

# **SYNOPSIS OF (PhD) DISSERTATION**

## **ISDS in an Evolving World Order: The EU and China**

**by**

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## **A. Background of the Dissertation**

There are growing calls amongst states, to reform international investment law. The calls seek to revise the global investment treaty network, by revisiting the most contentious corner of international economic law concerning Investor-State Dispute Settlement (ISDS). However, in what this dissertation refers to as evolving towards a New World Order, there are elements that reflect there is a change in the way that the international system operates such as the ‘re-convergence’ of trade and investment. In drawing a parallel between the international trade and international investment sub-disciplines of international economic law, scholars write on a new generation of international investment agreements drawing lessons from international trade law. Accordingly, the dissertation aimed to evaluate the EU and China’s position on ISDS as reflected in their new ‘comprehensive’ Free Trade Agreements (FTAs), towards the modelling of investment dispute resolution in a new generation of investment agreements such as the EU-China Comprehensive Agreement on Investment (CAI). It is introduced early in the dissertation that the provision for investment dispute settlement in the EU-China CAI has still not yet been concluded. This represents a notable research gap due to its current status as an ongoing and unresolved matter. This presented an opportunity for the dissertation to delve into the evolving developments of investment dispute resolution as the negotiations and agreements progress. The dissertation took the opportunity to make proposals for the EU-China CAI, in cognisance and with the aim to contribute to the scientific research gaps.

### *Existing Literature*

A review of literature research revealed that there is an adequate knowledge base on the topic to successfully undertake the research. This is evident from the availability of various secondary sources on the topic that the dissertation reports. To identify where research was needed, the literature review of the dissertation focused on key debates. The dissertation synthesised the sources to help identify the status of knowledge on the research of ISDS in the context of the EU-China CAI. The research gaps were indicated by scholars making the most significant contribution, what they are saying, their content and methodology, and ultimately identifying areas of limitation within the academic discourse. A literature review was

conducted on the works of scholars who have a major impact on the topic of the dissertation. The arguments and ideas of existing knowledge in the field of international investment law were summarised and synthesised with the intention of the dissertation to add with new contributions. Methodically organising and examining the body of literature, a thematic literature review identified the concepts; ISDS, EU position on ISDS, China position on ISDS as the key themes. Research gaps were identified in the literature to bridge the gap in existing literature and provide direction for the research work of the dissertation.

### *Research Gaps*

Key critiques and perspectives on existing literature of international investment law were identified in the dissertation as; A focus on BITs, The emphasis on other dispute resolution methods over Arbitration, Institutional Bias, Normative Approach & the Lack of Comparative law Approach. These research gaps referred to areas where knowledge is lacking or where existing studies have not fully explored certain questions or methods on understanding ISDS in new generation FTAs and comprehensive agreements. Identifying these gaps was crucial to highlight where further investigation is needed, to support the significance of the dissertation.

### **The Significance of the Research**

The significance of the dissertation is grounded in existing literature as it sought to make contribution to the field of international investment law by addressing the research gaps. In existing literature, there is increasing rhetoric to replace the ISDS mechanism. In this realm, criticism against ISDS and the building of stronger state -to- state and domestic processes are discussed. However, there is a tug of war between critics and supporters of ISDS. There is no absolute answer on whether or not ISDS has lost significance. This requests fundamental research on the varying positions of states and the issues for which this reform is required to address. It is particularly significant in a world where there is a change in the way that the international system, international law and its institutions operate.

The dissertation discussed that the EU has contributed to developments with a new generation FTAs. The main novelty of the new generation of EU FTAs is dispute resolution, in response to the criticism of ISDS. China has also begun to enter into what is considered a ‘comprehensive’ FTAs. Both the EU and China’s position on ISDS point towards a ‘comprehensive approach’ on investment protection and investment dispute settlement. But whereas the EU’s new approach to investment protection replaces the old ISDS mechanism, China’s recent FTAs generally maintain a commitment to the ISDS mechanism. The China–EU CAI is expected to draw lessons from these new ‘comprehensive’ FTAs. So, the contrast between the EU and China’ position contributes to the uncertainty on establishing a new generation of investment agreements which the China–EU CAI is expected to represent.

