



Amicus Curiae, Local Community and Collective Interests in International Investment Arbitration *

Summary

*** Please note that this summary of the panel was AI-generated and therefore has not been fully vetted for accuracy.**

The session at Washington Arbitration Week 2020, moderated by Dr. Jose Antonio Rivas, focused on the role of amicus curiae, local communities, and collective interests in international investment arbitration. Ian Laird, co-founder of the event, introduced the topic, highlighting the growing interest and complexity surrounding third-party involvement in arbitration. He noted that arbitration is fundamentally based on the consent of the parties involved, which raises questions about the appropriate level of third-party participation.

Dr. Rivas emphasized the increasing significance of local community and environmental interests in investment disputes, citing high-profile cases that have drawn public attention. The discussion explored how amicus curiae briefs can provide insights into social and environmental issues relevant to arbitration, particularly in cases involving indigenous communities and public welfare.

The panelists included Vanessa Plant, who discussed the evolving criteria for amicus curiae participation in treaties and the importance of addressing public interest considerations in investment arbitration. Karina G. and other panelists contributed insights on the technical requirements for submitting amicus briefs and the necessity of regulating participation in procedural orders to prevent disruptions in proceedings.

The conversation also touched on the concept of "social license" in mining and how it affects the legitimacy of investment projects. The Bear Creek case was highlighted as a pivotal example of the consequences of failing to engage local communities adequately. The panel concluded by discussing the balance between investor obligations and state responsibilities in ensuring community consultations and addressing environmental concerns, reflecting on the need for a more integrated approach to investment treaties and domestic laws.

Overall, the session provided a comprehensive overview of the challenges and



developments in incorporating local community interests into international investment arbitration, emphasizing the need for transparency and inclusivity in the process.

Authors

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Topics

Amicus Curiae, Local Community, Collective Interests, International Investment Arbitration, Investment Arbitration

Category

WAW

Full Transcript

00:00:13

Good morning, and Welcome to

00:00:15

our second session of the

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day Washington arbitration week 2020

00:00:24

for my name is Ian

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Laird. I'm a partner here

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in Washington DC at Crowell

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& moring. I am co-founder

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and co-chairman Washington arbitration a

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week along with my colleague.

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Dr. Jose Antonio Rivas who

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will be moderating this panel

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today on before I introduce.

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Dr. Rivas. I wanted to

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provide a few comments about

00:00:52

this panel, which is titled

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Amicus Curie. I local community

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and Collective interests in International

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Investment arbitration and the whole

00:01:03

idea. Third-party involvement amicus briefs

00:01:09

and the like in international

00:01:12

arbitration is being a topic

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that has generated a lot

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of interest in discussion over

00:01:19

the years. I can recall

00:01:21

in one of my first

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cases which was under the

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NAFTA and unsecured rules parties

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coming and making application to

00:01:31

are cardinals initially to actually

00:01:34

be recognized as full parties

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before the tribunals. That was

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the starting position. These are

00:01:41

outside groups that had no

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party standing and one of

00:01:46



the issues issues we had

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to Grapple with is what

00:01:48

what is the appropriate involvement

00:01:50

of third parties? And as

00:01:52

you know arbitration is based

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on the consent of the

00:01:57

parties to arbitration in in

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a commercial arbitration. Usually it's

00:02:00

through contract investor-state arbitration the

00:02:04

initial consent. The offer is

00:02:06

made by the state party

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and in the treaty and

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that it is accepted by

00:02:11



the climates. And so that

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relationship is it is a

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very tight one between climate

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and responded and arguably doesn't

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have room for third parties

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that being said tribunals and

00:02:25

institutions of since sought to

00:02:28

Grapple with this rules. It

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said provided some accommodations. I

00:02:33

believe in its early 2000

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2004 amendments and ends and

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the After parties as well.

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So it's been a lot

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of progress over the last

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25 years trying to address

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this issue and I can

00:02:48

think of no better person

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to moderate a panel on

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this then doctor Revis who

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is a principal at X

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strategy LLP here and Washington

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DC as I said co-founder

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of Washington arbitration week Jose.

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It was an Adjunct professor

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here at Georgetown University Law

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Center teaching on arbitration in

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public international law. He has

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a background of course as

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Council and as an arbitrator

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and in his early days,

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he was counseled at Exit

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here in Washington DC. So

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he's seen firsthand all of

00:03:28

these developments as a government

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official. I should also mention

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he was treating negotiator for

00:03:36

the Colombian government. So he

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he's seen all the all

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of these developments from the

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different perspective Council arbitrator government

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official negotiator and as an

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academic so I can think

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of no better person to

00:03:51

take us away on our

00:03:53

second panel today and and

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welcome everyone to Washington arbitration

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way to Jose Antonio. Thank

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you Ian for for those

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generous remarks and thank you

00:04:08

for being part of of

00:04:12

of this adventure that that

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we didn't know whether was

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going to be successful 4

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years ago when we were

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in the middle of the

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pandemic show. Amigos Korea and

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and local community participation that

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that's what we have in

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front of us. I would

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like to look into a

00:04:38

read read what what we

00:04:40

believe might be. The development

00:04:43

of our panel first so

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that we give a little

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bit of context to to

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this panel. So your eyes

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investment disputes continue to grow

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every year this as shown

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by exit and other statistics

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there remain concerned about transparency

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and public scrutiny including by

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interested local communities, including also

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by indigenous communities in some

00:05:09

cases or by environmental interest

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groups and investment arbitration proceedings

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Amicus curiae a local committee

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considerations might play a significant

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role in identifying social local

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community and environmental interests that

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may be crucial to explain

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the acts of the whole

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state that might help its

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offense and the tribunal might

00:05:34

consider in the investment arbitration

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proceedings high-profile arbitrations, including a

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US versus hungry or Bear

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Creek versus Peru have generated

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public attention due to decisions

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that considered a major security.

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from Civil Society groups or

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International Organization this final We'll

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analyze the role that local

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communities and Civil Society may

00:06:01

have investment arbitration through fighting

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them into Syria or even

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by filing submissions. That might

00:06:07

rely upon America on this

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application is under public international

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law think about the environment

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and environmental concern attempting to

00:06:16

legitimize their intervention investor arbitration

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proceedings. Define balance between a

00:06:22

politically-motivated or policy motivated Act

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of State on the one

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hand and arbitration proceedings on

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the other hand that gives

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us to justify deference to

00:06:34

public participation will be discussed

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with Concepts. Like social license

00:06:39

in mining has developed by

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case law it remains to

00:06:42

be seen how much of

00:06:44

a role local community and

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Collective interest May and shoot

00:06:49

play investment arbitration proceeding the

00:06:52

one comment that I would

00:06:54

like to make from the

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start. Is that even though

00:06:57

by now they may be

00:07:00

sophisticated. Technical requirements to file

00:07:06

amicus curiae briefs and this

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this we know from many

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years ago at the time

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that the WTO was was

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vibrant still exists, but not

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so much. I know not

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so as vibrant with the

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EC communities at European commission

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has asbestos case that we

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we started an era where

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the Apple body of the

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WTO put together a set

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of conditions that might make

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or would make the process

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of filing a make a

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secure area in international economic

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blocks irrational one and there

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were many concerns their Ian

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pointed out to the issue

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that a Judicial proceeding or

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a dispute resolution proceeding normally

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needs consent from the disputing

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parties. And therefore if I

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haven't given my consent or

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if I'm not a party

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technically why should I speak

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there were some requirements including

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there in terms of efficiency

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of the proceedings by the

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same time justifying the interest

00:08:15

of the Friend of the

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Court that wanted to participate

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and their arm or more

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elements there. So that that's

00:08:23

one then then comes the

00:08:25

issue of Whitwell. Yes. what

00:08:29



type of Disputes are we

00:08:32

dealing with normally investor-state arbitration?

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It's not simply a contract

00:08:37

issue. Normally it's not a

00:08:39

contract case, but the Investments

00:08:42

that were normally seeing our

00:08:44

investment Investments that that are

00:08:48

some some of them related

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to natural resource concessions something

00:08:53

to Public Utilities great infrastructure

00:08:57

projects and there for at

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least a big number percentage

00:09:03

number of the Investments that

00:09:05



that become a subject of

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dispute. Touch upon the public

00:09:12

interest and may touch upon

00:09:14

communities that that that may

00:09:17

not have given their consent.

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They're not technically g-string party,

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but they might be affected

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and that that's where the

00:09:24

whole landscape becomes a little

00:09:26

bit muddy. So I'm not

00:09:30

supposed to be the moderator.

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I might intervene substantially on

00:09:34

some some of the things

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but but luckily I have

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Timeless which you have started

00:09:40

this and and participating arbitrations

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that involve local community participation.

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So I am not fully

00:09:48

on the hook on this.

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I don't have to resolve

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all the questions. So with

00:09:52

us today. We have a

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I need a credible grade

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panel. And and by the

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way, this is an exceptional

00:10:02

woman panel, which were very

00:10:06



proud of what we have

00:10:08
first of all by next

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Saturday. And by the way,

00:10:13
but I said Peruvian, I'm

00:10:15
Columbia no relationship that I

00:10:16
know so miss Reba's plant

00:10:20
that serves as president of

00:10:21
the special commission representing the

00:10:24
Republic of Peru in International

00:10:26
Investment disputes prior to her

00:10:29
current position. Mysterious planet acted

00:10:31
as investment Affair coordinator of

00:10:35
the ministry of foreign trade

00:10:36



having participated as lead investor

00:10:39

negotiator of multiple International Investment

00:10:42

agreements, including the comprehensive and

00:10:44

Progressive agreement for Trans Pacific

00:10:47

partnership National Business and economic

00:10:53

law from Georgetown University. So

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there's there's there's that in

00:10:58

common and last but not

00:11:00

least. I think that Vanessa

00:11:03

has perspective is is is

00:11:05

highly appreciated for so many

00:11:07

reasons. Only the cases that

00:11:09

fit who has have to

00:11:10



face but also because it

00:11:12

is is a is a

00:11:14

very interesting. Active participant of

00:11:18

the of the investment negotiation

00:11:20

system and also invest an

00:11:23

arbitration system is one of

00:11:24

the few countries and perhaps

00:11:26

the only country that that

00:11:27

has actually successful launch AAA

00:11:30

claim against the investor and

00:11:34

it has a very active

00:11:35

defense strategy. So so we're

00:11:38

very glad to have an

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issue with us today will

00:11:42

still have my deck original

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run is counselor at Baker

00:11:46

but she has extensive experience

00:11:48

representing investors and stage and

00:11:52

complex and high-profile dispute her

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case is span the full

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range of economic sectors, including

00:11:58

electricity mining oil and gas

00:12:02

infrastructure and cover the globe

00:12:04

with a particular emphasis on

00:12:06

Latin America notable successes include

00:12:09

representing Latin American state in

00:12:11



a multi-billion-dollar 3D arbitration. I

00:12:15
can I can That that

00:12:18
my Catalina with with with

00:12:21
a great team also were

00:12:23
successful not so long ago

00:12:25
on a case that when

00:12:27
I first read I thought

00:12:29
how are they going to

00:12:30
get out of that? But

00:12:32
anyway? And and the last

00:12:37
but not least Monica. Melancon.

00:12:39
is practices within the international

00:12:44
litigation and arbitration department at

00:12:46



40 hold or she represents

00:12:49

clients in international disputes prior

00:12:51

to joining Foley Holy by

00:12:53

the Camila worked as an

00:12:55

associate at Saratoga. She also

00:12:57

served as public servant at

00:12:59

the national agency of illegal

00:13:01

defense of the state of

00:13:03

of of Columbia where she

00:13:05

participated in the representation of

00:13:07

Columbia and several International Investment

00:13:10

arbitration and advice on matters

00:13:12

related to International Education and

00:13:13



public international law. She was

00:13:15

also part of the ministry

00:13:17

of trade at where she

00:13:19

participated in that the negotiation

00:13:21

of different International Investment agreements

00:13:24

and and help elaborate Colombia's

00:13:28

foreign investment policy the weather

00:13:31

I would like to know

00:13:33

beginner panel and the and

00:13:35

ask her a few questions

00:13:36

to R&R playlist starting with

00:13:40

with Vanessa and would like

00:13:44

to go to divide our

00:13:45



discussion in in two part.

00:13:47

One is are the the

00:13:49

the technical requirements to file

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Amicus curiae. I think that

00:13:52

is useful to go to

00:13:54

the requirements and some of

00:13:56

the provisions that might exist

00:13:58

in different trees and then

00:14:00

also in parallel launch the

00:14:03

discussion as to how do

00:14:04

local communities and interest groups

00:14:07

should participate or if they

00:14:09

shoot at all. So what

00:14:12



would that Vanessa? How how

00:14:16

is is amicus curiae regulated

00:14:19

if I do and and

00:14:21

that's the first question then

00:14:24

supposed to questions in one

00:14:26

but I'll do it anyway,

00:14:27

and the second question is

00:14:29

if if there are some

00:14:31

instruments that that provide. The

00:14:35

spring but there are some

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that do not and you

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get into a case were

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that person is not open.

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What would you do or

00:14:41

how do you handle that?

00:14:42

So first of all your

00:14:44

what what is the Panorama

00:14:45

that you see in terms

00:14:47

of Amigos Taqueria participation in

00:14:49

in instruments that that they

00:14:51

do might be a part

00:14:51

of Good morning to everyone

00:14:58

and thank you very much

00:15:00

to Jose Antonio and the

00:15:02

organizers for inviting me to

00:15:05

take part in the Washington

00:15:06



arbitration week and for allowing

00:15:09

me to take Part B

00:15:11

a trolley view to summer

00:15:13

schedule constraints. So thank you

00:15:16

very much. I Jose Antonio

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and organizers and I would

00:15:20

like to start by saying

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that any views. I will

00:15:23

expressed are my own and

00:15:25

should not be interpreted as

00:15:28

binding the Republic of Peru

00:15:30

in any I'm going on

00:15:31

a future investment arbitration admissions

00:15:39



really a fascinating topic. I

00:15:45

would like to start by

00:15:48

saying that we should go

00:15:50

to the basics from an

00:15:54

investment or a former investment

00:15:56

negotiator a perspective. I think

00:16:00

we have infant size how

00:16:02

investment arbitration should be distinguished

00:16:06

from a typical commercial arbitration

00:16:09

on the basis that I

00:16:12

state is a respondent. The

00:16:16

issues had to be decided

00:16:18

in accordance with a treaty

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and the principles of public

00:16:21

international law and a decision

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on the dispute could have

00:16:27

a significant impact extending Beyond

00:16:30

disputing parties. notably investment disputes

00:16:36

race complex issues of public

00:16:38

international law namely environment because

00:16:42

security and related matters these

00:16:48

were disputes and the tribunal's

00:16:56

decision to have on environmental

00:16:58

and public welfare object generator

00:17:03

public support for the participation

00:17:06

of individuation demanded that the

00:17:11



states regulate its participation within

00:17:15

the investment treaties negotiated by

00:17:17

then. Do they need to

00:17:20

address public interest considerations in

00:17:22

investment arbitration including the participation

00:17:25

of local communities is intrinsically

00:17:29

linked to the legitimacy of

00:17:31

the ICS system. Perspective of

00:17:35

the members of Munich is

00:17:37

located in the area of

00:17:39

influence of an investment project

00:17:41

in combination with their local

00:17:44

knowledge of the fact that

00:17:45



it's taking Denise cute. Interview

00:17:49

with not only assist tribunals

00:17:52

in the resolution of this

00:17:53

lady is also critical address

00:17:56

concerns regarding legitimacy and transparency

00:18:00

that is your sister going

00:18:04

to a house. You know,

00:18:06

how are states and particularly

00:18:09

Peru have addressed the issue

00:18:12

of Amigos Korea participation within

00:18:15

investment treaties in modern treaties.

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We have attempted to regulate.

00:18:23

What is the criteria to

00:18:25



be followed by a tribunal

00:18:27

has to consider these applications

00:18:30

and this has gone through

00:18:34

an evolution from generation v.

