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WORLD MARITIME UNIVERSITY

Malmö, Sweden

**MULTILATERAL AGREEMENT
ON THE PROTECTION OF
THE MARINE ENVIRONMENT OF
THE CASPIAN SEA AREA**

By

HOSSEIN ALI GHOLIZADEH

The Islamic Republic of Iran

A dissertation submitted to the World Maritime University in partial
fulfilment of the requirements for the award of the Degree of

MASTER OF SCIENCE

in

GENERAL MARITIME ADMINISTRATION

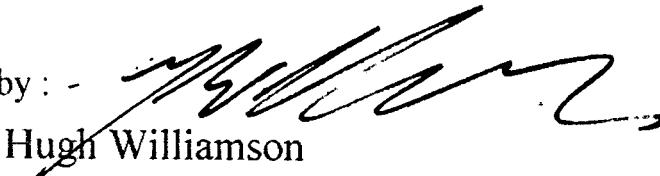
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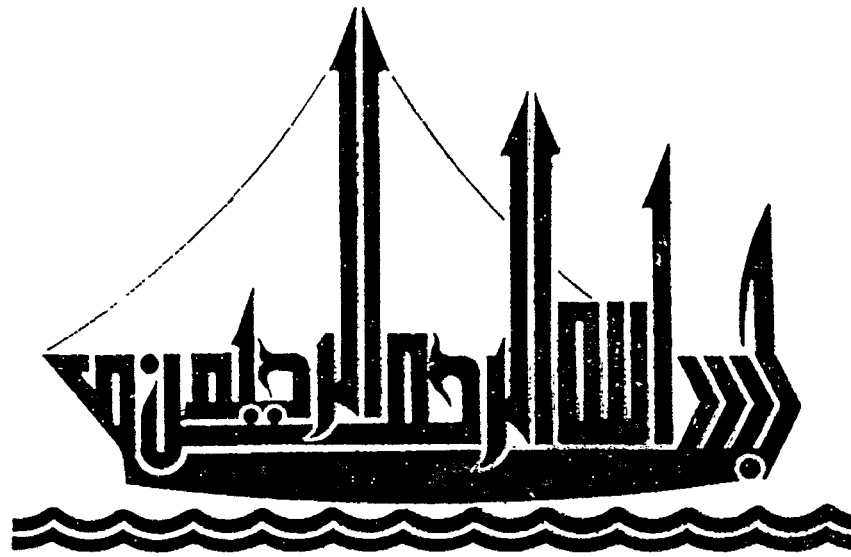
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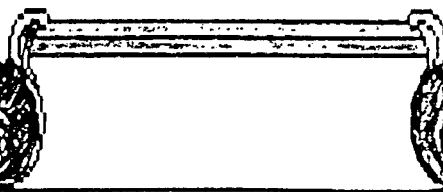
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IN THE NAME OF ALLAH,
THE COMPASSIONATE,
THE MERCIFUL.



بسمه تعالی

تقدیم به :

- روح مطهر عارف متقی،
معلم بزرگ قرن و بیت‌شکن
دوران امام خمینی قدس
سره الشریف.
- ارواح طیبه شهدا خصوصا
شهداء مفقود الاثر و خانواده‌های
معظم آنها که در هر شرائطی
راضی به رضای الهی بوده‌اند.
- مرید مخلص، یار امام راحل
و ادامه دهنده راهش رهبر عزیز
حضرت آیت‌الله... خامنه‌ای
حفظه...

MULTILATERAL AGREEMENT ON THE PROTECTION OF THE
MARINE ENVIRONMENT OF THE CASPIAN SEA AREA

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ABSTRACT

The Caspian Sea as the greatest lake in the world with a surface of 37500 km², a water volume of 78000 km³, a maximum depth of 1025m and a great many valuable characteristics and specifications is now a polluted environment.

The research on its legal regime shows that there is no comprehensive legal agreement on this sea including a comprehensive multilateral agreement for the protection of the marine environment.

The assessment of the water quality of the Caspian Sea in 1991, specifies that most part of it is contaminated. Furthermore, the new political situation of the region has intensified the need for taking higher steps by its coastal states on this issue. The results of the studies on the Caspian Sea are integrated within the first three chapters of this paper.

Learning from the experiences and measures taken by the coastal states of semi-closed waters (regional seas), namely the regional conventions, a draft of a convention on the Protection of the Marine Environment of the Caspian Sea and a protocol concerning Regional Co-operation in Combating Pollution by Oil and other Harmful Substances in Case of Emergency is proposed.

The objective is that the coastal states of the Caspian Sea collaborate in saving this sea from pollution for the benefits of their present and future generations.

Chapter 1

CASPIAN SEA

Chapter 1-1

GENERAL INTRODUCTION

Chapter- I

INTRODUCTION

The protection and preservation of the environment is a global issue, which calls for international endeavours and co-operation. The consequence of wrong use of natural resources and industries or omissions in this relation not only may endanger the health of society and economic interests of a country but can also cause adverse result to other nations. In this respect the nature of pollution on land differs from water pollution in dissemination although both of them are influenced from air pollution. If the water is polluted it will be spread in a region through rivers and seas and will damage the coastal area and living resources of other nations at sea and endanger the health of societies and habitats.

From governments point of view, the economy is prior to ecology and health of the community because of their interests and responsibilities to solve the economic problems of the country that they are facing. Governments usually have reaction response for the environment instead of action and preventive measures despite of the fact that sometimes reimbursement of damages to the environment is actually impossible.

Taking into account these facts the necessity of international measures is indispensable. The United Nations Organization has made considerable efforts since the early 1900 in this relation, particularly after the Second World War. The adoption of conventions and resolutions, the establishment of especial agencies to deal with environmental issues are the most significant results of its endeavours.

The International Maritime Organization, which as an especial agency, is responsible for the establishment of standards and rules for safety of life at sea and prevention of pollution of the marine environment, has adopted a certain number of conventions and recommendations. Many countries have ratified and taken them into national legislation but many countries like the majority of the coastal states of the Caspian Sea are not yet party to many of these conventions.

Although the Caspian Sea is a lake it is larger than the Baltic Sea and the

Black Sea. There are five coastal states across its coasts, the most of which have recently become independent.

The Caspian Sea should be considered as a patient environment suffering from pollution because of the deleterious utilisation of its resources by, and the diffuses of the industries of, the former USSR.

The purpose of this paper is to consider the various facts about the Caspian Sea, including the latest evaluation of water quality and to introduce some of the regional conventions on the protection of the marine environment against pollution. Finally to take this lesson that the multiple users of the Caspian Sea need a similar legal framework for the purpose concerned if they are willing to survive and preserve the Caspian Sea for the interests of present and future generations of their nations. This paper will furthermore recommend the draft of a model regional agreement on the mentioned issue. The sequence of this paper will be as follows:

- a. Part I, chapter 1, will provide a general background of the Caspian Sea including a brief introduction of the existing legal regime. In chapter 2 the last assessment of water pollution is considered.
- b. Part II, chapter 3 and 4, the structure of a regional convention and a related protocol is introduced.
- c. Part III, chapter 5, a draft of the convention for the protection of the marine environment of the Caspian Sea is recommended.

THE GEOGRAPHICAL REGIME

The world's greatest inland sea, the Caspian Sea, lies beyond the Caucasian peaks at Europe's south-eastern most extremity and dominates the huge, flat expanses of western Central Asia.¹

Its name derives from the ancient Kaspi peoples, who once lived in Transcaucasia to the west ; among its other historical names, Khazarsk and Khvalynsk derive from former peoples of the region , while Girkansk stems from girkanos , the country of wolves. Its elongated shape sprawls for nearly

¹. Encyclopaedia Britannica, 15th ed. 1984, Vol. 3, "Caspian Sea", P. 980-982.

750 miles (1200 kilometres) from north to south although its average width is only 200 miles (350 kilo-metres). It covers an area of 143,000 square miles (371,000 square kilometres larger than Japan) while its surface lies some 93.5 feet below sea level. The maximum depth, toward the south is 3,360 feet. Except for its southern shores, which lie at the foot of the giant Elburz Mountains of Iran six-sevenths of the Caspian coast runs through Azerbaijan, Russia, Kazakistan, and the Torkmanistan territory.

It is often stated that the Caspian Sea is the greatest salt lake in the world, but this is not absolutely correct, as scientific studies have shown that, geographically until quite recent times, it was linked, via the Sea of Azov, the Black Sea, and the Mediterranean, to the world ocean. This factor has strongly moulded all aspects of its physical geography. The Caspian Sea is of exceptional scientific interest because its history, particularly in respect to former fluctuations in both area and depth, offers clues to the complex geological and climate evolution of the region. Manmade changes, notably those resulting from the construction of dams, reservoirs, and canals on the immense Volga River system (which drains into the Caspian Sea from the north), have had their own effect on the contemporary hydrological balance. The Caspian Sea is also of great importance in the transportation networks of the region and in the production of petroleum and gas. It is anticipated that the use of its splendid sandy beaches for health and recreation resorts will increase considerably in the future.

TOPOGRAPHY

The Caspian Sea has as many as 50 islands, mostly small. Chechen, in the Northwest, is the largest followed by Artyon, Zhiloy, Tyuleny, Morskoy, Kulaly and Ogurchinsky. The basin, as a whole, is usually divided into the North, Middle, and South Caspian Sea, using relief and, in part, hydrological characteristics as the basis.

Shoreline features: The shores of the north Caspian Sea are low and reflect the great accumulation of alluvial material washed down by the Ural,

Teresk, Sulak, and, above all, the Volga rivers, the deltas of which are extensively developed .

The western shore of the middle Caspian Sea is hilly. The foothills of the Great Caucasus loom close but are separated from the coast by a narrow marine plain. The Apsheron Peninsula, on which the city of Baku is sited, thrusts out into the sea here , while, just to its south, the floodplain of the Kura and Araks rivers forms the Kura-Araks Lowland.

The southern shores are formed of the sediments of the Lenkoran and Gilan-Mazanderan lowlands, with the high peaks of the Talishand Elburz mountains rearing up close inland . The eastern shore of the south Caspian Sea is also low land and is formed by sediments resulting from wave action; it is broken sharply by the low, hilly Cheleken and Krasnovodsk peninsulas.

For the most part, the eastern shore of the middle Caspian Sea is precipitous, with the sea destroying the margin of limestone plateau of Mangyshlak and Kenderli-Koyasan. A most important feature of this area is Kara-Bogaz-Gol, the Caspian Sea's largest, split off from the main body of water by the Kara-Bogaz barrier spits; the Krasnovodsk and Kenderli spits are similar in type. The major rivers- the Volga, Ural, and Terek- empty into the north Caspian Sea, with their combined annual flow accounting for 88 percent of all river water entering the sea. The Sulak, Samur, Kura, and a number of smaller rivers flow in on the western littoral, contributing about seven percent of the flow. The remainder comes in from the rivers of the Iranian shore.

The eastern littoral is notable for a complete lack of permanent streams.

SUBMARINE FEATURES

The north Caspian Sea, with an area of 30,000 square miles, is the shallowest portion of the sea, with an average depth of 13 to 20 feet, reaching a maximum of 66 along the boundary with the middle Caspian Sea. The bottom is formed of monotonously rippling sedimentary plain, broken only by a line of southern bars and shoals (some of which provide foundations for Tyuleny, Kulaly, and Zhemchuzhny islands) reflecting underlying structural

rises. Beyond this belt, known as the Mangyshlak Bank.

The Middle Caspian, 53,000 square miles in area, forms an irregular depression with an abrupt western slope and a gentler eastern gradient. The shallowest portion (a shelf with depths up to 330-460 feet) extends along both shores, with the western most slope furrowed by submerged landslips and canyons. The remains of ancient river valleys have been discovered on the gentler northern slope; the bottom of the depression is formed of a plain that deepens to the west.

The Apsheron Bank, a belt of shoals and islands rising from submerged elevations of older rocks, marks the transition to the south Caspian Sea, a depression covering about one-third of the sea. This is fringed by a shelf that is narrow to the west and south but widening to the east. A series of submerged ridges breaks up the relief to the north, but otherwise the bottom of the depression is a flat plain, with the maximum depth of 3,360 feet.

GEOLOGICAL ORIGINS

The relief of the Caspian Sea reflects its complex geological structure. The northern portion forms a peripheral section of the North Caspian tectonic depression, a vast downward warp of the Earth's surface that is itself part of the great ancient structural block known as the Russian Platform.

The Mangyshlak Bank links the mountainous peninsula of the same name to the east with underlying western shore structures; all the rocks concerned reflect an outlying structural uplift of the Hercynian mountain-building movement, which occurred some 290,000,000 years ago. The bottom of the Middle Caspian is very complex. To the west, the submarine shelf is part of the sagging edge of the Great Caucasus Geosyncline, while the submerged Turan Platform on the east swells up in the feature known as the Kara-Bogas swell. The Apsheron Peninsula regions bear the impress of the Alpine mountain building and folding period (dating from some 10,000,000- 26,000,000 years ago), which created the Caucasian ranges, as do the folded structures of the western South Caspian depression.

The entire South Caspian, in fact has as its base a sub-oceanic type

basalt crustal structure, although this is overlain in the south by huge accumulations of sedimentary layers many miles thick . The great age thus indicated for the area has led geologists to postulate that this the remnant of the geologically ancient Tethys Sea. Similarly, the North Caspian Sea bottom is also very old, dating back to Precambrian times, or at least 570,000,000 years ago .

The bottom of the North and Middle Caspian has a continental-type crustal structure. It has been suggested that the Middle Caspian depression results from a sagging at the edge of these ancient structures that occurred in Late Paleozoic times, about 250,000,000 years ago; the border between the Middle and South Caspian is, in fact, still experiencing folding activity. Until the upper Miocene, about 12,000,000 years ago, the sea basin of the Caspian was connected closely to the Black Sea, through the structural depression known as the Manych Trench .

This link was broken after an upper Miocene elevation, and the Caspian became an enclosed body of water, with oceanic submarine characteristics preserved today only in the Southern Caspian. The connection with the ocean was re-established in the upper Pliocene, about 2,500,000 years ago , and it is possible that there was also a link northward across the expansive Russian plain to the Barents Sea of the Arctic. In the ensuing Quaternary times, great glaciers advanced and retreated across the Russian plain, and the Caspian Sea itself (in successive phases known as Bakin, khazar, and Khvalyn) alternately shrank and swelled out. This process left a legacy in the form of peripheral terraces, marking old shorelines and also be traced in the recent underlying sedimentary layers.

CLIMATE

The North Caspian lies in a moderately continental climatic zone, while all the Middle (and most of the south) Caspian lies in the moderately hot belt .

The southwest is touched by subtropical influences, and this remarkable variety is completed by the desert climate prevailing on the

eastern shores. Atmospheric circulation is dominated in winter by the cold, clear air of the Asiatic anticyclone, while in summer spurs of the Azores high pressure and the South Asian low-pressure centres are influential. Complicating factors are the cyclonic disturbances rippling in from the west and the Great Caucasian ranges.

As a result of these factors, northwesterlies (32 percent of occurrences) and southeasterlies (36 percent) dominate circulation patterns. Savage storms are associated with northerly and southerly winds. Summer air temperatures are quite evenly distributed (average July-August; 75- 79 F [24-26 C], with an absolute maximum of 111 F [44 C] on the sunbaked eastern shore), but winter temperatures range from 14 F (-10 C) in the north to 50 F (10 C) in the south. Average annual rainfall varies from 67 inches to 8 inches over the sea. Most falls in winter and spring. Evaporation from the sea surface is very high, reaching 40 inches a year. Ice formation afflicts the North Caspian, while usually freezes completely by January, and in very cold years floating ice comes as far south as the Apsheron Peninsula region.

Fluctuations in water level: Short-term wind induced fluctuations in the sea level can rise to up seven feet, though such rises average about two feet. Seiches (rises included by barometric pressure changes) can cause similar fluctuations. Tidal changes are but a few inches, and seasonal rises included by high spring water in the rivers are not much more.

One of the more fascinating aspects of the study of the Caspian, however, is the reconstruction of the long-term fluctuations over the centuries from archeological, geographical, and historical evidence. It seems the Caspian reached a level of 72 feet below sea level about 4,000 to 6,000 years ago and again early in the 19th century AD. A still lower level held from the 7th to the 11th centuries, while the lowering that took place between 1929 and 1957 stemmed from the effects of climatic change resulting in lesser river influx and increased evaporation amplified by reservoir construction on the Volga, and from river water consumption for irrigation and industry.

The flow of water into the Kara-Bogaz-Gol, now about 12 feet lower than the Caspian, has also had an effect. By the early 1970s, the water level

was very close to the -93.5 feet level , reflecting a balance between input (rainfall, river inflow , subterranean up welling) and consumption (evaporation , flow into the Kara-Bogas-Gol, human usage) that gave the latter a slight edge and hence a projected annual lowering of the level by three inches.

If, however, the north flowing Vychegda and Pechora were diverted into the Volga, it would seem that the present level could at least be maintained (and increase, under favourable climate conditions) until the year 2000. Soviet planners have given serious attention to such an ambitious project .

HYDROLOGY AND LIFE FORMS

In summer, the average sea water temperature is 75-79 F (24-26 C), with the south a little warmer. There are, however, significant winter contrasts, from 37-45 F (3-7 C) in the north to 46-52 F (8-11 C) in the south. Upwellings of deep water at the eastern littoral (a result of prevailing wind activity) can also bring a marked drop in summer temperature. Salinity in the Caspian is about 1.27 percent on average, but this conceals a variation from a mere 0.1 percent near the Volga outlet to a high of 32 percent in the Kara-Bogaz-Gol, where intense evaporation occurs. Caspian waters differ from those of the ocean in their high sulphate, calcium, and magnesium carbonate content and (as a result of river inflow) low chloride content.

Water mass circulation occurs, basically, in a north to south movement along the western shore, with a complex pattern developing further south , where there are several subsidiary movements . Currents can be speeded up where they coincide with strong winds , and the sea surface is often ruffled by wave actions , with the maximum storm waves being observed near the Apsheron Peninsula.

There are about 850 animal and more than 500 plant species in the Caspian .Animal life has been affected greatly by changes in salinity . It includes, among the fish , herring , pike, perch, and sprat; several mollusks; and a variety of other organisms including sponges. Some 15 species of Arctic (e.g. the Caspian seal) and Mediterranean types complement the basic

fauna. Perch are important among freshwater fish varieties. Some organisms have migrated to the Caspian quite recently: barnacles, crabs, and clams, for example, have been transported by sea vessels; grey mullets have been deliberately introduced by man. The future of the Caspian will depend on the success of measures to maintain the present sea level, on restoration and development of fishing resources, on further oil and gas exploitation, and on the creation of a large chemical complex at Kara-Bogaz-Gol. Future transportation developments will require, as a necessity, new port facilities and new ferries. The hitherto largely deserted eastern shores will benefit from development associated with oil extraction, and an extensive development of the fine shores of the sea as health and recreation resorts figures largely in Soviet long-term for the area.

THE HUMAN IMPRINT

The Caspian was long famous for its sturgeon catch, but this has been reduced greatly in recent years, as a result of the decline in sea level, and the connected drying up of the most favourable places for spawning. The seal industry is, however, being developed in northern regions. Oil and gas have now become the region's most important resources, following extensive geological surveys in the 1940s and 1950s. Seabed oil is extracted from derricks and artificial island, most of which are concentrated off the shores of the Azerbaijan, supplying half that republic's total oil extraction volume.

The extraction of such minerals as sodium sulphate from the Kara-Bogaz-Gol is also of considerable economic importance. Finally, the Caspian is of major importance for transportation in the region: petroleum, wood, grain, cotton, rice, and sulphate are the basic goods carried, while Astrakhan, Baku, Makhachkala, Krasnovodsk, and Shevchenko (plus Anzaly, Nowshahr, and Oktav) are the most important ports. They are also connected to the regular passenger runs, while railway stock is transported direct, without unloading, on the Baku-Krasnovodsk run.

The future of the Caspian will depend on the success of measures to

maintain the present sea level, on restoration and development of fishing resources, on further oil and gas exploitation, and on the creation of chemical complex at Kara-Bogas-Gol. Further transportation developments require, as a necessity, new port facilities and new ferries. The hitherto largely deserted eastern shores will benefit from development associated with oil extraction, and an extensive development of the fine shores of the sea as health and recreation resorts figures largely in Soviet long-term for the area.

THE PORTS OF THE CASPIAN SEA

There are several ports in the Caspian Sea. Some of them are for local use, especially for fishing, and some of them are commercial ports for exports, imports and passenger transportation. The ports of the Caspian Sea play an important role for the economy of the coastal States as the other ports of the world.²

The Caspian Sea has access to the Black Sea and the Baltic Sea through the river Volga. This lane is available approximately 8 months a year. The ships with maximum 4000dwt can sail through the channels of Volga. So the cargoes are carried directly by ships from/to Caspian ports(transit) or by trains to the northern ports and then by vessels carried to the southern ports of the Caspian Sea(Tranship).

Bearing in mind the new political situation in the region and independence of the coastal states of the Caspian Sea, the ports activities will considerably increase in early future.

The existing ports are going to be well equipped and some new ports are under construction. The multi-purpose ports Fredoonkenar (in the south) and Amirabad (in the south east) are the examples of new-building ports of Iran in the Caspian Sea. The Republic of Kazakistan established an international company for development of port and shipping activities in the Port Aktau.

There are a series of continuous discussions between the coastal states for transshipment of their products through the ports, railway, roads and pipeline

²-The information about the ports is from my experiences and interview with some of well-informed persons.

of each other. Some of these discussions resulted a certain number of agreements, especially between Iran and Azerbaijan, Iran and Kazakistan, and Iran and Turkmenistan. The consequences of these agreements and activities will effect either the ports of the Baltic Sea or the ports of Iran in the Persian Gulf, which are located in the opposite side of each other from the Caspian Sea.

The commodities carried through the Caspian are; the products of its coastal states, European countries, Australia and Latin America. They are in dry bulk (grains), liquid bulk (oil products), general cargo and containers. The main commercial ports of the Caspian is shown in the map of next page.

The passenger vessels mostly work between the northern ports of the Caspian Sea but recently an Iranian passenger vessel started to carry the passengers between Baku and Anzali. The followings are the main commercial ports of the Caspian Sea;

Port of Nowshahr

The Port of Nowshahr, which is located on the southern shore of the Caspian Sea in northern Iran, is the most beautiful port in Iran. Before the Islamic Revolution of Iran it was called the second capital, because the Shah went there for pleasure for at least two months a year. It is the second largest Iranian port on the Caspian Sea.

