

Damages, Country Risk, and Interest Rates *

Summary

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

The Washington Arbitration Update (WAU) session focused on the critical topic of country risk in international arbitration, highlighting its significance in investor-state disputes and commercial arbitration. Dr. Rivas opened the session by acknowledging the contributions of various experts and sponsors involved in the forum, emphasizing the diverse backgrounds of the speakers.

Miguel, the moderator, introduced the panelists, including Matilda Le Flores, who presented on the relevance of country risk in discounted cash flow (DCF) methodologies. Matilda explained how country risk is often incorporated into DCF analyses, influencing the discount rates applied in valuations and ultimately affecting damage awards. She referenced several recent arbitration cases, particularly from Venezuela, illustrating how different tribunals have approached country risk and the varying conclusions reached.

Olga followed, discussing the economic implications of country risk. She emphasized the importance of accurately determining discount rates to reflect the inherent risks of investing in foreign countries, outlining two primary methods for evaluating country risk: probability-weighted cash flow scenarios and the addition of a country risk premium to the discount rate. Olga noted the challenges in measuring country risk and highlighted the volatility of sovereign default spreads as a tool for assessing risk.

Carlos Pavon provided insights into traditional methods for measuring country risk, including credit ratings and sovereign spreads. He discussed their limitations and the importance of considering specific project risks rather than applying a one-size-fits-all approach.

Rob Patton introduced the concept of "Lambda," a measure that reflects a company's exposure to country risk, advocating for a more nuanced approach to risk assessment that considers the specific nature of the business and the risks involved. He also touched upon the evolving relationship between sovereign risk and corporate risk, noting that traditional methods may not always be appropriate.

The panel concluded with a discussion on the implications of including or excluding risks associated with expropriation in country risk assessments. The experts emphasized the need for clarity and transparency in presenting country risk to tribunals, advocating for methodologies that accurately reflect the complexities of the investment environment.

Overall, the session underscored the importance of thorough analysis and careful consideration of country risk in arbitration cases, as the impact on damage awards can be substantial. The discussion highlighted the need for continuous development of methodologies to assess and quantify country risk effectively.

Authors

Miguel Nakhle, Olga Ukhaneva, Carlos Pabon Agudelo, Matilde Flores, Miguel Lopez, Robert Patton

Topics

damages, country risk, interest rate

Category

WAU

Full Transcript

00:00:02

Analysis now, I'll hand it

00:00:05

over to Dr. Rivas to

00:00:07

introduce our moderator and we'll

00:00:10

proceed Jose. Thank you. Thank

00:00:14

you Ian and thank you,

00:00:16

you know first of all

00:00:17



to all of our sponsors

00:00:19

as you know, the World

00:00:22

operation update is a form

00:00:25

which was created at both

00:00:27

to update on issues of

00:00:30

investors State arbitration International commercial

00:00:33

arbitration and public international law

00:00:36

as one of its objectives.

00:00:40

The other objective is of

00:00:42

the world arbitration update is

00:00:44

to The centralized International arbitration

00:00:49

and and therefore here you

00:00:52

see speakers and experts from

00:00:55

from many services related to

00:00:59

International arbitration, but also from

00:01:02

many jurisdictions. In a diverse

00:01:05

manner now, I would like

00:01:07

to it's to introduce our

00:01:10

moderator and and say that

00:01:14

this is a key subject

00:01:16

for any International rotation. The

00:01:19

subject related to Country risk

00:01:21

is is one that hopefully

00:01:23

this this panel will be

00:01:25

able to demystify I would

00:01:28

like to thank Miguel exactly

00:01:29

because he has been a

00:01:30

force behind the the idea

00:01:34

of putting together this panel

00:01:35

by providing comments we have

00:01:37

also Who colleagues from from

00:01:41

there who have also provided

00:01:43

information and ideas to put

00:01:46

this panel together. We have,

00:01:49

you know, several colleagues here

00:01:52

that will be introduced by

00:01:53

BL. But but as for

00:01:54

Miguel, I would like to

00:01:56

say that he is an

00:01:58

executive vice president at Compass

00:02:01

lexicon is based in Houston.

00:02:03

He has over 20 years

00:02:06

of experience in economic financial

00:02:07

consulting. He has provided written

00:02:10

an old testimony or expert

00:02:13

advice in over 40 treaties

00:02:15

and Commercial International arbitration cases

00:02:18

under several arbitration rules, including

00:02:21

exit answer trial ICC and

00:02:23

many others. He has conducted

00:02:26

damages assessments as well as

00:02:29

economic financial and Regulatory analysis

00:02:32

related to assets in oil

00:02:35

and gas Our Generation telecommecations

00:02:38

and many other Industries. He

00:02:40

has worked in various arbitrations

00:02:43

involving cases that involved the

00:02:46

various countries and and I

00:02:50

won't read the list but

00:02:51

I can assure you that

00:02:52

there are all based in

00:02:53

more than five in more

00:02:56

than four continents. I would

00:02:57

say and I will close

00:02:59

my introduction to Miguel I

00:03:01

do I really do not

00:03:02

want to embarrass him and

00:03:03

I will give way to

00:03:05

what will be no doubt

00:03:06

a fabulous panel Miguel you

00:03:09

have the floor. Thank you,

00:03:11

Jose Antonio. Thank you very

00:03:12

much. Yeah, and also for

00:03:14

the invitation to already spinal

00:03:17

put this planet together. I

00:03:18

I really like this format

00:03:20

of the word arbitration update

00:03:22

and how we come together

00:03:24

and pick topics and and

00:03:26

really dig into them. Hopefully,

00:03:28

this will be a very

00:03:30

useful question session for all

00:03:32

of the attendees. I have

00:03:34

a very distinguished group of

00:03:36

experts with me economy experts

00:03:39

legal experts. So I would

00:03:41

like to introduce them today

00:03:42

one by one before we

00:03:44

dive into the into the

00:03:46

issues. I was I would

00:03:48

like to start with matinee

00:03:49

Le Flores. She's gonna be

00:03:50

our presenter today, which is

00:03:53

this this great idea that

00:03:54

we have at the world

00:03:55

reputation that day when we

00:03:56

do someone's gonna present the

00:03:57

topic for us and give

00:03:58

us and the latest On

00:04:01

the topic on in the

00:04:02

in international reputation. So you

00:04:03

hear Matilda Matilda is an

00:04:05

associate Chaffee agency in New

00:04:07

York her practice focuses on

00:04:09

investment and Commercial arbitration. She

00:04:11

has handled cases under all

00:04:14

major arbitration rules including icdr

00:04:16

ICC unusual exceed and scia.

00:04:19

Okay, she's having both disputes

00:04:21

and energy sector construction licensing

00:04:23

and distribution agreements. I'm Banking

00:04:26

and finance Matilda has specific

00:04:28

experience with damages modeling in

00:04:30

the context of long-term contracts

00:04:32

before joining trafficey. Material. There

00:04:34

was an associate at an

00:04:35

international law firm in Paris.

00:04:37

So welcome until then thank

00:04:39

you for joining us today.

00:04:40

Then we will continue with

00:04:43

organava. Okay and Associate principal

00:04:47

in the antitrust and competition

00:04:49

practice of Charles Rivers associate

00:04:51

and a senior visiting policy

00:04:53

score at the center for

00:04:54

business and policy public policy

00:04:56

at Georgetown University. She's specializes

00:04:58

in complex litigation that Application

00:05:01

of economic statistical and financial

00:05:04

analysis Chief frequently assist clients

00:05:06

in economic and policy matters

00:05:08

including damages analysis in both

00:05:10

domestic disputes and international arbitrations

00:05:12

as well as competition and

00:05:14
antitrust analysis intellectual property and

00:05:16
ground certification. Her work covers

00:05:19
a variety of Industries include

00:05:21
energy food products consumer products

00:05:23
software applications book publishing and

00:05:26
real estate. She has a

00:05:28
particular expertise in Telecom me

00:05:29
and technology and she has

00:05:31
caught or a series of

00:05:33
new newsletter topics related to

00:05:35
5G. She has also published

00:05:37
articles on various economic topics

00:05:39
you reviewed journals. So, thank

00:05:42

you Olga very much for

00:05:44

joining us today. She will

00:05:47

she was with diving into

00:05:48

the country's topic today, which

00:05:50

is gonna be great. And

00:05:52

then she would be followed

00:05:53

by Carlos Pawan agudero calories

00:05:55

in managing director at infrastructure.

00:05:57

Economic Consulting. He's a regulatory

00:06:00

Economist damage is expert in

00:06:02

international regressions. He has special

00:06:04

expertise in unity regulation Market

00:06:07

restructuring and economic assessment of

00:06:09

liability and damages for clients

00:06:10

the power natural gas or

00:06:13

roads Mining and other infrastructure

00:06:15

Industries. One has helped clients

00:06:18

in cases involving economic utility

00:06:20

decision making reach of confidentiality

00:06:23

Contracting a market interaction and

00:06:25

contract disputes for governments and

00:06:27

private investors. As an expert

00:06:29

of in the regulation of

00:06:30

utilities. Carlos has worked for

00:06:33

more than 30 years for

00:06:34

private companies Regulatory Agencies utilities

00:06:37

and system operators on a

00:06:40
range of different issues. So

00:06:42
thank you very much Carlos

00:06:43
joining us today in the

00:06:46
panel. We will also hear

00:06:48
Robert Patton. Robbie said director

00:06:51
at near economic Consulting. He's

00:06:53
based in Toronto, Canada. He's

00:06:55
a charter financial analyst and

00:06:57
holds a master's degree from

00:06:59
the London School of Economics.

00:07:00
Rob a routinely advises clients

00:07:03
and policy and strategy as

00:07:05
well as on economic issues

00:07:06

arising in complex litigation and

00:07:08

application matters in a disputes

00:07:10

context. Rob has testified in

00:07:12

multiple venues and has access

00:07:14

damages in matters alleging expropriation

00:07:16

bridges of the fair Network

00:07:18

treatment standard breach of contract

00:07:20

and the information among other

00:07:21

issues his approaching Quantum typically

00:07:24

combines traditional evaluation approaches such

00:07:26

as discounted cash for analysis,

00:07:27

which we will be discussing

00:07:28

today with Advanced Techniques from

00:07:31

finance and economics. He has

00:07:33

author articles on Topics in

00:07:34

financial economics and valuation as

00:07:36

well as studies of financial

00:07:38

regulation and other public policy

00:07:40

issues. Thank you very much

00:07:42

Rob for for joining us

00:07:44

today, and we will end

00:07:46

the panel with a presentation

00:07:48

by miguelo before as many

00:07:51

of you know, it's a

00:07:52

partner at Covington building in

00:07:54

Washington, DC. His practice focus

00:07:56

is on International arbitration and

00:07:57

litigation. He co-chairs Covington's Global

00:08:00

problem solving Practice Group. He

00:08:02

has successfully represented a wide

00:08:04

range of clients including those

00:08:06

in the oil and gas

00:08:07

mining Communications Financial Services pharmaceutical

00:08:10

biotech and Food Industries in

00:08:12

both investors State and Commercial

00:08:14

arbitrations. He has been recognized

00:08:16

by Chambers Global chambers that

00:08:19

in America and the I500

00:08:21

as a living international application

00:08:22

lawyer. His work is praised

00:08:25

by clients for his total

00:08:27

analysis, insightful advocacy and consistently

00:08:29

reliable judgment both civil law

00:08:32

and common law train Miguel

00:08:33

handles contentious work in English

00:08:35

Spanish and Portuguese. He's a

00:08:38

frequent lecture and arbitration and

00:08:39

international law issues at conferences

00:08:41

and universities around the globe.

00:08:43

And he also said as

00:08:45

arbitrator and we will have

00:08:48

the privilege of hearing him

00:08:48

given that he's he has

00:08:50

also been Council for claimants

00:08:52

in two cases that we

00:08:53

will explore today because they

00:08:55

have dealt with the issue

00:08:57

of countries, which are more

00:08:59

videos. That would be very

00:09:01

interesting to hear. So, thank

00:09:03

you Miguel for joining us

00:09:04

today. And thank you all

00:09:05

of you. So let me

00:09:07

get started with with this

00:09:09

parallel as I said, we

00:09:09

have Matilda. As our presenter

00:09:13

Matilda. I know that what

00:09:16

you have worked on many

00:09:18

cases as I mentioned involving

00:09:19

countries risk, and as a

00:09:21

presenter of the topic, which

00:09:23

you explain to us and

00:09:24

walk us through your views

00:09:26

on this topic how it

00:09:28

is why it is relevant

00:09:29

and how it has surfaced

00:09:31

in recent arbitrations. Sure. Thank

00:09:36

you. Good afternoon, everyone and

00:09:39

thank you for joining our

00:09:40

panel. So let's be in

00:09:42

by looking at the first

00:09:44

question that Mia asked why

00:09:46

is country risk relevant. Well

00:09:48

as most of you already

00:09:50

know one of the most

00:09:51

widely adopted methods in valuing assets

00:09:53

and international arbitration is the

00:09:55

discounted cash flow or DCF

00:09:57

methodology. Where future cash flows

00:10:00

of an investment are projected

00:10:02

and then discounted back to

00:10:03

a specific valuation date through

00:10:06

the application of a discount

00:10:07

rate, which is intended to

00:10:08

reflect the riskness of the

00:10:10

investment. And the country risk

00:10:12

in turn is often incorporated

00:10:14

into the DCF and 60

00:10:16

represent the incremental risk associated

00:10:19

with investing in a particular

00:10:20

foreign country. So what this

00:10:23

means is that virtually every

00:10:25

case that involves a DCF

00:10:27

analysis. also involved in analysis

00:10:31

of our country risk premium

00:10:32

either inclusively or explicitly and

00:10:35

finally the country is that

00:10:37

is ultimately adopted by a

00:10:39

tribunal can have a significant

00:10:40

impact in the amount of

00:10:42

Damages awarded and we will

00:10:44

see how this can come

00:10:45

into play later in my

00:10:47

presentation. Now the specific issue

00:10:51

of country risk was extensively

00:10:53

discussed in a series of

00:10:54

awards issued in the Venezuelan

00:10:56

context in 2014 and 2015

00:10:58

and from which two different

00:11:00

trench Trends approaching country risk

00:11:03

emerged. As mentioned by Miguel

00:11:06

earlier, this will be addressed

00:11:08

by other panelists here. But

00:11:09

just by way of background,

00:11:11

we're going to look at

00:11:11

the main conclusions of this

00:11:13

tribunals. so gold Reserve versus

00:11:16

Venezuela Here are the tribunal

00:11:19

held that it was not

00:11:19

appropriate to increase the country

00:11:21

risk to reflect the risk

00:11:23

that a state May expropriate

00:11:25

and investment therefore aligning more

00:11:27

with the claimants views, but

00:11:29

noting that country risk should

00:11:31

take into account the genuine

00:11:33

risk, including political risk other

00:11:34

than expiration. Conversely if we

00:11:38

look at Venezuela Holdings or

00:11:40

mobile. Here the tribunal considered

00:11:42

that the confiscation risk remained

00:11:45

part of the country risk

00:11:46

and must be taken into

00:11:47

account in the determining the

00:11:49

discount rate. So aligning more

00:11:51

with the respondents here. And

00:11:53

in a similar veined the

00:11:55
tribunal and Tidewater aligned more

00:11:57
with the state's position and

00:11:58
determine that the country risk

00:12:00
premium was an economic rather

00:12:02
than a legal question. That

00:12:03
was not specifically tied to

00:12:05
the measure something nice to

00:12:07
the flame. Now if we

00:12:11
look at awards from the

00:12:14
last couple of years we

00:12:15
can see that country risk

00:12:17
is no longer exclusively tied

00:12:19
or exclusively discussed within the

00:12:21

Venezuelan context. And in fact,

00:12:22

it is an issue that

00:12:24

tribunals all over the world

00:12:25

continue to Grapple with and

00:12:27

often consider different different parameters

00:12:30

or reach different conclusions. So

00:12:33

for example, if we started

00:12:35

by looking at DeVos versus

00:12:36

India, this is the case

00:12:38

involving the cancellation of the

00:12:41

lease agreement for broadcasting Services,

00:12:43

which was helped to constitute

00:12:45

a non-lawful exploration. And the

00:12:47

tribunal adopted the DCF methodology

00:12:49

founded to be there are

00:12:51

reliable way to Value the

00:12:52

assets. But hell that there

00:12:54

was that no additional rate

00:12:56

should be applied to the

00:12:57

discount rate to account for

00:12:59

Country risk. And the reason

00:13:01

for this according to the

00:13:02

tribunal was that the country

00:13:04

risk was already implicit in

00:13:06

the claimants expert model because

00:13:08

it used a discount rate

00:13:09

that was based on Indian

00:13:11
government bonds of 8.6% which

00:13:14
were not risk free. So

00:13:16
this is more consistent with

00:13:17
the gold Reserve approach. We

00:13:18
just saw where the tribunal

00:13:20
health of no additional premium

00:13:21
should be account should be

00:13:22
incorporated to include to account

00:13:25
for the country risk. now

00:13:27
if we look at another

00:13:28
recent award car key versus

00:13:29
Pakistan again, this was another

00:13:32
contractual termination contract the tribunal

00:13:35

determined that there was an

00:13:36

unlawful expropriation and the GCF

00:13:38

results. the methodology of the

00:13:41

methodology adopted but here the

00:13:44

country risk proposed by the

00:13:45

respondent Pakistan of 9% was

00:13:47

preferred over the claimants proposed

00:13:49

rate of zero percent. And

00:13:52

why was this? Well, the

00:13:54

claimant argued that the investors

00:13:56

already had insurance policies and

00:13:58

the bit. Which should have

00:14:01

protected already the claimant and

00:14:04

there was no need for

00:14:04

an additional country risk, but

00:14:07

the tribunal disagreed and noted

00:14:09

that insurance policies did not

00:14:10

eliminate all social political and

00:14:13

legal risks and specifically noted

00:14:15

that for example, the claimant

00:14:17

had to litigate with its

00:14:18

best or with this with

00:14:20

its ensure and actually receive

00:14:22

the lower payout than it

00:14:24

was anticipated. So the term

00:14:27

and so and so the

00:14:28

tribunal determined that the vit

00:14:30

and even an insurance policy

00:14:31

did not really completely eliminate

00:14:33

the country risk. It merely

00:14:35

mitigated it. now if we

00:14:39

go back to Latin America

00:14:40

BBVA versus Venezuela here the

00:14:45

the treaty breach that was

00:14:46

found was a violation of

00:14:47

the fet standard so not

00:14:49

an expropriation case, but the

00:14:51

DCF methodology was also employed

00:14:54

And it arrived in a

00:14:56

arriving at the adopted country

00:14:58

risk the tribunal looked at

00:15:00

the Emerging Market bonds index

00:15:01

or embi that was closest

00:15:03

to the valuation date. Because

00:15:06

they tell that this would

00:15:07

reflect the market conditions the

00:15:10

market expectations at the time

00:15:11

and in this particular case.

00:15:14

The measures were around 2020

00:15:16

and so these included the

00:15:18

investors perceptions of the effect

00:15:20

of covid-19 on The Sovereign

00:15:22

risk of Bolivia. And this

00:15:24

led the tribunal to adopt

00:15:25

a higher country risk 6.2%

00:15:27

as proposed by the respondent

00:15:29

versus the lower rate proposed

00:15:31

by the time Um, if

00:15:34

we look at another case

00:15:35

security report versus Benin, this

00:15:38

is an ICC case, so

00:15:39

we're now in the context

00:15:40

of commercial arbitration, but again

00:15:43

wrongful termination of a contract

00:15:45

for airport security services and

00:15:47

DCF employees to Value future

00:15:50

cash flows. And specifically concerning

00:15:54

the country risk analysis the

00:15:55

tribunal rejected the claimants proposed

00:15:58

country risk of 0.5% and

00:16:01

in doing so it rejected

00:16:02

the claimants argument that a

00:16:04

contract stabilization costs in the

00:16:06

contract meant that there was

00:16:08

no additional country risk premium

00:16:10

needed. The tribunal looked at

00:16:13

the fact that the unpaid

00:16:14

invoices are issuing the case

00:16:15

bared interest and then it

00:16:17

ended and and that that

00:16:19

showed an indication that the

00:16:20

claimants anticipated at least certain

00:16:23

risks associated with the project

00:16:24

and for this recently adopted

00:16:26

a country risk of 5%

00:16:29

What's interesting about this case?

00:16:31

Is that here the analysis

00:16:33

focused on whether the contractual

00:16:35

stabilization Clause eliminated the need

00:16:37

to include a country risk

00:16:39

premium. But this is very

00:16:40

analogous to the analysis that

00:16:41

some investment is investment tribunals

00:16:44

engaging when the determining whether

00:16:46
the bi the bit also

00:16:49
eliminates this this need to

00:16:50
incorporate a specific premium per

00:16:52
country risk. And in this

00:16:54
particular case as we just

00:16:55
saw the terminal answer this

00:16:57
question in the negative and

00:16:58
side of the respondent. And

00:17:02
finally, we look at another

00:17:03
commercial case data fan versus

00:17:06
Kosovo Telecom. This is a

00:17:08
nicesty case and the fluoride

00:17:10
is not public but there's

00:17:11

there's some public information that

00:17:12

tells us how the tribunal

00:17:14

dealt with with country risk.

00:17:16

And specifically here the claimant

00:17:19

proposed to use the country

00:17:20

risk. as a country with

00:17:22

the average between Albania and

00:17:24

Serbia, which are causing those

00:17:25

neighboring countries because there's no

00:17:27

official credit rating for cost

00:17:29

about but the respondent claim

00:17:32

that these would underestimate cost

00:17:33

of those credit rating and

00:17:35

instead proposed to rely on

00:17:36

an average of of country

00:17:38

ratings that had a similar

00:17:40

oecd ranking than Coastal and

00:17:42

this is what the tribunal

00:17:43

agreed with Um determining that

00:17:47

country risk cannot just simply

00:17:48

be the average of geographical

00:17:51

neighboring countries. So what we

00:17:55

can what we can gather

00:17:56

from from this five cases

00:17:57

is that the tribunal's approaches

00:18:00

to Country risk? They extend

00:18:02

beyond the Venezuelan context they

00:18:03

extend outside of the vit

00:18:06

investment arbitrations here. and the

00:18:11

approaches that tribunal's employee remain

00:18:13

relatively consistent and considering different

00:18:15

variables. So just looking at

00:18:17

the country rates adopted in

00:18:19

these five cases this range

00:18:21

from arguably zero percent in

00:18:23

Davis to 9% in car

00:18:25

key and in awards that

00:18:28

involved millions of dollars as

00:18:29

is often the case in

00:18:30

investment arbitration. This range of

00:18:32
country risk can have a

00:18:33
significant impact on the awards

00:18:35
of Damages that are ultimately

00:18:36
awarded. And so we just

00:18:39
thought I conclude and I

00:18:41
turn it over to you.