00:18:38

I t where there was

00:18:40

complete silence on a m

00:18:42

equals Korea submissions. Modern treaties

00:18:47

that regulate and what are

00:18:50

the criteria to be followed

00:18:52

by tribunal's to consider this

00:18:54

a Migos song in terms

00:18:57

of technical requirements, but also

00:19:00

in terms of substantive a

00:19:02



Provisions that should be included

00:19:05

or Incorporated in the context

00:19:07

of this affords regulate these

00:19:14

Amigos Korea submissions, and it

00:19:16

is also important to take

00:19:17

into consideration that it states

00:19:20

have been included in public

00:19:24

policy considerations within the design

00:19:28

and the structure of investment

00:19:30

treaties, not only from a

00:19:32

procedural perspective, but also promote

00:19:36

substantive and Prospect. I just

00:19:41

want a side want a

00:19:42



specific example of this attempt

00:19:46

to regulate local communities interest

00:19:50

from a substantive. For example

00:19:54

in the to USM FDA

00:19:57

has included brought non-conforming measure

00:20:03

that is to say I

00:20:06

miss her that is considered

00:20:08

as not consistent with a

00:20:10

specific provisions and their investment

00:20:12

chapters in stating that room

00:20:16

reserved the right to adopt

00:20:18

or maintain any measured according

00:20:21

rights or preferences to socially

00:20:23



or economically disadvantaged minorities and

00:20:27

ethnic groups. It is not

00:20:30

only non-conforming measures, but also

00:20:32

saw a file two exceptions

00:20:34

that have been included in

00:20:36

various investment rates by state.

00:20:41

Help when there is silence

00:20:43

in a legal instruments. It

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is important that is building

00:20:49

parties take into consideration. Whether

00:20:52

the regulation on the Migos

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Square submissions to be included

00:20:57

in the context of a

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procedural order number one and

00:21:02

that will depend upon the

00:21:05

disputing parties. The measures are

00:21:08

the steak they going to

00:21:11

mix factor involved in the

00:21:14

dispute. So even saw it

00:21:17

states having attempted attempting to

00:21:19

be very explicit in the

00:21:22

possibility of admitting Amigos Korea

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submissions in the context of

00:21:26

investment arbitration, there could be

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instances. For example in the

00:21:32

context of Our Generation v

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i t s or contract

00:21:35

based disputes in which there

00:21:37

is complete silence and there

00:21:39

has ended bodies, shoot attempt

00:21:43

to regulate disposability in the

00:21:45

context of procedural orders including

00:21:47

president over there and number

00:21:52

thank you for thank you

00:21:53

very much. I miss that

00:21:54

mean that. Gives a significant

00:21:58

overview of treaties that include

00:22:01

or have a reference and

00:22:05

concerns for the potential interest

00:22:10



or or effects of certain

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investment projects in in fda's

00:22:14

and the one I'm very

00:22:16

much interested in in in

00:22:18

the last part that you

00:22:19

shared with us another possibility

00:22:21

of of anticipating within arbitral

00:22:26

proceedings, the participation of interest

00:22:30

groups or Friends of the

00:22:31

Court by the wonder. What

00:22:32

what animal are Karina might

00:22:35

say about about trying to

00:22:37

regulate that from the start

00:22:38



from the get-go in procedural

00:22:40

order number one. What what

00:22:44

might you see as as

00:22:45

the challenges that that a

00:22:49

particular case might bring with

00:22:51

it. The one where you

00:22:55

have. When you have a

00:22:59

case where the investment treaty

00:23:01

does provide or a regulator

00:23:04

me gustaria proceeding and and

00:23:08

the other scenario is you

00:23:10

you're basing your arbitration on

00:23:13

a old VIP model where

00:23:16



it was that is not

00:23:17

regulated by the investment treaty.

00:23:22

Thank you. Cousin Tonio. Good

00:23:26

morning to everybody and good

00:23:27

afternoon. Whatever is draining another

00:23:29

part of the world and

00:23:30

thank you for inviting me

00:23:31

need to be here. I'm

00:23:32

very happy to be here.

00:23:33

This is a subject that

00:23:35

is. Brought me a lot

00:23:38

of memories when we were

00:23:40

doing the birthday cake, and

00:23:43



it was nice to to

00:23:44

read it again, but in

00:23:46

terms of your question, if

00:23:48

you're dealing with a case

00:23:49

that involves local communities in

00:23:53

cases where the issue a

00:23:55

dispute is. a protest violent

00:24:00

protests from from local communities

00:24:01

you might want to think

00:24:04

about or other issues where

00:24:07

the Civil Society in general

00:24:09

might have a particular interest

00:24:10

you might think about getting

00:24:13



together with the other side

00:24:14

and regulating it from the

00:24:17

very beginning so that it

00:24:18

doesn't disrupt the The procedure

00:24:22

mean it really depends first

00:24:25

on under which treaty the

00:24:26

claim is being brought and

00:24:28

to what are the rules

00:24:30

of arbitration are going to

00:24:31

use the exit rules regulated.

00:24:35

They started regulated with the

00:24:37

amendment in 2006. I believe

00:24:38

it was a rule 37

00:24:41



to provide some very specific.

00:24:46

Provides the tribunal with specific

00:24:48

criteria, they should consider when

00:24:51

deciding whether or not to

00:24:52

admit an amicus curiae brief.

00:24:56

But if it's under an

00:25:00

old treaty that doesn't say

00:25:01

anything and under rules that

00:25:03

doesn't don't say anything and

00:25:04

as Ian was saying earlier

00:25:07

you really need the consent

00:25:08

of the parties. Otherwise the

00:25:10

tribunal might start running into

00:25:11



problems of jurisdiction, whether they

00:25:13

have the authority or not

00:25:14

to admit it, so In

00:25:19

specific answer to your question.

00:25:21

Yes, I think you should

00:25:22

regulated in procedural order number

00:25:23

one specially with when you're

00:25:25

dealing with with local communities,

00:25:27

and I'm not sure if

00:25:29

you want to go now

00:25:30

into the specific requirements that

00:25:31

the tribunal will analyze or

00:25:33

we can discuss that later.

00:25:34



That's that's just starting the

00:25:44

Is the context of of

00:25:46

treaties that. And you have

00:25:48

seen your experience also, noting

00:25:51

that that some cases treaties

00:25:55

are very similar to The

00:25:56

Proving in cases like in

00:25:57

the US FDA case, but

00:25:59

they're not exactly the same

00:26:00

but I wonder what what

00:26:02

what your views are concerning

00:26:05

treaties that might have supposed

00:26:07

to be in trees at

00:26:08



night. Thank you and thank

00:26:11

you for inviting me to

00:26:13

the Washington arbitration week. I'm

00:26:15

very happy to be here

00:26:16

with you today. So they're

00:26:20

like for example the free

00:26:21

trade agreement between Columbia and

00:26:23

Canada has a specific section

00:26:25

on non disputing parties. And

00:26:28

the the interesting thing about

00:26:30

this section is that it

00:26:33

makes or includes some requirements

00:26:36

for the request. For the

00:26:38



tribunal the submission itself, but

00:26:42

the request that the petitioners

00:26:43

have 2% So this from

00:26:46

the beginning determines the Contours

00:26:49

of what would the tribunal

00:26:51

except and I think this

00:26:53

is something remarkable. I need

00:26:55

limits the scope of the

00:26:57

participation because it limits the

00:26:59

nuns putting part of submission

00:27:00

to are reading one. This

00:27:03

is something that the rules

00:27:05

on the expected arbitration rules.

00:27:08



Do not specifically provide for

00:27:10

so it limits more. The

00:27:12

scope of participation up lines

00:27:14

between parties and also the

00:27:16

submission thoughts have some requirements

00:27:18

for sample. It cannot be

00:27:19

longer than 20 Pages which

00:27:21

I think was meant of

00:27:24

course for not there to

00:27:26

be a disruption of their

00:27:27

proceedings. And I think this

00:27:29

is useful and it is

00:27:30

helpful also helpful for to

00:27:32



be organized before the parties

00:27:33

for there not to be

00:27:34

a disruption. And for example,

00:27:36

if the tribunal is considering

00:27:37

toorak, An undertaking a previous

00:27:40

undertaking from the petitioners to

00:27:42

secure the costs of their

00:27:44

participation. So that limitation would

00:27:49

help that or the tribunal

00:27:51

to accept the position without

00:27:53

requiring an undertaking or some

00:28:01

Catalina what are the basic

00:28:06

concerns that a tribunal should

00:28:09



have in terms of principles

00:28:10

are before getting into the

00:28:11

nitty-gritty of the requirement that

00:28:14

why why should it be

00:28:17

regulated? Why can't I do

00:28:18

just free they have to

00:28:20

seem to have any interest

00:28:22

and and then by the

00:28:34

way, when I when I

00:28:36

first joined exit there was

00:28:40

a proceeding versus Bolivia and

00:28:47

my welcoming to the room

00:28:51

where I was working from

00:28:53



was was to share the

00:28:55

room with boxes and boxes

00:28:56

of letters that have been

00:29:00

filed by the community and

00:29:01

read them and go to

00:29:03

them and see what was

00:29:05

going to happen with that.

00:29:06

But anyway, I bet that

00:29:09

was fun. So we we

00:29:13

need to put this into

00:29:14

context because the tribunals are

00:29:16

not there to be solved

00:29:19

all the problems in the

00:29:19



world regarding the environment. The

00:29:22

tribunal is there to solve

00:29:23

the dispute between two parties

00:29:24

so jurisdiction and then back

00:29:32

to the if it has

00:29:33

jurisdiction of that may be

00:29:34

discussed within the case, but

00:29:36

it to resolve the dispute

00:29:38

put in front of it.

00:29:39

So the idea of the

00:29:43

commission's is mainly to assist

00:29:47

the tribunal in its decision-making

00:29:49

that's one of the main

00:29:51



purposes. Of course, it has

00:29:52

good benefits for the system

00:29:55

in general because it provides

00:29:56

more transparency. It allows the

00:29:58

Civil Society to provide comments

00:30:00

on what's going on. There

00:30:02

are billions of dollars being

00:30:03

discussed in this treaty arbitration,

00:30:06

but in the The tribunal

00:30:09

is there as I said

00:30:10

to resolve the dispute in

00:30:12

particular, so there have been

00:30:16

instances where we will speak

00:30:18



more of that where you

00:30:21

have on interested Community regarding

00:30:22

the environment and the how

00:30:26

mining affect the environment. A

00:30:31

lot of people will agree

00:30:32

with that but it does

00:30:34

acific dispute there wasn't really

00:30:37

about whether the investor is

00:30:39

going to get a restitution

00:30:40

of its Mining rights were

00:30:42

not so there wasn't really

00:30:44

a discussion of whether there

00:30:46

would be further activity mining

00:30:48



activity in the in the

00:30:50

area that was going to

00:30:51

be protected for example, but

00:30:54

so so that's the idea

00:30:56

of limiting it and also

00:30:57

the parties consent to the

00:30:59

arbitration to 2 to get

00:31:01

their disputes old and the

00:31:03

parties in general don't want

00:31:05

their dispute to get disrupted

00:31:06

in a way if you

00:31:08

open the door, as you

00:31:09

said you will have a

00:31:11



never-ending case. I really was

00:31:14

very controversial environmental or or

00:31:17

or social cases where you

00:31:19

have to the parties have

00:31:20

to submit comments on every

00:31:22

single I mean cuz that

00:31:24

is submitted for years and

00:31:26

years and the dispute will

00:31:27

never be solved. So you

00:31:29

need to draw a draw

00:31:30

balance. And it's it's a

00:31:32

good idea to have them

00:31:33

sometimes they're very necessary and

00:31:35



they do help the tribunal

00:31:36

but it needs to be

00:31:37

within a ventricle and what's

00:31:42

behind putting some limitations on

00:31:45

ghouls. What are the The

00:31:48

most significant the rules that

00:31:50

in your defense you've seen

00:31:52

concerning submissions of third parties

00:31:56

or work or I make

00:31:57

your own Friend of the

00:31:58

Court. It really depends first

00:32:04

of all the rules on

00:32:08

the arbitration. So if you're

00:32:09



doing enough the case for

00:32:11

sample, do you have to

00:32:12

see these comments on non

00:32:15

disputing parties submissions will be

00:32:17

relevant. If you're doing an

00:32:20

excellent case where the B

00:32:21

doesn't say anything about it.

00:32:22

The exit rows will be

00:32:24

relevant. But in general terms

00:32:27

Trevino's have developed a certain

00:32:30

criteria that they need to

00:32:31

consider when analyzing whether to

00:32:34

admit and I M A

00:32:36



submission and those mainly are

00:32:40
in one as I said

00:32:44
before it needs to be

00:32:45
a it has the party

00:32:48
you want that wants to

00:32:49
submit the yamakas needs to

00:32:51
prove that they will be

00:32:56
Submitting A New Perspective and

00:32:58
a highlight new to the

00:33:01
tribunal. I've seen amicus briefs

00:33:04
and because of Nations or

00:33:05
application where the tribunal says

00:33:08
it's very interesting what you're

00:33:09



saying, but you're not providing

00:33:10

Me A New Perspective. I

00:33:12

already know what you're going

00:33:14

to say kind of so,

00:33:15

I'm denying it. the other

00:33:24

the other criteria generally that

00:33:26

is that that is taking

00:33:28

into account is Weather and

00:33:35

as I said before weather

00:33:36

the desert mission is within

00:33:38

the scope of the dispute

00:33:39

again, if the if the

00:33:41

dispute is how about I

00:33:45



might even station or something

00:33:46

like that. It's you can't

00:33:48

extend the scope too much.

00:33:49

It really needs to be

00:33:50

about that. However, again, I

00:33:54

think that was because of

00:33:55

that recently there was a

00:33:58

tribunal that admitted and made

00:34:02

an exception a little bit

00:34:03

today is where they admitted

00:34:05

a brief because they could

00:34:07

be related to a matter

00:34:09

that Huntingdon put by the

00:34:10



crib it by the parties

00:34:11

before the tribunal but it

00:34:13

was a matter of corruption

00:34:14

and the corrupt requirements of

00:34:18

the investment. So they thought

00:34:20

this was a matter of

00:34:21

public interest and And they

00:34:25

admit it at the time

00:34:26

because we don't know what

00:34:28

they will decide. The decision

00:34:30

hasn't come out. So then

00:34:33

the And then they will

00:34:42

have also considered whether their

00:34:43



needs to be whether the

00:34:45

party the Americas that wants

00:34:47

to submit the the Amicus

00:34:50

brief has a significant interest

00:34:53

in the preceding whether they

00:34:55

will be affected by the

00:34:56

decision of the preceding. I

00:34:58

mean, that's a question that

00:35:00

is for an investment treaty.

00:35:04

If you're a national of

00:35:05

the state that is being

00:35:07

sued. Of course you have

00:35:08

an interest because in the

00:35:09



end your tax dollars are

00:35:10

going to pay for that

00:35:11

but it needs to be

00:35:13

more limited than that and

00:35:15

the Cardinals have set some

00:35:17

standards and in more general

00:35:21

terms the the they have

00:35:28

also analyzed and this is

00:35:31

not set out in specific

00:35:32

some of the specific rules

00:35:34

to do provided but that

00:35:38

there needs to be and

00:35:39

the actually the 2016 Rose

00:35:41



provided in a certain way

00:35:43

that the Amicus needs to

00:35:45

prove that its independent and

00:35:48

impartial to the to the

00:35:50

parties. They have been requesting

00:35:52

whether they what is their

00:35:54

relationship with the parties. If

00:35:55

any in the the scope

00:35:59

of transparency, what are you

00:36:02

think is behind the submissions

00:36:05

finally whether the the submission

00:36:11

will disrupt the proceedings and

00:36:14

whether it's fair to compare

00:36:15



to the parties. Thank you,

00:36:17

Karina. And and we have

00:36:20

sort of walk through a

00:36:23

secure area justification the principle

00:36:26

that that that the tribunal

00:36:28

must take into account the

00:36:30

requirements of some treaties but

00:36:33

now and let's let's take

00:36:35

a step back and look

00:36:36

a little bit further into

00:36:38

local participation at an investment

00:36:42

in proceedings. But also participation

00:36:47

related to the investment projects

00:36:50



as such so so if

00:36:52

it freezes and lets us

00:36:53

know thank you and another

00:36:55

chance if an investment project

00:36:57

went on and there was

00:36:59

a there there were a

00:37:01

set of consultations leading to

00:37:04

the authorization of the investment

00:37:06

project and investment project was

00:37:09

was done whether whether or

00:37:11

not there where he comes

00:37:12

afterwards if everyone recognizes that

00:37:15

procedure took place. We in

00:37:18



principle say well there was

00:37:20

feedback and there shouldn't be

00:37:22

an issue of of whether

00:37:23

or not the communities were

00:37:25

consulted, right? But let's move

00:37:29

into the second scenario where

00:37:30

the project one took place

00:37:32

and there was underwater Investments.

