or dead animals into the sea waters. Furthermore, the Regulations do not provide for keeping on board the ship a cargo record, similar to the oil book record. In brief, at the national level, Saudi Arabia which has demonstrated a great concern with the marine pollution issues, has to develop its already existing regulations, to adopt new regulations to face the various sources of marine pollution, and to develop effective monitoring and information systems.

Conclusion

The previous analysis reveals that Saudi Arabia has dealt seriously with the problem of marine pollution, and the first real serious step in this context was the establishment of MEPA as a central governmental authority responsible for the protection of the environment in general, including the marine environment. In terms of the “legal protection”, the Saudi Arabian policy is of three dimensions, international, regional and national.

At the international level, of the major international conventions, Saudi Arabia acceded to the OILPOL Convention as amended, the 1969 International Convention on Civil Liability for Oil Pollution Damage and the 1982 United Nations Convention on the Law of the Sea, Part XII of which deals with the protection of marine environment. Thus, in the non-accession to the MARPOL Convention, the Kingdom seems to have been satisfied with its accession to the OILPOL Convention, which prohibits the discharge of oil and oily mixture within 100 nm from the coasts of the Red Sea and the Arabian Gulf, on the ground that both Conventions are the main multilateral instruments regulating pollution from ships. However, this assumption is not reasonable, since the MARPOL Convention contains a more comprehensive legal framework, under which the

discharge of all types of pollutants is completely prohibited, something which makes the excuse of the “costly reception facilities” also illogical. It would also be advisable for the Kingdom to be party to the London Dumping Convention of 1972 which prohibits the deliberate disposal of waste from ships and aircraft into the sea. The Kingdom is also invited to ratify the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes. Further, the Kingdom needs to convince the other littoral states in the Red Sea and the Arabian Gulf which have not yet adopted these international measures, especially those regulating oil pollution, to do so, as the nonadoption of such internationally agreed criteria will frustrate the other states’ efforts, since oil pollution does not know national boundaries.

At the regional level, in adopting the two Conventions of Kuwait and Jeddah, and their Protocols, the states of the two Regions of the Arabian Gulf and the Red Sea embody the regional co-operation in the context of the protection of the marine environment. They elaborated a vital system for combating pollution emergencies, and provided for the establishment of two Mutual Emergency Aid Centres. Both Conventions, as indicated above, impose general obligations on the Parties, but due to expressions employed such as “possible sources” and “applicable measures”, these obligations do not seem to be absolute. The enforcement system contained in both Conventions is not effective, and the Parties are free to formulate and enforce national measures for the detection and reporting of violations. As to the implementation of the two Conventions themselves, comparison seems to be unfair. The Regional Organization for the Protection of the Marine Environment, based in Kuwait, has shown a reasonable degree of effectiveness in the protection of the Gulf marine environment, while its counterpart in the Red Sea and Gulf of Aden area has not yet seen the light of day.

Moreover, in the Gulf, as mentioned earlier, three protocols have been introduced and attached to the Kuwait Convention in return for one protocol only in the Red Sea and Gulf of Aden area. In any case, whether in the Arabian Gulf or in the Red Sea, political disagreements among the Contracting Parties to these instruments remain the major obstacle standing in the way of more regional success as to the protection and preservation of the marine environment. Unfortunately,

some of these disagreements have developed into armed conflicts between the Parties (the eight years war between Iraq and Iran, parties to the Kuwait Convention) or even to the occupation of one state party by another (Iraq and Kuwait, States Parties also the Kuwait Convention, for example). Such problems undoubtedly overshadow these Conventions and their protocols and make their efficiency a doubtful matter.

At the national level, there still exist big gaps in the Saudi National legislation. The real municipal regulations on the protection of the marine environment are contained in the Seaports and Lighthouses Regulations of 1974, which regulate only oil pollution from ships, and in general terms, discharges from ships. Up to date, there are no specific regulations in Saudi Arabia to deal with oil pollution from sea-bed activities, pollution by dumping, pollution from land-based sources and pollution from other human activities. These considerations, plus the facts that Saudi Arabia is not party to certain major international conventions and that the two Regional Conventions of Kuwait and Jeddah are, as mentioned earlier, not free from deficiencies, necessitate the creation of new regulations and the review and development of the already existing legislation in such a way as to reflect the great concern of the Saudi authorities about environmental issues in general, and the marine environment in particular.

NOTES TO CHAPTER VII

1. Lothar Gundling, "Our Responsibility to Future Generations", 84 *AJIL*, (1990), p. 207, at p. 212.
2. E.B. Weiss, "Our Rights and Obligations to Future Generations for the Environment", 84 *AJIL*, (1990), p. 198, at p. 205.
3. T.C. Bacon, "The Role of the United Nations Environment Program (UNEP) in the Development of International Environmental Law", XII *CYIL*, (1974), p. 255, at p. 255.
4. D. Freestone, "The Conservation of Marine Ecosystems under International Law", in C. Redgwell and M. Bowman (eds.), International Law and the Conservation of Biological Diversity, Great Britain, Kluwer Law International, (1995), pp. 92-107, at p. 93.
5. For further details on the biological effects of marine pollution, see GESAMP, The State of the Marine Environment, London, Blackwell Scientific Publications, (1990), pp. 66-93.
6. It has been estimated that some 77% of marine pollution originates from the land and reaches the sea either waterborne or airborne, see GESAMP, The State of the Marine Environment, UNEP Regional Seas Reports and Studies No. 115, Nairobi (1990). For further information on this subject, see for example, Meng Qing-Nan, Land-based Marine Pollution, London, Graham & Trotman, (1987), especially Chapters 2, 3, 4 & 5; R.M. M'gonigle, "Developing Sustainability and the Emerging Norms of International Environmental Law: The Case of Land-Based Marine Pollution Control", XXVIII *CYIL*, (1990), pp. 169-224.
7. The marine pollution resulting from shipping was estimated to be some 12%, see *Ibid.* For further discussion on this topic, see for example S.A. Meese, "When Jurisdictional Interests Collide: International, Domestic and State Efforts to Prevent Vessel Source Oil Pollution", 12 *ODIL*, (1982-83), pp. 71-139; A.D. McIntyre, "Environmental Monitoring of the Oceans", 19 *MP*, (1995), pp. 497-502; D. Brubaker, Marine Pollution and International Law, London and Florida, Belhaven Press, (1993), Chapter 5.
8. Of the marine pollution incidents from the continental margins and the sea-bed activities, those that have been clearly remembered are the dramatic blow outs at oil wells, such as the January 1969 incident at Santa Barbara, see C.O. Okidi, Regional Control of Ocean Pollution, Legal and Institutional Problems and Prospects, The Netherlands, Sijthoff, & Noordhoff, (1978), at p. 50.
9. The "Area" has been defined by Article 1 of the LOSC as: the sea-bed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction. The "Area" comprises about 60% of the whole sea-bed of the world. The resources of the "Area" are considered as "common heritage of mankind", and can be explored or exploited only in accordance with the relevant provisions of the LOSC. For further information, see Part XI (The Area) of the LOSC, and Churchill and Lowe, *op. cit.*, Chapter I, note 10, Chapter twelve.
10. Art. 1 of the LOSC defines the term "dumping" as: (i) any deliberate disposal of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea; (ii) any deliberate disposal of vessels, aircraft, platforms or other man-made structures at sea. For more information on the subject, see for instance, D. Brubaker, *op. cit.*, note 7, Chapter 3; E.L. Hughes, "Ocean Dumping and its Regulation in Canada", XXVI *CYIL*, (1988), p. 155, particularly pp. 155-163.
11. The above-mentioned sources of marine pollution are identified in the LOSC, Articles 207-212.

