STATEMENT ON A QUOTA-SYSTEM AND ANTI-MONOPOLY PROVISION

The Delegation of the USSR considers an anti-monopoly provision as one of the principal elements not only of the system of the exploration and exploitation of the resources of the Area, but also of the whole regime of the seabed beyond the limits of the continental shelf. That is why we think it is important that prevention of monopolization of the exploration and exploitation of the resources of the Area should be embodied as one of the main principles of the general policy concerning activities in the Area as it has been done in Article 150.

In addition to embodying this principle in Article 150 it is necessary, in our opinion, to develop an anti-monopoly clause in Annex II for the purpose of determining main directions according to which measures should be taken for preventing monopolization. Our Delegation feels that the task of the anti-monopoly provision lies in preventing monopolization of activities in the Area by one or several States or their companies. The anti-monopoly provision should also ensure conservation of the resources for their future utilization by those States which for one reason or another will not participate in activities in the Area during the initial period of their performance after the entry of the Convention into force.

Now allow me to express the opinion of our Delegation as to how the anti-monopoly provision might look like in paragraph 5 (1), Annex II, which is now under our consideration.

First of all it is expedient that a provision should be included in the preamble of this paragraph to the effect that when granting contracts the Authority shall take into account the need to provide for all States Parties, irrespective of their social and economic system or geographical location, equal opportunities to participate in the development of the resources of the Area and the need to prevent monopolization of such activities. When discussing paragraph 5 (g) we proposed to include a similar provision in it with understanding that such a provision could be added also to paragraph 5 (1). Since many delegations of the developing countries opposed any changes in paragraph 5 (g) as a whole, we consider it expedient that the provision under discussion should be included as an introductory part of paragraph 5 (1).

How can the above objectives be achieved? For this purpose, the anti-monopoly provision could in our opinion consist of the following three elements:

1. Limitation of a total number of contracts which may be granted to one State Party and its state enterprises and private companies;

2. Preference, when applications are submitted within the same time period, to those applicants which have not yet obtained any contract as compared to those which already hold or had obtained earlier a certain number of contracts;

3. Limitation of the number of contracts, that may be granted, to one State Party in a certain portion of the Area, in order to prevent concentration of sites with the highest prospects as to rich mineral deposits in the hands of that State Party or its entities.
Now let me dwell upon these elements in detail.

1. The first element, namely, limitation of the total number of contracts granted to one State Party and its enterprises and companies aims not only at preventing monopolization of activities in the Area. Its purpose also is to provide for all States Parties, irrespective of their social and economic system or geographical location, opportunities to participate in the development of the resources of the Area. It aims at conservation of the resources for their future utilization by those who for one reason or another will not be able to participate in such activities in initial stages.

How such a limitation could be realized? In our view, such a limitation could be established as a certain percentage of the total size of the part of the Area, which will not be reserved for the Enterprise or developing countries pursuant to paragraph 5 (a), Annex II, and not withdrawn by the Technical Commission from eligibility for exploration and exploitation pursuant to paragraph 2 (xi) of Article 163. When considering an application for a contract an appropriate Commission of the Authority shall determine whether the conclusion of such contract would allow a State Party to hold contracts for the exploration and exploitation of mine sites which in aggregate size constitute or exceed a certain percentage. We are not touching upon a concrete figure of such percentage but we think we should lay down main principles.

If the Commission of the Authority determines that the aggregate size of the sites of such State will exceed to above limit when granting a new contract to it, the Council denies the application and does not award a site for exploration and exploitation to such State. Granting of an additional site to such State or its enterprises and companies will be possible only when the Council finds that such granting will not result in the monopolization of the exploration and exploitation of the resources of the Area or in precluding other States Parties from activities in the Area.

2. The second element aims at preventing monopolization of activities in the Area by any State during a certain period of time even if such State and its enterprises and companies have not exhausted the limit mentioned in paragraph 1 above. For this purpose, subject to the anti-monopoly provision concerning a total limit, referred to above, when considering the applications submitted within the same time period pursuant to paragraph 5 (g) Annex II, the Authority shall give preference to the State Party which has not yet obtained any contract as compared to the State Party which has already obtained a certain number of contracts. We do not mention that number at present but it should be determined in paragraph 5 (g).

3. The third element is also important. It aims at preventing monopolization by any State Party or its enterprises and companies in the parts of the Area, which are most promising for mineral resources. We should contemplate such a provision which would not allow any one State Party and its enterprises and companies to obtain contracts for the exploration and exploitation of the resources in mine sites concentrated in any one area of high mineral potential. It is difficult to find some ideal mechanism which would be simple and which at the same time would meet the above purpose. At present no data on the prospects of all the parts of the Area regarding minerals and, in particular, manganese nodules, are available. There also arises a problem with respect to the sizes of those parts of the Area within which the number of the contract
granted to one State Party or its enterprises and companies should be limited.

How would a mechanism of such limitation look like? When considering the applications received within the same time period pursuant to paragraph 5 (g), Annex II, the Authority shall determine with regard to each such application whether it is submitted by a State Party which has already been granted ... contracts for exploration and exploitation of sites not reserved pursuant to subparagraph 5 (j), Annex II, within a circular area of ... square kilometers, which is centered upon a point selected by the applicant within the requested additional site. If one of the applications is from such a State Party, the Authority shall give preference to an application among them submitted by a State Party which has not yet been granted ... contracts within the part of the Area under consideration.

4. An important problem, which should not be omitted in the anti-monopoly provision, is that of multinational corporations comprising enterprises and companies of different States. When a contract is granted to such corporations or consortia it should be counted on pro rata basis as the contract of those States Parties which sponsor the applications of such corporations or consortia.

It should be spelled out at the end of the anti-monopoly provision that for the purpose of this provision any reference to a State Party shall include not only the State itself but also all its State enterprises and private companies which may obtain a contract from the Authority under the sponsorship of this State Party.

Such are our views regarding the provisions to be included in paragraph 5 (i). At the given stage we could have these provisions included in the text without reference to concrete figures, on the assumption that such anti-monopoly formula could be finally elaborated after the discussion of its principles is completed.