00:37:36

They were not not as

00:37:40

as proper consultation with the

00:37:43

community and the at soundstage

00:37:46

the state backtracked and and

00:37:50

modify whatever is related to

00:37:55



the investment the license or

00:37:57

the scope of of of

00:38:00

land where the project was

00:38:03

was being developed. And that

00:38:06

comes to an international arbitration

00:38:08

tribunal. So what do you

00:38:10

do in those cases and

00:38:11

and feel free to refer

00:38:13

or not to cases? Well,

00:38:18

I will take that invitation

00:38:19

and I will refer specifically

00:38:22

to the face and I'm

00:38:24

not sure if I'm able

00:38:25



to share my screen. Just

00:38:31

to give everybody a visual.

00:38:37

Yep. So this is in

00:38:41

the Bear Creek case just

00:38:43

to give everybody who's not

00:38:45

familiar with it a little

00:38:47

bit of context in the

00:38:49

Bear Creek Ace Canadian mining

00:38:51

company birdcreek had found silver

00:38:54

deposits with in the border

00:38:57

between Peru and Bolivia was

00:39:01

within 50 km of the

00:39:03

Border would believe ya and

00:39:06



under under Peruvian law for

00:39:10

a foreigner to do activities

00:39:12

within 50 km of the

00:39:14

Border. They need to have

00:39:15

a special authorization, which is

00:39:17

a declaration of public interest

00:39:18

obvious reasons. It's for security

00:39:22

reasons. It's right on the

00:39:24

border. It's a completely normal

00:39:26

in the battery case Bear

00:39:31

Creek obtain dot license. And

00:39:34

they started doing their mining

00:39:36

activities, but three years later.

00:39:40



So this started in 2007

00:39:43

to 2011 violent protests erupt

00:39:47

blocking the bridge that connects

00:39:50

between Bolivia and Peru going

00:39:55

all the way to Lima.

00:39:56

They were very real and

00:40:00

it lasted for a while

00:40:01

and the question what and

00:40:04

in the end Peru revokes

00:40:06

that license that public necessity

00:40:08

decoration. So it wasn't without

00:40:12

that that public necessary decoration

00:40:15

the company had its mining

00:40:16



concessions, but it couldn't do

00:40:18

anything with them. So the

00:40:20

question was a question, of

00:40:21

course about expropriation, but there

00:40:23

was a specific an interesting

00:40:25

question arose in this in

00:40:28

this tribunal. Is it in

00:40:30

this case, which is what

00:40:32

the Bear Creek? Acquired the

00:40:35

social licence that is needed

00:40:37

in order to conduct its

00:40:41

mining activities. And would you

00:40:45

mind explaining Shanghai like anyone

00:40:48



want to send this? What

00:40:50

is social licence is because

00:40:51

the concept itself is not

00:40:53

is is is not that

00:40:54

that that clear I don't

00:40:57

think you might find in

00:40:58

Wikipedia, but I'm not sure

00:41:00

that's the right one more

00:41:03

that is going to be

00:41:11

affected by the by the

00:41:12

project whether they have for

00:41:14

him coder approval and there

00:41:17

a backing on whether to

00:41:18



do the project or not.

00:41:19

It's not on my license

00:41:22

that you apply for. You.

00:41:24

Don't get a check from

00:41:26

the government or anything like

00:41:27

that. It's something that is

00:41:29

ongoing. The company's need to

00:41:31

work on it a day

00:41:33

by day. Complex relationships that

00:41:37

you need to build a

00:41:38

build with the community when

00:41:41

you're going to their land

00:41:42

you're affecting. Maybe you will

00:41:44



the water. I don't know

00:41:45

the other stuff. So you

00:41:47

need to work very closely

00:41:48

with them. Everybody has their

00:41:50

own interest people want employment

00:41:53

from The Mining Company. It's

00:41:55

a dress. Oh, it's it's

00:41:56

a day-to-day work and that's

00:41:58

why it's called socializing. It's

00:42:01

really there's no official requirements.

00:42:05

Other than the what the

00:42:06

governments have been requiring more

00:42:08

and more of my dopping

00:42:10



consultations doing. But that only

00:42:13

goes so far which is

00:42:16

what takes me back to

00:42:17

the bakery case in the

00:42:19

Bear Creek case the if

00:42:21

if you see the image

00:42:23

the area area of influence

00:42:26

that the company had identified

00:42:27

as the dark black line.

00:42:31

And they made Outreach programs

00:42:35

with those communities that were

00:42:37

in that are highlighted in

00:42:39

green. This isn't couldn't find

00:42:43



anybody who's interested in you

00:42:45
can read it in the

00:42:45
field of science dissenting opinion

00:42:46
and the communities that they

00:42:51
didn't reach out to our

00:42:52
older. Well guess who started

00:42:55
the protests? So the the

00:42:59
the this wasn't I mean

00:43:04
this was particularly complicated because

00:43:05
of the types of communities

00:43:06
that were there and Bear

00:43:08
Creek fail to understand really

00:43:10
and do their due diligence

00:43:11



in a way on how

00:43:13

they needed to work with

00:43:14

this community. So they didn't

00:43:15

they failed to obtain their

00:43:16

social life Indians of the

00:43:19

tribunal found a doctor who

00:43:24

was liable because of the

00:43:25

indirect expropriation, but Phillip signs

00:43:28

dissenting opinion is it's not

00:43:30

very interesting one because in

00:43:32

his opinion Bear Creek had

00:43:35

contributory fault to a the

00:43:38

situation. That involved and that

00:43:41



in the end result Edwards

00:43:43

through having no other choice,

00:43:44

but to revoke the license

00:43:46

because of the situation they

00:43:47

were in was it proportional

00:43:49

or not? The tribunal made

00:43:51

its decision. But but there

00:43:56

was there was some fault

00:43:57

at least in Phillips and

00:43:58

Sand Canyon from Bear Creek

00:44:00

for having failed to obtain.

00:44:02

Your social life is not

00:44:05

involving the the communities as

00:44:07



they should have done and

00:44:09

in his opinion the damages

00:44:11

should have been even lower

00:44:12

than they were. Thank you.

00:44:14

Thank you very much my

00:44:16

Arena Vanessa into into a

00:44:22

little bit of local or

00:44:24

or or Peruvian. Do how

00:44:28

how important is our community

00:44:32

consultations. Before an investment project

00:44:38

moves forward. Let me know

00:44:39

what what how important is

00:44:41

that before we say, well

00:44:44



the investment was stung you

00:44:46

can go on move forward

00:44:47

and the second question is

00:44:52

what place should should those

00:44:56

consultations have in an investment

00:44:59

arbitration, or are they shooting

00:45:01

for they shoot Thank you

00:45:06

very much for that question

00:45:08

a whole San Antonio and

00:45:10

taking into consideration that the

00:45:14

tension between extractive Industries in

00:45:18

a country. Like they do

00:45:20

about other countries in the

00:45:21



region and the area of

00:45:24

influence of this investment projects

00:45:27

and environmental concerns indigenous communities

00:45:30

located in this area of

00:45:32

influence of the investment project.

00:45:35

These are private consultations are

00:45:37

essential to the survival of

00:45:41

the investment project over time

00:45:44

the sustainability of this investment

00:45:46

project overtime. There are indeed

00:45:51

a domestic relations address in

00:45:54

the need to consult this

00:45:56

indigenous communities prior to any

00:45:59



share any investment project, but

00:46:03

I would like to emphasize

00:46:05

Is a concept that was

00:46:07

addressed by Maya Carolina because

00:46:09

this the concept of social

00:46:11

licence is Interline to this

00:46:16

domestic law regulating the need

00:46:19

to a private consultation with

00:46:21

local communities. And if you

00:46:24

take a look at what

00:46:26

the states have been doing

00:46:28

any more than three days,

00:46:29

he's basically reaffirming the right

00:46:32



to regulate in public interest

00:46:35

and including some features of

00:46:37

a soft a law Provisions

00:46:40

cross-referencing, for example, the oecd

00:46:43

guidelines for Multinational Enterprises and

00:46:46

lizard islands that having a

00:46:48

reference by Estates in various

00:46:51

treaties to address the issue

00:46:54

of private consultations with communities

00:46:57

and other issues relating to

00:46:59

Human Rights environment and labor.

00:47:03

So I told Bonnie that

00:47:06

is interested in investing in

00:47:09



a country like Paris or

00:47:11

Italy has an allegiance in

00:47:16

applications. Not only with respect

00:47:20

to you know, and understanding

00:47:23

the local regulations. I would

00:47:25

respect to that going to

00:47:27

make sector in which are

00:47:30

the investment project that will

00:47:31

develop their community in the

00:47:36

area of influence of the

00:47:37

Bridget asked other jurisdictions do

00:47:43

have a develop regulations on

00:47:45

private consultations. It is essential

00:47:48



to comply with these domestic

00:47:50

and regulations in Mariposa County

00:47:52

Executive to invest in various

00:47:54

economic sectors, but they're also

00:47:57

a concept that is not

00:47:59

necessarily Define this concept of

00:48:02

social licence. Has been involved

00:48:04

in some investment treaty arbitrations

00:48:07

and this goes back to

00:48:09

the due diligence that companies

00:48:13

must undertake if they attempt

00:48:17

to invest in a complex

00:48:19

country in which the investment

00:48:22



project will interact with an

00:48:25

area of influence in which

00:48:27

indigenous communities or local communities

00:48:30

are located. So there is

00:48:34

certainly a beauty post on

00:48:37

an investor Eddie's Beauty has

00:48:40

been reaffirmed and recognized within

00:48:43

the design on the structure

00:48:45

of some other investment treaties

00:48:47

and it is not only

00:48:49

the investment treaties but also

00:48:52

their domestic regulations that are

00:48:55

compelling and responsibilities of companies

00:48:59



to incorporate these standards of

00:49:02

corporate. Social responsibility before finishing

00:49:07

my intervention. I want to

00:49:10

site one specific example of

00:49:12

these self-love features included in

00:49:16

the design of investment treaty

00:49:19

and I have seen in

00:49:21

the audience one of my

00:49:22

colleagues from the Canadian government

00:49:25

that they kind of the

00:49:26

FDA is one of those

00:49:29

mother and fda's in which

00:49:31

are both parties have attempted

00:49:32



to a strike is Right

00:49:34

balance between protection of foreign

00:49:37

investments and their right to

00:49:40

regulate in public interest. And

00:49:42

that was the first FDA

00:49:44

in which per which included

00:49:45

a provision and corporate social

00:49:46

responsibility. That is the truth

00:49:52

and courage Enterprises operating within

00:49:55

if their territories or subject

00:49:58

to their jurisdiction to voluntarily

00:50:00

incorporate internationally-recognized. Standards of corporate

00:50:04

social responsibility in their internal

00:50:07



policies such as a statement

00:50:09

of principles or statements are

00:50:14

on their way. They that

00:50:16

have been indoors or are

00:50:17

supported by both a price

00:50:19

on these principles address issues

00:50:22

such as labor the environment

00:50:24

human rights community relations and

00:50:26

antique. So yes, I think

00:50:31

kindly we have been including

00:50:35

these features to make very

00:50:37

clear that there is a

00:50:38

balance between these two full

00:50:40



of Jack gives protection of

00:50:42

foreign investments and right to

00:50:44

regulate and also a duty

00:50:46

of the religions by the

00:50:48

company's attempted to invest in

00:50:50

our territories. I'm really really

00:50:54

happy that you mention the

00:50:56

provisional on social corporate responsibility

00:50:59

of the Peru Canada 3D

00:51:03

pictures of Columbia also has

00:51:05

I think I forbade him

00:51:07

the same provision from its

00:51:09

owner investment treaty with the

00:51:12



with kind of that. I

00:51:13

happen to be the negotiation

00:51:14

of that negotiation and the

00:51:17

tail goes on as as

00:51:19

as follows. It's funny. I

00:51:24

think it's fine that I

00:51:24

thought I'd share this in

00:51:26

like 2008 or so and

00:51:30

came with the sorting out

00:51:35

there. So kind of that

00:51:36

came with the social corporate

00:51:38

responsibility provision that witch hats

00:51:41

off low and and and

00:51:43



perhaps. Time Colombia versus was

00:51:47

rebuilding itself because it came

00:51:49

from very complicated security situation.

00:51:52

So perhaps the thought was

00:51:55

that we might be opposed

00:51:58

to a social corporate responsibility

00:51:59

as a provision. But as

00:52:02

soon as we we we

00:52:03

we liked it and we

00:52:05

liked it so much that

00:52:06

we counterproposal not only to

00:52:09

have it as a floor

00:52:10

but to have it as

00:52:11



a as a Cargill so

00:52:15

not only trying to obtain

00:52:19

and comply with those social

00:52:21

corporate responsibility started but say

00:52:24

the investors will be bound

00:52:26

to comply with the environmental

00:52:30

minimum Sanders and also to

00:52:32

run consultations and everything that

00:52:34

is implying social responsibility. But

00:52:37

our counter proposal was was

00:52:41

that was too much at

00:52:44

the time. It was thought

00:52:48

that perhaps the obligation shouldn't

00:52:51



be on on the side

00:52:52

of of of the investor

00:52:54

but they should remain on

00:52:55

the side of the of

00:52:56

the State trying to push

00:52:57

or trying to encourage investors

00:53:00

to comply with social corporate

00:53:01

responsibility standards. That being said,

00:53:04

I would like to emphasize

00:53:07

that in kilometers also a

00:53:09

principle of my participation that

00:53:11

that must be respected and

00:53:13

consultation. In that context I

00:53:15



want to invite that my

00:53:17

dam to share some of

00:53:19

her thoughts concerning some of

00:53:21

the past cases are not

00:53:22

going cases that involve consultations.

00:53:26

Thank you, Anthony. Oh, let

00:53:31

me hear. my screen so

00:53:52

before it going into specific

00:53:54

cases and maybe just adding

00:53:57

I'm broke the building up

00:53:58

on the conversation that we

00:53:59

were having before the United

00:54:02

Arab Emirates treaty like the

00:54:05



Newbie it with Columbia House

00:54:08

at provision regarding responsible investor.

00:54:11

And what is that? It

00:54:13

is by the obligation incorporated

00:54:15

into treaty not only as

00:54:17

a reference to corporate social

00:54:18

responsibility, but that's a sausage

00:54:21

to conduct a due diligence

00:54:22

and the it's grewed. It

00:54:25

was not Define what should

00:54:27

that you could because of

00:54:28

course, it would depend on

00:54:29

the industry, but the content

00:54:33



will depend on the on

00:54:35

the type of investment, but

00:54:37

it was very important to

00:54:39

include. That in the treaty

00:54:40

because it would be an

00:54:41

obligation and it would be

00:54:43

something that the tribunal would

00:54:45

burn mine to the fine.

00:54:46

For example, the legitimate expectations

00:54:48

that the investor that the

00:54:49

investor could have. I know

00:54:51

so what was the the

00:54:54

scope of the of the

00:54:55



of the of the legitimate

00:54:57

expectation? So now going into

00:55:01

two cases, I would like

00:55:02

to speak about how tall

00:55:04

is ours mining versus Colombia

00:55:06

versus Columbia. Both cases are

00:55:09

we're not disputing parties submissions

00:55:11

requested under the free trade

00:55:13

agreement between Canada and Columbia.

00:55:15

We'd buried two different outcomes.

00:55:18

So the first one is

00:55:20

these Mining and the applicant

00:55:23

in this case was the

00:55:24



Monera. Algodon. This is a

00:55:27

different case from what we're

00:55:29

used to it now because

00:55:30

could you which are regularly

00:55:31

ngos or International organizations participating

00:55:35

on on this proceeding this

00:55:38

Association and Cote was substantially

00:55:42

involved in the case or

00:55:44

in the facts of the

00:55:45

case of the underlying dispute.

