Faculty of Law and Political Sciences
University of Szeged

Synopsis of PhD Dissertation

Dispute Settlement Systems of International Investment Law: Analyses of the Systems and Reform Proposals

Muhammad Abdul Khalique

Supervisors:

Professor Dr. Csongor Istvan Nagy
Dr. Gábor Hajdu
Department of Private International Law
University of Szeged

Szeged
2025

Table of Contents

1. Background of dissertation

1.1 Identification of research tasks

The thesis identifies a set of clearly defined research tasks aimed at examining, analyzing, comparing, and evaluating the international investment law dispute settlement systems and reform proposals. These tasks arise directly from the research questions and methodology outlined in the thesis.

a) Evaluating the Evolution of International Investment Law

This task involves analyzing historical developments in international investment law, especially in relation to its roots in power asymmetries and colonial structures, as explored through a TWAIL lens.

b) Analyzing Dispute Settlement Systems in Investment Law

The task here is a comprehensive legal analysis of ISDS mechanisms such as ad hoc, institutional, and treaty-based, and a critique of their procedural and substantive limitations.

c) Assessing the Need for Reform or Alternatives to ISDS

This task focuses on evaluating the criticisms of ISDS, identifying its structural and procedural weaknesses, and determining whether reform or replacement is necessary.

d) Drawing Lessons from the WTO Dispute Settlement System

This task includes a comparative legal study of the WTO's DSU and extraction of relevant structural, procedural, and institutional lessons for designing a multilateral investment dispute settlement mechanism.

e) Evaluating Reform Proposals and UNCITRAL WGIII Drafts

The task includes analyzing reform models such as the Multilateral Investment Court (MIC), appellate mechanisms, arbitrator appointment processes, and the proposed Advisory Centre on International Investment Law.

f) Applying TWAIL as an Analytical Tool

This research task involves critically examining the system from the standpoint of developing and least developed countries, identifying whether current reforms address historical injustices and asymmetries.

g) Using Legal Analysis and Law Reform Methodologies

This entails conducting normative legal research and law reform analysis to explore whether current law meets justice needs and how it might be changed.

1.2 Reasons of doing research work in the topic

a) This research is grounded in the recognition that there are numerous and significant issues within the current system of international investment dispute settlement, particularly the Investor-State Dispute Settlement (ISDS) mechanism. As the thesis notes:

   There are many problems which are involved in the international investment dispute settlement in general and investor-State dispute settlement in particular. The thesis explores these issues to understand the nature and extent of such problems so that the quality of reform proposals can be evaluated and recommended.

b) To understand and address these issues, the thesis begins by tracing the historical development of international investment law:

   The thesis examines the historical evolution of international investment law. It evaluates this through the lens of the Third World Approaches to International Law (TWAIL). It seeks to understand the origins of its current challenges. Moreover, it attempts to extract valuable insights for its future.

c) The thesis responds to the growing scholarly and policy interest in this field:
   Over the last few years, there has been a considerable rise in interest concerning the history of international law. Within international investment law (IIL) scholarship, there is a growing attention on historical inquiries. The exploration of the origins and development of contemporary investment law issues continues to attract significant scholarly studies.
d) Another reason is to critically assess the ISDS system, which remains the dominant mode of dispute resolution globally:
   Regardless of numerous problems associated with the ISDS mechanism, so many States have been incorporating this mechanism into their BITs, FTAs etc. It appears that this would stay in the international arena as the principal mode of dispute settlement.
e) In light of this persistence, the research seeks to identify root causes of dysfunction:
   The thesis argues that current problems and challenges of international investment law are deep-rooted in its evolution. The thesis further argues that to address these issues effectively historical legacy of the system must be dealt with properly.
f) The study also seeks to foreground the perspectives of developing countries, which are disproportionately affected:
   This dissertation examines various perspectives of the diverse stakeholders, particularly focusing on the perspectives of the developing and least developed countries.
g) In terms of dispute resolution mechanisms, the thesis identifies serious concerns warranting scholarly attention:
   The thesis analyzes Investor-State Dispute Settlement (ISDS) system, which is the prevalent system of international investment dispute resolution. The thesis focuses on

significant issues that have been raised by scholars and stakeholders. For example, concerns related to the arbitrators and the appointment of arbitrators, interpretation, chilling effect on the regulation of the State and lack of appeal mechanism are discussed in the thesis.

