THE ROLE OF ISLAMIC SHARIA TO PROTECT MARINE ENVIRONMENT WITH THE EFFORTS OF INTERNATIONAL LAW

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Marine pollution is one of the major problems in the world and in particular around the coasts of oil producing countries. The Arabian Gulf countries in general and in 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. 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 behavior. 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. In this research we consider the Sovereignty and the role of international treaties to protect marine environment. Furthermore, this research will show the role of UAE and Islamic Sharia to protect the marine environment.

Keywords: Marine, environment, International Law, Shariah

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[1].

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

[1]Hassan, AI. (2001) The History of Social and Law Systems. Alexandria, Diwan for academic publications. P. 19

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[2].

There are several environmental elements which are considered as cases worthy of legal protection from the legislature. Some of these cases are illustrated below:[3]

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 Clausom" published in 1625.[4]

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

[2]Hindi, J. et al. (2003) The History of Law. Damascus University publications: Damascus. Syria. P. 56
[3]Dashti, AI. (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
[4]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).

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.[5]

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.[6]

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.

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 1st 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

[5]Kiss, A and Shelton, D [2007].Guide to International Environmental Law. The George Washington university law school public law and legal theory working paper no. 347 published by Martinus Nijhoff publishers 2007, P 10-12.
[6] Ibid

Saint Vincent, the Grenadines and Guinea and the other four were about measures of provision.[7]

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 conservation and sustainable exploitation of swordfish stocks in the South-eastern Pacific Ocean.[8]

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 *ratione materiae* that extends beyond it. [9]

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.[10]

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.

[7]Ravin, M (2005).ITLOS and Dispute Settlement Mechanisms of the United Nations Convention on the Law of the Sea, Available at http://www.un.org/Depts/los/nippon/unnff_programme_home/fellows_pages/fellows_papers/mom_0506_cambodia_itlos.pdf Accessed March 2014.

[8] Ibid

[9] Ibid

[10] Houston, Christopher, (2004), Islammism, Castoriadia and Autonomy. Thesis Eleven, Number 76, P 56.

Javaid explores how Islamic international law is linked to concepts of spirituality and religion.[11]

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.[12] 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.[13]

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.[14] The application of law is more focused on issues connected with issues of human rights.[15]

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.

5. 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

[11]Rehman. J (2011). Siyar(Islamic International Law), The Higher Education Academy, UK Centre for Legal Education, P 4.
[12] Hamid Sultan (1987). Public International Law. Cairo, Arab Renaissance Publishing House, P 11, 12.
[13]AlSavori, M. A. (1997). History of Legal Systems, Dubai, Modern Printing Press, P 15.
[14]Ibid. p. 12
[15] Jeremy S [2008]. The Historical Origins, Convergence and Interrelationship of International Human Rights Law, International Humanitarian Law, International Criminal Law and Public International Law and their Application from at least the Nineteenth Century. Human Rights and International Legal Discourse, Vol. 1, 2007; *Hofstra Univ. Legal Studies Research Paper No. 08-24.*

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.[16]

Following, are the facts of the case[17]:

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:

'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.[18]

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

[16] [16]Cassese Antonio, International Law Oxford University Press, 2nd edition, 2005, New York, 480-485.

[17]Ibid

[18]6. Mark W. Jarris& John E. Noyes, Cases and Commentary on International Law West Publishing Company, 1997, St. Paul, 586

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.[19]

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 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.22[20]

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.[21]

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

[19] Ibid

[20]21. Austen L. Parrish, Trail Smelter Deja Vu: Extraterritoriality, International Environmental Law and the Search For Solutions to Canadian-U.S. Trans-boundary Water Pollution Disputes, Boston University Law Review, 2005, April. 2, 3.

[21]http://www.unescap.org/DRPAD/VC/document/compendium/int7.htm, Access July 2014.

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.[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.[23]

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.[24]

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.[25]

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 Shariah[26] relies on teaching people how to live healthy lives and avoid pollution, rather than punishing them for not doing so.