00:55:47

Why because the claim and

00:55:49

presented submission or in its

00:55:52

submission eat requested that I

00:55:54



let you in Columbia had

00:55:58

substantially deprived of his of

00:56:00

its investment because it had

00:56:01

failed to a beat some

00:56:04

miners or some artisanal miners

00:56:06

from its titles. So one

00:56:10

of those miners were a

00:56:11

go up in this community,

00:56:14

which was in Segovia, Antioquia

00:56:16

in Colombia. And they requested

00:56:20

they mean it I can

00:56:21

go there which was specifically

00:56:23

regarding their request for arbitration

00:56:24



requested the tribunal leave to

00:56:28

participate as an effort to

00:56:30

prevent. So what were the

00:56:32

criteria for the trip? We

00:56:34

took into consideration basically, they

00:56:36

refer to the elements that

00:56:38

might Academy not referred before

00:56:39

the weather the applicant had

00:56:41

a significant interest in the

00:56:43

proceedings whether the NDP submission

00:56:45

was within the scope of

00:56:47

the dispute whether the NDP

00:56:50

would fast is a tribunal

00:56:51



in determining the factual or

00:56:54

legal issue, which was different

00:56:57

from what the parties have

00:56:59

already presented or could present

00:57:01

on whether the NDP would

00:57:03

not affect the prejudiced any

00:57:07

of the parties or affect

00:57:09

the proceedings. So as regards

00:57:12

the significant interest the tribunal

00:57:14

concluded that it had a

00:57:16

significant interest. It was involving

00:57:18

their underlying dispute and actually

00:57:22

part of the claimants was

00:57:23



that Columbus had a field

00:57:25

trip baked this specific company

00:57:28

or artisanal Mining Company North

00:57:31

copper it to us as

00:57:33

he could call it. Clement

00:57:36

said that this was unfair

00:57:38

because it could be like

00:57:40

the fascial witness statement without

00:57:43

the benefit of call the

00:57:44

time nation and we will

00:57:46

see what the tribunal said

00:57:47

in regard to this. But

00:57:50

it initially the first point

00:57:52



is they have a significant

00:57:53

interest. then the tribunal Define

00:57:59

the scope of the dispute.

00:58:01

So basically the company presented

00:58:04

7 points, so they wanted

00:58:07

to present their and the

00:58:08

Pea on the seven points,

00:58:09

which the tribunal did not

00:58:11

accept all of them. So

00:58:14

ask the the request was

00:58:17

basically two to make their

00:58:20

presentation on what was the

00:58:21

social economic and cultural context

00:58:23



of the alcohol that my

00:58:24

the petitioners was that the

00:58:27

company arrived much later than

00:58:29

them. They have been in

00:58:32

this mining tiles for many

00:58:34

many years and the community

00:58:36

have been there for hundreds

00:58:38

of years. So those were

00:58:39

artisanal miners that have their

00:58:41

own ownership of this title.

00:58:43

The title in itself was

00:58:45

in dispute. So they wanted

00:58:47

to provide this historical context.

00:58:49



They also want to pronounce

00:58:51

on the tremendous lack of

00:58:53

jurisdiction passing the temple and

00:58:55

the Protist one of the

00:58:57

arguments that the company raised

00:59:00

was that the Protist were

00:59:01

affecting their operations. So the

00:59:06

tribunal also consider this to

00:59:08

be run relevant. What did

00:59:10

the tribunal reject the claim

00:59:12

the petitioners also wanted to

00:59:13

pronounce on the claimants responsibility

00:59:16

for violating Collective rights and

00:59:17



the health of the environment

00:59:19

that was not part of

00:59:20

the dispute that it was

00:59:21

not being in dispute between

00:59:22

Colombia and the company. So

00:59:25

the tribunal did not accept

00:59:26

it and it also rejected

00:59:29

the petitioner's request to pronounce

00:59:33

on Canada extra-territorial responsibility for

00:59:36

precisely the corporate social responsibility

00:59:38

that claim us should have

00:59:40

under it in this particular

00:59:43

area as well as Columbus

00:59:45



International responsibility to protect artisanal

00:59:48

mining the tribunal also said

00:59:50

that that was not part

00:59:51

of a scoop of a

00:59:52

few days dude, so it

00:59:53

rejected that submission. But this

00:59:58

is an interesting point and

00:59:59

think does a final decision

01:00:01

on your relevant decision on

01:00:03

this and it is that

01:00:04

the tribunal accepted the petitioner's

01:00:08

request to Eva to analyze

01:00:11

an issue of corruption, which

01:00:13



has not been raised by

01:00:15

any of the parties near

01:00:16

Columbia not claiming the petitioners

01:00:19

argument was that the title

01:00:21

but the the RPG wish

01:00:24

we were talking about was

01:00:26

acquired through corruption and in

01:00:29

a very brief sentence in

01:00:31

a paragraph describing upset the

01:00:34

fact that neither of the

01:00:35

parties have raised this issue

01:00:37

does not mean that the

01:00:40

tribunal cannot evaluated. It was

01:00:42



a sewage pump. Decision to

01:00:46

to to analyze this this

01:00:48

argument from the petitioners, of

01:00:49

course subject to the evidence

01:00:52

that they would present next,

01:00:54

but this is a very

01:00:57

very new from the Tribunal.

01:01:03

So then the tribunal after

01:01:06

having determined that those were

01:01:08

the matters of these cute

01:01:10

little face. Then went to

01:01:12

analyze which of the matter

01:01:14

is that we had already

01:01:15



dressed we're different from what

01:01:17

the parties have a greater

01:01:18

percent that could present. So

01:01:20

in that case it's that

01:01:22

well the Trevino's lack of

01:01:23

jurisdiction Russian. It's a yes

01:01:25

is something that the parties

01:01:26

have a regular either through

01:01:28

Council or expert so it's

01:01:30

not something new or different

01:01:32

from what they could resent.

01:01:34

I know the issues regarding

01:01:36

regarding mine legislation on the

01:01:39



difference between illegal on artisanal

01:01:41

or traditional miners. So I

01:01:44

just accepted three submissions social

01:01:49

economic and cultural context of

01:01:50

edit. Do they make the

01:01:52

manifestations of Civilian populations and

01:01:54

also a precautionary measure order

01:01:58

b l American Commission on

01:01:59

human rights. There was a

01:02:00

side dispute in things are

01:02:02

American. Human rights because some

01:02:05

of them minors and its

01:02:06

representatives were being killed by

01:02:08



Primal Terry groups during this

01:02:11

protest against the company. So

01:02:15

there was like this parallel

01:02:17

education. And The Bijou of

01:02:22

corruption which we already address.

01:02:26

And Athena and the tribunal

01:02:28

decided to accept all this

01:02:30

it is founded or four

01:02:32

criteria were fulfilled because it

01:02:35

did it concluded that they

01:02:37

must have failed to show

01:02:38

that the following of a

01:02:40

20-page submission would constitute A

01:02:42



disruption to the proceedings and

01:02:44
the on the point of

01:02:46
the witness that they could

01:02:47
be a factual witness. They

01:02:48
said well, if the petitioners

01:02:52
could not pronounce been an

01:02:54
issue of the facts, then

01:02:55
why would rule 37 to

01:02:57
or the annex to the

01:02:59
Free Trade Agreement refer to

01:03:01
the possibility that the not

01:03:02
disputing parties submission regard to

01:03:06
the issue soft factual disputes.

01:03:08



So it would rather like

01:03:10

under claimants provision under claimant

01:03:13

interpretation distributions would be rendered

01:03:15

nugatory. So basically it upheld

01:03:21

three of the seven request

01:03:23

from from the petitioners. Via

01:03:26

Cordoba versus Colombia Keys had

01:03:28

a Vietnam justkiddingparty request was

01:03:31

had a very different outcome.

01:03:33

Basically the first three elements

01:03:38

were the first three criteria

01:03:40

because it is founded the

01:03:44

it was probably not necessary

01:03:45



to analyze the last one.

01:03:48

So who were the applicants

01:03:49

Industries in this case? The

01:03:52

applicants were six and non-government

01:03:56

ngos on environment related to

01:04:00

environmental Matters from from Colombia

01:04:05

from Canada. I'm from also

01:04:07

the United States. The subject

01:04:10

matter of the application in

01:04:11

this he's was much more

01:04:13

limited the petitioners. They only

01:04:17

presented this request. We anticipate

01:04:19

focusing on international law regarding

01:04:21



human rights and particularly the

01:04:22
right to live in a

01:04:23
healthy environment. So the tribunal

01:04:27
said, well, this is not

01:04:29
how could I define whether

01:04:31
this is within the scope

01:04:32
of the of course? It's

01:04:35
something very proud and very

01:04:37
General Tso. It's not something

01:04:40
that is relevant for the

01:04:42
arbitration. One point to consider

01:04:44
here is that the submissions

01:04:47
of their party's still at

01:04:48



the time there was a

01:04:49

memorial and I can't remember

01:04:50

already submitted to attribute those

01:04:54

were not public. So the

01:04:56

petitioners did not have access

01:04:58

to them. So it wasn't

01:04:59

easy for them to determine.

01:05:01

What was the score. What

01:05:04

do you pronounce on but

01:05:06

regardless of that the tribunal

01:05:08

said well, but you had

01:05:09

access to procedural orders for

01:05:11

sample and you could have

01:05:15



presented something or develop more

01:05:18

your arguments on this point

01:05:20

to this to decisions from

01:05:28

investment arbitration tribunals that. That

01:05:33

even though we may call

01:05:34

certain environmental obligations or environmental

01:05:38

concerns concerns very much tied

01:05:40

to the even are gone.

01:05:42

This organization's it seems that

01:05:44

tribunal may want to hear

01:05:45

a little bit more as

01:05:46

to why why they want

01:05:48

to file and then where

01:05:49



is there interest is interest

01:05:51

to the subject matter of

01:05:52

not and simply say what

01:05:54

we were concerned about a

01:05:56

general interest in the interest

01:05:59

of time. I have I

01:06:00

have just a couple of

01:06:01

questions. Some of them bows

01:06:03

by are outlined a participant

01:06:06

one is we have been

01:06:08

talking much about the potential

01:06:11

applications by the investors to

01:06:14

respect the EST standard for

01:06:16



corporate social responsibility to do

01:06:18

to get an environment to

01:06:20

license and let's be mindful

01:06:22

that this applications are softball.

01:06:27

But even though what about

01:06:30

the responsibility of the state

01:06:32

to secure a social licence

01:06:34

that is a question that

01:06:35

comes from from one of

01:06:38

our online viewers. And and

01:06:40

I think it's a it's

01:06:41

a non-point obligation, Shoot the

01:06:43

state be off the hook

01:06:45



or not. And this is

01:06:47

to anybody to any of

01:06:49

her pattern, but I'll let

01:06:52

her speak and of course

01:06:56

the state has some responsibility

01:06:57

won. The state has to

01:06:59

establish the legal framework to

01:07:02

acquire the Type of social

01:07:08

licence from the cup from

01:07:09

the community but going back

01:07:11

to the caves. What Philip

01:07:14

Stansted is the state has

01:07:17

to put in the framework

01:07:18



has two when able it

01:07:19

has to help know that

01:07:21

most of this investment is

01:07:23

happening in very remote region.

01:07:25

So you need to stay

01:07:26

present but it's not the

01:07:28

responsibility of the state to

01:07:30

take the hand of the

01:07:31

investor is there needs to

01:07:35

be worked from the from

01:07:36

the investor at least from

01:07:38

subsonic .40 cal another this

01:07:50

is a very changing topic

01:07:54



and I believe that is

01:07:56

one of the topics why

01:07:58

the application system is under

01:08:02

so much pressure. There's the

01:08:03

the notion that that things

01:08:06

get decided the scope of

01:08:08

it of the district is

01:08:09

very limited and when their

01:08:11

interest of community groups, they

01:08:13

don't get to speak to

01:08:15

Matt my question to which

01:08:17

one of you know where

01:08:19

I know more than two

01:08:20



minutes to answer is is

01:08:24

Are we ready to include

01:08:27

or is the investor relations

01:08:28

system in the end of

01:08:29

the world of negotiators ready

01:08:31

to move from softball obligations

01:08:36

or investors into hartlaub's locations

01:08:40

for investors and is not

01:08:41

desirable where you say. Well

01:08:43

you should only try to

01:08:46

do community consultation, but you

01:08:49

must do that if you

01:08:52

are if you want qualified

01:08:53



investor are we ready for

01:08:55

that? Is that desirable or

01:08:57

will will that be too

01:08:59

much and will will scare

01:09:03

investors and there will be

01:09:04

no investment in the world

01:09:06

if that is done. I

01:09:10

think it's the first state

01:09:12

for that is in the

01:09:13

message, LOL. I mean that

01:09:14

each state have their priorities

01:09:16

to determine under its domestic

01:09:18

law water requirements in one

01:09:20



post on on on investors

01:09:24

and to determine what is

01:09:25

the positive spillover that he

01:09:27

wants to generate from foreign

01:09:29

investment. So, I don't think

01:09:31

that's something that necessarily has

01:09:33

to be done in treaties

01:09:34

or at least very specifically.

01:09:37

However, I do think that

01:09:40

and this is what my

01:09:41

personal opinion of course that

01:09:43

a treaties are becoming more

01:09:46

demanding on the applications that

01:09:49



investors has to protect the

01:09:51

respect Corporate social responsibility that

01:09:55

matters and also have good

01:09:59

Juju just practice on matters

01:10:01

of Human Rights and corruption

01:10:04

like sometimes practices on environmental

01:10:07

probation. And this is not

01:10:09

only subject to domestic law

01:10:11

but also to International standard

01:10:14

practice. So I think it

01:10:15

has to be a balance

01:10:17

between domestic law and treaties

01:10:18

the treaties that have become

01:10:22



start including. This requirements for

01:10:27

investors to conduct a proper

01:10:29

due diligence. I think it

01:10:37

is not necessary to include

01:10:40

these are no Provisions in

01:10:42

the context of investment treaties

01:10:44

and certainly there are various

01:10:49

bodies of laws that apply

01:10:51

+ or provide some obligations

01:10:54

with respect to consultations with

01:10:56

local communities environmental issues in

01:11:01

the context of extractive Industries.

01:11:04

So they should be used

01:11:06



to understand that International Investment

01:11:09
in the law is part

01:11:10
of public international law vary

01:11:13
the bodies of lost that

01:11:14
interact with investment treaties and

01:11:17
it is important for a

01:11:19
tribunal to take a holistic

01:11:21
approach and to incorporate some

01:11:24
of The provisions of having

01:11:26
address in various instruments signed

01:11:30
by the state. So you

01:11:31
need to incorporate them in

01:11:33
the Centre is but another

01:11:35



approach is basically to interpret

01:11:39

these investment treaties in the

01:11:41

life of a other instruments

01:11:44

are there public international law

01:11:45

instruments already in place and

01:11:48

critical in the context of

01:11:52

the legitimacy of of the

01:11:54

system. I agree with what

01:12:01

money I've been saying in

01:12:05

response to your specific question.

01:12:07

I don't think we're ready

01:12:08

to include hard Lawn &

01:12:10

tree that would be great

01:12:12



in my personal opinion. But

01:12:16

I mean, we haven't even

01:12:18

agreed on transparency of the

01:12:21

of the hearings for example.

01:12:24

With respect to every single

01:12:27

case and where there is

01:12:28

a treaty that doesn't include

01:12:29

a clause of transparency. The

01:12:36

majority of the times one

01:12:37

of the parties will know

01:12:38

that I want this to

01:12:39

be private and etcetera so

01:12:41

leave it there but I

01:12:44



do think there should be

01:12:45
a little bit of a

01:12:46
push to to get there.

01:12:47
There has been a Porsche.

01:12:48
I agree with Mother Kamala

01:12:49
mean when it comes from

01:12:50
domestic law that there is

01:12:52
a relationship between the domestic

01:12:53
law and and the and

01:12:55
the treaty and you could

01:12:57
get eventually point where you

01:12:59
actually need to include, but

01:13:00
I don't think so unless

01:13:04



there's any question we will

01:13:09

close and that to join

01:13:11

me in giving a round

01:13:13

of applause to our wonderful

01:13:14

panelist. I think that this

01:13:16

was a very educating at

01:13:18

least for me, so thank

01:13:19

you very much for for

01:13:21

for this for your questions

01:13:23

are preparations and for indulging,

01:13:25

you know, everyone here and

01:13:27

in the rest of the

01:13:28

world. Thank you. And the

01:13:35



next will be at that

01:13:37

meeting I said, I believe

01:13:39

in 30 minutes. So so

01:13:42

yes, it would be the

01:13:44

first Washington arbitration week in

01:13:47

in. in Spanish espanol Good

00:00:13

morning, and Welcome to our

00:00:16

second session of the day

00:00:19

Washington arbitration week 2020 for

00:00:24

my name is Ian Laird.

