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The Gulf Co-operation Council, Law and Institutions: Implications for the Member States

In two volumes

Volume I

By

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**A thesis submitted to the Department of Law of the University of Durham in
fulfilment of the requirement of the degree of Doctor of Philosophy in Law**

July 1991


10 FEB 1992

To my wife

Declaration

I declare that this thesis is original. No part of it has been submitted previously for a degree at this or any other university. All work shown is my own unless stated otherwise.

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Abstract	i
Acknowledgements	iii
Abbreviations	v
Table of Cases	vii
Preface	ix
Chapter One: Political Background of the Members and Foundations of the GCC	
Introduction	2
1.A: Birth of the Modern States	2
1.A.I: The United Arab Emirates	4
1.A.II: Bahrain	4
1.A.III: Saudi Arabia	5
1.A.IV: Oman	6
1.A.V: Qatar	7
1.A.VI: Kuwait	7
1.B: Paths to Gulf Unity	8
1.B.I: The Early Unification Process	8
1.B.II: Cooperation Efforts	14
1.B.III: Federation Experiments	16
1.B.IV: Partial Cooperation	19
1.C: Emergence and Establishment of the GCC	22
Summary	26
References and Notes	28
Chapter Two: Constitutional Analysis of the GCC	
Introduction	35
2.A: Charter	36
2.A.I: Overview	36
2.A.II: Aims	40
2.A.III: Principles	43
2.A.IV: Membership	44
2.B: Structure	48
2.B.I: The Supreme Council	48
2.B.II: The Ministerial Council	60
2.B.III: The Secretariat General	65
2.B.IV: Ancillary Organs	76
2.B.V: Specialised Ministerial Committees	78

2.C:	Decision-Making Process	79
2.C.I:	Initiating decisions	79
2.C.II:	Voting procedures	81
2.C.III:	The nature of decisions	86
	Summary	91
	References and Notes	93
 Chapter Three: International and Internal Legal Status of the GCC		
	Introduction	100
3.A:	International Legal Personality of the GCC	101
3.A.I:	General legal background	101
3.A.II:	The GCC	114
3.B:	International Responsibility of the GCC	128
3.B.I:	General legal background	128
3.B.II:	The GCC	136
3.C:	The GCC Personality and the Municipal Legal Systems	139
3.C.I:	Municipal Judicial Personality	139
3.C.II:	Privileges and Immunities of the GCC	141
	Summary	149
	References and Notes	150
 Chapter Four: The Legal Character of the GCC		
	Introduction	157
4.A:	Models for International Integration	158
4.A.I:	Federalism	158
4.A.II:	Supranationalism	165
4.A.III:	Confederalism	176
4.B:	The Legal Character of the GCC	181
	Summary	192
	References and Notes	194
 Chapter Five: Free Movement of Goods Within the GCC		
	Introduction	200
5.A:	The Formation of the Free Trade Area (FTE)	201
5.A.I:	Abolishing Custom Duties and Assimilated Charges	201
5.A.II:	Specification of Goods and their Origin	205
5.A.III:	Equal Treatment of Goods Originating from the GCC	206
5.A.IV:	Re-exportation of Foreign Goods	209
5.B:	Completion of a Customs Union	211
5.B.I:	Common External Tariffs	211
5.B.II:	Common Commercial Policy	213

5.C:	Elimination of Quantitative Restrictions and Similar Charges in Intra-GCC Trade	217
5.D:	Possible Limitations on the Principle of Free Movement of Goods	221
	Summary	225
	References and Notes	226

Chapter Six: Free Movement of Individuals Within the GCC

	Introduction	231
6.A:	Personal Scope	233
6.B:	Right of Movement	234
	6.B.I: Entry	234
	6.B.II: Residence	235
6.C:	Equality of Treatment	236
	6.C.I: Housing Ownership	237
	6.C.II: Acquisition of Companies' Shares	240
	6.C.III: Loans for Investment	244
	6.C.IV: Education	244
	6.C.V: Health	247
	6.C.VI: Taxation	248
6.D:	Right to Practice Liberal Professions	249
6.E:	Right to Engage in Economic Activities	256
6.F:	Possible Limitations on the Principle of Free Movement of Individuals	265
	Summary	266
	References and Notes	268

Chapter Seven: The Relationship Between GCC Rules and Municipal Laws of the Member States

	Introduction	274
7.A:	Theoretical Background	276
	7.A.I: Doctrines on the relationship between external and national law	276
	7.A.II: Methods for the application of external law in municipal law	278
7.B:	Interaction between GCC law and municipal law	287
	7.B.I: The character of the GCC law	287
	7.B.II: Its relations to national legal systems	293
7.C:	Reception of GCC law by national legal systems	298
	7.C.I: Implementation of GCC law	298
	7.C.II: Enforcement of GCC law	312

Summary	319
References and Notes	320
Appendices: Pertinent Constitutional Provisions	326
Chapter Eight: Conclusion	
8.A: The Findings Digested	333
8.B: Recommendations	344
8.B.I: The Need for a GCC Judicial Body	345
8.B.II: The Need for a GCC Supervisory Arm	359
8.C: Future Prospects	362
References and Notes	368
Bibliography	369

Volume II

Documents

A: Constituent Instruments of the GCC

A.1.a.	Charter of the GCC	1
A.1.b.	Rules of Procedure of the Supreme Council, May 25, 1981	12
A.1.c.	Rules of Procedure of the Ministerial Council, May 25, 1986.	22
A.1.d.	Rules of Procedure of the Commission for Settlement of Disputes, May 25, 1981	34
A.2.a.	The Internal Rules and Regulations of the Technical Office for Communications of the Cooperation Council of the Arab States of the Gulf	39
A.2.b.	The Basic Statute of the Board of Specifications and Standards of the States of the Cooperation Council of the Arab States of the Gulf	45

B: Economic Documents of the GCC

B.1.	Unified Economic Agreement, June 8, 1982	52
B.2.	Regulations governing Transit Goods in the GCC, June 19-20, 1982	60
B.3.	Gulf Investment Corporation, Agreement of Incorporation, November 10, 1982	63
B.4.	Gulf Investment Corporation, Articles of Association, November 10, 1982	69
B.5.	Economic Declaration of the Riyadh Summit, December 29, 1982	84

C: Common Policies

C.1.	Common Agricultural Policy of the GCC States, February -, 1984	88
C.2.	Common Uniform Strategy for the Industrial Development of the GCC States, November -, 1985	98
C.3.	Objectives and Policies of Development Plans of the GCC, March -, 1985	108

D: International Relations of the GCC

D.1.	Agreement on Privileges and Immunities of the GCC, March 11, 1984	117
D.2.	GCC - EEC Agreement, 1988	128

E: Security Co-operation

E.1.	The Projected Security Agreement	138
------	--	-----

F: Decisions of the GCC

F.1.	Final Communique of the First GCC Summit, May 26, 1981 - Abu Dhabi Declaration	149
F.2.	Final Communique of the Second GCC Summit, November 11, 1981	158
F.3.	Final Communique of the Third GCC Summit, November 11, 1982	162
F.4.	Final Communique of the Fourth GCC Summit, November 9, 1983	167
F.5.	Final Communique of the Fifth GCC Summit, November 29, 1984	170

F.6.	Final Communique of the Sixth GCC Summit, November 6, 1985	174
F.7.	Final Communique of the Seventh GCC Summit, November 5, 1986	178
F.8.	Final Communique of the Eighth GCC Summit, November 29, 1987	182
F.9.	Final Communique of the Ninth GCC Summit, December 22, 1988 - Manamah Declaration	189
F.10.	Final Communique of the Tenth GCC Summit, December 21, 1989 - Muscat Declaration	196
F.11.	Final Communique of the Eleventh GCC Summit, December 25, 1990 - Dohah Declaration	204

G: Executive Programme of the Unified Economic Agreement

G.1.	Regulations for Practising Liberal Professions by Nationals of the GCC Member States therein.	214
G.2.	Regulations on the Acquisition of Real Estate by Citizens of the GCC Member States therein.	217
G.3.	Regulations Governing the Practice of Economic Activities by Nationals of the GCC Member States therein.	220
G.4.	Regulations on the Engagement in Commercial Activities.	223
G.5.	Unified Regulations for Treating Investors of the GCC Member States in the Same Manner as National Investors in Obtaining Loans from Banks and Industrial Development Funds.	226
G.6.	The Unified Rules for the Acquisition of Shares of Companies and the Transfer of their titles by Citizens of GCC Member States.	228

Sources	231
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The Gulf Cooperation Council, Law and Institution: Implications for the Member States

Ali M. Al-Mehaimeed

Subsequent to numerous bilateral and multilateral cooperation attempts during the 1970's, the States of the UAE, Bahrain, Saudi Arabia, Qatar, Oman and Kuwait established a regional organisation, the GCC, on 25 May 1981 with the underlying objectives of promoting cooperation and development in all fields, with special emphasis on the economic sphere.

The aim of this study is to elucidate and analyse the constitutional formation of the GCC as well as its international and national legal status and to gauge the implication of the analysis for the Member States.

The study is introduced by the background chapter which traces the political history of the Member States and their pre-GCC cooperation efforts. It further delineates how and when the idea of embarking upon such an institutionalised cooperation was born and eventually materialised.

Chapter two dissects the constitutional framework of the GCC. Besides an identification of GCC stated and implied objectives and principles, it treats the issues on membership, unilateral withdrawal, reservation to provisions of the Charter and amendment thereof. It also portrays the GCC organs and classifies them into principle ones, ancillary and specialised ministerial committees. Having identified the decision-making organ, it concludes with an attempt to investigate the way GCC decisions are initiated and finally made; their nature as well as legal force is also determined.

The legal personality of the GCC both under international law and under municipal law of Member States is examined in chapter three. Chapter four ventures into determination of the characteristics of the GCC along the spectrum of international associations.

As an organisation aiming in the long run at integration amongst its Member States, consideration of the status of its legal acts within municipal law of each Member is of import for such undertaking purports to unfold and classify the type of relationship between GCC law and domestic law of Member States, and its effectiveness in pursuing the sought objective.

Accordingly, the study embodies chapters five and six which give an account of GCC substantive economic law, and, at the same time, show in practical terms how GCC programmes are being elaborated, sanctioned and received by the legal systems of Member States. Questions raised by these chapter regarding the character of GCC law and its relationship with municipal law of Member States are answered in chapter seven.

The concluding chapter highlights the findings of the study. In addition, it points out to the institutional shortcomings, and in light of the overall findings of the study it recommends the establishment of a GCC court of justice and a specialised supervisory organ. Thoughts on the future outlook of the GCC concludes the whole study.

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Whilst acknowledging the invaluable contribution that all of these people have made, I alone bear full responsibility for errors of fact and/or interpretation.

Abbreviations

AJIL	American Journal of International Law
AOI	Arab Organisation for Industrialisation
AMF	Arab Monetary Fund
AJAJ	Arabian Journal for Adjudication and Jurisprudence
ALL E.R.	The All England Law Reports
BYIL	British Year-book of International Law
BSS	The Board of Specifications and Standards
CCP	Common Commercial Policy
CCT	Common Custom Tariff
CMLR	Common Market Law Reports
CMLRev	Common Market Law Review
CLP	Current Legal Problems
CET	Common External Tariff
Euratom	European Atomic Energy Community
ECJ	European Court of Justice
ECR	European Court of Justice Reports
ECSC	European Coal and Steel Community
EEC	European Economic Community
EFTA	European Free Trade Association
EA	Unified Economic Agreement
ELRev	European Law Review

FTA	Free Trade Area
GIC	The Gulf Investment Corporation
GATT	General Agreement on Tariffs and Trade
GYIL	German Yearbook of International Law
GCC	Gulf Co-operation Council
Harvard ILJ	Harvard International Law Journal
ICJ	International Court of Justice
ICLQ	International and Comparative Law Quarterly
ILO	International Labour Organisation
ILM	International Legal Materials
IJIL	Indian Journal of International Law
INT Lawyer	International Lawyer
ITAL YIL	Italian yearbook of International Law
JCMS	Journal of Common Market Studies
MET	Minimum External Tariff
NATO	North Atlantic Treaty Organisation
OAS	Organisation of American States
OAU	Organisation of African Unity
PCIJ	Permanent Court of International Justice
RdC	Academie de Droit International, Recueil des Cours
REV Egypt DI	Revue Egyptienne de Droit International
SA	The Kingdom of Saudi Arabia
TOC	Technical Office for Communications
UN	United Nations
US/USA	The United States of America
UAE	The United Arab Emirates
WHO	World Health Organisation
YEL	Yearbook of European Law

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Preface

Founded on 25 May 1981, the GCC marked the first comprehensive attempt amongst its Members, the UAE, Bahrain, Saudi Arabia, Qatar, Oman and Kuwait, to furnish legal rules for co-operation as well as institutional structure and procedures whereby these will be administered. Invariably, its creations brought legal problems of internal as well as external character which need be tackled under various branches of international law.

Treatment of such legal issues of the GCC in a simple coherent whole is the purpose of this study. It aims at describing and analysing the constitutional structure and status of the GCC and considering the implications of the analysis for the legal systems of the Member States of the GCC. These implications cannot be understood entirely in terms of the institutions of the GCC but must take into account its objectives and programmes. The enquiry will concentrate on the GCC's economic aims. Because economic co-operation is a major objective of the GCC, it is inevitable that attention be given to the process of economic integration of the European Communities. This shows what can be achieved and what must be achieved for effective economic co-operation. However, as will be shown, the GCC is not a supranational institution like the EC and the legal systems of the Member States are

not integrated with the legal order of the GCC. It will not be possible, therefore, for the GCC to replicate exactly the mechanisms of the EC. On the other hand, the objectives of the GCC are similar to those of the EC. The importance of the EC experience to the GCC is to demonstrate that where certain choices may be made about the elaboration of programmes, about the legal status of the norms of GCC system and about the relationship between GCC law and national, those choices should be exercised in particular ways if the objectives of the GCC are to be pursued in the most effective way.

As far as the organisation of the thesis is concerned, it proceeds in the following way. It begins with a description of the political history of the GCC States and their previous attempts at unity, integration and co-operation. This is a necessary preliminary to understanding the constitutional structure of the GCC and its general relationship with its Members. This background chapter concludes with a presentation of what the States have done, which is that they have entered into a treaty relationship with the enumerated content.

The next chapter analyses this achievement from constitutional and institutional points of view. It identifies the explicit and implicit objectives of the GCC, principles and the question of membership. It includes discussion on the functional organs and their classifications into principal, ancillary and otherwise specialised ministerial ones. Examination of the decision making process, voting procedures and the legal status of GCC decisions concludes this chapter.

The question of whether a separate legal person, the GCC, has been created by the founding treaties is treated in chapter three: The conclusion is that there has. The character of that legal person is determined by chapter four. Federalism,

supranationalism and confederalism are defined and their *indicia* elements are enumerated: The finding is that the GCC is an international organisation with confederal, but neither supranational nor federal, characteristics.

As an international legal person, the authority of its legal acts within Member States is to be determined by the constitutional relationship between international law and domestic law in each particular State. In order to assess the ways in which these interrelations will arise, it is necessary to understand the range of the economic programmes undertaken by the GCC, their implementation and reception by national legal systems.

This is furnished in chapters five and six. Substantive rules on the free movement of goods are the subject of the first. The second is concerned with those on the free mobility of persons. In both chapters, each GCC rule is followed by the implementing national measures.

The study then turns again to the matter of the implementation of international legal rules in domestic legal orders. Chapter seven examines the issue and shows that it is seldom clearly or finally resolved.

One further matter remains. However well disposed the officials of a legal system are towards international obligations, there remains the problem of identifying and applying those obligations, particularly when they are a matter of dispute. In the EC legal order, it is possible to obtain an authoritative judgement of any dispute from the European Court of Justice. Dispute settlement in the GCC is much more diffuse. The concluding chapter, therefore, recommends that a progress toward an organ with jurisdiction and authority similar to those of the ECJ would play a substantial part in

eliminating the obstacles to uniform implementation of GCC law which exist at present.

In addition, the final chapter summarises the findings of the entire study enumerates several recommendations and assesses the future prospect of the GCC.

During the course of writing this thesis, a number of GCC documents have been obtained from various sources. They constituted an important basis for the study. Because they are used as a major reference throughout, it seemed the value of this study would be greatly increased if it included those referred to, as well as others which are more up to date. Volume Two was therefore prepared, edited and produced along with the thesis.

As far as GCC sources are concerned, I have drawn so much on, as just pointed out, official records and GCC documents. Meetings and discussions with some key GCC officials shed light on some issues which could not be found in the documentary evidence. In particular I learned a great deal from my personal conversation with Mr Abdulla Bishara, the Secretary General, and the same from my personal interview with Dr. Mohammed As-Syari the Director of the Legal Department.

Mention must be made of the fact that the GCC, as an international actor is only ten-years old, and, as will be noted, is undergoing a process of evolution. As such, conclusions reached in this study can be neither conclusive nor exhaustive. Within its framework, the six Members are practising regionalism, and in pursuance of integration. The process itself is neither blameworthy nor exceptionally praiseworthy: it represents the pragmatic approach of neighbouring States with much in common to achieve integration.

Chapter One

Political Background of the Members and Foundations of the GCC

Introduction

The endeavour embarked upon by the GCC is likely to involve issues and conceptions inherited from or influenced by past experiences of the Member States, in particular their political history before the creation of the GCC. What follows will be a brief account of their emergence as sovereign States.

This is followed by an examination of the various antecedent efforts made at unity, cooperation and integration. For the purposes of simplification of these processes, they will be organised in accord with their date as well as their classification. Such an exercise should provide the basic grounding of the present cooperative experience of the GCC.

Before attempts are made to analyse the GCC in light of its treaties and practice, the subject of the subsequent chapters, it is thought appropriate to explore how the idea of cooperation amongst the six States, in such a comprehensive manner, was born and how the GCC was subsequently established.

1.A: Birth of Modern States

The political history of Members of the GCC in their current forms is relatively short, especially the UAE, Bahrain and Qatar which joined the international

community in 1971, and Kuwait ten years earlier. Prior to that, all Members had experienced more or less the same political history: They had constituted, in one form or another, parts of considerably large political communities. First they were parts of the various Islamic States from about the 620s-1250s, i.e. the periods of the Prophet and the Four Rightly Guided Caliphs, the Ummayyael Caliphate and the Abbasid Caliphate.⁽¹⁾

Between the decline of the Abbasid Caliphate and the presence of the Ottoman influence in the Gulf and the Arabian Peninsula, politically discrete entities such as Bahrain, Oman and Al-Ahsa, assumed, at times, their independence and hence administered their own internal and external affairs. Other times, however, these units acknowledged foreign authorities over them and thus only local matters were left for their discretion.

The Ottoman Empire came to the region in the sixteenth century. Since then and until the first decades of the twentieth century several parts of Arabia and the Gulf were influenced to a variety of degrees by the Ottoman authority.⁽²⁾

Besides the Ottomans, European powers had developed interest in the Gulf region as early as the first decade of the sixteenth century, in particular the Portuguese, Dutch, French and British.⁽³⁾ By far, it is the British presence in the Gulf that lasted longer, and, as will be noted, immediately pre-dated the independence of four GCC Member States. The British presence was consolidated by the end of the nineteenth and beginning of the twentieth centuries, as the Ottoman influence in the area was declining. During that period, Britain concluded treaties with the Rulers of Bahrain, Kuwait, Qatar and the Emirates now constituting the UAE whereby Britain became the custodian of their defence and foreign affairs.⁽⁴⁾

Britain as well as France maintained various treaty relations with Muscat during the nineteenth and twentieth centuries.

Notwithstanding the advance of the Europeans, different parts in the mainland of Arabia continued acknowledging the authority of the Ottoman Empire until its collapse early in the twentieth century and the establishment of the third Saudi State.⁽⁵⁾ Hereunder follows how and when each Member of the GCC was established.

1.A.I: The United Arab Emirates

On 1 December 1971, the United Kingdom terminated the special treaties and all other agreements with the Trucial States, i.e. Abu Dhabi, Dhubai, Ajman, Fujairah, Umm-Al-Qaiwain, Sharjah and Ras Al- Khaimah ⁽⁶⁾. On the following day, six emirates formed the State of the United Arab Emirates (UAE) and signed a treaty of friendship with the United Kingdom ⁽⁷⁾. The emirate of Ras Al-Khaimah joined the Union and thus became the seventh member in the Federation in February 1972 ⁽⁸⁾. The UAE was recognised by Britain and other countries as an independent sovereign State. By the end of December, 1971, the UAE had been accepted as a member of both the United Nations and the Arab League ⁽⁹⁾.

1.A.II: Bahrain

Bahrain gained its independence from Britain on 14 August 1971 ⁽¹⁰⁾. In transferring sovereignty, Britain exchanged memoranda with Bahrain, explicitly abrogating the exclusive treaty and all other agreements between the United Kingdom and the State of Bahrain ⁽¹¹⁾. Shortly after the proclamation of its independence, most countries expressed their recognition of the new State. At the international organisations level, Bahrain was admitted to the United Nations and to the Arab

League in September 1971 ⁽¹²⁾. Since its independence, Bahrain has established relationships with most nations in the world.

1.A.III: Saudi Arabia

The process of creating Saudi Arabia began in 1902 when Riyadh was recaptured, and ended with the proclamation that the United territories in the Arabian Peninsula were to be called the Kingdom of Saudi Arabia.

Between the appearance of Abdul Aziz Ibn Saud in Najed in 1902, and the outbreak of the First World War in 1914, towns, villages and tribes of Najed and the Arabian shore of the Gulf submitted to his authority. As a result, he was the master of central Najed as well as the coast of Al-Ahsa in the Gulf.

In the south-west of the peninsula, Asir was annexed to the Abdul Aziz dominion in 1920. After a brief war, the dispute over boundaries with Yemen was settled in 1934.

In 1921, Abdul Aziz shifted to the north where he seized Hail and other oases such as Jauf and Turayf. The Saudi force went further to the north extending Saudi territory. Therefore the northern frontiers between Najed, Kuwait and Iraq had to be negotiated and settled.

Afterwards, Abdul Aziz turned to the western part of Arabia, Hijaz, where its ruler's position had weakened. Thus in September and October of 1924, Tife and Makkah respectively were in Abdul Aziz's hands. In 1925, he succeeded in eliminating the Hashimites, when they were driven out of Madinah and Jeddah. As a result, in 1927, Abdul Aziz was proclaimed King of Hijaz and Najed and its Dependencies. Britain recognised Ibn Saud's Kingdom by the treaty of Jeddah in 1927, which freed

the country from restrictions imposed by a previous treaty⁽¹³⁾. On 23 September 1932, the vast territories, 2,240,000 km², united by King Abdul Aziz and his men, was renamed the Kingdom of Saudi Arabia⁽¹⁴⁾.

Since its formation, the Unitary State of Saudi Arabia has established diplomatic relationships with the international community, both States and international organisations. It is an original member of the Arab League, established in 1945⁽¹⁵⁾. It is also a founding member of the United Nations, also formed in 1945⁽¹⁶⁾.

1.A.IV: Oman

The legal status of Oman was not affected by the British protectorate policy in the Gulf. The formal relationships between the United Kingdom and Oman have been a series of treaties of commercial, friendship and non-alienation characters only, some of which were signed in 1798, 1891, 1902, 1923 and 1951⁽¹⁷⁾. Nonetheless, it was not until 1970 that Oman's image on the international scene was enhanced⁽¹⁸⁾. Subsequent to 1970, Oman witnessed progressive changes at the national, regional and global levels. Nationally, apart from the economic and social achievements, the internal problem with the rebels was gradually resolved. Regionally, Oman has established relations with its neighbouring States as well as with other Arab countries. On the international level, it maintains relations with most countries of the world. In 1971, Oman was accepted as a member of the United Nations and the Arab League⁽¹⁹⁾.

1.A.V: Qatar

Qatar declared its full independence from Britain on 1 September 1971 after the failure of attempts to agree terms for Union with Bahrain and the Trucial States⁽²⁰⁾. The special treaty relationship between Qatar and the UK established in 1916 was terminated through exchanged memoranda between the countries in September 1971⁽²¹⁾. In the same month, the new State's international identity was fully established when it was accepted into the United Nations and the Arab League⁽²²⁾. Since then, the State of Qatar has undertaken the establishment of diplomatic relationships with neighbouring States as well as other countries of the world.

1.A.VI: Kuwait

The State of Kuwait was the first to be freed from the British protectorate system in the Gulf. It was declared independent ten years before its counterparts in the Gulf under that system. In June 1961, its sovereignty was transferred from Britain to the ruler of Kuwait through notes exchanged between the two countries, which terminated the special treaty of 1899⁽²³⁾. The exchanged notes, moreover, stipulated that:

nothing ... shall affect the readiness of Her Majesty's Government to assist the Government of Kuwait if the latter request such assistance.

Noticeably, this "assistance clause" was annulled by mutual consent in May 1968 through another exchange of notes between United Kingdom and Kuwait⁽²⁴⁾. It should be noted that the "assistance clause" of 1961 has not been repeated in subsequent agreements between Britain and the rest of the protected States when the exclusive agreements with them were abrogated⁽²⁵⁾.

In July 1961, Kuwait was accepted as a member of the Arab League. Likewise its application for membership of the United Nations was accepted in May 1963 ⁽²⁶⁾. Since then, Kuwait has been an active participant in global politics.

1.B: Paths to Gulf Unity

Unity amongst the GCC Member States is an old phenomenon; apart from their unification during the Muslem empires, the Reformative Movement (1755 - 1818) had once unified them into one state. However when the Movement was stripped of its territories in the Gulf, integrative efforts of any kind were undermined. Thus, it was not until the mid-1950s that attempts at integration were re-activated. Although they were of limited success, they erected the foundation for subsequent attempts. When the British withdrew from the Gulf, the true desire of the people for integration appeared clear and soon resulted in the establishment of the United Arab Emirates. Yet, for more common actions, a new approach was needed to overcome barriers and unite the whole region. Therefore, in the 1970s the ultimate aim of unity was pursued through a gradual integrative process. This can be seen in the bilateral and multilateral agreements concluded after the independence of the States, the joint ventures and common institutions established throughout the 1970s, and finally the comprehensive and far-reaching terms of the GCC Charter. The following is an enumeration of the unification and co- operation processes up to the formation of the GCC.

1.B.I: The Early Unification Process

By the 18th century, Arabia, including the Gulf, had been divided into numerous tiny entities sharing common societal features, e.g ignorance, hunger, fears and polytheism. It was apparent that since this society had already experienced the

same illness and had been successfully treated, the same treatment was to be reapplied if the society wished to recover. Islam had brought unity in the 7th century, and therefore, in the 18th century, Islam was seen as the only way to liberation and unification.

Therefore, in the mid-18th century, Shaikh Mohammad Ibn Abdul- Wahab⁽²⁷⁾ launched his Reformative Movement from Hurimla, in Najed. He aimed to preach that Muslims should return to the teaching of the Quran and tradition of the Prophet. The ultimate goal, though, was stipulated to be Arab unity under the banner of Islam. In Hurimla he preached the oneness of God and condemned acts prohibited in the Quran such as adultery, murder, theft, usury and drinking alcohol. However, he had to leave Hurimla after surviving an assassination attempt engineered by slaves of his town. His destination was Uyaina.

In Uyaina, he gained a number of followers, including the ruler who promised the Shaikh full protection and support⁽²⁸⁾. They both undertook the destruction of trees and domes which were held sacred and invoked in the daily prayers⁽²⁹⁾. They further applied Islamic law to several criminal acts. Those acts of the Shaikh and the ruler, nonetheless, did not go unnoticed. On the contrary: chiefs of tribes and rulers of some towns, especially the non-Sunni sects, forced the ruler of Uyaina to expel the Shaikh, which he did.

Shaikh Mohammad left Uyaina for Dariyah where he had followers. The ruler of Dariyah, Mohammad b. Saud, advised by his wife, met with the Shaikh and promised to offer to his Movement every protection and support⁽³⁰⁾. Most importantly, the historical Dariyah agreement of 1745 was signed by the two men,

which marked the beginning of the practical pursuance of the goals sought, i.e. liberation and unification of Arabia under the banner of Islam.

The unification process started with the propagation in the neighbouring tribes of a peaceful return to the basic precepts of Islam. To this end, the Shaikh and the ruler sent followers to those tribes and to some Arab countries in an effort to invite them to join the Movement. Few positive responses were offered. Moreover, the rest announced their opposition to the Movement and finally they coalesced against it.

At this stage, a new approach was needed, especially when some followers, under the rule of some opponents, were unlawfully treated. It was presumed that preserving people's autonomy could only be achieved by means of establishing an Islamic State. To this end, Riyadh and nearby towns were annexed to Dariyah⁽³¹⁾; by 1790, the vast land of Najed was under the Movement's authority⁽³²⁾.

The Muwahedun⁽³³⁾, uniting force, then moved to the eastern part of Arabia. In 1796, Al-Ahsa was conquered and judges, preachers and Islamic scholars were appointed⁽³⁴⁾. About 1800, Bahrain submitted to the authority of Dariyah. Attempts to annex Kuwait in the last decade of the 18th century were unsuccessful⁽³⁵⁾. Groups and tribes at different points along the Gulf welcomed the Movement and accepted the idea of reversion to the early teaching of Islam; they were also impressed by the concept of liberating their lands from foreign powers of any kind and unifying it under one Islamic State. However, Muwahedun attention was directed towards the three local powers along the Arabian shore of the Gulf. Those powers were Muscat, the al-Qawasim confederation and the Bani Yas Union⁽³⁶⁾. The question that occupied the minds of the Muwahedun was how to convince these powers to adopt the Movement.

The Qawasim pact consisted of a number of tribes situated in an area extending from Musandam to Sharjah along the Arabian coast of the Gulf. Ras-al-Khaimah, an important sea port, was their main city. Others such as Sharjah, umm Al-Quwain and Ajman were either under the dominance of Ras Al-Khaimah or in alliance with it ⁽³⁷⁾.

The Qawasim enrolled in the Movement at the beginning of the 19th century ⁽³⁸⁾. As well known seafarers and brave men, the Qawasim played a considerable role in fighting colonialism and spreading the movement throughout the Gulf region. As in most conquered territories, the Qawasim were allowed to be ruled by their own people; however they were provided with judges and Islamic scholars from Najed, to ensure justice and knowledge of Islam.

In the beginning of the nineteenth century, Oman submitted to Duriyah and paid an annual tribute of 50,000 Riyals, but it was administered locally. ⁽³⁹⁾

By 1805, most of the Arabian Coast of the Gulf was under the control of only one State, from Bussora to Dubba ⁽⁴⁰⁾.

In the western part of Arabia, the Muwahedin captured Tif, Macca, Medina and Jaddah ⁽⁴¹⁾. Asir, Najran and Hudiduh were also included in the new state ⁽⁴²⁾.

In the north, the Movement reached the outskirts of Bagdad and Horan, now in Syria ⁽⁴³⁾.

By 1810, those tiny entities in the Gulf and in Arabia in general had been unified into one State, for the first time after the death of the Prophet Mohammad. It came to include Najed, Ahsa, Bahrain, Arabian Gulf emirates, Hejaz, Asir, and portions of Yemen, a part of Iraq and a part of Syria. Those territories witnessed the

replacement of diversity and conflict by unity and holy war. Their political, economic, cultural and social aspects of life were improved noticeably by the Islamic system introduced by the new State ⁽⁴⁴⁾. Those achievements and developments were highly appreciated by people of Arabia as security, justice and unity were the predominant and distinctive features of the society; but since the region was interesting to external powers of the time as well, their views, regardless of their legitimacy, of the union were of considerable import. They either decided to side with it, against it or leave it alone. Thus, the questions are what were their views and what decision did they take?

The views of the foreign powers were that this large Arab-Moslem State was a major threat to their interests in the region. Accordingly, they decided to work towards its total destruction if possible. If not, dividing it into small entities was the least goal. Two means were employed to achieve that end. One was conceptual, the other physical.

In an attempt to separate conceptually this state from the rest of the Islamic world, they labelled its foundation, i.e. the Movement, Wahhabism ⁽⁴⁵⁾. The message to Moslems was that this Movement founded by b. Abdul-Wahhab is different from the four Islamic schools of thought; and as such is an innovative sect which should be rejected. They hoped that through this propaganda the new state would lose Moslem sympathy when the physical means were used.

On the battlefield, the Turks were demolishing the State from the West of the region, while the British force in the East watched the progress, waiting to take over the mission where the Turks left off.

Mohammad Ali, the Turks' Viceroy of Egypt, as well as his sons, stripped the State from its western, southern, northern and central territories, including the capital during the second decade of the 19th century ⁽⁴⁶⁾. In 1818, defenders of the State's capital, Dariya, after several months of fighting were unable to withstand the French heavy weapons used by the intruders. As a result, the city surrendered ⁽⁴⁷⁾. The eastern part of the State, i.e. the Arabian shore of the Gulf, was not targeted by the Egyptians, but foreign forces were there ready to demolish what was left of the State. Hence, in 1819, Ras-Alkaima, the major city in the east, was totally destroyed; other emirates preferred to surrender before they too were wiped out ⁽⁴⁸⁾.

Generally, although Britain is partly responsible for the frustration of the State, Mohammad Ali is by far more to blame not only because he aborted the State but also because he rendered the east powerless when Dariya was captured, and in so doing he provided the British with an opportunity to impose their colonial protection on the Arabian Gulf emirates. That system lasted for about 150 years taking the emirates away from any integration attempt in the Arabian Peninsula ⁽⁴⁹⁾.

Thus, when this State was reconstructed by Imam Faisal b. Turkey in the mid-19th century, only a small portion of the Gulf could be annexed to it ⁽⁵⁰⁾.

When the third and last attempt at a united Arabia was made, annexation of the Gulf was not easily possible, for the British had comfortably established themselves. The exclusive agreement, the extra-territorial jurisdiction and boundaries between the emirates were novel features and undermined their inclusion with the rest of the unified territories. Therefore, the attempt resulted only in the establishment of the vast united land called Saudi Arabia ⁽⁵¹⁾.

1.B.II: Co-operation Efforts

Between 1820 and 1950, foreign powers' policies in the region fostered fragmentation of the emirates and completely separated them from the rest of Arabia and its efforts at unification and co-operation. However by 1950, the region had witnessed numerous changes which induced Britain to assess its policy of neglect in the area. Those events include the Arab awakening and, most importantly, discovery of oil. The new policy gave way to political, social and economic improvements which were the foundation for subsequent co-operative, federalistic and integrative achievements. Under the new policy bilateral agreement was approved, a unified land force was formed and a consultative council for the rulers was set up.

In 1951, the Trucial Oman Scouts (TOS), a common land based force, was established to provide the Gulf emirates with internal peace and security ⁽⁵²⁾. It was commanded by a British officer assisted by Jordanians and other Arab officers. In addition to its headquarters in Sharjah, it maintained some camps in various places within the emirates ⁽⁵³⁾.

In the late 1950s, the TOS was enlarged, and vested with power to defend the emirates against external aggression and to engage in extra-territorial combat, in addition to its original task as a peace keeping force. The record of its functional activities includes its participation in two external confrontations, i.e. the Buraimi Dispute between Saudi Arabia and Abu Dhabi, and Southern Oman combats ⁽⁵⁴⁾. When the States gained their independence in 1971, the TOS was handed over to the federal government and thus became a nucleus for an advanced federal army.

Another positive step which resulted from the post-1950s British policy was the formation of the Trucial States Council (TSC) in 1952 ⁽⁵⁵⁾. The Council was

composed of rulers of the seven Trucial States, i.e. Abu Dhabi, Dhobi, Ras Al-Khaima, Sharjah, Ajman, Fujairah and Umm Al-Qaiwain. Although the TSC was set up under the guardianship and presidency of Britain, it offered the rulers a chance to meet once again in an atmosphere which differed from that of the war-field; throughout its duration, they met and discussed matters of mutual concern in a peaceful and co-operative environment and reviewed their societies' needs.

By the late 1950s, the rulers had showed a considerable interest in co-operation on social and economic matters, the result of which was a Deliberative Council comprising two representatives from each emirate annexed to the TSC. The mission of the new council was to prepare proposals for, and implement recommendations of, the TSC.

During the 1960s more developments along the road to closer co- operation occurred. The presidency of the TSC was handed to the rulers themselves, who elected the ruler of Ras Al-Khaimah as its chairman ⁽⁵⁶⁾. More importantly, the Trucial States Development Office and the Trucial States Development Fund were formed under the TSC supervision.

The TSC, through the Development Fund, undertook to provide the emirates with the basic needs of the 20th century such as roads, education, health facilities, housing, electricity, telecommunications and other development programmes ⁽⁵⁷⁾. Abu Dhabi alone subsidised 70% or more of the revenues of the Development Fund ⁽⁵⁸⁾. The rest came from outside sources.

The above were the institutions that made the emirates come closer to each other in the economic, military and social fields; hence, the question is what did those institutions generate on the political level?

No significant accomplishment could be attributed to them. However, it is obvious that the TSC provided the emirates with an opportunity to consider political co-ordination, taking into account the success they gained from their collaboration over socio-economic development.

Yet, prior to 1968 when Britain decided to pull out, no advantage was taken of that opportunity. No definite reason can be identified. The only co-operative effort that materialised was the agreement reached between Sharja and Fujairah in February 1958 which stated that "there shall be unity between the parties, in good and bad times, ..." ⁽⁵⁹⁾.

1.B.III: Federation Experiments

In 1968, when Britain announced its intention to withdraw from the Gulf by the end of 1971, the rulers had to consider seriously the future of their mini-states. Each emirate was faced with deciding between two options: to work towards its own independence, or to join the other emirates in a federal government. The latter was the choice of all states, although each, during the transitional period 1968-1971, showed ability to act independently when each enjoyed self-government and freedom of decision regarding its future.

People of the Gulf were optimistic about the unification of those states even though similar attempts had been made under similar circumstances but had not been realised ⁽⁶⁰⁾.

a. The 9-member Union

The first step towards unity was the agreement concluded between Abu Dhabi and Dubai in February 1968 to establish, under one flag, a federation between the two states ⁽⁶¹⁾. This agreement called for entrusting the federal authority with security matters, social and education services, and citizenship and immigration ⁽⁶²⁾. Article 4 invited the other five States, Qatar and Bahrain to join the union and discuss the future of the region. The invitation was accepted; accordingly, a conference attended by all nine rulers was held in Dubai on 25-27 February 1968. The three days of deliberations produced an agreement to establish a federation signed on the last day by all nine rulers ⁽⁶³⁾. That union was to be called "the Federation of Arab Emirates" (FAA) ⁽⁶⁴⁾. Ultimate political authority was vested in a Supreme Council made up of the nine rulers ⁽⁶⁵⁾. Executive authority was entrusted to a federal Council ⁽⁶⁶⁾. Furthermore, the agreement provided for the establishment of a Supreme Federal Court ⁽⁶⁷⁾.

However, the accord ran into difficulties in its implementation process due, it seems, to its generality, vague terms and the unanimity provision. Negotiations over the implementation of the terms agreed upon in the agreement occupied the four sessions the Supreme Council held between July 1968 and October 1969 ⁽⁶⁸⁾. Agreement in important matters such as the Union's constitution, budget and army was not reached. The disagreement, moreover, was intensified after the fourth round of negotiation, when the British Political Resident in the Gulf sent forward a message to the rulers urging them to overcome their difficulties and erect the basis for the projected federation. This note was considered by some members as unjustifiable interference in purely local matters which concerned their own future. ⁽⁶⁹⁾ As a direct

result, the meeting broke up when the rulers of Qatar and Ras Al-Khaima walked out of the negotiation room ending discussions at the rulers' level ⁽⁷⁰⁾. Attempts at the level of deputy rulers had also failed as their two meetings in 1970 broke down ⁽⁷¹⁾.

At this stage, a federation of nine members was inconceivable; first, because differences on some subjects of the accord remained unresolved, and second, Bahrain reactivated its old demands that the number of representatives in the Federal Council be proportional to population whilst other emirates suggested equal representation. This latter demand was insisted upon by Bahrain only after the Iranian claim to Bahrain was settled. Those two local reasons, as well as others such as Qatar and Bahrain's opposition to each other during the negotiations, with or without legitimate justifications, led to the failure of the nine member federation. On the other hand, it has been suggested that external powers did not encourage a union involving Qatar and Bahrain ⁽⁷²⁾; if so, the contention that internal and external forces collaborated in shaping the future of the Gulf would be valid.

b. The 7-Member Union

When it became clear that Britain would honour its promise to withdraw by the end of 1971 and the date came closer, speed in deciding the future of each emirate was necessary. Having realised that, the rulers of seven emirates - Qatar and Bahrain not included - held a meeting in Dubai on 10 July 1970, during which many nationals paid visits to various rulers urging them to launch a seven-member union ⁽⁷³⁾. On 18 July 1971, the formation of the United Arab Emirates (UAE) was declared. The constitution of the nine member union was adopted with some modifications to suit the new federation. On 2 December 1971, its independence was proclaimed. Bahrain

and Qatar had already declared themselves independent in the same year, in August and September respectively.

In brief, by the end of 1971, the future of the Gulf had been mapped out. At first, the map of the Gulf looked so bad that boundaries, passports and flags slowed down their interactions; however the subsequent numerous co-operative efforts in all forms, i.e. bilateral, multilateral and joint ventures in various fields, rendered those obstacles more of artificial barriers, particularly when the time for a Gulf citizenship is drawing closer.⁽⁷⁴⁾ The co-operative and integrative process which are gradually bringing the people of the Gulf together are discussed in the following section.

1.B.VI: Partial Co-operation

Between 1971, when the States gained independence, and 1981, when they established the GCC, many agreements were concluded and more than 30 institutions were jointly established in most fields, e.g. economic, information, culture, education and communications. They all aimed at self identity, solidarity and integration.

Education and cultural co-ordination:

Deep concern about the educational bases, methods and goals guided the Gulf States to the establishment of the Arab Educational Office for the Gulf States in 1976, with its headquarters in Saudi Arabia⁽⁷⁵⁾. The objectives of this Office are to co-ordinate the educational process at all levels, enhance the Islamic Arabic identity of the region, consolidate unity of the region's society, establish common educational institutions and spread Arabic, especially in Muslem countries⁽⁷⁶⁾. Achievements of the Office include strengthening relations with regional and international centres for Arabic and Islamic studies, editing, publication and

Islamic source books and participation in a number of regional and international educational conferences.⁽⁷⁷⁾

In the late 1970s two educational bodies were established and attached to the Office; these are the Arab Centre for Educational Research located in Kuwait, and the Gulf University based in Bahrain ⁽⁷⁸⁾.

Informational collaboration:

The following are common establishments in the field of information:

- The Gulf Corporation for the Production of Joint Television Programmes, based in Kuwait and established in 1976.⁽⁷⁹⁾
- The Gulf News Agency (GNA), located in Bahrain and formed in 1978.⁽⁸⁰⁾
- The Gulf Television, based in Saudi Arabia and set up in 1977.⁽⁸¹⁾

Economic cooperation

Economic co-operation between the States has covered all economic aspects and taken various forms, all of which is an indication that the road to economic integration had already been marked when the GCC was established. The following are some of the joint economic projects and institutions.

- The Gulf Petrochemical Industries Company, based in Bahrain, founded in the late 1970s.⁽⁸²⁾
- The Gulf International Bank, situated in Bahrain and formed in 1975.⁽⁸³⁾
- The United Arab Shipping Company, located in Kuwait and launched in 1976.⁽⁸⁴⁾
- The Union of Chambers of Commerce and Industry in the Gulf States, based in Saudi Arabia and established in the late 1970s.⁽⁸⁵⁾
- The Gulf Organisation for Industrial Investment, located in Qatar, and founded in 1976.⁽⁸⁶⁾
- The Gulf Air, formed in 1950 and involving Bahrain, Qatar, Oman and the UAE.⁽⁸⁷⁾
- The Drydock, in Bahrain, was established in 1978.⁽⁸⁸⁾

- The Gulf Aluminium Rolling Mill Company, based in Bahrain and set up in 1981.⁽⁸⁹⁾
- The Gulf Organisation for Industrial Consultancy, located in Qatar, and launched in 1976.⁽⁹⁰⁾
- The Regional Fishery Survey and Development Project, based in Qatar and established in 1975.⁽⁹¹⁾
- The Gulf Ports Union was established in 1976.⁽⁹²⁾
- The Organisation of Arab Petroleum Exporting Countries (OAPEC) was established in 1968 and includes Bahrain, Kuwait, Qatar, Saudi Arabia and the UAE from the GCC besides some other Arab countries. ⁽⁹³⁾
- The Arab Shipbuilding and Repair Yards, based in Bahrain, and established in 1974.⁽⁹⁴⁾

Interaction in other fields

Joint actions in fields such as health, agriculture, communication and social affairs were also undertaken by the States prior to the GCC.

In 1976, a general secretariat for the Arab Gulf Health Ministers Council was set up in Saudi Arabia.⁽⁹⁵⁾

In the agricultural field, two bodies have been established: the first is the Arab Gulf Agriculture Ministers Conference; the second, the Arab Gulf Ministerial Council.⁽⁹⁶⁾

In 1978, the Ministerial Council for Arab Gulf Labour and Social Affairs was formed. A follow-up committee, based in Bahrain, was annexed to it.⁽⁹⁷⁾

In 1971, the Permanent Committee of the Gulf Telecommunication was established, based in Bahrain and involving Qatar, Bahrain, Kuwait and the UAE ⁽⁹⁸⁾. Now all GCC Members are subscribers to it, and it has been converted to a GCC institution.⁽⁹⁹⁾

The Gulf Postal Association was established in 1977 by Bahrain, Qatar, Kuwait, Oman, Iraq, Saudi Arabia and the UAE. It aims to co-ordinate and develop the postal services, exchange expertise and unify the postal systems in the Member States ⁽¹⁰⁰⁾.

1.C: Emergence and Establishment of the GCC

The idea of establishing an integrated regional body was born in the 1970s; yet, it was not until 1981 that this idea materialised. This was largely due, it is thought, to the fact that the States had learned much about different kinds of association and about the approaches to be employed in pursuing each, both at the Gulf level and at the Arab level. Therefore, during the decade of discussions and preparation stages, the States made sure that the best and most well-considered means were employed in pursuing the aim of Gulf integration. In this section, the birth of the idea of close and institutionalised co-operation will be traced, as well as the formation process of the GCC.

Leaders of the Gulf States, long before the GCC was set up, had expressed the view that Gulf integration had become a pressing need for development of the region. In 1970 Sultan Qaboos b Saaid of Oman expressed his willingness to maintain close co-operation with neighbouring states. He said:

This will be our long-term policy under which we will maintain consultations for the future well being of our region ⁽¹⁰¹⁾.

In 1976, Oman hosted a conference for the Foreign Ministers of the Gulf States. Security of the region, development and advancement for the well-being of the peoples of the Gulf and the promotion of co-ordination in all spheres were, according

to the Sultan of Oman, the prime purposes of the conference ⁽¹⁰²⁾. This meeting was the first practical step towards the establishment of the GCC.

Following the Oman Conference, the conceptual efforts for close co-operation were intensified. They all called for the finding of ideal and sound bases for co-operation. The Crown Prince of Bahrain, Shaikh Hamad b Isa Al-Khalifa, observed the need for collective work in all fields as a prerequisite for sound development, when he stated:

Since this is the age of major powers and nations, there is no place for small countries to survive on their own and should they try to do so, they will definitely experience more backwardness and pressures, while the advanced nations will continue to enjoy more progress and advancement. All this prompts us to believe in the principle of co-operation based upon good faith and a clear vision ⁽¹⁰³⁾.

The President of the UAE, Shaikh Zayed b Sultan, had also expressed the need for Gulf integration based on "sound political, cultural, social and economic principles", which would enable it:

to hold out in the face of challenges and will help it to withstand external storms and pressures ⁽¹⁰⁴⁾.

The Amir of Kuwait, who was then the Crown Prince and Prime Minister, also expressed his view regarding the future of the region, which was that of:

creating a form of unity or federation that is based upon firm and sound foundations for the benefit and stability of the peoples of the region ⁽¹⁰⁵⁾.

The second practical step to establishing the GCC was the tour made in 1978 by Shaikh Saad A. Al-Sabah, Kuwait's Crown Prince and Prime Minister, to the capitals of Oman, Bahrain, Qatar, UAE and Saudi Arabia. Those visits showed positively the determination of those States to maintain more comprehensive co-operation than that which they already had. The Kuwaiti-Omani Communique states:

The two parties, after reviewing relations between the Gulf States and the prevailing circumstances, agreed on the need for the closest possible formula of co-operation between its states within the framework of their Islamic concepts, historical relations and similarities of affairs, and in response to the aspirations of the region's people to realize greater progress and stability ⁽¹⁰⁶⁾.

The Kuwaiti-Bahraini Communique states the two sides' determination:

to lay down a verified plan for political, economic, social and educational performance ⁽¹⁰⁷⁾.

The Kuwaiti-Qatari Communique reads, in part, that:

The two sides held an identical view on the critical situation prevailing in the region and the need for collective and speedy action towards unity of its Arab States which is determined by the nature of their historical relations and similarities and also to cope with the desire to achieve progress and welfare ⁽¹⁰⁸⁾.

In Abu Dhabi, the joint Kuwaiti-UAE Communique states:

reviewing the prevailing situation in the Gulf, the two sides agreed on the need for a collective and speedy move to realize unity of the Arab Gulf States emanating from their religious and national linkage and to achieve aspirations of their people for progress and prosperity ⁽¹⁰⁹⁾.

In Riyadh, an excerpt of the Kuwaiti-Saudi joint Communique reads:

after reviewing the prevailing situation on the Arab peninsula and in the Gulf region, the two sides affirm their belief that continuity of positive efforts to strengthen all aspects of co-operation is a natural duty. The two sides affirm their concern that the region should remain a zone of peace and stability removed from international struggles. Relations between its States should be maintained on a strong basis of mutual respect, organized co-ordination and effective solidarity, with the aim of utilizing their substantial joint potential in serving their people ⁽¹¹⁰⁾.

In 1980 the six leaders of the GCC States discussed the establishment of a Co-operation Council, while attending the Arab Summit in Amman, Jordan. ⁽¹¹¹⁾ This meeting was the third practical step towards the launching of the GCC.

The fourth practical step was taken in February of 1981, when the Gulf Heads of State met on the sidelines of the Islamic Summit Conference in Al-Tife, Saudi

Arabia. This meeting resulted in an agreement to set up a co-operation council for the six States, Oman, Bahrain, Qatar, Kuwait, UAE and Saudi Arabia.

Formal declaration of the six States' agreement to establish a regional organisation to include the six participants was issued at the end of the meeting held on 4 February 1981 by the Foreign Ministers of the six States ⁽¹¹²⁾. They agreed to hold another meeting in Muscat on 8 March 1981, with the understanding that it would be preceded by two expert meetings, which would be entrusted with drafting the agreement reached regarding the establishing of the regional entity called the Gulf Co-operation Council. The joint statement issued at the end of the meeting reads:

Since the United Arab Emirates, State of Bahrain, Kingdom of Saudi Arabia, Sultanate of Oman, State of Qatar and State of Kuwait realise the very close relations amongst them and the common features arising from their own religion, similarity of their regions, unity of their heritage, identical political, social and demographic structures and their shared cultural background; and since these States are desirous of deepening and developing co-operation and co-ordination amongst them in various fields, they have agreed to establish a new organisation to be called the Gulf Co-operation Council, to be based in Riyadh, Saudi Arabia. This Council will serve as the medium for achieving a higher degree of co-ordination, integration and cohesion in all fields and for forging closer links between its members in various spheres. The GCC will seek to establish similar systems in the fields of economy, finance, education, culture, social welfare, health services, transportation and communications, information, passports and immigration, travel, commercial affairs, customs, shipping, legal and legislative affairs ⁽¹¹³⁾.

The historic day of the formation of the GCC was followed by official meetings at various levels. These meetings were preparatory ones, and were assigned for the drawing up of the constitution of the GCC and the internal rules of its various organs ⁽¹¹⁴⁾.

Between the setting up of the GCC on 4 February 1981 and the first Gulf Summit on 25 May 1981, ie. the preparation period, the Foreign Ministers of the six States held two Conferences ⁽¹¹⁵⁾. The first was in Muscat on 9 March 1981, where

they put the final touches on the basic laws of the GCC, the internal regulations of the Supreme Council and the internal regulations of the Ministerial Council. They also discussed the internal regulations of the General Secretariat but agreed to postpone ratification of it until a GCC General Secretary was appointed.

The second Ministerial Meeting was held in Abu Dhabi on May 23-25 1981; it was mainly concerned with the preparation for a GCC Summit to be held on 25 May 1981; it also reviewed the items of the agenda for the GCC Summit and the co-operative plans and proposals that would be put before the Summit for its approval. The Foreign Ministers also agreed in principle that the GCC Secretary General would be from the State of Kuwait ⁽¹¹⁶⁾.

On 25-26 May 1981 the UAE witnessed the first Gulf gathering at the highest level; the six Heads of State met in Abu Dhabi, where the GCC was launched and signing took place of the Charter of the GCC and other documents governing its organs. They also appointed Mr Abdulla Yacoub Bishara ⁽¹¹⁷⁾ as the first GCC Secretary General; Moreover, five specialised committees were set up to accelerate the implementation of the GCC programmes. These committees are: the Committee for Economic and Social Planning, the Committee for Financial, Economic and Trade Co-operation, the Industrial Committee, the Oil Committee and the Committee for Social and Cultural Services ⁽¹¹⁸⁾. More importantly, the first Summit Meeting marked the formal starting of the GCC integrative journey.

Summary

The geo-strategic import of the Gulf has been recognised for a long time. Early significance of the area related to its position as a route for east-west trade, and

as a transit centre. Powerful nations at different times in history came to the Gulf as traders, travellers or occupiers. The Portuguese, Dutch, French and British all had a footing in the Gulf, though to a variety of degrees. Britain, however, is the most familiar power in the region as it encompassed nearly 150 years, during which it established different types of relationships with the Gulf States, the last being the protectorate system whereby the UK administered foreign and defence affairs on behalf of the UAE, Bahrain, Qatar and Kuwait. During that period, Britain also maintained treaty relationships between Oman and Saudi Arabia. Before the advance of the West to the area, the now GCC region, for centuries, had constituted parts of the various Islamic States, including the Ottoman empire.

As a result, the modern political history of GCC Member States is rendered considerably short. In the international arena, Saudi Arabia is the oldest, having participated in the establishment of the UN and the Arab League in 1945. Although never formerly colonised, it was not until 1970 that Oman became an international actor. The other four GCC Members, i.e. the UAE, Bahrain, Qatar and Kuwait, acquired their independence from Britain in 1971, 1971, 1971 and 1961 respectively.

As regards their pre-GCC interaction, it dates back centuries, and generally it could be divided into four phases: the first phase include those three coercive efforts at unification which, after two centuries, resulted in the formation of the unitary State, Saudi Arabia. The method employed in this phase could have left bad attitudes amongst people of the Gulf which must be taken into account when an integrative journey is pursued. It shall be seen in the following chapters how the GCC was designed to overcome this, along with the long experience with the States being sovereignless for colonial reasons. The second phase took the form of limited

cooperation under the supervision of Britain during the 1950s and 1960s, e.g. the establishment of the TOS and TSC. The third phase covers the two federal attempts, the last of which resulted in the creation of the UAE. The fourth phase represents the numerous bilateral and multilateral cooperative efforts by the states since their independence up to the launching of the GCC.

The GCC as a concept emerged in the mid 1970s, yet it was not until May 1981 that it was materialised by signing the GCC Charter and other related documents. These constituent treaties constitute the backbone of the GCC, the study of which is necessary for any investigation of the GCC venture. Accordingly, the following chapter will analyse its constitutional aspects.

References and Notes

1. See Richard E. Nyrob, *Area Handbook for the Persian Gulf States*, (Washington: American University, Foreign Area Studies, 1977), pp.15-21, and Franke Heard-Bey, *From Trucial States to United Arab Emirates*, London: Longman Group, 1982; pp.126-163. For details see Sir John Glubb, *The Empire of the Arabs*, London: Hodder & Stoughton, 1963; pp.22-23. Also Sir John Glubb, *The Great Arab Conquests*, London: Hodder & Stoughton, 1963; Also Sir William Muir, *The Caliphate and its Rise, Decline and Fall*, 2nd ed., Oxford, 1892.
2. For detailed account of Ottoman-Gulf relations, see J.B. Kelly, *Arabia, the Gulf and the West*, London: Wiedenfeld & Nicholson, 1980; pp.168-170, 179-180, 186, 226-227.
3. Arnold T. Wilson, *The Persian Gulf: An Historical Sketch from the Earliest Times to the Beginning of the Twentieth Century*, Oxford: The Clarendon Press, 1928.
4. The so-called "Special Treaty" was signed by Bahrain in 1880 and 1892, Trucial States in 1892 and Qatar in 1916. Under the special treaties, the rulers surrendered external sovereignties to Britain and pledged not to "cede, sell, mortgage or otherwise give for occupation" any part of their territories "save to the British Government". Thus, those States became Protectorates of Britain. Oman, however, was not included in the British Protectorate system. Nevertheless, the British extraterritorial jurisdiction was administered in Oman and treaty relationships were maintained between Britain and Oman. Concerning Saudi Arabia, a friendly relationship was established in 1927, after the British recognised the independence of the Ibn Saud dominion. For the text of the treaties, see C.U. Aitchison ed., *A Collection of Treaties, Engagements and Scandals Relating to India and Neighbouring Countries*, 9 Vols, 5th Ed., Calcutta, 1933. Generally see Husain M. Al-baharna, *The Arabian Gulf States, their Legal and Political Status and their International Problems*, Beirut, 1975 (hereinafter cited as Al-baharna). See also *The Arab Gulf and the West*, B.R. Pridham ed., London: Centre for Arab Gulf Studies, University of Exeter, 1985, pp.1-36. A.J. Cottrell, *The Persian Gulf States: A General Survey*, Baltimore: The Johns Hopkins University Press, 1980; Abdul Amir Amin, *British Interests in the Persian Gulf*, Leiden: 1967; William D. Brewer, 'Yesterday and Tomorrow in the Persian Gulf', 23 *The Middle East Journal*, 1969, pp.149-158. See David Holden, 'The Persian Gulf: After the British Raj', 49 *Foreign Affairs*, 1971, pp.721-735. See also D.C. Watt 'The Decision to Withdraw from the Gulf', 39 *Political Quarterly*, 1968, pp.310-321.
5. See J.B. Kelly, *Arabia, the Gulf and the West*, supra note 2, pp. 169 and 226-31.

6. Abdullah O. Taryam, *The Establishment of the United Arab Emirates, 1950-1985*, (London, 1985) p.189. A more comprehensive account of the Federation process is dealt with in later sections. See Al-Baharna, supra note 4., pp.396-398 for the text of the memoranda exchanged between the United Kingdom and the Trucial States (UAE).
7. *The Establishment of the United Arab Emirates*, ibid, pp.189, 196. No.112.
8. Ibid p.192. See also R. Said Zahlan, *The Origins of the United Arab Emirates: A Political and Social History of the Trucial States*, London: The Macmillan Press, 1978, p.195.
9. See Anthony John Duke, 'The Union of the Arab Emirates', *26 Middle East Journal*, 1972, p.271-287 at 271.
10. The collapse of the nine-member Federation of Gulf States, United Nations Security Council Resolution 287, 1970, which called for granting the Bahrainis their wish to attain a fully independent state, and the relinquishment of the Iranian claim to Bahrain, heartened Bahrain to work towards its own independence. See Emile Nakhleh, *Bahrain: Political Development in a Modernising Society*, Massachusetts, Lexington, 1976, pp.9, 99, 103-104, 175, No. 10; Mohammad Al-Rumaihi, *Bahrain: Social and Political Change Since the First World War*, U.K.: Bowker, in association with the Centre for Middle Eastern and Islamic Studies of the University of Durham, 1976, p.224.
11. The text of the exchanged notes abrogating the Special Treaty relations between Britain and Bahrain is reprinted in Al- baharna, supra note 4, pp.393-394.
12. J.D. Anthony, *Arab States of the Lower Gulf: People, Politics and Petroleum*, Washington: The Middle East Institute, 1975, p.45.
13. *The Persian Gulf States*, supra note 4, p.88.
14. For a more extensive treatment of Saudi Arabia's unification process, see, for example, Ahmad Assah, *Miracle of the Desert Kingdom*, London: Johnson, 1969.
15. Saudi Arabia was one of the seven founders of the Arab League. The original members were: Egypt, Syria, Lebanon, Iraq, Jordan, Yemen and Saudi Arabia. See Robert W. McDonald *The League of Arab States: A Study in the Dynamics of Regional Organisation*, New Jersey: Princeton University Press, 1965, p.42.
16. Ibid p.10.
17. For Omani treaty relations with Britain, see Al-bahrna, supra note 4, pp.47-54.
18. For an historical perspective on Oman's development, see Calvin H. Allen, Jr., *Oman: The Modernisation of the Sultanate*, London: Croom Helm, 1987.
19. Ibid p.114.
20. Muhammad Morsy Abdullah, *The United Arab Emirates: A Modern History*, London: Croom Helm, 1978, p.141.
21. For the text of those notes, see Al-baharna, supra note 4, pp.394-396.
22. Qatar, Ministry of Information, *Gulf Cooperation: The Path to Progress, Prosperity and Unity*, (Doha, Qatar, 1983), p.23.
23. J.B. Kelly, *Arabia, the Gulf and the West*, supra note 2, p.53. See also Ahmad M. Abu-Hakima, *The Modern History of Kuwait: 1750-1965*, London: Luzac & Co. Ltd, 1983, p.159.
24. For the text of these notes, see Al-baharna, supra note 4, pp.385-387.
25. One reason for the annulment of this clause with Kuwait and the avoidance of its restatement in subsequent instruments with the Protected States might have been that Britain, under the assistance clause, had spent more than it had expected when the Iraqi Prime Minister Abdul Karim Qassim laid claim to Kuwait and British military support had to be provided to Kuwait in fulfilment of the obligation of the 1961 treaty. See Hassan Ali Al-Ebraheem, *Kuwait and the Gulf: Small States and the International System*, London: Croom Helm, 1984, p.98.
26. Gedery Gala'ji, *Political and Economic Structure of Kuwait*, (in Arabic), Dar Al-Ketab Al-Arabi, 1973, pp.22-23.
27. Mohammad b. Abdul-Wahhab was born at Uyaina in 1703. He grew up in a highly educated house; suffice it to note that his father was a judge in his town, Uyaina. Thus, from his childhood, he studied the Quran and eventually memorised it along with thousands of the Prophet traditions (Hediths).

To expand his knowledge of Islam, he travelled to Medina, Baghdad, Basra, Damascus and other cities where Islamic studies were offered.

Convinced by what he had learned that the practice of Islam in Arabia had fallen into a grievous state, he started preaching the return to Islam in its original simplicity. This is the doctrine of his Movement.

In implementing this doctrine, he emphasised, first, the Five Pillars of Faith, i.e. 1) profession of faith; 2) the daily prayers; 3) alms; 4) fast during the month of Ramadan; 5) pilgrimage where possible. The second stage was enforcing the prohibitions and penalties of Quran and Hedith. Innovations of any kind that were introduced to the region by outsiders were strongly rejected after they were found repugnant and inconsistent with general principles of Islam. For more accounts of the doctrine of the Reformative Movement see, for example, Mohammad Morsey Abdullah, *Emirates of the Coast and Oman and the First Saudi State: 1793-1818*, Vol. 1 [in Arabic], (Cairo: the Egyptian Modern Office for Publication and Distribution, 1978); J.B. Kelly, *Arabia, the Gulf and the West*, supra note 2.

28. Mohammad Morsey Abdullah, Ibid, p.111.
29. *Miracle of the Desert Kingdom*, supra note 14, p.3.
30. Mohammad Morsey Abdullah, supra note 27, p.113.
31. Ibid, p.128.
32. Ibid.
33. The followers of Shaikh Mohammad b. Abdullah Wahhab were known as Muwahedun for either of two reasons. The first is that the term means the uniting force or the unitors; hence it suits them as the ones who undertook to unite Arabia. The second reason is that they believed in the oneness of God, and in Arabic, the believers of the oneness of God are called Muwahedun. Thus the term suits for this reason too.
34. Mohammad Morsey Abdullah, supra note 27, p.130.
35. See Ahmad Mustafa Abu-Hakima, *The Modern History of Kuwait 1750-1965*, supra note 23, pp.45-50.
36. The Bani Yas group was situated near Abu Dhabi. The larger portion of its tribe members was of bedouin background, in contrast to al-Qawasim and Muscat who were known as seafarers.
37. See Abdullah Morsey Abdullah, supra note 27, p.96.
38. Saleh, M. Al-Abid, *The Qawasim's Role in the Arabian Gulf, 1747-1820*, (in Arabic) Baghdad, 1976, p.141.
39. See Abdullah Morsey Abdullah, supra note 27, p.194-210.
40. See R. Hughes Thomas, ed., *Arabian Gulf Intelligence*, (England: The Oleander Press, 1985), p.303.
41. Ibid p.430.
42. See Mohammad Morsey Abdullah, supra note 27, p.137; *Miracle of the Desert Kingdom*, supra note 14, p.5.
43. Mohammad Morsey Abdullah, supra note 27, p.137; see also *Miracle of the Desert Kingdom*, supra note , p.5.
44. For the impact of the State on the economic, political, cultural and social aspects of life in Arabia and the Gulf, see Dr. Abdul Rahim Abdul Rahman "The Rising of the first Saudi State (1745-1818) and its effects on society in the Arabian Peninsula", [in Arabic], *25 Journal of the Gulf and the Arabian Peninsula Studies*, (1981), pp.65-83.
45. Wahhabism is a western term unacceptable to people who adopted the Movement throughout Arabia and the Gulf. It is so rejected because it means that a new sect has been innovated whereas the truth is that Shaikh b. Abdul Wahhab from the outset adopted the Hanbli school of thought after he studied the four schools very thoroughly, and hence he did not innovate a new school or create a new sect. In his Movement, he preached the adoption of "A'ahl Assunah wa Jama'ah" ideology, i.e. the reversion to any of the Sunny schools of thought which agree upon the Islamic Fundamental principles, e.g. the five pillars, the prohibitions and penalties of the Quran and Hadith.
46. See Mohammad Morsey Abdullah, supra note 27, pp.247-253.

