Third United Nations Conference on the Law of the Sea

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Summary records of meetings of the Third Committee
4th meeting

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called for concerted international action. Any legal instrument must take account of the source of pollution.

51. Bangladesh, with a coast over 1,000 miles long and heavy reliance on fishing, had an interest in protecting the marine environment adjacent to its coast. It supported the view that the coastal States should have responsibilities for taking appropriate measures to preserve and protect the marine environment, and indeed legislation had recently been passed in his country to that effect. However, States should take into account relevant internationally accepted standards so as to ensure proper harmonization between national and international measures. Care must also be taken that the activities carried out under national jurisdiction did not cause pollution damage to other States and to the marine environment as a whole. Moreover, States should take all possible measures to guard against transferring damage or hazards from one environment to another.

52. As far as scientific research was concerned Bangladesh, as a developing country, did not envisage that scientific research in the high seas should be arbitrarily restricted. It did, however, believe that the coastal States should be able to ensure at least four elements in the future legal framework, namely, the right of coastal States to have prior information or even authorization to undertake scientific research within its jurisdiction, to participate actively in research carried out in their areas of jurisdiction, to control and where necessary disallow such activities if they were against national security, and to have access to data and samples collected and to scientific results for effective publication and dissemination.

53. Mr. RASOLONDRAIBE (Madagascar) noted that certain important matters had not been made the subject of the texts produced by Sub-Committee III of the sea-bed Committee. Those matters included scientific research, the transfer of technology, the definition of marine pollution, responsibility for pollution, freedom of the high seas, relations with other international organizations with responsibilities for pollution, and international conventions.

54. His delegation, which had been a member of the sea-bed Committee, was convinced of the need to change the method of work employed. The Third Committee should concentrate on reaching agreement on general principles before formulating legal principles as such.

55. Since the idea of adopting "Caracas principles" had already been advanced, it might be useful for the Committee to deal with that matter as well.

56. As far as pollution was concerned, his delegation was in favour of an economic zone over which the coastal State had total sovereignty, and in which pollution would fall within the competence of that State.

57. His delegation was also in favour of an International Authority with wide powers and direct competence over pollution. That competence must now be defined and a solution found to the problem of pollutants crossing frontiers.

58. In Madagascar there was practically no pollution from land sources. Madagascar had a very small navy, and indeed its pollution problem was imported. It was a fact that the great maritime Powers were mainly responsible for marine pollution: hence countries such as Madagascar must have recourse to machinery to protect themselves from ships polluting their region and against negligence or *laissez faire* on the part of the flag States.

59. Madagascar had ratified the 1954 International Convention for the Prevention of Pollution of the Seas by Oil, but not the 1973 Convention for the Prevention of Pollution from Ships or the Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil. He noted with interest that that Protocol extended the scope of the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, signed at Brussels in 1969, by confirming the right of coastal States to take such action on the high seas as might be necessary to avert, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat of pollution of the sea by substances other than oil following an accident. Such a provision might well be adopted with respect to pollution resulting from negligence or non-compliance with international conventions.

60. The Committee's work would, moreover, be facilitated if agreement could be reached on the distribution of competences between national and international authorities, including the International Civil Aviation Organization (ICAO), IMCO and UNEP.

The meeting rose at 5.05 p.m.

4th meeting

Tuesday, 16 July 1974, at 3.25 p.m.

Chairman: Mr. A. YANKOV (Bulgaria).

Preservation of the marine environment (*continued*)
[*Agenda item 12*]

1. Mr. COLLINS (Liberia) said that as a developing coastal State his country was fully aware of the problems of marine pollution, while appreciating the tremendous relative cost of anti-pollution measures. As a maritime State Liberia recognized the special responsibility of flag States to support and enforce the highest attainable standards for inclusion in multinational agreements to combat marine pollution.

2. Such pollution was no longer a local problem: it was a global threat, requiring truly international solutions. In dealing with it, unilateralism would be destructive. Nevertheless, Liberia did not exclude the concept of specially sensitive ecological areas of the oceans requiring special anti-pollution measures; such areas and the special measures to be taken must, however, be determined internationally.

3. Liberia was not opposed to the idea of coastal States being empowered to set standards in excess of the requirements of multinational agreements for all vessels traversing its internal waters, but thought that all parties to such agreements should be bound to impose no other or further requirements for vessels of other parties traversing the coastal State's territorial waters or entering its ports and harbours open to international maritime commerce.

4. Finally, Liberia was not opposed to the concept of a coastal or port State enforcing jurisdiction over marine pollution offences committed outside its territorial waters; but it did believe that the primary responsibility for enforcement lay with the flag State, and that coastal or port State jurisdiction should come into play only in cases when the flag State failed to take action within a reasonable time. If the flag State had in fact initiated action, no other action should be permitted unless and until it had been determined, according to the agreed mecha-

nism for international dispute settlement, that the flag State action was inadequate.

5. Considerable progress had been made in the last seven years on the problems of marine pollution, particularly by the Inter-Governmental Maritime Consultative Organization (IMCO), which had produced a series of international instruments on marine pollution by ships which Liberia had ratified. IMCO's record in that field clearly established it as the appropriate organization to deal with all matters relating to ship-generated marine pollution. He believed that it had the experience and capability to deal with other sources of marine pollution as well.

6. Mr. RAMADAN (Egypt), after outlining the sources of marine pollution and its effect on the marine environment, said that, although the knowledge of the toxicity levels of the various chemicals used in industry was far from adequate, currently available parameters should be accepted until they could be refined.

