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MEMORANDA OF UNDERSTANDING AND CRITICAL MINERALS: EVOLUTION OF INTERNATIONAL ECONOMIC LAW?

LUKASZ GRUSZCZYŃSKI* & MARCIN J. MENKES**

The global transition toward green energy and Artificial Intelligence has repositioned critical minerals (CMs) as strategic levers of geopolitical confrontation. As the neoliberal paradigm shifts toward strategic autonomy, states increasingly utilise Memoranda of Understanding and hybrid instruments to secure supply chains. This article contends that these frameworks signal a structural transformation in international economic law, moving from universal multilateralism toward “bounded orders” defined by security imperatives. It identifies a dual-track evolution: a horizontal dimension of “asymmetric mutualism”, linking mineral access to essential aid, and a vertical dimension involving the “de-internationalization” of governance via foreign private law. Ultimately, the study demonstrates how geopolitical duress is leveraged to replace permanent sovereignty over natural resources with structural dependence on global value chains.

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A.	THE HORIZONTAL IMPACT — REGIME INTEGRATION

* Lukasz Gruszczynski, Professor of Public International Law at Kozminski University (Poland) and Research Fellow at the ELTE CSS Institute for Legal Studies (Hungary). The author may be contacted at lgruszczynski@kozminski.edu.pl.

** Marcin J. Menkes, Associate Professor of Public International Law at Warsaw School of Economics (Poland). The author may be contacted at [d08z1225\[at\]sgh.waw.pl](mailto:d08z1225[at]sgh.waw.pl).

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I. INTRODUCTION

The global transition toward an economy based on green energy and Artificial Intelligence (AI) has fundamentally altered the landscape of international economic law (IEL). At the centre of this shift are critical minerals (CMs) — necessary components of modern industrial and military power. As the neoliberal paradigm is increasingly replaced with the concept of strategic autonomy, CMs have become one of the main levers of geopolitical confrontation. The supply chain vulnerabilities, exacerbated by China's long-standing dominance in extraction and refining, have forced Western states to pioneer novel legal and diplomatic mechanisms to secure their access to these essential resources.

This article examines the proliferation of Memoranda of Understanding (MoUs) and hybrid instruments used by states as the primary vehicles for this new mineral diplomacy. We argue that this trend represents more than a shift in administrative preference; it signals a structural transformation in the governance of natural resources and, more broadly, international economic relations. By using non-binding (or quasi-binding) international frameworks, states bypass multilateral obligations and domestic parliamentary scrutiny, creating 'bounded orders' defined by security imperatives rather than universal rules or shared values.¹

This article examines recent state practice, with a specific focus on the United States-Ukraine partnership and various MoUs across Africa and Central Asia, to illustrate the emergence of a dual-track evolution in IEL. In this context, it first identifies the horizontal dimension, where access to minerals is linked to broader concessions in health, defence, and finance, creating a regime of asymmetric mutualism. Second, it recognises the vertical aspect of this evolution, which is characterised by the internalisation of CMs governance through the transposition of sovereign assets into

¹ J. J. Mearsheimer, *Bound to Fail: The Rise and Fall of the Liberal International Order*, 43 INT'L SEC. 7, 13-15 (2019) (order is an organised group of international institutions that assist in governing interactions among their members. International bound orders consist of institutions with limited membership. They are dominated by a single great power, though two or more great powers can form one if at least one great power remains outside. These orders are created and run by great powers, helping members cooperate internally while dealing with nonmembers externally; they are designed mainly to allow rival great powers to wage security competition, not advance cooperation between them).

private corporate frameworks governed by domestic law. Ultimately, this study demonstrates how geopolitical duress is being leveraged to replace permanent sovereignty over natural resources with to structural dependence on global value chains.

Consequently, the article proceeds as follows: Part II introduces the term of CMs (and related terminology) and explains the recent shift from the neoliberal paradigm of free trade toward strategic autonomy and economic confrontation, alongside the consequences for the CMs sector. Part III focuses on the concept of a MoU. In this context, it first discusses the characteristic features of this instrument and the reasons for its use, before examining how MoUs are utilised for international cooperation within the CMs sector. Building on this discussion, Part IV analyses the impact of this practice on IEL. Part V provides concluding remarks.

II. CRITICAL MINERALS

There is no universally accepted definition of CMs, and the scope of the term varies by country. In fact, states tend to employ various terminologies to describe this category. For example, the European Union (EU) refers to them as ‘Critical Raw Materials’ (CRMs),² the United States of America (US) and the United Kingdom (U.K.) both use the term ‘critical minerals’, Japan speaks of ‘critical materials’, while China employs the notion of ‘strategic minerals’.³ Despite those linguistic differences, countries tend to employ two common (and cumulative) criteria: (i) economic importance of a specific material and (ii) existing supply risk.⁴ For simplicity, this article uses the term ‘critical minerals’ or ‘CMs’, which also appears to be gradually dominating international discourse.

² See Council Regulation 2024/1252, of the European Parliament and of the Council of 11 April 2024, Establishing a Framework for Ensuring a Secure and Sustainable Supply of Critical Raw Materials and Amending Regulations (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1724 and (EU) 2019/1020, 2024 O.J. (L) 1 [hereinafter “Critical Raw Materials Regulation”], recitals 6-7. (the EU also uses the notion of ‘strategic raw materials’, which are a subset of CRMs, identified as indispensable for the green transition, digital transformation, and defence applications, and characterised by high projected demand growth and significant risks of supply chain disruption).

³ Cf., e.g., Council Regulation 2024/1252; Dep’t. Bus. & Trade, *Vision 2035: Critical Minerals Strategy*, (Jan. 23, 2026) UK, <https://tinyurl.com/t9ye2wja>; X. Sun et al., *Policy synergy and thematic evolution of strategic mineral policies in China*, 6(1) FUNDAM. RES. 441, 449 (2024); U. Jochheim, *Japan’s Economic Security Legislation*, EUR. PARL., EPRS Briefing, PE 751.417 (2023), <https://tinyurl.com/bdzaj7wf>.

⁴ R. Coulomb et al., *Critical Minerals Today and in 2030: An Analysis for OECD Countries* 13-20 (OECD Env’t., Working Paper No. 9, 2015).

Economic importance is understood as the prominence of a given mineral in a specific country. This normally requires looking at the industry breadth (i.e., how many sectors rely on it?), the type of industry that depends on a material (e.g., strategically important and technologically advanced industries carry more weight) and the added value to the national economy that is produced by such an industry.

The second criterion is a supply risk. A specific raw material is regarded as being at high risk if its production is either concentrated or unstable. As will be discussed below, the global distribution of CMs is highly uneven, a result of both geological characteristics and the extent to which existing deposits have been identified. Such concentration can also stem from the strategic decisions of a group of states (or even one country) to control deposits or the extraction process for specific raw materials, regardless of their locations.

About instability, note that CMs frequently originate from the regions with high political or economic risk, which, when materialised, may disrupt the supply chains. Production of certain materials can also face constraints resulting from technical, geological, and socio-political bottlenecks that prevent rapid expansion of supply to meet actual demand. Finally, supply risk assessment must consider the substitutability of relevant raw materials. This criterion measures the ease of replacing one material with another without compromising the performance of a final product or significantly raising its production costs. Lower substitutability increases the likelihood that a relevant material will be classified as critical.⁵

It is also worth noting that, unlike many broadly understood, Western countries that view CM primarily through the lens of vulnerability, China classifies them based on their utility to the state. Consequently, their identification is based not so much on the supply risks, as China is largely self-reliant in this regard, but rather on their importance to the domestic economy and national defence.⁶

Since all the above criteria are context-dependent, the groups of minerals that are considered critical differ from country to country, depending on their specific industrial needs and availability of relevant materials to them (either on their own territory or through secure supply chains), as well as other country-specific

⁵ See e.g., G. A. BLENGINI ET AL., EUR. COMM'N., STUDY ON THE EU'S LIST OF CRITICAL RAW MATERIALS: FINAL REPORT (2020); UK CRITICAL MINERALS INTELLIGENCE CTR., UK 2024 CRITICALITY ASSESSMENT DECARBONISATION AND RESOURCE MANAGEMENT PROGRAMME, OPEN REP. OR/24/047 (2024), <https://www.ukcmic.org/downloads/reports/ukcmic-2024-criticality-assessment.pdf>; L.R. Rowan, CONG. RES. SERV., IF13145, U.S. GEOLOGICAL SURVEY'S CRITICAL MINERALS LIST (Jan. 7, 2026), <https://www.congress.gov/crs-product/IF13145>.

⁶ See X. Ren et al., *Evaluation of the Importance of Critical Minerals in China*, 13 FRONT. EARTH SCI. 1491360, 2 (2025).

conditions. This also means that the list of such materials changes over time. For example, nickel, graphite, or copper (mined for roughly 10'000 years), once in abundance, are now considered strategic or critical. Again, this may result from the technological developments, modifications of the national priorities, improvements in access to materials or even methodological revisions in applicable risk models.⁷

Of course, some minerals are now commonly considered critical. This is the case of so-called rare earth minerals, which are a group of seventeen chemically similar elements that possess unique magnetic, catalytic and optical properties essential for numerous high-tech devices.

