



## Business and Human Rights in Times of War and Conflict: The Power of International Advocacy \*

### Summary

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

The Washington Arbitration Week panel, moderated from Geneva, discussed the formation of the Business and Human Rights Lawyers Association, which includes major global law firms. The panel focused on the intersection of business operations and human rights in conflict zones, particularly in light of recent high-profile legal cases involving corporations like Chiquita and LaFarge, which faced legal challenges for their activities in conflict-affected areas.

Key participants included John Trimmer from Paul Hastings, Virginia Newman from Miller & Chevalier, Tatiana So from Wiley Rein, and Jose Antonio Rivas from the Rivas Strategy Center. They highlighted the complexities companies face when deciding whether to remain in or withdraw from conflict zones, emphasizing the need for heightened human rights due diligence. The discussion underscored that companies cannot remain neutral in conflict situations, as their operations can impact local dynamics.

The panel also addressed the implications of mandatory human rights due diligence laws emerging in various jurisdictions, including the U.S., Europe, and China, and the challenges these create for multinational corporations. The participants noted that the legal landscape is evolving, with increasing scrutiny on businesses regarding their human rights practices and potential liabilities.

The conversation touched on the procedural aspects of how international arbitration might handle human rights issues, suggesting a need for clearer obligations within investment treaties to hold companies accountable for human rights violations. The panel concluded with a call for further education and resources for legal practitioners to navigate these complex issues effectively.

### Authors

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## Topics

human rights, hrrr

## Category

WAW

## Full Transcript

00:00:03

Thank you very much. He

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in and thank you, and

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Jose, Antonio for organizing the

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Washington arbitration week, which gives

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I think important information to

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a lot of people who

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do not ordinarily attend, some

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of these similar events, I

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speak to you for a

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ride moderate to you from

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Geneva Switzerland, where I'm attending



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the UN global forum on

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business and human rights and

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we're at the United States

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Mission here at the UN

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in Geneva, we have just

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announced the formation of the

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business and human rights Lawyers

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Association, which is a group

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of beginning group. Anyway of

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22 of the major Global

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law firms of the world

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including three of which are

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represented here on this panel



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today. Paul Hastings and Miller

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in Chevrolet My own firm

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King & Spalding along, with

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another number of other leading

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firms in the mission of

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the business and human rights

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Lawyers Association will be to

00:01:13

do exactly the kind of

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thing we're doing on the

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panel today which is to

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organize panel discussions and otherwise

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try to elevate the visibility

00:01:21

of the issues of business



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and human rights in the

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legal community. Our topic today,

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of course, as you know,

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is related to conflict, not

00:01:33

only International armed conflict, like

00:01:35

the Russian invasion of Ukraine

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at the moment, but all

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kinds of conflict areas, including

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Civil Wars, including situations, of

00:01:47

gross violations, of human rights

00:01:48

of military occupation territories. It

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covers a wide spectrum and

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it's a very timely topic.



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Not only because of what's

00:02:01

going on in Ukraine right

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now, but also because of

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what are the implications for

00:02:07

the clients of commercial law?

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Firms these days and just

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to take the last 3

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months by way of illustration

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in September, the federal court

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of appeals for the eleventh

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circuit allowed a Civil Trial

00:02:21

against Chiquita. Banana to go

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forward overruling. The district court



00:02:26  
or Chiquita bananas. Subsidiaries collusion

00:02:30  
with the paramilitary forces in

00:02:34  
Colombia a matter, in which

00:02:36  
Chiquita Colombia said, guilty to

00:02:40  
criminal charges back in 2007

00:02:42  
and paid a \$25. Fine.

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That was September. The decision

00:02:48  
of the court of appeals.

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In the civil case, in

00:02:51  
October, LaFarge company plead guilty

00:02:55  
to conspiring to provide material

00:02:57  
support to terrorists them in

00:03:00  
Syria by making payments for



00:03:02

a cement plant. Are the

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payments allowed LaFarge to make

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a \$70 profit in return

00:03:11

for which they were fined

00:03:13

and otherwise paid fees of

00:03:15

ten times that much. 711

00:03:18

times that much 777 million

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that was October. Then, in

00:03:23

November, The month we are

00:03:25

still in early lundeen in

00:03:29

Sweden. Received the ruling from

00:03:34

the Swedish Supreme Court is

00:03:36

that their criminal trial for



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complicity in war crimes, can

00:03:40

go forward and the former

00:03:44

CEO of lundeen faces, a

00:03:47

potential criminal sentence of up

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to life in prison along

00:03:52

with one of his other

00:03:53

senior Executives and the company

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itself, faces a 2.8 million

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dollars, slime, plus additional related

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cost. So, if that doesn't

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get the attention of lawyers,

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advising companies about the importance

00:04:09

of heightened human rights due



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diligence in Conflict zones. I

00:04:16  
don't know what will Aside

00:04:21  
from the issues of potential

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complicity or civil liability with

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Bad actors. In Conflict zones.

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There are also vexing issues

00:04:33  
for international companies of whether

00:04:36  
to stay or to remain

00:04:39  
in Conflict zones. There was

00:04:41  
a panel of here yesterday

00:04:42  
in Geneva. Happy global forum

00:04:45  
on the very same topic

00:04:47  
and a scholar, but also



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a resident from Ukraine, from

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the city of Kharkov in

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Ukraine. When she took the

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panel explained that when the

00:04:58

war broke out, when the

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Russian invasion of Ukraine broke

00:05:01

out back in February, the

00:05:04

International Food companies that provided

00:05:07

bread to the people truck

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is shut down and pulled

00:05:11

out right away. And she

00:05:13

stood in a line for

00:05:14

4 hours to get bread



00:05:15  
while shells were passing overhead

00:05:19  
because a local bakery, decided

00:05:23  
to stay over and try

00:05:25  
to provide food for the

00:05:26  
people who live there. And

00:05:28  
so the issue facing a

00:05:29  
company that provides essential services

00:05:32  
to a population in a

00:05:33  
conflict Zone. Whether it's food

00:05:36  
for the necessary medical drugs

00:05:39  
such as, for heart conditions

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and so on or even

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arguably internet, those kinds of



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decisions companies are having to

00:05:51  
face not only in Ukraine

00:05:54  
and in Russia but also

00:05:56  
in Myanmar and other zones

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and they are not easy

00:06:01  
decisions. One of my own

00:06:04  
clients are our firm's own

00:06:05  
client, is facing a decision

00:06:08  
whether to pull out from

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Myanmar there. By depriving the

00:06:13  
military regime of a source

00:06:15  
of Revenue. But the consequence

00:06:19  
of doing that was that



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under the contract, the military

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regime would become the new

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owner of the property in

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Myanmar. And instead of getting

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a cut of the action,

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which it gets now it

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would get all of the

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action again. What does the

00:06:34

company do? How does the

00:06:36

client advise the company? These

00:06:38

are not easy questions but

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two pieces of good news.

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First of all, have been



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a number of Publications by

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International bodies advising and assisting

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companies on how to deal

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with these kinds of dilemmas

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and maybe the most recent

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one, which came out in

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June of this year, which

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I come into all of

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you, is a joint publication

00:07:01

of the United Nations development,

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programme and the UN working

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group on business and human

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rights entitled. And it's on



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the web page of the

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UN working group and Are

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the undp entitled heightened human

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rights due diligence for businesses

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in conflict-affected contacts? A guy.

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So if any of you

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actually say some of these

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issues in your practice, I

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commend that to you, their

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course, many other relevant Publications.

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That might be the most

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recent, which I think takes

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advantage of a number of



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the earlier ones. Also, to

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address, these kinds of difficult

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topics were fortunate to have

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a highly qualified panel to

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speak on some of the

00:07:47

related issues before you today

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in the order, in which

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they will make their initial

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presentations of 5. No, more

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than 5 to 7 minutes

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each or will begin with

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John trimmer. Who is a

00:08:02

partner at Paul Hastings with



00:08:05  
an extensive cross-border practice? I

00:08:08  
will not read to you

00:08:10  
Sean's bio or that of

00:08:12  
the other speakers because it

00:08:14  
would take too much time

00:08:14  
among other things. John is

00:08:18  
a senior adviser to the

00:08:20  
nonprofit Group business for social

00:08:23  
responsibility. He's the former deputy

00:08:26  
general counsel at Barrick Gold.

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World's largest, I believe gold

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company which faced a number

00:08:34  
of conflict situations while he



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was there. We will then

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go to one of our

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hosts or hostesses Virginia Newman

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of Miller and is a

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Chevrolet or chevallier. She'll correct

00:08:47

me when she wakes before.

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If I got it wrong

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she will as she practices

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business and human rights matters

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of complex a civil litigation.

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She also happens to be

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fluent in Mandarin Chinese and

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the practice for a while



00:09:04  
in Hong Kong and will

00:09:05  
speak a bit about the

00:09:07  
situation in The Leaguer region

00:09:10  
to Shin Shin, John region

00:09:12  
of China, where the speakers

00:09:13  
are affected by Chinese practices,

00:09:16  
will then hear from Tatiana.

00:09:19  
So I not see who

00:09:21  
was at Wiley rain in

00:09:23  
d.c., she was listed last

00:09:26  
year as one to watch

00:09:28  
among the best lawyers of

00:09:30  
America in the field of



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commercial litigation. So be sure

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to watch her but more

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important than that, in my

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opinion. She was in 2012

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is summer intern in the

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Chicago, nonprofit office of Business,

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and Professional people for the

00:09:44

public interest, where I was

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General Counsel until 1990. So

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she comes highly qualified and

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Forest. And of course, not

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last at all, is one

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of the co-founders and Main



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organizers of Washington arbitration week.

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And that's Jose, Antonio Rivas

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strategy Center. And he will

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take some of these issues

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of Warren, peace and connect

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them up with issues International

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arbitration. So with that John,

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you have the floor and

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we look forward to your

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remarks that we appreciate being

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here and being able to

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talk about what is a

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obviously very difficult complex coffee.



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In addition to call Hastings

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and indeed, former deputy general

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counsel and chief compliance threadbare.

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I've also taught a war

00:10:45

crime, international law and human

00:10:48

rights for about 20 years

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at Georgetown Law Center. And,

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and I'm going to focus

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on, on really, what is

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as Doug TWP. One of

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the most complex issues right

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now in the business and

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human rights base, that is



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is facing companies that is

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operating in a conflict affected

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in high-risk area. And in

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this includes areas that are

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in active conflict. In areas

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that where there is a

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potential conflict, we're looking at

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a fragile fragility or institutions

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maybe last weekend and where

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violence may be on the

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horizon. And it certainly been

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brought into the four by

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the corporate Exodus from Russia



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as well as from being

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more last year from Mozambique

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and in the arbitrator. Is

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it is leading to a

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actually a good deal of

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of dispute work as a

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release of political Risk insurance.

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So I can connect this

00:11:42

back to the primary. A

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topic of of the washing

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arbitration week. I do want

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to make the point that

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I guess by way of



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beginning that this isn't really

00:11:51  
a new issue in about

00:11:52  
10 years ago in the

00:11:53  
bottom, three principles on security

00:11:54  
and human rights, which is

00:11:55  
a multi-stakeholder. Biggest oil. Gas

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mining company's logo is leading

00:12:01  
governments and ngos, you know,

00:12:03  
there was a working group

00:12:03  
is we all kind of

00:12:04  
debated whether to go back

00:12:07  
into Myanmar? As it was

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briefly the period of respite,



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where they were opening up

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their borders to foreign investment

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on exploration, for extractive companies

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in this debate, again, going

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on a decade ago, even

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before then, we had. Frank's

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conflict nipple, due diligence disclosure

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requirements section 1502 it to

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the Dozen years ago. And

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so, these are not new

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issues whether to stay. Whether

00:12:29

to go, whether to invest,

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how to think about a



00:12:32  
proceeding in conflict-affected, I am

00:12:35  
in high-risk areas, but it

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is Doug said, you know,

00:12:38  
it is to some extent,

00:12:39  
becoming much more of a

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binary choice and I want

00:12:42  
to talk a little bit

00:12:42  
about that. Binary choice right

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now and elaborated on what

00:12:47  
doug set up an end,

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and we see it with

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several high-profile lawsuit of criminal

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investigations of corporate exits, and



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in some respects, it's really

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a no-win. If you choose

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to stay, if you're operating

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a conflict affected area Garden

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area where conflict breaks out,

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you choose to say you

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can you can face the

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massive legal in the criminal

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liabilities, that that Doug reference

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in just to pick one

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is LaFarge and the story

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broke about five years ago.

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So during the Syrian Civil



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War LaFarge, which is one

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of the major global companies

00:13:23

was paying I saw and

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other armed groups to allow

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its cement factory, at to

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continue to operate through of

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the Civil War, essentially antennas

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as well as allow their

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people. Extortion payments to keep

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their operations going. And and

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their people say that is

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Doug mentioned, you know, in

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staying and keeping their people



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safe and keeping operations going

00:13:45  
to end up settling a

00:13:47  
terrorist financing case in the

00:13:50  
u.s. for 777 million dollars

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and they're still under investigation

00:13:53  
in France for crimes against

00:13:56  
humanity and, and war crimes.

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And it's not the only

00:13:59  
example group. Castell in France

00:14:01  
is also under criminal investigation

00:14:02  
for allegedly, making a similar

00:14:05  
kinds of payments in, in

00:14:06  
the Central African Republic carit.



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That's it, it's people safe.

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And there is recent guidance

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as well, but I think

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it's not since the undp

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from the icrc and from,

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and from decaf, which is

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to Geneva center. For the

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basically says, number one companies

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that think they can stay

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and be neutral and stay

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out of the conflict, not

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impacted the, underlying dynamics that

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are leading the conflict. You



00:14:35  
will never be neutral in

00:14:37  
terms of avoiding impact of

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conflict Dynamic and you will

00:14:42  
never be perceived as neutral.

00:14:43  
And so the idea again,

00:14:45  
with with, with the, this

00:14:47  
is a binary Choice. It

00:14:49  
is, the guidance is really

00:14:50  
suggesting that indeed, that is

00:14:53  
the case, but leaving is

00:14:54  
also not, that easy is

00:14:55  
Doug as Doug, alluded to.

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And this year, in particular,



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we had a range of

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companies, you know, think about

00:15:02

and effectively, leave me and

00:15:04

more whether it's cheer in

00:15:05

the beverage company, which is

00:15:06

a simple situations. The the

00:15:08

one Doug describe joint venture

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with the military, it's sold

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its shares to go to

00:15:12

the military and got out.

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It was roundly, criticized for

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helping to finance the war

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effort by selling its shares,



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that to the military Primark

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clothing, company Puma the at,

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the global Energy company. So

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we had a lot of

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a corporate exits at Eleanor

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the communications company left last

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year. We had a lot

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of exits high-profile exit out

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of Myanmar but that comes

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with with with wrist Forget

00:15:35

about your capital investment but

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what can happen to your

00:15:37

employees going to be on



00:15:38

the economic issues are your

00:15:40

employees going to be vulnerable

00:15:41

or they going to be

00:15:42

in Jeopardy because they were

00:15:43

associated with you with a

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multinational company. What's going to

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happen to the community programs

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that you were ultimately supporting

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what can happen to your

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equipment is that can ultimately

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be used to help Advance

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conflict and create negative human

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rights impacts and end. So



00:16:02

end when you sell it

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as is, and it up

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selling their Communications company to

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to another company. Allegedly didn't

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respect privacy, right? So, they

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were effectively getting out to

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avoid negative human rights in

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packs and selling their company

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allegedly to a company that,

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that would only further a

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different set of negative impact,

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leaving isn't so easy either.

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But you know, we do



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have dug as Doug said,

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I never won the UN

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guiding principles. On business and

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human rights principles. 12 just

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talk about companies respecting, the

00:16:38

standards of international humanitarian, law

00:16:40

and situations of armed conflict

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and elsewhere notes, the relevant,

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the relevance of a height

00:16:48

and height and contacts out

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of context and in conflict-affected

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areas. So it's contemplated within

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the UN guiding principles on



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business and human rights is

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a lot of good guidance

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from the undp and icrc

00:17:01

and human rights working group

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and that you need a

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center and Emily talk about

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which is really what a

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lot of this Focus has

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been on this Guidance, the

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key hear it from a

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human rights lands is you're

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not only looking at whether

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you're causing your contributing are



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directly linked to negative. A

00:17:19

human rights in fact, which

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is typically how human rights

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due diligence proceed but how

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you are affecting the overall

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operating contacts clearly a contacts

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and not just cause contribute

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and directly link. And it

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talks about focusing on phone.

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Populations and how they may

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be impacted by being associated

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with you. So, for instance,

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religious beliefs of your employees,



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may not create a silly

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address, but they may be

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a cellular rest. If it's

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in the mid, if they

00:17:46

have certain religious beliefs, the

00:17:48

parts of certain groups in

00:17:49

the midst of a conflict,

00:17:50

that's fueled by religious divisions.

00:17:53

They talk about knowing how

00:17:55

your equipment ultimately, might be

00:17:57

used to further negative human

00:18:00

rights impacts. If you're not

00:18:01

there to watch it that



00:18:03  
they talked about avoiding further

00:18:05  
contributing complex by selling shares

00:18:07  
parties to ultimately can use

00:18:09  
them to help fund the

00:18:11  
war effort and and and

00:18:12  
really the bottom line, then

00:18:14  
is he have to conduct

00:18:15  
Titans. Human rights. Due diligence

00:18:17  
that also considers International humanitarian

00:18:20  
law which is different than

00:18:22  
human rights to pull back.

00:18:23  
When you take the full

00:18:24  
context, Titan human rights due



00:18:27

diligence was a little bit

00:18:28

different from basic human rights.

00:18:29

Due diligence you later in

00:18:30

international humanitarian law effectively a

00:18:33

no-win And this is why

00:18:35

it is about as complex

00:18:37

as a guest in terms

00:18:39

of providing advice of being

00:18:40

able as as an attorney

00:18:42

in house or outside to

00:18:44

be able to provide meaningful

00:18:45

effective and an inn in

00:18:48

the kind of advice that



00:18:49  
ultimately assists in avoiding negative,

00:18:52  
human rights impact and the

00:18:54  
wind up. I'll say that

00:18:55  
this isn't a problem that

00:18:56  
is going away. There are

00:18:58  
110 active conflicts right now,

00:19:00  
involving 55 different countries, attention

00:19:05  
on businesses, operating in those

00:19:06  
environments, is only increasing. We

00:19:09  
do need more education and

00:19:12  
more guidance for lawyers internally

00:19:15  
or externally, who are counseling

00:19:17  
companies, who have to face



00:19:19

this no-win situation is binary

00:19:21

no-win situation, whether that's through

00:19:24

the IV a or through

00:19:25

the human rights, the business

00:19:27

and human rights Lawyers Association

00:19:28

that Doug mentioned which was

00:19:30

just formed and announced this

00:19:32

week that it really is

00:19:33

critical to her. Create those

00:19:35

tools that do allow the

00:19:37

profession to council companies counsel

00:19:40

their clients through these kinds

00:19:42

of incredibly difficult indexing situation.



00:19:45

There. Thank you, John. I

00:19:49

couldn't agree with you more

00:19:50

about the complexity and although

00:19:53

I counted this new publication

00:19:56

by undp and the UN

00:19:58

working group and others, it

00:20:01

remains perplexing. And as difficult,

00:20:04

as can be to cancel

00:20:07

a company in some of

00:20:08

these situations, Let let me

00:20:12

ask you because you you've

00:20:14

recognized the complexity how far

00:20:18

do you think a lawyer



00:20:20

should push a company? One

00:20:22

way or the other? When

00:20:24

it's facing a multifaceted multi-factor,

00:20:28

Marley legally the commercially very

00:20:32

difficult choice about whether to

00:20:35

stay or to go in

00:20:36

a situation like me on

00:20:38

Mario we're going pretentiously Mike,

00:20:41

we more equipment or lure,

00:20:43

more financing to the military

00:20:45

regime. Yeah, I mean I

00:20:48

think it's a lawyer if

00:20:49

you know it is one



00:20:50  
of those situations where you

00:20:51  
don't need to push that

00:20:54  
hard because the situation is

00:20:56  
that the issues are so

00:20:58  
Stark and the potential implications

00:21:00  
for negative human rights impact.