h) In particular, the thesis stresses that these problems are not superficial but systemic and interlinked:
The concerns are too many and sometimes deeply-rooted problems are involved. Therefore, these necessitate a complete reconsideration of the ISDS system and examination of possible alternatives. Inaction from the stakeholders would further undermine the system's acceptance and may fall out as a result.

i) Additionally, the thesis aims to critically evaluate ongoing reform initiatives, especially under UNCITRAL:
The thesis deals with ongoing debates concerning reform of the Investor-State Dispute Settlement (ISDS) system and the drafts of the UNCITRAL Working Group III (WGIII). In this regard, it examines positions of different stakeholders on reform, analyzes various reform proposals and evaluates the focus of reform initiatives by UNCITRAL, ICSID and UNCTAD.

j) One specific objective is to determine whether these reforms are sufficient:
After scrutinizing the nature of reform under the UNCITRAL WGIII, the thesis concludes that it is primarily and largely focused on procedural aspects rather than substantive issues. Therefore, it would not be able to solve the root causes of the problems linked to ISDS.

k) To this end, the thesis proposes to draw lessons from other regimes:
   The thesis evaluates the World Trade Organization (WTO) dispute settlement system to find pertinent lessons for the current ISDS reforms. The thesis examines the WTO dispute settlement system to extract lessons for multilateral investment dispute settlement mechanism.
l) Adressing both theoretical gaps and practical policy needs:
   This research aims to provide valuable insights, address critical issues, and propose reforms contributing to ongoing discourse on international investment law. Acknowledging its boundaries, the study inspires further research and dialogue for a more equitable and effective international investment regime.

1.3 Aims of the research

The primary aim of the research is to examine critical aspects of international investment law and dispute settlement, address key issues, and explore potential avenues for reform. To that end, the thesis outlines the following specific aims:

a) To evaluate the historical development and evolution of international investment law

This research aim seeks to evaluate the evolution of international investment law and draw conclusions about its implications and developments over time.

b) To analyze the dispute settlement systems of international investment law, with focus on ISDS

This research aim focuses on analyzing the dispute settlement systems of international investment law, focusing specifically on the investor-State dispute settlement systems. Moreover, through the analyses of merits and demerits, the research draws important conclusions to understand the positions of different stakeholders.

c) To examine whether there are grounds for reform or replacement of the current ISDS system

This research aim attempts to evaluate current ISDS system and examines whether there are grounds for reform or a shift to an alternative system. It seeks to identify and analyze the shortcomings, and criticisms of the existing ISDS mechanism, contributing to the discourse on prospective improvements in the field of international investment law.

d) To draw comparative lessons from the WTO dispute settlement system

This research aim endeavors to examine the WTO dispute settlement system to inform the ongoing reform of the ISDS system. By analyzing the strengths and weaknesses of the WTO system, the research seeks valuable lessons for the improvement of the ISDS, shaping to establish a more effective and equitable international investment dispute resolution framework.

e) To evaluate and assess reform proposals, particularly those of UNCITRAL WGIII

This research aim intends to evaluate the strengths and weaknesses of the reform proposals of various stakeholders and drafts prepared by the UNCITRAL WGIII regarding ISDS reform. Through these analyses, the research seeks to examine their potential effectiveness in addressing the existing problems.

f) To explore the influence of historical and structural factors

The thesis argues that current problems and challenges of international investment law are deep-rooted in its evolution. The thesis further argues that to address these issues effectively historical legacy of the system must be dealt with properly.

g) To propose a fair, consistent, and accountable investment dispute system

The thesis argues for a two-tier MIC. It stresses that this mechanism would enhance consistency, predictability and accountability which are the drawbacks of the current system.

h) To advance reforms that incorporate both procedural and substantive improvements

This research aims to provide valuable insights, address critical issues, and propose reforms contributing to ongoing discourse on international investment law. Acknowledging its boundaries, the study inspires further research and dialogue for a more equitable and effective international investment regime.