In the above context, it is worth looking briefly at the two regimes for the management of critical materials: one developed by the EU and another by the US. The EU adopted its first list of fourteen CRMs in 2011.⁸ This list was expanded in 2014, 2017 and 2020,⁹ and now consists of thirty items. It is limited to non-energy raw materials and includes minerals such as bauxite, fluorspar, niobium, lithium, gallium and platinum group metals. Labelling a material as a CRM triggers a specialised legal framework provided by the Council Regulation 2024/1252. This instrument introduces, among others, project fast-tracking (mining, recycling, or processing) and corporate accountability (audits of supply chains), and mandates EU Member States to build national exploration programmes for those minerals. It also sets various benchmarks and deadlines. For example, the Regulation mandates that by 2030 at least 10% of the EU's annual strategic raw material consumption be sourced through domestic extraction, while 40% must be refined or processed within the EU borders. Simultaneously, it promotes resilience of supply chains by capping the reliance on any single non-EU supplier at 65% of total annual consumption for each CRM. Finally, it encourages and facilitates strategic partnerships with third countries, aiming to enhance resilience and diversity of the EU's supply chains. Those partnerships are to be created in the form of non-binding arrangements.

⁷ See N.T. Nassar et al., U.S. GEOLOGICAL SURV., METHODOLOGY AND TECHNICAL INPUT FOR THE 2025 U.S. LIST OF CRITICAL MINERALS: ASSESSING THE POTENTIAL EFFECTS OF MINERAL COMMODITY SUPPLY CHAIN DISRUPTIONS ON THE U.S. ECONOMY 26 (2025) (for example, in 2025, the US moved from simple 'import reliance' metrics to a more complex economic effects assessment. The country now uses computer models to simulate a one-year supply disruption and calculate the total projected loss to the US Gross Domestic Product. Consequently, materials like rhodium and niobium are now ranked as having higher risk because their absence would cause significant economic damage).

⁸ EUR. COMM'N., *Tackling the Challenges in Commodity Markets and on Raw Materials*, COM (2011) 25 final (Feb. 2, 2011).

⁹ See EUR. COMM'N., *Critical Raw Materials Resilience: Charting a Path Towards Greater Security and Sustainability*, COM (2020) 474 final (Sept. 3, 2020).

In the US, the concept of CMs has evolved from a narrow focus on wartime industrial needs during the early 20th century into a comprehensive framework for economic and national security. The early targeted measures included the so-called *specialty metals restriction* (10 U.S.C. § 4863), which stipulated that “specialty metals” contained in any aircraft, missile and space system, ship, tank and automotive item, weapon system, ammunition, or any components thereof purchased by Department of Defence (DOD) must be melted or produced in the US. Additionally, DOD is prohibited from procuring ‘sensitive materials’¹⁰ from the Democratic People's Republic of Korea, the People's Republic of China, the Russian Federation, or the Islamic Republic of Iran.

As explained in the Executive Order 14272 of 15 April 2025:

A strong national defence depends on a robust economy and price stability, a resilient manufacturing and defence industrial base, and secure domestic supply chains. Critical minerals, including rare earth elements, in the form of processed minerals, are essential raw materials and critical production inputs required for economic and national security. Critical mineral oxides, oxalates, salts, and metals (processed critical minerals), as well as their derivative products – the manufactured goods incorporating them – are similarly foundational to United States national security and defence.¹¹

The current CMs list was drafted during the first Trump presidency (based on Executive Order 13817¹² and the subsequent Energy Act of 2020¹³). The US Geological Survey is mandated to update the list at least every three years to adapt to the evolving geopolitical and technological landscape. As of 2026, the list has expanded to sixty minerals, making it significantly more extensive than its EU counterpart, covering, for instance, nickel, tellurium, and zinc. Paradoxically, while the US maintains a broader CMs designation list than the EU, the current US administration's resistance to fossil fuel phase-out and the green energy transition effectively renders the EU more exposed to CM supply chain vulnerabilities, as accelerated decarbonization commitments generate proportionally greater and more immediate material dependencies.

¹⁰ These are: samarium-cobalt magnets, neodymium-iron-boron magnets, tungsten metal powder, tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy, and tantalum metals and alloys.

¹¹ Exec. Order No. 14,272, 90 Fed. Reg. 16,437 (Apr. 18, 2025).

¹² Exec. Order No. 13,817, 82 Fed. Reg. 60,835 (Dec. 26, 2017).

¹³ Energy Act of 2020, Pub. L. No. 116-260, div. Z, 134 Stat. 2418 (2020).

Designating a mineral as ‘critical’ carries legal and financial implications intended to stimulate domestic production and mitigate foreign dependence. These measures include federal tax incentives, the streamlining of administrative procedures, and directives for federal agencies to prioritise mineral security. Furthermore, building on Executive Order 13817 to bolster international cooperation and investment, the Energy Act of 2020 requires federal agencies to coordinate with global partners to diversify supply chains.

All these developments represent responses of states to ongoing geopolitical changes and technological advancements. The current global landscape is increasingly defined by strategic rivalry between major powers — most acutely the US and China — as the latter has they methodically constructed bottom-up dominance over CM supply chains,¹⁴ exploiting the liberalized trade architecture, while the former now responds with a nascent framework of strategic autonomy.¹⁵ This transition signals a departure from the era of hyper-globalisation, where efficiency was prioritised over national security and supply chain resilience. Consequently, nations nowadays invest heavily in domestic industrial capacity and secure partnerships to mitigate the risks of overdependence in an unpredictable international environment.

Access to CMs — due to their importance for the high-tech, military, and green energy sectors¹⁶ — is a central element of this new reality. In this context, it should be highlighted that their market has been dominated by China for decades. This is not only the result of China’s vast domestic reserves, but also its sustained industrial policy. The country currently controls approximately 60% of global rare earth extraction and between 87% and 90% of the world’s refining capacity for materials such as lithium, cobalt, and graphite.¹⁷ This ‘processing chokehold’ means that even

¹⁴ See, e.g., G. PITRON, *LA GUERRE DES MÉTAUX RARES: LA FACE CACHÉE DE LA TRANSITION ÉNERGÉTIQUE ET NUMÉRIQUE* [THE RARE METALS WAR: THE DARK SIDE OF CLEAN ENERGY AND DIGITAL TECHNOLOGIES] (Les Liens qui Libèrent 2018) (Fr.).

¹⁵ See, e.g., J. Hauge et al., *The new economic nationalism: Industrial policy and national security in the United States, China, and the European Union*, 166 GEOFORUM 104382 (2025); E. JONES, *POPULISM AND THE FUTURE OF TRANSATLANTIC RELATIONS: CHALLENGES AND POLICY OPTIONS* 101-113 (M. Riddervold, G. Rosén & J.R. Greenberg eds., European Center for Populism Studies 2026).

¹⁶ See e.g. V. Vivoda, R. Matthews & J. Andresen, *Securing defense critical minerals: Challenges and U.S. strategic responses in an evolving geopolitical landscape*, 44(2) COMPARATIVE STRATEGY 281–315 (2025) (for example, gallium and germanium are used for the production of semiconductors and chips; EV batteries require massive amounts of lithium, cobalt, nickel, manganese, and graphite; while precision-guided weapons rely on eighteen different critical minerals).

¹⁷ C.A. Hart, *Mapping China’s Strategy for Rare Earths Dominance*, ATLANTIC COUNCIL GLOBAL ENERGY CTR. (June 2025), <https://tinyurl.com/yc5caupn>.

when minerals are mined elsewhere, they often must be shipped to China to be transformed into the high-purity precursors required for specific products. Beyond its own borders, China has also aggressively pursued a policy of resource diplomacy to secure upstream assets and establish control over downstream processing sites, most notably across Africa.¹⁸ Through the Belt and Road Initiative, China has provided over USD 24 billion in the form of aid and credit for African mining projects, often outbidding Western competitors.¹⁹

A good example is the Democratic Republic of the Congo (DRC), where Chinese companies now control the majority of the country's industrial cobalt mines (the DRC is responsible for 70% of the current global production).²⁰ By integrating mining acquisitions with the development of transport corridors and processing hubs — such as those in Zambia and Nigeria — China is attempting to create vertical supply chains.²¹ This strategy not only ensures a direct and reliable flow of raw materials into its expanding domestic manufacturing sector but also creates powerful political leverage, allowing China to use critical materials as an instrument of economic coercion.²²

III. MEMORANDA OF UNDERSTANDING IN INTERNATIONAL PRACTICE

A. General characteristics of MoUs

MoUs²³ are instruments of soft law. As with other forms of soft law, they constitute a departure from traditional and formal methods of regulating international cooperation — most notably international treaties. The practice of using MoUs

¹⁸ See M. Power et al., *China's Resource Diplomacy in Africa - Powering Development?* INT'L. POL. ECON. SER., PALGRAVE MACMILLAN (2012).

¹⁹ P. Nantulya, *China's Critical Minerals Strategy in Africa*, AFRICAN CTR. FOR STRATEGIC STUDIES (Dec. 9, 2025), <https://africacenter.org/spotlight/china-africa-critical-minerals/> [hereinafter Nantulya].

²⁰ F. Gregory & P.J. Mila, *China in the Democratic Republic of Congo: A New Dynamic in Critical Mineral Procurement*, STRATEGIC STUDIES INSTITUTE (Oct. 17, 2024), <https://tinyurl.com/2465vetk>.

²¹ Nantulya, *supra* note 19.

²² See Appellate Body Report, *China — Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum*, WT/DS431/AB/R, WT/DS432/AB/R, WT/DS433/AB/R (Aug. 7, 2014).

