

International Comparative Legal Guides

Mining Law 2027

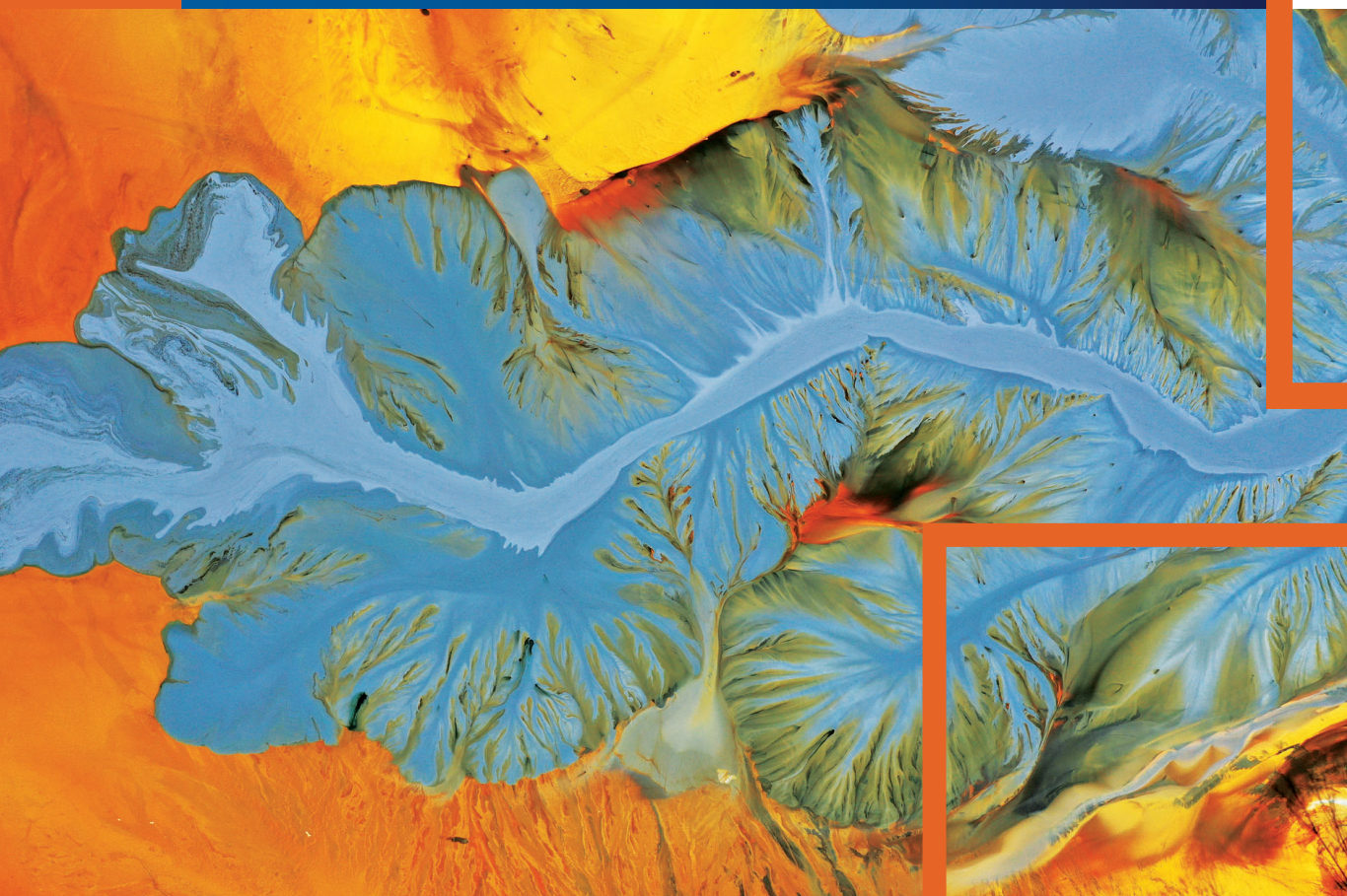
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Geopolitics and the Evolution of Mining Disputes: Trends, Developments, and the Role of Arbitration

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I Introduction

The international mining sector is experiencing a recalibration in the nature of disputes mining companies face. While disputes have long been endemic to large-scale extractive projects, recent years have witnessed a shift towards disputes shaped by state conduct, geopolitical competition, and public law considerations. This evolution is most clearly visible in the rising prominence of investor *versus* state arbitration and the deployment of legal arguments grounded in sovereignty, environmental regulation, and strategic resource control. But its effects are also felt in the commercial sphere.

A convergence of geopolitical pressures including resource competition and regulatory intervention, and the fact that many mining projects are situated in jurisdictions characterised by regulatory volatility and political risk, has led to a concentration of mining arbitrations over the last decade, which peaked in 2025¹ and is showing no signs that this trend might slow down anytime soon.

In this chapter, we explore a number of the geopolitical factors feeding this trend and the types of disputes arising as a result. With this background, we consider the role of arbitration as the preeminent mechanism for resolving disputes in the mining industry.