00:21:02  
Loss of life contribution to

00:21:04  
conflict is often so apparent

00:21:07  
that, that, that really the

00:21:10  
best thing you can do

00:21:11  
is identify all of the

00:21:14  
various pros and cons and

00:21:16  
options and how to go



00:21:17

about conducting heightened due diligence

00:21:19

in a conflict affected setting

00:21:21

that integrates International humanitarian law,

00:21:24

what that process looks like

00:21:26

from an outcome standpoint with

00:21:28

the least worst options are

00:21:30

and help creatively think through

00:21:32

how to decide between them

00:21:35

always with an eye towards

00:21:37

minimizing, the human rights images

00:21:41

of your decision. I think

00:21:43

the complexity really comes from

00:21:45

being able to park, do



00:21:46  
all of that, and lay

00:21:47  
it out in a way

00:21:48  
that enables effective decision-making. But,

00:21:52  
you know, I have found

00:21:53  
that people take that situation

00:21:56  
pretty darn seriously. And so

00:21:58  
as a lawyer, there definitely

00:21:59  
situations in the business and

00:22:01  
human rights space. Where were

00:22:03  
you do need to put

00:22:04  
things in Stark. Terms of

00:22:05  
people understand the implication but

00:22:08  
operating conflict-affected areas typically has



00:22:10  
people's at full attention. Tatiana,

00:22:15  
I thought I saw you

00:22:16  
nodding with possible agreement, to

00:22:19  
what John said, can you

00:22:21  
find an iota of disagreement

00:22:24  
with Stage remarks? You're a

00:22:27  
trained lawyer? So, if there's

00:22:29  
any leaking, what, John just

00:22:30  
said you can find it

00:22:33  
I told you I will

00:22:36  
do my best to play

00:22:38  
the contrarian, although I have

00:22:40  
to confess that I agree



00:22:41  
with a lot of what

00:22:43  
John said, and I do

00:22:47  
think it's, I mean, I'm

00:22:48  
sure they're not going to

00:22:49  
disagree that it's incredibly important

00:22:50  
to undertake heightened due diligence.

00:22:52  
If you find yourself or

00:22:53  
a client find themselves, operating

00:22:55  
in a van. think that

00:23:05  
said, I'm starting to be

00:23:11  
a contrary. I had covered

00:23:21  
the bases so well but

00:23:22  
it's it's hard to to



00:23:24  
find a way to get

00:23:25  
through it but Virginia I

00:23:27  
hear is a very good

00:23:28  
lawyer at and is it

00:23:31  
Miller and shovel yay, or

00:23:32  
a Virginia and can you

00:23:35  
find, can you find any

00:23:43  
holes to Perkins? Honestly, I

00:23:47  
I can't think of over

00:23:48  
holes to poke it definitely

00:23:51  
piqued my interest from the

00:23:54  
perspective of thinking about in

00:23:57  
advance of conflict, what to



00:23:58

do in situations, where you

00:23:59

might be in a situation

00:24:01

that could lead to conflict.

00:24:03

Or, or arguably already is

00:24:05

gross human rights violations. Or

00:24:08

something of the sort where

00:24:09

I can fly. And I

00:24:12

guess my question is, when

00:24:15

you're talking about conflict-affected areas,

00:24:17

having the attention of the

00:24:20

most important people at the

00:24:21

company, Do you think that

00:24:26

those companies and the people



00:24:28

that are in those scenarios

00:24:29

are taking the time to

00:24:30

actually, methodically go about knocking

00:24:32

out the risks and weighing

00:24:34

the benefits and cost of

00:24:36

pulling out or are they

00:24:37

making more of a decision?

00:24:39

So I think, when you're

00:24:46

already there, you know, off

00:24:48

in the focus on the

00:24:49

business side is, how much

00:24:50

money are we going to

00:24:52

lose? But but there's typically.



00:24:54

And then, you know, you're

00:24:55

you're effectively. Ditching, your operations

00:24:57

are giving up. Your Shares

00:24:59

are giving up all of

00:25:00

your investment and typically, there

00:25:03

is somebody is, does not

00:25:04

wait a second. There's also

00:25:05

a, an impact on people

00:25:08

and making that decision and

00:25:09

so that they may see

00:25:10

it simplistically. But, but they

00:25:12

will, at least get the

00:25:13

rough Contour of the problem.



00:25:15

And then, as a lawyer,

00:25:16

you're going to help spell

00:25:18

those out. You're going to

00:25:19

tease those out in more

00:25:22

detail. So so they understand,

00:25:24

you know, the full LOL.

00:25:25

All the elements to go

00:25:26

into into into that Paradigm

00:25:28

but typically you know, you

00:25:30

will see people understand what

00:25:33

the, what the relevant issues

00:25:34

are fairly early quickly, whether

00:25:36

to invest weather to go



00:25:38

into a, fragile territory where

00:25:41

conflict is the possibility, that

00:25:43

is a much more current

00:25:46

situation. And, and, and they

00:25:48

are, you definitely see a

00:25:50

lot more Divergent views. And

00:25:52

and frankly is Doug, mentioned

00:25:54

the London, energy case and

00:25:55

Sweden. That's exactly what happened

00:25:57

there. So there was a

00:25:58

beef, a brief break in

00:26:00

the action and fighting in

00:26:01

Sudan, 20 years ago, and



00:26:05

they went in during that

00:26:06

very brief. And there's no

00:26:08

evidence or anything like that.

00:26:10

And immediately, when they get

00:26:12

their fighting breaks out, again,

00:26:14

they build Bridges at the

00:26:15

government uses that, that that

00:26:17

end up contributing to the

00:26:19

conflict in 20 years later.

00:26:20

Now, they're under investigation for

00:26:22

a war crimes in connection

00:26:25

with With going in and

00:26:26

they didn't do that at



00:26:27  
that height and due diligence.

00:26:28  
And I don't know what

00:26:30  
that twenty years ago. A

00:26:31  
similar case was brought as

00:26:32  
a civil case today. It's

00:26:33  
a criminal case, which shows

00:26:34  
how this field has evolved.

00:26:36  
But I do think when

00:26:37  
you're going in ahead of

00:26:39  
time as it in making

00:26:40  
an investment during a period

00:26:42  
of fragility, but not active

00:26:44  
conflict. You know, that's one.



00:26:46

We're hiding due. Diligence is

00:26:47

super important. It can be

00:26:48

very difficult to do that.

00:26:50

Due diligence, given the fragility

00:26:51

and situation on the ground.

00:26:53

But I do think that

00:26:54

is one. Where is a

00:26:55

lawyer? You may need to

00:26:56

be a little more forceful

00:26:58

in advancing. What could happen

00:27:01

if the potentialities and how

00:27:02

this has happened for other

00:27:03

companies and what resulted. So



00:27:05

I can think that one

00:27:06

is a little trickier in

00:27:08

terms of client management when

00:27:09

it comes to that, We're

00:27:11

hearing the the voice of

00:27:12

experience here and we're having

00:27:14

trouble piercing the armor and

00:27:17

John's experience. But we have

00:27:19

someone from a war-torn country,

00:27:21

which fortunately has made important

00:27:24

step toward peace in the

00:27:26

person of Jose, Antonio Rivas,

00:27:28

who is based in Columbia?



00:27:30

I believe Jose Antonio or

00:27:33

you going to take the

00:27:33

same route as Tatiana and

00:27:35

Virginia and just deployed John

00:27:37

or a car can you

00:27:38

find the he's perhaps overlooked

00:27:40

even some small point? I

00:28:00

don't think that I would

00:28:01

disagree. We are in any

00:28:03

way with John. The only

00:28:04

thing that that I would

00:28:05

say as a way to

00:28:08

supplement is is are in



00:28:13  
countries that are being conflict

00:28:18  
or are going through conflict

00:28:20  
and, and by the way,

00:28:22  
I'm in d.c. Are you

00:28:25  
based in DC? Yes, I

00:28:28  
am basing, this? Yes, that

00:28:35  
is very proud of. So,

00:28:39  
you know, any of it,

00:28:40  
what what I was going

00:28:44  
to say is that in

00:28:45  
countries where you are transitioning,

00:28:48  
from a severe complex, situation

00:28:53  
of human rights in to



00:28:54

a more suited for internal

00:28:58

armed conflict, then the logic

00:29:00

at some stage changes from

00:29:02

from the logic, which I

00:29:05

am sure we're all aware

00:29:07

of protection and in respect

00:29:11

of human rights which is

00:29:12

one in one that should

00:29:15

be in the mindset of

00:29:16

state to a situation of

00:29:20

international humanitarian law and then

00:29:24

The question of what rules,

00:29:27

apply, not only four, or



00:29:29  
institutional, Armed Forces, but also,

00:29:31  
for those actors that are

00:29:34  
in the, in the midst

00:29:35  
of the war, I am

00:29:37  
not entirely sure that many

00:29:42  
of these companies. Of course,

00:29:43  
they may, they are a

00:29:46  
multinational companies. And, and to

00:29:49  
me, the big question is,

00:29:50  
is, and if you ask

00:29:51  
them, if they have in-house

00:29:53  
counsel and the house counsel

00:29:55  
might be there on site,



00:29:58

but they don't have John

00:30:00

there or Virginia or you

00:30:02

and therefore, some of the

00:30:05

calculations of local council is,

00:30:07

is how do we comply

00:30:08

with local law to continue

00:30:10

business? This business out of

00:30:14

financial economic equation. B investor

00:30:16

wants to continue business producing

00:30:18

the goods that he has

00:30:20

been producing or extracting the

00:30:22

the gold or oil or

00:30:24

Or, or whatever they're doing,



00:30:26

or providing the services that

00:30:28

they're providing. And the logic

00:30:30

is pretty much a, a

00:30:31

local law perspective. They may

00:30:33

have done the diligence but

00:30:36

when when things get more

00:30:38

complicated and perhaps some do

00:30:41

and perhaps with with with

00:30:42

the importance of the human

00:30:44

rights guidelines business and human

00:30:47

rights. Perhaps some do when

00:30:50

when, when things become more

00:30:51

complicated but my, my, my



00:30:55

perception and I have no,

00:30:58

no intelligence. I can't confirm

00:31:01

intelligence in some of the

00:31:02

things that have been happening

00:31:03

is that normally things go

00:31:07

business as usual, and the

00:31:10

carry-on and, and to the

00:31:12

list that that that John

00:31:15

has provided, I'd like to

00:31:17

also or that you provided

00:31:19

actually, sorry, and dog at

00:31:22

the beginning. There have been

00:31:26

also lately discussions in in



00:31:29

in Columbia, concerning human rights.

00:31:32

Violations are in the in

00:31:33

the coal extraction business also.

00:31:38

And and, and that to

00:31:41

me, leads to a big

00:31:43

question which is as it

00:31:46

should be only a matter

00:31:47

of locals are domestic law,

00:31:52

including human rights obligations through

00:31:57

local law, or shoot or

00:31:59

or wood, or should there

00:32:01

be also International economic treaties,

00:32:06

creating, obligations related to Human



00:32:09

Rights. I'll leave it there

00:32:10

because that's the subject of

00:32:11

of additional words that I

00:32:13

will be sharing with a

00:32:14

with the audience you set

00:32:18

up for your lighter. For

00:32:24

the answer. Their let's turn

00:32:26

to a different geographical context

00:32:29

as John mentioned or someone

00:32:32

mentioned. It's not just a

00:32:34

matter of being in a

00:32:36

conflict but I think Virginia

00:32:37

mention it's a matter of



00:32:38

looking at the precursors of

00:32:40

conflict and of course right

00:32:43

now, I'm not sure which

00:32:45

way to characterize the situation

00:32:47

in, send John it has

00:32:50

been declared by United Nations.

00:32:52

Human rights office investigation to

00:32:57

be a situation of I

00:32:59

believe they said crimes against

00:33:00

humanity. And on the other

00:33:02

hand it's not broken down

00:33:04

into what I think would

00:33:05

meet the minimum threshold for



00:33:06

a Geneva Convention armed conflict

00:33:09

yet. And I've been Virginia,

00:33:11

what, what kinds of issues

00:33:13

would you be hearing from

00:33:15

your company clients and what

00:33:17

kind of advice, would you

00:33:18

give them in regard to

00:33:20

syndrome? Thanks so much, dog

00:33:23

and Virginia Newman. I'm council

00:33:27

at Miller and Chevalier and

00:33:28

I work in our this

00:33:29

isn't human rights Practice Group.

00:33:31

Our leader, The Practice Group



00:33:33  
make like bridges over there.

00:33:34  
So we work on, on

00:33:37  
the issues related to sinkiang

00:33:39  
pretty frequently and I think

00:33:42  
that we like many of

00:33:44  
our clients try to stay

00:33:46  
neutral which, which, I know

00:33:49  
is it's not really practical

00:33:52  
or feasible when they're there

00:33:53  
actually, is conflict in the

00:33:54  
situation. But I do want

00:33:56  
to know, also that big

00:33:59  
gold staying in. Partial can



00:34:02

be can be a feasible

00:34:04

one. So we talk about

00:34:07

human rights due diligence in

00:34:09

the context of the situation

00:34:11

and she and John and

00:34:12

maybe for folks that aren't

00:34:13

aware of what's happening. There

00:34:14

there's alleged state-sponsored forced labor

00:34:19

against the minority group called

00:34:20

The uyghurs and xinzheng as

00:34:23

a region in a province

00:34:24

in China's, western region, this

00:34:29

situation is really tricky because



00:34:31

kind of alluding to what

00:34:32

John was discussing earlier that

00:34:34

are and also Jose Antonio

00:34:36

there are competing laws between

00:34:39

the US and China. So

00:34:41

where the US now has

00:34:42

regulated to say that you

00:34:45

cannot import any products into

00:34:47

the United States that are

00:34:48

made in whole or in

00:34:50

part in this region in

00:34:51

China, which produces a huge

00:34:55

proportion of the world solar



00:34:56

panels, a huge proportion of

00:34:58

our cotton and apparel as

00:35:01

well as electronics and there's

00:35:03

some ties to the Auto

00:35:04

industry. U.s. says, because of

00:35:07

the human rights violations. Are

00:35:08

alleged human rights violations over

00:35:10

there. You cannot import any

00:35:12

products from that region. Unless

00:35:14

you've done extensive due diligence

00:35:16

to prove there's no poor

00:35:17

sleeper. China has a very

00:35:20

different viewpoint on the situation



00:35:22

and she jumped. So not

00:35:24

only are Us and other

00:35:25

multinational companies trying to figure

00:35:27

out how do we comply

00:35:29

with us law and ensure

00:35:31

that we're conducting adequate due

00:35:32

diligence to make sure there

00:35:33

are no human rights violations

00:35:35

in our supply chain, they're

00:35:37

dealing with Chinese laws that

00:35:39

are actually a man dating

00:35:41

against enforcing the u.s. laws

00:35:43

within the trade. So whereas,



00:35:48

you know, you have this

00:35:49

potential situation where you could

00:35:51

be in a pre-con situation

00:35:53

between us and other Western

00:35:55

forces in China, either in

00:35:57

relation to ongoing, I'll let

00:36:00

streaming rights violations or some

00:36:02

of the other situations that

00:36:04

are happening in China, with

00:36:05

respect to Hong Kong and

00:36:06

Taiwan. And then there's also

00:36:07

the protests, which I think

00:36:10

everybody saw over the weekend



00:36:12

and potentially on going hard

00:36:14

to say, We're we're in

00:36:18

a scenario where height and

00:36:20

due diligence has certainly warranted

00:36:22

in a specific manner, related

00:36:23

to the forced Labour issues

00:36:24

and she John. But with

00:36:26

our clients, what we're seeing

00:36:28

a lot now is kind

00:36:29

of an expansion of that,

00:36:31

targeted height and due diligence.

00:36:33

So, heightened due diligence, from

00:36:34

the perspective of just forced



00:36:36

Labour to meet us and

00:36:37

other Western regulatory standards is

00:36:40

also an opportunity to conduct

00:36:41

broad-ranging human rights due diligence.

00:36:44

So it's more in keeping

00:36:46

with the UN GPS from

00:36:49

the perspective of understanding, all

00:36:50

of your potential and actual

00:36:53

adverse impact and risks. And

00:36:57

I think that as companies

00:37:00

are that are currently operating,

00:37:01

in China, are sourcing from

00:37:03

China, are figuring out how



00:37:05

to approach the strata risk

00:37:07

profile of potential conflict in

00:37:09

the region. And what they

00:37:10

would do, if the situation

00:37:12

than xinzheng got worse or

00:37:14

if there were actual conflict

00:37:16

It makes sense to conduct

00:37:18

that height and due diligence

00:37:19

from the broader range, in

00:37:21

perspective of what risks and

00:37:24

impacts are, my operations in

00:37:26

relationships connected to. In that

00:37:29

scenario than you, you have



00:37:31

the information to at least

00:37:32

be able to understand what

00:37:34

would I do if the

00:37:36

situation got worse and kind

00:37:39

of building on what John

00:37:40

was discussing, you know, it's

00:37:43

not necessarily best to pull,

00:37:45

cut the cut, the plug,

00:37:47

and pull out of either

00:37:49

the chignon region or out

00:37:50

of China entirely, just because

00:37:52

China and the US are

00:37:54

opposed to each other on



00:37:55

human rights issues, or or

00:37:57

if there is actual conflict,

00:37:59

that makes sense, to consider

00:38:00

what happens. If I do

00:38:02

pull out that region. 2070

00:38:05

course become unemployed to labor

00:38:07

practices, get worse in a

00:38:09

particular Factory because I'm no

00:38:10

longer going to Source from

00:38:11

that factory. Or if I

00:38:15

pull out in the event,

00:38:16

Like, does that does that

00:38:17

help or harm the local



00:38:18  
stakeholders and then also building

00:38:23  
on that too? One other

00:38:26  
question, Virginia, as I mentioned,

00:38:31  
the UN recently came out

00:38:33  
with a very extensive report

00:38:36  
on, I believe crimes against

00:38:37  
humanity allegedly, but according to

00:38:40  
the UN investigation being committed

00:38:42  
in in send John, in

00:38:46  
many conflict countries. There is

00:38:48  
likely to be irrelevant un

00:38:50  
report either because there's a

00:38:51  
special rapporteur of the UN



00:38:54  
Human Rights Council. Who's been

00:38:55  
assigned to a troubled countries

00:38:57  
such as me on March

00:38:58  
or because one or more

00:39:00  
of the systematic reporters of

00:39:03  
the UN Human Rights Council,

00:39:04  
whether it's freedom of expression

00:39:06  
or where the business and

00:39:09  
Human Rights group, or the

00:39:12  
arbitrary detentions group, or the

00:39:14  
forced disappearances group is often

00:39:17  
going to be at the

00:39:18  
UN report. A varying quality



00:39:21

in varying lengths but some

00:39:23

of them are pretty good.

00:39:25

How do you see as

00:39:27

a as a global law

00:39:29

firm based in the US?

00:39:31

How do you say advising

00:39:34

your clients when those kinds

00:39:36

of reports have come out

00:39:37

and down the road? Somebody

00:39:39

is going to say, but

00:39:40

you continue to do business

00:39:42

there knowing about that report

00:39:44

and we're going to, we're



00:39:46

going to sue your client

00:39:47

for drug for consequential damages.

00:39:51

I think that that's that's

00:39:53

a great question and you

00:39:54

kind of stole the theme

00:39:56

out of my mouth from

00:39:57

where I was going to

00:39:57

go. I think no no

00:39:59

no that's the perfect confronting

00:40:02

these issues. I think that

00:40:04

one of the most difficult

00:40:06

aspects of dealing with China

00:40:08

in particular and and xinzheng



00:40:10

is the lack of reliable

00:40:13

information and it went in

00:40:16

the face of the lack

00:40:18

of reliable information and just

00:40:19

getting certain information from for

00:40:22

example, you and reports or

00:40:24

NGO reports which we know

00:40:26

to be relatively reliable and

00:40:29

considered to be probably the

00:40:30

most trustworthy sources of information

00:40:32

when you don't have visibility

00:40:34

into what's going on the

00:40:36

ground. Because reporter, some and



00:40:38

Auditors are not permitted into

00:40:41

the region and there's also

00:40:42

just general lack of access

00:40:44

to certain sites in China

00:40:46

because of covid, lockdown. You

00:40:49

kind of have to take

00:40:51

that information into account when

00:40:53

conducting your due diligence and

00:40:54

consider it as a reliable

00:40:56

source. So when, when we're

00:40:59

facing, for example, when the

00:41:00

UN report came out, which

00:41:02

alleged serious, human rights violations



00:41:04

in sinkiang from the perspective

00:41:07

of us Regulators, that's obviously

00:41:09

relevant information and when we're

00:41:12

conducting, either targeted due diligence

00:41:15

with respect to sinkiang or

00:41:16

brought her human rights. Due

00:41:17

diligence for companies operating in

00:41:19

China, we absolutely treat. That

00:41:21

is something that factors into

00:41:23

the risk assessment and said

00:41:25

that, that's what we're doing,

00:41:26

either we document it and

00:41:28

it weighs in, with regard



00:41:29  
to, whether you should continue

00:41:30  
to work with the given

00:41:31  
supplier, or try to remediate

00:41:34  
the issue, by either working

00:41:36  
with suppliers to repair situations,

00:41:39  
or to change supply chain.

00:41:41  
That, that's not if that's

00:41:42  
not possible. There's not there's

00:41:44  
a burden of proof issue

00:41:46  
here is, I understand it

00:41:47  
under the new US, law

00:41:49  
relating to forced Labour and

00:41:52  
send John. There's a rebuttable



00:41:55  
presumption that anything coming from

00:41:57  
sinjar was produced with forced

00:41:59  
labor. Maybe I've overstated that.

00:42:02  
So you'd be able to

00:42:04  
have to be looking at

00:42:05  
you and reports and other

00:42:06  
information not just in terms

00:42:09  
of what can you prove

00:42:10  
or know what, in terms

00:42:12  
of, how can you read?

00:42:15  
What or do you even

00:42:16  
want to try to rebut

00:42:17  
the presumption that there was



00:42:19  
forced labor from Saint John?