00:18:45
Thank you, Matthew. That was

00:18:47
super helpful. And it is

00:18:49
very nice to have this

00:18:50
this presenter mode where you

00:18:53
walk us through this recent

00:18:55
Awards and we can see

00:18:56
how this issue is is

00:18:58

very much relevant. It still

00:19:00

can swing the damages amounts

00:19:03

by a significant volume. So

00:19:06

so we I think we

00:19:07

we all have to be

00:19:08

cognizant of it and with

00:19:10

that in mind I would

00:19:11

like to turn out to

00:19:11

Olga because you know to

00:19:14

explore a little bit what

00:19:15

we talk about when we

00:19:16

talk about country risk from

00:19:18

an economic point of view

00:19:19

and how such risk should

00:19:22

impact the value. I mean,

00:19:23

we think we all know

00:19:24

that it will have an

00:19:26

impact but how how it

00:19:27

impacts how it comes to

00:19:29

impact the assessment of damages

00:19:31

of the assessment body. Thank

00:19:35

you so much Miguel and

00:19:37

thank you for having me

00:19:38

on this panel. So. Assessing

00:19:43

dentist in international arbitrations and

00:19:45

specifically investors baby suits often

00:19:47

requirements and sports responsibilities. Like

00:19:54

how much it said this

00:19:56

relationship? Mobile value at the

00:20:07

rate which reflects both the

00:20:09

value of money in the

00:20:10

future and there is of

00:20:11

course. The lower is the

00:20:20

value of projects. determining what

00:20:29

the government discovered is and

00:20:33

one of the most heavily

00:20:34

debated questions in the context

00:20:35

of Damages assessment allows relating

00:20:37

to the measurement in the

00:20:39

appropriate treatment of their so-called

00:20:40

franchise countries is an incremental

00:20:43

risk of operating in a

00:20:44

country that is not the

00:20:46

us or a single National

00:20:47

employee importantly contribute want to

00:20:50

respirable and systematic degrees away,

00:20:54

right? So I'd like to

00:21:00

overload information to find the

00:21:03

business school professors here. Sorry.

00:21:07

Sorry interrupt Olga Miguel and

00:21:10

yeah dogs cannot hear the

00:21:13

apparently the audio quality is

00:21:14

really about is there where

00:21:17

you can change your microphone

00:21:19

or maybe do different? Okay,

00:21:21

right. Can you hear me?

00:21:26

Yeah, yes, that is better

00:21:29

Olga. Just just one suggestion

00:21:31

giving that this is recording

00:21:34

and that you you have

00:21:36

not gone, you know, very

00:21:37

far in your presentation because

00:21:39

we I I wasn't able

00:21:42

to get most of what

00:21:43

you said. So if if

00:21:46

you don't mind I would

00:21:47

invite you to like restart,

00:21:49

so that folks can can

00:21:51

hear you and that makes

00:21:52

sense and and do not

00:21:53

worry. I should have advised

00:21:55

you on that earlier. My

00:21:57

apologies. Thank you. Thank you.

00:21:59

Sorry about that. Um, so

00:22:01

as I as I mentioned

00:22:03

that you know, when we

00:22:05

approach assessing future damages in

00:22:08

international arbitrations and specifically inventor

00:22:11

State disputes, we often use

00:22:13

this so called discounted cash

00:22:16

flows methodology. It's also called

00:22:17

DCF. And the critical component

00:22:20

of this methodology is determining

00:22:22

an appropriate discount rate discount

00:22:24

rate from economic perspective reflects

00:22:27

the value of money in

00:22:28

the future and the level

00:22:29

of risk uncertainty. The high

00:22:32

is the discount rate. The

00:22:33

lower is the net present

00:22:34

value of a project or

00:22:36

asset. So it's really important

00:22:39

to determine what the appropriate

00:22:41

discount rate is and among

00:22:43

the most heavily debated questions

00:22:44

in the context of Damages

00:22:46

assessment are those relating to

00:22:48

the measurement in the appropriate

00:22:49

treatments of so-called countries risk

00:22:52

country risk is an incremental

00:22:53

risk of operating in a

00:22:55

country that is not the

00:22:56

us or a similar mature

00:22:58

economy and importantly countries is

00:23:00

non-diverse viable risk, and it's

00:23:04

also called systematic risk. So

00:23:05

it's one that investors cannot

00:23:07

diversify by investing in different

00:23:09

assets. I'd like to offer

00:23:12

you a definition from to

00:23:13

professors from the Columbia business

00:23:15

school geared beckard and Robert

00:23:18

hodrick. So they say that

00:23:20

country is concludes the adverse

00:23:22

political and economic risks of

00:23:23

operation in the country. For

00:23:25

example a recession in a

00:23:26

country that reduces their revenues

00:23:28

of exporters to that nation

00:23:30

is a realization of country

00:23:31

risk labor strikes strikes by

00:23:34

a country's dog workers trackers

00:23:36

and Transit workers that disrupt

00:23:38

production and distribution of products

00:23:39

last lowering profits also qualify

00:23:42

as country risks clashes between

00:23:44

rival ethic or religious groups

00:23:46

that prevent people in a

00:23:47

country from shopping can also

00:23:48

be considered country risk. A

00:23:51

special case of country risk

00:23:53

is a political risk, which

00:23:54

emerges because future actions of

00:23:56

a government can negatively affect

00:23:59

future cash flows of a

00:24:00

company examples of such risks

00:24:02

are a risk of seizure

00:24:04

of private assets or output

00:24:06

unexpected taxes or royalties and

00:24:08

profits internal or external conflicts

00:24:11

such as general strikes terrorism

00:24:13

and War and instability of

00:24:15

relevant policies to the operation

00:24:17

of a company. So one

00:24:20

of the key challenges of

00:24:21

addressing countries is that there's

00:24:23

no consensus on how to

00:24:24

define country risk making its

00:24:26

measurements somewhat problematic. However, if

00:24:28

you wanted to approach this

00:24:29

to conduct an evaluation, we

00:24:32

need to specify how the

00:24:34

risk should be Quantified and

00:24:36

having Quantified the risk. We

00:24:38

should translate it into a

00:24:39

risk premium. There are two

00:24:41

main methods on how we

00:24:42

generally approach that the first

00:24:44

one is probability weighted cash

00:24:45

flow scenarios. and because countries

00:24:50

because most often warrants a

00:24:52

reduction in value this method

00:24:54

based on cash flow situations

00:24:55

must often equates to considering

00:24:57

additional downside situations and probability

00:25:01

weight in them. This is

00:25:03

this approach is considered to

00:25:04

be more theoretically, correct. So

00:25:07

for example, consider a project

00:25:08

that is based in an

00:25:09

imaginary country Aberdeen that needs

00:25:11

to be evaluated from the

00:25:12

perspective of a US investor

00:25:14

and then assume that this

00:25:16

project generates 10 million a

00:25:17

year forever, and then that

00:25:20

an appropriate discount rate the

00:25:21

10% the net present value

00:25:23

of session investment would be

00:25:24

10 million divided by 0.1

00:25:26

or 100 million. Now if

00:25:29

we were to implement countries

00:25:32

risk consider that there's a

00:25:35

20% chance of a downside

00:25:36

situation. In this case. We

00:25:38

need to adjust and expect

00:25:40

the expected cash flow down

00:25:41
to 8 million, which is

00:25:43
10 million with the probability

00:25:45
of 0.8 and 0 with

00:25:47
probability of Point 2. So

00:25:48
we get the net present

00:25:50
value of an investment including

00:25:52
country risk now is 80

00:25:55
million. It's important to note

00:25:58
that the possible future cash

00:26:00
flows in their respective probabilities

00:26:02
should be those that relate

00:26:03
to the project in question.

00:26:06
The second approach. So while

00:26:11

the first approach is most

00:26:12

theoretically correct. It's often really

00:26:14

hard to construct such scenarios

00:26:17

in the same probabilities to

00:26:19

them. Therefore oftentimes practitioners used

00:26:22

second approach which is country

00:26:23

risk premium added to a

00:26:25

discount rate. So consider The

00:26:28

same imaginary country Aberdeen but

00:26:30

now assume that the appropriate

00:26:32

countries premium that should be

00:26:33

added to this country this

00:26:35

2.5% So in this case

00:26:37

The Net Present Value East

00:26:39

10 million divided by 0.1.

00:26:41

Plus this country is premium

00:26:43

and you get again to

00:26:44

80 million in this case.

00:26:49

We see that the adjustment.

00:26:53

Of the discount rate led

00:26:55

to inheritmetically equivalent result implemented

00:26:59

probability weight and can be

00:27:00

adjusted. In a risk premium.

00:27:02

It's also important to note

00:27:04

that if the future expected

00:27:08

cash flows. Are reduced as

00:27:10

a result of the country

00:27:11

specific risks, then the risks

00:27:13

of investing in the project

00:27:15

are clearly Incorporated in the

00:27:16

valuation and no adjustment to

00:27:18

the discount rate is necessary.

00:27:20

So in this case, if

00:27:22

you if you already adjust

00:27:24

future cash flow levels to

00:27:26

incorporate countries, and also at

00:27:28

the country is premium to

00:27:29

a discount rate. You would

00:27:31

be down down double counting

00:27:33

countries. So I'd like to

00:27:38

offer you some. Measures that

00:27:41

are out there and Carlos

00:27:45

will discuss how to translate

00:27:46

those measures into a country's

00:27:48

premium. But so I thought

00:27:49

you know would be interesting

00:27:50

to see how the current

00:27:52

political situation affected the country

00:27:57

risk inside. I have here

00:27:59

coffee countries assessment and I

00:28:01

have it for two quarters

00:28:02

free Ukraine Russia Ukraine conflict

00:28:05

in quarter 4 of 2021

00:28:07

and post and so this

00:28:10

is business default in Risk

00:28:11

so you can see that

00:28:13

um, not only Russia and

00:28:15

Ukrainian risk has increased but

00:28:17

also you can see that

00:28:19

European countries also are considered

00:28:22

to be more risky. And

00:28:25

secondly, so this is another

00:28:27

tool that is often used

00:28:28

to it estimate countries premium.

00:28:33

So here I have Sovereign

00:28:34

monthly Sovereign default spreads and

00:28:36

I had them again for

00:28:37

Russia Venezuela European Ukraine and

00:28:39

you see that you know,

00:28:41

you see how volatiles volatile

00:28:43

they are. And also it

00:28:44

presents some challenges in estimating

00:28:46

what the country is premiums

00:28:48

are so for example for

00:28:49

Russia. The country is premium

00:28:51

has been relatively low until

00:28:52

the current conflict where it

00:28:55

should and then no data

00:28:57

became is not no data

00:28:58

past February is available and

00:29:00

you see that Ukraine has

00:29:01

been Kind of volatile and

00:29:05

more. So after the current

00:29:08

conflict started and surprising someone

00:29:11

surprisingly The Sovereign defaults spread

00:29:15

has dropped in the recent

00:29:16

ones. to pre-crisis level and

00:29:20

finally, I'd like to show

00:29:21

you also similar server and

00:29:23

default spreads, but for countries

00:29:26

in North America and Europe

00:29:27

and so again you can

00:29:29

you see how their volatile

00:29:31

they are and Kind of

00:29:33

here. You can see what

00:29:33

the impact of the current

00:29:35

crisis is. So There is

00:29:39

some impact of Europe on

00:29:41

Europe, but I think it's

00:29:41

because it reflects risk in

00:29:44

the Ukraine. And with that

00:29:46

I'd like to pass it

00:29:47

to back to Miguel. Thank

00:29:49

you. Thank you yoga. That

00:29:51

was a really good and

00:29:53

just say follow up comment

00:29:55

on on what you just

00:29:56

explain and I think it

00:29:57

for example that you provide.

00:29:59

This is very telling I

00:30:00

mean just two and a

00:30:02

half percent premium on the

00:30:04

discount rate and cost 20%

00:30:06

reduction in the value. I

00:30:08

mean this is this is

00:30:09

what we are talking about

00:30:10

right when people throw this

00:30:12

this numbers these methods of

00:30:14

countries. We have to really

00:30:15

think what we are doing

00:30:16

to the valuation and without

00:30:18

if you can comment a

00:30:21

little bit and was always

00:30:22

just said I mean we

00:30:23

all agree, of course at

00:30:24

more race results in lower

00:30:26

value, but the tools to

00:30:27

measure that the risk seem

00:30:30

to be of critical importance.

00:30:31

It's all right. Thank you.

00:30:33

Yeah, absolutely. The the tools

00:30:36

are very important because we

00:30:38

have to remember what the

00:30:39

purpose of the exercise is.

00:30:41

The first place the purpose

00:30:42

of the exercise is to

00:30:43

determine the net present value

00:30:45

of an asset or a

00:30:46

company and a It you

00:30:51

know, they know principles of

00:30:52

corporate finance will say that

00:30:54

what you should do in

00:30:55

that case is first to

00:30:56

determine what type of cash

00:30:59

flows you have. You are

00:31:00

trying to evaluate and what

00:31:02

particular risk affect that set

00:31:05
of cash flows and if

00:31:07
possible you should account for

00:31:08
that reason in the cash

00:31:10
flows and not using some

00:31:13
fudge factor in the discount

00:31:15
rate, which is what we

00:31:17
have observing a lot of

00:31:18
cases and sometimes that is

00:31:21
not possible sometimes not that's

00:31:22
not a you know, you

00:31:26
don't have data that will

00:31:28
let you do that. But

00:31:31
in a lot of cases

00:31:32

it is possible and some

00:31:34

unfortunately is not done. Eh,

00:31:37

and and we see these

00:31:39

for instance in sometimes where

00:31:42

they use of sovereign default

00:31:44

spreads as a proxy for

00:31:46

for a for country race

00:31:50

because you know, what, does

00:31:51

that metric measure? Well, the

00:31:53

metric measures the risk that

00:31:55

is sobrant will be fold.

00:31:57

And that would be a

00:31:58

completely irrelevant risk. For say

00:32:02

in oil and gas venture

00:32:03

in country X that export

00:32:06

all its Productions to Countrywide.

00:32:08

You know, who why do

00:32:09

I care if that country

00:32:11

is going to be following

00:32:12

sovereign debt is completely relevant.

00:32:14

So by using that metric

00:32:17

to calculate the risk that

00:32:19

supposedly the gas flows from

00:32:22

that country might be affected.

00:32:24

You know, I might be

00:32:25

completely underestimating the value of

00:32:27

the investment by using that

00:32:30

tool. So that's why I

00:32:31

think it is very important

00:32:32

to be careful with the

00:32:33

tools that are used. In

00:32:34

the last few years and

00:32:36

I think we're gonna hear

00:32:37

more about that. There are

00:32:39

some other metrics that have

00:32:40

been developed to try to

00:32:42

oscillate isolate precisely a what

00:32:46

type of race we are

00:32:47

talking about and I think

00:32:49

that is a good development

00:32:50

and hopefully tribunal will become

00:32:52

more familiar with the technique

00:32:54

and use that more in

00:32:57

the future. Thank you. That's

00:33:01

that's great. And I think

00:33:03

we we want to explore

00:33:05

those those techniques that traditionally

00:33:08

use. I think they that's

00:33:10

that's the point here. We

00:33:11

let's explore a little bit

00:33:13

of those study on those

00:33:14

traditional techniques that you mentioned

00:33:17

me that I normally used

00:33:18

that sometimes are not perfect

00:33:20

or far from perfect and

00:33:22

then we'll see how we

00:33:22

go from there. But just

00:33:24

to get it so that

00:33:25

we are all in the

00:33:26

same patient those things Carlos.

00:33:28

Can you walk us through

00:33:29

where are these most commonly

00:33:31

methods use including the Sovereign

00:33:34

spread that both origami I

00:33:36

have mentioned and how do

00:33:38

you deal with those in

00:33:39

practice? Yes. Hey, thank you

00:33:43

Miguel. And thank you word

00:33:44

arbitration update for the invitation.

00:33:46

I am Carlos pavon managing

00:33:48

director of infrastructure economic Consulting.

00:33:50

So I'm going to discuss

00:33:52

about the traditional approaches before

00:33:53

going deep in other a

00:33:55

Alternatives as Matilda a and

00:33:59

Olga pointed out going to

00:34:01

risk is with countries. We

00:34:03

are trying to to measure

00:34:04

the incremental risk that an

00:34:05

investment is subject to when

00:34:07

operating in a country a

00:34:10

These countries must be known

00:34:12

universifiable and they include issue

00:34:14

aspects like microeconomic and Regulatory

00:34:17

and political trees fiscal and

00:34:19

currency risk is preparation risk

00:34:21

and internet conflict. Someone others

00:34:23

the impact on magnitude of

00:34:25

each one of these elements

00:34:26

depends really on the specific

00:34:28

asset and that is all

00:34:29

something that that I would

00:34:30

like to emphasize always and

00:34:32

countries as projects as Olga

00:34:35

pointed out here. I'm going

00:34:37

to discuss is those approaches

00:34:39

that add to the course

00:34:40

of equity but as she

00:34:41

pointed out there are other

00:34:43

alternatives to adjust the cash

00:34:45

flows. The the first approach

00:34:48

that I want to mention

00:34:49

is the ratings approach that

00:34:50

everybody knows and I mean

00:34:52

the Credit Agencies come to

00:34:53

a country and they produce

00:34:56

a they assign is is

00:34:59

a rate into a country

00:35:01

and they go on model

00:35:02

based on different variables and

00:35:04

they say well you are

00:35:05

double a triple A. In

00:35:07

terminal in Practical terms practitioners

00:35:10

assign to each one of

00:35:11

the of the ratings a

00:35:13

value by looking at the

00:35:14

default rate for a bond

00:35:15

versus they they fall free

00:35:18

Bone for that country. And

00:35:20

in that way they come

00:35:21

up with with an approximation

00:35:22

of risk the issue with

00:35:24

this approach is that is

00:35:25

the focuses on the fall

00:35:27

and may obscure other risk.

00:35:29

The other problem is that

00:35:30

the rate of change may

00:35:32

not reflect changes really in

00:35:33

political risk and the timing

00:35:36

and biased the timing and

00:35:37

bias issues had been great

00:35:39

as a problem and I

00:35:41

would say the most important

00:35:42

aspect here is that they

00:35:44

are not Market oriented. This

00:35:46

is just a table showing

00:35:47

what all of us know

00:35:48

different different ratings and this

00:35:51

table they show the second

00:35:52

one is showing how people

00:35:54

assign to specific ratings a

00:35:56

how they obtain the default

00:35:59

rate. They the other approach

00:36:03

the more generic The Sovereign

00:36:05

is spread approach. What is

00:36:06

doing is really measuring the

00:36:08

difference between deals the yield

00:36:10

between a local bone versus

00:36:11

a bone denominated in her

00:36:13

currency, obviously with a similar

00:36:14

maturity. The advantage is a

00:36:16

market base and it's less

00:36:18

objective apparently provides a more

00:36:20

granular differentiation and more countries

00:36:22

in terms of risks and

00:36:24

is more Dynamic than ratings

00:36:26

and cannot just quickly to

00:36:27

information. That is important. However,

00:36:30

the problem with this approach

00:36:32

is they they volatility and

00:36:34

and also the issue is

00:36:37

that the measure risk at

00:36:39

the specific point in time

00:36:40

and may not reflect really

00:36:42

actual default risk exposures. And

00:36:45

as we as you guys

00:36:47

have here is it could

00:36:48

marry create risk allowed to

00:36:50

The Sovereign versus the one

00:36:51

that is is that could

00:36:52

assume and Equity investor? Destably

00:36:55

showing the hey for the

00:36:59

selected countries. They the bones

00:37:01

for for this country 10

00:37:03

year bond rates versus the

00:37:04

USD bone and the last

00:37:07

column shows the default spread.

00:37:09

Eh following this is spreads

00:37:13

Southern expressed. We have seen

00:37:15

in the market something that

00:37:16

is called Emerging Market bone

00:37:17

index the MPS are waited

00:37:20

indexes produced by JP Morgan

00:37:22

and what they measure is

00:37:23

the rate of return of

00:37:24

active credit dollar denominated external

00:37:26

the instruments. And exists different

00:37:29

MPS MB plus the global

00:37:32

the Diversified and specific aim

00:37:34

is for for some countries

00:37:36

for Country risk determination. One

00:37:39

uses the yield of these

00:37:40

bones versus a benchmark Park

00:37:42

a benchmark Bond NBA as

00:37:45

as the beauty is that

00:37:46

they are metric is a

00:37:48

metric produced by the market.

00:37:49

However, again is questionable whether

00:37:52

the control is reflect it

00:37:54

reflected in the spread applied

00:37:56

to the investment a under

00:37:59

analysis. This table is just

00:38:01

showing that I wanted to

00:38:03

show how this spreads aim

00:38:06

and the returns for Brazil

00:38:07

have moved from 2000 to

00:38:09

2016 as you can see

00:38:11

is there is a volatility

00:38:12

there. This I call it

00:38:14

Professor the motherland's approaches. I

00:38:16

believe that is the one

00:38:17

that many people uses a

00:38:20

professor. The mother has uses

00:38:22

the Sovereign rate in front

00:38:23
of the from one of

00:38:25
the Credit Agencies and estimated

00:38:27
the whole spreads for that

00:38:28
rating. The advantage for my

00:38:31
perspective the professor the mother

00:38:32
and does is that he

00:38:33
is scales the full spreads

00:38:35
by multiplying that if that

00:38:38
is spread by the create

00:38:39
but the relative Equity Market

00:38:40
volatility for that market in

00:38:42
order to arrive to to

00:38:44
the contrary risk. Mmm, if

00:38:48

I mean in order to

00:38:49

to avoid all volatility and

00:38:51

tragedy issues Professor the mother

00:38:53

and what he does is

00:38:54

to use indices and that

00:38:55

that's an advantage and obviously

00:38:58

this is the market based

00:38:59

approach that incorporate specific Market

00:39:01

characteristics here. I just graph

00:39:04

the graph for selected countries

00:39:06

Devolution of a control risk

00:39:08

premiums according Pro for according

00:39:10

to Professor the mother and

00:39:11
as you can see there

00:39:13
have been more volatiles some

00:39:15
more times than other I

00:39:16
chose Argentina Brazil Colombia Egypt

00:39:18
Mexico Philippines and church. Obviously

00:39:21
the big one that we

00:39:23
see here is Argentina. Another

00:39:25
interesting instrument that is in

00:39:27
the market is is the

00:39:28
credit default swap spreads. The

00:39:30
city is a contracts that

00:39:32
allow investors to buy protections

00:39:34
again a credit event of

00:39:36

the issuer. Country risk premium

00:39:38

is is the spread between

00:39:39

the city's premium under analysis

00:39:41

and the Cities Premium on

00:39:43

The Benchmark Benchmark country Sovereign

00:39:46

Bond. The advantage of the

00:39:47

CDs is this is the

00:39:49

frequency of the data. However,

00:39:51

the issue is that the

00:39:53

city Simplicity assumes that the

00:39:55

premium for the respawn by

00:39:57

the investors in government. That

00:39:58

is the same as that

00:39:59

pay by investor, which is

00:40:01

a problem. It's the issue.

