

# Constitutional Resource Sovereignty and Critical Minerals Governance under International Law: The Case of Mongolia

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*Critical minerals play a central role in the global energy transition. This article argues that their regulation is significantly shaped by domestic constitutional doctrines alongside geopolitical and industrial considerations. This article emphasizes the role of constitutional sovereignty over natural resources in shaping regulatory autonomy in resource-rich states, by placing the management of critical minerals at the intersection of constitutional law and international natural resource management. This article advances three claims: First, critical minerals constitute a regulatory category determined by global demand and by constitutional constraints embedded within national legal systems. Second, the constitutional framework of Mongolia, particularly Article 6 of the Constitution, uses principles of intergenerational justice, public ownership, and long-term stewardship to structure the permissible scope of future legislative and regulatory measures. Third, orthodox interpretations of Permanent Sovereignty over Natural Resources (PSNR) do not fully reflect the constitutional dimension of contemporary resource governance.*

## Keywords

Critical Minerals, Constitutional Sovereignty, Permanent Sovereignty over Natural Resources

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# 1. Introduction

The global transition toward low-carbon energy systems has placed a group of minerals such as copper, lithium, graphite, nickel, manganese, rare earth elements, and cobalt at the center of debates concerning energy security, industrial policy, and geopolitical competition, because they are essential for renewable energy technologies, battery storage, digital infrastructure, and advanced manufacturing.<sup>1</sup> In response to this trend, many states have adopted critical minerals strategies, priority minerals lists, and supply-chain security frameworks.<sup>2</sup> Yet, despite their growing strategic importance, the legal status of “critical minerals” remains conceptually unsettled. The designation is neither geologically determined nor legally fixed; it reflects a contingent category shaped by technological change, market conditions, and geopolitical priorities.<sup>3</sup> This instability raises a legal question that has received little attention in academic literature: How do constitutional doctrines regarding sovereignty over natural resources influence the emergence of new regulatory categories such as critical minerals?

The primary purpose of this research is to examine the concept of constitutional sovereignty over natural resources under international law. In this article, “constitutional resource sovereignty” refers to the constitutional allocation of ownership, stewardship duties, and public-interest constraints that regulate the exploitation of natural resources within national legal systems.<sup>4</sup> Conventional analyses approach the management of critical minerals from the perspective of industrial policy, security strategy, or supply-chain management. This article, however, argues that the regulation of critical minerals is fundamentally shaped by constitutional principles governing ownership, control, environmental protection, and public interest. Critical minerals governance is evolving not only through legislation and policy innovation, but also through pre-existing constitutional commitments that structure the scope of resource management.

Mongolia is a resource-rich state with a long tradition of public ownership of natural resources. Article 6(1) of the Constitution of Mongolia (1992) stipulates

1 International Energy Agency (IEA), *The Role of Critical Minerals in Clean Energy Transitions* (2021), at 5-8 & 21-4, <https://www.iea.org/reports/the-role-of-critical-minerals-in-clean-energy-transitions>.

2 IEA, *Critical Minerals Market Review 2023*, at 11-8 & 23-7, <https://www.iea.org/reports/critical-minerals-market-review-2023>.

3 Benjamin Sovacool et al., *Sustainable Minerals and Metals for the Energy Transition*, 15 *NATURE REV. MATERIALS* 299-312 (2020).

4 MONG. CONST. (1992, as amended in 2019), <https://www.legalinfo.mn>.

that land and subsoil resources “shall be subject to the people’s power only and be under the State protection,” while Article 6(2) affirms that the subsoil and its mineral wealth constitute state public property.<sup>5</sup> The constitutional amendments of 2019 strengthened these provisions by linking subsoil resource exploitation to long-term development, environmental protection, intergenerational equity, and equitable benefit-sharing.<sup>6</sup> These amendments establish a constitutional framework of collective ownership, state trusteeship, and temporal responsibility that applies to all subsoil resources, regardless of whether they are formally designated as “critical.” The Minerals Law of Mongolia (2006) does not contain a definition of critical minerals.<sup>7</sup> Minerals generally considered critical, such as copper, rare earth elements, uranium, and lithium-related minerals, are dealt with via a broader legal framework, specifically Article 4.1.12 of the Minerals Law<sup>8</sup> and the Law on the National Wealth Fund (2024) in relation to fiscal mechanisms.<sup>9</sup> This absence is often interpreted as evidence of a regulatory gap. However, in Mongolia, the Constitution and existing mineral legislation already provide a normative framework for governing minerals essential to the energy transition. Through rules on public ownership, state control over subsoil resources, environmental protection, strategic deposits, and equitable distribution of benefits, the legal system is capable of regulating such minerals even without a statute expressly labeling them as “critical.”<sup>10</sup>