00:42:21  
So so how do you

00:42:23  
see is a big issue

00:42:24  
under this new US statute

00:42:26  
of having your client or

00:42:29  
you on the client's behalf,

00:42:30  
try to Rob us of

00:42:32  
our presumption? That's got some

00:42:33  
pretty good evidentiary support. For

00:42:38  
a lawyer who practices in

00:42:40  
the UFL p. A space

00:42:42  
that we are forced labor,

00:42:43  
prevention act. You didn't overstay



00:42:46

that you probably under seated

00:42:47

it. The rebuttable presumption is

00:42:49

absolutely considered. Basically, from us

00:42:53

Regulators perspective to be watertight.

00:42:54

So if something's coming from

00:42:56

ching chong, it's expected to

00:42:58

be made with forced Labour

00:42:59

and we have not seen

00:43:00

CVP Customs and Border Protection

00:43:02

which enforces the law in

00:43:03

the US has said that,

00:43:05

nobody has tried to overcome

00:43:07

that presumption. So essentially all



00:43:10

us companies right now are

00:43:11

operating as if good coming

00:43:13

from, xinzheng are made with

00:43:15

forced labor and can't be

00:43:16

imported to the US. And

00:43:19

from a regulatory perspective, we

00:43:21

advise companies that sourcing from

00:43:23

the x u a r

00:43:23

will be incredibly difficult to

00:43:26

prove to be admissible to

00:43:28

the US but that. I

00:43:30

think raises an important question

00:43:32

as to whether sanctions and



00:43:34

the UFL PA. Advancing the

00:43:37

overall interest of Human Rights,

00:43:39

right? Because now we're seeing

00:43:41

a mass Exodus from the

00:43:43

region in terms of Supply

00:43:44

chains. And it's not necessarily

00:43:46

changing the Chinese government's stance

00:43:49

on anything and it it

00:43:52

probably is causing some economic

00:43:55

harm in change on even

00:43:56

though the Chinese government wouldn't

00:43:57

would never release that information.

00:43:59

I'm so I just think



00:44:01

that that's kind of an

00:44:02

interesting question from a philosophical

00:44:04

perspective, which does have bearing

00:44:07

on our practice, right? We

00:44:08

talked about your point about

00:44:10

reliable information and how to

00:44:12

know what, rent information to

00:44:14

rely on and what? Wait

00:44:15

to play place on you.

00:44:17

And reports, I think of

00:44:18

us as practitioners of having

00:44:20

the opportunity to gather reliable

00:44:23

information when were conducting risk



00:44:24

assessments, when were talking to

00:44:26

our Chinese counterpart and conducting

00:44:29

due diligence, and learning about

00:44:30

the supply chain, their sensitivities

00:44:34

here in terms of how

00:44:35

we Talk about human rights

00:44:37

and how we collect this

00:44:38

data and the Judgment. We

00:44:40

apply to our Chinese counterparts

00:44:42

because of their common practices

00:44:44

and I think that building

00:44:46

that capacity building those relationships

00:44:49

and gathering information from them



00:44:51

with respect is is probably

00:44:54

the best way to to

00:44:55

try to keep the relationship

00:44:57

as healthy as possible. And

00:44:59

and that's personally how I

00:45:00

how I try to conduct

00:45:02

our business. What do you

00:45:05

what do you do when

00:45:06

when solid information is simply

00:45:08

not available? I've heard stories

00:45:11

that the companies can't send

00:45:12

their inspectors to send John

00:45:15

because either they can't get



00:45:17  
in, or they can't see

00:45:18  
anything where there, they know

00:45:20  
that they're being Sean misinformation,

00:45:23  
basically. So when you're in,

00:45:26  
when you're in an information

00:45:27  
vacuum, How can you conduct

00:45:31  
heightened or any other kind

00:45:33  
of Human Rights due diligence

00:45:35  
and in the absence of

00:45:37  
good information? Which way should

00:45:40  
the domino fall. So I

00:45:46  
I think that the first

00:45:48  
response I would say is



00:45:50

Happy tried every way of

00:45:52

trying to get information. There's

00:45:58

So II, my first talk

00:46:00

and I think our team's

00:46:01

first task is to say,

00:46:02

how else could we try

00:46:03

to go about getting some

00:46:04

information? And then, you know,

00:46:06

we have a laundry list

00:46:07

of ways to conduct due

00:46:09

diligence. It could be to

00:46:10

talk to diligent through various

00:46:13

different providers gathering information and



00:46:14

Chinese media Us Media, talking

00:46:17

to counterparts on the ground

00:46:19

or company employees on the

00:46:20

ground. And then of course

00:46:22

there are also some, you

00:46:24

know, in-depth kind of More

00:46:27

gumshoe, detective types of due

00:46:29

diligence. So, basically like cracking

00:46:32

a nut, like is this

00:46:33

part week is that part

00:46:34

week? How can I go

00:46:35

about getting this information? If

00:46:37

there really is not accessed



00:46:38  
information? Then that is in

00:46:41  
and of itself an indicator

00:46:42  
which should inform your risk

00:46:43  
assessment. If you cannot get

00:46:45  
any information from your suppliers

00:46:47  
or online, then you have

00:46:50  
to kind of act accordingly.

00:46:51  
Based on that black box,

00:46:52  
you need to be able

00:46:53  
to confirm that they're there

00:46:55  
is no exposure to the

00:46:57  
alleged horse labor violations. And

00:46:59  
if you can't, I'm that



00:47:00

should also inform the decisions

00:47:02

you make. I want me

00:47:03

to pull a surprise question

00:47:04

on Tatiana, who didn't think

00:47:06

she was going to be

00:47:06

talking about send John today,

00:47:08

Virginia, you've indicated that your

00:47:12

approach is to try to

00:47:14

be neutral. Even in situations

00:47:17

where neutrality is challenging to

00:47:19

say the least Tatiana. Today,

00:47:22

I had to leave the

00:47:24

last panel at the UN



00:47:25

world for him. A little

00:47:26

early to go set up

00:47:28

the reception for the announcement

00:47:30

of the of the business

00:47:32

and human rights Lawyers Association.

00:47:33

But I did hear a

00:47:35

presentation on the final panel

00:47:37

by somebody from the state

00:47:39

department who explained the new

00:47:41

while you were statue in

00:47:43

a setting up the reportable

00:47:44

presumption. That anything from sinjon

00:47:46

is, is Tainted by forced



00:47:49

labor and you disturbed Virginia

00:47:51

indicate that apparently, no. American

00:47:53

company has tried to challenge

00:47:55

that. I'm told that after

00:47:58

I left, I wish I'd

00:47:59

been able to stay that

00:48:00

the Chinese who were present

00:48:03

in the room. Challenge the

00:48:05

state department person and basically

00:48:08

and we've heard this for

00:48:10

years but we're getting it

00:48:11

again well in your country.

00:48:13

You have terrible violations of



00:48:15

human rights, you have been

00:48:17

no systematic race discrimination and

00:48:20

and free use of guns

00:48:25

that go around massacring people

00:48:26

and probably I don't know

00:48:28

what other examples they gave

00:48:30

of us human rights violations

00:48:33

and of course we like

00:48:33

any other country have lots

00:48:35

of human rights violation. So

00:48:37

how much of a point

00:48:39

do you think China has

00:48:40

and say, why are you



00:48:41

picking on us just because

00:48:43

of sin John when you're

00:48:44

you want to clean up

00:48:45

your own house first, Well,

00:48:50

fortunately, I had the earlier

00:48:54

today, saw the response that

00:48:56

a captain of u.s. soccer

00:48:58

games. When asked a similar

00:48:59

question by the recording from

00:49:02

Iran and I might be

00:49:05

a little bit from what

00:49:06

he said, which is it

00:49:07

is certainly true that every



00:49:09

country is constantly striving to

00:49:12

improve or should be constantly

00:49:14

striving to improve in that.

00:49:16

No country is perfectly respecting

00:49:18

all of its citizens, right?

00:49:20

All of the time. That's

00:49:22

what I do think there

00:49:23

is a real difference in

00:49:26

a country that is transparent

00:49:29

about, its problems are and

00:49:31

sincere in its efforts to

00:49:33

have an open dialogue about

00:49:35

overcoming those problem. And we



00:49:40

are constantly I think in

00:49:41

the United States top like

00:49:45

a t-shirt of them so

00:49:47

fast, but I do think

00:49:48

I do think you are.

00:49:49

Hampton Inn, United States, trying

00:49:51

to address the systemic Injustice

00:49:53

has that that we may

00:49:55

see in our society. And

00:49:58

I think, there is also

00:50:03

a difference between a country

00:50:05

that says, something's up in

00:50:08

a country, that's not even



00:50:09  
allowing investigators on the ground

00:50:12  
to see what is going

00:50:12  
on. And to see and

00:50:15  
to see what is happening

00:50:16  
behind it behind the scenes.

00:50:18  
Transparency setting that issue aside

00:50:27  
is what they are allegedly

00:50:30  
doing in Soon. Jung more

00:50:33  
serious than what we allegedly

00:50:35  
do to learn or people

00:50:37  
on our people of different

00:50:40  
racial complexion and immigrants. And

00:50:44  
and is that an important



00:50:46

question? I think it is

00:50:50

an important question, I do.

00:50:52

Because I think that these

00:50:55

are all the types of

00:50:56

questions that if you're doing

00:50:57

any sort of Human Rights,

00:50:59

due diligence whether in a

00:51:01

contest event that I can

00:51:02

do diligence in a conflict

00:51:03

or pre-conflict area or just

00:51:05

regular do diligence, you have

00:51:06

to be mindful of what,

00:51:10

what what the human rights



00:51:11  
in skate is this is

00:51:13  
what human rights. Various people

00:51:16  
are afforded in whether governments

00:51:18  
and societies are combined with

00:51:19  
those human rights. I was

00:51:27  
driving that forced labor is

00:51:29  
a more serious problem. I

00:51:35  
don't know. I think it's

00:51:35  
I think it's certainly very

00:51:36  
bad. I think that it's

00:51:39  
if you know, the centrally

00:51:40  
slavery and that the entire

00:51:43  
world has condemned to slavery



00:51:45

in the strongest possible for

00:51:46

racial discrimination of all. So

00:51:48

terrible and every supplies country

00:51:50

that is racial discrimination, that

00:51:57

there is a difference in

00:52:01

in degree that we have

00:52:03

to be mindful of as

00:52:04

attorneys and that we have

00:52:06

to kind of Ensure that

00:52:12

when we're doing a due

00:52:14

diligence investigation, or when we're

00:52:16

providing due diligence guidance to

00:52:18

our clients, we are we



00:52:20

are very mindful of the

00:52:21

seriousness of the allegations related

00:52:25

to related to these various

00:52:27

areas. Virginia, you indicated earlier

00:52:30

you were your approaches to

00:52:32

try to be neutral Tatiana's

00:52:34

approaches. I'll characterize it as

00:52:37

not neutral. How would you

00:52:39

have responded to the Chinese

00:52:41

today? If they said, what

00:52:43

I was told, they said,

00:52:45

I was glad that you

00:52:47

ask Tatiana, but questions about



00:52:49  
something totally responding. So I

00:52:51  
think I was saying, everyone's

00:52:56  
trying to be neutral, but

00:52:58  
that we really are trying

00:52:59  
to be impartial. I'm in

00:53:00  
and make sure that we

00:53:01  
speak about this, in a

00:53:02  
way that doesn't alienate any

00:53:05  
of our stakeholders. Which for,

00:53:06  
for us here at Miller

00:53:08  
does include many multinationals that

00:53:12  
have operations in China, that

00:53:13  
I'm on the phone with



00:53:14

all the time. And so,

00:53:16

you know, I think that

00:53:20

I would probably go back

00:53:22

to just using the methodology

00:53:24

that we use when we're

00:53:25

conducting risk assessments, and we're

00:53:26

looking at the severity of

00:53:28

the impact, how widespread it

00:53:30

is, and the remedial ability

00:53:32

of those issues and kind

00:53:34

of trait is that sounds,

00:53:35

it does provide a good

00:53:36

objective way to measure was



00:53:39  
actually happening and to Tatiana's.

00:53:42  
First point, the the biggest

00:53:43  
issue in my mind really

00:53:45  
is black Transparent because as

00:53:47  
you ask Doug, what happens

00:53:49  
if you can't figure out

00:53:49  
the answer, if you're looking

00:53:51  
at a black box, you

00:53:51  
kind of have to assume

00:53:52  
that was happening. There is

00:53:53  
bad or that you don't

00:53:55  
have enough information to know

00:53:57  
that it meets your standards.



00:53:58

And a lot of the

00:54:00

time when we're conducting due

00:54:02

diligence, in relation to the

00:54:03

x u, a r to

00:54:04

see John, I'm not in

00:54:06

broader China, you know what

00:54:08

that is, ultimately what we

00:54:09

have to come back to

00:54:10

you is that there's just

00:54:11

not enough information to be

00:54:12

able to make informed decisions

00:54:13

to justify going into the

00:54:15

region. And, you know, hopefully



00:54:18

that would change in the

00:54:19

future, but I hope that

00:54:22

that gives you enough meat

00:54:23

to, to satisfy the question,

00:54:25

enough to appreciate how difficult

00:54:33

it is. For lawyers to

00:54:36

give confident advice to companies.

00:54:38

In in these kinds of

00:54:40

situations. Let's move on, however,

00:54:44

to touch you, you were

00:54:45

going to speak a bit

00:54:47

about it. And also Jose

00:54:49

Antonio moving on, from sort



00:54:52

of the substance of these,

00:54:53

dilemmas of how lawyers going

00:54:56

to advise clients. In these

00:54:58

kinds of situations, you both

00:55:00

have started. Some, I think

00:55:02

I'll characterize them as procedural,

00:55:04

approaches, and Tatiana. You were

00:55:07

going to talk something about

00:55:08

how courts might deal with

00:55:10

these problems. Let me give

00:55:11

you the floor, and you

00:55:13

can certainly correct my mischaracterization

00:55:15

if it is that of



00:55:16

your topic. Thank you God.

00:55:19

I am interested in how

00:55:23

far you Tools in particular,

00:55:26

my deal with Investments are

00:55:30

or contracts that they perceive

00:55:32

to be painted, I'll say

00:55:33

by alleged human rights. Abuses

00:55:36

or complicity on the parts

00:55:38

of businesses or corporations. As

00:55:43

John mentioned earlier, the question

00:55:46

of business and human rights

00:55:47

is not is certainly not

00:55:48

a new question, but the



00:55:50  
question of whether International tribunals

00:55:55  
might find corporations responsible for

00:55:58  
human rights. Abuses of human

00:56:00  
rights violation. Is relatively is

00:56:03  
relatively new, and I think

00:56:04  
it was roster beat Argentina

00:56:07  
in 2016, where a tribunal

00:56:10  
first affirmatively said, we actually

00:56:13  
do believe that human rights

00:56:16  
impose Obligations on both public

00:56:20  
and private actors. And so

00:56:21  
conceivably a corporation could be

00:56:24  
held responsible for violating the



00:56:30

exercise by individuals that got

00:56:38

me thinking questions, or issues

00:56:45

of human rights in investor

00:56:48

State, and Commercial arbitration with

00:56:50

political Risk insurance. I think

00:56:51

another place where we may

00:56:53

see the human race coming

00:56:55

up. There's that there's a

00:56:58

road map for how that

00:56:59

might come up in the

00:57:00

way tribunals currently deal with

00:57:02

allegations of corruption. So, the

00:57:06

Seminole case in this regard



00:57:07

was World duty free and

00:57:11

in that case investor invented

00:57:14

a very candidly to animate,

00:57:16

a 2 million dollar payment

00:57:17

to the canyon. Bend Canyon

00:57:19

post president to get his.

00:57:21

And the tribunal had no

00:57:23

doubt that it was bribed

00:57:24

to obtain the investment. And

00:57:26

then said, the investment was

00:57:27

voidable because it had been

00:57:29

prepared for you. And in

00:57:31

subsequent cases tribunals have decided



00:57:34

either that they mocked her

00:57:35

over Investments. That were procured

00:57:39

through a bribe or three

00:57:40

minions since that violate the

00:57:44

treaty requirement for most Investments,

00:57:47

got a baby need legally

00:57:49

in conformance with the lost

00:57:50

the host, 8 questions of

00:57:55

whether they can provide relief

00:58:00

to investors where there are

00:58:01

allegations that there was crushing

00:58:03

the performance of an investment

00:58:04

or contract in there too.



00:58:05

They adopted doctor is similar

00:58:07

to unclean hands and not

00:58:09

there either. Allegations were inadmissible

00:58:13

that about your friends were

00:58:14

inadmissible or they severely reduced

00:58:16

damages Awards in those cases

00:58:18

the approach. I think it's

00:58:21

similar in commercial arbitration because

00:58:24

an arbitration award can be

00:58:27

one of the very, very

00:58:28

circumstances and tribunals are doing

00:58:37

when they're confronted with these

00:58:37

questions of corruption is considering



00:58:40  
that the Russian violates International

00:58:43  
can map of public policy.

00:58:44  
It's been condoned in the

00:58:47  
strongest possible language in the

00:58:50  
laws of domestic States and

00:58:51  
also in numerous International treaties

00:58:55  
and therefore tribunals cannot uphold

00:58:58  
Investments that policy so far

00:59:05  
is to conclude that even

00:59:07  
if neither party, in front

00:59:08  
of them has brought up

00:59:09  
an allegation of corruption, they

00:59:10  
have to and at the



00:59:11  
investigated, And so, you're going

00:59:15  
to suggest that a similar

00:59:17  
approach be used for bhr,

00:59:19  
right? Something investors may want

00:59:23  
to be wary of is

00:59:25  
that if they are operating

00:59:28  
in a conflict zone, or

00:59:30  
if they were operating in

00:59:32  
the country before complex and

00:59:33  
are now operating a possible

00:59:37  
defense to an investment claim,

00:59:40  
maybe while you violated the

00:59:43  
human rights of our citizens,



00:59:44

by continuing to operate in

00:59:47

this conflict Zone and the

00:59:49

tribunals may actually give Credence

00:59:52

to arguments like that the

00:59:54

tribunal past with deciding such

00:59:56

a case may take that

00:59:59

same approach since day one.

01:00:00

We do think did you

01:00:02

think corporations have an obligation

01:00:04

to respect human rights and

01:00:05

to we see you know

01:00:07

it I think it would

01:00:08

be probably a controversial practices



01:00:10

light child slavery or war

01:00:12

crimes and crimes against humanity

01:00:13

are violations of international public

01:00:16

policy and their foreign investment

01:00:18

that is heated by association

01:00:19

and when their stick their

01:00:20

practices would be Voidable and

01:00:23

not production, a creative approach,

01:00:27

and there's some Authority for

01:00:29

it. But then, let me

01:00:32

ask Jose, Antonio weather, that

01:00:34

doesn't meet his whole proposal

01:00:35

Jose Antonio Reyes. I understand



01:00:39  
that you're going to suggest

01:00:39  
that investment treaties be our

01:00:45  
new ones. At least contain

01:00:47  
new Clauses that will allow

01:00:49  
human rights to make their

01:00:51  
way into arbitral decisions, but

01:00:53  
touch out as just suggested

01:00:55  
a way of doing that

01:00:55  
without your new language in

01:00:58  
investment treaty. So, tell us

01:01:00  
why you think your new

01:01:01  
language is still necessary. And

01:01:03  
Tatyana, Ali, skipping over to



01:01:06

Jose Antonio, because I've got

01:01:07

my eye on the clock.

01:01:11

I thank you. And thank

01:01:13

you. And I think that

01:01:14

I'm not necessarily in disagreement

01:01:17

with that Tiana. I want

01:01:20

to start by saying that

01:01:21

something that you indicated at

01:01:23

the beginning of the panel,

01:01:24

which is that this is

01:01:25

not a new issue, this

01:01:26

is this is not you.

01:01:27

I happened to be the



01:01:29

Secretary of one of the

01:01:30

secretaries of the world duty

01:01:32

free vs Kenya. The secretary

01:01:35

of the tribunal at the

01:01:36

time. That was a novel

01:01:37

issue. The issue of corruption

01:01:39

on the issue of respecting

01:01:43

a general principle of law,

01:01:45

which is good faith, which

01:01:47

is the basis on, which

01:01:48

the tribunal decided that he

01:01:51

could not ultimately hear the

01:01:53

case because I reach that



01:01:58

principle, it's also not new.

01:02:00

I happen also to, to

01:02:01

have negotiated the treaty with

01:02:03

the with Canada and you

01:02:04

know, this anecdote that I

01:02:05

have shared this with you

01:02:07

dog and the investment treaty

01:02:10

on behalf of Another time

01:02:14

that this was 2006 Canada,

01:02:16

came to us and said

01:02:17

they had this this novel

01:02:19

proposal on the social corporate

01:02:21

responsibility that would make that



01:02:25

would create the best efforts

01:02:27

by both of State parties

01:02:29

to promote to The Respect

01:02:32

by the respective companies of

01:02:34

each party to respect that

01:02:36

at the social corporate responsibility.