00:40:03

It doesn't insurance. Basically, it's

00:40:05

an insurance contract and the

00:40:07

market for CDs is very

00:40:08

narrow and concentrated in a

00:40:11

very few big players and

00:40:14

Like this one the exposure

00:40:16

to Country party and liquidity

00:40:17

risk is an issue that

00:40:18

has been raised and you

00:40:20

guys remember the problem with

00:40:21

Lima? And this figure here

00:40:24

is just showing how how

00:40:26

CDs can adapters the move

00:40:30

in the daily movement of

00:40:31

the CDs in case of

00:40:32

agrees and they vertical lines

00:40:35

is showing where the ratings

00:40:37

were adjusted. So some kindness

00:40:39

is interested to see how

00:40:41

that adjustment how the CDs

00:40:43

really reflected changes in contrary

00:40:45

risks. Here, I'm just decided

00:40:47

to graph a Devolution also

00:40:50

for a few countries for

00:40:53

the last six years or

00:40:55

so. So selected countries how

00:40:56
this is not since it's

00:40:58
the data is annual is

00:40:59
not that bullet volatile but

00:41:01
is at least is showing

00:41:03
the trend. in the last

00:41:05
approach, I would say that

00:41:06
I have here to to

00:41:07
present these developility of the

00:41:08
equity and dead and here

00:41:10
one is measuring the volatility

00:41:12
of the local that Equity

00:41:14
or bone Market to the

00:41:16
volatility of a reference mark

00:41:19

In Practical terms one takes

00:41:20

is the ratio between the

00:41:22

volatility and and that ratio

00:41:25

is applied to the market

00:41:26

risk Premier and finally one

00:41:27

takes the difference between estimated

00:41:30

Market premium and the market

00:41:31

premium the reference Market in

00:41:32

order to calculate the contrary.

00:41:35

The approach is an alternative

00:41:37

to measure investors risk exposure.

00:41:38

But one problem here is

00:41:41

the adequacy of the data

00:41:42

not all the countries have

00:41:44

data Deputy Market information. And

00:41:46

so the alternative is to

00:41:48

go to to indexes and

00:41:50

that is a problem liquidity

00:41:52

issues is another problem here.

00:41:54

This is a table that

00:41:55

is showing just numbers how

00:41:57

the calculation have been done

00:41:59

and for me to close.

00:42:01

I just want to say

00:42:02

that everything is showing really

00:42:04

a big correlation between markets.

00:42:06

So countries cannot be totally

00:42:09

Diversified several alternatives to estimate

00:42:13

countries exists. And I believe

00:42:14

that assessment of the information

00:42:15

about level is Paramount on

00:42:17

the practitioners and traditional methods

00:42:20

assume that every company in

00:42:21

a giving country share the

00:42:23

same risk exposure and that's

00:42:24

probably this an issue that

00:42:25

the practitioner is really need

00:42:27

to assess project profile specifics

00:42:30

need to be assess when

00:42:32

estimating country risk. I'm finally

00:42:33

I would say that is

00:42:35

not only countries specific but

00:42:38

also asset specific. Thank you

00:42:41

very much. Thank you. Carlos.

00:42:44

Tell us a very informative

00:42:46

and I think it you

00:42:49

you very well explain different

00:42:51

methods to go to go

00:42:53

about measuring countries risk and

00:42:55

many of these as you

00:42:57

have explained our based on

00:42:58

Sovereign spreads, right which is

00:43:00

which is what we've been

00:43:01

discussing. So and I would

00:43:02

like to all guys if

00:43:03

you could follow up briefly.

00:43:05

What are your thoughts on

00:43:07

this Sovereign spreads measures and

00:43:08

then we'll Explore More with

00:43:10

Rob. So as Carla said

00:43:13

so kind of started some

00:43:16

methods and I think there's

00:43:17

a good starting point because

00:43:19

oftentimes circumstances of the case

00:43:21

are different and so you

00:43:22

have to kind of adjust,

00:43:23

you know, you start from

00:43:25

this kind of off-the-shelf Market

00:43:28

risk premium and then you

00:43:29

can adjust it using various

00:43:31

methods. And so one of

00:43:33

the methods that was recently

00:43:34

developed is when you you

00:43:36

can estimate using statistical techniques

00:43:38

relationship between Sovereign spread and

00:43:41

various characteristics of the country

00:43:44

to isolate certain sub-risks that

00:43:48

you think are important for

00:43:50

for your case. So when

00:43:53

you think about Soren spread

00:43:56
it, you know, it can

00:43:57
reflect political risk also financial

00:43:59
and economic risks, but maybe

00:44:01
you're future cash flows already

00:44:04
incorporate financial and economic risk.

00:44:07
So if you kind of

00:44:09
add that country is premium

00:44:10
on top of What you're

00:44:12
already Incorporated, you will be

00:44:14
double counting them. So using

00:44:16
the statistical techniques, you can

00:44:17
isolate some components of the

00:44:19
risks that are important for

00:44:20

you. And then sometimes Sovereign

00:44:23

default spreads are not available

00:44:26

for some countries or for

00:44:28

example, they are available for

00:44:29

Venezuela, but only up to

00:44:31

certain points in time as

00:44:32

I showed. So what you

00:44:33

can do you can again

00:44:35

use that statistical relationship that

00:44:38

you estimated and you can

00:44:40

you for example using characteristics

00:44:43

often as well or any

00:44:45

other country for each for

00:44:46

which the Thor in the

00:44:48

fall spread is not available.

00:44:49

You can calculate what the

00:44:52

what that Spirit should be

00:44:54

based on the country characteristics.

00:44:57

So these are kind of

00:44:59

more advanced methods and also

00:45:01

looking forward to see more

00:45:02

usage of them. Thank you

00:45:05

yoga. That's that's great. And

00:45:06

with that I'd like to

00:45:07

turn to to Rob. How

00:45:10

do we take this this

00:45:11

traditional methods to the next

00:45:13

level Rob? I mean, we

00:45:14

we've talked about them and

00:45:16

how we go from there

00:45:17

to something that is more

00:45:19

sophisticated and more robust and

00:45:21

why the traditional methods may

00:45:23

not work in certain circumstances

00:45:26

Um, well, thanks. Thanks Miguel

00:45:28

for having me here. And

00:45:30

I want to thank Carlos

00:45:33

for in his last five

00:45:34

teaming up. What's going to

00:45:35

be the key theme of

00:45:37

my remarks, which I think

00:45:41

Carlos put it very well

00:45:42

and he said the traditional

00:45:43

methods of adjusting for Country

00:45:45

risk assume that every country

00:45:47

in a given every company

00:45:48

in a given country is

00:45:50

is exposed to Country risk

00:45:51

in the same way. And

00:45:53

so, you know, what I

00:45:54

want to explore is how

00:45:55

best to incorporate country risk

00:45:56

depending on the specific nature

00:45:58

of the business the nature

00:45:59

of the risks and certain

00:46:01

other factors. So this is

00:46:03

often done in the broad

00:46:04

context of DCF and might

00:46:06

adjust the cash flows. It

00:46:07

might discount rate, but I

00:46:09

want to I want to

00:46:09

focus mainly on something called

00:46:12

Lambda, which I'll explain. it

00:46:16

also the so-called Sovereign ceiling

00:46:20

which I think has interesting

00:46:21

implications for for how we

00:46:24

as damage the experts Implement

00:46:25

country risk and I want

00:46:27

to along the way try

00:46:28

to incorporate some some practical

00:46:30

considerations, you know, what are

00:46:31

the issues that arise when

00:46:32

you know use that for

00:46:33

a really getting your hands

00:46:34

dirty and trying to trying

00:46:35

to implement these adjustments Um,

00:46:38

okay. So let's talk first

00:46:40

about Lambda. So Lambda is

00:46:42

a measure. Divides to reflects

00:46:44

the degree of exposure of

00:46:46

a company or an investment

00:46:48

to a particular country's risk.

00:46:50

And so Lambda is going

00:46:52

to be relevant for example

00:46:53

in context where we are

00:46:56

considering a company that is

00:46:57

multinational in nature or otherwise

00:47:00

geographically, Diversified. And it's most

00:47:04

basic form. It's estimated using

00:47:06

revenues. So if you're focused

00:47:08

on let's say a company

00:47:10

in Brazil, and then you

00:47:11

might look at the proportion

00:47:12

of revenues that your company

00:47:14

of Interest generates in Brazil.

00:47:17

And then you compare that

00:47:19

to the percentage of Revenue

00:47:20

that the average Brazilian company

00:47:22

generates domestically. So this becomes

00:47:25

essentially a scaling factor for

00:47:28

the country risk premium. So

00:47:30

if you're incorporating it, let's

00:47:31

say it's discount rate you

00:47:33

you might multiply the country

00:47:35

risk premium by Lambda in

00:47:37

generating your your overall Equity

00:47:40

risk premium. And so I

00:47:42

mean, this is I think

00:47:42

it's a helpful adjustment when

00:47:44

we're dealing with a company

00:47:45

that has degree of country

00:47:47

risk exposure that's different from

00:47:49

the average exposure of a

00:47:52

company in that country and

00:47:54

we're sort of getting away

00:47:54

from a one size. It's

00:47:56

all approach to to come

00:47:58

here is and it's certainly

00:47:59

an improvement on this kind

00:48:01

of simple. Binary assumption that

00:48:03

country risk, you know is

00:48:04

is either there or not.

00:48:07

Um, and of course we

00:48:08

have to be careful on

00:48:09

how we apply Lambda even

00:48:11

so just to give you

00:48:11

some examples if we focus

00:48:14

on the geographic breakdown of

00:48:15

Revenue that may not reflect

00:48:19

the breakdown of risk, right?

00:48:20

So, you know, for example,

00:48:22

we might want to look

00:48:23

at the breakdown of profit

00:48:24

which is I'll discuss in

00:48:25

a minute maybe maybe tricky

00:48:26

to implement but they're you

00:48:28

know, depending on this individual

00:48:29

circumstances. There may be other

00:48:31

ways that are appropriate to

00:48:32

allocate the risk, you know,

00:48:33

for example, some lines the

00:48:34

company business maybe more subject

00:48:37

to Country risk than others

00:48:41

and may you know, the

00:48:42

risk may be concentrated in

00:48:43

particular geography and another issue

00:48:47

that you can arise with

00:48:49

even revenue and I think

00:48:51

will be familiar to to

00:48:52

a number of people, you

00:48:53

know on this panel and

00:48:54

maybe in the audience is

00:48:55

that it's often the you

00:48:59

know where the production is

00:49:00

happening rather than you know,

00:49:01

where the are being earned

00:49:03

so you could have You

00:49:05

know a mind for example

00:49:06

with sales generated on International

00:49:08

spot markets their Diversified the

00:49:11
revenue May mainly come from

00:49:12
less risky countries. But of

00:49:15
course the Mind itself is

00:49:16
in immovable asset that you

00:49:19
know, maybe located in a

00:49:20
more risky country. So these

00:49:21
sort of classic sources of

00:49:23
of country risk that we

00:49:25
all focus on like expropriation

00:49:27
or or labor dispute. The

00:49:30
those will be felt at

00:49:32
the at the source of

00:49:33
production and even when it's

00:49:36

the product Market that the

00:49:38

source of the risk, you

00:49:39

know, Revenue may not be

00:49:40

a perfect proxy for that

00:49:42

risk. So I mean just

00:49:43

to give you an example

00:49:44

this is public so I

00:49:45

can talk about it. I

00:49:46

worked on a case there's

00:49:47

actually piece of litigation but

00:49:48

we're country risk arose and

00:49:49

it was it involved Canada

00:49:51

Goose who make these sort

00:49:53

of warm fashionable down jackets.

00:49:56

And so the scores in

00:49:58

the country risk in this

00:49:59

case was this sort of

00:50:01

tensions that arose between government

00:50:02

Canada and the government of

00:50:04

China? in Canada detained the

00:50:06

CFL of Huawei which we

00:50:08

may have read about and

00:50:10

so there what happened was

00:50:11

there was consumer boycott in

00:50:13

China of Canadian products and

00:50:17

then Canada Goose suffered from

00:50:19

the sort of being a

00:50:20

high-profile Canadian company and so

00:50:22

you know it So there

00:50:25

the the revenue is a

00:50:26

good starting point but as

00:50:27

it turned out it underestimated

00:50:29

the degree of country risk

00:50:31

because actually China was a

00:50:34

huge source of expected growth

00:50:35

for for Canada Goose so

00:50:38

that the exposure was actually

00:50:39

outsized as compared to what

00:50:41

you might infer just from

00:50:42

looking at a revenue breakdown

00:50:45

and you know what I

00:50:47

think with that highlights is

00:50:48

that now kind of getting

00:50:49

into like, you know, where

00:50:50

to you know, getting our

00:50:50

hands dirty and how do

00:50:51

we implement this stuff, you

00:50:54

know? Can run into implementation

00:50:56

issues because for one thing

00:50:58

Revenue data is the most

00:50:59

easily available with a geographic

00:51:01

breakdown from financial statements, you

00:51:04

know, if you want to

00:51:04

look at a breakdown of

00:51:05

profit you might end up

00:51:06

having to make some kind

00:51:07

of assumptions about allocation of

00:51:08

costs and that's more difficult.

00:51:10

So, you know where you're

00:51:12

going to get other sources

00:51:12

of data one one possibility

00:51:15

is equity analyst reports. If

00:51:18

you're dealing with a publicly

00:51:19

traded company or if you

00:51:20

have publicly traded proxies, which

00:51:22

might give you something more

00:51:23

like an allocation of value

00:51:24

that might be just what

00:51:26

you're looking for. That might

00:51:27

be a helpful discussion there

00:51:28

of Of the risks. So

00:51:31

I think you know in

00:51:33

short if you're if you're

00:51:34

implementing this kind of approach

00:51:35

you want to think about,

00:51:36

you know, first of all,

00:51:39

just give a careful thought

00:51:41

to the nature of the

00:51:41

risks and then be creative

00:51:43

about data sources and not

00:51:45

sort of, you know rely

00:51:49

on a cookie cutter approach.

00:51:51

Let me let me talk

00:51:53

briefly. I want to take

00:51:55

up too much time about

00:51:56

this idea of The Sovereign

00:51:57

feeling which I think is

00:51:58

another interesting topic because to

00:52:01

me is an interesting example

00:52:02

of how development in what

00:52:03

ratings agencies have been doing

00:52:05

relates to what we as

00:52:07

damage experts focus on you

00:52:09

know, it also picks up

00:52:10

on the theme that that

00:52:11

several speakers have mentioned that

00:52:12

Sovereign spread is not necessarily

00:52:14

the best proxy for risk,

00:52:16

you know, it's often the

00:52:17

starting point and then there's

00:52:19

the other approach that you

00:52:20

see often an international arbitration.

00:52:22

Is this approach that that

00:52:23

Carlos bench which I think

00:52:25

is another one from Oswald

00:52:26

which is kind of starting

00:52:28

with the Sovereign spread. Scaling

00:52:30

it up by the volatility

00:52:31

the ratio of the volatility

00:52:33

of equity to the volatility

00:52:34

of debt. And you know,

00:52:36

I think that's appropriate a

00:52:37

lot of cases, but there

00:52:39

is there's a there's an

00:52:40

assumption implicit in that approach

00:52:42

that the the risk associated

00:52:46

with Equity investments in a

00:52:47

country can only be higher

00:52:49

than kind of equal to

00:52:50

our higher than the risk

00:52:52

of a sovereign investment and

00:52:55

you know that that's broadly

00:52:56

consistent with this idea that

00:52:58

used to Prevail at ratings

00:53:00

agencies that you know of

00:53:01

a sovereign feelings. So the

00:53:03

the rating of a company

00:53:05

can't be higher than the

00:53:07

Sovereign but the fact is

00:53:09

that like within ratings agencies

00:53:11

the past couple of decades

00:53:12

there's been a move away

00:53:13

from that and so, you

00:53:15

know, the The Sovereign feeling

00:53:16

is not as stringently applied

00:53:17

and you have things like

00:53:19

Microsoft Johnson and Johnson have

00:53:22

you know higher credit ratings

00:53:24

then from S&P and from

00:53:26

other ratings agencies in US

00:53:28

government and you've also, General

00:53:30

an interesting decoupling of sovereign

00:53:32

risk and Company risk. So,

00:53:34

you know, for example in

00:53:35

the context of the sovereign

00:53:38

debt knows yeah the European

00:53:40

sovereign debt crisis that we

00:53:41

observed in Europe, but a

00:53:43

decade ago, you know, when

00:53:45

when Greece was perceived as

00:53:48

being particularly with father and

00:53:52

dad that wasn't necessarily being

00:53:53

applied to Greek companies and

00:53:57

and so, you know, With

00:54:00

business suggests from the bringing

00:54:02

it back to us as

00:54:03

damages experts is that sometimes

00:54:05

you're gonna be in a

00:54:05

situation where you know starting

00:54:08

with the Sovereign spread and

00:54:09

scaling it up is not

00:54:11

necessarily going to be a

00:54:13

reasonable approach now partly. This

00:54:17

is taught ties back to

00:54:18

the idea of Lambda. Right?

00:54:19

One of the reasons why

00:54:20

the risk of a company

00:54:23

that's a headquartered in a

00:54:25

particular country will maybe lower

00:54:26

is that it's it's geographically

00:54:29

Diversified but there are other

00:54:31

reasons just to do with

00:54:32

the the nature of the

00:54:33

risk. And so I just

00:54:35

want to close this some

00:54:36

some brief thoughts about what

00:54:38

you might do. If if

00:54:40

I look I'm just gonna

00:54:41

just in the Sovereign spread

00:54:43

altogether. So even as a

00:54:45

starting point and and look

00:54:47

at something else, I mean,

00:54:48

there are a couple of

00:54:49

possibilities one is that you

00:54:52

know, you've got these outfits

00:54:54

there are several of them

00:54:55

that do political and Country

00:54:56

risk analysis. So, you know,

00:54:58

they can first Risks for

00:55:02

a different given industry and

00:55:05

within you know, and they'll

00:55:06

do that within the country.

00:55:07

They often do produce these

00:55:09

type of nuanced analyzes that

00:55:11

that can be quite helpful.

00:55:12

And the other thing that

00:55:14

that can be helpful occasionally

00:55:16

is looking at political Risk

00:55:18

insurance. So I mean the

00:55:20

Matilda mentioned this interesting instance

00:55:23

where you know in car

00:55:24

key versus Pakistan with the

00:55:25

claim to try to argue

00:55:25

that there's zero country risk

00:55:27

because they had, you know,

00:55:28

political Risk insurance and The

00:55:32

other way that this can

00:55:33

come in is that you

00:55:34

can make inferences from the

00:55:35

price of political Risk insurance

00:55:37

about, you know, certain types

00:55:38

of risks, you know the

00:55:39

risks that are insured for

00:55:40

either for that country that

00:55:42

company itself or for, you

00:55:45

know, analogous situations. So, I

00:55:47

mean, these are the sorts

00:55:49

of tools that we have

00:55:50

in our toolkit that allow

00:55:51

us to get away from

00:55:52

Miguel Lopez called fudge factors

00:55:55

and these other kind of

00:55:56

cookie cutter approaches, and I

00:55:58

think increasingly we probably That's

00:56:02

all. Thanks very much. Thanks,

00:56:05

Rob that does very helpful

00:56:07

and we get to to

00:56:09
more of that in a

00:56:12
minute or before before we

00:56:14
go. I mean, I want

00:56:15
to follow up with with

00:56:15
Carlos briefly on it. But

00:56:16
before we before I do

00:56:18
that again, I forgot to

00:56:19
mention that right after because

00:56:22
presentation we would have some

00:56:24
Q&A. So if you have

00:56:26
any questions that you have

00:56:28
for apparent list, feel free

00:56:30
to use our chat. There's

00:56:31

a question there about the

00:56:33

presentations and I think the

00:56:36

organizers are telling me that

00:56:37

we should be able to

00:56:37

share those class of the

00:56:40

webinar. But if you have

00:56:40

other questions on substance of

00:56:41

the things that have been

00:56:42

discussed also feel free them

00:56:44

in the chart without Carlos.

00:56:46

Can you briefly comment you

00:56:49

want to briefly comment on

00:56:49

this adjustments that Rob mentioned

00:56:52

to The Sovereign spread measures?

00:56:54

Yes, of course and I

00:56:56

believe that but what probably

00:56:58

is being home the point

00:56:59

that country risk needs to

00:57:01

be determined that they may

00:57:02

spend level and considering Levels

00:57:05

that are Faith investment equation

00:57:06

and I would let that

00:57:08

a traditional approaches really use

00:57:10

by practitioners are starting point,

00:57:13

but one needs to explore

00:57:15

alternative waste to Country in

00:57:17

order to see where they

00:57:19

really a specific things that

00:57:20

are affecting the investment again

00:57:21

is same and in this

00:57:24

case, I adjustments like Lambda

00:57:27

really are helping to determine

00:57:29

country risks that are more

00:57:31

applicable maybe to an investment.

00:57:33

I'm not saying that is

00:57:34

the only one but is

00:57:35

is an additional and and

00:57:37

the fact that as Robert

00:57:39

make the point that there

00:57:41

is a coupling of the

00:57:42

country and the foreign risk

00:57:44
a really is that that

00:57:46
fact is forces. All of

00:57:48
us is forcing all of

00:57:49
us to focus more in

00:57:50
looking at alternative ways to

00:57:53
analyze in a country risks

00:57:55
and there is no doubt

00:57:57
us as proverb pointed out

00:57:59
that that a these these

00:58:02
political rating Consulting work. They

00:58:05
they the insurance are an

00:58:07
instrument that is an additional

00:58:08
instrument that all of us

00:58:09
need to look at it

00:58:10
and see the evolution. And

00:58:12
in order to make an

00:58:13
assessment applying a standard methods

00:58:16
are a good starting point.