²³ See J. Klabbers, *Governance by Academics: The Invention of Memoranda of Understanding*, 80 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT 35 (2020) (on the origin of a MoU at the international level). Note more generally that the concept of a MoU is rooted in Anglo-American commercial law. In that legal tradition, the term is used to describe preliminary agreements, particularly within the context of corporate mergers and acquisitions.

emerged shortly after World War II,²⁴ but they have proliferated only recently, appearing in various areas of international relations.²⁵ In particular, MoUs are used when specific commitments require regular updates or for matters focusing on technical and administrative functions. MoUs are also utilised in sensitive defence and technology sectors requiring document classification, as well as for providing the necessary subsidiary frameworks to complete the details of existing treaties.²⁶ Finally, these documents can function as ‘pre-contracts’. In this context, they serve as a formal, yet non-binding, mechanism to assess the feasibility of deeper collaboration between states and the possibility of (some) subsequent legal agreements. By signing an MoU, states elevate their relationship, signalling a strategic political commitment to intensify their partnership and engage in more detailed discussions regarding specific issues.

Considering the above, one may define MoUs as “[a]n instrument concluded between States which they do not intend to be governed by international law (or any other law) and, consequently, is not legally binding”.²⁷ In practice, these instruments take different names — while usually they are simply called MoUs, in other instances they may be adopted as arrangements (either in the form of an exchange of notes or as a single document), letters of intent, protocols, minutes, joint declarations or partnerships.

It should also be acknowledged that the line between such instruments and treaties is sometimes blurred, as treaties themselves may incorporate non-binding provisions. International treaties can also appear under different names (e.g., agreement, convention, protocol), and sometimes they can even be called MoUs.²⁸ Clearly, it is not the name that determines the legal status of a specific instrument but its nature. As noted above, an MoU (or any other instrument of soft law concluded by states), unlike a treaty, is neither intended to be governed by international law nor is it legally binding. What is therefore crucial for the distinction

²⁴ It should be, however, recognised that other forms of non-binding international arrangements are as old as international politics itself. Diplomatic notes, for instance, have been utilised as a standard tool of communication and informal agreement well before the proliferation of MoUs.

²⁵ M. N. SHAW, *INTERNATIONAL LAW* 113-118 (7th ed., 2014).

²⁶ LEGAL DIRECTORATE OF FOREIGN, COMMONWEALTH AND DEV. OFFICE, *TREATIES AND MEMORANDA OF UNDERSTANDING (MoUs): GUIDANCE ON PRACTICE AND PROCEDURES* (August, 2025), <https://www.gov.uk/government/publications/treaties-and-mous-guidance-on-practice-and-procedures> (hereinafter *GUIDANCE ON PRACTICE AND PROCEDURES*).

²⁷ A. AUST, *MODERN TREATY LAW AND PRACTICE* 32 (2nd ed., 2007)

²⁸ *Id.* at 26; see, for example, Nuclear Suppliers Group, *Memorandum of Understanding Implementing Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Materials and Related Technology*, 31(5) INT’L. LEGAL MATERIALS, 1094-1134 (1992).

between an MoU and a treaty is the intent of the parties signing a specific instrument.²⁹ In the following Parts, the term ‘MoU’ is used to refer to these various forms of legally non-binding instruments of CMs governance.

Determining such intent requires a careful review of the terms used in such a document.³⁰ International treaties use mandatory language (e.g., ‘shall’, ‘agree’, ‘undertake’, ‘rights and obligations’, or ‘come into force’), while MoUs (or other soft law instruments) employ voluntary expressions, such as ‘should’, ‘carry out’, ‘decide’, ‘will’, ‘commitments’, and ‘come into effect’.³¹ To emphasise their non-binding nature, MoUs (or other soft law instruments) can also contain explicit clauses that address this matter. For example, the MoU on a Partnership on Sustainable Raw Materials Value Chains between the EU and the Republic of Zambia explicitly states that “[t]he partnership is not intended to create rights or obligations under international or domestic law. Nothing in this partnership represents a commitment of financing on the part of either side”.³²

While MoUs are not legally binding, they record international political commitments. In other words, the signatory states express their intent to comply, without incurring international legal obligations. In practice, such arrangements can function through the mechanism of reputational stakes — while a breach of an MoU does not trigger the formal regime of state responsibility with a possibility of international adjudication, it generates ‘soft sanctions’ such as loss of reputation and erosion of trust³³ (which may negatively affect the overall credibility of a state). The effectiveness of an MoU can also be further reinforced by the power asymmetries that often exist in such arrangements (which may also be true for treaties).³⁴ Consequently, a weaker party may comply with its commitments not out of legal obligation but out of a calculated apprehension of adverse political consequences in

²⁹ R. GARDINER, *TREATY INTERPRETATION* 87 (2nd ed., 2015).

³⁰ We leave it an open question whether the interpretation of an MoU (applying international treaty law indirectly or by analogy) must consider the negotiating history or contemporaneous statements as required by international customary law and the Vienna Convention of the Law of Treaties.

³¹ GUIDANCE ON PRACTICE AND PROCEDURES, *supra* note 26, at 18.

³² MEMORANDUM OF UNDERSTANDING ON A PARTNERSHIP ON SUSTAINABLE RAW MATERIALS VALUE CHAINS BETWEEN THE EUROPEAN UNION REPRESENTED BY THE EUROPEAN COMMISSION AND THE REPUBLIC OF ZAMBIA (Oct. 26, 2023), <https://tinyurl.com/3phbnm3e>.

³³ C. Lipson, *Why Are Some International Agreements Informal?* 45 INT’L. ORG. 495, 508 (1991); see also D. E. Ho, *Compliance and International Soft Law: Why Do Countries Implement the Basle Accord?* 5(3) J. INT’L. ECON. L. 647 (2002); M. Menkes, *Governance gospodarczy – studium prawnomiedzynarodowe* 57-73 (C.H. Beck 2016).

³⁴ See generally N. Krisch, *International Law in Times of Hegemony: Unequal Power and the Shaping of the International Legal Order*, 16(3) EUR. J. INT’L L. 369 (2005).

case of its non-compliance, such as the withdrawal of foreign aid, the loss of strategic patronage, or the imposition of informal economic pressures (e.g., removal of trade preferences) by a more powerful signatory.

A primary advantage of MoUs lies in the simplicity of their conclusion. Unlike formal treaties, these instruments enable states to establish frameworks for cooperation without undergoing the protracted and often politically sensitive domestic ratification processes. This enables countries to finalise such arrangements quickly, responding dynamically to emerging global challenges or technical developments, without being constrained by the procedural requirements of their own constitutional law. Furthermore, because these instruments are non-binding, they foster a unique environment for international cooperation where parties can experiment with new policy frameworks or share sensitive information with a lower threshold of political risk. A key benefit in this regard is their inherent confidentiality. This provides a discreet mechanism for states to align their interests in sensitive areas like national security, intelligence sharing, or preliminary negotiations where public exposure might be strategically disadvantageous or politically premature.³⁵

However, the choice of ‘soft law’ is not without costs. The primary drawback (at least for democratic societies) lies in a pronounced lack of parliamentary oversight over the actions of the executive branch, as these arrangements bypass legislative scrutiny and public debate. By operating in the shadows of formal diplomacy, MoUs insulate high-level decision-making from constitutional checks and balances. This may undermine accountability and create a democratic deficit where significant public policies are shaped without a clear mandate and supervision.³⁶ Such practice also contradicts the spirit of the international consensus that emerged after World War II (as embodied in Art. 102 of the Charter of the United Nations³⁷), which calls for registration and publication of international agreements to prevent the return of the ‘secret diplomacy’ that dominated the pre-war period.³⁸ Finally, the lack of an enforcement mechanism means that MoUs offer scarce remedies and do not generate exit costs (other than purely political), unless their application is linked to other benefits. This renders them vulnerable to sudden political shifts, undermining their long-term stability.³⁹

³⁵ G.C. Shaffer & M.A. Pollack, *Hard vs. Soft Law: Alternatives, Complements, and Antagonists in International Governance*, 94 MINN. LAW REV. 706, 719 (2010).

³⁶ See RESEARCH HANDBOOK ON SOFT LAW, *particularly* ch. 6 (M. Eliantonio, E. Korkea-aho & U. Mörtz eds., Edward Elgar 2021).

³⁷ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945), 1 UNTS XVI.

³⁸ *But see generally*, M. Donaldson, *The Survival of the Secret Treaty: Publicity, Secrecy, and Legality in the International Order*, 111(3) AM. J. OF INT’L. L. 575 (2017).

³⁹ F. Schott, *Soft Law’s Journey: A Tale of Blurred Lines and Complex Governance*, BIICL BLOG (Dec. 15, 2025), <https://tinyurl.com/muku97p4>.

B. MoUs as Instruments of International Cooperation in the CMs Sector

International cooperation is an indispensable element of CMs policy. On the one hand, resource-intensive developed nations require reliable access to minerals, primarily located in the Global South. On the other hand, developing countries seek investment and technology transfers to facilitate a structural transition of their economies from basic extraction toward high-value processing, allowing them to capture a greater share of the global value chain. While treaties on supply chain security exist,⁴⁰ MoUs have proved particularly popular for establishing such cooperation. Apparently, the gradual erosion of the multilateral legal order has forced states to seek alternatives in the form of bilateral or plurilateral arrangements.⁴¹ This fact, however, does not entirely explain why MoUs, rather than treaties, are preferred by states in this policy space.

