

# 1989 PROTOCOL CONCERNING MARINE POLLUTION RESULTING FROM EXPLORATION AND EXPLOITATION OF THE CONTINENTAL SHELF

*Adopted in Kuwait on 29 March 1989*

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# 1989 PROTOCOL CONCERNING MARINE POLLUTION RESULTING FROM EXPLORATION AND EXPLOITATION OF THE CONTINENTAL SHELF

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## THE CONTRACTING STATES

BEING PARTIES to the Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution and to the Protocol concerning Regional Co-operation in Combating Pollution by oil and other Harmful Substances in Cases of Emergency;

BEING AWARE of the Articles 76, 197 and 208 of the United Nations Convention on the Law of the Sea (1982);

RECOGNIZING the danger posed to the marine environment and to human health by pollution from exploration and exploitation of the Continental Shelf, and the serious problems resulting therefrom in the Sea Area under their national jurisdictions;

CONSCIOUS of the need for further and more particular measures to prevent and control marine pollution from exploration and exploitation of the sea-bed and its subsoil;

BEING MINDFUL of their existing obligations under International Law; and

PROMPTED by the desire to implement Article III, paragraph (b), Article VII, and Article XIX of the Convention;

HAVE AGREED as follows:

## ARTICLE I

For the purposes of this Protocol:

1. "Centre" means the Marine Emergency Mutual Aid Centre established under Article III paragraph 1 of the "Protocol concerning Regional Co-operation in Combating Pollution by Oil and other Harmful Substances in Cases of Emergency".
2. "Certifying Authority" means any person or body of persons authorized by the Contracting State to issue a certificate of safety and fitness for purpose;
3. "Chemical Use Plan" means a plan drawn up by the operator of an offshore installation which shows:
  - a) The chemicals he intends to use in his operations;
  - b) The purpose or purposes for which he intends to use the chemicals;
  - c) The maximum concentrations of the chemicals he intends to use within any other substances, and maximum amounts he intends to use in any specified period;

- d) The area within which the chemical may escape into the marine environment; provided that where there is no known danger of a chemical escaping into the marine environment, it need not be included in the plan;
4. "Competent State Authority" means any Government department, Agency or other Authority in the Contracting State designated to exercise the power or discharge the function referred to in this Protocol, with such designation to be formally communicated to the Organization;
  5. "Contracting State" means any State which has become a party to this Protocol;
  6. "Convention" means the Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution;
  7. "Council" means the organ of the Organization comprised of the Contracting States and established in accordance with Article XVI, paragraph (b)(i) of the Convention;
  8. "Garbage" means kitchen and domestic waste, refuse and solid wastes, other than any for which provision is made by any other Article of this Protocol, save for Article XII;
  9. "Guidelines" means only guidelines issued by the Organization and any amendments thereto in each case approved by the Council;
  10. "Licence" means a licence, permit including work permit, or authorization, formally issued under the authority of a Contracting State for undertaking an offshore operation;
  11. "Marine Pollution" shall have the meaning given to it in Article I(a) of the Convention;
  12. "Offshore Installation" means any structure, plant or vessel, whether floating or fixed to or under the seabed, placed in a location in the Protocol Area (defined in item 16 in this Article) for the purpose of offshore operations, including any tanker for the time being moored and used for the temporary storage of oil, and including any plant for treating, storing or regaining control of the flow of crude oil;  
  
and  
  
for the purposes of certification under Article VI, an installation includes any integral part of the structure, plant, equipment or vessel, any attached lifting gear or safety mechanism, and any other part or equipment specified by the Contracting State as part of the installation;
  13. "Offshore Operations" means any operations conducted in the Protocol Area for the purposes of exploring of oil or natural gas or for the purposes of exploiting those resources, including any treatment before transport to shore and any transport of the same by pipeline to shore. It includes also any work of construction, repair, maintenance, inspection or like operation incidental to the main purpose of exploration or exploitation;
  14. "Operator" means any natural or juridical person who undertakes offshore operations as defined under item (13) of Article I of this Protocol;
  15. "Organization" shall have the meaning given to it in Article I(c) of the Convention;
  16. "Protocol Area" means all parts of the Continental Shelf of a Contracting State which fall within the Sea Area as defined in paragraph (a) of Article II of the Convention and all parts of its Continental Shelf contiguous therewith;

17. "Sewage" means
- i) Drainage and other waste from any form of toilet, urinal or water closet;
  - ii) Drainage from medical premises such as dispensary or sick bay, via wash-basins, washtubs and drains located in such premises;
  - iii) Other wastewaters when mixed with significant quantities of the drainage defined above;
18. "Special Area" means that part of the Sea Area located north-west of the rhumb line between Ras Al Hadd (22°30' N, 59°48'E) and Ras Al FasteH (25°04'N, 61°25'E).

