

University of London  
London School of Economics and Political Science

THE LEGAL ASPECTS OF THE

GULF COOPERATION COUNCIL

A.A. AL-MUSLEMANI

Licence en Droit, Cairo University  
Master of Laws, Hull University

Ph.D. thesis submitted to the  
University of London

October, 1989.

UMI Number: U050250

All rights reserved

INFORMATION TO ALL USERS

The quality of this reproduction is dependent upon the quality of the copy submitted.

In the unlikely event that the author did not send a complete manuscript and there are missing pages, these will be noted. Also, if material had to be removed, a note will indicate the deletion.



UMI U050250

Published by ProQuest LLC 2014. Copyright in the Dissertation held by the Author.  
Microform Edition © ProQuest LLC.

All rights reserved. This work is protected against  
unauthorized copying under Title 17, United States Code.



ProQuest LLC  
789 East Eisenhower Parkway  
P.O. Box 1346  
Ann Arbor, MI 48106-1346

THESES  
F  
9705



1284170

DEDICATION

To the Memory of my beloved father,  
Abdulatef, who was waiting to see the  
fruits of this work but passed away a few  
weeks before it was presented.



ABSTRACT

The significance of this thesis lies in the fact that it reviews the activities of a newly-born organisation, that has hardly received an authoritative legal analysis. In addition the thesis relies heavily on primary sources in examining the internal structure of the organisation.

Looking at the nature of the issues involved, the principal contribution is made by applying the principles of international law to three different areas of law. These are, the law of international institutions, economic integration, inspired and influenced by the literature on the EEC, and the law of the use of force.

Chapters 1-6, which deal with the institutional aspect, examine the treaty-making power within the constitutions of the six member states and how treaties enter into force according to these constitutional arrangements. This occurs despite the fact that sometimes signature is sufficient, according to the agreement concerned, to bring it into force.

They further deal with the aims of establishing the organisation. Like other traditional organisations, the objectives stipulated in the instruments do not match the political realities in the state practice of the member states. The gap is widened by the realisation of the weak power entrusted to the G.C.C. organs. That the mechanism of

decision-making, which requires unanimity in itself, is not binding per se, emphasises this view.

They also deal with the question of membership and the political and legal implications of excluding some states in the region from the organisation.

The constituent instrument is silent on the issues of expulsion, suspension and withdrawal. The probable implications of this omission are examined.

However, the case may be with the structure and the powers of the organisation, the G.C.C. is not deprived of its international personality on the international and national plane. The capacity of incurring obligations and obtaining rights, which is the indicating factor of such personality, has been shown in both the G.C.C. instruments and its actual practice.

Chapter Seven mainly deals with the implementation of the Unified Economic Agreement (UEA). It examines the concept of economic integration which is generally contemplated in the agreement, but loosely adjusted to meet the political and economic realities in the member states, rather than to meet the standards of functional integration which concede a higher degree of sovereignty.

A hypothetical problem is raised in the case of a conflict between the UEA and earlier treaties concluded in substantially similar terms under the Arab League auspices. Yet the invocation of de jure or de facto termination is possible by those parties to the later treaty (i.e. the UEA).

The implementation of the UEA provisions may also give rise to some difficulties for those GCC member states which are bound by the GATT (i.e. Kuwait), a matter which receives some consideration in this thesis.

This chapter also deals in great length with the problem of supervision within the G.C.C., which poses a real challenge for effective implementation of the UEA. This is a matter evidenced in the number of complaints of the governments and private parties to the G.C.C. Secretariat. It is also realised in the unilateral interpretation of the UEA by the member states.

Despite the fact that the UEA has an immense impact on individual citizens, this has not been regulated, a matter which has cast doubt on the extent of the rights of individuals under the agreement.

The implementation of the agreement also raises some important issues concerning the application of GCC decisions in a federal member state, such as the United Arab Emirates, which constitutionally reserves large powers for the individual Emirates.

Chapter Eight deals with security in the G.C.C. member states. It examines delicately the dividing line between illegal intervention and mere political propaganda. In this regard the acts of intervention and indirect aggression by Iran, which largely caused the involvement of the G.C.C. member states in the Gulf war are highlighted. Thus, a relationship between supporting Iraq financially, which is a

forbidden act under the strict rules of neutrality, and the exercise of collective self-defence in the form of such funding has been argued and examined in the light of the Nicaragua Case (1986). Also of great concern is the legal position of G.C.C. member states who are not required to remain strictly neutral when they are subjected to indirect aggression. This in fact raises the issue of collective self-defence under both the Arab League and the GCC arrangements.

### ACKNOWLEDGMENTS

I wish to express my profound gratitude to my supervisor, Rosalyn Higgins, Professor of International Law at the London School of Economics and Political Science, University of London, under whose constant guidance, patience and encouragement this study emerged. Her critical comments and observations have greatly improved the quality of this research.

My sincere thanks are due to the Government of Qatar for sponsoring this research. I should also like to thank H.E. Shaik Ahmed Bin Saif Al-Thani, the Minister of Justice in Qatar who rendered me particular assistance in obtaining documents from the Secretary-General of the G.C.C. and his staff.

I am indebted to H.E. Dr. Hassan Kamel, the Advisor of the Amir of Qatar, for offering me some primary source material concerning the travaux preparatoires on the G.C.C.'s main instruments.

I am extremely grateful to H.E. Saif Said, the Director of the G.C.C. Department in the United Arab Emirates Ministry of Foreign Affairs, who offered me material which proved to be extremely useful

The G.C.C. Secretariat, especially the Legal Department headed by Dr. Al-Syari, the Director, also offered me great help and facilities and kindly answered all my queries.

My thanks extend to Mrs. Susan Hunt of the London School of Economics for typing this thesis with patience and efficiency.

Finally, I am greatly beholden to my parents, wife and children. Their resolute moral support and faithful endurance during my long absences from home I regard as a great sacrifice.

The views maintained as well as the shortcomings of the thesis are mine alone. They do not represent in any way the opinions of the Government of Qatar.

ABBREVIATIONS

A.C.R.:	Africa Contemporary Record
A.J.I.L.:	American Journal of International Law
A.N.Z.U.S.:	Australia, New Zealand and United States Security Pact
A.O.I.:	Arab Organisation for Industrialisation
A.S.I.L.Proc.:	American Society of International Law Proceedings
B.B.C./S.W.B./ M.E.:	British Broadcasting Corporation/Summary of World Broadcast/ Middle East
Benelux:	Belgium, the Netherlands and Luxembourg (customs union between)
B.I.S.D.:	Basic Instruments and Selected Documents
Brit.J. International Studies:	British Journal of International Studies
B.Y.I.L.:	British Year Book of International Law
Byelorussia SSR:	Byelorussia Soviet Socialist Republic
Case W.Res.J. International Law:	Case Western Reserve Journal of International Law
C.L.J.:	Cambridge Law Journal
C.L.R.:	Commonwealth Law Reports
Cmd., Cmd.:	United Kingdom, Command Papers
C.M.L.R.:	Common Market Law Review
COMECON, CMEA:	Council for Mutual Economic Aid
E.A.C.:	East African Community
E.C. Bulletin:	European Community Bulletin
E.C.O.W.A.S.:	Economic Community of West African States
E.C.R.:	European Court Reports

E.C.S.C.:	European Coal and Steel Community
Ed.:	Editor
E.E.C.:	European Economic Community
E.E.Z.:	Exclusive Economic Zone
F.A.O.:	Food and Agriculture Organisation
F.B.I.S.:	Foreign Broadcast Information
F.C.O. Press Release:	Foreign and Commonwealth Office Press Release
F.O.:	U.K. Foreign Office
G.A.:	General Assembly
G.A.O.R.:	General Assembly Official Records
G.A.T.T.:	General Agreement on Tariffs and Trade
G.C.C.:	Gulf Cooperation Council for Arab States
Geo.Wash.J.Int.'L & Econ.:	George Washington Journal of International Law and Economy
G.Y.I.L.:	German Yearbook of International Law
Harvard Int. L.J.:	Harvard International Law Journal
H.C.Hansard:	House of Commons. Hansard
H.L. Weekly Hansard:	House of Lords Weekly Hansard
I.A.E.A.:	International Atomic Energy Agency
I.C.J.:	International Court of Justice
I.C.L.Q.:	International and Comparative Law Quarterly
I.C.O.:	Islamic Conference Organisation
I.J.I.L.:	Indian Journal of International Law
I.L.C.:	International Law Commission
I.L.M.	International Legal Materials
I.L.O.:	International Labour Organisation



I.M.C.O.:	Intergovernmental Maritime Consultative Organisation
I.R.N.A.:	Islamic Republic News Agency
I.T.A.6:	The Sixth International Tin Council Agreement
I.T.O.:	International Trade Organisation
K.U.N.A.:	Kuwait News Agency
Law Mag.:	Law Society Magazine
L.I.E.I.:	Legal Issues of European Integration
L.O.S.C.:	Law of the Sea Convention (1982)
L.Q.R.:	Law Quarterly Review
M.E.A.:	Middle East and North Africa
M.E.C.S.:	Middle East Contemporary Survey
M.E.E.D.:	Middle East Economic Digest
M.E.E.R.:	Middle East Executive Reports
Misc.:	Miscellaneous editions of HMSO
N.A.T.O.:	North Atlantic Treaty Organisation
Neths.Int.L.R./ N.I.L.R.	Netherlands International Law Review
N.I.L.R.:	Netherlands International Law Review
N.L.J.:	Netherlands Law Journal
Nor.T.I.R.:	Nordisk Tidsskrift for International Ret
N.Y.Times:	New York Times
O.A.P.E.C.:	Organisation of Arab Petroleum Exporting Countries
O.A.S.:	Organisation of American States
O.A.U.:	Organisation for African Unity
O.E.C.D.:	Organisation for Economic Cooperation and Development
O.J.L.N.:	Official Journal of League of Nations

O.N.U.C.:	United Nations Operations in Congo
O.P.E.C.	Organisation of Petroleum Exporting Countries
P.C.I.J.:	Permanent Court of International Justice
R.C., RdC:	Receuil des Cours de l'Academie de Droit International
R.G.D.I.P.:	Revue général de droit international public (Paris)
S.C.O.R.:	Security Council Official Records
S/P.V.:	United Nations Security Council, Provisional Verbatim Record.
S/Res.:	Security Council Resolution
S.W.B.:	Summary of World Broadcast
Trans. and ed.:	Translation and edition
Trans.Grotius Soc.:	Transactions of the Grotius Society
U.A.E.:	United Arab Emirates
U.E.A.:	Unified Economic Agreement
U.K.:	United Kingdom
U.K.M.I.L.:	United Kingdom Materials on International Law
U.K.T.S.:	United Kingdom Treaty Series
U.N.:	United Nations
U.N.C.I.T.R.A.L.:	United Nations Commission on International Trade Law
U.N.E.F.:	United Nations Emergency Force
U.N.E.S.C.O.:	United Nations Educational, Scientific and Cultural Organisation
U.N.F.I.C.Y.P.:	United Nations Peacekeeping Force in Cyprus
U.N.O.G.I.L.:	United Nations Observation Group in Lebanon
U.N.T.S.:	United Nations Treaty Series
U.N.Y.O.M.:	United Nations Yemen Observation Mission

U.P.U.:	Universal Postal Union
U.S.A.:	United States of America
U.S.S.R.:	Union of Soviet Socialist Republics
Ukrainian SSR:	Ukrainian Soviet Socialist Republic
Va.J.Int.L.:	Virginia Journal of International Law
W.H.O.:	World Health Organisation
W.L.R.:	Weekly Law Reports
W.M.O.:	World Meteorological Organisation
Yale L.J.:	Yale Law Journal
Y.B.I.L.C./ Y.I.L.C.:	Yearbook of International Law Commission

## TABLE OF CONTENTS

	<u>Page</u>
<u>ABSTRACT</u>	iii
<u>ACKNOWLEDGMENTS</u>	1
<u>ABBREVIATIONS</u>	3
<u>TABLE OF CONTENTS</u>	8
<u>TABLE OF CASES</u>	13
<u>TABLE OF TREATIES</u>	16
<u>INTRODUCTION</u>	21
<u>CHAPTER ONE</u>	31
1. <u>Geographical and historical aspects</u>	31
(a) Geography	31
(b) History	32
1. United Arab Emirates	33
2. State of Bahrain	34
3. Kingdom of Saudi Arabia	34
4. Sultanate of Oman	37
5. State of Qatar	38
6. State of Kuwait	39
2. <u>The legal and political background position of protectorates</u>	40
3. <u>The legal system during British rule and after independence</u>	44
4. <u>The failure of Federation</u>	49
(a) Major obstacles to the Federation	54
(b) Kuwait and Saudi Arabia Mediation	55
<u>CHAPTER TWO: ESTABLISHMENT OF THE G.C.C.</u>	57
1. <u>The Kuwaiti Initiative</u>	57
2. <u>Meetings and Discussions of Ministers and Experts</u>	59

3.	<u>The First Summit of the Heads of State</u>	64
4.	<u>The Legal Character of the G.C.C. Constituent Instrument and its Entry into Force</u>	65
	<u>CHAPTER THREE: THE REALISATION OF THE G.C.C. OBJECTIVES IN THE FUNDAMENTAL STATUTE AND THE UEA</u>	83
	<u>Introduction</u>	83
(i)	<u>Political Coordination</u>	84
(ii)	<u>Economic Integration</u>	92
1.	Supremacy of the UEA over Bilateral Treaties	97
2.	Conflict between the UEA and Other Treaties Concluded with Third Parties	99
3.	Supremacy of the UEA over Internal Law	100
4.	Entry into Force of the UEA	102
5.	Incorporation of the UEA into Municipal Law	107
6.	Non-Self Executing Treaty	110
7.	Techniques of Incorporation	113
(iii)	<u>Security</u>	116
(iv)	<u>Cooperation in Various Fields</u>	123
	<u>CHAPTER FOUR: MEMBERSHIP</u>	130
1.	<u>Closed Type of Membership</u>	130
2.	<u>Expulsion and Suspension</u>	138
3.	<u>Withdrawal</u>	143
	<u>CHAPTER FIVE: THE INTERNAL STRUCTURE OF THE G.C.C.</u>	149
I.	<u>Introduction</u>	149
II.	<u>Functions and Powers of the Organs</u>	150
(1)	Functions and powers of the Supreme Council	150
(2)	The legal nature of the Supreme Council Decisions	155
(a)	Decisions pertaining to the structure and operation of the G.C.C.	160
(b)	Decisions concerning the interpretation of the Fundamental Statute and the UEA	161
(c)	Decisions pertaining to the application of the UEA and the concept of subsequent practice	167
(d)	Regional customary international law	171
(e)	Recommendations	172

III. <u>Frequency of Meetings and Voting of the Supreme Council</u>	173
(a) Meetings	173
(b) Voting	175
(c) Absence	177
(d) Abstention	178
(e) The distinction between substantive and procedural matters	180
(f) Consensus	183
IV. <u>Committees and Agencies Established by the Supreme Council</u>	185
V. <u>The Commission for the Settlement of Disputes</u>	188
VI. <u>The Ministerial Council</u>	194
(a) Functions and Powers	194
(b) Meetings and Voting of the Ministerial Council	196
VII. <u>The Secretariat</u>	202
(a) The Secretary General	203
(b) The Secretariat General	206
(c) The Budget	212
CHAPTER SIX: <u>THE LEGAL PERSONALITY OF THE G.C.C.</u>	217
I. <u>The Legal Personality on the International Plane</u>	217
A. <u>Tests for Personality</u>	224
1. The G.C.C. capacity to conclude agreements	225
2. Essential Element - Volante Distincte	235
3. The G.C.C. Joint Command Forces	240
II. <u>The Legal Personality on the Domestic Plane</u>	242
A. The Headquarters Agreement of the ITC	245
B. The Headquarters Agreement of the G.C.C.	251
C. The G.C.C. Agreement on Privileges and Immunities	254
CHAPTER SEVEN: <u>THE IMPLEMENTATION OF THE UNIFIED ECONOMIC AGREEMENT (UEA)</u>	265
1. <u>The Concept of Economic Integration in the UEA</u>	265

2.	<u>The Problem of Coexistence between the UEA and the Arab League Economic Agreements concluded in substantially similar terms</u>	272
3.	<u>GCC and the GATT</u>	286
4.	<u>Supervision within the G.C.C.</u>	298
	(i) The mechanism of supervision in the application and interpretation of the UEA	304
	(ii) The priority in Governmental purchase of national products of national origin in the G.C.C.	319
	(iii) Governmental subsidies	323
5.	<u>The Private Citizen and G.C.C. Obligations</u>	326
6.	<u>The Implementation of G.C.C. Decisions in the United Arab Emirates</u>	339
	A. The Distribution of Jurisdiction in the UAE Constitution	339
	B. Some problems of implementing G.C.C. decisions in the United Arab Emirates (UAE). Main facts and arguments.	343
	C. Analysis of the United Arab Emirates' claims as a Federal State within the G.C.C.	346
	1. The United Arab Emirates' responsibility as a federal state within the G.C.C.	346
	2. The dilemma of the United Arab Emirates coastal jurisdiction	353
7.	<u>Safeguard Clauses in the UEA</u>	363
	<u>CHAPTER EIGHT: SECURITY IN THE GULF: SOME LEGAL ISSUES</u>	375
1.	<u>G.C.C. Searches for Security</u>	375
2.	<u>International Law versus Systems of Public Order</u>	386
3.	<u>Iran's View of World Order</u>	389
4.	<u>Acts of Iran which have been complained of</u>	397
	(A) Re Iraq and Iran's counter-argument	397
	(B) Re some G.C.C. member states	398

(i) Intervention	401
(ii) Armed attack in the form of direct aggression	413
(iii) Reprisal	424
5. <u>G.C.C. Practice</u>	428
(i) Regarding collective self-defence	428
(ii) Regarding the Gulf War	435
(iii) Regarding Security Council Resolutions	444
<u>CHAPTER NINE: CONCLUSION</u>	458
<u>BIBLIOGRAPHY</u>	471
<u>APPENDICES</u>	502



TABLE OF CASES

(A) International

Application of Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement, 26 June 1947 (1988), p.24.

Asylum Case (1950) I.C.J. Reports of Judgments, pp.276-77.

Certain Expenses of the United Nations (1962) I.C.J. Reports of Judgments, pp.151 et seq.

Corfu Channel Case (1949), I.C.J. Reports of Judgments, p.2.

Effects of Awards of Compensation made by the United Nations Administrative Tribunal (1954), I.C.J. Reports of Judgments, para.47 at p.52, 58-62.

Jurisdiction of the Courts of Danzig, P.C.I.J. B. No.15 (1920), pp.17-18

Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (Advisory Opinion of 1971), I.C.J. Reports (1971), pp.46-7.

Military and Paramilitary Activities in and against Nicaragua (1986), I.C.J. Reports of Judgments, Advisory Opinion and Orders, pp.103, para.195, 106, para.202, 119, para.228, para.230, and p.122.

Minquiers and Ecrehos Case (1953) I.C.J. Reports of Judgments, p.82.

Nationality Decrees Issued in Tunis and Morocco Case (1923) P.C.I.J. Series B. No.4, p.27.

North Sea Continental Shelf Cases (1969) I.C.J. Reports, p.41, para.70, 71.

Reparation for Injuries Suffered in the Service of the United Nations (1949) I.C.J. Reports, pp.181-82.

Rights of Nationals of the United States of America in Morocco (France v. United States of America) (1952) I.C.J. Reports, pp.185-8.

South-West Africa Case (1950), I.C.J. Reports of Judgments, pp.135-6

South-West Africa Cases (1962) I.C.J. Reports of Judgments, pp.426-28

Treatment of Polish Nationals in Danzig, P.C.I.J. Ser.A/B No.44 (1932), p.22.

United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), (1980) I.C.J. Reports of Judgments, pp.9, 59

Westland Helicopter Ltd. v. Arab Organisation for Industrialization (AOI), United Arab Emirates, Saudi Arabia, Qatar, Egypt and British Helicopter Company (1984) 33 I.L.M., pp.1073-89

(B) Supranational

Commission v. Kingdom of Belgium, Case 102/79, [1980] E.C.R. 1473.

Dairy Products Case, Commission v. Belgium and Luxembourg, Case 90-91/63, judgment of 13 November 1964, 10 June 1964, pp.1292, 1293; 10 December 1964, pp.1231, 1232; 2 C.M.L.Rev. (1964-65), pp.340-341; C.M.L.R. (1965), p.72.

Defrenne v. Sabena, 43/75 [1976] E.C.R. 455 at para.31 of the judgment

French Merchant Seaman Case, (The Commission v. France), Case 167/73, [1974] E.C.R., p.359.

Ratti Case, Case 148/78, [1979] E.C.R. 1629.

Simmenthal Case, Case 106/77, [1978] E.C.R., pp.651-2.

Van Gend en Loos Case, Case 26/62, [1963] E.C.R. 1, C.M.L.R. [1963] pp.12, 105.

(C) Municipal

Al-Ansari v. The Director of the University of Qatar, Judgment of 5 April 1987, The Civil Court, Second Circuit, pp.1-12 (unpublished).

Attorney-General for Canada v. Attorney for Ontario (1937) A.C. 362

Blackburn v. Attorney-General [1971] 2 W.L.R. at p.1039.

Bonsor v. La Macchia (1969) 122 C.L.R., pp.186-87, 189-190, 197-98.

J.H. Rayner (Mincing Lane) v. Department of Trade and Industry and Others; the High Court of Justice, Queen's Bench Division, Commercial Court. Butterworths Company Law Cases (1987), pp.557-706.

J.H. Rayner (Mincing Lane) v. Department of Trade and Industry and Others; Arbuthnot Latham Bank Ltd. and Others v. Department of Trade and Industry and Others; Maclaine Watson & Co. Ltd. v. Department of Trade and Industry, Court of Appeal (Lord Justice Kerr, Lord Justice Nourse, Lord Justice Ralph Gibson), April 1988; 3 All England Law Reports [1988], pp.257 et seq.

Jurisdiction of Civil Courts to hear cases challenging the legality of Administrative Decisions, The Judgment of the Upper Civil Appeal Court (1984). In The Collection of the Legal Principles according to the Judgment of Upper Civil Appeal Court (January 1980-December 1985), Government of Bahrain Print, 103pp.

Maclaine Watson & Co. Ltd. v. Department of Trade and Industry and Others (1987). The judgment was delivered on 29 July 1987. Butterworth's Company Law Cases, (1987), pp.707-16.

Missouri v. Holland (1920), 25 U.S. 416.

New South Wales v. Commonwealth (1975) 135 C.L.R. 338.

Reference the Ownership of Off-shore Mineral Rights, 685 Dominion Law Reports (1968), pp.353, 376, 380.

Salmon v. Commissioner of Customs and Excise, [1987] 2 Q.B. 116 p.132.

Standard Chartered Bank v. I.T.C. (Q.B.D.) [1987] 1 W.L.R., pp.641-44.

U.S. v. California (1947) 332 U.S. 19

U.S. v. California (1965) 382 U.S. 448

U.S. v. Louisiana (1950) 339 U.S. 69

U.S. v. Louisiana (1960) 363 U.S. 1

Wales and Others v. Commonwealth of Australia, 50 A.L.J.R., pp.211-212

## TABLE OF TREATIES

Agreement of Economic, Cultural and Technical Cooperation between the Government of Greece and the Government of the United Arab Emirates, Abu Dhabi 21.5, 1976, U.A.E. Official Gazette issue 85 (November 1980), pp.44-45 (Arabic)

Agreement of Economic, Educational and Information Cooperation between the Government of Qatar and the Government of Kuwait, Doha 11 December 1978, Kuwait Official Gazette (Kuwait Today), issue 1238 (25 March 1979, 5 pp. (Arabic)

Agreement of Economic and Technical Cooperation between the State of Qatar and the Republic of India, New Delhi, 19 April 1984, Qatar Official Gazette, Issue 8 (1984), pp.213-4 (Arabic)

Agreement with the Sheikh of Kuwait, 23 January 1899, Foreign and Political Department, Part 5, Treaties and Undertakings in force between the British Government and Rulers of Kuwait (1884-1913), pp.1-14.

Agreement of Economic, Technical and Commercial Cooperation between the Government of Qatar and the Republic of Korea, Seoul, 21 October 1984, Qatar Official Gazette, Issue 8 (1984), pp.211-212

Agreement of Economic Cooperation between the Government of the Islamic Republic of Pakistan and the Government of Qatar, Islamabad, 16 April 1984, Qatar Official Gazette, Issue 8 (1984), p.217 (Arabic)

Agreement of the Gulf Investment Corporation, 1982, G.C.C. Legal Gazette, 3rd ed. (1983), pp.49-55

Agreement of Establishment of the Board of Specifications and Standards, 1983, in Decrees which have been issued and Measures which have been Adopted in Implementing the Unified Economic Agreement, G.C.C. Secretariat (1988), pp.184-189

Arab Economic Unity Agreement, 1984, in the Arab League Treaty Series (1987), pp.277-86

Charter of the United Nations, 1945, 1 U.N.T.S. xvi

Charter of the Organisation of African Unity, 1963, 479 U.N.T.S. 39

Charter of the Organisation of American States, 1967, 119 U.N.T.S. 4

Cooperation Agreement between the GCC and EEC (unpublished).

Reference is made in EC Bull. 6 (1988), p.97.

Commercial and Economic Agreement between the Government of the United Arab Emirates and the Government of Iraq, Baghdad, 3 October 1977, U.A.E. Official Gazette No.58, Year 8 June 1978), pp.31-34 (Arabic)

Commercial and Economic agreement between the Government of Qatar and the Government of the Republic of Iraq, Baghdad, 2 October 1979, Qatar Official Gazette, Issue4 (1984), pp.186-87 (Arabic)

Commercial and Economic Agreement between the Government of Qatar and the Government of the Kingdom of Jordan, 1980, Qatar Official Gazette, Vol.1 (1961-85), pp.105-1-6 (Arabic)

Convention respecting the Rights and Duties of Neutral Powers in Maritime War, Hague (XIII), 1907, 2 A.J.I.L., Supp.202.

Convention for the Facilitation of Trade Exchange and the Regulation of Transit Trade among States of the Arab League, 1953, in Khalil, M. (ed), The Arab States and the Arab League, Document, Record, Beirut, pp.122-125

Convention on International Civil Aviation, 1944, 15 U.N.T.S. 295

Convention on Privileges and Immunities of the Specialised Agencies, 1947, 33 U.N.T.S. 261

Dubai Agreement, 1968, forming the Federation of the Arab Emirates, 1968, in Al-Baharna, H., The Arabian Gulf States, 2nd ed. (1957), pp.380-83.

Egypt-Israel Treaty of Peace (1979) XVII I.L.M. 362.

Exchange of Notes concerning the Termination of Special Treaty Relations between the United Kingdom of Great Britain and Northern Ireland and the Trucial States (Abu Dhabi, Dubai, Sharjah, Ajman, Umm al Qaiwain, Ras al Khaimah and Fujairah), 1 December, 1971, U.K.T.S. 34 (1972), Comnd. 4941

Exchange of Notes concerning termination of Special Treaty Relations between the United Kingdom of Great Britain and Northern Ireland and Bahrain and its Dependencies, U.K.T.S. No.78 (1971), Comnd. 4827

Exchange of Notes concerning the Termination of Special Treaty relations between the United Kingdom of Great Britain and Northern Ireland and the State of Qatar, September 1971, U.K.T.S. No.3, Comnd. 4849

Exchange of Notes regarding relations between the United Kingdom of Great Britain and Northern Ireland and the State

of Kuwait, 19 June 1961, U.K.T.S. No.1 (1961), Comn. 1409.

Exclusive Agreement of the Shaikh of Bahrain with the British Government dated 13 March 1892, Aitchison, p.238.

Exclusive Agreement of the Chief of Abu Dhabi with the British Government, dated 6 March 1892, Hertslet's Commercial Treaties, Vol.19, p.769

Food and Agriculture Organisation, 1943, U.K.T.S. 47 (1946).

Forced Labour Convention 1957 (No.105), International Labour Office Bulletin Vol.XLV, No.2, Supp. II, (April 1962), 39 U.N.T.S. 55

Fundamental Statute of the Gulf Cooperation Council for Arab States, 1981, in 26 I.L.M. (1987), pp.1138-1143

G.C.C. Agreement on Privileges and Immunities, 1984, G.C.C. Legal Gazette, 13th ed. (1985), pp.167-74 (Arabic)

General Agreement on Tariffs and Trade (GATT), 1947, 55 U.N.T.S. 194

General Convention on Privileges and Immunities of the United Nations, 1946, U.K.T.S. 10 (1950, Comd. 7991, 1 U.N.T.S. 15.1.

Geneva Convention on the Continental Shelf, 1958, 499 U.N.T.S. 311

Geneva Convention on the Territorial Sea and Contiguous Zone, 1958, 516 U.N.T.S. 205

Hague Convention respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, 2 A.J.I.L. Supp. 117.

Havana Convention on Asylum, 1928, 22 A.J.I.L. Supp.158

Inter-American Treaty of Reciprocal Assistance. The "Rio Treaty", signed at Rio de Janeiro on 2 September 1947, 21 U.N.T.S. 77 (ed.)

Israel-Lebanon Treaty (1983) XXII I.L.M. 708.

Joint Iranian-Iraqi Communique (The Algiers Protocol) of 6 March 1975, U.N.T.S. 1017, No.14903

Joint Defence and Economic Cooperation Treaty between the States of the Arab League of April 13, 1950, 49 A.J.I.L., Supp.51.

Law of the Sea Convention, 1982, 21 I.L.M. 1261

Memorandum of Understanding between Iran and Sharjah, 1971, in Al-Baharna, H., The Arabian Gulf States, Beirut (1975), pp.399-40.

Montevideo Convention on Political Asylum, 1933, 28 A.J.I.L., Supp.70.

North Atlantic Security Treaty, April 1949, 34 U.N.T.S. 243

Pact of the League of Arab States of March 22, 1945, 70 U.N.T.S. 238

Rules of Procedure of the Commission of Settlement of Disputes, 1981, G.C.C. Legal Gazette, 3rd ed. (1983), pp.17-19.

Rules of Procedure of the Ministerial Council of the Gulf Cooperation Council, 1981, 26 I.L.M. (1987), p.1150

Rules of Procedure of the Supreme Council of the Gulf Cooperation Council, 1981, 26 I.L.M. (1987), p.1144

Security Treaty between Australia, New Zealand and the United States of America (The ANZUS Treaty Alliance), 1951, in Peaslee, A., International Governmental Organisations, Martinus Nijhoff, Part I, pp.76-78.

Sixth International Tin Council Agreement, 1981, U.K.T.S. Comnd. 8546

Statute of the International Court of Justice, 1945, U.K.T.S. 67 (1949)

The Unified Economic Agreement among the Countries of the Gulf Cooperation Council, 1981, 26 I.L.M. (1987), pp.1160-1163

Treaty of Friendship between the United Kingdom of Great Britain and Northern Ireland and the State of Qatar, Geneva, 3 September 1971, U.K.T.S. No.4 (1972), Comnd. 4850

Treaty for East African Cooperation, 1968, in Peaslee, A., International Governmental Organisations, Part 1, pp.382-445.

Treaty of Rome establishing the European Economic Community, March 25, 1957, as amended April 8, 1965, April 22, 1970 and January 22, 1972, 289 U.N.T.S. 11

United Nations Headquarters Agreement, 1947, 11 U.N.T.S. (1947), pp.12-37.

Vienna Convention on the law of Treaties between States and International Organisations or between Organisations, 25 I.L.M. 543.

Vienna Convention on the Law of Treaties, 1968, U.K.T.S. 58 (1980).

World Health Organization and China. Basic Agreement for the Provision of Technical Advisory Assistance, 1955, 210 U.N.T.S., pp.72-80



### INTRODUCTION

On the 25th of May 1981 the Head of States of the six Gulf countries (United Arab Emirates, State of Bahrain, Kingdom of Saudi Arabia, Sultanate of Oman, State of Qatar and State of Kuwait), signed two important documents. The first was the Fundamental Statute of the Gulf Cooperation Council for Arab States (G.C.C.),<sup>1</sup> establishing the function, form and purpose of the Council. The second document, no less essential, is the Unified Economic Agreement.<sup>2</sup>

---

<sup>1</sup> The General Secretary, acting on behalf of the parties registered the Fundamental Statute with the U.N. Secretariat on 20th September 1982, in accordance with Article 102 of the Charter of the U.N. The Certificate of Registration No. 29203 done at New York on 20th August 1986, for the Secretary-General. The same document was registered with the Arab League Secretariat on 29.12.1982. A letter of notification from the G.C.C. Secretariat to Ministry of Foreign Affairs of Qatar No. 49402/134712 dated 4.11.1983. For the text of the G.C.C. Fundamental Statute see the G.C.C. Legal Gazette No.3 year (Arabic) - 11.6.1983, pp.7-13. For the English text see 26 I.L.M. (1987), pp.1138-1143.

<sup>2</sup> The Unified Economic Agreement unfortunately has not been registered either with the U.N. Secretariat or the Arab League Secretariat. For the text of the Agreement see the G.C.C. Legal Gazette, *ibid.*, pp.23-28. For the English text see 26 I.L.M., pp.1160-1163. In spite of non-registration there can be no question here regarding the binding force of the U.E.A. The problem may arise in the case of a G.C.C. member state who wishes to invoke it before an organ of the U.N. For according to Article 102 of the U.N. Charter, agreements relied upon by a member state must be registered with the Secretary General of the U.N. This does not, however, affect the right of a state not a member of the G.C.C. to invoke the unregistered treaty. The fact that the G.C.C. published the U.E.A. in its Legal Gazette would be significant evidence as to the purpose of Article 102, mainly to eliminate secret diplomacy. Although Article 102 uses the

It is obvious from the Fundamental Statute of the G.C.C. that integration is not a goal in itself, but merely a means for the achievement of the final objective. The final objective is to promote the unity of the Gulf.<sup>3</sup> Yet economic integration is the determining factor to bring about the final objective.

Although the formation of the G.C.C. marked the first step towards institutionalizing the concept of Gulf unity, the six countries have shared close cooperation on multilateral and bilateral levels. Since the early 1970s cooperation has taken different forms: economic, cultural, educational, informational, technical, commercial and military. Thus a very important factor which has helped the Gulf states to create the G.C.C. is that pattern of similarities in their history, culture, economy and forms of rule. By stressing these similarities of governmental institutions and political regimes among the six states, the council's members have impliedly and perceptively limited the G.C.C. membership to themselves<sup>4</sup> at least for the time being. The other Arab Gulf

---

words 'as soon as possible' but the G.C.C. even after few years still has the right to register the treaty since the statement appears to have a wide interpretation. See in this regard, Higgins, R., The Development of International Law through the Political Organs of the United Nations, Oxford University Press (1963), pp.328-36; Brandon, M., "The Validity of Non-Registered Treaties", 29 B.Y.I.L. (1952), pp.186-204; Broches and Boskey, "Theory and Practice of Treaty Registration" 4 Neths.Int.L.R. (1957), pp.152-86.

<sup>3</sup> Article 4.1 of the Fundamental Statute of the G.C.C.

<sup>4</sup> Article 5 of the Fundamental Statute.

State, Iraq, has not been included, partly because of the war with Iran but also because the social, economic and political systems of Iraq's Baathist regime were not shared with the G.C.C. conservative countries.<sup>5</sup> Furthermore in an attempt to avoid unnecessary offence to Iran, the organisation has the formal title of 'The Cooperation Council for Arab States of the Gulf'.

A number of factors have pushed the G.C.C. States to establish the organisation, not least of which was the realisation that cooperation would lead to the protection of the stability, security and progress of the region. The recent oil crisis has demonstrated how strategically important the Gulf region is to the West. This coupled with the fact that most of the Gulf States are small entities has contributed to making cooperation among them paramount concern.<sup>6</sup> Another significant factor is the recognition by member states that if the region is to survive, political independence can prevail only through real unity. Nevertheless the impact of three major events between 1978 and

---

<sup>5</sup> For these differences see Robins, P., The Future of the Gulf. Politics and Oil in the 1990s, Royal Institute of International Affairs, Gower Publishing Co., England (1989), p.30; Kechichian, J., "The Gulf Cooperation Council in Search for Security", 7 Third World Quarterly No.4 (1985), pp.868-70.

<sup>6</sup> Price, R., The Gulf Cooperation Council, Congressional Research Services, The Library of Congress No.85-516, Washington D.C. 10540, November 30, 1984 at p. CRS-9. See also Nakhleh, Emile, A., The Persian Gulf and American Policy, Praeger Publishers, United States (1982), pp.44-46; Rizvi, N., "Gulf Cooperation Council", Pakistan Horizon, Vol.XXXV No.21, 1982, the Pakistan Institute of International Affairs, pp.29-38.

1981 have compelled the six Gulf States to begin the pace of cooperation. These events were:

- (i) The collapse of the Shah's regime in Iran and emergence of the Islamic Republic after a long mass upheaval.
- (ii) The Soviet military intervention in Afghanistan in December 1979.
- (iii) The Iran-Iraq war which was started in September 1980.<sup>7</sup>

However, the council so far is experiencing numerous problems in particular the old and continuing question of territorial boundaries, several disputes remain unresolved. For example the unresolved Qatari-Bahraini dispute over the Huwar Islands, the lack of agreement between Saudi Arabia and Kuwait over the location of their common maritime frontiers and the Oman-United Arab Emirates dispute (a longstanding one by which Oman claims substantial parts of Ras-Al-Khaimah).

In spite of the fact that the impetus behind the formation of the G.C.C. was the desire to evolve a common strategy for the defence of the Gulf, there are nevertheless differences in the foreign policy orientations of the six states. For example, perched strategically on the Strait of Hormuz, Oman tends to feel vulnerable and openly favours cooperation between the Gulf security system and that of the West. The other states, however, perceived western military presence as dangerously provocative as far as the Soviet Union

---

<sup>7</sup> Rikye, J., "Gulf Security, Quest for Regional Cooperation", A Report of the International Peace Academy, Report No.22, New York (1985), pp.14-16.

was concerned.<sup>8</sup> As such they favoured the development of an indigenous security system. Kuwait is more forthright in its dealings with the super powers. It was the first member of the G.C.C. which had diplomatic relations with the Soviet Union. In fact Kuwait has suggested that other members of the G.C.C. should have their own diplomatic ties with the Soviet Union to demonstrate their determination to avoid complete identification with the West and to provide the balanced image of non-alignment. This recommendation has been recently taken up by Oman and the U.A.E.<sup>9</sup>

Problems arose when Kuwait particularly gave notice to the G.C.C. member states stating its reluctance to sign a multilateral security agreement. Kuwait is the only G.C.C. member not to have signed a bilateral agreement with Saudi Arabia since for example the abortive coup attempt in Bahrain in December 1981. The security agreement set down provisions over cross-border pursuit, coordinating punishments for the same crimes which would have meant increasing penalties in

---

<sup>8</sup> El Azhary, M.S., "The Gulf Cooperation Council and regional defence in the 1980s", Centre for Arab Gulf Studies, University of Exeter, Paper No.1 (1982), pp.14-16.

<sup>9</sup> Oman established diplomatic relations with the Soviet Union in September 1985, see Keesing's Contemporary Archives (1985), p.34014 A. The United Arab Emirates Foreign Ministry announced on November 15, 1985 that diplomatic relations had been established with the Soviet Union with effect from November 13, 1985. The decision to establish relations which reportedly followed contact between U.A.E. officials and the Soviet Ambassador in Kuwait was described by a government spokesman as being in line with the U.A.E's neutral and non-aligned foreign policy. See Keesing's Contemporary Archives (January 1986) at 34134.

some states and the extradition of criminals has aroused fears in Kuwait that it would threaten her democratic traditions.<sup>10</sup>

It has also been observed that some states found difficulties in applying the provisions of the Unified Economic Agreement, partly because of local resistance to price rises in commodities imported from outside the G.C.C., since these now attracted tariff.<sup>11</sup> The provisions of the Unified Economic Agreement are the most ambitious ever undertaken in the Gulf region. However, it has not been found easy to implement most of the terms of the agreement. The realities of international politics as usual manifest themselves in compromise. This is not to dismiss the fact that the formation of the G.C.C. is the most important political, social, economic event in the history of the Gulf States since their independence. Also the G.C.C. free trade area established on 1st March 1983, so far fails to affect a large portion of total trade involving member states. Added to this, the planned 4-20 percent tariff structure - a much more complex and demanding measure - was to have taken effect on 1st September 1983, but some parties to the U.E.A. continue to levy customs duties at pre-agreement rates, which is

---

<sup>10</sup> A report by Middle East Economic Digest (M.E.E.D.) November 1984 at p.20.

<sup>11</sup> Under Article 4 of the Unified Agreement member states are authorised to impose a uniform minimum tariff on goods from non-member states. This inevitably could cause price rises in countries which had hitherto imposed taxes on such goods. A report by M.E.E.D., ibid., "Economic integration means toeing the lines", 28 October 1983, at p.23.

contrary to the aims and objectives of the Unified Economic Agreement. For the G.C.C. officials the foregoing limitations in the U.E.A. are attributed to administrative elements. Yet numerous observers have stated the blockage in U.A.E. is due partly to the respective Emirates' slow progress in imposing higher customs duties on some powerful business personnel fearing an intensified recession in local markets. In this connection U.A.E. business personnel had expected strict and immediate application of the higher duties and in August 1983 imported goods in bulk to take advantage of the previous 1 percent rate.<sup>12</sup> However it has to be mentioned that the Federal Ministries of the U.A.E. are in the process of looking at methods of introducing the G.C.C. rates.<sup>13</sup>

On the whole, however, it may be judged that the above problems have not undermined the G.C.C.'s main achievements and demands. Yet problems still exist, which as noted earlier arise mainly from the inevitable national interests of individual states. This occurs of course in contravention of the Unified Economic Agreement which stipulated that its provisions would supersede all laws and legislation (Article 27). The question now to be asked is whether each state is willing to give up part of its sovereignty for the benefits of the council.

---

<sup>12</sup>Ibid.

<sup>13</sup>Ibid.

Accordingly, the main purpose of this study is to investigate these issues in the light of international law. In particular the study will explore the legal status of the council as an international organisation. It is hoped that through the investigation, the writer will be able to identify most of the problems and offer further suggestions for improvements.

Further, in exploring these problems, the writer hopes to examine the functional aspects of the G.C.C., by comparing these to other similar regional international organisations, particularly the E.E.C., hence there are some common objectives between the G.C.C. and the E.E.C.

The methodology to be employed in the study consists mainly of investigating official documents and delegations reports. But also interviews were conducted with high ranking officials in both the Council and State members.

It should be admitted here that the travaux preparatoires of the Fundamental Statute and other important instruments are apparently not written and are still kept on tapes, so the writer did not have access to these important documents. However efforts will be made to get some insight into these issues during the investigation. Accordingly, the thesis is divided into nine chapters.

The first chapter deals with the geographical and historical aspects of the member states of the G.C.C., reviews the political and legal background and discusses the first



move in the Gulf towards federation, which had been unsuccessful previously.

The second chapter considers the various steps which contributed to the establishment of G.C.C. and the legal character of the G.C.C. establishing instrument. It also deals with the treaty-making power within the constitutional arrangements of the Member States.

The third chapter embraces a study of how the objectives of the organisation are realised.

The fourth chapter deals with membership. In this context, an attempt was made to explain why the membership is restricted to the six states and the significance of this restriction. In addition, the rules of expulsion, suspension and withdrawal under international law are examined since the constituent instrument of the G.C.C. is silent on these issues.

Chapter five examines the organs of the G.C.C. and the supplementary apparatus annexed to it. It also deals with decision-making powers of these organs and the extent to which these decisions are binding.

Chapter six looks at the international personality of the G.C.C. with a comparative view on the international and domestic plane.

Chapter seven deals with the G.C.C.'s Unified Economic Agreement (U.E.A) concluded in summer 1981. The 28 articles of this agreement - which set very ambitious targets that go much further than any previous effort to coordinate Gulf

development - are examined. The chapter examines critically the advantages and the disadvantages of Gulf experience, comparing it specifically with the E.E.C. experience, mainly through the process of supervision. It furthermore deals with the problem of possible conflict between the agreement and other similar agreements concluded under the auspices of the Arab League. Moreover, careful attention is given to the implementation of the U.E.A in a federal state (i.e. United Arab Emirates (U.A.E)).

Chapter eight deals with some legal issues of the security in the Gulf. It particularly examines the question of neutrality of the G.C.C. in the Iraqi-Iran war and the relevance of the concept of self-defence to the attitude of the G.C.C in funding Iraq.

The concluding chapter (Chapter 9) gives a brief summary of the thesis pointing out the main findings of the study and offers recommendations and suggestions for further research.

Finally, one should note that the dearth of authoritative legal literature on the Gulf Cooperation Council, and the excessive confidentiality imposed on its documents, contributed significantly to the difficulties involved in writing this thesis.

CHAPTER ONE1. GEOGRAPHICAL AND HISTORICAL ASPECTS(a) Geography

The Arabian side of the Gulf refers to the United Arab Emirates, the State of Bahrain, Kingdom of Saudi Arabia, Sultanate of Oman, State of Qatar and State of Kuwait. "The Gulf", however, is a term frequently used to include also Iran, which occupies the entire northern shore and the head east of the Shatt-al-Arab.

The Gulf is a shallow marginal sea of the Indian ocean that lies between the Arabian peninsula and south-east Iran. It has an area of 92,500 square miles (24,000 square kilometres) and is rarely deeper than 300 feet (50 fathoms or 100 metres) although depths exceeding 360 feet are found at its entrance and isolated localities in its southern part. The length of the Gulf is 500 miles and its width varies from 180 miles to a mere 26 miles at the Strait of Hormuz. The strait links the Arabian Gulf with the Gulf of Oman and the Arabian sea. At the northern point of the Gulf Shatt-Al-Arab enters it and for a very short distance to the west of its

mouth the sea-board belongs to Iraq.<sup>1</sup>

The shallowness of the waters had led to the widespread belief that the whole of the Gulf is in the legal term a continental shelf, but it does not form a continental shelf in the technical meaning of the term.<sup>2</sup> This explains why the rulers of the Arabian Gulf Shaikdoms did not refer to the continental shelf in their proclamations of the extent of that shelf.<sup>3</sup>

(b) History

At times the Gulf region has been noted as an area of important trade routes, for the ships of foreigners from 1507, the ships of Kuwait, Oman and the Hadhramout on their routes to the Far East and East Africa, the ships of Europe and America and now air traffic.<sup>4</sup> All the Mid and Upper Gulf areas experienced the severe depression of the 1930's, which stemmed partly from the decline in the pearl trade resulting from world depression and the advent of the cultured pearl.

---

<sup>1</sup> For general geographical and other information on the Arabian Gulf see Encyclopedia Britannica, 13th ed. (1973) at p.649; Wilson, Sir A.T., The Persian Gulf (1928 reprinted 1954) Oxford; British Admiralty, A Handbook of Arabia, Vol.1 (1916); Hay, Sir Rupert, The Persian Gulf States, The Middle East Institute (1959).

<sup>2</sup> Amin, S., International and Legal Problems of the Gulf, Middle East and North African Studies Press Ltd., London (1981), p.97.

<sup>3</sup> Lauterpacht, Sir H., "Sovereignty over Submarine Area", 27 B.Y.I.L. (1950), p.384.

<sup>4</sup> For the general history of the Arabian Gulf see Lorimer, J.G., Gazetteer of the Persian Gulf, Oman and Central Arabia, Historical Part 9A, Calcutta Superintendent Government Printing, India (1915), pp.2-4.

The whole population was on the move from many Shaikdoms for lack of a livelihood.

Politically the Arabian Gulf was a divided area: individual tribes, villages, townships, ports were very much left to their own devices under the rule of their own Shaikhly families, Al Saud in Saudi Arabia, Al Sabah in Kuwait, Al Thani in Qatar, Al Khalifa in Bahrain, Al Nahyan in Abu Dhabi and Al Bu Said in Oman.<sup>5</sup>

#### 1. United Arab Emirates

The creation of United Arab Emirates in December 1971 came after a century and a half of the existence of the Trucial States in special treaty relations with Britain.<sup>6</sup>

The trucional coast comprised seven Shaikdoms (Abu Dhabi, Dubai, Sharja, Ras-Al-Khaimah, Fujairah, Umm-Al Qaiwain and Ajman).

Early in the eighteenth century, Britain represented by the English East India Company, began its monopoly of the trade and politics of the Gulf area. Subsequently the rulers of these Shaikhdoms concluded in 1820 a general treaty<sup>7</sup> with

---

<sup>5</sup> Yapp, M., The Nineteenth and Twentieth Centuries in the Persian Gulf States, The Johns Hopkins University Press, Baltimore and London (1980), pp.41-68.

<sup>6</sup> See Exchange of Notes concerning the termination of special treaty relations between the United Kingdom and the Trucial States, 1st December 1971, U.K. Treaty Series No.34 (1972) Cmnd.4941.

<sup>7</sup> For an English translation of the original Arabic copy of the treaty of peace of 1820 signed by Major-General W. Grant Keir with the Arab tribes of Ras El Khaimah see F.O. 60117, January 1920. For the text of the treaty see also Aitchison, C.U., A Collection of Treaties, Engagements and Sanads relating to India and Neighbouring Countries, Vol.XI,

the British Government in which they agreed to help the British to maintain peace and order, prevent plundering and piracy on land and sea. The 1820 treaty was imposed on the Chiefs by the British in order to keep the Gulf route to India safe and open. This treaty was followed by a perpetual Maritime Treaty of 1853 and the 1892 Exclusive Treaty by which the British Government became responsible for the external affairs of the Shaikhdoms.<sup>8</sup> In 1951 a Council of Trucial States rulers was formed with the object of inducing the Shaikhdoms to adopt a common policy in administrative matters, such as regulation for motor traffic, the issue of nationality and passport laws and so on.<sup>9</sup>

## 2. State of Bahrain

Since 1782 the Al-Khalifah branch of the Utub families has ruled Bahrain. Early in the eighteenth century they settled in Kuwait with their cousins Al-Sabah (rulers of Kuwait). In 1766 they moved to Qatar where they established themselves at Zubarah on the north-western coast. On 28th July 1782 Al-Khalifah with the help of their cousins Al-Sabah

---

Calcutta (1933), pp.245-8.

<sup>8</sup>See India, Foreign and Political Department, Part I - Treaties and Engagements in force between the British Government and the Trucial Chiefs of the Arab Coast 1820-1912 at p.19.

<sup>9</sup> For the history of trucial Shaikhdoms and their treaty relations see Hay, Sir Rupert, The Persian Gulf States, Washington (1959). The Middle-East Institute, pp.113-129; Wilson, ibid., pp.192-200, Arabian Gulf Intelligence - Selections from Record, Oleander Press (1985); Heard-Bey, F., From Trucial States to United Arab Emirates. A Society in Transition, Longman, London and New York (1982).

launched an attack on the Bahrain islands and occupied it in November 1782. However from time to time, as in the years 1870-1905, Bahrain was involved in many attempts by, among others, the Sultan of Muscat, the Ottoman Turks, and the Wahhabis to exercise their sovereignty over her.

In 1861 Britain and Bahrain concluded a perpetual treaty of peace and friendship concerning such matters as slavery, piracy, maritime aggression and British trading.<sup>10</sup> Nevertheless Bahrain did not come under British protection until 1820.<sup>11</sup> In 1880 and 1892 Shaikh Isa-Bin-Ali signed two further agreements which associated the British government more closely with the affairs of Bahrain.<sup>12</sup> However, these agreements were terminated on 14th August 1971 by Exchange of Notes between the Bahrain and British Governments.<sup>13</sup>

### 3. Kingdom of Saudi Arabia

Owing to its Islamic background, size, material prosperity and vast resources, as also the stability of its government., Saudi Arabia enjoys a unique status among the

---

<sup>10</sup> Great Britain, British Foreign and State Papers, Vol.56 (1864-5), pp.402-3. On the general history of Bahrain and her treaties see Aitchison, C.U., op.cit., p.196.

<sup>11</sup> On the history of Bahrain see Arabian Gulf Intelligence, op.cit., p.362; Lorimer, J.G., Gazetteer Persian Gulf, Vol.1, Historical Part 1B, op.cit. at p.205; Belgrave, H.D. (ed.), Welcome to Bahrain, (1965), p.61.

<sup>12</sup> For the text of these agreements, see India, Foreign and Political Department, Treaties between the British Government and the Rulers of Bahrain (1820-1914), Part 4, pp.1-17.

<sup>13</sup> Exchanges of Notes concerning termination of special treaty relations, U.K.T.S., No.78 (1971) Cmnd. 4827.

Gulf states. Wahhabism, as the name of a modern Islamic reform movement in Arabia, hold that their movement is a return to the original principles of Islam and a repudiation of all innovations contrary to the practices of the Prophet Muhammed. In 1744 the reformer Muhammed-Ibn-Abdal-Wahab, the founder of Wahhabism, and the ruler Muhammed-Ibn-Saud entered into a compact by which the ruler promised the reformer to sponsor his movement in order to dominate the whole Arabian peninsula.

As a result of this alliance the movement extended through the subsequent reigns of the Saud House to many parts of Saudi Arabia. However in 1818 Muhammed Ali, the Governor of Egypt, accepting the charge put to him by the Ottoman Sultan who feared the spread of the movement, brought an end to the first Wahhabite State. Yet under the pressure of circumstances the Egyptians withdrew their forces. In 1838 Mohammed Ali, not satisfied with the nominal suzerainty to which the progress of events had reduced his power, succeeded in re-establishing his control in many parts of Saudi Arabia. However, due to difficulties the Egyptians experienced in occupying a distant territory, they soon evacuated their troops in 1840. This was not the end of the series of troubles inflicted upon the Saud House. Since the first half of the eighteenth century the Saud House had repelled challenges for supremacy by other dynasties (i.e. Al-Rashid in Najd and Riyadh, Sharif-Husseini in Mecca and Hijaz). Eventually in 1902 Abal-Aziz-Ibn-Saudi, who is the founder of



the modern Kingdom of Saudi Arabia, emerged. It took him thirty years to unify the greater part of the peninsula and announce the establishment of the Kingdom in 1932.<sup>14</sup>

#### 4. Sultanate of Oman

The ruling family and a large proportion of the Arab tribesmen of Oman proper belong to the Ibadi Sect of Muslims (originally the Kharijites). They prefer to entrust the administration of their country to an elected Imam, though they have in fact submitted to dynastic rule.<sup>15</sup> The founder of the present Al-Bu-Said dynasty, Saiyid-Ahmed, was elected Imam after driving the Persians out of Oman in 1744.

The most eminent ruler of the dynasty was Sayyid-Said-Ibn-Sulan. During his reign (1807-56) he devoted much of his power to consolidating his hold over Africa's east coast (Zanzibar). This led to a boom in Zanzibar which attracted Arab, Indian, European and American traders.

As a result commercial treaties were concluded between Oman and the United States (1833),<sup>16</sup> Great Britain (1831),<sup>17</sup>

---

<sup>14</sup> For the history of the Kingdom of Saudi Arabia, see Philby, H.St. J.B., Saudi Arabia, London (1955), p.337; Lorimer, op.cit., Vol.1, pp.1109-1164); Hogarth, D.G., Arabia, Oxford (1922) at p.103.

<sup>15</sup> The Ibadhiya Sect were originally called Khawarij (i.e. Outsiders) who fought against Ali the fourth Khalif. They believed that a man might become Imam of the Moslems, though he did not belong to the tribe of Kuraish. Against the Khawarij are the Shiahs, those who followed the Khalif Ali. See Wilson, op.cit., pp.80-1.

<sup>16</sup> See the text of the Treaty in Arabian Gulf Intelligence, op.cit., pp.262-64.

<sup>17</sup> Ibid., pp.250-56.

in addition to a series of political treaties with France (1844).<sup>18</sup>

Oman had for centuries been an independent state and the Sultan conducted his own foreign relations. Great Britain had, however, no exclusive provision in Oman such as she enjoyed in the Gulf Shaikhdoms and relations between the two countries were governed by commercial treaties.<sup>19</sup>

On 6th October 1971 Oman became a member of the League of Arab States and on 7th October 1971 she was admitted to membership of the United Nations.<sup>20</sup>

#### 5. State of Qatar

The modern history of Qatar starts with the settlement of the Utub of Zubarah in 1766. It has been stated earlier that in that year Al-Khalifah (the rulers of Bahrain) remained at Zubarah until they occupied Bahrain in 1782.

Though Al-Khalifah showed their intention in the nineteenth century to keep Qatar under their control, it slowly came out of their power and other tribes started to take over.

---

<sup>18</sup> Ibid., p.266-271.

<sup>19</sup> For the general history of Muscat and Oman, see Arabian Gulf Intelligence, op.cit., p.170; Hay, op.cit., p.130; Lorimer 1, op.cit., pp.420-35; Wilson, op.cit., at p.77.

<sup>20</sup> See Keesing, op.cit. (1971-72) pp.24670 B - 2490C A. See also U.N. Report of the Secretary-General on the Work of the Organisation, 16 June 1971-15 June 1972, pp.68-9, 91.

As a result of the Turkish influence in eastern Arabia in 1820 Qatar was joined to the Turkish province there and Shaikh Muhammed-Ibn-Thani became the ruler of the peninsula.<sup>21</sup> However after the withdrawal of Turks an agreement with the Shaikh of Qatar was concluded by the British government on November 3rd, 1916.<sup>22</sup> In it Shaikh Abdallah-Ibn-Jasim-Al-Thani undertook to abide by the spirit and obligations of the agreements with the other trucial Shaikhs. This agreement was followed by the 1934 agreement which extended British protection until September 1971 when Qatar obtained its independence.<sup>23</sup>

#### 6. State of Kuwait

The first settlers of Kuwait belonged to the Utub tribe who are said to be derived from Anizah of northern central Arabia.

The modern history of Kuwait dates back to 1716, when it was founded by ancestors of the present ruling family (Al

---

<sup>21</sup> On the general history of Qatar, see Lorimer, op.cit. at p.787; see also Arabian Gulf Intelligence, op.cit.

<sup>22</sup> For the text of this agreement see Aitchison, op.cit., pp.258-60.

<sup>23</sup> On 3rd September 1971 the agreement of 3 November 1916 between Qatar and the British Government and the supplementary agreement of 1934 which placed Qatar under British protection in the past, was terminated by means of an Exchange of Notes between the Amir of Qatar and the British political Resident in the Gulf representing the British Government. On the same date, the state of Qatar and the United Kingdom signed a 10 Years Treaty of Friendship. See U.K.T.S. No.4 (1972) Cmnd.4850.

Sabah). The first acknowledged shaikh of the community Al-Sabah, assured rulership in 1750, and his successors progressively strengthened Kuwait nationhood. Yet it was at the time of Shaikh Mubarak Al-Sabah (1896-1905) that Kuwait signed the Exclusive Agreement of 1899<sup>24</sup> with Great Britain. This agreement did not affect the Turkish suzerainty, and its claims to the north west coast of the Gulf were contested. However, such authority was over when the Turkish troops entered the First World War on the side of Germany in 1914.<sup>25</sup>

Great Britain thus became responsible for conducting the foreign relations of Kuwait and subsequently for its protection against foreign aggression until Kuwait became independent on 19th June 1961.<sup>26</sup>

## 2. The Legal and Political Background Position of Protectorates

Apart from Saudi Arabia and Oman, who were sovereign states, the rest of the G.C.C. members were under the

---

<sup>24</sup> See Foreign and Political Department, Part 5, "Treaties and undertakings in force between the British Government and Rulers of Kuwait 1884-1913", pp.1-14.

<sup>25</sup> For the history of Kuwait, see Lorimer, op.cit. no.1002; Wilson, op.cit., pp.247-53; Hay, op.cit., p.98; Dickson, H.R.P., Kuwait and her Neighbours (1956), pp.26-8 and Chapter VI.

<sup>26</sup> On 19 June 1961 the United Kingdom concluded with the Ruler of Kuwait, the late Shaikh Abd Allah Al Salim Al Sabah, a new treaty by virtue of which the former recognised Kuwait as a sovereign independent state. For the text see U.K.T.S. No.1 (1961) Cmd. 1409.

protection of the British Crown.<sup>27</sup>

During the nineteenth century, as has been mentioned earlier, Britain concluded agreements with the various rulers of the Arabian Gulf by which the latter agreed not to cede, sell, mortgage or otherwise give for occupation any part of their territories, except to the British Government. In return Britain obtained great control over the foreign relations of the Gulf States and undertook to defend them in case of any aggression.

Yet the position of the Gulf States under these agreements has been a matter of controversy. Although the British Government repeatedly qualified them as independent states under its protection<sup>28</sup> some writers deny that they had any degree of separate personality at all.<sup>29</sup> Others regard them (Oman excepted) as having some international status but not as independent states.<sup>30</sup>

Herbert J. Liebesny has considered them as having a similar status as Tunis and Morocco, whose protectorate

---

<sup>27</sup> Saudi Arabia's sovereignty was fully practised and recognised since its independence. See supra, pp.36-37.

<sup>28</sup> Sir B. Eyres, House of Commons debate on April 18, 1934, Hansard, Vol.88, cols.973-74. Article 6 of the Jidda Agreements, Foreign Office (Great Britain) Treaty Series, 4 U.K.T.S. (1927) 35.

<sup>29</sup> Amin, S.H., Political and Strategic Issues in the Persian Arabian Gulf, Royston Ltd. (1984), p.15.

<sup>30</sup> Al Baharna, H.M., The Legal Status of the Arabian Gulf States, Manchester University Press (1968), pp.79-80.

treaties with France were internationally binding.<sup>31</sup> Crawford determines that since it is uncertain that they retained a sufficient degree of independence under the protection treaties a resort to ancillary criteria such as recognition is necessary. He adds that:

"The principality of Morocco is recognised as an independent state in special treaty relations with France. It is a member of international organisations and party to a substantial number of bilateral treaties."<sup>32</sup>

It may be argued that if this criterion was sufficient the legal status of the Gulf states as independent states would be obtained.<sup>33</sup> Nevertheless the protection treaties have been considered as unequal treaties establishing gross inequality between the obligations of the parties.<sup>34</sup> This argument, however, can be met by the fact that the protected

---

<sup>31</sup> Liebesny, H., "International Relations of Arabia", Middle East Journal (1947), at p.167.

<sup>32</sup> Crawford, J., Creation of States in International Law, Clarendon, Oxford, (1979), at p.193.

<sup>33</sup> It is to be noted that being protectorates has not prevented Bahrain, Qatar and Kuwait from acceding to some international organisations long before they attained their independence (i.e. Bahrain to UNESCO and WHO, Qatar to OPEC, WHO, UNESCO, and Kuwait to International Telecommunications Union, WHO, International Civil Aviation, OPEC etc.) as well as all of them have participated in international conferences and concluded many agreements. See in detail Al-Baharna, op.cit., pp.76, 102, 112.

<sup>34</sup> The African-Asian Lawyers Conference, 1957. The Asian-African legal consultative committee which adopted a wide definition of duress in order to invalidate these treaties. Essam Sadik, Unequal Treaties in International Law (1978) Ph.D. thesis submitted to Cairo University (Arabic), pp.236-243. Sadik does not regard these treaties as international ones. The reason he gives is that the Shaikhs had no legal capacity at that time to conclude these treaties.

states in the Gulf specially requested the protection arrangements and these arrangements were not imposed on them in any way.

In the Nationality Decrees issued in Tunis and Morocco Case (1923) the Permanent Court of International Justice stated that the extent of power conferred on the protecting power depends on two things; firstly upon the treaty or "treaties between the protecting state and the protected state establishing the protectorate and secondly upon the conditions under which the protectorate has been recognised by third powers as against whom there is an intention to rely on the provisions of these treaties."<sup>35</sup> Further, the court held that

"in spite of common features possessed by protectorates under international law, they have individual legal characteristics resulting from the special conditions under which they were created, and the stage of their development."<sup>36</sup>

In the Right of the United States Nationals in Morocco Case (1952) the International Court of Justice accepted the principle that "Morocco even under the protectorate, has retained its personality as a state in international law".<sup>37</sup>

At any rate one may conclude that while the four Gulf States (Qatar, Bahrain, Kuwait and the Trucial States) have surrendered their external sovereignty, they reserved their internal sovereignty.

---

<sup>35</sup> P.C.I.J. Series B No.4 (1923) at p.27.

<sup>36</sup> Ibid.

<sup>37</sup> I.C.J. Reports (1952), pp.185-8.

Although it has not been agreed that for an entity to be considered as a subject of international law it must be fully sovereign,<sup>38</sup> it is hard to conclude that Qatar, Kuwait, Bahrain and the Trucial States retained their personality as full states in international law since they were obliged according to the protection treaties to consult and take the consent of Great Britain as protector in most of their external affairs (ex. the establishment of diplomatic or consular relations with foreign powers, cession or disposal of their territory, the conclusion of treaties).

### 3. The Legal System During British Rule and After Independence

The highest British official in the Gulf was the political Resident, subordinated to him were the political Agents in Qatar, Bahrain, Kuwait and the Trucial States. The constitutional power of the political Resident derived from a succession of British orders in council issued on the basis of the Foreign Jurisdiction Act of 1890 as amended, and from the agreements concluded with the rulers.

The orders in council enacted separately for each of the States explained exclusively the exercise of the British

---

<sup>38</sup> See Westlake, J., International Law, 2 vol., 2nd ed., Cambridge (1910-1913) at p.21; Willoughby, W.W., Fundamental Concepts of Public Law, New York (1924), p.21; Baty, T., The Canons of International Law, London (1930), pp.6-7.



extraterritorial jurisdiction.<sup>39</sup>

At the time of the Trucial States there was a court of law in Dubai administered by a qualified Qadi (Judge). Legal cases were as a rule referred to the ruler or a member of his family. Cases were decided primarily according to customs and tradition, otherwise in personal status matters they were subject to Islamic law.<sup>40</sup> However with the establishment of the federal state (U.A.E.) there are two branches of Emirates laws and federal laws. The 1972 constitution provides three federal bodies, a supreme council of the rulers in which Abu Dhabi and Dubai have the right of veto, a federal government and a federal national assembly with advising powers and supreme federal court. Subsequently two main sources of law are applied. The Sharia law and the non-Islamic laws applied in the civil courts.

In Bahrain prior to the cession of British jurisdiction the only courts apart from the agency court which existed in Bahrain were Sharia's court and the customary law court. The latter dealt with disputes concerning the pearl diving industry.

---

<sup>39</sup> See Hay, op.cit., pp.19-22. See also Persian Gulf Gazette (containing orders in council, laws and regulations) published by Her Majesty's Political Resident in the Arabian Gulf by his Authority, supplement, Nos.1-32 (1952-61). See also, Ballantyne, W., Commercial Law in the Arab Middle East: The Gulf States, Lloyds of London Press Ltd., London (1986), pp.13-24.

<sup>40</sup> Hay, op.cit., pp.114-16.

The Sharia court's jurisdiction included matters of marriage, divorce and inheritance.<sup>41</sup>

Nowadays the judicature in Bahrain is clearly separated into civil judicature and Islamic judicature and the Bahraini constitution makes mention of Sharia law as one of the principle sources of law in the state. The Sharia judicature is divided into Sunni and Jafari (Sect of Shiat). It is worth noting that Bahrain among few Gulf states issued the penal code which is normally governed by Islamic laws and the criminal jurisdiction in these states is restricted to Islamic courts.

In 1973 a National Assembly was set up, composed of 22 elected members plus 8 members nominated by the ruler. However, some ideologically opposed polarities united against government policy in an attempt to impose their own religious and political commitments. The ruler instead dissolved the Parliament altogether in 1975 and has continued to rule by decree. Amiri Order postponed the election of a new National Assembly until the promulgation of new election laws and suspended the effectiveness of Article 65 of the constitution and any other provisions relating to elections. The Amir and Council of Ministers took over all legislative powers.<sup>42</sup>

---

<sup>41</sup>Liebesny, "Administration and Legal Development in Arabia", Middle East Journal (1956) No.X, p.41.

<sup>42</sup> Ballantyne, op.cit., p.44. See also, Amin, S.H., Middle East Legal System, Royston Ltd. (1985), pp.18-37.

The legal system in Saudi Arabia is entirely different. The main source of law in Saudi Arabia is the Hanbali school of Islamic jurisprudence.<sup>43</sup> The government adopted no formal constitution other than the Quran and the other sources of classical Islamic law.

It is to be noted that Saudi Arabia is the only state among the G.C.C. members which applies strictly the Islamic penal law.

As for Oman the legal system is based on the Islamic law. The traditional doctrine which is administered is Ibadi.<sup>44</sup> Since 1970, Oman has adopted certain codes of law (i.e. the Income Tax Decree 1971, the Foreign Business and Investment Law 1977, the Commercial Companies Law 1974 and Commercial Agencies Law 1977. Legislation in Oman appears in the form of Royal decrees. In 1981 Sultan Qabus Ibn Said Al Bu Said set up a 45-member advisory council to help the cabinet by putting forward recommendations for further policy developments.

Before the independence of Qatar in 1971 the Sharia courts had jurisdiction in personnel status matters. In other matters a court composed of two Shaikhs from the ruling family with the British Advisor participating in an advisory capacity had jurisdiction.<sup>45</sup> However, the laws have been changed

---

<sup>43</sup> Ballantyne, ibid., p.49; Amin, ibid., pp.312-319. Also Liebesny, op.cit., at p.41.

<sup>44</sup> Hay, op.cit., at p.101.

<sup>45</sup> Amin, op.cit., at pp.299-300.

greatly after the cession of British jurisdiction.

The provisional constitution (1971) provides that Sharia shall be the principal source of law in the state. Along with the Sharia rules which are applied by religious Qadis there are the Qatari and Commercial Codes which are applied in the civil courts.<sup>46</sup> Furthermore, in accordance with the provisions of the amended provisional constitution an advisory council was set up. The functions of the council inter alia are to discuss draft laws proposed by the cabinet before their submission to the Amir for ratification. It also makes recommendations to the government. Yet these recommendations are left entirely to the discretion of the government to be taken.

Finally Kuwait has experienced two different legal systems. During the years preceding her independence in 1961 the Ruler's courts administered justice and Sharia laws were applied in both civil and criminal cases. Since its independence the legal system in all fields changed rapidly. The Kuwait government commissioned the well-known Egyptian jurist Al-Sanhouri to draft the constitution and major codes for use in the state. Sanhouri wrote the constitution and a commercial code (which has recently been replaced) in 1981. He also wrote a Courts' Law and a Conflict of Laws Code, which is the only one in the area apart from some fragmentary

---

<sup>46</sup> Ballantyne, op.cit., p.55.

provisions in Bahrain and Qatar, and in Oman banking law.<sup>47</sup> It is not surprising of course to note these codes were taken mainly from the Egyptian counterpart and therefore based originally upon the French system. In 1963 a national assembly of 50 members was elected. The assembly has the power, inter alia, of voting of no confidence against the ministers, approve the budget and pass the laws. The parliamentary life in Kuwait proved to be a unique experience in the G.C.C. member states.

However in 1976 the Amir of Kuwait, due to internal political turbulence, dissolved the National Assembly, providing that the authorities delegated to the Assembly by the constitution become vested in the Council of Ministers.<sup>48</sup> The cessation of the assembly remained in force until 1981 when a new assembly was elected.

#### 4. The Failure of Federation

Qatar, Bahrain and the seven Trucial shaikhdoms are commonly known as the British protected states (they are in special treaty relations with the United Kingdom).<sup>49</sup>

Following Britain's announcement to withdraw from the Gulf area by the end of 1971, the rulers of the nine Gulf

---

<sup>47</sup> Ballantyne, ibid., p.20.

<sup>48</sup> Ballantyne, ibid., p.45.

<sup>49</sup> Al-Baharna, H., The Arabian Gulf States - Their Legal and Political Status and their International Problems, reprinted (1978) Singapore, pp.1-22.

Emirates (Abu Dhabi, Bahrain, Dubai, Qatar, Sharjah, Ajman, Umm-Al-Qaiwain, Ras-Al-Khaimah and Fujairah) prepared to consider how political stability could be maintained and sustained thereafter. Anticipating a political vacuum after the British military presence in the Gulf, the rulers immediately responded and began to meet to discuss possible approaches to overcome potential threats.

Under its treaty obligations, Britain had conducted foreign and defence affairs on behalf of the Gulf states for many years. As a result of Britain's absence individually or collectively the Gulf states would have to take over these responsibilities themselves. Some of these countries, the smaller ones specifically, realised that their chances of becoming a viable political unit were very slim, especially as the bigger states tended to play a more key role in the area in the absence of Britain. The effect of Britain's withdrawal was not restricted to the nine Gulf city states however, for other Arab and non-Arab countries also saw that they also had involvement in the area obviously, taking into consideration the possible crises which might have occurred.

Therefore, the rulers had to unite and seek to achieve a concrete objective for the prosperity and security of the area. In this respect Abu Dhabi and Dubai were the first to spark off the movement towards federation. The rulers of the two Emirates met on 18th February 1968 on the border between their two states and formally agreed to form the two Shaikhdoms in a union, conducting jointly foreign affairs,

defence, security, social services and adopting a common immigration policy.

Article 4 of the Abu Dhabi-Dubai bilateral agreement urged the other Gulf Emirates to discuss the proposal for the establishment of the union. Rulers of the nine Emirates responded to the invitation of Abu Dhabi and Dubai and met in Dubai on February 25th, 1968, to consider the future of their countries. After three days deliberation they reached the federation agreement which was to come into effect at the end of March 1968.<sup>50</sup>

The Federation agreement invested ultimate political power in a supreme council composed of the rulers of the nine Emirates and this body was made responsible for formulating the overall policies of the federation on political, economic and social affairs. Chairmanship of the council was rotated annually among its members.

The chairman represented the federation body internally and externally. The legislative power was reserved to the supreme council, consisting of the nine rulers. The executive body of the federation was to be the "federal council" and three councils concerned with defence, economy and culture were to report to it. However, the role of the federal council was considerably reduced, and it was to operate under

---

<sup>50</sup> The Documents of the Union of Arab Emirates, Part 1, Palace of Amir Doha, Qatar. Unpublished (Arabic). See also Heard-Bey, F., From Trucial States to United Arab Emirates - A Society in Transition, Longman, London and New York (1982), pp.343-47.

the close supervision of the supreme council. The composition of the federal council was left to the discretion of the law.<sup>51</sup>

Chapter 3 of the agreement, entitled "General Rules", addressed itself first to the need to cooperate in defending individual Emirates and the state as a whole against external aggression; secondly to the supreme federal court, whose functions were specified only in the draft; thirdly to the need for the supreme council to decide on its permanent headquarters; fourthly to the reservation to each Emirate of the right to manage its own internal non-federal affairs; and finally to a provision that the supreme council could amend the agreement, particularly if the amendment tended to make this among the member Emirates stronger.

It was decided that the agreement should come into force on 30 April 1968, and remain in force until superseded by a permanent charter.<sup>52</sup>

The first legal problem which the countries faced was how to implement the federation agreement. Qatar particularly strongly advocated the immediate establishing of the various organs necessary for the new state to function. On the other hand, the majority of the Emirates preferred to leave many

---

<sup>51</sup> In the original draft which was prepared by Dr. Hasan Kamil Adviser to the Government of Qatar and submitted to Ruler and the Deputy Ruler of Qatar a maximum of four representations from each Emirate was proposed. See Heard-Bey, ibid., at p.344.

<sup>52</sup> Ibid.



subjects until the adoption of a constitution for federation was considered by all the participating countries. It was impossible to promote progress. In an attempt to solve this problem and other related issues, the Government of Qatar suggested that the whole matter should be given to legal experts for advice. In this regard Qatar raised the question "Should the countries implement the Dubai Agreement of 1968 or should they freeze it until the constitution of the federation was adopted". Qatar also wanted to know if it was possible for the new union to obtain membership of the United Nations. The latter question was raised due to some speculation that it might not be acceptable for the Union to be admitted to the United Nations.

The legal experts fully supported Qatar's view that the Dubai Agreement of 1968 did not need ratification and the agreement should come into force on 30th March 1968 without any need of further constitutional procedures. Thus failing to implement the Dubai agreement would result in a breach of the agreement.<sup>53</sup> In respect of the latter question raised by Qatar, Professor Rousseau asserted that so long as the "federal union enjoys sovereignty and can be considered as a separate entity there is no reason why it cannot obtain the

---

<sup>53</sup> Professor Charles Rousseau from Paris University and Dr. Wahid Rafat, the Egyptian legal adviser to the then Ruler of Kuwait; ibid. at p.472.

necessary UN membership".<sup>54</sup>

(a) Major Obstacles to the Federation

Despite all efforts made to overcome the differences between the nine Emirates, they could not achieve a consensus on three basic matters.

First, the question of where to locate the federal capital, and whether a permanent seat of the union should be designated for once and all as proposed by Qatar or whether this location should be left until a permanent constitution was drafted as suggested by Bahrain. It was suggested that after a short period of transition the city of Abu Dhabi should be chosen as the provisional federal capital.

Secondly, the voting system in the supreme council was debated. The proposals were whether unanimity should be the rule, as demanded by Qatar despite the difficulties of achieving a unanimous vote at all times, or whether a specific majority would be satisfactory. The various proposals included a two-thirds majority, including the vote of the four large Emirates (Bahrain, Qatar, Abu Dhabi, Dubai), providing that the council could not achieve unanimity, or a plain two-thirds majority without giving effect to any Emirate's vote, or a seven out of nine majority as was proposed by some legal

---

<sup>54</sup> Quoted from Professor Charles Rousseau memo dated 22nd June 1968, Paris at p.7. Professor Rousseau considered that the Dubai Agreement 1968 formed a confederation among the nine Arab Emirates. The Documents of the Union, The Palace of the Amir of Qatar, op.cit.

experts.

Thirdly, according to the draft of the permanent constitution, there should be a federal assembly represented by the nine Emirates. Bahrain insisted that members of the proposed parliament (Federal Assembly) should be selected on the basis of proportional representation. This was opposed by all other Emirates because this system would have given Bahrain with its large and well-educated population an overwhelming advantage.<sup>55</sup> In addition to the above three issues there were other minor differences in matters like the division of powers between the federal state and the member Emirates; the budget and whether it should be a percentage not exceeding 10 percent of the revenues of the oil-rich Emirates, or whether such contributions should be in accordance with the total income of every Emirate.

(b) Kuwait and Saudi Arabia Mediation

A joint Kuwait-Saudi delegation headed by Shaikh Sabah al Ahmed al Gaber Al Sabah, Foreign Minister of Kuwait, and Prince Nawaf Ibn Abdelaziz, the then Special Advisor to King Faisal of Saudi Arabia, visited the nine Emirates, carrying with them some suggestions for a way to achieve a compromise.

Following the recognition by both the Saudi and Kuwait

---

<sup>55</sup> For the different views over the provisions of the provisional constitution, see Dr. Wahid Rafaat, "The United Arab Emirates - A Study of the Development of the Provisional Constitution of 1971", Egyptian Review of International Law, Vol.26 (1970), pp.1-3; see also Al-Baharna, op.cit., pp.XXI-XXXIX.

Government that there was little hope of convincing the nine Gulf Emirates to ratify the draft provisional constitution either as it stood or with any possible amendments, they finally agreed not to oppose the proclamation of the sovereignty of any member Emirate.

By June 1971 it became clear that both Qatar and Bahrain were proceeding with plans for independence. The other Emirates followed, namely, the United Arab Emirates state (the new federation in the Gulf).<sup>56</sup>

---

<sup>56</sup> Keesing's Contemporary Archives (1971-72), pp.24731 A, 25010 A.

CHAPTER TWO  
ESTABLISHMENT OF THE G.C.C.

(1) The Kuwaiti Initiative:

It should be noted that Kuwait has played an important role in promoting the idea of cooperation since early in May 1976 when the Amir of Kuwait, Shaikh Jaber Al Ahmed Al Sabah, who was then Prime Minister and Crown Prince, called for the establishment of Gulf unity.<sup>1</sup>

The object was to realise cooperation in all economic, political, educational and informational fields and the creation of "a form of unity with solid foundations to serve the interests and stability of the people in the region".<sup>2</sup>

In December 1978 Shaikh Saad Al Abdulla Al Sabah, Crown Prince and Prime Minister of Kuwait made a Gulf tour, during which joint communiques were issued in the capitals of the five Gulf States (Riyadh, Manama, Doha, Abu Dhabi and Muscat). These communiques contained assurances of support for the realisation of Gulf unity.<sup>3</sup> Furthermore intensive efforts were made by Kuwait during the Arab summit conference in Amman

---

<sup>1</sup> For the reasons underlying the establishment of the G.C.C., see supra, pp.23-24.

<sup>2</sup> The Gulf Cooperation Council, Kuwait News Agency (KUNA) Digest, Documentation Department, Kuwait, 9th edition, May 1981, p.14.

<sup>3</sup> Ibid., p.16.

in November 1980 when Kuwait's Foreign Office circulated a memorandum containing Kuwaiti views on joint cooperation among Gulf States in all fields. This memo was distributed to all Arab Gulf States.<sup>4</sup>

In January 1981 at the Islamic summit conference held in Mecca and Taif the leaders of the Gulf States discussed the Kuwaiti proposal and two other proposals submitted by Saudi Arabia and Oman.<sup>5</sup>

Following on from the Kuwaiti initiative the Saudi proposal identified possible external and internal threats (associated with the policies of Israel and Iran towards the Gulf States). The Saudi proposal emphasised that in terms of security the Gulf States are interdependent and a threat to one of them could jeopardise the security of every other state. It also promised Saudi assistance in the event of any need to counter an external threat or internal subversion.<sup>6</sup>

The Omani proposal was more particular. It called upon the Gulf States to set up a joint naval force to protect the Strait of Hormuz because of its strategic importance as an international waterway.<sup>7</sup>

---

<sup>4</sup> Ibid., p.13.

<sup>5</sup> Idem.

<sup>6</sup> For the text of the Saudi plan, see Middle East, January (1981), pp.16-17.

<sup>7</sup> Al-Ashal, A., The Legal and Political Framework of the Gulf Cooperation Council, Riyadh (1983) (Arabic), p.24.

Nevertheless the Kuwaiti plan was welcomed and a warm response was given to it since it proved to be more inclusive. In final form it ranged over economic, political, social, cultural and petroleum policies.<sup>8</sup>

(2) Meetings and Discussions of Ministers and Experts

On February 4th, 1981 the Foreign Ministers of the six Arab Gulf States met in Riyadh to draw up an organisational structure for the consolidation and development of cooperation between them. The Ministers represented each of United Arab Emirates, Bahrain, Oman, Saudi Arabia, Qatar and Kuwait. As a result of consultations and discussion held between these Foreign Ministers a declaration was released and the text was as follows:

"In recognition of the special ties which bind each of the United Arab Emirates, Bahrain, Saudi Arabia, Oman, Qatar and Kuwait to one another, arising from their common ideology and heritage and the similarity between their social, political and demographic structure and out of desire to promote their people's prosperity, growth and stability through closer cooperation, the Foreign Ministers of these states met in Riyadh, Saudi Arabia, on February 4th 1981, corresponding to Rabi Al Awal 29, 402 A.H.

"The talks at this meeting were aimed at drawing up a practical framework for the consolidation and development of cooperation between the states concerned. As a result it was agreed to establish a cooperation council between these Arab Gulf states which would have a general secretariat and hold regular meetings both on the summit and foreign

---

<sup>8</sup>The writer has been able to see the summary of the first and second memorandum of the Amir of Kuwait which has been sent to the Amir of Qatar. Both of them covered different ranges of cooperation. The first memo is undated, while the second is dated 21.12.80.

minister level in order to achieve the goals of the states and their people in all fields.

The steps conform with the national aims of the Arab nation as expressed in the Charter of the Arab League, which encourages regional cooperation as a means of strengthening the nation. In this way the formation of the Gulf Cooperation Council can be seen as confirming the support of these states for the Arab League, its charter and objectives, and for Arab and Islamic causes as a whole.<sup>9</sup>

Gulf States Foreign Ministers decided to hold a further meeting in Muscat on March 8th, 1981 which was to be preceded by two experts meetings composed of diplomatic and civil servants on February 24th and March 4th, 1981, in Riyadh and Muscat respectively. The purpose of the meeting was to draw up an integrated structure for the establishment of the Gulf Cooperation Council of Arab States.

Another statement, however, issued by the six states on February 14th 1981, outlined the objectives of the Council and clarified the Council's legal status as an international organisation which was to have its headquarters in Riyadh.<sup>10</sup>

As had been decided earlier at the fourth Ministers meeting, the first meeting for the experts took place in Riyadh from 24 to 26 February 1981. The participants, who were diplomats and civil servants, were entrusted with drawing up four basic statutes submitted by the Kuwaiti delegation. These statutes were concerned with (i) The Fundamental Statute

---

<sup>9</sup>Documents of the Gulf Cooperation Council for Arab States (Arabic), Qatar News Agency, October 1983, Part 1, at p.13.

<sup>10</sup>Ibid., p.14.



of the G.C.C., (ii) Rules of Procedure of the Supreme Council, (iii) Rules of Procedure of the ministerial council, (iv) Rules of procedure of the secretariat.

Between 6th and 10th March 1981 the second meeting of the experts committee took place in Muscat. The purpose of this meeting was to conclude the deliberations on the final revision of the four statutes, which had been discussed at the previous meeting of the experts. While the meeting was in progress the Foreign Ministers of the six states met on 8th March 1981 in Muscat to initial the four statutes.

The main issues the experts in their second meeting in Muscat dealt with in relation to the establishment of the G.C.C. were, inter alia, the status of the basic instrument of the organisation, and in particular whether it should be determined a 'treaty'. This was suggested by Qatar and supported by Kuwait because the 'term' is more common in the practice of international organisations. There was a proposal from the Omani delegation that it be termed a 'charter'. There was a further proposal from the delegation of Saudi Arabia that it should be called 'the fundamental statute'. The reasons put forward by this delegation were connected with an argument that there would be speculation that the G.C.C. had come to substitute the Arab League if the terms 'treaty' or 'charter' were used to describe the constituent

instrument.<sup>11</sup> Other issues on the agenda were discussed, such as the preamble of the Fundamental Statute, the organs of the G.C.C., the frequency and order of the meeting of the supreme council, voting in the supreme council, the commission for the settlement of disputes, the meetings of the ministerial council and the nomination of the Secretary General.

However, having still some difficulties to overcome the experts committee submitted their recommendations and proposals to the Ministers of Foreign Affairs whose meeting was due to be held on March 8th, 1981. This meeting of Ministers took two days to deliberate by which time they unanimously agreed the draft of what came to be called the Fundamental Statute of the G.C.C. and internal regulations (the rules of procedure of the supreme council, the rules of procedure of the ministerial council and the rules of procedure of the commission for settlement of disputes).<sup>12</sup>

---

<sup>11</sup>Report of the Head of Qatari delegation to the experts committee, dated 14.3.81, Doha, Qatar. The Palace of the Amir Archives, Unpublished (Arabic). it should be noted that the Saudi delegation's argument does not find support in the charter of the Arab League where it provides in Article 9 that "The states of the Arab League that are desirous of establishing among themselves closer collaboration and stronger bonds than those provided for in the present charter, may conclude among themselves whatever agreements they wish for this purpose. The treaties and agreement already concluded or that may be concluded in the future between a member state and any other state shall not be binding on other members". However, when the three proposals were put on vote the Saudi one won through.

<sup>12</sup>Qatar News Agency, Part One, op.cit., pp.25-26. For the text of the four instruments see 26 ILM (1987), pp.1138-1160.

By initialling them they were proposed for signature by the respective Heads of State.

It should be noted here that the International Law Commission observed that state practice shows that initialling of a treaty, especially by Head of State or Prime Minister, or Minister of Foreign Affairs, "is not infrequently intended as the equivalent of full signature". The Commission, while recognising this, felt that "it was important that the use of initials as a full signature should be understood and accepted by other states".<sup>13</sup>

Article 12.2 of the Vienna Convention on the Law of Treaties provides that initialling is the equivalent of a signature when it is established that negotiating states so agreed.<sup>14</sup>

Article 12, however, is among several provisions in the Vienna Convention which "introduced fundamental changes in practice or ran counter to generally accepted rules of international law",<sup>15</sup> and since Kuwait is the only member of the Convention, it therefore cannot establish customary law for the other G.C.C. member states.<sup>16</sup>

---

<sup>13</sup> Yearbook of the International Law Commission (1966-II), p.196.

<sup>14</sup> See Brownlie, Ian, Basic Documents in International Law, 3rd ed. (1983), p.355.

<sup>15</sup> See Sinclair, I., The Vienna Convention on the Law of Treaties, 2nd ed., Manchester University Press (1984), p.249.

<sup>16</sup> According to Bowman, M. & Harris, D., Kuwait is the only G.C.C. Member State party to the Vienna Convention on the Law of Treaties. See Multilateral Treaties. Index and Current Status, Butterworths, London (1984). See also the

The Ministers in their meeting agreed to nominate Mr Abdullah Yacoub Bishara of Kuwait to be the first Secretary General of the Council.<sup>17</sup>

(3) The First Summit of the Heads of States

On 25th and 26th May, 1981, the Heads of State members of the Gulf Cooperation Council met in the United Arab Emirates federal capital Abu Dhabi where they signed the Fundamental Statute, the Rules of Procedure of the Supreme Council, the Rules of Procedure of the Ministerial Council, the Rules of Procedure of the Commission for the Settlement of Dispute. All these had previously been initialled by the Foreign Ministers.<sup>18</sup> At the summit the Heads of State issued a final communique outlining the council's organisational structure, its institutions, objectives and the role of its member states in promoting regional, Arab and international causes and their relations with regional and global organisations.

The summit approved the Foreign Minister's nomination of Mr Bishara as the Secretary General.

In order to realise the objectives of the Council as stipulated in Article 4 of the Fundamental Statute the heads

---

Fifth Cumulative Supplement of the book, University of Nottingham Treaty Centre (1988), p.92.

<sup>17</sup>Mr. Bishara was the former Ambassador of Kuwait in the U.N. from 1971-1981.

<sup>18</sup>Qatar New Agency, Part 1, op.cit., pp.25-26.

of state in their communique established five committees for socio-economic planning, financial and economic cooperation, industrial cooperation, oil and socio-cultural services.

At the same time, the final communique clearly stressed that security and stability of the Gulf is the responsibility of its own people and states. It said the Council represented the will of these states and their right to defend and preserve their independence. The communique affirmed the leader's outright rejection of any foreign intervention whatsoever. It further called for the entire region to be kept out of international conflicts in particular as regards the presence of foreign fleets and military bases in the area. The communique also stated that the heads of the six states abide by the Charter of the Arab League and resolutions adopted at all Arab summit conference organisations and its resolutions. In addition, they expressed their commitment to the principles of the non-aligned movement and the U.N. Charter.<sup>19</sup>

(4) The Legal Character of the G.C.C. Constituent Instrument and its Entry into Force

It is to be noted that most international organisations are established by a convention concluded between the member

---

<sup>19</sup>See the final communique in Qatar New Agency (Arabic), op.cit., pp.91-93.

states.<sup>20</sup> However there is some controversy as to whether a treaty is a necessary requirement to establish an international organisation.

Seyersted considers that the requirement of a treaty is not a necessary requirement either to constitute an international organisation or to establish it as a subject of international law.<sup>21</sup> Quite a number of international organisations have been established by resolutions. This is the way the Asian-African Legal Consultative committee, the Council for Technical Cooperation in South and South-East Asia (Colombo Plan), Comecon, The Inter-American Defence Board, the International Cotton Advisory Committee, the International Hydrographic Bureau and the International Rubber Study Group were established.<sup>22</sup> Schermers regards the treaty as a better criterion to distinguish public from private international organisations and this is widely accepted by the United Nations.<sup>23</sup> Brierly provides a definition of international organisation in his report on the law of treaties to the International law Commission which includes the term treaty

---

<sup>20</sup>Schermers, Henry G., International Institutional Law, Sijthoff and Noordhoff (1980), at p.11.

<sup>21</sup>Seyersted, F., "International Personality of International Organisations. Do their Capacities Really Depend upon their Constitution?" I.J.I.L. (1964), pp.43-48.

<sup>22</sup>These examples are found in Peaslee, A.J., International Governmental Organisation Documents, revised third edition, Martinus Nijhoff, The Hague (1974), pp.79, 273, 326, 805, 243, 306 and 367 respectively.

<sup>23</sup>Schermers, op.cit., at p.11.

as a basic element for defining an international organisation.<sup>24</sup> Fitzmaurice provides the following definition with similar emphasis of the term "treaty":

"The term - International Organisation - means a collective of states established by treaty with a constitution and common organs, having a personality distinct from that of its member states, and being a subject of international law with treaty making capacity."<sup>25</sup>

As concerns the G.C.C. it has been found necessary to establish the organisation by entry into force of the treaty of 25th May 1981. This is embodied in Article 1 of the Fundamental Statute.

"A council shall be established hereby to be named the cooperation council for the Arab states of the Gulf, herein after referred to as cooperation council."

Furthermore, Article 19 of the Fundamental Statute provides:

"This statute shall come into effect as of the date it is signed by the heads of state of the six member states named in the preamble."

The words of the above provision clearly indicate that the Fundamental Statute was intended to come into force as from the date of the signature of the heads of state.

It is firmly established as international practice that heads of state are considered as representing their state for the purpose of all acts relating to the conclusion of a

---

<sup>24</sup>See Yearbook of the International Law Commission. First report on relations between states and inter-governmental organisations by Abdullah El Erian (C/CN 4/161), 11 June 1963 at p.166.

<sup>25</sup>Ibid. at p.167.

treaty.<sup>26</sup> However, it is not always easy to determine that there is a general rule that international law attributes the right to represent the state in its international relations to heads of state and that a treaty concluded by him is internationally valid. Some jurists hold the view that the criterion of the competence of the treaty-making organ is the authority which is conferred upon it under domestic law without any reference to international law.<sup>27</sup> The constitutional limitation upon the competence of the head of state is emphasised by Oppenheim where he states:

"Treaties concluded by the heads of state in person do not require ratification provided that they do not concern matters in regard to which constitutional restrictions are imposed upon the heads of state."<sup>28</sup>

However, the development of the constitutional system of government under which various organs are given a say in the treaty-making power, has increased the importance of ratification. It is a problem relating to the fact that some states insist on parliamentary approval of the treaty although the treaty expressly provides that it operates as from

---

<sup>26</sup>Sinclair, I, The Vienna Convention on the Law of Treaties, 2nd ed., Manchester University Press (1984), at p.31.

<sup>27</sup>Holloway, K., Modern Trends in Treaty Law, Stevens & Sons, London (1967), pp.123-128. See also, Wildhaber, L., Treaty Making Power and Constitution, Helbing and Lichtenhahn (1971), pp.149-152.

<sup>28</sup>L. Oppenheim, International Law, Vol.1, 7th ed., Longman (1948), pp.511-12.



signature.<sup>29</sup>

Philip Jessup in this regard affirms that despite the fact that there is no residuary rule for ratification and international law has no problem to bring a treaty into force on signature, it is a matter of the constitutional law of the state to provide for any particular procedure to be performed.<sup>30</sup> Similarly Fitzmaurice agrees that a treaty needs no ratification if it is expressed to take effect as from signature. However, if the constitutional law of the contracting party requires the consent of the legislature, then it must be obtained.<sup>31</sup> In a modern approach to this subject Article 46 of the Vienna Convention on the Law of Treaties provides:

"1. A state may not invoke the fact that its consent to be bound by treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as in validating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.

2. A violation is manifest if it would be objectively evident to any state conducting itself in the matter in accordance with normal practice and in good faith."<sup>32</sup>

---

<sup>29</sup>Starke, S.G., Introduction to International Law, 9th ed., Butterworths (1984).

<sup>30</sup>Jessup, P.C., A Modern Law of Nations, Archon Books (1968), at p.126.

<sup>31</sup>Fitzmaurice, G.G., "Do Treaties Need Ratification?" B.Y.I.L. XV (1934) at p.127.

<sup>32</sup>See Brownlie, Basic Documents, op.cit., pp.368-69.

This Article establishes that a state may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law unless this violation is objectively manifest to the other contracting parties. The constitutions of the G.C.C. member states save for Kuwait and Bahrain confirm the exclusive treaty-making power of the heads of state or the executive power.

Article 54 of the United Arab Emirates constitution describes the powers and functions of the head of state. These include chairmanship of the supreme council, signing union decrees, law and decisions, appointing the Prime Minister and some other ceremonial functions.<sup>33</sup> Nevertheless according to Article 91 of the constitution the government must inform the federal council about the treaties and international agreements which it concludes with foreign countries or with various international organisations with appropriate explanations. Yet the union national council has no role whatsoever in ratifying the international treaties.

Article 47 of the constitution provides that the supreme council of the union (consisting of the rulers of seven

---

<sup>33</sup>Constitution of the United Arab Emirates in the Constitutions of the Countries of the World, editors Albert P. Blaustein and Gisbert H. Flanz, Oceana Publications Inc., Dobbs Ferry, New York (1982). The union authorities of the U.A.E. is composed of the following organs: (i) the Supreme Council of the Union, comprising the seven rulers of the Emirates; (ii) the President and the Deputy President of the Union; (iii) the Council of Ministers of the Union; (iv) the Union National Council; and (iv) the union judiciary.

Emirates making up the union) is responsible for the ratification of the international treaties. Such ratification is accomplished by decree by the head of state.

It is to be noted that the decisions of the supreme council in procedural matters are binding by an affirmative vote of the majority of its members. But its decisions in all other matters become binding by an affirmative vote of five members, including the concurring votes of both the Emirates of Abu Dhabi and Dubai (Article 49 of the constitution). However, the constitution does not lay down any criterion to distinguish the procedural from substantive matters.

Article 37 of Bahrain's constitution provides that:

"The Amir shall conclude treaties by decree and shall transmit them immediately to the National Assembly with the appropriate statement. A treaty shall have the force of a law after it has been signed, ratified and published in the official gazette. However treaties of peace and alliance, treaties concerning the territory of the state, its national resources or sovereign rights or public or private rights of citizens, treaties of commerce, navigation and residence and treaties which entail additional expenditures not provided for in the budget of the state, or which involve amendment to the laws of Bahrain shall come into effect only when made by a law. In no case may treaties include secret provisions contradicting those declared."<sup>34</sup>

According to the above provision it is obvious that the National Assembly has a considerable role in ratifying some treaties which are mentioned above. Nevertheless at the time of establishing the G.C.C. the National Assembly played no

---

<sup>34</sup>Constitution of Bahrain is modelled closely on the Kuwait constitution of 1962. See the constitution of Bahrain in Constitutions of the Countries of the World, op.cit. by Patricia E. Darkin, issued June 1985.

role in approving the G.C.C. Fundamental Statute. In point of fact the National Assembly was dissolved in 1975, and the Amir has continued to rule by decree.<sup>35</sup> The power of concluding treaties therefore vests solely in the Amir.