12. UNEP/LAEA/IOC: Reference Methods and Materials: A Programme of Support for Regional and Global Marine Pollution Assessments. UNEP, October 1990, at p. 1.
13. Ia.A. Ostrovskii, "International Legal Protection of the Seas from Pollution", 3 *ODIL*, (1975-76), p. 287, at p. 288. The ship, a large tanker of about 119,000 tons oil registered in Liberia, split open on rocks, a few miles off the coast of Cornwall, England, spilling around 100,000 tons of crude oil into the sea. For a brief history of the accident, see the Liberian Board of Investigation Report on Stranding of Torrey Canyon, in 6 *ILM*, (1967), pp. 480-87.
14. See Churchill and Lowe, *op. cit.*, Chapter I, note 10, at p. 241; C.A. Fleischer, "The Lessons of the Ekofisk Bravo Blow-Out", in D.J. Cusine and J.P. Grant, (eds.). The Impact of Marine Pollution", London, Croom Helm Ltd., (1980), pp. 135-54.
15. *Ibid.*
16. *Ibid.*
17. A.E. Boyle, "Marine Pollution under the Law of the Sea Convention", 79 *AJIL*, (1985), pp. 347-72, at p. 347. The Convention was done in London. For the text, see II *ND*, (1973), at p. 557.
18. R. Kbaier and V. Sebek, "New Trends in Compensation for Oil Pollution Damage". 9 *MP*, (1985), pp. 269-79, at p. 269.
19. E.B. Weinstein, "The Impact of Regulation of Transport of Hazardous Waste on Freedom of Navigation", 9 *IJMCL*, (1994), pp. 135-72, at p. 135.
20. K. Topfer, "Assistance to Developing Countries in the Implementation of International Rules", 14 *MP*, (1990), pp. 259-63, at p. 259.
21. A.L. Springer, "Towards a Meaningful Concept of Pollution in International Law", 26 *ICLQ*, (1977), pp. 531-57, at p. 531.
22. A.L. Springer, The International Law of Pollution: Protecting the Global Environment in a World of Sovereign State, Westport, Connecticut, Quorum Books, (1983), pp. 63-84.
23. See J. Timagenis, The International Control of Marine Pollution, Vol. 1, Dobbs Ferry, New York, Oceana Publications, (1980), pp. 22-25.
24. J. Barrow and D.M. Johnston, The International Law of Pollution, New York, Free Press, (1974), pp. 6-7. The Group was set up as a permanent working party in 1969 by IMCO (now IMO), FAO, UNESCO and WMO, to advise the sponsoring organizations on matters relating to marine pollution, see M. Tomczak, "Defining Marine Pollution, a Comparison of Definitions Used by International Conventions", 8 *MP*, (1984), p. 311, at pp. 317-18.
25. UN. Doc. A/CONF. 48/14 and Corr. 1, Report of the United Nations Conference on the Human Environment, reprinted in 11 *ILM*, (1972), p. 1416. According to one commentator, the 1972 Conference is considered as the starting point of the concern shown by international law on the environment, see H.A. Llanos, "Marine Pollution in Latin American Jurisdictional Waters", 26 *ODIL*, (1995), pp. 151-59, at p. 151.
26. Art. 2. For the text, see 13 *ILM*, (1974), at p. 546.
27. Art. 1. For the text, see *Ibid.*, at p. 352. It is to be noted that the Paris Convention for the Protection of the Marine Environment of the North Sea Atlantic of 1992, designated to replace the 1974 Convention, contains a similar definition to that included in the LOSC

- (See Arts. 1(d) and 31 of the Convention.). For the text, see 32 *ILM*, (1993), at p. 1072; 8 *IJMCL*, (1993), p. 51.
28. Art. 2(a). For the text, see 15 *ILM*, (1976), at p. 290.
 29. Art. 1(a). For the text, see X *ND*, (1980), at p. 99; 17 *ILM*, (1978), at p. 511.
 30. Art. 1(3). For the text, see Arab League Educational, Cultural and Scientific Organization, Final Act of Jeddah Plenipotentiary Regional Conference on the Conservation of the Marine Environment and Coastal Areas in the Red Sea and Gulf of Aden, Jeddah, (1982), at p. 41.
 31. Art. 1(4).
 32. Meng Qing-Nan, *op. cit.*, note 6, at p. 6.
 33. See Churchill and Lowe, *op. cit.*, Chapter I, note 10, at p. 242. For a comparison of the marine pollution definitions used in international conventions, see M. Tomczak, *op. cit.*, note 24.
 34. D. Freestone, The Road from Rio: International Environmental Law after the Earth Summit, Hull, The University of Hull Press, (1993), at p. 4 (published also as an article in 6 *JEL*, (1994), pp. 193-218).
 35. *Ibid.* According to one commentator, a third source of international law should be recognized and distinguished from treaties and custom, and that could be called declaratory international law, see H. Chodosh, "Neither Treaty nor Custom: the Emergence of Declaratory International Law", 26 *TILJ*, (1991), pp. 87-124. Professor Freestone, however, does not support this suggestion. He rightly concludes that states are usually happier to sign declarations than treaties since their status is ambiguous: *if their status were to be clarified, then new means of preserving what has been called "carefully studied ambiguity" would be found.* See *Ibid.*, at p. 16.
 36. S. Kuwabara, The Legal Regime of the Protection of the Mediterranean against Pollution from Land-Based Sources, Dublin, Tycooly International Publishing Limited, (1984), at p. 30.
 37. G. Handl, "Territorial Sovereignty and the Problem of Transnational Pollution", 69 *AJIL*, p. 50, at p. 54.
 38. See D.W. Abecassis and R.L. Jarashow, Oil Pollution from Ships, International, United Kingdom and United States Law and Practice, London, Stevens and Sons, (1985), pp. 12-13.
 39. III *RIAA*, (1949), p. 1906, at p. 1965.
 40. *ICJ Repts.*, (1949), p. 4, at p. 22.
 41. 53 *AJIL*, (1959), p. 156, at pp. 160-61.
 42. S. Kuwabara, *op. cit.*, note 36, at p. 33.
 43. See for example Recommendations 86 and 92, note 24 in Report of the United Nations Conference on the Human Environment, *op. cit.*, note 25.
 44. D. Freestone, *op. cit.*, note 34, at p. 31.

45. In addition to an approximately 800 page Agenda 21, the Conference adopted a number of documents: Convention on Biological Diversity (June 5, 1992), Framework Convention on Climate Change (May 9, 1992), Rio Declaration on Environment and Development (June 14, 1992) and Statement of Principles for a Global Consensus on the Management Conservation and Sustainable Development of All Types of Forests (June 13, 1992). For the texts, see 31 *ILM*, (1992), at pp. 818, 849, 874 and 881 respectively.
46. G. Palmer, "New Ways to Make International Environmental Law", 86 *AJIL*, (1992), p. 259, at p. 266.
47. II *ND*, (1973), p. 557.
48. The 1954 International Convention for the Prevention of Pollution of the Sea by oil, as amended in 1962, 1969 and in 1971. *Ibid.*: The 1973 International Convention for the Prevention of Pollution from Ships (MARPOL), reproduced in 12 *ILM*, (1973), at p.1319. For more information about the MARPOL Convention, in particular, and its protocols and annexes, see G. Peet, "The MARPOL Convention: Implementation and Effectiveness", 7 *IJECL*, (1992), pp. 277-95.
49. The 1969 International Convention on Civil Liability for Oil Pollution Damage. II *ND*, (1973), at p. 602.
50. The 1969 International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, in II *ND* (1973), at p. 592.
51. The 1972 Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft, in II *ND*, (1973), at p. 670. Some of the above agreements were followed by protocols. These agreements and protocols are reprinted in H. Hohmann, Basic Documents of International Environmental Law, Vol. 2, Sect. IA, London/Dordrecht/Boston, Graham & Trotman, (1992).
52. W.L. Schachte, "The Value of the 1982 UN Convention on the Law of the Sea: Preserving our Freedoms and Protecting the Environment", 23 *ODIL*, (1992), p. 55, at p. 59.
53. This is a result of the colonialist state, which predominated in the 19th century and the first half of the 20th century. See D. Alheritiere, "Marine Pollution Control Regulation, Regional Approaches", 6 *MP*, (1982), p. 162, at pp. 162-63.
54. Report of the United Nations Conference..., *supra*, note 25.
55. UNEP/AIMS: Monitoring Coral Reefs for Global Change: Reference Methods for Marine Pollution Studies No. 61, UNEP, (1993), at p. I.
56. See Churchill and Lowe, *op. cit.*, Chapt. I, note 10, at p. 246.
57. *Ibid.*, pp. 246-47. For the texts of these instruments, see H. Hohmann, *op. cit.*, note 51, Sect. IB.
58. O. Schachter and D. Serwer, "Marine Pollution Problems and Remedies", 65 *AJIL*, (1971), p. 84, at p. 111.
59. S.B. Christiansen, "The Scientific Basis of Marine Pollution Control", 6 *MP* (1982), pp. 2-10, at p. 2.
60. Arts. 92 and 207-212. For further information on the relevant provisions of the Convention, see A. Boyle, *op. cit.*, note 17; J.I. Charney, "The Marine Environment and the 1982 United Nations Convention on the Law of the Sea", 28 *IL*, (1994), pp. 879-901.