01:02:37

Of course, the whole state

01:02:40

was Columbia, so they know

01:02:41

the belief was and I

01:02:42

have the highest respect for

01:02:44

their negotiators. And I have

01:02:45

good friends. That put the

01:02:46

notion was at work. We're



01:02:48  
doing this for word proposal

01:02:50  
to the Columbia and they

01:02:51  
might say no. And behold

01:02:54  
I said well why don't

01:02:55  
we take it further? Why

01:02:56  
don't we do positive and

01:02:59  
an explicit Hartlaub legations and

01:03:02  
two that they said no

01:03:03  
we got to watch. Please

01:03:09  
don't want to your proposal

01:03:10  
Jose Antonio of time, but

01:03:14  
let me just take a

01:03:15  
little bit of an issue



01:03:17

with this notion that John

01:03:19

propounded, that these issues are

01:03:20

not new. Shoes are not

01:03:22

new, but the context is

01:03:23

new in the following sentence.

01:03:26

We now have a mandatory

01:03:31

human rights due diligence laws

01:03:33

with varying degrees of enforceability

01:03:35

in France and Norway. And

01:03:39

we're about to have one

01:03:40

in Germany. There's several other

01:03:41

National proposals, on the table,

01:03:43

we've got this new sinjon



01:03:46

law in the United States.

01:03:47

The Europeans are about to

01:03:49

produce their corporate sustainability due

01:03:52

diligence directive. Doesn't that make

01:03:55

it? Isn't that new wine

01:03:58

into Old vessels? John isn't

01:04:00

the context? So different that

01:04:03

the kinds of advice that

01:04:05

we have to give our

01:04:06

corporate clients now is qualitatively

01:04:09

different than it used to

01:04:11

be. In terms of the

01:04:11

degree of legal risk. There's



01:04:14

no question that since about

01:04:15

2015 then and you sort

01:04:17

of look at the UK

01:04:18

modern slavery, act as its

01:04:20

adoption. And then ultimately it's

01:04:22

going into force in 2017

01:04:23

as part of the, the

01:04:25

over-under line. For when we

01:04:27

move from difficult business decisions,

01:04:30

a litigation risk into a

01:04:32

regulatory are aware where we're

01:04:34

seeing new proposed business new

01:04:36

pop on almost a daily



01:04:38  
basis. And I do think

01:04:41  
while some when, and when

01:04:43  
I was talking about the

01:04:43  
issues are a new question

01:04:45  
of, do you stay, do

01:04:45  
you go in a complex

01:04:46  
affected area? I still think

01:04:48  
it is. It is the

01:04:50  
Baseline. Questions are relatively the

01:04:52  
same. As we saw a

01:04:53  
decade ago, 15 years ago

01:04:55  
with additional guidance wish Edition

01:04:57  
with additional thinking and frankly



01:04:58  
with additional scrutiny on companies

01:04:59  
that does does make the

01:05:01  
steaks. Hiring in any respect.

01:05:03  
The regulatory environment is changing

01:05:05  
so rapidly, which is it

01:05:08  
is something for lawyers. Obviously

01:05:10  
staying on top of that,

01:05:11  
on top of what has

01:05:12  
happened and being able to

01:05:13  
predict what is going to

01:05:14  
happen, is part of why

01:05:16  
it's such a challenging and

01:05:17  
dynamic. Feels like I do



01:05:18

think there is a different

01:05:19

context to the regulatory advice.

01:05:21

We don't have to provide

01:05:22

Antonio a chance to present

01:05:27

his proposal for investment treaties.

01:05:31

Let me share the screen

01:05:34

so they can see it

01:05:35

on the screen. So basically,

01:06:00

you're not a part of

01:06:03

this is me, this is

01:06:04

why I don't think that

01:06:06

and I'm taking into account

01:06:08

what John has said and



01:06:09  
what you indicated and everyone.

01:06:11  
I said, I don't think

01:06:11  
that that the first, I

01:06:13  
don't think that this is

01:06:14  
new proven, by the cases

01:06:17  
that we have shared with

01:06:18  
u s. I I do

01:06:21  
think that the environment is

01:06:23  
very different, so many things

01:06:25  
have been happening at me

01:06:26  
that that's the one. The

01:06:27  
one thing that I fully

01:06:28  
agree with is that in



01:06:30

in the many, many domestic

01:06:31

laws even in China. There

01:06:33

there are regulations concerning respecting

01:06:36

human rights, even state-owned companies.

01:06:38

Now in France, in China,

01:06:40

Inn in countries are mostly

01:06:42

in. In most of the

01:06:45

continents. In the world, have

01:06:46

some level of requirements of

01:06:49

respecting human rights. That's new

01:06:50

now, what, what, I don't

01:06:53

see happening and and the

01:06:55

is is a very rich



01:06:59  
discussion International arbitration or International

01:07:04  
Investment vacation concerning the welcoming

01:07:07  
or the emphasis on counterclaims.

01:07:10  
And Obligations of investors respecting

01:07:14  
human rights. That that's what

01:07:15  
I don't see you as

01:07:17  
there are some discussions. Perhaps

01:07:18  
you at the at the

01:07:19  
eleventh hour concerning on Central

01:07:21  
group 3. But at the

01:07:22  
end of the day, there's

01:07:24  
no clear proposal in, in

01:07:28  
that sense. And that's what



01:07:29

I'm missing with. The reason

01:07:31

why I said that, I,

01:07:31

that I agree with what

01:07:36

the Chiana is, is because

01:07:37

I believe that structurally. She,

01:07:39

she may be speaking mostly

01:07:42

about the jurisdictional part of

01:07:45

the cases. So, if we

01:07:48

see, or boster, or if

01:07:49

we see the defenses, if

01:07:51

there is an investment that

01:07:54

is made either with corruption

01:07:56

or through, thought corruption the



01:07:59

world duty free vs Kenya

01:08:01

fraud, the insatiable Salvador, those

01:08:04

are the president. Then the

01:08:06

tribunal is bound to tell,

01:08:09

if the part is that

01:08:10

it lacks jurisdiction. Because the

01:08:12

investment was made through fraud

01:08:15

or through corruption and I'm

01:08:16

doing that involves making an

01:08:20

investment in breach of Wonder

01:08:21

a quintessential sources of of

01:08:24

international, a general principle of

01:08:26

law, which one good faith



01:08:28  
to the discussion. Reents there,

01:08:30  
there could be a marriage

01:08:32  
decision. Is investment was initially

01:08:34  
made in a lawful manner,

01:08:37  
but then came corruption and

01:08:39  
that's it, that's up, marriage

01:08:40  
defense. But either way, you're

01:08:43  
in trouble as an investor,

01:08:44  
if that's the case. Now

01:08:46  
the big question is what

01:08:48  
happens when there are minimal

01:08:49  
Britain the word when there

01:08:51  
are Riches of Human Rights



01:08:54

by by the investor. And

01:08:56

and it's actually dog gave

01:08:59

us a long list of

01:09:01

recent events that I added

01:09:02

one in in in Glencoe

01:09:05

and Columbia Tetra. When things

01:09:07

happened in in the state,

01:09:09

what what could happen with

01:09:10

the investment in principle in

01:09:13

principle? There are no, there

01:09:15

are no, if it were

01:09:16

talking about a treaty obligation,

01:09:18

there are no means to



01:09:22

Sanctioned under international law. The

01:09:27

investor you could sanction, the

01:09:30

investor under local law which

01:09:32

is very much what what

01:09:33

council or investor say. Well,

01:09:35

I mean you have to

01:09:36

hold local law but the

01:09:37

fact is that he hasn't

01:09:38

proven right in many cases.

01:09:40

The question here is, don't

01:09:44

we want Good investment Investments

01:09:50

that are that are sophisticated

01:09:54

that are respectful of Human



01:09:55

Rights. What what would happen

01:09:57

if treaties include obligations. I

01:10:01

also respect of Human Rights

01:10:03

by the investors, not soft

01:10:04

or hard loan. And the

01:10:08

proposal is not inventing anything

01:10:10

because we have examples are

01:10:11

just as the Morocco Nigeria

01:10:16

treaty, which should provide heart

01:10:19

l'obligation so that would, that

01:10:21

would answer one element that

01:10:24

was was not answered in

01:10:26

or boxer, which was yes,



01:10:28  
the tribunal acknowledges that human

01:10:30  
rights are part of international

01:10:31  
law and I believe that

01:10:33  
we all could agree with

01:10:34  
that. They went a little

01:10:36  
bit further than any tribunal

01:10:37  
has gone by knowledge and

01:10:39  
something that should have been

01:10:40  
long long ago. Decided yes,

01:10:43  
human rights are parts of

01:10:44  
international law and if if

01:10:46  
International is the applicable law,

01:10:48  
We have jurisdiction, but then



01:10:50

when it went into, what

01:10:52

are the investment in the

01:10:54

investment, treaty obligation for the

01:10:56

investor, they looked into the

01:10:59

treaty up and down on

01:11:00

the flip, the pages. And

01:11:02

there was no obligation for

01:11:04

the concessionaire to guarantee the

01:11:07

provision of water, which was

01:11:08

issuing a visor. So, in

01:11:12

light of that Lacuna, what

01:11:15

what you what I would

01:11:16

say or what I, where



01:11:17

are you you would need

01:11:19

is to include certain obligations

01:11:21

of Human Rights within the

01:11:23

treaties for investors, not something

01:11:26

fanciful, not something you'll, perhaps

01:11:28

not the flu, no business

01:11:29

and human rights because that

01:11:31

that's very comprehensive at least

01:11:33

a basis so that we

01:11:35

can start from there. And

01:11:37

then there's there's a next

01:11:39

question which is well yes

01:11:42

but who and and that's



01:11:44

no. That's the following slide

01:11:45

but who actually Consent to

01:11:50

an investment treaty, well, to

01:11:53

States. So, how come the

01:11:56

investor is now Bound by

01:11:58

treaty? And for that? There's,

01:12:01

there's technical ways of dealing

01:12:03

with it. And you have

01:12:04

it in an under strain,

01:12:05

but, but the way is

01:12:07

to use a similar architecture

01:12:09

to the one that way

01:12:11

we can see him any



01:12:12  
free trade agreements were there's

01:12:15  
an onyx that the investor

01:12:17  
would have to sign before

01:12:20  
submitting a request for arbitration

01:12:23  
as a, as a requirement

01:12:25  
for consent. So, when I

01:12:29  
say that, I'm the investor,

01:12:30  
when I submit the request

01:12:32  
for arbitration, unless I submit

01:12:34  
a 9 x that indicate

01:12:38  
that I acknowledged and confirmed

01:12:40  
that I am Bound by

01:12:42  
the human rights obligations or



01:12:44  
corporate social responsibility obligations that

01:12:46  
are in the treaty which

01:12:48  
deals with the issue of

01:12:50  
consent. Unless I do that,

01:12:51  
then I would not provide

01:12:55  
my consent, or I would

01:12:58  
not meet the requirements by

01:12:59  
the state of required, by

01:13:00  
the state to submit the

01:13:02  
request for arbitration. So, that

01:13:04  
deals with the issue of

01:13:05  
consent, do the proposal is,

01:13:07  
is a two-way proposal. On



01:13:09

the one hand, investors in

01:13:10

investors obligations in the substantive

01:13:15

provisions, and all the other

01:13:17

hand in the, in the

01:13:18

jurisdictional part. An onyx that

01:13:23

would confirm the consent by

01:13:25

the investor to be subject

01:13:28

of counterclaims by the states.

01:13:30

In case this day, brings

01:13:33

any any claim in that

01:13:34

that I think that would

01:13:37

be more in line with

01:13:38

what is happening now and



01:13:40  
would be somehow balance. Many

01:13:44  
of the critics that are

01:13:45  
now happening in the ICS

01:13:48  
system which which I'm in

01:13:49  
favor of but, but it's

01:13:52  
better to reform it from

01:13:54  
within then then do away

01:13:55  
with it. Thank you. Thank

01:13:58  
you. Jose Antonio, let me

01:14:00  
know now suggest that each

01:14:03  
of you can make a

01:14:04  
closing statement on any relevant

01:14:07  
matter that we have discussed



01:14:09

her haven't discussed during the

01:14:11

course of the panel and

01:14:13

maybe we'll, we'll, we'll start

01:14:17

with. I'm not going to

01:14:19

ask. We're going to go

01:14:20

in reverse order, but since

01:14:21

Jose Antonio just finished and

01:14:24

that means Tatiana, we're going

01:14:25

to start with you. Any,

01:14:27

any closing Reflections? It's not

01:14:29

mandatory, it's not mandatory human

01:14:32

rights. Due diligence. This is

01:14:33

like the UN GPS. You



01:14:35

can, you can choose to

01:14:36

follow them or not. Thank

01:14:39

you for the opportunity. And

01:14:42

I think if I had

01:14:43

one General observation from hearing

01:14:47

all of the the wonderful

01:14:48

cool panelists and our moderator,

01:14:51

it's that, this is indeed

01:14:52

an incredibly difficult and complicated

01:14:55

area and it's one in

01:14:57

which you want. Your Council

01:15:01

to be operating at the

01:15:03

highest level to have an



01:15:04  
intimate familiarity with the relevant,

01:15:07  
human rights regulations human rights

01:15:10  
instruments at the international level.

01:15:12  
And also, how do is

01:15:13  
have been integrated into the

01:15:14  
domestic Bubbles and to be

01:15:16  
really thinking it through thoughtfully

01:15:19  
and strategically and went straight

01:15:21  
to see if I think

01:15:22  
anyone would provide just such

01:15:26  
a thoughtful and careful consideration

01:15:29  
for their clients. So, it's

01:15:31  
great to know that. That



01:15:32  
is a service that it

01:15:34  
is, but is available people

01:15:36  
who are the smarter thing

01:15:37  
keeping the sparkly about a

01:15:38  
piece of shoe. I have

01:15:46  
two Echo Tatiana statements. I

01:15:48  
think that, you know, I

01:15:50  
would agree that when in

01:15:53  
doubt, if you're considering, if

01:15:54  
you haven't already begun to

01:15:55  
conduct due diligence in areas

01:15:58  
that are complex affected her,

01:16:00  
or could be affected by



01:16:01  
conflict in the future that

01:16:03  
corporations should certainly execute that

01:16:05  
now. But also to do

01:16:08  
so, with care to make

01:16:09  
sure that you're considering local

01:16:10  
sensitivities and also risk to

01:16:12  
local stakeholders so that you're

01:16:15  
not endangering anyone just by

01:16:17  
conducting the due diligence in

01:16:19  
and of itself. So, it's

01:16:21  
up there. Thank you, Virginia.

01:16:22  
John, the point I make

01:16:25  
is, I think we'll really



01:16:26

sing in the business and

01:16:27

human rights space from a,

01:16:29

from a legislative, and Regulatory,

01:16:30

regulatory standpoint is sort of

01:16:32

two different two. Different trends

01:16:33

that didn't end up converging

01:16:35

in the first. She talked

01:16:36

about some of the mandatory

01:16:37

human rights due diligence laws

01:16:38

and and and other laws

01:16:40

that are focused on a

01:16:42

human rights, human rights. We've

01:16:43

also seen human rights, increasing



01:16:45

Integrated into other areas of

01:16:47

international Regulatory Compliance. Whether it's

01:16:49

a ml or sanctions or

01:16:50

export controls are Trey. And

01:16:52

I think corruption has is

01:16:53

right there as well. And

01:16:55

so you have these two

01:16:55

different colors and where they

01:16:56

really come together for lawyers

01:16:59

in advising clients is not

01:17:00

only do you have a

01:17:01

regulatory advice that that that

01:17:03

you're going to be providing



01:17:04

and in some specialist areas

01:17:05

as well as areas that

01:17:07

the human rights specifically. But

01:17:10

but also he wants me

01:17:11

to meet a business imperative

01:17:12

much as we start with

01:17:13

the S CPA in the

01:17:16

mid-2000s 2006/2007, increasingly being a

01:17:19

part of Simply how business

01:17:21

is done, including it, be

01:17:22

included in contracts and decryption.

01:17:24

Provisions included in due diligence

01:17:26

for employees, that you're hiring



01:17:28

pet screening or third parties

01:17:29

that you're bringing on included

01:17:31

in an MA do the

01:17:33

same thing with human rights

01:17:34

as these regulatory Trends and

01:17:37

up more more prominent, become

01:17:38

more of a business imperative.

01:17:40

Thank you. John. Jose Antonio

01:17:46

Herkimer game with, with my

01:17:49

colleagues. And I do think

01:17:51

that there is, there is

01:17:53

a huge opportunities for a

01:17:55

huge opportunity to to move



01:17:57  
the needle forward. 90 that

01:18:01  
I know from wearing The

01:18:04  
Negotiator hat in in a

01:18:07  
past life, things move very

01:18:09  
slowly India. The world duty

01:18:13  
free is a case that

01:18:14  
happened more than 10 years

01:18:15  
ago and on the negotiations

01:18:19  
with Canada happened more than

01:18:21  
10 years ago as well.

01:18:22  
And and at least in

01:18:25  
my lifetime I would like

01:18:26  
to to see some movement



01:18:27

and we have seen local

01:18:31

adding that things that are

01:18:32

moving forward. Why not moving

01:18:35

things a little bit further.

01:18:36

So as to create International

01:18:40

tools that would somehow reflect

01:18:43

that movement in in in

01:18:45

in local jurisdictions. So as

01:18:48

to create a investment that

01:18:52

is more qualified and more

01:18:55

respect for human rights and

01:18:56

and and tools with with

01:18:58

teeth so so that no



01:19:00

other robots are 2,000 happen

01:19:02

or that a good one

01:19:03

happen. Thank you, Jose. Antonio,

01:19:06

and that might bring me

01:19:08

back again for a commercial

01:19:10

for the new business and

01:19:11

human rights Lawyers Association at

01:19:14

the moment, it consists of

01:19:16

the big firms in the

01:19:17

north, but it is certainly

01:19:19

Our intention to expand to

01:19:21

the global South Latin America

01:19:24

Africa. Asia. And we have



01:19:27

to the new board of

01:19:28

directors will have to work

01:19:30

out some questions because right

01:19:31

now, the annual dues are

01:19:35

appropriate for a large Global

01:19:36

Law Firm. They're not appropriate

01:19:38

for some small law firms

01:19:41

in the global South. They're

01:19:42

also not appropriate for individuals

01:19:45

who may wish to join.

01:19:47

So, we'll be working all

01:19:48

that out in the next

01:19:49

few board meetings in and



01:19:51  
be seeking out additional members

01:19:54  
in 2023. In the meantime,

01:19:57  
if anyone is interested in

01:19:59  
that or their firm is

01:20:01  
there will be a at

01:20:04  
least an inch Web page

01:20:05  
for the association, put up

01:20:07  
pretty soon. It might even

01:20:08  
be up by today. I'm

01:20:09  
not sure, but it's it's,

01:20:12  
it's going to be one

01:20:13  
way to discuss and maybe

01:20:15  
Advance innovative ideas. Like the



01:20:18

one Jose, Antonio just put

01:20:20

forward and if I met

01:20:21

the, the argument than the

01:20:23

legal analysis that Tatiana gave

01:20:25

us as well. So I

01:20:28

want to thank you all

01:20:29

for a terrific panel. As

01:20:32

usual, I'm sure you all

01:20:34

had far more wisdom to

01:20:36

convey than you had time

01:20:37

to convey it in, but

01:20:39

thank you all for joining

01:20:40

us. Thanks to everyone in



01:20:42  
the audience. Sorry. We don't

01:20:43  
have time for letting us

01:20:44  
questions, but I'm sure if

01:20:46  
you were email Jose Antonio,

01:20:48  
after this event, he'll be

01:20:51  
happy to pass. Along any

01:20:52  
questions to remember? They, they

01:20:55  
might fit. So, thanks the

01:20:57  
one at all and that

01:20:58  
concludes our panel for it

01:20:59  
today. I don't know how

01:21:01  
that technically happened, so San

01:21:03  
Antonio. We must push a



01:21:05

button somewhere. Thank you very

00:00:04

much. He in and thank

00:00:05

you, and Jose, Antonio for

00:00:08

organizing the Washington arbitration week,

00:00:10

which gives I think important

00:00:12

information to a lot of

00:00:15

people who do not ordinarily

00:00:17

attend, some of these similar

00:00:19

events, I speak to you

00:00:21

for a ride moderate to

00:00:23

you from Geneva Switzerland, where

00:00:26

I'm attending the UN global

00:00:28

forum on business and human



00:00:30

rights and we're at the

00:00:32

United States Mission here at

00:00:35

the UN in Geneva, we

00:00:38

have just announced the formation

00:00:39

of the business and human

00:00:42

rights Lawyers Association, which is

00:00:45

a group of beginning group.