As for Saudi Arabia, it has no formal constitution other than the Quran and other sources of classical Islamic law.<sup>36</sup> However the king issued a regulation called "a regulation of Council of Ministers" which organises, inter alia, the treaty-making power in Saudi Arabia.<sup>37</sup> Articles 18, 19 of the regulation give the king an exclusive power to approve international treaties and its amendments by Royal decrees.

The Sultanate of Oman may be described as an Arab Islamic state which regards the Islamic Sharia as the main source of legislation.<sup>38</sup> The system of government in Oman is not governed by any written constitution. However the Sultan (the head of state) issued a decree in 1975 which regulates the

---

<sup>35</sup>Amin, S.H., Middle East Legal Systems, Royston Ltd. (1985), p.18.

<sup>36</sup>Saudi Arabia is one of ten countries of the world which does not have a modern constitution. It has often been stated that its constitution is the Quran. See Constitutions of the Countries of the World, op.cit., issued March 1976 at p.1.

<sup>37</sup>For the text see the G.C.C. Legal Gazette No.2 (1982), pp.73-83.

<sup>38</sup>By the Royal Decree of 19 October 1981 the Sultan set up a 45 member state consultative council. The council consists of 17 members representing various sections of the government, 11 members representing the private sector, and 17 members representing the regions. However, all the members are appointed by the Sultan and they have no power whatsoever in passing any international treaty. See Amin, S.H., Middle East Legal Systems, op.cit., at p.284.

administrative organs of the state.<sup>39</sup> Article 3 of the decree gives the Sultan first the power to conclude international treaties and thus does not need any further procedure to bind Oman on the international plane. There is another type of treaty which are signed by persons authorised by the Sultan. In the second type the treaty does not bind the Sultanate unless it is ratified by the Sultan himself.

Article 24 of Qatar's amended provisional constitution provides that the Amir as head of state concludes treaties by decree and informs the Advisory Council with an appropriate statement.<sup>40</sup> In accordance with the constitutional provisions the Advisory Council is not a legislative body and does not have the authority to pass legislation. The Council may be consulted as a convenient advisory body and its opinion sought on matters connected with legislation. If the government chooses to consult the council, the members of the council give their opinions in the form of recommendations which are entirely left to the discretion of the government to be taken (Article 51 of the amended provisional constitution).

Articles 23 and 24 of the constitution provide clearly that the treaty-making power vests in the Amir and in his

---

<sup>39</sup>For the text of the regulation and its amendment see G.C.C. Legal Gazette No.1 (1983), pp.7-37.

<sup>40</sup>See the amended provisional constitution of 17 April 1972, which repeated the provisional constitution of 2 April 1970, published in Qatar Official Gazette (Al-Jaridah al Rasmiyah) No.55, 22 April 1972.

capacity he concludes treaties and ratifies them by decree.<sup>41</sup>

Kuwait is the only country among the G.C.C. member states where its national assembly played a remarkable role in approving the Fundamental Statute. Following extensive deliberation upon the matter in the assembly, the body finally recommended that Kuwait become a member of the G.C.C. Members of the Assembly discussed what reservations and anxieties they had.<sup>42</sup>

In 1976 an order of the Amir suspended the operation of the provision of Articles 56(3), 107, 174 and 181 of the constitution relating to elections, and dissolved the National Assembly, providing that the authorities delegated to the Assembly by the constitution vested in the Council of Ministers. The Order also provided that laws should issue by

---

<sup>41</sup>In accordance with the provisions of the amended provisional constitution of 1972, members of the consultative council, the first semi-legislative body in the history of Qatar, were appointed by a decree issued by the ruler on 23rd April 1972 under Articles 41-42 of the provisional constitution. Membership of the consultative council is restricted to original Qatari nationals over the age of 24 years; see Amin, op.cit., at p.300.

<sup>42</sup>Assembly members expressed fear that popular freedom in Kuwait might be diminished as a consequence of the decision to establish the new regional organisation. Abdul Aziz Hussein, the Minister of State, assured the Assembly that the council was compatible with the charter of the Arab League, which permits member countries to work in diverse ways for inter-Arab cooperation and coordination. The Assembly Vice-President underlined that the people in most of the Gulf states had no voice in the establishment of the council. He stressed that the single exception was Kuwait where the merits of the council had been discussed in the National Assembly and the mass media. See Assembly Proceedings, No.10, 7 July 1981, pp.70-80 and the Proceedings, No.11, 14 July 1981, pp.153-57.

Amiri Decree or in case of emergency, by Amiri Order. Article 4 of the Order provided for the setting up of the committee to recommend the necessary amendments to the constitution in the light of practical experience, "provided that such amendments shall be in accordance with the spirit of our Islamic Sharia, drawing upon our original Arab Kuwaiti traditions".<sup>43</sup>

Shaikh Jaber Al Ahmed Al Sabah, who survived a car bomb assassination attempt in May 1985, dissolved his country's parliament on 3 July 1986, saying that Kuwait was the target of a destructive foreign conspiracy. The decree states reasons for dissolution that the country faces many ordeals and hardships, its security has been exposed to a fierce foreign conspiracy which threatened lives and almost destroyed the wealth of the homeland. The decree also imposed press censorship and suspended four articles of the Kuwait 1962 constitution. These articles are 56.3 which deals with the competence of the Amir to appoint ministers among the members of the National Assembly, Article 107 which gives the Amir the right to propose the constitution by amending or deleting or adding new provisions; and Article 181 which allows the National Assembly to hold its meetings even when martial law is in force.<sup>44</sup>

---

<sup>43</sup> Kuwait Official Gazette, Supplement 1097, Amiri Order, 29 August 1976. The Kuwaiti National Assembly was reconvened in 1980: Amiri Order, 24 August 1980, Official Gazette, No.1316, August 1980.

<sup>44</sup> See The Guardian, 4.7.86.

Article 70 of the Kuwait constitution, which is identical to Article 37 of the Bahrain constitution, provides:

"The Amir shall conclude treaties by decree and shall transmit them immediately to the National Assembly with appropriate statement. A treaty shall have the force of law after it is signed, ratified and published in the official Gazette.

However, treaties of peace and alliance, treaties concerning the territory of the state, its natural resources or sovereign rights, navigation and additional expenditures not provided for in the budget, or which involve amendment of the laws of Kuwait, shall come into force only when made by a law. In no case may treaties include secret provisions contradicting those declared."<sup>45</sup>

From the above provision it appears that there are two kinds of treaties, each of which requires a different procedure in order to come into force.

The Amir himself has the constitutional power to conclude treaties. The signature of the Amir on the Royal decree is considered equivalent to ratification.<sup>46</sup> However, the constitution requires that the Amir must inform the National Assembly immediately with an appropriate statement. This is only to keep the National Assembly informed as regards the external relations of the country. Nevertheless, the constitution does not limit the time in which the Amir should inform the Assembly. It also does not specify the content of the statement. All these matters are left to the discretion

---

<sup>45</sup>Constitution of countries by Blaustein, op.cit., pp.5-35.

<sup>46</sup>This is the interpretation of Hassan, H., The Principles of the Constitutional Law in Kuwait, Dar Al Nahdah, Beirut (1968) (Arabic), pp.331-33.



of the Amir. The National Assembly therefore has no power to discuss the treaty or approve it or decide on it. But this restriction does not extend to inquiring into the political consequences of the treaty and even censuring the minister responsible through a vote of no confidence.<sup>47</sup>

The second type of treaty mentioned in Article 70 requires the consent of the Assembly. The treaties in this group are those which directly affect the rights of people, their personal freedom or concern, the sovereignty and the interest of the state. This type of treaty comes into force only by enabling Acts. The ratification of this type of treaty does not take place until the parliamentary procedure has been fully exhausted. The executive power first has to sign the treaty and send it to the National Assembly for its consent. If it is approved the National Assembly submits the treaty to the Amir for ratification and then to have it published in the official Gazette. The National Assembly, while it discusses the treaty, may approve it in its entirety or reject it, but it has the power to postpone giving its consent.<sup>48</sup>

However the question to be asked is whether the G.C.C. Fundamental Statute belongs to the first or the second type of treaty, as explained above.

---

<sup>47</sup>Ibid.

<sup>48</sup>Al-Tabtabai, A., The Constitutional Law in Kuwait - A Comparative Study, Dar Al-Ulum, Kuwait (1985) (Arabic), pp.553-57.

It is apparent that the treaty belongs to the second type. There are two reasons which the Kuwait National Assembly put forward. One is that Article 17 of the G.C.C. Fundamental Statute obliges the member states to contribute equal amounts to the budget of the Secretariat General. Article 73 of the Kuwait constitution does not allow budgetary increase unless it is approved by the National Assembly. The second reason is that Article 18 of the Fundamental Statute provides that representatives of the G.C.C. member states and the council's employees enjoy privileges and immunities as are specified in agreements to be concluded for this purpose between the member states.<sup>49</sup>

However, the position in international law is that treaties of cooperation may imply a voluntary restriction of sovereignty.<sup>50</sup> Schwarzenberger points out that the acquisition of any jurisdiction by international institutions must rely on the acts of transfer from the member states.<sup>51</sup> He further confirms that:

"By consenting to the establishment of an international institution each member must be taken to have transferred these rights to the institution in question. Thus the functional jurisdiction exercised by international institutions is merely the sum total of the pooled and delegated rights of

---

<sup>49</sup>See the decree No.44, 1981 and the explanatory memorandum in Kuwait Official Gazette (Kuwait Today) No.1367, year 27, 22 July 1981, pp.12-15.

<sup>50</sup>See the Report of the International Law Association, 45th conference, Lucerne (1952), pp.30, 35.

<sup>51</sup>Schwarzenberger, G., "The Forms of Sovereignty", in Defence of Sovereignty, edited by W.J. Stankiewkz, Oxford University Press (1969), pp.178-79.

positive sovereignty which result from the transfer of rights from the member to these organisations."<sup>52</sup>

The G.C.C. Fundamental Statute calls for political, economic, social and cultural cooperation by the member states, and organs have been established to strengthen this cooperation (Article 4, 6). There exists an international organisation by which G.C.C. member states seek reciprocal interest in all fields. The G.C.C. has power to take binding decisions as well as to make recommendations to member states on a broad range of subjects. Although these recommendations are not legally binding they may have political repercussions if not followed.<sup>53</sup> They may, for example, affect foreign relations between member states. Since the organisation functions by means of its organs the Fundamental Statute provides some obligations on the member states to grant privileges and immunities to both the staff of the organisations and the representatives of the member states (Article 17). These provisions may have implications for the concept of sovereignty of states.

In making such provisions the sovereignty of each state must suffer to the extent stipulated in the constituent instrument.

Having satisfied ourselves with the conclusion that the Fundamental Statute of the G.C.C. could be included in the

---

<sup>52</sup>Ibid.

<sup>53</sup>Thomas and Thomas, Non-intervention. The Law and Its Import in America, Southern Methodist University Press, Dallas (1956), pp.108-9.

second type of treaty which needs the consent of the parliament, it is necessary now to answer whether the Kuwaiti Government could put forward such an argument and thereby declare its signature invalid. In other words, is Kuwait likely to plead its own failure to satisfy its constitutional requirement as sufficient reason for not being bound by the Fundamental Statute?

It is suggested by Fitzmaurice that except in those cases where a treaty provides that entry into force is dependent on the municipal legislature, a state cannot invoke its failure to escape its international obligations.<sup>54</sup> However, Hyde disagrees with this view where he states that an unconstitutional treaty must be regarded as void.<sup>55</sup> Similarly Wheaton says:

"Where, indeed, such auxiliary legislation becomes necessary in consequence of some limitation upon the treaty-making power, expressed in the fundamental laws of the state, or necessarily implied from the distribution of its constitutional power, such for example a prohibition of alienating the national domain, then the treaty may be considered as imperfect in its obligation until the national assent has been given in the forms required by the municipal constitution."<sup>56</sup>

McNair, however, points out that a distinction should be made between a state where its constitutional limitation as

---

<sup>54</sup>Fitzmaurice, "Do Treaties Need Ratification?", op.cit., at p.130.

<sup>55</sup>Hyde, C., International Law Chiefly as Interpreted and applied by the United States, Vol.2, Little Brown and Co. (1947), pp.1383-86.

<sup>56</sup>Wheaton, Elements of International Law, Stevens & Sons Ltd., London, 6th English edition, Vol.1 (1929), at p.499.

regards the consent of the legislative power is notorious and a state where its constitutional provision in this regard is obscure to the other contracting parties. Only in the former case McNair suggests that a state may plead constitutional incapacity.<sup>57</sup>

The Vienna Convention on the Law of Treaties has restricted the power of states to invoke internal law as invalidating their consent to be bound by a treaty. Such a plea is possible now only where the violation would be objectively manifest and would concern a rule of its internal law of fundamental importance.<sup>58</sup>

In the light of the foregoing it is likely that Kuwait would succeed in its claim that the constitutional provisions have not been followed. Not only must the constitutional provision be manifest, "notorious"<sup>59</sup> but must also be a fundamental rule. Therefore invoking Article 46 of the Vienna Convention on the Law of Treaties is possible due to the fact

---

<sup>57</sup>McNair, A.D., in his introduction to Mr. Ralph Arnold's Treaty-Making Procedure, Oxford/London (1933), p.118.

<sup>58</sup>The Vienna Convention on the Law of Treaties, Article 46. See Brownlie, I., Basic Documents, op.cit., pp.368-69.

<sup>59</sup>The attitude of the Kuwait National Assembly as regards the approval of the inclusive security agreement gives us clear evidence that the other G.C.C. member states are well aware of the constitutional limitation. On October 17-18 1982, the G.C.C. Interior Ministers held their second meeting in Riyadh to discuss draft proposals for the security agreement. At the end of the meeting it was announced that the ministers had failed to reach an agreement. According to the Interior Ministers of Saudi Arabia and Oman the failure was attributed to the influence of the Kuwait constitution and the Kuwait National Assembly.

that the constitutional provision is manifest, "notorious", whereas Article 70 of the Kuwaiti Constitution requires the consent of the National Assembly if the treaty concerns sovereign rights (e.g. granting privileges and immunities) and also involves additional expenditures.

Not only that, but also the absence of the consent of the Kuwait National Assembly may be regarded as a manifest violation to the constitution which is fundamental in nature.<sup>60</sup>

---

<sup>60</sup> See in this regard, Meron, T., "Article 46 of the Vienna Convention on the Law of Treaties (Ultra Vires Treaties): Some Recent Cases", XLIX B.Y.I.L. (1978), pp.180-81.

### CHAPTER THREE

#### THE REALISATION OF THE G.C.C. OBJECTIVES IN THE FUNDAMENTAL STATUTE AND THE U.E.A.

##### INTRODUCTION

The G.C.C., like any international organisation, aims at certain objectives contained in its constitution. However, one objective which is conspicuously avoided is any suggestion of a military character.<sup>1</sup> Unlike other international organisations,<sup>2</sup> the Fundamental Statute of the G.C.C. does not lay down any principles as a basis for achieving those objectives (i.e. the Arab league, the Organisation of African Unity, and the Organisation of American States). However, there are some principles which could be inferred from the constitutions of the G.C.C. member states, the final communique of the first meeting of the G.C.C. supreme council and the pronouncements of officials in the member states,<sup>3</sup>

---

<sup>1</sup>Bouachba, T., "Le Conseil de Cooperation des Etats Arabes du Golf", Revue generale de droit international public, Tom.LXXXIX (1985), pp.60-62.

<sup>2</sup>Al-Ashal, A., The Legal and Political Framework of the Gulf Cooperation Council, op.cit., p.134.

<sup>3</sup>See Article 12 of the UAE constitution, Art.5(3) of Qatar constitution in The Constitutions of the Countries of the World, op.cit.. The UAE constitution issued August 1981, p.5. As for Qatar, see The Legal Gazette No.2 dated 15 March 1983 at p.43 (Arabic). For the pronouncements of the G.C.C. officials, see Qatar News Agency Documentation (1983),

principles such as sovereign equality of all G.C.C. member states, settling of disputes by peaceful means, non-interference in matters which are essentially within the domestic jurisdiction of any state, the adherence to the principles of non-alignment and the U.N. Charter. In addition to the objectives laid down in Article 4 there is also the intention to cooperate in various fields aimed at strengthening cooperation. It is envisaged that there would be cooperation in the establishment of scientific research centres, implementation of common projects and encouragement of cooperation by the private sector for the good of the people. These by themselves are not objectives but merely serve as a basis for cooperation. Nevertheless it is not difficult to identify four basic objectives from the Fundamental Statute. These will be examined in turn.

(i) Political Coordination

It is thought that within the provisions of Article 4 of the Fundamental Statute, it would not be possible to take meaningful and durable common actions among member states unless they adopted a unified political position.

Political unity is one of the G.C.C. objectives. Article 4.1 of the Fundamental Statute provides:

"To effect coordination, integration and interconnection between member states in all fields in order to achieve unity between them."



Yet the term "unity" is extremely vague and widely interpreted. It is important to examine the meaning of the word as used in this Article.

In the view of the G.C.C. Secretariat neither federal nor confederal unity is meant in the context of Article 4. The term "unity" is an elastic frame which responds to the changes of development and the degree of accomplishment. The Gulf joint work does not draw any end or border for the work. It is flexible, wide and spacious for any future activity.<sup>4</sup> This suggests that the G.C.C. member states do not exclude any form of structural relations possible in the future whether federal or confederal.

The distinction between a federation and a confederation depends essentially upon the degree of centralisation of power. While in a federal structure the competence of the total state is distributed between a central government and the local government, in a confederation, states do not have such centralisation.<sup>5</sup>

In spite of the fact that the Fundamental Statute refers to political unity as an objective of the organisation, the Fundamental Statute does not indicate a clear intention on the part of the member states to relinquish some measures of sovereignty as would be necessary in a federal structure.

---

<sup>4</sup>The Secretary General Abdullah Bishara, The Role of the G.C.C. in the Realisation of Arab Unity, G.C.C. Secretariat Publications (1985), p.2 et seq.

<sup>5</sup>Kelsen, H., Principles of International Law, Holt, Rinehart (1966), pp.262-66.

This view is supported by some delegates' reports while they were discussing the adoption of the fundamental statute.<sup>6</sup>

These reports suggest that member states prefer to retain their own executive, legislative and judicial power. Nevertheless, political coordination prevails and is achieved in reality. Political coordination is achieved by means of various contacts at ministerial level and among the heads of state. It becomes concrete both at ministerial level and the Supreme Council.

The member governments held their regular and extraordinary meetings to settle their disagreements in respect of differences regarding difficult international problems affecting, directly and indirectly, the Gulf states. The most important issues dealt with so far have been the Palestinian issue, the Lebanese issue, the Iraq-Iran conflict and generally the security of the Gulf region. On May 7, 13, 14 and 16, 1984 Saudi and Kuwaiti oil tankers in the Gulf were hit by air strikes. The Foreign Ministers of the six G.C.C. member states immediately held an extraordinary session in Riyadh on May 17 to deal with the offensive and decided to present the issue to the U.N. Security Council as "a threat to the safety and stability of the area" which has serious

---

<sup>6</sup>Since the travaux preparatoires have not been printed, one may only refer to reports of the head of Qatar delegation to the legal experts committee. Muscat, March 1981, op.cit., p.3.

implications for international peace and security.<sup>7</sup>

Meanwhile, the G.C.C. Ministerial Council decided to take the matter up at an extraordinary meeting of the Council of the Arab League for the adoption of a unified Arab stand on the issue.<sup>8</sup> On May 21st, the G.C.C. member countries called for a U.N. Security Council meeting to discuss the offensive<sup>9</sup> with a majority of 13 votes to none and with two abstentions (Nicaragua and Zimbabwe). The Security Council on June 1st 1984 adopted a decision which "calls upon all states to respect, in accordance with international law, the right of free navigation" in international waters and "the territorial integrity" of the G.C.C. member states which are not parties to the hostilities.<sup>10</sup>

This is further evidence of cooperation in practice of G.C.C. foreign ministers meeting privately to agree on a common position to present before major international organisations (i.e. the Arab League, the Organisation of the

---

<sup>7</sup>On the security issue, see infra, chapter 8. For the letter of the G.C.C. member states, see the Official Records of the Security Council, 39th year, supplement for April, May and June 1984, Document S/16574. See also Kuwait News Agency (KUNA). Special dossier on the occasion of the fifth G.C.C. summit conference in Kuwait, November 1984, pp.32-33.

<sup>8</sup>Ibid.

<sup>9</sup>A letter dated 21 May 1984 from the representatives of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates addressed to the President of the Security Council (S/16574). See Official Records of the Security Council, 39th year, supplement for April, May and June 1984.

<sup>10</sup>S/INF/40, Security Council Official Records, 39th year, 1984, p.15.

Islamic Conference, U.N.). The G.C.C. states hope in this way to present a united and coherent group expressing a united voice in respect of the problems discussed. This could be achieved by many ways such as exchanging information, developing common positions, agreeing on candidates to be put forward and agreeing on a common spokesman.<sup>11</sup>

However it is not clear whether G.C.C. governments are obliged under the charter to consult and coordinate their foreign policy. In 1985 Oman and United Arab Emirates successively established diplomatic relations with the Soviet Union without consulting the G.C.C. in advance.<sup>12</sup> This attitude of the two G.C.C. members was construed by some member states as incompatible with the objectives of the G.C.C. They added that all decisions which have been taken through G.C.C. organs required coordination at least in important political matters.<sup>13</sup> Furthermore Article 8(5) of the Fundamental Statute provides that one of the Supreme

---

<sup>11</sup>See Kaufman, J., United Nations Decision-Making, Sijthoff and Noordhoff (1980), pp.90-2. It should be mentioned there that the G.C.C. member states acted both during and after the emergency session of the Security Council on the Iranian attacks against the Kuwaiti and Saudi commercial ships. The G.C.C. Foreign Ministers addressed the Security Council in the name of the G.C.C. as well as for their own respective governments. Kuwait's Deputy Premier, in his address, 25 May 1984, said: "the policy of Kuwait and the G.C.C. member states is to preserve the Gulf as a zone of peace and stability". The same attitude was repeated by Qatar's State Minister of Foreign Affairs, see Kuna, op.cit., p.33-A.

<sup>12</sup>Private information of the writer.

<sup>13</sup>Ibid.

Council's functions in achieving the objectives of the G.C.C. is to "approve the bases for dealing with other states and international organisations". However, if there is any obligation to consult it can only be moral. The enforcement of decisions of the G.C.C. appears to depend entirely on the good faith of its members. As such it may be argued that the relationship between the G.C.C. member states is akin to that between member states of loose confederation.<sup>14</sup> A confederation is defined as an association of independent states bound together by international treaty having its own organs. The constituent treaty gives the organisation certain power which acts upon the states and not the individuals though the organisation power does not affect the full sovereignty of the member state.<sup>15</sup> Although the members of a

---

<sup>14</sup>See Rivlin, P., "The League of Nations as Confederacy", International Relations, 5 (1975-77), Vol.V, No.4, November 1976, pp.1121-38. Rivlin in this article compares the theory and practice of the League of Nations with the model of confederacy as presented by Professor Christopher Hughes in his inaugural lecture, Confederacies, Leicester University Press (1963). See also, Schwarzenberger, International Law (1949), p.520 who describes both the League of Nations and the United Nations as "typical confederations as distinct from federations". Makarim, E., "The Positive Impact of the Establishment of Gulf Cooperation Council on the Issues of Private International Law in member States", seminar of Unification of Private International Law Legislations of the Gulf, Centre of Gulf and Arabian Peninsula Studies, Kuwait, 21-23 November 1987, pp.23-25. Makarim regards the G.C.C. as a confederation of states.

<sup>15</sup> See Oppenheim, L. International Law, Vol.1, (1905), p.128. See also Reuter, P., International Institutions, George Allen and Unwin Ltd. (1955), p.184. Corbett, P., cites Jellinek's definition of confederation as "permanent union of independent states, based on agreement and having for its object the protection of the territory of those states and the preservation of peace between them. Other objects may by agreement be pursued. This union requires a permanent

confederation of states may have some obligations regarding their international relations, their competence in foreign affairs is not restricted.<sup>16</sup>

Nevertheless there are essential differences between confederations which have all ceased to exist and international organisations.<sup>17</sup>

The object of confederations is declared to be the preservation of the external and internal security of the confederate states.<sup>18</sup>

The common features of the confederation differ greatly from those of international organisations. The main purpose of confederation is to maintain a common defence and foreign policy through binding decisions of the supreme organ.<sup>19</sup>

---

organisation for the realization of its end". Corbett concludes that Jellinek's definition is sufficient to consider the League of Nations as a confederation of states: "What is the League of Nations?", 5 B.Y.I.L. (1924), pp.147-48.

<sup>16</sup> Kelsen, H., Principles of International Law op.cit., at p.263. Kelsen concludes that there is no essential difference between these confederations and international organisations. See also Kunze, J., The Changing Law of Nations, Ohio State University (1968), pp.28-33 and also p.107 where he states that the O.A.S., Arab League and European organisations are no more than loose associations of sovereign states which have their highest form in the type of confederations.

<sup>17</sup> The defunct Germanic confederation (1815-1866); the American Confederation (1776-1787), later converted into federation; and the Swiss Confederation (1291-1798), also converted into federation.

<sup>18</sup> Wheaton, H., Elements of International Law with a Sketch of the History of the Science, London, vol.I (1836), p.69.

<sup>19</sup> Verzijl, J., International Law in Historical Perspective, A.W. Sijthoff, Leiden, Vol.II (1969), pp.160-61.

Furthermore the constitutions of confederations contain provisions quite alien in nature to those of international organisations.

In the Germanic confederation, for example, the Diet had power to establish fundamental laws for the confederation, and organic regulations as to its foreign, military and internal relations.<sup>20</sup> When war was declared by the confederation, no state could negotiate separately with the enemy, nor conclude peace or an armistice without the consent of the rest.<sup>21</sup>

In case of denial or unreasonable delay of justice by any member state to its subject, the aggrieved party might invoke the mediation of the Diet.<sup>22</sup>

Furthermore, confederations envisage wars as a sanction within the community against a member guilty of violating the constitution and against a state outside the confederation and in such a case the obligation arose to enact laws by which individuals were obliged to do military service and to pay taxes.<sup>23</sup>

Another marked contrast between a confederation and an international organisation is that, whereas an international organisation has international personality, the union of

---

<sup>20</sup> Acte final, Art.58, Wiener Schlass Acte Art.12-15 in Wheaton, op.cit., p.73.

<sup>21</sup> Ibid., p.74.

<sup>22</sup> Article 29 of the Wiener Schlass Acte in Ibid., p.75.

<sup>23</sup> Kelsen, H., Principles of International Law, op.cit., p.263.

confederated states is not an international person.<sup>24</sup>

One cardinal distinction between the confederal structure and an international organisation is that in the former case the rules governing the establishment and relationship between the member state in peace and war were contained solely in their constitutions, while in the case of the latter the constitution has to observe certain universal rules as contained in the U.N. Charter.

(ii) Economic Integration

Article 4 of the Fundamental Statute deals briefly and in general terms with the economic objectives of the G.C.C. It states the following:

The basic objectives of the cooperation council are:

1. To effect coordination, integration and interconnection between member states in all fields in order to achieve unity between them.
2. To deepen and strengthen, links and scopes of cooperation now prevailing between their people in various fields.
3. To formulate similar regulation in various fields including the following
  - a. Economic and financial affairs
  - b. Commerce, customs and communications.
4. To stimulate scientific and technological progress in the fields of industry, mineralogy, water and animal resources, the establishment of scientific research centre, implementation of common projects, and encourage cooperation by private sector for the good of their people."

From the previous provisions it is apparent that the Gulf Cooperation Council is not only to be seen as providing the opportunity for achieving political coordination of the

---

<sup>24</sup>Oppenheim, op.cit., Vol.I, p.171: "A union of so-called confederation states is not an international person".



member states, but also it has an economic dimension which adds to its political character. Since their economic systems are similar, the G.C.C. states are easily able to turn towards this economic integration. This economic and political harmony makes regional integration much easier for the Gulf states. Thus while the groups such as the Arab League or the Organisation of Islamic Countries are of an ideal size for economic integration, the G.C.C. is able to realise this aim much more easily and in an atmosphere of homogeneity.<sup>25</sup>

Nevertheless, though the Fundamental Statute, in particular the parts dealing with economic issues, embodies integration in its articles, the economic objectives are expressed in wide terms and no stages have been drawn for their implementation. By contrast the European Economic Community treaty provides for a transitional period of twelve years for the common market to be established. Article 8 of the E.E.C. treaty states:

"The common market shall be progressively established during a transitional period of twelve years. This transitional period shall be divided into three stages of four years each, the length of each stage may be altered ..."<sup>26</sup>

To remedy this situation the G.C.C. Supreme Council

---

<sup>25</sup> Novati, G., "The E.E.C. and the Gulf Cooperation Council", in The Arab Gulf and the West, Centre for Arab Gulf Studies, University of Exeter (1985), p.114.

<sup>26</sup> For the E.E.C. treaty, see Peaslee, International Governmental Organisations, op.cit., pp.459-60. For an economic study which explores the experience of the E.E.C. and G.C.C., see Novati, ibid., pp.110-22.

decided on 26 May 1981 to set up five specialised committees made up of the competent ministers, charged with the tasks of drawing up recommendations for achieving the economic objectives.<sup>27</sup> The Supreme Council is empowered by Article 10 of the rules of procedure of the Supreme Council to create any ad hoc committees it deems necessary.

Four of these committees deal mainly with economic affairs. These are:

1. The committee for economic and social planning.
2. The committee for financial, education and trade cooperation.
3. The committee for industrial cooperation.
4. The oil committee.

The Fundamental Statute, having failed to specify the economic objectives, has been inadequate as a basis for economic integration. The G.C.C. member states therefore,

---

<sup>27</sup> The final communique of the first Supreme Council, Abu Dhabi, 25.5.81, see Qatar News Agency documents, op.cit., pp.91-3. See also the G.C.C. working paper published in Abu Dhabi on 26 May 1981, Middle East Contemporary Survey, Vol.V. (1980-81) Shiloah Centre, Tel Aviv University, p.518. It should be noted here that though the provisions of the economic agreement do not include gradualist application of the objectives, in practice the gradualist approach has been adopted by the specialised committees in two stages. The first began on 1st March 1983 by a free trade area and the achievement of the economic citizenship through the objectives stipulated in Article 8 of the agreement. In the second stage, the G.C.C. intends by 1990 to establish a common market referring directly to the E.E.C. model. During the third summit (Bahrain, November 9-11, 1982), the G.C.C. heads of state approved the gradual implementation of the agreement. See Qatar News Agency documents, op.cit., p.385. See also in this regard, Gulf Cooperation Council. The International Dimension, Arab-British Chamber of Commerce Publications, London (1 December 1983).

signed a supplementary agreement on 8 June 1981, the United Economic Agreement, probably inspired by the E.E.C. The agreement sets out the practical steps necessary to achieve the objectives mentioned in the statute. It should be noted here that the legal linkage between the Unified Economic Agreement and the Fundamental Statute is found in the preamble to the economic agreement. It emphasises that the member states in conformity with the G.C.C. Fundamental Statute express their desire to achieve a solid understanding and to create strong bonds between the states they represent by developing and widening the commercial ties already existing among them.

The Unified Economic Agreement does not provide for disputes settlement as concerns the application and the interpretation of the agreement. Nevertheless the agreement provides in its preamble that observance of its terms is to be in accordance with the Fundamental Statute which provides for settlement of disputes under Article 10.<sup>28</sup>

---

<sup>28</sup> On the question of the legal value of the preamble it is well established under international law that the preamble is an integral part of the treaty. Schwarzenberger comments on this matter as follows: "As every word and part of a treaty is presented to have been a meaning and produce some legal effects, no inherent reason exists for discrimination against the preamble as compared with the operative articles of a treaty". International Law, Vol.1, 3rd ed., London, Stevens (1957), at p.526. The International Court of Justice in the Asylum Case (1950) referred to the preambles of both the Havana Convention of Asylum of 1928 and the Montevideo Convention on Political Asylum of 1933 as to determine the objectives of the treaty. I.C.J. Asylum Case, November 20, 1950, I.C.J. Reports (1950), pp.276-77, p.282. Kelsen, H. gives the same view, The Law of the United Nations, London, Stevens (1951), p.5.

The 28 articles of the Unified Economic Agreement set ambitious targets which go much further than any previous attempts to coordinate Arab development. The main features of the agreement are:

1. Elimination of customs duties between G.C.C. states, provided goods satisfy a minimum local value added content criterion (Articles 2-3).
2. The establishment of a common minimum external tariff (Article 4). This has been set at between 4 percent and 20 percent.
3. The coordination of import and export policies and regulations. The agreement also calls for the creation of a collective negotiating force to strengthen the G.C.C.'s position in dealing with foreign suppliers.
4. Free movement of labour and capital (Article 8).
5. Coordination of oil policies (Article 11).
6. Coordination of industrial activities and standardisation of industrial laws. Efforts are to be made to allocate industries to member states according to relative advantage (Article 12).
7. Cooperation of technology, training and labour policies (Articles 14-17).
8. A cooperative approach to land, sea and air transport policies (Articles 18-20).
9. Move to set up a united investment strategy and coordinate financial, monetary and banking policies. This will include the possibility of introducing a common

currency (Articles 21-23).<sup>29</sup>

The intention of the author is to deal in detail with the Unified Economic Agreement in Chapter Seven of the dissertation. Here one may just draw some general remarks.

#### 1. Supremacy of the UEA Over Bilateral Treaties

Before the establishment of the G.C.C. and the signature of the Unified Economic Agreement there were many bilateral agreements among the G.C.C. member states in the economic field.<sup>30</sup> To resolve the problems coming out of these concomitant agreements Article 28 stipulates that the Unified Agreement has priority in application over all the bilateral agreements. It states:

"Provisions herein shall supersede any similar provisions contained in bilateral agreements."

This provision confirms the principle of autonomous operation which applies mainly to international organisations, which presumes that "each international organisation must regard itself as being bound in the first instance by its own

---

<sup>29</sup> See the text of the agreement in the G.C.C. Legal Gazette (1982).

<sup>30</sup> The writer has been unable to trace these treaties in the UNTS. As a result of investigation he carried out in the G.C.C. member states these bilateral treaties are found in the Official Gazette of the member states. For example, see U.A.E. Official Gazette No.70 (1977), pp.41-45, No.58 (1978), pp.32-34, No.85 (1980), pp.43-45. See also Qatar Official Gazette No.50 (1979), p.101, No.11 (1981), p.107, No.8 (1982), p.128, No.3 (1983), p.128, No.4 (1984), p.185, No.8 (1984), p.212, No.8 (1984), p.214, No.11 (1984), p.216. For Kuwait Official Gazette (Kuwait Today) see No. 1039 (1975), p.16, No.1238 (1979), p.5.

constitution and will naturally apply instruments which it is itself responsible for administering rather than other instruments with which they may be in conflict".<sup>31</sup> However, one excludes the possibility of conflict between the U.E.A and those bilateral economic agreements among the G.C.C. member states. Furthermore the provisions of the bilateral agreements are similar to the U.E.A provisions and deal with the same subject except that the latter are made specific, effective and subject to close observation by the G.C.C. Secretariat.<sup>32</sup>

---

<sup>31</sup> Jenks, W., "The Conflict of Law-Making Treaties" 30 B.Y.I.L. (1953) at p.448. In this regard it is worth mentioning that Article 30 of the Vienna Convention on the Law of Treaties does not include this principle, though the principle of hierarchy may be applicable according to the Article. This principle is to establish the superiority of the constitution of the organisation over the provisions of bilateral treaties. See Sinclair, I., The Vienna Convention on the Law of Treaties, 2nd ed., Biddles Ltd., Guildford and King's Lynn, at p.96.

<sup>32</sup> On the whole the bilateral economic agreements concentrate on the following: (i) to remove everything likely to obstruct the freedom of economic and commercial activities of citizens of one country in the other as regards ownership of estate, shares and companies; (ii) to unify the policy relating to customs and excise regulations and tariff to commercial companies and to the provisions of goods and foodstuffs; (iii) to unify legislation relating to the protection of local industries and to encourage the establishment of joint projects by the citizens in each country; (iv) to ensure that each party grant the citizens of others the same treatment regarding right of residence and work,

- (b) freedom of exercising economic activity,
- (c) right to ownership, inheritance and bequest in accordance to the laws applied in each country,
- (d) facilitate the procedure for free movement of capital;
- (v) to permit the importation and exportation of agricultural, animal, industrial and natural resources products that are of national origin.

## 2. Conflict between the UEA and other Treaties Concluded with Third Parties

The conflict of treaty obligations may arise as regards those bilateral agreements concluded between each of the G.C.C. member states and third parties before and after the establishment of the organisation. Some of those agreements deal in part with the same subject matter as those of the first category but in the main they differ substantially from the bilateral agreements mentioned earlier.<sup>33</sup>

According to Article 30.4(b) of the Vienna Convention on the Law of Treaties, 1961, the obligations of the G.C.C. member states within the UEA cannot override their obligations within the bilateral agreements concluded with third parties.<sup>34</sup> However, the above provision does not reflect customary law, since the state practice in this area of law is continually developing and fixed guidelines have not been

---

<sup>33</sup> There are a number of bilateral economic agreements concluded between each G.C.C. member state and other parties. For example between UAE and Iraq, 3 October 1977, UAE Official Gazette, No.58, 8 June 1987, pp.32-4; UAE and Greece (1976), ibid., pp.44-6; Qatar Official Gazette No.9.4 (1984), pp.186-187; Qatar and the Republic of Korea, 21 April 1984, ibid.n (1984), p.212; Qatar and Jordan (1980), ibid., pp.105-6; Qatar and Pakistan, 16 April 1984, ibid. at p.217; Qatar and India, 19 April 1984, ibid.n at pp.214-5. The writer will examine the legal implications of a possible clash between the UEA and treaties concluded substantially in similar terms under the Arab League auspices in Chapter Seven, which deals with the implementation of the UEA. See infra, pp.271-85.

<sup>34</sup> See the text in Brownlie, Basic Documents, op.cit., p.362.

established yet.<sup>35</sup>

### 3. Supremacy of UEA Over Internal Law

Article 27 provides that:

"In case of conflict with local laws and regulations of Member states, execution of provisions of this agreement shall prevail."

This sort of supremacy of inter-state law over domestic law is clearly enshrined within the G.C.C., especially with respect to its economic agreement.

The hypothesis of conflict with municipal law could be posed in different terms. In accordance with the principle of pacta sunt servanda, the state is legally obliged to fulfil in good faith the international obligations it has undertaken and to refrain from subsequent practice or concluding contradictory provisions.

Article 26 of the Vienna Convention on the Law of Treaties provides:

"Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

This rule in fact demonstrates one of the most fundamental principles of customary international law of treaties.<sup>36</sup>

The above Article is strengthened by Article 27 of the Convention that a party to a treaty may not invoke the provisions of its constitution or its internal laws as an

---

<sup>35</sup> Sinclair, I., The Vienna Convention on the Law of Treaties, op.cit., pp.97-98.

<sup>36</sup> Sinclair, I., op.cit., pp.84-119; Elias, T., The Modern Law of Treaties, Oceana Publications Inc., Dobbs Ferry, N.Y., A.W. Sijthoff, Leiden (1974), p.40. For the text see Brownlie, op.cit., p.361.



excuse for failure to perform any international obligation it has undertaken under the treaty. It provides:

"A party may not invoke the provisions of the internal law as justification for its failure to perform a treaty..."

Furthermore, a state can only derogate from its obligations through procedures prescribed in the treaty and not merely by unilateral act.<sup>37</sup> It is arguable that Article 27 attempts to introduce into the G.C.C. an E.E.C. type of legal practice which provides for the supremacy of Community legislation irrespective of whether the municipal legislation concerned has been enacted before or after the commencement of membership.<sup>38</sup>

However, one has to state clearly that this sort of supremacy does not lead to the conclusion that a proof of supremacy of international law over national law could be maintained.<sup>39</sup>

---

<sup>37</sup> McNair, The Law of Treaties, Oxford Clarendon Press (1961), pp.493-4.

<sup>38</sup> Although this rule is not found in any of the EC treaties, it has been firmly established by the court of the European Community. See the Simmenthal Case, Case 106/77, [1978] E.C.R. 629, pp.651-2. See also, Ratti Case, Case 148/78, [1979] E.C.R. 1629; French Merchant Seaman Case (The Commission v. France), Case 167/73, [1974] E.C.R. 359; Lasok, D. and Bridge, J., Introduction to the Law and Institutions of the European Communities, 3rd ed., Butterworth (1982), pp.261-67. See also, Wyatt, D. and Dashwood, A., The Substantive Law of the EEC, Sweet & Maxwell (1980), pp.53-4; Hartley, T.C., The Foundations of the European Community, Clarendon, Oxford (1981), pp.219-23.

<sup>39</sup> In spite of the fact that Al-Awadi, B. accepts the view that the constitution of Kuwait 1962 and its explanatory note annexed to it do not refer to the question of primacy of international law over national law, she maintains that this could be inferred from treaties concluded by Kuwaiti

The constitutions of the G.C.C. member states do not contain provisions of this sort.<sup>40</sup>

At any rate, the admission of external law to the territory of a state cannot be achieved merely by providing supremacy over municipal law, but there is a further problem which is the constitutional transmission of internal law.

#### 4. Entry into Force of the UEA

According to the law of treaties, treaty provisions determine the manner in which and the date on which the treaty enters into force.<sup>41</sup> Article 26(1) of the UEA states that the agreement "shall enter into force, four months after its approval by the Supreme Council". Nevertheless the G.C.C.

---

government which provide so. She gives two examples of treaties providing this sort of supremacy:

- (1) The treaty establishing the Arabian maritime company of oil transportation, 1972;
- (2) The treaty establishing the Arabian company for petroleum services, 1975.

See her book, Public International Law in Time of Peace and War and its Application in the State of Kuwait, Dar-Alfiker, Damascus (1979) (Arabic), pp.43-5.

<sup>40</sup> The constitutions of the G.C.C. member states instead adopt the dualist theory which requires transformation measures for the rules of international law. See Article 47 of the UAE constitution, Article 37 of the Bahrain constitution, Article 70 of the Kuwait constitution, Article 18 of the Saudi Arabia Cabinet Order, Article 3 of the Oman Decree of the Administrative Organ, and Article 24 of the Qatar constitution. For the text, see G.C.C. Legal Gazette 1 (1982), pp.16, 54, 61, 79 and 2 (1983), pp.8, 47 and 69 respectively.

<sup>41</sup> Article 24 of the Vienna Convention on the Law of Treaties (1969).

member states, save for Oman, ratified the UEA.<sup>42</sup>

---

<sup>42</sup> It is worth mentioning that according to the G.C.C. Legal Gazette issued 11.6.83, the various constitutional measures taken by the member states are described by the secretariat as ratification documents. By examining these documents, however, it becomes apparent that some of them are in fact ratification instruments. UAE ratified the agreement on 4.10.82 and in that instrument there is reference to the incorporation act No.47 1982. This may explain the process in Article 47(4) of the constitution which requires the consent of the union council to ratify the treaty and enable the head of state to issue the ratification instrument. Therefore the consent to ratify the treaty by the union council paves the way to both ratification and incorporation. And yet the signature of the head of state, according to Article 54(4), is necessary to execute the act of incorporation which is followed by the ratification document.

Bahrain has deposited an instrument which is difficult to be called a ratification instrument. It is in fact an incorporation act which brings the treaty into force under municipal law. As such it appears that Bahrain complied with Article 26(1) of UEA that there is no need for further procedures to be taken to bind her internationally.

Saudi Arabia has deposited a ratification instrument by which is referred to the approval of the Council of Ministers No.4 dated 6.1.1402 A.H. and the Royal Act No. M113. According to Article 18 of the decree of the Council of Ministers of 1958 combination of the final approval of the cabinet and the Royal decree constitute incorporation first and ratification.

Oman has not deposited any instrument since the signature of the Sultan does not need any further procedures. Qatar deposited an instrument of ratification. Its attitude reflects the practice in Qatar and in compliance with Article 26 of the constitution that a treaty is signed, ratified by the Amir then the incorporation process takes place in the form of a decree signed by the Amir and published in the Official Gazette.

Kuwait deposited a ratification instrument issued on 1.11.1982. However this was preceded by a legislative act by the National Assembly on 31.10.1982 and enabled the Amir to ratify the treaty. One may notice the different constitutional procedures taken by Kuwait and Bahrain although their constitutions require identical measures. The reason appears to lie in the fact that the Bahrain National Assembly was dissolved at the time Bahrain joined the G.C.C. and therefore played no role in approving the ratification process.

This kind of practice among the G.C.C. member states may have the advantage of order and certainty and would confirm compliance with the domestic constitutional requirement, yet there is no residuary rule to the effect that ratification is essential.<sup>43</sup> However, for the purpose of examining the effect of internal law on the question of entry into force it seems necessary, in view of the diversity of the legal systems in G.C.C. member states, to investigate the position in each member state.

According to the constitution of the six member states, save for Kuwait and Bahrain, treaties are made and ratified by the head of state or the Supreme Council.<sup>44</sup>

Article 47 of the UAE constitution provides that the Supreme Council ratifies the international agreements, thus committing the country internationally. Both the constitutions of Bahrain and Kuwait provide for an identical approach as for signature and ratification for two types of

---

<sup>43</sup> See Sinclair, I, The Vienna Convention on the Law of Treaties, 2nd ed. (1984), pp.39-42. For the practice of states in this regard see Blix, H., "The Requirement of Ratification", 30 B.Y.I.L. (1953), p.380.

<sup>44</sup> See the Articles in the constitution of the member states. The English text is found in The Constitutions of the Countries of the World, op.cit.

treaties.<sup>45</sup>

(a) Treaties concluded by the Amir notified to the National Assembly with appropriate explanations and published in the Official Gazette.

(b) Treaties requiring the consent of the National Assembly. The treaties in this group are those which directly affect the rights of the people, their personal freedom or concern, the sovereignty and interest of the state.

It seems that the first type of agreement is signed and ratified by the Amir while the second type needs a legislative act which enables the Amir to ratify and therefore for the country to be bound internationally.<sup>46</sup>

Article 18 of the Saudi regulation states that international treaties do not come into force unless they are approved by the Council of Ministers. The approval of the cabinet is final unless it requires a royal decree. Article 19 determines that all the international treaties after the

---

<sup>45</sup> For the English text of the constitutions, see The Constitutions of the World, Bahrain constitution, June 1958, at p.26. As for the Kuwait constitution, see ibid., the provision at p.16. The Kuwait National Assembly approved the agreement and it was promulgated by a decree No. 5811982. This process was succeeded by a ratification of the UEA. For the decree see Kuwait Official Gazette, Kuwait Today, No.1443, 2 November 1982, pp.2-6.

<sup>46</sup> According to the article the distinction between ratification as a procedure which binds the state internationally and the procedure of incorporation which brings the treaty into force under municipal law is unclear. In practice however the government tends to incorporate treaties of both groups, although the wording of Article 20 of the Constitution provides for incorporation only of the second group.

approval of the cabinet need to be brought into force by a Royal decree.<sup>47</sup> According to this provision one may infer that both signature and ratification which vest with the cabinet and the King are necessary procedures to bind Saudi Arabia.

Oman may be considered an exception in this regard as the signature of the Sultan may suffice to bind her internationally.<sup>48</sup>

As it is provided in the Omani decree there are two types of treaties.<sup>49</sup> First, treaties signed by the Sultan himself, and this type does not need further procedures to be complied with. The second type of international treaty, which are signed by those who are authorised by the Sultan, clearly need ratification by the Sultan.

Finally, in Qatar Article 24 of the constitution provides that "The Amir concludes treaties by a decree and informs the advisory council with an appropriate statement". The treaty has "the force of the law" when it is signed, ratified and

---

<sup>47</sup> See the text of the decree in G.C.C. Legal Gazette (1982), op.cit., pp.75-82.

<sup>48</sup> See the text of the decree, the regulation and its amendments in G.C.C. Legal Gazette 3 (1983), ibid., pp.7, 37.

<sup>49</sup> In a letter sent by Oman Minister of Foreign Affairs to the secretary general of the G.C.C. dated 18.4.82 regarding the application of Article 26(1) of the UEA the Minister indicated that in accordance with Article 3 of the regulation the administrative organ of the state and its amendments there is no need to ratify treaties that have been signed by the Sultan. See G.C.C. Legal Gazette, ibid., No.3 (1983) at p.36.

published in the Official Gazette.<sup>50</sup>

##### 5. Incorporation of the UEA into Municipal Law

The question here concerns how the provisions of the UEA penetrate the legal systems and reach the municipal organs and individuals to become binding upon them.

There are some requirements, such as promulgation, publication and legislative or executive approval to transfer the treaty provisions into municipal law.

The requirements of course do not alter or affect the obligation of a state. Therefore a state cannot plead its municipal law to evade international obligations.<sup>51</sup>

The constitution of the G.C.C. member states includes certain acts to transform international treaties into municipal law.

The UAE constitution requires the issue of a decree signed by the head of state to incorporate the ratified

---

<sup>50</sup> See the text of the constitution and its amendments in the Legal Gazette, ibid., pp.41-58.

<sup>51</sup> This principle is widely acknowledged, see Article 27 of the Vienna Convention on the Law of Treaties 1969. See also Fitzmaurice, G., "The General Principles of International law Considered from the Standpoint of the Rule of Law" 92 RC (1957) 11, pp.85-90. See also, McDougal, M., Studies in World Public Order, New Haven Press, New Haven (1987), pp.196-200; McNair, The Law of Treaties, op.cit., 100-4; Morgenstern, F., "Judicial Practice and the Supremacy of International Law", 27 B.Y.I.L. (1950), pp.43-48; Waldock, H., "General Course on Public International Law" 106 RC (1962) 11, pp.123-38; Brownlie, I, Principles of Public International Law, Clarendon Press, Oxford (1982), pp.36-37.

agreement into the municipal law.<sup>52</sup> The Unified National Assembly has no rule whatsoever to discuss or approve the international treaties.<sup>53</sup>

Although Article 89 of the constitution gives the Assembly the right to approve, amend or reject the laws proposed by the governments, this rule is without prejudice to Article 110, which gives the final word to issue any "union acts" to the head of state or the Supreme Council.

The constitutions of Bahrain and Kuwait require some method of incorporation.<sup>54</sup> For treaties not requiring the consent of the National Assembly the Amir need only issue a decree and publish the treaties in the Official Gazette. The second type of treaties are incorporated into the municipal law by act of the National Assembly after which the Amir issues a decree and gets them published in the Official Gazette.

According to the Saudi order for the Council of Ministers, Article 19 requires a Royal decree to incorporate

---

<sup>52</sup> Articles 47 and 54 of the constitution. Some writers hold the view that publication and issuing an act are not real legislative acts and therefore it cannot be considered as such process of incorporation. See Morgenstern, F. "Judicial Practice and the Supremacy of International Law", B.Y.I.L. Vol.XXVII (1959), pp.50-2. See also Wildhaber, L., op.cit., pp.225-27.

<sup>53</sup> Article 91 provides that agreements concluded by the governments are notified to the National Assembly with appropriate explanation.

<sup>54</sup> See Article 37 of the Bahrain constitution and Article 70 of the Kuwait constitution, G.C.C. Legal Gazette (1982), pp.54 and 61.



international treaties into municipal law. Furthermore, Article 24 requires publication for all Royal decrees to come into force. Therefore both procedures, the issue of a decree by the King and publication, are necessary steps for incorporation.<sup>55</sup>

Article 3 of Oman's decree provides that the signature of the Sultan of an international treaty makes it part of the law of the land. However, publication in the Official Gazette is a necessary requirement for incorporation for both treaties signed by the Sultan or ratified by him after the signature of whom he authorises.<sup>56</sup>

The above article was amended by the Royal decree with the addition "unless the Sultan determines otherwise".<sup>57</sup>

This amendment of Article 3 of the decree in fact gives the Sultan enormous power of incorporation. As such it is not clear whether the signature of the Sultan and the publication of the treaty suffices to incorporate a treaty into Oman's legal system and therefore becomes binding internally.

According to the constitution of Qatar, incorporation takes place through a decree and publication, which both succeed signature and ratification.<sup>58</sup>

---

<sup>55</sup> Ibid., p.79.

<sup>56</sup> Ibid. (1983), p.8.

<sup>57</sup> Ibid.

<sup>58</sup> Article 24 of the constitution. The practice shows in Qatar that the incorporation act is issued by the Amir through the Ministry of Justice and called "the instrument of approval".

## 6. Non-Self Executing Treaty

A treaty becomes incorporated into municipal law to the extent that it is necessary for application. However the UEA encounters the problem of a non-self executing treaty.<sup>59</sup> It requires further decisions from the Supreme Council to implement it.

In international law, treaties sometimes stipulate in terms that they shall be put into effect by legislative enactment. The agreements may be drafted in general terms leaving the details of their application to be filled out by internal legislation.<sup>60</sup>

The UEA cannot be applied without further acts. As such the G.C.C. Secretariat puts it in this way:

"It is necessary when applying the provisions of the UEA to draw distinction between the provisions according to its nature. Some of these do not take long measures to be implemented but it is enough to take a decision and then the application comes in a normal and regular way (i.e. Article 18 of the UEA which deals with national treatment for transportation and communication in the G.C.C. states."

---

<sup>59</sup> The notion of self-executing has two meanings. In the U.S.A., where the notion first evolved, it means the automatic incorporation of treaties into internal law. The other meaning, which may correspond to the UEA, is that a treaty cannot immediately be applied without further implementing acts to individuals. See Wildhaber, L., op.cit., pp.226-28. See also Preuss, L., "The Execution of Treaty Obligations Through Internal Law System of the United States and of Some Other Countries", A.S.I.L. Proc. (1951), pp.82-100.

<sup>60</sup> Dickinson, E., "Are the Liquor Treaties Self-Executing?", A.J.I.L. Vol.20 (1926), p.448. See also Morgenstern, F., B.Y.I.L., op.cit., pp.66-8. See also McDougal, M. and associates, Studies in Public Order, Yale University Press (1960), pp.217-19.

Some other provisions require gradual implementation in order to comprehend the experience and reduce what might be the cause of negative effects as the right of ownership and freedom of exercising economic activity (Articles 18, 23). In this regard the agreement uses proper phrases for these Articles which begin with words such as:

The member states shall agree on the executive rules which would insure that each member state shall grant the citizens of all other member states the same treatment granted to its own citizens..." Article 8.<sup>61</sup>

The secretariat emphasises further that the executive implementation of the UEA is subjected to subsequent accords among the G.C.C. member states.

"There are provisions which require a long time to be implemented as the achievement of similarity in development plans, unification of their attitudes towards the world and coordination of their financial monetary and exchange policies (i.e. Articles 10, 11, 12, 21, 22 and 23). These Articles dealing with those above subjects which usually begin with words such as 'The member states shall seek to... or endeavour to'..."<sup>62</sup>

Furthermore the UEA includes some provisions which are merely "a guiding rule for cooperation as the obligation of the member states to support private enterprise".<sup>63</sup>

Thus from the intention of the contracting parties and the words of the agreement one may say that neither the G.C.C. governments nor the individuals can derive direct rights from

---

<sup>61</sup> Unpublished memorandum of the G.C.C. Secretariat regarding the implementation of the UEA. The G.C.C. archives, September 1984 at p.1.

<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

the UEA without further municipal executive implementation.

According to well established principles of international law the international agreements cannot, as such, create direct rights and obligations for individuals unless it is the intention of the parties.<sup>64</sup>

Furthermore, it is not the intention of the G.C.C. member states to create direct rights and obligations for individuals to the extent that they can see their rights and obligations directly enforceable by the national courts.<sup>65</sup>

By contrast, the E.E.C. treaty provides that Community law can prevail over municipal law and that a directly effective provision of Community law may benefit individuals.<sup>66</sup> However the constitutional requirements in

---

<sup>64</sup> The Advisory Opinion regulating jurisdiction of the courts of Danzig, P.C.I.J., Ser.B. No.15 (1920), pp.17-18.

<sup>65</sup> In an interview by the writer with the Director General of Legal Affairs in the G.C.C. Secretariat, the writer raised the question whether it is possible for private individuals and companies to claim any right derived from the UEA before the national court. The answer was that in the present practice the only channels to bring these issues would be through the Ministry of Foreign Affairs in each member state. They would go in their turn to the G.C.C. Secretariat in the form of complaints. It is worthy of mention in this regard that the G.C.C. is working on a draft of an agreement for commercial arbitration. This is to deal with the economic disputes arising out of the implementation of the U.E.A. However, due to the issue of compulsory jurisdiction of the committee concerned, which the member states do not prefer, and the high cost of establishing such body, the draft is still under discussion. The interview was conducted in Riyadh, the G.C.C. headquarters on 21 November 1986. For the rights of individuals under the UEA see infra, Chapter 7, pp.325 et seq.

<sup>66</sup> See Van Gend en Loos Case, Case 26/62, [1963] at p.12. See also, Hartley, T., The Foundation of European Community Law, op.cit., pp.219-21.

each member state determine the forms of implementation that may be taken and which organs of the state may be considered competent in the application of Community law.<sup>67</sup>

## 7. Techniques of Incorporation

Due to the requirement in the UEA that provisions of the agreement shall come into force in stages, the G.C.C. Supreme Council in its third session held in Bahrain took the decision to start implementation of the agreement from March 1983.<sup>68</sup>

These executive measures recommended by the financial and economic committee at its second meeting in Riyadh cover a very limited area of the agreement.<sup>69</sup>

Nevertheless, these measures to implement gradually the UEA reveal a diversity of approach from one country to another.

The UAE gives effect to the Unified Economic Agreement by a decree by the head of state or by a cabinet decision.<sup>70</sup> In Qatar and Bahrain the technique of incorporation comprises

---

<sup>67</sup> See Brinkhorst, L., "Implementation of (Non-Self-Executing) Legislation of the European Economic Community, including Directives", in Legal Problems of an Enlarged European Community, London, Stevens & Sons (1972), pp.77-81. In the same meaning see Opsahl, T., "Implementation of Non-Self-Executing Community Legislation, including Directives in Scandinavia", ibid, pp.104-9. For a different view see Lasok and Bridge, op.cit., pp.263-4 who think that the E.E.C. treaty is a self-executing treaty whose rules bind both the member states and individuals directly and immediately.

<sup>68</sup> See the decision in the G.C.C. Secretariat publication, The Decisions and Measures which have been Taken to Implement the UEA, (October 1984), pp.8-10 (Arabic).

<sup>69</sup> Ibid.

<sup>70</sup> Ibid., pp.15, 42 and 67.

a decree signed by the Amir (the head of state),<sup>71</sup> while Oman applies the agreement through ministerial decisions provided that the G.C.C. organ which takes the decision is the Supreme Council. Here the legal provision is clear because it presumes that the Sultan of Oman participates in issuing the G.C.C. decisions. Otherwise, if the decision to implement the UEA comes from another G.C.C. organ such as the Ministerial Council, the approach would be different and ordinance by the Sultan himself is necessary to bring the rule into force municipally.<sup>72</sup>

Saudi Arabia uses a slightly different approach which is the Royal order to implement the G.C.C. Supreme Council decisions.

In Kuwait the technique is similar to that of Oman. The compliance to the UEA rules through the G.C.C. decisions is accomplished by ministerial decisions and not by a decree.<sup>73</sup> The reason may lie in the fact that the National Assembly approved the UEA by a statute and therefore there was no need for further constitutional measures.<sup>74</sup>

However, some writers hold the view that such decrees and

---

<sup>71</sup> Ibid., pp.15, 26, 42, 51 and 67.

<sup>72</sup> Ibid., pp.22, 49 and 67.

<sup>73</sup> Ibid., pp.18, 44 and 67.

<sup>74</sup> Ibid., pp.31 and 56. It is worthy of mention that the Amir of Kuwait dissolved the National Assembly and suspended some provisions of the constitution for the second time in the history of Kuwait parliamentary life. See the declaration in the G.C.C. Legal Gazette, No.17, 13.11.86, pp.161-2. For more details, see supra, Chapter 2, pp.74-75.

decisions do not amount to an act of incorporation but only means of publicity and notification on the national plane. The decisions of the organisation are capable of creating direct rights and obligations.<sup>75</sup>

It is clear from this brief survey of the methods of implementing the UEA through the G.C.C. organ decisions that the member states have a tendency to put the matter in the hands of the executive. The methods are various, ranging from a decree to merely ministerial decision, but this depends on the constitution of each member state.<sup>76</sup> The diversity of approach therefore does not reduce the effectiveness of the incorporation process or allow the G.C.C. Secretariat to interfere for a common approach and uniform procedure. Nevertheless, the G.C.C. Secretariat drew the attention of the member states to the slow process of incorporation and the necessity of issuing their acts at the fixed time they agree

---

<sup>75</sup> Vicunna, F., "Contemporary International Law in the Economic Integration of Latin America. Problems and Perspectives", Hague Academy of International Law, Colloquium (1971) at p.14.

<sup>76</sup> By contrast the EEC countries according to their constitutions adopt various measures to comply with the EEC treaty. In Belgium the King takes measures by decree subject to parliamentary approval. In Netherlands the Queen is delegated by the authority of law to carry out the Community agricultural policy by decree. In Denmark there is a system of general delegation, according to constitutional provision. In the UK and Eire there exists a general delegation system by virtue of the European Communities Acts 1972. In Italy and the German Federal Republic a system of special delegation of legislative power operates. In Greece the constitution provides for delegated legislation to carry out economic measures. For the details of the EEC countries' techniques of incorporation, see Lasok and Bridge, op.cit., pp.281-6.

upon.<sup>77</sup>

(iii) Security

Neither external defence nor internal security were referred to explicitly in the Fundamental Statute, perhaps out of apprehension of being misunderstood as a formation of a regional military bloc. The other reason is that the Joint Defence and Economic Cooperation Treaty established, though in theory and not in practice, a system of collective security,<sup>78</sup> thus making further agreement along these lines unnecessary. Kuwait in particular was reluctant to commit itself to another multilateral defence scheme. Kuwait had previously rejected a bilateral security agreement with Saudi Arabia while the rest of the G.C.C. member states entered into such agreements.<sup>79</sup>

---

<sup>77</sup> Unpublished memorandum prepared by the G.C.C. Secretariat on the implementation of the UEA. The G.C.C. Secretariat Archives, September 1984, pp.1-2.

<sup>78</sup> See Pogany, I., The Arab League and Peacekeeping in the Lebanon, St. Martin's Press, New York (1987), p.13.

<sup>79</sup> In an explanation for the Kuwait position the Kuwaiti Defence Minister stated in an interview that as a member state of the Arab League Kuwait was bound by the provisions of the joint Defence and Economic Cooperation Treaty between the states of the Arab League, which envisages military cooperation: Al-Anba newspaper Kuwait, 2 October 1982. It is to be mentioned that Article 2 in particular of the Joint Defence and Economic Cooperation Treaty between the States of the Arab League provides:

"The contracting states consider any act of armed aggression made against any one or more of them or their armed forces to be directed against them all. Therefore, in accordance with the right of self-defence individually and collectively, they undertake to go without delay to the aid of the state or states against which such an act of aggression is made, and immediately to take



However, thorough examination of the Fundamental Statute of the G.C.C. reveals that security matters are impliedly included in the area of cooperation. Article 4.1 of the statute provides:

"The basic objectives of the Cooperation Council are: To effect coordination, integration and interconnection between member states in all fields."

Furthermore Article 8.2 of the Statute entrusts the Supreme Council with certain functions inter alia to lay down the higher policy for the Cooperation Council and the basic line it should follow.

Therefore the Supreme Council fulfilling its functions called upon the ministers of defence to examine the military situation in the region, the military data of individual member states and the establishment of the means of coordination between them. Of relevant interest is the signing in August 1981 of a treaty of friendship and cooperation between the People's Democratic Republic of Yemen, Libya and Ethiopia. The G.C.C. Supreme Council responded by inviting the Defence Ministry to examine the question of mutual defence. Ministries of Defence met for the first time in January 1982 and in conjunction with the G.C.C. chiefs of

---

individually and collectively all steps available, including the use of armed force, to repel the aggression and restore security and peace in conformity with Article 6 of the Arab League pact and Article 51 of the United Nations Charter, the Arab League Council and United Security Council shall be notified of such act of aggression and the means of procedure taken to check it."

staff have met several times since. A joint military exercise called 'Peninsula shield' held in October 1983 and October 1984, as well as bilateral air and naval exercises, paved the way for the announcement by the Supreme Council in December 1984 of a joint military command consisting of units drawn from the armed forces of all member countries.<sup>80</sup>

On another occasion, acting on the G.C.C. Supreme Council's recommendation, the defence ministers met on 25 and 26 January 1982 in Riyadh to discuss defence priorities in the light of the discovery of an Iranian backed plot to overthrow the government of Bahrain. They also discussed the security agreement between Saudi Arabia and Bahrain, a G.C.C. military delegation's visit to Oman and an Iranian warning not to conclude security treaties.<sup>81</sup>

These activities led to the belief that the G.C.C. has upgraded its security arrangements into a military alliance much like NATO.<sup>82</sup>

The experience of alliance in some outstanding cases such

---

<sup>80</sup> Major-General Rikhye, J., Gulf Security Question for Regional Cooperation, A Report of the International Peace Academy, Report No.22, New York, (1985), pp.34-35.

<sup>81</sup> Middle East Contemporary Survey (M.E.C.S.) (1982-3), op.cit. 483.

<sup>82</sup> Martin, L.G., The Unstable Gulf, Lexington Books, D.C. Heath and Co., Lexington, Massachusetts, Toronto (1984), at p.155. GCC officials insisted, however, that the units participating in the manoeuvres were not designed as a permanent force, but rather as a group of units which would coordinate and deploy rapidly in response to any perceived threat. See M.E.C.S. (1982-83), op.cit., p.453. For the question whether the GCC is a "regional arrangement" for the purposes of Chapter VIII, UN Charter, see infra. pp.133-38.

as NATO and ANZUS brought about fierce controversy as to whether the term "regional arrangement", within the meaning of the expression used in Chapter VIII (Articles 52-4 of the UN Charter) applied to them.

Eric Becket points out that the North Atlantic Treaty is not a regional arrangement and contains no provisions about enforcement action, but much about self-defence.

This enforcement action, according to Chapter VIII of the U.N. Charter, is essentially different from the use of force in the exercise of collective self-defence. The first is "decided or approved" by the Security Council, the latter regulated by Article 51 of the Charter.<sup>83</sup>

Furthermore, he argues that the "hallmark" of a regional arrangement constituting a regional organisation is the provision "that the enforcement measures are to be taken in case of a conflict between any two or more of the members of this union".<sup>84</sup>

Since the North Atlantic Treaty "does not contemplate that if a party to the treaty violates the peace, the other parties should be the medium of taking enforcement action against it" then the treaty is not a regional arrangement.<sup>85</sup>

Professor Starke similarly points out that:

"The great weight of opinion and practice is to the

---

<sup>83</sup> Becket, E., The North Atlantic Treaty. The Brussels Treaty and the Charter of the United Nations, London, Stevens & Sons (1950), p.16.

<sup>84</sup> Ibid., p.21.

<sup>85</sup> Ibid., p.34.

effect that NATO, ANZUS and the South-East Asia Collective Defence Treaty are not regional arrangements under Chapter VIII of the UN Charter."<sup>86</sup>

Furthermore Starke argues that the parties in those alliances did not intend to enter into a regional arrangement within the meaning of Article 52 and if so they would have kept the Security Council "at all times fully informed of their activities".<sup>87</sup>

On the other hand, Hans Kelsen argues that there is no doubt that NATO is a regional arrangement within the meaning of Chapter VIII of the U.N. Charter and fulfils all the requirements of that chapter, hence:

"Chapter VIII does not contain an exhaustive enumeration of the matters which may be regulated by regional arrangements."<sup>88</sup>

The G.C.C., however, like the Arab League, the Organisation of African Unity (O.A.U.) and the Organisation of American States (O.A.S.) is distinguished from the aforementioned alliances.

---

<sup>86</sup> Stark, J., The ANZUS Treaty Alliance, Melbourne University Press (1964), pp.79-80.

<sup>87</sup> Ibid., pp.78-79.

<sup>88</sup> Kelsen, H., "Is the North Atlantic Treaty a Regional Arrangement?" A.J.I.L. 45 (1951), pp.162-6. See also his book, Recent Trends in the Law of the UN, London, Institute of World Affairs (1951), pp.918 et seq. Kleffans, N. supports the view that the North Atlantic Treaty is wholly consistent with the Charter of the United Nations - "Regionalism and Political Pacts with Special Reference to the North Atlantic Treaty", A.J.I.L. 43 (1949), pp.666-78.

Alliance treaties are mainly concerned with the security of the parties and may be offensive in nature.<sup>89</sup> In contrast, the G.C.C. is a peaceful regional organisation and deals with coordination and integration between member states in all fields (Article 4 of the Fundamental Statute).

The G.C.C. Fundamental Statute does not contain any security provisions, such as an obligation on member states to establish a particular form of military structure for mutual defence. The NATO and ANZUS treaties impose on the parties the obligation of mutual aid and collective defence in case of armed attacks.<sup>90</sup>

However, Bowett refers to the fact that although NATO is not a "regional arrangement" within the meaning of Chapter VIII of the U.N. Charter, it is an organisation expressed to be one for "collective self-defence" under Article 51 of the Charter.<sup>91</sup>

Some regional organisations, however, have provisions which, while not providing a military alliance, make provisions for collective repulsion of aggression. Such provision is contained in Article 6 of the Arab League Pact<sup>92</sup>

---

<sup>89</sup> Kleffens, ibid., p.670.

<sup>90</sup> Articles 3 and 5, NATO; Articles 2 and 4, ANZUS. For the text see Peaslee, International Governmental Organisations, op.cit., pp.1148 and 74 respectively.

<sup>91</sup> Bowett, W., The Law of International Institutions, 4th ed., Stevens & Sons, London (1982), pp.164-5.

<sup>92</sup> For the text of the treaty, see UNTS 69-71 (1950), pp.248-63.

and in Article 7 of the Inter-American Treaty of Reciprocal Assistance.<sup>93</sup> However, the G.C.C. lacks any of these provisions. The Fundamental Statute reveals a general obligation of the G.C.C. members to "complement efforts already begun in all vital scopes that concern their people and their hopes for a better future on the path of unity of their states".

Also of some significance is the fact that the G.C.C. Fundamental Statute establishes a machinery for the peaceful settlement of disputes among member states. Article 10 of the Statute provides for a commission for settlement of disputes. These provisions have been included so as to project the G.C.C. as a regional organisation rather than a military alliance.

Finally, if we are satisfied that the G.C.C. is a regional organisation under Article 52 of the U.N. Charter, there is little doubt that the G.C.C. has the capacity under Article 51 of the U.N. Charter to take collective self-defence or under Article 53 of the Charter to take enforcement action authorised by the Security Council. In doing so, the establishment of joint command forces as a subsidiary organ does not contradict the very purpose of the U.N. Charter provisions.<sup>94</sup>

---

<sup>93</sup> For the text of the treaty see UNTS 21-23 (1948-49), 163, pp.77-91.

<sup>94</sup> In practice the joint command forces have played a remarkable role in maintaining peace and security among the G.C.C. member states themselves. In March 1986 Bahrain began to construct a coast guard station on a reef of Fashet-al

(iv) Cooperation in Various Fields

The Fundamental Statute provides some general obligations which envisage the realisation of cooperation in all fields. Article 4.3 stresses the necessity of elaborating and adopting similar systems in fields of education and culture, social, health, information and tourism, legislation and administrative affairs. It states that the basic objectives of the Cooperation Council are:

- "3. Formulate similar regulations in various fields including the following:
- a. economic and financial affairs
  - b. commerce, customs and communications
  - c. education and culture
  - d. social and health affairs
  - e. information and tourism
  - f. legislation and administrative affairs.

The objective of the G.C.C. here is to bring about coordination, approximation in various fields and not integration.<sup>95</sup> Thus certain developments in the form of new policies require the harmonisation and most likely a reform of internal laws.<sup>96</sup> Yet apart from the economic objectives

---

Deribel. Qatar, disputing Bahrain's claim, seized the reef on April 26, installing artillery and anti-aircraft guns. The confrontation was eased by the G.C.C. and especially Saudi mediation, and military observers from the G.C.C. joint command forces supervised the Qatar withdrawal. See the Gulf Cooperation Council, Moderation and Stabilities in an Interdependent World, edited by Sandwick, West View Press, American Arab Affairs Council (1987), at p.194.

<sup>95</sup> The Secretary-General Abdullah Bishara, The Role of the G.C.C. in the Realisation of Arab Unity, A research paper submitted to a seminar held in Riyadh on 29-30 April 1985, G.C.C. Secretariat General, p.26.

<sup>96</sup> According to the recommendations of ministerial and technical committees the G.C.C. secretariat has conducted legal studies in order to unify the legislation in the member states. These legal studies concentrate on a unified law of

which are stipulated in the UEA, the Fundamental Statute has unclear references to cooperation in the above fields. One may notice only that these goals are generalities. There is no firm commitment except for a determination to adopt similar systems in all fields.

The terms "cooperation", "coordination" and formulating similar regulations in various fields are methods to be employed in pursuing the aim of achieving "unity between them". These methods of cooperation are not absolutely binding in view of the nature of the cooperation and the method has to be flexible rather than obligatory. In other words the achievement of similar regulations comes as a result of negotiation between the member states and within their own

---

printing and publication in the member states, a draft system for pesticides and fertilizers, a draft system of registration and selling of drugs, a draft of unified patent system and a draft for establishing a Gulf company for road transport. Furthermore, there are recommendations concerning the unified tariffs for electricity and water, standardisation of electricity and water equipment, standardisation of construction equipment, unification of telecommunications rates etc. See the G.C.C. Annual Report (1985), pp.59-62, 73 and 119-26. See also some studies conducted on the unification of G.C.C. internal laws. Al-Alfi, M., "The Unification of Private Law Legislations in the G.C.C. Member States", a seminar organised by the Centre of Gulf and Arabian Peninsula Studies, op.cit., pp.1-32; Al-Ahwani, H., "Perceptions on the Unification of the Civil Law between the G.C.C. Member States", ibid., pp.1-26; Attyia, A., "Aspects of Cooperation in the Procedural Fields between G.C.C. Member States", ibid., pp.1-42; Al-Baharna, H., "A Study of the Unified Economic Agreement and its Impact on the Unification of Rules of Ownership. Commercial and Economic Codes of the G.C.C. Member States", ibid., pp.1-19.



institutions.<sup>97</sup>

The G.C.C. Statute does not provide that the organisation shall follow any other than traditional methods of international cooperation. It seems therefore that the basic

---

<sup>97</sup> In the annual report of the G.C.C. (1985) the secretariat affirms that the fourth objective concerns the approximation and not integration of their systems in the various fields. Therefore it is not surprising that most of the activities in this area take the form of recommendations. For example, the first meeting ever of the G.C.C. ministers of education was not held until September 1985. Bahrain's Education Minister attributed the apparent slow pace of educational cooperation under the G.C.C. to two factors. First, significant educational cooperation existed even before the creation of the G.C.C. (i.e. educational cooperation has taken place under the auspices of the Arab Education Office of the Gulf States, which has been in existence for several years and which also includes Iraq). Second, G.C.C. policy-makers have directed their attention to more immediate issues such as economic and industrial planning. On the information level, cooperation has involved news agencies, radio programmes, and even the creation of a regional G.C.C. radio programme called the "Voice of the Gulf Cooperation Council". This programme, initiated in July 1985, would broadcast from Abu Dhabi for three months and then would rotate among the members. The voice would be heard two hours daily (recommendations of the Deputy Ministers of Information at their meeting on 12 March 1985).

Another example is the recommendations taken by the Ministers of Labour and Social Affairs in their meeting in Doha on 6 May 1985. The recommendations concern the following:

- To study the recruitment of G.C.C. citizens in the social welfare institutions.
- To prepare regulations concerning social welfare and assistance.
- To study the possibility of establishing a regional centre for private education for the handicapped.
- To formulate social policy and legislation to recruit blind and handicapped people in various fields.

There are other recommendations taken by specialised committees on the levels of culture, youth and sport, civil service, health and the protection of the environment. For more details on these recommendations see the G.C.C. Annual Report (1985), *ibid.*, pp.97-115. See also Nakhleh, E., The Gulf Cooperation Council, Policies, Problems and Prospects, Praeger (1986), pp.35-38.

philosophy of the Fundamental Statute is the idea of cooperation among governments of the region but which does not go towards the achievement of functional integration.

The emphasis is put entirely on cooperation between inter-governmental organs, such as the ministerial committees. No rule has been created for independent supranational bodies, which by their very composition and function could escape the control of the governments of member states. By contrast to the European Economic Community<sup>98</sup> and the defunct East African Community,<sup>99</sup> there is a more elaborate and more integrated institutional framework to achieve their objectives. Both organisations have been endowed in addition to the strictly intergovernmental organs with:

- (1) A kind of supranational body (The Commission in the EEC and the East African Ministers in the defunct EAC)
- (2) A kind of parliamentary assembly.
- (3) A court of justice.<sup>100</sup>

---

<sup>98</sup> For the provisions governing the institutions of the EEC see Sohn, L., International Organisation and Integration: Annotated Basic Documents and Descriptive Directory of International Organisations and Arrangements, Martinus Nijhoff, The Hague (1986), pp.833-853.

<sup>99</sup> For the EAC treaty see Sohn, L., Basic Documents of African Regional Organisations, Oceana Publications, pp.1145-1201.

<sup>100</sup> For the legal status of the European Community see Lasok, D. and Bridge, J., Introduction to the law and Institutions of the European Communities, 3rd ed., London, Butterworth (1982), pp.26-46. See also Hartley, T.C., The Foundations of European Community Law, Clarendon Press, Oxford (1983), pp.8-24. As for the defunct EAC, see Akiwumi, A., "Juridical Aspects of Economic Integration Treaties in Africa", Hague Academy of International Law Colloquium (1971) (23-25 VII) Sijthoff, Leiden, pp.33-46. In December 1977 the EAC collapsed and the constituent treaty of Kampala 1967 was terminated. This termination is probably due to changed

However, as mentioned earlier the Fundamental Statute is only concerned with pointing out the larger objectives, the major principles and the fundamental machinery, but does not enter into detailed regulation of all objectives, a task which to a great extent is left to the institutions it establishes.

In accordance with Article 10 of the rules of procedure the Supreme Council set up five ministerial committees in order to achieve, inter alia, these goals.

As soon as these committees started their work they realised the need for other ministerial committees and subcommittees to be established. There are fourteen ministerial committees so far entrusted with the task of coordination and implementation of the various objectives in both the Fundamental Statute and the Unified Economic Agreement. The ministerial committees meet in accordance with the dates proposed by the Secretary General. The process of consultation and cooperation continues both within the Secretariat General, which has a coordinating role<sup>101</sup> and within a number of subcommittees. Some of the subcommittees are permanent, others ad hoc (i.e. permanent subcommittees for basic industries operating under the aegis of the

---

circumstances, both political and economic. See Green, R., "The East African Community, Death, Funeral, Inheritance" African Contemporary Record (1977/1978), pp.A125-A137. See also, Africa Contemporary Record (ACR) (1976-77), pp.A59-67.

<sup>101</sup> Article 15 of the Fundamental Statute.

ministerial committees for industry).<sup>102</sup>

The main function of all these committees and subcommittees is to exchange information and coordinate activity. However, there is a move gradually to set standards and to make recommendations within the various areas of competence of each ministerial committee and subcommittee, aiming to meet their obligations set out in Article 4.3 of the Fundamental Statute.<sup>103</sup>

Nevertheless these committees are empowered to make recommendations for the consideration and the final approval of the Supreme Council.

The G.C.C. political organs (the Supreme Council and ministerial council) normally are under no obligation whatsoever to consult these committees. Therefore, from the institutional point of view, these committees do not have any participation in the process of decision-making.

---

<sup>102</sup> There are other various committees with specific responsibilities, for example for pollution effects from oil-based industries and the massive oil slick from Gulf war-damaged oil fields, a joint committee on pharmaceuticals to develop regulation for joint purchase of pharmaceutical products, a committee concerned with issuing a single G.C.C. passport to nationals in member states. See Middle East Executive Reports (MEER), a monthly legal and business guide to the Middle East (June 1983), Vol.61, No.6, pp.7-15. See also Al Quwaiz, A., The G.C.C. Secretary-General Assistant for economic affairs, "Gulf Cooperation Council from an Economic Integration View", a lecture being presented in the Institute of Diplomatic Studies, Ministry of Foreign Affairs, Saudi Arabia, January 1986, p.3 (Arabic).

<sup>103</sup> For more details of the ministerial committees' work, especially in areas such as education, agriculture, information, see Nakhleh, E., The Gulf Cooperation Council, Policies, Problems and Prospects, Praeger, New York, London (1986), pp.23-38.

Furthermore, for the purpose of achieving the objectives laid down in the Fundamental Statute the Supreme Council (composed of the heads of state) is the only organ empowered to consider the cooperation plans and take decisions on them.<sup>104</sup>

In this regard one may conclude that the G.C.C. closely resembles the Arab League. Although the cooperation efforts have been relatively successful in the social and cultural fields, the League has no enforcement authority in the functional fields and limited staff of the secretariat can hardly support large-scale regional programmes. The best they can do is to remind the competent bodies of member governments about decisions taken and request them to submit progress reports.<sup>105</sup>

However, one has to keep in mind that organs and institutions usually reflect to a great extent the ideologies and realities of the member states they are representing. In the case of the G.C.C. neither the political realities nor the economic and social conditions allowed the authors of the Fundamental Statute to go further in stipulating their cooperation efforts.

---

<sup>104</sup> Article 8 of the Fundamental Statute. See also Article 12, where one would notice that the rule of the ministerial council does not have decision making power of the scope and degree of the Supreme Council. All the resolutions aim at developing cooperation and coordination in the various fields adopted by the ministerial council must be referred to the Supreme Council to be decided on (Article 12.1 of the Statute).

<sup>105</sup> Macdonald, R., The League of Arab States - A Study in the Dynamics of Regional Organisation, Princeton University Press (1965), pp.172-83.

## CHAPTER FOUR

### MEMBERSHIP

#### 1. Closed Type of Membership

The provision of the Fundamental Statute governing membership is contained in Article 5, which provides:

"The Cooperation Council shall be formed of the six states that participated in the foreign ministers meeting held at Riyadh on 4 February 1981."

The above provision indicated clearly that the G.C.C. adopts a closed type of organisation. It is made up of only six states which took part in the meeting of foreign ministers held in Riyadh on 4 January 1981, which met together specifically to declare the establishment of the organisation.

It should be noted that the reference to the foreign ministers meeting is inappropriate, since the first Supreme Council held in Abu Dhabi on 25 May 1981 led to the signature of the G.C.C. Fundamental Statute by the heads of state, which formally established the organisation.<sup>1</sup> The Fundamental Statute of the G.C.C. makes no provision for other Arab states of the Gulf region to join the organisation in the future.

In general international organisations set some rules regulating membership as regards the original parties to the constituent treaty and states which may later be admitted.

---

<sup>1</sup> See the final communique of the first meeting of the Supreme Council in Abu Dhabi on May 25, 1981 in the Documents of Qatar News Agency, Ministry of Information, (October 1983), pp.91-93.

In contrast, Article 1 of the Arab League pact provides a criterion of admission.<sup>2</sup> Membership is open to independent Arab States which "shall have the right to adhere to the league". However, in practice subsequent membership of Libya, Sudan, Tunisia, Bahrain, Qatar, Oman, Mauritania and the United Arab Emirates was determined by application and unanimous acceptance of the applications by the council of the League.<sup>3</sup> Membership under Article 237 of the treaty establishing the European Economic Community is open to every European state, yet application must be submitted to the council. The council determines unanimously the admission of any new member, acting on the proposal from the Commission.

Since the G.C.C. has adopted a closed type of membership, it is thought that the member states deliberately exclude states with republican constitutions or with revolutionary tendencies.<sup>4</sup> The preamble of the Fundamental Statute impliedly excludes Iraq from G.C.C. membership. It speaks of the similarity between the regions of Arab Gulf states in

---

<sup>2</sup> The pact of the League of Arab States concluded on 22 March, 1945 in Cairo. It entered into force on 22 May 1945. The members of the League are 22 countries, including Palestine which became a full member on 9 September 1976. Egypt's membership was suspended in March 1977 and the League's headquarters moved from Cairo to Tunis. See Bowman and Harris, Multilateral Treaties Index and Current Status, Butterworths (1984), at p.112.

<sup>3</sup> Bowett, D., The Law of International Institutions, 4th ed. (1982) London, Stevens & Sons, p.230. For the question of membership of the Arab League, see Pogany, op.cit., pp.6-7.

<sup>4</sup> Bouachba, "Le Conseil de Cooperation Des Etats Arabes du Golfe", Revue generale de droit international public, Tome LXXXIX (1985), p.33.

their political and economic orientations. It states: "Being fully aware of their mutual bonds of special relations, common characteristics and similar systems..." etc.

Iran of course was excluded from the beginning since the G.C.C. is only for Arab states in the Gulf, and therefore the title of the organisation "The G.C.C. for Arab States" has been drawn very carefully. However, some held the view that because of the Iraqi-Irani war it would have been unwise for the Gulf states to admit Iraq to the G.C.C. since this might incite the hostility of Iran against the Gulf states. This view is accentuated in that Iran accused the Gulf states of supporting Iraq.<sup>5</sup>

The G.C.C. ministerial council has also excluded other states which are not in the region by rejecting applications for admission from the Arab Yemen Republic (North Yemen) and Somalia.<sup>6</sup>

This decision must be correct, for not only do these states lie outside the Gulf region, but also maintain political systems which are incompatible with those of the region. Furthermore, the economic conditions prevailing in

---

<sup>5</sup> Alssiyasa Newspaper, Kuwait, 28.1.1981. The President of Iraq, Saddam Hussein, was displeased with the exclusion of Iraq from the G.C.C. on the ground that Iraq was fighting for Iraq rights as well as the Gulf states. See Muhklis, A., The Gulf Cooperation Council. A Political Study, University of Basra (1986), p.115.

<sup>6</sup> Al-Ashal, A., The Legal and Political Framework of the Gulf Cooperation Council (1983), op.cit., pp.135-36. See also, Kechichion, "The Gulf Cooperation: Search for Security", 7 Third World Quarterly (1985), p.583; 26 ILM, p.1132.



these states are vastly different from those within the member states. Consequently the G.C.C. has been accused of being a rigid political and military organisation,<sup>7</sup> a charge which its founders vehemently deny. G.C.C. officials have expressed their standpoint and explained the implications of having a closed type of organisation. They stated that the political, economic and social similarities of the six member states are the real reasons behind the decision. They added that the success of the organisation would be guaranteed only if they preserved the degree of homogeneity and natural similarities between the founders.<sup>8</sup> As the Saudi Minister of Foreign Affairs put it:

"This does not exclude other states in the region from becoming members in the future if they possess institutions and legislation similar to that of the founding member states."<sup>9</sup>

However, it is clear from this diplomatic announcement that the G.C.C. member states do not wish to open their doors to other states. At any rate, an attempt to admit new member states requires the amendment of not only Article 5 but also the preamble.

Yet the question to be asked is whether the term "regional organisation" applies to the G.C.C., though it does

---

<sup>7</sup> Bouachba, op.cit., p.33.

<sup>8</sup> Qatar News Agency documents, Part One, op.cit., pp.103-5.

<sup>9</sup> An interview with the Minister of Foreign Affairs of Saudi Arabia, Prince Saud Al-Faisal, Al Saudia Newspaper, 4.4.1981.

not include all the states in the region.

Professor Schermers excludes the strict geographical meaning of the word "region" and "regional" to be attributed to international organisations, though it derives its name from it. As he puts it:

"The exact meaning of the word 'region' depends on the interest involved and therefore on the purpose of the organisation concerned and the organs formed."<sup>10</sup>

A region therefore should not be defined as geographical characteristics only but also by other factors such as economic, social, cultural and political. The G.C.C. as such possesses certain characteristics which are undoubtedly difficult to find in other regional organisations. However, the factors to qualify an organisation as a regional arrangement under the U.N. Charter are quite different. The U.N. Charter, though it does not define the concept of regional arrangement, sets two criteria to qualify an association of sovereign states as a regional organisation.

---

<sup>10</sup> Schermers, H.G., International Institutional Law, Vol.1, Structure, A.W. Sijthoff, Leiden (1980), p.108. In another place Schermers gives examples of a group of states forming a regional organisation although they are from different continents (i.e. British Commonwealth, the Organisation for Economic Cooperation and Development (OECD)). The former counts the U.K., Canada and India, and the latter Japan. Other examples: O.A.S. excludes Cuba for its different system; OAU excludes South Africa for its racial discrimination policy; see p.18 for the meaning of the term "region". See also Kleffens, E.N., "Regionalism and Political Pacts with Special reference to the Northern Atlantic Treaty", A.J.I.L. Vol.43 (1949), at p.667; Smithers, P., "Toward Greater Coherence among Intergovernmental Control", in Regionalism and the United Nations, edited by Andemicael B., Oceana Publications (1979), pp.26-7.

- (i) Whether its objectives and activities are compatible with the purposes and principles of the United Nations (Articles 1, 2 of the Charter); and
- (ii) Whether it contributes to the maintenance of international peace and security as is appropriate for regional action, including peaceful settlement of disputes and enforcement action as authorised by the Security Council (Article 52 of the Charter).<sup>11</sup>

From the travaux preparatoires of the UN Charter relating to Article 52 a proposal by the Egyptian delegation to introduce a definition into the Charter that would emphasise as requirements of a regional arrangement such factors as permanent organisation, geographical proximity, community of interest, and cultural and historical affinities was rejected on the ground that while it "clearly defined obvious legitimate and eligible factors" it failed to cover possible cases.<sup>12</sup>

Furthermore, in the practice of the U.N. Israel raised the issue of whether the Arab League as regional arrangement and its activities are consistent with the purpose and principle of the United Nations when the League chief

---

<sup>11</sup> Andemicael, B., The O.A.U. and the U.N. Relations between the Organisation of African Unity and the United Nations, African Publishing Co., New York and London (1976) at p.2.

<sup>12</sup> Goodrich, L., Hambro, E. & Simons, A., Charter of the United Nations. Commentary and Documents, 3rd and revised edition, Columbia University Press, New York and London (1969), p.356.

administrative officer invited to meetings of the UN General Assembly. Israel maintained that the League was based on racial principles and its activities in Palestine had not been consistent with the purpose and principles of the UN Charter. The Assembly, however, did not make a decision on the matter.<sup>13</sup> It is widely accepted that the Arab League constitutes a "regional arrangement" within the meaning of Article 52 of the UN Charter,<sup>14</sup> and that can also be deduced from the practice of the UN itself.<sup>15</sup>

The G.C.C. Fundamental Statute is silent on the question of whether the G.C.C. should be considered as a regional organisation within the meaning of Chapter VIII of the U.N. Charter. Neither does the Statute explicitly refer to the parties' commitment to achieve international peace and security in accordance with the U.N. Charter.<sup>16</sup> However, the

---

<sup>13</sup> Ibid., p.359.

<sup>14</sup> Hassouna, H., League of Arab States and Regional Disputes. A Study of Middle East Conflict, Oceana Publications, New York (1975), pp.11-12; Kourala, E., "Peacekeeping and Regional Arrangements" in Cassese, A., United Nations Peacekeeping, Sijthoff & Noordhoff, The Netherlands (1978), pp.102-3; Eide, A., "Peacekeeping and Enforcement by Regional Organisations", Journal of Peace Research, Vol.3 (1966), note 53 at p.136; Moussa, A., "Rapports entre les Nations Unies et la Ligue des Etats Arabes", 29 Revue Egyptienne de Droit International (1973), pp.69-70.

<sup>15</sup> Hassouna, op.cit., p.12; Pogany, I., The Arab League and Peacekeeping in the Lebanon, op.cit., p.103.

<sup>16</sup> While discussing the draft of the Fundamental Statute the Bahrain delegation proposed adding a paragraph in the preamble which would refer to the obligation of the G.C.C. member states to adhere to the principles and purposes of the U.N. Charter and the Universal Declaration of Human Rights. However, this proposal was rejected by the Saudi Arabia

G.C.C. Heads of State affirmed in the final communique of the first Supreme Council meeting their entire obligations towards the U.N. Charter and their willingness to make every effort to maintain international peace and security.<sup>17</sup> Furthermore, the G.C.C. Fundamental Statute provides for establishment of a commission for the settlement of disputes (Article 10). While at the same time it provides for the resolution of local regional disputes, these provisions conform to the U.N. concept of peaceful resolution of disputes, the development of friendly relations and international cooperation as provided under Article 1 of the Charter.

It may not be necessary to mention in the constitution of the organisation that its aims are compatible with those

---

delegation, claiming that such addition might contradict some provisions of Islamic law. This view could truly be envisaged reading Articles 2, 4, 7, 16(1), 18, 25(2) and 30 of the Declaration.

It appears though that the most contradictory provision of the declaration is in Article 16(1) which provides "Men and women of full age without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution". According to Islamic law women get married only with Moslems. They also cannot divorce their husband without court proceedings, while husbands can. Furthermore, the Saudi Arabian delegation claimed that there is no need to refer to the U.N. Charter so long as there is reference to the Arab League pact in the preamble of the Fundamental Statute of the G.C.C. They added that it is sufficient that the Arab League pact refer to the U.N. Charter. The latter argument cannot be supported since the Arab League pact could not possibly have referred to the Charter which came into force on 26 June 1945, while the pact became operational on 22 March 1945. (The second report of the head of Qatar delegation to the legal experts meeting which was held in Muscat on 14.3.1981).

<sup>17</sup> Documents of Qatar News Agency, op.cit., pp.91-93.

of the U.N. provided that those aims are in fact compatible and do not conflict with the U.N. Charter.

## 2. Expulsion and Suspension

The expulsion of a member state from an organisation is a very strong measure by way of sanction against the wrongdoing state. While expulsion terminates membership, suspension is a temporary action which suspends membership until a particular situation has been remedied or particular conditions have been fulfilled.<sup>18</sup>

Some constitutions of international organisations contain provisions on both suspension and expulsion,<sup>19</sup> some others make provision for only suspension<sup>20</sup> and some are silent on the matter.<sup>21</sup> The G.C.C. Fundamental Statute falls within the

---

<sup>18</sup> Schermers, op.cit., at p.54. Professor Sohn, however, raises the doubt as to the effectiveness of expulsion as a sanction to achieve any useful long-range purpose. He thinks that suspension or selective exclusion might be a much better sanctions. See his article "Expulsion or Forced Withdrawal from an International Organisation", Harvard Law Review, Vol.77 (June 1964), pp.1420-25.

<sup>19</sup> This is the situation for instance in the United Nations (Article 5 and 6 of the Charter), the International Civil Aviation Organisation (Article 93) and the International Monetary Fund (Article XXVI) and the WHO constitution (Article 7). See Peaslee, A.J., International Governmental Organisation Documents, 3rd ed., op.cit., pp.1303, Part 1, 370 Part 5, 1014 Part 1 and 453 Part 3 and 4 respectively.

<sup>20</sup> WMO Constitution (Article 31, Statute of I.A.E.A. (Article XIX(B))). See Peaslee, ibid., pp.545 and 231 Parts 3 and 4 respectively.

<sup>21</sup> UPU, F.A.O., UNESCO, IMCO and ITO. See Peaslee, ibid., pp.634 Part 4, 98 Part 2, 439 Parts 3 and 4, 370 and 497 Part 5.

last category.

Due to similarities in history, culture, economy and political system, there is no such provision for expulsion in the Fundamental Statute of the G.C.C. This fact has been deliberately emphasised so as to appeal to the good faith of the member states to observe and implement their obligation as provided in the Statute. However, since the G.C.C. Fundamental Statute is silent on this matter and there is no practice giving rise to guidance on the point, one needs to consult the opinion of the legal commentators and the practice of other international organisations. This may help to reach a solution if a problem occurs in the future.

Opinion is divided among legal commentators on whether it is permissible to suspend or expel a state member of an international organisation in the absence of constitutional provision to that effect.

Nagendra Singh states the general position in the absence of constitutional provision.

"It is a well-established principle of international law that where a constituent instrument is silent... there is no right vested in the organisation to expel or suspend a member state."<sup>22</sup>

Professor Schermers is also of the view that expulsion in the absence of constitutional provision may not be

---

<sup>22</sup> Singh, N., Termination of Membership of International Organisations, Stevens and Sons Ltd., London (1958), p.79. Singh makes an exception to this principle when a member state persists in refusing to ratify an amendment to the constitution of the organisation even though the same is passed in accordance with the procedure for amendment laid down in the constituent instrument.

compatible with the general objectives of an international organisation, especially an organisation of universal character.<sup>23</sup> However for closed regional organisations (such as the G.C.C.) he thinks that the situation is different. Schermers argues that although the legal argument against expulsion without constitutional provision would be the same as in the universal organisation, a state may lose its membership without express provisions for expulsion. This could happen when a state places itself outside the political or economic sphere of the organisation.<sup>24</sup>

The attitude of some European states is against the expulsion of a member from an international organisation in the absence of express constitutional provisions. This was declared at the signing of the Final Act of the 1979 congress of the Universal Postal Union in Rio de Janeiro on 26 October 1979 by the nine member states of the European Community.

"... the decision taken on 13 September 1979 purporting to expel a member country from the U.P.U. constitution which contains no provision for the expulsion of members. The decision, therefore, has no legal validity and accordingly the nine do not accept it. They consider that South Africa is still a member of the Universal Postal Union and will therefore continue to treat with the South African postal administration."<sup>25</sup>

However, Professors Schwarzenberger and Brown agree that international institutions may suspend a member in the absence

---

<sup>23</sup> Schermers, op.cit., p.81.

<sup>24</sup> Ibid., pp.81-2.

<sup>25</sup> Quoted by Marston, G., "United Kingdom Materials on International Law", 50 B.Y.I.L. (1979), pp.310-11.



of express provision, if such power is indispensable to the fulfilment of the organisation's function.<sup>26</sup> As for expulsion, they express the doubt as to whether an international institution should be granted the power of expulsion, but if there are persistent breaches of membership obligations amounting to a serious breach of a treaty, then it is the right of every member to exclude the wrong-doing state.<sup>27</sup>

The Vienna Convention on the law of Treaties accepts the latter view if the persistent violations of the obligation of membership amount to a material breach of the constituent instrument of an international organisation. Article 60 of the Convention provides, inter alia, that:

"A material breach of a multilateral treaty by one of the parties entitles (a) the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either (i) in the relation between themselves and the defaulting state; or (ii) as between all the parties."

