THE INFLUENCE OF SHARI’AH IN PROTECTING
THE MARINE ENVIRONMENT IN THE
UNITED ARAB EMIRATES

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A thesis submitted in partial fulfillment of the requirements of Nottingham Trent University and
Southampton Solent University
for the Degree of Doctor of Philosophy.

August 2013
DECLARATION

I hereby declare that this thesis is my own work and effort and that it has not been submitted anywhere for any award.

Signed………………………………… (Candidate)

Date……………………………………

II
DEDICATION

To.... My Beloved Country..

United Arab Emirates

To.... The secret of my power...

Dad

To.... The God gift.....

Mom

To My wonderful wife...

And to the flowers of my life... my children

To all my friends who faithfully encouraged me

I dedicate this effort to you all

Yours,

Saif
ACKNOWLEDGEMENTS

As our Prophet Mohammed taught us by his holy words: “Those who give no thanks to people, give no thanks to God”, I would like to praise and thank my Almighty God, who has bestowed on me the blessing and has assisted me in the completion of my research.

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<td>Ballast Water Management</td>
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<tr>
<td>CCL</td>
<td>Commercial Court Law</td>
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<td>CIL</td>
<td>Customary International Law</td>
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<tr>
<td>EEC</td>
<td>European Economic Community</td>
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<tr>
<td>EHSMS</td>
<td>Environment Health and Safety Management System</td>
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<tr>
<td>GCC</td>
<td>Gulf Council Countries</td>
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<tr>
<td>ICJ</td>
<td>International Court of justice</td>
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<td>ICS</td>
<td>International Chamber of Shipping</td>
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<td>IMCO</td>
<td>International Maritime Consultative Organization</td>
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<td>IMO</td>
<td>International Maritime Organisation</td>
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<td>ISM</td>
<td>International Safety Management</td>
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<td>LC</td>
<td>London Convention</td>
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<td>LP</td>
<td>London Protocol</td>
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<td>MEMAC</td>
<td>Marine Emergency Mutual Aid Centre</td>
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<td>MEP</td>
<td>Marine Environmental Protection</td>
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<td>OECD</td>
<td>The Organization for Economic Co-operation and Development</td>
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<td>PBUH</td>
<td>Peace Be Upon Him</td>
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<td>RECSO</td>
<td>Regional Clean Sea Organization</td>
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<td>ROPM</td>
<td>Regional Organization for the Protection of the Marine Environment</td>
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<td>SOLAS</td>
<td>Safety of life at sea</td>
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<td>United Arab Emirates</td>
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<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<tr>
<td>UK</td>
<td>United Kingdom</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNCED</td>
<td>United Nations Conference on the Environment and Development</td>
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<td>UNCLOS</td>
<td>United Nations Conventions on the Law of the Sea</td>
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<tr>
<td>UNECE</td>
<td>United Nations Economic Commission for Europe</td>
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<td>UNEP</td>
<td>United Nations Environment Program</td>
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<tr>
<td>UNHRC</td>
<td>United Nations Human Rights Council</td>
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<td>USA</td>
<td>United States of America</td>
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ABSTRACT

Marine pollution is one of the major problems in the world and in particular around the coasts of oil producing countries. The Arabian Gulf and the Straits of Hormuz are of particular concern to the United Arab Emirates (UAE) as they play host to a number of endangered marine species. As a Muslim state, the UAE has historically been protective of the marine environment through the teachings of the prophet Mohammed (PBUH) and the Holy Quran. As a modern state with international trade connections, the UAE has signed up to a number of international conventions designed to protect the marine environment.

This thesis considers international law and its transposition into state law in the UAE. The influence of religion on the formulation of legislation to protect the marine environment is considered in this comparative study between the UAE and the UK. The main part of the thesis is an analysis of the influence of Shari’ah on legislation in the UAE to protect the marine environment. This is informed by a number of interviews with key figures in Dubai.

In order to produce detailed and accurate results in the research, analytical and comparative examination is made to the actual scope of protect the marine environment in the UAE. This is achieved through studying the relevant literature as well as studying legislation and case law.

The methodology used is a comparative secondary research study supplemented by face-to-face interviews. The legislation in the UAE has proved more difficult to research than the UK legislation. Moreover, a number of listings and web-sites contain partial and fragmented information.

The final conclusions include recommendations for the UAE on how to develop their protection of the marine environment. From this conclusion the most recommended concern is to develop the legislations of the UAE and develop citizen’s awareness. Training is the most important point which was taken into the consideration of all people that have been interviewed.
CHAPTER ONE

1.1 Introduction

The world faces many environmental problems, one of which is marine pollution. The issue is complex and has greatly affected human health. The problems associated with the marine environment are as a result of human activities such as factories and the exploration and transportation of oil and gas on the seas and oceans.

The main cause of marine pollution is the leaking of oil and gas, in particular in the Gulf area, as the region is one of the foremost producers of oil, giving rise to wells of oil on the sea bed.

Marine pollution occurring across States becomes trans-boundary pollution and solving the environmental problem demands cooperation between states.

According to the United Nations law of the sea 1982 "pollution of the marine environment" means the “introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results, or is likely to result, in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities."

Since globalism has become a feature of the modern era, the relationship between humans and environment has caused several critical environmental issues to appear. This has prompted the global community to consider the nature of these issues as well as their causes in an attempt to prevent their harmful impact on both humans and the environment.

The most critical environmental issues that man faces nowadays include: global warming, climate change, depletion of the Ozone layer, death of fish and other living creatures, degradation of vegetation which causes expansion of desertification, increasing salinity in groundwater, and increasing the percentages of pollutants in rivers and seas as a result of increased oil pollutants. These issues have recently led to an acceleration of the depletion of

natural resources, as well as causing an impaired environmental balance, in particular in the Gulf region due to the migration of fish whose numbers are in decline.2

The researcher argues that, at the same time as the countries all around the world take action towards implementation of development projects, the pace of production and consumption is increasing and inflicting the greatest damage on the environment. Another problem is the difficulty of providing sufficient basic needs for increasing populations.3 Projects to address this in turn place considerable stress on the environment in general and on the marine environment in particular, reflected by the depletion of sea bounties. This is compounded by a growth of demand to build residential areas in coastal cities.4

Global efforts to protect or to stop violations against the ecosystem and its components (including the marine environment) began with the Conference on the Human Environment (Stockholm 1972). This can be considered as the first significant event focusing on the relationship between environmental protection from pollution and human rights.5

The protection of the marine environment was one of the outcomes of the Stockholm Conference held by the UN. The Declaration of Stockholm Conference was the first comprehensive attempt to deal with cases of pollution of the marine environment.6 This declaration involved 26 principles, three of them relevant to addressing issues related to the marine environment such as Principles 7, 21 and 22. Principle 7 focused on the protection of the marine environment from all kinds of pollution which could threaten health and resources and present a hazard to sea life. Principle 21 imposed responsibilities on member states to avoid transporting any environmental damage to other states across borders. Each state was held accountable for its activities such as marine activities.7

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Principle 22 encouraged participating countries to develop international law with regard to compensation for the victims of marine pollution and all other environmental damage as a result of each state’s activities inside and outside its boundary.\(^8\)

In addition, 109 recommendations were adopted at the 1972 Stockholm Conference to protect the environment, 9 of them specifically addressing the preservation of the marine environment. These recommendations invited member states to enforce legislation to control marine pollution and prevent vessels from dumping at sea, the main source of marine pollution.\(^9\)

After the declaration of Stockholm many international environmental meetings and conferences have been held. However, the environment in general and marine life in particular are still suffering from pollution. For example, the international community held several conferences on the environment such as the Rio (1997), New York (2005) and Johannesburg declarations (2002).\(^10\)

In recent years, the region around the Arabian Gulf has seen remarkable development economically and socially. The Gulf coastal areas in particular have witnessed significant development and this has led to increasing the scale of environment pollution. However, development in the region is able to bring together environment leaders and experts from all around the world to assist with environmental management.\(^11\) Van Lavieren (2011) stated that the region of the Arabian Gulf has a unique coastal environment, partly influenced by a shallow sea, with warm waters which are home to many species of marine animals.\(^12\)

Van Lavieren also argued that there is a limited awareness of the importance of ecosystem services of the coastal areas and their significance in sustaining economic growth and promoting human welfare. A manifestation of this limitation is that most countries in the Gulf region have

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\(^9\)Ibid.


not implemented policies and actions that engender better coastal management. Interestingly, many of these countries have enacted national legislation for marine conservation and have signed various regional and international environmental agreements.\textsuperscript{13}

Van Lavieren’s report concluded that there is a critical gap in the indigenous capacity to understand and respond to coastal challenges and that addressing this gap must be given the highest priority. Such capacity – human, technological and institutional - is crucial for the region to respond effectively to the growing competition for coastal resources and the potential impact of human economic activities. It would also reduce dependence on “imported” technical expertise, which often leads to sub-optimal outcomes.\textsuperscript{14}

Not surprisingly, most of the current strategies and policies in the Gulf region are ineffective and insufficient to secure human health and protect the marine environment and coastal resources. Decision-makers will need to take major steps to improve these strategies. Although it is true that some countries are performing better than others, each faces similar environmental challenges, especially those experiencing rapid population growth and coastal development.

Gulf Countries are Muslim and the Islamic religion has a clear position towards environmental problems like marine pollution. The provisions of Islam call upon people around the world to do good things towards their environment and to keep it healthy and clean. In Islam, all people are equal when protecting the environment so there are rules and provisions for all peoples, both Muslim and Non-Muslim.

\textsuperscript{13}Ibid.

In this study the researcher structured the methodology as follows:-

1.1.1 Aims of the Study

The study aims to explore marine pollution from several perspectives:

1- To evaluate international Law in regard to marine pollution.

2- To compare and clarify marine pollution legislations, laws and constitutions, describe action taken in the UAE and UK and to consider the impact of GCC cooperation.

3- To establish whether Shari’ah law has any influence on marine pollution law in the UAE.

4- To make recommendations which raise awareness and educate decision-makers in the United Arab Emirates on ways of reducing marine pollution.

Looking at these in more depth, the researcher can relate the aims to the methodological approaches;

1.1.1.1 To Evaluate International Law Regard To Marine Pollution

International law sets rules on how the seas and oceans should be used and to protect them from threat. The current focus is on protecting marine life from pollution. Many treaties and conferences, at both local and international level, take place to establish standards to protect this environment.

The field of international law which protects the marine environment is Maritime law, the set of legal rules governing the use of the seas.\textsuperscript{15}

Maritime law in the UAE derives its provisions like any branch of the law from legislation, custom and practice as primary sources, and judiciary and jurisprudence as secondary sources.\textsuperscript{16}

UAE law is based on Egyptian law, which in turn is derived from French law.


Due to the importance of maritime trade in the UAE and its geographical location which enables trade and exchange of trade with East Asian Countries, the State gave attention to legislative regulation in respect of the safety of the marine environment, focusing on legislation which protected the marine environment from pollution from transportation vessel traffic. The port of Jabil Ali, for example, was a focus for the legislation. Thus, the UAE government and its institutions, such as marine environment agents, use international and domestic law to provide comprehensive protection to secure the marine environment. The transport minister has provided the maritime inspection department with increased powers to enforce anti-pollution legislation and to secure marine life.

Besides maritime legislation, customs still play an important role in maritime navigation. Originally, maritime law was established as a result of customs and social norms in society, hence custom become one of the primary sources for maritime law. For instance, the methods of charging and discharging of vessels have become routine from habits cultivated over a long period of time and are carried out even if the shipping contract does not specify them explicitly.

Social customs in the UAE oblige citizens to secure and protect the environment in all its forms. Many factors can affect social customs in the UAE; one factor is the official religion of the state. Both positive and negative impacts on the marine environment can come from the relationship between international law, domestic law, social custom and religion.

Alongside legislation and custom as primary sources for maritime law, the judiciary has a role in interpreting the texts of legislation and custom and to fill gaps which may exist as a result of the age of the sources and their lack of relevance to the rapidly changing world of modern navigation. French Jurisprudence, for example, has broad powers to interpret the provisions of the law of the sea in the light of the need to protect the marine environment or to modify the text of the legislation.

18 Decision of UAE transport minister number 28 for the year of 1983
19 The award of French Court of Cessations 1929 I, P 337.
The judiciary in the UAE plays an important role in the interpretation and application of the provisions of the federal law on maritime law to identify developments that occur in the marine environment which need protection.  

In the past, and before the existence of any law in the UAE, custom and practice and religion had more influence on the citizen’s behaviours and their relationship with the environment. Since then, there is no doubt that jurisprudence has a major part to play in the interpretation and explanation of maritime legislation, evidenced by the constant amendment to the relevant legislation.

Maritime trade has increased and developed dramatically, placing significant responsibility on the shoulders of jurists and scholars to interpret and explain law texts so that they can keep pace with this development.

The next aim of this thesis is compare the UK constitution and marine legislation with the UAE constitution and marine legislation.

1.1.1.2 To compare and clarify marine pollution legislation laws, constitutions, efforts in United Arab Emirates and United Kingdom.

It is very important to study the political systems of countries and their constitutional laws, since any system is built upon a set of social norms and legislation. The political system needs to define the economic, social and cultural responsibilities and customs of the state.

A comparison between the UAE and the UK of their constitutions and marine legislation will provide us with a comparison of how each protects the marine environment from pollution.

There has long been a relationship between the UAE and the UK and these two countries were chosen for the following reasons: first, the relationship between the two countries is very good across their economic, social and political systems. Second, the UK has a traditional culture with respect to the marine environment so there is a range of legislation to protect the marine

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22 Ibid.
environment from a range of human activities which can destroy it. Third, there are many UK agents and employees working in the UAE, particularly in Dubai, building cities on the sea or near the sea such as Palm Island.

The process of comparison is used by governments and institutions as one of the tools to improve performance and promote leadership. The comparison process measures the performance of one institution against another and identifies deficiencies which are then addressed with targets to improve the quality and performance of public services.

Today, many governments and institutions make comparisons between their laws and legislation and other governments or institutions to identify the deficiencies of their local institutions.

The laws of the marine environment in the UAE need to be evaluated against international laws and compared to produce effective strategies of protection from pollution. Such an evaluation requires cooperation from the respective governments.

Both the UAE and UK can benefit from this research and make a contribution to the legal discourse on marine pollution to preserve the environment in general and marine environment in particular.

The third aim is to investigate the role of Islamic Shari’ah in protecting the marine environment from pollution.

1.1.1.3 To establish whether Shari’ah law has any influence on marine pollution law in the UAE.

Despite the great importance of marine pollution and the work of international institutions to find the most effective solutions, human activities continue to threaten the environment. Environmental problems prompted Muslim scholars to conduct research to explore the role of religion in controlling behaviour and treating the environment with respect. Other religions also established rules which protected the environment.

Islamic researchers explored the connections between cosmic issues and Islamic law, which required the study of different disciplines, in addition to a knowledge of the sources of Islamic law and the ability to link science with belief. These types of study were critical in addressing
contemporary issues, based on the Qur'an and Sunnah. At the same time, this provided evidence for non-Muslims of the flexibility of Islamic law, and its appropriateness in attempting to solve intractable problems that have emerged in contemporary societies.

This research is an attempt to study the issue of preservation of the marine environment in Islam and international conventions, where the environment is approached from both a scientific and Islamic perspective, on the basis of what is stated in the Quran and in the Sunnah and reported in the scientific modern literature.

Muslim jurisprudence regulates the relationship between man and his environment, commensurate with the simplicity of the environment. Previous environmental jurisprudence did not encounter damage to the environment on the scale of today’s pollution. However, historical documentary evidence of the efforts of jurisprudence to protect the environment can be found going back many centuries, illustrating that diligence in environmental concerns has been a prominent feature of Islamic culture.

The complexity of modern society has challenged the impact of Islamic jurisprudence on damage to the environment and it has struggled to balance humanitarian concerns, evolution and the diversity of policies in different societies. It seems that more research and further study is needed to develop jurisprudence to cope with the modern world.

In Islam, the rules of law are consistent with the rules of religion, ethics, and morals and govern the behaviour of the individual. The rules of Islam are binding provisions created by God for his creatures. The provisions of Islam include the provisions of faith, provisions of morality and provisions of transactions. The provisions of the Islamic religion differ from the provisions of positive law in both their scope and penalties for infringing those laws. The Islamic religion is broader than positive law, as the provisions of Islam cover organized behaviour and intentions whereas positive law covers only actions. Moreover, punishment according to the Islamic religion is delayed until the Day of Judgment which will be enforced by God; the punishment of positive law, however, is implemented in this life by the State.24

The fourth aim considers recommendations which affect decision-makers in the UAE.

24Article 1 of the Transactions law of the UAE.
1.1.1.4 To reach results and recommendations which raise awareness and educate decision-makers in the united Arab emirates in how to reduce marine pollution.

Exploring the role of international law in protecting the marine environment, whether at local or international level, will reveal to UAE institutions and decision-makers if there are any gaps in the provisions for providing a high quality of marine protection. Comparing the policies of the UK and UAE also has a role in increasing the protection of the marine environment, as it will clarify deficiencies in strategy and regulations. Furthermore, comparison creates competition between the institutions inside and outside the State and identifies good practice, enabling institutions to learn from one another and to investigate what works in each jurisdiction when assessed against the cultural and political background. For example, at a local level each year the Dubai government gives an award to one winning department and this encourages institutions to increase their efforts to provide solutions to environmental problems.

A study of Shari’ah and its jurisdiction will show to UAE institutions and other countries the most effective strategies to protect the environment in general and the marine environment in particular. Islamic Shari’ah is one way of controlling behaviour without the need for punishment, as believers seek reward from God on the Day of Judgment.

1.1.2 The Importance Of The Topic

The legal system for the protection of the marine environment in the UAE and Gulf countries is a major issue. Most of the regulations and laws in the Arabian Gulf countries have originated from Islamic legislation under Shari’ah, the dominant form of Islam in the Gulf.

There is no doubt that marine pollution has reached large areas of the Gulf countries in general and the UAE in particular, affecting both marine life and people’s health.

Controlling behaviour in order to protect the environment is a challenge as businesses try to circumvent the law in order to make a living. Studies of the influence of Sharia’h in the protection of the marine environment are very recent and it is hoped that this study will contribute to an understanding of its influence in this respect.
This study may assist institutions in the UAE like the Ministry of Water and Environment in using Islamic Shari’ah provisions to clarify the law in relation to the marine environment; the Ministry of Education to provide teaching programmes based on Islamic Sharia’h to raise the awareness of students; and the Ministry of Media to raise public awareness of the importance of the marine environment.

The countries of the GCC have historical importance, at an international level, in the oil market. Oil is one of the many contributors to the pollution of the region and marine environment of the UAE. The societies of the GCC in general and the UAE in particular are structurally based on Islam in their social, cultural and political attitudes.

Arabic studies have tended to focus on oil pollution only, ignoring other sources of marine pollutants. It is very important for international law to review its role in managing the problem of marine pollution like garbage, particularly plastic which can cause death to marine creatures. The behaviour of human beings and their actions, whether they are intentional or accidental, are the main source of marine pollution. This study will raise awareness of behaviour which leads to the pollution of the marine environment and identify positive behavior to support its preservation.

The importance of the current thesis stems from an urgent need to place environmental issues under the umbrella of Islamic law and focus on Islamic solutions to problems which have challenged the efforts of the scientific community. Environmental protection in Islamic law is based on the principle of prevention before treatment so the research may not find solutions to all the problems of the contemporary environment in Islamic provisions but will seek to identify general rules which will assist in solving the problem.

A clean marine environment is important in the UAE as it is one of the countries overlooking the Arabian Gulf which is rich in many marine species, including fish. The geographical location and warm waters of the Gulf have assisted the UAE in becoming one of the most important countries in the world in fish trading. UAE citizens love to eat fish because it is an integrated health food which has a lot of vitamins. Many species of fish need protection from pollution so

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their numbers can be maintained for future generations. Tourism is also a major source of income in the UAE, particularly in Dubai where most of the tourists visit the beaches to enjoy clean water and sunshine.

1.1.3 Important Definitions

**Islamic Shari’ah**: All rules are established by God for his slaves by his messenger Mohammad, Peace Be Upon Him. These rules are available in the Holy Quran and the Sayings of the prophet Mohammad PBUH.

**Environment Pollution**: Damage which can occur on the land, sea or air.

**Sunnah**: The saying of the Prophet Mohammad PBUH during his life.

1.1.4 The Research Methodology

“A PhD is a contribution to research development culture. It is a significant step forward in the work done in a specific area that is disciplinary or inter-disciplinary-based.”

In engaging in this thesis, the researcher seeks to clarify current thinking, by describing and explaining topical ideas and established theories or legal applications. Further, a structural approach was required, so that sources and information could be properly identified and accessed, which in turn will lead to a critical and analytical investigation. From this, the impact of current ideas can be evaluated and new ideas and theories may be proposed.

The research methodology in this study will take into account the wide role of international law in the protection of the marine environment from pollution. The are some areas of law which may have an impact on current marine legislation such as the history of international law, the sources of international law, treaties, conventions and environmental principles.

The researcher compares some aspects of the UK and the UAE constitution and marine laws to identify the differences between the two countries and to highlight important legal issues which have a bearing on pollution and to relate them to the political system. The political system can be described as the sum of the institutional and behavioural actions associated with the process of

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political decision-making, which reflects the various elements of social reality, its features and determinants. The process of political decision-making is considered one of the most significant functions of the political system, as well as the relationship between the political system and its environment and how this system responds to what is being required which, in turn, depends on the structural and cultural attitudes of society. The general scope of this research is to illustrate and study the political systems in both the United Arab Emirates (UAE) and the United Kingdom (UK) and to explore some of the marine environment legislation. The purpose of this study is to highlight, in general, the nature of the systems and the environmental laws, and in particular, the marine environment, as these laws are assessed and controlled by the local government, both in the UAE or in the UK.

Interviews are an important part of the research methodology. Interviews are conducted with prime figures in the UAE responsible for protecting the environment to gather their opinions on the issue.

When conducting face-to-face interviews it is vital that permission is sought from the participants well in advance and that they understand how the interview will be conducted, the broad topic of the interview, whether they will be audio-recorded and what will be done with their responses. The interviews here were semi-structured the researcher prepared questions in advance but had the flexibility to ask supplementary questions and to depart from the ‘script’ if necessary.

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1.1.4.1 Method

This is the approach, tools and practices, used to gather the data and information that will form the basis of the investigation.\textsuperscript{28} Given the nature of the research questions and areas of coverage, it was necessary to collect and collate data relating to international, UAE, EU and UK laws – both in the primary sources and in the commentaries. Aside from the library-based review of information, the researcher also sought to adopt the use of semi-structured interviews as a way of enhancing the original information, and of providing greater context and analysis of the main themes within the study.

As stated, the background research for this thesis encompassed both primary and secondary research materials. The primary research was conducted through the use of structured interviews (see chapter 4 and Appendix A). One of the key aims of the primary data gathering was to gather data from parties involved in the development of environmental law and policies within the UAE.

The secondary research approach allowed for the collation and analysis of international and national reports, and for the considerations of other researchers and academics in the field to be assessed. A large desk-based study using available library sources, both hard copy and electronic, was utilized, and a clear pattern for the evaluation of international environmental law was thus established.

Information in the study is drawn from library-based primary sources such as legislation and case studies and secondary sources such as journal articles, books, reports, treaties and historical studies. In addition, the researcher will focus on legal data from Internet sites such as West Law and Google Scholar. The researcher also felt that it was very important to attend conferences relating to the field of study, in order to better understand the components and implications of marine pollution and the scale of the problem. Growing coastal populations have a relationship with new transportation, energy processing, infrastructure for manufacturing and consumption. Furthermore, the populations are responsible for both for increased waste and its safe disposal.\textsuperscript{29}

\textsuperscript{28}Blaxter, L, Hughes, C & Tight, M (2006) How To Research (Open University press) see p.58 et seq
One of the benefits of this method, combining primary and secondary analyses, was that it enabled the researcher to adopt a number of approaches within the analysis. Thus, a black-letter approach (often found in considerations of legal documents and sources), was used to evaluate the impact of international law and UAE legislation, and noting the overlap with UK source materials (see chapter 2). Whilst this may have a limitation in that it may provide an overtly descriptive focus, the comparative aspects did provide the opportunity for greater evaluative and analytical dimensions to the discussion.

Therefore, the comparative approach was highlighted as an important approach to the methodology. Within the thesis, there are two main strands of comparative analysis – those comparing UAE to UK laws and policies (see chapter 3), and those comparing Shari’ah to more civil based legal systems also, (see chapters 3).

Further, the evaluation of the varying reports and primary research findings allowed the researcher to adopt a more socio-legal perspective and gave greater emphasis to the critical dimensions of the findings and conclusions.

1.1.4.2 Selecting the Methodology:

When commencing this research it was necessary to consider the reasons for the project, and what was to be expected in terms of achievement. Below are the research objectives, aims and research questions.

The Aims of the Study are;

- To evaluate international law in regard to marine pollution
- To compare marine pollution legislation in UAE and UK
- To establish whether Shari’ah law has any influence on marine pollution law in UAE
- To investigate Shari’ah law in UAE in the context of environmental issues; and in particular, how it impacts on marine pollution legislation in the UAE
When reviewing these factors, it was important to ask the general questions – what, why, when, where, when etc., was the research to be carried out\(^{30}\). Such questions enabled the researcher to determine the most appropriate methodology for the thesis.

1.1.4.3 Methodology

This refers to the underlying assumptions and philosophies of the study, although the methodology should obviously inform the methods of data collection. Texts on research methodologies cover the broad spectrum of approaches, and it was important to identify the right approach to this study\(^ {31}\).

It was important, when considering the methodology for the study, to identify the best fit from the range of approaches available. Morris and Murphy identified several approaches in legal research methodologies; Black-letter or doctrinal analysis, jurisprudential perspectives (of which there are several), socio-legal research, empirical research and, comparative legal analysis.\(^ {32}\)

In reviewing these distinct methodologies, the researcher concluded that the following approaches provided the most opportune approach in analyzing the content materials.

Traditional black letter approaches to investigation and evaluation are used, and these are presented in a critical dialogue. This approach basically focuses on the main legal source materials, legislation and case decisions, both domestic and international. This approach is pervasive through the thesis. It is important to note that this approach, in evaluating legal source materials, is providing an evaluation of their coherence and consistency – it does not seek to evaluate the law as being either ‘good’ or ‘bad’.

There is a brief jurisprudential analysis provided, notably in chapter 2, where the justifications for the development and application of international environmental laws are covered. Whilst brief in scope, this section does cover the more philosophical aspects of methodology, and provides a solid underpinning to the evaluation of laws and practices discussed elsewhere.


\(^{32}\)Morris, C & Murphy, C. (2011) Getting a PhD in Law (Hart Pubs) at ch 3
The other main aspect of methodology is the comparative approach. This is used to open investigation into alternate ways of viewing similar problems, and seeking to develop aspects of good practice as a way of informing any proposed developments. This approach, of itself, can be broad and informative, as Morris and Murphy indicate: “Comparative legal analysis might be undertaken within the same legal family such as common law jurisdictions or civil law jurisdictions, or between legal families – comparing customary systems of law to the common law, or comparing the common law to the civil law.”33

In the present thesis, the researcher has sought to compare, contrast and evaluate international with domestic laws, focusing on UAE and UK legal systems and structures, and to compare the nature of civil laws with the Islamic Sharia’h system. The analysis can best be seen in chapter 3, with further guidance provided in Appendix A.

Whilst these established approaches to methodology within legal research are used, it was determined that a more focused approach to the analysis of current and practical aspects of the subject areas would be required. To that end, the collection of data, and the corresponding qualitative analysis, was extended into the use of semi-structured interviews.

“Interviews, because of their flexibility, are a useful method of obtaining information and opinions from experts during the early stages of your research project. It is important, however initial your research enquiry, to devise an efficient method of recording what is discussed in the interview and to form a simple structure for organizing the data collected."34

It was important, within the scope of the thesis, to try to evaluate the current practices and potential for future development, of marine environmental legislation and practices within the UAE. To that end it was determined to interview a number of experts within the current provision of marine environmental protection systems in UAE. These experts would provide valuable insights, allowing for extended analysis of the overall themes and issues and, given their role, and the available time-frames, were further confirmed as the most suitable interviewees. The researcher was mindful of issues pertaining to ethics and professional diligence in conducting the interviews, and discussed aspects of privacy and confidentiality with the

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33ibid, at p.37
34Walliman, N, supra, at p.285
interviewees prior to conducting the interviews. The interviews were conducted in a face-to-face manner, and were originally conducted in Arabic language. The researcher has provided English translations of the interviews within Appendix A.

Thus, interviews were conducted with the following experts;

   Director of the Centre for Marine Environmental Research in Umm Al Quwain
   Director of Environmental Legislation, Health and safety
   Officer of the Port of Jebel Ali
   Director of Operations and Marine safety in the National Transport Authority in Abu Dhabi
   Director of the Centre for Environment and Maritime Safety in the Port of Jebel Ali

It was decided to adopt a semi-structured interview approach, whereby similar questions could be used to gain insights into consistency of approaches, and which further allowed for elaboration on specific activities or procedures.

“Semi-structured, open-ended interviews manage to address both the need for comparable responses – that is, the same questions being asked of each interviewee – and the need for the interview to be developed by the conversation between interviewer and interviewee – which is often very rich and rewarding.”35

The results arising from the interviews are located within chapter 4, which considers the overall findings and conclusions to the thesis. There the researcher seeks to utilize the primary data gathered from the interviews, and to place them within the context of the more general doctrinal and comparative analyses.

This overall approach, combing various methodological approaches, provided the most suitable form of data gathering, and the most useful form of analysis. It further allowed for the triangulation of data from differing sources, providing as such a useful tool for the overall discussion and evaluation of marine environmental laws and policies.

35Wisner, G, supra, at p.194
Further, there is a large element of qualitative analysis in the thesis, whereby the ideas and experiences of other academics and important sources were evaluated. This was addressed when considering the ideas put forward in the structured interviews that was utilized as one of the main research method tools. Thus, the data collection methods were directly relevant to the identified methodology.

A full quantitative approach to the methodology was not fully used, whereby data gathered from identified studies was used to evaluate the impact of ongoing research. However, statistics and reports which show patterns and trends are considered within the more qualitative approach.

1.1.5 Literature Review

1- Oceans cover two-thirds of the Earth’s surface and its protection has become one of the main issues confronted by the United Nations. The attention of the world has focused on the oceans and seas thanks to the work of United Nations Environment Program (UNEP), especially its various initiatives to protect the marine environment. The International Maritime Organization (IMO) is the specialized agency of the United Nations responsible for taking measures to prevent marine contamination from ships and enhance the security of international shipping. Although the latter is a matter of concern, marine pollution by oil from ships decreased by 60% in the 1980s and oil spills have been significantly reduced in recent years by 20%. This is due in part to the use of better methods to control waste disposal since the agreements have imposed controls. Oceans are vital for life on earth and serve as means of communication, as a source of entertainment, as a food source and are an essential part of the "life cycle". The life cycle begins with the evaporation of water from the oceans, turning into clouds which give rise to rainfall over land, crossing mountains, depositing rainfall in rivers and returning again to the ocean. The water produced by this life cycle provides oxygen, which is essential to life, and depends on the global circulation of water. Without water there would be no life on Earth.36

Sands and Peel clarified the importance of securing marine life and the role of United Nations in protecting the oceans and seas whether from ships or other pollution sources such as dumping at

sea. Their study provided examples of international efforts to protect marine life such as those adopted by the International Marine Organisation. Their study concluded that focusing on one source of marine pollution such as from ships is not adequate and that the United Nations needed to consider all forms of marine pollution.

However, the researcher built on this publication by adding that the UAE government and environmental agents should consider not only clarifying the marine problem but also create new legislation with updated laws relating to the marine environment.

2- A constitution that has not been codified does not have a very clear point of foundation that highlights one process as its base. Blick explains that the constitution of the UK has developed over time. Even though codified constitutions undergo change and the majority of international constitutions have done so, the UK constitution can be viewed as a conglomeration over the course of time. Like the Office of the Prime Minister as a formally recognized part of the government of the UK that took nearly two centuries to develop (i.e. early eighteenth to early twentieth century) some developments have been slow. Even now the premiership is merely a convention of informal origins rather than a statutory body. The Constitution Committee explains the way ‘Statutory intervention takes place to achieve a step change’. The 'step change' includes legislation like the European Communities Act 1972 which is responsible for the UK's membership to the present European Union. The UK constitution has undergone change erratically, which was neither through a framework predefined by text nor was a part of the foundation exercise.37

3- Jowell and Oliver define the term ‘constitution’ as a norm of sorts that, instead of being applied to a nation’s statutory functions, needs to be acquired through aspiration. Defining the term in this regard requires many other qualifications that need to be taken into account for the entity to be classified as a true constitution. These qualifications include a written text, an authority that is gained through the people and priority over the political institutions that formulated it. The UK arrangement can be viewed as a flaw that demands ratification to achieve customary international democratic practice and many

arguments can be presented to favour a codified constitution. Michael Foley explains that the UK constitution ‘is said to fall foul of Thomas Paine’s celebrated criteria of a constitution – namely, that it should be antecedent of government; that it should define the authority of government; and that where the distinction between the constitution and the government is not observed; there is in effect no constitution’. Not having a codified constitution can mean that the government’s power can be unchecked and that there is also ineffective protection of human and individual rights. Furthermore, under the prevalent conditions, by the use of its dominance of the Commons and the pre-eminent parliamentary Chamber, the UK executive in effect is more powerful than the legislature and judiciary. An exercise of codification might, to some extent, help mitigate these supposed anomalies.  

The constitution is the core of all States; however, countries differ in their constitutions and laws. In the UAE, the constitution is different from that in the UK as it is written.

Good administration law in the State will lead to the effective operation of institutions in conjunction with legislation to protect the environment. However, corruption inside the institutions of the State can compromise this protection. Protecting the environment cannot happen without administration law. Furthermore, the courts have an important role in securing the environment by imposing punishment on those who pollute the seas and oceans. The researcher suggested that the local government of the UAE establish special courts to look at the cases of environment.

4- According to Abu-Sway, the environment was cited in the Holy Quran and Al-Sunnah as a place within which God, and only God, should be worshipped. The environment can thus be considered as a collection of locations which serve mankind in the worship of God. Therefore, there is a strong relationship between humans and the environment.

The Islamic religion established relationships between mankind and his environment long time ago before laws were drawn up to protect it. The environment in the Holy Quran

includes all parts of the earth whether air, land or sea. Islam is a religion for all people whether Muslim or Non-Muslim.

5- Abu Rahli, clarified that marine pollution has developed with industrial development, but its intensity has increased with technology advancement. Demographic growth, as well as the expansion of cities established on the banks of coasts, can also be considered important causes of environmental change and a threat to marine life, either positively by development through building and construction of installations and the widespread uses of technological applications in different fields, or negatively by exploitation and destruction of natural resources.40 These factors led to the land being unable to hold the vast amount of pollutants, and seas have become the alternative dumping ground for waste, despite the risk they might pose at both local and global levels41.

However, when describing the causes of marine pollution, it must be clarified that it is not only man-made causes which cause marine pollution; there are other sources which, surprisingly, originate from nature itself.

Abu. Rahli defined natural causes are those which originate from the components of the environment itself, such as gases and saturated dust in the layers of the atmosphere that are emitted from volcanic projectiles and molten lava, or as a result of storms, winds and other air currents which travel through the air for long distances. Contaminants linger in the atmosphere then rainfall deposits them in the oceans. This is in addition to nitrogen oxides resulting from the electric discharge of detonators42, or due to the emergence of natural or sudden shifts of the marine environment elements, or in other vital substances and natural radiations where an increase in the number of materials or creatures in a certain place and time may cause marine environmental imbalance.43

41 Ibid. p 64
While there are natural causes of marine pollution, a major source of pollution is the building of new factories without due consideration for the marine environment.

6- Alhooni, argues that oil pollution has the most serious impact on the marine environment and refers to the traffic of vessels such as loading and discharging oil and the cleaning of tankers after discharging oil. Ballast water is one of the most serious causes of marine environmental damage. Ballast water refers to water taken on board during the tanker’s return trip after unloading oil to maintain balance and prevent the vessel from sinking.\textsuperscript{44}

Alhooni’s study provides information about the serious impact of oil pollution on the marine environment but it does not mention how the government might be able to control and reduce pollution by focusing on people’s moral behaviour.

Many countries do not have legislation to protect the marine environment from the danger of ballast water. Some ports have good facilities to discharge ballast water from the vessel but most poor countries do not have any facilities. Port authorities in some modern countries may charge the vessels after using their port facilities to discharge ballast water’. To avoid paying the charge, some vessels discharge ballast water before reaching port and this destroys the marine ecosystem.

7- (Peterson and Rice argued that sanitation and wastewater pollution is the most critical type of maritime pollution due to the increase of population on the coastline with the growth of major cities which deposit their wastes into the sea without treatment. These wastes contain substances that deplete oxygen and dissolve organic materials or suspended matter that also depletes oxygen during decomposition, such as human and animal wastes including carbohydrates, proteins and fats. Wastewater consists of the total water used in homes, kitchens, as well as toilet wastes, rainwater and water used for washing cars, machines and streets.\textsuperscript{45}

\textsuperscript{44}Al- Hooni, S. (2005) The science of marine environment, Algeria, Al- Fatih University Publications. P 135
\textsuperscript{45} Qamar, I,(2007), Health and Environment, Damascus, Dar Al- Sahabfor publishing and distribution,P76.
Peterson’s study describes the relationship between populations who live near the sea and waste water and how awareness of protecting the marine environment depends on the level of education people have received. Education and religion can both develop knowledge and respect for the environment from an early age.

8- Hamza, the region of the Arabian Gulf is a semi-enclosed sea located in a sub-tropical zone and is characterised by high aridity and lack of rain. The water of the Gulf is shallow with an average depth of 35 m.\(^4\) The countries of the Arabian Gulf have a unique marine ecosystem which is relatively low in term of species and organisms. The Gulf region is dominated by one of the most arid coastlines in the world and the southern parts of the Gulf have an ecosystem characterised by a high level of salinity and high temperatures, caused by shallow water and its small surface area of 226,000 km\(^2\). The Arabian Gulf is overseen by 6 Arabian countries which comprise the Gulf Cooperation Council: the United Arab Emirates, Oman, Kuwait, Saudi Arabia, Bahrain and Qatar. Iraq overlooks the Arabian Gulf in the north while Iran is the only non-Arabic state which is located on the coastal line of the Arabian Gulf.\(^4\)

When this study speaks of the Gulf Countries, it is referring to Muslim countries which are connected by culture and religion which have a profound effect on behavior since a failure to respect the environment is punished by God.