00:58:18
But I believe that all

00:58:19
of us here in this

00:58:20
panel at this point in

00:58:22
our experience believe that we

00:58:24
we just need to explore

00:58:26
further without for the benefits

00:58:29
of the projects project. No,

00:58:31
no to help claim and

00:58:33

respond and it's just go

00:58:34

and focusing what's going to

00:58:36

have is happening to the

00:58:37

project. Infinite. Okay, just to

00:58:42

read provocative. He said in

00:58:45

this Ethan using a sovereign

00:58:47

default spread type of analysis.

00:58:51

to calculate the countries of

00:58:54

any gospel of the same

00:58:58

as using essentially a kitchen

00:58:59

knife to actually pay the

00:59:02

cancer, you know when you

00:59:03

could use a scalpel to

00:59:05

to perform that surgery. I

00:59:08

believe that all of us

00:59:10

will answer. Yeah. I mean,

00:59:11

it's easy. I believe that

00:59:13

isn't interesting and analogy and

00:59:15

you see now we're hands

00:59:16

as practitioners as as if

00:59:19

expert to come up with

00:59:20

a values that really are

00:59:23

affecting the investment please. I

00:59:28

just just wait to For

00:59:31

my perspective, I would use

00:59:32

it like a reference value

00:59:34

there, but I just need

00:59:35

to go down. It's just

00:59:36

yeah, and I I hate

00:59:38

surgeries in order to cut

00:59:40

because we need to cut

00:59:41

so I believe that there

00:59:42

are approaches that we need

00:59:43

to explore alternatives. Thank you

00:59:47

guys, and I'm here just

00:59:48

to I think there's one

00:59:50

thing that we have an

00:59:51

explored yet. I mean we

00:59:52

have looked at Country risk

00:59:54

measures and we talked about

00:59:56

how they you know, in

00:59:57

theory there will be applicable

00:59:59

to particular investment and exposure

01:00:01

of that investment to the

01:00:02

countries. But what we haven't

01:00:04

talked about I think is

01:00:05

critical also is that we

01:00:08

are kindness in a particular

01:00:09

context and this is a

01:00:10

context in many cases of

01:00:11

treaty arbitrations and Country risk

01:00:14

measures will normally include the

01:00:17

risk of expropriation or treatment

01:00:20

or other actions by government

01:00:23

that in principle are protected

01:00:25

by the visit. So we

01:00:27

have seen review at the

01:00:29

beginning taking a different approaches

01:00:32

about that. What are your

01:00:34

thoughts? And I know you

01:00:35

you've been more cases. So

01:00:37

where are your thoughtsy about

01:00:39

those particular risk, and how

01:00:41

wine should not reduce the

01:00:45

value? those Sure. Thanks again

01:00:50

for for inviting me to

01:00:52

to join these panel today

01:00:54

and thank you all so

01:00:55

what arbitration update and an

01:00:58

En and Jose Antonio particular

01:01:00

and channel to what to

01:01:02

all of those of you

01:01:03

in the audience for celebrating

01:01:04

the the Jewish New Year

01:01:06

today. So the question that

01:01:09

Miguel asked me is whether

01:01:10

it's appropriate to include the

01:01:12

resource of and compensated expropriation

01:01:15

in other words confiscation. Other

01:01:18

unfair treatment as part of

01:01:19

the country is premium in

01:01:21

the valuation of investment investment

01:01:23

arbitration. and the short answer

01:01:26

to this question is that

01:01:27

it is inappropriate to so

01:01:29

because it essentially incentivizes respondent

01:01:32

state to benefit from its

01:01:34

own a local conduct to

01:01:36

the detriment of investor. And

01:01:38

I submit that this is

01:01:39

a perverse result. So first

01:01:42

let us keep in mind

01:01:44

why these issues important you

01:01:47

heard from Olga that the

01:01:49

higher the country race the

01:01:50

lower the compensation respondent stay

01:01:52

with all to a protecting

01:01:53

investor for contact that is

01:01:55

unlawful under international law. And

01:01:58

second we need to understand

01:01:59

what country risk or political

01:02:01

risk is and what it

01:02:03

is not and I will

01:02:05

also rely on Professor. I

01:02:08

don't know if he's a

01:02:08

professor but he's an economist

01:02:09

geared back your back hurts

01:02:12

from Colombia and who has

01:02:14

ridden several articles on the

01:02:16

topic and there is one

01:02:17

excellent that was publishing the

01:02:18

Journal of corporate financing 2016.

01:02:22

He with others Define the

01:02:25

concept of political race or

01:02:27

countries for a given country

01:02:28

as quote. The reason the

01:02:30

countries government actions or imperfections

01:02:33

of the countries Executives legislative.

01:02:36

And judicial institutions adversely affect

01:02:40

the value of an investment

01:02:41
by a foreign firm in

01:02:43
that country. These definition encompasses

01:02:47
government seizure private assets or

01:02:49
output and creeping forms of

01:02:51
expropriation shassas such as unexpected

01:02:55
taxes or royalties and profits

01:02:57
or pernicious currency regulations. It

01:03:00
also includes instability of relevant

01:03:02
government policies as well as

01:03:03
the strength of the legal

01:03:05
system, especially with respect to

01:03:06
enforcement of property rights. finally

01:03:09
internal and external conflicts such

01:03:12

as general strikes terrorism and

01:03:14

Civil War are also typically

01:03:17

categorized as part of political

01:03:19

risk importantly political risk does

01:03:22

not Encompass natural disasters such

01:03:26

as earthquake nor does it

01:03:27

include macroeconomics or financial risk

01:03:30

factors and quote? so you

01:03:33

probably notice as I was

01:03:36

reading this definition that some

01:03:39

of the risk some can

01:03:41

you guys mute your your

01:03:42

cameras your phones because And

01:03:47

you probably noticed that in

01:03:50
the definition. There are some

01:03:53
risks included there that are

01:03:55
the very same Breeze that

01:03:57
most investment treaties intend tend

01:03:59
to protect from with very

01:04:01
very degrees of protection. I'm

01:04:03
talking about direct and indirect

01:04:04
experiencing unexpected taxes or royalties

01:04:07
on profits. currency restrictions instability

01:04:12
of government policies and you

01:04:14
probably also know that some

01:04:16
of the race in this

01:04:18
definition are not protected by

01:04:19

investment treaties like for instance

01:04:21

lacks enforcement of Ip rights.

01:04:24

For instance could the stealing

01:04:26

of Ip by a private

01:04:27

actors in a host country

01:04:29

engage the responsibility the international

01:04:31

responsibility of the host country

01:04:33

under an investment treaty? Most

01:04:35

likely not perhaps under certain

01:04:37

circumstances that could be a

01:04:39

violation of a treaty but

01:04:40

unlikely similarly natural disasters are

01:04:43

not protected by treaties. so

01:04:47

is some of these reefs

01:04:49

of unlawful conduct are baked

01:04:51

into the country race of

01:04:52

a given country. Show the

01:04:55

valuation exercise include or exclude

01:04:57

those risks related to that

01:04:59

conduct. And this leads me

01:05:01

to the second question that

01:05:03

Miguel pose and which is

01:05:06

whether sand tribunals have taken

01:05:09

different views on these issues

01:05:11

and we got a glimpse

01:05:12

of that through materials presentation.

01:05:14

The answer is yes. Tribunal's

01:05:17

mainly dealing with Venezuelan cases

01:05:19

have grapple with this issue.

01:05:21

On just to put things

01:05:23

in context and the main

01:05:26

topic that was discussed in

01:05:28

the context of those cases

01:05:30

was whether Venezuela's policies of

01:05:33

national of nationalization of Investments.

01:05:37

And in some cases nationalization

01:05:39

without compensation. Whether that those

01:05:43

policies that tend to depress

01:05:45

the value of the investment.

01:05:46

How do we take into

01:05:47

account in the garden in

01:05:50

the country is calculation and

01:05:51

and the first case that

01:05:53

deal with this issue was

01:05:54

called Reserve. This cases you

01:05:56

will see that these cases

01:05:57

were resolved around the same

01:06:00

time in some cases. They

01:06:03

were able to benefit from

01:06:04

other analysis in previous cases

01:06:07

in some others. They just

01:06:09

a or not because of

01:06:11

the timing of the decisions

01:06:12

and in some cases they

01:06:14

just ignore some other decisions,

01:06:16

but in Gold resolve this

01:06:18

again, September 2014. The tribunal

01:06:21

recognized the principle that it

01:06:23

is inappropriate to use country

01:06:26

risk premium that quote includes

01:06:28

some element reflective of the

01:06:30

state policy to nationalize investments

01:06:33

in quote. So in that

01:06:35

case the tribunal rejected the

01:06:37

country risk premium sponsored by

01:06:39

Venezuela because it Incorporated some

01:06:41

of those elements but the

01:06:43

tribunal also rejected the cancer

01:06:45

experiment offer by the claimant

01:06:46

because it didn't take into

01:06:48

account political race other than

01:06:50

expropriation. Remember when we went

01:06:51

over the definition there were

01:06:53

some risk in the political

01:06:55

reason that certainly are protectively

01:06:58

by treaties, but there are

01:07:00

some others are not so

01:07:01

tribunal said, you know, there

01:07:02

are some that have to

01:07:04

be taking into account because

01:07:05

they are not deeply protected

01:07:06

by treaties. Are that decision

01:07:10

was followed by Venezuela Holdings

01:07:12

against Venezuela and was rendered

01:07:14

a month later, you know

01:07:16

toward 2014 and the tribunal

01:07:19

here basically avoided the question

01:07:21

with a circular argument. The

01:07:23

Trevino said right before an

01:07:25

expropriation. There is a race

01:07:27

of expiration does the race

01:07:29

of confiscation that is confiscating

01:07:31

expiration must be taking into

01:07:32

account period those essentially a

01:07:36

give or take the recenting

01:07:39

of the Tribunal. Later in

01:07:43

that year November 2014. We

01:07:46

have the case of Luke

01:07:47

hafen, which was his concessionaire

01:07:50

of an IOP of one

01:07:52

of the airports in Venezuela.

01:07:53

And in that case the

01:07:55

tribunal essentially recognized the same

01:07:56

general proposition that the tribunal

01:07:58

in Gold Reserve. But added

01:08:00

a timing element it held

01:08:03

that quote a state that

01:08:05
through the adoption of new

01:08:06
policies adopted after the investment

01:08:09
was made after investment was

01:08:11
made. Increases the country risk

01:08:14
may not benefit of its

01:08:15
own a lawful conduct to

01:08:17
reduce the compensation do end

01:08:19
quote. So we can see

01:08:22
here these idea that it

01:08:25
is inappropriate to take into

01:08:28
account country risk created by

01:08:30
the respondent state. And after

01:08:34
the investment was very may

01:08:36

but not before the investment

01:08:37

was made and then we

01:08:38

have the case of Thai

01:08:41

water when it's versus Venezuela

01:08:43

also, which was rendered a

01:08:44

few months later in March

01:08:45

2015 and the tribunal rejected

01:08:48

this principle and held that

01:08:50

the issue was an economic

01:08:53

question on a legal question

01:08:54

and you feel that under

01:08:56

the applicable treaty. He was

01:08:58

required to exclude only the

01:09:00

particular and lawful conduct at

01:09:02

the issue in that case

01:09:03

an extra patient. So, you

01:09:06

know on the literal reading

01:09:07

of the treaty they tribunal

01:09:10

focus on the language of

01:09:11

the expiration close of the

01:09:13

treaty and it says I

01:09:15

had to take into account

01:09:16

if our market value of

01:09:17

the investment immediately before the

01:09:20

exploration and I don't need

01:09:22

to look further into whether

01:09:23

these policies that might have

01:09:25

depressed the value of the

01:09:26

investment should be included or

01:09:28

excluded in the country which

01:09:29

calculation and in my view

01:09:32

And I had to disclose

01:09:34

it. I was Counseling in

01:09:35

that case and in one

01:09:36

of these other cases this

01:09:38

analysis is flawed from an

01:09:41

economics and a legal point

01:09:42

of view from from an

01:09:44

economics point of view because

01:09:45

it's centered only on whether

01:09:47
the Willing buyer would take

01:09:49
that reason to account when

01:09:51
acquiring investment. The tribunal completely

01:09:54
ignored the other side of

01:09:55
the transaction that is whether

01:09:58
an investor protective within adequate

01:10:00
investment treaty will part ways

01:10:02
will sell. an investment if

01:10:06
they purchase price is heavily

01:10:08
discounted for race that the

01:10:09
very same treaty is intended

01:10:11
to protect from so let

01:10:13
me offer you and analogy

01:10:15

just to make this point.

01:10:17

If an invest ourselves and

01:10:18

investment with a policy that

01:10:20

provides and insurance policy that

01:10:22

provides protection for certain specific

01:10:24

political race events. Should that

01:10:28

seller assume that a policy

01:10:29

is worthless and thus accept

01:10:31

the price the price that

01:10:34

ignores the protection. The answer

01:10:37

is no has to be

01:10:38

no. So that I think

01:10:40

for that reason I think

01:10:41

that analysis is flawed. From

01:10:43

a legal point of view.

01:10:45

I think it's also analysis

01:10:47

flow because it essentially avoids

01:10:48

the question of whether a

01:10:49

state can depress the value

01:10:51

of an investment through its

01:10:52

own unlawful conduct. A party

01:10:55

should not be able to

01:10:57

benefit from its own wrongful

01:10:59

conduct to decrease the compensation

01:11:00

of those but it's as

01:11:02

a basic principle of law.

01:11:05

After these cases a few

01:11:06

others follow. I'm not going

01:11:08

to recite them or tell

01:11:10

you what they are. But

01:11:11

essentially they fall in one

01:11:13

or these two camps that

01:11:15

we we have a discussed.

01:11:19

So what are the more

01:11:21

conclusions can we extract from

01:11:22

from these cases? Well, first

01:11:26

one is the ultra, you

01:11:28

know seem to agree that

01:11:30

the specific property act or

01:11:33

a lawful conduct issue in

01:11:35

a particular case must be

01:11:36

disregarded. Okay, that is it

01:11:38

pretty basic principle. No tribunal

01:11:41

has said that conduct should

01:11:42

be taking into account. But

01:11:44

tribunals are split on the

01:11:46

issue of whether the country

01:11:47

is premium should include the

01:11:49

risk of policies to nationalized

01:11:51

investment in general or adopt

01:11:54

other unlawful measures in disregard

01:11:55

of international law. We saw

01:11:58

that in Gold reserve and

01:11:59

include happen the terminals agree

01:12:01
that these elements should be

01:12:05
disregarded. And we also saw

01:12:07
that include Half and the

01:12:09
time in element introduced by

01:12:10
HIV, you know. In that

01:12:14
case again. It's terminal said

01:12:15
it should be disregarded only

01:12:17
if those policies are adopted

01:12:19
after the investment. The investor

01:12:22
made its investment. On finally

01:12:25
we saw email. So we're

01:12:26
holding something water that they

01:12:28
rejected this approach. So with

01:12:32

that summary, I will conclude

01:12:35

my presentation Miguel and I

01:12:37

think I probably exceeded my

01:12:38

time, but I am open

01:12:41

to any questions. I mean,

01:12:42

no that's that's really good.

01:12:43

I mean, yeah, thank you

01:12:45

and I again invite them.

01:12:48

Participants we don't have much

01:12:49

time left. But I if

01:12:51

you want to put any

01:12:52

questions in the chat in

01:12:54

the meantime, I I do

01:12:55

have a follow-up questions for

01:12:57

for both me and nothing

01:13:00

there from you know, more

01:13:01

of a practical point of

01:13:02

view and you both mention

01:13:04

the you know particular you

01:13:07

Miguel mention how you know

01:13:08

claimants are presented and how

01:13:10

the response and what the

01:13:11

community say. Do you think

01:13:13

until they mentioned by the

01:13:14

way that they were these

01:13:15

two cases were famous when

01:13:17

we did zero percent country

01:13:18

risk or a 0.5% countries.

01:13:21

Do you think there's a

01:13:22

way for claimants to make

01:13:24

their country's case more transparent

01:13:28

to the tribunal rather than

01:13:29

taking maybe what the tributions

01:13:31

may think to be to

01:13:33

extreme position or I remember

01:13:35

one of the case, I

01:13:36

think you mentioned we got

01:13:36

the Serena say well that

01:13:37

that countries that came as

01:13:39

proposal is too low and

01:13:40
they went with something in

01:13:41
between but that's one to

01:13:43
go with something in between.

01:13:44
They may end up siding

01:13:45
with another, you know with

01:13:47
respondent. Us because they came

01:13:50
as position is nowhere articulating

01:13:52
that respect and what are

01:13:54
your thoughts about that? I

01:13:56
think that's a good point

01:13:57
and I think that is

01:13:57
possible. And in fact, I

01:13:59
am now trying a case

01:14:02

in which we're using a

01:14:04

mythology like that because there

01:14:07

are some and I think

01:14:08

Robert mentioned these there are

01:14:11

some consultancy groups out there

01:14:14

that are evaluating particular ways

01:14:17

to particular countries using different

01:14:19

metrics and then isolating how

01:14:21

they build that country is

01:14:23

index. So then you can

01:14:25

reverse engineer and deconstruct that

01:14:27

rating or index and and

01:14:30

apply those metrics to a

01:14:32

other methodologies that you may

01:14:34

use to come up with

01:14:36

a solid robust and you

01:14:39

know cohesive methodology that can

01:14:42

explain how did you get

01:14:43

to to the the countries

01:14:47

premium that you using your

01:14:49

your cause of equity? Yeah.

01:14:56

Okay. Yes, thank you. I'm

01:14:59

attilio. What did you you

01:15:01

saw those Awards too and

01:15:02

maybe you also have some

01:15:03

thoughts about that. Yeah, just

01:15:06

to offer a bit of

01:15:07

a more theoretical question as

01:15:09

to what the claimants can

01:15:10

do to just not propose

01:15:11

zero. I mean, we've been

01:15:12

hearing that it's you know.

01:15:16

In including the country risk

01:15:18

premium in the discount rate.

01:15:18

It allows states to benefit

01:15:20

from their wrongful conduct. But

01:15:22

you also have to look

01:15:22

at the other side of

01:15:23

the coin which would be

01:15:24

a vit is not an

01:15:26

insurance against all wrongs a

01:15:28

vit does not protect completely

01:15:30

firm expocation. It's intended to

01:15:32

manage or mitigate this risks

01:15:34

and therefore that cannot translate

01:15:36

into a country receiving of

01:15:37

zero and that's what It's

01:15:42

a thought for for two

01:15:43

months to consider when presenting

01:15:45

this issues to the tribunal

01:15:46

because this is often you

01:15:48

sign some of the cases

01:15:49

we talked about the country

01:15:50

risk offer by claimant was

01:15:51

zero and the tribunal was

01:15:53

just reluctant to accept that.

01:15:57

Straight away. I'm not so

01:15:59

sure that in some cases

01:16:01

in these cases the countries

01:16:03

propose like claim us all

01:16:04

completely zero. I think it

01:16:05

was a low country. I'm

01:16:06

not sure was here. Yeah,

01:16:09

I think one of them

01:16:10

as well in cases in

01:16:11

the ones that are that

01:16:13

the recent ones in the

01:16:14
five I think is right

01:16:15
and I think and I

01:16:16
think you know, that is

01:16:17
an interesting the question because

01:16:18
you know, it is a

01:16:20
different. you know we're talking

01:16:22
here when when a situations

01:16:26
where states have engaged in

01:16:29
a campaign or in a

01:16:31
overt policy of nationalization of

01:16:35
disrespect for the rule of

01:16:36
law, you know without providing

01:16:38
any compensation and the question

01:16:40

is can that breeze be

01:16:42

taking into account or not?

01:16:43

That is it that is

01:16:44

the issue really that what

01:16:46

was being addressed in Venezuelan

01:16:48

cases? Yeah, I think that

01:16:50

in the case of other

01:16:52

countries the the various a

01:16:54

little more nuance and it

01:16:56

may have to do with

01:16:56

a particular facts of the

01:16:58

case, but it is not

01:17:00

this question of General policy

01:17:02

towards us taking over all

01:17:05
private investment without compensation that

01:17:07
it is being discussed. Yeah,

01:17:10
just just clarify that the

01:17:12
case that that weren't claimant

01:17:14
proposed 0% was a car

01:17:15
key case and they relied

01:17:16
on the fact that they

01:17:17
had insurance policies and a

01:17:18
vit to say. We really

01:17:20
don't need to account for

01:17:20
the country risk anymore. So

01:17:21
we're offering zero and that's

01:17:23
sort of the particular example.

01:17:25

I was alluding to Yeah,

01:17:27

that's maybe not didn't. Agree

01:17:29

with that but I think

01:17:31

just to close the panel

01:17:33

anything. We have any any

01:17:34

questions Reliance, but just to

01:17:35

close the pattern will be

01:17:36

behind schedule. We you know,

01:17:39

how important this topic is.

01:17:41

I think we are we

01:17:42

we spend so much time

01:17:43

on these and I guess

01:17:45

it the message overall is

01:17:47

that times needs to be

01:17:48

spent on this the the

01:17:50

impact on on the final

01:17:52

number is very significant. I

01:17:55

think we all have to

01:17:55

always understand that and it

01:17:57

can be a five Factor.

01:17:58

It can be something that

01:17:59

we just put at the

01:18:00

end or the tribuna may

01:18:01

spend, you know a line

01:18:02

or two on it. It's

01:18:03

a topic that deserves attention.

01:18:06

It has a an impact

01:18:07
and and I think all

01:18:10
of you all your views

01:18:11
or your time preparing these

01:18:12
these presentations and with this

01:18:15
I will turn to either

01:18:16
for Centennial or Ian. I

01:18:19
think there may be some

01:18:20
networking session now. thank you

01:18:28
very much, Miguel and thank

01:18:29
you Matilda Olga, and I'm

01:18:33
Naming you in the in

01:18:35
the way that I see

01:18:36
you Robert Miguel Lopez Carlos

01:18:41
and and Miguel are moderator.

01:18:44
Thank you very much. It

01:18:45
was it was an absolutely

01:18:46
rich panel. Thank you very

01:18:51
much Matilda for for sort

01:18:53
of updating everyone on the

01:18:54
cases and and sort of

01:18:57
starting with a baseline that

01:18:58
that I believe allows everyone

01:19:01
to understand the issue of

01:19:04
country risk. Thank you everyone

01:19:07
sort of like to to

01:19:09
put some some emphasis on

01:19:12

on the challenges from a

01:19:14

Quantum expert perspective on on

01:19:18

what data to take into

01:19:20

account Etc. And also on

01:19:23

on the issues that that

01:19:24

the the tribe, you know,

01:19:28

make grapple with and and

01:19:29

also Council for respondent counsel

01:19:32

for and to make grapple

01:19:34

with when analyzing whether there

01:19:36

should be or not and

01:19:38

to what extent what that

01:19:40

is, they get country risk

01:19:42

taking into account with that.

