



# Change it or Leave it

## Denunciation and Renegotiation of Treaties

### Denunciation and Renegotiation Are:

- Two notions that do not share common features
- Nonetheless, often resorted to as an alternative solution for the same reason (a change of circumstances)
- While denunciation is a familiar concept, renegotiation remains an understudied legal process



### Denouncing or Renegotiating Bilateral Investment Treaties



### The PhD Thesis

- Examined the interaction between denunciation and renegotiation when they relate to the same treaty
- Sought to identify the notion of treaty renegotiation and its legal framework



### Main Findings

- Renegotiation is distinguishable from similar treaty adaptation concepts
- Renegotiation is an omnipresent possibility in all cases of treaty denunciation, although it may remain dormant
- Renegotiation only takes place before the denunciation takes effect
- Denunciation and renegotiation are procedurally linked: obey certain common conditions and are governed by common principles
- Although their effects are seemingly divergent, they are intertwined in several respects
- Denunciation and renegotiation are treaty flexibility tools i.e. they reduce the tension between the requirements of legal stability and social change



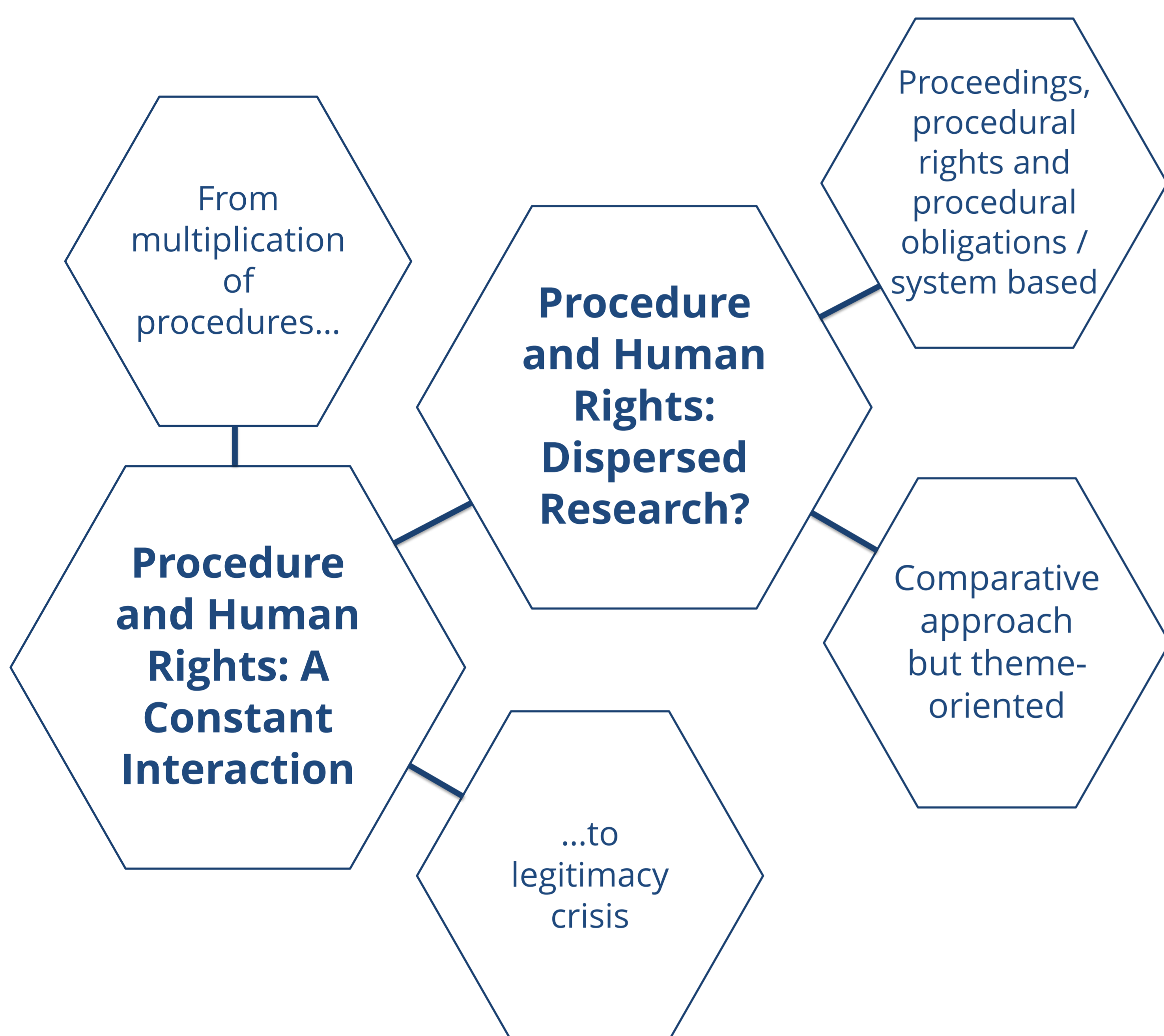


# Human Rights and Procedure

## PERSPECTIVES OF INTERNATIONAL LAW

(with Prs. H el ene Ruiz Fabri & Edoardo Stoppioni)

### POSITION OF THE ISSUE



### AXES OF ANALYSIS

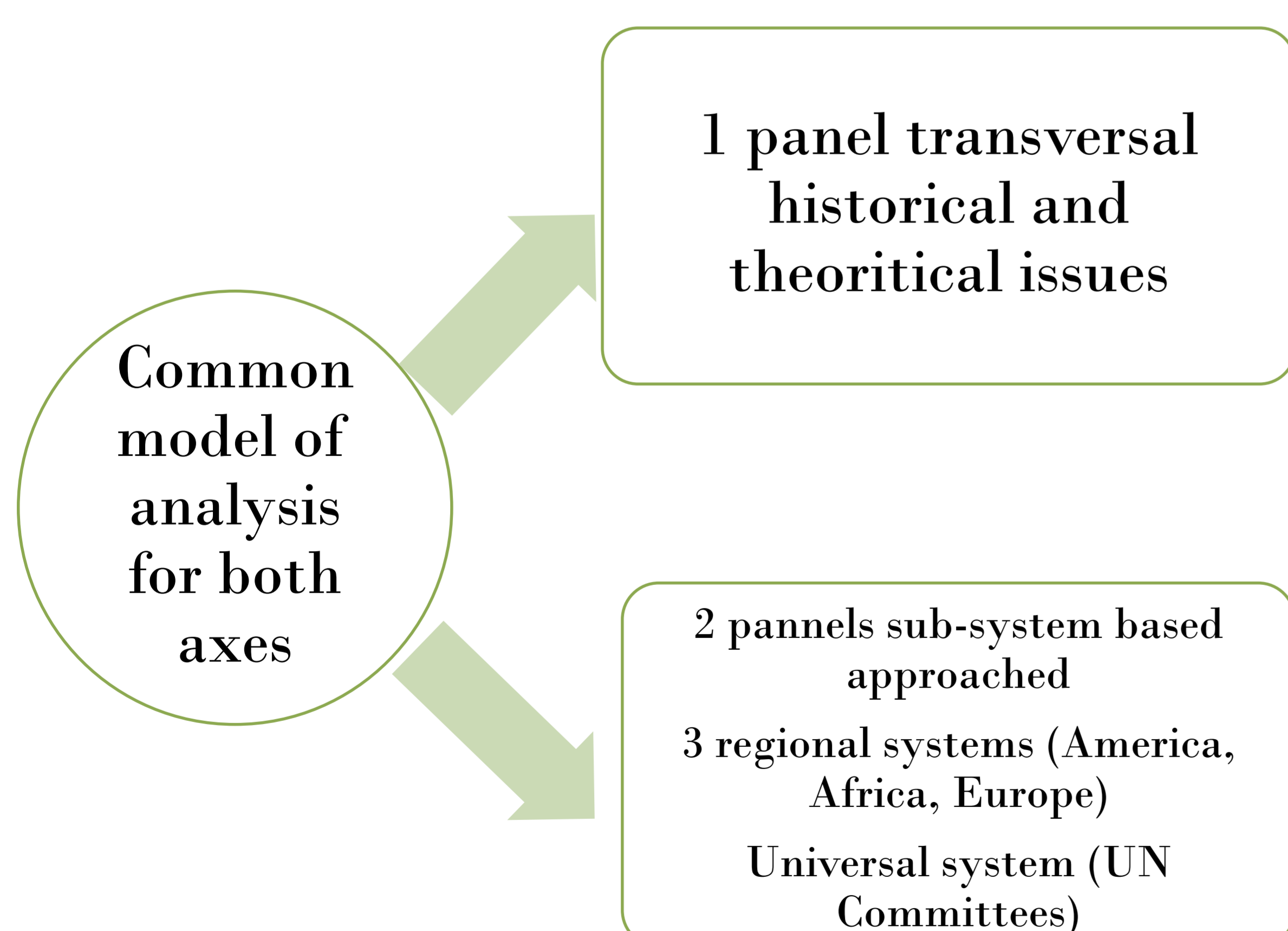
#### INTERNATIONAL HUMAN RIGHTS PROCEDURAL LAW

- Historical and theoretical underpinnings of choices of procedural mechanisms (judicial, non-judicial bodies)
- Influences on the proceedings before these bodies of the particular nature and object of Human Rights

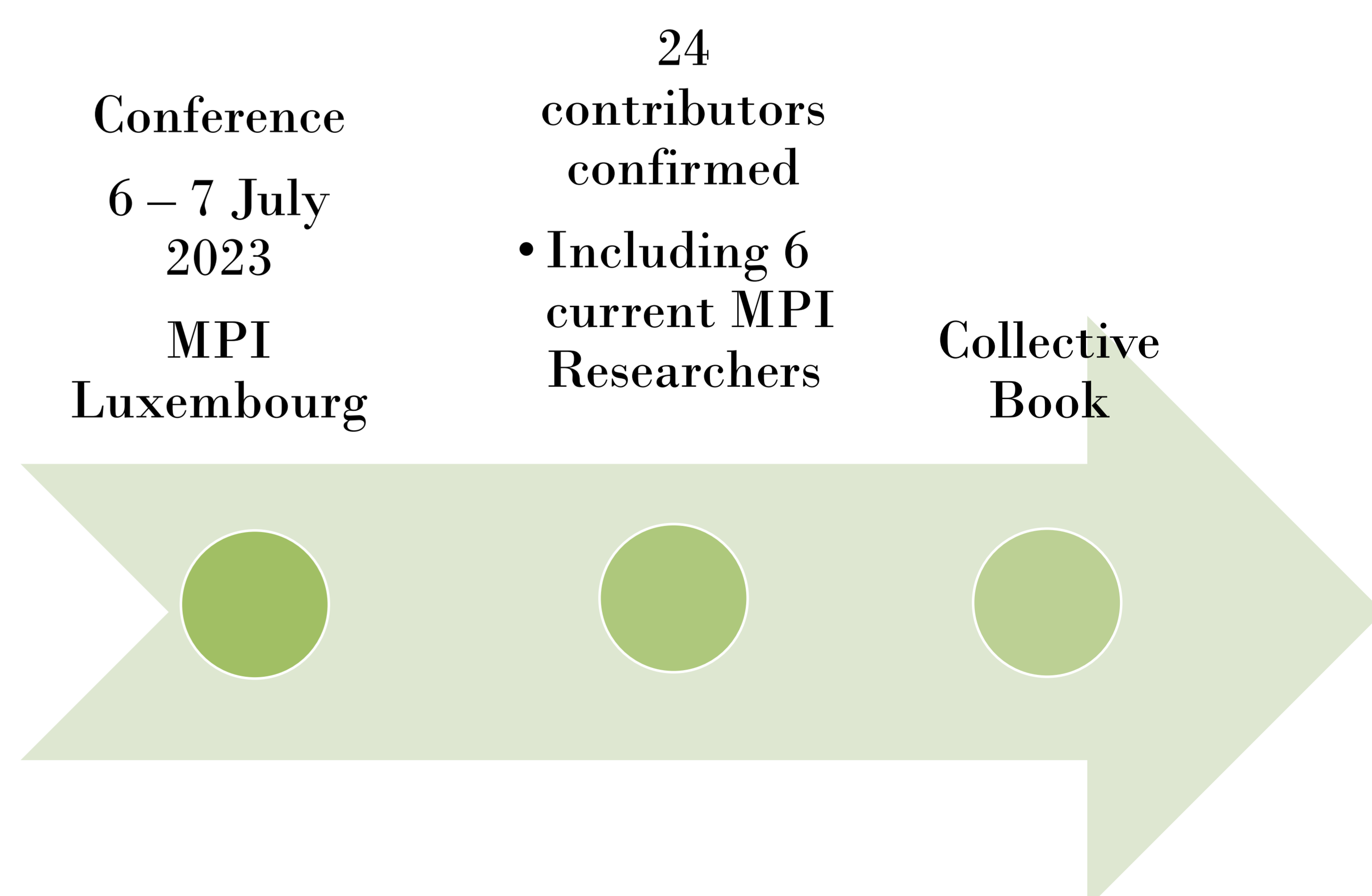
#### THE PROCEDURAL TURN IN HUMAN RIGHTS LAW

- Transformation of procedural rights and new / alternative legal instrument of social regulation
- Transformation of control from substance to decision-making processes
- Critical and theoretical reassessment of this vis- a-vis theory, history and promises of human rights law

### METHODOLOGY



### TIMEFRAME



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# Private Grievance Mechanisms: a route to access to remedy for victims of transnational business-related human rights abuses?