47. *ibid*, p.253.
48. For a more detailed description of how Ras-Al-Khaima and its dependencies were destroyed, see, for example, *The Qawasim's Role*, *supra* note 38, pp.295-320.
49. The State built between 1745-1818 was later referred to by historians as the First Saudi State.
50. The second unification attempt by Imam Faisal Ibn Tunky is known as the Second Saudi State.
51. The third unification attempt that resulted in the establishment of Saudi Arabia is known as the Third Saudi State.
52. *The United Arab Emirates*, *supra* note 20, p.80.
53. Franke Heard-Bey, *supra* note 1, pp.312-13, 465 no. 92.
54. See *Oman: the Modernisation of the Sultanate*, *supra* note 18, pp.64, 68.
55. *The United Arab Emirates*, *supra* note 20, p.135.
56. *Ibid*, p.81.
57. See Mohammad T. Sodik and William P. Snively, *Bahrain, Qatar and the United Arab Emirates: Colonial Past, Present Problems and Future Prospects*, (1972), p.188. Hereinafter Mohammad and William.
58. *Ibid*.
59. See *The Establishment of the United Arab Emirates*, *supra* note 6, p.36. The content of this agreement is reprinted on the same page.
60. But see "The Persian Gulf: After the British Raj", *supra* note 5, p.731.
61. *The Establishment of the United Arab Emirates*, *supra* note 6, p.89.
62. *Ibid*.
63. The English version of this agreement is reprinted in Albaharna, *supra* note 4, pp.380-83.
64. Article 1 of the Agreement.
65. Articles 3, 4.
66. Articles 7, 8, 9, 10, 11.
67. Article 13(a).
68. For morbe details on the four meetings see Mohammad and William, *supra* note 57, pp.193-195.
69. Ali Mohammad Khalifa, *The United Arab Emirates: Unity in Fragmentation*, (Colorado: Westview Press, 1976), p.32.
70. *Ibid*.
71. *Ibid*. Also, see K.G. Fenelon, *The United Arab Emirates: An Economic and Social Survey*, (London: Longman, 1973), p.22.
72. See Ali M. Khalifa, *supra* note 69, p.191 No. 40.
73. *The Establishment of the United Arab Emirates*, *supra* note 6, p.175.
74. See chapter six.
75. Education Office for the Arab Gulf States, *A Guide to the Gulf Joint Associations and Institutions* (Arabic), (Riyadh: Educational Office for the Arab Gulf States, 1982), p.7.
76. *Ibid*, p.8-9.
77. *Ibid*, pp.10-11.
78. *Ibid*, pp.11-13.
79. See United Arab Emirates, Ministry of Information and Culture, *Gulf Co-operation - A Background Study*, (Abu Dhabi, no date), p.16.
80. *Ibid*, p.19.
81. *A Guide to the Gulf Joint Associations and Institutions*, *supra* note 75, p.23.
82. *Ibid*, pp.46-47.

83. Ibid, pp.32-33.
84. Ibid, pp.38-39.
85. Mohammad Al-Rumaihi, *Beyond Oil: Unity and Development in the Gulf*, (London: Al Saqi Books, 1986), p.79.
86. Ibid. Also, *A Guide to the Gulf Joint Associations and Institutions*, supra note 75, pp.43-45.
87. *A Guide to the Gulf Joint Associations and Institutions*, supra note 75, pp.50-51.
88. Ibid, p.35.
89. Ibid, p.48.
90. Fouad Hamdi Beseisu, "Sub-regional Economic Co- operation in the Arab Gulf", 1 *The Arab Gulf Journal*, (1981), pp 45-54 at 48.
91. *A Guide to the Gulf Joint Associations and Institutions*, supra note 75, p.49.
92. *Beyond Oil*, supra note 85, p.79.
93. Abdelkader Maachou, *OAPEC and Arab Petroleum*, (Paris: Berger-Levrault, 1982).
94. See Ibid, p.71
95. For more accounts of the coordination in this field see, for example, *Gulf Co-operation - A Background Study*, supra note 79, pp.31-35.
96. Ibid, pp.26-28.
97. Ibid, pp.29-30.
98. *A Guide to the Gulf Joint Associations and Institutions*, supra note 75, p.57.
99. See chapter two, p.77.
100. *A Guide to the Gulf Joint Associations and Institutions*, supra note 75, pp.62-63.
101. Oman, Ministry of Information, *The Way Forward: Co-operation and Unity in the Gulf*, (issued by the Ministry of Information, Sultanate of Oman, on the occasion of the Sixth Session of the Supreme Council of the Gulf Co-operation Council, Muscat, Sultanate of Oman, 1985), p.11.
102. Ibid.
103. Ibid, p 13.
104. Ibid.
105. Ibid.
106. Quoted in Kuwait News Agency (KUNA), *Special Dossier on the Occasion of the Fifth Gulf Co-operation Council Summit Conference in Kuwait*, (Kuwait 1984) p.8 (hereinafter KUNA 1984).
107. Ibid.
108. Ibid.
109. Ibid.
110. Ibid.
111. *The Way Forward*, supra note 101, p.13.
112. UAE, Ministry of Information and Culture, *Documents of the GCC* [in Arabic], (Abu Dhabi, n.d.).
113. *The Way Forward*, supra note 101, p.15.
114. When the Charter of the GCC was being drafted, the States' delegations had before them three working papers, one designed by Saudi Arabia, the second by Oman and the third by Kuwait. The Saudi and Omani proposals emphasised the security and defence spheres, whereas the Kuwaiti plan stressed co-operation in the areas of economic and social affairs and education. It was the Kuwaiti working paper that was adopted as the main source upon which the Charter of the GCC was drawn up. See Qatar News Agency, *Documents of the GCC*, [in Arabic], vol.1, p.25.
115. *Documents of the GCC*, UAE, supra note 112, pp.26-33.
116. *Documents of the GCC*, vol.1, supra note 114, p.29.

117. Mr Abdulla Yacoub Bishara, a Kuwaiti national, was born in 1936 in Kuwait. His schooling includes Cairo University, Oxford University and St John's College (1955-1973). He specialised in international relations, diplomacy and African studies.

His diplomatic experience includes Second Secretary in the Kuwaiti Embassy in Tunis (1963-64), Director of the Kuwaiti Foreign Ministry Cabinet, Ambassador of Kuwait to Argentina and Brazil and Permanent Representative of Kuwait to the United Nations from 1971- 1981. Between 1979-1981, Mr Bishara served as the representative of Kuwait at the United Nations Security Council, which he presided over in February 1979.

His publications include a number of articles on politics and economics, and the book *Two years in the UN Security Council* [in Arabic]. See *Documents of the GCC, UAE*, supra note 112, pp.382-3.

118. *Documents of the GCC, UAE*, supra note 112, pp 35-42. For more details on these Committees, as well as the ones created subsequently, see chapter two, pp.78-79

Chapter Two

Constitutional Analysis of the GCC

Introduction

Having sketched the historical and political background of Member States as well as their co-operative efforts which culminated in the launching of the GCC, the next step is to understand the constitutional structure of this new institution. Accordingly, light will be shed to illuminate what the GCC is and how it is working.

Following a general reading of the constituent treaty and examination of some of the common constitutional problems of international organisations, the objectives of the GCC and the devices controlling its progress towards their realisation are indicated. Next the question of membership, in particular the possible ways of its coming to an end, is tackled in light of the prevailing theories in international law.

Considering the imperative need for dividing the work amongst various organs based on speciality and competence, the GCC Charter provided for three principle institutions: the Supreme Council, the Ministerial Council and the Secretariat General. The institutional development of the GCC has given birth to three ancillary organs. Additionally, a number of specialised ministerial committees have been formed. Accordingly, the institutional setting will be explored, before proceeding to the decision-making process, in order, *inter alia*, to identify the

decision-making organ within the framework of the GCC. The last section of this chapter is devoted to an examination of the stages through which a GCC decision is made: in particular, the sources of proposals and voting procedures. More emphasis, however, will be placed on the characteristic of GCC decisions, and an enquiry into whether or not they have legal force, and if so, in what way.

2.A Charter

2.A.I. Overview

The constituent treaty of an international organisation is usually called the "charter", "basic law" or "constitution". Thus, these terms will be used in this section interchangeably.

Charters of international organisations are of special importance: they are the fundamental basis for the activities. As well as being a tool which distinguishes public from private international organisations, charters contain the mutual rights and obligations of their member states.

On the nature of the constituent instrument of international organisations, legal authorities are divided. One view characterises them as a special form of international treaty, but still governed by the Law of Treaties. This opinion is formulated by an author in the following words:

"It is natural, therefore, that the conclusion, and especially the operation of an international treaty such as the charter of an international organisation, has certain peculiarities. However, all the basic provisions of the law of treaties are applicable to the charters of international organisations" (1)

Another view maintains that these constituent agreements of international organisations are of a constitutional nature once they have been concluded (2). Accordingly, all issues on charters are dealt with in the light of constitutional norms.

A third view holds that the constituent instruments are of a two-fold nature, i.e. international agreement and constitution of the organisation ⁽³⁾. According to this view, which seems to be gaining ground both in theory and action, treaties establishing international organisations are agreements in terms of form and in that they contain rights and duties of the contracting parties and, at the same time, constitutions establishing the institutions and determining their objectives, principles, organs and so forth. In essence, this opinion says that, whilst these treaties resemble national constitutions in their contents, all legal issues arising under their terms are governed by the Law of Treaties unless, as provided for in Article 5 of the Vienna Convention on the Law of Treaties 1969, the organisation itself has its own rules regarding a given issue. The Charter of the GCC should be regarded as such, i.e. an international agreement and a constitution.

A charter, in general, is usually composed of a preamble and a number of articles. Sometimes, annexes are attached to them as in the example of the Pact of the Arab League. The preamble usually specifies the reasons and incentives which led to the creation of the organisation. The articles, on the other hand, contain the institutional and legal structure of the organisation.

As a typical example, the charter of the GCC consists of a preamble and 22 numbered articles. The preamble sets out the grounds and incentives for the establishment of the GCC. It also designs the ultimate objective of the GCC. The 22 articles are concerned with the following:

- Article 1: Establishment of the GCC
- Article 2: Seat
- Article 3: Venues of Meetings
- Article 4: Aims

Article 5:	Membership
Article 6:	Organs
Article 7:	Supreme Council (SC)
Article 8:	Powers of SC
Article 9:	Voting in the SC
Article 10:	Commission for Settlement of Disputes
Article 11:	Ministerial Council (MC)
Article 12:	Functions of MC
Article 13:	Voting in the MC
Article 14:	General Secretarial (GS)
Article 15:	Functions of GS
Article 16:	Duties of the Secretary-General and his Assistants and Staff
Article 17:	Privileges and Immunities
Article 18:	Budget
Article 19:	Enforcement of the Charter
Article 20:	Amendment of the Charter
Article 21:	Reservations to the Charter
Article 22:	Depository and Registration of the Charter

Since organisations generally need to adapt themselves in response to developments of society, their constitutions usually empower one of the organs, normally the one at which all members are represented, to make amendments and changes as needed. Conditions, procedures and quorum should also be provided for in the charter, though these vary from one to another. The Charter of the GCC confers upon any Member the right to request amendment of the GCC Charter ⁽⁴⁾. Procedurally, the requesting State is required to hand its amendment to the Secretary General whose task it is to submit the amendment to Member States four months or more before it is referred to the Ministerial Council for review ⁽⁵⁾. The amendment comes into force if unanimously approved by the Supreme Council ⁽⁶⁾.

A member state in an international organisation may consider making reservations to provisions of the constituent treaty of the organisation. The question, in a given circumstance, is whether or not reservations can be made. Reservations may be formulated where expressly permitted by the constituent treaty. Reservations cannot be made where the constitution expressly prohibits reservations. However, problems arise where a constitution remains silent on this question. Legal authors are divided. One view would allow reservations provided that the concerned organ of the organisation accepts the reservation ⁽⁷⁾. This view follows the formulation in Article 20(3) of the Vienna Convention on the Law of Treaties of 1969. Another opinion restricts to the most exceptional cases a State's right to make reservations ⁽⁸⁾. This view takes into account the peculiarity of treaties which establish an international organisation. It finds such reservation contrary to the object and purpose of the constituent instrument which necessitates that the machinery of the organisation is to be the same for all member states. ⁽⁹⁾

The Charter of the GCC expressly prohibits making reservations to any of its provisions. Article 21 reads: "No reservations may be voiced in respect of this Charter." Accordingly, reservations to the GCC Charter cannot be made.

Members of International organisations are required to register their constitutions with the General Secretariat of the U.N. in accordance with Article 102 of the U.N. Charter. In compliance with that Article, the Charter of the GCC provides for registration of a copy of it with the United Nations ⁽¹⁰⁾. Another copy was registered with the Arab League in compliance with Article 17 of the Pact of the Arab League which demands registration of all treaties and international agreements made by its members.

2.A.II. Aims

Constitutions of international organisations usually specify their objectives. For example, Article 1 of the United Nations Charter, Article 2 of the Arab League Pact, the preamble of the ECSC treaty, as well as the preamble together with Article 2 of the EEC, all represent the spirits and objectives underlying their respective treaties. An enumeration of the aims of the organisation is important for at least two reasons. On the one hand, it underlines the purpose for which the organisation is established and limits its competence to those goals articulated in the treaty. On the other hand, knowledge of the aims is an essential tool in interpreting the treaty and other legislations enacted thereunder.

Having recognised the imperative need for stating the purpose of the organisation, the GCC Charter numbers its objectives in Article 4, though in general terms. Herebelow is an examination of these goals.

One objective of the GCC is to promote co-ordination and integration among Member States in all fields, with the ultimate aim of achieving their unity⁽¹¹⁾. The importance of this goal is evident in restating it more than once in the Charter. Before reciting it in Article 4(1), the preamble of the Charter reads, in part:

"Desiring to effect co-ordination, integration and interconnection between them [GCC Member States] in all fields".

Nonetheless, it does not clarify whether the GCC is seeking to make uniform the systems of all fields in Member States, or else seeking to achieve unity among Member States themselves. Reading Article 4(1) alone and/or the phrase of the preamble cited above, may lead to the conclusion that the long-term objective of the

GCC is to make uniform the systems in the various fields. However, reading them together with another phrase of the preamble,

"In an endeavour to complement efforts already begun in all essential areas that concern their peoples and realise their [people of the GCC] hopes for a better future on the path to unity of the States"

will enforce the assumption that unity of the GCC States is its ultimate objective, and integrating the systems in the various fields is the means employed for achieving that end.

Another explicit objective of the GCC is to encourage scientific and technical progress in the spheres of industry, mining, agriculture, water, animal welfare; to set up scientific research centres; and to encourage collective projects by private sector, for the good of the people of GCC Member States ⁽¹²⁾. This goal, to be noted, is a traditional one in the practice of international organisations: that is, all organisations are formed principally for the good of the peoples of their member states, especially since this goal is attained better by means of collective work.

The third objective of the GCC is spelled out in item (3) of Article 4. According to this item, the GCC should work on establishing similar systems in different fields including economic, financial, commerce, customs, communications, education and culture, social, health, information, tourism, judicial and administrative affairs. This goal seems to be a restatement of the first one considering the areas mentioned as the prime fields that the GCC is seeking to promote. As was said about the first objective, forming similar systems in the various spheres is another means to approach the end of unity amongst Member States.

The last objective expressly stated in the Charter is to enhance and strengthen relationships, bonds and existing co-operation between peoples of the Member States in various fields⁽¹³⁾. It is clear that this item has been worded in general terms. The reason behind such generalities might well be the desire of the founders not to limit their co-operative actions to specific events and leave the door open for any other activities which are considered beneficial to Member States. Mr. Abdulla Y Bishara, the GCC Secretary General confirms this justification when he says:

"You may observe that these objectives are 'generalities' and that no definitions are given, except the injunction to set up similar systems in 'all fields'. The thing about this which draws one's attention is the fact that this proposed mode of joint Gulf action is not burdened with any restrictions. There is no ceiling and there are no confining fences. The field is wide open, flexible and untrammelled as regards future activities." (14)

The above objectives of the GCC make no reference to political co-operation or to co-operation on internal and external security, yet the GCC, since its inception, has made considerable achievements in these fields. This is a manifestation of the fact that the GCC has been able to promote co-operation in these fields (and in others) although it is neither expressly stated nor even provided for under the general terms of Article 4 concerning the GCC objectives. Consideration of the achievements made by the GCC in the areas which were mentioned in Article 4 as well as those achievements made in the fields not expressly articulated in the Article strengthens the contention that the GCC is seeking co-operation amongst its Members in every field and that the areas mentioned in Article 4 are but examples.

Furthermore, one may observe that the GCC makes no reference to the maintenance of international and regional peace and security as an objective. Nevertheless, since it was set up in May 1981, the GCC has made every possible effort to bring peace and security to the Gulf. It established the Committee for the

Settlement of Disputes to solve disagreements between its Members. In addition, its presence was felt in the dispute between Bahrain and Qatar.⁽¹⁵⁾ In the regional events, the GCC has played an important role. As well as restoring the relationship between Oman and the People's Democratic Republic of Yemen,⁽¹⁶⁾ it contributed considerably to putting an end to the war between Iraq and Iran.⁽¹⁷⁾

The above shows that the GCC has not only economic interests but also social, political and security objectives.⁽¹⁸⁾ The economic sphere has been stressed only because it is thought to be the backbone of any kind of integration.

2.A.III Principles

The principles of an international organisation are different from its objectives. Its objectives are the goals that the organisation is seeking to achieve. Its principles are those controlling devices to which member states adhere for the sake of realising the objectives of the organisation⁽¹⁹⁾.

Some international organisations expressly articulate their principles in their constituent treaties. The U.N. is an example of these organisations: its charter enumerates the U.N. principle in Article 2. Another example is the Arab League; the Pact in its preamble, as well as in Articles 2, 5, 6 and 8, states the principles to be adhered to by member states in pursuing the League's goals.

The GCC, on the other hand, is an example of an organisation, the Charter of which does not expressly articulate its principles. In the case of the GCC, however, the Charter includes provisions that amount to the effect of explicit principles. The principles implied in these provisions are similar to those articulated by the charters of the U.N. and the Arab League. The principle of equality between Members,

adopted by the U.N. and the Arab League, is provided for in the Charter of the GCC. In the GCC, each Member State has one vote in both the Supreme Council and the Ministerial Council ⁽²⁰⁾ The "One State, One Vote" principle is a clear indication that the GCC has adopted the principle of equality between States.

Another principle of the GCC is the resort to peaceful settlement of disputes. In this respect, the establishment of the Commission for the Settlement of Disputes under the terms of Article 10 of the Charter is a manifestation that the GCC prohibits the use of force in solving disagreements and that it calls for the employment of any of the peaceful means including judicial channels. In practice, the peaceful means were utilised when the territorial disputes arose between Qatar and Bahrain.⁽²¹⁾

2.A.IV.Membership

Membership of the GCC is limited to its six founders ⁽²²⁾, therefore, its constitution makes no provisions regarding admission of new members. Were the GCC ever to decide to enlarge its membership, it would do so by a constitutional amendment.

Membership may come to an end for reasons including: expulsion of the member, disappearance of the member, dissolution of the organisation or withdrawal by the member. Membership is terminated for all when the organisation is dissolved. Some constitutions of international organisations such as those of the U.N. and the Arab League, make provisions for expulsion and describe their reasons and procedures ⁽²³⁾. The lack of such provision, as in the case of the GCC, may stop the organisation short from expelling an undesired member. However, in addition to applying political pressure on that member to withdraw voluntarily, the organisation

has the right to expel the unwanted member by duly amending its constitution before such a case arises. Examples of the extinction of member states include the Baltic States which lost their membership of a number of international organisations when they were incorporated into the Soviet Union in 1940⁽²⁴⁾. Withdrawal is another way of putting an end to the membership of a member. Most constitutions of international organisations permit unilateral withdrawal of a State once that State has decided that it is no longer interested in the organisation. Some constitutions, on the other hand, make no provision for unilateral withdrawal.

The constitution of the GCC is silent on this matter. In the absence of constitutional provision on this issue, the question of whether or not withdrawal from the GCC is permissible remains unanswered.

The legal literature contains conflicting opinions resulting partly from discussions on the withdrawal announcements made by members of the World Health Organisation (WHO), the United Nations Educational, Scientific and Cultural Organisation (UNESCO) and the United Nations itself. In the three cases, no re-admission procedure was applied to the States making the withdrawal notifications when they decided to rejoin the organisations. Furthermore, they had to pay their assessed contributions, though only a small percentage (5-10%), for the time of their absence. Hence, they were considered as if they never disposed of their membership. In light of this practice, as well as the legal theory, some authors concluded that unilateral withdrawal is forbidden and void unless expressly or implicitly provided for in the constitution of the organisation⁽²⁵⁾. Implicit right to withdraw, according to this view, may be inferred from the terms of the constituent treaty or from the preparatory work of the organisation. Alternatively, since the intention of the parties is decisive

in the absence of explicit authority, such intention can be put down in an interpretative declaration such as the one adopted at San Francisco at the establishment of the United Nations. That declaration conceded the right to withdraw "in exceptional circumstances" ⁽²⁶⁾.

Another view permits withdrawal even when explicit authority on the subject is lacking. ⁽²⁷⁾ The conclusion of this opinion is based, *inter alia*, on arguments of sovereignty, equity or expediency ⁽²⁸⁾. However, these arguments have been counted as unpersuasive as a legal basis for withdrawal in the absence of express or implied right to withdraw. The argument of sovereignty is not accepted because it

"would permit a State not only to withdraw from international organisations, but also to repudiate all of its international obligations at will." ⁽²⁹⁾

The arguments of equity and expediency are held sufficient grounds for inserting a withdrawal provision in the constituent instrument, not argument for permitting withdrawal in the absence of such a clause. ⁽³⁰⁾

In evaluating the two points of view, Dr. Singh divides international treaties into two categories; ⁽³¹⁾ those which set up international organisations and those which do not. The former, according to him, is governed by principles which pertain to international institutions rather than strict adherence to maxims of international law of treaties. Thus, he holds the first stated view, i.e. prohibiting unilateral withdrawal, rightly with regard to "those law-making treaties (*traités-lois*) which are not organisational in pattern," while holding correctly the other opinion, i.e. allowing withdrawal from international organisations in the absence of express stipulation. His reasoning is that depriving a member state from this right could only be achieved by

obtaining its express consent in the constituent treaty, and not by keeping the said instrument silent on the point.

In the case of the GCC, an implied right to withdraw could be inferred by ascertaining the intentions of the parties of the GCC. As suggested above, intention of the parties is inferred from the contents of the constituent treaty or the work preparatory to the launching of the institution as well as the circumstances in which it was concluded. In addition, their intention to allow unilateral withdrawal may be expressed in a separate statement. Concerning the GCC, no interpretative declaration or similar on the question of withdrawal has been brought to the public attention. Neither has the issue been mentioned in the documents on the preparatory work for drafting the Charter of the GCC. The constituent treaty of the GCC is for an indefinite period; its contents lead to the finding that the obvious intention of its Members is to create a permanent institution.

All these indications suggest that unilateral withdrawal from the GCC may be difficult to be found by implication. Nonetheless, an answer to the question of whether or not it is legally possible for a GCC Member State to withdraw is probably in the affirmative. Notwithstanding the permanent nature of the GCC, its limited membership, the objectives sought, etc., the right to withdraw could have been extinguished when the GCC treaties were drafted by providing express stipulation. This must have been understood by the draftsmen who decided not to include a provision on the matter. Because a State may not be obliged by something it did not consent to, a constitutional amendment is needed should the GCC consider prohibiting unilateral withdrawal. The confusion a withdrawal is bound to have in disturbing the organisation's financial as well as other legal obligations and the need

for rearranging such matters is a logical rather than legal argument against withdrawal in the absence of implicit agreement. Additionally, the nature of the GCC as an international organisation liable for changes and development and the dependence of the GCC's success on its Members co-operation boosts the contention that a State is at liberty to withdraw once it decides that, for instance, the course of changes or programmes proposed demands so.

2.B: Structure

2.B.I. The Supreme Council (SC)

The Supreme Council is the highest organ of the GCC. It draws up policies and basic guidelines for the organisation. Formal functions of the SC are elaborated in Articles 8 and 9 of the Charter as well as in those Rules of Procedure of the Supreme Council ⁽³²⁾ signed concurrently with the Charter, on 25 May 1981. The Articles of the Charter and the SC Rules of Procedures will guide the analysis of the SC which will include its composition, chairmanship, meetings, office, committees, powers and functions.

a. Composition

Article 7(1) of the GCC Charter states in part that:

"The Supreme Council ... will be formed of heads of member States".

In contrast with representation to high organs in most regional organisations, which is opened for participants of lower ranking than the Heads of State, or of Government, representation to the SC is exclusive to the Heads of Member States. For instance, the Arab League Pact makes no specification on the level of representation of its member States to the Council of the Arab League ⁽³³⁾. Thus, although a State could be represented at the Arab League by the Head of State, lower

ranking participation satisfies the requirements of the Pact. In practice, however, the Council of the Arab League meets at the level of Ambassadors or Foreign Ministers.

In brief, whilst most regional organisations allow representation to their highest organs by participants other than Heads of States or of Government, the GCC Charter is very clear on this point and restricts representation to the Heads of its six Member States. In this respect, the GCC has chosen the appropriate level of representation which suits its case as a regional organisation. The Supreme Council meets in ordinary session only once a year, thus adding little to the national and international responsibilities of a Head of State. Meeting at this high level is the best means for effective decision-taking, and the most formal device for directing implementation of the GCC programme. Meeting at this level also reveals not only the seriousness of the joint undertaking, but also the determination of the highest authorities of Member States to monitor the developments step by step.

b. Chairmanship

According to Article 7(1) of the GCC Charter, as well as Article 2(1) of the Rules of Procedure of the Supreme Council, chairmanship of the Supreme Council (SC) rotates periodically amongst Member States based on the Arabic alphabetical order of their names, i.e. the UAE, Bahrain, Saudi Arabia, Oman, Qatar and Kuwait. However, review of the GCC Summit chairmanship from its inception in 1981 until now reveals that neither the English nor the Arabic alphabetical order has been followed.

Non-compliance with the Articles calling for an alphabetical order for presiding over the first three SC sessions can be understood in the context of the decision by the Foreign Ministers, two months prior to the launching of the GCC; to

hold these three meetings in the UAE, Saudi Arabia and Bahrain respectively ⁽³⁴⁾. However, overriding the alphabetical sequence provided for in the constituent treaty and stressed by the Foreign Ministers when announcing their above-mentioned decision is justifiable if at all by the fact that between the foundation of the GCC in 1981 and 1990 have been obstacles beyond their control: lack of sufficient facilities in some States, such as Oman, thus rendering them unable to host the GCC Summit, led to the interim suspension of the Articles in this respect. Member States have, over the past 10 years, adopted an alternative procedure for passing the chairmanship periodically from one State to another. The new procedures inferred from the practice of the State is that a State, or States, at the end of a Summit, expresses its desire to hold the next Summit. Then the SC decides where to convene in the next year. This conclusion is based on reading into the GCC documents regarding its Summits especially the final communiqués of the sessions already held ⁽³⁵⁾.

Having found that the chairmanship of the SC is assigned by a decision to be made by the SC itself in a previous session rather than the alphabetical order, other aspects concerning the presidency will be analysed below.

Generally elaboration of the SC is governed by its Rules of Procedure. These rules allow the chairman to participate in discussions and make suggestions in the name of the State he represents; he is, however, at liberty to have a member of his State's delegation to act on his behalf for deliberations in a session ⁽³⁶⁾. But, if the country of the chairman is a party to a dispute which is put before the SC for discussion, he may not chair the meeting singled out to discuss and resolve that dispute ⁽³⁷⁾; instead, a temporary chairman will be chosen to preside over the session from amongst its other members ⁽³⁸⁾.

Functions of the president include calling meetings, directing voting procedures, making sure that the Charter of the GCC and the Rules of Procedure of the various organs are complied with and ensuring the smooth running of the organisation as a whole ⁽³⁹⁾.

The chairmanship of a GCC session remains with the President until a subsequent Summit when it is handed over to his successor ⁽⁴⁰⁾. It is worth mentioning that each State presiding over the Supreme Council, which is the policy-making organ of the GCC, tries to achieve maximum progress during its presidency.

c. Meetings

The Supreme Council (SC) meets in ordinary session once a year and in extraordinary session whenever a request is made by a Member State and agreed upon by another ⁽⁴¹⁾. Deciding the opening date is a responsibility of the Secretary General who also makes a suggestion regarding the closing date of the sessions ⁽⁴²⁾. Invitations to a GCC regular session are issued 30 days or more prior to the opening date and 5 days or fewer for an extraordinary session, both of which are issued by the Secretary General ⁽⁴³⁾.

Along with the Heads of State, each State is allowed to send a delegation to the SC Summit conditional upon informing the Secretary General of their names 7 days or more prior to the opening date of the Summit they are attending ⁽⁴⁴⁾.

Regarding the venue of the Summits of the SC, is governed exclusively by Article 3 of the GCC Charter which reads:

"The Council shall hold its meetings in the State where it has its headquarters, and may convene in any member State",

and/or Article 7(3) which states:

"The Supreme Council shall hold its sessions in the territories of member States".

But although the two Articles designate territories of Member States as the inclusive venue for holding the SC Summits, it is doubtful whether or not they answer the question of what system is employed regarding convening the SC. In other words, the two Articles do not clearly answer the question of whether the headquarters, being in the territories of Member States, is the only place to host the SC meetings or other systems such as the alphabetical order of the names of the States or their capitals have been adopted.

In view of this uncertainty, the two Articles throw little light on that question. Therefore, the question can be answered by examining the practice of the States in this regard.

The GCC Summit meetings held up to date were convened as follows: the first in the UAE, the second in Saudi Arabia, the third in Bahrain, the fourth in Qatar, the fifth in Kuwait, the sixth in Oman, the seventh in the UAE, the eighth in Saudi Arabia, the ninth in Bahrain, the tenth in Oman and the eleventh in Qatar. Clearly an English alphabetical order of the names of Member States has not been adopted for hosting the GCC Summit meetings. Had the English alphabetical order been utilised, meetings would have been held in this order: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, UAE, Bahrain, Kuwait, Oman, Qatar and Saudi Arabia. Neither has the Arabic alphabetic order been followed, otherwise the meetings would have been convened in this order: the UAE, Bahrain, Saudi Arabia, Oman, Qatar, Kuwait, the UAE, Bahrain, Saudi Arabia, Oman and Qatar. Accordingly, examining the venues of previous Summits with a probe provides no understandable guide for assigning the places of the GCC Summit meetings.

Nevertheless, close reading of the final communiqués of all previous Summit meetings points to the fact that the venue of the next Summit is determined by the SC itself on receipt of an invitation from the State willing to host the forthcoming Summit meeting ⁽⁴⁵⁾.

Turning to other legal aspects of the SC meetings, the quorum required and rules governing extraordinary meetings. The quorum required for a valid meeting is two-thirds of the Heads of Member States, i.e. four Members ⁽⁴⁶⁾. At the beginning of each meeting, the SC decides whether to hold a private or public meeting ⁽⁴⁷⁾.

An extraordinary meeting is held at the request of one Member seconded by another, or by a decision taken in a previous meeting ⁽⁴⁸⁾. The extraordinary sessions are concerned only with those matters for which the session is called ⁽⁴⁹⁾.

d. Office

The office of the Supreme Council is presided over by the chairman of the SC itself and comprises, in addition to the chairman, the President of the Ministerial Council and the Secretary General ⁽⁵⁰⁾. Tasks of the office include reviewing the drafting of decisions of the SC, helping the chairman in running the GCC Summit meetings and other functions assigned to it by the SC ⁽⁵¹⁾.

e. Committees

The Rules of Procedure of the Supreme Council provide the SC with two kinds of committee entrusted with different functions according to their status. The two types of committee are technical committees and temporary ones.

The temporary committees are assembled at the beginning of every Summit to study topics referred to them by the SC ⁽⁵²⁾. Matters are submitted to these

committees based on their speciality⁽⁵³⁾. A legal committee, for example, would study matters of a legal nature only. There is no limitation on the number of committees to be created, thus their number depends on the number of cases which need to be discussed by specialists. Delegates of Member States are to participate in the activities of such committees⁽⁵⁴⁾.

The second type of committee which the SC may create is the technical committee. Such committees, unlike temporary committees, are of a permanent nature. The task of such committees is to advise

"on the design and implementation of the Supreme Council programmes in specific fields." (55)

Members of the technical committees are to be appointed from specialists who are citizens of Member States⁽⁵⁶⁾. A technical committee meets on invitation by the Secretary General⁽⁵⁷⁾; plans of its work are drawn up in consultation with the Secretary General⁽⁵⁸⁾ who also prepares the agenda of a committee after consultation with its chairman⁽⁵⁹⁾.

f. The Commission for Settlement of Disputes

The GCC Commission for Settlement of Disputes, hereinafter the Commission, was set up by Articles 6(1) and 10(1) of the GCC Charter. Article 6(1) reads:

The Co-operation Council shall have the following main organisations:

1. the Supreme Council to which shall be attached the Commission for Settlement of Disputes.

Article 10(1) provides:

The Co-operation Council shall have a Commission called "The Commission for the Settlement of Disputes" which shall be attached to the Supreme Council.

The Rules of Procedure of the Commission were signed and ratified concurrently with the GCC Charter on 25 May 1981.⁽⁶⁰⁾ These rules, which describe the Commission's organisation and jurisdiction as well as other matters are examined below.

The seat of the Commission is according to Article 2 of the Rules at Riyadh, Saudi Arabia, where the GCC Secretariat General is located. Its sessions too are to be convened in Riyadh; if necessary it may meet 'elsewhere'. The term 'elsewhere' is rather broad, hence it could hold its meetings in the territory of any State whether member or otherwise.

As concerned the Commission's composition, Article 4 of its Rules specifies no definitive number, however, it does stipulate that they are no less than three. Qualifications required of its members are two:

- 1) Citizenship of a Member State;
- 2) Non-involvement of his State in the dispute for which the Commission is assembled.

The Supreme Council as such appoints members of the Commission.⁽⁶¹⁾ Such appointments are probably considered procedural matters, thus made by majority vote. Pursuant to Article 4(b) the Commission may seek the necessary advice from experts and consultants.

The Commission once assembled enjoys itself and its members within the Member States the privileges and immunities necessary for the realisation of its aim, in accordance with Article 17 of the GCC Charter and the Agreement of the GCC Privileges and Immunities.⁽⁶²⁾

In relation to the Commission's jurisdiction scope, it is two fold both of which are expressly stated in Article 3 of the Commission's Rules:

- a) "disputes between members states";
- b) "differences of opinion as to the interpretation or implementation of the Co-operation Council Charter".

Reading the said Article with Article 10 of the Charter cited earlier suggests that in both types of dispute it is the Supreme Council, rather than disputant States, which submits a case to the Commission.

Obviously, once installed, the Commission, according to the width of its granted jurisdiction, is expected to be able to tackle all kinds of dispute between Member States. Paragraph (a) of Article 3 of the Commission Rules cited above anticipates the Commission to solve all sort of non-GCC disputes including, for instance, frontier disputes. Paragraph (b) of the same Article concerned itself with GCC-related disputes; however, it is of limited scope, and not without confusion. It gives the Commission jurisdiction over GCC disputes relating only to the interpretation or implementation of the Charter of the GCC. Disputes concerning non-compliance of GCC norms, for instance, is not covered by the paragraph, unless the case is squeezed so as to appear as one of the differences of opinion regarding the source of the obligation under question. A confusion it causes is, for example, whether GCC agreements other than the Charter are covered by paragraph (b). Would the Commission, for instance, be eligible from jurisdictional point of view to entertain a dispute concerning the interpretation of a provision of the Economic Agreement? Logically, the answer is in the affirmative because all subsequent agreements are in essence extensions of the Charter. Bearing in mind that the GCC is based on

consensus building in its actions in general, an agreement between its Members covering all GCC agreements by paragraph (b) is very likely. However, should a restructuring of the GCC constitutional organisation take place, this point must be clarified, if the whole existing machinery is to remain.

When a dispute is referred to the Commission, all its members must be present in order to constitute a valid meeting.⁽⁶³⁾ Parties to a dispute are entitled to be presented by representatives who may observe the proceedings and present their parties' cases.⁽⁶⁴⁾

Before venturing into the nature of the Commission, an assessment of its findings will be made which should by itself throw some light on the characteristic of the whole process. Article 9 of the Commission's Rules is devoted to this matter; it is entitled "Recommendations and Opinions". One possible interpretation is that the Commission is empowered to deliver either recommendations or opinions. Yet, the differentiation is meaningless in consideration of the fact that both opinions and recommendations of the Commission are not binding. The Commission hands its findings to the Supreme Council for execution which may yet necessitate another diplomatic method for final settlement, e.g. mediation etc.

Sources of law applicable by the Commission are provided for in Article 9(a) of its Rules, i.e. the Charter of the GCC, international law and principles of Islamic law.

Voting procedures are described by Article 7 and 9(d) of the Commission's Rules. Every member of the Commission has one vote. Recommendations or opinions are made by majority vote. In cases of tied votes, the group with whom the Chairman

has voted prevails. Dissenting members are entitled to record their dissenting opinions, a matter which should not have been allowed in order to preserve the unity of a GCC jurisprudence and to enhance the independence and partiality of the members for whom a single judgment will speak without revealing who has concurred and who has dissented. As the Rules are, Article 9(c) requires the Commission to reason its opinions and for them to be signed by the Chairman and Secretary.

Mention should be made of Article 9(b) of the Rules which provides that while the Commission is deliberating on a case, it may ask the Supreme Council to take temporary measures, i.e. seeking an undertaking by the disputants not to initiate any hostile actions that might inflame the situation, or it may ask the parties to maintain the status quo before the dispute was referred to it.

Of no less importance is noting that the submission by the Commission of the finding to the Supreme Council marks the end of its task, though it might be summoned at any time for discussion and elaboration of its findings. ⁽⁶⁵⁾

Enforcement of its opinions is a prerogative of the Supreme Council. According to Article 9(a) of the Rules, once opinions are made by the Commission and handed over to the Supreme Council, it is the later which takes 'appropriate action'. No details offered on the nature or type of the contemplated action. Yet possibilities are numerous. If the parties within the Supreme Council had agreed to accept the finding of the Commission as it is, the 'appropriate action' will be asking the parties to execute the findings of the Commission. Otherwise, consultation as well as other diplomatic means for peaceful settlement will be employed taking much note of the Commission's findings.

The above description of the Commission reveals that it is of a conciliatory nature for it possesses the characteristics of some historical commissions of conciliation.⁽⁶⁶⁾ Such commissions like that of the GCC apply the rule of law in accordance with designated rules of procedure; in addition to their fact finding role, they, like that of the GCC, render non-binding recommendations or opinions. Consequently despite the fact that its conciliatory function is not indicated by its name, it does do the business of conciliation as opposed to other means of settlement.

g. Powers and Functions

The Supreme Council is vested with supreme and wide ranging powers to enable it to undertake its responsibility to realise the objectives of the GCC. The broad powers and functions conferred upon the SC can be justified by the fact that it meets frequently and therefore all matters of common interest, whether of primary importance or not, can be decided by the SC itself without retarding the endeavour of integrative process by the GCC at large. In other words, because the SC meets annually, there is no need to transfer some of the competence of the GCC from its highest organ (the SC) to a junior organ, e.g. the MC. The SC, by reason of its composition, is more effective in the integration undertaking than any other organ of the GCC.

Although the GCC Charter in general terms singles out the SC as the organ responsible for realisation of the express and implied objectives of the GCC, the Charter stresses the responsibility of the SC in particular areas. These stressed responsibilities include the consideration of subjects of common interest; examination of reports and studies entrusted to the Secretary General for preparation; ratification of the Rules of Procedure of the Commission for the Settlement of

Disputes and nomination of its members; considering reports, recommendations, studies and joint ventures proposed to the SC by the Ministerial Council in preparation for their final endorsement; appointing the Secretary General; amending the Charter; approving the SC's own internal Rules of Procedure and approving the budget of the GCC ⁽⁶⁷⁾. In addition, there are two functions conferred upon the SC which are of prime importance. The first is its responsibility to determine the higher policies of the GCC and the basic guidelines along which it operates ⁽⁶⁸⁾. Secondly, it is charged with the responsibility to draw up GCC external policies with other States and with international organisations ⁽⁶⁹⁾.

Providing the SC, whose members are the Heads of State, with these functions, particularly the last two, was a wise choice by the framers of the GCC Charter. For one thing, the six Heads of State have, under their national Constitutions, rights and powers which enable them gradually to unify their national policies as a concrete base for unification of the regional policies within the framework of the GCC. Not only this, but the Heads of State by means of their national positions have considerable influence on their national institutions, thus equipping them to direct those institutions to take the means necessary to implement a decision made at GCC level, and this accelerates the integrative process in all fields ⁽⁷⁰⁾.

2.BII. The Ministerial Council (MC)

Constituent instruments of some international organisations establish second principal organs with fewer lower representation requirements than their highest organs. The purpose as well as decision-making power entrusted to such secondary organs vary from one organisation to another. Generally, however, junior organs contribute a great deal in the decision-making process, even though they may

be without the power to produce them. They make suggestions, prepare proposals and adopt recommendations. Moreover, items listed on the agenda, having been agreed upon by members of the junior organ, are adopted by the highest organ with little discussion.

Representation to secondary organs is of lower rank than members of the supreme bodies. Organisations whose supreme bodies are composed of Heads of State or of Government, usually require representation in their junior organs at a ministerial level. Those organisations which hold their high sessions at a ministerial level should accept participation of lower ranking national delegates, be it ministerial deputies or other diplomats.

The GCC has adopted the common practice of international organisations and thus formed the Ministerial Council [MC] as its junior organ. Herebelow is a discussion of the composition, meetings, presidency, office and functions of the MC.

a. Composition

The Ministerial Council (MC) consists of the Foreign Ministers or other delegated Ministers of the six Member States ⁽⁷¹⁾. Hence, whilst Foreign Ministers are the principal representatives of their States in the MC, other Ministers can be sent to a meeting of the MC especially when the MC is installed to discuss matters falling within their areas of expertise. In practice, the participants in the MC meetings are usually Foreign Ministers. In some cases, specialised ministers have joined the Foreign Ministers in MC sessions ⁽⁷²⁾. Representation to the MC of Member States by specialised Ministers alone may now have been superseded by the creation of the Specialised Ministerial Committees, as will be examined in Section V of this chapter.

This contention, nevertheless, does not negate the fact that specialised ministers, e.g. Finance Ministers, may represent Member States in the MC meetings.

It is worth noting that the GCC Charter requires ministerial delegates to the MC sessions. This requirement manifests the desire of the framers to shorten the time taken in decision-making as well as its stages. Allowing representations by officials ranking lower than the Ministers, would add yet another stage into producing a decision, and much more time, since such officials would need to consult their national Minister specialising in the topic under discussion. Therefore, having the Ministers themselves involved in the more preparatory and detailed work of the GCC programmes in the MC saves time in the Supreme Council and guarantees their acceptance.

b. Meetings

Meetings of the Ministerial Council are governed by Article 11 of the GCC Charter, as well as by several Articles of its own Rules of Procedure signed concurrently with the Charter in May 1981 ⁽⁷³⁾. According to these Articles, the MC holds four regular sessions a year ⁽⁷⁴⁾. At first sight, four annual meetings seems an inadequate frequency bearing in mind that the MC is an important arm for the planning and execution of the GCC programmes. But taking into account the developed de facto competence of the Specialised Ministerial Committees to act as a Specialised Ministerial Council in dealing with subjects falling within their interests, the four regular meetings provided for appears an acceptable frequency for the Foreign Ministers to discuss political and general matters.

The GCC Charter and the MC Rules of Procedure provide, furthermore, for extraordinary sessions as needed. Holding such meetings must be either requested by

a State and agreed upon by another ⁽⁷⁵⁾ or decided by the MC itself at a previous meeting ⁽⁷⁶⁾. In the first case, specification of the venue, date and agenda of the meeting is the responsibility of the Secretary General ⁽⁷⁷⁾; in the second case, these are the responsibility of the MC itself ⁽⁷⁸⁾. In both cases, the Secretary General is to provide Member States with an invitation to the extraordinary session along with a note containing either the request of the Member State or the decision of the MC to hold such a session in addition to the date, place and agenda of the meeting which should include only matters for which the session is convened ⁽⁷⁹⁾. The extraordinary session is to be held no more than five days from the issuance date of the invitation ⁽⁸⁰⁾.

Whilst the MC itself is responsible for deciding the place of its next ordinary meeting, consultation between the Secretary General and Member States is needed to decide the venue of an extraordinary convention ⁽⁸¹⁾. Consultation is also needed in order to choose another venue, in the case where an ordinary or extraordinary session is precluded from being held at its contemplated place ⁽⁸²⁾.

c. Chairmanship

In accordance with Article 11(1) of the GCC Charter as amended and Article 15(1) of the Rules of Procedure of the MC, the chairman of the MC is for the State

"which presided the last ordinary session of the Supreme Council, or, if necessary, to the State which is next to preside the Supreme Council"

The Chairman presides over meetings, whether regular or extraordinary, until the post is handed over to the next chairman ⁽⁸³⁾. If the MC is discussing a dispute to which the State of the chairman is a party, an interim chairman is to be appointed ⁽⁸⁴⁾.

Functions of the Chairman ⁽⁸⁵⁾ include calling the opening and closing of sessions, calling the beginning of voting ⁽⁸⁶⁾ and ensuring the smooth running of the

MC in accordance with the GCC Charter and the MC's own internal Rules of Procedure. The Chairman may either participate in the MC discussions and vote for his State, or, alternatively, he may delegate this right to another delegate of his State to act on his behalf ⁽⁸⁷⁾.

d. Office

The Office of the MC comprises the Chairman of the MC, who is the chairman of the office, the Secretary General and the heads of the preparatory and working committees that the MC itself resolved to form for a session ⁽⁸⁸⁾. The office is assigned a number of tasks. These include assisting the President in the session's administrative matters, co-ordinating the work between the MC and its preparatory and working committees charged with studying matters listed on the agenda or other assignments and reviewing the drafting of decisions of the MC ⁽⁸⁹⁾.

e. Functions

The Ministerial Council (MC) is the intermediate organ of the GCC. It does most of the detailed preparatory work of the GCC; thus, most, if not all, of the discussions over the GCC programmes are done within the MC. Although it has very limited power to make final decisions, regional plans approved by it are mostly accepted without discussion by the Supreme Council, i.e. the decision-making body of the GCC.

Putting its decision-making power aside, the MC is in fact the heart of the GCC. On the one hand, it makes proposals and recommendations to the Supreme Council regarding the best means by which greater co-operation can be effected, on the other hand it follows up the implementation process of the GCC's wide ranging

programmes on behalf of the GCC highest organ. Furthermore, the MC advises the relevant Ministers on the execution of the GCC decisions concerning their Ministries.

Broadly speaking, functions of the MC can be divided into two categories. The first includes the few areas in which the MC is empowered to make final decisions. Under Article 12, items (7), (8) and (9) of the Charter, the MC is delegated authority to make final decisions regarding the approval of its own Rules of Procedure as well as the Secretariat General's, the appointment of the GCC Under-Secretaries General and the endorsement of the periodic reports and internal administrative and financial rules and regulations.

The second category encompasses those spheres in which the MC is authorised only to make suggestions and recommendations. Under this set the MC is assigned broad functions. It initiates policies and plans aimed at bringing close co-operation between Member States in various fields, makes recommendations and reports to the Supreme Council regarding co-operative actions, provides advice to the various national institutions on the execution of the GCC programmes, encourages private sector co-operation in all fields, seeks appropriate advice and recommendations from technical and specialised committees on co-operation in the different fields, studies proposals for amending the GCC Charter and makes its own recommendation, arranges for the Supreme Council Summits and examines matters submitted to it by the Supreme Council ⁽⁹⁰⁾.

2.B.III.The Secretariat General [SG]

All international organisations need a permanent organ to serve the various bodies and committees with secretarial facilities, and to be responsible for the

administrative and financial matters of the organisation. Nevertheless, it was not until the 1920s or thereabouts, that such organ was formally included in the structure of international organisations⁽⁹¹⁾. Nowadays, however, the secretarial organ has become a principal body in most international organisations. Functions of the Secretariat are usually of an administrative, financial and clerical nature, but other functions may be entrusted to it.

Secretarial bodies, mostly termed "Secretariat", "Directorate" or "Bureau", are composed of the head of the body, assistants and international civil servants. In addition, they are usually divided into departments or sectors all of which are necessary for ensuring an adequate follow-up system and a smooth running of the organisation. The head of such a body is generally termed the "Secretary General" or the "Director General". In the case of the GCC, the Head of the GCC Secretariat General is known as the GCC Secretary General. Below is a sketch of the GCC Secretariat General he is heading.

a. Composition

The GCC Secretariat General [SG] is composed of the GCC Secretary-General, two Under-Secretaries General and a number of Gulf Civil Servants.

1. *The Secretary General*

Head of the GCC SG, the Secretary General is appointed by the Supreme Council from amongst the GCC citizens for a term of three years, renewable for one further term only⁽⁹²⁾. Since the inception of the GCC, the post of its Secretary General

has been occupied by Mr. Abdulla Y. Bishara ⁽⁹³⁾, a Kuwaiti national, who is still serving in that capacity. Two points, therefore, need examination.

One is that the office of the GCC Secretary General is confined to Kuwaiti qualified citizens. This finding is based, in part, on close reading of documents produced during the preliminary steps for establishing the GCC. Those documents reveal that Foreign Ministers of the six Member States in their preparatory meeting in Oman in March 1981, agreed in principle that the GCC Secretary General would be a national of the State of Kuwait ⁽⁹⁴⁾. The question remains as to whether the agreement reached was concerned with the first Secretary only, or else included all future Secretaries of the GCC. It would appear that their agreement meant all GCC Secretaries. This contention is grounded by the fact that, when the end of Mr. Bishara's second term drew to a close, the candidate for the post was also from Kuwait ⁽⁹⁵⁾. During that time, the Kuwaitis alone were concerned about finding a qualified substitute for the current Secretary. Nationals of other Member States were prepared only to comment on the qualifications of the nominee from Kuwait. As such, the post of the GCC Secretary General could be understood to be always engaged by a Kuwaiti national.

The second point worth mentioning concerns the terms allowed for a Secretary. Article 14(2) of the GCC Charter provides for the appointment of a Secretary General for a period of three years renewable for a one second term only. Nonetheless, the current Secretary General has been in the office for over ten years. Thus, questions could be raised as to the legality of such practice under the GCC Charter. It is obvious that the first three years term was in accordance with the Charter, as was the second three year term. In both terms the Secretary General was appointed

by decisions made by the Supreme Council in its first and fifth Summit meetings ⁽⁹⁶⁾. Therefore, the enquiry is limited to the period after the sixth year. Had the appointment of the Secretary General been renewed for a third term, a violation of the GCC Charter would have been committed. Absence of such renewal makes room for justifying the current Secretary's occupation of the post. A thorough review of the decisions made by the Supreme Council to date reveals no reference to a third term renewal. Thus, it can be argued that there is no violation of the Charter and that the current Secretary's engagement of the office is based on a temporary assignment which ends whenever the Supreme Council decides that another person who is knowledgeable about the regional political and economic issues is qualified to shoulder the responsibilities of the post. Nothing in the Charter precludes interim designation for the office from citizens of Kuwait including the current General Secretary.

2. *The Under Secretary General For Economic Affairs*

In accordance with Article 12(8) of the GCC Charter, the Assistant Secretary General for Economic Affairs was appointed. He was nominated by the General Secretary and approved by the Ministerial Council in its first regular session in Saudi Arabia between 31 August 1981 and 2 September 1981 ⁽⁹⁷⁾. He was appointed for a renewable period of three years ⁽⁹⁸⁾. His main task is to assist the Secretary General in purely economic matters. Other functions include ⁽⁹⁹⁾ preparation of economic studies and plans for the Supreme Council, the Ministerial Council and the Specialised Ministerial Committees; following up of the process of implementation of GCC programmes in the area of the economy; communication with other international economic organisations; organising meetings and conferences on

development and economic integration; and participation in economic conventions. In addition, he prepares the budget of the Economic Sector of the Secretariat General, acts as the secretary for the various ministerial economic committees and represents the GCC Secretariat General in international economic gatherings.

3. *The Under-secretary General For Political Affairs*

The Under-Secretary General is the second of the two Assistant Secretaries General of the GCC. He was appointed in accordance with Article 12(8) of the GCC Charter in September 1981.⁽¹⁰⁰⁾ The principal function⁽¹⁰¹⁾ of the Under-Secretary for Political Affairs is to aid the Secretary General in topics of a political nature. Accordingly, he undertakes to prepare unified political strategy for Member States in co-ordination with the concerned national institutions; prepares political studies and common plans for review by the Supreme Council, the Ministerial Council and the various specialised Committees; follows up the execution of the GCC political plans through communication with the the concerned national bodies and evaluates the outcomes of the GCC common political projects. In addition, the post assumes responsibility for secretarial work for sessions of the Supreme Council and the Ministerial Council.

4. *The Gulf Civil Servants*

Gulf Civil Servants are those officials who have been assigned certain positions in the GCC on either a permanent or a temporary basis. Appointment of such staff is the responsibility of the Head of the Secretariat General, i.e. the Secretary General, who selects them from amongst the qualified individuals of Member States

(102). Individuals from non-member States may be appointed upon an approval of the Ministerial Council (103).

The Gulf Civil Servants, whether permanent, temporary or individuals appointed to work in collaboration with the GCC, must act independently of their national origin. To ensure independence in executing their tasks, all staff of the GCC are given certain privileges and immunities according to their grade, as will be discussed in chapter three.

b. Functions

The name "Secretariat General" indicates a purely administrative and clerical body. However, in light of the development of the function of the Secretariat in most international organisations, functions of the GCC Secretariat General and the Secretary General have been extended. In addition to the conventional administrative tasks, the GCC Secretariat General currently maintains political and representative functions.

The administrative duties encompass preparation of co-operative plans for joint action by Member States; following up the implementation of the GCC programmes; furnishing periodic reports on the GCC activities; drafting reports and studies needed by other organs of the GCC; preparing the GCC budget; and drafting resolutions and preparing the agenda for the Ministerial Council (104). In addition, it assumes the Secretarial services for the Ministerial Council and its sub-committees and organises the relationships between the Ministerial Council and the media (105).

The political role of the GCC Secretariat General is seen in several forms. Firstly, one of its many tasks is to propose to the President of the Ministerial Council

holding an extraordinary session when needed ⁽¹⁰⁶⁾. The argument that all the Secretariat General has been granted a power to make non-binding recommendations for convening such sessions, is counter-balanced by the fact that giving a power to make recommendations implies empowering it to watch international and regional events and decide whether or not it is advantageous for the GCC to convene an extraordinary session. This task is of a political nature and the fact that its proposal may or may not be adopted does not strip the Secretariat General of its statutory political function. The other form of its political tasks is of an intermediary and conciliatory characteristic. As the Secretariat is expected to improve the working climate of the various organs, the GCC Secretary General is co-charged with a conciliation function. According to Article 36(1) of the Rules of Procedure of the Ministerial Council, the Secretary is co-responsible to reconcile opponents and suggest compromises when members of the Ministerial Council cannot reach an agreement.

The GCC Secretariat General, furthermore, represents the GCC at regional and international levels. According to Article 14(5) of the GCC Charter, the Secretary "shall represent the Gulf Co-operation Council" with other States and international organisations. Consequently, the Secretary took part in the dialogue between the GCC and the EEC ⁽¹⁰⁷⁾. Furthermore, he conducts extensive communications with the Arab League for the overall interest of the Arab nation ⁽¹⁰⁸⁾. In addition, he attends regular sessions of the U.N. General Assembly. In 1985, he met the U.N. Secretary General in Oman where they discussed regional events, especially the Iraq-Iran war and the efforts made by the GCC to put an end to that war ⁽¹⁰⁹⁾.

In summary, the GCC Secretariat General has been assigned tasks of a different nature alongside the administrative and clerical functions. In this respect, the GCC has adopted the new development of international secretariats in most global and regional organisations.

c. Structure

The general competence of the GCC, as well as the comprehensive objectives which it is seeking to achieve, necessitated the construction of a well-organised Secretariat General staffed by qualified personnel, in a number of departments. In recognition of this fact, the Secretariat was divided into several sectors, each concerned with an area of interest and staffed with a number of personnel. These sectors include the following.

The Office of the Secretary General: consists of the GCC Secretary General, his two Assistants and a number of employees. The main task of the office is to provide the Secretary General with an environment that enables him to perform his functions effectively⁽¹¹⁰⁾.

The Legal Affairs Sector: comprises several legal scholars with different backgrounds, i.e. Islamic Law, Civil Law, Common Law and International Law. This sector is sub-divided into four sections: the Legislative Institutions section, the Jurisprudence and Research section, the Legal Opinion and Lawsuits section and the Treaties section. Different responsibilities have been assigned to these sections according to their natures. Generally, the Legal Affairs Sector has, *inter alia*, the following duties:

1. Prepare studies and plans and conduct research aimed to co-ordinate legislative processes in the Member States in an attempt to unite their laws in the various fields;

2. Strengthen ties between legislative, judicial and consultative entities in Member States and make every effort to unify their structures, duties and the procedural approaches to their tasks;
3. Follow up the execution of the GCC legal programmes by the concerned bodies in Member States;
4. Strengthen the ties between the consultative bodies and the specialised supreme councils and committees in Member States;
5. Make preparation of legal studies and final draft of agreements and regulations that stem from within the framework of the GCC;
6. Follow-up the ratification procedures of new rules and interstate agreements;
7. Undertake the legal studies requested by organs of the GCC;
8. Provide legal opinion in matters referred to it by the GCC organs;
9. Represent the Secretariat General before courts and legal entities;
10. Prepare, file, register and promulgate treaties and agreements aimed at strengthening ties between Member States and between the Members and Arab States, other nations and international organisations;
11. Conduct comparative legal studies between the various laws in Member States and establish their common features for the ultimate objective of their unification;
12. Study the possibility of unifying judicial systems in Member States; and
13. Record the recommendations and opinions of the Commission for Settlement of Disputes⁽¹¹¹⁾.

The Economic Affairs Sector: aims at consolidating and co-ordinating economic activities in the GCC States in order to achieve full economic integration.

To enable this sector properly to pursue this objective, it was divided into the following departments:

1. Monetary, Finance and Investment
2. Economic and Social Planning
3. Industry, Power and Water Desalination
4. Research
5. Trade

6. Works, Municipality and Housing
7. Petroleum and Gas
8. Agriculture and Water
9. Communications and Transport

The Economic Sector responsibilities are, *inter alia*, furnishing a draft economic strategy with the objective of attaining a comprehensive economic strategy; unifying economic laws, regulations and legislation; attaining economic citizenship and ensuring the involvement of the private sector in the development and integration process and co-operation with international, regional and Arab organisations operating in the economic sphere; and preparation of economic studies that are requested by the GCC organs or the Secretariat General considers should be supplied to these organs and committees ⁽¹¹²⁾.

The Political Affairs Sector: aims at dealing with political, security and information matters of Member States within the framework of the GCC. The political sector consists of three departments which are as follows:

1. Security [Military Affairs]
2. Arab Relations
3. International Relations

Functions of the Political Sector include, *inter alia*, following up regional and international military and political affairs, drawing up political plans, supervising political activities and eliminating obstacles preventing execution of the GCC political programmes ⁽¹¹³⁾.

Man and Environment Affairs Sector: it undertakes to promote joint actions by Member States in fields touching upon man and his environment such as education, health, human resources, youth, sports, social, cultural and environment. To perform its functions properly, the sector is divided into the following departments:

1. Education
2. Health
3. Human Resources
4. Social Affairs
5. Culture
6. Environmental Protection
7. Youth and Sports

The duties of the Man and Environment Sector include the preparation of studies in the above-mentioned areas which are requested by the various GCC organs as well as studies and projects the Secretariat General considers should be supplied to those organs; evaluating the outcomes of the GCC programmes in the areas mentioned above in light of their laid-down objectives; and co-ordinating with regional, Arab and international organisations concerned with the areas of man and environment.⁽¹¹⁴⁾

Information Centre: comprised of two departments:

1. Information, which includes:
 - Supply
 - Operational Aids
 - Library
 - Listing and Bibliography
 - Archives
 - Statistics and Micro-film
2. Computer, which includes:
 - Systems Analysis
 - Programming
 - Maintenance

Functions of the Information Centre encompass, inter alia, compilation of the GCC Member States government publications; supplying the necessary

information to the GCC, its organs and various committees; and co-ordination with other information centres ⁽¹¹⁵⁾.

Financial and Administrative Sector: its main concern is the financial and administrative affairs of the Secretariat General and its respective sectors. It also assumes the responsibility of employing qualified officials from amongst the citizens of the GCC States ⁽¹¹⁶⁾.

2.B.IV. Ancillary Organs

In addition to the principal institutions of the GCC discussed above, there are three ancillary organs formed in response to the need of the GCC for more arms in pursuing its objectives. These new institutions owe their origin to the GCC Charter, especially Articles 4 and 6. Besides, they were necessitated by the need for various bodies in order for the GCC to achieve its ultimate goals. The three organs which have been established to date are: the Gulf Investment Corporation [GIC], the Technical Office for Communications [TOC] and the Board for Specifications and Standards [BSS].

1. The Gulf Investment Corporation [GIC]

At its meeting in June 1982, the Financial and Economic Co-operation Committee recommended the establishment of the Gulf Investment Corporation ⁽¹¹⁷⁾. The Supreme Council, at its session in Bahrain in November, 1982, approved the establishment of the GIC ⁽¹¹⁸⁾ and authorised the Ministers of Finance and Economy of the GCC States to sign the Agreement establishing the GIC as well as its Basic Statute. At its meeting in Bahrain in November 1982, the Financial and

Economic Co-operation Committee approved the Agreement and the Basic Statute of the GIC.

2. The Technical Office for Communications [TOC]

At the first meeting of the Committee of Ministers of Telegraph, Post and Telephones, it was decided to convert the Gulf Permanent Committee for Communications into an institution of the GCC with the name of the Technical Office for Communications ⁽¹¹⁹⁾ after the GCC Member States all became members of it.

During the third meeting of the Telegraph, Posts and Telephones in January 1986, the Internal Regulations for the Technical Office for Communications were approved. The Supreme Council confirmed the establishment of this office in its sixth session in Muscat in November 1985 ⁽¹²⁰⁾.

3. The Board of Specifications and Standards [BSS]

Two sectorial Committees of the GCC recommended the establishment of a Gulf body concerned with specifications and standards for the GCC States. These two Committees were the Industrial Co-operation Committee at its meeting on 24-25 October 1982 ⁽¹²¹⁾ and the Commercial Committee at its meeting on 30 October 1982 ⁽¹²²⁾.

Based on these recommendations, the Supreme Council decided to convert the Saudi Arabian Bureau for Standards and Measurements into the Board for Specifications and Standards for the GCC States ⁽¹²³⁾. Furthermore, it authorised the Ministers concerned, Ministers of Commerce, to endorse the internal rules of this Board. ⁽¹²⁴⁾

2.B.V. Specialised Ministerial Committees

The objectives of the GCC are both comprehensive and far-reaching. Its Charter, in Article 4, speaks of unity amongst Member States in all fields as the ultimate aim of the GCC. Integration in the economic and social spheres, however, is the prime goal to which the GCC aspires in the short term. In order to achieve these ambitious goals, a number of specialised ministerial committees have been formed and charged with executing policies of the GCC and working out the details for their implementation. The composition of each depends on its speciality. The Agricultural and Water Committee, for example, is composed of the Ministers of Agriculture in the Member States. These sectorial committees owe their origin to the implied authority in the GCC Charter. As time passed and the meetings became more frequent, these committees, it is thought, drew closer to becoming a de facto specialised Ministerial Council of the GCC, and the Ministerial Council, composed of Foreign Affairs Ministers has qualified for the title of the "General Ministerial Council". Reviewing the tasks assigned to these committees as well as their long and tangible contribution to Gulf integration strengthens the basis for that contention. Herebelow is an enumeration of the GCC specialised committees.⁽¹²⁵⁾

- The Interior Ministers Committee:
- Defence Ministers Committee:
- Commercial Co-operation Committee:
- Transport and Communications Ministers Committee:
- Telegraph Posts and Telephone Ministers Committee:
- Civil Aviation Ministers Committee:
- Agricultural and Water Co-operation Committee:
- Housing Committee:
- Justice and Islamic Affairs Committee:
- Ports Authorities Official Committee:
- Scientific and Technological Committee:

- Auditing and Accounting Chief Standing Committee:
- Economic and Social Planning Committee
- Financial, Economic and Trade Committee
- Industrial Co-operation Committee
- Oil Committee
- Social and Cultural Services Committee

2.C: Decision-Making Process

2.C.I. Initiating decisions

Decisions of international organisations are made by working through a number of stages, starting with the initiatives and ending with voting. Initiators of international decisions include the various organs of the organisation concerned, its member states, individuals and interested groups. Some decisions of an organisation may be initiated by another organisation as in the case of the U.N. and the specialised agencies ⁽¹²⁶⁾. In addition, the constituent treaty of an organisation may initiate decisions for the overall interest of the organisation and its members. The Charter of the GCC, for instance, in Article 17(2), instructs Member States to conclude two agreements: one on the privileges and immunities of the GCC; the other is the headquarters agreement with Saudi Arabia.

Member States of the GCC are the most effective initiators of its decisions. Initiatives taken by the States are of special importance because they employ all the means necessary for the survival of the initiatives during the various stages of the decision-making process. More importantly, the initiating State usually seeks consultations and opinions in the matter before it adopts the initiative under consideration. When other Member States are sufficiently prepared for discussing the matter, the sponsoring State forwards the proposal for elaboration. In the case of the GCC, the right of initiative of decisions is not conferred on States by the prevailing

practice alone; it is also invested in them by the instruments establishing the GCC in recognition of the importance and effectiveness of decisions sponsored by Member States⁽¹²⁷⁾.

The Secretariat General of the GCC has a power, albeit limited, of initiative by virtue of its nature. It is empowered by the Charter to initiate the decision-making process in the various fields entrusted to the GCC⁽¹²⁸⁾. It prepares and proposes items for review by the Ministerial Council⁽¹²⁹⁾. Additionally, it makes initiatives based on requests by either the Supreme Council or the Ministerial Council⁽¹³⁰⁾. As an organ equipped with qualified manpower specialising in different subjects and a body charged with the day-to-day operation of the GCC, the Secretariat General has become an active forum for launching proposals, giving birth to several regional programmes. As such, it should not be unusual for the Secretariat General to take an initiative and send to its Member States for comments preparatory to finalisation by the GCC decision-making organ, i.e. the Supreme Council.

The Ministerial Council is another arena for taking initiatives. Its statutory right of initiative is established by Article 12(1) of the Charter itself.

Individual persons of GCC Member States can be indirect initiators of the process leading to some GCC decisions, particularly in social and economic fields. For example, if some businessmen of a Member State desire a GCC decision on a commercial matter, they persuade their State to adopt their initiative, and to act on their behalf until the decision is taken. Another route open would be to submit complaints to the GCC regarding current programmes, along with the modifications needed. These complaints and demands are an indirect source for subsequent

decisions in their respective fields of interest. Additionally, the role of experts and intellectuals' in drawing up GCC educational, cultural and social plans is considerable.

The following stage of the decision-making process is the preparation of a draft text of the proposal. Formulating a clear draft of the proposal influences its final outcome if the draft remains unchanged through each stage of the decision-making process.

The next stage is the submission of the proposal. In order that consultation between delegations of Member States and their concerned national authorities can take place, sufficient time should elapse between the submission of the proposal and the opening of the session during which the proposal will be discussed. The GCC requires that items for the agenda be forwarded to Member States at least 30 days before the opening of a session ⁽¹³¹⁾. However, additional items may be included in the agenda if so requested by a State no fewer than 15 days prior to the opening date of a session, provided that these additional proposals are circulated to the States at least 5 days in advance of the opening of that session ⁽¹³²⁾. If the proposal concerns matter which is "considered both important and urgent", it may be included in the agenda, "as late as the date set for opening a session" ⁽¹³³⁾.

2.C.II Voting Procedures

Voting on an item on the agenda is the final stage of the decision-making process. It takes place only after the draft text of the decision has been circulated to all delegations and the Chairman of the session has closed the discussions and announced that voting has begun. Once voting is called for, every State has one vote on the item to be voted upon, and no State can vote for another or represent it ⁽¹³⁴⁾.