This article advances three claims: First, critical minerals constitute an emerging legal category whose significance is shaped by international supply-chain pressures and by constitutional principles of resource sovereignty. Mongolia’s constitutional framework shapes and constrains how the state may regulate, commercialize, and allocate such minerals. Second, the concept of “emergence” offers a more accurate analytical framework than narratives about the absence of legislation. The governance of critical minerals in Mongolia reflects an incremental adaptation within an existing constitutional order. Third, Mongolia’s constitutional model, based on public ownership, trusteeship, intergenerational equity, and equitable benefit-sharing, offers an alternative perspective on the doctrine of Permanent Sovereignty over Natural Resources

5 MONG. CONST. art. 6.

6 *Id.* (Nov. 14, 2019), revising art. 6.

7 Minerals Law of Mongolia (2006, as amended).

8 *Id.* art. 4.1.12.

9 Law of Mongolia on the National Wealth Fund (2024), <https://www.legalinfo.mn>.

10 MONG. CONST. (1992, as amended in 2019), art. 6; Minerals Law of Mongolia (2006); Law of Mongolia on the National Wealth Fund (2024).

(PSNR), articulated in UN General Assembly Resolution 1803 (XVII).<sup>11</sup> While PSNR affirms state sovereignty over natural resources, it provides limited guidance on environmental rights, long-term stewardship, and intergenerational responsibility.

By placing the management of critical minerals within Mongolia's constitutional framework, this article addresses broader debates on sovereignty, regulatory autonomy, and legal governance in resource-rich states. This article demonstrates that constitutional resource sovereignty – rather than PSNR alone – provides the operative legal architecture through which new resource categories acquire meaning, constraint, and legitimacy.

## 2. Resource Sovereignty under International Law

### A. Permanent Sovereignty over Natural Resources

The doctrine of PSNR emerged in the mid-twentieth century when newly independent states sought to reclaim control over their natural wealth. Its most authoritative formulation appears in UN General Assembly Resolution 1803 (XVII), which affirms that peoples and nations possess permanent sovereignty over their natural wealth and resources and that such sovereignty must be exercised in the interest of national development and the well-being of the population.<sup>12</sup> The Resolution recognizes the authority of states to regulate access to natural resources, determine conditions of exploitation, and nationalize foreign-owned assets subject to appropriate compensation.

The doctrine of PSNR has been widely examined in international legal scholarship as a cornerstone of post-colonial economic sovereignty. Nico Schrijver views PSNR as a dual-natured principle: it affirms sovereign control over resources, yet simultaneously imposes obligations to use those resources for national development and the population's welfare.<sup>13</sup> Similarly, Sornarajah observes that the doctrine functions as an important counterbalance to international investment protection by preserving the regulatory authority of states over their natural resources within international economic law.<sup>14</sup> Other scholars have also highlighted the broader structural role of PSNR in shaping

11 U.N. Doc. A/RES/1803 (XVII) (Dec. 14, 1962).

12 *Id.*

13 NICO SCHRIJVER, SOVEREIGNTY OVER NATURAL RESOURCES: BALANCING RIGHTS AND DUTIES 15-22 & 285-310 (1997).

14 M. SORNARAJAH, THE INTERNATIONAL LAW ON FOREIGN INVESTMENT 102-10 & 205-15 (2017).

the relationship between international economic law and domestic regulatory autonomy.<sup>15</sup> While earlier formulations focused primarily on sovereign control over extraction, these interpretations emphasize that PSNR encompasses both rights and responsibilities.