00:00:27

I'm a partner here in

00:00:29

Washington DC at Crowell &

00:00:31

moring. I am co-founder and

00:00:35



co-chairman Washington arbitration a week

00:00:38

along with my colleague. Dr.

00:00:40

Jose Antonio Rivas who will

00:00:42

be moderating this panel today

00:00:44

on before I introduce. Dr.

00:00:47

Rivas. I wanted to provide

00:00:51

a few comments about this

00:00:53

panel, which is titled Amicus

00:00:55

Curie. I local community and

00:00:57

Collective interests in International Investment

00:01:00

arbitration and the whole idea.

00:01:05

Third-party involvement amicus briefs and

00:01:11

the like in international arbitration

00:01:13



is being a topic that

00:01:15

has generated a lot of

00:01:17

interest in discussion over the

00:01:19

years. I can recall in

00:01:22

one of my first cases

00:01:23

which was under the NAFTA

00:01:25

and unsecured rules parties coming

00:01:30

and making application to are

00:01:32

cardinals initially to actually be

00:01:34

recognized as full parties before

00:01:37

the tribunals. That was the

00:01:39

starting position. These are outside

00:01:42

groups that had no party

00:01:44



standing and one of the

00:01:46

issues issues we had to

00:01:47

Grapple with is what what

00:01:48

is the appropriate involvement of

00:01:51

third parties? And as you

00:01:53

know arbitration is based on

00:01:55

the consent of the parties

00:01:57

to arbitration in in a

00:01:58

commercial arbitration. Usually it's through

00:02:00

contract investor-state arbitration the initial

00:02:05

consent. The offer is made

00:02:06

by the state party and

00:02:08

in the treaty and that

00:02:10



it is accepted by the

00:02:11

climates. And so that relationship

00:02:15

is it is a very

00:02:16

tight one between climate and

00:02:17

responded and arguably doesn't have

00:02:19

room for third parties that

00:02:23

being said tribunals and institutions

00:02:26

of since sought to Grapple

00:02:28

with this rules. It said

00:02:30

provided some accommodations. I believe

00:02:34

in its early 2000 2004

00:02:36

amendments and ends and the

00:02:39

After parties as well. So

00:02:41



it's been a lot of

00:02:42

progress over the last 25

00:02:44

years trying to address this

00:02:46

issue and I can think

00:02:48

of no better person to

00:02:49

moderate a panel on this

00:02:51

then doctor Revis who is

00:02:55

a principal at X strategy

00:02:57

LLP here and Washington DC

00:02:59

as I said co-founder of

00:03:02

Washington arbitration week Jose. It

00:03:05

was an Adjunct professor here

00:03:08

at Georgetown University Law Center

00:03:10



teaching on arbitration in public

00:03:12

international law. He has a

00:03:15

background of course as Council

00:03:17

and as an arbitrator and

00:03:18

in his early days, he

00:03:21

was counseled at Exit here

00:03:23

in Washington DC. So he's

00:03:25

seen firsthand all of these

00:03:28

developments as a government official.

00:03:32

I should also mention he

00:03:34

was treating negotiator for the

00:03:36

Colombian government. So he he's

00:03:38

seen all the all of

00:03:39



these developments from the different

00:03:41

perspective Council arbitrator government official

00:03:46

negotiator and as an academic

00:03:49

so I can think of

00:03:50

no better person to take

00:03:52

us away on our second

00:03:53

panel today and and welcome

00:03:56

everyone to Washington arbitration way

00:03:59

to Jose Antonio. Thank you

00:04:05

Ian for for those generous

00:04:07

remarks and thank you for

00:04:09

being part of of of

00:04:12

this adventure that that we

00:04:15



didn't know whether was going

00:04:18

to be successful 4 years

00:04:19

ago when we were in

00:04:20

the middle of the pandemic

00:04:21

show. Amigos Korea and and

00:04:26

local community participation that that's

00:04:30

what we have in front

00:04:31

of us. I would like

00:04:36

to look into a read

00:04:38

read what what we believe

00:04:40

might be. The development of

00:04:44

our panel first so that

00:04:45

we give a little bit

00:04:46



of context to to this

00:04:48

panel. So your eyes investment

00:04:52

disputes continue to grow every

00:04:53

year this as shown by

00:04:55

exit and other statistics there

00:04:58

remain concerned about transparency and

00:05:01

public scrutiny including by interested

00:05:04

local communities, including also by

00:05:07

indigenous communities in some cases

00:05:09

or by environmental interest groups

00:05:12

and investment arbitration proceedings Amicus

00:05:16

curiae a local committee considerations

00:05:18

might play a significant role

00:05:20



in identifying social local community

00:05:24

and environmental interests that may

00:05:26

be crucial to explain the

00:05:28

acts of the whole state

00:05:30

that might help its offense

00:05:32

and the tribunal might consider

00:05:34

in the investment arbitration proceedings

00:05:37

high-profile arbitrations, including a US

00:05:40

versus hungry or Bear Creek

00:05:43

versus Peru have generated public

00:05:46

attention due to decisions that

00:05:48

considered a major security. from

00:05:50

Civil Society groups or International

00:05:52



Organization this final We'll analyze

00:05:57

the role that local communities

00:05:59

and Civil Society may have

00:06:01

investment arbitration through fighting them

00:06:04

into Syria or even by

00:06:05

filing submissions. That might rely

00:06:07

upon America on this application

00:06:09

is under public international law

00:06:11

think about the environment and

00:06:13

environmental concern attempting to legitimize

00:06:17

their intervention investor arbitration proceedings.

00:06:21

Define balance between a politically-motivated

00:06:23

or policy motivated Act of

00:06:26



State on the one hand

00:06:28

and arbitration proceedings on the

00:06:30

other hand that gives us

00:06:32

to justify deference to public

00:06:34

participation will be discussed with

00:06:37

Concepts. Like social license in

00:06:39

mining has developed by case

00:06:40

law it remains to be

00:06:42

seen how much of a

00:06:44

role local community and Collective

00:06:47

interest May and shoot play

00:06:49

investment arbitration proceeding the one

00:06:53

comment that I would like

00:06:54



to make from the start.

00:06:55

Is that even though by

00:06:58

now they may be sophisticated.

00:07:03

Technical requirements to file amicus

00:07:07

curiae briefs and this this

00:07:08

we know from many years

00:07:11

ago at the time that

00:07:12

the WTO was was vibrant

00:07:16

still exists, but not so

00:07:18

much. I know not so

00:07:20

as vibrant with the EC

00:07:24

communities at European commission has

00:07:26

asbestos case that we we

00:07:28



started an era where the

00:07:32

Apple body of the WTO

00:07:34

put together a set of

00:07:36

conditions that might make or

00:07:39

would make the process of

00:07:41

filing a make a secure

00:07:42

area in international economic blocs

00:07:44

irrational one and there were

00:07:46

many concerns their Ian pointed

00:07:48

out to the issue that

00:07:49

a Judicial proceeding or a

00:07:54

dispute resolution proceeding normally needs

00:07:57

consent from the disputing parties.

00:07:59



And therefore if I haven't

00:08:01

given my consent or if

00:08:03

I'm not a party technically

00:08:05

why should I speak there

00:08:08

were some requirements including there

00:08:09

in terms of efficiency of

00:08:12

the proceedings by the same

00:08:13

time justifying the interest of

00:08:16

the Friend of the Court

00:08:18

that wanted to participate and

00:08:19

their arm or more elements

00:08:20

there. So that that's one

00:08:23

then then comes the issue

00:08:25



of Whitwell. Yes. what type

00:08:29

of Disputes are we dealing

00:08:32

with normally investor-state arbitration? It's

00:08:36

not simply a contract issue.

00:08:38

Normally it's not a contract

00:08:40

case, but the Investments that

00:08:43

were normally seeing our investment

00:08:45

Investments that that are some

00:08:49

some of them related to

00:08:51

natural resource concessions something to

00:08:54

Public Utilities great infrastructure projects

00:08:57

and there for at least

00:08:59

a big number percentage number

00:09:03



of the Investments that that

00:09:05

become a subject of dispute.

00:09:10

Touch upon the public interest

00:09:13

and may touch upon communities

00:09:16

that that that may not

00:09:17

have given their consent. They're

00:09:19

not technically g-string party, but

00:09:21

they might be affected and

00:09:23

that that's where the whole

00:09:25

landscape becomes a little bit

00:09:26

muddy. So I'm not supposed

00:09:31

to be the moderator. I

00:09:32

might intervene substantially on some

00:09:34



some of the things but

00:09:36

but luckily I have Timeless

00:09:39

which you have started this

00:09:41

and and participating arbitrations that

00:09:43

involve local community participation. So

00:09:45

I am not fully on

00:09:48

the hook on this. I

00:09:49

don't have to resolve all

00:09:50

the questions. So with us

00:09:53

today. We have a I

00:09:55

need a credible grade panel.

00:09:57

And and by the way,

00:09:58

this is an exceptional woman

00:10:04



panel, which were very proud

00:10:06

of what we have first

00:10:09

of all by next Saturday.

00:10:10

And by the way, but

00:10:14

I said Peruvian, I'm Columbia

00:10:15

no relationship that I know

00:10:17

so miss Reba's plant that

00:10:20

serves as president of the

00:10:22

special commission representing the Republic

00:10:25

of Peru in International Investment

00:10:27

disputes prior to her current

00:10:29

position. Mysterious planet acted as

00:10:32

investment Affair coordinator of the

00:10:35



ministry of foreign trade having

00:10:37

participated as lead investor negotiator

00:10:40

of multiple International Investment agreements,

00:10:42

including the comprehensive and Progressive

00:10:45

agreement for Trans Pacific partnership

00:10:47

National Business and economic law

00:10:53

from Georgetown University. So there's

00:10:57

there's there's that in common

00:10:58

and last but not least.

00:11:00

I think that Vanessa has

00:11:03

perspective is is is highly

00:11:06

appreciated for so many reasons.

00:11:08

Only the cases that fit

00:11:09



who has have to face

00:11:10

but also because it is

00:11:13

is a is a very

00:11:14

interesting. Active participant of the

00:11:18

of the investment negotiation system

00:11:21

and also invest an arbitration

00:11:23

system is one of the

00:11:24

few countries and perhaps the

00:11:26

only country that that has

00:11:28

actually successful launch AAA claim

00:11:31

against the investor and it

00:11:34

has a very active defense

00:11:36

strategy. So so we're very

00:11:38



glad to have an issue

00:11:39

with us today will still

00:11:42

have my deck original run

00:11:44

is counselor at Baker but

00:11:47

she has extensive experience representing

00:11:49

investors and stage and complex

00:11:52

and high-profile dispute her case

00:11:54

is span the full range

00:11:56

of economic sectors, including electricity

00:11:59

mining oil and gas infrastructure

00:12:03

and cover the globe with

00:12:04

a particular emphasis on Latin

00:12:07

America notable successes include representing

00:12:10



Latin American state in a

00:12:11

multi-billion-dollar 3D arbitration. I can

00:12:15

I can That that my

00:12:20

Catalina with with with a

00:12:22

great team also were successful

00:12:24

not so long ago on

00:12:26

a case that when I

00:12:27

first read I thought how

00:12:30

are they going to get

00:12:30

out of that? But anyway?

00:12:35

And and the last but

00:12:37

not least Monica. Melancon. is

00:12:42

practices within the international litigation

00:12:45



and arbitration department at 40

00:12:47

hold or she represents clients

00:12:49

in international disputes prior to

00:12:51

joining Foley Holy by the

00:12:53

Camila worked as an associate

00:12:55

at Saratoga. She also served

00:12:58

as public servant at the

00:12:59

national agency of illegal defense

00:13:02

of the state of of

00:13:03

of Columbia where she participated

00:13:06

in the representation of Columbia

00:13:08

and several International Investment arbitration

00:13:10

and advice on matters related

00:13:12



to International Education and public

00:13:13

international law. She was also

00:13:16

part of the ministry of

00:13:17

trade at where she participated

00:13:20

in that the negotiation of

00:13:21

different International Investment agreements and

00:13:24

and help elaborate Colombia's foreign

00:13:28

investment policy the weather I

00:13:32

would like to know beginner

00:13:33

panel and the and ask

00:13:35

her a few questions to

00:13:36

R&R playlist starting with with

00:13:40

Vanessa and would like to

00:13:44



go to divide our discussion

00:13:46
in in two part. One

00:13:47
is are the the the

00:13:49
technical requirements to file Amicus

00:13:51
curiae. I think that is

00:13:52
useful to go to the

00:13:54
requirements and some of the

00:13:56
provisions that might exist in

00:13:58
different trees and then also

00:14:01
in parallel launch the discussion

00:14:04
as to how do local

00:14:05
communities and interest groups should

00:14:08
participate or if they shoot

00:14:10



at all. So what would

00:14:12

that Vanessa? How how is

00:14:17

is amicus curiae regulated if

00:14:19

I do and and that's

00:14:22

the first question then supposed

00:14:25

to questions in one but

00:14:26

I'll do it anyway, and

00:14:28

the second question is if

00:14:30

if there are some instruments

00:14:32

that that provide. The spring

00:14:35

but there are some that

00:14:36

do not and you get

00:14:37

into a case were that

00:14:39



person is not open. What

00:14:41

would you do or how

00:14:41

do you handle that? So

00:14:43

first of all your what

00:14:44

what is the Panorama that

00:14:46

you see in terms of

00:14:47

Amigos Taqueria participation in in

00:14:49

instruments that that they do

00:14:51

might be a part of

00:14:55

Good morning to everyone and

00:14:59

thank you very much to

00:15:00

Jose Antonio and the organizers

00:15:02

for inviting me to take

00:15:05



part in the Washington arbitration

00:15:07

week and for allowing me

00:15:09

to take Part B a

00:15:11

trolley view to summer schedule

00:15:13

constraints. So thank you very

00:15:16

much. I Jose Antonio and

00:15:17

organizers and I would like

00:15:20

to start by saying that

00:15:21

any views. I will expressed

00:15:24

are my own and should

00:15:26

not be interpreted as binding

00:15:28

the Republic of Peru in

00:15:30

any I'm going on a

00:15:32



future investment arbitration admissions really

00:15:40

a fascinating topic. I would

00:15:45

like to start by saying

00:15:48

that we should go to

00:15:51

the basics from an investment

00:15:54

or a former investment negotiator

00:15:57

a perspective. I think we

00:16:01

have infant size how investment

00:16:04

arbitration should be distinguished from

00:16:07

a typical commercial arbitration on

00:16:11

the basis that I state

00:16:13

is a respondent. The issues

00:16:16

had to be decided in

00:16:18



accordance with a treaty and

00:16:20

the principles of public international

00:16:22

law and a decision on

00:16:25

the dispute could have a

00:16:27

significant impact extending Beyond disputing

00:16:31

parties. notably investment disputes race

00:16:36

complex issues of public international

00:16:39

law namely environment because security

00:16:43

and related matters these were

00:16:48

disputes and the tribunal's decision

00:16:56

to have on environmental and

00:16:59

public welfare object generator public

00:17:04

support for the participation of

00:17:06



individuation demanded that the states

00:17:12

regulate its participation within the

00:17:15

investment treaties negotiated by then.