UNIVERSITY OF AMSTERDAM



UNIVERSITÉ DU LUXEMBOURG

## Research Problem

Victims of transnational business-related human rights violations face legal, economic, and political challenges to access remedies through courts in a transnational context.

Therefore, the UN Guiding Principles on Business and Human Rights have introduced the use of private grievance mechanisms under a complementary function vis-à-vis judicial mechanisms. Private mechanisms are established through private governance initiatives and involve actors such as corporations, industry associations, NGOs and other stakeholders to enable victims to directly start grievances against corporations.

The problem is that such mechanisms are advancing and establishing their own practices without clear grounds on how human rights law should be applied. Even though these processes may overcome some procedural difficulties faced by victims through judicial courts, they may also fall short of providing victims with access remedy if not developed and applied in compliance with human rights standards.



Source: Al Jazeera <https://www.aljazeera.com/economy/2010/12/10/how-shell-infiltrated-nigeria>

## Main Question

How may private grievance processes contribute to and/or impair the fulfilment of the right to access an effective remedy for victims of transnational business-related human rights violations?



Source: Friends of the Earth Netherlands <https://en.milieudedefensie.nl/shell-in-nigeria>

## Objective and Research Design

**Objective:** to critically analyse private grievance mechanisms through the lens of international human rights law and against the backdrop of the lack of access to remedy via courts. To do so, this research intends to answer:

- 1) How private grievance mechanisms are established, what are their procedural characteristics and types of remedies provided to victims? (*Empirical study*)
- 2) How these mechanisms (should) operate vis-à-vis the victim's access to remedy under international human rights law? (*Doctrinal study*)
- 3) Is there a state's obligation to police and regulate the establishment of private grievance mechanisms in relation to human rights law? (*Doctrinal study with a normative approach*)



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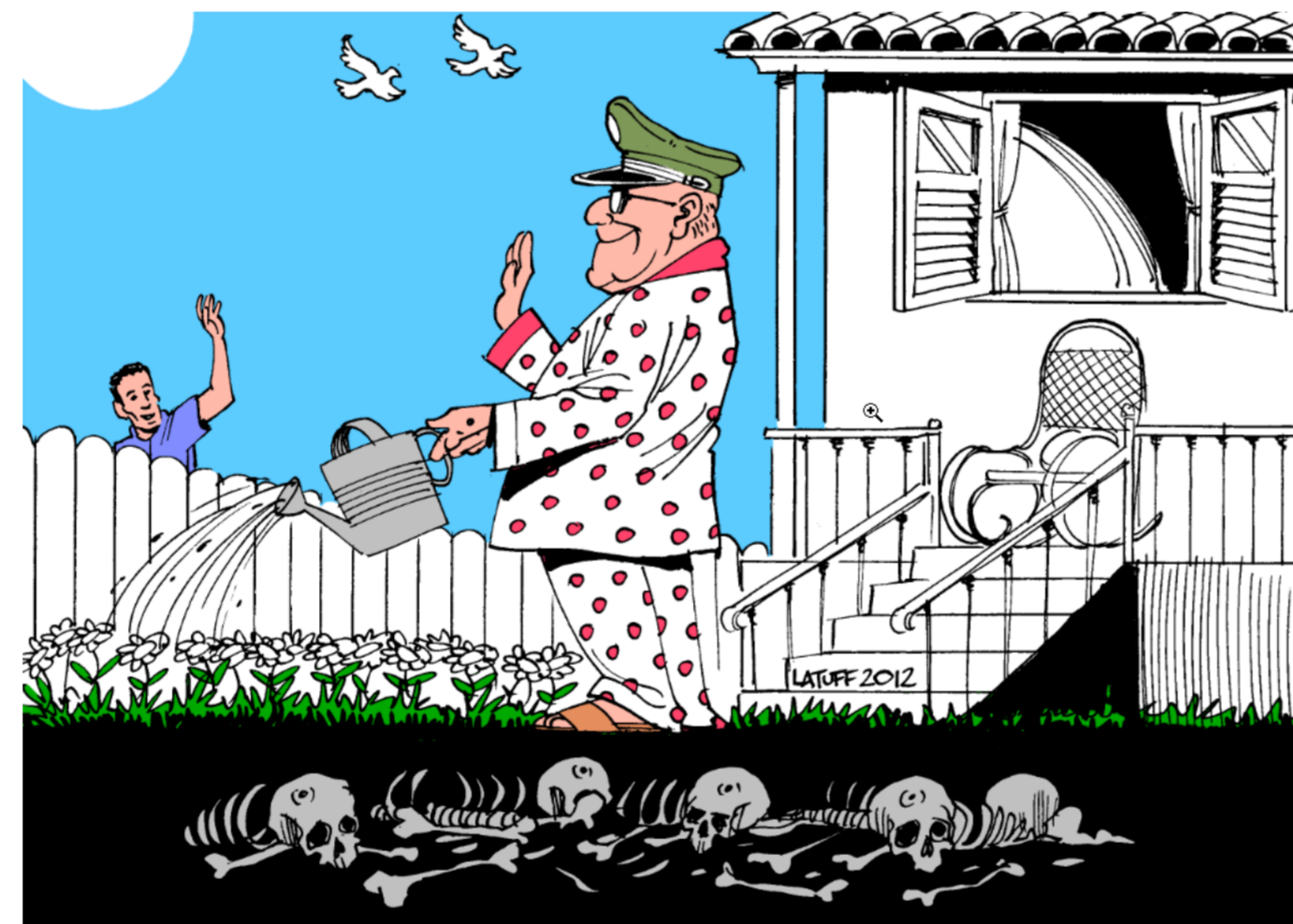
# 'The Solitude of Latin America': The Influence of the Region in the International Codification on Crimes against Humanity

U F *m* G

## Research Interest

This research aims to bring together two significant developments towards the prevention and punishment of crimes against humanity (CaH):

**(1) The extensive national prosecution of CaH in Latin America, especially the atrocities committed by the totalitarian regimes in the region between the 1960s and 1990s**



**(2) The adoption of a global treaty on CaH**

Two current treaty proposals

The International Law Commission's Draft Articles on Crimes against Humanity (DACaH)

The Mutual Legal Assistance Convention (MLA Convention)

## Research Questions

Is there sufficient uniformity to affirm the existence of a Latin American practice on CaH?

Assuming the existence of such a practice, to what extent is it reflected in both the DACaH and the MLA Convention?

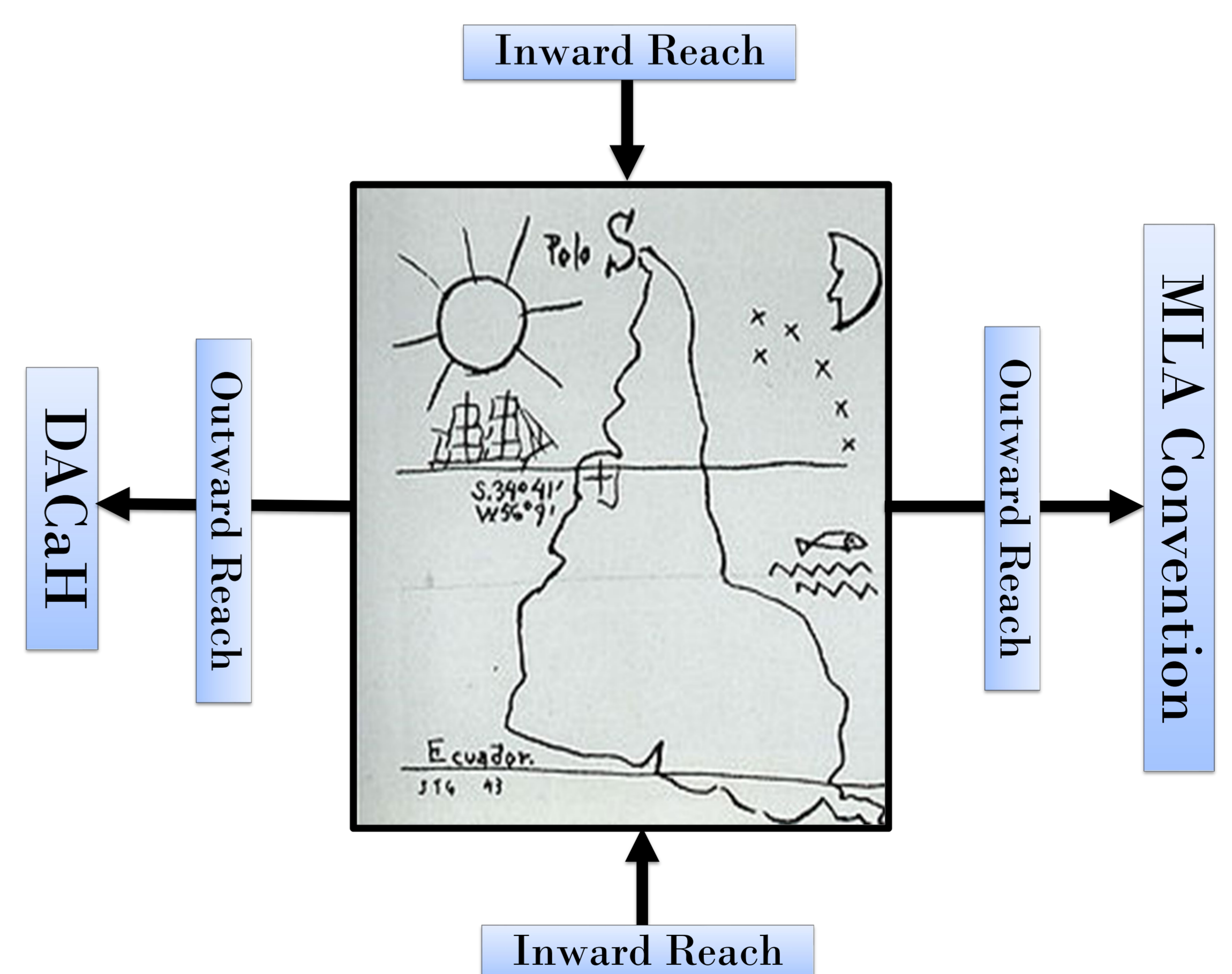
## Methodology

Inward reach of the research

Systematic cross-country comparison within Latin America to determine whether there is a regional practice on CaH

Outward reach of the research

Assessment of the drafting of the DACaH and MLA Convention to determine whether the Latin American practice on CaH was taken into account



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# Complementarity as Subsidiarity:

*is there a space for Restorative Justice in international criminal proceedings?*



## A. The Framework:

My research argues that the core elements of restorative justice affect four main procedural avenues in the legal framework of criminal courts and tribunals in a dialectic manner:

LEGAL PROCEDURAL FRAMEWORK	RESTORATIVE JUSTICE ELEMENTS
Reparations	Harm-Centered
Victims' Participation Procedure / Admissions of Guilt	Relational
	Participatory
Complementarity	Democratic

## B. In this context:

- Restorative Justice ('RJ') has been evoked by ICC officials, academics, practitioners and diplomats as a way of dispensing punishment beyond the retributive and consequentialist paradigms.
- The specialized scholarship tends to equate RJ with reparations, victim participation and guilty pleas in international criminal trials.
- While this might all be true, I argue that another key element of the possibility of RJ is the application of the principle of complementarity as part of the democratic commitment of RJ.