The significance of this dissertation is that it examined international dispute resolution in consideration of these developments. Particularly, it offered a new perspective on the issue of ISDS which supplements and fills the gaps in current scholarship. Most of the academic scholarship was produced before the EU-China CAI, that was agreed in principle at the end of the year 2020. The contribution of this research to the existing literature is that it extended the discussion to the new developments in international investment law that took place after 2020.

### *Significant shifts*

The dissertation focused on two significant shifts that characterise a new era of international investment dispute resolution. The first is the shift from distinct international economic law sub-disciplines of trade and investment, towards a re-convergence reflecting the beginnings of a single legal order under international economic law. Where trade agreements cover (i) trade in both goods and services and (ii) investment rules and protections, then there must be a dispute resolution mechanism that covers investments. Although ISDS is also provisioned in the trade chapters of FTAs, the dissertation accepted the assumption that it does not deal with trade issues which are typically heard by the World Trade Organisation (WTO) Dispute Settlement Body (DSB). But the trend of parallel proceedings claiming ISDS protection in investment arbitration tribunals as well as a WTO claim, points to an overlap. Moreover, one of the EU proposals to replace the ISDS mechanism, the MIC, is described as resembling the WTO DSB. This proposal suggests weakened support of the ISDS mechanism in dealing with international investment issues. Broadly, it contributes to discussion on whether international

trade law contributes to the development of international investment law. The second focus of the dissertation is on the shift from the ISDS mechanism that is subjected to reform options. In a New World Order, emerging states such as China also propose changes to the ISDS, with the aim of contributing to the change in international law and its institutions, rather than be determined by it.

The timing of this dissertation couldn't be more apt with increasing separate talks on ISDS reform, re-convergence of international trade and international investment law, and a New World Order. The dissertation aligned with legal scholarship in referring to 'a change in the way the international system and international law and institutions operate' as reflective of a New World Order. Moreover, with global importance placed on the negotiations on the EU–China CAI, it is somewhat expected to be a revolutionary agreement. The dissertation reflects these international developments by conducting research on the EU and China's ISDS reform proposals, an examination of their FTAs to determine their position on ISDS, and contribution to developing a new generation of investment agreements as expected of the EU-China CAI. It is not only a topic of great interest to me as a researcher on the evolution of international law but a relevant and useful study to policy and practice. Particularly also to non-Western states that have historically not been represented in the determination of international law as we know it. So, the dissertation found it of interest to see the changes brought by the EU and China.

### **Aims of the Research**

The primary aim of the dissertation is to advance the understanding of ISDS in new generation FTAs and comprehensive agreements by addressing unanswered questions or exploring the under-researched areas of this topic.

The dissertation identified that the ISDS mechanism is important because it is discussed a great deal. As alluded in the significance of the dissertation, there seems to be no shortage of academic interest in the ISDS. In international law, in particular, there has been a resurgence of research on international investment law in consideration of global changes. Given recent international developments, the dissertation sought to explore the interaction of the EU and China's position on ISDS in a new generation of investment agreements. In the end, the

dissertation sought to respond on whether there is a need to reform ISDS, whether the EU proposes relevant ISDS changes, and whether China proposes substantive changes on ISDS.

## **Research Questions**

### *Overarching Research question*

Representing the overarching aim of the research, the identified overarching question is; What is the effect of the EU and China's position on ISDS on their interaction and collaboration in the context of a new generation of investment agreements, and how does this collaboration influence the development of international investment dispute resolution in the New World Order? This overarching research question was broken down into specific research questions.

### *Specific Research Questions*

Specific research questions were identified and addressed by the different components of the research topic. The dissertation examined the following research questions:

1. In the New World Order, what are the reasons that ISDS is provided for in international agreements?
2. What changes does the EU propose regarding ISDS in the context of the New World Order?
3. What substantive changes does China propose for ISDS in the context of the New World Order?
4. Is there a need to reform ISDS in the New World Order?

