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International considerations related to DSHMRA - UNCLOS

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8 June 2026
Environmental Law Institute webinar

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ORGANIZATION

Four questions:

1. What is UNCLOS and how does it relate to US seabed mining in areas beyond national jurisdiction (ABNJ).

2. Are UNCLOS provisions on such activities customary international law?

3. What is the principle of the common heritage of humankind/mankind and how does it relate to DSHMRA and mining rights?

4. What are the obligations of states parties to UNCLOS concerning involvement in value chains deriving from DSHMRA permitted mining in ABNJ?

The Law of the Sea

United Nations
Convention on
the Law of the Sea

Agreement relating to the
Implementation of Part XI of the
United Nations Convention
on the Law of the Sea
with Index and excerpts
from the Final Act of the
Third United Nations Conference
on the Law of the Sea

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1. What is UNCLOS and how does it relate to US seabed mining in areas beyond national jurisdiction (ABNJ).

- United Nations Convention on the Law of the Sea, opened for signature Dec. 10, 1982, 1833 U.N.T.S. 397.
- US objections to Part XI (seabed mining in ABNJ) led to the 'reciprocating states regime' (1980s). DSHMRA was part of this regime, and specifies so in its text.
- Led to renegotiation of Part XI to satisfy US and other developed states that participated in the RSR - 1994 Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea.
- US signed 1994 Agreement, President Clinton attempted to get advice and consent of the Senate on a resolution for ratification of UNCLOS, but failed. Other reciprocating states acceded to UNCLOS.
- In 1980s, RSR could plausibly offer operators legal certainty – a viable multilateral web of support, notwithstanding debate over its international legality – relevant to practical viability of DSHMRA today.

2. Are UNCLOS provisions on seabed mining in ABNJ customary international law?

- **Customary international law** is uncodified law identified by two variables: state practice and opinio juris. Significant treaties like UNCLOS can be considered to have codified pre-existing customary international law, or contributed to its realisation. This has the effect of binding all states, including those that are not parties to that treaty. A **persistent objector** is a state that has maintained a clear and consistent enough objection to the formation of a norm of customary international law that it may be recognised as not bound by it.

- Many states, which have objected to EO 14285 and US unilateral authorisation of seabed mining in ABNJ under the DSHMRA, **believe that Part XI of UNCLOS, or significant parts of it, are customary international law and bind the US**. They argue that the US cannot be considered a persistent objector because it has accepted the UNCLOS derived seabed mining regime, which vests exclusive authority in the International Seabed Authority. They argue the US has demonstrated this acceptance through its state practice including participation in the work of the ISA itself since the 1990s and by signing the 1994 Agreement. That signature obliges it to not defeat the object and purpose of that instrument.

- The US position **is likely that it is a non-party to UNCLOS exercising a high seas freedom**; Part XI is **not customary international law**, or only minimally in ways compatible with DSHMRA permitting in ABNJ; and that in any case the US should be considered a **persistent objector** based on practice like the DSHMRA itself, its renewal of permits issued under that act, and non-ratification of UNCLOS.

- I will suggest, and most states are clearly stating, that the **US argument is a weak one** and that US unilateral authorization of mining in ABNJ would likely be considered a violation of international law by a tribunal.

3. What is the principle of the common heritage of humankind/mankind and how does it relate to DSHMRA and mining rights?

- A legal principle applied to global commons – spaces and resources shared by all of humanity. ABNJ, Moon Agreement. Means benefits should be shared – redistributed – between developed and developing states.

- The principle of the common heritage of humankind is how redistribution of benefits of mining in ABNJ was intended to be ensured through UNCLOS. Central to UNCLOS Part XI, remained so in the 1994 Agreement, and was recently reaffirmed in the 2023 BBNJ Agreement.

- US was clear under President Nixon in 1970s that this principle applied to mineral resources of ABNJ, DSHMRA also states this, dispute is over what it means. US position has been (in 1980s, abandoned in 1990s, presumably being revived after EO 14285) that it disagrees with how UNCLOS fills out the meaning of this principle and can act itself to do so. Hence the incongruous commitment to report on designing an international revenue sharing fund in EO 14285.

- More widely shared view internationally – Part XI implementation of this principle represents customary international law and the ISA has exclusive regulatory jurisdiction over its operationalisation.

4. What are the obligations of states parties to UNCLOS concerning involvement in value chains deriving from DSHMRA permitted mining in ABNJ?

- This question returns us to the point of the practical utility of the DSHMRA. Separable from question of international law violation or not.
- UNCLOS articles 137-139, states parties to UNCLOS:
  - Should not recognise any claims to sovereign rights to resources of the Area or appropriations of any part of the Area not made in accordance with Part XI;
  - Generally conduct themselves in ways in accordance with Part XI;
  - Have responsibility to ensure that activities in the Area, whether carried our by states parties or state enterprises or natural or juridical persons which possess the nationality of states parities or are effectively controlled by them or their nationals, shall by carried out in conformity with Part XI.
- Depending on the political will of states, this means, no involvement of states parties or private parties subject to their jurisdiction of control in value chains deriving from DSHMRA authorized mining in ABNJ – domestic enforcement legislation (exists in some states); criminalisation; money laundering legislation.
- High risk level for commercial operators, miners, financial sector, ancillary services.

insights

Volume: 29 Issue: 9

By: Rián Derrig and Kahlil Hassanali

July 2, 2025

Understanding Executive Order 14285: On the Possibility of Authorizing Seabed Mining in Areas Beyond National Jurisdiction

Introduction

On April 24, 2025, President Trump issued the executive order (EO), "Unleashing America's Offshore Critical Minerals and Resources." Most of the order focuses on policies intended to bolster the United States' capacity to access and domestically process mineral resources derived from seabed mining in areas under its own jurisdiction, or the jurisdiction of states willing to partner with the United States in this sector.[1] However, two paragraphs of the order concern seabed mining in areas *beyond* national jurisdiction. Section 3(a)(i) invokes the 1980 Deep Seabed Hard Mineral Resources Act (the DSHMR Act) and directs that applications for seabed mining exploration and recovery licenses in areas beyond national jurisdiction under that legislation be expedited, while section 3(c)(ii) calls for a report on the possibility of 'an international benefit-sharing mechanism' for seabed mining in the same areas.[2] This *Insight* explains the legal context in which these two paragraphs of the order fit, briefly identifies arguments for and against their international legality, and offers some reflections on the likely practical import of EO 14285.

Background: Understanding EO 14285's History

These paragraphs of EO 14285 are an intervention into a long-running political confrontation that has played out in Jamaica over at least the last decade. Hosted in Kingston, Jamaica, the International Seabed Authority (ISA) regulates activities

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What next, from an international perspective?

- Arguments **unlikely to be tested in contentious international litigation** – US has withdrawn from the compulsory jurisdiction of the International Court of Justice (the Hague); and is unlikely to agree to arbitration.

- Domestic litigation is possible, to use national laws to challenge involvement of private actors in value chains deriving from DSHMRA authorised mining.

- In late July 2026, the Assembly of the ISA will consider requesting an advisory opinion from the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea 'on matters relating to the legal implications for the International Seabed Authority of activities in the Area undertaken by non-States Parties.' Advisory opinions are not binding, but it means that these legal arguments will be tested, which will have consequences for how states and bodies like ISA subsequently act, and can be politically significant.

- Reducing risk level for private actors would require the US to reconstruct the logic of the 1980s RSR through agreements with states that are themselves capable of completing links in a value chain from mining to processing to sale of minerals exploited on a DSHMRA legal basis from areas beyond national jurisdiction. Of doubtful feasibility.