01:19:45

I would also like to

01:19:46

move forward with our breakout

01:19:50

rooms. I believe that there

01:19:51

might be about four or

01:19:54

five record rooms perhaps so

01:19:57

will will go into that

01:20:00

and and we're also I

01:20:04

would like also to advise

01:20:05

everyone that that this this

01:20:07

session has been recorded that

01:20:08

we should have it up

01:20:09

on the web sometime in

01:20:12

October with a new tools

01:20:15
that will allow people to

01:20:16
search for content in the

01:20:18
video as such so thank

01:20:21
you and and let's move

01:20:23
on to the breakout rooms.

01:19:59
will go into that and

01:20:00
and we're also I would

01:20:04
like also to advise everyone

01:20:06
that that this this session

01:20:07
has been recorded that we

01:20:08
should have it up on

01:20:10
the web sometime in October

01:20:12
with a new tools that

01:20:15

will allow people to search

01:20:17

for content in the video

01:20:19

as such so thank you

01:20:21

and and let's move on

01:20:23

to the breakout rooms. Analysis

00:00:03

now, I'll hand it over

00:00:05

to Dr. Rivas to introduce

00:00:08

our moderator and we'll proceed

00:00:10

Jose. Thank you. Thank you

00:00:14

Ian and thank you, you

00:00:16

know first of all to

00:00:19

all of our sponsors as

00:00:20

you know, the World operation

00:00:23

update is a form which

00:00:25

was created at both to

00:00:28

update on issues of investors

00:00:31

State arbitration International commercial arbitration

00:00:34

and public international law as

00:00:38

one of its objectives. The

00:00:40

other objective is of the

00:00:43

world arbitration update is to

00:00:47

The centralized International arbitration and

00:00:50

and therefore here you see

00:00:52

speakers and experts from from

00:00:57

many services related to International

00:01:00

arbitration, but also from many

00:01:02

jurisdictions. In a diverse manner

00:01:05

now, I would like to

00:01:07

it's to introduce our moderator

00:01:11

and and say that this

00:01:14

is a key subject for

00:01:16

any International rotation. The subject

00:01:20

related to Country risk is

00:01:21

is one that hopefully this

00:01:24

this panel will be able

00:01:25

to demystify I would like

00:01:28

to thank Miguel exactly because

00:01:29

he has been a force

00:01:31

behind the the idea of

00:01:34

putting together this panel by

00:01:35

providing comments we have also

00:01:40

Who colleagues from from there

00:01:42

who have also provided information

00:01:44

and ideas to put this

00:01:47

panel together. We have, you

00:01:51

know, several colleagues here that

00:01:52

will be introduced by BL.

00:01:53

But but as for Miguel,

00:01:55

I would like to say

00:01:56

that he is an executive

00:01:58

vice president at Compass lexicon

00:02:02

is based in Houston. He

00:02:04

has over 20 years of

00:02:06

experience in economic financial consulting.

00:02:08

He has provided written an

00:02:11

old testimony or expert advice

00:02:14

in over 40 treaties and

00:02:16

Commercial International arbitration cases under

00:02:18

several arbitration rules, including exit

00:02:22

answer trial ICC and many

00:02:24

others. He has conducted damages

00:02:27

assessments as well as economic

00:02:29

financial and Regulatory analysis related

00:02:33

to assets in oil and

00:02:35

gas Our Generation telecommecations and

00:02:38

many other Industries. He has

00:02:40

worked in various arbitrations involving

00:02:44

cases that involved the various

00:02:47

countries and and I won't

00:02:50

read the list but I

00:02:51

can assure you that there

00:02:52

are all based in more

00:02:54

than five in more than

00:02:56

four continents. I would say

00:02:57

and I will close my

00:03:00

introduction to Miguel I do

00:03:02

I really do not want

00:03:02

to embarrass him and I

00:03:04

will give way to what

00:03:05

will be no doubt a

00:03:07

fabulous panel Miguel you have

00:03:09

the floor. Thank you, Jose

00:03:11

Antonio. Thank you very much.

00:03:12

Yeah, and also for the

00:03:14

invitation to already spinal put

00:03:17

this planet together. I I

00:03:18

really like this format of

00:03:20

the word arbitration update and

00:03:22

how we come together and

00:03:24

pick topics and and really

00:03:26

dig into them. Hopefully, this

00:03:29

will be a very useful

00:03:30

question session for all of

00:03:32

the attendees. I have a

00:03:35

very distinguished group of experts

00:03:37

with me economy experts legal

00:03:39

experts. So I would like

00:03:41

to introduce them today one

00:03:43

by one before we dive

00:03:45

into the into the issues.

00:03:46

I was I would like

00:03:48

to start with matinee Le

00:03:50

Flores. She's gonna be our

00:03:51

presenter today, which is this

00:03:53

this great idea that we

00:03:54

have at the world reputation

00:03:55

that day when we do

00:03:56

someone's gonna present the topic

00:03:57

for us and give us

00:03:58

and the latest On the

00:04:01

topic on in the in

00:04:02

international reputation. So you hear

00:04:04

Matilda Matilda is an associate

00:04:05

Chaffee agency in New York

00:04:07

her practice focuses on investment

00:04:09

and Commercial arbitration. She has

00:04:11

handled cases under all major

00:04:14

arbitration rules including icdr ICC

00:04:17

unusual exceed and scia. Okay,

00:04:20

she's having both disputes and

00:04:21

energy sector construction licensing and

00:04:24

distribution agreements. I'm Banking and

00:04:26

finance Matilda has specific experience

00:04:28

with damages modeling in the

00:04:30

context of long-term contracts before

00:04:32

joining trafficity. Material. There was

00:04:34

an associate at an international

00:04:36

law firm in Paris. So

00:04:38

welcome until then thank you

00:04:39

for joining us today. Then

00:04:42

we will continue with organava.

00:04:44

Okay and Associate principal in

00:04:47

the antitrust and competition practice

00:04:49

of Charles Rivers associate and

00:04:51

a senior visiting policy score

00:04:53

at the center for business

00:04:54

and policy public policy at

00:04:56

Georgetown University. She's specializes in

00:04:59

complex litigation that Application of

00:05:01

economic statistical and financial analysis

00:05:04

Chief frequently assist clients in

00:05:06

economic and policy matters including

00:05:08

damages analysis in both domestic

00:05:11

disputes and international arbitrations as

00:05:12

well as competition and antitrust

00:05:14

analysis intellectual property and ground

00:05:17

certification. Her work covers a

00:05:19

variety of Industries include energy

00:05:21

food products consumer products software

00:05:24

applications book publishing and real

00:05:26

estate. She has a particular

00:05:28

expertise in Telecom me and

00:05:30

technology and she has caught

00:05:32

or a series of new

00:05:33

newsletter topics related to 5G.

00:05:35

She has also published articles

00:05:38

on various economic topics you

00:05:40

reviewed journals. So, thank you

00:05:42

Olga very much for joining

00:05:45

us today. She will she

00:05:47

was with diving into the

00:05:48

country's topic today, which is

00:05:50

gonna be great. And then

00:05:52

she would be followed by

00:05:53

Carlos Pawan agudero calories in

00:05:56

managing director at infrastructure. Economic

00:05:58

Consulting. He's a regulatory Economist

00:06:01

damage is expert in international

00:06:02

regressions. He has special expertise

00:06:05

in unity regulation Market restructuring

00:06:07

and economic assessment of liability

00:06:09

and damages for clients the

00:06:11

power natural gas or roads

00:06:14

Mining and other infrastructure Industries.

00:06:17

One has helped clients in

00:06:19

cases involving economic utility decision

00:06:21

making reach of confidentiality Contracting

00:06:24

a market interaction and contract

00:06:26

disputes for governments and private

00:06:28

investors. As an expert of

00:06:30

in the regulation of utilities.

00:06:31

Carlos has worked for more

00:06:33

than 30 years for private

00:06:35

companies Regulatory Agencies utilities and

00:06:38

system operators on a range

00:06:40

of different issues. So thank

00:06:42

you very much Carlos joining

00:06:45

us today in the panel.

00:06:46

We will also hear Robert

00:06:49

Patton. Robbie said director at

00:06:51

near economic Consulting. He's based

00:06:53

in Toronto, Canada. He's a

00:06:56

charter financial analyst and holds

00:06:58

a master's degree from the

00:06:59

London School of Economics. Rob

00:07:01

a routinely advises clients and

00:07:03

policy and strategy as well

00:07:05

as on economic issues arising

00:07:07

in complex litigation and application

00:07:08

matters in a disputes context.

00:07:11

Rob has testified in multiple

00:07:12

venues and has access damages

00:07:14

in matters alleging expropriation bridges

00:07:17

of the fair Network treatment

00:07:18

standard breach of contract and

00:07:20

the information among other issues

00:07:22

his approaching Quantum typically combines

00:07:24

traditional evaluation approaches such as

00:07:26

discounted cash for analysis, which

00:07:27

we will be discussing today

00:07:29

with Advanced Techniques from finance

00:07:31

and economics. He has author

00:07:33

articles on Topics in financial

00:07:35

economics and valuation as well

00:07:37
as studies of financial regulation

00:07:39
and other public policy issues.

00:07:41
Thank you very much Rob

00:07:42
for for joining us today,

00:07:44
and we will end the

00:07:46
panel with a presentation by

00:07:48
miguelo before as many of

00:07:52
you know, it's a partner

00:07:52
at Covington building in Washington,

00:07:54
DC. His practice focus is

00:07:56
on International arbitration and litigation.

00:07:58
He co-chairs Covington's Global problem

00:08:01
solving Practice Group. He has

00:08:03

successfully represented a wide range

00:08:04

of clients including those in

00:08:06

the oil and gas mining

00:08:07

Communications Financial Services pharmaceutical biotech

00:08:11

and Food Industries in both

00:08:12

investors State and Commercial arbitrations.

00:08:15

He has been recognized by

00:08:17

Chambers Global chambers that in

00:08:19

America and the I500 as

00:08:21

a living international application lawyer.

00:08:23

His work is praised by

00:08:25

clients for his total analysis,

00:08:27

insightful advocacy and consistently reliable

00:08:30

judgment both civil law and

00:08:32

common law train Miguel handles

00:08:34

contentious work in English Spanish

00:08:35

and Portuguese. He's a frequent

00:08:38

lecture and arbitration and international

00:08:39

law issues at conferences and

00:08:42

universities around the globe. And

00:08:44

he also said as arbitrator

00:08:46

and we will have the

00:08:48

privilege of hearing him given

00:08:49

that he's he has also

00:08:50

been Council for claimants in

00:08:53

two cases that we will

00:08:54

explore today because they have

00:08:56

dealt with the issue of

00:08:57

countries, which are more videos.

00:08:59

That would be very interesting

00:09:02

to hear. So, thank you

00:09:03

Miguel for joining us today.

00:09:04

And thank you all of

00:09:06

you. So let me get

00:09:07

started with with this parallel

00:09:09

as I said, we have

00:09:10

Matilda. As our presenter Matilda.

00:09:15

I know that what you

00:09:16

have worked on many cases

00:09:18

as I mentioned involving countries

00:09:20

risk, and as a presenter

00:09:22

of the topic, which you

00:09:23

explain to us and walk

00:09:24

us through your views on

00:09:26

this topic how it is

00:09:28

why it is relevant and

00:09:30

how it has surfaced in

00:09:31

recent arbitrations. Sure. Thank you.

00:09:36

Good afternoon, everyone and thank

00:09:39

you for joining our panel.

00:09:41

So let's be in by

00:09:43

looking at the first question

00:09:44

that Mia asked why is

00:09:46

country risk relevant. Well as

00:09:48

most of you already know

00:09:50

one of the most widely

00:09:51

adopted methods in valuating assets and

00:09:54

international arbitration is the discounted

00:09:56

cash flow or DCF methodology.

00:09:59

Where future cash flows of

00:10:00

an investment are projected and

00:10:02

then discounted back to a

00:10:04

specific valuation date through the

00:10:06

application of a discount rate,

00:10:07

which is intended to reflect

00:10:09

the riskiness of the investment.

00:10:11

And the country risk in

00:10:13
turn is often incorporated into

00:10:14
the DCF and 60 represent

00:10:16
the incremental risk associated with

00:10:19
investing in a particular foreign

00:10:21
country. So what this means

00:10:23
is that virtually every case

00:10:25
that involves a DCF analysis.

00:10:29
also involved in analysis of

00:10:31
our country risk premium either

00:10:32
inclusively or explicitly and finally

00:10:36
the country is that is

00:10:37
ultimately adopted by a tribunal

00:10:39
can have a significant impact

00:10:41
in the amount of Damages

00:10:42
awarded and we will see

00:10:44
how this can come into

00:10:45
play later in my presentation.

00:10:49
Now the specific issue of

00:10:51
country risk was extensively discussed

00:10:53
in a series of awards

00:10:55
issued in the Venezuelan context

00:10:56
in 2014 and 2015 and

00:10:59
from which two different trench

00:11:01
Trends approaching country risk emerged.

00:11:05
As mentioned by Miguel earlier,

00:11:07
this will be addressed by

00:11:08

other panelists here. But just

00:11:09

by way of background, we're

00:11:11

going to look at the

00:11:11

main conclusions of this tribunals.

00:11:15

so gold Reserve versus Venezuela

00:11:17

Here are the tribunal held

00:11:19

that it was not appropriate

00:11:20

to increase the country risk

00:11:21

to reflect the risk that

00:11:23

a state May expropriate and

00:11:25

investment therefore aligning more with

00:11:27

the claimants views, but noting

00:11:30

that country risk should take

00:11:31

into account the genuine risk,

00:11:33
including political risk other than

00:11:35
expiration. Conversely if we look

00:11:38
at Venezuela Holdings or mobile.

00:11:41
Here the tribunal considered that

00:11:44
the confiscation risk remained part

00:11:45
of the country risk and

00:11:46
must be taken into account

00:11:48
in the determining the discount

00:11:49
rate. So aligning more with

00:11:51
the respondents here. And in

00:11:54
a similar veined the tribunal

00:11:56
and Tidewater aligned more with

00:11:57
the state's position and determine

00:11:59

that the country risk premium

00:12:00

was an economic rather than

00:12:02

a legal question. That was

00:12:03

not specifically tied to the

00:12:05

measure something nice to the

00:12:07

flame. Now if we look

00:12:11

at awards from the last

00:12:14

couple of years we can

00:12:15

see that country risk is

00:12:17

no longer exclusively tied or

00:12:19

exclusively discussed within the Venezuelan

00:12:22

context. And in fact, it

00:12:23

is an issue that tribunals

00:12:25

all over the world continue

00:12:26

to Grapple with and often

00:12:28

consider different different parameters or

00:12:30

reach different conclusions. So for

00:12:34

example, if we started by

00:12:35

looking at DeVos versus India,

00:12:37

this is the case involving

00:12:40

the cancellation of the lease

00:12:41

agreement for broadcasting Services, which

00:12:44

was helped to constitute a

00:12:45

non-lawful exploration. And the tribunal

00:12:48

adopted the DCF methodology founded

00:12:50

to be there are reliable

00:12:52

way to Value the assets.

00:12:53

But hell that there was

00:12:55

that no additional rate should

00:12:56

be applied to the discount

00:12:57

rate to account for Country

00:12:59

risk. And the reason for

00:13:02

this according to the tribunal

00:13:03

was that the country risk

00:13:05

was already implicit in the

00:13:06

claimants expert model because it

00:13:09

used a discount rate that

00:13:10

was based on Indian government

00:13:11

bonds of 8.6% which were

00:13:14

not risk free. So this

00:13:16

is more consistent with the

00:13:17

gold Reserve approach. We just

00:13:19

saw where the tribunal health

00:13:20

of no additional premium should

00:13:22

be account should be incorporated

00:13:23

to include to account for

00:13:25

the country risk. now if

00:13:27

we look at another recent

00:13:28

award car key versus Pakistan

00:13:31

again, this was another contractual

00:13:32

termination contract the tribunal determined

00:13:35

that there was an unlawful

00:13:36

expropriation and the GCF results.

00:13:39

the methodology of the methodology

00:13:41

adopted but here the country

00:13:44

risk proposed by the respondent

00:13:45

Pakistan of 9% was preferred

00:13:48

over the claimants proposed rate

00:13:50

of zero percent. And why

00:13:53

was this? Well, the claimant

00:13:55

argued that the investors already

00:13:57

had insurance policies and the

00:13:59

bit. Which should have protected

00:14:02

already the claimant and there

00:14:04

was no need for an

00:14:05

additional country risk, but the

00:14:07

tribunal disagreed and noted that

00:14:09
insurance policies did not eliminate

00:14:11
all social political and legal

00:14:13
risks and specifically noted that

00:14:15
for example, the claimant had

00:14:17
to litigate with its best

00:14:19
or with this with its

00:14:20
ensure and actually receive the

00:14:22
lower payout than it was

00:14:24
anticipated. So the term and

00:14:27
so and so the tribunal

00:14:28
determined that the vit and

00:14:30
even an insurance policy did

00:14:32
not really completely eliminate the

00:14:34

country risk. It merely mitigated

00:14:36

it. now if we go

00:14:39

back to Latin America BBVA

00:14:42

versus Venezuela here the the

00:14:45

treaty breach that was found

00:14:47

was a violation of the

00:14:48

fet standard so not an

00:14:49

expropriation case, but the DCF

00:14:52

methodology was also employed And

00:14:54

it arrived in a arriving

00:14:57

at the adopted country risk

00:14:58

the tribunal looked at the

00:15:00

Emerging Market bonds index or

00:15:02

embi that was closest to

00:15:04

the valuation date. Because they

00:15:06

tell that this would reflect

00:15:07

the market conditions the market

00:15:10

expectations at the time and

00:15:12

in this particular case. The

00:15:14

measures were around 2020 and

00:15:16

so these included the investors

00:15:18

perceptions of the effect of

00:15:20

covid-19 on The Sovereign risk

00:15:22

of Bolivia. And this led

00:15:24

the tribunal to adopt a

00:15:25

higher country risk 6.2% as

00:15:28

proposed by the respondent versus

00:15:30
the lower rate proposed by

00:15:31
the time Um, if we

00:15:35
look at another case security

00:15:36
report versus Benin, this is

00:15:38
an ICC case, so we're

00:15:40
now in the context of

00:15:41
commercial arbitration, but again wrongful

00:15:44
termination of a contract for

00:15:45
airport security services and DCF

00:15:48
employees to Value future cash

00:15:51
flows. And specifically concerning the

00:15:54
country risk analysis the tribunal

00:15:56
rejected the claimants proposed country

00:15:58
risk of 0.5% and in

00:16:01
doing so it rejected the

00:16:02
claimants argument that a contract

00:16:04
stabilization costs in the contract

00:16:07
meant that there was no

00:16:08
additional country risk premium needed.

00:16:11
The tribunal looked at the

00:16:13
fact that the unpaid invoices

00:16:14
are issuing the case bared

00:16:16
interest and then it ended

00:16:18
and and that that showed

00:16:20
an indication that the claimants

00:16:21
anticipated at least certain risks

00:16:23

associated with the project and

00:16:25

for this recently adopted a

00:16:26

country risk of 5% What's

00:16:30

interesting about this case? Is

00:16:31

that here the analysis focused

00:16:33

on whether the contractual stabilization

00:16:36

Clause eliminated the need to

00:16:38

include a country risk premium.

00:16:39

But this is very analogous

00:16:41

to the analysis that some

00:16:42

investment is investment tribunals engaging

00:16:44

when the determining whether the

00:16:46

bi the bit also eliminates

00:16:49

this this need to incorporate

00:16:50

a specific premium per country

00:16:52

risk. And in this particular

00:16:54

case as we just saw

00:16:55

the terminal answer this question

00:16:57

in the negative and side

00:16:59

of the respondent. And finally,

00:17:02

we look at another commercial

00:17:04

case data fan versus Kosovo

00:17:06

Telecom. This is a nicesty

00:17:09

case and the fluoride is

00:17:10

not public but there's there's

00:17:11

some public information that tells

00:17:13

us how the tribunal dealt

00:17:14

with with country risk. And

00:17:17

specifically here the claimant proposed

00:17:19

to use the country risk.

00:17:21

as a country with the

00:17:22

average between Albania and Serbia,

00:17:24

which are causing those neighboring

00:17:25

countries because there's no official

00:17:27

credit rating for cost about

00:17:30

but the respondent claim that

00:17:32

these would underestimate cost of

00:17:33

those credit rating and instead

00:17:35

proposed to rely on an

00:17:37

average of of country ratings

00:17:39

that had a similar oecd

00:17:41

ranking than Coastal and this

00:17:43

is what the tribunal agreed

00:17:44

with Um determining that country

00:17:47

risk cannot just simply be

00:17:48

the average of geographical neighboring

00:17:52

countries. So what we can

00:17:55

what we can gather from

00:17:56

from this five cases is

00:17:57

that the tribunal's approaches to

00:18:00

Country risk? They extend beyond

00:18:02

the Venezuelan context they extend

00:18:04

outside of the vit investment

00:18:06

arbitrations here. and the approaches

00:18:11

that tribunal's employee remain relatively

00:18:13

consistent and considering different variables.

00:18:16

So just looking at the

00:18:17

country rates adopted in these

00:18:19

five cases this range from

00:18:21

arguably zero percent in Davis

00:18:23

to 9% in car key

00:18:25

and in awards that involved

00:18:28

millions of dollars as is

00:18:29

often the case in investment

00:18:30

arbitration. This range of country

00:18:33

risk can have a significant

00:18:33

impact on the awards of

00:18:35

Damages that are ultimately awarded.

00:18:38

And so we just thought

00:18:39

I conclude and I turn

00:18:41

it over to you. Thank

00:18:46

you, Matthew. That was super

00:18:47

helpful. And it is very

00:18:49

nice to have this this

00:18:51

presenter mode where you walk

00:18:54

us through this recent Awards

00:18:55

and we can see how

00:18:56

this issue is is very

00:18:58

much relevant. It still can

00:19:02

swing the damages amounts by

00:19:03

a significant volume. So so

00:19:06

we I think we we

00:19:08

all have to be cognizant

00:19:09

of it and with that

00:19:10

in mind I would like

00:19:11

to turn out to Olga

00:19:12

because you know to explore

00:19:14

a little bit what we

00:19:15

talk about when we talk

00:19:16

about country risk from an

00:19:18

economic point of view and

00:19:20

how such risk should impact

00:19:22

the value. I mean, we

00:19:23

think we all know that

00:19:24

it will have an impact

00:19:26

but how how it impacts

00:19:28

how it comes to impact

00:19:30

the assessment of damages of

00:19:31

the assessment body. Thank you

00:19:35

so much Miguel and thank

00:19:37

you for having me on

00:19:38

this panel. So. Assessing dentist

00:19:43

in international arbitrations and specifically

00:19:46

investors baby suits often requirements

00:19:48

and sports responsibilities. Like how

00:19:55

much it said this relationship?

