insights

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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

concerning the exploration and exploitation of mineral resources of seabed areas beyond national jurisdiction (denoted by the prosaic term, the Area). As conferred by the United Nations Convention on the Law of the Sea (UNCLOS), that mandate is exclusive to the ISA.[3] In that respect, the assertion of jurisdiction made by EO 14285 clearly contravenes UNCLOS.

By attempting to fulfill its assigned role of acting on behalf of 'mankind as a whole', in whom UNCLOS vests the resources of the Area,[4] the ISA has mediated an increasingly animated political debate over whether, and how, to mine the seabed for minerals like nickel, manganese and cobalt, which are today considered valuable as materials used in the production of battery technologies. A growing number of states (37 at the time of writing), have called for a pause or moratorium on deep seabed mining until its likely impacts are better understood and to prevent work from proceeding without the necessary regulatory framework.[5] France has even called for an outright ban on mining activity. Other states, however, including the small island developing state of Nauru, want to finalize ISA mining regulations to allow companies with sponsorship arrangements prescribed in UNCLOS to begin commercial mining.

The company sponsored by Nauru, known as Nauru Ocean Resources, Inc. (NORI), is a wholly owned subsidiary of The Metals Company (TMC), which has pursued an aggressive, highly public lobbying campaign to commence deep seabed mining. Based on reporting and on its own public statements, the paragraphs of EO 14285 that concern areas beyond national jurisdiction appear to have been inserted after TMC lobbied the Trump administration to do so.[6] After the order was issued, The Metals Company USA LLC, which is the American subsidiary of TMC (itself a Canadian company), applied to the National Oceanic and Atmospheric Administration (NOAA) for exploration licenses and permits for commercial recovery of minerals in the Clarion-Clipperton zone of the Pacific Ocean.[7]

The DSHMR Act as Part of the Reciprocating States Regime

Rather than a shock new twist, EO 14285 is better viewed with a sense of déjà vu. Through the 1970s, how resources of the seabed in areas beyond national jurisdiction should be managed and shared (if they should be shared at all), had become one of the most contentious issues negotiated at the Third United Nations Conference on the Law of the Sea (UNCLOS III). By 1980 the conference was at an advanced stage (UNCLOS

would be adopted in 1982), but developed and developing countries remained in disagreement on this issue. In 1980, the United States adopted the DSHMR Act as a kind of backstop measure – as an intervention in a specific, but now quite altered, international legal context.

The Act refers to UNCLOS III and states a policy of anticipating the Conference's successful conclusion and American participation in the treaty thereafter, at which point the DSHMR Act would be superseded by the provisions of UNCLOS. In the interim, as the reasoning outlined in the Act explained, it was necessary to put some domestic legal architecture in place to give companies investing in seabed mining security, in particular by assuring them that their investments in technology and exploration would be honored with secure tenure and rights to exploitation.

Some other developed states (France, the United Kingdom, Germany, Italy, and Japan), which broadly aligned with the American position on this issue in the UNCLOS III negotiations, followed the United States' example by passing similar domestic legislation in the early to mid-1980s, which reciprocally recognized licenses.[8] With the international agreements between those states that acknowledged it, this web of national legislation was known as the Reciprocating States Regime.[9] It was so-called because each piece was premised, for its practical utility, on the existence of the web as a whole. The DSHMR Act noted that reciprocating states could be identified by the Administrator of NOAA.[10] Such recognition meant that licenses granted under the domestic legislation of those states to mine areas beyond national jurisdiction would be recognized by the United States, and vice versa.

Through the 1980s and into the early 1990s the reciprocating states regime was presented by its participants as a viable alternative to the seabed mining regime adopted in 1982 as UNCLOS Part XI. Reflective of a redistributive vision of international economic relations advanced by negotiating blocs like the Group of 77 and the movement for a New International Economic Order, the United States and other developed states objected to Part XI to the extent that they refused to ratify the treaty. While legal scholars argued about the legal status of the reciprocating states regime,[11] the observation most relevant to appraising EO 14285 is that such a reciprocal, multilaterally coordinated arrangement between states that were likely to control most of the technology necessary to mine in areas beyond national jurisdiction was practically viable. It could have plausibly assured

private companies that their mining rights would be recognized by the states that had the means to challenge them, and that they would likely be able to sell what they mined.

What is Likely to Happen after EO 14285?