1.4 Data Collection

The thesis is based on both primary and secondary legal materials relevant to international investment dispute settlement.

a) Primary Legal Sources

The thesis uses foundational legal texts, including treaties, conventions, rules, and case law. The list of primary sources includes:

- Bilateral and Multilateral Treaties and Agreements, such as:
    - China-Australia Free Trade Agreement (2015)
    - The Comprehensive and Economic Trade Agreement (CETA) (2017)
    - The EU-Vietnam Free Trade Agreement (EVFTA) (2019)
    - Treaty between Germany and Pakistan for the Promotion and Protection of Investments (1959)
    - The Mauritius Convention on Transparency (2014)
    - The Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention)

- Arbitration Rules and Legal Instruments:
    - UNCITRAL Arbitration Rules (2021)
    - UNCITRAL Model Law on International Commercial Arbitration (2006)
    - Understanding on Rules and Procedures Governing the Settlement of Disputes (WTO DSU)

b) Institutional and Official Documents

A significant portion of data comes from authoritative institutional records:

Examples include:

- UNCITRAL Working Group III reports and draft proposals (e.g., A/CN.9/WG.III/WP.142, WP.150, WP.153, WP.156)
- ICSID annual reports and proposals for amendments to the ICSID rules
- UNCTAD policy tools and investment reports
- European Commission documentation on the Multilateral Investment Court project

c) Empirical and Case-Based Data

The thesis draws on data-driven and empirical studies to evaluate the real-world impact of ISDS. Empirical studies cited include:

- ISDS case data from UNCTAD,
- Moehlecke's research on regulatory chill,
- Berge and Berger's study using 146 ISDS cases related to environmental regulation

d) Secondary Academic Sources

Extensive scholarly literature is cited to support critical analysis. The research includes secondary sources such as journal articles or other written commentaries on the case law and legislation.

These include:

- Books and articles by scholars such as Susan Franck, Van Harten, Sornarajah, Pauwelyn, and Waibel.
- Commentaries on WTO DSU by Claus-Dieter Ehlermann and Thomas Alexander Zimmermann.
- Publications on reform, such as those by Jean E. Kalicki, Anna Joubin-Bret, and the European Parliament.

1.5 Applied Methods

The methodology selected for this thesis is legal analysis which falls under the broad category of the qualitative legal research. This is defined by Ian Dobinson and Francis Johns as:

> Research which asks what the law is in a particular area. The researcher seeks to collect and then analyze a body of case law, together with any relevant legislation (so-called primary sources). This is often done from a historical perspective and may also include secondary sources such as journal articles or other written commentaries on the case law and legislation. The researcher's principal or even sole aim is to describe a body of law and how it applies. In doing so, the researcher may also provide an analysis of the law to demonstrate how it has developed in terms of judicial reasoning and legislative enactment. In this regard, the research can be seen as normative or purely theoretical.

The legal analysis method is selected to analyze the problems of investor-State dispute settlement, to determine the existing law in this area, and to examine the reform proposals. This method integrates various interpretive approaches to comprehend and apply the law. It is considered a flexible method that provides the scope to incorporate multiple perspectives. Moreover, this is useful to address ambiguity or novelty in legal questions.

This thesis also utilizes the third world approaches to international law (TWAIL). This dissertation examines various perspectives of the diverse stakeholders, particularly focusing on the perspectives of the developing and least developed countries. To do that utilizing the TWAIL approach is helpful as well as necessary for this study. According to Antony Anghie, TWAIL serves not as a fixed methodology but as an analytical tool, facilitating examination of significant issues. It addresses inquiries such as how international law can be employed to examine concerns of the peoples of the Third World and investigates the effects of specific rules or legal frameworks on empowerment or disempowerment within these regions. Whether studying international investment law, environmental law, or international financial institutions, these common inquiries characterizes TWAIL scholars. Moreover, Appiagyei-Atua describes that the TWAIL is focused on uncovering the injustices and contradictions present embedded within international law. Furthermore, TWAIL focuses on the postcolonial approaches of international law, seeking to examine the diverse political, economic, and social imbalances that originated during the colonial era and have persisted and expanded ever since.