## **Research Objectives**

The dissertation included several key objectives, defined as measurable steps to achieve the aims of the dissertation.

Tailed by a critique of the ISDS in the present day [ie. New World Order], the starting point of the research was a revisit of early investment protection mechanisms to revise the reasons that underpin the development of the ISDS mechanism. The discussion on the significance ISDS in the present day was constructed on the validity of the reasons upon which the mechanism was developed. In the dissertation, the synthesis of trade and investment acknowledges the changes in the present day. The arguments in support and against the ISDS mechanism were collected in attempt to collate points on the significance of ISDS in this context or lack thereof.

The dissertation developed the EU's position considering the ISDS, on the arguments in support and against the mechanism. Evidence on EU's perspective on ISDS reform was collected [ie. reform proposals] as an indication of the EU's position on the ISDS mechanism. Unlike previous legal scholarship, the dissertation did not aim to give a response to the question of which reform options of ISDS are better. Rather, the objective of this dissertation was to peripherally touch on the issue of 'ISDS reform', by addressing the broader question on the EU's position on ISDS. Rather than which option is 'better', it is whether the EU proposes changes that are 'relevant' to the New World Order. The dissertation took note that the examination of the EU's position on ISDS cannot be conceptualised in isolation from the current proposed Investment Court System (ICS), the Multilateral Investment Court (MIC) and the EU's proposed amendments to the International Centre for Settlement of Investment Disputes (ICSID) Rules. To answer the aforementioned question on whether changes are relevant to the New World Order, the dissertation focused on analysing the recently signed new generation of FTAs of the EU, as evidence.

Another objective of the dissertation was to assess China's position on the ISDS mechanism. Evidence on China's perspective on ISDS was examined to reveal China's position on the mechanism. The dissertation explored China's approaches on innovating the ISDS mechanism

[ie. UNCITRAL Working Group III submission, China's domestic arbitral institutions and courts, and building joint arbitration centres] as a determinant of its position. China's new 'Comprehensive' FTAs are inspected for evidence thereof.

The dissertation decided the relevance of the respective positions on the ISDS mechanism in a New World Order, on the interaction of the respective positions towards the EU-China CAI. The EU and China's perspective on ISDS was used to make an ideal proposition for the EU-China CAI. The objective was to take stock of the proposals and initiatives put forward by the EU and China, as well as the implementation in their 'new comprehensive' FTAs and assessed how the EU-China CAI could meaningfully address them.

## **Methodology**

To ensure the reliability of the findings in this dissertation, there was consideration for how the scientific sources were gathered and analysed. This also included the acknowledgement of potential biases in the dissertation. In contributing to the credibility of research work of the dissertation, transparency of the research process was emphasised by not only articulating the research questions but methodologies and potential limitations as well.

The choice of the dissertation was the application of mainstream doctrinal methodology which followed the normal two-part process: i) locating the sources of law and ii) interpreting and analysing texts. This approach identified, analysed and synthesised the content of the law.

### *Data Collection*

Once the legal issues had been framed, the dissertation identified available legal resources best in addressing the issues identified in the dissertation; ISDS, EU position on ISDS, China position on ISDS. Primary sources for the dissertation included documents from the European

Commission about ISDS reform, the establishment of the bilateral ICSs, the negotiation of a Multilateral ICS under the auspices of the United Nations Commission for International Trade Law Working Group III ('UNCITRAL WGIII') and proposed amendments to the ICSID Rules submitted on behalf of the European Union and its Member States. Other primary sources used in the analysis of the ISDS included what is considered the new generation of EU FTAs and IPAs and China's new comprehensive FTAs and IPAs. Reliance was placed on both primary and secondary sources. The dissertation drew sources from books, peer-reviewed scholarly or scientific journals from reputable publishers. Factors such as the author's expertise and credibility were also considered.