The "one State, one vote" formula of voting has been adopted by the GCC, despite the diverse political, economic and population size factors amongst Member States. Therefore, whilst Member States have widely divergent interests in and commitments to any given field, they have equal voting power. However, because the GCC is an organisation with general competence which assumes responsibilities for further integration amongst the States in so many fields, rendering arduous the identification of good and fair grounds for extra representation, it is difficult to argue for providing some States with weighted representation. Consequently, lack of an accurate criterion upon which weighted representations can be based is enough reason for the GCC to adopt the "one nation, one vote" formula. The measure adopted by which a State can safeguard its vital interests in some fields from being outvoted by Members with little or no interest at all, is the requirement of unanimity for decisions in substantive matters. Furthermore, unlike some organisations, voting power proportional to financial contribution cannot be argued for in the case of the GCC because the six Member States contribute equally to its budget.⁽¹³⁵⁾ In brief, arguments of equity and/or voting abuses are unpersuasive, bearing in mind the unanimity requirement, as well as the way the GCC membership was selected.

Before turning to the types of voting chosen by the GCC, mention of them and their origins is made. International decision-making is approached through different kinds of voting; the basic ones being: unanimity voting, majority voting, and weighted voting. According to Inis Claude, these three types were developed outside the area of international organisation, but were borrowed by the organisations in order to finalise their decision-making process.⁽¹³⁶⁾

The GCC adheres to both unanimity and majority voting. Unanimity is the requirement for decisions in substantive matters whilst majority is used for those of a procedural nature ⁽¹³⁷⁾. The final say on whether a matter is substantive or procedural probably rests with the Supreme Council, but the latter may choose to accept a decision made by the Ministerial Council as to whether a matter is one or the other ⁽¹³⁸⁾. With the system of unanimity voting, it may seem difficult for the GCC to obtain decisions which further integration amongst its Members. However, to mitigate this difficulty, the GCC provides that absence or abstention of a Member will not prevent decision-making by the unanimity of Members present and voting. In the words of Article 9(2) of the GCC Charter the unanimity required is that of "member states participating in the voting". Also, Article 5(2) of the Rules of Procedure of the Supreme Council reads to the same effect ⁽¹³⁹⁾. Since abstention is in effect non-participation in voting, it is counted as neither for nor against the item being voted upon. This conclusion applies to both substantive and procedural matters. ⁽¹⁴⁰⁾ Item (2) of Article 15 of the Rules of Procedure of the Supreme Council, which speaks of abstention from voting on procedural matters, should not be taken as restricting abstention to cases in which procedural topics are the subject of voting, and not when substantive matters are voted on. Limiting abstention to topics of a procedural nature conflicts with Article 9(2) of the Charter of the GCC itself which does not impose such limitation. Additionally, Article 5(2) of the Rules of Procedure of the Supreme Council is supportive of the view that abstention may be made even on substantive matters since it does not differentiate between the two categories.

Since the Charter is superior to the interior rules of the various organs, Article 9(2) of the Charter prevails over Article 15(2) of the Rules of Procedure of

the Supreme Council. Thus, abstention can be exercised on both substantive and procedural topics. The question yet remains as to whether abstainees can escape the consequences of a decision made by the other Members of the GCC. The answer is in the affirmative. While the decision is valid, it is not applicable to Members who abstained from voting on it. According to part of Article 5(2) of the Rules of Procedure of the Supreme Council, "Any member abstaining shall record that he is not bound by the resolution". This Article, in effect, resembles Article 7 of the Arab League which declares that decisions made by a majority vote bind only Members who accept them. Is an absent Member bound by a decision made in his absence? The Charter of the GCC is silent on the issue. Whilst it requires that the abstaining Member should document the fact that it will not be bound by the decision, it makes no similar provision in the case of an absentee. Thus, equating absence with abstention was not probably the intent of the framers of the GCC Charter. Thus, an absent Member is bound by a decision taken unanimously by the Members present and participating in the vote⁽¹⁴¹⁾. The obvious result of this is that not all Members are bound by the same rules. In practice, however, this problem has been tackled by the adherence to the principle of "consensus". Consensus has played a considerable role in GCC decision-making. Most GCC decisions have used consensus as opposed to formal voting. Mr Bishara, the GCC Secretary General, highlighted the rule in his address to a Washington audience. He said:

"Moderation is the essence of the societies and governments that make up the GCC. Another important quality in the GCC is flexibility. This is the basis of co-operation. The heads of states are used to patience, quiet persuasion, consensus-building and co-operative decision-making. These have been our traditional political tools, and they form today the foundation of unity within the GCC and of co-operation in the region. Moderation and flexibility form our natural system of operation. They are our breath, our philosophy" (142).

Lack of consensus results in abstentions and/or absences which themselves result in binding the States by different rules. To avoid the latter outcome, i.e. applying different rules to different Members, the GCC adopted a unique approach in its decision-making which calls for shelving the proposal temporarily and pursuing a final decision in spheres where consensus is available. This approach has been elaborated by Mr Bishara as follows:

"The GCC is an irreversible process, but its main characteristic is flexibility. There is no imposition or embarrassment to any member state. Instead we follow a practice of exemption: when consensus is lacking, and one or more members have difficulty with a policy direction, we exempt the issue temporarily and turn to other areas where greater consensus exists." (143)

The above shows that the practice of the GCC is really neither unanimity nor majority voting; in other words, formal voting is rare. Alternatively, there is a flexible formula in operation, based on persuasion and consensus, both of which invite compromises and produce decisions that find their way to implementation.

The GCC, as a young organisation with limited and selective membership which includes only neighbours of identical ideology, history, language, national resources and future ambitions, has chosen the particular voting systems that suit its case. The pattern of unanimity adopted by the GCC enables it to further co-operation amongst its Members while it leaves States at liberty to decide whether or not to contract-in to new obligations.

The States' experience with centuries of colonialism must have been borne in mind when unanimity was selected as the GCC system of voting on important decisions. Seemingly the GCC has been able to find consensus thus avoiding the question of sovereignty which, by reason of the States' colonial past, is very sensitive. Susceptibility of Members regarding the question of sovereignty, however, has faded

as the first decade of the GCC's existence has closed and so, consensus has become readily available, as will be demonstrated in chapters five and six.

2.C.III.The Nature of Decisions

Broadly speaking, normative acts of international organisations fall, in terms of legal effect, into two categories: Hortatory and binding. Hortatory norms are voted under different names such as recommendations, resolutions, advice, opinions, etc.; whereas binding norms have been named decisions, regulations, rules, annexes, directives etc. ⁽¹⁴⁴⁾ However, the terminology is not uniform, hence the same term may be employed in different organisations to denote an obligatory norm in one case and in another a mere expression of suggestion. For instance, the term 'recommendation' was used by the ECSC Article 14 to denote a binding rule of law. Therefore, one should not rely so much upon the terminology for ascertaining the legal force of a normative act. For our purposes, the term 'recommendation' will be employed to describe non-binding norms and the term 'decision' for binding ones.

Before venturing into GCC decisions and their legal force, words on where to find them seems in order. Unlike in most international organisations, there is no GCC 'official journal' or 'gazette', or the like whose function is to provide interested people with GCC legislation. Notably, there is a quarterly 'Legal Bulletin' which is, unfortunately, of no help to researchers on the GCC experience. It would be more beneficial if the Bulletin starts including GCC decisions, at least as a part of its task. Recognising the compelling need for publicising decisions, particularly those of an economic nature which concern citizens most, the Economic Directorate of the GCC Secretariat General collected all GCC decisions, except those of a security or political nature, and produced them in their details in a GCC publication entitled 'Decisions

on the Common Work'. Although brief communiqués of the Supreme Council do contain decisions taken, international lawyers will probably be more interested in seeing those decisions in the aforementioned publication, if only because it articulates decisions in a more detailed manner, in particular prefacing the decision by a preamble reciting its legal basis. Because there is no official journal, the final communiqués sometimes serve that purpose instead, and some of their contents can be regarded, broadly speaking, as decisions, however summary and imprecise.

As to the nature of GCC decisions, Article 9 of the GCC Charter and Article 5 of the Rules of Procedure of the Supreme Council regulate the issuance of normative acts of the GCC. Yet neither these constituent instruments, nor any other, define the effects of these acts. It is submitted that all organisations may issue recommendations,⁽¹⁴⁵⁾ the GCC included. Yet the question remains whether it can issue norms of a binding nature. In other words, what is the legal force of GCC decisions?

It has been held that the power to make binding decisions depends upon the constituent treaty of the organisation, or, as a supplement, its practice that has been accepted by all members.⁽¹⁴⁶⁾ With regard to the GCC, a provision on the matter is, as mentioned, lacking; the practice, on the other hand manifests the fact that Member States execute every decision as soon as it is made.⁽¹⁴⁷⁾ Whether the States feel bound to do so is not clear.

Theoretically, several views have been formed on the legal nature of GCC decisions. Admittedly, none were formulated in special studies on the issue but rather were produced incidentally when matters related to the GCC were discussed. This

should not discredit their value since they represent opinions of international law specialists.

Generally, their opinions fall into two categories: one holds that they are of a recommendatory nature, i.e. with no binding force; it equates them with those made by the UN General Assembly.⁽¹⁴⁸⁾ The other views GCC decisions as legally binding norms but its advocates differ on the degree and scope of their force: Dr. Al-Asha'al says they bind Member States who accept them.⁽¹⁴⁹⁾ Dr. Al-Bahurna views GCC decisions as legally binding on Member States, but their implementation for domestic purposes is in accord with each States constitutional procedures.⁽¹⁵⁰⁾ Dr. Makarem took the position that they are binding and directly effective within the municipal legal system of the Member States.⁽¹⁵¹⁾ Dr. As-Syari is of the opinion that they are binding upon the States on the international plane.⁽¹⁵²⁾

As said earlier, no-one offered his reasoning for the position he adopts. Hence, one is not able to examine their arguments. Thus, what is left is formulating yet another view, which is closely similar to that of Dr. Al-Bahurna, and probably what both Dr. Al-Asha'al and Dr. As-Syari had in mind.

With lack of provision on the matter, one can readily see why some argue that all decisions are of a recommendatory nature, especially since, from a structural point of view, the GCC loosely resembles organisations such as the UN, whose General Assembly makes non-legally binding resolutions. The logic of this conclusion is recognisable. Yet one is inclined to join the other view for textual as well as practical reasons. In international law, GCC decisions are legally binding on all Members, except those who abstain and record that they are not bound by the decisions. But for domestic law purposes their effect is dependent upon their implementation in

accordance with each State's constitutional procedures. Textual support of this opinion is found in Article 5(2) of the Rule of Procedure of the Supreme Council which, after stating that decisions on substantive matters are carried by unanimous vote, provides that "Any member abstaining shall record that he is not bound by the resolution". The use of the terms 'shall' and 'bound' as well as the inclusion of the stipulation as a whole implies that all Members, which are not abstaining and recording their non-acceptance of the legal implication of the decision, are bound by the decision voted. It says nothing about absentees; yet, as said earlier, mentioning abstention and omitting absentees could mean that absent Member(s) are also bound since the unanimity required means those present and participating in the vote, and that contracting-out of a decision is to be put into writing. In either case, the quorum of two-thirds of the six Members must, of course, be satisfied, as mentioned earlier in relation to meetings of the Supreme Council.

In practice, all decisions of the GCC have been incorporated in national legal systems ⁽¹⁵³⁾, which supports the contention that the decisions are binding in international law. However, the effect of the decisions is to bind the States in international law only. There is no direct effect of GCC decisions in the legal systems of the Member States, hence the need for implementing action by them to fulfil their obligations. ⁽¹⁵⁴⁾

Before concluding this discussion, a few words must be said on what may be described as GCC 'declarations'. They are established by practice rather than the constituent treaties. In recent years, the issuance of 'declarations' bearing the name of the State capital hosting the Summit have been frequent. ⁽¹⁵⁵⁾

Having had the title, i.e. 'declaration', which may be employed to describe a normative act of any institution, practical questions may arise. In particular those relating to whether or not they have legal force, and if not what legal implication they have.

Generally speaking, the term 'declaration' describes a class of action which, Schermers suggests, purport to clarify existing rules rather than creating new ones.⁽¹⁵⁶⁾

This observation seems applicable to GCC declarations. Reading into them reveal that they neither attempt to articulate specific new future programmes nor invite Member States to change existing laws. Accordingly, they are probably more of, as described by Schachter, 'political text'⁽¹⁵⁷⁾ containing mere political commitments to honour legal obligations assumed previously. The fact that they have never been incorporated into the domestic law of Member States, if they ever contain something transformable, indicates that the States intended to differentiate them from legal obligations which have been transformed immediately after their making. The language and the context in which they have been drawn favour the said view too.⁽¹⁵⁸⁾ Instead of enumerating what 'shall' be done in the future, the declarations voice merely what 'should' be considered. Additionally, their issuance alongside what contains GCC decisions, i.e. communiques, is suggestive of the fact that they have been intended to convey other than legal rules. Having said that, they are not without legal implications. In the case of the GCC as a regional organisation, it is enough to point out to their significance as evidence of the Members positions on legal rules already decreed.

Summary

On 25 May, 1981, the six States of the Gulf, i.e. the UAE, Bahrain, Saudi Arabia, Oman, Qatar and Kuwait brought into being the GCC by signing its Charter and other related instruments which were later ratified by the said States in accord with their constitutional requirements.⁽¹⁵⁹⁾ Besides being multilateral international conventions concluded by sovereign States, the said constituent treaties are effectively the GCC constitution which enumerates the content and scope of the treaty relationship entered into by the States. For instance, it describes the aims of the GCC as co-operation in all fields with the ultimate goal of integration.

However, while some constitutional problems have been settled explicitly by the Charter, others are left open for interpretation: amongst those settled is the issue of reservation. The Charter explicitly prohibits voicing reservation to any of its provisions in recognition of the fact that success of the GCC depends on part upon its Members assuming the same obligations including the collective work in the common organs. The question of unilateral withdrawal is an example of the issues on which the Charter kept silent, while expressly limiting membership to the six founding States. On the issue of unilateral withdrawal from international organisation, the review of the legal literature reveals that opinions are far from being at agreement. Yet, the view which seems in line with the logic of inter State relations at the international plane would allow a GCC State to withdraw unilaterally. Other constitutional aspects include the institutional setting of the GCC and the process of making and adopting programmes.

As far as the organisational structure and development is concerned, the GCC has three main institutions: the Supreme Council, which is composed of the

Heads of the six States, is the highest organ and the policy maker within the framework of the GCC; attached to it is a conciliatory *ad hoc* tribunal called the Commission for Settlement of Disputes. The Ministerial Council consists of any delegated minister, but mainly the Foreign Ministers, who are charged with much of the detailed work of the GCC. The third main body is the Secretariat General, headed by a Secretary-General and two assistants, is responsible for the day to day operation of the GCC as well as much of the preparatory work for the various activities of the organisation. The institutional development so far include the establishment of the Gulf Investment Corporation, the Technical Office for Communications and the Board for Specifications and Standards. In addition, 17 specialised ministerial committees covering various fields have been formed, all of which aim at establishing as many channels for co-operation by proposing regional plans and executing decisions made by the Supreme Council.

These sectorial committees are not the only initiator of GCC decisions. The other organs of the GCC as well as its Charter and the Member States make proposals to be decided by the Supreme Council. The said Council takes decisions on substantive matters by unanimous vote of the Members present and voting, provided, of course, that the quorum of four States is satisfied. Abstention and absence are counted neither for, nor against, a decision. In other words, only present negative votes can veto a decision. Procedural matters are carried out by majority vote. In practice, the Secretary General has made it clear that GCC decisions are reached by consensus. Once a decision is made, it is binding upon Member States on the international scene; in the municipal sphere, its effectiveness is subject to its incorporations in accordance with the constitutional procedures.⁽¹⁶⁰⁾

Finally, it should be mentioned that the institutional structure of the GCC has been described in detail, and some routine legal problems have been examined to show that the GCC is a developing organisation which resolves some of its problems in a pragmatic way. Too literal or formal an approach to the interpretation of its text would be inappropriate.

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- 95 The nominee for the post of the GCC Secretary General was Sheikh Salman Al-Dua'ij, the former Minister of Justice of the State of Kuwait. See *Al-Watan* [newspaper], Kuwait, 11 October 1988; also *Al-Siyasah* [newspaper], Kuwait, 11 October 1988.
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- 98 see Charter of the GCC, Article 12(8). Since the inception of the GCC and to date, the Under Secretary General for Economic Affairs has been Dr Abdullah I. El-Quwaiz, a citizen of Saudi Arabia. His term has been renewed twice in accordance with Article 12(8) of the GCC Charter.
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- 148 Yahya H. Rajab, supra note 138, p.138.
- 149 *The Legal Framework of the Gulf Co-operation Council*, supra note 140, p.140.
- 150 Husain M. Al-Baharna, 'The Unified Economic Agreement and its impact on harmonising norms of ownership and economic and commercial transactions in the GCC States', [in Arabic], in *Collection of Researches and Studies* delivered at the Conference on Unification of Private Law of the States of the Gulf and Arabian Peninsula, 21-23 November 1987, Kuwait: Centre for the Gulf and Arabian Peninsula Studies, 1988, pp. 25-49, at 47.

- 151 Dr. Ibrahim M. Makarem, 'The Positive Effect of the Establishment of the GCC on Issues of the Private International Law of the Gulf States' [in Arabic], in *Collection of Researches and Studies.*, *ibid*, pp.437-504, at 459. Apparently his view is based on reading of the Kuwaiti Official Gazette which publishes GCC Standards even though the BSS establishment was not incorporated in the Kuwaiti legal system.
- 152 Based on personal interview on January 26, 1991.
- 153 See chapters five and six.
- 154 For the nature of GCC law and its relationship with national legal systems of Member States, see Chapter seven.
- 155 See GCC declarations reproduced in vol. 2 of this work, pp.84-7, 153-57, 194-5, 201-2 and 212-3.
- 156 Schermers, vol.II, *supra* note 24, pp.609-18.
- 157 O. Schachter, 'International Law in Theory and Practice: General Course in Public International Law', 178 *RdC* (1982-V), pp.9-396, at 123-32.
- 158 This particular test is suggested by Schachter, *ibid*, at 128.
- 159 For the establishment process see chapter one, pp.22-26. Elucidation on how treaties are incorporated in national legal systems is made in chapter seven, pp.299-308.
- 160 See chapter seven.

Chapter Three

International and Internal Legal Status of the GCC

Introduction

The emergence of public international organisations in such a large number has introduced new developments in the international legal order. The intensive international operations in various fields undertaken by these new actors have gradually attracted the attention of international law as reflected in the works of its theorists. Contrary to the practice in regard to private corporations or companies, which are the creatures of national legal systems, public international organisations are the product of interstate agreements and provided with organs of a permanent nature. Of related significance is the fact that they are offered privileges and immunities including jurisdictional immunities, all of which somewhat resemble those accorded to sovereign states. Furthermore, many organisations aim at the well-being and general interests of peoples of the member states and, therefore, there arise important issues of the relation between the interactional legal acts of the organisations and domestic legal systems.⁽¹⁾

At present, and in the light of these developments, it has become obvious that international organisations have been admitted to the international theatre as a new type of international actor. Review of the practice and history of international

organisations reveals that several types of activities, which used to be the prerogative of states, have been performed by international organisations. Then, consideration begins to be given to the legal consequences of the failure of international organisations to stay within their legal powers.

Having stated this, few general conclusions can be reached regarding their international status; in general, the matter is best approached by an *ad hoc* examination of each organisation. Seemingly, it is appropriate at this stage of the legal work on the GCC to investigate the international, as well as the municipal legal status of the GCC. This chapter, accordingly, ventures into these questions as far as time and division of the general work allow.

3.A: International legal personality of the GCC

3.A.I: General legal background

a. Early trends

Before the establishment of the League of Nations, the notion of international legal personality was widely thought to be the prerogative of the sovereign states alone; it went hand in hand with the then dominant belief that states were the only subject of international law. This view, then, associated the idea of international personality with the notion of sovereignty. Accordingly, since international organisations and confederations lack the *de jure* prerequisites⁽²⁾ for constituting sovereign states, they were denied the attribute of an international legal personality.⁽³⁾ Other grounds for such denial include the contention that the organisations do not have a will of their own distinct from that of their members, as discussed below; the doubts cast on the ability of an international treaty to create an



independent international legal personality, and that international organisations are financially dependent on their members. (4)

However, subsequent to the creation of the League of Nations, the need to attribute the notion of international juridical personality to international organisations became imperative. Accordingly, it was conceded to the organisations by some theorists. (5)

During the process of establishing the United Nations (UN), the notion received more attention and gathered more support. The San Francisco Conference (1945), nonetheless, was not convinced of the need to provide the UN with a specified international personality. (6)

b. Opinion of the ICJ

The absence of explicit language on the international legal personality of the UN was no barrier to its existence in the minds of most jurists in accordance with the implication of the terms of the UN Charter. This was confirmed by the International Court of Justice (ICJ) in the *Reparations* case (1949) which determined that the UN was an international legal person. In this case, the ICJ was requested by the UN General Assembly to give an advisory opinion on the following legal questions:

- I. In the event of an agent of the United Nations in the performance of his duties suffering injury in circumstances involving the responsibility of a State, has the United Nations, as an organisation, the capacity to bring an international claim against the responsible *de jure* or *de facto* government with a view to obtaining the reparation due in respect of the damage caused (a) to the United Nations, (b) to the victim or to persons entitled through him?
- II. In the event of an affirmative reply on point I(b), how is action by the United Nations to be reconciled with such rights as may be possessed by the State of which the victim is a national?" (7)

The ICJ reached the conclusion "that an affirmative answer should be given to Question I(a) and (b) whether or not the defendant State is a member of the United Nations." ⁽⁸⁾ Of importance to this discussion is the fact that the Court, in arriving at this conclusion, considered it proper to determine at the outset whether or not the UN had an international legal personality because the ICJ said, "if the organisation [the UN] is recognised as having that personality, it is an entity capable of availing itself of obligations incumbent upon its members". ⁽⁹⁾

It noted, as did some international jurists, that the UN international juridical personality, i.e. capacity to have rights and duties distinct from those of its member states, could only be deduced implicitly from the terms of its Charter; for this purpose the ICJ considered "what characteristics it was intended thereby to give to the Organisation." ⁽¹⁰⁾ In doing so, the Court identified the following characteristics of the UN: ⁽¹¹⁾

1. The UN has purposes and principles expressly articulated in its Charter;
2. It is equipped with organs;
3. It has been assigned special tasks;
4. Its Charter has defined its position in relation to the member states "which occupies a position in certain respects in detachment from its members";
and
5. It exercises and enjoys functions and rights which are usually carried out and undertaken by a subject possessing an international legal personality.

In addition, the ICJ took note of the Convention on Privileges and Immunities of the UN which initiated rights and obligations between the signatories, on the one hand, and the UN itself, on the other. It went on to state that

"it is difficult to see how such a convention could operate except upon the international plane and as between parties possessing international personality."⁽¹²⁾

Having assessed the characteristics of the UN and the nature of its function, the ICJ reached the conclusion that the UN was an international person. To qualify its conclusion, the Court ruled out the possible implication of its decision as equating the UN's international personality with those of sovereign states.⁽¹³⁾ It stated, moreover, that attributing an international personality to the UN does not mean classifying it as a 'super-state'. It then distinguished between the international personality of the states and that of the UN stating:

"... What it does mean is that it is a subject of international law and capable of possessing international rights and duties, and that it has capacity to maintain its rights by bringing international claims.⁽¹⁴⁾ ... Whereas a state possesses the totality of international rights and duties recognized by international law, the right and duties of an entity such as the Organisation must depend upon its purposes and functions as specified or implied in its constituent documents and developed in practice."⁽¹⁵⁾

This distinction is based on the Court's earlier thesis that

"The subjects of any legal system are not necessarily identical in their nature or in the extent of their rights, and the nature depends upon the needs of the community."⁽¹⁶⁾

More importantly, the ICJ confirmed the UN objective international legal personality. In justification of its opinion on this particular point, it stated:

"... the Court's opinion is that fifty States, representing the vast majority of the members of the international community, had the power, in conformity with international law, to bring into being an entity possessing objective international personality, and not merely personality recognized by them alone, together with capacity to bring international claims."⁽¹⁷⁾

This point, to be noted, has been questioned by a number of international jurists. Whilst some probably accept the concept of objective international personality in relation to universal organisations, e.g. the UN, ⁽¹⁸⁾ others doubt this concept altogether. ⁽¹⁹⁾

c. Current theory

The opinion of the ICJ in the *Reparations* case (1949) influenced and shaped current legal theory in respect to the possible attribution of international legal personality to most contemporary international organisations. The jurisprudence and reasoning of the Court in this case constituted a major basis for the acceptance of such notion by an increasing number of international legal writers. They, however, hold different views regarding the scope of the international personality that might be granted to international organisations. Their disagreement stems from their opposing opinion with regard to the source of the personality.

One opinion maintains that the international juridical personality of intergovernmental organisations stems from general or customary international law. ⁽²⁰⁾ This view is advocated by Seyersted. According to him, once an organisation is established with one or more organs by more than one state, it is an international person in relation to both members and non-members. ⁽²¹⁾ He therefore suggests that the process for discovering the rights and duties of international organisations is the same as that for States. ⁽²²⁾ His argument for putting organisations on an equal footing with states in terms of international personality is that only factual limitations preclude intergovernmental organisations from engaging in the undertakings thought to be the prerogative of states. In his own words:

"there is no basic difference between states and intergovernmental organisations with regard to organic jurisdiction. With regard to territorial and personal

jurisdiction and with regard to certain international acts there is, however, a considerable difference of fact. Intergovernmental organisations exercise territorial and personal jurisdiction only in exceptional cases where states cede to them part of their jurisdiction over territory or individuals (which need not be done by constitutional provision or by another treaty to which the other Member States are parties). And when an organisation has no such jurisdiction, there are many international acts which it is not called upon, or is not in a practical position, to perform to the same extent as the traditional subjects of international law, states. But this is a difference of fact, not of inherent legal capacity. Thus, as already pointed out, when so far no intergovernmental organisation has been invited to participate in an international conference on an equal footing with states, this not because the constitutions of intergovernmental organisations do not authorize them to do so, but because such organisations usually do not represent interests comparable to those of states. Only when they exceptionally do represent comparable interests will the practical need arise. And the silence of their constitutions is then no hindrance" (23)

In his conclusion, he summarised the theory of "the inherent power" which he advocates in a passage which reads:

"Intergovernmental organisations are thus, from a legal point of view, general subjects of international law, *ipso facto* on the basis of general and customary international law, in basically the same manner as states. The main difference is one of fact, namely that most organisations are not in a practical position to exercise their inherent international capacities to the same extent as states, because they have no territory and population, but not because they lack the capacity to exercise jurisdiction over territory and persons." (24)

Thus the heart of this theory is that the international personality of intergovernmental organisations is determined by international law provided that such organisations be equipped with at least one autonomous organ and more than one member. So, the basis for the legal capacities of interstate organisations as well as the basis for performing international acts and to become the holders of international rights and obligations is general international law as opposed to the constitution of the prospective organisations which is seen by this theory, if it exists, as a possible source of negative effect. (25) Analogy between the rules of municipal law, which requires positive provisions and/or incorporation for allocating a private organisation with a legal personality, and constitutional terms of governmental

organisation for the attribution of an international legal personality at the international level is rejected. For one thing, under some judicial systems, this view maintains, private organisations are legal persons unless this is "precluded by statutory or factual limitation."⁽²⁶⁾ In other words, Seyersted attributes to intergovernmental organisations an objective international legal personality. Moreover, he sees international organisations as original subjects of international law.⁽²⁷⁾

The other school of thought which is gaining firm ground holds the constituent instruments of international organisations as the source of their international personality, if at all.⁽²⁸⁾ In brief, they admit that a personality arises from and depends upon the nature and aims of the organisation. Moreover, they consider international organisations as derivative subjects of international law.⁽²⁹⁾

More importantly, within the majority recognising the enjoyment of international personality by some international organisations, several authors have described preconditions, the presence of which is necessary for accepting an organisation as a candidate for such attributes. Notably, the preconditions hereunder presented as well as possible others have been borrowed from the judgment of the ICJ in the *Reparations* case (1949), as well as from the general works in the field of international institutional law. This latter requires the presence of particular elements in an organisation for its classification as an international intergovernmental organisation for the purposes of public international law.

The possession of a permanent organ is the most common precondition.⁽³⁰⁾ This particular characteristic was searched for by the ICJ in the UN and found present.⁽³¹⁾ The question thus is what importance this precondition carries in the context of the international personality of intergovernmental organisations? It seems that the

permanent organ is insisted on by a number of jurists for several reasons. On the one hand, it distinguishes between international organisations which are set up so as to be continuously active from the *ad hoc* conferences. On the other hand, the permanent nature of the organisation, Professor Reuter writes,

"is a measure of its independence; if it is not permanent it can only act in accordance with the will of the member states; if it is permanent it can stand up to the states." (32)

As such, the notion of a permanent organ is advocated to guarantee some sort of detachment of the will of the organisation from those of its members. (33)

Such detachment of wills thus is another precondition; (34) if it cannot be made available by means of providing permanent organs, it has to be put in hand in the terms of the charters, whether expressly or implicitly. This precondition is also investigated and noted by the ICJ in the *Reparations* case (1949), although only in certain respects of the inter-relations of the UN and its members. (35) Of greater significance is the inquiry into where in the UN Charter the ICJ found the kind of detachment required for allotting the UN an international personality. The Court apparently based its conclusion on this point on the finding of facts which include: the Charter of the UN

- requires members to assist the UN in any action undertaken by it;
- requires members to accept and carry out the decisions of the Security Council;
- authorises the General Assembly to make recommendations to its members;
- gives the UN legal capacity, privileges and immunities in the territory of each member; and

- provides the conclusion of agreements between the UN and its members. ⁽³⁶⁾

Accordingly, these were the criteria employed by the ICJ in determining whether the UN has a distinct will separate from that of its members. The Court, notably, paid no attention to the kind of voting system provided for in the Charter in measuring the detachment of the wills of the UN and its members. However, as noted by some authors, the adoption of a majority by an organisation is "a clear indication" of the distinct wills. ⁽³⁷⁾

Regarding Soviet doctrinal international law, it is unclear whether it would admit the individual will of the organisations, let alone require it. In 1971, an international law student examined the writing of leading Soviet jurists who addressed the issue of the individual will of international organisations, relating some of them to the political circumstances under which they were produced, and wrote:

"The general conclusion one can reach from this analysis is that Soviet doctrinal international law, for the most part, refuses to concede to any universal international organisation an individual will that is independent of the wills of the member states. This will is seen as being not only derived from and limited by, but also as being wholly dependent upon, the wills of the member states." ⁽³⁸⁾

This author's discussion took note of Professor Tunkin's criticism ⁽³⁹⁾ of Sir Gerald Fitzmaurice's opinion that the UN as a subject of international law is a completely independent legal person. ⁽⁴⁰⁾ He also stated that Professor Tunkin maintained that "It is ... inaccurate to assume that the United Nations is an entity independent of its member states," ⁽⁴¹⁾ yet, he mentioned nothing about Professor Tunkin's statement that although the UN was set up by states, it is "a social phenomenon distinct from states members of the Organisation (UN)." ⁽⁴²⁾ The surmise, therefore, is that in spite of his denial of complete independence, he concedes

some sort of co-ordinated wills of those of the organisations and those of their members. In the light of the development of international institutional law, particularly as regards their personality and responsibility at the international level, one would expect that this would be followed by conceding some aspects of the restricted view which Soviet doctrinal international law holds with regards to the issue of the will of international organisations. However, such expectations, if held, at least up to 1982, would be misplaced. The conclusion reached by the said student cited above, in 1971, probably held true at least until 1982 when a comprehensive text book on international law was published; this work was contributed to by a number of leading Soviet international jurists and edited by Professor Tunkin. It contains the following:

"As subjects of international law, international organisations possess their will. It is a result of the concordance of wills of the member-states, exists in parallel with their wills (but does not take precedence over them), and manifests itself in particular actions by the corresponding organs of international organisations that implement its will. The direction and basic contents of the will of an international organisation are always conditioned by the contents of the wills of the member-states." (43)

The doctrinal Soviet international law on issues relating to the legal international personality of international organisations, including the question of the organisations' independence, is most likely to be politically influenced. Views of the USSR on these issues reflect the governmental policies of the ruling party. The Soviet Union's approach to those questions was probably influenced by its objection to majority decisions of the UN General Assembly, against which it had voted, where the Soviet Union had serious doubts about the competence of the General Assembly.

(44) The issue was closely related to the personality of the UN because the argument, especially in relation to UN peace-keeping forces, turned on the implied powers of the GA. The Soviet Union took the view that such a doctrine had no place in

interpreting what was simply an ordinary treaty between States where States were bound only by their express understandings. ⁽⁴⁵⁾

Such a view is overly narrow, and when one realises its consequences, one quickly recognises the imperative need for liberation from it.

A third precondition for possible endowment of the notion of international personality to an intergovernmental organisation is its establishment by international treaty. ⁽⁴⁶⁾ This legal element is advocated, by its proponents, to distinguish public international organisations from private international organisations, and also to measure the distinct legal personality of the organisation. An express agreement is the most common means for establishing an organisation and for legal reasons it is preferable. However, an organisation may be founded by other means; tacit agreement is another way. To Dr. Rama Montaldo, parallel resolutions of states may suffice but with qualification; in his words:

"Parallel resolutions of states followed by acts which undoubtedly show the intention of creating an international organisation may suffice. What does seem essential is that those acts leading to the establishment of an international organisation must be performed by the organs charged with the international relations of the State competent to bind the state internationally and to delegate functions and powers to the organisation to be exercised by the latter upon its members." ⁽⁴⁷⁾

"This precludes the Nordic Council from being considered as an international organisation, with international personality ..., since it has been established in 1952 by parallel resolutions of the parliaments of the original members, Denmark, Iceland, Norway and Sweden." ⁽⁴⁸⁾

The essence of this passage is that an interstate agreement may be detected from acts other than a treaty. This view is shared by Schermers although he said that in such a case "it may be more difficult to prove the existence of the agreement." ⁽⁴⁹⁾ As such, ways of concluding agreements establishing international organisations other

than by an express treaty are likely to prove defective when it comes to studying an agreement for ascertaining the whole package of internationality.

It is, however, worth mentioning that Seyersted does not require the conclusion of an international treaty for the finding of a public international organisation. ⁽⁵⁰⁾

Yet a fourth precondition is the possession by the organisation concerned of defined objectives. In the *Reparations* case (1949), the ICJ mentioned that the UN Charter specified its purposes; then, it declared that for the achievement of those objectives the endowment of international legal personality to the UN was indispensable. ⁽⁵¹⁾ The account taken by the ICJ of the UN aims has probably influenced those who require the definition of the organisation's aims in order to have international juridical personality.

In sum, the above inexhaustive study of the major preconditions for providing public international organisations with an international legal personality shows how keen international jurists are to show that the organisations are independent from their members before attributing such legal internationality to them. In section 3.B of this chapter, the discussion will focus on the responsibility of international organisations, in which the individual will and thus the international separate personality will play a major part. But before passing to other points, this legal personality in relation to non-members should be examined.

The question here is whether or not the personality so acquired by a public international organisation is an international legal personality *erga omnes*. Those who speak of objective international personality such as Seyersted answer this question in

the affirmative.⁽⁵²⁾ Others suggest a distinction between universal and non-universal organisations.⁽⁵³⁾ For example Professor Tunkin sees the personality of non-universal organisations in relation to non-members as *res inter alios acta*; whereas those of universal membership or enjoying wide acceptance by non-members have a status *erga omnes*.⁽⁵⁴⁾

The ICJ had the chance to state its view with regard to the UN as a universal organisation. In the *Reparations* case (1949), the ICJ took the view that the subscription by a majority of states in the UN rendered its personality *erga omnes*; in arriving at this conclusion, it put great weight on the number of participants; it stated:

"Fifty states representing the vast majority of the members of the international community, had the power in conformity with international law, to bring into being an entity possessing objective international personality, and not merely personality recognized by them alone."⁽⁵⁵⁾

This line of reasoning for explaining the status of the UN, a world-wide organisation, with regard to non-members has, nonetheless, been doubted. Without acceptance, it is difficult to see why non-parties to the founding treaty should be obliged to acknowledge the personality of an entity created by others. Since charters of international organisations are basically treaties, their binding effect is conditional on the consent given. As such, as long as third states do not consent to them, they are not bound by them.

In summation, the above general theoretical overview on the notion of international personality of public intergovernmental organisation reveals that the majority of jurists are of the opinion that such personality may be attributed to those organisations which meet the requirements they described. They are, however, divided into two teams when it comes down to what gives such personality and how

much of it. The objective personality school of thought maintains that international law provides the international personality to the organisations. The other school of thought, which includes the ICJ and the majority of jurists, is of the opinion that the constituent instruments are the sources of the possible international personality. Within this latter school, the view that with the absence of express endowment of international personality to an organisation, personality may be found by necessary implication from powers and objectives vested in it seem to be more grounded inasmuch as it takes account of the need for such attribute by organisations with constant international activities. Additionally, it has judicial support as seen by the result of the *Reparations* case. Of more significance, is the fact that it conforms with the reality of international relations that international organisations, as they operate, are of no less need than States for an attribution enabling them to discharge their functions effectively.

3.A.II: The GCC

a. International Legal Personality

The international legal personality of the GCC will be measured against the above background. There, it appeared that the satisfaction of the requirements for the attribution of public intergovernmental organisation is required of an organisation to qualify as a candidate for international juridical personality. It is, therefore, appropriate in this connection to examine whether or not the GCC meets the requirements mentioned in the previous section. The first of these is the presence of a permanent organ. The GCC satisfies this readily inasmuch as it has the Secretariat-General undertaking the day-to-day work. Another is the possession of a distinct will of its own. As noted above, this requirement is measured by different

people using various criteria. If this can be met by providing the GCC with a permanent organ, then it is, as just mentioned, satisfied. But moreover, the Unified Economic Agreement in Article 27 provides that "In case of conflict with local laws and regulations of member-states, execution of the provision of this Agreement shall prevail."⁽⁵⁶⁾ This probably means that there are two wills, i.e. that of the GCC and that of each Member-State; This confirms to an analyst of the GCC that it has a similar independent will to that of the UN to which the Court refers in the *Reparations* case.⁽⁵⁷⁾ The third precondition is the establishment of the concerned organisation by an international agreement. This, too, is met in the case of the GCC; its charter is a multilateral treaty concluded by the six sovereign States. The fourth requirement is the possession by the organisation of defined aims; in the case of the GCC, this requirement is satisfied as well by Article 4 of the Charter; it reads:

The basic Objectives of the Cooperation Council are:

1. To effect coordination, integration and inter-connection between Member States in all fields in order to achieve unity between them.
2. To deepen and strengthen relations, links and areas of cooperation now prevailing between their peoples in various fields.

To formulate similar regulations in various fields including the following:

- a. Economic and financial affairs
 - b. Commerce, customs and communications
 - c. Education and culture
 - d. Social and health affairs
 - e. Information and tourism
 - f. Legislative and administrative affairs.
4. To stimulate scientific and technological progress in the fields of industry, mining, agriculture, water and animal resources; to establish scientific research; to establish joint ventures and

encourage cooperation by the private sector for the good of their peoples.

These aims of the GCC require an independent organisation. The use of words such as *effect*, *formulate* and *establish* implies that the GCC is an entity having the capacity to carry out functions which are attributes of autonomous bodies.

Having thus surveyed the preconditions of public intergovernmental organisation, which have also been counted as preconditions for the international personality, and examined them in relation to the GCC, and finding them present, it should be reasonable to find the GCC as a possible candidate for the attribution of international legal personality. Therefore, attention will be paid to finding whether or not the GCC possesses such personality. This will be done through examining the explicit and implicit terms of the Charter.

To begin with, the Charter contains no clear-cut provision on the GCC international personality such as, for example, 'the GCC shall possess full international legal personality.' However, it does contain Article 17 (1) which states that the GCC and its subsidiaries

"shall enjoy on the territories of all member states such legal competence, privileges and immunities as are required to realize their objectives and carry out their functions." (58)

This provision in essence is similar to Articles 104 and 105, taken together, of the UN Charter. But in the case of the GCC, Article 1 of the *Privileges and Immunities of the GCC* adds that

"The Gulf Co-operation Council shall enjoy an independent juridical personality, with a legal capacity to: a) possess movable and immovable real properties and funds with disposal and assignment of the same. b) conclude contracts. c) institute legal action." (59)

Moreover, the aforesaid Convention has granted the GCC wide privileges and immunities, as discussed below. Generally, such provisions, as noted by Dr. Shihata, do not specify whether personality is in international law or in national law. (60) Consequently, questions such as 'are they providing the GCC with personality merely under domestic legal systems or under international law are raised.

The departure point is from the submission that exact explicit language, whilst preferable, is not, in the last resort, essential. Yet the point with which this discussion is concerned is that once such vague terms exist, can they contain anything about the international personality?

The above provisions which provide the GCC with firmer and wider standing in the municipal legal system than the rights and privileges given to private corporations and other legal bodies can, by itself, be taken as at least an indication of the presence of some sort of international personality. In addition, the Convention on the Privileges and Immunities of the GCC in its entirety points towards the existence of something more than a municipal legal person; it imposes a vast sum of obligations on the Member States towards the GCC; those duties which the Members have assumed are "reserved for entities which possess international personality." (61)

Writing on the UN international status, G. Weissberg stated that

"The granting of such immunities is, to a certain extent, equivalent to a conveyance of international legal personality to the Organisation as well as to a recognition of that status." (62)

Using the same line of logic, it may be argued that the *Convention on Privileges and Immunities of the GCC* establishes mutual rights and obligations between the GCC on the one hand and its Members on the other; therefore, as the ICJ noted:

"It is difficult to see how such a convention could operate except upon the international plane and as between parties possessing international personality."
(63)

Furthermore, the presence of the international personality of the GCC may be found by a necessary implication of the powers conferred upon it to materialise its objectives, as reflected in the Charter and other instruments, e.g. the *Unified Economic Agreement*. Based on those powers, the GCC has assumed international acts usually approached by international legal persons; it has concluded an agreement with the host of its headquarters, i.e. Saudi Arabia, ⁽⁶⁴⁾ and is likely to enter into such international interactions with other subjects of international law.

In brief, since the GCC by and large satisfies the overstated conditions necessary for accepting it and the like as an international person, its international personality could be found by implications from its functions as well as these express terms cited above. The express articles in the Charter and other documents should be taken as indications hinting at the existence of an international juridical personality. In particular, the *Convention on Privileges and Immunities of the GCC* is another finger pointing toward the GCC as an international person distinct from its Members. This, however, should not obscure the fact that the personality possessed by the GCC is narrower than that of States: that is to say limited to the areas entrusted to it - mainly economic - by the Charter, subsequent agreements and other internal rules. Such personality has no existence in relation to non-members which have not recognised it as such whether expressly or tacitly.

b. Treaty-making power

The capacity to conclude international agreements is a major competence needed by international organisations to be able to discharge their functions

effectively. An indication of the importance of such a right is the large number of treaties to which international organisations were parties which have been reported in the *United Nations Treaties Series*. Hence, the existence of some measure of treaty-making competence vested in these organisations is a fact. Yet, the questions always asked are, 'what is the legal basis for such power?' 'What is the standpoint of conventional international law in relation to this issue?'

As regards the legal foundations of the power of international organisations to conclude international agreements, a number of theories have been advanced. One opinion holds that the international personality of international organisations, as mentioned above, is an objective one; once the organisations with more than one organ and one member are established, this view goes, they are an objective international person possessing the "capacity to perform all types of international acts which they are in a practical position to perform"⁽⁶⁵⁾ "provided that their constitutions do not preclude such acts."⁽⁶⁶⁾ According to this opinion, international personality is derived from general or customary international law. Thus, the inherent powers of international organisations stemming from their objective personality would include the capacity to conclude a treaty.

At the other extreme is the view maintaining that the treaty-making power of international organisations must be expressly articulated, otherwise the constitutionality of such international agreements is in doubt.⁽⁶⁷⁾

The ICJ and the majority of the international jurists took an intermediate position. The ICJ stated, in relation to the UN in the *Reparations* case (1949), that

"the Organisation must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties."⁽⁶⁸⁾

This line of reasoning of the court has been followed by several jurists.⁽⁶⁹⁾ The Soviet doctrinal international law seems to be of this opinion also. A comprehensive text book on international law edited by Tunkin and contributed to by a number of leading Soviet international thinkers states that "One of the basic rights of international organisations as a subject of international law is the right to conclude treaties."⁽⁷⁰⁾ This passage may be taken as a modification of those earlier Soviet views such as Tunkin's in this regard. In his earlier view, although he accepted that organisations can conclude treaties with the absence of a provision to this effect, he required the consent of the members for its legality.⁽⁷¹⁾

In brief, the legal literature in respect to the treaty-making power of international organisations basically contains two theories. Inherent power stemming from international law is the first; the second is the provided power whether explicit or implicit.

As regards the codified international law in relation to the capacity of international organisations to enter into international treaties, the *Vienna Convention on Treaties between States and International Organisations or between International Organisations of 1986*,⁽⁷²⁾ hereinafter referred to as the *Vienna Convention of 1986*, generally recognises the capacity of international organisations to conclude international treaties. The preamble of that Convention in paragraph 11 contains the following:

"... international organisations possess the capacity to conclude treaties which is necessary for the exercise of their functions and the fulfilment of their purposes."

In addition, Article 6 of the same Convention reads:

"The capacity of an international organisation to conclude treaties is governed by the rules of that organisation."

At first glance, Article 6, in particular, seems to be restricting the capacity of international organisations to conclude treaties to the written language of their charters; but when this Article is read together with Article 2 (1) (J) which states:

"Rules of the organisation' means, in particular, the constituent instruments, decisions and resolutions adopted in accordance with them, and established practice of the organisation"

it becomes clear that Article 6 encompasses those powers expressly conferred upon the organisations as well as those confirmed by

"reasonable implications as a competence required to enable the organisation to discharge its function effectively." (73)

Thus, the contents of these articles is in accordance with the view of the majority on the treaty-making power of international organisations and, in effect, it rejects the idea that there is such an inherent capacity to enter into treaties in respect to international organisations. According to the *Vienna Convention of 1986*, there is no parallelism between states and international organisations on the capacity to make international agreements. This is so because, whereas the *Vienna Convention on the Law of Treaties of 1969* in Article 6 admits the inherent power of states to conclude treaties, ⁽⁷⁴⁾ Article 6 of the *Vienna Convention of 1986*, whilst not restating the principle convened in Article 6 of the *Vienna Convention of 1969* in relation to States, it recognised only the explicit or implicit power of international organisations to conclude treaties. Against such a theoretical legal background, the ability of the GCC to conclude international treaties will, in turn, be examined.

As in most constituent instruments of international organisations, the Charter of the GCC contains no specific general authorisation for the GCC to conclude international agreements. The Supreme Council, it should be mentioned, is empowered by Article 8(5) of the Charter to: "Approve the basis for dealing with other

States and international organisations." One basis could be international agreements. The Charter, anyway, includes an authorisation for the conclusion of two special agreements.⁽⁷⁵⁾ One of these two is on the privileges and immunities of the GCC; the other is a headquarters agreement between the GCC itself and its host state, i.e. Saudi Arabia. These agreements were finalised in 1984 and 1990 respectively, as will be pointed out.

The question yet to be ascertained is whether or not the GCC is capable of entering into international agreements other than these two treaties specified in its constitution. If the express powers doctrine, mentioned above, is to be adopted, the plain answer would be 'no'. If, on the other hand, the inherent power doctrine, aforementioned, is accepted, the answer would be a plain 'yes'. But, as mentioned earlier, both prove to be out of touch with the reality of the working of international organisations: the first is overly narrow and formalistic; the second, while presenting an ambitious hope for fostering the development of international relations, ignores the practice of the organisation in this respect, and disregards the aims for which they are established.

The case of the GCC is somewhat similar to that of the UN on this very issue: neither of their charters carry provisions on their general treaty-making powers, while providing for the making of particular agreements, but the UN has made a number of treaties⁽⁷⁶⁾ both with states and international organisations without express authorisation by its charter; and, more importantly, their validity has never been challenged.⁽⁷⁷⁾ Correspondingly, the GCC may take a path similar to that of the UN in the making of such valid agreements under similar circumstances, e.g. Article 8(5). In this, it seems, firstly, that the UN acquired such a capacity for itself by pointing to

the fact that such capacity is a necessary means for productive functioning as noted in the jurisprudence of the ICJ in the *Reparations* case (1949); and secondly, through obtaining explicit or implicit consent of its members on the matter, the UN established a practice for itself, enabling it to make treaties accordingly. Similarly, if the GCC could perceive the necessity for concluding a treaty, and were able, especially in its beginnings, to obtain the consent of its six Members, it should be able to enter into valid agreements. Once a GCC practice is established, its legal basis for the conclusion of agreements would be its established practice in addition to the explicit power, just as in the case of the UN.

The UN, however, is not the only international organisation the treaty-making power of which was extended beyond the verbal letters of its charter. At the regional level, for example, the EEC treaty-making capacity has been expanded: for example, in the landmark case of *ERTA*, beyond the express provision on this matter.⁽⁷⁸⁾ Furthermore, in the *Kramer* case, the European Court of Justice states that the EEC treaty-making capacity may arise implicitly from treaty or legislative provisions.⁽⁷⁹⁾

The cases of the UN and the EEC, both show the general trend for accepting that the right of international organisations to conclude treaties not explicitly provided for in the constituent instrument may be found by implication from the same, or the decisions and regulations of the respective organisations. This conclusion finds support in the *Vienna Convention of 1986* in Article 2 (1). In accordance with this provision of the *Convention* as well as the judgment of the European Court of Justice in *Kramer*, not only the explicit terms of the charters are the source of such power, but also subsequent rules made in response to the need of the respective organisations to

enter into treaties for the overall interest of the organisation. ⁽⁸⁰⁾ In addition, a practice of the organisation's own can be established to be the source of such capacity as required by the *Vienna Convention of 1986*.

Having found that, from a theoretical point of view, the GCC may conclude treaties necessary for the exercise of its functions and attainment of its objectives, ascertaining the practice of the GCC in this respect seems in order. So far three agreements have been made, all of which have connection with the GCC in one way or another: the *Convention on the Privileges and Immunities of the GCC*, that commonly known as the EEC-GCC agreement and the Headquarters agreement between the GCC and Saudi Arabia.

The question is whether or not the GCC has been a party to these agreements, a mere sponsor and/or a forum for negotiations or otherwise? Admittedly, drawing a line between being a party and being a sponsor is difficult in any institution, and in the GCC it is particularly arduous. At any rate, here below is an attempt to probe the connection of the GCC, and whether the ways these agreements were concluded have any implication on the treaty-making capacity of the GCC.

As far as the *Convention on the Privileges and Immunities of the GCC* is concerned, ⁽⁸¹⁾ its terms as well as the exclusion of the GCC as a signatory throw considerable doubts on the possibility that the GCC is a party. Thus, though it concerns the GCC most, it is an agreement between the six States.

Similarly, it may well be argued that in the described EEC-GCC agreement ⁽⁸²⁾ the GCC as such is not a party but rather the sponsor and negotiating forum of

that treaty between its Members, on the one hand, and the EEC itself on the other.

General reading of this agreement is supportive of this view:

Its title reads:

Cooperation Agreement between the *European Economic Community*, of the one part, and the *Countries party to the Charter of the Cooperation Council of the Arab States of the Gulf*, ... of the other. ⁽⁸³⁾

Further, the preamble of the said agreement when referring to its parties reads, in paragraphs (1) and (2):

The Council of the European Community, hereinafter referred to as "*the Community*" of the one part, and the Governments of the Countries party to the Charter of the Cooperation Council for the Arab States in the Gulf ..., hereinafter referred to as "*the GCC Countries*", of the other part ⁽⁸⁴⁾

In each passage, it has been made abundantly clear that the parties are the *EEC* and the *GCC Member States* rather than the GCC itself. Moreover, the agreement was signed by two representatives: one for the Council of the EC, and another for the *Governments of the GCC States*. The fact that the said agreement was incorporated into the legal systems of the six Members is probably neither for nor against the aforementioned argument, because any international obligation need be incorporated for its internal effectiveness, as will be discussed in chapter seven. On the other hand, the Supreme Council's constant supervision of the process and its expressed approval of the agreement when finalised provoke curiosity on the precise connection of the GCC with regard to this particular treaty. ⁽⁸⁵⁾

Of related significance is enquiry into whether or not the two mentioned treaties, presuming that the GCC was not a party in either, have adverse implications on the general treaty-making capacity of the GCC? Although it may be argued otherwise, they seem not, since explanations for not engaging the GCC as a party can

be made. One is that Member States having recognised that unanimity is needed both to start and to finalise the treaty-making process, simply use the GCC's facilities to co-ordinate the treaty-making process. Also, at this early stage in the development of the GCC, the substantive content of its programmes is limited and the Member States may wish to keep an active interest in the content of the treaty negotiations to protect their essential interests. In each case, the direct participation of the Member States is, for the present, a guarantee that its interests will not be prejudiced. However, so long as it is established that the GCC has an independent treaty-making power, future developments may allow it to use it more extensively, even in matters on which the States for the present insist that they be separate parties. Such an explanation finds support in the Headquarters agreement.⁽⁸⁶⁾ It was concluded between the GCC, represented by the Secretary General, and the host country, i.e. Saudi Arabia. In concluding this agreement, the other five Members could have been the parties, but they decided not to be. Evidently, this kind of agreement is of international rather than national character and area of application. This could be one explanation why this time Member States enabled the GCC to exercise its treaty-making power.

When the GCC establishes a practice of being itself a party to treaties, its capacity to make treaties will be consolidated by Article 6 of the *Vienna Convention of 1986*. Yet it must be said before concluding this point that authority whether expressed, implied or established by practice will currently play a minor role in the GCC making of treaties anyway. The reason is that the entire work of the GCC is built on the principle of consensus; accordingly, once consensus is available, questioning the GCC capacity will not arise. Once consensus is lacking, the entire projected treaty would be shelved until it is available, as explained by the Secretary General.⁽⁸⁷⁾

Another point which is worth mentioning is that under the terms of Article 8(5) of the GCC Charter, cited earlier, the Supreme Council is the treaty-making organ. How the Council is to exercise this power is not elaborated in the Charter or other related documents. However, the ways the abovementioned agreements were made reveal that the Supreme Council has the first and last word over the process. It authorises the Ministerial Council or the Secretary General to negotiate and sign while it reserves the final approval for itself. Some treaties, like the EEC-GCC treaty, will require implementation in the Member States, something which will require the co-operation of the Member States. Their direct participation in the treaty makes it more likely that they will take these steps and makes it more clear that they have an obligation to do so.⁽⁸⁸⁾

In conclusion, the GCC has an implied treaty-making power required to enable it to discharge its functions effectively and realise its objectives. In practice, this right has been exercised by the GCC, i.e. the Headquarters agreement with Saudi Arabia. In another two cases, i.e. the *Convention of Privileges and Immunities* and the so-called EEC-GCC agreement, Member States rather than the GCC were apparently the other party.

Bearing in mind the short period of the GCC's existence, which does not allow it to have established practice, denying treaty-making capacity to the GCC altogether seems unsound as far as the prevailing theory in international institutional law is concerned. As said above, the objectives and tasks given to the GCC imply such right: in addition, attribution of international personality to the GCC should be meaningful at least to imply rights, e.g. treaty-making, compatible with the confederal nature of the GCC and its designated purposes.

3.B: International Responsibility of the GCC

3.B.I: General legal background

Legal systems, be they national or international, accord their subjects rights, and, at the same time, impose upon them obligations. And in those legal systems, wrongful acts are attributed to the wrongdoer who becomes responsible for his act and liable for the damage sustained. At the international level, states as subjects of international law are accountable for their non-compliance with the international obligations by which they are bound; they are also liable for the damage they cause in violation of such duties. In other words, international norms of states' responsibility have been developed by reason of their being the primary subjects of international law. The legal position of the responsibility of international organisations, on the other hand, is far less clear. Whilst their status as subjects of international law is widely recognised, their responsibility for their international acts has not yet been precisely defined in spite of their presence in large numbers and in spite of their intensive international operations.

After the creation of the UN and especially subsequent to the confirmation by the ICJ of its status as an "international legal person", it became apparent that this kind of international person like states may perform acts contrary to the norms of the international law; therefore, questions such as whether or not the organisations are responsible for their unlawful undertakings arose. Only one year after the decision on the *Reparations* case, Professor C. Eagleton predicted that "the UN may be expected to assume responsibility for acts of these agents injurious to others."⁽⁸⁹⁾ In rejecting hypothesised arguments to the effect of exempting the UN from responsibility, he stated:

"The United Nations has been given a legal status which enables it to do harm to others in certain situations, and it must, as a legal person, be able to repair the damages which it does. It is reasonable, however, to take into consideration its limited legal capacity, which would reduce its field of responsibility, and to take into consideration its different structure and procedures, which might require settlement of claims against it in a fashion different from that to which states are accustomed." (90)

a. Responsibility

Such a growing tendency to hold international organisations responsible for their acts seemingly went hand in hand with the acceptance of the international juridical personality of the organisations; hence, the scope of the former became dependent on that of the latter. In the case of states, their possible areas of responsibilities are extensive by reason of their inherent wide powers; whereas in the case of international organisations, their responsibilities may arise in those fields in which they are expressly or implicitly allowed to function. Thus, if one did not depart from the assumption that international organisations have objective international legal personality, one would find the areas of possible responsibility vary from one organisation to another in accordance with their charters.

Generally, responsibility might arise from the inevitable contacts between international organisations, during the course of their operation, and other subjects of law, be it a state-member or non-member, an international organisation or other subject of international law.

The responsibility of international organisations to observe the norms of international law in their field of operation is exemplified by the acceptance by the UN of the responsibility and the liability for the damage caused by the UN forces engaged in peacekeeping in parts of the world. The agreement concluded between

the UN and Belgium⁽⁹¹⁾ is an indication that the international community accepted the concept of holding the organisation alone responsible for its illegal acts.

Similarly, codified international law has taken notice of the legal development regarding responsibility of international organisations to comply with the rules governing relations of the international community as well as their responsibility to shoulder liability resulting therefrom, as discussed below. The *Convention on the Law of the Sea* of 1982, for example, attaches a responsibility to international organisations to observe the provisions concerned of the treaty in their area of operation; under the title "Responsibility to Ensure Compliance and Liability for Damage", Article 139 (1) reads:

1. States parties shall have the responsibility to ensure that activities in the Area, whether carried out by States Parties, or State enterprises or national or juridical persons which possess the nationality of States Parties or are effectively controlled by them or their nationals, shall be carried out in conformity with this part. *The same responsibility applies to international organisations for activities in the Area carried out by such organisations.*⁽⁹²⁾ (my italics)

In the area of marine scientific research, Article 263 (1) of the aforesaid convention states:

1. States and *competent international organisations* shall be responsible for ensuring that marine scientific research, whether undertaken by them or on their behalf, is conducted in accordance with this convention.⁽⁹³⁾

Both articles call upon international organisations to fulfil those obligations themselves: no reference is made to member states. The *Convention on the Law of the Sea* and others, e.g. the Space Treaty, Article VI,⁽⁹⁴⁾ have added to the development of the law of responsibility on the part of international organisations which is generally in a state of evolution.

b. Liability

Non-compliance may result in injury, a matter that is likely to generate a search for who is to be liable for the damages. At this stage, thus, the question becomes: who is internationally the liable person?

The departure point for this discussion is the submission that international legal personality of international organisations is derived from the explicit or implicit terms of their constituent instruments, as opposed to general or customary international law. Hence, non-members may accept such personality expressly or tacitly. This is meant to overcome the difficulty of explaining how non-members of regional organisations come to be obliged to accept the juridical personality of an entity set up by few subjects of international law; and at the same time, it serves the purpose of making good the losses of non-members caused by the organisation.

Turning to the question of who bears the liability, should the organisation be held responsible for unlawful acts, there are several possibilities, depending on the nature of the organisation, the provisions of its charter and the intention of the founders. These possibilities include:

1. holding member states liable for the damage caused by their organisation;
2. holding the organisation itself alone liable; and
3. holding the organisation as the primary liable legal person and its member states only secondarily liable, e.g. in case the organisation is unable to discharge its debts.

Holding member states exclusively liable may succeed provided that it can be established that the organisation in question has no legal personality distinct from

those of its members, or, alternatively, if it can be proven that the concerned organisation is a mere agent for the member states.

On the first alternative, success is dependent upon whether the organisation is explicitly or implicitly endowed with legal personality; but prior to that it has to meet the requirements, examined in section A, for the condition of legal personality. Non-satisfaction of these requirements and the absence of explicit or implicit language on the legal personality of the concerned organisation makes it vulnerable to attack as a non- international person separate from its members. In such a case, members are likely to be found liable for acts of their organisation.

In *The International Tin Council* case, Lord Templeman found that the ITC had a legal personality distinct in law from its members; therefore he exonerated its members from liability.⁽⁹⁵⁾ The essence of his opinion was that once the international personality is established no direct liability on the parts of the members can be attributed. But can an organisation have such a personality and still escape liability on the grounds of being a mere agent for its members?

This issue was faced by the Court of Appeal in *The International Tin Council* case; Ralph Gibson L J states that

"The relationship of agency ... is based on the consent of both parties... The consent of the parties may be implied from their conduct or from their positions with regard to each other."⁽⁹⁶⁾

He then examined the constituent treaty of the ITC to identify what the intention of the parties was. He concluded:

"It is ... impossible to argue that the terms of the Sixth Agreement demonstrate the real consent of all the members that the ITC should contract as agent for the members...⁽⁹⁷⁾ The powers and duties of the members and of the ITC, and of the officers of the ITC, and the use of those powers in the making of contracts,

do not, given that the ITC has legal personality separate from its members, amount in law to the relationship of agency ... " (98)

Such a relationship in a nutshell is difficult to establish in the case of an organisation expressly vested with legal personality. An argument for agency relationship succeeds in cases where such a relationship is either expressly or implicitly provided for.

The second possibility of locating the liability is holding the organisation exclusively liable. The practice of the UN contains a precedent in which it was found in violation of its international duties and thus held liable for that misconduct. As a result of wrongful acts by officers of the UN in the Congo, it paid a sum of money to the government of Belgium as compensation for the harm done. (99) It is understood that the UN alone bore the liability. National adjudication, furthermore, had held an organisation exclusively liable for its conduct. (100) Although those two cases do not create customary international law on the point, they do mirror the existence of legal theory that finds the organisation as such liable.

The third possibility is finding the organisation primarily liable whilst its members have only secondary liabilities, i.e., if the liability is not discharged by the organisation, it is to be borne by member states. This is the opinion of Schermers as reflected in his much read *International Institutional Law* of 1980. He wrote:

"Under national legal systems, companies can be created with restricted liability. An express provision thus enables natural persons to create, under specific conditions, a new law in such a way that they are no longer personally liable for the acts of the new person.

In international law no such provision exists. It is therefore impossible to create international legal persons in such a way as to limit the responsibility of the individual Members. Even though international organisations, as international persons, may be held liable under international law for the acts they perform, this cannot exclude the secondary liability of the Member States themselves. When an international organisation is unable to meet its liabilities, the Members

are obliged to stand in, according to the amount by which each member is assessed for contributions to the organisation's budgets." (101)

The message he is conveying is clear; that is, notwithstanding the distinct international legal personality of an organisation, its members are secondarily liable should the organisation default on its liability. Yet the phrase regarding limiting the liability of member states in international law calls for further examination; it reads: "In international law no such provision exist."

If he meant that no treaty had contained a provision limiting the liability of its members, his perception is wide open to questioning; for even up to the publishing date of his valuable book, at least 16 treaties included such provisions limiting or excluding liability of member states. (102) If he meant that no such provisions may legally be made on the international level, his contention does not seem very plausible since subjects of international law when making treaties are at liberty to decide the terms of their agreements provided that they do not conflict with international law. In addition, Schermers' statement contradicts other authoritative writings which are of no less value in examining the meaning of international law on this matter, i.e. the bearer of liability.

Dr. Shihata, for instance, speaks of limited liability in international law; he also recognises the possible presence of unlimited liability provisions; but unlike Schermers who rejects the existence of provisions on limitation of liability as a matter of international law, Dr. Shihata emphasises the role of the intention of the parties and how it was made known to third parties in deciding whether the liability of member states is limited or otherwise. Examination of the parties' intention, according to Shihata, requires the studying of all relevant provisions of the constituent instruments

as well as the circumstances under which the organisation emerged and operated. To ascertain how he has formulated his view, the following is a passage from his article:

"A question usually raised in this respect is whether the members of an international company can be held liable to third parties for its acts. It has been argued that since the company has an independent personality, the states constituting it will not be answerable to its creditors unless some misconduct or negligence can be imparted to them in the exercise of their supervision over its activities. Influenced by the same logic some writers suggested that only the state exercising control over the company (*l'etat- tuteur*) assumes an unlimited liability. Others, having found no rule of limited liability in international law, concluded that all member states are liable beyond the limits of the value of their shares. My point here is that we cannot conclude a rule of unlimited liability merely from the absence of a rule of limited liability in international law. All relevant provisions and circumstances must be studied to ascertain what was intended by the parties in this respect and the extent to which their intention was made known to third parties dealing with the enterprise. Present general rules of international law cannot, in my opinion, be quoted as basis of the unlimited liability of the parties to an international corporation for its acts or omissions, unless of course the corporation is considered, despite its independent personality, an organ of the states establishing it." (103)

The inference that can be made is that Dr. Shihata would argue that an express or implied terms excluding or limiting liability of the members would put third parties on notice of the member's intention and thus relieve them of or limit their liability.

The issue of limitation of liability, when the constitution of the concerned organisation is silent, was considered and decided by an international arbitration tribunal. In *Westland Helicopters Ltd. v. Arab Organisation for Industrialisation (AOI)* (104) the question was whether its four member states were liable for discharging the obligation incurred by the AOI before its collapse. The Tribunal took the view that the attribution of legal personality does not by itself exclude member states from liability. Then it examined the constitution of AOI which it found silent on the matter of liability. Next, it examined the features of AOI in terms of form and as it operates. Its conclusion was that the absence of any provision explicitly or implicitly excluding

the liability of the members coupled with the fact that the express legal personality of the AOI was limited to operational needs and the fact that the member states had obligated themselves to the UK guaranteeing the obligation of the AOI towards British companies all pointed towards the liability of member states; therefore, it held that the members of the AOI were liable.

In summary, responsibility and liability of international organisations have gradually been recognised although no complete picture of their law of responsibility has been drawn. Seemingly, apart from the allocation of liability, the international norms governing the responsibility of states are applicable to them as well unless there are special rules determining the organisations' responsibility.⁽¹⁰⁵⁾ It appears that the notion of legal personality plays a major role in measuring the magnitude of their responsibility in spite of the fact that such an attribute may not bar holding their members indirectly liable. It has been shown that establishing the existence of such an attribute may only deter direct action against member states. Also it mitigates the possibility of agent/principle and/or the mere harmonisation character of the concerned organisation for the purpose of allocating liability, unless, of course, either or both is in fact the legal relationship established.

3.B.II: The GCC

The GCC is, as mentioned above, endowed with a international personality as well as the expressly provided legal personality under the private law of its Member States, as discussed above. As an international person and during its operation, the GCC, as other subjects of international law, is able to do harm to others, whether to its own members, to non- members or to other subjects of international law. While

discharging its functions, it may violate norms of international law. This is so because the areas where the GCC is capable of doing damage are fairly wide.

As noted earlier, it is responsible for compliance with international law, be it treaty-based or customary. Its ships and aircraft, should it possess such, are obliged to observe the international rules involved. The GCC, as an international organisation with an international personality, is bound by those conventions addressing international organisations along with states, e.g. the aforementioned *Convention on the Law of the Sea* of 1982, if and when it becomes a party.