00:20:01

Mobile value at the rate

00:20:07

which reflects both the value

00:20:09

of money in the future

00:20:10

and there is of course.

00:20:18

The lower is the value

00:20:21

of projects. determining what the

00:20:29

government discovered is and one

00:20:33

of the most heavily debated

00:20:34

questions in the context of

00:20:35

Damages assessment allows relating to

00:20:37

the measurement in the appropriate

00:20:39

treatment of their so-called franchise

00:20:41

countries is an incremental risk

00:20:43

of operating in a country

00:20:44

that is not the us

00:20:46

or a single National employee

00:20:47

importantly contribute want to respirable

00:20:50

and systematic degrees away, right?

00:20:59

So I'd like to overload

00:21:01

information to find the business

00:21:03

school professors here. Sorry. Sorry

00:21:07

interrupt Olga Miguel and yeah

00:21:10

dogs cannot hear the apparently

00:21:13

the audio quality is really

00:21:14

about is there where you

00:21:17

can change your microphone or

00:21:19

maybe do different? Okay, right.

00:21:25

Can you hear me? Yeah,

00:21:26

yes, that is better Olga.

00:21:30

Just just one suggestion giving

00:21:33

that this is recording and

00:21:35

that you you have not

00:21:36

gone, you know, very far

00:21:38

in your presentation because we

00:21:39

I I wasn't able to

00:21:42

get most of what you

00:21:43

said. So if if you

00:21:46

don't mind I would invite

00:21:48

you to like restart, so

00:21:49

that folks can can hear

00:21:51

you and that makes sense

00:21:52

and and do not worry.

00:21:53

I should have advised you

00:21:55

on that earlier. My apologies.

00:21:57

Thank you. Thank you. Sorry

00:21:59

about that. Um, so as

00:22:01

I as I mentioned that

00:22:04

you know, when we approach

00:22:06

assessing future damages in international

00:22:09

arbitrations and specifically inventor State

00:22:12

disputes, we often use this

00:22:13

so called discounted cash flows

00:22:16

methodology. It's also called DCF.

00:22:18

And the critical component of

00:22:20

this methodology is determining an

00:22:22

appropriate discount rate discount rate

00:22:25

from economic perspective reflects the

00:22:27

value of money in the

00:22:28

future and the level of

00:22:29

risk uncertainty. The high is

00:22:32

the discount rate. The lower

00:22:33

is the net present value

00:22:34

of a project or asset.

00:22:37

So it's really important to

00:22:39

determine what the appropriate discount

00:22:41

rate is and among the

00:22:43

most heavily debated questions in

00:22:45

the context of Damages assessment

00:22:46

are those relating to the

00:22:48

measurement in the appropriate treatments

00:22:50

of so-called countries risk country

00:22:53

risk is an incremental risk

00:22:54

of operating in a country

00:22:55

that is not the us

00:22:56

or a similar mature economy

00:22:58

and importantly countries is non-diverse

00:23:01

viable risk, and it's also

00:23:04

called systematic risk. So it's

00:23:05

one that investors cannot diversify

00:23:07

by investing in different assets.

00:23:11

I'd like to offer you

00:23:12

a definition from to professors

00:23:14

from the Columbia business school

00:23:16

geared becard and Robert hodrick.

00:23:18

So they say that country

00:23:20

is concludes the adverse political

00:23:22

and economic risks of operation

00:23:24

in the country. For example

00:23:25

a recession in a country

00:23:27

that reduces their revenues of

00:23:28

exporters to that nation is

00:23:30

a realization of country risk

00:23:32

labor strikes strikes by a

00:23:34

country's dog workers trackers and

00:23:36

Transit workers that disrupt production

00:23:38

and distribution of products last

00:23:41

lowering profits also qualify as

00:23:43

country risks clashes between rival

00:23:45

ethnic or religious groups that

00:23:46

prevent people in a country

00:23:47

from shopping can also be

00:23:49

considered country risk. A special

00:23:52

case of country risk is

00:23:53

a political risk, which emerges

00:23:55

because future actions of a

00:23:57

government can negatively affect future

00:23:59

cash flows of a company

00:24:00

examples of such risks are

00:24:02

a risk of seizure of

00:24:04

private assets or output unexpected

00:24:06

taxes or royalties and profits

00:24:08

internal or external conflicts such

00:24:11

as general strikes terrorism and

00:24:13

War and instability of relevant

00:24:16

policies to the operation of

00:24:17

a company. So one of

00:24:20

the key challenges of addressing

00:24:22

countries is that there's no

00:24:23

consensus on how to define

00:24:24

country risk making its measurements

00:24:26

somewhat problematic. However, if you

00:24:28

wanted to approach this to

00:24:31

conduct an evaluation, we need

00:24:32

to specify how the risk

00:24:35

should be Quantified and having

00:24:36

Quantified the risk. We should

00:24:38

translate it into a risk

00:24:39

premium. There are two main

00:24:41

methods on how we generally

00:24:43

approach that the first one

00:24:44

is probability weighted cash flow

00:24:46

scenarios. and because countries because

00:24:51

most often warrants a reduction

00:24:53

in value this method based

00:24:54

on cash flow situations must

00:24:56

often equates to considering additional

00:24:58

downside situations and probability weight

00:25:01

in them. This is this

00:25:03

approach is considered to be

00:25:04

more theoretically, correct. So for

00:25:07

example, consider a project that

00:25:08

is based in an imaginary

00:25:10

country Aberdeen that needs to

00:25:11

be evaluated from the perspective

00:25:13

of a US investor and

00:25:15

then assume that this project

00:25:16

generates 10 million a year

00:25:17

forever, and then that an

00:25:20

appropriate discount rate the 10%

00:25:22

the net present value of

00:25:24

session investment would be 10

00:25:25

million divided by 0.1 or

00:25:27

100 million. Now if we

00:25:29

were to implement countries risk

00:25:33

consider that there's a 20%

00:25:35

chance of a downside situation.

00:25:37

In this case. We need

00:25:39

to adjust and expect the

00:25:40

expected cash flow down to

00:25:41

8 million, which is 10

00:25:44

million with the probability of

00:25:45

0.8 and 0 with probability

00:25:47

of Point 2. So we

00:25:49

get the net present value

00:25:50

of an investment including country

00:25:53

risk now is 80 million.

00:25:55

It's important to note that

00:25:59

the possible future cash flows

00:26:00

in their respective probabilities should

00:26:02

be those that relate to

00:26:04

the project in question. The

00:26:07

second approach. So while the

00:26:11

first approach is most theoretically

00:26:12

correct. It's often really hard

00:26:15

to construct such scenarios in

00:26:18

the same probabilities to them.

00:26:19

Therefore oftentimes practitioners used second

00:26:22

approach which is country risk

00:26:24

premium added to a discount

00:26:25

rate. So consider The same

00:26:29

imaginary country Aberdeen but now

00:26:30

assume that the appropriate countries

00:26:32

premium that should be added

00:26:34

to this country this 2.5%

00:26:35

So in this case The

00:26:37

Net Present Value East 10

00:26:39

million divided by 0.1. Plus

00:26:41

this country is premium and

00:26:44
you get again to 80

00:26:45
million in this case. We

00:26:50
see that the adjustment. Of

00:26:54
the discount rate led to

00:26:56
inherithmetically equivalent result implemented probability

00:26:59
weight and can be adjusted.

00:27:01
In a risk premium. It's

00:27:03
also important to note that

00:27:04
if the future expected cash

00:27:08
flows. Are reduced as a

00:27:11
result of the country specific

00:27:12
risks, then the risks of

00:27:14
investing in the project are

00:27:15

clearly Incorporated in the valuation

00:27:17

and no adjustment to the

00:27:19

discount rate is necessary. So

00:27:21

in this case, if you

00:27:22

if you already adjust future

00:27:25

cash flow levels to incorporate

00:27:27

countries, and also at the

00:27:28

country is premium to a

00:27:30

discount rate. You would be

00:27:31

down down double counting countries.

00:27:37

So I'd like to offer

00:27:39

you some. Measures that are

00:27:42

out there and Carlos will

00:27:45

discuss how to translate those

00:27:47

measures into a country's premium.

00:27:48

But so I thought you

00:27:50

know would be interesting to

00:27:50

see how the current political

00:27:52

situation affected the country risk

00:27:57

inside. I have here coffees

00:28:00

countries assessment and I have

00:28:01

it for two quarters free

00:28:03

Ukraine Russia Ukraine conflict in

00:28:05

quarter 4 of 2021 and

00:28:08

post and so this is

00:28:10

business default in Risk so

00:28:11

you can see that um,

00:28:13

not only Russia and Ukrainian

00:28:16

risk has increased but also

00:28:18

you can see that European

00:28:20

countries also are considered to

00:28:22

be more risky. And secondly,

00:28:25

so this is another tool

00:28:27

that is often used to

00:28:28

it estimate countries premium. So

00:28:33

here I have Sovereign monthly

00:28:34

Sovereign default spreads and I

00:28:36

had them again for Russia

00:28:38

Venezuela European Ukraine and you

00:28:39

see that you know, you

00:28:42

see how volatiles volatile they

00:28:44

are. And also it presents

00:28:45

some challenges in estimating what

00:28:46

the country is premiums are

00:28:48

so for example for Russia.

00:28:50

The country is premium has

00:28:51

been relatively low until the

00:28:53

current conflict where it should

00:28:55

and then no data became

00:28:57

is not no data past

00:28:59

February is available and you

00:29:00

see that Ukraine has been

00:29:03

Kind of volatile and more.

00:29:06

So after the current conflict

00:29:08

started and surprising someone surprisingly

00:29:12

The Sovereign defaults spread has

00:29:15

dropped in the recent ones.

00:29:18

to pre-crisis level and finally,

00:29:20

I'd like to show you

00:29:21

also similar server and default

00:29:24

spreads, but for countries in

00:29:26

North America and Europe and

00:29:28

so again you can you

00:29:29

see how their volatile they

00:29:31

are and Kind of here.

00:29:33

You can see what the

00:29:34

impact of the current crisis

00:29:35

is. So There is some

00:29:40

impact of Europe on Europe,

00:29:41

but I think it's because

00:29:41

it reflects risk in the

00:29:44

Ukraine. And with that I'd

00:29:46

like to pass it to

00:29:47

back to Miguel. Thank you.

00:29:50

Thank you yoga. That was

00:29:52

a really good and just

00:29:53

say follow up comment on

00:29:55

on what you just explain

00:29:56

and I think it for

00:29:58

example that you provide. This

00:29:59
is very telling I mean

00:30:00
just two and a half

00:30:02
percent premium on the discount

00:30:05
rate and cost 20% reduction

00:30:07
in the value. I mean

00:30:08
this is this is what

00:30:10
we are talking about right

00:30:11
when people throw this this

00:30:12
numbers these methods of countries.

00:30:14
We have to really think

00:30:15
what we are doing to

00:30:16
the valuation and without if

00:30:19
you can comment a little

00:30:21

bit and was always just

00:30:22

said I mean we all

00:30:24

agree, of course at more

00:30:25

race results in lower value,

00:30:26

but the tools to measure

00:30:28

that the risk seem to

00:30:30

be of critical importance. It's

00:30:31

all right. Thank you. Yeah,

00:30:34

absolutely. The the tools are

00:30:36

very important because we have

00:30:38

to remember what the purpose

00:30:40

of the exercise is. The

00:30:41

first place the purpose of

00:30:42

the exercise is to determine

00:30:44
the net present value of

00:30:45
an asset or a company

00:30:46
and a It you know,

00:30:51
they know principles of corporate

00:30:52
finance will say that what

00:30:54
you should do in that

00:30:55
case is first to determine

00:30:57
what type of cash flows

00:30:59
you have. You are trying

00:31:00
to evaluate and what particular

00:31:03
risk affect that set of

00:31:05
cash flows and if possible

00:31:07
you should account for that

00:31:08

reason in the cash flows

00:31:10

and not using some fudge

00:31:13

factor in the discount rate,

00:31:15

which is what we have

00:31:17

observing a lot of cases

00:31:19

and sometimes that is not

00:31:21

possible sometimes not that's not

00:31:24

a you know, you don't

00:31:27

have data that will let

00:31:29

you do that. But in

00:31:31

a lot of cases it

00:31:32

is possible and some unfortunately

00:31:35

is not done. Eh, and

00:31:38

and we see these for

00:31:39

instance in sometimes where they

00:31:42

use of sovereign default spreads

00:31:44

as a proxy for for

00:31:47

a for country race because

00:31:51

you know, what, does that

00:31:52

metric measure? Well, the metric

00:31:53

measures the risk that is

00:31:55

sobrant will be fold. And

00:31:57

that would be a completely

00:31:58

irrelevant risk. For say in

00:32:02

oil and gas venture in

00:32:04

country X that export all

00:32:06

its Productions to Countrywide. You

00:32:08

know, who why do I

00:32:09

care if that country is

00:32:11

going to be following sovereign

00:32:13

debt is completely relevant. So

00:32:14

by using that metric to

00:32:17

calculate the risk that supposedly

00:32:21

the gas flows from that

00:32:22

country might be affected. You

00:32:24

know, I might be completely

00:32:25

underestimating the value of the

00:32:27

investment by using that tool.

00:32:30

So that's why I think

00:32:31

it is very important to

00:32:32

be careful with the tools

00:32:33

that are used. In the

00:32:34

last few years and I

00:32:37

think we're gonna hear more

00:32:37

about that. There are some

00:32:39

other metrics that have been

00:32:40

developed to try to oscillate

00:32:43

isolate precisely a what type

00:32:47

of race we are talking

00:32:48

about and I think that

00:32:49

is a good development and

00:32:50

hopefully tribunal will become more

00:32:52

familiar with the technique and

00:32:54

use that more in the

00:32:57

future. Thank you. That's that's

00:33:02

great. And I think we

00:33:04

we want to explore those

00:33:06

those techniques that traditionally use.

00:33:09

I think they that's that's

00:33:10

the point here. We let's

00:33:12

explore a little bit of

00:33:13

those study on those traditional

00:33:15

techniques that you mentioned me

00:33:17

that I normally used that

00:33:19

sometimes are not perfect or

00:33:20

far from perfect and then

00:33:22

we'll see how we go

00:33:23

from there. But just to

00:33:24

get it so that we

00:33:25

are all in the same

00:33:26

patient those things Carlos. Can

00:33:28

you walk us through where

00:33:30

are these most commonly methods

00:33:33

use including the Sovereign spread

00:33:34

that both origami I have

00:33:36

mentioned and how do you

00:33:38

deal with those in practice?

00:33:40

Yes. Hey, thank you Miguel.

00:33:43

And thank you word arbitration

00:33:45

update for the invitation. I

00:33:47

am Carlos pavon managing director

00:33:48

of infrastructure economic Consulting. So

00:33:51

I'm going to discuss about

00:33:52

the traditional approaches before going

00:33:54

deep in other a Alternatives

00:33:56

as Matilda a and Olga

00:34:00

pointed out going to risk

00:34:01

is with countries. We are

00:34:03

trying to to measure the

00:34:04

incremental risk that an investment

00:34:06

is subject to when operating

00:34:07

in a country a These

00:34:10

countries must be known universifiable

00:34:13

and they include issue aspects

00:34:15

like microeconomic and Regulatory and

00:34:17

political trees fiscal and currency

00:34:19

risk is preparation risk and

00:34:21

internet conflict. Someone others the

00:34:24

impact on magnitude of each

00:34:25

one of these elements depends

00:34:27

really on the specific asset

00:34:28

and that is all something

00:34:29

that that I would like

00:34:31

to emphasize always and countries

00:34:33

as projects as Olga pointed

00:34:35

out here. I'm going to

00:34:37

discuss is those approaches that

00:34:39

add to the course of

00:34:40

equity but as she pointed

00:34:42

out there are other alternatives

00:34:43

to adjust the cash flows.

00:34:46

The the first approach that

00:34:48

I want to mention is

00:34:49

the ratings approach that everybody

00:34:51

knows and I mean the

00:34:52

Credit Agencies come to a

00:34:53

country and they produce a

00:34:56

they assign is is a

00:35:00

rate into a country and

00:35:01

they go on model based

00:35:03

on different variables and they

00:35:04

say well you are double

00:35:06

a triple A. In terminal

00:35:08

in Practical terms practitioners assign

00:35:11

to each one of the

00:35:11

of the ratings a value

00:35:13

by looking at the default

00:35:14

rate for a bond versus

00:35:16

they they fall free Bone

00:35:18

for that country. And in

00:35:20

that way they come up

00:35:21

with with an approximation of

00:35:22

risk the issue with this

00:35:24

approach is that is the

00:35:26

focuses on the fall and

00:35:27

may obscure other risk. The

00:35:30

other problem is that the

00:35:30

rate of change may not

00:35:32

reflect changes really in political

00:35:34

risk and the timing and

00:35:36

biased the timing and bias

00:35:38

issues had been great as

00:35:39

a problem and I would

00:35:41

say the most important aspect

00:35:43

here is that they are

00:35:44

not Market oriented. This is

00:35:46

just a table showing what

00:35:47

all of us know different

00:35:49

different ratings and this table

00:35:51

they show the second one

00:35:52

is showing how people assign

00:35:54

to specific ratings a how

00:35:58

they obtain the default rate.

00:36:00

They the other approach the

00:36:03

more generic The Sovereign is

00:36:05

spread approach. What is doing

00:36:06

is really measuring the difference

00:36:08

between deals the yield between

00:36:10

a local bond versus a

00:36:11

bond denominated in her currency,

00:36:13

obviously with a similar maturity.

00:36:15

The advantage is a market

00:36:17

base and it's less objective

00:36:18

apparently provides a more granular

00:36:21

differentiation and more countries in

00:36:23

terms of risks and is

00:36:24

more Dynamic than ratings and

00:36:26

cannot just quickly to information.

00:36:28

That is important. However, the

00:36:31

problem with this approach is

00:36:32

they they volatility and and

00:36:35

also the issue is that

00:36:37

the measure risk at the

00:36:39

specific point in time and

00:36:40

may not reflect really actual

00:36:42

default risk exposures. And as

00:36:46

we as you guys have

00:36:47

here is it could marry

00:36:48

create risk allowed to The

00:36:50

Sovereign versus the one that

00:36:51

is is that could assume

00:36:53

and Equity investor? Destably showing

00:36:56

the hey for the selected

00:36:59

countries. They the bones for

00:37:01

for this country 10 year

00:37:03

bond rates versus the USD

00:37:05

bone and the last column

00:37:07

shows the default spread. Eh

00:37:10

following this is spreads Southern

00:37:13

expressed. We have seen in

00:37:15

the market something that is

00:37:16

called Emerging Market bone index

00:37:17

the MPS are waited indexes

00:37:21

produced by JP Morgan and

00:37:22

what they measure is the

00:37:23

rate of return of active

00:37:24

credit dollar denominated external the

00:37:26

instruments. And exists different MPS

00:37:30

MB plus the global the

00:37:32

Diversified and specific aim is

00:37:34

for for some countries for

00:37:37

Country risk determination. One uses

00:37:39

the yield of these bones

00:37:40

versus a benchmark Park a

00:37:43

benchmark Bond NBA as as

00:37:45

the beauty is that they

00:37:46

are metric is a metric

00:37:48

produced by the market. However,

00:37:50

again is questionable whether the

00:37:53

control is reflect it reflected

00:37:55

in the spread applied to

00:37:56

the investment a under analysis.

00:38:00

This table is just showing

00:38:01

that I wanted to show

00:38:03

how this spreads aim and

00:38:06

the returns for Brazil have

00:38:08

moved from 2000 to 2016

00:38:10

as you can see is

00:38:11

there is a volatility there.

00:38:13

This I call it Professor

00:38:15

the motherland's approaches. I believe

00:38:16

that is the one that

00:38:18

many people uses a professor.

00:38:21

The mother has uses the

00:38:22

Sovereign rate in front of

00:38:24

the from one of the

00:38:25

Credit Agencies and estimated the

00:38:27

whole spreads for that rating.

00:38:29

The advantage for my perspective

00:38:31

the professor the mother and

00:38:33

does is that he is

00:38:34

scales the full spreads by

00:38:35

multiplying that if that is

00:38:38

spread by the create but

00:38:39

the relative Equity Market volatility

00:38:41

for that market in order

00:38:43

to arrive to to the

00:38:45

contrary risk. Mmm, if I

00:38:48

mean in order to to

00:38:49

avoid all volatility and tragedy

00:38:52
issues Professor the mother and

00:38:53
what he does is to

00:38:54
use indices and that that's

00:38:55
an advantage and obviously this

00:38:58
is the market based approach

00:38:59
that incorporate specific Market characteristics

00:39:02
here. I just graph the

00:39:04
graph for selected countries Devolution

00:39:07
of a control risk premiums

00:39:09
according Pro for according to

00:39:10
Professor the mother and as

00:39:12
you can see there have

00:39:13
been more volatiles some more

00:39:15

times than other I chose

00:39:16

Argentina Brazil Colombia Egypt Mexico

00:39:19

Philippines and church. Obviously the

00:39:22

big one that we see

00:39:23

here is Argentina. Another interesting

00:39:25

instrument that is in the

00:39:27

market is is the credit

00:39:28

default swap spreads. The city

00:39:31

is a contracts that allow

00:39:32

investors to buy protections again

00:39:34

a credit event of the

00:39:36

issuer. Country risk premium is

00:39:38

is the spread between the

00:39:39

city's premium under analysis and

00:39:41

the Cities Premium on The

00:39:43

Benchmark Benchmark country Sovereign Bond.

00:39:46

The advantage of the CDs

00:39:48

is this is the frequency

00:39:49

of the data. However, the

00:39:51

issue is that the city

00:39:53

Simplicity assumes that the premium

00:39:55

for the respawn by the

00:39:57

investors in government. That is

00:39:59

the same as that pay

00:40:00

by investor, which is a

00:40:01

problem. It's the issue. It

00:40:03

doesn't insurance. Basically, it's an

00:40:05

insurance contract and the market

00:40:07

for CDs is very narrow

00:40:09

and concentrated in a very

00:40:11

few big players and Like

00:40:15

this one the exposure to

00:40:16

Country party and liquidity risk

00:40:18

is an issue that has

00:40:19

been raised and you guys

00:40:20

remember the problem with Lima?