Contemporary scholarship increasingly recognizes that PSNR alone cannot fully address the governance challenges associated with minerals central to the global energy transition. Questions relating to environmental sustainability, intergenerational equity, and supply-chain responsibility extend beyond the traditional state-centric framework of PSNR and require closer attention to the role of domestic constitutional systems in structuring the exercise of resource sovereignty.<sup>16</sup> This is further supported by Article 1(2) of the International Covenant on Economic, Social and Cultural Rights, which affirms that all peoples may freely dispose of their natural wealth and resources, and Article 21 of the African Charter on Human and Peoples' Rights, which recognizes the right of peoples to freely dispose of their wealth and natural resources and to recover property or compensation in cases of dispossession.<sup>17</sup> Together, these instruments situate PSNR as a foundational doctrine of international economic law.

PSNR has been interpreted largely through the interaction between sovereign regulatory authority and international investment protection. Investment tribunals generally recognize the right of states to regulate natural resources but link that power to criteria such as expropriation, fair and equitable treatment, and legitimate expectations.<sup>18</sup> This reveals a structural tension: while PSNR affirms sovereign authority over natural resources, international investment law simultaneously establishes rules for the manner in which that authority may be exercised.

## B. Limits of PSNR in the Era of Energy Transition

The rise of the importance of critical minerals exposes several limitations in the orthodox understanding of PSNR. First, PSNR offers little guidance on intergenerational responsibility. While it stresses the principle of accountability

15 DANIEL BRADLOW & DAVID HUNTER, *INTERNATIONAL FINANCIAL INSTITUTIONS AND INTERNATIONAL LAW* 3-15 (2010); KATE MILES, *THE ORIGINS OF INTERNATIONAL INVESTMENT LAW: EMPIRE, ENVIRONMENT AND THE SAFEGUARDING OF CAPITAL* 1-12 & 343-60 (2013).

16 SCHRUIVER, *supra* note 13.

17 International Covenant on Economic, Social and Cultural Rights, art. 1(2); African Charter on Human and Peoples' Rights art. 21.

18 *Khan Res. Inc. v. Mongolia*, UNCITRAL Arb. (Perm. Ct. Arb.), Award (Mar. 2, 2015); *SouthGobi Sands LLC v. Mongolia*, ICSID Case No. ARB/20/42.

over land and resources, it does not specifically address questions of long-term stewardship or the management of finite resources. Critical minerals extraction raises precisely such concerns, including extraction pace, depletion, and future access.<sup>19</sup> Second, PSNR is based on territorial control, whereas critical minerals governance increasingly takes place within transnational supply-chains. Due-diligence obligations, sustainability standards, and strategic stockpiling policies require coordination across jurisdictions and regulatory systems, something PSNR does not fully take into account.<sup>20</sup> Third, PSNR provides limited guidance on environmental protection and participatory governance. Although under PSNR, natural resource exploitation must benefit the population, the doctrine does not explicitly address environmental accountability, community participation, or benefit-sharing. This is particularly relevant in the case of critical minerals because of their role in advancing global matters of public interest, such as climate mitigation.<sup>21</sup> Contemporary critical minerals governance involves a complex interaction between climate policy, trade regulation, industrial strategy, and security considerations. PSNR, by contrast, is primarily concerned with nationalization and control over extraction and therefore does not fully capture the regulatory complexity surrounding minerals that are central to the global energy transition.

### C. Critical Minerals as an Emergent Legal Category

Critical minerals represent an emergent regulatory category shaped by the interaction of multiple legal regimes, but they are not as such defined in international law. International legal instruments addressing climate change, responsible business conduct, and supply-chain transparency increasingly influence how states regulate mineral extraction, even in the absence of a specific international legal framework governing critical minerals.<sup>22</sup> Soft law instruments such as the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas have become influential in shaping regulatory expectations for producing states.<sup>23</sup> Regional initiatives – including the European Union’s Critical Raw Materials Act<sup>24</sup> and the United States’

19 SCHRIJVER, *supra* note 13.

20 OECD, OECD DUE DILIGENCE GUIDANCE FOR RESPONSIBLE SUPPLY CHAINS OF MINERALS FROM CONFLICT-AFFECTED AND HIGH-RISK AREAS 13-20 & 31-6 (2016),

21 JAMES MAY & ERIN DALY, GLOBAL ENVIRONMENTAL CONSTITUTIONALISM 1-18 & 79-96 (2015).

22 OECD, *supra* note 20.

23 *Id.* at 13-20.