The imports of gasoline is pumped to the tanks of the Distribution Company of Oil Products in Chalus 7 kilometres far from the port through pipeline. Some commodities needed for the northern, western, and eastern part of Iran are imported through this port. The imports of dry cargo are mostly from northern Europe. The only export from this port since 8 years ago was Lintre (to Frankfort).

Port Nowshahr is the nearest port to the capital city, Tehran (194 km). The access to inland destinations is through roads and an airport (2km away from the port).

In order to increase the capacity of the port more than 5 billion Rials has been invested since 1991 to build new warehouses, open stores, new piers,



and to dredge the harbour and extend the western breakwater. The capacity of the port will be increased (about 700,000 ton/year dry cargo) as the result of new investments. The port can also berth tankers up to 1000,000 ton/year. The allowed draft for vessels is 4.5 metres.

Port of Anzali

This port is located on the south western Caspian Sea. It is the biggest northern port in Iran.

The port is connected by road to the capital (380 km) and by air from Rasht (45 km from the port), and to other cities of the country.

Anzali is the nearest port to Port Baku in Azerbaijan, the biggest port on the Caspian Sea. The commodities imported from Caspian States and Europe to cover some of the needs in the western and northern part of Iran are discharged in this port. The pipeline from Rasht to this port helps to pump the imported gasoline to the destination points.

Port Anzali is the best alternative for Azerbaijan to export its products through it to Europe. In this regard some agreements have been made between the two neighbours. This port supports the Ministry of Oil for its activities on the exploration of oil and gas in the shallow waters of the south western Caspian Sea.

The port has a technical school for maritime education of the Ports and Shipping Organisation of Iran.

This port is also under development in infrastructures and facilities. The capacity of it is 900,000 ton/year dry cargo and vessels with 4.5 metres draft can enter this port.

Port of Baku

The biggest port on the Caspian Sea located in Baku the capital of Azerbaijan in the western Caspian Sea.

The harbour is surrounded by a lot of oil exploitation installations at sea

and industries on land, including an oil refinery. The port was the gate of economic interests of the former USSR from the Caspian Sea. The Caspian Shipping line, that belonged to the USSR before, now belongs to Azerbaijan with about 75 vessels of different types such as Ro-Ro ships, tankers, passenger vessels, river ships and dry cargo carriers.

Port Baku plays a vital role in the economy of Azerbaijan as well as its oil refinery and national fleet.

Port of Krasnovodsk

The port of Krasnovodsk the main port of the Turkmenistan Republic, is located on the east coast of the Caspian Sea. From this port several commodities are exported and imported, e.g. they export phosphate, natural salt and gravel. The port is connected to a railway that links this port to northern ports in Russia.

It plays an important role in the economy of the state. Trains tranship the wheat from large dry carriers and in this port it is loaded for the ports of Anzali and Nowshahr. The ports of Krasnovodsk and Baku are very active in relation with Iranian ports. This port will also be more active in the future according to new agreements between Iran and Turkmenistan.

The port has a pre-scheduled passenger line with Baku. There are also three small ports around this port called: Beckdash, Aladja, and Kianly, each with one berth under the management of Port Krasnovodsk.

Port of Aktau

The port of Aktau is the main port in the Kazakhstan Republic located on the east coast of the Caspian Sea. The port is smaller than Krasnovodsk but its infrastructures and equipment are enough to receive all kinds of vessels like tankers, dry cargo ships, passenger ships and Ro-Ro ships.

The port has a routine ferry line with Baku. The establishment of an international company to develop the port and shipping activities and several economic agreements between Iran and Kazakhstan, including the acceptance

of Iranian cargo ships and passenger vessels will result in a highly developed port in the near future.

Port of Makhachkala

The small commercial port of the Russian Federation is located on the west coast of the Caspian Sea. This port is mostly in relation with Port Baku and Port Beckdash in the Krasnovodsk area. It has a domestic airport 25 Km far from the port.

Port of Astarakhan

The port Astarakhan is the gate of the Caspian Sea for river ships sailing from Europe. It is located on the northern coasts of the Caspian Sea in the Russia area. The port stretches 50 Km along the River Volga. several jetties and berths serve different industries in this port.

The vessels who wish to leave the Caspian Sea to the European ports through the Volga river should 48 hours before departure give notice for pilot to sail the 101 nautical miles of the Volga river and its Channels. Also the river vessels arriving to this port have to wait for departure to other Caspian ports. Little attention is paid to oil pollution of this port³.

3- See appendix 1 for more information about the ports of the Caspian Sea.

Chapter1-2

LEGAL REGIME OF CASPIAN SEA

LEGAL REGIME OF THE CASPIAN SEA

INTRODUCTION

The Caspian Sea is a closed sea and its legal regime is subject to agreements between its coastal states⁴. Article 123 of UNCLOS 82 encourages the coastal states of closed seas to co-operate on the enforcement of their rights and duties.⁵

Hence the Legal Regime of the the Caspian Sea with general considerations to overall international rules in the field of maritime activities, fishing, use of sea-bed resources, protection of marine environment and prevention of pollution are regulated among the coastal states through agreements.

The main agreements on the Legal Regime of the Caspian Sea are the Treaty of 1921 and the Treaty of 1940, between Iran and the former United States of Soviet of Russia(USSR). According to Faithful Relationship Treaty on 26 February 1921, the principle of equal rights on the use of the Caspian Sea was accepted by both parties. This principle is stipulated by both sides in the Treaty signed on 25 March 1940.

Therefore, on the basis of the above mentioned treaties the Caspian Sea is common water for its coastal states, except for an area of "ten nautical miles" that is accepted as; "Exclusive Fishing Zone", other areas of this sea are open for utilisation of coastal states.

⁴-All information in this section is from three articles that I have summarized and translated them from Farsi(Persian) to English.

⁵-United Nations Convention on the Law of the Sea, Montego Bay, Jamaica. December 10, 1982.

SHIPPING IN THE CASPIAN SEA

Freedom of Navigation

According to chapter 11 of the Treaty 1921 the coastal states have the right to shipping in all areas of the Caspian Sea. There is no limitation for the movement of ships of coastal states on this sea.

Articles 12 and 13 of Treaty 1940, which is called "The Treaty of Commercial and Maritime contract", specifies the right of free navigation by the vessels of both sides, and describes it with more details.

In this Treaty it is anticipated that in the ports of each party, the behaviour with the vessels of other side should be similar to its national vessels, in all aspects (mainly for charging).

The only exclusion is for the ships of a third party other than the coastal states. The coastal states have not the right to give permission for navigation in the Caspian Sea to the ships do not belong and not registered by the coastal states of the Caspian Sea. In this regard the section 13 of the Treaty 1940 prescribes On the basis announced.

In the Treaty 1921, between Iran and the (former)USSR, the parties agreed that in all areas of the Caspian Sea, no ship has the right to exist except the ships which belong to their citizens and commercial or transportation organizations who fly the flag of Iran or the (former)USSR.

Foreign Crew

Also both parties, by the letters attached to the Treaty 1940, accepted that "the crew, who are not citizens of the Coastal States are allowed to work on board the ships in the Caspian Sea, but their work should be limited to the tasks given to them as crew". This expression was mentioned because the Russians were worried about spying the foreigners when working on board Iranian ships.

Cabotage

In article 12 of Treaty 1940, both parties also agreed that ships of each party are permitted to carry the cabotage cargoes of other states.

Certificates

In Treaty 1940 the two parties agreed that the issue and control of safety certificates of the vessels both be left for flag state authorities and that these certificates would not be inspected in the ports of other states. In article 14 of the Treaty is said; "The certificates issued by the relevant flag state authority for the capacity of vessels who are entitled to fly its flag is officially accepted by the port authorities of other states ". A list of these vessels will be sent to each party. The vessels who carry these certificates will not be subject to related inspections in the port of other states". Also "In the port of each party the certificates for the safety of navigation, load line, and other technical titles issued by the related authorities of the flag state are officially accepted by the port authorities of next party".

FISHING AGREEMENTS

There are varieties of fish species in large quantities in the Caspian Sea such as Khaviar fishes, white fish, kilka, and etc.(at least more than 50 species). The largest fishing scales belong to the Russians(northern States) with approximately 450, 000 tons catch a year. The actual portion of Iranian is less than 10 percent of this figure. This is because of Russian's technology, investment and political power in the past.

The Treaty of 1490 has some clear provisions about fishing in the Caspian Sea. Irrespective of 10 N.M. from the baseline which has been agreed as "The Exclusive Fishing Zone" for the coastal state, all other areas of the Caspian Sea are free to fish for all coastal states. Paragraph 4 of article 12 of the Treaty 1940 says; "Each Party allocates the area of its coastal waters up to 10 nautical miles for national vessels and holds this right that the imports of

fishes caught by the crew of the vessels who sail under its flag to enjoy some special reductions and to profit by having some special advantages".

In 1963 the two parties made an agreement to co-operate in aqua culture (spawning) of living resources in the Caspian Sea. Article 1 of this Treaty anticipates to establish a collective institution for spawning Khaviar fishes with a capacity of 3, 500, 000 per year. In a long-term agreement of co-operation that has been signed by President Mr Hashemi Rafsangani and President Mr Gorbachov in June 1989, one part is allocated to bilateral co-operation for re-generation of living resources in the Caspian Sea.

EXPLOITATION OF SEA-BED RESOURCES

Since 1940 the (former) USSR has exploited the oil resources of the Baku area in the Caspian Sea. According to data in 1976 their production of oil in this area was 220, 000 barrels per day. Since 1987 Iran has also started to explore the oil and gas resources in shallow waters about 15 nautical miles far from Port Anzali.

The extension of these operations raises the question of the legal rights of the coastal states on the sea-bed and sub-soil resources in this lake. In fact the continental shelf has not been determined in any contract. There is no official claim in this regard. The governments of the Caspian Sea have not announced their wishes for dividing the continental shelf. In one of the guideline books on international law that was published in Russia, it is explicitly mentioned that the resources of the continental shelf of the Caspian Sea belong to the governments of Iran and the former USSR. This matter was propounded by William Butler, the American researcher, who is specialised on the Law of the Seas in the USSR in an article in an American Publishment called "International Law".⁶ He quoted this matter from a book which was written by P.D.Barabolia and Voенno-Morskoimezhdu. Therefore since there is no delimitation, the continental shelf of the Caspian Sea jointly belongs to its coastal states. The jointly use of this lake for shipping, fishing, and

⁶-Butler (W.E). "The Soviet Union and the Continental Shelf", Notes and comments, American Journal of International Law, 1969, Vol. 63, P. 106.

exploitation of sea-bed resources are the additional indications of this jointly jurisdiction. It is necessary to mention that unlike fishing, the exploitation of mineral resources of the sea-bed requires a long-term possession and jurisdiction of soil.

CO-OPERATION ON POLLUTION PREVENTION

Pollution is one of the biggest problems in the Caspian Sea. The exploitation of oil, industrial wastes, municipal and agriculture pollutants are the main sources of pollution.

On the basis of the Agreement on Scientific, Technical and Cultural Co-operation, between Iran and the (former)USSR on 25 February 1971, the two parties signed a "Mutual Understanding Letter". Paragraph 2 of this paper stipulates that the parties shall continue to study the Marine Environment of the Caspian Sea. For this purpose they will co-operate in order to exchange information, technical documents, scientists and experts. Meanwhile in 1973 the two parties agreed to establish a "permanent working group" to research and follow the measures for prevention pollution in the Caspian Sea. This working group had its seventh session in Tehran in 1984. The result of it was just signing another "mutual understanding letter".

CONCLUSION

With regard to the existing Treaties on the Legal Regime of the Caspian Sea, it is clear that some basic legal issues like territorial waters, the exclusive economic zone, and continental shelf, which is usually divided between the coastal states of enclosed waters, are not delimited in the Caspian Sea. Hence, this Lake is common in possession and utility.

This condition may raise questions among the new independent states of the Caspian Sea. In this regard the first requirement for any measures on the described issues depends upon the willingness of the coastal states. There is no doubt that the rights of all coastal states, according to existing treaties and

international laws should be considered. In this respect the government of the Russian Federation announced that its political system is the substitute for the former USSR. Accordingly, they have accepted all the agreements signed by the previous political system. The other new independent states of the Caspian Sea actually followed those agreement.

Another important point about the legal regime of the Caspian Sea is the problem of on-going marine pollution and the lack of an appropriate multilateral agreement to prevent it. Chapter II will describe the present pollution condition in the Caspian Sea. It is obviously clear that any co-operation made in the past was not sufficient either to prevent the continuous pollution or to combat it.

The present status of the water quality shows that the pollution in the lake is spreading fast whilst no combating procedure has been prepared. If the coastal states do not react immediately, the health and ecosystem of the area will not have a chance of survival.

Therefore a stronger and practical multilateral agreement is necessary to protect the marine environment and to prevent pollution in the Caspian Sea Area.

Chapter 2

POLLUTION
OF THE
CASPIAN
SEA

Chapter II

The current state of pollution in the Caspian Sea

INTRODUCTION

Information provided by the North-Caucasian Hydro-meteorological Administration, The Dagestan Hydrometeorological Centre, and Azerbaijan Hydrometeorological Administration has been used in describing the contamination state of the sea.⁷

The sewage volumes were estimated by the Astrakhan Environment Protection State Committee.

The The Caspian Sea : General Information.

Sea surface : 376,000 km² (at sea level of -28 m).

Volume of sea water : 78,000 km³.

Maximum depth: 1025 m.

Annual river inflow: 240 - 300 km³

Annual precipitation : 60-1000 mm varying from to region.

The Sea level rise has been observed since 1978.

Water temperature :

in summer 24-27 ° C

in winter from 0° C on the northern part up to 11° C on the southern part.

The surface layers on the central and southern regions are well and virtually equally heated in summer, whereas on depths of 20-35 m water temperature drastically drops . Under these depths a gradual decrease in the temperature can be observed.

⁷-This is the latest report (1991) received from Moscow through Helsinki Commission by help of Mr. Vassili Rodionov, the secretary of Technological committee in Helsinki Commission and translated from Russian to English.

In the northern (shallow) part of the sea the water temperature is homogeneous throughout the year.

Salinity in the most part of the sea is: 12.6% - 13.2% (in the northern part : 1-8 %).

Salinity is homogeneous throughout all layers. Convection mixing of water is intensive in autumn and winter due to cooling and salting during ice formation.

Convection mixing reaches depths to 200 m in the central part and 80-100 m in the southern part. The cyclonic circulation of water with few local eddies are prevailing. Water transparency is desired 15 m.

The northern part of the sea is frozen in winter with a thickness of ice of 25-30 cm seldom reaching 60 cm. The rest of the sea is always free of ice.

No tides are observed. Wind-induced surging (up to 2-3 m) and seismic fluctuations (up to 35 cm) in the sea level with continuity ranging from 8-10 minutes up to several hours are commonplace.

In 1991 the average sea level rose by 35 cm vis-a-vis the 1990 level (the absolutely highest annual increase recorded since 1900) and is now 27.08 m lower than the ocean level. This is the highest average level for last 60 years. The lowest level was recorded in January (-27.97 m) and the highest level in July (-26.35 m) which corresponds to the level recorded in early 1930s.

Generally the year (1991) has appeared to be warmer than the average of many years. Winds were weaker than normally observed.

In the northern part currents were mainly characterised by the prevailing winds, except western currents in spring affected by intensified river inflow.

Main Pollutants in The The Caspian Sea.

The main sources of contamination of the The Caspian Sea are

- river inflow
- oil -field exploration and exploitation
- oil and petro-chemical industries
- oil transportation by sea

- sewage discharges from cities and discharge of water used in farming.

The volume of insufficiently purified sewages in the Astrakhan region has increased by 6.5 million m³ mainly because of inefficiency and overloading of existent purification plants. In 1991 the number of contaminants grown from 15 to 19 resulting in an increase in contaminating waters by 2.73 million m³ (Petro-chemical and Fishery Ministries). In the same year these were 21 events of accidental discharge of oily waters from ships (total 9.3 tons of oil). Discharge of sewages in the Astrakhan region is banned.

Near the Volga delta the discharges from the vegetable processing plants, big farms and fish processing plants contributed 23.35 tons of organic substances, 0.481 tons of the ammonium nitrogen and 0.018 tons of nitrite nitrogen.

Definition

Index of water pollution (IWP) for sea water is a mean ratio between the actual concentration (C) and maximum permissible (tolerable) concentration (P) of four most significant pollutants (they are Carbon monoxide, Hydrocarbon, Sulphur and Nitrate oxide), and is calculated in the following way:

$$IWP = \left(\frac{C_1}{P_1} + \frac{C_2}{P_2} + \frac{C_3}{P_3} + \frac{C_4}{P_4} \right) : 4$$

Seven classes are distinguished depending on the value of IWP :

<u>water quality</u>	<u>IWP</u>
1. Very clean	< 0.25
2. Clean	0.25- 0.75
3. Moderately contaminated	0.75- 1.25
4. Contaminated	1.25- 1.75
5. polluted	1.75- 3.0
6. Very polluted	3.0- 5.0
7. Extremely polluted	> 5.0

Abbreviations used

PH - petroleum hydrocarbons

MTC - maximum tolerable concentrations

SSAS- synthetic surface-active substances

AHCH- alfa-HCH

GHCH- gamma-HCH (Technical lindane - rem. Author)

IWP - Index of water pollution.

COP -Chlorinated Organic Pesticides

Contamination of the open sea

In the northern part compared to 1990 the average content of PH decreased from 4 down to 3 MTC (level of 1989). The seasonal character of the pollution is evident through a decrease of PH in a water from 6 MTC during low water spring period down to 2-1 MTC during the river flood time and low water summer and autumn periods.

The vertical distribution of HP also varies with seasons; during the low water spring period the contamination of the surface layer prevails (6 and 4 MTC respectively), whereas during other seasons the contamination of the deep waters doubles the contamination of surface layers.

In the course of the year maximum contamination has been observed in the south-western area of the northern part of the sea (average 5 MTC), maximum 23 MTC has been observed in this area during the river flood.

The contamination by phenols has been practically constant during last few years and is 3 MTC. During low water spring periods phenols were not observed, during the flood and autumn low the phenol concentrations were unremarkable whereas in August rose to 10 MTC. The maximum phenol contamination has been observed throughout Mangyshlag Rapids and in the south-western part of the Volga mouth.

The average content of SSAS and ammonium nitrogen has somewhat increased as compared to 1987-1990, however did not exceed the MTC. During the flood the average concentration of SSAS in the region has exceeded the MTC and in the most polluted eastern area of the northern

Caspian Sea reached 5 MTC. The highest concentration of ammonium nitrogen was observed in August (242 $\mu\text{g/l}$), maximum 1 MTC in this period was observed in the south-western part of the Volga mouth.

For the first time in the last 5 years **DDT** was not found in the bottom layer, but in June the AHCH (maximum 85 $\eta\text{g/l}$) and GHCH (maximum 92 $\eta\text{g/litre}$) were found.

The oxygen regime is generally satisfactory, minimum 4.3 mg/litre was observed in the bottom layer in western part of the Volga mouth. According to IWP the quality of the water is classified as "polluted" in the south-western area as it was in 1990, whereas the central part is acknowledged as "contaminated". The water quality in the eastern part has improved from "polluted" to "contaminated".

The Central Caspian Sea

AREA 1

Compared to 1990 the average PH decreased to below 1 MTC, the maximum 14 MTC was observed in August in the bottom layer. The average concentration of phenols has dropped down from 4 to 3 MTC, maximum 7 MTC observed in August in the surface layer. The most polluted is the surface layer (4-6 MTC during the year).

The average concentration of the SSAS is higher than during last 5 years but still lower than 1 MTC, the maximum 1 MTC was observed in April in the surface layer, the seasonal trend is not considerable. The average concentration of the ammonium and total nitrogen is unchanged, the oxygen regime is satisfactory, minimum 1.44 mg/litre observed in August in the bottom layer.

The quality of water is classified as "contaminated".

AREA 2

Compared to 1990 the average concentration of PH has not changed and is 2 MTC, maximum 12 MTC observed in October in the surface layer.

In the course of the year PH concentration were 1 MTC, in October 5 MTC. The average concentration of phenols has increased from 3 up to 4 MTC, the highest average concentrations were observed in October (6 MTC, maximum 8 MTC)

The average concentration of the SSAS and ammonium nitrogen lower than 1 MTC, the oxygen regime is satisfactory.

The quality of the water has slightly deteriorated and is classified as "polluted".

AREA 3

Compared to 1990 the quality of the water remains unchanged. The average concentration of PH was 1 MTC, phenols - 3 MTC, SSAS and ammonium nitrogen - less than 1 MTC.

The highest pollution was observed in August (PH -4 MTC; phenols - 4 MTC).

The oxygen regime is satisfactory.

The water quality is classified as "contaminated".

The Southern Caspian Sea

AREA 4

Compared to 1990 the average concentration of PH has increased from 1 up to 2 MTC, maximum 7 MTC was observed in April in the surface layer.

The average concentration of phenols has increased from 3 up to 4 MTC (in February 8 MTC in the surface layer), maximum 11 MTC observed in February.

SSAS, ammonium nitrogen and heavy metal contamination is lower than 1 MTC, COP not found.

The oxygen regime is satisfactory, minimum 2.12 kg/litre observed in August on the bottom. The bottom sediments contain 0.02 mg /l of oil. COP not found.

The water quality has deteriorated and changed from "moderately

contaminated" to "contaminated".

AREA 5

The PH and phenol contamination has not changed and is 1 and 3 MTC respectively. In November the average concentration of PH was nearly 3 MTC.

The average SSAS, ammonium nitrogen, and heavy metal concentrations were below 1 MTC, COP not found.

Water quality - "contaminated".

AREA 6

The average HP concentration increased from 0.4 up to 1.2 MTC (in November 2.4 MTC), the average concentration of phenols dropped from 4 down to 3 MTC, the average SSAS, ammonium nitrogen, and heavy metal concentrations were below 1 MTC, COP not found.

Water quality - "moderately contaminated" and has slightly improved.

