

Consequences of Energy Transition Policies *

Summary

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

The session focused on the consequences of energy transition policies for investment arbitration disputes, highlighting the tension between states' obligations to combat climate change and their commitments under investment treaties. Ian Laird, co-founder of the World Arbitration Update (WAU), opened the session, emphasizing the growing global importance of international arbitration, particularly in the energy sector.

Moderator Christina Bihari introduced the panel, featuring experts in international investment arbitration, including Maria Lucia Us, Louise Barber, Garrett Rush, Lisa Sachs, and Julie Carey. The discussion began with Maria Lucia presenting an overview of recent trends in investment arbitration related to energy transition policies, noting a rise in disputes tied to changes in regulations aimed at reducing carbon emissions.

Louise Barber provided insights into case law, categorizing disputes into three types: those arising from changes to existing regulations, new policies introduced as part of energy transition strategies, and specific project decisions by states. She highlighted significant cases, particularly those involving Spain and the Czech Republic, where investors challenged state actions that impacted renewable energy incentives.

Lisa Sachs discussed the broader implications of these disputes, emphasizing the existential challenge of restructuring the global economy to meet climate goals. She noted the backlash against investment treaties, particularly the Energy Charter Treaty, which some view as hindering necessary regulatory changes for climate action.

Garrett Rush addressed quantum issues in renewable energy disputes, highlighting the complexities of calculating damages and the unique characteristics of renewable projects, such as their long-term nature and regulatory environment. Julie Carey examined the policy implications of transitioning from fossil fuels to renewable energy, identifying challenges such as the politicization of energy policy and the need for comprehensive planning to achieve decarbonization goals.

The panel concluded with a discussion on the potential for reform in investment treaties to

align with climate commitments, with calls for a reevaluation of how investment governance can better support sustainable development and facilitate the energy transition. The session underscored the need for robust national and regional planning and the importance of understanding the barriers to investment in renewable energy.

Authors

Test

Topics

Test

Category

WAU

Full Transcript

00:00:08

Good afternoon, good evening. And

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I guess good morning for

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those who are really west

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of the Year, welcome to

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the Third Edition, world arbitration

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update. My name is Ian

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Laird, I'm co-founder and co-chairman

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of the conference along, with

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my colleague, dr. Jose Antonio

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Rivas, we founded World arbitration

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update, 3 years ago, partially

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in response to during the

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covid epidemic in response to

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what we saw is that

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I need for people to

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get together and a lot

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of conferences have been canceled

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or delayed and we thought

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that would be a great

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opportunity to have a virtual

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conference and where are largely

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keeping that up. Although we

00:01:01

had a great two days

00:01:02

in Mexico, City at the

00:01:04

end of last week at

00:01:06

the National autonomous University in

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Mexico City. We had over

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950 participants virtually and in

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person at the University and

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eight panel and it was

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very successful discussion of investment

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treaties and the NAFTA and

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the usmca, and all sorts

00:01:27

of issues related, to International

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arbitration, commercial arbitration, and international

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law, which is part of

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what where are objective at

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the wow, is to address

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issues in respect of those

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topics from around the world.

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Because one of the things

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that we noticed in particular

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and setting up, wow, is

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that International arbitration has really

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spread from each To Each

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corner of the globe. It's

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not just something practiced in

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the major centres and under

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the major institutions. But In

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every region of the world.

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So so we set up

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a conference to basically reflect

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that diversity in the wide

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nature of international arbitration practice.

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We started last week with

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a couple of days on

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topics with regard to him,

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are the Americas today. We're

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focusing on topics related, to

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Middle East and, and Africa.

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And this is our our

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last panel for today. But

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we will move to Oceana

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tonight and tomorrow morning to

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Singapore time and just to

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give us a brief promotion

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for that panel, the role

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of domestic legislation on evidence.

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International arbitration proceedings will be

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panel tonight tomorrow morning, Singapore

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time, but I want to

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get to today's panel and

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welcome our panelists and moderator

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to a panel titled. Consequences

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of energy. Transition policies for

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investment arbitration disputes and clearly

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this is a growing and

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continuingly important topic in international

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arbitration in general. But in

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particular in the investment arbitration

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disputes forum and I wanted

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to introduce our moderator for

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this panel and she'll introduce

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the panel and the get

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the discussion going. We're very

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grateful to have Christina bihari

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from Foley Hoag. Christina has

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worked in the public and

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private sector representing an advising

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States and state-owned entities on

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international disputes in public, international

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law matters. She has represented

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States and various for as

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including the icj exit t.

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C h a, i c

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h, i c, c, and

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under the unsocial arbitration rules.

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She Christina previously served as

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counsel in the trailer. Bureau

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at the Canadian Department of

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Foreign Affairs and international trade

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and representing the government of

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Canada in investor-state dispute under

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NAFTA, chapter 11, as well.

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She has experience and got

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some other trade agreements. We're

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really privileged to have Christina

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here today. And I'll pass

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over the microphone to Christina

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and we'll get the discussion

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going. Banks in that warm

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welcome and welcome to all

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of you today on today's

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session on the consequences of

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energy, transition spur investment arbitration.

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So our panel will tackle

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the seeming tension between the

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policy goals of states to

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act in accordance with their

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International obligations to reduce global

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warming on the one hand

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and their obligations under investment

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arbitration treaties. In on the

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other side to address. This

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topic, I'm joined by a

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group of leading figures in

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the field of International Investment

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arbitration, who I will now

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proceed to introduce starting first

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with Maria. Lucia us, she's

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a Colombian lawyer, specializing in

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the regulation of renewable energy

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and Energy Efficiency. She is

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a senior associate of stray.

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Prodigy and is based in

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Bogota. She's also an Adjunct

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professor and international arbitration and

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an assistant professor in public

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international law. At the University.

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Del Rosario Louise, Barber is

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a senior associate at at

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Herbert Smith International arbitration group

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in London, she works on

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both commercial and investment, treaty

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arbitration and specializes in energy

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disputes to take a little

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league, those involving energy, transition

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and climate change. Yes. For

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some reason, I'm not sure

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if this is the sound

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as well. I don't know

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if everyone could hear, okay,

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I'm sorry. Go ahead. So

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Louise is also experienced in

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advising on a range of

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public international law issues, including

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boundary dispute it, slop and

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see if she has and

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reinterpretation Garrett. Rush is a

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managing director at Secretariat and

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is based in Washington, d.c.

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He's been damages Consulting, an

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expert claimants and respondents in

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international disputes for approximately 25

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years. He's worked across all

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major industries, including the extractive

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sector, electricity generation, and electricity

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distribution. Lisa Sachs is the

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director of the Columbia Center

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on sustainable investment which is

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a Joint Center of Columbia

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Law School and the Columbia.

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I'm at school, she is

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a recognized expert in the

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ways that laws policies and

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business practices shape. Global investment

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flows and affect sustainable development.

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I'm finally Julie Carey is

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the managing director at Nira.

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She is a energy Economist

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with 25 years of experience,

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providing expert evidence and energy

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and transportation related disputes. Julie

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frequently, can dogs eat, can

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also use on energy markets,

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contract regulatory policy as well

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as damages and Alice. He's

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Julie is also an adjunct

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professor at Georgetown University where

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she teaches a graduate-level course

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on energy, economics and policy.

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So, the format of today.

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So I will consist of

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first a presentation by Maria

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Lucia and it'll be followed

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by a panel discussion. I

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would invite all of you

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to enter any questions or

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comments you have in the

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chat function. And without further

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Ado, I'll turn the floor

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over to Maria Lucia for

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her. Acacia. Thank you, Christina,

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for the introduction of thank

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you. Jose Anthony a limitation.

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I'm very excited to be

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here today at the third

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day of world arbitration update

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in the Middle East and

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Africa. And of course, it

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is an honor to be

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sharing this planet with Christina

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Lewis jewelry, Lisa and Garrett.

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So to start with the

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introduction of our session on

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the consequence of energy transition

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policies, for investment arbitration disputes.

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The first thing that I

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would like to raise is

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bad according to the latest

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except report almost house updated

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case the same 2022. We're

00:09:04

related to the energy and

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Mining sectors. Also, I would

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like to highlight the pins

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of mason sand Queen Mary

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survey report on the future

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of International Energy arbitration which

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was Felicia the beginning of

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this year that suggests that

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the one of the causes

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of internationally International Energy. Dispute

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is climate change and environment.

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As we all know, nowadays

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the states are under pressure

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to ensure regulations to mitigate

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the effects of climate change.

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Time to comply with the

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new international environmental obligations that

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those states have assumed mainly

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on their divorce agreement as

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a consequence over the past

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years. Regulatory changes in response

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to climate change, have been

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introduced about a president that

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rate and these regulatory inflation

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is suspected of course to

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keep increasing as a consequence

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of the newest States allegations

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regarding buy me. These have

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caused the government's phase two

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competing objectives at the same

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time on one hand trying

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to move on energy transition

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forward and implementing the embassies

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that they have made under

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the Paris agreement. And on

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the other hand, they obligation

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to respect the rights and

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cuff companies and investors that

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owns a In the energy

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production and transmit transmission sex.

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It will be very important

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to see how this tension

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between these two competing objectives,

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play, South in relation to

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the Praxis in Investments. But

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what we have seen so

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far is the distance on

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has produced, of course, and

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increasing investor-state arbitration disputes. And

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we checked above course to

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challenge a specific time of

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measures. Some examples of these

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include cases, such as Universe

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versus the Netherlands, Rockhopper Eatly,

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and Granada private Power vs

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Granada which are panelists will

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explain in a few minutes.

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Another issue that I would

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like to take him to

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a hacked account here and

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Trace tour. Participants is the

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fact that investment treaty landscape

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was conceptualized way before the

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emergence of the climate crisis.

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So Monster part. Investment Agreements

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are silent on environmental issues

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that might be related to

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the energy transition, never the

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last in the last few

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years. There has been a

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changing with the introduction of

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new generations of international agreements

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that make them theme care

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about states rights to regulate

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and obligations of investors to

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protect the environment on to

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respect human rights. These development

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that highlights the growing concerns

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that it states may have

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to balance their environmental policies

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with the commitments that they

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have made way before to

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the foreign investors. Examples of

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these new generations of Agreements

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are for instance, the Netherlands

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model B. I T the

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Moroccan Singapore, Indonesia by Katy

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disagreements. Companies Progressive t-shirts that

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recognize an explicit, try to

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regulate and investors environmental obligations.

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For instance, of an example

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of these is article. Six

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point. Six of the Netherlands

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model, B. I T, which

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incentivize foreign investment that aligns

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with the imperatives of the

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Paris agreement? And of course

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this provision reminds the bodies

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or might remind the bodies

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in the future. They are

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not free to up out

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of their obligations under the

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Paris agreement but there is

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more that they restroom their

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commitments within the scope and

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application of International Investment Club.

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Another Trend that I would

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like to hide like under

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this discussion, is there more

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any station process? I'm with

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Google of the energy Charter

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treaty that was announced last

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year as a consequence, that

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it states are alleging that

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the treaty does not go

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far enough to others are

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climate change your location. So

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this morning station process may

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have some material consequence for

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the state regulation, and of

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course, also to investment relations

00:13:36
are related to the energy

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transition. Give him the situation.

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So mi standing issues that

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must be resolved during this

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panel and luckily he's not

00:13:48
my place to answer to

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our, where is Deus protects

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fossil-fuel Investments weather is Diaz

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is subject to Foster investment

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in renewable energy and which

00:14:01
is the role of our

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experts in the assessment of

00:14:04
the policy and Regulatory costs

00:14:06
of a potential electric Farm

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in a particular case. So,

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will these introduction I would

00:14:13
like to do the floor

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to the final least. We

00:14:16
did very difficult task to

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answer some of these concerns

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and questions that they are

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like at very hot topic

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nowadays. Thank you. Maria Lucia.

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I'm going to start with

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Louise, Louise. Can you give

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us an overview of the

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case law concerning investment? Arbitrations

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that have Arisen from the

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energy transition policies of States

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show. Thanks so much, Christina

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and good morning. Good evening,

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everyone. Depending on where you're

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joining us from. And thank

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you so much for having

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me. Just can't put my

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slides up on the screen.

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KSAT visible to everybody. Okay.

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So I'll be presenting a

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high-level overview of the isds

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claim that had a reason

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from the energy transition. Today's

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this is not going to

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cover every single case, but

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it's hardly going to set

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out some broad Trends. Which

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will, then allow us to

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discuss these points. Are there

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throughout the panel discussion So

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the first thing to say

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is to occur what Maria

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Lucia said, which is that

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the energy sector has traditionally

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made up a very sizable

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portion of total is DS

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cases. Largest share of cases

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if administered by exid on

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my table. Come from the

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energy sector is not surprising.

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If you work in this

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sector thinking about the nature

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of the project involved. So

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they often require some sort

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of State involvement, like concessions

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or license has been granted.

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It's a pretty heavily regulated

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sector. There's a high degree

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of foreign investment in v.

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A lot of the time,

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it's very comfy, International set-up

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and the project themselves tend

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to have huge amounts of

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money involved. But I choose

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not to risk involved and

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then they are all them

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plans to be a very

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long time Horizons. Do all

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of that really stepped out

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quite so tall conditions for

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disputes to arise between investors

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in these projects, on the

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one hand, and then States

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because of the high potential,

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for regulatory conditions, to change

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a state actions to have

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a significant impact on these

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projects and it's a reflection

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of the close relationship between

00:16:34

the energy sector and the

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investment treaty system that we

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have the energy Chata Tracy,

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which is that the multilateral

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investment rate he designed to

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address investments in the energy

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sector energy sector. Specifically will

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no doubt come back to

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this spot. There have of

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course been lots of changes

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in the membership of the

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act in recent years but

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a tight it's had been

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in more than 50 countries.

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As seen it treason, and

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many more as observers. So

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it really has been one

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of the largest multinational investment

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agreements in the world. But

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today, we're not talking, just

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about energy related cases, where

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specifically disgusting energy, transition related

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cases. So by that, I

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mean the the broad drive

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towards decarbonisation, that's being pursued

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to varying degrees, 50 states,

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and private actions around the

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world. And so the focus

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on the one hand of

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the reduction of carbon emissions

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from industry, from existing projects

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and then on the other

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hand, the increase in the

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use of low-carbon and renewable

00:17:36

energy sources to replace fossil

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fuels. And so against this

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backdrop, the pace of regulatory

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change has been increasing very

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substantially in the past decades

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and it can reasonably be

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expected to do serve even

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further going into the future

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and the final kind of

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General instructions point to say

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is that we've historically seen

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a very high number of

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cases in the investment system.

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Arising from measures taken by

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Statesville environmental reasons. And we've

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been seeing this increase in

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recent years. I say all

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of this really just sets

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the stage for many more

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disputes in this area arising

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from the energy transition. Search

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heading to the types of

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cases that we've already seen.

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I put the energy transition

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climbs into three General buckets.

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To the first category is

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claims arising, from changes to

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existing regulation and cities. These

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claims might arise in response

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to changes, in regulations, in

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pursuit of particular, decarbonisation objectives.

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And usually claims, those measures

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are alleged to make the

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performance of an investment of

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more interest, or potentially possible

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examples of these claims are

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the series of very large.

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Number of cases that have

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been brought against Spain. Usually,

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the Czech Republic and then

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more recently Romania, where incentives

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encouraging investment in solar power

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and other Renewable Energy Technologies,

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waiting for cheese. And then

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later were allegedly withdrawn all

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downgraded after about a bit

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messed up, Saturday Night, Live

00:19:11

been a huge fan base

00:19:12

cases drawer. I think more

00:19:13

than 50 at this point.

00:19:14

I really do What kind

00:19:16
of disproportionate number of the

00:19:18
total is DS, cases pencil

00:19:21
cases, argued with mixed success.

00:19:23
That the states in question,

00:19:26
had breached the protections that

00:19:27
they offered to find investors

00:19:28
underneath Tracey's on DCTC specifically

00:19:33
decision-making in connection. With these

00:19:37
incentive programs amounted to a

00:19:39
breach of the 30, maybe

00:19:41
take you out. There was

00:19:42
a focus on the investors

00:19:43
legitimate expectation, around the basis

00:19:46

on which they were electrical

00:19:47

by their investments in the

00:19:48

sector. I'm on the basis

00:19:50

of the particular what they

00:19:53

say, what commitments will make

00:19:54

by States. I'm disabled to

00:19:56

rain at least one thing,

00:19:58

like I scored against Germany.

00:19:59

All flights or at least

00:20:02

in relation to the offshore

00:20:03

wind sector. They're all these

00:20:05

claims have a region from

00:20:06

which states have introduced in

00:20:09

pursuit of energy transition goals.

00:20:11

But where investors say that

00:20:13

the way that those policies

00:20:14

have been implemented or changes

00:20:16

that have been made them

00:20:17

have affected their Investments, best

00:20:20

Buckeyes. The second package is

00:20:23

where a new policy or

00:20:25

regulation has been introduced as

00:20:27

part of an energy transition

00:20:28

strategy. And then you said,

00:20:30

you claimed the rides in

00:20:31

connection because new policies such

00:20:34

as was mentioned in the

00:20:35

introduction of the VIN number

00:20:37

of claims that have been

00:20:38

a reason from the introduction

00:20:41

of all of these for

00:20:45

specific types of energy. This

00:20:48

is very much focused on

00:20:50

cold sore, look at the

00:20:52

unit and all of you

00:20:53

make time to Midlands Benevolence

00:20:57

introduced a piece of legislation

00:20:59

that required all of the

00:21:01

countries qualified health plans to

00:21:03

be closed down by 2030.

00:21:06

Was this part of the

00:21:07

Dutch, Brody, navigation. And he

00:21:11

was also said to be

00:21:12

pursuant to the pledges that

00:21:13

the country had made under

00:21:15

the Paris agreement. And so

00:21:17

while some companies received compensation

00:21:20

from the government in connection

00:21:22

with the impact of this,

00:21:23

bill on the cold and

00:21:24

businesses you to put an

00:21:26

automated, not answer. The claims

00:21:28

were essentially around a compensation

00:21:30

mechanism in the way that

00:21:31

was being implemented as being

00:21:34

a similar claim against Canada

00:21:36

approached by the, the Westmoreland

00:21:38

coal company around that they

00:21:40

got mad about that his

00:21:41

commitment to end the use

00:21:43

of all this power generation

00:21:44

by 2030. That was a

00:21:46

claim on the NAFTA and

00:21:47

then a new claim more

00:21:48

recently under the usmca. And

00:21:51

again that was kind of

00:21:52

very, very much for the

00:21:53

song that the that compensation

00:21:55

mechanism I have also seen

00:21:57

a couple of cases around

00:21:58

uranium Mining and the use

00:22:01

of nuclear power. But again,

00:22:03

it kind of around the,

00:22:04

the the, the direction of

00:22:06

policies to phase out a

00:22:10

common feature of all those

00:22:11

cases has really been an

00:22:12

acceleration of the timetable that's

00:22:14

been set down by a

00:22:15

site for transitioning. Two different

00:22:18

sources of energy answer. You

00:22:21

find that commercial potties, which

00:22:22

is made Investments on the

00:22:24

basis of a different timetable.

00:22:25

And in some cases, allegedly

00:22:27

on the encouragement of the

00:22:28

states in question might have

00:22:30

found themselves facing a different

00:22:32

regulatory framework, which doesn't fit

00:22:33

very well with the planned

00:22:35

lifespan of those Investments and

00:22:37

so which then kind of

00:22:38

jeopardizes the recovery of those

00:22:40

Investments. I didn't say category,

00:22:43

the third bucket is claims

00:22:45

which arise from a particular

00:22:48

decision by States in respect

00:22:50

of specific projects. So this

00:22:51

is often taken the form

00:22:53

of the denial, all withdrawal

00:22:55

of particular approvals ultimate Soul

00:22:58

licenses for the project. So

00:23:02

the trans-canada case against the

00:23:06

USA, which was around the

00:23:08

construction of the Keystone XL

00:23:10

pipeline has been very prominent

00:23:13

and similar Rockhopper Natalie case,

00:23:19

which is where that all

00:23:21

show all condition initially had

00:23:23

been granted. There was a

00:23:25

change in the law which

00:23:27

sought to ban for the

00:23:28

offshore drilling project about that

00:23:30

provided that it would grandfather

00:23:32

in position for a system

00:23:36

project. But as a result

00:23:37

of some public outcry, the

00:23:40

government never move. exception insult

00:23:43

to shut down this particular

00:23:44

confession and said that that

00:23:45

was the time came from

00:23:47

the instance, Then it look

00:23:50

the series of all the

00:23:50

cases that kind of have

00:23:51

it a similar effect but

00:23:53

the point is that the

00:23:54

connecting thread between all of

00:23:55

these claims is commercial actors

00:23:58

who are seeking redress for

00:24:00

the impact of state-level policy

00:24:02

changes around a table and

00:24:03

isolation. And so given the

00:24:05

pace in the scale of

00:24:06

the change that was seeing

00:24:07

from the states and instead

00:24:09

of regular productivity we can

00:24:12

fairly expect to see more

00:24:13

of these claims arising the

00:24:14

future. And so, looking to

00:24:17

the Future, then on this

00:24:19

load of Trenton said that

00:24:21

we might expect to say,

00:24:22

coming down the line, I

00:24:25

guess, sometimes abroad, Spain Festival.

00:24:27

There's lots of activity on

00:24:29

the enforcement from that will

00:24:30

expect to say arising from

00:24:31

those solar cases in Europe,

00:24:32

they look through these cases

00:24:34

are running afoul of Entry,

00:24:35

you git, you don't even

00:24:38

wear Wards have been made

00:24:39

against States. If it's been

00:24:40

proven quite difficult to enforce

00:24:42

those words in Europe, that

00:24:44

was saying a lot of

00:24:44

attempts made around the world

00:24:45

including Australia in the US.

00:24:49

I need to try and

00:24:50

force it was and so

00:24:52

we'd expect to see a

00:24:53

lot of activity on that

00:24:54

front in the coming years.

00:24:56

The second point I'll say

00:24:58

is that a theme has

00:25:01

been has been a pretty

00:25:02

high number of dissenting opinion

00:25:03

and they sell cases that

00:25:04

say more than average in

00:25:06

these kind of climate and

00:25:07

environment related cases. So which

00:25:11

is easier to think especially

00:25:12

secret war in Colombia case

00:25:15

where there a text to

00:25:16

dissenting opinions. And you know,

00:25:19

I think this reflects that

00:25:20

they's, a very difficult issues

00:25:21

and some elements of them

00:25:23

about, the, the balance, between,

00:25:25

what can reasonably be expected

00:25:26

of the states, when they

00:25:28

are dealing with environmental issues,

00:25:30

he's likely to generate more.