The most important characteristic of EO 14285 is that it cannot offer the assurance that the DSHMR Act did because there are no longer any reciprocating states. The Reciprocating States Regime became practically defunct (even if the legislation that constituted it sometimes remained in force) when UNCLOS Part XI was effectively renegotiated in 1994, to the satisfaction of the developed states that had built the Reciprocating States Regime. The 1994 Agreement watered down the redistributive components of Part XI, removing such provisions as mandatory technology transfer to developing states and delaying establishment and operationalization of 'the Enterprise' – the mining arm of the ISA. Thereafter most of the former reciprocating states acceded to UNCLOS.

The United States has remained an exception to this trend due to opposition from a section of the Republican Party that prevents the Senate from giving its advice and consent on a resolution for ratification by the Executive. That said, the United States signed the 1994 Agreement in July 1994, which led to provisional application by virtue of signature in November 1994, and the United States actively participated as an observer to the ISA until 2024. By way of illustration, as recently as July 2024, the United States concluded its substantive comments on principles and approaches that should inform the ISA's development of exploitation regulations with the following passage:

> …the Authority rightly commemorates its 30 years of work to develop the legal framework for the Area. The United States looks forward to continuing to contribute to the success of the ISA as it begins its next decade of work.[12]

From a formal legal perspective, there are two arguments that can be made concerning the international legality of the assertion of jurisdiction over mineral resources of areas beyond national jurisdiction made by Section 3(a)(1) of EO 14285. The first is that UNCLOS provisions that identify seabed resources beyond national jurisdiction as the 'common heritage of mankind' have the status of customary international law and are binding even on non-parties to UNCLOS like the United States.[13] The United States' possible objections to this argument are weakened by its prior practice of accepting the

provisions of UNCLOS generally as representative of customary international law; by its specific and active participation in the regulatory work of the ISA as an observer (as illustrated by the above extract from its July 2024 statement to the Assembly); and by the fact that the United States has not persistently objected to the ISA's undertaking of that work.

Concerning the possible argument that the customary nature of the 'common heritage of mankind' is not applicable to mineral resources of areas beyond national jurisdiction, the United States itself does not accept that view. Reflecting this, the DSHMR Act includes amongst its purposes:

> to encourage the successful conclusion of a comprehensive Law of the Sea Treaty, which will give legal definition to the principle that the hard mineral resources of the deep seabed are the common heritage of mankind and which will assure, among other things, nondiscriminatory access to such resources for all nations ….[14]

Further, amongst the international objectives of the DSHMR Act is that:

> The Secretary of State is encouraged to negotiate successfully a comprehensive Law of the Sea Treaty which, among other things, provides assured and nondiscriminatory access to the hard mineral resources of the deep seabed for all nations, gives legal definition to the principle that the resources of the deep seabed are the common heritage of mankind ….[15]

Nonetheless, the United States could rehearse a position it has historically held, and which these passages also indicate. That view is that the legal content of the common heritage concept is not clear. That was the position of the members of the Reciprocating States Regime in the 1980s. Section 3(c)(ii) of EO 14285, which requests a report on the possibility of 'an international benefit-sharing mechanism' could be read as an attempt to prepare the ground for the revival of such an argument.

A second argument that does not favor the United States concerns the fact that it signed the 1994 Agreement, and is therefore obliged to refrain from acts that defeat the object and purpose of the treaty.[16] By unilaterally seeking to authorise deep seabed mining in areas beyond national jurisdiction, the United States arguably defeats the purpose and

object of the 1994 Agreement. The US government has never formally announced that it will not ratify the Agreement, which may be the only way to nullify application of the Vienna Convention's 'object and purpose' clause.

Conclusion

The merits of the legal arguments outlined above have been discussed elsewhere (for example, see here and here). Briefly and by way of summary, it can be observed that the near-universal level of participation by states in UNCLOS and in the ISA, alongside the United States' own practice prior to EO 14285, strengthens the legal position of states objecting to EO 14285. However, these arguments are unlikely to be tested because the United States has withdrawn from the compulsory jurisdiction of the International Court of Justice, nor is it a party to UNCLOS or likely to agree to arbitration.

More likely, perhaps, is that practical exigencies (structured by legal considerations) will determine what happens next. The Reciprocating States Regime, on which the DSHMR Act relied for its effectiveness, no longer exists. TMC or any other private company that attempted to mine in areas beyond national jurisdiction on the basis of a license issued by NOAA under the DSHMR Act are unlikely to have their mining rights recognized by other states. They may not be able to sell any minerals exploited in the Area, and financing and other ancillary services would likely be difficult to access due to this risk level.[17] Why? Because the provisions of EO 14285 concerning areas beyond national jurisdiction unilaterally invoke a specific multilateral web of support that no longer exists, and they are practically weaker as a result.