AREA 7

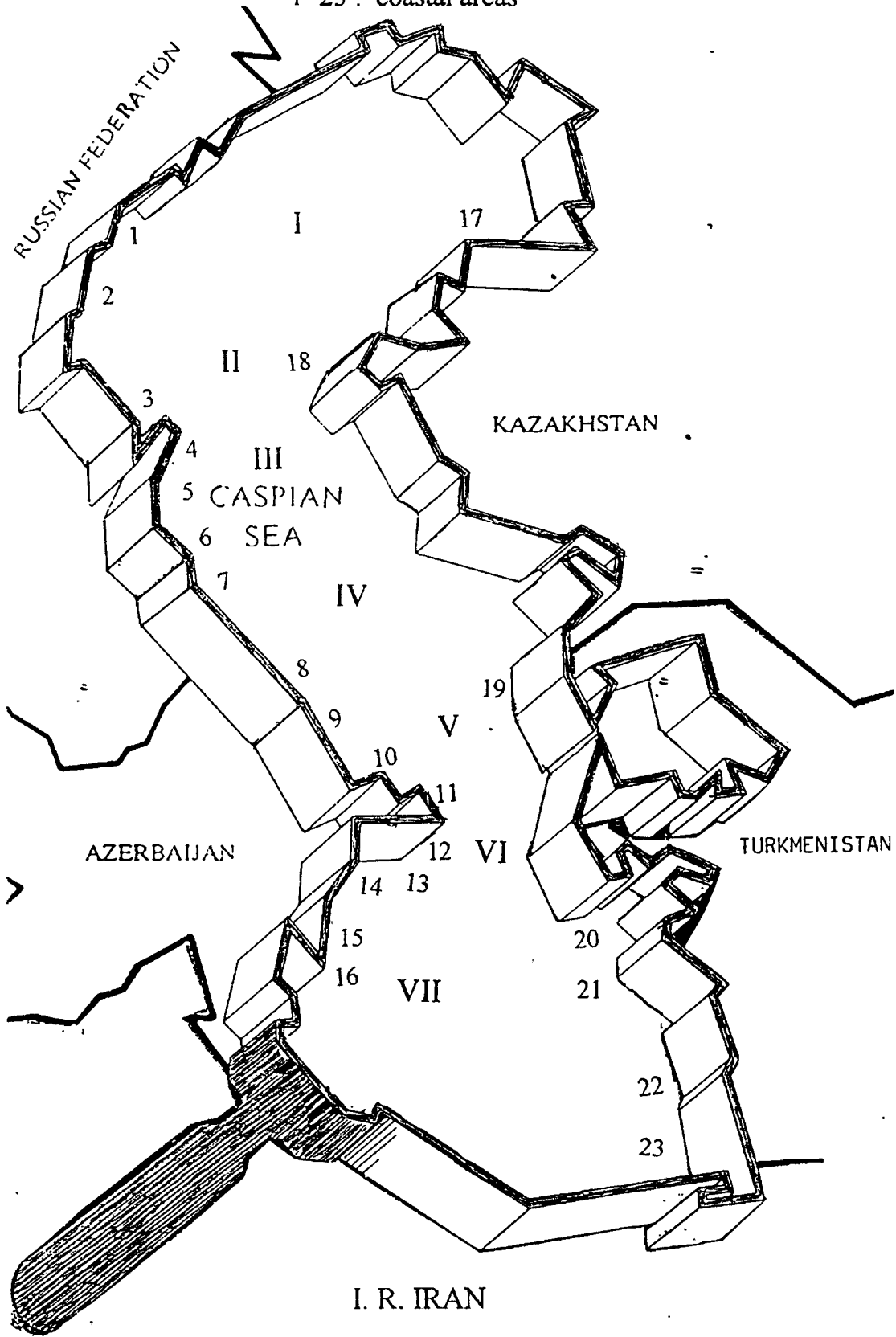
Compared to 1990 the average PH concentration has somewhat increased and is 2 MTC (in November 5 MTC), average phenol concentration dropped from 4 down to 3 MTC. The average SSAS, ammonium nitrogen and heavy metal concentration lower than 1 MTC, COP not found.

The oxygen regime is satisfactory, minimum 3.4 mg/l observed in November on the depth of 790 m. In bottom sediments the oil content has changed within 0.05-0.07 mg/g.

The water quality remained "contaminated".

sources of water quality assessment of the Caspian Sea

I- VII : deep sea areas
1- 23 : coastal areas



Pollution of coastal areas

Dagestan Coast

SUB-AREA 1- Lopatina

Compared to 1990 the average HP concentration dropped from 3 down to 1 MTC, with no concentration found in January and October. The average phenol concentration increased from 3 up to 4 MTC changing in the course of the year from slightly below 3 MTC in January up to 6 MTC in October and 5 MTC in May.

The average content of SSAS has almost doubled and reached 0.6 MTC with the concentration growing from 0.4 MTC in January to 0.8-0.7 MTC in September and October. The average ammonium nitrogen concentration remains about 0.2 MTC total nitrogen slightly decreased while total phosphorus increased.

The oxygen regime - satisfactory.

The water quality though improved compared to 1990 still remains "contaminated".

SUB-AREA 2- Mouth of The River Terek

Compared to 1990 the average HP concentration dropped from 2 down to 1 MTC, seasonal changes are not considerable, with no concentration found in October. The average concentration of phenols remains 3 MTC, seasonal changes being not considerable. The average concentration of SSAS increased and reached 0.5 MTC., the average of ammonium nitrogen remained 0.2 MTC, while total nitrogen concentration slightly decreased with a little increase in total phosphorus.

The oxygen regime - satisfactory, however due to high temperatures in the course of the year the water saturation dropped by 1 mg/l

The water quality somewhat improved still remaining "contaminated" however.

SUB-AREA 3- Mouth of The River Soulak

The average HP concentration dropped in 1991 from 3 MTC down to zero values, the average phenol concentration increased from 3 up to 4 MTC with the highest average concentrations (6 MTC) in September. The average SSAS content slightly increased (up to 0.5 MTC), the average concentration of ammonium and total nitrogen remained unchanged, while total phosphorous content slightly increased. The oxygen regime is satisfactory, though water saturation is lower than in 1990 to 1.1mg/l.

The water quality remained "contaminated".

SUB-AREA 4- Makhachkala

Compared to 1990 the average HP concentration dropped from 3 down to less than 1 MTC, maximum 20 MTC observed in July. The average phenol concentration grew from 3 up to 4 MTC (in May and October 5 MTC).

The average concentration of the SSAS about 0.5 MTC, the average ammonium nitrogen remains 0.12 MTC, the average total nitrogen decreased by 0.12 mg/l, while total phosphorus content somewhat increased.

The oxygen regime is satisfactory. The quality of water remains "contaminated".

SUB-AREA 5- Caspiysk

Compared to 1990 the average PH concentration decreased from 3 down to less than 1 MTC ,with no concentration found in September and October.

The average phenol concentrations doubled and reached 4 MTC (6 MTC in May and October).

The average concentration of SSAS and ammonium nitrogen was unchanged (0.4 and 0.1 MTC respectively), the average concentration of total nitrogen slightly decreased, but total phosphorus concentration slightly increased.

The oxygen regime is satisfactory, while saturation of water lower than in 1990, minimum 3.46 mg/l observed in September.

Water quality remained **"contaminated"**.

SUB-AREA 6- Ezberbash

Compared to 1990 the average HP concentration dropped from 4 down to 1 MTC, with no concentration observed in May, September and October.

The average phenol concentration doubled and reached 5 MTC, seasonal changes not considerable.

The SSAS concentration increased to reach 0.5 MTC, while the ammonium and total nitrogen decreased, but total concentration of phosphorus slightly increased.

The oxygen regime - satisfactory, however, oxygen saturation decreased by 0.8 mg/l.

Water quality remained **"contaminated"**.

SUB-AREA 7- Derbent

Compared to 1990 the HP concentrations decreased from 2 down to 1 MTC, with zero values in September, and October.

The average phenol concentration increased from 3 up to 6 MTC, being constantly high and only in July averaged 4 MTC.

The average SSAS concentration is slightly higher than in 1990 and is 0.6 MTC, the average ammonium nitrogen and total phosphorus concentrations remained unchanged, while total nitrogen dropped by 0.075 mg/l.

The oxygen regime is satisfactory, however the oxygen saturation is the lowest in the last 5 years and is 1.2 mg/l lower than in 1990.

The water quality deteriorated and changed from the **"contaminated"** to **"polluted"** class.

SUB-AREA 8- Mouth of the River Samour

Compared to 1990 the average PH concentration dropped from 2 down to

1 MTC, with no concentrations found in September and October.

The average phenol concentration doubled and reached 4 MTC (6 MTC in May).

The average SSAS concentration increased up to 0.5 MTC, while ammonium and total nitrogen concentrations fell.

The oxygen regime is satisfactory, however the oxygen saturation is by 1.3 mg/l lower than in 1990.

The water quality remained "contaminated".

The Coast of Azerbaijan.

SUB-AREA 9- Soumgait

Compared to 1990 the PH concentration has remained 5 MTC (in January averaged 14 MTC, maximum 27 MTC with highest pollution at 10 m depth up to 20-23 MTC).

The average phenol concentration increased from 7 up to 8 MTC, average SSAS, ammonium nitrogen and heavy metal concentrations not exceeding 1 MTC, in individual samples concentrations of mercury reached 1.5-2 MTC. COP not found.

The oxygen regime is generally satisfactory.

In bottom sediments the oil content fluctuated within 0.31-1.22 mg/g, phenols - 2.186-2.370 mg/g, mercury- 0.03-0.07 mg/g. COP not found.

Water quality remained in the "very polluted" class.

SUB-AREA 10- Bilga

Average HP and phenol concentration remains 2 and 6 MTC respectively. Average concentration of SSAS, ammonium nitrogen and heavy metals are lower than 1 MTC.

COP not found. The oxygen regime is satisfactory. In bottom sediments the oil content changed from 0.09 to 1.03 mg/g. COP not found.

The water quality - "polluted".

SUB-AREA 11- Baku Harbour

During last four years the average concentration of HP decreased 3.5 times and reached in 1991 6 MTC (annual change from 3-9 MTC), maximum 29 MTC observed in March in the bottom layer. For the same period the average concentration decreased from 18 down to 12 MTC, maximum average concentrations were observed in January (13 MTC) and in May (14 MTC).

Most contaminated is the water in the vicinity of the sewage system outlets where 2 cases of 30 and 40 MTC and 1 case of phenol 30 MTC were recorded.

The average concentrations of SSAS, ammonium nitrogen and heavy metals are lower than 1 MTC, in individual cases the mercury concentration exceeded 1 MTC in January, and 2 MTC in May. COP not found.

The oxygen regime is satisfactory, though oxygen saturation is lower by 1.5- 2.1 mg/l than in neighbouring regions.

In bottom layers the concentration of oil changed within 21.98 to 130.8 mg/g., phenols - 4.212-17.440 mg/g, mercury 0-0.07 mg/g. COP not found.

The quality of water has improved from "extremely polluted" to "very polluted".

SUB-AREA 12- Neftyanje Kamni

Compared to 1990 the average PH concentration dropped from 3 down to 2 MTC, phenols increased up to 7 from 4 MTC (March- 11 MTC, maximum 13 MTC in March and October).

The average SSAS, ammonium nitrogen and heavy metal concentrations are lower 1 MTC. COP not found. The oxygen regime is satisfactory.

Bottom sediments contained 0.67-2.05 mg/g oil, 1.52 mg/g -phenols, mercury - up to 0.03 mg/g. COP not found.

The water quality is in the "polluted" class with deteriorating trend.

SUB-AREA 13- Shekhov Sangachal

Compared with 1990 the water quality is unchanged with the average concentration of HP 2 MTC (maximum 6 MTC) phenols - 6 MTC (max. 9 MTC) SSAS, ammonium nitrogen and heavy metals - 1 MTC, COP not found.

The oxygen regime is satisfactory.

In bottom sediments the concentration of oil- 0.5-1.29 mg/g, phenols- 0.109-3.776 mg/g, mercury 0.02-0.09 mg/g. COP not found.

The water quality remained "polluted".

SUB-AREA 14- Boulla Island

Average concentration (AC) of HP remained 2 MTC (October- 8 MTC), phenols - 6 MTC, SSAS, ammonium nitrogen -lower than 1 MTC . COP not found.

The oxygen regime - satisfactory.

Bottom sediments contain oil within 0.33-0.49 mg/g, phenols- 0.246-6.429 mg/g, mercury 0.01 mg/g. COP not found.

Water quality remained in the "polluted" class.

SUB-AREA 15- - Banka Makarova

Water quality is deteriorating. AC of HP increased from 1 up to 3 MTC (in July-6 MTC , maximum 19 MTC), phenols- from 5 up to 6 MTC. AC of SSAS, ammonium nitrogen (AN), heavy metals(HM) and mercury are lower than 1 MTC. COP not found.

The oxygen regime is satisfactory.

In bottom sediments AC of oil is within 1.02-1.85 mg/g, phenols- 0.156-1.851 mg/g, mercury - 0.08 mg/g.

Water quality is "polluted" with deteriorating trend.

SUB-AREA 16- Mouth of the River Kura

AC of HP lowered from 5 down to 3 MTC, maximum 27 MTC in July.

AC of phenols (4 MTC), SSAS, AN, HM and mercury (lower than 1 MTC). COP not found. The oxygen regime - satisfactory.

Bottom sediments contain : oil - 0.29-0.74 mg/g, phenols 0.912-1.506 mg/g, mercury 0.01-0.06 mg/g. COP not found.

Water quality is "polluted" with improving trend.

SUB-AREA 17- Lankaran

Water quality unchanged. AC of HP is 2 MTC, phenols 4 MTC, SSAS, AN, HM -lower than 1 MTC. COP not found.

The oxygen regime is satisfactory. In April the oil content in bottom sediments was 0.12 mg/g. Water quality "polluted".

Eastern Coast

SUB-AREA 18- Boutino

Compared with 1990 the AC of HP dropped from 2 down to 1 MTC (in November 2 MTC); The AC of phenols remains 4-3 MTC.

SSAS slightly increased up to 0.5 MTC, ammonium and total nitrogen-unchanged, total phosphorus increased 1.7 times.

The oxygen regime- satisfactory.

Water quality improved from "polluted" to "contaminated".

SUB-AREA 19- Shefchenko

AC of HP dropped from 3 down to 1 MTC, phenols-unchanged -4 MTC (6 MTC in November).

SSAS doubled and reached 0.6 MTC.

AC of AN and total nitrogen (GN) unchanged, while total phosphorus increased 1.4 times.

The oxygen regime - satisfactory.

The water quality improved from "polluted" to "contaminated".

SUB-AREA 20- Bekdash

AC of contaminants unchanged : PH-1.2 MTC, phenol - 6 MTC, SSAS, AN and HM lower than 1 MTC. COP not found.

The oxygen regime - satisfactory.

Oil content in bottom sediments was 0.02 mg/g in April.

Water quality remains "polluted".

SUB-AREA 21- Krasnovodsk Gulf

Compared with 1990 the AC of HP increased from 0.8 to 1.8 MTC (maximum 9 MTC in the bottom layer in February). The AC of phenol unchanged - 6 MTC, SSAS, AN, HM lower than 1 MTC. COP not found.

The oxygen regime - normal.

In bottom sediments AC of oil was changing within 0.02-0.03 mg/g, phenols - 0.038 - 1.347 mg/g, mercury 0.05 mg/g.

Water quality remains "polluted".

SUB-AREA 22- Cheleken Peninsula

AC of HP increased from 0.4 to 1.8 MTC , phenols remained 6 MTC, SSAS, AN, HM and mercury below 1 MTC. COP not found. Oxygen regime - normal. In bottom sediments the oil concentrations were changing within 0.01-0.36 mg/g. COP not found.

Water quality - "polluted"

SUB-AREA 23- Turkmen Gulf

AC of HP raised from 0.4 to 1.8 MTC, AC of phenol dropped from 6 down to 4 MTC, AC of SSAS, AN, HM and mercury did not change and remains below 1 MTC. COP not found.

The oxygen regime is satisfactory. In bottom sediments the oil content was within 0.01-0.28 mg/g. COP not found.

The water quality improved from **"polluted"** to **"contaminated"**.

Conclusion

During 1991 the level of the contamination of the Russian part of the The Caspian Sea regions was continuously decreasing due to oil and oil products.

The outstanding feature of 1991 was growing pollution from the PH of the open sea areas as compared to that of coastal regions. This might have been brought about by the peculiarities of water exchange as well as by the growing sea-level (+34 cm during 1991; 1.84 m since 1978).

The quality of water both in coastal areas and in the open sea has generally improved and is mostly classified as **"contaminated"**, except in the south-western area of the northern Caspian Sea, the central part of the The Caspian Sea, and near Derbent coastal areas which are classified as **"polluted"**.

Coastal waters of Azerbaijan (The gulf of Baku and Sumgait) are **"heavily polluted"**, the rest **"polluted"**, near Lencoran - **"contaminated"**.

The eastern areas near Beckdash, the Gulf of Krasnovodsk, Chelecken are **"polluted"**, and the Turkmen Gulf - **"contaminated"**.

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Chapter 3

THE STRUCTURE
OF A REGIONAL
CONVENTION
ON THE
PROTECTION OF
MARINE
ENVIRONMENT

Chapter III

Introduction

The lesson has been taken from the information given within the last two chapters is that not only the pollution of the Caspian Sea is relatively high but also there is not any comprehensive multilateral legal agreement for preventing and combating pollution of this area. In addition ,

-The Caspian Sea is an enclosed water so the existing international conventions on the prevention of pollution of the marine environment is not applicable to this Sea, therefore the coastal states themselves should make the regional agreements concerned;

-The regeneration of its water is dependent only on the river input, particularly the rivers Volga and Oral which also carry the industrial and municipal wastes and pollutants to the Caspian

-Most of the coastal states are newly independent and need to be re-organised and authorised to participate in the preservation and protection of the marine environment, taking into account all kinds of interests of their nations.

Therefore the establishment of a regional agreement for the coastal states to undertake, co-operate and co-ordinate measures on the protection of the marine environment of the Caspian Sea is necessary and unavoidable.

For the protection of the marine environment of any region three steps should be taken:

- 1- Legal agreements under the name of convention, protocol(s) and necessary annexes, as the constitutional and principal measures.
- 2- Adoption of appropriate action plans as the long-term procedures for monitoring, assessment and prevention of pollution of the concerned marine environment.
- 3- Providing contingency plan for co-ordination and taking immediate actions against pollution incidents in cases of emergencies within the marine environment concerned.

The purpose of this chapter and next chapter is to introduce the main and common provisions of the said regional conventions and the protocols concerning regional co-operation in combating pollution of the marine environment by oil and other harmful substances in cases of emergency.

The reason for introducing the regional conventions and protocols mentioned above is to recommend a similar convention and protocol to be adopted for the Caspian Sea area because of the similarity of the nature and characteristics of semi-closed waters to the Caspian Sea .

The regional conventions on the protection of the marine environment have a certain number of common provisions. There are also some additional provisions in the regional conventions on the basis of the geographical, ecological and political characteristics and considerations of the marine environment and the coastal states concerned. Furthermore sometimes the contracting parties adopt some additional provisions in order to emphasise on the procedures and the implementation of the convention.

Although the adoption of a convention and/or protocol(s), which is prepared by working groups of experts in law, policy, ecology and chemistry, it is very important as a basic measure but the key to success to protect the marine environment is in the hands of the measures that the contracting parties take in practice to implement the provisions of the adopted legal agreements.

Regional conventions

A convention is a legal agreement and framework for the purposes specified in the convention among a certain number of countries.

The structure of a convention is usually composed of an introduction and a specific number of articles .

The regional convention for the protection of the marine environment already has the same structure as the other similar conventions.

The establishment of the regional conventions was actually the consequence of IMO's (International Maritime Organization) decision, that

announced these areas as "Special Areas" for the purposes of environmental preservation and protection. In this chapter the intention is to discuss the structure of some of the regional conventions, because of the similarity of the Caspian Sea to semi-closed seas of which these conventions are established to be applied.

Before entering into discussions on the structure of regional conventions some of the regional conventions and clauses used within the discussions and in the provisions of the regional conventions will be introduced and defined

1. Convention for the Protection of the Mediterranean Sea against Pollution, Barcelona , 16 February 1976 (hereinafter referred to as **BAR CON 76**).
2. Final Act of the Kuwait Regional Conference of the Plenipotentiaries on the Protection and Development of the Marine Environment and the Coastal Areas, Kuwait, 15-23 April 1978.(hereinafter referred to as **KUW CON 78**).
3. Convention on the Protection of the Marine Environment of the Baltic Sea Area, Helsinki, 21 April 1992 (hereinafter referred to as **HEL CON 92**).
4. "Commission" means;
 - a) The Baltic Marine Environment Protection Commission, established for the purposes of HEL CON 92 (article 19), or
 - b)The Commission on the Protection of the Black Sea Against Pollution, established for the purposes of the Convention (article 17).
5. "Organisation" in discussions on the articles of;
 - a) KUW CON 78 means; Regional Organisation for the Protection of The marine Environment of the Persian Gulf established for the purposes of the Convention (article 16).
 - b) BAR CON 76 means; the United Nations Environment Programme(UNEP), designated for the secretariat purposes of the Convention (article 13 and paragraph (b) of article 2).

6. "council" means the council of the Organisation of K.U.W. CON 78.

It is also important to be mentioned here that the examples chosen from a convention for the articles discussed do not necessarily mean that they are more appropriate than the content of the same articles of the other conventions and protocols although the preference or the weakness of an article of a convention or protocol may be specified in some cases.

The "Introduction"

The introduction of a regional convention consists of the basic facts and concepts that accordingly the contracting parties on the basis of these facts and concepts establish the convention. On the other hand the introduction of a regional convention illustrates why the convention is made.

Hydrographic and ecologic characteristics, sensitivity of living resources, the economic, social and cultural values of sea, ongoing pollution, ecological restoration and preservation of ecological balance are some of the considerations.

In addition, the need for regionally planned research, monitoring and assessment programme and the required co-ordination and co-operation among the coastal states for any related action (and failure of the existing international conventions to cover all aspects of the observed sea area) are other considerations to establish a legal framework for the protection of marine environment for the benefit and enjoyment of present and future generations.

Therefore the reasons of the coastal states for making a regional agreement on the protection of the marine environment are based on the factors and considerations which are usually mentioned in the introduction of the convention.

Definitions

Some of the main concepts and phrases used in a convention are defined in one of the articles. This is to make clear and understand the meaning and the area of these concepts and phrases. Some of the important issues in a marine environmental convention are; pollution, marine pollution, pollution from land-based sources, dumping, ship, oil, harmful substances, hazardous substances, commission or organization, national authority and action plan. The definitions distinguish the extent of the concepts and helps to avoid misunderstanding or wrong interpretations.

In Article 2 of BAR CON 76 only the definitions of "Pollution" and "Organisation" are mentioned.

KUW CON 78 (article 1) has the definitions of; "Marine Pollution", "National Authority", "Organisation", "Secretariat" and "Action Plan".

HEL CON 92 has more definitions than the others. There the concepts and phrases of "Pollution", "Pollution from land-based sources", "Ship", "Dumping", "Incineration", "Oil", "Harmful substances", "Hazardous substances", "Regional economic integration organisation" and "Commission" are defined.⁸

Although more definitions in a legal framework results less disputes and less wrong interpretation but the number of definitions depends on the number of issues and the content of the conventions. Therefore more definitions does not necessarily means that article is more complete than the same article in another convention because the other convention may not entered in that issue.

