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From Mines to Courts: The Litigation Impact of Critical Minerals and Supply Chain Disruptions

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Critical minerals have recently become one of the most sought-after commodities. The clean energy transition and national security concerns have only boosted their demand. According to the [International Energy Agency](#) (“IEA”), the demand for critical minerals in 2023 experienced strong growth, with lithium demand rising 30% and demand for nickel, cobalt, graphite, and rare earth increasing from 8% to 15%. Moreover, secure sourcing has become crucial for the defense industry, since they are essential components in many vital military technologies.

These minerals are concentrated in only a few countries, thus presenting unique complexities, creating potential vulnerabilities to supply chain disruptions, and causing strong geopolitical tensions to establish a reliable critical mineral supply. Hence, in the coming years, we are likely to see a diversification of sourcing, leading private investment in undeveloped mining regions with substantial reserves emerging as alternative suppliers. Some States are also poised to foster the establishment and development of new domestic mining projects—paths already taken, for instance, by the United States and Brazil. Furthermore, the trade tensions between importing and exporting countries are likely to intensify.

With the rising demand for critical minerals, international mining disputes are likely to increase, exponentiating the growing trend of mining disputes observed in recent years. The purpose of this post is to explore the importance of critical minerals in today’s global supply chain, and to assess how building a larger and more diverse supply chain for critical minerals impacts the international arbitration and international disputes landscape.

The Role of Critical Minerals in Today’s Economy

Critical minerals lie at the heart of sustainable development and the transition to a renewable global energy system, as they are essential components of numerous emerging energy technologies such as electric vehicles, wind turbines, nuclear reactors, and solar panels. The [IEA](#) estimates that reaching the 2°C target set by the [Paris Agreement](#) will require “a quadrupling of mineral requirements for clean energy technologies by 2040”.

It is worthwhile to note that there is no universally accepted definition of critical minerals. Each country maintains its own lists, reflecting its national interests and strategic industries. The [U.S.](#)

Energy Act defines them as:

“a non-fuel mineral or mineral material essential to the economic or national security of the U.S. and which has a supply chain vulnerable to disruption. Critical minerals are also characterized as serving an essential function in the manufacturing of a product, the absence of which would have significant consequences for the economy or national security.”

Currently, the U.S. Geological Survey’s (USGS) 2022 critical minerals list includes 50 minerals, such as lithium, cobalt, nickel, rare earths, aluminum, and zinc, among others. However, this list evolves to reflect changing technological needs. For example, under Executive Order, “[Unleashing American Energy](#)” of January 20, 2025, the USGI has been instructed to update the list and consider the incorporation of uranium.

A significant current challenge in securing these resources is that their production is concentrated in a limited number of countries, which makes supply chains susceptible to geopolitical tensions. To illustrate this situation, EV batteries need, among other minerals, lithium, cobalt, nickel, copper, and manganese, while the motors’ magnets require rare earth minerals. In the case of [lithium](#), Australia controls 37% of the global production, followed by Chile with 20.4% and China with 17%. Congo has a staggering 75% of the global production of [cobalt](#). And in the case of rare earth minerals, China holds 70% of the global production.

In response to supply chain risks, some countries have started to adopt different strategies to secure minerals. For instance, the U.S. has declared it a public policy to restore [America’s mineral dominance](#).

International Disputes From Different Angles

Over the past decade, a significant surge in investor-state mining arbitrations has arisen. According to [UNCTAD statistics](#), from 2005 to 2015, 55 cases were registered in the sector, and from 2015 to 2024, the cases increased 65% to a total of 91 cases. Given the current situation, disputes are likely to arise among players in the critical minerals supply chain at various project stages. Below we highlight key types of international disputes which are likely to reveal future trends.

WTO Disputes – Trade War

The [WTO](#) is likely to be a lens through which the world observes the power struggle over critical minerals. In 2025, the global trade tensions have continued to escalate, placing critical minerals at the forefront of international concerns. In the case of the US and China relationship, the US has been imposing significant tariffs on Chinese products, which have been retaliated by China through the imposition of tariff and non-tariff countermeasures, which include export restrictions on [rare earth](#) minerals. China has filed formal WTO dispute complaints regarding the legality of the U.S. tariff measures (*see* complaints related to the [10% US tariff](#) and the [US reciprocal tariff measures](#)).

The clashes between the U.S. and China at WTO are not new. In 2018, [China](#) initiated the same WTO proceeding due to additional duties imposed by the U.S. on Chinese imports. The panel ruled in favor of China. Although the U.S. appealed, the decision remains pending due to the blockage of appointment at the [WTO Appellate Body](#) that left the body without a quorum of adjudicators needed to hear appeals. While the functionality and structure of the WTO remain under a global discussion, it is expected to be a central forum and indicator of global trade tensions.

