



Ethics and International Arbitration: Is it Time for an International Code of Ethics? *

Summary

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

The panel discussion during Washington Arbitration Week focused on the ethical challenges in international arbitration, moderated by Ben Love, a prominent figure in the field. Panelists included Rose Remo, Todd Weiler, Ignacio Totorola, and Daniel Müller, each bringing their unique perspectives and experiences.

The conversation began with Rose Remo providing an overview of the current state of ethics in international arbitration, highlighting the lack of uniformity in ethical rules across different legal traditions, particularly between common law and civil law systems. She discussed various proposals for a universal code of ethics, emphasizing the IBA guidelines on conflicts of interest as a reference point, though recognizing they are not binding. Rose introduced the Spanish Arbitration Club's Code of Best Practice, which aims to establish ethical standards for all participants in arbitration, although it remains non-binding unless adopted by the parties involved.

Todd Weiler followed with insights on specific ethical dilemmas, particularly the challenges posed by the "double-hatter" issue, where an individual serves as both arbitrator and counsel in different cases. He questioned the practicality of prohibitions on such practices, suggesting that existing ethical guidelines already cover potential conflicts of interest. Todd expressed skepticism about the effectiveness of new codes, arguing that adherence to current ethical standards should be prioritized.

Ignacio Totorola shifted the focus to the financial implications of arbitration challenges, particularly in Peru, where arbitration is mandated for state contracts. He proposed a system of mandatory disclosures for arbitrators, aimed at preventing conflicts of interest and enhancing transparency. Ignacio stressed the importance of proactive measures to avoid conflicts before they arise.

Daniel Müller concluded the presentations by addressing the feasibility of a universal code of ethics for counsel in arbitration. He highlighted the diversity of legal traditions and the



existing ethical frameworks that lawyers operate under, expressing concern that a universal code might dilute these standards. Daniel underscored the need for lawyers to maintain their independence and suggested that ethical breaches should be addressed through existing mechanisms rather than new regulations.

The discussion revealed a shared recognition of the complexities surrounding ethics in international arbitration, with panelists debating the necessity and practicality of codifying ethical standards for various participants in the arbitration process. The session concluded with a call for continued dialogue and collaboration among practitioners to address these pressing issues.

Authors

Ben Love, Ignacio Torterola, Todd Weiler, Rose Rameau, Daniel Muller

Topics

Ethics

Category

WAW

Full Transcript

00:00:02

welcome, this is wow, second

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edition 2021 our panel today

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is about to speak on

00:00:15

issues of ethics and international

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arbitration. my name Is Jose

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Antonio Rivas? I'm co-founder of



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Washington arbitration week together with

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Ian Laird from crawl in Mooring.

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I am a partner at

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astrology LLP, which is a

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boutique Law Firm here in

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Washington DC in international arbitration

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both investor State and Commercial

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arbitration and matters of public

00:00:47

international law. I have the

00:00:51

task of introducing Ben love

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who is a partner at

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boys Schiller and flexner. Ben

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is a today's moderator and



00:01:05

he has done quite a

00:01:07

bit of coordination and and

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work towards putting this panel

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together. So Kudos and thanks

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to Ben. I would like

00:01:16

to say that Ben is

00:01:18

a recognized he's recognized as

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a global leader in international

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arbitration and public international law.

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He has represented clients in

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more than 50 commercial and

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investment these Foods under all

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major arbitral rules, including some



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of the most high profile

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matters submitted to International arbitration

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over the past decade Ben

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has assisted clients, you know,

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obtaining farewell settlements securing Awards

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in excess of 1 billion

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dollars on multiple occasions and

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defeating several attempts to know

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high value exit Awards. He

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has particular experience in these

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boots relating to the exploitation

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production distribution sale and purchase

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of hydrocarbons and natural resources.



