



## REPUBLIC OF NAURU

### **Opinion paper on the regulatory steps and decision-making for a Plan of Work submitted to the Authority pursuant to Section 1, Paragraph 15 of the Annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea**

#### **Purpose**

1. The purpose of this opinion paper is to provide, in the absence of the provisional adoption of the Regulations on exploitation of mineral resources in the Area (the **Regulations**), an overview of the regulatory and decision-making steps for the consideration and provisional approval of a plan of work for exploitation pursuant to the United Nations Convention on the Law of the Sea (the **Convention**) and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea (**1994 Agreement**).
2. This opinion paper also proposes a road map for the consideration of a plan of work under Paragraph 15 as Annexure I.

#### **Background**

3. Section 1, Paragraph 15 of the Annex to the 1994 Agreement (**Paragraph 15**) facilitates a process whereby "*a State whose national intends to apply for approval of a plan of work for exploitation*" may request the Council complete the adoption of all rules, regulations and procedures necessary to facilitate the approval of a plan of work for exploitation within two years of the request (the **Request**).
4. On 25 June 2021, the Republic of Nauru (**Nauru**) issued a Request to the Council notifying the Council of the intention of Nauru Ocean Resources Inc (**NORI**) to submit an application for approval of a plan of work for exploitation. The effective date of the Request is 9 July 2021, therefore the Regulations on exploitation of mineral resources in the Area (the **Regulations**) and any additional rules, regulations and procedures necessary to facilitate the approval of plans of work for exploitation i.e., the standards must be provisionally

adopted by the Council and the Guidelines finalised by the Legal and Technical Commission (the **Commission**) no later than 9 July 2023.<sup>1</sup>

5. The Authority, through its organs, and member States of the Convention are legally mandated by the Convention and the 1994 Agreement to “*to complete the adoption of such rules, regulations and procedures*” for exploitation by 9 July 2023.<sup>2</sup> Notwithstanding this legal obligation, we understand that the Council and its member States may fail to complete the adoption of the Regulations and any additional rules, regulations and procedures necessary to facilitate the approval of plans of work for exploitation by 9 July 2023.
6. If the Council and its member States fail to provisionally adopt the Regulations and any additional rules, regulations and procedures necessary to facilitate the approval of plans of work for exploitation, pursuant to Article 162(2)(o) of the Convention and a plan of work for exploitation is pending, the Council must still consider and provisionally approve a Plan of Work based on the following provisions of Paragraph 15(c):
  - (a) the provisions of the Convention; and
  - (b) any rules, regulations and procedures the Council may have adopted provisionally; or
  - (c) on the basis of norms contained in the Convention; and
  - (d) the terms and principles contained in the Annex to the 1994 Agreement and the principle of non-discrimination among contractors(we collectively refer to the above as the **Treaty Provisions**).
7. In the event that the Council and its member States fail to complete the adoption of the Regulations and any additional rules, regulations and procedures necessary to facilitate the approval of plans of work for exploitation by 9 July 2023, we provide this paper to assist the Authority and its member States understand the decision-making process for the consideration of a plan of work for exploitation pursuant to Paragraph 15(c).
8. This opinion paper explains:
  - (a) the obligatory language requiring the Council to consider and approve a plan of work in the absence of the adoption of the Regulations;
  - (b) the decision-making framework under the Convention and the 1994 Agreement that requires the Commission to firstly consider a plan of work and make a

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<sup>1</sup> Secretary-General’s report ‘*Status of the draft regulations on exploitation of mineral resources in the Area and a proposed roadmap for 2022 and 2023*’ dated 23 August 2021 (ISBA/26/C/44), para. 13.

<sup>2</sup> See: Paragraph 15(b), 1994 Agreement.

recommendation to the Council for approval of a plan of work under Paragraph 15;

- (c) the Treaty Provisions that the Commission must take into account when assessing a plan of work pursuant to Paragraph 15(c); and
- (d) the relevance of any draft exploitation regulations, standards and guidelines previously endorsed by the Commission (the **Commission's Draft Regulatory Framework**).