## C. Why focus on complementarity?

- The democratic element of RJ stresses that decisions should be taken 'as close as possible' to those affected.
- Complementarity as a rule of priority in ascertaining jurisdiction (negative) outlines a prescriptive preference for domestic trials.
- Complementarity as a principle (positive) requires the ICC to delve in strengthening capacities at the local level.

## D. Preliminary Results



- Subsidiarity as complementarity is not an exact science. It will call for autonomy when warranted and intervention when necessary.
- As a principle, it will give content to positive complementarity and restraint to negative complementarity.
- It would help strike balance between sovereign claims and make sense of the catalyzing effect of complementarity in a multi-level world.
- It would deal effectively with issues of pluralism in international criminal law.
- Advance RJ values.



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# THE PROCEDURALISATION OF SUBSTANTIVE RIGHTS AND ITS IMPACT ON STATES' SUBSEQUENT PRACTICE



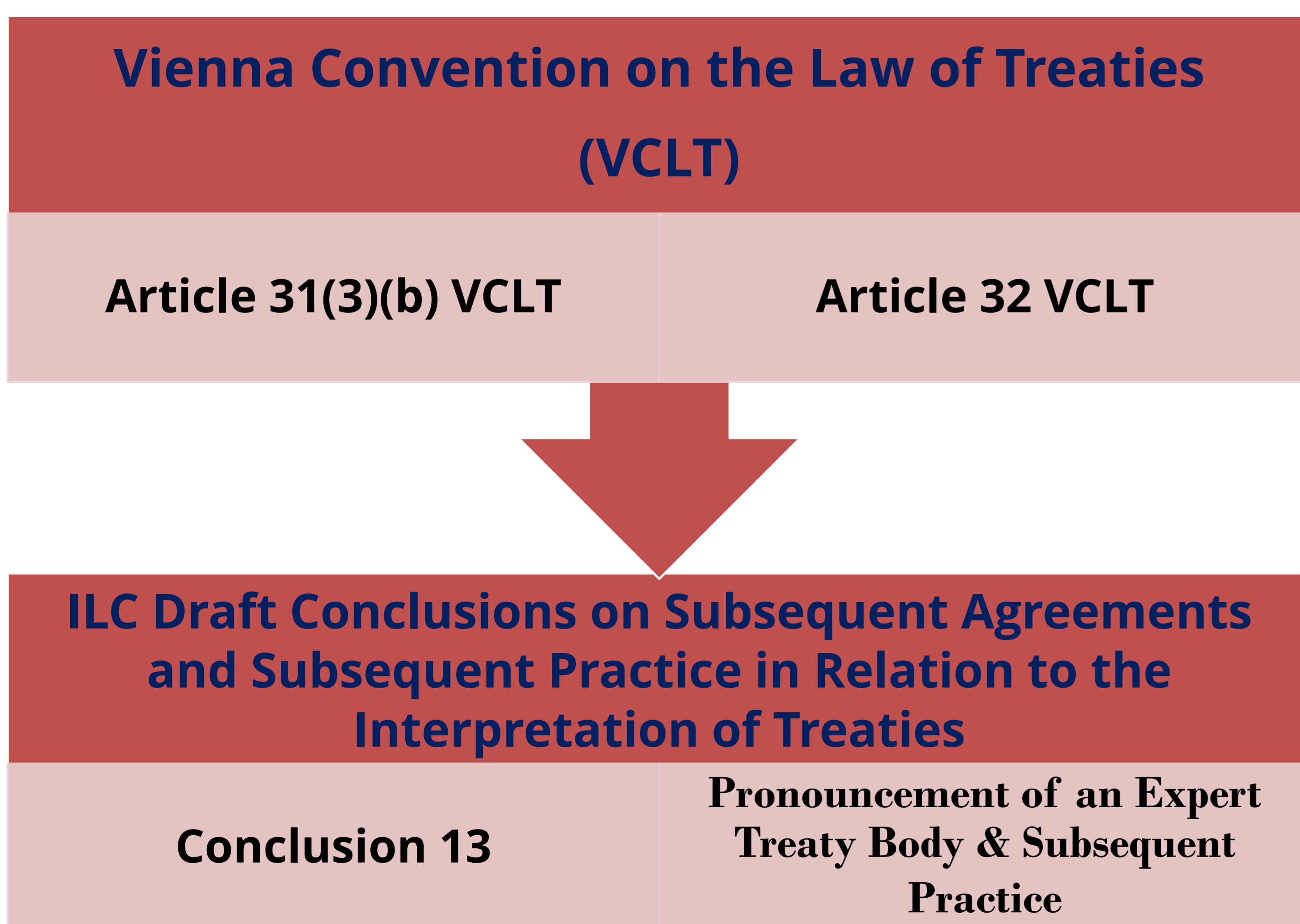
## Research Interest

- Regional Human Rights Courts (RHRC) and other Expert Treaty Bodies (ETB) have developed a practice of adding a procedural obligation to national authorities to strengthen the internal protection of a substantive right. While this interpretative practice is unnamed in the judgements of RHRC and pronouncements of ETB, the doctrine has identified it as the “proceduralisation of substantive rights”.
- The proceduralisation of substantive rights has helped RHRC and ETB shape substantive rights in widening the scope of state obligations and deepening the requirement for their protection.

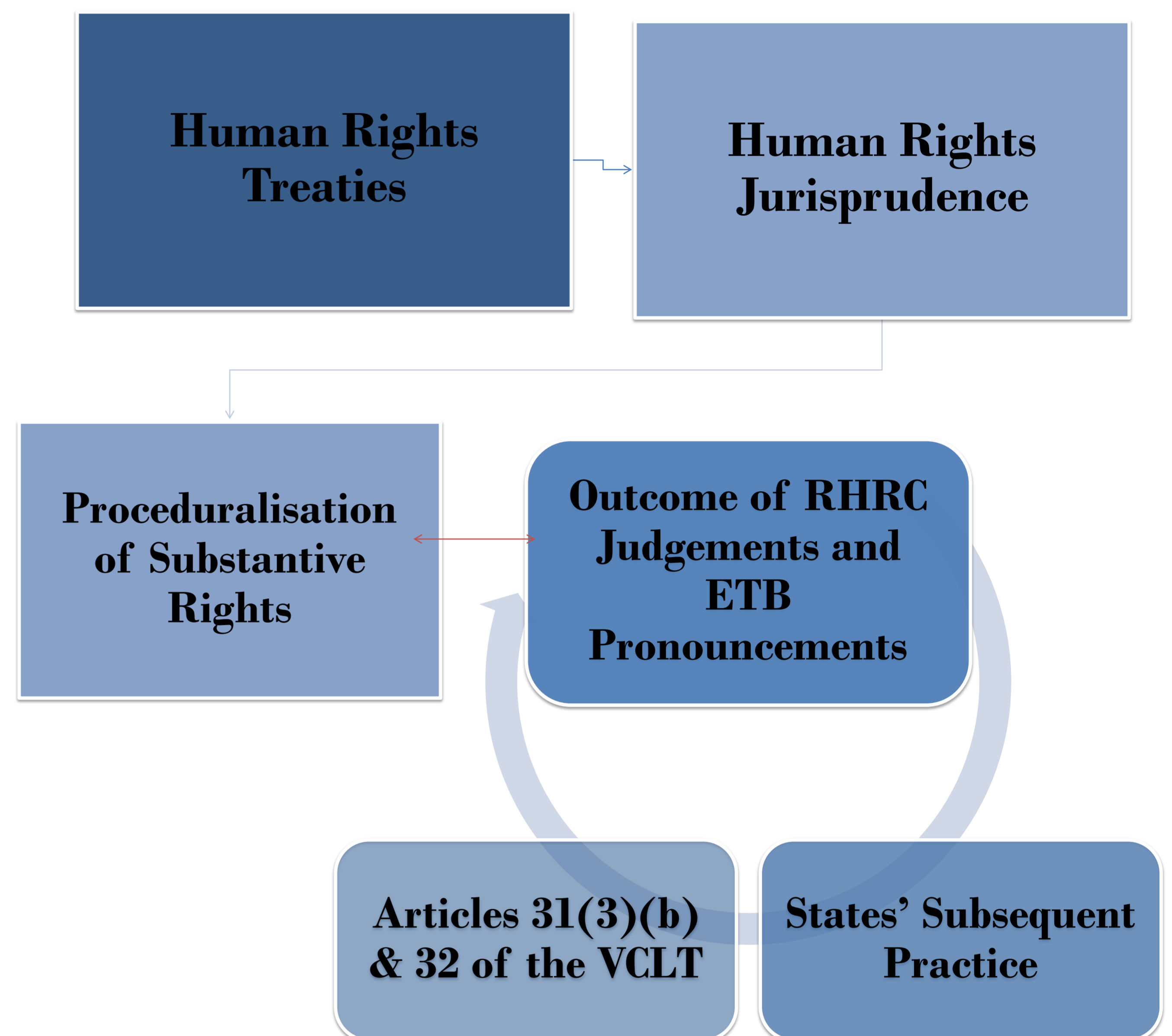
## Research Question

- To what extent does the proceduralisation of the substantive contribute to developing subsequent state practice on interpreting human rights treaties?

## Hypothesis



## Way forward



## Expected Result

- As an offshoot of judicial activism, the proceduralisation of substantive rights broadens the scope of states' obligations by establishing procedural requirements to which they did not expressly consent at their adhesion.
- However, the outcomes of RHRC judgements and other ETB pronouncements reveal that it may serve as a catalyst for the subsequent practice by fashioning states' conduct.



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# Anthropocentrism and Sustainability of the Earth System and Outer Space (ANTARES)

TOPIC: INTERNATIONAL LAW AND MORE-THAN-PLANETARY ENVIRONMENTAL PROBLEMS  
INTRODUCED BY HUMAN ACTIVITIES IN OUTER SPACE

## OUTER SPACE ENVIRONMENT

**EXAMPLE:** Large Satellite Constellations can contribute to orbital debris and light pollution (affecting observation, astronomy, navigation etc.)

Space technology also has many important uses:  
e.g. Earth System Monitoring, Telecommunication, etc.