7. His country took the view that pollution control and preservation of the marine environment in areas under national jurisdiction were essentially the obligation of coastal States, which must enforce standards for sewage and industrial waste disposal by means of an approved system of monitoring. The convention to be drafted should include provisions on those issues along the lines of the 1972 London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter.

8. On the question of pollution from ships, he stressed the importance of the 1973 International Convention for the Prevention of Pollution from Ships. Nevertheless, rapid development in ship design, sea transport techniques and navigation aids called for a review of the basis of liability for damage. A future convention must contain clear obligations for flag States and port States without unduly hampering shipping schedules.

9. With regard to the exploration and exploitation of sea-bed resources, the coastal State must be responsible for enforcing anti-pollution measures in waters within its national jurisdiction and, with the aid of modern technology, should ensure that any pollution or disturbances caused by sea-bed mining were kept to a minimum. Such questions could be studied by a competent scientific *ad hoc* committee, which could then make appropriate recommendations to be reflected in the convention.

10. Within the area of national jurisdiction, extending for a distance of 200 miles from the territorial sea, the coastal States must observe and enforce international standards, especially with regard to shipping and sea-bed mining. However, there was a need for special arrangements between coastal States whose area of national jurisdiction could not extend for 200 miles without overlapping, as in the case of certain closed and semi-closed seas. In such cases, his delegation advocated a buffer zone wherein strict anti-pollution measures would be jointly adopted by the States concerned. Special areas, such as straits, and related zones important from the point of view of fish mobility, should be subject to enforcement of the strictest pollution measures by coastal States.

11. His delegation also advocated the prevention of pollution from all sources by means of all scientific and legal means within the power of coastal States with regard to areas under their national jurisdiction. However, internationally agreed standards and obligations could serve as guidelines. His delegation supported co-operation between States of common interests in one geographical area for the purposes of pollution control, application of new technologies and warning of imminent dangers.

12. As to the exploitation of sea resources in areas within national jurisdiction, it was necessary to assess the intensity of pollution, and neighbouring States were entitled to be informed of countermeasures adopted, especially when such States were located below sea currents. Accidents must be promptly reported to States in imminent danger from pollution. Countermeasures must be undertaken promptly, with the use of up-to-date methods and technology. Where a State could not cope with a situation, it should immediately call for help from both neighbouring countries and recognized international bodies, without regard to financial considerations.

13. On the question of a pollution control authority, his country considered that reliance on the relevant existing specialized agencies was feasible. It should be possible to achieve agreement with regard to co-ordination of programming and documentation, and perhaps monitoring.

14. Pollution control in the international zone should be the responsibility of an international body established for the purpose.

15. In conclusion, he emphasized the need to avoid a rigid approach in a matter having such a far-reaching impact.

16. Mr. LEGAULT (Canada), after reading out the statement of objectives endorsed by the United Nations Conference on the Human Environment held at Stockholm in 1972 and contained in its recommendation 92,[1] said that unanimous approval of the statement by all the Governments present at that Conference had been of great significance. It was the task of the Conference on the Law of the Sea to follow up that statement of objectives by establishing binding legal obligations that recognized the limited assimilative and regenerative capacities of the sea; devising management concepts for the marine environment to replace the laissez-faire attitude of the past; maintaining a unified and comprehensive approach to various kinds of environmental and resource management; and providing means for coastal States to pursue their particular interests and discharge their particular responsibilities in management and protection of the marine environment.

17. Both before and after the Stockholm Conference, Canada had advocated a "comprehensive approach" to the protection of the marine environment. That approach, which Canada had explained fully in the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction (See A/AC.138/SC.III/L.26 and 28) involved three elements: a broad range of national and international measures, with national measures relating particularly to land-based pollution; harmonization of such measures; and the assignment and co-ordination of functions of national and international agencies. Canada did not consider that a comprehensive approach required the adoption of a single treaty instrument dealing in detail with all aspects of marine pollution, but rather hoped that the Conference would approve an "umbrella" treaty which would, in general terms, establish the rights and obligations of States concerning the protection of the marine environment, affirm a commitment to develop and adhere to particular specialized treaties, give a common direction to the future development of international instruments and international measures, and fix uniform rules for such general problems as enforcement, compensation for damage and settlement of disputes.

18. A broad consensus around the comprehensive approach had emerged from the general proposals or draft treaty articles on marine pollution already submitted by the delegations of Australia, Kenya, Malta, Norway, the United States, the Soviet Union, Ecuador, El Salvador, Peru and Uruguay, and from the more specific proposals put forward by France, Japan, the Netherlands and Trinidad and Tobago. In particular, all of those proposals showed wide areas of similarity on important specific issues such as the obligation of States to protect the marine environment and to ensure that activities under their jurisdiction did not cause damage to other States;

[1] See *Report of the United Nations Conference on the Human Environment* (United Nations publication, Sales No. E.73.II.A.14), chap. II.

and the need to take measures to prevent marine pollution from any source, to develop international standards and conventions covering all forms of marine pollution, to take into account international standards in adopting national measures, and to avoid transferring pollution from one area to another. There was also widespread agreement on the need to establish global and regional co-operation for the prevention of marine pollution; international arrangements concerning monitoring, minimization and abatement of marine pollution; better enforcement procedures in respect of pollution from vessels; better rules on liability and compensation for marine pollution damage; and, finally, technical assistance for developing States to permit them to meet their responsibilities in respect of protection of the marine environment.