00:40:23

And this figure here is

00:40:25

just showing how how CDs

00:40:28

can adapters the move in

00:40:30

the daily movement of the

00:40:31

CDs in case of agrees

00:40:33

and they vertical lines is

00:40:35

showing where the ratings were

00:40:37

adjusted. So some kindness is

00:40:40

interested to see how that

00:40:41

adjustment how the CDs really

00:40:43

reflected changes in contrary risks.

00:40:46

Here, I'm just decided to

00:40:47

graph a Devolution also for

00:40:51

a few countries for the

00:40:53

last six years or so.

00:40:55

So selected countries how this

00:40:57

is not since it's the

00:40:58

data is annual is not

00:40:59

that bullet volatile but is

00:41:02

at least is showing the

00:41:03

trend. in the last approach,

00:41:05

I would say that I

00:41:06

have here to to present

00:41:07

these developility of the equity

00:41:09

and dead and here one

00:41:10

is measuring the volatility of

00:41:12

the local that Equity or

00:41:14

bone Market to the volatility

00:41:17

of a reference mark In

00:41:19

Practical terms one takes is

00:41:21

the ratio between the volatility

00:41:22

and and that ratio is

00:41:25

applied to the market risk

00:41:26

Premier and finally one takes

00:41:28

the difference between estimated Market

00:41:30

premium and the market premium

00:41:31

the reference Market in order

00:41:33

to calculate the contrary. The

00:41:36

approach is an alternative to

00:41:37

measure investors risk exposure. But

00:41:39

one problem here is the

00:41:41

adequacy of the data not

00:41:43

all the countries have data

00:41:44

Deputy Market information. And so

00:41:47

the alternative is to go

00:41:48

to to indexes and that

00:41:51

is a problem liquidity issues

00:41:53

is another problem here. This

00:41:55

is a table that is

00:41:56

showing just numbers how the

00:41:58

calculation have been done and

00:42:00

for me to close. I

00:42:02

just want to say that

00:42:02

everything is showing really a

00:42:04

big correlation between markets. So

00:42:07

countries cannot be totally Diversified

00:42:10

several alternatives to estimate countries

00:42:13

exists. And I believe that

00:42:14
assessment of the information about

00:42:16
level is Paramount on the

00:42:17
practitioners and traditional methods assume

00:42:21
that every company in a

00:42:22
giving country share the same

00:42:23
risk exposure and that's probably

00:42:24
this an issue that the

00:42:26
practitioner is really need to

00:42:27
assess project profile specifics need

00:42:31
to be assess when estimating

00:42:32
country risk. I'm finally I

00:42:34
would say that Is not

00:42:36
only countries specific but also

00:42:38

asset specific. Thank you very

00:42:41

much. Thank you. Carlos. Tell

00:42:45

us a very informative and

00:42:46

I think it you you

00:42:49

very well explain different methods

00:42:52

to go to go about

00:42:53

measuring countries risk and many

00:42:55

of these as you have

00:42:57

explained our based on Sovereign

00:42:59

spreads, right which is which

00:43:00

is what we've been discussing.

00:43:01

So and I would like

00:43:02

to all guys if you

00:43:03

could follow up briefly. What

00:43:05

are your thoughts on this

00:43:07

Sovereign spreads measures and then

00:43:09

we'll Explore More with Rob.

00:43:11

So as Carla said so

00:43:15

kind of started some methods

00:43:16

and I think there's a

00:43:17

good starting point because oftentimes

00:43:20

circumstances of the case are

00:43:22

different and so you have

00:43:23

to kind of adjust, you

00:43:24

know, you start from this

00:43:25

kind of off-the-shelf Market risk

00:43:29

premium and then you can

00:43:29

adjust it using various methods.

00:43:32

And so one of the

00:43:33

methods that was recently developed

00:43:35

is when you you can

00:43:36

estimate using statistical techniques relationship

00:43:39

between Sovereign spread and various

00:43:42

characteristics of the country to

00:43:45

isolate certain sub-risks that you

00:43:48

think are important for for

00:43:51

your case. So when you

00:43:53

think about Soren spread it,

00:43:56

you know, it can reflect

00:43:57

political risk also financial and

00:44:00

economic risks, but maybe you're

00:44:01

future cash flows already incorporate

00:44:05

financial and economic risk. So

00:44:07

if you kind of add

00:44:09

that country is premium on

00:44:11

top of What you're already

00:44:12

Incorporated, you will be double

00:44:14

counting them. So using the

00:44:16

statistical techniques, you can isolate

00:44:18

some components of the risks

00:44:19

that are important for you.

00:44:20

And then sometimes Sovereign default

00:44:24

spreads are not available for

00:44:26

some countries or for example,

00:44:28

they are available for Venezuela,

00:44:30

but only up to certain

00:44:31

points in time as I

00:44:32

showed. So what you can

00:44:33

do you can again use

00:44:35

that statistical relationship that you

00:44:38

estimated and you can you

00:44:41

for example using characteristics often

00:44:44

as well or any other

00:44:45

country for each for which

00:44:46

the Thor in the fall

00:44:49

spread is not available. You

00:44:50

can calculate what the what

00:44:54

that Spirit should be based

00:44:55

on the country characteristics. So

00:44:58

these are kind of more

00:44:59

advanced methods and also looking

00:45:01

forward to see more usage

00:45:02

of them. Thank you yoga.

00:45:05

That's that's great. And with

00:45:07

that I'd like to turn

00:45:07

to to Rob. How do

00:45:11

we take this this traditional

00:45:12

methods to the next level

00:45:13

Rob? I mean, we we've

00:45:15

talked about them and how

00:45:16

we go from there to

00:45:17

something that is more sophisticated

00:45:19

and more robust and why

00:45:22

the traditional methods may not

00:45:23

work in certain circumstances Um,

00:45:26

well, thanks. Thanks Miguel for

00:45:28

having me here. And I

00:45:31

want to thank Carlos for

00:45:33

in his last five teaming

00:45:35

up. What's going to be

00:45:35

the key theme of my

00:45:38

remarks, which I think Carlos

00:45:41

put it very well and

00:45:42

he said the traditional methods

00:45:43

of adjusting for Country risk

00:45:45

assume that every country in

00:45:47

a given every company in

00:45:49

a given country is is

00:45:50

exposed to Country risk in

00:45:51

the same way. And so,

00:45:53

you know, what I want

00:45:54

to explore is how best

00:45:55

to incorporate country risk depending

00:45:57

on the specific nature of

00:45:58

the business the nature of

00:45:59

the risks and certain other

00:46:01

factors. So this is often

00:46:03

done in the broad context

00:46:04

of DCF and might adjust

00:46:06

the cash flows. It might

00:46:07

discount rate, but I want

00:46:09

to I want to focus

00:46:10

mainly on something called Lambda,

00:46:13

which I'll explain. it also

00:46:16

the so-called Sovereign ceiling which

00:46:21

I think has interesting implications

00:46:22

for for how we as

00:46:24

damage the experts Implement country

00:46:26

risk and I want to

00:46:27

along the way try to

00:46:28

incorporate some some practical considerations,

00:46:30

you know, what are the

00:46:31

issues that arise when you

00:46:33

know use that for a

00:46:33

really getting your hands dirty

00:46:35

and trying to trying to

00:46:36

implement these adjustments Um, okay.

00:46:39

So let's talk first about

00:46:40

Lambda. So Lambda is a

00:46:42

measure. Divides to reflects the

00:46:44

degree of exposure of a

00:46:46

company or an investment to

00:46:48

a particular country's risk. And

00:46:51

so Lambda is going to

00:46:52

be relevant for example in

00:46:54

context where we are considering

00:46:56

a company that is multinational

00:46:58

in nature or otherwise geographically,

00:47:01

Diversified. And it's most basic

00:47:04

form. It's estimated using revenues.

00:47:07

So if you're focused on

00:47:08

let's say a company in

00:47:10

Brazil, and then you might

00:47:11

look at the proportion of

00:47:12

revenues that your company of

00:47:15

Interest generates in Brazil. And

00:47:18

then you compare that to

00:47:19

the percentage of Revenue that

00:47:20

the average Brazilian company generates

00:47:22

domestically. So this becomes essentially

00:47:26

a scaling factor for the

00:47:29

country risk premium. So if

00:47:30

you're incorporating it, let's say

00:47:31

it's discount rate you you

00:47:33

might multiply the country risk

00:47:35

premium by Lambda in generating

00:47:38

your your overall Equity risk

00:47:40

premium. And so I mean,

00:47:42

this is I think it's

00:47:43

a helpful adjustment when we're

00:47:45

dealing with a company that

00:47:45

has degree of country risk

00:47:48

exposure that's different from the

00:47:50

average exposure of a company

00:47:52

in that country and we're

00:47:54

sort of getting away from

00:47:55

a one size. It's all

00:47:57

approach to to come here

00:47:58

is and it's certainly an

00:48:00

improvement on this kind of

00:48:01

simple. Binary assumption that country

00:48:04

risk, you know is is

00:48:05

either there or not. Um,

00:48:07

and of course we have

00:48:08

to be careful on how

00:48:09

we apply Lambda even so

00:48:11

just to give you some

00:48:12

examples if we focus on

00:48:14

the geographic breakdown of Revenue

00:48:16

that may not reflect the

00:48:19

breakdown of risk, right? So,

00:48:21

you know, for example, we

00:48:22

might want to look at

00:48:23

the breakdown of profit which

00:48:24

is I'll discuss in a

00:48:25

minute maybe maybe tricky to

00:48:26

implement but they're you know,

00:48:28

depending on this individual circumstances.

00:48:30

There may be other ways

00:48:31

that are appropriate to allocate

00:48:32

the risk, you know, for

00:48:33

example, some lines the company

00:48:35

business maybe more subject to

00:48:37

Country risk than others and

00:48:41

may you know, the risk

00:48:42

may be concentrated in particular

00:48:44

geography and another issue that

00:48:47

you can arise with even

00:48:49

revenue and I think will

00:48:51

be familiar to to a

00:48:52

number of people, you know

00:48:53

on this panel and maybe

00:48:54

in the audience is that

00:48:55

it's often the you know

00:48:59

where the production is happening

00:49:00

rather than you know, where

00:49:02

the are being earned so

00:49:03

you could have You know

00:49:05

a mind for example with

00:49:07

sales generated on International spot

00:49:09

markets their Diversified the revenue

00:49:11

May mainly come from less

00:49:13

risky countries. But of course

00:49:15

the Mind itself is in

00:49:16

immovable asset that you know,

00:49:19

maybe located in a more

00:49:20

risky country. So these sort

00:49:22

of classic sources of of

00:49:23

country risk that we all

00:49:26

focus on like expropriation or

00:49:27

or labor dispute. The those

00:49:31

will be felt at the

00:49:32

at the source of production

00:49:33

and even when it's the

00:49:36

product Market that the source

00:49:38

of the risk, you know,

00:49:39

Revenue may not be a

00:49:40
perfect proxy for that risk.

00:49:42
So I mean just to

00:49:43
give you an example this

00:49:44
is public so I can

00:49:45
talk about it. I worked

00:49:46
on a case there's actually

00:49:47
piece of litigation but we're

00:49:48
country risk arose and it

00:49:49
was it involved Canada Goose

00:49:52
who make these sort of

00:49:53
warm fashionable down jackets. And

00:49:56
so the scores in the

00:49:58
country risk in this case

00:49:59

was this sort of tensions

00:50:01

that arose between government Canada

00:50:03

and the government of China?

00:50:04

in Canada detained the CFL

00:50:07

of Huawei which we may

00:50:08

have read about and so

00:50:10

there what happened was there

00:50:12

was consumer boycott in China

00:50:14

of Canadian products and then

00:50:17

Canada Goose suffered from the

00:50:19

sort of being a high-profile

00:50:21

Canadian company and so you

00:50:23

know it So there the

00:50:25

the revenue is a good

00:50:26

starting point but as it

00:50:27

turned out it underestimated the

00:50:30

degree of country risk because

00:50:31

actually China was a huge

00:50:34

source of expected growth for

00:50:36

for Canada Goose so that

00:50:38

the exposure was actually outsized

00:50:40

as compared to what you

00:50:41

might infer just from looking

00:50:43

at a revenue breakdown and

00:50:46

you know what I think

00:50:47

with that highlights is that

00:50:48

now kind of getting into

00:50:49

like, you know, where to

00:50:50

you know, getting our hands

00:50:51

dirty and how do we

00:50:52

implement this stuff, you know?

00:50:55

Can run into implementation issues

00:50:57

because for one thing Revenue

00:50:58

data is the most easily

00:51:00

available with a geographic breakdown

00:51:02

from financial statements, you know,

00:51:04

if you want to look

00:51:04

at a breakdown of profit

00:51:05

you might end up having

00:51:06

to make some kind of

00:51:07
assumptions about allocation of costs

00:51:09
and that's more difficult. So,

00:51:11
you know where you're going

00:51:12
to get other sources of

00:51:13
data one one possibility is

00:51:16
equity analyst reports. If you're

00:51:18
dealing with a publicly traded

00:51:20
company or if you have

00:51:20
publicly traded proxies, which might

00:51:22
give you something more like

00:51:23
an allocation of value that

00:51:25
might be just what you're

00:51:26
looking for. That might be

00:51:27

a helpful discussion there of

00:51:29

Of the risks. So I

00:51:32

think you know in short

00:51:33

if you're if you're implementing

00:51:34

this kind of approach you

00:51:35

want to think about, you

00:51:37

know, first of all, just

00:51:39

give a careful thought to

00:51:41

the nature of the risks

00:51:42

and then be creative about

00:51:44

data sources and not sort

00:51:45

of, you know rely on

00:51:49

a cookie cutter approach. Let

00:51:52

me let me talk briefly.

00:51:54

I want to take up

00:51:55

too much time about this

00:51:56

idea of The Sovereign feeling

00:51:57

which I think is another

00:51:58

interesting topic because to me

00:52:01

is an interesting example of

00:52:02

how development in what ratings

00:52:04

agencies have been doing relates

00:52:06

to what we as damage

00:52:07

experts focus on you know,

00:52:09

it also picks up on

00:52:10

the theme that that several

00:52:11

speakers have mentioned that Sovereign

00:52:13

spread is not necessarily the

00:52:14

best proxy for risk, you

00:52:16

know, it's often the starting

00:52:17

point and then there's the

00:52:19

other approach that you see

00:52:20

often an international arbitration. Is

00:52:22

this approach that that Carlos

00:52:25

bench which I think is

00:52:25

another one from Oswald which

00:52:27

is kind of starting with

00:52:29

the Sovereign spread. Scaling it

00:52:30

up by the volatility the

00:52:32

ratio of the volatility of

00:52:33

equity to the volatility of

00:52:34

debt. And you know, I

00:52:36

think that's appropriate a lot

00:52:37

of cases, but there is

00:52:39

there's a there's an assumption

00:52:40

implicit in that approach that

00:52:42

the the risk associated with

00:52:46

Equity investments in a country

00:52:47

can only be higher than

00:52:49

kind of equal to our

00:52:50

higher than the risk of

00:52:53

a sovereign investment and you

00:52:55

know that that's broadly consistent

00:52:57

with this idea that used

00:52:59
to Prevail at ratings agencies

00:53:00
that you know of a

00:53:01
sovereign feelings. So the the

00:53:03
rating of a company can't

00:53:05
be higher than the Sovereign

00:53:08
but the fact is that

00:53:09
like within ratings agencies the

00:53:11
past couple of decades there's

00:53:13
been a move away from

00:53:13
that and so, you know,

00:53:15
the The Sovereign feeling is

00:53:16
not as stringently applied and

00:53:18
you have things like Microsoft

00:53:20

Johnson and Johnson have you

00:53:22

know higher credit ratings then

00:53:24

from S&P and from other

00:53:26

ratings agencies in US government

00:53:28

and you've also, General an

00:53:30

interesting decoupling of sovereign risk

00:53:33

and Company risk. So, you

00:53:34

know, for example in the

00:53:35

context of the sovereign debt

00:53:38

knows yeah the European sovereign

00:53:40

debt crisis that we observed

00:53:42

in Europe, but a decade

00:53:43

ago, you know, when when

00:53:45

Greece was perceived as being

00:53:48

particularly with father and dad

00:53:52

that wasn't necessarily being applied

00:53:54

to Greek companies and and

00:53:58

so, you know, With business

00:54:01

suggests from the bringing it

00:54:02

back to us as damages

00:54:04

experts is that sometimes you're

00:54:05

gonna be in a situation

00:54:06

where you know starting with

00:54:08

the Sovereign spread and scaling

00:54:09

it up is not necessarily

00:54:11

going to be a reasonable

00:54:14

approach now partly. This is

00:54:17

taught ties back to the

00:54:18

idea of Lambda. Right? One

00:54:19

of the reasons why the

00:54:22

risk of a company that's

00:54:24

a headquartered in a particular

00:54:25

country will maybe lower is

00:54:27

that it's it's geographically Diversified

00:54:29

but there are other reasons

00:54:31

just to do with the

00:54:32

the nature of the risk.

00:54:33

And so I just want

00:54:35

to close this some some

00:54:36

brief thoughts about what you

00:54:38
might do. If if I

00:54:40
look I'm just gonna just

00:54:41
in the Sovereign spread altogether.

00:54:44
So even as a starting

00:54:46
point and and look at

00:54:47
something else, I mean, there

00:54:49
are a couple of possibilities

00:54:49
one is that you know,

00:54:52
you've got these outfits there

00:54:54
are several of them that

00:54:55
do political and Country risk

00:54:57
analysis. So, you know, they

00:54:58
can first Risks for a

00:55:03

different given industry and within

00:55:05

you know, and they'll do

00:55:06

that within the country. They

00:55:08

often do produce these type

00:55:09

of nuanced analyzes that that

00:55:11

can be quite helpful. And

00:55:14

the other thing that that

00:55:15

can be helpful occasionally is

00:55:16

looking at political Risk insurance.

00:55:19

So I mean the Matilda

00:55:20

mentioned this interesting instance where

00:55:23

you know in car key

00:55:24

versus Pakistan with the claim

00:55:25

to try to argue that

00:55:25
there's zero country risk because

00:55:27
they had, you know, political

00:55:29
Risk insurance and The other

00:55:32
way that this can come

00:55:33
in is that you can

00:55:34
make inferences from the price

00:55:36
of political Risk insurance about,

00:55:37
you know, certain types of

00:55:38
risks, you know the risks

00:55:40
that are insured for either

00:55:40
for that country that company

00:55:42
itself or for, you know,

00:55:45
analogous situations. So, I mean,

00:55:47

these are the sorts of

00:55:49

tools that we have in

00:55:50

our toolkit that allow us

00:55:51

to get away from Miguel

00:55:53

Lopez called fudge factors and

00:55:55

these other kind of cookie

00:55:56

cutter approaches, and I think

00:55:58

increasingly we probably That's all.

00:56:02

Thanks very much. Thanks, Rob

00:56:05

that does very helpful and

00:56:07

we get to to more

00:56:10

of that in a minute

00:56:12

or before before we go.

00:56:14

I mean, I want to

00:56:15

follow up with with Carlos

00:56:16

briefly on it. But before

00:56:17

we before I do that

00:56:18

again, I forgot to mention

00:56:19

that right after because presentation

00:56:22

we would have some Q&A.

00:56:25

So if you have any

00:56:26

questions that you have for

00:56:28

apparent list, feel free to

00:56:30

use our chat. There's a

00:56:32

question there about the presentations

00:56:34

and I think the organizers

00:56:36

are telling me that we

00:56:37

should be able to share

00:56:38

those class of the webinar.

00:56:40

But if you have other

00:56:41

questions on substance of the

00:56:42

things that have been discussed

00:56:43

also feel free them in

00:56:44

the chart without Carlos. Can

00:56:47

you briefly comment you want

00:56:49

to briefly comment on this

00:56:50

adjustments that Rob mentioned to

00:56:53

The Sovereign spread measures? Yes,

00:56:55

of course and I believe

00:56:56

that but what probably is

00:56:58

being home the point that

00:56:59

country risk needs to be

00:57:01

determined that they may spend

00:57:02

level and considering Levels that

00:57:05

are Faith investment equation and

00:57:07

I would let that a

00:57:08

traditional approaches really use by

00:57:11

practitioners are starting point, but

00:57:14

one needs to explore alternative

00:57:16

waste to Country in order

00:57:17

to see where they really

00:57:19

a specific things that are

00:57:20

affecting the investment again is

00:57:22

same and in this case,

00:57:24

I adjustments like Lambda really

00:57:27

are helping to determine country

00:57:30

risks that are more applicable

00:57:32

maybe to an investment. I'm

00:57:33

not saying that is the

00:57:34

only one but is is

00:57:35

an additional and and the

00:57:38

fact that as Robert make

00:57:40

the point that there is

00:57:41

a coupling of the country

00:57:42

and the foreign risk a

00:57:44

really is that that fact

00:57:46

is forces. All of us

00:57:48
is forcing all of us

00:57:49
to focus more in looking

00:57:51
at alternative ways to analyze

00:57:53
in a country risks and

00:57:55
there is no doubt us

00:57:57
as proverb pointed out that

00:58:00
that a these these political

00:58:02
rating Consulting work. They they

00:58:05
the insurance are an instrument

00:58:07
that is an additional instrument

00:58:08
that all of us need

00:58:10
to look at it and

00:58:11
see the evolution. And in

00:58:12

order to make an assessment

00:58:13

applying a standard methods are

00:58:17

a good starting point. But

00:58:18

I believe that all of

00:58:19

us here in this panel

00:58:20

at this point in our

00:58:23

experience believe that we we

00:58:24

just need to explore further

00:58:27

without for the benefits of

00:58:29

the projects project. No, no

00:58:31

to help claim and respond

00:58:33

and it's just go and

00:58:34

focusing what's going to have

00:58:36

is happening to the project.

00:58:39

Infinite. Okay, just to read

00:58:42

provocative. He said in this

00:58:45

Ethan using a sovereign default

00:58:48

spread type of analysis. to

00:58:51

calculate the countries of any

00:58:56

gospel of the same as

00:58:58

using essentially a kitchen knife

00:59:00

to actually pay the cancer,

00:59:03

you know when you could

00:59:04

use a scalpel to to

00:59:06

perform that surgery. I believe

00:59:09

that all of us will

00:59:10

answer. Yeah. I mean, it's

00:59:11

easy. I believe that isn't

00:59:13

interesting and analogy and you

00:59:15

see now we're hands as

00:59:16

practitioners as as if expert

00:59:20

to come up with a

00:59:21

values that really are affecting

00:59:23

the investment please. I just

00:59:29

just wait to For my

00:59:31

perspective, I would use it

00:59:32

like a reference value there,

00:59:34

but I just need to

00:59:35

go down. It's just yeah,

00:59:37

and I I hate surgeries

00:59:39

in order to cut because

00:59:40

we need to cut so

00:59:41

I believe that there are

00:59:42

approaches that we need to

00:59:43

explore alternatives. Thank you guys,

00:59:47

and I'm here just to

00:59:48

I think there's one thing

00:59:50

that we have an explored

00:59:51

yet. I mean we have

00:59:52

looked at Country risk measures

00:59:54

and we talked about how

00:59:56

they you know, in theory

00:59:58

there will be applicable to

00:59:59

particular investment and exposure of

01:00:01

that investment to the countries.