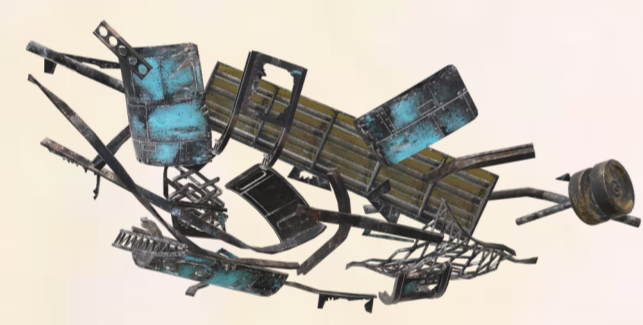


Image: Abstract space debris icon

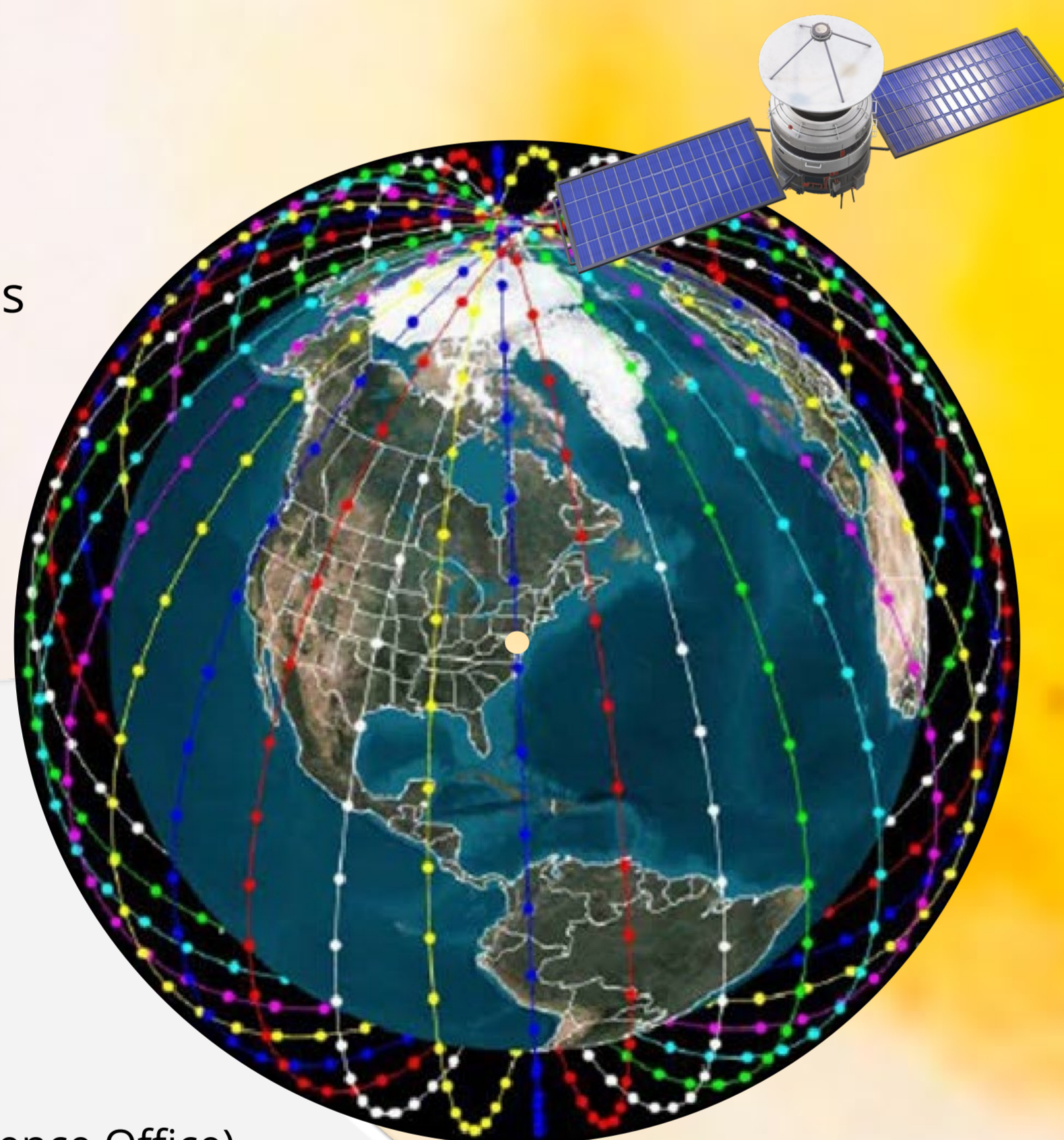


Image: Large constellations of low-orbiting satellites (© ESA-Science Office)

## EARTH SYSTEM ENVIRONMENT

**EXAMPLE:** Arctic Methane Craters  
Satellites are crucial for Earth System data, including greenhouse gas (GHG) monitoring



Image: A crater in the Yamal Peninsula. ©VLADIMIR PUSHKAREV/REUTERS

Project proposal: Reordering Anthropogenic Law For More-Than-Planet-Spacetime  
The Cosmolegal proposal: builds on the hypothesis of profound interrelatedness of the outer space-earth complex systems

Background image: © Elena Cirkovic



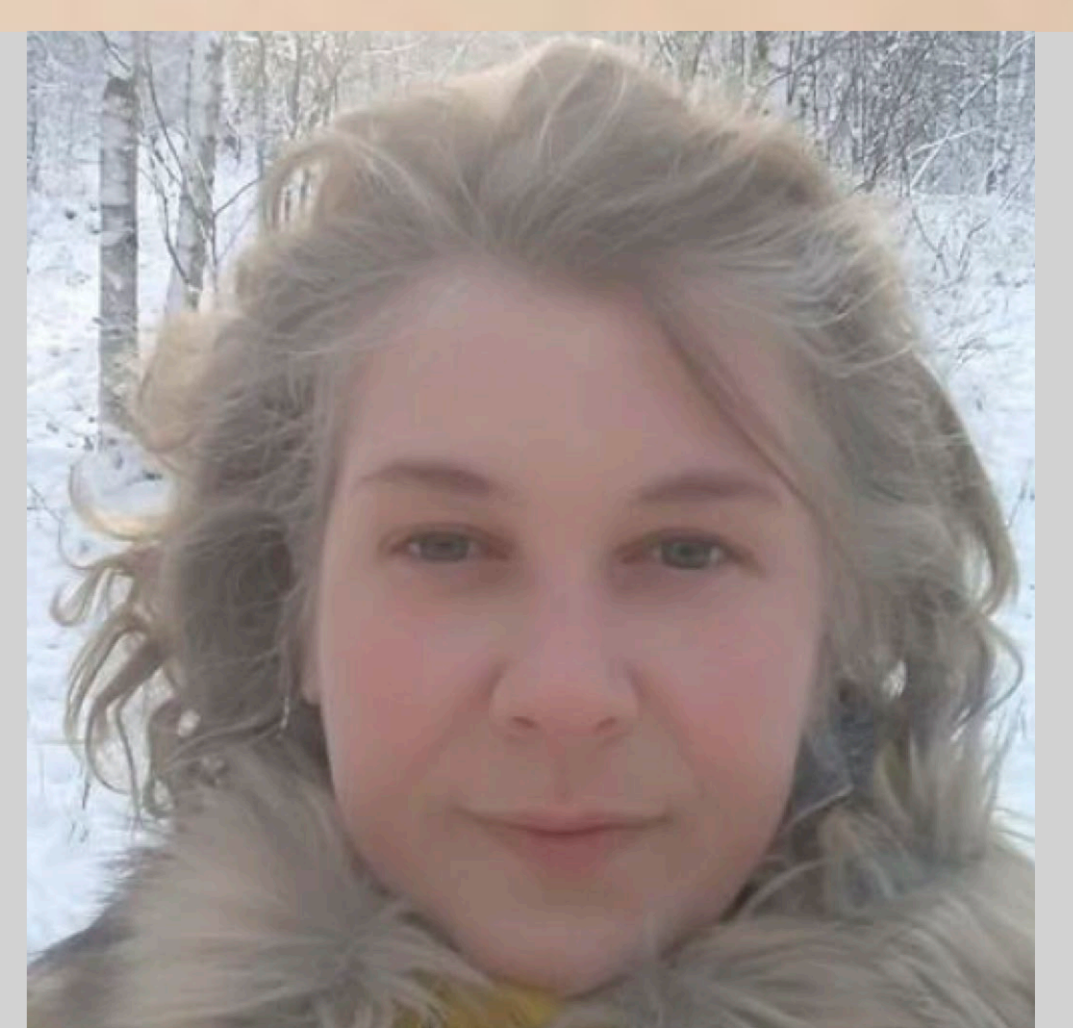
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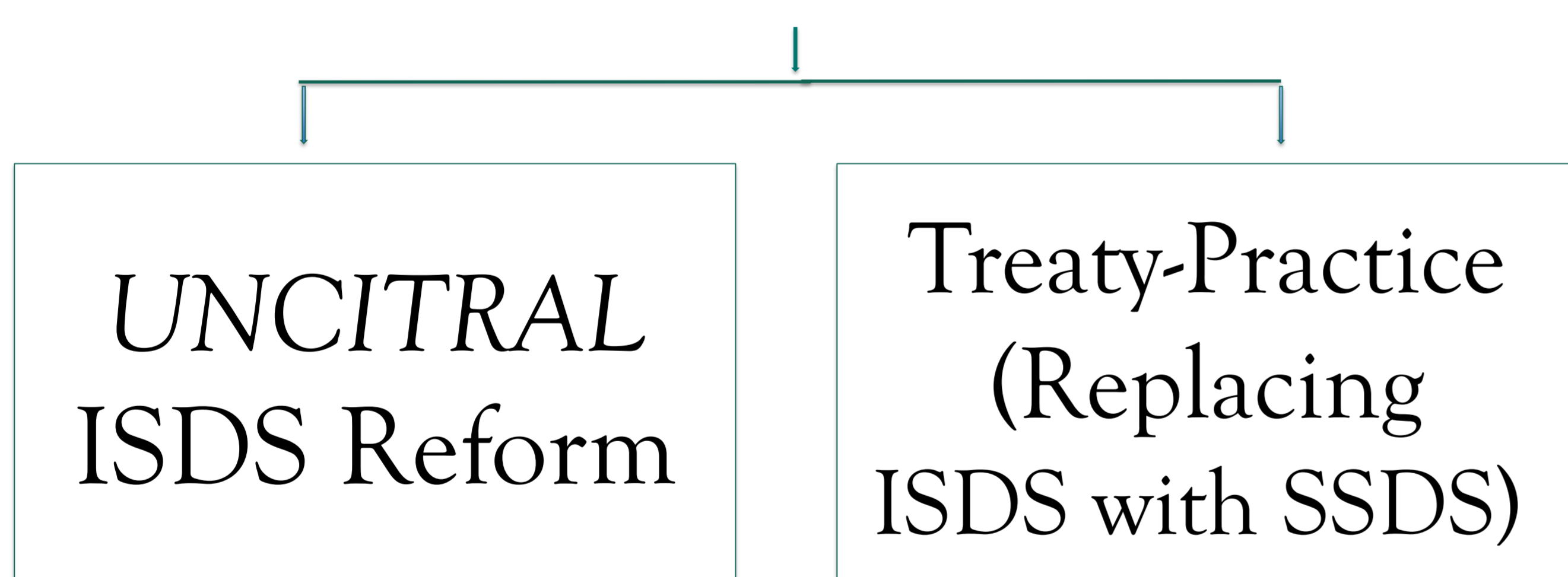
# The Replacement of Investor-State Arbitrations with Inter-State Adjudication Mechanisms



Source: bilaterals.org

Considering procedural drawbacks, there has been a backlash against investor-State dispute settlement (ISDS) mechanisms, in particular against investor-State arbitration (ISA).

## Consequences of the ISDS Backlash



## Research Background

- Not sufficient attention has been given to the emerging trend towards the replacement of investor-State arbitrations with State-State dispute settlement mechanisms (SSDS mechanisms).
- Research focuses on how treaty-based investment adjudication would look like if investor-State arbitration gets replaced by SSDS mechanisms.

## Research Question

Whether inter-State adjudication (SSDS mechanisms) can act as functional equivalent of investor-State arbitrations?

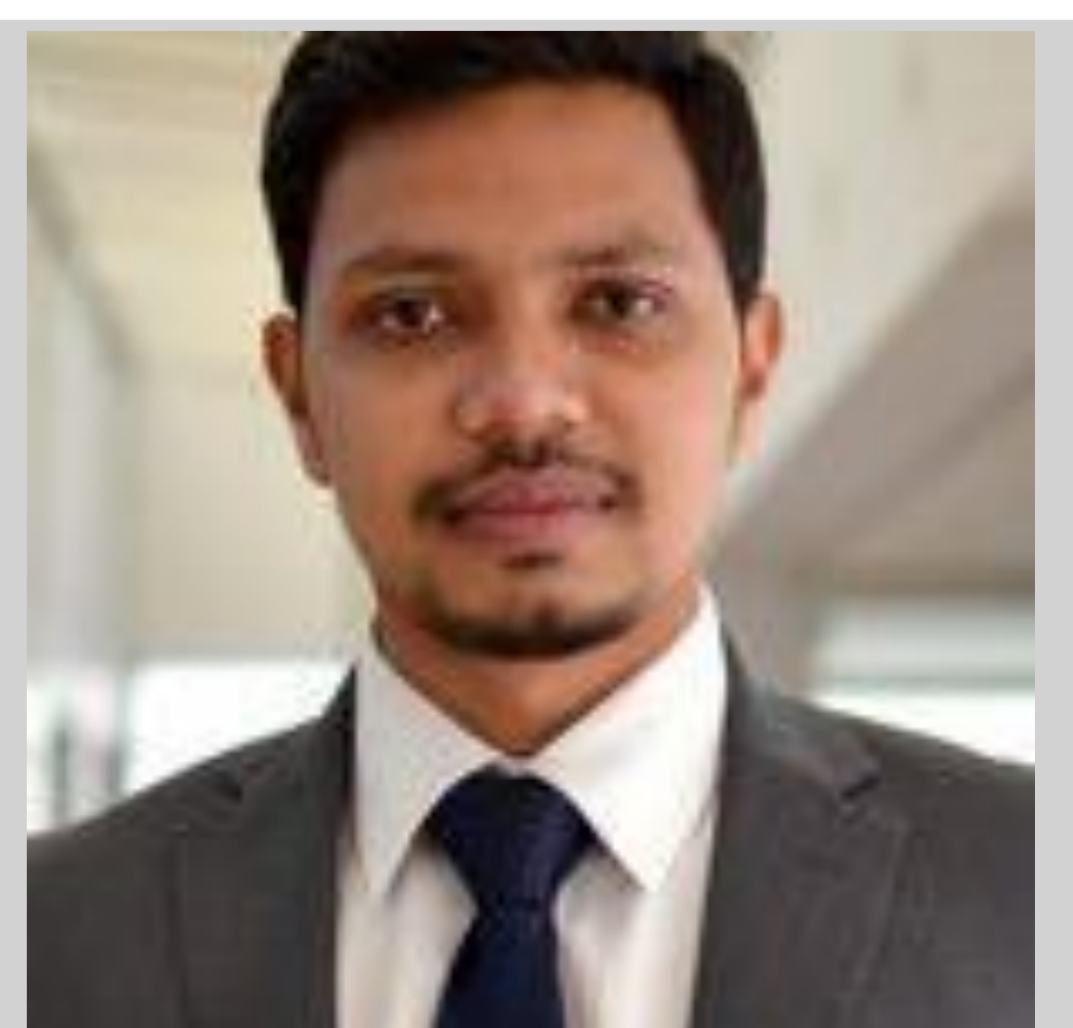
Investor-State Arbitrations



State-State Dispute mechanisms

## Preliminary Conclusions

- This emerging trend towards replacing investor-State arbitration with inter-State adjudication mechanisms, will have an impact on future treaty-practice. However, this trend will exist alongside ISA provisions as a large number of international investment agreements continue to include ISA.
- There is a potential in SSDS mechanisms to emerge as a functional equivalent of ISA, from a procedural perspective, especially considering modern tools such as ‘disputes funding’.
- Institutional inter-State adjudication may be more beneficial for States, as opposed to *ad hoc* inter-State adjudication, considering the (legal (representation related) benefits that come along with such institutional mechanisms.
- Non-adjudicatory mechanisms, such as ‘investment guarantees’ including ‘political risk insurance’, may be referred to by the concerned investors in case of non-espousal of claims by States of nationality of investors.