As noted above, MoUs and other soft law instruments offer several distinct advantages. Because they circumvent formal treaty-making procedures, MoUs can be adopted more easily, making them an attractive option for rapid responses to supply chain disruptions⁴². While the administrative nature of MoUs may entail legitimacy deficit, they may nonetheless provide the only viable alternative in the race against states as China or governments such as Trump's administration, whose CMs policies are not constrained by lengthy deliberative procedures and the need to secure political compromises for adoption. Furthermore, as previously discussed, MoUs offer a high degree of flexibility, allowing parties to easily modify the terms of cooperation as required by technological and market changes. Beyond these efficiencies, MoUs also serve as instruments for trust-building between states. They provide grounds for collaboration, signalling political will to financial markets and investors while maintaining a level of confidentiality not always possible under treaties. Finally, MoUs may also serve as a useful mechanism for states to circumvent their international obligations, for instance, under WTO law or international investment treaties.⁴³

⁴⁰ See, e.g., Agreement on Strengthening Critical Minerals Supply Chains, Japan-U.S. (Mar. 28, 2023), <https://tinyurl.com/js8aj8ed>.

⁴¹ See generally, L. GRUSZCZYNSKI, M. MENKES, V. BILKOVA & P. FARAH EDS., *THE CRISIS OF MULTILATERAL LEGAL ORDER: CAUSES, DYNAMICS AND IMPLICATIONS* (Routledge 2022).

⁴² See, e.g., L. Georges, *Critical minerals shortage threatens US military production capacity*, S&P GLOBAL (Mar. 4, 2026), <https://tinyurl.com/w36nzd7f>; D. Dennis, *Critical Minerals Shortage Threatens EU Energy Transition*, EY IRELAND (Oct. 9, 2025), <https://tinyurl.com/mwzkbvza>.

⁴³ Such arrangements, if implemented, may go against WTO non-discrimination principle (i.e., Most-Favoured Nation) and rules on subsidies. They may also be incompatible with certain obligations of international investment law.

Since 2020, there has been a sharp increase in the number of MoUs concluded in the CMs sector.⁴⁴ Most of them are concluded between the US, EU, Japan, and the UK (major resource-hungry states), as well as Canada and Australia (major exporters interested in strengthening supply chains) and various resource-rich states in the Global South and Central Asia.⁴⁵ While the details of these arrangements vary depending on the parties involved, it is possible to identify certain themes that are typically addressed in such arrangements. We briefly present them below. At the same time, it needs to be stressed that this presentation does not aspire to be exhaustive, nor does it cover all existing MoUs or every aspect agreed upon between parties — such an undertaking would require a separate and much longer study. Our aim is limited to providing readers with a broad overview of the matters that are normally addressed in MoUs.

Arguably, the most important issue in MoUs concerns states' commitments to secure and diversify CMs supply chains by establishing closer cooperation between the parties. The level of specificity, however, varies greatly. Some MoUs remain very general and simply call for cooperation between parties (e.g., at the level of industry) and the promotion of initiatives to strengthen the resilience and efficiency of supply chains through public and private partnerships, however without giving any details.⁴⁶ Others include more specific provisions. For example, the EU-Uzbekistan MoU not only calls for the development of closer economic and industrial integration between the parties in the CMs sector but also identifies specific means of doing so. This includes actions such as mapping resources, developing joint projects, facilitating business opportunities, promoting the use of advanced technologies and expertise in the CMs sector, and facilitating cooperation on trade and investment.⁴⁷ There are also instruments that envisage even closer cooperation from the outset. This is evident in several US MoUs that include commitments to implement additional — and sometimes aggressive — mechanisms to protect domestic CMs markets from non-market policies and unfair trade practices. These measures include establishing price floors, creating or strengthening rules on asset sales for national security

⁴⁴ See generally, S. Sasmal, *Let's Get Critical: Critical Minerals Mini Deals as Evolving Models of Trade Cooperation*, 25(2) WORLD TRADE REV. 267–302 (Feb. 18, 2026); G. Dufour et al., *Targeted Trade Deals As a New Form of Global Value Chain Governance*, in GLOBAL VALUE CHAIN DEVELOPMENT REPORT 2025: REWIRING GVCs IN A CHANGING GLOBAL ECONOMY (2025), https://www.wto.org/english/res_e/publications_e/gvcreport2025_e.htm [hereinafter 'Dufour et al.'].
⁴⁵ *Id.*

⁴⁶ See, e.g., Memorandum of Understanding between the Department of Natural Resources of Canada and the Ministry of Trade, Industry and Fisheries of Norway concerning Critical Mineral Cooperation, Can.-Nor. (Mar. 14, 2026), <https://tinyurl.com/3v5yyprp>.

⁴⁷ Memorandum of Understanding between the European Union and the Republic of Uzbekistan on a strategic partnership on sustainable raw materials value chains, EU-Uzb., § 4 (Apr. 5, 2024), <https://ec.europa.eu/docsroom/documents/58835?locale=en>.

reasons, and accelerating or streamlining permitting processes for the mining, separation, and processing of minerals.⁴⁸

Second, most MoUs contain arrangements on financing and capital mobilisation. Some earlier MoUs are general. For example, the UK-Japan MoU envisages that parties will encourage ‘partnerships between companies and industrial bodies of both Participants in order to diversify supply chains and leverage private finance to conduct shared investments into CM projects in the UK, Japan and globally.’⁴⁹ Others are more specific, sometimes identifying individual projects. The India-Australia MoU may serve as a good example here, as it calls for supporting the investment in Australia by the Indian state-owned enterprise KABIL.⁵⁰ Finally, some MoUs provide for a comprehensive set of actions relating to financing and capital mobilisation. For example, the US-Japan MoU refers to both public and private capital, envisages specific forms of support (e.g., grants, guarantees, loans, or equity; off-take arrangements; insurance; or regulatory facilitation), and other forms of investment support, and proposes a process of joint project selection. This comes with a set of deadlines for specific steps (e.g., organising a ministerial meeting dedicated to investment promotion).⁵¹

Note that blending public and private capital can actually yield important benefits. On the one hand, such an approach alleviates pressure on national budgets. On the other hand, it enables government backing for projects characterised by high costs and long-term development cycles, where private returns are often deferred. Moreover, regarding MoUs with some developing nations, public financial intervention may be required to offset the higher risks — such as regional instability — faced by potential private investors.

⁴⁸ Framework for Securing of Supply in the Mining and Processing of Critical Minerals and Rare Earths, Austl.-U.S., § 1, Oct. 20, 2025, <https://tinyurl.com/muckmyu3> [hereinafter US-Austl. Critical Minerals Framework]; Framework for Securing the Supply of Critical Minerals and Rare Earths Through Mining and Processing, Japan-US, § 1, Oct. 28, 2025, <https://tinyurl.com/euuvnk58> [hereinafter US-Japan Critical Minerals Framework].

⁴⁹ Memorandum of Cooperation between the Ministry of Economy, Trade, and Industry of Japan the Department for Business and Trade of the United Kingdom of Great Britain and Northern Ireland on Critical Minerals, Japan-UK, (Oct. 28, 2023), <https://tinyurl.com/mr8rc3rp> [hereinafter Japan-UK CM MoU].

⁵⁰ Memorandum of Understanding on Cooperation in the Field of Mining and Processing of Critical and Strategic Minerals between Ministry of Mines, the Government of the Republic of India and Department of Industry, Science, Energy and Resources for Australia, the Government of Australia, IND.-AUSTL., ¶3(b) (June 3, 2020), <https://tinyurl.com/ynhzzxem>.

⁵¹ United States-Japan Framework For Securing the Supply of Critical Minerals and Rare Earths through Mining and Processing, 27 October 2025 [hereinafter Japan-US MoU], Section I, § 2.

Third, some MoUs (particularly those signed by the EU, but not only⁵²) address issues of sustainable mining and environmental, social, and governance (ESG) standards within the extractive and processing industries. For example, the EU-Kazakhstan MoU foresees the ‘application of the principles of sustainable mining and processing of raw materials by monitoring the regulatory framework of the mining and processing industry and their compliance with international standards and best practices, in particular as regards environmental, social and good governance standards’.⁵³ Some agreements go further by committing to enforce specific internationally recognised ESG frameworks, such as the OECD Guidelines for Multinational Enterprises.⁵⁴ This may be also accompanied by due diligence duties that aim to ensure effective implementation.⁵⁵ At the same time, one should be cautious in assessing the sustainability of CMs MoUs. On the one hand, they appear to align cooperation with international environmental obligations. On the other hand, the mining and processing of CMs entail significant social and environmental costs.⁵⁶

Integral to the commitment to sustainability is the promotion of the circular economy. The MoUs frequently refer to recovery, recycling, and remanufacturing of secondary raw materials.⁵⁷ This systemic shift towards circularity can be portrayed as a dual-purpose strategy: it concurrently mitigates the problem of environmental

⁵² See, e.g., Japan-UK CM MoU, *supra* note 49, para. II.1(f), Oct. 28, 2023, <https://tinyurl.com/89ue4mp7>.

⁵³ Memorandum of Understanding on a strategic partnership on sustainable raw materials, batteries and renewable hydrogen value chains, EU-Kaz., § II.1. (Nov. 7, 2022), <https://tinyurl.com/553p37jt> [hereinafter EU-Kaz MoU].