Investor-State Mining Disputes in Africa

Mining exports are an important part of the GDP in many African countries, and the region has substantial critical minerals reserves, such as chromium, manganese, cobalt, etc. Although of its potential, some nations have been shifting towards resource nationalism representing a risk for current and prospective investors in the mining sector. The governments of Mali, Burkina Faso, and Niger have implemented regulatory changes in the mining sector, leading to an increase in investor-state arbitrations in Africa.

Below are examples of measures affecting both, critical minerals and gold mining, in Africa. Of note, gold is not usually considered to be a “critical mineral”. However, disputes related to gold mining are mentioned here because the type of measures adopted by the States affecting this sector, could eventually be replicated and affect the critical mineral industry in these countries.

In Mali, [gold mining](#) contributes to 80% of the total exports. The government has been seeking to extract a larger stake from its mining operations, and in 2023, implemented a [new mining code](#) requiring producers to divest a 35% share of new projects to Malian investors, an increase from the previous 20% requirement. The new code also increases royalty taxes to 10.5% from about 6% and specifically regulates “strategic minerals” like lithium, uranium, and rare earths. The impact in the sector has been mixed, with companies taking different approaches. Barrick Gold, for instance, has been under negotiations with the government over a tax dispute and it has been [reported](#) that it has reached a deal, whereas other companies have decided to settle.

In Burkina Faso, [gold](#) accounts for 70% of the country’s total exports. Recently, the government has been seeking stricter regulation over the sector. [Sarama Resources](#) filed a request for arbitration in December 2024 under the Burkina Faso-Canada BIT, seeking at least US\$115 million in damages for the withdrawal of a gold exploration permit. Additionally, in August 2024, the state [nationalized](#) two gold mining companies, Bounboua and Wahgnion, in order to resolve a legal dispute between two former concessionaries, Endeavour and Liliam.

In Niger, Africa’s most important uranium ore exporter, the government [revoked uranium exploitation permits](#) affecting foreign investors. Since 1971, a French Company, Orano, has been mining uranium in Niger through different projects: Somair, Cominak and Imouraren. However, in June 2024, the government [revoked](#) the uranium exploitation permit for the Imouraren mine. Moreover, Niger also withdrew a uranium exploitation permit held by a Canadian miner, GoviEx.

Both companies initiated legal proceedings. [GoviEx](#) filed a request for arbitration before ICSID in January 2025. And according to the company’s press release, [Orano](#) initiated two investor-State arbitrations against Niger. One related to the license for Imouraren and the other one related to the Somair Project.

In Congo, AVZ filed a request for arbitration against the State in relation to a lithium mine, [Dathcom](#), alleging that the host state failed to comply with some measures that would have led to the issuance of an operating permit.

These trends show that as African nations continue to assert greater sovereignty over their resources, the landscape of international mining disputes is likely to become even more complex and contentious.

Competition Among Critical Mineral Suppliers: Latin America and Central Asia

Diversification of sourcing is fundamental to secure the supply, and different countries might fill the gap. Latin America holds vast reserves of critical minerals like lithium, nickel, and rare earth elements. Chile, Argentina, and Bolivia lead in lithium reserves; Chile and Peru in copper; and Brazil has the third reserve of nickel and rare earths. Despite having these resources, the region's mineral industries are underdeveloped, but it could become a global supplier in extraction and refining.

In fact, several Latin American countries have begun to sign memoranda of understanding ("MOUs") with the [United States](#) and the [European Union](#) ("EU"), aiming to boost cooperation in the extraction, processing, and trade of critical minerals. These agreements focus on securing investments, sharing technological know-how, and improving supply chains to ensure that Latin America plays a more prominent role in the global market for these minerals. Moreover, countries like [Argentina](#) are establishing policies aimed at attracting substantial investments and fostering the growth of heavy industries, including mining.

At the same time, Central Asian countries are seeking investors to develop mineral reserves and renewable energy projects. Uzbekistan plans to triple renewable energy production in ten years and attract \$70 billion in foreign investment from 2022-2026. In June 2024, Kyrgyzstan lifted a ban on uranium extraction to boost economic growth. Kazakhstan is aiming to [attract](#) mining investment and become a leading producer of uranium, copper, gold, and rare earths, which the President has referred to as the "new oil."

Like Latin America, some Western states have engaged Central Asian governments in critical minerals initiatives. [The UK](#) and the [EU](#) have signed strategic MOUs with Kazakhstan, while the [EU](#) and the [United States](#) have reached similar agreements with Uzbekistan. It is worth following the development in these regions as private capital moves to invest and mining disputes arise.

Conclusion

The escalating demand for critical minerals, driven by the clean energy transition and national security imperatives, underscores the urgent need for a diversified and secure supply chain. As countries and private entities invest in new mining projects in undeveloped regions, the geopolitical landscape will inevitably shift, potentially leading to increased international disputes. Understanding the pivotal role of critical minerals in global supply chains and addressing the complexities of sourcing and trade tensions will be crucial in navigating the future of international arbitration and dispute resolution.

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