\(^4\) Ibid.
9- Fazlun Khalid, in his research about Islam and the environment considered the ethical dimension and he used the story of Abu Baker, the first Caliph(Khalif)\(^{48}\) of Islam who told his armies not to kill or harm women, animals, children, crops or the environment.\(^{49}\)

Fazlun’s research revealed that securing and preserving the environment was integral to Islamic leaders of Islam despite the lack of harm to the environment at the time as they did not have industries, factories, vessels, oil, and chemicals - the main sources of environmental pollution. The leaders of Islam took the rules of protecting the environment and nature from the sources of Islam which are the Holy Quran and the Sunna’h\(^{50}\) of Prophet Mohammad PBUH.

10- The Islamic Science and Research Academy in Australia developed the key principles of Islamic environmental ethics. One such principle is Tawhid. Tawhid proclaims God’s Unity and Oneness and asserts that God is creator and the owner of the universe and everything in this life. In the Holy Quran, God gave human beings the role of steward of the earth in this life to protect nature and do everything to preserve it for future generations.\(^{51}\)

From the work of the Islamic Science and Research Academy in Australia, the researcher understood that under the key principles of Islamic environmental ethics such as Tawhid, Muslims have to follow the instructions of their religion and refrain from harming or destroy nature in the course of their business activities, especially in relation to industry and agriculture.

\(^{48}\)Caliph or Khalif means the ruler after the death of Prophet Mohammad Peace Be Upon Him. Abu Baker was the first of four rightly guided caliphs who succeeded the prophet after his death.


\(^{50}\)Sunnah means the saying of prophet Mohammad PBUH during his life.

\(^{51}\)Environmental ethics in Islam: A study provided by the Islamic Science and research academy in Australia.
11- Islam provides comprehensive protection for the environment. Islam assumes a fundamental link between all the natural elements of life; if a human being abuses one of the natural elements then the whole natural world will suffer from these abuses. In Islamic Sharia’h, there are major aims called Maqasid such as the protection of life, religion, mind and property. These aims can be fulfilled if the natural environment remains clean and is not polluted.\textsuperscript{52}

Islamic Relief Worldwide also clarifies the aims of Islam, emphasizing that these aims cannot exist without the existence of the natural environment and that this is true of Muslims and non-Muslims alike.

1.2 Conclusion

The marine Environment is an integral part of human society’s heritage and culture. This environment includes critical elements which are important for the existence of society. As human beings are part of the environment, protecting and securing the marine environment is a duty of everyone, whether governments, authorities or citizens.

Arabian Gulf governments have to address all issues of marine environment and they are responsible for passing and revising laws and policies to secure it. The protection of the marine environment is a priority and should be enforced even when they are not meeting formally to discuss the issue.

Although the UAE region and Dubai in particular has a highly successful economy, the government needs to focus more on securing the marine environment and to cooperate with other federal authorities in the UAE in this respect. In principle, the UAE government is very concerned about the marine environment. In 1999, the Gold Panda Award was given to the UAE President, His Highness the late Sheikh Zayed bin Sultan Al Nahyan, for his services for the environment. In his final speech, the late president promised to continue to protect the environment:

'With God’s will, we shall continue to work to protect our environment and our wild life, as did our forefathers before us. It is a duty – and, if we fail, our children, rightly, will reproach us for squandering an essential part of their inheritance and of our heritage.'

The next chapter will discuss international attitudes towards protecting the marine environment.

CHAPTER TWO

The Protection Of The Marine Environment Under International Law

2.1 The Law And Human Life

The Law is considered one of the core institutions in human life, which is indispensable in each community to regulate the relations between its members and bodies. As people meet and are in close contact with each other, in addition to their interactions with their environments, there is a need to create and evolve laws to regulate relationships between individuals and to monitor and influence behaviour.

Given the seriousness of environmental pollution in general, and marine pollution in particular, concern in both the academic and non-academic communities have led to research and conferences to explore possible solutions.

As a result, pollution has occupied a great deal of time and effort. There is strongly held belief that the natural environment must be considered as a borderless unit and that this could lead to a range of legal problems and economic, political and social consequences and therefore there is a strong need for control by the law.

53Extract from Sheikh Zayed’s speech on the occasion of the UAE’s first Environment Day, 4 February 1998
There are several environmental elements which are considered as cases worthy of legal protection from the legislature. Some of these cases are illustrated below:\textsuperscript{56}

1. In the modern environment, there must be compliance for, and respect of, the laws provided to keep the environment healthy and clean to avoid disease. The natural environment such as the forests, vegetation, the atmosphere and its gas components like oxygen are very important for human life and all living creatures on the earth. The marine environment plays an important role in maintaining biological balance on earth.

Today, there are many protests about marine pollution around the world. Societies are becoming increasingly aware of the dangers which threaten them and their health. Many laws and legislations have been passed to preserve the marine environment whether at national or international level. International regulations and penalties are, however, not enough to secure the marine environment from pollution. Teaching people to respect the environment and to comply with the tenets of Islam is more powerful than punishment by man for breaking environmental laws. The divergent views of States and scholars of international law concerning the legal status of the sea and the possibility of the imposition of sovereignty concluded that the seas should be for all people and should not be exclusive to particular countries. The Dutch scholar Grotius, known as the father on international law, was the first to propose this policy in his famous "Mare Liberum", published in 1609. This was opposed by the English Selden in his famous "Mare Clausum” published in 1625.\textsuperscript{57}

\textsuperscript{56}Dashti, Al. (2011) Legal Aspects of Marine Environment Pollution by Oil. A thesis submitted as a partial fulfillment of the Degree of Master in Law. Jordan, Middle East University. PP. 16-19
\textsuperscript{57}Efthymios Papastavridis [2011]. The Right of Visit on the High Seas in a theoretical Perspective: Mare Liberum versus Mare clausum revisited. L.J.I.L. 2011, 24(1).
2.2 Sovereignty

State sovereignty, as explained by Alexandre Kiss and Dinah Shelton, is one of the most historic international law principles that gives every state power over activities in its territory by means of exclusive legislative, judicial, and executive jurisdiction. It is not an absolute concept and is exercised in line with international law. Treaties that limit sovereignty are contracts that the states willingly bind themselves to under contract since states have the right to enact or accept limits on their freedom to safeguard either common interests or interests of other states. In recent times, many environmental treaties have been signed by states that give them a wide range of control over private and public action, constructing legal boundaries to their freedom of action. Such treaties entail necessary obligations to safeguard species of wild fauna and flora, prevent dumping of toxic substances in rivers, lakes or sea and stop atmospheric pollution.58

Exclusive jurisdiction over resources of a state is part of its sovereign rights. The Stockholm Conference and Declaration, Chapter II, Section A, Principle 21 of the Stockholm Declaration (adopted in 1972) clearly extends this principle to issues of the environment with the statement: “States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies.” This statement was altered twenty years later by the Rio Declaration with reference to “environmental and developmental policies” (Chapter II, Section B). As a result, it is every state’s choice to define the extent of environmental protection it aims to achieve that is not contradictory to the obligations of its treaties and customs. International law is designed to prevent conflict and manage resources because exploitation of a state’s resources might infringe the sovereignty of another state due to trans-frontier environmental impact. Also, many wild animal species, birds and fish migrate across boundaries, necessitating legislation to avoid interstate disputes over rights to them. Thus, state sovereignty is balanced by the responsibility of ensuring that the activities of one state in its jurisdiction do not cause harm to

the environment of other states or territories beyond its national jurisdiction and this is defined by international laws including the Stockholm Declaration.\textsuperscript{59}

Despite the progress of the national and international legal system of environmental protection, there are many cases of marine pollution left to the jurisdiction of the state itself. The international system has not yet reached an advanced level to develop and organize authorities which can exercise judicial and executive powers over marine pollution cases.

2.3 International Tribunal On The Law Of The Sea

To bring the United Nations Convention on Law of the Sea into full operation, the International Tribunal for Law of the Sea was established, shortly after the United Nations Convention formulated the Law of the Sea in November 1994. It started its work on 1\textsuperscript{st} October 1996 when its first session was held in Hamburg. The following three documents were brought into use during its first year: the Rules of Tribunal, the Guidelines concerning the Preparation and Presentation of Cases before the Tribunal, and the Resolution on the Internal Judicial Practice of Cases before the Tribunal. Out of the total of 13 cases that the tribunal has decided so far, seven cases were concerned with immediate release proceedings, one case concerned the Conservation and Sustainable Exploitation of Swordfish Stocks in the South Eastern Pacific Ocean between Chile and European Community, another was the M/V “SAIGA” case between Saint Vincent, the Grenadines and Guinea and the other four were about measures of provision.\textsuperscript{60}

The Tribunal forms a Chamber of Summary Procedure on a yearly basis as it can create special chambers under article 15 of the Statute. In future years this can also be implemented if cases of prompt release under article 292 of the Convention are sent to the Chamber of Summary Procedure. To handle fishery disputes and disputes of the marine environment, the Tribunal has in place two other Chambers. A distinctive case that attracted the attention of the world was between an international organization, the European Community, and a state, Chile. In 2000, on their request, the Tribunal established a special chamber to handle a dispute in reference to the

\textsuperscript{59} Ibid


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conservation and sustainable exploitation of swordfish stocks in the South-eastern Pacific Ocean.\textsuperscript{61}

The Tribunal’s jurisdiction is binding in reference to the prompt release of vessels under Article 292 and provisional measures under Article 290, Paragraph 5 of the Convention, granted to the Tribunal under Part XV of UNCLOS, if the parties do not mutually opt for an alternative solution. The Tribunal’s jurisdiction extends to some legal disputes between states linked to the application and interpretation of the Law of the Sea convention or international agreement related to the Convention’s purpose. Nearly exclusive jurisdiction is granted to the Tribunal’s Seabed Disputes Chamber with regard to activities taking place in the international seabed region. It reviews contracts or work plans, acts of omission, denial of contracts, legal issues arising in contract negotiation, and disputes where it is alleged that liability has been incurred and matters expressly mentioned in Article 187 of the convention as well as competence \textit{ratione materiae} that extends beyond it.\textsuperscript{62}

The scholar Mohammad Kabbani declared that Islamic civilizations since the existence of the prophet Mohammad (PBUH) are firmly founded on the concept of the rule of law. In addition, Muslims must follow Islamic law. Kabbani clarified that if the Muslim commits a religious violation, he is judged on the basis of Islamic law; however, the non-Muslim citizen is judged on religious issues by the laws governing his own faith.\textsuperscript{63}

\textsuperscript{61} Ibid
\textsuperscript{62} Ibid
\textsuperscript{63} Houston, Christopher, (2004), Islammism, Castoriadia and Autonomy. Thesis Eleven, Number 76, P 56.
2.4 The History Of International Law

Professor Javaid Rehman stated that some modern international laws differ from Islamic international law. However, he clarified that there are many aspects to consider within the two systems. Furthermore, he explained that teaching the aspects of Islamic International law is not the same as teaching the aspects of modern international law. Javaid explores how Islamic international law is linked to concepts of spirituality and religion.\textsuperscript{64}

Historical records show that, ever since the first civilizations, man has been skilled in the art and methods of agriculture and as a result he has sought long-term residence in a fixed location. The development of agriculture and evolution of human groups created the emergence of the need for a higher power to adjudicate disputes.\textsuperscript{65} Law is the set of rules governing the conduct of individuals within groups and which aims to maintain the group by establishing a system of justice. Law emerged to protect individual interests and to ensure group security and stability.\textsuperscript{66}

Law has developed over the centuries. In early times, the law was synonymous with power and power was used to protect the rights of individuals and groups. Groups gradually developed the idea of God and religious beliefs and they referred all matters to the various religions, which in turn became a source of law. Over time, the groups began to distinguish between what was beneficial and what was harmful. From the relationships between groups emerged the concept of social customs. Thus, since ancient times, these various stages – law enforced through power, religious beliefs as the higher power and social customs - interacted and became complementary.\textsuperscript{67} The application of law is more focused on issues connected with issues of human rights.\textsuperscript{68}

\textsuperscript{67} Ibid. p. 12  
As there are various religions around the world and they were formed many centuries ago, the first societies strongly believed in and respected their religions so they referred any matters and issues to their religion before they made decisions. If a matter was against respect for their religion then they would refuse it and they would not make any decision concerning that problem or matter. Today, the opposite occurs as people and government soften act against their religions and against the orders of their Gods.

It is appropriate to refer to other religions because some people may refuse to respect law because it may be in conflict with their culture and religion and this may lead to the destruction of the rivers and the marine environment.

2.5 The Abu Dhabi Vision 2030

With regard to respecting international law, Abu Dhabi has issued its vision until 2030. In 2006, His Highness Sheikh Mohamed bin Zayed Al Nahyan, Crown Prince of Abu Dhabi and Chairman of the Executive Council, mandated the Abu Dhabi Council for Economic Development, the General Secretariat of the Executive Council and the Department of Planning and Economy to develop a long-term economic vision for Abu Dhabi city. His Highness Sheikh Mohamed bin Zayed Al Nahyan issued this mandate in order to deliver the vision of His Highness Sheikh Khalifa bin Zayed Al Nahyan, President of the UAE, Ruler of Abu Dhabi, to develop the economic success of Abu Dhabi. The expectation of the Abu Dhabi government was the establishment of a long-term roadmap for the progress of the economy in Abu Dhabi city by introducing plans and policies for all government departments and fully engaging the private sector in their implementation.69

The vision of His Highness Sheikh Mohammad and His Highness Sheikh Khalifa reflected their awareness to create a State in conformity with international standards and develop the sustainable development of the UAE.

The initiatives of the government relied on the foundations of the Policy Agenda 2007/2008 for Abu Dhabi. The initiatives were produced by a taskforce which joined stakeholders from the

private and public sectors. Many international institutions supported these initiatives and contributed to the Abu Dhabi task force. This taskforce was mandated with two key important tasks:70

1. To conduct a comprehensive assessment to support the economic growth of Abu Dhabi.

2. To create a long-term comprehensive economic vision, with clear targets, to develop and guide the economy of Abu Dhabi and support it until 2030.

International Law can be defined as a governing authority, which organises the behaviours of countries in their relations with each other. Scholars are not all in agreement with the terms of international law and this has led to a focus on and a debate about the methods of the law, relations of the law to ethics and science and disputes about its limits. Lawrence, states that modern international law was established and grew between Christian States and so has been influenced by the views of scholars and Christian thinkers. There are some non-Christian states which accept modern international law such as Turkey and Japan.71 Verma, defined the law in his book “An Introduction to Public International Law” as the tool to regulate interactions and behaviours between members of societies; he considers that society cannot develop without a law governing its members.72

Verma focused on the interactions of the members of societies and did not link the law to one specific religion. The researcher agrees with Verma that that laws can be established in all societies.

Law in general and maritime law in particular does not belong to one state or one religion as Lawrence argued. Laws were established because of the need for societies to control life. However, the law can be created by the State itself or the law can be learnt from religions like Islamic Shari’ah or the Christian religion or other religions.

The maritime law is enforced by the rules established by the government of each state; for instance, the UAE established rules to control the marine environment by enforcing penalties against all polluters such as oil ships.

70 Ibid.
72Verma. S, An Introduction to Public Law.Delhi, University of Delhi, P 1.
Article One of the UN Charter defines the aims of international law as the maintenance of peace and security in the world and the protection of individual and state freedom. In addition, the UN Charter expresses its intention to seek international cooperation in solving international problems of an economic, social, cultural and humanitarian nature and to promote respect for fundamental human rights and freedom for all.\textsuperscript{73} Article 28 of the Universal Declaration of Human Rights declares that everyone has the right to a social and international system which protects their freedom and human rights.\textsuperscript{74}

The previous articles can be applied to the rights of the UAE citizens to a clean environment without any kind of pollution and, in particular, in relation to marine life.

\textbf{2.6 The Marine Environment Under International Law And The Abu Dhabi Road Map}

Schiffman, from New York University, explained that the development of the modern law of the sea came from an increase in the number of issues and problems related to the marine environment, including the loss of marine mammals and biodiversity.\textsuperscript{75}

The modern international system of law is the result of the experience of the past four centuries and the expression of the customs of transactions or communication between the modern European States. International law owes its inception and development to international scholars who played a prominent role in the emergence of its basic tenets through their writing from the sixteenth to the nineteenth centuries, as well to the emergence of the principle of equality and independence. We can trace the beginnings of the rules and principles of international law in early human societies and we find that treaties, diplomatic immunity and some laws and customs of war were known to the ancient Egyptian States and India. There are cases where third parties acted as arbiters or mediators in disputes, as happened in the state of ancient China. Islamic law included the strict legal regulation of many of the issues currently addressed by modern international law. The principles of modern international law, however, dating back to the mid-sixteenth century, have their foundation in the rules that were devised between Christian - and

\textsuperscript{73} Article One of The United Nation Charter.
\textsuperscript{74} Article 28 of The Universal Declaration of Human Rights.
mainly Catholic – countries who, due to their predominance, influenced relationships in the international community.\textsuperscript{76}

Marine law is part of the international law so if international law did not exist then also marine laws would not exist to protect the seas and beaches.

Based on the principles considered at the agenda of the Abu Dhabi Government in 2007, the Abu Dhabi Economic Vision 2030 is a roadmap for the Emirate’s economic progress. The Abu Dhabi vision is to ensure the continuing success of the UAE and its sustainable development. The government has developed Economic Vision 2030, in consultation and cooperation with the private sector, as a 22-year strategy to achieve these aims, and to ensure that all stakeholders in the economy are moving in concert, with a clear view of the long-term targets.\textsuperscript{77}

The Policy Agenda 2007/2008 of Abu Dhabi defines and clarifies the priorities for public policy in Abu Dhabi. These priorities were identified to enable the Abu Dhabi government to set goals such as an open economy and a safe and secure society. The Policy Agenda identified nine elements that will form the foundation of the Emirate’s political, economic and social future:\textsuperscript{78}

\begin{itemize}
\item The existence of a large private sector which has economic and social influence.
\item An economy based on sustainable knowledge.
\item The promotion of a clean, transparent regulatory environment.
\item The existence of a good relationship at local and international level with other countries.
\item The optimization of Abu Dhabi resources and their preservation for future generations.
\item The existence of good healthcare, education and supporting infrastructure.
\item The establishment of domestic and international security.
\item Support for the Abu Dhabi heritage and culture.
\item Support for the federation of the UAE.
\end{itemize}

\textsuperscript{76} Amjad, A. (2002). Summary of the Public International Law. Fujairah National Press, PP 31 - 42.

\textsuperscript{77} Paper developed by the Department of Planning and Economy of Abu Dhabi, General Secretarial of Executive Council of Abu Dhabi and Abu Dhabi Council for Economic Development, P 5-7.

\textsuperscript{78} Ibid
The history of international law is thus bound up with the history of relationships between emergent and developing European civilizations. For instance, the Hellenistic civilization of the Greeks contributed to the composition of the rules of international law, as each city had an independent system of rules, and a common structure and process was badly needed. An independent law system between Greeks cities was created to govern mutual relations between Greek cities whether in time of peace or war. There were, for example, rules governing the declaration of war, the exchange of prisoners and respect for war refugees living in the temples. The source of these rules is religion, which, during that period, had control over human history.79

A second example of international law being bound up with developing civilizations is the Roman Empire. When the sovereignty of the Roman States was established over the old world, there were some rules which were designed to control and govern the relations of Rome with other peoples and states. The rules of Rome had precedence over Greek rules as they were of a religious nature.80

The third example is the Middle Ages, which were known as the first stage of the beginning of international law, as it was founded in the fifteenth century at the time of the emergence of independent European States. Prior to this period, development of international law on the European continent was problematic because of political conflicts between nations. Two main factors impacted negatively on the development of the international legal system. The first factor was the power of Rome over most of the European continent and the second was the predominance of the feudal system over the political system in the European states which prevented the emergence of the independent state with authority and control over its territory.81

The fourth example is the European Renaissance. In the fifteenth and sixteenth centuries, many changes took place in the world, such as the discovery of the continent of the Americas (1494). The scientific renaissance in Europe and the religious revolution in Europe in the Middle Ages had a dramatic impact on the existing political system. New theories emerged in the face of the changing political and social landscape. Furthermore, secular concepts appeared which were designed to affirm and consolidate the concept of the modern sovereign state. Political theories

80 Ibid
81 Ibid
emerged in the writings of the French jurist Bodin (1530-1596) and the English philosopher Hobbes (1588-1679). As a result, an increasing number of independent States began to form customary international law rules and practices to govern their mutual relations and some appointed the equivalent of the modern-day diplomat. Significantly, scholars began to take the emergence of independent societies consisting of independent states into account and began to consider and write about various political problems within the framework of a law of nations. They also argued for the need for a set of rules to regulate relations between these countries, drawing on history and ideas from past centuries. In the absence of stable international customary rules they referred to the rules of Roman law. Many famous scholars contributed to the development of jurisprudence such as Vittoria, Professor of theology at the University of Salamanca; Belli (1502-1575); Brunus (1491-1563); Ayala (1548-1584); Saurez (1548-1617) and Gentilis (1552-1608) who became the professor of Civil Law at Oxford University and is credited by some as the founder of international law. The Spanish school, through Saurez, argued that the principles of international law are universal and must be applied to all nations.82

Previous civilizations, political systems around the world, countries and scholar’s views and opinions all played vital roles in building the rules of international law. International law was not established by one civilization and was developed from the need to regulate human behaviour between societies. For instance, an international law might appear during the sixteenth century but might not gain international acceptance until the seventeenth century. However, the rules of the marine environment started to affect the main laws of the countries long after the theories of the scholars and the laws of civilizations had a global impact.

During the time of the European commercial revolution, European governments had control over the trade of the Atlantic and Indian Ocean and countries disputed the notion of sovereignty over the sea. Two great jurists were prominent in debating the question of sovereignty over the oceans: the Dutch jurist Hugo Grotius and the English lawyer and polymath John Selden. The argument of who should have judicial rights over the seas focused, as we have seen, on Grotius’s work Mare Liberum (‘The Freedom in the Seas’) in 1618 and John Selden’s Mare Clausum.83

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82Ibid. PP 31 - 32.
Hugo Grotius was a Dutch scholar and diplomat from April 1583-August 1645. Grotius worked as a jurist in the United Provinces, now known as the Netherlands. Grotius created the foundation of international law and acquired the reputation throughout Europe of being one of the most influential thinkers and incisive humanist scientists of his age. His work as a lawyer increased his reputation and helped him to achieve political influence in Europe, which led to his being awarded the unofficial title of Father of International Law. Grotius further displayed his philosophical, rhetorical and literary talent when he published Mare Liberum and he also wrote a famous treatise on international law called De Jure Belli ac Pacis which was published in 1625.

Grotius intervened politically on behalf of his country and two events in particular had great significance for the United Provinces. The first was when the Dutch broke away from the United Provinces in 1581 and Grotius brokered negotiations with the Spanish Monarchy. The second was in supporting the right of the Dutch for open navigation and commercial trading in South-East Asia. Grotius argued that all nations are bound to, and should comply with, the principles of the law of nature and formulated his principles in Mare Liberum which argued that the sea should be free for all nations and all should be able to use the sea for the purposes of trade. Grotius’s justification for his principle was that nobody can own the sea as the sea is not a property; the sea, he concluded, belonged to nature and nature allowed it to be used for the common good.

However, scholars and jurists were unable to solve the issue of who controlled and had jurisdiction over the high seas and the matter became a political dispute between the countries of the world. The United Provinces tried to claim huge spaces of the high seas as part of regional development and argued with the concept of the free and ‘Open Sea’. The issue of the freedom of the seas arose mainly due to the interests of European maritime nations in both the exploration and commercial exploitation of the East and elsewhere. Grotius supported the right of the Dutch to use the sea to promote commerce in East India against claims of the Portuguese for monopoly. His principle of the freedom of the high seas quickly became one of the fundamental principles of international law; however, freedom of this principle was limited because it was limited because it was

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84 Grotius lived from April 1583 – 1645.
87 Ibid. 15.
considered that states could claim ownership of their coastal waters, as this was considered integral to their territorial jurisdiction.88

Grotius’s principle could have made countries equal in their rights to use their freedom over the seas and oceans. His ideas could have taken their place many centuries before the industrial revolution at the time when there were not many vessels using the seas and oceans. However, following industrial development, especially the building of big oil vessels, Grotius’s ideas could not work. Without controlling the seas and oceans, marine pollution can take place in large areas of the marine environment. Politically weak countries could not provide legislation to protect the marine environment. Marine pollution is not like land pollution, as marine pollution can spread from one state to other states. Grotius’s principles were based on the argument that it is unfair for powerful countries to control marine waters as they can also explore and exploit them.

In the sixteenth century, the Danes and Norwegians claimed ownership over the Northern seas. In 1599, some English vessels sailing in these waters were detained and seized and Queen Elizabeth I strongly opposed and protested against this act. International law had not been yet developed to support the principle of Mare Liberum; before the seventeenth century, the protocol of using the high seas was indeterminate and states depended on their power to control navigation. Selden, who was an opponent of Grotius, published Mare Clausum, which argued for the right of states to control navigation over the seas and to establish laws of exclusive jurisdiction over it. John Selden was English. He was born in Sussex on 16th December 1584 and died in London on 30th of November, 1654. Like Grotius, Selden gained a reputation among his contemporaries as a jurist, scholar and politician.89

Selden’s principles had political implications, which served the purposes of powers such as Portugal, Spain and the Nordic countries. Furthermore, English monarchs upheld the principle of Mare Clausum as they wished to control navigation within their coastal waters.90

Grotius and Selden used different approaches to support their respective countries and consequently the arguments which Dutch and English scholars used to debate the control of the

88Ibid. P15.
90Ibid. p. 215.
seas were very different. As Grotius promoted unrestricted trade, seven chapters in Mare Liberum focused on free navigation. In the fifth chapter of Mare Liberum, for example, he attacked the Portuguese for claiming that they owned the Indian Ocean as they occupied it. Selden’s concern, on the other hand, was for the political interests of his country. He based his position, not only according to Mare Clausum, but also on the theory of Divine Right and the sovereignty of the monarchy to argue that England’s jurisdiction on the seas should include the Atlantic Ocean: from the west, reaching the coasts of Greenland and New world; to the east, reaching Holland and Norway, as well as to ‘own’ the English Channel. Grotius’s arguments relied on a deductive method rather than on historical analysis and, as we have seen, he was a supporter of natural law theory. Selden, on the other hand, used the inductive method of rational argument. The work of both Grotius and Selden, although based on different principles, was influential in the development of modern international law. Article 38, for example, of the International Court of Justice (ICJ) uses international law principles in some circumstances, which have their origin in the disputes of the 16th and 17th centuries. Section C of Article 38 refers to general principles of law, which are recognized by civilized nations.91

International law also covers many other topics, some of which are related to philosophical questions about the individual and society. During the nineteenth century, international law expanded due to several factors, including the emergence of a number of independent States inside and outside Europe, the spread of European civilization outside the European continent, modernization of international transport, and the growing means of mass destruction. Islamic Turkey joined as a member of the international community under the Treaty of Paris (1856) and international law became universal and included all nations, regardless of their location or history. The Brussels Treaty (1874) declared that international law applies to all nations and not only to European countries. Arbitration became more established and the states tended to use treaties to regulate matters of mutual interest.92

The researcher mentioned the civilizations of the countries such as European and Islamic civilizations because they have great influence on life and in particular, on protecting marine life. The UAE can learn from these civilizations how to protect the marine environment.

92Ibid.
International law expanded and became prominent in issues connected with the economy, social conditions and human rights and freedoms. People began to appreciate that the law was created through the will of the people and for human benefit. International law matured and developed as a result of the combined efforts of the nations to find a reference point for intellectual and cultural human rights.\textsuperscript{93}

Human rights are established in the history of various philosophical and political theories and in the teachings of many religions. Since ancient times, the process of the development of human rights and expressions of freedom has been in the forefront of the inter-relationship between the citizen and the power of the state. Ancient civilizations such as the Egypt civilization, the Mesopotamian civilization and Hellenic civilization (Greek and Roman) were cited as potential sources of evidence for the outcome when religious authority was allowed to acquire power at the expense of individual rights and freedom was based on the division of individuals according to social class. The supporters of major philosophical theories such as natural law and the theory of the social contract aligned themselves to models in ancient civilizations.\textsuperscript{94}

The theory of natural law is one of the most important theories in the field of philosophy of international law. It revolves around the idea that nature is the basis of the legal system of organizations and communities and that all men are equal and have the freedom to obey the law or to refuse to obey it. Christian philosophers and thinkers such as Thomas Aquinas in the thirteenth century identified natural law with the law of God. Aquinas believed that a law which infringed natural law was not a true law. The philosopher Grotius developed the theory of natural law and the theory found a place in the human mind.\textsuperscript{95}

The Renaissance and the secularization of society made the theory more popular and it became the first comprehensive theory for international law. John Locke wrote that, as human beings are free in a state of nature, so they are equal and free under the law. Whilst citizens surrender some personal rights in order to benefit the public interest, they retain fundamental rights drawn from natural law. In the 19th century, the theory of natural law lost its influence and the historical school became more popular in the 20th century. However, natural law theory continues to be

\textsuperscript{93} Ibid
\textsuperscript{94} Ibid. 82 – 95.
cited as the basis for promoting human rights and is, in a sense, convention which focuses on principles and morals common between people across all societies.\textsuperscript{96}

The researcher doubts whether the theory of natural law could be applied to the protection of marine life in the UAE as citizens would be free to ignore it. In addition, this theory is against Islamic law as the Islamic Shari’ah is derived from the law of God and the law of God must be applied between Muslim people.

God created nature for human life and the law of God was established at the same time as the creation of nature to protect this life from any damage which can pollute it. Furthermore, the law of God was established from the beginning of life on this earth and, in common with other religions, Shari’ah creates rules to protect the earth. The theory of natural law would lead to the contamination of our planet with human activities. Without the existence of laws, the planet would be governed by the law of jungle which means that the strong will overcome the weak without respecting the environment.

Today, many jurists do not consider the law of God, as they seek to solve problems within the provisions of civil laws. This can lead to mistakes being made in the way that legislation is created. Thomas Aquinas in the 18\textsuperscript{th} century linked the existence of the law with the law of God. Aquinas argued that any law which infringed natural law and the law of God, is not a true law. Islamic Law is from God who created this planet so, people have to obey its instructions.

Social contract theory is one of the important theories in the field of human rights and international law and is an extension of the theory of natural law. Social contract theory tried to address how, in moving from natural life into society, people could be governed by rules which were based on the greater good. Thinkers behind social contract theory interpreted the phenomenon of power in the state as an inevitable consequence of a contractual agreement between individuals within the framework of society. It emerged in the Seventeenth and Eighteenth centuries with liberal thinkers in Europe and was espoused by philosophers such as Thomas Hobbes and John Locke. The concept of the social contract was used to argue for resistance to the absolute power of kings and princes at the expense of the freedom of individuals in society. The disadvantage of social theory is that it has difficulty in distinguishing between

\textsuperscript{96}\textsuperscript{Ibid. p. 10.}
binding and non-binding behaviour, with the result that citizens have the right to choose whether they will obey it or not. In addition to the ideas and interpretations contained in the ancient civilizations and the teachings of religions and theories of philosophers and thinkers, we cannot forget the legal references to human rights before the stage of the universal Declaration of human rights, particularly in Britain, France and the United States of America.97

Social contract theory infringes the Islamic methods of governance, politics and sovereignty for the following reasons:

- Social contract theory gave absolute power to the people without reference to God who created the earth and all people. In Islam, absolute power resides with God.

- Social contract theory is based on the relationships between man whereas Islam is based on the commands and orders of God through the Holy Quran and Sayings of the Prophet Mohammad Peace Be Upon Him.

- The founders of the social contract theory, such as Thomas Hobbes, John Locke and Rousseau are not Muslims so did not base their actions on the Holy Quran and the Prophet Mohammad’s sayings and actions. Those who base their ideas on social contract theory will follow human positive laws.

- Social contract theory is based on the benefits of current life and takes no account of the benefits of life after death. However, the contract of God is based both on the benefits of current life and life after death.

- The theory of the social contract argues for a non- Islamic constitution based on laws without any Islamic references to the Holy Quran.

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2.7 The Responsibility Of International Law To Protect The Marine Environment: Reasons And Duties

Professor Diana Shelton, explained that Principle 1 of the Stockholm Declaration linked the protection of marine environment with human rights.\textsuperscript{98}

Earth is the only planet which is habitable for human and other living organisms. However, human beings are increasing their destructive activities and actions, which lead to damage to the environment, including the marine environment. The oceans produce 70\% of the earth’s Oxygen, and the marine environment owns the sources of fish and other marine habitats, which are rich in many vitamins and minerals necessary for human health. Furthermore, as the marine environment is important for transportation and tourism,\textsuperscript{99} international law has to consider legislation to control and preserve this environment.

Important issues in international law are decided mainly by reference to international treaties and customs. Each country has jurisdiction over its own territory, so compliance and enforcement of international treaties raise potential conflict with the exclusive jurisdiction of other countries, especially where matters of the environment such as maritime pollution are concerned. Some environment issues initially arose within the territorial limits of a national border since pollution was not harming another country. Therefore, national governments have responsibility for any infringement of environmental treaties committed by citizens or by the government itself. When the nations accept a treaty’s provisions, they have to respect its rules.\textsuperscript{100}


2.8 Trail Smelter arbitration case( United States Vs Canada) 1941, U.N. rep. int’l Arab. Awards 1905 (1949)

In the late 1950s, the case of the Trail Smelter arose along with the International Environmental Law problem. One state had harmed the environment of the other which gave rise to a legal claim. The issue was not legally distinguished from public or private property harm, as might occur, for example, when entering the territory of a foreign state by armed forces without intent. The international Tribunal, for the first time, put forward the principle that a State or the nationals of a State may not use its territory in a way which harms a bordering country.101

Following, are the facts of the case102:

Flowing past the lead and zinc smelter based at Trail in British Columbia (Canada) is the Columbia River. Beyond the Trail, on the boundary of United States, it was alleged that the smelter company had harmed the trees, crops and land in the American States of Washington. The Consolidated Mining and Smelting Company of Canada, Limited gained the smelter plant at Trail in 1906 which was originally built under U.S auspices but was taken over. Since 1906, the Canadian company, in the absence of opposition, gained control over the operations of the Smelter which they developed over time to be one of the best and most well equipped smelting plants on the continent of America. The smelter’s production enhanced when, in 1925 and 1927, 409 feet high stacks were erected which in effect increased emissions of Sulphur Dioxide fumes damaging a large area in the United States. On January 1st1932, the International Joint Commission suggested payment of $350,000 to cover the damage that had been caused between 1925 and 1931 to the State of Washington. The Arbikal Tribunal was set up to “finally decide” if any more harm was faced by Washington, whether any financial restitution needed to be paid and if the smelter’s operations required to be halted and, if this was the case, whether compensation was due, since the conditions were still unacceptable as communicated to Canada by the Unites States. The law and practice of the United States, together with international law and practice, was followed by the tribunal.

The case was described as follows:

102 Ibid
‘The United States Government, on February 17, 1933, made representation to the Canadian Government that the existing conditions were entirely unsatisfactory and that damage was still occurring and diplomatic negotiations were entered into, which resulted in the signing of the present convention.’

Canada was held accountable by the court for the Trail Smelter’s conduct and was ordered to make monetary compensation to the United States. The future effects of the activities of the company on the environment and the likelihood of further harm to the environment of United States were identified for future monitoring by the Court.\textsuperscript{103}

The diplomatic negotiations that took place after this gave way to the signing and ratification of a Convention in 1935 which the two states and an independent chairman – a Belgian national - signed. The arbitration Tribunal had to determine if the Trail Smelter damage to the environment continued after January 1932 in which case restitution should be paid. Given the scenario, the arbitration tribunal affirmed that the Canadian Smelter had indeed caused damage to the State of Washington from 1932 to 1937 and compensation was awarded, amounting to $78,000 (equal to approximately $ 1.3 million today). A more pressing and imperative issue that the Tribunal was charged with was to decide if it should be required of the Canadian Smelter to prevent any more damage occurring to the State of Washington in the future.\textsuperscript{104}

Canada, however, held the United States responsible for the harm that was caused by the privately owned Canadian company from fumes travelling with the winds, and called upon the company to avert future instances of such damages. The Tribunal deemed it gratuitous to rule if the issue needed to be resolved by United States Law or international law because the United States already followed a law between its states which was in line with the basic rules of International Law in terms of air pollution. The Tribunal, referring to the lack of international decisions over air pollution, argued that the nearest analogy was that of water pollution. Several United States Supreme Court decisions, covering both air and water pollution, were consulted by the Tribunal as legitimate guides in international law because there was no other rule in

\textsuperscript{103} Mark W. Jarris & John E. Noyes, Cases and Commentary on International Law West Publishing Company, 1997, St. Paul, 586

\textsuperscript{104} Ibid
international law to contradict it. The tribunal confirmed that, according to principles of international law, a State could not use, or allow the use of, its territory in a way that could cause harm to another state’s regions or its people. The tribunal also considered a Swiss case on water pollution, Georgia vs. Tennessee Copper Co.\textsuperscript{22105}

The Dominion of Canada was held accountable by international law for the Trail Smelter operation by the Tribunal. Along with the Convention’s undertakings, the Government of the Dominion of Canada was charged with the duty to ensure that future conduct would be in line with the determined obligation of the Dominion under international law. The Trail Smelter Company was ordered to prevent any more harm occurring from fumes in the State of Washington as long as the conditions in the Columbia River existed. The tribunal ordered that damages would be forthcoming following decisions of the United States courts in relation to the suits of private individuals. The Governments were ordered to agree a fixed penalty for the damages caused. The Trail Smelter arbitration was a dispute that was dealt with under domestic litigation, and, thus, is a legal landmark. With the liberalization of jurisdictional regulations in both nations and the development of environmental enforcement under domestic law, residents no longer needed to depend on their federal governments to look for a solution for trans-boundary contamination.\textsuperscript{106}

International law reflects the requirements of relationships between nations and the rules of international law are derived from two principal sources. Scholars of law divide international law into two doctrines to explain its binding force: the Voluntary doctrine and the Substantive doctrine. The Voluntary doctrine subscribes to the view that laws are created by provisions of human will. Under this doctrine, international law is based on the consent of States to accept the provision of laws in the same way as domestic law, which in turn is based on the consent of citizens. The supporters of this doctrine are divided into two camps: one based on the theory of self-identification, the other based on the theory of federation wills.\textsuperscript{107}


\textsuperscript{107}ibid. p. 17-22.
The theory of self-identification argued that the law is effectively linked to the will and thus the law has a power derived from the authority of the will; domestic law is established by the will of individuals within states and international law is established by the will of states. International law derives its power from the will of the State and there is no other will higher than the will of the State. When the State obeys the provisions of international law it obeys it by absolute freedom of choice.108

The theory of federation of wills assumes that the law comes from a higher authority than the authority of people and that, if such power is missing in the international sphere, it must be created under international law provided that it meets the will of the people. On the other hand, the individual state does not serve as the basis of international law. The supporters of the Federation Wills theory proposed that the basis of the force of international law comes from the federation wills of the states acting together so there is no basis for law in the will of an individual state.109

The substantive doctrine searches for the basis of international law outside the circle of human will. According to the substantive doctrine, the power of international law is created by external factors rather than the human will. Substantive theory supporters can be separated into two groups for identifying the external factors which produced the legal rules of law - the French school and the Geneva school.110

The researcher’s view is that people obey the orders of international laws in general and environmental laws in particular if they feel trust in these laws. Some individuals, however, may obey laws not because they feel trust but because they want to avoid punishment. This study focuses on why citizens of the UAE obey a law without punishment for breaching it. The argument is that people respect the marine environment if they reach a high level of awareness about Islamic rules, which encourage them to act positively towards their environment in general, and the marine environment in particular. The Islamic Shari’ah111 relies on teaching people how to live healthy lives and avoid pollution, rather than punishing them for not doing so.