⁵⁴ Memorandum of Understanding on a Strategic Partnership on Sustainable Raw Materials Value Chains, EU-Rwanda, p. 1 (Feb. 19, 2024), <https://tinyurl.com/2s3fu7p2> [hereinafter EU-Rwanda MoU].

⁵⁵ Such MoUs serve as a tool in the race for CMs against governments that do not see the need to subject this cooperation to the obligations of modern corporate governance (e.g., China, the US). It suffices to note here that the provisions of the partnership between the US and Ukraine, analysed later in this article, contain clauses that could *de jure* or *de facto* prevent investors complying with the ESG standards from participating in such a venture. It is also worth noting the dilemma faced by the European Commission after signing the MoU with Rwanda – a country at the centre of a geopolitical race for raw materials – given the lack of respect for fundamental human rights.

⁵⁶ U.N. UNIV. INST. FOR WATER, ENV'T & HEALTH, *Critical Minerals, Water Insecurity and Injustice* (2026), (29 Apr., 2026), <https://unu.edu/inweh/collection/unu-inweh-report-critical-minerals-water-insecurity-and-injustice>; *How Does the Environmental Impact of Mining Clean Energy Metals Compare to Mining Coal, Oil, and Gas?*, MIT CLIMATE PORTAL (May 11, 2026), <https://climate.mit.edu/ask-mit/how-does-environmental-impact-mining-clean-energy-metals-compare-mining-coal-oil-and-gas>.

⁵⁷ E.g. Japan-UK CM MoU, *supra* note 49.

degradation and bolsters supply chain resilience by establishing alternative, sustainable sources of CMs. The EU is a particularly strong proponent of that.⁵⁸ Interestingly, some US MoUs also contain this type of commitment (although they are less central to the core cooperation).⁵⁹

Fourth, a common theme in MoUs is a political commitment to facilitate cross-border research, innovation, and technological exchange. For example, states may commit to joint research and development endeavours aimed at creating novel extraction methods, low-carbon processing technologies, and advanced material substitution.⁶⁰ Interestingly, beyond traditional metallurgical and geological research, this collaborative scientific focus may incorporate modern digital innovations. MoUs can call for the deployment of advanced diagnostic tools — such as artificial intelligence, satellite Earth observation (e.g., Copernicus data), and digitalised geological mapping — to optimise the identification of mineral deposits and monitor the ecological impact of mining activities.⁶¹

All these instruments normally constitute only the first step of cooperation. As noted at the outset, they signal the political will of states to strengthen their relations in the CMs sector. To be effective, they require further discussion between partners on specific steps, as most MoUs remain quite general, and ‘implementation’ at the national level (e.g. activating funds within one of the state agencies). Sometimes, they are also followed by traditional instruments such as treaties. Dialogue is maintained through various arrangements in the governance structures for cooperation. For example, the UK-Indonesia MoU envisages the establishment of a joint working group to discuss and implement various elements of the arrangement.⁶² The EU-Rwanda MoU, besides establishing a working group, also expresses the intention of

⁵⁸ See e.g. EU-Rwanda MoU, *supra* note 54; EU-Kaz. MoU, *supra* note 53..

⁵⁹ Memorandum of Understanding concerning Cooperation to Diversify Global Critical Minerals Supply Chains and Promote Investments, Malay-US, (Oct. 26, 2025), <https://tinyurl.com/3mwxp9w>.

⁶⁰ E.g., Joint Declaration of Intent Between Canada and Germany on Critical Minerals Cooperation, Can.-Ger., (Aug. 26, 2025), <https://tinyurl.com/32ynhyw5> [hereinafter Canada-Germany Critical Minerals Declaration].

⁶¹ E.g., Memorandum of Understanding between the European Union and Ukraine on a Strategic Partnership on Raw Materials, EU-Ukr., §II.2., (July 13, 2021), <https://ec.europa.eu/docsroom/documents/46300>.

⁶² Memorandum of Understanding between the Ministry of Energy and Mineral Resources of Indonesia and the Foreign, Commonwealth, and Development Office of the UK on a Strategic Partnership on Critical Minerals, Indon.-U.K. (Nov. 29, 2024), <https://tinyurl.com/yc7hjahn>.

the parties to develop a Roadmap that would identify concrete actions for cooperation.⁶³

In addition to bilateral cooperation, there are also plurilateral initiatives with the partially overlapping objectives and participating parties. Probably, the most important is FORGE (Forum on Resource Geostrategic Engagement), spearheaded by the US. It was presented in February 2026 as a successor to the Minerals Security Partnership (MSP).⁶⁴ FORGE is much larger than the MSP (54 versus 15 partners), and unlike its predecessor, it focuses not only on catalysing public and private investment in CMs supply chains but also on the establishment of a preferential trading zone for such minerals. The zone is designed to counter China's dominance, for instance, by establishing price floors and common border adjustment mechanisms.⁶⁵

The G7 has been active as well. Its formal Action Plan⁶⁶ envisages the creation of a closed market for minerals produced with high environmental and labour standards. The plan includes a coordinated mechanism for responding to deliberate market disruptions or export bans from adversarial nations. It also leverages the G20 Compact with Africa to help resource-rich developing nations build their own processing facilities rather than just exporting raw ore, which is supposed to differentiate this offer from its Chinese counterpart.

Another recent initiative, led by the US, EU and Japan, aims to conclude a plurilateral trade agreement on CMs (possibly within the FORGE framework).⁶⁷ As of today,

⁶³ EU-Rwanda MoU, *supra* note 54, Section III; *see also* Commission Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, RESourceEU Action Plan: Accelerating Our Critical Raw Materials Strategy to Adapt to a New Reality, COM (2025) 945 final (Dec. 3, 2025).

⁶⁴ U.S. DEP'T OF STATE, 2026 CRITICAL MINERALS MINISTERIAL (Feb. 4, 2026), <https://tinyurl.com/2btk2uek>.

⁶⁵ R. Blakemore & A. Harmon, *US critical minerals policy goes collaborative with FORGE*, ATLANTIC COUNCIL (Feb. 12, 2026), <https://tinyurl.com/mt6xs9wz>; G. Baskaran & M. Schwartz, *Critical Minerals Ministerial Introduces New International Cooperation Strategy*, CTR. FOR STRATEGIC & INT'L STUD. (Feb. 13, 2026), <https://tinyurl.com/bdfjvpe3>.

⁶⁶ Group of Seven (G7), *G7 Critical Minerals Action Plan* (June 17, 2025), <https://tinyurl.com/mryb6r73>.

⁶⁷ Press Release, European Commission, U.S. Gov't. & Japanese Gov't., *Joint Press Statement Among the European Commission, the United States Government, and the Japanese Government Following February 4 Critical Minerals Ministerial Meeting* (Feb. 4, 2026), https://ec.europa.eu/commission/presscorner/detail/fr/statement_26_323; *see also* Request for Comments on the Design of a Plurilateral Agreement on Trade in Critical Minerals and Policy Actions to Strengthen the Resilience of Critical Mineral Supply Chains, 91 Fed. Reg. 9686 (Feb. 26, 2026).

the parties are still discussing the possibility of removing tariffs between members while potentially applying ‘border-adjusted’ tariffs on minerals sourced from countries that do not meet certain ecological or labour benchmarks. The agreement is also expected to create shared strategic reserves (like the newly formed \$12 billion US Critical Minerals Reserve) to buffer against supply shocks.

Finally, the Sustainable Critical Minerals Alliance (SCMA),⁶⁸ spearheaded by Canada, focuses specifically on the upstream portion of the supply chain, with members (including Australia, France, Germany, Japan, the UK, and the US) committing to making sustainability a competitive advantage.

IV. IMPACT ON INTERNATIONAL ECONOMIC LAW

The proliferation of MoUs in the CMs sector is not merely a technical shift but may entail a structural transformation in CMs diplomacy or even IEL at large. These instruments increasingly serve as functional substitutes for traditional treaties (although, as we will see, international agreements can also be a part of CMs governance), facilitating a transition from a liberal, rules-based economic order toward ‘bounded orders’⁶⁹ defined by security imperatives.

By operating through non-binding frameworks, states bypass domestic legislative scrutiny and circumvent the rigidities of multilateral trade obligations. This Part analyses this evolution through three lenses: (i) the functional integration of disparate legal regimes, (ii) the privatisation of sovereign governance, and (iii) the emergence of domestic-centric dispute settlement mechanisms.

A. *The Horizontal Impact — Regime Integration*

The rapid deployment of MoUs since 2020 reflects a geoeconomic logic that views the three pillars of IEL — trade, investment, and finance — as interlocking regulatory spheres. While these instruments are formally characterised as ‘soft law’ or specific trade arrangements, confining their assessment to a traditional legal taxonomy is misleading. Approximately 47% of these instruments are concluded between parties already bound by pre-existing Free Trade Agreements (FTAs).⁷⁰ Accordingly, these instruments do not implicitly waive existing legal obligations but rather create a parallel layer of ‘asymmetric mutualism’ (in the form of political commitments).

⁶⁸ See, CRITICAL MINERALS ALL., <https://www.cmialliance.com/>.

⁶⁹ Mearsheimer, *supra* note 1, at 13-15.

⁷⁰ Dufour et al., *supra* note 45, at 391 (these instruments can be seen as adding extra political commitments to the existing international legal obligations between parties of a specific FTA).