19. He was confident that new proposals from other delegations would strengthen the already solid basis for agreement that had been established. The work of the Working Group on Marine Pollution of Sub-Committee III of the sea-bed Committee showed that generally acceptable texts could be arrived at on the basis of such broad agreement. The problems that Working Group had encountered in dealing with the broad area of "standards" had arisen from the fact that too many issues had been subsumed under one category. That was why his delegation had already suggested that the Third Committee should consider under separate headings the questions of special anti-pollution measures in particular geographical and ecological situations, and the basic zonal approach to the prevention of marine pollution.

20. One major area of difficulty still remaining related to the effect of differing levels of economic development on the duty to combat marine pollution. The Canadian view was that Principle 21 of the United Nations Declaration on the Human Environment[2] provided the basic elements for an accommodation on that point, by recognizing the sovereign right of States to exploit their own resources pursuant to their own environmental policies, subject to the limitation that activities under their jurisdiction should not cause damage to the environment of other States or areas beyond national jurisdiction. Since lesser developed States were equally susceptible to the effects of pollution and equally concerned with protecting the health of their environment and their people, his delegation believed that different levels of economic development were relevant not so much to the setting of environmental standards as to the extent to which such standards could be implemented at any given time. It had therefore advocated a functional, comprehensive approach which would include minimum international standards for the prevention of marine pollution, supplemented by special regional standards, and further supplemented by national measures, which were circumscribed strictly in so far as they related to ship-generated pollution.

21. A second major remaining difficulty related to the adoption of rules and standards for the prevention of ship-generated pollution. Canada agreed with the general view that international agreements on that subject were necessary in order to achieve the greatest possible uniformity. However, highly controversial issues arose from the view of some delegations that such rules and standards should be exclusively international. Those delegations argued that national measures adopted without prior international sanction and applied by a coastal State against foreign vessels could lead to a mosaic of uncoordinated and even conflicting legislation which could make international navigation virtually impossible. Canada and other countries had pointed out in reply that such an exclusively international approach would limit the existing sovereign rights of States to protect themselves against threats to their environmental integrity, a right which had been established as early as the Trail Smelter Arbitration between Canada and the United States in 1935. The United States, in fact, was a country which still sought to preserve the right to protect its environment by unilateral action in respect of foreign vessels, and under the draft articles submitted by that country, States would continue to enjoy the right to set higher standards than those fixed by international conventions for vessels entering their ports, including standards for the design and construction of such vessels. That approach was incorporated into existing United States legislation, namely the Ports and Waterways Safety Act of 1972. Thus, if there was indeed a danger of conflicting regulations as to vessel-source pollution, that danger appeared to arise under the United States approach as much as it did under the approach allowing coastal States to adopt national measures in zones adjacent to their coasts. In practice, however, his delegation was convinced that no such danger need arise under either approach, any more than it had arisen under the existing situation, in which coastal States exercised sovereign rights in their ports and territorial waters.

22. The draft treaty articles submitted by the United Kingdom delegation (A/CONF.62/C.2/L.3) appeared to reflect a more extreme version of the exclusively international approach. They appeared to deprive coastal States not only of their right to protect their environment from the activities of foreign vessels in their territorial sea, but also of their right to deny such vessels entry to their ports on environmental or other grounds. That did not appear consistent with "modernization" of the concept of innocent passage, which Canada had advocated in the sea-bed Committee, and he hoped that the Conference would agree on a less restrictive approach.

23. Another drawback to the exclusively international approach was that there existed no universal law-making body whose decisions would be automatically and necessarily binding on States. The United States draft treaty articles sought to give the Inter-Governmental Maritime Consultative Organization the status of a universal lawmaker on ship-generated pollution, but that did not appear consistent with the fundamental legal principle that States could not be bound by any rule without their consent. IMCO did not have the super-agency status envisaged by the United States. A further difficulty was that it was impossible to foresee all the problems that rapidly developing technology might create, and it was extremely difficult for international standards to be developed quickly enough to respond to new situations.

24. An accommodation might be possible, however, perhaps along the lines of the encouraging statement by the Norwegian delegation at the 25th plenary meeting, which had suggested distinguishing coastal State rights in respect of discharges, dumping and traffic separation from rights in respect of ship construction, design equipment and manning. The latter rights had given rise to the greatest concern on the part of some States, and that concern, if valid, related to such rights whether they were exercised only in ports or in the territorial sea or adjacent areas. The solution to the problem lay not so much in restricting the exercise of coastal-State rights to particular areas of jurisdiction as in restricting their exercise to cases where they were strictly necessary, and ensuring that they were applied under appropriate safeguards on a non-discriminatory basis, in response to particular geographic, navigational or ecological situations not adequately covered by international rules and standards. That was the functional approach followed in Canada's draft articles (A/AC.138/SC.III/L.28), particularly its article IV. Ice-covered waters were an obvious example of the need for special measures, and other possible examples might include enclosed or semi-enclosed seas, congested traffic situations, and shallow or narrow channels. Thus, the question of measures for the prevention of marine pollution was intimately linked to the question of passage through straits. The right of passage must be assured, but must be subject not only to international regulation but also to the right of the coastal State to protect itself. Management principles were particularly needed in that area.

[2] *Ibid.*, chap. I.

25. A third major area of difficulty related to the enforcement of rules and standards for the prevention of ship-generated pollution. The 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter and the 1973 International Convention for the Prevention of Pollution from Ships pointed the way to an accommodation by requiring the application of rules and standards not only by flag States but also by coastal States, thus breaking away from the traditional doctrine of exclusive flag-State jurisdiction. The same approach had been adopted in a number of proposals at the present Conference, including those of his own delegation, France and Japan. Those proposals would extend shared enforcement jurisdiction to areas beyond the territorial sea, although some countries still took the position that it should be restricted to territorial waters, or even not permitted at all. Both the Conventions he had referred to called upon the present Conference to settle the issue of the limits of enforcement jurisdiction. His delegation believed that if a State had the right to make national rules and standards it must have the right to enforce them on the same basis as international regulations.