In contrast, what is attractive, and what the two paragraphs of EO 14285 have drawn public attention away from, is the possibility of mining seabed areas *within* the national jurisdiction of the United States, with which most of EO 14285 was concerned. The United States recently claimed national jurisdiction over an expanded seabed area by articulating a legal argument (to which other states have objected) in support of an expanded continental shelf area.[18] Media reports indicate active interest from private companies in this aspect of the EO, which concern mining rights within the United States' national jurisdiction.[19]

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[1] *Executive Order 14285 of April 24, 2025, Unleashing America's Offshore Critical Minerals and Resources* (2025)., outlined in; Section 1; 2.
[2] *Id.* C.F.R. 17735 (2025); *Deep Seabed Hard Mineral Resources Act*, 30 (1980).
[3] *United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982, in Force 16 November 1994) 1833 U.N.T.S. 3.*, arts. 137; 153.
[4] *Id.* arts. 137; 153.
[5] LeMonde with AFP, *Macron Says Imposing a Moratorium on Seabed Mining Is "an International Necessity": The Number of Countries Opposed to Seabed Mining Has Now Risen to 36*, LE MONDE, June 9, 2025, https://www.lemonde.fr/en/environment/article/2025/06/09/macron-says-imposing-a-moratorium-on-seabed-mining-is-an-international-necessity_6742172_114.html.
[6] Max Bearak, Rebecca Dzombak & Harry Stevens, Trump Takes a Major Step Toward Seabed Mining in International Waters, THE NEW YORK TIMES, Apr. 24, 2025, https://www.nytimes.com/2025/04/24/climate/trump-seabed-mining.html?smid=nytcore-ios-share&referringSource=articleShare.
[7] Elizabeth Claire Alberts, *The Metals Company Applied to the U.S. for a Deep-Sea Mining License*, MONGABAY, Apr. 30, 2025, https://news.mongabay.com/2025/04/the-metals-company-applied-to-the-u-s-for-a-deep-sea-mining-license/.
[8] SURABHI RANGANATHAN, STRATEGICALLY CREATED TREATY CONFLICTS AND THE POLITICS OF INTERNATIONAL LAW 162 (2014).
[9] Agreement Concerning Interim Arrangements Relating to Polymetallic Nodules of the Deep Seabed (between France, Germany, the United Kingdom and the United States) Washington D.C., 02/09/1982, 1871 U.N.T.S. 275.; Provisional Understanding Regarding Deep Seabed Matters between Belgium, France, Germany, Italy, Japan, the Netherlands, the United Kingdom and the United States, Geneva, 3 August 1984, 23 I.L.M. 1354.
[10] *Supra* note 2., § 1428.
[11] For a contemporary account of this debate, *see* Ranganathan, *supra* note 8, 147-379.
[12] *Statement of the United States, International Seabed Authority Assembly 29th Session, July 2024*, https://www.isa.org.jm/wp-content/uploads/2024/08/United-States-item7-31July2024.pdf (last visited Jun. 13, 2025). For further discussion of this see: Coalter Lathrop, *The Latest Trump Threat to International Law: Unilaterally Mining the Area*, EJIL:TALK! (May 6, 2025), https://www.ejiltalk.org/the-latest-trump-threat-to-international-law-unilaterally-mining-the-area/.

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[13] Press Release, Int'l Seabed Authority, The Council of the International Seabed Authority Concludes Part I of Its Thirtieth Session (Mar. 29, 2025), https://www.isa.org.jm/news/the-council-of-the-international-seabed-authority-concludes-part-i-of-its-thirtieth-session/.

[14] *See supra* note 2, § 1401(b)(1).

[15] *Id.* § 1402(b)(1).

[16] Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331; 8 I.L.M. 679 (1969).

[17] For discussion of this topic, including this observation, *see* Catherine Amirfar, Kal Raustiala & Samantha Rowe, *ASIL Behind the Headlines Episode 54 - Is the Trump Administration's Deep Seabed Mining Program Violating International Law?*, https://asil.org/resources/podcast/ep54. For discussion of TMC's practical financial projections see: Iceberg Research, *The Metals Company ($TMC): A Remake Of The Nautilus Fiasco* (2025), https://iceberg-research.com/2025/05/27/the-metals-company-tmc-a-remake-of-the-nautilus-fiasco/.

[18] Articulating that legal argument, see Kevin A. Baumert, *The Continental Shelf Beyond 200 Nautical Miles: Announcement of the U.S. Outer Limits*, 118 AM. J. INT'L L. 275 (2024).

[19] Kanishka Singh, *US Takes First Step for Potential Mineral Lease Sale near American Samoa*, REUTERS, Jun. 12, 2025, https://www.reuters.com/world/us/us-initiates-first-step-potential-mineral-lease-sale-near-american-samoa-2025-06-12/.