II Resource Nationalism and the Reassertion of Sovereignty

The resurgence of resource nationalism has been a defining feature of the contemporary mining landscape. Governments, particularly in resource-rich jurisdictions, are increasingly seeking to assert control over mineral assets and capture a greater share of the economic benefits associated with them. This trend is especially pronounced in regions such as Africa and Latin America, which account for a substantial proportion of global mining disputes.

The geopolitical backdrop to resource nationalism is multifaceted. Fiscal pressures, particularly in developing economies, have incentivised governments to revisit existing agreements and impose more onerous fiscal regimes. At the same time, the strategic importance of critical minerals has emboldened states to assert greater control over resource development, often in ways that conflict with prior contractual arrangements. This may manifest in various forms: the imposition of taxes; environmental and social regulatory changes; terminations or refusals to renew licences and concessions; or expropriation. The well-publicised recent actions of the governments of Mali,² Burkina Faso,³ and Guinea⁴ are prominent examples of this trend.

The sentiment behind this trend is not new. Developing economies, in particular, have always sought a greater share of the benefits and revenues from extractive industries. However, the resolve of state actors to actively try and take those benefits or revenues has grown and this trend is leading to a proliferation of disputes and licence and contract renegotiations. While states retain the sovereign right to regulate, the exercise of that right is increasingly subject to scrutiny under international investment law.

III The Critical Minerals Race: Supply Chains, State Competition, and Disputes

The global transition to low-carbon energy systems has elevated certain minerals to strategic status, transforming the mining sector into a key arena of geopolitical competition. Demand for lithium, cobalt, copper, and other critical inputs has accelerated significantly, driven by the rapid expansion of electric vehicles and renewable energy technologies. At the same time, large increases in the prices of certain commodities, such as gold, have caused a re-examination of the profits certain enterprises are making and how those are being shared.

This surge in demand and prices has created both opportunities and sources of conflict. The geopolitical dimension is central. The concentration of mineral reserves in specific regions creates vulnerabilities that states are seeking to mitigate through strategic diversification and domestic production initiatives. At the same time, competition between major powers has intensified, with governments deploying trade measures, investment controls, and industrial policy tools to secure access to critical resources.

These dynamics increase the likelihood of disputes in several ways. First, state intervention in licensing and permitting processes may disrupt investor expectations. Second, changes in trade policy may render contractual performance more difficult or impossible. Third, geopolitical competition may lead to overlapping claims or competing rights in respect of the same resource.

Tribunals will increasingly be required to consider the interaction between contractual obligations and external geopolitical shocks, such as sanctions or export restrictions, often in the context of *force majeure*, material adverse change or change-of-law events. These issues are now beginning to manifest in mining disputes, particularly in relation to critical mineral supply chains.

As the strategic importance of critical minerals continues to grow, so too does the complexity of the disputes associated with them.

IV Sanctions and Political Risk

Linked to the above is the increasing impact of sanctions, political instability, and state behaviour on mining disputes. These factors can disrupt projects in ways that are not easily addressed through traditional legal frameworks.

Sanctions, in particular, have emerged as a significant source of dispute. By restricting trade and financial flows, sanctions can render contractual obligations impracticable and give rise to claims under *force majeure* or hardship provisions.

In more extreme cases, global conflict can lead to similar issues. While the effect of the recent closure of the Strait of Hormuz on global oil prices has been well publicised, its no less significant effect on global mineral supply chains has been less well appreciated.

Arbitral tribunals are increasingly required to navigate these issues, often in circumstances where the underlying dispute is intertwined with broader geopolitical tensions.

V The Growing Role of Environmental, Social, and Governance (“ESG”)

ESG considerations are now firmly embedded in the legal architecture of mining disputes.

Geopolitical factors play a critical role in shaping these disputes. Governments are under increasing pressure to align domestic policy with international climate commitments and respond to societal demands for environmental protection. As a result, regulatory measures grounded in ESG considerations are more common, and such measures are more likely to be defended vigorously in arbitration. Tribunals are increasingly called upon to assess not only the legality of state measures but also the broader public policy context in which those measures are taken.

This evolution was exemplified by the case of *Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v The Argentine Republic*.⁵ Albeit not a mining case, there the tribunal entertained a counterclaim by the state based on alleged violations of human rights obligations. While the tribunal ultimately rejected the counterclaim, it recognised in principle that corporations may be subject to certain international obligations, marking a significant departure from traditional investment arbitration doctrine. The recent mining case, *Bear Creek Mining Corporation v The Republic of Peru*,⁶ concerned the tension between sovereign regulatory change and investor protection. There, the Peruvian government revoked a decree authorising a mining project following significant social unrest. While Peru argued that the revocation was necessary to restore public order, the tribunal determined that the measure constituted an unlawful expropriation, albeit awarding reduced damages on the basis of contributory fault.

As *Bear Creek* illustrates, in a mining context, ESG issues frequently arise in connection with environmental harm, community opposition, and indigenous rights. In this respect, the concept of the “social licence to operate” has become particularly salient, reflecting the need for projects to secure and maintain local acceptance.