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108 Ibid
109 Ibid
110 Ibid
111 Shari’ah means Islamic Rules.
2.9 The Resources Of International Law

As international law relies on the consent of the member states, there are many sources for this law as a result of the multiple expressions of the consent of the States, either implicitly or explicitly. Treaties are established by the explicit expression of the states and customs are created by the implicit expression of the states. Article 38 of the Statute of the ICJ referred to the sources of international law and divided them into two types: primary sources such as Treaties, international customs and the principles of law approved by the United Nations, and Secondary sources, such as Court awards and doctrines of famous authors on international law. International treaties are the first and main source of the agreement provided in article 38 of the International Court of Justice.112

2.9.1 International Customs

A custom can be defined as an habitual behaviour. It is often difficult to produce conclusive evidence of customs and so conflict may occur as a result.113 Philosophy and Jurisprudence are at odds over the nature of international custom. Furthermore, researchers have made many attempts to explain the idea of custom and its relationship with other systems at domestic and international levels. They seek to explain custom at a theoretical level, rather than to explain it at a practical level. For instance, under the rules of the ICJ, something can be argued as a custom if it: 1- has been practised for a long time; 2- is practised by the majority of states; 3- Is not contrary to third party interests. International custom plays a vital role as a source of international law. International custom is different from treaties which are negotiable and usually subject to a complex process of ratification. The State usually has the right to exist unilaterally from a treaty. However, the State does not have any right to exist unilaterally from the rules of the law of international customs. It is not obvious why it is easier to withdraw from treaties than from international customs. Some philosophers and scholars of the eighteenth and nineteenth centuries determined that the nation can withdraw unilaterally from the rules of international customs if it raises notice of its intent. It is clear from the differences between treaties and

international customs that the rules of international customs law are non-negotiable so they do not need any ratification to become binding.\textsuperscript{114}

The rules of law were established to control the behaviour of communities in their early stages of formation and this concept applies equally to the international community. With the growth of relations between states, the rules governing behaviour became customary so, in the absence of legislative and executive powers in the international community, international customs began to play a role in developing international law. International law defines custom from the behaviour of the people, believing it to be a legal requirement.\textsuperscript{115}

Hafiz Abdul Ghani, defined invalid custom in Islam. Invalid custom in Islam refers to a well-known practice between the people, but one which opposes the law of God, or legitimises something prohibited by God, and causes harm.\textsuperscript{116}

2.9.1.1 Elements Of International Custom

A custom has two main elements: the Material Element and the Moral Element. The Material Element refers to the conduct followed by the state. There is no set time for the emergence of a custom nor does it need to be derived from an old rule or created from a new one; it depends on the circumstances of the customary rule. This was confirmed by the ICJ when it ruled that there was a requirement for the conduct of a rule to be consistent with practice pursued by states on a permanent basis. It was not necessary for all states to participate in the customary rule nor for it to be universal so, as Article 38 of the Statute of the ICJ stated, the most important aspect of the law was the position of the state whose interests are affected. If a state does not follow the international customary rule or fails to comply with its provisions, it will become liable under international customary rules if the rules are confirmed and established and a subsequent objection will not exempt it from accepting responsibility for the infringement.\textsuperscript{117}

\textsuperscript{116}Ghani. H [2012]. Conditions of a valid custom in Islamic and Common Laws. International Journal of Business and Social Science, Vol.3 No.4[SPECIAL ISSUE- February 2012].
The Moral Element focuses on the consequences of international law not having power over all the mutual relations between States and therefore it is necessary to distinguish between legal rules that arise and other rules which do not have a basis in law. 118

The moral element has a significant impact in relation to the marine environment, as citizens may feel unhappy with their environment if it is dirty and contaminated by government activities; they may, however, be powerless to stop those activities.

Customary rules can also be used by the State to protect the marine environment. In the UAE they play a vital role in protecting the marine environment from oil pollution, factory waste thrown into the sea and agricultural waste. In the UAE, for instance, there is the Sheik Zayed award for the environment. This award is presented yearly by the Abu Dhabi government for the person or institution who assists the environment the most. Customary rules can be found between the States and between the people as in the UAE. Islamic Shari’ah has a more effective role than customary rules in the UAE; for instance, Muslims will respect and protect the marine environment because they follow Islamic ethics which are provided by the Holy Quran and the Sunnah of the prophet Mohammed (PBUH).

2.9.2 Treaties

Treaties are very important in the UAE as they follow a range of conventions in regard to keeping the marine environment clean and safe.

Christoph Schreurer, clarified that the treaties—agreements between sovereign states—are the most obvious sources of international law. Treaties may be bilateral or multilateral; multilateral treaties impose obligations on all signatories to them. However, creating international law from multilateral treaties may take some time. For instance, the creation of the Law of the Sea from the convention which was initiated in 1973 by the United Nations Conference took until 1994 to be ratified and signed by 60 states.119

118 Ibid
As a treaty is an agreement between States, it is not governed by the rule of domestic law. Treaties contain international legal norms, which are similar to some domestic state legislation so they are only possible between the member states who established and ratified the treaty despite the fact that the domestic legislation may apply to citizens in other states. There are a range of treaties which can be drawn up such as Bilateral Treaties, Multilateral treaties, Law-Making Treaties and Contracts treaties.\textsuperscript{120}

Treaties are often negotiable, put in writing and subject to processes of ratification at a domestic level. The state or nation usually has the right to unilaterally withdraw from the provisions and obligations of the treaty. Some treaties require notice from the nation to withdraw and some examples would include treaties which reflect general principles and public policy such as the Geneva Conventions and Nuclear Non-Proliferation Conventions. Some treaties and conventions do not acknowledge the right of nations to unilaterally withdraw from treaties despite the fact that nations or states legally have the right of withdrawal and this raises issues and difficulties at both international and domestic levels.\textsuperscript{121}

Article Two of the Law Treaties Convention defined treaties as an international agreement concluded between two or more states in writing and subject to international law.\textsuperscript{122} The treaty is an international agreement between legal persons or bodies and the distinction between treaty agreements and other forms of agreement is that there is no treaty until negotiations have taken place between the contracting states. Furthermore, the treaty needs to be signed by both states and it cannot become effective until both states have ratified it.\textsuperscript{123}

The UAE is one of the member countries of the GCC, which adheres to the international maritime conventions. The UAE is also a member of major international conventions such as: the International Maritime Organization 93 (IMO); the SOLAS Convention 74; the SOLAS Protocol 78; the Load Lines Convention 66; the Intervention Convention 69; the Fund Convention 71; the Fund Protocol 92 and the Salvage Convention 69.\textsuperscript{124}

\begin{flushleft}
\textsuperscript{120}Ibid. PP 77-78.
\textsuperscript{121} Ibid, P 2,3.
\end{flushleft}
The UAE follows international standards with regard to protecting the marine environment. All international standards defined by international maritime conventions were considered and explained by the Islamic Shari’ah many centuries ago so, if we search within Shari’ah Law, we will find that the Quran and the Prophet Mohammed’s (PBUH) Sunnah include those standards in order to protect our marine life.

2.9.2.1 Treaties In Islamic Law

Some scholars believe that treaties did not take place between peoples many centuries ago. However, there is evidence that treaties can be found many centuries ago at the time of Islam and even before that time.

Emilia Justyna Powell, explains that the International Court of Justice, as the principal judicial organ of the UN, plays a vitally important role in world peace in settling international disputes between states, whether Muslim or non-Muslim. Traditionally, the relationship between courts, Islamic law and international law has been complex and sometimes aggressive due the differences between religions and beliefs. Until now, some countries have recognized the compulsory jurisdiction of ICJ but have not abided by it.125 For example, the United Arab Emirates applied to the ICJ in its dispute with Iran regarding the three islands of Abu Musa, Tanb al Kubra and Tanb al Sughra which are occupied by Iran. However, Iran has not responded to the instructions of the ICJ to relinquish control of the islands.

The Islamic religion provides instructions for Muslims to follow. The ratification of international treaties of the ICJ do not conflict with Islam, as long it is in the interests of the state and its citizens.

Over time, treaties became more popular as a way of developing foreign political relations between states. Furthermore, they were seen as a way of regulating their common affairs and an expression of mutual interest, as well as a way of resolving outstanding problems between communities. Islam has taken into account the respect between the parties of treaties and the Holy Quran has given instructions that Muslims must comply with and respect treaties and conventions agreed with other parties, whatever their nature and nationality. The Holy Quran

said in Surat AL-Maidah, Verse One: *O you who believe! Fulfil your obligations.* Also the Prophet Mohammad (PBUH) said in his Hadith: *Muslims do not have good faith and good religion if they do not fulfill their obligations held with other parties*.126

The scholars of Islam hold to the general principle that relations with non-Muslim countries are peaceful. All Muslim governments support relationships with all countries created through treaties.

International Islamic Law gives binding force to the parties of treaties, whether with states or groups, whether strong or weak, whether external or internal. Treaties are adopted to preserve the marine environment from pollution and can govern the relationship between neighbouring countries in the event of pollution. As explained earlier, marine pollution cannot end at the border of one state.

There are two types of treaties in International Islamic Law: firstly, treaties with foreign countries; and secondly, treaties between residents of an Islamic state.127 Treaties with foreign countries can be sub-divided into general peace treaties where there is an agreement between the Islamic State and a hostile state to cease hostilities for a specified period or indefinitely. This agreement applies to the states even if they were not subject to the rule of the Islamic State. A general peace treaty has several main provisions: firstly, it is an umbrella for many peace treaties and conventions that take place between the Islamic State and other States, such as trade treaties, economic treaties and scientific treaties where there is an exchange of knowledge. Many treaties would fall under the umbrella of the general peace treaty as it is not restricted to any one type of relationship and is drawn from the principles of public policy under Islamic law. The legitimacy of a treaty in Islamic law depends on the relationship between the parties of the treaty so, if Islamic law does not prohibit the relationship between the parties, the agreement is lawful. However, if Islamic law prohibits the relationship then the agreement of the parties is unlawful. For example, trade treaties would be unlawful according to Islamic law if the agreement covered trading in alcohol or included gambling. The general rule is that if you force the representative of the Islamic State into the agreement, the agreement becomes invalid. International Islamic Law

emphasizes the need to clarify the rules of the agreement and conditions in order to prevent confusion and ambiguity, which may lead to the demise of the treaty.\textsuperscript{128}

Secondly, treaties with the residents of the Islamic state: this is a treaty agreed with residents who are not Muslims and who live in the Islamic State. The Islamic state has an obligation to protect those residents who in turn pay tax to the state in exchange for protection.\textsuperscript{129}

In the early stage of Islam there were many treaties created by the Prophet Mohammed (PBUH) with non-Muslim people; for instance, the treaty between the Prophet Mohammed (PBUH) and the Jews of Al Medina in Saudi Arabia.

2.10 State Sovereignty

State sovereignty is instrumental in assisting the UAE to control its marine boundaries. Without this sovereignty, the seas could be polluted by a range of causes such as oil pollution, sewage and dumping at sea from foreign vessels entering the state boundary illegally. As we have seen, international law has several basic principles, some of which are important in the field of the development of environmental law. Article 2 of the Charter of the United Nations sets out principles which are important to the UN and member states: Cooperation in solving matters at an international level; compliance; respect for the agreement when the state is a party in the agreement and to abide by it in good faith; the pursuit of peace when attempting to solve international disputes; and the avoidance of interference in the sovereignty and domestic issues of other states.\textsuperscript{130}

Sovereignty of the state is one of the most important principles of internal public law, which means that the state has exclusive jurisdiction over individuals, groups of people and organizations who are settled within its boundaries. The state may issue or may accept limitations on its freedom, for example human rights and environmental treaties which place obligations on territories such as prohibition treaties which prevent harm being intentionally done, for example to wild animals or the environment such as oil spillage in the oceans and seas,

\textsuperscript{128}Ibid. P18-30.
\textsuperscript{129}Ibid.
in order to protect the public and the common interests of a group of states. Principle 21 of the Stockholm Declaration, adopted in 1972, focused on environmental issues, which were threatened by state sovereignties; the declaration was set up in accordance with the United Nations and principles of international law.131

While states have rights to exploit their resources, this can lead to infringement upon the sovereignties of other states and will have an impact on common environmental resources. This creates political and environmental problems at an international level and needs the ruling of international law.132

The French thinker Jean Bodin, was the first to introduce the term sovereignty in 1576 in his work "Les Six Livres De La Republique." Bodin defined sovereignty as the supreme authority of citizens and nationals who are subject to the law. Bodin, described four aspects of the sovereignty theory. An essential element in the composition of the state is the existence of a supreme power, which controls all other authorities. The highest authorities in the state are not answerable to other authorities so they have the power to control the state and their citizens.133 These factors can be explained further in the following five points:

Firstly, sovereignty is the supreme authority in the state and is above all the powers of the state so it controls everyone in it. The sovereign authority is not subject to any groups or individuals in the state. Secondly, sovereignty requires that the authority of the state is independent from the rulers and the people of the state. Thirdly, the sovereignty of the state applies to all citizens and residents of the state without exception. Only international law, rules and customs have the power to decide that there should be some exceptions, privileges or immunities for foreigners who are living within the state. Sovereignty of the state is also absolute within the geographical scope of the state where it extends beyond its territorial boundaries. Fourthly, sovereignty of the state is permanent which means that the state is the home of its authority and this authority may not be removed from it. Fifthly, the authority of the state has the ability to impose its will on all

131 Ibid. p. 13
132 Ibid. 13.
groups, individuals and others who are residents within the state without the consent of the governed people.\textsuperscript{134}

Sovereignty manifests itself in both external and internal forms within the territory of the state. External sovereignty concerns the state’s relationship with other states so the state has independent sovereignty when dealing with states of equal authority. The scope of external sovereignty in the international community is different from one country to another so the state can use either full or incomplete sovereignty. Full sovereignty means that the state has the power to control and manage all its internal and external affairs without any interference or reduction in authority from foreign states. Full sovereignty is the ideal aim since the state has the right and freedom to manage its own affairs. Incomplete sovereignty means that the state is governed and controlled by other states in certain respects such as countries under mandate or trusteeship. Complete and incomplete sovereignty has a close relationship to international public law. When the state has incomplete external power, this impacts on the internal power of the state. Incomplete external sovereignty means the state lacks the internal sovereignty to manage its internal affairs. This lack of sovereignty of the state will make the constitution of the state liable to amendment by foreign countries while full sovereignty of the state gives it absolute freedom to develop and amend its constitution. International law, as enshrined in Article Two of the Charter of the United Nations, forbids one state from interfering in the affairs of another independent state.\textsuperscript{135}

Internal sovereignty means that the supreme authority in the state applies to all organizations and individuals within its territory and the state has full jurisdiction to control all affairs within its territory. Full sovereignty of the state means that the state has independence and full supreme authority in both the domestic sphere and external spheres. There is no conflict between the concept of external or internal sovereignty when the state obeys international public law rules or customs. For the holder of sovereignty there is no existence of the state until there is implementation of sovereign political authority. Sovereignty is the supreme authority in the state to control and manage its own affairs and is vested in the person/peoples who ‘own’ it. The state is a legal entity, which has permanence and stability. One question which arises, is: ‘Who owns

\textsuperscript{134} Ibid
\textsuperscript{135} Ibid

58
the sovereignty of the state?’ It is insufficient to say that the state is the owner of sovereignty as the state is only an entity because of the people within it; we have to determine who is the real owner of the sovereignty in the state. To answer this question, two kinds of theory have emerged – those related to the sovereignty of the nation and theories of sovereignty of the people.\footnote{Mohamed, K (1994). State Theory. Dubai, Dubai Commerce Press. 322.}

The French revolution clarified the theory that sovereignty belongs to the nation and is independent from the individuals and organizations within it. Individuals do not own any part of the sovereignty, as sovereignty belongs to the nation. Sovereignty is not subject to statutory limitations and is indivisible or inalienable. When the State tries to break the limits of its authority, which are based on the principles of nation sovereignty, and seeks to abuse the rights and freedoms of individuals, then those individuals have the right to resist the power of the state, based on the principle that sovereignty belongs to the nation and not to the State. Sovereignty of the nation theory has implications: Firstly, election is not an individual privilege, it is a duty undertaken on behalf the nation to serve it. Secondly, Parliament represents the whole nation and therefore is not to be used for individual or group advancement. Thirdly, the law in accordance with this theory is an expression of the absolute sovereignty of the nation.\footnote{Ibid. p. 290}

There are criticisms of this theory proposed by some scholars of law which are based on the notion that, as the nation and state are regarded as separate entities for the purpose of defining individual responsibilities and obligations, the two can come into conflict and this can lead to instability. Also, as in this theory sovereignty is free from restriction, it has the potential to infringe the rights and freedom of individuals.\footnote{Ibid.}
In recognition of the importance of the sovereignty of the State, the Canadian Parliament issued the 1970 Act to give them wide jurisdiction over the Arctic Coast up to 100 nautical miles. Parliament established this Act to control water pollution.\textsuperscript{139}

The theory of sovereignty of the people is based on the premise that sovereignty relates to individuals and that groups of individuals are not independent; the state, therefore, consists of a number of individuals, each of whom has sovereignty. Sovereignty is therefore shared between individuals. The difference between sovereignty of the nation and sovereignty of the people is that the theory of sovereignty of the people relies on the principle that sovereignty is shared between the individuals of the state while the theory of sovereignty of the nation is not shared with the individuals within it and the nation has absolute sovereignty. In sovereignty of the people theory the question arises of who is eligible to share that sovereignty. The answer to this question is that individuals have the right to share sovereignty when they have the nationality of the state and exercise their political rights.\textsuperscript{140}

The principle of sovereignty of the people is characterized as more democratic than the principle of sovereignty of the nation. Just as the principle of sovereignty of the nation can lead to the establishment of the two legal entities of state and nation fighting over power and sovereignty, the principle of sovereignty of the people can have similar problems. As sovereignty of the people recognizes that sovereignty is shared between them, this can create conflict between the sovereignty of the state and the sovereignty of the people and representatives of the people can be led into accepting instructions and orders, which may be immoral or undemocratic.\textsuperscript{141}

These aspects of sovereignty of the state have been described in detail to explain how the marine environment can be influenced by conflict between the people and government. In countries which lack sovereignty in its internal affairs the marine environment can be compromised, as foreign states will control its affairs and will establish their businesses and factories without care for the marine environment.


\textsuperscript{141}Ibid
2.11 International Efforts To Prevent Marine Pollution

Bagader, argued that Islam is not only concerned with protecting the elements of environment for the interests of present and future generations, it is also concerned with protecting health and the environment from the impact of harmful external factors such as, for instance, chemical products and wastes whether from land or air or sea activities.142

There are some problems which can arise within the field of environmental law. First, some scholars argue that international environmental law is simply a part of international law and the principles of international law can be applied to environmental law. Second, problems can arise with the definition of environmental law. Many important and significant treaties do not clarify or provide guidelines for environmental law because the environment can be interpreted widely to include anything in the air, sea or land.143

Rather, efforts are made to address environmental challenges through international co-operation. There are some important challenges which are addressed in this way such as acid rain, ozone depletion, disposal of waste and pollution of the oceans, seas and rivers, such as oil pollution, which can lead to a lack of fresh water and food.144

Since 1980, international law has emphasised the importance of focusing on the development and conservation of natural sources and avoiding any damage to the environment. There are conditions that make it critical to help to create and establish environmental law, such as the large number of attacks on the environment at domestic and international level. The growth of environmental issues at international level reflect a number of the principles and rules of environment law which need to be applied at domestic level and international level and lead to co-operation between the states to address those issues. International legal control over the environment has gradually increased over the last fifty years, as incidents involving damage to the environment have increased.145

145Ibid.
Since the 1950’s, the international community has been concerned to pass legislation to identify and control oil pollution of the rivers, seas and oceans. From the 1960’s, there have been two factors responsible for the development of environment law. The first was the increase in the number of serious incidents, which had cross-boundary impact. For instance, in 1967, there was the Torrey Canyon tanker disaster, which caused oil pollution on a massive scale and the disaster led to the establishment of a number of IMO conventions to confront the threat to the maritime environment. The second factor was that the environment became one of the most important subjects on the agenda of international conferences such as the 1972 Stockholm Conference and similar events which contributed to the development of international law on the environment.  

Indeed, marine environment pollution emerged many centuries ago but serious problems started after the discovery of oil and industrial revolutions through the world. When comparing marine pollution before and after the discovery of oil, the gap regarding the scale and the size of environmental was striking. All kinds of marine pollution can be related to oil; for instance, sewage goes into the rivers from oil because tankers and their equipment need oil when in motion, other sea vessels use oil and factories on the land also use oil.

By the 1970’s destruction of flora from pollution became indisputable and was shown to be the direct result of human activities. In the 1980’s, the scientific community clarified the size and scale of ozone depletion and global warming. There are many local and international challenges which threaten our environment and the quality of life, such as oil pollution, destruction of flora, nuclear weapons and air pollution. The year 1996 was a landmark when the International Court of Justice recognized the existence of international environmental law, with the intention of ensuring that states conducted activities within their jurisdiction and showed respect for the territories of other states. In 1992, UNCED provided the opportunity for states to consolidate and prioritize environmental matters and to draw up inter-state legislation. There are some treaties and laws which were issued and adopted during UNCED which recognized and reflected the growth of economic activities and the conference enabled this expansion to be subject to international regulation with regard to environmental matters. The United Nations Conference on Environment and Development divided environmental issues into two groups: 1) Those relating

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to the protection of the environment, such as ozone depletion, global warming and the protection of the resources of the land; 2) The regulation of the activities and products of the states, which could harm the environment such as toxic chemicals and harmful agricultural practices. 

2.12 Oil Pollution In The Marine Environment

Garaham, examined the explosion of the BP deepwater horizon oil rig which took place on the Gulf of Mexico and concluded that the recovery of oil spill is a difficult task. Garaham, argued that the process of cleaning up the spill of oil from the Mexico Gulf depended on many factors such as the density and type of the oil, the water temperature, the size of oil spill, the distance of the shorelines, currents, waves, weather and the degree of cooperation and response from neighbouring states. 

Garaham, makes an important point about the degree of response from others like neighbouring states and their cooperation in combating the problem of the marine environment. Attempting to protect the marine environment without cooperation at a national and international level will not be effective in securing it from pollution.

Incidents of collisions and spillage from oil tankers are very common, particularly within the region of exporting countries like the UAE. In the cases of The Commune de Mesquer and Total France Sa, the claimant municipality (M), a case was raised against the defendant (T) seeking the cost of cleaning the waste of the spillage of the crude oil in their territorial waters. The European Court of Justice referred the matter to the Directive 75/442 to determine if the spillage was in accordance with the classification of the directive. 

In any incident of spillage it is common for the defendant to try to escape from paying any penalties and to show limited concern for the marine environment.

The IMO has been involved in many agreements relating to marine pollution. The first adopted by the IMO was SOLAS. SOLAS was established in 1960 and with it the most important treaties which focused on maritime safety. With the disaster of the Torrey Canyon, during which

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150 The Commune de Mesquer v Total France Sa[2008]. E.C.R.I-4501;AGO
120,000 tons of oil spread into the sea, the IMO was made acutely aware of the danger of oil threatening the safety of the marine environment and therefore gave it the same consideration as the SOLAS treaty.\textsuperscript{151}

During 1980, there were many shipping accidents because of human error and poor management standards. In 1989 the IMO developed the ISM Code and the IMO Assembly established resolutions regarding the safety of ships and the protection of the marine environment from pollution from vessels. Resolution A.596 (15) established by the IMO Assembly in 1987 called upon the Maritime Safety Committee to advise shipping regarding safety. The IMO took the decision to amend the International Safety Management Code regularly to keep pace with new developments in the field of ship safety and marine environmental protection. The amendments took place in 2000, 2004, 2005 and 2008.\textsuperscript{152}

Oil pollution entering the maritime environment comes from a range of sources such as tragic incidents, for instance oil tankers running aground, and some occurs as a result of insufficient care being taken by oil workers whilst using oil products, offshore drilling and factory waste.

Scientific researchers estimate that approximately 706 million gallons of oil enter the seas and oceans every year. When oil spills in the seas or oceans the oil slick may remain cohesive or alternatively spread to wide areas, spread by the wind and do tremendous damage to the maritime environment. Oil pollution also harms fish, reptiles, mammals, amphibians, birds and other species. There are also many human activities such as swimming, scuba-diving, snorkeling, boating and other activities which are affected and this has an impact on the State’s economic well-being. Success in removing the oil slick from the ocean depends on the nature of the oil and the characteristics of the environment.\textsuperscript{153}

There are quantitative and qualitative costs of oil spills. The qualitative costs of oil spills include harm to human health, harm to wildlife, loss of freshwater and damage to the soil. Quantitative costs include cleaning, removal of oil slicks, loss of oil products and penalties imposed by the


regulating agencies.\textsuperscript{154} During the last two decades, there has been increasing public awareness and concern about the danger of oil spills and the threat to the marine environment. The Media plays a vital role in increasing the awareness of the public by covering pollution incidents such as Exxon Valdez. The oil spill from the vessel was due to an accident resulting from strong winds. 58,000 gallons of oil were spilt and killed two dozen species of water birds.\textsuperscript{155}

The UK aims to become the world leader in offshore renewable energy. Scotland aims to provide all its offshore energy sources by the year 2020. This cannot be achieved without issuing auxiliary legislation to control the transportation of energy from offshore sources. For more than 44 years the UK has been producing oil and gas so, many lessons can be learnt from the experience of transporting energy. Scotland has an offshore wind-farm called Robin Rigg. This wind farm is still at the first stage of its development and the provisions monitoring this industry are still young. Scotland has experience in oil and gas transportation and this experience can be transferable to the field of transporting energy from offshore sources like this new Wind Farm. Most of the oil in the UK is transported by pipeline from offshore to the shore. The transportation of electricity which is generated by offshore renewable energy is along sub-sea cables to the shoreline.\textsuperscript{156}

The transportation of energy and gas is safe and does not cause pollution. However, in some situations there can be problems, for instance, if the pipelines or cables are severed. For example, Egyptian supporting the revolution in 2011 cut the pipeline supplying gas to Israel.

This study has sourced examples of anti-pollution initiatives such as the Dolphin Gas project in the UAE. The Dolphin Project is one of the largest projects in the Middle East and reflects the cooperation between three countries of the Gulf Cooperation Council (GCC), the UAE, Qatar and Oman. The cost of this project is $7bn and its aims are to transport gas from Qatar to the UAE and Oman. The transportation of Qatari gas through the marine environment using pipelines could cause a disaster in the region if extra care was not taken for its safe transportation as the pipelines between the three countries cross many types of environment. The pipelines

\textsuperscript{154}Ibid. . \\
\textsuperscript{155}Ibid. \\
coming from Qatar cross the sea to the UAE and then run from the UAE to Oman using the desert, mountains and the sea. The kingdom of Saudi Arabia raised objections regarding the Qatari pipelines as Saudi Arabia has an ongoing border dispute with the State of Qatar.\textsuperscript{157}

The 1973 MARPOL Convention is one of the most famous conventions preventing ships discharging waste into the marine environment. MARPOL was confirmed and supported by the International Maritime Organization (IMO) to prohibit ships from destroying the marine environment by discharging waste. The MARPOL convention applies to ships such as oil tankers, ferries and cruisers and other vessels which may be a source of pollution. In the past, ships used to dump their wastes into the oceans and seas; these wastes were very dangerous and included plastics, chemicals and material which were not biodegradable, so the waste could remain static for many years and was often found washed up on the world’s beaches. The MARPOL convention was ratified by many countries, as they appreciated the role and the advantages of the agreement in its aim to protect the marine environment. Most of the countries who agreed to MARPOL depended economically on beach-based tourism. The agreement stipulated that ships hold on to their waste until reaching the port of loading or discharge. In some circumstances, the agreement did allow discharge of waste such as ground foodstuffs. Contracting states had to provide proper and suitable procedures in their ports for the reception and disposal of wastes, which were carried on board ship. At the receiving port, there were municipalities, which had the capacity to store waste until it could be disposed of. Problems developed however, around the safe disposal of used oil where no one was prepared to accept it. The scale of the problem of waste increases when the municipality in the receiving port does not have the technology and an appropriate system for waste disposal. In such countries, the discharge of waste can be a real problem, as in Manila and in the Philippines where there is no system of disposal and waste thus pollutes the sea.\textsuperscript{158}


2.13 Maritime Law And Pollution

Islamic Relief Worldwide pointed out that there are many poor people, especially in developing countries, who live around ecological vulnerable environments which compromise their safety and livelihoods by destroying their farms.\(^{159}\)

Maritime law can be defined as a set of legal rules relating to maritime navigation. Maritime law includes the rules governing maritime relations between states both in times of peace and in times of war; these rules are known generically as Maritime International Law. One of the most important issues addressed by maritime law is the protection of the maritime environment and this area is a key interest of the researcher.\(^{160}\)

Maritime law was practised in the Arab world from the middle ages until the fifteenth century. Islamic conquests resulted in the Arabic and Muslim peoples using the Mediterranean Sea and they had extensive maritime trade with India, East Africa and China.\(^{161}\)

Even before the spread of Islam throughout the world, the Greek traveler Hipaa Los acknowledged advice from Arab sailors to use maritime winds called monsoons. Arabs used these winds both in the winter and summer months. Sailors waited for the strong winds coming from the north to carry their boats towards the south of the Red Sea to India and East Asia, and then waited for the arrival of the headwinds to return them to their homes. The Arabs also reached China and it is recorded that there were communities of Arab origin living there even at this stage in history. When Islam began to spread, Muslims were very keen to promote its influence further so they increased the number of journeys to Africa, India and East Asia.\(^{162}\)

\(^{159}\) Islamic Relief Worlwide(2009). Islamic Relief is dedicated to alleviating the poverty and suffering of the world’s poorest people. Available at www.islamic-relief.com, accessed on April 2014.


\(^{161}\) Ibid.

2.14 The Importance of Codifying the Organisation Rules for the Exploitation of the International Seas:

There was no doubt that the codification of the International Law of the Sea would effectively bring the desired results. Codifying the law of the sea aimed to develop customary rules and principles established over many years and put them in the form of legal written rules. In addition, the process of codifying the International Law of the Sea aims to enable its continual development.\(^{163}\)

Codifying the rules of the International Law of the Sea is important to regulate the conduct of states regarding the use and exploitation of the seas and oceans and sub-soil of the seas. However, there is still a large number of disputes about the rules themselves, especially where they act against custom and practice. Under Islamic Sharia’h, however, these rules already exist in the Holy Quran, The Sunnah.

At the beginning of the twentieth century, the international community began to codify the rules of the international law of the sea. The League of Nations established a special committee in 1924 to draft conventions on territorial waters. However, in 1930, the Hague conference, which was held to codify this project, failed to agree on the identification of the extent and breadth of territorial waters.\(^{164}\) Despite the failure of the Hague Conference to reach an international agreement in this regard, the United Nations used the conference's discussions as important reference points afterwards. Also, the Hague Conference succeeded in preparing a draft of convention on the legal status of territorial waters.\(^{165}\)

The UN began its attempts to codify the customary rules of the law of the sea when international lawyers were commissioned by the General Assembly in 1948 to study the rules of the law of the sea and to prepare drafts of international agreements. The positive action of the UN culminated


\(^{164}\) There was disagreement between the states involved in this project. The majority of the states asked for three nautical miles as the breadth of the territorial waters and recognition of the existence of neighbouring regions adjacent to the territorial sea so states could exercise some control over the territory. However, a minority of states called for identifying the breadth of the territorial sea from 4 to six nautical miles. See Al Deghma, A (1998). The New International Law of the Sea. Cairo, Dar Al Nahda Al Arabia, P18.

in inviting States to the first UN conference on the law of the sea in 1958. The convention ended with the adoption of four conventions:

1. Convention of territorial waters and a contiguous zone.
2. Convention of the continental shelf.
4. Convention on fishing and conservation of living resources in the high seas.

2.15 The Development Of Modern Laws Regarding The Marine Environment And Sea

2.15.1 Geneva Convention 1958 And Its Outcomes:

The Geneva Convention, 1958, and the Convention of the United Nations on the law of the sea, 1982, (UNCLOS) are the main two conventions governing the important rules of the law of the sea. The Geneva Convention, 1958 set up four conventions: the convention of the territorial seas, the convention of the high seas, the convention of fishing and the convention of the continental shelf.

The United Arab Emirates became a party to the Geneva Convention despite the fact that the UAE did not become a Federal State until 1971. Its contribution reflects how the UAE was willing to support the protection of the Marine environment. This is a reflection of Islamic law which guides Muslim countries to act for the benefit of the environment.

On the 29th April 1958, the United Nations Conference on the law of the sea was opened in order to gain signatories to the four conventions and one optional Protocol as follows:

166 This Conference was held in the city of Geneva from February 24 to April 28. This Conference was attended by representatives from 86 countries including States that were not then members of the UN and other countries which did not have coastlines.

167 In addition to these four agreements, the Optional Protocol on the commitment to settle disputes was established. This provided that the parties of the States declare the present Protocol and, in any one of the four conventions, willingness to give jurisdiction to the International Court of Justice (ICJ) to settle the disputes that arise concerning the interpretation or application of the texts contained in the four agreements except if there is text in any of these conventions which includes another mode of settlement, or if parties of the disputes may choose another means of settlement within a reasonable period.

1. Convention of the Territorial Seas and Contiguous Zone which came into effect on 10th September, 1964.
2. Convention on the high seas which came into effect on 30th September, 1962.

Furthermore, the 1958 Geneva Convention presented one optional Protocol to be signed concerning the compulsory settlement of disputes and this came into force on 30th September, 1962.170

The previous conventions and the optional protocol reflect the concerns of the first United Nations conference on the law of the sea. The conference was held in pursuance of the General Assembly of the United Nations. The Geneva conference was based on many previous conferences such as the Hague Conference for the codification of international law held in 1930 under the supervision of the League of Nations.

Eighty six countries participated in the 1958 Geneva conference. The conference was organized by five main committees and one general authority. The internal system of the conference was restricted in a similar way to the system of General Assembly of the United Nations. The ratification and adoption of certain provisions of one of the five committees required the approval of a simple majority of two-thirds when a ruling needed approval from the general authority. Because of this procedural rule, the states could not agree on the width of territorial seas. While a width of 12 nautical miles looked likely to gain the approval of the committee, it was clear that this would not be ratified by the public authority. Territorial sea and contiguous zone issues were left unresolved. Since the convention provided that the limit of the contiguous zone could not be more than 12 nautical miles, it meant that any width over 12 nautical miles was not acceptable.171

The General Assembly of the UN focused on unresolved issues of the 1958 Geneva conference and gave them more attention and priority within the agenda of the second conference of the UN

170Ibid
171Ibid. p. 13
on the Law of the Sea in 1960. However, the conference was unsuccessful in addressing the issue of how to measure territorial seas. There were various proposals for measuring territorial waters but the ranges proposed extended from 3 to 200 nautical miles.\textsuperscript{172}

The high seas convention did not include internal or territorial waters. It dealt instead with the freedom of the high seas and the right of a state to fly its flag on foreign vessels and its obligations. Furthermore, the convention considered piracy, rights of visit, rights of pursuit and issues associated with laying cables and pipes submerged in the sea. In addition, the convention included provisions which focused on incidents of oil spills and the disposal of radioactive waste.\textsuperscript{173}

Fishing conventions and conservation of the living resources of the high seas determined the principles and mechanisms of the management of fisheries on the high seas. Moreover, fishing conventions considered the compulsory settlement of disputes. At that time, the conventions of fishing and conservation of resources on the high seas were very controversial and consequently there were only a small number of states which were signatories to agreements. On the one hand, many nations wanted to establish exclusive rights to fish in areas beyond the territorial seas so more open agreements to enable fishing on the high seas were not satisfactory for those nations. On the other hand, states were not ready at that time to accept a centralised authority in the compulsory settlement of disputes.\textsuperscript{174}

The 1958 Geneva Convention had historic importance in enabling the traditional law of the sea to be discussed – a law which had prevailed before the international community had been formed. Its evaluations of the uses of the sea prompted the United Nations to set the third conference on the law of the sea.\textsuperscript{175}

Paragraph 1 of article 311 of the United Nations on the Law of the Sea 1982 focused on the implementation of the 1982 convention between the member states of the United Nations on the Law of the Sea convention (UNCLOS) and the same paragraph states that UNCLOS prevailed.

\textsuperscript{173}Op. p. 19
over the Geneva conventions of 1958. 155 countries of the convention signed up to an agreement. Some countries ratified the Geneva Convention but did not ratify UNCLOS 1982; the United States of America, for example was one such country.\textsuperscript{176}

Despite the great importance of the four Geneva Conventions in aiming to set new principles governing the issues of fishing on the high seas, and to address the problems of wealth and recognition of the rights of coastal States to access marine resources, the agreements did not succeed in resolving all the problems relating to the sea. There were many issues left in dispute and conflicts between the States, particularly relating to matters concerning the right to fish as well as the area of territorial sea. In addition, the four Geneva Conventions did not reflect the views of all member States in the International Community, so the majority of countries in Africa, Asia and Latin America were not represented, which led to subsequent conventions, as well as in the second conference of the UN held in 1960.\textsuperscript{177}

The progress of science and technology has an impact on the exploration and exploitation of living and non-living beings, especially those relating to the needs of nations and the wealth and economic resources of the sea. The UN sought to search for new agreements to find appropriate solutions to existing problems and to anticipate future problems.\textsuperscript{178}

Despite these drawbacks of the 1958 Geneva Convention, it played a vital role in drawing up the Law of the Sea and it was one of the main conventions in the establishment of guidelines regarding the use of the sea and the setting of jurisdictions over some areas of the marine environment.

\textsuperscript{176}Paragraph 1 of Article 311 of UNCLOS.


\textsuperscript{178}Ibid
2.15.2 London Convention 1954 To Protect Marine Environment From Oil Pollution

Abdel Wareth, explained that the Washington Conference of 1926 drew attention to the danger of oil pollution of the marine environment. Despite the failure of this conference to declare an agreement, it was a prelude to the London Conference of 1954, which was the first multilateral agreement to protect the marine environment from oil pollution. The agreement involved personal and substantive rules and set penalties for their violation.179

The United Arab Emirates ratified the International Convention for the Prevention of Pollution of the Sea by Oil (1954).180 The UAE is a main producer of oil so the ratification of the London Convention was very important in protecting the life of the Gulf and its citizens.

