



INDIAN JOURNAL OF
LEGAL REVIEW

VOLUME 5 AND ISSUE 14 OF 2025

INSTITUTE OF LEGAL EDUCATION



INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 5 and Issue 14 of 2025 (Access Full Issue on – <https://ijlr.iledu.in/volume-5-and-issue-14-of-2025/>)

Publisher

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REGULATING THE FINAL FRONTIER: A LEGAL ANALYSIS OF DEEP SEABED MINING UNDER UNCLOS AND THE INTERNATIONAL SEABED AUTHORITY

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BEST CITATION – MRS. VEENA KUMARI, REGULATING THE FINAL FRONTIER: A LEGAL ANALYSIS OF DEEP SEABED MINING UNDER UNCLOS AND THE INTERNATIONAL SEABED AUTHORITY, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (14) OF 2025, PG. 978-983, APIS – 3920 – 0001 & ISSN – 2583-2344. DOI –

<https://doi.org/10.65393/KIFS4180>

Abstract

Deep seabed mining has emerged as one of the most contested frontiers of contemporary international law. As terrestrial mineral resources face depletion and the global transition towards green technologies accelerates demand for critical minerals, attention has shifted to the ocean floor beyond national jurisdiction. This region, designated as “the Area” under the United Nations Convention on the Law of the Sea (UNCLOS), is governed by the principle of the Common Heritage of Mankind and administered by the International Seabed Authority (ISA). However, the move from exploration to exploitation has exposed serious legal, environmental, and ethical concerns. This paper examines the international legal framework regulating deep seabed mining, with particular emphasis on UNCLOS and the institutional role of the ISA. It critically analyses the adequacy of existing rules, environmental safeguards, and benefit-sharing mechanisms, and highlights regulatory gaps that threaten marine ecosystems and global equity. The study argues that without stronger precautionary standards, transparency, and accountability, deep seabed mining risks undermining both environmental protection and the normative foundations of international ocean governance.

Keywords: Deep seabed mining, UNCLOS, International Seabed Authority, Common Heritage of Mankind, environmental law, global commons

Introduction: The Emergence of Deep Seabed Mining as a Legal Issue

The deep seabed, once regarded as a distant and technologically unreachable space, has in recent decades emerged as a zone of significant strategic, economic, and geopolitical interest. Rapid advancements in marine engineering, robotics, and deep-ocean mapping have enabled states and private actors to access mineral-rich resources such as polymetallic nodules, polymetallic sulphides, and cobalt-rich ferromanganese crusts located thousands of metres beneath the ocean surface (Wedding et al., 2015). These minerals are increasingly viewed as indispensable for the

production of renewable energy infrastructure, electric vehicle batteries, and advanced digital technologies, particularly in the context of global efforts to transition towards low-carbon economies (Clark et al., 2016). As terrestrial mineral reserves face depletion and environmental opposition, the deep seabed is being projected as the next frontier of resource extraction.

At the same time, deep seabed mining raises complex legal questions that fundamentally differ from those associated with land-based or even offshore mining within national jurisdiction. Activities in areas beyond national jurisdiction cannot be governed by traditional notions of

territorial sovereignty or exclusive economic control. Instead, they fall within the realm of the global commons, where resources are legally characterised as belonging to humanity as a whole. Recognising this unique status, the United Nations Convention on the Law of the Sea (UNCLOS) designates the seabed and ocean floor beyond national jurisdiction as “the Area” and declares its resources to be the “common heritage of mankind” (UNCLOS, Art. 136). This designation reflects an attempt to reconcile resource exploitation with principles of collective ownership, peaceful use, and intergenerational equity (Pardo, 1975).

To operationalise this legal vision, UNCLOS established the International Seabed Authority as the central institution responsible for regulating exploration and exploitation activities in the Area. The ISA was entrusted with a dual mandate: to facilitate access to seabed resources and to ensure environmental protection and equitable sharing of benefits, particularly with developing states (UNCLOS, Art. 153). In theory, this institutional framework represents a progressive model of global governance. However, as the ISA has moved from regulating exploration to considering commercial exploitation, concerns have intensified regarding its capacity to fulfil these obligations effectively (Jaekel, 2017). Critics argue that economic pressures and geopolitical competition increasingly shape regulatory decision-making, potentially undermining the foundational ideals of the common heritage principle (Mickelson, 2019).