# Polluting the Shores of the Cosmic Ocean

## Regulating Space as 'Environment' and International Investment Law

### Which questions *prompted* the research?

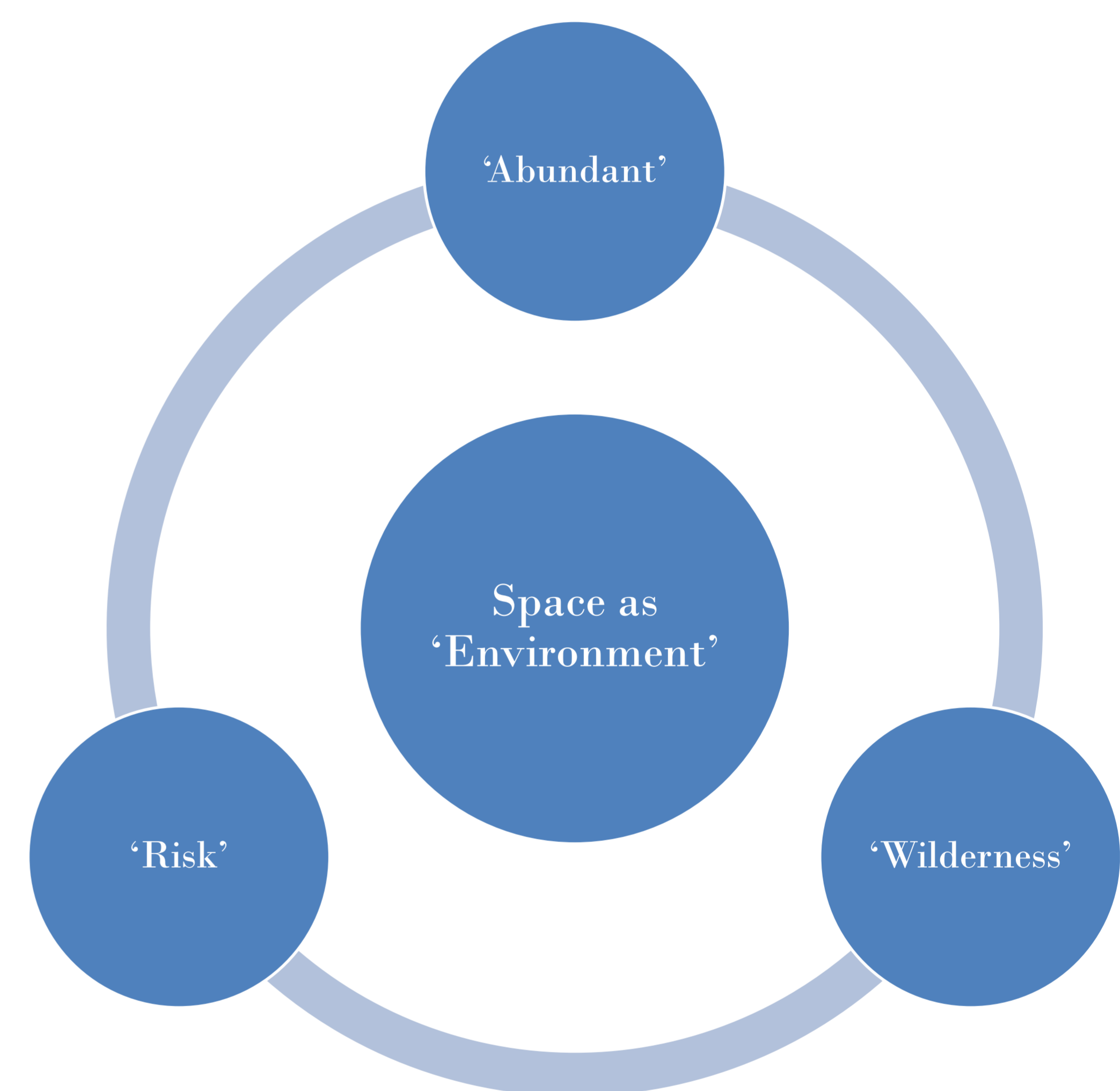
- Is outer space part of our environment? If so, how does/will humanity interact with it?
- How do multilateral fora, such as the UNCOPUOS, engage with this problematique?
- How do states, in particular, engage with its regulation?
- What about private capital? If space is a part of our environment, how does that affect companies and other private actors, as well as their activities in space?

### Which questions *drive* the research?

- What are the consequences of designating space as environment?
- Does international investment protection regime apply to space activities?
- From the states' perspective, what types of regulatory measures are conceivable in order to (a) exploit it as 'abundant' environment, (b) mitigate 'risks', and (c) preserve it as 'wilderness'?

### Space as 'Environment': A Sociological Trichotomic Approach (Ormrod, 2020)

Designation of space as environment has multiple layers: it is rich in natural resources (abundant), it is an extremely hostile environment (risk aversion and mitigation), and a sanctuary to be preserved and protected (wilderness).



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# When States Bend their Will

## Decodifying the Power of the *Jus Cogens* Norms



### A. The *Jus Cogens* Norms and their Relevance

- *Jus Cogens* norms are international rules which states cannot derogate.
- Their emergence assures that the political dimension of international relations is subject to limits. Their purpose is to prevent the **total dehumanization** between and within states (by prohibiting –in absolute terms– certain acts that include genocide, torture, slavery, and others).



- Their inclusion represented the recalibration of certain traditional International Law principles, such as the **Principle of State Consent**, etc.
- Their positivization (in the VCLT of 1969) led to our discipline's **hierarchization** (shifting the functionality of the sources of International Law).
- In 2012, the International Law Commission (ILC) restarted the study of the **sources of International Law** - custom (until 2018) and the principles of International Law (still taking place). On the other hand, the ILC started the study of the *jus cogens* norms as a potential product of those sources (the study finished in 2022).

### B. Research Question

Can the traditional approaches to International Law (positivism and naturalism) appropriately explain those rules' emergence and functionality?

### C. Research Overview and Methodology

1. Voluntarist Positivism has reduced *jus cogens* norms to products formed from the states' will and –therefore– has considered them to originate through custom or the general principles of law (if this last source of law is connected with state consent).
2. Naturalism adds no certainty regarding identifying or determining the effects of *jus cogens* norms, either.
3. International Constitutionalism, while in decline –with adjustments to its premises– would explain the role of the general principles of law in International Law, a fact that will help decode the emergence and effects of the *jus cogens* norms.



Can ‘**International Constitutionalism**’ explain the formation and functioning of the *jus cogens* norms? Can it work as a methodological tool in international legal discourse?

### D. Proposed Outcome

To offer a different understanding of the role of the general principles of law, constitutionalism, and the role of international courts and tribunals in identifying those particular rules.



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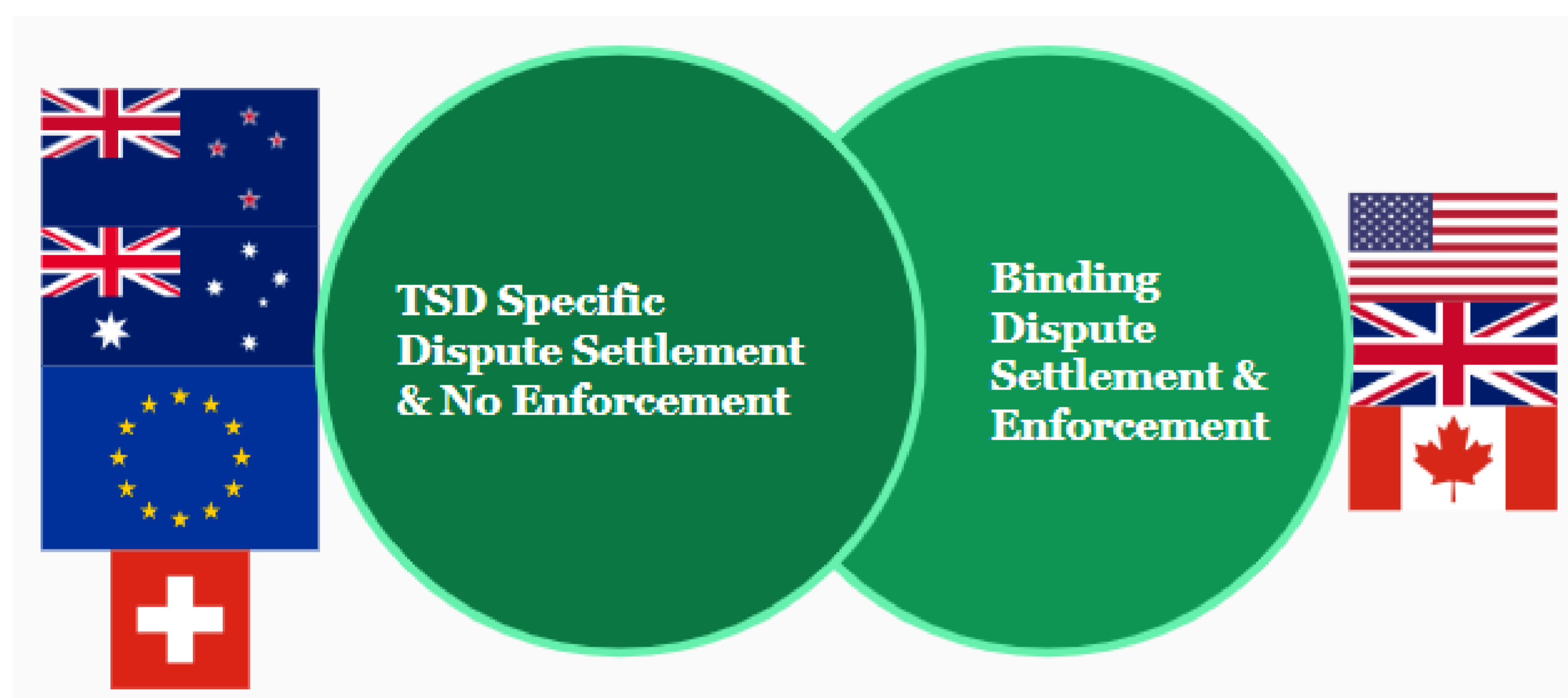
**Luis A. Lopez Zamora**



# EVALUATING AND RETHINKING COMPLIANCE WITH SUSTAINABLE DEVELOPMENT STANDARDS OF FREE TRADE AGREEMENTS THROUGH EFFECTIVE DISPUTE RESOLUTION AND ENFORCEMENT MECHANISMS

## Research Interest & Theory of Problem

Trade and Sustainable Development Chapters in free trade agreements come in different forms, levels of precisions, scopes, dispute settlement and enforcement mechanisms.



The lack of appropriate rules to govern the enforcement of dispute settlement reports is worrying in terms of **non-enforcement** and under-compliance with envisioned standards, and **over-enforcement**, which can give rise to unilateral protectionist measures that can become particularly destructive for the smaller economies.