The 1954 London Convention began by clarifying terms such as heavy diesel and mixture oil, and explored the issues connected with ships loading and discharging. The Treaty decided that its provisions applied to vessels registered in the province of governments as well as ships carrying flags and nationalities of those governments. The convention also applied to warships except vessels carrying less than 150 tons. The convention called upon the parties to implement necessary measures to apply its provisions to all ships in view of the standard quantities and type of oil used.181

Zeeniya, argued that, despite data which highlights the contribution of land based pollutants, the bulk of international regulatory attention has traditionally been paid to vessel-source pollution. The reason for this is understandable because ships travel between different countries through the world and affect the interests of many countries when ships enter their jurisdictions.182

181 See Articles 1 and 2 of London Convention 1954.
Zeeniya, suggests that ships are the number one cause of pollutants in the sea, especially when they are transferring oil which is the most dangerous threat to life of the seas and oceans. The UAE and the GCC countries need to address the terms of the London convention and consider all its provisions to ensure the protection of the Gulf.

The London Convention dealt with the prevention of the intentional discharging of oil in coastal sea areas which were designated for Tourism and Recreation. Following an amendment to the provisions of the treaty of 1962 which led to provisions being drawn up in 1967, the treaty strictly banned the discharging of oil and oil mixture within a distance of 50 nautical miles from the nearest point of land from where the territorial sea was measured. Also, the convention banned vessels from discharging oil and oil mixtures within 100 nautical miles from the nearest point of land. This prohibition took place in particular areas such as the Baltic Sea, the North Sea, the Red Sea and the Mediterranean Sea. To ensure commitment to this convention, states have to provide all necessary equipment at the ports to receive waste oil and mixture oil from the ships.\textsuperscript{183}

There are similarities between the London convention and the system of Islamic rules which can impose penalties for the people who pollute the environment. However, whereas the penalties within the London convention applied to polluters soon after the offence, the penalties of God under Islamic Sharia’h are enforced on the day of judgment after death.

Article Three of the London Convention of 1954, under its amendments in 1969, prohibited any discharging of oil into the sea, except in some situations where ships were still at sea, in which case the quantity of discharged oil could not exceed sixty litres per mile and the discharging of oil had to take place as far from the mainland as possible. Furthermore, Article Four of the London Convention approved the discharging of ballast water as long as it took place in quiet and clean water and did not produce visible traces of oil on the surface.\textsuperscript{184}

Articles Three and Four of the London Convention did not serve the interests of marine life; instead they helped the companies responsible for the vessels. The Articles encouraged vessels to use the most convenient way to dump waste oil and ballast water into the sea and maritime

\textsuperscript{183} See Articles 1 and 8 of London Convention 1954 and Articles 2 and 3 of the United Nations on the Law of the Sea.
\textsuperscript{184} Articles 3 and 4 of London Convention 1954.
companies used the exemptions rather than going through the complex procedure to discharge waste oil and ballast water in port, for which they would usually be charged.

The London Convention had some advantages, as Article Nine covered the preservation of the marine environment. It committed all vessels to keep a record of all transactions involving oil such as loading and discharging. These transactions were recorded and signed on each page by a designated employee. Recording in this way made oil operations easier to control. The London Convention referred the responsibility for the violation of its provisions to the domestic law of the state of the ship.\(^{185}\)

When legal action depended on the degree of responsibility taken and an assessment of damage to the marine environment, the London Convention did not have the power and influence to take action against marine pollution beyond the national jurisdiction of the state.

On the continental shelf of North Western Europe is the North Sea. The North Sea is surrounded by a number of European countries: for example, Sweden and Norway on the east; Denmark, Germany, the Netherlands, Belgium and France on the south and England and Scotland on the west. The North Sea has an extensive marine ecosystem and the populations are very dense on the coastlines. The sea also produces oil and gas and therefore it is crowded with vessels discharging and loading. The North Sea is one of the most famous seas in the world for fish. In 1987 an assessment of the health of the North Sea showed that all of these human activities started to affect the sea and the governments of the North Sea were charged with addressing how to secure and protect the ecosystem of the sea from human activities.\(^{186}\)

The OSPAR Convention adopted the Joint Assessment and Securing Program of the North Sea in 1995. Under the cooperation of the Environmental Assessment and Monitoring Committee, the participating countries agreed to contribute assessments on the quality of the marine ecosystem. Provided that a report on the status of the North Sea in 2000 was prepared, the OSPAR Commission was charged with producing guidelines for future work.\(^{187}\)

\(^{185}\)Article 9 of London Convention 1954.
2.16 Environmental Principles

One of the important characteristics of environment law is the role of environmental principles which affect the governance of the state and its policies in general. The environmental principles are very difficult to define and also hard to enforce as they have various applications. For example, the principles of environmental law consist of the Principle of Precaution and the Principle of Polluter Pays. The principles of environmental law are part of domestic and international law but each principle has a different degree of application.188

2.16.1 The Principle of good Faith

2.16.1.1 Good Faith And Sustainability In The Holy Quran189

Many citations from the Holy Quran and the Hadiths (sayings of the Prophet PBUH) focus on sustainability and the protection of natural resources. They state that all elements, habitats, species and ecosystems are part of the perfect universe which is created by God. Every Muslim, who has “surrendered” or “submitted” himself/herself, body and soul, to the Creator has to respect the law of nature and all its components.

Principles on sustainability are highlighted by the Holy Quran such as:

1. Justice (Adl) – governing and controlling human relationships between each other and other living creatures.
2. Balance (Mizan) - governing the relationship between the social and economic and mankind’s relationship to the environment, especially in ensuring the balance of nature and using its resources and life cycle for the benefit of all species.
3. Middleness (Wasat) - choosing the middle ground and using it to plan for economic and scientific pursuits, social behaviour, material resources, ideological views, and water and energy consumption.

4. Mercy (Rahmah) - governing the relationship of human beings with all living animals and insects, including micro-organisms and plants.

5. Trustworthiness and custodianship (Amanah). God appointed humans to be caretakers of the universe and to protect it from all kinds of pollution.

6. Spiritual purity and physical cleanliness (Taharah) - creating contented individuals through consciousness of the presence of his/her Creator and spiritual purity, resulting in a balanced society and living in harmony with the natural environment thereby striving for cleanliness that would create a healthy society, free from water or air pollution. This also included creating an economy devoid of deceitful marketing techniques, business transactions and usury.

The Principle of Good Faith is fundamental to all principles in the holy Quran; for instance, Mercy, Spiritual Purity, Balance and Justice.

Roberto Harran, explained that the World Trade Organisation (WTO) provides companies with guidelines and standards for good faith within institutions to achieve their business goals. The standards from WTO also include guidelines for disputes. The WTO focused on the protection of the environment from international trade.190

O'Connor, considered that the Principle of Good Faith was very important in relationships between countries. However, it is difficult to define. Although the concept of good faith relied on honesty and fairness, individual interpretations of what is honest and what is fair can differ.191

The Principle of Good Faith can influence the general principle of law and the rules of international customary law which may impose obligations on states.192 For instance, Gill, explained that in the event of disputes between states, they should settle the dispute using the Principle of Good Faith. In order to do this, states have to respect treaties and they should both make and keep their promises in good faith without any attempt to obstruct and break the clauses of the treaty which they ratified.193

Noman, argued that the Principle of Good Faith is one of the basic principles of public international law, customary law and traditional law. This principle has international acceptance. The Principle of Good Faith was contained in the charter of the UN, where the second article of the charter obliged the parties to fulfill their obligations and commitment with good faith in order to get their rights. Furthermore, the interpretation of the treaty was to be in agreement with the states’ original intentions.

Auer, concluded that the Principle of Good Faith was one of the main important concepts within the legal thought of traditional civil law or common law during the 19th and 20th centuries, specifically in contractual performance. From the early stage of Islam, Shari’ah was based on the Principle of Good Faith and all transactions in Muslim society must be based upon it.

Most polluters of the marine environment try to avoid paying penalties imposed by domestic courts. Marine pollution cases may take a long time to settle as the defendant may try to appeal a number of times to avoid paying compensation and, in doing so, break the Principle of Good Faith.

One case which illustrates the importance of the Principle of Good Faith was a dispute between the Russian companies group and some of their former senior officers. The Russian companies group – the claimant - alleged that the senior officers conducted some shipping transactions which were against the interests of the group and the benefits of the transaction went to their senior officers. The claimant alleged that their officers did not fulfill the policy and the original intention of the Russian group and therefore had broken the Principle of Good Faith between them.

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Marietta Auer[2006]. The Structure of Good Faith: A Comparative Study of Good Faith Arguments. *Faculty of Law, University Munich.*

Fiona Trust & Holding Crop v Privalor [2010]. EWHC 3199.
Alramahi, The oil and gas industries have seen many disputes between companies. In the event that there is no resolution of a dispute, the matter can be referred to the national courts under a process of arbitration. Foreign companies are often concerned about having to settle a dispute in a different language and in an unfamiliar judicial system. There is also often concern that the national court may be biased against the foreign country and that it is more likely to find in favour of the home country. In this situation the Principle of Good Faith plays a vital role in ensuring that both parties believe that justice will be applied fairly.\(^{198}\)

In some countries which have weak domestic legislation, in the event of marine pollution the national courts may issue judgments against the foreign vessel or company which caused the pollution, especially if there is a history of enmity between the countries. To avoid this, the company or the vessel can agree for any dispute to be resolved through a process of arbitration prior to conducting business with the foreign country.

The United Nations on the Law of the Sea Convention 1982 includes the Principle of Good Faith. Paragraph four of Article 157 states that the parties of the authority must fulfill their obligations with good faith in order to enjoy the rights and privileges of their membership.\(^{199}\) Article 300 of the United Nations on the Law of the Sea confirms the Principle of Good Faith.\(^{200}\)

The application of the Principle of Good Faith in the protection of the environment in general and the marine environment in particular helps to address environmental pollution and reduce risks to the environment. The obligation of states to the principle of good faith contributes to stability and optimal use of natural resources adjacent to the border and helps to prevent negative environmental impact.\(^{201}\)

Cheng, points out that international law, the arbitral tribunal and ICJ apply general principles such as the Principle of Good Faith.\(^{202}\) The ICJ relied on the good faith principle in the case of

\(^{198}\) Mohammad Alramahi,Nd Disputes Resolution in Oil and Gas Contracts[2011]. International Law Review, I.E.L.R. 2 011, 3, 78-85


nuclear tests when the French agreed to a unilateral declaration that they would stop atmospheric nuclear tests.\textsuperscript{203} If the French had not agreed to take unilateral action to stop atmospheric tests at the ICJ and therefore acted on the Principle of Good Faith, then binding legal obligations from the ICJ could have been applied.\textsuperscript{204}

International law includes the Principle of Good Faith in many of its clauses. For instance, Article 5 of the United Nations (UN) on the prohibitions of using Nuclear Weapons on the seabed (1971) clarified that all members states which signed the treaty were bound by the Principle of Good Faith during their negotiations to prevent a seabed arms race.\textsuperscript{205} Moreover, the Rio Declaration on the development of the environment (1992) declared that all states and individuals should aim to improve international law by using the Principle of Good Faith.\textsuperscript{206}

Elshurafa, argued that the economic crises affecting Europe and North America also affected the Middle East and in particular The Gulf Cooperation Council (GCC). Following the crises, huge construction projects took place in Saudi Arabia, Dubai and the GCC countries.\textsuperscript{207} In her article, Elshurafa, argued that Islamic finance was the best way to invest. She provides numerous examples of how the Middle East affected the whole world during the financial crises in 2007 and how the Principle of Good Faith played a major role within these Islamic bank countries.


\textsuperscript{204} See Nuclear Tests Cases (1974) ICJ Reports 267,2680.43


2.16.1 - The Principle Of Good Neighbourliness

Dawalib, states that under Islamic Sharia’h, your neighbour has many rights and that the prophet Mohammad (PBUH) provides rights for a neighbor, whether a person or country. A neighbour’s rights include the protection of his wealth, family and health and freedom from harm. The meaning of neighbourliness in Islam is very broad and not just for the person who lives nearby.\textsuperscript{208}

Islam also gives priority to neighbouring countries, whether Muslim or non–Muslim. Muslims are required to take action to create a strong relationship with their neighbour, irrespective of whether it is peacetime or during a war. An important obligation on the neighbour is to keep the environment clean and tidy, including the marine environment.

Noman, suggests that cooperation between States is vital in the communication and information revolution and that cooperation in the fields of economics and social responsibility can be traced back to the United Nations charter, which defined them.\textsuperscript{209} There is no doubt that international cooperation has created global awareness, improved relations between societies and strengthened the feeling of human solidarity.\textsuperscript{210}

International cooperation therefore has a legal basis and is an effective international tool for the protection of the environment. This was confirmed by Principle 24 of the 1972 Stockholm Declaration which states that all nations, big or small, have a duty to cooperate on international issues related to the protection of the environment.\textsuperscript{211}

Hashem, the Principle of Neighbourliness means that all countries have to exercise their power and sovereignty within their borders and avoid any activities that may affect neighbouring countries. The idea of neighbours was established many years ago, and started as a custom before the principle became legally binding in domestic law.\textsuperscript{212}

According to Amer, the Principle of Good Neighbourliness means that states must take into account the rights of neighbouring states to avoid any damage to the environment in general and marine environment in particular.\textsuperscript{213}

International law courts take into account the rights of neighbouring countries. The ICJ considered this in the case of the Corfu Channel (1949). In this case, Albania had some information that mines had been laid inside the territorial waters of Albania and therefore Albania notified its neighbours about the danger. The ICJ issued a ruling that all countries have to respect their neighbour’s country and avoid any action which could affect or destroy that country’s environment.\textsuperscript{214}

The arbitration court resolution on Lac Lanoux in the issue between France and Spain clarified that all countries must take liability for all activities taking place in their territories which could harm the environment of the neighbouring state.\textsuperscript{215}

Despite the power and economic wealth of large modern countries, they are unable to prevent marine pollution. A great deal of marine pollution arrives on the doorstep of countries through the high seas and from poor countries which do not have the resources to combat marine pollution in particular or environmental pollution in general. This reflects the need for international coordination and cooperation on a global level and for the need to strengthen efforts at national and regional level in order to protect the marine environment.\textsuperscript{216}

Rateb, points out that the idea of good neighbourliness has expanded since being recognized by international public law to include many countries and therefore has become of universal interest, especially with the expansion and progression of global sciences and communication. Despite competition between countries over the principle of sovereignty, they cannot ignore the existence of other countries that may be affected by the fight for dominion.\textsuperscript{217}

\textsuperscript{214}Paragraph 27 of the Award of International Arbitral Tribunals with regard to the situations of San Laurence (1986).
In traditional theories established by German Jurisprudence, such as the theory of absolute sovereignty of the State, civil and criminal liability of the state for its operations toward other countries were excluded, but most scholars opposed this approach.\textsuperscript{218} Scholars, in accordance with the rules of good neighbourliness, believed that in public international law the state is internally free but is bound by international rules in its external role as it is a member of the international community, governed by the principle of equality and the principle of respect for international obligations.\textsuperscript{219} The Principle of Good Neighbourliness, approved by the states and societies of the International Charter which called upon the world to live in peace is confirmed by the ICJ in its system.\textsuperscript{220}

Regarding the Principle of Good Neighbourliness, the International Court of Justice resolved a dispute between France and Australia with regard to atomic trials in the South Pacific. The ICJ issued a judgment that the French government should refrain from carrying out atomic trials which resulted in radioactive leaks in Australia. The ICJ also resolved a conflict between New Zealand and France by issuing the same judgment on the same date.\textsuperscript{221}

The International Arbitral Tribunals defined the concept of neighbouring as geographic proximity between two countries. However, it has legally been defined as including any threat which may raise a conflict between two countries and affect their co-operation as a result of overlapping interests of their citizens or authorities in a geographic region.\textsuperscript{222}

The UAE has many neighbour countries and applies the Principle of Good Neighbourliness to protect the marine environment from all kinds of pollution. The history of the UAE does not reveal any harm or cause of damage to neighbouring countries as the UAE seeks to resolve its problems with its neighbouring countries by peaceful means, showing respect for the right of neighbourhood.

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\textsuperscript{218}Professor Aisha Rateb is one of the scholars who are against the theory of Absolute Sovereignty of the State. The Professor believes in restricting the sovereignty of the State and to subject it to the principles of International Law. The researcher agrees with this position as the state should take responsibility for its civil and criminal activity where it affects its neighbours. \\
\textsuperscript{219}Noman, M (2004). International Protection for the Marine Environment. Private Legal Study for the Red Sea. PP 103, 104. \\
\textsuperscript{220} See preamble of the International Charter of the United Nations as well as the International Court of Justice (ICJ). Paragraph 7 of Article 38. \\
\textsuperscript{221}The International Court of Justice (ICJ) judgment issued on 22.06.1973. \\
\textsuperscript{222} See Paragraph 27 of The Award of International Arbitral Tribunals considering the issue of San Laurence, issued on 17.07.1986. 
\end{footnotesize}
The principle of good neighbourliness can be enacted during marine pollution which can extend beyond the territorial waters of one state and harm the marine environment of a neighbouring state. Countries, for instance the GCC, will cooperate to prevent and resolve the pollution.

There are many clauses of international declarations and conventions focused on the Principle of Good Neighbourliness; for instance, Article 2 of the Rio declaration (1992) with respect to environmental protection and its development. This considers that all States have a responsibility to ensure that all the activities conducted in their regions do not harm or cause any damage to neighbouring countries. Furthermore, the Stockholm Declaration stated that countries must respect neighbouring countries by avoiding any harm to their environment.

Article 123 of Geneva Convention 1958 called on the coastal states to cooperate to exercise their rights and fulfill their duties through regional organisations or by acting directly. The Geneva Convention considered many issues with regard to cooperation between states such as the management of living resources of the sea and the preservation, exploration and exploitation of the marine environment. The convention also invited coastal states to coordinate their policies with regard to scientific research.

The United Nations on the Law of the Sea Convention (1982) also gave consideration to the protection of the marine environment from pollution. Article 197 of the convention called for international and regional cooperation on the protection of the marine environment and recommended the establishment of international and regional standards with regard to protecting marine life.

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224 For more detail see Stockholm Declaration, Principle 21, on the Human Environment (1972).
2.16.3- Principle Of Prohibition Of Abuse Of Right

Fazlun Khalid, explained that Islam cannot be described as a religion only for the performance of worship, as it deals with all issues of life whether in the past, present or future. He also emphasized that Islam sets standards of personal hygiene and our relationship with the environment. Islam provides a holistic approach to existence. The roots of Islamic Environmental practice are established in the Holy Quran and guidance (Sunnah)\textsuperscript{227} from the prophet Mohammad (PBUH).

Sameh, explained the principle of abuse of the right to protect the environment is a preventive measure when dealing with environmental issues in Islam. Islam prohibits all kinds of environmental pollution and the depletion of resources. Islam assesses the seriousness of an environmental problem through the damage caused or the resources it wastes.\textsuperscript{228}

The prophet Mohammad (PBUH) was concerned about the environment during his life and his actions and sayings are directed towards protecting it in a range of ways, prioritizing the well-being of human life.

The general principles of law stated that the use of the argument of ‘right’ is arbitrary when the rights holder uses his authority in a manner resulting in harm to others.\textsuperscript{229} The importance of the principle of non-arbitrariness entails a constant need to maintain the concept of social solidarity to develop and progress society.\textsuperscript{230}

Akhtar, argues that one of the key features of Islamic life is simplicity which plays an important role in environmental balance. Simplicity is fundamental to the Islamic pattern of social life. The Holy Quran and Sunnah are the two main authorities which support a life of simplicity.\textsuperscript{231}

\textsuperscript{227}Sunnah means the actions and saying of the Prophet Mohammad (PBUH) during his life.
Simplicity within Islam is against the abuse of rights of the environment so, all Islamic rules support a simple life and clean environment. Muslims have to follow the simplicity of Islam and protect the resources of the earth.

Sands, writes about the Greek scholar Nicholas Polities who, in his study which was published in 1925, underlined the importance of the principle of non-arbitrariness. He explained that if a state uses its right to harm another, this is arbitrary use of the right which leads to the acceptance of responsibility, as it committed a wrongful act. This principle was incorporated in Principle 21 of the Stockholm Declaration and was also included in the Rio declaration which declares that states must consider the interests of other states.

Principle 21 of the Conference of the Global Environment held in Stockholm, focused on the duty to ensure that the activities carried out within the limit of any State or under its supervision do not harm or cause damage to other countries, in addition to any areas not controlled by any national state. This principle is clearly formulated in Article 300 of the United Nations on the Law of the Sea Convention (1982), which stated that the exercise of the jurisdictions, rights and freedoms which are recognised by this convention shall be such that they do not constitute any abuse of those rights.

Applying the idea of the principle of prohibition of abuse of right on marine pollution means that countries are held responsible if any damage occurs to neighboring countries as a result of activities in their territorial waters. These countries are responsible for any damage either because they failed to take measures to prevent the damage caused by another country or they did all they could but did not succeed in preventing harm to another country.

In Islam, abuse of right is forbidden so individuals have to conserve the environment by protecting and developing its natural resources. Individuals have a mandatory duty to protect the

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234 For more detail, see Principle 21 of the Conference of the Global Environment held in Stockholm.
environment as, if they harm the environment by pollution or other means, then God will punish them on the day of judgment.\textsuperscript{237}

2.16.4 The Principle of Reporting and Consultation

Akhtar, writes about the principle of reporting and consultation. Islamic countries can set up a monitoring agency to supervise the implementation of environmental policy. Historically, this role was performed by an institution called \textit{hisbah}. This institution was established to perform entire municipal functions like controlling the water supply, the removal of garbage and implementation of pollution laws. The revival of this institution as a monitoring agency in contemporary Muslim countries will be very helpful for the protection of the environment in general and the marine environment in particular.\textsuperscript{238}

Islamic states also, have a responsibility to maintain and develop their land, whether from endowments, unclaimed land or common lands, for forests and wild–life preservation.

The Principle of Reporting is one of the general environmental law principles. This principle provided that states should immediately inform other states about any incident which could cause environmental damage to their environment and which could help in responding to, for example, emergency events.\textsuperscript{239} The duty of reporting environmental incidents had been developed in many international conventions such as the Law of the Sea Convention. Article 198 of the United Nations on the Law of the Sea Convention 1982, clarified that if a state knows about circumstances where the marine environment is threatened or where there has been a marine environmental incident, the state has a duty to immediately notify other States which are likely to be affected, as well as to notify international organisations.\textsuperscript{240}

The question arises of how assistance or cooperation should be provided to one of the countries in the case of an environmental emergency, especially as assistance on foreign lands require special measures. Because of this, some countries have been reluctant to provide assistance.

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However, as a result of this issue, the United Nations at the Law of the Sea Convention 1982 sought to remove the ambiguity surrounding environmental emergency assistance and cooperation. The agreement of the law of the sea 1982 clarified that in the case of actual damage to the marine environment or in the case of a threat to the marine environment, States should cooperate to offer assistance to the affected area according to their abilities and work with international organisations as much as possible to eliminate or control marine pollution.  

The principle of Shura is important in Islamic law. Shura, states that all Muslims should be involved in a process of consultation. If the consultation is restricted to one group then it is not Shura.

Paragraphs 22 and 38 of the programme of the United Nations agenda of the 21st century focused on providing assistance in cases of environmental disaster. There are already a large number of emergency measures in place. The first of these agreements is the Convention of Nordic countries, which aims to provide emergency assistance and cooperation in combating oil spill or nuclear or radiation incidents. There is also the 1969 Bon agreement for cooperation in combating oil pollution in the North Sea. In general, measures of cooperation must address in detail the procedures required to prevent an incident (Preventative Measures) as well as measures and procedures in the event of an incident (Remedial Measures).

Preventative measures consist of the exchange of information and the notification of competent agencies, as well as the formulation of appropriate national plans and programs, such as monitoring and financial measures and legal action in cases of pollution.

To support the principle of reporting and consultation, countries have to apply administrative laws to the environment and provide guidelines for the use of environmental resources. Islamic law supports the Principle of Reporting and consultation. Furthermore, Islamic law provides administrative procedures to protect the environment and human health.

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242Shura means consultation and considering the best idea which is provided by a group of relevant people.
2.16.5 The Precautionary Principle

Jonathan the Minister for Marine, Landscape and Rural affairs said:

“Our seas are important. We use the seas not just for fish to eat but for many other resources on which jobs and livelihoods depend: for tourism and recreation too.”

Bugge, writes that countries should cooperate to conserve, protect and restore the health and integrity of the Earth’s ecosystem. States make different contributions to global environmental degradation and share different responsibilities for damage to the environment. Developed countries around the world acknowledge the responsibility and liability that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.

Islamic Sharia’h imposes responsibility on all users of the environment to do their utmost to protect nature. Islam charges all governments to use the sources of the earth in a way which does not damage or pollute the environment.

Students in environmental law apply a range of interpretations to the precautionary principle. The variations in its definition can be a source of frustration for those who rely on this principle as a foundation for awareness of the danger and effects of modern technology on the environment.

The precautionary principle is highly influential in all legal systems in all the parts of the world. This principle imposes a burden of proof on those people or companies who create some potential risk. All governments need to create regulations to develop the precautionary principle.

The precautionary principle works in conjunction with the commitment of international cooperation to prevent cross–border pollution. Although there is no unified understanding of this

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principle between states, most countries act carefully when making decisions about activities that can have an adverse impact on the environment.248

Sands, clarified that the precautionary principle aims to develop international law in the field of environment law as it still needs more attention. International views vary on the meaning of environmental law and the application of environmental law in judicial practice is also variable. It is thus very important for states to take early action to protect the marine environment before extensive damage can take place. The preamble to the Ministerial Declaration of the 1984 International Conference for the Protection of the North Sea specifies that states must take necessary action to protect marine life and not wait until the damage affects large areas of the marine environment because it is far more effective to prevent damage in the early stages than reverse it in the later stages.249

The interpretation of this principle requires ensuring that the activities of the States within its territorial waters or abroad regarding the disposal of certain materials will not adversely affect the environment. The principle is widely accepted with regard to the obligation of the States not to cause harm to the environment and is stipulated in international declarations such as the Bergen Ministerial Declaration which stated:

“The lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation”.250

The precautionary approach was the focus of the Declaration of Rio on the environment and development as an important tool in the evaluation of guidance to the States and the international community and the development of environment law and policy. Principle 15 of the Rio Declaration considered that, in order to protect the environment, the precautionary approach should be widely applied by the States according to their capacity, stressing that if there was no way of reversing the risks of serious harm then states should not use the lack of full scientific

certainty as a reason to postpone cost-effective measures to prevent environmental degradation.\textsuperscript{251}

The Vienna Convention in 1985 for the protection of the Ozone layer was the first convention to use the precautionary principle of preventive measures as contained in the Montreal Protocol to control emissions of carbon gas at national and international level.\textsuperscript{252}

International safety management code (1993), Resolution A 680 (17) encouraged member states to accelerate progress, inviting and encouraging those who were in charge of the management of ships’ operations to follow IMO standards. The high standards provided by the IMO reflected the necessity of cooperation of governments to prevent pollution and to preserve the marine environment.\textsuperscript{253}

An important example of the application of the Precautionary Principle in environmental law was the Mox Case (2001). A claim was raised by Ireland against the United Kingdom on the basis that the UK failed to apply the precautionary method and to protect the Irish Sea. Ireland claimed that the UK failed to exercise its power to control the effect of Mox radioactivity which can direct or indirect affect the marine environment of Irish Sea. Nuclear energy is a key source of energy for the future but there is concern about the impact of this form of energy on the environment and on marine life in particular. An example of the potential of nuclear energy to damage the environment was seen in the meltdown of the Fukushima Daiichi nuclear plant in March 2011. This case raised many questions for nuclear policy makers.\textsuperscript{254}

Countries throughout the world compete to develop nuclear energy, some for non-peaceful purposes such as producing nuclear weapons and others looking to harness nuclear energy for peaceful purposes, such as producing power and electricity. In the UAE, for example, the first

Nuclear Reactor will be activated and producing peaceful energy by 2017. The production of nuclear energy is potentially highly dangerous and a threat to human life and the environment. For this reason, the activation of the precautionary principle is essential.

2.16.6 The Principle Of Sustainable Development

The 1987 Brundtland Report formulated the Principle of Sustainable Development to provide for the needs of the present society and to ensure the needs of future generations are met. The Principle of Sustainable Development gives international law power and influence over domestic law systems when it is necessary to protect the environment from pollution.

The Principle of Sustainable Development is not new to Islam as Islam focuses on all aspects of life. Under Islam, the Principle of Sustainable Development means the development of strategies of environmental protection and the protection of natural sources for current and future generations.

The idea of protecting the environment is an important international issue. Principle 1 of the Stockholm Declaration states that man is charged with the protection and preservation of the environment for present and future generations and the ICJ operates under the terms of this declaration.

Sulaiman, described the Precautionary Principle as a legal framework to support sustainable development and stressed that it plays an important role in environmental law and governance. Using the Precautionary Principle in environmental law and governance reflects the fact that every country must protect the environment from their activities and daily actions. Many countries have started to use the Islamic approach to protect their environment, their economies and health. For instance, Islamic banking is concerned with achieving The Principle of Sustainable Development. Islamic banks do not issue loans or charge interest. The world’s banks

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are studying how they might use the Precautionary Principle in their own banking practices as Islamic banks have been far less affected by the global recession than banks in the West.\textsuperscript{258} 

Jonathan, focused on how the Rio Conference of 1992 on the environment and development played an important role in emphasising the importance of environmental principles in both domestic and international affairs. However, principles of sustainability and development are no less important than other principles. Around the world, the Principle of Sustainable Development become a key concept for governments’ environmental policies.\textsuperscript{259} 

At an international level there is a lack of agreement about the importance of environmental principles. For instance, the United States refused to include environmental principles in the convention of the United Nations on Climate Change (1992). The US alleged that the principles were drawn up out of self-interest and that they should be included in the preamble of the convention only.\textsuperscript{260} 

This lack of agreement about the role of environmental principles meant that their role in legal practice was questioned by the USA. However, their importance was accepted by the convention. Environmental principles on, for instance, sustainable development linked morality and aspiration, ideal and duties, values and rules and therefore formed an important part of clauses in treaties and legislation on the environment.\textsuperscript{261} 

Abed Al–Rahim, analysed the Conference of Johannesburg (2002) and concluded that the concept of sustainable development must consist of three important points: 1) Protection of the environment; 2) Social development; and 3) Economic development. Policy-makers, he argues, cannot overlook any of the three constituents; if they omit one of these essential ‘ingredients’ the concept of sustainable development cannot be delivered. It is important to focus on how Islam recognises the sustainable development of the environment, argues Abed Al-Rahim. The main rule in Islam about protecting the environment which controls individual behavior is called La Derrer Wa La Dirrar,, which means ‘Not to harm the environment’. There are many examples in

\textsuperscript{260}Ibid, P 4. 
\textsuperscript{261}Ibid, P16.
Islam which obligate Muslims to clean the environment and cause no harm, such as the necessity of removing waste from the street.\textsuperscript{262}

The principle of sustainable development is the most important principle for the protection of the marine environment from pollution. If countries just think for today and do not care about future generations then this can cause long-term damage to marine life.

There are some international organisations which influence the preservation of the marine environment from pollution and encourage governments to cooperate and develop their legislation to find the most effective strategies of sustainable development. The best example of such an international organisation is the International Maritime Organisation (IMO).

The IMO focused on developing measures to control and prevent tanker accidents and to minimize the consequences of accidents with vessels. The convention sought to clarify the situation of environmental threats by ships during the cleaning of oil cargo operations and disposal of the wastes of engine rooms.\textsuperscript{263}

2.16.7 The Principle Of Polluter Pays

Sands, explained the Principle of Polluter Pays which was established on the basis that the cost of pollution rests with the person who caused the pollution. The meaning and interpretation of this principle varies widely, depending on the nature of the pollution and other factors. The Principle of Polluter Pays did not get much support at domestic and international levels, unlike the Principles of Precaution and Prevention. The OECD(1972) was the first international instrument to refer to the Principle of Polluter Pays to cover the cost of removing pollution, to encourage international trade for rational use of marine resources and to protect the marine environment.\textsuperscript{264}


The Principle of Polluter Pays is able to protect the marine environment more than other principle because there are compensation and fees which apply if pollution takes place. In addition, countries want to avoid the loss of revenue which comes from the penalties associated with pollution. Verse 46 of the Holy Quran is clear about the pursuit of wealth: “Wealth and children are an ornament of life of the world, and everlasting good works are better with your Lord in reward and better in expectation.”

Mouat, pointed out that in the North-East Atlantic region municipalities spend a great deal of money to remove litter from beaches. For instance, municipalities in the UK spend approximately 18 million Euro each year to clean its beaches. Similarly, Netherlands and Belgium spend approximately 10.4 million Euro cleaning beaches each year.

In the UAE all municipalities spend far too much money to clean their beaches from litter. The problem is that most people are not aware of what can happen to the marine environment and human health as a result of lack of care for the environment such as polluting beaches.

Islam can apply punishments to the polluter of the marine environment as it gives great importance to the health of the environment.

Many developing countries adopt the Principle of Polluter Pays. They ensure that compensation is paid to victims of environmental damage by the guilty states. Developing countries consider that the state must compensate the victims of environmental harm if the sources of pollution are very difficult to identify or if the polluter is insolvent. The principle gave a guide to local governments and countries at an international level. Both developing and developed countries enforce legislation against the polluters of the environment but if they are unable to do so, they compensate the victims themselves.

266Luppi, Barbara; Parisi, Francesco; and Rajagopalan, Shruti[2009], Environmental Protection for Developing Countries: The Polluter-Does-Not-Pay Principle, International Review of Law and Economics, Forthcoming; Minnesota Legal Studies Research Paper No. 09-08.
On 30th April 2004, the community legislature adopted a new Directive clarifying the Principle of Polluter Pays to protect the environment from pollution. In this Directive the policy makers adopted some proposals. One important proposal was on waste management, referring back to the proposal of the Council Directive on toxic and dangerous waste, 1976. The proposal provided that the holder of dangerous waste and toxins is jointly and severally liable and responsible for any damage as a result of unauthorized disposal. The Directive explicitly stated that the holder of waste and toxins was liable to pay in line with the Principle of Polluter Pays.269

The MARPOL 1973 convention was modified by the Protocol of 1978. This convention began as an attempt to protect the marine environment from pollution such as chemical pollution, sewage and air pollution. The IMO established a new system to support those who were suffering from financial loss resulting from pollution. The 1969 and 1971 conventions adopted a system of compensation for the victims of oil pollution. Referring to the provisions of those two conventions, victims were able to obtain compensation quickly and smoothly. The previous treaties were amended in 1992 and 2000 for the purpose of increasing the limits of victims’ compensation.270

270 The MARPOL 1973 convention, was modified by the Protocol of 1978
2.17 Conclusion

The development of international law was influenced by world civilizations, scholars’ views and religion. Many civilizations had a direct impact on the establishment of the law such as Europe and western regions such as the Mediterranean civilizations. Societies through the centuries developed the rules of maritime law, some applying custom rather than legal regulations, making it difficult to enforce the law.

Religions like Islam and Christianity clarified human rights, including the right to live in a safe and clean environment. Under Islam the meaning of environment includes land, air and sea. However, the influence of religion has lessened over the years as many Europeans do not follow any particular religion.

In Islam Muslims are brothers and believe in one God (Allah). Muslims believe that God sent His commands through His Prophet Mohammed (PBUH). Muslims have to follow these commands which protect life and the environment. Some Muslims do not follow the right way of worship to Allah; as a result there are some problems with respecting the environment.

All international laws were created by man so these laws have to be updated to make them appropriate for the modern environment. However, the law of God does not need any update as it is fixed for the past, present and future. Maritime pollution can happen in any part of the sea and can spread between countries very easily so, there needs to be a great deal of cooperation between states in drafting legislation.

There are many religions around the world and many differences in the way God is worshipped. However, there is common ground between them which can provide support for the protection of the environment. Some questions are universal: Who created this environment? What is the main reason for the creation of the earth? What is the purpose of human beings on this earth? Has man been created by God to be happy? What will happen at the end of this life?

Public policy can enhance the protection of the marine environment. Policy makers can make important decisions to protect the marine environment from human activities whether from industry or individuals. Environmental matters are not only in the hands of lawyers and
environmental agencies. Policy makers can change many things as they have more power than lawyers and environmental agencies.

Each country has different types of legislation and mechanisms for protecting the marine environment. The UAE can solve some environmental problems by enforcing international treaties and legislation which are relevant to the country.

The Principle of Good Faith ensures that there is a rapid response in the event of pollution on the land or within its maritime environment. The Principle of Good Neighbours has a strong influence, especially in the case of pollution; respect for the rights of neighbouring countries is important in protecting the environment from marine pollution. The Principle of Non–abuse of Rights attempts to protect the marine environment from hostile acts such as war in which ‘crimes’ are committed against the marine environment.

Today, international cooperation has become an effective tool in the control and protection of the environment in general and the maritime environment in particular. The principles of reporting and consultation clarify the role of the State in instances of pollution, placing upon the State an obligation to inform other states about the pollution, to seek assistance from those countries and to prevent the damage spreading to other countries. Finally, the Principle of Precaution supports countries by giving them environmental guidance and enabling them to plan to avoid harm to the environment.

In the UAE, competition takes place between cities without care for the marine environment. Abu Dhabi city has recently built a new port a few miles from the Jabel Ali port of Dubai. Unless there is cooperation between the two cities, damage to the marine environment will take place. There is competition for the large number of ships who use the ports. If Dubai raises the cost of entering the port and for using its facilities to protect the marine environment from pollution, ships will use the port of Abu Dhabi if the fees are less, as the distance between them is very short. This example reflects the importance of cooperation with regard to protecting marine life and preventing any kind of pollution. This example also reflects the Principles of Precaution, Reporting and Consultation and Sustainable Development. The port can protect the marine environment through these principles by taking measures to prevent pollution and monitor ships entering the port.
CHAPTER THREE

3.1 Introduction

This chapter will review the legal frameworks which protect the marine environment both in the United Kingdom and the United Arab Emirates and compares the main trends and rules which protect the marine environment in the UK with Environmental legislation in the UAE.

This comparison will assist legislators in both the UK and UAE to amend and improve the national legal framework dedicated to the protection of the environment. Protection of the environment is a crucial issue, not only because of economic development but also to maintain and enhance human welfare and the quality of life.

Environmental concerns in the United Kingdom and in the United Arab Emirates have been at the top of the agenda during the last two decades. Despite the UK and UAE sharing some common environmental goals, each has its own strategy to achieve sustainable development. An analysis of the strengths and weaknesses of each country in the field of marine environmental protection is thus beneficial to legislators and decision-makers.

