War Series: The 1930 Lena Goldfields Precedent and the New Geopolitics of Critical Minerals

November 18, 2025

The contemporary international order is changing. As the era of globalization yields to a multipolar landscape defined by strategic competition, the control of critical mineral supply chains has emerged as a primary vector of state power. This intensifying struggle, essential for defense capabilities, the energy transition, and technological supremacy, is triggering a sophisticated wave of resource nationalism. Host states are increasingly willing to destabilize established investments and rewrite contracts to secure strategic advantage.

While the technologies dependent on these resources (lithium, cobalt, rare earths) are modern, the political and legal tactics employed to control them are not. The 1930 ad hoc arbitration in *Lena Goldfields, Ltd. v. The Soviet Union* provides a foundational blueprint for understanding how states weaponize their regulatory and security apparatus when economic necessity yields to geopolitical imperatives. Analyzing the Lena dispute offers a crucial framework for navigating the high-stakes conflicts emerging in today's contested resource landscape.

The Concession and the Strategic Pivot

In 1925, during its New Economic Policy (NEP), a period of tactical openness to foreign capital, the Soviet government granted Lena Goldfields, a British company, an extensive

concession in Siberia for gold, copper, and other minerals. It was the largest such agreement the USSR had ever entered into.

The dispute's genesis was not a mere commercial disagreement but a fundamental realignment of state strategy. In 1929, the USSR abandoned the NEP and launched the first Five Year Plan, prioritizing rapid industrialization and autarky (economic self-sufficiency). This mandated collectivized state ownership, placing the Soviet apparatus in direct conflict with the private-enterprise foundation of the Lena concession. The state's strategic objectives were now incompatible with foreign control over vital resources.

The state's subsequent actions were a campaign of what is referred to in investment treaty disputes as creeping expropriation. The company faced the withholding of contractually obligated state support, the instigation of labor unrest framed as class warfare, and direct intervention by the state security agency (O.G.P.U.). Key personnel were arrested on charges of espionage and counter-revolutionary activity. Rendered inoperable, Lena Goldfields withdrew its personnel and initiated arbitration in 1930.

The Jurisdictional Contest and the 'Paper Victory'

The Lena case remains significant for the fundamental jurisdictional conflict it presented. The Soviet Union, asserting absolute sovereignty, boycotted the proceedings and withdrew its appointed arbitrator. The USSR argued that Lena's cessation of operations constituted a unilateral termination of the entire agreement, thereby nullifying the arbitration clause and the tribunal's competence.

The tribunal, proceeding *ex parte*, rejected this argument, implicitly affirming the principle of *Kompetenz-Kompetenz*, the power of a tribunal to determine its own jurisdiction. Finding the arbitration clause separable and operative, the tribunal then faced the question of applicable law. Recognizing the

impossibility of applying Soviet domestic law, the very instrument of the policy change that caused the breach, the tribunal elevated the dispute to the international level, applying “general principles of law.”

Based on the principle of unjust enrichment, the tribunal awarded Lena Goldfields approximately £13 million in compensation on September 2, 1930. Equal to almost £1.09 billion today in CPI and RPI measures. The Soviet government immediately repudiated the award as a nullity, resulting in a significant “paper victory” for the investor but a complete failure of enforcement.

The Modern Archetype: Resource Warfare in a Multipolar World

The Lena Goldfields fact pattern provides a precise historical archetype for the geopolitical strategies surrounding critical minerals today. The tactics of 1929 are mirrored, albeit often with greater sophistication, in contemporary disputes.

The shift from the NEP to the Five Year Plan parallels the modern shift from maximizing economic efficiency to maximizing strategic control. Today, states view critical minerals not merely as commercial assets but as necessities for national security. In a multipolar environment, this drives policies aimed at forced localization, mandatory joint ventures with state champions, and the redirection of resources toward geopolitically aligned partners, a dynamic intensified by concepts like “friend-shoring” and strategic decoupling.

The Soviet strategy of rendering the investment valueless through a pattern of conduct, regulatory strangulation, police action, and withholding state performance, remains the classic model of indirect expropriation. Modern iterations involve the unilateral revision of mining codes, the imposition of windfall taxes that destroy project economics, sudden and punitive environmental audits, and seemingly discrete administrative actions that, in aggregate, amount to a

constructive taking.

The O.G.P.U. raids illustrate the use of a state's non-commercial apparatus to achieve a strategic objective. This tactic persists, with investors facing pressure through the detention of personnel, spurious criminal investigations, or the seizure of assets by security or customs agencies, actions often calibrated to force a renegotiation of terms favorable to the host state.

Offtake Agreements and the Battle for Supply Chains

A critical dimension of modern disputes, absent in the Lena era but central today, is the role of offtake agreements. These long-term contracts for the future delivery of minerals are the lifeblood of project finance, securing the massive capital expenditures required for mine development.

Host states now target these agreements as leverage points. By imposing export bans, demanding domestic downstream processing, or introducing new royalties that challenge the viability of the offtake price, states seek to capture a greater share of the value chain. More significantly, these actions can be used to disrupt supply chains vital to rival powers. An investor may find their offtake commitment, perhaps to a European or American end-user, rendered impossible by a state mandate redirecting output to a different geopolitical bloc. This transforms a bilateral commercial dispute into a geopolitical flashpoint.

The Evolving Remedy and Persistent Risk

The primary distinction between 1930 and today lies not in the state's tactics, but in the investor's remedy, and its limitations. The Lena award proved unenforceable when repudiated by a non-participating sovereign. The modern system of international investment law, characterized by Bilateral Investment Treaties (BITs) and the framework of the International Centre for Settlement of Investment Disputes

(ICSID), was designed specifically to prevent such jurisdictional boycotts and enforcement failures.

However, the landscape is shifting again. The legitimacy of the Investor-State Dispute Settlement (ISDS) system is under increasing challenge as geopolitical pressures intensify. States are withdrawing from investment treaties, challenging awards on grounds of national security, and utilizing domestic courts to counter international arbitration rulings.

For businesses navigating this complex terrain, the Lena Goldfields arbitration serves as a stark reminder that in the realm of strategic resources, investments are never purely commercial. They are, inherently, geopolitical positions subject to the shifting imperatives of state power in a contested world order.

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