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Well as related infrastructure, this

00:02:04

includes numerous matters in Latin

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America, Europe Asia and Africa,

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involving mining sector Upstream hydrocarbon

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sectors and agreements to supply

00:02:13

natural resources, including natural gas

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pipeline and LNG and other

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Commodities. He also teaches investment

00:02:22

law and arbitration are proofing

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law school, and he he

00:02:27

also has a presence in

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Washington DC as well as

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in New York, and I



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could keep on going, but

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I do not want to

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embarrass Ben by by reading

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his whole set of a

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conference. So Ben with you

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our moderator take the floor

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and thank you so much

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for being in Washington arbitration

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week. Thank you Jose. And

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thank you to others who

00:02:53

helped facilitate and organized this

00:02:56

panel. It's my pleasure to

00:02:58

serve as moderator today. Of



00:03:02

course, we're going to be

00:03:02

talking about ethics and international

00:03:04

arbitration and you know, not

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just arbitrator ethics but also

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Council ethics and other participants

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in the arbitral process with

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the central question, which will

00:03:16

you know get to throughout

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this panel of whether we

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are now at a time

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where a code of ethics

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for you know, one or

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all of these actors is



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necessary and it's my pleasure

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to introduce our distinguish panel

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of speakers first, we have

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rules Remo who is the

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founding partner of remmel international

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law Boutique law firm and

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Washington, DC. Rose was a

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full Fulbright scholar at the

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University of Ghana a school

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of law where she taught

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investment in international commercial arbitration

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general principles of arbitration and

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contemporary issues and arbitration amongst



00:04:01

other subjects. Rose focuses her

00:04:05

practice on investor State arbitration

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International Business Law commercial litigation

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and international commercial arbitration. She

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was also an Adjunct professor

00:04:17

at the University of Perry

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do Pantheon assess and University

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dues where she taught fundamentals

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of the English and American

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legal systems as well as

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international business law. Rose was

00:04:33

recently appointed ABA advisor to

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the uniform law commission study



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committee on the Singapore convention

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on mediation and she has

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been appointed president co-arbitrator and

00:04:46

Sol arbitrator in investor State

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and Commercial disputes involving African

00:04:52

States. Rose is also a

00:04:54

barrister and solicitor of the

00:04:56

Supreme Court of Ghana and

00:04:58

was appointed to the permanent

00:04:59

Court of arbitration by Haiti.

00:05:02

And next our next speaker

00:05:05

will be Todd Weiler who

00:05:07

is an independent International arbitrator



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based out of Canada. Todd

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has well over 20 years

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of experience working in investment

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investor State disputes. Mainly as

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Council. He is a prolific

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speaker and author he holds

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llms from the University of

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Ottawa and Michigan and international

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trade and International Investment law

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respectively as well as an

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sjd from Michigan which yielded

00:05:41

a 2013 book entitled interpretation

00:05:45

of International Investment law a



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book that is celebrated for

00:05:49

its historically informed approach to

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treaty interpretation. Todd now spends

00:05:56

most of his time serving

00:05:57

as arbitrator and Consulting as

00:05:59

an expert in on International

00:06:02

Investment law and in international

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disputes. Our third speaker will

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be agnacio. Totorola. And Ignacio

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is a founding partner of

00:06:16

gst's Washington DC office. He

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has a distinguished career of

00:06:22

25 years as a dispute



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resolution attorney in which he

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has served as lead counsel,

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Sol arbitrator chairman and tribunal

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tribunal member and more than

00:06:33

70 high stakes International arbitrations.

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He has been named a

00:06:37

leading arbitration practitioner in Latin

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America and worldwide by Chambers

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Latin America Chambers Global and

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legal 500 annually since 2015.

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Ignacio has extensive experience in

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complex international law matters under

00:06:53

most if not all the



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major arbitral rules and in

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a variety of Industries. He

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formally defended Argentina Bolivia and

00:07:03

Ecuador gets investment disputes and

00:07:06

his trained government officials from

00:07:07

these and other countries under

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the auspices of unpad and

00:07:13

is a frequent lecture at

00:07:15

the Columbia University centers for

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sustainable investment where he transformed

00:07:21

government officials on preventing and

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defending themselves against investment disputes.