Given the influence of Sharia’h in the UAE, it is useful to provide a brief synopsis of religious influences in the UK in order to determine the influence of religious mores and morality upon the development of the law.

3.2 The Constitution of United Kingdom

It is wrong to say that the United Kingdom (UK) does not possess a constitution because the United Kingdom does have a constitution, but it is not in the form of a single document. The countries which have a written constitution also have constitutional law and the constitution is mostly in the form of a single text document. The UK does have ground rules which are found in the constitutional text of the constitutions of many countries. These ground rules deal with the distribution of power in the government, the accountability of the government for its deeds, the principles of consensus, legitimacy, permanency, amendments in the law and its interpretation.
The constitution of the United Kingdom is similar in many ways to the written constitutions of other countries. The central government of the UK is divided into three branches which are the legislature, the executive and the judiciary. The power is shared horizontally by these three branches. There is also a vertical sharing of power between the different departments of the government. This vertical sharing of power is quite similar to the EU model and devolved and local governments are included. The government is made accountable legally and politically by clauses which have a legitimacy established by consensus.

There are many similar features between the constitution of the United Kingdom and the written constitutions of many other nations, like the UAE. The main difference between the UK constitution and constitutions of other countries is that the arrangements of the UK constitution lack a specific legal status. Since the fundamental tenets of the UK constitution are not in written form, it is possible for the legislators of the United Kingdom to make laws which are against the spirit of the constitution. It can be argued that fear of losing the next election is the only factor which prevents the legislators from making laws which go against the principles of the UK constitution.

Laws passed by the Parliament of the United Kingdom cannot be cancelled by the courts even if they run counter to the principles of the constitution of the country, but the courts recognize that the legal status of the principles of the constitution is higher than that of parliament’s laws. In the legal case of R Jackson v Attorney General (2005), the Lords Hope, Steyn and Baroness Hale stated that the courts could cancel laws which were against basic constitutional principles. The courts could also refuse to enforce the application of these laws.271

Laws passed by the lawmakers in the House of Commons and the House of Lords can be regarded as interpretations of the different provisions of the constitution. The courts may also interpret the text of the law which can lead to the formation of constitutional law. If the constitutional text or other laws do not deal with a particular matter, then an informal resolution can be made by the people involved. The constitutional arrangements of the United Kingdom have several sources such as the ordinary law passed by the legislatures, the international treaties

signed by the government, the common law\textsuperscript{272}, and precedents of the courts and politicians. Most of the laws deal with power sharing amongst the different institutions of the government such as the executive and legislative authority given to the governments of Wales, Scotland and Northern Ireland\textsuperscript{273}. New laws were also introduced when the United Kingdom joined the European Union. The laws of the EU are enforced in the UK by the courts of the kingdom. The main function of the courts in the United Kingdom is to settle disputes and apply the law to the facts involved. The courts mostly make laws by referring to precedents of the judiciary.\textsuperscript{274}

Common law gives the courts the power to make laws and does not limit them only to the interpretation of the law. The royal prerogative is contained in the common law and it allows the executive to declare war and perform certain other functions. It has its basis in history, as the monarchy used to rule the country by using the royal prerogative. Ministers usually exercise prerogative powers, but the monarch has the right to use them.\textsuperscript{275}

International law also affects the laws of the United Kingdom because the treaties signed by the UK become laws when passed by the legislature. The laws of the country can also be interpreted in a way that complements international treaties which are entered into by the UK.\textsuperscript{276}

The UK constitution also has several political conventions which are not strictly regulated by the country’s laws. The Johnathan Cape and GCHQ case showed that the conventions can supply evidence which can lead to the enforcement of certain laws such as confidentiality or legitimate expectation.\textsuperscript{277}

It is important to recognise important branches of government which have authority in framing the laws in the UK. The constitution of the country works on the principle of division of powers but in certain areas the divisions are not clear. The issue of the division of power between the

\textsuperscript{272} Including the royal prerogative.
\textsuperscript{274} Judicial precedent is when decisions made by courts when deciding cases bind all lower courts given the same or similar circumstances,
\textsuperscript{275} Garland v British Rail Engineering Ltd [1983] 2 AC 751, 771.
\textsuperscript{276} Ibid
\textsuperscript{277} Elliot & Thomas(2011) Public Law. OUP
three main branches of the government is vital as it is responsible for preventing the institutions from using their powers unfairly. 278

3.2.1 Executive
The executive rules over the United Kingdom; it consists of a political party which has the majority of votes or of an alliance of two parties when there is a hung parliament. Its main functions are to develop public policy and to implement laws which are made by the legislature. It is responsible for handling the affairs of the country 279 and is the branch of government which is responsible for taking legal initiatives 280. The UK has a strong executive system but it is not formally recognized by the law which does not use the term executive 281. The reason for this lies in historical precedent and is also due to the fact that the UK constitution is not written down. The monarchy is still seen as the executive and the executive formed by the political parties is called the Crown in Parliament.

3.2.2 Parliament
The parliament of the UK is responsible for making the laws of the country. It also revises and amends the existing laws. Parliament is a vital component in the legal system of the country. Laws which are considered by parliament are usually presented before it by the ruling government.

In ‘The Sovereignty of Parliament’ 282, Goldsworthy argues that the sovereignty of parliament is recognised by orthodox constitutional principles and the courts also accept this sovereignty 283. Parliament is thus free to make any kind of law. Dicy (1959) affirms that laws made by parliament cannot be cancelled or abolished 284. The UK courts are bound to apply the laws of parliament, but there are certain laws which can only be altered or abolished if it is politically necessary.

278 Elliot & Thomas (2011) Public Law. OUP
280 Elliot & Thomas. ibid.
281 Town Investments Ltd v Department of the Environment [1978] AC 359, 398, as per Lord Simon.
283 British Railways Board v Pickin [1974] AC 765, 782, as per Lord Reid.
Parliament consists of the House of Lords and the House of Commons. The House of Lords consists of Lords who are politically selected or who have gained the title by birthright. The drafts presented by the politically elected representatives of the House of Commons are examined by the House of Lords.

Law-making powers are not only possessed by parliament, but are divided between the different institutions of the government and the power is exercised by the European Community Act 1972, the parliament of Scotland and the assembly of Wales. Local and regional governments have also developed law-making powers.

3.2.3 The Judicial System
There are several courts in the judicial system of the UK. The three main types of courts are Magistrates courts, Tribunals and County Courts. County Courts are the lowest courts; they examine facts, hear the witnesses and determine the outcome. Cases presented for the first time are taken up by these courts.

The High Courts and the Court of Appeal are above the county courts and they serve as an appellant court or a court of first instance. The Supreme Court is the highest court in the UK and handles cases which greatly affect the public and those related to constitutional matters. It is also a major source of Common Law. The courts can also be classified according to the type of case that they hear: criminal, civil or administrative.

The judiciary can also introduce laws by precedent. Judges have to show great self-restraint as a great deal of responsibility lies on their shoulders. When Lord Philips was the Lord Chief Justice he stated that the limits of the judiciary were known to the judges; it was therefore necessary for judges to respect the rights of the other two branches of the state, Parliament and the Lords, and it was important for these branches to respect the functions of the courts.

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The judiciary of the UK proudly states that it is independent. The division of powers between the three branches of the state provides the necessary restraint that is needed to prevent any one of them from abusing their powers, but it is necessary for each branch of the state to play its own role and not to interfere in the matters of the other branches. The separation of powers guarantees the independence of the judiciary.\textsuperscript{287}

3.3 UK Maritime Law

English law is not only widely recognized but is also a legal system preferred by various key financial global markets. Although the law originates from a relatively small region of the European market, various advantages inherent in the English legal system makes it an ideal and favoured system within the realm of international commerce.\textsuperscript{288} Some of these advantages are the adaptable nature of the general concept of law, the associated reputation of upholding honesty and integrity and stability within its political context.

Within the UK system, there are three basic legal approaches towards marine contaminants. The first pertains to the pollution or contaminant’s source; the second is the basis of pollution or contaminant’s cause and the last is as per the pollutant or contamination’s nature.\textsuperscript{289}

The first approach concentrates on determining the origin of the pollutant, whether from sea exploration, from land-based sources, from the atmosphere, from ships dumping it in the sea or from exploitation of the sea bed. The second approach focuses on whether pollution has been caused by accident, is the result of an incident or has been caused deliberately.\textsuperscript{290} This approach has helped to determine the cause of many of the huge marine disasters causing pollution, many of which are accidental and unintentional in nature and not due to the vessel supervisor’s negligence. The third approach determines the contaminant or pollutant which can have unique characteristics such as its visibility. This particular approach has been welcomed by the legislature as many complex and high status incidents of pollution in the sea involve oil.

\textsuperscript{287}Elliot & Thomas. ibid.
\textsuperscript{288}Godfrey(2008) Countries coming in from the cold: why English law is the blueprint for a global village10 JIBFL, p540.
\textsuperscript{290}Timagenis (1980) The International Control of Marine Pollution Oceana.
3.4 Pollution and Contamination Level within UK Coastal Waters

The geographical location of the UK provides it with great environmental benefit as it is surrounded by seas. The excessive waste from industries and the sewage sludge that the UK receives is not only handled well because of this but is also counterbalanced without causing much damage to the marine system. The geographical setting of the UK however poses a threat for other EU neighbouring countries as the water eventually circulates and flows into the North Sea. Hence, it is imperative that regulations are devised to help restrict international movement of ships. But this will come with its own share of cross-border complications with respect to environmental and legal issues.

3.5 Marine pollution under International Treaties

International treaties pertaining to the UK are classified on the basis of regional or global jurisdiction. Amongst them are conventions at multilateral level which pertain to sea dumping and one which regulates marine pollution caused by shipping.

The EU has a great influence on the legislative system made for the marine pollution. Furthermore, there are different agreements which the UK is a member of. This affects the regulatory structure of the marine pollution. Such regional agreements include, Agreement for Co-Operation in Dealing with Pollution of the North Sea by Oil and other Harmful Substances, (1983) the OSPAR Convention, International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990.
3.6 Enforcing International Law within UK

Despite the fact that national laws are greatly influenced by international policies, national courts cannot implement international law directly. Enforcing it within the UK is also not always possible.

It is only when the UK Parliament validates international agreements under the basic principle of ‘Parliamentary Sovereignty’ that international laws can be incorporated within the UK’s national laws. However, it is customary international law and treaty obligations which control the relationship between UK law and international law.

In 1899 the House of Lords, while addressing the ‘Cook v Sprigg’ case, determined that with regard to treaties, municipal courts do not have the authority and the expertise to arbitrate and reinforce rights originating from transactions which occur in international transactions entered into between independent and sovereign countries. Almost 100 years later, the *International Tin Council Case* verified this ruling in 1990. According to the court’s ruling, a treaty can be negotiated, concluded, construed, observed, breached, repudiated or terminated by the Government. Judges hold no authority in terms of either granting specific performance of a treaty or in awarding charges to an independent state against their breaching a particular treaty. Likewise, judges have no power to create new laws or misconstrue legislation for the purpose of enforcing a treaty. UK legislation cannot be modified solely on the terms of international law (Lord Templeton).

It is the Royal Prerogative which has the sole authority to decide and conclude treaties with other independent countries. It is not possible to challenge the validity of treaties within municipal law. However, it is improbable that the courts will eliminate any particular field of law from their control. Lord Oliver states that there is no corollary attached to this proposition with regards to the fact that a treaty can never be viewed or construed by the court. In cases where English law includes a specific treaty through acts of the legislature, the terms and conditions of this treaty are subject to the court’s interpretive jurisdiction similar to any other act of the legislature. The *Fothergill v Monarch Airlines Ltd* case specifies that in a situation when a law is ratified

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291 J H Raynor (Mincing Lane) v Department of Trade and Industry [1990] 2AC, p418
293 {1981} AC 251.

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only to provoke obligations of the UK under a treaty, it is necessary to give due consideration to the terms and conditions of the treaty. Also, if it is required, it should be construed to clarify any uncertainty or obscurity with regards to the statute’s meaning or scope. Like any other subject, it should be considered that concluding an international treaty along with its conditions is also a factual matter. Within a matter of fact, the treaty can be regarded in consideration of a particular issue that originates, which would automatically appear as an obvious consideration. However, it is imperative to emphasize on the objective which can certainly be evidential, for which such a reference is made under legitimate means.

As previously explained, the Royal Prerogative authorizes treaties. Decisions are integrated by Parliament within national law to give courts the power to enforce them. In order to prevent legislative uncertainties, unincorporated treaties are also examined by the courts. Unincorporated treaties are also referred to the courts when the requirement is to construe national law in accordance with international law. This means that international laws are given due consideration when national courts interpret the terms of the treaty. Furthermore, the principle of ‘incorporation’ has been taken up by common law in the UK with respect to conventional international law. This inherently makes international law a part of national law, with no requirement of legislative or judicial pronouncement.294

While addressing the case of Triquet v Bath 295 in 1746, it was clearly stated by Lord Mansfield that it is the practice of different states along with the authority of writers which combine to form the law of nations. In the West Rand Central Gold Mining Co. v The King296 case, Lord Alverstone CJ asserted that the mutual consensus of civilized states will also receive the UK’s concurrence and whatever has been agreed on a mutual basis along with other sovereign nations is commonly known as international law. This law needs to be recognized, approved and applied by the municipal tribunals within the country involved.

The UK courts apply conventional international law as a component of the common law in situations where the pertaining customary international law is clear. However, unambiguous legislation can override this since common law includes customary international law. It would however

295(1746) 3 Burr 1478; 97 ER 936, Court of Kings Bench.
296[1905] 2KB 391, Kings Bench Division.
be a bold step by the government to finalize a treaty based on international law and then establish unambiguous legislation.

Active involvement under various regional and multilateral programmes has led towards the change of the UK law in terms of both policy and practice. Although the impact of international law is restricted, the UK law has altered to allow modifications in environmental legislation. The primary legislation has, however, not been changed even after the endorsement of the OSPAR Convention. Nevertheless, there is still room to allow for legislative consequences according to international agreements under which the UK is currently a member.297

3.7 UK Vision for Marine Environment and Sustainable Development

The UK envisions a safe, healthy, clean and productive marine environment. Its vision is also to have biologically different seas and oceans. The UK high level marine objectives that were formed in 2009 defined outcomes in order to achieve this vision. It reflected the chief principles regarding sustainable development. To deliver efficient marine objectives, the marine planning process works to integrate sectorial activity, taking the economic, environmental and social issues into account. This process aids the sustained development of the marine environment in the UK and helps to achieve its vision.298

The formulation and presentation of the outcomes regarding the marine environment are enshrined in the Marine Plans, reinforced by the Marine Policy Statement (MPS). The management of marine resources are set out in the Marine Plans. It will ensure that various activities are run and supervised in order to achieve sustainable development, with the priority on the reduction of conflict and promotion of compatibility. It will be ensured through monitoring that all activities covered by the Marine Plans work toward the delivery of future changes in the marine environment, including the MPS.299

298 See Marine and Coastal Access Act 2009 S42 (3) and (4).
3.8 Emergence of the Precautionary Principle in UK Environmental Policy

In 1990, five principles were announced by the UK government that were intended to help in guiding environmental policies in the future. Precaution is one of the five principles.\(^{300}\) It was also included in 'Strategy on Sustainable Development' by the UK government in 1994 as one of a number of important aims in supporting sustainable development. There are various links between sustainability and precaution; the government, however, did not discuss or specify them. It is interesting to note that government now often refers to the precautionary principle in its political pronouncements. Firstly, it points to the fact that environmental policy is now playing an active role internationally and is transcending the boundaries of the state, which is mainly channeled through communities of trans-national policy. The fact corsage that extended to an international level from Germany is evidence of the Europeanization of environmental policy. The UK government focuses on precaution as a major principle that lays the foundation of environmental policy.\(^{301}\) In many other states of Europe, the practice of starting with the principles and arriving at a general policy still pertains, while it is less popular in the EU and completely foreign in the UK. It has yet to be seen what effect and influence these principles have on environmental policy development and on the actions of agencies, pressure groups and ministers.\(^{302}\)

Certain other strict principle formulations follow the traditional British style when making environmental policy which places emphasis on cost balancing, benefit factors and risk, with the aim of establishing the best usage of the environment's capacity to absorb waste. This approach is said to be less proactive and more reactive. Often the UK government failed to impose rigid protective measures due to the 'high cost' and 'unpredictable science', and fell victim to pressure from other states, while precaution diminishes the influence of politicians on scientific activity.\(^{303}\)

3.9 European Liability Directive and the Polluter Pays Principle\textsuperscript{304}

The Environment Agency fine is strictly imposed by the European Liability Directive (ELD) on all the businesses that do not adhere to the Polluters Pay Principles. The businesses are strictly monitored by this body so that they do not fail to comprehend the significance of the principles and their impact. The ELD was a new phenomenon and not all businesses were aware of it or took measures to implement it. Hence, it was surprising to note a UK law called 1388 being passed which made it unlawful to dump animal waste or throw litter into rivers. However, it is ironical that even 600 years later, legislations for controlling pollution are still required. At present, the penalties being imposed are not very harsh or strict even though the Environmental Agency is making efforts to enable the courts to impose more severe fines; however, their attempts are not successful. For instance, in 2003, ‘pocket change’ fines was enacted, however, it did not play any significant role in eliminating the environmentally detrimental activities of a few businesses. Sir John Harman, Chairman of the Environment Agency said that, “the fines should correspond to the effect on the environment and to the turnovers achieved for large businesses that do not conform to the rules” and this was the need of the hour.

It was recently stated by Dr. Paul Leinster, the Chief Executive of the Environment Agency that they were seeking the imposition of higher fines for pollution so that they served as a preventive measure. He also said that each day, at least two intense pollution cases occur which cause a lot of damage. Waste management is found to be the most severe offense as it was found to constitute one-third of all the major causes of pollution in 2008. The investigations are still being carried out; however, it seems that it was because of a waste management company that the cyanide pollution incident took place in October this year. The investigation showed that there was a huge amount of destruction in the River Trent and thousands of fish in the river were killed. Action was immediately undertaken by the Environment Agency who made efforts to decrease the impact to a restricted area rather than to be spread in 117 mile of the river length that faced the threat.

Apart from the imposition of heavy fines, the EA should issue notification which makes the company liable for fulfilling remediation costs that are part of the pay principle of the polluter, hence reinforcing the Environmental Liability Directive ELD 2004/35/EC. On average, fines worth 10,080 pounds were charged in 2008 and it is quite likely that there will be an increase in fines to reach a figure of millions of pounds, instead of thousands. This amount is very small for companies and the costs are not even included in their insurance policies.

3.10 Common Law Tradition

The tradition of Common Law developed in Medieval England through royal command and was enforced by the Chancellor to settle disputes. The authority of the state enforced Common Law and citizens had an opportunity to present their case before a judge 305. Judges were able to control the institutions of Common Law because of a writ. Instructions from the King constituted the writ and were given to royal officers telling them how to proceed with the investigation of disputes. The officers were required to order the defendant to appear and to show cause in relation to breaking Common Law so that property could be seized or a jury could be empanelled. There were no trials in Chthonic law and there was little agreed procedure. No jury was used in Roman law. Talmudic and Islamic law also did not involve much representation and the judge was responsible for ruling on issues. Lawyers argued in favour of or against an issue and provided the necessary facts when needed. Arguments were conducted and the facts presented verbally, as the jury mostly consisted of illiterate people. The courts were essentially controlled by local people. The royal justice process was validated by dependence on the local customs of the people and the activities of the people were controlled by writ and this was known as substantive law to Islamic lawyers. The system continued to grow and it now exists as the legal system of the United Kingdom.

To cover the various legal orders, the execution of the Common Law must have a certain degree of flexibility and should be capable of considering the different legal orders of today. According to the Islamic point of view, different schools of Common Law appear to exist in different parts of the world and a certain degree of tolerance is required for the continuation of past traditions.

The Inns of Court were created by English lawyers to provide the necessary education for legal professionals operating in the royal courts. The University of Cambridge and Oxford followed the injunctions of Roman law but the Inns were initially under the influence of the church, similar to how the mosques controlled the madhabib. The Inner Temple and the Middle Temple are the two Inns which have survived to this day and they were traditionally linked with the Order of the Knights Templar which was created in 1120 in Jerusalem. They were located near the Temple of Solomon and their full title was the Poor Knights of Christ and the Temple of Solomon. The Inns were associated with the cities of London and Paris for many years and they provided education related to the legal professions. The cities of London and Paris also had historical links with the Holy city of Jerusalem.306

Natural justice is part of Common Law. Bradley and Ewing 307 describe how natural justice developed under the influence of the central courts to have power over institutions with a lesser legal standing. The Human Rights Act of 1998 contains many of these rules. ‘Inter alia’ is also a part of the Act. It is a law which prevents bias and grants a right to a fair hearing.

The Common Law says that a fair judicial decision can only be made by a judge who is impartial308. If the judge has a personal interest in the matter brought before him there is a chance that he will be biased in favour of one of the parties involved. In such a case the judge must not involve himself in the decision-making process as he could give an unfair judgment.

The principle of natural justice in Common Law also demands that all the involved parties should be made aware of the case against them so that they can defend themselves and present their own point of view before the judge. Sometimes, the judge may prevent parents from knowing about the medical reports on children.309 Public officials are also under the doctrine of natural justice when they make decisions about important issues such as the pollution of the marine environment.

308 R v Rand (1866) LR 1 QB 230
The principle of natural justice covers many different issues in the legal system of the United Kingdom and the courts make sure that administrators use their authority correctly by upholding the principles of justice and fairness.

3.11 Christian Church

In the UK, the Church of Christ is one of the oldest state institutions. Moreover, the Christian Church has an important role in the British economy; currently the Church of England holds £8 billion in investments and assets, providing many locations for worship. The Church of England currently provides approximately 16,550 places where worship can take place around the UK.\(^310\)

However, despite the interest of geographers in religion, the Christian Church is still an under-researched institution.\(^311\)

James Steven argued that the particular characteristics of the faith make the Christian Church an ideal institution for study and research. Steven describes how the church integrated the Geography of Religion with the Geography of Economics to show how the locations of Christian religion institutions, for instance the Parish Church, has an influence and impact on the capitalist economic system of the United Kingdom.\(^312\)

In Britain, the Christian Church is one of the oldest institutions. It was established into the nation at the time of the Roman Empire and has various forms. The major landowner in UK is the Christian Church as the church owns a large number of commercial properties and rural estates.

\(^{310}\)Ibid
\(^{312}\)Ibid.
3.12 England: Religion

Religion is integral to the British national character. Traditionally, Christianity has been the most practised religion in Britain and religious beliefs have played a major role in the political system of England and its development.

Christianity was established in 597 AD by Pope Gregory’s ‘Initiative for the Conversion of England’. From this time, Roman Catholicism was the national religion until the Reformation created by King Henry VIII in 1534. The Reformation established the Church of England which became the sole religion of England until 1689 despite the promotion of Catholicism in the reign of Queen Mary I (1553-1558). The England parliament established the Act of Tolerance which was designed to prevent the persecution of worshippers of other religions. Establishing the Act of Tolerance was a major development in the history of religion in the UK as it confirmed that the nation legally accepted the validity of multiple religious within the English system. Currently the UK is multi-faith and Church attendance is declining. The Christian religion in England is also affected by economic migration as society has become more multi-cultural.

There are many reasons for the decline in attendance at Church. During the course of gathering data for this study, the researcher met many people who did not believe in any religion and who did not want to join any religion as they thought that this would create obligations for them. They believed that the Christian religion would not add anything to their lives and that visiting Church would be a waste of their time.

James Stephen refers to a study published by the charity Tear fund in 2007. In this study the charity reported that, while a large number of people in the UK were no longer visiting the Christian Church, 26 million of UK adults considered that they were still Christian. Stephen links his findings to Davie’s work ‘Believing without Belonging’ (1994).

Stephen identified challenges in creating a cohesive multi-faith society and the lack of connection between looking after the environment and religious beliefs. Most religions do not impose rules on how people should behave towards the environment.

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314 Ibid.
3.13 The Franconia Case (R V Keyn 1876)\textsuperscript{315}

The German ship \textit{Franconia} crashed into the British ship \textit{Strathclyde} around two and a half miles off Dover beach. The collision led to death of 38 passengers on \textit{Strathclyde}. The commander of the German ship was Keyn, who was convicted in the English courts. He was put on trial for manslaughter. Keyn was a foreigner who was sailing on a foreign ship with high tide in the sea. He appealed to the court on this basis that the court did not have the jurisdiction for his trial in the court.

However, Crown believed that this incident would come under the British jurisdiction\textsuperscript{316} since it occurred within 3 miles of coast. When the perspectives of conflicting authorities were carefully reviewed, it was observed that GB had not explicitly declared their power to claim a territorial sea, although they might have the right to do so. Till the Parliament declared it through legislation, the courts did not have the right to state that British jurisdiction covers foreigners and foreign ships further than British shores.

The Territorial Waters Jurisdiction Act 1878 was passed after two years. This Act confirmed the legal authority of the Crown over territorial waters which were considered by the international law to come under the territorial authority of Her Majesty. This position is still maintained at present.

\textsuperscript{316} Ibid
3.14 The Case Of Anglo-Norwegian Fisheries (1951)

The Court held that the Norwegian straight baseline system conformed to international law. The Court, influenced by the geographical circumstances of the case, decided that the skjaergaard was an extension of the mainland and so it was the outer limit of the skjaergaard which established the true baseline and that, where the coastline was deeply indented or fringed by islands, ‘the baseline becomes independent of the low watermark and can only be determined by means of geometric construction’\(^\text{317}\).

The Rules of Construction are as follows:\(^\text{318}\):

1. The lines must be drawn so that they do not depart from the general direction of the coast.
2. They must be drawn so that the sea areas lying within these lines are sufficiently closely linked to the land domain to be subject to the regime of internal waters.

It is legitimate to take into account certain economic interests peculiar to a region, the reality and importance of which are clearly evidenced by established usage.

The rules in the Norwegian case were taken up by the ILC and incorporated into the Territorial Sea Convention Act 4.

Under LOSC Art 7(1) a system of straight baselines ‘may’ be used ‘in localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity’\(^\text{319}\). The state is able to choose whether it uses this method to determine territorial waters e.g. the USA does not use this method in Alaska.

The convention described the conditions of use which included\(^\text{320}\):

1. Baselines must not depart from the general direction of the coast. (TSC Art 4(2); LOSC Art 7(3)).


\(^{318}\)Ibid.

\(^{319}\)Ibid. p.118

\(^{320}\)Ibid. p.119-120
2. Straight baselines may not be drawn to or from low-tide elevations unless lighthouses or similar installations which are permanently above sea level have been built on them. (TSC Art 4(3); LOSC Art 7(4)).

3. A state may not draw straight baselines in such a way as to cut off from the high seas the territorial sea of another state (TSC Art 4(5); LOSC Art 7(6)).

4. Where, because of the presence of a delta and other natural conditions, the coastline is unstable, the appropriate points may be selected along the furthest seaward extent (LOSC Art 7(2)).

3.15 The Sinking of the Prestige\textsuperscript{321}

The Prestige oil slick is considered to be one of the most damaging events in the history of maritime transport, and one of the most complex disasters that has ever occurred.

The main reason for the disaster was that the tanker lost most of its oil cargo during the first few days, before finally sinking after a long and erratic six-day drift. As a result, 64,000 tonnes of oil were spilled. Because the tanker drifted along coastal waters then out to sea at the mercy of the prevailing winds, spilling its cargo with it, slicks in successive waves reached virtually the whole of Spain’s northern coastline, as well as stretches of the French and British coasts\textsuperscript{322}. Another incident occurred in which a Bahamas registered single hull tanker sank off the Atlantic coast of Spain, spilling oil into marine ecosystems.

3.15.1 Legal Issues Raised By These Events

1. Limited jurisdiction of coastal states with regard to dangerous tankers in transit.

2. Ineffectiveness of existing standards for transport of heavy grades of oil in single hull tankers.

3. Limits of unilateral/regional responses.

4. Lack of Flag State implementation and enforcement.

\textsuperscript{321} Raul Garcia. (2003)\textit{The Prestige: one year on, a continuing disaster.} A report published by Marine Officer, WWF-Spain. P5 - 10

\textsuperscript{322} Ibid
5. Uncertainties surrounding the legal regime for ‘places of refuge’.

These incidents led to the following actions:

1. Call for re-evaluation of existing international legal framework.

2. EU took the lead in this process\textsuperscript{323}.

3. EU raised standards for all tankers, regardless of their flag, entering or leaving ports, offshore terminals and anchorage areas under the jurisdiction of the EU MS or flying the flag of an EU MS.

3.16 Constitution of UAE

The law of the UAE is based on Islamic Shari’ah and other sources. The courts of the UAE base their decisions on Islamic Shari’ah if the laws do not cover certain issues which need to be resolved. UAE law is constructed and interpreted in terms of Islamic jurisprudence principles.

3.16.1 What is Shari’ah?

Shari’ah means ‘way’ or ‘path’ in Islam and is the divining law for Muslims. There are two main sources of Shari’ah:

1. The Holy Quran, which consists of the divine revelations of Allah.

2. The Sunnah, which consists of the sayings and the actions of the Holy Prophet (Peace be upon him).

Secondary sources for Islamic Jurisprudence (fiqh) are:

- Consensus
- Analogical deduction
- Reason

Islamic jurisprudence has several schools and these schools have different views about secondary sources and the importance they hold.

\textsuperscript{323}Xunta de Galica website: http://www.ccmm-prestige.cesga.es/
Many non-Muslims think that it is only religious matters that are dealt with under Shariah. This is incorrect as it also deals with succession planning, banking, contracts, property, family and social matters.

Shari’ah divides human behaviour into 5 different classes:

1. Obligatory conduct (fard)
2. Recommended conduct (mustahabb)
3. Neutral conduct (mubah)
4. Forbidden conduct (haraam).

3.16.2 How Does Shari’ah Come to be a Source of UAE law?

The rulers of the first six Emirates that were part of the UAE presented the first provisional constitution on July 18th 1971. It was in the year 1972 that Ras Al Khaimah also became part of the UAE. This constitution formed the foundation of the current constitution of the UAE. The provisional constitution was made a permanent one in 1996.

It is presented in Article 7 of the constitution that Islam is the official religion of the state that Islamic Shariah is the main source of all its laws.

However, Shari’ah is not the only source of law in the country. It is also not compulsory to only use Shari’ah as the basis of laws in the UAE.

It is presented in Article 110 of the constitution that federal laws should be formed in accordance with the provisions of the given article and other pertinent constitutional provisions. Yet it is believed by some jurists that Shari’ah should be the source of any law formed in the UAE. This is because Article 7 of the constitution presents such a clause. This is quite a common interpretation of Article 110324.

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Article 7 does not state that Shari’ah is the only source of UAE law. It only states that Shari’ah is one of the sources. Interest charge is not allowed in Shari’ah and is considered haram in Islam. However, the UAE courts allow payment of interest in accordance with contracted provisions.

Due to this, UAE civil code is reviewed:
Initially, this civil code was established as Federal Law No.5 of 1985 and could be recognised as the chief law of the UAE. As per the law, where a particular legislation is quiet, there is no specific legislation that differs from it. The provisions linked with the role of Shariah that is present in the current legal system of the UAE are presented in the three Articles of the Civil Code give below.

Article 1 of the Civil Code of UAE mentions that the judge is supposed to declare his verdict in accordance with Islamic Shari’ah if there is no provision present in this law.

Following this, a list of precedence of Islamic laws of jurisprudence is provided in Article 1 which assists the judge and is essential during decision making of the judge:\footnote{Webb. M, (2010), Shari’ah as a source of UAE Law, Available at http://www.hadefpartners.com/News/pageid/120-137/default.aspx?mediaid=151, Access July 2014.}

1. First of all, the laws of jurisprudence established by Imam Ahmed Bin Hanbal and Imam Malik’s schools should be taken into account by the judge.
2. The judge should then take into account Imam Abu Hanifa and Imam Al Shafi’s schools if a solution is not achieved through those two schools.

It is presented in Article 2 of the Civil Code of UAE that understanding of these provisions should be the basis of the principles of Islamic jurisprudence.

It is presented in Article 3 of the Civil Code that all public order should comprise of issues that are regarding personal factors such as marriage, private ownership, wealth circulation, status, inheritance, freedom of trade, etc. But, they inclusion should be such that it does not differ from the Islamic Shariah and also the definitive provisions.
The following principles are quite evident from the above mentioned statements:

- Islamic Shari’ah is certainly a source of UAE law, but it is not the only source
- The UAE courts will implement a certain aspect if it has been presented in a particular provision in the UAE law
- If there is no provision of the UAE law, then judgement would be given in accordance with Islamic Shari’ah.

The courts will be reliant on the principles of Islamic Jurisprudence with regard to understanding and formation of the UAE law.

3.16.3 The UAE Civil Code

The UAE Civil Code can be considered as the main law of the UAE. It was established as Federal Law No.5 of 1985. This code is implemented in case there is no particular legislation that differs from it and when particular legislation is quiet. There are essential provisions regarding role of Shari’ah in the UAE legal system present in the initial three Articles of the Civil Code.

First of all, it is presented in Article 1 of the Civil Code that a judge has to present his decision in accordance with Islamic Shari’ah, if there is no provision in this law.

Following this, Article 1 includes a list of the order of precedence of the Islamic schools of jurisprudence. The judge has to consider these when making a decision\(^\text{326}\). Thus, it provides guidelines regarding how the judge would perform that task.

1. First of all, he should consider the principles of jurisprudence established by Imam Ahmad bin Hanbal and Imam Malik’s schools.
2. Following this, the judge should consider Imam Abu Hanifa and Imam Al Shafii’s schools if any solution is not achieved through the above two schools.

Secondly, Article 2 of the Civil Code provides, in translation, that

It is presented in Article 2 of the Civil Code that for understanding, interpreting, and forming these provisions; the rules and principles of Islamic jurisprudence would be depended upon.

It is presented in Article 3 of the Civil Code that public order would comprise of issues regarding personal factors like inheritance, lineage, and marriage. It would also include issues regarding freedom of trade, rules of private ownership, sovereignty, circulation of wealth, and other rules and the aspects on which a society is based. However, it would be included in a way that it does not disagree with the basic principles of Islamic Shari’ah and the definitive provisions.

Considering the above aspects, the principles given below are quite evident

- Islamic Shari’ah is not the only source of UAE law; it is only one of the sources.
- The UAE courts will consider any specific provision that is present in the UAE law.
- In case there is no provision in the UAE law, the courts will give their judgment as per Islamic Shari’ah.
- With regard to formation and interpretation of the UAE law, the courts will depend on principles of Islamic jurisprudence.

3.16.4 Implications for Legal Practice in UAE

A very essential implication for those who practice law is the likely impact of Shari’ah, particularly when handling products commercially. They have to consider this very carefully and not be deceived by reading the English translation of the UAE law. This is because it could seem to be settling and lead to misunderstanding. The approaches through which a UAE court usually implements the provision should be considered by the practitioners. Also the degree to which Islamic jurisprudence can impact that provision’s interpretation should be considered.

To further explain its significance, we would discuss a practical example which is a case that lately occurred. The case was dealt in the Federal Supreme Court and was regarding Margin Trading Agreements. The previous decisions regarding Margin Trading Agreements were reversed by the Federal Supreme Court and such agreements was declared to be haram as per

Shari’ah. The court decreed that only those commercial activities that are in agreement with Shari’ah will be permitted. Margin Trading Agreements were permitted by the court in accordance with UAE law. According to the court, Margin Trade Agreements have been discussed in the UAE banking law and Federal Law No.10 of 1980. The abovementioned presumption has been presented that if there is an express provision of codified legislation, then a provision is in accordance with Shari’ah.

3.16.5 Defining The Role Of Shari’ah In The UAE’s Legal Foundation

Although Shari’ah holds a significant role in UAE law, it is quite common for people to misinterpret its application. To understand the difference between non-Islamic and Islamic law, it is important to realize the intention of the founders. According to the UAE constitution, the official religion of the Union is Islam and the main source of legislation is Islamic Shari’ah.

It is, however, difficult to determine the law in some cases, since there are instances where certain legislation has been introduced in contradiction to the UAE civil code. As we have seen, Shari’ah is the chief source which guides and shapes the law; however, it is not the only one.

Hamade points out that, in the case of absence of a provision of UAE law which does not cover a particular issue, the courts will reach a judgement with respect to Shari’ah. The government has so far been successful in maintaining and blending Shari’ah with policies of expatriated non-Muslims and also protecting the integrity of the founders.

The UAE has started to merge Shari’ah law and man-made law: for instance, family law. The UAE has made it mandatory that Shari’ah is used as the foundation of legal issues related to the family. Personal status law, covering marriage, succession and divorce, extends to all UAE nationals, except for places where non-Muslims reside and have their own religious and sectorial

rules. Furthermore, Article 1 states that this law can apply to non-UAE nationals too, but they can also choose their own law instead.

The nation's criminal code has similar distinguishing characteristics. For example, in the case of an injury or death, Shari’ah allows the payment of blood money. Other crimes like fornication, killing, abandoning of Islam, homosexuality and adultery are all classified under ‘Al Hudud’. They are all punishable by a predefined penalty such as the amputation of an arm and flogging.

Despite this, certain Emirates do not follow these strict punishments. They have replaced these penalties by, for example, payment of fines and jail sentences.

The business sector is also covered by Islamic law. Examples include prohibition of unjust enrichment and banning of transactions with high risk and other financial circumstances where exploitation is possible.

The prohibition of unjustified enrichment has been recognized in UAE Federal Law No.5 of 1985 which concerns civil transactions (Article 714). There are three main principles that follow Shari’ah which form the foundation of Islamic economics. These three principals include Riba, which basically prohibits charging interest, PLS, profit and loss sharing and Gharar, which is speculation and uncertainty. Following these principles, Islamic finance has flourished and thrived in the UAE.

Some work is being done on the establishment of a higher Shari’ah council by federal officials. This will ensure supervision of the Islamic finance sector by the state, which would replace the current civil code law provision with respect to Islamic finance.

It should be pointed out that Shari’ah is not as immovable or as rigid as many people believe it to be. In truth, Shari’ah is fairly flexible if it is applied and understood in the right way. It is in fact very compatible with the modern legal system.
It should be understood that the Holy Quran or the Prophet's Sunnah, or the Islamic Scholar's ruling cannot provide specific solutions to every individual detail of life, when we say that Islam gives a fulfilling solution for every problem in every situation. Through Quran and Sunnah, broad principles have been laid down under which scholars deduce solutions and answers for every new situation and interpret it accordingly. This process of decision-making is known as Ijtihad. It is an ongoing process where new ideas can be developed as long as their underlying meaning relates to the aforementioned sources.

The principles of freedom and democracy are core principles of Islamic law. It is unfair to Shari’ah as well as the public to deny these rights to the people. Scholars and lawyers need to cooperate with each other in order to develop appropriate laws, instead of blaming Shari’ah when the law fails to adapt to the interpretation of Islamic law.