Briefly, the international personality of the GCC introduced it to the international community as a subject of international law; therefore, it will be responsible for its acts which violate rights of other international persons. In general, it will be liable to the injured State or organisation for the damage which it has done. As the *Westland* case and Dr. Shihata suggest, there may be exceptional circumstances where the acts of the organisation occasion the responsibility of its Members. These special cases will depend on the nature of the GCC and the intention of its Members.

To begin with, the GCC is not an agent for its Members. It has been expressly granted legal personality under the legal systems of Member States. It has been implicitly endowed with an international legal personality. It has a number of international contacts including the entering into agreement with the host of its headquarters, i.e. Saudi Arabia. All of this gives support to the contention rejecting the agent/principle relationship between the GCC and its Members, especially with the absence of provisions on agency; in addition, it points towards the existence of the GCC as a distinct legal entity. As such, Member States should not be held directly liable for acts of the GCC. Yet the question remains whether the Members can escape

liability only because they establish an organisation satisfying the requirements of public intergovernmental organisation and endowed with legal personality.

Views of distinguished international jurists on this issue have been cited and studied in the previous section. Additionally, the judgment of the international tribunal in the *Westland* case on the very question was also examined. Apart from the opinion of Schermers, the available international legal literature on the subject resorts to the provisions of the constitutions in determining the intentions and measuring the extent of the members' liability once the legal personality of the organisation concerned is found. In the case of the GCC, its Charter contains no clause limiting or excluding liability of Member States. There is no apparent reason for omitting provision on the matter in the Charter. No inference should be made one way or another. In international law, Shihata points out that "we cannot include a rule of unlimited liability merely from the absence of a rule of limited liability."⁽¹⁰⁶⁾ Resort, then should be made to the intention of the parties of the GCC as suggested by Shihata and as carried out by the arbitrators in the *Westland* case. Such intention may be reflected in the Charter of the GCC and/or the general features of the GCC, i.e. framework and operation. Terms of the Charter, whether explicit or implicit, do not point to non-, full or limited liability; they appear neutral on the subject. Its framework does not differ much from that of the UN which has, as noted earlier, borne liability by itself. As it is, and without express, or what amounts to express, acceptance of liability, the six Member States would probably not be bound by its obligations, as decided by the *International Tin Council* case.⁽¹⁰⁷⁾

As a moral issue, the Members should stand and discharge the liability incurred by the GCC, but such an approach is of a diplomatic nature, and is therefore irrelevant to this issue.

3.C: The GCC Personality and the Municipal Legal Systems

3.C.I: Municipal Juridical Personalities

Public international organisations which satisfy the requirements for acquiring the title of public permanent intergovernmental organisation will nonetheless be in constant need, while discharging their functions, of performing private-like transactions with private, natural or legal persons, or with other international organisations. This was observed in 1945 by C.W. Jenks who proposed determining specifically the status of international organisations when dealing under private law with third parties. He wrote:

"Even though created as instruments of co-operation between governments and not entrusted with direct authority over individuals or called upon to discharge operating functions on an extensive scale, public international organisations of a permanent character which have responsibilities of any substantial importance will almost always be called upon ... to enter into a wide variety of legal relations with individuals and corporate bodies in connection with banking transactions, real property, contracts for supplies, public utility services, transportation and insurance, printing contracts, copyright and other matters." (108)

He then suggested that founding treaties should specifically confer legal personality on the organisations created thereunder in all appropriate cases." In other words, he was more specific in describing what is needed. He stated:

"In the light of experience it appears desirable that the constitutions of all new international organisations should embody general principles which guarantee effectively the independence of the organisation and its agents by the grant of appropriate immunities and ensure that the organisation will enjoy all the facilities in regard to communications, exchange arrangements, travel arrangements and similar matters which governments customarily extend to each other to facilitate the conduct of official business." (109)

In response to such a call, the constitution of the GCC provided in Article 17 that the GCC (and its subsidiaries) on the territories of all the six Member States, such legal competence, privileges and immunities necessary for carrying out its functions and realisation of its aims. Moreover, Article 1 of the *Convention on the Privileges and Immunities of the GCC* (hereinafter referred to as the *Convention*) provides it with independent legal personality under the law of Member States;⁽¹¹⁰⁾ it may, in particular, acquire or dispose of movable or immovable property, conclude contracts and be a party to legal proceedings. As such, the GCC legal personality in national laws of the Member States should be undisputed. These provisions allow the GCC and its subsidiaries to act within the national legal systems of its Members as legal persons. The said legal systems grant legal status to the GCC in the laws ratifying the Charter,⁽¹¹¹⁾ and the *Convention*.⁽¹¹²⁾

The GCC, like other international organisations having personality in domestic legal systems, is granted not only the capacity to act but also extensive privileges and immunities, as will be shown.

The enumeration of some of the legal capacities of the GCC under private law is probably not limitative. Those mentioned capacities are but examples of what is necessary for the realisation of its aims. Ignaz Seidl-Hohenveldern is of the opinion that "In its private law capacity an organisation can perform any act, which may be performed by any other person enjoying a private law personality," provided that they are in "a reasonably close connection with the aim".⁽¹¹³⁾ So far, discussion has been focusing on the private law capacity of the GCC in the territories of its six Members.

In states which are non-members of the GCC, its legal personality for the purposes of private law may be recognised even in states that do not recognise it for

the purposes of public international law. In cases where the GCC is in fact recognised as possessing international legal personality, one opinion holds, its "legal personality under private law follows from the international personality."⁽¹¹⁴⁾ Alternatively, municipal legal personality could be granted in accordance with the rules of conflict of laws, if recognised, that the legal personality granted by a law of state to an entity may be recognised in another.⁽¹¹⁵⁾ This alternative is available for non-members to recognise the GCC in its private law capacities while, should they wish, denying its recognition as an international juridical person.

Under this rule of conflict of laws, the House of Lords held the Arab Monetary Fund, AMF, an international banking organisation established in 1976 by a treaty, entitled to recognition by English courts as a foreign municipal juridical person with the capacity to bring proceedings in the English courts; it based its decision on the fact that the AMF's treaty was incorporated into the municipal law of the UAE which conferred on the AMF legal personality and made it a corporate body which the English courts would recognise.⁽¹¹⁶⁾ Furthermore, in the case of *The International Tin Council v. Amalgamet Inc.*, the New York court recognised the existence of the ITC, although the US was not a party to its charter, because of its personality in UK law.⁽¹¹⁷⁾

3.C.II: Privileges and Immunities of the GCC

By reason of the need for an independent organisation, laws of Member States are subject to limitations. The *Convention* contains a number of limitations; so probably does the Headquarters Agreement. Other restrictions on the application of domestic law may follow from other documents of the GCC subsidiaries.

The *Convention* provides the GCC, including its branches, the governmental representatives, officials, experts and advisers, with privileges and grants them immunities, all of which are aimed at securing the independence and effective functioning of the GCC. Such privileges and immunities impose limits on the application of domestic law or its adjudication in national courts. Seemingly, therefore, a somewhat detailed account of these privileges and immunities is worthwhile. Such discussion aimed at measuring the preferentials accorded to the GCC in the national legal systems. It should also show whether the possible unjust result in respect to the GCC transactions with private persons is mitigated.

In contrast to the previous international capacity of the GCC, i.e. treaty-making, its right of privileges and immunities has been expressly provided since its inception. First, the Charter itself granted to it in Article 17 the privileges and immunities enjoyed by similar organisations. Thereafter, in response to the call made also by its Charter, the *Convention on the Privileges and Immunities of the GCC* was concluded by the Member States.⁽¹¹⁸⁾ Hence, the GCC legally holds its privileges and immunities based on the express terms of this multilateral Convention. This section will examine the scope of these privileges and immunities; the order will be in accordance with that of the Convention.

The GCC is granted an independent legal personality, and in particular the juridical capacity to conclude contracts, own, dispose of and assign real and personal properties and funds, and be a party to litigation.⁽¹¹⁹⁾ In addition, the property and assets of the GCC enjoy immunity from legal process unless such immunity is waived expressly by the General Secretary; such waiver, however, does not extend to the procedure of execution.⁽¹²⁰⁾ Moreover, the properties belonging to the GCC are

inviolable; in any Member State, they are not to be inspected, confiscated, seized, appropriated or suffer any similar act or measure of execution or compulsory procedure. ⁽¹²¹⁾ Archives and documents of the GCC are also inviolable. ⁽¹²²⁾ Further, Member States are obliged to secure the continuous and full utilisation of the GCC properties in their respective territories. ⁽¹²³⁾

On the fiscal immunities of the GCC, Article 4 (a) grants it the freedom from financial or organisational restrictions on the holding and depositing of money in any currency; paragraph (b) of the same Article further provides it with liberty to receive, carry and transfer money in any currency desired from one State to another or within the same State. Also, its fiscal immunities include its exemption in the territory of any Member from direct taxes and customs duties on its real and movable properties, funds and assets, with the exception of fees charged for public utilities and services. ⁽¹²⁴⁾ It is also exempted from laws and orders restricting or prohibiting the import or export of materials and equipment provided that these items are for the official use of the GCC. ⁽¹²⁵⁾

In regard to its communicational privileges, Article 6 (b) exempts it from customs duties, laws and orders prohibiting or restricting the import or export of its publications and printed matter, apart from the fees charged for public services. Generally, all correspondence and means of communication of the GCC are treated in the territory of each Member State in the same manner in which the respective Member State treats any other state, and its diplomatic mission or any international organisation. ⁽¹²⁶⁾ According to Article 9, the GCC may use ciphers, diplomatic messengers or bags, all of which enjoy the same privileges and immunities granted to

the diplomatic missions in the Member States. Furthermore, its correspondence is free from censorship during peace-time. ⁽¹²⁷⁾

Representatives of Member States are the concern of Articles 11 - 14 of the *Convention*. According to Article 11, governmental representatives in this *Convention* include not only the representatives themselves but also "their assistants, advisers, technical experts and the secretaries delegated with them." Article 12 grants the representatives of Member States including those who participate in a GCC conference provided they are not representatives of the host state while discharging their tasks and travelling to and from the conference venue, the following privileges and immunities:

1. they enjoy immunity from arrest and detention of their persons and from the seizure of their personal belongings;
2. they are also granted immunity from legal process even after the lapse of their official appointments for acts performed in official capacities;
3. their documents and written deeds are inviolable;
4. they are at liberty to use ciphers and receive their correspondence by means of special messenger or sealed bags;
5. they, together with their families, are to be granted the necessary visas;
6. they enjoy the facilities made available to foreign states' delegates sent in an interim official mission in respect of the regulations of stock exchange and hard currency.

However, the above immunities are, according to Article 13, to be waived by Member States in cases where it becomes obvious that such immunity impedes the course of justice and the Member State can do so without prejudice to the objective for which it was originally granted.

As regards the permanent missions and delegations, Article 14 provides them, together with their members, with the same privileges and immunities granted to the diplomatic missions and their members at any Member State.

Officials of the Secretariat-General are granted different privileges and immunities based on their rank and State of origin. However, Article 15 confers upon the officials of the Secretariat-General, regardless of their nationality and probably their rank, the following:

1. immunity from arrest or seizure for acts performed by them in their official capacities;
2. immunity from legal process for any acts they committed while in their capacities as GCC officials, even after the lapse of such capacities; and
3. exemption from income tax on their salary and remunerations earned or earnable by them from their jobs at the GCC.

Article 16 singles out the Secretary-General and the Assistant Secretaries and their families, and grants them, in addition to the three immunities mentioned above, the recognised status of the heads of diplomatic missions in the Member States, regardless of their nationality.

Article 17 picks up the officials of grade 8 and above, providing them, together with their families, the same privileges and immunities enjoyed by their counterparts at the diplomatic missions of the Member States.

Those officials, other than the Secretary-General, his assistants, officials of grade 8 and above, and official citizens of the Seat-State, i.e. now the Saudis, are granted, probably in addition to those privileges and immunities stated in Article 15, the following: ⁽¹²⁸⁾

1. exemption from civil service obligations;
2. exemption, together with their families, from immigration formalities and restrictions;
3. enjoyment of foreign exchange facilities made available to their counterparts of the diplomatic missions accredited to the Seat-State, i.e. now Saudi Arabia.
4. using the special facilities provided to diplomatic missions at the time of international crises regarding their return to their countries; and
5. exemption from customs duties within two years, commencing from the date they assume their work.

In addition, officials of the GCC Secretariat-General are privileged by the suspension, if required, of their military service for up to two years. ⁽¹²⁹⁾

Having stated this, Article 21 provides that the Secretary General may withdraw immunity if the assertion of it would result in the prevention of the application of justice, provided that it can do so without affecting the objective for

which the immunity was granted; the same Article empowers the Secretary-General to waive immunity of officials other than those of himself and the Assistant Secretary; the immunity of his Assistants are waived under the consent of the Ministerial Council. That of the Secretary-General is lifted when proposed by the Ministerial Council and approved to by the Supreme Council.

Advisers and experts who are neither representatives of Member States nor officials of the GCC, while performing their functions, enjoy privileges and immunities including the following:

1. immunity from arrest and detention and the seizure of their personal effects;
2. immunity from judicial process;
3. their documents and written deeds are inviolable;
4. freedom to use cipher and exchange correspondence with the GCC by means of special messenger or official bags;
5. the experts and advisers are offered the facilities granted to the representatives of states sent on official missions in regard to currency and foreign exchange regulations;
6. their personal effects are provided with immunity and the facilities enjoyed by diplomatic representatives;
7. they, together with their families, are exempted from immigration formalities and restrictions; and

8. their military service, when required, is suspended for up to two years. ⁽¹³⁰⁾

Those privileges and immunities of advisers and experts of the GCC may, however, be withdrawn by the Secretary-General if it is determined, as mentioned above, that such immunity would prevent the achievement of justice, and its waiver does not affect the purpose for which it was originally provided. ⁽¹³¹⁾

Settlement of disputes is provided for in Articles 24 and 25. In realisation of the fact that jurisdictional immunities granted to international organisations and their employees are not actually to free them from their duties to third parties, but only to relieve them from being obliged to appear unwillingly in national courts, Article 24 authorises the Ministerial Council to set up an *ad hoc* committee to resolve private law disputes to which the GCC is a party, or which concern officials whose immunity has not been waived.

Another type of dispute envisaged by this Convention is that which relates to the interpretation or application of the *Convention* itself, i.e. the *Convention on the Privileges and Immunities of the GCC*. In such a case, this *Convention* expects it to be resolved through negotiations or any other peaceful method accepted by the States concerned; ⁽¹³²⁾ if such methods fail, Article 25 provides for resort to the GCC Commission for Settlement of Disputes according to the terms of Article 10 of the Charter of the GCC. ⁽¹³³⁾

The above is a manifestation of how privileged the GCC is under municipal legal systems of its Member States. They offer the GCC a wide range of privileges and immunities necessary for its independence and the effective functioning of its personnel. For example, national laws on custom duties, direct taxation, censorship,

holding and transfer of currency, search, seizure, confiscation and appropriation of property are not applied to the GCC. Moreover, adjudication of national laws is curtailed by the jurisdictional immunities granted to the GCC. Such jurisdictional immunities, however, mean limiting national jurisdictions to reach the GCC without its consent. The settlement of disputes arising from acts of the GCC or its officials with private third parties eases the inconvenience jurisdictional immunities may bring about.

Summary

The GCC is a public intergovernmental organisation established in accordance with the requirements drawn by international jurists for gaining such attributes. It has been granted powers and assigned functions so that it may become able to discharge its aims effectively, internally and internationally. By necessary implication from those powers and objectives, the GCC has been granted an international juridical personality. Such personality may be recognised by non-members explicitly or implicitly.

As an international person, the GCC ought to have some measures of rights and duties by implication as necessary means for discharging its functions in an effective manner, and by implication of the attribute of international personality which would otherwise be meaningless and a mere label. For the attainment of its objectives, therefore, the GCC should be able to conclude agreements in the fields entrusted to it.

As an international actor, the GCC is responsible for the compliance with the rules and laws governing the activities of international legal subjects.

In the municipal legal systems of the Member States, on the other hand, its legal personality is beyond doubt. Even in non-member states' territories, and for private law purposes, it is likely to be provided with such personality by way of the rules of conflict of laws. What has been granted is that which preserves its independence from the Member States: this is manifest in the *Convention of Privileges and Immunities of the GCC*. The said Convention provides the GCC, its subsidiaries and officials with all necessary privileges and immunities in the territories of its Member States. The range and nature of the privileges and immunities of the GCC, as has been shown, even if they attach only to the personality of the organisation in a particular municipal legal system, are such that they can be explained only by the recognition of the international status of the GCC. States do not confer comparable privileges and immunities on ordinary legal persons in their legal system or on those of other legal systems whose personality they are prepared to recognise.

Generally, it appears even clearer that problems related to the legal status of the organisation whether internal or international, responsibility and liability should be tackled by the founding treaty; in doing so, a third party doing business with the organisation, whether in its private law capacity or that of its international law, is made aware of the status of that organisation.

References and Notes

1. On the relationship between the international legal areas of the GCC and the domestic legal systems of its Members, see Chapter seven.
2. see William W. Bishop, Jr., *International Law: Cases and Materials*, 3rd Edition, (Boston: Little, Brown and Company, 1971), p.301, where he lists those qualifications as follows:
 - a. a permanent population;
 - b. a defined territory;
 - c. government; and
 - d. capacity to enter into relations with other states.
3. Dr. Mohammad I. Ali, *International Organisations: A Brief*, [in Arabic], (Cairo: Dar al-Ketab al-Jam'ai, 1982), p.213.

4. see Dr. Ahmad Abu-al-wafa, *The Law of International Organisations*, [in Arabic] (Cairo: Dar al-Nahdah al- Arabiah, 1985-86), pp. 58-60, quoting Quadi, *La personnalité internationale de la communalité*, 3e colloque de Lige, 1969, pp.41-74.
5. Dr. Mohammad Ali, *supra* note 3, p.215.
6. The conference notably did not reject the international personality of the UN; it mainly saw it superfluous to include a provision on the international personality in the text; "Report of the Rapporteur of Committee" IV/2 (U.N.C.I.O. Doc.933; IV/2/42(2), p.8.
7. "Reparation for injuries suffered in the service of the United Nations, Advisory Opinion": *I.C.J. Reports* 1949, p.174 at p.175." It is worth mentioning that the ICJ answered question II in words, some of which read:

The risk of competition between the Organisations and the national State can be reduced or eliminated either by a general convention or by agreements entered into in each particular case. There is no doubt that in due course a practice will be developed, and it is worthy of note that already certain States whose nationals have been injured in the performance of missions undertaken for the Organisation have shown a reasonable and co- operative disposition to find a practical solution.

The questions of reconciling action by the Organisation with the rights of a national State may arise in another way; that is to say, when the agent bears the nationality of the defendant state.

In law ... it does not seem that the fact of the possession of the nationality of the defendant State by the agent constitutes any obstacle to a claim brought by the Organisation for a breach of obligations towards it occurring in relation to the performance of his mission by that agent.

8. *Ibid*, p.185.
9. *Ibid*, p.178.
10. *Ibid*.
11. *Ibid*, pp.178-179.
12. *Ibid*, p.179.
13. *Ibid*.
14. *Ibid*.
15. *Ibid*, p.180.
16. *Ibid*, p.178.
17. *Ibid*, p.185.
18. see Henry G. Schermers, *International Institutional Law*, (The Netherlands: Sijthoff & Noordhoff, 1980), p.778. Also, see Hugo J. Hahn, "Euratom: The Concept of an International Personality," 71 *Harvard Law Review* (1958), pp.1001-1056, at p.1049.
19. Dr. Abu-al-wafa, *supra* note 4, p.64.
20. Finn Seyersted, "International Personality of Intergovernmental Organisations: Do Their Capacities Really Depend Upon Their Constitutions," 4 *IJIL*, (1964), pp.1-74, at p.68.
21. see *Ibid*, pp.40-53.
22. *Ibid*, p.20.
23. *Ibid*.
24. *Ibid*, p.68.
25. *Ibid*.
26. *Ibid*, p.68.
27. *Ibid*, p.69.
28. see for example, Ignaz Seidl-Hohenveldern, "The Legal Personality of International and Supranational Organisations," 21 *Rev.Egypt.D.I.*, (1965), pp.35-72, at p.39; *Reparations*, (1949),

- supra note 7; D.W. Bowett, *The Law of International Institutions*, 4th ed (London: Steven & Sons, 1982), p.339; Hans Kelsen, *The Law of the United Nations*, (London: Stevens & Sons, 1951), pp.329-330.
29. see, for example, Seidl-Hohenveldern, supra note 28, p.71.
 30. see, for example, Dr. Manuel Rama-Montaldo, "International Legal Personality and Implied Powers of International Organisations", 44 *BYIL*, (1971), pp.111-155, at p.245. Also, Finn Seyersted, supra note 20, p.178.
 31. *Reparations*, (1949), supra note 7, p.178.
 32. Reuter, *The Law of International Institutions*, (1958), p.215.
 33. The Soviet doctrinal international law is too of the opinion that a permanent organ is required. See Chris Osakwe "Contemporary Soviet Doctrine on the Juridical Nature of Universal International Organisations," 65 *AJIL* (1971), p.504-521, at p.513.
 34. see, for example, Dr. Ibrahim M. Makarem, *The Legal Personality of International Organisations*, [in Arabic], (Cairo: Dar al-Nahdah al-Arabiah, 1975-76, p.134. XX
 35. *Reparations* (1949), supra note 7, p.179.
 36. *Ibid*, pp.178-179.
 37. see, for example, Rama-Montaldo, supra note 30, p.246.
 38. Chris Osakwe, supra note 33, pp.512-513.
 39. see, G. I. Tunkin, "The Legal Nature of the United Nations," 119 *RdC* (1966, III), pp.1-67 at p.30.
 40. Sir Gerald Fitzmaurice' view on the autonomy of the UN is stated in his article "The Law and Procedure of the International Court of Justice: International Organisations and Tribunals," 29 *BYIL*, (1952), pp.1-62, at p.21.
 41. *The Legal Nature of the United Nations*, supra note 39, p.32.
 42. *Ibid*, p.29.
 43. G. I. Tunkin ed., *International Law: A Textbook*, (Moscow: Progress Publishers, 1982), pp.190-191.
 44. See the Memorandum of the USSR Government on the question of financing the UN emergency force in the Middle East and the UN operations in the Congo included in "I.C.J. Pleadings, Certain Expenses of the United Nations", (Article 17, paragraph 2 of the Charter), pp.270-274.
 45. see "Certain expenses of the United Nations", (Article 17, paragraph 2, of the Charter), Advisory opinion of 20 July 1962: *ICJ Reports*, 1962, p.151.
 46. see, for example, Dr. Mustafa A.Fuad, *The General Theory of the Law of International Institutions*, [in Arabic], (Alexandria: Mansha'at al-Ma'aref, 1986), pp.137-138.
 47. Dr. Rama-Montaldo, supra note 30, p.145.
 48. *Ibid*, p.145, no.1.
 49. Schermers, supra note 18, p.10. Brownlie is also of the opinion that treaty "is by no means necessary and the source could equally be the resolution of a conference of States or a uniform practice", *infra* note 69, pp.682-683.
 50. Seyersted, supra note 20, pp.43-48.
 51. *Reparations* (1949), supra note 7, p.178- 79.
 52. Finn Seyersted, "Is the International Personality of Intergovernmental Organisations Valid *vis-à-vis* Non- Members," 4 *IJIL* (1964), pp.233-265 at p.260.
 53. see, for example, Hahn, supra note 18, p.1049.
 54. G.I. Tunkin, *Theory of International Law*, (London: George Allen & Unwin Ltd, 1974), p.364. Also *Reparations*, (1949), supra note 7, p.185.
 55. *Reparations* (1949), supra note 7, p.185.

56. For the text of the Unified Economic Agreement between the GCC Member States, see vol. 2 of this work pp. 52-59. The relationship between GCC law and that of Member States is dealt with in Chapter seven.
57. *Reparations* (1949) supra note 7, pp. 178- 179.
58. For the text of the GCC Charter, see vol. 2 of this work, pp.1-11.
59. For the text of the Convention on Privileges and Immunities of the GCC, see vol.2 of this work, pp.117-127.
60. Dr. Ibrahim Shihata, "Role of Law in Economic Development: The Legal Problems of International Public Ventures," 25 *Rev.Egypt.D.I.*, (1969), p.119-128, at p.123.
61. Guenter Weissberg, *International Status of the United Nations*, (Ney York: Oceana Publications, 1961), p.12.
62. Ibid.
63. *Reparations* (1949), supra note 7, p.179.
64. The Secretary General of the GCC concluded it with the State of Saudi Arabia during the tenth GCC Summit, personal interview with the Director of the Legal Sector of the GCC Secretariat General on 26 January 1991.
65. Seyersted "International Personality of Intergovernmental Organisations," supra note 20, p.20.
66. Ibid, p.22.
67. Kelsen, supra note 28, p.330.
68. *Reparations*, (1949), supra note 7, p.182.
69. see, for example, D. W. Bowett, supra note 28, p.342. See also Ian Brownlie, *Principles of Public International Law*, 4th ed, (Oxford: Clarendon Press, 1990), p.684. It is worth mentioning that both Bowett, at 337, and Brownlie, at 691, maintain that no specific rights, including treaty-making, or duties arise from the very fact of international personality, and that resort is to be made to the constituent instruments provisions particularly the purposes and functions of the organisation concerned. But see Guenter Weissberg, *The International Status of the United Nations*, supra note 61, at p.25 where he states:

.... it may be said that a view which maintains that international legal personality does not increase the powers, rights or competence of the organisation is highly unrealistic and fictitious.
70. *International Law: A Textbook*, supra note 43, p.191.
71. *Theory of International Law*, supra note 54, p.363.
72. The text of this Convention is reproduced in I.L.M., vol.25 (1986), pp.543-92.
73. Bowett, supra note 28, p.342.
74. Article 6 of the Vienna Convention on the Law of Treaties of 1969 provides that "every state possesses capacity to conclude treaties."
75. Charter of the GCC, Article 17(2).
76. see Bowett, supra note 28, p.342.
77. see Seyersted, "International Personality of Intergovernmental Organisations," supra note 20, pp.9-10.
78. Case 22/70, *Commission v. Council*, (1971), *E.C.R.* 263, at 274, the Court stated: Article 210 provides that 'The Community shall have legal personality'. This provision...means that in its external relations the community enjoys the capacity to establish contractual links with third countries over the whole field of objectives defined in Part One of the Treaty.... To determine in a particular case the Community's authority to enter into international agreements, regard must be had to the whole scheme of the Treaty no less than to its substantive provisions. Such authority arises not only from an express conferment by the Treaty - as is the case with Articles 113 and 114 for tariff and trade agreements and with Article 238 for association agreements - but may equally flow from other provisions of the Treaty and from measures adopted, within the framework of the provisions, by the Community institutions....

79. Cases 3, 4 and 6/76, *Cornelis Kramer and others* (1976) *E.C.R.* 1279 at 1308.
80. This is also the view of Bowett *supra* note 28, p.342.
81. see *supra* note 59.
82. The text of this agreement is produced in vol. 2 of this work, pp.128-137. For the national steps implementing this treaty, see the GCC, *Decisions on the Common Work*, (Riyadh: GCC Secretariat General, 1989) pp.342-50.
83. *Ibid*, p.129.
84. *Ibid*.
85. see the seventh, eighth, ninth and tenth Communiqués of the Supreme Council, produced in vol. 2 of this work, pp.178-203.
86. see *supra* note 64.
87. see Chapter two, pp.84-86.
88. see *supra* note 85.
89. Clyde Eagleton, "International Organisations and the Law of Responsibility", 76 *RdC* (1950-I) pp.319-423 at p.387.
90. *Ibid*, p.403.
91. Dr. Mohammad S. Al-Daggag, *International Organisations* [in Arabic] (Alexandria: Dar al-Matbo'at al- Jami'ayah, 1986, pp.320-321.
92. United Nations, *Convention on the Law of the Sea* of 1982. On liability paragraph 2 of Article 139 contains:
 2. Without prejudice to the rules of international law and Annex III, Article 22, damage caused by the failure of a State Party or *international organisation* to carry out its responsibilities under this Part [Part XI the Area] shall entail liability;
93. *Ibid*. On liability for damages caused by marine scientific research, Article 263 (2) and (3) provide:
 2. States and competent *international organisations* shall be responsible and liable for the measure they take in contravention of this Convention in respect of marine scientific research conducted by other States, their natural or juridical persons or by competent *international organisations*, and shall provide compensation for damage resulting from each measure.
 3. States and competent *international organisations* shall be responsible and liable pursuant to article 233 for damage caused by pollution of the marine environment arising out of marine scientific research undertaken by them or on their behalf. [italics are mine]
94. For the text of this Treaty, see Nandasini Jasentuliyana and Roy S.K. Lee, editors, *Manual of Space Law*, vol.II (New York: Oceana Publications, 1979), pp.1-7.
95. *Maclaine Watson & Co Ltd v. Department of Trade and Industry*, (1989) 3 All E.R., H.L. 523 at 528 and 531.
96. *Maclaine Watson & Co. Ltd v. Department of Trade and Industry*, (1988), 3 All E.R., 257 at 357.
97. *Ibid*, p.358.
98. *Ibid*.
99. see Dr. Al-Daggag, *supra* note 91, pp.320-321.
100. see *The International Tin Council* cases, *supra* 95 note.
101. Schermers, *supra* note 18, p.780.
102. see *supra* note 96, Judgment of Nourse LJ, p.333; see the list that includes those 16 agreements in the annexe to the judgment of Kerr LJ at pp.321-323 of the *International Tin Council* cases, *supra* note 96.
103. "Role of law in Economic Development", *supra* note 60, p.125.

104. see 23 *I.L.M.*, (1984), pp.1071-1089. For discussion on the case, see Andre Chapelle, "Rights of Legal Persons", [in Arabic] 9 *A.J.A.J.*, (1989), pp.526-529.
105. This the opinion of Dr. Jamal Nada as stated in his book, *Responsibility of International Organisations*, [in Arabic] (Egyptian Commission for the Book, 1986), at p.43.
106. "Role of Law in Economic Development", supra note 60, p.125.
107. see supra note 95. For a recent discussion on this issue, see C.F. Amerasinghe, "Liability to Third States of International Organisations: Practice, Principle and Judicial Precedent", 8 *A.J.I.L.* (1991) pp.259-280.
108. C. W. Jenks, "The Legal Personality of International Organisations", 22 *BYIL* (1945) p.267-275, at p.272.
109. C. W. Jenks, "Some Constitutional Problems of International Organisations", 22 *BYIL* (1945) pp.11-72 at p.58-59.
110. see supra note 59.
111. UAE: Federal Decree No.76 of 1981, *UAE Official Gazette* No.97 of 1981.
Bahrain: Law No 24 of 1981, *Bahrain Official Gazette* No 1461 of 1981.
Kuwait: Law No.44 of 1981, *Al-Kuwait Alyoum [The Official Gazette]* No. 1367 of 1981.
112. UAE: Federal Decree No.13 of 1985, the *UAE Official Gazette*, No.150 of 1985.
Bahrain: Law No.5 of 1984, *Bahrain Official Gazette* No.1586 of 1984.
Oman: Decree No 22 of 1985; *Oman Official Gazette* No.306 of 1985.
Qatar: Decree No.34 of 1984, *Qatar Official Gazette* No.7 of 1984.
Kuwait: Law No.14 of 1986, *Al-Kuwait Alyoum [The Official Gazette]*, No.1655 of 1986.
Saudi Arabia: Royal Decree No.M/41 of 1984, 13 *The GCC Legal Bulletin of 1986*, p.177.
113. see Seidl-Hohenveldern, supra note 28, p63.
114. see Schermers, supra note 18, p.791. But see the ITC case, supra note 96.
115. see, for example, Seidl-Hohenveldern, supra note 28, pp.64-65.
116. see *Arab Monetary Fund v Hashim and others*, (No.3), (1991) 1 All E.R., H.L. 870 at 873-81.
117. (1988) 524 N.Y.S. 2d.971.
118. On whether or not the GCC is a party see section 3.A.II.b of this chapter.
119. Convention on Privileges and Immunities of the GCC, Article 1. For the whole text, see vol.2 of this work, pp.117-127.
120. Ibid, Article 2(1).
121. Ibid, Article 2(2).
122. Ibid, Article 2(3).
123. Ibid, Article 3.
124. Ibid, Article 6(a) and (b).
125. Ibid, Article 6(b).
126. Ibid, Article 8.
127. Ibid, Article 10.
128. Ibid, Article 18.
129. Ibid, Article 20.
130. see Ibid, 22(h).
131. Ibid, Article 23.
132. Ibid, Article 25.
133. See chapter two, pp.54-59 for more on the said Commission.

Chapter Four

The Legal Character of the GCC

Introduction

In the first chapter some light was thrown on the development of the Gulf Corporation up to the point where the GCC materialised in 1981. In the second, certain legal aspects were examined in the light of developments in international institutional law. In the course of analysis of the legal structure of the GCC, it became clear that the GCC, on account of its being equipped with various principal and subsidiary organs, is of a permanent nature. Also it has been established that the GCC is an international person. However, nothing has yet been said about what kind of association of states the GCC is.

It is therefore the aim of this chapter to tackle the question of the legal characteristics of the GCC. For this purpose, three models for international co-operation will be analysed from a legal point of view. These models are federalism, supranationalism and confederalism. In addition, the role of law in each will be determined. This will be the subject of Section A.

Section B, on the other hand, will be concerned with the application of these models to the GCC. This is in addition to determining what law governs the relations between the Members of the GCC *inter se*.

4.A: Models for International Integration

4.A.I: Federalism

Federalism is an important concept in the theory of international integration. The literature of international organisations has been enriched by federalists through their descriptions of its history, origin, conditions, etc. In addition, some federalist theorists have been concerned with developing an academic theory of regional integration. For the purposes of this study, the classical definition of the concept of federalism, as well as the definitions by the new federalists, will be explored. Also, an examination of the impact of federalism on some of the existing organisations will be made in an endeavour to probe its usefulness as a model for regional integration.

The concept of federalism has meant different things to different scholars. The vast majority of the definitions of the concept led one particular scholar, A.H. Birch, to conclude that federalism

has no fixed meaning; its meaning in any particular study is defined by the student in a manner which is determined by the approach which he wishes to make to his material'.⁽¹⁾

However, the influential definitions drawn by pioneers on the subject can be divided into two categories. In the first of these emphasis is placed upon the concept as a state rather than as a process, and thus describes the conditions and features of the federal institution. For instance, K.C. Wheare states:

by the federal principles I meant the method of dividing powers so that the general and regional government are each, within a sphere, co-ordinate and independent.⁽²⁾

Although description of federalism varies from one writer to another, it seems that there is some agreement on the division of powers between the sections of government and the utilisation of some formulas of majority or weighted voting

systems as in the case of the U.S. Some authors have enumerated requirements, the presence of which is necessary for an institution to be regarded as federal. These requirements encompass, besides what was mentioned above,

- independence between central and local governments,
- direct contact between both governments and the people,
- a certain degree of independence of member states to manage their own internal affairs,
- legal equality of member states and
- a constitutional court.⁽³⁾

This classical theory of federalism offers little, if anything at all, for integration in most parts of the world, inasmuch as it relies heavily on the American school of federalism for its definition and the description of a federal state. Reliance on the American school may lead advocates of this theory to reject existing federations simply because they are not based on American models. Such a view is overly narrow, since it ignores the values upon which other federations of the world were built.

In brief, the classical approach to federalism is of little use for integration, since it requires rapid adjustment to the new structure and the surrender of the greater part of members' sovereignty. This may also be attributed to the fact that the driving force behind modern-day federative endeavours are different from previous ones, which were induced by a desire for independence or fear of the immediate danger of war: these states were therefore ready to move rapidly beyond the nation-state. Nowadays the driving force for integration allows time for reaching the ultimate end of federation over a suitable period. This fact has necessitated the improvement of the definition of federalism along with its conditions. Those authors who have realised this may best be described as 'new federalists', seeing federalism as a process rather than as a condition which is either present or absent.

These new federalists constitute the second category of federalist theorists: their definition of federalism is illustrated in a work by C.J. Friedrich, in which he mentions that federalism is

The process by which a number of separate political communities enter into arrangements for working out solutions, adopting joint policies, and making joint decisions on joint problems, and, conversely, also the process by which a unitary political community becomes differentiated into a federal organised whole.... In short, we have federalism only if a set of political communities coexist and integrate as autonomous entities, united in common order with an autonomy of its own.⁽⁴⁾

It is not only this approach, as well as numerous writings about the European Communities, that chiefly called attention to a need to consider the concept of federalism in connection with the GCC, but also the fact that the federalising process ranges from the establishment of a mere league to the construction of a federal state. What lies between the two is the federalising process, which is subject to a considerable degree of variation. Thus, although there is an apparent difference among for instance the UN, GCC and the European Communities, each constitutes part of a federalising process. Most of the existing international organisations have one or more federal features. The more federal characteristics found in an institution, the closer it moves to the federal model. The most important test, it seems, is whether an institution has any federal aspiration in its constitution, so as to distinguish it from those of a more co-operative nature on the one hand, and those of fully centralised governments on the other.

Consequently, one can even find a federal characteristic in the UN. In addition to Article 27 of the Charter which provides for binding Security Council decisions made by a majority vote of nine of the fifteen members, including the concurring votes of the permanent members, Article 25 states:

'The members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.'

Hence, both involve relinquishment of some sovereign powers of the states. Furthermore, several organisations such as the International Monetary Fund have adopted formulas of weighted voting, which constitutes one feature of the practice of federal regimes. However, in both instances, the organisations themselves are not formally prepared for a journey to the federal bond. It is principally the lack of such federal intention which keeps them outside the concept.

By contrast, the EC, because of its federal ambitions, has departed from the traditional practice of international organisation since its inception. Thus a number of characteristics identified with federal states are exhibited by the EC but to a different degree. As such, it has reached an advanced stage in the federation process of Europe. For this reason, the EC has variously been classified as federation, partial federation, functional federation and international organisation with features resembling those of a federal state.⁽⁵⁾ Hereunder are the federal features of the EC which if found in any other integrative attempt places it where the EC is along the federal spectrum. If, however, only some federal features are shown by the new institution, it is still taking part in a federalising process, but unlike the EC, is at an early stage.

The most important characteristic of the EC which makes it resemble a federal state is the direct contact between organs of the EC and the peoples of member states. In *Van Gend and Loos v. Nederlandse Administratie Der Belastingen*, the European Court of Justice pointed out that:

The objective of the EEC Treaty, which is to establish a Common Market,..., implies that this Treaty is more than an agreement which merely creates mutual obligations between the contracting states. This view is confirmed by the

preamble to the Treaty which refers not only to governments but to peoples. It is also confirmed more specifically by the establishment of institutions endowed with sovereign rights, the existence of which affects Member States and also their citizens.⁽⁶⁾

The Court then concluded that:

The Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member States but also their nationals.⁽⁷⁾

Another federal characteristic of the EC is the European Constitutional Court, i.e. the Court of Justice of the Communities. Based on experience of successful federation, a court has been created as one of the essential bodies in the federation entity.⁽⁸⁾ The role of the EC Court was equated with those of federal states by the Advocate General in *Federation Charbonniers de Belgique v. High Authority of the ECSC* when he concluded:

... it could be objected that our [EC] Court is not an international court but the court of a community created by six states on a model which is more closely related to a federal than an international organisation....⁽⁹⁾

The European Court has jurisdiction over the acts of the EC institutions and may annul them on grounds, *inter alia*, of lack of competence or misuse of powers.⁽¹⁰⁾ In addition, it has jurisdiction to decide actions against member states brought by other members or by the EC institutions.⁽¹¹⁾ Individuals and legal persons also have standing before the Court under some circumstances.⁽¹²⁾ In general, the position of the Court in the EC is very close, but not identical, to those of federal states.

Another federal characteristic of the EC is the relative independence of the EC institutions *vis-a-vis* the member states⁽¹³⁾. Still another federal characteristic of the EC is the division of powers on the fields for which they were established. In *Costa V. ENEL*, the Court of Justice stated:

By creating a Community of unlimited duration, having its own institutions, its own personality, its own legal capacity and capacity of representation on the international plane and, more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the states to the Community, the member states have limited their sovereign rights, albeit within limited fields, and have thus created a body of law which binds both their nationals and themselves.⁽¹⁴⁾

Generally speaking, while federalism is desired in itself as an end to an integrative journey, it does not suit the ambitions of some contemporary national states which are ready to give away a certain amount of sovereignty only in instalments, and only if the institution is competent and has proved that it is qualified to bear its new responsibilities. This contention is supported by the fact that out of the vast number of international organisations, in only a few has there been any transfer of sovereign authority and then only in very limited fields. The EC is, no doubt, the fullest integrative organisation. It is more than 30 years old but it has achieved this degree of integration, at least until only recently, only in the economic fields for which it was originally established.

The above leads to the conclusion that the federal approach to international integration may be overbalanced by the functional one, even if the long-term objective of the latter is still federation. Because sovereignty is the main obstacle, the functional approach tackles the problem by merely requiring 'pooling as much of it as may be needed for the joint performance of the particular task'.⁽¹⁵⁾ Thus, sovereign power is transferred from member states to the common institution through a functional process, which in its turn pushes the organisations gradually forward along federal lines. This is probably what David Mitrany meant when he wrote:

Sovereignty cannot ... be transferred effectively through a formula, only through a function. By entrusting an authority with a certain task, carrying with it command over the requisite powers and means, a slice of sovereignty is transferred from the old authority to the new, and the accumulation of such

partial transfers in time brings about a translation of the true seat of authority.⁽¹⁶⁾

The essence of the functional approach is that supranationalising the functions of governments one at a time is more effective than the federal approach, which requires massive surrender of sovereignty. However, the functionalist approach cannot go unchallenged; on the contrary, its weakness is apparent in its avoidance of any mention of some sort of constitutional arrangement.

Some regionalists may still relinquish federalism in favour of another approach to integration: they are the neofunctionalists. The neofunctionalists set themselves apart from the functionalists by the introduction of various variables and by stressing the importance of political integration. The neofunctionalist approach assumes that integrating non-political functions will 'spill over' to integrate the more politicised functions. Generally, the neofunctionalists are in favour of a system which goes beyond the nation-state through economic integration and the establishment of a supranational institution vested with limited political power.⁽¹⁷⁾

Before turning to another form available for integration, the role of law in federal institutions should briefly be pointed out. Experience shows that in federal entities there are three different kinds of law, i.e. regional (local) law, central (federal) law and international law. While the interrelation between international law and federal law is dependent on whether the federation adheres to a monist or dualist approach, the relation between federal and local is a matter of superior and inferior. The federal law is supreme, meaning that in a case of conflict the federal law prevails. This is in addition to the direct effect of the federal law on the parts and their inhabitants. Above all, the federal law is passed by a democratically elected body. This last character of federal law may differentiate it from supranational law, which

in operation but not in the making process. Supranationalism and the role of law in supranational institutions is the subject of the following section.

4.A.II: Supranationalism

Before the establishment of the European Coal and Steel Community (ECSC), international organisations based on treaties between sovereign States were classified as international loose associations at the one end of the spectrum, or federal States at the other. The former is said to be the case when the organisation is based on the sovereign equality of its members, the principle of unanimity in the voting procedure, the non-intervention of the internal matters of member states, the governmental representation to the organs and the indirect relations between the organisation and individuals of the member States.⁽¹⁸⁾ Besides, the member States remain subject to international Law. The second form of international association which may result from the establishment of an organisation is, as mentioned earlier, a federal state. A federal state is created when two or more states merge into a single state responsible under international law; relations between the merged states are no longer governed by international law; instead, their relations with each other, as well as with the newly formed federal government, are determined by the new national (i.e. federal) law.

Prior to 1950, there was no theoretical category midway between international and federal institutions. In practice, however, there existed a few organisations which were, by reason of their functions and power, more than international yet not resembling federal regimes; these institutions included the German Zollverein and Danube Commission.⁽¹⁹⁾ Nonetheless, their peculiar features waited a long time before conceptual differentiations between them and the

traditional organisations on the one hand, and the federal entities on the other, were made. It was not until the 1950s, when the term 'supranational' was born, that such institutions were retrospectively described as supranational.⁽²⁰⁾

As such, the history of the term 'supranational' is relatively short; it dates back to 1950 when the ECSC was proposed. In a word, despite the earlier existence of supranationalism, the term 'supranationality' itself originated concurrently with the ECSC. It became the subject of discussion in 1950 when the French Foreign Minister, Robert Schumann, proposed to place the French and German coal and steel industries under a supranational authority and invited other countries to join in.⁽²¹⁾ When the ECSC materialised in 1951, the term 'supranational' made its first appearance in a legal document. Article 9(5) and (6) of the ECSC Treaty read:

The members of the High Authority shall exercise their functions in complete independence, in the general interest of the Community. In the fulfilment of their duties, they shall neither solicit nor accept instructions from any government or from any organisation. They will abstain from all conduct incompatible with the *supranational* character of their functions.

Each member state undertakes to respect this supranational character and not to seek to influence the members of the High Authority in the execution of their duties.

The term, however, did not appear in subsequent European treaties, e.g. EEC and Euratom. Furthermore, Article 9 just cited was repealed by Article 19 of the Merger Treaty signed on 8 April, 1965. Additionally, the projected European Defence Community (EDC) and European Political Community (EPC), which contain express provisions on their supranational characteristics, were both aborted.⁽²²⁾ Despite these changes, rejections and omissions of supranationality, in practice the European Communities now embrace the substance of the notion of supranationality.

The rest of this section is devoted to an inquiry into the meaning of 'supranationality' and of its elements suggested by authors in the field of law and international organisations.

Although the concept has been the subject of discussion for the last four decades, it has acquired no definite legal meaning. It has been defined differently by almost every student of the concept.⁽²³⁾ Hereunder is an examination of some of the meanings offered by recognised authors in the fields of international law and integration. Haas, after setting 'supranationalism' against 'federalism', concluded that:

Supranationality in structural terms, therefore, means the existence of governmental authorities closer to the archetype of federation than any past international organisations, but not yet identical with it. ... Supranationality in operation ... depends on the behaviour of men and groups of men. It is in this realm that the final answer to the query may be found.⁽²⁴⁾

The merit of Haas' description is that while there is a need for division of governmental power between the international and national authorities, it is the member states and the civil servants who determine the extent of the organisation's supranationality. Another definition close to that of Haas is that:

the term 'supranationality' signifies that signatory states have transferred to an international institution certain limited decision-making powers normally exercised only by the governmental organs of a sovereign state, powers which include the capability of issuing, under certain specified conditions, binding norms to the states or to their inhabitants.⁽²⁵⁾

Kunz also sees the essence of supranationality in the partial transfer of sovereign powers from the states to the supranational authority. He writes:

It [the idea of supranationality] is based not on a mere restriction, but on a transference of sovereignty, but a transference of sovereignty in a particular area only.⁽²⁶⁾

A slightly different definition is offered by Pierre Pescatore. He summarises the essence of supranationality:

in the form of three propositions: the recognition by a group of states of a complex of common values; the creation of an effective power placed at the service of these interests or values; finally, the autonomy of this power.⁽²⁷⁾

This definition emphasises two other aspects of supranationalism. The first and quite novel one is the criterion of common values. The second is the independence of the power endowed to the institution.

Having thus surveyed various definitions of supranationalism, attention is called to the elements of the concept extracted from these definitions and from those provided by other authors.

1. The first and most significant criterion is the independence of the organisation and its institutions *vis-a-vis* the national governments. Such autonomy is attained, for instance, by providing the decision-making machinery of the organisation with independent individuals. Independence of the organs is of special importance as an element of supranationality inasmuch as the term 'supranational' itself was drawn in the ECSC treaty particularly when describing the requirement of independence of members of the High Authority of the ECSC. Even after the replacement of Article 9 (5) and (6) of the ECSC by Article 19 of the Merger Treaty, 'the substance of the concept, professor Mathijsen points out, remains.'⁽²⁸⁾ The essence of independence of an organ is to allow its members to act in the general interest of the organisation.

2. Another criterion of the supranational character of an organisation is its ability to take decisions which are directly binding on both the states and their nationals. This element is seen as essential by some authors, including Robertson and Schermers⁽²⁹⁾. Pierre Pescatore, by contrast, sees the direct effect of decisions of the organisation as an accessory criterion of supranationality; in his opinion, giving too much weight to the direct relations between the common institution and the individuals of its members states in judging its supranationality

is a much too narrow conception. Whenever it is possible to achieve an autonomous will, there is supranationality even if states must, in the end, serve as 'executive arms' of that will. Of course, this involves an indirect, and hence to a certain extent hazardous, supranationality, but it is nonetheless a real supranationality which is not inconsequential. Thus, in the Communities themselves, side by side with a sphere where supranationality is exercised by provisions enjoying direct effect, there exist several spheres of action involving measures whose obligatory effect is real even though such measures are addressed only to states as such, under the form, for example, of directives and decisions.⁽³⁰⁾

At first glance, the view of Pescatore may not seem very persuasive; but, as will be mentioned, when one takes into account the fact that the usefulness of this criterion depends upon the objective and scope of the organisation (i.e. economic, military, foreign policy etc.), one soon finds ways of justifying Pescatore's classification of this element as a secondary one.

3. Financial autonomy. The budgetary independence of the organisation has been listed by authors as a condition for its supranationality. It has been argued that the institution which, in undertaking its activities, is dependent on the contribution of its members states, can be heavily influenced by the

members on account of their financial powers.⁽³¹⁾ In the case of the European Communities, for example, with describing the conditions, financial autonomy has been attained by allowing them finance from levies and tariffs. Such a way of financing the Communities has proved its usefulness.

4. The power to make decisions requiring the vote of the majority or the weighted majority.⁽³²⁾ Again the EC is an example, particularly after signing the Single European Act in 1986 which modified the decision-making process under Article 100 of the EEC Treaty. To facilitate the establishment of the internal market, Article 16 of the Single European Act requires qualified majority voting by the Council of Ministers in enumerated areas. ⁽³³⁾
5. Institutionalisation has been counted as a requirement for supranationalism. The institutions of the European Communities were suggested as models for the supranational organs, but since most international organisations, other than those of mere treaty arrangements or alliances, have the equivalent of the Council and the Commission, one author finds the essence of supranationality in the existence of a judiciary as a principal organ of the organisation and another sees it in the presence of an assembly.⁽³⁴⁾ To another author, on the other hand, institutionalisation is of secondary importance. Pierre Pescatore finds the essence of supranationality in 'a real and autonomous power placed at the service of objectives common to several states'⁽³⁵⁾ which can be accomplished even by non- institutionalised grouping through the

employment of a majority procedure, a matter which enables the gathering to take decisions not necessarily in accordance with the will of all participants.⁽³⁶⁾

6. The ability of an institution to enforce its decisions has been added to the legal literature as a criterion of supranationality.⁽³⁷⁾ However, Pescatore and Robertson rejected the connection between supranationality and the capability of the organisation to enforce its decisions by means of the application of constraint.⁽³⁸⁾ Pescatore sees the notion of 'constraint' as a federal conception,⁽³⁹⁾ and therefore, rejected it in favour of the political scientist's approach, which looks at 'integration from the point of view of its effectiveness by reference to criteria infinitely more subtle than that of constraint.'⁽⁴⁰⁾ Likewise, Robertson finds the power of enforcement to be of a federal nature. In the context of a discussion of the High Authority's ability to enforce decisions of the Community, he wrote:

The High Authority power of enforcement is, then, in the last resort, only through the medium of national governments; this is, in effect, the limit on the 'supranational'. Indeed, if its powers also include those of enforcement they would be more in the nature of those of a federal government. As it is, the supranational represents, in the words of M. Robert Schuman, 'a new step in the gradation of powers'; it must be placed, as its name implies, somewhere above the national level but it has not yet the status of a federal authority.⁽⁴¹⁾

Thus, both of these writers disregarded the enforcement power as a criterion of the supranational characteristic of an organisation. The conclusion drawn from their views is that the ability of the institution to enforce its decisions is a thin line setting federal states apart from supranational institutions.

7. The partial transfer of sovereignty to the common institution is said to be another criterion.⁽⁴²⁾ However, one author suggests, seconded by another, that 'with few exceptions, ... the criteria for the loss of sovereignty coincide with those which much of the literature regards as the elements of supranationalism.'⁽⁴³⁾ Hence, the conclusion that an institution is supranational involves the admission that an amount of sovereignty has been invested in that institution. In this sense, transfer of sovereignty may not be regarded as a criterion but as a result of the existence of a combination of criteria which requires some measure of surrender of sovereignty.

8. The impermissibility of unilateral withdrawal from the organisation.⁽⁴⁴⁾

Having assessed the criteria of supranationalism offered by the legal literature,⁽⁴⁵⁾ an inquiry will be made to answer questions such as: is it necessary for an organisation to fulfil all the above elements in order to be supranational? If not, how many elements are needed to be present in an organisation to acquire that character?

Clearly the presence of all the abovementioned criteria removes any doubt of an organisation's supranational nature. Yet it seems that in practice no organisation can now completely fulfil all elements. Even in the European Communities, the model for supranational organisations, the presence of most of the above elements varies mostly in degree from other institutions.

On the other hand, the presence of only one element should not be taken as an indication of the supranational nature of the organisation; otherwise most

international organisations now in existence would qualify as supranational. Further, supranationality would lose its attribute as a category midway between traditional organisations and federal entities. For instance, if independence of the individuals of the organs were considered the sole criterion of supranationalism, a number of international organisations such as the International Labour Organisation would be supranational.⁽⁴⁶⁾ If, furthermore, the ability of an organisation to take decisions binding on its members were the required element, the UN would be supranational since the Security Council acting under Article 25 makes binding decisions.

The presence of two or more elements of supranationality in an organisation, however, states that the organisation is run along at least some supranational lines. Hence it is probably the presence of a combination of elements which distinguishes supranational from traditional international organisations. But the question that arises here is whether there are elements, the presence of which is necessary with that combination? It seems that there are not, because the usefulness of one element or another varies from one organisation to another, depending on the objectives sought. For example, the criterion of the direct relations between the organisation and individuals of member states, which seems more useful than others, may become of secondary importance in some organisation 'due to the subject matter of their activity (for instance, foreign policy) but which are nevertheless relatively supranational when compared with other international organisations'⁽⁴⁷⁾ by reason of the existence of several of the above-mentioned elements of supranationality.

Admittedly, the task of the analyst is arduous when venturing into the classification of an organisation as supranational or international. In a few instances, though, the analyst finds it possible to identify the supranational characteristic of an

organisation, as in the case of the European Communities; but in most cases he or she discovers him/herself overwhelmed by uncertainty about the international and supranational elements which render it difficult to place the organisation one way or the other. Such vagueness has led some authors to reject the notion 'supranational' altogether.⁽⁴⁸⁾ Schermers, by contrast, has offered students a useful guide when faced with such uncertainty; after the suggestion that the notion 'supranational' be used in a relative sense, he states:

As long as we realise its relative value we can use the qualification 'supranational organisation' to indicate that the supranational elements prevail and that the organisation has considerable powers above the level of the co-operating governments. If the intergovernmental elements prevail we use the expression 'intergovernmental organisation', keeping the name 'international organisation' to refer to both.⁽⁴⁹⁾

Having surveyed the various meanings and criteria of supranationalism as well as the suggested method of its application to international organisations, discussion on this new phenomenon should be concluded. It should, however, be pointed out that in this discussion of supranationalism no full attempt has been made to apply the concept to the European Communities as a guide for its later application to the GCC; this is due in part to the fact that supranationalism was in fact born in connection with the European Communities and most, if not all, of its elements were drawn from features of the European Communities. The coming into force of the Single European Act in all member states in 1987 should remove any doubts about the EC supranationality expressed by some authors,⁽⁵⁰⁾ inasmuch as the said Act has strengthened the bonds of the EC, in particular its provision on weighted majority in defined areas which modify Article 100 of the EEC Treaty which required unanimity. In this context mentioned should be made of the "Delors Report" on economic and monetary union which if adopted would add to the supranational character of the EC

for it involves the creation of a supranational institution, i.e. a European System of Central Banks, and the transformation of the decision-making power in certain areas from national governments to the EC.⁽⁵¹⁾ This potential venture once embarked upon ought to make the supranationality of the EC beyond question. In the discussion of federalism, its application to existing international organisations was considered useful in judging whether federalism is a preferable model for international integration; therefore, the European Communities were purposely chosen to provide a foundation for the examination of the legal nature of the GCC which will be the subject of a later section of this chapter.

The law in supranational organisations differs in terms of its making process and its application from that of traditional international organisations on the one hand, and that of fully fledged federal entities (though less so), on the other. The federal law is made by a democratically elected body and directly binds the member states and their nationals and enforceable by federal as well as member states courts. In supranational institutions, the law is passed by various organs whose members are either appointed, though independent, or instructed governmental officials; in terms of application, the supranational law, as set in theory and demonstrated by the European Communities, although it has direct effect in most instances is enforced through the medium of national courts. At the other end, the supranational law is different from the law of traditional international organisations in that it is mostly made by independent individuals and has a direct effect within the member states. Generally, the law of supranational institutions is similar but not identical to the law of federal regimes. As seen in the European Communities, it may be called

quasi-federal law.⁽⁵²⁾ This contention will be relied on when discussing the concept of confederalism, i.e. association of states, in the following section.

4.A.III:Confederalism

Unlike the concept of 'supranationalism', the term 'confederalism' or 'confederation' is an old one. Nonetheless, international lawyers are not in agreement regarding its meaning. Some have defined it in words that amount to equating confederalism with federalism. Others describe it in terms used by certain authors to identify supranationalism. Still others, however, define confederalism in terms that set it apart from both federalism and supranationalism. Before assessing elements attributed to confederal systems, these fragmented definitions of confederal entities will be surveyed.

Apart from the fact that some federal institutions, such as Switzerland,⁽⁵³⁾ have been entitled confederation - which aggravated the vagueness of the concept - a legal dictionary, *Black's Law Dictionary* contends that the term 'confederation'

... is more commonly used to denote that species of political connection between two or more independent states by which a central government is created, invested with certain powers of sovereignty (mostly external), and acting upon the several component states as its units, which, however, retain their sovereign powers for domestic purposes and some others.⁽⁵⁴⁾

According to this definition, there is little, if any, difference between federation in its classical form and confederation; this is so because the creation of a central government, the transfer of external powers (e.g. foreign policy and defence) and the restriction of member states' powers to domestic matters are all features of federal entities.⁽⁵⁵⁾ A corollary of accepting such an approach is equating confederalism with federalism, at least in terms of conditions, a matter that is of no

help in finding a model for co-operation that does not touch upon sovereignty from the outset of the collective journey.

Still others have drawn a parallel between confederal and supranational institutions. M. Forsyth, for example, sees confederation as a half way house' between federal states and international organisations.⁽⁵⁶⁾ His examples of historical confederations include the German Zollverein established in the nineteenth century.⁽⁵⁷⁾ Hence, an examination of the general features of the Zollverein may be appropriate in order to assess Forsyth's theory of confederalism. In his words, the 'confederal aspects of the Zollverein can be seen in its organisation'.⁽⁵⁸⁾ Analysis of its structure shows that it had a General Congress which met annually and was composed of diplomatic representatives of the governments; decisions were made unanimously; the decisions were directly binding upon member states; supervision of the implementation of the Zollverein's decisions in the various member states was conducted through a system of reciprocal surveillance by means of placing officers of one member state at the customs service of another member.⁽⁵⁹⁾ Within the framework of the Zollverein, a common currency parallel to the then existing national currencies was created.⁽⁶⁰⁾ Concerning their external relations, the states reserved the right to conclude separate treaties but, in practice, they made no use of it.⁽⁶¹⁾ In addition, the Zollverein union concluded several treaties with third parties, which were subject to ratification by the individual member States.⁽⁶²⁾

These characteristics qualify the Zollverein for the classification of a supranational institution in accordance with the criteria offered by authors in international law and organisation, which were examined in the previous section (Supranationalism). When Forsyth viewed the EEC as the economic confederation

of the twentieth century, it became evident that the institutions which are seen as supranational by some authors are but confederal in his eyes. The criteria employed by him in judging whether an organisation is confederal are almost the same as those used by other authors to identify supranational organisations. The confederal elements of the EEC, according to Forsyth, are seen in that:

The Community is based on a treaty which is more than a conventional interstate treaty. It is a constitutive treaty which, in the act of creating a new body politic, alters the constitutions of the partners to it. The treaty establishes common institutions which are capable of passing laws that are directly binding throughout the territory of the community, and which are also endowed with considerable discretionary power to fulfil the general objectives of the Union. The treaty is concluded for an 'unlimited period'.⁽⁶³⁾

The above passage thus shows in a nutshell the criteria that Forsyth used when characterising the EEC as an economic confederation. Therefore, if he does not mean that the EEC features the highest form of confederalism, then his confederal institutions are for others supranational or quasi-federal. The difference his view makes is that confederal arrangements exhibit a relationship between confederal and national legal systems, i.e. direct effect, different from that maintained between the law of traditional international organisations and their members.

This, however, is contrary to the common belief that confederal institutions possess a type of law, which is in essence international law of co-operation, but concerning those particular confederate states. In other words, the confederal law is equal in force to international law, since both are dependent upon the member states' consent and implementation for their internal effectiveness.⁽⁶⁴⁾ Consequently, scholars of this school of thought see confederation differently from both federations, which are governed by federal law, and supranationals, which are governed by the supranational law or the law of integration. For the sake of distinguishing

confederations from other types of associations, each author has listed one or more elements to differentiate it from those of federal and supranational entities.

Hereunder are some of these elements of confederalism.

1. The states retain their sovereignties.⁽⁶⁵⁾ Hence in a confederation, member states do not lose their international personality and as such remain states.
2. The interrelations of a confederation's member states are determined by international treaty.⁽⁶⁶⁾
3. Confederations are based on the principle of non-intervention in domestic affairs of member states.⁽⁶⁷⁾
4. Decisions of the confederations are taken unanimously.⁽⁶⁸⁾ Other types of voting procedures may be employed for procedural matters.
5. Laws of the confederation have no direct effect within the member states.⁽⁶⁹⁾
6. Member states of a confederation are at liberty to leave.⁽⁷⁰⁾
7. Common organs of a confederation are usually composed of diplomatic representatives of the member states.⁽⁷¹⁾ In other words, the independence of the representatives is lacking.

The features of the confederal system described distinguishes it from the federal and supranational entities inasmuch as, as mentioned in the previous sections,

the last two require stricter conditions and the sovereignty, to a variety of degrees, is involved.

An example of a contemporary confederal institution which has been mentioned by more than one author is the Arab League.⁽⁷²⁾ At this point, therefore, it should be appropriate briefly to consider the general features that made those scholars classify it as a confederal entity.

Firstly, the Pact establishing the Arab League is an international treaty as opposed to a constitution which involves the transference of sovereignty of member states to the institution that becomes the new sovereign state. In addition, the member states of the Arab League are, according to Articles 1 and 9 of the Pact, independent and full sovereign states; in other words, member states retain their international competence in all matters not explicitly covered by the Pact. As far as the internal affairs of member states are concerned, the Pact, in Article 8, makes it clear that the League is based on the principle of non-intervention in the domestic matters of its members. Moreover, unilateral withdrawal from the League is permissible provided that the state wanting to leave notifies the Council of the League of such intention one year in advance.⁽⁷³⁾ Another confederal feature of the League is the diplomatic representation of member states to its organs.⁽⁷⁴⁾ Decisions of the Council of the League in substantive matters are made unanimously; if, however, the decisions are taken by majority vote, they are 'binding only upon those states which have accepted them'.⁽⁷⁵⁾ In either case, the decisions have no direct effect in member states; they are 'enforced in each member state according to its respective basic laws'.⁽⁷⁶⁾

Before attempting to classify the GCC, two points should be mentioned. The first is that organisations which meet the requirements for being international ones,

i.e. international treaty, organ, individual will, being established under international law (intergovernmental) and permanence,⁽⁷⁷⁾ have been considered confederations. Examples include, beside the Arab League, the UN and the Organisation of American States.⁽⁷⁸⁾ Such organisations by and large bear the features of confederal institutions described earlier. But the answer to the question of whether or not to these authors the term 'confederation' is a synonym for 'international organisation' is not really clear. For the purpose of this study, the term will be considered synonymous only in that the GCC is preparing for a journey towards integration. This should distinguish between the organisations which are set up to co-ordinate mere governmentally orientated activities such as defence and/or diplomacy (e.g. NATO) from those which are, with or without the governmentally orientated functions, concerned with activities which touch upon the life of the member states' nationals aiming at integrating the whole (e.g. the Arab League).

The second point concerns the classification of the law of the confederations. The law of confederations, when taking into account the elements discussed above, appears to be equivalent to international law since it has no direct effect within the confederate states unless they expressly implement it, or on the basis of case-by-case consent to its direct effect. Thus, though it may be called the internal law of the confederation, the requirements for its effectiveness within the states are the same as those required for international law.

4.B: The Legal Character of the GCC

The GCC is currently in a state of evolution; therefore the task of classifying its legal characteristic is no easy one, and answers to questions regarding its nature may not be accurately given. However, in this section an attempt will be made to

measure its general features against the criteria of federal, supranational and confederal theories discussed earlier, and to see to what extent it matches each; it will be classified as either one of them if it fits it more comfortably than the others. If possible, there shall be an endeavour to probe where the GCC is heading.

In the previous sections, three selected models for integration, i.e. federalism, supranationalism and confederalism, were defined and their elements were identified. It appeared that federations are the strongest institutions, supranationals the second strongest, and confederations are the third.

Clearly, the GCC is not a federal institution; not only because it was based on an international treaty concluded by sovereign States, but also because its legal framework resembles few, if any, of the features of federal entities. There is no division of powers between the GCC and its Member States, there is no independent judiciary, there is no merger of sovereignty and no direct relations between the GCC and citizens of its Member States. Indeed, neither the founders of the GCC nor the advocates of Gulf integration have contemplated federalism as a model for the Gulf integration when the GCC was established. Only on one sole occasion has the question of a federal arrangement arisen. Three years before forming the GCC (1978) the ruler of Kuwait, then Prime Minister, suggested:

creating a form of unity or federation that is based upon firm and sound foundations, for the benefit and stability of the peoples of the region.⁽⁷⁹⁾

Thus, the GCC in its form and practice is evidence that the federal concept was not adopted as the model for Gulf integration. If the GCC is not a federal organisation, is it, then, a supranational institution?

but an interim one.⁽⁹⁴⁾ When asked in 1991 to classify the GCC, his view was the same, i.e. confederation.⁽⁹⁵⁾

The above thus showed that writers in the Gulf see the GCC as a high form of confederation moving towards a tighter form of interstate co-operation yet not similar to the supranational or federal institutions. For this contention, and because the GCC as examined above does not satisfy the federal and supranational requirements, an application of the confederal elements to the GCC to see whether it is possible currently to classify it as a confederation, will be made; also, an attempt will be made to examine whether or not the GCC is really developing so as to be more than a confederation.

One element of confederal institutions is the retention by sovereign states of their sovereignty. In the case of the GCC, there is no clear indication that Member States have or have not transferred a portion of their sovereignties. What is clear is that the Members did not merge and lose their international personality. Yet the Economic Agreement provisions have preference over national laws in case of conflict.⁽⁹⁶⁾ Hence, in the case of the GCC, it seems that some powers in particular fields have been delegated to the common institutions. Nonetheless, this does not negate the fact that each State still maintains its independence and sovereignty.