The incorporation of ESG considerations into arbitral proceedings has several implications. It expands the scope of relevant evidence, increases the importance of expert testimony, and introduces normative considerations that may influence the outcome of disputes. It also complicates the assessment of damages, particularly where projects are affected by environmental or social constraints.

VI The Expansion of Mining Arbitration: From Exception to Structural Features

As mining projects very often involve multiple parties from multiple jurisdictions, foreign investment and public bodies, it is no surprise that international arbitration is the dispute resolution mechanism of choice for the industry.

Within commercial international arbitration, the factors above have both direct and indirect effects on joint venture and supply chain relationships, leading to disputes as diverse as pricing disputes, offtake disputes, royalty and cost and profit share disputes, and quality, quantity, shipping and transport disputes.

As to the resolution of disputes involving sovereign conduct, investor *versus* state arbitration remains the principal forum of dispute resolution. The sharp increase in such cases, as noted above, reflects a broader reconfiguration of the investment environment in a more turbulent world and mining sector, in which state actions are increasingly a source of contention, and disputes, rather than renegotiation, are becoming more likely.

The mining sector is now one of the most significant users of arbitration. As the number of mining arbitrations increases, it will be interesting to see whether principles emerging from those cases can provide some guidance to mining participants. While awards do not create precedent or binding rules, the publication – in particular in investor *versus* state arbitration cases – of awards in mining arbitrations (of which more can be expected as more cases are filed and advance to their conclusion) allows both participants and arbitrators to consider and build upon prior reasoning. In due course, this may help assuage some of the uncertainties currently facing the sector, although each case will be decided on its own merits and facts and seeking to de-risk projects on this basis could only be a hope, not an expectation.

VII Conclusion

The contemporary mining disputes landscape is characterised by a convergence of legal, economic, and geopolitical forces. The factors examined in this chapter, including resource nationalism, the critical minerals race, geopolitical risk and ESG integration, are not merely coincidental developments. They reflect a fundamental transformation in the way mining projects are conceived, regulated, and contested.

Geopolitics has emerged as the central organising principle of this transformation. The strategic importance of natural resources has heightened the stakes of disputes, while the fragmentation of the global order has increased the likelihood of conflict. At the same time, evolving public policy considerations have expanded the scope of issues addressed in arbitration.

For investors and practitioners, this environment demands a nuanced and proactive approach. Legal risk can no longer be assessed in isolation from geopolitical context. Instead, it requires an integrated analysis that takes into account the interplay between international law, domestic regulation, and global strategic considerations.

Mining disputes are no longer solely about the interpretation of contracts or treaties. They are, increasingly, about the allocation of power, value, and responsibility in a world defined by competing priorities and constrained resources. How tribunals balance those competing factors has the power to influence the industry for years to come.

Endnotes

- 1 In 2025 alone, 15 cases concerning mining were registered with the International Centre for Settlement of Investment Disputes (“**ICSID**”) (24% of all newly registered cases). See *The ICSID Caseload – Statistics*, Issue 2026-1: https://icsid.worldbank.org/sites/default/files/publications/2026-1_ENG_TheICSIDCaseloadStatistics.pdf
- 2 <https://www.reuters.com/world/africa/mali-creates-state-owned-company-manage-mining-holdings-2026-02-09>
- 3 <https://www.reuters.com/world/africa/burkina-faso-completes-nationalisation-five-gold-mining-assets-2025-06-12>
- 4 <https://www.reuters.com/world/africa/guinea-revokes-46-mining-licences-signalling-stricter-oversight-major-operators-2025-05-15>
- 5 ICSID Case No. ARB/07/26: https://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C255/DC9852_En.pdf
- 6 ICSID Case No. ARB/14/2: https://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C3745/DC7377_En.pdf



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Bracewell LLP is a leading international law firm in the energy and infrastructure sector, headquartered in Houston, Texas, with offices across the U.S. and in Dubai, London and Paris. Our lawyers have extensive experience in matters related to mining and have represented mining clients in M&A, project development and finance, private equity, environmental issues, litigation, financial restructuring, capital markets, and intellectual property. Bracewell has represented clients in the mining sector in jurisdictions across the globe. Our team has experience acting for developers, lenders, royalty providers and other stakeholders in the mining industry. We deliver commercially oriented legal excellence on every project and transaction. Our extensive experience results in a pragmatic, constructive and commercially oriented approach that will assist our clients in identifying issues, finding practical solutions, analysing risk allocation, preparing competitive bids, thoroughly diligencing potential acquisitions and successfully developing or acquiring

projects. Bracewell's industry focus enables our lawyers to maintain state-of-the-art knowledge of the commercial and legal challenges faced by our clients, as well as utilise their extensive "on-the-ground" expertise, to provide innovative solutions that are considerate of local requirements and precedents. We are also leaders in ESG issues and we regularly assist our clients with analysing and implementing ESG policies relevant to the mining sector.

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