The significance of Islam as a modern and a current day ideology that influences the environment globally is not completely appreciated. Islamic jurisprudence lays down clear standards and laws about the allocation and usage of resources such as water, land, minerals, animals and even manpower. It has a framework for issues concerning pollution, ownership, ethics of land, aesthetics and the role a man is to play on earth. Most of these topics hold values that differ from those that are influential in the West. Not much is known by scholars in the West or by the international development community about Islamic law. As Islam is said to be a global faith, it is very important to bridge this gap. Shari’ah is gradually being adopted in many Muslim countries such as Pakistan, UAE, Saudi Arabia and Sudan. It will have a great influence on how policies develop in these countries regarding the management of resources. It is believed that this trend will grow quickly, as it is believed by Muslim intellectuals that it is important that Islam makes a significant social contribution.

Moral issues are normally taken as something which are beyond the law and the study of economics. This is of concern to many Muslims as they believe that Islam does not only lay down moral values but also deals with economics. It is interesting to note that even in Europe, economics

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332 Hamed, S.,*Seeing the Environment through Islamic Eyes: Application of Shariah to Natural Resources Planning and Management* Texas Teach University available at WWW.TTU.EDU Accessed June 2014.
followed religious foundations until the late 1700's. Before this, most of the economists in Europe were either priests or theologians. Scholastic economics was developed and presented by the Church through, for example Augustine and Thomas Aquinas. They held Christian beliefs and considered issues of people and land based on religion. After the Industrial Revolution, economists started to detach economic study from religion and resisted the Church and its authority. This revolt was gradually mollified in the West and never really happened again in the East. 333

There are some economists today who believe that it is wrong to deny the relationship that existed between religion and economics in the past and feel that there is somehow, always some moral association attached to economics. It is perhaps not of interest to many today to link economics and ethics. This approach is discussed by the Czechoslovakian American Eugene Lovell in his book ‘Humanomics’. According to Lovell, Humanomics is an economy that is for human beings in their entirety. Lovell points towards a gradual movement towards economic concepts which do not regard morality and religion as insignificant. 334

There are five maqasids or aims of Shari’ah: the protection of deen (religion), nafs (life), nasl (offspring), aql (mind) and ma’al (property). 335 Shari’ah believes that environmental degradation will bring an end to the ownership of property, begetting children and piety. Hence, it is important to achieve the goals of Shari’ah. Some Quranic verses command Muslims to protect nature, consider the relationship between the environment and living things and to include logic in decisions. The Quran also asks Muslims to maintain the balance God has put into Creation. 336 Hence, through these five aims of Sharia'h, it can be seen that it is very important in Islamic law that the environment is protected in all aspects of life.

Legislation has a significant role in those countries that adopted codified civil law instead of a legal system similar to the Common Law System which is based on judicial precedents. There is a greater emphasis on the progress of legislation in those jurisdictions that have adopted Shariah

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334 Ibid.
335 Practically, Shariah has clear instructions such as harim (preserved natural environments) and hima (protected land for grazing purposes) which can be applied to nature conservation within Islamic law.
as the underlying source of the legal system, such as the UAE. This is due to the two main principles of Islamic Law.

Discretionary interpretation is not allowed for issues that come under specified legislation. When such a specific law does not exist, then Islamic law is implemented by the courts. It is necessary for them to then apply the Islamic jurisprudence and its principles of justice. Precedents are not obligatory in Islamic law. The decisions passed by other judges do not have to be considered by a judge when these principles are applied. Even a judge’s past decisions do have to be considered.

These principles have been confirmed in the Civil Code of the Ottoman State; namely, Majalat Al-Akham Al-Adlia (Al Majala), which is based on Islamic Law. Its derivation was from the Hanfi Sect, and its compilation was undertaken by jurists and promoted in Istanbul in 1286 H (1836). It was then applied to all those Arab countries under Ottoman rule and continued until the First World War. Once independence was achieved, Al Majala was still applied by these countries when they finally began to promote their independent civil codes. Even today, Al Majala is a significant influence on Islamic Law. According to Al Majala, every case should be judged on individual merit.337

As described earlier, the Constitution claims that Shari’ah is the chief source of law in the UAE. It also provides that the Federal Supreme Court's decisions are binding. Even though the decisions by the Federal Supreme Court are not a part of legislation, they are still very important and help to determine the Law. Some difficulties can arise with interpreting the decisions of the Federal Supreme Court in the light of other Appeal Courts. A quarterly periodical is published by the Federal Ministry of Justice, which contains legal articles and recently made decisions by the courts. However, a classified law report is not available to help judges and lawyers where they are not clear about the interpretation of a rule.

337http://gulf-law.com/uaeclaw_legalsystem.html
3.16.6 UAE Institutional Framework

Below is the description of the UAE institutional framework and the other seven emirates as a federation. Institutional responsibility is in its infancy and still needs a lot of development. However, it is developing gradually and there is a possibility of some organizations being overtaken by events due to the rapid changes taking place.

3.16.7 Ruling Families

Every Emirate has a ruling family which has a head. He makes official orders which are important and hold the force of law. These orders are concerns relating to the environment, for example establishing protected areas and putting bans on hunting in certain areas.

3.16.8 Government Bodies

Given below are the government organisations and a description of their responsibilities:

Federal Government, Federal Environment Agency (FEA)

The FEA is a federal government body which has duties such as pollution control and enforcement of environmental standards (refer to the federal Law No. (7) for 1993). The Minister of Health is the chairman of the Board of Directors who supervises the tasks of the agency. The FEA published a draft National Strategy and Environmental Action Plan with the UNDP in 1998. The FEA also established a national biodiversity committee, however, it is presently not active. Federal Law No. (24) for 1999 was developed by the FEA. It was related to the protection and development of the environment.

3.16.9 Ministry of Agriculture and Fisheries including Department of Fisheries

The tasks of the Ministry of Agriculture and Fisheries comprise of terrestrial and even marine matters (refer to Law No (23) for 1999). The management of marine and coastal commercial fisheries is done by the department of fisheries. It works on a research program regarding recruitment and fishery stocks and also works on development of the aquaculture.
Individual emirate agencies/ other government bodies Environmental Research and Wildlife Development agency (ERWDA)

The ERWDA is a government institution in Abu Dhabi but it also provides services to the remaining Emirates. The ERWDA manages the functioning of terrestrial and marine research centres. The ERWDA also includes the National Avian Research Centre. The agency has the duty of performing research regarding birds and so also has a captive breeding facilitation. It includes the Houbara Specialist Group of the Species Survival Commission of the WCU (World Conservation Union). The ERWDA also works with the cross-sectorial environmental services unit.

The responsibility of the Desert Part, which a natural history museum, is that of the DEPA (Department of Environment and Protected Areas) Sharjah. The department also operated the Endangered Arabian Wildlife Centre. The DEPA has been functional since 1998. The DEPA also has the duty of nature reservation in the emirates.

3.16.10 Municipalities

For managing civic amenities, a local council, known as ‘baladiya’ or municipality, is effectively maintained by all main cities, including the capitals of each Emirate. A huge number of activities are carried out by municipalities, such as sanitation and cleaning services, but best-control and managing zoos, parks and gardens was not under their jurisdiction. The FECC (Food and Environment Control Centre) across Abu Dhabi is part of the municipality dealing with health-related matters. A similar operation is being performed by other departments which are controlled within their individual cities by other states.

The Emirates University, Al Ain, controls the academic research institution. The offices at the Department of Fisheries and research laboratories at Ummal-Qaiwain, a division of the Ministry, are associated with the Centre for Desert and Marine Studies, part of Emirates University. The Centre has an uncertain future because of current restructuring.
According to Isabel, the ethical bond between nature and human beings should be considered within environmental principles and the following questions should be asked: Is it appropriate for humans to destroy and pollute the nature? Is it illegal to pollute the atmosphere because human protection is likely to be damaged or because there is an essential value associated with nature? Islamic ethics hold great importance for the structure of Muslims’ behaviour regarding nature. To give great importance to nature and safeguarding it is a core element of faith according to directions from the Quran and Sunna (hadith). Refined values have been provided to Muslims by Islamic ethics. The taking of a leading role in the protection of nature and in the development of ecological policy and practices is not being exercised by the majority of Muslims.338

According to Isabel, luxury and a higher level of flexibility in daily life has been possible due to technological advancements but there are also hazards which result from this advancement for humans as well as for nature. The primary cause of global warming is the emission of carbon dioxide from various sources, such as oil refineries, power plants, motor vehicles, industries, aircraft and ships’ exhausts which pollute the environment and cause health hazards. The Fukushima Daiichi nuclear disaster in 2011 was one such example. The Japanese nuclear facility got damaged by an earthquake resulting in a disaster during which substantial radioactive material was reportedly emitted. Subsequently, a ‘dead zone’ of several hundred square kilometres was polluted around the plant due to the discharge of radiation, and even areas near North America witnessed low levels of radioactive material.

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3.16.11 Tracing Environmental Law Principles within UAE Legislation

Laws and regulations are shaped through religion across the UAE. Freedom of religion is allowed and acknowledged by the constitution. 339 The total population is 4.04 million according to the 2001 census, of which 76% are Muslims, 9% are Christians, and the remaining 15% are people from Baha’i of Parsi and Sikh religions. 340

The responsibilities of Muslims are clearly explained by the 5 pillars of Islam. These pillars contain the elements: faith, prayers, zakat, fast, and Hajj or the holy pilgrimage to Makkah, the holy city of Saudi Arabia. To offer prayers 5 times a day is compulsory for every Muslim. The Azan, a call for prayer, is recited to launch prayer. When Azan is heard by across offices in the UAE, Muslims stop their work and begin the preparation for prayer.

The environmental impact principle, the precautionary principle, sustainable development, public contribution and the polluter principle are among the major principles of environmental law. Within the law of the UAE, implementation of these principles has been associated with nautical eco friendly protection and the most of the principles were acknowledged by UAE policymakers.

3.16.12 Sustainable Development

From an Islamic view, sustainable development was described by Muhammed Nouh; he expressed it as a multi-dimensional process that attempts to maintain stability between social and economic development on the one hand and upkeep of nature on the other. Its intention is to direct humans to utilize resources in an optimum manner in addition to justifying the natural aspects on which those resources depend. Islam describes human beings as the representatives of God Almighty on this Earth and they are allowed to consume resources without greedily dominating them. According to the specifications of the Holy Quran and the instructions of

Prophet Muhammad (PBUH) ‘Sunnah’, this planet must be strengthened by humans, so that present needs are fulfilled without threatening the rights of future generations.341

The Buriedland Report ‘Our Common Future’ first introduced the term ‘sustainable development’; it is described as the development by which the needs of the current generations are fulfilled, without sacrificing future generations in meeting their own requirements. This concept turned out to be a revolutionary statement in almost all global eco friendly treaties and environmental declarations. This standard was recommended by Principles 3 and 4 of the Rio Declaration in the statement: ‘It is important that development rights must be accomplished so that the environmental and developmental needs of existing and future generations should be fairly met.’ It also stated: ‘…a central part of the development process would be established by environmental protection and it cannot be considered in seclusion in order to achieve sustainable development’ 342 According to Article 1 of the United Arab Emirates Law on the protection and development of the Environment no 24 /1999343, sustainable development is defined as the bond between planning, development policy and ecological matters for satisfying the needs of the current generation without jeopardizing future targets and needs. There are certain prerequisites of sustainable development apart from those contained in these definitions, such as the implementation of environmental friendly technologies, the need to shift to renewable resources, implementation of practical waste management policies and the need to reduce consumption. Furthermore, it is explained in Article 9 of Emirati Environmental Law, that certain aspects, such as pollution control, environment safety and balanced use of natural resources would be considered by all concerned and responsible parties for planning, construction and monetary expansion while implementing social and economic plans.

342 Some were in doubt on how this concept could be operated and assessed since future generations are not known or even exist and their needs and capacities are not determined due to the introduction of new and high technologies.
343 This law was published (in Arabic) in the UAE Official Gazette Issue No. 340, Year 28, October 1999.
3.16.13 Precautionary Principle

In environmental law, the precautionary approach is an important principle: ‘precaution is better than cure. Human activities and their allied consequences should be judged by the impact on human beings and nature and they must devise a plan to meet these challenges in an effective way. The policymakers of the UAE understand the reasoning behind the precautionary principle; human actions causing undesirable environmental results must be managed through implementation of environmental impact assessment.\(^{344}\) The precautionary principle is applied by UAE Environmental Councils through the utilization of the environmental impact assessment technique as a precondition so that the diverse range of human activities can be certified. Administrators also observe the implementation of the precautionary principle, and across both countries, public organisations oversee human comfort and public health is concerned about the significance of their duties. For instance, naturally altered products are most likely to be banned by the Emirati Ministry for the Environment, since they are likely to have concerns about the possible consequences on the environment and human health.

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\(^{344}\) Principle 15 of the Rio Declaration states that in order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where the reare threats of serious or irreversible damage, lack of full scientific certainty shall not be used as are as on for postponing cost-effective measures to prevent environmental degradation.” RioDeclarationonEnvironmentandDevelopment, 1992, Available online at: http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163Accessed May 2014.
3.16.14 Polluter Pays

Through financial penalties and criminal offences, the polluter-pays-principle is broadly implemented by both laws. This principle states that the cost of pollution will be borne by the respective polluter, rather than shifting the financial burden to the end user in the shape of elevated prices of services or products. The implementation of polluter-pays-principle has to be carefully observed by the competent authority in order to ensure that victims of the environment must be compensated by the individual(s) by whom the damage was caused.345

Emirati Environmental Law has implemented a punitive approach when the law is broken. But a doctrine containing civil obligation has also been provided by Environmental Law. Article 71 of the Emirati Federal Law no.24/1999: ‘If the damage to the environment is deliberately or unintentionally caused by any individual or a scenario appears as a violation of this Law or the resolutions or orders issued for its implementation, then that individual would be accountable for removal of such damages or all the costs of treatment and any reimbursement earned as a result’, the polluter-pays-principle considers this provision as a civil application because under its jurisdiction, every person’ juristic or natural’ who will deliberately or inadvertently become the cause of damage to the environment or to others would be held responsible for the recovery imposed thereof.

If the environment is affected in such a way that reduces or prevents permanent or temporary legitimate use, or damage statistic and economic values, in addition to the disbursement of the ecological restoration and all similar matters according to Article 72 of the Law, this will be included in compensation for environmental damage. These provisions must be examined from time to time so that the burden of proof can be eased by the provision of specific limitation rules other than those available in the Emirati Civil Transactions Law.

3.16.15 Environmental Impact assessment

Environmental Impact Assessment is one of the structural parts of the environmental protection process, and is employed as a safety mechanism. Principle 17 of Rio Declaration declares Environmental Impact Assessment as a national affair which is to be implemented when activities threaten the environment. It is a matter which should be handled by the state.

It also grants the following charges to the authorities:

1. Categorization of potential projects on the basis of the extent to which they may affect the environment.
2. Recognition of environmentally sensitive and significant areas like places of historical and archaeological importance, wet lands, coral reefs, natural sanctuaries and public vicinities.
3. Detection of natural reserves and substantial environmental issues.

3.16.16 Environmental Legislation

The contemporary legal code for the security of the natural environment and natural reserves has been in practice for only a decade. Thus there are still some gaps in it. For instance, many of the rules are yet to be tested, assignment of duties is still in process and there is no authorized structure to implement and supervise this law.

The Federal Environmental Agency of UAE was established by Federal Law No. 7 of 1993. It granted financial and administrative authority to the state along with financial assistance from the national budget. The objectives of the FEA are outlined in Article 4 of the law as set out below:

Article 4

The objectives in establishing the Federal Environmental Agency are:

- To provide security and improvement in the natural environment of the state.
- To outline strategies to deal with activities effecting living beings, natural reserves and environment.

346 Article 4 of the UAE Federal Environment Law.
• To ensure implementation of these strategies.
• To take precautionary measures to prevent environmental deterioration.

For efficient implementation of its objectives, the FEA shall work with concerned bodies to:
• Formulate a standard legal code for environmental fortification.
• Put forward new, national level strategies based on scientific studies, for existing and imminent environmental problems.
• Examine the projects and activities of different governmental and non-governmental parties and provide identification and solutions if any activity is seen to affect the natural environment.
• If the Agency is referred to an environmental issue by any government or non-government body, it is likely to examine the issue thoroughly, propose solutions and make arrangements to implement them.
• Conduct scientific research on environmental pollution and identify its potential effects on health and atmosphere. On the basis of these findings, take appropriate steps to prevent pollution.
• With the help of the Environmental Impact Assessment, make suitable arrangements to ensure the incorporation of environmental concerns as a structural element in state development plans and projects being carried out by government or private parties.
• Develop a system to secure approval of the Cabinet for development activities affecting the environment before granting them a licence of commencement.
• Plan and implement a range of precautionary measures to prevent all types of pollutions and their adverse effects on the natural environment.
• Devise projects for the development and protection of wildlife and natural reserves.
• Make special arrangements to identify the issues pertaining to the protection, misuse and extinction of soil, water and energy resources and take appropriate steps to resolve them.
• Make suitable arrangements to protect, conserve and develop coastal zones and marine environment and prevent pollution. Specialized and trained personnel may be needed to execute the relevant policies and plans.
• An environmental laboratory with trained staff and appropriate equipment may be established to carry out research, scientific monitoring of different projects and measurement of radioactivity in water, air, soil and food.
• Promote public awareness and participation in the protection and development of the environment through the media and educational, sociological and cultural forums.
• Make arrangements to professionally train technical staff to monitor and execute environmental protection plans and programmes.
• Establish efficient channels to inform the public about imminent natural disasters.
• Identify and review the problems pertaining to human settlements and, keeping in view economic and social development, propose suggestions to:
  a) Distribute human settlements equally in urban and rural areas.
  b) Ensure the use of environment-friendly technology in the design and development of buildings.
  c) Provide ideal living conditions in towns and villages.
  d) Reduce noise and air pollution by using appropriate transportation.
• Establish an efficient system for collecting, storing and exchanging environmental data with national and international research institutes and organizations and ensure their due usage.

3.16.17 Federal Law No. (23) 1999 for the Protection of the Marine Environment (see Anon 1999b)³⁴⁷

To oversee the protection of marine environment, the Ministry of Agriculture and Fisheries suggested Law No, (23) for 1999 on April 17th 2000. One year is the transitional compliance term of the new law, except if further extended through the Cabinet Resolution. Development and protection of marine life and resources is the objective of the law. The aspects given below are included in this law:

- Fishing
- Processing and marketing of fish
- Safeguarding the prohibited areas
- Export, transit, and re-export of fish products
- Extension of loans and grants to the fishermen

³⁴⁷ 17 Federal Law No. (23) 1999 for the Protection of the Marine Environment (see Anon 1999b)
The regulation of the number of fishermen and sailing containers in the UAE waters is done through the new law controls. They also license their activities. The size of the caught animal is also controlled. It identifies the restricted locations, close season, and the fishing approaches and equipment that are allowed. Regardless of this, the number of catches and artificial reefs construction is checked and approved through the Ministry of Agriculture and Fisheries. Approval from the related authorities is required by the fishing farms so as to perform its functions.

The previous marine law did not permit sailing of fishing boats that did not have an owner or national representative. The new law also includes this limitation. Fishing in the UAE seas is permitted for nationals from any AGCC country but foreign containers are strictly not allowed.

There are fines and/or imprisonment and even confiscation of fishing tools and boats if any article in Law No. (23) is broken. The list of penalties that could be faced by defaulters is presented below:

- There would be a fine of Dhs 50,000 – 100,000 (US $ 13,500- 27,000) if turtles or dugongs are caught and/or imprisonment for six months. Another form of penalty would be fine of Dhs 100,000-200,000 with imprisonment of three months.
- There will be fine of Dhs 25,000-50,000 with three months’ imprisonment if fishing is done in restricted season or any prohibited approach is followed. In other cases, the penalty could also be Dhs 50,000 -100,000 with imprisonment of one year.

The former law and several of the articles presented in Law No. (24) for 1999 have similar aspects. For instance, even the former law includes the prohibition of catching turtles and dugong and collection of turtle eggs. But, penalties with regard to violation of law have not been stated in the new law.

The article mentioned above signifies that laws and regulations are established, with authorities assigned to different bodies, so that natural environment of the state is safeguarded. This approach has been successful and for future operations, they have levelled down the foundations.
3.16.18 The Aims Of Islamic Shari’ah Regarding The Environment

There are five important aims agreed in Islam called Maqasid. These aims were established when the Islamic religion was formed and still exist today. They are: protection of religion, protection of the mind, protection of life, protection of property and protection of offspring. 348

Protecting the Environment is a major aim of Shari’ah. If the environment is destroyed the other aims will be adversely affected.

Destroying the environment in general and the marine environment in particular would prevent Muslims from fulfilling the concept of succession on this earth and threaten human existence. Pollution can lead to many diseases and miscarriage, sterility and deformities. In industrial cities, where pollution is extensive, the sun might not appear for some time so the human brain might be affected by pollution as we need the sun to remove some of the harmful substances from the body.

Protecting property will also be threatened where the environment is highly polluted. In order to protect the marine environment, Muslims have to give the Islamic civilization the opportunity to reject the Western model as it is one of the main sources of marine pollution. 349

By giving the Islamic civilization the chance to be advanced this will help Muslim governments to enforce laws and legislations to preserve the environment and implement them.

Today, degradation of the environment has been increased by human activities and has become one of the most important global issues. Islam is the main source of legislation in many Islamic countries; many, however, still pollute the environment whether the sea or land. Clarifying the role of Islam to protect the marine environment will help to provide controls for the behavior both of individuals and companies in Islamic countries which do not follow Islamic Shariah rules and refuse to accept the fact that Islamic religion is a religion in all times and locations. 350

This chapter will focus on Islamic Shari’ah involving the Holy Quran, the Prophet Mohammed (PBUH) Hadith and Muslims scholars’ opinions. The chapter will also clarify the position of

350 Al Duajj, N. (2009). The Environmental Protection in Islamic Waqf Kuwait University, Faculty of Law, Department of International Law.

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Islam regarding the preservation of the marine environment. In addition, this chapter will explain and clarify the rituals and position of the Islamic religion in relation to man and the marine environment.

### 3.16.19 The Legal Background And The Nature Of Shari’ah Versus The Law

The concept of law is radically different from the concept of Shari’ah and its application. The explanations and of lawyers who practice law within modern secular legal systems are not adequate when considering the protection of the environment in Muslim countries. We need to describe the nature of Islamic Shari’ah and its application in the GCC to maritime environmental protection. Shari’ah lays down universal and divine rules for the control of human behavior from two perspectives: his spiritual matters and the control of his political, economic and social matters in society. Shariah covers many areas apart from the subjects of prayer, fasting and ablution. For instance, Shari’ah deals with constitutional law, the law of war and commercial law.\(^{351}\)

### 3.16.20 Islam and the Marine environment

Each culture or society has special procedures to protect their environment depending on their knowledge of pollution. Some countries do not have the education, experience or financial means to protect the marine environment nor do they prioritize it as they prefer to spend their money in investments. They thus leave the protection of marine environment to nature.

Scientists have forgotten that Islam has an important role in saving the environment. Muslims believe that man has been given a responsibility by Allah\(^{352}\) on this earth and that man will be accountable to God for his actions and the trust placed in him. Prophet Mohammed (PBUH) said: ‘Every one of you is a guardian and is responsible for his charges. The ruler who has authority over people is a guardian and is responsible for them’. Islam gives responsibility to humans not to abuse the trust placed in them and to keep nature clean and tidy. In Islam, Muslims have primary sources which define Islam: First the Quran, the Muslim Holy Book, and second the Hadith of Prophet Mohammed (PBUH) which contains his sayings, actions and


\(^{352}\) During this chapter the researcher will use the word of Allah and God interchangeably.
examples. Both of these primary sources impose responsibility on human beings to preserve and protect the creatures around him.353

Today, scientists and scholars have to share their knowledge, whether Muslim scholars or non-Muslims, to put in place the most effective measures to protect the marine environment. Muslim scholars emphasise the rules of Islamic law which serve the environment. The previous story of the cat provided by Prophet Mohammed (PBUH) clarified the responsibility of man towards all living things on our planet. Based on this Hadith, it is the responsibility of man to provide care for the environment in general and the marine environment in particular.

Muslim researchers explained how Islam protects the environment from pollution. Islam has provided legislation to take care of the environment and conserve it, and orders humankind to strive to find solutions for a range of environmental issues; furthermore, Islam makes the maintenance and protection of environment a form of worship. Islamic law focuses on marine environment protection and it is the legacy of successive generations that God placed all elements of life in the environment for the benefit of both human and non-human life. Islamic law also clarifies the foundations, rules and principles that regulate and codify the relationship between man and the marine environment.

The Quran is the Constitution of life for all mankind until the Day of Judgment. Its aim is to improve the moral behaviour of mankind. It has the ability to rebuild human life on Earth and to establish appropriate worship to God. This importance of the Holy Quran is explained by some verses of the Holy Quran like in Surat Al Anam when God said: ‘And there is no animal that walks upon the earth nor a bird that flies with its two wings but (they are) like yourselves; We have not neglected anything in the Book, then to their Lord shall they be gathered”.354

According to Kamali, the Holy Quran encourages people to save the environment, including the marine environment and forbids any harm to it. Marine environmental pollution is derived from reducing the blessing of God. There are many forms of polluting the marine environment, for

354Surat Al Anam (Cattle) Verse 38, Holy Quran,132.
example, dropping refuse into the sea. The Holly Quran emphasizes the importance of cleanliness of all creatures.355

It is important to say that poor strategies of the government which do not follow Islamic Shari’ah will lead to damaging marine life. The Holy Quran provides specific rights for marine life; Islamic countries enforce these rights.

3.16.21 Sunnah356 And Its Role In The Protection Of Marine Life

The Sunnah contains the sources of Islamic legislation which direct us to the way of goodness and righteousness. The prophet Mohammed (PBUH) said:

‘O People! Indeed, I am living among you, that which if you hold fast to them, you shall not be misguided after me. One of them is greater than the other: (First is) The book of Allah is a rope extended from the sky to the earth, and (the second is) my family, the people of my house (ahlul bait), and they shall not split until they meet me at the hawd, so look at how you deal with them after me.’357

The above hadith is translated by Hashim. Translations of Hadiths358 differ between scholars. One of the most important objectives of the Holy Quran and Sunnah is to develop an environmental system based on Islamic heritage. Islamic heritage and knowledge reflect the practical experience and positive relationship between humankind and his environment.

The Prophet Mohammed (PBUH) encouraged Muslims not to harm others, including the creatures in the sea, because this may pollute the marine environment. In addition, he said that if individuals damage the sea environment, then they will lose a source or a component of the earth. Mustafa Al-Alwani raised a question about the system of the universe and the creation of the heaven, earth and other objects and creatures – has this creation been in vain or is it protected by man as God intended?359


356Sunnah means all sayings (Hadith) of the prophet Mohammed (PBUH).

357 This Hadith narrated by Abdullah Albani, Jami Al Tirmidhi, Hadith Number 3786.

358 Hadith means the saying of Prophet Mohammad Peace Be Upon Him during his life.

359 Mustafa, A. [2008]*Islam and Environment*, Journal for environmental issues (established in Libya and focuses on environmental issues at a local and international level).
God created man to follow his command and to worship him. Man is God’s steward on earth so he has a responsibility to conserve the environment from all kinds of damage.

3.16.22 Meaning Of The Environment In Islam

There are many definitions for the environment and it is important to define the environment in this study. The meaning of environment in the framework of the Islamic perspective is different from the meaning of environment in general. To define it from an Islamic perspective, the origin of the word ‘environment’ must be clarified. In Islam, environment means ‘Hold the Place’ which means to choose the location and organize it and make it suitable before settling in it.360

According to Abu-Sway, the environment is mentioned in the Holy Quran and Al-Sunnah as the place from which God and only God was to be worshipped. The environment can be considered as a group of components that are found to serve humankind in worshipping God. Therefore, there is a crucial relationship between humans and the environment.361

The term of environment is an Islamic term as the Holy Quran in many verses contains derivatives of the term of environment such as in Holy Quran, Surat Yunus, Verse 87.362 For more details of these verses, the reader can refer to the appendix.

The Holy Quran does not use the word ‘environment’ directly to mean the place where humans live but uses other descriptions, as in verse 56 in Surat Yusuf (Joseph) where the word ‘land’ is used instead of environment. Environment in the Holy Quran means both living organisms and non-living elements on the surface of the earth such as plants, animals, humans, air, water and soil.

Abu-Sway demonstrated that the universe and environment consists of many components. All of these components shape the universe and damage to any component will affect the others since they are all connected. Human beings are considered parts of the universe or environment and

362 Holy Quran, Surat Yunus, Verse 87.
the Islamic religion declares the importance of the relationship between humankind in the environment.\textsuperscript{363}

According to Abu-Sway, these components can be damaged in several ways. Water is considered as a very important aspect of life; as God said in the Holy Quran: ‘…We made from water every living thing…’ Individuals can pollute the sea environment in several ways, such as dropping waste. Also, the land can be damaged in many ways and both the Holy Quran and Al-Sunnah encourage individuals to maintain the cleanliness of the land. As Prophet Mohammed said: “Faith is some seventy branches, the highest of which is ‘There is no god but Allah’, and the least is removing obstacles from the path of people, and that shyness is a branch of faith.”

The land can be damaged by human kind in many ways such as putting material obstacles on the ground or dropping solid waste. In addition, the Holy Quran and the Sunnah explain the importance of maintaining the cleanliness of the air which can be polluted from smells both inside homes and in open spaces.\textsuperscript{364}

3.16.23 Islamic View Of Environment And Nature Compared With Western View

The aim of studying nature in Islamic Shari’ah is for humans to discover God and to use natural resources in ways which can help and assist human beings. Mankind can use nature as a source of food and all people are equal to seek food whether from the land or from the sea. All activities that cause harm to mankind and in turn destroy nature are forbidden. When seeking food sources, human beings have a duty to protect the environment.\textsuperscript{365} The Holy Quran emphasizes the nature of the good work that human beings do when they protect their environment.\textsuperscript{366}

\textsuperscript{364} Ibid.
In Islamic law Muslims have legislation which is suitable to use in matters of international arbitration to settle disputes between the parties of the arbitration, including disputes about the environment and its care.367

3.16.24 Marine Environment In Relation To The Rituals Of Islam

Today, one of the problems in relation to the teaching of Islam is that Islamic teachers can be selective in their teachings which gives the impression to the worshippers that Islam is not interested in dealing with certain issues. Those who have studied Islam know that it has a viewpoint, idea, philosophy, and makes provision for every major issue of life. Islam is fundamental to the psychological, social, educational, economic and environmental concerns of human life. Islam stresses the importance of caring for the environment. Islamic sciences have been created by the divinity that created the universe ‘who has perfected everything he created’368. Also, Muslims believe that we will not see in the creation of the universe any imperfection369.

Any imperfection is man-made and does not come from Allah. An example is a religious precept from the prophet Mohammad (PBUH) which forbids us to urinate in stagnant water then use it for ablutions or for bathing. The Prophet (PBUH) curses those who disposes of human waste in water, in the street or in the shade, where it will spoil the environment.370

The verses of the Holy Quran and the Sunnah Hadiths clarify the ways in which water can be protected from all kinds of pollution such as oil pollution. At the time of the Prophet Mohammed (PBUH) there were few sources of water pollution unlike today.

The Prophet Mohammad (PBUH) says, ‘Allah wrote charity on everything’. If we look at the science of jurisprudence rules which are concerned with the purposes of the law, the five necessities that Islam conserves are: maintain religion, self-preservation, maintenance of cattle, maintenance of money and maintenance of the mind. All these necessities have a relationship to the environment; any disruption of the environment will have an effect on our health, and will

367 Ibid. p.22
368 Holy Quran, SuratAlSajda, Verse 7.
369 Holy Quran, SuratAlMuluk,Verse 3
also impact on our descendants. Islamic sciences have a close relationship with the care and protection of the environment.\textsuperscript{371}

3.16.25 Examples Of Islamic Rituals Concerning The Marine Environment

According to Abu-Sway, there are many examples in the Holy Quran and Al-Sunnah where God and the Prophet Mohammed (PBUH) encourage people to take care of the marine environment. For example, in the Holy Quran, Surat Al Anam (Cattle), Verse 165. In this verse, God is confirming the importance of protecting nature, especially the marine environment: ‘Then we made you heirs in the land after them, to see how you would behave!’\textsuperscript{372}

Another example from Al-Sunnah is the “hadith” of prophet Mohamed (PBUH) when he explained that the world is sweet and appealing, and Allah placed human beings as vice-regents therein. So, the prophet asked human beings to be more careful of what they do in this world.\textsuperscript{373} This ‘hadith’emphasises the importance of keeping the marine environment clean, as human kind must use water sources appropriately.

3.16.26 The Relationship Between Mankind And Marine Environment From An Islamic Perspective

Mankind’s relationship to the marine environment from an Islamic perspective stems from the concept of harnessing the earth. This means that God has provided the environment to serve mankind and to enable them to worship sincerely and honestly (Holy Quran, Surat Luqman [The Sage]Verse 20: See Appendix).

Abu-Sway argued that the Holy Quran considers the individual as khalifah (vice-regent) as God said in Verse 30 of Surat Al Baqara:

“Behold, your Lord said to the angels: ‘I will create a vice-regent on earth.’ They said: ‘Will you place therein one who will make mischief therein and shed blood? While we do celebrate your praises and glorify your holy (name)?’ He said: ‘I will what you know not.’”

\textsuperscript{372} Holy Quran, SuratYunus(Jonah), Verse 14.
This means that individuals are khalifah to protect the earth and they must not damage it in any form. The Holy Quran identifies the environment as the responsibility of mankind and they will be rewarded or punished according to how they treat it.

God created people on this earth with different circumstances such as rich and poor, strong and weak, educated and non-educated to serve life and make it sustainable. The differences in capacity between peoples was intended to make them help each other and cooperate, including helping to keep their environment clean and tidy.

3.16.27 Islam Against Marine Life Pollution

Islam considers the preservation of the marine environment as a part of faith. As stated in the hadith of the Messenger of Allah, the prophet Mohammed (PBUH) clarified that Faith is a few and Seventy or a few and Sixty Divisions: ‘No god but Allah, and the lowest is removing harmful things from the road and modesty is a part of faith’.  

Islam does not only mean to worship; it also means commitment to Islamic guidance in all fields such as protecting the marine environment from pollution. This protecting of the marine environment is a duty of mankind and man must comply with this duty or he will become ungrateful for the blessings bestowed by Allah and deserves to be punished. The worship of Allah (God) is the basic foundation of all religions and a source of morality and social behaviour. Mankind will either get rewarded or punished by Allah if his actions are not good or harmful to the marine environment.

Belief in the Hereafter guides man in his relationship with the environment. This raises some important issues. The first issue is that of permitting and forbidding which regulates the relationship between human beings and their environment. God has the power to make everything; man does not have that power. He must only comply with the rules of God. Allah knows about everything related to the environment so he takes care and protects his environment by establishing the law of God. Man has a choice in this life whether to follow the law of God and to worship Allah and to keep the environment safe from any damage but if man refuses to

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374 Hadith narrated by Muslim (2006) Saheeh Muslim, Saudi Arabia, Dar Taiba, Hadith number 35.
comply and he behaves badly towards the environment then he is responsible for his actions and God can punish him either in this life or on the day of the judgment.

The second issue is reward and punishment. There is an incentive to do good things to the environment as good behaviour will be rewarded by Paradise in the Hereafter. However, the person who destroys the environment and does bad things in this life will go to Hell in the Hereafter.375

3.16.28 The Development And Establishment Of Marine Environment Law In The UAE

The UAE is a federal state. It consists of seven Emirates. The UAE has dual courts. In each city, there are Courts of Shari’ah, which are held under the control of the Federal Ministry of Justice and Islamic Affairs, and civil courts. The distinction between the two types of the courts is often unclear. The courts of Shari’ah have jurisdiction over some areas like family law, law of the land and some criminal matters. The civil laws have jurisdiction over commercial matters, maritime environmental issues and also some criminal matters. In the UAE the Shari’ah courts may take jurisdiction over marine environment matters as the UAE recognizes that Shari’ah is the fundamental source of legislation.

Today societies have many laws and international organisations around the world which protect and preserve the marine environment like the International Maritime Organization (IMO). These international organisations, conventions, and protocols may punish marine polluters by applying compensation payments depending on the size of damage to the environment but they will not deal with encouraging people not to pollute the environment. Islamic Shari’ah provides lessons to the people in respecting their environment in all its forms rather than dealing with compensation. Shari’ah rules include behaviour; the good Muslim will never pollute his environment. However, if he does so by mistake then he will remove the source of the pollution and pay compensation not because he is afraid of civil rules but because of his responsibility in front of God [Allah].

375All Muslim people know this so good Muslims will comply with all God’s commands and fulfill his duty to preserve the marine environment.
Shipping is one of the most effective trades in the world. The shipping business serves more than 90% of the world’s industries. During their voyages, vessels may hold a different jurisdiction from the foreign state rather than its own state with which it is registered, as each state has its own navigation rules which are not necessarily in accordance with other states’ rules and legislations. There is a need for international standards to regulate shipping and maritime environment safety. States are always seeking to find and recognize the best way to protect and ensure the safety of the marine environment by developing international standards. The Geneva Convention in 1948 played a vital role in establishing the International Maritime Organization (IMO).³⁷⁶

Shari’ah established its own rules and lessons to teach the people and governments how to respect the environment many centuries ago before modern laws appeared. The GCC States also attempted to codify maritime laws, before the existence of the IMO.