## ARTICLE II

Contracting States shall require that all appropriate measures are taken to prevent, abate and control marine pollution from offshore operations in those parts of the Protocol Area within their respective jurisdictions taking into account the best available and economically feasible technology. Contracting States acting individually or jointly shall also take all appropriate steps to combat marine pollution from offshore operations within the parts of the Protocol Area under their jurisdiction. Such obligations shall be without prejudice to the more specific obligations accepted under this Protocol.

## ARTICLE III

Each Contracting State shall ensure that in the Protocol Area under its jurisdiction any offshore operation shall be conducted under a licence, which may be granted subject to such conditions for the protection of the marine environment and coastal areas as the Competent State Authority sees fit to impose. The Competent State Authority shall require the operator to comply with relevant laws and regulations issued under the authority of the State, and shall have the power to take such measures as are necessary to enforce compliance therewith.

## ARTICLE IV

1. Each Contracting State shall take measures to ensure the following:
  - a) Before licensing any offshore operation which could cause significant risks of pollution in the Protocol Area or any adjacent coastal area, the Competent State Authority shall call for submission of an assessment of the potential environmental effects thereof. No such operation shall commence until a statement of those effects has been submitted, and no licence shall be granted until the Competent State Authority is satisfied that the operation will entail no unacceptable risk of such damage in the Protocol Area or any adjacent coastal area.
  - b) In deciding to call for an environmental impact statement, and in determining its scope, the Competent State Authority shall have regard to the Guidelines issued by the Organization.
  - c) Whenever a Competent State Authority has called for and received an environmental impact statement, it shall send to the organization a summary of the potential environmental effects referred to in that statement. The Organization shall, within four days of its receipt, dispatch copies of that summary to all the other Contracting States. The Competent State Authority before granting a licence for the proposed operation, shall allow all other Contracting States to submit representations to it through the Organization within a stated time which shall be reasonable taking into account the type of operation and the urgency of the need for a decision. It shall consider any such representations before licensing the said operation.

Notwithstanding the obligation to send a summary to the Organization, the Contracting State shall have the right to withhold information which might prejudice its national security.

2. Whenever a Contracting State does not call for an assessment of the environmental impact of a proposed offshore operation, it shall consider calling for a survey of the marine environment and the aquatic life therein to be made before the start of the proposed operation. The survey is to be carried out by or under the direct supervision of a body independent of the operator and approved by the Competent State Authority.
3. The Guidelines on Environmental Impact Assessment to be issued by the Organization shall contain guidance on the type of operation, and the circumstances in which it would cause significant risk of pollution in the Protocol Area or any adjacent coastal area.

## **ARTICLE V**

1. Each Contracting State shall endeavour to ensure that offshore operations within its jurisdiction shall not cause unjustifiable interference with lawful navigation, fishing or any other activity carried on under a bilateral or multilateral agreement or on the basis of international law, and that in siting an installation, due regard shall be had to existing pipelines and cables. Regard shall also be had to the need for protecting sites of special ecological and cultural interests.
2. Each Contracting State shall take steps to ensure that, within the area of its jurisdiction, operators of offshore installations survey the sea-bed in the vicinity of their installations, and remove any debris resulting from their operations which might interfere with lawful fishing:
  - a) In the case of a pipeline, or other sub-sea apparatus immediately following completion of the work of installation;
  - b) In the case of production platform, immediately following its removal;
  - c) In any case when the Competent State Authority might reasonably require survey and clean-up.

## **ARTICLE VI**

Each Contracting State shall take all practicable measures to ensure that every offshore installation to be used in that part of the Protocol Area within its jurisdiction is certified by a Certifying Authority or its designee that it is safe and fit for the purpose for which it is to be used so as to ensure that it will not cause accidental damage to the marine environment.

## **ARTICLE VII**

Each Contracting State shall take all practicable measures to ensure the following:

1. Operators shall at all times have available to their offshore installations, in good working order, equipment and devices to minimize the risk of accidental pollution and to facilitate prompt response to a pollution emergency, in accordance with good oilfield or other relevant industry practice.
2. Any such plant or equipment not included as part of an installation for the purposes of Article VI shall be subject to prior examination and approval by or on behalf of the Competent State Authority, and to periodic inspection, in accordance with good oilfield or other relevant industry practice.