24 EU, Regulation (EU) 2024/1252 establishing a framework for ensuring a secure and sustainable supply of critical raw

use of the Defense Production Act<sup>25</sup> for strategic minerals — also demonstrate how geopolitical and industrial policies are contributing to the evolving governance landscape.<sup>26</sup> Critical minerals governance currently develops through soft law, policy practice, and domestic institutions rather than a single treaty. In this sense, it emerges through interpretive practice, institutional adaptation, and domestic legal structures rather than through a single comprehensive legal regime.<sup>27</sup>

### 3. Constitutional Resource Sovereignty in Mongolia

#### A. Overview

PSNR affirms the authority of states to control natural resources, but it offers limited guidance on how that authority is organized and constrained within national legal orders. National constitutions, by contrast, can establish fundamental principles regarding ownership, environmental protection, benefit-sharing, and intergenerational responsibility. From this perspective, developments in critical minerals governance are a continuation of resource governance shaped by constitutional logic, rather than a departure from existing legal orders. Constitutional provisions determine the legal conditions under which minerals may be extracted, commercialized, and distributed.<sup>28</sup>

Mongolia's constitutional framework illustrates this dynamic. The combination of collective ownership, state trusteeship, environmental rights, and equitable benefit-sharing provides a legal structure capable of mediating the tensions between sovereignty, environmental responsibility, and global supply-chain demand. Constitutional resource sovereignty functions as the legal framework through which emerging categories of mineral governance acquire meaning and legitimacy.<sup>29</sup>

Constitutional provisions are becoming more important for structuring natural resource governance. In many resource-rich countries, therefore, such principles as the ownership of natural resources, environmental protection, and public benefit-sharing are enshrined in the Constitution. These provisions

materials and amending Regulations (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1724 and (EU) 2019/1020 (Apr. 11, 2024), <https://eur-lex.europa.eu/eli/reg/2024/1252/oj/eng>.

25 Defense Production Act, 50 U.S.C. §§ 4501-4568 (1950).

26 EU, *supra* note 24.

27 IEA, *supra* note 1, at 159-70.

28 MAY & DALY, *supra* note 21, at 79-96.

29 MONG. CONST. (1992, as amended in 2019), art. 6.

have been described as “resource constitutionalism,”<sup>30</sup> which means that natural resources are treated not merely as economic assets, but as objects of public trust, subject to the legal duties the state owes to its population.<sup>31</sup> It is emphasized that the constitutional recognition of environmental rights and intergenerational equity can reshape regulatory decision-making by embedding sustainability and long-term stewardship in the legal structure of state authority.<sup>32</sup>

Constitutional resource sovereignty is increasingly intertwined with emerging norms of environmental governance and public accountability. In this regard, Mongolia’s Constitution establishes a distinctive model of resource sovereignty based on collective ownership, public trusteeship, and long-term stewardship. Article 6(1) provides that “the land, its subsoil, forests, water, fauna, flora and other natural wealth shall be subject to the people’s power only and be under the State protection.”<sup>33</sup> This provision places natural resources within a constitutional structure in which the people are the ultimate owners, while the state acts as the institutional guardian of those resources. Meanwhile, Article 6(2) affirms that “the land, except those owned by the citizens of Mongolia, as well as the subsoil, its wealth, forests, water reserves, and wildlife shall be the state public property.”<sup>34</sup> This provision confirms that the state exercises authority over subsoil resources as a public custodian acting on behalf of the people, and not as a private proprietor.

In addition, Article 6 of the 2019 Constitution provides that state policy on natural wealth “shall be based on the long-term development policy and aim to ensure rights of each citizen in current and future generations to live in a healthy and safe environment, and to fairly and equitably distribute benefits from land subsoil wealth by accumulating them into the National Wealth Fund.”<sup>35</sup> This amendment constitutionalizes intergenerational equity, environmental rights, and equitable benefit-sharing, by defining the National Wealth Fund as the mechanism for distributing mineral revenues. Taken together, these provisions establish a constitutional architecture in which resource sovereignty is not only exercised by the state, but also by a set of affirmative legal duties owed by public

30 MAY & DALY, *supra* note 21, at 79-96.

31 *Id.*

32 DAVID BOYD, *THE ENVIRONMENTAL RIGHTS REVOLUTION: A GLOBAL STUDY OF CONSTITUTIONS, HUMAN RIGHTS, AND THE ENVIRONMENT* 101-30 & 211-36 (2012).