According to the Article:

"A material breach of a treaty, for its purposes, consists of (a) a repudiation of the treaty not sanctioned by the Vienna Convention on the Law of Treaties, or (b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty."<sup>28</sup>

---

<sup>26</sup> Schwarzenberger, G. and Brown, E.D., A Manual of International Law, 6th ed., Professional Books Ltd. (1976) at p.265.

<sup>27</sup> Ibid.

<sup>28</sup> See the Convention in Brownlie, Basic Documents in International Law, op.cit., pp.372-3.

The International Court of Justice in its Advisory Opinion in the Namibia Case (1971) appears to have accepted this approach while dealing with the question of the failure of South Africa to fulfil its obligation in respect of the administration of the mandated territory. The Court stated:

"In examining the action of the General Assembly it is appropriate to have regard to the general principles of international law regarding the termination of a treaty relationship on account of breach... The rules laid down by the Vienna Convention on the Law of Treaties (adopted without a dissenting vote) may in many respects be considered as a codification of existing customary law on the subject... General Assembly resolution 2145 (XXI) determines that both forms of material breach had occurred in this case. By stressing that South Africa has in fact disavowed the mandate, the General Assembly declared in fact that it had repudiated it. The resolution in question is therefore to be viewed as the exercise of the right to terminate a relationship in case of a deliberate and persistent violation of obligation which destroys the very object and purpose of that relationship.<sup>29</sup>

The Court emphasised that:

"The silence of a treaty as to the existence of such right cannot be interpreted as implying the exclusion of a right which has its source outside of the treaty in general international law, and is dependent on the occurrence of circumstances which are not normally envisaged when a treaty is concluded."<sup>30</sup>

In practice, members have been expelled from an international organisation in the absence of constitutional provisions. An outstanding example is the expulsion of Cuba from the Organisation of American States (O.A.S.) in January 1962 because of Cuba's adoption of the communist system and

---

<sup>29</sup> I.C.J. Reports (1971), pp.46-7.

<sup>30</sup> Ibid., p.47.

its political, economic and military ties with the communist nations.<sup>31</sup>

There have been many reasons given for the Cuban expulsion. Some justify the expulsion on the basis of the rule of international law that violation of a treaty by one party justifies the release from treaty obligations by another party.<sup>32</sup> Others maintain that it is an inherent right of any regional organisation to determine which countries should participate and it was for the O.A.S. to interpret its own charter for its purposes.<sup>33</sup>

### 3. Withdrawal

Withdrawal is one of the methods by which a state can bring its membership in an international organisation to an end.

The G.C.C. Fundamental Statute does not provide for withdrawal from membership of the organisation. Apparently the authors of the Fundamental Statute did not want to jeopardise the permanent nature they wanted for the

---

<sup>31</sup> U.N. Doc. S15075 SC, Official Records, 17th year, p.74. On the exclusion of Cuba from the O.A.S. generally see Thomas & Thomas, The Organisation of American States, Southern Methodist University Press, Dallas (1963), pp.58-60; Sohn, L., "Expulsion or Forced Withdrawal", op.cit., pp.1417-20; Fenwick, "Non-intervention v. Collective Security", 56 A.J.I.L. (1962), pp.469 and 474; Schermers, International Institutional Law, op.cit., at p.62.

<sup>32</sup> Fenwick, op.cit., p.474.

<sup>33</sup> Sohn, op.cit., p.1419. See Schermers, who concludes "OAS has taken the view that a state which no longer satisfies the criteria on which the regional cooperation is based may be suspended without express provision", ibid., p.122.

organisation. Therefore the statute was designed with the belief that the organisation would be permanent no matter what obstacles may appear in its path.

However, the silence over the question of withdrawal in the constitution of some international organisations has given rise to serious controversy. Some argue that withdrawal is an inherent right arising out of principle of state sovereignty, equality, expediency and fundamental changes in circumstances, and this right exists unless expressly barred.<sup>34</sup> Others attach the right of withdrawal to the confederate states. They point out that the right of withdrawal in a confederal structure is well established in political practice and in constitutional law. It is based upon the principle that confederal states are sovereign, retaining their full international personality.<sup>35</sup> However, this argument is not supported by many commentators who deny the existence of a right to withdraw, even from a confederation.

Jellinek considers withdrawal from a confederation a breach of treaty.<sup>36</sup> Professor Kunz points out that confederations have been established for ever and the right of withdrawal is nowhere expressly granted except the

---

<sup>34</sup> See Schermers, op.cit., who explains in detail the states' claims in supporting this argument, pp.51-53.

<sup>35</sup> Singh, op.cit., p.9.

<sup>36</sup> This view is cited by Feinberg, N., "Unilateral Withdrawal from an International Organisation", 39 B.Y.I.L. (1963), p.214.

confederated states (1861-65).<sup>37</sup>

This also was the problem of the League of Nations. Although it was founded on the basis of confederation, it allowed states to withdraw.<sup>38</sup>

McNair also denies the right of withdrawal in the absence of an express or implied provision, if a treaty is intended to be of perpetual duration. He states:

"A treaty is intended to be of perpetual duration and incapable of unilateral termination, unless, expressly or by implication, it contains a right of unilateral termination, or some provision for its coming to an end."<sup>39</sup>

This view is supported by Article 56.1 of the Vienna Convention on the Law of Treaties. It stipulates:

"1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless  
(a) it is established that the parties intend to admit the possibility of denunciation or withdrawal, or  
(b) a right of denunciation or withdrawal may be implied by the nature of the treaty."<sup>40</sup>

The practice of some international organisations shows that withdrawals have taken place even in the absence of such

---

<sup>37</sup> Cited by Feinberg, ibid.

<sup>38</sup> See Rivlin, D., "The League of Nations as Confederacy", International Relations (November 1976), op.cit., pp.1125-30. Rivlin refers to the fact that the right to withdraw was explicitly refuted in the United States Articles of Confederation. Article 13 stated: "The articles of this confederation shall be inviolately observed by every state and the union shall be perpetual".

<sup>39</sup> McNair, The Law of Treaties, Oxford, Clarendon Press (1961), pp.493-94.

<sup>40</sup> See the convention in Brownlie, Basic Documents in International Law, op.cit., p.371.

express provisions.<sup>41</sup> However, opinion is divided on the matter among international lawyers after the Indonesian withdrawal from the U.N. This came as a result of the absence of withdrawal provisions in the Charter of the U.N. and ambiguity in the declaration of withdrawal passed by the San Francisco conference on the U.N.<sup>42</sup>

Writers such as Unni maintain that Indonesia had the right to withdraw from the U.N. He concludes that, since it was not the purpose of the U.N. to compel a member to continue its cooperation in the organisation. The conference declaration envisaged certain illustrative and not exhaustive circumstances to justify the withdrawal of a member from the United Nations.<sup>43</sup> Livingstone points out that although

---

<sup>41</sup> Although the WHO constitution did not contain any provision which permitted members to withdraw, in 1949 and 1950 the East European countries (USSR, Ukrainian SSR, Byelorussia SSR, Bulgaria, Romania, Albania, Czechoslovakia, Hungary and Poland) informed the secretariat of the WHO that they were withdrawing from the organisation. On 6 May 1950 China also withdrew from WHO. In 1952 and 1953 Czechoslovakia, Poland and Hungary announced that they considered their membership of UNESCO terminated, although withdrawal was not authorised under the UNESCO constitution. See respectively, The records of the 3rd session of the Council of WHO (WHO Official Records No.17) Annex 22, and the Report of the 3rd session of the WHO Conference (WHO Official Records No.28) Annex 13, UNESCO resolution 9.3.1964, pp.189-192. See also Schermers, op.cit., pp.47-51.

<sup>42</sup> Unni, A.C., "Indonesia's Withdrawal from the United Nations", 4-5 Indian J.I.L. (1964-65), pp.128-46.

<sup>43</sup> The declaration of committee 1/2 approved unanimously at plenary session of the San Francisco conference, read as follows:

"The committee adopts the view that the charter should not make express provision either to permit or to prohibit withdrawal from the organisation. The committee deems that the highest duty of the nations which will become members is to continue their cooperation within

Indonesia had no right to declare withdrawal from the U.N., it had the legal power to do so. A state cannot be deprived of its legal power in the constitutional structure of the U.N.<sup>44</sup>

On the other hand, Schwelb considers that withdrawal from the United Nations is permissible only in the exceptional circumstances set forth in the interpretative declaration. The Indonesian withdrawal cannot be considered as such and it constitutes a breach of international obligation according to article 4 of the Charter. Indonesia's return to the U.N. without the requirement of readmission confirms this

---

the organisation for the preservation of international peace and security. If, however, a member, because of exceptional circumstances, feels constrained to withdraw and leave the burden of maintaining international peace and security on the members, it is not the purpose of the organisation to compel that member to continue its cooperation in the organisation.

It is obvious, however, that withdrawals or some other forms of dissolution of the organisation would become inevitable if, deceiving the hopes of humanity, the organisation was revealed to be unable to maintain peace or could do so only at the expense of law and justice.

Nor would it be the purpose of the organisation to compel a member to remain in the organisation if its rights and obligations as such were changed by Charter amendment in which it has not concurred, and which it finds unable to accept, or if an amendment duly accepted by the necessary majority in the assembly or in a general conference fails to secure the ratification necessary to bring such amendment into effect." Documents of the United Nations Conference on International Organisations, San Francisco 1945, London, New York (1945), Vol.7, p.37, doc.314, 1.2.17.

<sup>44</sup> Livingstone, F., "Withdrawal from the United Nations - Indonesia", 14 I.C.L.Q. (1965), pp.637-646.

conclusion.<sup>45</sup> Similarly Feinberg considers that withdrawal is not legally permissible when the constituent instrument is silent on the matter unless a right to withdraw can be inferred from the relevant circumstances.<sup>46</sup>

One may conclude tentatively that the right to withdraw from the G.C.C. is not permissible. This view could be held for a number of reasons. There is no clause in the Fundamental Statute which entitles any member to withdraw nor is the right of withdrawal capable of being implied. Furthermore the practice of the United Nations shows great reluctance to support such an act in the absence of express provision. Moreover, the vast majority of the commentators support the view that unless the right of withdrawal explicitly or impliedly exists, a state may not unilaterally withdraw. As such there exists no presumption in favour of the right of unilateral withdrawal from the G.C.C.

---

<sup>45</sup> Schwelb, E., "Withdrawal from the United Nations. The Indonesian Intermezzo", 61 A.J.I.L. (1967), pp.661-72. See also Schwarzenberger who considers the Indonesian withdrawal ineffective in law: "Letter to the Editor", the Times, London, 8 January 1965 at p.9. Another writer, William R. Harris, states that Indonesia has withdrawn de facto and there has been no test of her withdrawal de jure. Inaction of the Security Council of the U.N. coupled with the silence of member states acknowledged the de facto withdrawal, "Legal Aspects of Indonesia's Withdrawal from the United Nations", Harvard International Law Club Journal, 6-7 (Winter 1984 - 66), pp.180-83.

<sup>46</sup> Feinberg, N., op.cit., p.215.



## CHAPTER FIVE

### THE INTERNAL STRUCTURE OF THE G.C.C.

#### I. INTRODUCTION

On examining the internal structure of the G.C.C., compared with other regional organisations, the G.C.C.'s structure is relatively simple and hardly original. It presents the characteristics of a traditional, classical type of international organisation with three main organs, the Supreme Council, the Ministerial Council and the Secretariat. However, the G.C.C. Fundamental Statute does not exclude the possibility of the principal organs creating subsidiary organs whenever they deem it necessary Article 6 states:

"The Cooperation Council shall have the following main organs:

1. Supreme Council to which shall be attached the commission for settlement of disputes.
2. Ministerial Council
3. Secretariat-General.

Each of these organs may establish subsidiary organs as necessary."

The constituent instruments of some international organisations expressly provide for delegation of functions to competent organs, as is the case with the U.N. Charter (Articles 22, 29 and 68). In other cases the constituent instruments are silent on the subject of delegation. However, the main organs may utilise their implied power to create

subsidiary organs to perform their functions.<sup>1</sup>

Furthermore, it must be pointed out that the authors of the Fundamental Statute did not take much care in defining the nature of the powers of the G.C.C. organs.<sup>2</sup> However, one has now to look more closely at the functions and powers of the organs of the G.C.C. to define its efficiency.

## II. FUNCTIONS AND POWERS OF THE ORGANS

### (1) Functions and Powers of the Supreme Council

From the wording of Article 8 of the Fundamental Statute it seems that the statute confers vast powers upon the G.C.C. Supreme Council. Therefore the Supreme Council could be considered as the highest authority of the G.C.C. The Supreme Council is entrusted with examining matters which concern all the member states. The provision does not specify which matters in particular are to be reviewed by the Supreme Council, but it is clear since the Supreme Council comprises the head of states that these matters are of immense importance, especially those of a political nature.

---

<sup>1</sup> Seyersted, F., "Objective International Personality of International Organisations", 34 Nor. T.I.R. (1964), p.111. See also ICJ Advisory Opinion, Effect of awards of compensation made by the U.N. Administrative Tribunal, Advisory Opinion of July, ICJ Reports (1954-55), pp.58-62.

<sup>2</sup> Schermers thinks that the vagueness of competence is a result of the absence of real power. International organisations do not tend to specify their competence if they only issue recommendations to the members, while this is not true with the treaties of the European Communities, which provide for binding decisions. Therefore they define the powers of the organs for each subject. International Institutional Law, op.cit., p.202.

However the Supreme Council is not competent to determine any question which is essentially within the domestic jurisdiction of any member state.

The restriction, though it is not stipulated, may be implicit in the understanding of the G.C.C. member states that the organisation can only perform those powers for which the provisions of the Fundamental Statute were made.

The inclusion of the principle of non-interference in matters essentially within the domestic jurisdiction of states under Article 2(7) of the U.N. Charter has provided members of the U.N. with a strong argument opposing taking measures in fields such as human rights, colonial questions, peacekeeping forces and disarmament. This has great impact on the effectiveness of international cooperation.<sup>3</sup>

One of the intricate functions of the Supreme Council is the responsibility for "approving the bases for dealing with other states and international organisations".<sup>4</sup> This in fact means that the Supreme Council determines the main policy which the member state is requested to follow in conducting its relationships with other states as well as with international organisations such as the United Nations and its specialised agencies, the Arab League, the Islamic Conference

---

<sup>3</sup> For a detailed view on this question, see Goronwy, J., The United Nations and the Domestic Jurisdiction of States, Cardiff, Welsh Centre for International Affairs (1977), Chapters III, IV, V and VI.

<sup>4</sup> Art.8 of the Fundamental Statute.

# Organisation and the E.E.C.<sup>5</sup>

<sup>5</sup> For instance (a) the G.C.C. summit held in Riyadh, 10 November 1981 reviewed the Saudi initiative for realising peace in the Middle East and solving the Palestinian problem, and decided to ask Saudi Arabia to table the proposal at the 21st Arab summit conference. The Saudi initiative called for:

- (1) An Israeli withdrawal from all Arab territories occupied in 1967, including Jerusalem.
- (2) Removal of settlements established by Israel in the occupied Arab territories after 1967.
- (3) Securing the right of worship for all religions.
- (4) Affirmation of the right of the Palestinians to return home and compensation payments to those who do not wish to do so.
- (5) The West Bank and Gaza to be placed under supervision of the United Nations for a transitional period not exceeding a few months.
- (6) The establishment of an independent state of Palestine with Jerusalem as its capital.
- (7) The plan called for the United Nations, or some of its member states, to be assigned responsibility for implementing these principles.

In September 1982, the 12th Arab summit conference in its second stage, endorsed the Saudi initiative after certain amendments to clauses 4, 7 and 8, which read as follows:

- (4) Affirm the right of the Palestinian people to self determination in practising their inalienable national rights under the leadership of the Palestine Liberation Organisation, their sole legitimate representative.
- (7) The Security Council to set guarantees of peace among all countries of the region, including the independent Palestinian state.
- (8) The Security Council to be responsible for implementing these principles. See Kuwait News Agency, Special Dossier (1984), pp.28-29.

(b) As a result of Supreme Council approval in 1983 the G.C.C. sponsored a mission which aimed at trying to overcome Iran-Iraq differences and follow up efforts to cap the leaking of crude oil from the Iranian Nowruze oil fields into the Gulf waters.

(c) The G.C.C. adopted a unified stand by supporting the Afghanistan cause against the Soviet intervention through the Islamic Conference Organisation (I.C.O.), see ibid., pp.32.

(d) Following air strikes against Saudi and Kuwaiti oil tankers in the Gulf area, the G.C.C. Supreme Council decided in 1984 to take the matter up at an extraordinary meeting of the Arab League and on May 21 to the U.N. Security Council, ibid., pp.32-3.

This may imply the Supreme Council has legal authority to conclude agreements on behalf of member states - a view which conforms to the general position in international institutions that the more effective organ may conclude agreements on behalf of the organisation.<sup>6</sup> Another possible interpretation is that major foreign policy transactions must conform to the ground rules laid down by the Supreme Council. It is probable that the objection to the establishment of diplomatic relations between Oman, U.A.E. and the Soviet Union without prior consultation was based on Article 8(5).<sup>7</sup>

Another function of the Supreme Council is to examine recommendations, reports and common projects which are passed to it by the Ministerial Council (Article 8(3) of the Fundamental Statute). This provision reveals that the

---

(e) The G.C.C. Supreme Council has taken some practical steps to unify the stand and relations of its member states on the case of African resumption of diplomatic relations with Israel by suspending aid and breaking diplomatic relations with some countries, ibid., p.34.

(f) The Supreme Council in its third summit approved a detailed plan to subsidise some vital enterprises to both the Arab Republic of Yemen and the Popular Democratic Republic of Yemen. See the G.C.C. Annual Report (1985), op.cit., pp.29-44.

(g) The G.C.C. Supreme Council approved the policy of good offices to solve the political and boundary disputes between Oman and South Yemen. See ibid.

<sup>6</sup> Detter, I., "The Organs of International Organisations Exercising their Treaty-Making Power", 38 B.Y.I.L. (1962), 422. See also, Jenks, W., "Some Constitutional Problems of International Organisations", 22 B.Y.I.L. (1945), 23. Brierly in his report on the law of treaties. U.N. Doc. A/CN.4123, p.26.

<sup>7</sup> See supra, Chapter 3, pp.88-89.

approval of the Supreme Council is necessary for any act taken by the Ministerial Council (Article 8(3) of the Fundamental Statute). The Supreme Council is also in charge of the appointment of the Secretary General. This gives the Secretary General more prestige and power to deal not only with administrative but also with political issues. Most specifically, the Supreme Council is endowed with power to establish a commission for settlement of disputes whenever a dispute arises and to nominate its members.<sup>8</sup> The jurisdiction of this commission is consultative and its findings are only recommendations. (Article 9(1) of the Rules of Procedure of the Commission for Settlement of Disputes.)

The Commission cannot be considered as an effective judicial body, nor does it have compulsory jurisdiction. On a different level, the Supreme Council has competence on certain matters which affect the Fundamental Statute as well as the overall working of the organisation. It has the right to approve the budget of the Secretariat (Article 8(10) of the Statute) as well as reserving the right of amending the Fundamental Statute (Article 8(8) of the Statute).<sup>9</sup> The latter right could be exercised only with the unanimous

---

<sup>8</sup> See Article 8(6) of the Fundamental Statute.

<sup>9</sup> The Supreme Council has approved the amendment of the Fundamental Statute on a single occasion to include Art.11(1) of the Fundamental Statute and Art.15(1) of the rules of procedure of the Ministerial Council. Both of these amendments deal with the rotation of presidency which is to take place once a year at the same time as the Supreme Council meets. See the Annual Report (1985), op.cit., p.122.

approval by the Supreme Council.<sup>10</sup>

According to the modern law of treaties, amendment would also be possible by majority, but it could not oblige the dissenting members.<sup>11</sup> However, the unanimous vote of the member states is not always sufficient to establish an amendment, especially when ratification is required.<sup>12</sup>

In spite of the wide function and competence of the Supreme Council in Article 8, the powers to take decisions or recommendations are not clearly set out. Nevertheless, the absence of these does not create any serious restriction upon the power of the Council to take decisions or recommendations, since performing functions and exercising powers are normally carried out by them.

## (2) The Legal Nature of the Supreme Council Decisions

The concept "decision" is often used to mean both binding and non-binding pronouncements of a body, although some international organisations use the word only for the legally binding decisions.<sup>13</sup> The vast majority of decisions of

---

<sup>10</sup> Article 20 of the Fundamental Statute.

<sup>11</sup> Articles 39, 40 of the Vienna Convention on the Law of Treaties, 1969. See also Sinclair, op.cit., pp.106-8.

<sup>12</sup> Schermers, op.cit., para.1024.

<sup>13</sup> These organisations are EEC, Art.187, ECSC, Art.14, Benelux, Art.19a, OECD, Art.5. See Schermers, ibid., p.363. The UN and the Organisation of American States (OAS) may also issue binding decisions in the field of peace-keeping: see Higgins, R., "The Advisory Opinion on Namibia: which UN Resolutions are Binding under Article 25 of the Charter?", 21 I.C.L.Q. (1972), pp.270-86. In case of a meeting of consultation, the Ministers of Foreign Affairs (OAS, Art.59)

international organisations are not binding per se. However, where a decision is binding under the constituent treaty a member state still needs to incorporate it into its municipal legislation in order to give it binding effect.

The decisions of the Security Council are binding on all members under the terms of Article 25 of the U.N. Charter, regardless of the agreement of the member states. Recommendations of the Security Council are not covered by the term of Article 25 and cannot be mandatory.<sup>14</sup>

As regards the power of the U.N. General Assembly, it is generally recognised that the Charter of the U.N. does not possess mandatory power, except in internal organisational matters.<sup>15</sup>

As such, the binding nature of General Assembly resolutions or declarations has been a matter of controversy among a number of writers. Some have claimed, except in some cases, that these decisions are not binding, and they are merely recommendations which may not be the source of legal

---

act as an organ of consultation under the treaty of Rio de Janeiro of 2 September, 1747121, UNTS, p.93, Treaty of Rio de Janeiro, Art.17.

<sup>14</sup> Higgins, R., "Compliance with United Nations Decisions on Peace and Security and Human Rights Questions in the Effectiveness of International Decisions", Papers of a Conference of the American Society of International Law and the Proceedings of the Conference, Leiden (1971) at p.3. See also her Article "The Advisory Opinion on Namibia: Which UN Resolutions are Binding Under Article 25 of the Charter?", 21 I.C.L.Q. (1972), p.270.

<sup>15</sup> Ibid., p.272.



rights and duties.<sup>16</sup> On the other hand, there is the view which admits the legal significance of these resolutions and refutes the traditional assumptions. This view regards the resolutions of the Assembly as collective acts of states which are capable of creating customary international law.<sup>17</sup> In Detter's view a great many of the administrative decisions of the U.N. and other specialised agencies are binding on member states regardless of whether or not they have approved them.<sup>18</sup> Castaneda points out that the legal value of the General

---

<sup>16</sup> Binding decisions of the Assembly relate to the admission of members into the United Nations (Article 4(2)); the election of some members of the Security Council, the Economic and Social Council and the Trusteeship (Articles 32, 61, 86); the adoption of rules of procedure (Article 21); the suspension and expulsion of members from the organisation (Articles 5 and 6); the appointment of the Secretary General (Article 97); the determination of conditions under which a non-member state becomes a party to the statute of the International Court of Justice (Article 13); the establishment of subsidiary organs (Article 22); the selection of the judges of the International Court of Justice (Article 8 of the statute); the approval of a budget and the appointment of expenses (Article 17). For this view, see Sloan, F., "The Binding Force of a 'Recommendation' of the General Assembly of the United Nations", 25 B.Y.I.L. 4 (1948); Fitzmaurice, G., "Law and Procedures of the International Court of Justice, 1951-4", 34 B.Y.I.L. 4 (1958); Vallat, "The Competence of the United Nations General Assembly", 97 Recueil des Cours 225-230 (1959); Johnson, D., "The Effect of Resolutions of the General Assembly of the United Nations", 32 B.Y.I.L. (1955-56), p.97.

<sup>17</sup> Higgins, R., The Development of International Law Through the Political Organs of the United Nations, Oxford University Press (1963) at p.2. See also her article, "The United Nations and Law Making. The Political Organs", Proc.A.J.I.L. (1970); Falk, R., "On the Quasi-Legislative Competence of the General Assembly" 60 A.J.I.L. (1966), pp.782 et seq.

<sup>18</sup> Detter, I., Law-Making by International Organisations (1965), pp.319-29.

## Assembly resolutions

"... depends not only on the organ that approves them and their form, but also, and especially, on their content. Even if there is no real creation of norms, there is often recognition and confirmation that certain practices or principles are, in the judgment of an organ largely representative of the international community, either customary rules or general principles of international law."<sup>19</sup>

In a recent judgment of the International Court of Justice the Court asserted that except for those resolutions regarding organisations and financial matters, General Assembly resolutions have no legal effect because such powers have not been conferred upon it by the Charter.<sup>20</sup>

The legal nature of the G.C.C. Supreme Council's decisions could not be easily analysed without thorough examination of the provisions of the Fundamental Statute and the practice of the member states.

However, some maintain that all the decisions of the Supreme Council of the G.C.C. are binding. They claim that decisions of the Supreme Council do not need further legislation in the member states by referring to an

---

<sup>19</sup> Castaneda, J., Legal Effects of United Nations Resolutions, Columbia University Press, New York and London (1969) at p.5; Virally, M., in his introduction to Yemen, E., Legislative Powers in the United Nations and Specialised Agencies, Sijthoff (1969); Asamoah, O., The Legal Significance of the General Assembly of the United Nations, Sijthoff, The Hague (1966). Asamoah ascribes some legal effect to the U.N. declarations and considers them in themselves as state practice.

<sup>20</sup> Legal Consequences for States of the Continued Presence of South Africa in Namibia, I.C.J. Reports (1971), pp.45-50.

unpublished advisory opinion issued by the Department of Advisory Opinion and Legislation in Kuwait, No.2/428/1985.<sup>21</sup> The opinion states that the UEA has binding effect on national authorities and individuals. Yet, it may need further ministerial decisions or decrees to implement the UEA provisions in the light of the merits of each individual case, and with the observance of the internal laws, noting that in case of conflict with the local laws and regulations of member states execution of the provisions of the UEA shall prevail in accordance with Article 27 of the UEA without a need for amendment of the internal laws.<sup>22</sup>

This view, however, cannot find support either in the Fundamental Statute of the G.C.C. or the practice of the member states. On the contrary, the practice reveals that only by virtue of municipal law and not the UEA provisions the Supreme Council decisions are implemented internally. Furthermore, Article 8 of the UEA explicitly provides that prior agreement of the member states is a necessary requirement in implementing the UEA provisions, especially in the field of economic activities. In the experience of the G.C.C., like many other similar organisations, it is essential to draw a line between obligations of the states on the international plane and those obligations on the municipal

---

<sup>21</sup> Makarim, E., "The Positive Impact of the Establishment of the G.C.C. on the Issues of Private International Law of member States", op.cit., pp.28-29.

<sup>22</sup> Ibid.

plane which need further legislation to bind the internal institutions and private individuals.<sup>23</sup>

According to the Fundamental Statute, the Supreme Council is allowed in general terms to take various decisions which carry out the objectives of the organisation. The statute itself does not indicate which decisions are binding, but a useful guide may be obtained by classifying them into categories.

(a) Decisions Pertaining to the Structure and Operation of the G.C.C.

The G.C.C. Fundamental Statute entrusts the Supreme Council with certain functions concerning the internal law of the organisation. These functions are described by Article 8 as follows:

- "6. Approve the rule of procedures of the commission for settlement of disputes and nominate its members.
7. Appoint the Secretary General.
8. Amend the Charter of the Cooperation Council
9. Approve the council's internal rules
10. Approve the budget of the Secretariat."

In fact, international organisations tend to create their own rules in regard to their internal structure, a matter which is well established and recognised by the League of Nations since 1929.<sup>24</sup> The technical instrument normally used by the organisation for such purpose is obligatory

---

<sup>23</sup> See supra, Chapter 3, pp.107-13.

<sup>24</sup> Castaneda, op.cit., at p.22.

decision, either adopted by unanimous or majority voting.<sup>25</sup>

This category of resolutions does not raise much dispute among the writers as to their binding effect. They derive their juridical effect from the authorisation of the constituent instrument and give rise to direct obligations.<sup>26</sup>

(b) Decisions Concerning the Interpretation of the Fundamental Statute and the UEA

Article 10 of the Fundamental Statute provides:

- "1. ...
2. ...
3. If a dispute arises over interpretation or implementation of the Fundamental Statute and such dispute is not resolved within the Ministerial Council or the Supreme Council, the Supreme Council may refer such dispute to the commission for the settlement of disputes.
4. The commission shall submit its recommendations or opinions, as applicable, to the Supreme Council for appropriate action."

---

<sup>25</sup> For example, according to the League of Nations pact unanimous voting had to be followed to determine its internal system, while the Charter of the United Nations does not distinguish between internal and external activities of the organisation. The enumeration of "important questions" contained in Article 18, which requires two-thirds majority, includes internal as well as external matters. See Castaneda, *ibid.*, at p.26. The O.A.U. presupposes the acceptance of all member states on internal structure and function. See Cervenka, Z., The Unfinished Quest for Unity. Africa and the O.A.U., Friedman (1977), at p.24. In the Arab League some of the internal functions require two-thirds majority (i.e. confirmation of the Secretary General and approval of amendments). Others require only simple majority (i.e. adoption of annual budget, establishment of the regulations of the League). See McDonald, R., The League of Arab States, Princeton (1965), at p.57.

<sup>26</sup> See *supra*, note 16.

In this Article the distinction between interpretation and application is not easy to make. It is for the commission of settlement of disputes, which works as an ad hoc committee, to give its recommendation or its opinion to the Supreme Council, but it is the Supreme Council which decides on it. The relationship here is between a superior organ and a subordinate one. The Supreme Council may direct or entrust the commission through the resolution which establishes it with certain tasks.<sup>27</sup>

However, Article 10 of the Fundamental Statute provides that the commission for the settlement of disputes "submits its recommendations or opinion, as applicable, to the Supreme Council for appropriate action". That is to say, the appropriate act which will be taken by the Supreme Council if it accepts the recommendation of the commission is an authoritative interpretation, and at the same time application of the Fundamental Statute. The authoritative interpretation of the Supreme Council here derives its existence from the explicit competence of the Council in the Statute. Any decision in this regard would be legally binding.<sup>28</sup>

---

<sup>27</sup> For the decisions being the work of more than one organ see Tammes, A, "Decisions of International Organs as a Source of International Law", Recueil des Cours, Vol.94 (1958) - 11, pp.324-26.

<sup>28</sup> This position represents the "textual" or "ordinary" meaning of words school. See Fitzmaurice, "Law and the Procedure of the International Court of Justice", 28 B.Y.I.L. (1951), at p.7.

As Professor Tammes suggests, a state may not insist on the correctness of its views if the organ's power of effective interpretation is recognised in advance.<sup>29</sup> Furthermore, the application of the law necessarily, as Kelsen says, implies interpretation.<sup>30</sup>

As such, the G.C.C. Supreme Council interpreted the Fundamental Statute in order to apply the provisions of the Fundamental Statute. This has been done by the application of some provisions to a new fact situation which indicates the meaning attached by the Supreme Council to the provision applied. For instance, in order to institutionalize economic cooperation in the light of the provisions of the Fundamental Statute, the G.C.C. Supreme Council approved, in 1983, the establishment of two regional agencies - the Organisation for Standards and Measurement and the Gulf Investment Corporation.<sup>31</sup>

The G.C.C. does not encounter the problem of the U.N. General Assembly as to whether the Assembly is competent to interpret the Charter.

Writers such as Vallat and Kelsen hold the view that the General Assembly is a "law-applying" and not a "law-making"

---

<sup>29</sup> Tammes, op.cit., at p.350.

<sup>30</sup> Kelsen, H., Recent Trends in the Law of the United Nations, London, Stevens and Sons Ltd. (1951), at p.960.

<sup>31</sup> See, in particular, Articles 4 and 6 of the Fundamental Statute. For the establishment of the two agencies, see Gulf Cooperation Council, Initial Measures Taken by the Member States for the Implementation of the Unified Economic Agreement, pp.32, 37.

body and has no power of interpretation. Therefore, the interpretation could be made only by amendment.<sup>32</sup>

Professor Higgins points out that the General Assembly is

"... engaged in a constant process of Charter interpretation. This process cannot be simply defined as classical treaty interpretation."<sup>33</sup>

The I.C.J. has shown a tendency to adopt the above principle.<sup>34</sup>

Some consider that the interpretative resolution of the Inter-American Conference, which is the supreme organ of the O.A.S., is legally binding due to the establishing role it plays in revealing the intent of the parties.<sup>35</sup>

---

<sup>32</sup> Vallat, F., "Competence of the United Nations General Assembly", 97 Recueil des Cours, 11 (1959), at p.211. Kelsen states that "the General Assembly as any organ of the United Nations is certainly competent to interpret the Charter, but only in connection with an act by which the organ applies the Charter": Recent Trends in the Law of the United Nations, London, Institute of World Affairs (1951), p.960.

<sup>33</sup> Higgins, R., "The United Nations and Law-Making - The Political Organs", 64 Proceedings of the A.S.I.L. (1970), 64th annual meeting, 1970 No.4 at p.44. See also Schachter, O., where he makes a distinction between the power of interpretation which the General Assembly possesses and the recommendatory functions of the assembly: "The Relation of Law, Politics and Action in the United Nations" Recueil des Cours, 109 (1963) at p.185. Asamoah, O., The Legal Significance of the Declarations of the General Assembly of the United Nations, op.cit., pp.30-45.

<sup>34</sup> Reparations for Injuries Suffered in the Service of the United Nations Case (1949) I.C.J.Rep., p.71.

<sup>35</sup> Thomas and Thomas, The Organisation of American States, op.cit., pp.72-3. They go further than that by stating that "resolutions of an interpretative nature may be said to be legally binding, even to the extent of what may be in effect an amendment to the treaty".



However, if the interpretative power of the Fundamental Statute is a matter which is settled clearly in Article 10 of the Fundamental Statute, the power of interpreting the UEA is not clear. Article 10 of the Fundamental Statute, which sets out the competence of the commission for the settlement of disputes, refers only to disputes which arise over interpretation and application of the Fundamental Statute, but not to disputes between member states. One may, however, refer to another instrument concluded between the member states to find a solution. Article 3 of the rules of procedure of the commission for settlement of disputes<sup>36</sup> provides:

"The commission shall once installed have jurisdiction to consider the following matters referred to it by the Supreme Council:

1. Disputes between member states.
2. Differences of opinion as to the interpretation or execution of the Cooperation Council Fundamental Statute."

The wording of the above Article enlarges the competence of the commission to include all the disputes among the member states.

There is little doubt that the rules of procedure of the commission for the settlement of disputes, as an international treaty, have a legal character akin to the Fundamental Statute and the UEA, and therefore are legally binding upon the G.C.C.

---

<sup>36</sup> The text of the rules can be found in the G.C.C. legal Gazette, ed. 3 (1983), pp.17-19.

member states.<sup>37</sup>

However, while in principle the authoritative interpretation of the Fundamental Statute and the UEA is determined by both the Supreme Council and the commission for the settlement of disputes, in practice what occurs is that the member states or the Secretariat tend to interpret the basic instruments.<sup>38</sup>

According to the prevailing view in international law, every party may interpret the extent of its own obligations. However, this practice is considered as a political act and has no binding force on other parties to the treaty.<sup>39</sup>

---

<sup>37</sup> See Jessup, P., "Parliamentary Diplomacy", 89 Recueil des Cours (1956) at p.204. See also Rosenne, S. who refers to the rules of procedure of the International Court of Justice as an "international example of delegated or subordinate law-making": The Law and Practice of the International Court, Nijhoff at p.53; Skubiszewski, K., "Enactment of Law by International Organisations, 41 B.Y.I.L. (1965-66) at p.242.

<sup>38</sup> The G.C.C. Supreme Council decided in its second session to grant the facilities for steamers, ships and boats of the member states and give them the same treatment and privileges granted to their own in docking or calling at their ports. This is in accordance with Article 20 of the UEA. Kuwait wrote to the G.C.C. secretariat in May 1983 that the wording (steamers, ships and boats of the member states) should not be restricted to the governmental ships as the literal interpretation may lead to, but it should include also those belonging to citizens. This interpretation, the memorandum said, would be continued for the purpose of the agreement. The ministerial committee for finance and economy accepted Kuwait's view. See G.C.C. Secretariat, Cooperation in the Field of Customs between the G.C.C. Member States in accordance with the U.E.A., Riyadh (1985), pp.33-34.

<sup>39</sup> Wright, Q., International Law and the United Nations, London (1960), pp.35-39,

The Secretariat similarly may occasionally be confronted with issues of interpretation by giving legal advice to other organs which cannot be regarded as authoritative.<sup>40</sup> The practice of the Secretariat and the member states in this regard seems to emphasise the principle of effective interpretation which gives weight to the purpose of the organisation unless it is explicitly forbidden, rather than the restrictive principle which sticks to the provisions of the treaty.<sup>41</sup>

(c) Decisions Pertaining to the Application of the U.E.A. and the Concept of Subsequent Practice

The UEA was approved on 8 June 1981 by the signature of the heads of state and ratified by the six member states.<sup>42</sup> During the third summit (Bahrain, November 9-11, 1982), the G.C.C. heads of state decided to begin gradual implementation of the agreement starting 7 March 1983.<sup>43</sup>

The initial decision was to implement the following provisions of the UEA:<sup>44</sup>

---

<sup>40</sup> Schachter, O., "The Development of International law through the Legal Opinion of the United Nations Secretariat", B.Y.I.L. 25 (1948), pp.93-96.

<sup>41</sup> Ibid. For the restrictive and effective interpretation, see Lauterpacht, H., "Restrictive Interpretation and the Principle of Effective Interpretation of Treaties", B.Y.I.L. 26 (1949), p.48 et seq.

<sup>42</sup> Initial Measures Taken by the G.C.C. Member States to Implement the UEA, G.C.C. Secretariat, op.cit., pp.3-31.

<sup>43</sup> Idem.

<sup>44</sup> Ibid., pp.3-31.

1. Article 18 which provides that the member shall accord means for passenger and cargo transportation belonging to citizens of the other member states, when transiting or entering its territory, the same treatment they accord to the means of passenger and cargo transportation belonging to their own citizens, including exemption from all duties and taxes.
2. Article 5, which concerns the facilities for the transit that each member state must grant to any other member state.
3. Article 2, which exempts all the agricultural, animal, industrial and natural resources products that are of national origin from duties and other charges having equivalent effect.
4. Article 8(3), which encourages G.C.C. citizens to expand their economic and professional activities.
5. Article 8(1) which gives individuals the freedom of movement, work and residence.
6. Article 20, which provides that member states' ships are allowed to use freely the various ports facilities.

These types of decisions clearly have binding force, as they express the consent of the member states to the UEA. Member states which fail to comply with these decisions may be in breach of the agreement.

In spite of the above, neither the Fundamental Statute nor the Unified Economic Agreement contains provisions to the effect that the decisions of the Supreme Council are binding

on the member states.

By contrast, the E.E.C. treaties specify the binding force of its measures as regards their objectives, means and their addressees.<sup>45</sup>

Thus, this category of resolutions, as Judge Castaneda suggests

"... juridically significant, have as their content an informal agreement, explicit or tacit, among the members of an organ or international organisation. To the extent that a resolution is the result of an agreement, giving it form and registering and externalising it, the resolution can have binding force."<sup>46</sup>

Another legal interpretation which may be applied to these decisions is the examination of the state practice of G.C.C. members in relation to the provisions of the UEA, which indicate the binding nature of the Supreme Council decisions.

---

<sup>45</sup> The EEC institutions may issue a variety of specific measures of the types defined in Article 189 of the EEC treaty. It provides: "In order to carry out their task the council and the commission shall, in accordance with the provisions of this treaty, make regulations, issue directives, take decisions, make recommendations or deliver opinions. A regulation shall have general application. It shall be binding in its entirety and directly applicable in all member states. A directive shall be binding as to the result to be achieved upon each member state to which it is addressed, but shall leave to the national authorities the choice of form and methods. A decision shall be binding in its entirety upon those to whom it is addressed. Recommendations and opinions shall have no binding force." See the text in Peaslee, A., International Governmental Organisations, Part 1, op.cit., p.506.

<sup>46</sup> See Castaneda, op.cit., p.150 where he refers to the fact that these resolutions have precedent both in the League of Nations and in the Inter-American system.

All the G.C.C. member states tend consistently to apply the measures the Supreme Council takes to implement the UEA.<sup>47</sup> Any member state which does not want to comply with the Supreme Council decisions because of certain domestic difficulties will seek the application of Article 24 of the UEA which is a derogation clause, allowing temporary exemption from applying the UEA by the unanimous approval of the Supreme Council.<sup>48</sup>

Consequently, the practice of the G.C.C. member states is consistent enough to constitute a subsequent practice in relation to the measures taken by the Supreme Council to implement the UEA.<sup>49</sup>

---

<sup>47</sup> See these decisions mainly in the G.C.C. Secretariat publications. Initial measures taken to implement the U.E.A., op.cit.. See also, Cooperation between the G.C.C. Member States in the Field of Customs to Implement the Unified Economic Agreement Provisions (Arabic), G.C.C. Secretariat (1985), pp.23-44.

<sup>48</sup> So far Oman and Qatar have been exempted from the application of some of the UEA provisions. See Measures Taken to Implement the U.E.A. (1986). For the discussion of the exemption see infra, Chapter 7, pp.362-71 (the question of safeguard clauses within the UEA).

<sup>49</sup> The concept of subsequent practice is a reliable principle, regarded as a guide to infer the intention of the parties as to the meaning of a treaty, by observing the manner in which the parties to a treaty have acted in carrying out its provisions. The principle may apply to throw light on a previous state of fact or the evidence of the existence at an earlier date of certain rights or possession of certain territory. See Fitzmaurice, G., The Law and Procedure of the International Court of Justice, Grotius Publications, Vol.1 (1986), pp.61, 184-86. See also South West Africa Case, I.C.J. Reports (1950), pp.135-6; Corfu Channel Case, I.C.J. Reports (1949), p.25; Minquiers and Ecrehos Case, I.C.J. Reports (1953), p.82. In the Asylum Case, Judge Read in his dissenting opinion referred to the principle of subsequent practice which the ICJ recognised in the Corfu Channel Case, I.C.J. Reports (1950), p.324. In the U.S. Nationals in

Further, Article 31.3(b) of the Vienna Convention on the Law of Treaties supports this principle in certain circumstances. However, the value of subsequent practice depends on whether it is concordant, common and consistent, and not merely an isolated fact or a few individual events.<sup>50</sup>

(d) Regional Customary International Law

The subsequent practice of the G.C.C. member states, as demonstrated in their continuous compliance with the decisions of the Supreme Council, has not nevertheless developed into international customary Law.<sup>51</sup> The very limited length of time since the establishment of the G.C.C., and the insufficient frequency, coupled with the small size of membership, is not capable of creating customary international law. Yet it is difficult to determine with certainty that a rule of regional customary international law cannot emerge as a result of Supreme Council decisions, if it is for a long time and of sufficient frequency. It depends on the experience of the G.C.C. and its competence consistent with Supreme Council decisions, followed by a conviction that such

Morocco Case, the court, in interpreting Article 95 of the Act of Algeciras had extensive recourse to the subsequent practice, though it happened in a confused and inconsistent manner, I.C.J. Reports (1952), p.211.

<sup>50</sup> Sinclair, I., The Vienna Convention on the Law of Treaties, op.cit., pp.135-8.

<sup>51</sup> For the binding effect of the U.N. General Assembly resolutions as customary law, see Higgins, R., The Development of International law through the Political Organs of the United Nations, op.cit., p.2. See also Asamoah, op.cit., p.2.

conduct is obligatory.<sup>52</sup>

By contrast, the O.A.S. resolutions and declarations, as a result of continuous habits of compliance with them together with the conviction that the action of compliance is obligatory, are considered by some writers as likely to become binding by custom.<sup>53</sup>

(e) Recommendations

The obligatory force of certain of the Supreme Council resolutions, which cannot be considered as a direct application of the UEA provisions and which seek to determine general principles for cooperation without identifying precise obligations of the member states, may be subject to doubt. As such there are some occasions on which the Supreme Council has to take decisions to fulfil in general terms the purposes and the aims of the Fundamental Statute and the UEA.<sup>54</sup>

---

<sup>52</sup> The consistent state practice of the Gulf states as regards the delimitation of the offshore boundaries using the median line in their bilateral agreements led to the belief that a regional customary international law has come into existence. See Al-Baharna, H.M., The Legal Status of the Arabian Gulf States (1968), op.cit., p.289. See also, El-Hakim, A., The Middle Eastern States and the Law of the Sea, Manchester University Press (1978), p.130; Amin, S., International and Legal Problems of the Gulf, London, Middle East and Northern African Studies Press Ltd. (1981), p.143.

<sup>53</sup> Thomas and Thomas, The Organisation of American States, op.cit., p.71.

<sup>54</sup> e.g. (1) The decision of the Supreme Council in its fourth session which provides for unifying the prices and the fees of services, inter alia electricity and water rates.

(2) The decision to unify oil prices (except for diesel) in the G.C.C. member states market. See the Annual Report (1985), op.cit., pp.59, 83.

(3) The Supreme Council decision in its sixth session to approve the general policies and principles to protect the environment in the G.C.C. member states, according to Art.4



These decisions by their very nature do not appear to constitute legal obligations to behave in conformity with them. They are rather recommendations or invitations to direct the G.C.C. member states to act in a certain way and legally are not binding.

The distinction between the above decisions is illustrated in Castaneda's observations:

"... the treaty gives the member states a margin for judgment concerning the best way to realise its institutional ends, at least when an organisation makes a recommendation. When the treaty does not allow this margin for judgment, it provides other technical means to achieve its goals which, unlike recommendations, have a mandatory character."<sup>55</sup>

### (III) FREQUENCY OF MEETINGS AND VOTING OF THE SUPREME COUNCIL

#### (a) Meetings

Article 7 of the Fundamental Statute authorises the Supreme Council to meet once a year in an ordinary session<sup>56</sup>

---

of the Fundamental Statute, the recommendation of the specialised ministers of the environment and the recommendation of the ministerial council.

(4) According to Art.4 of the Fundamental Statute and Art.16 of the UEA, the Supreme Council decided in its sixth session in Oman to approve the aims and areas which are recommended by the ministerial council in planning the role of education and implementing integration. In G.C.C. Decisions of the Supreme Council in its Sixth Session, Oman (1985), The G.C.C. Secretariat Archives.

<sup>55</sup> Castaneda, op.cit., at p.13.

<sup>56</sup> The draft of the experts committee for Article 7 provides that the Supreme Council hold its regular session twice a year. This proposal was rejected by Oman which preferred one session a year to give the heads of state enough time to meet their commitments in the Arab League, the Islamic Conference and the non-aligned movement. At the same time the council may hold extraordinary sessions whenever the need arises. The Report of Qatar Delegation to the Legal Experts

with the possibility of an extraordinary meeting at the request of a member state, and this request must be upheld by at least one other member state. An extraordinary meeting can also be held by a decision taken by the Council in a previous meeting.<sup>57</sup> The extraordinary meeting must discuss only matters for which it was convened and should take place within five days of the official date of the request.<sup>58</sup>

Usually organs of international organisations meet at the headquarters of the organisation.<sup>59</sup> However, the Supreme Council, like other organisations (i.e. O.A.S., O.A.U., COMECON) is allowed to hold its sessions in the member states' territories.<sup>60</sup>

The official invitations to the meetings are the responsibility of the Secretary General.<sup>61</sup>

Committee, 6-10.3.1981.

<sup>57</sup> Article 4 of the rules of procedure of the Supreme Council provides the same provisions. It should be noted that there is repetition of the provision which regulates the meetings of both the Supreme Council and the Ministerial Council in the Fundamental Statute and the rules of procedure of both councils.

<sup>58</sup> Articles 5, 6 of the rules of procedure of the Supreme Council.

<sup>59</sup> Schermers, International Institutional Law, op.cit., p.130.

<sup>60</sup> Idem. It should be mentioned here that Saudi Arabia suggested having the Supreme Council sessions regularly at the headquarters of the organisation in Riyadh. This proposal was supported by Qatar and Kuwait later. Qatar Delegation Reports, op.cit.

<sup>61</sup> Article 4.2(a) of the rules of procedure of the Supreme Council.

At the beginning of each session the Supreme Council decides whether the meeting should be public or private.<sup>62</sup> Presidency is taken in turn by each head of state of each member state in alphabetical order. Each President retains his presidency for the start of one session to the beginning of a new session. However, if a head of state was involved in legal dispute with another member state, he would not be allowed to preside over the session of the Supreme Council to discuss the subject of the dispute. If such a case arose, a temporary president would be appointed.<sup>63</sup>

The Supreme Council's meeting (ordinary and extraordinary) is only valid if the quorum is made up of two-thirds of the heads of state.<sup>64</sup>

(b) VOTING

Article 9 of the Fundamental Statute provides:

"1. Each member of the Supreme Council shall have one vote.

2. Resolutions of the Supreme Council in substantive matters shall be carried by unanimous approval of the member states participating in the voting, while resolutions or procedural matters be carried by majority vote."

The above Article reflects the principle of the sovereign equality of independent states, that of one state, one vote. Since the League of Nations and subsequently the United

---

<sup>62</sup> Article 5(1) ibid.

<sup>63</sup> Article 7(3) ibid.

<sup>64</sup> Article 7(4) of the Fundamental Statute.

Nations, the principle has become accepted in theory and practice.<sup>65</sup>

However, the equality of voting power of all members seems to be unreal. The unreality is reflected in decision-making in different ways. It could be in the form of a block of states acquiring a degree of political influence within an organ which is disproportionate to their real political influence in the world at large. Yet the resolutions they pass have little chance of implementation because of the opposition by states which alone have the power to implement it.<sup>66</sup>

Inequality also exists in some international organisations because of the disparity of the interests involved. Therefore different systems of weighted voting have been considered in order to compensate for the inequality of voting in some international organisations (e.g. the International Monetary Fund and the International Bank for Reconstruction and Development).<sup>67</sup>

---

<sup>65</sup> Jenks, W., "Unanimity, the Veto, Weighted Voting, Special and Simple Majorities and Consensus as Modes of Decisions in International Organisations" in Cambridge Essays in International Law. Essays in Honour of Lord McNair, London, Stevens and Sons, Dobbs Ferry, New York, Oceana Publications (1965) at p.52. See also Williams, J., "The League of Nations and Unanimity" 19 A.J.I.L. (1925), pp.475-6

<sup>66</sup> Bowett, D., The Law of International Institutions, op.cit., p.44.

<sup>67</sup> See Schermers, H., International Institutional Law, op.cit., pp.395-400.

The method of unanimity has advantages and disadvantages. It may paralyse the process of decision-making in a very prolonged discussion. However, states prefer it as their interest is surely protected and the decision once reached is easier implemented.<sup>68</sup>

As such, some writers have expressed the view that law-making by unanimity in international organisations is similar to a treaty and therefore is binding.<sup>69</sup> Nevertheless, neither the law of international organisations nor state practice has considered them as treaties.<sup>70</sup>

(c) Absence

Article 5(2) of the rules of procedure of the Supreme Council provides:

"A meeting shall be considered valid if attended by heads of states of two-thirds of the member states."

This provision led some delegations to suggest that, since the absence of any G.C.C.member state does not harm its

---

<sup>68</sup> Schermers, op.cit., pp.391-2. Unanimity is the rule in the East African Community, Benelux, the Organisation for Economic Cooperation and Development, the European Free Trade Association, the Latin American Free Trade Association (LAFTA) and the Organisation of Petroleum Exporting Countries. In the Council of Europe and in the European Communities unanimity is required in many cases. In the UN the unanimity rule was not followed, with only a partial exception for the Security Council where the concurring vote of the permanent members is required in certain cases. Ibid., pp.393-94.

<sup>69</sup> Kelsen, Principles of International Law, New York (1952), p.66.

<sup>70</sup> See Parry, C., The Sources and Evidence of International Law, Manchester University Press, Oceana Publications (1965), p.22. See also Detter, I., Law-Making by International Organisations, op.cit., p.321; Skubiszewski, op.cit., p.222.

position as regards to substantive matters because of the unanimity rule in voting, the quorum for meetings should conform to the unanimity rule as well.<sup>71</sup>

However, the correctness of this view is doubtful, as Article 7(2) of the Fundamental Statute provides that unanimity is the "unanimous approval of the member states participating in the voting".

As such, the absence of a member state cannot operate to block the voting process in taking unanimous decisions, provided that the quorum of two-thirds is met.

In the experience of the U.N. Security Council absence is regarded as abstention, so that decisions could be taken without all permanent members being present according to Article 27(3) of the Charter. This happened in 1950 when the U.S.S.R. refused to participate in meetings of the Security Council, in which China was (allegedly) illegally represented by the wrong delegation.<sup>72</sup>

(d) Abstention

Article 9 of the Fundamental Statute does not deal with the effect of abstention in voting, yet Article 5 of the rules of procedure of the Supreme Council provides:

"Any member abstaining shall document his voting not bound by the resolution."

---

<sup>71</sup> The delegations of Oman and Saudi Arabia, Qatar Delegation's Report, op.cit., p.2.

<sup>72</sup> Schermers, op.cit., p.414.

But it is unknown whether the above provision applies to substantive or to procedural matters. The provision is usually found in organisations where rules require unanimity, while on the other hand providing for the validity of decisions taken in spite of abstentions.<sup>73</sup>

It has been well established in the United Nations that abstention does not prevent unanimity, even in cases where the Charter expressly provides that the concurring votes of the permanent members of the Security Council are needed.<sup>74</sup>

However, as some have noted, if this effect of abstention of the Supreme Council's decisions is applied to the majority rule on procedural matters, this would mean that decisions on what are substantive and procedural matters are binding on those who reject them.<sup>75</sup>

Any G.C.C. member may participate in the voting if it is involved in a dispute, a matter which increases the difficulty of obtaining unanimity on a decision concerning that dispute.

According to Article 7 of the rules of procedure of the

---

<sup>73</sup> Jenks, W., "Unanimity, the Veto, Weighted Voting, Special and Simple Majorities and Consensus as Modes of Decision in International Organisations", op.cit., p.50. See also Skubiszewski, op.cit., p.261; Schermers, op.cit., pp.460-7 where he gives examples of these provisions: Article 6, para.1 of the OECD, Article 4 of CMEA and under the General Arrangement to Borrow, para.7 of IMF.

<sup>74</sup> Schermers, ibid. at p.412.

<sup>75</sup> See Al-Ashal, A., The Legal and Political Framework of the Gulf Cooperation Council, op.cit., p.140. This view may explain why consensus in procedural matters may not be required because of majority vote, but in actual fact the G.C.C. experience shows that member states demand it, even on procedural matters, as will be explained later.

Supreme Council, the head of a state which is a party to an outstanding dispute may not preside over a session or a meeting called to discuss the subject of dispute, but he is entitled to vote.

By contrast, in the Security Council of the U.N., where unanimity of the permanent members is required "in decisions under Chapter VI, and under para.3 of Article 52", the parties to a dispute must abstain from voting on decisions concerning the peaceful settlement of the dispute.<sup>76</sup>

(e) The Distinction between Substantive and Procedural Matters

Another issue that Articles 9 of the Fundamental Statute, and 5 of the Rules of Procedure raise is that neither of them lays down a criterion to distinguish the substantive issue from the procedural.<sup>77</sup> This is due to the fact that there is no clear-cut criterion which might help in the distinction of the nature of each category and enumeration of what matters

---

<sup>76</sup> U.N. Charter, Art.27, para.3. See in this regard, Bailey, S., Voting in the Security Council, Indiana University Press, Bloomington and London (1969), pp.63-74.

<sup>77</sup> From Qatar Delegation's Report, Muscat, 6-10.3.1981, op.cit., p.7. It seems that Qatar suggested an addition to Article 9 of the Supreme Council that in case of dispute on the nature at issue, whether it is substantive or procedural, the Supreme Council should decide that by absolute majority. However, this addition was apparently later omitted for unknown reasons, though it is interesting to note that the Qatar proposal was upheld by the meeting of the Ministers of Foreign Affairs.



fall into each category cannot be exhaustive.<sup>78</sup> However, it is viewed by some that Article 33(2) of the rules of procedure of the ministerial council lends help to this problem, since the ministerial council is the organ which deals with all the issues to be submitted to the Supreme Council. Therefore it is said to be within the ministerial council's competence to determine the nature of these decisions.<sup>79</sup>

The Article provides:

"If a member of the council should disagree on the definition of the matter being put to the vote, the matter shall be settled by majority vote of the member states present."

This view, though it appears to be sensible, is however not persuasive. The main objection to it lies in the fact that this provision simply does not apply to the Supreme Council voting system. It only deals with the session of the ministerial council. One way of avoiding this problem is to amend either Article 9 of the Fundamental Statute or Article 5 of the rules of procedure of the Supreme Council by giving the Supreme Council the power to decide by simple majority on the nature of the decision whether it is substantive or procedural. Another way is to apply the practice of the U.N. Security Council. The question whether a matter is procedural or substantive is regarded by the Security Council as

---

<sup>78</sup> See Kerley, E, "Voting on Important Questions in the United Nations General Assembly", 53 A.J.I.L. (1959), pp.324-40. See also Kelsen, H., The Law of the United Nations, London, Stevens (1950), pp.180-81.

<sup>79</sup> Rajab, Y., The Gulf Cooperation Council of Arab States, op.cit., p.107.

substantive and therefore subject to the approval of each of the five permanent members.<sup>80</sup>

As regards the General Assembly the practice is unclear. For example whether a request for an advisory opinion is a procedural or substantive matter seems to have no clear answer.<sup>81</sup>

Furthermore, neither Article 9 of the Statute nor Article 5.2 of the rules of procedure require certain majority (i.e. simple, absolute) for the Supreme Council meetings.<sup>82</sup> However, simple majority (the smallest possible majority which is more than half of the votes counted) apparently is required.

---

<sup>80</sup> See Rosenne, S., Law and Practice of the International Court, Leiden (1985), pp.666-7. Rosenne states that "... the double veto entails a decision, itself subject to the veto, as to whether the decision is procedural or not". See also Bailey, S., Voting in the Security Council, op.cit., pp.18-25. Bailey points out that the decisions of the Security Council in different cases do not reveal a consistent pattern. Goodrich and Hambro, The Charter of the United Nations, New York (1943), pp.222-3 maintain a similar view to Rosenne.

<sup>81</sup> Rosenne, ibid., pp.661-66.

<sup>82</sup> Schermers states at para.706, op.cit. that some international organisations and several authors do not distinguish between simple majority and absolute majority. They even consider the terms identical as regards multiple voting. However, the U.N. makes a distinction between simple majority and absolute majority. Both the General Assembly and the Security Council define simple majority as the majority of the votes cast, and absolute majority as the (simple) majority of the total number of possible voters or, in other words, the majority of the total membership of the U.N. See also Rudsinzki, A., "Election Procedure in the United Nations", 53 A.J.I.L. (1959), pp.82-111, who opposes the practices of the U.N.

Because the quorum for holding a meeting is two thirds of the member states, simple majority would be the least that must be expected to carry out a decision on procedural matters. This would mean either 4 votes out of 6 if all the members attend or 3 out of 6 if 5 member states attend the meeting.<sup>83</sup>

However, in practice, and since the establishment of the G.C.C., the habitual working method of the Supreme Council is consensus.<sup>84</sup>

(f) Consensus

The concept of consensus is not legal but political. It differs from unanimity in that unanimity requires voting in order to reach full agreement while consensus is collective

---

<sup>83</sup> It should be mentioned here that according to Qatar Delegation's Reports the G.C.C. Ministers of Foreign Affairs agreed on using the terminology "absolute majority" for decisions on procedural matters. This could mean in the light of other provisions (i.e. Article 7(4) of the Fundamental statute which deals with the quorum for holding meetings) a simple majority.

<sup>84</sup> The author interviewed the director of the legal department in the G.C.C. Secretariat, Dr. Al-Sayari, who confirmed that the G.C.C. never applied voting as a method of decision-making. It has always been consensus as a result of the negotiation process. Riyadh on 22 November 1986. See also, Bouachba, The Council of Cooperation of Gulf States, op.cit., p.41.

opinion achieved as a result of the negotiation process.<sup>85</sup> However, consensus is greatly influenced by unanimity in the sense that all the members have the right of veto.<sup>86</sup> Yet, both consensus and unanimity being only a formality does not change the legal effect of the G.C.C. Supreme Council decisions. The decisions concerning direct application of the U.E.A. provisions, are rules which were agreed upon registering and which the content of the treaty expressed would be binding. Other decisions which reflect the aims and purposes of both the Fundamental Statute and the UEA, and which are consistently followed by the practice of the member states, would provide only some evidence of their mandatory nature.

By contrast, a decision taken by the Security Council under Article 25 of the U.N. Charter is legally binding regardless of the formalities of its passing.<sup>87</sup>

---

<sup>85</sup> M'Bow, A., "Consensus in International Organisations", in Consensus and Peace, ed. by Selassie, B., UNESCO (1980), pp.13-30. See also Jenks, W., "Unanimity, the Veto, Weighted Voting, Special and Simple Majority and Consensus as Modes of Decision in International Organisation", op.cit., pp.55-57; Bailey, S., op.cit., pp.75-83; Merillot, H. (ed.), Legal Advisers and International Organisations, Oceana Publications Inc., New York (1966), pp.25-34; Buzan, B., "Negotiating by Consensus. Developments in Technique at the United Nations Conference on the Law of the Sea" 75 A.J.I.L. (1981); Schermers, op.cit., pp.391-93.

<sup>86</sup> Schermers, idem.

<sup>87</sup> From the examination of the use of consensus method in the Security Council. Bailey concludes that consensus is a decision in the sense that it has the effect of "settling an important aspect of the question at issue and of providing authority for future action", op.cit., p.83.

However, consensus may have some legal relevance to the decision reached by the U.N. General Assembly. It may be considered as evidence of customary process of international law being a decision reflecting a consistent pattern of conduct which develops into a legal rule.<sup>88</sup>

#### IV. Committees and Agencies Established by the Supreme Council

Article 10 of the rules of procedure of the Supreme Council provides for temporary committees that the Supreme Council may form at the beginning of every session, to study some issues listed on the agenda. These committees take recommendations by majority vote. In addition to these committees there are technical committees which may be established by the Supreme Council to be charged with giving advice on the design and execution of Supreme Council programmes in specific fields.<sup>89</sup>

However, the Supreme Council, referring to Article 4(3) of the Fundamental Statute which provides a foundation for further G.C.C. cooperation in all fields, decided in its first session in 1981 to set up five ministerial committees which include competent ministers from G.C.C. member states.<sup>90</sup> Yet

---

<sup>88</sup> See Cassese, A., International Law in a Divided World, Clarendon Press, Oxford (1986), pp.197-198.

<sup>89</sup> Article 17(1) of the rules of procedure of the Supreme Council.

<sup>90</sup> These committees are: (1) Social and economic planning committee; (2) Economic and financial cooperation; (3) Industrial cooperation committee; (4) Oil committee; (5) Social and cultural committee. See, for the functions of these committees, Qatar News Agency, Documents of the Gulf

questions concerning the relations between the ministerial specialised committees and other institutions of the organisations, mainly the Supreme Council and the ministerial council (ministers of foreign affairs), are not satisfactorily clarified in the Fundamental Statute or the rules of procedure. It is not clear whether these committees are those which are provided for in Article 10 of the rules of procedure which envisage a direct relationship with the Supreme Council. In practice, though, there appears to be little relationship between the Supreme Council and the ministerial committees. In practice the relationship between the ministerial committees and the Supreme Council is not direct. The ministerial committees tend to submit all its decisions to the ministerial council in forms of recommendations, and if it is approved the ministerial council submits them to the Supreme Council for the final approval. Yet, because of the subordinate position of the ministerial committees to the ministerial council, the relationship is not decided by any form of regulation.

Various projects anticipated by the specialised committees mostly have not achieved the required progress. Perhaps the most significant committee is the Economic and Financial Cooperation Committee which paved the way greatly for the implementation of the UEA through its frequent

recommendations to the ministerial council.<sup>91</sup> Yet one must say that the activities of these committees still remain in the nature of an experiment, the success of such will be determined in the light of experience during reasonable time.

Furthermore, according to Article 4 of the Fundamental Statute, the Supreme Council on its third session in Bahrain, 1983 decided to convert the Saudi Organisation for Specifications and Standards into a Gulf Board of Specifications and Standards for the G.C.C.<sup>92</sup> The concerned ministers in the G.C.C. member states are authorised to approve the regulations of the Board and to determine its powers and relationship to the member states. The Board has legal personality of its own and has an independent budget.<sup>93</sup> It enjoys legal capacity on the national level as well as the same privileges and immunities enjoyed by the G.C.C. staff.<sup>94</sup>

Accordingly, all agreements between foreign manufacturers, suppliers and dealers or distributors in the G.C.C. member states shall stipulate that the foreign seller's goods conform to all relevant specifications and standards

---

<sup>91</sup> The economic and financial committee has played a remarkable role in advising the ministerial council on how to implement the UEA provisions in the form of recommendations. Examples of these recommendations relating to Articles 2, 4, 5, 8 and 20 can be found in Initial Measures Taken by the G.C.C. Member States to Implement the Unified Economic Agreement (1985), op.cit., pp.4-5, 28-30.

<sup>92</sup> See the decision in ibid., pp.32-34.

<sup>93</sup> Article 8 of the Board statute, ibid.

<sup>94</sup> Ibid.

which are required by the Board.

This must be applicable as well to the national products to benefit from the available experience in the member states in order to establish national industry on unified grounds.

In the same session of the Supreme Council which was held in Bahrain, the Council decided to establish the Gulf Investment Corporation with an initial capital of two thousand and one hundred million U.S. dollars.<sup>95</sup> The G.C.C. ministerial committee for financial and economic cooperation signed an agreement which established the corporation in Bahrain in November 1982.<sup>96</sup> The mandate of the corporation is to seek opportunities for investment as a joint venture partner within and outside the Gulf states in the private as well as public sector.<sup>97</sup> The corporation will seek self-sustaining projects and should not be regarded as an aid institution.

V. The Commission for the Settlement of Disputes

In accordance with the provision of Article 6 of the G.C.C. Fundamental Statute, the Supreme Council is entitled to set up subsidiary organs.

---

<sup>95</sup> Gulf Cooperation Council, Secretariat General, Gulf Investment Corporation, (1986) Riyadh, p.3.

<sup>96</sup> Ibid. The agreement contains 11 articles which, inter alia, provide the legal capacity of the agency on the national level, its privileges and immunities under the internal law of member states, the settlement of disputes should be through negotiation, arbitration clauses and statute attached to the agreement of 48 articles which declare how the agency works.

<sup>97</sup> Article 10 of the agreement.



Furthermore, Article 10 of the Fundamental Statute provides that a commission for settlement of disputes shall be attached to the Supreme Council. However, the commission has not yet been established, though the Supreme Council approved its rules of procedure with a main basic instrument at the time of establishing the organisation. The commission is not of a permanent nature and shall be formed whenever the occasion arises for every case separately, based on the nature of the dispute.<sup>98</sup> It should be noted here that the establishment of the commission is the last resort of the Supreme Council after all other means have been exhausted. A dispute should be resolved first within the ministerial council or the Supreme Council, then is to be referred to the commission for settlement of disputes.<sup>99</sup> The jurisdiction of the commission covers disputes between member states and differences of opinion on the interpretation and application of the Fundamental Statute.<sup>100</sup>

---

<sup>98</sup> Article 10(2) of the Fundamental Statute.

<sup>99</sup> Article 10(3) ibid.

<sup>100</sup> Article 3 of the rules of procedure of the commission for the settlement of disputes, G.C.C. Legal Gazette, 1981. Through the travaux preparatoires some delegations proposed another type of jurisdiction to cover cases related to the staff of the G.C.C. Secretariat and an advisory opinion could be given at the request of any of the G.C.C. principal organs, but these were omitted later. In practice, though, and according to the G.C.C. staff regulation, the disputes of the staff are solved within the Secretariat itself. The above proposal came in Qatar delegations. Both Riyadh and Muscat meetings, op.cit., pp.7-8, 8-9.

Although it is not clear whether the commission's jurisdiction extends to boundary disputes among G.C.C. states which already existed before the establishment of the G.C.C.,<sup>101</sup> the literal interpretation of the provision of the rules would entitle the Supreme Council to refer any dispute either before or after the establishment of the G.C.C.

One should stress that the decision of the commission is not binding and it is merely a recommendation or opinion to be submitted to the Supreme Council for further action.<sup>102</sup> Furthermore, the commission apparently is a judicial body, judging by the provisions of Article 9(1) of the rules of procedure which requires it to apply the norms of international law and the Sharia.<sup>103</sup> The Supreme Council is entitled to elect at least three citizens of the member states

---

<sup>101</sup> There are some unsettled boundary disputes between G.C.C. member states, i.e. Kuwait-Saudi Arabia, Qatar-Bahrain, Qatar-Saudi Arabia and Oman U.A.E. See Amin, H., op.cit., pp.11136 and El-Hakim, A., op.cit., pp.107-131.

<sup>102</sup> Article 4 of the rules of procedure. It should be mentioned here that during the discussion of this article Qatar, supported by Saudi Arabia, proposed that the jurisdiction of the commission should be compulsory if the parties to the dispute agree in advance, while the decision of the commission is not final and executable until the Supreme Council endorsement. This proposal in fact does not add any element of compulsory jurisdiction of the commission. However, it met with rejection by the Kuwait delegation, stating that international courts in their traditional form have not gained the trust of the states and they sometimes instead tend to seek for mediation and conciliation. The report of Qatar delegation, Muscat, op.cit., p.8.

<sup>103</sup> Article 9(1) of the rules of procedure of the commission. Al-Ashal, commenting on the commission composition, its jurisdiction, power and operation, considers it as a judicial body with advisory jurisdiction, op.cit., pp.155-6.

not involved in the dispute.<sup>104</sup> Professional competence is not required.<sup>105</sup> Yet the Rules of Procedure of the commission refer to "international law and custom, and the principles of Islamic Sharia" as sources for the commission's recommendations,<sup>106</sup> a matter which needs to be determined by legally qualified personnel.

From the composition, jurisdiction and operation of the commission one may conclude that the G.C.C. would rather adopt a political solution than a judicial one to settle its disputes through ad hoc committees. Therefore, it is perhaps worthwhile to note that the settlement of legal disputes has not yet had the occasion to function. However, this does not mean that there have not been disputes between the G.C.C. member states, particularly after the G.C.C. establishment. One example of these is the lingering dispute between Qatar

---

<sup>104</sup> Article 4(1) of the rules of procedure of the commission.

<sup>105</sup> Kuwait has rejected a Qatar proposal that the commission must have legal task and maintained that the door should be left open as regards the composition of the commission. Therefore the ministers of foreign affairs could be members of the commission if the dispute has only a political aspect, or lawyers if the dispute has a legal aspect, a distinction which is difficult to maintain. Qatar Delegation's Report, Legal Experts Meeting, Muscat, op.cit., p.9.

<sup>106</sup> It should be noted here that customary international law is part of international law and one of its main sources. However the authors might mean as international law only multilateral and bilateral treaties.

and Bahrain concerning the Huwar Islands.<sup>107</sup> Instead, the G.C.C. urged both parties to settle their dispute through the

---

<sup>107</sup> Since 1930 a territorial dispute has existed between Qatar and Bahrain. The dispute is about the Huwar Islands situated less than one mile off the western coast of Qatar and 18 miles off the Bahrain coast. In 1938, Belgrave, the political adviser to Bahrain, claimed that Huwar had been occupied by the subjects of Bahrain and Shaikh Isa, the ruler of Bahrain, used to pay an annual visit to Huwar. In July 1939 the British government, according to the advice of her political agent in Bahrain, decided that the Huwar Islands belonged to Bahrain. Qatar protested against the British government's decision and claimed that the Huwar Islands lay in its territorial waters and Bahrain's physical acts were temporary, discontinuous and accomplished by unauthorised individuals, which did not signify sovereignty claims and therefore lack animus occupandi. The second issue which further arose was a dispute regarding the demarcation of the offshore boundaries between the two countries using the median line. In 1947 the British government took a decision concerning the delimitation of the two countries' boundaries, based on the median line. This decision was accepted by Qatar while it was rejected by Bahrain. Bahrain claims that the median line cannot be strictly applied and should deviate to include the pearl fisheries in Bahrain. Such deviation is justified by the principle of special circumstances. In 1964 Qatar suggested to the British government to refer the whole dispute to arbitration. Both Bahrain and Britain agreed to the process of arbitration in settling the dispute, but in 1966 Bahrain withdrew its agreement. In 1971 Saudi Arabia accepted to play the role of the mediator. On 3 March 1983 the dispute between the two countries erupted when Bahrain named one of its military ships "Huwar" in a ceremony attended by her Prime Minister. Qatar considered it as a provocative act and protested strongly. The G.C.C. decided to resolve the dispute peacefully and requested Saudi Arabia to resume its mediation role. On 26 April 1986 Qatar landed troops on the disputed reef between the two countries and seized it. This occurred, Qatar claimed, as a result of Bahrain's "insistent" violation of Qatar sovereignty represented in dredging and construction work on the reef which is against all the principles of mediation. Bahrain described Qatar's act as a violation of good neighbourliness within the G.C.C. Mediation by Saudi Arabia and the G.C.C. subsequently defused the confrontation. See Huwar Islands, R/15/2/547 (unpublished official document), India Office Library and Records, London. See also the author's LL.M. dissertation, The Qatari-Bahraini Boundary Dispute over the Huwar Islands, Hull University (1984) (unpublished).

mediation of Saudi Arabia.<sup>108</sup>

---

<sup>108</sup> On 4 April 1978 the government of Saudi Arabia submitted a draft consisting of five principles as framework for a peaceful solution, which includes the following terms (translated from Arabic by the writer):

- (1) The sovereignty over the Huwar Islands and the offshore boundaries are inalienable issues, so they should receive exclusive settlement.
- (2) Every party pledges from the date of this plan not to take any action which might strengthen his legal position, or weaken the legal position of the other party or to change the present situation as regards the disputed matters. Any act of this kind would have no legal effect at all.
- (3) (a) The parties pledge not to exercise any act through the media against each other, either in regard to the dispute or any other issues until they reach a final settlement.  
(b) The two parties pledge not to take any action which would obstruct the process of negotiation.
- (4) A committee of the two parties will be set up, attended by a representative of Saudi Arabia in order to achieve acceptable solutions based on justice, good neighbourliness, balanced interests and the security requirements of both parties.
- (5) The two parties pledge to solve all the disputed issues and this would be achieved through negotiations. In case of disagreement on any of these issues, the parties should delegate Saudi Arabia to suggest a compromise for the disputed issues. That compromise should be accepted as a solution between them.

On 2 July 1981 the government of Qatar made its comments on the above draft, by which it gave its primary acceptance accompanied by the following clarifications:

- (1) All the disputed issues should be considered as legal ones.
- (2) In referring to Article 5 of the draft Qatar stated that the question of sovereignty cannot accept compromise; it is either complete and for one of the parties, otherwise not.
- (3) If the two parties did not reach a settlement through the mediation of Saudi Arabia the latter government may share the view of the government of Qatar that the dispute should be settled according to the principles of international law. Accordingly Qatar suggests that Article 5 of the Saudi draft should be read as follows: "If the negotiations stipulated in Article 4 have not led to an agreement on one or more of the disputed issues which have already been mentioned (i.e. the sovereignty over the Huwar Islands and the demarcation of offshore boundaries), the governments of the two parties pledge with the consultation of the government of Saudi Arabia

The reluctance of the G.C.C. member states to resort to compulsory jurisdiction is understandable as they are newly independent states, unwilling to submit their disputes on vital matters to final judicial settlement unless they are entirely sure of their legal position. Similarly other international organisations have set up ad hoc commissions for the settlement of disputes, though with different composition and jurisdiction. In the case of the O.A.S., for example, there is no compulsory jurisdiction, while with the O.A.U. there is no enforcement procedure of the decisions of the ad hoc committees.<sup>109</sup>

## VI. The Ministerial Council

### (a) Functions and Powers

The ministerial council is composed of the ministers of foreign affairs of the member states. However, it is understood that in the case of a minister for one reason or another being unable to represent his state, another minister

---

to determine the best means for solving those issues according to the rules of international law. The decision of the agreed body for this purpose will be final and obligatory for both parties." From the above comment, it seems apparently that Qatar is willing to go to arbitration rather than accept a political compromise. Ministry of Foreign Affairs Archives, Doha, Qatar, 17.4.1978.

<sup>109</sup> Thomas and Thomas, op.cit., p.288. See also Fenwick, International law, 4th ed., New York (1965), p.233. For the O.A.U. see Cervenka, Z., The Organisation of African Unity and its Charter, C. Hurst & Co., London (1968), pp.85-92. See also Elias, T., Africa and the Development of International Law, Sijthoff, Leiden (1977), pp.164-70; Andemicael, The O.A.U. and the U.N., op.cit., pp.35.36.

could be delegated to take his place.<sup>110</sup> The ministerial council deals with a large scope of affairs which makes it an essential factor in the running of the G.C.C.<sup>111</sup> One of the most important functions of the ministerial council is to prepare the future political moves and to propose recommendations, studies and projects which allow for the cooperation and coordination of the member states to develop in all spheres. The ministerial council finds itself in the unenviable position of promoting cooperation and coordination between the private and the public sectors as well as regulating the movement of capital, citizens and generally supervising economic activity as provided in the UEA. The ministerial council has the power to entrust the study of any question concerning the diverse interests of cooperation between member states to one or several technical or specialised committees. Equally, the council lays down its rules of procedure as well as the rules of procedure of the Secretariat. The ministerial council also approves nominations of the assistant Secretaries-General put forward to them by the Secretary-General. However the nomination of the assistants is carried out through close consultation between the ministers of foreign affairs.<sup>112</sup> Finally, the

---

<sup>110</sup> Article 11(1) of the Fundamental Statute.

<sup>111</sup> The functions of the ministerial council are described by Article 12 of the Fundamental Statute.

<sup>112</sup> This experience in fact happened when Oman decided to replace the Secretary General assistant for political affairs who is an Oman citizen with another citizen for the same post, after six years of holding this position. Private

ministerial council, inter alia, examines all the matters referred to it by the Supreme Council. However, in actual fact the ministerial council enjoyed more power than merely examining these referred matters. On more than one occasion the Supreme Council delegated powers to the ministerial council to adopt policies and to take decisions which are addressed directly to the G.C.C. member states without subsequent consent of the Supreme Council.<sup>113</sup>

By contrast, the O.A.U. Council of Ministers has far less power than the G.C.C. ministerial council. It is charged mainly with the implementation of the Assembly of Heads of State decisions and also has no power to nominate the assistant of the Secretary general.<sup>114</sup>

(b) Meetings and Voting of the Ministerial Council

Article 11(2) of the Fundamental Statute provides that the ministerial council meets once every six months in an ordinary session with the possibility of holding an

---

information of the author.

<sup>113</sup> During the fifth session of the Supreme Council it delegated power to the ministerial council to adopt the document of 'aims and policies of development plans in the G.C.C.'. On another occasion the Supreme Council in its sixth session in Muscat 1986 delegated power to the ministerial council to adopt a timetable for the implementation of the UEA which is based on the Secretary General's proposals. Furthermore, the Supreme Council in its seventh session delegated power to the ministerial council to approve the aims and policies of cooperation with other states and international economic groups. See The Annual Report, 1985, p.53. For the sixth and seventh sessions, see Measures to Implement the U.E.A., G.C.C. Secretariat, Riyadh (1986).

<sup>114</sup> Article XIII of the O.A.U. Charter. See Peaslee, Part 1, op.cit.



extraordinary session at any given moment if ever any state wishes to have one, as long as at least one other member state supports it. However, the council's presidency rotates among member states annually in alphabetical order of the state.<sup>115</sup> On the whole, provisions of the rules of procedure of the ministerial council are more or less identical to those of the Supreme Council. Furthermore, for both organs many rules of procedure are simply repeated as already embodied in the Fundamental Statute.

The usual outcome of the council's deliberations consists of resolution and recommendations. However, the legal substance of each is not specified.<sup>116</sup>

Article 33(1) of the rules of procedure of the ministerial council provides that decisions are taken unanimously except those relating to procedural matters which shall have a majority vote. It is also stressed in Article 33(2) that in case of disagreement on the definition of whether the matter is substantive or procedural, the matter will be decided by a majority vote of the state members

---

<sup>115</sup> This is the first amendment to the Fundamental Statute (Art.11(2)) and consequently Article 15(4) of the rules of procedure of the ministerial council. The previous formula provided that the council's presidency shall rotate among member states every six months, a rule which is not compatible with Article 7(2) of the Fundamental Statute which organises the presidency of the Supreme Council. The G.C.C. Secretary General's Memo No. 4383/49402 dated 6.5.1985. Ministry of Foreign Affairs Archives, Qatar.

<sup>116</sup> Article 12(1)(2)(3) of the Fundamental Statute.

present and voting.<sup>117</sup> Here one could notice, unlike the case of the Supreme council, the rules of procedure provide a solution for the distinction between substantive and procedural matters. However, the ministerial council's rules of procedure contain provisions for appearing on the occasion of examining certain questions by the council. If such a case were to arise it would be up to the President of the ministerial council (chosen in the same way as the President of the Supreme Council) and to the Secretary General to reconcile the divergent viewpoints and to forge an understanding between the members before putting the issue to the vote.<sup>118</sup> Probably this is meant to avoid differences in opinion which would result in the failure of the meeting of the ministerial council, although the G.C.C. organs pay more importance to the consensus than to vote.

Furthermore, the President of the ministerial council, the Secretary General and member states are even allowed to ask for a vote to be delayed for a certain period of time in order to negotiate a consensus.<sup>119</sup>

---

<sup>117</sup> During the discussion of the legal experts committee on the rules of procedure for the ministerial committee, the Oman delegation was the only one which insisted that both decisions on substantive and procedural matters should be taken by unanimous vote. Qatar Delegation Report, Muscat, 6.10.1981, op.cit., p.6.

<sup>118</sup> Article 36(1) of the rules of procedure of the ministerial council.

<sup>119</sup> Article 36(2) of the rules of procedure.

Yet the experience of the ministerial council in the decision-making process shows that voting is a desirable procedure when consensus among the member states cannot be obtained. In 1984 the Secretary General prepared a draft for the unified patent system which was agreed upon by the committee of science and technology. The draft was further submitted to the ministerial council for approval. It was approved by all member states except Oman, and yet in spite of Oman's objection the draft was submitted to the Supreme Council for final approval.<sup>120</sup> In a letter from the Omani Minister of Foreign Affairs to the Secretary General, Oman objected to taking the recommendation to the Supreme Council on the ground that the question under discussion was a substantive issue and needed unanimity according to Article 13(2) of the Fundamental Statute. The G.C.C. Secretariat studied the Oman objection and replied in the following way:

(1) Article 13(2) of the Fundamental Statute which Oman referred to deals only with "legislative decisions" taken by the ministerial council. This type of decision is final and can be addressed to the member states for implementation without further consent by the Supreme Council. These binding decisions, the Secretariat explained, fall into two categories. Firstly, decisions stipulated in the Fundamental Statute concerning the approval of the rules of procedure of the ministerial

---

<sup>120</sup> The Secretary General's memo No.201, No.122 dated June 1986.

council as well as the rules of procedure of the Secretariat and other internal organisational matters.<sup>121</sup>

Secondly, decisions which are delegated by the Supreme Council. The Omani complaint does not fall into any of these, therefore it cannot be regarded as a matter to be dealt with under Article 13(2).

- (2) The decision whether a matter is procedural or substantial cannot be determined by an individual member state alone, but collectively at a session of the ministerial council as provided by Article 33.
- (3) The unanimity rule which is required in the ministerial council decisions does not mean necessarily all the six member states, but it is for all the casting and present member states. If a member state is absent or abstained this does not affect the quorum.

On the legal opinion of the Secretariat General one may draw few remarks. The word "decision" is often used to mean legally binding and non-binding actions. In the U.N. Charter it refers to all types of actions as decisions.<sup>122</sup> Article 198 of the E.E.C. treaty restricts the use of the word "decision" to legally binding decisions. Article 7 of the Arab League pact on the other hand, provides that the word "decision" covers both decisions arrived at unanimously, which are binding on all members, and decisions arrived at by a

---

<sup>121</sup> Article 12(7) of the Fundamental Statute.

<sup>122</sup> See in particular Article 18(2) for the concept of recommendations. See Castaneda, op.cit., pp.6-16.

majority vote, which are binding only on those who vote in favour.

However, a number of international organisations apply decisions to recommendations or preparatory work even though these are not decisions.<sup>123</sup>

Article 13(2) of the G.C.C. Fundamental Statute provides:

"Resolutions of the Ministerial Council in substantive matters shall be carried by unanimous vote of the member states present and participating in the vote, and in procedural matters by majority vote."

According to the above article there is no distinction between legally binding decisions and recommendations. It is apparent that it covers all types of actions taken by the ministerial council. Article 12(2) of the Statute describes that resolutions adopted in developing and coordinating activities existing between member states in all fields shall be referred by the ministerial council as recommendations to the Supreme Council for appropriate action. However, in Article 12(1) of the Fundamental Statute both the words "resolution" and "recommendation" are used to demonstrate the required actions in the same fields. Moreover, if one accepts the Secretariat's argument that Article 13(2) deals only with "legislative decisions" then the question arises as to how the council arrives at its recommendations.

As such it is arguable that the Fundamental Statute does not draw a distinction between binding decisions and

---

<sup>123</sup> Schermers, op.cit., pp.203-4.

recommendations. Nevertheless it is accepted in the law and practice of international institutions as mentioned earlier that decisions relating to the internal structure or functioning of the organisation are binding.<sup>124</sup>

Where the ministerial council implements a binding decision by way of delegation from the Supreme Council, it may not exceed its own powers. As such there are limits to the power of delegation. Thus the delegating organs may not delegate power they do not possess and responsibility for the delegated power resides with the delegating organ.

It is arguable that the Supreme Council has absolute power of delegation to the ministerial council which empowers it to take binding decisions addressed to member states, since the Supreme Council decisions are not binding per se.<sup>125</sup>

(VII) The Secretariat

The usual structure of an international organisation consists of a Secretary General assisted by deputies. The G.C.C. is not an exception to this basic rule. The organisation has a Secretary General and two assistants, each responsible for political and economic affairs.<sup>126</sup>

The Secretariat is staffed by officials from member states nominated by their governments and approved by the Secretary General, permanent staff and others who are

---

<sup>124</sup> See supra, note 16.

<sup>125</sup> See supra, pp.160-73.

<sup>126</sup> Article 14(3) of the Fundamental Statute.

recruited locally. However, it is provided that the Secretary General can recruit if need be candidates from states that are not members, if permission is first obtained from the ministerial council.<sup>127</sup> In performing its duties the Secretariat consists of seven main departments.<sup>128</sup>

For the purpose of presentation the Secretary General and his staff will be dealt with separately.

(a) The Secretary General

The Secretary General of the G.C.C., who must be a citizen of one of the member states, is appointed by the Supreme Council for three years, which can only be renewed once.<sup>129</sup> The Fundamental Statute does not altogether make clear the precise functions of the Secretary General. Nevertheless, the mere fact of leaving the decision to the Supreme Council to appoint him indicates the political character of such a choice and emphasises his importance. However, one has to examine the power of the Secretary General in the Fundamental Statute, in the rules of procedure of the Supreme Council and the staff regulations to obtain an

---

<sup>127</sup> Article 14(4) of the Fundamental Statute.

<sup>128</sup> These departments are: (1) The office of the Secretary General; (2) The Department of Political Affairs; (3) The Department of Economic Affairs; (4) The Department of environment and human resources; (5) The Department of financial and administrative affairs; (6) The Department of legal affairs; (7) Information centre. See the G.C.C. Annual Report, The secretariat (1984), pp.22-24.

<sup>129</sup> Article 14(2) of the Fundamental Statute. It is interesting to note that the Secretary General has remained in his post for more than two terms without giving reasons or amending Article 14 of the Statute.

accurate view.

The G.C.C. Secretary General is ultimately answerable to any action to do with the Secretariat and has to ensure its smooth running. It is also the duty of the Secretary General to supervise and to make sure that the functions of the Secretariat devolved by the Fundamental Statute are dealt with by the Secretariat.<sup>130</sup> The Secretary General is also described as having the power to act as representative of the organisation within the powers vested to him.<sup>131</sup>

The function is often not only to speak publicly about the organisation but also to buy, rent, borrow, pay on behalf of the organisation and, more important, conclude agreements on behalf of the organisation.<sup>132</sup>

The Secretary general is empowered to play a significant role in the meeting of both the Supreme and ministerial council and perform functions entrusted to him by other organs.<sup>133</sup>

---

<sup>130</sup> Article 14(5) of the Fundamental Statute.

<sup>131</sup> In this regard one may mention that Oman suggested adding "within the power vested in him" to Article 5(5) to restrict the Secretary General's power in representing the organisation and to avoid ultra vires acts. Qatar Delegation Reports, Muscat meeting, op.cit.

<sup>132</sup> Schermers, op.cit., p.250.

<sup>133</sup> The Secretary General is responsible for setting the opening date of the Supreme Council's session and suggesting a closing date (Article 4.2(a) of the Supreme Council's rules of procedure). He attends every session of the Supreme Council's rules of procedure. For his powers in the rules of procedure of the ministerial council, see Articles 3(2)(3), 4(2)(3), 8(1)(4), 11, 36(1)(2) and 38(1).



There are other tasks the Fundamental Statute empowers the Secretariat to exercise which apparently cannot be achieved properly without the efforts of the Secretary General himself. For instance, the Secretariat is empowered to follow up the implementation of the member states of the decisions and recommendations of the Supreme Council and ministerial council.<sup>134</sup> Furthermore, to recommend to the chairman of the ministerial council the convocation of an extraordinary session of the council whenever necessary.<sup>135</sup> The latter power may impliedly include what is stipulated in Article 99 of the U.N. Charter, where the U.N. Secretary General is empowered to bring to the attention of the competent organ "any matter which in his opinion may threaten the maintenance of international peace and security". Article 8(4) of the rules of procedure of the ministerial council emphasises this power by giving the Secretary General the right to include in the Council's agenda matters he believes should be reviewed. Moreover, he enjoys the capacity of proposing an amendment to the rules of procedure of the ministerial council.<sup>136</sup>

However, it is too early to say at this time whether the G.C.C. Secretary General could play a political role such as the Secretary General of the Arab League, who has developed

---

<sup>134</sup> Article 15(3) of the Fundamental Statute.

<sup>135</sup> Article 15(8) of the Fundamental Statute.

<sup>136</sup> Article 38(1) of the rules of procedure of the ministerial council.

a political role similar to the U.N. Secretary General.<sup>137</sup> Yet the role of the G.C.C. Secretary General is stronger than the Secretary General of the O.A.U. who is merely administrative head by the very name, and may be removed from office before the end of his four year term by a two-thirds majority of the O.A.U. Assembly.<sup>138</sup>

(b) The Secretariat General

The Secretariat General has to deal with some matters which are exclusively of an administrative nature.<sup>139</sup> The G.C.C. Secretariat is responsible for a number of tasks which consist of the commissioning of studies related to cooperation and coordination, concerned with common action in the member states, as well as for preparing periodic reports and studies

---

<sup>137</sup> See Bowett, The Law of International Institutions, op.cit., at p.232. On the recent dispute between Qatar and Bahrain over the construction of a coastguard post in Fasht Al-Diabal, a reef midway between the two countries, the G.C.C. Secretary General Abdullah Bishara and the head of the military committee conducted talks in Qatar and Bahrain on how to carry out the Saudi plan. However, the G.C.C. Secretary General has not played a significant role in settling the dispute as representative of the organisation. This may be partly due to the Saudi mediation role. Reuter Reports, London archive, 25 May 1986. While in the Iraq-Iran war the role of the Secretary General was confined to political announcements which are not accompanied by actual acts, a matter which carried by some of the G.C.C. ministers of foreign affairs. See G.C.C. Annual Report, 1986, op.cit., pp.29-34. See also Nonneman, G., Iraq, the Gulf States and the War. A Changing Relationship, 1980-1986 and Beyond, Ithaca Press, London (1986).

<sup>138</sup> Article XVI of the O.A.U. Charter and Article 36 of the O.A.U. Assembly rules of procedure. In Peaslee, op.cit., pp.1165-1181.

<sup>139</sup> The functions of the Secretariat are described in Article 15 of the Fundamental Statute.

ordered by the two other principal organs of the organisation. In this way, the G.C.C. Secretariat is regarded as a sort of information bureau. The Secretariat has to ensure that the member states carry out the decisions reached by the Supreme Council and the ministerial council. It also prepares the drafts of administrative and financial regulations as well as the budget and the closing accounts of the organisation. The budget is prepared according to the actual needs of the Secretariat which are determined by the competent bodies of the Secretariat within the Secretary General's instructions.<sup>140</sup>

The Secretariat has certain tasks regarding the preparation for the two councils and carrying out any missions delegated to it by the two main organs.<sup>141</sup>

The distinctively international character of the Secretariat is spelled out in Article 16 of the Fundamental statute which borrows the language of Article 100 of the United Nations Charter:

"In the performance of their duties the administrative Secretary General and the staff shall not seek or receive instructions from any government or from any other authority external to the organisation."

---

<sup>140</sup> Articles 4, 5 and 6 of the G.C.C. Financial Regulation. The Secretariat prepared the G.C.C. Staff Regulation and the Financial and Audit Regulation. The two Regulations were issued by a decision of the ministerial council on 12.7.1982.

<sup>141</sup> The ministerial council has delegated the Secretariat represented by the Secretary General on 14 August 1984 to negotiate on behalf of the organisation with the E.E.C. to reach an agreement on the policy of levying tax on G.C.C. petrochemical products. G.C.C. Annual Report (1985), p.65.

Article 16 in the same language reminds the Secretary General and all the Secretariat General staff that they

"shall carry out their duties in complete independence and for the common interest of the member states. They shall refrain from any action or behaviour that is incompatible with their duties and from divulging the secrets of their jobs either during or after their tenure of office."

One can notice here the functional protection which is expressly confirmed in a number of international organisations<sup>142</sup> and confirmed in the advisory opinion of the International Court of Justice.<sup>143</sup>

The G.C.C. staff regulation at the same time enriches the international character of the staff by providing an obligation upon the Secretary General to consider the principle of merit in recruitment to the Secretariat posts.<sup>144</sup>

The subjection of recruitment of the staff member to the political consent of governments would allow for pressure from member states to employ those who enjoy their confidence regardless of their standard of efficiency and competence. This if it occurs would contradict the letter and spirit of Article 16 of the Fundamental Statute, which provides:

"The Secretary-General and the Assistant Secretaries-General and all the Secretariat General's staff shall carry out their duties in complete independence and for the common interest of the member states. They shall

---

<sup>142</sup> Seyersted, F., "Jurisdiction over Organs and Officials of States, the Holy See and Intergovernmental Organisations (2)" 14 I.C.L.Q. (1965), pp.493-96.

<sup>143</sup> See the advisory opinion on Reparation for Injuries Suffered in the Service of the United Nations, I.C.J. Reports (1947), pp.181-82.

<sup>144</sup> Article 6 of the Staff Regulation.

refrain from any action or behaviour that is incompatible with their duties and from divulging the secrets of their jobs either during or after their tenure of office."

However, the staff regulation does not provide this perception of independence, whereas Article 7(7) provides that a citizen who is dismissed from government service in the member state for disciplinary reasons or has not done military service, would not be entitled to hold Secretariat posts. This sort of emphasis on governmental loyalty greatly contradicts Article 6 of the staff regulation and Article 16 of the Fundamental Statute. By contrast the practice of the U.N. Secretariat towards states who exert pressure of this character and the Secretary General who yields to such pressure is considered in violation of Articles 100 and 101 of the U.N. Charter.<sup>145</sup>

The G.C.C. staff regulation probably reflects the tendency of law and practice of international organisations in establishing statutory instead of contractual relationships of employment with their officials, and the law to be applied in case of dispute is the regulation of the organisation.<sup>146</sup>

---

<sup>145</sup> Meron, T., "Staff of the United Nations Secretariat: Problems and Directions" 70 A.J.I.L. (1976), pp.678-83. In practice though the G.C.C. at the present time recruited more than three-quarters of its staff from Saudi Arabian citizens. This initial imbalance will probably slowly modify over years by recruiting on a wider basis.

<sup>146</sup> For the legal nature of staff recruitment with international organisations, see Seyersted, op.cit., pp.496-505. See also Akehurst, M., The Law Governing Employment in International organisations, Cambridge University Press (1967), pp.4-5, while Kelsen maintains that the relationship of employment has the character of contract of private law and the organisation has no right to establish the rights and duties of the individuals on a unilateral basis. It should

The G.C.C. staff regulation provides that the Secretary general recruits the staff by a decision.<sup>147</sup>

However, those who are recruited locally (G.C.C. citizens and others) are bound by a renewable contract on an annual basis, signed between them and the assistant general director for finance and administrative affairs.<sup>148</sup>

There is no clause in the regulation which allows the organisation to amend unilaterally the conditions of service, but the organisation has a legislative power derived from the G.C.C. Fundamental Statute to make rules for the staff.<sup>149</sup>

This would mean that acquired rights for the permanent staff become incapable of protection, since there is no contract by which they can be protected. A similar view has

---

duties of the individuals on a unilateral basis. It should be governed by the law of the host country. The Law of the United Nations (1950), pp.313-14 and 318.

<sup>147</sup> Articles 15 and 16 of the staff regulations.

<sup>148</sup> The rights and duties of the employee are clearly set out in a model contract sent to the author by the Director of Finance in the G.C.C. Secretariat. In case of dispute, the staff regulations will apply. Furthermore, the employee is subject to any duty imposed on the staff by the staff regulations. In case of administrative malpractice committed by the employee, the competent body of the organisation may apply either the staff regulation or the provisions of the labour law of the host country (Articles 19, 20 and 21 of the model contract). It appears therefore that non-permanent staff have no acquired rights that they can pursue in the courts of the host country.