00:07:28

Um Ignacio also served as



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a diplomat and as Council

00:07:33

for the government of Argentina

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with respect to its exit

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disputes and on behalf of

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Argentina, he negotiated the 2010

00:07:44

arbitration rules. The 2012 ICC

00:07:49

rules for disputes involving States

00:07:51

state entities and represented Argentina

00:07:55

before the WTO the Young

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Ted investment committee and the

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oecd investment committee. And last

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but not least we have

00:08:04

Daniel Müller who is a



00:08:06

founding partner of Pharr avocado

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and Paris Daniel is a

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member of the Paris bar

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and has expensive extensive experience

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representing an advocating for States

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as Council on numerous occasions,

00:08:21

before International courts of tribunals,

00:08:23

including a number of cases

00:08:27

before the icj the international

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Tribunal for the law of

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the sea and various arbitral

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tribunals. Daniel has also represented

00:08:36

investors and states and investors



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State disputes before Dixit tribunals

00:08:41

and before tribunals operating on

00:08:43

the ncertral rules and among

00:08:46

Daniels many Publications is a

00:08:49

recent one on ethics in

00:08:52

investment treaty disputes. So with

00:08:55

that I will yield the

00:08:57

floor to Rose who will

00:08:58

start us off with an

00:09:00

overview of the topic at

00:09:01

Hand Rose. Thank you. Thank

00:09:04

you so much. Ben. I

00:09:05

picked the opportunity to also



00:09:07
think Jose is always thought

00:09:10
of me and put me

00:09:11
on this flat platform. So

00:09:12
thank you so much. If

00:09:16
I can share my screen,

00:09:17
I'm just going to go

00:09:18
straight into it because I

00:09:20
know we don't we have

00:09:21
a lot to say. Okay,

00:09:48
great. I was about to

00:09:50
get very very worried. I

00:09:53
said, oh my God, I

00:09:53
can't find the slides. My



00:09:55

job will be quite easy

00:09:56

because I am going to

00:09:58

leave the heavy duty to

00:10:00

yeah sure to Todd and

00:10:02

and Danielle who? Come I'll

00:10:06

just give just a quick

00:10:07

overview of what we are

00:10:09

looking at when we talk

00:10:10

about ethics in international arbitration.

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I will skip the first

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few slides because I think

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Just giving you a background

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and then go inside the



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presentation probably best. Um International

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arbitration we know is a

00:10:29

why Global practice and we

00:10:32

have different legal Traditions, but

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two main legal tradition that

00:10:37

would say at least I

00:10:39

see in my practice is

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a lot of the common

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law versus the civil law.

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And by having those different

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type of legal tradition, I

00:10:51

would say that because some

00:10:53

form of lack of uniformity



00:10:54
in the applicable ethical rules

00:10:57
when we talk about ethics

00:10:59
in international arbitration. So with

00:11:04
that we see that in

00:11:06
the past few years that's

00:11:07
been many different proposals as

00:11:11
to how to handle or

00:11:13
how to properly present ethics

00:11:17
in the international arbitration Community

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First we can look generally

00:11:23
for the ethic rules for

00:11:25
arbitrators and and Council we

00:11:28
could say that the IBA



00:11:30
guidelines on the conflict of

00:11:31
interest is usually what many

00:11:34
of us we look to

00:11:37
when we are speaking of

00:11:39
the conflict of interest in

00:11:41
partiality and all those green

00:11:43
line yellow orange and all

00:11:45
the other stuff that we

00:11:46
know that the idea guidelines

00:11:48
will provide us. These are

00:11:49
cool very cold principle, but

00:11:52
it's still a guideline. It's

00:11:54
it's just a soft law



00:11:55
on the other hand when

00:11:56
we look at the lawyers

00:11:58
regulation. It has not been

00:12:01
consistent at all. Mainly because

00:12:03
we know that the lawyers

00:12:05
are attached to their own

00:12:06
particular jurisdictions. And this is

00:12:08
where you will have the

00:12:08
difference between the common law

00:12:10
and the civil law what

00:12:11
should be ethical what's not

00:12:13
and and the tribunal doesn't

00:12:15
have any coercive power anyway



00:12:17
to force these lawyers to

00:12:19
abide by any set of

00:12:20
rules. So then then what

00:12:25
we've seen that many have

00:12:27
had different proposals. So one

00:12:29
of the proposals that many

00:12:31
suggestions to have a universal

00:12:33
code of ethics for counseling

00:12:35
International arbitration with this code.