**In the absence of the provisional adoption of the Regulations the Council must still consider and approve a plan of work**

9. Paragraph 15 requires that if the Council has not completed the elaboration and adoption of the Regulations by 9 July 2023, the Council “*shall none the less consider and provisionally approve*” a plan of work.
10. Based on accepted and ordinary principles of treaty interpretation, Paragraph 15 clearly imports a mandatory obligation on the Council to consider and approve a plan of work for exploitation in the absence of the elaboration and adoption of the Regulations.
11. Any interpretation of the Convention and the 1994 Agreement requires the application of the relevant rules of treaty interpretation contained in articles 31 to 33 of the 1969 Vienna Convention on the Law of Treaties (**Vienna Convention**).<sup>3</sup> The Vienna Convention is widely accepted as customary international law and requires an interpretation that: (i) is based on good faith; (ii) accords with the ordinary meaning of the treaty's terms; (iii) accords with context of the treaty's terms; and (iv) is made in light of the object and purpose of the treaty. The well-accepted and overarching approach in applying these four criteria is that the interpretation must above all be based on the text of the treaty.<sup>4</sup>
12. The text of Paragraph 15, Paragraph 15(b) and Paragraph 15(c) adopts the word “*shall*”. The ordinary meaning of “*shall*” is that it is a modal verb that is “*used to say that something certainly will or must happen*”.<sup>5</sup> Therefore the ordinary meaning of the word ‘shall’ confirms that it conveys a mandatory obligation on the Council to consider and provisionally approve a plan of work for exploitation in the absence of the adoption of the Regulations.

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<sup>3</sup> The Seabed Disputes Chamber has confirmed that the rules of the Vienna Convention apply to the interpretation of provisions of the UNCLOS and the 1994 Agreement: Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area, Seabed Disputes Chamber ITLOS, Case No 17, Advisory Opinion (1 February 2011) paras 57, 60 and 68–69.

<sup>4</sup> Case *Concerning the Territorial Dispute Between Libya and Chad* (Judgment) [1994] ICJ Reports para 41.

<sup>5</sup> Cambridge Dictionary, definition of “shall” (online) <https://dictionary.cambridge.org/dictionary/english/shall>.

13. The Vienna Convention also permits consideration of other provisions in the Convention and the 1994 Agreement to aid the interpretation of Paragraph 15. The Convention and the 1994 Agreement contain other verbs when the drafters of the Convention and the 1994 Agreement intended to convey a non-mandatory requirement or step.<sup>6</sup>
14. The Seabed Disputes Chamber’s Advisory Opinion on Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area, Case No 17 (1 February 2011) (**Advisory Opinion**) also confirms that the Chamber considered relevant decision of international tribunals to help guide its analysis on the interpretation of the Convention and the 1994 Agreement. In this regard, various international tribunals have confirmed beyond doubt that the word “*shall*” indicates a mandatory action or obligation in a treaty.<sup>7</sup>
15. Therefore, pursuant to Paragraph 15, the Authority, its organs and member States of the Convention are legally mandated to complete the elaboration and adoption of the Regulations and any additional rules, regulations and procedures necessary to facilitate the approval of plans of work for exploitation on or before 9 July 2023. In the absence of adoption, the Authority, its organs and member States are in breach of their obligations under the 1994 Agreement and remain legally mandated to consider and approve a plan of work for exploitation pursuant to Paragraph 15(c).
16. We note that the terms “*elaborate*” and “*adopt*” are used interchangeably in Paragraph 15. Paragraph 15(b) requires the “*adoption*” by 9 July 2023, where as Paragraph 15(c) uses the term “*elaboration*”. Applying a Vienna Convention analysis to Paragraph 15 and interpreting the text in good faith and in its ordinary meaning we do not consider that the term “*elaborate*” or more specifically “*completed the elaboration*” in Paragraph 15(c) has any legal significance.
17. We consider that Paragraph 15 is a cascading framework of regulatory steps and needs to be interpreted as a whole rather than terms in isolation. For example:

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<sup>6</sup> For example, see: Section 1 of the 1994 Agreement, para. 12(a) “The Council may, upon the request of the State or entity concerned, extend such membership beyond 16 November 1996”; Section 3 of the 1994 Agreement, para. 7: “*The Council may defer the taking of a decision in order to facilitate further negotiation whenever it appears that all efforts at achieving consensus on a question have not been exhausted*”; Article 163(2) of the Convention “*However, if necessary, the Council may decide to increase the size of either Commission having due regard to economy and efficiency*”.