TWAIL's attention to the postcolonial nature of international law aims therefore to uncover, and as we shall see, also to redress, the broad array of political, economic and social asymmetries that were inaugurated in the process of colonization, and which have proliferated across the globe since then.

This thesis also employs the law reform research. This is defined by Ian Dobinson and Francis Johns as:

> A consideration of the problems currently affecting the law and the policy underpinning the existing law, highlighting, for example, the flaws in such policy. This in turn may lead the researcher to propose changes to the law (law reform).

The law reform research is selected to examine reform initiative in the UNCITRAL WGIII under the framework of international investment law and international law.

This study centers on international instruments, specifically BITs, FTAs, the ICSID convention, and decisions from international investment law arbitrations, as pertinent references. Additionally, UNCITRAL WGIII documents and scholarly works constitute significant part of references due to the chosen research methodology.

1.6 Overall presentation of the dissertation

The thesis is organized into six chapters. Each chapter explores distinct but interrelated aspects of international investment dispute settlement systems, particularly the ISDS mechanism, and evaluates reform proposals through both legal and historical lenses.

Chapter I: Introduction

This chapter introduces the topic, outlines the significance of the study, presents the research questions, and explains the chosen research methodologies—including the TWAIL and law reform approaches. It situates the research within the broader debates on legitimacy and fairness in international investment law and sets the stage for the critical inquiries pursued in later chapters.

Chapter II: Evaluating the Evolution of International Investment Law

This chapter provides a historical and critical evaluation of the evolution of international investment law. It examines two dominant historical narratives: one emphasizing investor protection as a legal evolution and the other viewing international investment law as an extension of imperial power. It demonstrates how persistent structural imbalances and power asymmetries originated from this history and continue to shape present-day investor-State relations.

Chapter III: Analyses of Dispute Settlement Systems of International Investment Law

This chapter critically analyzes various forms of ISDS: ad hoc, institutional, and treaty-specific systems. It examines four major problem areas:

a) Arbitrator appointment and bias;
b) Inconsistent interpretation of treaties;
c) Regulatory chill and policy space constraints;
d) Lack of appellate mechanism.

These issues are assessed in light of reform initiatives, especially by UNCITRAL WGIII.

Chapter IV: Lessons for Multilateral Investment Dispute Settlement Mechanism from the WTO Dispute Settlement System

This chapter explores what international investment law can learn from the WTO's Dispute Settlement Understanding (DSU). It analyzes multilateralism, the two-tier system, voting procedures, appointment mechanisms, secretariat function, and the advisory centre. While recognizing the strengths of the WTO model, it also warns against repeating its flaws—such as consensus paralysis and politicized appointments.

Chapter V: Analyses of the Different Reform Proposals and Views

In this chapter, the thesis provides critical analyses of the ongoing reform efforts within ISDS. Furthermore, it studies the multifaceted nature of the debate. The thesis also scrutinizes the broader implications of various reform proposals and views.

This chapter examines:

- Stakeholder positions (e.g., idealist vs realist, status quo vs reformist),
- Institutional reform initiatives (UNCITRAL, ICSID, UNCTAD), and

- Specific reform proposals (Multilateral Investment Court, appellate mechanisms, appointment reforms, code of conduct).

It critically assesses the focus of reforms, finding most to be procedural rather than substantive, and emphasizes the need for more comprehensive change.

Chapter VI: Concluding Remarks

This final chapter summarizes the findings and reiterates the need for structural, not just procedural, reform. It emphasizes the importance of historical awareness, equitable representation, and balanced power dynamics. While acknowledging that UNCITRAL WGIII's reforms may offer improvements, the thesis calls for deeper changes addressing both procedural and substantive issues.