00:12:38
They are proposing to have

00:12:39
Global arbitration ethics kind of

00:12:43
body to review any conducts

00:12:46
of lawyers and arbitrators are



00:12:49
all the participant in international

00:12:51
arbitration. With that also we

00:12:53
see in 2014 LCI revised

00:12:56
its arbitration rule by providing

00:12:58
guidelines to the parties legal

00:13:01
representative that are mandatory in

00:13:04
all lcio arbitrations and the

00:13:07
Tripoli has done the same

00:13:08
thing as well by providing

00:13:09
some standards. But we have

00:13:13
another code. This code has

00:13:14
not gotten a lot of

00:13:15
attention. Maybe Ignacio can correct



00:13:18

me from wrong because it's

00:13:19

it's the Spanish arbitration Club

00:13:21

code always very well well

00:13:24

of it, but it has

00:13:26

not gotten much attention. So

00:13:28

the Spanish objection Club has

00:13:31

two codes one was in

00:13:32

2005 when 2019 the 2005

00:13:36

was really focusing more on

00:13:38

arbitral Institution. The 2000 the

00:13:45

2019 on the other hand

00:13:47

after they've reviewed the 2005

00:13:51

they realized that the international



00:13:53

audition Community. They were seeking

00:13:56

to have all participants in

00:13:58

arbitration to to have some

00:14:01

kind of Standards when it

00:14:02

comes to Independence in partiality

00:14:04

transparency and professionalism. So therefore

00:14:08

by 2019 the Spanish obituary.

00:14:11

Hey, we might as well

00:14:13

come up with the new

00:14:13

code and that's 20 19

00:14:16

code and I personally have

00:14:18

gone through the code. I

00:14:19

think it's phenomenal now the



00:14:22

CBP the code of best

00:14:23

practice. It's a set of

00:14:25

soft rules a compilation of

00:14:27

lots of recommendation that the

00:14:30

Spanish arbitration club would provide

00:14:34

to the International Community and

00:14:37

the rules deals with arbitral

00:14:40

institutions. I'll be Traders lawyers

00:14:42

experts And as well as

00:14:44

to party funders, and I

00:14:46

thought that was extremely interesting

00:14:48

to see that they've thought

00:14:50

and I must say that



00:14:51
when you look at the

00:14:52
the code and you see

00:14:55
a lot of people in

00:14:57
the International Community high profile

00:15:00
individuals who are engaged in

00:15:01
the drafting of the code,

00:15:03
but yet it's still not

00:15:05
binding unless the parties adopted

00:15:08
in in the arbitration agreement

00:15:11
or you put it in

00:15:12
the Tor as the arbitrator

00:15:14
so you're not gonna have

00:15:15
to be able to enforce



00:15:17
the code. Quickly, I'll tell

00:15:20
you here. It has about

00:15:21
six sections and four annexes.

00:15:25
So. It's it's a code

00:15:28
that I would encourage everyone

00:15:30
to take a look at

00:15:30
because I think it covers.