In addition, the relations between Members of the GCC are determined by its Charter and subsequent agreements which are not a constitution, as in the case of federations.

Although there is no express provision for the non-intervention in domestic matters in the GCC Member States, the force of the GCC decisions was so restricted

One author, who could be the only one tackling the issue (though not at length) rejected the supranationality of the GCC; his rejection was based on the GCC's lack of 'independent legislative and judicial authority' and the non-transference of sovereignty from Member States to the GCC.⁽⁸⁰⁾ Since this author did not fully examine the concept of supranationalism and its various criteria when deciding that the GCC was not supranational, it seems appropriate here to apply the criteria of supranationalism, discussed in section A.II, to the GCC; the result should be that the GCC is not supranational, or that the GCC is on some sort of supranational lines, or that the GCC is a supranational organisation.

Independence of the institution is, as mentioned earlier, the most stressed criterion of supranationality, but not the only one. Thus if the GCC and its organs are independent from the governments of Member States, one important element of supranationality is counted for its supranationality. However, since such autonomy is seen in providing the decision-making organs of the organisation with independent persons and/or adopting voting procedures other than unanimity, two matters which are lacking in the case of the GCC, the autonomy of the GCC organs is wanting.

Moreover, the GCC cannot take decisions that are directly binding on the inhabitants of Member States. Although the GCC decisions always find their way towards execution, they are nonetheless treated procedurally in the same way as other international laws. The fact that the GCC decisions reach citizens of Member States so fast should not obscure the fact that those decisions are implemented in accordance with the constitutional requirement of each state, but with extra speed and determination to execute what has been agreed upon. However since, as mentioned above, this criterion is controversial, its non-existence alone, or even the absence of

both it and the previous criterion (i.e. autonomy), should not negate the supranational character of the GCC if the GCC satisfies other conditions for supranationality.

Another element of supranationality is the financial autonomy of the organisation. Hence the question is whether the GCC is financially independent? The answer is plainly no: it is dependent upon its Member States which contribute equally to its budget, as provided in Article 18 of the Charter.

On the other hand, the GCC is an institutionalised organisation; as mentioned in chapter two, it has three principal organs and a number of ancillary bodies. Consequently, the institutionalisation element of supranationality is present in the GCC. However, those scholars who see the essence of supranationality in the possession of a judicial organ or an assembly⁽⁸¹⁾ may not find this element present in the GCC for the lack of both.

Also, the required ability of the organisation to take decision by means other than unanimity should not be taken against the supranationality of the GCC, if it can be attributed to it by the combination of other conditions. This is so because the minority's vital interest can be outvoted by the majority, a matter which may endanger the existence of the organisation. This is especially true in the case of the GCC since its decision-making organ is not composed of independent persons who may take account of the interests of all states. The weakness of this criterion is thus apparent in that it could lead to crisis in a developing organisation which has not yet attained federal character. Consequently, though in the GCC decisions are made unanimously in substantive matters and the majority vote is confined to procedural matters, the supranational character of the GCC can be established by proving the existence of other supranational features.

Likewise, the inability of the GCC to enforce its decisions in Member States by its own means, if taken alone, may not negate its supranationality if it can be attributed to the GCC by the existence of other elements of supranationality. This is in accordance with Robertson's suggestion that the power of enforcement is a feature of federal entities and not of supranational institutions.⁽⁸²⁾

Another criterion of supranationality that was discussed in the previous section is the transfer of sovereignty from Member States to the organisation. In the case of the GCC, one author maintained that Member States did not transfer their sovereignty to the GCC,⁽⁸³⁾ another, however, indicated that the member states 'have to some degree transferred their sovereign prerogatives to the organisation [GCC]'.⁽⁸⁴⁾ As a whole, it seems that membership of an international organisation mostly requires the restriction or partial transference of sovereignty, however small. In the case of the GCC, there is no express language on the transference or the restriction of sovereignty. Nonetheless, its limited restriction in some fields is implied in providing for, for instance, the supremacy of the Economic Agreement provisions over the local laws in the case of conflict between them.⁽⁸⁵⁾ But it seems that the loss of sovereignty, as suggested by authors and discussed earlier, should be regarded as an outcome of the presence of enough supranational elements in an organisation, and not in itself as an element of supranationality. In other words, the investment of sovereignty or part of it in the institution is an indication that the necessary elements of supranationalism are already present in the organisation. Thus, answering questions such as whether or not the sovereignties of the GCC Member States have been handed in (in whole or in part) to the GCC, depends on the result of the enquiry

into whether supranational elements are present in the GCC in terms of structure and operation.

The last condition of supranationality that was examined earlier was the impermissibility of member states leaving the organisation unilaterally. This issue, however, is highly disputed.⁽⁸⁶⁾ Thus, since the unilateral withdrawal from international organisations (supranational and otherwise) is controversial, its employment to judge the supranationality of organisations, including the GCC, becomes of little use.

In summary, the above showed that the GCC bears very few features of supranational institutions in accordance with the requirements described by authors of international institutional law. The fact that the GCC is doing far more than other non-supranational organisations and its effectiveness in integrating its Member States are different matters. They were, in fact, the result of the sincere desire of its Members to achieve what supranational organisations can accomplish, but without resort to their theoretical and institutional framework. The question, then, is: if the GCC does not seem to be supranational (on account of the lack of most supranational elements), nor a mere alliance (on account of the existence of common and permanent organs), is it a confederation?

Because the GCC can be classified neither as a federal organisation nor a mere alliance, apart from the difficulty of classifying it as supranational, it may well be considered a confederation. Therefore, an application of the confederal criteria offered by the legal literature to the case of the GCC is appropriate. But before venturing into this, an examination of the writings of GCC officials on the nature of the GCC will be made since unlike other models for regional co-operation, the

confederal approach has been looked upon a number of times by the GCC Secretary General, Mr. Bishara.

Three days after the inception of the GCC, Mr. Bishara was quoted by *Al-syasa* [Newspaper] as saying

the GCC is neither a confederal nor a federal organisation, but a co-operation council.⁽⁸⁷⁾

But in 1982, only six months after the establishment of the GCC, Mr. Bishara stated that

the philosophy of the GCC is a confederal structure aiming at an ultimate integration.⁽⁸⁸⁾

In stressing the confederal structure of the GCC, he said that drawing a common constitution for Member States is but a hope,⁽⁸⁹⁾ however. During the third year of the GCC's existence, Mr. Bishara elaborated more on the working method of the GCC as a confederation. While emphasising that the substance of the GCC Charter is the first attempt in the Gulf's history to establish such a wide confederation, in both geographical and demographical terms, he pointed out that the Economic Agreement, which was drawn so as to touch upon every aspect of people's life, was the principal means for pursuing Gulf integration.⁽⁹⁰⁾ At that time, he agreed that the confederal structure of the GCC was based on several foundations: economic, political, security, socio-cultural and educational co-operation.⁽⁹¹⁾ He explained why the founders of the GCC chose the confederal structure from amongst the various models of integration, such as the federal and supranational systems, in a passage quoted by the Kuwait News Agency (KUNA), saying:

Despite the fact that the GCC Charter does not contain a clear-cut political theory, there is consensus on some form of confederacy between its six member states. Every Arab country is keen to maintain its special characteristics, independence and legislative authority, while at the same time a strong desire

exists among these states to promote their regional potential within one framework. There is common agreement that, acting under the umbrella of the council, they will be able to pool their political, economic and other efforts in a confederal manner.⁽⁹²⁾

It is interesting to note that after all he has said about the confederal model of the GCC, Mr. Bishara said in 1987 that the GCC is neither federation nor confederation, but unlike his statement in 1981, this time he pointed out that the GCC structure is a unique one resulting from the region's own experience with the various attempts at integration as well as the experience of others: in a nutshell, he emphasised that the GCC was not modelled on any existing organisation.⁽⁹³⁾ This view of Mr. Bishara may well be taken as an indication of his opinion that the GCC has moved away from a confederal nature to a tighter kind of association, which is more than confederation but less than a federation: it is in a midway position between these two categories that he places the GCC, seeing it as a unique organisation which does not fit any of the three well-known categories, i.e. federal, supranational and confederal.

Yet since the view of Mr. Bishara, although a strong guide to the nature of the GCC, is not a decisive one, an examination of the opinions of other GCC officials, as well as the writings of legal scholars who have addressed themselves to the issue, is necessary to measure the dimension taken by the nature of the GCC.

Dr. As-Syari, the Director General of the Legal Department of the GCC Secretariat General, has unofficially addressed himself to the question, and wrote, in 1986, that the nature of the GCC is closer to confederation, basing his opinion on the general features of the GCC; Further, he points out that the GCC objective is integration amongst Member States in accordance with Article 4 of the GCC Charter. Therefore, he stressed that the classification of the GCC as confederation, is, if at all,

but an interim one.⁽⁹⁴⁾ When asked in 1991 to classify the GCC, his view was the same, i.e. confederation.⁽⁹⁵⁾

The above thus showed that writers in the Gulf see the GCC as a high form of confederation moving towards a tighter form of interstate co-operation yet not similar to the supranational or federal institutions. For this contention, and because the GCC as examined above does not satisfy the federal and supranational requirements, an application of the confederal elements to the GCC to see whether it is possible currently to classify it as a confederation, will be made; also, an attempt will be made to examine whether or not the GCC is really developing so as to be more than a confederation.

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In addition, the relations between Members of the GCC are determined by its Charter and subsequent agreements which are not a constitution, as in the case of federations.

Although there is no express provision for the non-intervention in domestic matters in the GCC Member States, the force of the GCC decisions was so restricted

that their effectiveness within the states is dependent upon their consent and implementation in accordance with the states' constitutional requirements.⁽⁹⁷⁾ The GCC integrative projects that touch upon purely local matters are adopted only after their approval by the Member States. This leads to the conclusion that laws of the GCC have no direct effect within the Member States - a distinctive feature of a confederal institution.⁽⁹⁸⁾ Thus, these two features of confederal entities are present in the GCC.

Another characteristic of confederations that has been listed by authors is the unanimity vote on decisions of substantive nature. In the GCC, resolutions of the Supreme Council are passed by unanimous vote of the Member States. But, it should be pointed out, absolute unanimity is not required.⁽⁹⁹⁾ Decisions of the GCC in procedural matters, however, are taken by a majority vote. Generally, the GCC, as indicated by its Secretary General, approaches its decision by means of consensus rather than formal voting.⁽¹⁰⁰⁾ Consequently, although unanimity is the formal voting procedure in important matters, its role is in decline in favour of consensus. But in any event, a consensus power does allow a State to protect what it regards as its vital interests by preventing consensus from arising.

Yet another feature of confederalism is the ability of the member states to leave the confederation, should they decide to do so. In the case of the GCC, as noted earlier, there is no express authority to this effect. With the absence of such authority, the legal literature is not in agreement in this respect.⁽¹⁰¹⁾ One opinion holds that unilateral withdrawal is permissible. This is in effect in agreement with those who count this right as an element of confederalism. Another view, however, sees unilateral withdrawal of any organisation impermissible if not expressly provided for

in the constitutive treaty. Since the division of legal opinion applies to all types of international organisation, including the confederal ones, this element shall be shelved in discussing the confederality of the GCC.

The last confederal element of an international organisation is the existence of common organs, which are composed of diplomatic representatives of member states. In the case of the GCC, three principal organs have been set up, two of which are composed of government personnel, i.e. the Supreme Council and the Ministerial Council. The Secretariat General, however, is composed of independent persons chosen from amongst citizens of the Member States. By and large, the GCC is composed of a number of organs consisting mainly of diplomats from the Member States. Broadly speaking, this element is met by the GCC.

The above application of confederal criteria to the GCC showed that the GCC comfortably fits the confederal mode of co-operation. One reason is that the requirements of international organisations are very much similar to those of confederations. In other words, almost any organisation which is more than a mere organless alliance and less than supranational, would be a confederation. But unlike most static organisations, the GCC is in a constant state of evolution, a matter best illustrated by examining the difference between what the words of its Charter say and what its practice indicates. Thus, if an analyst takes its Charter as his source in examining its nature, he will conclude that the GCC (as other international, especially regional organisations) is at best a confederation. If, on the other hand, he employs the theory and practice of the GCC, he should find that the GCC started formally as a confederation, but in pursuing its ultimate objective of integration between its Members has gone a respectable distance along the way.⁽¹⁰²⁾ Where it is in the

spectrum of interstate bonds in the distance between confederalism and supranationalism may not be answered exactly. And this will probably be so until the formal documents, such as the Charter, correspond to the practice and expressly state its theory, or, alternatively, add some provisions capable of satisfying the requirements of the supranational or federal models of integration.

Until then, all that can be said about the nature of the GCC is that its constitutional framework is of a confederal nature, while its objectives and achievements are of supranational character. Consequently, it is probably a high form of confederation making its journey towards supranationality. To put it in different words, it started as, and still is a co-operative institution which will become an integrative organisation. It is a confederation built on some sort of supranational lines, i.e. it has supranational aspirations.

Summary

The discussion of the federal idea in section AI reveals its unsuitability as a model for integration in this century when the waves of nationalism are so high. Although federalism is desirable in itself as an ultimate end to a number of integrative stages, its requirement for massive surrender of national prerogatives in a very short period leads to its rejection altogether as an approach for integration.

Supranationalism, on the other hand, is a less demanding model than the federal one. Despite the fact that its elements are almost similar to those of the federal, they in fact vary widely in terms of degree. Also, the common organs are short handed when it comes to the enforcement of what is agreed upon beyond the nation-states. Besides, the supranational institutions, as seen in the European Communities, can be

limited to particular fields. In short, it establishes a union of states but not a unity of government. For those reasons, it appears that some existing organisations, though not fully supranational, show some features of supranationalism. This in itself shows its suitability as an approach for integrating states which are willing to move beyond the nation-state but are not ready to form a federal entity. In terms of operation, the law in such an institution is very similar to that of federal states. The obvious difference between the two is manifest in the enforcement of the supranational law; in this type of law, the enforcement power is exercised through the medium of member states.

Confederalism is another form of interstate co-operation; this kind of association of states is a conventional one. By reason of its less demanding character, most of the existing international organisations are considered confederal entities. It has been differentiated from those organisations whose nature is merely that of an alliance by the presence of common organs of a permanent nature which acquire some kind of individual will. The law governing the relations between the confederate states *inter se*, and between them and the common organs, is basically international law, be it general or particular - i.e. the internal law of the confederation.

The GCC shows few features of supranationalism; therefore, it is probably not a supranational institution, let alone federal in character. It is at best an organisation proceeding on supranational lines. It fits the category of confederalism far more comfortably. The elements of confederalism apply to the GCC in varying degrees. In general, they are all evident in the GCC of today. The law of a confederation in its making process, as well as in its application, is of an international nature. Hence, the law of the GCC, as it appears today, is in essence an international

law.⁽¹⁰³⁾ The special treatment of the GCC law by its Members, as well as the impact it has made on their laws and legal systems, should not change its international nature.

References and Notes

1. A.H. Birch, 'Approaches to the Study of Federalism', 14 *Political Studies* (1966), pp.15-33, at 15.
2. K.C. Wheare, *Federal Government*, 4th edition (London, 1963), p.10.
3. See, for example, Charles Pentland, *International Theory and European Integration*, (London: Faber, 1973), p.150; Ursula K. Hichs, *Federalism: Failure and Success*, (London: The Macmillan Press Ltd., 1978), p.7.
4. Carl J. Friedrich, *Trends of Federalism in Theory and practice*, (London: Pall Mall Press, 1968), pp.7-8. On page 173 of the same work he concludes:

The review of selected issues in contemporary federal relations has ... shown that federalism is more fully understood if it is seen as a process, an evolving pattern of changing relationships rather than a static design regulated by firm and unalterable rules. This finding is not to be misunderstood as meaning that the rules are insignificant; far from it. What it does mean is that any federal relationship requires effective and built-in arrangements through which these rules can be recurrently changed upon the initiative and with the consent of the federal entities. In a sense, what this means is that the development (historical) dimension of federal relationships has become a primary focal point, as contrasted with the distribution and fixation of jurisdictions (the legal aspect). In keeping with recent trends in political science, the question is: What function does a federal relationship have? - rather than: What structure?

5. See Peter Hay, *Federalism and Supranational Organisation: Patterns for New Legal Structure*, (University of Illinois Press, 1966), pp.77-8.
6. Case 26/62 [1963] ECR 1 at 12.
7. Ibid.
8. See Hicks, supra note 3, p.7; Wheare, supra note 2, p.63.
9. Case 8/55 (1954-1956) ECR 245 at 277
10. Article 33 ECSC; 173 EEC and 146 Euratom.
11. Articles 88, 89 ECSC; 169, 170 EEC; and 141, 142 Euratom.
12. Article 173 (2) EEC; Detailed account on the construction and jurisdiction of the EC Court is found, for example, in L. Neville Brown and Francis G. Jacobs, *The Court of Justice of the European Communities*, 3rd ed (London: Sweet & Maxwell, 1989).
13. see Merger Treaty, Article 10 (2), (3).
14. Case 6/64 [1964] ECR 585 at 593. For more on the federal nature of the European Communities see Georg Schwarzenberger, 'Federalism and Supranationalism in the European Communities', 16 C.L.P. (1963), pp.17-33, at 19-20.
15. David Mitrany, 'The Functional Approach to World Organisation', in *The New International Actors: The United Nations and the European Economic Community*, eds C.A. Cosgrove and K.J. Twitchett (London: Macmillan and Co. Ltd., 1970), pp.65-75, at 73.
16. David Mitrany, *A Working Peace System*, (Chicago: Quadrangle Books, 1966), p.31. For more on the functional approach to international integration see, besides the works just cited in note 15, Ernst B. Haas, *Beyond the Nation-State: Functionalism and International Organisation*, (Stanford, California: Stanford University Press, 1964); Reginald J. Harrison, *Europe in Question: Theories of Regional International Integration*, (London: George Allen and Unwin Ltd., 1974), pp.24-41; *International Theory and European Integration*, supra note 3, pp.64-99; Paul Taylor, 'Functionalism: the Theory of David Mitrany', in *International Organisation: A Conceptual Approach*, eds Paul Taylor and A.J.R. Groom, (London: Frances Pinter Ltd., 1978), pp.236-252.

17. For a more detailed account on the neofunctionalist approach to international integration, see, for example, R.J. Harrison, 'Neofunctionalism' in *International Organisation: A Conceptual Approach*, supra note 16, pp.253-269; *Europe in Question*, supra note 16, pp.75-94; *Regional Integration: Theory and Research*, eds Leon N. Lindberg and Stuart A. Scheingold (Cambridge, Massachusetts: Harvard University Press, 1971); Haas, *The Obsolescence of Regional Integration Theory*, (Berkeley, California: Institute of International Studies, 1976).
18. Josef L. Kunz, 'Supra-National Organs', 46 *AJIL* (1952), 690-698, at 696.
19. Hay, supra note 5, p.4.
20. *Ibid*, p.5.
21. See P.S.R.F. Mathijsen, *A Guide to European Community Law*, 4th Edn, (London: Sweet and Maxwell, 1985), p.6.
22. Hay, supra note 5, p.30.
23. Of this E. Haas wrote in 1958:

If the term 'federation' can boast an ancient and honourable lineage in the history of political thought, the same cannot be said of the kindred expression 'supranationality'. Yet this term, like political integration, is now current in discussions of regionalism and, like the notion of integration, is sadly in need of precise definition. *The Uniting of Europe: Political, Social and Economic Forces 1950- 1957*, (Stanford, California: Stanford University Press, 1958).
24. *Ibid*, p.59.
25. Werner Feld, *The Court of the European Communities: New Dimensions in International Adjudication*, (The Hague: Martinus Nijhoff, 1964), pp.1-2.
26. Kunz, 'Supra-national Organs', supra note 18, p.697.
27. Pierre Pescatore, *The Law of Integration, Emergence of a new phenomenon in international relations, based on the experience of the European Communities*, (Leiden: A.W. Sijthoff, 1974), p.50. Max Beloff, 'International Integration and the Modern State', 2 *JCMS* (1963-64), pp.52-62, at 55 wrote:

What supranational means is that there is a recognised interest within a political grouping of several nations which is different from, or distinguishable from, the interests of any one of them, and which thus claims institutional expression.

At 56 he added that:

The difficulty lies not in conception of policy, but in its authorisation and execution.
28. *A Guide to European Communities Law*, supra note 21, p.43.
29. See A.H. Robertson, 'Legal Problems of European Integration', 91 *RdC* (1957, I) pp.105-210, at 147; Henry G. Schermers, *International Institutional Law*, 2nd. ed, (The Netherlands: Sijthoff and Noordhoff, 1980), p.28.
30. *The Law of Integration*, supra note 27, pp.53-4.
31. Schermers, supra note 29, pp.28-9.
32. Mentioned and evaluated by Hay, supra note 5, p.31.
33. The text of the Single European Act is produced in 2 *CMLR* (1987), pp.741-768. It is worth mentioning that the said Act became law in all 12 EC states on 1 July 1987, see Michele Anne McElhenny, 'The United Kingdom, Ireland and the Single European Act: Its origins and implications', 39 *North. Irel. L.Q.*, (1988), pp.54-72, at 72.
34. see Hay, supra note 5, pp.33-35, for more discussion on these views.
35. *The Law of Integration*, supra note 27, p.51.
36. *Ibid*, pp.52-3.
37. R. Quadri, 'Course Général De Droit International Public', 113 *RdC* (1964-III), pp.237-483, at 113 quoted by *ibid*, p.54.
38. *The Law of Integration*, supra note 27, pp.54-5; also Robertson, supra note 29, p.147-8.

39. *The Law of Integration*, supra note 27, p.54.
40. *Ibid*, p.55.
41. Robertson, supra note 29, p.148.
42. Kunz, 'Supra-national Organs', supra note 18, p.697.
43. Hay, supra note 5, p.69. Joseph Weiler, 'The Community System: The Dual Character of Supranationalism', 1 *YEL* (1981), pp.267-306, at 271.
44. Schermers, supra note 29, p.29. But see R. Pryce, *The Politics of the European Community*, (Butterworths, 1973), p.55, where he maintains that a member of the EC is free to withdraw from it at any time.
45. It should be mentioned that Joseph Weiler, supra note 43, in discussing the supranational nature of the European Communities, drew a distinction between two facets of supranationalism: one he called normative; the other, decisional (p.271). According to him:

Normative supranationalism is concerned with the relationships and hierarchy which exist between community policies and legal measures on the one hand, and competing policies and legal measures of the Member States on the other. *Decisional* supranationalism relates to the institutional framework and decision-making processes by which Community policies and measures are, in the first place, initiated, debated and formulated, then promulgated and finally executed. (p.271)

He then concluded that:

It is the union of the two within one framework which distinguishes structurally the supranational order from other international organisations. (p.305)

46. The General Conference of the International Labour Organisation is composed of four representatives of each member state, two of whom are not governmental delegates, Article 3(1) of the Constitution of the International Labour Organisation.
47. Hay, supra note 5, p.36.
48. *Ibid*, appendix to chapter 2, p.76.
49. Schermers, supra note 29, pp.29-30.
50. This is to say that the literature contains denials of the supranational nature of the European Communities. For views rejecting such characteristics see, for example, Francis Rosenstiel, 'Reflection on the Notion of Supranationality', 2 *JCMS* (1963), pp.127-139, at 132-39; Paul Taylor, 'Elements of Supranationalism: The Power and Authority of International Institutions', in *International Organisations: A Conceptual Approach*, supra note 16, pp.216-235, at 232.
51. On the Single European Act see supra note 33. For the 'Delors Report', see Commission of European Communities, *Report on Economic and Monetary Union* (1989).
52. Hay, supra note 5, p.76, suggests:

that Community Law has several aspects, including international law aspects, but that much of internal Community Law is truly federal law.

For more account of the nature of the EC law, see Constantinos Galapulos, *The Legal Character of European Community Law: Meaning, Nature and Classification* (unpublished PhD thesis, Faculty of Law of Exeter University, 1982).
53. See A.P. Frogner, 'Federal and Partly Federal Systems, Institutions and Conflict Management: Some Western European Examples', in *Political Co-operation in Divided Societies*, ed. Desmond Rea, (Dublin: Gill and Macmillan, 1982), pp.187-215, at 188.
54. Henry C. Black, *Black's Law Dictionary*, 5th ed, (St. Paul, Minnesota: West Publishing Co., 1979), p.268.
55. See section 4.A.I of this chapter.
56. Murray Forsyth, *Unions of States, the Theory and Practice of Confederation*, (Leicester University Press, 1981), p.6. See also Christopher Brewin, 'The European Community: a Union of States without unity of government', 26 *JCMS* (1987), pp.1-23, at 14-15.
57. *Union of States Ibid*, p.5.

58. Ibid, p.168.
59. Ibid, pp.168-9.
60. Ibid, p.169.
61. Ibid, p.168.
62. Ibid, p.167.
63. Ibid, p.184.
64. See Hay, supra note 5, pp.88-9, where, in connection with the EC, he states that characterising the Communities as confederations ... requires the classification of their law as international law
65. See Kunz, 'Supra-national Organs', supra note 18, p.696; Maurice J.C. Vile, 'Federation and Confederation: the Experience of the United States and the British Commonwealth', in *Political Co-operation in Divided Societies*, supra note 53, pp.216-228, at 217; Dr. Mohsen Khalail, *Constitutional Law and Political Systems* (Arabic) (1987), p.307.
66. See, for example, Paul Reuter, *International Institutions*, translated from the French by J.M. Chapman (London: George Allen and Unwin Ltd., 1958), pp.184-5.
67. Kunz, 'Supra-national Organs', supra note 18, p.696.
68. See, for example. A.P. Frogner, supra note 53, p.187; Maurice J.C. Vile, supra note 65, p.217.
69. Maurice J.C. Vile, Ibid p.217.
70. Maurice Vile, Ibid, p.217; A.P. Frogner, supra note 53, p.187; Dr. Mohsen, supra note 65, p.310; also chapter two of this work, pp.45-48.
71. Dr. Mohsen, supra note 65, A.P. Frogner, supra note 53, p.188.
72. See, for instance, Dr. Mohsen, supra note 65, pp.311-14; Kunz, 'Supra-national Organs', supra note 18, p.696.
73. Article 18 of the Pact of the Arab League.
74. Articles 3 and 4 of the Pact of the Arab League.
75. Article 7 of the Pact of the Arab League.
76. Ibid.
77. For more on the requirements of international organisations see, for instance, Schermers, supra note 29, pp.8-15; Dr. Mufeed M. Shehab, *International Organisations*, (Arabic), 9th edn (Cairo: Dar Al-Nahdah Al-arabiah, 1989), pp.36-43.
78. All have been cited by authors such as A.P. Frogner, supra note 53, p.188.
79. Oman, Ministry of Information, *The Way Forward: Co-operation and Unity in the Gulf*, (Muscat, 1985), p.13.
80. Nicholas B. Angell, 'Impact of the GCC on the Developing Legal Systems of the Gulf Countries', in *The Gulf Co-operation Council: Moderation and Stability in an Interdependent World*, edited by John A. Sandwick (Boulder, Colorado: Westview Press, 1987), pp.107-144, at 129.
81. See section 4.A.II of this chapter.
82. See *ibid*.
83. See 'Impact of the GCC on the Developing Legal Systems of the Gulf Countries', supra note 80, p.129.
84. See William V.O. Grichtel, 'The Arab States' Gulf Co-operation Council: Unified Rules for Trade and Industry', 20 *The International Lawyer* (1986), pp.309-318, at 309.
85. On the question of supremacy of GCC law, see chapter seven, pp.294-298.
86. See chapter two, pp.45-48.
87. Al-Syasa (newspaper), Kuwait, 28 May 1981.
88. See Mr. Bishara's speech before the Bahrain Engineers Society, 14 January 1982 in *The Gulf: Hope and Future* (Arabic), (Riyadh: GCC Secretariat General no.d.), pp.179-184, at 182.

89. Mr. Bishara's speech at the University of King Abdulaziz in Jeddah, Saudi Arabia, 29 March 1983, in *The Gulf: Hope and Future*, Ibid, pp.95-111, at 109.
90. See Mr. Bishara's speech at the GCC Press Conference held on 25 May 1983, in *The Gulf: Hope and Future*, Ibid, pp.15-28, at 16.
91. See Ibid, pp.21-22.
92. Kuwait News Agency (KUNA), *Special Dossier on the Occasion of the Fifth Gulf Co-operation Council Summit Conference in Kuwait*, (Kuwait: KUNA, 1984), pp.8-9.
93. See Al-Anba (newspaper), Kuwait, 3 May 1987.
94. Dr. Mohammad As-syari, 'The GCC as International Regional Organisation - its relationships with the Arab League and the United Nations' (Arabic), 3 *Al-Ta'awun* (1986), pp.121-135, at 130-31.
95. Personal interview conducted on 26 January 1991.
96. On the issue of GCC law supremacy over national inconsistent law see chapter seven, pp.294-298.
97. Methods of implementing GCC rules into the national legal systems are elaborated in chapter seven, pp.298-312.
98. On the nature and legal force of GCC decisions see chapter two, pp.86-90.
99. More account on the decision-making within the GCC is treated in chapter two, pp.79-86.
100. Ibid, pp.84-86.
101. see ibid, pp.45-48.
102. The achievements of the GCC, particularly those in the economic field are examined in chapters five and six.
103. Elucidation on the nature of the GCC law is made in chapter seven, pp.287-292.

Chapter Five

Free Movement of Goods Within the GCC

Introduction

In a previous chapter, it was noted that from a legal point of view, the GCC is at present of a confederal nature, seeking closer unity amongst its Members by means of integration in all fields. Economic integration is, however, considered by officials of the GCC as the best tool for approaching their unity.⁽¹⁾ This is evident in the sizeable achievements made in the economic field. The Unified Economic Agreement (EA) signed on 11 November 1982⁽²⁾ which stipulates the creation of free trade area, then customs union and eventually a Gulf common market,⁽³⁾ shows that the GCC as a confederal structure stresses the economic needs as a significant driving force, capable of paving the way for integration in other fields. That the GCC is in pursuit of establishing a Gulf common market is manifested not only in the EA, but also in speeches of officials and official documents of the GCC⁽⁴⁾.

The process of establishing this common market involves the adoption and harmonisation of laws for such a project; those laws and rules as adopted by the GCC constitute the legal principles upon which a common market may be formed. Amongst those general principles are the free movement of goods and persons.

Consequently, this chapter will examine the free movement of goods within the GCC. This will cover the formation of free trade area. Next, it will measure the process for completion of the GCC customs union. The concept of elimination of quantitative restrictions and assimilated measures will also be examined. The chapter concludes with analysis of the possible justifications for derogating from the rules of the free movement of goods. Throughout the examination of the principle of free mobility of goods as applied by the GCC, two factors must be borne in mind: The first is the short period of GCC existence, in particular the beginning of executing the EA, 1983. The second is the lack of a judicial or quasi-judicial body which, by providing materials on problems and resolutions, could enrich this discussion. This attempt, consequently, will investigate the basis laid down in the EA, and, furthermore, measure the scope of these rules adopted by the GCC and implemented by Member States.

5.A: Formation of the Free Trade Area

5.A.I: Abolishing Customs Duties and Assimilated Charges

A free trade area is established when the customs duties and other charges of assimilated effect and quantitative restrictions on goods originating in the territories of members of a community are eliminated.⁽⁵⁾

Within the GCC, the provisions of abolishing customs duties and charges with equivalent effect are enshrined in the EA; Article 1(a) reads:

The Member States shall permit the importation and exportation of agricultural, animal, industrial and natural resource products that are of national origin.

Article 2 provides:

1. All agricultural, animal, industrial and natural resource products that are of national origin shall be exempted from customs duties and charges bearing equivalent effect.
2. Fees charged for specific services such as demurrage, storage, transportation, freight or unloading shall not be considered as customs duties when they are levied on domestic products.

Those provisions envisage the creation of a GCC free trade area and were implemented by the Supreme Council in its third Summit in 1982 when it decided, *inter alia*,

to exempt agricultural, animal, industrial and natural resource products from customs duties and other charges having equivalent effect as of March 1 1983.⁽⁶⁾

To facilitate the movement of goods, it furthermore decided on the same Summit: 1) to grant the same rights on the same conditions to the means of transportation belonging to nationals of GCC States, as are accorded to the means of transportation belonging to nationals of the host States provided they are driven by their owners or authorised persons; 2) to grant the steamers, ships and boats owned by any Member State the same port facilities and treat them equally with their own in docking, pilotage and docking services, loading and unloading, freight, maintenance, repair, storage of goods and other assimilated services,⁽⁷⁾ effectively denying discrimination on grounds of nationality in these spheres.

When this decision was first announced, there was a question as to whether or not those privileges were inclusive of the government's own vessels. This ambiguity was later clarified by the Committee for Financial and Economic Co-operation; it construed the phrase 'belonging to any Member State' liberally so as to include vessels of citizens of any Member State provided that: a) the vessel is owned wholly or partially by a citizen; b) it is registered in a Member State; and c) it carries the flag of a Member State.⁽⁸⁾

Also at the same summit, i.e. the third in 1982, the Supreme Council resolved to grant the necessary facilities for the transit of goods belonging to a Member State in accordance with the GCC Regulations Governing Transit Rights.⁽⁹⁾

The above decrees made by the Supreme Council to effectuate the formation of a free trade area and to encourage the intra-GCC trade were implemented into the national legal systems by the following laws:

UAE: Decree of the Council of Ministers No. 113/20M of 1983⁽¹⁰⁾, which implemented all aspects of the GCC decision presented above.

Bahrain: The Ministry of Finance and National Economy issued directives to the concerned entities to take the appropriate measures,⁽¹¹⁾ to effectuate the four aspects of the decision.

Saudi Arabia: The Ministry of Finance and National Economy directed the Customs Authority to take the necessary measures for implementing the decisions of the Supreme Council in its entirety.⁽¹²⁾

Oman: Ministerial Decree No. 6 of 1983 by the Deputy Prime Minister for Financial and Economic Affairs. However, it should be noted that this legislation enumerates some commodities as not exempted from customs duties - namely, cement and its by-products, asbestos products, polyethylene, plastic products, dyestuffs, edible oils, hydrogenated oils, detergents, car batteries, and electric bulbs.⁽¹³⁾

Qatar: Law No. 6 of 1983.⁽¹⁴⁾ Articles 1, 5, 6 and 7 incorporates the terms of the decision under discussion.

- Kuwait:** a) Decree No., 52 of 1982 by the Minister of Commerce and Industry exempts, in Article 3, the prescribed products from customs duties and similar charges.
- b) Decree No. PPA/0/88-274 by the Minister of Communications, Decree No. SPA/10 of 1985 by the Minister of Oil and Industry and Decree No. SPA/6 of 1983 by the Minister of Commerce and Industry all incorporated in somewhat similar terms the Supreme Council decision on equal treatment of vessels, ships and boats belonging to nationals of the GCC provided that they meet the three requirements mentioned above.
- c) Decree No. 6 of 1983 by the Minister of Finance incorporates the GCC Regulations Governing Transit Rights.
- d) Decree No. 85 of 1984 by the Minister of the Interior recognising driving licences issued in a GCC Member State. Also the General Administration of Customs issued the Directive No. 2 of 1983 granting vehicles belonging to GCC nationals the same rights accorded to those owned by Kuwaitis, provided that their documents are effective and driven by their owners or authorised persons.⁽¹⁵⁾

Before concluding this point, clarification of the meaning of the phrase 'charges having equivalent effect' in Article 2(1) of the EA seems appropriate.

Paragraph 2 of the said Article limits its generality. It reads:

Fees charged for specific services such as demurrage, storage, transportation, freight or unloading, shall not be considered as customs duties when they are levied on domestic products.

As such, those enumerated fees for services cannot be asserted as charges with equivalent effect.

To decide whether a charge is with equivalent effect, it is likely that the GCC will look to the practice of other organisations, and particularly the ECJ which has

had to decide this very issue under the EEC treaty. From this researcher's experience, legal experts in the GCC, anyway, build up their legal knowledge in the law of integration through the constant review of legal materials on the EC, as witnessed by this researcher. Therefore, it would not be surprising to find judgements of the ECJ on the construction and scope of the phrase 'charges having equivalent effect' taken by them as an important source for legal consultation of the GCC Member States. The ECJ had defined the phrase in a number of cases. In *Commission v Luxembourg and Belgium*, the ECJ described the 'charges having equivalent effect' as

'duties whatever their description or technique, imposed unilaterally, which apply specifically to a product imported by a Member State but not to a similar product and which by altering the price, have the same effect upon the free movement of goods as a customs duty.'⁽¹⁶⁾

Furthermore in *Bouchuis v Netherlands*, the ECJ declared that the phrase means

'any pecuniary charge, whatever its designation and mode of application which is imposed unilaterally on goods by reason of the fact that they cross a frontier and which is not a customs duty in the strict sense'.⁽¹⁷⁾

Examples of charges that have been held by the ECJ to have equivalent effect to customs duties include imposition of tax on the export of articles of arts⁽¹⁸⁾ and charges for health inspections.⁽¹⁹⁾

5.A.II: Specification of Goods and their Origin

In the GCC, types of goods which might be freely moved without subjection to customs duties or charges with equivalent effect are enumerated in the above-cited Article 1(a) of the EA. However, the wording of that paragraph allows for the inclusion within this list of almost all moveable goods. More importantly, the same

paragraph places a condition which must be fulfilled before goods can cross borders, namely, that the goods must be of a national origin.

The term 'national origin' is explicitly defined in the EA. Besides products which have been wholly produced within the GCC, Article 3 (1) includes those goods which have been produced in a foreign or undetermined origin with two conditions: 1) that the 'value added ensuing from their production in Member States shall not be less than 40% of their final value as at the termination of the production phase'; 2) that 'Member States Citizens' share in the ownership of the producing plant shall not be less than 51%.'

5.A.III: Equal Treatment of Goods Originating from the GCC

Equal treatment of goods originating in the Members' territories is provided for in Article 1(b) of the EA, it reads:

All agricultural, animal, industrial and natural resource products that are from Member States shall receive the same treatment as national products.

One step of materialising the principle of equal treatment of goods called for in Article 1 of the EA is seen in the Supreme Council's decision in its fifth Summit, granting priority to national products of Member States in governmental purchasing.⁽²⁰⁾ In its seventh Summit, the Supreme Council endorsed the Unified Rules for Granting Priority to the Purchase of National Products and Products of National Origin, i.e. of the GCC Member States.⁽²¹⁾

Since Member States have incorporated the exact terms of the Rules, it seems appropriate to summarise their contents before enumerating the implementing national measures.

The Rules are composed of 11 Articles, the first of which defines *national product* as "every product produced in a Member State and considered as such under the law of that State", and product of *national origin* as "the products which the added value ensuing from their production in a Member State is not less than 40 percent of the final value at the termination of the production phase and that GCC citizens sharing in the ownership of the producing plant is not less than 50 percent."

Article 2 describes the manner whereby the priority is given: *National products* have priority over similar foreign products by 10%, and over similar products of national origin by no more than 5%. Where there is no *national product*, products of *national origin* are accorded priority over similar foreign products by 10%. Paragraph (b) stipulates that shortages of a *national product* to meet the demand of governmental entities are to be made up from a product of *national origin*, then from foreign products.

Article 3 commands governmental establishments including public companies and those which a government own more than 51% of its capital to satisfy their demands from *national products* and those of *national origin*.

Article 4 stipulates that governmental entities include express provision in their contracts obliging suppliers or contractors etc. to meet their needs from national products or those of national origin. This Article, furthermore, provides that a breach of that express provision will be considered a breach of the concerned contract, a matter which involves a charge of no less than 20% of the value of the product in addition to the applications of the stipulations provided for in the contract. Cheating and fabrication to bypass these Rules are according to Article 8 severely punished by means including blacklisting the supplier.

Articles 5, 6 and 7 instructs governmental entities to draw their contracts with the application of these Rules in mind. Article 6 specifically states that a foreign supplier or contractor may not build a production unit for the purpose of supplying products needed by the concerned governmental project.

Article 9 contemplates that each Member State sets up a body to supervise the execution of these Rules. The Committee for Financial and Economic Co-operation, Article 10 contains, has the right of interpreting and amending these Rules. Article 11 stipulates these Rules to be effective as of 1 March 1987.

Member States of the GCC took the appropriate steps to enact legislation to give effect to the Rules decreed by the Supreme Council. Those measures are as follows:

UAE: Decision of the Council of Ministers No.2/2 of 1987.⁽²²⁾ Its Article 9 appoints the Ministry of Finance and Industry as the supervisory body in the UAE.

Bahrain: Decree No. 16 of 1987 amending Decree No. 11 of 1985. Also the Council of Ministers Decree No. 21 of 1987.⁽²³⁾

Saudi Arabia: Decision of the Council of Ministers No. 139 of 1987⁽²⁴⁾

Oman: Ministerial Decree No. 18 of 1987 made by the Deputy Chairman of the Council of Ministers for Financial and Economic Affairs. Article 9 of the Rules as annexed to this Decree provides that these Rules are not applicable to the contracts and projects of the defence and security units. The Decree appoints the Ministry of Finance and Economy the responsibility of supervising the application of the Rules.⁽²⁵⁾

Qatar: Law No. 6 of 1987.⁽²⁶⁾ In Article 9 it assigns the Central Committee of Bids the task of supervising the application of the Rules.

Kuwait: Ministerial Decision No. 6 of 1987 by the Minister of Commerce and Industry.⁽²⁷⁾ As such, this Ministry is the supervisory body.

In the context of equality between goods originating within the GCC, it is worth noting that the GCC prohibits discriminatory taxation as a necessary measure to enhance the free mobility of goods. In its ninth Summit, the Supreme Council decided to treat citizens of the GCC equally in terms of taxation to facilitate movement of goods, as well as persons, as will be seen in chapter six.⁽²⁸⁾ Like the GCC, the EEC expressly prohibits the imposition of 'internal taxation of any kind in excess of that imposed... on similar domestic products.'⁽²⁹⁾ Thus, such prohibition, while leaving the state at liberty 'to decide on the rate of taxation to be applied to a particular product, does not mean that they are free to apply rates which discriminate between the domestic and imported products, or which afford indirect protection to the former'.⁽³⁰⁾

Equal taxation of goods of national origin is the rule in the GCC for yet another reason; this is because differentiation in terms of taxation between domestic and GCC goods would constitute charges having equivalent effect to customs duties - a matter which the Member States bound themselves not to apply to products originating from the GCC.⁽³¹⁾

5.A.IV: Re-exportation of Foreign Goods

A question that may arise in this context is whether or not re-exportation of goods imported from non-member states is permitted. The GCC Committee for

Finance and Economy in its fifth meeting in approved the recommendation of the GCC Customs Directorate Generals that:

concerning the re-exportation of foreign goods that have been imported by a Member State and accorded importation aids may be re-exported to other Member States after the sum of such aids are refunded from the exporter of such goods.⁽³²⁾

Accordingly, response to the question regarding the re-exportation of foreign goods which have not been aided, or which have been but refunded of such aids, is in the affirmative.

The question yet remains: when foreign goods are exported from one Member State to another, are they liable for yet more customs duties? In other words, are they in free circulation or not?

The concept of free circulation of goods as understood in EC law⁽³³⁾ means that goods which come from a third country have satisfied the following conditions: 1) completion of relevant formalities, i.e. the necessary paper work applicable in a member state; 2) the payment of appropriate customs duty or charges with equivalent effect which are payable in that state; and 3) no partial or total drawback⁽³⁴⁾ has been claimed for re-exportation. In the case of the GCC, this issue is ambiguous. It is not clear whether the above-mentioned permission is for a mere exportation, or whether it further puts a product into a GCC free circulation after customs formalities and duties are paid to a GCC Member State and the aid if any is refunded.

Currently, the logical answer would be in the negative, because, as will be discussed below, the Common External Tariff (CET) which ranges between 4-20% allows unduly for unfair competition, since an exporter can export a product through a GCC customs point adhering to a lower percentage of customs duty and then

re-export it to the Member State adopting the higher percentage. Until a CET is precisely determined, for instance 10% in all states and aids on import are standardised, such logical assumption holds true. Even if such CET is drawn up, it may still be argued that the concept of free circulation may not be adopted by the GCC because some Member States rely heavily on customs duties as a main source of their national revenue, and may thus be reluctant to reduce their tariffs. Of course this kind of problem can be tackled by means including a 'package deal'. It is generally accepted that once a GCC external customs wall is evenly built, the question of free circulation will force itself into the open and hence be answered either by practice or decision.

By then, free circulation as a GCC concept will differ slightly from that of the EC. Within the GCC, it will require, besides the three conditions described in the EC law as mentioned above, uniform classification of foreign goods and standardisation of the amounts of aids on import. Alternatively, the three mentioned conditions be satisfied, and the exporter returns the amount of aids in excess of that provided by the State of destination, so that benefits within the GCC by importers are equalised, hence levelling the price in the State of destination.

5.B: Completion of a GCC Customs Union

5.B.I: Common External Tariffs

The adoption of a Common External Tariff (CET) in the relations with the outside world by a community such as the GCC constitutes one of the two complementary elements for the creation of a customs union in that community. The Treaty of the EEC, for example, provides that the community is based on a customs union and thus stipulates the adoption of a common customs tariff in relations with third countries.⁽³⁵⁾ The GCC, too, in pursuing its long-term objective of economic

union,⁽³⁶⁾ realised the need for unification of its Members' external tariff as a step forward. Consequently, the EA provides for the adoption of an external tariff within five years. But unlike the EEC, the GCC at first sought the establishment of a Minimum External Tariff (MET), to be set up gradually within five years, commencing from March 1983.⁽³⁷⁾ The MET is provided for in Article 4 of the EA which reads:

1. Member States shall establish a uniform minimum Customs tariff applicable to the products of countries other than GCC Member States.
2. One of the objectives of the uniform Customs tariff shall be the protection of national products from foreign competition.
3. The uniform Customs tariff shall be implemented gradually within five years from the date on which this agreement becomes effective. Arrangements for its gradual implementation shall be agreed upon within one year from the said date.

Notably, notwithstanding the gradual approach stipulated in the above Article, an MET of 4 percent, as well as a maximum of 20 percent, was agreed and implemented by Member States within the first year: Kuwait and Bahrain already had their customs tariffs in that range (i.e. 4 and 5 percent respectively).⁽³⁸⁾ The UAE increased its tariffs from 1 to 4 percent.⁽³⁹⁾ With regard to Saudi Arabia,⁽⁴⁰⁾ Royal Decree No. M/52 of 1983, increased the customs tariff from 3 to 4 percent; Royal Decree No. M/16 of 1985 approved the decision of the Council of Ministers No.L/02 of 1985, which further increased the tariff from 4 to 7 percent. Oman, too, passed a Royal Decision, No. 4 of 1983, increasing customs tariff from 2 to 4 percent.⁽⁴¹⁾ Qatar issued a decree in Law No. 4 of 1984, modifying the Customs Law of 1975 and providing 4 percent as the minimum customs tariff.⁽⁴²⁾

Mention should be made of the fact that while the above national measure taken by the States to implement the MET shows their keenness to effectuate GCC

programmes, one should recall that the GCC, through the EA, aims at economic integration. Furthermore, the policy-makers of the GCC have always expressed their aspiration for a GCC common market. Such factors give weight to the argument that the framers of Article 4 stipulated the eventual setting up of a CET to be worked out in accord with the prevailing economic circumstances, including the existence of MET. This finds support in paragraphs (2) and (3) of Article 4 itself; both refer to 'uniform Customs tariff' rather than minimum.

At any rate, the process to form a defined CET was begun in 1988 when the Supreme Council issued the 'Al-Manamah Declaration', stressing 'the necessity for setting up a Common External Tariff for the establishment of a Gulf common market in light of the principles laid in the EA and decisions of the Supreme Council'.⁽⁴³⁾ As regards the level of the expected unified tariff, the GCC Under-Secretary General for Economic Affairs has indicated that this would not necessarily be higher than the existing levels (i.e. 4-7 percent).⁽⁴⁴⁾ More consultations on the CET have been taking place at the highest level,⁽⁴⁵⁾ but until the eleventh Summit in December of 1990 no agreement has been reached.

5.B.II: Common Commercial Policy

Like the CET, the Common Commercial Policy (CCP) constitutes one characteristic of a common market. But the CEP apparently includes, besides the economic aspects, political elements, and therefore the processes of establishing a CCP appear slower than those of constituting a CET. This is manifested, for example, in the experience of the EEC.

In the case of the GCC, Articles 7 and 23 are of relevance. Article 7 of the EA provides that:

Member States shall co-ordinate their commercial policies and relations with other states and regional economic groupings and blocs, with a view to creating balanced trade relations and equitable circumstances and terms of trade therewith.

To achieve this goal, the Member States shall make the following arrangements:

1. Co-ordination of import/export policies and regulations;
2. Co-ordination of policies for building up strategic food stocks;
3. Conclusion of collective economic agreements in cases where joint benefits to Member States would be realised;
4. Taking of action for the creation of collective negotiating power to strengthen their negotiating parties in the field of importation of basic needs and exportation of major products.

Thus this Article on a GCC Commercial Policy is largely concerned with its international trading arrangements. It calls for standardisation of policies regarding import/export relations with the outside world, and it stresses the need for collective work as a significant bargaining tool in dealing with non-member states and organisations.

Article 23 of the EA is also of some relevance to the developing Common Commercial Policy of the GCC. It reads: 'Member States shall seek to co-ordinate their external policies in the sphere of international and regional aid'.

Although these calls for co-ordination touch upon sensitive issues of a political nature, Member States were not so slow in laying foundations in this area. This is to say that a GCC Commercial Policy has got off the ground. The Unified Industrial Development Strategy which came to light after the EA supports such theses; this Strategy contains in Part III that 'Member States are to adopt a collective

international industrial relations policy based on encouraging the possibility of adding new terms to foreign aid and trade agreements concluded with industrialised and developing countries to promote the industrial exports of the GCC states'.⁽⁴⁶⁾

The steps taken so far are considerable as measured against the practice of most international organisations in the area of commercial relations towards non-members. The guidelines articulated in Article 7 of the EA have been closely followed.

In the field of importation of the basic needs such as rice, television programmes, educational equipment, and papers, Member States entered into collective bulk purchases of such imports.⁽⁴⁷⁾

Furthermore, the GCC is empowered by its Members to negotiate commercial agreements with other states and international groupings. Accordingly there were a number of negotiating rounds with the EEC, ending in 1988 with the conclusion of an economic agreement.⁽⁴⁸⁾ The GCC, moreover, is conducting trade negotiations with the United States⁽⁴⁹⁾ and Japan.⁽⁵⁰⁾

In the CCP arena, the Supreme Council's decision in its ninth summit in December 1988 is of great significance; it 'endorsed the Unified System for the Protection of Industrial Products which are of National Origin'.⁽⁵¹⁾ 'National Origin', as spelled out in Article 3(1) of the EA, means that the added value ensuing from the production of an item in a Member State is not less than 40% of the final value as at the termination of the production phase and that citizens' share in the ownership of the producing plant is not less than 51%.

The Unified System is basically a protectionist tariff measure of up to 25% of the products' value on arrival at the port, or the value determined by the Protection Committee established by this system.⁽⁵²⁾ According to Article 2 of the system, its aims include enhancing the competition capacity of GCC products against unjust competition by foreign products, providing chances for developing national industries to acquire experience and the needed technical, administrative and marketing know-how to lower production and distribution costs, so that it may be possible to compete with foreign industries which possess long experience, and especially encouraging the use of national resources to satisfy the requirements of the GCC market, and encouraging trade of industrial products of national origin. Pursuant to Article 1 of the System, 'protectionist tariffs' means imposition of customs duties, either on the quantity of the imported products, or their value, or both; in cases involving dumping, the same Article provides that protectionist measures include, besides those just mentioned, the imposition of quantitative restrictions on importation, or prohibiting it altogether, or any measure recommended by the Protection Committee. Having said that, Article 3 of the System provides that such measures, if taken, are to be of a temporary nature. Thus, the overall goal of the system is to bring about an atmosphere where GCC industries can grow, and at the same time to guarantee that the imports of particular products do not prejudice the interests of the GCC producers.

Generally, it is worth mentioning that in the eleventh Summit held in December 1990, the Supreme Council issued the 'Doha Declaration' emphasising its determination to promote economic integration by means including laying down programmes for establishing a 'unified trade policy'.⁽⁵³⁾

The above examination of protection measures and restrictions leads this discussion into another aspect necessary for the application of the principle of intra-GCC free movement of goods, i.e. elimination of quantitative restrictions as between its own Member States.

5.C: Elimination of Quantitative Restrictions and Similar Charges in Intra-GCC Trade

Realisation of the principle of free movement of goods in a community requires the abolition of restrictions on the quantities of exported/imported products in intra-community trade. 'Although a customs union is, strictly speaking, limited to the elimination of internal customs duties and the setting up of a common external tariff, free trade between Member States could be jeopardised if it were possible to limit, in one way or another, the quantity of goods crossing the inter-state borders'.⁽⁵⁴⁾ A quota, as a measure restricting the import or export of a product by amount or by value may disturb the flow of trade to a greater extent than tariffs, since such measures, *inter alia*, may render the supply unable to meet the demands of the restricted area, since reciprocal measures and mutual arrangements are difficult to set up. For this reason, the Treaty of the EEC provides for the abolition of quantitative restrictions and measures with equivalent effect on imports and exports⁽⁵⁵⁾ and contains in addition the so-called 'standstill' provisions precluding Member States from introducing any new quantitative restrictions or measures with equivalent effect. The seeming complexity of the concept of measures having equivalent effect to quantitative restrictions is defined to some extent in the EC Commission Directive of 22 December 1969,⁽⁵⁶⁾ as well as the jurisprudence of the ECJ. The ECJ case law on the issue of what amounts to 'quantitative restrictions or measures having equivalent effect' has developed to a stage where it is necessary for those concerned with the

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equivalent ideas in organisation to take it into account. For the purpose of this study on the GCC, it seems of significant importance to seek definition of this concept; and, since the concept was developed more in Europe, the say of the ECJ is of much weight. In *Geddo v Ente Nazionale Risi*, the ECJ declared that: 'the prohibition of quantitative restrictions covers measures which amount to a total or partial restraint of, according to the circumstances, imports, exports or goods in transit.'⁽⁵⁷⁾ Then, on definition of the phrase 'measures having equivalent effect' the ECJ said in *Dassonville* that it includes 'all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-community trade'.⁽⁵⁸⁾ Actions held by ECJ to constitute quantitative restrictions include the suspension of import of a commodity.⁽⁵⁹⁾ Examples of the measures held to have assimilated effect to quantitative restrictions include a requirement for import or export licences in intra-community trade.⁽⁶⁰⁾

Turning to the case of the GCC, the concept of 'elimination of quantitative restrictions and measures having equivalent effect' has not been straightforwardly addressed in its constituent documents. However, the wording of Articles 1(b) and 2(1) of the EA amounts to the effect that restrictions on quantities of imports and exports or measures with assimilated effects may not be imposed.

Article 1(b) reads:

All agricultural, animal, industrial and natural resource products that are from Member States shall receive the same treatment as national products. ?

Article 2(1) provides:

All agricultural, animal, industrial and natural resource products that are of national origin shall be exempt from customs duties and other charges having equivalent effect.

Both begin with the term 'all'; in the former, the initial 'all' most probably means: in all matters products of Member States shall receive the same treatment as national products. In the latter the inclusion of the word 'all' may be taken as an indication of the intention of the framers of the EA. That is to say that the framers drew the term 'all' to prevent the elimination of customs duties on fixed quantities from which may follow quantitative restrictions on imports and or exports. Yet, more measures to prevent quantitative restrictions should be taken.

With the absence of provision on the issue, or a decision of the Supreme Council, it may be argued that a quantitative restriction may covertly be imposed even if applying the same rules to domestic and imports alike. This may be demonstrated in, for instance, a case where the same maximum selling price is applied to both imported and domestic goods where the former cost more than the latter. This measure is of equivalent effect to quantitative restrictions since it covertly drives importers out of the market.

Much of the development of the concept with regard to the GCC will depend upon its practice. The practice of the GCC and the steps it takes for the creation of a Gulf common market will, in one way or another, indicate whether the GCC, even with the silence of its documents on some issues, intend to adopt the principles developed by other regional organisations for efficient intra-GCC trade, including the principle under discussion, i.e. elimination of quantitative restriction on imports and exports and measures having equivalent effect. Notably, the first signs of its practice point towards its trend to fill the gaps in the EA by a number of measures. For instance, the Supreme Council passed a decision allowing access of products of Member States to the domestic market of other GCC Members without having to appoint an agent

or representative in the territory of the importing Member State.⁽⁶¹⁾ This decision was rapidly transformed into the national legal system.⁽⁶²⁾ Of relevance to this discussion is the fact that under the EEC law, particularly Directive 70/51 Article 2(3)(g), the requirement of a local agent would constitute unlawful measure amounting to a quantitative restriction.⁽⁶³⁾

Thus, the fact that the decision of the Supreme Council and the national laws implementing it stress the *non-need* for local agency, shows the general trend toward abolishing not only quotas, but also the assimilated measures.

In this context, the discussion would not be complete without making reference to Article 6 of the EA; this Article permits national laws to blacklist or restrict some goods, and thus deny them the right of transit which is granted by the EA and the earlier mentioned decision of the Supreme Council with respect to other goods; Member States, according to Article 6 of the EA, are to exchange lists of such goods. The GCC Secretariat General assumed responsibility for informing customs authorities of the Members about changes and developments on the lists.⁽⁶⁴⁾ In this respect, a non-GCC analyst may hold this as a quantitative restriction undermining intra-GCC trade. GCC observers may view it differently, especially when such measures are grounded by reference to Islamic principles. Hence, if one takes into account that the social values inspired by Islam are shared by almost everyone in the territory of the GCC, and that such values take precedence over economic gains, he or she realises that they may not, in fact, amount to quantitative restrictions, just as the world is in an agreement that prohibiting the importation/exportation of narcotics does not constitute a quantitative restriction on international trade.

Generally speaking, the test is subjective. Thus, whereas in Europe, for instance, prohibition on the import of pornographic items may or may not amount to a quantitative restriction,⁽⁶⁵⁾ in the Gulf, it would not. This leads this discussion to cases of possible justification for derogations from the prohibited customs duties or assimilated charges and quotas and assimilated measures.

5.D: Possible Limitations on the Principles of Free Movement of Goods

There can be no doubt that full application of the principles of free movement of goods liberates trade, and thus increases the volume of goods crossing the inter-state borders. However, rigid adherence to those principles mentioned above can be destructive, not only in economic terms, but also in political and security as well as social terms. Such a possible result, coupled with the fact that most rules have their exception (which can be found either in the source of the law itself or in the interpretation of the rule), was not absent from the minds of the draftsmen of the treaties of some integrative economic institutions such as that of the EEC. This Community is seeking the attainment of economic objectives similar to those of the GCC, but unlike the GCC, it has drawn provisions including the grounds on which a member state may legitimately make exceptions to the free movement of goods.

In the EEC, Articles 30-34, as noted earlier, prohibited quantitative restrictions on import/export and all measures having equivalent effect. Article 31, in particular, prevents the introduction of new quotas or assimilated measures. Justifications for derogation from applying the principles laid down by these Articles are spelled out in Article 36 of the EEC Treaty which reads:

The provisions of Arts. 30 to 34 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic

or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

While this Article takes account of security and social values, and hence permits derogation from the principle of free movement of goods for the sake of their protection, it maintains that the exercise of such powers by Member States shall not be arbitrary. This is to say that the scope of these justifications has to be interpreted narrowly, so as to avoid undermining the free movement of goods. The strict construction has been decreed in *Commission v Italy* where the ECJ stated:

It must be recalled that in accordance with the settled case-law of the Court Article 36 must be strictly interpreted and the exceptions which it lists may not be extended to cases other than those which have been exhaustively laid down and, furthermore, that Article 36 refers to matters of a non-economic nature.⁽⁶⁶⁾

Moreover, it is worth mentioning that the list of exceptions embodied in Article 36 is suggested to be exhaustive.⁽⁶⁷⁾ Further exposition of them was made by the ECJ when it had the opportunity to determine the scope of some of the justifications and define their concepts. Hereunder are grounds, the scope of which the Court had determined:

- Public Morality;⁽⁶⁸⁾
- Public Policy;⁽⁶⁹⁾
- Public Security⁽⁷⁰⁾
- The Protection of Health⁽⁷¹⁾
- The Protection of Health and Life of Plants⁽⁷²⁾
- The Protection of National Treasures⁽⁷³⁾

- The Protection of Industrial and Commercial Property⁽⁷⁴⁾

As mentioned earlier, strict adherence to the principle of free movement of goods may also result in economic problems. For this reason, Article 25 of the EEC Treaty allows derogation from the common customs tariff under specific conditions; paragraph (1) provides that if the Commission finds that demand for a particular product cannot be met by supply from within the community and traditionally depends to a considerable extent on imports from third countries, the Council shall grant a Member State tariff quotas at a reduced rate of duty or duty free; paragraph (2) contains that the Commission may grant similar exemption when shortage of supply within the community is such as to entail harmful consequences for the processing industries of a Member State; paragraph (3) envisages that where agricultural products are concerned, 'the Commission may authorise any Member State to suspend, in whole or part, collection of the duties applicable, or may grant such Member State tariff quotas at a reduced rate of duty or duty free, provided that no serious disturbance of the market or the products concerned results therefrom'.

In the case of the GCC, its operative nature plays a major role on the application of its documents. Yet, this should not make a legal analyst of the GCC lose sight of the fact that the people concerned, i.e. businessmen, await an answer to questions including the one at hand, i.e. whether there is a legally possible derogation from the concepts governing the free movement of goods in the GCC. Although the shortage of the experience coupled with the gaps in the Charter and the EA are in some points so wide that one is unable to form an opinion, examination of the potential legal direction the GCC may take in a given issue is an apposite work an analyst can do. This approach is adopted in discussing whether there is room at all for making

exceptions in the GCC. What are the grounds on which a given derogation may be based?

Taking into account the contents of Article 24 of the EA, which mirrors the operative nature of the GCC, one would consider exceptions to the free movement of goods possible: the said Article reads in part:

Any Member States may be temporarily exempted from applying such provisions of this Agreement as may be necessitated by temporary local situations in that State or specific circumstances faced by it. Such exemption shall be for a specified period and shall be decided by the Supreme Council of the Co-operation Council of the Arab States of the Gulf.

Accordingly, this Article allows exemptions with three conditions: Firstly, a State must face an internal situation temporarily necessitating the derogation from the agreed principles of free movement of goods. Secondly, exemption must be of an interim nature. Thirdly, the Supreme Council must agree to provide a State with an exemption.

Possible grounds for derogation from the rules on intra-GCC trade may include all those enumerated by Article 36 of the EEC Treaty which was discussed above. However, the prevailing political and social values in the GCC may differentiate between their scopes in terms of degree. Thus what constitutes a security threat in a GCC State may be considered a minor criminal offence in an EEC State, and in the 'public morality' concept, an article which can be regarded by a GCC State as having the tendency of degrading its national may not be regarded in an EEC State as such; and so on with regard to other grounds. In brief, justifications provided for in Article 36 of the EEC Treaty are, in principle, likely to justify derogation by a GCC Member State from the agreed rules on free movement of goods in the GCC. Other

exceptions may be found justifiable, especially those reasoned by violation of Islamic teachings, e.g. objects intended to be worshipped by some people in the States.

Generally speaking, this issue deserves special attention from the policy-makers of the GCC; since there is no court of justice to which questions of this nature can be addressed, an addition to the EA or a decision of the Supreme Council is needed in order that concerned persons, whether natural or legal, take notice of the GCC stand on this problem.

A final remark concerns the proper procedure to minimise the possible abuse of power to derogate by the Member States of the GCC. In this respect, the addition of a provision obliging Members intending to apply any of the allowed derogations to inform other Member States through the concerned division of the GCC General Secretariat of the intended derogation and its duration as well would minimise the adverse effects of derogation.

Summary

The EA explicitly embodies the principle of free mobility of goods of national origin. It envisages the elimination of customs duties and other charges of assimilated effect, a matter that was implemented into the national legal systems. Furthermore, the GCC is pursuing the creation of a GCC external customs wall through progressive stages as a step towards a customs union. The process in this direction reached a stage where the States bound themselves to an external customs tariff ranging between 4-20 percent. Efforts to set up a common external tariff are ongoing at the highest GCC level, i.e. the Supreme Council. Efforts to form a GCC common commercial policy are promising.

In materialisation of the principle of equality among goods originating from within the GCC, several measures have been taken, hence facilitating the free movement of goods, i.e. equality between means of transportation belonging to the GCC nationals and equal opportunity for making use of the ports and the services provided therein in any Member State.

The EA, though, is silent on the issue of quantitative restrictions. Nonetheless, it is suggested that they may not be imposed since they may constitute an obstacle to the free flow of goods.

Possible grounds for limitations on the free movement of goods are enshrined in Article 24 of the EA, i.e. temporary local situations or specific circumstances. Besides those vague justifications, grounds of public morality, public policy, public security and breach of Islamic teachings, are likely to be held legitimate.

Generally speaking, in the 10 years of its existence, besides laying down the basis, the GCC has accomplished admirable goals in the direction of realising the principle of free movement of goods, hence establishing a Gulf common market. The latter, however, depends on the implementation of other principles, such as the free movement of persons; this principle accordingly is the subject of the following chapter.

References and Notes

1. See Abd Alla Bishara 'The Gulf: Hope and Future', a speech delivered in Abu Dhabi on February 1, 1982 and Abd Alla Bishara, 'The GCC: Goals and Future' press conference on the occasion of the second anniversary of the GCC on May 25, 1983. Both are reproduced in *The Gulf: Hope and Future* [in Arabic], (Riyadh: GCC Secretariat General, n.d.) pp.10 and 16 respectively.
2. For the text of the Agreement see vol.2 of this work pp.52-59. The EA was given effect within the Member States by the following laws:

UAE: Federal Decree No. 47 of 1982; *UAE Official Gazette*, No. 105 of 1982

Bahrain: Law No. 26 of 1981; *Bahrain Official Gazette*, No. 1468 of 1981.

Saudi Arabia: Royal Decree No. M/13 of 1402 H. (1982); *The GCC Legal Bulletin*, 3, P.22.

Qatar: Decree No. 51 of 1982; *Qatar Official Gazette*, No. 8 of 1982.

Kuwait: Law No. 58 of 1982; *Al-Kuwait Ayoun* [the Official Gazette], No. 1443 of 1982.

3. A 'free trade area' is established when the customs duties and quantitative restrictions on goods originating between members of a community are abolished; however, each member state of the free trade area is free to impose its own external tariffs on goods originating from outside the free trade area. This is the lowest form of economic association.

A 'customs union' entails, besides the elimination of customs duties and quotas, the adoption by member states of the customs union of a common external tariff in the relations with non-members. As such, it is a higher form of economic association than the free trade area.

A 'common market' combines the elements of a customs union and the elimination of the barriers of movement of goods, persons and capital.