26. The concept of port enforcement, whereby States would be entitled to enforce the provisions of international conventions against foreign vessels found in their ports irrespective of the area where the violation had occurred, had first been broached by Canada in the sea-bed Committee in 1971. Although it was not incorporated in Canada's draft treaty articles, his delegation hoped that the concept would be dealt with and accepted at the Conference.

27. A final major area of difficulty related to the basic zonal approach to the adoption and enforcement of measures for the prevention of marine pollution, an approach reflected in proposals such as Canada's draft treaty articles, and the working paper submitted to the sea-bed Committee in 1973 (A/AC. 138/SC.III/L.56). The zonal approach appeared to be a cause for concern on the part of some States, but the concepts of the economic zone, or patrimonial sea, and of the common heritage of mankind, which had been overwhelmingly endorsed by speakers in plenary meetings, represented the best opportunity for resolving the problem of preservation of the marine environment through the zonal approach. What had to be emphasized was that the economic zone was not simply a contiguous resource zone, as appeared to be the view of some delegations, but involved the functional interrelationship between resource jurisdiction and the prevention of pollution. It applied an integrated management system to resource exploitation and environmental preservation in a broad area. Canada attached the greatest importance to meeting the concerns of some States regarding the zonal approach to the prevention of ship-generated pollution, and was gratified that a number of other delegations shared its view. That could be done by limiting jurisdiction to what was strictly necessary to meet real, concrete needs, and by striking the proper balance between the rights of flag and coastal States, between national, regional and international standards and between States' rights and obligations. Such a balance could be struck by building on the functional approach to jurisdictional questions inherent in the economic zone/patrimonial sea concept, coupling it with appropriate safeguards against unreasonable or arbitrary action by either flag or coastal States and appropriate procedures for compensation and settlement of disputes.

28. As the Canadian Prime Minister had stated, the principle of clean seas was as vital a principle for the world of today and tomorrow as the principle of free seas had been for the world of yesterday. Canada, one of the pioneers in the development of responses to environmental problems, hoped to be able to continue its contributions at the Conference.

29. Mr. MANNER (Finland) said he wished to describe in detail the 1974 Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area (see A/CONF. 62/C.3/L.1) as an example of a regional agreement with a wide scope which to some extent indicated what kinds of general provisions were needed to protect the world oceans as a whole.

30. The Baltic Sea was one of the heaviest loaded sea areas of comparable size. Its ecological balance was extremely sensitive to disturbances, owing to the low salinity of its water, its shallowness and its slow and irregular exchange of water. The relatively low nutrient content of its water, its climate and topography, together with the stressed condition of its organisms, made the Baltic responsive even to small changes in its natural state. The oxygen content of Baltic deep water was decreasing, and its food chains were being threatened by chemical substances with significant toxic effects. All the States surrounding the Baltic Sea area were highly urbanized and industrialized, with intensive agriculture and forestry. The population living within the catchment area of the Baltic amounted to 150 million. The Baltic was also a sea area of heavy international navigation. Those characteristics, and the inadequacy of existing regulations aimed at protecting the Baltic Sea, called for special regional provisions for protection of the marine environment of that sea area as a whole.

31. The preparatory work for the Helsinki Convention, as well as the Diplomatic Conference which adopted it, had proceeded entirely by consensus, with no votes taken at any time. Recognition of the fact that the signatory States were confronted with problems which derived from the special characteristics of the Baltic Sea and which were too broad for national authorities to solve, led to that unanimous regional approach. So far no State had ratified the Convention, because of the new and extensive national legislation which was required in all the Baltic Sea States in order to implement its provisions.

32. The Convention covered the Baltic Sea proper, including the Gulf of Bothnia, the Gulf of Finland and the entrance to the Baltic Sea. The border to the North Sea was the same as the border used in the 1973 International Convention for the Prevention of Pollution from Ships to define the Baltic Sea as a special area. The Convention did not cover internal waters of the contracting parties, but those parties had undertaken, without prejudice to their sovereign rights, to ensure that its purposes would be achieved in those waters, too. The Convention did not restrict the sovereign rights of the contracting parties to their territorial sea, but the parties had undertaken to implement the provisions of the Convention within their territorial sea through their national authorities.

33. The provisions of the Convention were without prejudice to the rights and obligations of the contracting parties under treaties concluded previously, as well as under treaties which might be concluded in the future, to further and develop the general principles of the law of the sea upon which the Convention was based. That was a direct reference to the Conference on the Law of the Sea and the conventions it might conclude.

34. The Convention contained a general obligation for the contracting parties to take all appropriate legislative, administrative or other relevant measures in order to prevent and abate pollution and to protect and enhance the marine environment of the Baltic Sea area. That basic rule was enforced by detailed provisions on different kinds and sources of pollution.

35. The provisions concerning prevention of land-based pollution divided the pollutants from those sources into hazardous and noxious substances. The parties had particularly undertaken to counteract the introduction into the Baltic Sea area—whether airborne, waterborne or otherwise—of such hazardous substances as DDT and its derivatives. They had also agreed not to introduce other noxious substances and materials, listed in annex II to the Convention, into the marine environment of the Baltic Sea area in significant quantities without a prior special permit by the appropriate national authority. The list enumerated mercury, cadmium and their

compounds for urgent consideration, as well as 15 other groups of noxious substances.