These developments have brought deep seabed mining to the forefront of contemporary legal discourse. The absence of comprehensive scientific knowledge about deep-sea ecosystems, coupled with irreversible environmental risks, has exposed significant normative and regulatory gaps in the existing legal regime (Ardron et al., 2018). As a result, scholars and policymakers have begun to question whether UNCLOS and the ISA, in their current form, are adequately equipped to govern this emerging industry. The debate is no

longer limited to technical feasibility but extends to broader concerns of environmental justice, sustainability, and the legitimacy of international institutions in managing shared global resources.

Research Questions

1. What is the legal framework governing deep seabed mining under UNCLOS?
2. How does the International Seabed Authority regulate exploration and exploitation activities in the Area?
3. To what extent does the existing regime adequately address environmental protection and global equity?
4. What legal and institutional gaps exist in the current governance of deep seabed mining?
5. What reforms are necessary to align deep seabed mining with international environmental and sustainability principles?

Research Methodology

This research adopts a doctrinal and analytical legal methodology. Primary sources include international treaties, particularly the United Nations Convention on the Law of the Sea (1982), ISA regulations, and advisory opinions of international judicial bodies. Secondary sources comprise scholarly articles, policy reports, and environmental assessments related to ocean governance and international environmental law. The paper follows a qualitative approach, analysing legal texts and institutional practices to assess normative coherence, regulatory effectiveness, and emerging challenges. Comparative references to environmental law principles such as the precautionary principle and sustainable development are used to evaluate the adequacy of the current regime.

Legal Framework under UNCLOS: The Common Heritage of Mankind

UNCLOS provides the foundational legal architecture for deep seabed mining. Part XI of

the Convention governs the Area and its resources, explicitly prohibiting claims of sovereignty and asserting that activities must benefit mankind as a whole (UNCLOS, Arts. 136–137). This represents a significant departure from traditional resource governance based on territorial control.

The Common Heritage of Mankind principle carries both moral and legal obligations. It requires that resource exploitation be conducted for peaceful purposes, with due regard to environmental protection, and with mechanisms to ensure fair distribution of economic benefits, particularly for developing states (Pardo, 1975). In theory, this principle embeds equity and sustainability at the heart of deep seabed governance.

In practice, however, operationalising this principle has proven difficult. Critics argue that the emphasis has gradually shifted from collective ownership towards facilitating commercial mining, potentially diluting the redistributive and environmental objectives originally envisaged under UNCLOS (Mickelson, 2019). This tension lies at the core of contemporary debates on deep seabed mining.

The Role and Powers of the International Seabed Authority

The International Seabed Authority (ISA), established under Part XI of the United Nations Convention on the Law of the Sea and headquartered in Kingston, Jamaica, serves as the central institution for governing activities in the Area, defined as the seabed and ocean floor beyond national jurisdiction. The ISA is vested with extensive regulatory powers, including the authority to grant exploration and exploitation contracts, formulate and enforce mining regulations, monitor compliance by contractors and sponsoring states, and ensure effective protection of the marine environment (UNCLOS, Art. 153). Acting “on behalf of mankind as a whole,” the ISA occupies a unique position in international institutional law, combining elements of resource administration,

environmental regulation, and distributive justice.

In practice, the ISA has primarily focused on regulating the exploration phase of deep seabed mining. Over the past two decades, it has approved numerous exploration contracts for polymetallic nodules, sulphides, and cobalt-rich crusts, involving both state-sponsored enterprises and private corporations (Lodge et al., 2014). However, the transition from exploration to commercial exploitation has proven far more controversial. The ongoing development of exploitation regulations, collectively referred to as the “Mining Code,” has sparked intense debate among member states, scientists, and civil society groups. Concerns have been raised that the pace of regulatory development is being driven by economic and geopolitical pressures rather than by adequate scientific understanding or environmental preparedness (Ardron et al., 2018).