00:25:31

Descendants, the full of the

00:25:34

third point, which is a

00:25:37

very interesting. Very complicated one,

00:25:40

he's around the potential claims

00:25:42

arising from a States in

00:25:43

action, or States, kind of

00:25:45

failure to act and, you

00:25:47

know, thinking smile. In the

00:25:49

context of a failure to

00:25:50

enforce environmental regulation, for example,

00:25:53

or failure to to take

00:25:55

what is considered to be

00:25:57

necessary action on climate change

00:25:58

and interesting, parallel is to

00:26:01

look at the, a lot

00:26:02

of Barbados case, where the

00:26:04

claimant had said that Barbados

00:26:06

failure to take certain Environmental

00:26:09

Protection measures was what it,

00:26:10

what had caused the destruction

00:26:12

of value in the investment

00:26:14

and I claim titles in

00:26:17

the course of doing sorry.

00:26:18

The tribunal Deeds suggests that

00:26:21

consideration of a high-stakes enforcement

00:26:24

of environmental issues would be

00:26:25

relevant to the full Protection

00:26:26

security system, stat, which is

00:26:28

very interesting way of effectively

00:26:30

leaving the door country. They

00:26:32

sort of points bank as

00:26:33

soon as future. And then

00:26:35

just to mention that there

00:26:35

is a cool State advisory

00:26:38

opinion. That's been sold from

00:26:39

the icj, on the status

00:26:41

of the states of the

00:26:43

Nations and international law in

00:26:44

respect of climate change and

00:26:46

depending on the outcome about

00:26:49

Find Reliable not supposed to

00:26:52

say that states should have

00:26:53

been doing more test results.

00:26:56

And the final point, I'll

00:26:57

say, it's just that we

00:26:59

might see more attempts by

00:27:00

states to bring counterclaims against

00:27:02

invest, is related to what

00:27:05

they allege. Those are best

00:27:06

is non compliance with environmental

00:27:08

and climate like messages, either,

00:27:11

3:00 or 3 deal today.

00:27:13

Most of the challenge has

00:27:15

been with a soda counterclaims,

00:27:17

very secure signal issues or

00:27:20

lack of the basis of

00:27:21

substantive face symmetry she to

00:27:23

to a positive ovulation test

00:27:26

is but as was mentioned

00:27:28

in connection with seeing more

00:27:30

interesting draft again more reciprocity

00:27:32

of obligation in his new

00:27:34

generation of crazy. So I

00:27:35

think we'll come back to

00:27:36

that later. Actually, plenty of

00:27:39

food for thought there in

00:27:40

the meantime suppose that you

00:27:41

could say no. Thank you,

00:27:44

Louise, for that excellent. Text

00:27:46

Mom to me disputes and

00:27:48

identification up key trends. I'm

00:27:51

going to turn to Lisa

00:27:53

and ask you, Lisa. Do

00:27:56

you have any, any additional

00:27:58

thoughts are observations to add?

00:28:01

Thank you so much Louise.

00:28:03

I also thought that that

00:28:04

was a really excellent incredibly

00:28:07

helpful and organization at the

00:28:09

cases that we seen and

00:28:10

and the trans I think

00:28:12

the only thing I would

00:28:13

add a baby to the

00:28:15

trends is not is the

00:28:18

real clash between the case

00:28:21

of the types of games

00:28:23

that are being made and

00:28:24

States other International commitments, they

00:28:28

can admit that states are

00:28:29

making to address this existential

00:28:33

crisis. This is not, you

00:28:37

know, if it's is not

00:28:39

They kind of typical dispute

00:28:43

between states prerogative and and

00:28:45

private interests or profit. Entrust.

00:28:48

This is probably the largest

00:28:50

existential challenge. That world's governments

00:28:53

have had in our generation,

00:28:55

which is how to restructure

00:28:57

the global economy to try

00:29:00

to stay within inhabitable warming

00:29:03

limits and that requires massive

00:29:07

restructuring, massive Investments, massive policy,

00:29:10

flexibility of negotiations and so

00:29:14

on, and states are making

00:29:15

these types of commitments in

00:29:17

international binding mechanisms like the

00:29:19

Paris agreement. But also at

00:29:21

the G7 level of the

00:29:22

G20 level at ministerial for

00:29:24

energy and Ministers of ministerial

00:29:27

Forum on finance ministers and

00:29:29

so on. And so I

00:29:31

think the other bullet I

00:29:32

would add is the real

00:29:34

tension between the obligations and

00:29:37

investment treaties that underlie these

00:29:39

just and those commitments and

00:29:43

the imperatives for States and

00:29:44

taking action and I think

00:29:46

I would just know and

00:29:46

maybe preview for later in

00:29:48

the discussion that that's exacerbating,

00:29:51

I think the backlash against

00:29:53

the system that in a

00:29:55

predated, the energy transition of

00:29:57

predated, the climate crisis, because

00:29:58

it's always been a concern

00:29:59

to many that investors are

00:30:02

able to challenge public interest

00:30:04

measures in these often closed

00:30:08

or for us, without the

00:30:11

proper integration with other International

00:30:13

commitments and stakeholders. But I

00:30:15

think that the tensions in

00:30:17

the climate space have really

00:30:18

accelerated, I would say maybe

00:30:21

that backlash, and I'll just

00:30:23

end with us Lewis's helpful,

00:30:25

to know that the energy

00:30:26

Charter treaty is probably a

00:30:28

central treaty and all of

00:30:30

this. And it's also the

00:30:31

focal point for a lot

00:30:32

of the backlash right now.

00:30:33

There's as I'm sure everyone

00:30:36

on the call knows there's

00:30:37

a vigorous public debate in

00:30:40

the EU, especially right now,

00:30:42

although Global participants are participating

00:30:45

in the debate that are

00:30:46
real. Vigorous debate about whether

00:30:47
the energy Charter treaty can

00:30:49
become Distance with the energy

00:30:51
transition and whether the steps

00:30:55
that the members have taken

00:30:57
to attempt to modernize so

00:30:59
to speak, the treaty are

00:31:01
sufficient and the rebounding call

00:31:06
from many is no and

00:31:08
be seen many European States.

00:31:12
Withdrawal from the two-year, indicate

00:31:14
their intent to withdraw and

00:31:15
call in the European Union

00:31:16

to withdraw as a whole.

00:31:17

So so maybe I'll stop

00:31:20

there, just to say that

00:31:21

this is really setting up

00:31:22

an even bigger attention, I

00:31:23

think than those that will

00:31:24

exist between investors and states.

00:31:26

Thank you, Lisa. We're going

00:31:30

to shift gears now, and

00:31:31

look at some of the

00:31:32

quantum issues related to renewable

00:31:35

energy. And I'm going to

00:31:37

turn to Garrett now, based

00:31:39

on your experience as a

00:31:41

damages expert. What are some

00:31:43

of the unique characteristics of

00:31:45

these cases from a Quantum

00:31:47

perspective and what are the

00:31:49

condom issues that are most

00:31:51

frequently debated in these types

00:31:53

of cases. And I'm starting

00:32:07

with, you know, when we

00:32:08

talked about Renewables, what's interesting

00:32:11

to us is quantum experts

00:32:13

is of course so what

00:32:15

specifically what industry are? We

00:32:18

talked about what 7ish are

00:32:19

we talkin about? And we've

00:32:21

looked at the awards since

00:32:24

2018 and their 49 were

00:32:27

able to review that are

00:32:29

publicly available. And here we

00:32:31

have a breakdown of what

00:32:32

what those where those fall

00:32:35

in terms of the industry.

00:32:36

And you can see this

00:32:37

is dominated when we talked

00:32:38

about Renewables, dominated by sober

00:32:41

in about 2 States. That's

00:32:44

30 of the 49 and

00:32:46

then others we all know

00:32:47

kind of its dominated by

00:32:48

Spain to. The second bar

00:32:51

is interesting cuz it's hydrobar

00:32:53

but Hydro I'm is by

00:32:56

far the biggest renewable source

00:32:57

of electricity but it's it's

00:33:00

not generating nearly as many

00:33:03

Cases as some of the

00:33:04

others and specifically solar and

00:33:08

we'll see why I think

00:33:09

it's natural that. So where

00:33:12

is is number one just

00:33:14

giving the flows of investment

00:33:15

between countries across borders but

00:33:18

when would be next to

00:33:20

sore around the same time

00:33:23

in terms of the power

00:33:23

produced in the renewable sector

00:33:26

by wind and solar around

00:33:29

the same. So those are

00:33:30

the dominant the dominant cases

00:33:33

we've seen in the renewable

00:33:35

sector of Interest. Awesome. On

00:33:38

the right side of the

00:33:39

screen, you can see that

00:33:41

most of these in this

00:33:43
is always a little bit

00:33:44
surprising. To me most of

00:33:45
these matters involving operational facility.

00:33:48
So, they've got their producing

00:33:50
energy on Big Ben built.

00:33:52
They're going to attract investors

00:33:55
and they're producing energy only

00:33:58
about 20%. Operational so not

00:34:04
producing energy yet and I

00:34:07
think that's actually a little

00:34:09
bit skewed compared to other

00:34:11
Industries. Receive receipt generally more

00:34:13
pre-operational project investor State disputes.

00:34:17

Then let's reflect this year

00:34:19

for the renewable sector. And

00:34:22

what we do when we

00:34:23

have operational projects and this

00:34:25

has been true of the

00:34:26

award is it were able

00:34:28

to use an income approach

00:34:29

which means the damages are

00:34:31

usually calculated looking for work

00:34:34

across the the lifespan of

00:34:36

a project and so is

00:34:39

projected performance. That's just kind

00:34:41

of back to evaluation day

00:34:43

and stay around. That's been

00:34:45
consistent. We see a lot

00:34:46
of income approach applications in

00:34:50
the damages Awards. Just going

00:34:54
back. This next slide to

00:34:59
the point, I was making

00:35:00
about the investment flows and

00:35:03
you can see on this,

00:35:04
this left side of the

00:35:05
screen, be renewable versus non

00:35:08
renewable, share in power, generating

00:35:10
capacity and it really is.

00:35:12
It's, it's pretty striking. How

00:35:16
quickly and how much the

00:35:20

solar and wind. And other

00:35:23

Renewables are growing compared to

00:35:25

the traditional power capacity Investments,

00:35:29

that's underpinning. The disputes that

00:35:33

we're seeing empty continuing as

00:35:35

well. I think on the

00:35:37

right side you can see

00:35:38

a reason to think that

00:35:40

This will potentially even accelerate

00:35:43

and the relationships on this

00:35:46

graph on the right side

00:35:48

show that on in 2010.

00:35:51

And that's the left portion

00:35:52
of each section is the

00:35:55
average cost of production in

00:35:58
2010. First for solar, concentrated

00:36:01
solar power washer when and

00:36:04
then on Sherwood and there's

00:36:06
quite a range in 2010

00:36:09
those costs have fallen dramatically

00:36:12
by 2021 and what's even

00:36:15
more interesting is that gray

00:36:17
line across. That gray sectional

00:36:19
cross. The bottom of the

00:36:20
ground is the average cost

00:36:23
for fossil fuels so you

00:36:25

can see that we started

00:36:26

in 2010 with cost it

00:36:29

were significantly higher than fossil

00:36:31

fuels and of course that's

00:36:33

that created a subsidy situation

00:36:35

that we saw of it

00:36:36

in order to attract store

00:36:38

other types of renewable investment.

00:36:40

There needs to be some

00:36:42

sort of subsidy scheme. Where

00:36:44

not only is not only

00:36:48

are these renewable sources competitive,

00:36:50

but they're, they're actually beating

00:36:52

out fossil fuel cell. One

00:36:54
source of disputes might be

00:36:56
moving off off the table,

00:36:58
but at the same time,

00:36:59
increasing the amount of investment

00:37:01
coming in for these type

00:37:04
of dispute, these types of

00:37:06
Investments is also a bit

00:37:09
of a counterbalance and newest

00:37:11
shoes coming out. Through this

00:37:16
already talked a little bit

00:37:18
about this, but some of

00:37:20
the characteristics of renewable energy

00:37:22
that make it a fertile

00:37:25

ground. For the fuse is

00:37:28

for the ones we posted

00:37:30

here that they're heavily regulated

00:37:31

and its capital intensive and

00:37:33

because of that capital-intensive element,

00:37:37

there's an impact on local

00:37:39

communities and National economies because

00:37:42

it is regulated development construction,

00:37:48

operational phases over a fairly

00:37:52

significant period of time so

00:37:54

that can lead to not

00:37:55

only constructions be used, but

00:37:56

investment disputes, and then exposure

00:37:59

to changing regulations while. So

00:38:01

you have multiple multiple areas

00:38:04

of exposure along the lifespan

00:38:06

of these Investments and then

00:38:08

you have a mix of

00:38:09

stakeholders involved. So you got

00:38:11

Regulators, you got stubborn operators,

00:38:15

Contractors in the ambassadors, and

00:38:17

then also concerned with as

00:38:18

well. And then another element

00:38:21

is the long-term agreements. And

00:38:22

this is the basis for

00:38:23

a lot of disputes long-term

00:38:25

agreement over the life of

00:38:26

the project is about 25

00:38:30

to 30 years. These projects

00:38:33

have life spans for which

00:38:35

is a lot of exposure.

00:38:36

Particularly when they showed on

00:38:38

the previous there are significant

00:38:41

changes in cost going on

00:38:42

as well as the behind-the-scenes

00:38:46

changes in the your worldview

00:38:49

about a renewable energy and

00:38:52

the need to transition to

00:38:53

it. So it's 25 30

00:38:56

year man. It is significant

00:38:59

and then I'm dead financing

00:39:04

here is used to increase

00:39:06

returns, that's the equity holders

00:39:09

but in the process it

00:39:11

also exposes that exactly holders

00:39:12

to more risk. So smaller

00:39:15

Changes in pricing, can create

00:39:17

a bigger changes in terms.

00:39:21

The so far when we've

00:39:22

looked across the cases that

00:39:25

we, we've seen come out

00:39:26

of the last few years.

00:39:27

The ones I showed him.

00:39:28

The first screen, the quantum

00:39:30
debate is typically around a

00:39:34
few key issues. What is

00:39:36
the useful life of a

00:39:37
plant touched on that? But

00:39:41
there's there's a lot of

00:39:42
debate about how long one

00:39:44
expects, the life of the

00:39:45
plant to be versus realistically,

00:39:48
is that playing going to

00:39:49
be technologically relevant in 25

00:39:52
to 30 years? There's always

00:39:54
risk of future cash flows.

00:39:57
The discount rate is always

00:39:59

at the baby in these

00:40:00

cases and that's true in

00:40:02

almost any invest in case,

00:40:04

that's consistent here. There's also

00:40:08

been a text for about

00:40:09

dispute. So should taxes or

00:40:14

claim damages from taxes? Be

00:40:16

included. And those were indications.

00:40:18

Spain. And Revenue tax is

00:40:20

7%. And so far that

00:40:22

has not succeeded on both

00:40:24

have not been included in

00:40:25

Damages. You see a lot

00:40:28

of discussion about due diligence

00:40:30

and documentation. So how much

00:40:32

diligence did in the Investor's,

00:40:34

do into the returns that

00:40:37

they should have expected in

00:40:38

the wrist, which even has

00:40:41

returned and what was the

00:40:44

expectation for the Investments made?

00:40:46

So there's been a lot

00:40:49

of discussion of that same

00:40:50

type of documentation. But this

00:40:52

last one, I think it's

00:40:53

the biggest issue at the

00:40:55

core of of these Awards.

00:40:59

And it's still, it's still

00:41:00

hotly debated. So there's there's

00:41:03

not really in My Mind,

00:41:05

One Way the tribunals have

00:41:08

wings and that is around

00:41:10

legitimate expectations of returns and

00:41:13

falls. Into two categories, is

00:41:15

the ambassador? Should I expect

00:41:19

a reasonable rate of return

00:41:21

for a fixed stable return?

00:41:24

And so when I say

00:41:25

reasonable rate of return, what

00:41:26

am I I'm in the

00:41:28
investment World. Typically, a reasonable

00:41:31
rate of return is tantamount

00:41:33
to cost of capital or

00:41:36
slightly above the cost of

00:41:38
capital of the project cost

00:41:40
of capital is defined as

00:41:43
what is the return, that's

00:41:46
required to have investors attracted

00:41:48
to an investment and I

00:41:50
can change over time is

00:41:51
referred to as interest rates

00:41:52
change and and the macroeconomy

00:41:54
changes the reasonable rate of

00:41:58

return for Investments, can can

00:41:59

change over time. We look

00:42:02

to Market its Finance professionals.

00:42:04

We go to the market

00:42:06

to determine what the market

00:42:09

is rewarded investors with as

00:42:10

rates of return, the nuts

00:42:12

different for across Industries and

00:42:14

solar and wind is no

00:42:17

exception to that. So we

00:42:18

can look to the market

00:42:19

to see what a reasonable

00:42:21

rate of return is considered

00:42:22

at a point in time.

00:42:24

I'm going to fix stable

00:42:25

return is really going back

00:42:28

to this idea. That a

00:42:30

single rate was agreed to

00:42:31

for the life of a

00:42:32

project on those rates are

00:42:34

typically adjusted by inflation. Is

00:42:37

that rates and regardless of

00:42:38

what's going on around the

00:42:41

projects that rate is what

00:42:43

that that project should should

00:42:46

return. It's a he, right?

00:42:49

I just copied some, some

00:42:52

brief summaries of two cases

00:42:55

that show. This contrast on

00:42:57

the left is a reasonable

00:42:58

rate of return reedy, Spain.

00:43:00

You can see here that

00:43:02

the tribunal basically said that

00:43:05

claimants only had a legitimate

00:43:07

expectation, that they would receive

00:43:09

a reasonable return on their

00:43:11

investment and not that the

00:43:12

regulatory framework would remain unchanged.

00:43:15

And you can see here

00:43:18

in the middle of those

00:43:20

modifications, I say son is

00:43:22

a reasonable and Equitable Davis

00:43:25

would fall within a legitimate

00:43:28

change for the regulatory framework.

00:43:31

And this tribunal decided that

00:43:33

what a reasonable rate of

00:43:35

return was as for Reef

00:43:37

was the cost of capital

00:43:38

which is the wac there

00:43:40

plus 1%. So they did

00:43:42

recognize that, maybe the 1%

00:43:45

was a recognition that their

00:43:49

work had to be more

00:43:50

of a return them cost

00:43:51

of capital to attract investors

00:43:53

to bad investment. On the

00:43:57

right, we have a good

00:43:58

example of a fixed rate

00:43:59

and here you can see

00:44:01

that we've summarized it while

00:44:04

it's important to respect the

00:44:05

state's right to regulate. The

00:44:07

tribunal said this rice is

00:44:08

not Trump specific Promises of

00:44:11

stability and this goes back

00:44:13

to that point I was

00:44:14

making about documentation in these

00:44:16
cases this case certainly highlighted

00:44:19
the fact that investors had

00:44:22
invested with a specific rates

00:44:25
for the life of the

00:44:27
project in mines and so

00:44:29
the tribunal highlighted. I mean

00:44:31
you can see that some

00:44:32
in this middle part of

00:44:34
that box. The claimant would

00:44:35
not have invested without the

00:44:37
expectation of a fixed tariff

00:44:39
stability. And then when we

00:44:42
surfaced her, as I mentioned

00:44:44

earlier, it is inflation-adjusted, but

00:44:46

that's assumed over the life

00:44:48

of the project. So this

00:44:51

is my comment on that

00:44:52

topic. Thank you, Gareth. I

00:44:56

was also an extremely informative

00:44:59

presentation, based on empirical analysis

00:45:02

and Analysis of key Quantum

00:45:05

issues. We're going to turn

00:45:07

into energy policy and regulation,

00:45:10

Julie, you also are a

00:45:14

Quantum x 4, but you

00:45:16

approach these issues through a

00:45:18

different lens of regulatory policies.

00:45:21

What are some of the

00:45:22

policy implications of transitioning away

00:45:25

from fossil fuels, two sources

00:45:27

of renewable energy? And perhaps

00:45:30

carry, you can stop the

00:45:32

screen sharing I'm sorry. That's

00:45:36

okay. Thanks, Christina and good

00:45:38

afternoon, good evening, and good

00:45:40

morning doll. Let me share

00:45:41

my screen. And hopefully, hopefully

00:45:46

everyone can see that the

00:45:49

place to start to answer

00:45:50

the important question. Important question

00:45:55

is to First acknowledge that

00:45:58

we have just begun to

00:45:59

address our most pressing Global

00:46:00

Environmental goals to reduce carbon

00:46:02

emissions of greenhouse gases that

00:46:05

negatively impact the climate. And

00:46:07

then second in fact, we

00:46:08

continue to use a lot

00:46:10

of fossil fuels today that

00:46:11

are that are carbon-emitting. As

00:46:15

shown in my first charge,

00:46:16

70% of our Global energy

00:46:18

consumption has consistently come from

00:46:20

fossil fuels, oil, gas and

00:46:22

coal shown in orange gray

00:46:25

and dark. Blue portions of

00:46:28

the pie chart in the

00:46:28

slide since 1990, the 70%

00:46:33

fossil-fuel proportion excludes electricity which

00:46:36

also includes fossil fuels and

00:46:38

we'll talk about that shortly.

00:46:39

The 70% fossil-fuel proportion is

00:46:43

consistent overtime. Even though substantial

00:46:46

growth in energy consumption, has

00:46:48

occurred with a 50% increase

00:46:50

in three decades, due to

00:46:52

surging, Economic Development, around the

00:46:54

world. And in particular the

00:46:56

asia-pacific region, indeed energy consumption,

00:46:59

in economics development. Go hand-in-hand

00:47:02

You can also see from

00:47:04

this chart that electricity consumption

00:47:06

has increased from 13 to

00:47:08

20% in the last three

00:47:09

decades. That's the light blue

00:47:11

portion of the pie chart.