## Research Question

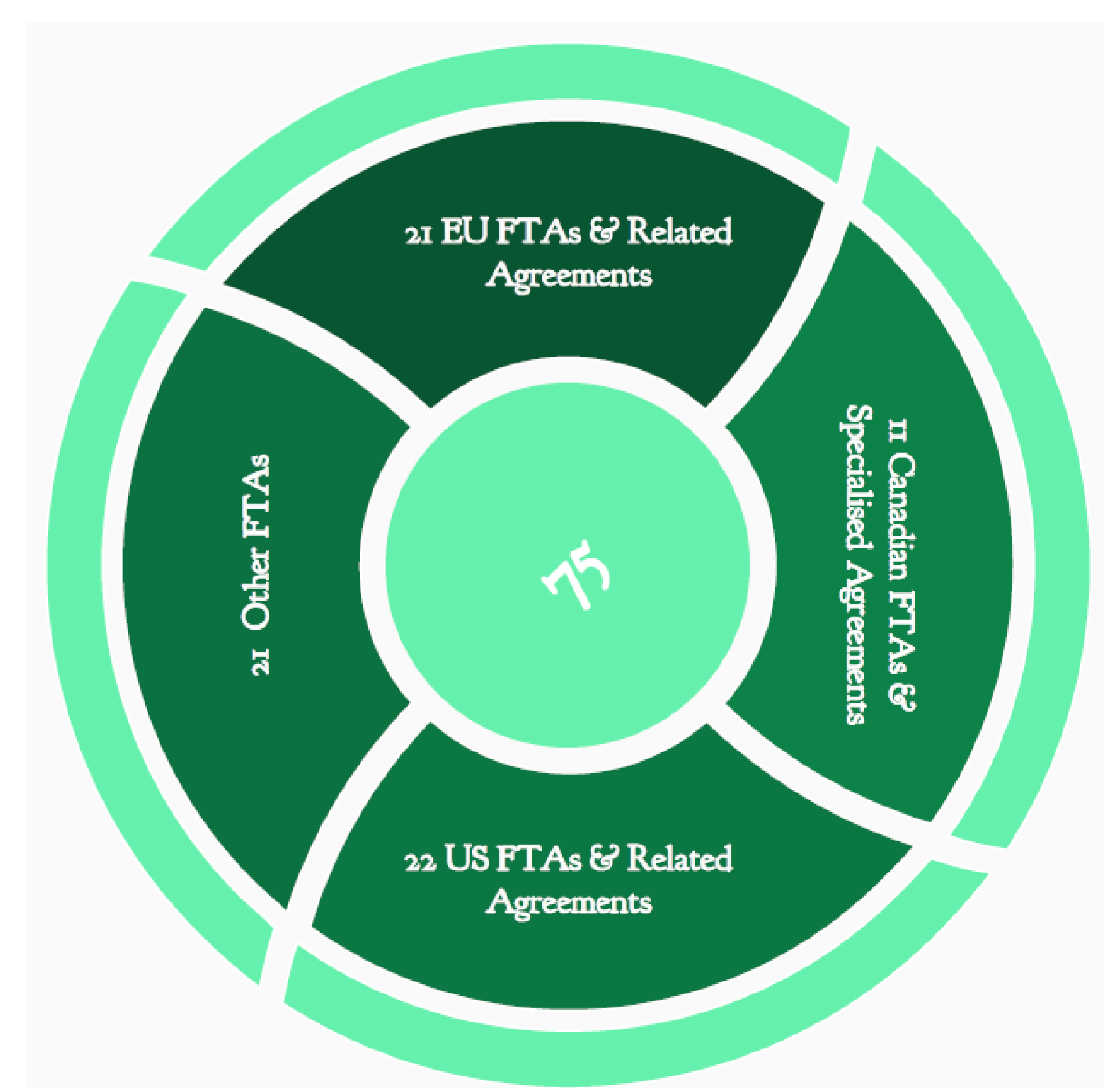
The **main question** driving this research is:

*“Whether the introduction of a comprehensive multi-layered sanction-based (conditional) approach in free trade agreements could raise the effectiveness of implementation and prevent the under-enforcement of Trade and Sustainable Development Chapters?”*

## Specific Goals, Methodology & Scope

Beyond what has already been achieved, this research will:

- comprehensively analyse the existing agreements of major trade actors through legal and geopolitical lenses;
- look into the design and application of the dispute resolution and enforcement models in their particular contexts;
- provide critical analysis of existing case law;
- scrutinise the ways of improving the soft law means of consultation, mediation expert panels, as well as the harder law method of binding arbitration procedures;
- propose solutions for the future discussion of the necessary substantive and procedural reforms to increase the effective enforcement of sustainable development standards of free trade agreements.



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# RESOLVING ECONOMIC DISPUTES IN AFRICA: ASSESSING THE ROLE OF INTERNATIONAL COURTS AND ARBITRAL BODIES

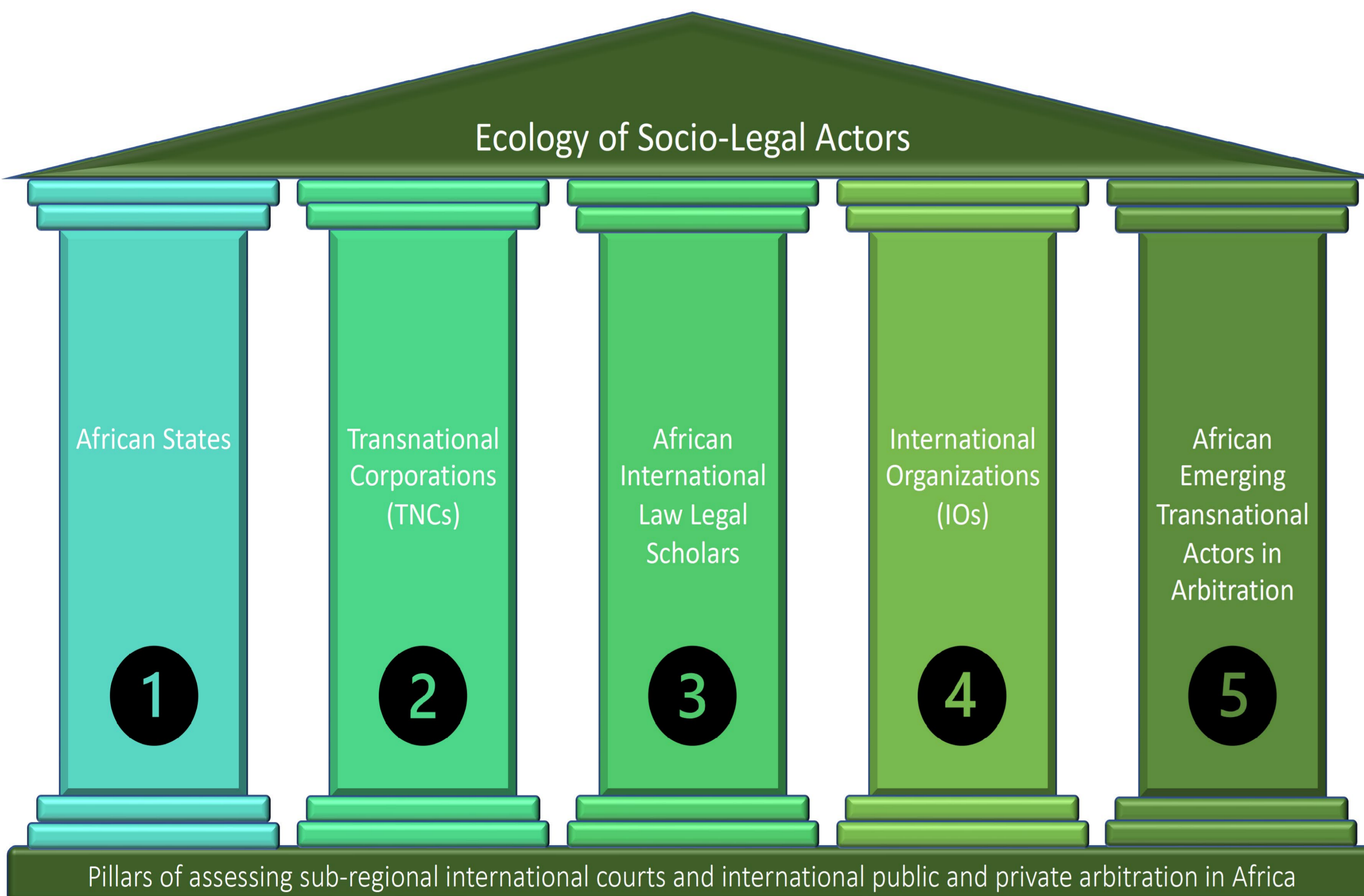


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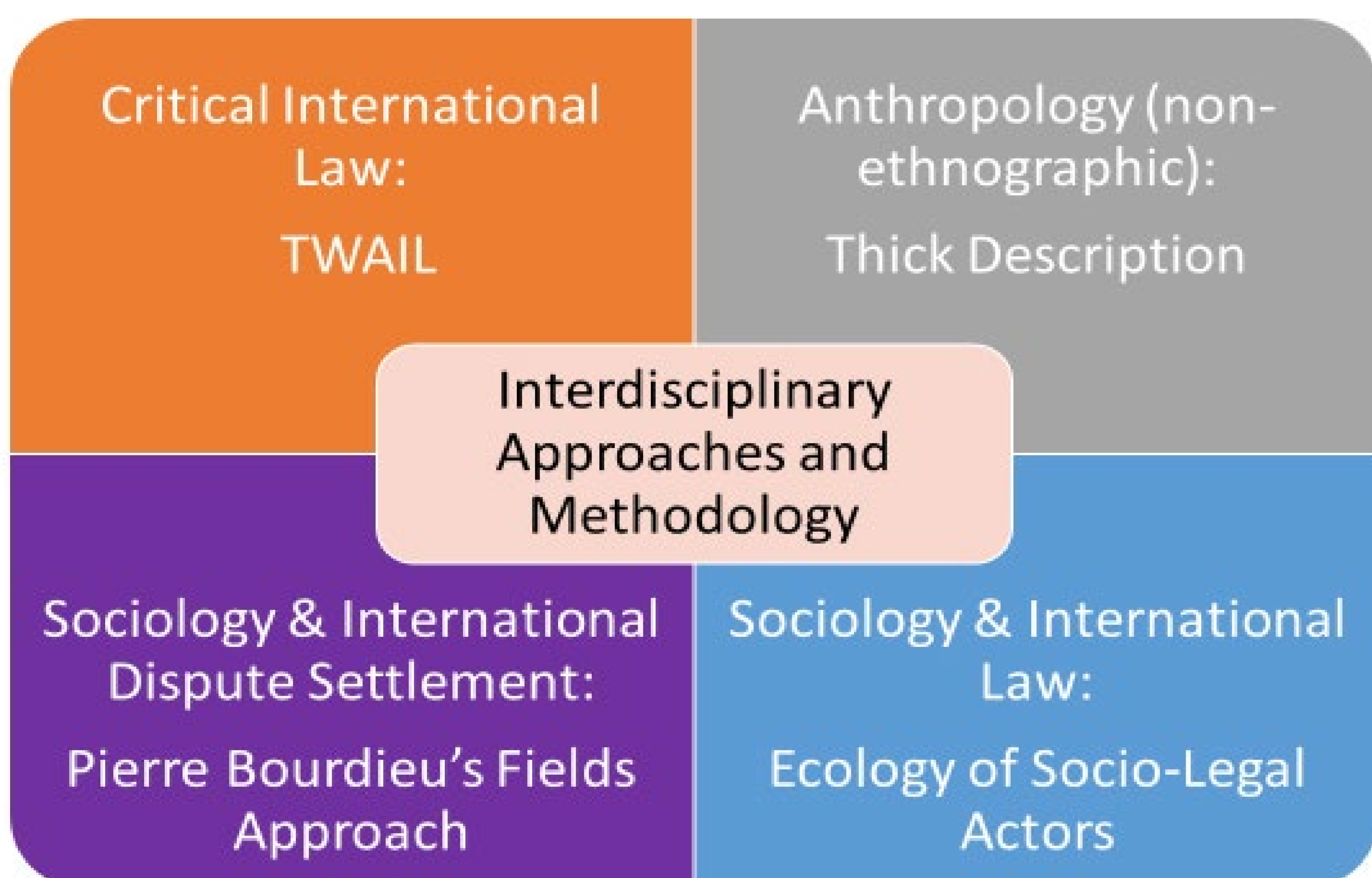
## Thesis Abstract

The assessment of many African international economic dispute settlement regimes portrays them as less authoritative versions of their European and international counterparts. This study argues that such evaluations are inaccurate and aim to further marginalize African institutions involved international economic dispute settlement.