An 'economic union' is established when elements of the common market are realised in addition to the normalisation of the members' economic policies especially in the fields of industrialisation, monetary, financial and taxation etc., El-Guaze, *The Concept of Economic Integration*. A lecture delivered on January 24, 1983 in *The Gulf: Hope and Future*, supra note 1, pp.148- 158, at 151.
4. See, for example, the Al-Riyadh and Al-Manamah Declarations both of which are reproduced in vol.2 of this work, pp.84- 87 and 194-195 respectively.
5. *The Concept of Economic Integration*, supra note 3, p.151.
6. The GCC, *Co-operation Amongst the GCC States in the Customs Field* [in Arabic], (Riyadh: GCC Secretariat General,n.d.), p.20.
7. The GCC, *Decisions on the Common Work* [in Arabic], (Riyadh: GCC Secretariat General, 1989), p.15-16 hereinafter The GCC.
8. *Co-operation Amongst the GCC States in the Customs Field*, supra note 6, pp.33-4
9. See The GCC, supra note 7, p.15. For the text of those regulations see vol.2 of this work pp.60-62.
10. Ibid. pp.23-5
11. Ibid, p.27
12. Ibid, pp.29-30
13. *Oman Official Gazette*, No. 265 of 1983
14. *Qatar Official Gazette*, No.3 of 1983
15. *Al-Kuwait Al-Youm, the Official Gazette*, No. 1450 of 1982, No.1468 of 1983, No.1631 of 1985, No. 1475 of 1983, No. 1461 of 1983, No. 1523 of 1984 and The GCC, supra note 7, p.41 respectively.
16. Cases 2 and 3/62 [1962] E.C.R. 425 at 432
17. Case 46/76 [1977] E.C.R. 5 at 14
18. Case 7/68 *Commission v. Italy*, [1968] E.C.R. 423
19. Case 29/72 *Marimex SpA v. Italian Finance Administration*, [1972] E.C.R. 1309
20. See the Fifth Communique of the Supreme Council which is reproduced in vol.2 of this work, pp.170-174.
21. See the Seventh Communique of the Supreme Council which is reproduced in vol.2 of this work, pp.178-181. For the Arabic text of the rules see note 7, pp.139-142
22. The GCC, supra note 7, p.143.
23. Ibid, pp.143-5. Bahrain Official Gazette, No. 1778 of 1987.
24. The GCC, supra note 7, p.149.
25. *Oman Official Gazette*, No.362 of 1987
26. *Qatar Official Gazette*, No.2 of 1987
27. *Al-Kuwait Al-Youm, the Official Gazette*, No.1703 of 1987

28. See Chapter six, pp.248-249.
29. EEC Treaty Article 95
30. Josephine Steiner, *EEC Law* 2nd ed, (London: Blackstone Press, 1990), p.67
31. See above pp.201-205.
32. *Co-operation Amongst the GCC States in the Customs Field*, supra note 6, p.31
33. EEC Treaty Article 10(1)
34. *The Dictionary of English Law*, edited by Earl Jowett and Clifford Walsh defines 'drawback' as:

a term used in commerce to signify the remitting or paying back upon the exportation of a commodity of the duties previously paid upon it.

Down to 1803, when goods liable to import duty were imported into this country the full duty was payable in every case, but was repaid to the owner of the goods if they were exported without being used in this country. Such repayment was called a drawback. Drawbacks were still paid in the case of dutiable articles, such as tobacco leaf, which, after undergoing a process of manufacture, is exported as a manufactured article; but other dutiable articles which are intended to be exported never pay duty on importation, being kept in warehouses (*q.v.*) until they are exported.

A drawback differs from a bounty in that a bounty enables a commodity to be sold for less than its natural cost whereas a drawback enables it to be sold exactly at its natural cost. Were it not for the system of drawbacks it would be impossible, except where a country enjoyed some very peculiar facilities of production, to export any commodity which was more heavily taxed at home than abroad. The drawback obviates this difficulty, and enables merchants to export commodities loaded at home with heavy duties, and to sell them in the foreign markets on the same terms as commodities fetched from countries where they are not taxed.

Most articles imported or to be exported into or out of this country may be warehoused for subsequent exportation in bonded warehouses. In this case they pay no duties if imported; and, of course, get no drawbacks on their exportation.

Sometimes a drawback exceeds the duty or duties laid on the article; and in such cases the excess forms a real bounty of that amount.

35. EEC Treaty Article 9
36. For the necessary elements for establishing an 'economic union' see supra note 3
37. See *Co-operation Amongst the GCC States in the Customs Field*, supra note 6, pp.20-21.
38. *Ibid.* p.23
39. *Ibid.* p.22
40. *Ibid.*
41. *Ibid.*
42. *Qatar Official Gazette*, No. 7 of 1984.
43. For the text of Al-Manamah declaration see vol.2 of this work, pp.194-195.
44. *Al-Jazairah* Newspaper, Saudi Arabia, January 22, 1984
45. See, for example, the tenth Communique of the Supreme Council, vol. 2 of this work, pp.196-201.
46. For the text of this Strategy see vol.2 of this work, pp.98-107.
47. See *The GCC, Accomplishments of the GCC, A Brief*, [Arabic] (Riyadh: GCC Secretariat General, 1989), pp.41-2
48. For the text of this Agreement see vol.2 of this work. pp.128-137.
49. *Asharq Al-Awsat* Newspaper, [in Arabic] London, March 29, 1989
50. See *Accomplishments of the GCC*, supra note 47, p.23

51. See the Ninth Communiqué of the Supreme Council which is reproduced in vol.2 of this work, pp.189-194. The Arabic of the said system is produced in the GCC, supra note 7, pp.294-98.
 52. Article 19 of the said system
 53. The Doha Declaration is produced in Vol. 2 of this work, pp.212-213.
 54. P.S.R.F. Mathijssen, *A Guide to European Community Law*, 4th Ed. (London: Sweet and Maxwell, 1985), 116
 55. EEC Treaty Articles 30, 32, 33, 34 and 35.
 56. Commission Directive 70/51, is reproduced in B.Rudden and D.Wyatt, ed. *Basic Community Law*, 2nd Ed.(Oxford: Clarendon Press, 1986), pp.205-209.
 57. Case 2/73 [1973] E.C.R. 865 at p.879
 58. Case 8/74, *Procureur du Roi v. Benoit and Gustave Dassonville*, [1974] E.C.R. 837 at 852
 59. Case 7/61, *Commission v. Italy* (1961) E.C.R. 317.
 60. Cases 51-54/71, *International Fruit Co. NV v. Produktschap voor Groenten en Fruit*, (1971) E.C.R. 1107.
 61. See The GCC, supra note 7, p.106.
 62. UAE: Ministerial Decree No.12 of 1986, see the *UAE Official Gazette* No.161 of 1986
- Bahrain:** The GCC Secretariat General reported that it was informed in 1985 that the decision of the Supreme Council has been put into effect; see The GCC, supra note 7, p.108
- Saudi Arabia:** reportedly the concerned entities in the Kingdom have been directed to take the necessary measures to execute the decision of the Supreme Council, see The GCC, supra note 7, p.108
- Oman:** Ministerial Decree No.26 of 1986; see *Oman Official Gazette* No.332 of 1986
- Qatar:** Law No.3 of 1987, see *Qatar Official Gazette* No.1 of 1987
- Kuwait:** The GCC Secretariat General was informed in March 1986 that Kuwait has taken the appropriate measures to implement the decision of the Supreme Council; see The GCC, supra note 7, p.111.
63. For the text see *Basic Community Law*, supra note 56, p.207.
 64. *Co-operation Amongst GCC States in the Customs Field*, supra note 6, p.30
 65. See infra note 68.
 66. Case 95/81 [1982] E.C.R. 2187, at 2204.
 67. D. Wyatt and A. Dashwood, *The Substantive Law of the EEC*, 2nd ed. (London: Sweet and Maxwell, 1987), p.138.
 68. Case 34/79 *The Queen v. Maurice Donald Henn and John Frederick Ernest Darby*, [1980] 1 C.M.L.R. 246.
 69. Case 7/78 *R. v. Thompson* [1978] E.C.R. 2247.
 70. *McAfee v. Smyth and Quigley*, [1981] 1 C.M.L.R. 410
 71. Case 153/78, *Re Health Control on Imported Meat* [1980] 1 C.M.L.R. 198
 72. Case 89/76 *Commission v. Netherlands* [1977] E.C.R. 1355
 73. Case 7/68 *Commission v. Italy* [1968] E.C.R. 423
 74. Case 102/77 *Hoffmann-La Roche & Co. v. Centrafarm Vertriebsgesellschaft* [1978] 3 C.M.L.R. 217

Chapter Six

Free Movement of Individuals Within the GCC

Introduction

The previous chapter explored one component of the establishment of a Gulf common market, i.e. the free movement of goods in the GCC. This chapter will enumerate the steps which have been taken within the framework of the EA to realise yet another essential element for creating a Gulf common market, which is the free movement of individuals. The importance of attaining this principle in an economic community is reflected in its enshrinement in the constituent treaties of a number of regional communities. Apart from the Charter of the GCC, the free mobility of individuals in the EEC Treaty, for instance, is one of its fundamental principles ⁽¹⁾ which has been conformed by the ECJ ⁽²⁾ and shown by the Community secondary legislation.⁽³⁾ Provisions for realisation of this principle aim *inter alia* at the creation of

a 'common market in manpower' which would serve the purpose of moving labour to areas which reveal shortage of manpower and to solve the problem of unemployment in overpopulated areas.⁽⁴⁾

It is the purpose of this chapter to identify and examine the measures taken by the GCC to erect this pillar of the desired Gulf common market. The discussion will include determination of its personal scope, the rights of entry and residence in the Member States, the extent of equality of treatment of citizens of the GCC, the

right to practice liberal professions and the right to engage in economic activities. The final part of this chapter explores the possible grounds for exceptions to the rules on the principle of free movement of persons.

Throughout and following the presentation and discussion on the rules adopted by the GCC on the free movement of persons, there will be enumeration of national legislation effectuating GCC rules. For the purpose of this chapter, the presentation of such legislation should throw light on the degree of Member States responses towards GCC law. Furthermore, when put together, they sometimes determine the meaning as well as the personal and material scope of the concerned GCC law. At any rate, for reasons to be explored in some detail in chapter seven, making sure that a GCC rule has been incorporated in national law is of crucial significance.

The place of this chapter within the arrangement of the whole thesis may not allow detailed consideration of national legislation on each and every GCC decision. On the other hand, some contents of such legislation require pointing out. Consequently, they will be approached as follows: in cases where a national legal system receives a GCC rule in the exact terms formulated by the GCC, or even the substance of the rule, only reference to that national law will be made, especially since GCC decisions themselves are analysed, anyway, prior to the presentation of national legislation. In cases where a municipal law makes exceptions to a GCC rule, changes of its substance, changes of its effective date etc., these matters will be pointed out for they bear on the needed uniformity of the application of GCC law within the Member States, lack of which could be a hindrance of the free movement of persons.

6.A: Personal Scope

The EA does not elaborate on the personal scope of free mobility of individuals provided for in its Article 8, which reads:

Member States shall agree on executive principles to ensure that each Member State shall grant the citizens of all other Member States the same treatment as is granted to its own citizens without any discrimination or differentiation in the following fields:

1. Freedom of movement, work and residence.
2. Right of ownership, inheritance and bequest.
3. Freedom to exercise economic activities.

This Article is worded in rather general terms, using the word citizens, for example, as opposed to workers or liberal professionals. Additionally, an economic nexus does not seem to be regarded as a prerequisite for a GCC citizen to be entitled to exercise this right of movement, unlike, for example, in the EEC.⁽⁵⁾ The inclusion of the provision for the free exercise of economic activities in the same Article suggests that those two rights, i.e. freedom to move and freedom to exercise economic activities, are not interdependent. However, references to 'economic citizenship' as opposed to the plain 'Gulf citizenship' in some official documents, e.g. the Al-Manamah Declaration,⁽⁶⁾ can be taken as an indication of the desire for economic mobility, until the personal scope of the provided rights are clearly determined. Until then, 'citizen' is not a GCC concept and thus its definition in each Member State must be left to the respective national law.

Notably, the personal scope of the Article cited above has a limited effect on the free movement of individuals in the GCC. This is because the economic sectors, industry, trade, agriculture, etc. in the Member States, whilst wholly or partially owned by GCC nationals and most likely managed by them, are still heavily dependent on

foreign labour. Consequently, it is apt to enquire whether such foreign labourers, e.g. truck drivers, are also beneficiaries of the right of movement as a necessary extension of GCC citizens wishing to exercise their rights to move and engage in economic activities. According to the Chamber of Commerce and Industry in Riyadh, freedom of movement has not been extended to include these labourers in most Member States.⁽⁷⁾ The problem, therefore, needs to be solved. One possible way would be through, first, the unification of the procedures of importation and recruitment of foreign labour in the Member States; and secondly, through the exchange of lists of names of those involved in cross-border economic activities. The establishment of a GCC office to monitor these processes would control their movement properly, and would be likely to advance improvements in the machinery. Alternatively, the States could agree terms on mutual recognition of work permits. Generally speaking, it is necessary to work out a practical system which allows GCC citizens who are compelled by need to import a foreign workforce to establish themselves and/or provide services within the GCC.

6.B: Right of Entry

6.B.I: Entry

In the GCC, the right of entry is implicitly provided for in the EA; its Article 8 stipulates that GCC nationals in any Member State are to be treated equally with its own inhabitants, including the exercising of freedom of movement, work and residence. Free mobility, work and residence can be exercised only if the right of entry is made available.

The EA says nothing about the required document for crossing frontiers between Member States. It appears that this is left to the Members to work out. In

practice, as experienced by this researcher, the national passports are the only required documents. The pre-GCC visa requirements have been eliminated. Not only this, but the previous separate passport control counters at entrances to the Member States for their own citizens have been converted to GCC ones. Additionally, there have been uniform simplifications of border crossing formalities throughout the Member States.

Mention should be made of the intention of the Member States to introduce a GCC passport with a uniform format as a means of facilitating free mobility of individuals within the GCC.⁽⁸⁾ The commencement of this venture is anticipated to occur in 1990, in progressive steps.⁽⁹⁾ However, no steps in this respect have been taken possibly due to the occupation of Kuwait by Iraq in August 1990, and its consequences in terms of security.

6.B.II: Residence

The right of residence in the GCC is expressly guaranteed by Article 8 of the EA. Seemingly, this right is available to any GCC citizen regardless of the purpose of his/her movement.

So far no specific measures governing the exercising of this right have been made. Of course, a GCC regulation detailing its personal and material scope would answer many questions in this regard. Up to now, it is not clear whether residence in a Member State by a national of another Member State is conditional upon the issuance of a special residence permit. Reportedly, citizens of the GCC are exempted from those residence permits required of foreign workers.⁽¹⁰⁾ Moreover, since the wording of Article 8 of the EA is general, i.e. 'citizens', it would seem that every GCC

citizen is eligible, making the need for such a permit unlikely. Statistical and other reasons for its requirement can be satisfied by other means, such as registration at the check-in points.

6.C: Equality of Treatment

Article 8 of the EA expressly calls on Member States to ensure that their citizens are treated equally in any fellow Member State. By implication, it prohibits discrimination based on nationality in recognition of the fact that equal treatment of nationals in a community is necessary to clear the way for their cross-border movement.

In all States, except Saudi Arabia, nationality laws, in one way or another, distinguish between classes of nationals, but such distinction is solely concerned with political rights, e.g. voting or running for elected public posts, and for a specified period of time. Rights arising under GCC law are, as will be seen, of economic and social character. Consequently, the distinction, should it continue, has no effect on the treatment of GCC nationals in these States since their citizens of any class have the same non-political rights.

At any rate, the concept of equal treatment in the GCC is a growing one. It is not as developed as in some other regional organisations, such as the EEC. In principle, its attainment by a number of organisations including the GCC indicates its importance for the integration of the community concerned. Unequal treatment of nationals in a community could hinder the free movement of individuals and hence the attainment of the integration sought.

In implementing the principle of equality amongst its citizens, the GCC has decreed a number of measures in the areas of real estate ownership, possession of company shares, education, health, investment and taxation.

6.C.I: Home ownership

One measure taken by the GCC for the realisation of the free movement of persons and the attainment of equal rights of ownership is the GCC Regulations on Real Estate Ownership. This set of regulations was approved by the Supreme Council in its fifth Summit in 1984.⁽¹¹⁾ Recognising the importance of the availability of housing for migrants, the said Regulations in Article 1 provide natural citizens of a Member State permission to own real estate. However this right is restricted to one piece of property, whether land or building, provided that its area is no more than 3,000m². Legal persons, according to Article 7 of these Regulations, are granted rental privileges only. Additionally, real estate in Makkah and Madina, according to Article 8, are beyond the reach of these regulations.

Notably, whilst Article 8 of the EA creates a right of ownership for citizens of the GCC States equal to those of the Member State's own nationals, the Regulations nonetheless contain only a tiny privilege for the GCC nationals inasmuch as most of its 12 articles, while establishing a new right, in essence constitute restrictions on such ownership. These restrictions include specifications of the citizens who may own real estate, allowing the possession of only one piece not exceeding 3,000m², and restricting the transfer of title, according to Article 4, before the eighth year of possession unless exempted.

Mention should be made however of the fact that pursuant to Article 5 of the Regulations, where the ownership is obtained through inheritance, the inheriting owner is treated on an equal footing to citizens of the Member State where the estate is located. Article 12 of the Regulations explicitly indicates that these Regulations in their current form were experimental; they were to be evaluated by the Ministerial Council in March 1990. As such, deficiencies in them are expected to be tackled so as to suit the current co-operative stage of the GCC. In the meantime, Member States of the GCC have made the following arrangements for implementing this decision of the Supreme Council:

- UAE: Nowhere in the *Official Gazette* does any measure appear on this matter.
- Bahrain: Decree on Law No. 6 of 1985.⁽¹²⁾ This law incorporated the exact terms of the Regulations on the right of real estate ownership.
- Saudi Arabia: Royal Decree No. M/55 of 1985,⁽¹³⁾ which ratified the Regulations in their entirety.
- Oman: Royal Decree No. 70 of 1987.⁽¹⁴⁾ It instructs the Housing Minister to execute the Regulations endorsed by the Supreme Council. The Regulations are not annexed to this Decree. However, since no exceptions or reservations are made, the presumption is that the right of housing ownership as determined by the aforesaid Regulations is applicable in Oman in accord with the exact terms of the regulations.
- Qatar: Law No. 2 of 1987.⁽¹⁵⁾ As of 5 November 1991, the regulations will be applied in Qatar in their entirety. It is worth mentioning that Qatar was exempted from the provision of Article 6 of the Regulations by a decision of the Supreme

Council in its seventh Session.⁽¹⁶⁾ The said Article provides that: "In case the citizen who wishes to own in accordance with these Regulations has acquired his nationality of a Member State through naturalisation, it is required that at least 10 years in total elapse from the date of his naturalisation." According to the said decision this exemption was valid only until February 5, 1991. As such, in Qatar naturalised persons of the GCC Member States may acquire real estate after the mentioned date provided that 10 years or more have elapsed since their naturalisation.

But Article 6 of the aforementioned law incorporating the Regulations, unlike in the other States where it is effective as from the date of issuance and publication in the *Official Gazette*, will be effective only from 5 November 1991, 9 months in excess if the exemption given to Qatar by the supreme council. The said Qatari law Article 6 reads:

In case that a person wishing to own property according to this law is a naturalised national of a GCC Member State, and was not born in one of the States, such ownership is allowed as of 5 November 1991 provided that ten years have elapsed since the date of his naturalisation.

- Kuwait: The General Secretariat of the GCC received a letter from the Ministry of Justice and Legal Affairs in 1985 indicating that the concerned entity, i.e. the Bureau of Land Registration and Notarisation, has been directed to execute the Regulation on Real Estate Ownership.⁽¹⁷⁾

Bearing in mind that exemptions like in the case of Qatar, or reservations would be voiced, the assumption is that, the right of real estate ownership and the Regulations thereof are effective in Kuwait too.

Notably, no evaluation of the Regulations was made in March 1990 as stipulated, or thereafter.

6.C.II: Acquisition of Company Shares

In the furtherance of GCC citizenship and affirming the principle of equality among nationals of Member States, the Supreme Council in its ninth Summit in 1988 took a decision entitling citizens of the States to own and transfer the title of company shares established in the Member States in accordance with specified Rules - translated and produced in volume 2 - attached to this decision.⁽¹⁸⁾

These Rules, which came into force in March 1989, determine the personal and material scope of the concept of the right to own and dispose of company shares. According to the said Rules, holders of this right are both natural and legal citizens of GCC Member States. On the other hand, the material scope of the concept as seen in the Rules is rather narrow.

Limitations of the concept are found in Articles 2 and 4 of the aforementioned Rules. The former reads to the effect that this right may be exercised in relation to the shares of only two kinds of companies. Companies which were established in national laws before the Rules do not fall within its provisions unless they are *joint national stock companies* as defined by Article 1(2) of the Rules. The Rules require the creation of *new stock companies*, according to Article 1(1) in which GCC national other than of the State of registration may hold shares but only if the companies are carrying on the economic activities set out in the EA, Article 2 of the Rules. A further restriction follows from Article 4 which allows in some cases a State to provide that its citizens must hold up to 51% shares. The result is that wholly

nationally owned companies established before the decision and companies which carry on activities outside the EA are beyond the scope of the Rules. All other companies fall within them.

In summary, shares of the two kinds of companies may be owned by GCC citizens:

1. Joint stock company which holds the nationality of a Member State and whose shares are owned by nationals of more than one Member State. This includes companies established before and after the GCC decision.
2. New stock company which meets these requirements: a) the nationality of a Member State; b) being established after the GCC decision; c) its capital is divided into equal shares; and d) engagement in an economic activity decreed by the GCC to be exercisable by GCC nationals.

Mention should be made here of the content of Article 8 of the above-mentioned Rules: it stipulates review of the Rules in March 1992, i.e. three years from its effective date in March 1989. This provision makes those seemingly restricting requirements understandable as a first step.

The extent of the six national laws executing the decision of the Supreme Council on the ownership and transference of titles of shares is of some interest, apart from being an indicator of the willingness of Member States to effect the GCC decisions. Hereunder are those enactments:

- UAE: Federal Law No. 8 of 1984 on Commercial Companies in Article 22 allows non-UAE nationals to own and transfer the title of shares of stock companies,

whether established under this Law or before it was passed, provided that 51 percent or more of the capital of the concerned company is owned by UAE nationals.⁽¹⁹⁾ The requirement of 51 percent is permitted under GCC Rules mentioned above. Therefore the Ministry of Trade and Economy of the UAE communicated to the GCC Secretariat General that what has been decreed by the Supreme Council is already the law in the UAE, i.e. under the aforementioned Federal Law, hence, the letter goes, GCC nationals have the right to own and negotiate shares of stock companies established before and after that law.⁽²⁰⁾

- Bahrain: Ministerial Decree No. 4 of 1989 by the Minister of Trade and Agriculture which incorporated the exact terms of the Rules of the GCC. Moreover, Law No. 17 of 1986 amending some provisions of the Company Law of 1975 confers upon GCC nationals a right to own up to 25 percent of stock companies owned wholly by Bahrainis. Hence in Bahrain, GCC citizens may own shares in three kinds of company:
 1. Joint stock companies whose shares are owned by the citizens of more than Member States.
 2. New stock companies established after the GCC Rules were sanctioned, provided that they operate in an economic activity exercisable by GCC nationals by a GCC decision as will be discussed.
 3. Stock companies even if undertaking economic activities not yet listed as available for GCC nationals, but in this latter case, as pointed out earlier, GCC citizens may only own 25 percent of the shares.⁽²¹⁾

- Saudi Arabia: Decree of the Council of Ministers No. 102 of 1989 and Royal approval No. 5/16179/B of 1989 incorporating the Supreme Council's decision and the Rules annexed to it.⁽²²⁾
- Oman: Ministerial Decree No. 62 of 1989 by the Minister of Trade and Industry implementing the above mentioned decision and attached Rules.⁽²³⁾
- Qatar: Law No. 12 of 1989 incorporating the exact terms of the GCC decision and Rules on the possession and disposal of the shares of stock companies.⁽²⁴⁾
- Kuwait: In this Member State, the right had already been established when the GCC decision was taken. About six months before the ninth Summit of the GCC, Law No. 33 of 1988 confirmed that nationals of the GCC States had the right to own shares of the Kuwaiti stock companies established before and after this law.⁽²⁵⁾ The Ministerial Decree No. 52 of 1988 concerning regulations of the ownership of shares by citizens of the GCC Member States of Kuwaiti shares, unlike the GCC Rules, defines stock companies as all those listed in the Kuwaiti Capital Market without reference to whether or not a company is engaging economic activities open for citizens of the GCC. Article 2 of the said Decree however provides that shares of banks and insurance companies are the exceptions.⁽²⁶⁾ But, anyway, these two activities, as will be discovered, are not yet available for GCC citizens in other States.

In summary, taking into account the fact that the GCC is in the early stages, taking such a step to enable citizens of the GCC Member States to negotiate shares in stock companies, though limited, is in principle a sizable accomplishment. From the above presentation of the national laws on the subject, it appears that what the GCC Rules provide for is the minimum measure inasmuch as several States extended

the scope of this right of ownership beyond that enshrined in the Supreme Council decision. Bearing in mind this fact, one is inclined to expect further liberalisation of the terms of the GCC Rules when they are reviewed in March 1992. Indeed the express provision of such a review may imply that the framers initially intended the Rules in the current form to be experimental.

6.C.III: Loans for Investment

At its seventh Summit in 1986, the Supreme Council decided to open the door for investors who are citizens of a GCC Member State to obtain loans from banks and industrial development funds in other Member States on an equal footing with investors of the host State.⁽²⁷⁾ This principle of equalisation is governed by the Regulation annexed to the said decision.⁽²⁸⁾ Obviously this step, as determined by the said Regulation, which became effective as of March 1987, is a major achievement for the GCC on the road to economic integration. Reportedly, this decision made its way to implementation. Because Bahrain and Qatar currently have neither lending banks nor industrial development funds, implementing measures on this matter was probably considered superfluous, hence no enactment was made. On the other hand, the UAE, Saudi Arabia, Oman and Kuwait informed the GCC Secretariat General that they have instructed the concerned entities to put this decision of the Supreme Council into effect.⁽²⁹⁾

6.C.IV: Education

Another step in the application of the principle of free movement of persons was taken by the Supreme Council at its sixth Summit in 1985, in accordance with Article 16 of the EA which provides that:

Member States shall formulate policies and implement co-ordinated programmes for technical, vocational and professional training and

qualifications at all levels and stages. They shall also develop educational curricula at all levels to link education and technology with the development needs of Member States.

In the execution of this Article, the Supreme Council in its above mentioned Summit decreed:

- 1) The treatment of students in elementary, intermediate and high schools of any Member State in the same manner as the students in the same level of the host State;
- 2) Mutual recognition of diplomas and educational qualifications.

Interestingly, the substance of this decision by the GCC had already been applied in half of the States by the time it was made:

- The UAE, Oman and Kuwait informed the Secretariat General that equal treatment of students in elementary, secondary and high schools as well as the recognition of diplomas and other qualifications had been in effect prior to its sanctioning by the GCC.⁽³⁰⁾
- Saudi Arabia issued the Ministerial decree No. 35/4/26/368/1 of 1986 by the Minister of Education implementing both parts of the said decision.⁽³¹⁾
- Bahrain passed the Ministerial decree No. 23/6/1989 of 1989 by the Minister of Education providing for equal treatment between Bahraini students and their counterparts from other GCC States.⁽³²⁾ It says, however, nothing about recognition of diplomas and other educational qualifications.
- Qatar passed Law No. 9 of 1989 incorporating the provisions of this decision on equalisation of students and recognition of educational qualifications.⁽³³⁾

This measure showed that progress towards the free movement of persons was being achieved in several socio-economic sectors. No doubt, equalisation and recognition of diplomas, certificates and other educational documents concerning the primary, intermediate and high schooling eases the way for parent citizens willing to exercise their right of free movement. In the case of the GCC, hence, a potential hindrance of freedom of movement, (i.e. the fear by parents of exercising this right at the expense of their children's educational future) has been eliminated.

This is not the sum total of the GCC's educational co-operative efforts. In this field, as a means of giving substance to the principle of free movement of persons for the purposes of creating a genuine Gulf common market, the Supreme Council in its eighth Summit in 1987 decreed the equalisation of GCC students in the Member States' higher educational establishments.⁽³⁴⁾ Such equalisation includes, besides academic aspects, such requirements as fees, housing, allowances, etc.

Like their positive reaction with regard to equal treatment of students in public schools, the Member States took the necessary measures to implement equal treatment of GCC students in higher educational institutions.

- While Saudi Arabia has treated GCC students in higher educational establishments equally with its nationals, even prior to the adoption of this decision, the UAE, Bahrain, Qatar and Kuwait communicated to the GCC Secretariat General that they have directed the concerned entities to execute this GCC measure.⁽³⁵⁾

- Oman issued the administrative decree No. 168 of 1988 by the Chancellor of the Sultan Qabus University implementing the exact terms of the decision into the rules of that university.⁽³⁶⁾

6.C.V: Health

The free movement of individuals has been further facilitated by the GCC in the field of health services. With due regard to the role of health care in the execution of the principle of freedom of movement and the further implementation of Article 8 of the EA, the Supreme Council decided that citizens of the GCC Member States, whether residents or visitors of any Member, are to be treated on equal footing with the nationals of the host Member State in the use of medical centres, clinics and general hospitals.⁽³⁷⁾ This decision of the Supreme Council was implemented into the national legal systems through the following measures:

- UAE: Ministerial Decree No. 572 of 1989 by the Minister of Health.⁽³⁸⁾
- Bahrain: Decree No. 4 of 1989 by the Minister of Health.⁽³⁹⁾
- Saudi Arabia: Ministerial Decree No. 1/16 of 1989 by the Health Minister.⁽⁴⁰⁾
- Oman: Ministerial Decree No. 2 of 1989 by the Health Minister.⁽⁴¹⁾
- Qatar: Law No. 8 of 1989.⁽⁴²⁾
- Kuwait: Ministerial Decree No. 114 of 1989 by the Minister of Health.⁽⁴³⁾ It should be pointed out that this decree expressly states that this right does not include providing "the special rooms" which may be provided for Kuwaitis.

It is worth mentioning that this right to use medical establishments means States owned ones. When this right is to be exercised, proof of a Member State citizenship is to be given, e.g. passport, identity card or other official documents.

6.C.VI: Taxation.

In this context, mention must be made of the decision of the Supreme Council at its ninth Summit in 1988, which enhanced the realisation of the principle of free movement of persons. This decision entitles the citizens of the GCC Member States within the territory of any Member to the same tax advantages as nationals of the host State as of March 1989.⁽⁴⁴⁾ Thus, whilst States are free to decide the rate of taxation, they restrict their liberty to apply rates which discriminate between nationals of their own and of their own fellow Members. Equality between nationals of the GCC States in terms of taxation seemingly covers natural as well as legal persons. This may be detected from the implementing national measures. For example, the Saudi implementing decree No. 3/719 of 1985 refers to both national and legal persons.⁽⁴⁵⁾ This may well be the understanding of the equal taxation measure. Hereunder is listed the said national legislation:

- UAE: Decree of the Ministerial Council No. 106/5 of 1989.⁽⁴⁶⁾
- Bahrain: Decree by the Minister of Finance and National Economy of 1989.⁽⁴⁷⁾
- Saudi Arabia: (1) Before this GCC Supreme Council decision, the Royal Decree No. 5/506/M of 1985 had already been issued providing for the treatment of all GCC nationals in the same manner as the citizens of the Kingdom, thus submitting all to the Islamic principle of *Zakat* ⁽⁴⁸⁾ instead of the income tax formula now applicable to non-GCC natural and legal persons; (2) Ministerial Decree No.

3/719 of 1985 by the Minister of Finance and National Economy; (3) approval of the Council of Ministers No. 151 of 1989 on granting citizens of the GCC Member States the same tax advantage as the citizens of the Kingdom.⁽⁴⁹⁾

- Oman: Ministerial Decree No. 18 of 1989 by the Deputy Prime Minister for Financial and Economic Affairs.⁽⁵⁰⁾
- Qatar: Law No. 9 of 1989.⁽⁵¹⁾
- Kuwait: Ministerial Decree No. 3 of 1989.⁽⁵²⁾

It must be pointed out that all national incorporating measures provide that equal taxation treatment is conditional upon engaging in an economic activity, or a liberal profession which GCC citizens are allowed to pursue in Member States by a decision of the Supreme Council, as will be discovered.

6.D: The Right to Practise Liberal Professions

Since the Supreme Council resolution to begin the implementation of the provisions of the EA as of March 1 1983, several liberal professions were made available for professionals who are nationals of the GCC Member States, e.g. medicine, law, accountancy, engineering, consultancy, pharmacy, translation, land surveying, soil inspection, and programming, analysing and operating computers.⁽⁵³⁾ Involvement in these activities by professionals has been facilitated partially by the Supreme Council decision in 1985 to grant mutual recognition to diplomas and academic documents issued by official educational establishments in Member States as mentioned earlier.

Before the list of these permitted professions was further enlarged, the rules governing the practice of these professions were endorsed by the Supreme Council

in its eighth Summit in 1987 and were adopted by the Member States. These rules, entitled *Regulations for Practising Liberal Professions by Nationals of the GCC Member States Therein* ⁽⁵⁴⁾, are truly liberal. They do not seem to constitute restrictive or limiting measures. Generally speaking, once a profession is regionalised, these rules come to play the role of determining who is eligible and how he is to be treated. According to Article 1(4) of the Regulations,

Nationals of the GCC States are the natural persons who are holders of the nationality of any Member State or the legal persons, provided that they are in professional joint liability companies, owned wholly by nationals of the GCC Member States.

The treatment provided for by the Regulations is of an equalising nature, i.e. between nationals of the host State and those of other fellow Members in terms of requirements, conditions of employment and the working environment. Pursuant to Article 7 of these Regulations, they are solely concerned with liberal professions which have not been accorded special rules. Article 8 provides that these Regulations do not prejudice preferential privileges currently granted or those which might be granted in the future to the citizens of the GCC Member States.

The said Regulations were implemented in the national legal systems by the following instruments:

- UAE: Decree of the Council of Ministers No. 306/2 of 1988.⁽⁵⁵⁾
- Bahrain: Decree on Law No. 9 of 1988,⁽⁵⁶⁾ Article 5, providing for the treatment of liberal professionals in Bahrain in accordance with the terms of the said Regulations.
- Saudi Arabia: Decree of the Council of Ministers No. 200 of 1988.⁽⁵⁷⁾

- Oman: Ministerial Decree No. 48 of 1988,⁽⁵⁸⁾ implementing the exact terms of the Regulations.
- Qatar: Law No. 7 of 1988,⁽⁵⁹⁾ incorporating the Regulations as sanctioned by the Supreme Council.
- Kuwait: Article 2 of the Ministerial Decree No. 7 of 1988 by the Minister of Trade and Industry on the regulations of practising liberal professions by citizens of the GCC Member States.⁽⁶⁰⁾

Turning to the listed professions, firstly the reference to professions already regionalised which was made in the preamble of the Regulations mentioned above referred to the professions of medicine, law, accountancy, engineering and pharmacy.

As pointed out, in its third Summit in 1982, the Supreme Council decided to open the door for doctors, lawyers, accountants, engineers and administrative, economic, technical, agricultural, fisheries and industrial consultants to practice their respective professions in any Member State in accordance, of course, with the above mentioned Regulations. That decision of the Supreme Council was implemented in national legal systems in the following Laws:

- UAE: Article 2 of the Federal Law No. 2 of 1984.⁽⁶¹⁾ The Ministerial Decree No. 24 of 1985 details in Articles 5, 6, 7, 8 and 9 conditions for engaging in the professions of medicine, law, accountancy, engineering, including engineering consultancy offices, and administrative, economic, technical, agricultural, fisheries and industrial consultation.⁽⁶²⁾ It is worth mentioning that such conditions are contemplated under Article 3 of the Regulations.

- Bahrain: Amiri Decree No. 3 of 1983 provides in Article 2 that citizens of the GCC Member States are to be treated in the same manner as their counterpart nationals of Bahrain in the professions of medicine, law (including legal consultancy), accountancy (including legal accountancy), engineers (including engineering consultancy).⁽⁶³⁾
- Saudi Arabia: The Royal Approval by Telegram No. 4585 of 1983 containing general permission for citizens of the GCC States to engage in economic activities in the Kingdom.⁽⁶⁴⁾ Presumably, lawyers, doctors, engineers and accountants are covered by the general terms of this Royal Approval.
- Oman: Ministerial Decree No. 13 of 1983 by the Minister of Trade and Industry providing in Article 2 that nationals of the GCC Member States may practice the following professions: medicine, law, accountancy, engineering (including engineering consultancy), and administrative, economic, technical, agricultural, fisheries and industrial consultancy.⁽⁶⁵⁾
- Qatar: Law No. 6 of 1983 provides in Article 2 that citizens of the GCC Member States are allowed to practice medicine, law, accountancy, engineering (including engineering consultancy), and administrative, economic, technical, agricultural, fisheries and industrial consultancy.⁽⁶⁶⁾
- Kuwait: Ministerial Decree No. 51 of 1982 allows nationals of the GCC States to engage in the following regionalised professions: Medicine, law, accountancy, engineering (including engineering consultancy), and administrative, economic, technical, agricultural, fisheries and industrial consultancy.⁽⁶⁷⁾

One other liberal profession was listed along with those regionalised ones by the Supreme Council at its fourth Summit in 1983. It was decided, *inter alia*, to enable pharmacists who are nationals of Member States, to practice their profession in any Member State provided that they hold educational qualifications enabling them to pursue the profession of pharmacy; the effective date of this decision was 1 March 1984.⁽⁶⁸⁾ In execution of the above GCC decision, the Member States produced the following implementing steps:

- UAE: Decree by the Council of Ministers No. 264/2 of 1984 on the approval of Decisions of the Supreme Council in its fourth session, including allowing GCC pharmacists to practice in the UAE has been reported to the Secretariat General.⁽⁶⁹⁾
- Bahrain: Decree on Law No. 4 of 1984 Article 2.⁽⁷⁰⁾ Reportedly, unlike professionals of non-GCC States, those of a GCC origin are exempted from the requirement of holding non-Bahrain permits; instead, they are granted identifications granted to their counterpart Bahraini citizens.⁽⁷¹⁾
- Saudi Arabia: Royal Order by Telegram No. 5/2023 of 1983 on *inter alia* allowing qualified pharmacists who are citizens of GCC Member States to practice pharmacy in the Kingdom.⁽⁷²⁾
- Oman: Ministerial Decree, by the Minister of Trade and Industry, No. 25 of 1984 in Article 2 which equalises the practitioners of pharmacy who are citizens of the GCC Member States with those of Oman.⁽⁷³⁾

- Qatar: Law No. 1 of 1984 states in Article 4 that citizens of Member States of the GCC with educational qualifications enabling them to practice pharmacy may do so in the State of Qatar, on an equal footing with their Qatari counterparts.⁽⁷⁴⁾
- Kuwait: Ministerial Decree No. 43 of 1983 by the Minister of Trade and Industry allowing pharmacists who are citizens of Member States of the GCC to practice this profession in the State of Kuwait.⁽⁷⁵⁾

Mention should be made of the fact that all above national implements require that drugs be imported through national approved agents. In addition, some stipulate that the pharmacists are permanent residents and themselves engaging in the profession. Once each stipulation is made, it finds legal basis in a Supreme Council decision in its fourth Summit.⁽⁷⁶⁾

An addition to the list of liberal professions which may be practised by any citizen of the GCC Member States on an equal footing with nationals of the host State was made by the Supreme Council at its eighth Summit in 1987; it decreed that in accordance with the GCC Regulations on Practising of Liberal Professions, translators, land surveyors, soil inspectors, and programmers, analysts and operators of computers could practice their respective professions in any other Member State.⁽⁷⁷⁾

Subsequently the professions of translation, land surveying, soil inspecting, and programming, analysing and operating computers were received by the States as professions available to qualified professionals who are nationals of any GCC Member State in the same manner as nationals of the host State by virtue of the following:

- UAE: Decree of the Council of Ministers No. 306/2 of 1988.⁽⁷⁸⁾
- Bahrain: Law No. 9 of 1988 in its Article 4.⁽⁷⁹⁾
- Saudi Arabia: Decree of the Council of Ministers No. 57 of 1988.⁽⁸⁰⁾
- Oman: Ministerial Decree No. 49 of 1988 by the Minister of Trade and Industry.⁽⁸¹⁾
- Qatar: Law No. 10 of 1988.⁽⁸²⁾
- Kuwait: Decree by the Minister of Trade and Industry No. 7 of 1988 in its Article 1.⁽⁸³⁾

As pointed out earlier, by the time these professions were sanctioned by the GCC and incorporated by Member States, the Regulations on practising liberal professions had been endorsed by the Supreme Council. The above national measures, therefore, were clear in giving effect to the GCC decision on these professions, hence referring to the Regulations to determine the personal and material scope. Reportedly, at this stage, the Supreme Council delegated to the Ministerial Council the power to enlist further liberal professions based on recommendations to be made by the Committee of Financial and Economic Co-operation.⁽⁸⁴⁾

Of related importance is recalling the Supreme Council's decision at its fourth Summit: according to that decision, professionals are allowed to practice the said professions provided that, as well as being qualified and personally engaged, they are permanently resident in the State where they practice their profession.⁽⁸⁵⁾

It is worth mentioning, unfortunately, that there are no statistics on the movement of professionals within the GCC to show how much those rights have been exercised.

6.E: The Right to Engage in Economic Activities

Freedom to exercise economic activity has been made a GCC principle embodied in Article 8 of the EA. As soon as the GCC programmes for the implementation of the EA began on 1 March 1983, realisation of this right was one of the major priorities on the GCC agenda. Concurrently with the decision to begin the execution of the EA, a number of economic activities were made available to nationals of the GCC States therein. Before venturing into enumeration and examination of these permitted activities and their reception into the national legal systems, it seems appropriate to make note of the Regulations - translated and produced in volume 2 of this work - governing the undertaking of such activities. They are of both personal and material scope; their personal scope includes, besides natural citizens of the Member States, legal persons which are wholly owned by nationals of the GCC Member States. Their material scope affords equalisation between nationals of GCC Member States and those of the host State in their engagement in the allowed economic activities.

These Regulations were to come into effect in March 1988. The national enactments implementing the regulations into the legal systems of the Member States are:

- UAE: Decree of the Council of Ministers No. 306/2 of 1988.⁽⁸⁶⁾

- Bahrain: Law No. 9 of 1988,⁽⁸⁷⁾ in Article 3, the exact terms of the Regulations are incorporated. It has been effective from 1 June 1988.
- Saudi Arabia: Decree of the Council of Ministers No 199 of 1988,⁽⁸⁸⁾ incorporating the regulations as annex to the said Decree.
- Oman: Ministerial Decree No. 29 of 1988,⁽⁸⁹⁾ by Deputy Prime Minister for Monetary and Economic Affairs implementing the verbal terms of the Regulations which became effective as of 1 April 1988.
- Qatar: Law No. 6 of 1988,⁽⁹⁰⁾ according to which the Regulations became effective on 1 April 1988.
- Kuwait: Decree No. 8 of 1988 in Article 2 by the Minister of Trade and Industry.⁽⁹¹⁾ The effective date was 1 June 1988.

Now that the contents of the GCC Regulations governing the engagement in economic activities in Member States have been summarised, we can move on to examine the steps taken by the GCC to put the said principle into practice. This entails identification of the allowed economic activities as well as the national measures taken to guarantee availability in the municipal sphere.

To begin with, concurrent with the Supreme Council decision to start implementing the EA, it decreed that natural as well as legal persons who are nationals of the Member States are allowed to engage in industrial activities, agriculture, animal husbandry, fishing and construction in any Member State. It permitted, however, that States could continue for five years (1 March 1983 to 1 March 1988) to make it a condition that 25% of such economic projects should be owned by their citizens.

Rights to engage in these activities were incorporated into municipal law by virtue of the following measures:

- UAE: Federal Law No. 2 of 1984 in Article 1.⁽⁹²⁾
- Bahrain: Amiri Decree No. 3 of 1983 in Article 1.⁽⁹³⁾
- Saudi Arabia: Royal Approval Telegram No. 4585 of 1983.⁽⁹⁴⁾
- Oman: Ministerial Decree No. 6 of 1983 in Article 1.⁽⁹⁵⁾ Ministerial Decree No. 13 of 1983 in Article 1,⁽⁹⁶⁾ by the Minister of Trade and Industry. The former law emphasised that the right of GCC nationals to engage in the fishing industry in Oman does not include the actual catching activity.
- Qatar: Law No. 6 of 1983 in Article 3.⁽⁹⁷⁾
- Kuwait: Ministerial Decree No. 52 of 1982, by the Minister of Trade and Industry.⁽⁹⁸⁾

Notably, whilst the laws of Bahrain, Oman, Qatar, UAE and Saudi Arabia provide that participation of up to 25% may be required for a period of five years, that of Kuwait, although requiring the same, does not specify a period of time. Reportedly, however, the five year period which ended in March 1988 was observed by all States and thus the concerned national entities were instructed not to require such participation.⁽⁹⁹⁾ As such, it can be said that industrial activities, agriculture, animal husbandry, fishing and construction are available in any Member State to any citizen of the Members, provided that they are undertaken in accordance with the above mentioned Regulations.

More economic activities were added to the list by the Supreme Council in its fourth Summit in 1983. It decreed *inter alia*, that nationals of the GCC Member States have the right to establish hotels and restaurants as well as the right to work in them. Additionally, they have the right to engage in maintenance activities relevant to the economic activities in which they are allowed to operate, i.e. industrial, agricultural, animal and fish fields, contracting, establishment of hotels and restaurants.⁽¹⁰⁰⁾ The decision similarly permits Member States to require the participation of nationals in no more than 25% of the plant built for the purpose of hotel or restaurant operation, and maintenance, for a period of five years (1 March 1984 - 1 March 1989) after which activities in these areas would be unrestricted. The five year period, it should be stressed, ended in March 1989.

A question which might arise is whether this later decision, especially the specification of five years, has been observed by the Member States. This is best answered through reference to the national enactments implementing that decision:

- UAE: Decree by the Council of Ministers No. 264/2 of 1984.⁽¹⁰¹⁾ The Decree of the Council of Ministers No. 195/2 of 1989 dropped the conditional participation of UAE nationals in economic projects established by other GCC nationals in the areas of hotels, restaurants and maintenance.⁽¹⁰²⁾
- Bahrain: Law No. 4 of 1984; according to Article 1 of this law, establishment of hotels and restaurants and the engagement in maintenance work in the permitted fields of economic activity are unrestricted as of 1 March 1989.⁽¹⁰³⁾
- Saudi Arabia: Royal Order by Telegram No. 5/2023 of 1983; pursuant to the regulations and rules attached to this Order, exercising the economic activities of

hotels, restaurants and maintenance in the allowed fields are unrestricted as from 1 March 1989.⁽¹⁰⁴⁾

- Oman: Ministerial Decree, by the Minister of Trade and Industry, No. 25 of 1984: this makes the exercise of the above mentioned activities unconditional as of 1 March 1989.⁽¹⁰⁵⁾
- Qatar: Law No. 1 of 1984, Article 3 provides that the requirement for the participation of no more than 25% Qataris is valid only until 1 March 1989.⁽¹⁰⁶⁾
- Kuwait: Ministerial Decree No. 45 of 1983 by the Minister of Trade and Industry:⁽¹⁰⁷⁾ although this decree reads to the effect that the participation of up to 25% Kuwaitis may continually be required, the Kuwaiti Ministry of Trade and Industry notified the GCC that the concerned entities have been instructed to allow GCC nationals to own wholly the establishments built for the purpose of pursuing the specified economic activities, e.g. hotels, restaurants and maintenance works in the allowed economic areas, as of 1 March 1989.⁽¹⁰⁸⁾

Further growth in the number of permitted economic activities was promoted by the Supreme Council at its seventh Summit in 1986, when it decreed that citizens of the GCC Member States may engage in the practice of retail and wholesale trade in any Member State according to annexed Regulations.⁽¹⁰⁹⁾ Although that decision indicates equalisation of nationals of GCC States with nationals of host GCC States, the attached Regulations indicate that complete equality is still a future step. Close examination suggests that the Regulations were drawn up in such a way as would mitigate the negative impact of the effect of free mobility of individuals on a community with some Members less economically advanced than others. In their

current form, the Regulations render the right to engage in retail and wholesale trade of limited material scope. Hereunder is an exposition of their provisions.

The Regulations define retail trade as:

the practice of selling and buying of any good or goods directly to the consumers without a middleman on a continuing basis and from licensed premises.

The limitations these regulations place on nationals of the GCC Member States in undertaking such commerce may be summarised as follows:

A: On GCC natural persons:

1. He himself has to be engaged in this activity;
2. He must be a resident of the Member State where his retail trade takes place;
3. He may not engage in more than one activity;
4. He may not have more than one place of business;
5. His activity is restricted to retail trade made directly to the consumers from his licensed place;
6. He has no rights of importation and commercial agencies.

B: On legal persons:

1. The host state may require participation of its nationals of up to 50% of its value;
2. Its activity must be restricted to one licensed shop in direct contact with the consumers;
3. It has no rights of exportation and commercial agencies.

According to paragraph 1(2) of the Regulations, however, these seemingly restrictive requirements may not prejudice any preferential privilege granted to citizens of the GCC by a Member State or decreed by the Supreme Council.

Wholesale trade has been defined by the same Regulations as:

the practice of selling, buying, importing and exporting of any good or goods, the practice of which is made on a continuing basis and from licensed premises.

The limitations imposed upon wholesale traders who are nationals of a Member State in a GCC Member State are, more or less, the same as those stated above relating to retail trade, with one exception: this is that GCC wholesale traders have the right to export his goods on an equal basis as traders of the host state. Here, again, the limitations on GCC wholesale traders embodied in the Regulations according to paragraph 2(2) may not prejudice any preferential privilege granted by a Member State or decreed by the Supreme Council.

Again, it should be restated that those Regulations which could have a negative effect have been kept to a minimum. Admittedly, the step by itself is an admirable one in affirming its Members' determination to realise the principle of free movement of persons and eventually to create a GCC common market. The above mentioned limitations on retail and wholesale traders are doomed to future elimination, taking into account their number and scope as well as the provisions of paragraph 1(2) and 2(2), stated earlier. In addition, one must bear in mind that the Regulations on retail and wholesale trade are due to be reviewed in 1992 and 1993 respectively.

In its present form, this GCC-created right as governed by the Regulations was implemented in the national legal systems in the following instruments:

- UAE: Federal Law No. 2 of 1989 which requires that a GCC legal person wishing to engage in retail or wholesale trades acts in the form of a company of which at least 50% of its capital is owned by UAE nationals.⁽¹¹⁰⁾

- Bahrain: Law No. 6 of 1987 on retail commerce⁽¹¹¹⁾ requires that legal persons operate in the form of a company of which 50% at most is owned by Bahrainis. Otherwise, it incorporates the substance of the provisions of the said Regulations. The wholesale trade Regulations are incorporated by Law No.19 of 1988.⁽¹¹²⁾
- Saudi Arabia: Reportedly, Directive No. 231/303/1945, issued by the Deputy Minister of Commerce, Directive No. 221/741, issued by the Director General of Internal Commerce in the Ministry of Commerce and Directive 231/669 by the Deputy of the Minister of Commerce, all addressed the concerned entities to implement the decision of the Supreme Council about retail and wholesale trade.⁽¹¹³⁾ The former requires that companies engaging in trade are to be owned by Saudis up to 50%.
- Oman: Ministerial Decree No. 18 of 1987,⁽¹¹⁴⁾ by the Minister of Trade and Industry, requires that legal persons be established in the form of companies registered in Oman, of which at least 50% of its capital is owned by Omanis. Otherwise, it incorporates the terms of the GCC Regulations on retail and wholesale trade.
- Qatar: Law No. 7 of 1987⁽¹¹⁵⁾ in Article 2 stipulates that GCC legal persons comprise no more than 50% Qatari capital. The other provisions incorporated the exact content of the Regulations.
- Kuwait: Ministerial Decree No. 2 of 1987 on retail trade, by the Minister of Trade and Industry, requires that legal persons be instituted in the form of companies. Furthermore it states that the Kuwait Ministry of Trade and Industry may require participation by Kuwaitis of no more than 50% of its capital.⁽¹¹⁶⁾ Generally, this

Decree incorporates the provisions of the Regulations on retail aforementioned. Apparently, the provision on wholesale has not been incorporated.

The arena of permitted economic activities was further expanded in 1987 when the Supreme Council, at its eighth Summit, decreed that citizens of Member States are allowed to engage in two areas of economic activity in any Member State.⁽¹¹⁷⁾ These are (1) inspection, which is defined as discovering the obvious defects with the naked eye or by utilising some mechanical means including testing, weighing, measuring etc., to ensure conformity of the good(s) with the terms of the contract; and (2) operation and maintenance, which is defined as assuming responsibility for a project or an entity for the operation and maintenance of mechanical and electrical machines and other equipment, including making spare parts, and having the necessary labourers available, bearing in mind the Regulations relating to undertaking such economic activities as mentioned earlier in this section. The decision was to be effective as of 1 June 1988.

These two areas of permitted economic activity were implemented in the national legal systems in the following:

- UAE: Decree by the Council of Ministers No. 306/2 of 1988.⁽¹¹⁸⁾
- Bahrain: Law No. 9 of 1988,⁽¹¹⁹⁾ in Article 1 incorporating the two economic activities as defined above.
- Saudi Arabia: Decree by the Council of Ministers No. 57 of 1989.⁽¹²⁰⁾
- Oman: Ministerial Decree No. 28 of 1988 by the Deputy Prime Minister for Financial and Economic Affairs.⁽¹²¹⁾
- Qatar: Law No. 9 of 1988.⁽¹²²⁾

- Kuwait: Ministerial Decree by the Minister of Trade and Industry No. 8 of 1988 in Article 1.⁽¹²³⁾

The stipulate effective date, i.e. 1 June 1988, was observed by Member States.

At its eighth Summit, the Supreme Council delegated the power to decree more regionalised economic activities to the Ministerial Council based on the recommendations to be made by the Committee for Financial and Economic Co-operation.⁽¹²⁴⁾ Based on this delegated power, the Ministerial Council, in November 1989, decreed the regionalisation of several economic areas, hence became available to any GCC national in any Member States. These include engagement in supply services, marketing, weighing and measurement and cleaning services.⁽¹²⁵⁾ Bahrain has incorporated this Ministerial Council by Law 12 of 1990.⁽¹²⁶⁾

6.F: Possible Limitations of the Free Movement of Persons

The view expressed in the previous chapter in relation to the possible limitations on the application of the principle of free mobility of goods also applies to the principle of freedom of movement of individuals.⁽¹²⁷⁾ As such, the grounds such as public policy, public health and public security maybe invoked by the GCC Member States. In addition, temporary derogation would be legitimate when the criteria stated in Article 24 of the EA is met, the said Article provides in part:

Any Member State may be temporarily exempted from applying such provisions of this Agreement as may be necessitated by temporary local situations in that State or specific circumstances faced by it.

Consequently, the right to enter, reside, work, pursue liberal professions, engage in permitted economic activity may lawfully be denied during upheavals such

as a military coup d'état or the threat of aggression or war, etc., matters which are usually the responsibility of sovereign States towards their societies. Generally speaking, once this principle is further realised and the GCC becomes of an integrated nature rather than merely a co-operative institution, elaborated justification for derogation would find its place on the agenda of the GCC.

Summary

In the light of the above, it is clear that the EA contemplates the application of right of entry, residence, work, ownership, engagement in economic activity and pursuit of liberal professions, all of which have been gradually decreed by the Supreme Council and have been received by the Member States.

In the area of cross-border mobility of individuals, it is suggested that the 'citizens' referred to in Article 8 of the EA are the nationals of the Member States in accordance with their own laws of nationality. That is to say that the term 'citizens' is not a GCC concept which may be taken as including, for instance, non-GCC labourers who are involved in intra-State economic activities for citizens of the GCC Member States.

The right of entry is granted to any national of a GCC Member State. After the required visas are abolished, the document needed at this stage is a passport. The right of residence is also available to citizens of the GCC Member States in any fellow Member State.

The concept of equality of treatment amongst citizens of the GCC is provided for in Article 8 of the EA and discussed above at some length. In the light of that discussion, it is manifest that numerous measures have been taken to realise this concept. Although the approach has been one of progressive steps, most areas needed

for the application of the principle of free movement of persons have been covered. They have been equalised in the fields of housing ownership, acquisition of company shares, loans for investment, education, health and taxation.

Citizens of the GCC Member States are also allowed to practice a number of liberal professions. These include law, medicine, accountancy, engineering, consultancy, pharmacy, translation, land surveying, soil inspection and programming, analysing and operating computers. They are also permitted to engage in several types of economic activity. These include operating hotels and restaurants and working therein, industry, agriculture, animal husbandry, fishing, construction, retail and wholesale trade, inspection, operation and maintenance, supply services, weight and measurement and cleaning services.

This chapter concludes with the identification of the possible ground for derogation of the rules laid down by the EA and implemented by the Supreme Council and the component GCC organs. Article 24 of the EA is suggested to count for a criteria with temporary limitations, e.g. internal upheavals, but other justifications, such as public policy, public health and public security, are also possible grounds for limitation on the principle of free movement of individuals.⁽¹²⁸⁾

This chapter has shown that the Member States have been largely faithful to their obligations arising under the GCC treaties in these areas. However, they do implement these obligations domestically each in their own way, in some exceptional cases making reservations to the GCC rules. In these circumstances it is important that national courts and officials who have to apply the national rules remember their international origins and the purposes of the GCC so that differences in the national laws will be as little as possible.

References and Notes

1. Provisions of the EEC Treaty are:
 - 48-51: Free movement of workers
 - 52-58: Freedom of Establishment
 - 59-66: Freedom to provide services
2. See for example: Case 44/65, *Hessische Knappschaft v. Maison Singer et Fils* (1965) E.C.R. 996 at 971. Case 2/74 *Jean Reyners v. Belgian State* (1974) E.C.R. 631 at 971.
3. Secondary legislation include:
 - Council Regulation 1612/68 of 15 October 1968 on freedom of movement for workers within the Community
 - Council Directive 68/360 of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families.
 - Commission Regulation 1251/70 of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State
 - Council Directive 64/221 of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health
 - Council Directive 73/148 of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services
 - Council Directive 64/223 of 25 February 1964 concerning the attainment of freedom of establishment and freedom to provide services in respect of activities in wholesale trade
 - Council Directive 75/34 of 17 December 1974 concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self employed capacity
 - Council Directive 77/249 of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services
 - Council Directive 75/35 of 17 December 1974 extending the scope of Directive 64/221 to include nationals of a Member State who exercise the right to remain in the territory of another Member State after having pursued therein an activity in a self- employed capacity
4. D. Lasok, *The Law of the Economy of the European Communities* (London: Butterworth, 1980) p.92.
5. See Josephine Steiner, *EEC Law*, London: Blackstone Press Ltd., 2nd ed. (1990) pp.165.
6. See Vol.2 of this work, pp.194-95, at p.195
7. Chamber of Commerce and Industry of Riyadh, 'Comments on some executive aspects of the Unified Economic Agreement of the GCC' in *Lectures on Co-operation Amongst the GCC Member States* (in Arabic) Riyadh: K.S.A. Ministry of Foreign Affairs, Institute for Diplomatic Studies, 1986, pp.201-212 at 206.
8. *Al-Anba'a [Newspaper]* Kuwait, 13 April 1987; *Al-Qabas [Newspaper]* Kuwait, 27 May 1983; *Al-Gazairah [Newspaper]* Saudi Arabia, 31 November 1983.
9. See *Al-Ra'i Al-A'am [Newspaper]* Kuwait, 7 October 1987.
10. The GCC, *Accomplishment of the GCC: A Brief* [in Arabic] (Riyadh: GCC Secretariat General, 1989, p.28.
11. For the Arabic text of these Regulations see The GCC, *Decisions on the Common Work*, [in Arabic], (Riyadh: GCC Secretariat General, 1989), pp.83-85, hereinafter the GCC. Unofficial translation of the Regulations by this author is reproduced in Volume 2 of this work, pp.217-19.
12. Bahrain Official Gazette, No.1633 of 1985.

13. The GCC, *supra* note 11., p.92.
14. Oman Official Gazette, No. 369 of 1987.
15. Qatar Official Gazette, No. 1 of 1987.
16. See *The GCC*, *supra* note 11, p.133
17. *Ibid*, p.94.
18. See the ninth Communique of the Supreme Council; reproduced in Volume 2 of this work, pp.189-94. For an unofficial translation of these rules by this author, see Volume 2 of this work, pp.229-30.
19. UAE Official Gazette, No.137 of 1984.
20. See *The GCC*, *supra* note 11, p.259.
21. Bahrain Official Gazette, No. 1726 of 1986. See also *The GCC*, *supra* note 11, pp.259-266.
22. *The GCC*, *supra* note 11, pp.268-69.
23. Oman Official Gazette, No.418 of 1989.
24. Qatar Official Gazette, No.6 of 1989.
25. Al-Kuwait Al-youm, the Official Gazette, No.1774 of 1988.
26. *Ibid*, No.1804 of 1988.
27. See the seventh Communique of the Supreme Council reproduced in Volume 2 of this work, pp.178-181.
28. A translation of the Regulations by this author is produced in Volume 2 of this work , pp.226-227.
29. The GCC, *supra* note 11, pp.183-84.
30. *Ibid*, pp.113, 115 and 117.
31. *Ibid*, p.114.
32. *Ibid*, pp.113-14.
33. Qatar Official Gazette, No.13 of 1986.
34. The eight Communique of the Supreme Council is reproduced in Volume 2 of this work, pp.182-188.
35. *The GCC*, *supra* note 11, pp.236-240.
36. Oman Official Gazette, No.382 of 1988.
37. The ninth Communique of the Supreme Council is reproduced in Volume 2 of this work, pp.189-194.
38. The GCC, *supra* note 11, pp.352-54.
39. Bahrain Official Gazette, No.1843 of 1989.
40. *The GCC*, *supra* note 11, pp.355-56.
41. Oman Official Gazette, No.401 of 1989.
42. Qatar Official Gazette, No.6 of 1989.
43. Al-Kuwait Al-youm, The Official Gazette, No.1818 of 1989.
44. See the ninth Communique of the Supreme Council, produced in Vol. 2 of this work, pp.189-94.
45. The GCC, *supra* note 11, pp.284-85.
46. *Ibid*, p.282
47. Bahrain Official Gazette, No.1846 of 1989.
48. *Zakat*, as a principle, is one of the five pillars of Islam. It donates the annual compulsory alms of one fortieth of money and property with prescribed conditions.
49. *The GCC*, *supra* note 11, pp.283-7.
50. Oman Official Gazette, No.409 of 1989.

51. Qatar Official Gazette, No.6 of 1989.
52. Al-Kuwait Al-youm, the Official Gazette, No.1816 of 1989.
53. See the third Communique of the Supreme Council, reproduced in Vol.2 of this work, pp.162-65. Implementing the first stage referred to in this Communique includes, according to the Secretariat General, those liberal professions mentioned in the text, see *The GCC*, supra note 11, p.16.
54. See the eighth Communique of the Supreme Council, reproduced in Volume 2 of this work, pp.182-88. For a translation of these Regulations by this author, see Volume 2 of this work, pp.214-16.
55. *The GCC*, supra note 11, p.208.
56. Bahrain Official Gazette, No.1802 of 1988.
57. *The GCC*, supra note 11, pp.209-10.
58. Oman Official Gazette, No.389 of 1988.
59. Qatar Official Gazette, No.6 of 1988.
60. *Al-Kuwait Al-youm*, the Official Gazette, No.1762 of 1988.
61. UAE Official Gazette, No.136 of 1984.
62. *Ibid*, No.149 of 1985.
63. Bahrain Official Gazette, No.1525 of 1983.
64. *The GCC*, supra note 11, pp.27-8.
65. Oman Official Gazette, No.265 of 1983.
66. Qatar Official Gazette, No.3 of 1983.
67. *Al-Kuwait Al-youm*, the Official Gazette, No.1450 of 1982.
68. See the fourth Communique of the Supreme Council, reproduced in Volume 2 of this work, pp.166-69. The decision in this Communique to "expand the scope of economic activities" which citizens are allowed to pursue includes, according to the Secretariat General, allowing pharmacists to practise their profession in any GCC State as of 1 March 1984, see *The GCC*, supra note 11, p.59.
69. *The GCC*, supra note 11, p.63.
70. Bahrain Official Gazette, No.1581 of 1984.
71. *The GCC*, supra note 11, p.65.
72. *Ibid*, pp.65-66.
73. Oman Official Gazette, No.288 of 1984.
74. Qatar Official Gazette, No.3 of 1984.
75. *Al-Kuwait Al-youm*, the Official Gazette, No.1516 of 1984.
76. *The GCC*, supra note 11, p.60.
77. The eighth Communique of the Supreme Council, reproduced in Volume 2 of this work, pp.182-88 refers only to adding additional professions but the Secretariat General reported the details in *The GCC*, supra note 11, p.229.
78. See *The GCC*, supra note 11, p.230.
79. Bahrain Official Gazette, No.1802 of 1988.
80. *The GCC*, supra note 11, p.231.
81. Oman Official Gazette, No.389 of 1988.
82. Qatar Official Gazette, No.7 of 1988.
83. *Al-Kuwait Al-youm*, the Official Gazette, No.1762 of 1988.
84. See *The GCC*, supra note 11, p.205.
85. *Ibid*, p.60.
86. *Ibid*, p.190.

87. Bahrain Official Gazette, No.1802 of 1988.
88. *The GCC*, *supra* note 11, pp.194-5.
89. Oman Official Gazette, No.393 of 1988.
90. Qatar Official Gazette, No.6 of 1988.
91. Al-Kuwait Al-youm, the Official Gazette, No.1962 of 1988.
92. UAE Official Gazette, No.136 of 1984.
93. Bahrain Official Gazette, No.1525 of 1983.
94. *The GCC*, *supra* note 11, pp.27-8.
95. Oman Official Gazette, No.265 of 1983.
96. *Ibid.*
97. Qatar Official Gazette, No.3 of 1983.
98. Al-Kuwait Al-youm, the Official Gazette, No.1450 of 1982.
99. *The GCC*, *supra* note 11, pp.42-4.
100. See the fourth Communique of the Supreme Council, reproduced in Volume 2 of this work, pp.166-69. For more details see *The GCC*, *supra* note 11, pp.59-60.
101. *The GCC*, *supra* note 11, p.63.
102. *Ibid*, p.79.
103. Bahrain Official Gazette, No.1581 of 1984.
104. *The GCC*, *supra* note 11, pp.65-66.
105. Oman Official Gazette, No.288 of 1984.
106. Qatar Official Gazette, No.3 of 1984.
107. Al-Kuwait Al-youm, the Official Gazette, No.1516 of 1984.
108. See *The GCC*, *supra* note 11, p.80.
109. A translation of these Regulations by this author is reproduced in Volume 2 of this work, p.223-25.
110. UAE Official Gazette, No.203 of 1989.
111. Bahrain Official Gazette, No.1739 of 1987.
112. *Ibid*, No.1880 of 1989.
113. *The GCC*, *supra* note 11, p.172.
114. Oman Official Gazette, No.355 of 1987.
115. Qatar Official Gazette, No.2 of 1987.
116. Al-Kuwait Al-youm, the Official Gazette, No.1702 of 1987.
117. See the eighth Communique of the Supreme Council, reproduced in Volume 2 of this work, pp.182-88. The decision is detailed in *The GCC*, *supra* note 11, pp.220- 1.
118. *The GCC*, *supra* note 11, p.222.
119. Bahrain Official Gazette, No.1802 of 1988.
120. *The GCC*, *supra* note 11, pp.223-24.
121. Oman Official Gazette, No.393 of 1988.
122. Qatar Official Gazette, No.7 of 1988.
123. Al-Kuwait Al-youm, the Official Gazette, No.1762 of 1988.
124. *The GCC, Accomplishments of the GCC: A Brief* [in Arabic] (Riyadh, GCC Secretariat General, 1989), p.36.
125. *The GCC, Decisions Made Within the Framework of the GCC* [a leaflet in Arabic], (Riyadh, GCC Secretariat General, 1989).