36. In annex III to the Convention, the parties also committed themselves to controlling and minimizing the detrimental effects of all kinds of harmful substances likely to cause pollution, sewage treatment, industrial wastes and discharge of cooling water from nuclear power plants. Municipal sewage was to be treated in an appropriate way so that the amount of organic matter did not cause injurious changes in the oxygen content of the Baltic Sea area, and the amount of nutrients did not cause harmful eutrophication. The hygienic quality, and in particular epidemiological and toxicological safety, of the receiving sea area was to be maintained at a level which did not cause harm to human health. The polluting load of industrial wastes and harmful effects of cooling water was to be minimized. Those provisions were of a general recommendatory nature, and it would be the task of the Baltic Marine Environment Protection Commission to give a more exact content to their application.

37. Airborne pollution was dealt with in article 6 of the Convention as a part of land-based pollution. The contracting parties agreed to endeavour to use the best practicable means to minimize airborne pollution of the Baltic Sea area caused particularly by certain enumerated noxious substances.

38. The Convention also contained provisions, in article 7, concerning the prevention of pollution from ships. In order to protect the Baltic Sea area from pollution by deliberate, negligent or accidental release of oil and other harmful substances or by the discharge of sewage and garbage from ships, the parties agreed to take measures which were set out in detail in annex IV. The annex followed almost word for word the provisions of those parts of the IMCO International Convention for the Prevention of Pollution from Ships dealing with the Baltic Sea as a special area. However, the provisions were intended to become applicable to the seven signatory States earlier than to the signatories of the IMCO Convention, and some provisions which in the IMCO Convention were optional had been made binding in the Helsinki Convention.

39. He wished to draw attention to a resolution approved by the Diplomatic Conference in Helsinki, and appearing in annex III to the Convention which requested the seven participating States to prevail upon other States and ships flying the flag of other States to act in accordance with the provisions of the Helsinki Convention. The Helsinki Conference further had invited IMCO to adopt a recommendation on the application by States other than the contracting parties of the Helsinki Convention of special rules for ships operating in the Baltic Sea area.

40. The Helsinki Convention contained a provision in article 8, which had no counterpart in other international conventions, requiring the contracting parties to take special measures, including the development of adequate reception facilities for wastes, to abate harmful effects of pleasure craft activities on the marine environment of the Baltic Sea area.

41. The Convention went further than any existing convention in prohibiting dumping in the Baltic Sea area. There were, however, two exceptions. According to article 9, dumping of dredged spoils was allowed subject to a prior special permit by the appropriate national authority, and dumping was allowed when human life, or a vessel or aircraft, was in danger sufficient to outweigh the consequent damage.

42. In article 10 of the Convention, each party agreed to take all appropriate measures to prevent pollution of the marine environment of the Baltic Sea area resulting from exploration or exploitation of its part of the sea-bed and its subsoil, and agreed to ensure the availability of adequate pollution abatement equipment.

43. The Convention contained special provisions, in article 11, concerning co-operation in combating marine pollution by oil or other harmful substances. Those provisions dealt with co-operation between the respective authorities of the signatory States, and contained obligations for masters of ships and pilots of aircraft.

44. For the implementation of the new rules and provisions, the creation by the Convention of the Baltic Marine Environment Protection Commission was of fundamental importance. The office of the Commission, called the "Secretariat," would be in Helsinki. The Commission would promote, in close co-operation with appropriate governmental bodies, additional measures to protect the marine environment of the Baltic Sea area, and for that purpose it would receive, summarize and disseminate from available sources relevant scientific, technological and statistical information, and promote scientific and technological research. If the Convention was to be viable, the Commission would have to play an active role in finding ways to further the aims of the Convention. Thus its duties included keeping implementation of the Convention under continuous observation, and recommending amendments to the contracting parties. The Commission was a joint organ for the contracting States, and not a supranational body. It could not take decisions which would create obligations for the contracting parties against their will. Thus, its powers did not encroach upon the sovereignty of the signatory States.

45. In a very significant provision of the Convention, in article 16, the contracting parties had undertaken, directly or through competent regional or other international organizations, to co-operate in the fields of science, technology and other research, and to exchange data as well as other scientific information for the purposes of the Convention.

46. The Diplomatic Conference had not been able to agree on rules of responsibility for damage caused by pollution. The Convention therefore contained only a general undertaking by the contracting parties jointly to develop and accept rules concerning responsibility for damage resulting from acts or omissions in contravention of the Convention. Such rules should, in his delegation's view, be general in nature and should not be created separately for every region; their proper place therefore was in a new law of the sea convention.

47. The Helsinki Convention further contained provisions, in article 18, concerning the peaceful settlement of disputes. They included the possibility of using *ad hoc* arbitration tribunals, permanent arbitration tribunals or the International Court of Justice if the parties so agreed.

48. According to article 25, reservations could not be made to the Convention, in keeping with its binding nature. A contracting party could, however, suspend the application of an annex to the Convention for a period not exceeding one year.

49. As set out in article 26, the Convention was open for accession to States other than its original signatories, on condition that they were interested in fulfilling its aims and purposes and that each such State was invited by all the contracting parties.

50. To cover the period of time between the signing of the Convention and its coming into force, the Diplomatic Conference had established an Interim Commission, which would prepare the later activities of the Baltic Marine Environment Protection Commission. It would hold its first session in Helsinki in the autumn of 1974.