61. Art. 93.
62. Art. 235.
63. Arts. 197-200.
64. Arts. 202 and 203.
65. Arts. 204-206.
66. For further details of the conservation of marine ecosystems under international law, see D. Freestone, "The Conservation of Marine Ecosystems...", *op.cit.*, note 4.
67. Thus, it was correctly stated by one author, that there is a pressing need for the formation of a new international convention for the protection of the oceans from pollution on the basis of the "precautionary principle". See W. Jackson Davis, "Global Aspects of Marine Pollution Policy, the Need for a New International Convention", 14 *MP*, (1990), pp. 191-97. For information on the "precautionary principle", see generally D. Freestone, "The Precautionary Principle", in R. Churchill and D. Freestone, International Law and Global Climate Change, London, Graham and Trotman, (1991), pp. 21-39.
68. Ali A. Douabul, Hamid T. Al-Saad and Solak A. Darmonoian, "Distribution of Petroleum Residues in Surficial Sediments from Shatt al-Arab River and the North-West Region of the Arabian Gulf", 15 *MPB*, (1984), pp. 198-200.
69. A.R.G. Price, T.T. Wrathall and S.M. Bernard, "Occurrence of Tar and Other Pollution on the Saudi Arabian Shores of the Gulf", 18 *MPB*, (1987), at p. 650.
70. MEPA, Report on the Ship Hitting in the Sea Area, (no date), as it was stated that between 1966-1991, the Arabian Gulf was subject to 26 major marine pollution accidents.
71. 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, at p. 2.
72. GESAMP, Reports and Studies No. 50, Impact of Oil and Related Chemicals on the Marine Environment, IMO, London, (1993), pp. 32-33, see also *Ibid.* According to another source, the oil spill was estimated to be around 4 million barrels, see A Preliminary Report on Modelling the Fate and Transport of AL-Ahmadi Oil Spill, prepared by the Research Institute (King Fahd University of Petroleum and Minerals), May 1991, at p.3. In its Statement of Claim, Submitted to the United Nations Compensation Commission, which was formed following the Gulf War with the aim of estimating of all damages caused by the Iraqi invasion of Kuwait, Saudi Arabia put the number as 10.8 million barrels. See Ecology and Environmental Inc., Environmental Impacts of the Gulf War on the Kingdom of Saudi Arabia, New York, (1994), at p. 11.
73. See G. Plant, "Legal Aspects of Marine Pollution During the Gulf War", 7 *IJECL*, (1992), p. 217, at p. 218.
74. See M.A. Gerges, "On the Impacts of the 1991 Gulf War on the Environment of the Region: General Observations", 27 *MPB*, (1993), pp. 305-14.
75. The Co-ordinating Committee consisted of: Saudi Arabian Oil Company (Saudi Aramco), Royal Commission for Jubail and Yanbu, Saudi Consolidated Electricity Company, Saudi Water Conversion Corporation, National Commission for Wildlife Conservation and Development, Saudi Royal Navy, Civil Defence Directorate, Ministry of Agriculture and Water, Ports Authority, Ministry of Municipal and Rural Affairs (Eastern Province), Damman Municipality and King Fahd University of Petroleum and Minerals. The

Scientific Subgroup, on the other hand contained MEPA, King Fahd University of Petroleum and Minerals, National Commission for Wildlife Conservation and Development and International Inter-agency Assessment Team, which included: United States Coastguard, United States Environmental Protection Agency, National Oceanic and Atmospheric Administration, United States Army Corps of Engineers, Australian Petroleum Institute, Ministry of Transport and Public Works (The Netherlands), the Australian Department of Art, Sport, the Environment, Tourism and Territories, Japanese Disaster Relief Team, and European Community Environmentalists. See MEPA, National Report ..., *op. cit.*, note 71. See also Nizar I. Tawfig and David A. Olsen. "Saudi Arabia's Response to the 1991 Gulf Oil Spill", 27 *MPB*, pp. 333-45. For information on Saudi Aramco's efforts in particular, see the paper prepared by Abdul-Rahman Al-Shahri, entitled "Saudi Aramco's Experience in Combating the 1991 Gulf Oil Spill", (1991).

76. *Ibid.*
77. *Majalat Al-Majalla*, London. No. 810, August 1995, at p. 20.
78. MEPA, (Response Centre for Marine Pollution). Annual Report on Response Actions to the 1993 Pollution Accidents. (1993). However, in the light of the extensivity of oil transport and exploitation actions in the Gulf region on the one hand, and the weakness of the information system on the other, it is expected that the number of pollution accidents is much more than has been reported above.
79. For further details, see O. Linden and others, State of the Marine Environment in the ROPME Sea Area, UNEP Regional Seas Reports and Studies No. 112, Rev. 1, UNEP, (1990), pp. 16-24; S.H. Amin, Marine Pollution in International and Middle Eastern Law, Glasgow, Royston Limited, (1986), pp. 36-47.
80. S. Lintner, S. Arif and M. Hatziolis, "The Experience of the World Bank in the Legal, Institutional and Financial Aspects of Regional Environmental Progress: Potential Application of Lessons Learned for the ROPME and PERSGA Programs", a paper presented to Regional Conference on Sustainable Use of the Marine Environment, held in Jeddah (Saudi Arabia) between 9 and 12 of October, 1995. Reprinted in Background Papers: Sea to Sea, Jeddah, (1995), pp. 163-98, at p. 169.
81. *Ibid.*
82. *Supra*, note 78.
83. H. Awad, "Role of Petromin Refining in Adding Crude Oil to Jeddah Coastal Waters, Saudi Arabia", 4 *Journal of the Faculty of Marine Science* (King Abdulaziz University, Jeddah), (1985), pp. 131-41.
84. A report made in 1989 by MEPA revealed that between 1983 and 1989 around 370 tons of contaminated materials had been released to a municipal lake (205 square km), located on the Jeddah coast. See MEPA, Technical Report on the Lake Contiguous to King Fahed Coastal City, February 1989.
85. For further details, see S. Lintner, *op. cit.*, note 80, pp. 170-71.
86. See Sadok Atallah, "Human Health Impacts Resulting from Degradation of the Coastal Environment", a paper presented to Regional Conference on Sustainable Use of the Marine Environment, held in Jeddah (Saudi Arabia) between 9 and 12 of October, 1995. Reprinted in Background Papers ..., *op. cit.*, note 80, p. 139, at p. 145.
87. *Ibid.*, at p. 147.