6. 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

[22]Ibid. p. 17-22.
[23] Ibid
[24] Ibid
[25] Ibid
[26]Shari'ah means Islamic Rules.

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.[27]

6.1 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.[28]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.[29]

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.[30]

[27]Degan, V (1997). The Sources of International Law Netherlands. Martinus Nijhoff publishers,P5.
[28]Amjad, A (2002). Summary of the Public International Law. Fujairah National Press, P 67.
[29]Gulati, C. A. B. a. G. M (2010). "Withdrawing from International Custom." Yale Law Journal, Vol. 120, P202,2010.
[30]Shaw, M (2003). International Law. Cambridge, Cambridge University,PP 65, 66.

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.[31]

6.1.1 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.[32]

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. [33]

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 Shariah 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).

[31]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].
[32]Amjad, A (2002). Summary of Public International Law. Fujairah National Press, PP 67-73.
[33] Ibid

6.2 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.[34]

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.[35]

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.[36]

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.[37]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.[38]

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;

[34]Schreurer. C. Sources of International Law: Scope and Application. Emirates Lecture Series 28,published by the Emirates Centre for Strategic Studies and Research.
[35]Ibid. PP 77-78.
[36] Ibid, P 2,3.
[37]Degan, V (1997). The Sources of International Law. Netherlands, Martinus Nijhoff publishers ,P5.
[38] Hamid Sultan (1987). Public International Law. Cairo, Arab Renaissance Publishing House, PP 232-255.

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.[39]

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 Shariah many centuries ago so, if we search within Shariah Law, we will find that the Quran and the Prophet Mohammed's (PBUH) Sunnah include those standards in order to protect our marine life.

7. 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.[40]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*[41].

[39]Waelt. A (2011). The UAE Maritime Code, Available http://www.uae-shipping.net/forums/united-arab-emirates-shipping-laws-f8/the-uae-maritime-code-t22.html, Access Oct 2012.
[40] Powell. E(2013). Islamic Law states and the International Court of Justice Journal of Peace Research, P 1.
[41] Al Qari. Ali (2002). Mirqaat Al Mafateeh, Beirut, Dar Al fakar, P35.

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.[42] 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.[43]

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.[44] 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.

8. 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

[42] Al Zuheily. W(2012). International Relations in Islam Damascus, Dar Al Fakar,P18-30.
[43]Ibid. P18-30.
[44]Ibid.

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.[45]

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, 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.[46]

9. 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.[47]

9.1 The Principle of Good Faith

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:

[45]Shelton, A. K. A. D (2007). Guide to International Environmental Law. United States of America, MartinusNijhoff Publishers,P.11-13.
[46]Ibid. p. 13
[47] Ole W. Pedersen Environmental principles and Environmental justice [2010]. Environmental Law Preview, Env. L. Rev. 2010, 12(1), 26-49.

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.[48]

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.[49] 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.[50] 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.[51]

[48]Harren. R, Nd, The principle of Good faith in the law of the World Trade Organisation based on Marrakesh agreement establishing the World Trade Organisation, Cambridge University Press, P4.
[49] O'Connor, J (1992). Good Faith in International Law. International & Comparative Law Quarterly, I.C.L.Q. 1992, 41(2), 484-485
[50] O'Connor, J. (1991). Good Faith in International Law. Dartmouth Publishing, London, pp. 124.
[51] Goodwin-Gill, G. (2004.) State Responsibility and the "Good Faith" Obligation in International Law.

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.[52] 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.[53] 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.[54] From the early stage of Islam, Shariah 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.[55]

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 infavour 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.[56]

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

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Hart Publishing, Oxford in Fitzmaurice, M. and Sarooshi, D. eds (2004) Issues of State Responsibility before International Judicial Institutions. Hart Publishing, Oxford, pp. 75- 88.

[52]Noman, M (2004). International Protection for the Marine Environment. Private Legal Study for the Red Sea. P99.

[53] See Second Paragraph of Article two of the United Nations in Document ofMarch1995 DPI/511 Reprint 5M – 93251.