⁸. Here are the examples of some definitions of the concepts mentioned above:

Definition of clause "marine pollution" in KUW CON 78:

"Marine pollution", means the introduction by man, directly or indirectly, of substances or energy into the marine environment resulting or likely to result in such deleterious as harm to living resources, hazards to human health, hindrance to marine activities including fishing, impairment of quality for use of sea and reduction of amenities

Definition of harmful substances in HEL CON 92:

"Harmful substances" means any substances, which if introduced into the sea, is liable to cause pollution.

For example the concept "incineration" is defined in HEL CON 92 because there is an article in this subject.

Geographical coverage

The limitation of the area to which the convention is applied is determined in one of the articles in any convention. This is important because in some marine areas there is the probability of mixing the extent of the application with the neighbouring area. It prevents the probable problems arising from the application of the convention when there is an inspection of ships by a coastal state is concerned.

The determination of the geographic area of the application of the convention is usually specified by geographic longitude and latitude

General Principles and Obligations

The duties of contracting parties in general is cleared in the convention. Every state accordingly should take all necessary measures to apply the provisions of the convention and protocols (if ratified) as well as their annexes and amendments. This includes the followings;

- a. Put the convention and protocols into national legislation;
- b. Establish national standards, laws and regulations;
- c. Harmonise national policies;
- d. Establish regional organisation, standards, recommended practices;
- e. Take precautionary measures to prevent pollution into the marine area;
- f. Co-operate regionally and take other measures for the implementation of the convention.

The general undertaking in HEL CON 92 is more complete than the other conventions. In article 3 of the convention they specified the following:

1. *The Contracting Parties shall individually or jointly take all appropriate legislative, administrative or other relevant measures to prevent and eliminate pollution in order to promote the ecological restoration of the Baltic Sea Area and the preservation of its ecological balance.*

2. *The Contracting Parties shall apply the precautionary principle, i.e., to take preventive measures when there is reason to assume that substances or energy introduced, directly or indirectly, into the marine environment may create hazards to human health, harm living resources and marine ecosystems, damage amenities or interfere with other legitimate uses of the sea even when there is no conclusive evidence of a causal relationship between inputs and their alleged effects.*

3. *In order to prevent and eliminate pollution of the Baltic Sea Area the Contracting Parties shall promote the use of Best Environmental Practice and Best Available Technology. If the reduction of inputs, resulting from the use of Best Environmental Practice and Best Available Technology, as described in annex II, does not lead to environmentally acceptable results, additional measures shall be applied.*

4. *The Contracting Parties shall apply the polluter-pays principle.*

5. *The Contracting Parties shall ensure that measurements and calculations of emissions from point sources to water and air and of inputs from diffuse sources to water and air are carried out in a scientifically appropriate manner in order to assess the state of the marine environment of the Baltic Sea Area and ascertain the implementation of this Convention.*

6. *The Contracting Parties shall use their best endeavours to ensure that the implementation of this Convention does not*

cause transboundary pollution in areas outside the Baltic Sea Area. Furthermore, the relevant measures shall not lead either to unacceptable environmental strains on air quality and the atmosphere or on waters, soil and ground water, to unacceptably harmful or increasing waste disposal, or to increased risks to human health.

Regional organisation for the purposes of the Convention

One of the basic requirements for the implementation purposes of a regional convention is to establish a regional organisation or to designate and authorise a competent organisation.

The structure, function and duties of such organisations differ in regional conventions. It depends on the contracting parties to decide on the size and authorisation of such institution.

In KUW CON 78, Article 16, the "Organization" was established for the purposes of the Convention the following bodies:

- a) a Council comprising of the representatives of the contracting parties,
- b) a secretariat, and
- c) a Judicial Commission for the settlement of disputes.

The composition, terms of reference and rules of procedure of the Judicial Commission in this article is left to the first meeting of the Council. The functions of the Council and the secretariat are adopted in articles 17 and 18. The Council has the responsibility to periodically review the functions of the secretariat.

In HEL CON 92, Article 19, a "Commission" was established with the provisions on the duties of the Commission; administrative and financial rules are specified in articles 20, 21 and 22.

The common provisions and functions of the Organization and Commission in KUW CON 78 and HEL CON 92 are mainly as follows:

- 1- The meeting of the Council or the Commission is once a year.
- 2- Each contracting party has one representative and one vote.
- 3- The chairmanship of the Council or the Commission shall be given to each party in turn in alphabetical order of the names of the contracting parties in the English language.
- 4- The Executive Secretary is appointed by the Commission or the Council.
- 5- The Executive Secretary is the chief administrative official of the Commission or the Organization.
- 6- The Council and the Commission also have similar functions in the following areas:
 - a) To keep under observation the implementation of the convention.
 - b) To receive and review the reports from the contracting parties and international organizations.
 - c) To make recommendations on the amendments to the provisions of the convention and the annexes.

HEL CON 92 has, furthermore, some clear provisions for the financial procedure of the Commission. For example;

- i) the budget of the Commission is contributed by the contracting parties in equal parts,
- ii) each contracting party shall pay the expenses of its representative participating in the Commission.

In Article 22 of KUW CON the financial rules and procedure of the Organization are left to be adopted by the Council.

The Contracting Parties of BARCON 76 only designated the United Nations Environment Programme (UNEP) as responsible for carrying out the Secretariat functions which are similar to the functions of the secretariat of the Organization of KUW CON 78.⁹

⁹. In Article 13 of BAR CON 76 the following functions are adopted for the UNEP to carry out as

Prevention of Pollution from Ships

One of the sources of marine pollution is discharge from ships into the sea area. They mainly include discharges of ship sewage, segregated ballast tanks and the procedure of crude oil washing in tankers.

To prevent, eliminate and combat pollution of discharge or emissions from ships' cargo into the sea, the contracting parties usually agree to take all appropriate measures, individually or jointly, in compliance with the provisions of their convention and other international conventions. These measures should include:

- port facilities for reception of ships' discharges,
- suitable and enough installations on the ships for this purpose,
- implementation of related provisions of conventions especially MARPOL 73-78 and its annexes,
- survey of the ships for applicable requirements, survey and issue of certificate for passenger ships in this matter.¹⁰

the secretariate:

- i) To convene and prepare the meetings of Contracting Parties and conferences;
- ii) To transmit to the Contracting Parties notifications, reports and other information received;
- iii) To consider enquiries by, and information from, the Contracting Parties, and to consult with them on questions relating to this Convention and Protocols and Annexes thereto;
- iv) To perform the functions assigned to it by the protocols to this Convention;
- v) To perform such other functions as may be assigned to it by the Contracting Parties;
- vi) To ensure the necessary co-ordination with other international bodies which the Contracting Parties consider competent, and in particular, to enter into such administrative arrangements as may be required for the effective discharge of the secretariat functions.

¹⁰ The Contracting Parties of BAR CON 76, in article 6 of the Convention stated that they will

Prevention of Pollution by Dumping

Dumping of wastes and garbage is another source of pollution in marine areas of the world. Prevention of pollution from this source requires both national and regional co-operation. The states should pay higher attention to this matter because it is a common problem on land and at sea. Some substances are not only dissolved in water or soil but also they have harmful and hazardous emissions, and endanger the health of life at sea and in land.

The countries of each region should individually and jointly collaborate to eliminate harmful emissions of such substances through integrated and promotional measures.

In some regions the coastal states agreed to take measures to prevent pollution from dumping at sea e.g. the coastal states of the Mediterranean Sea and the Persian Gulf. The coastal states of the Baltic Sea decided to prevent basically any dumping at sea by ships.¹¹

"take all measures in conformity with international law to prevent, abate and combat pollution of the Mediterranean Sea Area caused by the discharges from ships and to ensure the effective implementation in that Area of the rules which are generally recognized at the international level relating to the control of this type of pollution".

The KUP CON 78 has already the same sentences, as mentioned above, in article 4 of the Convention. In addition it specifies the "load-on-top, segregated ballast and crude oil washing procedures for tankers" included to this type of pollution.

The HEL CON 92 has more detail in this subject. There in article 8 the coastal States referred to the Annex (4) that determines all required measures through certain number of Regulations to control the ships. In paragraph 2 of the article they stated that;

"The Contracting Parties shall develop and apply uniform requirements for the provision of reception facilities for ship-generated wastes, taking into account, inter alia, the special needs of passenger ships operating in the Baltic Sea Area.

¹¹. Prevention of dumping in HEL CON 92, Article 11:

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1. The Contracting Parties shall, subject to exemptions set forth in paragraphs 2 and 4 of this Article, prohibit dumping in the Baltic Sea Area.
 2. Dumping of dredged material shall be subject to a prior special permit issued by the appropriate national authority in accordance with the provisions of Annex V.
 3. Each Contracting Party undertakes to ensure compliance with the provisions of this Article by ships and aircraft:
 - a) registered in its territory or flying its flag;
 - b) loading, within its territory or territorial sea, matter which is to be dumped; or
 - c) believed to be engaged in dumping within its internal waters and territorial sea.
 4. The provisions of this Article shall not apply when the safety of human life or of a ship or aircraft at sea is threatened by the complete destruction or total loss of the ship or aircraft, or in any case which constitutes a danger to human life, if dumping appears to be the only way of averting the threat and if there is every probability that the damage consequent upon such dumping will be less than would otherwise occur. Such dumping shall be so conducted as to minimize the likelihood of damage to human or marine life.
 5. Dumping made under the provisions of paragraph 4 of this Article shall be reported and dealt with in accordance with Annex VII and shall be reported forthwith to the Commission in accordance with the provisions of Regulation 4 of Annex V.
 6. In case of dumping suspected to be in contravention of the provisions of this Article the Contracting Parties shall co-operate in investigating the matter in accordance with Regulation 2 of Annex IV.

Article 5 of K UW CON 78 states that; "The Contracting Parties shall take all appropriate measures to prevent, abate and combat pollution in the Sea Area caused by dumping of wastes and other matter from ships and aircraft, and shall ensure effective compliance in the Sea Area with applicable international rules relating to the control of this type of pollution as provided for in relevant international conventions".

Considering the nature of the Baltic Sea it was an appropriate decision that the coastal states agreed to prohibit any dumping at sea by ships.

Land-based pollution

Land-based pollution is the biggest source of marine pollution. In lectures at the World Maritime University some visiting professors have stated that more than 85 percent of the marine contamination is from land-based sources. In fact the United Nations and its Special Agencies like the International Maritime Organisation (IMO) and the United Nations Environment Programme (UNEP), which have made a lot of conventions and regulations for cleaner oceans, concentrating their endeavours on a few portion of marine pollution sources, but the largest portion is left to the coastal states and countries with rivers.

The regional conventions usually have an article talking about the obligation of contracting parties to take appropriate steps to abate and combat pollution emanating from land-based sources.

There are a large variety of substances that may cause contamination so coastal states ratified that regional conventions should establish special programmes, standards, regulations and guidelines to be implemented in order to control the inputs of water and air and to prevent pollution of products and emissions.

For example the standards and programmes should involve sewage and garbage processing, deposit for returning some materials used for canned food and drinks, batteries and other harmful substances, gathering papers and etc.

Furthermore, the standards for the establishment of any factory including evaluation of their refuses and emissions, designating an appropriate authority to be responsible for carrying out the control and issuing permissions and more important than all public promotional activities to raise the knowledge and culture of the inhabitants. The latter factor is a complementary step and can play an important role in succeeding all measures concerned and vice versa.¹²

¹². Article 6 of KUW CON 78 states that " The Contracting States shall take appropriate measures

Prevention of pollution from exploration and exploitation of the seabed and its subsoil

Exploration and exploitation of the seabed for oil and gas may cause pollution if the states do not take precautionary measure. For this purpose the contracting parties of a regional convention undertake to ensure that adequate preparedness is maintained for immediate response actions against pollution incidents caused by such activities. In addition the contracting parties undertake to implement the procedures prepared for this purpose.¹³

Environmental assessment

To prevent the adverse impacts of planning activities and projects across the coastal area of the states is another important issue.

The member states of a regional convention should take appropriate measures to prevent and eliminate pollution from such activities within their territory.

to prevent, abate and combat pollution caused by discharges from land reaching the Sea Area whether water-borne, air-borne, or directly from the coast including outfalls and pipelines.

¹³. In this relation the Contracting Parties of KUW CON 78 in Article 7 agreed as follows:

The Contracting States shall take all appropriate measures to prevent, abate and combat pollution in the Sea Area resulting from exploration and exploitation of the bed of the territorial sea and its sub-soil and the continental shelf, including the prevention of accidents and the combating of pollution emergencies resulting in damage to the marine environment.

In paragraph 1 of Article 12 of HEL CON 92 it is adopted that:

"Each Contracting Party shall take all measures in order to prevent pollution of the marine environment of the Baltic Sea Area resulting from exploration or exploitation of its part of the seabed and the subsoil thereof or from any associated activities thereon as well as to ensure that adequate preparedness is maintained for immediate response actions against pollution incidents caused by such activities".

The first requirement for this purpose is to develop technical and other guidelines in accordance with standard scientific practice and international standards concerned.

In this regard the provision of the regional conventions binds the contracting state of origin to notify and consult with any contracting party which may be affected by such impacts, including the executive sector of the convention.

The contracting states through environmental assessment ensure that the potential impacts on the marine environment of the concerned sea area is fully investigated. In this regard in BAR CON 76 there is no article on this matter but HEL CON 92 has a similar article to KUW CON 78.¹⁴

Co-operation in dealing with pollution emergencies

When a marine incident results in marine pollution, immediate response plays an important role to abate and eliminate the emissions and damages to the marine environment and its living resources.

In this regard the coastal states should have adequate ability and readiness to take the basic steps immediately. The success of the coastal state involved in such an incident depends on the extent of pollution, the

¹⁴. Article 11 of KUW CON 78 states that;

- (a) Each Contracting State shall endeavour to include an assessment of the potential environmental effects in any planning activity entailing projects within its territory, particularly in the coastal areas, which may cause significant risks of pollution in the Sea Area.
- (b) The Contracting State may, in consultation with the secretariat, develop procedures for dissemination of information of the assessment of the activities referred to in paragraph (a) above;
- (c) The Contracting States undertake to develop, individually or jointly, technical and other guidelines in accordance with standard scientific practice to assist the planning of their development projects in such a way as to minimise their harmful impact on the marine environment. In this regard international standards may be used where appropriate.

equipments provided for combating and the readiness of the employees who have been trained for this purpose including their immediate reaction in case of emergency.

But, because of the nature of marine pollution which spreads very fast there may also be damages to the marine environment of other states. Therefore co-operation between coastal states is unavoidable, although the pollution of one state's territorial waters itself may require such co-operation.

Therefore in a regional convention the contracting parties adopt provisions for co-operations in cases of pollution emergencies in order to reduce or eliminate damages resulting from such incidents.

The Mediterranean States in BAR CON 76 , article 9 agreed that

1- The Contracting Parties shall co-operate in taking the necessary measures for dealing with pollution emergencies in the Mediterranean Sea Area, whatever the causes of such emergencies, and reducing or eliminating damage resulting therefrom.

2- Any Contracting Party which becomes aware of any pollution emergency in the Mediterranean Sea Area shall without delay notify the Organisation and, either through the Organisation or directly, any Contracting Party likely to be affected by such emergency.

KUW CON 78 has the similar article to the one mentioned above but in HEL CON 92, they amended an annex to Article 14 to be implemented.¹⁵

Scientific and technological co-operation

To find the best methods, criteria and standards of monitoring , assessment and treatment of substances and other scientific measures related to the protection of the marine environment, the coastal states in a regional convention undertake to co-operate in scientific and technical research and studies. This co-operation includes developing methods for evaluating the

¹⁵. See appendix II.

nature and extent of pollution, pathways, exposures, risks and remedies in the sea area concerned.

Therefore, the contracting parties undertake directly, or when appropriate through a competent regional or other international organisations, to co-operate in the field of science, technology and other researches, and to exchange data and other scientific information for the purposes of the concerned regional convention.

The research may also include the development of alternative methods of treatment, disposal and elimination of substances that may cause pollution of the marine environment.¹⁶

Liability and Compensation

One of the issues in case of marine pollution is the liability and compensation for the damages resulting from omissions and contraventions.

In fact it is necessary, first of all to cover the expenditures of cleaning the polluted area and other damages to the marine environment including living resources, tourism industry and shipping activities.

Secondly, the repetition of omissions and violations shall be reduced

16. The coastal states of the Black Sea in article 15 of the adopted Convention agreed that;

"1. The Contracting Parties shall co-operate in conducting scientific research aimed at protecting and preserving the marine environment of the Black Sea and shall undertake, where appropriate, joint programmes of scientific research, and exchange relevant scientific data and information.

2. The Contracting Parties shall co-operate in conducting studies aimed at developing ways and means for the assessment of the nature and extent of pollution and of its effect on the ecological system in the water column and sediments, detecting pollution areas, examining and assessing risks and finding remedies, and in particular, they shall develop alternative methods of treatment, disposal, elimination or utilisation of harmful substances.

3. The contracting Parties shall co-operate, through the Commission, in establishing appropriate scientific criteria for the formulation and elaboration of rules, standards, and recommended practices and procedures for the prevention, reduction and control of pollution of the marine environment of the Black Sea.

when those who are involved in marine pollution consider the costs of their violations from the provisions of the convention. In this regard also other shipping companies and seafarers will take lessons and pay more attention within the marine area concerned.

The coastal states of Mediterranean in BAR CON 76 limited the liability and compensation deriving from the violations of the provisions of the convention:

"The Contracting Parties undertake to co-operate as soon as possible in the formulation and adoption of appropriate procedures for the determination of liability and compensation for damage resulting from the pollution of the marine environment deriving from violations of the provisions of this Convention and applicable protocols."

But the Member States of KUW CON 78 have undertaken to formulate and adopt rules and procedures for liability and compensation resulting not only from violations of the convention but also violations from the applicable and related international rules.¹⁷

The Baltic states also implicitly included the international rules as described in article 25 of HEL CON 92:

"The Contracting Parties undertake jointly to develop and accept rules concerning responsibility for damage resulting from acts or

¹⁷. Article 13 of KUW CON 78 says:

The Contracting States undertake to co-operate in the formulation and adoption of appropriate rules and procedures for the determination of:

- (a) civil liability and compensation for damage resulting pollution of the marine environment, bearing in mind applicable international rules and procedures relating to those matters; and
- (b) liability and compensation for damage resulting from violation of obligations under the present Convention and its protocols.

omissions in contravention of this Convention, including, inter alia, limits of responsibility, criteria and procedures for the determination of liability and available remedies."

Settlement of disputes

Disputes between the member states of a convention returns to the interpretation and application of the convention and/or the protocols.

The first recommendation of the convention to the parties in this regard is to find the solution through negotiation or any other peaceful means.

The second step for settlement of disputes if the first method did not result in a solution, is to submit it to the arbitration tribunal.

The Contracting Parties of HEL CON 92 made a sequence for solving the disputes on the interpretation and application as follows:

- a) to seek a solution through
 - i. negotiation between two parties, or;
 - ii. jointly request for mediation by;
 - a third party, or
 - a qualified international organisation, or
 - a qualified person.

- b) to submit the dispute to
 - an ad hoc arbitration tribunal, or
 - to a permanent arbitration tribunal, or
 - to the International Court of Justice.

The Member States of KUW CON 78 generally followed the procedures of paragraph (a) above, but for the second level they agreed that the case of dispute be submitted to the Judicial Commission which was established according to paragraph (b), sub-paragraph (III) of article 16 of the Convention.

The Parties to BAR CON 76 paid higher attention in this regard within

the adoption of the Convention. They have adopted an annex to the Convention as a procedure for arbitration for the second stage measures (see the annex in appendix III).¹⁸

Reports

The measures taken on the implementation of the Convention should be reported to the Commission or Organisation established or designated for the purposes of conventions, or in case of request to the other contracting parties.

This procedure is also a good incentive to push the member states to take appropriate measures on the implementation of the convention and to take it into the national legislation.

The form and intervals of reports is determined by the contracting parties or the secretariat established by the conventions.

In this relation articles of KUW CON 78 and BAR CON 76 generally bind the Contracting Parties to report the measures adopted in the implementation of the provisions of the Convention and its protocols.

The Baltic States in HEL CON 92 developed this provision (article 16) with more detail as follows:

18. Article 22 of BAR CON 76 states that:

1. In case of a dispute between Contracting Parties as to interpretation or application of this Convention or the protocols, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice.
2. If the Parties concerned cannot settle their dispute through the means mentioned in the preceding paragraph, the dispute shall upon common agreement be submitted to arbitration under the conditions laid down in annex A to this Convention.
- 3- Nevertheless, the Contracting Parties may at any time declare that they recognise as compulsory ipso facto without special agreement, in relation to any other Party accepting the same obligation, the application of the arbitration procedure in conformity with the provisions of annex A. Such declaration shall be notified in writing to the Depositary, who shall communicate it to the other parties.

1. The Contracting Parties shall report to the Commission at regular intervals on:
 - a) the legal, regulatory, or other measures taken for the implementation of the provisions of this Convention, of its Annexes and of recommendations adopted thereunder;
 - b) the effectiveness of the measures taken to implement the provisions referred to in sub-paragraph a) of this paragraph; and
 - c) problems encountered in the implementation of the provisions referred to in sub-paragraph (a) of this paragraph.

2. On the request of a Contracting Party or of the Commission, the Contracting Parties shall provide information on discharge permits, emission data or data on environmental quality, as far as available.

Amendments to the Convention and its Protocols

The provisions of a convention or a protocol may need to be changed or amended by the contracting parties after the enforcement of the convention or protocol. This measure and its procedure is specified in one of the articles of the convention.

The regional conventions have different procedures for the adoption and entering into force of the amendments to the articles of the conventions or protocols.

The Parties to BAR CON 76 and KUW CON 78 have devolved the adoption of the amendments to diplomatic conference of Contracting Parties. Paragraph (a) of article 20 of KUW CON 78 states that; " Any Contracting State to the present Convention or to any of its Protocols may propose amendments to the Convention or to the Protocol concerned at a diplomatic conference to be Convened by the secretariat at the request of at least three Contracting States. Amendments to the Convention and its protocols shall be

adopted by a unanimous vote of the Contracting States present and voting."