### *Analysis*

Information from collected sources was classified using tabulation to facilitate comparisons between categories, based on the research questions and objectives of the dissertation. The dissertation acknowledged that all scholarly research inherently involves comparisons, especially in legal studies where identifying similarities and differences is essential. Although comparative law historically lacked recognition as a distinct discipline, it has evolved to play a crucial role in legal science. As the dissertation aimed to address gaps in understanding ISDS and proposed feasible alignment between the EU and China's positions on ISDS, the dissertation also acknowledged the necessity of comparative analysis. The dissertation primarily focused on comparing international investment rules of China and the EU to pursue the harmonisation of law, despite the absence of agreed-upon methodologies in the field. Although, acknowledging limitations for the legal researcher of the dissertation, this analysis in the dissertation was explained as simply as 'comparing,' a method in itself. While the EU and China share common characteristics in their civil law systems which aids the comparison, the dissertation is aware that challenges remain, particularly as the analysis is confined to legislation which potentially overlooks the broader social realities that influence legal practices.

### *Limitations*

The identified research gaps in the dissertation are also subject to limitations such as the insufficiently fill research gaps such as A Normative Approach and the application of a Comparative Approach. That is, Although, the dissertation includes the identification of differences and similarities of the EU and China through the implication of comparisons, it does not research non-legal factors such as the social context.

It is acknowledged that doctrinal legal research adopted in the dissertation is a method that is criticised as being too descriptive, technical, and uncritical. Its limitation is that it is isolated from social context, devoid of reality. Nonetheless, doctrinal research methodology has been the dominant research mechanism in the legal discipline as far back as the 19th Century. Although, it may not be time-feasible to for this dissertation to go beyond doctrinal research on this topic. However, it would be dishonest to pretend that the dissertation research method is not limited as it isolated from the society in which it operates.

### **Overall Presentation of the Dissertation**

The introductory Chapter One introduced that there is a call for a New World Order in dispute resolution that responds to the needs of the present times. It introduced one of the elements that is evident in the present times as the re-convergence of trade and investment. That is, that there is a substantive overlap of trade and investment aspects that contributes to the discussion on the significance of ISDS in a New World Order.

Chapter Two addressed the significance of ISDS in a New World Order. The Chapter began with an outline of early investment protection mechanisms and circumstances under which the ISDS mechanism catapulted. After highlighting reasons and circumstances that have led to its emergence in international agreements, it describe elements of the New World Order and draw upon the claim that international trade and investment law are converging towards each other. It is an argument that has been developed by scholars in the latter years. In this chapter, this is not the argument that was to be developed further. The basis of this convergence argument was briefly established in the context of the ISDS. The merits of the argument that there are similarities between the underlying principles of international trade and investment and a clear

convergence between some of constitutive elements of international trade and investment agreements were observed. But more relevant to the study of this dissertation, discussions were observed that their enforcement mechanisms are structurally different. It has remained to be seen whether this difference will hold out, even with the implementation of the EU reform proposal on ‘modernising’ the ISDS. On the point of international trade and investment sharing the same roots, some scholars suppose that trade and investment would not be treated independently should a hypothetical need or opportunity arise to develop an international system of international economic law all over again from the beginning. The dissertation did not intend to prove prediction of this hypothetical case. But rather, this convergence argument was pointed to as giving weight to the trade element in investment, which weakens support on the adequacy of ISDS. Chapter Two concluded with an identification of the critics of ISDS as from both non-Western states as well as the West (incl. The EU) but the EU ‘supposedly’ playing the major role in its reformation.

Chapter Three contributed with reflections on the future of ISDS, by evaluating whether UNCITRAL efforts, the EU proposal of a multilateral investment treaty and a proposed amendment to ICSID rules are desirable and plausible in a New World Order. The second section of the chapter assessed whether the new generation of EU FTAs are able to address the concerns expressed about the substantive legitimacy crisis of the ISDS mechanism. As the section on ISDS in EU FTAs logically followed a section on the activities under UNCITRAL, the chapter is organised in a way that they build the arguments progressively. The analysis of the FTAs could indeed be incorporated in the section on UNCITRAL activities. However, a separation of the sections on UNCITRAL and ISDS in EU FTAs helped break down complex information which sought to make navigation easier.