The Chairman of Dubai Dry docks World and Maritime World Mr Khamis Juma Bu Amim, pointed out that the organization prepared, with partners in the government, a comprehensive national plan for the protection of the marine environment and its resources. The national plan included targets and specific mechanisms. Mr. Khamis also made clear that when the national plan gets approval from the government, they can improve the protection of the marine environment by more than 80%.³⁷⁷

Mr. Khamis, in his speech reported by Al Bayan Newspaper, pointed that UAE federal laws Number 23 and 24 for the year of 1999 are effective but that there needed to be a focus on the mechanism to implement them. From all perspectives - national, regional and international – Mr Khamis argued that there was a need to develop the law and to improve it and to consider future requirements, following the international agreements signed by the UAE and complying with them.³⁷⁸

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³⁷⁷Mr Khamis Abu Amim available at www.albayan.ae, Access May 2013.
³⁷⁸Ibid.
The Federal environment authority, in accordance with the competent authorities and in cooperation and consultation with the relevant authority in the UAE, issued plans to deal with environmental disasters. The plans needed the agreement of the council of ministers.\(^{379}\)

Prior to 1980, all attempts to codify maritime laws were undertaken by Kuwait, Saudi Arabia and Sharjah which became part of the Federal States of the United Arab Emirates in 1971.\(^{380}\)

The first attempt of Saudi Arabia to codify maritime legislation was undertaken in 1931 by the Commercial Court Law (CCL). In fact CCL was known as Hejazi legislation as at that time Saudi Arabia was still known as the Kingdom of Hejaz and the Sultanate of Nejd. The legislation of the CCL was taken from the translation of the Ottoman Commercial Code of 1850 which was based on the French Commercial Code of 1807. The French Commercial Code (Part 2) determined that Maritime Law relied on the Ordonnance de La Marine of 1681. The legislation of CCL was based on traditional European laws which were unsuitable for modern trade and commerce. For instance, the CCL did not include the Hague Rules and York – Antwerp Rules. Translating the French legislation to Turkish and then to Arabic raised some doubts regarding some terms in the CCL which existed in the original legislation of the French Commercial Code but did not reappear after translation. Saudi Arabia also attempted to regulate maritime law by using the Regulation for Ship Mortgages RMS (1955) but the RMS failed to codify maritime law as it was in conflict with CCL.\(^{381}\)

Kuwait has great importance in the field of commercial maritime traditions, more than any of the Gulf countries. In the middle of the 18\(^{th}\) century Kuwait started to develop maritime law and commercial trading such as pearl diving fleet and fishing. 2200 ships were registered with the authorities of Kuwait port in 1918, mostly used for trading with Gulf countries. In 1959 Kuwait authorities issued Maritime Law Number 2 which focused on the essential matters of maritime law such as the registration of ships, safety and measures to preserve the marine environment.

\(^{379}\) Article 15 of the UAE Federal Environmental Act No 24 of the year of 1999 for the Protection of Environment and Sustainability.


\(^{381}\) Ibid.
Furthermore, Kuwait issued the law of 1961 followed by the amendments of the law of 1981 which revised all maritime laws.³⁸²

The final attempt to codify the maritime law in the GCC was in Sharjah in 1980.³⁸³ Before 1970 and before formal independence from British colonial rule, Sharjah had its maritime law which involved 153 articles. Sahrijah maritime law is more or less the same as the maritime law in England. For instance, Sharjah maritime law uses the Hague Rules with regard to registrations of ships and limitations of ship owners. The maritime law of Sharjah still had influence until Sharjah joined the union of the UAE and the maritime law of the UAE was issued in 1981.³⁸⁴

Today, industry requires an investment in environmental resources, so the environment must be protected. The environment belongs to all humans, and they have a shared responsibility to preserve it. Protection of the environment is also important for an appropriate place within which to worship Allah.³⁸⁵ Most surely in the creation of the heavens and the earth and the alternation of the night and the day there are signs for men who understand’.³⁸⁶

Man has to do his duty of succession of God on Earth. This succession cannot happen without establishing justice on Earth and without protecting and caring for the environment.³⁸⁷ The role of human beings is the building of Earth which the Holy Quran indicated in Verse 21 of Surat Houd in the Holy Quran.

Building of the earth takes place by avoiding any corruption or pollution of the environment in all areas. Human kind has wasted and destroyed the environment; he polluted and spoiled the water, damaged the land by cutting down trees and draining resources. This is as a result of not obeying God’s commands and failing to follow prohibitions on various environmental issues like the marine environment therefore Islam has issued legislation and made the environment part of worship so that avoiding throwing filth and garbage in the seas and rivers reflects good worship

³⁸²Ibid p.32.
³⁸³Sharjah is one of the seven emirates of the United Arab Emirates. Pre-1971 there were seven separate emirates which came together in the Union of 1971 under one state known as the United Arab Emirates.
³⁸⁶Holy Quran, Surat Al Imran(The House of Imran) Verse 190.
to Allah. Respecting the law of God leads to human happiness. The Holy Quran clarifies that the relationship between mankind and the environment must be a harmonious, integrated and loving relationship, and humans must take responsibility for the maintenance of clean seas and rivers.

3.16.29 The UAE Federal Environment Law 1999

The law of the UAE is a federal law established in 1999. Its first aim is to protect the environment and maintain the quality and balance of nature.\footnote{Federal Environment Law for the United Arab Emirates Number 24:1999.}

The UAE is a Muslim country so Shari’ah has a great influence on the laws of the UAE whether in relation to the environment or other laws like family laws. The federal State of the UAE is 41 years old but the protection of the environment whether on the land or sea or in the air is one of the most important matters considered by UAE rulers and governments. The UAE Federal Maritime law is consistent with the provisions of Shari’ah to protect the marine environment in all its articles.

There is a hadith of the Prophet Mohammed (PBUH) that says ‘Be Merciful to those in the earth (Land and Sea), so the one above the heaven will be Merciful to you’\footnote{Bangao, T (2006). Provincial Fatwa on Marine Environmental Protection and Conservation, Supreme Council for Islamic Preaching and Guidance pp.3-4.} This hadith clarifies the protection of the environment such as the marine environment from pollution and promises rewards from God to people who preserve and protect it.

There are many local bodies and institutions in the UAE which play a major role in the protection and preservation of the environment, including the Emirate Association for the Protection of the Marine Environment in Dubai and the Environment Agency, Natural Reserves in Sharjah, the Industrial Development in Ras Al Khaimah, Environment Management in Jebel Ali Free Zone in Dubai, and the department of the environment in oil and specialized companies.

Article 17 clarified the aims of protecting the marine environment: The first aim is to protect the coast and beaches of the State and its ports from any risk or contamination; secondly, to protect
environmental natural resources and all living and non-living resources; thirdly, to protect drinking water, groundwater and to develop drinking water resources.390

The second aim of the Federal Maritime law of the UAE is to control environment pollution in its various forms and to avoid any damage or negative effects of economic, agricultural, industrial and urban development plans and programmes.391 During recent years, there have been various environmental bodies which have attempted to collate information needed to estimate the extent of pollution in the UAE and the Arabian Gulf. During the first meeting of the Abu Dhabi Global Environment Initiative in 2005, many workshops were set up to gather stakeholders from relevant organisations and to address social, economic and environmental needs.392

The third aim of the Federal Maritime law of the UAE considered the development of natural resources in the territory of the state and to harness them for the benefit of present and future generations.393 Shariah commands always direct the government and individuals towards sustainable development of the environment and preserving it for future generations.

Islam defines sustainable development as: ‘The balance between several elements including the balance between consumer welfare, economic efficiency, social equity and balance of the environment in the context of knowledge based on the principle of social interaction called the Shura’. The principle of Shura means that people have the right to contribute to and participate in the rulings of the principles of Islam and to express their opinion regarding issues such as social concerns.394

Within the meaning of the principle of Shura in Islam, the people of the UAE can give advice on the protection of the marine environment and pollution which comes from agricultural sources, industrial sources and land-based sources. For instance, any citizen can easily meet rulers of the State, raise his problem and discuss the issue whether a personal problem or a public one such as

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391 Ibid
the marine environment. In the UAE there is freedom of expression in front of the rulers of the State.

The fourth aim of the UAE Federal maritime environmental law is protecting society and human health and other living organisms from all activities and actions that are environmentally harmful. The main aim of Islamic Shari’ah is to protect and preserve the health of all Muslim and non-Muslim people by keeping the environment clean and healthy and fit for them to live in. All religions are concerned with the protection of human health and the environment.

The UAE took a different approach to protect the environment as a whole and the marine environment in particular. There is legislation to protect the environment; however, Abu Dhabi applied an additional strategy by adopting Environment, Health and Safety Management System (EHSMS). This system is applied to schools seeking to provide guidance for students on how they can preserve the environment to keep it healthy.

The environmental law of the UAE has emergency plans to cope with environmental disasters. Article 15 clarified that the Federal Environment Agency shall, in coordination and consultation with the competent authorities of the state, make plans for emergency disasters. The Council of Ministers is responsible for ratifying these plans and for issuing a budget to implement them. Article 16 of UAE environment law provides that all authorities and people of the State shall provide all assistance required to control environment disasters quickly.

The UAE marine environment is mostly polluted by oil ships and exploitation of oil and gas fields. The UAE Federal government protects marine life by providing articles within environmental law which forbid any damage to it. Article 18 of the Federal Environment Law of the UAE prohibited parties authorized to explore gas and oil resources from discharging any pollutant resulting from drilling, exploration wells and testing. The authorized companies were directed to follow the terms and conditions of regional and international agreements in relating to pollution.

Article 20 of Federal Environment Law confirmed that the Federal Environment Agency, in coordination with the competent authorities, conduct periodic monitoring on the exploitation and exploration of oil and gas companies and in order to ensure that the marine environment is kept clean and safe and protected from the damaging effects of oil. Article 21 prohibited the discharging or dumping of oil into the marine environment without exception.\footnote{Article 20 and 21 of Federal Environment Law for the United Arab Emirates Number 24: 1999.}

The UAE Federal Environmental Law determined that, in the event of a collision of oil tankers or any marine means, whether it is due to intentional action or as a result of mistake or negligence, the master of the ship is responsible for preventing leaks into the sea. Furthermore, the master or the owner has a duty to inform the Coast Guards about any pollution and a duty to declare to the UAE ports if the ship is carrying dangerous cargo.\footnote{Articles 23 and 29 of Federal Environment Law for the United Arab Emirates Number 24: 1999.}

Today many international environmental treaties focus on protecting the marine environment from pollution; for instance, the Basel treaty (1989). In the preamble of the Basel treaty it is explained that the parties to the treaty have to be aware of the danger that threatens the health of people and their environment as a result of trans-boundary Movement of Hazardous Wastes and their Disposal.\footnote{The Preamble of Basel Convention in respect of the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal.} The Basel treaty reflects the Islamic view that the environment should be protected in all its aspects.
3.16.30 The Relationship Between Shari’ah And the Federal Environment law of UAE

God harnessed the earth and the environment for humankind to fulfill his task and mission on earth. God delayed the appearance of man on the earth; Allah created all life supplies like water, plants and animals before the creation of the human and that was to make the Earth appropriate for the worship to Allah - that when man came to the Earth it was clean and tidy so, he must keep it in the same condition. God, in the Holy Quran, says: ‘There surely came over man a period of time when he was a thing not worth mentioning’.402

Man has not maintained a clean marine environment. He has created pollution and, according to Shari’ah, will face negative consequences that are considered as a punishment and warning from God.403 Allah said ‘Corruption has appeared in the land and the sea on account of what the hands of men have wrought, that He may make them taste a part of that which they have done, so that they may return.’404

Marine pollution is a dangerous threat to the whole of society so we cannot limit marine pollution to one area of the seas or rivers. There are cases of marine pollution every day, particularly the cases of oil ships crashing, burning or sinking due to overloading or war between countries and the pollution of seas and rivers as a result of the release of ballast water. Islamic philosophy and law did not ever deviate from values or ethics, which are fundamental to all human beings without distinction in relation to colour, race or language.

Islam venerates human beings: ‘And we have certainly honoured the children of Adam and carried them on the land and sea and provided them with the good things and preferred them over much of what we have created, with [definite] preference’.405 As a result, human rights are emphasised, such as political, economic, social and intellectual property rights. These rights are targeted at all individuals whether they are Muslims or not, without any distinction in colour, race or language. However, rights are not considered as irrevocable nor inconvertible due to their strong link with Allah’s teachings.

402 Holy Quran, Surat Al Insan (Man) Verse 1.
403 Magazine of Islam Today Issue 11, p.8887.
404 Holy Quran, Surat Al Rum (The Romans), Verse 41.
405 Holy Quran, Surat Al Isra Verse 70.
Islam honours humankind in general, and acknowledges the sanctity of blood, the right to life and the right of equality among all people, individuals or groups, races and people, rulers and the ruled people, and governors and parish. No restrictions or exceptions, no difference between Arab and foreign citizens, white or black. Differentiation among people is based on piety, as the prophet Mohammed – peace be up on him - said: ‘…to people that they have one God, one father, all of them belong to Adam and Adam was created from mud. The most honoured is the most pious, and no preference of Arab over foreign except by piety.’

3.16.31 Thinking In Islam

From an Islamic viewpoint, thinking is considered as a religious duty; it is not permissible for a Muslim to renounce it. Islam opened the door for practising thinking on religious issues, in order to seek legitimate solutions for all of life’s problems. This is what Islamic Scholars call Ejtihad – diligence - which means to depend on thought in devising or developing strategies. The principle of Ejtihad has had great influence in enriching jurisprudential studies for Muslims, as well as finding effective solutions to problems that did not exist during the first era of Islam. As a result of this principle, many schools of Islamic jurisprudence were created and the Islamic world is still obeying their teachings to this day. Thought is represented as a primary pillar in the strong mental attitude of Islam. It is considered as a basic foundation upon which Muslims have built their flourishing prosperous civilizations throughout history.

The governments and individuals of the UAE and GCC countries are diligent in their efforts to co-operate and assist each other to preserve the marine environment from pollution. The principle of Ejtihad encourages people to consider future generations and how they can live in a healthy environment suitable for living purposes.

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3.16.32 Ethical Importance

Salah Abdel Sami, advises that we need to review and examine our actions when crimes against the environment occur such as marine pollution, and to consider whether such actions indicate the absence of conscience and morals.\textsuperscript{408}

Moral pollution is a serious type of pollution, because ethical behaviour is an essential foundation for all human activity. It is the force which underpins all aspects of worship, human actions and relationships. It is clear that the standard of care for the environment depends upon a set of ethical values. For example, the value of hygiene makes a person refrain from dumping waste into the seas or rivers.\textsuperscript{409}

The truth is that there is an imbalance in our culture, an imbalance in our consciousness, an imbalance in our comprehension. Islamic education has a deficiency in that issues such as the care and protection of the environment are not learned by our students. Why aren’t Islamic children taught about caring for the environment in schools? Why isn’t the problem of marine pollution highlighted in information programmes? There is a deficiency in Islamic culture in relation to priorities jurisprudence. The meaning of the jurisprudence of priorities is to give every issue its value, not maximizing insignificant issues and not minimizing important ones. The issue of the environment is regarded in education as one of the less important issues and it needs to be considered more carefully within our literature, our education, and our culture.\textsuperscript{410}

Muslims have a religious precept set down by the prophet Mohammed (PBUH) which states that once an individual removes something harmful from the road it is considered as charity.\textsuperscript{411} This basic tenet should run through all of the ministries concerned with the environment: the Ministry of the Environment, the Ministry of Municipality, the Ministry of Health and the Ministry of Roads and Bridges. Regarding the importance of ethics in the field of protecting marine

\begin{footnotes}
\textsuperscript{408} Salah. A (2012) Ethical Pollution University of Helwan Education College.
\textsuperscript{409} Ibid
\textsuperscript{410} Ibid
\end{footnotes}
environment from pollution, the prophet Mohammad (PBUH) guaranteed an abode (house) at the highest point in heaven to those who follow the ethical path set out by Islam.412

Centuries ago, all religions such as Islam and Christianity contained morals and determined behaviour which assisted and protected the marine environment. Nevertheless, people still cause damage and pollution to the environment in general and the marine environment in particular.

In Islam, ship-owners, crew, governments, oil companies and owners of cargo, factories and other organisations related to marine pollution have no morals or honour if they pollute the marine environment through their negative actions. All religions protect the environment and prohibit any action that may cause pollution or any harm to it.

3.16.33 The Relationship Between Muslims And Non-Muslims

Systems in Islamic civilization did not limit the settling of Muslim and non-Muslims affairs inside the Islamic state. They were also concerned with regulating the relationship between Muslims and non-Muslims. This was achieved with a range of principles which underpinned the relationships during peace and war. Peace is the keystone of Islam. Allah ordered whoever believed in his majesty and his prophet Mohammed to live in peace:

‘O you, who have believed, enter into Islam completely [and perfectly] and do not follow the footsteps of Satan. Indeed, he is to you a clear enemy.’ 413

Peace here means Islam because Islam is peace within a human, in his home, his society and with those around him. The word Islam derives from the Arabic word ‘salam’ meaning peace. Peace is considered to be a fundamental principle of Islam and the words ‘Islam’ and ‘peace’ are synonymous. Peace in Islam promotes cooperation and the dissemination of good deeds among people. If Muslims and non-Muslims live in peace, they live together as brothers in humanity.

413 Holy Quran, Surat Al Baqara, (The Cow), Verse 208.
3.16.34 Human Honour And The Creation Of The Earth

God made the sky to serve humankind as a roof and made the earth for them. Allah gave human beings the stewardship of the Earth to preserve it and manage it in conformity with nature, to benefit him and all other creatures on the earth such as animals. Furthermore, Allah created the seas, rivers and streams to provide drinking water for human beings and animals and to irrigate the land and for transport and movement between places by using ships.\textsuperscript{414}

Allah created Man on Earth and gave him stewardship of it to manage life in accordance with God’s purposes and his intentions.\textsuperscript{415} In Islam, the advantages of natural resources is a right for all people and all creatures without distinguishing between them so that each generation shall manage and keep the environment and its resources for the future generations without changing the system created by Allah for the environment.\textsuperscript{416}

Shari’ah imposes cooperation and solidarity among its followers in addition to solidarity in need by which they become as a solid building structure, each supporting the other. Social solidarity in Islam is not limited to objective benefits- although it is considered a main pillar of it- but it covers all community needs, individuals or groups, whether these needs are objective, subjective or intellectual. Through this wide meaning of social solidarity, all basic rights for individuals and groups inside the nation are respected and reserved. Thus, Muslim society does not condone selfish or negative actions or behaviours but strong cooperation in good deeds and piety. As a vice-regent, each human being must follow Allah's commands on earth by having knowledge of the teachings of the holy Qur’an and the Sunnah of the prophet Mohammad (PBUH) and be guided by them in order to fulfill his responsibility for the purpose of his existence.

Allah guided Man to use the environment resources carefully and wisely so Islamic Shariah prohibited harm to the earth. It set environmental principles more than one thousand four

\textsuperscript{415} Al Sadlan, S. (1999) Islamic Shariah and Environmental Protection Faculty of Shariah Law, United Arab Emirates Universityp.45.
\textsuperscript{416}Isa. I. (2002) Environment Pollution: the Most Important Problem of the Century and the Solution Cairo, Alazhar University, p.25
hundred years ago. Islam has given the right to humankind to use the resources of the earth carefully and wisely.\textsuperscript{417}

Allah said: ‘And He taught Adam the nature of all…’\textsuperscript{418}. The verse indicates that knowledge of Islamic teachings has a very powerful connection with appropriate behaviour towards the environment such as the way in which nature is used and the preservation of its resources, and so knowledge is a tool to enable humankind to take care of the environment, and maintain the balance that was created to serve him.

Allah created the Earth to serve humankind, without any abuse or destruction of any kind, and so human beings should take care of the resources that God blessed him with, to have a place to live in and establish a civilization that worships God. Protecting the environment is therefore an act of worship, but based on the fact that the purpose of the whole universe is to serve humankind, so he can meet his obligations. On occasion, he has to do the contrary like uprooting a tree that is an obstacle. However, Man must take good care of the universe that he inhabits, such as forests, the atmosphere, water supplies, earth metals, and energy sources that form the environment for human beings in their seeking to worship and obey God.

\textsuperscript{417}Ibid. P10.
\textsuperscript{418} Holy Quran, Surat Al Baqarah(The Cow) Verse 31.
3.16.35 The Duty Of Man

1- To fulfill the successor’s duty. As Allah says in the Holy Quran: ‘I will create a Successor on earth’\(^{419}\) which means ‘to execute Allah’s will on Earth and conduct his rules in it. Thus, it means that man of all creatures has the utmost power in the universe in order to fulfill the mission assigned to him; to follow Allah’s orders and to stay away from what He forbade.'\(^{420}\)

2- Therefore, as a successor, a Muslim is asked to work and walk through the paths of the universe, and to unravel the secrets of science and use it in the best interests of humanity. Muslims have power over all other creatures in the universe, and are required to seek and develop it, to fulfill his mission on this earth and reach his spiritual end.\(^{421}\)

3- To worship Allah the Almighty: ‘I have only created Jinns and men that they may serve me’\(^{422}\) Allah has commanded upon humans in legislation in the Holy Quran and Sunnah to perform the right of Allah, the rights of one’s soul, and the rights of others and everything around us. The development of the universe is an act of worship of Allah and therefore does not contradict other acts of worship because it is one of its aspects. A man who worships Allah must be a productive element in the universe and hard work is the way to achieve both the individual’s and group’s happiness; so work is an act of worship. As Allah the Almighty says: ‘It is He who hath produced you from the earth and settled you therein.’\(^{423}\) ‘Settled you therein’ means that humans have developed the earth with building and plants because all of this is considered as developing the earth.

4- Allah has trusted man to accomplish good deeds when dealing with Allah, the universe or other human-beings. There is no doubt that this trust is a great honour to mankind.

5- To witness over the nations: Surat Al Baqarah, Verse 143: To witness means to watch over moderation of the nations and to straighten deviation in their paths caused by extremism or to

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\(^{419}\) Holy Quran, Surat Al Baqarah, Verse 30.


\(^{422}\) Holy Quran Surat Al Dhariyat Verse 56.

\(^{423}\) Holy Quran Surat Hud, Verse 61.
repress the body’s needs in favour of spirituality. It also means to follow the principle of moderation and balance in all aspects of life.424

It is from the concepts of successor and worship, development and trust and witness over nations that missions and duties and aims in the life of mankind are formed and identified, and they positively reflect on the development of the universe which is one of man’s greatest duties. Muslim scientists believe that a Muslim is assigned to the development of the earth and he should therefore not dedicate himself to worship as a monk. Al Razi says that monastic life leads to the corruption of the world and the end of crops and breeding while abandoning monastic life to devote oneself to the attendance of knowledge, love and worship is for the benefit of developing the world and the afterlife.425

This shows the importance of maintaining and protecting the environment in general and the marine environment in particular. Man is in charge of this so God will reward him if he keeps the marine environment clean from all kinds of pollution such as oil pollution, activities of factories, exploitation and exploration of the sea. Competition to exploit the resources of the sea will lead to the destruction of the marine environment as each country seeks to create a strong economy. However, Islamic Shari’ah always directs human beings to protect the marine environment rather than give priority to economic purposes.

Contemplation is not a silent mental process, it is rather experimental, outspoken, conscious, explorative and devoted to the results it achieves in the process of development. The universe is a vast arena in which to contemplate the blessings Allah bestowed, and to reflect on the signs Allah deposited in it. The Revelation has made this universe an important vehicle in which to behold the oneness of Allah the Almighty, for it is a great mosque where all creatures glorify and praise Allah, and one must share creatures in the glorification and praise of Allah, which is a real act of worship. Contemplating the creation of the heavens and the earth is revival of the universe and development of it through the glorification of Allah. It is neither being inactive nor silent nor deaf; it is rather a declaration of the argument and proof of the Oneness of Allah. Man is influenced by contemplation and learns many lessons from it. The regularity of the universe should be reflected in man’s lifestyle in order to tune his movement and behaviour. If everything

in the universe is active, then this activity should be reflected in human behavior in order to protect it from any damage such as protecting the marine environment. Contemplation in all of its dimensions is a Quran requirement that allows man to unravel the mysteries of the cosmic system in the world of space and earth, seas and human life.426

The Holy Quran and Sunnah reflect the importance of protecting the environment in Islamic Law such as the marine environment. Today, marine pollution is a global problem which needs much more attention from scholars and governments. Societies need to cooperate with regard to the protection of the marine environment.

The verses of the Holy Quran and texts explain the ways through which we can protect our environment and plant trees to prevent pollution. The hadith provides that there is no Muslim who plants or cultivates a crop from which a bird or a man or an animal eats but it would be considered as an act of charity.427 His good deed shall continue for as long as the plant still stands in the ground and is still being eaten from, even if the man who planted it died or the possession of the land moved to another man.428 The hadith also, directs us to protect our marine environment and keep it clean for future generations.

426 Mohammed, IQuran and its science power Beirut, Dar Al Feker Al Arabipp.146-147.
428 IbnHajar A; Fatah Al Bary explained by Sahih Al Buhri, Riyadh, Saude Fatwa published, p.4.
Conclusion

Chapter Three concluded that both the UK and UAE are influential in the protection of the environment in general and the marine environment in particular. Legislation in the UAE has proven more difficult to research than in the UK, as a number of search results and websites contain partial and fragmented information. The difficulty with UAE legislation is that Shari’ah law is under-researched in relation to the protection of the marine environment. Scholars are less interested in the influence of religion in the protection of the marine environment than on civil legislation.

The comparison carried out in Chapter Three will assist legislators in both the UK and UAE to amend and improve the national legal framework dedicated to the protection of the environment. Protection of the environment is a crucial issue, not only because of economic development but also to maintain and enhance human welfare and the quality of life.

The UK and UAE share some common environmental goals, but each has its own strategy to achieve sustainable development. This analysis of the strengths and weaknesses of each country in the field of marine environmental protection is thus beneficial to legislators and decision-makers alike.

The vision and capacity of the UK and UAE to protect the marine environment are different, as is the scale of marine pollution in each country. In the UK, organizations responsible for tackling marine pollution are not the same as in the UAE; for instance, the UK has specific agencies whereas the UAE has coastguards, the Dubai Municipality and the police who, as in Dubai, have special centres which focus on marine pollution.

Chapter Three also shows the benefit of bringing religious influence to bear on civil law such as marine environment law in order to widen its scope. While the political systems of the UK and UAE are very different, religions in both countries aim to protect the environment from harm. Legislators in both the UAE and UK should consider the role of religion more actively in establishing environment laws, especially in the UAE where Islamic Law is a more powerful force in society.
CHAPTER FOUR

4.1 Conclusions And Recommendations

This exploration of the influence of Shari’ah in the protection of the marine environment in the United Arab Emirates had the following aims:

1- To evaluate international Law in regard to marine pollution.

2- To compare and clarify marine pollution legislation, laws and constitutions, describe action taken in the UAE and UK and to consider the impact of GCC cooperation.

3- To establish whether Shari’ah law has any influence on marine pollution law in the UAE.

4- To make recommendations which raise awareness and educate decision-makers in the United Arab Emirates on ways of reducing marine pollution.

The following summary describes to what extent the aims were achieved.

Many international conventions and legislation focused on protecting the marine environment from human activities such as the London convention in 1954 which prohibited oil pollution, the London 1972 convention and the OSPAR Convention. International law provided global guidelines on how nations were to secure their marine environments. International law considered the issue of the marine environment from the outset; for instance, international law was the subject of two main conventions which played a vital role in protecting marine life and highlighted the rights of states to use the sea but also specified their obligations and duties. The two main conventions were the 1958 Convention and the 1982 Convention on the Law of the Sea. Whilst international law had provided rules to eliminate and control pollution and to avoid future damage to the marine environment, it was decided that it was individual governments and their societies and not international law which should be responsible for the care of the marine environment.

A comparison of the United Arab Emirates and the United Kingdom, both of their political systems and their marine environment legislation, clarified similarities and dissimilarities between them. The UAE is a small country and the union of the UAE was established 42 years
ago. However, the UK is a long-established union and its economy, culture and political system were established many years ago. Great Britain has a history of protecting the marine environment from pollution and it has many laws governing it such as the UK Merchant Shipping Act 1995 and the Coast Protection Act 1949. However, in the UAE, law number 24 (1999) for the protection and development of the environment is the only law in the State to cover the marine environment.

The thesis shows that Islamic Shari’ah law in the United Arab Emirates has an impact on environmental laws, both on the sea or land and this effect may be direct or indirect. Through studying, visiting and meeting with the officials responsible for the marine environment in the UAE, the researcher has been able to conclude that Islamic law has a significant role to play in the protection of the marine environment. The influence of Islamic law in the protection of the environment in general and the marine environment in particular is evident in awareness programmes in schools, universities, seminars and courses. The research found that the ordinances did not violate the lofty goal of Islamic law, which is to maintain a clean and healthy environment for a safe and clean community. Shari’ah is compatible with all modern international laws that are serving the marine environment and also compatible with other divine religions which stipulate preservation of the environment. Thus, it is indeed the case that Islamic Shari’ah has a great influence in the UAE on legislation in general and on laws which apply to the marine environment in particular.

The problem of environmental pollution in general and the marine environment in particular was not born in the modern era, but was created many hundreds of years ago. In modern times it has become a priority issue as a result of industrial progress. Marine pollution is a serious problem throughout the world and governments are grappling with the problem, especially in the West. Strict penalties for creating pollution have been imposed and, as a result, the marine environment is better protected. In addition, if anyone is harmed by marine pollution, he can resort to the judiciary and apply for compensation.

Arab legislation and the laws of the United Arab Emirates in particular have accepted the problem of marine pollution and enacted strong laws to protect the marine environment, but these laws are unclear when applied to specific cases. Stronger, less ambiguous legislation needs
to be passed to deal with those who out of self-interest or indifference, pollute the marine environment.

This study has described the role of Islamic law in the preservation of the environment in general and the marine environment in particular, and also focused on topics in international and constitutional law.

4.2 Interviews With Key Persons Of The Marine Environment Authorities In The UAE

1- The importance of the interview as a tool in scientific research.

As stated within the research methodology section in chapter 1, the researcher sought to conduct a number of semi-structured interviews as a way of gaining valuable information pertaining to the application and monitoring of marine environmental legislation in the UAE. To show topicality and currency, the researcher conducted a number of interviews with key personnel in order to gain information as to the current state of UAE maritime laws, and to consider possible future developments. These interviews were conducted with the aim of building on the present legal and cultural scenario, with the goal of seeking ways forward in the development of UAE maritime protections.

“The purpose of qualitative interviewing is to describe and interpret experience, not to test hypotheses, find statistical differences between groups, or describe what proportion of a population holds a certain belief.”429 With this in mind, the following interviews are included for the purpose of providing a clear and informed perspective on the operation of the marine environmental laws in the UAE as provided directly by the designated experts in the field.

The interviews which follow were not part of an empirical study as the number was insufficient, but they were conducted with prime actors in the UAE for the protection of the environment to inform the study of a range of opinions about marine pollution.

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429 Oishe, S.M. (2003) How to Conduct In-Person Interviews for Surveys, (Sage Pubs)
Interviews are a valuable qualitative research tool, particularly when there is a need to understand participants’ experiences in greater depth.\textsuperscript{430} They can provide valuable information which substantiates or contradicts primary sources like surveys or secondary sources such as data.

The researcher conducted interviews with officials and scholars in the field of marine pollution. This chapter is a collection of opinions and conclusions.

2- Dr. Ibrahim Al-Jamali, the Director of the Centre for Marine Environmental Research in Umm Al Quwain. (11/12/2012) at 10:00 AM.

On the 11\textsuperscript{th} December, 2012 the researcher conducted this interview with the Director of the Centre for Marine Environmental Research, Dr Ibrahim Al-Jamali. Dr Al-Jamali said that we, in the United Arab Emirates, fight against marine pollution via competent authorities in the country to which we entrust this task as they are familiar with it and they know how to combat this pollution more than others that do not have experience and skills in this area. He also assured me that the responsibility in the United Arab Emirates for combating marine pollution, according to the plan of the National Commission for Crises and Disasters, is the Ministry of Environment and Water, especially if there is an oil pollution threat. Al Jamali, said, we have other responsible authorities which provide support for the prevention of marine pollution and which contribute to the success of the plan with the National Commission for crises and disasters such as the National Transport Authority, the armed forces, the police, civil defense and other civil authorities.\textsuperscript{431}

As for the numerous competent institutions, Al Jamali, respected their role because it will raise the quality which will contribute to the reduction of the negative effects that may occur as a result of pollution. They will avoid many of the risks due to precautions. Measures are also being


\textsuperscript{431} Dr. Ibrahim Al-Jamali, The Director of the Centre for Marine Environmental Research in Umm Al Quwain. (11/12/2012) at 10:00 AM.
taken in accordance with cooperation between institutions which are of great importance in the face of the dangers of the sea, as the role of these institutions is giving an important example. These institutions are developing training courses and workshops to raise the level of capacity in the area of operational environmental protection of the marine environment, especially protection from oil pollution as a single strategic goal of the Federal Environment. Raising the capacity of working environment in this area is particularly important at this particular time. The Ministry of Environment and Water has developed an emergency plan and a comprehensive national response to all cases of oil pollution and other harmful chemicals from various sources. AL-Jamali also said that, when a maritime disaster occurs, the cooperation of the authorities concerned intends to minimize their impact and avoid many of the expected results. Al Jamali, said that the multiplicity of the competent authorities of the country to protect the marine environment could lead to fragmentation and lack of focus as the competencies and skills will different between them. Al Jamali, honestly support central administration as it is to ensure and lead to greater protection for the marine environment in the United Arab Emirates for all kinds of environmental pollution, either land or sea, and this institution distributes tasks to entities in the country that falls under the umbrella.432

An example of the cooperation between the authorities: I researched for the incident of the White whale ship mentioned by Ibrahim AL-Jamali where I found information about it in the United Arab Emirates through research. Dr. Rashid Ahmad bin Fahad, Minister of Environment and Water discovered the white whale ship which was submerged off the coast of the Emirate of Umm Al Quwain. They tried eleven times to pull the ship up to the surface. Before they began the twelfth attempt to lift the ship, they filled holes in the ship to ensure the safety and protection of the environment from any potential leaks of fuel and to ensure the safety of all recovery operations supervisors.433 Also the Minister of the Environment said the giant ship which carried out the salvage was linked to the ship. Fourteen holes were filled, then the ship started floating after twelve o'clock noon after the holes were confirmed to be sealed and stopped leaking.434

432 Ibid
434 Ibid
Dr. Jamali explained that we in the federal country, in order to avoid a conflict of domestic legislation, put forward a national comprehensive plan. He said that he genuinely tries to avoid conflicts of domestic legislation in the country’s laws regarding the environment, and saw that the plan could be a vehicle for avoiding inconsistencies by implementing a unified mandatory environmental law over all institutions and country employees.435

Concerning the laws created by the Emirati legislature to protect the marine environment, I would like to mention two articles about its important role in the protection of the marine environment to which I was referred by Ibrahim AL-Jamali. Article 23 of the UAE Federal Environmental law states that "in the event of a collision of oil tankers, naval installations or tankers’ hazardous materials, whether deliberately or the result of a mistake of one of his subordinates, the master is the responsible person for operations to stop the leak and the carrier shall be jointly responsible for paying all the costs of the damages and compensations, and control implications of the spill in the marine environment, coasts and beaches.” I notice that the legislator of the UAE imposes severe penalties against polluters, whether by sea or land.436

As for Article 24: “The owner of the marine means captain or any person responsible for it and those responsible for the transportation of oil located within ports or to the marine environment of the state, as well as officials of the actors in the extraction of oil that immediately is in accordance with the procedures stipulated in the Regulations to notify port authorities, border guards, coasts and other competent authorities for each incident, as soon as an oil leak occurs; the incident and type of material that leaked and the measures taken to stop the leak or reduce it. At all events, port authorities must guard the limits and coasts to inform State and stakeholders which gather information of the incident referred to him as soon as it occurs.”437

I'm not against cooperation between the authorities, but I suggest that one authority in the country should delegate powers and functions to other authorities under its control.

I would say that there are a lack of provisions in the United Arab Emirates Environmental Laws in reference to the role of Islam and Shari’ah in the protection of the environment.

435Dr. Ibrahim Al-Jamali, the Director of the Centre for Marine Environmental Research in Umm Al Quwain. (11/12/2012) at 10:00 AM.
436Ibid
Raising public awareness of the dangers of marine pollution is important and can be achieved by delivering awareness lectures and workshops, especially with regard to oil pollution because it is the most dangerous marine pollutant. The potential risks must be understood and how to respond to incidents. Mechanisms for cooperation between different agencies should be developed and joint action plans drawn up, making use of all the experience, knowledge and techniques in the treatment of oil pollution to reduce its negative effects on the marine environment.438

The researcher noted that Dr. Al- Jumaili was more concerned about oil pollution more than other pollutants and focused on raising awareness of its dangers. As a researcher, it is my view that there should be a focus on all risks to the marine environment with the same degree of attention and responsibility that is shown towards oil pollution.

3- Dr. Hamad Al-Falasi, Director of Environmental Legislation, Health and Safety and Mr. Adam Mohieddin, Officer of the port of Jebel Ali (16/12/2012) at 1:00 PM

The researcher met two other officials: Dr. Hamad Al Falasi, Director of Environmental Legislation, Health and Safety and Adam Mohieddin Officer of the Port of Jebel Ali in Dubai. The key points of the interviews are as follows:

The main goal of the development of laws, whether local or federal, is the protection of the marine environment through the complete elimination of oil pollution and other harmful substances and the reduction of discharges that are linked to these materials. The secondary goal is ensuring that the Precautionary Principle is followed and that there are severe penalties for failure to follow it.439

The issue of environmental protection from pollution is one of the most contemporary issues and major challenges facing the country, especially in the planning of comprehensive development,

438Dr. Ibrahim Al-Jamali, Director of the Centre for Marine Environmental Research in Umm Al Quwain. (11/12/2012) at 10:00 AM.
439Dr. Hamad Al-Falasi, Director of Environmental Legislation, Health and Safety and Mr. Adam Mohieddin, Officer of the Port of Jebel Ali (16/12/2012) at 1:00 PM
and achieving a balance between protecting the environment through legislation and influencing human behaviour is a constant battle.\textsuperscript{440}

The UAE has developed a solid legal framework in order to maintain wealth in the environment. The country also drew up a number of agreements on environmental protection and marine ecosystems by issuing federal laws and local orders.\textsuperscript{441}

The Environmental Protection Law and Development, formulated by the late Sheikh, is one of the most prominent laws passed in the UAE in the field of environmental protection. The law aims to preserve the environment, quality and pollution control in all its forms and avoid pollution and damage, whether immediate or long-term, resulting from economic or agricultural plans or industrial law. It also seeks to develop natural resources and the protection of society and human health and other organisms from all environmentally harmful activity.\textsuperscript{442}

There is a need to intensify cooperation with environmental authorities and participate in international conventions relating to the use of resources and the reduction of pollution through global programs for environmental monitoring, as well as recommending the establishment of departments which are ecologically sound.\textsuperscript{443}

The conclusion of the interview is that the UAE must increase deterrent penalties for the worst perpetrators of environmental crimes, to promote environmental awareness and draw up environmental laws and spell out the environmental responsibilities of individuals from an Islamic perspective. If we follow all these recommendations, we will get rid of pollution with minimal losses, achieve success in the protection of the marine environment and protect humanity from environmental danger.\textsuperscript{444}

In the United Arab Emirates, there are pollutants other than ships such as plastic. Several studies have shown that 80\% of waste is plastic, a material that has been increasingly used since the end of Second World War. Plastic accumulates because it is not decomposed by bacteria though it

\textsuperscript{440}\textsuperscript{440} Ibid
\textsuperscript{441}\textsuperscript{441} Ibid
\textsuperscript{442}\textsuperscript{442} Dr. Hamad Al-Falasi, Director of Environmental Legislation, Health and Safety and Mr. Adam Mohieddin, Officer of the Port of Jebel Ali(16/12/2012) at 1:00 PM.
\textsuperscript{443}\textsuperscript{443} Ibid
\textsuperscript{444}\textsuperscript{444} Dr. Hamad Al-Falasi, Director of Environmental Legislation, Health and Safety and Mr. Adam Mohieddin, Officer of the Port of Jebel Ali(16/12/2012) at 1:00 PM.
may degrade when exposed to the sun which increases the seriousness of the problem. There is also the burial of solid waste, as well as other pollutants such as radioactive waste, in the sea and other contaminants. Littering and disposal of plastic in this manner are completely unacceptable in Islam because the environment is an Islamic priority, as well as the right of human beings to live in a natural and clean land because cleanliness is a requirement of faith.\textsuperscript{445}

The Department of Marine Inspection has jurisdiction of ports, the coastline and territorial waters and has the power to prevent the entry of ships which are polluting the environment until they have remedied the problem or undergone repairs. The United Arab Emirates has an effective National Transport Authority where the offshore section includes maritime control. In this section, the officers are internationally recognized and inspect ships independently. If they find a ship that is not conforming to maritime safety, they will issue a report. Every Gulf country will be informed that the ship is not matching the specifications of the marine environment once it enters its ports. This process is agreed in a Memorandum of Understanding by a Committee in Riyadh for the inspection and control of ships. This system is derived from Islamic Shari'ah.\textsuperscript{446}

\textbf{4- Dr. Saud Al-Junaibi, Director of Operations and Maritime Safety in the National Transport Authority in Abu Dhabi (18/12/2012) at 10:00 AM.}

Some results were drawn from an interview with Dr. Saud Al Junaibi, Director of Operations and Maritime Safety in the National Transport Authority in Abu Dhabi:

The National Transport Authority is seeking to make the United Arab Emirates the home of leadership and excellence in the field of transport, adopting programmes to ensure the efficiency and safety of maritime transport and to track ships through the launch of a national software platform. The UAE became one of the first countries in the world to create such a programme, demanding the highest international standards in the maritime field and this enhances its standing regionally and globally. The National Transport Authority and the Federal Environment Agency have formulated between them measures to protect the marine environment from pollution ranging from warnings, fines and even deportation. This includes inspection campaigns to ensure

\textsuperscript{445} Ibid
\textsuperscript{446} Ibid
that ships conform to safety requirements and the monitoring of violations of marine pollution control, obliging ships to hire companies specialized in the field of waste processing and disposal ships and processed before being returned to the sea. Ships in disrepair have been retained in docks and have been repaired before being allowed to leave. In addition, other ships have been docked for failing to produce incomplete documentation or lacking the required health certificates or not complying with the relevant safety procedures. The Federal Environment Agency and the Coast Guard will be notified of violating vessels and they will be prevented from sailing. The UAE is a member of the so-called white list of countries that are committed to the conventions and laws concerning maritime transport, which includes 95 countries. Joint action in furtherance of the legislation relating to the protection of the marine environment aims to reduce the incidents of pollution caused by ships.