00:17:19

Do they need to address

00:17:20

public interest considerations in investment

00:17:23

arbitration including the participation of

00:17:26

local communities is intrinsically linked

00:17:30

to the legitimacy of the

00:17:31

ICS system. Perspective of the

00:17:36

members of Munich is located

00:17:38

in the area of influence

00:17:39

of an investment project in

00:17:42

combination with their local knowledge

00:17:44



of the fact that it's

00:17:46

taking Denise cute. Interview with

00:17:49

not only assist tribunals in

00:17:52

the resolution of this lady

00:17:54

is also critical address concerns

00:17:57

regarding legitimacy and transparency that

00:18:01

is your sister going to

00:18:04

a house. You know, how

00:18:06

are states and particularly Peru

00:18:10

have addressed the issue of

00:18:12

Amigos Korea participation within investment

00:18:16

treaties in modern treaties. We

00:18:20

have attempted to regulate. What

00:18:24



is the criteria to be

00:18:25

followed by a tribunal has

00:18:27

to consider these applications and

00:18:31

this has gone through an

00:18:34

evolution from generation v. I

00:18:38

t where there was complete

00:18:40

silence on a m equals

00:18:42

Korea submissions. Modern treaties that

00:18:48

regulate and what are the

00:18:50

criteria to be followed by

00:18:53

tribunal's to consider this a

00:18:54

Migos song in terms of

00:18:57

technical requirements, but also in

00:19:00



terms of substantive a Provisions

00:19:03

that should be included or

00:19:06

Incorporated in the context of

00:19:07

this affords regulate these Amigos

00:19:14

Korea submissions, and it is

00:19:16

also important to take into

00:19:18

consideration that it states have

00:19:21

been included in public policy

00:19:25

considerations within the design and

00:19:28

the structure of investment treaties,

00:19:30

not only from a procedural

00:19:33

perspective, but also promote substantive

00:19:37

and Prospect. I just want

00:19:41



a side want a specific

00:19:43

example of this attempt to

00:19:46

regulate local communities interest from

00:19:50

a substantive. For example in

00:19:54

the to USM FDA has

00:19:58

included brought non-conforming measure that

00:20:03

is to say I miss

00:20:06

her that is considered as

00:20:08

not consistent with a specific

00:20:10

provisions and their investment chapters

00:20:13

in stating that room reserved

00:20:17

the right to adopt or

00:20:18

maintain any measured according rights

00:20:22



or preferences to socially or

00:20:24

economically disadvantaged minorities and ethnic

00:20:27

groups. It is not only

00:20:30

non-conforming measures, but also saw

00:20:33

a file two exceptions that

00:20:34

have been included in various

00:20:37

investment rates by state. Help

00:20:42

when there is silence in

00:20:44

a legal instruments. It is

00:20:47

important that is building parties

00:20:49

take into consideration. Whether the

00:20:52

regulation on the Migos Square

00:20:55

submissions to be included in

00:20:58



the context of a procedural

00:20:59

order number one and that

00:21:03

will depend upon the disputing

00:21:06

parties. The measures are the

00:21:08

steak they going to mix

00:21:11

factor involved in the dispute.

00:21:14

So even saw it states

00:21:17

having attempted attempting to be

00:21:20

very explicit in the possibility

00:21:22

of admitting Amigos Korea submissions

00:21:26

in the context of investment

00:21:28

arbitration, there could be instances.

00:21:31

For example in the context

00:21:32



of Our Generation v i

00:21:33

t s or contract based

00:21:35

disputes in which there is

00:21:37

complete silence and there has

00:21:40

ended bodies, shoot attempt to

00:21:43

regulate disposability in the context

00:21:45

of procedural orders including president

00:21:48

over there and number thank

00:21:52

you for thank you very

00:21:53

much. I miss that mean

00:21:54

that. Gives a significant overview

00:21:58

of treaties that include or

00:22:02

have a reference and concerns

00:22:05



for the potential interest or

00:22:10

or effects of certain investment

00:22:12

projects in in fda's and

00:22:14

the one I'm very much

00:22:16

interested in in in the

00:22:18

last part that you shared

00:22:19

with us another possibility of

00:22:22

of anticipating within arbitral proceedings,

00:22:26

the participation of interest groups

00:22:30

or Friends of the Court

00:22:31

by the wonder. What what

00:22:33

animal are Karina might say

00:22:35

about about trying to regulate

00:22:37



that from the start from

00:22:39

the get-go in procedural order

00:22:40

number one. What what might

00:22:44

you see as as the

00:22:45

challenges that that a particular

00:22:49

case might bring with it.

00:22:51

The one where you have.

00:22:57

When you have a case

00:22:59

where the investment treaty does

00:23:02

provide or a regulator me

00:23:04

gustaria proceeding and and the

00:23:08

other scenario is you you're

00:23:10

basing your arbitration on a

00:23:13



old VIP model where it

00:23:16

was that is not regulated

00:23:19

by the investment treaty. Thank

00:23:22

you. Cousin Tonio. Good morning

00:23:26

to everybody and good afternoon.

00:23:27

Whatever is draining another part

00:23:29

of the world and thank

00:23:30

you for inviting me need

00:23:31

to be here. I'm very

00:23:32

happy to be here. This

00:23:34

is a subject that is.

00:23:37

Brought me a lot of

00:23:38

memories when we were doing

00:23:40



the birthday cake, and it

00:23:43

was nice to to read

00:23:45

it again, but in terms

00:23:46

of your question, if you're

00:23:48

dealing with a case that

00:23:50

involves local communities in cases

00:23:54

where the issue a dispute

00:23:56

is. a protest violent protests

00:24:00

from from local communities you

00:24:03

might want to think about

00:24:04

or other issues where the

00:24:07

Civil Society in general might

00:24:09

have a particular interest you

00:24:11



might think about getting together

00:24:13

with the other side and

00:24:15

regulating it from the very

00:24:17

beginning so that it doesn't

00:24:19

disrupt the The procedure mean

00:24:23

it really depends first on

00:24:25

under which treaty the claim

00:24:27

is being brought and to

00:24:28

what are the rules of

00:24:30

arbitration are going to use

00:24:31

the exit rules regulated. They

00:24:35

started regulated with the amendment

00:24:37

in 2006. I believe it

00:24:39



was a rule 37 to

00:24:41

provide some very specific. Provides

00:24:47

the tribunal with specific criteria,

00:24:48

they should consider when deciding

00:24:51

whether or not to admit

00:24:54

an amicus curiae brief. But

00:24:57

if it's under an old

00:25:00

treaty that doesn't say anything

00:25:01

and under rules that doesn't

00:25:03

don't say anything and as

00:25:05

Ian was saying earlier you

00:25:07

really need the consent of

00:25:08

the parties. Otherwise the tribunal

00:25:10



might start running into problems

00:25:11

of jurisdiction, whether they have

00:25:13

the authority or not to

00:25:14

admit it, so In specific

00:25:20

answer to your question. Yes,

00:25:21

I think you should regulated

00:25:22

in procedural order number one

00:25:24

specially with when you're dealing

00:25:25

with with local communities, and

00:25:28

I'm not sure if you

00:25:29

want to go now into

00:25:30

the specific requirements that the

00:25:32

tribunal will analyze or we

00:25:33



can discuss that later. That's

00:25:35

that's just starting the Is

00:25:45

the context of of treaties

00:25:46

that. And you have seen

00:25:48

your experience also, noting that

00:25:51

that some cases treaties are

00:25:55

very similar to The Proving

00:25:56

in cases like in the

00:25:57

US FDA case, but they're

00:25:59

not exactly the same but

00:26:01

I wonder what what what

00:26:02

your views are concerning treaties

00:26:06

that might have supposed to

00:26:07



be in trees at night.

00:26:08

Thank you and thank you

00:26:11

for inviting me to the

00:26:13

Washington arbitration week. I'm very

00:26:15

happy to be here with

00:26:16

you today. So they're like

00:26:20

for example the free trade

00:26:21

agreement between Columbia and Canada

00:26:23

has a specific section on

00:26:26

non disputing parties. And the

00:26:28

the interesting thing about this

00:26:30

section is that it makes

00:26:33

or includes some requirements for

00:26:36



the request. For the tribunal

00:26:39

the submission itself, but the

00:26:42

request that the petitioners have

00:26:44

2% So this from the

00:26:46

beginning determines the Contours of

00:26:49

what would the tribunal except

00:26:51

and I think this is

00:26:53

something remarkable. I need limits

00:26:56

the scope of the participation

00:26:57

because it limits the nuns

00:26:59

putting part of submission to

00:27:00

are reading one. This is

00:27:03

something that the rules on

00:27:06



the expected arbitration rules. Do

00:27:08

not specifically provide for so

00:27:10

it limits more. The scope

00:27:12

of participation up lines between

00:27:14

parties and also the submission

00:27:16

thoughts have some requirements for

00:27:18

sample. It cannot be longer

00:27:20

than 20 Pages which I

00:27:23

think was meant of course

00:27:24

for not there to be

00:27:26

a disruption of their proceedings.

00:27:27

And I think this is

00:27:29

useful and it is helpful

00:27:31



also helpful for to be

00:27:32

organized before the parties for

00:27:33

there not to be a

00:27:34

disruption. And for example, if

00:27:36

the tribunal is considering toorak,

00:27:38

An undertaking a previous undertaking

00:27:40

from the petitioners to secure

00:27:43

the costs of their participation.

00:27:45

So that limitation would help

00:27:49

that or the tribunal to

00:27:51

accept the position without requiring

00:27:53

an undertaking or some Catalina

00:28:05

what are the basic concerns

00:28:07



that a tribunal should have

00:28:09

in terms of principles are

00:28:10

before getting into the nitty-gritty

00:28:12

of the requirement that why

00:28:15

why should it be regulated?

00:28:18

Why can't I do just

00:28:19

free they have to seem

00:28:21

to have any interest and

00:28:31

and then by the way,

00:28:34

when I when I first

00:28:36

joined exit there was a

00:28:40

proceeding versus Bolivia and my

00:28:48

welcoming to the room where

00:28:51



I was working from was

00:28:54

was to share the room

00:28:55

with boxes and boxes of

00:28:56

letters that have been filed

00:29:00

by the community and read

00:29:02

them and go to them

00:29:03

and see what was going

00:29:05

to happen with that. But

00:29:07

anyway, I bet that was

00:29:09

fun. So we we need

00:29:14

to put this into context

00:29:15

because the tribunals are not

00:29:17

there to be solved all

00:29:19



the problems in the world

00:29:20

regarding the environment. The tribunal

00:29:22

is there to solve the

00:29:23

dispute between two parties so

00:29:25

jurisdiction and then back to

00:29:32

the if it has jurisdiction

00:29:33

of that may be discussed

00:29:35

within the case, but it

00:29:37

to resolve the dispute put

00:29:39

in front of it. So

00:29:41

the idea of the commission's

00:29:44

is mainly to assist the

00:29:47

tribunal in its decision-making that's

00:29:50



one of the main purposes.

00:29:52

Of course, it has good

00:29:54

benefits for the system in

00:29:55

general because it provides more

00:29:56

transparency. It allows the Civil

00:29:58

Society to provide comments on

00:30:00

what's going on. There are

00:30:02

billions of dollars being discussed

00:30:04

in this treaty arbitration, but

00:30:07

in the The tribunal is

00:30:09

there as I said to

00:30:10

resolve the dispute in particular,

00:30:12

so there have been instances

00:30:16



where we will speak more

00:30:18

of that where you have

00:30:21

on interested Community regarding the

00:30:25

environment and the how mining

00:30:27

affect the environment. A lot

00:30:31

of people will agree with

00:30:32

that but it does pacific

00:30:35

dispute there wasn't really about

00:30:37

whether the investor is going

00:30:39

to get a restitution of

00:30:41

its Mining rights were not

00:30:42

so there wasn't really a

00:30:44

discussion of whether there would

00:30:47



be further activity mining activity

00:30:49

in the in the area

00:30:50

that was going to be

00:30:51

protected for example, but so

00:30:54

so that's the idea of

00:30:56

limiting it and also the

00:30:58

parties consent to the arbitration

00:31:00

to 2 to get their

00:31:01

disputes old and the parties

00:31:03

in general don't want their

00:31:05

dispute to get disrupted in

00:31:07

a way if you open

00:31:08

the door, as you said

00:31:09



you will have a never-ending

00:31:11

case. I really was very

00:31:14

controversial environmental or or or

00:31:17

social cases where you have

00:31:19

to the parties have to

00:31:20

submit comments on every single

00:31:22

I mean cuz that is

00:31:24

submitted for years and years

00:31:26

and the dispute will never

00:31:27

be solved. So you need

00:31:29

to draw a draw balance.

00:31:31

And it's it's a good

00:31:32

idea to have them sometimes

00:31:34



they're very necessary and they

00:31:35

do help the tribunal but

00:31:36

it needs to be within

00:31:37

a ventricle and what's behind

00:31:43

putting some limitations on ghoul's.

00:31:45

What are the The most

00:31:48

significant the rules that in

00:31:51

your defense you've seen concerning

00:31:53

submissions of third parties or

00:31:56

work or I make your

00:31:57

own Friend of the Court.

00:32:02

It really depends first of

00:32:04

all the rules on the

00:32:08



arbitration. So if you're doing

00:32:09

enough the case for sample,

00:32:11

do you have to see

00:32:13

these comments on non disputing

00:32:16

parties submissions will be relevant.

00:32:17

If you're doing an excellent

00:32:20

case where the B doesn't

00:32:21

say anything about it. The

00:32:23

exit rows will be relevant.

00:32:25

But in general terms Trevino's

00:32:27

have developed a certain criteria

00:32:30

that they need to consider

00:32:31

when analyzing whether to admit

00:32:35



and I M A submission

00:32:38

and those mainly are in

00:32:41

one as I said before

00:32:44

it needs to be a

00:32:46

it has the party you

00:32:48

want that wants to submit

00:32:50

the yamakak needs to prove

00:32:52

that they will be Submitting

00:32:57

A New Perspective and a

00:32:58

highlight new to the tribunal.

00:33:01

I've seen amicus briefs and

00:33:05

because of Nations or application

00:33:06

where the tribunal says it's

00:33:08



very interesting what you're saying,

00:33:10

but you're not providing Me

00:33:11

A New Perspective. I already

00:33:12

know what you're going to

00:33:14

say kind of so, I'm

00:33:17

denying it. the other the

00:33:24

other criteria generally that is

00:33:27

that that is taking into

00:33:28

account is Weather and as

00:33:35

I said before weather the

00:33:36

desert mission is within the

00:33:38

scope of the dispute again,

00:33:40

if the if the dispute

00:33:42



is how about I might

00:33:45

even station or something like

00:33:46

that. It's you can't extend

00:33:48

the scope too much. It

00:33:50

really needs to be about

00:33:51

that. However, again, I think

00:33:54

that was because of that

00:33:55

recently there was a tribunal

00:33:58

that admitted and made an

00:34:02

exception a little bit today

00:34:03

is where they admitted a

00:34:05

brief because they could be

00:34:07

related to a matter that

00:34:09



Huntingdon put by the crib

00:34:11

it by the parties before

00:34:11

the tribunal but it was

00:34:13

a matter of corruption and

00:34:16

the corrupt requirements of the

00:34:18

investment. So they thought this

00:34:20

was a matter of public

00:34:21

interest and And they admit

00:34:25

it at the time because

00:34:27

we don't know what they

00:34:28

will decide. The decision hasn't

00:34:30

come out. So then the

00:34:40

And then they will have

00:34:42



also considered whether their needs

00:34:44

to be whether the party

00:34:45

the Americas that wants to

00:34:48

submit the the Amicus brief

00:34:51

has a significant interest in

00:34:53

the preceding whether they will

00:34:55

be affected by the decision

00:34:56

of the preceding. I mean,

00:34:59

that's a question that is

00:35:01

for an investment treaty. If

00:35:05

you're a national of the

00:35:05

state that is being sued.

00:35:07

Of course you have an

00:35:08



interest because in the end

00:35:09

your tax dollars are going

00:35:10

to pay for that but

00:35:12

it needs to be more

00:35:13

limited than that and the

00:35:15

Cardinals have set some standards

00:35:17

and in more general terms

00:35:21

the the they have also

00:35:29

analyzed and this is not

00:35:31

set out in specific some

00:35:33

of the specific rules to

00:35:34

do provided but that there

00:35:38

needs to be and the

00:35:39



actually the 2016 Rose provided

00:35:42

in a certain way that

00:35:44

the Amicus needs to prove

00:35:45

that its independent and impartial

00:35:48

to the to the parties.

00:35:50

They have been requesting whether

00:35:52

they what is their relationship

00:35:54

with the parties. If any

00:35:55

in the the scope of

00:36:00

transparency, what are you think

00:36:03

is behind the submissions finally

00:36:08

whether the the submission will

00:36:11

disrupt the proceedings and whether

00:36:14



it's fair to compare to

00:36:15

the parties. Thank you, Karina.

00:36:18

And and we have sort

00:36:21

of walk through a secure

00:36:23

area justification the principle that

00:36:27

that that the tribunal must

00:36:29

take into account the requirements

00:36:31

of some treaties but now

00:36:33

and let's let's take a

00:36:35

step back and look a

00:36:37

little bit further into local

00:36:40

participation at an investment in

00:36:43

proceedings. But also participation related

00:36:48



to the investment projects as

00:36:50
such so so if it

00:36:52
freezes and lets us know

00:36:53
thank you and another chance

00:36:55
if an investment project went

00:36:57
on and there was a

00:36:59
there there were a set

00:37:01
of consultations leading to the

00:37:04
authorization of the investment project

00:37:07
and investment project was was

00:37:10
done whether whether or not

00:37:11
there where he comes afterwards

00:37:13
if everyone recognizes that procedure

00:37:15



took place. We in principle

00:37:18

say well there was feedback

00:37:21

and there shouldn't be an

00:37:22

issue of whether or

00:37:24

not the communities were consulted,

00:37:26

right? But let's move into

00:37:29

the second scenario where the

00:37:31

project one took place and

00:37:33

there was underwater Investments. They

00:37:37

were not not as as

00:37:40

proper consultation with the community

00:37:43

and the at soundstage the

00:37:47

state backtracked and and modify

00:37:52



whatever is related to the

00:37:55

investment the license or the

00:37:57

scope of of of land

00:38:02

where the project was was

00:38:03

being developed. And that comes

00:38:07

to an international arbitration tribunal.