Chapter Four assessed whether China proposes substantive changes to the ISDS, and that contribute towards a New World Order. The Chapter considered China’s submission to the UNCITRAL Working Group III as well as initiatives at domestic level that contribute towards an indication of its position towards the ISDS mechanism. That is, the chapter considered China’s expansion of its existing arbitral institutions and establishment of new courts to encompass investor-state disputes. The second section of the chapter assessed whether China’s new comprehensive FTAs address the concerns expressed about the substantive legitimacy crisis of the ISDS mechanism. As with the structure of Chapter Three, a separation of the

sections on UNCITRAL and ISDS in China FTAs sought to help break down complex information for easier navigation.

Chapter Five first revisited the major negotiating goal of the EU-China CAI, as introduced in Chapter One to conclude an investment protection agreement that will replace the BITs that China has with most EU Member States. Following reasons discussed in Chapter Two of the dissertation, Chapter Five approached the study on the relevance of ISDS in New World Order with a comparative analysis of the EU and China's position on ISDS. The analysis began with characteristics in the EU's and China's new FTAs that may be reflected in the EU-China CAI. Through a comparative analysis, the chapter drew from the proposed changes identified in Chapter Three and Chapter Four, as desirable and plausible in a New World Order, to make 'feasible' propositions for the EU-China CAI investor-state dispute settlement provision. As a further step on the relevance of ISDS in a New World Order, beyond the international system as that of the West, it explored how the investor-state provisions of the EU-China could look if substantial changes are based on China's position on ISDS or whether to adopt the EU position on ISDS.

The concluding Chapter Six of the dissertation briefly summarised the findings of the dissertation, provided some final thoughts on ISDS in a New World Order, offered concluding observations and suggested areas in need of further research.

## **B. New Scientific Results and their Application to the Practical and Theoretical Problem**

In the course of the dissertation, significant new scientific results have emerged that contribute to both the theoretical understanding and practical applications within the field of international investment law. These findings not only address previously identified research gaps but also provide valuable insights into the complexities of ISDS, the EU position on ISDS and China position on ISDS. Results of the dissertation can be applied to solve pressing practical

problems, enhance existing theoretical frameworks, and inform future research directions. By bridging the gap between theory and practice, this analysis aims to demonstrate the relevance and impact of the research outcomes in the present day [ie. New World Order] as defined in the dissertation, thereby reinforcing the importance of interdisciplinary approaches in advancing knowledge and practice.

#### I) Analysis of comprehensive new generation international agreements

Research Gap 1 critiqued that the exclusive focus on BITs might not fully capture the evolving landscape of international investment treaties. The perspective is that a more comprehensive analysis that encompasses a broader array of agreements should be considered. Research Gap 2 marked that there are various critiques of ISDS in FTAs. Additional perspectives consider the re-convergence of international investment law and international trade law.

The specifics of the dissertation discussed the position of the EU and China on ISDS. One of the major elements featured in the reformed approach taken by EU is replacing the private nature of investment arbitration with the public nature of an investment court, which is modelled on international trade dispute settlement. It is also discussed that, although China has not moved very much beyond its commitment to ISDS, it has borrowed some features of new generation investment agreements in its FTAs. However, there is little research that conducts studies on the investment provisions of the EU new generation investment agreements and the comprehensive FTAs of China. By analysing EU new generation investment agreements and the comprehensive FTAs of China, the dissertation contributes to the exploration of the evolving landscape of international investment law.

#### II) Comparison of ISDS positions

Research Gap 3 was accompanied by the critique that the preference of scholars for conciliation may overlook scenarios where arbitration is more suitable. The accompanying perspective is for a more pragmatic approach that emphasises flexibility in dispute resolution approaches.