00:47:14

That brings us to my

00:47:15

next chart at, in order

00:47:18

to take a closer look

00:47:18

at today's electricity sector. Most

00:47:22

of our pass energy right

00:47:23

before policies, are focused on

00:47:24

the electricity sector. That's an

00:47:26

important fact, I sent only

00:47:28

20% of our Global energy

00:47:30

consumption is electricity. 80% is

00:47:33

not this torkoal energy policies

00:47:37

that began decade ago, was

00:47:39

simple form. Incentivizing more Renewables

00:47:42

to be billed, particularly wind

00:47:44

and solar resources, the types

00:47:47

of renewable dispute cases that

00:47:49

Louis and and Garrett discussed

00:47:55

These policies were helpful as

00:47:57

initial starting point to facilitate

00:48:00

new technology to economically compete

00:48:02

with traditional fossil fuels to

00:48:04

help them come down the

00:48:05

cost curve. Come lower-cost resources,

00:48:07

what you see is many

00:48:09

country specific, electricity policies, few

00:48:13

Regional, and few really address,

00:48:15

the global nature of policy

00:48:18

and the issue we have

00:48:19

with our been countries, have

00:48:21

agreed to decrease the world

00:48:22

greenhouse gas emissions with her

00:48:24

long long distant periods in

00:48:27

time where those commitments exists,

00:48:29

some energy policies were directed

00:48:31

to all sources of carbon

00:48:33

emissions with those are few

00:48:34

and far between Overall Global

00:48:37

electricity generation from fossil fuel

00:48:39

is approximately the same proportion

00:48:41

today. As it was in

00:48:42

1990, that's about 60% the

00:48:45

bar chart on the right

00:48:46

shows that in the electricity

00:48:47

sector 30% of our Global

00:48:50

electricity is from coal. That's

00:48:52

the dark blue 24% from

00:48:54

natural gas Ray and 2%

00:48:56

from oil. Today we have

00:48:58

a lot less nuclear power.

00:49:00

Would you non-carbon emitting fuel

00:49:02

than we did in the

00:49:02

past? We also have new

00:49:04

wind and solar 12%. Those

00:49:06

are mostly what we staying

00:49:08

out of the, the the

00:49:09

new regulatory incentives there. It's

00:49:12

a small impact on a

00:49:13

global electricity consumption. Because we

00:49:16

get limited production only when

00:49:18

the wind blows in the

00:49:19

sunshine, so you can add

00:49:20

a lot of capacity, but

00:49:22

the utilization is very low

00:49:24

30% We have a fair

00:49:29

amount of hydroelectric that asset

00:49:31

and resource has long been

00:49:33

economically. So it didn't have

00:49:35

the same. New technology means

00:49:37

that a wind in our

00:49:38

Solar did and that's presumably

00:49:40

why we don't see as

00:49:41

many cases on the hydro

00:49:43

side. Now let's switch our

00:49:46

discussion from energy consumption and

00:49:49

greenhouse gas emissions today or

00:49:52

Global greenhouse gas. Emissions are

00:49:54

comprised substantially a call over

00:49:57

44, 44% oil 30% and

00:50:02

then a little over and

00:50:04

the natural gas proximally 22%

00:50:09

Geographically. Our greenhouse gas emissions

00:50:13

today in the right tide

00:50:14

chart or substantially from the

00:50:16

asia-pacific region to see that

00:50:18
in the dark blue. You

00:50:21
see that in the in

00:50:21
the in the dark blue

00:50:23
area on the right pie

00:50:23
chart. Slide, also shows that

00:50:26
carbon emissions have grown significantly

00:50:27
since 1990 more than 60%

00:50:31
2021 billion times a billion

00:50:34
times by the depicted. In

00:50:38
the pie, charts the rise

00:50:39
of the missions from economic

00:50:41
developments in energy consumption cause

00:50:44
this but it was worsened

00:50:46

by substantial additional coal use.

00:50:49

Looking at where we are

00:50:50

today from the lens of

00:50:51

global. Carbon emission levels are

00:50:54

passable energy. Policies are inadequate

00:50:57

and suboptimal to address the

00:50:59

carbon emissions blindfold challenges that

00:51:02

existed in many forms to

00:51:04

name a few first challenge.

00:51:07

I refer to the Lost

00:51:08

decade from Miss specifying problems.

00:51:10

That's a particularly a u.s.

00:51:12

issue. The goal is to

00:51:14

reduce carbon. It's not specifically,

00:51:16

and renewables or eliminate fossils

00:51:18

Second Challenge, energy policy has

00:51:21

become politicized. There's lots of

00:51:23

blame to spread around, but

00:51:25

the bottom line is not

00:51:26

is that not working together

00:51:27

for the best solution has

00:51:29

failed us so far. And

00:51:32

then thirdly, 1/3 challenges we

00:51:35

did as broadly or sufficiently

00:51:37

have a carbon tax or

00:51:39

address, the global nature of

00:51:40

carbon including from an international

00:51:42

trade aspect. A carbon tax

00:51:45

a price on carbon is

00:51:47

the most economically. Efficient approach

00:51:49

that leads to lowest cost.

00:51:51

It has a wide and

00:51:54

that's a potential solution and

00:51:56

leaves the high probability of

00:51:59

success. Now, as a result

00:52:01

of these challenges, we've had

00:52:02

many lost opportunities. We didn't

00:52:05

find a solution for coal,

00:52:06

which dominates our Global greenhouse

00:52:08

gas emissions and carbon-free nuclear

00:52:11

wasn't good enough. We didn't

00:52:14

get all Industries to be

00:52:17

carbon Focus, to reduce their

00:52:19

carbon used and demand of

00:52:21

carbon. If you will in

00:52:22

a today, we're seeing engineer's

00:52:25

seat to design concrete and

00:52:27

steel building structures with less

00:52:29

carbon. That would have been

00:52:30

helpful to have started that

00:52:32

process a decade ago. And

00:52:35

additionally, we have many unintended

00:52:37

consequences from our challenges. Electric

00:52:41

vehicle growth in places like

00:52:43

China or cold fuel. It

00:52:44

electricity actually increases greenhouse gas

00:52:48

emissions because Cole has a

00:52:50

35% more carbon intensity than

00:52:54

gasoline know, by the way

00:52:56

twice, as carbon-intensive is natural

00:53:00

gas. So what are we

00:53:03

specifically seeking Today's Energy policies

00:53:05

in the US, we have

00:53:06

very large investment. In Renewables

00:53:09

electric vehicles and batteries the

00:53:11

store or intermittent, wind and

00:53:13

solar. Hydrogen that we hope

00:53:16

will replace natural gas potential,

00:53:19

substantial amounts of carbon capture

00:53:21

and storage on the front

00:53:23

front possibility as well. We

00:53:26

spending a lot of money

00:53:27

but we're picking and choosing

00:53:28

winners, which is the store

00:53:30

to need namakkal and leads

00:53:32

to a sub-optimal solution. That

00:53:34

is I spend too much

00:53:35

and I don't get as

00:53:36

much of the results. I'm

00:53:39

European policy front. There's more

00:53:41

Renewables, and battery, and an

00:53:43

extra interest in hydrogen with

00:53:45

a gold to see cease

00:53:47

making new petroleum vehicle, starting

00:53:49

a 20. 35, in addition,

00:53:51

finalization of the, what's referred

00:53:54

to, as a carbon border

00:53:55

adjustment mechanism, which occurred recently,

00:54:00

which is the highest, carbon

00:54:04

Industries cement, iron, steel and

00:54:07

aluminum. That's that's, he is

00:54:10

tracking the impact of full

00:54:13

global life. Cycle Emissions on

00:54:15

the final, good consumed in

00:54:17

Europe. Turning to the asia-pacific

00:54:20

region, there are relatively new

00:54:22

carbon tax in China or

00:54:24

substantial subsidies and tax breaks

00:54:27

and other policies sentence with

00:54:29

your matron and our house.

00:54:31

India has just introduced legislation

00:54:34

for a carbon tax as

00:54:35

well as things going on

00:54:38

significant predict, Asia has headwinds

00:54:47

with economic growth and environmental

00:54:48

goals, having to be balanced

00:54:50

the US and the European,

00:54:52

since the majority of our

00:54:54

future carbon emissions are coming,

00:54:57

increasingly from petroleum from Transportation,

00:54:59

electric vehicles, or alternative fuel,

00:55:03

vehicles are challenging and that

00:55:06

they are not an immediate

00:55:07

solution. Even the iea estimates,

00:55:10

that only 5% reduction in

00:55:12

global oil consumption in 2030

00:55:15

will occur from the state,

00:55:16

electric vehicles. Now, what's this

00:55:20

fast forward? A bit and

00:55:22

move to the implications of

00:55:23

all of today's efforts, and

00:55:25

let's just assume the US

00:55:26

and Europe were successful and

00:55:28

are able to substantially. Reduce

00:55:31

our carbon emissions to nearly

00:55:32

zero. If that were to

00:55:34

happen with what we see

00:55:35

today, going on and Investments

00:55:37

would be renewable, hydrogen to

00:55:39

be, lots of carbon capture

00:55:41

which is investing largely into

00:55:44

these days. We still see

00:55:46

the traditional Vehicles, they would

00:55:49

just be taking carbon out

00:55:51
of the air and storing.

00:55:52
It more safely Underground. If

00:55:55
you was in your ghost

00:55:56
is here, where would we

00:55:57
be will since the majority

00:55:59
of global greenhouse gas? Emissions

00:56:01
are from Cole. We are

00:56:03
at least still 25% above

00:56:06
the level. That the ipcc

00:56:09
says is needed to limit

00:56:10
global warming. Sufficiently there 1.5

00:56:13
degrees Celsius Simply put if

00:56:16
we don't find a solution

00:56:17
for call, we don't if

00:56:19
she's a Global Environmental goals,

00:56:21
we become heavily dependent on

00:56:23
a technological breakthrough of carbon

00:56:25
abatement in Coal. Now it's,

00:56:28
it's not impossible innovation in

00:56:30
US Shale oil and gas

00:56:31
created reversal of Fortunes for

00:56:34
the US from oil and

00:56:35
gas, importers to energy Independence.

00:56:38
What is not accurate in

00:56:40
less than a decade. And

00:56:41
investment is needed to solve

00:56:46

our Global issues. Do I

00:56:48

look around and I seen

00:56:49

you take ideas around today.

00:56:51

If you include ammonia burning

00:56:54

with Cole, that would greatly

00:56:56

reduce emissions, receive, greater activity,

00:56:59

and Investments and cold with

00:57:01

carbon capture and storage CCS

00:57:03

Alternatives. Non cold, steel, manufacturing,

00:57:07

fossil fuel power, plants that

00:57:10

new tests of using carbon

00:57:13

as a fuel Ikea predicts,

00:57:16

the technology winners and no

00:57:18

one else can in 2016.

00:57:21

When I first started tracking

00:57:23

in my Georgetown class the

00:57:25

new technologies. I only really

00:57:27

saw a handful of new

00:57:28

inventions and ideas every year.

00:57:30

Now, I see many, many

00:57:33

dozens of new ideas every

00:57:34

year, and that's a very

00:57:36

positive development. In some, there

00:57:39

is urgency. However, technological innovation

00:57:43

is right for an unexpected

00:57:44

solution and should give us

00:57:46

some optimism for the future.

00:57:48

We will not look like

00:57:51

it does today, but it's

00:57:54

also not predetermined to look

00:57:55

at any specific way. With

00:57:58

that that concludes my commentary

00:58:00

on energy policy. Thank you,

00:58:04

Julie, and that's a very

00:58:06

sobering. A presentation. I'm going

00:58:10

to ask Lisa, perhaps. Now

00:58:14

can you tell us some

00:58:16

lessons? Are there any lessons

00:58:18

to be drawn from the

00:58:20

perspective of a policy maker

00:58:22

from the evolution in policies

00:58:27

in the last 10 years?

00:58:28

Thanks Julie. Really was excellent

00:58:33

and it really was so

00:58:34

boring. And I think it

00:58:35

also intersected quite well, with

00:58:37

the rest of the discussion

00:58:38

because you write. So we

00:58:41

emphasized how complicated things are

00:58:43

headed. Dynamic, things are that

00:58:45

wedding on certain winners. Trying

00:58:48

certain policies doesn't necessarily mean

00:58:50

that those are the right

00:58:51

policies that were moving in

00:58:52

an uncertain landscape. So I

00:58:55

think that that's just by

00:58:56

the way, really critical message.

00:58:58

I think if I could

00:58:59

emphasize with in 2 minutes,

00:59:01

1 take away for me,

00:59:04

then tried to bid on

00:59:05

Julie and also I might

00:59:06

run to this presentation and

00:59:07

also I'm my own work

00:59:08

in this area. It's that

00:59:10

decarbonizing the economy and scaling

00:59:13

up Alternative Energy Solutions. Doesn't

00:59:15
happen piecemeal. It doesn't happen

00:59:16
by Betting on certain technology

00:59:20
sector by sector. It requires

00:59:22
robust National, even Regional planning.

00:59:25
As I've been Julie emphasized,

00:59:27
it really requires having a

00:59:30
road map for decarbonization and

00:59:33
an energy. Master plan for

00:59:37
an, add a national scale,

00:59:39
and at a regional scale

00:59:40
because energy generation and distribution

00:59:42
is often Regional for some

00:59:45
of the reasons that Julie

00:59:45

also emphasized that different types

00:59:47

of generation. Especially in renewable,

00:59:49

energies are necessarily Geographic dependency

00:59:52

there, where the sun is,

00:59:53

the wind is the water

00:59:54

and so on, but but

00:59:57

they're distributed more reason. So

01:00:00

what this is going to

01:00:01

require is I would say

01:00:03

to fold and then I'll

01:00:04

stop on that point. One

01:00:05

is real planning at a

01:00:08

national level and Regional level.

01:00:09

How are we going to

01:00:10

Tri City Schools? What is

01:00:12

the regional? What is our

01:00:13

Energy, Mix what's available to

01:00:15

us? In terms of energy

01:00:16

sources, who are our Energy

01:00:17

Partners? What is that imply?

01:00:19

In terms of where we

01:00:20

need to still up energy?

01:00:21

What does it imply in

01:00:22

terms that we need to

01:00:23

figure this out? So I'm

01:00:24

going to just solution and

01:00:26

then how do we achieve

01:00:27

that at a, what's public

01:00:29

Investments with private Investments and

01:00:30

so on? That would be

01:00:32

one point. And then my

01:00:33

second point is a gratuitous

01:00:35

plug for a report that

01:00:37

we wrote that. I had

01:00:38

put the Lincoln to the

01:00:40

shop for a different reason

01:00:41

which is that even with

01:00:43

that Master Plan, even with

01:00:44

a road map of national

01:00:46

and Regional road map, there,

01:00:47

remain many constraints and challenges

01:00:50

to actually achieving this actually

01:00:52

emphasizes. Many of them, we

01:00:54

need to understand what they

01:00:56

are. What are the challenges

01:00:58

that states are facing and

01:00:59

attracting investment that investors are

01:01:01

facing and attracting Investments and

01:01:03

a relevant to our discussion

01:01:05

based on surveys, based on

01:01:09

what we know about the

01:01:10

sector based on the challenges

01:01:11

that we can observe from

01:01:12

history. And so on, it's

01:01:14

not the lack of treated

01:01:16

protections. There are real challenges

01:01:19

in terms of affordable Finance

01:01:21

in terms of robust, Utilities

01:01:23

in terms of access to

01:01:25

the grid and turns it

01:01:26

off. Take backs in every

01:01:28

region. There was a great

01:01:30

article very sobering. Also got

01:01:32

the challenges of Grid interconnection

01:01:33

in the US most of

01:01:36

this access to finance Capital

01:01:37

most of the access to

01:01:38

low-cost B capital r in

01:01:41

the developing countries and so

01:01:42

on. So we should be

01:01:43

doing governments need to be

01:01:44

leading us. I really robust

01:01:47

assessment of what the roadblocks

01:01:49

are and then our discussion

01:01:51

about how to address that

01:01:52

in the context of international

01:01:54

governance investment governance, should flow

01:01:57

from that. Perfect segue. Thanks

01:02:01

Lisa. To the final topic,

01:02:04

I'm going to stay with

01:02:05

you on this particular topic

01:02:10

of SDS. Have you observed

01:02:13

any proposed or adopted reforms

01:02:17

that are specific to energy

01:02:18

transition and a relatedly? Do

01:02:21

you anticipate any challenges and

01:02:24

moving this agenda forward? Challenges.

01:02:28

Yes, but reform options. Yes.

01:02:31

So it but this is

01:02:33

again a really Dynamic space.

01:02:35

Let me start of what

01:02:37

I see happening because I

01:02:38

think the reform efforts happening

01:02:40

bilaterally. So, in the context

01:02:42

of certain actually even within

01:02:44

the context of States model,

01:02:48

treaties of thinking through their

01:02:49

own investment policy reform efforts

01:02:53

bilaterally in the context of

01:02:54

specific treaties, their efforts multilaterally

01:02:57

and there. I would, I

01:02:59

will try pension to the

01:03:01

reform efforts of the energy

01:03:02

Charter treaty. I bet there

01:03:04

are even broader multilateral discussions.

01:03:07

For instance, most notably, I

01:03:08

would say right now, in

01:03:09

the context of the oecd

01:03:11

that is leading a discussion

01:03:12

on this and then finally,

01:03:13

but I'll be brief. There

01:03:15

are reform efforts that I

01:03:16

think are proposed by civil

01:03:18

society and including us. We're

01:03:20

not and advocacy Organization for

01:03:21

an academic institution. So just

01:03:24

very, very briefly to go

01:03:25

through each of those. I

01:03:26

think that types of worms

01:03:28

that are largely Happening by

01:03:30

states and their models and

01:03:31

in bilateral, negotiations is largely

01:03:34

for the for the moment

01:03:35

limited to clarifying or limiting

01:03:39

the scope of certain types

01:03:40

of substantive Provisions or inserting

01:03:42

more language into treaties, with

01:03:44

respect to General or specific

01:03:46

exceptions that reinforce States policy

01:03:50

space of it or that

01:03:52

may accept certain types of

01:03:54

measures or certain sectors and

01:03:56

so on, that's Been true

01:03:59

for other public policy areas,

01:04:01

but now especially Environmental Protection

01:04:04

and to some degree climate,

01:04:06

measures are being integrated in

01:04:10

that type of approach. I'll

01:04:12

just note there a wonderful

01:04:14

book by Wolfgang, all snow

01:04:16

from the University of Ottawa

01:04:17

who has written a book

01:04:18

on, but I don't remember

01:04:20

the exact title, but new

01:04:21

treaty is old outcomes and

01:04:23

he pretty systematically documents. The

01:04:27

challenges that states face in

01:04:29

realizing their goals with these

01:04:31

types of modifications in the

01:04:34

outcomes of tribunal cases. And

01:04:35

he, he, he gives many

01:04:38

reasons for that, but but

01:04:40

at least a couple are

01:04:42

that the existence of the

01:04:44

3,000 free to use old

01:04:47

quote-unquote old generation treaties have

01:04:50

really in French. The perpetration

01:04:52

of key Provisions for arbitrators

01:04:54

City, arbitrators are relying on

01:04:55

Old case law and old

01:04:56
treaties in the interpretation. New

01:04:58
treaty. So that minimizing, some

01:04:59
of these new types of

01:05:00
provisions and exceptions. And of

01:05:03
course, another reason is that

01:05:05
there is increasing creativity and

01:05:07
bringing claims and some pretty

01:05:09
shopping. I'm so, I'm so

01:05:10
because these reforms are happening

01:05:12
in certain bilateral, treaties or

01:05:15
not, even in the case

01:05:16
of models, they're not yet

01:05:17
at the scale that we

01:05:18

would see a systematic Effectiveness.

01:05:20

I think, yet the second

01:05:24

that I thought, I'd emphasize

01:05:26

in the context of the

01:05:27

energy, Charter treaty, which is

01:05:28

probably the most The most

01:05:31

concerted reform after that, we're

01:05:34

seeing in the context of

01:05:35

the current investment regime starting

01:05:39

in 2018, the energy Charter

01:05:41

treaty set out to quote,

01:05:44

unquote, modernize the energy, Charter

01:05:46

treaty that was three years

01:05:47

after the adoption of the

01:05:49

Paris agreement. Although even then

01:05:51

when they identified the list

01:05:53

of topics that would be

01:05:54

part of the modernization effort,

01:05:56

there was very little if

01:05:58

I'm being generous and effort

01:06:01

to really a line with

01:06:03

the Paris goals and I

01:06:05

think that that set them

01:06:06

on a Failing truck in

01:06:09

my view to meaningfully, think

01:06:12

about how an energy Charter

01:06:14

treated, which could have should

01:06:15

have been a core instrument

01:06:17

in achieving the climate goals

01:06:18

through an investment treaty could,

01:06:21

and should indeed a line

01:06:23

with the climate goals. And

01:06:24

so it doesn't test or

01:06:25

what the energy, Charter treaty

01:06:27

reform efforts have looked like,

01:06:29

is, frankly, largely, what I

01:06:32

just described in the bilateral

01:06:33

contact. So a number of

01:06:34

proposed changes to Provisions into

01:06:38

isds that are again, quite

01:06:40

similar to those another treaties

01:06:42

that have had limited or

01:06:44

GPS. A fact, there is

01:06:46

a proposed new article on

01:06:48

climate change and clean energy

01:06:49

transition, which as drafted is,

01:06:51

largely reaffirming the members exist

01:06:55

in commitments to corporation on

01:06:57

the number of climate energy

01:06:58

matters. They've introduced the flexibility

01:07:03

mechanism that allows members to

01:07:05

unilaterally. Food, investor protections for

01:07:08

fossil. Fuels are though even

01:07:11

the leading states that are

01:07:14
supporting the monetization have indicated

01:07:17
that they're unlikely to use

01:07:18
that flexibility mechanism and others

01:07:20
are likely to be even

01:07:21
more conservative. So it's not

01:07:23
looking likely that that would

01:07:24
be widely adopted. And then

01:07:27
despite concerns regarding is dies

01:07:30
in all sectors, not just

01:07:34
with respect of fossil fuels

01:07:35
but how it can bind

01:07:36
States hands as they're trying

01:07:39
to Dynamic, we evolved their

01:07:43

policies, it actually extends its

01:07:46

and scope of its des

01:07:47

to a number of other

01:07:48

critical policy areas including with

01:07:49

respect to hydrogen and biomass

01:07:51

and biogas and synthetic fuels.

01:07:53

And so on which is

01:07:54

probably moving in the opposite

01:07:56

direction, then climate campaigners would

01:07:59

have like to seen. So

01:08:00

so the the modernization effort

01:08:02

has faced Substantial headwinds from

01:08:05

those in the climate Community,

01:08:08

I would say. And Adonis,

01:08:10

I routed to earlier number

01:08:11

of EU states have already

01:08:13

indicated that despite these modernization

01:08:15

attempts, they're planning to withdraw

01:08:19

from the ECT in the

01:08:20

remaining question, is whether the

01:08:21

EU will do. So as

01:08:22

a whole or whether individual

01:08:24

states? Well and I think

01:08:26

how that, how that pans

01:08:27

out there in that moment

01:08:30

right now the other Reform

01:08:33

effort that I mentioned was

01:08:35
at the oecd. They've been

01:08:37
convening a discussion on the

01:08:39
alignment of investment treaties with

01:08:40
Paris agreement and NetZero. I

01:08:43
think this was the second

01:08:44
year that they've convened a

01:08:45
conference. It just happened last

01:08:47
month. The first one was

01:08:48
last year where they're soliciting

01:08:51
input from a number of

01:08:53
interested stakeholders in what? It

01:08:56
would look like with your

01:08:57
laundry. Oh my gosh. I

01:09:02

just noted in preparation for

01:09:04

speaking today, one paragraph that

01:09:05

I thought Notable from some

01:09:08

of their background materials, for

01:09:09

this year's conference, one of

01:09:11

the background material. So they

01:09:12

prepared for this year's conference

01:09:13

was actually a stock-taking of

01:09:16

critical agreements that states have

01:09:17

made with respect to climate

01:09:19

policy and all those four

01:09:20

of that. I previously mentioned

01:09:21

that she 70s G20 meetings,

01:09:23

ministerial conventions and so on.