33 MONG. CONST. (as amended in 2019), art. 6(1).

34 *Id.* art. 6(2).

35 *Id.* art. 6.

institutions to the people.<sup>36</sup>

## B. Public Ownership and State Trusteeship

The state functions as a trustee charged with managing natural resources on behalf of the public. This trusteeship model carries several legal implications. First, the state should regulate resource extraction in a manner consistent with environmental protection and public welfare, as mandated by the constitutional requirement that natural wealth be used in accordance with long-term development policy.<sup>37</sup> Second, decision-making concerning mineral licensing and resource development should adhere to principles of transparency and accountability, reflecting the constitutional right of citizens to know about the environmental impacts of subsoil exploitation.<sup>38</sup> Third, the governance of subsoil resources must avoid the permanent alienation of national wealth, since the Constitution treats subsoil wealth as state public property held on behalf of the people.<sup>39</sup> Although analogous doctrines exist in other jurisdictions, Mongolia's Constitution provides unusually explicit textual recognition of public ownership and trusteeship. This recognition shifts the legal analysis from exclusive focus on control to broader questions of responsibility, fiduciary obligation, and stewardship, making resource governance not only a matter of sovereign authority but also of constitutional duty.<sup>40</sup>

## C. Intergenerational Equity and Environmental Rights

Intergenerational equity within natural resource governance is a central feature of Mongolia's constitutional framework. Article 6 of the 2019 amendments requires that state policy on natural wealth be based on long-term development, to ensure "the rights of each citizen in current and future generations to live in [a] healthy and safe environment."<sup>41</sup> This language adds a time dimension to the management of resources, requiring the state to consider the long-term consequences of extraction decisions.

For non-renewable resources such as minerals, this temporal obligation has significant legal implications. Extraction must be evaluated not only in

<sup>36</sup> *Id.* art. 6.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* art. 6(2).

<sup>39</sup> *Id.* See also SCHRIJVER, *supra* note 13.

<sup>40</sup> MAY & DALY, *supra* note 21, at 79-96.

<sup>41</sup> Law on Amendments to the Constitution of Mongolia (Nov. 14, 2019), revising art. 6.

terms of immediate economic returns, but also with regard to environmental sustainability, resource depletion, and the preservation of national wealth for future generations. The 2019 amendment to Article 6 therefore transforms long-term stewardship from a policy preference into a binding constitutional norm. Separately, Article 6(2) of the Constitution recognizes the people's right to environmental information by guaranteeing the right to know about the environmental impacts arising from the exploitation of land and subsoil wealth. This provision anchors transparency and public participation within Mongolia's constitutional framework for resource governance.<sup>42</sup> Article 6(1), Article 6(2), and the 2019 amendment to Article 6 align Mongolia's constitutional framework with broader developments in international environmental law by emphasizing environmental democracy, access to information, intergenerational equity, and public accountability.<sup>43</sup> Such a framework imposes constraints on mineral development under the Constitution. Failure to consider environmental impacts, cumulative effects, and long-term sustainability will likely trigger constitutional challenges, particularly when extraction affects ecological systems or community livelihoods.

#### **D. Equitable Benefit-Sharing and the National Wealth Fund**

Article 6, which mandates the fair and equitable distribution of subsurface revenues through the National Wealth Fund,<sup>44</sup> constitutes another defining element of Mongolia's constitutional resource system. This provision elevates benefit-sharing from a policy objective to a constitutional obligation, transforming natural resource wealth into long-term national development benefits.

The Law on the National Wealth Fund (2024) operationalizes this obligation by establishing a sovereign mechanism for the accumulation, management, and distribution of mineral revenues.<sup>45</sup> The Fund is governed by the principles of transparency, accountability, and long-term sustainability, ensuring that mineral revenues are not treated as ordinary fiscal income but as public wealth belonging collectively to the people. It enshrines the principle of intergenerational equity within resource governance.