Legal analysis that focuses solely on their non-binding nature or substantive omissions risks overlooking their true function: serving as flexible tools of statecraft designed to align commercial extraction with broader geopolitical security objectives. The paradigmatic change lies in the fact that importing states of CMs can no longer hedge against asymmetrical dependency through traditional market mechanisms alone. Instead, they must create a symbiotic relationship between economies, often by linking access to mineral resources to various political or economic concessions.

The EU-Nigeria MoU is a telling example: it functionally links a broad spectrum of issues ranging from migration to economic cooperation.⁷¹ For our purposes, it is important to acknowledge the implicit *quid pro quo* between the EU's access to Nigeria's vast and largely untapped CMs resources and Nigeria's greater access to the European market. Moreover, securing the right of access to CMs is merely the initial phase of a long-term, capital-intensive investment process. As signalled above, some instruments analysed here are not limited to trade but include diverse economic benefits such as FDI and capital injections.⁷²

This is also reflected in the 2025 Joint US-India Statement on the launch of Transforming the Relationship Utilising Strategic Technology (TRUST), which broadened the earlier Initiative on Critical and Emerging Technology (iCET) by linking CMs to other sectors such as defence, AI, semiconductors, and quantum computing, as well as the ongoing FTA talks.⁷³

A stark illustration of this integration is the contingency of the 2025 America First Global Health Strategy,⁷⁴ which superseded the previous frameworks of the United States Agency for International Development (USAID) and the President's Emergency Plan for AIDS Relief (PEPFAR). As a part of this policy, the US signed health MoUs with 22 African and 5 Latin American, including recent arrangements

⁷¹ B. Fox, *EU offers cash and defence deal as it inks migrant returns pact with Nigeria*, EU OBSERVER (Mar. 23, 2026), <https://euobserver.com/208101/eu-offers-cash-and-defence-deal-as-it-inks-migrant-returns-pact-with-nigeria/>.

⁷² *America's New Era of State-Sponsored Mining*, THE ECONOMIST (Feb. 26, 2026), <https://www.economist.com/briefing/2026/02/26/americas-new-era-of-state-sponsored-mining>.

⁷³ WHITE HOUSE, *United States-India Joint Leaders' Statement* (Feb. 13, 2025), <https://www.whitehouse.gov/briefings-statements/2025/02/united-states-india-joint-leaders-statement/> [hereinafter Ind.-US MoU].

⁷⁴ K. Cullinan, *US Speeds up Signing of Bilateral Health Agreements, DRC Lawyers Challenge Minerals Deal*, HEALTH POLICY WATCH (Mar. 2, 2026), <https://healthpolicy-watch.news/us-speeds-up-signing-of-bilateral-health-agreements/>.

with Angola, Honduras and Senegal in March 2026.⁷⁵ While the most debated aspects involve reducing U.S. financial assistance and shifting financial responsibility to the beneficiary states, these arrangements contain distinctly commercial dimensions.⁷⁶ In exchange for financial assistance, the US seeks exclusive access to pathogen information, needed for R&D in vaccines, medicines and diagnostics.⁷⁷

The case of Zimbabwe demonstrates the early friction inherent in this type of integration. In 2026, Zimbabwe rejected a health MoU proposed by the US, citing risks to data sovereignty and misalignment with its commitment to the ongoing negotiations on the WHO Pathogen Access and Benefits Sharing (PABS) mechanism.⁷⁸ As explained by Nick Mangwana, Zimbabwe's Secretary for Information, Publicity and Broadcasting Services:

Zimbabwe was being asked to share its biological resources and data over an extended period, with no corresponding guarantee of access to any medical innovations – such as vaccines, diagnostics, or treatments – that might result from that shared data. (...) In essence, our nation would provide the raw materials for scientific discovery without any assurance that the end products would be accessible to our people should a future health crisis emerge. The United States, meanwhile, was not offering reciprocal sharing of its own epidemiological data with our health authorities.⁷⁹

For the present article, it is important to acknowledge the link between economically oriented health MoUs and CMs instruments.

A similar pattern emerged in Zambia, where negotiations on a health partnership stalled after the US conditioned a substantial grant package on collaboration in the mining sector and specific regulatory reforms.⁸⁰ Zambia explicitly rejected the linking of health assistance to access to CMs. By March 2026, reports indicated that critical

⁷⁵ *Id.*

⁷⁶ *Id.*; see also P. Fabricius, *Trump's African health strategy falters*, INST. FOR SEC. STUD. (ISS) (Mar. 6, 2026), <https://issafrica.org/iss-today/trump-s-african-health-strategy-falters>.

⁷⁷ See, e.g., T. Pigott, *Implementing the Trump Administration's America First Global Health Strategy in Angola*, U.S. DEP'T. OF STATE (Mar. 19, 2026), <https://tinyurl.com/bd5ayjku>.

⁷⁸ AVAC, *Global Health Watch: Zimbabwe steps away from US health MoU* (Feb. 27, 2026), <https://avac.org/blog/global-health-watch-issue57/>.

⁷⁹ *Id.*

⁸⁰ US EMBASSY IN ZAMBIA, PRESIDENT HICHILEMA AND VISITING SENIOR U.S. OFFICIAL AGREE TO A NEW WAY FORWARD FOR THE U.S.-ZAMBIA BILATERAL RELATIONSHIP (Dec. 8, 2025), <https://zm.usembassy.gov/hichilema-orr-agree-to-a-new-way-forward-for-the-u-s-zambia-bilateral-relationship/>.

HIV aid was being withheld contingent upon the adoption of a CMs agreement.⁸¹ This marks a significant shift from the voluntary nature of MoUs toward a model of coercive linkage. In contrast, the DRC followed a different trajectory. In December 2025, while the US signed Health MoUs with fourteen other African states (some alongside trade agreements), negotiations with the DRC froze. Following initial confusion,⁸² it later emerged that health cooperation was only sanctioned once the DRC accepted the treaty on CMs,⁸³ suggesting that health aid now functions as a layer of mineral diplomacy.⁸⁴

These developments suggest that the publicly discussed elements of cooperation in CM are merely components of broader arrangements designed to serve the strategic interests of the dominant systemic powers. Whether analysing US practice or Chinese overseas expansion, actors competing in the global technology race use a mix of bilateral, soft law frameworks to trade mineral access for a combination of economic and security benefits (note that this is less visible in the case of MoUs concluded by the EU).

This creates asymmetric mutualism, where the importer-state seeks to neutralise the exit power of exporters. By deepening infrastructure dependency and linking CMs to essential services such as health or military aid, the importer ensures that the supplier remains structurally tied to a specific bounded order.

⁸¹ C. Okafor, *Zambia joins the list of African countries rejecting the U.S. "strings-attached" health funds*, BUSINESS INSIDER AFRICA (Feb. 26, 2026), <https://africa.businessinsider.com/local/markets/zambia-joins-the-list-of-african-countries-rejecting-the-us-strings-attached-health/g6357jx>; S. Nolen, *U.S. Considers Withholding H.I.V. Aid Unless Zambia Expands Minerals Access*, N.Y. TIMES (Mar. 16, 2026), <https://www.nytimes.com/2026/03/16/health/zambia-hiv-aid-minerals-trump.html>; J. Loades-Carter, *Zambia Rejects US Critical Minerals Deal Over Preferential Access Terms*, S&P Global (May 5, 2026), <https://www.spglobal.com/energy/en/news-research/latest-news/metals/050526-zambia-rejects-us-critical-minerals-deal-over-preferential-access-terms>.

⁸² K. Cullinan, *December Deals: US Signs Bilateral Health Agreements with 14 African Countries – With Some Key Exceptions*, HEALTH POLICY WATCH (Jan. 9, 2026), <https://healthpolicy-watch.news/december-deals-us-signs-bilateral-health-agreements-with-14-african-countries/>.

⁸³ Bureau Of African Affairs, *Strategic Partnership Agreement Between the Government of the United States of America and the Government of the Democratic Republic of the Congo*, U.S. Dep't. of State (Dec. 4, 2025), <https://tinyurl.com/33ndby6b> [hereinafter DRC-U.S. MoU].

⁸⁴ U.S. DEP'T. OF STATE, *FOSTERING HEALTH SOVEREIGNTY IN THE DEMOCRATIC REPUBLIC OF THE CONGO THROUGH THE AMERICA FIRST GLOBAL HEALTH STRATEGY* (Feb. 26, 2026), <https://tinyurl.com/4n9raux9>.

In this context, a significant paradox emerges. On the one hand, trade universalism is being replaced by fragmented soft bilateral arrangements in the CMs sector. On the other hand, since CMs supply chains require the coordinated participation of multiple jurisdictions, we are witnessing the emergence of ‘exclusive clubs’. This is the underlying premise of the G7 Critical Minerals Action Plan and, more surprisingly, the US draft of the plurilateral FTA treaty for CMs, which is currently under consultation.

Such clubs re-multilateralise cooperation, but in a restricted circle that does not follow the general non-discriminatory principles of the multilateral trading system. Ultimately, they may serve as the architectural foundation for a deeper, structural transformation: the shift from organisational oversight to the competing clubs of states.