01:09:26

So they have a background

01:09:27

document that lists, many of

01:09:30

those as those meetings and

01:09:33

commitments. And then the oecd

01:09:34

says, while government commitments to

01:09:36

tackle climate change and become

01:09:38

frequent, it can be difficult

01:09:39

to see changes in investment

01:09:40

treaties or their Associated Finance.

01:09:42

In addition, while there are

01:09:44

multiple inter-governmental groups addressing sustainable

01:09:46

Finance or the climate effects

01:09:47

of trade. It's unclear whether

01:09:49
governments have included investment treaties

01:09:51
in their Finance. Close in

01:09:52
this work overall despite the

01:09:53
many initiatives and commitments. It's

01:09:55
unclear if governments are addressing

01:09:56
the alignment of investment treaty,

01:09:57
and sentence, with the Paris

01:09:58
agreement, and sustainable Finance in

01:10:01
any other ongoing work. So

01:10:04
I think that nicely summarizes,

01:10:06
where Are with respect to

01:10:07
investment treaties and meaningful reform

01:10:09
around climate. The main call

01:10:14

for reform among Civil Society

01:10:17

is predominantly. I think to

01:10:20

fundamentally reform is dies because

01:10:22

climate is is added to

01:10:25

the list of critical policy

01:10:27

areas that are being successfully

01:10:29

challenged and creating a shell

01:10:32

for government policy. Even when

01:10:33

we are not seeing the

01:10:34

claims, or even for favorable

01:10:35

towards, there's increasing evidence that

01:10:38

states are being shelled and

01:10:39

taking critical policy measures. So

01:10:41

I think from Civil Society,

01:10:42
the major call is from

01:10:44
form of the ICS system,

01:10:46
as a whole. And then

01:10:47
I'll just end with reiterating

01:10:51
Our conclusions and finding from

01:10:54
that, I was just a

01:10:56
looting to have to do

01:10:57
a presentation. But I really

01:10:58
think that it's the core

01:11:01
of where reform discussions should

01:11:03
be, which is that investment

01:11:05
plays the central role in

01:11:07
the energy transition, we need

01:11:09
to mobilize trillions of dollars

01:11:13
of investment, we need to

01:11:15
properly govern, that investment, it's

01:11:17
incredibly complicated. And that's why

01:11:20
I love investment governance and

01:11:22
investment law because it is

01:11:24
so decisive. And whether we

01:11:25
are able to achieve our

01:11:26
goals, but that really requires

01:11:28
a fundamental rethink of what

01:11:29
it is. What are the

01:11:30
problems that we're trying to

01:11:31
solve? What are the roadblocks

01:11:33

that are? That are impeding

01:11:36

the financial flows that are

01:11:37

needed and what are solutions

01:11:39

that we can bring, what

01:11:40

needs to happen to the

01:11:41

National level? What needs to

01:11:42

happen at an international level.

01:11:43

So I would suggest that

01:11:45

we start the reform discussions

01:11:46

there because there's an absolutely

01:11:49

critical role for investment governance

01:11:51

but it's certainly not clear

01:11:54

that the problem is With

01:11:57

the lack of investor Protections

01:11:59

in investment treaties, the evidence

01:12:01

that investment treaties have been

01:12:03

effective at mobilizing investment, is

01:12:04

weak at best. And as

01:12:07

Julie indicated, we're not solving

01:12:08

the problem. So for me,

01:12:10

this is a real call

01:12:11

to action for a community

01:12:12

to really rethink. What are

01:12:14

the barriers? What are the

01:12:15

challenges? How do we, how

01:12:18

do we address those fundamentally?

01:12:19

How do we anticipate the

01:12:21

types of disputes that my

01:12:23

fellow panelists have helpfully previewed

01:12:26

before they arise. And how

01:12:28

do we resolve them in

01:12:29

a way that's consistent with

01:12:30

our Global efforts to address

01:12:32

climate change. I'll stop there.

01:12:35

Thank you for that summary

01:12:38

of various initiatives and potentially

01:12:41

also carving at the agenda.

01:12:46

Looking for, I'm going to

01:12:48

give Louise the last word

01:12:51

before we open up the

01:12:53

q-and-a. Louise, do you have

01:12:54

anything you'd like to add

01:12:56

on this topic? Just to

01:12:59

say that I've loved hearing

01:13:01

from all the other panelists

01:13:02

there and I think Lisa

01:13:04

is lost points a particularly

01:13:06

so horny. And I'm very

01:13:07

interesting. I think you're thinking

01:13:10

about this. This why the

01:13:12

question of the legitimacy of

01:13:14

the ICS system? This is

01:13:16

of course very closely connected

01:13:17

with the current development of

01:13:20

days and energy transition in

01:13:22

the climate change that in

01:13:23

cases because I really do

01:13:25

represent a very pointed challenge,

01:13:29

the idea that states should

01:13:30

be entirely unfit in. In

01:13:33

the measures, they take him

01:13:33

to see the climate change.

01:13:34

Has already some skepticism and

01:13:37

hostility towards the system. It's

01:13:39

really being pronounced in this

01:13:43

context. I don't have an

01:13:45

easy answer to that. I

01:13:46

had to guess, just two

01:13:48

points tonight. One, is that

01:13:50

at? And it's 22 2022

01:13:53

report by the ipcc identified

01:13:56

is dies as one of

01:13:56

their the key barriers to

01:13:58

a I think climate change

01:13:59

and saying that it's stopping

01:14:01

country's legislative to climate change.

01:14:03

And I'm not. Kind of

01:14:06

represents one side of this

01:14:07

Beast of a Kia Stinger

01:14:10

in that context today and

01:14:12
say all of the. If

01:14:13
it said of being put

01:14:14
into the badging the system

01:14:17
as such I guess more

01:14:19
reshaping it through this new

01:14:21
generation of treaties and especially

01:14:23
this interest in finding out

01:14:25
more receiver cultivations around environment

01:14:28
and climate change the final

01:14:30
thing. Well, the final two

01:14:31
points, I'll make, I just

01:14:32
thought, I think God has

01:14:35
always been the case with

01:14:36

investment treaty arbitration. The way

01:14:38

it's described outside of the

01:14:41

The Specialist legal sector, that

01:14:43

kind of engages in it,

01:14:45

in a little detail. Sometimes

01:14:48

the the descriptions of the

01:14:50

two cases is I think

01:14:52

a little simplistic and I

01:14:54

think can kind of see

01:14:56

where are some important details?

01:14:58

A lot of the descriptions

01:15:00

of the Unicorn out of

01:15:01

your cases against the Netherlands,

01:15:03

just reported them as its

01:15:05

unit. That the company is

01:15:06

suing the Netherlands in connection

01:15:10

with the phase-out of a

01:15:11

coal-fired power generation. Actually, you

01:15:14

know, when you look at

01:15:15

them more closely, it's about

01:15:16

the what they said was

01:15:18

it the more Abba Tree

01:15:19

application of the compensation mechanism,

01:15:21

which is arguably a different

01:15:23

proposition and I think it

01:15:26

is interesting to look at

01:15:27

the, the angles that are

01:15:31

being presented, when these issues

01:15:33

are being discussed, some, you

01:15:35

wants to the the challenges,

01:15:38

I'm going to being obscure

01:15:41

would at times. My final

01:15:43

point is, it's a point

01:15:45

of being picked up in

01:15:46

the questions in the chat

01:15:47

will ready, which is about

01:15:48

how can I have DS.

01:15:50

He actually used to encourage

01:15:52

climate change action and facilitated.

01:15:54

I think looking up the

01:15:57

the gross that he is

01:15:59

expected in Africa, for example

01:16:02

is turning into a kind

01:16:02

of green energy continent that

01:16:04

will involve a huge amount

01:16:06

of investment over the coming

01:16:08

decades and you know that.

01:16:11

He's what is DS was

01:16:12

traditionally supposed to enable and

01:16:14

encourage? I'm especially when you're

01:16:16

dealing with such as that

01:16:17

all sounds on newest technology

01:16:20

or rapidly. Developing regulation. For

01:16:23

example, of round green hydrogen.

01:16:24

Then I think it's interesting

01:16:27

to think about the role

01:16:28

of a sort of treaties

01:16:29

and creating confidence among the

01:16:32

kind of strong investment sector

01:16:34

up. Again, I don't think

01:16:35

there is a spot and

01:16:37

he got to know the

01:16:38

fact that that should be

01:16:39

considered. Giveaways. So what I'm

01:16:43

supposed to do is just

01:16:44

summarize, the questions that have

01:16:47

come in in the chat

01:16:50

and props, give you all

01:16:51

an opportunity to comment on

01:16:53

summer, all these questions. So

01:16:56

the first has to do

01:16:58

with this last issue that

01:17:00

we stepped on and whether

01:17:02

you know investment treaties and

01:17:04

that a call to climate

01:17:07

change perform or whether they

01:17:10

can be used in a

01:17:12

way to advance or protect

01:17:14

Investments and alternative non-fossil fuel

01:17:18

energy of question one. A

01:17:22

question to you is how

01:17:24

to essentially increase the chances

01:17:27

for a state's success and

01:17:31

making a counterclaim related to

01:17:34

climate change and environmental measure

01:17:37

question. 3 relates to, whether

01:17:42

there would be any rise

01:17:45

in new energy, Charter treaty

01:17:48

claims that might be expected

01:17:51

in the next four years.

01:17:52

And I'll question was particularly

01:17:55

directed to Lisa and then

01:18:02

Final question by Eureka. Do

01:18:07

you see any future participation

01:18:08
of Civil Society or International

01:18:11
organizations as an amicus curiae?

01:18:14
So I will perhaps start

01:18:17
with Julie and then Garrett

01:18:20
Louise and Lisa I mean,

01:18:25
I think those were aboard

01:18:26
Charter, Charter related questions. I

01:18:29
didn't, I didn't hear, you

01:18:31
know, I'll defer to others.

01:18:38
Eric, do you have anything

01:18:39
to add her? And there

01:18:48
was one question in there

01:18:49
about the effectiveness of treaties.

01:18:53

In-ear, facilitate investment or creating

01:18:57

Investments. We we got to

01:19:01

look at the inside of

01:19:03

the engine, right? Cuz we

01:19:04

get to see the white

01:19:05

investors were thinking and I

01:19:08

do think that a lot

01:19:09

of the Investments that have

01:19:10

been made that are subject

01:19:12

to dispute were made partially

01:19:16

because they felt like there

01:19:17

was protection from treating me.

01:19:19

So I would say that's

01:19:20

Jean entreaties, do provide at

01:19:22

least in my experience incentives

01:19:24

for investment. Louis. Yeah, I

01:19:31

mean on the last point,

01:19:32

if this is something that

01:19:34

I am engaged in our

01:19:36

day-to-day basis is talking to

01:19:37

companies who was thinking of

01:19:39

making Investments and this is

01:19:41

something that he's certainly a

01:19:43

factor in the discussions that

01:19:45

we having, it might be

01:19:46

an asset to Tracy system

01:19:49

evolved over time. It might

01:19:51
be that there is more

01:19:52
interesting than other forms of

01:19:53
investor protection like stabilization clauses

01:19:57
in a specific investment contracts

01:19:59
with states listed and cheese.

01:20:01
So it might be that

01:20:03
some of this is kind

01:20:05
of a big located in

01:20:08
different types of legal instruments.

01:20:10
Every time I think on

01:20:12
the point about counterclaims and

01:20:15
coming the challenge of consent

01:20:20
to investor bank subjects without

01:20:22

a climb. But this isn't,

01:20:24

this is a major issue.

01:20:25

And I think, you know,

01:20:27

this is why I was

01:20:27

saying, so few instances of

01:20:29

success account of claims. I'm

01:20:31

going to the main exception

01:20:32

being the Belington, the XL

01:20:33

case. In that instance, the

01:20:37

parties agreed to, to submit

01:20:40

to the jurisdiction of the

01:20:41

Tribunal. For there is a

01:20:43

range of reasons. It was

01:20:45

specific to that case and

01:20:47

the the obligations that were

01:20:49

said to apply to the

01:20:50

investor arose from domestic total

01:20:53

or so there's a lot

01:20:55

of factors that are specific

01:20:56

to the second sense of

01:20:57

that case which allowed the

01:20:59

counter claim to be effective.

01:21:01

You know I think what

01:21:04

we've been discussing here while

01:21:06

I take it off. Is

01:21:08

the changes to treaties that

01:21:10

might allow claims arising from

01:21:14

obligations that I said to

01:21:15

to subsist in the treaty

01:21:17

itself rather than a fairly

01:21:19

from domestic law which is

01:21:20

a really interesting and ends

01:21:22

and slightly different question. You

01:21:24

know the investment treaty system

01:21:25

has schools conventionally operate as

01:21:28

a daily one-way Street. Has

01:21:31

been kind of option which

01:21:32

could be taken up by

01:21:33

the avesta, and this would

01:21:35

fundamentally change that. So, it's

01:21:36

interesting to see the way

01:21:37

that that sort of issue

01:21:38

is is being raffled Within

01:21:40

These newer generation of crazies.

01:21:41

But, you know, I was

01:21:43

still saying the vast vast

01:21:45

majority of cases that have

01:21:47

been brought up like that.

01:21:49

I still think right now

01:21:50

around this much older generation

01:21:52

of Tracy's, as I think

01:21:54

it will be quite some

01:21:55

time. Until we say those

01:21:56

new mechanisms to the extent.

01:21:59

They're actually agreed in a

01:22:00

straight, he's becoming effective. Over

01:22:04

to lease up and lost

01:22:06

word for us to unpack

01:22:16

and it's clearly contested but

01:22:19

anecdotal evidence survey evidence of

01:22:21

empirical evidence and so on.

01:22:23

So it's certainly not straightforward

01:22:24

and I edited a book

01:22:29

on this topic in 2008

01:22:31

too long ago to admit,

01:22:33

even then the evidence was

01:22:35

not strong, the treaties are

01:22:37
effective, immobilizing investment, most recently

01:22:40
that I'm aware of a

01:22:41
meta study of 20 in

01:22:43
2021. That was an empirical

01:22:44
method studies, 74 empirical studies,

01:22:47
and I found the effect

01:22:48
of these treaties to be.

01:22:49
So negligible is 220. So

01:22:52
at least let me just

01:22:54
say that it deserves Real

01:22:57
question it because because it

01:23:01
has substantial impacts on States

01:23:03
and on policies. And so

01:23:06
at least let us know

01:23:07
and let us really critically

01:23:09
evaluate the benefits. And by

01:23:11
the way, for all the

01:23:12
lawyers it's not to say

01:23:13
that disputes. They'll be always

01:23:16
be disputed still always be

01:23:17
mechanisms to mitigate disputes to

01:23:21
bring Rego. Actually, I just

01:23:22
wanted to mention that I

01:23:23
think that's with respect to

01:23:24
what we said that because

01:23:26
we did the survey of

01:23:27

investors in renewable energy to

01:23:28

understand what they care about

01:23:29

and the idea of certain

01:23:32

types of legal certainty absolutely

01:23:35

comes through but that's a

01:23:36

concept that should be unpacked

01:23:38

because we go certainty can

01:23:39

be realized through many different

01:23:41

types of instruments. And actually

01:23:42

when you ask what matters

01:23:43

is Clarity over. Off-take agreements

01:23:46

and certainty over and Gino

01:23:47

standardized, ptas that explain rate

01:23:50

adjustments and so on. So

01:23:52

we should, you know, better

01:23:53

understand what it is where

01:23:55

we can end. Add legal

01:23:57

certainty in ways that also

01:23:59

don't undermine States policy space.

01:24:02

So it's it's a tricky

01:24:03

question. I'm also interested in

01:24:06

the example from Brazil, where

01:24:08

Brazil ask their investors and

01:24:10

they're in there, they're not

01:24:12

called, by lot of us,

01:24:12

make sure do they call

01:24:13

them the best of operation

01:24:14
of facilitation agreement. It's Brazil's

01:24:17
model. May ask their investors.

01:24:19
What matters to you? They

01:24:20
did a survey of their

01:24:21
investors before concluding in negotiating

01:24:23
these treaties and they don't

01:24:24
have is dies and their

01:24:25
treaties. It looks quite different.

01:24:27
So again there is enough

01:24:30
evidence that we should be

01:24:31
asking a question and not

01:24:33
presuming that ists is necessary

01:24:35
or the right model and

01:24:37

how do we adopt around

01:24:39

it? But that we really

01:24:40

try to understand what is,

01:24:42

you know, again for those

01:24:43

of us who are trying

01:24:44

to achieve the energy transition,

01:24:46

what what are? How do

01:24:49

we what are the real

01:24:50

barriers? What are the challenges

01:24:51

that investors are facing? And

01:24:53

how do we achieve? And

01:24:54

how do we achieve that

01:24:54

in a way that benefits

01:24:55

all stakeholders? Because by the

01:24:58
way, to the extent that

01:24:59
there is a concern that

01:25:00
states that domestic Judicial Systems

01:25:03
are not sufficient, that affects

01:25:05
all stakeholders. So if it's

01:25:07
that, we need more robust

01:25:09
Judicial System. That's also something

01:25:11
I think we should be

01:25:12
considering. So anyway I think

01:25:14
I like this open. Critical

01:25:18
discussion about. About the prophecies

01:25:25
I would say on which

01:25:26
these treaties are based and

01:25:30

maybe I'll just use that

01:25:31

to answer as I did

01:25:32

in the chat. The last

01:25:33

question about the e c.

01:25:34

T a weather could take

01:25:35

you to from form and

01:25:36

I like to think yes,

01:25:39

I believe very much that

01:25:40

we need International Investment governance

01:25:43

and that we need International

01:25:44

cooperation in that. We need

01:25:45

International mechanism but I would

01:25:48

say that it should look

01:25:48

way different that it should

01:25:50

be based on the starting

01:25:51

point of what are we

01:25:53

trying to achieve? What kind

01:25:54

of investment do we need

01:25:55

globally? Where do we want

01:25:57

to drive out and investment?

01:25:58

Where do not want to

01:26:00

drive the investment? What types

01:26:01

of Investments do not want

01:26:02

to encourage? What are the

01:26:03

challenges that states are facing?

01:26:05

What are the in both

01:26:06

attracting but also in governing

01:26:07

their investment? And how do

01:26:08

we design mechanisms that are

01:26:10

supportive of those policies that

01:26:12

are supportive of those goals?

01:26:14

So I would love to

01:26:16

see model treaties that look

01:26:18

like. But it would be

01:26:19

quite different from from the

01:26:21

existing. Farms that we have.

01:26:25

Thank you. Lisa. This brings

01:26:28

us to the end of

01:26:29

the formal portion of our

01:26:31

session. I want to thank

01:26:33

all the panelists for their

01:26:35

truly thoughtful presentation. I turned

01:26:39

the floor. Now over to

01:26:40

our house, Jose Antonio Indiana.

01:26:58

Mute off. So that was

01:27:00

really fantastic. This is a

01:27:02

discussion that certainly an hour

01:27:04

and a half, didn't do

01:27:05

sufficient Merit to, I Just

01:27:07

Want to Thank our panelists.

01:27:10

You know, a lot of

01:27:13

time and preparation thinking about

01:27:15

these issues and thank you

01:27:18

very much and thank you,

01:27:19

Christina for your usual Mastiff

01:27:22

for moderation of this panel.

01:27:24

I know a lot of

01:27:25

work went into organizing this

01:27:27

and that, I really appreciate

01:27:28

those efforts and just a

01:27:30

final note to all of

01:27:32

our attendees online and around

01:27:36

the world. We have more

01:27:38

Wash World, arbitration update coming

01:27:42

up this evening. We're moving

01:27:44

to Oceania this evening which

01:27:48

is tomorrow morning and Hong

01:27:49

Kong and Singapore. And again

01:27:52

I will Remind folks that

01:27:53

tonight at 8 p.m. eastern

01:27:58

time but 9:30 or sorry,

01:28:01

8 a.m. in Singapore and

01:28:03

Hong Kong. We have the

01:28:04

role of domestic legislations on

01:28:06

evidence in international arbitration proceedings,

01:28:08

Clash of legal cultures and

01:28:10

taking of evidence in international

01:28:12

arbitration which I think will

01:28:15

be a great topic and

01:28:17

I'm looking forward to it.

01:28:18

That was antoniou anything you

01:28:21

want to close with. Just

01:28:26

to say that it was

01:28:27

a fantastic from from the

01:28:33

moderator to the presenter, to,

01:28:36

which part of the Palace

01:28:36

II. It's a, it's highly

01:28:39

appreciated that there are so

01:28:41

many views and on substance.

01:28:43

And, and that it is,

01:28:46

it is a vital, a

01:28:48

vital topic for for a

01:28:52

survival of life in itself,

01:28:55

but also how to how

01:28:58
to use a no or

01:28:59
not models of arbitration, investment,

01:29:05
treaties or Alternatives. Thank you

01:29:07
everyone. And now, I believe

01:29:08
that we should move further

01:29:10
into the breakout rooms that

01:29:13
they are. There are people

01:29:14
who would love to see

01:29:16
the the speakers and and

01:29:18
as you know we have

01:29:20
the breakout rooms as a

01:29:21
way to communicate with people

01:29:23
that are not in the

01:29:24
same jurisdiction. Synonym for generational

01:29:27
matter. No, net, no need

01:29:29
to talk about the, the,

01:29:31
the substance of of the

01:29:33
panel, but of course that

01:29:34
is that is, that is

01:29:35
an option. So, thank you.

01:29:37
And then that will see

01:29:39
you in a few hours

01:29:41
in Asia day as the

01:29:44
sun is is about to

01:29:46
come there. I like, Good

00:00:09
afternoon, good evening. And I



00:00:11

guess good morning for those

00:00:12

who are really west of

00:00:16

the Year, welcome to the

00:00:19

Third Edition, world arbitration update.