42 MONG. CONST. art. 6(2).

43 MAY & DALY, *supra* note 21, at 79-96.

44 MONG. CONST. art. 6(2).

45 Law of Mongolia on the National Wealth Fund (2024), arts. 3-8.

## E. Constitutional Boundaries

The principles of public ownership, state trusteeship, intergenerational equity, environmental protection, and equitable benefit-sharing do not prescribe specific policy choices, but rather establish the legal boundaries within which mineral governance must operate. Any future regulatory regime addressing critical minerals must be consistent with these commitments. Legislative or contractual arrangements that undermine public ownership, bypass redistributive mechanisms, or compromise environmental protection would raise serious constitutional concerns.<sup>46</sup>

Article 6(2) of Mongolia's Constitution also mandates that strategic mineral exploitation is subject to the people's power and "a majority of the benefits gained from it" be allocated to the people.<sup>47</sup> This clause solidifies the state's role in managing minerals of national importance, upholding the principles of collective ownership and public benefit. This constitutional basis is particularly significant for governing critical minerals in global supply-chains. Since Mongolia's Constitution enshrines core principles of ownership, stewardship, transparency, and distribution, a sufficient legal basis exists for regulating such minerals even without specific legislation. In this sense, Mongolia's constitutional framework demonstrates how resource sovereignty provides the legal architecture through which emerging categories of mineral governance acquire meaning, constraint, and legitimacy.<sup>48</sup>

## 4. Comparative Constitutionalism and International Resource Governance

### A. Constitutional Resource Sovereignty as a Distinct Model

Mongolia's Constitution offers a distinctive model of resource sovereignty that departs from both the classical doctrine of PSNR and the legal approaches common in other resource-rich nations. While PSNR affirms state authority against foreign actors, Mongolia's Constitution imposes domestic constraints—including state trusteeship, intergenerational equity, and equitable benefit-sharing—that dictate

<sup>46</sup> MONG. CONST. (1992, as amended in 2019), art. 6.

<sup>47</sup> *Id.* art. 6(2).

<sup>48</sup> *Id.* art. 6.

how that sovereignty must be exercised.<sup>49</sup>

## B. Comparative Constitutional Perspectives

Latin American constitutions, for example those of Bolivia<sup>50</sup> and Ecuador,<sup>51</sup> emphasize public ownership of natural resources and incorporate strong environmental protections and participatory rights. These systems often incorporate broader plurinational or indigenous governance structures that differ from Mongolia's unitary constitutional model. African constitutional systems such as those of South Africa<sup>52</sup> and Kenya<sup>53</sup> recognize environmental rights and public participation in natural resource governance, but benefit-sharing mechanisms are typically implemented through statutory frameworks rather than constitutional mandates. Nordic resource governance models, most notably those of Norway,<sup>54</sup> Sweden, and Finland, rely primarily on statutory institutions and sovereign wealth funds rather than on constitutional provisions to manage mineral and petroleum revenues. These systems emphasize institutional design and administrative capacity rather than constitutional text.<sup>55</sup>

Mongolia's Constitution combines these elements, but stands out for the explicit integration of public ownership, environmental rights, intergenerational equity, benefit-sharing, and the recognition of strategic mineral deposits. This means that Mongolia's Constitution can structure mineral governance even in the absence of detailed statutory categories. This highlights the importance of constitutional design as a determining factor for regulatory autonomy in resource-rich states. This framework aligns the jurisdiction with those that enshrine mineral governance within their constitutions, rather than relying exclusively on statutory legislation.

## C. Implications for International Investment Law

The constitutional anchoring of the mining policy has significant implications

<sup>49</sup> *Id.*

<sup>50</sup> BOL. CONS. arts. 349-351, <https://www.constituteproject.org>.

<sup>51</sup> ECUADOR CONS. arts. 1, 313, 317 & 408, <https://www.constituteproject.org>.

<sup>52</sup> S. AFR. CONST. (1996) § 24, <https://www.justice.gov.za>.