<sup>149</sup> See Article 12(9) of the Fundamental Statute which describes the ministerial council competence. In this meaning see Akehurst, M., The Law Governing Employment in International Organisations, op.cit., p.201. See also Seyersted, "Jurisdiction over Organs, Officials of States, the Holy See and Intergovernmental Organisations", op.cit., p.469.

been adopted by the Court of Justice of the European Communities.<sup>150</sup>

Furthermore, the staff regulation provides that the Secretary General, or whom he authorises, has the right to terminate the employment unilaterally for non-disciplinary reasons. One of those is the cancellation of the service.<sup>151</sup>

This is a matter which gives the authorised body a great deal of discretion. Moreover, any appeal against the administrative decision should be taken to the next senior head of service and the latter's decision is final.<sup>152</sup> This decision would be detrimental to the official concerned and for the efficacy of the organisation if the next senior officer himself is involved in the dispute. The protection necessary to ensure the independence of the services cannot be guaranteed by merely having a regulation but by securing the right of officials to challenge the administrative decision before an administrative tribunal or any other form of judicial observance.<sup>153</sup>

As a result one may conclude that the G.C.C. staff regulation does not provide the officials with great security since there is no guarantee against abuse of administrative decision through a judicial body, and at the same time

---

<sup>150</sup> Akehurst, ibid., pp.228-36.

<sup>151</sup> Article 134 of the staff regulations.

<sup>152</sup> Article 118 of the staff regulations.

<sup>153</sup> Jenks, W., The Proper Law of International Organisations, London, Stevens & Sons Ltd. (1962), p.68.

deprives the staff of acquired rights because of the statutory character of the regulation.

(c) The Budget

Article 18 of the Fundamental Statute provides that the budget is contributed only to the Secretariat and therefore does not cover other expenditure of the organisation.<sup>154</sup>

The budget is divided into four chapters. Salaries of the staff, administrative expenditure, capital expenditure, and enterprise expenditure which requires a large amount of money.<sup>155</sup> Due to the difficulty of anticipating all needs and priorities of the expenditure, the Secretariat is given some administrative flexibility to transfer funds from one chapter to another.<sup>156</sup>

---

<sup>154</sup> The budget estimated at:

1. 98,304,857 Saudi Ryials in 1404 AH
2. 95,700,000 Saudi Ryials in 1405 AH
3. 95,100,000 Saudi Ryials in 1406 AH
4. 85,156,000 Saudi Ryials in 1407 AH.

The last figure is equivalent to £13,002,290.08. These figures came in a letter to the author from the secretariat dated 15.6.87. According to the interview the writers conducted with the Director of the Finance Department in December 1986, the latter revealed that the budget is confined strictly to the Secretariat expenses. Therefore it does not cover the expenditure of the peninsula shield troops or any obligations coming out of contracts concluded for military purposes for these troops. These troops represent a unified military command based in the north-eastern Saudi Arabian desert town of Hafr Al Baten formed at the G.C.C. summit 1984 as a unified military command. For the meetings of the chiefs of staff in preparation for these troops, see Qatar News Agency Documents, Part 4 (1984), pp.27-42.

<sup>155</sup> Article 7 of the G.C.C. Financial and Audit Regulation. The G.C.C. Secretariat published by the Institute of Public Administration Riyadh (1982).

<sup>156</sup> Article 8(2).



However to prevent abuse of appropriating funds the Secretariat power does not extend to transferring funds from chapter one, which is designated to salaries, to chapter four, which is allocated to enterprises expenditures, a matter which needs the approval of the ministerial council.<sup>157</sup>

The budget is prepared by the Secretariat, recommended by the ministerial council and approved by the Supreme Council.<sup>158</sup>

This gives the Secretariat some power of initiative to investigate new fields of activity and gives an accurate estimate of the need for expenditures. However, this estimate is revised by the ministerial council and the final decision on budget must be taken by the Supreme Council.

Undoubtedly the question of financing international institutions involves some elements of restricting sovereignty and contains economic, social as well as political matters.<sup>159</sup>

This is obvious in the equal contribution to the budget and the unanimous decision which must be taken by the Supreme Council to approve it. This indicates the important power the Supreme Council enjoys in reviewing the work of the organisation and controlling its activities. Yet the power to approve does not mean that it has the right to refuse to

---

<sup>157</sup> Article 8(3).

<sup>158</sup> Article 9(1) of the Financial Regulation and Article 8(10) of the Fundamental Statute.

<sup>159</sup> Jenks, W., "Some Legal Aspects of the Financing of International Institutions", Transactions of the Grotius Society, Vol.28 (1962) at p.88.

give effect to obligations entered into by the organisation in the proper discharge of its functions, especially those on a contractual basis. This view is asserted in the advisory opinion of the I.C.J. on the Effects of Awards of Compensation made by the United Nations Administrative Tribunal (1954).<sup>160</sup>

While governmental contribution remains the primary source of income of the G.C.C., neither the G.C.C. Fundamental Statute nor the Financial Regulation formulate clearly the legal obligation to contribute the sums decided by the Supreme Council. Article 18 of the Fundamental Statute provides:

"The Secretariat General shall have a budget to which the member states have equal amounts."

Article 9.3 of the Financial Regulation provides only that the budget will be informed to the member states with schedules and an explanatory memorandum as soon as it is approved.

The contribution lacks a fixed date for the payment.<sup>161</sup> Furthermore, the above obligation is weakened by the absence of any sort of sanction in case of failure to pay their contribution.

By contrast the U.N. Charter includes a clear provision for failure of a member to pay its contribution and calls for the loss of its vote in the General Assembly if it falls into

---

<sup>160</sup> I.C.J. Reports (1954), para.47 at p.59. See also Meron, T. "Budget Approval by the General Assembly of the United Nations. Duty or Discretion?" XLII B.Y.I.L. (1967), pp.91-122.

<sup>161</sup> Jenks, op.cit., p.104.

arrears of more than two years.<sup>162</sup>

Funding of the UN is not always straightforward and unproblematic. The Soviet Union submitted that in the General Assembly of the UN an express decision would be required before a member could lose its voting rights. Such a decision would only be possible by a two-thirds majority.<sup>163</sup> This view, however, was not accepted by the UN Secretariat.<sup>164</sup>

The great crisis in the General Assembly, particularly during the 19th session, demonstrated the danger of applying sanctions automatically. The General Assembly was not strong enough to apply sanctions to strong members. The Assembly did not vote throughout its entire 19th session. Decisions were either postponed or taken by acclamation. The expenses of peace-keeping operations would be paid out of a special fund open to voluntary contributions of all the members. After separating these expenses from the normal budget of the organisation, Article 19 was no longer applicable since the states concerned were not significantly in arrears in the payment of their normal contributions.<sup>165</sup>

Article 11 of the regulation provides investment policy for the short and medium term designated from the budgetary

---

<sup>162</sup> Article 19 of the United Nations Charter.

<sup>163</sup> UN Document A/5431.

<sup>164</sup> Schermers, op.cit., p.722, para.1298.

<sup>165</sup> Higgins, R., "United Nations Peacekeeping. Political and Financial Problems", The World Today, August 1965, pp.325-33.

surplus of the Secretariat in a way that does not affect its activity and is consistent with Islamic law.

The concept of investment under Islamic law, with its different categories, is based mainly on the idea that the organisation should be a partner with the bank, sharing profit or loss by way of trade. Fixed interest on the assets is considered as forbidden usury.<sup>166</sup>

The provision is compatible with Article 32 of the regulation where it provides that assets of the Secretariat should be deposited in the current account in one of the national banks in the G.C.C. member states and the city of the headquarters.<sup>167</sup>

---

<sup>166</sup> Hamoud, S., Islamic Banking, Ph.D. thesis submitted to the University of Cairo (1984). Arabian information, London (1986), pp.236-55.

<sup>167</sup> In actual fact the Secretary General, according to the ministerial council decision, is allowed to obtain interests on the assets of the organisation. He maintains internal financial control in addition to external audit under the observance of the committee, which includes the Directors of Finance of the G.C.C. member states. An interview with the Director of the Finance Department in the G.C.C. Secretariat, December 1986. See also Articles 19, 20 of the regulation.

## CHAPTER SIX

### THE LEGAL PERSONALITY OF THE GCC

#### I. The Legal Personality on the International Plane

The legal personality as a concept does not exist as an objective reality. It is law which creates it and attaches to it certain rights and duties for the social benefit of the community.<sup>1</sup>

The situation is similar as regards international organisations whose constitutional instruments expressly or impliedly provide for their legal capacities.<sup>2</sup>

However some international organisations explicitly tend to mention the term "legal personality" in their constituent instruments to spell out the full capacity of the organisation to be the subject of legal rights and duties from the member states on the international plane.

As such Article 6 of the Sixth International Tin Council

---

<sup>1</sup>Nekam A., The Personality Concept of the Legal Entity. Harvard University Press, 1938, pp.21-27.

<sup>2</sup>In this meaning see Weissberg G., International Status of the United Nations, New York, 1960, pp.203-4; Bowett, The Law of International Institutions, op.cit., p.337; Seidl-Hohenveldern, "The Legal Personality of International and Supranational Organisations", Revue Egyptienne de droit international, Vol.21-22, 1965-66, p.71; Hahn H., "The Conception of an International Personality", Harvard Law Review, 71 (1957-58), pp.1045-6; Lauterpacht, E., "The Development of the law of international organisations by the decisions of international tribunals" 152 RdC (1976), Part IV, pp.422-27; Bindschedler, R., "International organisations, general aspects", in Encyclopedia of Public International Law, North-Holland: 5 (1983), p.130.

Agreement (ITA6)<sup>3</sup> provides:

"The Council shall have a legal personality. It shall in particular have the legal capacity to contract, to acquire and to dispose of movable and immovable property and to institute legal proceedings."

Other international organisations such as the UN do not use the term "legal personality". Article 104 of the UN Charter provides:

"The organisation shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and fulfilment of its purpose."

This, however, does not amount to a denial of a legal entity separate from its member states. The actual terms of Article 104 of the UN Charter may give rise to controversy as to whether "legal capacity" equates to international personality since it does not use the term "international personality" expressly.

The ICJ in the Advisory Opinion in Reparations Case (1949)<sup>4</sup> thought that it was necessary to consider first the preconditions for establishing the existence of international personality. The Court found that the Charter

(i) had gone further than creating a mere centre for harmonizing the action of nations in the attainment of common ends (Article 1, para.4) but also

(ii) had equipped that centre with organs,

---

<sup>3</sup>See the text of the ITA6 in Misc 13(1982), UKTS, Cmnd.8546.

<sup>4</sup>See the Advisory Opinion on Reparation for Injuries suffered in the services of the United Nations in ICJ Reports (1949), pp.178-9.

(iii) had given it special tasks,

(iv) had defined the position of the members in relation to the organisation, which should be detached from its members and given the organisation legal capacity and privileges and immunities in the territory of each member state.

The possession of these legal capacities would necessarily entitle the UN to bring an international claim, which is an element of international personality.

The Court view was enshrined as follows:

"... In the international sphere, has the organisation such a nature as involves the capacity to bring an international claim? In order to answer this question, the Court must first enquire whether the Charter has given the organisation such a position that it possesses, in regard to its members, rights which it is entitled to ask them to respect. In other words, does the organisation possess international personality."<sup>5</sup>

To answer this question the Court thought it must consider what characteristics the term "legal capacity" was intended thereby to give the UN.

The Court stated:<sup>6</sup>

"... the organisation was intended to exercise and enjoy, and is in fact exercising and enjoying, functions and rights which can only be explained on the basis of the possession of a large measure of international personality and the capacity to operate upon an international plane."

The international personality of an organisation is therefore established as being the necessary consequence of the possession of certain functions, duties, and rights, for

---

<sup>5</sup> Ibid., p.178.

<sup>6</sup>Ibid., p.179.

the due performance and exercise of which the attribution of such personality is indispensable.<sup>7</sup>

The functional approach of legal personality was upheld in the Certain Expenses of the United Nations Case (1962)<sup>8</sup> in which it was held that the organisation in relation to third parties was bound by the acts of its organ, even if these acts were ultra vires provided that the acts in question were within the scope of the functions of the organisation.

However, the Court in the Reparation Case expressly stated that its conclusion that saying the UN is an international person is not the same as saying that its legal personality, rights and duties are of the same nature as those of a state. What it meant is only that the UN is a subject of international law and capable of possessing international rights and duties.<sup>9</sup>

The Court added:

"...The rights and duties of any entity such as the organisation must depend upon its purposes and functions as specified or implied in its constituent

---

<sup>7</sup>Ibid. For contrary view see Ronyer-Hameray, B., Les competences implicites des organisations internationales, Librairie generale de droit et de jurisprudence. Paris, 1962, p.69. He points out that capacity is not conclusive evidence that international organisation has international personality. Capacity is merely one of the factors to be taken into consideration when determining international personality.

<sup>8</sup>See the Advisory Opinion in the ICJ Reports (1962), p.168.

<sup>9</sup>The Advisory Opinion in ICJ Reports, op.cit., p.179. See also in this meaning, The American Law Institute, Restatement of the Law. The Foreign Relations Law of the United States No.1 (1987), pp.140-44.



documents and developed in practice."<sup>10</sup>

Article 17 of the GCC Fundamental Statute, which bears great resemblance to Article 104 of the UN Charter, provides:

"The Cooperation Council and its organs shall enjoy on the territory of Member States such legal capacity, privileges and immunities as required to realise their objectives and carry out their functions."

It is clear that the above provision uses the term "legal capacity" but as demonstrated in the Reparation Case, the Court had to apply the functional approach to interpretation of legal capacities which was intended to mean international personality.

It is a mistake as Professor O'Connell states to:

"... jump to the conclusion that an organisation has personality and then deduce specific capacities of the concomitants of personality. The correct approach is to equate personality with capacity, and to inquire what capacities are functionally implied in the entity concerned."<sup>11</sup>

One therefore ought to deduce the legal capacities from the constitution, which expressly or impliedly states the will of its members.

Bowett emphasises the point further by stating:

"The danger is, therefore, that one might be tempted to deduce say, a general treaty-making power from the very fact of personality even though personality is itself deduced from a specific treaty-making power. In other words one becomes involved in a circular argument unless great care is taken to restrict implied power to those which may reasonably be deduced from the purpose and functions of the organisations in question. Therefore the test is

---

<sup>10</sup>Ibid., p.180.

<sup>11</sup>O'Connell, D., International Law, London, Vol.I (1970), p.98.

a functional one.<sup>12</sup>

However, the practice seems to confirm the view that express provisions in the constituent instruments of the organisation are not necessary for carrying out its functions.<sup>13</sup>

The GCC Fundamental Statute has equipped the organisation with organs and has given it special tasks to achieve certain ends. (Articles 6, 8, 10 and 15). The GCC as political and economic organisation is involved in various areas of cooperation. The agreement on privileges and immunities creates rights and duties between each member state and the

---

<sup>12</sup>Bowett, The Law of International Institutions, op.cit., p.337. Kelsen takes a much more restrictive view by granting organisations only those special capacities as are conferred upon them by particular provisions, but he admits the right of the UN to receive and send diplomatic missions without recourse to express provisions in the Charter. See his book, The Law of the United Nations, New York, 1951, p.335. According to another school, the international personality of international organisations is enjoyed as a consequence of the actual existence of an organisation. Personality is an objective fact which can be enjoyed by every organisation constituting an international person regardless of the particular provisions of the constitutions. For this school of thought see Seyersted, I, "Objective international personality of international organisations: Do their capacities depend upon the convention establishing them?", 31-34, N.O.R.T.I.R. (1961-64), pp.28-9; Serreni, A., Diritto internazionale, Vol.2 (1960), p.847, cited by Rama-Montaldo, M., "International legal personality and implied powers of international organisations", 44 B.Y.I.L. (1970) at p.120; Balladore, P., Diritto internazionale pubblico (1962), cited by Rama-Montaldo, ibid., p.118. See also, for the same approach, Carroz and Probst, Personalite juridique internationale et capacite de conclure des traites de l'ONU et des institutions specialisee (1953), p.86.

<sup>13</sup>Seyersted, "International personality of intergovernmental organisations. Do their capacities depend upon the convention establishing them?", op.cit., pp.45-50.

organisation. The Unified Economic Agreement (UEA) lays down specific plans for economic integration. It sets to coordinate and unify economic, fiscal, monetary, industrial and trade policies of the GCC member states. The GCC in its dealings with third parties sometimes resorts to treaties to implement its aims. It is doubtful that the GCC can perform all these functions without international personality being conferred upon it.

The ICJ in its Advisory Opinion on the Reparation Case<sup>14</sup> did not only affirm the international personality of the UN vis-a-vis the member states, but also held that it possesses such status in its relations with non-member states.

This view may not necessarily apply to a closed type of organisation such as the GCC which includes very few members and is only competent to deal with certain areas of the members' interest. It is true that organisations with a universal character enjoy objective international personality vis-a-vis non-member states while closed international

---

<sup>14</sup>The Advisory Opinion of the Court, op.cit., p.185. This judgment is criticised by Schwarzenberger who maintains that recognition or acquiescence is necessary on the part of non-member states since they are not parties to the constitution of the organisation. International Law, I, 3rd edition, London (1957), pp.128-30. Other writers take similar views, like Seidl-Hohenveldern who states that the non-member state would suffer a disadvantage if the organisation can require the non-member state to accept that it has rights under duties vis-a-vis her, while they are not in an equal position to sue each other. "The legal personality of international and supranational organisations", op.cit., p.54.

organisations need recognition by non-member states.<sup>15</sup>

Thus, if the Secretary-General of the GCC or his assistants violate the laws or damage property in a non-member state, they cannot rely on their immunities against suit in that state's domestic jurisdiction by claiming that they are fulfilling their duty as GCC officials at that time.<sup>16</sup>

This position, however, could be avoided if there are certain arrangements between the GCC and the non-member state conferring on its officials the necessary privileges and immunities.<sup>17</sup>

#### A. Tests for Personality

The possession of legal personality under international law normally requires evidence of certain capacities of the organisation,<sup>18</sup> such as the right to conclude agreements, to

---

<sup>15</sup>Schermers, op.cit., p.778. In the same meaning, see also Bowett, The Law of International Institutions, op.cit., p.339. Hahn, H. also states that the ICJ judgment does not appear to be applicable to all international organisations. Third parties to other international organisations should show their willingness through their recognition of the legal personality. See his article, op.cit., p.1049. There is, however, an unsupported view which maintains that the GCC has objective personality, like states. Makarim, E., "The positive impact on the establishment of the GCC on the issues of private international law of those states", op.cit., pp.27-28.

<sup>16</sup>Seidl-Hohenveldern gives a similar example, op.cit., p.54.

<sup>17</sup>Ibid., pp.57-60.

<sup>18</sup> See Seidl-Hohenveldern, I., "The legal personality of international and supranational organisations", op.cit., pp.42-3. He points out, by giving examples, that there are inherent capacities of international organisations resulting from their legal personality and they exercised them without

enjoy privileges and immunities, to own property<sup>19</sup> and the right of litigation. However, the proof of actual exercise of these capacities is unnecessary in order to let the organisation be the holder of such capacities.<sup>20</sup>

#### 1. The GCC Capacity to Conclude Agreements

To Parry and Bowett the effect of the capacity to conclude treaties on the concept of personality is quite significant. They point out that treaty making power is evidence of international personality but the reverse may not be so.<sup>21</sup>

The GCC Fundamental Statute neither contains a general provision authorising the organisation to enter into international agreements, nor does it make specific provisions determining the organ competent to conclude on behalf of the GCC such agreements.

---

contest of their validity.

<sup>19</sup>As far as the GCC is concerned, it owns its headquarters in Riyadh, but it pays regular rent for its subsidiary organisation's buildings sited in Manama (Bahrain), and Kuwait, where it established the technical bureau for communication and the Gulf Investment Organisations.

<sup>20</sup>Seyersted, Objective International Personality of Intergovernmental Institutions. Do their Capacities Really depend upon their Constitutions? Copenhagen (1963), p.60. See also Seidl-Hohenveldern, *op.cit.*, p.32.

<sup>21</sup>Parry, C., "The treaty-making power of the United Nations", 26 *B.Y.I.L.* (1949), p.147; Bowett, *op.cit.*, p.341. For opposite views see Kasme, B., La capacite de l'organisation des Nations Unies de conclure des traites, Librairie generale de droit et de jurisprudence (1960), pp.30-31.

However, Article 17(2) of the Fundamental Statute provides:

"Representatives of the member states of the Council and the Council employees, shall enjoy such privileges and immunities as are specified in agreements to be concluded for this purpose between the member states."

It may be argued that according to the above provision the GCC is not a contracting party, since the agreement on privileges and immunities is concluded between the member states. Therefore, this as such does not indicate that the GCC has the capacity to conclude agreements.

The ICJ recognised expressly that the conclusion of the UN privileges and immunities agreement intended to exercise and enjoy "functions and rights which can only be explained on the basis of the possession of a large measure of international personality and the capacity to operate upon an international plane".<sup>22</sup>

However, the UN is in a rather unique position which enables it to enjoy objective personality and therefore it possesses an "inherent treaty-making power". The Charter of the UN also includes a group of provisions which can be relied

---

<sup>22</sup>The Advisory Opinion in the Reparation Case, op.cit., p.174. For the criticism of this view see Parry, C., "The treaty-making power of the United Nations", 26 B.Y.I.L. (1949), pp.142-45. Detter, I considers the conventions on privileges and immunities as conventions between states and not treaties of organisations. They are international agreements in favour of third parties. Law-making by International Organisations. Stockholm 1965), at p.124.

upon as evidence of the treaty-making power.<sup>23</sup>

The GCC is a political body entrusted with a wide range of activities to foster and strengthen various aspects of cooperation. To achieve its aims it must be endorsed with the competence to conclude treaties.<sup>24</sup>

As such the Fundamental Statute contains provisions regarding treaty-making power couched in general terms. Article 8(5) provides that one of the Supreme Council's functions is to "approve the bases for dealing with other states and international organisations".

The latter may be widely interpreted as capacity of the GCC to conclude agreements. There is yet another way of attributing such power to the GCC. That is to adopt the approach taken by some writers on the question of personality, to find the basis of the capacity not only in the constitutional provisions, but also in the acts of the organs and the practice which developed through the organisation's functions.<sup>25</sup>

Despite the fact that the UEA operates within the express and spiritual context of the Fundamental Statute, it does not make clear reference to the capacity of the organisation to

---

<sup>23</sup> See Parry, op.cit., p.148. See also, Seidl-Hohenveldern, I., "International Economic Law", III Recueil des Cours (1986), pp.108-109.

<sup>24</sup>In this meaning, see the Advisory Opinion in Reparation Case, op.cit., p.182.

<sup>25</sup>This is the functional approach. See Weissberg, op.cit., p.37. See also Bowett, op.cit., p.342.

conclude agreements.<sup>26</sup> Article 7 formulates such capacity in general terms as well as in specific terms, but it is attributed to the member states and not to the organisation as such.

"Member states shall coordinate their commercial policies and relations with other states and regional economic groupings and blocs with a view toward creating balanced trade relations and favourable circumstances and terms of trade therewith.

To achieve this goal, the member states shall make the following arrangements:

1.....

2.....

3. Conclude economic agreements collectively when and if the common benefit of the member states is realised."

Another provision in the UEA demonstrates similar capacity to the member states, inasmuch as Art.15 provides that:

"Member states shall set rules, make arrangements and lay down terms for the transfer of technology, selecting the most suitable or introducing such changes thereto as would serve their various needs. Member states shall also, whenever feasible, conclude uniform agreements with foreign governments and scientific or commercial firms to achieve these objectives."

On the whole one may draw the conclusion that the legal capacity of the G.C.C. to conclude agreements is not provided

---

<sup>26</sup>The UEA could be regarded as a supplementary agreement to the Fundamental Statute. The legal linkage between the two is clearly laid down in the UEA preamble. It confirms that the governments of the GCC member states agree to implement the UEA in accordance with the Fundamental Statute. It is needless to say that the organs which implement the provisions of the two instruments are the same. The only difference is while the Fundamental Statute deals with the cooperation in general and wide terms the UEA is confined to specific economic issues.



expressis verbis either by reference to the Fundamental Statute of the G.C.C. or the rules embodied in the UEA.

In practice the GCC has moved collectively to build on the authorization of the Supreme Council to enter into international arrangements with the EEC and other economic groups.<sup>27</sup> The Cooperation Agreement initialled in March between the E.E.C. and the G.C.C. was signed in Luxembourg on 15 June, 1988. Mr. Genscher, President of the Council, and Mr. Cheysson, Member of the Commission with special responsibility for North-South relations, signed on behalf of the Community. Prince Saud al-Faisal bin Abdul Aziz, the

---

<sup>27</sup>The Ministerial Council in its eleventh session 12-13 June 1984 discussed the Secretariat-General memorandum and the Saudi Government memo No.96/40/15/2375813 dated 15.9.1404.A.H. It decided to endorse the principle of entering into direct negotiation with the economic groups starting with the EEC, then Japan and finally USA. This decision was preceded by another decision by the Ministerial Council taken on 14 August 1984 to delegate the Secretary-General to start his contact with the European group. The main issue on the agenda was the conclusion of agreements with the EEC in order to reduce the customs tariff which is imposed on the main GCC export products to the European market. The debate on this issue covered a series of GCC Ministerial Council sessions. These decisions are not published yet, and collected by the author during his tour of the GCC member states (November-December 1988). The first ministerial meeting between the GCC and the EEC took place in Luxembourg on 14 October 1985. Both sides agreed that discussion should cover the conclusion of a comprehensive, mutually beneficial agreement to foster the broadest possible commercial and economic cooperation between the two regions. The agreement should contain provisions covering future developments in such fields as energy, industrial cooperation, investment, transfer of technology and training. See Bull. E.C. 2 1985, point 2.2.24, Bull. E.C. 3 1985, point 2.2.24, Bull. E.C. 7/8 1985, point 2.3.29, Bull. E.C. 9 1985, point 2.3.15. See also the resolution of the European Parliament adopted on economy and trade with GCC, Bull. E.C. 2, Vol.20 1987, point 2.4.11, Bull. E.C. 5, Vol.21, 1988, p.68

Saudi Arabian Minister for Foreign Affairs and current President of the Ministerial Council of the G.C.C., and Mr. Abdulla Y. Bishara, Secretary-General of the G.C.C., signed on behalf of the G.C.C.<sup>28</sup> The Agreement sets relations between the two organisations on a contractual footing. It provides for cooperation in the following fields: economic affairs, agriculture and fisheries, industry, energy, science, technology, investment, the environment and trade.

As regards economic cooperation the two sides will seek to facilitate the transfer of technology through joint ventures and to encourage cooperation on standards. In the case of energy, both sides will promote cooperation between firms, training and joint studies on trade in oil, gas and petroleum products. They will also endeavour to promote appropriate investment protection and a reciprocal improvement of investment conditions. In the trade sector the aim of cooperation will be to encourage expansion and diversification. Both sides will also continue to accord each other most-favoured-nation treatment. In order to ensure that the cooperation measures are given practical application a Joint Council will be set up which will meet at least once a year, or at the request of one of the parties.<sup>29</sup>

On 15 June a joint political statement was issued on the occasion of the signing of the cooperation agreement between

---

<sup>28</sup> See EC Bull. 6 (1988), p.97.

<sup>29</sup> See EC Bulletin No.3, Vol.21 (1988), p.93, EC Bull., No.6, Vol.21 (1988), p.97; EC Bull. 7/8 (1988), p.90.

the G.C.C. and the E.E.C.<sup>30</sup> Nevertheless, the political

---

<sup>30</sup> On 15 June the following joint political statement was issued to mark the signing of the Cooperation Agreement between the European Community and the Gulf Cooperation Council (GCC):

"1. On the occasion of the signing of the Cooperation Agreement between the European Community and the Member States of the Cooperation Council for the Arab States of the Gulf (GCC), the European Community and its Member States and the GCC and its member States expressed their determination to continue strengthening and intensifying relations between the two regions in the political, economic and cultural fields. The signing of the Agreement will no doubt create the momentum for the strengthening of their already solid relations and will expedite the realization of their common objectives.

2. On this occasion the Ministers of the European Community and the GCC discussed regional and international issues of common interest. They expressed their deep concern over the gravity of the situation in the Occupied Territories. They share the view that the repressive measures taken by Israel against the Palestinian people are in clear contradiction to international law and human rights and must stop forthwith. This situation underlines the urgent need for a speedy negotiated settlement of the Arab-Israeli conflict. In this context, the Ministers of the European Community and the GCC, recalling respectively the Venice Declaration issued by the European Council and subsequent declarations and the Fez Plan and subsequent statements adopted by the Arab League summit, reaffirmed their support for the early convening of an international peace conference and will do their utmost with a view to reaching a just, comprehensive and lasting peace in the Middle East.

Both sides expressed their profound concern about the continuation of the war between Iraq and Iran, which endangers international peace, security and stability. They reiterated their full support for the early implementation of Security Council resolution 598 and commended the efforts of the UN Secretary General in this regard. They urged the Security Council to take every effort for the realisation of a peaceful solution to the conflict and to take whatever additional measures are necessary in accordance with the UN Charter to secure compliance with Security Council resolution 598.

The two sides also reviewed problems related to navigation in the Gulf's international waterways. They

statement did not reflect clearly that the two organisations and not the member states are the parties.<sup>31</sup> In the introductory paragraph of the statement the reference was made to the E.E.C. and the countries of the G.C.C. as parties.<sup>32</sup> This was reiterated in paragraphs 1 and 4.<sup>33</sup> Yet in paragraph 2 the statement provides:

---

explicitly emphasized that freedom of navigation and unimpeded flow of trade is a cardinal principle in international relations and international law. In this context they call upon the international community to safeguard the right of free navigation in international waters and sea lanes for shipping en route to and from all ports and installations of the littoral States that are not party to the hostilities.

3. Reaffirming that cooperation between the European Community and the GCC countries is complementary to the Euro-Arab dialogue and not a substitute for it, they expressed their determination to support actively the objectives of the dialogue and contribute positively towards its success.

4. Recognising the positive role of the GCC for the preservation of peace, security and stability of the Gulf region, the European Community and its Member States are determined to develop further cooperation with the GCC and its member States, particularly in the framework of the Cooperation Agreement. In so doing both sides will be contributing to peace and stability in the region.

5. Both sides expressed their determination to take necessary steps to ensure the early entry into force of the Cooperation Agreement signed today, and to pursue with vigour its subsequent implementation. In accordance with the provisions of the Agreement, they decided to hold one annual meeting with the participation of the Member States of the Community and the Commission on the one hand, and the member States of GCC and the Secretariat-General of the GCC on the other hand."

See EC Bull, 6-1988, pp.118-119.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

"On this occasion the Ministers of the European Community and the G.C.C. discussed regional and international issues of common interest."

This formula was also reinforced in paragraphs 4 and 5 to demonstrate the will of the two organisations.<sup>34</sup>

However, this authorisation and the practice which followed is not necessary to prove the capacity of an organisation to conclude international agreements. There are a great number of treaties concluded between the UN and both states and specialised agencies which do not fall within the categories authorized in the UN Charter. The same applies to a number of other organisations.<sup>35</sup>

Neither the OAU nor the Arab League have any constitutional authorisation for entering into agreements, but in practice they have concluded agreements with some specialised agencies.<sup>36</sup>

The wide practice of international organisations as such led some writers to the belief that capacity to conclude agreements and hence cooperation agreements, is based on customary rule of international law recognising that

---

<sup>34</sup> Ibid.

<sup>35</sup> Seyersted, "International personality of intergovernmental organisations", op.cit., pp.8-10.

<sup>36</sup> McRae, D., "Cooperation Agreements and the law relating to Agreements concluded by international organisations", in Agreements of International Organisations and the Vienna Convention on the Law of Treaties, edited by Zemanek, K., New York (1971), p.13.

capacity.<sup>37</sup>

However, the contributions of the International Commission as to the question of agreements between states and international organizations or between several international organizations have defined the concept of capacity within the functions of the organization.<sup>38</sup>

The basic rule as to the legal capacity of international organizations is therefore stated in Article 6 of the Vienna Convention on the Law of Treaties between states and international organizations or between international organizations:

"The capacity of an international organization to conclude treaties is governed by the rules of that organization."<sup>39</sup>

It is rightly observed by the Rapporteur of the International Law Commission, Paul Reuter on this question when he states:

"The most important question... is whether all international organizations, both universal and regional, serving a general or a specific purpose, have the same capacity to conclude treaties. On that point, a firm negative reply can be given at once. As far as its capacity to perform legal acts

---

<sup>37</sup>Chiu, H., The Capacity of International Organizations to Conclude Treaties and the Special Legal Aspects of the Treaties So Concluded, The Hague, Nijhoff (1966), p.34. See also, Seyersted, "Objective International Personality of International Organisations", op.cit., p.10; Schneider, Treaty-Making Power of International Organisations, Geneva, Droz (1959), pp.139-42.

<sup>38</sup>For the discussion and draft of Article 6 of the Vienna Convention on the law between states and international organizations, or between international organizations, see Yearbook of the International Law Commission (Y.B.I.L.C.) (1979) II/II, 139, (1974) II/I, p.145, (1973), I.P. 209, (1972) II, pp.178-182.

<sup>39</sup>See the text in I.L.M. Vol.25 (1986), pp.543-592.

of whatever kind is concerned, any international organization is a highly individualized entity which cannot a priori be assimilated to any other. An intergovernmental organization... is based on a treaty between states: each intergovernmental organization is shaped individually by the will of its founders, and subsequently of its members... It necessarily results that, if we consider the specific content of the capacity of an international organization, this capacity depends essentially on the law peculiar to each organization."<sup>40</sup>

There is another category of agreements the GCC member states concluded collectively, yet which cannot be subject to international law and did remain governed by private law.<sup>41</sup> These are contracts between the GCC as an international person on the one hand and companies or natural persons under a domestic legal system on the other hand, and therefore should be governed as a rule by the system of municipal law chosen by the parties.<sup>42</sup>

## 2. Essential Element - 'Volonté Distincte'

The concept of *volonte distincte* refers to that international authority which is unique to the legal personality of an international institution. It is only when

---

<sup>40</sup>Reuter, P., Third Report on the question of treaties concluded between states and international organizations or between two or more international organizations, UN Doc. A/CN.4/279, Y.B.I.L.C. (1974) II/I 135, at p.146.

<sup>41</sup>The GCC delegated Saudi Arabia to negotiate on behalf of the Council to buy rice from an association of rice export located in Pakistan where they reached an agreement to sell rice to all the GCC member states at \$665 per ton. See the GCC Annual Report, 1985, op.cit., pp.88-9.

<sup>42</sup>Mann, A., "The proper law of contracts concluded by international persons", 35 B.Y.I.L. (1959), p.41.

an international organ is able to exercise "volonté distincte, superior to that of the member state, that it is possible to speak of genuine power (or will) and existence of international personality of the organization."<sup>43</sup>

Some writers maintain that in order to detect the existence of "volonté distincte" for an organisation the existence of a power of decision-making by majority is a necessary element to indicate its international personality.<sup>44</sup>

However, Article 13 of the GCC Fundamental Statute provides that the resolutions of the Supreme Council on substantive matters are taken by unanimous vote of the member states participating in the voting.

In spite of the provision for unanimity the GCC does not cease to have legal personality as the organisation continues to act on behalf of its members and its will (volonté) is

---

<sup>43</sup>See Adam, A, Les établissements publics internationaux, Librairie generale de droit et de jurisprudence (1957), who states at p.57: "Le pouvoir international est la marque de la personnalite internationale qui comporte egalement d'autres elements revelateurs de l'apparetenance a l'ordre juridique international. C'est dans la mesure ou un organe international peut manifester une volonte independante et superieur a celle d'un etat membre composant qu'on peut parler de la realite du pouvoir, de l'existence de la personnalite internationale de cet organe."

<sup>44</sup>This view is expressed by Mouskhéli, regarding the international personality of the Arab League. According to Art.7 of the League pact, only those decisions taken unanimously are binding on all the member states. He thinks that as a result of this provision there is no detached will for the organisation and therefore it lacks international personality. See his article "La ligue des Etats Arabes: Commentaires du pacte du 22 Mars", 3 R.G.D.I.P., Tome L (1946), pp.149-151. A similar view is expressed by El-Gunaimy, M., The League of Arab States, Alexandria (1973), p.153 (Arabic).



detached from that of its member states.<sup>45</sup>

Reuter raises this issue stating that:

"...if the organization has jurisdiction then its decisions, even when taken unanimously by the member states, have the immediate force of law and bind that state as decisions and not as agreements subject to national conditions of constitutional validity."<sup>46</sup>

The GCC as such has independent organs established by sovereign states and entrusted with common interest towards cooperation and integration.<sup>47</sup>

One may argue that the distinct will of the GCC as an organisation could be realised in the light of its unanimous decisions if it is incorporated in the internal law of the member states, whereas it changed the individual characteristics of the legal system of each member and replaced it with characteristics of community law.

New laws have in fact been enacted on the domestic plane to reflect Supreme Council decisions (e.g. by providing for supremacy of the UEA provisions - which are implemented by those decisions - over local law, either by modifying or repealing conflicting laws).

---

<sup>45</sup>See in this meaning, Kelsen, The Law of United Nations, op.cit., p.329, who states that the rule of unanimity does not exclude the assumption that international organs exercise rights and competence of the community and act on behalf of the community, not the members.

<sup>46</sup>Reuter, P., International Institutions, George Allen & Unwin Ltd., London (1958), p.215.

<sup>47</sup>The preamble of the GCC spells out the notion of permanence clearly when it declares the aim of the organisation is to achieve coordination, cooperation and integration on the path of "unity".

These new laws covered a great area of the UEA provisions which are new to the legal system of the member states. Laws which provide for free movement and equal treatment of goods, including elimination of customs duties on products of member states (Articles 1, 2 and 3 of the UEA).

New laws in Member States accord the GCC means of passenger and cargo and transportation, ships, boats and their cargoes belonging to citizens of other member states the same treatment accorded to those belonging to their own citizens (Articles 18 and 20 of the UEA).

New laws in member states give all GCC citizens the same treatment granted in the member states, without discrimination or differences in the fields of freedom of movement and residence, right of ownership, freedom of exercising economic activities and movement of capital (Article 8 of the UEA).<sup>48</sup>

However, it must be pointed out that incorporation of common policies into national law does not necessarily prove the existence of the legal personality of the G.C.C.

Furthermore, the organisation exercises organic jurisdiction over its organs which includes enacting regulations which govern procedures, rights and duties of the

---

<sup>48</sup>See the decisions of the Supreme Council on implementing the UEA and the following constitutional procedures in each member state in Initial Measures taken by the Member States to Implement the UEA, GCC Secretariat Publications (1984), op.cit., pp.3-31. See also The Decisions and Measures taken to Implement the Unified Economic Agreement, GCC Secretariat, 2nd ed. (1987), pp.17-178.

staff vis-a-vis the organization itself.<sup>49</sup> Some of these are fulfilled through the decisions of the GCC Secretary-General without even requiring voting.<sup>50</sup>

Moreover, one may argue that the unanimous approval of the GCC member states participating in the voting does not always assure that the positive unanimity of all the member states will be attained (Article 9.2 of the Fundamental Statute). The absence of some members does not preclude taking decisions by at least two-thirds of the member states (Article 7(4) of the Fundamental Statute).

There yet remains the question that one should admit that the unanimity rule for small and closed types of organizations, such as the GCC, is more appropriate than majority rule.

The liberal approach of interpretation which takes into account new developments may be unsuited to the GCC. For, to achieve this unanimity the members may have to rely more heavily on the text of the constitution. In organisations adopting the majority principle the position is rather different. They are more likely to apply a liberal interpretation "... of the purposes and functions of an

---

<sup>49</sup>Seyersted, F., "International personality of international organisations", I.J.I.L., op.cit., pp.6-8.

<sup>50</sup>For the powers of the Secretary-General in both the administrative staff regulation and the financial regulation, supra, pp.203-08.

organisation ..."<sup>51</sup> conceiving it "... as a dynamic institution evolving to meet changing needs and circumstances and, as time goes by becoming further and further removed from its treaty base."<sup>52</sup> This may lead to confrontation and eventually to withdrawal from the organization.<sup>53</sup>

### 3. The GCC Joint Command Forces

There is a certain special attribute of personality which attaches to the GCC and that is the power to maintain international forces.

This special attribute may derive from the very wide and general functions and powers stipulated in the GCC Fundamental Statute. The power to maintain an international force is not provided for in the Statute, but the Supreme Council decided in 1983 to establish a joint command force, in order to ensure the Gulf security and safeguarding the peace and stability of the GCC member states.<sup>54</sup>

---

<sup>51</sup>Bowett, The Law of International Institutions, op.cit., p.338

<sup>52</sup>Ibid., p.338.

<sup>53</sup>Ibid., p.338.

<sup>54</sup>The GCC participating forces consist of paratroops, artillery, tanks and mechanised infantry. Kuwait, Qatar, Saudi Arabia, the UAE and Oman were represented by contingents of approximately brigade strength. Bahrain, with the smallest defence establishment among the Gulf states, sent a detachment no larger than a company. In addition, the UAE contributed aircraft: both Mirage interceptors and Gazelle helicopters. The total number of men involved in their first manoeuvre announced was estimated by unofficial sources at c.5,000. Middle East Contemporary Survey, op.cit. (1983-4), p.389.

It must be noted, however, that a common military arrangement is not a necessary requirement of international organisation. Several international organizations do not have such position (e.g. Economic Community of West African States (ECOWAS), OAU, FAO, etc.)

In 1933, the League of Nations established an international detachment in connection with the Leticia dispute and in 1934 the Council of the League sponsored an international force to police the Saar plebiscite.<sup>55</sup>

It is interesting to note that the UN Command in Korea, UNEF, UNOGIL, ONUC, UNYOM and UNFICYP provide useful examples of remarkable attributes of international personality.<sup>56</sup>

The constitutional basis of the GCC joint command forces however is not articulated in as much detail as is the case with the UN.<sup>57</sup> However, one may assume that the GCC joint forces is a "subsidiary" organ of the Supreme Council and it is established in accordance with Article 6 of the Fundamental

---

<sup>55</sup>14 O.J.L.N. (1933) 977-979 and 15 O.J.L.N. (1934), pp.1729-1730 respectively.

<sup>56</sup>See Bowett, op.cit.

<sup>57</sup> Art.40 of the UN Charter. There are certain differences between the UN and the GCC forces. The GCC forces do not enjoy privileges and immunities. They have their independent budget from that of the Secretariat. The GCC Secretary-General does not have any supervisory power over the forces in spite of the fact that they take their orders from the Defence Committee (composed of the Ministers of Defence and Chiefs of Staff) which is one of the Secretariat Committees. In addition to this Committee there is the Military Committee which is an organ in the GCC Secretariat. The latter committee is responsible, inter alia, for organizing the administrative and other military affairs of the Defence Committee. Private information of the author.

Statute<sup>58</sup> which provides:

"The cooperation Council shall have the following main organs:

1. Supreme Council to which shall be attached the Commission for Settlement of Disputes.
2. Ministerial Council.
3. Secretariat-General.

Each of these organs may establish subsidiary organs as necessary."

The United Nations Emergency Forces as such were classified by the Secretary-General as the subsidiary organ of the General Assembly and this position has received general support.<sup>59</sup>

Furthermore, in the experience of the UN it is not always easy to identify the Charter article in which the Security Council has based its establishment of a UN force.<sup>60</sup> A matter which has led some writers to the belief that it is the inherent power of international organizations to establish military forces and which cannot be challenged without express provisions to the contrary.<sup>61</sup>

## II. The Legal Personality on the Domestic Plane

The legal personality of an organisation as in the case

---

<sup>58</sup>For the value of this view see Sohn, B., "The authority of the United Nations to establish and maintain a permanent United Nations force", 52 A.J.I.L. (1958), p.234.

<sup>59</sup>See Bowett, United Nations Forces, London, Stevenson & Sons (1964), p.287.

<sup>60</sup>See Seyersted, "Some legal problems of the UN forces", 37 B.Y.I.L. (1961) pp.436-37.

<sup>61</sup>Ibid., p.461.

of states derives its existence from public international law and municipal law only warrants its effectiveness in the territory of the member states.<sup>62</sup>

Jenks states:

"It is as inherently fantastic as it is destructive of any international legal order to regard the existence and extent of legal personality provided for in the constituent instrument of an international organisation as being derived from, dependent upon and limited by, the constitution and laws of its individual member states."<sup>63</sup>

For the constituent instrument of the international organization to give effect to the legal personality on the domestic plane there is a need of recourse to other instruments incorporated into the legal system of the member states, such as the Headquarters Agreements or the Privileges and Immunities Agreement and sometimes there is need for a municipal legislation to avoid domestic difficulties.

The Headquarters Agreement usually operates in the host state and does not provide capacities in other member states. Accordingly it is doubtful that the legal personality of the organisation in those states is secured.

Nevertheless, a Headquarters Agreement may be taken as evidence of legal personality of the organisation. Although the G.C.C. has yet to sign a Headquarters Agreement, the signing of such an agreement is usually evidence of the recognition of legal personality of the organisation.

---

<sup>62</sup>See Jenks, "The legal personality of international organisations", 22 B.Y.I.L. (1945), p.270.

<sup>63</sup>Ibid., pp.270-71.

In the case of the G.C.C., the incorporation of certain legal instruments into municipal legislation (such as the Fundamental Statute and the Agreement on Privileges and Immunities) conferring immunities on the G.C.C., is sufficient to claim that the G.C.C. enjoys legal personality on the domestic plane. Such incorporation may also lead to the conclusion that the legal personality of the G.C.C. implies that member states are not severally liable under domestic law. In both instruments mentioned above, "legal capacities" should be interpreted in the light of international law which requires a separation of the entity of the organisation from that of the member states. Secondly, there appears to be no legislation in the G.C.C. member states which holds member states of an international organisation severally liable.

An example worth citing in some detail is the agreement between the British Government and the International Tin Council (ITC). The agreement was a directly relevant issue before the Court of Appeal.<sup>64</sup>

---

<sup>64</sup> See J.H. Rayner (Mincing Lane) Ltd. v. Department of Trade and Industry and Others; Related Appeals; MacLaine Watson and Co. Ltd. v. Department of Trade and Industry. The case is reported in 3 All England Law Reports [1988], pp.257 et seq. The court rejected by a 2:1 majority the creditors' argument that ITC's members were legally liable for the organisation's debts and dismissed appeals against the High Court's striking out of a petition for the compulsory winding up of the ITC and refusal to appoint a receiver of the ITC. However, Lord Justice Nourse dissenting said that in ITA6 the members did not, as they easily could have done, expressly exclude or limit their liability for ITC obligations. The intention was that ITC members should be liable for its obligations. The ITC had separate personality in international law, but its members were nevertheless jointly and severally, directly and without limitation liable for its undischarged debts.



The legal problems involved in the proceedings of this case do not only concern English law. They concern all international organisations operating in the host countries and require analysis on the plane of public international law and of the relationship between international law and the domestic law of those countries. Such relationship between international law and municipal law raises also the issue of liability of international organisations in the municipal courts. Laws of the states differ as to whether the exclusive liability of an international organisation is a necessary corollary of its legal personality.

A. The Headquarters Agreement of the ITC

According to the legal system of some countries (e.g. U.K.), the Headquarters Agreement cannot operate on the domestic plane without the enactment of municipal legislation. This was, inter alia, the issue which was dealt with in J.H.

---

For the criticism of this judgment see "ITC - Bringing the Law into Disrepute" in Business Law Brief, (ed.) A. Hermann, May, 1988, pp.297-9. Two judgments brought under appeal have common nature as to the possible liability of the ITC members on contracts made in the name of the organisation. These are J.H. Rayner (Mincing Lane) Ltd. v. Dept. of Trade and Industry, Butterworths Company Law Cases (1987), pp.557-706, and MacLaine Watson & Co. Ltd. v. Department of Trade and Industry and Others (1987), ibid., pp.707-16.

For short comments on the cases brought against the ITC see Ramond, H., "Tin's losses, lawyers' gain. Collapse of the International Tin Council and succeeding litigation", Law Mag. 1987, 1 May, pp.30-31. See also MacGlashan, M., "Winding up corporate personality. The International Tin Council. Should a trading organisation enjoy immunity?" C.L.J. 1987, 46(2), pp.193-95; Cunningham, A., "Winding up corporate personality. Court lacks jurisdiction to wind up international organisation", Oil & Gas: Law & Taxation Review, 1986/87, 5(12), pp.146-7; Owles, D., "Whether the Tin Council can be wound up", N.L.J., 1987, 137 (6294), 206.

Rayner (Mincing Lane) Ltd. v. The Department of Trade and Industry and Others; Arbuthnot Latham Bank Ltd. and Others v. Department of Trade and Industry and Others; Maclaine Watson & Co. Ltd. v. Department of Trade and Industry.<sup>65</sup>

This case concerned the Sixth International Tin Council Agreement (ITA6) which was concluded in April 1982 by 23 sovereign states and the EEC. Due to the fact that the seat of the Council was located in London, a Headquarters Agreement was concluded in February 1972 between the Government of the United Kingdom and the ITC. Those two instruments, ITA6 and the Headquarters Agreement, were international treaties and did not form part of English law.

The process of enactment, "perfectly or imperfectly", of some part of their provisions into English law is necessary to give effect to the two agreements on the domestic plane. This process begins with the International Organisation Act 1968<sup>66</sup> which provides:

"1(1) This section shall apply to any organisation declared by Order in Council to be an organisation of which

(a) the United Kingdom, or Her Majesty's Government

---

<sup>65</sup> Ibid., pp.323-324. On the breakdown of the ITC see McFadden, E., "The collapse of tin: restructuring a failed commodity agreement" 80 A.J.I.L. (1986) p.811 et seq; The House of Commons Second Report from the Trade and Industry Committee, session 1983, The Tin Crisis, Vol.1, p.IV et seq. On the proceedings initiated by creditors in the United Kingdom, see P. Sands, "The Tin Council litigation in the English courts" 34 N.I.L.R. (1987) p.367 et seq.; Herdegen, M., "The insolvency of international organisations and the legal position of creditors: some observations in the light of the International Tin Council Crisis", N.I.L.R. (1988), pp.135-144.

<sup>66</sup>Ibid., p.280

in the United Kingdom, and

(b) one or more foreign sovereign powers, or the Government or Governments of one or more such powers, are members."

The Act in Article 2(a) confers on the organisation the legal capacities of a body corporate.

In accordance with the above Act parliament has approved the 1972 Order which confers on the ITC the legal capacities of a body corporate.<sup>67</sup>

This sort of relationship between international treaties and English law supports the proposition that the legal capacity of an international organisation may depend on municipal legislation to determine its scope in municipal law.

It is well settled that an international treaty to which the United Kingdom is a party does not alter the law of England. That is the function of Parliament, or of delegated legislation.<sup>68</sup>

Lord Denning M.R. in Blackburn v. Attorney-General<sup>69</sup> states:

"...It is elementary that these courts take no notice of treaties as such. We take no notice of treaties until they are embodied in laws enacted by Parliament, and then only to the extent that Parliament tells us."

However, the crucial question before the court was the determination of the meaning of para.5 of the 1972 Order in Council in order to ascertain the relationship between the

---

<sup>67</sup>Idem.

<sup>68</sup> Ibid., pp.291, 324-325.

<sup>69</sup>2 W.L.R. [1971] at p.1039.

Headquarters Agreement, ITA6 and English domestic law.<sup>70</sup>

The Order in Council used the words, "shall have the legal capacities of a body corporate", while the ITA6 and the Headquarters Agreement used the term "legal personality".

In determining this relationship the court had to consider how far the concept "legal capacities of a body corporate" relates to legal personality in international law.

The only instrument having direct effect in English municipal law is the 1972 Order. Article 4 of the Order provides that the ITC is an organisation in international law, and Article 5 does no more than to confer "capacities on this organisation without purporting to define, or to alter its legal nature in any way. So the Court must consider the Sixth Agreement against the background of international law in order to inform itself about the nature of the ITC."<sup>71</sup>

It is accepted in English law that if domestic legislation deals with the topic as in an international treaty, it would be proper to examine the treaty to resolve any ambiguity in English legislation.

In Salomon v. Commissioners of Customs and Excise Diplock L.J. said:

"When the Crown has entered into a treaty the court will so far as possible construe a domestic Act in conformity with the treaty, so that the Crown in its judicial capacity does not sleep while in another

---

<sup>70</sup>The judgment of the Court of Appeal, op.cit., pp.292, 338.

<sup>71</sup> Ibid., pp.292-3.

capacity it watches."<sup>72</sup>

The law of the creation of the ITC is public international law and the constituent instrument is the Sixth International Tin Agreement. But no rule of English law prohibits the examination and interpretation of the Agreement, although it is an international treaty not directly incorporated into domestic law.<sup>73</sup>

However, the problem of interpretation of U.K. obligation by looking at treaty provision lies in the fact that the 1972 Order expressly refers to the Headquarters Agreement in para.1 and uses at the same time the words "shall have legal capacities of a body corporate".<sup>74</sup>

It would be rather easy to refer to the Headquarters Agreement to infer the intention of English legislation to comply with the international obligation imposed by the Headquarters Agreement (i.e. the Council shall have legal personality). But the 1972 Order used the words "shall have legal capacities of a body corporate" because no other power was conferred by the enabling Act (the International Organisation Act 1968). The Act was directed at a whole host of international organisations and not only the ITC.<sup>75</sup>

---

<sup>72</sup> 2 Q.B. 116 [1967] at p.132.

<sup>73</sup> The judgment of the Court of Appeal, op.cit., p.343.

<sup>74</sup> Ibid., pp.280-81.

<sup>75</sup> Ibid., pp.338-40.

In order to construe the true meaning of "legal capacities of a body corporate" the judge referred to previous legislation containing similar words, especially the United Nations Act (1946). There is no doubt that what the legislator had in mind was to establish international legal personality with the necessary implication that the members of the organisation were not liable for its obligations.<sup>76</sup>

---

<sup>76</sup>Ibid., pp.338-40. In another case the question of liability of international organisation against third parties has received different legal treatment. In the case Westland Helicopters Ltd. v. Arab Organisation for Industrialization (AOI), United Arab Emirates, Saudi Arabia, Qatar, Egypt and British Helicopter company [1984], the four sovereign aforementioned states concluded an agreement establishing an Arab Industrialization Organisation. On 14 May 1979 after the Camp David Agreement between ARE and Israel and as a result of it the three Gulf states decided to put an end to the organisation by their withdrawal. There the issue was whether the claimants were entitled to arbitrate against the member states which comprised the AOI. It was held that the answer depended on whether the states were liable for the obligations of the AOI and that they were so liable. The Tribunal appears not to apply the concept of legal personality, which necessarily excludes the liability of the individual member states. It held:

"The fact that the AOI 'has the juridical personality', 'enjoys full administrative and financial independence' and has the right of ownership, disposition and litigation as mentioned in its statute (Treaty, Art.2: in the same vein, see Basic Statute, Art.5), that is to say the express attribution of legal personality, of administrative independence and of the right to sue in the courts, do not in any respect allow one, as has been shown, to deduce an exclusion of the liability of the four states."

See the Award of the ICC in International Legal Materials, Vol.33 (1984), pp.1073-89 at p.23 and 25 of the Award. For similar view, see Schermers, op.cit., p.780.

Under the EEC law, the European Court of Justice requires that member states are sued for their liability before any claim against the Community. See Schermers, H., Judicial Protection in the European Communities, Kluwer Europa Instituut, Third edition (1983), pp.313-18. See also, Lasok, D. and Bridge,

Gibson L.J. observed that from the statutory context of the 1968 Act, it appears that Parliament should have intended that "... a contract made by the ITC was made by the ITC as a separate entity and that sufficient legal personality for that to be the position in law was conferred on the ITC by the 1972 Order".<sup>77</sup>

He further emphasised the separate entity of the ITC by rejecting the principle relied upon by the plaintiffs in the Westland Helicopter Case, that because the liability of the members had not been excluded in the constituent instrument of the organisation, the member states should be held liable.<sup>78</sup>

B. The Headquarters Agreement of the GCC

The Headquarters Agreement ensures the functioning of the organisation in a particular area.<sup>79</sup> There is little doubt

---

J., Introduction to the Law and Institutions of the European Communities, op.cit., p.40.

The International Law Commission's Draft on the Law of Treaties between States and International Organisations or between International Organisations envisaged obligations of the members of an international organisation flowing from agreements between the organisation and other states only on the basis of their clearly expressed consent. But this provision was not adopted as a part of the Vienna Convention on the Law of Treaties between States and International Organisations or between Organisations, UN DOC.A/CONF.129/15. See G.E. da Nascimento e Silva, "The Vienna Convention and the treaty-making power of international organizations", 29 G.Y.I.L. (1986), pp.79-82.

<sup>77</sup> The judgment of the Court of Appeal, Ibid., p.341.

<sup>78</sup> Ibid., pp.352-3. For Westland Helicopter Case, see supra, note 76.

<sup>79</sup> See Jenks, C., The Headquarters of International Institutions. A Study of Their Location and Status. The Royal Institute of International Affairs (1945), p.45.

that this type of agreement ensures the legal capacity of an international organisation to contract under local law.<sup>80</sup>

In fact the Headquarters Agreements cover the same grounds as the general agreement on privileges and immunities among member states. In addition to that the Headquarters Agreement includes special provisions regarding freedom of access to the Headquarters, police protection and public utility services and the law applicable to the organisation's premises.<sup>81</sup> The GCC has not concluded any Headquarters Agreement with the Saudi Arabian Government.

In the absence of a Headquarters Agreement but with the existence of the General Agreement on Privileges and Immunities, certain writers contend in law that the host country is under a duty to grant certain basic privileges and immunities to the organisation as is necessary to its task.<sup>82</sup>

---

<sup>80</sup>See Detter, op.cit., p.124. See also, Parry, C., "The treaty making power of the United Nations", op.cit., p.146 who states that the same argument used against the UN general convention on privileges and immunities could be used here that both treaties came to existence as an application to the provisions of the Charter of the UN which is approved by the member states. For the same view, see the UN Secretariat opinion in Y.I.L.C., 1967, p.246.

<sup>81</sup>See Jenks, International Immunities, op.cit., pp.7-9.

<sup>82</sup>See Jenks, "The legal personality of international organisations", op.cit., pp.270-73. For the opposite view, see the case of Standard Chartered Bank v. I.T.C. (Q.B.D.) 1 W.L.R., 22 May 1987, pp.641-44. As far as the GCC is concerned one has to emphasise that it is one of basic immunity which should be prima facie given to the organisation that its property and assets wherever located and by whomsoever held shall be immune from search. Article 2(2) of the GCC Agreement on privileges and immunities provides this principle. The Agreement itself is incorporated in the legal systems of the member states. In this regard very few incidents occurred in the host country concerning inspecting



It is maintained that the general convention would govern the position in this case more fully than the Headquarters Agreement, which may have temporary character.<sup>83</sup>

However the GCC constituent instrument is not in fact silent on the question whether the organisation may conclude Headquarters Agreements. Article 17 provides that:

"(2)... A special agreement shall organise the relation between the Council and the state in which it has its headquarters.

(3) Until such time... its staff shall enjoy the diplomatic privileges and immunities established for similar organisations."

The shortcoming of this provision is that it defines the privileges and the immunities accorded by reference to undefined privileges and immunities to be accorded to other international organisations.<sup>84</sup>

---

newspapers and magazines owned by the GCC (e.g. Kuwaiti newspaper called Al-Waton and The Times of London). The problem was solved later through telephone conversation between the GCC Legal Department and the competent authorities in Riyadh. An interview conducted by the author with the General Director of the Legal Department of the GCC, Dr. Al-Sayari, 22.11.1986. One should assert that censorship of newspapers either those published in the GCC member states or outside the GCC is a common procedure in all GCC member states.

<sup>83</sup>See, for example, Agreement concluded between WHO and China, UNTS, Vol.210, pp.78, 80 and 82 cited by Detter, Law Making by International Organisations, op.cit., p.126.

<sup>84</sup>Article 17(2) and (3) of the GCC Fundamental Statute bears resemblance to Article 60 of the ICAO Convention which provides:

"Each contracting state undertakes, so far as possible under its constitutional procedure, to accord to the President of the Council, the Secretary General, and the other personnel of the organisation, the immunities and privileges which are accorded to corresponding personnel of other public international organisations."

The legal personality of the G.C.C. on the domestic plane, however, is secured in the G.C.C. member states since the G.C.C. Agreement on Privileges and Immunities confers legal capacities on the organisation and the treaty has been incorporated into the legal systems of each member state.

C. The GCC Agreement on Privileges and Immunities 1984

Another right which is associated with the international personality of organisations is the enjoyment of the rights of privileges and immunities from the local jurisdiction of member states.

The GCC member states concluded an agreement on privileges and immunities in March 1984.<sup>85</sup>

---

Similar also is the case of Article VIII(4) of the FAO Convention which provides:

"Each member nation and associate member undertakes, insofar as it may be possible under its constitutional procedure, to accord to the Director General and senior staff diplomatic privileges and immunities and to accord to other members of the staff all facilities and immunities accorded for non-diplomatic personnel attached to diplomatic missions, or alternatively, to accord to such other members of the staff the immunities and facilities which may hereafter be accorded to equivalent members of the staff of other public international organisations."

For the text of the conventions see Sohn, L., International Organisations and Integration, Martinus Nijhoff (1986), pp.514-33 and pp.482-90.

<sup>85</sup>For the text of the agreement and the ratification instruments of the member states, see The GCC Legal Gazette, 13 ed. (1985), pp.167-74. It was signed by the six member states on 11.3.1984 and ratified on the following dates: Qatar on 2.4.84, Bahrain on 3.4.84, Saudi Arabia on 21.7.84, Oman on 11.2.85, UAE on 13.3.85 and Kuwait on 20.3.80.

The conclusion of such treaties evidences the capacity of an organisation to conclude agreements as has been referred to and may pave the way for the international personality of an organisation to operate on the national plane. This point may be illustrated by referring to the incorporation process which took place in the GCC member states by issuing decrees which express their approval of the Agreement on privileges and immunities. According to the constitutions of the member states the Agreement becomes part of the domestic law and there is no need for further legislation.<sup>86</sup>

The GCC agreement on privileges and immunities is identical to that of the UN from which the GCC heavily borrowed most of its provisions. However, certain differences exist between the two instruments.<sup>87</sup>

Article 15 of the GCC's agreement, which is similar to Art.IV(18) of the UN Convention on Privileges and Immunities, grants certain privileges and immunities to the GCC officials without any form of nationality distinction. The GCC's agreement, however, covers only: (a) immunity from arrest or detention in regard to acts performed by them in their official capacity; (b) immunity from legal process in respect of words and acts in their capacity as GCC officials even after such capacity terminates; (c) exemption from taxation

---

<sup>86</sup>For the incorporation process of international treaties under internal law of the member states, see supra, pp.113-16.

<sup>87</sup>For the UN General Convention on Privileges and Immunities, see Vol. 1-4 UNTS (1946-7), pp.16-33.

on salaries and emoluments.

The exemptions from national service obligations are not included, but the GCC agreement draws distinction between senior officials who enjoy civil service immunity and junior officials who enjoy such immunity only when they are not nationals of the host state.<sup>88</sup>

By contrast, Art.IV(18) of the UN General Convention provides without qualification that officials of the UN shall be immune from national service obligations.

However, the GCC agreement provides exemption for the official of the organisation where public service obligations are concerned. As concerns military service, this may be delayed for a maximum of two years where the national

---

<sup>88</sup>Art.18 of the agreement.

government so requests.<sup>89</sup>

Furthermore, Article 18 of the Agreement confers on non-Saudi junior officials below the eighth rank<sup>90</sup> the following privileges:

(a) Immunity together with their spouses and their relatives dependent on them, from immigration restrictions and alien registration.

(b) Privileges in respect of exchange as are accorded to the officials of comparable ranks forming part of diplomatic mission to the host state.

---

<sup>89</sup>Art.20 which provides that the delay cannot be more than two years applies also to the experts according to Art.22. It is to be noted that according to Section 18(C) of the UN agreement both the civil service and military service obligation are national obligations, the UN officials are exempted without distinction between them. Some of the G.C.C. member states have enacted domestic laws providing for conscription and consequently insisted on the provision above.

Kuwait is mainly concerned with this provision. It therefore made reservation on the first draft which stated that a list of names of the exempted persons should be drawn up and be submitted by the Secretary General to the state concerned for its approval. The main reason for that is that it violates its internal law concerning conscription.

Oman in its memo No. 3/3/4928 dated 15.7.1982 made reservations without declaring reasons. UAE made reservations and suggested the following amendment:

(a) The provision should provide two years only for the exemption which cannot be extended; or

(b) to leave the matter for the state concerned; or

(c) to replace the word "exemption" with another.

The UAE delegation however has announced that UAE has drafted a conscription statute.

<sup>90</sup>Those officials holding the eighth rank onwards classified according to the GCC Administrative Regulations: Specialised (B), Director (C), Specialised (A), Director (B), Director (A), General Director. All these ranks come below the rank of Secretary General Assistant. See the Regulation, GCC Secretariat, op.cit., at p.38. See also the study on The Regulation of the GCC Secretariat, Public Administration Institute, Saudi Arabia, 1403 A.H. at p.171.

(c) Repatriation facilities in time of international crisis as diplomatic convoys. (The provision omits without justification the reference to the official's spouses and relatives.)

(d) The exemption from import fee of duty on their furniture during two years of taking up their post in the country in question.

This group of privileges is considerably justified to be granted only to other nationals of the host state since such immunity is granted ratione materiae and not ratione personae.

It is significant to note that unlike the UN General Convention agreement the GCC's agreement makes an exception for the general rule of immunity from legal process for officials by providing that:

"The officials of the Secretariat-General who possess the nationality of the host country whatever their positions are, may not claim immunity before domestic courts concerning matters extraneous to their official duties."<sup>91</sup>

The above provision may raise fears to some writers as regards the determination of what is an official act and private act and who decides that, since the GCC does not have its own tribunal.

Jenks points out on this fact that:

"If a national court can assume jurisdiction over private acts of an international official without a waiver of immunity by international institution concerned, the determination of the official or private character of a particular act pass from international to national control... In the case of international as in that of diplomatic immunities

---

<sup>91</sup>Art.19 of the Agreement.

the only principle which affords real protection is that of complete immunity from jurisdiction."<sup>92</sup>

However, there is little doubt that the greater part of judicial interpretation of international agreements falls to the municipal rather than the international tribunals.<sup>93</sup>

Furthermore, there are some specialised agencies and regional organisation statutes which make an exception to the diplomatic immunity in case of nationals, even in respect of the Secretary-General as regards judicial proceedings concerning matters extraneous to their official duties.<sup>94</sup> The idea behind this exception may be that according to generally recognised rules of international law, when an international official is a national of the host state, he does not enjoy the privileges and immunities to the same extent as other

---

<sup>92</sup>Jenks, W., "Some problems of an international civil service", Public Administrative Review, Vol.III, No.1 (1943), p.103.

<sup>93</sup>Schreuer, C., "The interpretation of treaties by domestic courts", XLV, B.Y.I.L. (1971) p.255. See also, Falk, R., The Role of Domestic Courts in the International Legal Order, Syracuse University Press (1964), pp.19-20.

<sup>94</sup> European Community officials of whatever rank do not have complete immunity from the jurisdiction of national courts, but only immunity from legal process for acts performed by them in their official capacity. Yet there is a jurisdiction in the court of the Communities to take proceedings against a community or an official for official or personal fault. See Bowett, The Law of International Institutions, op.cit., p.356. Another example exists in Art.19 of the Agreement between UNESCO and France which excepts French nationals from diplomatic immunity in matters not relevant to their work. For the text of the agreement see U.N.T.S., Vol.357, pp.3-26.

officials who are of foreign nationality.<sup>95</sup>

Article 25 of the GCC agreement deals with disputes between states on the interpretation or application of the agreement when no settlement could be reached by negotiation or other means. Then the dispute should be taken to the Commission of Settlement of Dispute according to Article 10 of the Fundamental Statute.

The above article does not provide for dispute settlement between the Secretariat and member states, although disputes are possible in view of the fact that the agreement deals at length with the status of the Secretariat officials, who are protected by the organisation and not by the member states.

Accordingly, and as the International Court of Justice states:

"It must be noted that the effective working of the organisation, the accomplishment of its task and the independence and the effectiveness of the work of its agents require that these undertakings should be strictly observed. For that purpose, it is necessary that, when an infringement occurs, the organisation should be able to call upon the responsible state to remedy its default, and in particular to obtain from the state reparation for damages that the default may have caused to its agents."<sup>96</sup>

The Court states further that the agent

"should not have to rely on the protection of his

---

<sup>95</sup>See Ahluwalia, K., The Legal Status of the Specialised Agencies of the United Nations and Certain Other International Organisations, Martinus Nijhoff, The Hague (1964), pp.177-78. The author gives many examples of organisations which deny the officials of the nationality of the host state the privilege of exemption, like IMCO, OAS, IAEA and FAO.

<sup>96</sup>Reparation for Injuries Suffered in the Service of the United Nations Case, ICJ Report (1949), p.183.



own state. If he had to rely on that state, his independence might well be compromised."<sup>97</sup>

However, Article 25 of the GCC Agreement on the Privileges and Immunities does not seem to be formulated properly or even render an effective way for settlement of dispute between the member states. It provides:

"If the subject of the dispute arises out of the interpretation or application of the present agreement and has not been resolved by negotiation or any other means of settlement agreed upon, then the dispute could be referred to the Commission of Settlement of Dispute in accordance with Article 10 of the Fundamental Statute of the Gulf Cooperation Council for Arab States."

The Article refers the dispute to the Commission of Settlement of Disputes according to Article 10 of the Fundamental Statute. Article 10 of the Statute includes only disputes arising over the interpretation or implementation of the Fundamental Statute. It provides:

"If a dispute arises over interpretation or implementation of the Fundamental Statute and such dispute is not resolved within the Ministerial Council or the Supreme Council, the Supreme Council may refer such dispute to the Commission for Settlement of Dispute."

A recourse to Article 3(1) of the Commission Rules of Procedure would be more appropriate, where it includes general jurisdiction as regards disputes between member states. It provides:

"The Commission... has jurisdiction to consider the following matters referred to it by the Supreme Council.

1. Disputes between member states.
2. Differences of opinion as to the interpretation or implementation of the Fundamental Statute of the Gulf

---

<sup>97</sup>Idem.

Cooperation Council."

The other problem with the GCC Settlement of Disputes clause is that unlike the UN General Convention which provides that the opinion which is given by the ICJ in interpreting and applying the Convention shall be binding (Article VIII(30) of the UN Convention), the opinion given by the GCC Commission for Settlement of Disputes (if the parties agreed to refer the case at all) is not binding and needs further unanimous decision of the Supreme Council to comply with.<sup>98</sup>

---

<sup>98</sup> Art.4(3) of the Commission rules of procedure. It is interesting to note that in the short experience of the GCC an incident occurred and raised the question of immunity from taxation. The authorities at Bahrain airport imposed airport services fees on the GCC officials. The GCC Secretariat wrote to Bahrain Ministry of Foreign Affairs and obtained the exemption. The Secretariat claimed that since the Bahraini Government exempted accredited diplomats from paying these fees, therefore an international official working in the GCC is entitled prima facie to such treatment. They added that according to international law, international officials enjoy privileges and immunities over and above those diplomats who are only immune in foreign jurisdictions, but not in the sending state. (A memo of the GCC legal department dated 27.9.1986 obtained by the author.) Although the memorandum of the Secretariat refers to some accepted rules of immunity it is arguable that these immunities cannot cover all the GCC officials as regards exemption from airport departure fees. Since there is no express provision covering exemption from airport fees in the GCC agreement, it is possible that the Secretary-General, his assistants and those high-ranking officials may enjoy such immunity under Art.16 and 17 which regard them as diplomats.

According to Art.34(e) of the Vienna Convention on Diplomatic Relations 1969 the diplomatic agent is not exempt from charges levied for specific services rendered.

However, the question depends on the interpretation of the "departure service fees" which is levied by Bahrain. If they are charges for public utility services then the organisation normally does not claim exemption, but if they are direct taxation then there should be exemption. See in this regard Jenks, International Immunities, Stevens, London (1961), pp.59-60.

On the other hand, it should be mentioned here that it is a difficult task to draw analogy between the immunities and

Despite the obligation of the Secretary General and the member states to waive immunity in order to prevent abuse of privileges included in the GCC agreement,<sup>99</sup> the agreement includes other provisions which provide for the security and the preservation of public order in the member state.

Article 26 entitles the member states to take any action necessary to protect their security and public order. Any state taking such measures has to contact the Secretariat General to agree on the effective arrangements to protect the Council's interest.

Criticism can be levelled against the above provision on the ground that it is vague and liable to be abused by withholding immunities and privileges, especially as there is not an effective tribunal which can guarantee that the invocation of the Article is done in a manner compatible with the Agreement.<sup>100</sup>

---

privileges of the international organisation and that of a diplomatic one which had been regulated almost exclusively by virtue of a rule of customary international law. See Bowett, *op.cit.*, p.348.

<sup>99</sup>Art.13 and 21 of the Agreement.

<sup>100</sup>Some headquarters agreements refer explicitly to the right of the host state to expel the representatives of the member state when they indulge in the territory of the host state in undesirable activities which have nothing to do with their official functions. This right, however, is subject to strong safeguards. For example the representatives shall not be required to leave the country except in conformity with the diplomatic procedure applicable to diplomatic envoys accredited to the country (Art.25(2.1) of the Specialised Agencies Convention), or with the prior approval of the Secretary of State of the United States, which shall be given only after consultation with the member state in question. (Section 11 of the United Nations Headquarters Agreement). Similar provisions in Section 22(e)(i) of the FAO, Art.9(4)

The final difference existing between the two agreements is that the GCC agreement does not authorise the Secretary General to issue to the officials travel documents or what is analogous to the laissez-passer in section 24 of the UN Convention. The officials have instead identification cards which cannot be recognised and accepted as valid travel documents. The Saudi high ranking officials in the GCC hold diplomatic passports issued by the Saudi Ministry of Foreign Affairs,<sup>101</sup> this depending in this regard on the national government.

This position is the result of strong objections raised by some member states who claimed the issuance of a travel document is best reserved to the prerogative of a sovereign state. This led to the omission of such capacity from the original draft,<sup>102</sup> a matter which may reflect the attitude of these governments to curb the power of the Secretary General and noticed throughout the debate.<sup>103</sup>

---

of the UNESCO and Section 27(e)(i) of the IAEA Headquarters Agreements. See Ahluwalia, op.cit., pp.184-87.

<sup>101</sup>Private information of the author.

<sup>102</sup>Oman particularly had a strong objection against including this provision. This was raised during the meeting to draft the agreement in Bahrain on 29.10.1982. A later memo from Oman No. 3/3/4928 dated 15.2.1982 confirmed this attitude to the GCC Secretariat.

<sup>103</sup>Ibid.

## CHAPTER SEVEN

### THE IMPLEMENTATION OF THE UNIFIED ECONOMIC AGREEMENT (UEA)

#### 1. The Concept of Economic Integration in the UEA

GCC economic objectives are set out in five documents, all of which were adopted by the Supreme Council. These are the Fundamental Statute of the GCC, the Unified Economic Agreement, Objectives and Policies of GCC Development, GCC Industrial Strategy and GCC Agricultural Policy.<sup>1</sup>

Since most of these objectives are broad and comprehensive, the UEA, signed by the six GCC Heads of State in November 1981, came to catalogue their details and specifics. The ultimate aim of the agreement is to integrate the economies of the six member states.<sup>2</sup>

---

<sup>1</sup>El Kuwaiz, A., The Secretary-General Assistant for Economic Affairs, Economic Integration of the Cooperation Council of the Arab States of the Gulf. Challenges, Achievements and Future Outlook, G.C.C. Secretariat-General, p.3. See also, Gnichtel, "The Arab States' Gulf Cooperation Council: Rules for Trade and Industry", 20 The International Lawyer 309 (1986); Rissi, "Il Consiglio di Cooperazione del Golfo: La CEE del Mondo Arabo?", 24 Rivista di Diritto Europeo (1984), p.172; Wittingham, "GCC allows more professionals, some service industries to operate regionally", 6 Middle East Executive Reports, No.12 (1983), at p.23; also his article "Modernizing the Rules", in ibid., No.10 (1984), p.18.

<sup>2</sup> The word "integration" denotes the bringing together of parts into a whole. In the economic literature the term "economic integration" does not have such a clear-cut meaning. Some authors include social integration in the concept, others include various areas of cooperation, but the existence of trade relations between independent national economies is an indication of integration. See in this regard, Balassa, B.,

The motive behind economic integration of the GCC is to achieve the following goals:

1. The advantage of reduced cost of production cannot be achieved without mass production of goods in large factories. This, however, cannot be accomplished except by the removal of barriers obstructing the movement of products to a larger market.
2. The construction of large production units will lead necessarily to the use of modern technology and the diversification of sources of income.
3. The consumption capacity of the GCC member states will be increased as a result of enlargement of the market.
4. The similarity in modes of production, and export and import arrangements will enhance trade between member states.<sup>3</sup>

Theoretically, economic integration can take several forms. First, a free trade area where the customs tariffs among member states are abolished, but each country retains its own tariff against non-members. Secondly, establishing a customs union which involves, besides the elimination of customs tariffs between the member states, unified customs tariffs which are imposed on goods imported from non-member states. The third form is a common market, where not only

---

The Theory of Economic Integration, Richard D. Irwin Inc. (1961), p.1.

<sup>3</sup> El-Kuwaiz, A., "The Gulf Cooperation Council and the Concept of Economic Integration", American Arab Affairs No.17 (Winter 1983-84), p.41.

trade restrictions but also restrictions on all factors of production are abolished. And last, economic union as distinct from a common market, combines the elimination of restrictions on commodities and factors of production with some degree of harmonization of national economic policies in order to remove discrimination which might exist in these policies.<sup>4</sup>

In this connection, assessing the UEA provisions we find some elements of integration.

Articles 1, 2 and 3 of the UEA deal with the issue of free movement of trade, as they provide for the exemption of products of member states from customs tariffs.<sup>5</sup>

Article 4(1) provides for the establishment of a customs union, calling for a unified customs tariff arrangement vis-a-vis the outside world within a specific time limit (five years).

These two stages come before the establishment of a common market where not only trade restrictions are abolished but also restrictions on labour, capital and other factors of production.

Therefore, Articles 6, 7, 8 and 9 of the UEA deal with the establishment of a common market where they state the

---

<sup>4</sup> Balassa, op.cit., p.2.

<sup>5</sup> One may suggest that the wording of Articles 1-3 coupled with the practice of the member states and reflected in the list of complaints against the breach of UEA provisions appear to be exclusively concerned with tariffs. See also infra, pp.318-325.

necessity of reaching an agreement on arrangements related to the freedom of movement of capital, labour and right of residence and possession, and freedom to participate in all economic activity.

Articles 10, 11, 12, 13, 21, 22 and 23 allow for the unification of the various political and economic aspects of integration. This stage forms the last step of economic integration and amounts to economic union.

The stipulation of these forms of integration in the UEA does not mean that these forms can be easily achieved within the capacity of the G.C.C. institutions. It is doubtful that the institutions of the G.C.C. have the capacity or power to carry through the economic objectives anticipated in the UEA.

Furthermore, it is uncertain that the G.C.C. could implement these economic objectives while the economic order is left to be determined by free market conditions, and the member states stubbornly cling to their national sovereignty.<sup>6</sup>

These difficulties are compounded by the unanimity rule which governs all decisions, including those regarding economic integration.

---

<sup>6</sup> See Townsend, J., "The Gulf Council for Cooperation: Is there an economic potential?", British Society for Middle East Studies, King's College, University of Cambridge (1983), pp.1-18. See also, El-Kuwaiz, "Economic Integration of the Cooperation Council of the Arab States of the Gulf", op.cit., p.12, who suggests that the G.C.C. institutions develop themselves to assume increasingly the role of supranational power, which is a crucial step to see the implementation of the G.C.C. economic objectives.



An examination of the economic objectives contained in the Fundamental Statute and the UEA reveals a remarkable absence of real powers bestowed on the institutions of the G.C.C., to carry out these objectives.

The G.C.C. is not unique in this regard. The traditional trend is for governments to restrict the powers conferred on institutions of a regional organisation to coordination. In this way governments avoid subordinating their sovereign powers and retain their privileges, including their veto power.<sup>7</sup>

Nevertheless, the lack of supranational organs within the G.C.C. and the existence of a unanimity rule do not mean that the sovereignty of each member state remains intact.

The forms of economic integration which have been included in the UEA have established a great degree of freedom of commerce among the member states and required joint action towards the world which demonstrates that there is a functional limitation on the economic sovereignty of each member state.<sup>8</sup>

However, the gradual implementation of the UEA without effective supervision<sup>9</sup> and the tendency of the governments to

---

<sup>7</sup> Vicuna, F., "Contemporary international law in the economic integration of Latin America. Problems and perspectives", Hague Academy of International Law Colloquium (1971), p.140.

<sup>8</sup> See in this regard, Schwarzenberger, G., "The Principles and Standards of International Economic Law", 117 Recueil des Cours (1966) I, p.33.

<sup>9</sup> For supervision of the UEA, see infra, pp.297 et seq.

interpret the provisions unilaterally may reinforce the sovereignty of the members.

It must also be emphasised that the attempts of the G.C.C. to achieve integration through trade liberalization is inappropriate, as it does not conform to the economic realities of the member states.<sup>10</sup>

All the member states trade heavily in the exportation of oil and import their other requirements from the major industrial countries. Consequently, trade, inter se, is absent. Liberalisation of trade is unlikely by itself to create integration. The question of integration is a problem of development which makes integration more difficult for the G.C.C. than it would be for developed countries, which have diversified economies and many products to trade with each other.<sup>11</sup>

---

<sup>10</sup> Morsi, M., The Gulf Cooperation Council for Arab States. The Proper Introductions to Achieve Economic Integration, Doha, Ministry of Foreign Affairs (1982), p.101. Morsi adds that the attempts of the Third World, including the G.C.C., to achieve integration through trade liberalisation have challenged the correctness of J. Viner's traditional theory which calls for customs union as an introduction for the achievement of economic integration. For the works of the two writers Morsi refers to, see Viner, J., The Customs Union Issue, Carnegie Endowment for International Peace, New York (1950), pp.46-51; Lipsey, R., "The Theory of Customs Union" in Bhagwati, J., International Trade, Harmondsworth, Middx., Penguin Books (1969), p.218. In this meaning see also Dager, M., The Use of Coordinating Plans and Developing Programmes in Supporting Economic Cooperation among Arab Gulf States, University of Basra (1986), p.124.

<sup>11</sup> The Secretary-General Assistant El-Kuwaiz, in his article "Economic Integration of the G.C.C.", op.cit., p.8. See also Arikat, H., Regional Cooperation and Integration: The Case of Arab Gulf States, Ph.D. thesis, University of Sheffield (1984), pp.3-4. Khawajkiah, H., "Remarks on the Gulf Economic Agreement", Economy and Business (Arabic) (March

Hence, the EEC model of integration is not easily adaptable to the economic realities of G.C.C. countries, where production growth is limited by the small size of the national markets coupled with the lack of communication and organised markets.<sup>12</sup>

Articles 1-2 of the UEA for instance put strong emphasis on trade liberalization in terms of agricultural and industrial products as a positive integration method, yet the economic value of agriculture and industry in the case of the G.C.C. member states is so low as to be irrelevant.

Thus, the lack of sufficient interdependence and interrelationships of the economic structure of the G.C.C. countries has not yet allowed the positive integration to really get off the ground.<sup>13</sup>

Furthermore, the EEC is a supranational organisation, the distinctive mark of which is its independent institutions vis-a-vis the national governments and the power to take decisions not necessarily requiring unanimity, and which may apply to both the member states and individuals. Moreover, the jurisdiction of its dispute settlement organ does not depend

---

1982), pp.36-37.

<sup>12</sup> Morsi, M., The Gulf Cooperation Council for Arab States, op.cit., pp.104-105. See also Novati, G., "The EEC and the Gulf Cooperation Council" in The Arab Gulf and the West, edited by Pridham, B., Centre for Arab Gulf Studies, University of Exeter, pp.115-16.

<sup>13</sup> See in this regard, Morsi, idem. See also Novati, idem.

on the ad hoc consent of the states or their organs.<sup>14</sup>

In addition to that, with the existence of the European Court of Justice, which has adopted a technique of interpretation in favour of integration, the treaty provisions are remarkably observed and implemented.<sup>15</sup>

The conclusion to be drawn from the foregoing is that although the G.C.C. draws its inspiration from the EEC as far as trade liberalization is concerned, the absence of basic economic conditions necessary to apply the EEC model and the lack of independent organs with power to implement the treaty obligations confirms the view that the EEC model cannot be imitated.

## 2. The Problem of Coexistence between the UEA and the Arab League Economic Agreements concluded in substantially similar terms

There are a number of obligations included in the UEA and the Arab League economic agreements formulated in fairly similar terms, but there are some substantial differences in purpose and function of these agreements.

Since the establishment of the Arab League on 22 March 1945, the Arab countries have increasingly paid attention to

---

<sup>14</sup> Seidl-Hohenveldern, "International Economic Law. General Course on Public International law", Recueil des Cours, (1986) III, p.110.

<sup>15</sup> Rasmussen, H., "The Court of Justice", in Thirty Years of Community Law, Commission of the European Communities, Belgium (1983), pp.190-91.

economic cooperation and integration through bilateral and multilateral agreements.<sup>16</sup>

Article 2 of the Arab League Pact<sup>17</sup> provides:

"The League... has also as its purpose the close cooperation of its member states, with due regard to the system and conditions of each state, on the following matters (a) economic and financial affairs including trade, customs, labour, agricultural and industrial matters, and (b) communication affairs, including railways, roads, aviations, navigations, post and telegraph."

However, after the setback the Arabs experienced in Palestine in 1948, the Arab states badly felt the need to develop new strategies, both economic and military, to strengthen their position. Their efforts culminated in the conclusion of the Joint Defence and Economic Cooperation Treaty by the Council of the Arab League on April 13, 1950 which has been subsequently ratified by the majority of Arab states.<sup>18</sup> Article 7 of the Treaty provides:

---

<sup>16</sup> See in general on Arab economic cooperation and integration, Ghanus, E., Economic Development and Integration, a paper presented at the Arab Countries Seminar OECD, Beirut, 13-15 February 1978; Zalzallah, A., "Arab Economic Integration and its Challenges", Arab Future Journal, No.21, (November 1980), pp.6-21 (Arabic); Sayigh, "Incorporation of Arab Economies", The Arab Future Journal, No.6 (March 1979), pp.23-41 published by the Centre for Arab Unity Studies, Beirut (Arabic); Khawajkiah, H., "Arab Economic Integration: presence, Problems and Means for Development", Al-Feker Al Arabi, Arab Development Institute, 2nd year, Issue No.9, (January 1986), pp.44-60.

<sup>17</sup> See the text in 70 UNTS, 338 and in 39 A.J.I.L., Supp.266.

<sup>18</sup> See Kaddori, F., "The Joint Arab Economic Action and the Role of the Council of Arab Economic Unity", a lecture given at the Royal Institute for International Relations, June 7, 1982, published in Studia Diplomatica, Vol.XXXVI (1983), No.1, pp.32-33. See also, Bowman, M. & Harris, D., Multilateral Treaties. Index and Current Status,

"In fulfilment of the objectives of this treaty which aim at generalizing assuredness in the Arab countries, providing for their prosperity and raising their standard of living, the signatories shall cooperate in developing their economies, in exploiting their national resources and facilitating the exchange of national products, both agricultural and industrial and generally cooperate in organising their economic activities and coordinating and signing whatever special agreements are needed for the achievement of these objectives."

Article 8 further provides:

"An Economic Council is to be formed of ministers of economic affairs of the signing states, or, if necessary, their representatives, to propose to the governments of those states whatever is conceived by them as necessary for the achievement of the objectives in Article 7."

However, the above provisions of the pact of the Arab League are confined solely to economic cooperation laid down in very broad terms and do not bear clear obligations upon the parties, whilst Articles 7 and 8 of the Joint Defence and Economic Cooperation Treaty do not seem to embody the tendency toward integration in the joint Arab economic action.

On 7 September 1953, another step was initiated by the League of Arab States towards economic cooperation by signing a trade agreement.<sup>19</sup> This agreement was concluded between some of the Arab countries. The main objectives of the agreement were to facilitate trade and transit movements among the Arab countries. Furthermore, the agreement deals with the

---

Butterworths, London (1984), p.161.

<sup>19</sup> This agreement was first ratified by Egypt and Jordan (1952), Iraq, Lebanon, Saudi Arabia and Syria (1954) and Kuwait (1961). For the text of the agreement see the text in the Collection of Treaties, The Arab League (July 1978).

extension of preferential treatment in customs duties. Agricultural and animal products were to be exempted from duties. Industrial and intermediate products became subject to a reduction of 25-50 percent respectively in the applicable duty.

Yet, the trade agreement did not succeed. It fell far short of establishing a free trade area or a customs union. Furthermore, it did not provide for the elimination of all customs duties, nor did it call for the establishment of a common external tariff. The agreement was not effectively implemented by the parties, a matter which led to a very limited multilateral trade rather than economic integration.<sup>20</sup>

Thus, the three economic agreements concluded by some of the GCC member states under the auspices of the Arab League do not appear to conflict with the G.C.C. UEA provisions. The UEA operates in a different functional orbit where economic integration in its full form is the main objective of the G.C.C., and therefore the obligations are articulated in a more specific and effective manner, while the Arab League agreements deal with broad economic issues which fall short of economic integration.

---

<sup>20</sup> See Arikat, H., op.cit., p.105. See also Makdisi, S., "Arab Economic Cooperation Implications for the Arab World and World Economics", in Arab Industrialisation and Economic Integration, edited by Aliboni, R., Croom Helm, London (1979), p.91. For more details on the factors which have limited the effectiveness of this first trade agreement by the League of Arab States, see Dajani, B., "Arab Economic Cooperation, Practical and Historical Aspects", Day of Arab Economic Cooperation, 22 March 1972, a paper submitted in a seminar organised by the Kuwait Economic Society, pp.50-53 (Arabic).

This situation of successive treaties dealing with the same subject responds to the application of the lex specialis principle which gives priority in implementing successive treaties to the "most specific" one which "approaches most heavily to the subject in hand: for special provisions are ordinarily more effective than those which are general."<sup>21</sup>

The principle of lex specialis though is not expressed as such in Article 30 of the Vienna Convention on the Law of Treaties, but it is widely supported.<sup>22</sup>

In order to provide a more effective legal framework for the advancement of joint Arab action, the Economic Council of the Arab League has paved the way for the Arab Economic Unity Agreement, which came into force in 1964.<sup>23</sup>

The reasons for concluding such an agreement are clearly stated in its introduction:

"The signatories, desiring to organise and consolidate economic relations among the Arab League states on bases that are consistent with the natural and historical links among them, and to provide the best conditions for bolstering their economies, developing their resources and ensuring the

---

<sup>21</sup>Jenks, C., "The Conflict of Law-Making Treaties", 30 B.Y.I.L. (1953), p.446.

<sup>22</sup> Sinclair, I., The Vienna Convention on the Law of Treaties, op.cit., p.96.

<sup>23</sup> So far, 13 Arab states have signed the Agreement and that is slightly more than half the number of member states of the Arab League. These 13 states are: Kuwait, the United Arab Emirates, Egypt (whose membership was suspended in 1979 after the Camp David agreement) Iraq, Syria, Jordan, the Arab Republic of Yemen, Sudan, the People's Democratic Republic of Yemen, Somalia, Libya, Mauritania and Palestine. See the text of the Agreement and the dates of ratification in the Collection of Treaties, The Arab League (July 1978), pp.277-86.



prosperity of their countries,

Have agreed on the establishment of a complete economic unity among themselves and on the achievement of such unity in a gradual way and as fast as possible, such that the transfer of their countries from the status quo to the future status is accomplished without rendering any damage to their basic interest."

The main features of the Arab Economic Unity Agreement which bear resemblance to the obligation of the G.C.C. Unified Economic Agreement are:

1. The achievement of economic unity among Arab countries. The Agreement specifies that the achievement of this objective shall guarantee for the Arab states and their citizens certain freedoms and rights: namely, freedom of personal and capital mobility, freedom of exchange of foreign and national goods and products, freedom of residence, work, employment and practice of economic activities, freedom of transportation and transit and the rights of possession, bequest and inheritance (Article 1).

2. The Agreement specifies the way by which the signatories can accomplish economic unity, namely by merging their countries into a single customs area subject to a unified administration, customs legislation and regulation, transit regulations, by signing multilateral trade and payment agreements jointly with other countries, by coordinating trade, agricultural and industrial policies and by unification of economic legislation such that it would guarantee equivalent conditions for all citizens of the signing states working in agriculture, industry and other professions

(Article 2).

The first two features of economic unity mentioned above show the purposes and the objectives of the agreement are similar to the provisions of the UEA, though with more details in the latter.

In fact, some of the G.C.C. provisions started to operate on regular implementation since March 1983 by the unanimous decision of the Supreme Council. To illustrate the similarity of obligations in the two instruments, reference to some examples of the UEA is necessary.

According to Article 2 of the UEA member states are required to exempt from customs duties agricultural, animal, industrial and natural resources products of national G.C.C. origin.

By resolution of the Supreme Council in November 1982, two requirements for exemption from customs duties were imposed:

a. The seller must be a citizen of a G.C.C. member state, or a company which is at least 51 percent owned by G.C.C. citizens. In the case of an industrial company, it will qualify for exemption even if not 51 percent owned by a G.C.C. citizen during a period of one year from the effective date of the resolution, namely March 1, 1983 through March 1, 1984.

b. The product must be either of G.C.C. member state origin or at least 40 percent value must have been added by

the seller to the product's final value.<sup>24</sup>

The Supreme Council decided at its third session held in Bahrain in 1982 that according to Article 20 of the Agreement member states are required to allow vessels "belonging to any member state" to use port facilities and otherwise be placed on a parity of treatment with nationals of the member state.<sup>25</sup>

Article 4 of the UEA requires member states to establish a uniform minimum tariff applicable to products of non-member states. By a resolution adopted in November 1987, the minimum tariff on such foreign merchandise, effective from September 1, 1983, is 4 percent; the maximum is 20 percent. All member states are required to raise their minimum tariff to 4 percent.

There is a further resolution, however, imposing customs duties of 30 percent on merchandise of a special nature, described as tobacco and the like. Member states are given an option to impose duties higher than 30 percent on products in this category.<sup>26</sup>

Yet, a few differences remain between the two instruments, the UEA and the Arab League Agreement of Economic

---

<sup>24</sup> See the Decisions and Steps taken to Implement the Unified Economic Agreement, published by the G.C.C. Secretariat, 2nd ed. (1987) (Arabic), p.72.

<sup>25</sup> Controversy subsequently arose as to whether this article was confined solely to government-owned vessels. A clarifying interpretation by Kuwait, approved later by the Committee of Financial and Economic Cooperation, states that a vessel will qualify for such favourable treatment whether solely owned by governments or citizens. See ibid., p.170.

<sup>26</sup> Ibid., pp.175-78.

Unity.

With the GCC agreement, the Supreme Council, which comprises the heads of state, is entrusted to endorse most of the economic policies and plans. Therefore the implementation of the economic decision is far more effective, especially when prevailing national ideologies are also similar and as such, the legal procedures to follow the adopted policies by the heads of state need, in fact, no further approval by any other superior body.

The Council of Arab Economic Unity, which has been established as the highest authority governing the Agreement, consists of representatives of the member states, who are usually the ministers of economy, finance or trade.<sup>27</sup>

According to Article 7 of the Arab Economic Unity Agreement, the Council is regarded as a financially and administratively independent entity, and has its own budget and its own rules and regulations.

One of the significant elements of the Arab Agreement which the UEA lacks is that linkage between governing the speed of progress towards economic unity and the mechanism of decision making. To guarantee efficiency in the decision-making process, the Agreement provides that the Council of Arab Economic Unity may take its decision by a majority of two thirds of the votes of member states and not necessarily as

---

<sup>27</sup> See Kaddori, F., op.cit., p.36.

the case in the GCC, unanimously.<sup>28</sup>

Yet, the achievement of some form of economic unity among the Arab countries has always been a declared objective of the Arab League, while has not yet been realised despite their various efforts at laying down the most binding terms to move the Arab economies towards integration.<sup>29</sup>

While the ultimate objective of the Arab Economic Agreement is a full economic union, beginning with the gradual implementation of a free trade area among the parties, only four countries, namely Egypt, Iraq, Jordan and Syria, have so far agreed to implement a free trade area. Even, to that primary obligation, a truly free trade area among these four countries has not been fully established. Important obstacles still remain in the way of free movement of goods relating to trade regulations of an administrative character and the

---

<sup>28</sup> Article 4(4) of the Arab Economic Agreement.

<sup>29</sup> Makdisi, op.cit., p.91.

decisions of the public sector organisations.<sup>30</sup>

Accordingly, when one refers to the Arab economic agreements and their obligations it is necessary to draw a distinction between obligations agreed upon in the concerned instruments and the de facto non-compliance with these arrangements. This is a matter which may lead some to the belief that the Arab League decisions cannot be binding and always need endorsement from the member states,<sup>31</sup> despite the fact that the agreements concerned include their binding effect.

Nevertheless, there appears little difficulty in harmonising and reducing the differences between the two instruments, particularly as each of them has a great degree of flexibility in giving non-member states the same rights and

---

<sup>30</sup> Ibid., p.92. On August 13, 1964 the Council of Arab Economic Unity took a decision to establish an Arab Common Market. the aims of the market are specified in the text of that resolution as the accomplishment of the following freedoms among member states of the market:

- (1) Freedom of personal and capital mobility.
- (2) Freedom of exchange of foreign and national goods and products.
- (3) Freedom of residence, work, employment and practice of economic activities.
- (4) Freedom of transport, transit, and use of transport vehicles, ports and civilian airports.

In actual practice there has been no significant achievement in any objective set in this resolution. See the text of the resolution in ILM, Vol.III, No.6 (November 1964). For the achievement of the Arab Common Market, see Kaddori, op.cit., p.37; Arikat, op.cit., pp.109-111.

<sup>31</sup> Schermers, G., International Institutional Law (1980), op.cit., para.715 at p.412.

the preferential privileges included in the agreement.<sup>32</sup>

Thus, Article 15 of the Arab Economic Unity agreement provides:

"Two parties or more may conclude economic agreements aiming at further economic unity."

Article 25 of the UEA provides:

"No member state shall give to any non-member state any preferential privilege exceeding that given herein."