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

[55] Fiona Trust & Holding Crop v Privalor [2010]. EWHC 3199.

[56] Mohammad Alramahi,Nd Disputes Resolution in Oil and Gas Contracts[2011]. International Law Review,I.E.L.R. 2 011, 3, 78-85

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 157states that the parties of the authority must fulfill their obligations with good faith in order to enjoy the rights and privileges of their membership.[57]Article 300 of the United Nations on the Law of the Sea confirms the Principle of Good Faith.[58]

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.[59] Cheng, points out that international law, the arbitral tribunal and ICJ apply general principles such as the Principle of Good Faith.[60] The ICJ relied on the good faith principle in the case of nuclear tests when the French agreed to a unilateral declaration that they would stop atmospheric nuclear tests.[61] 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.[62]

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.[63] 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.[64]

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.[65]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.

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[57]Article 157 of the United Nations on the Law of the Sea 1982.
[58]Article 300 of the United Nations on the Law of the Sea 1982.
[59]Noman, M (2004). International Protection for the Marine Environment. Private Legal Study for the Red Sea. P101.
[60]Cheng, B. (1953) General Principles of Law, London, Stevens, p 130.
[61]Sands, P (2004). Principle of International Environmental Law.Second edition, Cambridge, Cambridge University Press, P 130
[62] See Nuclear Tests Cases(1974) ICJ Reports 267,2680.43
[63]United Nations (1990). Events of Extracting Weapons. New York, p. 7.
[64]The Rio Declaration on Environment and Development. International and Political Magazine, S 110, 1992, p 7.
[65] Dina Elshurafa [2012]. The 2012 Saudi Arbitration Law and the Sharia'h factor: a friend or foe in construction?*International Arbitration Law Review*. Int. A.L.R. 2012, 15(4), 132-139

9.2 The Principle of Good Neighborliness

Dawalib, states that under Islamic Shariah, your neighbour has many rights and that the prophet Mohammad (PBUH) provides rights for aneighbor, 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.[66] 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.[67] There is no doubt that international cooperation has createdglobal awareness, improved relations between societies and strengthened the feeling of human solidarity.[68] 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.[69]

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.[70] 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.[71]

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.[72] The arbitration court resolution on Lac

[66]Dawalibi. M, (1998). The Different Aspects of Islamic Culture. France, University of France Press, P 235- 240.
[67] See Paragraph 3 of Article 1 of the United Nations.
[68]Noman. M (2004). International Protection for the Marine Environment. Private Legal Study for the Red Sea. P 112.
[69]Principle 24 of the Stockholm Declaration, 1972.
[70]Hashem,S.(1999). International Responsibility for Compromising the Integrity of the Marine Environment. Cairo. Dar Al Nahda Al Arabia. P 173.
[71]Amer, S (1973). Introduction to International Environment Law. Cairo. University of Cairo.p 74.
[72] Paragraph 27 of the Award of International Arbitral Tribunals with regard to the situations of San Laurence (1986).

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.[73]

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.[74] 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.[75]

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.[76]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.[77] 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.[78]

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.[79] 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

[73] 24, International Law Reports (1957). P 119.

[74]Noman, M (2004). International Protection for the Marine Environment. Private Legal Study for the Red Sea. P 117.

[75]Rateb, A(1963).Diplomatic Organisation, Cairo. Dar Al Nahda Al Arabia. P 13.

[76]Professor AishaRateb 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.

[77]Noman, M (2004). International Protection for the Marine Environment. Private Legal Study for the Red Sea. PP 103, 104.

[78] See preamble of the International Charter of the United Nations as well as the International Court of Justice (ICJ). Paragraph 7 of Article 38.