2. Scientific results and their application to practical and theoretical problem solving

This thesis evaluates the historical evolution, systemic flaws, and reform proposals of international investment law (IIL) with a focus on the Investor-State Dispute Settlement (ISDS) system. Based on the research, the following scientific results are found:

To begin with, the thesis offers some important insights after evaluating the evolution of international investment law. It demonstrates that there is consistent emphasis to protect the rights and interests of foreign investors. In such a way that this can be characterized as investor-centric approach. This approach is evident in different historical periods, from the early FCN treaties to the modern BITs. Although many treaty provisions evolved or added over time, the underlying approach and objective has remained same. Thus, BITs did not embody a radical departure from the past but rather a continuation.

Moreover, the thesis founds that there is substantial power imbalance between capital-exporting and capital-importing States. This influenced the development of international investment law in a significant way. Often at the expense of developing countries and through military intervention and diplomatic pressure, powerful States received favorable treaty terms and enforced their investors' claim during the pre-BIT era. This historical legacy of power imbalance continues to exist to some extent that engenders unfavorable outcomes for capital-importing States.

The thesis also highlights differing positions and causes of resistance of capital-importing States. Particularly, Latin American States expressed their position in the form of the Calvo doctrine. This position challenged international minimum standard of treatment championed by European capital-exporting States and the United States. Moreover, they passed various resolutions by the UN General Assembly. These contentions showcase the persistent tension between the interests of investors and host States.

In tracing the development of legal principles, the thesis looks for the evolution of some concepts such as the international minimum standard of treatment and State responsibility for rebels. It maintains that these principles also have been influenced by the interests of powerful States. This examination highlights inherent ambiguities of these concepts. Besides, it points out disagreements over their interpretation and application.

Another important finding is that certain historical tensions persist still today. For instance, the debate regarding appropriate compensation for expropriation. That means there is no consensus on these issues. This issue has contributed to the ongoing instability and uncertainty.

In addition, the thesis attempts to uncover historical roots of the current challenges in the system. It finds the persistent influence of international investment law's imperial roots. The analyses reveal a continuity of certain themes and power dynamics. It maintains that

these factors influenced the field. Moreover, it highlights that this legacy poses challenges for developing countries even in the contemporary era.

Focusing on dispute resolution, the thesis analyzes Investor-State Dispute Settlement (ISDS) system, which is the prevalent system of international investment dispute resolution. The thesis focuses on significant issues that have been raised by scholars and stakeholders. For example, concerns related to the arbitrators and the appointment of arbitrators, interpretation, chilling effect on the regulation of the State and lack of appeal mechanism are discussed in the thesis.

The thesis scrutinizes the concerns regarding arbitrators and appointment of arbitrators. The examination reveals deeply rooted concerns about the presiding arbitrators. The thesis points out that there is lack of diversity among arbitrators and majority of the arbitrators belong to the Western countries. It highlights that there is limited pool of arbitrators who are appointed repeatedly. Furthermore, there is double-hatting problem where one individual can serve as arbitrators and legal counsel in separate disputes.

On systemic bias, the thesis contends that the perception of systemic pro-investor bias in international investment arbitration is well-founded. This issue engendered widespread dissatisfaction of the States. Moreover, it undermined the legitimacy of the system. The analyses of Van Harten, Franck, and Sornarajah contended that the legitimacy crisis in ISDS stems from alignment of investor interests by arbitrators.

With respect to the regulatory chill, the thesis argues that although there is debate about extent of chilling effect, however, there are persuasive evidence including case studies and empirical research. Therefore, the thesis concludes that ISDS contributes to regulatory chill. It deters governments, mostly in developing countries, from passing regulations for public interests. Due to the threat of costly

litigation and large some of awards involved, the governments avoid passing consequential regulations that might end up in litigation.

For instance, Germany's relaxation of environmental safeguards in Vatenfall and Canada's reversal of a public health ban in Ethyl are two such examples in this matter. Moehlecke's research on anti-smoking regulations further demonstrates that the developing countries remain hesitant to adopt similar measures even when a respondent State of developed in economic capacity win the case. Furthermore, from Berge and Berger's study, thesis finds that there is a period that can critically delay urgent public interest measures.