<sup>7</sup> See, for example, *MOX Plant Case, Ireland v United Kingdom*, Final award, (2005) XXIII RIAA 59, ICGJ 377 (PCA 2003), (2003) 42 ILM 1118, (2005) 126 ILR 334, 2nd July 2003, Permanent Court of Arbitration [PCA] ICGJ. The tribunal stated: “*There is a cascading standard of expression providing for the particular obligations imposed on a Contracting Party. For example, there are mandatory provisions that provide for Contracting Parties: — to take some act (‘shall apply’, ‘shall include’, ‘shall undertake’, ‘shall co-operate’ or ‘shall keep’)*”. See also in respect of investment-disputes before ICSID Tribunals: *Wintershall Aktiengesellschaft v Argentine Republic*, ICSID Case No ARB/04/14, Award (8 December 2008) 19; *Daimler Financial Services AG v Argentine Republic*, ICSID Case No ARB/05/1, Award (22 August 2012) 179–80; *Garanti Koza LLP v Turkmenistan*, ICSID Case No ARB/11/20, Decision on the Objection to Jurisdiction for Lack of Consent (3 July 2013) 28.

- (a) Paragraph 15 contains the legal requirement under the 1994 Agreement for the Authority to elaborate and adopt the Regulations and any additional rules, regulations and procedures to facilitate the approval of a plan of work for exploitation;
- (b) Paragraph 15(a) provides the circumstances as to when the elaboration of the Regulations and any additional rules, regulations and procedures necessary to facilitate the approval of plans of work for exploitation is to commence;
- (c) Paragraph 15(b) contains the deadline as to when the Council must adopt the Regulations and any additional rules, regulations and procedures necessary to facilitate the approval of plans of work for exploitation that were commenced under Paragraph 15(a); and
- (d) Paragraph 15(c) contains a circuit breaker to ensure that in the event the Council fails to complete its legal mandate under Paragraph 15(b) that a plan of work for exploitation is none the less considered and provisionally approved based on the Treaty Provisions.

18. In the alternative, even if “*elaborate*” is to have a separate meaning to “*adopt*”, Paragraph 15(c) is clear. The Council must have “***completed the elaboration of the rules and regulations and procedures relating to exploitation***” (emphasis added) by 9 July 2023. This includes all necessary standards and guidelines to facilitate the approval of a plan of work for exploitation. We consider this would mean the Council has agreed final but not yet provisionally adopted as a package the Regulations and any additional rules, regulations and procedures necessary to facilitate the approval of plans of work for exploitation.

**Paragraph 15 requires that the Commission firstly consider the plan of work and make a recommendation to the Council**

19. The provisions of the Convention and the 1994 Agreement are clear that a plan of work is firstly considered by the Commission and a recommendation submitted to the Council. For example:

- (a) Article 153(3) of the Convention states:

*“Activities in the Area shall be carried out in accordance with a formal written plan of work drawn up in accordance with Annex III and **approved by the Council after review by the Legal and Technical Commission.** In the case of activities in the Area carried out as authorized by the Authority by the entities specified in paragraph 2(b), **the plan of work shall, in accordance with Annex III, article 3, be in the form of a contract.**”* (emphasis added)

- (b) Article 165(2)(b) of the Convention provides:

*“The Commission shall: 2. [...] (b) review formal written plans of work for activities in the Area in accordance with article 153, paragraph 3, and submit appropriate recommendations to the Council. The Commission shall base its recommendations solely on the grounds stated in Annex III and shall report fully thereon to the Council”* (emphasis added)

- (c) Further, Annex, Section 3, Paragraph 11(a) of the 1994 Agreement is titled “Decision-Making” and states:

*“The Council shall approve a recommendation by the Legal and Technical Commission for approval of a plan of work unless by a two-thirds majority of its members present and voting, including a majority of members present and voting in each of the chambers of the Council, the Council decides to disapprove a plan of work”* (emphasis added)