Article 16 of BAR CON 76 (paragraph 1 and 2) has similar procedure (except in the number of requests and votes for adoption)as there is said;

1. Any Contracting Party to this Convention may propose amendments to the Convention. Amendments shall be adopted by a diplomatic conference which shall be convened by the Organisation at the request of two thirds of the Contracting Parties.
2. Any Contracting Party to this Convention may propose amendments to any protocol. Such amendments shall be adopted by a diplomatic conference which shall be convened by the Organisation at the request of two thirds of the Contracting Parties to such protocol.

According to article 32 of HEL CON 92 the proposed amendments to the articles of the Convention by any member state "shall be submitted to the Depositary and communicated by it to all Contracting Parties, which shall inform the Depositary of either their acceptance or rejection of the amendments,..... ".

A proposed amendment shall also, at the request of a Contracting Party endorsed by another Party, be considered in the Commission. In such a case the Commission unanimously shall adopt the proposed amendment as soon as possible, however, not later than ninety days after the date of submission of the request.

The "Commission" can also recommend amendments to the articles of the Convention. Any such recommended amendment shall be submitted to the Depositary and communicated by it to all Contracting Parties, which shall notify the Depositary of either their acceptance or rejection of the amendment.

The amendment shall enter into force ninety days after the Depositary has received notifications of acceptance of that amendment from all Contracting Parties.

The amendments to the articles of Convention or Protocol in BAR CON 76 is adopted by a majority of a three fourths vote of the

Contracting Parties, and shall enter into force between the States accepted the adopted amendments on the thirtieth day following the receipt by the Depositary of notification of their acceptance by at least three fourths of the Contracting Parties to the Convention or to the Protocol.

The same procedure is determined in KUW CON 78 for acceptance and entering into force of the amendments to the Convention or its protocols .

Annexes and amendments to annexes

The annexes form an integral part of a convention and/or protocols. They contain integrated criteria, standards and procedures for the enforcement of the basic provisions of the conventions and/or protocols including;

- criteria for issuing certificates for the activities concerned .
- criteria for the substances concerned to be harmful or hazardous for the marine environment.
- the procedures for co-operation between the contracting parties in relation to the provisions of the convention and/or protocols.

The procedure of adopting the annexes or amendments to the annexes is more or less the same as the adoption of the amendments to the articles of a convention or protocols. The main difference is usually in the level of the decision makers for the adoption which for the annexes is usually lowered.

In addition for the acceptance of the adopted annexes or amendments to annexes, the procedure of tacit acceptance is applied.

The procedure for the adoption of the annexes is the same as the procedure of the adoption of the amendments to annexes.

In BAR CON 76 this task is also left to the biennial meetings of the Contracting Parties, because they have only designated the UNEP as the secretariat of the Convention but in KUW CON 78 it is adopted by the "Council" and in HELCON 92 by the "Commission".

An amendment to annexes may be proposed by a contracting party. In HEL CON 92 the procedure is in the following way:

- 1- An amendment to annexes may be proposed by a contracting party through the Depositary and considered in the Commission.
- 2- The Depositary shall communicate the amendment (adopted) in the Commission to all Contracting Parties and recommend for acceptance.
- 3- Such amendment shall be deemed to have been accepted at the expiration of a period determined by Commission for acceptance (tacit acceptance).
- 4- The period determined can be prolonged for an additional period of six months and accordingly the date of entry into force, for the exceptional cases that a Contracting Party intends to accept an amendment but is not ready to apply the amendment from the date it enters into force.

Signature

An adopted convention is open to be signed by the participant states. This provision means the plenipotentiaries of the concerned states who participated in the diplomatic conference, certify that they have been present within the whole processes of the adoption of the convention including the final act of the conference. In the other hand the signature states that the convention and/or the protocol(s) is legalised and is officially known as a legitimate document.

The conventions have a period for signature forthwith from the end of the conference held for adoption. In HEL CON 92 it was six months. In BAR CON 76 it was one year and in KUW CON 78 it was three months. The period for signature is also an opportunity for contracting parties to translate a copy of the convention and/or the protocol(s) and make it ready with other measures for taking the next action which is ratification.

Ratification, acceptance or approval

The Depositary shall send a copy of signed convention and/or the protocol(s) to all contracting states and recommend for ratification, acceptance or approval (or accession)¹⁹.

A convention may not enter into force if it is not ratified. The ratification is done by the legislative authority, which is usually the parliament or the congress of a country.

Sometimes the board of government under some conditions may be authorised by the parliament or congress for ratification of conventions or protocols.

The country which has ratified a convention is known as a "Contracting Party" to the convention or protocol. The contracting party shall take the convention into national legislation and takes appropriate measures in order to enforce the convention including to issue required instruments to the relevant authorities and organisations and will inform the Depositary about all measures has taken.

If the convention is adopted with protocol(s), they both shall be signed and ratified. In this regard, according to the procedure of some conventions, a country which has accepted the convention is also considered as having accepted the protocol. Paragraph (c) of article 27 of KUW CON 78 states that;

" Any State which has ratified, approved, accepted or acceded to the present Convention shall be considered as having ratified, accepted, approved or acceded to the Protocol concerning Regional Co-operation in Combating Pollution by oil and other Harmful Substances in Cases of Emergency".

¹⁹. Accession legally has the same meaning and value as ratification, approval or acceptance, but sometimes if a country ratifies a convention after the date of entry into force or the country is not a signatory state or a regional organisation (like EEC) according to the procedure of the concerned convention ratifies the convention and/protocols, it is considered as accession. In BAR CON 76 there is an article as "Accession" (Article 26).

The last point about this provision in the conventions is the period determined for ratification, acceptance or approval. The date for ratification usually starts one day after that the period for signature is expired but no expiration date is determined for ratification.

The Depositary shall deposit the ratified convention and/or the protocol(s).

Entry into force

A convention enters into force from a date determined within of the articles of the convention. This entails that the contracting parties regularise their procedures and authorities, and take other necessary measures before the convention enters into force.

The procedure of entering into force of the regional conventions differs from each other in a few items.

If the convention is adopted with protocol(s) simultaneously, they shall enter into force at the same date. Paragraph (a) of article 28 of K UW CON 78 states that;

"The present Convention together with the protocol concerning Regional Co-operation in Combating Pollution by oil and other harmful substances in Cases of Emergency shall enter into force on the ninetieth day of following the date of deposit of at least five instruments of ratification, acceptance or approval of, or accession to, the Convention."²⁰

The Member States of BAR CON 76 (article 27) agreed that;

" This Convention shall enter into force on the same date as the protocol first entering into force.

Any protocol to this Convention, except as otherwise provided in such protocol, shall enter into force on the thirtieth day following the date of deposit of at least six instruments of ratification,

²⁰-The total number of the Coastal States of the Persian Gulf are Eight.

acceptance, or approval of, or accession to such protocol by the Parties referred to in article 24."²¹

The coastal states of the Baltic Sea in HEL CON 92 specified two months after the ratification of the convention by all Signatory States as the date of which the Convention enters into force, although for each country which ratifies or approves the convention, it shall enter into force two months after the date of deposit by such states of its instrument of ratification or approval.

Withdrawal

The member states of a convention have the right to withdraw from the convention after a certain number of years of which the convention entered into force. The notification of such withdrawal should be in written and submitted to the depositary of the convention.

All the regional conventions determined expiration of five years from the date of entering into force for withdrawal from the convention or its protocol(s), except BAR CON 76 which has determined three years for withdrawal from its Protocols.

The withdrawal usually takes effect after three months from the date that it has been received by the Depositary. Some of the regional conventions, like HEL CON 92 and the Convention on the Protection of Marine Environment of the Black Sea Area 92, determined a specific day of the year (30 July or 31 December) for the withdrawal to be taken into effect.

The two regional conventions for the Mediterranean Sea and the Persian Gulf state that the withdrawal from the convention effects the membership to its protocol(s), so that the withdrawn state from the convention is also considered as having withdrawn from its protocol(s) and vice versa.

Article 29 of KUW CON 78 expresses that ;

²¹-The total number of the Coastal States of the Mediterranean Sea are 18.

- "a) At any time after five years from the date of entry into force of this Convention, any Contracting State may withdraw from this Convention by giving a notification of withdrawal to the Depositary;
- b) Except as may be otherwise provided in any other protocol to the Convention, any Contracting State may, at any time after five years from the date of entry into force of such protocol, withdraw from such protocol by giving written notification of withdrawal to the Depositary;
- c) Withdrawal shall take effect ninety days after the date on which notification of withdrawal is received by the Depositary;
- d) Any Contracting State which withdraws from the Convention shall be considered as also having withdrawn from any protocol to which it was a party.
- e) Any Contracting State which withdraws from the Protocol concerning Regional Co-operation in Combating Pollution by Oil and other Harmful Substances in Case of Pollution Emergency shall be considered as also having withdrawn from the Convention."

As far as the information says none of the contracting parties to the existing regional conventions for the protection of marine environment have withdrawn from the conventions or their protocols yet.

Depositary

One of the signatory states (usually the host country where the convention is adopted) is designated by the member states to act as the Depositary. The functions of Depositary are as follows;

- a) To inform the contracting parties of the convention and

protocol(s) of;

i- signature, ratification, approval or acceptance of the convention, protocol(s), annexes and any amendments to them.

ii- the date on which the concerned convention and any protocol(s) will come into force as well as the date of their amendments.

b) To transmit the copy of the instruments mentioned above to the contracting parties and the executive body of the convention and any international organisations concerned.

c) To deposit the original instruments mentioned above.

Additional articles in the regional conventions

The issues mentioned above are the common provisions of the regional conventions. The regional conventions also have some additional articles on the implementation and legal procedures of the convention and protocol(s), political situation of the region, nature and utilisation of the marine area concerned. Although in some cases the content of an article of a convention is one part of an article in another convention, e.g., "Monitoring" is an Article in BAR CON 76 (Article 10), whilst in the Black Sea Convention it is a part of an article (Scientific and technical co-operation and monitoring).

BAR CON 76 and KUW CON 78 both have articles on the adoption of additional protocols (Article 15 and Article 19) and compliance control (Article 21 and Article 24).

KUW CON 78, in addition, has an article under the name of "Disclaimer" (Article 15) which excludes any rights or claims of the contracting states on the nature or extension of the maritime jurisdiction, which may be established in conformity with international law from the provisions of the Convention .

HEL CON 92 has more additional articles than the other regional conventions. The parties have allocated a certain number of provision in this regard. They adopted articles on; prohibition of incineration on the marine area, nature conservation and biodiversity, pleasure craft, non-existence of reservation for the articles of the convention, information to public, and protection of information.

For example there are more than 1,300,000 pleasure crafts on the Baltic Sea coasts belonging to Swedes 700,000 of which are motorised.²² The dissemination of air pollution within the summer by these pleasure crafts including some 100,000_s pleasure crafts of Denmark, Finland and other

²². According to the last information, said Mr. Stefan Lemiezewski the Senior Administration Officer of Environment & technology Department of National Maritime Administration of Sweden.

coastal states of the Baltic Sea is four times more than the air pollution caused by the commercial vessels on the Baltic Sea in a year. Therefore, the parties agreed (Article 9) to take special measures to abate harmful effects of the pleasure crafts

Within the discussions with some officials in the Ministry of Environment of Sweden they believed that HEL CON 92 has entered too much into details.

Summary

According to what has been mentioned in this chapter about the contents of the regional conventions on the protection of the marine environment, the articles adopted can be divided into six categories as follows;

- 1- Introductory and fundamental articles;
 - convention area and its application.
 - definitions.
 - principles and obligations.
 - environmental assessment and monitoring.
 - liability and compensation.
- 2- Sources of pollution and preventing measures;
 - pollution from ships.
 - pollution from dumping by ships.
 - pollution from land-based sources.
 - pollution from exploration and exploitation of oil and gas
 - pollution from incineration and pleasure crafts.

- operation between the parties on;
technology and science.
- exchange of information.
- notification in emergency cases.
- combating marine pollution.
- technical and other assistance.

4- Institutional and financial arrangements.

5- Procedure of adoptions and implementation;

- signatory.
- ratification, approval, acceptance or accession.
- entry into force
- relation with the other international conventions.
- reservation.
- withdrawal.
- Depositary.

6- Other regional considerations and precautionary measures.

Finally, it is necessary to mention that BAR CON 76 and KUW CON 78 are prepared by the assistance of the UNEP including its co-operation on the implementation but HEL CON 92 and its Commission is independent from the UNEP.



Chapter 4

PROTOCOL
CONCERNING
REGIONAL CO-
OPERATION IN
COMBATING
POLLUTION BY OIL
AND OTHER
HARMFUL
SUBSTANCES IN
CASES OF
EMERGENCY

Chapter IV

THE STRUCTURE OF A PROTOCOL ON CO-OPERATION IN COMBATING POLLUTION BY OIL AND OTHER HARMFUL SUBSTANCES IN CASES OF EMERGENCY

A protocol is a legal framework for co-operation to deal with a specific issue between countries. A protocol may also be added to a convention, in such a case the main reason for adopting a protocol is the great importance of the issue concerned and the need for more details in order to specify the measures for co-operation. The contracting parties by adopting a protocol not only emphasise on the potential importance of the issue concerned but also determine in detail the procedures and measures for co-ordination and co-operation between themselves and, if necessary, any international organisations for the purposes of the protocol.

The common protocol in the regional conventions for the protection of the marine environment is the protocol concerning co-operation in combating pollution of the marine environment by oil and other harmful substances in cases of emergency (hereinafter referred as "the Protocol"), except the parties to HEL CON 92 which instead adopted an annex to the convention in this matter.

In this chapter the discussion will be on the introduction of the structure of such a protocol to the regional conventions. At the first step the articles of two similar protocols for the Black Sea and the Mediterranean Sea will be briefly introduced and then the content of the same protocol in KUW CON 78 will be discussed with more details.

PROTOCOL ON THE CO-OPERATION IN COMBATING
POLLUTION OF THE BLACK SEA MARINE ENVIRONMENT BY OIL
AND OTHER HARMFUL SUBSTANCES.

This Protocol consists of six articles and an Annex on the content of the report to be made pursuant to the provision of the protocol.

Article one binds the parties, in general, to take necessary measures and co-operate in cases of grave and imminent danger to the marine environment of the Black Sea or to the coasts of one or more of the parties.

Article two requires the contracting Parties to maintain and promote contingency plans, individually or jointly, or through bilateral or multilateral co-operation, for combating pollution of the sea by oil and other harmful substances. The plan should include preparing of equipment, vessels, aircraft and manpower for operations.

According to article three the parties should take necessary measures for detecting violations and enforcing the provisions of the protocol, particularly by the vessels flying their flags.

This article also asks the parties to promote exchange of information on the related subjects, including transmission of reports and urgent information in compliance with Article one.

Article four stipulates that each contracting party, which becomes aware of the said dangers or damages by pollution, most immediately notify the other Parties that deems likely to be affected by such damages.

Article five requires the parties to indicate the competent national authorities responsible for controlling and combating of pollution, in addition to designate focal point to transmit and receive reports of incidents.

The contracting parties due to article six should issue instruments to the masters of vessels and to the pilots of aircrafts requiring them to report to

the Party or Parties the presence of any spillage of oil or other harmful substances within the Marine Area of the Black Sea and any emergency situations of pollution. Such information must be communicated to the other parties by the party or the Commission which receive the report. In this regard the annex to this protocol specifies the necessary information and other supplementary information (requested by other parties or the Commission), to be made by the Masters of ships within the reports, in five items. To this end more information with examples will be given within the discussions on the same protocol in KUW CON 78.

PROTOCOL CONCERNING CO-OPERATION IN COMBATING
POLLUTION OF THE MEDITERRANEAN SEA BY OIL AND OTHER
HARMFUL SUBSTANCES IN CASES OF EMERGENCY

This Protocol consists of 13 articles and an annex on the reports to be made by the Masters of ships as said in the previews Protocol.

Articles 1,3,6,8 and 9 of this Protocol cover all the issues mentioned within the Protocol to the Black Sea Convention, except paragraph 1 of Article 3 which states the measures to be taken for detection of violations of the vessels from the provisions of the Protocol, which is not stated here precisely.

Article 2 is a definition. It defines only the clause "related interest" of the Coastal States which may be affected or threaten in terms of; activities in the coastal waters, historical and tourism appealing, health and the coastal pollution, and preservation of living resources.

Article 4 is about monitoring activities, either individually by the coastal states or through bilateral or multilateral co-operation, in order to get related information on the situation of the Mediterranean Sea area.

The content of article 5 returns to the cases of release or loss overboard

of harmful substances in packages, freight containers, portable tanks or road and rail tank wagons. The parties are required to co-operate in the salvage and recovery of such substances so as to reduce the danger of pollution of the marine environment.

Due to article 7 the coastal states are required to co-ordinate the utilisation of the means of communication for prompt, reliable reception, transmission and dissemination of all reports and urgent information concerned.

Call for assistance from other parties in order to combat pollution or threatening to pollute the coasts of a party by oil and other harmful substances forms the article 10 of this protocol. This assistance may include, expert advice and the supply to or placing at the disposal of the party of products, equipments and nautical facilities. In this relation the parties are requested to use their best endeavours.

Article 11 refers the application of some articles to the "Regional Centre" and its extension to sub-regional centres.

Unfortunately the Contracting Parties, neither in this protocol nor in BAR CON 76 did not specified the establishment of such a centre, except in part 4 of the Mediterranean Action Plan (adopted on 4 February 1975), the Coastal States requested from the Executive Director of the UNEP (which is designated as the Organisation of BAR CON 76) to "have early consultation with the Governments of the region on the possibility of establishing a regional oil-combating centre to deal with the ever-present and growing threat of a major oil spillage in the Mediterranean Sea and takes note of the proposal of Malta to host such a centre".²³

Article 12 states the meetings of the parties to the protocol ,in conjunction with ordinary meetings of the contracting parties of BAR CON 76, in order to

- keep under review the implementation of the protocol,
- review and amend as appropriate any annexes to protocol, and

²³. Later on they established this centre in Greece.

-discharge other functions for the implementation of the protocol.

Article 13 specifies the relation between this protocol and BAR CON 76 particularly the rules of procedure and the financial rules of the convention which are also applicable to this protocol.

PROTOCOL CONCERNING REGIONAL CO-OPERATION
IN COMBATING POLLUTION (OF THE PERSIAN GULF) BY
OIL AND OTHER HARMFUL SUBSTANCES IN CASES OF
EMERGENCY

The Protocol has 13 articles with an appendix as guidelines for reports to be made by the Masters of ships (the same as the annex of two protocols mentioned before).

The introduction of the Protocol reminds the Parties of

- being Party to KUW CON 78,
- the recognition of the potentiality of emergencies which may result in substantial pollution and to provide co-operation and effective measures in this relation,
- the need for enhancement of the existing measures for responding to pollution emergencies on a national and regional basis.²⁴

This Protocol compared with the two others is more detailed and completed. It seems that the weaknesses of the same protocol to BAR CON 76 is covered here (both are prepared by the assistance of the UNEP). The articles adopted are as follows:

²⁴. The introduction of the protocol to BAR CON 76 in addition has referred to some international conventions such as; "the Convention on the Prevention of Pollution from Ships, 1973, the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties , 1969, the Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances Other than Oil, 1973, the International Convention on Civil Liability for Oil Pollution Damage , 1973". These are not mentioned in this protocol perhaps because the coastal states of this region are not party to the said conventions.

Article I DEFINITIONS

The protocol has nine definitions of; appropriate authority, marine emergency, marine emergency contingency plan, marine emergency response, Related Interests, centre, convention, sea area and council.

The three latter return to definitions in KUW CON 78. The definition of the Centre is referred to article 3 of this protocol.²⁵

²⁵. The other five definitions are as follows:

- (1) "Appropriate Authority" means either the National Authority defined in Article 1 of the convention or the authority or authorities within the government of a Contracting State, designated by the national authority and responsible for:
 - (a) combating and otherwise operationally responding to marine emergencies;
 - (b) receiving and co-ordinating information of particular marine emergencies;
 - (c) co-ordinating available national capabilities for dealing with marine emergencies with general within its own government and with other Contracting States.
- (2) "Marine Emergencies" means any casualty, incident occurrence or situation, however caused, resulting in substantial pollution or imminent threat of substantial pollution to the marine environment by oil or other harmful substances and includes, inter alia, collision, stranding and other incidents involving ships, including tankers, blow-out arising from petroleum drilling and production activities, and the presence of oil or other harmful substances arising from the failure of industrial installation ;
- (3) "Marine Emergency Contingency Plan" means a plan or plans, prepared on a national, bilateral or multilateral basis, designed to co-ordinate the deployment, allocation and use of personnel material and equipment for the purpose of responding to marine emergencies ;
- (4) "Marine Emergencies Response " means any activity intended to prevent, mitigate or eliminate pollution by oil or any harmful substances or threat of such pollution resulting from marine emergencies;
- (5) "Related Interests" means the interests of a contracting state directly or indirectly affected or threatened by marine emergencies, such as:
 - (a) Maritime, coastal, port or estuary activities including fisheries activities, constituting an essential means of livelihood of the persons concerned ;
 - (b) historic and tourist attraction of the area concerned;
 - (c) the health of the coastal population and the well-being of the area concerned,

The definitions have determined different aspects of the issues concerned and made a clear understanding of the clauses used and their limitations.

Article II GENERAL UNDERTAKINGS

This article in general binds the contracting parties to co-operate in taking necessary and effective measures when the coastline and related interests of one or more of the coastal states is endangered or threatened from pollution by marine emergencies.

The requirement of this co-operation is to provide the contingency plans and the necessary means for combating pollution, so the coastal states agreed to take appropriate measures in this relation.²⁶

including conservation of living marine resources and of wild life;

(d) industrial activities which rely upon intake of water, including distillation plants and industrial using circulating water ;

²⁶. Article II states that:

1. The Contracting States shall co-operate in taking the necessary effective measures to protect the coast line and related interest of one or more of the states from the threat and effects of pollution due to the presence of oil and other harmful substance in the marine environment resulting from marine emergencies.
2. The Contracting States shall endeavour to maintain and promote, either individually or through bilateral or multilateral co-operation their contingency plans and means for combating pollution in the sea area by oil and other harmful substances. These means shall include, in particular, available equipment, ships, aircraft and manpower prepared for operations in cases of emergency.

Article III

THE MARINE EMERGENCY MUTUAL CENTRE

The co-ordination on co-operation and operation in prompt combating in cases of marine pollution and other emergency cases is the most important step and of course a very difficult one. Well-arranged co-ordination and co-operation may result in abating, eliminating the extension of pollution to ensure the survival of the human life and living resources of the marine area. .

For this purpose the parties established the Marine Emergency Mutual Aid Centre (hereinafter referred to as "Centre") in Article 3 of the Protocol and specified some objectives and functions for that.