[79]The International Court of Justice (ICJ) judgment issued on 22.06.1973.

and affect their co–operation as a result of overlapping interests of their citizens or authorities in a geographic region.[80]

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. 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.[81] Furthermore, the Stockholm Declaration stated that countries must respect neighbouring countries by avoiding any harm to their environment.[82] 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.[83]

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.[84]

9.3 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

[80] See Paragraph 27 of The Award of International Arbitral Tribunals considering the issue of San Laurence, issued on 17.07.1986.
[81] The Rio Declaration on the Environment and its Development. International and Political Magazine, S110, 1992, pp. 1-3.
[82] For more detail see Stockholm Declaration, Principle 21, on the Human Environment (1972).
[83] Article 123 of the Geneva Convention 1958.
[84] Article 197 of the United Nations on the Law of the Sea Convention 1982.

roots of Islamic Environmental practice are established in the Holy Quran and guidance (Sunnah)[85]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.[86] 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.[87]The importance of the principle of non-arbitrariness entails a constant need to maintain the concept of social solidarity to develop and progress society.[88] 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.[89]

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.[90] 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.[91] 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.[92]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

[85]Sunnah means the actions and saying of the Prophet Mohammad (PBUH) during his life.
[86]Sameh, M (2013). Principle of Abuse of Right. Available at http://www.alukah.net/Spotlight/1080/61389/ Accessed May 2014.
[87]Noman, M (2004). International Protection for the Marine Environment. Private Legal Study for the Red Sea. PP 105.
[88]Noman, M (2004). International Protection for the Marine Environment. Private Legal Study for the Red Sea. PP 106 -108.
[89]Akhtar, M [1996].Towards an Islamic Approach for Environmental Balance. Islamic Economic Studies Vol. 3, No. 2, June 1996.
[90]Norman .M (2004). International Protection for the Marine Environment. Private Legal Study for the Red Sea. PP 106,107,108.
[91]Sands, P.(2004.) Principle of International Environmental Law.Second edition, University Press, Cambridge, p. 151.
[92] For more detail, see Principle 21 of the Conference of the Global Environment held in Stockholm.

jurisdictions, rights and freedoms which are recognised by this convention shall be such that they do not constitute any abuse of those rights.[93]

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.[94] 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 environment as, if they harm the environment by pollution or other means, then God will punish them on the day of judgment.[95]

9.4 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 *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.[96]

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.[97] 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.[98]

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[93]Article 300 of the United Nations on the Law of the Sea.

[94] Charter of the United Nation number A/CN. 4/SER .A/ADD.1.

[95] The World Conservation Union(IUCN) (1994). Environmental Protection in Islam IUCN Environmental Policy and Law Paper No.20 Rev: P17.

[96]Akhtar. M[1996].Towards an Islamic Approach for Environmental Balance. Islamic Economic Studies Vol. 3, No. 2, June 1996.

[97]Noman, M (2004). International Protection for the Marine Environment. Private Legal Study for the Red Sea. P 121.

[98]Article 198 of the United Nations on the Law of the Sea Convention 1982.

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. 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.[99]

The principle of Shura[100]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 the1969 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).[101]

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.[102] 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.

9.5 The Precautionary Principle

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

[99]Article 199 of the United Nations on the Law of the Sea Convention 1982.
[100]Shura means consultation and considering the best idea which is provided by a group of relevant people.
[101]Noman, M (2004). International Protection for the Marine Environment. Private Legal Study for the Red Sea. P 124.
[102]Noman, M (2004). International Protection for the Marine Environment. Private Legal Study for the Red Sea. P 125.

"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."[103]

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.[104]

Islamic Shariah 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.[105] 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 principle between states, most countries act carefully when making decisions about activities that can have an adverse impact on the environment.[106]

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.[107] The interpretation of this principle requires ensuring that the activities of the States

[103] Jonathan Show MP,. Minister for Marine, Landscape& Rural Affairs and Minister for the South East (2008) Department for Environment, Food and Rural Affairs.

[104]Bugge. H, Principles of International Environmental Law. Available athttp://www.uio.no/studier/emner/jus/jus/JUS5520/h11/undervisningsmateriale/jus5520_Principles%20of%20International%20Environmental%20Law.pdf. Accessed on May 2014.

[105]Sunstein, Cass R[2003]. Beyond the Precautionary Principle. U Chicago Law & Economics, Olin Working Paper No. 149; U of Chicago, Public Law Working Paper No. 38.