20. The combined effect of Articles 153(3) and 165(2)(b) of the Convention and Annex, Section 3, Paragraph 11(a) of the of the 1994 Agreement, is that an application for a plan of work *must* first be reviewed by the Commission and a recommendation concerning the approval of the plan of work submitted to the Council. This is an explicit role of the Commission contained in the Convention and the 1994 Agreement and cannot be derogated or amended unilaterally by the Council.
21. If a positive recommendation is submitted by the Commission to the Council concerning the approval of a plan of work, the Council is required to approve the Commission's recommendation. The Council may decide to reject the Commission's recommendation for approval of a plan of work if a two-thirds majority of the Council's members present and voting, including a majority of members present and voting in each of the chambers of the Council, decides to disapprove the Commission recommendation.<sup>8</sup>
22. Under Article 153(3) of the Convention, all activities in the Area shall be carried out in the form of a contract in accordance with the Authority's approved plan of work. Specifically, “[...] *In the case of activities in the Area carried as authorised by the Authority by the entities specific in paragraph 2(b), the plan of work, shall, in accordance with Annex III, article 3, be in the form of a contract [...]*”.
23. There is no legal basis under the Convention, or the 1994 Agreement for a plan of work submitted under Paragraph 15 to follow a different decision-making framework than that clearly stipulated under Articles 153(3) and 165(2)(b) of the Convention. Any interpretation to the contrary would be clearly inconsistent with the Vienna Convention and well-established rules of treaty interpretation.

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<sup>8</sup> Paragraph 11 of Section 3 of the 1994 Agreement.

## **The Treaty Provisions that guide the Commission’s assessment of a plan of work in the absence of Regulations**

24. The identification of the applicable Treaty Provisions is critical to ensure that the Commission does not err in taking any irrelevant considerations into account when considering a plan of work under Paragraph 15(c).
25. The below analysis identifies the Treaty Provisions that the Commission must take into consideration, including the provisions of the Convention, namely Annex III, as further supplemented by any rules, regulations and procedures that the Council may have adopted provisionally, applicable norms in the Convention and the terms and principles of the 1994 Agreement, including the principle of non-discrimination among contractors.

### The “provisions of the Convention”

26. The decision-making framework outlined in the Convention and the 1994 Agreement, read with Paragraph 15 requires that that the Commission firstly consider the plan of work based on the “provisions of the Convention”.
27. Annex III of the Convention titled “*Basic Conditions for Prospecting, Exploration and Exploitation*” contains the regulatory framework relevant for the assessment of a plan of work based on the provisions of the Convention, as confirmed by the following:
  - (a) Article 153(2) of the Convention provides that activities in the Area shall be carried out by, relevantly, sponsored prospective contractors that “*meet the requirements provided in [Part XI] and in Annex III*”;
  - (b) Article 165(2)(b) of the Convention says that the Commission shall base its recommendations in respect of a plan of work application “*solely on the grounds stated in Annex III*”; and
  - (c) Article 153(3) of the Convention requires that activities in the Area shall be carried out in accordance with a formal written plan of work drawn up “*in accordance with Annex III*”.
28. Annex III of the Convention as amended by the 1994 Agreement, contains the regulatory framework for the Commission’s assessment of a plan of work for exploitation under Paragraph 15(c). These provisions include but are not limited to: (i) the qualifications of applicants (Article 4); (ii) requirements for the approval of plans of work (Article 6); (iv) preference and priority among applicants (Article 10); (v) financial terms of a contract (Article 13); (vi) exclusivity (Article 16); (vii) revisions (Article 19); and (viii) the transfer of rights (Article 20).

29. As such, in the absence of the Regulations, the Commission’s starting point and regulatory framework for the consideration of a plan of work under Paragraph 15(c) shall be the provisions of the Convention, including Annex III.

*Provisionally adopted rules, regulations and procedures on exploitation*

30. The Treaty Provisions permit the Commission to have recourse to “*provisionally adopted rules, regulations and procedures*”. As at the date of this opinion paper, the Council has not provisionally adopted any rules, regulations or procedures relating to exploitation in the Area.

31. Should the Council provisionally adopt some but not all the rules, regulations or procedures relating to exploitation in the Area, those rules, regulations or procedures relating to exploitation that have been provisionally adopted shall be considered by the Commission in its consideration of a plan of work pursuant to Paragraph 15.

32. If the Council considers that Annex III to the Convention would benefit from further supplementation, it is for the Council to provisionally adopt further rules, regulations or procedures relating to exploitation in the Area. These provisionally adopted rules, regulations and procedures could be used by the Commission, in addition to Annex III, in the consideration of a plan of work for exploitation under Paragraph 15(c).

*The “norms contained in” the Convention*

33. The Treaty Provisions permit the Commission to recommend the provisional approval of a plan of work for exploitation on the basis of “*norms contained in the Convention*”.

