

**SUBMISSION OF WRITTEN COMMENTS ON THE ISSUES RAISED IN THE CO-FACILIATORS'  
NOTE OF THE INFORMAL INTERSESSIONAL DIALOGUE**

**Name(s) of Delegation(s) making the comments:** The Republic of Korea

**(1) What is the meaning of the phrase 'consider and provisionally approve' in subparagraph (c)? Can the Council disapprove a plan of work after having considered it? Can the consideration of a pending application be postponed until certain conditions are met? Does the use of the word 'elaboration' in subparagraph (c) carry any legal significance?**

- Subparagraph (c) might have been elaborated and adopted with intention of precluding unreasonable impediment of development of the seabed through disapproving the plan of works for exploitation submitted by qualified applicants, simply because the Regulations have not been adopted. It is however difficult to interpret this paragraph as those plans cannot be refused even in specified circumstances for instance when substantial evidence indicates the risk of serious harm to the marine environment from activities therein.
- It seems that 'elaboration' in the subparagraph has been included to indicate that the duty given to the Council is an obligation of conduct rather than the obligation of result so that, in accordance with this subparagraph, the Council is obliged to do all the best to complete the rules, regulations and procedures relating to exploitation in two years, and it is not necessary to result in the adoption of those if all efforts have been taken.

**(2) What is the procedure and what are the criteria to be applied in the consideration and provisional approval of a pending application under subparagraph (c), in the light of, amongst others, article 145 of UNCLOS? In this regard, what roles do the Council and the Legal and Technical Commission (LTC) respectively play?**

- There is currently no such procedure and criteria for consideration and (provisional) approval of the plan of work for exploitation besides the draft Regulations on Exploitation of Mineral Resources in the Area. It does not seem to be in contravention of the Convention though, if the Council adopts a decision that, "if a plan of work for exploitation is submitted before adoption of the Regulations on exploitation and if the required content of the application for approval of a plan of work for exploitation in the draft is satisfied, the LTC shall consider the plan of work based on the draft Regulations available at that time and, if appropriate, recommends provisional approval of the plan of work to the Council." Then the Council shall decide whether or not the plan of work shall be provisionally approved, *mutatis mutandis*, in accordance with section 3, paragraph 11(a) of Annex to the Agreement.

**(3) What are the consequences of the Council provisionally approving a plan of work under subparagraph (c)? Does provisional approval of a plan of work equate to the conclusion of an exploitation contract?**

- In case of exploitation, unlike exploration, doctrinal constructions as to the content and legal regime of the contracts have yet to be specified. Thus, until the adoption of the Regulations on exploitation by the Council, conclusion of the contract between the applicants and the Secretary-General seems not feasible. Contracts for exploration have never been concluded before relevant regulations have been adopted by the Council as well.
- Even so, upon the provisional approval of the plan of work for exploitation, the exclusive right to explore and exploit the area covered by the plan of work shall be provisionally guaranteed.