00:00:22

My name is Ian Laird,

00:00:24

I'm co-founder and co-chairman of

00:00:28

the conference along, with my

00:00:30

colleague, dr. Jose Antonio Rivas,

00:00:34

we founded World arbitration update,

00:00:38

3 years ago, partially in

00:00:41

response to during the covid

00:00:44

epidemic in response to what

00:00:46

we saw is that I

00:00:47

need for people to get

00:00:48

together and a lot of

00:00:50

conferences have been canceled or

00:00:51

delayed and we thought that

00:00:54

would be a great opportunity

00:00:55

to have a virtual conference

00:00:57

and where are largely keeping

00:01:00

that up. Although we had

00:01:01

a great two days in

00:01:03

Mexico, City at the end

00:01:05

of last week at the

00:01:06

National autonomous University in Mexico

00:01:09

City. We had over 950

00:01:11

participants virtually and in person

00:01:15
at the University and eight

00:01:18
panel and it was very

00:01:19
successful discussion of investment treaties

00:01:23
and the NAFTA and the

00:01:25
usmca, and all sorts of

00:01:27
issues related, to International arbitration,

00:01:30
commercial arbitration, and international law,

00:01:34
which is part of what

00:01:35
where are objective at the

00:01:38
wow, is to address issues

00:01:41
in respect of those topics

00:01:45
from around the world. Because

00:01:48
one of the things that

00:01:50

we noticed in particular and

00:01:52

setting up, wow, is that

00:01:53

International arbitration has really spread

00:01:57

from each To Each corner

00:01:59

of the globe. It's not

00:02:00

just something practiced in the

00:02:03

major centres and under the

00:02:04

major institutions. But In every

00:02:07

region of the world. So

00:02:08

so we set up a

00:02:10

conference to basically reflect that

00:02:12

diversity in the wide nature

00:02:15

of international arbitration practice. We

00:02:18

started last week with a

00:02:20

couple of days on topics

00:02:21

with regard to him, are

00:02:23

the Americas today. We're focusing

00:02:25

on topics related, to Middle

00:02:28

East and, and Africa. And

00:02:30

this is our our last

00:02:34

panel for today. But we

00:02:36

will move to Oceania tonight

00:02:39

and tomorrow morning to Singapore

00:02:41

time and just to give

00:02:44

us a brief promotion for

00:02:46

that panel, the role of

00:02:50

domestic legislation on evidence. International

00:02:52

arbitration proceedings will be panel

00:02:55

tonight tomorrow morning, Singapore time,

00:02:57

but I want to get

00:02:58

to today's panel and welcome

00:03:01

our panelists and moderator to

00:03:04

a panel titled. Consequences of

00:03:08

energy. Transition policies for investment

00:03:11

arbitration disputes and clearly this

00:03:13

is a growing and continuingly

00:03:16

important topic in international arbitration

00:03:21

in general. But in particular

00:03:23

in the investment arbitration disputes

00:03:25

forum and I wanted to

00:03:27

introduce our moderator for this

00:03:29

panel and she'll introduce the

00:03:31

panel and the get the

00:03:33

discussion going. We're very grateful

00:03:35

to have Christina bihari from

00:03:38

Foley Hoag. Christina has worked

00:03:42

in the public and private

00:03:43

sector representing an advising States

00:03:45

and state-owned entities on international

00:03:48

disputes in public, international law

00:03:49

matters. She has represented States

00:03:54

and various for as including

00:03:55

the icj exit t. C

00:03:57

h a, i c h,

00:03:58

i c, c, and under

00:03:59

the unsocial arbitration rules. She

00:04:03

Christina previously served as counsel

00:04:06

in the trailer. Bureau at

00:04:07

the Canadian Department of Foreign

00:04:09

Affairs and international trade and

00:04:11

representing the government of Canada

00:04:13

in investor-state dispute under NAFTA,

00:04:15

chapter 11, as well. She

00:04:18

has experience and got some

00:04:20

other trade agreements. We're really

00:04:22

privileged to have Christina here

00:04:24

today. And I'll pass over

00:04:27
the microphone to Christina and

00:04:30
we'll get the discussion going.

00:04:33
Banks in that warm welcome

00:04:36
and welcome to all of

00:04:37
you today on today's session

00:04:40
on the consequences of energy,

00:04:42
transition spur investment arbitration. So

00:04:45
our panel will tackle the

00:04:47
seeming tension between the policy

00:04:50
goals of states to act

00:04:51
in accordance with their International

00:04:53
obligations to reduce global warming

00:04:56
on the one hand and

00:04:58
their obligations under investment arbitration

00:05:01
treaties. In on the other

00:05:04
side to address. This topic,

00:05:07
I'm joined by a group

00:05:08
of leading figures in the

00:05:10
field of International Investment arbitration,

00:05:13
who I will now proceed

00:05:15
to introduce starting first with

00:05:18
Maria. Lucia us, she's a

00:05:21
Colombian lawyer, specializing in the

00:05:24
regulation of renewable energy and

00:05:26
Energy Efficiency. She is a

00:05:29
senior associate of stray. Prodigy

00:05:33

and is based in Bogota.

00:05:35

She's also an Adjunct professor

00:05:37

and international arbitration and an

00:05:40

assistant professor in public international

00:05:42

law. At the University. Del

00:05:44

Rosario Louise, Barber is a

00:05:50

senior associate at at Herbert

00:05:52

Smith International arbitration group in

00:05:56

London, she works on both

00:05:58

commercial and investment, treaty arbitration

00:06:00

and specializes in energy disputes

00:06:03

to take a little league,

00:06:03

those involving energy, transition and

00:06:06

climate change. Yes. For some

00:06:09

reason, I'm not sure if

00:06:12

this is the sound as

00:06:14

well. I don't know if

00:06:15

everyone could hear, okay, I'm

00:06:17

sorry. Go ahead. So Louise

00:06:24

is also experienced in advising

00:06:27

on a range of public

00:06:28

international law issues, including boundary

00:06:31

dispute it, slop and see

00:06:32

if she has and reinterpretation

00:06:34

Garrett. Rush is a managing

00:06:37

director at Secretariat and is

00:06:39

based in Washington, d.c. He's

00:06:41

been damages Consulting, an expert

00:06:43

claimants and respondents in international

00:06:47

disputes for approximately 25 years.

00:06:50

He's worked across all major

00:06:52

industries, including the extractive sector,

00:06:55

electricity generation, and electricity distribution.

00:07:00

Lisa Sachs is the director

00:07:03

of the Columbia Center on

00:07:05

sustainable investment which is a

00:07:07

Joint Center of Columbia Law

00:07:10

School and the Columbia. I'm

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at school, she is a

00:07:14

recognized expert in the ways

00:07:16

that laws policies and business

00:07:18

practices shape. Global investment flows

00:07:20

and affect sustainable development. I'm

00:07:24

finally Julie Carey is the

00:07:27

managing director at Nira. She

00:07:29

is a energy Economist with

00:07:31

25 years of experience, providing

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expert evidence and energy and

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transportation related disputes. Julie frequently,

00:07:39

can dogs eat, can also

00:07:41

use on energy markets, contract

00:07:43

regulatory policy as well as

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damages and Alice. He's Julie

00:07:48

is also an adjunct professor

00:07:49
at Georgetown University where she

00:07:51
teaches a graduate-level course on

00:07:54
energy, economics and policy. So,

00:07:58
the format of today. So

00:08:00
I will consist of first

00:08:02
a presentation by Maria Lucia

00:08:04
and it'll be followed by

00:08:06
a panel discussion. I would

00:08:10
invite all of you to

00:08:11
enter any questions or comments

00:08:15
you have in the chat

00:08:17
function. And without further ado,

00:08:20
I'll turn the floor over

00:08:22

to Maria Lucia for her.

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Acacia. Thank you, Christina, for

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the introduction of thank you.

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Jose Anthony a limitation. I'm

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very excited to be here

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today at the third day

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of world arbitration update in

00:08:36

the Middle East and Africa.

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And of course, it is

00:08:39

an honor to be sharing

00:08:40

this planet with Christina Lewis

00:08:42

jewelry, Lisa and Garrett. So

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to start with the introduction

00:08:47

of our session on the

00:08:48

consequence of energy transition policies,

00:08:51

for investment arbitration disputes. The

00:08:54

first thing that I would

00:08:55

like to raise is bad

00:08:56

according to the latest except

00:08:58

report almost house updated case

00:09:01

the same 2022. We're related

00:09:04

to the energy and Mining

00:09:05

sectors. Also, I would like

00:09:08

to highlight the pins of

00:09:09

mason sand Queen Mary survey

00:09:11

report on the future of

00:09:13

International Energy arbitration which was

00:09:16

Felicia the beginning of this

00:09:17

year that suggests that the

00:09:19

one of the causes of

00:09:20

internationally International Energy. Dispute is

00:09:24

climate change and environment. As

00:09:27

we all know, nowadays the

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states are under pressure to

00:09:30

ensure regulations to mitigate the

00:09:33

effects of climate change. Time

00:09:34

to comply with the new

00:09:36

international environmental obligations that those

00:09:39

states have assumed mainly on

00:09:42

their divorce agreement as a

00:09:44

consequence over the past years.

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Regulatory changes in response to

00:09:49

climate change, have been introduced

00:09:50

about a president that rate

00:09:53

and these regulatory inflation is

00:09:56

suspected of course to keep

00:09:58

increasing as a consequence of

00:10:00

the newest States allegations regarding

00:10:01

buy me. These have caused

00:10:04

the government's phase two competing

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objectives at the same time

00:10:08

on one hand trying to

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move on energy transition forward

00:10:13

and implementing the embassies that

00:10:16

they have made under the

00:10:17

Paris agreement. And on the

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other hand, they obligation to

00:10:21

respect the rights and cuff

00:10:23

companies and investors that owns

00:10:26

a In the energy production

00:10:28

and transmit transmission sex. It

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will be very important to

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see how this tension between

00:10:34

these two competing objectives, play,

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South in relation to the

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Praxis in Investments. But what

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we have seen so far

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is the distance on has

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produced, of course, and increasing

00:10:46

investor-state arbitration disputes. And we

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checked above course to challenge

00:10:52

a specific time of measures.

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Some examples of these include

00:10:57

cases, such as Universe versus

00:10:59

the Netherlands, Rockhopper Eatly, and

00:11:03

Granada private Power vs Granada

00:11:05

which are panelists will explain

00:11:08

in a few minutes. Another

00:11:11

issue that I would like

00:11:12

to take him to a

00:11:13

hacked account here and Trace

00:11:15

tour. Participants is the fact

00:11:18

that investment treaty landscape was

00:11:20

conceptualized way before the emergence

00:11:24

of the climate crisis. So

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Monster part. Investment Agreements are

00:11:29

silent on environmental issues that

00:11:31

might be related to the

00:11:32

energy transition, never the last

00:11:35

in the last few years.

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There has been a changing

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with the introduction of new

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generations of international agreements that

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make them theme care about

00:11:45

states rights to regulate and

00:11:48

obligations of investors to protect

00:11:50

the environment on to respect

00:11:52

human rights. These development that

00:11:56

highlights the growing concerns that

00:11:59

it states may have to

00:12:00

balance their environmental policies with

00:12:03

the commitments that they have

00:12:05

made way before to the

00:12:07

foreign investors. Examples of these

00:12:10

new generations of Agreements are

00:12:13

for instance, the Netherlands model

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B. I T the Moroccan

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Singapore, Indonesia by Katy disagreements.

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Companies Progressive t-shirts that recognize

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an explicit, try to regulate

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and investors environmental obligations. For

00:12:33

instance, of an example of

00:12:35

these is article. Six point.

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Six of the Netherlands model,

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B. I T, which incentivize

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foreign investment that aligns with

00:12:44

the imperatives of the Paris

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agreement? And of course this

00:12:48

provision reminds the bodies or

00:12:51

might remind the bodies in

00:12:52

the future. They are not

00:12:54

free to up out of

00:12:56

their obligations under the Paris

00:12:58

agreement but there is more

00:12:59

that they restroom their commitments

00:13:01

within the scope and application

00:13:03

of International Investment Club. Another

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Trend that I would like

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to hide like under this

00:13:09

discussion, is there more any

00:13:11

station process? I'm with Google

00:13:13

of the energy Charter treaty

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that was announced last year

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as a consequence, that it

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states are alleging that the

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treaty does not go far

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enough to others are climate

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change your location. So this

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morning station process may have

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some material consequence for the

00:13:32

state regulation, and of course,

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also to investment relations are

00:13:37

related to the energy transition.

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Give him the situation. So

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mi standing issues that must

00:13:44

be resolved during this panel

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and luckily he's not my

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place to answer to our,

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where is Deus protects fossil-fuel

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Investments weather is Diaz is

00:13:57

subject to Foster investment in

00:13:59

renewable energy and which is

00:14:01

the role of our experts

00:14:03

in the assessment of the

00:14:04

policy and Regulatory costs of

00:14:07

a potential electric Farm in

00:14:09

a particular case. So, will

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these introduction I would like

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to do the floor to

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the final least. We did

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very difficult task to answer

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some of these concerns and

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questions that they are like

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at very hot topic nowadays.

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Thank you. Maria Lucia. I'm

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going to start with Louise,

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Louise. Can you give us

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an overview of the case

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law concerning investment? Arbitrations that

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have Arisen from the energy

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transition policies of States show.

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Thanks so much, Christina and

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good morning. Good evening, everyone.

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Depending on where you're joining

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us from. And thank you

00:14:49
so much for having me.

00:14:50
Just can't put my slides

00:14:52
up on the screen. KSAT

00:14:58
visible to everybody. Okay. So

00:15:05
I'll be presenting a high-level

00:15:07
overview of the isds claim

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that had a reason from

00:15:12
the energy transition. Today's this

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is not going to cover

00:15:15
every single case, but it's

00:15:16
hardly going to set out

00:15:17
some broad Trends. Which will,

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then allow us to discuss

00:15:20
these points. Are there throughout

00:15:21
the panel discussion So the

00:15:24
first thing to say is

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to occur what Maria Lucia

00:15:27
said, which is that the

00:15:29
energy sector has traditionally made

00:15:30
up a very sizable portion

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of total is DS cases.

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Largest share of cases if

00:15:38
administered by exid on my

00:15:41
table. Come from the energy

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sector is not surprising. If

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you work in this sector

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thinking about the nature of

00:15:46

the project involved. So they

00:15:48

often require some sort of

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State involvement, like concessions or

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license has been granted. It's

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a pretty heavily regulated sector.

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There's a high degree of

00:15:59

foreign investment in v. A

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lot of the time, it's

00:16:01

very comfy, International set-up and

00:16:03

the project themselves tend to

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have huge amounts of money

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involved. But I choose not

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to risk involved and then

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they are all them plans

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to be a very long

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time Horizons. Do all of

00:16:15

that really stepped out quite

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so tall conditions for disputes

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to arise between investors in

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these projects, on the one

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hand, and then States because

00:16:24

of the high potential, for

00:16:25

regulatory conditions, to change a

00:16:28

state actions to have a

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significant impact on these projects

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and it's a reflection of

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the close relationship between the

00:16:35

energy sector and the investment

00:16:36

treaty system that we have

00:16:38

the energy Chata Tracy, which

00:16:40

is that the multilateral investment

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rate he designed to address

00:16:44

investments in the energy sector

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energy sector. Specifically will no

00:16:48

doubt come back to this

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spot. There have of course

00:16:52

been lots of changes in

00:16:53

the membership of the act

00:16:54
in recent years but a

00:16:56
tight it's had been in

00:16:57
more than 50 countries. As

00:16:59
seen it treason, and many

00:17:00
more as observers. So it

00:17:01
really has been one of

00:17:02
the largest multinational investment agreements

00:17:04
in the world. But today,

00:17:06
we're not talking, just about

00:17:08
energy related cases, where specifically

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disgusting energy, transition related cases.

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So by that, I mean

00:17:15
the the broad drive towards

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decarbonisation, that's being pursued to

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varying degrees, 50 states, and

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private actions around the world.

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And so the focus on

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the one hand of the

00:17:26

reduction of carbon emissions from

00:17:29

industry, from existing projects and

00:17:32

then on the other hand,

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the increase in the use

00:17:34

of low-carbon and renewable energy

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sources to replace fossil fuels.

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And so against this backdrop,

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the pace of regulatory change

00:17:43

has been increasing very substantially

00:17:46
in the past decades and

00:17:48
it can reasonably be expected

00:17:49
to do serve even further

00:17:51
going into the future and

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the final kind of General

00:17:55
instructions point to say is

00:17:56
that we've historically seen a

00:17:58
very high number of cases

00:17:59
in the investment system. Arising

00:18:02
from measures taken by Statesville

00:18:04
environmental reasons. And we've been

00:18:06
seeing this increase in recent

00:18:07
years. I say all of

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this really just sets the

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stage for many more disputes

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in this area arising from

00:18:13

the energy transition. Search heading

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to the types of cases

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that we've already seen. I

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put the energy transition climbs

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into three General buckets. To

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the first category is claims

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arising, from changes to existing

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regulation and cities. These claims

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might arise in response to

00:18:33

changes, in regulations, in pursuit

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of particular, decarbonisation objectives. And

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usually claims, those measures are

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alleged to make the performance

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of an investment of more

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interest, or potentially possible examples

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of these claims are the

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series of very large. Number

00:18:51

of cases that have been

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brought against Spain. Usually, the

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Czech Republic and then more

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recently Romania, where incentives encouraging

00:19:00

investment in solar power and

00:19:02

other Renewable Energy Technologies, waiting

00:19:04

for cheese. And then later

00:19:05
were allegedly withdrawn all downgraded

00:19:08
after about a bit messed

00:19:10
up, Saturday Night, Live been

00:19:12
a huge fan base cases

00:19:13
drawer. I think more than

00:19:13
50 at this point. I

00:19:15
really do What kind of

00:19:17
disproportionate number of the total

00:19:19
is DS, cases pencil cases,

00:19:21
argued with mixed success. That

00:19:25
the states in question, had

00:19:26
breached the protections that they

00:19:27
offered to find investors underneath

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Tracey's on DCTC specifically decision-making

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in connection. With these incentive

00:19:37

programs amounted to a breach

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of the 30, maybe take

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you out. There was a

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focus on the investors legitimate

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expectation, around the basis on

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which they were electrical by

00:19:47

their investments in the sector.

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I'm on the basis of

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the particular what they say,

00:19:53

what commitments will make by

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States. I'm disabled to rain

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at least one thing, like

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I scored against Germany. All

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flights or at least in

00:20:02

relation to the offshore wind

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sector. They're all these claims

00:20:06

have a region from which

00:20:07

states have introduced in pursuit

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of energy transition goals. But

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where investors say that the

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way that those policies have

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been implemented or changes that

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have been made them have

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affected their Investments, best Buckeyes.

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The second package is where

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a new policy or regulation

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has been introduced as part

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of an energy transition strategy.

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And then you said, you

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claimed the rides in connection

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because new policies such as

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was mentioned in the introduction

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of the VIN number of

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claims that have been a

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reason from the introduction of

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all of these for specific

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types of energy. This is

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very much focused on cold

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sore, look at the unit

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and all of you make

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time to Midlands Benevolence introduced

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a piece of legislation that

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required all of the countries

00:21:02

qualified health plans to be

00:21:04

closed down by 2030. Was

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this part of the Dutch,

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Brody, navigation. And he was

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also said to be pursuant

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to the pledges that the

00:21:14

country had made under the

00:21:15

Paris agreement. And so while

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some companies received compensation from

00:21:20

the government in connection with

00:21:22

the impact of this, bill

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on the cold and businesses

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you to put an automated,

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not answer. The claims were

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essentially around a compensation mechanism

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in the way that was

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being implemented as being a

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similar claim against Canada approached

00:21:36

by the, the Westmoreland coal

00:21:38

company around that they got

00:21:40

mad about that his commitment

00:21:41

to end the use of

00:21:43

all this power generation by

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2030. That was a claim

00:21:46

on the NAFTA and then

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a new claim more recently

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under the usmca. And again

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that was kind of very,

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very much for the song

00:21:53

that the that compensation mechanism

00:21:56

I have also seen a

00:21:57

couple of cases around uranium

00:22:00

Mining and the use of

00:22:01

nuclear power. But again, it

00:22:03

kind of around the, the

00:22:04

the, the direction of policies

00:22:06

to phase out a common

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feature of all those cases

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has really been an acceleration

00:22:13

of the timetable that's been

00:22:15

set down by a site

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for transitioning. Two different sources

00:22:18

of energy answer. You find

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that commercial potties, which is

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made Investments on the basis

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of a different timetable. And

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in some cases, allegedly on

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the encouragement of the states

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in question might have found

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themselves facing a different regulatory

00:22:32

framework, which doesn't fit very

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well with the planned lifespan

00:22:35

of those Investments and so

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which then kind of jeopardizes

00:22:39

the recovery of those Investments.

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I didn't say category, the

00:22:44

third bucket is claims which

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arise from a particular decision

00:22:48

by States in respect of

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specific projects. So this is

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often taken the form of

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the denial, all withdrawal of

00:22:56

particular approvals ultimate Soul licenses

00:22:59

for the project. So the

00:23:04

trans-canada case against the USA,

00:23:06

which was around the construction

00:23:09

of the Keystone XL pipeline

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has been very prominent and

00:23:14

similar Rockhopper Natalie case, which

00:23:20

is where that all show

00:23:21

all condition initially had been

00:23:23

granted. There was a change

00:23:25

in the law which sought

00:23:27

to ban for the offshore

00:23:29

drilling project about that provided

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that it would grandfather in

00:23:32

position for a system project.

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But as a result of

00:23:38

some public outcry, the government

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never move. exception insult to

00:23:43

shut down this particular confession

00:23:44

and said that that was

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the time came from the

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instance, Then it look the

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series of all the cases

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that kind of have it

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a similar effect but the

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point is that the connecting

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thread between all of these

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claims is commercial actors who

00:23:58

are seeking redress for the

00:24:00

impact of state-level policy changes

00:24:02

around a table and isolation.

00:24:04

And so given the pace

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in the scale of the

00:24:06

change that was seeing from

00:24:08

the states and instead of

00:24:09

regular productivity we can fairly

00:24:12

expect to see more of

00:24:13

these claims arising the future.