88. The Regulations were endorsed by Royal Decree No. M/27, of 19 April 1974. For text, see L.A. Glick, Trading with Saudi Arabia, London, Croom Helm, (1980), p. 22. For Arabic text, see Umm Al-Qura, Suppl. to No. 260, 9 November 1975; The Maritime Documents of the K.S.A., *op. cit.* Chapt. II, note 62, p. 22.
89. A copy of the Plan was obtained by the present author from the Archives of MEPA. See *infra*, pp. 395-402.
90. See *infra*, p. 340.
91. Action Plan for the Protection of the Marine Environment and the Coastal Areas of Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates, 17 *ILM*, (1978), p. 501.
92. See *supra*, note 29.
93. X *ND*, at p. 117, 17 *ILM*, (1978), p. 526..
94. Regional Organization for the Protection of the Marine Environment, Protocol concerning Marine Pollution resulting from Exploration and Exploitation of the Continental Shelf, ROPME, Kuwait, (1989).
95. Regional Organization for the Protection of the Marine Environment, Protocol for the Protection of the Marine Environment against Pollution from Land-Based Sources, ROPME, Kuwait, 21 February, (1990).
96. Action Plan for the Conservation of the Marine Environment and Coastal Areas in the Red Sea and Gulf of Aden, in *supra*, note 30, at p. 20.
97. See *supra*, note 30.
98. *Ibid*, p. 71.
99. II *ND*, (1973), at p. 557.
100. See *supra*, note 49, and H. Hohmann, *op. cit.*, note 51, at p. 721.
101. Address by H.E. Hisham M. Nazer, Saudi Arabia's Minister of Petroleum and Mineral Resources in the United Nations Conference on Environment and Development, Rio De Janeiro, (Brazil) June 10, 1992. A copy of the Address was obtained from the Archive of the Ministry of Petroleum and Mineral Resources, Saudi Arabia.
102. *Ibid*.
103. Ministry of Planning, MEPA, King Abdulaziz Centre for Science and Technology, and the National Commission of Wildlife Conservation and Development, National Report Submitted to the United Nations Conference on Environment and Development, Brazil, June, 1992, Archives of MEPA.
104. See *supra*, Chapter I, note 141.
105. See *supra*, Chapter VI, note 53.
106. *Ibid*.
107. *Ibid*.

108. MEPA, Environmental Protection Standards for the Control of Disastrous Wastes, Doc. 3, (1993). According to Art. 1 of this Document, the goal of the standards was stated to be: to lay down suitable measures for the control of production operations, and the transport, storage, tackle and disposal of disastrous wastes ..., to protect the Kingdom's environment and resources in general, and to encourage and develop the reemployment of resources in such a way that the protection of man and environment is to be taken into account. It is to be noted that the initial set of standards were issued in August, 1982. The document includes source and ambient standards designed to protect air and water quality by limiting the emission of pollutions from sources and the concentration of pollutions in air and water. See MEPA, Environmental Protection Standards (General Standards), Doc. No. 1401-01, (1982), Archives of MEPA.
109. The Conference was jointly sponsored by PERSGA, UNEP, ACOPS, and ROPME.
110. *Infra*, p. 342 *et seq.*
111. See, the Meteorology and Environmental Protection Administration, The State of ... *op. cit.*, Chapter VI, note 57, at p. 5. The functions of the Administration were stated to be to:
- Conduct environmental surveys to define problems and recommend environmental standards and measures;
 - Recommend protection regulations and measures dealing with environmental problems;
 - Recommend practical measures necessary to deal with emergency situations affecting the environment;
 - Assess existing environmental pollution levels and future variations;
 - Keep abreast of developments in the field of environmental levels; and
 - Establish environmental standards and specifications for pollution control and environmental protection.
112. *Ibid.*, at p. 9.
113. *Ibid.*, at p. 11.
114. *Ibid.*
115. See National Report,..., *op.cit.*, note 103, pp. 168-70.
116. *Ibid.*
117. *Ibid.*
118. *Ibid.*
119. See *supra*, notes 71 and 75.
120. MEPA, The State of the Environment ..., *op. cit.*, Chapter VI, note 57, at p. 14.
121. UNCLOS III, Official Records, Vol. 1, (1975), at p. 144.
122. *Supra*, note 88.
123. UNCLOS III, Official Records, Vol. IV, Doc. A/CONF.62/WP.8, p. 137, at p. 176.
124. Art. 41 became Article 44 of the Revised Single Negotiating Text, and Article 236 of the Informal Composite Negotiating Text. See respectively, UNCLOS III, Official Records, Vol. V, Doc. A/CONF.62/WP.8/Rev.1, p. 135, at p. 180, and UNCLOS III, Official Records, Vol. VIII, Doc. A/CONF.62/WP.10, p. 1, at p. 41.

125. In this respect Art. 41 of the Informal Single Negotiating Text reads: *States have the responsibility to ensure that activities under their jurisdiction or control do not cause damage to areas under the jurisdiction of other states or to the marine environment of other states, and shall, in accordance with principles of international law, be liable to other states for such damage.*
126. For the texts of the two proposals, see Renate Platzoder, X Third United Nations Conference on the Law of the Sea, (1986), *op. cit.*, Chapter III, note 110, pp. 451 and 487.
127. For the text, see *Ibid.*, Doc. MP/18, at p.231.
128. For the text of this proposal, see *Ibid.*, Doc. MP.18/Rev.1, at p. 233.
129. Art. 235 reads:
 1 *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.*
 2 *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 at the marine environment by natural or juridical persons under their jurisdiction.*
 3 *With the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, states shall co-operate 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.*
130. For the text, see *supra*, note 126, at pp. 358-59.
131. UNCLS III, Official Records, Vol. IV, Doc. A/CONF.62/WP.8, p. 137. at p. 179.
132. Paragraph 3 of Art. 263 stipulates that: *States and competent international organizations shall be responsible and liable pursuant to Article 235 for damage caused by pollution of the marine environment arising out of marine scientific undertaken by them or on their behalf.*
133. See for example the draft articles submitted by the United Kingdom on 21 March 1975, on behalf of a group of states (Belgium, Denmark, German Democratic Republic, Federal Republic of Germany, Greece, Netherlands, Poland, and United Kingdom of Great Britain and Ireland), in UNCLOS III, Official Records, vol. IV, Doc. A/CONF.62/C.3/L.24, at p. 210. For the various statements of states' representatives on this issue, see pp. 82-92 of the same Vol., and Vol. II, pp. 311-35, pp. 355-66, and pp. 369-75.
134. See the proposal submitted by the Group of 77 to the Third Committee on 8 April 1975 in *supra*, note 126, at p. 433. For further details, see B.A. Bolzek, "Peacetime Military Activities in the Exclusive Economic Zone of Third Countries", 19 *ODIL*, (1988), pp. 445-68; B.H. Oxman, "The Third United Nations Conference on the Law of the Sea", 73 *AJIL*, (1979), p. 1, at pp. 24-27.
135. According to Art. 211(6)(a) of the LOSC, this area is described to be the area in respect of which, the coastal state believes that: *the adoption of special mandatory measures for the prevention of pollution from vessels is required for recognized technical reasons in relation to its oceanographical and ecological conditions, as well as its utilization or the protection of its resources and the particular character of its traffic.*

136. *Ibid.*
137. LOSC, Art. 211(6),(a),(b),(c).
138. Arts. 217, 218 and 220.
139. Art. 220 of the LOSC.
140. See *supra*, note 17.
141. See *supra*, note 49; H. Hohmann, *op. cit.*, note 51.
142. I *ND*, (1973), at p. 288.
143. The Convention was adopted under the auspices of the United Nations Environment Programme, and entered into force by 5 May 1992. For the text, see 28 *ILM*, (1989), at p. 657. For comprehensive discussion on the provisions of this Convention, see K. Kummer, "The International Regulation of Transboundary Traffic in Hazardous Wastes: The 1989 Basel Convention", 41 *ICLQ*, (1992), pp. 530-62.
144. National Report ..., *op. cit.*, note 103, at p. 196.
145. I *ND*, (1973), at p. 285.
146. II *ND*, (1973), at p. 592, and H. Hohmann, *op. cit.*, note 51, at p. 706.
147. H. Hohmann, *op. cit.*, note 51, at p. 715.
148. II *ND*, (1973), at p. 611.
149. IV *ND*, (1975), at p. 331.
150. Art. 11.
151. Art. 111.
152. Art. IV.
153. IV *ND*, (1975), at p. 345.
154. X *ND*, (1980), at p. 32.
155. Regulation 10 of Annex I. The other special areas are: the Mediterranean, The Gulf of Aden, the Black Sea, and the Baltic Sea. The "special area system" is however, reintroduced in the LOSC, as the coastal state can declare this status for a clearly defined area of its EEZ, subject to the approval of the competent international organization (LOSC, Art. 211(b)).
156. Regulation 12 of Annex I.
157. Regulation 24(1) of Annex I provides that: *Every new oil tanker shall comply with the provisions of this Regulation. Every existing oil tanker shall be required, within two years after the date of entry into force of the present Convention, to comply with the provisions of this Regulation ... etc.* The Convention has been in force since 2 October 1983.
158. See *supra*, p. 330.
159. See Churchill and Lowe, *op. cit.*, Chapt. I, note 10, pp. 263-64.