01:00:02

But what we haven't talked

01:00:04

about I think is critical

01:00:06

also is that we are

01:00:08

kindness in a particular context

01:00:09

and this is a context

01:00:11

in many cases of treaty

01:00:12

arbitrations and Country risk measures

01:00:16

will normally include the risk

01:00:18

of experience or treatment or

01:00:21

other actions by government that

01:00:24

in principle are protected by

01:00:26

the visit. So we have

01:00:27

seen review at the beginning

01:00:29

taking a different approaches about

01:00:33

that. What are your thoughts?

01:00:34

And I know you you've

01:00:36

been more cases. So where

01:00:38

are your thoughtsy about those

01:00:40

particular risk, and how wine

01:00:42

should not reduce the value?

01:00:46

those Sure. Thanks again for

01:00:51

for inviting me to to

01:00:52

join these panel today and

01:00:54

thank you all so what

01:00:56

arbitration update and an En

01:00:59

and Jose Antonio particular and

01:01:01

channel to what to all

01:01:02

of those of you in

01:01:03

the audience for celebrating the

01:01:05

the Jewish New Year today.

01:01:06

So the question that Miguel

01:01:09

asked me is whether it's

01:01:11

appropriate to include the resource

01:01:13

of and compensated expropriation in

01:01:15

other words confiscation. Other unfair

01:01:18

treatment as part of the

01:01:19

country is premium in the

01:01:21

valuation of investment investment arbitration.

01:01:24

and the short answer to

01:01:26

this question is that it

01:01:27

is inappropriate to so because

01:01:30

it essentially incentivizes respondent state

01:01:33

to benefit from its own

01:01:34

a local conduct to the

01:01:36

detriment of investor. And I

01:01:39

submit that this is a

01:01:40

perverse result. So first let

01:01:43

us keep in mind why

01:01:45

these issues important you heard

01:01:47

from Olga that the higher

01:01:49

the country race the lower

01:01:50

the compensation respondent stay with

01:01:53

all to a protecting investor

01:01:54

for contact that is unlawful

01:01:55

under international law. And second

01:01:59

we need to understand what

01:02:00

country risk or political risk

01:02:02

is and what it is

01:02:03

not and I will also

01:02:06

rely on Professor. I don't

01:02:08

know if he's a professor

01:02:08

but he's an economist geared

01:02:11

back your back hurts from

01:02:12

Colombia and who has ridden

01:02:14

several articles on the topic

01:02:16

and there is one excellent

01:02:17

that was publishing the Journal

01:02:18

of corporate financing 2016. He

01:02:22

with others Define the concept

01:02:25

of political race or countries

01:02:27

for a given country as

01:02:28

quote. The reason the countries

01:02:31

government actions or imperfections of

01:02:33

the countries Executives legislative. And

01:02:37

judicial institutions adversely affect the

01:02:41

value of an investment by

01:02:42

a foreign firm in that

01:02:44

country. These definition encompasses government

01:02:47

seizure private assets or output

01:02:50

and creeping forms of expropriation

01:02:52

shassas such as unexpected taxes

01:02:56

or royalties and profits or

01:02:57

pernicious currency regulations. It also

01:03:00

includes instability of relevant government

01:03:02

policies as well as the

01:03:04

strength of the legal system,

01:03:05

especially with respect to enforcement

01:03:07

of property rights. finally internal

01:03:11

and external conflicts such as

01:03:12

general strikes terrorism and Civil

01:03:14

War are also typically categorized

01:03:18

as part of political risk

01:03:19
importantly political risk does not

01:03:22
Encompass natural disasters such as

01:03:26
earthquake nor does it include

01:03:28
macroeconomics or financial risk factors

01:03:30
and quote? so you probably

01:03:34
notice as I was reading

01:03:36
this definition that some of

01:03:39
the risk some can you

01:03:41
guys mute your your cameras

01:03:43
your phones because And you

01:03:48
probably noticed that in the

01:03:50
definition. There are some risks

01:03:53
included there that are the

01:03:56

very same Breeze that most

01:03:57

investment treaties intend tend to

01:03:59

protect from with very very

01:04:01

degrees of protection. I'm talking

01:04:03

about direct and indirect experiation

01:04:05

unexpected taxes or royalties on

01:04:07

profits. currency restrictions instability of

01:04:12

government policies and you probably

01:04:15

also know that some of

01:04:16

the race in this definition

01:04:18

are not protected by investment

01:04:20

treaties like for instance lacks

01:04:22

enforcement of Ip rights. For

01:04:24

instance could the stealing of

01:04:26

Ip by a private actors

01:04:27

in a host country engage

01:04:29

the responsibility the international responsibility

01:04:32

of the host country under

01:04:34

an investment treaty? Most likely

01:04:36

not perhaps under certain circumstances

01:04:38

that could be a violation

01:04:39

of a treaty but unlikely

01:04:40

similarly natural disasters are not

01:04:43

protected by treaties. so is

01:04:48

some of these reefs of

01:04:49

unlawful conduct are baked into

01:04:51

the country race of a

01:04:52

given country. Show the valuation

01:04:55

exercise include or exclude those

01:04:58

risks related to that conduct.

01:05:00

And this leads me to

01:05:02

the second question that Miguel

01:05:03

pose and which is whether

01:05:07

sand tribunals have taken different

01:05:09

views on these issues and

01:05:11

we got a glimpse of

01:05:12

that through materials presentation. The

01:05:15

answer is yes. Tribunal's mainly

01:05:18

dealing with Venezuelan cases have

01:05:19

grapple with this issue. On

01:05:21

just to put things in

01:05:23

context and the main topic

01:05:27

that was discussed in the

01:05:28

context of those cases was

01:05:30

whether Venezuela's policies of national

01:05:34

of nationalization of Investments. And

01:05:37

in some cases nationalization without

01:05:39

compensation. Whether that those policies

01:05:44

that tend to depress the

01:05:45

value of the investment. How

01:05:46

do we take into account

01:05:47

in the garden in the

01:05:50

country is calculation and and

01:05:52

the first case that deal

01:05:53

with this issue was called

01:05:54

Reserve. This cases you will

01:05:56

see that these cases were

01:05:57

resolved around the same time

01:06:00

in some cases. They were

01:06:03

able to benefit from other

01:06:05

analysis in previous cases in

01:06:07

some others. They just a

01:06:09

or not because of the

01:06:11

timing of the decisions and

01:06:13

in some cases they just

01:06:14

ignore some other decisions, but

01:06:16

in Gold resolve this again,

01:06:18

September 2014. The tribunal recognized

01:06:21

the principle that it is

01:06:23

inappropriate to use country risk

01:06:27

premium that quote includes some

01:06:29

element reflective of the state

01:06:30

policy to nationalize investments in

01:06:33

quote. So in that case

01:06:35

the tribunal rejected the country

01:06:37

risk premium sponsored by Venezuela

01:06:39

because it Incorporated some of

01:06:41

those elements but the tribunal

01:06:43

also rejected the cancer experiment

01:06:45

offer by the claimant because

01:06:46

it didn't take into account

01:06:48

political race other than expropriation.

01:06:50

Remember when we went over

01:06:52

the definition there were some

01:06:53

risk in the political reason

01:06:56

that certainly are protectively by

01:06:59

treaties, but there are some

01:07:00

others are not so tribunal

01:07:02

said, you know, there are

01:07:02

some that have to be

01:07:04

taking into account because they

01:07:05

are not deeply protected by

01:07:07

treaties. Are that decision was

01:07:10

followed by Venezuela Holdings against

01:07:12

Venezuela and was rendered a

01:07:15

month later, you know toward

01:07:17

2014 and the tribunal here

01:07:19

basically avoided the question with

01:07:21

a circular argument. The Trevino

01:07:24

said right before an expropriation.

01:07:25

There is a race of

01:07:27

expiration does the race of

01:07:29

confiscation that is confiscating expiration

01:07:31

must be taking into account

01:07:32

period those essentially a give

01:07:37

or take the recenting of

01:07:39

the Tribunal. Later in that

01:07:43

year November 2014. We have

01:07:46

the case of Luke hafen,

01:07:48

which was his concessionaire of

01:07:50

an IOP of one of

01:07:52

the airports in Venezuela. And

01:07:53

in that case the tribunal

01:07:55

essentially recognized the same general

01:07:57

proposition that the tribunal in

01:07:58

Gold Reserve. But added a

01:08:01

timing element it held that

01:08:03

quote a state that through

01:08:05

the adoption of new policies

01:08:07

adopted after the investment was

01:08:10
made after investment was made.

01:08:12
Increases the country risk may

01:08:14
not benefit of its own

01:08:16
a lawful conduct to reduce

01:08:18
the compensation do end quote.

01:08:20
So we can see here

01:08:22
these idea that it is

01:08:25
inappropriate to take into account

01:08:28
country risk created by the

01:08:31
respondent state. And after the

01:08:34
investment was very may but

01:08:36
not before the investment was

01:08:37
made and then we have

01:08:38

the case of Thai water

01:08:41

when it's versus Venezuela also,

01:08:43

which was rendered a few

01:08:44

months later in March 2015

01:08:46

and the tribunal rejected this

01:08:49

principle and held that the

01:08:51

issue was an economic question

01:08:53

on a legal question and

01:08:55

you feel that under the

01:08:56

applicable treaty. He was required

01:08:59

to exclude only the particular

01:09:00

and lawful conduct at the

01:09:02

issue in that case an

01:09:03

extra patient. So, you know

01:09:06
on the literal reading of

01:09:08
the treaty they tribunal focus

01:09:10
on the language of the

01:09:11
expiration close of the treaty

01:09:13
and it says I had

01:09:15
to take into account if

01:09:17
our market value of the

01:09:17
investment immediately before the exploration

01:09:20
and I don't need to

01:09:22
look further into whether these

01:09:24
policies that might have depressed

01:09:26
the value of the investment

01:09:26
should be included or excluded

01:09:28

in the country which calculation

01:09:30

and in my view And

01:09:33

I had to disclose it.

01:09:34

I was Counseling in that

01:09:36

case and in one of

01:09:36

these other cases this analysis

01:09:39

is flawed from an economics

01:09:41

and a legal point of

01:09:43

view from from an economics

01:09:45

point of view because it's

01:09:46

centered only on whether the

01:09:48

Willing buyer would take that

01:09:50

reason to account when acquiring

01:09:51

investment. The tribunal completely ignored

01:09:55

the other side of the

01:09:56

transaction that is whether an

01:09:58

investor protective within adequate investment

01:10:00

treaty will part ways will

01:10:03

sell. an investment if they

01:10:06

purchase price is heavily discounted

01:10:08

for race that the very

01:10:10

same treaty is intended to

01:10:11

protect from so let me

01:10:13

offer you and analogy just

01:10:15

to make this point. If

01:10:17

an invest ourselves and investment

01:10:19

with a policy that provides

01:10:20
and insurance policy that provides

01:10:22
protection for certain specific political

01:10:25
race events. Should that seller

01:10:28
assume that a policy is

01:10:29
worthless and thus accept the

01:10:32
price the price that ignores

01:10:34
the protection. The answer is

01:10:37
no has to be no.

01:10:39
So that I think for

01:10:41
that reason I think that

01:10:42
analysis is flawed. From a

01:10:44
legal point of view. I

01:10:45
think it's also analysis flow

01:10:47

because it essentially avoids the

01:10:48

question of whether a state

01:10:50

can depress the value of

01:10:51

an investment through its own

01:10:53

unlawful conduct. A party should

01:10:56

not be able to benefit

01:10:57

from its own wrongful conduct

01:10:59

to decrease the compensation of

01:11:01

those but it's as a

01:11:02

basic principle of law. After

01:11:05

these cases a few others

01:11:07

follow. I'm not going to

01:11:08

recite them or tell you

01:11:10

what they are. But essentially

01:11:12
they fall in one or

01:11:14
these two camps that we

01:11:16
we have a discussed. So

01:11:19
what are the more conclusions

01:11:22
can we extract from from

01:11:23
these cases? Well, first one

01:11:26
is the ultra, you know

01:11:28
seem to agree that the

01:11:30
specific property act or a

01:11:33
lawful conduct issue in a

01:11:35
particular case must be disregarded.

01:11:37
Okay, that is it pretty

01:11:38
basic principle. No tribunal has

01:11:41

said that conduct should be

01:11:43

taking into account. But tribunals

01:11:45

are split on the issue

01:11:46

of whether the country is

01:11:48

premium should include the risk

01:11:49

of policies to nationalized investment

01:11:52

in general or adopt other

01:11:54

unlawful measures in disregard of

01:11:56

international law. We saw that

01:11:58

in Gold reserve and include

01:12:00

happen the terminals agree that

01:12:04

these elements should be disregarded.

01:12:06

And we also saw that

01:12:07

include Half and the time

01:12:09

in element introduced by HIV,

01:12:11

you know. In that case

01:12:14

again. It's terminal said it

01:12:16

should be disregarded only if

01:12:18

those policies are adopted after

01:12:20

the investment. The investor made

01:12:23

its investment. On finally we

01:12:25

saw email. So we're holding

01:12:27

something water that they rejected

01:12:29

this approach. So with that

01:12:33

summary, I will conclude my

01:12:35

presentation Miguel and I think

01:12:37

I probably exceeded my time,

01:12:38
but I am open to

01:12:41
any questions. I mean, no

01:12:43
that's that's really good. I

01:12:44
mean, yeah, thank you and

01:12:45
I again invite them. Participants

01:12:49
we don't have much time

01:12:49
left. But I if you

01:12:51
want to put any questions

01:12:53
in the chat in the

01:12:54
meantime, I I do have

01:12:55
a follow-up questions for for

01:12:57
both me and nothing there

01:13:00
from you know, more of

01:13:01

a practical point of view

01:13:02

and you both mention the

01:13:06

you know particular you Miguel

01:13:07

mention how you know claimants

01:13:09

are presented and how the

01:13:10

response and what the community

01:13:11

say. Do you think until

01:13:13

they mentioned by the way

01:13:14

that they were these two

01:13:15

cases were famous when we

01:13:17

did zero percent country risk

01:13:19

or a 0.5% countries. Do

01:13:21

you think there's a way

01:13:22

for claimants to make their

01:13:25

country's case more transparent to

01:13:28

the tribunal rather than taking

01:13:29

maybe what the tributions may

01:13:31

think to be to extreme

01:13:33

position or I remember one

01:13:35

of the case, I think

01:13:36

you mentioned we got the

01:13:36

Serena say well that that

01:13:38

countries that came as proposal

01:13:39

is too low and they

01:13:40

went with something in between

01:13:41

but that's one to go

01:13:43

with something in between. They

01:13:44

may end up siding with

01:13:45

another, you know with respondent.

01:13:48

Us because they came as

01:13:50

position is nowhere articulating that

01:13:53

respect and what are your

01:13:54

thoughts about that? I think

01:13:56

that's a good point and

01:13:57

I think that is possible.

01:13:58

And in fact, I am

01:14:00

now trying a case in

01:14:02

which we're using a mythology

01:14:04

like that because there are

01:14:08

some and I think Robert

01:14:10

mentioned these there are some

01:14:11

consultancy groups out there that

01:14:14

are evaluating particular ways to

01:14:17

particular countries using different metrics

01:14:20

and then isolating how they

01:14:22

build that country is index.

01:14:23

So then you can reverse

01:14:26

engineer and deconstruct that rating

01:14:29

or index and and apply

01:14:30

those metrics to a other

01:14:33

methodologies that you may use

01:14:35

to come up with a

01:14:36

solid robust and you know

01:14:39
cohesive methodology that can explain

01:14:42
how did you get to

01:14:43
to the the countries premium

01:14:47
that you using your your

01:14:49
cause of equity? Yeah. Okay.

01:14:58
Yes, thank you. I'm attilio.

01:15:00
What did you you saw

01:15:01
those Awards too and maybe

01:15:02
you also have some thoughts

01:15:03
about that. Yeah, just to

01:15:06
offer a bit of a

01:15:07
more theoretical question as to

01:15:09
what the claimants can do

01:15:10

to just not propose zero.

01:15:11

I mean, we've been hearing

01:15:13

that it's you know. In

01:15:16

including the country risk premium

01:15:18

in the discount rate. It

01:15:19

allows states to benefit from

01:15:20

their wrongful conduct. But you

01:15:22

also have to look at

01:15:22

the other side of the

01:15:23

coin which would be a

01:15:25

vit is not an insurance

01:15:27

against all wrongs a vit

01:15:29

does not protect completely firm

01:15:31

expocation. It's intended to manage

01:15:33

or mitigate this risks and

01:15:34

therefore that cannot translate into

01:15:36

a country receiving of zero

01:15:37

and that's what It's a

01:15:42

thought for for two months

01:15:43

to consider when presenting this

01:15:45

issues to the tribunal because

01:15:46

this is often you sign

01:15:48

some of the cases we

01:15:49

talked about the country risk

01:15:51

offer by claimant was zero

01:15:52

and the tribunal was just

01:15:53

reluctant to accept that. Straight

01:15:57

away. I'm not so sure

01:15:59

that in some cases in

01:16:01

these cases the countries propose

01:16:03

like claim us all completely

01:16:04

zero. I think it was

01:16:05

a low country. I'm not

01:16:06

sure was here. Yeah, I

01:16:09

think one of them as

01:16:10

well in cases in the

01:16:11

ones that are that the

01:16:13

recent ones in the five

01:16:14

I think is right and

01:16:15

I think and I think

01:16:16

you know, that is an

01:16:17

interesting the question because you

01:16:18

know, it is a different.

01:16:21

you know we're talking here

01:16:23

when when a situations where

01:16:26

states have engaged in a

01:16:30

campaign or in a overt

01:16:33

policy of nationalization of disrespect

01:16:35

for the rule of law,

01:16:36

you know without providing any

01:16:39

compensation and the question is

01:16:41

can that breeze be taking

01:16:43

into account or not? That

01:16:44

is it that is the

01:16:45

issue really that what was

01:16:46

being addressed in Venezuelan cases?

01:16:48

Yeah, I think that in

01:16:51

the case of other countries

01:16:52

the the various a little

01:16:54

more nuance and it may

01:16:56

have to do with a

01:16:57

particular facts of the case,

01:16:58

but it is not this

01:17:00

question of General policy towards

01:17:03

us taking over all private

01:17:05

investment without compensation that it

01:17:08

is being discussed. Yeah, just

01:17:10

just clarify that the case

01:17:12

that that weren't claimant proposed

01:17:14

0% was a car key

01:17:15

case and they relied on

01:17:16

the fact that they had

01:17:17

insurance policies and a vit

01:17:19

to say. We really don't

01:17:20

need to account for the

01:17:20

country risk anymore. So we're

01:17:22

offering zero and that's sort

01:17:23

of the particular example. I

01:17:25

was alluding to Yeah, that's

01:17:27

maybe not didn't. Agree with

01:17:30

that but I think just

01:17:31

to close the panel anything.

01:17:33

We have any any questions

01:17:34

Reliance, but just to close

01:17:35

the pattern will be behind

01:17:37

schedule. We you know, how

01:17:40

important this topic is. I

01:17:41

think we are we we

01:17:42

spend so much time on

01:17:43

these and I guess it

01:17:45

the message overall is that

01:17:47

times needs to be spent

01:17:48

on this the the impact

01:17:51

on on the final number

01:17:52
is very significant. I think

01:17:55
we all have to always

01:17:56
understand that and it can

01:17:57
be a five Factor. It

01:17:59
can be something that we

01:17:59
just put at the end

01:18:00
or the tribuna may spend,

01:18:02
you know a line or

01:18:02
two on it. It's a

01:18:04
topic that deserves attention. It

01:18:06
has a an impact and

01:18:08
and I think all of

01:18:10
you all your views or

01:18:11
your time preparing these these

01:18:13
presentations and with this I

01:18:15
will turn to either for

01:18:17
Centennial or Ian. I think

01:18:19
there may be some networking

01:18:21
session now. thank you very

01:18:28
much, Miguel and thank you

01:18:29
Matilda Olga, and I'm Naming

01:18:34
you in the in the

01:18:35
way that I see you

01:18:36
Robert Miguel Lopez Carlos and

01:18:42
and Miguel are moderator. Thank

01:18:44
you very much. It was

01:18:45

it was an absolutely rich

01:18:48

panel. Thank you very much

01:18:51

Matilda for for sort of

01:18:53

updating everyone on the cases

01:18:54

and and sort of starting

01:18:57

with a baseline that that

01:18:59

I believe allows everyone to

01:19:01

understand the issue of country

01:19:05

risk. Thank you everyone sort

01:19:08

of like to to put

01:19:10

some some emphasis on on

01:19:12

the challenges from a Quantum

01:19:15

expert perspective on on what

01:19:19

data to take into account

01:19:21

Etc. And also on on

01:19:23

the issues that that the

01:19:26

the tribe, you know, make

01:19:28

grapple with and and also

01:19:30

Council for respondent counsel for

01:19:33

and to make grapple with

01:19:34

when analyzing whether there should

01:19:36

be or not and to

01:19:39

what extent what that is,

01:19:40

they get country risk taking

01:19:42

into account with that. I

01:19:46

would also like to move

01:19:47

forward with our breakout rooms.

01:19:50

I believe that there might

01:19:51

be about four or five

01:19:54

record rooms perhaps so will

01:19:59

will go into that and

01:20:00

and we're also I would

01:20:04

like also to advise everyone

01:20:06

that that this this session

01:20:07

has been recorded that we

01:20:08

should have it up on

01:20:10

the web sometime in October

01:20:12

with a new tools that

01:20:15

will allow people to search

01:20:17

for content in the video

01:20:19

as such so thank you

01:20:21

and and let's move on

01:20:23

to the breakout rooms. will

01:19:59

go into that and and

01:20:01

we're also I would like

01:20:04

also to advise everyone that

01:20:06

that this this session has

01:20:07

been recorded that we should

01:20:08

have it up on the

01:20:11

web sometime in October with

01:20:13

a new tools that will

01:20:15

allow people to search for

01:20:17

content in the video as

01:20:20

such so thank you and



01:20:22
and let's move on to

01:20:23
the breakout rooms.