However, the G.C.C. Committee of Financial and Economic Cooperation, in its seventh session, appeared to discourage the G.C.C. parties from giving effect to Article 25.<sup>33</sup> The decision apparently focuses only on the bilateral agreements intended to be concluded between a member states and third parties.

It refers particularly to Article 4 of the UEA which requires the member states to set a minimum unified customs tariff to be applied to the goods originating from the non-member countries. It also refers to Article 7 of the UEA which requires the member states to coordinate their trade policies and relations with other economic and regional blocs

---

<sup>32</sup> By contrast, the EEC commercial relations have never been uniform. Each member state had its own commercial treaties with third states when the Community was established. It was therefore provided in Article 234 of the EEC treaty that, as soon as possible, the member states were to terminate treaties whose provisions were inconsistent with the transfer of powers to the Community, which meant they could be replaced by Community agreement. See Schermers, International Institutional Law, op.cit., p.787.

<sup>33</sup> See the decision in the G.C.C. publication, Decisions and Steps Taken to Implement the UEA, op.cit., pp.179-80.

and groups in order to provide equal circumstances and conditions for their trade dealings.

In order to implement these principles the decision emphasises the obligations of the member states to observe these provisions in case of concluding any treaty with non-member states.

Accordingly, the G.C.C. Secretariat informed the competent bodies in the member states not to give non-member states any preferential treatment concerning foreign products entering G.C.C. member states. Elimination of the customs tariff within the G.C.C. member state creates rights to the local producers, a matter which is illusory if others outside the G.C.C. share such privileges.<sup>34</sup>

The G.C.C. Secretariat puts it as follows:

"This is in keeping with the text and the spirit of the Unified Economic Agreement, whereby the cancellation of the customs tariffs on national products of the states of the Council, for instance, will create a price priority for these products in regard to foreign products, thereby creating (rights) for the national producers which might be lost in the event a member state grants the same priority to a third party. This, in effect, is what the Unified Economic Agreement attempted to deal with when it indicated in paragraph (2) of Article 4 that among the goods of the customs tariff was the protection of the products of the states of the Council in confronting competitive foreign products."<sup>35</sup>

---

<sup>34</sup> Ibid.

<sup>35</sup> See Decrees which have been issued and measures which have been adopted in implementing the UEA, G.C.C. Printing Press (1988), p.177.



This decision, though, does not seem to refer to those multilateral agreements to which a G.C.C. member state was a party before the conclusion of the UEA (i.e. Arab Economic Agreement) but it does clash with Article 25 of the UEA, which does not restrict giving similar rights to any third party.

At any rate, the legal position of incompatibility which arises from the application of the UEA and the Arab League Economic Unity Agreement is a difficult one. On the one hand the economic interests of the two groups may conflict with each other. If this should occur the UEA cannot override the Arab Economic Agreement as far as the obligations of Kuwait and the United Arab Emirates are concerned, since they ratified the agreement. The Arab Economic Unity Agreement came into force in 1964 while the G.C.C.'s UEA has been in operation since 1982.

According to Article 30.4(B) of the Vienna Convention on the Law of Treaties:

"When the parties to the later treaty do not include all the parties to the earlier one...

(b) as between a state party to both treaties and a state party to only one of the treaties, the treaty to which both states are parties governs their mutual rights and obligations."

It is to be noted here that rules laid down in Article 30, especially paragraphs 3, 4 and 5, are intended to be residuary rules operating in the absence of express provisions regulating priority.<sup>36</sup>

---

<sup>36</sup> See Sinclair, I., The Vienna Convention on the Law of Treaties, Manchester University Press (1984), pp.97-98.

On the other hand, the type of economic cooperation which prevails today among the Arab countries cannot be described, as stated earlier, as a true implementation of the Arab Economic Unity Agreement, since in fact it did not achieve either a free trade area or a customs union or any other specific economic arrangement.<sup>37</sup>

It seems that the implementation of the Arab Economic Unity agreement which was concluded earlier is not possible. The question is to be asked whether any state party can terminate the agreement on the grounds of material breach,<sup>38</sup> or can treat it on the ground of de facto termination. But this raises a very sensitive political issue.

### 3. The G.C.C. and the GATT

Of the six member states of the G.C.C., only one, Kuwait, is a full contracting party of the General Agreement on Tariffs and Trade (GATT). The UAE, Bahrain and Qatar, to whom the GATT had applied before their independence, maintain a de facto application of GATT rules pending final decisions as to their future commercial policies. None of these three, however, has applied for full membership of GATT.<sup>39</sup> Saudi

---

<sup>37</sup> Makdis, loc.cit.

<sup>38</sup> Article 60.2 (band c) and 60.3(b) of the Vienna Convention on the Law of Treaties. See Brownlie, Basic Documents in International Law, op.cit., p.373.

<sup>39</sup> For UAE de facto application of the GATT Agreement, see BISD 21 Supp. (1973-4), p.23. As for Qatar and Bahrain, see BISD, 18 Supp. (1970-71), p.23. See also, McGovern, E., International Trade Regulation. GATT, the United States and the European Community, Globefield Press, Exeter (1986),

Arabia has acquired observer status in GATT with the view of examining full membership.<sup>40</sup>

Should these governments decide to join GATT, they would have to consult GATT as to whether their plans for regional economic integration are consistent with the provisions of Article XXIV of GATT.

In a memorandum prepared by the G.C.C. Secretariat for the member states it assessed the benefits and the obligations of member states of GATT.<sup>41</sup> There are three main benefits deriving from GATT membership:

First, the General Agreement establishes an internationally accepted and legally binding framework for the conduct of trading relations. This framework includes general, unconditional most-favoured-nation treatment of the trade of all contracting parties, national treatment of their trade as regards domestic taxes and other internal regulations, and uniform practices in such matters as freedom of transit, customs valuation, treatment of dumped or subsidised merchandise, and emergency restrictive actions to safeguard domestic economic interests from damage caused by

---

pp.17, 536-37. It is to be noted that under Article XXVI 5(c) a state applying GATT regulations on a de facto basis may become a full contracting party.

<sup>40</sup> See Petersmann, E., "The EEC as a GATT Member. Legal Conflicts between GATT Law and European Community Law", in The European Community and GATT, Hilf, M., Jacobs, F. & Petersmann, E. (eds.), Kluwer-Deventer, The Netherlands (1986), p.25.

<sup>41</sup> G.C.C. memorandum on major costs and benefits of GATT membership (July 1983), pp.1-10. (Unpublished).

increased imports. It also includes a general commitment against the use of quantitative restrictions for trade regulation, with clearly defined exceptions subject to specified rules and procedures.

Second, the General Agreement provides non-discriminatory access to markets representing a preponderance of world trade under stable, bound tariff schedules and uniform, known trading practices. That is, every contracting party benefits as of right from the schedules of concessional duty rates maintained by all other contracting parties, bound against unilateral increase and protected by clearly specified procedures for the modification or withdrawal of concessions, subject to renegotiation and compensation.

Third, the General Agreement provides a multilateral forum with mutually accepted norms and procedures for consultation and negotiation on trade matters and settlement of trade disputes. Thus, the Contracting Parties as a consultative body may discuss a general trade problem such as protectionism, or establish guidelines for a major trade negotiation or, through the Council of Representatives, act to resolve a trade complaint brought by one or more contracting parties against action taken by another.

The principal burdens of GATT participation are the obligations corresponding to the above benefits. They are, first, to accept the internationally sanctioned discipline of the General Agreement in formulating and administering domestic policies that affect the trade interests of other

contracting parties; second, to offer and guarantee access to domestic markets on the same terms as those accorded by other contracting parties in their markets; and third, to be prepared to be held accountable before the GATT Contracting Parties for any damage done to the trade of other contracting parties through actions contrary to General Agreement provisions, and to offer appropriate compensation.

Participation in GATT affairs as a full contracting party involves, among other things, having a voice, through the Contracting Parties and subsidiary bodies, in shaping important trade policy actions and an opportunity to negotiate on a basis of legal equality for the resolution of trade problems with other contracting parties or groupings, or for additional trade benefits. It also involves, in some degree at least, giving up total autonomy in the management of external trade relations.

The G.C.C. as a regional arrangement establishes preferential trading rules within the six member states such as a free-trade area, customs union and other forms of economic integration.<sup>42</sup> The very nature of such arrangements involves a departure from the most-favoured-nation clause which entitles any contracting party to have the right to receive the same treatment that is accorded to the country which is treated most favourably.

---

<sup>42</sup> See Articles 1, 2, 3, 4, 6, 7, 8, 9, 11, 12, 13, 21, 22 and 23 of the UEA which include forms of integration.

Article 1(1) of GATT provides:<sup>43</sup>

"With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties."

Thus favourable treatment of an import from one GATT member country that is not extended to all other GATT members is a violation of Article 1 of the GATT and may subject the benefits accruing to the contracting party to nullification or impairment according to Article XXIII of the GATT.

A regional association of economic integration such as the G.C.C, if it acceded to the GATT, would meet the requirements of Article XXIV of GATT which permit the G.C.C. member states to grant preferences to trade with each other. Beyond that, a G.C.C. member state could not treat its foreign trade in a given product with other countries more favourably than it treated its trade in that product with any GATT member. The object of Article XXIV is precisely to exempt the various forms of economic integration from the most-favoured-nation clause.

---

<sup>43</sup> See the text in Sohn, L., International Organisation and Integration, Martinus Nijhoff (1986), p.651.

However, there is continuing difference of view as to the interpretation of Article XXIV of GATT among GATT contracting parties. The EEC Treaty conforming to this rule has been questioned, and some complaints raised about its application. One member of the working party stated that the compatibility of the Treaty of Rome itself with the provisions of the General Agreement remained an open question, since the working party which had examined the question had not reached any final conclusions in this regard. Similarly, the compatibility of the 1973 enlargement with the General Agreement had also remained unresolved as that working party had issued a final report.<sup>44</sup>

In 1982 the USA complained under Article XXIII of GATT against "EC tariff treatment on imports of citrus products from certain countries in the Mediterranean region", and explained that the legal compatibility of the EEC's preferential arrangements with Mediterranean countries likewise continues to be put into doubt by third GATT contracting parties.<sup>45</sup>

This attitude overshadowed the G.C.C.-E.E.C. discussion during the period before the conclusion of the cooperation agreement in June 1988.<sup>46</sup>

---

<sup>44</sup> See GATT, BISD, 30th Suppl. (1982-3), p.174.

<sup>45</sup> See The European Community and GATT, op.cit., p.36.

<sup>46</sup> See supra, pp.229-230.

Following an exchange of views on what could be covered in that agreement, the EEC maintained that it was not possible to envisage a preferential access agreement. Only two possibilities existed, either a free trade agreement based on Article XXIV of GATT or a non-preferential agreement involving most-favoured-nation treatment and a joint commitment to seek tariff reductions in the framework of a multilateral negotiation involving the USA, Japan and other interested parties. They further maintained that it was not realistic to conclude a free trade agreement at this stage in E.E.C.-G.C.C. relations, and the best solution was the second option which could be evolutionary and seen as a first step towards the road to free trade.<sup>47</sup>

The EEC side explained that a free trade agreement because of GATT regulations would not permit the granting of trade concessions outside multilateral negotiations. During the period before multilateral negotiations were concluded, the Community could seek to assure continuity of Generalised System of Preference (GSP)<sup>48</sup> access to the EC market by the

---

<sup>47</sup> These views were expressed to the author in an interview with the general coordinator of the G.C.C. in E.E.C.-G.C.C. negotiations, Mr. Kurdi in the Saudi Ministry of Foreign Affairs, 17 December 1987. See also Mr. Kurdi's remarks on the negotiations published in Al-Qabus newspaper, 27.12.1987, Council of the European Communities, General Secretariat 7294/87 (Press 112). An interview by Al-Qabus newspaper with Dr. Al-Quaiz, the Secretary-General of the G.C.C. for economic affairs confirmed these views, 28/12/87.

<sup>48</sup> GSP constitutes a framework within which the EEC countries are invited to offer non-reciprocal and non-discriminatory trade preference on manufactured and semi-finished imports from G.C.C. countries.



G.C.C.<sup>49</sup>

The G.C.C. side thought this was not enough to meet its aspirations as it does not go beyond the codification of the status quo in the practical sense. The G.C.C. would rather prefer an agreement that inter alia takes into consideration the following:

- The historic, strategic and geo-political importance of trade between the two region.
- The fact that G.C.C. members are developing countries and are therefore entitled to treatment in conformity with the provisions of Part IV of the GATT.
- The G.C.C. believes that the application and implementation of the provisions of Part IV of the GATT should not be restricted and limited only to the GSP.
- The G.C.C. considers itself as a natural extension of the Mediterranean region and expects a treatment commensurate with the importance of its trade with the Community. This means a treatment similar to that extended to other Arab countries or Israel, it being understood that the G.C.C. considers the development dimension in trade agreements to be relevant to the level and extent of reciprocity.
- The fact that a substantial part of the G.C.C.-E.E.C. trade is already liberalised de facto justifies a possible further liberalisation benefiting from Article

---

<sup>49</sup> The interview with Mr. Kurdi, op.cit.

XXIV of the GATT.

- The G.C.C. therefore expects an important improvement in access to market conditions. Consolidation of tariffs as well as additional reciprocal tariff concessions are not to be excluded.
- Before an agreement was concluded it would be ready to accept duty free access based on what it had achieved in 1985 under GSP.<sup>50</sup>

The compliance with GATT requirements in Article XXIV of GATT, however, is made for approval of exceptional cases. The terms of paragraph 5 of Article XXIV, which establishes the exception, apply only to regional arrangements between territories of contracting parties.<sup>51</sup> It provides, inter alia:

"... the provisions of this agreement shall not prevent, as between the territories of contracting parties, the formation of a customs union or of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or of a free-trade area, provided that:

(a) With respect to a customs union, or an interim agreement leading to the formation of a customs union,

---

<sup>50</sup> See Wilson, R., European-Arab Trade Prospects to the 1990s, Special Report No.1105, The Economist Intelligence Unit, U.K., (January 1988), pp.88-97. See also, Yorke, V. & Turner, L., European Interest and Gulf Oil, Policy Studies Institute and Royal Institute of International Affairs (1986), Gower (1986), pp.91-97; Al-Shawa Khalid, "The Art of Negotiation and the Arab Gulf States' Ability to Negotiate the Export of their Petrochemical Products", paper presented at the training programme on the Diplomacy of Negotiation, Political Science Section of the Department of Trade, Economics and Political Science, Kuwait University, 30 March-17 April, 1985.

<sup>51</sup> Jackson, J., World Trade and the Law of GATT, The Bobbs-Merrill Co. Inc., New York (1969), p.582.

the duties and other regulations of commerce imposed at the institution of any such union or interim agreement in respect of trade with contracting parties not parties to such union or agreement, shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union or the adoption of such interim agreement, as the case may be."

Since Kuwait is a GATT contracting party and entered G.C.C. arrangement, it is obligated under Article XXIV, paragraph 7 to "promptly notify the contracting parties" and furnish information about the G.C.C. arrangement.

At an early GATT session, a question was raised whether the contracting parties might establish a procedure for implementation of Article XXIV. A GATT working party discussed this question and reached the conclusion that:

"Consideration by the contracting parties of proposals for customs unions would have to be based on the circumstances and conditions of each proposal and, therefore, that no general procedures can be established beyond those provided in the article itself."<sup>52</sup>

Article XXV, paragraph 5 of GATT also has a provision for waiver of an obligation imposed upon a contracting party provided that such decision is approved by a two-thirds majority of the vote cast and that such majority shall comprise more parties.<sup>53</sup> According to the law of treaties other G.C.C. member states who maintain a de facto application

---

<sup>52</sup> GATT, 2 BISD (1952), p.181.

<sup>53</sup> In 1952 the six ECSC states requested a "waiver" (Article XXV:5) from certain of their obligations under the General Agreement (e.g. Articles I, XIII) in order to permit them to fulfil their obligations under the ECSC treaty. See the report of the working party in BISD, 1st suppl., pp.85, 88.

of the GATT regulations could be regarded as third parties.

The GATT rules confer benefit but do not create obligations or rights for them. This type of de facto arrangement could be described as "non-binding" or "voluntary" agreements.<sup>54</sup>

Article 34 of the Vienna Convention on the Law of Treaties provides:

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

Article 35 supplements the above provision by providing:

"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."<sup>55</sup>

It should be noted that this article is carefully worded so as to make the legal basis of the obligation for third states not the treaty itself but the collateral agreement whereby the third state has accepted the obligation.<sup>56</sup>

The two articles reflect the maxim pacta tertiis nec nocent nec prosunt which is supported by general principles

---

<sup>54</sup> Roessler, F., "Law, De Facto Agreements and Declarations of Principle in International Economic Relations", 21 G.Y.I.L. (1978), p.41. For non-binding agreements see also, Munch, F., "Comments on the 1968 Draft Convention on the Law of Treaties. Non-binding Agreements", 29 Zeitschrift fur Ausländisches öffentliches Recht und Völkerrecht (1969), pp.1-11; Schachter, O., "The Twilight Existence of Non-Binding International Agreements", 71 A.J.I.L. (1977), pp.296-304.

<sup>55</sup> For the text of the Articles, see Brownlie, op.cit., p.364.

<sup>56</sup> Sinclair, op.cit., p.101.

of law that third states are clearly strangers to the contract.<sup>57</sup> However, third states are bound by the provisions of a treaty only if such provisions become, in the course of time, rules of customary law.

Article 38 of the Vienna Convention deals with cases of obligations arising out of this source of law. It provides:

"Nothing in Articles 34 to 37 precludes a rule set forth in a treaty from becoming binding upon a third state as a customary rule of international law."

It has long been affirmed by the ICJ in the North Sea Continental Shelf Cases (1969) that a rule

"... while only conventional or contractual in its origin, has... passed into the general corpus of international law, and is now accepted as such by the opinio juris, so as to have become binding even for countries which have never, and do not, become parties to the Convention."<sup>58</sup>

In fact there is no evidence in the state practice of de facto application of GATT rules which suggests that international customary law has emerged therefrom.<sup>59</sup>

The decision of the GATT to allow governments of territories acquiring autonomy to apply the General Agreement de facto in their trade relations with contracting parties is only to permit new nations to experiment with GATT membership while they are formulating their initial commercial

---

<sup>57</sup> Sinclair, ibid., p.99; Elias, op.cit., p.59 et seq.

<sup>58</sup> See ICJ Reports of the Judgments (1969), p.41, paragraph 71. See also, Baxter, R., "Treaties and Custom", I Recueil des Cours (1970), p.69.

<sup>59</sup> Roessler, F., "Law, De Facto Agreements and Declarations of Principle in International Economic Relations", op.cit., pp.27-59.

policies.<sup>60</sup>

De facto arrangements are therefore generally only used to coordinate economic policies and can "because of their uncertain consequences, often only be experiments to be repeated if successful and abandoned if not. In such situations de facto agreements provide an ideal form of cooperation; they permit a step forward because they do not prevent steps backward".<sup>61</sup>

#### 4. Supervision Within the G.C.C.

Supervision in general affords real influence for the fulfilment of an obligation and an effective means to prevent violations. It also serves as a corrective when violation has taken place.<sup>62</sup>

The UEA sets out a framework and occasionally gives details for the implementation of its provisions. The elaboration is primarily left to the policy-makers, through the gradual implementation of the treaty by adopting resolutions issued by the Supreme Council.

The UEA does not include a single article which regulates supervision or the body which implements the provisions of the treaty.

Yet, due to the legal linkage between the UEA and the

---

<sup>60</sup> GATT BISD, 15th Suppl. (1966-67), p.64.

<sup>61</sup> Roessler, op.cit., p.54.

<sup>62</sup> See Andretsch, H., Supervision in European Community Law, 2nd rev.ed., North-Holland (1986), p.410.

Fundamental Statute, which is clearly referred to in the preamble of the UEA, the organs stipulated in the Fundamental Statute are inter alia engaged in the supervisory machinery of the whole range of G.C.C. activities.

The functions of the supervisory organs are impliedly laid down in the Fundamental Statute, but there is no explicit reference to them in the provisions. Indirectly, however, these functions may be inferred from the competence of the Supreme Council, Ministerial Council and the Secretariat.

Article 8 of the Fundamental Statute, which includes the Supreme Council functions, provides broad terms for supervision to "review matters of interest to the member states", "lay down the higher policy for the cooperation Council and basic lines it should follow" and "review reports and studies which the Secretary-General is charged to prepare". Very similar supervisory functions are defined in Article 12 of the Fundamental Statute, which describes the Ministerial Council competence.

The Secretariat-General seems, however, to play the cardinal role in laying the foundation for eligible supervision in the implementation of the UEA. Competence in the field is based upon Article 15 (2) & (3) of the Fundamental Statute, in which it is stipulated that the Secretariat shall "prepare periodic reports on the Cooperation Council's work" and "follow up the implementation by the member states of the resolutions and recommendations of the Supreme Council and Ministerial Council".

In order to carry out these functions the Secretariat tends to request and receive the necessary materials and information from the member states. Sometimes the Secretariat on its own initiative, has "pioneered some steps" to make supervision more effective and "integration possible".<sup>63</sup>

It is the task of the Secretariat to report the information received on the progress of implementing the G.C.C. decisions, and especially when it is requested by the Supreme Council or the Ministerial Council for consideration.<sup>64</sup>

It has to be stressed that although according to the Fundamental Statute the Secretariat has no express power to address directly the competent bodies in the member states, the practice of the Secretary-General in following up compliance of the member states with Supreme Council decisions has encouraged it to write directly to the competent ministers in the member states to remind them of their obligations.

The aim of the Secretariat here appears to be to gain closer supervision and contact with the national authorities, unlike that of traditional organisations.

An explicit obligation on the member states to supply the Secretariat-General with information about the implementation of the decisions is not provided for in the Fundamental Statute.

---

<sup>63</sup> The Secretary-General Assistant El-Kuwaiz, The Cooperation Council of Arab States of the Gulf, op.cit., p.12.

<sup>64</sup> Article 15 (2) & (4) of the Fundamental Statute.



This should not, however, give a G.C.C. member state the impression that they are completely free in deciding how to fulfil those obligations or to comply with the Supreme Council decisions. The member states are bound by generally recognised principles of international law, and in the present context, that they should fulfil their obligations in good faith.<sup>65</sup> This would mean that a member state which voted in favour of the adoption of a decision of the Supreme Council should make a serious effort to show its intention and willingness to comply with it by providing enough information about it.

In practice, the knowledge of states parties to due performance by other parties is frequently ascertained as a result of debate between delegations. Something is agreed and put forward and will be a matter of expediency rather than legal requirement. Thus, the state concerned is apt to inform other parties about the difficulties it finds in fulfilling its obligation partly or wholly when it is called to account for its non-compliance.

The scope of supervision may extend to the conclusion of

---

<sup>65</sup> See Lauterpacht's Separate Opinion, appended to the 1955 Advisory Opinion on South West Africa Voting Procedure, I.C.J. Reports of Judgment (1955), p.120, who states: "Although there is no automatic obligation to accept fully a particular recommendation or series of recommendations, there is a legal obligation to act in good faith...". See also the "Declaration on Principles of International law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations", Resolution 2625(XXV) of the UN General Assembly. The text of this declaration has been published in Brownlie, I. (ed.), Basic Documents in International Law, 2nd ed., Oxford (1978), pp.32-40.

bilateral treaties between a member state and a third party. An obligation upon a member state to provide the necessary information and have prior consultation with the other member states when concluding bilateral treaties can be inferred from the extensive interpretation of Article 7 of the UEA.<sup>66</sup>

It provides:

"Member states shall coordinate their commercial policies and relations with other states and regional economic groupings and blocs with a view towards creating balanced trade relations and favourable circumstances and terms of trade therewith. To achieve this goal, the member states shall make the following arrangements.

1. Coordinate import/export policies and regulations.

2. Coordinate policies for building up strategic food stock.

3. Conclude economic agreements collectively when and if the common benefit of the member states is realised.

4. Work for the creation of a collective negotiating position vis-a-vis foreign parties in the field of importation of basic needs and exportation of major products."

The true coordination of commercial policies, as required by Article 7, can only be effectively guaranteed if a member state is willing to consult with another about proposed arrangements with a third party. A mere good faith requested upon that member to have in mind UEA obligations will not suffice.

---

<sup>66</sup> Oman in the seventh meeting of the Financial and Economic Committee has made a reservation on the Committee decision that prior consultation is a necessary procedure for the G.C.C. member states before entering any bilateral agreement, which might affect the privileges the members get from the UEA provisions. The reservation is referred to in the memo of the G.C.C. on the obstacles of implementing the UEA (unpublished).

This sort of supervision, which is exercised by the Secretariat or partially and indirectly by the other organs of the G.C.C. (the Supreme Council and Ministerial Council) remains political and does not have legal character. Political discussion is the only way to correct the wrongful behaviour of the member state.

However that may be, nothing can be said with certainty about the real practice of this form of supervision, since the debate of the organs is kept entirely behind closed doors and no material is published relating to possible violations.<sup>67</sup>

The absence of judicial supervision is not surprising and may be a result of the fact that its decisions are not binding per se.<sup>68</sup>

Considering the economic objectives of the G.C.C., which are provided by the UEA and range from free trade area (Articles 1-3) to establishing economic union (Articles 10-13, 21-23), it may be difficult to attain satisfactory results when the organs are not subject to any judicial system of supervision regarding their activity or decisions, with no

---

<sup>67</sup> Neither the G.C.C. Annual Reports nor its regular publication on the gradual implementation of the UEA contain accurate supervision of possible violations of the agreement and the Secretariat-General role. For the significance of supervision using publicity see Landy, E., The Effectiveness of International Supervision. Thirty Years of ILO Experience, London, Stevens & Sons (1966), pp.151-52.

<sup>68</sup> See Van Hoof, G. and De Vey Mestdagh, K., "Mechanisms of International Supervision", in "Supervising International Economic Organisations", ed. by Dijk, P., Kluwer De Venter, Netherlands (1984), p.34. See also, Schermers, International Institutional Law, op.cit., p.242.

access for individuals to an autonomous judicial body which is capable of giving the right and unified interpretation of the UEA and eventually establish effective integrationist law. This, consequently, contributes to settling disputes between the member states impartially and giving proper remedies for states as well as for individuals.<sup>69</sup>

The gradual implementation of the UEA provisions, however, is the best demonstration of how effective is the present non-judicial supervision exercised by the Secretariat and to what extent judicial supervision is needed.

- (i) The mechanism of supervision in the application and interpretation of the UEA

---

<sup>69</sup> For this meaning see Vicuna, F., "Contemporary International law in the Economic Integration of Latin America. Problems and Perspective", Recueil des Cours (1971), op.cit., p.168. See also Sundberg-Weitman, B., "The Legal Enforcement of Obligations Incumbent upon Member States under Treaties of the European Communities", Scandinavian Studies in Law (1975), pp.261-63; Rasmussen, op.cit., p.151 et seq. For the opposite view, see Hudson, M., International Tribunals Past and Future, Carnegie Endowment for International Peace, Washington (1944), who states at p.213 that "A conviction seems to be widespread that judicial settlement is not the best way of handling economic disputes, and that disputes relating to commercial questions should be dealt with by specialist experts rather than by judges of general competence who may have had no special experience in the field of international commerce." This view, however, could have only considered at the time it was written. The judicial system which is integrated with the institutional structure of international economic organisations does not function only for the purpose of the settlement of disputes, but also for the supervision of the legality of the treaty and the decisions enacted by the institutions as a guarantee for the protection of the rights and obligations of both the states and the individuals. For criticism of this view see Vicuna, ibid., pp.131-35.

In international law, an interpretation is binding only if the organ concerned has been authorised to interpret and to make a binding interpretation of the constituent instrument. Otherwise, a purported interpretation will remain a political declaration.<sup>70</sup>

Apart from the commission for settlement of disputes provided in the Fundamental Statute<sup>71</sup> which has not been established yet, there is no authority to interpret or to adjust the text in the process of application.

In practice, however, member states, private entities and individuals bring their complaints about a violation of the UEA to the G.C.C. Secretariat. These complaints are brought through either the diplomatic channels of the member states or directly lodged with the G.C.C. Secretariat.<sup>72</sup> Yet one has to state that there is no set procedure to follow or specific authority in the treaty to tell how and to whom the complaints are to be submitted.

---

<sup>70</sup> See supra, Chapter 5, pp.155-61. See also, Bos, M., A Methodology of International Law, T.M.C. Asser Institute (1984), pp.130-33 who maintains that "a purely political interpretation is no interpretation but a political act, gratuitous if emanating from someone devoid of political power. Interpretation must live up to good faith and observance of the principle of rational organisation".

<sup>71</sup> Article 3 of the Fundamental Statute. See also, supra, Chapter 5 for the Commission of Settlement of Disputes, pp.181-87.

<sup>72</sup> An interview with the Director General of the Legal Department in the G.C.C. Secretariat, dated December 1987.

Between 14 June 1983 and 24 September 1987 more than a hundred complaints were received by the Secretariat-General.<sup>73</sup> Most of the complaints were submitted alleging violations of the UEA provisions, misinterpretation of the agreement provisions and non-fulfilment of certain procedures which are required by the G.C.C. organs or the national authorities to implement the agreement.<sup>74</sup>

Indeed, as a rule the G.C.C. member states do not intentionally violate their obligations. Usually it is a matter of carelessness. Sometimes the infringement is due to disagreement in the interpretation of the G.C.C. decisions and the substance of international obligation may be involved.

---

<sup>73</sup> These complaints are filed in a list by the Secretariat and obtained by the author during his regular tours to the G.C.C. member states.

<sup>74</sup> According to Articles 2 and 3 of the UEA the exemption of customs duties and other charges having equivalent effect is granted to products of national origin. A certificate of origin must be submitted and proves (1) the ownership of the product shall not be less than 51%; (2) the added value arising out of the product shall not be less than 40% of its end value upon completion of production. The Committee of Economic and Financial Affairs added some other procedural conditions that are to be fulfilled (e.g. the name of the factory which is entitled to the exemption must be included in the industrial guide which provides the necessary information about the products of each factory within the G.C.C. Member state, otherwise the factory will not be entitled to such exemption). There are about 13 complaints from different national corporations and individuals against the G.C.C. member states for imposing customs duties on their products because of their failure to meet this requirement. Another procedural requirement which is imposed by Saudi Arabia is that certain regulations for packing of goods must be observed. Among the 101 complaints there are about 4 submitted by G.C.C. member states on behalf of their citizens which claimed that these rules cause harm and increase the cost of export. All these complaints are found in the G.C.C. list. Ibid.

The absence of an impartial body to give the right meaning to the agreement provisions and the Supreme council decisions is keenly felt. It adversely affects any move towards integration.

Article 8(3) of the UEA for instance provides that:

"The member states shall agree on the executive rules which would ensure that each state shall grant the citizens of all other member states the same treatment granted to its own citizens without any discrimination or differentiation in the following fields:

1. ...
2. ...
3. Freedom of exercising economic activity"

In accordance with the above provision, the Supreme Council in its third session in Bahrain decided that G.C.C. citizens may exercise economic activities in the fields of industry, agriculture, animal husbandry, construction and fishery.<sup>75</sup>

Oman has submitted a memorandum on its interpretation of the exercise of economic activity in the field of fishing. it stated that:

"Fishing is similar to oil which constitutes an important source of the state's main revenues. The treatment of fishing in the same way as oil explains the basis on which Oman understands the phrase 'exercising economic activities'.... Therefore fishing may not be a subject of joint property, but exercising this type of activity may only be confined to marketing, storage, canning and other similar activities."<sup>76</sup>

---

<sup>75</sup> See the decision in Decisions to Implement the UEA, G.C.C. Secretariat Publication (Arabic) (1987), pp.14-16.

<sup>76</sup> A memorandum prepared by the Economic Department of the Secretariat (1985) (unpublished), p.3. An interview conducted by the writer in December 1987 with the director of the Legal Department of the G.C.C. Secretariat confirmed

This interpretation has been received with dissatisfaction by the Secretariat, which does not regard fishing as outside the domain of economic activities covered by Article 8(3).<sup>77</sup>

Interpretative disputes of opinion between the organisation and members are frequent. This may be illustrated by reference to the International Court of Justice Advisory Opinion of 20 July 1962 in Certain Expenses Case of the United Nations, in which the scope of Article 17(2) of the UN Charter was decided upon. France and the Soviet Union, who had refused to contribute towards the expenses of certain United Nations operations in the Congo and the Middle East, kept to their own interpretation of Article 17 which is different from the one adopted by the Court.<sup>78</sup>

However, since there is no effective authorised body stipulated in the treaty to decide whether Oman has failed to fulfil an obligation under Article 8(3) of the UEA, Oman may argue that its interpretation of the Supreme Council decision does not amount to a breach of UEA provisions.<sup>79</sup>

Another example which indicates the unilateral

---

Oman's interpretation, which has not since been changed.

<sup>77</sup> The interview, ibid.

<sup>78</sup> See Bos, M., op.cit., p.129.

<sup>79</sup> See in this meaning the opinion of the European Court of Justice deciding on similar problems, in Schermers, G., "The Law as it Stands against Treaty Violations by the States", The Legal Issues of European Integration (1974), p.117.



interpretation by G.C.C. member states of the UEA provisions is illustrated in the application of Article 1(a). Article 1(a) of the Unified Economic Agreement provides:

"The member states shall permit the importation and exportation of agricultural, animal, industrial and natural resource products that are of national origin. Also, they permit exportation thereof to other member states."

The Financial and Economic Committee, at its fifth meeting, held at the Headquarters of the Secretariat General in Riyadh on 11 May 1983, gave assurances on the implementation of Article 1(a), which requires allowing the importation and exportation of national products to and from the member states beginning on the first day of March 1983, without the need to undertake any procedures except certificates of origin, and the manifest of exportation which was agreed upon in the third meeting of the directors general of customs.

At its seventh meeting, which was held in Riyadh on 18-19 May, 1983, the Ministerial Council (the Ministers of Foreign Affairs) approved the above recommendations and the Secretariat General issued a general circular to the concerned bodies in the member states to the effect that it would become operational on the first day of March 1983.

The Minister of Finance and National Economy of the State of Bahrain informed the G.C.C. Secretariat that the procedures applied in the state of Bahrain regarding Article 1(a) of the UEA were in conformity with what was agreed upon at the fifth meeting of the Financial and Economic Cooperation Committee

and at the seventh meeting of the Ministerial Council, while the Ministry of Foreign Affairs of Saudi Arabia informed the Secretariat that their authorised bodies had agreed on the unrestricted freedom of export in relation to agricultural products and cattle, in accordance with Articles 1 and 27 of the Unified Economic Agreement, under the following conditions:

- "1. Continuing unrestricted freedom of export of agricultural products.
- 2. Unrestricted freedom of export of cattle and animal products of national origin to the states of the Cooperation Council according to the following standards:
  - A. Female and Arab horses may not be exported except with special permission.
  - B. All other types of cattle and animal products of national origin may be unrestrictedly exported on condition that these exports be subject to the international health procedures and obligations which are currently in force."<sup>80</sup>

Ironically, Article 27 of the UEA, which was referred to by the Ministry of Foreign Affairs of Saudi Arabia, provides:

"In case of conflict with local laws and regulations of member states, execution of the provisions of this Agreement shall prevail."

It seems, therefore, that an "obligatory method" by only an independent body with the task of interpretation, could restrain the freedom of auto interpretation.<sup>81</sup>

In this regard, it is worth mentioning that some maintain that member states are entitled to their own interpretation,

---

<sup>80</sup> See Decrees which have been Issued and Measures which have been Adopted in Implementing the UEA, op.cit., pp.170-171.

<sup>81</sup> See Professor Sur, S., L'Interpretation en Droit International Public, Paris (1974), pp.237-238, cited by Bos, M., op.cit., p.129.

differing from the organisation's, and this might even extend to binding decisions and judgments pronounced by the International Court of Justice.<sup>82</sup> The right view, however, is that a binding decision by the political body or authoritative decision by the court will have compelling legal effect.

According to Article 3 of the UEA three conditions must be fulfilled for a product to be exempted from customs duties.

- (1) The value added to the national product shall not be less than 40% of their final value.
- (2) The share of the citizens in ownership of the product shall not be less than 51%.
- (3) An authenticated certificate of origin to be submitted to the receiving state which is procedural and obtained as a result of fulfilling the first two conditions."<sup>83</sup>

---

<sup>82</sup> This view is expressed by Professor Sur, *ibid.*, pp.133-38, cited by Bos, pp.128-29.

<sup>83</sup> The Supreme Council at its third meeting, which was held in the state of Bahrain on 7-9 November 1982, issued the following exemption:

"1. To exempt products of national origin from customs tariffs and reciprocal tariffs as of the first day of March, 1983.

2. To authorize that this exemption will include products of the industrial establishment in which the ownership by citizens of the member states has not yet reached 51 percent. This authorisation will be valid for the period of one year, beginning on the first day of March, 1983."

This deadline, fixed by the Supreme Council, expired at the end of February 1984. See Decrees which have been Issued and Measures which have been Adopted in Implementing the Unified Economic Agreement, G.C.C. Secretariat (1988) p.59. See also, Gnichtel, W., "The Arab States Gulf Cooperation Council: Unified Rules for Trade and Industry", 20 International Lawyer (1986), pp.309-318.

In the practice of the G.C.C., and through the complaints submitted to the Secretariat, it appears that on many occasions the contracting party has the final say as to whether there is or there is not fulfilment of these conditions, provided in Article 3. Consequently, the contracting party or the beneficiary of the rule has no effective means to challenge the alleged violations against him.

In a complaint to the G.C.C. Secretariat a dispute arose between the Ministry of Trade and Industry in Kuwait and a company specialising in producing chemicals in the United Arab Emirates. The latter claimed its entitlement to the exemption of the customs duty according to Article 3(1). The former claimed in return that the company is owned entirely by American associations. The G.C.C. Secretariat had only to write to the Kuwait Foreign Office explaining the view of the company through a memo it received from the UAE's Foreign Office.<sup>84</sup>

In a similar incident concerning the application of Article 3(1) of the UEA the Ministry of Finance and National Economy in Saudi Arabia wrote to the G.C.C. Secretariat that in future it would impose customs duty on some jewellery exported to Saudi Arabia from the United Arab Emirates. The

---

<sup>84</sup> Complaint No.1 in the list, op.cit. There are other similar complaints focusing on fulfilling the three conditions of granting the exemption from customs duties, the role of the Secretariat is limited to the extent of writing what they received from and to the parties concerned. The List of Complaints, op.cit.

Saudi authorities claimed that the products' final value cannot exceed more than 5%, which is far less than the required percentage under Article 3(1). Furthermore, gold is not one of the United Arab Emirates' natural resources. The Secretariat merely wrote in its turn to the Ministers of Economy of the G.C.C. member states explaining to them the Saudi interpretation and requesting their comment.<sup>85</sup>

Again in February 1984 the Saudi authorities imposed customs duty on some imports coming from Kuwait as products of national origin. Saudi Arabia claimed that after careful verification the products proved to be owned entirely by foreign firms. The Kuwaiti authorities wrote to the Secretariat of the G.C.C. disputing the Saudi evaluation and ascertaining that the products were entitled to the exemption under Article 3(1) of the UEA.<sup>86</sup>

The receiving state as a result could take an arbitrary position in granting the exemption of customs duties.

Another problem relating to these conditions is that the national authorities may without accurate verification of the first and second condition issue the certificate of origin, sacrificing the community benefit for the sake of national or even individual benefits.<sup>87</sup>

---

<sup>85</sup> Complaint No.13, ibid.

<sup>86</sup> Complaint No.16, ibid.

<sup>87</sup> According to some of the complaints the receiving state proved after verification that the products are completely foreign and accompanied by a certificate of origin. Complaints Nos. 5, 13, 16, 38 and 75.

In one of the complaints which was submitted to the Secretariat in July 1985, the Omani Customs Department found after verification that 770 ice cream boxes and iced cakes exported as national products from the Emirate of Sharjah in the UAE were all produced in England. The goods were accompanied by a certificate of origin, purporting them to have been produced in the UEA.<sup>88</sup>

The demand for a certificate of origin has been criticised by some private entities on the ground that it is difficult to meet the first condition and itemize the product's final value which includes such variables as the original values, manufacturing costs, marketing and advertising expenses, and suggested sale price. Also these variables can be influenced by market conditions and by the psychological attitudes of customers.<sup>89</sup>

The first condition, which requires that at least 40% value must have been added by the seller to the product's final value, has also been a matter of dispute between the member states. The problem is mainly due to the question of definition of the 40% value added to the product, which is entirely in the hands of those who issue the certificate of

---

<sup>88</sup> Complaint No.32 in the list. Ibid.

<sup>89</sup> In a newspaper interview following the implementation of Article 3 of the UEA on September 1, 1985, the executive director of the Bahrain Aluminium Sheets Company further objected to the certificate of national origin on grounds of confidentiality. He maintained that the information demanded in the certificate include highly sensitive company secrets that should not be revealed easily. See Nakhleh, E., The Gulf Cooperation Council, op.cit., pp.272-28.

origin or the authorities which receive the product.

One of the complaints which relates to this kind of dispute concerns ready-made houses and whether they constitute 40% of the added value locally or not. The Customs Department in Saudi Arabia has disputed the fact that this type of product is 40% locally produced and claimed that they are completely foreign. The Ministry of Trade and Industry in both Kuwait and UAE claimed the whole 40% cannot be added before installing these houses. Therefore some percentage of the value is not completed until it is received by the buyer and in this case in Saudi Arabia is to be added on the site at the time of installation.<sup>90</sup>

Furthermore, when the G.C.C. applies Article 3 of the UEA, a state will not necessarily agree with a specific position taken by another state. However, often diplomatic considerations will lead them to remain silent rather than express their opposition, and thus the legal issue involved remains uncertain.<sup>91</sup>

Although there can be an adverse impact upon individuals as a result of actions by G.C.C. organs and consequential actions by national authorities, there is no remedy obtained by the individuals. Individuals on many occasions have suffered damages to their products. In one of the complaints,

---

<sup>90</sup> Complaint No.5 in the list, op.cit.

<sup>91</sup> For the disadvantages of contracting party supervision, see Andretsch, H., Supervision in European Community Law, op.cit., pp.403-4.

the Saudi customs authorities have imposed a regulation on the truck drivers carrying sheep from the United Arab Emirates to Saudi Arabia, providing that the sheep conveyors had to enter Saudi territory through the same road by which other products enter. Delay was bearable to these other goods but not in the case of sheep. This regulation was meant to check and investigate the contraband products coming from the northern borders with the United Arab Emirates. The result was the loss of those sheep, of which up to 19% perished, because of the difficulty of feeding them in the desert for more than 5 days.<sup>92</sup>

According to the aforementioned list of complaints prepared by the G.C.C. Secretariat, all these complaints came to nothing as they did not come before the national courts for judicial settlement.

The absence of systematic examination of the policy of member states with a view to ascertaining the extent to which they have actually given effect to their obligations under the UEA means that violations of the general provisions of the agreement may have occurred without it being certain. This would also encourage further violation of UEA provisions.

Article 27 of the UEA provides:

"In case of conflict with local laws and regulations of member states, application of the provisions of this Agreement shall prevail."

---

<sup>92</sup> Complaint No.34 in the list, op.cit.. For the right of individuals to claim damages in the light of the UEA see infra, pp.325-38.



In three complaints some member states have not allowed products of national origin to enter their territories on the pretext that their health regulations do not permit them. As such the refusal of the authorities in Kuwait and Oman to grant the exemption of customs duties to products coming from Saudi Arabia is based on the ground that products of origin are not good enough for human consumption according to the laboratory results.<sup>93</sup>

Furthermore, other complaints have been focused on the specifications and measurements of the products of G.C.C. national origin, claiming that they are not up to the standard of domestic products.<sup>94</sup>

In July 1986 the Ministry of Economy and Commerce in Qatar complained to the G.C.C. Secretariat that both Saudi Arabia and Oman customs refused entry for mineral water accompanied with a certificate of origin which led to the damage of 350 cartons. Oman claimed that the goods did not comply with the specifications pertaining to similar local goods. The Qatari company in turn produced evidence prepared by the official bodies in Qatar, UAE and other bodies confirming the high standard of the mineral water (i.e. Evian).<sup>95</sup>

---

<sup>93</sup> Complaint No.17, ibid.

<sup>94</sup> Complaints No.29 and 59.

<sup>95</sup> Ibid., No.59.

This attitude by some G.C.C. member states has further proved their loose commitment to other agreements in this field specially concluded for such purposes. In 1982 the Supreme Council at its third meeting held in Bahrain, established the Board of Specification and Standards attached as a subsidiary organ to the G.C.C. The Board, according to Article 4 of its statute, will be concerned, inter alia, with the following:

- "1. Legislative affairs concerned with specifications and standards in the states of the Council, and it alone will prepare, sanction and publish the Gulf Standard Specifications for commodities and products and the apparatus for measurements, verification, definition, symbols, technical terms, conditions for implementation and methods of inspection, testing and verification etc.
2. To prepare, print and publish the standard specifications in cooperation with the member states.
3. To follow up the implementation of the approved specifications through the evaluatory apparatus in each member state.....
7. To set up regulations for granting marks of quality and certificates of conformity for products.
8. To publish guidance and information in measuring."<sup>96</sup>.....

The situation between G.C.C. member states may lead to the use of retaliatory measures, where some member states believe that another member state has violated its obligations.

However, under international law not every violation by

---

<sup>96</sup> See the Basic Statute of the Board of Specifications and Standards of the States of the G.C.C. in Decisions and Steps taken to Implement the UEA, op.cit., pp.184-89.

a member state entitles another party affected by the failure of non-compliance with the agreement obligations not to fulfil its own obligations.<sup>97</sup> Only violations that render the agreement in essence different from the one entered into, or without purpose, would entitle a party to decline to fulfil its own obligation. That is opting to terminate the agreement.

(ii) The Priority in Governmental Purchase of National Products and Products of National Origin in the G.C.C.

Article 1 of the UEA provides:

"The member states shall permit the exportation and importation of agricultural, animal, industrial and natural resources products that are of national origin. Also, they shall permit exportation thereof to other member states.

2. All agricultural, animal, industrial and natural resource products that are of national origin shall receive the same treatment as national products."

---

<sup>97</sup> Article 60 of the Vienna Convention on the law of Treaties entitles the party to invoke only material breach as ground for termination or suspension of the treaty.

"A material breach of a treaty, for the purpose of this Article, consists in: (a) a repudiation of the treaty not sanctioned by the present Article; or (b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty".

In EEC law a violation cannot be justified by the fact that the other party first violated its obligations. The court has rejected the Belgian and Luxembourg argument in the Dairy Products Case that since the Community had failed to comply with its obligations to set up a common organisation of markets for dairy products, therefore they were justified in keeping their own (protected) measures in force. They argued that was possible in international law. The court replied, "this relationship between the obligations of parties subject to the treaty cannot be recognised within the framework of Community law". See Schermers, G., "The Law as it Stands against Treaty Violations by States", 2 L.I.E.I. (1974), p.121.

The above mentioned products, that are of "national origin", shall be exempted from customs duties and other charges having equivalent effect.<sup>98</sup>

The phrase "products of national origin" is defined as products in which the ratio of the added value arising out of its production in a member state shall not be less than 40% of its end value upon completion of production, and the percentage of ownership of the entity by nationals of G.C.C.

---

<sup>98</sup> Article 2(1) of the UEA. By contrast, the EEC treaty affords a cohesive formula to guarantee freedom of movement within Community markets. Article 3(a) provides:

"For the purpose set out in Article 2, the activities of the Community shall include, as provided in this treaty and in accordance with the timetable set out therein (a) the elimination, as between member states, of customs duties and of quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect."

Thus, it is not only "customs duties and other charges having equivalent effect" as Article 2(1) of the UEA provides and makes products of national origin receive the same treatment, but also as Article 3(a) of the EEC treaty provides "quantitative restrictions and import and export of goods and all other measures having equivalent effect". The difference between the two provisions is very wide and the aims of each to grant Community products the same treatment is too far to be similar. As a result there are measures which are not governed by the UEA and applied by some member states with distinction to the intra-community trade, which may impede the latter, and must be regarded as prohibited measures (i.e. government subsidies to domestic products). Furthermore, the European Court of Justice has elaborated on the relevant concepts in the provisions of integration which cannot be defined by the treaty and only determined in various cases as whether a breach of the treaty has occurred as a result of imposing measures having equivalent effect. See in this regard, Lasok, D. and Bridge, J., The Law and Institutions of the European Community, op.cit., p.358. See also Timmermans, C., "The Free Movement of Goods", in Thirty Years of Community Law, Office for the Official Publications of the European Communities (1983), pp.254-58.

states shall not be less than 51%.<sup>99</sup>

In the line of these protectionist measures, and under rules recently issued by the G.C.C.,<sup>100</sup> the G.C.C. member states must accord preference to goods produced by member states,<sup>101</sup> and products of national origin over similar goods produced by non-member states (i.e. foreign products) in any government procurement.<sup>102</sup>

Furthermore, G.C.C. member states must purchase national products if they are no more than ten per cent higher in cost than similar foreign origin and 5% higher than products of national origin.<sup>103</sup> If there are no available national products, products of national origin must be utilised if they are no more than 10% higher in cost than similar foreign

---

<sup>99</sup> Article 3(1) of the UEA.

<sup>100</sup> See the Unified Rules for Giving Priority in Government Purchases to National Products and Products of National Origin in the G.C.C., G.C.C. Publication (Arabic), reprinted Saudi Arabia, Section B, Middle East Exec. Rep. (June 1987), at p.22. See also Government Purchasing Priority Rules, Saudi Economic Survey (April 6, 1987), summarising the new G.C.C. procurement rules).

<sup>101</sup> "National product" is defined as a "product produced in a member state and which is deemed a national product pursuant to the law of such member state", ibid.

<sup>102</sup> Ibid., Article 2(a). The procurement rules apply to procurement by "ministers, government corporations, public corporations and government companies or companies in which the government holds not less than 51% of capital...", idem.

<sup>103</sup> Idem. For pricing purposes, the cost of delivery to the buyer's warehouse is included in the price of the goods. Moreover, the value of all customs and other import fees must be added to the cost of a foreign product, even if the foreign product is exempt from such costs. Ibid.

products.<sup>104</sup> Therefore, assuming the price limitations are satisfied, a G.C.C. member state may not purchase foreign goods until it has first exhausted the supply of national products and then the supply of products of national origin.<sup>105</sup>

Therefore, when contracting with a government agency of a G.C.C. member state, the contractor must stipulate that it will adhere to the G.C.C. procurement rules in purchasing goods and materials.<sup>106</sup>

As far as supervision is concerned, it seems that the Secretariat has little role to play and it is for each member state to designate a competent authority to supervise the implementation of these rules.<sup>107</sup>

As such, the G.C.C. government agencies are permitted substantial administrative discretion in choosing sources of products required for any particular project. Therefore, the rule may be interpreted flexibly at the ministerial level to encourage foreign participation without apparent supervision

---

<sup>104</sup> Ibid.

<sup>105</sup> Ibid. It is evident that with the increase of government procurement, government preferences to domestic producers have become a serious impediment to international trade. In the mid-1960s government procurement as a barrier to trade was discussed within the OECD. Due to the stalemate it reached, the U.S.A. and a number of developing countries led by India urged successfully that negotiations be transferred to the GATT. See Courage-Van Lier, "Supervision within the General Agreement on Tariffs and Trade", in van Dijk, Supervisory Mechanisms in International Economic Organisations, op.cit., p.157.

<sup>106</sup> Article 4 of the Unified Rules for giving priority in government purchases, op.cit.

<sup>107</sup> Ibid., Article 9.

by G.C.C. organs.<sup>108</sup>

In fact, according to the list of complaints a Kuwaiti firm complained against the Public Department of Enterprise and Maintenance in the Ministry of Health in Saudi Arabia concerning instructions issued by the former to buy local products rather than products produced in G.C.C. member states, in order to build a hospital. The Kuwaiti firm claimed that this was in violation of Article 1(2) which requires all products of national origin to receive equal treatment. The G.C.C. Secretariat intervened and requested the Minister of Health to correct the wrongful act.<sup>109</sup>

(iii) Governmental Subsidies

Governments can influence domestic trade by granting subsidies or other kinds of aid to producers or consumers. However, international competition is likely to be distorted if domestically produced commodities were to receive these subsidies.<sup>110</sup>

Unfortunately, however, the UEA agreement does not provide for the regulation of subsidies. This loophole may have serious repercussions for economic integration, especially since a member can only complain of explicit violation of the UEA, rather than of an indirect benefit that

---

<sup>108</sup> Wisner, G., "The Procurement Policies of the Kingdom of Saudi Arabia", 21 George Washington J. Int'l. L. & Econ. (1987), pp.120-21.

<sup>109</sup> Complaint No.22 of the list, op.cit.

<sup>110</sup> Courage-Van Lier, "Supervision within the General Agreement on Tariffs and Trade" in van Dijk, op.cit., p.136.

has been impaired.

A violation of an explicit provision of the UEA by a member state is apparently a necessary condition to bring a complaint. As such, the purpose and the intent of the agreement may not be the criterion to be applied in determining a violation. This position, however, does not conform to well-established principles of interpretation in the law of treaties. Article 31(1) of the Vienna Convention on the Law of Treaties provides:

"A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

Article 32 furthermore provides:

"Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of Article 31, or to determine the meaning when the interpretation according to Article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable."<sup>111</sup>

This may be illustrated by reference to governmental subsidies within the G.C.C., where no provision is stipulated in the U.E.A. to allow or prevent it. Yet it is possible that the objective of the agreement could be impeded when a government subsidises a national product, and consequently competition is upset.

---

<sup>111</sup> See the text in Brownlie, I., Basic Documents in International Law, op.cit., pp.245-46.



As such, a broad interpretation of Article 1(2) of the UEA may not allow government subsidies to be given to national products at the expense of G.C.C. products of national origin.

The Article provides:

"All agricultural, animal, industrial and natural resources products that are of national origin shall receive the same treatment as national products."

However, Article 2(1) of the UEA seems not to support this conclusion. It provides the treatment that G.C.C. products of national origin receive is confined to the exemption of customs duties and other charges having equivalent effect.

It states:

"All agricultural, animal, industrial and natural resources products that are of national origin shall be exempted from customs duties and other charges having equivalent effect."

Furthermore, the practice of the G.C.C. member states in this regard poses serious questions as to the right explanation of the agreement and how its provisions are observed.

In 1984 Kuwaiti producers raised the question of Saudi government aids to the Saudi producers exporting locally produced chicken to Kuwait, which distorted free competition and adversely affected trade between G.C.C. member states. Therefore Kuwaiti consumers preferred buying Saudi chicken for its lower cost.<sup>112</sup> Not surprisingly, this issue has received

---

<sup>112</sup> Complaint No.9 in the list, op.cit.. This time the complaint was not brought to the Secretariat by the contracting party or the beneficiary, but raised in Al-Syassah newspaper in Kuwait who blamed the UEA for not finding a solution to the problem.

little attention from the Secretariat as far as supervision is concerned. As such, it is uncertain whether Saudi Arabia is prohibited under the provisions of the agreement from subsidising its local products.

Neither is there a judicial body capable of giving the phrase "products that are of national origin shall receive the same treatment as national products" its proper interpretation.

This conclusion similarly applies to other direct governmental support to national products, such as taxation facilities, cheaper rents and indirect support such as facilities offered in the field of training, marketing and studies.<sup>113</sup>

##### 5. The Private Citizen and G.C.C. Obligations

Although the UEA has an immense impact on individual citizens, there is no direct relationship between the UEA provisions and such private persons. The agreement only binds governments and through its authorised bodies it is applied

---

<sup>113</sup> See in this regard Jackson, H., World Trade and the Law of GATT, Bobbs-Merrill Co. Inc., New York (1969), p.365. In the EEC state aids might amount to the equivalent of a quantitative restriction which is prohibited under the treaty. This argument might have some force if all state aids were prohibited by the EEC treaty, but that is not the case. Although Articles 92-4 impose Community control over state aids because they may affect competition and trade between member states, not all state aids are prohibited. Article 92(2) for example, does not consider all types of aids incompatible with the policy of the common market. Article 93(3) permits some aids to be compatible with the common market. See Burrows, F., Free Movement in European Community Law, Clarendon Press, Oxford (1987), pp.47-9,

to citizens. Individuals in the G.C.C. member states, therefore, have no locus standi before any organ of the G.C.C., even where their rights have been breached.

In international law, there is no rule which precludes individuals from obtaining directly rights derived from a custom or a treaty provided that this is the intention of the parties.<sup>114</sup>

In its judgment in the Danzig Case, the Permanent Court of Justice pointed out that:

"The very object of an international agreement, according to the intention of the contracting parties, may be the adoption by the parties of some definite rules creating individual rights and obligations and enforceable by the national courts."<sup>115</sup>

---

<sup>114</sup> Lauterpacht, H., "The Subjects of the Law of Nations", 64 L.O.R. (1948), p.112. See also, Friedmann, W., The Changing Structure of International Law, Stevens & Sons, London (1964), p.278.

<sup>115</sup> P.C.I.J. Rep., Ser.B. No.15, pp.17-18. See also, Lauterpacht, H., "The Subjects of the Law of Nations", 64-65 L.O.R. (1948-49), pp.97-8, who maintains that prior to this Advisory Opinion the question whether individuals were capable of acquiring direct rights was "answered in the negative - though even then some caution would have been indicated, having regard to the law of some countries, such as the United States, in which duly ratified treaties are a self-executing part of municipal law". But he argues that possibly it could have been said in reply that "this was so only by virtue of municipal law and not of international law - an argument the relevance of which is open to question." Henkin, H., "Resolutions of International Organisations in American Courts", in Essays on the Development of the International Legal Order, (ed.) Kalshoven, F., Kuyper, P. and Lammers, J., Sijthoff & Noordhoff (1980), pp.202-3.

It is only through an exercise of the state's will that such is granted to individuals.<sup>116</sup>

Sometimes an individual's interests arising from a treaty may be revoked by a later treaty and the individual affected by such revocation will not be able to invoke the protection of the international forum established by earlier treaty.<sup>117</sup>

Therefore, under classical rules of international law individuals may generally only have benefits conferred upon them by states and cannot possess enforceable rights against states. On a cursory reading this may also appear to be the position under Article 1 of the UEA. It reads:

"1. The member states shall permit the importation and exportation of agricultural, animal, industrial and natural resource products that are of national origin. Also, they shall permit exportation thereof to other member states.

2. All agricultural, animal, industrial and natural resource products that are of national origin shall receive the same treatment as national products."

Furthermore, the UEA does not include provisions which lay down the procedures for the individual to petition against possible violations of the agreement.

It is not always necessary that the establishing treaty explicitly confer rights corresponding with the obligations

---

<sup>116</sup> Jessup, P. A Modern Law of Nations, Archon Books (1968), pp.17-18.

<sup>117</sup> Seidl-Hohenveldern, "International Economic Law", Recueil des Cours, III (1986), p.34. See also White, G., "The Impact of the European Community on International Law", in International Law: Teaching and Practice, (ed.) Cheng, B., Stevens & Sons, London (1982), pp.81-84, who states "In general treaties, do not create direct and enforceable rights or obligations for individuals or other legal persons".

of the states and refer directly to the individuals. In economic integration treaties a community rule is, as regards its form, directed to the states, does not of itself deprive individuals who have an interest in it of the right to require it to be applied in the national courts.

The position of individuals in the EEC basically is determined in the establishing treaty which includes three different kinds of provisions. The first category of provisions lays down the traditional concept of obligations which exist only between states. These obligations must be implemented by the member states in order to become effective. If they affect individuals, they can only do so indirectly. A second category addressed to community institutions only requires them to adopt implementing measures in order to pursue the objectives of the community included in the treaty. Individuals, therefore, are affected by the treaty provisions through these measures (the so-called secondary legislation). The implementing measures are divided into directly applicable and non-directly applicable. The latter may affect individuals only and after further procedures taken by a member to which the measures are addressed. The third category of provisions were originally addressed to and create obligations for the member states only, but were subsequently declared by the European Court to produce direct effects in the legal relations between the member states and individuals directly without legislative intervention by the member

states.<sup>118</sup>

However, for a legal provision to be directly effective two requirements must be satisfied. First, the provision must be part of the internal law of the member state. This does not mean that legislation is needed to bring it into effect, but merely the national courts must recognise the provisions as valid and binding law. The second requirement is that the terms of the provision must be appropriate to confer rights on individuals.<sup>119</sup>

In the Van Gend en Loos Case,<sup>120</sup> which is the first decision by the European Court on the direct effect of the treaty provisions, the main issue was whether Article 12 of the EEC is directly effective. It reads:

"Member states shall refrain from introducing between themselves any new customs duties on imports or exports or any charges having equivalent effect, and from increasing those which they already apply in their trade with each other."

Although the provision imposes obligations on the member states and does not grant any corresponding right to individuals, the European Court took the view that a provision addressed to member states is not prevented from being

---

<sup>118</sup> Only a few provisions of the EEC Treaty are of such a nature as to be directly applicable. See Toth, A., The Legal Protection of Individuals in the European Communities, Vol.1 (The Individual and Community Law), North Holland (1978), pp.7-8, 11, 44 and 104-105. See also, Case 102/79, Commission v. Kingdom of Belgium [1980] E.C.R. 1473.

<sup>119</sup> Hartley, T., The Foundations of European Community Law (1988), op.cit., pp.183-185.

<sup>120</sup> Case 26/62 [1963] E.C.R.1, C.M.L.R. [1963], p.105.

directly effective and conferring rights on private individuals.<sup>121</sup> The Court instead laid down a different test, stated as follows:

- (1) The provision must be clear and unambiguous.
- (2) It must be unconditional.
- (3) Its operation must not depend on further action being taken by community or national authorities.<sup>122</sup>

As such, the EEC treaty regards the free movement of workers, freedom to provide services and freedom of establishment for self-employed workers as fundamental rights and protects them against any infringement by sovereign power of the member state. The treaty provisions relating to these rights (Articles 48, 52 and 59 EEC) are directly applicable in the member state.<sup>123</sup>

The European Court of Justice has made it clear on many occasions that when a legal provision is regarded as being directly effective it is meant that individuals have rights and must be upheld by the national courts. These rights are enforceable by individuals rather than by public

---

<sup>121</sup> The principle was affirmed in Defrenne v. Sabena, Case 43/75, [1976] E.C.R. 455 at paragraph 31 of the judgment.

<sup>122</sup> Dashwood, A., "The Principle of Direct Effect in European Community Law", 16 Journal of Common Market Studies (1978), pp.231-234. See also, Kovar, R., "The Relationship between Community Law and National Law", in Thirty Years of Community Law, op.cit., pp.137-149.

<sup>123</sup> Ress, G., "Free Movement of Persons, Services and Capital", in Thirty Years of Community Law, op.cit., p.183.

authorities.<sup>124</sup> Thus, a private individual may invoke community law against another private individual or against a national government and it is also possible that a national government can enforce community law against a private individual.<sup>125</sup>

The possibilities for individuals within the EEC with respect to alleged failures are the following:

- (1) They may submit a complaint to the Commission.
- (2) They may institute proceedings against the Commission under the ECSC Treaty (Article 35 in conjunction with Article 88 ECSC).
- (3) They may rely before the national authorities (especially the national judge) on community law and its priority over conflicting national law.<sup>126</sup>

As regards the G.C.C., since it lacks a court or supranational decision-making body, it cannot follow the path of the EEC. Still, individuals have not been deprived of direct rights under the UEA provisions and they could invoke the UEA provisions against a government body or against a private party in the national courts, alleging a violation of the agreement.

The UEA provisions have been incorporated into the legal

---

<sup>124</sup> Hartley, op.cit., p.183.

<sup>125</sup> Idem.

<sup>126</sup> Andretsch, H., Supervision in European Community Law, op.cit., pp.240-247. For the locus standi of private parties see also Lasok, D. and Bridge, J., The Law and Institutions of the European Communities, op.cit., pp.266-269.



systems of the member states by virtue of domestic legislation and further decrees implementing the Supreme Council decisions.<sup>127</sup> Nevertheless, rulings of the national courts to affirm these rights and to create precedents to protect them are greatly needed.

Local remedies in the form of compensation against administrative decisions of the member states could be obtained, in spite of the defendant's argument that ordinary courts have no jurisdiction to hear cases involving the challenges to administrative decisions.

In a case which was brought before the ordinary courts for the first time in Qatar, the plaintiff, Mr. Al-Ansari who works for Qatar University, challenged the legality of a decision taken by the director of the university to transfer him from his post to another outside the university as a disciplinary measure. The defendant argued, inter alia that the jurisdiction of the civil courts does not include any provision to hear cases of an administrative nature. The judge, accepting the plaintiff's argument, has maintained that although the legislature has not given the civil courts explicitly the right to hear cases against administrative decisions, in principle the ordinary courts have general jurisdiction to hear the whole gamut of cases, a rule which is well established in law and the practice of the courts, especially in the Anglo-Saxon system where there is no

---

<sup>127</sup> See G.C.C. Legal Gazette, Edition 3 (1983), pp.31-48.

administrative court to scrutinise the acts of the administration.<sup>128</sup>

In principle there are other possible remedies which could be obtained by individuals, that is the annulment of the decision which infringes upon their rights.<sup>129</sup> However, the latter form of remedy may not be accessible in all G.C.C. member states.

Under the Kuwait legal system a distinction is made between cases of private appeals against administrative acts, to be dealt with by the administrative courts, and other types of cases to be dealt with by ordinary courts. Under such a system appeals against government actions in the field of application of the UEA are not, however, open to challenge as illegal actions affecting individual interests, since the jurisdiction of the administrative courts is confined to hearing disputes concerning public recruitment, staff salaries, rewards, allowances, promotion, the administrative actions and administrative contracts.<sup>130</sup>

The only alternative left for any party seeking satisfaction for an alleged violation by Kuwait authorities

---

<sup>128</sup> Judgment of 5 April 1982, The Civil Court of Qatar, Second Circuit (unpublished).

<sup>129</sup> Riphagen, W., "National and International Regulation of International Movement and the Legal Position of Private Individuals", III Recueil des Cours (1970), pp.577-78.

<sup>130</sup> See Article 3 of the Decree No.20, 1981, establishing the administrative court, in Collection of Legislation issued during the Constitutional Revision, Book 1, Part 6 (1981), pp.2226.

at the UEA is to bring his case before the ordinary courts which have a general jurisdiction.<sup>131</sup>

In the United Arab Emirates the Federal Court of First Instance, of which there may be more than one, sitting in several sites in the capital of the Union or in the capital of the other Emirates, has jurisdiction, in terms of Article 102 of the provisional constitution 1971, to hear inter alia disputes of an administrative nature between the union and individuals. This jurisdiction appears to accommodate complaints from G.C.C. citizens and corporations against the Federal Government or any of its Emirates in cases of a breach of G.C.C. decisions which are incorporated in the municipal law as union law.<sup>132</sup>

---

<sup>131</sup> See Rakhib, W. and Abdulfatah, A., Principles of Kuwait Civil Jurisprudence, 1 ed., Dar-Al-Kotob Foundation, Kuwait (1984), pp.112-113. See also, Saif, R., The Law of Civil and Commercial Procedures in accordance with Kuwait Law, Kuwait Print, Faculty of Law and Sharia (1974), p.23. Article 1 of the decree organising jurisprudence provides that ordinary courts have general jurisdiction to hear all cases except those excluded by a provision. The appeal of the Supreme Court, Kuwait, 124/84, Commercial Division, 27 February 1985.

<sup>132</sup> For the techniques of incorporation see supra, Chapter 3, pp.113-116. See Article 3 of the Union Decree No.6, 1978 establishing federal courts and transferring the jurisdiction of domestic courts in some Emirates to it. Published in the UAE Official Gazette, 58 edition dated 15 June 1978. It is to be noticed that according to this decree, and due to the federal structure of the state, there are some Emirates which have independent judicial systems and do not have full jurisdiction (Dubai, Umm Al-Qaiwain, Ras Al-Kaimah) and therefore they still have their own court jurisdiction. Dubai in 1972 issued an order stating that claims against the government cannot be brought without its consent. See the Structure of Dubai Courts, Government of Dubai, Dubai Print (1972) (Arabic), p.31. As far as the G.C.C. Unified Economic agreement is concerned, this order should not become an obstacle for the injured party to sue the government, since

In Saudi Arabia, by the Royal Decree No.M151 (1982) the Board of Grievances was constituted as an independent judicial authority to adjudicate all disputes between the government and private parties. The jurisdiction of the Board includes: the legality of administrative rulings, government contracts, and other administrative acts. Thus in Saudi Arabia the injured party may raise the issue of the Saudi government liability as a result of the application of the UEA.<sup>133</sup>

In Bahrain law, the legality of administrative decisions may be challenged,<sup>134</sup> but the legality of government acts cannot be challenged.<sup>135</sup> Thus, this rule is an exception to

---

the agreement is incorporated in the municipal law as union law. According to the UAE constitution the Emirates are bound to implement any regulation or laws assigned to execute international obligations of the union (the federal state) (Article 125). If a court in one of those Emirates which are excluded from the federal system (has its independent judicial system) refused to hear a claim against the Emirates concerning violation of the UEA, then it is quite possible in law to sue the federal government in the federal capital court (the first instance) since it is the party to the agreement (Article 3 of Union Decree No.6, 1978).

<sup>133</sup> See the Royal Decree No.M151 of 1402 A.H. See also, Steelman, J., "The Grievance Board in Saudi Arabia - An Overview of Royal Decree M151", Middle East Executive Reports, Vol.6 No.5 (May 1983), p.8.

<sup>134</sup> The legal principle No.74 in Case No.642-1984 pronounced by the Upper Court of Appeal in its session dated 18.7.84. The court stated the jurisdiction of the civil court to hear cases challenging the legality of administrative decisions including both the annulment of the decision and compensation of the injured party. Yet sovereign acts are immune from judicial scrutiny. See the principle in The Collection of the Legal Principles according to the Judgments of Upper Civil Appeal Court (January 1980-December 1985), The Government of Bahrain Print, p.103.

<sup>135</sup> The legal principle No.75 in Case No.1148, ibid.

the general rule that a citizen who suffers a civil damage is entitled to compensation.<sup>136</sup>

The problem, however, is not so much the access of the individual to the national court, but rather their ability to get the other defendant party before their national court, where the other party, in the practice of the G.C.C., is often a government who may well plead that certain acts enjoy sovereign immunity.<sup>137</sup>

The delicacy and complexity of these issues will give the national courts the opportunity to interpret and apply both its national laws and international obligations of the member states in order to respond to individuals' claims.<sup>138</sup> This development will consequently enhance the role of supervision of the UEA provisions and protect the interests of individuals.

A G.C.C. member state can file a complaint with the

---

<sup>136</sup> Ibid.

<sup>137</sup> See supra, notes 132 and 134 as examples. In this meaning see Higgins, R., "Conceptual Thinking about the Individual in International Law", 114 British J. International Studies (1978), pp.8-9.

<sup>138</sup> Idem. According to the interview the writer conducted in December 1987 with the Director of the Legal Department of the G.C.C. Secretariat, he confirmed the fact that only on one occasion an Omani citizen had applied to the national court in Saudi Arabia. That was in order to challenge an administrative decision precluding him from opening a pump station in accordance with Article 8(3) of the UEA and the relevant decision, that G.C.C. citizens are entitled to exercise economic activities. The court consulted the G.C.C. Secretariat before taking any legal procedure and the dispute was settled in the claimant's favour by merely contacting the concerned bodies in Saudi Arabia. This complaint is filled as well in the Secretariat's list of complaints No.96.

Secretariat on grounds of violation of the UEA provisions by another member state which results in injury to individuals without alleging its effect on them.<sup>139</sup>

The preferable remedy for individuals, however, would be to take their claim themselves from the diplomatic channels to the judicial level, through the establishment of an international body to enable the individuals, either directly or after exhausting the legal remedies before the national authorities, to submit claims for judicial review rather than diplomatic settlement between the member states.<sup>140</sup> This is

---

<sup>139</sup> At first sight this view looks similar to what Judge Jessup said in his concurring opinion in the South West Africa Cases. He used the ILO Charter provisions and procedures concerning a government filing a complaint alleging failure of any other member effectively to observe the treaty to demonstrate that

"... a state may have a legal interest in the observance, in the territories of another state, of general welfare treaty provisions and that it may assert such interest without alleging any impact upon its own nationals or its direct so-called tangible or material interest... [and] that the basic situation of a difference of opinion concerning the application of a treaty provision on the general welfare of the inhabitants might perfectly well be the subject of negotiations between two states."

See the separate opinion of Judge Jessup in the South West Africa Cases, I.C.J. Reports of Judgments (1962), pp.526-428. But this is quite different from an economic integration treaty. However, according to the list of complaints some national authorities in the G.C.C. member states claimed on behalf of the individuals concerned their entitlement to some rights when applying the UEA provisions and the relevant decisions adopted by the Supreme Council, but never claimed that the member state has breached the agreement.

<sup>140</sup> See in this meaning, Friedmann, W., The Changing Structure of International Law, op.cit., p.238. The possibility of individuals bringing their claims to a specialised body is not excluded. In 1983 the government of Bahrain has made proposals to the G.C.C. that an arbitration centre be established in one of the member countries. The proposal has been considered by the justice ministers of the member states, the Trade Cooperation Committee of the G.C.C.,

important especially when there will be situations, as between the G.C.C. member states, when governments are disinclined to sacrifice their relations with each other, which are of more strategic significance than protecting interests of nationals.<sup>141</sup>

6. The Implementation of G.C.C. Decisions in the United Arab Emirates

A. The Distribution of Jurisdiction in the UAE Constitution

The United Arab Emirates is a unique creation, the only one of its kind in the Arab world, which managed to emerge despite extremely difficult circumstances.

The division of powers between the federal government and the individual Emirates is one of the major factors which has influenced and confronted the progress of the Union since independence in 1971.<sup>142</sup>

The United Arab Emirates constitution delegates specific powers to the union government, leaving the rest (i.e. any areas that are not assigned) to the jurisdiction of the

---

and most recently was discussed by the Supreme Council at the November 1985 summit. However, consideration for such a centre is not at an advanced stage. No rules of procedure have been agreed upon, though it is understood that there is serious consideration being given to the use of UNCITRAL rules. See The Gulf Cooperation council, ed. by Sandwick, op.cit., p.141.

<sup>141</sup> See in this meaning Friedmann, W., op.cit., p.238.

<sup>142</sup> See Taryam, A., The Establishment of the United Arab Emirates, 1950-85, Croom Helm, London (1987), p.207.

Emirates.<sup>143</sup>

The constitution, however, affirms the independence and internal sovereignty of the individual Emirates. Article 3, for instance, provides that the member Emirates shall exercise sovereignty over their respective territories and territorial waters in all matters not pertaining to the Union in accordance with the constitution.

Article 123 accords the member Emirates the right to conclude limited agreements of a local administrative nature with neighbouring states provided the Supreme Council is

---

<sup>143</sup> Article 120 of the constitution provides that:  
"The Union shall have legislative and executive jurisdiction in the following:

1. Foreign affairs.
2. Defence and the United Armed Forces.
3. Protection of Union's security against internal or external threat.
4. Matters pertaining to security, order and jurisdiction in the permanent capital of the Union.
5. Matters relating to Union officials and Union judges.
6. Union finances and Union taxes, duties and fees.
7. Postal, telegraph, telephone and wireless services.
9. The construction, maintenance and improvement of Union roads which the Supreme Council has determined to be truck roads.
10. Air traffic control and the issue of licence to aircraft and pilots.
11. Education.
12. Public health and health services.
13. Currency notes and coins.
14. Weight, measures and standards.
15. Electricity.
16. Union nationality, passports, residence and immigration.
17. Union property and all matters relating thereto.
18. Census matters and statistics relevant to Union purposes.
19. Union information."

For the text of the UAE constitution in English, see The Constitutions of the Countries of the World, eds. Albert P. Blaustein & Gisbert H. Flanz, Oceana Publications, Dobbs Ferry, New York (1982). The text in Arabic is found in G.C.C. Legal Gazette, ed.3 (1983).



notified in advance. The same Article entitles individual Emirates to maintain membership in, or to join the Organisation of Petroleum Exporting Countries (OPEC) and the Organisation of Arab Petroleum Exporting Countries (OAPEC).

Each Emirate might maintain its own legislative, executive and judicial authorities.<sup>144</sup>

Article 23 provides that the "natural resources and wealth in each Emirate shall be considered the public property of the respective Emirates". Article 142 points out that the individual Emirates are empowered to raise and maintain their security forces.

Thus, the provisions of the United Arab Emirates constitution apparently do not help to enhance the spirit of federation, but rather encourages independence and disintegration of the individual Emirates.<sup>145</sup>

The distribution of powers between the federal authority and the individual Emirates was worked out in a manner that makes the former's functions secondary and the latter's functions primary.<sup>146</sup>

Such distribution envisages minimal relinquishing of sovereignty by the Emirates to the federal government and may lead some writers to deny the federal structure of the United

---

<sup>144</sup> Article 118 of the constitution.

<sup>145</sup> Taryam, op.cit., p.202.

<sup>146</sup> Al-Sayyid, J., The Foundation of Policies and Constitution of the United Arab Emirates, Documentation and Study Centre, Abu Dhabi (Arabic) (1971), p.64.

Arab Emirates.<sup>147</sup> According to this view the acceptance of the United Arab Emirates into the UN as a state was considered mainly for practical reasons rather than for legal ones.<sup>148</sup>

When the G.C.C. was established in 1981 the United Arab Emirates joined the organisation and participated in its activities which touched upon various aspects of life. The decisions to implement the UEA particularly posed a challenge for the federal government to fulfil its international obligations amid its constitutional arrangements in favour of the individual Emirates.

---

<sup>147</sup> Rousseau, C., "Federation de Emirates du Golfe Persique", 76 Revue General de Droit Public (1972), p.865. For a detailed legal study of the UAE federation, see Al-Tabtabai, A., The Federation System of the United Arab Emirates, A comparative study, Cairo (1978). In practice, there have been many initiatives by the Supreme Council of the Union and its committees to consolidate the Union giving the federal government more power in fields of armed forces, general security, contribution to the federal annual budget, federal Supreme Council, the provisional constitution and federal legislation, immigration and population policy and even the amendment of the constitution to give the federal government more powers to enable it to discharge its responsibilities, mainly in the sphere of external affairs, cooperation of oil policies and observance of resolutions to which the state committed itself at international organisations. But due to political factors many obstacles remain in the way of stronger union. For more details, see Taryam, op.cit.

<sup>148</sup> Rousseau, ibid.. He states "L'affirmative a été admise, sans doute moins pour des considérations de technique juridique - car l'Union des Emirates du Golfe Persique peut difficilement passer pour un Etat fédéral authentique - que pour des raisons d'ordre pratique, une fragmentation de la représentation des Etats exigus risquant de donner à ceux-ci au sur de l'organisation une importance disproportionnée à leur consistance effective."

B. Some Problems of Implementing G.C.C. Decisions in the United Arab Emirates (UAE). Main Facts and Arguments

1. In accordance with the gradual implementation of Article 8(3) of the UEA the GCC Supreme Council decided in its third session held in March 1983 in Bahrain that freedom of economic activity will be practised in the industrial, agricultural, fishing and animal husbandry fields. This freedom will be allowed to both G.C.C. citizens and corporations.<sup>149</sup>

The Ministry of Agriculture and Fishing in the United Arab Emirates issued a decision to implement the G.C.C. decision referring to a Union decree in this regard, pending the application of the G.C.C. decision to the rules and regulations concerned issued by the Ministry of Agriculture and Fishing and the local authorities in the Emirates.<sup>150</sup>

In a further step, in the course of implementing the decisions and particularly after a draft prepared by the G.C.C. Secretariat for a unified system of utilisation and protection of living resources, the United Arab Emirates raised doubts about the possibility of allowing G.C.C. citizens or corporations to exercise fishing rights. The Federal government stated that the constitution of the United Arab Emirates gives the right of utilisation of living resources to the local authorities in the individual

---

<sup>149</sup> See the decision in Decisions and Steps taken to Implement the Unified Economic Agreement, op.cit., pp.14-15.

<sup>150</sup> Ibid., pp.20-21.

Emirates.<sup>151</sup>

In a further explanation to the Secretariat they submitted that the exercise of economic activities does not include the actual catching of fish, but rather having access to the fishing industry through the national policy of the country.<sup>152</sup> This would include, for instance, canning, training, researching and buying fishing vessels and equipment.

2. Another problem which weakened the United Arab Emirates obligation towards the G.C.C. Supreme Council decisions is the customs policy in each individuate Emirate, a matter which the G.C.C. Secretariat viewed as within the jurisdiction of the Emirates and not the federal state.<sup>153</sup>

In accordance with Article 4 of the UEA, which established a uniform customs tariff gradually applicable to the products of third countries, the Ministerial Council decided in its seventh session 1983 the following:

- (1) The minimum customs tariff applied to the foreign products received by the G.C.C. member states shall be 4%.
- (2) The maximum customs tariff charged to the same products

---

<sup>151</sup> A letter sent by the federal Minister of Agriculture and Fishing to the G.C.C. Secretary-General, dated 22.6.1985.

<sup>152</sup> An interview by the author with the Director of the G.C.C. Legal Department, Dr. Al-Syaari, in December 1987.

<sup>153</sup> This view expressed by the Director-General of the Legal Department, Al-Sayari, M., G.C.C. Secretariat-General. An interview conducted by the author on 1st June 1988 in the headquarters of the G.C.C.

shall be 20% starting from September 1983.<sup>154</sup>

The rulers of the Emirates issued Amiri Decrees raising the customs tariff from 1% to 4%, beginning on the first day of September, 1983.<sup>155</sup> In practice, however, non-compliance with the above decision results from alleged constitutional handicaps in the United Arab Emirates and a lukewarm attitude by some Emirates, since supervision is absent.<sup>156</sup>

The provisions of the United Arab Emirates constitution, however, do not support the Secretariat view that customs tariff falls within the jurisdiction of each individual Emirate.

Article 120(6) of the constitution provides:

"The Union shall have exclusive and executive jurisdiction in the following matters.....

6. Union finances and Union taxes, duties and fees."

---

<sup>154</sup> See the Decision and Steps taken by the G.C.C. Member States to Implement the UEA, op.cit., pp.174-75.

<sup>155</sup> See Decrees which have been Issued and Measures which have been Adopted in Implementing the UEA, op.cit., p.174.

<sup>156</sup> A letter sent by the Saudi Minister of Finance and Economy to the Secretary General dated 5.2.1407 AH, No.3 1973, regarding the reduction by Abu Dhabi of its customs tariff from 4% (the minimum agreed percentage by the GCC member states) to 2%, in defiance of the G.C.C. decisions. The letter refers to the Middle East newspaper issued 23.9.1986 as the source of information and inquires about the possibility of including the issue on the agenda of the Ministerial Committee for Financial and Economic Cooperation. This situation in fact does not indicate the United Arab Emirates is the only member state which has not complied with the decision concerned. Other member states, due to weak supervision, have evaded their obligations as far as Unified Tariff on foreign products are concerned. Private information of the author.

C. Analysis of the United Arab Emirates Claims as a Federal State within the G.C.C.

After the ratification of the UEA, the United Arab Emirates government indicated, as shown above, that there are certain rights which are reserved for the individual Emirates according to the constitution and therefore, exclude the application of the UEA. One of those rights which Article 23 of the constitution impliedly includes is fishing.

"The natural resources and wealth in each Emirate shall be considered the public property of that Emirate. Society shall be responsible for the protection and proper exploitation of such natural resources and wealth for the benefit of the national economy."

From the above article it is apparent that any G.C.C. decision dealing with the national wealth of the United Arab Emirates ought to be determined with the consent of each individual Emirate. This will lead us to deal with two main issues, the United Arab Emirates' responsibility as a federal state towards the G.C.C. in general, and another issue which is closely related to it, coastal jurisdiction of the United Arab Emirates over its natural resources.

1. The United Arab Emirates' responsibility as a Federal State within the G.C.C.

Under international law it is a generally accepted principle that a federal state is responsible for the conduct of its constituent units and cannot, therefore, evade its international obligations by alleging that its constitutional

powers do not enable it to exercise control over their units in order to comply with such obligations.<sup>157</sup>

Yet in certain federations the federal government is not capable of ensuring the fulfilment of all its treaty obligations. This is the case with Canada, for example.

In 1937, in the Labour Convention Case, the Privy Council decided that international obligations undertaken by the federal government over subjects belonging to the provinces could not be implemented internally without the cooperation of the latter.<sup>158</sup> Nevertheless, the ratifications of the Labour Conventions are not considered invalidated under international law.<sup>159</sup>

---

<sup>157</sup> Article 27 of the Vienna Convention on the Law of Treaties, 1969. Oppenheim, L., International Law, 6th ed., Vol.I, London (1947), p.308. See also, Hyde, C., International Law, 2nd ed., Vol.II, p.941; Hackworth, G., Digest of International Law, Vol.V (1940-44), pp.593-97; Harvard Research in International Law, Draft Convention on responsibility of States, 1929, Art.3, A.J.I.L., Special supplement, Vol.23 (1929), p.45; League of Nations, Conference for Codification of International Law, Bases of Discussion, Vol.III, pp.121-124 (1929); Sorensen, M., "Federal State and the International Protection of Human Rights", 46 A.J.I.L. (1952), p.210; The Advisory Opinion on Treatment of Polish Nationals in Danzig, P.C.I.J., Ser.A/B, No.44 (1932) at 22; The Advisory Opinion of the ICJ on Application of the Obligation to Arbitrate Under Section 21 of the United Nations Headquarters Agreement of 26 June 1947 (1988), the UN General List No.77 at p.24.

<sup>158</sup> Attorney-General for Canada v. Attorney for Ontario (1937), A.C. 362.

<sup>159</sup> See Sorensen, M., op.cit., p.201. See also, Jenks, W., "The Present Status of the Bennett Ratification of the International Labour Conventions", 15 Canadian Bar Review (1937), pp.464-77.

In 1957 the Constitutional Court of Germany adopted a similar attitude on the Reichskonkordat:

"Legal obligations deriving from an international treaty which is binding upon a federal state can create legal duties for its constituent states only in accordance with the provisions of constitutional law... We need not consider the question whether the German Federal Republic is liable to the Holy See for the acts of a Land which are contrary to the provisions of the Concordat."<sup>160</sup>

The American federal government, though it is empowered to give effect to its treaty obligations, was not able on some occasions to fulfil its treaty obligations.

In 1894 a treaty was made between Japan and the United States, which prescribed equality of treatment for Japanese citizens in America. Some years later the school authorities of San Francisco violated the treaty by admitting Japanese children only to special schools. This occurred because education was a subject reserved to the state, and the federal government could only try to persuade the school authorities to change their attitude. In the end, the school authorities yielded after Japan's approval to limit the immigration of Japanese subjects to the United States.<sup>161</sup>

However, the federal government has the constitutional power to give effect to its treaty obligations. Sometimes this power results from a judicial interpretation of the

---

<sup>160</sup> International Law Reports (1957), at p.594.

<sup>161</sup> See Bernier, I., International Legal Aspects of Federation, Longman Group, London (1973), pp.97-100.



constitution. In the famous Migratory Birds Case,<sup>162</sup> the American Supreme Court upheld federal legislation which was enacted by Congress in order to give effect to a treaty with Canada for the protection of migratory birds, irrespective of the fact that legislation for such a purpose would otherwise come within the reserved power of the state. The court stated:

"If it had even been suggested that, although Congress had no power to control the taking of wild game within the borders of any state, yet indirectly by means of a treaty with some foreign power it could acquire the powers and by this means its long arm could reach into the state and take food from the tables of their people, who can for one moment believe that such consultation would have been ratified?"

In international law the obligations of the United States remain and the federal government cannot plead its failure to carry out its international obligations on the ground of its unconstitutionality.<sup>163</sup>

"As such... the United States remain bound internationally when a principle of international law or a provision in an agreement with the United States is not given effect because of its inconsistency with the constitution. A state cannot adduce its constitution or its laws as a defence for failure to carry out its international obligations."<sup>164</sup>

However, there is no rule in international law which can be adduced against the inclusion in the treaty of a "federal

---

<sup>162</sup> Missouri v. Holland (1920), 252 US 416.

<sup>163</sup> See American Law Institute, Restatement of the Law, The Foreign Relations Law of the United States, Vol.1 (1986), p.43.

<sup>164</sup> Ibid. at p.64.

clause" which limits the obligations of the signatory federal state with respect to subject matters falling within the jurisdiction of its member states.<sup>165</sup>

Yet, it is not the federal state itself that invokes the clause to justify its failure to perform the treaty, but it is the treaty that allows the state to invoke the rule.<sup>166</sup> If there is no rule in the treaty, then there is no question of invoking the clause due to the federal structure of the party. As such, the claims of the United Arab Emirates that there are certain rights or powers which constitutionally must be left to the individual Emirates do not receive recognition under international law.

The UEA has been signed by the President of the United Arab Emirates, ratified by the Union Supreme Council and incorporated into the municipal law by Union decree.<sup>167</sup> The Supreme Council of the Union can be viewed as a body of collective leadership that has the final say in the most important matters in the Union.<sup>168</sup> It stands at the top of both legislative and executive authorities in the Union. The Council is composed of the seven rulers of the member

---

<sup>165</sup> Sorensen, op.cit. at p.75. See also Bernier, op.cit. at p.172; Looper, B., "Federal State Clause in Multilateral Instruments", 32 B.Y.I.L. (1955-56), p.162.

<sup>166</sup> Elias, T., the Modern Law of Treaties, A.W. Sijthoff, Leiden (1974), pp.45-46.

<sup>167</sup> See Decisions and Steps taken to Implement the Unified Economic Agreement (1987), op.cit., p.17.

<sup>168</sup> Article 47 of the UAE constitution.

Emirates. Each Emirate has tremendous influence in the conduct of Union affairs through its chief executive (the ruler).<sup>169</sup>

Article 47 of the constitution provides:

"The Supreme Council of the Union shall be responsible for the following matters....

3. The ratification of decrees connected with matters which by virtue of the provisions of this constitution are subject to the ratification or agreement of Supreme Council. Such ratification shall take place before the promulgation of these decrees by the President of the Union."

Thus, the federal state distribution of powers set forth in the constitution of the United Arab Emirates is not an obstacle for the treaty implementation, since the treaty-making and treaty implementation powers are vested in the Supreme Council of the Union.

The fact is then that by virtue of having ratified an agreement, the Supreme Council of the United Arab Emirates might be held to possess the power to enact legislation which would otherwise be ultra vires.

The Committee of Experts with Lord McNair as its Rapporteur, in its report of 10 April 1937 to the governing body of the I.L.O., severely criticised the practice of some states of ratifying conventions in advance of their ability to give internal effect to them, expecting that this would be

---

<sup>169</sup> Khalifa, A., The United Arab Emirates. Unity in Fragmentation, Westview Press, Boulder, Colorado, Croom Helm, London (1979), pp.42-43.

possible at an early date.<sup>170</sup> This position, however, did not take notice of the possibility that some federal governments, as in the case of the United Arab Emirates, by the very act of ratifying conventions may confer upon its executive and judicial authority the right to give internal effect to the agreement so ratified.<sup>171</sup>

The matter is even more clearly emphasised in the United Arab Emirates constitution structure where the Federal National Council (the legislature) has no role to play in incorporating the treaty into the municipal system.<sup>172</sup>

Furthermore, Article 124 of the constitution confirms the obligation of consultation on the part of the federal government before concluding any agreement. It states:

"Before the conclusion of any treaty or international agreement which may affect the special position of any one of the Emirates, the competent Union authorities shall consult that Emirate in advance. In the event of disputes they shall submit the matter to the Supreme Court of the Union for a ruling."

The fact that the Supreme Council ratified the UEA and issues a decree for its implementation must be taken as prima facie evidence that consultation has taken place.

---

<sup>170</sup> International Labour Conference, 23 session 1937, Summary of Annual Reports under Article 22 of the International Labour Organisation, Appendix Report of the Committee of Experts on the Application of Conventions.

<sup>171</sup> In this meaning, see Looper, R., "Federal State Clauses in Multilateral Instruments", op.cit. at p.178.

<sup>172</sup> Article 71 of the UAE constitution.

On the contrary, Article 125 of the United Arab Emirates' constitution binds the governments of the individual Emirates to make all the necessary arrangements to implement all the treaties the Union concludes through laws, regulations, decisions and domestic instruments. Furthermore, Article 29 of the Vienna Convention on the Law of Treaties (1969) seems not to support the UAE position. It provides:

"Unless a different intention appears from the treaty or otherwise established, a treaty is binding upon each party in respect of its entire territory."

## 2. The Dilemma of the United Arab Emirates Coastal Jurisdiction

Another point of law which was raised by the United Arab Emirates is that fishing rights cannot be exercised by G.C.C. citizens, due to constitutional arrangements between the individual Emirates.<sup>173</sup>

It is evident that as long as each Emirate maintains its individual entity as regards coastal jurisdiction, there can be no federal policy for the United Arab Emirates to comply with international law obligations, and in particular with G.C.C. decisions. This situation is explicit in the United Arab Emirates constitution, and is supported by the practice of the individual Emirates.

According to Article 121 the federal government itself has the power to define territorial waters, but the matter is

---

<sup>173</sup> The letter of the UAE Minister of Agriculture and Fishing. See supra, note 151.

extremely complicated by Article 4 which obliges the Union not to abandon its sovereignty over any part of its lands or waters, which latter are in turn defined in Article 2 as those within the international boundaries of the member Emirates.<sup>174</sup>

Article 2 provides:

"The Union shall exercise sovereignty in matters assigned to it in accordance with this constitution over all territory and territorial waters lying within the international boundaries of the member states."

Article 3 makes it more difficult to recognise the jurisdictionary power. It provides:

"The member Emirates shall exercise sovereignty over their own territories and territorial waters in all matters not within the jurisdiction of the Union as assigned in this constitution."

The position of the territorial sea after the establishment of the federation has not yet changed and is still unclear. Of the seven constituent Emirates, six appear to have adhered through proclamations in the period before the Union to the three-mile standard, but Sharjah in March 1970 published a claim to a 12-mile limit.<sup>175</sup> In similar

---

<sup>174</sup> See Young, R., "The Persian Gulf" in New Directions in the Law of the Sea, ed. by Churchill, R., Simmonds, K., and Welch, J. London, Vol.III (1973), pp.238-39.

<sup>175</sup> Amin, S., International and Legal Problems of the Gulf, London (1961), p.156. Despite the fact that the individual Emirates reject attempts to unify the laws of the Union for coastal jurisdiction, there is a new draft, prepared as the Unified Offshore Boundaries Law. The federal government, realising the problems relating to its coastal jurisdiction, especially after the conclusion of LOSC (1982), has proposed 12 nautical miles for the territorial sea, 50 miles for the EEZ and 18 for contiguous zone. The proposed law has given to the Federal Ministry of Agriculture and Fishing the right to issue regulations for fishing. It also includes an important article which provides the right of each

proclamations they asserted individually their rights in the continental shelves adjacent to their coasts. All these proclamations are constitutionally valid even after the establishment of the Federation.<sup>176</sup>

Within these arrangements, the president of the Union, who is the ruler of Abu Dhabi, Shaikh Zaid bin Sultan Al-Nahyan, signed Abu Dhabi's Ownership of Gas Law (1976). Article 1 of this law states that all gas discovered, recovered, or produced within Abu Dhabi's "territorial property" (defined as Abu Dhabi's land, territorial waters, and continental shelf), shall be solely owned by the Emirate of Abu Dhabi, rather than the federal state.<sup>177</sup>

As a result of the attachment of the continental shelf to each individual Emirate, Dubai concluded an agreement with Iran in 1975 on the demarcation of their continental shelf boundary,<sup>178</sup> despite the fact that the United Arab Emirates constitution reserves the power of treaty-making to the

---

individual Emirate to settle disputes regarding the islands which belong to it historically. An interview with the legal advisor of the UAE Ministry of Foreign Affairs, 25.12.1987.

<sup>176</sup> Article 148 of the UAE constitution.

<sup>177</sup> For the text of this law, see OPEC, Selected Documents of the International Petroleum Industry, Vienna, OPEC (1977), p.19.

<sup>178</sup> Amin, International and Legal Problems of the Gulf, op.cit., p.132.

federal government.<sup>179</sup>

This position, however, needs examination under international law. It is international law that ensures general recognition of authority for a sovereign state over its territorial sea and continental shelf, but it is for constitutional law to determine the degree and extent of that authority.<sup>180</sup>

It is true that whenever a dispute arises concerning the territorial sea or the continental shelf, it is the federal government rather than individual units which is responsible for the conduct of external relations. This, however, has no effect on the question of allocation of rights in these areas.<sup>181</sup>

The detachment of the continental shelf from the state is consistent with the tendency to increase maritime power and responsibility vested in federal authorities.<sup>182</sup> This tendency was affirmed by the decision of the Canadian Supreme Court in

---

<sup>179</sup> Article 147(4) of the constitution. There is exception, however, for treaties signed before the establishment of the federation and those of an administrative nature (Article 147).

<sup>180</sup> O'Connell, D., International Law of the Sea, Clarendon Press, Oxford, Vol.1 (1982), p.83 and p.483.

<sup>181</sup> Churchill, R. and Lowe, V., The Law of the Sea, Manchester University Press (1985), p.122.

<sup>182</sup> O'Connell, D., "The Problems of Australian Coastal Jurisdiction", 42 The Australian Law Journal Reports (1968), p.45.



November 1967.<sup>183</sup> The offshore mineral rights issue arose as a dispute between the federal government of Canada and those provinces bordering on the sea, concerning the respective federal and provincial competence and legislative jurisdiction in regard to the development and exploitation of mineral resources, especially oil, under the territorial waters, contiguous zones, and the continental shelf of Canada. The substance of the dispute was an economic conflict over the respective rights to collect the licensing fees and royalties accruing from such development by private companies. The federal government claimed a federal monopoly of constitutional competence over the submarine oil and mineral deposits.

The court found Canada alone competent (although Canada has not ratified the Geneva Convention), saying:

"(1) The continental shelf is outside the boundaries of British Columbia.

(2) Canada is the sovereign state which will be recognised by international law as having the rights stated in the Convention of 1958, and it is Canada, not the province of British Columbia, that will have to answer the claims of other members of the international community for breach of the obligations and responsibilities imposed by the Convention."<sup>184</sup>

Again, in relation to the territorial sea, the Supreme Court stated:

"... the right in the territorial sea arises by international law and depends upon recognition by

---

<sup>183</sup> Case of Reference the Ownership of Offshore Mineral Rights, in 65 Dominion Law Reports (1968), p.353.