<sup>53</sup> KENYA CONS. art. 42, <https://www.kenyalaw.org>.

<sup>54</sup> FAROUK AL-KASIM, MANAGING PETROLEUM RESOURCES: THE NORWEGIAN MODEL 1-25 & 233-60 (2006).

<sup>55</sup> OECD, OECD Skills Strategy Norway: Assessment and Recommendations (2014), at 15-40, <https://www.regjeringen.no/globalassets/upload/kd/vedlegg/internasjonal/oecd/norwaydiagnosticreportfinalcover280114.pdf>; Government Pension Fund Global of Norway, <https://www.nbim.no>; Mining legislation of Sweden, <https://www.government.se>; Mining legislation of Finland, <https://finlex.fi>.

for Mongolia's role in international investment law. Investment tribunals have historically balanced PSNR with investor interests such as fair and equitable treatment, legitimate expectations, and safeguards against indirect expropriation.<sup>56</sup> Mongolia's constitutional provisions provide a robust legal foundation for legitimate public-interest objectives when regulatory measures affecting mineral development are assessed under international investment law. These structures also aid in defining the state's constitutional duties—principles that courts increasingly rely on to assess the proportionality and legitimacy of regulatory measures.<sup>57</sup>

## **D. Implications for Global Critical Minerals Governance**

The global governance of critical minerals remains fragmented, shaped primarily by national strategies, industrial policies, and soft law initiatives rather than binding international agreements. Mongolia's Constitution provides durable governance principles that remain stable even when global mineral markets fluctuate. The National Wealth Fund aligns mineral development with long-term national welfare, while environmental and intergenerational rights limit extraction activities to broader sustainability constraints. Strategic-deposit clauses serve as domestic counterparts to international critical-mineral designations, allowing states to regulate key resources independently of international consensus. In this connection, constitutional resource sovereignty is likely to become increasingly relevant as states navigate the tensions between energy transition demands and geopolitical competition. National frameworks are essential for balancing the conflicting objectives of sovereignty, sustainability, and supply-chain security.<sup>58</sup>

## **E. Toward a Constitutional Theory of Critical Minerals Governance**

The Mongolian experience demonstrates how pre-existing constitutional commitments shape emerging resource categories, providing a structure for regulatory autonomy that international law alone cannot offer. Constitutional frameworks mediate global pressures stemming from the energy transition, ensuring that resource governance remains aligned with public welfare and long-term sustainability. This model demonstrates that the governance of critical

56 ANDREW NEWCOMBE & LLUÍS PARADELL, *LAW AND PRACTICE OF INVESTMENT TREATIES: STANDARDS OF TREATMENT* 279-357 & 429-98 (2009).

57 *Id.*

58 IEA, *supra* note 1, at 159-70.

minerals is fundamentally a constitutional question.<sup>59</sup>

## 5. Conclusion

The global energy transition is not simply a matter of industrial policy, but also of geopolitical strategy and market design. The Mongolian experience demonstrates that constitutional commitments—rather than mere statutory innovation—structure the legal framework through which resource categories gain meaning, constraint, and institutional coherence. Article 6 of the Mongolian Constitution (as amended in 2019) created a resource regime that effectively anticipated the governance challenges now surrounding minerals deemed “critical” to global supply-chains. Rather than requiring the creation of an entirely new legal category, the governance of such minerals arises from the interpretation and application of these constitutional commitments. Such resource governance carries broader implications by embedding clear public-interest objectives directly into the constitutional framework. Mongolia has bolstered its regulatory autonomy, ensuring that mineral development remains firmly aligned with long-term national welfare. Simultaneously, constitutional mandates for environmental protection, public oversight, and benefit-sharing establish the normative ground necessary to manage minerals with evolving strategic importance.

The Mongolian experience demonstrates that constitutional resource sovereignty does not merely reflect but rather extends and operationalizes the doctrine of PSNR. As global demand for critical minerals intensifies, constitutional frameworks will increasingly mediate the tensions between sovereignty, sustainability, and resource governance. This model provides a valuable lens for examining the constitutional underpinnings of mineral governance within resource-rich states.

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<sup>59</sup> MAY & DALY, *supra* note 21, at 79-96.