B. The Vertical Impact — Internalisation of CMs Governance

The US-Ukraine minerals cooperation represents a radical departure from traditional state-to-state resource management. While Part IV.A demonstrated the horizontal integration of disparate legal regimes, the US-Ukraine Reconstruction Investment Fund illustrates a vertical shift: the internalisation of mineral governance. As we will explain below, it transposes the management of national strategic assets from the domain of public international law into the framework of private corporate law, specifically that of Delaware and New York.

This trajectory began with the Memorandum of Intent of April 2025, a classic soft law instrument that signalled political alignment without establishing any rigid legal architecture.⁸⁵ The MoU created a ground for the subsequent cooperation,⁸⁶ including through the Agreement on the Establishment of the United States-Ukraine Reconstruction Investment Fund⁸⁷ (UURIF). We recognise that this instrument is an international treaty and not an MoU. Nevertheless, we have decided to include it in our analysis, as, due to its architecture, it effectively falls into a grey zone between binding international commitments and purely political arrangements. Like MoUs, it escapes the traditional categories used to describe inter-state dealings. It also serves as a good example of the complexities of the current international CMs governance.

⁸⁵ *Full text of US-Ukraine memorandum of intent for minerals deal*, REUTERS (Apr. 18, 2026), <https://www.reuters.com/markets/commodities/full-text-us-ukraine-memorandum-intent-minerals-deal-2025-04-18/>.

⁸⁶ See Part III (that this is one of the typical functions performed by MoUs).

⁸⁷ Agreement Between the United States of America and Ukraine on the Establishment of a United States-Ukraine Reconstruction Investment Fund, Ukr. -U.S. (Apr. 30, 2025), T.I.A.S. No. 25-523, <https://www.state.gov/wp-content/uploads/2025/07/25-523-Ukraine-Reconstruction-and-Investment.pdf>, [hereinafter referred to as UURIF.]

The primary purpose of UURIF is to provide the sovereign acknowledgement of a legal regime where the actual operational power resides in private-law entities. In particular, the UURIF is ‘facilitated’ by a Limited Partnership (LP) Agreement established under Delaware law.⁸⁸ This choice of instrument is systemic. By utilising a Delaware LP (and LLC) structure, the management of Ukraine’s CMs is removed from the purview of Ukrainian law,⁸⁹ and placed under a regime designed for private equity and asset protection. Crucially, in the event of any inconsistency between UURIF and Ukrainian law, the former prevails.⁹⁰ Arguably, at the international level, this commitment is reinforced by potential adverse political consequences for Ukraine in case of its non-compliance (rather than the rules of state responsibility).

1. From Assistance to Equity: The Financial Conversion

The UURIF operates as a sophisticated mechanism to securitise geopolitical aid into private equity. This essentially treats national defence support as an advance payment for future mineral extraction. The capitalisation of the UURIF is achieved through a structural exchange where Ukraine’s contribution consists of a perpetual, irrevocable royalty interest.⁹¹ This is further fortified by a perfect first-priority security interest⁹² for the benefit of the Partnership regarding all payment rights and receivables from third-party payors.⁹³ This royalty interest captures 50% of revenues from licensing, distributions from future investments, and any functionally equivalent benefits received via setoff.⁹⁴ In exchange for this comprehensive claim on its future national wealth, Ukraine is relegated to Class B (Common) Units, while being compelled to waive all license fees for any project under the Partnership’s umbrella.

Among the various asymmetrical provisions of the LPA, we highlight four areas. First, the agreement facilitates a ‘retroactive’ trade-off, providing for the valuation and conversion of the past US military and economic assistance — including

⁸⁸ *Id.*, art. III (1); *see also* UURIF Agreement of Limited Partnership (A Delaware Limited Partnership), 2025 in D. Gadomsky, *United States-Ukraine Reconstruction Investment Fund*, DEAD LAWYERS SOCIETY (Mar. 23, 2025) (leaked version), <https://www.deadlawyers.org/united-states-ukraine-reconstruction-investment-fund/> [hereinafter LP Agreement]

⁸⁹ UURIF, *supra* note 87, art. II (3).

⁹⁰ *Id.*

⁹¹ LP Agreement, *supra* note 88, §3.6.

⁹² Perfect first-priority security grants the Partnership a senior, enforceable right to seize or redirect Ukraine’s mineral revenues and receivables before they ever reach the national treasury.

⁹³ LP Agreement, *supra* note 88, § 15.6.1 (iii).

⁹⁴ *Id.*, § 5.3 (c).

technical and management aid — into equity shares within the Fund.⁹⁵ This turns assistance into capitalised investment, and transforms the US from a security guarantor into a priority shareholder in the host state's natural wealth. This mechanism mirrors the mechanism of debt-for-nature swaps, although here the underlying logic is not ecological conditionality but the securitisation of geopolitical support.⁹⁶ At the same time, any additional military assistance to Ukraine remains voluntary.⁹⁷

Second, capitalisation is achieved through the collateralization of future mineral extraction, where assistance is traded for Class A (Preferred) and Class C (Golden Shares) units.⁹⁸ Class A units entitle U.S. persons to a priority distribution of a 4% annual return plus their entire capital contribution before Ukraine receives any payments. Class C units grant an absolute veto over Board resolutions. Ukraine thus cannot act without the express consent of its 'partner'.

Third, the framework allows the partnership to facilitate the extra-budgetary capture and mandatory reinvestment of resource-derived revenues. Crucially, up to 100% of fund project earnings and royalty interest earnings can be diverted to an investment account for reinvestment into eligible projects.⁹⁹ This mechanism removes these funds from the Ukrainian national budget.

Fourth, the Partnership institutionalises vertical geoeconomic integration by combining supply-side control with a buy-side monopoly. This is secured through a right of first offer, which precludes the alienation of Ukrainian resource assets to third-party competitors — whether to China or the EU — and priority offtake rights, which guarantee the U.S. designees' preferential access to the physical supply of strategic minerals. By entangling control over extraction with exclusive rights of purchase, the LP Agreement creates a 'captive supply' arrangement,¹⁰⁰ suppresses

⁹⁵ *Id.*, §3.5.

⁹⁶ See generally W.K. Reilly, *Using International Finance to Further Conservation: The First 15 Years of Debt-for-Nature Swaps*, in SOVEREIGN DEBT AT THE CROSSROADS: CHALLENGES AND PROPOSALS FOR RESOLVING THE THIRD WORLD DEBT CRISIS 197 (C. Jochnick & F.A. Preston eds., Oxford Univ. Press 2006); WORLD BANK, DEBT-FOR-NATURE SWAPS (1990) (explaining the basic structure of debt-for-nature swaps as debt reduction in exchange for conservation-linked commitments; the analogy is partial — unlike classic debt-for-nature swaps, which channel fiscal savings into conservation, the UURIF-type mechanism transforms past assistance into an equity position tied to strategic resource access).

⁹⁷ UURIF, *supra* note 87, art. VI (5).

⁹⁸ LP Agreement, *supra* note 88, § 3.2 (a, c), 5.1, 7.1(f).

⁹⁹ *Id.*, §5.3 (a).

¹⁰⁰ See Fed. Trade Comm'n, *Exclusive Supply or Purchase Agreements*, FTC, <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/single-firm-conduct/exclusive-supply-or-purchase-agreements> (by 'captive supply' we mean a

the exporter's exit power, and keeps the strategic minerals within a closed, US-managed circuit.

2. The Delaware-New York Law Shield

The choice of a Limited Partnership structure governed by US domestic law constitutes a systemic move aimed at removing the management of Ukraine's strategic resources from the purview of both public international law and Ukrainian domestic regulation. However, unlike standard commercial entities where fiduciary duties provide a baseline of protection for partners, the UURIF utilises Delaware's permissive statutory regime to eliminate the fiduciary duties of the General Partner and Managers to the fullest extent permitted by law.¹⁰¹ These traditional obligations are replaced solely by the specific, asymmetrical terms of the agreement, effectively shielding the US-managed entity from claims of mismanagement or breach of duty toward the Ukrainian state.

Furthermore, the US maintains systemic control through the mechanism of Super-Majoritarian Governance tied to the Class C 'Golden Share.' As stipulated in the LPA, these units provide a mandatory concurrence requirement for any resolution of the Board. This grants the US an absolute veto over 'strategic decisions,' including the selection of third-party investors, changes to offtake volumes, or the alienation of assets. Consequently, while Ukraine retains nominal 'ownership' of its minerals, the functional authority over the supply chain and the strategic direction of the national mining sector rests with the Class C shareholder.

This jurisdictional shield is further reinforced by the application of New York law to key aspects of the UURIF's function, including the foreign exchange matters, the validity of Ukraine's representations and warranties — such as the exemption of Fund's operations from Ukrainian taxes, levies, duties — and the enforcement of the right of first offer and the priority offtake rights.¹⁰² For instance, Ukraine must ensure the free convertibility and transferability of royalty interest and Fund project earnings into U.S. dollars to offshore accounts designated by the General Partner, effectively mandating the circumvention of the National Bank of Ukraine's capital controls while requiring the state to indemnify the Partnership for any costs arising

supply arrangement in which upstream production is effectively tied to a single downstream buyer through exclusivity, offtake rights, or similar contractual and structural constraints, so that the supplier's output cannot realistically be diverted to alternative purchasers. In the context of REE diplomacy, this creates a vertical foreclosure of the market: by controlling the investment capital and the offtake rights simultaneously, the importer 'captures' the upstream production, preventing the resource-rich state from benefiting from global price fluctuations or alternative markets).

¹⁰¹ LP Agreement, *supra* note 88, § 7.5.