00:00:48

Anyway of 22 of the

00:00:50

major Global law firms of

00:00:52

the world including three of

00:00:54

which are represented here on

00:00:56

this panel today. Paul Hastings

00:00:59

and Miller in Chevrolet My



00:01:03

own firm King & Spalding

00:01:04

along, with another number of

00:01:06

other leading firms in the

00:01:08

mission of the business and

00:01:10

human rights Lawyers Association will

00:01:12

be to do exactly the

00:01:14

kind of thing we're doing

00:01:15

on the panel today which

00:01:17

is to organize panel discussions

00:01:19

and otherwise try to elevate

00:01:20

the visibility of the issues

00:01:22

of business and human rights

00:01:24

in the legal community. Our



00:01:29

topic today, of course, as

00:01:31

you know, is related to

00:01:32

conflict, not only International armed

00:01:35

conflict, like the Russian invasion

00:01:37

of Ukraine at the moment,

00:01:39

but all kinds of conflict

00:01:42

areas, including Civil Wars, including

00:01:46

situations, of gross violations, of

00:01:48

human rights of military occupation

00:01:51

territories. It covers a wide

00:01:55

spectrum and it's a very

00:01:58

timely topic. Not only because

00:02:00

of what's going on in



00:02:01

Ukraine right now, but also

00:02:05

because of what are the

00:02:06

implications for the clients of

00:02:08

commercial law? Firms these days

00:02:10

and just to take the

00:02:11

last 3 months by way

00:02:13

of illustration in September, the

00:02:16

federal court of appeals for

00:02:17

the eleventh circuit allowed a

00:02:20

Civil Trial against Chiquita. Banana

00:02:23

to go forward overruling. The

00:02:26

district court or Chiquita bananas.

00:02:28

Subsidiaries collusion with the paramilitary



00:02:32

forces in Colombia a matter,

00:02:36

in which Chiquita Colombia said,

00:02:39

guilty to criminal charges back

00:02:41

in 2007 and paid a

00:02:43

\$25. Fine. That was September.

00:02:47

The decision of the court

00:02:49

of appeals. In the civil

00:02:50

case, in October, LaFarge company

00:02:53

plead guilty to conspiring to

00:02:56

provide material support to terrorists

00:02:59

them in Syria by making

00:03:02

payments for a cement plant.

00:03:03

Are the payments allowed LaFarge



00:03:08

to make a \$70 profit

00:03:10

in return for which they

00:03:12

were fined and otherwise paid

00:03:14

fees of ten times that

00:03:16

much. 711 times that much

00:03:18

777 million that was October.

00:03:22

Then, in November, The month

00:03:25

we are still in early

00:03:27

lundeen in Sweden. Received the

00:03:34

ruling from the Swedish Supreme

00:03:35

Court is that their criminal

00:03:38

trial for complicity in war

00:03:39

crimes, can go forward and



00:03:43

the former CEO of lundeen

00:03:46

faces, a potential criminal sentence

00:03:50

of up to life in

00:03:51

prison along with one of

00:03:53

his other senior Executives and

00:03:55

the company itself, faces a

00:03:57

2.8 million dollars, slime, plus

00:04:00

additional related cost. So, if

00:04:05

that doesn't get the attention

00:04:07

of lawyers, advising companies about

00:04:09

the importance of heightened human

00:04:11

rights due diligence in Conflict

00:04:14

zones. I don't know what



00:04:17

will Aside from the issues

00:04:23

of potential complicity or civil

00:04:25

liability with Bad actors. In

00:04:29

Conflict zones. There are also

00:04:32

vexing issues for international companies

00:04:36

of whether to stay or

00:04:38

to remain in Conflict zones.

00:04:40

There was a panel of

00:04:42

here yesterday in Geneva. Happy

00:04:44

global forum on the very

00:04:46

same topic and a scholar,

00:04:49

but also a resident from

00:04:51

Ukraine, from the city of



00:04:52

Kharkov in Ukraine. When she

00:04:55

took the panel explained that

00:04:57

when the war broke out,

00:04:59

when the Russian invasion of

00:05:00

Ukraine broke out back in

00:05:02

February, the International Food companies

00:05:06

that provided bread to the

00:05:07

people truck is shut down

00:05:10

and pulled out right away.

00:05:12

And she stood in a

00:05:13

line for 4 hours to

00:05:15

get bread while shells were

00:05:18

passing overhead because a local



00:05:20

bakery, decided to stay over

00:05:24

and try to provide food

00:05:26

for the people who live

00:05:27

there. And so the issue

00:05:29

facing a company that provides

00:05:31

essential services to a population

00:05:33

in a conflict Zone. Whether

00:05:35

it's food for the necessary

00:05:38

medical drugs such as, for

00:05:40

heart conditions and so on

00:05:43

or even arguably internet, those

00:05:49

kinds of decisions companies are

00:05:51

having to face not only



00:05:53

in Ukraine and in Russia

00:05:55

but also in Myanmar and

00:05:58

other zones and they are

00:05:59

not easy decisions. One of

00:06:03

my own clients are our

00:06:05

firm's own client, is facing

00:06:07

a decision whether to pull

00:06:09

out from Myanmar there. By

00:06:12

depriving the military regime of

00:06:15

a source of Revenue. But

00:06:18

the consequence of doing that

00:06:20

was that under the contract,

00:06:21

the military regime would become



00:06:24

the new owner of the

00:06:25

property in Myanmar. And instead

00:06:28

of getting a cut of

00:06:29

the action, which it gets

00:06:30

now it would get all

00:06:31

of the action again. What

00:06:34

does the company do? How

00:06:36

does the client advise the

00:06:37

company? These are not easy

00:06:39

questions but two pieces of

00:06:42

good news. First of all,

00:06:44

have been a number of

00:06:45

Publications by International bodies advising



00:06:49  
and assisting companies on how

00:06:51  
to deal with these kinds

00:06:52  
of dilemmas and maybe the

00:06:55  
most recent one, which came

00:06:56  
out in June of this

00:06:57  
year, which I come into

00:06:59  
all of you, is a

00:07:00  
joint publication of the United

00:07:02  
Nations development, programme and the

00:07:04  
UN working group on business

00:07:06  
and human rights entitled. And

00:07:09  
it's on the web page

00:07:09  
of the UN working group



00:07:11

and Are the undp entitled

00:07:14

heightened human rights due diligence

00:07:16

for businesses in conflict-affected contacts?

00:07:20

A guy. So if any

00:07:23

of you actually say some

00:07:24

of these issues in your

00:07:25

practice, I commend that to

00:07:27

you, their course, many other

00:07:28

relevant Publications. That might be

00:07:31

the most recent, which I

00:07:33

think takes advantage of a

00:07:35

number of the earlier ones.

00:07:36

Also, to address, these kinds



00:07:40  
of difficult topics were fortunate

00:07:42  
to have a highly qualified

00:07:44  
panel to speak on some

00:07:47  
of the related issues before

00:07:49  
you today in the order,

00:07:51  
in which they will make

00:07:53  
their initial presentations of 5.

00:07:57  
No, more than 5 to

00:07:58  
7 minutes each or will

00:08:00  
begin with John trimmer. Who

00:08:02  
is a partner at Paul

00:08:03  
Hastings with an extensive cross-border

00:08:07  
practice? I will not read



00:08:09

to you Sean's bio or

00:08:12

that of the other speakers

00:08:13

because it would take too

00:08:14

much time among other things.

00:08:16

John is a senior adviser

00:08:19

to the nonprofit Group business

00:08:22

for social responsibility. He's the

00:08:25

former deputy general counsel at

00:08:27

Barrick Gold. World's largest, I

00:08:30

believe gold company which faced

00:08:33

a number of conflict situations

00:08:35

while he was there. We

00:08:38

will then go to one



00:08:40

of our hosts or hostesses

00:08:42

Virginia Newman of Miller and

00:08:45

is a Chevrolet or chevallier.

00:08:47

She'll correct me when she

00:08:48

wakes before. If I got

00:08:50

it wrong she will as

00:08:53

she practices business and human

00:08:54

rights matters of complex a

00:08:57

civil litigation. She also happens

00:09:00

to be fluent in Mandarin

00:09:01

Chinese and the practice for

00:09:04

a while in Hong Kong

00:09:05

and will speak a bit



00:09:07

about the situation in The

00:09:09

Leaguer region to Shin Shin,

00:09:11

John region of China, where

00:09:12

the speakers are affected by

00:09:15

Chinese practices, will then hear

00:09:19

from Tatiana. So I not

00:09:20

see who was at Wiley

00:09:22

rain in d.c., she was

00:09:25

listed last year as one

00:09:27

to watch among the best

00:09:29

lawyers of America in the

00:09:31

field of commercial litigation. So

00:09:33

be sure to watch her



00:09:34

but more important than that,

00:09:36

in my opinion. She was

00:09:38

in 2012 is summer intern

00:09:40

in the Chicago, nonprofit office

00:09:42

of Business, and Professional people

00:09:44

for the public interest, where

00:09:46

I was General Counsel until

00:09:48

1990. So she comes highly

00:09:50

qualified and Forest. And of

00:09:53

course, not last at all,

00:09:54

is one of the co-founders

00:09:56

and Main organizers of Washington

00:10:02

arbitration week. And that's Jose,



00:10:04

Antonio Rivas strategy Center. And

00:10:07

he will take some of

00:10:08

these issues of Warren, peace

00:10:10

and connect them up with

00:10:12

issues International arbitration. So with

00:10:16

that John, you have the

00:10:18

floor and we look forward

00:10:20

to your remarks that we

00:10:25

appreciate being here and being

00:10:26

able to talk about what

00:10:28

is a obviously very difficult

00:10:30

complex coffee. In addition to

00:10:37

call Hastings and indeed, former



00:10:40

deputy general counsel and chief

00:10:41

compliance threadbare. I've also taught

00:10:44

a war crime, international law

00:10:47

and human rights for about

00:10:49

20 years at Georgetown Law

00:10:51

Center. And, and I'm going

00:10:53

to focus on, on really,

00:10:55

what is as Doug TWP.

00:10:57

One of the most complex

00:10:58

issues right now in the

00:10:59

business and human rights base,

00:11:01

that is is facing companies

00:11:02

that is operating in a



00:11:04  
conflict affected in high-risk area.

00:11:07  
And in this includes areas

00:11:09  
that are in active conflict.

00:11:10  
In areas that where there

00:11:12  
is a potential conflict, we're

00:11:14  
looking at a fragile fragility

00:11:16  
or institutions maybe last weekend

00:11:19  
and where violence may be

00:11:21  
on the horizon. And it

00:11:24  
certainly been brought into the

00:11:25  
four by the corporate Exodus

00:11:28  
from Russia as well as

00:11:29  
from being more last year



00:11:30  
from Mozambique and in the

00:11:34  
arbitrator. Is it is leading

00:11:35  
to a actually a good

00:11:36  
deal of of dispute work

00:11:38  
as a release of political

00:11:40  
Risk insurance. So I can

00:11:41  
connect this back to the

00:11:42  
primary. A topic of of

00:11:44  
the washing arbitration week. I

00:11:48  
do want to make the

00:11:49  
point that I guess by

00:11:49  
way of beginning that this

00:11:51  
isn't really a new issue



00:11:51

in about 10 years ago

00:11:53

in the bottom, three principles

00:11:54

on security and human rights,

00:11:55

which is a multi-stakeholder. Biggest

00:11:59

oil. Gas mining company's logo

00:12:00

is leading governments and ngos,

00:12:02

you know, there was a

00:12:03

working group is we all

00:12:04

kind of debated whether to

00:12:06

go back into Myanmar? As

00:12:08

it was briefly the period

00:12:10

of respite, where they were

00:12:11

opening up their borders to



00:12:12  
foreign investment on exploration, for

00:12:14  
extractive companies in this debate,

00:12:16  
again, going on a decade

00:12:18  
ago, even before then, we

00:12:19  
had. Frank's conflict nipple, due

00:12:22  
diligence disclosure requirements section 1502

00:12:24  
it to the Dozen years

00:12:25  
ago. And so, these are

00:12:27  
not new issues whether to

00:12:28  
stay. Whether to go, whether

00:12:30  
to invest, how to think

00:12:31  
about a proceeding in conflict-affected,

00:12:34  
I am in high-risk areas,



00:12:36  
but it is Doug said,

00:12:37  
you know, it is to

00:12:38  
some extent, becoming much more

00:12:40  
of a binary choice and

00:12:42  
I want to talk a

00:12:42  
little bit about that. Binary

00:12:43  
choice right now and elaborated

00:12:46  
on what doug set up

00:12:49  
an end, and we see

00:12:51  
it with several high-profile lawsuit

00:12:52  
of criminal investigations of corporate

00:12:54  
exits, and in some respects,

00:12:56  
it's really a no-win. If



00:12:59

you choose to stay, if

00:13:00

you're operating a conflict affected

00:13:02

area Garden area where conflict

00:13:04

breaks out, you choose to

00:13:05

say you can you can

00:13:06

face the massive legal in

00:13:08

the criminal liabilities, that that

00:13:10

Doug reference in just to

00:13:11

pick one is LaFarge and

00:13:14

the story broke about five

00:13:15

years ago. So during the

00:13:18

Syrian Civil War LaFarge, which

00:13:21

is one of the major



00:13:21  
global companies was paying I

00:13:24  
saw and other armed groups

00:13:25  
to allow its cement factory,

00:13:27  
at to continue to operate

00:13:29  
through of the Civil War,

00:13:31  
essentially antennas as well as

00:13:33  
allow their people. Extortion payments

00:13:36  
to keep their operations going.

00:13:38  
And and their people say

00:13:40  
that is Doug mentioned, you

00:13:42  
know, in staying and keeping

00:13:43  
their people safe and keeping

00:13:44  
operations going to end up



00:13:46  
settling a terrorist financing case

00:13:50  
in the u.s. for 777

00:13:51  
million dollars and they're still

00:13:53  
under investigation in France for

00:13:55  
crimes against humanity and, and

00:13:58  
war crimes. And it's not

00:13:59  
the only example group. Castell

00:14:00  
in France is also under

00:14:02  
criminal investigation for allegedly, making

00:14:04  
a similar kinds of payments

00:14:06  
in, in the Central African

00:14:07  
Republic carit. That's it, it's

00:14:11  
people safe. And there is



00:14:12

recent guidance as well, but

00:14:14

I think it's not since

00:14:15

the undp from the icrc

00:14:17

and from, and from decaf,

00:14:20

which is to Geneva center.

00:14:21

For the basically says, number

00:14:24

one companies that think they

00:14:26

can stay and be neutral

00:14:28

and stay out of the

00:14:29

conflict, not impacted the, underlying

00:14:32

dynamics that are leading the

00:14:33

conflict. You will never be

00:14:36

neutral in terms of avoiding



00:14:39  
impact of conflict Dynamic and

00:14:42  
you will never be perceived

00:14:43  
as neutral. And so the

00:14:44  
idea again, with with, with

00:14:47  
the, this is a binary

00:14:48  
Choice. It is, the guidance

00:14:50  
is really suggesting that indeed,

00:14:52  
that is the case, but

00:14:53  
leaving is also not, that

00:14:55  
easy is Doug as Doug,

00:14:56  
alluded to. And this year,

00:14:59  
in particular, we had a

00:15:00  
range of companies, you know,



00:15:01

think about and effectively, leave

00:15:03

me and more whether it's

00:15:04

cheer in the beverage company,

00:15:06

which is a simple situations.

00:15:08

The the one Doug describe

00:15:09

joint venture with the military,

00:15:10

it's sold its shares to

00:15:12

go to the military and

00:15:13

got out. It was roundly,

00:15:14

criticized for helping to finance

00:15:16

the war effort by selling

00:15:17

its shares, that to the

00:15:18

military Primark clothing, company Puma



00:15:21

the at, the global Energy

00:15:23

company. So we had a

00:15:24

lot of a corporate exits

00:15:26

at Eleanor the communications company

00:15:27

left last year. We had

00:15:28

a lot of exits high-profile

00:15:30

exit out of Myanmar but

00:15:32

that comes with with with

00:15:33

wrist Forget about your capital

00:15:36

investment but what can happen

00:15:37

to your employees going to

00:15:38

be on the economic issues

00:15:39

are your employees going to



00:15:41

be vulnerable or they going

00:15:42

to be in Jeopardy because

00:15:43

they were associated with you

00:15:45

with a multinational company. What's

00:15:48

going to happen to the

00:15:50

community programs that you were

00:15:51

ultimately supporting what can happen

00:15:53

to your equipment is that

00:15:55

can ultimately be used to

00:15:56

help Advance conflict and create

00:15:58

negative human rights impacts and

00:16:01

end. So end when you

00:16:03

sell it as is, and



00:16:05  
it up selling their Communications

00:16:07  
company to to another company.

00:16:10  
Allegedly didn't respect privacy, right?

00:16:12  
So, they were effectively getting

00:16:14  
out to avoid negative human

00:16:16  
rights in packs and selling

00:16:18  
their company allegedly to a

00:16:20  
company that, that would only

00:16:21  
further a different set of

00:16:23  
negative impact, leaving isn't so

00:16:26  
easy either. But you know,

00:16:29  
we do have dug as

00:16:31  
Doug said, I never won



00:16:32  
the UN guiding principles. On

00:16:35  
business and human rights principles.

00:16:36  
12 just talk about companies

00:16:38  
respecting, the standards of international

00:16:40  
humanitarian, law and situations of

00:16:42  
armed conflict and elsewhere notes,

00:16:44  
the relevant, the relevance of

00:16:47  
a height and height and

00:16:49  
contacts out of context and

00:16:51  
in conflict-affected areas. So it's

00:16:53  
contemplated within the UN guiding

00:16:55  
principles on business and human

00:16:57  
rights is a lot of



00:16:58

good guidance from the undp

00:17:00

and icrc and human rights

00:17:02

working group and that you

00:17:03

need a center and Emily

00:17:05

talk about which is really

00:17:07

what a lot of this

00:17:08

Focus has been on this

00:17:10

Guidance, the key hear it

00:17:12

from a human rights lands

00:17:14

is you're not only looking

00:17:15

at whether you're causing your

00:17:16

contributing are directly linked to

00:17:18

negative. A human rights in



00:17:19

fact, which is typically how

00:17:21

human rights due diligence proceed

00:17:23

but how you are affecting

00:17:25

the overall operating contacts clearly

00:17:27

a contacts and not just

00:17:29

cause contribute and directly link.

00:17:32

And it talks about focusing

00:17:33

on phone. Populations and how

00:17:35

they may be impacted by

00:17:37

being associated with you. So,

00:17:39

for instance, religious beliefs of

00:17:41

your employees, may not create

00:17:42

a silly address, but they



00:17:43

may be a cellular rest.

00:17:45

If it's in the mid,

00:17:46

if they have certain religious

00:17:47

beliefs, the parts of certain

00:17:49

groups in the midst of

00:17:50

a conflict, that's fueled by

00:17:51

religious divisions. They talk about

00:17:54

knowing how your equipment ultimately,

00:17:56

might be used to further

00:17:58

negative human rights impacts. If

00:18:01

you're not there to watch

00:18:02

it that they talked about

00:18:04

avoiding further contributing complex by



00:18:07  
selling shares parties to ultimately

00:18:09  
can use them to help

00:18:10  
fund the war effort and

00:18:12  
and and really the bottom

00:18:13  
line, then is he have

00:18:15  
to conduct Titans. Human rights.

00:18:17  
Due diligence that also considers

00:18:19  
International humanitarian law which is

00:18:21  
different than human rights to

00:18:23  
pull back. When you take

00:18:24  
the full context, Titan human

00:18:26  
rights due diligence was a

00:18:27  
little bit different from basic



00:18:29

human rights. Due diligence you

00:18:30

later in international humanitarian law

00:18:32

effectively a no-win And this

00:18:35

is why it is about

00:18:36

as complex as a guest

00:18:38

in terms of providing advice

00:18:40

of being able as as

00:18:41

an attorney in house or

00:18:43

outside to be able to

00:18:44

provide meaningful effective and an

00:18:48

inn in the kind of

00:18:49

advice that ultimately assists in

00:18:51

avoiding negative, human rights impact



00:18:53  
and the wind up. I'll

00:18:55  
say that this isn't a

00:18:56  
problem that is going away.

00:18:57  
There are 110 active conflicts

00:19:00  
right now, involving 55 different

00:19:03  
countries, attention on businesses, operating

00:19:06  
in those environments, is only

00:19:07  
increasing. We do need more

00:19:11  
education and more guidance for

00:19:13  
lawyers internally or externally, who

00:19:16  
are counseling companies, who have

00:19:18  
to face this no-win situation

00:19:20  
is binary no-win situation, whether



00:19:23

that's through the IV a

00:19:24

or through the human rights,

00:19:26

the business and human rights

00:19:27

Lawyers Association that Doug mentioned

00:19:29

which was just formed and

00:19:31

announced this week that it

00:19:33

really is critical to her.