160. *Supra*, note 29.
161. *Supra*, note 30.
162. IMO, Guide to International Assistance on Marine Pollution Emergencies, London, (1990), at p. 222. For a brief history of the Conference, see A. Al-Ashaal, "The Protection of the Marine Environment of the Arabian Gulf from Pollution" (Arabic Text), 36 *REDI*, (1980), p. 201, pp. 207-209.
163. *Supra*, note 91.
164. *Supra*, note 93.
165. *Supra*, note 162, at p. 228. For further details on the history of the Conference, see Dirar H. Nasr, Brochure on the Red Sea and Gulf of Aden Environment Programme, Arab League Educational, Cultural and Scientific Organization, (1412 AH.).
166. *Supra*, note 96.
167. *Supra*, note 30.
168. *Supra*, note 94.
169. *Supra*, note 95.
170. See, United Nations. (Office for Ocean Affairs and the Law of the Sea), The Law of the Sea, Protection and Preservation of the Marine Environment, New York, United Nations Publications, (1990), at p. 4. Saudi Arabia was among the first states to sign the Convention (April 24, 1978). See, however, Arts. XXVI, XXVII, and XXVIII of the Convention.
171. *Ibid.*, at p. 6. See also Articles XXV, XXVI, and XXVII of the Convention.
172. Art. XXVI(2).
173. It is to be noted that Egypt was not invited to the Jeddah Conference in which the Convention and its Protocol were adopted. The reason for that, is the suspension of Egypt's membership of the Arab League of States as a consequence of its conclusion in 1979 of the Camp David Peace Treaty with Israel. However, on May 31, Egypt ratified the Convention following the renormalization of diplomatic relationship with the other Arab States. Djibuti was invited to the Conference, but it did not attend, while Ethiopia's exclusion is likely to be viewed in the context of the then Eritrean question, when Eritrea was occupied by Ethiopia. The exclusion of Israel is also viewed in the context of its deep differences with the Arab World, especially with the Palestinians.
174. KC (Art. XXIX), and JC (Art. XXVIII).
175. Art. I(3).
176. For the text of this definition, see *supra*, p. 327.
177. See *supra*, pp. 327-28.
178. KC, Art. II.
179. JC, Art. II.

180. Established by Art. XVI.
181. Art. II(2).
182. *Supra*, note 26, Art. 4(3).
183. *Supra*, note 28, Art. 1(2).
184. Art. 15 of both Conventions. It is worth noting that the same provision is included in Art. 1(2) of the Barcelona Convention, which provides further for non-prejudice to the development of the law of the sea, as to the nature and extent of the coastal state jurisdiction.
185. Art. 3(3).
186. Art. 4(4).
187. Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft, VI *ND*, (1977), p. 483, Art. 11(2).
188. Art. 236.
189. KC (Art. XIV), JC (Art. XIV(2)).
190. Art. 111(1)
191. Art. IV(1).
192. KC (Art. III(b)), JC (Art. III(2)).
193. KC (Art. III(c)), JC (Art. III(3)).
194. KC (Art. III(e)), JC (Art. III(5)).
195. Art. 3(2).
196. Art. 7.
197. See *supra*, pp. 329-30.
198. Art. IV of both Conventions. It is apparent that the “generally recognized international rules”, referred to here, are intended to be OILPOL and MARPOL Conventions.
199. Art. V. Again, this Article of both Conventions contains the clause, “relevant international conventions”, which clearly refers to the London Dumping Convention of 1972.
200. Art. VI.
201. Art. VII.
202. Art. XIII.
203. Art. IX.
204. Art. 9.
205. Art. 198.

206. Art. XIII of both conventions.
207. *Ibid.*
208. See II *ILM*, (1972), at p. 1420.
209. Art. 17.
210. Art. 12.
211. *Supra*, notes 49 and 51.
212. KC (Art. XXIII), JC (Art. XXII).
213. KC (Art. XXIV), JC (Art. XXIII).
214. Art. 10.
215. Under the KC, “negotiation” was referred to as one of the amicable means for the settlement of disputes. However, although the Conventions do not refer to the “peaceful means”, they are understood to be good offices, mediation, inquiry and conciliation.
216. Art. XXV.
217. Art. XXIV(2). Amongst other objectives, it was stated under Art. XVII(i) that the Council is to *endeavour to settle any differences or disputes between the Contracting Parties as to the interpretation or implementation of this Convention or its protocols or annexes.*
218. Art. XXIV(3).
219. A. Al-Ashall, *op. cit.*, note 162, at p. 214.
220. Art. 21.
221. Art. 18.
222. *Ibid.*
223. Art. 22(2).
224. Art. 22(3).
225. Arts. X and XI of the Conventions.
226. Art. III(3).
227. Art. XVI of both Conventions.
228. See Arts. XVI, XVII and XVIII of both Conventions.
229. KC (Art. XVII), JC (Art. XVIII).
230. KC (Art. XVIII), JC (Art. XIX).
231. Art. 13.
232. See *supra*, pp. 357-59.

233. Protocol concerning Co-operation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency in VI *ND*, (1977), at p. 493.
234. See Art. 3 of both Kuwait and Jeddah Protocols.
235. Arts. 2 and 13.
236. Art. 12.
237. The Decision of the Arab Council Ministers Responsible for Environmental Affairs No. 42-DA5, 24 November 1993.
238. Cairo Declaration concerning the Formation of the Regional Organization for the Conservation of the Environment of the Red Sea and Gulf of Aden, Cairo, 26 September 1995. This information was made available to the present writer through a letter from the Secretary General of the Organization, Dr Nizar Tawfiq dated 8 January 1996.
239. Arts. III and XIX.
240. Art. III.
241. See *supra*, note 93.
242. See *supra*, note 94.
243. See *supra*, note 95.
244. See *supra*, note 30.
245. Art. I(2) of both Protocols.
246. *Supra*, note 146, Art. II.
247. IV *ND*, (1975), at p. 451, Art. I(2).
248. Art. IV.
249. Paragraph 2 of Art. I of the Convention reads:
... no measures shall be taken under the present Convention against any warship or other ship named or operated by a State and used, for the time being, only on government non-commercial service.
250. Art. III. For the objectives and functions of these Centres, see *supra*, pp. 362-65.
251. Art. II.
252. Art. I of the Protocol.
253. Art. I of both the Convention and the Protocol.
254. Arts. II(2) of Kuwait and Jeddah Protocols, and Art. 3 of Barcelona Protocol.
255. Art. X of both Protocols.
256. *Ibid.*
257. Art. II(d).