The objectives of the Centre are;

- to facilitate co-operation among the coastal states to combat marine pollution and to strengthen their capabilities for this purpose.
- to assist the contracting parties to develop national capabilities for combating pollution and to co-ordinate the exchange of information, technological co-operation and training.
- initiating the operation of combating pollution (after the Council approved it).

The function of the Centre are specified in eight categories:

- to collect and disseminate related information on regulatory measures, designated authorities, methods, techniques and research, list of available experts, equipment and materials for emergency response;
- to assist the Contracting Parties in preparation of relevant laws and regulations, marine emergency contingency plans, procedures for response and fast transportation of personnel, equipment and materials for pollution combating;
- to co-ordinate training programmes and prepare anti-pollution manuals;
- to develop and maintain a communication/information system for immediate exchange of information in cases of pollution incident;²⁷

²⁷. In the Protocol of BAR CON 76 an article is allocated to the co-ordination for utilisation of the communication means (Article 7).

- to prepare the inventories of available personnel, materials, vessels and aircraft for marine emergency response;
- to keep liaison with the competent regional and international organisations, particularly the IMO, in order to obtain whatever may assist in the performance of its functions;
- to prepare periodic reports concerned;
- to perform any other functions assigned to it by this Protocol or by the Council.

Article IV APPLICATION

The Article specifies that this protocol is applicable to the same area as KUW CON 78 (the Persian Gulf). The area covered by the protocol may include the ports, harbours, estuaries, bays and lagoons if the contracting party so decided. This means, in cases of marine emergency within the territorial waters of a party, it is the coastal state which decides the application of the provisions of the protocol or not. This is the right of jurisdiction for the coastal states according to generally accepted rules.

Articles V and VI EXCHANGE OF INFORMATION

The two Articles require the parties to provide the Centre and the contracting parties two series of information in compliance with the protocol.

Article 5 binds them to provide information about the;

- the designated authority,
- legal arrangements and instruments, and
- national contingency plans.

In Article 6 the information on the existing and new methods, techniques, materials including the relevant procedures of the party for marine emergency response are required. Furthermore the research, developments

and results of research on them should be reported by the parties.

The provisions of these two articles is an effective incentive to direct the contracting parties to take necessary measures in compliance with articles 2, 3 and 10 of the Protocol.²⁸

Article VII

REPORT ON MARINE EMERGENCY

The prompt notification of pollution emergencies is a basic factor for eliminating, combating and rectifying pollution. In cases of coastline where maritime activities are concentrated, there is the possibility for emergencies to be reported by any body who is working there through alarm and different communication means. It is also easier to take appropriate measures to deal with any kind of pollution incidents because of locating combating equipment, materials and personnel on shore. But offshore emergencies do not have these characteristics, therefore all the protocols on marine emergency contain an article which requires the masters of ships, pilots of aircraft and persons in charge of any other offshore platform activities to report existence of any

²⁸. Article 5 and 6 of the Protocol are as follows:

Each Contracting States shall provide the Centre and the other Contracting States with information concerning:

- (a) its appropriate authority;
- (b) its laws, regulations, and other legal instruments relating generally to matters addressed in this Protocol, including those concerning the structure and operation of the authority referred to in Paragraph (a) above;
- (c) its national marine emergency contingency plans.

Each Contracting States shall provide to other Contracting States and the Centre information concerning:

- (a) existing and new methods, techniques, materials, and procedures relating to marine emergency response;
- (b) existing and planned research and developments in the areas referred to in Paragraph (a) above; and
- (c) results of research and developments referred to in Paragraph (b) above.

marine emergency, in the area concerned, to the national authorities and regional centres and so forth.²⁹

This procedure was adopted in Article 7 of this protocol including an appendix which is a uniform guideline for the reports to be made in cases of offshore emergencies.

Article VIII TRANSMISSION OF INFORMATION

This article states that the Centre should immediately transmit the information and reports received, pursuant to articles 5, 6 and 7, to all other contracting parties.

The contracting parties which become aware of a marine emergency would be ready for any co-operation that may be requested and will have enough opportunity to take necessary measures to protect their marine environment and coastal areas which are likely to be affected by the marine emergency.

Article IX RESTRICTION OF INFORMATION

The information reported by a contracting party is likely to be used against its national interests or wrong use of wrong receivers rather than the expected negative impacts for the country because of the failures and

²⁹. Paragraph 2 of Article VII states that:

2. Any Contracting States receiving a report pursuant to paragraph 1 above shall promptly inform the following of the marine emergency:
 - (a) the Centre;
 - (b) all other Contracting States;
 - (c) the flag State of any foreign ship involved in the marine emergency concerned.

negligence of individuals or sectors resulting the marine emergency.

Therefore a party may restrict the dissemination of the information. In such a case the Centre and any other parties to whom the information is transmitted should not disclose or transmit the information to any other person, government or any public or private organisation, without permission of the state of origin. This is stipulated in Article 9 of the protocol.

Article X RESPONSE ACTION

The Articles mentioned above determined the duties of the contracting parties in preparations and information communications. This Article detail the actions to be taken by the any party facing with an emergency.

Any contracting party involved in a marine emergency situation should take four steps in the following sequence as adopted in Article 10 of the protocol:

- (a) take every appropriate measure to combat pollution and/or to rectify the situation;
- (b) immediately inform all other contracting states, either directly or through the Centre, of any action which it has taken or intends to take to combat the pollution. The Centre shall promptly transmit any such information to all other contracting states;
- (c) determine the necessary and appropriate action to be taken with respect to the marine emergency , in consultation, where appropriate, with other contracting states, affected states and the Centre.

This Article is the main body of the protocol and all other articles are adopted to support it.

Article XI CALL FOR ASSISTANCE

A contracting party facing a marine emergency may need assistance of the other Parties to take part in the situation occurred. The parties to this Protocol in Article 11 undertook to "use their best endeavours within their capabilities to render assistance requested". The assistance may include:

- (a) personnel , material , and equipment ,including facilities or methods for the disposal of recovered pollutant ;
- (b) surveillance and monitoring capacity;
- (c) facilitation of the transfer of personnel material, and equipment into out of and through the territories of the contracting states.

The contracting party can also utilize the services of the Centre in co-ordinations on marine emergency response in which the assistance is called, as well as to call for the mobilization of resources made available by other contracting parties for combating pollution in cases of special emergencies.

The assistance and its result should be reported by the assisted party to the Centre and through it to all other Contracting Parties.

Regarding to call for assistance it would be better if the parties to this Protocol determined, within this Article or another article, the financial procedure as to be paid for the assistance with unitized tariffs.

Article XII ESTABLISHMENT OF NATIONAL AUTHORITY

According to this Article each contracting party should "establish and maintain an appropriate authority to carry out fully the obligations

under this protocol". Furthermore, with the assistance of the Centre, the authority of each country would co-operate and co-ordinate its activities with the counterparts in the other contracting party. The co-operation and co-ordination comprises the following items;

- distribution and allocation of stocks of materials and equipment;
- training of personnel for marine emergency response activities;
- marine pollution surveillance and monitoring activities;
- methods of communication in respect of marine emergencies;
- facilitation of the transfer of personnel, equipment and materials involved in marine emergency responses into, out of, and through the territories of the contracting parties.

Indeed the co-ordination between the parties before, within and after a marine emergency is a difficult step but plays such an important role in emergency response that the lack of this co-ordination may result in tremendous damage to the party or parties involved and vice versa. In this regard the regional centre can make effective assistance. This fact is considered within the articles of this protocol.

Article XIII

FUNCTIONS OF THE COUNCIL ON THE CENTRE

The contracting parties by adopting this Article devolved the control and decide on the functions and work of the Centre to the Council in three categories;

- (a) review periodically the activities of the Centre performed under this Protocol;
- (b) decide on the degree to which, and stages by which, the functions of the Centre set out in Article III will be implemented; and
- (c) determine the financial, administrative and other support to be provided by the contracting states to the Centre for the

- a) the identification of the source of pollution (e.g. the ship);
 - b) the geographic position , time and date of occurrence of the incident or of the observation;
 - c) the marine meteorological conditions prevailing i the area;
 - d) the conditions of the ship, if the pollution originated from a ship;
2. Each report must contain, whenever possible, in particular:
 - a) a clear indication or description of the harmful substances involved, including names of such substances (trade names should not be used in place of the correct technical names);
 - b) a statement or estimate of the quantities, concentrations and likely conditions of harmful substances discharged or likely to be discharged into the sea;
 - c) the name of the consignor, consignee or producer.
 3. Each report should clearly indicate, as far as possible, the harmful substance discharged or likely to be discharged is:
 - a) oil or a noxious liquid, solid or gaseous substance;
 - b) carried in bulk or contained package form, freight containers, portable tanks, or submarine pipelines.
 4. Each report should be supplemented, if necessary, by any other information requested by the recipient or the person sending the report.
 5. Any of the persons who are required to provide and send the report also should:
 - a) supplement the initial report, as necessary and possible, with additional and new information;
 - b) provide as fully as possible the additional information as requested by the affected Party.

performance of its functions.

At the end of the Protocol it is mentioned that the undersigned plenipotentiaries are being authorized by their respective governments. In addition in the last paragraph the date of adoption, its languages (Arabic, English and Persian, being equally authentic) and to refer to English texts in case of disputes on the interpretation or application of the Protocol is specified.

The reason of adopting the protocol in three languages is that the people of the contracting parties speak Persian (only Iran) and Arabic, and the protocol is prepared by the assistance of the UNEP. The English text is also appropriate for the international organizations and as the reference for solving disputes between the parties on the interpretations .

CONTENT OF THE REPORT TO BE MADE PURSUANT TO ARTICLE VII

To make understanding of the emergency cases clear the parties of such protocols adopted a uniform data sheet to be reported. This simplifies the work of the authorities to find the necessary and relevant information specified in the forms. It also facilitates the prompt decision making on the methods, equipment, materials and the personnel needed for operations to combat , abate and to rectify pollution and the survival of the crew and personnel endangered in a marine emergency

The items of the adopted appendix to this Protocol, to be used by the masters of ships, pilots of aircraft and persons in charge of offshore platforms and other similar structures operating in the marine environment and under its jurisdiction to report the existence of any marine emergency in the area concerned to the appropriate national authority and to the Centre, are the same as in the annexes of the same Protocols of BAR CON 76 and the Black Sea 92.

The guidelines for such reports is specified in five major items;

1. Each report shall, as far as possible, contain, in general:

SUMMARY

The protocol on co-operation in combating pollution by oil and other harmful substances, irrespective of some preliminary articles about general undertaking, definitions and application, specifies the agreements on co-ordination, co-operation, assistance and exchange of relevant information, before, within and after marine emergencies.

The regional centres or commission are the axis of these measures. In this regard the main issues include;

- a) exchange of information on;
 - national laws and regulations concerning appropriate authorities and marine contingency plans;
 - methods, techniques, equipment and the personnel trained for marine emergency monitoring and response;
 - researches and their results on the issues concerned;
 - reports of the offshore marine emergencies.

- b) Co-ordination on;
 - prompt and reliable utilization of communication means;
 - assistance with the parties facing marine emergency as consulting and rendering capabilities or taking part in action;

- c) co-operation, assistance and consulting on;
 - combating pollution;
 - assessment of the nature and extent of marine emergency;
 - determination of appropriate and necessary action due respect to the marine emergency.

CONCLUSION

Comparing the three protocols introduced above, the Protocol of the Black Sea Convention concerned is too short and general. Therefore needs more

specifications. The Protocol of BAR CON 76 has emphasized some coordination measures like utilization of communication means.

The Protocol of KUW CON 78 is more comprehensive and objective although minor changes can be made as to combine some articles regarding to the exchange of information.

PROPOSAL OF A
MODEL
CONVENTION
ON THE
PROTECTION OF
THE MARINE
ENVIRONMENT
OF THE CASPIAN
SEA AREA

INTRODUCTION

The present Convention and its protocol is a draft of a multilateral legal framework proposal to the Coastal States of the Caspian Sea for the protection and preservation of the marine environment of the Caspian Sea area.

The content of the articles is based on the geographical, biological, political and geopolitical considerations of the Caspian Sea and its coastal states and similar regional conventions.

The position of the Caspian Sea as an enclosed water to which the international rules are not applicable, which has influenced the main body of the Convention, is the main difference between this Convention and the other regional conventions.

The Convention is composed of 35 articles. Generally the description of the articles was discussed in the previous chapters but some of the articles have specifications in different aspects which may be useful to be mentioned here:

1. In Article 9 any dumping in the Caspian Sea Area is prohibited except dredging materials with special permits and in emergency cases of vessels where the safety of life of the personnel is endangered. This is a higher measure rather than prevention of pollution from dumping.
2. The incentive of proposing Article 12 is the need for more co-operation between the Coastal States for preservation of wild birds and fish species, particularly caviar fishes.
3. In Article 15 the consideration was given to the political situation of the region and the legal regime of the Caspian Sea as a common sea for the Coastal States. Bearing in mind that irrespective to the existing legal regime the Coastal States need to divide the marine area for their monitoring responsibility.
4. The headquarters of the Regional Organization is offered to be in

Baku (Article 18). It is because;

- a) Baku is the only capital city among the capitals of the Coastal States that is located beside the Caspian Sea and close to the other States. Therefore many possibilities are available for the Organization there.
 - b) Following the suitable position of Baku for the location of the Regional Organization the government of Azerbaijan is suggested to act as Depositary.
5. The Convention has only one protocol which is the minimum legal requirement for the purposes of the protection of the marine environment of the Caspian Sea. Therefore in Article 27 adoption of additional protocols is proposed.
 6. There is no opportunity for reservations to the articles of the Convention and its protocol (Article 30) because the enforcement of any decision requires co-operation of all the five Coastal States (so the reservation makes no sense).
 7. The period for withdrawal from the Convention is proposed to be seven years in Article 34 (while in the other regional conventions it is five years). The idea behind this period is that
 - a) the first year of the enforcement of the Convention is used for preparations,
 - b) the reasonable time for a period of the implementation of the Convention is five years, and
 - c) the seventh year is for evaluation of the results and the usefulness of the Convention.

The Protocol concerning Co-operation in Combating Pollution of the Caspian Sea by Oil and other Harmful Substances in cases of Emergency is the most important protocol among the protocols concerned because it is necessary for the parties of a convention take appropriate measures to respond or co-operate in emergencies. This Protocol is based on the protocol in KUW CON 78. Minor changes have been made because it was applicable to region concerned. The Headquarters of the Centre (Article 3 of the Protocol) to be

offered in Baku. The intention for this suggestion is that it would be more useful if the Centre is situated where the Regional Organization and its council are. The Council then will have better control on the work of the Centre (Article 12 of the Protocol).

Convention on the Protection of the Marine Environment of the Caspian Sea Area 1993

THE CONTRACTING PARTIES,

CONSCIOUS of the indispensable values of the marine environment of the Caspian Sea Area, its exceptional hydrographic and ecological characteristics and the sensitivity of its living resources to changes in the environment;

BEARING in mind the historical and present economic, social and cultural values of the Caspian Sea Area for the well-being and development of the peoples of that region;

NOTING with deep concern the ongoing pollution of the Caspian Sea Area;

DECLARING their firm determination to assure the ecological restoration of the Caspian Sea, ensuring the possibility of self-regeneration of the marine environment and preservation of its ecological balance;

RECOGNIZING that the protection and preservation of the marine environment of the Caspian Sea Area is a great task that cannot effectively be accomplished by national efforts alone but by close regional co-operation and other appropriate international measures;

CONSCIOUS of the importance of transparency and public awareness for successful protection of the Caspian Sea Area;

WELCOMING the improved opportunities for closer co-operation which have been opened by the recent political developments in the Caspian Sea States on the basis of peaceful co-operation and mutual understanding;

BEING AWARE of the position of the Caspian Sea as an enclosed water to which the international laws and conventions are not applicable.

HAVE AGREED as follows:

Article 1

CONVENTION AREA

This Convention shall apply to the Caspian Sea Area. For the purposes of this Convention the "Caspian Sea Area" shall be the Caspian Sea and the entrance to the Caspian Sea bounded by the parallel of 34°, 13 latitude and 18° , 24 longitude surrounded by the States; Azerbaijan, Ghazakistan, Iran, Russian Federation and Turkmenistan. It includes the internal waters.

Article 2

DEFINITIONS

For the purposes of this Convention:

1. "Pollution" means introduction by man, directly or indirectly, of substances or energy into the sea, including estuaries, which are liable to create hazards to human health, to harm living resources and marine ecosystems, to cause hindrance to legitimate uses of the sea including fishing, to impair the quality for use of sea water, and to lead to a reduction of amenities;

2. "Pollution from land-based sources" means pollution of the sea by point or diffuse inputs from all sources on land reaching the sea waterborne, airborne or directly from the coast. It includes pollution from any deliberate disposal under the seabed with access from land by tunnel, pipeline or other means;

3. "Ship" means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles,

submersibles, floating craft and fixed or floating platforms;

4. a) "Dumping" means:

- i) any deliberate disposal at sea or into the seabed of wastes or other matter from ships, other man-made structures at sea ;
- ii) any deliberate disposal at sea of ships, other man-made structures at sea ;

b) "Dumping" does not include the disposal at sea of wastes or other matter incidental to, or derived from the normal operations of ships, other man-made structures at sea and their equipment, other than wastes or other matter transported by or to ships, other man-made structures at sea , operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such ships, structures.

5. "Oil" means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products;

6. "Harmful substance" means any substance, which, if introduced into the sea, is liable to cause pollution;

7. "Hazardous substance" means any harmful substance which due to its intrinsic properties is persistent, toxic or liable to bio-accumulate;

8. "Pollution incident" means an occurrence or series of occurrences having the same origin, which results or may result in a discharge of oil or other harmful substances and which poses or may pose a threat to the marine environment of the Caspian Sea or to the coastline or related interests of one or more Contracting Parties, and which requires emergency actions or other immediate response;

9. The "Organisation" means the Caspian Marine Environment Protection Organisation" referred to in Article 16.

Article 3

FUNDAMENTAL PRINCIPLES AND OBLIGATIONS

1. The Contracting Parties shall individually or jointly take all appropriate legislative, administrative or other relevant measures to prevent and eliminate pollution in order to promote the ecological restoration of the Caspian Sea Area and the preservation of its ecological balance.

2. In addition to the Protocol concerning Regional Co-operation in Combating Pollution by Oil and other Harmful Substances in Cases of Emergency opened for signature at the same time as the present Convention, the Contracting Parties shall co-operate in the formulation and adoption of other protocols prescribing agreed measures, procedures and standards for the implementation of the Convention

3. The Contracting Parties shall apply the precautionary principle, i.e., to take preventive measures when there is reason to assume that substances or energy introduced, directly or indirectly, into the marine environment may create hazards to human health, harm living resources and marine ecosystems, damage amenities or interfere with other legitimate uses of the sea even when there is no conclusive evidence of a causal relationship between inputs and their alleged effects.

4. In order to prevent and eliminate pollution of the Caspian Sea Area the Contracting Parties shall promote the use of "Reasonable Environmental Practice" and "Acceptable Technology". The criteria and standards of "Reasonable Environmental Practice" and "Acceptable Technology" shall be specified and promoted by the Organization

5. The Contracting Parties shall apply the polluter-pays principle.

6. The Contracting Parties shall ensure that measurements and calculations of emissions from point sources to water and air and of inputs from diffuse sources to water and air are carried out in a scientifically

appropriate manner in order to assess the state of the marine environment of the Caspian Sea Area and ascertain the implementation of this Convention.

Article 4

APPLICATION

1. This Convention shall apply to the protection of the marine environment of the Caspian Sea Area which comprises the water-body and the seabed including their living resources and other forms of marine life.

2. Without prejudice to its sovereignty each Contracting Party shall implement the provisions of this Convention within its territorial sea and its internal waters through its national authorities.

3. This Convention shall not apply to any warship, naval auxiliary, military aircraft or other ship and aircraft owned or operated by a state and used for the time being, only on government non-commercial service.

However, each Contracting Party shall ensure, by the adoption of appropriate measures not impairing the operations or operational capabilities of such ships owned or operated by it, that such ships act in a manner consistent, so far as is reasonable and practicable, with this Convention.

Article 5

PRINCIPLES AND OBLIGATIONS CONCERNING POLLUTION FROM LAND-BASED SOURCES

1. The Contracting Parties undertake to prevent and eliminate pollution of the Caspian Sea Area from land-based sources by using, inter alia, Reasonable Environmental Practice for all sources and Acceptable Technology for point sources. The relevant measures to this end shall be taken by each Contracting Party in the catchment area of the Caspian Sea without prejudice to its sovereignty.

2. In this regard the Contracting Parties undertake to prepare and implement appropriate procedures and criteria. To this end they shall cooperate in the development and adoption of specific programmes, guidelines, standards or regulations concerning emissions and inputs to water and air, environmental quality, and products containing harmful substances and materials and the use thereof.

3. Harmful substances from point sources shall not be introduced directly or indirectly into the marine environment of the Caspian Sea Area, without a prior special permit, which may be periodically reviewed, issued by the appropriate national authority. The Contracting Parties shall ensure that authorised emissions to water are monitored and controlled.

4. If the input from a watercourse, flowing through the territories of two Contracting Parties or forming a boundary between them, is liable to cause pollution of the marine environment of the Caspian Sea Area, the Contracting Parties concerned shall jointly, take appropriate measures in order to prevent and eliminate such pollution.

Article 6

ENVIRONMENTAL IMPACT ASSESSMENT

1. Each Contracting Party shall endeavour to include an assessment of the potential environmental effects in any planning activity entailing projects within its territory, particularly in the coastal areas, which may cause significant risks of pollution in the Caspian Sea Area.
2. The Contracting Party may, in consultation with the secretariat, develop procedures for dissemination of information of the assessment of the activities referred to in paragraph 1 above;
3. The Contracting Parties undertake to develop, individually or jointly, technical and other guidelines in accordance with standard scientific practice to assist the planning of their development projects in such a way as to minimise their harmful impact on the marine environment. In this regard international standards may be used where appropriate.
4. Where two or more Contracting Parties share transboundary waters within the catchment area of the Caspian Sea, these Parties shall co-operate to ensure that potential impacts on the marine environment of the Caspian Sea Area are fully investigated within the environmental impact assessment referred to in paragraph 1 of this Article. The Contracting Parties concerned shall jointly take appropriate measures in order to prevent and eliminate pollution including cumulative deleterious effects.

Article 7

MONITORING

1. The Contracting Parties shall, inter alia, establish through the Organisation and where appropriate, in co-operation with international organisations they consider to be competent, complementary or jointly monitoring programmes covering all sources of pollution and shall establish a

pollution monitoring system for the Caspian Sea including, as appropriate, programmes at bilateral or multilateral levels for observing, measuring, evaluating and analysing the risks or effects of pollution of the marine environment of the Caspian Sea.