<sup>184</sup> Ibid., p.380.

other sovereign states. Legislative jurisdiction in relation to the lands in question belongs to Canada, which is a sovereign state recognised by international law and thus able to enter into arrangements with other states respecting the rights in the territorial sea."<sup>185</sup>

In the United States, Congress alone has legislative power over the continental shelf.<sup>186</sup> Regarding the question of the territorial sea jurisdiction, the United States Supreme Court has asserted the primacy of the Union over the territorial sea in the virtue of the Union's inherent "paramountcy" in the field of foreign relations.<sup>187</sup>

In Australia, the Commonwealth parliament in the Seas and Submerged Land Act, 1973 vested all rights in the internal waters of the Commonwealth, in the territorial sea, including the super-incumbent airspace and the seabed and subsoil thereof, as well as the continental shelf, in the federal government. The Act also reserves the power to the federal government to set all maritime boundaries imposed on Australia by virtue of her becoming a party to the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone and the Geneva Convention on the Continental Shelf.

---

<sup>185</sup> Ibid., p.376.

<sup>186</sup> O'Connell, Australian Law Journal Reports (1968), at p.45. He refers to the United States Outer Continental Shelf Lands Act, 67 Stat. 462; 43 U.S.C., §1331 vests in the United States land on the continental shelf seaward of lands granted to the states by the Submerged Land Act.

<sup>187</sup> See: U.S. v. California, 332 U.S. 19 (1947); U.S. v. Louisiana, 339 U.S. 69 (1950), U.S. v. Texas, 339 U.S. 707 (1950); U.S. v. Louisiana, 363 U.S. 1 (1960); U.S. v. California, 382 U.S. 448 (1965).

As a result of this federal legislation all six state of Australia brought actions in the High Court against the Commonwealth, seeking to invalidate the Act.

On behalf of the plaintiff states it was submitted, inter alia, that both prior to and after federation they had enjoyed sovereignty and legislative power over the territorial sea adjacent to their coasts up to the three-mile limit, including the seabed, subsoil, and superadjacent airspace thereof, as well as the continental shelf. The defence of the Commonwealth was based on the argument that even if such rights were found to exist prior to the enactment of the Commonwealth constitution, these rights passed to the Commonwealth upon the commencement of the federation, or at least upon Australia's becoming a fully independent nation.

Thus the issue was substantially whether the states had been deprived of this common law right by the Act. For the majority of the judges the decision was that the territory of the states did not encompass the "league seas", and they therefore concluded that the Commonwealth's status as an international person entails the lack of the state's such status and the accretion to the Commonwealth of maritime zones attributable in international law to Australia qua nation.<sup>188</sup>

---

<sup>188</sup> New South Wales v. Commonwealth (1975) 135 C.L.R. 338 et seq. For a study of O'Connell's position on these issues see Crawford, J., "The Contribution of Professor D.P. O'Connell to Discipline of International Law" 51 B.Y.I.L. (1980) 1 at pp.47-61. For a similar conclusion see also Bonser v. La Macchia (1969) 122 C.L.R. 177, pp.186-87, 189-90, 197-98.

In the case of the UAE the provisions of the constitution do not offer help as to the question whether the federal government has control over coastal jurisdiction, and if so, whether G.C.C. citizens need not obtain any fishing licence from an individual Emirate.<sup>189</sup>

Article 23 of the constitution does not explain clearly where the natural resources and wealth that each Emirate is entitled to own is located. Does the Article impliedly refer to those in land, inland waters, territorial sea, or the continental shelf?

This is not a question concerning the distribution of rights of ownership or control between the federal government and the individual Emirate, which is left entirely to the municipal law. The issues surrounds the identity of the party responsible for claims involving such resources in those

---

<sup>189</sup> In the UAE almost all fishing enterprises are undertaken by private individuals and are based essentially upon fishmeal operations. The Ras al-Khaimah first company, which had earlier established a 1250 ton a day raw materials plant, later ran into financial difficulties. In Ajman a similar plant called the Ajman Marine Products Company (owned jointly by the Ajman Government with 60% of shares and the balance to a Pakistani-American consortium) is designed to have a capacity of about 1,400 tons a day of raw materials. In Fujairah a Japanese company has been granted fishing rights within the jurisdiction of waters of this Emirate by its ruler. In the UAE, however, a Federal Fisheries Department located in the Emirate of Dubai works under the Ministry of Agriculture and Fisheries, yet each individual Emirate develops its own fisheries and is involved in joint enterprises without taking the consent of the Federal Department. See in this regard, Amin, S., "Fisheries in the Gulf", Lloyd's Maritime and Commercial Law (1983), pp.673-75. Amin points out that this position is permitted under the UAE constitution which maintains the identity of each Emirate", idem.

areas.

The limitation on the sovereignty of the individual Emirates in Article 3, which excludes matters within the jurisdiction of the Union, is contradicted by both Article 2 of the constitution and the practice of the individual Emirates.

Article 2 envisages international borders for each Emirate. The attitude of the constituent Emirates as indicated earlier, affirms the tendency, which was embodied in the proclamation long before the establishment of the federation, that each Emirate has its own continental shelf and territorial waters. These assertions of constituent sovereignty do not receive recognition under the Geneva Conventions on the Law of the Sea, 1958, and the Law of the Sea Convention 1982 since it is for the whole state to become party to those Conventions, and not its constituent units. The United Arab Emirates is not a party to any of the Geneva Conventions, yet many provisions of these conventions have passed into customary law and so become binding upon states not party to the conventions.<sup>190</sup>

Article 1 of the Geneva Convention on the Territorial Sea, for example, provides that the sovereignty of the coastal state extends over the territorial sea. No-one would have envisaged that this meant the sovereignty of each federal unit

---

<sup>190</sup> See Churchill and Lowe, op.cit., pp.7-11.

rather than the sovereignty of the entire state.<sup>191</sup>

The fact that the UAE has not yet ratified the Law of the Sea Convention 1982,<sup>192</sup> or the treaty itself has not yet entered into force for the lack of members for ratification prescribed by the treaty<sup>193</sup> does not undermine the UAE obligation under customary international law to be responsible for its coastal jurisdiction.

One may argue that a rule of customary international law has been established which recognises the coastal state's responsibility over the continental shelf and its sovereign rights over the territorial sea, regardless of potential conflicts on the location of natural resources between the federal government and its component units.<sup>194</sup>

The process by which rules included in a multilateral convention may come to be recognised and accepted as rules of

---

<sup>191</sup> O'Connell, The International Law of the Sea, op.cit., p.118.

<sup>192</sup> United Nations, Law of the Sea Bulletin (November 1987), p.5.

<sup>193</sup> Article 308 of the Law of the Sea Convention, 1982. See the text in The Law of the Sea. United Nations Convention on the Law of the Sea, United Nations, New York (1983).

<sup>194</sup> State practice shows competing claims between the federal government and the provinces over the sovereignty of the territorial sea and continental shelf in order to control their resources. "The constitution of the Federal Republic of Germany creates a federal system under which every part of the nation is under the dual territorial sovereignty of both the laender (states) and the federal government. This system of dual sovereignty extends into the territorial sea, and there has been a continuing controversy over whether this duality also extends into the continental shelf." See Westernman, G., Juridical Bay, Clarendon Press, Oxford (1987), pp.189-91.

customary international law to which states are subject independently of the convention, has been emphasised by the International Court of Justice in the North Sea Continental Shelf Cases (1969):

"The court must now proceed to the last stage in the argument put forward on behalf of Denmark and the Netherlands. This is to the effect that even if there was at the date of the Geneva Convention no rule of customary international law in favour of the equidistance principle and no such rule was crystallised in Article 6 of the Convention, nevertheless such a rule has come into being since the Convention, partly because of its own impact, partly on the basis of subsequent state practice - and that this rule, being now a rule of customary international law binding on all states, including therefore the Federal Republic, should be declared applicable to the delimitation of the boundaries between the parties' respective continental shelf areas in the North Sea."<sup>195</sup>

Furthermore, the UAE under both international law and constitutional law signs international agreements and ratifies them for the nation as a whole and not for each individual Emirate.<sup>196</sup>

#### 7. Safeguard Clauses in the UEA

Safeguard clauses are a common mechanism which has been frequently used in many treaties dealing with international economic organisations, in order to overcome economic

---

<sup>195</sup> The judgment of the court in the I.C.J. Report (1969), p.42.

<sup>196</sup> Article 47(4) of the UAE constitution.

difficulties or political crises.<sup>197</sup>

The safeguard clause in the UEA provides for a derogation from the agreement provisions on very broad grounds, described in Article 24 as "differences in the development priorities of each member state", "temporary local situations" or "specific circumstances faced by it". Article 24 provides:

"In the execution of the agreement and determination of the procedures resulting therefrom, consideration shall be given to differences in the levels of development between the member states and the local development priorities of each. Any member state may be temporarily exempted from applying such provisions of this agreement as may be necessitated by temporary local situations in that state or specific circumstances faced by it. Such exemption shall be for a specified period and shall be decided by the Supreme Council of the Gulf Arab States Cooperation Council."

Due to the fact that economic integration treaties include great restrictions on sovereignty, it is necessary for the state party to maintain some power to intervene to safeguard the interests of its economy and nationals.<sup>198</sup>

The general result of the application of these clauses is to suspend some treaty obligations for a limited period of time until the benefiting party adjusts itself to the new

---

<sup>197</sup> Weber, A., "Safeguards in International Economic Organisations in Times of Crises with Special Reference to the European Economic Community", 27 G.Y.I.L. (1984) p.212. See also, Seidl, M., "Escape Clauses in European Community Law, with Special Reference to Capital Movement", 15 Common Market Law Review, (1978), p.283; Sauermilch, T., "Market Safeguards against Import Competition. Article XIX of the General Agreement on Tariffs and Trade", 14 Case W.Res.J. International Law (1982), pp.88-90.

<sup>198</sup> Akiwumi, A., "Judicial Aspects of Economic Integration Treaties in Africa", Hague Academy of International Law (1971), op.cit., p.52.



regime. To that extent, safeguard clauses raise some delicate issues with respect to the law of treaties, for they may limit the effect of treaties between the parties.

Safeguard clauses may be applied without reciprocity, unless reciprocal sanctions are involved as an answer to unlawful recourse to such exemptions.<sup>199</sup> While safeguard clauses allow the suspension of treaty obligations temporarily after consent is given by the competent organ, denunciation on the other hand by any party terminates its obligations in relation to all parties.<sup>200</sup>

Safeguard clauses provide for the parties the opportunity to adapt to the new circumstances which were not clearly foreseen at the time of conclusion of the treaty, without breaching it. A kind of rebus sic stantibus clause seems to appear, although with different effects.<sup>201</sup> Safeguard clauses are necessarily included in the treaty and do not terminate the party's obligations.<sup>202</sup>

---

<sup>199</sup> For the effect of reservation and safeguard clauses on treaties, see Weber, A., op.cit., p.231. See also, Vicuna, F., "Contemporary International Law in the Economic Integration of Latin America. Problems and Perspectives", op.cit., pp.123-4.

<sup>200</sup> Weber, idem.

<sup>201</sup> Vicunna, op.cit., p.124. See also in this meaning, Mercia, P., "Safeguard Measures in GATT", 15 Journal of World Trade Law (1981), p.41.

<sup>202</sup> See Article 62 of the Vienna Convention on the Law of Treaties. It provides:  
"1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

However, one may notice that Article 24 of the UEA is laid down in rather general terms which do not establish an objective criterion or even the unforeseen circumstances to justify its application.

Since escape clauses or safeguard clauses arise from the very nature of obligations brought about under economic integration, the obligation from the treaty cannot easily be fulfilled if the clauses were to be invoked subjectively. Yet, with the UEA safeguard clauses the party will be more inclined either to leave the issue for the diplomatic courtesy and not invoke the provision, or to invoke it as retaliation if it feels its interests have not received any protection. In this event the affected party is then free and capable of blocking the Supreme Council decision arbitrarily against the interest of another member state who needs the exemption badly.

By contrast, the GATT does not seek to achieve economic integration, rather mutual cooperation in economic and trade fields. The application of the safeguard clauses is subject to some conditions.

The principal clause of Article XIX provides that certain protective action can be taken

---

(a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and

(b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty."

See the text in Brownlie, I., Basic Documents in International Law, op.cit., pp.374-75.

"[i]f, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products..."<sup>203</sup>

Therefore, in order to invoke Article XIX, the following must be shown:

(1) Imports in increased quantities. Neither an absolute increase in imports, nor a difference between the price of imports and the price of similar domestic products are required.<sup>204</sup> The "relative" increase concept appears to be inappropriate since countries would tend to use it as a protective device and very often invoke the escape clause.<sup>205</sup>

(2) The increased imports are a result both of (a) unforeseen developments, and (b) the effect of GATT obligations. There must be a causal relation or at least coincidence between the increased imports and both GATT obligations and unforeseen developments at the time that the

---

<sup>203</sup> See Article XIX of the GATT in International Organisation and Integration, ed. Sohn, L., op.cit., pp.684-85

<sup>204</sup> Jackson, J., World Trade and the Law of GATT, Bobbs-Merrill Co. Inc. (1969), pp.555-57. See also, Mercia, op.cit., p.44; McGovern, E., International Trade Regulation, op.cit., pp.291-92; Bronckers, M., "The Non-Discriminatory Application of Article XIX GATT: Tradition or Fiction?", Legal Issues of European Integration (1981-82), pp.36-39; Pogany, I., "'Steel Wars' vs. 'Star Wars': the impact of voluntary export restraints on the GATT", in Current Issues in International Business Law, (eds.) Perrott, D. & Pogany, I., Avebury, England (1988), pp.79-82.

<sup>205</sup> Jackson, ibid., p.559.

concession was made.<sup>206</sup>

However, the condition of "unforeseen development" was a controversial issue in the GATT proceedings. In 1950 the United States, through its Tariff Commission procedures, found that increased imports of fur hats fulfilled the criteria of the escape clause, so it withdrew a concession negotiated at Geneva in 1947. The action was challenged by Czechoslovakia, and GATT set up a working party to review the matter. The increased imports had resulted from a change of ladies' hat styles and the United States contended that this was an "unforeseen development". The working party drew a line. All members except the United States agreed that:

"'Unforeseen development' should be interpreted to mean developments occurring after the negotiation of the relevant tariff concession which it would not be reasonable to expect that the negotiators of the country making the concession could and should have foreseen at the time when the concession was negotiated."<sup>207</sup>

These members also agreed with the Czechoslovakian argument that "it is universally known that fashions are subject to constant changes" and that the United States negotiators should have known that fashions might change.<sup>208</sup> But all members of the working party except Czechoslovakia

---

<sup>206</sup> See Report on Withdrawal by the United States of a Tariff Concession under Article XIX of the GATT, Geneva, November 1951, Sales No. GATT/1951-3, p.12; reproduced in part in Jackson, J., Legal Problems of International Economic Relations, 2nd ed., West Publishing Co., St. Paul, Minn. (1986), pp.556-59.

<sup>207</sup> Ibid.

<sup>208</sup> Ibid., at p.10.

felt that "the degree to which the change in fashion affected the competitive situation could not reasonably be expected to have been foreseen by the United States authorities in 1947", and therefore the Article XIX condition of "unforeseen developments" was fulfilled.<sup>209</sup>

(3) The increased imports cause serious injury or threaten serious injury.

There is no firm definition for the term "serious injury" and the subsequent practice of some countries reveals that both an "actual prejudice and a mere threat of damage" may fall within the scope of Article XIX.<sup>210</sup>

Article XIX does not provide which party has the burden of proving that Article XIX provisions have not been applied in a given case. But according to the Hatter's Fur Case, the working party of GATT was of the view that the plaintiff exporting countries demonstrated that the safeguard measures enacted by an importing party were ill-founded. The importing party which invokes Article XIX will therefore be "entitled to the benefit of any reasonable doubt".<sup>211</sup>

If no agreement is reached the invoking country has the right to start withdrawing its concession under Article XIX and the exporting country has the right as well to

---

<sup>209</sup> Ibid., at p.12.

<sup>210</sup> Jackson, op.cit., pp.557-563. See also Mercia, op.cit., p.44.

<sup>211</sup> See GATT, 1951-53, op.cit., p.23.

retaliate.<sup>212</sup> The party wishing to take escape clause action is thus likely to be compelled to pay for it, either by granting compensation or by facing retaliation.<sup>213</sup>

Thus safeguard action in Article 24 of the UEA is subject to the approval of the Supreme Council of the G.C.C., whereas Article XIX of the GATT permits such action to be taken unilaterally.

However, the EEC comes with a more developed arrangement, which includes an elaborate system which avoids the lack of precision, providing for suspension by contracting parties, and risk interpretation of Article XIX, that makes protection measures easy to be circumvented.<sup>214</sup>

The safeguard clause most frequently used in the experience of the EEC is Article 115. The Article deals only with two kinds of difficulties, the deflection of trade caused by unequal measure of commercial policy of the member states, and the rise of economic difficulties.<sup>215</sup> Those objective

---

<sup>212</sup> Jackson, op.cit., at pp.555-57.

<sup>213</sup> Dam, W., The GATT Law and International Economic Organisation, University of Chicago Press (1970), p.104. See also, Graham, R., "Reforming the International Trading System: the Tokyo Round Negotiations in the Final Stage", 12 Cornell Journal of International Law, No.1, (Winter 1979), p.24.

<sup>214</sup> For criticism of the GATT mechanisms, especially Article XIX, see Mercia, , op.cit., pp.46-53. See also, Long, O., Law and Limitations in the GATT Multilateral Trade System, Nijhoff (1985), pp.59-61.

<sup>215</sup> Kapteyn and Themaat, V., Introduction to the Law of the European Communities, London, Sweet & Maxwell (1973), pp.228-229. See also, Wyatt, D. & Dashwood, A., The Substantive Law of the EEC, op.cit., pp.78, 108.

conditions are placed upon recourse to these clauses, which cannot simply be unilaterally invoked by a member. It is the Commission which recommends the methods of cooperation and if it fails, the member states can take protective measures, provided an authorisation from the Commission has been obtained. In case of urgency member states could take the necessary measures and notify them to the other parties. The Commission in this case also decides whether the state concerned must amend or abolish these measures.<sup>216</sup>

In the case of the G.C.C., Oman and Qatar consecutively invoked the application of Article 24 of the UEA and obtained the Supreme Council approval.<sup>217</sup>

Oman, due to the status of its infant industry, fearing competition, has been inclined to restrict the flow of investment capital from other G.C.C. member states and protects its market from less expensive regional products.<sup>218</sup>

As such, Oman is given an exemption in accordance with Article 24 of the UEA in order to enable it to levy duties on some G.C.C. products, excluding the effect of Article 2 of the economic agreement, which provides an exemption from customs duties on agricultural, animal, industrial and natural

---

<sup>216</sup> Ibid., pp.220-221.

<sup>217</sup> see Decisions and Steps taken to Implement the UEA, op.cit., pp.34 and 86.

<sup>218</sup> See Twinan, J., "Reflections on Gulf Companies with Focus on Bahrain, Qatar and Oman", in The Gulf Cooperation Council, Moderation and Stability in an Interdependent World, ed. by Sandwick, J., Westview Press, American-Arab Affairs Council, p.35.

resources products of G.C.C. origin.<sup>219</sup>

Another G.C.C. Member state, Qatar, has invoked Article 24 and obtained the exemption from some UEA provisions for five years.<sup>220</sup>

In accordance with Article 8(2) of the UEA, the Supreme Council decided in its fifth session in Kuwait, 1984, to regulate the ownership of real estate by individuals in the G.C.C. member states.<sup>221</sup> The decision allows the citizen of member states (both native-born and naturalised, with different conditions) to own up to 3,000 square metres of residential property, with construction of a residential dwelling on unimproved land to be completed within five

---

<sup>219</sup> The exemption applies to cement and its derivatives, asbestos products, plastics and polythene products, paints, plant oil and fat, industrial cleaners, car batteries and electric bulbs. See Decisions and Steps Taken to Implement the UEA, op.cit., p.34.

<sup>220</sup> Ibid., p.86.

<sup>221</sup> Ibid., p.74.



years.<sup>222</sup>

According to Qatari laws, only native-born citizens are entitled to own property, while naturalised citizens do not have such a right.<sup>223</sup>

This tendency in Qatari legislation reflects the policy of its political leadership which ensures that indigenous Qataris dominate the ownership of real estate.

---

<sup>222</sup> There are other requirements for the right of real estate ownership to be fulfilled. These are, inter alia:

(1) The ownership is only for the purpose of housing for the owner or his family.

(2) The owner can sell the property only with the lapse of 8 years (exception is given in extreme conditions).

(3) If the owner has obtained his nationality through naturalisation then the lapse of 10 years from the date of obtaining nationality is a required condition before he is entitled to ownership.

(4) The properties in the area of Mecca and Medina are excluded from this regulation.

(5) The regulation does not prejudice the right of the member states to expropriate the property for public utility, offering adequate compensation. It also does not prejudice the right of the state to prohibit ownership for security reasons. See ibid., pp.74-6.

<sup>223</sup> Article 1 of the decree No.5 (1963) concerning foreigners' non-entitlement to own property in Qatar. See also Article 3 of the Decree No.14 (1964) regarding the Registration of property. The decrees make an exception which allows non-Qataris to own properties, provided it is for the purpose of facilitating the performance of public utility or interest and accompanied by a consent of the deputy ruler. In the above decree No.14 (1964) it provides that ownership by other Arabs must be subject to the reciprocal treatment to Qataris. In the decree No.1 (1980) concerning the regulation of ownership by foreign diplomatic missions in Qatar, the Amir exempted embassies from the above decree No.5 (1963) which restricts ownership to Qataris. This is, however, based on the reciprocity principle. The exemption also applies to international organisations existing in Qatar. For the above decrees see Qatar Official Gazette No.2 1983, No.1 (1984) and No.2 (1980).

However, Qatar has amended its present law in order to comply with the G.C.C. Supreme Council decision and issued a decree providing naturalised people with the right to own real estate after 10 years of obtaining citizenship (that is in accordance with the G.C.C. decision), starting from November 5, 1991.<sup>224</sup>

---

<sup>224</sup> See G.C.C. Official Gazette, ed.20 (1987), pp.153-55. See also Decrees which have been Issued and Measures which have been adopted in implementing the Unified Economic Agreement, G.C.C. Secretariat (1988), pp.72-76.

## CHAPTER EIGHT

### SECURITY IN THE GULF: SOME LEGAL ISSUES

#### 1. G.C.C. Searches for Security

Although the G.C.C. member states at the establishment of the organisation in May 1981 avoided using expressions conferring military character to their cooperation, it was clear from the beginning that political and strategic factors had been primarily responsible for bringing the states together.<sup>1</sup>

Producing more than half of OPEC total oil exports, and controlling the strategic Strait of Hormuz, the Gulf region has always been vulnerable to outside pressure. The revolution in Iran, with the resultant upset in the balance of power in the Gulf, combined with Soviet intervention in Afghanistan and U.S. efforts to strengthen its presence in the Gulf region, emphasised the vulnerability of the Gulf states to foreign intervention.<sup>2</sup>

---

<sup>1</sup> The Fundamental Statute of GCC refers to Gulf security only implicitly in the terms of cooperation and coordination in "all fields". See supra, Chapter 3, p.116 et seq.

<sup>2</sup> For the background on security issues within the G.C.C. there is vast literature. On the political aspects, see, for example, Al-Nafisi, A., The Gulf Cooperation Council: The Political and Strategic Framework, London, Taha Publishers (Arabic) (1982); Cordesman, A., The Gulf and the Search for Strategic Stability, Boulder Co., Westview Press (1984); Darius, R., Amos, J. and Magnus, R. (eds.), Gulf Security into the 1980s, Stanford, CA, Hoven (1984); Hunter, S. (ed.), Gulf Cooperation Council. Problems and Prospects, Washington,

In 1973 the Gulf states feared intervention<sup>3</sup> as a result of the 1973 war between the Arab states and Israel and there was a call in the Arab world for the use of the "oil weapon" against the western countries who supported Israel.

The Gulf states justified their action as legitimate to discourage third countries from violating their obligations of neutrality towards the belligerents.

The Arab oil embargo was initiated at a time when many of the states applying it were in an actual situation of war with Israel. Egypt and Syria were the major belligerents against Israel and other Arab states, including some Gulf states, participated in the war as co-belligerents.<sup>4</sup> The Arab states were bound with Egypt and Syria by regional

---

Georgetown University, OSJS (1984); McNaughta, Arms and Oil: U.S. Military Strategy and the Persian Gulf, Washington, Brookings Institution (1985); Kechichian, J., "The Gulf Cooperation Council: Search for Security", Third World Quarterly, Vol.1, No.4 (October 1985), pp.853-81; Hameed, M., Arabia Imperilled; The Security Imperatives of the Arab States, Washington, Middle East Assessment Group (1988); and Peterson, J., Defending Arabia, London, Croom Helm (1986).

<sup>3</sup> In 1975 Henry Kissinger threatened that the United States would intervene in Arab oil fields in the event of some actual strangulation of the industrialized world, 72 Dept.State Bull., 97, 101 (1975). See also, Ramazani, R., The Gulf Cooperation Council: Records and Analysis, University Press of Virginia, Charlottesville (1988), p.9. See also, "Kissinger says a continuation of the Arab Oil Embargo would be blackmail", N.Y. Times, Feb.7, 1974, at 1, col.4.

<sup>4</sup> See Shihata, I., "Destination Embargo of Arab Oil: its Legality under International Law", in Economic Coercion and the New International Economic Order, ed. Lillich, R., The Michie Co., Virginia (1976), pp.180-192.

arrangements including a mutual defence pact.<sup>5</sup>

Israel formally denounced the existence of a state of war between her and the Arab belligerent states and contended before the Security Council that the state of war is incompatible with the U.N. Charter and cannot exist.<sup>6</sup> However, in 1979 Israel, in its Peace Treaty with Egypt, acknowledged the existence of a state of war in Article 1(1), which provides:

"The state of war between the parties will be terminated and peace will be established between them upon the exchange of instruments of ratification of this treaty."<sup>7</sup>

Furthermore, the Gulf states felt that unchecked production of oil would jeopardize their economic future and therefore it was necessary to act on the basis of economic rationality and cut back their production to suit their economic needs.<sup>8</sup> This attitude was regarded by some as economic coercion amounting to a violation of the U.N. Charter and particularly Article 2(4).<sup>9</sup>

---

<sup>5</sup> For the Arab League defence arrangements, see *infra*, pp.428-434.

<sup>6</sup> S.C.O.R. 549th Mtg., 26 July 1951, paras.40-41.

<sup>7</sup> Treaty of Peace between the Arab Republic of Egypt and the State of Israel (1979). See the text in XVIII *I.L.M.*, p.362. For the discussion of war in state practice, see Greenwood, C., "The Concept of War in Modern International Law", 36 *I.C.L.Q.* (1987), pp.290-94.

<sup>8</sup> See Shihata, *op.cit.*, pp.172-75.

<sup>9</sup> Paust, J. and Blaustein, A., "The Arab Oil Weapon. A Threat to International Peace", in *ibid.*, pp.140-152. For the relevant documents concerning the embargo, see Paust, J. and Blaustein, A., *The Arab Oil Weapon*, Oceana Publications, New York (1977). For the relevance of Article 2(4) of the UN Charter to economic coercion, see Blum, Y., "Economic Boycotts

The relevance of Article 2(4) of the U.N. Charter is, however, questionable. In the course of the debate in the Committee on Friendly Relations, the consensus which emerged was that Article 2(4) should not cover economic coercion.<sup>10</sup> Indeed, the Declaration on Friendly Relations characterises economic coercion as intervention in matters within the domestic jurisdiction of the member states. It declares that the duty of states to refrain from political, economic or any other form of coercion in order to obtain any kind of advantage. It, inter alia, states:

"No state may use or encourage the use of economic, political or any other type of measures to coerce another state in order to obtain from it the subordination of the exercise of its sovereign rights and secure from it advantages of any kind..."<sup>11</sup>

The Declaration does not deprive states of the right to resort to economic measures as self-defence or reprisal.<sup>12</sup> As has

---

in International law", 12 Texas International Law Journal (1977), pp.11-13; Parry, C., "Defining Economic Coercion in International Relations", ibid., pp.1-4; Fawcett, J., Law and Power in International Relations, Faber & Faber, London (1982), p.115.

<sup>10</sup> Bowett, D., "International Law and Economic Coercion", in Economic Coercion and the New International Economic Order, Ed. Lillich, R., The Michie Co., Virginia, pp.8-11; Blum, ibid., p.10; Brosche, H., "The Arab Oil Embargo and United States Pressure Against Chile: Economic and Political Coercion and the Charter of the United Nations", 7-8 Case W. Res. J. International Law, p.22.

<sup>11</sup> UN G.A. Res. 2625(XXV), Oct., 241, 1970, GAOR, 25th Sess. Supp. No.28 at 24 (A180 28).

<sup>12</sup> Bowett, D., "Economic Coercion and Reprisals by States", 13 VA.J. Int.L. (1972), pp.7-9. See also, Elagab, O., The Legality of Non-Forcible Counter-Measures in International Law, Clarendon Press, Oxford (1988), pp.205-6.

been suggested by McDougal and Feliciano, "... a certain degree of coercion is inevitable in states' day-to-day interactions for values. Fundamental community policy does not seek to reach and prohibit this coercion".<sup>13</sup>

In response to the Soviet military intervention in Afghanistan, the American administration under President Jimmy Carter issued what was called "the Carter doctrine":

"Let our position be absolutely clear. An attempt by any outside force to gain control of the Persian Gulf region will be regarded as an assault on the vital interest of the United States of America, and such an assault will be repelled by any means necessary, including military force."<sup>14</sup>

In 1984 the U.S. Secretary of Defence, Weinberger, described six tests to govern the use of force abroad by the United States.

1. Force should be used for vital interests.
2. If used, then it should be dedicated to winning.
3. Winning should be clearly defined in relation to political and military objectives.
4. The military capabilities required to win should be provided, and adjusted during the course of combat as necessary.

---

<sup>13</sup> McDougal, M. and Feliciano, F., Law and Minimum World Public Order. The Public Regulation of International Coercion, Yale University Press (1961), p.197. See also, Higgins, R., "The Legal Limits to the Use of Force by Sovereign States. United Nations Practice", 37 B.Y.I.L. (1961), pp.276-77.

<sup>14</sup> 16 Weekly Comp. of Press, Doc.197 (Jan.23, 1980).

5. The whole undertaking should not be attempted without some reasonable reassurance of broad backing by the American people and Congress.
6. The commitment to force should be a last resort.<sup>15</sup>

Similarly, the U.S. Secretary of State Shultz claimed the discretionary right of the United States to combat with force any terrorist threats abroad, including the right to pre-emptive strikes.<sup>16</sup>

In similar terms the Soviet Union also appears to lay claim to a security zone, although this was based on legal principles rather than political doctrine. Professor Tunkin explains it thus:

"The Soviet state, as the 'oldest' socialist state whose historic fate has been the task of paving the way for a new socio-economic formulation, always precisely fulfils its duties arising from the principle of socialist internationalism. A vivid manifestation of this policy is the assistance of the Soviet Union to the Hungarian people in 1956 and the assistance, together with other socialist countries, to the people of Czechoslovakia in 1968 in protecting socialist gains and, ultimately, in defending their sovereignty and independence from sudden swoops of imperialism..."<sup>17</sup>

In fact, the American and Soviet claims are based on security and defensive considerations, and neither of them are lawful.

---

<sup>15</sup> New York Times, November 29, 1984.

<sup>16</sup> Ibid., October 26, 1984.

<sup>17</sup> Tunkin, G., Theory of International Law, George Allen & Unwin, Butler, W. translation (1974), pp.435-36.



Both claims assert the right of states to intervene to act in alleged self-defence against threats to their vital interests, and undoubtedly in a direct conflict with the unlawful use of force in Article 2(4) of the UN Charter, which reads:

"All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purpose of the United Nations."

Moreover, these claims are much broader than the concept of self-defence in Article 51 of the U.N. Charter. Article 51 does not permit the stretching of either the strict notion of "prior armed attack" or even "the inherent right" of self-defence in the form of imminent attack as it is established in customary law to cover areas such as threatened vital interest or economic coercion.<sup>18</sup>

As Professor Thomas Franck has shown, new rules derived from the practice of states have severely undermined Article 2(4). This has occurred through their temptation from time to time to "settle a score, to end a dispute or to pursue their national interest" by the use of force.<sup>19</sup>

Falk similarly observes the disparity between state

---

<sup>18</sup> See in this regard Farer, T., "Political and Economic Aggression in Contemporary International Law", in Cassese, A. (ed.), The Current Legal Regulation of the Use of Force, Martinus Nijhoff (1986), pp.124-125. See also, Bowett, D., "Economic Coercion and Reprisals by States", op.cit., p.7; Waldock, C., "The Regulation of the Use of Force by Individual States", Recueil des Cours II (1952), p.503.

<sup>19</sup> Franck, T., "Who Killed Article 2(4)?", 64 A.J.I.L. (1970), p.809.

practice of the use of force and international law rules by stating:

"What is striking is the absence of any 'test' to reconcile a proposed use of force with international law requirements."<sup>20</sup>

Some, however, attempt to justify allegedly new rules which emerged from state practice and undermined Article 2(4).

Reisman as such, likens the U.N. Charter to a wild town in the 19th century when a sheriff arrives announcing that he will enforce the law and that citizens no longer need carry weapons or resort to personal force to protect their rights. However, he concludes that if the sheriff is utterly incapable of maintaining order "even the best of citizens" will no longer refrain from the techniques of self-help that prevailed before the sheriff's arrival.<sup>21</sup>

Professor Schachter takes a sharp criticism of Reisman's view. He replied that "[a] community might allow the citizen a gun to defend himself and his household, but it would not follow that he could legitimately use the weapon to impose behaviour (however good) on another household."<sup>22</sup>

Reisman further attempts to evaluate the lawfulness of a particular activity without basing it on some authoritative

---

<sup>20</sup> Falk, R., "The Decline of Normative Restraint in International Relations", 10 Yale Journal of International Law (1985), p.266.

<sup>21</sup> Reisman, M., "Coercion and Self-determination: Construing Charter Article 2(4)", 78 A.J.I.L. (1984), pp.642-3.

<sup>22</sup> Schachter, O., "The Legality of Pro-Democratic Invasion", 78 A.J.I.L. (1984), pp.645-6.

text of the Charter. Instead he uses the maintenance of minimum order criteria to justify particular actions. He states:

"If an evaluation of the international lawfulness of a particular activity is based only on its congruence with some authoritative text, one need proceed no further. Under textual inquiry neither the Brezhnev nor the Reagan doctrine is lawful. But if an assessment of lawfulness includes an examination of the probable consequences of the activity and of its feasible alternative in terms of maintenance of minimum order in international community and their contribution to other authorised goals, then such an inquiry has perforce only begun."<sup>23</sup>

Such a view would necessarily lead to the adoption of the doctrine of necessity that might allow a state to cause injury to another state on the ground that its military, economic or political interest is at stake. This concept cannot be "kept within proper bounds".<sup>24</sup>

The International Law Commission has dealt with the question of necessity apart from the concept of self-defence.<sup>25</sup> The Special Rapporteur outlined that in both cases the state would act in response to an imminent danger, which

---

<sup>23</sup> Reisman, M., "Old Wine in New Bottles: The Reagan and Brezhnev Doctrines in Contemporary International law and Practice", Yale Journal of International Law (Winter 1988), p.182. See also his article, "Critical Defence Zone and International Law: The Reagan Codicil", 76 A.J.I.L. (1982), p.589.

<sup>24</sup> Higgins, R., The Development of International law through the Political Organs of the United Nations, op.cit., pp.218-219. See also, Waldock, C., "The Regulation of the Use of Force by Individual States in International Law", Recueil des Cours II (1952), p.462.

<sup>25</sup> Report of the International Law Commission, 32nd session, II(2) I.L.C. Yearbook (1980) at pp.44 and 57.

must be in both cases serious, immediate and incapable of being countered by other means. But in the case of necessity there was no internationally wrongful act committed by the state against which justified action may be taken. That state was in no way responsible by any of its own actions for the danger threatening the state invoking necessity. By contrast, in self-defence the target state would be responsible for the injury caused to the state acting in self-defence by breaching the general prohibition of the use of armed force.<sup>26</sup>

Similarly different from the concept of self-defence is the claim of "vital interest", which was the main one on which the United Kingdom based its right to intervene forcefully in the Suez dispute of 1956.<sup>27</sup> The then Legal Adviser to the British Foreign Office, Sir Gerald Fitzmaurice, warned the Foreign Office that the use of force on the ground of protecting vital interests abroad would be "a breach of general international law".<sup>28</sup> He wrote:

"It is certainly tempting to try and extend the notion of self-defence to the defence of e.g. one's property and interest abroad, and I have myself tried to argue that way in the past, but it is

---

<sup>26</sup> Ibid., Vol.II(1), pp.15-16.

<sup>27</sup> See the view of Professor Goodhart, the only one who supported the use of force as self-defence to protect the British vital interest in Egypt in 1956, in Marston, G., "Armed Intervention in the 1956 Suez Canal Crisis: The Legal Advice Tendered to the British Government", 37 I.C.L.Q. (October 1988), p.778.

<sup>28</sup> FO 371/119727 (JT 1053/89G) cited by ibid., p.783. See also Fawcett, J., Law and Power in International Relations, Faber & Faber (1982), p.75, who states that the British reasoning of vital interest convinced nobody. Bowett, D., Self-Defence in International Law, op.cit., pp.14-15.

impossible to get very far with the argument. It inevitably results in an extension of the notion of self-defence so great as to let in almost anything that a country chooses to regard as involving the protection of its interest. There is not a single modern authority that supports so wide an interpretation of the idea."<sup>29</sup>

However, it must be admitted that as far as G.C.C. security is concerned, the opposed intervention doctrines, as President Carter himself has admitted, could not be effectively implemented without the support of the local states.<sup>30</sup> The Gulf states, also, did not really seem to believe that the Soviet invasion of Afghanistan or the American threat of intervention posed an immediate threat to the security and stability of the region.

The real threat viewed by the G.C.C. member states which impelled them to band together and establish their organisation, was the imminent threat of the Islamic Republic of Iran to export the revolution to the region and the call for the establishment of a new "Islamic world order".<sup>31</sup>

---

<sup>29</sup> Cited by Marston, G., "Armed Intervention in the 1956 Suez Canal Crisis: The Legal Advice Tendered to the British Government", op.cit., p.785. Fitzmaurice's view is shared by McNair, who was unable to see the legal justification of the threat or the use of force by Britain, ibid., pp.809-13.

<sup>30</sup> G.C.C. member states rejected strongly all foreign intervention in the Gulf, no matter what its origin. See Ramazani, op.cit., p.9.

<sup>31</sup> For the discussion of this most critical interpretation, see Ramazani, R., "Khumayni's Islam in Iran's Foreign Policy", in Adeed Dawisha (ed.), Islam in Foreign Policy, Cambridge University Press (1983), pp.9-33. Similar fears were expressed by Butler, W., "Regional and Sectional Diversities in International Law", in Cheng, B. (ed.), International Law: Teaching and Practice, London, Stevens (1982), p.46. See also, Bassiouni, M., "Protection of Diplomats under Islamic Law", A.J.I.L. (1980), pp.609-633 who

## 2. International Law Versus Systems of Public Order

According to the classical law of Islam, the ultimate objective was that Islamic law would dominate the whole of mankind and become supreme over the world.<sup>32</sup> However, some jurists point out that Islam found itself entirely adjusted to the western system, which itself had undergone radical

---

maintains that the way the Iranians dealt with the American hostages is not compatible with Islamic Law. Chubin, S., Iran and its Neighbours. The Impact of the Gulf War, The Centre for Security and Conflict Studies (1987), p.2.; Daraz, M., "Public International Law and Islam", 5-6 Revue Egyptienne de droit international (1949-50) (Arabic), states at p.6 that lawful use of force in Islam is confined to self-defence, either individual or collective, if another Muslim country requested support to defend itself. Abu Zahra, M., "The Theory of War in Islam", in 14-15 Revue Egyptienne de droit international (1958-59) points out that Islam is against intimidation and forcing others, including atheists, to believe in Islam. The other important issue is that the Muslim state does not permit war unless it is a self-defence, pp.6-21 (Arabic). Khadduri, The Islamic Law of Nations, Johns Hopkins Press, Baltimore, Maryland (1966), explains that Islamic law, like all ancient laws was inherently personal rather than territorial, since it is intended for all mankind. Yet Islamic legal schools accepted with different degrees the territorial limitations. The opposite view is found in the Iranian revolution practice of opposing the territorial state and its conception of Islamic government and reviving and reconstituting the universal pan-Islamic state under spiritual and political leadership. See in this regard, Algar, H. (trans. and ed.), Islam and Revolution: Writings and Declarations of Imam Khomeini, Berkeley, Mizan Press (1981). See also Iran's President's statement in Washington Post, April 13, 1982 where he declared that "there is no geographical border for Imam Khomeini".

<sup>32</sup> Bozeman, A., The Future of Law in a Multicultural World, Princeton Press (1971), pp.81-87. See also, Mahmassani, S., "The Principles of International Law in the Light of Islamic Doctrine", 117 Recueil des Cours (1966), pp.232-237; Daraz, M., "Public International Law and Islam", in 5-6 Revue Egyptienne de droit international, ibid., p.6.

changes from its medieval Christian heritage.<sup>33</sup> Not only do Muslim states accept international law rules and participate in international organisations, but Islamic rules could in principle be part of international law as Article 38 of the Statute of the I.C.J. permits the adoption of general principles of law.<sup>34</sup>

International law, as Professor Higgins rightly put it:

"...is intended to bind all states and to provide normative guidance to behaviour for all international actors in their transnational relationships. Its reach extends to democracies and dictatorships alike, to developed and developing economies, to capitalism and socialism. The norms of international law are said to be applicable to all."<sup>35</sup>

---

<sup>33</sup> Khadduri, M., "The Islamic System: Its Competition and Co-existence with Modern Systems", 50-53 Proceedings of the American Society of International Law (1956-59), pp.49-52. See also his book The Islamic Law of Nations, Johns Hopkins Press, op.cit., pp.4-7.

<sup>34</sup> Khadduri, "The Islamic System: Its Competition and Co-existence with Modern Systems", ibid., p.52.

<sup>35</sup> Higgins, R., "Contending Systems of World Public Order and International Law: An Overview", The Atlantic Community Quarterly (Summer 1987), p.145. There is a vast literature on diverse public order systems and international law. See, for example, Jenks, W., The Common Law of Mankind, Chapter 2, "The Universality of International Law", London, Stevens (1958); Northrop, F., "Contemporary Jurisprudence and International Law", 61 Yale L.J. (1952), pp.623-654; Fifield, R., "The Five Principles of Peaceful Coexistence", 52 A.J.I.L. (1958), pp.504-510; Kunz, J., "Pluralism of Legal and Value Systems and International Law", 49 A.J.I.L. (1955), pp.370-376; McDougal, M. and Lasswell, H., "The Identification and Appraisal of Diverse Systems of Public Order", 53 A.J.I.L. (1959), pp.1-29, Proceedings of the American Society of International Law, April 30-May 29 (1959); "Diverse Systems of World Public Order Today", pp.1-185; Kulski, W., "The Soviet Interpretation of International Law", 49 A.J.I.L. (1955), pp.518-534; Badr, G., "Law in a Changing Community of Nations", 37 Revue Egyptienne de droit international (1981), pp.1-11; Cassese, A., International Law in a Divided World, Clarendon Press, Oxford (1986), especially chapters 5,

There are, however, a number of systems of public order, each demanding and embodying different values and standards of human life. The meaning of public order systems given by McDougal and Lasswell:

"The reference is to the basic features of social process in a community - including both the identity and preferred distribution pattern of basic goal values and implementing institutions - that are accorded protection by the legal process. Since the legal process is among the basic patterns of a community, the public order includes the protection of the legal order itself, with authority being used as a base of power to protect authority."<sup>36</sup>

In order to achieve a universal order it is necessary to conform to the basic rules of international law. The existence of severe regional diversities in the interpretation of universal values and principles if allowed to exist will certainly weaken the universal perspective and the application of international law.<sup>37</sup>

International law, as Clive Parry defines it:

"... is a strict term of art, connoting that system of law whose primary function it is to regulate the relation of states within one another. As states have formed organisations of themselves, it has also come to be concerned with international organisations... And because states are composed of individuals and exist primarily to serve the needs

---

10, 12 and 15; Butler, W., "Regional and Sectional Diversities in International Law", in Cheng, B. (ed.), International Law: Teaching and Practice, Chapter 4, p.45.

<sup>36</sup> McDougal, M. and Lasswell, H., "The Identification and Appraisal of Diverse Systems of Public Order", 53 A.J.I.L. (1959), p.10.

<sup>37</sup> Lasswell, H., "Universality in Perspective", 50-53 Proceedings of American Society of International Law, April 30 (1956-59), pp.4-5. See also McDougal and Lasswell, ibid., pp.1-3.



of individuals, international law has always had a certain concern with the relations of the individual, if not to his own state, at least to other states... even if the relations between the individual and his own state have come to involve questions of international law... Nevertheless, international law is and remains essentially a law for states and thus stands in contrast to what international lawyers are accustomed to call municipal law"<sup>38</sup>

### 3. Iran's View of World Order

The influence of religion represented in Khomeini's thoughts on Iran's foreign policy has been remarkable. According to Khomeini's order, authority should be taken from the "privileged few" to be given to the "under-privileged masses". This in turn would reorganise the political structure of the Muslim state.<sup>39</sup>

Among the G.C.C. states, Khomeini's Islamic revolutionary ideology is viewed as a direct threat to the peace and stability in the region. Furthermore, Khomeini has consistently questioned the contemporary international order. The earliest indication of this strong view is found in his book, Revealing of Secrets, in which he stated that modern states "are the products of man's limited ideas" and the world is the "home of all the masses of people under the law of

---

<sup>38</sup> The definition is found in Sørensen, M. (ed.), Manual of International Law, St. Martin's Press, London (1968), pp.1-2

<sup>39</sup> Ramazani, R., "The Gulf Cooperation Council: A Search for Security" in Dowdy, W. and Trood, R. (ed.), The Indian Ocean: Perspectives on a Strategic Arena, Duke University, Durham (1985), p.179; Abdulghani, J., Iraq and Iran. Years of Crisis, Croom Helm, London (1984), pp.180-81.

God".<sup>40</sup>

Iran views the existing order as unjust, reflecting an imbalance of power which gave the Western states advantage in the formulation of rules that govern international relations. It asserts the right to deal directly with and assist the "people" in their struggle, claiming that its own revolutionary model has universal applicability.<sup>41</sup>

In a statement to Iranian students abroad Khomeini declared:

"Iran's Islamic Revolution, with the support of the gracious Almighty, is spreading on a world scale and God willing, with its spread the satanical powers will be dragged into isolation and governments of the meek will be established."<sup>42</sup>

Khomeini thought that Islam is a universal ideology and should be exported to the whole world. He told the people he met in the pilgrimage rituals:

"... what is to be said is that the moslem nation of Iran has arisen for the obliteration of tyranny throughout the world and will not cease its struggle until a global Islamic government is established."<sup>43</sup>

---

<sup>40</sup> See Haj Ruhollah Mussavi Khomeini, *Kashf-el Assrar*, Tehran, n.p. (1944), p.267. See also his classic work, Islamic Government, translated by Joint Publications Research Service, Arlington, Virginia; New York, Manor Books (1979), in which he sets forth his conception of society and government, pp.14-32.

<sup>41</sup> Chubin, S., Iran and its Neighbours. The Impact of the Gulf War, The Centre for Security and Conflict Studies (1987), p.2.

<sup>42</sup> For the text see Foreign Broadcast Information Service (F.B.I.S.), Daily Report. South Asia, 4 November 1981, Vol.VIII, No.213.

<sup>43</sup> Ibid., 25 October 1981.

In a major speech to the Iranian people on the occasion of the Iranian New Year in 1980, he declared unequivocally:

"We should try hard to export our revolution to the world. We should set aside the thought that we do not export our revolution, because Islam does not regard various Islamic countries differently and is the supporter of all the oppressed people of the world."<sup>44</sup>

These pronouncements do not represent vaguely the official policy of the revolutionary regime. Article 154 of the Iran constitution provides in the same rhetoric line:

"Therefore, while practising a policy of complete non-interference in the internal affairs of other nations, it will support the just struggle of the oppressed against their oppressors anywhere in the world."<sup>45</sup>

As has been shown, Iran advocates the export of the "Islamic Revolution" as a mean of promoting the idea of establishing Islamic government on earth, and rejects the very concept of contemporary international order, and has instead resorted to the use of force.<sup>46</sup>

---

<sup>44</sup> Ibid., 9 March 1982, Vol.VIII, No.046. See also Sadun Hamadi's speech (Iraq Foreign Minister), United Nations Records, S/PV2250, Foreign Office (Iraq), Documentary Dossier, pp.238-9.

<sup>45</sup> See the text of the Iran Constitution in Constitutions of the Countries of the World, op.cit., Article 154, at p.66.

<sup>46</sup> See Ramazani, R., "Khumayni's Islam in Iran's Foreign Policy", op.cit., pp.29-30. In December 1981 the Saudi Interior Minister said, and according to the evidence they have explained beyond doubt, that the Iranian Government plotted to overthrow the Bahraini government and destabilise security by using armed force. FBIS-MEA, V-81-240, 15 December. See also the G.C.C. Ministerial Council first extraordinary meeting which was held to review the abortive coup d'etat in Bahrain, FBIS-MEA, V-81-026, 8 February 1982, pp.C5-C6. Another incident took place in Kuwait on December 12, 1983 in which the perpetrators carried out a bombing raid at the U.S. and French embassies, Kuwait airport control

Iran, furthermore, did not rely on international law to uphold its sovereign rights, since it views international law as being one-sided and without the capacity to provide authoritative guidelines for the behaviour of states in the "post-colonial contemporary world system".<sup>47</sup>

In the case concerning United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Iran relied on the above-mentioned argument as an essential one to justify its refusal to take part in the judicial proceedings brought by the U.S. to resolve the dispute of taking hostages at the ICJ.

---

tower, Electricity and Water Ministry's control centre, the Shuaybah industrial area offices and residences of American firms in Kuwait. Responsibility for the bombings was claimed by Islamic Holy War organisation, a militant group widely seen as having close links with Iran. The same group carried out a car bomb attack mounted on a motorcade containing the Amir and other senior officials on May 25, 1985. Further attacks on two seaside cafes in Kuwait City on July 11 killed nine people and wounded a further 89. For Kuwait State Security Court statement on bombing suspects, see FBIA-MEA-V-84 24 January 1984. See also the report on the Trial of Embassy Bombings in Kuwait, 11 February 1984, in FBIS-MEA, V-84-030, 13 February 1984, pp.C1-C2. See also an interview with Kuwait's Deputy Prime Minister, Foreign and Information Minister, Shaikh Sabah Al-Ahmed on the involvement of Iran in the subversive activities in the region. Al-Tadaman Magazine (London), 16 June 1984, as translated in FBIA-MEA, V-84-118, 18 June 1984, pp.C2-C3.

<sup>47</sup> Falk, R., "International Law and the Peaceful Settlement of the Conflict", in The Iraq-Iran War. Issues of Conflict and Prospects of Settlement, (ed.), by Dessouki, A., Centre of International Studies, Princeton University (1981), p.79. See also his article, "The Iran Hostage Crisis: Easy Answers and Hard Questions", 74 A.J.I.L. (1980), pp.411-417. Higgins, R., "Legal Response to the Iran Crisis", Proc.Am.Soc.Int.Law (1980), p.251, who states that "the seizure of the hostages had to be categorized not only as a violation of international law but as a threat to international peace."

The Iranian Government in its letter of 9 December 1979 drew attention to what it referred to as the

"deep rootedness and essential character of the Islamic Revolution of Iran, a revolution of a whole oppressed nation against its oppressors and their masters, the examination of whose numerous repercussions is essentially and directly a matter within the national sovereignty of Iran."<sup>48</sup>

Iran's claims were unanimously repudiated by the court, while, as the court pointed out in its order of 15 December 1979:

"A dispute which concerns diplomatic and consular premises and the detention of internationally protected persons, and involves the interpretation or application of multilateral conventions codifying the international law governing diplomatic and consular relations, is one which by its very nature falls within international jurisdiction".<sup>49</sup>

Iran, in its dealing with some territorial disputes with its G.C.C. neighbouring states, sought to generalise the

---

<sup>48</sup> See the Reports of the ICJ Judgments (1980), at p.9. The judgment took particular account of the traditions of Islam, which contributed along with others to the elaboration of the rules of contemporary public international law on diplomatic and consular inviolability and immunity. See the dissenting opinion of Judge Tarazi, p.59. See also, Bassiouni, M., "Protection of Diplomats under Islamic Law", A.J.I.L. (1980), pp.609-633. In connection with Iran's violation of diplomatic immunity it is worth stating that in 1987, after the deaths of Iranian pilgrims in Mecca, a crowd of demonstrators stormed and ransacked the Saudi and Kuwaiti embassies in Tehran. A Saudi diplomat as a result died, suffering from injuries. The French embassy also came under attack. The Islamic Republic's News Agency (IRNA) commented on the latter attack: "The assailants were demonstrating their hatred of the French Government for its support of reactionary Arab regimes". See Keesings, Vol.XXXIV, (January 1988), pp.35676-7.

<sup>49</sup> ICJ Reports of Judgments (1979), p.16, para.25. See also Gross, L., "The Case Concerning United States Diplomatic and Consular Staff in Tehran: Phase of Provisional Measures, 74 A.J.I.L. (1980), pp.400-402.

validity of its own revolutionary doctrine to justify the continuation of unlawful occupation of three UAE islands.

The dispute was over the three islands (Abu Musa and the Greater and Lesser Tumbs) in the Strait of Hormuz, which were militarily occupied by Iran on the eve of UAE independence on 30 November 1971. Before that date, the islands were generally recognised as belonging to the Emirates of Sharjah and Ras al-Khaimah respectively.<sup>50</sup> In the case of Abu Musa, which was under the control of the Emirate of Sharjah, Iranian occupation was made in pursuance of an agreement made between the Government of Iran and the Ruler of Sharjah. Regarding the two islands of Tumb, which were under the control of Ras al-Khaimah, Iran resorted to their occupation by means of military action. The Iranian government was reported to have made its forcible landings on the islands after failing to negotiate a peaceful arrangement with the Ruler of Ras al-

---

<sup>50</sup> For Iran's annexation of the three islands on 30 November 1971, see Abulghani, Iraq and Iran. Years of Crisis, op.cit., pp.89-94. For Iran's official and non-official pronouncements towards its intention to keep the control over these islands, see The Policy of Iran Expansion: Ambitions Towards the Arab States. Attitudes and Pronouncements against the Arab Nation, Baghdad (1987), pp.14-15; The Iraqi-Iranian Dispute. Facts v. Allegations, Ministry of Foreign affairs of the Republic of Iraq (1981), p.51; El-Azhary, M., The Gulf Cooperation Council and Regional Defence in the 1980s, Centre for Arab Gulf Studies, University of Exeter (1982), p.14; Shaikh Zaid, the President of the UAE, explained his country's position on the islands issue in a way avoiding antagonising Iran. For his statement, see ibid. For a legal analysis of the dispute before the revolution, see Shaukri, M., The Question of Islands in the Arabian Gulf and International Law (1972) (Arabic).

Khaimah on the transfer of the islands to Iran.<sup>51</sup>

On 3 December 1971, four Arab states (Algeria, Iraq, Libya and Southern Yemen) requested the Security Council to consider, on an urgent basis, the question of the occupation.<sup>52</sup> In the discussion of the situation on 9 December 1971, the representative of the United Arab Emirates explained that "Iran had never presented any convincing evidence of its claim to the islands. It had refused to negotiate the matter with the UAE and had chosen to use force to settle its claim".<sup>53</sup> The Iranian representative said:

"The Iranian title to the islands was long-standing and substantial: both maps hundreds of years old and modern, highly authoritative encyclopaedia, treated the territories as belonging to Iran."<sup>54</sup>

The representative of the United Kingdom (the protecting state before the occupation) explained that his Government was satisfied with the agreement reached between the ruler of Sharjah and Iran on Abu Musa. As regards the two islands of Tumb, he stated that "the United Kingdom had declared that it could not protect them if agreement was not reached by the time of withdrawal".<sup>55</sup>

In fact the Ruler of Ras al-Khaimah in 1971 presented to

---

<sup>51</sup> Keessing's Contemporary Archives, (1971-72), p.25010A.

<sup>52</sup> United Nations, Report of the Secretary-General on the Work of the Organisation, 16 June 1971-15 June 1972 (Official Records, 27th session), p.76.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid., pp.76-7.

<sup>55</sup> Ibid., p.77.

the Council of the League of Arab States 18 historical documents to substantiate his title to the Tumb islands, which may be regarded as valuable evidence in support of his claim.<sup>56</sup> As regards Abu Musa island, evidence of continued and uninterrupted control of Sharjah over it is also not lacking. A report prepared by a group of British lawyers, on the instructions of the Ruler of Sharjah, reveals abundant British documentary evidence which supports Sharjah's legal title to the island for at least 100 years.<sup>57</sup>

However, the reason put forward by some writers for the continuation of occupation by the new regime in Iran is that, after the overthrow of the Shah, the new revolutionary regime viewed the entire Muslim world as its legitimate constituency and thereby it could gain a broader international influence by keeping them.<sup>58</sup> This is a matter which has been supported by Iranian official statements.<sup>59</sup>

---

<sup>56</sup> Official Records of the League of Arab States on the Gulf Islands, Document presented by Ras al-Khaimah on 6 December 1971.

<sup>57</sup> Interim Report to the Ruler of Sharjah, prepared by Coward Chance and Associates of St. Swithin's House, London (unpublished), 23 July 1971. For a legal analysis of the claims of the concerned parties, see Al-Baharna, H., The Arabian Gulf States. Their legal and political status and their international problems, Beirut (1975), pp.341-48. See also Amin, S., Political and Strategic Issues in the Persian Arabian Gulf, op.cit., pp.53-54.

<sup>58</sup> See Chubin, op.cit., p.3.

<sup>59</sup> In March 1980 the then President Bani Sadra reiterated Iran's categorical refusal to return the islands to the UAE merely on the grounds that the Gulf states were not independent and that they were controlled by the USA. Furthermore, he claimed that, historically, all the Gulf states were part of Iran. See Kuwait Newspaper, Al-Rai al-



#### 4. Acts of Iran Which Have Been Complained Of

##### (A) Re Iraq and Iran's Counter Argument

The war between Iraq and Iran erupted in September 1980. The main argument put forward by Iraq in support of her abrogation of the 1975 Treaty was that Iran had herself "terminated" the agreement by "word and deed" prior to Iraq's more formal abrogation. The reasoning put forward is that Iran had secured the thalweg boundary in Shatt-al-Arab, a cession of considerable importance to her, by agreeing to refrain from fomenting and aiding the Kurdish rebellion in Iraq. It was contended that Iran's guarantee regarding the Kurdish insurgency was a quid pro quo regarding the cession of the thalweg line extended by Iraq. The latter argued that Iran had disregarded this obligation and provided Kurdish rebels with the facility of using parts of Iranian territory as bases for operations against Iraq. It was further claimed that Iran's leaders were trying to export their revolution to Iraq through subversive activities carried out by the Al-Da'awa Party (The Call Party). They further claimed when the policy of subversion and sabotage had failed, Iranian military action began. The Iranian indiscriminate military acts have been especially directed against cities and populated areas.<sup>60</sup>

~~Am~~, March 16, 1979; Al-Nahar al-Arabi wa al-Dowali, March 24-30, 1980, p.31. UAE newspaper, Al-Itihad, May 1, 1980.

<sup>60</sup> For a legal discussion of the parties' claims on the abrogation of the 1975 treaty, see Kaikobad, K., The Shatt-al-Arab Boundary Question. A Legal Reappraisal, Clarendon Press, Oxford (1988), pp.93-115. See also A Review of the

Iran in return argued that the war was imposed upon her in the form of military aggression organised by Iraq. Iraq unilaterally abrogated the Algiers Agreement, 1975. This is against Article 6 of the Agreement which requires the parties in case of difference regarding interpretation and application to have recourse to negotiation, mediation and arbitration involving even the International Court of Justice, and according to a clear timetable. The Vienna Convention they argued, disallows annulment of a border treaty even after substantial change of circumstances may occur. Definitiveness, permanence and unalterability are three integral elements of any border treaty. Iran further claimed that since 1980, Iraqi forces attacked numerous Iranian towns, villages and border posts. The United Nations, they emphasised, should look upon the Iraqi aggression within the framework of the definition of aggression adopted by the General Assembly in Resolution 3314(XXIX) of December 14, 1974.<sup>61</sup>

(B) Re Some G.C.C. Member States

A main feature of Iranian foreign policy was the interference in the internal affairs of G.C.C. states. This intervention took various forms, ranging from non-armed

Imposed War, Legal Dept., Ministry of Foreign Affairs, Iran (February 1983), pp.xvii-xviii, xx, 5, 77. Amin, S., International and Legal Problems of the Gulf, Middle East and North African Studies Press Ltd. (1981), pp.83-88; The Iraqi-Iranian Dispute. Facts v. Allegations, Ministry of Foreign Affairs of the Republic of Iraq (1981).

<sup>61</sup> Ibid.

intervention to indirect armed aggression. Non-armed intervention consisted of hostile propaganda<sup>62</sup> accompanied by incitement of the people to rise against their governments.<sup>63</sup>

Another form of intervention some G.C.C. member states complained of is training, financing and arming nationals and non-nationals of the G.C.C. member states to overthrow the national regimes and destabilise security through subversive activities.<sup>64</sup>

---

<sup>62</sup> The Kuwaiti Deputy Prime Minister and Foreign Minister, Shaikh Sabah Al-Ahmad was asked whether he believes that the Iran regime is still trying to export its revolution. He answered, "We had hoped that Iran would not harbor such designs, but when we hear the statements coming out of Iran in Friday sermons and statements by Iranian officials, we discover they still harbor this idea of exporting revolution." Al-Hawadith, London, 15 June 1984, pp.26-27, as translated in FBIS-MEA, V-84-117, 15 June 1984, pp.C1-C3.

<sup>63</sup> For hostile propaganda to be regarded as a form of illegal intervention, see Thomas, A. and Thomas, A., Non-Intervention, Southern Methodist University Press, Dallas (1956), p.273. See also Lauterpacht, H., "Revolutionary Activities by Private Persons against Foreign States", 22 A.J.I.L. (1928), p.105; Whitton, J., "Propaganda and International Law", 72 Recueil des Cours (1948), p.565; Stowell, E., Intervention in International Law, Washington, D.C., J. Byrne & Co. (1921) at p.378 stresses that calling on subjects of a foreign state to revolt is a "violation of the sovereign rights of a friendly state". Fawcett, J., Law and Power in International Relations, op.cit., pp.111-16; Higgins, R., "Intervention and International Law", in Intervention in World Politics, ed. by Bull, H., Clarendon Press, Oxford (1984), pp.36-38; Schwebel, S., "Aggression, Intervention and Self-Defence", Recueil des Cours, II (1972), pp.452-55.

<sup>64</sup> According to Kuwait's State Security Court statement on bombing suspects (23 January 1984), the accused included 17 Iraqis, 3 Lebanese, 3 Kuwaitis and 2 stateless persons. The 19 main defendants, according to the spokesman, along with one perpetrator who died while carrying out the bombing raid at the U.S. Embassy, would stand trial for responsibility for the blasts at all seven locations, the US and French Embassies, of the charges against the defendants illegal possession and importation of unlicensed ammunition. The

The I.C.J., however, in the Case Concerning Military and Paramilitary Activities Against Nicaragua, has drawn a distinction between "intervention" and "use of force" in terms of aid to insurgents in another state. Accordingly, the Court found that

"... while the arming and training of the Contras can certainly be said to involve the threat or use of force against Nicaragua, this is not necessarily so in respect of all the assistance given by the United States Government. In particular, the Court considers that the mere supply of funds to the Contras, while undoubtedly an act of intervention in the internal affairs of Nicaragua... does not in itself amount to a use of force."<sup>65</sup>

Furthermore, G.C.C. member states were under immense pressure felt because of Iranian pronouncements that as soon as Iraq collapsed a military intervention was imminent.<sup>66</sup>

This position moreover worsened and the interests of some G.C.C. member states came under fierce attacks. Ships, ports, islands and installations were hit in act of reprisal against the policy of funding Iraq in the Gulf war.<sup>67</sup>

The combination of these acts and pronouncements against

---

Kuwaiti Deputy Prime Minister in an interview confirmed Iranian links with the bombing attacks against Kuwait installations and the foreign embassies. Al-Tadamun, London, 16 June 1984, as translated in FBIS-MEA-V-84-118, June 1984, pp.C2-C3. As far as Bahrain is concerned, the Iranian abortive coup d'etat in 1981 was denounced by the Saudi Interior Minister which pointed at the Iranian Government as responsible for the act, FBIS-MEA-V-81-240, 15 December 1981, p.C.4.

<sup>65</sup> See the case in the I.C.J. Reports of Judgments (1986), p.109, para.228.

<sup>66</sup> See infra, p.424.

<sup>67</sup> See infra, p.423.

G.C.C. member states, which represented Iranian foreign policy, has brought them into a direct clash with the rules of international law which need to be discussed under the terms of intervention, armed attack in the form of indirect aggression and reprisal.

(i) Intervention

Intervention is a term often applied to any act of interference by one state in the affairs of others.<sup>68</sup> The term for some seems to include the notion of any interference at all in the state's affairs and for others the notion of military intervention.<sup>69</sup>

However, the balance should exist between the respect for sovereignty and political independence of states on the one hand and the reality of an interdependent world and international obligations, especially to human rights, on the other.<sup>70</sup>

Certain acts will not constitute intervention if the

---

<sup>68</sup> Thomas, A. and Thomas, A., Non-Intervention, op.cit., pp.67-68; Brownlie, I., International Law and the Use of Force by States, Oxford, Clarendon Press (1963), p.44.

<sup>69</sup> Higgins, R., "Intervention and International Law", in Intervention in World Politics, ed. by Bull, H., op.cit., p.30. Some writers, however, restrict it to the narrow sense of the term and that of dictatorial interference. See Lawrence, J., Principles of International Law, 5th ed., London (1913), at p.124. Similar views are expressed by Oppenheim, J., International Law, Lauterpacht ed., 7th ed., Longman Green (1948), pp.272-73; Brierly, J., The Law of Nations, 6th ed., Clarendon Press, Oxford (1963), p.402; Kelsen, H., Principles of International Law, New York (1952), p.64.

<sup>70</sup> Higgins, R., "Intervention and International Law", idem. See also, Schwebel, S., "Aggression, Intervention and Self-Defence", op.cit., pp.453-454.

methods fall short of the use of armed force as stipulated in Article 2(4) of the UN Charter, or the active support of groups aiming at overthrowing a regime as the UN resolutions indicate.<sup>71</sup> Therefore rhetorical statements by a regime portraying its political system as an ideal which should be followed by others may not be regarded as intervention unless it deliberately foments civil unrest in other countries.

Under the UN Charter intervention in its wide sense has not been condemned and Article 2(4) is primarily directed against the use of force.<sup>72</sup>

However, for some one way of providing criteria for unlawful non-military intervention is to tie the concept to state jurisdiction and any minor act against that is unacceptable.<sup>73</sup> Another way of adjusting the concept is to adhere to the UN General Assembly Declarations and Resolutions.

After prolonged debate and controversy in the UN the principle, including the duty not to intervene in matters

---

<sup>71</sup> See Resolution 2131-XX (1965) entitled Declaration on the Inadmissibility of Intervention into Domestic Affairs of States and the Protection of their Independence and Sovereignty, General Assembly Res. 2131(XX) 20 G.A.O.R. Supp.14, Declaration on Principles of International law Concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations, 25 G.A.O.R. Supp.18, at 122, UN Doc.A/8028 (1970), Helsinki Final Act, 14 I.L.M. (1975), p.1292. For supporting view see Fawcett, J., Law and Power in International Relations, op.cit., p.113.

<sup>72</sup> Fawcett, Ibid., p.114.

<sup>73</sup> Higgins, R., "Intervention and International Law", op.cit., p.30.

within the domestic jurisdiction of any state in accordance with the Charter, was formulated as a General Assembly Resolution 2131-XX(1965), adopted on its recommendation, entitled "Declaration on the Inadmissibility of Intervention into the Domestic Affairs of states and the Protection of their Independence and Sovereignty".<sup>74</sup>

The principle of non-intervention as stated in the above Resolution was repeated in similar terms and without essential change in the Declaration on Principles of International law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations<sup>75</sup> and also in the Helsinki Final Act.<sup>76</sup>

According to these resolutions and declarations, any form of interference or attempted threats against the political independence of the state, as well as armed intervention, are condemned.

Declaration 2131 on the inadmissibility of intervention for instance, states:

"1. No state has the right to intervene, directly or indirectly for any reason whatever, in the

---

<sup>74</sup> See General Assembly Res. 2131(XX) 20 G.A.O.R. Supp.14, at 11, UN Doc. A/6014 (1965). This resolution was adopted by the vote of 109 to 0, with 1 abstention (the United Kingdom). In explaining his favourable vote, the Representative of the United States characterised the resolution "as a political message, not as a declaration or elaboration of the law governing non-intervention" Official Records of the G.A., 20th session, First Committee, Verbatim Record of the 143rd Meeting, A/C.1/20/PV.14, 1422, p.12.

<sup>75</sup> General Assembly Res. 2625, 25 G.A.O.R. Supp.18, at 122, UN Doc. A/8028 (1970).

<sup>76</sup> See the text in 14 I.L.M. (1975), p.1292.

internal or external affairs of any other state. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the state or against its political, economic and cultural elements, are condemned.

2. No state may use or encourage the use of economic, political, or any other type of measures to coerce another state in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind. Also, no state shall organise, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another state."<sup>77</sup>

The ICJ in the Case Concerning Military and Paramilitary Activities in and against Nicaragua firmly emphasised that;

"Expressions of an opinio juris regarding the existence of the principle of non-intervention in customary international law are numerous and not difficult to find. Of course, statements whereby states avow their recognition of the principle of international law set forth in the United Nations Charter cannot strictly be interpreted as applying to the principle of non-intervention by states in the internal and external affairs of other states, since this principle is not, as such, spelt out in the Charter. But it was never intended that the Charter should embody written confirmation of every essential principle of international law in force. The existence in the opinio juris of states of the principle of non-intervention is backed by established and substantial practice. It has moreover been presented as a corollary of the principle of the sovereign equality of states. A particular instance of this is General Assembly Resolution 2625(XXV), the Declaration on the Principles of International Law concerning Friendly Relations and Cooperation among States"<sup>78</sup>

---

<sup>77</sup> See supra, note 71.

<sup>78</sup> See ICJ Reports of the Judgments, Advisory Opinions and Orders (1986), Nicaragua v. United States of America, p.106, para.202. Professor Brownlie has described the Declaration of Friendly Relations, 2625(XXV) and the Declaration on the Inadmissibility of Intervention, 2131(XX) as "part of the subsequent practice of the member states of the U.N. and must be given appropriate weight for the purpose of interpreting the provisions of the Charter", but they



In the Corfu Channel Case, in which Britain claimed a right of intervention in order to obtain evidence in the territory of another state for submission to an international tribunal, the court observed that:

"The alleged right of intervention is the manifestation of a policy of force, such as has, in the past, given rise to most serious abuse and such as cannot, whatever be the present defects in international organisations, find a place in international law. Intervention is perhaps still less admissible in the particular form it would take here: for, from the nature of things, it would be reserved for the most powerful states, and might easily lead to perverting the administration of international justice itself."<sup>79</sup>

It is apparent that various acts which have been attributed to the Iranian Government, such as the very hostile propaganda through inflammatory radio broadcasts inciting the people to rise against their governments, may fall within the limits of intervention as indicated in the above Declarations and Resolutions. This applies more positively to those acts indirectly carried out by Iranian agents in the form of subversive activities.

However, the acts of the Iranian agents in the form of threats to the political independence of the G.C.C. member states or the use of force by irregular groups to weaken or overthrow their established political order, may fall within

---

"cannot have a legislative effect". See his article, "The United Nations Charter and the Use of Force", in Cassese (ed.), op.cit., p.494. See also his book, Basic Documents in International Law, 3rd ed. (1985), p.35.

<sup>79</sup> See I.C.J. Reports of the Judgments (1949), p.35.

Article 2(4) of the UN Charter.<sup>80</sup>

According to Judge Schwebel the Declaration on Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty considers that "armed intervention is synonymous with aggression".<sup>81</sup>

The Charter of the UN speaks in Article 2(4) of the "use of force" in international relations and does not differentiate between the various kinds of illegal use of force, attributing to them certain degrees of illegality according to the methods used.

As the US Representative to the Special Committee on the Question of Defining Aggression stated:

"There is simply no provision in the Charter, from start to finish, which suggests that a state can in any way escape or ameliorate the Charter's condemnation of illegal acts of force against another state by a judicious selection of means to

---

<sup>80</sup> For similar view on subversive activities, see Fawcett, J., "Intervention in International Law: A Study of Some Recent Cases" in Recueil des Cours II (1961), pp.353-57. The Secretary General of the G.C.C. in this regard made a distinction between the rhetoric of the Iranian government and its actual recourse to the use of force. He stated: "the GCC has not been hostile to the revolution, nor even to the rhetoric of the revolution. In the beginning, Iran called for the overthrow of the moderate regimes in the area, but we can tolerate hostile propaganda. It did not represent a real threat to us. But it soon became clear that the Iranian government wanted to change the political texture of the region by resorting to force". See Bishara, A., The Gulf Cooperation Council: Its Nature and Outlook, No.1, National Council on US-Arab Relations (1986), p.5.

<sup>81</sup> Schwebel, S., "Aggression, Intervention and Self-Defence in Modern International law", II Recueil des Cours (1972), p.452.

its illegal ends."<sup>82</sup>

It is hard to maintain that when a state sends individuals or groups of individuals not belonging to the regular armed forces to perform military operations in the territory of another state for acts of terrorism or sabotage, this does not constitute unlawful use of force according to Article 2(4).<sup>83</sup> Furthermore, the I.C.J. in the Nicaragua Case emphasized that arming and training Contras could involve the use of force.<sup>84</sup>

However, one has to make it clear that "intervention is not aggression in its entirety, whereas the first term involves various ranges of intrusions from minor or major ones, the latter term is confined to the unlawful military use of force."<sup>85</sup>

Yet, the definition of aggression operates only as a guidance to the Security Council and does not deprive the Council's own discretion in determining whether the requirements of Article 39 have occurred.<sup>86</sup> Article 39

---

<sup>82</sup> The statement by Lawrence Hargrove, United States Representative to the Special Committee, Press Release US UN 32 (69), p.5, cited by Schwebel, ibid., p.458.

<sup>83</sup> Zanardi, P., "Indirect Military Aggression", in The Current Legal Regulation of the Use of Force, ed. Cassese, A., Martinus Nijhoff (1986), pp.111-112.

<sup>84</sup> See I.C.J. Reports of Judgments (1986), op.cit., p.119, para.228.

<sup>85</sup> See Higgins in Bull (ed.), op.cit., pp.37-40.

<sup>86</sup> Schwebel, op.cit., p.448. See also his article "Law-Making in the United Nations", Federal Law Review of the Australian National University (1970), Vol.4, No.1, pp.118-119; Brom, B., "The Definition of Aggression", 2 Recueil des

provides:

"The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security".

In fact, the Security Council has dealt with many situations which involved a high degree of violence without classifying them as acts of aggression.<sup>87</sup>

The characteristic of indirect aggression appears to be that the aggressor state, without itself committing hostile acts as a state, operates through third parties who are either foreigners or nationals seemingly acting on their own initiative.<sup>88</sup>

It has been argued that it is more difficult and necessary to define indirect aggression and subversion than

Cours (1977), pp.369-73.

<sup>87</sup> Garvey, J., "The UN Definition of 'Aggression'. Law and Illusion in the Context of Collective Security", 17 Virginia Journal of International Law, (1976-77), p.186. See also Higgins, R., "The Legal Limits to the Use of Force by Sovereign States. United Nations Practice", 37 B.Y.I.L. (1961), p.274.

<sup>88</sup> See The Report of the Secretary General, UN Doc. A/2211, p.72. Aggression not involving the use of armed force can be mounted by indirect as well as direct means. See the discussion in McDougal, M. and Feliciano, F., Law and Minimum World Public Order, Yale University Press, New Haven and London (1961), which describes as "indirect aggression" exercise of coercion emphasising political or ideological instruments, with military instruments "in a muted and background role", pp.190ff.; Zanardi, P., "Indirect Military Aggression in Current Legal Regulation of the Use of Force", op.cit., p.111.

direct aggression.<sup>89</sup> This is mainly because of the radically different outlook in law of the contending systems, which leads to different interpretations of what is permitted or prohibited.<sup>90</sup>

Such outlook was reflected in the states' attitudes towards the definition of aggression when the work began in 1968 (the latest Special Committee on the Question of Defining Aggression) to the extent that some states did not define aggression to include indirect as well as direct uses of force. These proposals spoke only of the "use of armed force by a state against another state".<sup>91</sup>

Nevertheless, Article 3 of the definition of aggression came to include explicitly indirect aggression in paragraph (g). It provides:

"Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of Article 2, qualify as an act of

---

<sup>89</sup> Falk, R., Legal Order in a Violent World, Princeton U.P. (1968), p.508.

<sup>90</sup> See McDougal, M. and Lasswell, H., "The Identification and Appraisal of Diverse Systems of Public Order", in The Strategy of World Order, Vol.2, World Law Fund, Falk, R. and Mendlovitz, S. (ed.) (1966), p.67. See also, Henkin, L., "Force, Intervention and Neutrality in Contemporary International Law", in ibid., pp.344-46; Dore, I., International Law and the Superpowers. Normative Order in a Divided World, Rutgers University Press (1984), pp.45-49.

<sup>91</sup> The thirteen countries who maintained that self-defence to indirect aggression is unjustified are Colombia, Cyprus, Ecuador, Ghana, Guyana, Haiti, Iran, Madagascar, Mexico, Spain, Uganda, Uruguay and Yugoslavia. See Schwebel, S., op.cit., pp.455-57 and p.482. See also, Ferencz, B., "Defining Aggression: Where it Stands and Where It Is Going", 66 A.J.I.L. (1972), p.499. For the relevant documents on the issue see UN Doc. A/AC.134/L.37, Annex I, p.2, UN A/AC.134/L.37, Add.1, p.3.

aggression:....

(g) The sending by or on behalf of a state of armed bands, groups, irregular or mercenaries, which carry out acts of armed force against another state of such gravity as to amount to the acts listed above, or its substantial involvement therein."<sup>92</sup>

It should be stressed that the notion "sending" presupposes close links between the sending state and the armed group, in view of which the acts of sending could be attributed to the sending state or its organs.<sup>93</sup>

According to Zanardi, if the acts are isolated and sporadic, then they may not meet the requisite and extent of gravity characteristic of aggression.<sup>94</sup> Similarly, according to Article 3(g) of the definition giving assistance to the armed groups or acquiescing in their activities only may not constitute aggression<sup>95</sup> but it may be considered as intervention.

Yet the link between the target state and the armed group when these are its nationals does not exclude the application

---

<sup>92</sup> For the text and the discussion of the definition, see Ferencz, B., Defining International Aggression, Oceana Publications, New York (1975).

<sup>93</sup> Zanardi, op.cit., p.112.

<sup>94</sup> Zanardi, idem. See also Bowett, D., Self-Defence in International Law, Manchester (1958), p.192, who regards assistance to revolting minorities as a form of indirect aggression, but not armed attack according to Article 51 of the UN Charter.

<sup>95</sup> See the statement of Mr. Bessou (France) in the Special Committee, who states "Until they had been dispatched, no act of aggression had occurred; the mere fact of organising or preparing armed bands did not itself constitute an act of aggression". In Ferencz, Vol.2, op.cit., p.577.

of paragraph (g),<sup>96</sup> provided that those nationals act under the influence of the aggressor state.

Thus, the acts of the Iranian Government in the form of arming, training and sending irregular groups both of G.C.C. nationals and non-nationals, to engage in subversive activities may fall within the definition of aggression.<sup>97</sup>

In 1981 assistance given by Iran to internal groups in Bahrain took a very subtle form, including the training, exportation of ammunition and financing, then sending some Bahraini nationals with the aim of overthrowing the regime of Bahrain.<sup>98</sup> As evidence of Iran's complicity in the abortive

---

<sup>96</sup> The Report of the Secretary General, supra, note 88. See also McDougal and Feliciano, op.cit., p.190.

<sup>97</sup> See supra, note 64.

<sup>98</sup> On 17 December 1981 an Iranian-backed coup d'etat attempt in Bahrain was foiled by the security services. The Bahraini government announced that with the help of Saudi Arabia 64 plotters had been arrested. The plot aimed at overthrowing the Bahraini Government and the state radio accused Iran of "sending saboteurs... to carry out acts of violence against vital installations and [high] ranking Bahraini defence security and other government officials". The arrested plotters, who were reported to have been trained in Iran, belonged to the Islamic Front for the Liberation of Bahrain, and the operation had been coordinated with Iranian officials: New York Times, December 17, 1981, Washington Post, March 31, 1982, Middle East Economic Survey, 25-29 (1983), p.17. The Bahrain Prime Minister confirmed that and accused Iran of helping the Shiites in the Gulf to overthrow the Gulf regimes. See also the statement of Saudi Arabian Minister of the Interior which confirmed the link between the plotters in the coup d'etat and the Iranian government. He emphasised that Saudi Arabia was targeted by such acts. See FBIS-ME-A-V-81-240, 15 December 1981, p.C4. As a result of the abortive coup d'etat a security agreement with Saudi Arabia was signed, and though Bahrain itself appears to have reverted to a more low key approach, the Saudis attacked Iran in the harshest terms after signing the agreement in Manama. The Saudi Arabian Minister directly accused Iran of being responsible for the plot and that it had become the "terrorist

coup, a message was delivered to the Bahrain embassy in Tehran demanding the immediate release of the arrested plotters.<sup>99</sup>

Another abortive attempt in the form of a coup d'etat disguised as a purely domestic change, was directed and carried out against the regime of Bahrain in 1984.<sup>100</sup>

Some other G.C.C. member states (i.e. Kuwait and Saudi Arabia) have been similarly subjected to Iranian indirect aggression and interference.<sup>101</sup>

---

of the Gulf". Summary of World Broadcast (SWB) ME/7256/A/3, 12-2 (1963).

<sup>99</sup> New York Times, December 17, 1981.

<sup>100</sup> The charges brought against the 19 persons accused by the Bahrain Attorney-General in the case No.1105/1984 dated 20/6/1984 (not published). All the accused were of Bahraini nationality. The charges brought were, inter alia, the overthrow of the Bahraini Government using military force in violation of Articles 159 (1.2), 164, 185 of the law. The attempt was carried out with the cooperation and coordination of some organs in the Iranian government. The Supreme Appeal Court in Bahrain upheld the charges brought by the Attorney-General concerning the link with Iranian officials and their role in training and sending them to Bahrain. The Security of the State Case 12, Session 24.12.84. Private information of the author.

<sup>101</sup> Convinced of his religious mission and his supreme spiritual power, Khomeini began appointing personal religious envoys to the Gulf states in order to propagate his hostile teachings. In early 1979 the Kuwait Government uncovered an arms depot in a suburb of the Kuwaiti capital and arrested a group of individuals regarded as pro-Khomeini. On June 12 1980 explosions occurred at the office Public Opinion, a daily Kuwaiti newspaper known for its criticism of Iran. Since the Islamic Revolution in 1979, Iran has used the annual pilgrimage as an occasion to propagate its revolutionary ideas in one form of violence or another. To these ends it has been reported in March 1980 that the Iranian Government would allocate approximately one billion Iranian riyals to promote and support various national liberation fronts. For these charges see consecutively, Al-Nahar, Sept.26, 1979; Christian Monitor, Jan. 22, 1979; Khadduri, M., The Gulf War, Oxford (1988), pp.126-29; Iran subsidiary to subversive activities cited by MacDonald, C., "Iran as a Political Variable", in



It should be noted here that even if it were the case that Iran did not send irregular groups to some G.C.C. member states, it had been "substantially involved" in the operation as the evidence has already been shown.<sup>102</sup> According to Article 3(g) of the Definition of Aggression, "the substantial involvement" in the sending of armed bands constitutes an autonomous provision of the paragraph. As Professor Stone concludes, while Article 3(g) "requires there to have been" sending into the target state, it inculcates the host state not merely when that state did the sending, but also when it has a "substantial involvement therein".<sup>103</sup>

(ii) Armed attack in form of indirect aggression

In applying Article 3(g) of the Definition of Aggression to the incidents which took the form of indirect aggression as explained before, one should refer to the doubts that were raised by some government delegates in the UN Special Committee as to the relationship between Article 3(g) and self-defence.

The Mexican delegate, for instance, pointed out that the above paragraph should not be interpreted under any circumstances "as adding to the number of situations in which

---

Koury, E. and MacDonald, C. (ed.), Revolution in Iran, Institute of Middle East and North African Affairs (1982), p.56.

<sup>102</sup> See supra, note 100.

<sup>103</sup> See the dissenting opinion of Judge Schwebel in Case Concerning Military and Paramilitary Activities, op.cit., p.344, para.166.

the right of self-defence in accordance with the Charter could be invoked". He stated:

"No state must be permitted to use that provision to invoke the right of self-defence against another state when acts of subversion or terrorism took place in its territory, since the definition of aggression, instead of discouraging the use of armed force, would then serve to legitimate it."<sup>104</sup>

Rosenstock, the US representative, contended that Article 3(g) correctly stated the view that not every act of force in violation of the Charter constitutes aggression. He maintained that this followed as well from Article 1, which defines aggression as "the use of armed force... as set out in this definition". The provision of Article 2 of the Charter, that the Security Council may conclude that the use of force in contravention of the Charter "does not comprise an act of aggression", moves in the same direction. Especially one had in mind hereby "the fact that the acts concerned or their consequences are not of sufficient gravity".<sup>105</sup>

The attitude of the United States Government in this regard is quite significant in relation to the Vietnam War. The US, in its argument justifying the use of force against North Vietnam under Article 51 of the UN Charter, avoided the invocation of the notion of indirect aggression to justify its action against North Vietnam, and on the contrary made it

---

<sup>104</sup> See A.AC.134 SR 113, in Ferencz, op.cit., Vol.2, p.594.

<sup>105</sup> Ibid., p.578.

clear that it only regarded it an armed attack when North Vietnam had sent thousands of armed infiltrators, followed by regular troops.<sup>106</sup>

In the Case Concerning Military and Paramilitary Activities in and Against Nicaragua (1986), the court, on the critical question of whether aid to irregulars may be tantamount to an armed attack, regrettably departed from accepted and desirable rules which reflect progressive development of the law on the use of force. The court accepted that the "description, contained in Article 3, paragraph (g) of the Definition of Aggression annexed to General Assembly resolution 3314(XXIX) may be taken to reflect customary international law".<sup>107</sup> It was not, however, satisfied that

"assistance has reached the Salvadorian armed opposition, on a scale of any significance, since the early months of 1981, or that the Government of Nicaragua was responsible for any flow of arms at either period. Even assuming that the supply of arms to the opposition in El Salvador could be treated as imputable to the Government of Nicaragua, to justify invocation of the right of collective self-defence in customary international law, it would have to be equated with an armed attack by Nicaragua on El Salvador... The court is unable to consider that, in customary international law, the provision of arms to the opposition in another state constitutes an armed attack on that state. Even at a time when the arms flow was at its peak, and again

---

<sup>106</sup> See the State Department Memorandum of March 4, 1966, which is to be found in Falk, R., The Vietnam War and International Law, Princeton (1968), p.583. On the legal problems arising from the American military intervention in Vietnam, see the numerous articles in the four-volume work edited by Falk, ibid., (1968, 1969, 1972, 1976).

<sup>107</sup> See the Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), ICJ Reports of Judgments (1986), p.103, para.195.

assuming the participation of the Nicaraguan Government, that would not constitute such armed attack."<sup>108</sup>

The court's interpretation of Article 3(g), which recognises indirect aggression as armed attack only if carried out on a large significant scale, has narrowed the concept of use of force. Thus, the court has laid down a distinction between a relatively low level of use of force and armed attack as referred to in Article 51 of the UN Charter. It states that not every use of force is an armed attack.

The distinction is not compatible with the purposes of the preamble, nor Article 2(4) of the UN Charter. Both are directed to reducing tension and preventing the use of force in international relations. The realities of the use of force in international relations have brought profound affliction to the stability and peace in the world, and to adopt such an interpretation of the use of force is more likely to promote

---

<sup>108</sup> Ibid., p.119, para.230.

it.<sup>109</sup>

For the operation of indirect aggression to be on a significant scale in order to be regarded as armed attack, does not match the realities of use of force. Such a rule cannot be taken in its entirety as state practice.

As Fawcett points out, the activities of armed bands which constitute armed attack

"...depend upon difficult questions of fact, for example, armed bands, self-organised and irregularly equipped, may constitute no threat at all to a powerful state, but their operations may well amount to an 'armed attack' upon a militarily weak or politically unstable state."<sup>110</sup>

Thus, there is a distinction between the situation in Central America as indicated in the Nicaragua Case and the political and economic realities of the Gulf region. The small size of some of the G.C.C. countries, coupled with the fact that they are entirely dependent upon one product, namely

---

<sup>109</sup> See the dissenting opinion of Judge Schwebel, op.cit., p.332. For the interpretation of Article 51 the views of the jurists are divided between narrow interpretation which requires the prior occurrence of armed attack, and wide interpretation which allows anticipatory self-defence. Those who adopt a narrow definition of the Article: Higgins, The Development of International Law through the United Nations Organs, op.cit., p.199; Brownlie, International Law and the Use of Force, op.cit., pp.258-9; Jessup, A Modern Law of Nations (1948), op.cit., pp.165-168; Skubiszewsky, K., "Use of Force by States. Collective Security. Law of War and Neutrality", in Manual of Public International Law, Sorensen (ed.), op.cit., p.767. Those who think that Article 51 should be widely construed: Bowett, Self-Defence in International Law, op.cit., pp.182-199; McDougal and Feliciano, op.cit., pp.231-241; Waldock, "The Regulation of the Use of Force by Individual States in International Law", op.cit., p.496.

<sup>110</sup> Fawcett, "Intervention in International Law", op.cit., p.363.

oil, and the exposed nature of the oil installations, means that a minor act of subversion could jeopardize the entire economic future of those countries. Furthermore, the court's judgment departs from the progressive development on the law of force, either through the writings of the jurists or the work of the International Law Commission.

That the direction and control of armed bands by a state is attributable to that state for purposes of determining its liability is an elementary principle of international law. The principle has been codified in draft form by the International Law Commission. Article 8 of the draft articles on State Responsibility reads:

"The conduct of a person or group of persons shall also be considered as an act of the state under international law if, (a) it is established that such person or group of persons was in fact acting on behalf of that state.." <sup>111</sup>

Commenting on this draft article in the Third Report on State Responsibility to the I.L.C., Special Rapporteur, Judge Roberto Ago writes:

"The attribution to the state, as a subject of international law, of the conduct of persons who are in fact operating on its behalf or at its instigation is unanimously upheld by the writers on international law who have dealt with this question." <sup>112</sup>

Judge Ago states further:

"Private persons may be secretly appointed to carry out particular missions or tasks to which the organs of the state prefer not to assign regular state officials: people may be sent as so-called

---

<sup>111</sup> See Y.I.L.C. II (1974), Part I, p.277.

<sup>112</sup> Ibid., Vol.II (1971), Part I, p.266.

'volunteers' to help an insurrectional movement in a neighbouring country - and many more examples could be given."<sup>113</sup>

Professor Higgins takes the position that the use of irregular groups to carry out armed attacks against another state is "from a functional point of view, a use of force".<sup>114</sup> She develops the historical background for the growing emphasis on indirect uses of force in UN practice at San Francisco. She points out the main thrust was on conventional means of armed attack, but "the unhappy events of the last fifteen years" precipitated a substantial re-evaluation of the concept of the use of force.<sup>115</sup>

Brownlie notes that although sporadic operations by armed groups might not amount to armed attack,

"it is conceivable that a coordinated and general campaign by powerful bands of irregulars, with obvious or easily proven complicity of a government of a state from which they operate would constitute an 'armed attack'".<sup>116</sup>

Rifaat also points to the growing practice of state covert operations in an attempt to circumvent the prohibition of Article 2(4):

"States, while overtly accepting the obligation not to use force in their mutual relations, began to

---

<sup>113</sup> Ibid., p.283.

<sup>114</sup> Higgins, R., "The Legal Limits to the Use of Force by Sovereign States. United Nations Practice", 37 B.Y.I.L. (1961)., p.278.

<sup>115</sup> Ibid., pp.288-289.

<sup>116</sup> See Brownlie, I., International Law and the Use of Force by States, Clarendon Press, Oxford (1963) p.279. It should be noted here that Professor Brownlie was counsel for Nicaragua before the ICJ in 1986.

seek other methods of covert pressure in order to pursue their national policies without direct confrontation. The incompatibility of the classical external armed aggression with the present rules regulating international relations, led to the development of other methods of covert or indirect aggression."<sup>117</sup>

Thus, there is a strong ground for arguing that "the use of force" by way of covert operations may well fall within Article 2(4) of the UN Charter.<sup>118</sup>

The consequent result of that is that the victim state shall be entitled to use its right of self-defence according to Article 51 of the UN Charter.

Professor Higgins states:

"The right of self-defence is available equally to an indirect use of force as well as a direct use of force."<sup>119</sup>

Fawcett similarly maintains that the action by irregular groups, armed and organised for the political purpose of overthrowing a government, may constitute an armed attack for

---

<sup>117</sup> Rifaat, A., International Aggression: A Study of the Legal Concept: Its Development and Definition in International Law, Almquist & Wiksell, Stockholm (1979), p.217.

<sup>118</sup> For similar views, see Higgins, op.cit., p.278; Fawcett, J., "Intervention in International Law", op.cit., p.356; Schwebel, op.cit., p.482. See also his dissenting opinion in the Military and Paramilitary Case, op.cit., pp.332-335. Bowett, op.cit., pp.45-6. At p.279 he maintains that "new techniques of subversive activities and ideological propaganda... call for a specific regulation; the right of self-defence in relation to these new techniques will only have judicial connotation when their use can be characterised as delictual".

<sup>119</sup> Higgins, in B.Y.I.L. (1961), op.cit., p.204.



the purpose of Article 51 of the Charter.<sup>120</sup>

So the Special Committee on the Question of Defining Aggression observed that "support of invading armed bands, though not included in the concept of aggression, was serious enough to be placed on the same footing as armed aggression",<sup>121</sup> and in that Committee the Netherlands put forward a definition of "armed attack" which included armed intervention by irregular forces and justified accordingly the use of the right of self-defence.

"Armed attack, as this form is used in Article 51, is any use of armed force which leaves the state, against which it is directed, no means other than military means to preserve its territorial integrity or political independence."<sup>122</sup>

Schwebel argues that:

"The Charter proscribes the threat or use of armed force, without specifying the means by which that force is exerted. Even if, *arguendo*, one construes Article 51 as confining the exercise of self-defence to response to armed attack, subversive or terrorist acts carried out by irregular, volunteers or armed bands with the organisation and support of a foreign state comprehend forms of armed attack."<sup>123</sup>

Brownlie, though he accepts that a "coordinated and general campaign by powerful bands of irregulars" could constitute an "armed attack", warns that a right to use force against various forms of indirect aggression cannot be derived

---

<sup>120</sup> Fawcett, "Intervention in International Law", op.cit., p.357.

<sup>121</sup> G.A.O.R. (1957) A/3574, para.51-52.

<sup>122</sup> Ibid., 208.

<sup>123</sup> Schwebel, S., "Aggression, Intervention and Self-Defence", op.cit., p.482.

from Article 51 if the proportionality rule is strictly observed.<sup>124</sup>

Yet, as demonstrated earlier,<sup>125</sup> the I.C.J. in the Nicaragua Case did not accept the view that "armed attack" and the use of force are synonymous, and limited the circumstances in which a state may resort to the right of self-defence. The Court emphasised that the alleged intervention by Nicaragua in the internal affairs of neighbouring states could not justify U.S. counter-measures against Nicaragua involving the use of armed force:

"While an armed attack would give rise to an entitlement to collective self-defence, a use of force of a lesser degree of gravity cannot ... produce counter-measures involving the use of force. The acts of which Nicaragua is accused, even assuming them to have been established and imputable to that state, could only have justified proportionate counter-measures on the part of the state which had been the victim of these acts ..."<sup>126</sup>

However, the duty imposed upon Iran to prohibit the initiation of hostile expeditions by persons within its territory or funding and arming nationals of other states, does not only raise the issue of self-defence, which is basic policy, "but also international collaboration in the prohibition of the use of force by entities not associated

---

<sup>124</sup> Brownlie, I., The Use of Force and International Law, op.cit., p.279.

<sup>125</sup> See supra, p.414.

<sup>126</sup> I.C.J. Reports (1986), op.cit., p.127, para.249.

with or operating under the delegation from a nation state."<sup>127</sup>

Yet, one has to examine other requirements laid down in the Nicaragua Case (1986) concerning self-defence.

The court found that in customary law there is no rule permitting the exercise of collective self-defence in the absence of a request by the state which regards itself as the victim of an armed attack. The court concludes that the requirement of a request by the victim state for collective self-defence is additional to the requirement that it had declared itself to have been under attack.<sup>128</sup>

Another stringent condition has to be met, that is, in accordance with the UN Charter, the measures taken by states in exercise of the right of self-defence must be "immediately reported" to the Security Council.<sup>129</sup>

As far as the requirement that a state should declare itself to have been attacked is concerned, Bahrain has publicly announced the incident.<sup>130</sup> However, the requirement of a request for collective self-defence apparently has not been made. This condition, as Sir Robert Jennings points out,

---

<sup>127</sup> Reisman, M., "Private Armies in a Global War System: Prologue to Decision", in Law and Civil War in the Modern World, Moor, N. (ed.), Johns Hopkins University Press (1974), p.257.

<sup>128</sup> See the Case Concerning Military and Paramilitary Activities in and against Nicaragua, op.cit., paragraph 199, p.105.

<sup>129</sup> Ibid.. See also Bowett, Self-Defence in International Law, op.cit., p.197.

<sup>130</sup> See supra, note 98.

"might sometimes be unrealistic".<sup>131</sup> For Bahrain to make such a formal declaration and request the right of collective self-defence in itself could have adversely antagonised Iran.