258. Art. III(e).
259. Art. V.
260. D. W. Bowett, Self-Defence in International Law, Manchester, Manchester University Press, (1958), at p. 9.
261. *Ibid.*, at p. 10.
262. D. W. Abecassis and R. L. Jarashow, *op. cit.*, note 38, at p. 117.
263. Art. I(13).
264. Art. I(16).
265. See *supra*, pp. 187-89.
266. Art. I(14).
267. Arts. III and IV.
268. Art. IV(2).
269. Art. IX(3).
270. Art. V(2).
271. Arts. VI and VII.
272. Art. VIII.
273. Art. XI.
274. Art. IX(1)(a).
275. In defining the concept of "Special Area" the Protocol copies the geographical definition found in Regulation 10 of the MARPOL Annex 1. As a Special Area, the Gulf is defined therein as:
the sea area located north west of the thumb line between Ras al Hadd (22° 30N, 59° 48E) and Ras al Fasteh (25° 04N, 61° 25E). See Art. I(18) of the Protocol.
276. Art. IX(1)(b) and (2).
277. Art. IX(c).
278. Art. IX(d).
279. Art. IX(4)(a)(b).
280. Art. IX(c).
281. Art. XII.
282. Art. XIII.
283. The Convention divides wastes into three categories. The first category (the black list) includes those substances listed in Annex I to the Convention: organohalogen compounds,

mercury, cadmium, oil plastics and high-level radioactive wastes defined by the International Atomic Energy Agency. Under Art. IV(1) of the Convention, the dumping of these substances is prohibited. The second category (the grey list) includes those substances listed in Annex II. These include: arsenic, lead, copper, zinc, organosilicon compounds, cyanides, fluorides, pesticides, scrap metal and radioactive matter not included in Annex I. The dumping of these substances, which are somewhat less noxious, is prohibited unless a prior special permit from the national authorities of a contracting party is obtained (Art. IV(1)). The third category includes those wastes which fall outside the first and second categories. Here, dumping is permitted if a prior general permit has been obtained (Art. IV(1)). For further details, see Churchill and Lowe, *op. cit.*, Chapt. I, note 10, pp. 268-70.

284. Special reference was made to Articles 194 (on measures to prevent, produce and control pollution from the marine environment), 207 (on pollution from land-based sources), 212 (on pollution from or through the atmosphere), and 213 (on enforcement with respect to pollution from land-based sources). For the text of the Montreal Guidelines, see H. Hohmann, *Basic Documents ...*, vol. 1, *op. cit.*, note 51, at p. 130.
285. Art. I(8).
286. Art. 4.
287. For the text, see XIX *ILM*, (1980), at p. 869.
288. Annex A to the Paris Convention and Annexes I and II to the Mediterranean Protocol.
289. Art. II.
290. Art. 3(a).
291. Art. 3.
292. As stipulated, for example, in Art. 2 of the Paris Convention, Art. of the Mediterranean Protocol and Art. II of the KC Protocol concerning Marine Pollution resulting from Exploration and Exploitation of the Continental Shelf.
293. Art. V.
294. Art. VI.
295. See Arts. 9-11.
296. See Arts. 8-13.
297. Art. VII.
298. Art. VIII. This Article is regarded as a response to Art. XI of the Kuwait Convention.
299. Art. IX. Also, the Article is a response to Art. X of the Kuwait Convention.
300. Art. X.
301. Art. XI.
302. Art. XII.
303. See *supra*, note 91.

304. See *supra*, note 96.
305. Paras. 4 of the Kuwait Action Plan, and 3 of the Jeddah Action Plan.
306. Paras. 5 of the Kuwait Action Plan, and 4 of the Jeddah Action Plan. See also Art. II of the Conventions.
307. The Kuwait Action Plan, Para. 27, Jeddah Action Plan, para. 22.
308. The Kuwait Action Plan, Para. 24, Jeddah Action Plan, para. 29.
309. *Yearbook of International Environment Law*, vol. 2, (1991), at p. 127.
310. See for example, the HSC (Art.24), and LOSC, Arts. 207(1), 208(1), 210(1), 211(2) and 212(1).
311. See *supra*, note 88.
312. The National Contingency Plan for Combating Marine Pollution by Oil and Other Harmful Substances in Emergency Cases, MEPA, 1984.
313. Art. 312 of the SLR. It should be noted, however, that the OILPOL Convention as amended in 1969 is satisfied with defining the term “oily mixture” as a “mixture with any oil content”, without specifying the oil preparation in the mixture.
314. Art. 111.
315. Paras. (e) and (f)(ii).
316. Art. 322 of the SLR.
317. Art. 332.
318. Art. 32.
319. Arts. 21 and 211(4).
320. Art. 31.
321. Arts. 56 and 211(5).
322. Art. 236.
323. Art. 330.
324. Art. IX(5), as amended in 1969.
325. Art. 226(1)(a).
326. Art. 220(2) and (6).
327. Art. 220(6).
328. Art. 385.
329. Art. 386.
330. Art. 387.

331. Art. 388.
332. Art. VI of the Convention as amended in 1962.
333. L. Henkin, "Arctic Anti-Pollution: Does Canada Make or Break International Law?" 65 *AJIL*. (1971), p.131, at p. 133 (note 8).
334. With certain differences, these conditions have been readopted under Regulation 24 of Protocol 2 of the MARPOL.
335. Art. 327.
336. *Ibid.*, Art. 329.
337. *Ibid.*, Art. 334.
338. *Ibid.*, Art 389.
339. See for example Art. 21(f) of the LOSC.
340. Art. 56(1)(b)(iii).
341. The SLR, Art. 335.
342. *Ibid.*, Art. 389.
343. Regulation 8.
344. Regulation 3.
345. See LOSC, Arts. 56(1)(b)(iii) and 58(3).
346. See Art. IX of both Conventions and Arts. II, X and XII of the Protocols.
347. NCP, Art. 3.
348. *Ibid.*, Art. 8.
349. *Ibid.*
350. *Ibid.*, Art. 9. In regard to the objectives and composition of the Environmental Protection Coordinating Committee, see *supra*, p. 340.
351. NCP, Art. 3(a).
352. NCP, Art. 3(b).
353. *Ibid.*
354. *Ibid.*, Art. 4(a).
355. *Ibid.*, Art. 5.
356. *Ibid.*, Art. 6.
357. Art. 6(2). Under the Appendix to the NCP, pollution incidents are divided into two kinds:

1. limited pollution incident: this is an incident which occurs within an area belonging to any of the authorities responsible for pollution combating and having marine or coastal facilities, and which may be controlled by local resources of the affected authorities, and the local plan is applicable.

2. major pollution incident: this is an incident which occurs within the area of any of the said authorities, but by reason of its size, it exceeds the capabilities of the authority concerned, so that assistance in combating the pollution becomes a necessity, through the Area Coordinator of the Area Operations Committee.

358. Art. IX(3) of both Conventions.

359. Passed by the Royal Order No. 21/1/1112, dated 5-5-1376 AH. Archives of the Ministry of Health.

360. See *supra*, note 108.

361. See *supra*, note 108.

362. *Ibid.*, Art. 4.

363. *Supra*, Chapt. V, note 142.

364. The Executive Bill for the Regulation of Fishing, Investment and Protection of Marine Living Resources, is published in *Umm Al-Qura*, No. 3236, dated 25 November 1988.

365. Art. 65.

366. Art. 63.

367. Art. 9 of the Regulations.

General Conclusions and Recommendations

Each chapter of this thesis has contained a conclusion section in which an attempt was made to highlight the general features of the Saudi Arabian marine policy, and specific aspects of this policy, in the light of international standards. The aim of this concluding section is to recapitulate some of the major issues contained in the previous chapters in order to make a number of observations concerning Saudi Arabia's behaviour with regard to different uses of the seas. In other words, here, there will be an attempt to assess and evaluate the Saudi attitudes and marine policies as a whole, and to offer some recommendations.

The marine policy of any country will, inevitably, be a result of a number of factors, internal and external. Saudi Arabia is no exception, and to evaluate her practices and attitudes towards the legal regime of the oceans, four questions can be raised. First, to what extent do the Saudi attitudes and marine policy serve the national interests? Second, is there an integrated Saudi Arabian national marine policy, or in other words, how effective is the way in which Saudi Arabia approaches its marine policy problems? Third, is Saudi Arabia's practice in conformity with international regulations and standards, and finally, has Saudi Arabia contributed to the development of the law of the sea?