## Socio-Legal Actors Underpinning My Study



## Theoretical & Methodological Framework/Approaches



## Some Supported Claims and Levels of Intervention

### Claims

The jurisdictional mandates of Africa's sub-regional economic courts and tribunals are complex, and commentators should avoid purely positivistic or doctrinal analyses of these courts. I label these complexities into three types: Analytical complexity, Utility complexity, and Dormant Functional complexity.

### Levels of Intervention

Doctrinal level

The East Africa Court of Justice (EACJ) British American Tobacco (BAT) case shows how powerful transnational companies (big tobacco in this case) are willing to use all types of regimes, including triggering the EACJ international trade dispute jurisdiction, to win economic gains and safeguard their transnational capital.

Epistemological level

Most Africanization efforts in the reform of international investment dispute settlement fall within a weak and contributionist strand of international law approaches in Africa.

Theoretical level

Three specific actors are strongly emerging in the African international commercial arbitration scene: Well-established and Emerging African Arbitrators, African top Tier corporate law firms, and arbitration training institutions, and professional associations.

Socio-cultural level



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# Sovereign Investors Inc.

or

## *Sovereign Wealth Funds in Investment Arbitration and Enforcement Proceedings*

Morgan Stanley  
PRIVATE WEALTH MANAGEMENT



### The Rise of Sovereign Wealth Funds

- Do you know what Paris St German football club, Disney, Pfizer and Morgan Stanley have in common?
- What they have in common is one of their shareholders, which is a Sovereign Wealth Fund (SWF), usually funded by Asian and Middle Eastern countries.
- SWFs are governmentally owned cross-border investors which have currently manage more than 10 trillion U.S. dollars and have shares in almost every each listed company in the world.
- SWFs are sovereign investors, melding the power of capitalism with the political background of statist, often times authoritarian, governments. This is why host countries concern over their true nature and intentions and have adopted protectionist measures in reaction. Yet, what is their true nature?

### The *Problématique*

- Are SWFs Private investors with commercial intentions or are they a *longa manus* of authoritarian states?
- How are they categorised in investment arbitration and by domestic court in award enforcement proceedings? What are the legal consequences attached to being considered as either of the two?
- This thesis studies how arbitrators and domestic judges in enforcement proceedings deal with the assessment of SWFs nature.



### Conclusions

- Depending on the legal structure of a SWF, the answer may changes.
- Overall consistency in terms of classification: the nature of the activities test is prevalent.
  - As a result SWFs are mainly seen as separate, private investors.
- Yet, this thesis argues that this might be a flawed way to assess such actors' nature.



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# Financial Digitalisation and International Investment Disputes

## Research Question

How are increasingly digitized financial markets changing the dynamics of

- international disputes generally,
- international investment disputes,
- sanctions disputes, and
- sovereign debt disputes?

## Financial Digitalisation

A new **digitized disputes ecosystem for financial markets** is on the verge fundamentally altering the dynamics of international dispute resolution mechanisms:

- Most central banks around the world have begun to issue **central bank issued digital currencies** (CBDC's) or are exploring them. See examples below. They are set to become the first digital legal tender for peer-to-peer use besides Bitcoin.
- **Asset tokenization** allows to increase liquidity of assets by converting and splitting ownership rights so they can be traded digitally. This is particularly relevant for physical or high value assets.
- Similarly, other financial instruments, such as **bonds and derivatives**, are equally ripe for digitization.
- **Lines between asset classes are blurring** as tokenization or compound assets enable payment functions using formerly



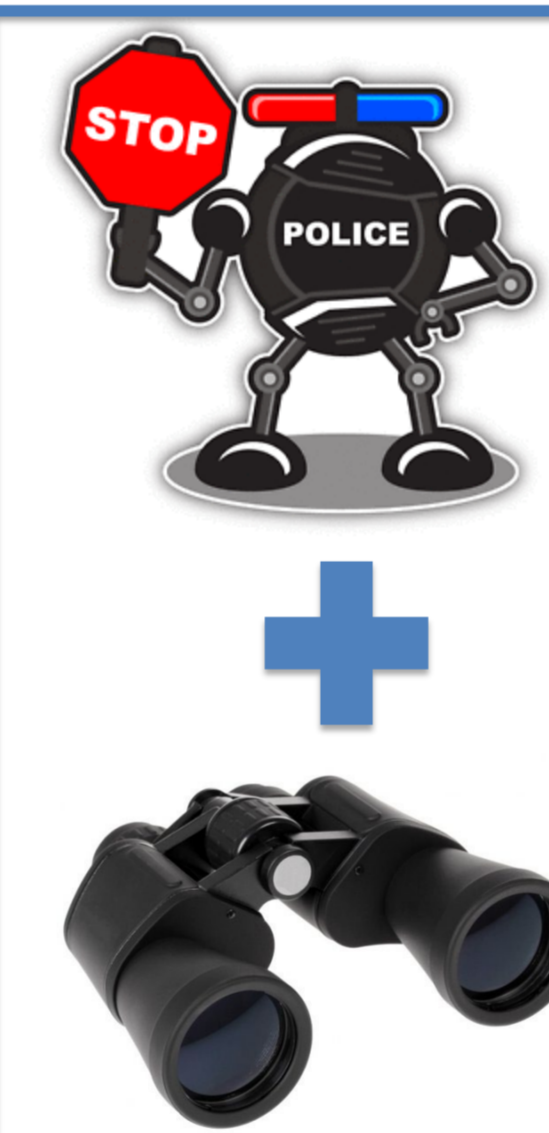
## Notion of Digital Investments



**Digital financial instruments** may be backed by a portfolio of others to increase stability resulting in compound or cascading instruments. This raises the fundamental question whether related investments would fall **within the current investment protection framework** due to the particularities revolving around issues such as **territoriality**.

## Procedural Impact

Financial digitalisation has the potential to particularly affect the procedural power balance in international investment disputes:



- Many digital financial instruments can be programmed and thereby unlock potential for **automation in dispute resolution and enforcement**.
- Cases can be **dynamically monitored or financed** as their progress can equally be monitored in an integrated way.

## Preliminary Findings

Intermediaries supporting sovereign digital asset projects and cryptocurrency related businesses seem likely to qualify for investment protection in various scenarios.



More specifically, following multiple crackdowns on crypto mining operations, mining disputes appear set to become the first digital asset related disputes.



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# When neoliberalism meets a human rights court

## Strasbourg Court's policy of procedural costs

What is the Court's policy on procedural costs? How does the Court's practice for legal aid and reimbursement of costs and expenses mechanisms work in practice?

### Access to Strasbourg

- Strasbourg is an inclusive judicial realm
- Represents a premise, a new relationship between individual and Justice: Everyone can enter this forum by litigation and contribute to the legal change
- Tools: Legal aid and reimbursement costs and expenses

### Neoliberalism

- Extends to all sectors including Justice
- Promotes 'accountability'/'responsibilisation' of individuals leading to the exclusion of 'vulnerable' from the judicial realm
- Minimizes the funding of Justice (managerialism)
- Strasbourg suffers from a budgetary crisis

### Research Agenda

- Empirical study of caselaw and archives
- Complementary qualitative interviews with Judges, Registry lawyers, NGO representatives and private lawyers
- Political science, legal sociology, humanities scholarship on 'Governmentality'

### The Court's policy on procedural costs reflects how the Court has changed:

1. It distances itself from the victim:
  - For repetitive cases, it awards very low sums, without assessing each and every case. This discourages potential applicants from waiting for their voices to be heard.
  - Legal aid is very limited. The Court spends less than the allocated budget for that purpose.
2. It entered into judicial restraint and became more cautious about states' concerns:
  - The policy in repetitive cases applies even for cases with high political tension between the Court and some states.
  - In complex cases, the Court awards legal aid. However, it adopts a formalistic approach in its assessment of reimbursement of costs and expenses. Also, costs are only reimbursed if they are related to a violation. This understanding contradicts the Court's role as a 'constitutional court', whose aim is to develop the case law on issues of high importance.
3. Who decides who enters this judicial forum? Costs policy does not facilitate access to Court. Which cases will be heard depends on whether they are interesting to private funders.

This symbolic grave in front of the Strasbourg Court illustrates how neoliberalism excludes certain from the judicial realm: On the cross, it says 'waiting for justice, eaten by rats'. Made probably by an angry applicant, the photo taken by Ezgi Özlü





# Judges Facing Doubts

## Proof Beyond a Reasonable Ground before the International Court of Justice



The ICJ during the hearings of the 2007's case – ICJ's website

**Should the ICJ apply a particularly high standard of proof for claims containing charges of particular gravity ?**

### Research Project

- So far no in-depth study has been carried on standards of proof before the ICJ, nor on the particularly high standard of proof applicable for some claims.
- This project aims at exploring the discourse *of* the heightened standard of proof and *on* the heightened standard and to propose a critical assessment.

### Hypothesis

- The ICJ applies the beyond a reasonable doubt standard (BARD) in cases of particular gravity. This standard is usually conflated with criminal proceedings.
- There are complex relationships between primary rules, secondary rules and rules of evidence. Seeing how they interact together is informative as to how the law is being perceived and applied by judges.

### Methodological Challenges

- Identifying standards of proof is a difficult task. Theories of legal evidence provide valuable insights to understand standards of proof and, to develop a methodology for identifying these in the case-law of the ICJ.
- There is no existing analytical framework to decipher discourse *of* and *on* evidence. However, concepts of “trans-substantive” vs “substance-specific” rules, developed in the context of domestic law, are useful notions for analysing the discourse *of* and *on* procedure.

### Provisional Results

- The ICJ justify the application of the BARD by the gravity of a claim. The BARD belongs to criminal law and is “substance-specific”. Gravity is “trans-substantive”. Why the gap?
- International law rejected criminal responsibility of the States but some norms remain of a criminal nature.



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# Walking the Line of Independence and Accountability?

## Governance of the International Criminal Court by the Assembly of States Parties



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### 1. Electing Justice?

The Assembly has complete control over the members that constitute the bench at the Court and the Prosecutor of the Court. Is the Assembly then responsible for the justice offered through prosecutions at the Court?

### 2. Financing Justice?

Based on the procedure for this, the Assembly could in theory starve the Court of funds. Is the Assembly then responsible for the quantitative and qualitative output of the Court?

### 3. Managing Justice?

Oversight or micro management? While the management oversight that the Assembly exercises over the Court was not restricted formally to non judicial aspects, this appears to be an implicit limitation. What prevents the Assembly from interpreting it otherwise?

### 4. Legislating for Justice?

The Assembly is allocated complete legislative prerogative to adopt any amendments to the Statute as well as the Rules of Procedure and Evidence. Based on the legislative framework and procedure set out for this, the Assembly can thus amend the applicable law *pendente lite*, thus directly impacting the Court's judicial function.

## Research Focus & Question

The Rome Statute of the International Criminal Court (ICC) established two institutions: The ICC as a permanent international criminal court and an international organisation; and the Assembly of States Parties to the Rome Statute, the Court's governance institution.

This research asks whether an *aurea medicritas vis-à-vis* governance can be developed and applied to ensure that the ICC is accountable to its Assembly whilst safeguarding its independence as a court of law.

## Methodology & Preliminary Findings

In order to answer the question raised above, this research benefits from case studies into four of the Assembly's key governance functions. This research develops a two pronged model of good governance applicable to the governance of the ASP: a theoretical good governance framework informed by feminist approaches to international (criminal) law, identifying principles of good governance; and an application segment comprising a balancing test with the principles of independence and accountability.