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And so, looking to the

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Future, then on this load

00:24:19
of Trenton said that we

00:24:22
might expect to say, coming

00:24:23
down the line, I guess,

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sometimes abroad, Spain Festival. There's

00:24:28
lots of activity on the

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enforcement from that will expect

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to say arising from those

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solar cases in Europe, they

00:24:33
look through these cases are

00:24:34
running afoul of Entry, you

00:24:36
git, you don't even wear

00:24:38
Wards have been made against

00:24:39
States. If it's been proven

00:24:41
quite difficult to enforce those

00:24:42
words in Europe, that was

00:24:44
saying a lot of attempts

00:24:45
made around the world including

00:24:46
Australia in the US. I

00:24:49
need to try and force

00:24:51
it was and so we'd

00:24:52
expect to see a lot

00:24:53
of activity on that front

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in the coming years. The

00:24:57
second point I'll say is

00:24:58
that a theme has been

00:25:01
has been a pretty high

00:25:02

number of dissenting opinion and

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they sell cases that say

00:25:04

more than average in these

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kind of climate and environment

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related cases. So which is

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easier to think especially secret

00:25:14

war in Colombia case where

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there a text to dissenting

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opinions. And you know, I

00:25:19

think this reflects that they's,

00:25:20

a very difficult issues and

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some elements of them about,

00:25:23

the, the balance, between, what

00:25:26

can reasonably be expected of

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the states, when they are

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dealing with environmental issues, he's

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likely to generate more. Descendants,

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the full of the third

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point, which is a very

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interesting. Very complicated one, he's

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around the potential claims arising

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from a States in action,

00:25:44

or States, kind of failure

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to act and, you know,

00:25:47

thinking smile. In the context

00:25:50

of a failure to enforce

00:25:51

environmental regulation, for example, or

00:25:54

failure to to take what

00:25:56

is considered to be necessary

00:25:57

action on climate change and

00:25:59

interesting, parallel is to look

00:26:01

at the, a lot of

00:26:02

Barbados case, where the claimant

00:26:05

had said that Barbados failure

00:26:06

to take certain Environmental Protection

00:26:09

measures was what it, what

00:26:11

had caused the destruction of

00:26:13

value in the investment and

00:26:15

I claim titles in the

00:26:17

course of doing sorry. The

00:26:18

tribunal Deeds suggests that consideration

00:26:22

of a high-stakes enforcement of

00:26:24

environmental issues would be relevant

00:26:25

to the full Protection security

00:26:27

system, stat, which is very

00:26:28

interesting way of effectively leaving

00:26:31

the door country. They sort

00:26:32

of points bank as soon

00:26:33

as future. And then just

00:26:35

to mention that there is

00:26:36

a cool State advisory opinion.

00:26:38

That's been sold from the

00:26:39

icj, on the status of

00:26:41

the states of the Nations

00:26:43

and international law in respect

00:26:45

of climate change and depending

00:26:46

on the outcome about Find

00:26:49

Reliable not supposed to say

00:26:52

that states should have been

00:26:53

doing more test results. And

00:26:56

the final point, I'll say,

00:26:57

it's just that we might

00:26:59

see more attempts by states

00:27:01

to bring counterclaims against invest,

00:27:03

is related to what they

00:27:05

allege. Those are best is

00:27:06

non compliance with environmental and

00:27:09

climate like messages, either, 3:00

00:27:12

or 3 deal today. Most

00:27:14

of the challenge has been

00:27:15

with a soda counterclaims, very

00:27:18

secure signal issues or lack

00:27:20

of the basis of substantive

00:27:22

face symmetry she to to

00:27:24

a positive ovulation test is

00:27:26

but as was mentioned in

00:27:28

connection with seeing more interesting

00:27:30

draft again more reciprocity of

00:27:32

obligation in his new generation

00:27:34

of crazy. So I think

00:27:36

we'll come back to that

00:27:36

later. Actually, plenty of food

00:27:39

for thought there in the

00:27:40

meantime suppose that you could

00:27:41

say no. Thank you, Louise,

00:27:44

for that excellent. Text Mom

00:27:46

to me disputes and identification

00:27:48

up key trends. I'm going

00:27:51

to turn to Lisa and

00:27:54

ask you, Lisa. Do you

00:27:56

have any, any additional thoughts

00:27:59

are observations to add? Thank

00:28:02

you so much Louise. I

00:28:03

also thought that that was

00:28:04

a really excellent incredibly helpful

00:28:07

and organization at the cases

00:28:09

that we seen and and

00:28:11

the trans I think the

00:28:12

only thing I would add

00:28:13

a baby to the trends

00:28:16

is not is the real

00:28:19

clash between the case of

00:28:22

the types of games that

00:28:23

are being made and States

00:28:24

other International commitments, they can

00:28:28

admit that states are making

00:28:29

to address this existential crisis.

00:28:35

This is not, you know,

00:28:37

if it's is not They

00:28:41

kind of typical dispute between

00:28:43

states prerogative and and private

00:28:46

interests or profit. Entrust. This

00:28:49

is probably the largest existential

00:28:51

challenge. That world's governments have

00:28:53

had in our generation, which

00:28:55

is how to restructure the

00:28:58

global economy to try to

00:29:01

stay within inhabitable warming limits

00:29:04

and that requires massive restructuring,

00:29:07

massive Investments, massive policy, flexibility

00:29:11

of negotiations and so on,

00:29:14

and states are making these

00:29:15

types of commitments in international

00:29:18

binding mechanisms like the Paris

00:29:19

agreement. But also at the

00:29:21

G7 level of the G20

00:29:22

level at ministerial for energy

00:29:25

and Ministers of ministerial Forum

00:29:28

on finance ministers and so

00:29:29

on. And so I think

00:29:31

the other bullet I would

00:29:33

add is the real tension

00:29:35

between the obligations and investment

00:29:37

treaties that underlie these just

00:29:39

and those commitments and the

00:29:43

imperatives for States and taking

00:29:45

action and I think I

00:29:46

would just know and maybe

00:29:47

preview for later in the

00:29:48

discussion that that's exacerbating, I

00:29:51

think the backlash against the

00:29:53

system that in a predated,

00:29:55

the energy transition of predated,

00:29:57

the climate crisis, because it's

00:29:58

always been a concern to

00:30:00

many that investors are able

00:30:02

to challenge public interest measures

00:30:05

in these often closed or

00:30:09

for us, without the proper

00:30:11

integration with other International commitments

00:30:14

and stakeholders. But I think

00:30:15

that the tensions in the

00:30:17

climate space have really accelerated,

00:30:21

I would say maybe that

00:30:22

backlash, and I'll just end

00:30:23

with us Lewis's helpful, to

00:30:25

know that the energy Charter

00:30:27

treaty is probably a central

00:30:28

treaty and all of this.

00:30:30

And it's also the focal

00:30:31

point for a lot of

00:30:32

the backlash right now. There's

00:30:33

as I'm sure everyone on

00:30:36

the call knows there's a

00:30:38

vigorous public debate in the

00:30:40

EU, especially right now, although

00:30:42

Global participants are participating in

00:30:45

the debate that are real.

00:30:46

Vigorous debate about whether the

00:30:47

energy Charter treaty can become

00:30:50

Distance with the energy transition

00:30:52

and whether the steps that

00:30:55

the members have taken to

00:30:57

attempt to modernize so to

00:30:59
speak, the treaty are sufficient

00:31:02
and the rebounding call from

00:31:06
many is no and be

00:31:08
seen many European States. Withdrawal

00:31:13
from the two-year, indicate their

00:31:14
intent to withdraw and call

00:31:15
in the European Union to

00:31:16
withdraw as a whole. So

00:31:17
so maybe I'll stop there,

00:31:20
just to say that this

00:31:21
is really setting up an

00:31:22
even bigger attention, I think

00:31:23
than those that will exist

00:31:25

between investors and states. Thank

00:31:29

you, Lisa. We're going to

00:31:30

shift gears now, and look

00:31:32

at some of the quantum

00:31:33

issues related to renewable energy.

00:31:35

And I'm going to turn

00:31:37

to Garrett now, based on

00:31:39

your experience as a damages

00:31:42

expert. What are some of

00:31:43

the unique characteristics of these

00:31:45

cases from a Quantum perspective

00:31:48

and what are the condom

00:31:50

issues that are most frequently

00:31:51

debated in these types of

00:31:53

cases. And I'm starting with,

00:32:07

you know, when we talked

00:32:08

about Renewables, what's interesting to

00:32:12

us is quantum experts is

00:32:14

of course so what specifically

00:32:16

what industry are? We talked

00:32:18

about what 7ish are we

00:32:19

talkin about? And we've looked

00:32:22

at the awards since 2018

00:32:25

and their 49 were able

00:32:27

to review that are publicly

00:32:29

available. And here we have

00:32:31

a breakdown of what what

00:32:33

those where those fall in

00:32:35

terms of the industry. And

00:32:36

you can see this is

00:32:37

dominated when we talked about

00:32:38

Renewables, dominated by sober in

00:32:42

about 2 States. That's 30

00:32:44

of the 49 and then

00:32:46

others we all know kind

00:32:48

of its dominated by Spain

00:32:49

to. The second bar is

00:32:51

interesting cuz it's hydrobar but

00:32:54

Hydro I'm is by far

00:32:56

the biggest renewable source of

00:32:57

electricity but it's it's not

00:33:00

generating nearly as many Cases

00:33:04

as some of the others

00:33:05

and specifically solar and we'll

00:33:08

see why I think it's

00:33:10

natural that. So where is

00:33:12

is number one just giving

00:33:14

the flows of investment between

00:33:16

countries across borders but when

00:33:19

would be next to sore

00:33:21

around the same time in

00:33:23

terms of the power produced

00:33:24

in the renewable sector by

00:33:27

wind and solar around the

00:33:29

same. So those are the

00:33:30

dominant the dominant cases we've

00:33:34

seen in the renewable sector

00:33:36

of Interest. Awesome. On the

00:33:38

right side of the screen,

00:33:39

you can see that most

00:33:41

of these in this is

00:33:43

always a little bit surprising.

00:33:44

To me most of these

00:33:45

matters involving operational facility. So,

00:33:49

they've got their producing energy

00:33:51

on Big Ben built. They're

00:33:52

going to attract investors and

00:33:56

they're producing energy only about

00:34:00

20%. Operational so not producing

00:34:05

energy yet and I think

00:34:08

that's actually a little bit

00:34:09

skewed compared to other Industries.

00:34:11

Receive receipt generally more pre-operational

00:34:14

project investor State disputes. Then

00:34:18

let's reflect this year for

00:34:20

the renewable sector. And what

00:34:23

we do when we have

00:34:24

operational projects and this has

00:34:26

been true of the award

00:34:27

is it were able to

00:34:28

use an income approach which

00:34:30

means the damages are usually

00:34:32

calculated looking for work across

00:34:34

the the lifespan of a

00:34:36

project and so is projected

00:34:39

performance. That's just kind of

00:34:41

back to evaluation day and

00:34:43

stay around. That's been consistent.

00:34:45

We see a lot of

00:34:46

income approach applications in the

00:34:50

damages Awards. Just going back.

00:34:57

This next slide to the

00:34:59

point, I was making about

00:35:01

the investment flows and you

00:35:03

can see on this, this

00:35:04

left side of the screen,

00:35:05

be renewable versus non renewable,

00:35:08

share in power, generating capacity

00:35:10

and it really is. It's,

00:35:13

it's pretty striking. How quickly

00:35:16

and how much the solar

00:35:21

and wind. And other Renewables

00:35:24

are growing compared to the

00:35:26

traditional power capacity Investments, that's

00:35:30

underpinning. The disputes that we're

00:35:33

seeing empty continuing as well.

00:35:36

I think on the right

00:35:37
side you can see a

00:35:39
reason to think that This

00:35:41
will potentially even accelerate and

00:35:45
the relationships on this graph

00:35:47
on the right side show

00:35:49
that on in 2010. And

00:35:51
that's the left portion of

00:35:52
each section is the average

00:35:55
cost of production in 2010.

00:35:59
First for solar, concentrated solar

00:36:01
power washer when and then

00:36:04
on Sherwood and there's quite

00:36:06
a range in 2010 those

00:36:10

costs have fallen dramatically by

00:36:13

2021 and what's even more

00:36:15

interesting is that gray line

00:36:18

across. That gray sectional cross.

00:36:20

The bottom of the ground

00:36:21

is the average cost for

00:36:24

fossil fuels so you can

00:36:26

see that we started in

00:36:27

2010 with cost it were

00:36:29

significantly higher than fossil fuels

00:36:31

and of course that's that

00:36:33

created a subsidy situation that

00:36:36

we saw of it in

00:36:37

order to attract store other

00:36:39

types of renewable investment. There

00:36:41

needs to be some sort

00:36:43

of subsidy scheme. Where not

00:36:46

only is not only are

00:36:48

these renewable sources competitive, but

00:36:51

they're, they're actually beating out

00:36:52

fossil fuel cell. One source

00:36:55

of disputes might be moving

00:36:56

off off the table, but

00:36:59

at the same time, increasing

00:37:00

the amount of investment coming

00:37:02

in for these type of

00:37:04

dispute, these types of Investments

00:37:07
is also a bit of

00:37:09
a counterbalance and newest shoes

00:37:11
coming out. Through this already

00:37:17
talked a little bit about

00:37:18
this, but some of the

00:37:20
characteristics of renewable energy that

00:37:22
make it a fertile ground.

00:37:25
For the fuse is for

00:37:29
the ones we posted here

00:37:30
that they're heavily regulated and

00:37:31
its capital intensive and because

00:37:35
of that capital-intensive element, there's

00:37:38
an impact on local communities

00:37:39

and National economies because it

00:37:42

is regulated development construction, operational

00:37:49

phases over a fairly significant

00:37:52

period of time so that

00:37:54

can lead to not only

00:37:55

constructions be used, but investment

00:37:57

disputes, and then exposure to

00:37:59

changing regulations while. So you

00:38:02

have multiple multiple areas of

00:38:04

exposure along the lifespan of

00:38:06

these Investments and then you

00:38:09

have a mix of stakeholders

00:38:10

involved. So you got Regulators,

00:38:12

you got stubborn operators, Contractors

00:38:16

in the ambassadors, and then

00:38:17

also concerned with as well.

00:38:18

And then another element is

00:38:21

the long-term agreements. And this

00:38:22

is the basis for a

00:38:23

lot of disputes long-term agreement

00:38:25

over the life of the

00:38:26

project is about 25 to

00:38:31

30 years. These projects have

00:38:33

life spans for which is

00:38:36

a lot of exposure. Particularly

00:38:37

when they showed on the

00:38:38

previous there are significant changes

00:38:41

in cost going on as

00:38:43

well as the behind-the-scenes changes

00:38:47

in the your worldview about

00:38:49

a renewable energy and the

00:38:52

need to transition to it.

00:38:54

So it's 25 30 year

00:38:57

man. It is significant and

00:38:59

then I'm dead financing here

00:39:04

is used to increase returns,

00:39:07

that's the equity holders but

00:39:10

in the process it also

00:39:11

exposes that exactly holders to

00:39:13

more risk. So smaller Changes

00:39:15

in pricing, can create a

00:39:17

bigger changes in terms. The

00:39:21

so far when we've looked

00:39:22

across the cases that we,

00:39:25

we've seen come out of

00:39:26

the last few years. The

00:39:27

ones I showed him. The

00:39:28

first screen, the quantum debate

00:39:31

is typically around a few

00:39:34

key issues. What is the

00:39:36

useful life of a plant

00:39:38

touched on that? But there's

00:39:41

there's a lot of debate

00:39:42

about how long one expects,

00:39:44
the life of the plant

00:39:45
to be versus realistically, is

00:39:48
that playing going to be

00:39:50
technologically relevant in 25 to

00:39:52
30 years? There's always risk

00:39:55
of future cash flows. The

00:39:58
discount rate is always at

00:39:59
the baby in these cases

00:40:01
and that's true in almost

00:40:03
any invest in case, that's

00:40:05
consistent here. There's also been

00:40:08
a text for about dispute.

00:40:10
So should taxes or claim

00:40:14

damages from taxes? Be included.

00:40:16

And those were indications. Spain.

00:40:19

And Revenue tax is 7%.

00:40:21

And so far that has

00:40:23

not succeeded on both have

00:40:24

not been included in Damages.

00:40:27

You see a lot of

00:40:28

discussion about due diligence and

00:40:30

documentation. So how much diligence

00:40:33

did in the Investor's, do

00:40:34

into the returns that they

00:40:37

should have expected in the

00:40:38

wrist, which even has returned

00:40:41

and what was the expectation

00:40:45

for the Investments made? So

00:40:47

there's been a lot of

00:40:49

discussion of that same type

00:40:50

of documentation. But this last

00:40:52

one, I think it's the

00:40:53

biggest issue at the core

00:40:56

of of these Awards. And

00:40:59

it's still, it's still hotly

00:41:01

debated. So there's there's not

00:41:04

really in My Mind, One

00:41:06

Way the tribunals have wings

00:41:08

and that is around legitimate

00:41:11

expectations of returns and falls.

00:41:13

Into two categories, is the

00:41:16

ambassador? Should I expect a

00:41:20

reasonable rate of return for

00:41:22

a fixed stable return? And

00:41:24

so when I say reasonable

00:41:26

rate of return, what am

00:41:26

I I'm in the investment

00:41:29

World. Typically, a reasonable rate

00:41:31

of return is tantamount to

00:41:33

cost of capital or slightly

00:41:37

above the cost of capital

00:41:38

of the project cost of

00:41:40

capital is defined as what

00:41:44

is the return, that's required

00:41:46

to have investors attracted to

00:41:48

an investment and I can

00:41:50

change over time is referred

00:41:51

to as interest rates change

00:41:53

and and the macroeconomy changes

00:41:55

the reasonable rate of return

00:41:58

for Investments, can can change

00:42:00

over time. We look to

00:42:02

Market its Finance professionals. We

00:42:05

go to the market to

00:42:06

determine what the market is

00:42:09

rewarded investors with as rates

00:42:11

of return, the nuts different

00:42:12

for across Industries and solar

00:42:16

and wind is no exception

00:42:17

to that. So we can

00:42:18

look to the market to

00:42:20

see what a reasonable rate

00:42:21

of return is considered at

00:42:22

a point in time. I'm

00:42:24

going to fix stable return

00:42:26

is really going back to

00:42:28

this idea. That a single

00:42:30

rate was agreed to for

00:42:31

the life of a project

00:42:32

on those rates are typically

00:42:34

adjusted by inflation. Is that

00:42:37

rates and regardless of what's

00:42:38

going on around the projects

00:42:41

that rate is what that

00:42:43

that project should should return.

00:42:48

It's a he, right? I

00:42:49

just copied some, some brief

00:42:52

summaries of two cases that

00:42:55

show. This contrast on the

00:42:58

left is a reasonable rate

00:42:59

of return reefy, Spain. You

00:43:01

can see here that the

00:43:04

tribunal basically said that claimants

00:43:06

only had a legitimate expectation,

00:43:08

that they would receive a

00:43:09

reasonable return on their investment

00:43:11

and not that the regulatory

00:43:13

framework would remain unchanged. And

00:43:17

you can see here in

00:43:18

the middle of those modifications,

00:43:21

I say son is a

00:43:22

reasonable and Equitable Davis would

00:43:25

fall within a legitimate change

00:43:29

for the regulatory framework. And

00:43:31

this tribunal decided that what

00:43:34

a reasonable rate of return

00:43:35

was as for Reef was

00:43:38

the cost of capital which

00:43:39

is the wac there plus

00:43:41

1%. So they did recognize

00:43:43

that, maybe the 1% was

00:43:45

a recognition that their work

00:43:49

had to be more of

00:43:50

a return then cost of

00:43:51

capital to attract investors to

00:43:54

bad investment. On the right,

00:43:57

we have a good example

00:43:58

of a fixed rate and

00:44:00

here you can see that

00:44:02

we've summarized it while it's

00:44:04

important to respect the state's

00:44:05

right to regulate. The tribunal

00:44:07

said this rice is not

00:44:08

Trump specific Promises of stability

00:44:11

and this goes back to

00:44:13

that point I was making

00:44:14

about documentation in these cases

00:44:16

this case certainly highlighted the

00:44:19

fact that investors had invested

00:44:23

with a specific rates for

00:44:27

the life of the project

00:44:27

in mines and so the

00:44:29

tribunal highlighted. I mean you

00:44:31

can see that some in

00:44:33

this middle part of that

00:44:34

box. The claimant would not

00:44:36

have invested without the expectation

00:44:37

of a fixed tariff stability.

00:44:40

And then when we surfaced

00:44:43

her, as I mentioned earlier,

00:44:44

it is inflation-adjusted, but that's

00:44:47

assumed over the life of

00:44:48

the project. So this is

00:44:51

my comment on that topic.

00:44:55

Thank you, Gareth. I was

00:44:56

also an extremely informative presentation,

00:45:00

based on empirical analysis and

00:45:03

Analysis of key Quantum issues.

00:45:06

We're going to turn into

00:45:08

energy policy and regulation, Julie,

00:45:12

you also are a Quantum

00:45:15

x 4, but you approach

00:45:16

these issues through a different

00:45:18

lens of regulatory policies. What

00:45:21

are some of the policy

00:45:23

implications of transitioning away from

00:45:26

fossil fuels, two sources of

00:45:27

renewable energy? And perhaps carry,

00:45:30

you can stop the screen

00:45:33

sharing I'm sorry. That's okay.

00:45:37

Thanks, Christina and good afternoon,

00:45:38

good evening, and good morning

00:45:40

doll. Let me share my

00:45:41

screen. And hopefully, hopefully everyone

00:45:46

can see that the place

00:45:49

to start to answer the

00:45:50

important question. Important question is

00:45:56

to First acknowledge that we

00:45:58

have just begun to address

00:45:59

our most pressing Global Environmental

00:46:01

goals to reduce carbon emissions

00:46:03

of greenhouse gases that negatively

00:46:05

impact the climate. And then

00:46:07

second in fact, we continue

00:46:09

to use a lot of

00:46:10

fossil fuels today that are

00:46:11

that are carbon-emitting. As shown

00:46:15

in my first charge, 70%

00:46:17

of our Global energy consumption

00:46:19

has consistently come from fossil

00:46:21

fuels, oil, gas and coal

00:46:23

shown in orange gray and

00:46:26

dark. Blue portions of the

00:46:28

pie chart in the slide

00:46:29

since 1990, the 70% fossil-fuel

00:46:33

proportion excludes electricity which also

00:46:37

includes fossil fuels and we'll

00:46:38

talk about that shortly. The

00:46:40

70% fossil-fuel proportion is consistent

00:46:44

overtime. Even though substantial growth

00:46:46

in energy consumption, has occurred

00:46:48

with a 50% increase in

00:46:50

three decades, due to surging,

00:46:53

Economic Development, around the world.

00:46:55

And in particular the asia-pacific

00:46:57

region, indeed energy consumption, in

00:47:00

economics development. Go hand-in-hand You

00:47:03

can also see from this

00:47:04

chart that electricity consumption has

00:47:07

increased from 13 to 20%

00:47:09

in the last three decades.