3. Blow-out preventers and other safety equipment shall be tested periodically by the operator or on his behalf, and exercises in their operation carried out periodically, in accordance with good oilfield or other relevant industry practice.
4. Offshore installations above sea level shall carry lights and other warning instruments, in accordance with international maritime practice, maintained in good working order, and those lights and instruments shall also be operated in accordance with international maritime practice.
5. All persons engaged in offshore operations shall have had or be given training in accordance with good oilfield practice. Any person employed on an offshore installation for the first time shall undergo an induction course, and shall be given a manual which includes instruction on emergency procedures.

## **ARTICLE VIII**

Each Contracting State shall take all practicable measures to ensure the following:

1. No operator shall start work on any stage of his offshore operations within its jurisdiction until he has:
  - a) Prepared a Contingency Plan to deal with any event which may occur as a result of the operations, and which may cause significant pollution to the marine environment;
  - b) Had that Plan approved by the Competent State Authority;
  - c) Shown to the satisfaction of that State Authority that he has available to him sufficient expertise and resources to put that Plan fully into operation.
2. No Contingency Plan shall be approved unless it can be coordinated with any existing national or local contingency plans, and any plans prepared by the Centre, and unless the operator can be required to participate in any exercise conducted in the implementation of such Contingency Plans.
3. Any person conducting offshore operations shall make and maintain arrangements to ensure that when an event occurs as a result of his operations which may cause significant pollution of the marine environment, a full report of that event is sent immediately to the State authority designated to receive such reports.
4. The respective roles and powers of the industry and the authorities shall be fully understood before an oil spill emergency, and shall be clearly defined in the operator's Contingency Plan, and in any national and local Contingency Plans.

## **ARTICLE IX**

1. Each Contracting State shall take all practicable measures to ensure, subject to paragraph 2 below, the following:
  - a) In that part of the Protocol Area which is a 'Special Area', no machinery space drainage from an offshore installation shall be discharged into the sea unless the oil content thereof does not exceed 15 mg. per litre whilst undiluted. Any Contracting State may impose a more restrictive level in any area under its jurisdiction.

- b) No other discharge from an offshore installation into the sea within the Protocol Area, except one derived from drilling operations, shall have an oil content, whilst undiluted, greater than that stipulated for the time being by the Organization. The oil content so stipulated shall not be greater than 40 mg. per litre as an average in any calendar month, and shall not at any time exceed 100 mg. per litre.
  - c) Discharge points for oily wastes shall be well below the surface of the sea as appropriate.
  - d) All necessary precautions shall be taken to minimize losses of oil into the sea from oil and gas collected or flared from well testing.
2. Measures passed in compliance with paragraph 1 of this Article may provide that there is no breach of their requirements if, when the oil content of a discharge is greater than the permitted concentrations, that excess was due to some accident or other cause beyond the control of the operator and his employees, and that they took all reasonable precautions and exercised all due diligence to avoid such excess. Alternatively, a defence of equivalent effect may be provided.
3. Each Contracting State shall ensure that the operator may be required to conduct surveys of environmental conditions in the vicinity of his offshore installation, periodically or on such occasions as the Competent State Authority may reasonably require.

The State itself may conduct or have conducted such a survey. If, without apparent reason, the results of that survey show a significant difference from the results of the operator's most recent survey, without prejudice to any other legal action, the State may charge the cost of its own survey to the operator.

4. Each Contracting State shall pass measures necessary to ensure the following:
- a) Oil-based drilling fluids shall not be used in drilling operations in those parts of the Protocol Area within its jurisdiction except with the express sanction of the Competent State Authority. Such sanction shall not be given unless the Authority is satisfied that the use of such fluid is justified because of exceptional circumstances. If such fluid is used, the drill cuttings shall be effectively treated to minimize their oil content before being appropriately disposed off. Any wash waters shall not be discharged at any place from which they may be carried to mix with the same drill cuttings. The discharge point for the cuttings shall, as appropriate, be well below the surface of the water.
  - b) No oil-based drilling fluid shall be discharged to any parts of the Protocol Area within its jurisdiction.
  - c) Water-based drilling muds discharged from offshore operations must not contain persistent systemic toxins which may continue to pose an environmental threat after the initial drilling fluid discharge.