## Can the ASP exercise good governance over the ICC?



Independence

Accountability



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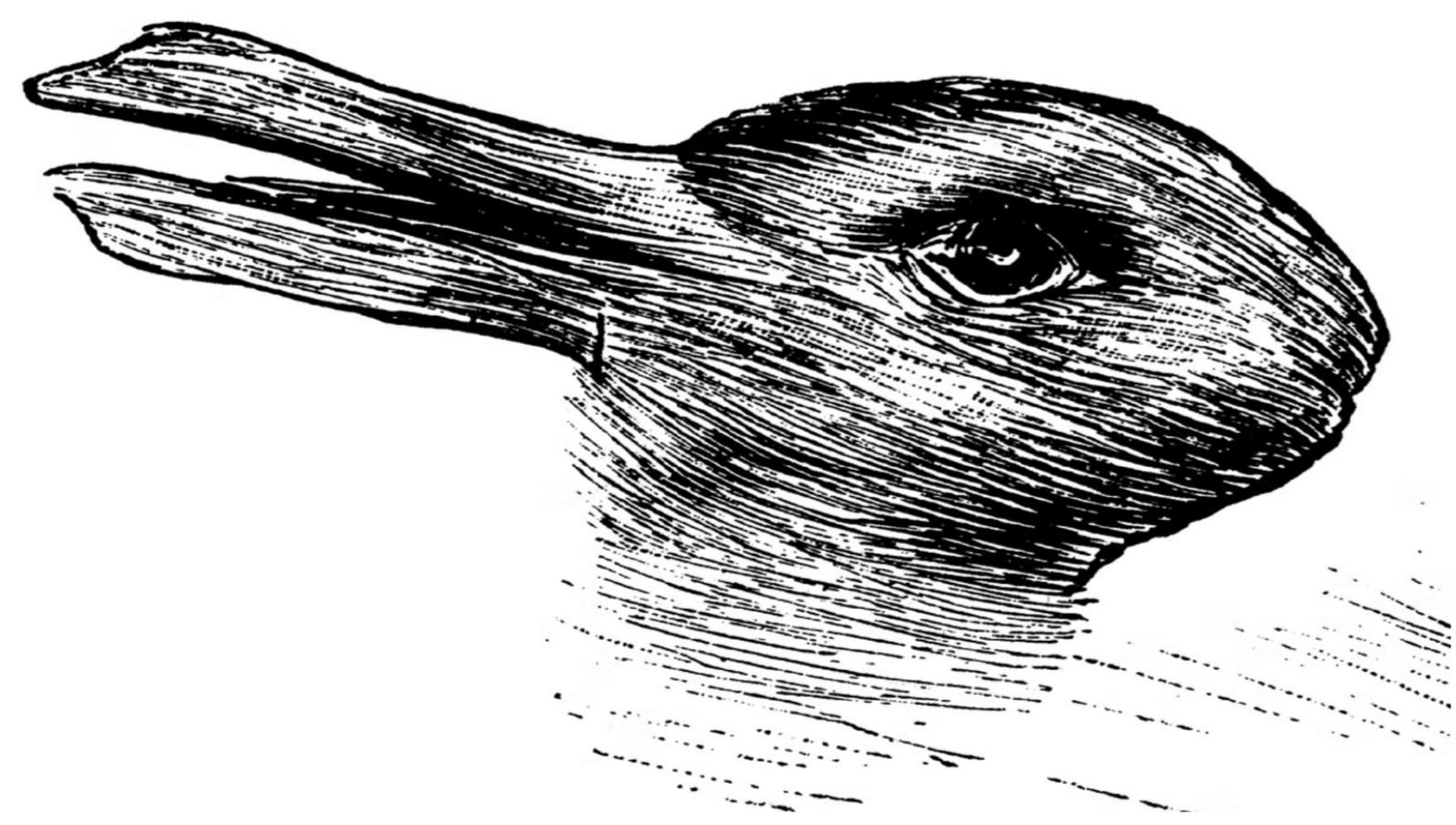


# Characterization of Inter-State Dispute Before International Courts and Tribunals

- A young priest asked his bishop, “May I smoke while praying?”  
-The answer was an emphatic “No!”
- Later, an older priest asked the bishop, “if I could pray while I’m smoking?”  
-The answer was, “it was okay to pray at any time!”

## Research Interest

- Different approaches to formulating a claim (just like pray while smoking, or smoke while praying) could have a significant impact on the court or tribunal’s characterization of the dispute. The jurisdiction of an international court or tribunal hinges on the characterization of the dispute which separates the parties.
- The criterion to characterize a dispute is unclear in practice. As showed by the famous rabbit–duck illusion, one thing can be perceived in different ways. Different courts and tribunals have developed inconsistent and even contradictory approaches on this issue.



What do you see? A duck or a rabbit? (Wikimedia Commons)

- States were fighting a fierce dispute-characterization battle in recent cases, eg:

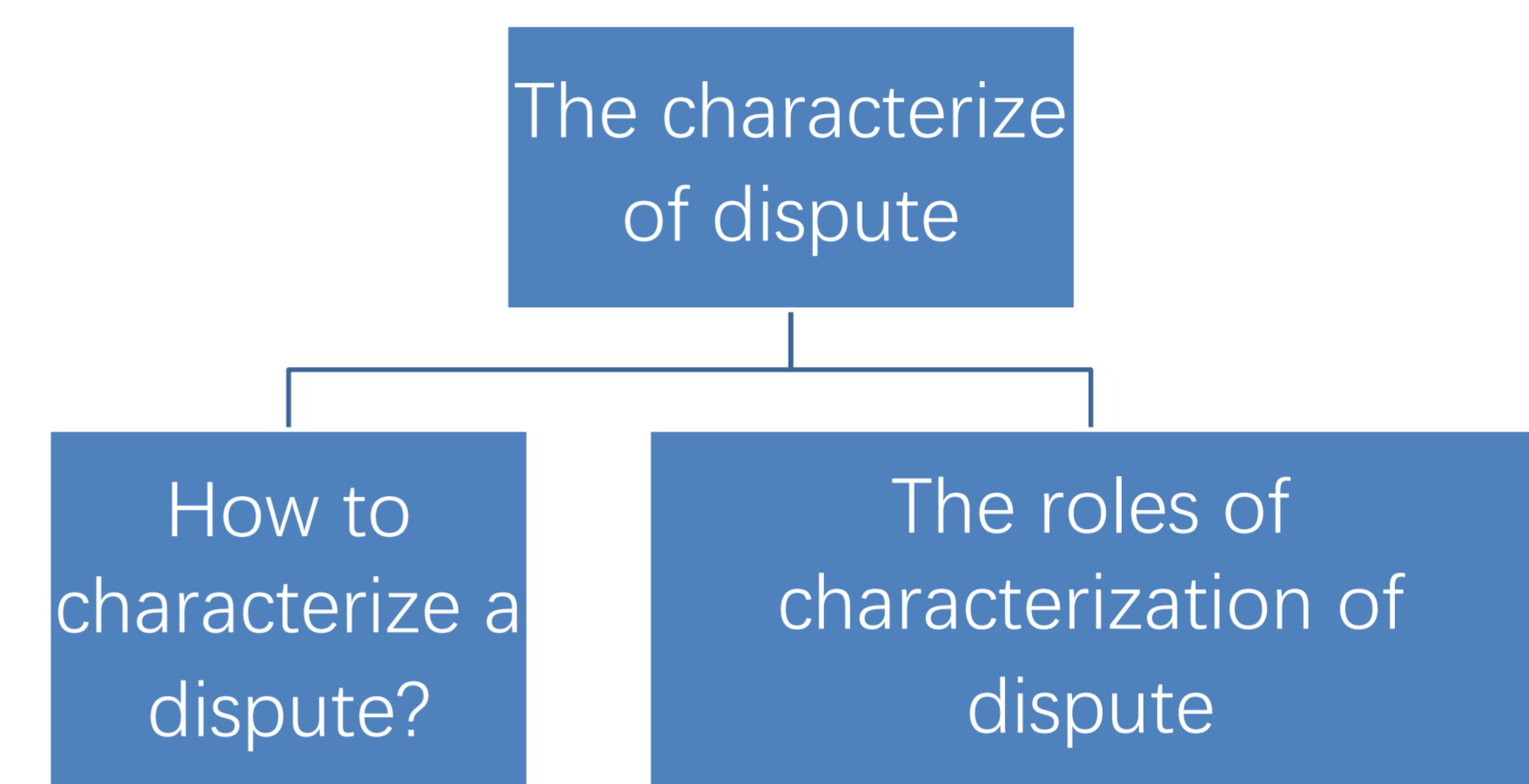
Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. Russian)

Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)

Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)

Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)...

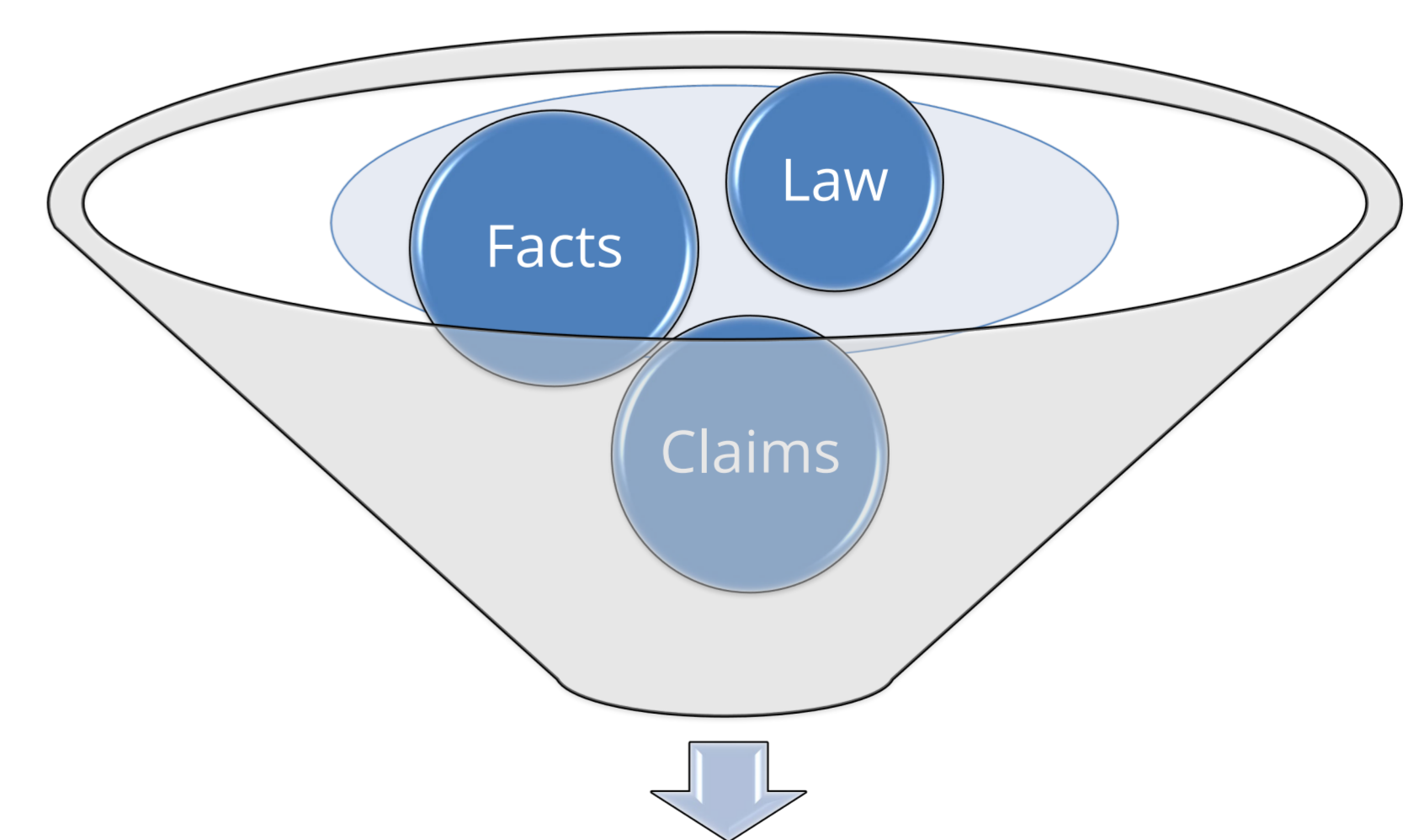
## Research Questions



- What is a legal dispute ?
- It is up to the court/tribunal to determine whether the dispute concerns treaty X or treaty Y, but the characterization of a dispute is not a scientific exercise with only one correct answer. The current ‘relative weight of a dispute’ test and the ‘objective of the claim’ test leave some room for an inherently subjective exercise. This study asks how to regulate such discretion, and how to characterize a dispute scientifically.
- What are the roles of characterization of dispute in a dynamic adjudicative process?

## Preliminary Conclusion

- The characterization of a dispute requires the eyes to move back and forth between claims, facts and laws. This outcome of the study will facilitate the work of adjudicating bodies.



Characterization of Dispute



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