In the specifics of the dissertation, discussions on the reform of ISDS are acknowledged, with an extensive analysis of the approach of the EU which is the main driver of ISDS reform. This analysis is seldom considered in terms of feasibility in contrast to an international agreement partner such as China. For instance, in the negotiations for the EU-China CAI. The dissertation agrees that investment dispute resolution is a key issue in the China–EU CAI. Although, existing literature seldom goes beyond the supposition that the agreement of the EU and China towards the EU-China CAI suggests that the reform of ISDS is inconclusive. With little academic sophistication provided, the general conclusion is that no ISDS provision in the current draft of the CAI is indicative of the differences between the EU and China. With the objective to make proposals for the EU-China CAI, a comparison of the differences between the EU and China in the dissertation, adds with the contribution that flexible open-ended clauses that provide for formal arbitration as well alternative dispute resolution options that include conciliation are perhaps more suitable. This flexible approach proposed by the dissertation, contributes with the perspective that there are scenarios where arbitration may be more suitable.

### III) Connecting the investigation and perspectives with engagement in the international legal order

Research Gap 5 acknowledged the critique of the traditional ISDS and the potential reforms to address issues that are related to its effectiveness. The diversity of perspectives mark the ongoing debate regarding the ISDS changes that are needed in the present day.

Going into the specifics of the dissertation, in light of the efforts that many states have made to improve the ISDS, emerging states such as China seeks to reform its own ISDS. The dissertation acknowledged the interest on why and how emerging states such as China, modernise their approach to the investment treaty regime. The investigation is interesting in cognisance of the varying perspectives such as with the EU. Important perspectives on ISDS are provided on how states engage in the international legal order, which is defined in the dissertation as a New World Order. The dissertation connected the perspectives on ISDS with engagement in the international legal order, which is defined in the dissertation as a New World

Order. This contributes to the understanding of the dynamics of international investment law and the diverse approaches of differing states in their agreements.

### **Different Views and Approaches**

The introduction of 'Comprehensive Agreement on Investment and Trade (CAIT)' in the dissertation to refer to comprehensive new generation agreements, differs from widely held expectations of a reference to international investment agreements. This departure from widely expected terminology added a nuanced perspective to the discourse on these agreements. In arriving to conclusions of the dissertation, there are also views and approaches that the dissertation did not fully accept or support. In concluding the dissertation, challenges and uncertainties within the research were confronted, by acknowledging the contradictory views or beliefs that were a crucial part of dissertation research. These contradictions also lead to new research questions suggesting further research.

#### *Eurocentric Assumptions*

Some scholars are of the Eurocentric view that international law is universal, a global system of law. Defying the Eurocentric assumptions of international legal scholarship, the dissertation added to research on this interaction of the EU with China with an outlook on ISDS reform that may possibly differ from reform reflected in the new generation of EU FTAs or China's comprehensive FTAs. In the negotiations of the EU-China CAI, it was observed that China seeks to contribute to international law rather than simply be determined by the EU's proposal. By examining the EU-China interaction on ISDS reform, the dissertation introduced an alternative outlook of differing perspectives. This challenge assumptions in international legal scholarship of Eurocentric views that assert that international law is universally a global system. Observations from the EU-China CAI negotiations, suggesting that China aims to contribute to international law rather than passively accept the EU's proposals, counter certain scholarly perspectives. This dynamic approach adds depth to understanding China's role in shaping international legal frameworks.

### *Convergence of Trade and Investment- historical roots*

Although with the historical knowledge on the roots of trade and investment, there are scholars who seemingly suggest that the convergence of trade and investment is a reflection of the modern era of globalisation. This comes across as incoherent because the convergence of trade and investment is not a new phenomenon. Rather, it is experiencing a renaissance, reflecting its roots. The dissertation critiqued the notion that the convergence of trade and investment is solely a product of modern globalisation, arguing that it is a recurrent theme with historical roots. These challenges perspectives suggesting an entirely new phenomenon, contributing a historical context to the discussion.