51. Pollution and other forms of deterioration in the Baltic Sea had been going on for a long time and could not be stopped overnight, but it was significant that all the Baltic States had joined together to effect the necessary changes. His Government was convinced that the Convention would effectively improve the abilities of all States concerned to combat marine pollution and to establish a firm foundation for the protection of the marine environment of the Baltic Sea. It was obvious that the solutions agreed upon for the Baltic could not as such be applied to other sea areas. His delegation hoped, however,

that the Convention would encourage efforts currently being undertaken to protect the environment of other sea areas, and would help the Conference on the Law of the Sea conclude a global framework for the protection of the marine environment as a whole.

52. Mr. KOVALEV (Union of Soviet Socialist Republics) said that his country attached the greatest importance to the elaboration of effective anti-pollution measures, which should and could be achieved without hampering freedom of navigation. Drawing attention to the statement by his delegation during the general debate at the 22nd plenary meeting, he considered that it should be possible, provided a mutual understanding was reached on the other complex questions on the agenda of the Third Committee, to secure for coastal States certain rights to protect the resources within a 200-mile wide economic zone from any damages arising from pollution.

53. Serious harm could be caused to both living and non-living marine resources by the dumping of wastes and other harmful materials in the sea. Coastal States should accordingly have the power to regulate dumping of wastes within a zone the width of which would be stipulated in the future convention. Dumping could be regarded as a particular kind of land-based pollution carried out to sea by ships. The issuance of licences for the dumping of wastes in coastal areas, or the refusal to grant such licences, should be the prerogative of coastal States, which should take into account international rules, particularly those laid down in the 1972 London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter. The coastal State should also ensure that permissible dumping did not harm shipping or neighbouring States.

54. Another source of danger to fisheries and other resources was that arising from collisions between tankers, or ships carrying other harmful substances, or from sea-bed mining operations. Coastal States should have the right beyond their own territorial waters to take protective measures against grave dangers of that kind. The measures adopted should be commensurate with the actual or potential damage.

55. The 1969 International Convention on Civil Liability for Oil Pollution Damage and the 1973 Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil represented a balanced and correct approach to pollution hazards arising from accidents at sea. However, those instruments did not cover pollution arising from sea-bed mining operations, particularly oil drilling.

56. A future convention should therefore embrace the fundamental provisions of the 1969 Convention and the 1973 Protocol, but should be extended to cases of accidents arising from sea-bed mining operations.

57. A major problem connected with anti-pollution measures arose in connexion with the need to safeguard freedom of navigation. His delegation felt that the problem could be solved only by the adoption of international anti-pollution measures and measures to ensure their observance, particularly by flag States. The introduction of separate national measures even with regard to territorial waters would undoubtedly give rise to difficulties for navigation.

58. The problem of controlling pollution from ships could be solved on the basis of the provisions of the 1973 International Convention for the Prevention of Pollution from Ships embodying measures to prevent pollution from oil and other harmful substances transported or discharged by ships. That Convention in practice applied to all the oceans of the world. Its five technical annexes contained detailed rules and recommendations concerning the construction and special requirements of vessels with regard to pollution control.

59. The Convention also laid down, in its article 6, that a foreign cargo vessel, while in the port of a foreign State, might be subject to inspection for the purpose of ascertaining whether it had discharged any substances in contravention of the relevant rules.

60. His delegation took the view that the 1973 Convention contained adequate provisions for the prevention of pollution from ships. If they were strictly observed, there would be no need for additional measures to be adopted on a national basis; moreover, they should be incorporated in a future convention in such a way as to form the basis for future work by IMCO and by specialized conferences for the formulation of specific technical rules and recommendations for the prevention of pollution from ships. In particular, it was essential to stipulate in a future convention that a coastal State had the right to take, within the limits of its internal and its territorial waters—of 12 miles in width—the necessary measures to ensure that ships observed the internationally agreed rules prohibiting or restricting the discharge of harmful substances. In the case of infringement of those rules by foreign vessels, the coastal State should have the right to inform the flag State, or to take appropriate legal or administrative action in accordance with its own legislation. The captain or other officers of the ship should be liable to fines on a non-discriminatory basis. Punishment in the form of deprivation of liberty should be imposed only by the flag State, which would be responsible for informing the coastal State of the measures taken.

61. A future convention should, of course, also lay down more general obligations for all States to ensure the cleanliness of the seas and oceans of the world. In particular, States should have the obligation to ensure that ships flying their flags refrained from causing marine pollution, and to co-operate with other States and competent international organizations in elaborating and applying more progressive standards.

62. His delegation, together with that of the German Democratic Republic, was currently seeking to formulate some of the provisions to which he had already referred and which would constitute additional draft articles for combating marine pollution.

63. Mr. WARIOBA (United Republic of Tanzania) said that every State had the obligation to take marine pollution control measures and to co-operate to that end both at the national and at the international level. Two issues arose in that connexion.

64. The first issue concerned the adoption of regulations. It was necessary to harmonize both national and international regulations in order to deal with pollution effectively. While international regulations were necessary their adoption was a slow process, and they represented only a basic minimum. They must therefore be supplemented by national regulations, especially in areas adjacent to the coast. In the case of the territorial sea, regulations against vessel-source pollution must be related to land-based sources. In the economic zone, they must be related to pollution sources arising from resource exploitation; while both coastal States and flag States had a responsibility in that field, their respective jurisdictions must be harmonized. As to freedom of navigation, he said that it was not the intention of coastal States to impede navigation. Many of them were dependent upon shipping for their international trade. The elaboration of international regulations must not be a monopoly of one forum: special cases, which might be of a subregional or regional nature, should be dealt with in special international forums, whether already in existence or still to be established.