2. The Contracting Parties shall co-operate as appropriate, in the development, acquisition and introduction of clean and low-waste technology, *inter alia*, by adopting measures to facilitate the exchange of such technology.

3. Each Contracting Party shall designate the competent national authority responsible for scientific activities and monitoring.

Article 8

PREVENTION OF POLLUTION FROM SHIPS

1. The Contracting Parties shall take all appropriate measures in conformity with the present Convention to prevent, abate and combat pollution in the Caspian Sea Area caused by international or accidental discharges from ships, extracting the international rules relating to the control of this type of pollution, including load-on-top, segregated ballast and crude oil washing procedures for tankers.

2. The Contracting Parties shall develop and apply uniform requirements for the provision of reception facilities for ship-generated wastes, taking into account, *inter alia*, the special needs of passenger ships operating in the Caspian Sea Area.

Article 9

PREVENTION OF DUMPING

1. The Contracting Parties shall, subject to exemptions set forth in paragraphs 2 and 4 of this Article, prohibit dumping in the Caspian Sea Area.

2. Dumping of dredged material shall be subject to a prior special permit issued by the appropriate national authority.

3. Each Contracting Party undertakes to ensure compliance with the provisions of this Article by ships :

- a) registered in its territory or flying its flag;
- b) loading, within its territory or territorial sea, matter which is to be dumped; or
- c) believed to be engaged in dumping within its internal waters and territorial sea.

4. The provisions of this Article shall not apply when the safety of human life or of a ship or aircraft at sea is threatened by the complete destruction or total loss of the ship or aircraft, or in any case which constitutes a danger to human life, if dumping appears to be the only way of averting the threat and if there is every probability that the damage consequent upon such dumping will be less than would otherwise occur. Such dumping shall be so conducted as to minimize the likelihood of damage to human or marine life.

5. Dumping made under the provisions of paragraph 4 of this Article shall be reported forthwith to the Organisation.

6. In case of dumping suspected to be in contravention of the provisions of this Article the Contracting Parties shall co-operate in investigating the matter.

Article 10

EXPLORATION AND EXPLOITATION OF THE SEABED AND ITS
SUBSOIL

1. Each Contracting Party shall take all measures in order to prevent pollution of the marine environment of the Caspian Sea Area resulting from exploration or exploitation of its part of the seabed and the subsoil thereof or from any associated activities thereon as well as to ensure that adequate preparedness is maintained for immediate response actions against pollution incidents caused by such activities.

2. In order to prevent and eliminate pollution from such activities the Contracting Parties undertake to co-operate to prepare and implement the necessary procedures, standards and criteria.

Article 11

NOTIFICATION AND CONSULTATION ON POLLUTION
INCIDENT

1. Whenever a pollution incident in the territory of a Contracting Party is likely to cause pollution to the marine environment of the Caspian Sea Area outside its territory and adjacent maritime area in which it exercises sovereign rights and jurisdiction according to existing treaties and international law, this Contracting Party shall immediately notify the designated authorities of such Contracting Parties whose interests are affected or likely to be affected.

2. Whenever deemed necessary by the Contracting Parties referred to in paragraph 1, consultations should take place with a view to preventing, reducing and controlling such pollution.

3. Paragraphs 1 and 2 shall also apply in cases where a Contracting Party has sustained such pollution from the territory of a third state.

Article 12

NATURE CONSERVATION AND BIODIVERSITY

The Contracting Parties shall individually and jointly take all appropriate measures with respect to the Caspian Sea Area and its coastal ecosystems influenced by the Caspian Sea to conserve biological diversity and to protect ecological processes. Such measures shall also be taken in order to ensure the sustainable use of natural resources within the Caspian Sea Area. To this end, the Contracting Parties shall aim at adopting subsequent instruments containing appropriate guidelines and criteria.

Article 13

REPORTING AND EXCHANGE OF INFORMATION

1. The Contracting Parties shall report to the Organisation at regular intervals on:

- a) the legal, regulatory, or other measures taken for the implementation of the provisions of this Convention, of its Protocol and of recommendations adopted thereunder;
- b) the effectiveness of the measures taken to implement the provisions referred to in sub-paragraph(a) of this paragraph; and
- c) problems encountered in the implementation of the provisions referred to in sub-paragraph (a) of this paragraph.

2. On the request of a Contracting Party or of the Organisation, the Contracting Parties shall provide information on discharge permits, emission data or data on environmental quality, as far as available.

Article 14

INFORMATION TO THE PUBLIC

1. The Contracting Parties shall ensure that information is made available to the public on the condition of the Caspian Sea and the waters in its catchment area, measures taken or planned to be taken to prevent and eliminate pollution and the effectiveness of those measures. For this purpose, the Contracting Parties shall ensure that the following information is made available to the public:

- a) permits issued and the conditions required to be met;
- b) results of water and effluent sampling carried out for the purposes of monitoring and assessment, as well as results of checking compliance with water-quality objectives or permit conditions; and
- c) water-quality objectives.

2. Each Contracting Party shall ensure that this information shall be available to the public at all reasonable times.

Article 15
DISCLAIMER

Nothing in the present Convention shall prejudice or affect the rights or claims of any Contracting Parties in regard to the nature or extent of its marine jurisdiction which may be established according to the existing regional Treaties and international law.

Article 16
REGIONAL ORGANISATION

1. The Regional Organisation for the Protection of the Marine Environment of the Caspian Sea (ROCS), referred to as " Organisation", is established for the purposes of this Convention.

2. The chairmanship of the Organisation shall be given to each Contracting Party in turn in alphabetical order of the names of the Contracting Parties in the English language. The Chairman shall serve for a period of two years, and cannot during the period of chairmanship serve as a representative of the Contracting Party holding the chairmanship.

Should the chairman fail to complete his term, the Contracting Party holding the chairmanship shall nominate a successor to remain in office until the term of that Contracting Party expires.

3. Meetings of the Organisation shall be held at least once a year upon convocation by the Chairman. Extraordinary meetings shall, upon the request of any Contracting Party endorsed by another Contracting Party, be convened by the Chairman to be held as soon as possible, however, not later than ninety days after the date of submission of the request.

4. Unless otherwise provided under this Convention, the Organisation shall take its decisions unanimously.

Article 17

THE DUTIES OF THE ORGANISATION

1. The duties of the Organisation shall be:

- a) to keep the implementation of this Convention under continuous observation;
- b) to make recommendations on measures relating to the purposes of this Convention and its protocol;
- c) to keep under review the contents of this Convention including its Protocol and to recommend to the Contracting Parties such amendments to this Convention and its protocol as may be required as well as the adoption of new Annexes and protocols;
- d) to define pollution control criteria, objectives and measures for the reduction of pollution;
- e) to promote in close co-operation with appropriate governmental bodies, taking into consideration sub-paragraph(f) of this Article, additional measures to protect the marine environment of the Caspian Sea Area and for this purpose:
 - i) to receive, process, summarise and disseminate relevant scientific, technological and statistical information from available sources; and
 - ii) to promote scientific and technological research; and
- f) to seek, when appropriate, the services of competent international organizations to collaborate in scientific and technological research as well as other relevant activities pertinent to the objectives of this Convention.

2. The Organisation may assume such other functions as it deems appropriate to further the purposes of this Convention.

Article 18

ADMINISTRATIVE PROVISIONS FOR THE ORGANISATION

1. The working language of the Organisation shall be English.
2. The Organisation shall adopt its Rules of Procedure.
3. The office of the Organisation, known as "the Secretariat", shall be in Baku
4. The Organisation shall appoint an Executive Secretary and make provisions for the appointment of such other personnel as may be necessary, and determine the duties, terms and conditions of service of the Executive Secretary.
5. The Executive Secretary shall be the chief administrative official of the Organisation and shall perform the functions that are necessary for the administration of this Convention, the work of the Organisation and other tasks entrusted to the Executive Secretary by the Organisation and its Rules of Procedure.

Article 19

FINANCIAL PROVISIONS FOR THE ORGANISATION

1. The Organisation shall adopt its Financial Rules.
2. The Organisation shall adopt an annual or biennial budget of proposed expenditures and consider budget estimates for the fiscal period following thereafter.
3. The total amount of the budget, including any supplementary budget adopted by the Organisation shall be contributed by the Contracting Parties in equal parts, unless unanimously decided otherwise by the Organisation.
4. Each Contracting Party shall pay the expenses related to the participation in the Organisation of its representatives, experts and advisers.

Article 20

RIGHT TO VOTE

1. Each Contracting Party shall have one vote in the Organisation.

Article 21

SCIENTIFIC AND TECHNOLOGICAL CO-OPERATION

1. The Contracting Parties undertake to co-operate in the fields of science, technology and other research, and to exchange data and other scientific information for the purposes of this Convention. In order to facilitate research and monitoring activities in the Caspian Sea Area the Contracting Parties undertake to harmonise their policies with respect to permission procedures for conducting such activities.

2. Without prejudice to Article 4, paragraph 2 of this Convention the Contracting Parties undertake to promote studies and to undertake, support or contribute to programmes aimed at developing methods assessing the nature and extent of pollution, pathways, exposures, risks and remedies in the Caspian Sea Area. In particular, the Contracting Parties undertake to develop alternative methods of treatment, disposal and elimination of such matter and substances that are likely to cause pollution of the marine environment of the Caspian Sea Area.

3. Without prejudice to Article 4, Paragraph 2 of this Convention the Contracting Parties undertake directly, or when appropriate through competent international organizations, and, on the basis of the information and data acquired pursuant to paragraphs 1 and 2 of this Article, to co-operate in developing inter-comparable observation methods, in performing baseline studies and in establishing complementary or joint programmes for monitoring.

4. The organization and scope of work connected with the implementation of tasks referred to in the preceding paragraphs should

primarily be outlined by the Organisation.

Article 22

LIABILITY AND COMPENSATION

The Contracting Parties undertake to co-operate in the formulation and adoption of appropriate rules and procedures for the determination of:

(a) civil liability and compensation for damage resulting pollution of the marine environment, bearing in mind applicable international rules and procedures relating to those matters; and

(b) liability and compensation for damage resulting from violation of obligations under the present Convention and its protocol.

The Contracting Parties undertake jointly to develop and accept rules concerning responsibility for damage resulting from acts or omissions in contravention of this Convention, including, *inter alia*, limits of responsibility, criteria and procedures for the determination of liability and available remedies.

Article 23

COMPLIANCE CONTROL

The Contracting Parties shall co-operate in the development of procedures for the effective application of the provisions of the Convention and its Protocol, including detection of violations, using all appropriate and practicable measures of detection and environmental monitoring, including adequate procedures for reporting and accumulation of evidence.

Article 24

SETTLEMENT OF DISPUTES

1. In case of a dispute between the Contracting Parties as to the interpretation or application of this Convention, they should seek a solution by negotiation. If the Parties concerned cannot reach agreement, they should seek the good offices of or jointly request mediation by qualified representatives of other Contracting Parties, or a qualified international organization.

2. If the Parties concerned have not been able to resolve their dispute through negotiation or have been unable to agree on measures as described above, such disputes shall be, upon common agreement, submitted to an ad hoc arbitration tribunal, to a permanent arbitration tribunal, or to the International Court of Justice.

Article 25

SAFEGUARD OF CERTAIN FREEDOM

Nothing in this Convention shall be construed as infringing upon the freedom of navigation, fishing, marine scientific research and other legitimate uses of the Caspian Sea, for the Contracting Parties, as well as upon the right of innocent passage of the passenger and cargo ships through the territorial waters.

Article 26

CONFERENCE FOR THE REVISION OR AMENDMENT OF THE
CONVENTION

A conference for the purpose of a general revision of or an amendment to this Convention and its protocol may be convened with the consent of the

Contracting Parties or at the request of the Organisation.

Article 27

ADOPTION OF ADDITIONAL PROTOCOLS

Any Contracting Party may propose additional protocols to the present Convention pursuant to Paragraph 2 of Article 3 at a meeting of the Contracting Parties to be convened by the Organisation at the request of at least two Contracting Parties. Additional protocols shall be adopted by a unanimous vote of the Contracting Parties present and voting.

Article 28

AMENDMENTS TO THE ARTICLES OF THE CONVENTION

1. Each Contracting Party may propose amendments to the Articles of this Convention and its protocol. Any such proposed amendment shall be submitted to the Depositary and communicated by it to all Contracting Parties, which shall inform the Depositary of either their acceptance or rejection of the amendment as soon as possible after receipt of the communication.

A proposed amendment shall, at the request of a Contracting Party, be considered in the Organisation. In such a case Article 16 paragraph 3 shall apply. If an amendment is adopted by the Organisation, the procedure in paragraph 2 of this Article shall apply.

2. The Organisation may recommend amendments to the Articles of this Convention and its protocol. Any such recommended amendment shall be submitted to the Depositary and communicated by it to all Contracting Parties, which shall notify the Depositary of either their acceptance or rejection of the amendment as soon as possible after receipt of the communication.

3. The amendment shall enter into force ninety days after the Depositary has received notifications of acceptance of that amendment from

all Contracting Parties.

Article 29

ANNEXES AND AMENDMENTS TO THE ANNEXES

1. Any annexes or amendment to an annex which may be proposed by a Contracting Party shall be communicated to the other Contracting Parties by the Depositary and considered in the Organisation. If adopted by the Organisation, the annex or the amendment shall be communicated to the Contracting Parties and recommended for acceptance.

2. Any annex or amendment to an annex recommended by the Organisation shall be communicated to the Contracting Parties by the Depositary and recommended for acceptance.

3. Such annex or amendment shall be deemed to have been accepted at the end of a period determined by the Organisation unless within that period any one of the Contracting Parties has, by written notification to the Depositary, objected to the annex or the amendment. The accepted annex or amendment shall enter into force on a date determined by the Organisation.

4. The period determined by the Organisation shall be prolonged for an additional period of six months and the date of entry into force of the annex or amendment postponed accordingly, if, in exceptional cases, any Contracting Party informs the Depositary before the expiration of the period determined by the Organisation that, although it intends to accept the annex or the amendment to the annex, the constitutional requirements for such an acceptance are not yet fulfilled.

Article 30

RESERVATIONS

1. The provisions of this Convention and the Protocol concerning Regional Co-operation in Combating Pollution by Oil and other Harmful Substances in Cases of Emergency shall not be subject to reservations.

Article 31
SIGNATURE

This Convention together with the Protocol concerning Regional Co-operation in Combating Pollution by Oil and other Harmful Substances in Cases of Emergency shall be open for signature in from untilby the States participating in the Diplomatic Conference on the Protection of the Marine Environment of the Caspian Sea Area held in on.....

Article 32
RATIFICATION, APPROVAL AND ACCESSION

1. This Convention together with the Protocol concerning Regional Co-operation in Combating Pollution by Oil and other Harmful Substances in Cases of Emergency shall be subject to ratification or approval.

2. This Convention shall, after its entry into force, be open for accession by any other State or organization interested in fulfilling the aims and purposes of this Convention, provided that this State or organization is invited by all the Contracting Parties.

3. The instruments of ratification, approval or accession shall be deposited with the Depositary.

Article 33
ENTRY INTO FORCE

1. This Convention together with the Protocol concerning Regional Co-operation in Combating Pollution by Oil and other Harmful Substances in

Cases of Emergency shall enter into force three months after the deposit of the instrument of ratification or approval by all signatory States bordering the Caspian Sea.

2. For each State which ratifies or approves this Convention before or after the deposit of the last instrument of ratification or approval referred to in paragraph 1 of this Article, this Convention shall enter into force three months after the date of deposit by such State of its instrument of ratification or approval or on the date of the entry into force of this Convention, whichever is the latest date.

3. For each acceding State this Convention shall enter into force three months after the date of deposit by such State of its instrument of accession.

Article 34

WITHDRAWAL

1. At any time after the expiry of seven years from the date of entry into force of this Convention and its protocol any Contracting Party may, by giving written notification to the Depositary, withdraw from this Convention.

2. Any Contracting Party which withdraws from the Convention shall be considered as also having withdrawn from its protocol and vice versa.

3. The withdrawal shall take effect for such Contracting Party 120 days after the date on which notification of withdrawal is received by the Depositary.

4. In case of notification of withdrawal by a Contracting Party the Depositary shall convene a meeting of the Contracting Parties for the purpose of considering the effect of the withdrawal.

Article 35
DEPOSITARY

The Government of Azerbaijan, acting as Depositary, shall notify all Contracting Parties and the Executive Secretary of:

- a) the signatures;
- b) the deposit of any instrument of ratification, approval or accession;
- c) any date of entry into force of this Convention and its protocol;
- d) any proposed or recommended amendment to any Article or Annex or the adoption of a new Annex as well as the date on which such amendment or new Annex enters into force;
- e) any notification, and the date of its receipt, under Articles 28 and 29;
- f) any notification of withdrawal and the date on which such withdrawal takes effect;
- i) any other act or notification relating to this Convention and its protocol;

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Convention and its protocol.

DONE at, this(date)..... in a single authentic copy in the English language which shall be deposited with the Government ofThe Government of shall transmit certified copies to all Signatories.

For the Republic of Azerbaijan

For the Islamic Republic of Iran

For the Republic of Kazakhstan

For the Russian Federation

For the Republic of Turkmenistan

PROTOCOL CONCERNING CO-OPERATION IN
COMBATING POLLUTION OF THE CASPIAN SEA BY OIL
AND OTHER HARMFUL SUBSTANCES IN CASES OF
EMERGENCY

The Contracting Parties ;

BEING MEMBERS to the Regional Convention on the Protection of the Marine Environment of the Caspian Sea (hereinafter referred to as "the Convention").

RECOGNIZING the significance of the prompt and immediate response to marine emergencies of the Caspian Sea as an enclosed water.

CONSCIOUS of the particular urgency to realise the ever present potential of emergencies which may result in substantial pollution by oil and other harmful substances and to provide co-operative and effective measures to deal with them.

ACCEPTING that the existing measures for responding to pollution emergencies need to be enhanced on a national and regional basis to deal with this problem in a reasonable manner for the benefit of the region;

HAVE AGREED as follows:

Article 1

For the purposes of this protocol:

(1) "Appropriate Authority" means authority or authorities within the government of a Contracting Party, designated by the national authority and responsible for:

- (a) combating and otherwise operationally responding to marine emergencies;
- (b) receiving and co-ordinating information of particular marine emergencies;

(c) co-ordinating available national capabilities for dealing with marine emergencies in general within its own government and with other Contracting Parties.

(2) "Marine Emergencies" means any casualty, incident occurrence or situation, however caused, resulting in substantial pollution or imminent threat of substantial pollution to the marine environment by oil or other harmful substances and includes, inter alia, collision, strandings and other incidents involving ships, including tankers, blow-outs arising from petroleum drilling and production activities, and the presence of oil or other harmful substances arising from the failure of industrial installation ;

(3) "Marine Emergency Contingency Plan" means a plan or plans, prepared on a national, bilateral or multilateral basis, designed to co-ordinate the deployment, allocation and use of personnel, material and equipment for the purpose of responding to marine emergencies ;

(4) "Marine Emergencies Response" means any activity intended to prevent, mitigate or eliminate pollution by oil or other harmful substances or threat of such pollution resulting from marine emergencies;

(5) "Related Interests" means the interests of a Contracting Parties directly or indirectly affected or threatened by a marine emergencies, such as:

(a) Maritime, coastal, port or estuary activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned ;

(b) historic and tourist attraction of the area concerned;

(c) the health of the coastal population and the well-being of the area concerned, including conservation of living marine resources and of wild life;

(d) industrial activities which rely upon intake of water, including distillation plants and industrial plants using circulating water ;

(6) "Convention" means the Convention on the Protection of the Marine Environment of the Caspian Sea Area;

(7) "Council" means the organ of the Regional Organization for the Protection of the Marine Environment of the Caspian Sea established under Article 16 of the Convention ;

(9) "Centre" means the Marine Emergency Mutual Aid Centre established under article 3 , paragraph 1 of the present protocol.

Article 2

1. The Contracting Parties shall co-operate in taking the necessary and effective measures to protect the coast line and related interest of one or more of the Parties from the threat and effects of pollution due to the presence of oil and other harmful substance in the marine environment of the Caspian Sea Area resulting from marine emergencies.

2. The Contracting Parties shall endeavour to maintain and promote , either individually or through bilateral or multilateral co-operation their contingency plans and means for combating pollution in the Caspian Sea Area by oil and other harmful substances. These means shall include, in particular, available equipment, ships, aircraft and manpower prepared for operations in cases of emergency.

Article 3

1. The Contracting Parties hereby establish the Marine Emergency Mutual Aid Centre.

2. The objectives of the centre shall be :

- (a) to strengthen the capacities of the Contracting Parties and to facilitate co-operation among them in order to combat pollution by oil and other harmful substances in cases of marine emergencies;

(b) to assist Contracting Parties, which so request, in the development of their own national capabilities to combat pollution by oil and other harmful substances and to co-ordinate and facilitate information exchange, technological co-operation and training.

3. The functions of the Centre shall be

(a) to collect and disseminate to the Contracting Parties information concerning matters covered by this Protocol, including :

- (i) laws, regulations and information concerning appropriate authorities of the Contracting Parties and marine emergency contingency plans referred to in article 5 of this protocol;
- (ii) information concerning methods, techniques and research relating to marine emergency response referred to in Article 6 in this Protocol ; and
- (iii) list of experts, equipment and materials available for marine emergency responses by the Contracting Parties;

(b) to assist the Contracting Parties, as requested :

- (i) in the preparation of laws and regulations concerning matters covers by this protocol and in the establishment of appropriate authorities ;
 - (ii) in the preparation of marine emergency contingency plans;
 - (iii) in the establishment of procedures under which personnel, equipment and materials involved in marine emergency responses may be expeditiously transported into, out of, and through their respective countries ;
 - (iv) in the transmission of reports concerning marine emergencies ;
and
 - (v) in promoting and developing training programmes for combating pollution .
- (c) to co-ordinate training programs for combating pollution and

prepare comprehensive anti-pollution manuals ;

- (d) to develop and maintain communication/information system appropriate to the needs of the Contracting Parties and the Centre for the prompt exchange of information concerning marine emergency required by this Protocol ;
- (e) to prepare inventories of the available personnel, material, vessels, aircraft, and other specialised equipment for marine emergency responses ;
- (f) to establish and maintain liaison with competent regional and international organization, particularly the International Maritime Organization (IMO), for purposes of obtaining and exchanging scientific and technological information and data, particularly in regard of any new innovation which may assist the Centre in the performance of its functions ;
- (g) to prepare periodic reports on marine emergencies for submission to the Council ; and
- (h) to perform any other functions assigned to it either by this Protocol or by the Council.
- (i) The headquarters of the Centre will be in Baku.