5- Captain Nasser Sabt, Director of the Center for Environment and Maritime Safety in the Port of Jebel Ali. (26/12/2012) at 9:30 AM.

The interview resulted in the following conclusions:

There are multiple sources of marine environment pollution caused by activities conducted on land, the seabed, and the air, as a result of dumping waste or disposal at sea. The most common cause is the use of sea as a means of transport for ships, leading to contamination from oil and radioactive waste.

To prevent the marine environment from pollution we must anticipate it and prevent it from happening by taking appropriate actions for securing the environment. We must implement measures which are cost-effective and ensure that they are not putting the environment at risk and which set safety standards of the marine environment. Our rules also prohibit actions, activities and projects that are likely to lead to pollution of the marine environment and to influence it.

447Dr. Saud Al-Junaibi, Director of Operations and Maritime Safety in the National Transport Authority in Abu Dhabi (18/12/2012) at 10:00 AM.
448 Ibid
449Captain Nasser Sabt, Director of the Center for the Environment and Maritime Safety in the Port of Jebel Ali (26/12/2012) at 9:30 AM.
450 Ibid

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Many countries use nuclear energy which increases the problem of marine pollution. The establishment of nuclear power plants and their development in many countries has led to serious problems and has had a severe impact on all elements of the environment from nuclear waste. We get rid of this nuclear waste in several ways, including throwing it in the seas and oceans, which adversely affects the marine environment and living organisms.\footnote{Ibid}

We need to protect the marine environment from the risk of contamination - protection of the environment is an integral part of the development process. All countries are committed to the essential task of conservation, protection, and restoration of the health and safety of the law’s ecosystem. Countries have to cooperate in good faith and a spirit of partnership to follow principles that are designed to protect and further develop legislation against pollution. They also have to develop control mechanisms for adoption in any organization of the world but which are applicable to social conditions. There should be coordination between the executive, legislative authorities, scientific and research agencies to preserve and protect the environment from pollution.\footnote{Ibid}

Finally we recommend supporting institutions, agencies and Arab environmental regulatory bodies to take all practicable steps to prevent pollution from ships, and develop national plans to deal with incidents of marine pollution, as well as the issuance of international legislation and administrative procedures that would prevent states bordering the seas and oceans from dumping waste and sewage discharges at sea and to establish treatment plants to purify sewage before it enters the sea. I also recommend the establishment of specialized environmental courts to implement environmental laws and the organization of courses on ecology for court judges and environmental inspectors to familiarize them with environmental legislation.\footnote{Ibid}
4.2.1 The Analysis Of The Conducted Interviews

The key points relating to the marine environment in the UAE which can be drawn from the interviews are as follows:

1. The first line authority protecting the marine environment in the UAE is the Ministry of Environment and Water.
2. There are several other authorities and formal committees that contribute to marine environment management and planning and the most important ones are:
   2.1 The National Commission.
   2.2 The National Transport Authority
   2.3 Armed forces
   2.4 Police
   2.5 Civil Defence
   2.6 Other civil communities
3. The most significant threat to the marine environment in the UAE is oil spill and pollution
4. There is a lack of established laws in the UAE built on Islamic Shari'ah regarding protection of the marine environment, although a great deal of effort has been made to keep the environment clean and safe relating to Islamic principles.
5. There is a lack of appropriate and effective penalties for those responsible for incidents of pollution in the UAE.
4.2.2 Conclusion to interviews

At the end of this section we notice that the UAE has many people who are working in the field of environment protection and they have much experience and knowledge to deal with any pollution or disaster which can affect the marine environment of the UAE.

From this conclusion the most recommended concern is to develop the legislations of the UAE and develop citizen’s awareness. Training is the most important point which was taken into the consideration of all people that have been interviewed.

The UAE always focuses on cooperation with GCC and all world countries to get good level of marine environment protection and develop all fields inside and outside the UAE. The UAE government can accept any opinion from anyone who can assist for the marine environment.

From the previous interviews we learned that the marine environment is common responsibility of anyone who lives in the same environment whether in the UAE or any part of the world. People and societies always ask the world governments to stop any activities which can harm the marine environment.

Finally, we have laws and legislations and we also have international legislations to protect our marine life but we really need mechanisms to implement those laws and legislations.
4.3 The Results:

1. The study shows that Islamic Shari’ah law in the United Arab Emirates has a significant impact and great influence on human life and the way people behave. The commands of God are to do everything possible to keep the environment clean and avoid any pollution, such as marine environmental pollution.

2. Recently, interest in protecting the marine environment in the United Arab Emirates has increased dramatically. The environment has a close relationship to human rights in general, and the human right of life and development in particular. The basic needs of individuals and groups can be provided by planning an integrated approach to the development of society as a whole and to protect the environment from contamination. This will ensure that quality of life is improved and that society as a whole benefits socially, culturally and medically. This also includes the preservation of the natural marine environment and achieving coordination and integration between the policies to rationalise its use.

3. The protection of the marine environment is an integral part of the development process in all countries and an essential component of conservation, protection and restoration of the health and safety of the ecosystem. Cooperation between countries and peoples is essential, both in good faith and in the spirit of participation, to the realization of the principles aimed at protecting and developing environmental law as a strategy of sustainable development.

4. Legislation relating to combating and controlling marine pollution and its specific objectives are valid for adoption in any organization but the application of the legislation is subject to standards that are linked to social conditions and administrative procedures of each country. There needs to be coordination between the executive and the legislature and scientific research targeted at preserving the environment and protecting it from pollution.

5. National development plans have a significant role to play in the effective functioning of administrative systems applied to the marine environment and in raising awareness of problems related to it, as well as engaging public participation in strategies designed to protect it. Environmental policies that are based on standards of preventing marine
pollution also have significant impact in contributing to the protection of the marine environment.

6. Research on the marine environment is essential. The effectiveness of the various agencies in the fight against marine pollution will increase as scientific knowledge about the impact of pollution improves and will also heighten awareness of the problem in the general population.

7. Marine environmental damage often does not take place immediately from a single incident but is caused gradually. For example, a single event of oil pollution leads to an increase in the death of marine organisms for up to a year or more.

8. Pollution of the marine environment may occur individually or collectively and civil action can also be taken against individuals or groups responsible for it.

4.4 Recommendations and proposals:-

1. The Emirate legislator should amend the Law on the Environment by adding special provisions to protect the marine environment, including from all sources of pollution, whether from oil or other contaminants. I also recommend the establishment of a federal law on the protection of the marine environment to distribute responsibility to federal institutions in the state but which are under central control.

2. There is a need to intensify cooperation between international organisations that are interested in the issues of marine environment, to promote and actively contribute to environmental activities and participation in international conventions relating to the protection of the marine environment. There should also be an increasing joint focus on the reduction of marine pollution across countries, the maintenance of the quality of the marine environment and to cooperate with global programmes for environmental monitoring.

3. Research centres should be established to explore the marine environment. The centres should be supported by qualified legal expertise and scientific regional development of national legislation on the prevention of pollution of the marine environment of the countries concerned. Unification is also recommended between national legislation issued
in regional environments and development of rules and standards to prevent and reduce the pollution of the marine environment, and to cooperate with relevant regional and international organisations.

4. Support should be requested of local Arab institutions, agencies and organisations, including the Council of Arab Ministers which is responsible for the environment. Committees and environmental bodies in Arab specialized organisations should be established and regional councils to coordinate with relevant bodies to raise finance for environmental projects. Support for local and regional plans to protect the marine environment should be encouraged and preparation of an English programme to link these networks to each other and to other global networks.

5. Enhancement of the provisions for Contracting Parties in any environmental agreement individually and collectively, the provisions to take all practical steps to prevent marine pollution caused by hard wastes and other materials that can be a risk to human health or cause harm to living resources, marine life, recreational facilities or impede other legitimate uses of the sea.

6. Local legislation should be drawn up that would prevent industrial and agricultural authorities and institutions from dumping waste into the marine environment or discharging sewage in the sea or ocean and work to establish treatment plants to purify sewage before it was discharged into sea water.

7. Environmental legislative sessions should be organized and court judges expert in environmental matters should be appointed. Environmental inspectors should be appointed who are familiar with environmental legislation and who are trained to recognise judicial irregularities.

8. Maritime control and inspection should be strengthened to improve the performance of its functions, both materially and morally, to spread awareness of all the different ways in which the marine environment can be polluted.

9. Environmental awareness, environmental laws and environmental rights to live in a clean and healthy environment should be revived and re-emphasised to increase public awareness.
10. The instilling of environmental concepts in individuals and in society as a whole from an Islamic perspective that the preservation of the environment and protection of natural resources are a religious necessity.

11. The delivery of environmental education for students in basic schools and specialized universities should be compulsory to increase public awareness from a young age.

12. The introduction of compulsory insurance imposed on industrial establishments relevant to hazardous activities which may lead to damage to the marine environment.

13. The role of the media should be enhanced in raising awareness of environmental issues via auditory, visual and printed information.

14. The study of environmental law is compulsory in all universities in the United Arab Emirates.
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VII Interviews Conducted In UAE

1- Dr. Hamad Al-Falasi, Director of Environmental Legislation, Health and Safety and Mr. Adam Mohieddin, Officer of the Port of Jebel Ali (16/12/2012) at 1:00 PM.

2- Dr. Ibrahim Al-Jamali, The Director of the Centre for Marine Environmental Research in Umm Al Quwain. (11/12/2012) at 10:00 AM.

3- Dr. Saud Al- Junaibi, Director of Operations and Maritime Safety in the National Transport Authority in Abu Dhabi (18/12/2012) at 10:00 AM.
A. Transcripts Of Interviews In UAE

Ibrahim al-Jamali:

The conversation that the researcher had with Dr. Ibrahim al-Jamali the Director of the Research Center of the Sea Environment in Umm Al Quwain at 11 - 12 - 2012 confirmed that the United Arab Emirates are combating sea pollution by giving authority to competent authorities which are entrusted with this task because they are knowledgeable and know how to combat pollution.

The responsible authority in the United Arab Emirates for combating sea pollution and strategically working with the National Commission for Crises and Disasters is the Ministry of Environment and Water, especially if it is oil pollution. There are other authorities responsible for providing support for the prevention of sea pollution and which contribute to the success of the plan with the National Commission for Crises and Disasters such as the National Transport Authority, the Armed Forces, the Police, Civil Defense and other civil authorities. The National Transport Authority enforces agreements at the local level, such as bilateral agreements of understanding between departments and institutions of the state; this organization is based in Abu Dhabi and Dubai.454

Ibrahim Al Jamali clarified that the besides the Armed Forces and the Interior Ministry, there are other important authorities involved in the protection of the environment such as local councils, the state associations of fishermen and ADNOC Petroleum, which has strong plans to combat sea pollution and especially oil pollution. Laws 23 and 24 cover environmental matters. At a national level we are committed to following the Treaty drawn up by the International Maritime Organization (IMO) and work according to maritime law which organizes operations so that we become a modern state free of sea pollution and strive for the welfare and health of its people, the comfort of its visitors and to maintain the beauty of the beaches.455

454 Dr. Ibrahim al-Jamali the Director of the Research Center of the Sea Environment in Umm Al Quwain in the UAE.
455 Dr. Ibrahim al-Jamali the Director of the Research Center of the Sea Environment in Umm Al Quwain in the UAE.
Regarding the many organizations concerned with the environment in the United Arab Emirates, I personally believe that all these organizations represent a determined strategy to unify their efforts to minimize the effects of sea pollution and secure as much protection as possible for our marine environment. For example, the purpose of the Ministry of Interior to combat crises and disasters is to unite efforts in the United Arab Emirates to deal with all possible incidents that occur at sea, on the land or in the air. Of course, there are joint exercises that take place regularly between all the authorities in the country, such as the Armed Forces, the Police, Civil Defence and other civil authorities. These exercises prepare the authorities to face any incident. One example of this working in practice is that of the sinking White Whale ship. When this ship sank we focused our efforts in a temporary operations room where we were able to recover the ship and remove all remnants of sea pollution.\textsuperscript{456}

Dr. Rashid Ahmad bin Fahad, the Minister of Environment and Water in the UAE described how the ship was recovered after being submerged off the coast of the Emirate of Umm Al Quwain and successfully floated it, after eleven tries to pull the ship upright that were prevented due to the rough weather. The twelfth attempt to lift the ship was successful. It was achieved by filling some reservoirs of the ship with air and sealing some holes in the ship to ensure the safety and protection of the environment from any leaks of diesel and the safety of all the workers involved in the recovery operation.\textsuperscript{457,458}

Twenty eight people oversaw the recovery operation which included divers and workers, as well as staff from the Ministry of Environment and Water and other relevant authorities.\textsuperscript{459}

As the United Arab Emirates is a federal country, in order to avoid a conflict of domestic legislation, we implemented a comprehensive anti-pollution plan at a national level, requiring all authorities in the UAE to support the leadership and achieve the objectives of the plan to control pollution, whether the pollution was from oil or any other environmental contamination expected to occur within the jurisdiction of the environment of the United Arab Emirates. Regarding the role of culture and Islamic principles we are working as a Muslim country seeking to work with

\textsuperscript{456}Dr. Ibrahim al-Jamali the Director of the Research Center of the Sea Environment in Umm Al Quwain in the UAE.  
\textsuperscript{457}Ibid  
\textsuperscript{458}Dr. Ibrahim al-Jamali the Director of the Research Center of the sea Environment in Umm Al Quwain in the UAE.  
\textsuperscript{459}Ibid
our visitors or neighbours from other countries, because Islamic culture plays a significant role in our legislation, not only on the environmental level, but in many of our laws serving the country and our citizens. We seek to educate the Emirati citizen and raise his awareness regarding environmental protection, according to Islamic principles.\(^{460}\)

Dr. Ibrahim al-Jamali affirmed his intention to work within general principles such as the Principle of Caution, the Principle of Good-neighbourliness and the Principle of Sincerity, all of which are integral to the Islamic religion. For example, to activate the Principle of Caution we must have a team that is ready and trained to combat any sea pollution. Dr. Jamal also said that the effects of sea pollution may cause destruction of the region and neighbouring countries and this must be combated by a specialist team who are trained to prevent sea pollution. Ibrahim AL-Jamali believed that the country should act according to the principles of law which urge cooperation and at both a local or international level to deal with any environmental damage.\(^{461}\)

Regarding the relationship between the different authorities, Ibrahim AL-Jamali said there is effective cooperation in the United Arab Emirates (UAE) to protect the environment in all areas according to the Federal Plan which will soon be formally adopted. In the United Arab Emirates we have a competitive market between ports, but there are strategies in place to encourage cooperation between the ports to avoid pollution and there is a widening of roles. For example, the customs authority would become involved in the regulation between ports. We have also have marine pollutants other than oil pollution, such as wastewater and factory waste and water for ship balancing. However, by far the greatest threat is from oil pollution because there are more than 3000 ships transporting oil to the country’s ports monthly. However, the disposal of plastic into the sea is also a serious problem. Sea turtles eat the bags believing they are jelly fish and die. Raising public awareness is very important. For example, when I go fishing with my friends in a boat, I stop them from throwing plastic bags in the sea so we keep the bags until we return to the mainland and then throw them in the places allocated for garbage.\(^{462}\)

At the end of the conversation with Dr. Ibrahim Al Jamali, he stressed the importance of awareness and educational programs in the United Arab Emirates and the need for all the

\(^{460}\)Dr. Ibrahim al-Jamali, Director of the Research Center of the Sea Environment in Umm Al Quwain in the UAE.

\(^{461}\)ibid

\(^{462}\)ibid
communities to have a broad view of the protection of the marine environment. Dr. Jamal Al Kamali also said that infrastructure is the basis of life. He explained that the UAE relies heavily on desalinated water from the sea so it must be protected from any threat to the marine environment. This includes natural threats such as dust and from the weather, such as Cyclone Gonu which began in Oman and extended to the Emirates. Finally, he gave advice to the community to collaborate with the Ministry of Environment and Water and relevant authorities to achieve the goals of ensuring a sustainable environment for life.463

The researcher agrees with most of the points raised by Dr. Ibrahim Al Jamali. However, I disagree with his view that more powers should be given to the authorities to protect the marine environment from pollution because this will lead to conflict of interest between the authorities of the State. I would personally prefer to delegate all the power to one authority which can then establish branches in all cities of the federal State of the UAE.

Dr. Hamad Al-Falasi, Director of Environmental Legislation and Health and Safety in Jabal Ali port said: Our duties, as the Department of Planning and Development in the Dubai Ports, Customs and Free Zone of Dubai, are based on our legislation of Environmental Laws No. 19 and 24, which were introduced in 1999. The legislation which we operate here is derived either from federal or local legislation. We know, of course, that our federal country is made up of seven Emirates and that federal legislation can be issued which protects the interests of the United Arab Emirates as a whole and our own domestic legislation here in the emirate of Dubai.464

At the beginning of 1991, the local Dubai Municipality was the lawmaker with regard to environmental laws, whether marine or land and issued relevant legislation, including Law No. 11. With our arrival, the licensed Authority of Dubai Customs in 1999 became part of a strategy to develop legislation to serve and preserve our environment from all forms of environmental pollution, whether offshore or onshore. Of course, our role here is complementary and was established some time ago by officials by former officials. We did not delete the previous

463 Ibid
464 Dr. Hamad Al-Falasi, Director of Environmental Legislation and Health and Safety in Jabal Ali port.
legislation but rather added specific legislation that serves those ports which did not have effective anti-pollution measures in place.\textsuperscript{465}

In some cases, there were no local nor federal laws to protect the environment for the UAE to build upon, so we had to rely on international laws and apply them locally. An example is the engineering process for the project bridging the Palm Jumeirah in the sea. We had to refer to global legislation to commit the developer and the engineering organization to an agreement for the protection of the marine environment.\textsuperscript{466} This reflects the level of cooperation in being willing to use international legislation when it was needed.\textsuperscript{467}

Al Falasi referred to legislation in the United Arab Emirates. At the outset of the federal government, environmental laws were issued to the executive authorities in each country. Each Emirate has organizations which vary in name but all have one goal of law enforcement and the protection of the country as a whole from sea pollution. We have many different institutions in the UAE and each institution has different capabilities in the implementation of the federal law and the protection of the marine environment. The role of these agencies is complementary to each other, but each authority applies the law differently according to their role. For example, Dubai Ports differ from the ports of the rest of the Country, as Dubai has a huge port and takes into account the role of nature in how it preserves and protects the harbour from marine pollution. The UAE cooperates with all local and federal institutions which serve the protection of the marine environment; whether military or civilian destinations, they all have one goal which is to protect our marine environment and land from any form of contamination or pollution.\textsuperscript{468}

Of course Islamic law has an active role in our laws, whether environmental or otherwise, because we are a Muslim country which has customs and traditions. It’s natural for Islam to have an impact because it has clear and effective environmental laws. Legislation worldwide is influenced by local culture, traditions and religion and it is no different in Muslim countries.\textsuperscript{469}

\textsuperscript{465}Dr. Hamad Al-Falasi, Director of Environmental Legislation and Health and Safety in Jabal Ali port.
\textsuperscript{466}Dr. Hamad Al-Falasi, Director of Environmental Legislation and Health and Safety in Jabal Ali port.
\textsuperscript{467}Ibid
\textsuperscript{468}Dr. Hamad Al-Falasi, Director of Environmental Legislation and Health and Safety in Jabal Ali port.
\textsuperscript{469}Dr. Hamad Al-Falasi, Director of Environmental Legislation and Health and Safety in Jabal Ali port.
In Dubai, all Marine offences are submitted to the Governor’s Office and then published in the Official Gazette so that users of the marine environment cannot use lack of knowledge of the law as an excuse if they pollute the marine environment. Inspectors must be qualified and experienced as they often have to attend court in relation to offences which have been committed against the marine environment. Dr. Hamad Al-Falasi explained that there is no conflict of legislation in the United Arab Emirates as federal laws are implemented by the authorities and there are specific laws that serve the local nature of the port and the marine environment.470

Dr. Hamad Al-Falasi concluded that marine life and the environment require cooperation at the level of individual and community officials. We need to share responsibility and to cooperate as we are all required to take preventive measures to protect our marine environment from the hands of polluters and violators.471

I personally agree with Hamad Al Falasi’s comments about the preservation of marine life in the UAE in general and Dubai port in particular. However, I would add one important point: the experience of employees is a very important factor in the preservation of the marine environment from pollution and they should be trained in environmental protection practices.

AdhamMohi, Officer of Ports Environment, Health and Safety in Jabal Ali in Dubai, explained that our role is to apply the law to offenders who pollute the marine environment. We notify the authorities and take legal action against them to bring them to court whether they cause minor or major environmental damage. Our role as inspectors is the periodic inspection of ships to make sure safety measures and precautions against environmental pollution are in place, so that potential damage in the future is avoided.472

Of course there are other pollutants other than ships; for example, sewage and water ballast. We have a common practice on ballast water that it must be released outside the port in order to avoid bringing contaminated seaweed into the port. Before the ship enters the port we ask the captain to submit a request to discharge ballast water through the annex logbook. Pollution from petrochemicals and oil is more dangerous. In the Dubai Ports, we deal with these materials and we have a federal law called the Environment and the Shipping Act which we use to combat

470Dr. Hamad Al-Falasi, Director of Environmental Legislation and Health and Safety in Jabal Ali port.
471Ibid
472AdhamMohi, Officer of Port Environment, Health and Safety in Jabal Ali in Dubai.
forms of marine pollution. There is also legislation from the International Maritime Organization and internal legislation of our own which can be used to prosecute offenders and impose fines for marine pollution. Our role here is to apply the law to protect the marine environment, and everyone plays a role in achieving this. An example of this are the inspectors who monitor offences during the periodic inspection of ships. Our precautionary measures include a search of 9 to 10 ships each day and we also have a qualified inspector who daily inspects oil tankers which are docked on Pier 11. In case of an emergency or an oil pollution incident we have a strategy in place to send a specialist team to tackle the pollution. If the incident is extensive, we have more teams standing by. However, we cannot control marine pollution caused by petrochemical pollutants or oil tankers. In these cases, we would ask for help from the Police and Armed Forces.473

In Jebel Ali port we have an operations room which has a 24-hour system to protect the harbour from all forms of marine pollution. We also have officers online 24 hours in case of synthetic petrochemical leaks and collisions which can cause serious environmental damage and cause fires. In the United Arab Emirates we have the Jamil system in place of the National Transport Authority, where the offshore section includes officials who are qualified in maritime matters. In this section there are officers who are internationally recognized; they inspect ships all over the country and are independent. If they find a ship that is not conforming to the laws of the marine environment, they issue a report online. Every Gulf country will then be able to identify which vessels are not conforming the legislation relating to the protection of the marine environment. This process was agreed in a Memorandum of Understanding of a Committee in Riyadh for inspection and control of ships. One of the issues that we focus on is to train individuals and companies, especially companies carrying petrochemical products, especially during loading and unloading. We also seek to make the sanctions as punitive as possible to act as a deterrent. We have also developed control systems for the marine environment such as satellites and GPS to track ships and also use helicopters to make regular patrols.474

Adham emphasized again the importance of providing information and training employees.475

473AdhamMohi, Officer of Port Environment, Health and Safety in Jabal Ali in Dubai.
474AdhamMohi,Officer of Port Environment, Health and Safety in Jabal Ali in Dubai
475Ibid
Engineer Ibrahim of the National Transport Authority in Abu Dhabi explained that the National Transport Authority in Abu Dhabi specializes in maritime environmental protection. Through his experience and his work with the National Transport Authority, there has been increased awareness of the danger and pollution risk of ships which carry oil and petrochemicals. When a maritime accident such as a collision or fire occurs, it affects marine life, the beaches and tourist attractions dramatically and the removal of oils and sea pollution will cost us a great deal of effort, time and money. As prevention is better than cure, our role is to oversee transportation to ensure maritime safety.476

The National Transport Authority comprises of people directly responsible for the safety of the marine environment so it has a key role at a national level concerning maritime safety. The National Transport Authority links with various authorities in the country continues as we have periodic meetings and agreements both at a local and international level. Islam is our original reference point, as the relationship between environmental law and religion has a special role because environmental protection in Islam has priorities that stem from the Islamic which calls upon us to preserve the environment from all forms of pollution, either at sea or on the land.477

Dr. Saud Al Junaibi, Director of Operations and Maritime Safety in the National Transport Authority in Abu Dhabi, described recent projects that have been undertaken near the sea which have had a negative impact on the marine environment, for example, repairs to the bridge and to damaged buildings near the beach and the expansion of the breakwater in Abu Dhabi which led to the destruction of the infrastructure of the marine environment. However, we also need to take into account the positive impact of the project as it will lead to the creation of a new attractive area for tourists and visitors.478

Saud Al Junaibi recommended that the most effective solution for the protection of the marine environment is cooperation between the various authorities and the community at both a local and national level so that each organization involved in the protection of the marine environment understands the role that they are expected to perform. Al Junaibi emphasized the importance of Islam in delivering principles of cleanliness and order. Islam calls for joint training to promote

476Adham Mohi, Officer of Port Environment, Health and Safety in Jabal Ali in Dubai.
477Ibid
478Dr. Saud Al Junaibi, Director of Operations and Maritime Safety in the National Transport Authority in Abu Dhabi.
cooperation between the country’s institutions which play a key role in the preservation of the marine environment.

The researcher disagrees with Saud Al Junaibi regarding his assessment of the negative impact of the project near the sea. There are benefits which come from new buildings near the beach, not least the tourists that are attracted to the area. Of course, there may be short-term damage to sea creatures and coral reefs, but the ecosystem will return to normal after a few years.479

Captain Nasser Ali, Director of the Marine and Harbour master in Jabal Ali in Dubai, explained: ‘Through my experience in the port area of marine pollution and its causes I can say it is not just one type but there are several types of pollution that may be different in the sea, air or land and some may be the result of an act outside a person's control’.480

The subject of marine pollution in recent years has attracted great interest at a local or global level. We in Dubai Port focused on this issue as we know we cannot be more productive without the preservation of the marine environment as people's health and economic well-being depend on it. Acting against marine pollution was far from just looking at the smoke coming from the chimneys of ships or the mere existence of an oil slick which need to be removed and cleaned. We have seen how the world has experienced rapid change and this is no less the case in the management of ports. The world also began to use alternative facilities like nuclear energy and countries began to use nuclear power to run private vessels such as the ship carrier. Marine pollution therefore took on a different and more dangerous shape, which called for increased control and clear strategies to ensure the protection of the marine environment.481

The big problem with many countries which use nuclear energy is that they do not have criteria and standards for the protection of the marine environment from pollutants such as dumping nuclear waste at sea without regard to what might happen to the marine environment and marine creatures. We are working within the laws organized by the International Maritime Organization so we are committed to these laws, but I notice through my presence here as manager of the Maritime Administration at the port of Jebel Ali that we have some limitations in terms of oversight and implementation of laws passed by the International Maritime Organization. I'm

479Ibid
480Captain Nasser Ali, Director of Marine and Harbourmaster in Jabal Ali in Dubai.
481Ibid
always learning and practising the laws which I need to implement and commit others to follow these laws, because they are in the interests of our marine environment and our overall health. Some people thought that we as a federal state have a special law for each Emirate for the protection of the marine environment and this is not true. We in the UAE have federal laws but one law on the environment issued by the Ministry of Environment and Water and directly responsible for the marine environment is the National Transport Authority. The role of other local governments is the establishment of supporting authorities such as the National Transport Authority, for example. Here in Dubai we have the Dubai Maritime Authority and Licenses Foundation.482

Captain Nasser Ali, Director of Marine and Harbour master in Jabal Ali in Dubai, considers that each geographical area has a special nature. We, here in the ports, are amending some laws of the International Maritime Organization because it gave us the right to do so. With regard to cooperation with local and foreign authorities, we do communicate with anyone that will benefit us in the protection of the port from marine pollution as we hold meetings with those authorities, whether local or international. We also have joint exercises between companies like the French company Total, one of the companies located at the port and also DUBAL and Shell, and the Gulf Centre for combating pollution in Bahrain. The important point is that our joint exercises identify our assets and capabilities in the event of pollution, as we ask the authorities who are working with us to provide data and information on their potential in the protection of the marine environment.483

The principles of such as Islamic law, put noble humanitarian principles into effect. The principles that serve the environment and rights do not conflict with the ethics of human beings. If we find that there is a conflict between the principles that serve the environment with ethics this means that there is an imbalance in the legislature and not in law. Law is a set of data and principles which have a true meaning. There is a very close relationship between the ethics of human beings and the protection of the environment. Our role here, as an authority concerned

482 Captain Nasser Ali, Director of Marine and Harbourmaster in Jabal Ali in Dubai.
483 Ibid
with the protection of the marine environment, is to raise the level of environmental awareness in dealing with the marine environment.\textsuperscript{484}

We also need to increase the deterrent role of the laws of the protection of the marine environment so we are in a strong position of command and control whether users are of the port of Dubai or the marine environment in general.\textsuperscript{485}

On existing laws in the UAE, I see that there is a close relationship between the legislature and the existing laws in the UAE, but I do not support the large number of lawmakers because it is not a healthy phenomenon to have a fragmentation of efforts and ideas because many legislators lead to varying compliance with the laws protecting the environment and this is negative. Central legislation in the state leads to concerted efforts and highlights the extent of compliance with the law. The problem is that the commitment to the marine environment varies from place to place, and from one Emirate to another according to the commitment of the authority or the Emirate. For example, I have cleaning equipment to clean the port but I make sure the ship does not throw waste into the sea in the first place. However, I find that the institution does not care that the measures are environmental and adopt some procedures but omit others.\textsuperscript{486}

Captain Nasser Ali explained that sustainable development and conservation is fundamental to the protection of the marine environment because last year we began to think about how to apply standards of sustainable development so we started to develop programmes and procedures that serve the evolution of our organization in the field of marine protection. Nasser Ali said that, the biggest problem we faced explicitly in the field of sustainable development is our lack of qualified people. He considered that they, have free equipment and sophisticated mechanisms for protection from marine forms of pollution, but I have a lack of qualified personnel. We have plans to create a generation of young people who are qualified and able to take responsibility for the protection of the marine environment. These plans are: 1 – To hold partnership agreements with other authorities to help us in protecting the marine environment. 2 - To train cadres in citizenship in local authorities to be able to understand international damage to the marine environment and able to raise awareness of how damage can occur to the marine environment.

\textsuperscript{484} ibid
\textsuperscript{485} Captain Nasser Ali, Director of Marine and Harbourmaster in Jabal Ali in Dubai.
\textsuperscript{486} Captain Nasser Ali, Director of Marine and Harbourmaster in Jabal Ali in Dubai.
The creation of strategies for community education and awareness should be an essential part of the protection of the marine environment and the basis of a safe and healthy life.\textsuperscript{487}

Captain Nasser Ali said that, through his experience of 25 years, he believes that the risk to the terrestrial environment is more than the risk to the marine environment. The sea cleans itself by the grace of the Almighty Creator. Ships’ captains always believed that this happens in the high seas and not in the region of territorial seas and this encourages them to stay committed to the laws protecting the marine environment.\textsuperscript{488}

At the end of our conversation, Captain Nasser Ali said he would like to advise people of the UAE government and citizens to increase their concern for the environment because without a clean environment there is no life so we must pay attention to it. He hopes that there are incentives that serve to protect the environment. During Captain Nasser’s travel and visits around the country he had observed that countries are paying more attention to preserving the marine environment. One Of Captain Nasser’s ambitions is always having a centre for environmental protection.\textsuperscript{489}

Captain Nasser has concern for the marine environment so he provided a study to the port administration which recommended imposing hundreds of Dirham’s on every ship entering the port which will enable the building of a small centre near the entrance, payment of staff wages and the purchase of hygiene kits. The main business of the centre would be to board the ship before it enters the port to take garbage from the deck free of charge. This process will encourage the crew not to throw waste into the sea and keep it until the ship enters the port of Dubai because there is someone who will take it at no charge. This process will also project an image of concern from the UAE for the marine environment. An important issue is to preserve the marine environment by setting a good example to others. For example, Captain Nasser is a manager so he wears a maritime safety vest not because he needs it very often, because he is often working at the main Office, but as a role model which his employees can emulate and regard him as a person to look up to.\textsuperscript{490}

\textsuperscript{487}Captain Nasser Ali, Director of Marine and Harbourmaster in Jabal Ali in Dubai.
\textsuperscript{488}Ibid
\textsuperscript{489}Ibid
\textsuperscript{490}Captain Nasser Ali, Director of Marine and Harbourmaster in Jabal Ali in Dubai.
Small guide booklets which each employee must carry have a very important role in environmental awareness in our organization. All our employee handbooks show all the maritime safety procedures that must be followed for the benefit of the marine environment. Captain Nasser has 88 questions for all oil tankers entering the port of Dubai and they must be answered before entering or they are not allowed to enter. Of course, these questions are related to marine safety and I took them from the International Maritime Organization (IMO) with some local modifications added. 491

I strongly agree with Captain Nasser in all his comments regarding protecting the marine life except for one point when he said that nuclear energy is a more dangerous source of marine pollution. I think that nuclear energy is a safe source because of the high standard of protection. I mean by nuclear energy the kind devoted for peaceful purposes not for war which destroys everything.

Appendix B

1- Allah said in the holy Quran “And We revealed to Musa and his brother, saying: Take for your people houses to abide in Egypt and make your houses places of worship and keep up prayer and give good news to the believers”. 492

2- Allah said in the sense “And remember when He made you successors after Adam and settled you in the land-- you make mansions on its plains and hew out houses in the mountains-- remember therefore Allah’s benefits and do not act corruptly in the land, making mischief”. 493

3- And thus we established Yusuf in the land to take his location (there) where he decides. We (make) our mercy alight on whomever We decide, and We do not waste the reward of the fair – doers, Allah said in the sense "And thus did We give to Yusuf power in the land-- he had mastery in it wherever he liked; We send down Our mercy on whom We please, and We do not waste the reward of those who do good”. 494

491 Ibid
492 Holy Quran, SuratYunus, Verse 87.
493 Holy Quran, SuratAl Araf ( The Battlements), Verse 74.
494 Holy Quran, Surat Yusuf, Verse 56.
The following verses also show the way the Quran presents the whole universe:

4- "We created not the heavens, the earth, and all between them, merely in (idle) sport; we created them not except for just ends. But most of them do not understand." Behold! In the creation of the heavens and the earth; In the alternation of the night and the day; In the sailing of the ships through the ocean for the profit of mankind; In the rain which Allah sends down from the skies And the life which He gives therewith to an earth that is dead; In the beasts of all kinds that He scatters through the earth; In the change of the winds and the clouds which they trail like their slaves between the sky and the earth - (here) indeed are Signs for a people that are wise.

5- "It is He who has made you (His) vicegerents, inheritors of the earth: He has raised you in ranks, some above others: that He may try you in the gifts He has given you: for your Lord is quick in punishment: yet He is indeed Oft-forgiving, Most Merciful."

6- “Do you not see that Allah has made what is in the heavens and what is in the earth subservient to you, and made complete to you His favors outwardly and inwardly? And among men is he who disputes in respect of Allah though having no knowledge nor guidance, nor a book giving light”.

7- "It is He who has made you (His) vicegerents, inheritors of the earth: He has raised you in ranks, some above others: that He may try you in the gifts He has given you: for your Lord is quick in punishment: yet He is indeed Oft-forgiving, Most Merciful."

8- “Allah is the one who brought you into being from the earth and has made you settle therein”.

496 Holy Quran: Surat Al- Baqara 2: 164
497 Holy Quran, Surat Al Anam(Cattle), Verse 165.
498 Holy Quran, Surat Luqman(The Sage), Verse 20.
499 The previous verses of the Holy Quran mentioned by Mustafa Abu-Sway. Ibid.
9- “And if the people of the towns had believed and guarded (against evil) We would certainly have opened up for them blessings from the heaven and the earth, but they rejected, so We overtook them for what they had earned”. ⁵⁰⁰

10- Thus, have We made of you an Ummat justly balanced, that ye might be witnesses over the nations, and the Messenger a witness over yourselves ⁵⁰¹.

⁵⁰⁰ Holy Quran, Surat Al Araf (The Battlements), Verse 96.
⁵⁰¹ Holy Quran, Surat Al Baqarah, Verse 143