### *Convergence of Trade and Investment- constitutive elements*

There are some views that there is no commonality of obligations across trade and investment regimes. Although the dissertation observes discussions that dispute enforcement mechanisms are structurally different, it also points to the similarities between the underlying principles of international trade and investment and a clear convergence between some of constitutive elements of international trade and investment agreements. This challenges the notion of complete divergence between the two regimes.

## **Recommendations and Further Research**

This dissertation aimed to analyse the position of the EU and China on ISDS, in shaping proposals for the EU-China Comprehensive Agreement on Investment (CAI). The initiatives and implementations in new generation agreements and comprehensive FTAs were considered. The research objectives included revisiting early investment protection mechanisms, examining arguments for and against ISDS, developing an understanding of the EU's stance on ISDS through evidence collection, evaluating China's position on ISDS by exploring its innovative approaches, and assessing the relevance of these perspectives in the context of the

New World Order. The contributions of the dissertation indicate that the research aims and objectives were met. In the analysis of EU new generation investment agreements and the comprehensive FTAs of China, the initiatives and implementations in new generation agreements and comprehensive FTAs were considered. With the objective to make proposals for the EU-China CAI, collecting evidence for a comparison and evaluation of the differences between the position of the EU on ISDS and the position of China on ISDS, examined arguments for and against ISDS. The contribution of the dissertation in connecting the perspectives of the EU and China on ISDS with engagement in the EU-China CAI, assessed the relevance of the perspectives in a New World Order.

However, the issues of ISDS in the present day are too broad and complex to capture in a single dissertation. As also the case with the work of this dissertation, the conclusions illuminate that there are lingering questions and open ends that spark interest in further research. The lingering questions in the dissertation are re-enforced by the research gaps and limitations. While the identified research gaps in literature can be considered as the outcome of literature review, they may also be considered as the inputs that motivate further research. Thus, further research is suggested by the dissertation.

### *Research Gap Limitations*

Although the dissertation sought to make contributions to Research Gap 1, the scope is limited to bilateral agreements. The dissertation did not analyse other agreements such as regional and plurilateral agreements. The dissertation also encountered challenges in addressing Research the Gaps 6&7; Normative Approach and Lack of a Comparative Approach. The dissertation acknowledged that the choice of a doctrinal legal research methodology is criticised. Its limitation is that it is isolated from a social context. The dissertation did not observe international agreements and proposals of the EU and China within their social contexts. Although context to the origin of the ISDS was given by discussing early investment protection mechanisms, the dissertation did not scrutinise this historical context in which investment treaties and arbitration mechanisms were established and understanding how they reflect and perpetuate existing power imbalances. The research gap was not sufficiently addressed with a normative approach.

### *Further Research and Recommendations*

As noted, there are areas of the dissertation research gaps and limitations that may not have provided a conclusive answer and some areas where new questions have emerged. Various questions have emerged in the research. The contradictory views in the dissertation also set the stage for future research opportunities. For instance, as the UNCITRAL WGIII is tasked with the harmonisation and unification of international trade and investment law, the most notable issue grounding the issues of this dissertation is the lack of a single, unified legal framework for international investment law or ISDS. It is fragmented across BITs, multilateral treaties, CIL, varied arbitral rules, and tribunal decisions with differing standards. Future research can contribute to a more coherent and effective framework for international investment law, ultimately fostering greater stability and predictability in the ISDS debates.

In answering the research questions, the dissertation has chosen not to provide a detailed discussion of the procedural rules such as Third-Party Funding Regulation, Code of Conduct for Arbitrators, Transparency in Proceedings, Consistency and Predictability that are discussed in the UNCITRAL WGIII. They have become increasingly important topics in the recent years. A discussion of these procedural reforms would indeed align the dissertation with the latest trends in ISDS reform. However, as stated in the dissertation, an examination of procedural rules of these reforms would not change the conclusion that incremental reform options demonstrate that ISDS remains functionally significant. Led by the research questions and limitations of the dissertation, the omission of these issues may provide an additional analytical dimension in their exploration as areas for future research. As these procedural reforms are designed to improve rather than replace the system, their examination may provide a richer analysis on the significance of ISDS.