126. Bahrain Official Gazette, No.1933 of 1990.
127. See chapter five, pp.221-225.
128. It should be pointed out that while "a free market mechanism and freedom in the mobility of capital are common characteristics of the GCC Member countries", no substantial GCC measures have been taken to achieve monetary integration. This may be grounded on the fact that such arrangement needs supranational authority, the existence of which requires political concession. Such political considerations as well as economic assessments were borne in mind when the EA was drawn, in particular those provisions in financial and monetary co-operation, e.g. 21 and 22. The terms of these two Articles leave their implementation entirely upon the willingness of the States and the appropriate political and economic circumstances. At this stage of the GCC experience, anyway, several specialists on the matter are in favour of approaching it gradually and "over a relatively long time period". See Theodore Hitiris and Michael H. Hoyle, 'Monetary Integration in the GCC', 6 *The Arab Gulf Journal* (1986), pp.33-42.

Chapter Seven

The Relationship Between GCC Rules and Municipal Laws of the Member States

Introduction

The last two chapters have shown that the GCC has elements of its programme of economic co-operation which clearly resemble elements in the EC design. However, earlier, it was shown that the GCC was not of the same institutional structure as the EC and that it was not possible to regard the GCC as a supra-national institution. Nevertheless, the effective implementation of these similar policies is designed to protect the economic activities of individuals and companies against arbitrary interference, particularly discriminatory interference, by the Member States of the organisation. That objective is partially to be achieved under the EC system by the integration of the national legal orders with the Community legal order, allowing individuals to rely directly on Community rules before national courts. The object of unification and harmonisation of laws is a much higher priority for the EC than the GCC, a matter of increasing practical importance as the Single Act takes effect and EC law effectively supplants national legislation in many areas. Although direct reliance on the GCC standards in the national legal systems on the supra-national level by analogy with the EC is not (yet) an option for the GCC States, the importance of domestic implementation of the agreed international standards, if necessary by actions brought by individuals in national courts, is obvious. The GCC Constitution,

certain associated treaties and, arguably, certain decisions are international legal obligations of the GCC States. As is commonly the case, no specific means of giving effect to these obligations is set out in the GCC agreement but it is clearly the case that some device whereby individuals may rely on the content of the international rules in domestic proceedings will contribute to ensuring that a state does observe its international undertakings in this sphere. How this is to be done is primarily a matter for the constitutional laws of the Member States themselves, but the more effective those laws are, the better implemented will be the objectives of the GCC. It is necessary, therefore, to try to discover how the GCC States deal with the domestic implementation of their international obligations, at the same time emphasising the special qualities of the GCC regime which might point to a more receptive approach of States than that which they take towards their international obligations at large.

Such an undertaking requires the identification of the nature of GCC law, whether it is international or supranational. It has already been established that the GCC is an international institution rather than a supranational one and this conclusion will be enforced by an examination of its legal rules later in this chapter. Accordingly, rather than using the EEC model for investigating the relationship between GCC law and the law of the Member States, the inquiry will be based on the theories of the interrelation between international and domestic law. A brief theoretical section on the doctrines of the relationship between external and national law prefacing this chapter seems in order.

For an overall appropriate examination and evaluation of the relationship between external and domestic law of GCC Member States, the practice of the UK and US in this respect will be sketched in the theoretical section. As a whole, this

chapter finishes with a discussion on the domestic status of GCC treaty law, decisions and possible customs in terms of way of implementation and priority.

7.A: Theoretical background

7.A.I: Doctrines on the relationship between external and national law

a. Monism

There are many variants to the monistic school of thought. Generally speaking, it is based on the assumption that national and international law are both manifestations of a single concept of law, that they essentially have the same sources and that both directly govern the behaviour of individuals ⁽¹⁾.

Regarding the primacy of one or the other, i.e. national or international law, monistic doctrine is divided. On the one hand, the opinion of a tiny minority maintains that municipal law is superior to international ⁽²⁾. Seemingly, however, this view has been abandoned. Professor O'Connell even argued that:

The theory that municipal law is in its nature superior to international law has never found favour in international tribunals and is no more than an abstract possibility.⁽³⁾

The dominant view, on the other hand, holds the pre-eminence of international law where there is a conflict between them.⁽⁴⁾

b. Dualism

The dualist doctrine maintains that international law and municipal law are two fundamentally distinct systems ⁽⁵⁾. It is based on a number of assumptions. One is that the two systems regulate different subject matters, i.e. inter-state relations are governed by international law whereas the individuals' relations are governed by municipal law. Another basis of this theory is that the two derive from different

sources. According to Triepel, the source of municipal law is the will of the state itself, whereas that of international law derives from the common will of states ⁽⁶⁾.

Accordingly, the dualist theory requires the transformation of rules of international law into municipal law for their internal applicability and enforceability. As such, supremacy of international law in a dualist state is dependent upon its constitution or fundamental law, or its judicial decisions.

c. Co-ordination

Some international jurists favoured the practice of international and national tribunals over the monist-dualist debate, hence offering a practical solution to the problem. Sir Gerald Fitzmaurice declared:

the entire monist-dualist controversy is unreal, artificial and strictly beside the point.⁽⁷⁾

He rejects the theses that municipal and international law have a common field of operation and exposed his theory, described as Co-ordination, stating:

In order that there can be controversy about whether the relations between two orders are relations of *co-ordination* between self-existent independent orders, or relations of *subordination* of the one to the other, or of the other to the one - or again whether they are part of the same order, but both subordinate to a superior order - it is necessary that they should both be purporting to be, and in fact be, applicable in the same field - that is to the same set of relations and transactions. For instance it would be futile to speak about a conflict between the laws of science and the laws of diplomatic intercourse, because they do not purport to apply to the same things. On the other hand it would make sense to talk, for instance, of a controversy about the relationship between the rules of private morality and the rules of private law, because they have a considerable common element: at least, both apply to the relations between and the conduct of private individuals.⁽⁸⁾

By way of illustration, he then equated the relationship between international and municipal law with that existing between the English and the French legal systems, each of which is supreme in its own place of operation, i.e. the French in France and

the English in England. Conflict between French and English law is governed in each country by its own rules of conflict law. Therefore, he states:

there can be no conflict between any two systems *in the domestic field*, for any apparent conflict is automatically settled by the domestic conflict rules of the forum.⁽⁹⁾

According to him, conflict between two systems on the inter- governmental level would be tackled by international law because it is the law of the international field and the only law applicable. Hence international law in the international field is supreme. He goes on to distinguish between the supremacy he attributes to international law, and that bestowed by the monists, who speak of its inherent superiority, saying it is one "not arising from *content*, but from the field of operation", as the French law is supreme in France, "not because the law is *French but because the place, the field, is France*." ⁽¹⁰⁾

It should be mentioned, moreover, that this view, as noted by Sir Gerald Fitzmaurice, had been expressed by Anzilotti when he wrote:

It follows from the same principle that there cannot be conflict between rules belonging to different judicial orders, and, consequently, in particular between international law and internal law. To speak of conflict between international law and internal law is as inaccurate as to speak of conflict between the laws of different States: in reality the existence of a conflict between norms belonging to different juridical orders cannot be affirmed except from a standpoint outside both the one and the other.⁽¹¹⁾

7.A.II: Methods for the application of external law in national law

For completion of the brief theoretical background on the interaction between international and municipal law, it is apposite to ascertain the machinery whereby national courts apply and enforce the rules of international law. States' practice on this point is of considerable importance; therefore, an example will be selected and examined by way of illustration, before moving on to the practice of the GCC Member States.

Basically, there are two methods for incorporating the rules of international law into a municipal legal system: one is termed "transformation", the other "adoption" or "incorporation" - hereafter adoption.

a. Transformation

The term could be employed to mean different things by different people. Here the concept of "transformation" means that rules of international law form part of municipal law only insofar as they have been accepted by the state concerned through legislation or judicial decision. Individual states would find this concept useful for a number of reasons. Internally, states in which the powers are separated make sure that the executive (which is usually responsible for the conduct of foreign affairs) is not exceeding its powers, indirectly assuming a domestic legislative function. New states also find this method effective in protecting their legal systems from international rules which were created at a time when they could not take part in their formation. Following this method renders the validity of international law subject to the state authority, hence preserving their sovereignty which they are mostly keen to protect. This is indeed one of the disadvantages of the "transformation" method, i.e. strengthening the notion of state sovereignty at times when people, for the interest of the international community as a whole, should look beyond the nation-state. Another drawback of this method is the fact that it changes the content of the rule of international law in the domestic sphere as, for example, the national rules of priorities and rules of interpretation are likely to take over.

b. Adoption

The concept of "adoption" shall mean that the rules of international law automatically form part of the municipal legal order. Internal legislation or executive

orders are not needed for national courts to apply international rules. An internationalist would surely conclude that the method of "adoption" is an ideal one for enhancing the status of international law and attaining the aim of unifying the law in the states constituting the international community. Presumably, under this method the application of international rules of interpretation is maintained. However, the fact that the international community is composed of members with different ideologies and, as mentioned above, the fact that a number of the international actors are newly established, and hence they may distrust international rules, both make the dominance of this method only a future possibility. Even in the older and advanced states, as will be shown, adoption machinery is accepted for those rules where the executive cannot really act as a legislator. Besides which, international law being primarily a law between states, it is not obvious that the adoption theory would be of much benefit to individuals and corporations whose interests might be affected by the international legal rules but whose rights would not be.

c. The methods in practice

In any constitutional system for dealing with international obligations of the state, there are two questions which must be considered:

1. Which organ of government makes international obligations, especially treaties?
2. Which organ of government implements these obligations in domestic law?

Where there is no necessity for the implementation of properly made international obligations, then the constitutional system is said to be monist. Where

there is need for implementation (and that implementation may be made by a different organ of government than the one which has bound the state internationally), then the system is dualist. However, because of the variety of constitutional systems, it must be understood that those formal terms cover a variety of circumstances where it may be possible to say only that a system is "more monist" or "more dualist" rather than purely one or another. Indeed, a single domestic legal system may exhibit both tendencies. The practice of the United Kingdom and the United States should illustrate those doctrines, and provide a basis for ascertaining those points in the legal systems of GCC Member States.

UK Practice

As concerns treaties, their negotiation signing and ratification is the prerogative of the Crown. However, because their subject matter varies and may involve alteration of domestic law, most require approval by Parliament for them to take internal legal effect; this is summarised in the following passage:

- a. Treaties which: (1) affect the private rights of British subjects, or (2) involve any modification of the common or statute law by virtue of their provisions or otherwise, or (3) require the vesting of additional powers in the Crown, or (4) impose additional financial obligations, direct or contingent, upon the government of Great Britain, must receive parliamentary assent through an enabling Act of Parliament, and, if necessary, any legislation to effect the requisite changes in the law must be passed.
- b. Treaties made expressly subject to the approval of Parliament require its approval, which is usually given in the form of a statute, though sometimes by Resolution.
- c. Treaties involving the cession of British territory require the approval of Parliament given by a statute.
- d. No legislation is required for certain specific classes of treaties, namely, treaties modifying the belligerent rights of the Crown when engaged in maritime warfare (presumably because such treaties involve no major intrusion on the legislative domain of Parliament),

and administrative agreements of an informal character needing only signature, but not ratification, provided they do not involve any alteration of municipal law.⁽¹²⁾

Obviously, large parts of those treaties whose nature is international co-operation rather than co-existence or state-like business are not automatically applicable by British courts. In particular, treaties which bear on rights under domestic law are part of the law of the UK only insofar as their rules have been transformed by an enabling Act of Parliament. Recently Lord Oliver confirmed this position, stating:

...as a matter of the constitutional law of the United Kingdom, the Royal prerogative, whilst it embraces the making of treaties, does not extend to altering the law or conferring rights upon individuals or depriving individuals of rights which they enjoy in domestic law without the intervention of Parliament. Treaties as it is sometimes expressed, are not self-executing. Quite simply, a treaty is not part of English law unless and until it has been incorporated into the law by legislation.⁽¹³⁾

Thus, those unimplemented treaties will not give rise to domestic legal rights, although if such a state of affairs results in a situation incompatible with the treaty, it will constitute a breach by the UK of its international obligations.

Treaties domesticated by enabling acts of parliament take precedence over prior inconsistent statutes.⁽¹⁴⁾ But such a treaty will yield precedence to subsequent statutes;⁽¹⁵⁾ there is, however, a presumption that Parliament did not intend to act inconsistently with the treaty, hence courts interpret the subsequent statute in conformity with it.⁽¹⁶⁾ One means of reaching that is by giving the language of the implementing statute the meaning of the treaty so far as possible.⁽¹⁷⁾ And in finding the meaning of a treaty, courts look at its language and interpret it so far as possible in accordance with the international rules for treaty interpretation, the Vienna Convention on the Law of Treaties, articles 31-3.⁽¹⁸⁾ In cases where provisions of a subsequent statute are unambiguously in conflict with a prior treaty, courts apply the

statute.⁽¹⁹⁾ The UK practice with regard to the treaties effectiveness in a domestic sphere is typical for states of the transformation camp. If the treaty has not been implemented by legislation, it cannot give rise to legal rights and duties in English law, However, the Courts may have regard to such a treaty in interpreting statutes (though not delegated legislation or the exercise of ministerial powers), although the force of the treaty will be less than where there is no implementing legislation.⁽²⁰⁾

With regard to customary international law, the classic doctrine, as stated by Blackstone,⁽²¹⁾ that international law is part of English Common law has been generally the position within the English legal system.⁽²²⁾ Currently, a customary rule constitutes part of UK law, provided that it is not inconsistent with statutes or judicial authority.⁽²³⁾ If a customary rule conflicts with a statute, the statute according to *Mortensen v Peters*⁽²⁴⁾ prevails; however, courts interpret statutes so as to conform with customary law, based on the assumption that Parliament did not intend to violate international law,⁽²⁵⁾ unless the statute is unambiguous;⁽²⁶⁾ generally speaking, the automatic applicability of customary international law by British courts shows that the UK is an adherent to the doctrine of adoption with regards to customary rules.

When compared to universal international law, EC law bears a closer, perhaps special, relationship with the domestic law of the UK. Such a relationship was established by the European Communities Act 1972, of which section 2(1) that gives legal effect to EC law within the UK reads:

All such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Treaties, and all such remedies and procedures from time to time provided for, by or under the Treaties, as in accordance with the Treaties are without further enactment to be given legal effect or used in the United Kingdom shall be recognised and available in law, and be enforced, allowed and followed accordingly; and the expression 'enforceable Community right' and similar expressions shall be read as referring to one to which this subsection applies.

The legal effect accorded to EC law by this provision, as envisaged by EC Law, includes the doctrine of primacy of EC law over inconsistent domestic legislation. However, it is known that in the UK the supremacy of Parliament is a traditionally fundamental doctrine. So, how are the two doctrines being reconciled? Section 2(4) of the Act is relevant to this question; it reads:

The provision that may be made under subsection 2(2) above includes, subject to Schedule 2 to this act, any such provision (of any such extent) as might be made by Act of Parliament, and any enactment passed or to be passed, other than one contained in this Part of this Act, shall be construed and have effect subject to the foregoing provisions of this section, but, except as may be provided by any Act passed after this Act, Schedule 2 shall have effect in connection with the powers conferred by this and the following sections of this Act to make Orders in Council and regulations.

Apparently, the sort of supremacy of EC law as formulated by the ECJ⁽²⁷⁾ is not really provided by the terms of this subsection, i.e. 2(4), but rather a rule of construing inconsistent domestic statutes so as to conform with EC law.

Of course, cases involving conflict between statutes enacted prior to the Act are not included in that generalisation. These, like the treatment of other international agreements, would be decided on the principle that the later in time prevails, hence pre-Act conflicting statutes are subjected to the Act.

As regards subsequent inconsistent statutes, British courts are, generally speaking, more likely to subject them to directly effective EC law either by way of reconciling the conflict or acknowledging the primacy of EC law as viewed by the EC itself, unless the Parliament deliberately deviates, in express terms, from EC obligations. This general assumption is illustrated by the rulings in cases such as *Garland*, mentioned earlier and *Smith*.⁽²⁸⁾ Recently, the House of Lords suggested that British Court should take an even more receptive attitude to Community law.⁽²⁹⁾

In conclusion, the practice of the UK generally reflects employment of both methods of incorporation, i.e. 'adoption' for customary international rules and 'transformation' for Treaty rules, though both are with qualification. Furthermore, the UK legal system exhibits an obviously more receptive attitude towards EC law.

United States Practice

At the outset mention must be made of the fact that in the United States its Constitution is the supreme law of the land, i.e. Constitutional provisions supersede any other law, domestic or international, customary or otherwise. Accordingly, US officials and courts as bound by the Constitution cannot enact or apply a law contrary to the Constitution.⁽³⁰⁾ Those external rules, customary and treaty, in conformity with the Constitution are applied domestically as such, though with some qualifications.

As far as treaties are concerned, the US Constitution describes where the treaty-making power lies as well as their status in domestic law. Courts too have recognised certain bases for their internal effect. Broadly speaking, international agreements which the US enters into fall into two categories: treaties and executive agreements. Treaties are those made by the President with the consent of two-thirds of the Senate as provided in Article II(2) of the Constitution. Executive agreements are those made by the President alone under his constitutional power⁽³¹⁾ or pursuant to congressional authorisation.⁽³²⁾ On their domestic effect, Article VI(2) of the Constitution provides that treaties confirmed by the Senate are 'the supreme law of the land'. This sort of internal status should also apply to executive agreements made under congressional authorisation. While executive agreements based solely on the power of the President, like treaties, prevail over any state law⁽³³⁾, it is not clear whether they have the same status with regard to federal law.

Anyway, domestic application of treaties is subject to court-imposed doctrines of self-executing treaties. That is, American courts distinguish between what they categorise as self-executing and non-self-executing treaties. The term 'self-executing' treaties refers to those agreements which, upon entry into force internationally, aim immediately at the creation of domestically enforceable rights and duties of private individuals by domestic courts. Conversely, 'non-self-executing' agreements are those which require legislation to make them effective in the domestic sphere. Determining whether or not a treaty is self-executing is, as mentioned earlier, the function of the courts; they reach their conclusions by examining the intent of the parties, language of the treaty and the surrounding circumstances.⁽³⁴⁾ For domestic considerations, however, some treaties might be treated as non-self-executing, regardless of whether or not they satisfy the aforementioned criteria; treaties on matters relating to the appropriation of money or the imposition of penalties for criminal offences are counted as examples.⁽³⁵⁾ In *US v Postal*⁽³⁶⁾, for instance, the court decided that the High Seas Convention, especially Article 6, was non-self-executing, so that an individual could not complain about the United States asserting jurisdiction over foreign vessels on the high seas. A critic of this decision suggested that the underlining policy was reaching out to criminals on the high seas.⁽³⁷⁾ He noted that had the court held Article 6 to be self-executing, it would have prevailed over the conflicting prior domestic statutes thus limiting its jurisdiction over defendants.⁽³⁸⁾ Apparently, therefore categorising a treaty as self-executing or not is a decision influenced by domestic policies.

A treaty considered as self-executing, or non-self-executing but implemented by legislation, is subordinate, as mentioned earlier, to the Constitution.⁽³⁹⁾ In relation to

statutes, such a treaty supersedes any prior inconsistent ones.⁽⁴⁰⁾ But it yields precedence to a subsequent statute if it can not be interpreted so as to avoid conflict.⁽⁴¹⁾

That said of treaty law in the US, it is apposite to make a mention of the status of customary international law therein. In 1900, the *Paquete Habana* case established that customary rules constitute part of the US law.⁽⁴²⁾ However, this adoption approach is not without qualification. The status of customary rules in the hierarchy of US law is not an obvious one. Besides provisions of the Constitution, domestic statutes regardless of their date of issuance take precedence over inconsistent customary rules.⁽⁴³⁾ However, in such cases, a statute is interpreted as far as possible so as not to conflict with customary rules of international law, "unless it unmistakably appears that a congressional act was intended to be in disregard of a principle of international comity".⁽⁴⁴⁾ Such a state of relationship has been subject to castigation in favour of applying the principle of the latter as time prevails, accorded to treaty law as noted above.⁽⁴⁵⁾

Generally, US practice reflects a more monistic approach towards international law subject to national courts determination of whether or not an international obligation gives rise to rights and duties in the domestic sphere.⁽⁴⁶⁾

7.B: Interaction between GCC law and municipal law

7.B.I: The character of GCC law

a. Regionality

In chapter four, it was established that the GCC in its present structure is neither a federation nor a supranational organisation. It follows, therefore, that its rules are neither federal nor supranational law. The character of the rules of the GCC

can best be identified through study of its constitutional and structural features.

For the purposes of this study the term 'GCC law' means that body of law encompassing rights, duties, powers and remedies created by the Charter of the GCC, subsequent agreements and decisions of the Supreme Council. Broadly speaking, the subjects are the Member States and the addressees are the inhabitants of the Members' territories, though the latter are involved only after the rules are domesticated.⁽⁴⁷⁾

Examination of the organisational structure of the GCC⁽⁴⁸⁾ reveals that it is of no more than a traditional international organisation. Examination of its constitution and the way it was handled by the Members calls for a number of observations. The constitutive instruments were international political acts resulting in the creation of treaty law amongst the six sovereign States. Those acts are international treaties ratified by the parties in accordance with their constitutional requirements. They can be amended only with the consent of all signatory Member States⁽⁴⁹⁾. They are subject to unilateral renunciation⁽⁵⁰⁾. All these constitutional and institutional observations point towards the existence of relations, though special, governed by international law, rather than a national or supranational law. Nonetheless, the limitation on its subjects and addressees hints to a need for qualification of the internationality suggested to be the classification of the GCC rules of law. This discussion, therefore, holds the view that the said law constitutes a regional international law, and hence shall be identified accordingly, i.e. GCC international law, or, for the purpose of simplification as employed in this work in general, GCC law.

By way of illustration, the term "regional international law" means here those rules of international law the field of validity of which is restricted to a number of

states associating themselves by means of international treaty. Thus, GCC law means those rules of international law the sphere of validity of which is confined to the six States of the GCC. Such definition should also apply to law pertinent to other non-universal associations which are not federations and yet still to reach the stage of supranationalism, e.g. the Arab League. Further, the term 'GCC law' denotes those rules of international law created to further the interests of the six Members without contradicting universal international law. As such, whilst the admissibility of regional international law, such as that of the GCC, corresponds to reality and meets the need for non-universal international law, it is offered insofar as there is no inconsistency between the regional and the universal international law.

The need and admissibility of regional international law has been recognised by learned authors such as Professor W. Friedman. In the preface to his much read book *The Changing Structure of International Law* (1964), he promoted the distinctive character of the international law of co-operation as increasingly reflected in international organisations and acknowledged the need for non-universal spheres of international law to further the interests of specific people. In his words:

This part [two] outlines the principal thesis of the book: that in international law it is today of both theoretical and practical importance to distinguish between the international law of "coexistence", governing essentially diplomatic inter-state relations, and the international law of co-operation, expressed in the growing structure of international organisation and the pursuit of common human interests. From this follows the acknowledgment of the necessity of both universal and non-universal spheres of international law.⁽⁵¹⁾

The concept of regionalism advocated by the learned jurist, though not elaborated, is assumed to include the rules created by regional organisations which do not violate the rights of non-members in the concerned organisation.

Having stated that, this discussion would be incomplete without clarifying the

interrelation between regional, in particular that of the GCC, and universal international law, though briefly. In accordance with what has been expressed above, their relationship is not one of hierarchy, rather of complementary, i.e. the regional being part of the universal. GCC law is regional because it concerns only six States of the international community, and international because, as said earlier, it contains international elements rather than supranational or federal ones. There are, however, two exceptions to the non-hierarchical inter-relation between regional and universal international law.

One is that obligations arising under the UN Charter supersede obligations incurred under other treaties, including those constituting the constitutional basis for regional laws. Thus, a regional law such as that of the GCC gives way to a duty enshrined in the UN Charter in case of conflict. According to Article 103 of the UN Charter:

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

Obviously, questions with regard to the specification of the obligations of the Members under the UN Charter may arise. In this respect, it has been maintained that:

the definition of "obligations under the Charter" within the meaning of article 103 must be confined to those obligations that have been laid down in provisions of the Charter and binding decisions of the Security Council.⁽⁵²⁾

This supremacy of the UN law under Article 103 has been expressly provided for in some constitutive instruments of international organisations, e.g. GATT in its article 21(c) states:

Nothing in this agreement shall be construed to prevent any contracting party

from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.⁽⁵³⁾

The Charter of the GCC contains no such provision. However, since it was set up by a treaty, it is bound to yield to the obligations which the Charter of the UN and binding decisions impose upon its Members.

The second exception to the above mentioned thesis that the relationship between universal and regional international law is not one of hierarchical character is the rules of *jus cogens*, e.g. prohibition of the use of force and trade in slaves and piracy, which override the provisions of treaties of international organisations. For example, an agreement by the GCC States to use force against another sovereign state would be void because the treaty is inconsistent with a rule of *jus cogens*, i.e. the prohibition of the use of force. Generally, however, those rules are the subject of controversy.⁽⁵⁴⁾

In cases other than those covered by the above mentioned exceptions, conflicts between regional and universal rules of international law should be governed by the conflict rules applied to cases of inconsistency between norms of international law.

b. Sources

Having suggested above that GCC rules are basically international law, though their sphere of validity is restricted to the six Member States, it should follow that the GCC rules derive from the same sources as the universal international law, i.e. treaties, customs, and general rules of international organisations.

Indeed, it has been expressly provided that the GCC Commission for Settlement of Disputes is to base its recommendations or opinions *inter alia* on the rules of international law.⁽⁵⁵⁾

The regional sources, however, are mainly treaties, e.g. the Charter of the GCC, the Economic Agreement and the Agreement on the GCC Privileges and Immunities. In other words, GCC law is mainly treaty law.

Decisions of the Supreme Council are yet another source of law, but it might be argued that those decisions are merely programming of the rules already in the treaties. In any case, those decisions have contributed to the body of GCC law ⁽⁵⁶⁾.

Besides universal customary international law, GCC customary law could be developed, and hence constitute a basis for rights and duties amongst its Members, in accordance with the jurisprudence of ICJ. In the *Right of Passage over Indian Territory* case, it accepted such assumption when it stated:

It is difficult to see why the number of States between which a local custom may be established on the basis of long practice must necessarily be larger than two. The court sees no reason why long continued practice between two States accepted by them as regulating their relations should not form the basis of mutual rights and obligations between the two States.⁽⁵⁷⁾

Regional customary rules, according to the jurisprudence of the ICJ, bind only those states which adhered to it; in the *Colombian- Peruvian asylum* case, it stated:

But even if it could be supposed that such a custom existed between certain Latin-American States only, it could not be invoked against Peru which, far from having by its attitude adhered to it, has, on the contrary, repudiated it....⁽⁵⁸⁾

Another source of GCC law would be the general principles of law common to the law of the Member States. In this respect, the general principles of Islamic law could play a significant role. It has been already sanctioned that disputes between the Member States are to be tackled *inter alia* in accordance with the principles of Islamic law ⁽⁵⁹⁾.

7.B.II: Its relations to national legal systems

a. Autonomy?

It was argued above that GCC rules are international law with regional peculiarities. Such character prompts one to ask whether GCC law is an autonomous legal system. This question and others like it are likely to be put forward by those who conclude that the GCC is modelled in long-term objectives on the organisation whose legal order is autonomous, i.e. the EEC. Therefore, it seems appropriate to examine how and why the EEC admitted such autonomy, for the purpose of contrasting the position of the GCC legal order.

Notably, like GCC law, that of the EEC is originally the product of international treaties. However, unlike the earlier suggested characteristic of the GCC law, i.e. that it is essentially international, the body of the EEC law has been described as an autonomous legal order, different from both national and international law, by the ECJ and various national courts. In the *Van Gend en Loos* case, the ECJ declared:

...the Community constitutes *a new legal order of international law* for the benefit of which the States have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member States but also their nationals.⁽⁶⁰⁾

Furthermore, in the *Costa v ENEL* case, it stated:

By contrast with ordinary international treaties, the EEC Treaty has created *its own legal system* which, on the entry into force of the Treaty, became an integral part of the legal systems of the Member States and which their courts are bound to apply.⁽⁶¹⁾

Similarly, the German Federal Constitutional Court in *Internationale Handelsgesellschaft v Einfuhr und Vorratsstelle fur Getriede* viewed the Community law as an autonomous legal order ⁽⁶²⁾. Also, in *Minister of Economic Affairs v SA*

Fromagerie Franco-Suisse 'Le Ski' the Belgian Cour de Cassation maintained that treaties of the Community have created a new legal order.⁽⁶³⁾

This new legal order has individuals as its subject alongside the Community institutions and the Member States. In the Community the creation of direct rights for individuals which must be safeguarded by national courts constitutes a new phenomenon. This nature of the EEC law, i.e. supranationality, made constitutional adjustment in some of its member states inevitable⁽⁶⁴⁾. By contrast, by reason of the internationality, rather than supranationality, of GCC law such adjustment has not been needed by the GCC Member States.

It can be argued that the GCC legal order constitutes a special type of international law; but it would be hard to prove that it is an autonomous system of law, i.e. distinct from national and international law. It is difficult, therefore, to see it other than as currently forming regional legal system.

b. Supremacy?

In this Section, the basis for the supremacy of EEC law will be identified. This will enable comparison and contrast with GCC law, and reasons for its primacy or otherwise, addressed below in Section 7.C.II, in which the treatment of the GCC treaties by Member States will be examined. Again, the justification for such an undertaking is the obvious fact that, operationally and organisationally, the GCC is growing; therefore, constitutional and structural features pointing towards the existence of supreme law should be known to the advocates of Gulf integration. Space here will allow only a brief examination of ECJ jurisprudence which illustrates the constitutional and political basis of EEC law primacy. The viewpoint of EEC Members on the issue of supremacy will be mentioned, and should measure the

responses to the treaties which brought into being the new legal order.

The ECJ in *Costa v ENEL* entertained the issue of whether Community law prevailed over national law. In making its judgment, the ECJ examined the Community features and made the following observations:

- a. By contrast with ordinary international treaties, the EEC Treaty has created its own legal system which, on the entry into force of the Treaty, became an integral part of the legal systems of the Member States and which their courts are bound to apply.
- b. By creating a community of unlimited duration...the Member States have limited their sovereign rights, albeit within limited fields, and have thus created a body of law which binds both their nationals and themselves.
- c. The integration into the laws of each Member State of provisions which derive from the Community, and more generally the terms and the spirit of the Treaty, make it impossible for the States...to accord precedence to unilateral and subsequent measures over a legal system accepted by them on a basis of reciprocity.
- d. The executive force of Community law cannot vary from one state to another in deference to subsequent domestic laws, without jeopardising the attainment of the objectives of the Treaty
- e. The obligations undertaken under the Treaty establishing the Community would not be unconditional...if they could be called in question by subsequent legislative acts of the signatories.⁽⁶⁵⁾

Then, based on these observations, it concluded that the Community law prevails, stating:

it follows from all these observations that the law stemming from the Treaty, an independent source of law, could not, because of its special and original nature, be over-ridden by domestic legal provisions, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question.⁽⁶⁶⁾

In the *Simmenthal* case, the question was whether an ordinary Italian court is prevented from discarding national provisions which are inconsistent with Community law. In the preliminary ruling, the ECJ noted that:

...any recognition that national legislative measures which encroach upon the field within which the Community exercises its legislative power or which are otherwise incompatible with the provisions of Community law had any legal effect would amount to a corresponding denial of the effectiveness of obligations undertaken unconditionally and irrevocably by Member States pursuant to the Treaty and would thus imperil the very foundation of the Community.⁽⁶⁷⁾

It then concluded that the question:

should therefore be answered to the effect that a national court which is called upon within the limits of its jurisdiction, to apply provisions of Community law is under a duty to give full effect those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation, even if adopted subsequently, and it is not necessary for the court to request or await the prior setting aside of such provision by legislative or other constitutional means.⁽⁶⁸⁾

Moreover, the ECJ declared that even national constitutional law must give way for EEC law. In the *Internationale Handelsgesellschaft* case, it held that:

the validity of a Community instrument or its effect within a member state cannot be affected by allegations that it strikes at either the fundamental rights as formulated in a state's constitution or the principles of a national constitutional structure.⁽⁶⁹⁾

The aforementioned cases should illustrate that the supremacy of the Community law as confirmed by the ECJ is based on treaty and policy considerations.

The treaty considerations include the fact that they created a new legal system and this involved the partial transference of sovereignty, thus exposing the subjects of the Member States to the force of EC law directly.

The policy considerations include the attainment of the functional effectiveness of the EEC, necessary for the realisation of the objectives of the EEC treaty.

Applied to the GCC case, the political considerations can constitute grounds for arguing for the primacy of GCC law. Yet, alone and without a judicial body, their role counts for nothing. It is the treaty considerations which make the difference. Had the GCC Charter been modelled on the EEC Treaty, the latter's primacy with its

otherwise. So given the fact that courts effectuate EC rules so long as Parliament decides not to distance itself from the EC, the UK, regardless of the method by which it maintains EC law supremacy, can probably be said to be recognising the primacy of EC rules like other members.

The point of view of the GCC Member States towards the status of GCC law is explained below in Section 7.C.I, in which the notion of GCC law primacy is examined.

7.C: Reception of GCC law by national legal systems

7.C.I: Implementation of GCC law

External law includes rules of customary, general and conventional international or regional law as well as decisions of international or regional organisations. However, the aim of this section is mainly to explore the relationship between GCC law and the national law of the Member States; the latter's relation to international law will be referred to where necessary. It is submitted that in the field of international law and organisations, there has been neither uniform legal theory nor a single state practice on the relationship between international law and municipal law. Compounding the problem for GCC Member States, as will be shown, is the secrecy of the very necessary sources for venturing into such an issue; notably, moreover, no written work on this complex problem has ever been published with regard to the six Members of the GCC. Nonetheless, this section will attempt to draw marks on the road of full exploration. The constitutions of the Member States are thought to be of primary importance in this regard; therefore, pertinent provisions annexed to this chapter and will be referred to throughout.

a. Treaty law

The constitutions of all the Member States contain provisions on treaties. Although not straightforward, they guide a discussion on how treaty law is implemented in addition to their original purpose of determining the treaty-maker and the necessary steps for concluding treaties. GCC treaty law in particular will be examined in terms of its relationship to the legal system of its Members. For simplicity, each Member state will be studied individually.

U.A.E.

The constitution of this federation embodies a number of articles on the conclusion and incorporation of treaties ⁽⁷⁴⁾. These include Articles 120/1, 124, 91, 110/1 and 2, 113, 111, 125, 144/a, c and d and 60.

According to Article 60, the Council of Ministers, controlled by the President of the Union and the Supreme Council, is the executive organ of the Union. The above-mentioned constitutional provisions make it clear that this branch of the government has not only the power to negotiate and sign but also to ratify international treaties. This prerogative is guaranteed by the constitution by the assignment of the conduct of foreign affairs to the said branch.

However, as provided in Article 124, this power is not absolute; the executive authority must consult the seven Emirates before concluding a treaty which may affect the special position of any one of the Emirates. The term 'special position' is not defined; yet, one would expect that it means those treaties of peace, alliances and territorial settlements as well as those which ensue financial obligations or amend greatly the existing local laws. For example, therefore, the Charter of the GCC and the subsequent related agreements should have been submitted to the individual

Emirates for consultation because, obviously, they affect the position of each Emirate.

Nonetheless, this requirement seems to be of academic nature since ratification of such treaties must, in the first place, acquire the consent of the rulers of the seven Emirates, hence in their capacity as members of the Supreme Council they can decide whether or not to give effect to the treaties. The soundness of this view becomes apparent when borne in mind that each Emirate is ruled absolutely by its ruler. So a question such as whether such treaties, including the GCC ones, referred to the individual Emirates can be answered in the affirmative on the assumption that the requirements under the circumstances is met by the rulers not objecting to its ratification by the Supreme Council. In other words, once it is learned that a treaty has been ratified, the assumption is that each emirate had been consulted as represented by its ruler.

The Union National Council too has a role in the conclusion of treaties. However, because its legislative function is narrowed to being of preparatory character, it seems that the say it has on treaties by which it is informed is of an advisory nature and acceptance, rather than amendment or rejection as is its power with regard to internal Union legislation.⁽⁷⁵⁾

Having established where the power to make treaties lies, it is apposite to determine how such treaties are implemented internally. Such ratified treaties are not adopted as such by the Emirates' national legal structure; formally the "transformation" not the "adoption" method is applied for application of treaty law in U.A.E. municipal law. GCC treaty law has undergone a process of transformation, though minor indeed, for its internal effectiveness. The Charter of the GCC, the Economic Agreement, the treaty setting up the Gulf Investment Corporation and the

Agreement on the GCC Privileges and Immunities were given effect by decrees having the force of law, in accordance with Articles 124 and 113, by the President based on the assent of the Council of Ministers and the Supreme Council.⁽⁷⁶⁾ They could, alternatively, have been made internally applicable by federal law, in accordance with the requirements of Article 110 cited above, i.e. by the President based upon the approval of the Council of Ministers and the Union National Council and the ratification of the Supreme Council, which consists of the Rulers of the seven Emirates. Either one must be published in the Federal Official Gazette, their internal effectiveness starting one month after the date of publication, unless otherwise stated in the law or decree itself. In the case of GCC treaty law, the one month period has been applied.

For ensuring the execution of international treaties, Article 125 of the constitution requires the member Emirates to take the necessary measures to implement the treaties concluded by the Federation.

Finally, it should be noted that, in accordance with Article 151, federal legislation prevails over local legislation; hence, GCC treaty law, as being implemented by federal decrees, overrides inconsistent local law. The question which remains, however, is whether a conflicting federal law or decree would give way to GCC treaty rules. This is examined below in Section 7.C.II.

Bahrain

In this Member State, the conclusion and implementation of treaties are described by the following constitutional provisions: 35/a, 37, 38, 42, 59, 104/a and 106.⁽⁷⁷⁾

The constitution provides that the system of government is based on the division of authority as follows:

1. legislative power rests with the Amir and the National Assembly;
2. executive power is vested in the Amir and the Council of Ministers;
and
3. judicial power is retained by the courts in the name of the Amir.⁽⁷⁸⁾

Of greater importance, however, is the fact that the constitution describes the requirements for the conclusion of two types of treaties: one for the purpose of this study will be characterised as 'general', and the other as 'special'. The former probably encompasses those treaties which are concerned with states as such, but a more precise definition could be: those treaties the subject of which is not covered by Article 37 paragraph 2. On the other hand, the 'special' treaties are those involving one or more of the enumerated subjects in the said paragraph.

It is the prerogative of the Amir to negotiate, sign and ratify what are termed 'general' treaties. They are made internally applicable by decrees by the Amir and come into effect one month after publication in the Official Gazette, unless otherwise stated in the decree itself. Notably, even this type of treaty is to be submitted to the National Assembly; yet, reading into the entire context of Article 37 supports the view that the Assembly's role in this kind of treaty is of an advisory nature. This role is better understood by comparison with the Assembly's role with regard to the other type of treaty, i.e. what has earlier been characterised as the 'special'.

The 'special' type of treaty is also negotiated, signed and ratified by the Amir. However, the Amir's ratification power is dependent upon the assent of the National Assembly. The joining of the Assembly in effectuating such treaties is provided for in

Article 37 paragraph 2, which stipulates that they come into effect only when made by a law. Laws, according to Article 42, are promulgated after being passed by the Assembly. In practice, their internal effectiveness takes place one month after their publication in the Official Gazette. GCC treaty law falls under the 'special' type of treaty because it shows at least one of the characteristics of the 'special' type, e.g. it involves expenses not included in the Bahrain budget.

Most of these constitutional procedures for concluding and implementing treaties, however, lost their practical value when in 1976 the National Assembly was disbanded ⁽⁷⁹⁾. From that date and until now the Assembly's chair has been occupied by the executive. Therefore, the GCC treaties concluded between 1981-90 were ratified and made applicable in Bahrain by means of decrees referring to the constitution in general and to the approval of the Council of Ministers as their legal basis, e.g. decree No. 24 of 1981 implementing the Charter of the GCC ⁽⁸⁰⁾.

Such decrees, while internally valid with the absence of the National Assembly, will have their validity exposed to the mercy of the Assembly once it is reinstated, i.e. in accordance with paragraph 2 of Article 38, decrees implementing GCC treaties must be referred to, and for their continued effectiveness must receive the assent of, the next Assembly at its first meeting; otherwise, the Article provides, they are either rejected by the Assembly or not referred to it, and in both cases they retroactively cease to have the force of law. However, if rejected, the Assembly may approve "their validity for the preceding period or settle in some other ways the effects arising therefrom."

Of related importance is measuring the relationship between internal law and GCC treaty law. Bahrain is no different in this issue from other Member States.

It is appropriate, therefore, to examine the position of Member States towards treaty rules of international law all together in Section 7.C.II.

Saudi Arabia

The Kingdom of Saudi Arabia has no formal written constitution. However, the Statute of the Council of Ministers illustrates who the treaty-maker is, how a treaty is made and what the municipal status of a treaty is. Therefore, this Statute will be consulted. Of some importance at the outset is to note that the said Statute removed many of the doubts that the Council of Ministers enjoys both executive and legislative powers. More significant for this discussion, however, are those articles which bear relevance to the making and implementing of treaties. These include Articles 18, 19, 20 and 24.⁽⁸¹⁾

Pursuant to Articles 18 and 19, the treaty-making power is a prerogative of the executive branch of the government, i.e. the King and the Council of Ministers. So, too, is the implementing authority of concluded treaties, i.e. the implementing measure is in the form of a Royal decree to be passed after being approved by the Council of Ministers. Such a decree, which is the highest legal instrument in the Kingdom, makes the concerned treaty applicable internally. Thus, the relationship between Saudi law and treaty international law, including GCC treaty law, is connected by an implementing legislative act, e.g. Royal decree No. M/13 of 1982 implementing the Economic Agreement. As such, treaties may be looked at by a national tribunal or commission for internal purposes only if they are given effect in the way described by the Articles mentioned above and published in the Official Gazette, as provided in Article 24.

Qatar

In the State of Qatar the Amended Provisional Constitution of 1972 determines the treaty-maker as well as the requirements for making treaties effective internally. These matters are enshrined in Articles 23/1 and 2, 24/1, 34/2 and 51/First/3.⁽⁸²⁾

According to Articles 23 and 24/1, it is the Amir who is authorised not only to negotiate and sign but also to ratify treaties by decrees having the force of law. Although Article 24/1 speaks of informing the Consultative Council of treaties, it seems that its power is restricted to the making of recommendations; this is based on general reading of the constitution which mentions nothing about assent or rejection by the said Council, especially Article 51/first/3.

Thus, treaty rules of international law, including those of the GCC, are made domestically effective by Amiri decrees, e.g. decree No. 51 of 1982 ratifying the GCC Economic Agreement and reaffirming its force of law⁽⁸³⁾. Other GCC treaty law has been transformed in the same way. The internal status of GCC treaty law in the Qatari legal hierarchy is examined in section 7.C.II of this chapter.

Like other national laws, decrees nationalising external treaty rules must, Article 24/1 says, be published in the Official Gazette to be internally effective.

Oman

The Sultanate of Oman has no written constitution. However, the Law on the Organisation of the Administrative System of the Sultanate of Oman contains what is usually embodied in the constitutions, including the provisions on concluding treaties and their internal effect, therefore, this Law will be the primary

source for this discussion. In its Article 3, it provides:

International treaties, agreements and pacts shall be signed by His Majesty the Sultan or who he has authorised to do so, in this later case, they shall be submitted to His Majesty for ratification. And, the international treaties, agreements and pacts signed by His Majesty the Sultan or ratified by His Majesty shall be deemed part of the domestic law as of the date of their publication in the Official Gazette, unless His Majesty decides otherwise. [author's translation] (84)

Accordingly, it is clearly apparent that the treaty-making power as well as the implementing legislative authority rest solely with the Sultan. Participation, let alone combining acts, of different national bodies, was not even accorded advisory power.

The above-cited Article reveals that treaties which have been signed by the Sultan are, as such, ratified and so they become part of the national law from the date of their publication in the Omani Official Gazette; an example of this kind of treaty is the GCC Economic Agreement, which was signed by the Sultan personally. On the other hand, pursuant to the same Article, those treaties signed by a person authorised by the Sultan must undergo a process of ratification by the Sultan himself. Such ratification process takes the form of Sultanic decrees, as appear in the various ratifying legislation of international agreements. An example of the treaties signed on behalf of the Sultan, hence needing ratification by the Sultan himself, is decree No. 2 of 1983 ratifying the agreement establishing the Gulf Investment Corporation (85). Likewise, this type of treaty comes into effect as of the date of its publication in the Official Gazette. In both cases, however, the Sultan may decide other dates for the treaties' entry into force, as stated in the cited Article 3.

Seemingly, like most Members, Oman takes a monistic attitude towards the international rules created by treaties to which it is a party. The requirement for publication for their internal effectiveness should not hinder this argument, inasmuch

as such requirement is minor and necessary, especially for treaties which create rights for individuals or impose obligations upon them. The domestic status of ratified treaties is no different from that in other Member States, therefore it is examined in section 7.C.II of this chapter.

Kuwait

The constitutional procedures for concluding and implementing treaties in Kuwait are similar, and in some parts identical, to those embodied in the constitution of Bahrain. Out of the 183 articles, those having relevance to this discussion and supporting the expressed view of similarity are Articles 6, 65, 70, 71, 79, 97 and 174.⁽⁸⁶⁾

Like the State of Bahrain, the above provisions contemplated two types of treaty which, as in Bahrain, may be characterised as either 'general' or 'special'. The executive has the prerogative to negotiate, sign and ratify both; but, unlike the 'general', the 'special', which is described by Article 70/2, must be approved by the National Assembly in order that it comes into force internally upon its publication in the Official Gazette. The role of the National Assembly with regard to the 'general' treaties, i.e. those which are not covered by Article 70/2, is of an advisory nature, which means that its disapproval counts for nothing in terms of internal effectiveness⁽⁸⁷⁾.

Although the National Assembly has been dissolved twice since 1962 when the Constitution was promulgated, i.e. 1976 and 1986, the GCC treaties coincided with its existence and, because they fall under the 'special' category of the contemplated types of treaties, they were implemented by laws approved by the Assembly and ratified and promulgated by the Amir, e.g. Law No. 44 of 1981, ratifying the Charter of the GCC⁽⁸⁸⁾. As in the case of Bahrain, the creation of the GCC involved Kuwait with expenses not included in the budget, to state one reason for treating the GCC Charter under Article 70/2.

It is worth mentioning that the said Assembly was reinstated in 1990, though not in the form intended by the constitution of 1962.

In summary, in formal terms, treaty rules of international law in the State of Kuwait become part of its internal law only once they are transformed by decree or law in accordance with the constitutional requirements. GCC treaty law has undergone the same process of nationalisation, hence has been internally effective. The status of GCC treaty law within Kuwait is treated in section 7.C.II of this chapter.

b. Customs

As mentioned above in the case of treaties, the internal status of customary rules of international law can best be determined by resort either to states' constitutions or the work of their courts. In the case of the GCC Member States, the jurisprudence of some national courts is not accessible, a matter which makes the constitutions the last useful resort. Unfortunately, provisions concerning the internal application of customary law are non-existent in the Member States' constitutions. It is understandable that customary international law no longer constitutes the major part of international law in this era when efforts are intensified to codify existing rules of international law in treaties; but the question is whether it is this trend which lies behind the silence of the constitutions of GCC Member States on the stand of customary law internally. This is probably one reason. Another reason may be their response to the fact that those rules were established at a time when they were unable to participate in their creation. The point is that they were hesitant, perhaps reluctant, to recognise the direct applicability of customary rules of international law; therefore, they drew up their constitutions containing no provisions on their internal application.

In terms of relationship between customary rules of international law and

national law, one would be of the opinion that currently customary rules have no internal effect as appears to be the attitude of developing countries. Logically, customary rules should be applied internally as a part of internal law so far as it is not inconsistent with constitutional and national law. In general, only an additional constitutional provision would clarify the internal status of rules of customary international law. Alternatively, they should release judicial decisions on this matter, should there be any.

c. Decisions

Member States of the GCC have not yet transferred even part of their respective sovereignties to the GCC, a matter unsurprising and to be expected of newly structured States. In fact, relinquishment of part or all sovereignty would require the amendment of the constitutions of those States having written ones as they expressly prohibit such transformation, i.e. U.A.E. Article 4; Bahrain Article 1; Qatar Article 2; and Kuwait Article 1. However, in light of the importance of the GCC decisions as a source of law, one is bound to conclude that from the viewpoint of the GCC, the decisions are expected to be made valid internally by means of national legislation. The said expectation can be detected from the comprehensive objectives the Members have designed for the GCC. Of more significance is that its functional ability to work is highly dependent upon the implementation of its decisions. The conclusive membership in the GCC also suggests that, in spite of its traditional structure, it includes chosen Members who should be willing to make the GCC more than a diplomatic conference.

That expectation has so far been honoured. In realisation of the important role of effectuating their willingness, the Member States have taken specific legislative

measures for each and every decision, hence making them internally effective. The question thus far is how?

To begin with, constitutions of Member States contain no provisions determining the internal status of decisions of international organisations, including those of the GCC. However, the practice of the States with regard to decisions of the GCC reveal that the internal validity of GCC decisions is guaranteed when given effect by municipal legislation or Ministerial decrees. In the U.A.E. GCC decisions are transformed by different instruments, e.g. federal laws, decrees by the Council of Ministers and decrees by the various Ministers. In Bahrain, they have been made applicable by Amiri decrees and Ministerial decrees. In Saudi Arabia they are made internally valid by Royal decrees, decrees by the Ministerial Council and Ministerial decrees. In Qatar, laws and decrees by the Council of Ministers are the means employed to implement the decisions of the GCC. In Oman, they have been given effect by means of Ministerial decrees. Kuwait implements them by means of Ministerial decrees. Notably the internal enactments are made by varieties of municipal organs, depending on the nature and specialty of the decision concerned. For example, a decision of a commercial nature is mostly implemented by Ministerial decree of the respective Ministers of Commerce. No decision of the GCC has been adopted as such, i.e. without implementing legislation.

Internal instruments vary not only from one State to another, but also within States. Elucidation of the relationship between municipal law and GCC decisions ought to arise out of the States' constitutions or work of the courts, but neither is of help because of the silence of the former and lack of the latter. In such circumstances, different views may be stated by different people. Hereunder is one.

The Charter of the GCC and other GCC treaty law, notably the Economic

Agreement, are the basis of GCC decisions. In practice those decisions are only detailed programmes of the principles already made applicable nationally by laws or decrees having the force of law. For example, Member States, by signing the Economic Agreement, have obliged themselves to realise the principle of free movement of persons. This principle became internally effective when the respective States passed their implementing legislation of the said Agreement. Officials and courts should thus apply the principles of the Economic Agreement, regardless of their external origin, seeking guidance for the personal and material scope as well as the timetable from the GCC decisions which are in essence the programmes for effectuating the Economic Agreement. The argument to be made here is that GCC decisions, regardless of the ranking of the instrument by which they were transformed, would be accorded the ranking given to the treaty which constitutes their constitutional basis. In other words, they should be treated as integrated with the treaty law, explaining its general principles and interpreting its terms.

Hence, one would expect that in the case of a conflict between a GCC decision and a national law, it would be solved on the basis of conflict between the origin, (i.e. treaty) and the national law, on the assumption that the decision, as stated above, is a supplement to the treaty ⁽⁸⁹⁾. Thus, the question becomes whether the Economic Agreement, for example, rather than the mere content of the decision, takes priority over national law.

Those decisions of non-economic character should be treated in the same way as the Charter of the GCC itself, since it is generally the constitutional basis for all GCC decisions.

Generally speaking, the fact that Member States take the necessary

legislative steps as soon as the decision is made suggests that there is a genuine willingness to give domestic effect to the international obligations; therefore, one is of the opinion that national courts, too, are most likely to draw on GCC decisions, which are inspired from the treaty law, with disregard to inconsistent municipal law which may be overridden by treaty law.

Before concluding this section, it should be mentioned that in the Member States, including Bahrain and Kuwait as long as their legislative organs are put out of action, the organs which make treaties are themselves the ones which implement treaty obligations in domestic law. Therefore, they can well be classified as 'monist' States in relation to treaty rules of external law. However, bearing in mind that the 'monist' schools are of various form, categorising them as such does not necessarily mean that external law is without qualification part of domestic legal systems. Qualifications or/and exceptions may be imposed for policy considerations of a domestic nature. At any rate, ascertaining how is/would GCC rules be treated domestically in terms of priority seems in order. This is the concern of the following section.

7.C.II Enforcement of GCC law

In a preceding section, it was seen that the GCC treaties were not adopted by the legal systems of the Member States, except Oman, as such. Although there are further formalities beyond the creation of the international obligations required for domestic effect, these formalities are not extensive and are completed by the same organ which effected the international obligation. Formally, it might be correct to say that the systems are dualist but the steps between making the international obligations and giving it domestic effect are so small as to make the system in practice almost monist.⁽⁹⁰⁾

More importantly, in practice, however, conflicts may arise between the provisions of a GCC treaty law and provisions of a national law of any internal hierarchy. Thus, the question to be asked here, and to be discussed and referred to throughout this section, is which prevails over the other?

Generally, the internal status of treaty law varies from one state to another. Further, constitutional law principles or court-imposed doctrines may come into play in this context. Thus to answer the posed question with precision, one must find either constitutional provisions or national jurisprudence on the point. If both means, or one of them, are usable, an answer to the question should not be difficult. Otherwise, any answer would be speculative.

Generally, for the purpose of determining the municipal status of international treaty law, some states' constitutions provide explicitly for the primacy of international law in the municipal sphere, e.g. the Netherlands' constitution in its Article 66 as amended in 1963, which reads:

Legal regulations in force within the Kingdom shall not apply if this application should be incompatible with provisions - binding on anyone - of agreements entered into either before or after the enactment of the regulations.⁽⁹¹⁾

In all six Member States of the GCC, by contrast, there is no constitutional or administrative provision speaking of the hierarchy between national and international treaty law, let alone the supremacy of the latter. As such, one major tool for answering that question has become of no value with regard to this discussion.

The other major tool by which that question may be tackled is the jurisprudence of the national courts and tribunals. In the UK, for example, writers such as Brownlie were able to state what is the internal status of the international

treaty law in the UK based on the cases decided on this very issue⁽⁹²⁾. Unfortunately, in the GCC Member States relevant cases decided by courts and other judicial or quasi-judicial bodies are not easily accessible. Vigorous attempts to obtain some were unsuccessful. It appeared eventually that this problem facing legal researchers is a common one, except to those closely linked with the national legal institutions. Disappointing as it must be, the consequence is that this tool, which could have been very useful indeed, has been rendered useless for answering the question raised at the outset of this discussion. With the inability to employ those two means, or either one of them, this discussion in most parts takes a course of prediction of what the status of treaty law would be, rather than what it is.

In an attempt to obtain the best prediction, the discussion will be based first, on thorough readings of the provisions of the treaties concluded by the Members of the GCC in order to ascertain their attitude to the idea of the supremacy of international law and, second, on examining the internal ranking of the instruments transforming the GCC treaties and making them internally applicable.

Reading of the provisions of treaties concluded by the Member States before and after the GCC was set up reveals that they seem to differentiate between two categories: one category includes those treaties the subject of which is the regulation of the inter-governmental relations and the States as such; with regard to the GCC, these, so far, include the Charter of the GCC and the Agreement on the GCC Privileges and Immunities⁽⁹³⁾. Conflicts and disputes arising under those treaties, and the like, are stipulated to be of an inter-State nature, hence both treaties provided for their submission to the GCC Commission for Settlement of Disputes⁽⁹⁴⁾. International law, as opposed to any national law, is a principal source of that Commission's law.

The second category includes those treaties which create rights and impose obligations upon the citizens of the Member States, whether natural or legal. The forum for execution of such treaties is the national courts and other quasi-judicial bodies and tribunals. It is in this category that it was found that most treaties, especially those to which the GCC Members are all or most parties, contained express terms for the supremacy of the words of the concerned treaty over inconsistent municipal law. Examples are not only the very typical GCC ones, i.e. the EA in its Article 27, but also those of the pre-GCC period when the States' co-operation was non-institutionalised; that era witnessed a number of treaties containing provisions providing for the primacy of their rules over conflicting national law, including: the Treaties establishing the Arabian Company for Maritime Transportation Article 3, the Arabian Corporation for Petroleum Services Article 5, and the Arabian Corporation for Shipbuilding and Repair Article 3⁽⁹⁵⁾. The question, as yet, is what would one make out of those abundant examples providing expressly for the superiority of the treaty law? What would be the internal status of GCC treaty law in particular?

Seemingly, it removed much of the believed individualistic notion of the Member States' interests. Moreover, it shed light on the fact that the States have established an attitude which gives treaties duly ratified the status they ought to be given by express terms. However, those examples are probably not decisive and enough evidence to make one unequivocally confirm that the Member States of the GCC give priority to treaty law over national law in case of conflict. The primacy provided for in those treaties is probably a qualified one; this limitation on the provided superiority has to do with the instrument by which a treaty is made applicable internally as well as its date of issuance.

Restricting the discussion to the internal status of the GCC treaty law, the prediction takes the following course: the constitutions, basic laws or organisational laws are amended by two-thirds majority of the empowered national organs ⁽⁹⁶⁾, in most Member States, while the national instruments, i.e. law or decree, are passed by absolute majority, therefore, it can be strongly argued that the GCC treaty law, even with the above-mentioned provision on its primacy, is likely to stop short of over-riding a constitutional provision, whether such provision is embodied prior or subsequent to a GCC treaty law. Indeed, Article 113 of the U.A.E. Constitution, Article 38 of the Bahrain Constitution and Article 71 of the Kuwait Constitution, reproduced in Appendices 7.1, 7.2 and 7.5 respectively, all provide expressly that the internal effectiveness of decrees effectuating treaties is conditioned by their consistency with the constitutions. In Qatar, Article 27 of its constitution provides that such decrees have the force of law provided that they are not contrary to the "essential guiding principles of State Policy". The State Policy, according to Articles 3-8 of the Qatar Constitution, includes the principles of the preservation of State sovereignty and allegiance to the Arab Nation, Islamic Nation and United Nations, the principle of free market economy, the principle of improvement based on Islam, and the principle of improving the educational and cultural prosperity of the citizens. Apparently, decrees implementing an international treaty in this State are open broadly for interpretation, unlike those in the States of Bahrain, U.A.E. and Kuwait. In Oman and Saudi Arabia, as mentioned above, there is no written constitution, therefore, it is unforeseeable that a treaty rule would be contested as in contradiction with a constitutional principle; and, there is no parliamentary supremacy or the like.

Moreover, the constitutions of Bahrain and Kuwait, in Article 38 and 71

respectively, provide that in cases where treaties are accorded effect by decrees, rather than by laws made with the participation of the legislative branches, such decrees have the force of law only insofar as they are not:

contrary to the constitution or *the appropriations included in the budget law*.

Thus, treaty law of the GCC implemented by decree in those States gives way to budget law unless the decrees are upgraded to laws which, of course, involves the participation of the legislative organs and the majority required for passing budget law.

At another stage, although GCC treaty law has been made effective in all Member States by the highest ranking instrument, and whilst it prevails over existing national law, it could be subjected to inconsistent subsequent municipal law by a municipal court, leaving the moral as well as the international obligation to be faced by the executive. But, courts can adopt a rule of construction such as that employed by British courts whereby bringing as far as possible conflicting subsequent law into conformity with their countries' GCC obligations. Assuming that their executives in the first place would not deliberately negotiate and adopt rules contrary to their constitutions, the room for manoeuvring of the suggested rule of construction is wide provided that the courts take positive and special attitude towards GCC rules which they should do if the existence of the GCC is to have any meaning for the citizens to whom its founders said it was established. At any rate, GCC treaty law should take priority over national law of inferior ranking, irrespective of its date of issuance.

This discussion, however, will not be balanced without mentioning that contrary arguments on this point, particularly with regard to those treaties provided expressly for their provisions' supremacy, may not be unfounded. At this early stage

of the GCC's existence the role of researchers is really to point roughly towards the direction his or her point of discussion may take, particularly in view of the scarcity of information. That having been stated, it should be remembered that if a state passes inconsistent legislation and it appeared that the provided primacy was by-passed, the state remains responsible to its counterparts under international law for breach of its international obligations.

In the eyes of the international community, international law is supreme in the international sphere. Thus, inconsistent internal law and other constitutional considerations have no effect in the international scene, nor can they relieve a state from its responsibility to shoulder the consequences of the breach of its international obligations. This is a principle enshrined in Article 27 of the Vienna Convention on the law of treaties, which reads:

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.

Article 64 provides:

1. A state may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.
2. A violation is manifest if it would be objectively evident to any state conducting itself in the matter in accordance with normal practice and in good faith.

Consequently, whilst a national judge may internally apply a subsequent conflicting law, be it for internal legal reasons, the state as such is obliged to bring its national law into conformity with its international obligations resulting from treaties, though international law does not really invalidate the municipal law⁽⁹⁷⁾.

Summary

From a theoretical point of view, the relationship between external and internal law has been dominated by the 'dualist - monist' doctrine. The dualist theory broadly speaking allows the enforcement of international law in the national sphere only when transformed into the latter, whereas the monist theory allows the direct adoption and enforcement of international law without transformation. As such, incorporation of international rules into the municipal sphere takes one of two methods: 'Transformation' or 'adoption', or both, but each for a set of rules of international law, e.g. transformation for treaties and adoption for customs. There are varieties of each system. In practical terms, the mechanisms may not be quite so far apart as at first appears. In the United States, which may be said to be a monistic state, for treaties to operate as domestic law, nonetheless, the national courts must decide whether they are 'self-executing'. In the United Kingdom, which shows a dualistic approach towards treaties, although legislation is necessary before the courts can give effect to an international obligation, it is often the case that the exact language of the treaty is incorporated into the implementing statute; further, English courts have increasingly recognised that in interpreting implementing statutes, it is their obligation to examine the meaning of the treaty language according to the canons of interpretation of international law and not to impose upon it the interpretive techniques applicable to domestic statutes.

As regards GCC law, it was confirmed that it is international rather than supranational law, though it is in fact a regional international law. It appeared too that Member States of the GCC are more monist countries with regard to external treaty rules including those of the GCC, as the organ which concludes treaties also

implements them in domestic law.

Generally, however, in the legal systems of Member States, the constitutional matters of the relationship between law and domestic law are not always clearly established and the courts have had few opportunities to develop their own positions. Given the objectives of the GCC, especially given the necessary impact of its programmes in the conduct and interests of individuals and corporations, it is desirable that such constitutional ambiguities as exist, and such powers as the courts have, be resolved and exercised in giving the maximum effect to the GCC treaty and its associated obligations.

Meanwhile, courts in particular should step in and make it crystal clear to investors and economic activists that the courts will find a way for effectuating GCC rules and maintaining their priority over domestic legislations. Such a way may be in the form of adopting a rule of interpreting GCC obligations so that Member States keep up to their obligations similar to that employed by British courts with regard to EC obligations. So doing will generate peoples' attraction and trust of GCC economic opportunities, hence the development of the GCC as an organisation, hence making its existence meaningful.

References and Notes

1. See, for example, Felice Morgenstern "Judicial Practice and the Supremacy of International Law", 27 *BYIL* (1950) pp.42-92 at 58-66; Emanuel Margolis "Soviet view on the relationship between national and international law", 4 *ICLQ* (1955) pp.116-128 at 117-19; and Ali Sadeq Abu-Heaf, *Public International Law* 11th Ed, (Alexendria: Mansha'at al-Ma'aref, no.d) pp 92-8
2. The existence of this view is mentioned by Ja'afar Abdulsalam, *Principles of Public International Law*, 2nd Ed, (Cairo: Dar al-Nahdah al-Arabiah, 1986), p.35, no.6.
3. D.P. O'Connell, *International Law*, Vol. 1, 2nd Ed (London: Stevens & Sons, 1970), p.42
4. See Hersch Lauterpacht, *International Law: Collected Papers*, Vol.1, ed. E. Lauterpacht (Cambridge University Press, 1970), pp 151-77
5. For more account of this doctrine see, for example, L. Oppenheim, *International Law*, Vol.1, 2nd Ed (London: Longmans, Green and Co, 1972) pp.25-29, where he wrote:

The law of Nations and the Municipal law of the single States are essentially different

from each other. They differ, first, as regards their sources...secondly, regarding the relations they regulate...thirdly, with regard to the substance of their law...

If, according to the Municipal law of an individual State, the law of Nations as a body or in parts is considered the law of land, this can only be so either by municipal custom or by statute, and then the respective rules of the law of Nations have by adoption become at the same time rules of Municipal law. Where ever and whenever such total or partial adoption has not taken place, municipal courts cannot be considered to be bound by international law, because it has, *per se*, no power over municipal courts. And if it happens that a rule of Municipal law is in indubitable conflict with a rule of the law of Nations, municipal courts must apply the former. If, on the other hand, a rule of the law of Nations regulates a fact without conflicting with, but without expressly or tacitly having been adopted by Municipal law, municipal courts cannot apply such rule of the law of Nations.

See also, "Judicial Practice and Supremacy of International Law", *supra* note 1, pp 48-58

6. Triepel, *Volkerrecht un Landesrecht* (1899), quoted by J.G. Starke, *Introduction to International Law*, 10th Ed (London: Butterworth, 1989) p.79
7. Sir Gerald Fitzmaurice, "The General Principles of International Law Considered from the Standpoint of the Rule of Law", 92 RdC (1957-II) pp.1-227 at 71
8. *Ibid*
9. *Ibid*, p.72
10. *Ibid*
11. See *Ibid* quoting from Anzilotti *Corso di diritto internazionale*
12. J.G.Stark, *supra* note 6, p.6
13. *Maclaine Watson & Co. Ltd. v Department of Trade and Industry, Maclaine Watson & Co. Ltd. v International Tin Council* (1989), 3 ALL E.R. HL 523 at 544-5
14. *Ostime v Australian Mutual Provident Society* (1959), 3 ALL E.R. HL, 245, at 248
15. *Collco Dealings Ltd. v IRC* (1961), 1 ALL E.R. HL, 762
16. *Garland v British Rail Engineering Ltd* (1983) 2 A.C. HL, 751
17. *The Jade, The Eschersheim* (1976), 1 ALL E.R. HL, 920
18. see *James Buchanan & Co. Ltd v Babco Forwarding and Shipping (UK) Ltd* (1977), 3 ALL E.R. HL, 1048; *Fothergill v Monarch Airlines Ltd* (1980) 2 ALL E.R. HL, 696
19. see *supra*note 15
20. *Brind v. Secretary of State for the Home Department*, (1991) 1 ALL E.R. H.L., 720
21. W. Blackstone, *Commentaries*, IV, Chapter 5
22. *Trendtex Trading Corp. v. Central Bank of Nigeria* (1977), 1 ALL E.R., 881
23. *Mortensen v Peters* (1906), 8F, 93; *Chung Chi Cheung v The King* (1938), 4 ALL ER, 786. However, see J.G. Starke, *supra* note 6, where he, besides the qualifications mentioned, enumerates two exceptions to this automatic applicability; at p.80 he identifies them as:
 1. Acts of state by the executive, for example a declaration of war, or an annexation of territory, may not be questioned by British municipal courts, notwithstanding that a breach of international law may have been involved.
 2. British municipal courts regard themselves as bound by a certificate or authoritative statement on behalf of the executive (that is to say, the Crown) in regard to certain matters falling peculiarly within the Crown's prerogative powers, such as the *de jure* or *de facto* recognition of states and governments, the sovereign nature of governments, and the diplomatic status of persons claiming jurisdictional immunity on the grounds of diplomatic privilege, although such certificate or statement may be difficult to reconcile with existing rules of international law.