Regarding interpretation inconsistencies, the thesis dissects concerns regarding interpretation. It finds persistent problem of inconsistent interpretation when it comes to the application of investment treaty standards. Because of ad hoc arbitration mechanism there is no requirement of following precedents. Moreover, ad hoc nature of the tribunals make them disconnected with each other. Furthermore, fragmented nature of the treaties and broadly defined treaty standards make it quite inevitable that there would be some inconsistency regardless of types of tribunals or any other factors.

The thesis also identifies lack of appellate review as a critical issue. It stresses that this is a fundamental shortcoming of the current system. This mainly because of ad hoc nature of the tribunals. Moreover, it is a barrier for correcting errors in law and ensuring that there is consistency in decisions.

In exploring solutions, the thesis evaluates the World Trade Organization (WTO) dispute settlement system to find pertinent lessons for the current ISDS reforms. It acknowledges the benefits of taking lessons from experiences of the WTO. However, it suggests incorporating from the WTO's strengths and caution against adopting its weaknesses.

To remedy systemic flaws, the thesis argues for a two-tier system with permanent bodies for both the first instance and appellate levels

instead of ad hoc panels for first instance and standing body for appellate level. This mechanism would be more beneficial in the context of international investment law as its disputes involve complex public international law and constitutional law issues.

Financial access is another concern: the thesis emphasizes the high costs associated with investment disputes needs to be addressed... this impacts access to justice for some developing countries. Therefore, the thesis recommends establishing an Advisory Centre on International Investment Law (ACIIL) after recognizing the positive impact of the Advisory Centre on WTO Law (ACWL) in assisting developing countries.

After evaluating the reform initiatives, the thesis concludes that reform of the UNCITRAL WGIII is fundamentally flawed as it is mainly focused on procedural matters. Therefore, it would not be able to solve all the deep-rooted problems. Nonetheless, reform proposals and drafts of the UNCITRAL WGIII offer qualitatively improved system compared to the current system and some potential benefits. However, adopting the recommendations of the thesis would make their reform more comprehensive, reliable and sustainable.

This research acknowledges that reforming international investment law carries the risk of unintended consequences. Willingness of States and international organizations to adopt proposed reforms depends on political dynamics and shifting priorities

3. The list of the author's publications written within the topic of the dissertation

a) Khalique, Muhammad Abdul, "The WTO Regime: Critical Analyses of Existing Hegemony and Rule-making." *Public Goods & Governance*, Volume 9, Issue 2, 2024. Link: https://publicgoodsjournal.eu/blog/2025/01/19/2024-volume-9-issue-2/

b) Khalique, Muhammad Abdul, “Evaluating the evolution of international investment law.” *Jog-Állam-Politika*, Volume 16, Issue 4, 2024. Link: https://jap.sze.hu/evaluating-the-evolution-of-international-investment-law
c) Khalique, Muhammad Abdul. “Identifying Problems of International Investment Law (IIL) and Evaluating the Focus of Reform Initiatives.” *Acta Humana–Emberi Jogi Közlemények,* Volume 12, Issue 2, 2024: 105-121. Link: https://folyoirat.ludovika.hu/index.php/actahumana/article/view/7238
d) Khalique, Muhammad Abdul, “Analyses of the European Union and its member states’ proposals on reforming the ISDS system under the UNCITRAL working group III” in *Green and Digital Transitions: Global Insights into Sustainable Solutions* (80-96) edited by Marianna Sávai, Szeged, 2024. Link: 10.14232/gtk.gdtgiss.2024.5
e) Khalique, Muhammad Abdul, “The critique of reform proposals for ISDS: solutions to existing and future problems” in *Challenges of international trade and investment in the 21st century* (64-82) edited by Vig Zoltan, Ankara, Chișinău, Szeged, 2022. ISBN 978-963-306-898-4. Link: https://acta.bibl.u-szeged.hu/77592/