Beyond the focus of the dissertation on the EU and China, future research on the perspectives from other countries would provide a more comprehensive view of global ISDS reforms. A comparative perspective that examines the outcomes of these reforms involving other countries would highlight the diversity of approaches. There is also the opportunity to make contributions with further research on other agreements such as regional and plurilateral agreements, which are beyond the scope of this dissertation. Future research on regional and plurilateral

agreements such as the USMCA could possibly offer useful parallels to the EU-China context. A comparison of reform proposals could provide a broader view of how different regions are addressing similar concerns.

The dissertation has also referred to ISDS cases involving NAFTA to illustrate the function of the ISDS mechanism in the present day. A further examination of cases may illustrate the tensions between investor rights and public policy. Without the time and resource constraints of this Phd dissertation, a study dedicated to this would contribute towards the empirical foundation for the debates on ISDS in the present day. Moreover, with the incorporation of empirical data, further research on the practical consequences of ISDS reforms may be conducted.

The limitations of the dissertation also emphasise needs such as for future research to incorporate critical legal theory or Socio-Legal methodology to analyse the power dynamics and equity issues within the international investment law framework. Research gaps have suggested unanswered questions on which cross-disciplinary perspectives could shed light. Some of those suggested by the research gaps, in the dissertation, include questions on Normative Approaches and Pragmatic Dynamics, Historical and Cultural Factors and Nuanced Understanding of ISDS, Socio-Economic Aspects of Investment Treaties and those on Law, Politics, and Socio-Political Context in ISDS. Future research may offer a more critical evaluation of the feasibility of the ISDS reforms discussed in the dissertation. As mentioned in the dissertation, procedural reforms address the potential impact on the dynamics of international investment arbitration. For example, the issue of TPF in ISDS which has become an increasingly important topic in recent years. These procedural reforms also pose risks to state sovereignty. The political and practical challenges may be considered. Furthermore, research on region-specific studies such as BRICS countries may also expand the discussion of ISDS reform by delving into the broader geopolitical implications of ISDS. The growing trend to reject traditional ISDS mechanisms in favour of domestic legal frameworks or regional dispute resolution mechanisms amongst emerging economies highlights a shift in global power with an influence on ISDS.

## **C. Publications within the Topic of the Dissertation**

- a) TP MADALANE, 'Navigating ISDS in the New World Order: Proposing ISDS Provisions in the EU-China Comprehensive Agreement on Investment (CAI)', *European Journal of Law Reform* (forthcoming, 2024/2025)
- b) TP MADALANE, *Exiting International Joint Ventures between Chinese and South African Banks IN: Casebook on Chinese Outbound Investment: Law, Policy, and Business*, Cambridge University Press (CUP), Ed. Matthew Erie, S, (Ed.) (forthcoming, March 2025)
- c) TP MADALANE, *Reconceptualising International Economic Law: Towards Comprehensive Agreement on Investment and Trade (CAITs) IN: Book of Proceedings of the International Doctoral and Postdoctoral Conference in the Law and Law Related Fields - Splitlaw 2024.*
- d) TP MADALANE, *Western Europe Immigration Laws on Diversity in International Arbitration*, *Journal on European History of Law*, 2023
- e) TP MADALANE, *China-Africa "Legal Cooperation" on Investment Dispute Settlement: Current Practice and the Role of Europe*, *China Law and Development Research Briefs*, 2022
- f) TP MADALANE, *EU DCFTAs: carrot-and-stick IN: Challenges of International Trade and Investment in the 21st century*, Ed. Víg Zoltán, 2022
- g) TP MADALANE, *Covid-19 on confidentiality in International Arbitration*, IN: *Rendkívüli helyzetek és jog Kalandozások a jog peremvidékén a COVID-19 apropóján*, Ed. Hajdu Gábor, 2021