00:38:09

So what do you do

00:38:10

in those cases and and

00:38:11

feel free to refer or

00:38:14

not to cases? Well, I

00:38:18

will take that invitation and

00:38:21

I will refer specifically to

00:38:22

the face and I'm not

00:38:24



sure if I'm able to

00:38:25

share my screen. Just to

00:38:31

give everybody a visual. Yep.

00:38:40

So this is in the

00:38:41

Bear Creek case just to

00:38:43

give everybody who's not familiar

00:38:45

with it a little bit

00:38:47

of context in the Bear

00:38:49

Creek Ace Canadian mining company

00:38:52

birdcreek had found silver deposits

00:38:54

with in the border between

00:38:57

Peru and Bolivia was within

00:39:02

50 km of the Border

00:39:04



would believe ya and under

00:39:06

under Peruvian law for a

00:39:10

foreigner to do activities within

00:39:13

50 km of the Border.

00:39:14

They need to have a

00:39:16

special authorization, which is a

00:39:17

declaration of public interest obvious

00:39:21

reasons. It's for security reasons.

00:39:23

It's right on the border.

00:39:24

It's a completely normal in

00:39:26

the battery case Bear Creek

00:39:31

obtain dot license. And they

00:39:35

started doing their mining activities,

00:39:37



but three years later. So

00:39:41

this started in 2007 to

00:39:43

2011 violent protests erupt blocking

00:39:49

the bridge that connects between

00:39:51

Bolivia and Peru going all

00:39:55

the way to Lima. They

00:39:59

were very real and it

00:40:00

lasted for a while and

00:40:03

the question what and in

00:40:04

the end Peru revokes that

00:40:07

license that public necessity decoration.

00:40:10

So it wasn't without that

00:40:12

that public necessary decoration the

00:40:15



company had its mining concessions,

00:40:17

but it couldn't do anything

00:40:18

with them. So the question

00:40:20

was a question, of course

00:40:21

about expropriation, but there was

00:40:23

a specific an interesting question

00:40:25

arose in this in this

00:40:28

tribunal. Is it in this

00:40:30

case, which is what the

00:40:32

Bear Creek? Acquired the social

00:40:35

licence that is needed in

00:40:37

order to conduct its mining

00:40:41

activities. And would you mind

00:40:46



explaining Shanghai like anyone want

00:40:48

to send this? What is

00:40:50

social licence is because the

00:40:51

concept itself is not is

00:40:53

is is not that that

00:40:55

that clear I don't think

00:40:57

you might find in Wikipedia,

00:40:59

but I'm not sure that's

00:41:00

the right one more that

00:41:10

is going to be affected

00:41:11

by the by the project

00:41:13

whether they have for him

00:41:14

coder approval and there a

00:41:17



backing on whether to do

00:41:19

the project or not. It's

00:41:20

not on my license that

00:41:22

you apply for. You. Don't

00:41:25

get a check from the

00:41:26

government or anything like that.

00:41:27

It's something that is ongoing.

00:41:29

The company's need to work

00:41:31

on it a day by

00:41:33

day. Complex relationships that you

00:41:37

need to build a build

00:41:39

with the community when you're

00:41:41

going to their land you're

00:41:42



affecting. Maybe you will the

00:41:44

water. I don't know the

00:41:45

other stuff. So you need

00:41:47

to work very closely with

00:41:48

them. Everybody has their own

00:41:50

interest people want employment from

00:41:53

The Mining Company. It's a

00:41:55

dress. Oh, it's it's a

00:41:56

day-to-day work and that's why

00:41:58

it's called socializing. It's really

00:42:02

there's no official requirements. Other

00:42:05

than the what the governments

00:42:07

have been requiring more and

00:42:08



more of my dopping consultations

00:42:11

doing. But that only goes

00:42:14

so far which is what

00:42:16

takes me back to the

00:42:17

bakery case in the Bear

00:42:19

Creek case the if if

00:42:22

you see the image the

00:42:24

area area of influence that

00:42:26

the company had identified as

00:42:28

the dark black line. And

00:42:32

they made Outreach programs with

00:42:35

those communities that were in

00:42:38

that are highlighted in green.

00:42:41



This isn't couldn't find anybody

00:42:44

who's interested in you can

00:42:45

read it in the field

00:42:45

of science dissenting opinion and

00:42:48

the communities that they didn't

00:42:51

reach out to our older.

00:42:53

Well guess who started the

00:42:55

protests? So the the the

00:43:00

this wasn't I mean this

00:43:04

was particularly complicated because of

00:43:06

the types of communities that

00:43:07

were there and Bear Creek

00:43:08

fail to understand really and

00:43:10



do their due diligence in

00:43:12

a way on how they

00:43:13

needed to work with this

00:43:14

community. So they didn't they

00:43:15

failed to obtain their social

00:43:17

life Indians of the tribunal

00:43:19

found a doctor who was

00:43:24

liable because of the indirect

00:43:26

expropriation, but Phillip signs dissenting

00:43:28

opinion is it's not very

00:43:31

interesting one because in his

00:43:33

opinion Bear Creek had contributory

00:43:36

fault to a the situation.

00:43:40



That involved and that in

00:43:41

the end result Edwards through

00:43:43

having no other choice, but

00:43:44

to revoke the license because

00:43:47

of the situation they were

00:43:47

in was it proportional or

00:43:50

not? The tribunal made its

00:43:51

decision. But but there was

00:43:56

there was some fault at

00:43:57

least in Phillips and Sand

00:43:58

Canyon from Bear Creek for

00:44:01

having failed to obtain. Your

00:44:02

social life is not involving

00:44:05



the the communities as they

00:44:07

should have done and in

00:44:09

his opinion the damages should

00:44:11

have been even lower than

00:44:12

they were. Thank you. Thank

00:44:15

you very much my Arena

00:44:16

Vanessa into into a little

00:44:23

bit of local or or

00:44:24

or Peruvian. Do how how

00:44:29

important is our community consultations.

00:44:35

Before an investment project moves

00:44:38

forward. Let me know what

00:44:39

what how important is that

00:44:41



before we say, well the

00:44:44

investment was stung you can

00:44:46

go on move forward and

00:44:49

the second question is what

00:44:52

place should should those consultations

00:44:57

have in an investment arbitration,

00:45:00

or are they shooting for

00:45:01

they shoot Thank you very

00:45:06

much for that question a

00:45:08

whole San Antonio and taking

00:45:12

into consideration that the tension

00:45:15

between extractive Industries in a

00:45:18

country. Like they do about

00:45:20



other countries in the region

00:45:22

and the area of influence

00:45:24

of this investment projects and

00:45:27

environmental concerns indigenous communities located

00:45:31

in this area of influence

00:45:33

of the investment project. These

00:45:35

are private consultations are essential

00:45:39

to the survival of the

00:45:41

investment project over time the

00:45:44

sustainability of this investment project

00:45:47

overtime. There are indeed a

00:45:51

domestic relations address in the

00:45:54

need to consult this indigenous

00:45:57



communities prior to any share

00:46:00

any investment project, but I

00:46:04

would like to emphasize Is

00:46:05

a concept that was addressed

00:46:07

by Maya Carolina because this

00:46:10

the concept of social licence

00:46:12

is Interline to this domestic

00:46:16

law regulating the need to

00:46:19

a private consultation with local

00:46:21

communities. And if you take

00:46:25

a look at what the

00:46:26

states have been doing any

00:46:28

more than three days, he's

00:46:29



basically reaffirming the right to

00:46:32

regulate in public interest and

00:46:35

including some features of a

00:46:38

soft a law Provisions cross-referencing,

00:46:42

for example, the oecd guidelines

00:46:43

for Multinational Enterprises and lizard

00:46:47

islands that having a reference

00:46:49

by Estates in various treaties

00:46:52

to address the issue of

00:46:54

private consultations with communities and

00:46:58

other issues relating to Human

00:47:00

Rights environment and labor. So

00:47:04

I told Bonnie that is

00:47:07



interested in investing in a

00:47:10

country like Paris or Italy

00:47:12

has an allegiance in applications.

00:47:17

Not only with respect to

00:47:20

you know, and understanding the

00:47:24

local regulations. I would respect

00:47:26

to that going to make

00:47:27

sector in which are the

00:47:30

investment project that will develop

00:47:32

their community in the area

00:47:36

of influence of the Bridget

00:47:38

asked other jurisdictions do have

00:47:43

a develop regulations on private

00:47:46



consultations. It is essential to

00:47:48

comply with these domestic and

00:47:50

regulations in Mariposa County Executive

00:47:53

to invest in various economic

00:47:54

sectors, but they're also a

00:47:57

concept that is not necessarily

00:48:00

Define this concept of social

00:48:02

licence. Has been involved in

00:48:05

some investment treaty arbitrations and

00:48:08

this goes back to the

00:48:10

due diligence that companies must

00:48:13

undertake if they attempt to

00:48:17

invest in a complex country

00:48:20



in which the investment project

00:48:23

will interact with an area

00:48:25

of influence in which indigenous

00:48:28

communities or local communities are

00:48:31

located. So there is certainly

00:48:34

a beauty post on an

00:48:38

investor Eddie's Beauty has been

00:48:41

reaffirmed and recognized within the

00:48:43

design on the structure of

00:48:45

some other investment treaties and

00:48:48

it is not only the

00:48:50

investment treaties but also their

00:48:52

domestic regulations that are compelling

00:48:56



and responsibilities of companies to

00:49:00

incorporate these standards of corporate.

00:49:03

Social responsibility before finishing my

00:49:07

intervention. I want to site

00:49:11

one specific example of these

00:49:13

self-love features included in the

00:49:17

design of investment treaty and

00:49:19

I have seen in the

00:49:21

audience one of my colleagues

00:49:23

from the Canadian government that

00:49:25

they kind of the FDA

00:49:28

is one of those mother

00:49:29

and fda's in which are

00:49:31



both parties have attempted to

00:49:33

a strike is Right balance

00:49:34

between protection of foreign investments

00:49:37

and their right to regulate

00:49:40

in public interest. And that

00:49:42

was the first FDA in

00:49:44

which per which included a

00:49:45

provision and corporate social responsibility.

00:49:47

That is the truth and

00:49:52

courage Enterprises operating within if

00:49:56

their territories or subject to

00:49:58

their jurisdiction to voluntarily incorporate

00:50:02

internationally-recognized. Standards of corporate social

00:50:05



responsibility in their internal policies

00:50:08

such as a statement of

00:50:10

principles or statements are on

00:50:15

their way. They that have

00:50:16

been indoors or are supported

00:50:18

by both a price on

00:50:20

these principles address issues such

00:50:22

as labor the environment human

00:50:24

rights community relations and antique.

00:50:27

So yes, I think kindly

00:50:32

we have been including these

00:50:35

features to make very clear

00:50:37

that there is a balance

00:50:39



between these two full of

00:50:40

Jack gives protection of foreign

00:50:42

investments and right to regulate

00:50:45

and also a duty of

00:50:46

the religions by the company's

00:50:48

attempted to invest in our

00:50:51

territories. I'm really really happy

00:50:55

that you mention the provisional

00:50:57

on social corporate responsibility of

00:50:59

the Peru Canada 3D pictures

00:51:03

of Columbia also has I

00:51:06

think I forbade him the

00:51:07

same provision from its owner

00:51:10



investment treaty with the with

00:51:13

kind of that. I happen

00:51:14

to be the negotiation of

00:51:15

that negotiation and the tail

00:51:18

goes on as as as

00:51:19

follows. It's funny. I think

00:51:24

it's fine that I thought

00:51:24

I'd share this in like

00:51:27

2008 or so and came

00:51:31

with the sorting out there.

00:51:35

So kind of that came

00:51:36

with the social corporate responsibility

00:51:38

provision that witch hats off

00:51:41



low and and and perhaps.

00:51:46

Time Colombia versus was rebuilding

00:51:48

itself because it came from

00:51:49

very complicated security situation. So

00:51:53

perhaps the thought was that

00:51:55

we might be opposed to

00:51:58

a social corporate responsibility as

00:52:01

a provision. But as soon

00:52:02

as we we we we

00:52:04

liked it and we liked

00:52:05

it so much that we

00:52:07

counterproposal not only to have

00:52:09

it as a floor but

00:52:11



to have it as a

00:52:11

as a Cargill so not

00:52:16

only trying to obtain and

00:52:19

comply with those social corporate

00:52:22

responsibility started but say the

00:52:24

investors will be bound to

00:52:27

comply with the environmental minimum

00:52:31

Sanders and also to run

00:52:33

consultations and everything that is

00:52:34

implying social responsibility. But our

00:52:38

counter proposal was was that

00:52:41

was too much at the

00:52:46

time. It was thought that

00:52:49



perhaps the obligation shouldn't be

00:52:51

on on the side of

00:52:52

of of the investor but

00:52:54

they should remain on the

00:52:55

side of the of the

00:52:56

State trying to push or

00:52:58

trying to encourage investors to

00:53:00

comply with social corporate responsibility

00:53:01

standards. That being said, I

00:53:05

would like to emphasize that

00:53:07

in kilometers also a principle

00:53:09

of my participation that that

00:53:11

must be respected and consultation.

00:53:14



In that context I want

00:53:15

to invite that my dam

00:53:17

to share some of her

00:53:19

thoughts concerning some of the

00:53:21

past cases are not going

00:53:22

cases that involve consultations. Thank

00:53:28

you, Anthony. Oh, let me

00:53:31

hear. my screen so before

00:53:52

it going into specific cases

00:53:54

and maybe just adding I'm

00:53:57

broke the building up on

00:53:58

the conversation that we were

00:54:00

having before the United Arab

00:54:03



Emirates treaty like the Newbie

00:54:05

it with Columbia House at

00:54:08

provision regarding responsible investor. And

00:54:12

what is that? It is

00:54:13

by the obligation incorporated into

00:54:15

treaty not only as a

00:54:17

reference to corporate social responsibility,

00:54:18

but that's a sausage to

00:54:21

conduct a due diligence and

00:54:23

the it's growed. It was

00:54:25

not Define what should that

00:54:27

you could because of course,

00:54:29

it would depend on the

00:54:30



industry, but the content will

00:54:34

depend on the on the

00:54:35

type of investment, but it

00:54:38

was very important to include.

00:54:39

That in the treaty because

00:54:41

it would be an obligation

00:54:42

and it would be something

00:54:43

that the tribunal would burn

00:54:45

mine to the fine. For

00:54:46

example, the legitimate expectations that

00:54:48

the investor that the investor

00:54:49

could have. I know so

00:54:51

what was the the scope

00:54:54



of the of the of

00:54:56

the of the legitimate expectation?

00:54:58

So now going into two

00:55:01

cases, I would like to

00:55:02

speak about how tall is

00:55:04

ours mining versus Colombia versus

00:55:07

Columbia. Both cases are we're

00:55:09

not disputing parties submissions requested

00:55:11

under the free trade agreement

00:55:14

between Canada and Columbia. We'd

00:55:15

buried two different outcomes. So

00:55:19

the first one is these

00:55:20

Mining and the applicant in

00:55:23



this case was the Monera.

00:55:25

Algodon. This is a different

00:55:27

case from what we're used

00:55:29

to it now because could

00:55:30

you which are regularly ngos

00:55:33

or International organizations participating on

00:55:37

on this proceeding this Association

00:55:39

and Cote was substantially involved

00:55:43

in the case or in

00:55:44

the facts of the case

00:55:45

of the underlying dispute. Why

00:55:48

because the claim and presented

00:55:50

submission or in its submission

00:55:52



eat requested that I let

00:55:57

you in Columbia had substantially

00:55:58

deprived of his of its

00:56:00

investment because it had failed

00:56:02

to a beat some miners

00:56:05

or some artisanal miners from

00:56:07

its titles. So one of

00:56:10

those miners were a go

00:56:11

up in this community, which

00:56:15

was in Segovia, Antioquia in

00:56:17

Colombia. And they requested they

00:56:20

mean it I can go

00:56:21

there which was specifically regarding

00:56:23



their request for arbitration requested

00:56:25

the tribunal leave to participate

00:56:28

as an effort to prevent.