[106]Noman, M (2004). International Protection for the Marine Environment. Private Legal Study for the Red Sea. P 129.

[107]Sands, P (2003).Principles of International Environmental Law. 2 (ed)Cambridge, Cambridge University Press, PP 267-269.

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".[108]

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.[109]

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.[110] 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.[111]

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.[112]

Countries throughout the world compete to develop nuclear energy, some for non-peaceful purposes such as producing nuclear weapons and others looking to harness

[108]Bergen Ministerial Declaration of Environment. Minister Members of the Organisation of Economic Cooperation and Development, held in 1990.
[109]Sands, P (2003). Principles of International Environmental Law. 2ndCambridge, Cambridge University Press, P268.
[110]Noman, M (2004). International Protection for the Marine Environment. Private Legal Study for the Red Sea. P 131.
[111]Admiralty and Maritime Law Guide."The International Safety Management Code".Available at http://www.admiraltylawguide.com/conven/ismcode1993.html Accessed Feb/ 2011.
[112]SrikanthHariharan, [2012].Nuclear safety, Liability and Non–proliferation; a Legal Insight International Energy Law Review, I.E.L.R. 2012, 3, 108-120.

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.

9.6 The Principle of Sustainable Development

The 1987 Brundt land 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.[113] 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.[114] 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.[115] 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 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.[116]

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

[113] Report of the World Commission on Environment and Development: (TheBrundtland Report) Our Common Future (1987)43.
[114]Dernbach, John C[2011]. Sustainable Development as a Framework for National Governance.*Case Western Reserve Law Review*, Vol. 49, No. 1, 1998.
[115]Sands. P(2003).Principles of International Environmental Law. 2nd ed. Cambridge, Cambridge University Press, P257.
[116]Sulaiman,. A[2011].*Study on the Concept of Sustainable Development: focusing on Islamic Banking and Role of Precautionary Principle,*Medwell Journal Volume: 6 | Issue: 3 | Page No.: 7.

governments' environmental policies.[117] 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.[118]

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.[119] 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 Islam which obligate Muslims to clean the environment and cause no harm, such asthe necessity of removing waste from the street.[120]

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.[121]

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[117]Verschuuren, Jonathan M[2006]. Sustainable Development and the Nature of Environmental Legal Principles. Potchefstroom Electronic Law Journal, Vol. 9, No. 1.
[118]Ibid,P 4.
[119] Ibid,P16.
[120] Mahmoud Yousef Abed Al – Rahim, (2010)Environmental Sustainability and Islam. The Royal Aal Al- Bayt Institution for Islamic Thought. PP 2,5,7.
[121]IMO (2010). Brief History of IMO. Available at http://www.imo.org/About/Pages/Default.aspx Accessed Feb/2011.

9.7 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.[122]

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".*[123] 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.[124]

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.[125][126]

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[122]Sand,.P (2003).Principles of International Environmental Law.2ndedCambridge, Cambridge University Press, PP 280,281.

[123]Surat Al Kahaf. Verse 46, Holy Quran, P 299.

[124]Mouat, J(2010). Economic Impacts of Marine Litter Available at http://www.kimointernational.org/WebData/Files/Marine%20Litter/Economic%20Impacts%20of%20Marine%20Litter%20Low%20Res.pdf Accessed May 2014.

[125]Luppi, Barbara;Parisi, Francesco; and Rajagopalan, Shruti. Environmental Protection for Developing Countries: The Polluter-Does-Not-Pay Principle (February 6, 2009). International Review of Law and Economics, Forthcoming; Minnesota Legal Studies Research Paper No. 09-08. Available at SSRN: http://ssrn.com/abstract=1339063

[126]Luppi, 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 30thApril 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.[127]

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.[128]

10. 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 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.

[127] Brans, Edward and Betlem,Gerrit[2006]. Environmental Liability in the EU: An Introduction.University of Southampton, School of Law, Cameron May International Law and Policy, PP 17 – 20.

[128] The MARPOL 1973 convention, was modified by the Protocol of 1978