A further challenge lies in the ISA’s decision-making structure and procedural transparency. Although the Authority is mandated to represent the interests of humanity as a whole, critics argue that its deliberative processes remain largely opaque and technocratic, limiting meaningful participation by developing states, independent scientists, and non-governmental organisations (Mickelson, 2019). The influence of states with advanced technological capabilities and commercial interests in mining has raised apprehensions that regulatory outcomes may reflect narrow economic priorities rather than collective global concerns. This imbalance risks undermining the legitimacy of the ISA as a trustee of the common heritage of mankind.

Most critically, the ISA faces an inherent institutional tension arising from its dual mandate. On the one hand, it is required to promote and facilitate the development of seabed resources; on the other, it must act as a stringent regulator committed to environmental protection and sustainability. This dual role creates a structural risk of regulatory capture,

where commercial imperatives overshadow ecological safeguards and precautionary obligations (Jaeckel, 2017). Without clearer separation between promotional and regulatory functions, along with stronger accountability and oversight mechanisms, the ISA's capacity to prioritise environmental protection over economic expediency remains uncertain. This institutional dilemma lies at the heart of ongoing debates about the future governance of deep seabed mining.

Environmental Protection and the Precautionary Principle

Environmental protection lies at the core of the legal debate surrounding deep seabed mining, as activities in the deep ocean pose unprecedented risks to ecosystems that are both fragile and poorly understood. Deep-sea habitats host unique biodiversity, including species that are slow-growing, long-lived, and highly sensitive to physical disturbance. Scientific studies indicate that mining operations can result in habitat destruction, biodiversity loss, and the creation of sediment plumes that spread far beyond the immediate mining site, potentially disrupting ecological processes on a regional scale (Clark et al., 2016; Van Dover et al., 2017). Given the extreme depth and remoteness of these environments, recovery from such disturbances may take decades or may not occur at all, raising serious concerns about irreversible environmental harm.

UNCLOS explicitly recognises the obligation of states and the International Seabed Authority to ensure effective protection of the marine environment from harmful effects arising from activities in the Area (UNCLOS, Art. 145). This provision reflects an early acknowledgment of environmental responsibility within the law of the sea. However, the Convention offers limited operational guidance on how environmental protection should be implemented in practice, leaving substantial discretion to the ISA. The lack of comprehensive baseline data on deep-sea ecosystems further complicates

environmental impact assessments, as it becomes difficult to measure the scale and significance of potential damage or to establish thresholds of acceptable harm (Lodge et al., 2014). As a result, environmental assessments risk being speculative rather than precautionary.

In this context, principles of international environmental law—most notably the precautionary principle—assume particular importance. The precautionary principle requires decision-makers to adopt preventive measures where there is a risk of serious or irreversible harm, even in the absence of full scientific certainty. Although the ISA has formally acknowledged this principle within its regulatory framework, its practical implementation remains inconsistent and limited (Jaeckel, 2020). Environmental safeguards are often framed in flexible or discretionary terms, allowing mining activities to proceed despite unresolved scientific concerns. This approach contrasts sharply with the spirit of precaution, which demands restraint and rigorous scrutiny in the face of uncertainty.

The growing push towards commercial exploitation, driven by demand for critical minerals, further intensifies these environmental concerns. By prioritising economic urgency and technological capability, current regulatory trends risk marginalising ecological considerations and long-term sustainability (Mickelson, 2019). This paper argues that a more robust application of the precautionary principle is essential, including mandatory baseline studies, independent scientific review, and adaptive management mechanisms. Without embedding precaution as a binding operational standard, deep seabed mining may proceed in a manner that fundamentally compromises the environmental integrity of the global commons.

Regulatory Gaps and Emerging Concerns

Despite the existence of a comprehensive legal framework under UNCLOS and the institutional oversight of the International Seabed Authority,

significant regulatory gaps continue to undermine the effective governance of deep seabed mining. One of the most pressing concerns relates to liability and compensation for environmental harm. Although UNCLOS obliges states and the ISA to ensure protection of the marine environment, it offers limited guidance on how responsibility should be assigned in cases of environmental damage caused by mining activities in the Area (UNCLOS, Art. 145). Given the transboundary nature of marine ecosystems and the likelihood of long-term or irreversible harm, existing legal provisions fall short in addressing questions of fault, causation, and adequate compensation, particularly where damage manifests decades after mining operations have ceased (Jaeckel, 2017; Lodge et al., 2014).