To Saudi Arabia, marine policy is not a newly emerged policy area. The country's assertion of its legal claims to the oceans began following its foundation in the early 1930s. The review of the Saudi attitudes and practices reveals that they were heavily influenced by security, economic and sovereignty considerations.

The security factor has been of exceptional significance to Saudi Arabia, due to the Israeli presence at the Gulf of Aqaba. In this regard, two issues have been the subject of special concern on the part of the Saudi authorities, namely, the breadth of the territorial sea and the right of innocent passage. Saudi Arabia was not satisfied with extending its territorial sea to 12 n.m. in 1958, but in UNCLOS I and UNCLOS II she also strongly defended her position and opposed the positions of some maritime powers, such as the US and the UK, which were in favour of a more restricted limit for the territorial sea. Having in mind the Strait of Tiran, the Saudi position on the issue of innocent passage in the straits linking the high seas

with the territorial sea of a foreign state, was solid although unsuccessful. Saudi Arabia did not refer to this issue in its national legislation, but in UNCLOS I and UNCLOS II she strongly rejected the legitimacy of such passage; rather she has repeatedly taken this issue to the circles of the United Nations itself. The significance of sovereignty and security considerations are evident in the wording of the 1993 Marine Scientific Research Regulations, which elaborate on restrictions imposed on foreign vessels seeking to conduct marine scientific research in the Saudi maritime zones. Obviously, Saudi Arabia's sovereignty and security interests included the use of maritime zones as exclusionary buffers to protect its vulnerable coastlines.

On the other hand, economic considerations have been a significant factor in formulating Saudi marine policy. Concerns for fisheries, oil and gas stand out as fundamental marine policy issues, and the formulation of this policy at the national level was mainly motivated by these issues. The Kingdom's concern to protect its fishery interests is quite clear in the timing of the issue of the initial regulations on fishing, which occurred very soon after the declaration of the country itself as a sovereign state in 1932. Also, aware of the Arabian Gulf's seabed resources, Saudi Arabia in 1949 became the first country in the region to claim sovereignty over the resources of the seabed and subsoil extending beyond its "coastal sea" in the Gulf. The 1932 and 1949 claims were followed, as seen in the foregoing chapters, by other claims, all of which reflect the significance of economic considerations as a cornerstone in directing the Saudi practice in the law of the sea.

Furthermore, in order to provide a wider umbrella for the protection of its marine living resources, the Kingdom has moved to control pollution in its marine environment. The Saudi moves in this respect have been in three directions, national, regional and international. Nationally, apart from having a central body responsible for the protection of the environment in general, including the marine environment, the Kingdom has regulated ship oil pollution and discharges from ships through Part 12 of the 1974 Seaports and Lighthouses Regulations. Regionally, the Kingdom is a party to both the Kuwait and Jeddah regional conventions for the protection of the marine environment in the Arabian Gulf and Red Sea. Internationally the Kingdom is a party to three major conventions: the

1954 International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL), the 1969 International Convention on Civil Liability for Oil Pollution Damage and the 1982 United Nations Convention on the Law of the Sea, Part XII of which is devoted to the protection of the marine environment.

The Saudi position regarding passage in the straits linking two parts of the high seas was mainly motivated by strategic, political and economic considerations. Having in mind the Strait of Bab El Mandeb at the entrance of the Red Sea and the Strait of Hormuz at the entrance of the Arabian Gulf, Saudi Arabia, in UNCLOS III, strongly and successfully defended the application of transit passage in such straits.

It is clear, then, that Saudi Arabia has been one of the most active countries in the region in protecting its sea interests. The question which may arise, however, is whether Saudi Arabia, as a coastal state, has done enough to protect all her potential interests in the seas and whether she has taken maximum advantage of the law of the sea and other international treaties in this regard. Although this study supports the conclusion that Saudi Arabia's marine policy as a whole has been more of a success than a failure, the answer to the foregoing question is no.

As for the contiguous zone, for example, the Saudi claim is less than that permissible in the law of the sea. In the Saudi regulations, the contiguous zone is claimed to be 6 n.m., although under the 1982 United Nations Convention, it is permitted to reach, together with the territorial seas, up to 24 n.m. The extension of its contiguous zone beyond 6 n.m. would provide the country with more powers for the protection of its customs, fiscal, immigration and sanitary interests.

In addition, while Saudi Arabia supported at UNCLOS III the creation of the 200 n.m. exclusive economic zone, she has not yet declared one of her own. The constitution of an EEZ would provide the country with more powers, for instance, as to the establishment and use of artificial islands, installations and structures, marine scientific research and the protection and conservation of the marine environment.

Also, though the Kingdom has shown great concern in recent years for the protection and conservation of the environment in general, including the marine

environment, the legal approaches followed in dealing with the issue are inadequate. The Kingdom, therefore, needs to widen the scope of legal protection at all levels, nationally, regionally and internationally. At the national level, particularly, it is necessary for the Kingdom to develop its already existing legislation and to regulate other kinds of pollution, such as oil pollution from seabed activities, pollution by dumping, pollution from land-based sources and pollution from other human activities. Regionally, the Kingdom, with the other states concerned, should activate the 1982 Jeddah Convention concerning the protection of the marine environment in the Red Sea and Gulf of Aden. Internationally, the Kingdom would be well advised to accede to certain major international conventions, such as the MARPOL Convention, under which the discharge of all types of pollutants is completely prohibited, and the London Dumping Convention of 1972, which prohibits the deliberate disposal of waste from ships and aircraft into the sea. It should also accelerate ratification of the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

As far as the way in which Saudi Arabia addresses her marine policy problems is concerned, it is noted that although a national marine policy has existed since the foundation of the country itself in 1932, the evidence shows that there has been no integrated and comprehensive approach to deal with a variety of marine policy issues. In certain cases, the formulation of the Saudi marine policy was accidental. Such was the case as to the Royal Decree of 1949 defining the territorial sea of the Kingdom. The formulation of the Saudi claim in this respect came only on legal advice from Hudson and Young, the two international law experts who were required to lay down the rules governing the Saudi Arabian jurisdiction over the submerged areas in the Arabian Gulf. In other cases, internally, the reaction towards certain developments in the law of the sea has been slow, or even non-existent. The Kingdom has only recently regulated marine scientific research in its maritime zones. It still maintains 6 n.m. for its contiguous zone. Furthermore, no EEZ has been declared, and many kinds of marine pollution have not been regulated. This situation could be attributed, in the first place, to a deficiency in the organizational approach followed in dealing with marine issues.

In Saudi Arabia, there are numerous governmental agencies which share responsibilities in managing the use of the ocean. Whatever the degree of coordination among different ocean-related units, the absence of a central governmental body is likely to make the process of national marine policy formulation less reactive. It will also lead to overlapping administrative responsibilities in the process of marine policy making.

In view of these considerations, it would be advisable for the Kingdom to re-examine the organizational setting in which its marine affairs are conducted. In particular, it is suggested that two specialised governmental agencies be created. The first one is to be of ministerial level (Ministry of Marine Affairs, or Ministry of Ocean Development, for example), and to be executive in nature. The function of this body would be to draw up the marine policy of the country both internally and externally. The second body would be advisory in nature, and could take the form of a national marine policy council, for instance. The task of the latter would be to provide continuous, evaluated policy information and recommendations to the former. Such an action would help unify and harmonize the various mission-related activities of the many governmental organizations. It would also help avoid fragmented and uncoordinated approaches adopted by numerous governmental agencies on each marine issue. Externally, centralization in organization would put the Kingdom in a better position to follow developments in the law of the sea, enabling the Saudi national marine policy to become both more creative and more reactive.

On the question of agreement between Saudi Arabia's practice and the law of the sea, the evidence shows that observance of the international law of the sea has been generally a cornerstone in building up and forming the Kingdom's marine policies and attitudes. In the Saudi claims, there has always been emphasis on "respect for the principles of international law".