34. As a matter of international law, a norm is an obligation, and “*its specific existence – consists in that the norm is to be observed, and if not observed, then applied*”.<sup>9</sup> Under international law, “*norms*” can imply obligations of various types of which some norms are more superior (or hierarchical) than others. By way of example:

- (a) “*norms*” may include pre-emptive norms in the Convention. Peremptory norms “*are hierarchically superior to other norms of international law as the idea of rules capable of invalidating others and permitting no derogation implies a normative hierarchy*”;<sup>10</sup>

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<sup>9</sup> Hans Kelsen, *General Theory of Norms* (Clarendon Press, 1991), at 3.

<sup>10</sup> First Report of the Special Rapporteur (Dire Tladi) on Jus Cogens (A/ cn.4/ 693) (2016), at 43. See also Article 53 of the Vienna Convention describes these types of norms as “*a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character*”. In the Nicaragua Case, the International Court of Justice relied on the prohibition on the use of force as “*a conspicuous example of a rule of international law having the character of jus cogens*.” *Military and Paramilitary Activities in and against Nicaragua* (Nicar. v. U.S.), 1986 I.C.J. 14 (Jun. 27).



- (b) “*norms*” may include customary international law that was codified in the Convention.<sup>11</sup> Customary international law is typically described as general practices that are already accepted as norms or law;<sup>12</sup>
- (c) “*norms*” may also include the codified rules contained in the Convention, irrespective of whether they are pre-emptive or customary international law.<sup>13</sup> These rules are sometimes called conventional rules of international law.<sup>14</sup>

35. If the Commission is required to assess a plan of work pursuant to Paragraph 15(c), as part of its consideration, the Commission will need to carefully identify and consider what international norms are contained in the Convention, their hierarchy and if they are relevant to the Commission’s consideration of a Plan of Work pursuant to Paragraph 15(c).

The “terms and principles” of the 1994 Agreement

36. According to the ordinary meaning of the words “*terms and principles*”, the Commission is required to identify in the 1994 Agreement, details, provisions, rules or doctrines that are relevant to the application for, and assessment of, a plan of work for exploitation.<sup>15</sup> By way of example, the following terms and principles in the 1994 Agreement clearly relate to the consideration of a plan of work:

- (a) Annex, Section 1, Paragraph 7 expressly requires that an application for approval of a plan of work shall be accompanied by an assessment of the potential environmental impacts of the proposed activities.

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<sup>11</sup> There are many customary international law norms in the Convention, see, for example, the comments of the Japanese delegate in the 33<sup>rd</sup> Session, at Bluebook 21st ed. Law of the Sea: The Work of the PREPCOM and the U.N. Secretary-General's Informal Consultations (1993), The, 33 Asian-African Legal Consultative Committee: Report and Selected Documents 41 (1994), pp 46 – 47 (“*He recalled that many of the provisions in the Convention were the result of the codification of rules of general customary law like the provisions governing territorial sea, innocent passage through the territorial sea, continental shelf and contiguous zone.*”). For discussion on customary international law and the Convention, see for example Martin L Lee, *The Interrelation Between the Law of the Sea Convention and Customary International Law* [VOL. 7: 405, 2006] SAN DIEGO INT’L L.J, p. 400ff.

<sup>12</sup> Defined by the International Court of Justice (ICJ) as “*evidence of a general practice accepted as law*” (Art. 38.1 of ICJ Statute).

<sup>13</sup> See, for example, Bluebook 21st ed. Committee on Legal Aspects of a New International Economic Order, 61 Int’l L. Ass’n Rep. Conf. 107 (1984), where the Committee on Legal Aspects of a New Economic Order considered the Convention to be “[e]xisting and evolving Principles and Norms of International Law relating to a New International Economic Order”.

<sup>14</sup> *Interpretation of the Agreement of 25 March 1951 between the who and Egypt*, Advisory Opinion, ICJ Reports 1980, 73, at para. 10 (“*a rule of international law, whether customary or conventional, does not operate in a vacuum; it operates in relation to facts and in the context of a wider framework of legal rules of which it forms only a part*”).

<sup>15</sup> *Terms* means “*details of an agreement, contract, etc.*” Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english-spanish/terms>; “*principles*” means a “*basic idea or rule that explains or controls how something happens or works*”, Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/principle>; or “*a comprehensive and fundamental law, doctrine, or assumption*” Merriam-Webster, <https://www.merriam-webster.com/dictionary/principle>.