For more on the so-called "executive certificate" see C.J. Warbrick, "Executive Certificate in Foreign Affairs: Prospects for Review and Control", 35 *I.C.L.Q.*, (1986) 138-156

24. see *ibid*
25. see for example *James Buchanan & Co. Ltd*, *supra* note 18
26. see *Collico Dealings Ltd.*, *supra* note 15, at 765. For more on the relationship between international law and English law see J.G. Collier, "Is International Law Really Part of the Law of England?", 38 *ICLQ* (1989), pp.924-35; in particular at p.935 when, after examining the case law on the issue, he concluded that whether or not international law is part of the law of England is not proven. Then he suggested that "rather than saying that international law is part of the law of England, a kind of subdivision thereof, it is more accurate to regard it as a *source* of English law."
27. For an account on some cases through which the ECJ established the principle of EC law supremacy see this chapter pp. 294-298.
28. *Macarthy Ltd v Smith* (1979), 3 ALL E.R.; see Garland, *supra* note 16
29. *Factortame Ltd v. Secretary of State for Transport (No.2)* [1991] 1 ALL E.R. 70, per Lord Bridge at pp.107-109.
30. *Reid v Covert*, 354 U.S.1 (1957)
31. *United States v Belmont*, 301, US 324 (1937)
32. *Dames & Moore v Regan*, 453 US 654 (1981)
33. *United States v Pink*, 315 US 203 (1942)
34. *Sei Fujii v the State of California*, 342 P. (2d) 617 (1952)
35. see Stephan A. Reisenfeld, 'The Power of Congress and the President in International Relations', 25 *California L. Rev.* (1937), pp.643-75 at 651
36. *United States v. Postal* 589 F (2d), 862 (1979)
37. see Stephan A. Reisenfeld, 'The Doctrine of Self-Executing Treaties' and 'US v Postal: Win at any price?', 74 *AJIL* (1980), pp. 892 - 904
38. *Ibid*, p. 894
39. see *Reid v Covert*, *supra* note 30
40. *Whitney v Robertson*, 124 US 190 (1888)
41. see Rest. 3rd (1987). *Restatement of the Foreign Relations law of the United States*, S.115. In *Cook v United States*, 288 US 102 (1933) it was held that without express language by Congress to the contrary, the presumption is that it did not intend to override previous treaties.
42. 175 US 677 (1900)
43. *Tag v Rogers*, 267 F(2d), 664 (1959). see Rest. 3rd, *supra* note 41, S 115, *comment d.* where it is stated that it has not been:

"authoritatively determined whether a rule of customary international law that developed after, and is inconsistent with, an earlier statute or international agreement of the United States should be given effect as the law of the United States."
44. *Schooder v Bissf*, 5F(2d), 838 (1925) at 842
45. see Louis Henkin, 'International law as law in the United States', 82 *Michigan Law Review* (1984) pp. 1555-1569, at 1566 where he wrote:

"customary law is 'self-executing', and like a self- executing treaty it is equal in authority to an act of Congress for domestic purposes. An old act of Congress need not stand in the way of US participation in the development of customary law and courts need not wait to give effect to that development of until Congress repeals the older statute. As with respect to a treaty, Congress can at any time legislate to supersede the development for purposes of domestic law".
46. see Louis Henkin, 'The Constitution and United States Sovereignty: A century of Chinese Exclusion and its Progeny', 100, *Harvard Law Review* (1987) pp. 853-886, where he seems to suggest that US

is moving outside the monist camp, though after pointing out that "few if any nations are either strictly monist or strictly dualist"

47. For views holding that a treaty can create rights for individuals see, for instance, Derrick Wyatt, "New Legal Order, or Old?", 7 *E.L. Rev.*, (1982) 147-166
48. For more account on the organisational setting of the GCC, see Chapter two, pp
49. GCC Charter Article 20(3), reprinted in vol.2 of this work, pp.1-11
50. More discussion on this question is exposed in Chapter two, pp.45-48.
51. Wolfgang Friedman, *The Changing Structure of International Law* (London: Stevens and Sons, 1964), p. XIII
52. Richard H. Louwaars, "The Interrelationship between United Nations Law and the Law of other International Organisations", 82 *Michigan Law Review*, (1984), pp.1604-1919 at 1907; at p.1906 no.16 he explains:

"Examples of the obligations imposed by the UN Charter include: The obligation to settle international disputes peacefully; to refrain from the threat of the use of force; to give the UN every assistance in any action it takes in accordance with the present Charter...to accept and carry out the decisions of the Security Council in accordance with the present Charter...to take joint and separate action for the achievement of the purposes set forth in article 55...and to comply with the decisions of the International Court of Justice..."

Example of the binding decisions of the UN would be Resolutions 661, 662, 663, 665 against Iraq for invading Kuwait.

53. For the text of the General Agreement on Tariffs and Trade see, for example, Amos J. Peaslee, *International Governmental Organisations: Constitutional Documents*, Revised 3rd ed., (The Netherlands: Martinus Nijhoff, 1974), Vol.1, pp.706-71
54. See Ian Brownlie, *Principles of Public International Law*, 4th ed (Oxford: Clarendon Press, 1990), pp.512-15. See also *Vienna Convention on Law of Treaties*, Article 53.
55. Rules of Procedures for the Commission for Settlement of Disputes, Article 9(a), reproduced in vol. 2 of this work, pp.34-38
56. The nature of the GCC decisions is treated in Chapter two; their internal status in the Member States is studied in this chapter, Section C, pp
57. "Case concerning Rights of Passage over Indian Territory (Merits)", Judgment of 12 April 1960: *I.C.J. Reports*, 1960, p.6 at 39
58. "Colombian-Peruvian Asylum case", Judgment of November 20th 1950: *I.C.J. Reports* 1950, p.266 at 277-8
59. Rules of Procedures of the Commission for Settlement of Disputes, Article 9(a)
60. Case 26/62 *Van Gend en Loos v Nederlandse Administratie der Belastingen*, (1963) E.C.R. 1 at 12
61. Case 6/64 (1964), E.C.R. 585 at 593
62. [1972] C.M.L.R. 177 at 185
63. [1972] C.M.L.R. 330 at 373
64. Some adjustments took the form of Parliamentary Statute, as in the U.K. i.e. European Community Act 1972; another took the form of constitutional amendment prior to joining the Community, as in the case of Ireland
65. See supra note 61, at 593-4
66. *Ibid*, at 594
67. Case 106/77, *Amministrazione delle Finanze dello Stato v. Simmenthal S.p.A.*, (1978) E.C.R. 629, at 643
68. *Ibid*, at 644
69. Case 11/70 *Internationale Handelsgesellschaft mbH v. Einfuhr und Vopratsstelle fur Getreide und Futtermittel*, (1972), C.M.L.R. 255 at 283

70. See section C.1 of this chapter
71. See, for example, Beber, *Development of Judicial Control of the European Communities* (1981)
72. Lawrence Collins, *European Community Law in the United Kingdom*, 4th Ed, (London: Butterworth, 1990), p.42
73. see this chapter pp.283-284.
74. The whole text of the Provisional Constitution of the United Arab Emirates is reproduced in *Constitutions of the Countries of the World*, eds. Albert P. Blaustein & Gisbert H. Flanz (New York: Oceana Publications Inc.), hereinafter *Constitutions of the World*. See Appendix 7:1 pp.326-327 for these provisions examined here
75. This is especially so when treaties are implemented by decrees.
76. The Charter: Federal decree No. 76 of 1981, U.A.E. Official Gazette No.97 of 1981
The Economic Agreement: Federal decree No. 47 of 1982, U.A.E. Official Gazette No. 105 of 1982
The Agreement establishing the Gulf Investment Corporation: Federal decree No. 54 of 1983, U.A.E. Official Gazette No.130 of 1983
The Agreement on the GCC Privileges and Immunities: Federal law No. 13 of 1985, U.A.E. Official Gazette No. 150 of 1985
77. The complete text of the Bahraini Constitution is reproduced in *Constitutions of the World*, supra note 74. The text of articles referred to in this chapter is reproduced in appendix 7.1 pp.327-328.
78. The Constitution of Bahrain, Article 32.
79. Dr. A'adel Al-Tabtaba'i, *Judicial Authority in the Gulf States*, [in Arabic], (Kuwait: Kuwait University, 1985), pp.353-57
80. Bahrain Official Gazette No. 1461 of 1981
81. The Arabic text of the entire Statute is reprinted in *The Legal Bulletin*, (Riyadh: GCC Secretariat General, 1982) No.1. See Appendix 7.3 for the provisions consulted, p.
82. The Arabic text of the Amended Provisional Constitution of 1972, as well as its amendments, is found in *Collection of the Laws of Qatar*, Vol.1 (Qatar: Ministry of Justice), pp.16-27. Provisions examined in this chapter are translated and reproduced in appendix 7.4 pp.328-329.
83. Qatar Official Gazette No. 8 of 1982
84. The entire Arabic text of The Law on the Organisation of the Administrative System of the Sultanate of Oman is printed in *General Regulatory Legislations*, (Oman's Bureau of the Official Gazette, the Office of the Deputy Prime Minister for Legal Affairs, 1980), pp.2-33
85. The Omani Official Gazette No. 256 of 1983
86. The text of the Kuwaiti Constitution is fully reproduced in *Constitutions of the World*, supra note 73. Articles mentioned in the text are reproduced in appendix 7.5 pp.330-331.
87. This is also the view of Dr. A'adel Al-Tabtaba'i in his book *The Constitutional Organisation of Kuwait: A Comparative Study*, (Kuwait: Dar al-Aulom, 1985) p.555
88. Al-Kuwait Al-Youm, the Official Gazette No. 1367 of 1981
89. Discussion on this question is made in section C.II of this chapter.
90. This is especially so while the National Assemblies of Kuwait and Bahrain are dissolved and when the UAE and Qatar implement international obligations by decrees rather than laws.
91. The text of the Netherlands' Constitution is reproduced in Amos J. Peaslee, *Constitutions of Nations*, 3rd Ed, (The Netherlands: Martinus Sijhoff, 1968) Vol.III, pp.649-85
92. *Principles of Public International Law*, supra note 54, pp.47-8
93. The texts of both are reproduced in Vol.2 of this work, pp.1-11 and 117-27.
94. Charter of the GCC, Article 10; Article 25 of the treaty on the GCC Privileges and Immunities. The said Commission was examined in Chapter two, pp.54-59.
95. Those three treaties concluded within the framework of OAPEC to which all members, except Oman, are parties. For the Arabic text of those treaties see:
 1. Qatar Official Gazette, No. 10 of 1972 where the treaty establishing the Arabian

Company for Maritime Transportation is printed.

2. The treaty establishing the Arabian Corporation for Petroleum Services is reproduced in Qatar Official Gazette No. 1 of 1976
 3. The treaty forming the Arabian Corporation for Shipbuilding and Repair is found in Qatar Official Gazette No. 1 of 1974
96. See Article 144(c) of the U.A.E. Constitution, Article 104 of Bahrain Constitution and Article 174 of Kuwait Constitution
97. Generally, see "Judicial Practice and the Supremacy of International Law", supra note 1, pp 43-8

Appendices: Pertinent Constitutional Provisions

7.1: UAE

Article 120/1

The Union shall have exclusive legislative and executive jurisdiction in the following matters:

1. Foreign Affairs...

Article 124

Before the conclusion of any treaty or international agreement which may affect the special position of any one of the Emirates, the competent Union authorities shall consult that Emirate in advance. In the event of disputes they shall submit the matter to the Supreme Court of the Union for ruling.

Article 91

The Government shall be responsible for informing the Union National Council of international treaties and agreements concluded with other states and the various international organisations, together with appropriate explanations.

Article 110/1 and 2

1. Union laws shall be promulgated in accordance with the provisions of this Article and other appropriate provisions of the Constitution.
2. A draft law shall become law after the adoption of the following procedure:
 - a. The Council of Ministers shall prepare a draft law and submit it to the Union National Council.
 - b. The Council of Ministers shall submit the draft law to the President of the Union for his agreement and presentation to the Supreme Council for their ratification.
 - c. The President of the Union shall sign the law after ratification by the Supreme Council and shall promulgate it.

Article 113

If between meetings of the Supreme Council, the speedy promulgation of Union laws, which cannot be delayed, is required, the President of the Union and the Council of Ministers may together promulgate the necessary laws in the form of decrees which shall have the force of law, provided they are not inconsistent with the Constitution. Such decree laws must be submitted to the Supreme Council within a week at the maximum for assent or rejection. In the case of assent the force of law shall be confirmed and the Union National Council shall be informed accordingly at its next meeting.

Article 111

Laws shall be published in the Official Gazette of the Union within a maximum of two weeks from the date of their signature and promulgation by the President of the Union after the Supreme Council has ratified them. Such laws shall become effective one month after the date of their publication in the said Gazette, unless the law stipulates another date.

Article 125

The Governments of the Emirates shall undertake to take the appropriate steps to implement the laws promulgated by the Union and the treaties and international agreements concluded by the Union, including the promulgation of the local laws, regulations, decisions and decrees necessary for such implementation.

Article 144/a, c and d

- a. If the Supreme Council considers that the supreme interests of the Union require the amendment of this Constitution it shall submit a draft constitutional amendment to the Union National Council.
- c. The approval of the Union National Council for a draft constitutional amendment shall require the agreement of two-thirds of the votes of members present.
- d. The President of the Union shall sign the constitutional amendment in the name of the Supreme Council and as its representative and shall promulgate the amendment.

Article 60

The Council of Ministers, in its capacity as the executive organ of the Union, and under the Supreme control of the President of the Union and the Supreme Council, shall be responsible for dealing with all internal and external matters within the competence of the Union according to this Constitution and Union laws.

7.2: Bahrain**Article 35/a**

The Amir shall have the right to initiate laws, and he alone shall ratify and promulgate the laws.

Article 37

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

However, treaties of peace and alliance, and treaties concerning the territory of the State, its natural resources or sovereign rights, or public or private rights of citizens, and treaties of commerce, navigation and residence, and treaties which entail additional expenditure not provided for in the budget of the State, or which involve

amendment to the laws of Bahrain, shall come into effect only when made by a law. In no case may treaties include secret provisions contradicting those declared.

Article 38

Should necessity arise for urgent measures to be taken while the National Assembly is not in session or is dissolved, the Amir may issue decrees in respect thereof which shall have the force of a law, provided that they shall not be contrary to the Constitution or the appropriations included in the budget law.

Such decrees shall be referred to the National Assembly within the fifteen days following their issue if the Assembly is in being. If it is dissolved or its legislative term has expired such decrees shall be referred to the next Assembly at its first sitting. If they are not thus referred they shall retroactively cease to have the force of a law without the necessity of any decision to that effect. If they are referred and the Assembly does not confirm them, they shall also retroactively cease to have the force of a law, unless the Assembly approves their validity for the preceding period or settles in some other way the effects arising therefrom.

Article 42

No law may be promulgated unless it has been passed by the National Assembly and ratified by the Amir.

Article 59

For a meeting of the National Assembly to be valid, more than half of its members must be present. Resolutions shall be passed by an absolute majority vote of the members present, except in cases where a special majority is required.

Article 104/a

Notwithstanding the provision of Article 35 of this Constitution, for an amendment to be made to any provision of this Constitution, it is stipulated that it shall be passed by a majority vote of two-thirds of the members constituting the Assembly and ratified by the Amir.

Article 106

Laws shall be published in the Official Gazette within two weeks of their promulgation and shall come into effect one month after their publication. The latter period may be extended or reduced for any law by a special provision included in it.⁽⁴⁵⁾

7.3: Saudi Arabia

Article 18 states, under the title *Jurisdiction of the Council of Ministers*:

The Council of Ministers shall draw up the policy of the State in the areas of internal and foreign affairs, finance, economy, education, defence and all public matters and shall oversee its execution; it shall possess legislative

authority, executive authority and administrative authority. It is the ultimate authority for financial affairs and for all affairs committed to all Ministries of the State and other departments, and it shall decide what measures it may be necessary to take therein. *Treaties and international agreements shall not come into effect until they are approved by the Council of Ministers.* And decisions of the Council of Ministers shall be final, except for those which require the issuance of Royal order or decree in accordance with the provisions of this Statute.

Articles 19, 20 and 24, under the heading *Legislative Functions*, read:

19. Laws, treaties, international agreements and concessions shall not be issued, except in form of Royal decrees drafted after the approval of the Council of Ministers.
20. Laws, treaties, international agreements or concessions may not be amended, except by law to be promulgated in conformity with Article 19 of this Statute.
24. All decrees must be published in the Official Gazette, and they shall enter into force as of the date of their publication, unless a period is stipulated therein. [Author's translation]

7.4: Qatar

Article 23/1 and 3 provides:

The Amir shall exercise the following powers:

1. He shall represent the State internally and towards other States in all international relations.
3. He shall ratify and promulgate laws and decrees. Such laws and decrees shall not enter into force until they are published in the Official Gazette, and they must be published in this Gazette, after their ratification and issuance, within two weeks from the date of issuance. They shall come into force after one month from the date of their publication, unless the law itself stipulates another date.

Article 24/1 reads:

The Amir shall conclude treaties by decree and shall inform the Consultative Council of them together with the appropriate statement. A treaty shall have the force of law after its conclusion, ratification and publication in the Official Gazette.

Article 34/2 states:

In its capacity as the highest executive organ, the Council of Ministers shall

be responsible for the administration of all the internal and external affairs which fall within its competence in accordance with their Constitution and laws. The Council of Ministers in particular shall have the following powers:...

2. Propose draft laws and decrees and submit them to the Consultative Council for discussion and forming an opinion thereto prior to their submission to the Amir for ratification and promulgation in accordance with the principles of this Constitution...

Article 51/First/3 reads:

The Consultative Council shall have the power to:

First, discuss the following:...

3. The draft laws proposed by the Council of Ministers and submitted to it, prior to their submission to the Amir for ratification and promulgation. [Author's translation]

7.5: Kuwait

Article 6

The system of Government in Kuwait shall be democratic under which sovereignty resides in the people, the source of all powers. Sovereignty shall be exercised in the manner specified in this Constitution.

Article 65, in part

The Amir shall have the right to initiate, sanction and promulgate laws...

Article 70

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

However, treaties of peace and alliance; treaties concerning the territory of the State, its natural resources or sovereign rights, or public or private rights of citizens; treaties of commerce, navigation and residence; and treaties which entail additional expenditure not provided for in the budget, or which involve amendment of the laws of Kuwait; shall come into force only when made by a law.

In no case may treaties include secret provisions contradicting those declared.

Article 71

Should necessity arise for urgent measures to be taken while the National Assembly is not in session or is dissolved, the Amir may issue decrees in respect thereof which shall have the force of law, provided that they shall not be contrary to the Constitution or to the appropriations included in the budget law.

Such decrees shall be referred to the National Assembly within the fifteen days following their issue if the Assembly is in being. If it is dissolved or its legislative term has expired, such decrees shall be referred to the next Assembly at its first sitting. If they are not thus referred, they shall retrospectively cease to have the force of law, without the necessity of any decision to that effect. If they are referred and the Assembly does not confirm them, they shall retrospectively cease to have the force of law, unless the Assembly approves their validity for the preceding period or settles in some other way the effects arising therefrom.

Article 79

No law may be promulgated unless it has been passed by the National Assembly and sanctioned by the Amir.

Article 97

For a meeting of the National Assembly to be valid more than half of its members must be present. Resolutions shall be passed by an absolute majority vote of the members present, except in cases where a special majority is required. When votes are equally divided, the motion shall be deemed to be rejected.

Article 174, in parts

Either the Amir or one-third of the members of the National Assembly shall have the right to propose the revision of this Constitution by amending or deleting one or more of its provisions or by adding new provisions...Approval by a two-thirds majority vote of the Members constituting the Assembly shall be required for the bill to be passed....

Chapter Eight

Conclusion

8.A: The Findings Digested

Member States of the GCC are the UAE, Bahrain, Saudi Arabia, Oman, Qatar and Kuwait. They have been brought to their present position of independent and sovereign States over the course of the past few decades. Saudi Arabia and Oman joined the international community earlier in this century. Kuwait gained its independence in 1961; Bahrain, Qatar and UAE ten years later. Since the early 1970s the States have realised that, by themselves, political independence does not guarantee the achievement of stability and prosperity for their people. They further recognised the imperative need for common actions in lieu of exclusive rights of each State. As a result, efforts towards co-operation in the various fields were set in motion. The 1970s witnessed numerous bilateral, as well as multilateral, agreements amongst the six States, for co-ordination in spheres including the economy, education, culture, information, health, labour and social affairs, communications, etc.. By the end of the 1970s the States stood on the threshold of a decisive phase in their political evolution. Under the impulse of these co-operation agreements and new initiatives, the States grasped the need to move towards some form of closer unity under the umbrella of an institutionalised arrangement. That desire for common action reached its peak in 1981 when, on 25 May, the six States formally signed the GCC Charter and other related documents. Integration in the economic sphere was considered the backbone of the journey necessary for integrating other fields. The EA, therefore, was signed by the states only six months after the establishment of the GCC.

The purpose of this study has been to analyse the GCC experience from a legal point of view. In particular, it has attempted to illuminate how the GCC is made

up, what type of association it is, and what implications the formation of the GCC has had for the Member States, especially in the economic area.

Having described how the idea of the GCC was born and later materialised, the study began with an examination of the Charter and other related constituent instruments in constitutional and institutional terms. It established that they are multilateral treaties signed and ratified by the six sovereign States in accordance with their respective domestic law procedures. In addition to being acts of an international political nature creating international legal obligations, the said treaties are the GCC constitution, establishing an institutional framework to undertake and carry out the aims of the GCC in accordance with the principles laid down therein. One of the main principles is equality between Member States. Despite the inequalities of the Members in terms of size, population, economic development and standing in the international community, the Charter laid the foundation of their co-operation on a footing of absolute equality, reflected in the composition of the Supreme Council as well as the Ministerial Council and their voting rules, i.e. one State one vote. Another GCC principle is the resort to amicable resolution of disputes. As far as the objectives of the GCC are concerned, the Charter designates it as "unity of the Member States". Of course, unity as an end-product can and does mean very different things to different people. However, apart from the policy-makers' statements, the conclusion of the EA and the adoption of various strategies in different spheres suggest that unity within the GCC means integration in particular fields: that is to say achieving uniform standards within these fields without destroying the independence of the Member States. The means employed to reach that end have been co-ordination in all fields with much emphasis on economic co-operation, for which purpose the EA was

concluded a few months after the establishment of the GCC. Besides enlisting these aims and principles, the Charter in its own terms resolves some common constitutional issues: for instance, it prohibits making reservations to its provisions. It is clear, too, in limiting membership to the six States which created the GCC in May 1981. What it does not answer is the question of withdrawal; however, a respectable body of opinion would allow unilateral withdrawal when a constitution, like that of the GCC, is silent.

From the institutional point of view, the Charter has established a structure marked with simplicity, when bearing in mind the breadth of its subject matter and the tasks entailed. It created three principal organs: the highest is the Supreme Council composed of the heads of State and meeting once a year. It draws up policies of the GCC, both internal and external. Attached to it is a conciliatory *ad hoc* tribunal called the Commission for Settlement of Disputes. The Ministerial Council is the second main organ within the GCC framework. It comprises Foreign Ministers or other delegated ministers of the Member States. In practice the States' representatives at the Ministerial Council are usually Foreign Ministers, although on some occasions other ministers have joined the Foreign Ministers in the Ministerial Council sessions when the discussion has focused on areas of their expertise. As the junior and intermediate organ meets four times annually, it is the channel through which all detailed and preparatory work pass to the Supreme Council. The third GCC principal organ is the Secretariat General. It comprises the Secretary General, his two assistants and several hundred civil servants. Functions of the Secretariat are mainly of an administrative, financial and clerical nature. It is charged with the day to day work of the GCC through its various departments, e.g. legal, economic, political,

environmental, information, etc.. Pursuant to the Charter, any of the above-mentioned organs may establish sub-organs. The Supreme Council is empowered to form permanent committees. To date, the institutional development of the GCC includes the establishment of three ancillary institutions: the Gulf Investment Corporation, the Technical Office for Communications and the Board for Specifications and Standards. Furthermore, 17 specialised ministerial committees have been formed in an attempt to hasten the planning and execution of GCC programmes.

These specialised committees are the prime source from which GCC decisions are taken annually by the Supreme Council, or by the Ministerial Council when authority to do so is delegated to it by the former. Decisions on substantive matters are made by unanimous vote of the Members present and voting, providing that the participants are no fewer than four. Procedural matters, on the other hand, are decided by majority vote. In practice, decisions are reached through consensus. GCC decision-making is influenced by the fact that the states' co-operation within the GCC is characterised by a consensus-building process in which an extensive co-operative network is maintained and promoted to facilitate interactions amongst Member States. This tendency could be grounded in the fact that the process establishes a sense of confidence because no vital interests are overlooked or ignored, hence generating far-reaching commitments along the road of integration. At any rate, once a decision is made, it is binding upon the Member States on the international plane; its internal effectiveness is dependent on being given effect by an enabling act as described by the respective national legal system. Although the character of the GCC has some indirect bearing on the effect of GCC law, the character of the GCC

has no bearing on whether or not the GCC is a separate legal person, both internationally and under the domestic law of Member States.

The study reached the conclusion that the GCC is an international legal person in accordance with the requirements drawn by international jurists for gaining such attributes by organisations whose constituent instruments do not specifically stipulate that they are invested with an international legal personality, e.g. the UN. The GCC has a permanent organ undertaking its day-to-day work, i.e. the Secretariat General. As an organisation with a permanent organ, it must have a distinct will of its own, similar to that confirmed by the ICJ in the *Reparations* case to the UN. Additionally, the GCC has been established by an international treaty which specifies its purposes. Above all, the international juridical personality is found by necessary implication from powers and objectives vested in it. This international personality, however, has no existence in relation to non-members who have not accepted it as such explicitly or implicitly.

As an international person, the GCC has some rights and duties by implication as a necessary means to discharge its functions effectively. In particular, it should be able to conclude agreements in the fields entrusted to it.

The international personality of the GCC, in its meaningful sense, has introduced the GCC to the international community as a subject of international law; it is, therefore, responsible for all acts injurious to other subjects of law. The liability for damage done will be borne by the GCC itself. The respectable body of jurisprudence on the issue shows that there may be exceptional circumstances when the acts of the organisation are the responsibility of its Members. The nature of the GCC as well as the intention of its Members in this regard are crucial. They may be

deduced from GCC constituent instruments. Explicit as well as implicit terms of its founding treaties neither suggest liability of the Members nor limit or exclude it. They appear neutral on the subject. Nonetheless when bearing in mind that the UN has itself born liability and, for instance, that the International Tin Council itself has been held liable, one would expect that the GCC as such will be liable.

Apart from the necessary privileges and immunities which have been granted to the GCC, its subsidiaries and officials by the Convention on Privileges and Immunities, the GCC, in Article 1 of this Convention, was expressly endowed with independent juridical personality under municipal law of Member States. It may, in particular, acquire or dispose of movable or immovable property, conclude contracts and be a party to legal proceedings. Such private law capacity may be accepted by non-members even those which do not recognise it for the purposes of public international law. One way is in accordance with the rule of conflict of laws that the legal personality granted by one state to an entity in its domestic law may be accepted by another state for the purposes of its domestic law.

As regards the character of that legal person, the GCC, the Charter does not state what precisely it is. This study is of the view that the GCC is a confederal institution. It seems abundantly clear that it is not a mere alliance for it has been provided with a permanent common organ possessing some measure of separate will. On the other hand, the Charter's employment of terms like "unity" and "intergration" triggers thoughts on its supranational or even federal character. The federal possibility is precluded by the fact that it does not show the elements of federal arrangements. There is no division of powers between the GCC and its Members, no independent common judiciary, no merger of sovereignties, and no direct contact between the

GCC and citizens of its Member States. It is of great significance to note that neither the founders of the GCC nor its treaties to date have contemplated merging the six States in a federal institution. It follows that Member States of the GCC are presently fixed at six. The existence of six governments, however, does not by itself rule out the supranationality of the GCC. Like federalism, supranationality has elements which must be exhibited by the GCC in order for it to be characterised a supranational institution. The number of its element vary from one study to another. The common ones are highly similar to those of federal arrangements in terms of kind, as opposed to degree. Amongst those mostly identified are the independence of the organisation vis-à-vis the governments of Member States, the direct effect of its rules within the legal systems of the members, the financial independence, the ability to take decisions by majority or weighted majority voting systems, and the partial transfer of sovereign powers to the common institution. The significance of each indicia is dependent on the nature of the organisation. What is required for a defensive organisation to be supranational is not necessarily the same for an economic one, etc. Broadly speaking, because it is an effective and less demanding model than the federal one, it appears that some existing international organisations including the GCC show some supranational features. Yet such organisations should not be classified supranational. The GCC, therefore, is not a supranational arrangement because it exhibits very few supranational elements, e.g. the institutionalisation. However, the GCC clearly has supranational aspirations reflected in the statements of its policy-makers and the provisions of its Charter and the EA. Hence, although it is difficult to classify it as supranational, the GCC is proceeding on supranational lines.

Evidently the GCC of today shows the following characteristics: it is composed of six States retaining their sovereignty, relations between its Members are determined under international law, whether the universal or the GCC one, decisions of substantive GCC matters are taken by unanimous vote, GCC law has no direct effect within the domestic legal sphere, its Members are at liberty to withdraw, and its policy-making organs are composed of instructed diplomats. All these elements are cited by jurists as *indicia* of confederalism. The GCC, thus, fits the category of confederalism far more comfortably than other models for integration. Confederalism then, is the keynote of GCC experience. To sum up, through its confederal structure, the GCC is pursuing supranational aspirations, reflected in its economic rules.

GCC substantive economic rules are embodied in the EA which was signed by the States only a few months after the creation of the GCC and ratified in accordance with the constitutional procedures in each Member State. Although it does not state it, the end pursued by the EA is economic integration through progressive steps. The detailed means whereby that end is to be achieved reveal an amount of flexibility in order to enable the GCC to adapt itself to changing circumstances and ideas as to how it should move towards realising its designated objectives. Despite the fact that the EA leaves ample room for the evolution of the GCC economic legal regime, such evolution is dependent upon the enactment of implementing rules by the Supreme Council or, when authorised, the Ministerial Council.

The EA explicitly embodies the principle of free movement of goods of national origin, i.e. goods which have been entirely produced within the GCC as well

as those of foreign or undetermined origin, provided that the value added ensuing from their production in Member States is not less than 40% of their final value as at the termination of the production phase, and that Member States citizens' share in the ownership of the producing plant is not less than 51%. As a first step the EA envisages the establishment of a GCC Free Trade Area: that is, eliminating customs duties and other charges of assimilated effect and quantitative restrictions on goods of national origin. On 1 March 1983, execution of the EA provisions began with the formation of the GCC FTE. Its detailed rules, sanctioned by the Supreme Council, were received and made part of the national legal systems. Attention then turned to creating a GCC Customs Union and materialising elements of a common market. In this direction, goods originating from within the GCC were accorded measures of equality; apart from equal taxation, products of national origin were granted priority in governmental purchasing. In addition, the GCC declared equality between means of transportation belonging to GCC nationals in terms of licensing recognition and equal opportunity for making use of the ports and services provided therein in any Member State. Most significant is the GCC success in creating a minimum external tariff of 4% before the lapse of the five years stipulated in the EA. Consultation is under way for agreement on a GCC Common External Tariff. Working out a Common Commercial Policy is an important current item on the GCC agenda. Steps towards a comprehensive CCP include the conclusion of a co-operation treaty between GCC States and the EEC, negotiating collectively similar agreements with the US and Japan, and the adoption of the unified system for the Protection of Industrial Products of National Origin.

As in the case of free mobility of goods, the EA provides explicitly for the free movement of individuals. It contemplates the confirmation upon citizens of Member States the rights of entry, residence, work, ownership, engagement in economic activities and practice of liberal professions through progressive steps. It also stresses equal treatment of nationals of the GCC in any Member State. Throughout the decade of the GCC's existence, a great deal has been accomplished in these directions. As regards the right of entry, the GCC abolished the entry visas required by some States prior to the creation of the GCC. Efforts are under way to introduce a GCC passport with a uniform format as a means of facilitating free mobility of individuals within the GCC. In the area of equal treatment, numerous measures have been taken in fields including housing ownership, acquisition of company shares and loans for investment, in accordance with agreed rules for each field. Fuller equality between GCC citizens is accorded in higher education, public education, health and taxation. Liberal professionals who are citizens of Member States are allowed by GCC rules to provide services in any Member State in the areas of law, medicine, accountancy, engineering, consultancy, pharmacy, translation, land surveying, soil inspection and programming, analysing and operating computers. In the establishment sphere, several GCC rules have been adopted to facilitate the effective exercise of the following economic activities: industrial, agricultural, animal and fish resources, contracting, operating hotels and restaurants and working therein, retail and wholesale trade, inspection, operation and maintenance, supply services, weights and measures, and cleaning services. Engagement of such economic activities is governed by the relevant GCC rules on the matter. Another set of GCC rules governs the practice of liberal professions.

It is important to consider questions raised by the above, as to how these, as well as other, GCC rules are contracted and treated by the domestic legal systems of the Member States. To begin with, the study established that GCC law is international rather than supranational, though it is in fact a regional international law. Consequently the relationship between GCC law and municipal law of Member States falls under the theories of the interrelation between international law and domestic law which has been dominated by the 'dualist' and 'monist' doctrines. In practice, a single domestic legal system may exhibit both tendencies. Generally, because of the variety constitutional systems, those formal terms cover a variety of circumstances where it may be possible to say only that a system is "more dualist" or "more monist" rather than purely one or another. The relationship between GCC law and municipal law of each Member State is not always clearly defined and the courts have had few opportunities to develop their own positions. In broad terms, GCC treaties and decisions are given internal effect by laws or decrees having the force of law. It was noted that national organs which conclude treaties and participate in making GCC decisions, i.e. the executives, also implement them for domestic law purposes. Therefore, the conclusion reached was that the six States are effectively more monist countries for the implementation process, apart from being conducted by the same organ, is relatively minor.

As far as supremacy of GCC law is concerned, three points are worth mentioning: the first is that out of the several constituent GCC treaties only the EA in Article 27 provides for the priority of its provisions over inconsistent domestic law. There is no GCC court to clarify the scope of such an article. The second point is that Member States have developed an attitude which gives international obligations

priority over conflicting municipal law. Hence, GCC rules are more likely to be preserved. The third is that GCC law could be subjected to constitutional provision as well as the terms of national laws of higher ranking than the instrument whereby a GCC rule was given domestic effect. It is clearly the case that some device whereby individuals may rely on the content of GCC rules in domestic proceedings will contribute to ensuring that a State observes its GCC obligations in this sphere. How this is to be done is primarily a matter for the constitutional laws and the courts of the Member States themselves. The more effective constitutional laws are, the better implemented will be the objectives of the GCC. The courts and tribunals can and should adopt a rule of interpreting GCC obligations in a way similar to that employed, for instance, by British Courts with regard to EC obligations. Courts and tribunals of the GCC States should, as far as possible, construct in a manner which conforms with GCC rules those domestic laws which would otherwise purport to conflict.

The shortcomings of the six States' overall organisational structure and in particular the gaps in their own legal systems were transmitted to the GCC. As stated in the beginning of this study, when GCC matters are disputed, its current mechanism for settlement of disputes which has not even been established, would be inadequate. Even were it able to dispose of some problems, it remains unsuitable for an institution embarking upon an integrative journey in which individuals are involved besides the States. The following section embodies an elaborated proposal on this structural deficiency as well as other recommendations.

8.B: Recommendations

As has been stated previously, in terms of institutional setting and constitutional structure, the GCC is a co-operative confederal institution. However,

in terms of objectives, it resembles integrative institutions such as the EEC. This latter integrative characteristic attempts to overwhelm an analyst of the GCC experience, particularly when studying GCC concepts in comparison with their counterparts in EC law. An analyst could reach a point where he questions achieving integration by ways other than those adopted in Western Europe. In such a case skill is needed to pay due regard to realities surrounding the GCC, rather than being carried away by the EC approach to integration.

Special attention must be paid to statements made by GCC policy-makers who, while frequently referring to integration as the end never mention supranationalism, let alone federalism, as the means employed or to be employed in the near future. Such a prevailing attitude towards the GCC's foreseeable future logically draws boundaries to what one should recommend. Proposals, therefore, should be made with a view to being possible to implement within the current legal framework, or with slight modifications thereof.

For such reasons, this section will be confined to the following two suggestions which should contribute to speedy implementation of the EA provisions and a steady march towards integration.

8.B.I: The Need for a GCC Judicial Body

a. Significance of Judicial Bodies to Integration

It is submitted that the usefulness of a settlement method depends on the nature of the dispute under consideration. Some kinds of disagreements are appropriate for judicial solutions; others are better disposed of by resorting to non-judicial means. Examples of the latter are political differences, or even legal

questions when the parties are unwilling to refer them for adjudication for whatever reason. Disputes more appropriate for judicial means are, it is thought, in addition to those involving legal matters, any differences arising under a treaty or treaties establishing a regional organisation aiming at integrating its community.

As such, the thesis of this section is that the possession by a regional organisation and the GCC in particular of a permanent judicial organ with jurisdiction over all disputes arising under its treaties, is the necessary means for achieving the ultimate goal of integration for the reasons highlighted below.

In general terms, the important role judicial bodies can play, and their contribution to the promotion of the international community, have been identified by several learned authors. Brierly has noted that they are "not only a means of settling disputes, but to some extent a means of preventing them from arising" (1). Jenks was more comprehensive when he stated that:

"It is not a true service to world peace and world order to exaggerate or oversimplify the contribution which the rule of law can make to their promotion; wider and more genuine political freedom, fuller respect for civil rights, more vigorous policies of world-wide economic development, the enlistment of scientific and technological progress for the common good, a deeper sense of social purpose, a keener sense of collective responsibility, greater moral integrity and moral courage, all these have equally indispensable parts to play. They can play them effectively only within a comprehensive scheme of world organisation, but no such scheme can fulfil its purpose satisfactorily, or secure justice, unless the rule of law finding expression in the last resort in the judicial process plays its full part" (2).

Application of the rule of law, consequently, plays a three-fold role: prevention, cure and advancement in all fields. Besides these advantages the availability of permanent judiciary relieves states from the task of creating a tribunal with the necessary negotiation for its composition, procedure, etc., whenever a dispute arises.

Moreover, an independent judicial organ is able to consolidate the integration process of a community by the development and restatement of the regional and international law as well, ensuring the uniform application of the respective community law, identifying the objectives of the community and adapting them as policies in the production of its judgments and judicially legislating for the community through the interpretation of treaties and other sources of the concerned regional law.

By reason of its permanent nature, a judicial institution, as time passes by, establishes a consistent jurisprudence hence contributing to the overall development and restatement of the law in which it is engaged. The jurisprudence established by the ICJ, for instance, has been of great importance to the legal order of the international community. That of the ECJ is imposing a body of European jurisprudence the positive effect of which has been felt not only in Europe where it originated but also in other parts of the world where a number of countries are embarking upon an integrative venture.

Judicial bodies, more so in regional organisations, can assume an activist approach so as to allow a policy, i.e. the objectives which the body wishes to promote, to play a dominant role in arriving at its judgments. Policies of a court, if kept in perspective, are necessary in integrative organisations by reason of their lack of proper legislation. On this practice by courts in general and the ECJ in particular, it has been suggested that:

All courts are influenced by policy, but in the European Court policy plays a particularly important role: occasionally the Court will ignore the clear words of the treaty in order to attain a policy objective. (3)

An examination of some of the ECJ jurisprudence, for instance, reveals that policy motivations behind its decisions have existed; amongst the policies of the ECJ are:

- "1. Strengthening the community ...;
2. Increasing the scope and effectiveness of Community law;
3. Enlarging the powers of Community institutions;" (4).

In other words, "the promotion of European integration" (5).

To take one case as an example, in the *Van Gend* case, the ECJ ruled that the doctrine of primacy of Community law over national law is necessary in order to attain the objectives of the EC⁽⁶⁾. As such, the functional ability of the EC was the essential element in establishing the primacy of Community law over national law⁽⁷⁾. Other courts, including a GCC future one, could, likewise, identify the concept of their respective communities and their underlying objectives and seek to promote them through the production of reasonable jurisprudence which should close the gaps in the constituent treaties.

As for any constitutional tribunal, courts which decide matters for international institutions have a wide law-making function because of the need to interpret the wide and general provisions of the basic treaties. In these circumstances, such courts can make a substantial contribution to strengthening the integration of the organisation, of which the performance of the ECJ is the most remarkable example. It may be argued that the value of a court case law is dependent on whether or not the concerned community regards it as a binding precedent; however, even in cases where it is not, its persuasive force is most likely to be borne in mind in

subsequent rulings; as such, jurisprudence built up by a court will at least reflect the way the law is applied in practice.

Yet another significant advantage of attaching a judicial organ to an organisation is its apparent role in ensuring that the terms of treaties and other sources of law are applied uniformly within the states who are party to them. Advisory opinions of the ICJ and preliminary rulings by the ECJ are functioning towards that effect. Having stated that, the role that international tribunals, particularly on the universal level as seen in the ICJ, can play has been curtailed by several factors. One is the inclination of some states to mix political differences with legal questions for reasons including the existence of different ideological concepts and/or the distrust between the old and new states, a matter which renders such mixed cases suitable for non-judicial means. However, in regional organisations where the membership is selective, there is a presumption that disputes of a legal nature be stripped from any political implication and submitted for definitive judicial settlement for the overall interest of the functioning of the organisation; the growing number of regional judicial institutions is supportive of their usability as they now exist in Europe, America, Africa and Asia, and it is a promising prospect for judicial settlement within the framework of regional organisations which should encourage the GCC to form a judicial body of its own.

Generally speaking, the fact that the role of the judicial method in the amicable settlement of disputes has remained quite modest has not resulted so much from deficiencies of the courts themselves but rather from the unwillingness of states to make use of them.

As regards the GCC, 10 years of existence without judicial authority necessary for proper supervision and enforcement of regional integration schemes may be justified by allowing Member States to adapt themselves to the concept of co-operation and the prospects for integration. This unlimited flexibility of implementation which may not have been offered had there been a judicial machinery enforcing GCC agreements should now be narrowed by establishing the necessary organ, ie a court of justice.

The time has come to emphasise the rule of law in the GCC cooperation process, because the journey it is embarking upon involves so many individuals besides the six Member States. Hence, rights and obligations that have been supervised diplomatically ought hereafter to be watched by an appropriate judiciary accessible by natural and legal persons participating in the process of integration alongside the States themselves. It is probable that at the time the GCC was set up, attention was mainly concentrated on the economic and political aspects of the venture, and how the survival of the GCC could be maintained, fears which were, at that time well grounded. However, not only the survival of the GCC is now securely guaranteed, but also the integration programmes of the GCC are becoming tangible; as noted in previous chapters, national legal documents eg official gazettes, are now acquainted with the constant inclusion of GCC rules. It is, therefore, necessary that a GCC judicial mechanism of a permanent nature be established to ensure that what the politicians and economists have decided upon is administered and supervised in accordance with the rule of law. Another reason for the need for such a body is the fact that in the current GCC system, its rules are implemented by each state by means of national laws or decrees having the force of law⁽⁸⁾ aiming at achieving the same result. Yet

there is no authority to decide, should it be necessary, whether or not implementing national instruments are in harmony. Currently such authority is vested in political bodies, ie the Supreme Council and the Ministerial Council, by means of diplomatic methods. This obvious gap in the GCC legal structure can be filled by setting up a judicial body. So far the question arises - what characteristics such a body should have? An attempt to identify some institutional and jurisdictional aspects that a GCC court should possess is made in the following point.

b. A tentative suggestion of a GCC Judicial Body

The Charter of the GCC, particularly Article 6 which enumerates the institutions of the GCC, does not provide for a fully fledged judicial organ, hereinafter called a court, nor does it stipulate the creation of one in the future, unlike, for example, Article 19 of the Arab League Pact which contemplates the establishment of an Arab court of justice. The last paragraph of Article 6 in the GCC Charter which enumerates GCC organs provides that, "each of these organisations may establish sub-agencies as may be necessary". It is self-evident therefore that the Article is not able to authorise the Supreme Council, the Ministerial Council nor the Secretariat General to set up a permanent independent court. If, arguably, they were able to do so, then the court must be attached to the body establishing it, a matter which contradicts the principle of autonomy of courts and judicial institutions.

What the GCC needs is an independent court to be established as one of the principal organs of the GCC; in other words, a fourth body - as its Court of Justice. This will probably require Article 6 to be amended as mentioned above so as to allow such institutional enlargement. Be it so, the modification process should not be exaggerated for it can be made concurrently with the ratification of the statute which,

like the Charter of the GCC, should be inclusive to the six Member States so that the bulk of the jurisdiction and function be devoted to the GCC-related matters.

Organisation:

Seat:

For a start, the seat of a GCC Court ought to be selected carefully. One possible site is at Riyadh, Saudi Arabia, where the headquarters of the Secretariat General are located. However, if one expects that a GCC Court, besides serving to consolidate the GCC, also to raise the profile of the GCC in the region, he/she might consider locating it in Bahrain where the University of the Gulf is situated, provided that other arrangements are made for establishing legal-educational bridges between the two; these arrangements should encompass the setting up, under the auspices of the University of the Gulf, of a GCC Centre for Legal Studies concentrating on GCC legal issues and taking into account international laws of co-operation and European law and integration. This suggested Centre will succeed if it is generously financed so that it can accommodate sufficient/enough students, researchers, lecturers, etc. This arm of the University of the Gulf and the future Court, both located in one city and easily accessible for every Member State, will have mutual academic legal relations and other contacts, each contributing to the promotion of GCC integration. The Court would hand down judgments and opinions on GCC-related legal questions, and the Centre would be a forum for GCC legal studies, laws and projects for the unification of legal systems, assessment of current programmes and mapping out of future prospects, providing judges and personnel concerned in the Court with legal materials, whether national, regional or international.

In brief, provided that the above, as well as other legally oriented arrangements are made, Bahrain would be an appropriate site for a GCC Court. Its geographic proximity to most Member States is the basic factor for its selection. Other sites still can be proposed.

Composition

A GCC Court should be composed of a relatively large number of judges, even if it is expected that it might not be inundated with cases in the near future so that as many judges as possible can gain experience. The detailed mechanism for the appointment of judges can remain to be worked out, to take into account the concerns of the States and the need to achieve independent and well qualified judges, in which all the States may have confidence. It will probably be necessary that each State has a national judge in the Court - six is not a good number for a court and so, perhaps, it will be necessary to appoint a president.

Jurisdiction

At this stage of the GCC operational development, it is necessary that a court be empowered to interpret its treaties and resolutions; to ensure Member States' compliance with its rules and to oversee the activities of its institutions. A first thought of the appropriate jurisdictional power would suggest the ECJ's jurisdictional model for a GCC Court. However, the economic and development levels of the GCC States are profoundly different from those of the EC countries, hence the effectiveness of a facsimile of the ECJ in the GCC may well be questionable. Copying the ECJ's broad, complicated and strict jurisdiction could lead to the breakdown of the whole

organisation, or the disregard of the Court rulings, thus, though structurally sound, nullifying its existence.

Therefore a jurisdictional scope that is less than that granted to the ECJ and more than that endowed, for instance, to the ICJ, should be worked out. For future development there ought to be a provision in its statute giving power to one body of the GCC based on a proposal by the Court to extend the Court's jurisdictional authority in line with the needs of the time and the evolution of the GCC.

At this juncture one may depart from the promise that since five Member States within OAPEC have already submitted to compulsory jurisdiction, albeit of a limited nature, and allowed themselves - upon their assent - for actions to be brought against them by legal persons, they, as Members, are more likely to make further advancement towards a supranational judiciary under the banner of the GCC. After all, they have established the GCC and described integration of their States as its ultimate goal.

Hereunder is a tentative suggestion on the contemporary types of jurisdiction required. First it should be pointed out that there must be an undertaking by Member States to submit all disputes relating to the functioning of the GCC to the future Court so that advantages of such a regional judicial body can be materialised by the Court.

1. Disputes relating to the function of the GCC

Interpretation of the GCC Charter and subsequent agreements.

Endowing a Court with a power to interpret provisions of treaties undoubtedly ensures their uniform application within the parties Member States. In

particular, uniformity in the interpretation and application in integrative communities is a necessary requirement for the existence and functioning of a common market.

Such power, however, can be extended or otherwise, according to the nature of the organisation concerned, ie whether supranational like the EC or international, like the UN. Although the GCC is basically a co-operative institution, its integrative objectives have presented it as an integration-orientated community.

Consequently in the case of the GCC a compulsory interpretative jurisdiction should be granted to its future judicial body in terms of allowing for the achievement of uniform application of GCC treaties. In principle, such compulsory jurisdiction has been accepted by Member States with other organisations, eg OAPEC, hence the principle has been acknowledged already by Member States.⁽⁹⁾

Actions of non-compliance

Although political controls may be sufficient in organisations of one or a limited field of operations, judicial supervision is necessary in those of comprehensive objectives embarking upon integrative ventures. The width of the aims as well as the participation of persons other than states in the venture render political bodies, however keen they are to ensure compliance, unable to discharge their supervisory function effectively since they are, at the same time, already loaded with their proper preparatory and legislative tasks.

Therefore several communities, including the EC and Andean Pact, attribute to their respective courts compulsory jurisdiction enabling them to entertain actions of non-compliance⁽¹⁰⁾. Both communities share similarities with the GCC in terms of long term goals.

Consequently, a GCC Court ought to be empowered to hear actions of non-compliance by Member States. And, as in both communities mentioned above, there should be a requirement that an intermediary administrative phase proceeds instituting proceedings in the Court, ie to designate a GCC organ, say the Secretariat General, to question the accused state, investigate the matter and participate in the action against the Member.

Staff Disputes

The number of staff in the GCC is probably in its hundreds. Thus it may be strongly argued that this size, when compared for instance with that of the EC, does not warrant assigning a GCC Court specific jurisdiction for their disputes within the GCC; instead, an administrative tribunal would fulfil the task. However, for the sake of the unity of the judiciary and adjudicating administrative matters by judicial mechanisms, the size factor as well as the possible substitutions should be disregarded, hence granting a future GCC Court jurisdiction over its civil servants' disputes. In practice, the ECJ is provided with such jurisdiction by Article 179 of EEC Treaty.

Actions for Nullification

Several permanent judicial bodies have been assigned jurisdiction to decide cases for nullification of acts by institutions of their respective organisations ⁽¹¹⁾. Proceedings may be brought by a member state, another institution or by natural or legal persons.

This type of jurisdiction is pertinent for a future GCC court. It could, though, be argued that in the case of the GCC where decisions are taken unanimously, such jurisdiction may not be necessary. Instead, should a State consider a potential act is

in violation of the norms which comprise the judicial structure of the GCC, it can easily block the decision by casting a negative vote and thereby keeping the problem at bay. However sound this argument might be, it does not take into account that questioning an act may arise after the decisions are made. Therefore, a Member State or a GCC institution should be able to bring proceedings for annulment of a GCC measure within a specified period of time.

2. Disputes not directly related to the functioning of the GCC

There are some disputes the rise of which could affect the very existence of the GCC. These disputes do not arise under the GCC arrangement although they are indirectly related to the functioning and development of the GCC. The most serious type of disputes, it is believed, are frontier disagreements. Despite the fact that most of the boundary disputes have been settled, several are still awaiting amicable settlement⁽¹²⁾. Silence of Member States on these disputes causes considerable disturbance to those concerned about the future of the GCC and its journey; yet it could mean that Member States have decided either to accept the *status quo* as the final and definite solution or that they consider their existence in hidden forms without danger. In neither case is the potential danger removed from the way of their co-operation within the GCC. They are still potential time-bombs which can explode at any time, as one did.⁽¹³⁾

Should they have decided, for whatever reason, that those territorial disputes are not worth bringing up, discussion and resolution and that the *status quo* pleases every State, i.e. each State keeps what it currently has, they should openly announce this and document it in, for instance, a summit meeting so that this potential threat of instability is definitely avoided.

If, on the other hand, their disregard of the unsettled frontier disputes is based on the belief that 'unity' or 'integration', or even constant 'co-operation' can evolve regardless, it is thought they must have misjudged the destructive force such differences could produce. For, even if people of the area choose to ignore existing unsettled disputes in order to promote friendly co-operation, outsiders within and outside of the Gulf will always find these disputes useful tools for undermining the venture of the states within the framework of the GCC whenever such outsiders decide that ignition of such disputes is to their advantage.

General Jurisdiction

It is submitted that most states prefer diplomatic means and arbitration over judicial methods for reasons including cost, time, propriety and the uncertainty about the outcome of the judicial process. However, the narrower the membership is in an organisation, the less convincing are most of these grounds for argument. In fact once considerations are given to long-term benefits, states who are members in a regional organisation armed with a judicial organ may sacrifice some of the immediate gains for the sake of building up an intra-state relationship based on the rules of law which resolve problems, and saves face from public criticism which is likely to be the case had disputes been disposed of by diplomatic means.

Therefore, a GCC Court should be armed with non-compulsory judicial jurisdiction to handle cases which lie beyond the functioning of the GCC.

In the case of the GCC, the need for such jurisdiction is acute for the reasons outlined above, ie the frontier disputes. A provision providing for a general jurisdiction over disputes referred by GCC Member States by special agreement will likely be made a future Court, a forum for settling the said disputes.

Arbitration jurisdiction

At the international adjudication level, arbitral jurisdiction has been attributed to some international courts, eg the ECJ and the Projected Islamic Court of Justice ⁽¹⁴⁾. Usually such jurisdiction comes into play when a bilateral or multilateral treaty or contract stipulates that disputes arising under it be settled through arbitration by a designated court.

There is no doubt that designation of a court as a forum for arbitration and/or arbitrator is a testimony of its competence. Accordingly, assigning a GCC Court an arbitration jurisdiction will clothe it with that prestige. But apart from that, and the fact that endowing it with such jurisdiction by the Member States is clear expression of their trust in the Court, when it actually arbitrates successfully, inter-state hidden disputes are likely to be unveiled and submitted to the Court for definitive solutions, especially if the states involved prefer arbitration methods over purely judicial ones.

8.B.II: The Need for a GCC Supervisory Arm

Within the current GCC framework, there is no supervisory body as such. Enforcement of GCC rules has been inspired by good relations between Member States, their desire to realise GCC objectives and their interested citizens' desire to see that governments of GCC states, including their own, implement the agreed rules. The General Secretariat undertakes a form of indirect supervision by means of collecting information on the implementation of GCC rules. Taking into account that the Secretariat General is overloaded by secretarial and preparatory tasks, assigning the supervision function to a sub-organ would contribute a great deal to the GCC experience as a whole.

This can be done within the existing legal framework of the GCC. Article 6 of the Charter provides that each of the three principal organs may create sub-organs as necessary. Hence, the Supreme Council preferably can establish a supervision organ and attach it to itself so that this organ contacts national entities in the name of the highest GCC body, i.e. the Supreme Council.

The significance of such an organ lies in the fact that the mere existence of it should be an incentive for the concerned national entities to implement GCC rules because otherwise it may draw attention to some non-compliance which currently went unnoticed. As explained below, since Member States noticeably implement GCC rules as they are handed down, the main task of this proposed organ will be to see to it that the exact terms or at least the substance of GCC rules are given internal effect.

GCC decisions are characterised for being poorly worded and presented to the public, in particular the economic ones in which private citizens are most interested. More importantly, they are of no direct effect which means that during the process of their internal effectuation, they could be stripped of their substance to a variety of degrees.

For such reasons, this suggested body in the name of the Supreme Council should be entrusted with supervisory tasks including the following:

- 1) formulating GCC decisions in a detailed manner before they are decided by the Supreme Council or the Ministerial Council should it be empowered to take decisions;

- 2) ensuring that GCC decisions are made effective by the required national instrument, through examination of the official gazette and contacts with concerned entities. As noted in chapters five and six, some States sometimes communicate with the Secretariat General by letter that, for instance, "the concerned establishment has been instructed to execute the decision of the Supreme Council", even though domestic law requires law or decree rather than a letter. Therefore this proposed body can be empowered to insist on implementing GCC rules by the constitutionally prescribed instrument. It may well be the case that officials realising that a letter may be held to be inadequate, start observing their own constitutional requirements. The point to be stressed here is establishing direct contacts between the Supreme Council represented by this supervisory organ and the national entities concerned rather than the foreign ministries, taking into consideration that such supervision is made only after a rule is established so that should a State dislike it, it can block the decision, by preventing it from being made in the first place; and
- 3) During its supervisory function, the body is likely to be more knowledgeable of the practical problems and obstacles involved in implementing certain rules. Therefore, it should also be assigned a responsibility to gather together such problems, propose solutions with the aid of the concerned GCC specialised committees, and submit them to the Supreme Council for modification.

In summary, despite the constant implementation of GCC rules by Member States, there have been cases where the substance of the rules was not implemented.

In other cases, moreover, the implementing instruments required by domestic law were not observed. Therefore a GCC supervisory body attached to the Supreme Council is in order. Deriving its power from that of the Supreme Council, which is composed of the six rulers, it will encourage Member States to implement and comply with GCC rules. This body can be created within the existing terms of the GCC Charter, Article 6. Hence, future improvements of the GCC should include the issue of supervision in line with what was stated above.

8. C: Future Prospects:

The States which make up the GCC possess one of the most important commodities of our time - oil. This has made the Gulf areas of vital interest to most industrialised nations, particularly the United States. Involvement, therefore, of such states in the policymaking has been and probably will be persisting whether directly or indirectly. Regionally the States of the GCC have always been affected by the events in neighbouring countries. In particular, security and stability of the six States could not be easily divorced from security and stability in other Gulf states. For instance, the States suffered from the Iran-Iraq war to a variety of degrees. Internally the fall of the price of oil has affected the economy and development plans in every State. In addition, as the development projects and industrialisation plans begin to snowball in some States, the need for co-ordination to avoid duplication and competition was, and still is, imperative.

Needless to say, as the above suggests, the GCC's future is influenced by international, regional and internal factors. Seemingly, therefore, in assessing its future one should first enquire into whether the very existence of the GCC is secure enough. In order to establish a reasonable answer, it appears necessary, *inter alia*, to

examine the motives which prompted its six Members to embark upon this journey of integration and to see if these motives are still present.

The founders have stated one motive for the setting up of the GCC: integration amongst the Member States and, realising the prosperity of their peoples for security and respectable standards of living ⁽¹⁵⁾. This aim is yet to materialise, hence it will continue to be a motive for some time to come. Other non-stated reasons for establishment of the GCC have been suggested ⁽¹⁶⁾. These include the belief that collective actions in the field of security, internal as well as external, through an institutionalised procedure - the GCC - is by far more rewarding than individual measures. Another is the recognition that the individual nation States are not able to withstand the political and economic pressures which they now face on the scale that they exist in the Gulf. Furthermore, they have realised that they may not be agricultural States, and that they need to diversify their sources of national revenue by, *inter alia*, entering the industrial field for which they have the raw materials. This movement towards industrialisation requires a high degree of co-ordination with a view to avoiding duplication and future competition. In addition, the six States capitalised on the fact that politically as well as from the point of view of security, co-operation would be facilitated through economic integration. Therefore, the EA was signed in the first year of the GCC's existence.

Apparently all the above motives as well as other possible ones are still valid and constitute compelling reasons for maintaining the GCC, which the States will do. This continued need is strengthened by their stance when Kuwait was invaded by Iraq on 2nd August 1990 and later annexed to Iraq ⁽¹⁷⁾. That event was one means, and probably the most destructive, which could have arisen to destroy the GCC as one

of its Members - Kuwait - was occupied overnight. Political co-operation was not a stated objective, and even implicitly was less well articulated and developed than the economic one. The invasion and the subsequent military, political and media campaign employed by Iraq and other Arab countries against the GCC and its Members could have put an end to the GCC experience as a vehicle for integration, or at least created differences amongst the Members hence making the future of the GCC recede. Nothing of this kind happened. On the contrary, the economic integrative journey was protected when security principles formulation throughout the decade of the GCC's existence were transformed into deeds. In 1982 the States reached an agreement that aggression against one Member is aggression against all (18). During the Kuwait crisis these words were honoured by deeds. This is best explained by passages from the final Communiqué of the GCC eleventh summit held in December 1990; in that final Communiqué the States held this view:

"... the GCC government and peoples stand beside the state of Kuwait in its ordeal and extend their full support for and solidarity with the struggle of the Kuwaiti government and people until full liberation is achieved." (19)

"... The GCC at the same time, underlines its Member States' right and determination to resort to all means necessary to secure the restoration of sovereignty and legitimacy to Kuwait." (20)

"The Council reiterates the GCC countries' firm stand in the face of the Iraqi aggression and their determination to resist it and nullify its negative consequences, proceeding from the premise that aggression against any member state is aggression against all GCC Member States and that the security of the GCC Member States is indivisible." (21)

This sort of action under the circumstances should make answering questions regarding the attainment of the GCC less difficult. One is, therefore, inclined to view the GCC as an irreversible process, as the Secretary General once said (22)

Now that the continued existence of the GCC seems secure, the question becomes whether or not the GCC will generate pressures for closer economic integration at which it is aimed, along with the necessary preconditions of political co-ordination and measures for stability. This depends on the political goodwill of the governments which, even during the Kuwait crisis, showed an enthusiastic attitude towards economic integration with the necessary political co-ordination. The eleventh summit communiqué reads (in parts):

"The GCC emphasises its concern to expedite steps and to make a qualitative leap in collective action among the Member States in the forthcoming stage in order to achieve further co-ordination, integration and cohesion out of its absolute conviction that its members share the same fate and goals." (23)

"The GCC Higher Council also reviewed the march of economic action and expressed satisfaction with the achievements of joint action in this field. It stressed its determination to continue the work to fulfil the ambitions and aspirations of the GCC peoples in completing the steps towards economic integration. To achieve this goal, the GCC Higher Council assigned the financial and economic co-operation committee the task of adopting the necessary measures to develop new concepts for joint economic action in order to expedite the achievement of economic integration and to draw up a programme to complete the establishment of a common Gulf market, agree on a unified trade policy, evaluate economic co-operation and examine the texts of the Unified Economic Agreement and methods of implementing it with the aim of securing new privileges that will enable the citizens of the GCC countries to enjoy new benefits in the march towards prosperity and development." (24)

The Manamah Declaration issued at the end of the eleventh summit embodied the following plans:

Completing the establishment of security and defensive arrangements for the GCC Member States to ensure that the individual national security of each member state and the collective regional security of all Member States is safeguarded.

Increasing political co-ordination among the GCC Member States on domestic, regional, Arab and international levels.

Promoting economic co-operation among the GCC Member States, particularly in:

- (a) Developing new concepts of common economic action to accelerate economic integration.

- (b) Laying down a programme for completing the establishment of a common market among the GCC Member States and of an agreement for a unified trade policy.
- (c) Reassessing the Unified Economic Agreement with a view to achieving benefits that can bring about a balance of interests among the Member States and overcome obstacles.

Supporting the GCC General Secretariat in forming committees of experts to study and develop proposals for integrated projects so that they can be submitted to the competent ministerial committees.⁽²⁵⁾

Thus, after a decade of GCC existence, during which several internal as well as neighbouring destructive events took place, Member States affirmed that not only will the GCC as an international entity be maintained, but also they are resolved to promote common actions, and in particular, economic integration will be the subject of special attention amounting to assessment and improvement. The EA, as noted in the passage cited above, will be evaluated in the light of the experience gained during the implementation of its provisions throughout the past decade. As such the GCC and its achievements so far are generating more and more measures for closer integration. There is no apparent convincing reason to doubt what the GCC policy-makers have planned for its future. After all, it is in line with the prevailing trend in international relations for collective rather than individual actions.

Another point however remains: that is how future improvement will be best controlled. Obviously it is for politicians, economists and time to answer this question. However, the chosen way will, of necessity, have legal implications. From a legal point of view, should what the States have expressed mean progress within the existing treaties, the current legal order of the GCC would increasingly be an inadequate contributor to the integration sought. Thus, as the integration process expands further, embracing as it grows more and more spheres of economic sovereign powers of

Member States, the whole structure and the legal framework of the GCC will have to be revised in order to respond to the new circumstances. Whether the required development is structural or substantive in nature, the EC then should be the model to satisfy the requirements of the coming stage of integration.

Mention should be made of the role of public opinion within Member States in shaping a brighter future for the GCC. Disputing the fact that popular views formally have no say in the policymaking within the States, let alone the GCC, they have indirect influence and at least can make what has been taken along the road for integration irreversible. Amongst the public, especially after the Kuwait crisis, it appears that discussion tends to be concentrated on what sort of unity is to be sought rather than whether or not it is desirable. For the purpose of generating public support for more integrative actions, and public attention for what is taking place, the Secretariat General can play a major role. It is necessary to devise forms of GCC education that will bring to ordinary citizens of Member States the advantages of integration. Notably, the Kuwait crisis, which caught the attention of every GCC citizen regardless of age and gender, has contributed considerably to the introduction of the GCC to all sections of the six societies. The concrete unified stance of GCC Members against the occupation of Kuwait, and the eventual liberation of Kuwait from Iraq, must have gained popular blessings for the concept of integration within the GCC.

Briefly, for the foreseeable future, the ultimate and decisive power in the GCC will remain, as it does at present, with the governments of the Member States. It is they who will determine how rapidly and effectively the treaties are carried out, and the speed of future developments. Progress in the direction of supranationality

will be dependent on their readiness to make decisions, and to advance beyond the present confines of co-operation laid down in the existing treaties. Over the past decade, Member States have shown a willingness to commit themselves to modest programmes of economic integration, in a pragmatic approach. This is likely to continue into the immediate future, which could also witness improvement in the judicial machinery and re-organisation of the supervision technique.

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5. Ibid.
6. Case 26/62 (1963) E.C.R.1.
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8. See Chapter seven.
9. See Article 24(1) of the Protocol of the Judicial Board of the Organisation of Arab Petroleum Exporting Countries.
10. EEC Treaty, Articles 169, 170 and 171; Andean Treaty Court, Articles 23-27.
11. For instance, see EEC Treaty, Article 173; Andean Treaty Court, Articles 17- 22.
12. These include the Huwar island dispute between Bahrain and Qatar.
13. Qatar and Bahrain disputed over Huwar Island in 1986.
14. EEC Treaty, Article 181; the Projected Islamic Court of Justice, Article 46.
15. See the GCC Charter, the preamble as well as Article 4, produced in Vol. 2 of this work, pp.1-11.
16. See Abdulla M. A. Al-Anzi, *The Gulf Co-operation Council: Reasons and Challenges, Critical and Analytical Study* (unpublished Ph. D. Dissertation, Claremont Graduate School, 1986).
17. For some legal account of that event for the period between 2nd August 1990 and 15th January 1991, see C. J. Warbrick, *The Invasion of Kuwait by Iraq*, 40 I.C.L.Q. (1991), pp.482-92.
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20. Ibid, p.207.
21. Ibid, p.206.
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