Article 4

1. The present Protocol shall apply to the Caspian Sea Area specified in Article 1 of the Convention.

2. For the purposes of dealing with a marine emergency, ports, harbours, estuaries, bays and lagoons may be treated as part of the Sea Area if the

concerned Contracting Parties so decides.

Article 5

Each Contracting Party shall provide the Centre and the other Contracting Parties with information concerning:

- (a) its appropriate authority;
- (b) its laws, regulations, and other legal instruments relating generally to matters addressed in this Protocol, including those concerning the structure and operation of the authority referred to in Paragraph (a) above;
- (c) its national marine emergency contingency plans.
- (d) existing and new methods, techniques, materials, and procedures relating to marine emergency response;
- (e) existing and planned research and developments in the areas referred to in Paragraph (a) above; and
- (f) results of research and developments referred to in Paragraph (e) above.

Article 6

1. Each Contracting Party shall direct its appropriate officials to require masters of ships, pilots of aircraft and persons in charge of offshore platforms and other similar structures operating in the marine environment and under its jurisdiction to report the existence of any marine emergency in the Caspian Sea Area to the appropriate national authority and to the Centre.

2. Any Contracting Party receiving a report pursuant to paragraph 1 above shall promptly inform the following of the marine emergency:

- (a) the Centre;
- (b) all other Contracting Parties;

(c) the flag State of any foreign ship involved in the marine emergency concerned.

3. The content of the reports, including supplementary reports where appropriate, referred to in paragraph 1 above should conform to Annex A of this Protocol.

Article 7

The Centre shall promptly transmit information and reports which it receives from a Contracting Party pursuant to Article 5 and paragraph 2 of Article 6 of this Protocol to all other Contracting Party.

Article 8

Any Contracting Party which transmits information pursuant to this Protocol may specifically restrict its dissemination. In such a case, any Contracting Party or the Centre to whom this information has been transmitted shall not divulge it to any other person, government, or to any public or private organisation without the specific authorisation of the former Contracting Party.

Article 9

Any Contracting Party faced with a marine emergency situation as defined in Paragraph 2 of Article 1 of this Protocol shall :

- (a) take every appropriate measure to combat pollution and/or to rectify the situation;
- (b) immediately inform all other Contracting Parties, either directly or through the Centre, of any action which it has taken or intends to take to combat the pollution. The Centre shall promptly transmit any such information to all other Contracting Parties;
- (c) determine the necessary and appropriate action to be taken with

respect to the marine emergency , in consultation ,where appropriate , with other Contracting Parties , affected Parties and the Centre .

Article 10

1. Any Contracting Party requiring assistance in a marine emergency response may call for assistance directly from any other Contracting Party or through the Centre. Where the services of the Centre are utilised , the Centre shall promptly transmit requests received to all other Contracting Parties. The Contracting Parties to whom a request is made pursuant to this paragraph shall use their best endeavours within their capabilities to render the assistance requested .

2. The assistance referred to in paragraph 1 above may include :

- (a) personnel , material , and equipment ,including facilities or methods for the disposal of recovered pollutant ;
- (b) surveillance and monitoring capacity;
- (c) facilitation of the transfer of personnel material , and equipment into out of and through the territories of the Contracting Parties.

3. The services of the centre may be utilised by the Contracting Parties to co-ordinate any marine emergency response in which assistance is called for pursuant to paragraph 1 above .

4. Any Contracting Party calling for assistance pursuant to paragraph 1 above shall report the activities undertaken with this assistance and it results to the Centre . The Centre shall promptly transmit any such report to all other Contracting Parties.

5. In cases of special emergencies , the Centre may call for the mobilisation of resources made available by the Contracting Parties to combat pollution by oil and other harmful substances.

Article 11

1. Having due regard to the functions assigned to the Centre under this protocol , each Contracting Party shall establish and maintain an appropriate authority to carry out fully its obligations under this Protocol . With the assistance of the Centre , where appropriate , the appropriate authority of each Contracting Party shall co-operate and co-ordinate its activities with counterparts in the other Contracting Parties .

2. Among other matters with respect to which co-operation and co-ordination efforts shall be directed under paragraph 1 above are the following :

- (a) distribution and allocation of stocks of material and equipment ;
- (b) training of personnel for marine emergency response;
- (c) marine pollution surveillance and monitoring activities ;
- (d) methods of communication in respect of marine emergencies;
- (e) facilitation of the transfer of personnel equipment and materials involved in marine emergency responses into, out of, and through the territories of the Contracting Parties;
- (f) other matters to which the Protocol applies.

Article 12

The Council shall;

1. Review periodically the activities of the Centre performed under this Protocol;
2. Decide on the degree to which, and stages by which, the functions of the Centre set out in Article 3 will be implemented; and
3. Determine the financial, administrative and other support to be provided by the Contracting Parties to the Centre for the performance of its functions.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorised by their respective governments, have signed this Protocol:

DONE AT on.....in the English, Persian and Russian languages, the three texts being equally authentic. In case of a dispute as to the interpretation or application of this Protocol, the English text shall be dispositively authoritative.

Annex A

Contents of the Report to be made pursuant to article 6 of this protocol

1. Each report shall, as far as possible, contain in general :
 - (a) The identification of the source of pollution (identity of the ship, where appropriate);
 - (b) The geographic position, time and date of the occurrence of the incident or of the observation;
 - (c) The wind and sea conditions prevailing in the area ;
 - (d) Where the pollution originates from a ship, relevant detail respecting the condition of the ship .

2. Each report shall contain, whenever possible, in particular:
 - (a) A clear indication or description of the harmful substances involved, including the correct technical names of such substances (trade names should not be used in place of the correct technical names):
 - (b) A statement of estimate of the quantities and likely condition of harmful substances discharged or likely to be discharged into the sea;
 - (c) Where relevant, a description of the packaging and identifying marks ; and
 - (d) The name of the consignor , consignee or manufacturer.

3. Each report shall clearly indicate, whenever possible, whether the harmful substance discharged and likely to be discharged is oil or a noxious liquid, solid or gaseous substance and whether such substance was or is carried in

bulk or contained in packaged form, freight container , portable tanks , or road and rail tank wagons.

4. Each report shall be supplemented , as necessary, by any relevant information requested by recipient of the report or deemed appropriate by the person sending the reports .

5. Any of persons referred to in article 6 paragraph one of this protocol shall:

- (a) Supplement as far as possible the initial report , as necessary with information concerning further development ; and
- (b) Comply as fully as possible with requests from effected States for additional information .

Appendix I

PORTS OF CASPIAN SEA

PORT OF ANZALI

Lat 37,26 N; Long 49,29 E. Located 380km from Tehran (Capital of Islamic Republic of Iran). Time zone: GMT+3.5h. Principal Facilities: G B T A

Approach: The dredged channel accommodates vessels up to 5000dwt.

Pilotage: Compulsory. All vessels should anchor at the outer buoy when arriving in good weather proceed to the fairway buoy to await a pilot. A message addressed to the agent should be sent via B.

Accommodation: There are 5 berths with a total length of 564m and a max depth of 5.5m, each supplied with cranes.

Storage: Warehouses with a cap of 23084 sm and open yard space of 118200sm.

Cranes: One floating crane, 26 cranes with max cap 60t, 21 forklifts with max 10t, 26 tractors and 67 trailers.

Water: Available by road tanker. Bunkers: Available by road tanker.

Towage: Three tugs up to 750hp available. Medical facilities: Available.

Airport: Rasht, 45km from port.

PORT OF NOWSHAHR

Lat 36,38 N. Long 51,30 E. Located: 198km from Tehran (I.R.Iran).

Time zone: GMT+3.5h. Principal Facilities: Q G B T.

Approach: The dredged channel accommodates vessels up to 5000dwt.

Pilotage: Compulsory. Accommodation: there are two jetties, No 1 is 150m and No 2 is 300m, both with a depth of 5m, liquid cargoes can be worked.

Storage: Warehouses with a cap of 15000sm and open yard space of 32500sm.

Cranes: 16 cranes, 19 forklifts, 11 tractors and 50 flat bed trailers.

Water: Available. Bunker: Available. Towage: two tugs of 140 and 565hp are available. Airport: 2km from port.

PORT OF BAKU

Located :Lat. 40,22 N. Long.49,56 E.(in Baku capital of Azerbaijan). Time zone: GMT+3h. Approach channel dredged for; Tankers up to 12000dwt and dry-cargo ships up to 6000dwt . Pilotage is compulsory for foreign ships. Radar based vessel traffic service is available. Tug boats: 6 tug boats (500-1500hp).

Salvage service: two tugs (7000hp).

Berths:	Number	Depth
For tankers	5	9
For dry cargo ships	8	6
Rw Ferry Terminal	2	7
Passenger ships	2	6

Cargo storage area: Warehouses with a cap of 16000sm and open area with a cap of 8000sm. Customs, medical service, fumigation, disinfection are available . There are 4 shipyards with 3 floating docks for ships up to 12000dwt and length 150m. One of these shipyards is shipbuilding yard (small ships, tugs, craft, etc), the three others for repairs. All kinds of communication are available. International airport is 35km away(port Baku is the biggest port in the Caspian Sea).

PORT OF KRASNOVODSK

Located: Lat 40,00 N. Long 53,02 E (in Turkmenistan).
Time zone: GMT+4h.

Approach channel for: Tankers up to 7000dwt and dry-cargo ships
4500dwt.

Pilotage is compulsory for foreign ships. Traffic control service is
available Berth:

	Number	Depth
Dry-cargo ships	4	5
tankers	2	7
Rw Ferry Terminal	2	7

Tugs: 3 (400- 1200hp). Bunker, water and provision supply is
available.

Small repairs, medical service, fumigation, disinfection, etc
available.

Telephone and radio communication are available. Airport(domestic
lines) is 20km away. Sub-ports related to Krasnovodsk:

Beckdash: 1 berth for dry-cargo ships up to 4500dwt.

Aladja: 1 berth for dry-cargo ships up to 3000dwt, 1 berth for tankers
up to 4000dwt.

Kianly: 1 berth for dry-cargo ships up to 3000dwt.

PORT OF AKTAU

Located: Lat 43,40 N. Long 51, 10 E (in Kazakhstan). Time
zone: GMT+3h.

Approach channel dedged for: Tankers up to 7000dwt, dry-cargo
ships up to 4500dwt. Pilotage is compulsory for foreign ships.
Traffic control service is available. Tug boats: 2 tugs(1200hp).

Berth	Number	depth(m)
tankers	2	7
Dry-cargo ships	2	6

Passenger 1 6

Rw Ferry Terminal 1 6

Bunker, water, provision supply and small repairs, medical service, fumigation, disinfection available. Airport(domestic lines)is 35km away.

PORT OF MAKHACHKALA;

Located: Lat 43,05 N. Long 47,25 E(in Russia).

Approach channel dredged for: tankers up to 12000dwt, and dry-cargo ships up to 5000dwt. Pilotage is compulsory for foreign ships. Traffic control service available. Tugs: 3 tug boats (1200hp).

Berths: 2 berths for tankers with 10m depth, and 2 berths for dry-cargo ships with 6m depth. Cargo storage area: 7000sm open area. Small repairs,bunker, water, and provision supply available. Airport (domestic lines) is 25km away.

PORT ASTRAKHAN (46° 20' N ; 48° 00' E)

To reach the port from the Caspian Sea ships need to proceed up the river along the 101 mile long Volga-Caspian Channel with the maximum allowed draft 4.4-4.5 m (except during flood when draft may rise to several dozens of cm.) and then 13.5 miles up the Volga river.

Pilots are available in two days' notice to take the ship up to Astrakhan or anywhere else up the river.

The Astrakhan Port area stretches for 50 km along the Volga river. There are numerous jetties and berths belonging to various different industries in the port. Floating cranes are widely used for cargo

operations. Lots of cargo operations are conducted on the road from/to barges.

Berths :	Number	Depth (m)	
For tankers	12	3.1 - 8.2	
Passenger station	1	0.5 - 4	(450 m long)
Central dry-cargo terminal	1	4 - 5.2	(540 m long)

There are 15- ton cranes on the dry-cargo terminal.

The navigation in the port is controlled by the Astrakhan Harbour Master Office and River

Navigation Inspection.

Navigation is not allowed in fog.

In winter the port doesn't operate because of icing.

Technical and provision supply, bunker and water available. Sanitary authorities available.

Repair facilities available, several floating docks are available.

All means of communication available. There is air and rail road connections with major cities of Russia and the CIS. The airport is 35 km away from the port.

The Astrakhan railroad bridge across the river has 65 m wide and 36.7 m high (over the average of the lowest levels) passage path when the rising portion is up (for limited time in the morning) and 18.7 m high otherwise.

Depths along the entire river way are maintained by dredgers.

Ships passing river way should have special communication equipment with frequencies not available in conventional VHF equipment.

The cargo turnover of the port is second (after Baku) largest on the Caspian Sea.

Appendix II

ANNEX VII (HEL CON 92)

Response to pollution incidents

Regulation 1; General Provisions

1. The Contracting Parties undertake to maintain the ability to respond to pollution incidents threatening the marine environment of the Baltic Sea Area. This ability shall include adequate equipment, ships and manpower prepared for operations in coastal waters as well as on the high sea.

2. a) In addition to the incidents referred to in Article 13 the Contracting Party shall also notify without delay those pollution incidents occurring within its response region, which affect or are likely to affect the interests of other Contracting Parties.

b) In the event of a significant pollution incident other Contracting Parties and the Commission shall also be informed as soon as possible.

3. The Contracting Parties agree that subject to their capabilities and the availability of relevant resources, they shall cooperate in responding to pollution incidents when the severity of such incidents so justify.

4. In addition the Contracting Parties shall take other measures to:

- a) conduct regular surveillance outside their coastlines; and
- b) otherwise co-operate and exchange information with other Contracting Parties in order to improve the ability to respond to pollution incidents.

Regulation 2; Contingency Planning

Each Contracting Party shall draw up a national contingency plan and in co-operation with other Contracting Parties, as appropriate, bilateral or multilateral plans for a joint response to pollution incidents.

Regulation 3; Surveillance

1. In order to prevent violations of the existing regulations on prevention of pollution from ships the Contracting Parties shall develop and apply individually or in co-operation, surveillance activities covering the Baltic Sea Area in order to spot and monitor oil and other substances released into the sea.

2. The Contracting Parties shall undertake appropriate measures to conduct the surveillance referred to in Paragraph 1. by using, inter alia, airborne surveillance equipped with remote sensing systems.

Regulation 4; Response Regions

The Contracting Parties shall as soon as possible agree bilaterally or multilaterally on those regions of the Baltic Sea Area in which they shall conduct surveillance activities and take action to respond whenever a significant pollution incident has occurred or is likely to occur. Such agreements shall not prejudice any other agreements concluded between Contracting Parties concerning the same subject. Neighboring States shall ensure the harmonization of

different agreements. Contracting Parties shall inform other Contracting Parties and the Commission about such agreements.

Regulation 5; Reporting Procedure

1. a) Each Contracting Party shall require masters or other persons having charge of ships flying its flag to report without delay any event on their ship involving a discharge or probable discharge of oil or other harmful substances.

b) The report shall be made to the nearest coastal state and in accordance with the provisions of Article 8 and Protocol I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 related thereto (MARPOL 73/78).

c) The Contracting Parties shall request masters or other persons having charge of ships and pilots of aircraft to report without delay and in accordance with this system on significant spillages of oil or other harmful substances observed at sea. Such reports should as far as possible contain the following data: time, position, wind and sea conditions, and kind, extent and probable source of the spill observed.

2. The provisions of paragraph 1. b) shall also be applied with regard to dumping made under the provisions of Article 11, paragraph 4 of this Convention.

Regulation 6; Emergency Measures on Board Ships

1. Each Contracting Party shall require that ships entitled to fly its flag have on board a shipboard oil pollution emergency plan as required by and in accordance with the provisions of MARPOL 73/78.

2. Each Contracting Party shall request masters of ships flying its flag or, in case of fixed or floating platforms operating under its jurisdiction, the persons having charge of platforms to provide, in case of a pollution incident and on request by the proper authorities, such detailed information about the ship and its cargo or in case of platform its production which is relevant to actions for preventing or responding to pollution of the sea, and to co-operate with these authorities.

Regulation 7; Response Measures

1. The Contracting Party shall, when a pollution incident occurs in its response region, make the necessary assessments of the situation and take adequate response action in order to avoid or minimize subsequent pollution effects.

2. a) The Contracting Parties shall, subject to sub-paragraph (b), use mechanical means to respond to pollution incidents.

b) Chemical agents may be used only in exceptional cases and after authorization, in each individual case, by the appropriate national authority.

3. When such a spillage is drifting or is likely to drift into a response region of another Contracting Party, that Party shall without delay be informed of the situation and the actions that have been taken.

Regulation 8; Assistance

1. According to the provisions of paragraph 3 of Regulation 1:

- a) a Contracting Party is entitled to call for assistance by other Contracting Parties when responding to a pollution incident at sea; and
- b) Contracting Parties shall use their best endeavours to bring such assistance.

2. Contracting Parties shall take necessary legal or administrative measures to facilitate:

- a) the arrival and utilization in and departure from its territory of ships, aircraft and other modes of transport engaged in responding to a pollution incident or transporting personnel, cargoes, materials and equipment required to deal with such an incident; and
- b) the expeditious movement into, through, and out of its territory of personnel, cargoes, materials and equipment referred to in sub-paragraph a).

Regulation 9; Reimbursement of Cost of Assistance

1. The Contracting Parties shall bear the costs of assistance referred to in Regulation 8 in accordance with this Regulation.

2. a) If the action was taken by one Contracting Party at the express request of another Contracting Party, the requesting Party shall reimburse to the assisting Party the costs of the action of the assisting Party. If the request is cancelled the requesting Party shall bear the costs already incurred or committed by the assisting Party.

b) If the action was taken by a Contracting Party on its own initiative, this Party shall bear the costs of its action.

c) The principles laid down above in sub-paragraphs a) and b) shall apply unless the Parties concerned otherwise agree in any individual case.

3. Unless otherwise agreed, the costs of the action taken by a Contracting Party at the request of another Party shall be fairly calculated according to the law and current practice of the assisting Party concerning the reimbursement of such costs.

4. The provisions of this regulation shall not be interpreted as in any way prejudicing the rights of Contracting Parties to recover from third parties the costs of actions taken to deal with pollution incidents under other applicable provisions and rules of international law and national or supra-national regulations.

Regulation 10; Regular Co-operation

1. Each Contracting Party shall provide information to the other Contracting Parties and the Commission about:

a) its organization for dealing with spillages at sea of oil and other harmful substances;

- b) its regulations and other matters which have a direct bearing on preparedness and response to pollution at sea by oil and other harmful substances;
- c) the competent authority responsible for receiving and dispatching reports of pollution at sea by oil and other harmful substances;
- d) the competent authorities for dealing with questions concerning measures for mutual assistance, information and co-operation between the Contracting Parties according to this Annex; and
- e) actions taken in accordance with Regulations 7 and 8 of this Annex.

2. The Contracting Parties shall exchange information on research and development programs, results concerning ways in which pollution by oil and other harmful substances at sea may be dealt with and experiences in surveillance activities and in responding to such pollution.

3. The Contracting Parties shall on a regular basis arrange joint operational combatting exercises as well as alarm exercises.

4. The Contracting Parties shall co-operate within the International Maritime Organization in matters concerning the implementation and further development of the International Convention on Oil Pollution Preparedness, Response and Co-operation.

Regulation 11; HELCOM Combatting Manual

The Contracting Parties agree to apply, as far as practicable, the principles and rules included in the Manual on Co-operation in Combatting Marine Pollution, detailing this Annex and adopted by the Commission or by the Committee designated by the Commission for this purpose.

Arbitration

Article 1

Unless the Parties to the dispute otherwise agree, the arbitration procedure shall be conducted in accordance with the provisions of this annex.

Article 2

1. At the request addressed by one Contracting Party to another Contracting Party in accordance with the provisions of paragraph 2 or paragraph 3 of article 22 of the Convention, an arbitral tribunal shall be constituted. The request for arbitration shall state the subject matter of the application including, in particular, the articles of the Convention or the protocol, the interpretation or application of which is in dispute.

2. The claimant party shall inform the Organization that it has requested the setting up of an arbitral tribunal, stating the name of the other Party to the dispute and articles of the Convention or the protocols the interpretation or application of which is in its opinion in dispute. The Organization shall forward the information thus received to all Contracting Parties to the Convention.

Article 3

The arbitral tribunal shall consist of three members: each of the Parties to the dispute shall appoint an arbitrator; the two arbitrators so appointed shall designate by common agreement the third arbitrator who shall be the chairman of the tribunal. The latter shall not be a national of one of the Parties to the dispute, nor have his usual place of residence in the territory of one of these Parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

Article 4

1. If the chairman of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of the more diligent Party, designate him within a further two months' period.

2. If one of the Parties to the dispute does not appoint an arbitrator within two months of receipt of the request, the other Party may inform the Secretary-General of the United Nations who shall designate the chairman of the arbitral tribunal within a further two months' period. Upon designation, the chairman of the arbitral tribunal shall request the Party which has not appointed an arbitrator to do so within two months. After such period, he shall inform the Secretary-General of the United Nations, who shall make this appointment within a further two months' period.

Article 5

1. The arbitral tribunal shall decide according to the rules of international law and, in particular, those of this Convention and the protocols concerned.
2. Any arbitral tribunal constituted under the provisions of this annex shall draw up its own rules of procedure.

Article 6

1. The decisions of the arbitral tribunal, both on procedure and on substance, shall be taken by majority vote of its members.
2. The tribunal may take all appropriate measures in order to establish the facts. It may, at the request of one of the Parties, recommend essential interim measures of protection.
3. If two or more arbitral tribunals constituted under the provisions of this annex are seized of requests with identical or similar subjects, they may inform themselves of the procedures for establishing the facts and take them into account as far as possible.
4. The Parties to the dispute shall provide all facilities necessary for the effective conduct of the proceedings.
5. The absence or default of a Party to the dispute shall not constitute an impediment to the proceedings.

Article 7

1. The award of the arbitral tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon the Parties to the dispute.
2. Any dispute which may arise between the Parties concerning the interpretation or execution of the award may be submitted by the more diligent Party to the arbitral tribunal which made the award or, if the latter cannot be seized thereof, to another arbitral tribunal constituted for this purpose in the same manner as the first.

Article 8

The European Economic Community and any regional economic grouping referred to in article 24 of the Convention, like any Contracting Party to the Convention, are empowered to appear as complainants or as respondents before the arbitral tribunal.

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