¹⁰² *Id.*, § 18.2 (a).

from future regulatory delays.¹⁰³ This ensures that the economic benefits of the minerals are governed by the stability of New York contract law rather than the evolving legislative priorities of a sovereign government in reconstruction. By explicitly submitting to the exclusive jurisdiction of New York courts¹⁰⁴ and providing a waiver of sovereign immunity from suit and execution,¹⁰⁵ the UURIF formalises a dual-track subordination. It combines Delaware's internal governance flexibility with New York's rigid protection of creditor rights, leaving Ukraine with the residual liabilities of a resource owner but stripping it of the adjudicatory and regulatory protections inherent to sovereignty.

3. Evolution of Sovereignty

The UURIF structure is the most vivid reflection of the US attempt to move beyond the principle of permanent sovereignty over natural resources.¹⁰⁶ It seems to promote partial, functional sovereignty over CMs' supply chains instead. While resource-rich states assert their right to dispose of their resources, the UURIF creates a locked-in governance model where the state's role is reduced to that of a junior partner in a private vehicle.

A recurring theme is the explicit goal of integrating the exporter's resources into the importer's value chains. This is evident in the EU-Kazakhstan MoU,¹⁰⁷ which seeks to 'deepen cooperation...to achieve closer integration of their respective sustainable value chains.' Similarly, the EU-Australia MoU (Objective 2) aims to 'enhance economic and industrial integration of the sides in the sustainable and strategic value chain of critical minerals.' This logic extends to diplomacy, the US-Malaysia and US-Thailand MoUs both aim to 'expand integration into secure and reliable global supply chains', while the US-India TRUST MoU commits parties to building 'trusted and resilient supply chains'.¹⁰⁸

The instruments signed by the EU with Namibia and Zambia focus on 'integration... of existing and emerging industrial value chains linked to raw materials', signalling a shift from simple commodity purchase to deep-tier industrial alignment.

¹⁰³ *Id.*, § 3.7.

¹⁰⁴ *Id.*, § 18.5.

¹⁰⁵ *Id.*, § 18.2 (a). 8.10.

¹⁰⁶ *Armed Activities on the Territory of the Congo, (Dem. Rep. Congo v Uganda)*, Judgment (merits), [2005] ICJ Rep 168, (Dec. 19, 2005).

¹⁰⁷ EU-Kaz MoU, *supra* note 54.

¹⁰⁸ Ind.-U.S. MoU, *supra* note 73, §18.

For all we know, the mechanisms for securing access and limiting an exporter's 'exit power' — analysed in depth within the UURIF — may constitute standardised features of U.S. MoUs, just like in the agreement with the DRC. This treaty includes the Right of First Offer for projects within a Strategic Asset Reserve, which locks the DRC into a negotiation window with the US before it can consider other partners.¹⁰⁹ In fact, U.S. entities are given more preferential access even ahead of Congolese investors. This is reinforced by Offtake Agreements and Reserves to guarantee supply to the market,¹¹⁰ and strict control over ownership changes. The DRC is expected to block transfers to 'ineligible' owners from strategic rival nations. Given President Trump's disparaging and hostile remarks about NATO allies, his shifting tone toward Russia, and the tariffs he periodically imposes and lifts on countries around the world, determining who is a 'strategic' rival of the U.S. will be an arbitrary call.¹¹¹ Furthermore, the DRC is obliged to notify the U.S. of any changes to cobalt export quotas or bans for 'consultation and dialogue.'¹¹² While the actual significance of such consultations is often framed as a non-binding ADR mechanism, it must be assessed within the broader context of power asymmetries, where 'dialogue' functions as a diplomatic tool to suppress sovereign regulatory autonomy.

While European instruments generally avoid such explicit language, the EU-Zambia and EU-Namibia agreements mention 'undistorted access to global markets', which in practical terms may be used as a safeguard against export restrictions.

This pattern of securing supply chains through extra-legal or military means is emerging elsewhere in 2026: the military intervention in Venezuela appears focused on controlling oil supply chains,¹¹³ while the ongoing conflict in Iran suggests that the US land operations — should they occur — will prioritise securing energy routes and the Kharg Island terminal rather than political transformation.¹¹⁴

Ultimately, the US-Ukraine agreement, concluded while the state faced an existential military threat, bears the hallmarks of an unequal treaty transposed into a corporate contract. Leveraging existential support to extract superior commercial terms —

¹⁰⁹ DRC-U.S. MoU, *supra* note 83, art. VII (2).

¹¹⁰ *Id.*, art. II (3) and XI.

¹¹¹ *Id.*, art. VI (11) in conjunction with Annex 1: Eligibility Criteria for Qualifying Strategic Projects and Annex 2: Definitions.

¹¹² *Id.*, art. XII (5).

¹¹³ P. Gunson, *The Venezuela Paradigm: Is Trump's Model Intervention a Mirage?* INT'L. CRISIS GROUP (Mar. 27, 2026), <https://tinyurl.com/2s4m5sxs>; *Trump promises oil executives 'total safety' if they invest in Venezuela*, AL JAZEERA (Jan. 9, 2026), <https://tinyurl.com/3yd9wy7m>.

¹¹⁴ J. Stavridis, *Three Targets for US Boots on the Ground in Iran*, BLOOMBERG (Mar. 13, 2026), <https://www.bloomberg.com/opinion/articles/2026-03-13/iran-war-three-targets-for-us-boots-on-the-ground>.

including the waiver of sovereign immunity — suggests a model where geopolitical vulnerability acts as a catalyst for deep-market penetration. In essence, the UURIF is the ‘tip of the iceberg’, signalling a future where resource-rich states under duress may be forced to trade their sovereign regulatory power for ‘assistance’ that is permanently converted into foreign-controlled private equity.

C. The Procedural Pivot: Dispute Settlement and Enforcement

The systemic change in IEL is finalised through a shift in how disputes are adjudicated. As analysed in previous chapters, the erosion of the multilateral legal order has driven states to seek bilateral, soft-law alternatives. However, this procedural pivot goes beyond administrative convenience; it reflects the instrumentalisation of international law by powerful states (which is most obvious for the US) to replace universal normative values with raw power asymmetries. The dismantling of international dispute settlement systems — whether by the paralysis of the WTO dispute settlement process or the dismantling of ISDS — is often framed as a victory for state sovereignty. Ironically, this vacuum facilitates a return to a bygone era of gunboat diplomacy and invites the re-politicisation of (economic) tensions.

In the MoUs model, dispute settlement is eliminated, while the enforcement is of purely political character (although it can be very effective), placing it outside the realms of international law. While the UURIF model is different, it leads to similar results. The US bypasses the constraints of international law by designating the state and federal courts of New York as the exclusive venue for all disputes. The UURIF effectively nationalises the enforcement of CMs instruments. This has two profound legal consequences. First, it necessitates an explicit and comprehensive waiver of sovereign immunity. By shifting the forum to New York, the host state is stripped of its public character and treated not as a sovereign entity, but as a private commercial litigant subject to the summary judgments of a foreign domestic court. Second, because the royalty interest is structured as a perfected first-priority security interest under New York law, enforcement no longer requires diplomatic intervention. Instead, it relies on the predictability of commercial debt collection and foreclosure mechanics, where sovereign assets are relegated to collateral.

This procedural shift completes the transition to asymmetric mutualism discussed in Part IV.A. When the ‘Great Compact’¹¹⁵ If international arbitration is discarded, resource-rich states lose their primary hedge against asymmetrical dependency. In this regime, mineral-for-aid trade-offs are protected not by the international rule of

¹¹⁵ See M.W. Reisman, *The Empire Strikes Back: The Struggle to Reshape ISDS*, SSRN (Feb. 16, 2017), <https://ssrn.com/abstract=2943514> (discussing the concept of the ‘Great Compact’).

law but by the hegemon's coercive capacity to withhold assistance — including military support or life-saving HIV aid — should the private contract be breached.

V. CONCLUSION

The proliferation of MoUs in the CMs sector marks a retreat from the post-war ideal of a universal, rules-based economic order. Our analysis reveals that these instruments function as the primary tools for a new geoeconomic architecture, where the traditional boundaries between trade, security, and private law are blurred. The transition from formal treaties to soft-law arrangements (or other hybrid instruments such as UURIF) has not enhanced state sovereignty; instead, it has facilitated a systemic subordination of resource-rich states to the industrial and legal requirements of dominant importing states.

The UURIF is a cautionary tale for such transformation. By converting geopolitical assistance into private equity and shielding resource management through foreign domestic law, the agreement 'de-budgetises' national wealth and places it outside the reach of sovereign oversight. The procedural pivot toward New York and Delaware law completes this internalisation. By stripping resource-rich states of their sovereign immunity and replacing international dispute settlement with domestic debt-collection mechanics, the new mineral order ensures that commercial certainty for the hegemon takes precedence over the public interest of the partner state. This 'vertical impact' is complemented by a 'horizontal' strategy of coercive linkage, where essential aid, ranging from military support to public health grants, is conditioned upon the surrender of supply-chain autonomy, as illustrated by various CM MoUs concluded with mainly African states. Ultimately, the exporter's only protection lies in a symbiotic, yet subordinate, relationship with a superior power.

In essence, the emergence of MoUs (and other hybrid instruments) in the CM sector heralds a future where the governance of strategic minerals is no longer a matter of international justice or market competition but a function of asymmetrical enforcement power.