## **ARTICLE X**

1. Each Contracting State shall take all practicable measures to ensure the following:
- a) Disposal into the sea of the following is prohibited:
    - i) All plastics, including but not limited to synthetic ropes, synthetic fishing nets and plastic garbage bags;

- ii) All other garbage, including paper products, rags, glass, metal, bottle, crockery, dunnage, lining and packing materials;
  - b) Disposal into the sea of food wastes shall be made as far as practicable from land, but in any case not less than 12 nautical miles from the nearest land.
  - c) When the garbage is mixed with other discharges having different disposal or discharge requirements the more severe requirements shall apply.
  - d) Sewage shall not be discharged into the Protocol Area from an installation permanently manned by ten or more persons unless:
    - i) It has been comminuted and disinfected using a system approved by the Competent State Authority and is discharged at a distance of more than four nautical miles from the nearest land; or
    - ii) It is discharged at a distance of more than twelve nautical miles from the nearest land; or
    - iii) It has passed through a treatment plant approved by the Competent State Authority; and in any case the discharge does not produce visible floating solids or discolouration of the surrounding water.
2. Each Contracting State shall provide at convenient points on its coastline, reception facilities for general garbage from manned offshore installations operating in the area of its jurisdiction.

## ARTICLE XI

1. Each Contracting State shall take all appropriate measures to ensure the following:
- a) Each operator of an offshore installation shall prepare, and submit for approval by the Competent State Authority, a "Chemical Use Plan". Application for amendments to the Plan may be submitted subsequently and approved. If at any time he wishes to use a chemical outside the scope of his approved Plan, and that chemical may escape into the marine environment, he shall notify the Competent State Authority, except that in case of emergency to prevent the risk of injury to person or extensive damage to property, the notification need not be given prior to the use of the chemical.
  - b) The Competent State Authority has a power to prohibit, limit or regulate the use of a chemical or product and to impose conditions on its storage and its use, for the purpose of protecting the marine environment. In exercising that power, the Authority shall have regard to any Guidelines issued by the Organization.
2. Each Contracting State shall take appropriate measures to ensure that seismic operations in the Protocol Area shall take into account the Guidelines issued by the Organization.

## ARTICLE XII

Each Contracting State shall require that, for offshore operations in any part of the Protocol Area within its jurisdiction, the operator shall:

1. Provide adequate system for collection and proper disposal of all unwanted substances or articles;



2. Give proper instructions on their use;
3. Endeavour to provide for penalties for improper disposal.

### **ARTICLE XIII**

1. Each Contracting State shall ensure that the Competent State Authority has the power to require the operator of an offshore installation:
  - a) In the case of a pipeline
    - i) To flush and remove any residual pollutants from the pipeline, and
    - ii) To bury the pipeline, or remove part and bury the remaining parts thereof, so as to eliminate for the foreseeable future any risk of hindrance to navigation or fishing, taking all circumstances into account.
  - b) In the case of platforms and other sea-bed apparatus and structures, to remove the installation in whole or in part to ensure the safety of navigation and in the interests of fishing.

Each Contracting State shall also take all practicable measures to ensure that the operator has sufficient resources to guarantee that any such requirements can be met.

2. Where Contracting States have a common interest in fishing grounds in the Protocol Area, they shall endeavour to adopt a common policy on the removal of installations, In determining any case whether or not installations must be removed, Contracting States shall have regard to any guidelines issued by the Organization. Whether pipelines are removed or not, they shall be flushed to remove residual pollutants.
3. Contracting States shall pass, and take all practicable steps to enforce, measures to ensure that no offshore installation which in use has floated at or near the sea surface, and no equipment from an offshore installation, shall be deposited on the sea-bed of the continental shelf when it is no longer needed.

### **ARTICLE XIV**

1. The provisions of the Convention relating to Protocols shall apply to this Protocol.
2. Procedures for amendments to Protocols and their Annexes adopted in accordance with Article XX and XXI of the Convention shall apply to this Protocol.
3. The Rules of Procedure and Financial Rules adopted pursuant to Article XXII of the Convention, and amendments thereto, shall apply to this Protocol.

### **ARTICLE XV**

1. This Protocol shall be open for signature in the State of Kuwait from 29 March to 26 June 1989 by any State which is party to the Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution.
2. This Protocol shall be subject to ratification, acceptance, approval or accession by the States parties to the Convention. Instruments of ratification, acceptance, approval or accession shall be deposited with the Government of Kuwait which shall assume the functions of the Depository.

This Protocol shall enter into force on the ninetieth day following the date of deposit of at least five instruments of ratification, acceptance or approval of, or accession to this Protocol by the States as referred to in paragraph 2 of this Article.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized by their respective Governments, have signed this Protocol.

DONE at Kuwait this twenty-ninth day of March, in the year one thousand nine hundred and eighty-nine in the Arabic, English and Persian languages, the texts being equally authentic protocols, the English text shall be dispositively authoritative.