65. Turning to the second issue, that of enforcement, he said it must be acknowledged that the current methods of enforcement had serious shortcomings. Despite a multiplicity of regulations, the oceans continued to be polluted. For the purposes of enforcement, there must be a division of competence between the flag States and the coastal States. Coastal States must be empowered to take enforcement measures in areas within their national jurisdiction, since many flag States lacked sufficient concern to ensure that anti-pollution measures were

implemented. The provision of compensation in respect of liability for damage was no consolation; in fact, it was detrimental: in view of the difficulty and frequent delay in attributing liability, action for compensation was in most cases never initiated. Hence, preventive measures were better than compensation. In areas under national jurisdiction, the coastal State should have enforcement powers in respect of both international and national regulations. In the case of the high seas, enforcement must also be tightened. The International Sea-Bed Authority, if and when established, should be given enforcement powers and, in the absence of international machinery, the powers must be effectively shared among all States.

66. In conclusion, he emphasized the need to limit freedom of navigation to the extent required in order to combat pollution.

67. Miss AGUTA (Nigeria) said that her delegation attached great importance to the need for adequate provisions for pollution control, which must be a joint product of action by coastal States and by international machinery. Any future convention on the law of the sea should embody provisions on pollution control and on compensation for damage caused by pollution.

68. Over the past few years, considerable strides had been made at the intergovernmental level, particularly by IMCO, and a number of anti-pollution conventions had already been concluded. She also wished to commend to the Committee the outcome of the United Nations Conference on the Human Environment held at Stockholm in 1972. Such developments could furnish guidelines for the elaboration of a future convention. Concise legal principles on the rights and responsibilities of States, including coastal, flag and port States, should be evolved in such a way that the autonomy of the IMCO Conventions was not prejudiced. Her delegation pledged its co-operation in the elaboration of the appropriate legal principles.

69. Mr. APPLETON (Trinidad and Tobago) said that the comprehensive statement by the Executive Director of the United Nations Environment Programme at the 31st plenary meeting provided a good basis for the Committee's discussions.

70. Trinidad and Tobago was a very small oil-producing island State with a tremendous amount of oil tanker activity in and around its coastal waters, involving importation and exportation of crude oil entirely by non-nationals and foreign flag vessels.

71. Extensive offshore exploration and exploitation activity was taking place on the continental shelf of Trinidad and Tobago, whose coastal waters were therefore extremely sensitive to the risk of oil pollution through deliberate dumping by ships, and possible tanker accidents and offshore oil-well explosions. Its land/marine pollution ratio was therefore probably just the opposite to that of many developed countries, which had reported in 1973 the incidence of 80 per cent land-based and 20 per cent marine-based pollution in those countries. Moreover, despoliation of beaches was a constant threat to the tourist industry of Trinidad and Tobago, which was thus both a potential polluter of the marine environment and a victim of its consequences.

72. The Government of Trinidad and Tobago was therefore seriously concerned with the problems of its marine environment and above all with the question of liability and responsibility for pollution damage, most of which was caused by non-nationals.

73. Motivated by that concern, his delegation had submitted to the 1973 Geneva session of the sea-bed Committee two draft treaty articles (A AC.138/SC.III/L.54) which sought to insure against marine pollution damage and to place liability for pollution damage on the entity or agent responsible for such damage, as opposed to placing it on the coastal State concerned. Those articles read as follows:

Article I:

"Coastal States shall reserve the right to require minimal levels of insurance against pollution damage for all commercial vessels operating within their territorial waters and within a broad area adjacent to their coastline."

Article II:

"Liability for any pollution damage within or beyond national jurisdiction arising from activities within the national jurisdiction of coastal States shall be borne by the entity responsible for such damage. In the case of vessel-source pollution, liability shall rest directly with the polluting agent or entity. With respect to damage arising from exploration and exploitation activities from the sea-bed, liability shall rest with the offshore operator concerned."

74. His delegation's draft article II was in contra-distinction to principle (*e*) (i) and (ii) of the working paper submitted by Australia (A/AC.138/SC.III/L.27). It was also contrary to article VII, paragraphs 1 and 2 of the draft articles submitted by Canada (A/AC.138/SC.III/L.28) and to the statement made by the Executive Director of UNEP at a plenary meeting the previous week. Those draft articles and the statement sought to make the coastal State liable for pollution damage caused by parties operating within the jurisdiction of the coastal State. His delegation felt that the principle of liability should be objectively stated, with primary responsibility for damage to the environment resting on the party responsible, whether it was a State or a public or private entity. The State would in any case have a residual responsibility to ensure that adequate reparation was made for any damage caused.

75. With respect to the question of regional vis-á-vis international standards for pollution prevention and control, his delegation supported the views of many developing countries that too high regional standards would increase the already high cost of their industrial development. It wished, however, to make a clear distinction between land-based and marine-based sources of pollution in relation to standards.

76. His delegation agreed that the highest international standards should be maintained for oil tankers, ships and offshore oil operators, and major sources of marine-based pollution, whether they operated in a developing country or not. Affluent multinational corporations were mainly involved, and they could well afford the highest international standards for marine pollution prevention and control. On the other hand, smaller land-based industries in developing countries were usually less of a threat to the marine environment and could, moreover, less afford the extra cost of too high international standards of pollution prevention and control. However, even in that category there was the possibility of extremely sophisticated and indeed extremely noxious industries being established. Such industries in developing countries ought to be subject to the highest international standards for pollution prevention and control.