- (b) Annex, Section 1, Paragraph 9 states that upon the expiration of a plan of work for exploration, the contractor shall apply for a plan of work for exploitation unless the contractor has already done so or has obtained an extension for the plan of work for exploration.
  - (c) Annex, Section 1, Paragraph 11(a) requires that an application for a plan of work is first reviewed by the Commission.
  - (d) Annex, Sections 5, 6 and 8 of the 1994 Agreement provides a list of principles relating to the financial terms of contracts, production policy of the Authority, and the transfer of technology.
37. Considering the Treaty Provisions and Paragraph 15 as a whole, if: (i) the Regulations and any additional rules, regulations and procedures necessary to facilitate the approval of plans of work for exploitation are not elaborated and provisionally adopted by the Council before 9 July 2023; and (ii) a plan of work for exploitation is pending, the Commission is required to identify and apply the above Treaty Provisions in the Commission's consideration of a plan of work pursuant to Paragraph 15.

### **The relevance of the Commission's Draft Regulatory Framework**

38. As explained by the Secretary-General in his report '*Status of the draft regulations on exploitation of mineral resources in the Area and a proposed roadmap for 2022 and 2023*' dated 23 August 2021, a complete set of regulations was prepared by the Commission and submitted to the Council in July 2020 pursuant to Article 165, paragraph 2(f), of the Convention. These regulations remain in draft and under consideration by the Council and have been through several rounds of stakeholder consultation.
39. The Commission has also prepared several draft phase one standards and guidelines to support the implementation of the draft regulations in accordance with the Commission's recommendation and the Council's subsequent decision contained in ISBA/25/C/19/Add.1 and ISBA/25/C/37. In accordance with the Commission's recommendation and the Council's subsequent decision:
- (a) **Phase One** - standards and guidelines are deemed necessary to be in place by the time of adoption of the draft regulations on exploitation, i.e., on or before 9 July 2023;
  - (b) **Phase Two** - standards and guidelines are deemed necessary to be in place prior to the receipt of an application of a plan of work for exploitation, i.e., on or before NORI submits its plan of work pursuant to Paragraph 15; and
  - (c) **Phase Three** - standards and guidelines are deemed necessary to be in place before commercial mining activities commence in the Area.

40. As at the date of this opinion paper, only draft phase one standards and guidelines have been prepared by the Commission and are presently in draft before the Council. Despite: (i) the Request; (ii) NORI's intent to submit a plan of work following the prescribed period; and (iii) the Commission's recommendation and the Council's subsequent decision contained in ISBA/25/C/19/Add.1 and ISBA/25/C/37, we understand the Commission has not commenced work on the preparation of phase two or three standards and guidelines.
41. The preparation of the Commission's Draft Regulatory Framework is an anterior step to the Council's provisional adoption of such rules, regulations and procedures. This is made clear under Article 162(2)(o)(ii) of the Convention, which states the Council must adopt and apply provisionally, pending approval by the Assembly, the rules, regulations and procedures of the Authority, *taking into account* the recommendations of the Commission.
42. Notwithstanding that the Regulations and accompanying standards are unlikely to be provisionally adopted by the Council before 9 July 2023, the Commission's Draft Regulatory Framework plays an important role in identifying and applying the Treaty Provisions to the assessment of a plan of work under Paragraph 15(c). This is because, the Commission discharging its role: (i) in good faith; (ii) in accordance with its purpose under the Convention; (iii) in accordance with the mandate given to it by the Council; and (iv) in accordance with its own rules of procedure has prepared a partial draft regulatory framework that reflects and is in accordance with the Treaty Provisions. To put it another way, if the Commission's Draft Regulatory Framework is not in accordance with the Treaty Provisions, the Commission will have acted *ultra vires* to the Convention and the 1994 Agreement.
43. Therefore, in the absence of the provisional adoption of Commission's Draft Regulatory Framework, we suggest that the Commission may take into account, as guidance, the Commission's Draft Regulatory Framework as the framework is indicative of the Treaty Provisions that apply to the assessment of a plan of work under Paragraph 15(c).

## ANNEXURE I

### Outline of the process for the consideration and provisional approval of of an application for the approval of a plan of work for exploitation under Annex, Section 1, Paragraph 15(c), 1994 Agreement