00:19:34

Create those tools that do

00:19:36

allow the profession to council

00:19:39

companies counsel their clients through

00:19:41

these kinds of incredibly difficult

00:19:43

indexing situation. There. Thank you,

00:19:47

John. I couldn't agree with



00:19:50

you more about the complexity

00:19:52

and although I counted this

00:19:55

new publication by undp and

00:19:58

the UN working group and

00:19:59

others, it remains perplexing. And

00:20:04

as difficult, as can be

00:20:05

to cancel a company in

00:20:08

some of these situations, Let

00:20:12

let me ask you because

00:20:13

you you've recognized the complexity

00:20:16

how far do you think

00:20:19

a lawyer should push a

00:20:21

company? One way or the



00:20:23

other? When it's facing a

00:20:25

multifaceted multi-factor, Marley legally the

00:20:31

commercially very difficult choice about

00:20:34

whether to stay or to

00:20:35

go in a situation like

00:20:37

me on Mario we're going

00:20:39

pretentiously Mike, we more equipment

00:20:42

or lure, more financing to

00:20:44

the military regime. Yeah, I

00:20:48

mean I think it's a

00:20:48

lawyer if you know it

00:20:49

is one of those situations

00:20:50

where you don't need to



00:20:53

push that hard because the

00:20:55

situation is that the issues

00:20:57

are so Stark and the

00:20:59

potential implications for negative human

00:21:01

rights impact. Loss of life

00:21:03

contribution to conflict is often

00:21:06

so apparent that, that, that

00:21:08

really the best thing you

00:21:11

can do is identify all

00:21:13

of the various pros and

00:21:15

cons and options and how

00:21:16

to go about conducting heightened

00:21:18

due diligence in a conflict



00:21:20

affected setting that integrates International

00:21:23

humanitarian law, what that process

00:21:25

looks like from an outcome

00:21:27

standpoint with the least worst

00:21:29

options are and help creatively

00:21:32

think through how to decide

00:21:34

between them always with an

00:21:36

eye towards minimizing, the human

00:21:40

rights images of your decision.

00:21:42

I think the complexity really

00:21:44

comes from being able to

00:21:45

park, do all of that,

00:21:47

and lay it out in



00:21:48

a way that enables effective

00:21:50

decision-making. But, you know, I

00:21:52

have found that people take

00:21:55

that situation pretty darn seriously.

00:21:58

And so as a lawyer,

00:21:59

there definitely situations in the

00:22:01

business and human rights space.

00:22:02

Where were you do need

00:22:03

to put things in Stark.

00:22:05

Terms of people understand the

00:22:06

implication but operating conflict-affected areas

00:22:09

typically has people's at full

00:22:11

attention. Tatiana, I thought I



00:22:16

saw you nodding with possible

00:22:18

agreement, to what John said,

00:22:20

can you find an iota

00:22:23

of disagreement with Stage remarks?

00:22:26

You're a trained lawyer? So,

00:22:28

if there's any leaking, what,

00:22:30

John just said you can

00:22:31

find it I told you

00:22:36

I will do my best

00:22:37

to play the contrarian, although

00:22:39

I have to confess that

00:22:41

I agree with a lot

00:22:42

of what John said, and



00:22:46

I do think it's, I

00:22:47

mean, I'm sure they're not

00:22:48

going to disagree that it's

00:22:49

incredibly important to undertake heightened

00:22:51

due diligence. If you find

00:22:52

yourself or a client find

00:22:54

themselves, operating in a van.

00:23:03

think that said, I'm starting

00:23:11

to be a contrary. I

00:23:12

had covered the bases so

00:23:21

well but it's it's hard

00:23:23

to to find a way

00:23:25

to get through it but



00:23:26

Virginia I hear is a

00:23:27

very good lawyer at and

00:23:31

is it Miller and shovel

00:23:32

yay, or a Virginia and

00:23:34

can you find, can you

00:23:42

find any holes to Perkins?

00:23:46

Honestly, I I can't think

00:23:48

of over holes to poke

00:23:49

it definitely piqued my interest

00:23:52

from the perspective of thinking

00:23:55

about in advance of conflict,

00:23:58

what to do in situations,

00:23:59

where you might be in



00:24:00

a situation that could lead

00:24:02

to conflict. Or, or arguably

00:24:04

already is gross human rights

00:24:07

violations. Or something of the

00:24:09

sort where I can fly.

00:24:11

And I guess my question

00:24:13

is, when you're talking about

00:24:16

conflict-affected areas, having the attention

00:24:19

of the most important people

00:24:21

at the company, Do you

00:24:26

think that those companies and

00:24:27

the people that are in

00:24:28

those scenarios are taking the



00:24:30

time to actually, methodically go

00:24:31

about knocking out the risks

00:24:33

and weighing the benefits and

00:24:34

cost of pulling out or

00:24:37

are they making more of

00:24:38

a decision? So I think,

00:24:46

when you're already there, you

00:24:48

know, off in the focus

00:24:49

on the business side is,

00:24:50

how much money are we

00:24:51

going to lose? But but

00:24:53

there's typically. And then, you

00:24:55

know, you're you're effectively. Ditching,



00:24:56

your operations are giving up.

00:24:58

Your Shares are giving up

00:24:59

all of your investment and

00:25:02

typically, there is somebody is,

00:25:03

does not wait a second.

00:25:04

There's also a, an impact

00:25:07

on people and making that

00:25:09

decision and so that they

00:25:10

may see it simplistically. But,

00:25:11

but they will, at least

00:25:12

get the rough Contour of

00:25:14

the problem. And then, as

00:25:16

a lawyer, you're going to



00:25:17  
help spell those out. You're

00:25:19  
going to tease those out

00:25:20  
in more detail. So so

00:25:23  
they understand, you know, the

00:25:24  
full LOL. All the elements

00:25:26  
to go into into into

00:25:27  
that Paradigm but typically you

00:25:30  
know, you will see people

00:25:31  
understand what the, what the

00:25:33  
relevant issues are fairly early

00:25:35  
quickly, whether to invest weather

00:25:38  
to go into a, fragile

00:25:40  
territory where conflict is the



00:25:43

possibility, that is a much

00:25:45

more current situation. And, and,

00:25:47

and they are, you definitely

00:25:48

see a lot more Divergent

00:25:51

views. And and frankly is

00:25:53

Doug, mentioned the London, energy

00:25:55

case and Sweden. That's exactly

00:25:57

what happened there. So there

00:25:58

was a beef, a brief

00:25:59

break in the action and

00:26:01

fighting in Sudan, 20 years

00:26:04

ago, and they went in

00:26:05

during that very brief. And



00:26:07

there's no evidence or anything

00:26:10

like that. And immediately, when

00:26:12

they get their fighting breaks

00:26:13

out, again, they build Bridges

00:26:15

at the government uses that,

00:26:17

that that end up contributing

00:26:18

to the conflict in 20

00:26:20

years later. Now, they're under

00:26:21

investigation for a war crimes

00:26:24

in connection with With going

00:26:26

in and they didn't do

00:26:26

that at that height and

00:26:28

due diligence. And I don't



00:26:30

know what that twenty years

00:26:30

ago. A similar case was

00:26:32

brought as a civil case

00:26:33

today. It's a criminal case,

00:26:34

which shows how this field

00:26:35

has evolved. But I do

00:26:37

think when you're going in

00:26:38

ahead of time as it

00:26:40

in making an investment during

00:26:41

a period of fragility, but

00:26:43

not active conflict. You know,

00:26:45

that's one. We're hiding due.

00:26:46

Diligence is super important. It



00:26:48

can be very difficult to

00:26:49

do that. Due diligence, given

00:26:51

the fragility and situation on

00:26:52

the ground. But I do

00:26:54

think that is one. Where

00:26:55

is a lawyer? You may

00:26:56

need to be a little

00:26:57

more forceful in advancing. What

00:27:00

could happen if the potentialities

00:27:01

and how this has happened

00:27:03

for other companies and what

00:27:04

resulted. So I can think

00:27:06

that one is a little



00:27:06

trickier in terms of client

00:27:08

management when it comes to

00:27:09

that, We're hearing the the

00:27:12

voice of experience here and

00:27:13

we're having trouble piercing the

00:27:16

armor and John's experience. But

00:27:18

we have someone from a

00:27:20

war-torn country, which fortunately has

00:27:23

made important step toward peace

00:27:25

in the person of Jose,

00:27:27

Antonio Rivas, who is based

00:27:30

in Columbia? I believe Jose

00:27:32

Antonio or you going to



00:27:33

take the same route as

00:27:34

Tatiana and Virginia and just

00:27:36

deployed John or a car

00:27:37

can you find the he's

00:27:39

perhaps overlooked even some small

00:27:41

point? I don't think that

00:28:01

I would disagree. We are

00:28:02

in any way with John.

00:28:03

The only thing that that

00:28:05

I would say as a

00:28:06

way to supplement is is

00:28:12

are in countries that are

00:28:16

being conflict or are going



00:28:19

through conflict and, and by

00:28:22

the way, I'm in d.c.

00:28:25

Are you based in DC?

00:28:26

Yes, I am basing, this?

00:28:28

Yes, that is very proud

00:28:37

of. So, you know, any

00:28:39

of it, what what I

00:28:43

was going to say is

00:28:44

that in countries where you

00:28:46

are transitioning, from a severe

00:28:51

complex, situation of human rights

00:28:53

in to a more suited

00:28:56

for internal armed conflict, then



00:29:00

the logic at some stage

00:29:01

changes from from the logic,

00:29:04

which I am sure we're

00:29:06

all aware of protection and

00:29:10

in respect of human rights

00:29:11

which is one in one

00:29:15

that should be in the

00:29:16

mindset of state to a

00:29:19

situation of international humanitarian law

00:29:22

and then The question of

00:29:25

what rules, apply, not only

00:29:27

four, or institutional, Armed Forces,

00:29:31

but also, for those actors



00:29:33

that are in the, in

00:29:35

the midst of the war,

00:29:36

I am not entirely sure

00:29:38

that many of these companies.

00:29:42

Of course, they may, they

00:29:45

are a multinational companies. And,

00:29:47

and to me, the big

00:29:49

question is, is, and if

00:29:51

you ask them, if they

00:29:52

have in-house counsel and the

00:29:55

house counsel might be there

00:29:56

on site, but they don't

00:29:59

have John there or Virginia



00:30:01

or you and therefore, some

00:30:04

of the calculations of local

00:30:06

council is, is how do

00:30:07

we comply with local law

00:30:09

to continue business? This business

00:30:13

out of financial economic equation.

00:30:16

B investor wants to continue

00:30:17

business producing the goods that

00:30:20

he has been producing or

00:30:21

extracting the the gold or

00:30:23

oil or Or, or whatever

00:30:25

they're doing, or providing the

00:30:27

services that they're providing. And



00:30:29

the logic is pretty much

00:30:31

a, a local law perspective.

00:30:33

They may have done the

00:30:34

diligence but when when things

00:30:37

get more complicated and perhaps

00:30:40

some do and perhaps with

00:30:42

with with the importance of

00:30:43

the human rights guidelines business

00:30:47

and human rights. Perhaps some

00:30:49

do when when, when things

00:30:51

become more complicated but my,

00:30:54

my, my perception and I

00:30:57

have no, no intelligence. I



00:31:00  
can't confirm intelligence in some

00:31:02  
of the things that have

00:31:03  
been happening is that normally

00:31:06  
things go business as usual,

00:31:08  
and the carry-on and, and

00:31:12  
to the list that that

00:31:13  
that John has provided, I'd

00:31:17  
like to also or that

00:31:19  
you provided actually, sorry, and

00:31:21  
dog at the beginning. There

00:31:25  
have been also lately discussions

00:31:28  
in in in Columbia, concerning

00:31:31  
human rights. Violations are in



00:31:33

the in the coal extraction

00:31:36

business also. And and, and

00:31:40

that to me, leads to

00:31:42

a big question which is

00:31:44

as it should be only

00:31:47

a matter of locals are

00:31:51

domestic law, including human rights

00:31:56

obligations through local law, or

00:31:59

shoot or or wood, or

00:32:01

should there be also International

00:32:04

economic treaties, creating, obligations related

00:32:08

to Human Rights. I'll leave

00:32:09

it there because that's the



00:32:11  
subject of of additional words

00:32:13  
that I will be sharing

00:32:14  
with a with the audience

00:32:16  
you set up for your

00:32:19  
lighter. For the answer. Their

00:32:25  
let's turn to a different

00:32:27  
geographical context as John mentioned

00:32:31  
or someone mentioned. It's not

00:32:33  
just a matter of being

00:32:35  
in a conflict but I

00:32:37  
think Virginia mention it's a

00:32:38  
matter of looking at the

00:32:39  
precursors of conflict and of



00:32:42

course right now, I'm not

00:32:43

sure which way to characterize

00:32:46

the situation in, send John

00:32:48

it has been declared by

00:32:51

United Nations. Human rights office

00:32:54

investigation to be a situation

00:32:57

of I believe they said

00:32:59

crimes against humanity. And on

00:33:02

the other hand it's not

00:33:03

broken down into what I

00:33:05

think would meet the minimum

00:33:06

threshold for a Geneva Convention

00:33:08

armed conflict yet. And I've



00:33:10

been Virginia, what, what kinds

00:33:13

of issues would you be

00:33:14

hearing from your company clients

00:33:17

and what kind of advice,

00:33:18

would you give them in

00:33:19

regard to syndrome? Thanks so

00:33:23

much, dog and Virginia Newman.

00:33:26

I'm council at Miller and

00:33:27

Chevalier and I work in

00:33:28

our this isn't human rights

00:33:30

Practice Group. Our leader, The

00:33:32

Practice Group make like bridges

00:33:34

over there. So we work



00:33:36

on, on the issues related

00:33:38

to sinkiang pretty frequently and

00:33:41

I think that we like

00:33:44

many of our clients try

00:33:46

to stay neutral which, which,

00:33:48

I know is it's not

00:33:49

really practical or feasible when

00:33:52

they're there actually, is conflict

00:33:54

in the situation. But I

00:33:56

do want to know, also

00:33:57

that big gold staying in.

00:34:00

Partial can be can be

00:34:03

a feasible one. So we



00:34:07

talk about human rights due

00:34:08

diligence in the context of

00:34:10

the situation and she and

00:34:11

John and maybe for folks

00:34:12

that aren't aware of what's

00:34:14

happening. There there's alleged state-sponsored

00:34:17

forced labor against the minority

00:34:20

group called The uyghurs and

00:34:22

xinzheng as a region in

00:34:23

a province in China's, western

00:34:26

region, this situation is really

00:34:30

tricky because kind of alluding

00:34:32

to what John was discussing



00:34:33

earlier that are and also

00:34:36

Jose Antonio there are competing

00:34:38

laws between the US and

00:34:40

China. So where the US

00:34:42

now has regulated to say

00:34:44

that you cannot import any

00:34:46

products into the United States

00:34:48

that are made in whole

00:34:49

or in part in this

00:34:51

region in China, which produces

00:34:53

a huge proportion of the

00:34:56

world solar panels, a huge

00:34:58

proportion of our cotton and



00:35:00

apparel as well as electronics

00:35:02

and there's some ties to

00:35:04

the Auto industry. U.s. says,

00:35:06

because of the human rights

00:35:08

violations. Are alleged human rights

00:35:09

violations over there. You cannot

00:35:11

import any products from that

00:35:14

region. Unless you've done extensive

00:35:15

due diligence to prove there's

00:35:17

no poor sleeper. China has

00:35:19

a very different viewpoint on

00:35:21

the situation and she jumped.

00:35:23

So not only are Us



00:35:25

and other multinational companies trying

00:35:27

to figure out how do

00:35:28

we comply with us law

00:35:30

and ensure that we're conducting

00:35:31

adequate due diligence to make

00:35:33

sure there are no human

00:35:34

rights violations in our supply

00:35:36

chain, they're dealing with Chinese

00:35:38

laws that are actually a

00:35:40

man dating against enforcing the

00:35:42

u.s. laws within the trade.

00:35:45

So whereas, you know, you

00:35:48

have this potential situation where



00:35:51

you could be in a

00:35:52

pre-con situation between us and

00:35:55

other Western forces in China,

00:35:56

either in relation to ongoing,

00:35:58

I'll let streaming rights violations

00:36:01

or some of the other

00:36:03

situations that are happening in

00:36:04

China, with respect to Hong

00:36:05

Kong and Taiwan. And then

00:36:07

there's also the protests, which

00:36:10

I think everybody saw over

00:36:11

the weekend and potentially on

00:36:14

going hard to say, We're



00:36:18

we're in a scenario where

00:36:19

height and due diligence has

00:36:20

certainly warranted in a specific

00:36:22

manner, related to the forced

00:36:24

Labour issues and she John.

00:36:25

But with our clients, what

00:36:27

we're seeing a lot now

00:36:28

is kind of an expansion

00:36:30

of that, targeted height and

00:36:32

due diligence. So, heightened due

00:36:34

diligence, from the perspective of

00:36:35

just forced Labour to meet

00:36:37

us and other Western regulatory



00:36:38

standards is also an opportunity

00:36:40

to conduct broad-ranging human rights

00:36:43

due diligence. So it's more

00:36:46

in keeping with the UN

00:36:47

GPS from the perspective of

00:36:49

understanding, all of your potential

00:36:51

and actual adverse impact and

00:36:55

risks. And I think that

00:36:58

as companies are that are

00:37:00

currently operating, in China, are

00:37:02

sourcing from China, are figuring

00:37:05

out how to approach the

00:37:06

strata risk profile of potential



00:37:08

conflict in the region. And

00:37:10

what they would do, if

00:37:11

the situation than xinzheng got

00:37:13

worse or if there were

00:37:15

actual conflict It makes sense

00:37:17

to conduct that height and

00:37:19

due diligence from the broader

00:37:21

range, in perspective of what

00:37:22

risks and impacts are, my

00:37:25

operations in relationships connected to.

00:37:28

In that scenario than you,

00:37:30

you have the information to

00:37:32

at least be able to



00:37:33

understand what would I do

00:37:35

if the situation got worse

00:37:37

and kind of building on

00:37:40

what John was discussing, you

00:37:42

know, it's not necessarily best

00:37:44

to pull, cut the cut,

00:37:46

the plug, and pull out

00:37:48

of either the chignon region

00:37:50

or out of China entirely,

00:37:51

just because China and the

00:37:53

US are opposed to each

00:37:55

other on human rights issues,

00:37:57

or or if there is



00:37:58

actual conflict, that makes sense,

00:38:00

to consider what happens. If

00:38:01

I do pull out that

00:38:02

region. 2070 course become unemployed

00:38:07

to labor practices, get worse

00:38:08

in a particular Factory because

00:38:10

I'm no longer going to

00:38:11

Source from that factory. Or

00:38:14

if I pull out in

00:38:15

the event, Like, does that

00:38:16

does that help or harm

00:38:18

the local stakeholders and then

00:38:22

also building on that too?



00:38:25

One other question, Virginia, as

00:38:30

I mentioned, the UN recently

00:38:32

came out with a very

00:38:35

extensive report on, I believe

00:38:36

crimes against humanity allegedly, but

00:38:40

according to the UN investigation

00:38:41

being committed in in send

00:38:45

John, in many conflict countries.

00:38:47

There is likely to be

00:38:49

irrelevant un report either because

00:38:51

there's a special rapporteur of

00:38:53

the UN Human Rights Council.

00:38:55

Who's been assigned to a



00:38:56

troubled countries such as me

00:38:58

on March or because one

00:39:00

or more of the systematic

00:39:02

reporters of the UN Human

00:39:04

Rights Council, whether it's freedom

00:39:06

of expression or where the

00:39:09

business and Human Rights group,

00:39:10

or the arbitrary detentions group,

00:39:14

or the forced disappearances group

00:39:16

is often going to be

00:39:17

at the UN report. A

00:39:20

varying quality in varying lengths

00:39:22

but some of them are



00:39:23

pretty good. How do you

00:39:26

see as a as a

00:39:28

global law firm based in

00:39:30

the US? How do you

00:39:33

say advising your clients when

00:39:35

those kinds of reports have

00:39:36

come out and down the

00:39:38

road? Somebody is going to

00:39:40

say, but you continue to

00:39:41

do business there knowing about

00:39:43

that report and we're going

00:39:45

to, we're going to sue

00:39:46

your client for drug for



00:39:47  
consequential damages. I think that

00:39:52  
that's that's a great question

00:39:54  
and you kind of stole

00:39:55  
the theme out of my

00:39:56  
mouth from where I was

00:39:57  
going to go. I think

00:39:58  
no no no that's the

00:39:59  
perfect confronting these issues. I

00:40:03  
think that one of the

00:40:05  
most difficult aspects of dealing

00:40:07  
with China in particular and

00:40:09  
and xinzheng is the lack

00:40:11  
of reliable information and it



00:40:16

went in the face of

00:40:17

the lack of reliable information

00:40:19

and just getting certain information

00:40:21

from for example, you and

00:40:23

reports or NGO reports which

00:40:25

we know to be relatively

00:40:27

reliable and considered to be

00:40:30

probably the most trustworthy sources

00:40:32

of information when you don't

00:40:34

have visibility into what's going

00:40:35

on the ground. Because reporter,

00:40:37

some and Auditors are not

00:40:40

permitted into the region and



00:40:42

there's also just general lack

00:40:44

of access to certain sites

00:40:46

in China because of covid,

00:40:47

lockdown. You kind of have

00:40:50

to take that information into

00:40:52

account when conducting your due

00:40:54

diligence and consider it as

00:40:56

a reliable source. So when,

00:40:59

when we're facing, for example,

00:41:00

when the UN report came

00:41:01

out, which alleged serious, human

00:41:04

rights violations in sinkiang from

00:41:07

the perspective of us Regulators,



00:41:09  
that's obviously relevant information and

00:41:11  
when we're conducting, either targeted

00:41:14  
due diligence with respect to

00:41:16  
sinking or brought her human

00:41:17  
rights. Due diligence for companies

00:41:19  
operating in China, we absolutely

00:41:20  
treat. That is something that

00:41:22  
factors into the risk assessment

00:41:24  
and said that, that's what

00:41:26  
we're doing, either we document

00:41:27  
it and it weighs in,

00:41:29  
with regard to, whether you

00:41:30  
should continue to work with



00:41:31

the given supplier, or try

00:41:34

to remediate the issue, by

00:41:35

either working with suppliers to

00:41:37

repair situations, or to change

00:41:40

supply chain. That, that's not

00:41:42

if that's not possible. There's

00:41:44

not there's a burden of

00:41:45

proof issue here is, I

00:41:46

understand it under the new

00:41:49

US, law relating to forced

00:41:52

Labour and send John. There's

00:41:54

a rebuttable presumption that anything

00:41:57

coming from sinjar was produced



00:41:59  
with forced labor. Maybe I've

00:42:00  
overstated that. So you'd be

00:42:03  
able to have to be

00:42:04  
looking at you and reports

00:42:06  
and other information not just

00:42:08  
in terms of what can

00:42:10  
you prove or know what,

00:42:12  
in terms of, how can

00:42:14  
you read? What or do

00:42:15  
you even want to try

00:42:16  
to rebut the presumption that

00:42:19  
there was forced labor from

00:42:20  
Saint John? So so how



00:42:22

do you see is a

00:42:24

big issue under this new

00:42:25

US statute of having your

00:42:28

client or you on the

00:42:29

client's behalf, try to Rob

00:42:31

us of our presumption? That's

00:42:33

got some pretty good evidentiary

00:42:34

support. For a lawyer who

00:42:39

practices in the UFL p.