(iii) Reprisal

Iran, in an act of armed reprisal, escalated its air raids on Kuwait territory and installations, commercial ships en route to and from the ports of Kuwait and Saudi Arabia.

The Iranian Government in a letter to the Security Council emphasised that the security of the Gulf was indivisible. Either there was security for all, or there was no security for anyone. It claimed that some states in the area and beyond attempted to impose an "unacceptable situation" on Iran. They "pour extensive financial and material resources" into Iraq, encouraging it to threaten commercial shipping in the Persian Gulf, "and yet they wish to remain secure from the consequences of their obvious backing of the aggressor Iraq". Those states, therefore, contribute to the internationalisation of a conflict "from which they can hardly remain secure". For that, only they themselves were to be blamed "next to Iraq."<sup>132</sup>

One should realise that the involvement of the G.C.C. member states by funding Iraq in the Gulf war,<sup>133</sup> mainly

---

<sup>131</sup> Sir Robert Jennings, dissenting opinion in Nicaragua Case, op.cit., p.545.

<sup>132</sup> UN Chronicle, No.5, Vol.XXI (1984), p.5.

<sup>133</sup> For the evidence of funding Iraq financially, see infra, note 159.

stemmed from the fear that Iran was bent on exporting its revolution to them by all means. The aim, as the leader in Iran made clear, is to establish an Islamic government and each country either to be associated with Iran or in a subordinate relationship.<sup>134</sup>

Such fears were fed by Khomeini himself who appeared to expect the G.C.C. member states to fall under Iran's dominance, once Iraq had been overcome:

"If the war continues and if in the war Iran defeats Iraq, Iraq will be annexed to Iran; that is, the nation of Iraq, the oppressed people of Iraq, will free themselves from the talons of the tyrannical clique and will link themselves with the Iranian nation. They will set up their own government according to their wishes - an Islamic one. If Iran and Iraq can merge and be amalgamated all the diminutive nations of the region will join them."<sup>135</sup>

Such a statement, however, does not justify G.C.C. member states in claiming that there was imminent danger and thereby they decided to side with Iraq as an exercise of their right of self-defence. This claim cannot be asserted even if the statement included the threat of use of force.

As Professor Higgins states:

"The prohibition against the use of force is balanced by permission to engage in individual or collective self-defence. But individual and collective self-defence appears to be limited to armed attacks, whereas the prohibition clause is drafted more widely. Article 2(4) prohibits the

---

<sup>134</sup> Khadduri, The Gulf War, op.cit., p.117. See also Abdulghani, op.cit., p.197; Ramazani, The Gulf Cooperation Council, op.cit., p.193; Chubin, "Iran and its Neighbours", op.cit., p.7; the Report on Iran-Iraq War and Navigation in the Gulf, May 17-August 11, 1987, 26 ILM (1987), p.1448.

<sup>135</sup> Khomeini, 21 June 1982, in FBIS, VIII, 11-3, 22 June 1982.

threat or use of force against the territorial integrity or political independence of a state. The two sides of the coin do not entirely match."<sup>136</sup>

Furthermore, if there is to be no linkage between funding Iraq by G.C.C. member states and the indirect aggression by Iran against certain G.C.C. member states (which is apparently the ground to invoke the right of self-defence) then the G.C.C. states would be guilty of indulging in acts of reprisal.

This presumption may be held if the indirect aggression by Iran had stopped before the war began.

The view that armed reprisal is forbidden under the Charter of the UN is widely held by most authors.<sup>137</sup>

However, economic reprisals short of the use of armed force are not prohibited by Article 2(4) of the Charter, but are only legitimate insofar as there is prior international delinquency against the claimant state, redress is not

---

<sup>136</sup> Higgins, "Intervention and International Law", in Intervention in World Politics, op.cit. at p.32.

<sup>137</sup> See Bowett, "Reprisals involving Recourse to Armed Force", 66 A.J.I.L. (1972), p.1; Goodrich and Hambro, Charter of the United Nations, Stevens and Sons, London (1949), pp.95-96; Brownlie, International Law and the Use of Force by States, op.cit., pp.219-23; Higgins, The Development of International Law through the Political Organs of the United Nations, op.cit., pp.202-205, 217-218; Waldock, "The Regulation of the Use of Force by Individual States in International Law", 81 Recueil des Cours, II (1952), pp.475-494; Sorensen, M., "Principes de droit international public", in ibid., III (1960), p.219; Skubiszewski in Sorensen, Manual of Public International Law, op.cit., pp.754-55. The authors maintaining a contrary view, i.e. accepting a continuing permissible role for armed reprisals are Colbert, S., Retaliation in International Law, King's Crown Press, New York (1948) and Stone, J., Aggression and World Order, King's Crown Press, New York (1958), pp.43, 94-98.

available and the principle of proportionality is observed. Furthermore, the effectiveness of economic reprisals must cease when their objective has been achieved.<sup>138</sup>

The International Law Commission (ILC) has accepted that, if the necessary conditions are fulfilled, "there is nothing to prevent a state which has suffered an internationally wrongful act from reacting against the state which committed the act by a measure consisting of unarmed reprisals".<sup>139</sup> The ILC states that economic reprisals

"...even though it does not involve the use of armed force, such a measure nevertheless constitutes conduct not in conformity with what would be required under an international obligation towards the state against which it is directed. In such a case, therefore, the fact that the measures in question were taken as legitimate reaction on the part of the state wronged by an international offence, against the state which had committed that offence earlier, precludes the wrongfulness that such a measure might otherwise entail."<sup>140</sup>

This tendency of the ILC was clear when it formulated the draft of Article 34 on state responsibility. It reads:

"The wrongfulness of an act of a state not in conformity with an international obligation of that state is precluded if the act constitutes a lawful measure of self-defence taken in conformity with the Charter of the United Nations."<sup>141</sup>

---

<sup>138</sup> Bowett, D., "Economic Coercion and Reprisals by States", op.cit., pp.9-10. See also, Malanczuk, P., "Counter-Measures and Self-Defence as Circumstances precluding Wrongfulness in International Law Commission's Draft Articles on State Responsibility", in 43 Zeitschrift für Ausländisches öffentlichesrecht und volkerrecht (1983), p.737.

<sup>139</sup> See Y.I.L.C. II (1979), Part 2, p.118, para.11.

<sup>140</sup> Ibid.

<sup>141</sup> See Y.I.L.C., Vol.I (1980), p.184.

(5) G.C.C. Practice(i) Regarding collective self-defence

As a result of the abortive coup d'etat in Bahrain in 1981 the G.C.C. regarded the incident as aggression directed at the sovereignty of all G.C.C. member states. In a statement for the G.C.C. Ministerial Council on 7 February 1982, the Council declared:

"During its meeting the Council reviewed the recent events in the State of Bahrain and declared its full support for the State of Bahrain in safeguarding its safety and stability and protecting its sovereignty and its determination to resist the acts of sabotage that are carried out by Iran with the aim of undermining security and stability, spreading chaos and confusion and threatening the interests of citizens on the basis of the G.C.C.'s fundamental principles which view any aggression against any G.C.C. member as an aggression against all G.C.C. members, and which stress that the region's security and stability is a collective responsibility that falls on all G.C.C. countries."<sup>142</sup>

The Supreme Council summit held in Doha in November 1983 declared in its final communique, inter alia, the G.C.C. commitment to deter any attempt directed against G.C.C. member states' security and stability.

"The G.C.C. Supreme Council reviewed the progress of military coordination among the G.C.C. countries in implementation of the resolution adopted at its third session held in Bahrain in November 1982 - resolutions aimed at building the strength of the G.C.C. member countries and coordinating among them so that the G.C.C. countries will be able to rely on themselves in defending their security and

---

<sup>142</sup> FBIS-MEA-V-81-026, 8 February 1982, pp.C5-C6. See also the press conference held by Bahrain Foreign Minister who confirmed the idea of collective security. Ibid., 10 February 1982, pp.C1-C3.



safeguarding their stability."<sup>143</sup>

In fact Kuwait has raised the issue of collective self-defence under the Joint Defence and Economic Treaty as a result of increasing attacks against its ships in the Gulf war. The Kuwaiti Minister of Foreign Affairs made it clear that his country will request the Arab League Secretariat to include the issue in the agenda of the League Council.<sup>144</sup>

The Fundamental Statute of the G.C.C. does not include any provision on collective self-defence. This is due in part to the fact that most G.C.C. member states are parties to the Arab Joint Defence and Economic Cooperation Treaty concluded in 1950. However, G.C.C. member states, in the absence of defence and security agreements within their arrangement, adopted two documents on security and defence. The security strategy which includes general principles of cooperation in various aspects of security and defence strategy which focuses on the mutual obligation between G.C.C. member states to repel any aggression directed against G.C.C. members. The latter strategy also deals with regular manoeuvres and military cooperation among the members.<sup>145</sup>

---

<sup>143</sup> Ibid., 9 November 1983, p.C3.

<sup>144</sup> Qatar News Agency Bulletin, 2 June 1984, p.18.

<sup>145</sup> An interview conducted by the author with Dr. Al-Hamaad, the G.C.C. Secretary General Assistant for Political Affairs Office, on 31 January 1988. One should state, however, that under international law G.C.C. member states are not deprived of their right of collective self-defence in the absence of any kind of defence arrangements. See infra, note 151. The G.C.C. member states, except Oman, seem to have adhered to the Joint Defence and Economic Treaty. Their ratification and accession occurred on the following dates:

Article 2 of the Defence and Economic Cooperation Treaty provides:

"The contracting states consider any act of armed aggression made against any one or more of them or their armed forces, to be directed against them all. Therefore, in accordance with the right of self-defence, individually and collectively, they undertake to go without delay to the aid of the state or states against which such an act of aggression is made, and immediately to take, individually and collectively, all steps available including the use of armed force, to repel the aggression and restore security and peace. In conformity with Article 6 of the Arab League Pact and Article 51 of the United Nations Charter, the Arab League Council and U.N. Security Council shall be notified of such act of aggression and the means and procedure taken to check it."

However, the member states of the Arab League in disputes involving alleged aggression or threat of aggression, have not invoked the application of the League's collective defence provision. Instead, they have relied either on the United

---

Saudi Arabia, 19 August 1952, Kuwait, 12 August 1961, Bahrain, 14 November 1971, Qatar, 14 November 1971. Oman does not seem to have acceded to the treaty according to Bowman, M. and Harris, D., Multilateral Treaties. Index and Current Status, Butterworth, London (1984), p.161. Oman, however, is party to the Arab League Pact, 1945, which provides in Article 6: "In case of aggression or threat of aggression by a state against a member state, the state attacked or threatened with attack may request an immediate meeting of the Council." It appears that the concept of collective self-defence as such was not established under the pact. For the text see 70 U.N.T.S. 238. See also Hassouna, H., The League of Arab States and Regional Disputes, Oceana Publications, New York (1975), p.13. Kuwait in fact in 1984 declared that it will request the members of the Arab League to fulfil its obligations and apply the Joint Defence and Economic Cooperation Treaty. The Kuwaiti Minister of Foreign Affairs made it clear that his country will request the Arab League Secretariat to include the issue in the agenda of the League Council in its session. This request followed the increasing attacks against Kuwaiti ships in the Gulf War. See Qatar News Agency Bulletin, 2 June 1984, p.18.

Nations collective security system, or on external assistance in pursuance of the right of collective self-defence. Thus Sudan in its dispute with Egypt in 1958 on border issues, resorted to the United Nations. The crisis between Egypt and the Sudan broke out in February 1958 when the Egyptian Government, in a note dated February 1, 1958, protested to the Sudanese Government against the fact that the latter had included some areas in the Sudanese electoral districts in contravention to the provisions of the Anglo-Egyptian Agreement of 1899. The Sudanese Government based its case on the contention that those areas were Sudanese territory and they were the basis on which Sudan obtained her independence.<sup>146</sup> Kuwait in its dispute with Iraq in 1961, Yemen in its internal crisis in 1962, and Lebanon in its dispute with the United Arab Republic in 1958, all invoked the right of collective self-defence in requesting foreign assistance.<sup>147</sup>

On 9 September 1982, the League of Arab States issued a resolution on the Gulf War at the end of the 12th Arab Summit at Fez, by which it stressed the need for Arab solidarity and unity of ranks, while realising their commitments toward the provisions of Article 6 of the Arab League's Charter and Article 2 of the Joint Defence and Economic Cooperation

---

<sup>146</sup> Hassouna, ibid., pp.48-49.

<sup>147</sup> Ibid., pp.379-380.

Treaty.<sup>148</sup>

It further declared its commitment to defend all Arab territory and to consider any aggression against any Arab country as an aggression against all Arab countries.<sup>149</sup>

Yet, according to the prevailing opinion, collective self-defence would be admissible, without prior treaty commitments or regional arrangements. Bowett maintains:

"...that a state resorting to force not in defence of its own rights, but in the defence of another, must justify its action as being in the nature of a sanction and not self-defence, individual or collective... The requirements of the right of collective self-defence are two in number: firstly that each participating state has an individual right of self-defence, and secondly that there exists an agreement between the participating states to exercise their rights collectively."<sup>150</sup>

However, he accepts that the geographical proximity of the states, where their interests are so essentially bound up with each other, is such that defence by one state to another attacked state is truly self-defence.<sup>151</sup>

---

<sup>148</sup> See FBIS-MEA-V-82-176, 10 September 1982, pp.A20-A21.

<sup>149</sup> Ibid., 10 September 1982, p.A18.

<sup>150</sup> Bowett, Self-Defence in International Law, op.cit., p.207.

<sup>151</sup> Bowett, "Collective Self-Defence Under the Charter of the United Nations", 32 B.Y.I.L. (1955-6), pp.133-34. See also Higgins, The Development of International Law through the Political Organs of the United Nations, op.cit., p.209. For the opposite view, see Dinh, N., "La legitime defense d'apres la Charte des Nations Unies", 1152 R.G.D.I.P. (1948), p.244 et seq. Akehurst, M. does not accept Bowett's view and widens the interpretation of Article 51. He points out that in the right of collective self-defence, a state may defend another state against attack, even though the attack on the second state does not endanger the defending state. See his article "Reprisals by Third States", 44 B.Y.I.L. (1970), p.4.

Yet the distinction between the right of collective self-defence under Article 51 of the Charter and the same right under Article 2 of the Arab Joint Defence and Economic Treaty, should be observed. While under Article 51 of the United Nations Charter self-defence is only a right under Article 2 of the Joint Defence and Economic Cooperation Treaty self-defence is both a right and an obligation. The reason for the difference lies in the fact that the latter treaty is based on a commitment of mutual assistance between the members of the Arab League.<sup>152</sup>

As such, the wording of Article 51, as it is in permissive form, legitimises the obligatory collective self-defence provided for in the Joint Defence Treaty.

We have already argued above that Article 51 permits self-defence in response to indirect aggression, therefore it follows that a response to indirect aggression under the Joint Defence Treaty is equally legitimised by Article 51.

Neither the right of self-defence under the UN Charter nor the right under the Arab Joint Defence Treaty require the prior authorisation of either the Security Council or the Arab League Defence Council respectively.<sup>153</sup>

---

<sup>152</sup> A similar view is expressed in the relation between the UN Charter and the Rio Treaty of the OAS. See Francisco, A., "The Rio de Janeiro Treaty: Genesis, Development and Decline of a Regional System of Collective Security", 17 Inter-American Law Review (1985), pp.11-2.

<sup>153</sup> Article 6 of the Joint Defence and Economic Cooperation Treaty between the states of the Arab League should not be interpreted as an authorisation is needed to the right of collective self-defence: "A Joint Defence Council under the supervision of the Arab League Council shall

Nevertheless, an obligation of collective self-defence upon the parties of the Arab Joint Defence Treaty cannot be established without observance of Article 6 which requires explicitly the prior consultation of the parties in order to reach binding decision on the implementation of the right of collective self-defence.<sup>154</sup>

However, if the Arab League Defence Council intends to carry out enforcement measures instead of exercising their right of collective self-defence, then Article 53 of the UN Charter imposes restrictions on the Council, requiring it to obtain the authorisation of the Security Council. Kelsen comments on Article 53:

"... The wording of the Charter does not exclude organisation of collective self-defence through regional arrangement even as substitute... for collective security... and the rule of Article 53, that no enforcement action shall be taken without the authorisation of the Security Council, does not apply to the exercise of the right of collective self-defence organised in the regional arrangement,

---

be formed to deal with all matters concerning the implementation of the provisions of Articles 2, 3, 4 and 5 of this treaty. It shall be assisted in the performance of its task by the Permanent Military Commission referred to in Article 5. The Joint Defence Council shall consist of the Foreign Ministers and the Defence Ministers of the contracting states or their representatives. Decisions taken by a two-thirds majority shall be binding on all contracting states." See the treaty in Peaslee, International Government Organisations, Vol.2, op.cit., pp.1122-1124.

<sup>154</sup> See the Article, ibid.. This interpretation may explain Syria's reservation on the decision taken by the Arab League Council in its extraordinary meeting, 23-25 August 1987. The reservation states that Iraq has violated the Joint Defence Economic Treaty by starting a war with Iran without consultation with the rest of the Arab League states. Private information of the author.

because this rule is restricted by Article 51."<sup>155</sup>

(ii) Regarding the Gulf War

G.C.C. member states from the outbreak of the war have been involved in concerted efforts on various international levels to stop the fighting between Iraq and Iran and protect its interests,<sup>156</sup> but all these efforts met with a lack of

---

<sup>155</sup> Kelsen, H., "Is the North Atlantic Treaty a Regional Arrangement?", 45 A.J.I.L. (1951), p.164. For a similar view see Bowett, Self-Defence in International Law, op.cit., p.223; Liang, Y., "Regional Arrangements and International Security", Trans. Grotius Soc., Vol.31 (1946), p.216 at p.228.

<sup>156</sup> For the efforts of the G.C.C., see G.C.C. draft resolution on Gulf tanker war, submitted to the United Nations Security Council, 21 May 1984, S/16594. The states had requested an urgent meeting of the Council to consider the "Iranian aggression on the freedom of navigation" en route to and from the ports of their countries, S/16574. In their letter of 21 May to the Council President, they stated that "such aggression constitutes a threat to the stability and security of the area and has serious implications to international peace and security". The resolution was adopted at the fifth meeting of a series that began on 25 May. Iran did not take part in the debate. See Official Records of the Security Council, Thirty-ninth year, Supplement for April, May and June 1984, Document S/6582, incorporated in the record of the 2541st meeting. On the Arab League level see the decision of the League Council (Ministers of Foreign Affairs) dated 25 August 1987 (Arabic). Both Syria and Libya made their reservation on this decision on the ground of their rejection of the existence of American vessels in the Arabian Gulf to protect Kuwaiti commercial ships. They also made reservations on para.(7) of the decision which calls on the Security Council to take effective measures according to the UN Charter to implement Security Council Res. 598 issued on 20 July 1987. Syria claimed that the end of the war does not depend on international resolutions nor on the existence of foreign military vessels, but rather on exclusive strategy within the Arab nation which does not turn Iran to an enemy to the Arabs. Another decision issued on 20 September 1987 dealt with the same matter. See also the statement of the League of Arab States at the 12th Arab summit conference at Fez, Morocco, 9 September 1982, FBIS-MEA-V-81-176, 10 September 1982, p.A18. League of Arab States Gulf War. Another resolution of the Arab League Council distributed as Security Council document issued on 26 March 1986, Security Council Records S/17951, 27 March 1986. On the Organisation of Islamic Conference level

response on Iran's part.<sup>157</sup>

The six G.C.C. member states were equally alarmed at the escalation of the fighting in the Gulf war. Iran, however, issued threats of its own, implying that only a change of attitude could save the Gulf states from Iranian and "Islamic revenge". As usual, therefore, the fears of the member states found expression in the communique issued with a neutral tone after the Foreign Ministers meeting in June 1982, appealing to Iran to respond to peace initiatives, and support the efforts of the UN, the Non-Aligned Movement and the Islamic Conference Organisation (ICO).<sup>158</sup>

Realising the determination of Iran to intervene by all means in their internal affairs and rejecting all attempts to put an end to the war, the G.C.C. member states decided to

---

see the Resolution of the Conference No.10/5/S/A.A during the fifth session held in Kuwait (Arabic). See also Resolution 12/15 regarding the Gulf war dated 22 December 1984 held in North Yemen. It is to be noted that some of those resolutions are obtained by the author from G.C.C. Foreign Offices.

<sup>157</sup> See Kuwait Deputy Prime Minister and Minister for Foreign Affairs speech in Security Council, 1 June, on the attack on ships in the Gulf, UN Chronicle, Vol.21 (1984), pp.6-7. It is reported that G.C.C. member states were willing to offer Iran an amount between \$10 and \$25 for construction, if a ceasefire was to take place. See in this regard Khadduri, The Gulf War, op.cit., p.152. For a detailed and official position of the Islamic Republic of Iran on Security Council Res. 598 (1987) annexed to Security Council Document S/19031, II, August 1987, reprinted in 16 ILM (1987), p.1481. During the extremely prolonged UN debates on the definition of aggression several states were in favour of including the refusal to comply with a binding Security Council decision in the definition of aggression, but this was not adopted. See Gray, C. "The British Position in regard to the Gulf Conflict", I.C.L.Q. (1988), p.428.

<sup>158</sup> See Nonneman, G., op.cit., pp.48-50.



abandon their tenuous strict neutrality and adopt a position of "qualified neutrality" and support Iraq financially.<sup>159</sup>

Under traditional rules of neutrality, the government of a neutral state must refrain from participating in war, including the obligation to prevent a belligerent from using neutral territory as a base.<sup>160</sup>

---

<sup>159</sup> The position of a state that refrains from some active participation in hostility but nevertheless resorts -due to collective security policies - to discriminatory measures against a belligerent has been termed "qualified neutrality". See Tucker, R., The Law of War and Neutrality at Sea, The United States Government Printing Office, Washington (1957), p.174. For the evidence that G.C.C. member states supported Iraq financially see the interview with the Saudi Deputy Minister of Defence and Aviation, Al-Sharg-al-Awsat (London), 27 April 1985, p.10, as translated in FBIS-MEA-V-85-84, 2 May 1985, pp.C1-C2. Saudi Radio commentary reflected this support: "There is no way to thwart those (Iranian) plans and foil them except by supporting Iraq financially and militarily in order to destroy the Iranian war machine", 10 November 1982, in BBC/SWB/ME, 12 November 1982 (A/6). The "Report on Iran-Iraq War and Navigation in the Gulf", in ILM, op.cit., p.1430. The Iranian letter to the Security Council, 25 March, which stated that "some states in the area and beyond attempted to impose an unacceptable situation on Iran. They poured extensive financial and material resources into Iraq...", UN Chronicle XXI (1984), p.5. The letter from the Minister for Foreign Affairs of Iran addressed to the UN Secretary General dated 22 July 1987 as a response to resolution 598 (1987), Security Council Dist. General, S/18993, 24 July 1987. The G.C.C. Secretary-General impliedly indicated such support in an interview with a Qatari newspaper on 16 January 1982, translated by FBIS-MEA-V-82-013, 20 January 1982. For the reports of G.C.C. member states' shares in financial aid see Nonneman, G., "Iraq, The Gulf states and the War", op.cit., pp.95-104.

<sup>160</sup> Article 6 of the Convention concerning the Rights and Duties of Neutral Powers in Naval War prohibits the direct and indirect supply to a belligerent power of ammunition or any war material. See the text in 2 A.J.I.L. (1908), Supp., pp.202-216. Article 15(B) of the Convention on Maritime Neutrality as well forbids a neutral state from granting loans, or to open credit during the time of war, 22 A.J.I.L. (1928), Supp., pp.151-57. Hague Convention respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, October 18, 1907, 2 A.J.I.L. (1908), Suppl., pp.117-

Neutrality in the traditional sense means that certain rights are conferred upon non-participants and certain duties are imposed on them. Four general duties are imposed:

- (1) The duty to act impartially towards the belligerent.
- (2) The duty to abstain from furnishing belligerents with any assistance for prosecution of war.
- (3) The duty to prevent the commission of hostile acts within neutral jurisdiction as well as to prevent the use of neutral jurisdiction as a base for belligerent operations; and
- (4) The duty to acquiesce in certain respective measures.<sup>161</sup>

The two pillars of the laws of neutrality, therefore, are non-participation and non-discrimination.<sup>162</sup> Thus, effective neutrality is maintained only if it has been regarded by neutral governments. Disrespect for the duties of neutrals will suspend their rights.<sup>163</sup>

---

127. For the meaning of neutrality in the abstract sense, see Wilson, R., "Non-Belligerency in Relation to the Terminology of Neutrality", 35 A.J.I.L. (1941), pp.122-123. Oppenheim, International Law, II, op.cit., p.690; Castren, E., Present Law of War and Neutrality, Helsinki, Suomalaisen Kirjallisuuden Seuran Kirjapainonoy (1954), pp.440-42; Greenspan, M., The Modern Law of Land Warfare, Berkeley and Los Angeles (1959), p.534; Hyde, International Law Chiefly as Interpreted and Applied by the United States, op.cit., pp.3336-44; Tucker, op.cit., pp.196-199.

<sup>161</sup> Tucker, op.cit., pp.197, 202-3.

<sup>162</sup> Komarnicki, T., "The Place of Neutrality in the Modern System of International Law", 80 Recueil des Cours I (1952), pp.395-406.

<sup>163</sup> Oppenheim, International Law, 7th ed., Lauterpacht, H. (ed.) (1952), p.695, n.1; Greenspan, The Modern Law of Land Warfare, op.cit., pp.189-197; Delupis, J., The Law of War, Cambridge University Press (1987), p.141; Williams, W.,

However, the law of neutrality does not oblige the states to observe economic neutrality in favour of belligerents or treat them equally in terms of economy and commerce.<sup>164</sup> A neutral state may deliver ordinary commodities in the way of commerce to a belligerent power.<sup>165</sup> This appears to be the case with some of the financial assistance by G.C.C. member states to Iraq, part of which was due to prior arrangements concluded before the outbreak of the war.<sup>166</sup>

Writers such as Oppenheim asserted that non-participants in a conflict were entitled to adopt a stance of "qualified

---

"Neutrality in Modern Armed Conflicts: A Survey of the Developing Law", 90 Military Law Review (1980), p.40; Castren, op.cit., pp.462-63. However, Greenwood, C., maintains that the right of a combatant state to take action against a non-combatant if it exists, depends on a reasonable measure of self-defence, "The Concept of War in Modern International Law", 36 I.C.L.Q. (1987), p.298.

<sup>164</sup> Komarnicki, op.cit., p.510. For the obligations of the G.C.C. member states to observe strict neutrality, see supra, pp.436-37. As for the right of self-defence, see infra, pp.441-43.

<sup>165</sup> Castren, op.cit., p.477. See also Lalive J., "International Organisation and Neutrality", B.Y.I.L. (1947), p.75. Professor Whitton also justified it by the lack of obligation of neutrals to maintain a strictly equal balance between the belligerents in the import and transport of goods, "La Neutralite et la Societe des Nations", Recueil des Cours, II (1972), p.500.

<sup>166</sup> See the Report on Iran-Iraq War in ILM, op.cit., p.1430. It states that the United States does not consider Kuwait a belligerent partly because Kuwait provides financial support to Iraq as do many Arab states. Its port, pursuant to a 1972 agreement that long predates the war, is open to cargo bound for Iraq; so are the ports of some other Arab countries. Another reason which will be discussed later in the report is that the security and stability of the G.C.C. member states depends on whether Iraq collapses before Iran or not.

neutrality" on the ground that "the historic foundation of neutrality as an attitude of absolute impartiality has disappeared with the renunciation and the abolition of war as an instrument of national policy".<sup>167</sup>

It has also been argued that even in a war the law of neutrality is incompatible today because states have a right, if not a duty, to discriminate between the aggressor and the victim in a conflict. This is due to the fact that war and neutrality, to which the concept of war may give rise, is incompatible with Article 2(4) of the U.N. Charter.<sup>168</sup>

Nevertheless, the practice does not support the view that the concept of war has been legally irrelevant as the result of the U.N. Charter provisions.<sup>169</sup> In fact, state practice provides ample evidence that the state of war and neutrality

---

<sup>167</sup> Oppenheim, L., International Law. A Treatise, Lauterpacht (ed.), Longman Green & Co., London, Vol.II (1952), p.221. Furthermore, Oppenheim maintains that "whether or not a third state will adopt an attitude of impartiality at the outbreak of war is not a matter for international law but for international politics. Therefore, unless a previous treaty stipulates it expressly, no duty exists for a state, according to international law, to remain neutral when war breaks out", ibid., p.653.

<sup>168</sup> See Feinberg, N., The Legality of a "State of War" After the Cessation of Hostilities under the Charter of the United Nations and the Covenant of the League of Nations, Magnes Press, The Hebrew University, Jerusalem (1961), pp.7-86; Lauterpacht, E., "The Legal Irrelevance of a State of War" (1968) 62 Proc.Am.Soc. Int.Law, pp.58-68.

<sup>169</sup> See Baxter, R., "The Legal Consequences of the Unlawful Use of Force Under the Charter", 62 Proc. Am.Soc.Int. Law (1968), p.68; Stone, J., Of Law and Nations. Between Power Politics and Human Hopes, William S. Hein & Co. Inc. Buffalo, New York (1974), pp.427 et seq.

still exists today.<sup>170</sup>

In the Gulf war the position has worsened as the G.C.C. member states were directly involved in the war and Iran's attacks increased indiscriminately against them, and consequently the threat of military intervention was imminent as soon as Iraq might collapse.<sup>171</sup> As some observed:

"If Iran wins the war all the Gulf states are finished... Iran will simply dispatch its chosen governor at the head of an army of 10,000 revolutionary guards to Kuwait, Saudi Arabia, Bahrain and so on, and who will dare to fight them? It will be the Ottoman conquest all over again."<sup>172</sup>

As far as the G.C.C. is concerned, the position was to take positive action immediately rather than await the consequences of further Iranian aggression. Oppenheim writes:

---

<sup>170</sup> See Greenwood, C., op.cit., pp.290-94, who gives some examples, e.g. the Middle East war, the Falklands war, the Iran-Iraq war, 1965 hostilities between India and Pakistan. See also, some references to the war in the Egypt-Israel Treaty of Peace (1979) XVII I.L.M. 362, and the unratified Israel-Lebanon Treaty (1983) XXII I.L.M., p.708. There have been also numerous references to the state of neutrality in the Middle East, the Gulf War and the Indo-Pakistan conflict. See Norton, P., "Between the Ideology and the Reality: The Shadow of the Law of Neutrality", 117 Harvard Int.L.J. (1976), pp.249, 257-262; Shihata, "Destination Embargo of Arab Oil: Its Legality Under International Law", op.cit., pp.155, 173 et seq.

<sup>171</sup> For the direct attack by Iran against the interests of some G.C.C. member states, see Al-Qabas newspaper, 23 October 1987, issue S548. See also the statement of the Ministry of Foreign Affairs, Kuwait, Al-Watan newspaper, issue 4547, 18 October 1987. For the incidents of attacking shipping, see Lloyd's Lists, issued regularly. For a legal discussion of these attacks, see Al-Awadi, B., "The Attitude of International Law to Iranian Attacks against Kuwait" in the G.C.C. Quarterly Magazine Cooperation, August 1988, pp.21-42.

<sup>172</sup> Quoted in Patrick Bishop and Simon O'Dwyer, Sunday Telegraph, 23 January 1987. A not dissimilar view is found in "If Iran Wins", The Economist, 24 January 1987, pp.14-15.

"The general view... is that neutral states are entitled to disregard their obligations as neutral vis-a-vis aggressor states, simply because aggression is illegal."<sup>173</sup>

In 1940 the U.S. government was prepared to discriminate openly against Germany and abandon its strict neutrality by transferring destroyers to Great Britain.<sup>174</sup> Its justification, apparently, was that:

"... the obligation of abstinence must be deemed to depend upon the unwavering condition that non-participation is compatible with and not subversive of, the requirement of self-defence."<sup>175</sup>

In fulfilment of the obligation of neutrality, it is required first that a belligerent abstain from all actions on its own part in derogation of the sovereignty or the peace and stability of another state.<sup>176</sup>

---

<sup>173</sup> Oppenheim, op.cit., pp.637-52.

<sup>174</sup> For US change of attitude see Komarnicki, op.cit., p.456 et seq. See also Fenwick, C. who justifies America's attitude towards Britain and against Germany that the latter violated the neutrality of Denmark, Norway, Holland and Belgium, undermining the foundation of neutrality. His article, "Neutrality on the Defensive", 34 A.J.I.L. (1940), p.698. See also, Wright, Q., "The Present Status of Neutrality", in ibid, p.393 who maintains that the word "neutrality" in such circumstances is hardly appropriate. Another article by Wright, "The Lend Lease and International Law" A.J.I.L. (1941), p.305 considers discrimination between the participants in the war is justified under international law.

<sup>175</sup> Hyde, International Law (1945), op.cit., p.2236. See also Secretary of State Hall before the House Committee on Foreign Affairs, 15 January 1941, Dept. of State Bulletin, 18 January 1941, pp.89-90.

<sup>176</sup> Curtis, R., "The Law of Hostile Military Expeditions as Applied by the United States", 8 A.J.I.L. (1914), pp.5-6.

G.C.C. member states did not resort to the use of force exercising the right of self-defence, but instead used alternative means, mainly financial, to support Iraq. The mere supply of funds to Iraq undoubtedly cannot amount to a use of force.<sup>177</sup>

The G.C.C. recourse to this type of self-defence is justified under international law. Bowett explains:

"Just as a legitimate claim of self-defence may justify unilateral measures involving force which would otherwise be illegal under Article 2(4) of the Charter, a state may justify unilateral economic measures which might otherwise be illegal if it can show that these measures are taken in self-defence. Of course, the essential of self-defence must be proved. The state would have to show that it was reacting to a delict by another state, posing an immediate danger to its security or independence in a situation affording no alternative means of protection and, lastly, that the reaction was proportionate to the harm threatened."<sup>178</sup>

The G.C.C. acts can be described as necessary, immediate, proportionate to the policy of indirect aggression and there was no other possible means to eliminate the imminent danger approaching them.<sup>179</sup>

If, however, the aggression was directed against some of

---

<sup>177</sup> Case Concerning the Military and Paramilitary Activities in and Against Nicaragua, op.cit., p.119, para.228.

<sup>178</sup> Bowett, "Economic Coercion and Reprisals by States", op.cit., p.7. See also Akehurst, M., "Reprisals by Third States", XLIV, B.Y.I.L. (1970), p.15 who states that reprisals by third states are limited to (1) enforcement of judicial decisions, (2) Article 60(2) of the Vienna Convention 1969 (termination of treaty due to essential breach by one party), (3) violation of rules prohibiting or regulating the use of force."

<sup>179</sup> Case concerning Military and Paramilitary Activities In and Against Nicaragua, op.cit., p.122.

the G.C.C. member states, as was the case then, then mutual defence arrangement is sufficient for the rest to depart from the rules of neutrality. As to the requirement found in Article 51 of the UN Charter, by which the state claiming to use the right of individual or collective self-defence must report that to the Security Council, one may observe that the acts of the G.C.C. member states have fallen short of use of force. Thus the report to the Security Council of financial assistance given to Iraq by the G.C.C. states cannot be envisaged under Article 51. The aim of the report, according to this article, is to enable the Security Council to "maintain or restore international peace and security", a role that cannot extend to this form of self-defence.

(iii) Regarding Security Council Resolutions on the Gulf War

With the adoption of the UN Charter and its outlawing of war, the law of neutrality has been greatly affected. The collective security system of the UN Charter, obliging member states to take positive action against aggression, sought to eliminate a situation in which nations could assume strict neutrality toward armed conflict.<sup>180</sup>

The Security Council, in accordance with Article 24 of the UN Charter, assumes "primary responsibility for the

---

<sup>180</sup> Norton, P., "Between the Ideology and the Reality: The Shadow of the Law of Neutrality", 17 Harvard Int. L.J. (1976), pp.249-51. See also Lobel, J., "The Rise and Decline of the Neutrality Act: Sovereignty and Congressional War Powers in United States Foreign Policy", 24-25 Harvard International Law Journal (1983-84), p.47; Kunz, J., "The Law of War", 50 A.J.I.L. (1956), pp.313, 326-327.



maintenance of international peace and security". Article 2(5) further states that all members of the United Nations shall provide every assistance to any United Nations actions in accordance with the Charter, and "refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action".

Article 39 of the UN Charter charges the Security Council with the duty to determine the existence of a threat to, or breaches of the peace, or acts of aggression. It provides:

"The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Article 41 and 42, to maintain or restore international peace and security."

The Security Council is therefore competent to assess the legality of each state's action in the initiation of a belligerency, that is, which state, if any, is the aggressor. Once the Security Council has determined the origin and nature of the aggression, it may direct members of the United Nations to apply sanctions under Article 41<sup>181</sup> or it may resort to the use of military force as outlined in Article 42 through 47<sup>182</sup>

---

<sup>181</sup> Article 41 lists a number of sanctions which the Security Council might apply, including "complete or partial interruptions of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication, and the severance of diplomatic relations."

<sup>182</sup> Article 42 gives the Security Council authority to employ air, sea and land forces of member nations to undertake demonstration, blockades or "other operations". Article 43 provides for agreements between the Security Council and members of the United Nations to have armed forces designed for Security Council use. Article 44 gives any member state whose armed forces are to be used with a Security Council enforcement measure, the right to participate in the Security

in order to restore the peace.

Action under Article 42 would be effected by armed forces provided by member states in accordance with agreements between the member states and the Security Council. The failure to conclude agreements under Article 43 would not prevent member states from agreeing ad hoc to place forces at the disposal of the Security Council, though the agreement could provide for better guarantees of peace and security.<sup>183</sup> This is in fact how the United Nations command was established in Korea in 1950 and the U.N. force in the Congo subsequently constituted.<sup>184</sup> Yet in the absence of such agreements, it is accepted that "the legal obligations of members do not extend to supplying the Council with armed forces on other than a voluntary basis".<sup>185</sup>

However, collective security under the UN system has

---

Council's decision. Article 45 supplements the provision of Article 43 regarding ready forces for security use. Articles 46 and 47 outline procedure for the creation of a military staff committee to assist the Security Council in its use of force. On the issue of neutrality under the UN Charter, see Oppenheim, International Law, Vol.II, op.cit., pp.645-652.

<sup>183</sup> It is to be noted that no such agreements have ever been concluded. See Bowett, The Law of International Institutions, op.cit., p.41. See also, Higgins, R., United Nations Peacekeeping, 1946-1967. Documents and Commentary, 2 Asia, Oxford University Press (1970), pp.176-78.

<sup>184</sup> Bowett, ibid. For the relevant resolutions see Uniting for Peace Resolution, Resolution 337(V), November 13, 1950, G.A.O.R., 15th session, Supp.20, p.10, Security Council Resolution, July 14, 1960, S.C.O.R., 15th year, Supp. for July-Sept., 1960, p.16.

<sup>185</sup> Goodrich, Hambro, Simons, Charter of the United Nations, op.cit., p.316; Pogany, I., The Security Council and the Arab-Israeli Conflict, Gower, England (1984), p.12.

proved ineffective.<sup>186</sup>

In the Gulf war the Security Council called upon the belligerents to cease hostilities, and to respect freedom of navigation in the Gulf.<sup>187</sup> The Security Council did not declare either Iran or Iraq as an aggressor according to Article 39 of the UN Charter. As Louis Henkin explains, this may be due to the fact that neither the USA nor the Soviet Union would permit such a thing to be declared.<sup>188</sup> The question of determining who is the aggressor according to Article 39 seems a matter of international politics rather than international law.

Yet, as Professor Henkin further states, in the absence of a Security Council declaration that one party was the aggressor, the UN Charter would be a guide on the law on this

---

<sup>186</sup> See Rifaat, A., op.cit., pp.207-16. See also, William, W., "Neutrality in Modern Armed Conflicts: A Survey of the Developing Law", op.cit., pp.25-26. See also Jenkins, M., "Air Attacks on Neutral Shipping in the Persian Gulf: The Legality of the Iraqi Exclusion Zone and Iranian Reprisals", 8 Boston College International and Comparative Law Review (1985), p.524; Tucker, op.cit., p.15.

<sup>187</sup> Security Council Resolutions 479 (1980), 514 (1982), 540 (1983), 552 (1984), 598 (1987), 588 (1986), 598 (1987) called respectively for cessation of hostilities and an immediate ceasefire. See Security Council Official Records: S/INF/36 (1980), pp.23-24; S/INF/37 (1981), p.10; S/INF/38 (1982), pp.19-20; S/INF/39 (1983), pp.6-7; S/INF/40 (1984), pp.14-15; S/INF/41 (1985); S/INF/42 (1986), p.13; S/INF/43 (1987), pp.5-6.

<sup>188</sup> See "The Persian/Arabian Gulf Tanker War: International law or International Chaos", Conference Report sponsored by the Council on Ocean Law and the Law of the Sea Institute, Carnegie Endowment for International Peace Building, in 19 Ocean Development and International Law (1988), p.310.

subject.<sup>189</sup>

If the Security Council declares either party an aggressor, the claim by other parties to neutrality cannot be sustained. Under Article 39 of the UN Charter member states are obliged to refrain from aiding the aggressor and to discriminate against it. This appears to contradict the traditional rules of neutrality as regards abstention and impartiality.<sup>190</sup>

The Security Council does not merely grant a right to a non-participant to discriminate against an aggressor belligerent but is also competent to assess the legality of neutral acts.

According to Article 39 of the UN Charter, the Council is charged with the duty to determine the existence of threats to, or breaches of the peace. In the Gulf war, the Security Council clearly condemned the attacks on ships bound to or from neutral ports and demanded that such attacks cease.

The Security Council, after having considered the letter dated 21 May 1984 from the representatives of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates complaining of Iranian attacks on commercial ships, issued its

---

<sup>189</sup> Idem. See also Rousseau, C., "Iraq et Iran. Evolution du different arme entre les deux etats due ler aout au 31 decembre 1983", 88 R.G.D.I.P. (1984), p.270; Ronzitti, N., "La Guerre de Golfe, le deminage et la circulation des navires", in 33 Annuaire Francais de Droit International (1987), pp.647-662. Amerie, F., Iran-Iraq War and the Freedom of Navigation, partial fulfilment of LL.M. degree, Hull (1985) (unpublished), pp.1-45.

<sup>190</sup> Tucker, op.cit., p.204.

resolution 552 (1984).<sup>191</sup>

Resolution 552(1984) in its operative paragraph affirmed the non-participation of the littoral states in the Gulf. It states:

"2. Reaffirms the right of free navigation in international waters and sea lanes for shipping en route to and from all ports and installations of the littoral states that are not parties to the hostilities.

3. Calls upon all states to respect the territorial integrity of the states that are not parties to the hostilities...

4. Condemns the recent attacks on commercial ships en route to and from the ports of Kuwait and Saudi Arabia.

5. Demands that such attacks should cease forthwith and that there should be no interference with ships en route to and from states that are not parties to the hostilities."

The Security Council furthermore, in its Resolution 540 (1983) affirmed the need to respect "the integrity of the littoral state" (i.e. Kuwait and Saudi Arabia) since they were not parties to the hostilities.<sup>192</sup>

Non-participation in the hostility rather than neutrality is the term the Security Council has adopted in the above resolution to describe the attitude of G.C.C. member states.

As Francis Russo points out, the descriptive category "not parties to the hostilities"

"... is akin to, and one suspects the equivalent of,

---

<sup>191</sup> Official Records of the Security Council, Thirty-ninth year, Supplement for October, November and December 1984. Adopted at the 254th meeting by 13 votes to none, with 2 abstentions (Nicaragua and Zimbabwe).

<sup>192</sup> Security Council Resolution S/RCS/540, op.cit.

the 'non-participation' standard suggested by Professor Tucker for assessing the legal status of a state relative to a conflict. So worded, the resolution makes no distinction between the level of rights and protection which may be enjoyed by ships trading with states that are neutral in the traditional sense and states pursuing a policy of non-belligerency."<sup>193</sup>

Professor Tucker explains a neutral state may take actions which fail to comply with strict neutrality, but which fall short of direct participation. However, such a situation does not deprive a neutral state of its neutral status:

"The traditional law clearly does recognise this position (non-belligerency), and precisely for the reason that it does attach to it certain legal consequences (e.g. reprisals),. In fact, it would seem that what writers actually have in mind when they declare that the traditional law does not recognise a condition of non-belligerency is that this law does not grant neutral states a right to depart from the duties otherwise imposed upon non-participants, a right in the sense that the injured belligerent is obliged to permit these acts and refrain from taking reprisals."<sup>194</sup>

Francis Russo criticises such a conclusion. He states that reprisal applies only as between belligerents. A belligerent's resort to force in response to a breach of neutrality is limited to those means and objects necessary to obtain neutral compliance. As such he concludes that Iran's limited right as a belligerent to enforce neutral state compliance with its obligations in response to Saudi and Kuwaiti tankers forfeiting the protections of a neutral

---

<sup>193</sup> See Russo, F., "Neutrality at Sea in Transition: State Practice in the Gulf War as Emerging International Customary Law", 19 Ocean Development and International Law (1988), pp.395-396.

<sup>194</sup> Tucker, op.cit., p.199.

"constitute a possible legal justification for its attacks upon Saudi tankers and Kuwait/Saudi port facilities".<sup>195</sup>

The above view can only be accepted if the acts of some G.C.C. member states did not involve the exercise of the right of self-defence.

It has been suggested that nothing in the UN Charter precludes the member states individually or collectively from discrimination against a belligerent if the act involves the right of self-defence.

Lauterpacht points out that the exercise of the right of self-defence vitiates any claim of breaching neutrality. He states:

"There is nothing in the Charter which obliges them to take an attitude of full neutrality in such cases. In the first instance, provided that there has been a case of armed attack, they may in the exercise of the right of collective self-defence under Article 51 of the Charter take such action as they deem fit, including... the denial of the ordinary benefits of neutrality and measures of discrimination against the aggressor."<sup>196</sup>

Furthermore, the above view undermines the binding effect of the Security Council resolutions on the Gulf war which attached great significance to the peace and security of the littoral states in order to protect them from further attacks.

The Iranian attacks on some G.C.C. member states' interests were more in the nature of armed reprisal and backing subversive activities inside and outside the

---

<sup>195</sup> Russo, op.cit., p.394.

<sup>196</sup> Oppenheim, International Law, II, 7th ed., op.cit., p.651.

territories of the G.C.C. states.<sup>197</sup> Kuwait, for instance, came under continuous Iranian air raids on its territory, installations, ships and its embassy in Tehran.

As a result of those frequent attacks and in accordance with Articles 33-34 of the UN Charter, which call on the parties to any dispute to resort to pacific settlement of disputes, Kuwait has taken the following procedures:

1. It handed the Iranian charge d'affaires protest notes against the above acts.

2. Expelled five of the Iranian diplomatic staff in Kuwait as persona non grata.

3. Warned the Iranian government about reconsidering the whole diplomatic relations between the two countries.

4. It has notified the Security Council of the above incidents and requested urgent measures in accordance with Article 35 of the UN Charter. Article 35 provides:

"Any member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly."

5. Finally Kuwait has intensified its diplomatic campaign through international conferences, the Arab League and the G.C.C. against such acts.<sup>198</sup>

---

<sup>197</sup> See Al-Awadi in the G.C.C. magazine Cooperation, op.cit., p.24. For the attacks on G.C.C. institutions and citizens as a form of indirect aggression, see supra, pp.409-12, and supra notes 98, 100 and 101.

<sup>198</sup> Ibid.



The law of neutrality was breached throughout the Gulf war by states which supported both Iraq and Iran, in that they failed to follow the traditional rules of neutrality and the UN Charter.<sup>199</sup>

The UK, for instance, from the start refused to allow the supply of lethal equipment to Iraq and Iran. From December 1984 the government applied certain guidelines on the sale of arms and made public in October 1985:

- "(i) We should maintain our refusal to supply any lethal equipment to either side.
- (ii) Subject to that overriding consideration, we should attempt to fulfil existing contracts, and obligations.
- (iii) We should not in future approve orders for any defence equipment which, in our view, would significantly enhance the capacity of either side to prolong or exacerbate the conflict.
- (iv) In line with this policy, we should continue to scrutinise rigorously applications for export licences for the supply of defence equipment to Iran and Iraq."<sup>200</sup>

However, these limitations do not reflect the position of strict neutrality as the traditional rules require active abstention and impartiality.

Therefore there has been some criticism of the above guidelines for being too broad. The term "lethal equipment" was broadly interpreted by the British government to allow sale of spare parts for tanks and aircraft to the

---

<sup>199</sup> For this view see Henkin, in Ocean Development and International Law, op.cit., p.31.

<sup>200</sup> H.C. Hansard, Vol.84, col.450, 29 October 1985, reprinted in "UKMIL", 56 B.Y.I.L. (1985), p.534.

belligerents.<sup>201</sup>

In 1987, however, the British government tightened its rules, following the Iranian attack on the British tanker Gentle Breeze<sup>202</sup> and the government ordered the closure of the Iranian Military Procurement Office which had continued to operate in London during the war. The UK government maintained that there was close observance of the transactions of the office and that its activities were illegal.<sup>203</sup> Nevertheless, Britain described its position from the beginning of the Gulf war as neutral and impartial.<sup>204</sup>

Other states, most notably China, the USSR and France, continued to supply arms to the belligerents while at the same

---

<sup>201</sup> Gray, C., "The British Position in regard to the Gulf Conflict", op.cit., p.422.

<sup>202</sup> See FCO Press Release, 24 September 1987.

<sup>203</sup> H.L. Weekly Hansard, Vol.488, cols.1282-1287, 21 July 1987.

<sup>204</sup> See the government replies to parliamentary questions in H.C. Hansard, Vol.20, col.297, 23 March 1982, reprinted in United Kingdom Materials in International Law (UKMIL) 53 B.Y.I.L. (1982), p.559; H.C. Hansard, Vol.36, col.991, 9 February 1983, reprinted in UKMIL, 54 B.Y.I.L. (1983), P.549; H.C. Hansard, Vol.451, col.622, 2 May 1984, reprinted in UKMIL, 55 B.Y.I.O. (1984), p.597; H.C. Hansard Vol.84, col.450, 29 October 1985, reprinted in UKMIL, 54 B.Y.I.L. (1985), p.534. In the Security Council speeches on the adoption of SC Resolution 275 of 20 July 1987, the British Foreign Secretary Sir Geoffrey Howe made it clear that "every single member of the international community should avoid any action which might increase tension in the region... Any state failing to do so, or which stands in the way of its implementation, takes a heavy responsibility on itself", Security Council document S/PV.2750, pp.16-17.

time claiming their neutrality.<sup>205</sup>

A certain number of states took an official position either for one party or the other. Their assistance took different forms which ranged from diplomatic support to the supply of arms and military equipment, and also other means of economic and political help. Thus, at different degrees, Jordan, Saudi Arabia, Morocco, Mauritania, Yemen, Kuwait, and Egypt took side with Iraq, while Syria, Libya, China and North Korea gave support to Iran.<sup>206</sup>

Since 1981, the supplies of arms for Iran came from Libya, North Korea, Taiwan and Israel. For Iraq, East European countries, Brazil, France, Italy and Jordan.<sup>207</sup> From 1982 it appears that the USSR and the United States sold arms or spare parts to Iraq.<sup>208</sup> Apparently Iran received military materials from Brazil, China and Vietnam<sup>209</sup> and in November 1986 it emerged that the United States had been secretly

---

<sup>205</sup> Gray, op.cit., p.422. See also the claims of neutrality by some countries supplying arms openly, such as China, in S/PV.2750, ibid.

<sup>206</sup> Keesing's (1981), p.31010.

<sup>207</sup> Ibid. (1982), p.31521.

<sup>208</sup> Ibid. (1981), p.31851. See also ibid. (1983), p.32100.

<sup>209</sup> Ibid. (1982), p.31519, (1983), p.32100, (1987), p.35160. Concerning the apparent contradiction between the supply of Soviet arms to Iraq and the supply of North Korean, Vietnamese, Syrian and Libyan arms to Iran, see Le Soir (Brussels), 4 August 1987, p.3. See also Le Monde, 4 August 1987, p.3 and ibid., 13 August 1987, p.4.

sending arms to Iran since summer 1985.<sup>210</sup>

All these actions clearly undermined the call stipulated in the first Resolution 579 (1980) of the Security Council and reappearing in all the resolutions concerning the conflict, that:

"Calls upon all other states to exercise the utmost restraint and to refrain from any act which may lead to a further escalation and widening of the conflict."

There is little doubt, therefore, that many states, including the five permanent members, supplied openly large quantities of arms and spare parts to both belligerents.

If the Council had wanted to put an embargo on the supply of arms to the belligerents, it would have said so specifically,<sup>211</sup> or it could have required strict application of the old rules of neutrality.

Erick David points out that if we take literally the ban of the Security Council regarding attacking neutral states' ships and if we consider the resolution in a restrictive way, limited to only the neutral states, it could be considered that the third states which give help to the belligerents - which are not neutral - would not be protected by the ban.<sup>212</sup>

---

<sup>210</sup> Keesing's (1987), pp.35160 and 35182; Chronique Rousseau, R.G.D.I.P. (1987), p.183.

<sup>211</sup> David, E., "La Guerre du Golfe et le Droit International", XX Revue Belge de Droit International (1987) 1, pp.171-72.

<sup>212</sup> Ibid., p.179.

This view seems to have the effect of the old law of neutrality which is not supported by the wording of the Security Council that "the littoral states are not parties to the hostilities"<sup>213</sup> and their integrity must be respected.<sup>214</sup>

The whole situation may represent a conflict between the old laws of neutrality and the law of the Charter, that the Security Council is responsible for maintaining peace and security.

Francis Deak's observation is that if

"... the obligations of those Hague Conventions conflict with member states' obligations under the Charter.. therefore, pursuant to Article 103, the Charter obligations prevail. Consequently, member states could not avail themselves of the right and are not required to observe the obligations of neutral powers set forth in the Hague Conventions whenever the Security Council decided on measures to be taken to maintain or restore international peace and security. (Article 39 of the Charter) This argument may be supported... by reference to Article 2(5) of the Charter."<sup>215</sup>

Nevertheless, one should admit that to a great extent both the old rules and the new rules of the Charter have been eroded in the Gulf war.<sup>216</sup>

---

<sup>213</sup> See the operative paragraphs 2 of the Security Council Resolution 552, 1984, op.cit.

<sup>214</sup> See the operative paragraph 4 of the Security Council Resolution 540 (1983), op.cit.

<sup>215</sup> Deak, F., "Neutrality Revisited", in Transnational Law in a Changing Society, ed. by Friedman, Henkin and Lissitzyn, Columbia University Press, New York and London (1972), pp.143-144.

<sup>216</sup> For this view see Henkin in Ocean Development and International Law, op.cit., pp.308-310.

## CHAPTER NINE

### CONCLUSION

The G.C.C. was born as a result of a number of contributing factors, the most important of which related to security. The eruption of the Iranian revolution in 1979 and the outbreak of the war between Iraq and Iran in 1980 called for even greater security.

The organisation was established by the executive power in each member state, except in the case of Kuwait whose parliament has approved the government decision to be party to the G.C.C.

#### (1) Article 19 of the Fundamental Statute

In international law there is no rule requiring ratification to bring a treaty into force. It is a matter of the constitutional law of the states to provide the necessary measures to bring the treaty into force. The Fundamental Statute was adopted in each member state according to the constitutional requirements of that country. Since most parties had to go through the ratification process, it would seem that the Fundamental Statute could not have entered into force by virtue of Article 19 alone.

#### (2) Is the G.C.C. a Confederation?

The G.C.C. should not be described as a confederation, a title which is sometimes incorrectly used in the legal

literature to describe certain universal and regional organisations. The common features of a confederation differ in various respects from those of international organisations. This is especially the case with respect to the concept of legal personality which the older confederations lacked. A confederation is an association of independent states bound together by international treaty, mainly to harmonise their external affairs. It originally came into existence as a military alliance. It was subject to the constitution of the confederation, while the constitution of a regional organisation must be compatible with the purpose and principles of the UN (Article 52 of the UN Charter).

(3) Implementation of the UEA Depends on Domestic Laws

Although the Unified Economic Agreement is incorporated into the national law of each member state, the gradual implementation of the agreement requires further decisions by the Supreme Council of the G.C.C. For these decisions to take effect a member state must take municipal measures which would be binding on national institutions and private individuals.

The G.C.C., like other similar traditional organisations, distinguishes between the obligations of the member states on the international plane and the obligations of internal institutions. On the international plane, states are generally bound by their commitments and cannot evade them on the ground of a plea of municipal law, while the internal institutions and private individuals are bound, on the domestic plane, according to their constitutional

arrangements.

The measures are various and range from ministerial decisions to decrees. The diversity of these forms does not reduce the effectiveness of the incorporation process, since every member state complies with its own constitutional requirements.

(4) Is the G.C.C. a Military Alliance?

Judging by the objectives of the G.C.C. in the Fundamental Statute, the UEA and state practice of the member states, it would be difficult to maintain that the G.C.C. constitutes a military alliance. The G.C.C. fulfils the conditions provided by the UN Charter (Articles 52-54) for a regional organisation as it seeks to maintain international peace and security and to achieve economic integration for the welfare of its member states. The establishment of the Joint Command Forces does not in any way contradict the above conditions, as Article 51 of the UN Charter permits collective self-defence through regional organisations.

(5) Provisions for Membership

The Fundamental Statute is silent on the question of expulsion, suspension and withdrawal. This is a matter which may well be understood by looking at the small size of the organisation and the degree of homogeneity among its member states. The inclusion of such provisions would undermine the very objectives in establishing the organisation, namely the achievement of permanent unity among the members.

The law and state practice are against suspension or



expulsion of a member without explicit authorisation from the treaty. The only exception, which is supported by the legal commentators and the Vienna Convention on the Law of Treaties (Article 60) is the situation which involves a material breach of membership obligations. This view is further supported by the I.C.J. ruling in the Namibia Case (1971) which emphasised the right to terminate the mandate in case of "a deliberate and persistent violation" of the obligation by South Africa in spite of the fact that the treaty is silent on such right.

Similarly, unilateral withdrawal by a G.C.C. member state would be against the spirit and intent of the Fundamental Statute and does not find support in the law of treaties or in state practice of the UN.

(6) The Supreme Council Decisions Are Not Binding Per Se

The Supreme Council could be considered the most important organ of the G.C.C., having capacity to take final decisions in matters which concern the general policy of the organisation. However, its decisions are not binding per se as is the case with the vast majority of international organisations. The legal nature of the G.C.C. Supreme Council decisions depends mainly on their character. Decisions pertaining to the structure and operation of the G.C.C. do not raise much dispute as to their binding effect since the Supreme Council is authorised by the provisions of the Fundamental Statute to issue them and therefore they give rise to obligations. Decisions concerning the interpretation of the Fundamental Statute by the Commission of the Settlement

of Disputes could only be authoritative if they are accepted unanimously by the Supreme Council.

Decisions pertaining to the application of the UEA are of two kinds. One type of decision clearly has binding force, since it implements the provisions of the UEA as stipulated by the agreement. These decisions are the result of an agreement between the member states. The second type of decision is not binding per se, but the G.C.C. member states nonetheless tend to apply such decisions consistently in the form of subsequent practice. Those decisions could be regarded as a guide to infer the intention of the member states as to whether they consider such decisions as binding. The subsequent practice of the G.C.C. member states in applying the UEA may, if followed in a concordant, common and consistent manner with opinio juris present, pave the way for the establishment of regional customary international law as far as the Supreme Council decisions are concerned. At present it is difficult to identify such a clear practice. Certain decisions of the Supreme Council remain mere recommendations. They have no binding effect and hence do not specify precise obligations on the member states and are left entirely to the national institutions to apply them with very broad discretion.

The Supreme Council and the Ministerial Council, however, tend to adopt their decisions through the practice of consensus. And yet both consensus and unanimity go to procedure, but cannot change the legal effect of the decisions

of the G.C.C., which depend on other factors.

(7) G.C.C. Lacks Compulsory Jurisdiction

It should be emphasized that the G.C.C., like similar regional organisations, lacks the mechanism for judicial settlement with a compulsory jurisdiction. The Commission of settlement of Disputes is based on ad hoc consent and cannot effectively settle disputes of any kind among the member states. The need for an effective mechanism to settle disputes between the member states and to give authoritative opinion is clearly evidenced in every aspect of G.C.C. cooperation. It certainly determines the degree of progress the G.C.C. would make in achieving its objectives.

(8) G.C.C. Enjoys Legal Personality

Legal personality is a concept which indicates the capacity of possessing international rights and duties. Such capacity is deduced explicitly or impliedly from the constituent instrument of the organisation.

The G.C.C. enjoys legal personality on the international plane as well as on the national plane. The G.C.C. Fundamental Statute has equipped the organisation with the capacity of incurring obligations and obtaining rights as a consequence of the tasks given to its organs. The Agreement on Privileges and Immunities among G.C.C. member states creates rights and duties between each member state and the organisation.

According to the UEA, which is legally linked to the Fundamental Statute, the member states and not the G.C.C. as

an organisation are competent to conclude agreements. However, in practice such capacity was demonstrated in the agreement concluded between the G.C.C. and EEC.

The unanimity rule the G.C.C. adopts to pass its decisions does not prevent the G.C.C. from having legal personality and the volonté distincte could be realised in the form of those decisions.

The G.C.C. Joint Command Forces is another indication of legal personality. However, the legal personality the G.C.C. enjoys on the international plane is limited within the jurisdiction of the member states. For the G.C.C. to acquire legal personality in non-member states it has to conclude an agreement to fulfil such purpose. However, the G.C.C. as international organisation needs to strengthen its legal personality through further practice, especially by concluding treaties with third parties.

On the municipal plane the G.C.C. agreement on privileges and immunities is incorporated into the legal system of the member states and paved the way for the legal personality to operate in the territories of the member states.

The UEA includes forms of integration from the free movement of trade to economic union. But it is doubtful that the institutions of the G.C.C. have the capacity to carry out the objectives involved in these forms. Both the Fundamental Statute and the UEA reveals a lack of real powers conferred upon the G.C.C. institutions.

(9) Conflict Between the UEA and Treaties with Third Parties

The possibility of conflict between the UEA, concluded in 1982, and the Arab League Economic Agreement (1964) is a real one. The obligations of the United Arab Emirates and Kuwait under the Arab Economic Agreement override their obligation under the UEA. According to the Vienna Convention on the Law of Treaties (1969) the earlier treaty of 1964 should govern the rights and obligations of Kuwait and the United Arab Emirates, should conflict occur with the UEA. At the same time both the United Arab Emirates and Kuwait are entitled to invoke Article 60.2(b) and (c) of the Vienna Convention on the Law of Treaties in order to terminate the earlier treaty on the ground of a material breach, otherwise a de facto termination is a possibility.

As regards the obligations of G.C.C. member states to the GATT, Kuwait is the only GATT contracting party which is under an obligation to promptly inform the GATT of its membership of the G.C.C. The G.C.C. members who apply the GATT rules de facto, on the other hand, owe the GATT no obligations.

(10) Supervision of the UEA

The lack of effective supervision within the G.C.C. could be regarded as the real dilemma facing the exercise of economic integration. None of the G.C.C. institutions enjoys effective powers to observe the implementation or the interpretation of the UEA. This is a matter of great concern and it could determine the degree of success of the G.C.C. economic objectives. The absence of judicial supervision coupled with the fact that the decisions of the Supreme

Council are not binding per se left the G.C.C. member states with very broad discretion to apply and interpret provisions of the UEA unilaterally. This problem is evident in the complaints of governments and private individuals to the Secretariat, which do not receive legal answers that can properly set out the rights and obligations of the parties concerned.

To fulfil the objectives of any economic integration treaty, the provisions must be carefully scrutinised when they are applied and interpreted. In this regard an integrationist approach must prevail in the process of interpreting and applying the UEA provisions in order to cover many loopholes in the agreement. As such the examination of possible violations should address not only the explicit provisions but rather also the intent and purpose of the conclusions of these kind of treaties (e.g. a governmental subsidy should not be sustained without proper guidelines).

(11) Locus Standi of Individuals

Private individuals in G.C.C. member states not only have interests, as is often the case under international law rules, but rights which could be pursued before the national courts, especially since the UEA has been incorporated into the municipal system of the member states. The UEA, like the EEC Treaty, aims at the establishment of a Gulf community, and therefore should not be confined to the exchange of obligation between governments, but should also be taken to confer rights on individuals. The access of the individuals to the national

courts remains the only guarantee for the individuals to obtain a remedy and at the same time for the treaty to be properly observed in its application and interpretation.

(12) The Legal Position of Federal Constitutions Within the G.C.C.

As a rule well-established under international law, the Federal Government of the United Arab Emirates cannot plead constitutional arrangements to evade its international obligations on the ground that there are some reserved areas of jurisdiction for the individual Emirates.

As far as the constitution of the United Arab Emirates is concerned, state practice clearly shows that the federal government has strictly observed the constitutional requirements in ratifying the UEA. In fact the ratification of the UEA by the Supreme Council of the United Arab Emirates can be held as an enactment of legislation. The only ground the federal government of the United Arab Emirates may have to exclude fishing from the domain of Article 8(3) of the UEA is to argue that its interpretation of the Supreme Council decision concerning Article 8(3) does not amount to a violation of the agreement. This view is tenable since there is no effective authorised body stipulated in the treaty to decide whether the United Arab Emirates has failed to fulfil its obligations under the agreement.

(13) Safeguard Clauses in the UEA

Safeguard clauses in the UEA are meant to deal with economic difficulties or political crises. Therefore, there

must always be objective conditions placed upon recourse to these clauses which cannot be simply unilaterally invoked by a member state, otherwise the very objective of the economic integration process may be undermined.

Since it is left for diplomatic courtesy to determine when to invoke this type of provision, possibilities of retaliation in case of dissatisfaction would increase and the affected party who needs the exemption would suffer as a result.

(14) The Claim of Self-Defence and the Gulf War

In international law a state cannot invoke Article 51 of the UN Charter for use of armed force in self-defence on the ground that its vital interests abroad have been harmed. Economic coercion as such does not amount to a violation of the UN Charter, and particularly Article 2(4).

Iran is bound by the obligation in Article 2(4) to refrain directly or indirectly in its relations "from the threat or use of force against the territorial integrity or political independence" of the G.C.C. member states. It may also be bound by the principle of non-intervention as stated in various UN Declarations which could be regarded as evidence of customary international law.

Iran's substantial involvement in sending individuals or groups of individuals to perform subversive activities in the G.C.C. member states constitutes unlawful use of force according to Article 2(4) of the UN Charter. These acts also meet the requirement in paragraph (g) of the definition of



aggression.

It is difficult to maintain that the Iranian assistance to the subversive elements in Bahrain was not on a significant scale.

According to the judgment in the Nicaragua Case (1988), the act of the G.C.C. member states in funding Iraq cannot readily be regarded as an act of self-defence in response to Iran's indirect aggression. As to the nature of Iran's acts one may consider them an armed attack, viewing their gravity and devastating effect on the security of a state such as Bahrain. However, the judgment requires the state which is the victim of an armed attack to make a request permitting the exercise of collective self-defence.

According to Article 51 of the UN Charter, states claiming to use the right of collective self-defence are required to report that to the Security Council. Both procedural requirements apparently have not been met. However, the latter requirement may not be relevant since the response of the G.C.C. member states has fallen short of the use of force and consisted solely of financial assistance to Iraq. The purpose of Article 51 of the UN Charter is to enable the Security Council to "maintain or restore international peace and security". The Council is to enquire into activities involving the use of force to discover whether it justifies the right of self-defence.

G.C.C. member states could not sustain the position of strict neutrality since they were subjected to various acts

of indirect aggression. For those who were not under attack, regional defence arrangements are sufficient for them to depart from the strict rules of neutrality.

# BIBLIOGRAPHY

## 1. List of Documents and Unpublished Materials

Annual Report of the G.C.C., 1982 (1985)

Arabian Gulf Intelligence. Selection from Record of the Bombay Government, The Oleander Press (1985)

Bishara, A., The First Five Years of the G.C.C.: An Experiment in Unification, 1981-86, Speeches and interviews of the Secretary-General of the G.C.C., G.C.C. Secretariat Printing Press (1987), pp.5-106

Comment of Qatar Government on Saudi Arabia Mediation Proposals, Ministry of Foreign Affairs memo dated 17 April 1978, Ministry of Foreign Affairs Archives, Doha, Qatar.

Complaints concerning the Implementation of the UEA submitted to the G.C.C. Secretariat by Governments and Private Individuals (unpublished and undated in Arabic)

Decrees which have been issued and Measures which have been adopted in Implementing the Unified Economic Agreement, G.C.C. Secretariat (1988)

Documents of the United Nations Conference on International Organisations, San Francisco, 1945, London, New York (1945), Vol.7, Doc.314, 1.2.17.

Documents of the Union of Arab Emirates, Palace of Amir, Doha, Qatar (1968-1971)

Documents of the Gulf Cooperation Council for Arab States, Qatar News Agency (October 1983) (Arabic)

Draft of Saudi Mediation Proposals on Huwar Islands to Qatar and Bahrain, April 1978, Archives of Qatar Ministry of Foreign Affairs (unpublished)

Encyclopedia Britannica, 13th ed. (1973)

Foreign and Political Department, Part 5, Treaties and Undertakings in Force between the British Government and Rulers of Kuwait (1884-1913)

G.C.C. Member States Letter to the Security Council, 21 May 1984, which requested an urgent meeting of the Council to consider the "Iranian aggression" on the freedom of navigation in the Gulf, S/16594, Official Records of the Security Council, 39th year, S/INF/40, pp.14-15.

General Assembly Resolution 2131(XX), 20 GAOR, Supp.14 at II, U.N. Doc. A/6014 (1965)

General Assembly Resolution 2625, 25 GAOR, Supp.18 at 122, U.N. Doc. A/8028 (1970).

Gulf Cooperation Council, Kuwait News Agency (KUNA), Digest Documentation Department, Kuwait (1981)

Huwar Islands, R/15/2/547, India Office documents (unpublished)

India, Foreign and Political Department, Treaties between the British Government and the Rulers of Bahrain (1920-1914)

Initial Measures taken by the G.C.C. Member States for the Implementation of the Unified Economic Agreement, G.C.C. Secretariat (1984), pp.1-178 (Arabic)

Iraqi-Iranian Dispute. Facts v. Allegations, Ministry of Foreign Affairs of the Republic of Iraq (1984)

Kuwait Assembly Proceedings, No.10 (7 July 1981), pp.70-80, No.11 (14 July 1981), pp.153-57.

League of Nations, Conference for Codification of International Law, Bases of Discussion, Vol.III, (1929) pp.121-124

Letter dated 22 July 1987 from the Permanent Representative of Iran to the UN addressed to the Secretary-General, S/18993, 24 July 1987

Memorandum of the G.C.C. Secretariat concerning the Implementation of the UEA, G.C.C. Archives (September 1984) (unpublished)

Memorandum of the G.C.C. Secretariat on Major Costs and Benefits of GATT Membership (July 1983), pp.1-10 (unpublished).

Official Records of the League of Arab States on the Gulf Islands, Documents presented by Ras al-Khaimah on 6 December 1971

OPEC, Selected Documents of the International Petroleum Industry, Vienna, OPEC (1977).

Policy of Iran. Expansion Ambitions towards the Arab States. Attitudes and Pronouncements against the Arab Nation, Baghdad (1987) (Arabic)

Records of the Third Session of the Council of WHO, WHO Official Records, No.17, 28 (1964).

Report on Iran-Iraq War and Navigation in the Gulf, 26 I.L.M. (1987), pp.1422-1489

Reports of the Head of Qatari Delegation to the Experts Committee of the G.C.C. (1981)

Report of the Sixth Committee on Invitation to the Secretary-General of the League of Arab States, GAOR/5, Sess/1950/Annexes 2, Agenda item 58/N/1442.

Review of the Imposed War, Legal Department, Ministry of Foreign Affairs, Iran (February 1983)

Security Council Official Records: 35th year, S/INF/36, pp.23-24; 36th year, S/INF/37, p.10; 37th year, S/INF/38, pp.19-20; 39th year, S/INF/39, pp.6-7; 40th year, S/INF/40, p.15; 41st year, S/INF/41; 42nd year, S/INF/42, p.13; 43rd year, S/INF/43, pp.5-6.

Security Council Document S/1903, 11 August 1987 on the official position of the Islamic Republic of Iran on Security Council Resolution 598 (1987)

U.N. Doc.S/5075, SC, Official Records, 17th year (1962) concerning expulsion of Cuba from OAS without authorising provision, 992 meeting, pp.1-28.

United Nations Records/Security Council S/PV.2250

United Nations Security Council Records on the Situation between Iran and Iraq, S/P.2253

United Nations Security Council debate on the Adoption of Resolution 598, 20 July 1987, Doc. S/PV.2750, pp.1-86.

Yearbook of the International Law Commission, First Report on Relations between States and Intergovernmental Organisations (A/C.1.CN.4/161), 11 June 1963, II, pp.178-182; (1972), II, pp.178-182; (1973), IP 209; (1974) II/I; (1977) II/II, p.139.

## 2. Books

Abdulghani, J., Iraq and Iran. Years of Crisis, Croom Helm, London (1984)

Abi Saab, G. (ed.), The Concept of International Organisation, UNESCO (1981)

Adam, A., Les Etablissements Publics Internationaux, Librairie Generale de Droit et de Jurisprudence (1957)

Ahluwalia, K., The Legal Status of the Specialised Agencies of the United Nations and Certain other International Organisations, Martinus Nijhoff, The Hague (1964)

Aitchison, C.V., A Collection of Treaties, Engagements and Sanads relating to India and Neighbouring Countries, Vol.XI, Calcutta (1933)

Akehurst, M., The Law Governing Employment in International Organisations, Cambridge University Press (1967)

Algar, H. (trans. and ed.), Islam and Revolution: Writings and Declarations of Immam Khomeini, Mizan, Berkeley (1981)

Al-Ashal, A., The Legal and Political Framework of the Gulf Cooperation Council, Riyadh (1983) (Arabic)

Al-Awadi, B., Public International law at Time of Peace and War and its Application in the State of Kuwait, Dar al-Fiker, Damascus (1979) (Arabic)

Al-Baharna, H.M., The Legal Status of the Arabian Gulf States, Manchester University Press (1968)

Aliboni, R. (ed.), Arab Industrialisation and Economic Integration, Croom Helm, London (1979).

Al-Nafis, A., The Gulf Cooperation Council: The Political and Strategic Framework, Taha Publishers, London (1982) (Arabic)

Al-Sayyid, I., The Foundation of Policies and Constitution of the United Arab Emirates, Documentation and Study Centre, Abu Dhabi (1971) (Arabic)

Al-Tabtabai, A., The Federation System of the United Arab Emirates. A Comparative Study, Ph.D. thesis, Cairo (1978) (Arabic)

Al-Tabtabai, A., The Constitutional Law in Kuwait. A Comparative Study, Dar al-Oloum, Kuwait (1985) (Arabic)

Amin, S.H., Political and Strategic Issues in the Persian-Arabian Gulf, Royston Ltd. (1984)

Amin, S.H., Middle East Legal Systems, Royston Ltd. (1985)

Amins, S., International and Legal Problems of the Gulf, Middle East and North African Studies Press Ltd., London (1981)

Andemicael, B. (ed.), Regionalism and the United Nations, Oceana Publications Inc. (1979)

Andemicael, B., The OAU and the UN. Relations between the Organisation of African Unity and the United Nations, African Publishing co., New York and London (1976)

Andretsch, H., Supervision in European Community Law, 2nd rev. ed., North-Holland (1986)

Arab Gulf and the West, Centre for Arab Gulf Studies, University of Exeter (1985)

Arikat, H., Regional Cooperation and Integration: The Case of Arab Gulf States, Ph.D. thesis, University of Sheffield (1984)

Arnold, R., Treaty-Making Procedures, Oxford, London (1933)

Asamoah, O., The Legal Significance of the General Assembly of the United Nations, Martinus Nijhoff, The Hague (1966)

Bailey, S., Voting in the Security Council, Indiana University Press, Bloomington and London (1969)

Balassa, B., The Theory of Economic Integration, Richard D. Irwin Inc. (1961)

Balladore, P., Diritto Internazionale Pubblico, Dott. A. Giuffre Editore, Milan (1962)

Ballantyne, W., Commercial Law in the Arab Middle East. The Gulf States, Lloyds of London Press Ltd., London, New York, Hamburg, Hong Kong (1988).

Bathurst, M.E. and others, Legal Problems of an Enlarged European Community, British Institute Studies in International and Comparative Law, No.6, Stevens & Sons, London (1972)

Baty, T., The Canons of International Law, London (1930)

Becket, E., The North Atlantic Treaty. The Brussels Treaty and the Charter of the United Nations, Stevens & Sons, London (1950)

Belgrave, J.H.D., Welcome to Bahrain, 5th ed. (1965)

Bernier, J., International Legal Aspects of Federation, Longman Group Ltd., London (1973)

Bhagwati, J. (ed.), International Trade, Penguin Books, Middx. (1969)

Bishara, A., The Role of the G.C.C. in the Realization of Arab Unity, G.C.C. Secretariat (1985)

Blaustein, P. and Flanz, G., Constitutions of the Countries

of the World, Oceana Publications Inc., Dobbs Ferry, New York (1982)

Bos, M., A Methodology of International Law, T.M.C. Asser Institute (1984)

Bozeman, A., The Future of Law in a Multilateral World, Princeton Press (1971)

Bowett, D., Self-Defence in International Law, Manchester (1958)

Bowett, D., The Law of International Institutions, 4th ed., Stevens, London (1982)

Bowman, M. and Harris, D., Multilateral Treaties. Index and Current Status, Butterworth, London (1984)

Brierly, J., The Law of Nations, 6th ed., Clarendon Press, Oxford (1963)

Brownlie, I., Principles of Public International Law, Clarendon Press, Oxford (1982)

Brownlie, I., International Law and the Use of Force by States, Clarendon press, Oxford (1963)

Brownlie, I., Basic Documents in International Law, 3rd ed. (1983)

Bull, H. (ed.), Intervention in World Politics, Clarendon press, Oxford (1984)

Burrows, F., Free Movement in European Community Law, Clarendon Press, Oxford (1987)

Cambridge Essays in International Law. Essays in Honour of Lord McNair, Stevens & Sons, London (1965).

Carroz and Probst, Personalite Juridique Internationale et Capacite de Conclure des Traites de l'ONU et des Institutions Specialisees (1953)

Cassese, A. (ed.), The Current Legal Regulation of the Use of Force, Martinus Nijhoff (1986)

Cassese, A., International Law in a Divided World, Clarendon Press, Oxford (1980)

Cassese, A. (ed.), United Nations Peacekeeping, Legal Essays, Sithoff & Noordhoff, The Netherlands (1978).

Castaneda, J., The Legal Effect of United Nations Resolutions,



Columbia University Press, New York and London (1969)

Castren, E., Present Law of War and Neutrality, Sumulaisen Kirjallisuuden Seuran Kirjapainonoy, Helsinki (1945)

Cervanka, Z., The Organisation of African Unity and its Charter, C. Hurst & Co., London (1968)

Cervenka, Z., The Unfinished Quest for Unity. Africa and the OAU, Friedman (1977)

Cheng, B. (ed.), International Law: Teaching and Practice, Stevens & Sons, London (1982)

Chiu, H., The Capacity of International Organisations to Conclude Treaties and the Special Legal Aspects of the Treaties so Concluded, Nijhoff, The Hague (1966)

Churchill, R., Simmonds, K. and Welch, J. (eds.), New Directions in the Law of the Sea, London (1973)

Churchill, R. and Lowe, V., The Law of the Sea, Manchester University Press (1985)

Cordesman, A., The Gulf and the Search for Strategic Stability, Westview, Boulder, Colorado (1984)

Crawford, J., Creation of States in International law, Clarendon, Oxford (1979)

Dam, W., The GATT Law and International Economic Organisation, University of Chicago Press (1970)

Darius, R., Amos, J. and Magnus, R. (eds.), Gulf Security into the 1980s, Hoover Institution Press, California (1984)

Dawisha, A. (ed.), Islam in Foreign Policy, Cambridge University Press (1983)

Delupis, I., The Law of War, Cambridge University Press (1981)

Dessouki, A. (ed.), The Iraq-Iran War. Issues of Conflict and Prospects of Settlement, Centre of International Studies, Princeton University (1981)

Detter, I., Law-Making by International Organisations, Stockholm (1965)

Dickson, H.R.P., Kuwait and her Neighbours (1956)

Dijk, P. (ed.), Supervisory Mechanism in International Economic Organisations, Netherlands (1984)

Dore, I., International law and the Superpowers. Normative

Order in a Divided World, Rutgers University Press (1984)

Elagab, O., The Legality of Non-Forcible Counter-Measures in International Law, Clarendon Press, Oxford, (1988).

Elias, T., The Modern Law of Treaties, A.W. Sijthoff, Leiden (1974)

Elias, T., Africa and the Development of International Law, Sijthoff, Leiden (1977)

El-Gunaimy, M., The League of Arab States, Alexandria (1973) (Arabic)

El-Hakim, A., The Middle Eastern States and the Law of the Sea, Manchester University Press (1978)

Encyclopedia of Public International Law, published under the auspices of the Max Planck Institute for Comparative Public Law and International Law, North Holland (1983)

Falk, R., The Role of Domestic Courts in the International Legal Order, Syracuse University Press (1964)

Falk, R. and Mendlovitz, S. (eds.), Strategy of World Order, Vol.2, World Law Fund (1966)

Falk, R., Legal Order in a Violent World, Princeton University Press (1968)

Falk, W. (ed.), The Vietnam War and International Law, Princeton University Press, Vols. 1, 2, 3, 4 (1968) (1969) (1972) (1976)

Fawcett, J., Law and Power in International Relations, Faber and Faber (1982)

Feinberg, N., The Legality of a State of War after the Cessation of Hostilities under the Charter of the United Nations and the Covenant of the League of Nations, Magnes Press, The Hebrew University, Jerusalem (1961).

Ferencz, B., Defining International Aggression, Oceana Publications Inc., New York (1975)

Friedman, W., Henkin, L. and Lissitzen, "Transnational Law in a Changing Society", Columbia University Press, New York and London (1972)

Friedmann, W., The Changing Structure of International Law, Stevens & Sons, London (1964)

Goodrich, L., Hambro, E. and Simons, A., Charter of the United Nations. Commentary and Documents, 3rd and revised ed.,

Columbia University Press, New York and London (1969)

Goronwy, J., The United Nations and the Domestic Jurisdiction of States, Welsh Centre for International Affairs, Cardiff (1977)

Greenspan, M., The Modern Law of Land and Warfare, Berkeley and Los Angeles (1959)

Gulf Cooperation Council for the Gulf Arab States. Its Institutional Aspects and Achievements, 2nd ed. G.C.C. Secretariat (1988)

Hackworth, G., Digest of International Law (1940-44)

Hameed, M., Arabia Imperilled: The Security Imperatives of the Arab States, Middle East Assessment Group, Washington (1988)

Hamoud, S., Islamic Banking, Cairo University 1984, Arabian Information, London (1986)

Hartley, T.C., The Foundations of the European Community, Clarendon Law Series, Oxford (1981)

Hassan, A., The Principles of the Constitutional Law in Kuwait, Dar al-Nahdah, Beirut (1968) (Arabic)

Hassouna, H., The League of Arab States and Regional Disputes, Oceana Publications Inc., New York (1975)

Hay, R., The Persian Gulf States, The Middle East Institute, Washington, D.C. (1959)

Heard-Bey, F., From Trucial States to United Arab Emirates. A Society in Transition, Longman, London and New York (1982)

Higgins, R., United Nations Peacekeeping 1946-57. Documents and Commentary, 2. Asia, Oxford University Press (1970).

Higgins, R., The Development of International law by the Political Organs of the United Nations, Oxford University Press (1963)

Hilf, M., Jacobs, F. and Petersmann, E. (eds.), The European Community and GATT, Kluwer-Deventer, The Netherlands (1986)

Hogarth, D., Arabia, Oxford (1922)

Holloway, K., Modern Trends in Treaty Law, Stevens & Sons, London (1967)

Hudson, M., International Tribunals Past and Future, Carnegie Endowment for International Peace, Washington (1944)

Hunter, S. (ed.), Gulf Cooperation Council. Problems and Prospects, Georgetown University, OSJA, Washington (1984)

Hyde, C., International Law Chiefly as Interpreted and Applied by the United States, Little, Brown & Co. (1947)

Jackson, H., World Trade and the Law of GATT, Bobbs-Merrill Co. Inc. (1969)

Jenks, W., The Proper Law of International Organisations, Stevens & Sons Ltd., London (1962)

Jenks, W., The Common Law of Mankind, Stevens, London (1958)

Jenks, W., International Immunities, Stevens, London (1961)

Jenks, W., The Headquarters of International Institutions. A Study of Their Location and Status, The Royal Institute of International Affairs (1945)

Jessup, P., A Modern Law of Nations, Archon Books (1968)

Kadduri, M., The Islamic Law of Nations, Johns Hopkins Press, Baltimore, Maryland (1966)

Kaikobad, K., The Shatt-al-Arab Boundary Question. A Legal Reappraisal, Clarendon press, Oxford (1988)

Kalshoven, F., Kuyper, P. and Lammers, J. (eds.), Essays on the Development of the International Legal Order, Sijthoff and Nordhoff (1980)

Kapteyn and Themaat, V., Introduction to the Law of the European Communities, Sweet & Maxwell, London (1973)

Kasme, B., La Capacite de l'Organisation des Nations Unies de Conclure des Traites, Librairie Generale de Droit et de Jurisprudence (1962)

Kaufman, J., United Nations Decision-Making, Sijthoff & Noordhoff (1980)

Kelsen, H., The Law of the United Nations, Stevens, London (1951)

Kelsen, H., Principles of International Law, 2nd ed., Holt, Rinchart and Winston Inc. (1966).

Kelsen, H., Recent Trends in the Law of the United Nations, Stevens & Sons Ltd. (1951)

Khalifa, A., The United Arab Emirates. Unity in Fragmentation, Westview Press, Boulder, Colorado, Croom Helm, London (1979)

Khomeini, Haj Ruhollah Mussari, Kashf-el Assrar, Tehran (n.p.) (1944)

Khomeini, Islamic Government, translated by Joint Publications Research service, Manor Books, Arlington, Virginia; New York (1979)

Koury, E. and MacDonald, G. (eds.), Revolution in Iran, Institute of Middle East and North African Affairs (1982)

Kunze, J., The Changing Law of Nations, Ohio State University (1968)

Landy, E., The Effectiveness of International Supervision. Thirty Years of ILO Experience, Stevens & Sons, London (1966)

Lasok, D. and Bridge, J., Introduction to the law and Institutions of the European Communities, 3rd ed. Butterworth (1982)

Lawrence, J., Principles of International Law, 5th ed., London (1913)

Lillich, R. (ed.), Economic Coercion and the New International Economic Order, The Michie Co., Virginia (1976)

Long, O., Law and Limitations in the GATT Multilateral Trade System, Martinus Nijhoff (1985)

Lorimer, J.G., Gazetteer of the Persian Gulf, Oman and Central Arabia, historical Part 1A, Calcutta, Superintended Government Printing, India (1915)

Luzius, W., Treaty-Making Power and Constitution, Helbing & Lichtenhahn (1971)

MacDonald, R., The League of Arab States, Princeton (1965)

Martin, L., The Unstable Gulf, Lexington Books, D.C. Heath & Co., Lexington (1984)

McDougal, M. and Feliciano, F., Law and Minimum World Public Order. The Legal Regulation of International Coercion, Yale University Press (1961)

McDougal, M., Studies in World Public Order, New Haven Press, New Haven (1987)

McGovern, E., International Trade Regulation. GATT, the

United States and the European Community, Globefield Press, Exeter (1986)

McNair, The Law of Treaties, Clarendon Press, Oxford (1961)

McNaughta, Arms and Oil: US Military Strategy and the Persian Gulf, Brookings Institution, Washington (1985)

Merillat, H., Legal Advisers and International Organisations, New York (1966)

Moor, N. (ed.), Law and Civil War in the Modern World, Johns Hopkins University Press (1974)

Morsi, M., The Gulf Cooperation Council for Arab States. The Proper Introductions to Achieve Economic Integration, Ministry of Foreign Affairs, Doha, Qatar (1982) (Arabic)

Mukhles, A., The Cooperation Council for Gulf Countries. A Political Study, University of Basra (1986) (Arabic)

Nakhleh, E., The Persian Gulf and American Policy, Praeger Publishers (1986)

Nekam, A., The Personality Concept of the Legal Entity, Harvard University Press (1938)

Nonneman, G., Iraq, The Gulf States and the War, a Changing Relationship. 1980-1986 and Beyond, Ithaca Press, London (1986)

O'Connell, D., International Law, Vol.1., London (1970)

Oppenheim, L., International Law, 7th ed., Longman Green, (1948)

Parry, C., The Sources and Evidence of International Law, Manchester University Press (1965)

Paust, J. and Blaustein, A., The Arab Oil Weapon, Oceana Publications, New York (1977)

Peaslee, J., International Governmental Organisations, Documents, Rev. 3rd ed., Martinus Nijhoff, The Hague (1974)

Perrot, D. and Pogany, I. (eds.), Current Issues in International Business Law, Avebury, England (1988)

Peterson, J., Defending Arabia, Croom Helm, London (1988)

Philby, H., Saudi Arabia, London (1955)

Pogany, I., The Arab League and Peacekeeping in the Lebanon, St. Martin's Press, New York (1987)

Pogany, I., The Security Council and the Arab-Israeli Conflict, Gower, England (1984)

Rajab, Y., The Gulf Cooperation Council of Gulf Arab States, Kuwait (1985)

Rakhib, W. and Abdulfatah, A., Principles of Kuwait Civil Jurisprudence, 1st ed., Dar al-Kotob Foundation, Kuwait (Arabic)

Ramazani, R., The Gulf Cooperation Council: Records and Analysis, University of Virginia Press, Charlottesville (1988)

Reuter, P., International Institutions, George Allen & Unwin Ltd. (1958)

Rifaat, A., International Aggression: A Study of the Legal Concept: Its Development and Definition in International Law, Almquist & Wiksell, Stockholm (1979)

Robins, P., The Future of the Gulf. Politics and Oil in the 1990s, Royal Institute of International Affairs, Gower, England (1989)

Ronyer-Hameray, B., Les Competences Implicites des Organisations Internationales, Librairie Generale de Droit et de Jurisprudence, Paris (1962)

Rosenne, S., The Law and Practice of the International Court, Nijhoff (1985)

Sadik, E., Unequal Treaties in International Law, Ph.D. thesis submitted to Cairo University (1978) (Arabic)

Saif, R., The Law of Civil and Commercial Procedures in Accordance with Kuwait Law, Kuwait Print (1974) (Arabic)

Sandwick (ed.), The Gulf Cooperation Council. Moderation and Stability in an Interdependent World, Westview Press, American Arab Affairs Council (1987)

Schermers, H., Judicial Protection in the European Communities, 3rd ed., Kluwer Europa Instituut (1983)

Schermers, H., International Institutional Law, Sijthoff & Noordhoff (1980)

Schneider, J., Treaty-Making Power of International Organisations, Droz, Geneva (1959)

Schwarzenberger, G. and Brown, E.D., A Manual of International Law, 6th ed., Professional Books Ltd. (1976)

Schwarzenberger, G., International Law, Vol.1, 3rd ed., Stevens, London (1957)

Schwebel, S. (ed.), The Effectiveness of International Decisions, Sijthoff, Leiden (1971)

Selassie, B. (ed.), Consensus and Peace, UNESCO (1980)

Serreni, A., Diritto International, Dott. A. Giuffre Editore, Milan (1966)

Shaukri, M., The Question of Islands in the Arabian Gulf and International Law (1972) (Arabic)

Sinclair, I., The Vienna Convention on the Law of Treaties, 2nd ed., Manchester University Press (1984)

Singh, N., Termination of Membership of International Organisations, Stevens & Sons Ltd. (1958)

Sohn, L. (ed.), Basic Documents of African Regional Organisations, Oceana Publications Inc. (1981)

Sohn, L. (ed.), International Organisations and Integration, Annotated Basic Documents and Descriptive Directory of International Organisations and Arrangements, The Hague (1986)

Sorensen, M. (ed.), Manual of International Law, St. Martin's Press, London (1968)

Stankiewkz, W.J. (ed.), In Defence of Sovereignty, Oxford University Press (1969)

Stark, J., The ANZUS Treaty Alliance, Melbourne University Press (1964)

Stark, J.G., Introduction to International Law, 9th ed., Butterworths (1984)

Stone, J., Of Law and Nations. Between Power Politics and Human Hopes, William S. Hein & Co. Inc., Buffalo, New York (1974)

Stowell, E., Intervention in International Law, J. Byre & Co., Washington (1921)

Sur, S., L'Interpretation en Droit International Public, Librairie Generale de Droit et de Jurisprudence, Paris (1974)

Taryam, A., The Establishment of the United Arab Emirates, 1950-85, Croom Helm, London (1987)

Thirty Years of Community Law, The European Perspectives



Series, Commission of the European Communities (1981)

Thomas, A. and Thomas, A., The Organisation of American States, Southern Methodist University Press, Dallas (1963)

Thomas, A. and Thomas, A., Non-Intervention. The Law and its Impact in Americas, Southern Methodist University Press, Dallas (1956)

Toth, A., The Legal Protection of Individuals in the European Communities, North-Holland (1978)

Tucker, R., The Law of War and Neutrality at Sea, The United States Government Printing Office, Washington (1957)

Tunkin, G., Theory of International law, translated with an introduction by William E. Butler, George Allen & Unwin (1974)

Verzijl, J., International Law in Historical Perspective, Vol. II., A.W. Sijthoff, Leiden, (1969).

Viners, J., The Customs Union Issue, Carnegie Endowment for International Peace, New York (1950)

Weissberg, G., International Status of the United Nations, New York (1960)

Westernman, G., Juridical Bay, Clarendon Press, Oxford (1987)

Westlake, J., International Law, 2nd ed., Cambridge (1910-1913)

Wheaton, H., Elements of International Law, 6th ed., Stevens & Sons Ltd., London (1924)

Willoughby, W., Fundamental Concepts of Public Law, New York (1924)

Wilson, A.T., The Persian Gulf Oxford, British Admiralty (1928)

Wilson, R., Euro-Arab Trade Prospects to the 1990s, The Economist Intelligence Unit, London (1988)

Wright, G., International Law and the United Nations, London (1960)

Wyatte, D. and Dashwood, A., The Substantive Law of the EEC, Sweet & Maxwell (1980)

Yapp, M., The Nineteenth and Twentieth Centuries in the Persian Gulf States, Johns Hopkins University Press, Baltimore and London (1980)

Yemen, E., Legislative Powers in the United Nations and Specialised Agencies, Sijthoff (1969)

Yorke, V. and Turner, L., European Interests and Gulf Oil, Policy Studies Institute and Royal Institute of International Affairs, Gower (1986)

Zemanek, K. (ed.), Agreements of International Organisations and the Vienna Convention on the Law of Treaties, New York (1971)

### 3. Articles and Papers

Abu Zahra, M., "The Theory of War in Islam", 14-15 Revue Egyptienne de droit international (1958-59) pp.1-42 (Arabic)

Akehurst, M., "Reprisals by Third States", XLIV, B.Y.I.L. (1970), pp.1-18.

Akiwumi, A., "Judicial Aspects of Economic Integration Treaties in Africa", Hague Academy of International Law (1971), pp.28-99

Al-Ahwani, H., "Perceptions on the Unification of the Civil Law between the G.C.C. Member States", submitted to a seminar organised by the Centre of Gulf and Arabian Peninsula Studies (1987), pp.1-26 (Arabic)

Al-Alfi, M., "The Unification of Private Law Legislation in the G.C.C. Member States", submitted to a seminar organised by the Centre of Gulf and Arabian Peninsula Studies (1987) (Arabic), pp.1-32

Al-Baharna, H., "A Study of the Unified Economic Agreement and its Impact on the Unification of Rules of Ownership, Commercial and Economic Codes in the G.C.C. Member States", submitted to a seminar organised by the Centre of Gulf and Arabian Peninsula Studies (1987), pp.1-19 (Arabic)

Al-Muslemani, A., The Qatari-Bahraini Boundary Dispute over the Huwar Islands and the Continental Shelf. Dissertation submitted in partial fulfilment of the requirement of the degree of Master in International Law, Hull University (1984).

Al-Quwaiz, A., "Gulf Cooperation Council from an Economic Integration View", a lecture presented in the Institute of Diplomatic Studies, Ministry of Foreign Affairs, Saudi Arabia, January 1986

Al-Shawa, K., "The Art of Negotiation and the Arab Gulf States' Ability to Negotiate the Export of their Petrochemical

Products", paper presented at the Training Program on the Diplomacy of Negotiation, Political Science Section of the Department of Trade, Economics and Political Science, Kuwait University, 30 March-17 April, 1985.

Amerie, F., "Iran-Iraq War and the Freedom of Navigation", Partial fulfilment of LL.M. degree, Hull (1985) (unpublished), pp.1-55

Amin, S., "Fisheries in the Gulf", Lloyd's Maritime and Commercial Law (1983), pp.671-679

Attyia, A., "Aspects of Cooperation in the Procedural Fields between G.C.C. Member States", submitted to a seminar organised by the Centre of Gulf and Arabian Peninsula Studies, pp.3-42 (Arabic)

Audretsch, H., "Supervision in the EEC, OECD and Benelux - A difference in degree, but also in kind", 36(4) I.C.L.Q. (1987), pp.838-855

Badr, G., "Law in a Changing Community of Nations", 37 Revue Egyptienne de droit international (1981), pp.1-11

Bassiouni, M., "Protection of Diplomats under Islamic Law", A.J.I.L. (1980), pp.609-633

Baxter, R., "Treaties and Customs", I Recueil des Cours (1970), p.31

Baxter, R., "The Legal Consequences of the Unlawful Use of Force under the Charter", 62 A.S.I.L. Proc. (1968), pp.68-83.

Bishara, A., The Gulf Cooperation Council: Its Nature and Outlook, Gulf Cooperation Council Reports Series, National Council on US-Arab Relations, Washington, D.C. (1986), pp.1-8

Blix, H., "The Requirement of Ratification", 30 B.Y.I.L. (1953), pp.352-380

Blum, Y., "Economic Boycotts in International Law", 12 Texas International Law Journal, pp.5-15

Bouachba, T., "Le Conseil de Cooperation des Etats Arabes du Golfe", Revue Generale de Droit International Public, Tom. LXXXIX (1985), pp.29-82.