00:47:10

That's the light blue portion

00:47:12

of the pie chart. That

00:47:15

brings us to my next

00:47:16

chart at, in order to

00:47:18

take a closer look at

00:47:19

today's electricity sector. Most of

00:47:22

our past energy right before

00:47:23

policies, are focused on the

00:47:24

electricity sector. That's an important

00:47:26

fact, I sent only 20%

00:47:29

of our Global energy consumption

00:47:30

is electricity. 80% is not

00:47:33

this torkoal energy policies that

00:47:37

began decade ago, was simple

00:47:39

form. Incentivizing more Renewables to

00:47:43

be billed, particularly wind and

00:47:44

solar resources, the types of

00:47:47

renewable dispute cases that Louis

00:47:49

and and Garrett discussed These

00:47:56

policies were helpful as initial

00:47:57

starting point to facilitate new

00:48:00

technology to economically compete with

00:48:03

traditional fossil fuels to help

00:48:04

them come down the cost

00:48:05

curve. Come lower-cost resources, what

00:48:08

you see is many country

00:48:10

specific, electricity policies, few Regional,

00:48:14

and few really address, the

00:48:15

global nature of policy and

00:48:18

the issue we have with

00:48:19

our been countries, have agreed

00:48:21

to decrease the world greenhouse

00:48:22

gas emissions with her long

00:48:24

long distant periods in time

00:48:27

where those commitments exists, some

00:48:30

energy policies were directed to

00:48:32

all sources of carbon emissions

00:48:33

with those are few and

00:48:34

far between Overall Global electricity

00:48:38

generation from fossil fuel is

00:48:40

approximately the same proportion today.

00:48:42

As it was in 1990,

00:48:43

that's about 60% the bar

00:48:45

chart on the right shows

00:48:46

that in the electricity sector

00:48:48

30% of our Global electricity

00:48:50

is from coal. That's the

00:48:52

dark blue 24% from natural

00:48:54

gas Ray and 2% from

00:48:56

oil. Today we have a

00:48:58

lot less nuclear power. Would

00:49:00

you non-carbon emitting fuel than

00:49:02
we did in the past?

00:49:03
We also have new wind

00:49:04
and solar 12%. Those are

00:49:06
mostly what we staying out

00:49:08
of the, the the new

00:49:09
regulatory incentives there. It's a

00:49:12
small impact on a global

00:49:13
electricity consumption. Because we get

00:49:16
limited production only when the

00:49:18
wind blows in the sunshine,

00:49:20
so you can add a

00:49:20
lot of capacity, but the

00:49:22
utilization is very low 30%

00:49:26

We have a fair amount

00:49:29

of hydroelectric that asset and

00:49:32

resource has long been economically.

00:49:33

So it didn't have the

00:49:35

same. New technology means that

00:49:37

a wind in our Solar

00:49:38

did and that's presumably why

00:49:40

we don't see as many

00:49:42

cases on the hydro side.

00:49:45

Now let's switch our discussion

00:49:47

from energy consumption and greenhouse

00:49:49

gas emissions today or Global

00:49:53

greenhouse gas. Emissions are comprised

00:49:55

substantially a call over 44,

00:49:58

44% oil 30% and then

00:50:02

a little over and the

00:50:04

natural gas proximally 22% Geographically.

00:50:11

Our greenhouse gas emissions today

00:50:13

in the right tide chart

00:50:15

or substantially from the asia-pacific

00:50:17

region to see that in

00:50:18

the dark blue. You see

00:50:21

that in the in the

00:50:21

in the dark blue area

00:50:23

on the right pie chart.

00:50:24

Slide, also shows that carbon

00:50:26

emissions have grown significantly since

00:50:28

1990 more than 60% 2021

00:50:32

billion times a billion times

00:50:34

by the depicted. In the

00:50:38

pie, charts the rise of

00:50:40

the missions from economic developments

00:50:42

in energy consumption cause this

00:50:45

but it was worsened by

00:50:46

substantial additional coal use. Looking

00:50:50

at where we are today

00:50:50

from the lens of global.

00:50:52

Carbon emission levels are passable

00:50:55

energy. Policies are inadequate and

00:50:57

suboptimal to address the carbon

00:50:59

emissions blindfold challenges that existed

00:51:03

in many forms to name

00:51:05

a few first challenge. I

00:51:07

refer to the Lost decade

00:51:08

from Miss specifying problems. That's

00:51:10

a particularly a u.s. issue.

00:51:12

The goal is to reduce

00:51:14

carbon. It's not specifically, dad

00:51:16

renewals or eliminate fossils Second

00:51:19

Challenge, energy policy has become

00:51:21

politicized. There's lots of blame

00:51:24

to spread around, but the

00:51:25

bottom line is not is

00:51:26

that not working together for

00:51:28

the best solution has failed

00:51:30

us so far. And then

00:51:32

thirdly, 1/3 challenges we did

00:51:36

as broadly or sufficiently have

00:51:37

a carbon tax or dress,

00:51:39

the global nature of carbon

00:51:41

including from an international trade

00:51:43

aspect. A carbon tax a

00:51:45

price on carbon is the

00:51:47

most economically. Efficient approach that

00:51:50

leads to lowest cost. It

00:51:52

has a wide and that's

00:51:55

a potential solution and leaves

00:51:57

the high probability of success.

00:51:59

Now, as a result of

00:52:01

these challenges, we've had many

00:52:02

lost opportunities. We didn't find

00:52:05

a solution for coal, which

00:52:07

dominates our Global greenhouse gas

00:52:08

emissions and carbon-free nuclear wasn't

00:52:12

good enough. We didn't get

00:52:15

all Industries to be carbon

00:52:17

Focus, to reduce their carbon

00:52:19

used and demand of carbon.

00:52:21

If you will in a

00:52:23

today, we're seeing engineer's seat

00:52:25

to design concrete and steel

00:52:27

building structures with less carbon.

00:52:29

That would have been helpful

00:52:31

to have started that process

00:52:32

a decade ago. And additionally,

00:52:36

we have many unintended consequences

00:52:38

from our challenges. Electric vehicle

00:52:41

growth in places like China

00:52:43

or cold fuel. It electricity

00:52:45

actually increases greenhouse gas emissions

00:52:48

because Cole has a 35%

00:52:52

more carbon intensity than gasoline

00:52:54

know, by the way twice,

00:52:57

as carbon-intensive is natural gas.

00:53:00

So what are we specifically

00:53:03

seeking Today's Energy policies in

00:53:05

the US, we have very

00:53:07

large investment. In Renewables electric

00:53:09

vehicles and batteries the store

00:53:11

or intermittent, wind and solar.

00:53:13

Hydrogen that we hope will

00:53:16

replace natural gas potential, substantial

00:53:20

amounts of carbon capture and

00:53:21

storage on the front front

00:53:24

possibility as well. We spending

00:53:26

a lot of money but

00:53:28

we're picking and choosing winners,

00:53:29

which is the store to

00:53:30

need namakkal and leads to

00:53:32

a sub-optimal solution. That is

00:53:34

I spend too much and

00:53:36

I don't get as much

00:53:37

of the results. I'm European

00:53:40

policy front. There's more Renewables,

00:53:42

and battery, and an extra

00:53:43

interest in hydrogen with a

00:53:45

gold to see cease making

00:53:47

new petroleum vehicle, starting a

00:53:49

20. 35, in addition, finalization

00:53:53

of the, what's referred to,

00:53:54

as a carbon border adjustment

00:53:57

mechanism, which occurred recently, which

00:54:01

is the highest, carbon Industries

00:54:05

cement, iron, steel and aluminum.

00:54:08

That's that's, he is tracking

00:54:11

the impact of full global

00:54:13

life. Cycle Emissions on the

00:54:15

final, good consumed in Europe.

00:54:18

Turning to the asia-pacific region,

00:54:20

there are relatively new carbon

00:54:23

tax in China or substantial

00:54:25

subsidies and tax breaks and

00:54:27

other policies sentence with your

00:54:29

matron and our house. India

00:54:32

has just introduced legislation for

00:54:34

a carbon tax as well

00:54:36

as things going on significant

00:54:41

predict, Asia has headwinds with

00:54:47

economic growth and environmental goals,

00:54:49

having to be balanced the

00:54:51

US and the European, since

00:54:53

the majority of our future

00:54:55

carbon emissions are coming, increasingly

00:54:58

from petroleum from Transportation, electric

00:55:01

vehicles, or alternative fuel, vehicles

00:55:04

are challenging and that they

00:55:06

are not an immediate solution.

00:55:07

Even the IEA estimates, that

00:55:11

only 5% reduction in global

00:55:13

oil consumption in 2030 will

00:55:15

occur from the state, electric

00:55:17

vehicles. Now, what's this fast

00:55:20

forward? A bit and move

00:55:22

to the implications of all

00:55:23

of today's efforts, and let's

00:55:25

just assume the US and

00:55:27

Europe were successful and are

00:55:28

able to substantially. Reduce our

00:55:31

carbon emissions to nearly zero.

00:55:33

If that were to happen

00:55:34

with what we see today,

00:55:35

going on and Investments would

00:55:37

be renewable, hydrogen to be,

00:55:39

lots of carbon capture which

00:55:41

is investing largely into these

00:55:44

days. We still see the

00:55:47

traditional Vehicles, they would just

00:55:49

be taking carbon out of

00:55:51

the air and storing. It

00:55:52

more safely Underground. If you

00:55:55

was in your ghost is

00:55:56

here, where would we be

00:55:57

will since the majority of

00:56:00

global greenhouse gas? Emissions are

00:56:01

from Cole. We are at

00:56:04

least still 25% above the

00:56:07

level. That the ipcc says

00:56:09

is needed to limit global

00:56:10

warming. Sufficiently there 1.5 degrees

00:56:13

Celsius Simply put if we

00:56:16

don't find a solution for

00:56:17

call, we don't if she's

00:56:19

a Global Environmental goals, we

00:56:22

become heavily dependent on a

00:56:23

technological breakthrough of carbon abatement

00:56:26

in Coal. Now it's, it's

00:56:28

not impossible innovation in US

00:56:30

Shale oil and gas created

00:56:32

reversal of Fortunes for the

00:56:34

US from oil and gas,

00:56:35

importers to energy Independence. What

00:56:39

is not accurate in less

00:56:40

than a decade. And investment

00:56:45

is needed to solve our

00:56:46

Global issues. Do I look

00:56:49

around and I seen you

00:56:49

take ideas around today. If

00:56:52

you include ammonia burning with

00:56:55

Cole, that would greatly reduce

00:56:56

emissions, receive, greater activity, and

00:57:00

Investments and cold with carbon

00:57:01

capture and storage CCS Alternatives.

00:57:04

Non cold, steel, manufacturing, fossil

00:57:09

fuel power, plants that new

00:57:11

tests of using carbon as

00:57:13

a fuel Ikea predicts, the

00:57:16

technology winners and no one

00:57:18

else can in 2016. When

00:57:21

I first started tracking in

00:57:24

my Georgetown class the new

00:57:25

technologies. I only really saw

00:57:27

a handful of new inventions

00:57:29

and ideas every year. Now,

00:57:31

I see many, many dozens

00:57:33

of new ideas every year,

00:57:34

and that's a very positive

00:57:36

development. In some, there is

00:57:39

urgency. However, technological innovation is

00:57:43

right for an unexpected solution

00:57:45

and should give us some

00:57:46

optimism for the future. We

00:57:50

will not look like it

00:57:52

does today, but it's also

00:57:54

not predetermined to look at

00:57:56

any specific way. With that

00:57:58

that concludes my commentary on

00:58:01

energy policy. Thank you, Julie,

00:58:05

and that's a very sobering.

00:58:07

A presentation. I'm going to

00:58:11

ask Lisa, perhaps. Now can

00:58:14

you tell us some lessons?

00:58:17

Are there any lessons to

00:58:18

be drawn from the perspective

00:58:21

of a policy maker from

00:58:23

the evolution in policies in

00:58:27

the last 10 years? Thanks

00:58:31

Julie. Really was excellent and

00:58:33

it really was so boring.

00:58:34

And I think it also

00:58:36

intersected quite well, with the

00:58:37

rest of the discussion because

00:58:38

you write. So we emphasized

00:58:41

how complicated things are headed.

00:58:43

Dynamic, things are that wedding

00:58:46

on certain winners. Trying certain

00:58:48

policies doesn't necessarily mean that

00:58:50

those are the right policies

00:58:51

that were moving in an

00:58:52

uncertain landscape. So I think

00:58:55

that that's just by the

00:58:56

way, really critical message. I

00:58:58

think if I could emphasize

00:58:59

with in 2 minutes, 1

00:59:02

take away for me, then

00:59:04
tried to bid on Julie

00:59:05
and also I might run

00:59:06
to this presentation and also

00:59:07
I'm my own work in

00:59:08
this area. It's that decarbonizing

00:59:11
the economy and scaling up

00:59:13
Alternative Energy Solutions. Doesn't happen

00:59:15
piecemeal. It doesn't happen by

00:59:18
Betting on certain technology sector

00:59:21
by sector. It requires robust

00:59:23
National, even Regional planning. As

00:59:26
I've been Julie emphasized, it

00:59:27
really requires having a road

00:59:30

map for decarbonization and an

00:59:33

energy. Master plan for an,

00:59:38

add a national scale, and

00:59:39

at a regional scale because

00:59:40

energy generation and distribution is

00:59:43

often Regional for some of

00:59:45

the reasons that Julie also

00:59:46

emphasized that different types of

00:59:47

generation. Especially in renewable, energies

00:59:49

are necessarily Geographic dependency there,

00:59:53

where the sun is, the

00:59:53

wind is the water and

00:59:55

so on, but but they're

00:59:57

distributed more reason. So what

01:00:00

this is going to require

01:00:01

is I would say to

01:00:03

fold and then I'll stop

01:00:04

on that point. One is

01:00:05

real planning at a national

01:00:08

level and Regional level. How

01:00:10

are we going to Tri

01:00:11

City Schools? What is the

01:00:12

regional? What is our Energy,

01:00:14

Mix what's available to us?

01:00:15

In terms of energy sources,

01:00:16

who are our Energy Partners?

01:00:18

What is that imply? In

01:00:20

terms of where we need

01:00:20

to still up energy? What

01:00:22

does it imply in terms

01:00:23

that we need to figure

01:00:23

this out? So I'm going

01:00:24

to just solution and then

01:00:26

how do we achieve that

01:00:27

at a, what's public Investments

01:00:29

with private Investments and so

01:00:31

on? That would be one

01:00:32

point. And then my second

01:00:33

point is a gratuitous plug

01:00:36

for a report that we

01:00:38

wrote that. I had put

01:00:39

the Lincoln to the shop

01:00:40

for a different reason which

01:00:42

is that even with that

01:00:43

Master Plan, even with a

01:00:45

road map of national and

01:00:46

Regional road map, there, remain

01:00:48

many constraints and challenges to

01:00:50

actually achieving this actually emphasizes.

01:00:52

Many of them, we need

01:00:54

to understand what they are.

01:00:56

What are the challenges that

01:00:58

states are facing and attracting

01:01:00

investment that investors are facing

01:01:01

and attracting Investments and a

01:01:04

relevant to our discussion based

01:01:06

on surveys, based on what

01:01:09

we know about the sector

01:01:10

based on the challenges that

01:01:11

we can observe from history.

01:01:13

And so on, it's not

01:01:15

the lack of treated protections.

01:01:17

There are real challenges in

01:01:19

terms of affordable Finance in

01:01:21

terms of robust, Utilities in

01:01:23

terms of access to the

01:01:25

grid and turns it off.

01:01:26

Take backs in every region.

01:01:28

There was a great article

01:01:30

very sobering. Also got the

01:01:32

challenges of Grid interconnection in

01:01:34

the US most of this

01:01:36

access to finance Capital most

01:01:38

of the access to low-cost

01:01:39

B capital r in the

01:01:41

developing countries and so on.

01:01:42

So we should be doing

01:01:43

governments need to be leading

01:01:45

us. I really robust assessment

01:01:48

of what the roadblocks are

01:01:49

and then our discussion about

01:01:51

how to address that in

01:01:52

the context of international governance

01:01:54

investment governance, should flow from

01:01:57

that. Perfect segue. Thanks Lisa.

01:02:01

To the final topic, I'm

01:02:05

going to stay with you

01:02:06

on this particular topic of

01:02:10

SDS. Have you observed any

01:02:14

proposed or adopted reforms that

01:02:17

are specific to energy transition

01:02:19

and a relatedly? Do you

01:02:21

anticipate any challenges and moving

01:02:24

this agenda forward? Challenges. Yes,

01:02:28

but reform options. Yes. So

01:02:32

it but this is again

01:02:33

a really Dynamic space. Let

01:02:36

me start of what I

01:02:37

see happening because I think

01:02:39

the reform efforts happening bilaterally.

01:02:41

So, in the context of

01:02:42

certain actually even within the

01:02:45

context of States model, treaties

01:02:48

of thinking through their own

01:02:49

investment policy reform efforts bilaterally

01:02:54

in the context of specific

01:02:55

treaties, their efforts multilaterally and

01:02:58

there. I would, I will

01:02:59

try pension to the reform

01:03:01

efforts of the energy Charter

01:03:02

treaty. I bet there are

01:03:04

even broader multilateral discussions. For

01:03:07

instance, most notably, I would

01:03:09

say right now, in the

01:03:09

context of the oecd that

01:03:11

is leading a discussion on

01:03:12

this and then finally, but

01:03:14

I'll be brief. There are

01:03:15

reform efforts that I think

01:03:16

are proposed by civil society

01:03:18
and including us. We're not

01:03:20
and advocacy Organization for an

01:03:21
academic institution. So just very,

01:03:24
very briefly to go through

01:03:26
each of those. I think

01:03:26
that types of worms that

01:03:28
are largely Happening by states

01:03:30
and their models and in

01:03:31
bilateral, negotiations is largely for

01:03:35
the for the moment limited

01:03:36
to clarifying or limiting the

01:03:39
scope of certain types of

01:03:40
substantive Provisions or inserting more

01:03:42

language into treaties, with respect

01:03:44

to General or specific exceptions

01:03:47

that reinforce States policy space

01:03:51

of it or that may

01:03:52

accept certain types of measures

01:03:55

or certain sectors and so

01:03:56

on, that's Been true for

01:04:00

other public policy areas, but

01:04:01

now especially Environmental Protection and

01:04:05

to some degree climate, measures

01:04:07

are being integrated in that

01:04:10

type of approach. I'll just

01:04:12

note there a wonderful book

01:04:14

by Wolfgang, all snow from

01:04:16
the University of Ottawa who

01:04:18
has written a book on,

01:04:19
but I don't remember the

01:04:20
exact title, but new treaty

01:04:22
is old outcomes and he

01:04:25
pretty systematically documents. The challenges

01:04:28
that states face in realizing

01:04:30
their goals with these types

01:04:32
of modifications in the outcomes

01:04:34
of tribunal cases. And he,

01:04:36
he, he gives many reasons

01:04:38
for that, but but at

01:04:41
least a couple are that

01:04:42

the existence of the 3,000

01:04:45

free to use old quote-unquote

01:04:47

old generation treaties have really

01:04:50

in French. The perpetration of

01:04:52

key Provisions for arbitrators City,

01:04:54

arbitrators are relying on Old

01:04:56

case law and old treaties

01:04:57

in the interpretation. New treaty.

01:04:58

So that minimizing, some of

01:05:00

these new types of provisions

01:05:02

and exceptions. And of course,

01:05:04

another reason is that there

01:05:05

is increasing creativity and bringing

01:05:08

claims and some pretty shopping.

01:05:10

I'm so, I'm so because

01:05:11

these reforms are happening in

01:05:12

certain bilateral, treaties or not,

01:05:15

even in the case of

01:05:16

models, they're not yet at

01:05:17

the scale that we would

01:05:18

see a systematic Effectiveness. I

01:05:21

think, yet the second that

01:05:25

I thought, I'd emphasize in

01:05:26

the context of the energy,

01:05:27

Charter treaty, which is probably

01:05:29

the most The most concerted

01:05:33

reform after that, we're seeing

01:05:34

in the context of the

01:05:35

current investment regime starting in

01:05:39

2018, the energy Charter treaty

01:05:41

set out to quote, unquote,

01:05:44

modernize the energy, Charter treaty

01:05:46

that was three years after

01:05:48

the adoption of the Paris

01:05:49

agreement. Although even then when

01:05:52

they identified the list of

01:05:53

topics that would be part

01:05:55

of the modernization effort, there

01:05:56

was very little if I'm

01:05:58

being generous and effort to

01:06:01

really a line with the

01:06:03

Paris goals and I think

01:06:05

that that set them on

01:06:06

a Failing truck in my

01:06:09

view to meaningfully, think about

01:06:12

how an energy Charter treated,

01:06:14

which could have should have

01:06:15

been a core instrument in

01:06:17

achieving the climate goals through

01:06:19

an investment treaty could, and

01:06:21

should indeed a line with

01:06:23

the climate goals. And so

01:06:24

it doesn't test or what

01:06:26
the energy, Charter treaty reform

01:06:28
efforts have looked like, is,

01:06:29
frankly, largely, what I just

01:06:32
described in the bilateral contact.

01:06:34
So a number of proposed

01:06:35
changes to Provisions into isds

01:06:39
that are again, quite similar

01:06:40
to those another treaties that

01:06:42
have had limited or GPS.

01:06:44
A fact, there is a

01:06:46
proposed new article on climate

01:06:48
change and clean energy transition,

01:06:50
which as drafted is, largely

01:06:52

reaffirming the members exist in

01:06:55

commitments to corporation on the

01:06:57

number of climate energy matters.

01:07:00

They've introduced the flexibility mechanism

01:07:03

that allows members to unilaterally.

01:07:06

Food, investor protections for fossil.

01:07:10

Fuels are though even the

01:07:11

leading states that are supporting

01:07:15

the monetization have indicated that

01:07:17

they're unlikely to use that

01:07:18

flexibility mechanism and others are

01:07:20

likely to be even more

01:07:21

conservative. So it's not looking

01:07:23

likely that that would be

01:07:24

widely adopted. And then despite

01:07:28

concerns regarding is dies in

01:07:32

all sectors, not just with

01:07:34

respect of fossil fuels but

01:07:35

how it can bind States

01:07:37

hands as they're trying to

01:07:40

Dynamic, we evolved their policies,

01:07:44

it actually extends its and

01:07:46

scope of is des to

01:07:47

a number of other critical

01:07:48

policy areas including with respect

01:07:49

to hydrogen and biomass and

01:07:51

biogas and synthetic fuels. And

01:07:53

so on which is probably

01:07:55

moving in the opposite direction,

01:07:56

then climate campaigners would have

01:07:59

like to seen. So so

01:08:01

the the modernization effort has

01:08:03

faced Substantial headwinds from those

01:08:05

in the climate Community, I

01:08:08

would say. And Adonis, I

01:08:10

routed to earlier number of

01:08:12

EU states have already indicated

01:08:14

that despite these modernization attempts,

01:08:16

they're planning to withdraw from

01:08:19

the ECT in the remaining

01:08:20

question, is whether the EU

01:08:21
will do. So as a

01:08:22
whole or whether individual states?