Even when, in certain cases, Saudi Arabia had to formulate her claims while there were no clear international rules, such claims were based on international legal precedents or a considerable body of state practice. The 1949 claim concerning the Kingdom's jurisdiction over the submerged areas in the Arabian

Gulf was very much influenced by the 1945 Truman Proclamation, and as one of the claim's justifications, it was pointed out in the claim itself that:

... various other nations now exercise jurisdiction over the subsoil and seabed of areas contiguous to their coasts.

Similar reference to the Truman Proclamation was made by the Saudi Oil Minister following the 1968 claim relating to the ownership of the Red Sea resources. In the preamble of the 1974 Declaration concerning the limits of the Saudi EFZ, it was pointed out that:

other states have at present affirmed their jurisdiction over the fish resources in the areas adjacent to their territorial seas.

Further evidence of the Kingdom's commitment to the principles of the law of the sea is clear in its position over the two questions of the breadth of the territorial sea and innocent passage, which have been of special concern to the Saudi Government. On the first question, Saudi Arabia in 1958 extended her territorial sea up to 12 n.m. and strongly defended her policy in UNCLOS I. In that instance, Saudi Arabia's claim was based on the then general acceptance of the 12 n.m. limit, an approach which was rejected at the Conference, due to the strong opposition of certain maritime powers, but which was adopted later on in UNCLOS III. On the question of innocent passage, the Kingdom in UNCLOS I and UNCLOS II relied, in its position rejecting innocent passage in the straits connecting one part of the high seas and another part of the territorial sea of a foreign state, on a norm, established in the Corfu Channel case of 1949, which allows such passage only in straits linking two parts of the high seas.

As the principles of international law of the sea crystallized and became clearer on certain aspects of ocean use, Saudi Arabia modified her position on some issues to reflect these principles. In this respect, the Kingdom refused to sign the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone on the grounds that the Convention adopted in its Article 16(4) provisions allowing innocent passage in the straits linking one part of the high seas with another part of the territorial sea of a foreign state. However, the Kingdom later on ratified the LOSC, although the latter contains the same provisions.

The Kingdom has applied this approach not only in essence, but also in form in certain areas. In this regard, Saudi Arabia has, in her claim of 1958, replaced the two terms, “territorial waters” and “coastal sea”, which were used in the claim of 1949 with the term “territorial sea”. Moreover, the 1993 Regulations of Marine Scientific Research were very much influenced by the wording of Part XIII of the LOSC regulating scientific research at sea.

Nevertheless, Saudi Arabia has to reconsider or clarify her position toward certain questions. The broad definition given to the term “island” to include artificial islands should be considered by the Saudi legislator. Saudi Arabia should also clarify the legal justifications concerning the use of closing lines for the bays along her coasts, the claim which seems to have been made on a “historic title”. Furthermore, Saudi Arabia as a party to the LOSC, has to produce charts or lists of geographical co-ordinates for her baselines, since no such charts or lists have yet been produced. On the other hand, however, the Saudi policies on certain issues have failed to take full advantage of these standards. The Kingdom, as mentioned earlier, has not yet declared an EEZ of its own, and it still maintains a 6 n.m. contiguous zone limit, although it is entitled to extend this limit up to 12 n.m. On other issues, specifically the question of fishing in the territorial sea, the Kingdom even goes further than what is adopted in international law by allowing “in principle” foreign fishing in its territorial sea. The Kingdom, then, is invited to re-examine its policies on these “limited exceptions”, in line with its espoused desire to adhere to the principles of international law, a desire which culminated in the recent ratification of the LOSC.

Finally, on the question of Saudi Arabia’s contribution to the development of the law of the sea, the evidence shows that Saudi Arabia has indeed, through her attitudes and policies, played a noticeable role in crystallizing certain international principles, which have become part of the ocean regime.

The strong support of a 12 n.m. limit for the territorial sea by Saudi Arabia and other Third World countries led ultimately to the adoption of this approach in the LOSC. The position of the Group of 77 states, which included Saudi Arabia, at UNCLOS III resulted in the adoption of the requirement of the coastal state consent for all marine scientific research activities conducted in the EEZ and on the

continental shelf, an approach which was opposed by developed nations. The collective position taken by Saudi Arabia and some other states, also gave rise to the adoption of the regime of “transit passage” in straits linking two parts of the high seas.

Saudi Arabia has effected the crystallization of the continental shelf theory as declared in the Truman Proclamation of 1945. She was the first country in the region to follow Truman’s pattern, and in that she was followed by many of the Gulf states, which firmly established the concept of the continental shelf as a customary one. Despite the fact that the Saudi claim in this regard (the claim of 1949) was very much influenced by the Truman Proclamation, it should be noted that while the latter was based on the geological character of the shelf, the former was mainly based on the concept of “contiguity”, and did not contain any reference to the continental shelf. Taking into account the unique nature of the Arabian Gulf, the ILC with the aim of expanding the concept of the shelf to cover the Gulf’s floor, adopted the criterion of “exploitability”. Thus, the Kingdom has significantly contributed in the creation of this concept.

In its maritime boundary policy, the Kingdom has obviously contributed in establishing a number of principles. The adoption in the Saudi national legislation of “equitable principles” in delimiting offshore boundaries gave this approach a strong thrust, although it was a departure from the “principle of equidistance”, which was adopted in the 1958 Geneva Convention on the Continental Shelf.

In her maritime boundary agreements with certain neighbouring states, Saudi Arabia has established a number of legal precedents. The 1958 Agreement with Bahrain uniquely provided for the application of the notion of a “joint maritime zone”, according to which both parties share the net revenues of the zone, while the sovereignty right over the zone was given to Saudi Arabia. The 1974 Agreement with Sudan has provided for the creation of a common zone, where the two parties have equal sovereign rights to exploit all the natural resources. The 1968 Agreement with Iran gave the Iranian island of Kharj half effect. All these precedents were subsequently supported and followed in conventional law and case law alike. Thus, this brief review suggests that Saudi

Arabia has not only accepted the principles of the international law of the sea, but she has also effectively contributed to the formulation of these principles.

From the above discussion, it can be concluded, generally speaking, that Saudi Arabia's marine policy has been more of a success than a failure. Nevertheless, this policy, as seen earlier, still suffers certain defects. This prompts the suggestion that Saudi Arabia needs to re-examine some aspects of her current marine policy if she is to enjoy the use of the ocean more reasonably and efficiently in the future. In particular, there is a need for creation of a more integrated, centralized organizational framework for the discharge of responsibilities for marine affairs, to achieve more creativity and reactivity towards future developments in the law of the sea. Given the lack of expertise in law of the sea matters, there is also a need to train new cadres to handle the expanding marine-related interests of the Kingdom.

As far as the Saudi national legislation is concerned, the need is urgent to re-formulate some of its aspects, taking into consideration the developments contained in the new ocean regime. The Kingdom should re-define its contiguous zone by extending it up to 12 n.m. It should also reconsider the wide foreign fishing rights in its territorial sea and the broad definition given to the term "island" in its legislation. The generality in the wording of some domestic regulations invites the suggestion that there should be detailed bills to remove the possibility of any ambiguity in interpretation. Furthermore, it would be advisable for the Kingdom to consider the possibility of involving the private sector in policy formulation. In order to avoid any future conflicts on maritime boundaries, the Kingdom is invited to take the initiative in entering serious negotiations with those states whose maritime boundaries with the Kingdom have not yet been settled.

As to marine pollution control, the Kingdom has a lot to do. It is in need of re-examination of its current legislation in oil pollution from ships, especially with regard to liability and penalties. There is an urgent need to introduce legislation to control other kinds of sea pollution. Regionally, the Kingdom with other concerned states, especially those bordering the Red Sea, needs to activate regional co-operation and to "revive" the 1982 Jeddah Convention concerning the protection of the Red Sea environments. Internationally, the Kingdom would be

well advised to consider seriously the possibility of acceding to major international conventions on the protection of marine environment, such as the MARPOL Convention and the London Dumping Convention. Such actions would undoubtedly provide the Kingdom with a wider umbrella against pollution in its marine environment.

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