Bowett, D., "Economic Coercion and Reprisal by States", 13 Va.J.Int.Law (1972), pp.1-12

Bowett, D., "Collective Self-Defence under the Charter of the United Nations", 32 B.Y.I.L. (1955-56), pp.130-61

Bowett, D., "Reprisals Involving Recourse to Armed Force", 66 A.J.I.L. (1972), pp.1-32

Brandon, M., "The Validity of Non-Registered Treaties", 29 B.Y.I.L. (1952), pp.186-204

Broches and Boskey, "Theory and Practice of Treaty Registration", 4 Neths.Int.L.R. (1957), pp.277-300

Brom, B., "The Definition of Aggression", 2 Recueil des Cours (1977), pp.199-400

Bronckers, M., "The Non-Discriminatory Application of Article XIX GATT: Tradition or Fiction?", in Legal Issues of European Integration (1981/2), p.35.

Brosche, H., "The Arab Oil Embargo and United Pressure Against Chile: Economic and Political Coercion and the Charter of the United Nations", 7-8 Case W. Res.J. International Law (1974-76), pp.3-35

Buzan, B., "Negotiating by Consensus: developments in technique at the United Nations Conference on the Law of the Sea", 75 A.J.I.L. (1981), pp.324-348

Chubin, S., "Iran and its Neighbours. The Impact of the Gulf War", The Centre for Security and Conflict (1982), pp.1-32

Corbett, P., "What is the League of Nations?", 5 B.Y.I.L. (1924), pp.119-248

Crawford, J., "The Contribution of Professor D.P. O'Connell to the Discipline of International Law" (1980) 51 B.Y.I.L., p.1

Cunningham, A., "Winding Up Corporate Personality. Court Lacks Jurisdiction to Wind Up International Organisation", 5(2) O.G.L.T.R. (1986-87), pp.146-7.

Curtis, R., "The Law of Hostile Military Expeditions as Applied by the United States", 8 A.J.I.L. (1914), pp.1-37

Dajani, B., "Arab Economic Cooperation, Practical and Historical Aspects", Day of Economic Cooperation, 22 March 1972, Kuwait Economic Society (Arabic), pp.1-53.

Daraz, M., "Public International Law and Islam", 5-6 Revue Egyptienne de droit international (1949-50), pp.1-15 (Arabic)

Dashwood, A., "The Principle of Direct Effect in European Community Law", 16 Journal of Common Market Studies (1978), p.229

David, E., "La Guerre du Golfe et le Droit International", XX Revue Belge de Droit International (1982), p.153

Detter, I., "The Organs of International Organisations Exercising their Treaty-Making Power", 38 B.Y.I.L. (1962), pp.421-444

Dickinson, E., "Are the Liquor Treaties Self-Executing?", 20 A.J.I.L. (1926), p.444

Eide, A., "Peacekeeping and Enforcement by Regional Organisations", Journal of Peace Research, Vol.3 (1966), p.125

El-Azhary, M., "The Gulf Cooperation Council and Regional Defence in the 1980s", Centre for Arab Gulf Studies, University of Exeter Paper No.1 (1982)

El-Kuwaiz, A., "Economic Integration of the Cooperation Council of the Arab States of the Gulf. Changes, Achievements and Future Outlook", G.C.C. Secretariat General, pp.1-15

El-Kuwaiz, A., "The Gulf Cooperation Council and the Concept of Economic Integration, No.17 Winter American Arab Affairs (1983-84), pp.45-49

Falk, R., "The Iran Hostage Crisis: Easy Answers and Hard Questions", 74 A.J.I.L. (1980), pp.411-417

Falk, R., "On the Quasi-Legislative Competence of the General Assembly", 60 A.J.I.L. (1966), p.782

Falk, R., "The Decline of Normative Restraint in International Relations", 10 Yale Journal of International Law (1985), p.263

Fawcett, J., "Intervention in International law. A Study of Some Recent Cases", Recueil des Cours II (1961), p.347

Feinberg, N., "Unilateral Withdrawal from an International Organisation", 39 B.Y.I.L. (1963), pp.189-219

Fenwick, G., "Neutrality on the Defensive", 34 A.J.I.L. (1940), p.697

Fenwick, G., "The Issues at Punta del Este: Non-Intervention v. Collective Security", 56 A.J.I.L. (1962), pp.469-474

Ferencz, B., "Defining Aggression: where it stands and where it's going", 66 A.J.I.L. (1972), p.491

Fifield, R., "The Five Principles of Peaceful Coexistence", 52 A.J.I.L. (1958), pp.504-10

Fitzmaurice, G., "The Law and Procedure of the International

Court of Justice: Treaty Interpretation and Certain Other Treaty Points", 28 B.Y.I.L. (1951), pp.1-28.

Fitzmaurice, G., "Law and Procedures of the International Court of Justice, 1951-4: Questions of Jurisdiction, Competence and Procedure", 34 B.Y.I.L. 4 (1958), pp.1-160

Fitzmaurice, G., "Do Treaties Need Ratification?", IILXV B.Y.I.L. (1934), pp.113-137

Fitzmaurice, G., "The General Principles of International Law Considered from the Standpoint of the Rule of Law", 92 Recueil des Cours (1952), II, pp.1-222.

Francisco, A., "The Rio de Janeiro Treaty: genesis, development and decline of a regional system of collective security", 17 Inter-American Law Review (1985), pp.1-42

Frank, T., "Who Killed Article 2(4)?", 65 A.J.I.L. (1970), pp.809-837

Garvey, J., "The UN Definition of 'Aggression'. Law and Illusion in the Context of Collective Security", 17 Va.J. Int.L. (1976-77), p.177.

Ghantus, E., "Economic Development and Integration", a paper presented at the Arab Countries Seminar, O.E.C.D., Beirut, 13-15 February, 1978

Gnichtel, "The Arab States Gulf Cooperation Council: Unified rules for trade and industry", 20 International Lawyer (1986), pp.309-318

Graham, R., "Reforming the International Trading System: The Tokyo Round Negotiations in the Final Stage", 12 Cornell Journal of International Law No. 1 (Winter 1979), pp.2-42

Gray, C., "The British Position in Regard to the Gulf Conflict", I.C.L.Q. (1988), pp.420-428

Green, R., "The East African Community: Death, Funeral, Inheritance", African Contemporary Record, Annual Survey and Documents, African Publishing Co. (1977-78), pp.A125-A137

Greenwood, C., "The Concept of War in Modern International Law", 36 I.C.L.Q. (1967), pp.283-306

Gross, L., "The Case Concerning United States Diplomatic and Consular Staff in Tehran: Phase of Provisional Measures", 74 A.J.I.L. (1980), p.395

Gulf Cooperation Council, "The International Dimension", Proceedings of One Day Conference held on 1 December 1983 by

the Arab-British Chamber of Commerce. An Arab-British Chamber of Commerce publication, Focus on the Gulf Cooperation Council (G.C.C.) (1983), pp.10-32

Hahn, H., "The Conception of an International Personality", 71 Harvard Law Review (1957-58), p.1045

Harris, W., "Legal Aspects of Indonesia's Withdrawal from the United Nations", 6-7 Winter Harvard Journal of International Law (1964-66), pp.172-188

Henkin, L., "The Persian/Arabian Gulf Tanker War: International law or international chaos", conference report sponsored by Council on Ocean Law and the Law of the Sea Institute, Carnegie Endowment for International Peace Building, 19 Ocean Development and International Law (1988), pp.299-321

Herdegen, M., "The Insolvency of International Organisations and the Legal Position of Creditors: some observations in the light of the International Tin Council crisis", N.I.L.R. (1988), pp.135-144

Hermann, A. (ed.), "ITC - Bringing the Law into Disrepute", Business Brief (May 1988), pp.2, 7-9.

Higgins, R., "The Advisory Opinion on Namibia: which UN resolutions are binding under Article 25 of the Charter?", 21 I.C.L.Q. (1972), pp.270-86

Higgins, R., "Conceptual Thinking about the Individual in International law", 14 Br.J. International Studies (1978), pp.1-19

Higgins, R., "Legal Response to the Iran Crisis", Proc.A.S.I.L. (1980), p.250

Higgins, R., "United Nations Peacekeeping: Political and Financial Problems", 21 The World Today (1965), pp.324-37

Higgins, R., "Contending Systems of World Public Order and International Law: An Overview", Atlantic Community Quarterly (Summer 1987), pp.145-159

Higgins, R., "The Legal Limits to the Use of Force by Sovereign States. United Nations Practice", 37 B.Y.I.L. (1961), pp.269-319

Higgins, R., "The United Nations and Law-Making: The Political Organs", 64 Proc. A.S.I.L. (1970), p.37

Jenkins, M., "Air Attacks on Neutral Shipping in the Persian Gulf: the legality of the Iraqi Exclusion Zone and Iranian reprisals", VIII Boston College International and Comparative

Law Review (1985), pp.517-549

Jenks, W., "The Conflict of Law-Making Treaties", 30 B.Y.I.L. (1953), pp.401-453

Jenks, W., "Some Constitutional Problems of International Organisations", 22 B.Y.I.L. (1945), pp.11-72

Jenks, W., "The Legal Personality of International Organisations", 22 B.Y.I.L. (1945), p.267

Jenks, W., "Some Problems of an International Civil Service", III Public Administrative Review (1943), p.93.

Jenks, W., "Some Legal Aspects of the Financing of International Institutions", 28 Transactions of the Grotius Society (1962), pp.87-111

Jenks, W., "The Present Status of the Bennett Ratification of International Labour Conventions", 15 Canadian Bar Review (1937), p.464

Jessup, P., "Parliamentary Diplomacy", 89 Recueil des Cours (1956), p.185

Johnson, D., "The Effect of Resolutions of the General Assembly of the United Nations", 22 B.Y.I.L. (1955-56), pp.97-122

Kaddori, F., "The Joint Arab Economic Action and the Role of the Council of Arab Economic Unity", XXXVI Studia Diplomatica (1983), No.1, pp.29-48

Kechichian, J., "The Gulf Cooperation: Search for Security", 7 Third World Quarterly, No.4 (October 1985), p.853

Kelsen, H., "Is the North Atlantic Treaty a Regional Arrangement?", 45 A.J.I.L. (1951), p.162.

Kerley, E., "Voting on Important Questions in the United Nations General Assembly", 53 A.J.I.L. (1959), p.324

Khadduri, M., "The Islamic System, its Competition and Co-existence with Modern Systems", 50-53 Proc. A.S.I.L. (1956-59), pp.49-52

Khawajkiah, H., "Remarks on the Gulf Economic Agreement", Economy and Business (March 1982) (Arabic), p.36

Khawajkiah, H., "Arab Economic Integration: Presence, Problems and Means for Development", Al-Feker Al-Arabi, Arab Development Institute, 2nd year, Issue No.9 (January 1986), pp.44-60.



Kleffans, N., "Regionalism and Political Pacts, with Special Reference to the North Atlantic Treaty", 43 A.J.I.L. (1949), pp.666-678

Komarnicki, T., "The Place of Neutrality in Modern Systems of International law", 80 Recueil des Cours I (1952), pp.399-502

Kulski, W., "The Soviet Interpretation of International Law", 49 A.J.I.L. (1955), p.518

Kunz, J., "Pluralism of Legal and Value Systems and International Law", 49 A.J.I.L. (1955), p.370

Kunz, J., "The Law of War", 50 A.J.I.L. (1956), pp.313-37

Lalive, J., "International Organisation and Neutrality", B.Y.I.L. (1947), pp.72-89

Lasswell, H., "Universality in Perspective", 50-53 Proc.A.S.I.L. (1956-59), pp.1-9

Lauterpacht, E., "The Legal Irrelevance of a State of War", 62 A.S.I.L. Proc. (1968), pp.58-68

Lauterpacht, E., "The Development of the law of International Organisations by the Decisions of the International Tribunals", 152 RdC (1976) Part IV, pp.377-478

Lauterpacht, H., "Sovereignty Over Submarine Area", 27 B.Y.I.L. (1950), pp.376-433

Lauterpacht, H., "Revolutionary Activities by Private Persons against Foreign States", 22 A.J.I.L. (1928), p.105

Lauterpacht, H., "The Subjects of the Law of Nations", 64 L.Q.R. (1948), pp.97-119

Lauterpacht, H., "Restrictive Interpretation and the Principle of Effective Interpretation of Treaties", 26 B.Y.I.L. (1949), p.48

Leckow, R., "The Iran-Iraq Conflict in the Gulf. The Law of War Zones", 37 I.C.L.Q. (1988), pp.629-644

Liang, Y., "Regional Arrangements and International Security", 31 Trans.Grotius Soc. (1946), pp.216-31

Liebesny, H., "International Relations of Arabia", Middle East Journal (1947), pp.148-168

Liebesny, H., "Administration and Legal Development in Arabia", Middle East Journal (1956), pp.33-42

Livingstone, F., "Withdrawal from the United Nations.

Indonesia", 14 I.C.L.Q. (1965), pp.637-646

Lobel, J., "The Rise and Decline of the Neutrality Act: sovereignty and Congressional war powers in United States foreign policy", 24-25 Harvard Int.L.J. (1983-84), pp.1-71

Looper B., "Federal State Clause in Multilateral Instruments", 32 B.Y.I.L. (1955-56), pp.162-203

Mahmassani, S., "The Principles of International Law in the Light of Islamic Doctrine", 117 Recueil des Cours (1966), pp.241-323

Makarim, E., "The Positive Impact of the Establishment of the Gulf Cooperation Council on the Issues of Private International Law of Member States", Seminar of Unification of Private International law Legislations of the Gulf and Arabian Peninsula, Centre of Gulf and Arabian Peninsula Studies, Kuwait (1987), pp.2-34 (Arabic)

Malanczuk, P., "Counter-measures and Self-defence as Circumstances Precluding Wrongfulness in International law Commission's Draft Articles on State Responsibility", in 43 Zeitschrift fur Ausländisches Öffentliches recht und Volkerrecht (1983), pp.703-802

Mann, A., "The Proper Law of Contracts Concluded by International Persons", 35 B.Y.I.L., p.34

Marston, G., "United Kingdom Materials on International Law", 50 B.Y.I.L. (1979), pp.290-391

Marston, G., "Armed Intervention in the 1956 Suez Canal Crisis: The Legal Advice Tendered to the British Government", 37 I.C.L.Q. (October 1988), p.733

McDougal, M. and Lasswell, H., "The Identification and Appraisal of Diverse Systems of Public Order", 53 A.J.I.L. (1959), pp.1-29

McFadden, E., "The Collapse of Tin: restructuring a failed commodity agreement", 80 A.J.I.L. (1986), p.811

McGlashan, M., "Winding Up Corporate Personality. The International Tin Council. Should a Trading Organisation Enjoy Immunity?" 46(2) C.L.J. (1987), pp.193-95

Mercia, P., "Safeguard Measures in GATT", 15 Journal of World Trade Law (1981), p.41

Meron, T., "Article 46 of the Vienna Convention on the Law of Treaties (Ultra Vires Treaties): Some Recent Cases", XLIX

B.Y.I.L. (1978), pp.175-199

Meron, T., "Staff of the United Nations Secretariat: Problems and Directions", 70 A.J.I.L. (1976), pp.659-693

Meron, T., "Budget Approval by the General Assembly of the United Nations. Duty or Discretion?", XLII B.Y.I.L. (1967), p.91

Morgenstern, F., "Judicial Practice and the Supremacy of International law", 27 B.Y.I.L. (1950), p.42

Mouskheli, M., "La Ligue des Etats Arabes. Commentaire du Pacte du 22 Mars 1945", Tome I R.G.D.I.P. (1946), pp.113-158

Moussa, A., "Rapports entre les Nations Unies et la Ligue des Etats Arabes", 29 Revue Egyptienne de Droit International (1973), p.67

Munch, F., "Comments on the 1968 Draft Convention on the law of Treaties. Non-binding Agreements", 29 Zeitschrift fur Auslandisches Offentliches Recht und Volkerrecht (1969), pp.1-11

Nascimento e Silva, "The 1956 Vienna Convention and the Treaty-Making Power of International Organisations", 29 G.Y.I.L. (1986), p.68

Northrop, F., "Contemporary Jurisprudence and International Law", 61 Yale L.J. (1952), p.623

Norton, P., "Between the Ideology and the Reality: the shadow of the law of neutrality", 17 Harvard Int. L.J. (Spring 1976), p.249

O'Connell, D., "The Problems of Australian Coastal Jurisdiction", 42 Australian Law Journal Reports (1968), p.39

Owles, D., "Whether the Tin Council Can be Wound Up", 137 N.L.J. (1987), p.206

Parry, C., "Defining Economic Coercion in International Law", 12 Texas International Law Journal (1977), pp.1-4

Parry, C., "The Treaty-Making Power of the United Nations", 26 B.Y.I.L. (1949), p.108

Preuss, L., "The Execution of Treaty Obligations through Internal Law. System of the United States and of some other Countries", A.S.I.L. Proc. (1951), pp.82-100

Price, R.M., "The Gulf Cooperation Council", Congressional Research Services. Library of Congress, No.85, 516F, Washington D.C. 29540 (1984)

Raafat, W., "The United Arab Emirates. A Study of the Development of the Provisional Constitution of 1971", 26 Egyptian Review of International Law (1971), pp.1-26

Rama-Montaldo, M., "International legal Personality and Implied Powers of International Organisations", 44 B.Y.I.L., pp.111-155

Ramond, H., "Tin's Losses, Lawyers' Gain. Collapse of the International Tin Council and succeeding litigation", Law Mag. (1 May 1987), pp.30-31

Reisman, M. "Critical Defence Zone and International Law: The Reagan Codicil", 76 A.J.I.L. (1982), p.589

Reisman, M., "Coercion and Self-Determination: Construing Charter Article 2(4)", 78 A.J.I.L. (1984), p.642

Reisman, M., "Old Wine in New Bottles: the Reagan and Brezhnev doctrines in contemporary international law and practice", Yale Journal of International Law (Winter 1988), pp.171-198

Rikhye, I.J., "Gulf Security, Question for Regional Cooperation", A Report of the International Peace Academy, Report No.22, New York (1985), pp.1-37

Riphagen, W., "National and International Regulation of International Movement and the Legal Position of Private Individuals", III Recueil des Cours (1970), pp.489-620

Rissi, "Il Consiglio di Cooperazione del Golfo: La CEE del Mondo Arabo?", 24 Rivista di Diritto Europeo (1984), pp.172-184

Rivlin, P., "The League of Nations as Confederacy", V, International Relations (1975-77), pp.1121-1138

Rizvi, H., "Gulf Cooperation Council", XXXV, Pakistan Horizon, No.2 (1982), The Pakistan Institute of International Affairs, pp.29-38

Roessler, F., "Law, De Facto Agreements and Declarations of Principle in International Economic Relations", in 21 G.Y.I.L. (1978), p.27

Ronzitti, N., "La Guerre de Golfe le deminage et la circulation des raviers", 33 Annuaire Francais de Droit International (1987), p.677

Rousseau, C., "Federation de Emirates du Golfe Persique", 76 Revue Generale de droit public (1972), pp.863-66

Rousseau, C., "Iraq et Iran. Evolution du different arme entre les deux etats du 1er aout au 31 decembre 1983", 88 R.G.D.I.P. (1984), pp.268-70

Rudzinski, A., "Election Procedure in the United Nations", 53 A.J.I.L. (1959), p.81

Russo, F., "Neutrality at Sea in Transition: State Practice in the Gulf War as Emerging International Customary Law", 19 Ocean Development and International Law (1988), pp.381-400

Sands, P., "The Tin Council Litigation in the English Courts", 34 N.I.L.R. (1987), p.367

Sauermilch, T., "Market Safeguards against Import Competition. Article XIX of the General Agreement on Tariffs and Trade", 14 Case W.Res. J. International Law (1982), p.83.

Sayigh, "Incorporation of Arab Economies", The Arab Future Journal No.6 (March 1979), p.24

Schachter, O., "The Legality of Pro-Democratic Invasion", 78 A.J.I.L. (1984), p.645

Schachter, O., "The Relation of Law, Politics and Action in the United Nations", 104 Recueil des Cours (1963), pp.169-249

Schachter, O., "The Development of International Law through the Legal Opinion of the United Nations Secretariat", 25 B.Y.I.L. (1948), p.91

Schachter, O., "The Twilight Existence of Non-Binding International Agreements", 71 A.J.I.L. (1977), pp.296-304

Schermers, G., "The Law as it Stands against Treaty Violations by the States", The Legal Issues of European Integration (1974), p.110

Schreuer, C., "The Interpretation of Treaties by Domestic Courts", XLV B.Y.I.L. (1971), p.255

Schwebel, S., "Aggression, Intervention and Self-Defence", Recueil des Cours II (1972), pp.411-498

Schwelb, E., "Withdrawal from the United Nations. The Indonesian Intermezzo", 61 A.J.I.L. (1967), pp.661-72

Seidl, M., "Escape Clauses in European Community Law, with special references to Capital Movement", 15 Common Market Law Review (1978), pp.283-308

Seidl-Hohenveldern, "The Legal Personality of International and Supranational Organisations", 21-22 Revue Egyptienne de Droit International (1965-66), pp.35-72

Seidl-Hohenveldern, "International Economic Law. General Course on Public International law", Recueil des Cours (1986) III, pp.21-210

Seyersted, F., "Objective International Personality of International Organisation", 34 Nor.T.I.R. (1964), pp.9-112

Seyersted, F., "International Personality of International Organisations: Do their capacities really depend upon their constitution?", I.J.I.L. (1964), pp.1-64

Seyersted, F., "Jurisdiction Over Organs and Officials of States, the Holy See and Intergovernmental Organisations (2)", I.C.L.Q. (April 1965), p.493

Seyersted, F., "Some Legal Problems of the UN Forces", 37 B.Y.I.L. (1961), p.351

Skubiszewski, K., "Enactment of Law by International Organisations", 41 B.Y.I.L. (1965-66), pp.198-274

Sloan, F., "The Binding Force of a 'Recommendation' of the General Assembly of the United Nations", 25 B.Y.I.L. 4 (1948), pp.1-33

Sohn, L., "The Authority of the United Nations to Establish and Maintain a Permanent United Nations Force", 52 A.J.I.L., pp.229-240

Sohn, B., "Expulsion or Forced Withdrawal from an International Organisation", 77 Harvard Law Review (1964), pp.1381-1425

Sorensen, M., "Federal State and the International Protection of Human Rights", 46 A.J.I.L. (1952), p.195

Steelman, J., "The Grievance Board in Saudi Arabia - An Overview of Royal Decree M151", Middle East Executive Reports, Vol.6, No.5 (May 1983), p.8

Sundberg-Weitman, B., "The Legal Enforcement of Obligations Incumbent upon Member States under Treaties of the European Communities", Scandinavian Studies in Law (1975), pp.261-292

Tammes, A., "Decisions of International Organs as a Source of International Law", 94 Recueil des Cours (1958) II, pp.265-364

"The Persian/Arabian Gulf Tanker War: International Law or International Chaos", Conference Report sponsored by the Council on Ocean Law and the Law of the Sea Institute, Carnegie Endowment for International Peace Building, in 19 Ocean Development and International Law (1988), p.310

Townsend, J., The Gulf Council for Cooperation: Is there an economic potential?, British Society for Middle East Studies, King's College, University of Cambridge (1983), pp.1-18

Unni, A., "Indonesia's Withdrawal from the United Nations", 4-5 I.J.I.L. (1964-65), pp.128-146

Vallat, F., "The Competence of the United Nations General Assembly", 96 Recueil des Cours (1959), pp.207-86

Vicuna, F., "Contemporary International Law in the Economic Integration of Latin America, Problems and Perspectives", Hague Academy of International Law Colloquium (1971), pp.102-186

Waldock, H., "General Course on Public International Law", 106 Recueil des Cours (1962), pp.451-517

Waldock, C., "The Regulation of the Use of Force by Individual States in International Law", Recueil des Cours II (1952), pp.451-517

Warbrick, C. and Cheyne, I., "The International Tin Council" 36 I.C.L.Q., pp.931-935

Wassermann, U., "Arms Supplies in the Gulf", 18 Journal of World Trade Law (1984), pp.455-56

Weber, A., "Safeguards in International Economic Organisations in Times of Crisis with special references to the European Economic Community", 27 G.Y.I.L. (1984), pp.212-232

Whitton, J., "La Neutralite et la Societe des Nations", Recueil des Cours, II (1972), pp.453-571

Whitton, J., "Propaganda and International Law", 72 Recueil des Cours (1948), pp.545-656

Williams, W., "Neutrality in Modern Armed Conflict: A Survey of the Developing Law", 90 Military Law Review (1980), pp.9-48

Williams, J., "The League of Nations and Unanimity", 19 A.J.I.L. (1925), p.475

Wilson, R., "Non-Belligerency in Relation to the Terminology of Neutrality", 35 A.J.I.L. (1941), p.121

Wisner, G., "The Procurement Policies of the Kingdom of Saudi Arabia", 21 Geo.Wash.J.Int. L. & Econ. (1987), pp.115-125

Wittingham, "G.C.C. Allows More Professionals Some Service Industries to Operate Regionally", 6 Middle East Executive

Reports, No.12 (1983), p.23

Wright, Q., "The Present Status of Neutrality", 34 A.J.I.L. (1940), pp.391-415

Wright, Q., "The Lend-Lease and International Law", A.J.I.L. (1941), pp.305-314

Zalzallah, A., "Arab Economic Integration and its Challenges", Arab Future Journal (21 November 1980), pp.6-21

#### 4. Newspapers, Magazines and Official Gazettes

Al-Anba, October 2, 1982, Kuwait (Arabic)

Al-Hawadith, June 15, 1984, pp.26-27, London

Al-Itihad newspaper, May 1, 1980, United Arab Emirates

Al-Nahar-al-Arabi wa al-Dowali, March 24-30, 1980

Al-Qabas, October 23, 1987, Kuwait and London

Al-Rai-al-Am, March 16, 1979

Al-Sharq-al-Awsat, April 27, 1985, London

Al-Ssiyasa Newspaper, January 28, 1981, Kuwait (Arabic)

Al-Tadaman magazine, June 16, 1984, London

Christian Monitor, January 22, 1979

Economy and Business, March 1982

FBIS-MEA-V, 82-176, September 10, 1982; 81-126, February 8, 1982, February 10, 1982; 85-84, May 1, 1985

G.C.C. Legal Gazette, issued quarterly by G.C.C. Secretariat. ed.1-25, December 1982-November 1988

G.C.C. Magazine, Cooperation, 1981-88

Kuwait Official Gazette (Kuwait Today), No.139, 1975, p.16, No.1238, 1979, p.5.

Middle East Economic Survey, (25-27) 1983

Middle East Executive Reports, Vol.6, No.5, May 1983, June 1987

New York Times, December 17, 1981, November 29, 1984



Qatar News Agency Bulletin, June 2, 1984

Qatar Official Gazette, No.50, 1979, p.101, No.11, 1981, p.107, No.8, 1982, p.128, No.3, 1983, p.128, No.4, 1984, p.185, No.8, 1984, p.212, No.8, 1984, p.214, No.11, 1984, p.216.

Saudi Economic Survey, April 6, 1987

Sunday Telegraph, January 23, 1987

U.A.E. Official Gazette, No.70, 1977, pp.41-45, No.58, 1978, pp.32-34, No.85 (1980), pp.43-45

UN Chronicle, Vol.21, 1984

Washington Post, March 31, 1982

Weekly Comp. of Press Doc., 197, January 23, 1980

**APPENDICES****THE FUNDAMENTAL STATUTE OF THE COOPERATION COUNCIL  
FOR THE ARAB STATES OF THE GULF**

The States of  
United Arab Emirates  
State of Bahrain  
Kingdom of Saudi Arabia  
Sultanate of Oman  
State of Qatar  
State of Kuwait

Being fully aware of their mutual bonds of special relations,  
common characteristics and similar systems founded on the  
Creed of Islam; and  
Based on their faith in the common destiny and destination  
that link their people; and  
In view of their desire to effect coordination, integration  
and interconnection between them in all fields; and  
Based on their conviction that coordination, cooperation and  
integration between them serve the higher goals of the Arab  
nations; and  
In order to strengthen their cooperation and reinforce their  
common links; and

In an endeavour to complement efforts already begun in all  
vital scopes that concern their peoples and realise their  
hopes for a better future on the path to unity of their  
States; and  
In conformity with the Charter of the League of Arab States  
which calls for the realisation of closer relations and  
stronger bonds; and  
In order to channel their efforts to reinforce and serve Arab  
and Islamic causes:

Have agreed as follows:

**ARTICLE ONE****Establishment of Council**

A council shall be established hereby to be named The  
Cooperation Council for the Arab States, of the Gulf  
hereinafter referred to as Cooperation Council.

**ARTICLE TWO****Headquarters**

The Cooperation Council shall have its headquarters in Riyadh,  
Saudi Arabia.

### **ARTICLE THREE**

#### Cooperation Council Meetings

The Council shall hold its meetings in the state where it has its headquarters, and may convene in any member state.

### **ARTICLE FOUR**

#### Objectives

The basic objectives of the Cooperation Council are:

1. To effect coordination, integration and interconnection between member states in all fields in order to achieve unity between them.
2. Deepen and strengthen relations, links and scopes of cooperation now prevailing between their peoples in various fields.
3. Formulate similar regulations in various fields including the following:
  - a. Economic and financial affairs.
  - b. Commerce, customs and communications
  - c. Education and culture
  - d. Social and health affairs
  - e. Information and tourism
  - f. Legislation and administrative affairs.
4. Stimulate scientific and technological progress in the fields of industry, mineralogy, agriculture, water and animal resources; the establishment of scientific research centres, implementation of common projects and encourage cooperation by the private sector for the good of their peoples.

### **ARTICLE FIVE**

#### Council Membership

The Cooperation Council shall be formed of the six states that participated in the Foreign Ministers' meeting held at Riyadh on 4 February 1981.

### **ARTICLE SIX**

#### Organisations of the Cooperation Council

The cooperation Council shall have the following main organisations:

1. Supreme Council to which shall be attached the Commission for Settlement of Disputes.

2. Ministerial Council.
3. Secretariat-General.

Each of these organisations may establish branch organs as necessary.

#### ARTICLE SEVEN

##### Supreme Council

1. The Supreme Council is the highest authority of the Cooperation Council and shall be formed of heads of member states. its presidency shall be rotatory based on the alphabetical order of the names of the member states.
2. The Supreme Council shall hold one regular session every year. Extraordinary sessions may be convened at the request of any member seconded by another member.
3. The Supreme Council shall hold its session in the territories of member states.
4. A Supreme Council's meeting shall be considered valid if attended by two thirds of the member states.

#### ARTICLE EIGHT

##### Supreme Council's Functions

The Supreme Council shall endeavour to achieve the objectives of the Cooperation Council, particularly as concerns the following:

1. Review matters of interest to the member states.
2. Lay down the higher policy of the Cooperation Council and the basic line it should follow.
3. Review the recommendations, reports, studies and common projects submitted by the Ministerial Council for approval.
4. Review reports and studies which the Secretary-General is charged to prepare.
5. Approve the bases for dealing with other states and international organisations.
6. Approve the rules of procedures of the Commission for Settlement of Disputes and nominate its members.
7. Appoint the Secretary-General.

8. Amend the Charter of the Cooperation Council.
9. approve the Council's Internal Rules.
10. Approve the budget of the Secretariat-General.

#### ARTICLE NINE

##### Voting in Supreme Council

1. Each member of the Supreme Council shall have one vote.
2. Resolutions of the Supreme Council in substantive matters shall be carried by unanimous approval of the member states participating in the voting, while resolutions on procedural matters shall be carried by majority vote.

#### ARTICLE TEN

##### Commission for Settlement of Disputes

1. The Cooperation Council shall have a commission called "Commission for Settlement of Disputes" and shall be attached to the Supreme Council.
2. The Supreme Council shall form the Commission for every case separately based on the nature of the dispute.
3. If a dispute arises over interpretation or implementation of the Charter and such dispute is not resolved within the Ministerial Council or the Supreme Council, the Supreme Council may refer such dispute to the Commission for Settlement of Disputes.
4. The Commission shall submit its recommendations or opinion, as applicable, to the Supreme Council for appropriate action.

#### ARTICLE ELEVEN

##### Ministerial Council

1. The Ministerial Council shall be formed of the Foreign Ministers of the member states or other delegated Ministers. The Council's presidency shall rotate among members every three months by alphabetical order of the states.
2. The Ministerial Council shall convene every three months and may hold extraordinary sessions at the invitation of any member seconded by another member.

3. The Ministerial Council shall decide the venue of its next session.
4. A Council's meeting shall be deemed valid if attended by two thirds of the member states.

## ARTICLE TWELVE

### Functions of the Ministerial Council

The Ministerial Council's functions shall include the following:

1. Propose policies, prepare recommendations, studies and projects aimed at developing cooperation and coordination between member states in the various fields and adopt required resolutions or recommendations concerning thereof.
2. Endeavour to encourage, develop and coordinate activities existing between member states in all fields. Resolutions adopted in such matters shall be referred to the Ministerial Council for further submission, with recommendations, to the Supreme Council for appropriate action.
3. Submit recommendations to the Ministers concerned to formulate policies whereby the Cooperation Council's resolutions may be put into action.
4. Encourage means of cooperation and coordination between the various private sector activities, develop existing cooperation between the member states' chambers of commerce and industry, and encourage the flow of working citizens of the member states among them.
5. Refer any of the various facets of cooperation to one or more technical or specialised committee for study and presentation of relevant proposals.
6. Review proposals related to amendments to this Charter and submit appropriate recommendations to the Supreme Council.
7. approve the Ministerial Council's Rules of Procedures as well as the Rules of Procedures of the Secretariat-General.
8. Appoint the Assistant Secretaries-General, as nominated by the Secretary-General, for a renewable period of three years.

9. Approve periodic reports as well as internal rules and regulations related to administrative and financial affairs proposed by the Secretary-General, and submit recommendations to the Supreme Council for approval of the budget of the Secretariat-General.
10. Make arrangements for the Supreme Council's meetings and prepare its agenda.
11. Review matters referred to it by the Supreme Council.

#### ARTICLE THIRTEEN

##### Voting at Ministerial Council

1. Every member of the Ministerial Council shall have one vote.
2. Resolutions of the Ministerial Council in substantive matters shall be carried by unanimous vote of the member states present and participating in the vote, and in procedural matters by majority vote.

#### ARTICLE FOURTEEN

##### Secretariat-General

1. The Secretariat-General shall be composed of a Secretary-General who shall be assisted by assistants and a number of staff as required.
2. The Supreme Council shall appoint the Secretary-General, who shall be a citizen of one of the Cooperation Council states, for a period of three years which may be renewed for one time only.
3. The Secretary-General shall nominate Assistant secretaries-General.
4. The secretary-General shall appoint the Secretariat General's staff from among the citizens of member states, and may not make exceptions without the approval of the Ministerial Council.
5. The secretary-General shall be directly responsible for the work of the Secretariat-General and the smooth flow of work in its various organisations. He shall represent the Cooperation Council with other parties within the powers vested in him.

**ARTICLE FIFTEEN****Functions of the Secretariat-General**

The Secretariat-General shall undertake the following functions:

1. Prepare studies elated to cooperation and coordination, and to integrated plans and programmes for member states' common action.
2. Prepare periodic reports on the Cooperation Council's work.
3. Follow up the execution by the member states of the resolutions and recommendations of the Supreme Council and Ministerial Council.
4. Prepare reports and studies ordered by the Supreme Council or Ministerial Council.
5. Prepare the draft administrative and financial regulations commensurate with the growth of the Cooperation Council and its expanding responsibilities.
6. Prepare the Cooperation Council's budget and closing accounts.
7. Make preparations for meetings and prepare agenda and draft resolutions for the Ministerial Council.
8. Recommend to the Chairman of the Ministerial Council the convocation of an extraordinary session of the Council whenever necessary.
9. Any other tasks entrusted to it by the Supreme Council or Ministerial Council.

**ARTICLE SIXTEEN**

The Secretary-General and the Assistant Secretaries-General and all the Secretariat General's staff shall carry out their duties in complete independence and for the common interest of the member states.

They shall refrain from any action or behaviour that is incompatible with their duties and from divulging the secrets of their jobs either during or after their tenure of office.

**ARTICLE SEVENTEEN****Privileges and Immunities**

1. The Cooperation Council and its organisations shall enjoy on the territories of all member states such legal



competence, privileges and immunities as require to realise their objectives and carry out their functions.

2. Representatives of the member states of the Council, and the Council's employees, shall enjoy such privileges and immunities as are specified in agreements to be concluded for this purpose between the member states. A special agreement shall organise the relation between the Council and the state in which it has its headquarters.
3. Until such time as the two agreements mentioned in item 2 above are prepared and put into effect, the representatives of the member states in the Cooperation Council and its staff shall enjoy the diplomatic privileges and immunities established for similar organisations.

#### **ARTICLE EIGHTEEN**

##### Budget of the Secretariat-General

The Secretariat-General shall have a budget to which the member states shall contribute equal amounts.

#### **ARTICLE NINETEEN**

##### Charter Implementation

1. This Charter shall go into effect as of the date it is signed by the heads of states of the six member states named in this Charter's preamble.
2. The original copy of this Charter shall be deposited with Saudi Arabia's Ministry of Foreign Affairs which shall act as custodian and shall deliver a true copy thereof to every member state, pending the establishment of the Secretariat-General at which time shall become depository.

#### **ARTICLE TWENTY**

##### Amendments to Charter

1. Any member state may request an amendment of this Charter.
2. Requests for Charter amendments shall be submitted to the Secretary-General who shall refer them to the member states at least four months prior to submission to the Ministerial Council.
3. An amendment shall become effective if unanimously approved by the Supreme Council.

**ARTICLE TWENTY-ONE**

Closing Provisions

No reservations may be voiced in respect of the provisions of this Charter.

**ARTICLE TWENTY-TWO**

The Secretariat General shall arrange to deposit and register copies of this Charter with the League of Arab States and the United Nations, by resolution of the Ministerial Council.

This Charter is signed on one copy in Arabic language at Abu Dhabi City, United Arab Emirates, on 21 Rjab 1401 corresponding to 25 May 1981.

United Arab Emirates  
State of Bahrain  
Kingdom of Saudi Arabia  
Sultanate of Oman  
State of Qatar  
State of Kuwait

**THE COOPERATION COUNCIL FOR THE ARAB  
STATES OF THE GULF RULES OF PROCEDURES  
OF THE SUPREME COUNCIL**

**ARTICLE ONE**

Definitions

These regulations shall be called Rules of Procedures of the Supreme Council of the Gulf Arab States Cooperation Council and shall encompass the rules that govern procedures for convening the Council and the exercise of its functions.

**ARTICLE TWO**

Membership

1. The Supreme Council shall be composed of the heads of state of the Cooperation Council member states. The Presidency shall be rotatory based on the alphabetical order of the states' names.
2. Each member state shall notify the Secretary-General of the names of the members of its delegations to the Council meeting, at least seven days prior to the date set for opening the meeting.

**ARTICLE THREE**

With due regard to the objectives of the Cooperation Council and the jurisdiction of the Supreme Council as specified in Articles 4 and 8 of the Charter, the Supreme Council may perform the following:

1. Form technical committees and select their members from member states' nominees who specialise in the committee's respective fields.
2. Call one or more of its members to a specific subject and submit a report thereon to be distributed to the members sufficiently in advance of the meeting set for discussing that subject.

**ARTICLE FOUR**

Convening the Supreme Council

- 1.a The Supreme Council shall hold one regular session every year, and may hold extraordinary sessions at the request of any one member seconded by another member.
- b The Supreme Council shall hold its sessions at the heads of state level.

- c The Supreme Council shall hold its sessions in the member states territories.
- d Prior to convening the Supreme Council, the Secretary-General shall hold a meeting to be attended by delegates of the member states for consultation on matters related to the session's agenda.
- 2.a The Secretary General shall set the opening date of the Council's session and suggest a closing date.
- b The Secretary-General shall issue the invitations for convening a regular session no less than thirty days in advance, and for convening an extraordinary session, within no more than five days.

#### ARTICLE FIVE

- 1. The Supreme Council shall at the start of every session decide whether the meetings shall be secret or public.
- 2. A meeting shall be considered valid if attended by heads of state of two thirds of the member states. its resolutions in substantive matters shall be carried by unanimous agreement of the member states present and participating in the vote, while resolutions in procedural matters shall be carried by majority vote. Any member abstaining shall document his being not bound by the resolution.

#### ARTICLE SIX

- 1. The Council shall hold an extraordinary session based on:
  - a - Resolution issued in a previous session.
  - b - Request of a member state seconded by another state. In this case, the Council shall convene within no more than five days from the date of issue of the invitation for holding the extraordinary session.
- 2. No matters may be placed on the extraordinary session's agenda other than those for which the session was convened to discuss.

#### ARTICLE SEVEN

- 1. Presidency of the Supreme Council shall, at the opening of each regular session, go to a head of state by rotation based on the alphabetical order of the member states' names. The President shall continue to exercise the functions of the Presidency until such functions are entrusted to his successor at the beginning of the next regular session.
- 2. The head of a state that is party to an outstanding

dispute may not preside over a session or meeting called to discuss the subject of the dispute. In such case, the council shall designate a temporary president.

3. The President shall declare the opening and closing of sessions and meetings, the suspension of meetings, and closures, and shall see that the Cooperation Council Charter and these Rules of Procedures are dully complied with. he shall give the floor to speakers based on the order of their requests, submit suggestions for acceptance by the membership, direct voting procedures, give final decisions on points of order, announce resolutions, follow up on works of committees, and inform the Council of all incoming correspondence.
4. The President may take part in deliberations and submit suggestions in the name of the state which he represents and may, for this purpose, assign a member of his state's delegation to act on his behalf in such instances.

#### ARTICLE EIGHT

##### Supreme Council Agenda

1. The Ministerial Council shall prepare a draft agenda for the Supreme Council, and such draft agenda shall be conveyed by the Secretary-General, together with explanatory notes and documentation, to the member states under cover of the letter of convocation at least thirty days before the date set for the meeting.
2. The draft agenda shall include the following:
  - a - A report by the Secretary-General on the Supreme Council's activities between the two sessions, and actions taken to carry out its resolutions.
  - b - Reports and matters received from the Ministerial Council and the Secretariat-General.
  - c - Matters which the Supreme Council had previously decided to include on the agenda.
  - d - Matters suggested by a member state for necessary review by the Supreme Council.
3. Every member state may request inclusion of additional items on the draft agenda provided such request is tabled at least fifteen days prior to the date set for opening the session. Such matters shall be listed in an additional agenda which shall be sent, along with relevant documentation, to the member state, at least five days before the date set for the session.
4. Any member state may request inclusion of extra items on the draft agenda as late as the date set for opening a session, if such matters are considered both important and urgent.

5. The Council shall approve its agenda at the start of every session.
6. The Council may, during the session, add new items that are considered urgent.
7. The ordinary session shall be adjourned after completion of discussions of the items placed on the agenda. The Supreme Council may decide to suspend the session's meetings before completion of discussions on agenda items, and resume such meetings at a later date.

#### ARTICLE NINE

##### Office and Committees of Supreme Council

1. The Supreme Council Office shall be formed, in every session, of the Council President, the Chairman of the Ministerial Council and the Secretary General. The Office shall be headed by the Supreme Council President.
2. The Office shall carry out the following functions:
  - a - Review the text of resolutions passed by the Supreme Council without affecting their contents.
  - b - Assist the President of the Supreme Council in directing the activities of the session in a general way.
  - c - Other tasks indicated in these Rules of Procedures or other matters entrusted to it by the Supreme Council.

#### ARTICLE TEN

1. The Council may, at the start of every session, create any committees that it deems necessary to allow adequate study of matters listed on the agenda. Delegates of member states shall take part in the activities of such committees.
2. Meetings of committees shall continue until they complete their task, with due regard for the date set for closing the session. The resolutions shall be carried by majority vote.
3. Every committee shall start its work by selecting a chairman from among its members. The rapporteur of the committee shall act for the chairman in directing the meeting in the absence of the chairman. The chairman, or the rapporteur in the chairman's absence, shall submit to the Council all the explanations that it requests on the committee's reports. The chairman may, with the approval of the session's President, take part in the discussions, without voting if he is not a member of the Supreme Council.
4. The Council may refer any of the matters included in the agenda to the committees, based on their specialisation

for study and reporting. Any one item may be referred to more than one committee.

5. Committees may neither discuss any matter not referred to them by the Council, nor adopt any recommendation which, if approved by the Council, may produce a financial obligation, before the committee receives a report from the Secretary-General regarding the financial and administrative results that may ensue from adopting the resolution.

#### **ARTICLE ELEVEN**

##### Progress of Deliberations and Suggestions

1. Every member state may participate in the deliberations and committees of the Supreme Council as stipulated in these Rules of Procedures.
2. The President shall direct discussion of the items as presented in order on the meeting's agenda and may, when necessary, call the Secretary-General or his representative to the meeting to explain any point as necessary.
3. The President shall give the floor to speakers in the order of their requests. He may give priority to the chairman or rapporteur of a committee to submit a report or explain specific points.
4. Every member may, during deliberations, raise points of order which the President shall resolve immediately and his decisions shall be valid unless contradicted by a majority of the Supreme Council member states.

#### **ARTICLE TWELVE**

1. Every member may, during the discussion of any subject, request suspension or adjournment of the meeting or discussion of the subject, or closure. Such requests may not be discussed but the President shall put them to the vote, if duly seconded, and decision shall be by majority of the member states.
2. With due regard to provisions of item 4 of the preceding Article, suggestions indicated in item 1 of this Article shall be given priority over all others based on the following order:
  - a - Suspend the meeting
  - b - Adjourn the meeting
  - c - Postpone discussion of the matter on hand.
  - d - Closure of discussion of the matter on hand.
3. Apart from suggestions concerning language or procedural matters, draft resolutions and substantive amendments

shall be submitted in writing to the Secretary-General or his representative who shall distribute them as soon as possible to the delegations. No draft resolution may be submitted for discussion or voting before the text thereof is distributed to all the delegations.

4. A proposal that has already been decided upon in the same session may not be reconsidered unless the council decides otherwise.

#### ARTICLE THIRTEEN

The President shall follow the activities of the committees, inform the Supreme Council of correspondence received, and formally announce before members all the resolutions and recommendations arrived at.

#### ARTICLE FOURTEEN

##### Voting

Every member state shall have one vote and no state may represent another state or vote for it.

#### ARTICLE FIFTEEN

1. Voting shall be by calling the names in the alphabetical order of the states' names, or by raising hands. Voting shall be secret if so requested by a member by decision of the President. The Supreme council may decide otherwise. The vote of every member shall be documented in the minutes of the meeting if voting is effected by calling the names. The minutes shall indicate the result of voting, if the vote is secret or by show of hands.
2. A member may abstain from a vote or express reservations over a procedural matter or part thereof, in which case the reservation shall be read at the time the resolution is announced and shall be duly documented in writing. members may present explanations about their stand in the voting after voting is completed.
3. Once the President announces that voting has started, no interruption may be made unless the matter relates to a point of order relevant to the vote.

#### ARTICLE SIXTEEN

1. If a member requests amendment of a proposal, voting on the amendment shall be carried out first. If there are more than one amendment, voting shall first be made on the amendment which in the President's opinion is farthest from the original proposal, then on the next farthest, and so on until voting is completed on all proposed amendments. If one or more such amendments is



passed, then voting shall be made on the original proposal as amended.

2. Any new proposal shall be deemed as an amendment to the original proposal if it merely entails an addition to, omission from or change to a part of the original proposal.

#### ARTICLE SEVENTEEN

1. The Supreme Council may create technical committees charged with giving advice on the design and execution of Supreme Council programmes in specific fields.
2. The Supreme Council shall appoint the members of the technical committees from specialists who are citizens of the member states.
3. The technical committees shall meet at the invitation of the Secretary-General and shall lay down their work plans in consultation with him.
4. The Secretary-General shall prepare the committee's agendas after consultation with the chairman of the committee concerned.

#### ARTICLE EIGHTEEN

##### Amendment of Rules of Procedures

1. Any member state may propose amendments to the Rules of Procedures.
2. No proposed amendments may be considered unless the relevant proposal is circulated to the member states by the Secretariat-General prior to tabling with the Ministerial Council by at least thirty days.
3. No basic changes may be introduced to the proposed amendment mentioned in the preceding item unless the text of such proposed changes have been circulated to the member states by the Secretariat-General before tabling with the Ministerial Council by at least fifteen days.
4. Except for items based on the provisions of the Charter, and with due regard to preceding items, these Rules of Procedures shall be amended by a resolution of the Supreme Council approved by majority of the members.

#### ARTICLE NINETEEN

##### Effective Date

These Rules of Procedures shall go into effect as of the date of approval by the Supreme Council and may not be amended except in accordance with procedures set forth in the

preceding Article.

These Rules of Procedures are signed at Abu Dhabi City, United Arab Emirates on 21 Rajab 1401 AH corresponding to 25 May 1981 AD.

United Arab Emirates  
State of Bahrain  
Kingdom of Saudi Arabia  
Sultanate of Oman  
State of Qatar  
State of Kuwait

**COOPERATION COUNCIL  
FOR THE ARAB STATES OF THE GULF  
RULES OF PROCEDURES OF THE MINISTERIAL COUNCIL**

**ARTICLE ONE**

1. These regulations shall be called Rules of Procedures of the Ministerial Council of the Gulf Arab States Cooperation Council and shall encompass rules governing Council meetings and exercise of its functions.
2. The following terms as used in these shall have the meanings indicated opposite each:

Cooperation Council	The Gulf Arab States Cooperation Council
Charter	Statute establishing the Gulf Arab States Cooperation Council
Supreme Council	The highest body of the Gulf Arab States Cooperation Council
Council	Ministerial Council of the Gulf Arab States Cooperation Council
Secretary-General	The Secretary-General of the Gulf Arab States Cooperation Council
Chairman	The Chairman of the Ministerial Council of the Gulf Arab States Cooperation Council

**ARTICLE TWO**

State Representation

1. The Ministerial Council shall be composed of the member states' Foreign Ministers or other delegated Ministers.
2. Every member state shall, at least one week prior the convening of every Ministerial Council's ordinary session, convey to the Secretary-General a list of the names of the members of its delegation. For extraordinary sessions, the list shall be submitted three days before the date set for the session.

### ARTICLE THREE

#### Convening the Sessions

1. The Ministerial Council shall decide in every meeting the venue of its next regular session.
2. The Secretary-General shall decide, in consultation with the member states, the venues of extraordinary sessions.
3. If circumstances should arise that preclude the convening of an ordinary or extraordinary session at the place set for it, the secretary-General shall so inform the member states and shall set another place for the meeting after consultation with them.

### ARTICLE FOUR

#### Ordinary Sessions

1. The Council shall convene in ordinary session once every three months.
2. The Secretary-General shall set the date for opening the session and suggest the date of its closing.
3. The Secretary-General shall address the invitation to attend a Council ordinary session at least fifteen days in advance, and shall indicate therein the date and place set for the meeting, as well as attach thereto the session's agenda, explanatory notes and other documentation.

### ARTICLE FIVE

#### Extraordinary Sessions

1. The Council shall hold an extraordinary session at the request of any member state seconded by another member.
2. The secretary-General shall address the invitation to the Council's extraordinary session and attach a memorandum containing the request of the member which asked for the meeting.
3. The Secretary-General shall specify in the invitation the place, date and agenda of the session.

### ARTICLE SIX

1. The Council may itself decide to hold extraordinary sessions, in which case it shall specify the agenda, time and place of the session.
2. The secretary-General shall send out to the member states the invitation to attend the Council's extraordinary meeting, along with a memorandum containing the council's

decision to this effect, and specifying the date and agenda of the session.

3. The extraordinary session shall be convened within a maximum of five days from the date of issue of the invitation.

#### ARTICLE SEVEN

No matters, other than those for which the extraordinary session was called, may be included on the agenda.

#### ARTICLE EIGHT

##### Agenda

The Secretary-General shall prepare a draft agenda for a Council's ordinary session and such draft shall include the following:

1. The Secretary-General's Report on the Cooperation Council's work.
2. Matters referred to him by the Supreme Council.
3. Matters which the Council had previously decided to include on the agenda.
4. Matters which the Secretary-General believes should be reviewed by the Council.
5. Matters suggested by a member state.

#### ARTICLE NINE

Member states shall convey to the Secretary-General their suggestions on matters they wish to include on the Council's agenda at least thirty days prior to the date of the Council's ordinary session.

#### ARTICLE TEN

Member States or the Secretary-General may request the inclusion of additional items on the Council's draft agenda at least ten days prior to the date set for opening an ordinary session. Such items shall be listed on an additional schedule which shall be conveyed along with relevant documentation to the member states at least five days prior to the date of the session.

#### ARTICLE ELEVEN

Member states or the Secretary-General may request inclusion of additional items on the Council ordinary session's agenda up to date set for opening the session if such matters are

both important and urgent.

#### **ARTICLE TWELVE**

The Council shall approve its agenda at the beginning of every session.

#### **ARTICLE THIRTEEN**

A Council's ordinary session shall end upon completion of discussion of matters listed on the agenda. The Council may, when necessary, decide to suspend its meetings temporarily before discussion of agenda items is completed and resume its meetings at a later date.

#### **ARTICLE FOURTEEN**

The Council may defer discussion of certain items on its agenda and decide to include them with the others, when necessary, on the agenda of a subsequent session.

#### **ARTICLE FIFTEEN**

##### Council's Chairmanship

1. Chairmanship of the council shall be entrusted every six months to a head of delegation on rotation based on the alphabetical order of the member states' names and, if necessary, to the next in order.
2. The Chairman shall exercise his functions until he passes his post on to his successor.
3. The Chairman shall, as well, preside over the extraordinary sessions.
4. The representative of a state that is party to an outstanding dispute may not chair the session or meeting assigned for discussing such dispute, in which case the Council shall name a temporary Chairman.

#### **ARTICLE SIXTEEN**

1. The Chairman shall announce the opening and closing of sessions and meetings, the suspension of meetings and closure of discussions, and shall see that the provisions of the Charter and these Rules of Procedures are duly respected.
2. The Chairman may participate in the Council's deliberations and vote in the name of the state he represents. He may, for such purpose, delegate another member of his delegation to act on his behalf.

## ARTICLE SEVENTEEN

### Council's Office

1. The Council Office shall include the Chairman, secretary-General and heads of working subcommittees which the Council decides to form.
2. The Council Chairman shall preside over the Office.

## ARTICLE EIGHTEEN

The Office shall carry out the following tasks:

1. Help the Chairman direct the session's proceedings.
2. Coordinate the work of the Council and the subcommittees.
3. Supervise the drafting of the resolutions passed by the Council.
4. Other tasks indicated in these Rules of Procedures or entrusted to it by the Council.

## ARTICLE NINETEEN

### Subcommittees

1. The Council shall utilise preparatory and working committees to accomplish its tasks.
2. The Secretariat-General shall participate in the work of the committees.

## ARTICLE TWENTY

1. The Secretary-General may, in consultation with the Chairman of the session, form preparatory committees charged with the study of matters listed on the agenda.
2. Preparatory committees shall be composed of delegates of member states and may, when necessary, seek the help of such experts as they may deem fit.
3. Each preparatory committee shall meet at least three days prior to the opening of the session by invitation of the Secretary-General. The work of the committee shall end at the close of the session.

## ARTICLE TWENTY-ONE

1. The Council may, at the start of each session, form working committees and charge them with specific tasks.
2. The work of the working committees shall continue until the date set for closing the session.

**ARTICLE TWENTY-TWO**

1. Each subcommittee shall start its work by electing a chairman and a rapporteur from among its members. When the chairman is absent, the rapporteur shall act for him in directing the meetings.
2. The chairman or rapporteur of each subcommittee shall submit a report on its work to the Council.
3. The chairman or rapporteur of a subcommittee shall present to the Council all explanations required about the contents of the subcommittee's report.

**ARTICLE TWENTY-THREE**

1. The Secretariat-General shall organise the technical Secretariat subcommittees of the Council.
2. The Secretariat-General shall prepare minutes of meetings documenting discussions, resolutions and recommendations. Such minutes shall be prepared for all meetings of the Council and its subcommittees.
3. The Secretary-General shall supervise the organisation of the Council's relations with the information media.
4. The Secretary-General shall convey the Council's resolutions and recommendations and relevant documentation to the member states within fifteen days after the end of the session.

**ARTICLE TWENTY-FOUR**

The Council's Secretariat and subcommittees shall receive and distribute documents, reports, resolutions and recommendations of the council and its subcommittees and shall draw up and distribute minutes and daily bulletins, as well as safeguard the documents and carry out any other tasks required by the Council's work.

**ARTICLE TWENTY-FIVE**

Texts of resolutions or recommendations made by the Council may not be announced or published except by decision of the Council.

**ARTICLE TWENTY-SIX**Deliberations

Every member state may take part in the deliberations of the Council and its subcommittees in the manner prescribed in these Rules of Procedures.



**ARTICLE TWENTY-SEVEN**

1. The Chairman shall direct deliberations on matters in hand in the order they are listed on the Council's agenda.
2. The chairman shall give the floor to speakers in the order of their requests. Priority may be given to the chairman or rapporteur of a certain committee to present its report or explain certain points therein. The floor shall be given to the Secretary-General or his representative whenever it is necessary.
3. The Council Chairman may, during deliberations, read the list of the names of members who requested the floor, and with the approval of the council, close the list. The only exception is exercise of the right of reply.

**ARTICLE TWENTY-EIGHT**

The Council shall decide whether the meetings shall be open or secret.

**ARTICLE TWENTY-NINE**

1. Every member may raise a point of order which the chairman shall resolve immediately and his decision shall be final unless opposed by majority of the member states.
2. A member who raises a point of order may not go beyond the point he raised.

**ARTICLE THIRTY**

1. Every member may, during discussion of any matter, suggest the suspension or adjournment of the meeting, or discussion of the matter on hand or closure. The Chairman shall in such cases submit the suggestion to the vote directly, if the suggestion is seconded by another member, and it requires the approval of the majority of the member states to pass.
2. With due regard to the provisions of the preceding item, suggestions indicated therein shall be submitted to the vote in the following order.
  - a. Suspension of meeting
  - b. Adjournment of meeting
  - c. Postponement of discussion of the matter in hand
  - d. Closure of discussion of the matter in hand.

**ARTICLE THIRTY-ONE**

1. Member states may suggest draft resolutions or

recommendations, or amendments thereto, and may withdraw such suggestions unless they are voted on.

2. Drafts indicated in the preceding item shall be submitted in writing to the Secretariat-General for distribution to delegations as soon as possible.
3. Except for suggestions concerning language or procedures, drafts indicated in this Article may not be discussed or voted upon before their texts are distributed to all delegations.
4. A suggestion already decided upon in the same session may not be reconsidered unless the Council decided otherwise.

#### ARTICLE THIRTY-TWO

The Chairman shall follow the work of the Committees, inform the Council of incoming correspondence, and formally announce before members the resolutions and recommendations that have been arrived at.

#### ARTICLE THIRTY-THREE

##### Voting

1. The Council shall pass its resolutions with the unanimous approval of the member states present and participating in the vote, while decisions in procedural matters shall be passed by a majority vote. The member abstaining from the vote shall document his nonsubscription to the decision.
2. If members of the Council should disagree on the definition of the matter being put to the vote, the matter shall be settled by majority vote of the member states present.

#### ARTICLE THIRTY-FOUR

1. Every member state shall have one vote.
2. No member state may represent another state or vote for it.

#### ARTICLE THIRTY-FIVE

1. Voting shall be by calling the names in the alphabetical order of the states' names, or by raising hands.
2. Voting shall be by secret ballot if so requested by a member or by decision of the Chairman. The Council, however, may decide otherwise.

3. The vote of every member shall be documented in the minutes of the meeting if voting is effected by calling the names. The minutes shall indicate the result of voting if the vote is secret or by show of hands.
4. Member states may explain their positions after the vote and such explanation shall be written down in the minutes of the meeting.
5. Once the Chairman announces that voting has started, no interruption may be made except for a point of order relating to the vote or its postponement in accordance with the provisions of this Article and the next Article.

#### ARTICLE THIRTY-SIX

1. The Council Chairman with the help of the Secretary-General shall endeavour to reconcile the stands of member states on disputed matters and obtain their agreement to a draft resolution before submitting it to the vote.
2. The Council Chairman, the Secretary-General or any member state may request postponement of a vote for a specific period during which further negotiations may be made concerning the item submitted to the vote.

#### ARTICLE THIRTY-SEVEN

1. If a member requests amendment of a proposal, voting on the amendment shall be carried out first. If there are more than one amendment, voting shall first be made on the amendment which the Chairman considers to be farthest from the original proposal, then on the next farthest, and so on until all proposed amendments have been voted upon. If one or more amendments are passed, then voting shall be made on the original proposal as amended.
2. A new proposal shall be deemed as an amendment to the original proposal if it merely entails an addition to, omission from, or change to a part of the original proposal.

#### ARTICLE THIRTY-EIGHT

1. Any member state or the Secretary-General may propose amending these Rules of Procedures.
2. No proposed amendment to these Rules of Procedures may be considered unless the relevant proposal is circulated to the member states by the Secretariat-General at least thirty days before submission to the Council.
3. No basic changes may be introduced to the proposed amendment mentioned in the preceding items unless the

texts of such proposed change have been circulated to the member states at least fifteen days prior to submission to the Council.

4. Except for items based on provisions of the Charter, and with due regard to preceding items, these Rules of Procedures shall be amended by a resolution of the Council approved by majority of its members.

#### ARTICLE THIRTY-NINE

##### Effective Date

These Rules of Procedures shall go into effect as of the date of approval by the Council and may not be amended except in accordance with procedures set forth in the preceding article.

Thus, these Rules of Procedures are signed at Abu Dhabi City, United Arab Emirates, on 21 Rajab 1401 AH corresponding to 25 May 1981 AD.

United Arab Emirates  
State of Bahrain  
Kingdom of Saudi Arabia  
Sultanate of Oman  
State of Qatar  
State of Kuwait

THE UNIFIED ECONOMIC AGREEMENT AMONG THE  
COUNTRIES OF THE GULF COOPERATION COUNCIL

With the help of the God Almighty;

The Governments of the Member States of the Gulf Cooperation Council;

In accordance with the Charter thereof, which calls for closer reapproachment and stronger links; and

Desiring to promote, expand and enhance their economic ties on solid foundations, in the best interest of their people; and,

Intending to coordinate and unify their economic, financial and monetary policies, as well as their commercial and industrial legislation, and customs regulations; Have agreed as follows:

**TRADE EXCHANGE**

Article 1

1. The Member States shall permit the importation and exportation of agricultural, animal, industrial and natural resource products that are of national origin. Also, they shall permit exportation thereof to other member states.
2. All agricultural, animal, industrial and natural resource products that are of national origin shall receive the same treatment as national products.

Article 2

1. All agricultural, animal, industrial and natural resource products that are of national origin shall be exempted from customs duties and other charges having equivalent effect.
2. Fees charged for specific services such as demurrage, storage, transportation, haulage or unloading, shall not be considered as customs duties when they are levied on domestic products.

Article 3

1. For products of national origin to qualify as national products, the value added ensuring from their production in member states shall not be less than 40% of their final value. In addition, the share of the member states' citizens in the ownership of the producing plant shall not be less than 51%
2. Every item to be exempted hereby shall be accompanied by

a certificate of origin duly authenticated by the government agency concerned.

#### Article 4

1. Member states shall establish a uniform minimum customs tariff applicable to the products of the third countries.
2. One of the objectives of the uniform customs tariff shall be the protection of national products from foreign competition.
3. The uniform customs tariff shall be applied gradually within five years from the date of entry into force of this agreement. Arrangements for the gradual application shall be agreed upon within one year from the said date.

#### Article 5

Member states shall grant all facilities for the transit of any member states' goods to other member states, exempting them from any duties and taxes, whatsoever, without prejudice to the provisions of Paragraph 2 of Article 2.

#### Article 6

Transit shall be denied to any goods that are barred from entry into the territory of a member state by its local regulations. Lists of such goods shall be exchanged between the customs authorities of the member states.

#### Article 7

Member states shall coordinate their commercial policies and relations with other states and regional economic groupings and blocs with a view toward creating balanced trade relations and favourable circumstances and terms of trade therewith. To achieve this goal, the member states shall make the following arrangements.

1. Coordinate import/export policies and regulations.
2. coordinate policies for building up strategic food stocks.
3. Conclude economic agreements collectively when and if the common benefit of the member states is realised.
4. Work for the creation of a collective negotiating force to strengthen their negotiating position vis-a-vis foreign parties in the field of importation of basic needs and exportation of major products.

**MOVEMENT OF CAPITAL, CITIZENS AND  
EXERCISE OF ECONOMIC ACTIVITIES**

**Article 8**

The member states shall agree on the executive rules which would ensure that each member state shall grant the citizens of all other member states the same treatment granted to its own citizens without any discrimination or differentiation in the following fields:

1. Freedom of movement, work and residence.
2. Right of ownership, inheritance and bequest.
3. Freedom of exercising economic activity.
4. Free movement of capital.

**Article 9**

The member states shall encourage their respective private sectors to establish joint ventures in order to link their citizens' economic interest in the various spheres.

**COORDINATION OF DEVELOPMENT**

**Article 10**

The member states shall endeavour to achieve coordination and harmony among their respective development plans with a view to achieving economic integration between them.

**Article 11**

1. The member states shall endeavour to coordinate their policies with regard to all aspects of the oil industry including extraction, refining, marketing, processing, pricing, exploitation of natural gas, and development of energy sources.
2. The member states shall endeavour to formulate unified oil policies and adopt common positions vis-a-vis the outside world, and in the international and specialised organisations.

**Article 12**

To achieve the objectives specified in this Agreement, the member states shall perform the following:

1. Coordinate industrial activities, formulate policies and mechanisms aiming at the industrial development and the

diversification of their productive bases on an integrated basis.

2. Standardise their industrial legislation and regulations and guide their local production units to meet their needs.
3. Allocate industries between member states according to relative advantages and economic feasibility, and encourage the establishment of basic as well as ancillary industries.

#### Article 13

Within the framework of their coordinating activities, the member states shall pay special attention to the establishment of joint ventures in the fields of industry, agriculture and services, and shall support them with public, private or mixed capital in order to achieve economic integration, productive interface, and common development on sound economic basis.

### **TECHNICAL COOPERATION**

#### Article 14

The member states shall collaborate in finding spheres for common technical cooperation aimed at building a genuine local base founded on encouragement and support of research and applied sciences and technology as well as adapting imported technology to meet the region's progress and development objectives.

#### Article 15

Member states shall set rules, make arrangements and lay down terms for the transfer of technology, selecting the most suitable or introducing such changes thereto as would serve their various needs. member states shall also, whenever feasible, conclude uniform agreements with foreign governments and scientific or commercial firms to achieve these objectives.

#### Article 16

The member states shall formulate policies and implement coordinate programmes for technical, vocational and professional training and rehabilitation at all levels and stages. They shall also up-grade educational curricula at all levels to link education and technology with the development needs of the member states.

#### Article 17



The member states shall coordinate their manpower policies and shall formulate uniform and standardised criteria and classifications for the various categories of occupations and crafts in different sectors in order to avoid harmful competition among themselves and to optimise the utilisation of available human resources.

## **TRANSPORT AND COMMUNICATION**

### **Article 18**

The member states shall accord means for passenger and cargo transportation belonging to citizens of the other member states, when transiting or entering its territory, the same treatment they accord to the means of passenger and cargo transportation belonging to their own citizens, including exemption from all duties and taxes, whatsoever. However, local transportations are excluded.

### **Article 19**

1. The member states shall cooperate in the fields of land and sea transportation and communications. They shall also coordinate and establish infrastructure projects such as seaports, airports, water and power stations, roads, with a view to realising common economic development and linking their economic activities with each other.
2. The contracting states shall coordinate aviation and air transport policies among them and promote all spheres of joint activities at various levels.

### **Article 20**

The member states shall allow steamers, ships and boats and their cargoes, belonging to any member state to freely use the various ports facilities and grant them the same treatment and privileges granted to their own in docking or calling at the ports as concerns fees, pilotage, and docking services, haulage, loading and unloading, maintenance, repair, storage of goods and other similar services.

## **FINANCIAL AND MONETARY COOPERATION**

### **Article 21**

The member states shall seek to unify investment in order to achieve a common investment policy aimed at directing their internal and external investments towards serving their interest, and realising their peoples' aspirations in development and progress.

Article 22

The member states shall seek to coordinate their financial, monetary and banking policies and enhance cooperation between monetary agencies and central banks, including an endeavour to establish a common currency in order to further their desired economic integration.

Article 23

Member states shall seek to coordinate their external policies in the sphere of international and regional development aid.

**CLOSING PROVISIONS**Article 24

In the execution of the Agreement and determination of the procedures resulting therefrom, consideration shall be given to differences in the levels of development between the member states and the local development priorities of each. Any member state may be temporarily exempted from applying such provisions of this Agreement as may be necessitated by temporary local situations in that state or specific circumstances faced by it. Such exemption shall be for a specified period and shall be decided by the Supreme Council of the Gulf Arab States Cooperation Council.

Article 25

No member state shall give to any non-member state any preferential privilege exceeding that given herein.

Article 26

1. This Agreement shall enter into force four months after its approval by the Supreme Council.
2. This Agreement may be amended by consent from the Supreme Council.

Article 27

In case of conflict with local laws and regulations of member states, execution of the provisions of this Agreement shall prevail.

Article 28

Provisions herein shall supersede any similar provisions contained in bilateral agreements.

Drawn up at Riyadh on 6 Sha'ban 1401 Corresponding to 8 June 1981.

**THE COOPERATION COUNCIL FOR THE ARAB STATES OF THE GULF  
RULES OF PROCEDURES  
COMMISSION FOR SETTLEMENT OF DISPUTES**

**PREAMBLE**

In accordance with the provisions of Article Six of the Charter of the Gulf Arab States Cooperation Council; and In execution of the provision of Article Ten of the Cooperation Council Charter,  
A Commission for Settlement of Disputes, hereinafter referred to as The Commission shall be set up and its jurisdiction and rules for its proceedings shall be as follows:

**ARTICLE ONE**

Terminology

Terms used in these Rules of Procedures shall have the same meanings established in the Charter of the Gulf Arab States Cooperation Council.

**ARTICLE TWO**

Commission's Seat and Meetings

The Commission shall have its headquarters at Riyadh, Saudi Arabia, and shall hold its meetings on the territory of the state where its headquarters is located, but may hold its meetings elsewhere, when necessary.

**ARTICLE THREE**

Jurisdiction

The Commission shall, once installed, have jurisdiction to consider the following matters referred to it by the Supreme Council:

1. Disputes between member states.
2. Differences of opinion as to the interpretation or execution of the Cooperation Council Charter.

**ARTICLE FOUR**

Commission's Membership

1. The Commission shall be formed of an appropriate number of citizens of member states not involved in the dispute as the Council selects in every case separately depending on the nature of the dispute, provided that the number shall not be less than three members.
2. The Commission may seek the advice of any such experts as it may deem necessary.
3. Unless the Supreme Council decides otherwise, the

Commission's task shall end with the submission of its recommendations or opinion to the Supreme Council which, after the conclusion of the Commission's task, may summon it at any time to explain or elaborate on its recommendations or opinions.

## **ARTICLE FIVE**

### Meetings and Internal Procedures

1. The Commission's meeting shall be valid if attended by all members.
2. The Secretariat-General of the Cooperation Council shall prepare procedures required to conduct the Commission's affairs, and such procedures shall go into effect as of the date of approval by the Ministerial Council.
3. Each party to the dispute shall send representatives to the Commission who shall be entitled to follow proceedings and present their defence.

## **ARTICLE SIX**

### Chairmanship

The Commission shall select a chairman from among its members.

## **ARTICLE SEVEN**

### Voting

Every member of the Commission shall have one vote, and shall issue its recommendations or opinions on matters referred to it by majority of the members. In case of a tie, the party with the Chairman's vote shall prevail.

## **ARTICLE EIGHT**

### Commission's Secretariat

1. The Secretary-General shall appoint a recorder for the Commission, and a sufficient number of employees to carry out secretarial work.
2. The Supreme Council may create an independent organisation to carry out the Commission's secretarial work when the need arises.

## **ARTICLE NINE**

### Recommendations and Opinions

1. The Commission shall issue its recommendations or opinions in accordance with the Cooperation Council's Charter, international laws and practices, and the principles of Islamic Shari'ah. The Commission shall submit its findings on the case in hand to the Supreme Council for appropriate action.

2. The Commission may, while considering any dispute referred to it and pending the issue of its final recommendations thereon, ask the Supreme Council to take interim action called for by necessity or circumstances.
3. The Commission's recommendations or opinions shall spell out the reasons on which they were based and shall be signed by the chairman and recorder.
4. If an opinion is passed wholly or partially by unanimous vote of the members, the dissenting members shall be entitled to document their dissenting opinion.

#### ARTICLE TEN

##### Immunities and Privileges

The Commission and its members shall enjoy such immunities and privileges in the territories of the member states as are required to realise its objectives and in accordance with Article Seventeen of the Cooperation Council Charter.

#### ARTICLE ELEVEN

##### Commission's Budget

The Commission's budget shall be considered part of the Secretariat General's budget. Remunerations of the Commission's members shall be established by the Supreme Council.

#### ARTICLE TWELVE

##### Amendments

1. Any member state may request for amendments of these Rules of Procedures.
2. Requests for amendments shall be submitted to the Secretary-General who shall relay them to the member states by at least four months before submission to the Ministerial Council.
3. An amendment shall be effective if approved unanimously by the Supreme Council.

#### ARTICLE THIRTEEN

##### Effective Date

These Rules of Procedures shall go into effect as of the date of approval by the Supreme Council.

These Rules of Procedures were signed at Abu Dhabi City,

United Arab Emirates on 21 Rajab 1401 AH corresponding to 25  
May 1981 AD.

United Arab Emirates,  
State of Bahrain  
Kingdom of Saudi Arabia  
Sultanate of Oman  
State of Qatar  
State of Kuwait

**FINAL DECLARATION OF THE FIRST REGULAR SESSION  
OF THE SUPREME COUNCIL OF THE COOPERATION  
COUNCIL FOR THE ARAB STATES OF THE GULF**

With the help of God Almighty and in response to the invitation of His Highness the President of the United Arab Emirates, a meeting convened in Abu Dhabi in the period between 21 to 22 Rajab 1401 Hirjiah corresponding to 25-26 May 1982 encompassing Their Majesties and Highnesses:

His Highness al-Shaikh Zayed bin Sultan Al Nahyan the President of the United Arab Emirates;  
His Highness al-Shaikh Issa bin Selman Al Khalifah the Ruler of the State of Bahrain;  
His Majesty King Khaled bin Abd al-Aziz Al Saud the King of the Kingdom of Saudi Arabia;  
His Majesty Sultan Qaboos bin Said the Sultan of Oman;  
His Highness al-Shaikh Khalifah bin Hamad Al Thani the Ruler of the State of Qatar;  
His Highness al-Shaikh Jaber al-Ahmad al-Jaber al-Sabah the Ruler of the State of Kuwait.

Departing from the spirit of brotherhood prevailing between these States and its peoples; and in complementing efforts already begun by its leaders in their search for an ideal formula to amalgamate their States and to permit their cooperation and coordination; and based on their faith in the importance of cooperation between these States; and in response to the desires and aspirations of their peoples for increased cooperation; and to work for a better future; and in accordance with what was achieved at the meetings of their Foreign Ministers in both Muscat on 2 January 1981 and Riyadh on 4 February 1981:

Their Majesties and Highnesses have agreed between them to set up a Council to unite their States called The Cooperation Council for the Arab States of the Gulf and have proceeded in signing the Charter of the Council which aims at developing cooperation between these States and to expand their relations and to effect coordination, integration, and interconnection, and to deepen and strengthen ties and relations existing between their peoples in various fields and to establish joint projects and to formulate comparable regulations in all economic, educational, media, social and legal fields in order to serve their interests and strengthen their power to adhere to their beliefs and values.

Their Majesties and Highnesses also agreed to appoint Abdulla Yacoub Bishara the Secretary-General of the Cooperation Council and to make Riyadh in the Kingdom of Saudi Arabia the permanent headquarters of the Council.

Being fully aware of the inevitability of economic

integration between their States and social amalgamation between their people, they see that the present circumstances which their States live in and the similar cases and problems they face in addition to their comparable economic and social systems necessitates laying down foundations and setting up institutions and establishing systems which will make this integration and social amalgamation an obvious reality.

In realising and in carrying out these objectives in accordance with Article Four of the Charter they have agreed to set up specialised committees as detailed in the working paper which was decided upon by the Supreme Council.

Their Majesties and Highnesses reviewed the current situation in the area and reaffirmed that the security and stability of the area is the responsibility of its peoples and States and that this Council is but an expression of the will of these States and their rights to defend their security and safeguard their independence. They also affirmed their total rejection of any foreign interference in the area whatever its origin and called for the necessity of isolating the whole area from international conflicts and in particular keeping away military fleets and foreign bases for their interest and that of the world.

They declared that the guarantee for stability in the Gulf is connected with the realisation of peace in the Middle East which confirms the necessity of a just solution to the Palestinian case which will ensure the legitimate rights of the Palestinian people including their right to return to their homeland and establish their independent State and which ensures Israeli withdrawal from all occupied Arab land, with Jerusalem at the forefront.

Their Majesties and Highnesses examined the dangerous situation resulting from the escalation of Zionist aggression on the Arab nation and discussed in a spirit of national responsibility the continuing Israeli violation of the sovereignty and independence of Lebanon and the barbaric bombing of Lebanese cities and villages and Palestinian camps and Israel's war of attrition against the Palestinians and its attacks on the Arab Defence Armies and threats against Syria. They affirmed their standing by and full support of Syria and they called upon all parties in Lebanon to discard their differences and to stop the bloodletting on Lebanese soil and to commence peace negotiations within the framework of Lebanese sovereignty.

Their Majesties and Highnesses backed the efforts spend on putting an end to the Iraq-Iran War as it is considered a problem which threatens the security of the area and increases the likelihood of foreign intervention in it and they affirmed the necessity of doubling efforts to find a final solution to the conflict.



Their Majesties and Highnesses also affirmed their commitment to the Charter of the League of Arab States and the decisions arising from the meetings of the Arab Summit and renewed their support of the Organisation of the Islamic Conference and their commitment to its decisions and expressed their adherence to the principles of non-alignment and the Charter of the United Nations.

At the invitation of His Majesty King Khaled bin Abd al-Aziz the King of the Kingdom of Saudi Arabia it was decided to hold the second meeting in Riyadh in Muharam 1402 which corresponds to the first half of November 1981.

Issued in Abu Dhabi  
22 Rajah 1401 Hirjiah  
Corresponding to 26 May 1981

**FINAL DECLARATION OF THE SECOND REGULAR SESSION  
OF THE SUPREME COUNCIL FOR THE ARAB STATES  
OF THE GULF**

With the help of God Almighty and in response to the invitation of His Majesty King Khaled bin Abd al-Aziz, the King of the Kingdom of Saudi Arabia, the second regular session of the Supreme Council of the Cooperation Council for the Arab States of the Gulf was held in the period between 14-15 Muharam 1402 Hirjah corresponding to 10-11 November 1981 in the presence of Their Majesties and Highnesses:

His Highness al-Shaikh Zayed bin Sultan Al Nahyan the President of the United Arab Emirates;  
His Highness al-Shaikh Issa bin Selmán Al Khalifah the Ruler of the State of Bahrain;  
His Majesty King Khaled bin Abd al-Aziz Al Saud the King of the Kingdom of Saudi Arabia;  
His Majesty Sultan Qaboos bin Said the Sultan of Oman;  
His Highness al-Shaikh Khalifah bin Hamad Al Thani the Ruler of the State of Qatar;  
His Highness al-Shaikh Jaber al-Ahmad al-Jaber al-Sabah the Ruler of the State of Kuwait.

The Council reviewed the political, economic and security situation in the Gulf area in light of current developments and declared its resolve to continue coordination in these spheres so as to confront the dangers surrounding the area and to increase contact between the States of the council in order to ward off these dangers.

The Council also discussed all the attempts by other powers to create positions for themselves in the Gulf area to threaten its security and sovereignty. The Council announced its rejection of these attempts which are dangerous to the area and its people and whose aim is to safeguard the influence of foreign powers in the area.

It reaffirmed that the security and stability of the Gulf is the responsibility of the Gulf States and expressed its opposition to the attempts of the great powers to interfere in the affairs of the area which will involve it in a conflict not in accord with the interests of its States and the will of its people. It also affirmed the necessity of isolating the whole area from international rivalries, in particular the presence of military fleets and foreign bases for their interests and the interest of security and world peace.

The Council examined the situation in the Middle East and reaffirmed its total support for the struggle of the Palestinian people for its right to decide its own destiny and set up its own independent State on its land under the leadership of the Palestine Liberation Organisation. The

Council renewed its faith that there is no way to achieve a just peace in the Middle East except by the withdrawal of Israel from all occupied Arab land including Jerusalem and the removal of Israeli settlements which are being erected on Arab land.

The Council reviewed the Arab and international reactions to the peace proposals announced by the Kingdom of Saudi Arabia concerning a just and comprehensive solution to the Palestinian case and the Council agreed to the request from the Kingdom of Saudi Arabia to include it on the agenda of the twelfth Arab Summit which is to be held in al-Maghreb with the objective of formulating a unified Arab stance on the Palestinian case.

The Council reviewed the current Arab situation in keeping with its national responsibilities concerning the necessity of achieving Arab solidarity and the removal of disagreements between the brotherly Arab States and the repudiation of divisions and the affirmation of unified efforts and in conformity with the principles of the Charter that the Cooperation Council is part and parcel of the Arab nation.

The Council decided that the member States shall carry out wholehearted attempts at securing the unity of the Arab rank and file.

The Council discussed the ongoing conflict between Iraq and Iran and the threats to the security and stability of all the area which emanate from it. it expressed hope that peaceful endeavours will prove successful and affirmed its support for all such endeavours among which are the Islamic attempts emanating from the Islamic Conference and the efforts of the non-aligned States and those of the United Nations.

The Council reviewed the situation in Afghanistan and the dangers it poses not just for the security of the region and its independence but for world peace and it affirmed its adherence to the decisions of the Islamic conference in this context.

The Council reviewed the Economic Agreement which the Financial and Economic Ministers had signed in Riyadh on 8 June 1981 and which was examined and agreed upon by the Ministerial Council at their meeting in al-Taif during the period 2-3 Thu al-Kadah 1401 Hijriah corresponding to 1 September 1981.

The Supreme Council in taking this important step according to the citizen's wishes in removing barriers between Member States and in strengthening links between the people of the area basing them on solid foundations leading to the unity of the area, realises that it is the ideal way to ensure

advancement and prosperity for all the States in the Council.

The Council also reviewed the subject of military cooperation between its States and decided to call the Ministers of Defence to a meeting in order to delineate the preliminaries which the States of the Cooperation Council need in order to safeguard its independence and sovereignty.

The Council decided to hold the Third Regular Session of the Supreme Council in Bahrain in the third week in the month of Muharam 1403 Hijriah corresponding to the first week of November, 1982.

The Council expressed its thanks, appreciation and gratitude to His Majesty King Khaled bin Abd al-Aziz and to his Crown Prince Fahd bin Abd al-Aziz and the Government of the Kingdom of Saudi Arabia for their generous hospitality and pleasant reception by which Heads and members of the participating delegations were met with during their attendance at the meetings which had a beneficial effect on the successful outcome of this brotherly meeting wishing His Majesty and his Crown Prince continued health and to the Saudi people continued opulence, advancement and prosperity.

Issued in Riyadh  
15 Muharam 1402 Hijriah  
corresponding to 11 November 1981

**FINAL DECLARATION OF THE THIRD REGULAR SESSION  
OF THE SUPREME COUNCIL OF THE COOPERATION COUNCIL  
FOR THE ARAB STATES OF THE GULF**

With the help of God Almighty and in response to the invitation of His Highness al-Shaikh Issa bin Selman Al Khalifah, the Ruler of the State of Bahrain, a meeting of the third regular session of the Supreme Council of the Cooperation Council for the Arab States of the Gulf convened in Manama in the period between 23-25 Muharam 1403 Hijriah corresponding to 9-11 November 1982 in the presence of Their Majesties and Highnesses:

His Highness al-Shaikh Zayed bin Sultan Al Nahyan the President of the United Arab Emirates;  
His Highness al-Shaikh Issa bin Selman Al Khalifah the Ruler of the State of Bahrain;  
His Majesty King Khaled bin Abd al-Aziz Al Saud the King of the Kingdom of Saudi Arabia;  
His Majesty Sultan Qaboos bin Said the Sultan of Oman;  
His Highness al-Shaikh Khalifah bin Hamad Al Thani the Ruler of the State of Qatar;  
His Highness al-Shaikh Jaber al-Ahmad al-Jaber al-Sabah the Ruler of the State of Kuwait.

During this session the Supreme Council reviewed the political and economic ties between the member States as well as the political and security situation in the Gulf region in light of current events.

In reviewing the ties between Member States, the Council expressed its satisfaction with the level of coordination reached between Member States in the realisation of the letter and spirit of the principles contained in the Council's Charter and with the Member States' efforts aimed at strengthening various aspects of cooperation and enhancing ties between them for the purpose of realising integration and the aspirations of their peoples for a better future.

The Council was also pleased with what had been accomplished by laying the groundwork and securing the fundamental structure for collective action which had paved the way to joint Gulf activity in attaining its practical objective and highest goal.

The Council urged the various instruments and committees of cooperation to carry on towards the third stage of collective action and to take steps towards enacting the programme of cooperation agreed upon to serve the citizens in the States of the Council and to consecrate their membership in the larger entity on the basis of equality between them in rights and duties to carry out their important role in maintaining the spirit of the cooperation movement and to push

it towards the delineated goal and in the area of examining the aspects of military coordination between the States of the Council.

#### Coordination in the Area of Defence.

The Council decided upon the recommendations of the Defence Ministries of the States of the Council on building an independent force for the member States and on coordination which will achieve self-reliance for the States of the region in defending their security and maintaining their stability.

The Council reviewed the decision of the Ministers of the Interior during their meeting in Riyadh on 30 Thi al-Hijjah corresponding to 17 October 1982 concerning the agreement on total security and it agreed to the request of the Ministers of the Interior for a continuation of research on the studies they required.

#### Iran-Iraq War

The Council discussed with great concern the development of the war between Iran and Iraq, in particular the recent dangerous developments which were exemplified by Iran crossing the international border between it and Iraq, by what these developments hold for the peace of the Arab nation and by how they threaten its security and the violation of its sovereignty.

In light of these latest developments which occurred at a time during which the Arab nation is working to affirm its solidarity and gather its strength for the purpose of confronting the increasing Zionist hostility and what that requires from joint efforts by the Islamic States, the Council affirms its support of Iraq in its attempts to put an end to this war by peaceful means and to secure the attempts of the Committee arising from the Islamic Conference and the efforts of the non-aligned States and the UN and requests Iran to reciprocate.

#### Aden and the Sultanate of Oman

The Council also reviewed the results of the commendable attempts which the State of Kuwait and the United Arab Emirates carried out to put an end to the dispute between the sultanate of Oman and the People's Democratic Republic of Yemen.

The Council extols the efforts of the State of Kuwait and the United Arab Emirates and the spirit of perseverance which marked these efforts. it greets the positive attitude shown by the Sultanate of Oman and the People's Democratic Republic of Yemen and the way they exhibited an honest desire to remove all causes of disagreement and separation from between the sons and people of the two brotherly States.

the success of these benevolent attempts is but proof of

the constructive role carried out by the Council in bringing about peace in the region and the establishment of brotherly relations and good neighbourly policy between their States.

#### Arab-Israeli Conflict

The Council studied the developments connected to the Arab-Israeli conflict and affirmed its support of the decisions and declarations which were taken at the twelfth Arab Summit in Fez in Morocco.

It reviewed the results of the first contacts carried out by the Committee of Seven which emanated from the Fez Conference headed by His Majesty King al-Hassan al-Thani, the King of Morocco, and it expressed its support of all attempts that realise Arab objectives as delineated by the Fez Conference.

It renewed its belief that there is no way to achieving a just and durable peace in the Middle East except by the withdrawal of Israel from all occupied Arab land including Jerusalem and the removal of all Zionist settlements which were erected and are being erected on occupied Arab land and the establishment of a Palestinian State on its national soil under the leadership of the Palestine Liberation Organisation, the one and only legitimate representative of the Palestinians.

#### Protect the Security of Lebanon

It also affirmed its full support for Lebanon in protecting its security, sovereignty, independence and the unity of its land. And it calls for the immediate and unconditional withdrawal of Israel from all Lebanese soil.

#### The Unified Economic Agreement

The Council also reviewed the developments which had taken place concerning the implementation of the terms of the Unified Economic Agreement and expressed its feelings of happiness at starting the implementation of the first stage of the Agreement on 1 March 1983 where the citizen will feel the beginning of economic integration which the Economic Agreement seeks to achieve.

Agreement was reached to set up a Gulf Investment cooperation with an estimated capital of two billion one hundred million United States dollars.

The Council also agreed to finance the conversion of the Arab-Saudi Organisation for Specifications and Measurements into a Gulf organisation specialising in specifications and measurements for the States of the Council.

The Council expressed its thanks, appreciation and gratefulness to His Highness al-Shaikh Issa bin Selman Al Khalifah the Ruler of the State of Bahrain and his Government

for the generous hospitality and pleasant reception with which the Heads and members of the participating delegations were met during their attendance at the meetings and which had the best effect on the success of his brotherly meeting wishing His Highness everlasting health and happiness and to the Bahraini people everlasting opulence, advancement and prosperity.

The Council decided to hold the fourth regular Session in the State of Qatar in the month of Sifr 1404 Hijriah corresponding to November 1983.

Issued in Bahrain  
25 Muharam 1403 Hijriah  
corresponding to 11 November 1982



RESOLUTION 514 (1982)  
of 12 July 1982

The Security Council,

Having considered again the question entitled "The situation between Iran and Iraq".

Deeply concerned about the prolongation of the conflict between the two countries, resulting in heavy losses of human lives and considerable material damage and endangering peace and security.

Recalling the provisions of Article 2 of the Charter of the United Nations, and that the establishment of peace and security in the region requires strict adherence to these provisions.

Recalling that by virtue of Article 24 of the Charter the Security Council has the primary responsibility for maintenance of international peace and security,

Recalling its resolution 479(1980), adopted unanimously on 28 September 1980, as well as the statement of the President of the Security Council of 5 November 1980,

Taking note of the efforts of mediation pursued notably by the Secretary-General and his representative, as well as by the Movement of Non-Aligned Countries and the Organisation of the Islamic Conference,

1. Calls for a cease-fire and an immediate end to all military operations;

2. Calls further for a withdrawal of forces to internationally recognised boundaries;

3. Decides to dispatch a team of United Nations observers to verify, confirm and supervise the cease-fire and withdrawal, and requests the Secretary-General to submit to the Security Council a report on the arrangements required for that purpose;

4. Urges that the mediation efforts be continued in a coordinated manner through the Secretary-General with a view to achieving a comprehensive, just and honourable settlement, acceptable to both sides, of all the outstanding issues, on the basis of the principles of the Charter of the United Nations, including respect for sovereignty, independence, territorial integrity and non-interference in the internal affairs of states;

5. Requests all other states to abstain from all actions that could contribute to the continuation of the conflict and to facilitate the implementation of the present resolution;

6. Requests the Secretary-General to report to the Security Council within three months on the implementation of the present resolution

Adopted unanimously at the  
2383rd meeting

(Security Council Official Records (1981)) S/INF/38)

RESOLUTION 522 (1982)  
of 4 October 1982

The Security Council,

Having considered again the question entitled "The situation between Iran and Iraq",

Deploing the prolongation and the escalation of the conflict between the two countries, resulting in heavy losses of human lives and considerable material damage and endangering peace and security,

Reaffirming that the restoration of peace and security in the region requires all Member States strictly to comply with their obligations under the Charter of the United Nations,

Recalling its resolution 479 (1980), adopted unanimously on 28 September 1980, as well as the statement of the President of the Security Council of 5 November 1980,

Further recalling its resolution 514 (1982), adopted unanimously on 12 July 1982, and the statement of the President of the Security Council of 15 July 1982,

Taking note of the report of the Secretary-General of 15 July 1982,

1. Urgently calls again for an immediate cease-fire and an end to all military operations;

2. Reaffirms its call for a withdrawal of forces to internationally recognised boundaries;

3. Welcomes the fact that one of the parties has already expressed its readiness to cooperate in the implementation of resolution 514(1982) and calls upon the other to do likewise;

4. Affirms the necessity of implementing without further delay its decision to dispatch United Nations observers to verify, confirm and supervise the cease-fire and withdrawal;

5. Reaffirms the urgency of the continuation of the current mediation efforts;

6. Reaffirms its request to all other states to abstain from all actions which could contribute to the continuation of the conflict and to facilitate the implementation of the present resolution;

7. Further requests the Secretary-General to report to the Security Council on the implementation of the present resolution within seventy-two hours.

Adopted unanimously at the  
2399th meeting.

(Security Council Official Records (1982) S/INF/38

RESOLUTION 540 (1983)

Adopted by the Security Council at its 2493rd meeting  
on 31 October 1983

The Security Council,

Having considered again the question entitled "The situation between Iran and Iraq",

Recalling its relevant resolutions and statements which, inter alia, call for a comprehensive cease-fire and an end to all military operations between the parties,

Recalling the report of the Secretary-General of 20 June 1983 (S/15834) on the mission appointed by him to inspect civilian areas in Iran and Iraq which have been subject to military attacks, and expressing its appreciation to the Secretary-General for presenting a factual, balanced and objective account,

Also noting with appreciation and encouragement the assistance and cooperative given to the Secretary-General's mission by the Governments of Iran and Iraq,

Deploing once again the conflict between the two countries, resulting in heavy losses of civilian lives and extensive damage caused to cities, property and economic infrastructures,

Affirming the desirability of an objective examination of the causes of the war,

1. Requests the Secretary-General to continue his mediation efforts with the parties concerned, with a view to achieving a comprehensive, just and honourable settlement acceptable to both sides;

2. Condemns all violations of international humanitarian law, in particular, the provisions of the Geneva Conventions of 1949 in all their aspects, and calls for the immediate cessation of all military operations against civilian targets, including city and residential areas;

3. Affirms the right of free navigation and commerce in international waters, calls on all states to respect this right and also calls upon the belligerents to cease immediately all hostilities in the region of the Gulf, including all sea-lanes, navigable waterways, harbour works, terminals, offshore installations and all ports with direct or indirect access to the sea, and to respect the integrity of the other littoral states;

4. Requests the Secretary-General to consult with the parties concerning ways to sustain and verify the cessation of hostilities, including the possible dispatch of United Nations observers, and to submit a report to the Council on the results of these consultations;

5. Calls upon both parties to refrain from any action that may endanger peace and security as well as marine life

in the region of the Gulf;

6. Calls once more upon all other states to exercise the utmost restraint and to refrain from any act which may lead to a further escalation and widening of the conflict and, thus, to facilitate the implementation of the present resolution;

7. Requests the Secretary-General to consult with the parties regarding immediate and effective implementation of this resolution.

(S/RES/540 (1983), 31 October 1983)  
Security Council Official Records S/INF/39)

LETTER DATED 21 MAY 1984 FROM THE REPRESENTATIVES OF  
BAHRAIN, KUWAIT, OMAN, QATAR, SAUDI ARABIA AND  
THE UNITED ARAB EMIRATES ADDRESSED TO THE  
PRESIDENT OF THE SECURITY COUNCIL

Decisions

At its 2541st meeting, on 25 May 1984, the Council decided to invite the representatives of Bahrain, Kuwait, Oman, Panama, Qatar, Saudi Arabia, Senegal, the United Arab Emirates and Yemen to participate, without vote, in the discussion of the item entitled "Letter dated 21 May 1984 from the representatives of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates addressed to the President of the Security Council (S/16574).

At the same meeting, the Council also decided at the request of the representative of Kuwait, to extend an invitation to Mr. Chedli Klibi under rule 39 of the provisional rules of procedure.

At its 2542nd meeting, on 25 May 1984, the Council decided to invite the representatives of Ecuador, Jordan, Somalia and the Sudan to participate, without vote, in the discussion of the question.

At its 2543rd meeting, on 29 May 1984, the Council decided to invite the representatives of the Federal Republic of Germany, Japan, and Morocco to participate, without vote, in the discussion of the question.

At its 2545th meeting, on 30 May 1984, the Council decided to invite the representatives of Djibouti, Mauritania, Tunisia and Turkey to participate, without vote, in the discussion of the question.

At its 2546th meeting, on 1 June 1984, the Council decided to invite the representative of Liberia to participate, without vote, in the discussion of the question.

(Security Council Official Records. S/INF/40)

RESOLUTION 552 (1984  
of 1 June 1984

The Security Council,

Having considered the letter dated 21 May 1984 from the representatives of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates complaining against Iranian attacks on commercial ships en route to and from the ports of Kuwait and Saudi Arabia,

Noting that Member States pledges to live together in peace with one another as good neighbours in accordance with the Charter of the United Nations,

Reaffirming the obligations of Member States with respect to the principles and purposes of the Charter,

Reaffirming also that all Member States are obliged to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State,

Taking into consideration the importance of the Gulf region to international peace and security and its vital role to the stability of the world economy.

Deeply concerned over the recent attacks on commercial ships en route to and from the ports of Kuwait and Saudi Arabia,

Convinced that these attacks constitute a threat to the safety and stability of the area and have serious implications for international peace and security.

1. Calls upon all states to respect, in accordance with international law, the right of free navigation;

2. Reaffirms the right of free navigation in international waters and sea lanes for shipping en route to and from all ports and installations of the littoral States that are not parties to the hostilities;

3. Calls upon all States to respect the territorial integrity of the States that are not parties to the hostilities and to exercise the utmost restraint and to refrain from any act which may lead to a further escalation and widening of the conflict;

4. Condemns the recent attacks on commercial ships en route to and from the ports of Kuwait and Saudi Arabia;

5. Demands that such attacks should cease forthwith and that there should be no interference with ships en route to and from States that are not parties to the hostilities;

6. Decides, in the event of non-compliance with the present resolution, to meet again to consider effective

measures that are commensurate with the gravity of the situation in order to ensure the freedom of navigation in the area;

7. Requests the Secretary-General to report on the progress of the implementation of the present resolution;

8. Decides to remain seized of the matter.

Adopted at the 2546th meeting by 13 votes to none, with 2 abstentions (Nicaragua and Zimbabwe)

(Security Council Official Records, S/INF/40)