00:56:30

So what were the criteria

00:56:33

for the trip? We took

00:56:34

into consideration basically, they refer

00:56:36

to the elements that might

00:56:38

Academy not referred before the

00:56:40

weather the applicant had a

00:56:41

significant interest in the proceedings

00:56:43

whether the NDP submission was

00:56:46

within the scope of the

00:56:47

dispute whether the NDP would

00:56:50



fast is a tribunal in

00:56:52

determining the factual or legal

00:56:54

issue, which was different from

00:56:58

what the parties have already

00:56:59

presented or could present on

00:57:02

whether the NDP would not

00:57:03

affect the prejudiced any of

00:57:08

the parties or affect the

00:57:09

proceedings. So as regards the

00:57:12

significant interest the tribunal concluded

00:57:14

that it had a significant

00:57:17

interest. It was involving their

00:57:19

underlying dispute and actually part

00:57:22



of the claimants was that

00:57:24

Columbus had a field trip

00:57:25

baked this specific company or

00:57:29

artisanal Mining Company North copper

00:57:32

it to us as he

00:57:33

could call it. Clement said

00:57:36

that this was unfair because

00:57:38

it could be like the

00:57:40

fascial witness statement without the

00:57:43

benefit of call the time

00:57:44

nation and we will see

00:57:46

what the tribunal said in

00:57:48

regard to this. But it

00:57:50



initially the first point is

00:57:52

they have a significant interest.

00:57:55

then the tribunal Define the

00:58:00

scope of the dispute. So

00:58:01

basically the company presented 7

00:58:05

points, so they wanted to

00:58:07

present their and the Pea

00:58:08

on the seven points, which

00:58:10

the tribunal did not accept

00:58:12

all of them. So ask

00:58:14

the the request was basically

00:58:17

two to make their presentation

00:58:20

on what was the social

00:58:21



economic and cultural context of

00:58:23

the alcohol that my the

00:58:25

petitioners was that the company

00:58:27

arrived much later than them.

00:58:31

They have been in this

00:58:32

mining tiles for many many

00:58:34

years and the community have

00:58:36

been there for hundreds of

00:58:38

years. So those were artisanal

00:58:40

miners that have their own

00:58:42

ownership of this title. The

00:58:43

title in itself was in

00:58:45

dispute. So they wanted to

00:58:47



provide this historical context. They

00:58:49

also want to pronounce on

00:58:51

the tremendous lack of jurisdiction

00:58:53

passing the temple and the

00:58:55

Protist one of the arguments

00:58:58

that the company raised was

00:59:00

that the Protist were affecting

00:59:02

their operations. So the tribunal

00:59:07

also consider this to be

00:59:08

run relevant. What did the

00:59:10

tribunal reject the claim the

00:59:12

petitioners also wanted to pronounce

00:59:14

on the claimants responsibility for

00:59:16



violating Collective rights and the

00:59:18

health of the environment that

00:59:19

was not part of the

00:59:20

dispute that it was not

00:59:21

being in dispute between Colombia

00:59:23

and the company. So the

00:59:25

tribunal did not accept it

00:59:26

and it also rejected the

00:59:29

petitioner's request to pronounce on

00:59:33

Canada extra-territorial responsibility for precisely

00:59:37

the corporate social responsibility that

00:59:39

claim us should have under

00:59:42

it in this particular area

00:59:44



as well as Columbus International

00:59:46

responsibility to protect artisanal mining

00:59:48

the tribunal also said that

00:59:50

that was not part of

00:59:51

a scoop of a few

00:59:52

days dude, so it rejected

00:59:54

that submission. But this is

00:59:58

an interesting point and think

00:59:59

does a final decision on

01:00:01

your relevant decision on this

01:00:03

and it is that the

01:00:04

tribunal accepted the petitioner's request

01:00:08

to Eva to analyze an

01:00:12



issue of corruption, which has

01:00:14

not been raised by any

01:00:15

of the parties near Columbia

01:00:17

not claiming the petitioners argument

01:00:19

was that the title but

01:00:22

the the RPG wish we

01:00:24

were talking about was acquired

01:00:26

through corruption and in a

01:00:29

very brief sentence in a

01:00:31

paragraph describing upset the fact

01:00:34

that neither of the parties

01:00:36

have raised this issue does

01:00:38

not mean that the tribunal

01:00:40



cannot evaluated. It was a

01:00:42

sewage pump. Decision to to

01:00:46

to analyze this this argument

01:00:48

from the petitioners, of course

01:00:50

subject to the evidence that

01:00:52

they would present next, but

01:00:55

this is a very very

01:00:57

new from the Tribunal. So

01:01:03

then the tribunal after having

01:01:06

determined that those were the

01:01:09

matters of these cute little

01:01:10

face. Then went to analyze

01:01:13

which of the matter is

01:01:14



that we had already dressed

01:01:15

we're different from what the

01:01:17

parties have a greater percent

01:01:18

that could present. So in

01:01:21

that case it's that well

01:01:22

the Trevino's lack of jurisdiction

01:01:23

Russian. It's a yes is

01:01:25

something that the parties have

01:01:26

a regular either through Council

01:01:28

or expert so it's not

01:01:30

something new or different from

01:01:32

what they could resent. I

01:01:35

know the issues regarding regarding

01:01:37



mine legislation on the difference

01:01:40

between illegal on artisanal or

01:01:42

traditional miners. So I just

01:01:46

accepted three submissions social economic

01:01:49

and cultural context of edit.

01:01:50

Do they make the manifestations

01:01:52

of Civilian populations and also

01:01:55

a precautionary measure order b

01:01:58

l American Commission on human

01:02:00

rights. There was a side

01:02:01

dispute in things are American.

01:02:03

Human rights because some of

01:02:05

them minors and its representatives

01:02:06



were being killed by Primal

01:02:09

Terry groups during this protest

01:02:11

against the company. So there

01:02:16

was like this parallel education.

01:02:19

And The Bijou of corruption

01:02:22

which we already address. And

01:02:27

Athena and the tribunal decided

01:02:28

to accept all this it

01:02:31

is founded or four criteria

01:02:33

were fulfilled because it did

01:02:35

it concluded that they must

01:02:37

have failed to show that

01:02:39

the following of a 20-page

01:02:40



submission would constitute A disruption

01:02:42

to the proceedings and the

01:02:45

on the point of the

01:02:46

witness that they could be

01:02:47

a factual witness. They said

01:02:49

well, if the petitioners could

01:02:53

not pronounce been an issue

01:02:54

of the facts, then why

01:02:55

would rule 37 to or

01:02:58

the annex to the Free

01:02:59

Trade Agreement refer to the

01:03:01

possibility that the not disputing

01:03:03

parties submission regard to the

01:03:07



issue soft factual disputes. So

01:03:09

it would rather like under

01:03:11

claimants provision under claimant interpretation

01:03:14

distributions would be rendered nugatory.

01:03:18

So basically it upheld three

01:03:21

of the seven request from

01:03:23

from the petitioners. Via Cordoba

01:03:27

versus Colombia Keys had a

01:03:29

Vietnam justkiddingparty request was had

01:03:32

a very different outcome. Basically

01:03:34

the first three elements were

01:03:38

the first three criteria because

01:03:41

it is founded the it

01:03:44



was probably not necessary to

01:03:46

analyze the last one. So

01:03:49

who were the applicants Industries

01:03:50

in this case? The applicants

01:03:52

were six and non-government ngos

01:03:58

on environment related to environmental

01:04:00

Matters from from Colombia from

01:04:05

Canada. I'm from also the

01:04:07

United States. The subject matter

01:04:10

of the application in this

01:04:12

he's was much more limited

01:04:13

the petitioners. They only presented

01:04:17

this request. We anticipate focusing

01:04:19



on international law regarding human

01:04:21

rights and particularly the right

01:04:23

to live in a healthy

01:04:24

environment. So the tribunal said,

01:04:28

well, this is not how

01:04:30

could I define whether this

01:04:31

is within the scope of

01:04:33

the of course? It's something

01:04:36

very proud and very General

01:04:37

Tso. It's not something that

01:04:41

is relevant for the arbitration.

01:04:42

One point to consider here

01:04:45

is that the submissions of

01:04:47



their party's still at the

01:04:48

time there was a memorial

01:04:49

and I can't remember already

01:04:51

submitted to attribute those were

01:04:54

not public. So the petitioners

01:04:56

did not have access to

01:04:58

them. So it wasn't easy

01:05:00

for them to determine. What

01:05:01

was the score. What do

01:05:04

you pronounce on but regardless

01:05:07

of that the tribunal said

01:05:08

well, but you had access

01:05:10

to procedural orders for sample

01:05:11



and you could have presented

01:05:16

something or develop more your

01:05:18

arguments on this point to

01:05:25

this to decisions from investment

01:05:29

arbitration tribunals that. That even

01:05:33

though we may call certain

01:05:35

environmental obligations or environmental concerns

01:05:39

concerns very much tied to

01:05:41

the even are gone. This

01:05:42

organization's it seems that tribunal

01:05:44

may want to hear a

01:05:45

little bit more as to

01:05:46

why why they want to

01:05:48



file and then where is

01:05:49

there interest is interest to

01:05:51

the subject matter of not

01:05:53

and simply say what we

01:05:54

were concerned about a general

01:05:57

interest in the interest of

01:05:59

time. I have I have

01:06:00

just a couple of questions.

01:06:02

Some of them bows by

01:06:04

are outlined a participant one

01:06:07

is we have been talking

01:06:08

much about the potential applications

01:06:12

by the investors to respect

01:06:14



the EST standard for corporate

01:06:16

social responsibility to do to

01:06:18

get an environment to license

01:06:20

and let's be mindful that

01:06:22

this applications are softball. But

01:06:28

even though what about the

01:06:30

responsibility of the state to

01:06:33

secure a social licence that

01:06:35

is a question that comes

01:06:36

from from one of our

01:06:38

online viewers. And and I

01:06:40

think it's a it's a

01:06:41

non-point obligation, Shoot the state

01:06:43



be off the hook or

01:06:46
not. And this is to

01:06:48
anybody to any of her

01:06:49
pattern, but I'll let her

01:06:52
speak and of course the

01:06:56
state has some responsibility won.

01:06:58
The state has to establish

01:07:00
the legal framework to acquire

01:07:02
the Type of social licence

01:07:08
from the cup from the

01:07:09
community but going back to

01:07:11
the caves. What Philip Stansted

01:07:15
is the state has to

01:07:17



put in the framework has

01:07:18

two when able it has

01:07:19

to help know that most

01:07:22

of this investment is happening

01:07:23

in very remote region. So

01:07:25

you need to stay present

01:07:26

but it's not the responsibility

01:07:28

of the state to take

01:07:30

the hand of the investor

01:07:31

is there needs to be

01:07:35

worked from the from the

01:07:36

investor at least from subsonic

01:07:39

.40 cal another this is

01:07:50



a very changing topic and

01:07:54

I believe that is one

01:07:56

of the topics why the

01:07:59

application system is under so

01:08:02

much pressure. There's the the

01:08:03

notion that that things get

01:08:06

decided the scope of it

01:08:08

of the district is very

01:08:10

limited and when their interest

01:08:12

of community groups, they don't

01:08:14

get to speak to Matt

01:08:16

my question to which one

01:08:17

of you know where I

01:08:19



know more than two minutes

01:08:21

to answer is is Are

01:08:25

we ready to include or

01:08:27

is the investor relations system

01:08:28

in the end of the

01:08:29

world of negotiators ready to

01:08:32

move from softball obligations or

01:08:38

investors into hartlaub's locations for

01:08:40

investors and is not desirable

01:08:42

where you say. Well you

01:08:44

should only try to do

01:08:47

community consultation, but you must

01:08:49

do that if you are

01:08:52



if you want qualified investor

01:08:54

are we ready for that?

01:08:55

Is that desirable or will

01:08:58

will that be too much

01:08:59

and will will scare investors

01:09:03

and there will be no

01:09:04

investment in the world if

01:09:06

that is done. I think

01:09:10

it's the first state for

01:09:12

that is in the message,

01:09:13

LOL. I mean that each

01:09:14

state have their priorities to

01:09:17

determine under its domestic law

01:09:19



water requirements in one post

01:09:21

on on on investors and

01:09:24

to determine what is the

01:09:25

positive spillover that he wants

01:09:28

to generate from foreign investment.

01:09:30

So, I don't think that's

01:09:31

something that necessarily has to

01:09:33

be done in treaties or

01:09:35

at least very specifically. However,

01:09:38

I do think that and

01:09:40

this is what my personal

01:09:41

opinion of course that a

01:09:43

treaties are becoming more demanding

01:09:47



on the applications that investors

01:09:50

has to protect the respect

01:09:52

Corporate social responsibility that matters

01:09:55

and also have good Juju

01:09:59

just practice on matters of

01:10:01

Human Rights and corruption like

01:10:04

sometimes practices on environmental probation.

01:10:08

And this is not only

01:10:09

subject to domestic law but

01:10:11

also to International standard practice.

01:10:14

So I think it has

01:10:16

to be a balance between

01:10:17

domestic law and treaties the

01:10:20



treaties that have become start

01:10:22

including. This requirements for investors

01:10:28

to conduct a proper due

01:10:29

diligence. I think it is

01:10:37

not necessary to include these

01:10:40

are no Provisions in the

01:10:42

context of investment treaties and

01:10:46

certainly there are various bodies

01:10:49

of laws that apply +

01:10:52

or provide some obligations with

01:10:54

respect to consultations with local

01:10:56

communities environmental issues in the

01:11:02

context of extractive Industries. So

01:11:04



they should be used to

01:11:06

understand that International Investment in

01:11:09

the law is part of

01:11:10

public international law vary the

01:11:13

bodies of lost that interact

01:11:15

with investment treaties and it

01:11:17

is important for a tribunal

01:11:20

to take a holistic approach

01:11:21

and to incorporate some of

01:11:24

The provisions of having address

01:11:27

in various instruments signed by

01:11:30

the state. So you need

01:11:31

to incorporate them in the

01:11:33



Centre is but another approach

01:11:36

is basically to interpret these

01:11:40

investment treaties in the life

01:11:42

of a other instruments are

01:11:44

there public international law instruments

01:11:46

already in place and critical

01:11:50

in the context of the

01:11:52

legitimacy of of the system.

01:11:54

I agree with what money

01:12:02

I've been saying in response

01:12:06

to your specific question. I

01:12:07

don't think we're ready to

01:12:08

include hard Lawn & tree

01:12:10



that would be great in

01:12:13

my personal opinion. But I

01:12:17

mean, we haven't even agreed

01:12:19

on transparency of the of

01:12:22

the hearings for example. With

01:12:26

respect to every single case

01:12:27

and where there is a

01:12:28

treaty that doesn't include a

01:12:30

clause of transparency. The majority

01:12:36

of the times one of

01:12:37

the parties will know that

01:12:38

I want this to be

01:12:39

private and etcetera so leave

01:12:42



it there but I do

01:12:44

think there should be a

01:12:45

little bit of a push

01:12:46

to to get there. There

01:12:47

has been a Porsche. I

01:12:48

agree with Mother Kamala mean

01:12:50

when it comes from domestic

01:12:51

law that there is a

01:12:52

relationship between the domestic law

01:12:53

and and the and the

01:12:55

treaty and you could get

01:12:57

eventually point where you actually

01:12:59

need to include, but I

01:13:00



don't think so unless there's

01:13:05

any question we will close

01:13:09

and that to join me

01:13:11

in giving a round of

01:13:13

applause to our wonderful panelist.

01:13:15

I think that this was

01:13:16

a very educating at least

01:13:18

for me, so thank you

01:13:19

very much for for for

01:13:22

this for your questions are

01:13:23

preparations and for indulging, you

01:13:25

know, everyone here and in

01:13:28

the rest of the world.

01:13:28



Thank you. And the next

01:13:35

will be at that meeting

01:13:38

I said, I believe in

01:13:39

30 minutes. So so yes,

01:13:43

it would be the first

01:13:44

Washington arbitration week in in.

01:13:49

in Spanish espanol