01:08:25
Well and I think how

01:08:26
that, how that pans out

01:08:27
there in that moment right

01:08:30
now the other Reform effort

01:08:34
that I mentioned was at

01:08:35
the oecd. They've been convening

01:08:38
a discussion on the alignment

01:08:39
of investment treaties with Paris

01:08:41
agreement and NetZero. I think

01:08:43
this was the second year

01:08:44
that they've convened a conference.

01:08:46

It just happened last month.

01:08:47

The first one was last

01:08:48

year where they're soliciting input

01:08:52

from a number of interested

01:08:54

stakeholders in what? It would

01:08:56

look like with your laundry.

01:08:57

Oh my gosh. I just

01:09:02

noted in preparation for speaking

01:09:04

today, one paragraph that I

01:09:05

thought Notable from some of

01:09:08

their background materials, for this

01:09:09

year's conference, one of the

01:09:11

background material. So they prepared

01:09:12

for this year's conference was

01:09:14

actually a stock-taking of critical

01:09:16

agreements that states have made

01:09:18

with respect to climate policy

01:09:19

and all those four of

01:09:20

that. I previously mentioned that

01:09:22

the 70s G20 meetings, ministerial

01:09:25

conventions and so on. So

01:09:26

they have a background document

01:09:27

that lists, many of those

01:09:30

as those meetings and commitments.

01:09:33

And then the oecd says,

01:09:35

while government commitments to tackle

01:09:37

climate change and become frequent,

01:09:38

it can be difficult to

01:09:39

see changes in investment treaties

01:09:41

or their Associated Finance. In

01:09:43

addition, while there are multiple

01:09:44

inter-governmental groups addressing sustainable Finance

01:09:47

or the climate effects of

01:09:47

trade. It's unclear whether governments

01:09:49

have included investment treaties in

01:09:51

their Finance. Close in this

01:09:52

work overall despite the many

01:09:53

initiatives and commitments. It's unclear

01:09:55

if governments are addressing the

01:09:56

alignment of investment treaty, and

01:09:57

sentence, with the Paris agreement,

01:09:59

and sustainable Finance in any

01:10:01

other ongoing work. So I

01:10:04

think that nicely summarizes, where

01:10:06

Are with respect to investment

01:10:08

treaties and meaningful reform around

01:10:11

climate. The main call for

01:10:14

reform among Civil Society is

01:10:17

predominantly. I think to fundamentally

01:10:21

reform is dies because climate

01:10:23

is is added to the

01:10:26

list of critical policy areas

01:10:28

that are being successfully challenged

01:10:30

and creating a shell for

01:10:32

government policy. Even when we

01:10:33

are not seeing the claims,

01:10:34

or even for favorable towards,

01:10:36

there's increasing evidence that states

01:10:38

are being shelled and taking

01:10:40

critical policy measures. So I

01:10:41

think from Civil Society, the

01:10:43

major call is from form

01:10:45

of the ICS system, as

01:10:46

a whole. And then I'll

01:10:48

just end with reiterating Our

01:10:52

conclusions and finding from that,

01:10:55

I was just a looting

01:10:56
to have to do a

01:10:57
presentation. But I really think

01:10:58
that it's the core of

01:11:01
where reform discussions should be,

01:11:03
which is that investment plays

01:11:05
the central role in the

01:11:08
energy transition, we need to

01:11:09
mobilize trillions of dollars of

01:11:13
investment, we need to properly

01:11:16
govern, that investment, it's incredibly

01:11:18
complicated. And that's why I

01:11:20
love investment governance and investment

01:11:22
law because it is so

01:11:24
decisive. And whether we are

01:11:25
able to achieve our goals,

01:11:27
but that really requires a

01:11:28
fundamental rethink of what it

01:11:30
is. What are the problems

01:11:31
that we're trying to solve?

01:11:31
What are the roadblocks that

01:11:33
are? That are impeding the

01:11:36
financial flows that are needed

01:11:38
and what are solutions that

01:11:39
we can bring, what needs

01:11:40
to happen to the National

01:11:41
level? What needs to happen

01:11:42

at an international level. So

01:11:44

I would suggest that we

01:11:45

start the reform discussions there

01:11:48

because there's an absolutely critical

01:11:49

role for investment governance but

01:11:51

it's certainly not clear that

01:11:55

the problem is With the

01:11:58

lack of investor Protections in

01:11:59

investment treaties, the evidence that

01:12:01

investment treaties have been effective

01:12:03

at mobilizing investment, is weak

01:12:05

at best. And as Julie

01:12:07

indicated, we're not solving the

01:12:09

problem. So for me, this

01:12:10
is a real call to

01:12:11
action for a community to

01:12:12
really rethink. What are the

01:12:15
barriers? What are the challenges?

01:12:16
How do we, how do

01:12:18
we address those fundamentally? How

01:12:20
do we anticipate the types

01:12:21
of disputes that my fellow

01:12:24
panelists have helpfully previewed before

01:12:27
they arise. And how do

01:12:28
we resolve them in a

01:12:29
way that's consistent with our

01:12:31
Global efforts to address climate

01:12:32
change. I'll stop there. Thank

01:12:36
you for that summary of

01:12:38
various initiatives and potentially also

01:12:41
carving at the agenda. Looking

01:12:47
for, I'm going to give

01:12:48
Louise the last word before

01:12:51
we open up the q-and-a.

01:12:53
Louise, do you have anything

01:12:55
you'd like to add on

01:12:56
this topic? Just to say

01:12:59
that I've loved hearing from

01:13:01
all the other panelists there

01:13:02
and I think Lisa is

01:13:05

lost points a particularly so

01:13:06

horny. And I'm very interesting.

01:13:08

I think you're thinking about

01:13:11

this. This why the question

01:13:12

of the legitimacy of the

01:13:14

ICS system? This is of

01:13:16

course very closely connected with

01:13:17

the current development of days

01:13:21

and energy transition in the

01:13:22

climate change that in cases

01:13:23

because I really do represent

01:13:26

a very pointed challenge, the

01:13:29

idea that states should be

01:13:30

entirely unfit in. In the

01:13:33

measures, they take him to

01:13:33

see the climate change. Has

01:13:36

already some skepticism and hostility

01:13:38

towards the system. It's really

01:13:40

being pronounced in this context.

01:13:44

I don't have an easy

01:13:45

answer to that. I had

01:13:47

to guess, just two points

01:13:48

tonight. One, is that at?

01:13:50

And it's 22 2022 report

01:13:53

by the ipcc identified is

01:13:56

dies as one of their

01:13:57

the key barriers to a

01:13:58

I think climate change and

01:14:00

saying that it's stopping country's

01:14:01

legislative to climate change. And

01:14:05

I'm not. Kind of represents

01:14:06

one side of this Beast

01:14:08

of a Kia Stinger in

01:14:11

that context today and say

01:14:12

all of the. If it

01:14:13

said of being put into

01:14:14

the badging the system as

01:14:17

such I guess more reshaping

01:14:19

it through this new generation

01:14:21

of treaties and especially this

01:14:23

interest in finding out more

01:14:25

receiver cultivations around environment and

01:14:28

climate change the final thing.

01:14:31

Well, the final two points,

01:14:32

I'll make, I just thought,

01:14:32

I think God has always

01:14:35

been the case with investment

01:14:37

treaty arbitration. The way it's

01:14:38

described outside of the The

01:14:41

Specialist legal sector, that kind

01:14:44

of engages in it, in

01:14:45

a little detail. Sometimes the

01:14:48

the descriptions of the two

01:14:50

cases is I think a

01:14:52

little simplistic and I think

01:14:54

can kind of see where

01:14:56

are some important details? A

01:14:58

lot of the descriptions of

01:15:00

the Unicorn out of your

01:15:01

cases against the Netherlands, just

01:15:04

reported them as its unit.

01:15:05

That the company is suing

01:15:07

the Netherlands in connection with

01:15:10

the phase-out of a coal-fired

01:15:11

power generation. Actually, you know,

01:15:14

when you look at them

01:15:15

more closely, it's about the

01:15:17

what they said was it

01:15:18

the more Abba Tree application

01:15:20

of the compensation mechanism, which

01:15:22

is arguably a different proposition

01:15:23

and I think it is

01:15:26

interesting to look at the,

01:15:28

the angles that are being

01:15:31

presented, when these issues are

01:15:33

being discussed, some, you wants

01:15:36

to the the challenges, I'm

01:15:39

going to being obscure would

01:15:41

at times. My final point

01:15:43

is, it's a point of

01:15:45

being picked up in the

01:15:46

questions in the chat will

01:15:47

ready, which is about how

01:15:49

can I have DS. He

01:15:51

actually used to encourage climate

01:15:53

change action and facilitated. I

01:15:55

think looking up the the

01:15:57

gross that he is expected

01:16:00

in Africa, for example is

01:16:02

turning into a kind of

01:16:02

green energy continent that will

01:16:05

involve a huge amount of

01:16:06

investment over the coming decades

01:16:08

and you know that. He's

01:16:11

what is DS was traditionally

01:16:13

supposed to enable and encourage?

01:16:14

I'm especially when you're dealing

01:16:16

with such as that all

01:16:18

sounds on newest technology or

01:16:20

rapidly. Developing regulation. For example,

01:16:23

of round green hydrogen. Then

01:16:26

I think it's interesting to

01:16:27

think about the role of

01:16:28

a sort of treaties and

01:16:29

creating confidence among the kind

01:16:33

of strong investment sector up.

01:16:34

Again, I don't think there

01:16:35
is a spot and he

01:16:37
got to know the fact

01:16:38
that that should be considered.

01:16:40
Giveaways. So what I'm supposed

01:16:43
to do is just summarize,

01:16:46
the questions that have come

01:16:48
in in the chat and

01:16:50
props, give you all an

01:16:51
opportunity to comment on summer,

01:16:54
all these questions. So the

01:16:57
first has to do with

01:16:58
this last issue that we

01:17:00
stepped on and whether you

01:17:02

know investment treaties and that

01:17:05

a call to climate change

01:17:07

perform or whether they can

01:17:11

be used in a way

01:17:12

to advance or protect Investments

01:17:14

and alternative non-fossil fuel energy

01:17:19

of question one. A question

01:17:23

to you is how to

01:17:24

essentially increase the chances for

01:17:28

a state's success and making

01:17:31

a counterclaim related to climate

01:17:35

change and environmental measure question.

01:17:39

3 relates to, whether there

01:17:42

would be any rise in

01:17:46

new energy, Charter treaty claims

01:17:49

that might be expected in

01:17:51

the next four years. And

01:17:52

I'll question was particularly directed

01:17:56

to Lisa and then Final

01:18:03

question by Eureka. Do you

01:18:07

see any future participation of

01:18:09

Civil Society or International organizations

01:18:12

as an amicus curiae? So

01:18:15

I will perhaps start with

01:18:18

Julie and then Garrett Louise

01:18:21

and Lisa I mean, I

01:18:25

think those were aboard Charter,

01:18:26

Charter related questions. I didn't,

01:18:29

I didn't hear, you know,

01:18:31

I'll defer to others. Eric,

01:18:38

do you have anything to

01:18:39

add her? And there was

01:18:48

one question in there about

01:18:49

the effectiveness of treaties. In-ear,

01:18:55

facilitate investment or creating Investments.

01:18:58

We we got to look

01:19:02

at the inside of the

01:19:03

engine, right? Cuz we get

01:19:04

to see the white investors

01:19:06

were thinking and I do

01:19:09
think that a lot of

01:19:09
the Investments that have been

01:19:10
made that are subject to

01:19:12
dispute were made partially because

01:19:16
they felt like there was

01:19:17
protection from treating me. So

01:19:19
I would say that's Jean

01:19:20
entreaties, do provide at least

01:19:22
in my experience incentives for

01:19:24
investment. Louis. Yeah, I mean

01:19:31
on the last point, if

01:19:33
this is something that I

01:19:34
am engaged in our day-to-day

01:19:36

basis is talking to companies

01:19:38

who was thinking of making

01:19:39

Investments and this is something

01:19:42

that he's certainly a factor

01:19:43

in the discussions that we

01:19:45

having, it might be an

01:19:47

asset to Tracy system evolved

01:19:50

over time. It might be

01:19:51

that there is more interesting

01:19:52

than other forms of investor

01:19:54

protection like stabilization closes in

01:19:57

a specific investment contracts with

01:19:59

states listed and cheese. So

01:20:02

it might be that some

01:20:03
of this is kind of

01:20:05
a big located in different

01:20:08
types of legal instruments. Every

01:20:10
time I think on the

01:20:13
point about counterclaims and coming

01:20:18
the challenge of consent to

01:20:21
investar bank subjects without a

01:20:22
climb. But this isn't, this

01:20:24
is a major issue. And

01:20:26
I think, you know, this

01:20:27
is why I was saying,

01:20:27
so few instances of success

01:20:30
account of clams. I'm going

01:20:31
to the main exception being

01:20:32
the Belington, the XL case.

01:20:34
In that instance, the parties

01:20:38
agreed to, to submit to

01:20:40
the jurisdiction of the Tribunal.

01:20:41
For there is a range

01:20:44
of reasons. It was specific

01:20:45
to that case and the

01:20:47
the obligations that were said

01:20:49
to apply to the investor

01:20:51
arose from domestic total or

01:20:53
so there's a lot of

01:20:55
factors that are specific to

01:20:56

the second sense of that

01:20:57

case which allowed the counter

01:21:00

claim to be effective. You

01:21:03

know I think what we've

01:21:05

been discussing here while I

01:21:06

take it off. Is the

01:21:08

changes to treaties that might

01:21:10

allow claims arising from obligations

01:21:15

that I said to to

01:21:16

subsist in the treaty itself

01:21:17

rather than a fairly from

01:21:19

domestic law which is a

01:21:20

really interesting and ends and

01:21:22

slightly different question. You know

01:21:24

the investment treaty system has

01:21:26

schools conventionally operate as a

01:21:28

daily one-way Street. Has been

01:21:31

kind of option which could

01:21:32

be taken up by the

01:21:33

avesta, and this would fundamentally

01:21:35

change that. So, it's interesting

01:21:37

to see the way that

01:21:37

that sort of issue is

01:21:38

is being raffled Within These

01:21:40

newer generation of crazies. But,

01:21:42

you know, I was still

01:21:43

saying the vast vast majority

01:21:45
of cases that have been

01:21:48
brought up like that. I

01:21:49
still think right now around

01:21:50
this much older generation of

01:21:52
Tracy's, as I think it

01:21:54
will be quite some time.

01:21:55
Until we say those new

01:21:57
mechanisms to the extent. They're

01:21:59
actually agreed in a straight,

01:22:00
he's becoming effective. Over to

01:22:05
lease up and lost word

01:22:06
for us to unpack and

01:22:16
it's clearly contested but anecdotal

01:22:19

evidence survey evidence of empirical

01:22:21

evidence and so on. So

01:22:23

it's certainly not straightforward and

01:22:25

I edited a book on

01:22:29

this topic in 2008 too

01:22:31

long ago to admit, even

01:22:34

then the evidence was not

01:22:36

strong, the treaties are effective,

01:22:37

immobilizing investment, most recently that

01:22:40

I'm aware of a meta

01:22:41

study of 20 in 2021.

01:22:44

That was an empirical method

01:22:45

studies, 74 empirical studies, and

01:22:47

I found the effect of

01:22:49
these treaties to be. So

01:22:49
negligible is 220. So at

01:22:53
least let me just say

01:22:54
that it deserves Real question

01:22:58
it because because it has

01:23:01
substantial impacts on States and

01:23:03
on policies. And so at

01:23:06
least let us know and

01:23:08
let us really critically evaluate

01:23:09
the benefits. And by the

01:23:11
way, for all the lawyers

01:23:13
it's not to say that

01:23:14
disputes. They'll be always be

01:23:16
disputed still always be mechanisms

01:23:18
to mitigate disputes to bring

01:23:21
Rego. Actually, I just wanted

01:23:22
to mention that I think

01:23:24
that's with respect to what

01:23:24
we said that because we

01:23:26
did the survey of investors

01:23:28
in renewable energy to understand

01:23:29
what they care about and

01:23:30
the idea of certain types

01:23:32
of legal certainty absolutely comes

01:23:35
through but that's a concept

01:23:37
that should be unpacked because

01:23:38

we go certainty can be

01:23:39

realized through many different types

01:23:41

of instruments. And actually when

01:23:42

you ask what matters is

01:23:44

Clarity over. Off-take agreements and

01:23:46

certainty over and Gino standardized,

01:23:48

ptas that explain rate adjustments

01:23:50

and so on. So we

01:23:52

should, you know, better understand

01:23:54

what it is where we

01:23:55

can end. Add legal certainty

01:23:57

in ways that also don't

01:24:00

undermine States policy space. So

01:24:02

it's it's a tricky question.

01:24:04

I'm also interested in the

01:24:07

example from Brazil, where Brazil

01:24:08

ask their investors and they're

01:24:10

in there, they're not called,

01:24:12

by lot of us, make

01:24:13

sure do they call them

01:24:13

the best of operation of

01:24:14

facilitation agreement. It's Brazil's model.

01:24:18

May ask their investors. What

01:24:19

matters to you? They did

01:24:20

a survey of their investors

01:24:21

before concluding in negotiating these

01:24:23

treaties and they don't have

01:24:24

is dies and their treaties.

01:24:26

It looks quite different. So

01:24:28

again there is enough evidence

01:24:30

that we should be asking

01:24:31

a question and not presuming

01:24:33

that ists is necessary or

01:24:36

the right model and how

01:24:37

do we adopt around it?

01:24:39

But that we really try

01:24:41

to understand what is, you

01:24:43

know, again for those of

01:24:44

us who are trying to

01:24:45

achieve the energy transition, what

01:24:47

what are? How do we

01:24:49

what are the real barriers?

01:24:50

What are the challenges that

01:24:51

investors are facing? And how

01:24:53

do we achieve? And how

01:24:54

do we achieve that in

01:24:55

a way that benefits all

01:24:56

stakeholders? Because by the way,

01:24:58

to the extent that there

01:24:59

is a concern that states

01:25:01

that domestic Judicial Systems are

01:25:03

not sufficient, that affects all

01:25:05

stakeholders. So if it's that,

01:25:08

we need more robust Judicial

01:25:09

System. That's also something I

01:25:11

think we should be considering.

01:25:12

So anyway I think I

01:25:14

like this open. Critical discussion

01:25:19

about. About the prophecies I

01:25:25

would say on which these

01:25:26

treaties are based and maybe

01:25:30

I'll just use that to

01:25:31

answer as I did in

01:25:32

the chat. The last question

01:25:33

about the e c. T

01:25:34

a weather could take you

01:25:35

to from form and I

01:25:37

like to think yes, I

01:25:39

believe very much that we

01:25:40

need International Investment governance and

01:25:43

that we need International cooperation

01:25:44

in that. We need International

01:25:45

mechanism but I would say

01:25:48

that it should look way

01:25:49

different that it should be

01:25:50

based on the starting point

01:25:51

of what are we trying

01:25:53

to achieve? What kind of

01:25:54

investment do we need globally?

01:25:56

Where do we want to

01:25:57

drive out and investment? Where

01:25:59

do not want to drive

01:26:00

the investment? What types of

01:26:01

Investments do not want to

01:26:02

encourage? What are the challenges

01:26:03

that states are facing? What

01:26:05

are the in both attracting

01:26:06

but also in governing their

01:26:07

investment? And how do we

01:26:08

design mechanisms that are supportive

01:26:11

of those policies that are

01:26:12

supportive of those goals? So

01:26:15

I would love to see

01:26:16

model treaties that look like.

01:26:19

But it would be quite

01:26:19

different from from the existing.

01:26:22

Farms that we have. Thank

01:26:26

you. Lisa. This brings us

01:26:29

to the end of the

01:26:29

formal portion of our session.

01:26:33

I want to thank all

01:26:34

the panelists for their truly

01:26:36

thoughtful presentation. I turned the

01:26:39

floor. Now over to our

01:26:41

house, Jose Antonio Indiana. Mute

01:26:59

off. So that was really

01:27:01

fantastic. This is a discussion

01:27:02

that certainly an hour and

01:27:04

a half, didn't do sufficient

01:27:06

Merit to, I Just Want

01:27:08

to Thank our panelists. You

01:27:11

know, a lot of time

01:27:13

and preparation thinking about these

01:27:15

issues and thank you very

01:27:18

much and thank you, Christina

01:27:19

for your usual Mastiff for

01:27:22

moderation of this panel. I

01:27:24

know a lot of work

01:27:25

went into organizing this and

01:27:27

that, I really appreciate those

01:27:28

efforts and just a final

01:27:30
note to all of our

01:27:32
attendees online and around the

01:27:36
world. We have more Wash

01:27:39
World, arbitration update coming up

01:27:42
this evening. We're moving to

01:27:45
Oceania this evening which is

01:27:48
tomorrow morning and Hong Kong

01:27:50
and Singapore. And again I

01:27:52
will Remind folks that tonight

01:27:54
at 8 p.m. eastern time

01:27:58
but 9:30 or sorry, 8

01:28:01
a.m. in Singapore and Hong

01:28:03
Kong. We have the role

01:28:04
of domestic legislations on evidence

01:28:06
in international arbitration proceedings, Clash

01:28:09
of legal cultures and taking

01:28:11
of evidence in international arbitration

01:28:12
which I think will be

01:28:16
a great topic and I'm

01:28:17
looking forward to it. That

01:28:20
was antoniou anything you want

01:28:21
to close with. Just to

01:28:26
say that it was a

01:28:28
fantastic from from the moderator

01:28:35
to the presenter, to, which

01:28:36
part of the Palace II.

01:28:37

It's a, it's highly appreciated

01:28:39

that there are so many

01:28:41

views and on substance. And,

01:28:43

and that it is, it

01:28:46

is a vital, a vital

01:28:49

topic for for a survival

01:28:53

of life in itself, but

01:28:55

also how to how to

01:28:58

use a no or not

01:28:59

models of arbitration, investment, treaties

01:29:05

or Alternatives. Thank you everyone.

01:29:08

And now, I believe that

01:29:09

we should move further into

01:29:10

the breakout rooms that they

01:29:13

are. There are people who

01:29:14

would love to see the

01:29:16

the speakers and and as

01:29:19

you know we have the

01:29:20

breakout rooms as a way

01:29:21

to communicate with people that

01:29:23

are not in the same

01:29:24

jurisdiction. Synonym for generational matter.

01:29:27

No, net, no need to

01:29:29

talk about the, the, the

01:29:31

substance of of the panel,

01:29:33

but of course that is

01:29:34

that is, that is an

01:29:36
option. So, thank you. And

01:29:37
then that will see you

01:29:39
in a few hours in

01:29:42
Asia day as the sun

01:29:45
is is about to come

01:29:46
there. I like,