77. The peculiarities of the industry concerned must also be taken into account. Naturally the oil industry and industries producing noxious chemical substances were to be subject to the highest international standards for pollution and prevention, whether they were established in a developing country or not. The fact that such industries might happen to be in a developing country was irrelevant. His delegation therefore wished to suggest the following draft articles III and IV:

"*Article III*

States shall establish individually, or through the appropriate regional and international organizations, minimum international standards for the prevention and control of marine pollution arising from the exploration and exploitation of the continental shelf and from vessels operating within national jurisdiction."

"*Article IV*

States shall individually establish national standards for the prevention and control of land-based sources of pollution, but they shall take all necessary action to ensure that those industries which by reason of their very nature pose

potential threats to the environment shall always conform to the highest international standards."

78. His delegation hoped to submit formal proposals along the lines suggested for the Committee's consideration, and reserved the right to intervene again on that issue.

79. Mr. SIMMS (United Kingdom) thanked the Finnish representative for his clear and comprehensive explanation of the Helsinki Convention, the signatories to which had demonstrated that a comprehensive approach to marine pollution could be based on existing international law.

80. He had been slightly puzzled by the Canadian representative's reference to the draft articles on the territorial sea and straits tabled by the United Kingdom delegation in the Second Committee, since those draft articles had no bearing on the question whether a State might impose, as a condition of entry to its internal waters, requirements going beyond those internationally agreed. His delegation proposed to deal with that matter in the Second Committee.

81. The consensus of both the New York and Geneva sessions of the sea-bed Committee had favoured the idea of an "umbrella" approach to marine pollution, and his delegation hoped that that consensus would be maintained. His delegation anticipated that the articles on marine pollution laying down general principles for its prevention and control would eventually form one chapter of the comprehensive convention on the law of the sea. The Committee must therefore resolve the rights, obligations and competences of flag and coastal States to make regulations, the areas in which they might exercise their jurisdiction, and what powers of enforcement they might use in those areas. Detailed technical regulations would not, however, come within the "umbrella" convention, but would be left to conventions on special subjects, examples of which were the 1973 International Convention for the Prevention of Pollution from Ships, the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, signed in London in 1972, the Convention for the Prevention of Marine Pollution from Land-based Sources, signed in Paris in 1974, the Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft, signed at Oslo in 1972, and the comprehensive Convention on the Protection of the Marine Environment of the Baltic Sea Area, signed at Helsinki in 1974.

82. The United Kingdom had a very extensive coastline and was much exposed to pollution from what was probably the world's busiest shipping lane, the English Channel and the Dover Straits. It therefore needed to be able to protect its shores and waters against marine pollution, like any other coastal State. Indeed, it had been one of the victims of the largest ship-pollution incident ever known. However, preservation of the right of innocent passage was vital to the United Kingdom, with its dependence on long-distance trade. It was essential and quite possible for the new convention to balance the need to prevent and control pollution with the need to preserve freedom of navigation. The Committee must ensure that the steps it took or the measures it invited States to take should be clearly designed to that effect.

83. As far as the convention and the draft articles were concerned, the United Kingdom welcomed the general and particular obligations in existing drafts to preserve the marine environment from the principle sources of pollution (land-based, dumping, vessel-source pollution and exploitation of the sea-bed), to avoid damage to the interests of other States and interference with the legitimate uses of the marine environment. Other articles contained important commitments on abatement and elimination of pollution, the promotion of scientific research into marine pollution and its dissemination, and monitoring of the marine environment. The United Kingdom also supported the comprehensive article on the provision of technical assistance with its valuable section on contingency planning for major incidents, and welcomed the proposals for the establishment of regional conventions.

84. His delegation would like to have a very firm compulsory dispute settlement procedure, for new laws would require careful interpretation. It thought that the discussion on the article on competences to make regulations should deal separately with the four principal sources of pollution of the marine environment, and that each should be considered in terms of international and national competence. The same was true of the discussion of areas, since different areas might be defined by the convention where States' powers differed, the obvious ones being the territorial sea and the sea-bed beyond national jurisdiction.

85. Moreover, his delegation would like the Committee to examine the enforcement question for each source of pollution separately, since the enforcement powers of the flag State over vessel-source pollution and the desirable balance between the flag, coastal and port States was clearly different from the normally absolute enforcement powers of a coastal State over its own land-based sources of pollution. Three of those sources (sea-bed exploration and exploitation, land-based sources and dumping) should present no difficulties for the Committee. Moreover, if coastal States exercised their duties and obligations over those three sources, through national, regional or international regulations or conventions, they would affect few interests other than their own. That would be the most effective method of preserving the marine environment.

86. The reverse, however, was true of vessel pollution, where the interests of all nations were involved and an international approach was best because consistency was needed. As the potential danger of vessel-source pollution had been recognized, the willingness of the flag States to make stricter regulations to control such pollution had increased, culminating in the 1973 International Convention, which went a long way towards eliminating deliberate vessel-source pollution. The combination of firm flag State obligation allied with the arrangements in the 1973 Convention for inspection in port should enable violations to be discovered and punished without creating additional hazards by interventions outside the territorial sea that could not be justified under the International Convention or an extension of it.

87. The United Kingdom was pleased that the 1973 Convention embodied the idea of especially vulnerable areas and measures, to be decided internationally. Any further special areas and measures should also be decided internationally. National discharge regulations more stringent than those currently required under the 1973 Convention would in practice have much the same effect as special construction requirements, since a ship had to be built and equipped to meet such requirements.

88. He hoped that the Committee would deal with the less controversial items on its agenda upon which he believed good progress could be made, and thus have time to deal with those matters now before considering those questions in the First and Second Committees which related to its own work.

The meeting rose at 6 p.m.