00:42:42

A space that we are

00:42:43

forced labor, prevention act. You

00:42:45

didn't overstay that you probably

00:42:47

under seated it. The rebuttable



00:42:48

presumption is absolutely considered. Basically,

00:42:52

from us Regulators perspective to

00:42:54

be watertight. So if something's

00:42:55

coming from ching chong, it's

00:42:57

expected to be made with

00:42:58

forced Labour and we have

00:42:59

not seen CVP Customs and

00:43:01

Border Protection which enforces the

00:43:03

law in the US has

00:43:05

said that, nobody has tried

00:43:06

to overcome that presumption. So

00:43:08

essentially all us companies right

00:43:11

now are operating as if



00:43:12

good coming from, xinzheng are

00:43:15

made with forced labor and

00:43:16

can't be imported to the

00:43:17

US. And from a regulatory

00:43:20

perspective, we advise companies that

00:43:22

sourcing from the x u

00:43:23

a r will be incredibly

00:43:25

difficult to prove to be

00:43:27

admissible to the US but

00:43:29

that. I think raises an

00:43:31

important question as to whether

00:43:33

sanctions and the UFL PA.

00:43:36

Advancing the overall interest of



00:43:38

Human Rights, right? Because now

00:43:41

we're seeing a mass Exodus

00:43:42

from the region in terms

00:43:43

of Supply chains. And it's

00:43:46

not necessarily changing the Chinese

00:43:48

government's stance on anything and

00:43:51

it it probably is causing

00:43:54

some economic harm in change

00:43:56

on even though the Chinese

00:43:57

government wouldn't would never release

00:43:58

that information. I'm so I

00:44:00

just think that that's kind

00:44:01

of an interesting question from



00:44:03  
a philosophical perspective, which does

00:44:06  
have bearing on our practice,

00:44:07  
right? We talked about your

00:44:09  
point about reliable information and

00:44:11  
how to know what, rent

00:44:14  
information to rely on and

00:44:15  
what? Wait to play place

00:44:16  
on you. And reports, I

00:44:18  
think of us as practitioners

00:44:19  
of having the opportunity to

00:44:21  
gather reliable information when were

00:44:24  
conducting risk assessments, when were

00:44:25  
talking to our Chinese counterpart



00:44:27

and conducting due diligence, and

00:44:30

learning about the supply chain,

00:44:31

their sensitivities here in terms

00:44:35

of how we Talk about

00:44:36

human rights and how we

00:44:38

collect this data and the

00:44:39

Judgment. We apply to our

00:44:41

Chinese counterparts because of their

00:44:43

common practices and I think

00:44:45

that building that capacity building

00:44:48

those relationships and gathering information

00:44:50

from them with respect is

00:44:53

is probably the best way



00:44:54  
to to try to keep

00:44:56  
the relationship as healthy as

00:44:58  
possible. And and that's personally

00:45:00  
how I how I try

00:45:01  
to conduct our business. What

00:45:04  
do you what do you

00:45:05  
do when when solid information

00:45:07  
is simply not available? I've

00:45:10  
heard stories that the companies

00:45:12  
can't send their inspectors to

00:45:14  
send John because either they

00:45:17  
can't get in, or they

00:45:18  
can't see anything where there,



00:45:19

they know that they're being

00:45:21

Sean misinformation, basically. So when

00:45:25

you're in, when you're in

00:45:26

an information vacuum, How can

00:45:30

you conduct heightened or any

00:45:32

other kind of Human Rights

00:45:34

due diligence and in the

00:45:36

absence of good information? Which

00:45:39

way should the domino fall.

00:45:41

So I I think that

00:45:47

the first response I would

00:45:49

say is Happy tried every

00:45:51

way of trying to get



00:45:52

information. There's So II, my

00:45:59

first talk and I think

00:46:00

our team's first task is

00:46:01

to say, how else could

00:46:03

we try to go about

00:46:04

getting some information? And then,

00:46:06

you know, we have a

00:46:07

laundry list of ways to

00:46:08

conduct due diligence. It could

00:46:10

be to talk to diligent

00:46:11

through various different providers gathering

00:46:14

information and Chinese media Us

00:46:16

Media, talking to counterparts on



00:46:18  
the ground or company employees

00:46:20  
on the ground. And then

00:46:21  
of course there are also

00:46:23  
some, you know, in-depth kind

00:46:25  
of More gumshoe, detective types

00:46:29  
of due diligence. So, basically

00:46:31  
like cracking a nut, like

00:46:33  
is this part week is

00:46:34  
that part week? How can

00:46:35  
I go about getting this

00:46:36  
information? If there really is

00:46:38  
not accessed information? Then that

00:46:40  
is in and of itself



00:46:41  
an indicator which should inform

00:46:43  
your risk assessment. If you

00:46:44  
cannot get any information from

00:46:46  
your suppliers or online, then

00:46:49  
you have to kind of

00:46:50  
act accordingly. Based on that

00:46:52  
black box, you need to

00:46:53  
be able to confirm that

00:46:54  
they're there is no exposure

00:46:56  
to the alleged horse labor

00:46:58  
violations. And if you can't,

00:46:59  
I'm that should also inform

00:47:01  
the decisions you make. I



00:47:03

want me to pull a

00:47:03

surprise question on Tatiana, who

00:47:05

didn't think she was going

00:47:06

to be talking about send

00:47:08

John today, Virginia, you've indicated

00:47:11

that your approach is to

00:47:14

try to be neutral. Even

00:47:16

in situations where neutrality is

00:47:18

challenging to say the least

00:47:20

Tatiana. Today, I had to

00:47:23

leave the last panel at

00:47:25

the UN world for him.

00:47:26

A little early to go



00:47:27

set up the reception for

00:47:29

the announcement of the of

00:47:31

the business and human rights

00:47:32

Lawyers Association. But I did

00:47:35

hear a presentation on the

00:47:36

final panel by somebody from

00:47:38

the state department who explained

00:47:40

the new while you were

00:47:42

statue in a setting up

00:47:43

the reportable presumption. That anything

00:47:45

from sinjon is, is Tainted

00:47:49

by forced labor and you

00:47:50

disturbed Virginia indicate that apparently,



00:47:52

no. American company has tried

00:47:54

to challenge that. I'm told

00:47:57

that after I left, I

00:47:59

wish I'd been able to

00:48:00

stay that the Chinese who

00:48:02

were present in the room.

00:48:04

Challenge the state department person

00:48:06

and basically and we've heard

00:48:09

this for years but we're

00:48:11

getting it again well in

00:48:13

your country. You have terrible

00:48:14

violations of human rights, you

00:48:16

have been no systematic race



00:48:19

discrimination and and free use

00:48:24

of guns that go around

00:48:25

massacring people and probably I

00:48:28

don't know what other examples

00:48:30

they gave of us human

00:48:32

rights violations and of course

00:48:33

we like any other country

00:48:34

have lots of human rights

00:48:36

violation. So how much of

00:48:39

a point do you think

00:48:40

China has and say, why

00:48:41

are you picking on us

00:48:42

just because of sin John



00:48:43

when you're you want to

00:48:45

clean up your own house

00:48:46

first, Well, fortunately, I had

00:48:52

the earlier today, saw the

00:48:55

response that a captain of

00:48:57

u.s. soccer games. When asked

00:48:59

a similar question by the

00:49:01

recording from Iran and I

00:49:03

might be a little bit

00:49:05

from what he said, which

00:49:06

is it is certainly true

00:49:08

that every country is constantly

00:49:11

striving to improve or should



00:49:14  
be constantly striving to improve

00:49:15  
in that. No country is

00:49:17  
perfectly respecting all of its

00:49:19  
citizens, right? All of the

00:49:20  
time. That's what I do

00:49:22  
think there is a real

00:49:24  
difference in a country that

00:49:27  
is transparent about, its problems

00:49:30  
are and sincere in its

00:49:32  
efforts to have an open

00:49:34  
dialogue about overcoming those problem.

00:49:37  
And we are constantly I

00:49:41  
think in the United States



00:49:42  
top like a t-shirt of

00:49:46  
them so fast, but I

00:49:48  
do think I do think

00:49:49  
you are. Hampton Inn, United

00:49:50  
States, trying to address the

00:49:53  
systemic Injustice has that that

00:49:55  
we may see in our

00:49:56  
society. And I think, there

00:50:01  
is also a difference between

00:50:04  
a country that says, something's

00:50:08  
up in a country, that's

00:50:09  
not even allowing investigators on

00:50:11  
the ground to see what



00:50:12

is going on. And to

00:50:15

see and to see what

00:50:16

is happening behind it behind

00:50:18

the scenes. Transparency setting that

00:50:26

issue aside is what they

00:50:30

are allegedly doing in Soon.

00:50:31

Jung more serious than what

00:50:34

we allegedly do to learn

00:50:36

or people on our people

00:50:38

of different racial complexion and

00:50:43

immigrants. And and is that

00:50:45

an important question? I think

00:50:49

it is an important question,



00:50:50

I do. Because I think

00:50:53

that these are all the

00:50:56

types of questions that if

00:50:57

you're doing any sort of

00:50:58

Human Rights, due diligence whether

00:51:01

in a contest event that

00:51:02

I can do diligence in

00:51:03

a conflict or pre-conflict area

00:51:05

or just regular do diligence,

00:51:06

you have to be mindful

00:51:09

of what, what what the

00:51:11

human rights in skate is

00:51:12

this is what human rights.



00:51:14

Various people are afforded in

00:51:17

whether governments and societies are

00:51:19

combined with those human rights.

00:51:24

I was driving that forced

00:51:28

labor is a more serious

00:51:31

problem. I don't know. I

00:51:35

think it's I think it's

00:51:36

certainly very bad. I think

00:51:37

that it's if you know,

00:51:39

the centrally slavery and that

00:51:41

the entire world has condemned

00:51:44

to slavery in the strongest

00:51:45

possible for racial discrimination of



00:51:48

all. So terrible and every

00:51:49

supplies country that is racial

00:51:51

discrimination, that there is a

00:51:58

difference in in degree that

00:52:03

we have to be mindful

00:52:03

of as attorneys and that

00:52:06

we have to kind of

00:52:11

Ensure that when we're doing

00:52:12

a due diligence investigation, or

00:52:16

when we're providing due diligence

00:52:18

guidance to our clients, we

00:52:19

are we are very mindful

00:52:21

of the seriousness of the



00:52:23

allegations related to related to

00:52:26

these various areas. Virginia, you

00:52:29

indicated earlier you were your

00:52:31

approaches to try to be

00:52:33

neutral Tatiana's approaches. I'll characterize

00:52:36

it as not neutral. How

00:52:39

would you have responded to

00:52:40

the Chinese today? If they

00:52:42

said, what I was told,

00:52:43

they said, I was glad

00:52:46

that you ask Tatiana, but

00:52:48

questions about something totally responding.

00:52:51

So I think I was



00:52:54  
saying, everyone's trying to be

00:52:56  
neutral, but that we really

00:52:58  
are trying to be impartial.

00:53:00  
I'm in and make sure

00:53:01  
that we speak about this,

00:53:02  
in a way that doesn't

00:53:03  
alienate any of our stakeholders.

00:53:05  
Which for, for us here

00:53:08  
at Miller does include many

00:53:10  
multinationals that have operations in

00:53:12  
China, that I'm on the

00:53:14  
phone with all the time.

00:53:15  
And so, you know, I



00:53:20

think that I would probably

00:53:21

go back to just using

00:53:23

the methodology that we use

00:53:25

when we're conducting risk assessments,

00:53:26

and we're looking at the

00:53:27

severity of the impact, how

00:53:29

widespread it is, and the

00:53:31

remedial ability of those issues

00:53:33

and kind of trait is

00:53:35

that sounds, it does provide

00:53:36

a good objective way to

00:53:37

measure was actually happening and

00:53:40

to Tatiana's. First point, the



00:53:43

the biggest issue in my

00:53:44

mind really is black Transparent

00:53:46

because as you ask Doug,

00:53:48

what happens if you can't

00:53:49

figure out the answer, if

00:53:50

you're looking at a black

00:53:51

box, you kind of have

00:53:52

to assume that was happening.

00:53:53

There is bad or that

00:53:55

you don't have enough information

00:53:56

to know that it meets

00:53:57

your standards. And a lot

00:54:00

of the time when we're



00:54:01  
conducting due diligence, in relation

00:54:03  
to the x u, a

00:54:03  
r to see John, I'm

00:54:05  
not in broader China, you

00:54:07  
know what that is, ultimately

00:54:08  
what we have to come

00:54:10  
back to you is that

00:54:10  
there's just not enough information

00:54:11  
to be able to make

00:54:12  
informed decisions to justify going

00:54:15  
into the region. And, you

00:54:18  
know, hopefully that would change

00:54:19  
in the future, but I



00:54:22

hope that that gives you

00:54:23

enough meat to, to satisfy

00:54:25

the question, enough to appreciate

00:54:31

how difficult it is. For

00:54:35

lawyers to give confident advice

00:54:38

to companies. In in these

00:54:39

kinds of situations. Let's move

00:54:43

on, however, to touch you,

00:54:45

you were going to speak

00:54:46

a bit about it. And

00:54:49

also Jose Antonio moving on,

00:54:51

from sort of the substance

00:54:53

of these, dilemmas of how



00:54:55  
lawyers going to advise clients.

00:54:58  
In these kinds of situations,

00:54:59  
you both have started. Some,

00:55:01  
I think I'll characterize them

00:55:03  
as procedural, approaches, and Tatiana.

00:55:06  
You were going to talk

00:55:07  
something about how courts might

00:55:10  
deal with these problems. Let

00:55:11  
me give you the floor,

00:55:12  
and you can certainly correct

00:55:13  
my mischaracterization if it is

00:55:15  
that of your topic. Thank

00:55:18  
you God. I am interested



00:55:21

in how far you Tools

00:55:25

in particular, my deal with

00:55:28

Investments are or contracts that

00:55:31

they perceive to be painted,

00:55:33

I'll say by alleged human

00:55:35

rights. Abuses or complicity on

00:55:38

the parts of businesses or

00:55:39

corporations. As John mentioned earlier,

00:55:44

the question of business and

00:55:46

human rights is not is

00:55:48

certainly not a new question,

00:55:49

but the question of whether

00:55:51

International tribunals might find corporations



00:55:57  
responsible for human rights. Abuses

00:56:00  
of human rights violation. Is

00:56:02  
relatively is relatively new, and

00:56:04  
I think it was roster

00:56:06  
beat Argentina in 2016, where

00:56:10  
a tribunal first affirmatively said,

00:56:12  
we actually do believe that

00:56:15  
human rights impose Obligations on

00:56:19  
both public and private actors.

00:56:21  
And so conceivably a corporation

00:56:23  
could be held responsible for

00:56:25  
violating the exercise by individuals

00:56:33  
that got me thinking questions,



00:56:44

or issues of human rights

00:56:45

in investor State, and Commercial

00:56:49

arbitration with political Risk insurance.

00:56:51

I think another place where

00:56:52

we may see the human

00:56:55

race coming up. There's that

00:56:58

there's a road map for

00:56:59

how that might come up

00:57:00

in the way tribunals currently

00:57:01

deal with allegations of corruption.

00:57:04

So, the Seminole case in

00:57:07

this regard was World duty

00:57:08

free and in that case



00:57:12

investor invented a very candidly

00:57:15

to animate, a 2 million

00:57:16

dollar payment to the canyon.

00:57:18

Bend Canyon post president to

00:57:21

get his. And the tribunal

00:57:23

had no doubt that it

00:57:24

was bribed to obtain the

00:57:25

investment. And then said, the

00:57:27

investment was voidable because it

00:57:28

had been prepared for you.

00:57:30

And in subsequent cases tribunals

00:57:33

have decided either that they

00:57:35

mocked her over Investments. That



00:57:38

were procured through a bribe

00:57:40

or three minions since that

00:57:43

violate the treaty requirement for

00:57:46

most Investments, got a baby

00:57:47

need legally in conformance with

00:57:49

the lost the host, 8

00:57:51

questions of whether they can

00:57:57

provide relief to investors where

00:58:01

there are allegations that there

00:58:02

was crushing the performance of

00:58:04

an investment or contract in

00:58:05

there too. They adopted doctor

00:58:07

is similar to unclean hands



00:58:09

and not there either. Allegations

00:58:12

were inadmissible that about your

00:58:14

friends were inadmissible or they

00:58:15

severely reduced damages Awards in

00:58:18

those cases the approach. I

00:58:20

think it's similar in commercial

00:58:22

arbitration because an arbitration award

00:58:27

can be one of the

00:58:28

very, very circumstances and tribunals

00:58:36

are doing when they're confronted

00:58:37

with these questions of corruption

00:58:39

is considering that the Russian

00:58:42

violates International can map of



00:58:44

public policy. It's been condoned

00:58:46

in the strongest possible language

00:58:49

in the laws of domestic

00:58:51

States and also in numerous

00:58:53

International treaties and therefore tribunals

00:58:57

cannot uphold Investments that policy

00:59:02

so far is to conclude

00:59:07

that even if neither party,

00:59:08

in front of them has

00:59:09

brought up an allegation of

00:59:10

corruption, they have to and

00:59:11

at the investigated, And so,

00:59:15

you're going to suggest that



00:59:16

a similar approach be used

00:59:18

for bhr, right? Something investors

00:59:23

may want to be wary

00:59:24

of is that if they

00:59:27

are operating in a conflict

00:59:29

zone, or if they were

00:59:31

operating in the country before

00:59:32

complex and are now operating

00:59:34

a possible defense to an

00:59:39

investment claim, maybe while you

00:59:42

violated the human rights of

00:59:44

our citizens, by continuing to

00:59:47

operate in this conflict Zone



00:59:48

and the tribunals may actually

00:59:51

give Credence to arguments like

00:59:53

that the tribunal past with

00:59:56

deciding such a case may

00:59:58

take that same approach since

01:00:00

day one. We do think

01:00:01

did you think corporations have

01:00:03

an obligation to respect human

01:00:04

rights and to we see

01:00:07

you know it I think

01:00:08

it would be probably a

01:00:09

controversial practices light child slavery

01:00:12

or war crimes and crimes



01:00:13  
against humanity are violations of

01:00:15  
international public policy and their

01:00:17  
foreign investment that is heated

01:00:18  
by association and when their

01:00:20  
stick their practices would be

01:00:22  
Voidable and not production, a

01:00:26  
creative approach, and there's some

01:00:28  
Authority for it. But then,

01:00:31  
let me ask Jose, Antonio

01:00:33  
weather, that doesn't meet his

01:00:35  
whole proposal Jose Antonio Reyes.

01:00:38  
I understand that you're going

01:00:39  
to suggest that investment treaties



01:00:42

be our new ones. At

01:00:45

least contain new Clauses that

01:00:48

will allow human rights to

01:00:50

make their way into arbitral

01:00:52

decisions, but touch out as

01:00:54

just suggested a way of

01:00:55

doing that without your new

01:00:58

language in investment treaty. So,

01:00:59

tell us why you think

01:01:01

your new language is still

01:01:02

necessary. And Tatyana, Ali, skipping

01:01:06

over to Jose Antonio, because

01:01:07

I've got my eye on



01:01:08

the clock. I thank you.

01:01:12

And thank you. And I

01:01:13

think that I'm not necessarily

01:01:17

in disagreement with that Tiana.