A second major regulatory gap concerns benefit-sharing mechanisms, which lie at the heart of the Common Heritage of Mankind principle. While UNCLOS mandates that financial and economic benefits derived from activities in the Area be shared equitably, especially with developing and least developed countries, practical modalities for such distribution remain ambiguous (UNCLOS, Art. 140). Scholars have noted that without clearly defined formulas and transparent redistribution processes, benefits are likely to be captured disproportionately by technologically advanced states and corporate actors capable of undertaking deep-sea mining operations (Singh, 2021; Mickelson, 2019). This risks transforming the common heritage regime into a de facto extension of market-driven resource exploitation, thereby eroding its normative commitment to global equity.

Enforcement and compliance represent a third and equally significant area of concern. The ISA's regulatory model relies heavily on self-reporting by contractors and oversight by sponsoring states, many of which have limited capacity or conflicting economic interests (Ardrón et al., 2018). Independent monitoring and verification mechanisms remain underdeveloped, and sanctions for non-compliance are rarely invoked. In the absence

of robust inspection regimes, transparent reporting standards, and meaningful penalties, regulatory compliance risks becoming largely procedural rather than substantive (Jaeckel, 2020). These enforcement weaknesses raise serious doubts about the ISA's ability to prevent environmental harm and ensure accountability.

Collectively, these regulatory gaps highlight a broader structural challenge within the deep seabed mining regime: the tension between facilitating resource exploitation and safeguarding the global commons. As pressure mounts to operationalise commercial mining, the persistence of unresolved legal ambiguities threatens both environmental sustainability and the legitimacy of international ocean governance. Addressing these concerns will require not only technical regulatory reform but also a renewed commitment to the foundational principles of UNCLOS, particularly precaution, equity, and collective responsibility for shared natural resources.

Conclusion and Recommendations

Deep seabed mining constitutes one of the most critical contemporary challenges for international law, testing its capacity to regulate activities in areas beyond national jurisdiction in a manner that is both environmentally sustainable and normatively just. While the United Nations Convention on the Law of the Sea and the institutional framework of the International Seabed Authority provide a foundational legal structure, this paper demonstrates that the existing regime remains insufficient to address the complex risks associated with large-scale seabed exploitation. Scientific uncertainty regarding deep-sea ecosystems, coupled with weak enforcement mechanisms and underdeveloped liability frameworks, exposes serious gaps in environmental protection and long-term stewardship of the global commons (Clark et al., 2016; Jaeckel, 2020). These limitations raise concerns about whether current regulatory approaches genuinely reflect the precautionary

and conservation-oriented obligations embedded in UNCLOS.

From an institutional perspective, the dual role of the ISA as both promoter and regulator of seabed mining has created tensions that undermine its legitimacy and effectiveness. Decision-making processes within the Authority have been criticised for limited transparency and disproportionate influence of technologically advanced and mining-interested states, potentially marginalising developing countries and non-commercial stakeholders (Mickelson, 2019). Given that the resources of the Area are legally designated as the common heritage of mankind, meaningful participation of developing states, independent scientific bodies, and civil society is not merely desirable but legally and ethically necessary (Pardo, 1975). Strengthening accountability mechanisms, improving access to information, and institutionalising independent scientific review should therefore be treated as core regulatory priorities.

In light of these concerns, this paper recommends a cautious and phased approach to deep seabed mining. The incorporation of robust precautionary standards, mandatory environmental baseline studies, and adaptive management frameworks is essential before any commercial exploitation is authorised (Ardron et al., 2018). Furthermore, clearer rules on liability, compensation, and restoration must be developed to address potential transboundary and irreversible environmental harm. The adoption of a temporary moratorium on exploitation, as advocated by several states and international environmental organisations, can be legally justified under international environmental law principles where scientific uncertainty and risk of serious harm persist (Jaeckel, 2017).

Ultimately, the regulation of deep seabed mining is not merely a technical or economic issue but a profound normative challenge for international law. The manner in which the international community governs this “final

frontier” will shape the future of global commons governance and set precedents for managing shared resources in an increasingly resource-constrained world. Whether international law can reconcile development needs with environmental protection and global equity will determine not only the legitimacy of deep seabed mining but also the credibility of international legal institutions in advancing sustainability, justice, and collective responsibility for future generations.

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