01:01:18

I want to start by

01:01:20

saying that something that you

01:01:22

indicated at the beginning of

01:01:23

the panel, which is that

01:01:24

this is not a new

01:01:25

issue, this is this is

01:01:26

not you. I happened to

01:01:29

be the Secretary of one

01:01:30

of the secretaries of the



01:01:31

world duty free vs Kenya.

01:01:34

The secretary of the tribunal

01:01:35

at the time. That was

01:01:37

a novel issue. The issue

01:01:38

of corruption on the issue

01:01:40

of respecting a general principle

01:01:44

of law, which is good

01:01:45

faith, which is the basis

01:01:47

on, which the tribunal decided

01:01:50

that he could not ultimately

01:01:52

hear the case because I

01:01:56

reach that principle, it's also

01:01:59

not new. I happen also



01:02:01

to, to have negotiated the

01:02:02

treaty with the with Canada

01:02:04

and you know, this anecdote

01:02:05

that I have shared this

01:02:06

with you dog and the

01:02:09

investment treaty on behalf of

01:02:11

Another time that this was

01:02:15

2006 Canada, came to us

01:02:17

and said they had this

01:02:18

this novel proposal on the

01:02:20

social corporate responsibility that would

01:02:23

make that would create the

01:02:26

best efforts by both of



01:02:28

State parties to promote to

01:02:31

The Respect by the respective

01:02:33

companies of each party to

01:02:35

respect that at the social

01:02:36

corporate responsibility. Of course, the

01:02:39

whole state was Columbia, so

01:02:41

they know the belief was

01:02:42

and I have the highest

01:02:43

respect for their negotiators. And

01:02:45

I have good friends. That

01:02:46

put the notion was at

01:02:47

work. We're doing this for

01:02:49

word proposal to the Columbia



01:02:51  
and they might say no.

01:02:51  
And behold I said well

01:02:55  
why don't we take it

01:02:55  
further? Why don't we do

01:02:56  
positive and an explicit Hartlaub

01:03:00  
legations and two that they

01:03:02  
said no we got to

01:03:04  
watch. Please don't want to

01:03:10  
your proposal Jose Antonio of

01:03:13  
time, but let me just

01:03:14  
take a little bit of

01:03:16  
an issue with this notion

01:03:17  
that John propounded, that these



01:03:20

issues are not new. Shoes

01:03:22

are not new, but the

01:03:23

context is new in the

01:03:25

following sentence. We now have

01:03:27

a mandatory human rights due

01:03:32

diligence laws with varying degrees

01:03:34

of enforceability in France and

01:03:38

Norway. And we're about to

01:03:39

have one in Germany. There's

01:03:41

several other National proposals, on

01:03:43

the table, we've got this

01:03:45

new sinjon law in the

01:03:46

United States. The Europeans are



01:03:49

about to produce their corporate

01:03:50

sustainability due diligence directive. Doesn't

01:03:55

that make it? Isn't that

01:03:57

new wine into Old vessels?

01:03:59

John isn't the context? So

01:04:02

different that the kinds of

01:04:04

advice that we have to

01:04:06

give our corporate clients now

01:04:07

is qualitatively different than it

01:04:10

used to be. In terms

01:04:11

of the degree of legal

01:04:12

risk. There's no question that

01:04:14

since about 2015 then and



01:04:16

you sort of look at

01:04:17

the UK modern slavery, act

01:04:19

as its adoption. And then

01:04:21

ultimately it's going into force

01:04:22

in 2017 as part of

01:04:24

the, the over-under line. For

01:04:26

when we move from difficult

01:04:29

business decisions, a litigation risk

01:04:32

into a regulatory are aware

01:04:34

where we're seeing new proposed

01:04:35

business new pop on almost

01:04:38

a daily basis. And I

01:04:40

do think while some when,



01:04:42

and when I was talking

01:04:43

about the issues are a

01:04:44

new question of, do you

01:04:45

stay, do you go in

01:04:46

a complex affected area? I

01:04:48

still think it is. It

01:04:49

is the Baseline. Questions are

01:04:51

relatively the same. As we

01:04:53

saw a decade ago, 15

01:04:54

years ago with additional guidance

01:04:56

wish Edition with additional thinking

01:04:58

and frankly with additional scrutiny

01:04:59

on companies that does does



01:05:01

make the steaks. Hiring in

01:05:02

any respect. The regulatory environment

01:05:05

is changing so rapidly, which

01:05:07

is it is something for

01:05:09

lawyers. Obviously staying on top

01:05:10

of that, on top of

01:05:12

what has happened and being

01:05:13

able to predict what is

01:05:14

going to happen, is part

01:05:16

of why it's such a

01:05:16

challenging and dynamic. Feels like

01:05:18

I do think there is

01:05:19

a different context to the



01:05:20  
regulatory advice. We don't have

01:05:22  
to provide Antonio a chance

01:05:26  
to present his proposal for

01:05:29  
investment treaties. Let me share

01:05:34  
the screen so they can

01:05:35  
see it on the screen.

01:05:58  
So basically, you're not a

01:06:02  
part of this is me,

01:06:04  
this is why I don't

01:06:05  
think that and I'm taking

01:06:07  
into account what John has

01:06:09  
said and what you indicated

01:06:10  
and everyone. I said, I



01:06:11  
don't think that that the

01:06:13  
first, I don't think that

01:06:14  
this is new proven, by

01:06:16  
the cases that we have

01:06:17  
shared with u s. I

01:06:21  
I do think that the

01:06:22  
environment is very different, so

01:06:24  
many things have been happening

01:06:25  
at me that that's the

01:06:26  
one. The one thing that

01:06:28  
I fully agree with is

01:06:29  
that in in the many,

01:06:31  
many domestic laws even in



01:06:32

China. There there are regulations

01:06:35

concerning respecting human rights, even

01:06:37

state-owned companies. Now in France,

01:06:39

in China, Inn in countries

01:06:42

are mostly in. In most

01:06:44

of the continents. In the

01:06:45

world, have some level of

01:06:48

requirements of respecting human rights.

01:06:50

That's new now, what, what,

01:06:53

I don't see happening and

01:06:55

and the is is a

01:06:56

very rich discussion International arbitration

01:07:03

or International Investment vacation concerning



01:07:06

the welcoming or the emphasis

01:07:08

on counterclaims. And Obligations of

01:07:12

investors respecting human rights. That

01:07:15

that's what I don't see

01:07:16

you as there are some

01:07:17

discussions. Perhaps you at the

01:07:18

at the eleventh hour concerning

01:07:20

on Central group 3. But

01:07:22

at the end of the

01:07:23

day, there's no clear proposal

01:07:27

in, in that sense. And

01:07:29

that's what I'm missing with.

01:07:30

The reason why I said



01:07:31

that, I, that I agree

01:07:33

with what the Chiana is,

01:07:37

is because I believe that

01:07:38

structurally. She, she may be

01:07:40

speaking mostly about the jurisdictional

01:07:44

part of the cases. So,

01:07:47

if we see, or boster,

01:07:49

or if we see the

01:07:50

defenses, if there is an

01:07:53

investment that is made either

01:07:54

with corruption or through, thought

01:07:57

corruption the world duty free

01:08:00

vs Kenya fraud, the insatiable



01:08:03

Salvador, those are the president.

01:08:05

Then the tribunal is bound

01:08:08

to tell, if the part

01:08:10

is that it lacks jurisdiction.

01:08:11

Because the investment was made

01:08:13

through fraud or through corruption

01:08:15

and I'm doing that involves

01:08:18

making an investment in breach

01:08:21

of Wonder a quintessential sources

01:08:24

of of international, a general

01:08:26

principle of law, which one

01:08:27

good faith to the discussion.

01:08:29

Reents there, there could be



01:08:31  
a marriage decision. Is investment

01:08:34  
was initially made in a

01:08:36  
lawful manner, but then came

01:08:38  
corruption and that's it, that's

01:08:39  
up, marriage defense. But either

01:08:41  
way, you're in trouble as

01:08:43  
an investor, if that's the

01:08:45  
case. Now the big question

01:08:47  
is what happens when there

01:08:48  
are minimal Britain the word

01:08:50  
when there are Riches of

01:08:52  
Human Rights by by the

01:08:55  
investor. And and it's actually



01:08:58

dog gave us a long

01:09:00

list of recent events that

01:09:01

I added one in in

01:09:02

in Glencoe and Columbia Tetra.

01:09:06

When things happened in in

01:09:09

the state, what what could

01:09:10

happen with the investment in

01:09:12

principle in principle? There are

01:09:14

no, there are no, if

01:09:16

it were talking about a

01:09:17

treaty obligation, there are no

01:09:19

means to Sanctioned under international

01:09:26

law. The investor you could



01:09:29  
sanction, the investor under local

01:09:31  
law which is very much

01:09:32  
what what council or investor

01:09:34  
say. Well, I mean you

01:09:35  
have to hold local law

01:09:37  
but the fact is that

01:09:38  
he hasn't proven right in

01:09:40  
many cases. The question here

01:09:42  
is, don't we want Good

01:09:48  
investment Investments that are that

01:09:51  
are sophisticated that are respectful

01:09:55  
of Human Rights. What what

01:09:57  
would happen if treaties include



01:09:59

obligations. I also respect of

01:10:02

Human Rights by the investors,

01:10:04

not soft or hard loan.

01:10:06

And the proposal is not

01:10:09

inventing anything because we have

01:10:11

examples are just as the

01:10:12

Morocco Nigeria treaty, which should

01:10:18

provide heart l'obligation so that

01:10:21

would, that would answer one

01:10:23

element that was was not

01:10:25

answered in or boxer, which

01:10:27

was yes, the tribunal acknowledges

01:10:29

that human rights are part



01:10:30  
of international law and I

01:10:32  
believe that we all could

01:10:34  
agree with that. They went

01:10:35  
a little bit further than

01:10:37  
any tribunal has gone by

01:10:38  
knowledge and something that should

01:10:40  
have been long long ago.

01:10:42  
Decided yes, human rights are

01:10:44  
parts of international law and

01:10:46  
if if International is the

01:10:47  
applicable law, We have jurisdiction,

01:10:49  
but then when it went

01:10:51  
into, what are the investment



01:10:53  
in the investment, treaty obligation

01:10:56  
for the investor, they looked

01:10:58  
into the treaty up and

01:11:00  
down on the flip, the

01:11:00  
pages. And there was no

01:11:03  
obligation for the concessionaire to

01:11:05  
guarantee the provision of water,

01:11:08  
which was issuing a visor.

01:11:10  
So, in light of that

01:11:14  
Lacuna, what what you what

01:11:16  
I would say or what

01:11:17  
I, where are you you

01:11:18  
would need is to include



01:11:19

certain obligations of Human Rights

01:11:22

within the treaties for investors,

01:11:25

not something fanciful, not something

01:11:27

you'll, perhaps not the flu,

01:11:28

no business and human rights

01:11:30

because that that's very comprehensive

01:11:31

at least a basis so

01:11:35

that we can start from

01:11:36

there. And then there's there's

01:11:39

a next question which is

01:11:40

well yes but who and

01:11:44

and that's no. That's the

01:11:44

following slide but who actually



01:11:48

Consent to an investment treaty,

01:11:51

well, to States. So, how

01:11:55

come the investor is now

01:11:57

Bound by treaty? And for

01:12:00

that? There's, there's technical ways

01:12:03

of dealing with it. And

01:12:04

you have it in an

01:12:05

under strain, but, but the

01:12:06

way is to use a

01:12:08

similar architecture to the one

01:12:10

that way we can see

01:12:12

him any free trade agreements

01:12:14

were there's an onyx that



01:12:17

the investor would have to

01:12:18

sign before submitting a request

01:12:23

for arbitration as a, as

01:12:25

a requirement for consent. So,

01:12:28

when I say that, I'm

01:12:30

the investor, when I submit

01:12:31

the request for arbitration, unless

01:12:34

I submit a 9 x

01:12:36

that indicate that I acknowledged

01:12:39

and confirmed that I am

01:12:42

Bound by the human rights

01:12:43

obligations or corporate social responsibility

01:12:45

obligations that are in the



01:12:47  
treaty which deals with the

01:12:50  
issue of consent. Unless I

01:12:51  
do that, then I would

01:12:54  
not provide my consent, or

01:12:58  
I would not meet the

01:12:59  
requirements by the state of

01:13:00  
required, by the state to

01:13:01  
submit the request for arbitration.

01:13:03  
So, that deals with the

01:13:05  
issue of consent, do the

01:13:06  
proposal is, is a two-way

01:13:08  
proposal. On the one hand,

01:13:09  
investors in investors obligations in



01:13:14  
the substantive provisions, and all

01:13:16  
the other hand in the,

01:13:17  
in the jurisdictional part. An

01:13:22  
onyx that would confirm the

01:13:24  
consent by the investor to

01:13:27  
be subject of counterclaims by

01:13:30  
the states. In case this

01:13:33  
day, brings any any claim

01:13:34  
in that that I think

01:13:36  
that would be more in

01:13:38  
line with what is happening

01:13:39  
now and would be somehow

01:13:41  
balance. Many of the critics



01:13:45

that are now happening in

01:13:46

the ICS system which which

01:13:49

I'm in favor of but,

01:13:50

but it's better to reform

01:13:53

it from within then then

01:13:55

do away with it. Thank

01:13:57

you. Thank you. Jose Antonio,

01:13:59

let me know now suggest

01:14:02

that each of you can

01:14:03

make a closing statement on

01:14:06

any relevant matter that we

01:14:08

have discussed her haven't discussed

01:14:10

during the course of the



01:14:12  
panel and maybe we'll, we'll,

01:14:16  
we'll start with. I'm not

01:14:19  
going to ask. We're going

01:14:20  
to go in reverse order,

01:14:21  
but since Jose Antonio just

01:14:22  
finished and that means Tatiana,

01:14:25  
we're going to start with

01:14:26  
you. Any, any closing Reflections?

01:14:29  
It's not mandatory, it's not

01:14:31  
mandatory human rights. Due diligence.

01:14:32  
This is like the UN

01:14:34  
GPS. You can, you can

01:14:36  
choose to follow them or



01:14:37

not. Thank you for the

01:14:40

opportunity. And I think if

01:14:43

I had one General observation

01:14:45

from hearing all of the

01:14:47

the wonderful cool panelists and

01:14:49

our moderator, it's that, this

01:14:52

is indeed an incredibly difficult

01:14:55

and complicated area and it's

01:14:57

one in which you want.

01:15:00

Your Council to be operating

01:15:02

at the highest level to

01:15:04

have an intimate familiarity with

01:15:06

the relevant, human rights regulations



01:15:09

human rights instruments at the

01:15:11

international level. And also, how

01:15:13

do is have been integrated

01:15:14

into the domestic Bubbles and

01:15:16

to be really thinking it

01:15:18

through thoughtfully and strategically and

01:15:20

went straight to see if

01:15:21

I think anyone would provide

01:15:25

just such a thoughtful and

01:15:28

careful consideration for their clients.

01:15:30

So, it's great to know

01:15:31

that. That is a service

01:15:33

that it is, but is



01:15:34

available people who are the

01:15:37

smarter thing keeping the sparkly

01:15:38

about a piece of shoe.

01:15:45

I have two Echo Tatiana

01:15:47

statements. I think that, you

01:15:50

know, I would agree that

01:15:51

when in doubt, if you're

01:15:53

considering, if you haven't already

01:15:55

begun to conduct due diligence

01:15:57

in areas that are complex

01:15:59

affected her, or could be

01:16:00

affected by conflict in the

01:16:02

future that corporations should certainly



01:16:05

execute that now. But also

01:16:07

to do so, with care

01:16:08

to make sure that you're

01:16:09

considering local sensitivities and also

01:16:12

risk to local stakeholders so

01:16:15

that you're not endangering anyone

01:16:16

just by conducting the due

01:16:18

diligence in and of itself.

01:16:19

So, it's up there. Thank

01:16:22

you, Virginia. John, the point

01:16:25

I make is, I think

01:16:26

we'll really sing in the

01:16:27

business and human rights space



01:16:28

from a, from a legislative,

01:16:30

and Regulatory, regulatory standpoint is

01:16:31

sort of two different two.

01:16:33

Different trends that didn't end

01:16:34

up converging in the first.

01:16:35

She talked about some of

01:16:36

the mandatory human rights due

01:16:38

diligence laws and and and

01:16:39

other laws that are focused

01:16:41

on a human rights, human

01:16:43

rights. We've also seen human

01:16:44

rights, increasing Integrated into other

01:16:46

areas of international Regulatory Compliance.



01:16:48

Whether it's a ml or

01:16:50

sanctions or export controls are

01:16:51

Trey. And I think corruption

01:16:52

has is right there as

01:16:54

well. And so you have

01:16:55

these two different colors and

01:16:56

where they really come together

01:16:57

for lawyers in advising clients

01:17:00

is not only do you

01:17:01

have a regulatory advice that

01:17:03

that that you're going to

01:17:04

be providing and in some

01:17:05

specialist areas as well as



01:17:06

areas that the human rights

01:17:08

specifically. But but also he

01:17:11

wants me to meet a

01:17:11

business imperative much as we

01:17:13

start with the S CPA

01:17:14

in the mid-2000s 2006/2007, increasingly

01:17:18

being a part of Simply

01:17:20

how business is done, including

01:17:21

it, be included in contracts

01:17:23

and decryption. Provisions included in

01:17:25

due diligence for employees, that

01:17:27

you're hiring pet screening or

01:17:29

third parties that you're bringing



01:17:30

on included in an MA

01:17:32

do the same thing with

01:17:34

human rights as these regulatory

01:17:36

Trends and up more more

01:17:38

prominent, become more of a

01:17:39

business imperative. Thank you. John.

01:17:42

Jose Antonio Herkimer game with,

01:17:49

with my colleagues. And I

01:17:50

do think that there is,

01:17:52

there is a huge opportunities

01:17:54

for a huge opportunity to

01:17:56

to move the needle forward.

01:17:59

90 that I know from



01:18:02  
wearing The Negotiator hat in

01:18:06  
in a past life, things

01:18:09  
move very slowly India. The

01:18:12  
world duty free is a

01:18:14  
case that happened more than

01:18:15  
10 years ago and on

01:18:18  
the negotiations with Canada happened

01:18:20  
more than 10 years ago

01:18:21  
as well. And and at

01:18:25  
least in my lifetime I

01:18:26  
would like to to see

01:18:27  
some movement and we have

01:18:30  
seen local adding that things



01:18:32  
that are moving forward. Why

01:18:34  
not moving things a little

01:18:36  
bit further. So as to

01:18:38  
create International tools that would

01:18:42  
somehow reflect that movement in

01:18:45  
in in in local jurisdictions.

01:18:47  
So as to create a

01:18:51  
investment that is more qualified

01:18:53  
and more respect for human

01:18:55  
rights and and and tools

01:18:57  
with with teeth so so

01:18:59  
that no other robots are

01:19:01  
2,000 happen or that a



01:19:02

good one happen. Thank you,

01:19:05

Jose. Antonio, and that might

01:19:07

bring me back again for

01:19:09

a commercial for the new

01:19:11

business and human rights Lawyers

01:19:13

Association at the moment, it

01:19:15

consists of the big firms

01:19:17

in the north, but it

01:19:19

is certainly Our intention to

01:19:20

expand to the global South

01:19:22

Latin America Africa. Asia. And

01:19:27

we have to the new

01:19:28

board of directors will have



01:19:29

to work out some questions

01:19:31

because right now, the annual

01:19:33

dues are appropriate for a

01:19:36

large Global Law Firm. They're

01:19:37

not appropriate for some small

01:19:40

law firms in the global

01:19:41

South. They're also not appropriate

01:19:44

for individuals who may wish

01:19:46

to join. So, we'll be

01:19:48

working all that out in

01:19:49

the next few board meetings

01:19:50

in and be seeking out

01:19:53

additional members in 2023. In



01:19:57  
the meantime, if anyone is

01:19:58  
interested in that or their

01:20:00  
firm is there will be

01:20:03  
a at least an inch

01:20:04  
Web page for the association,

01:20:07  
put up pretty soon. It

01:20:08  
might even be up by

01:20:08  
today. I'm not sure, but

01:20:11  
it's it's, it's going to

01:20:12  
be one way to discuss

01:20:14  
and maybe Advance innovative ideas.

01:20:17  
Like the one Jose, Antonio

01:20:19  
just put forward and if



01:20:21

I met the, the argument

01:20:23

than the legal analysis that

01:20:24

Tatiana gave us as well.

01:20:26

So I want to thank

01:20:29

you all for a terrific

01:20:30

panel. As usual, I'm sure

01:20:34

you all had far more

01:20:35

wisdom to convey than you

01:20:36

had time to convey it

01:20:38

in, but thank you all

01:20:39

for joining us. Thanks to

01:20:41

everyone in the audience. Sorry.

01:20:43

We don't have time for



01:20:44

letting us questions, but I'm

01:20:46

sure if you were email

01:20:48

Jose Antonio, after this event,

01:20:51

he'll be happy to pass.

01:20:52

Along any questions to remember?

01:20:54

They, they might fit. So,

01:20:56

thanks the one at all

01:20:57

and that concludes our panel

01:20:59

for it today. I don't

01:21:00

know how that technically happened,

01:21:03

so San Antonio. We must

01:21:05

push a button somewhere.