00:15:32
It's actually a precursor. I

00:15:35
would say if I may

00:15:35
of the idea to have

00:15:37
a universal code of conduct

00:15:39
for all the participants in

00:15:41
the international arbitration. I'll go



00:15:44
to some of the sections

00:15:46
that I thought was very

00:15:47
essential for instance the arbitral

00:15:49
institution section. This is like

00:15:51
section one. It's on the

00:15:54
one hand. It says that

00:15:55
show institution. They are there

00:15:57
to organize administer beauctician process

00:16:00
while applying to principle of

00:16:02
Independence in partiality transparency and

00:16:04
on the other hand, they

00:16:06
have these duty to ensure

00:16:08
the process and fairness of



00:16:10
words. So therefore the Spanish

00:16:13
arbitration Club felt the need

00:16:14
they are beautician institution obituaries

00:16:18
needed to be regulated as

00:16:19
well. I won't have time

00:16:21
to go into the the

00:16:22
rules for those regulations, but

00:16:26
we can take a look

00:16:26
at them. If you have

00:16:27
some times. I just will

00:16:29
set the stage for my

00:16:31
co-presentatives. The second one is

00:16:33
the section three. We're showing



00:16:36

to you the duties of

00:16:37

the arbitrators not different from

00:16:39

what we know but there's

00:16:40

one duty they call duty

00:16:42

of abstention. That will go

00:16:44

through a little bit so

00:16:45

you can have an idea

00:16:46

what the Spanish Obsession Club

00:16:49

did in this code. Basically,

00:16:52

I'll arbitrators are the key

00:16:53

to ensuring good outcome in

00:16:56

an arbitration. The mission is

00:16:58

to resolve disputes by applying



00:16:59
the procedural and substance of

00:17:01
rules that applied in each

00:17:03
case. So essentially the trust

00:17:06
that they will fulfill their

00:17:09
mission within specialty independence without

00:17:12
services in towards any of

00:17:13
the parts. He's essential for

00:17:16
arbitration to be showing as

00:17:18
a good system of justice.

00:17:20
So that's the main reason

00:17:24
why they needed to Rose

00:17:28
could I could I yeah,

00:17:29
I don't mean to interrupt



00:17:31

you but there are two

00:17:32

points. I'd like to make

00:17:32

as moderate at the moment

00:17:34

one is I wanted to

00:17:36

see whether you could put

00:17:37

your slides into presentation modes

00:17:39

so that they fill the

00:17:40

screen because I I a

00:17:41

couple of questions about the

00:17:43

visibility but then I thought

00:17:45

I might also ask anyone

00:17:46

who's not speaking to put

00:17:48

their microphone on mute because



00:17:49

we're getting a bit of

00:17:50

background noise from someone on

00:17:53

the line. Okay, how do

00:17:55

I do that then? It

00:17:58

should be. I mean if

00:18:01

you most likely if you

00:18:03

press into view. Or you

00:18:06

get a slight Joy To

00:18:08

Think? Okay. Advance sharing option.

00:18:17

I don't know little no

00:18:19

no not not in Zoom,

00:18:20

but in in PowerPoint itself,

00:18:23

if you very bottom right



00:18:25
hand corner that little square

00:18:27
should do it. You can

00:18:28
press you can press F5.

00:18:32
Okay, that that helps try

00:18:34
that. Okay. No, that's I

00:18:36
have I have a Mac

00:18:38
and five. No having much

00:18:42
you go to slideshow. I

00:18:45
mean you if you click

00:18:47
slideshow. Yeah. You have it.

00:18:51
It's at the top of

00:18:53
your toolbar. Okay. In the

00:18:57
middle and you slide I



00:18:59

seen you slide. No no

00:19:00

further over to the right.

00:19:02

It is between animations and

00:19:04

review. later No, no. Slide

00:19:13

show my God. No, you

00:19:14

missed it. Slideshow. You're moreover

00:19:19

there's something slideshow right there.

00:19:22

Click that one rose. You

00:19:28

should if you be able

00:19:29

to click that little box

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and they're far right hand

00:19:31

corner. That should do it.

00:19:34

And my assistant is not



00:19:36
here. Always this what an

00:19:41
embarrassment. Rose if you go

00:19:44
down At the right side

00:19:47
you see like a little

00:19:48
image that looks like a

00:19:50
glass of wine. If you

00:19:53
know more in the right

00:19:55
no, no. that one Okay,

00:19:58
that one yeah. Oh, yes.

00:20:04
Thank you Maria. Thank you.

00:20:05
Is that Maria? Yeah. Yeah.

00:20:07
Let me hear what Okay,

00:20:10
my apologies. So I'll go



00:20:14

straight to the some of

00:20:17

the example with article 74

00:20:20

of the codices that the

00:20:22

all arbitrators all arbitrator candidate

00:20:26

must without under delay. We

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refuse their appointment if a

00:20:33

they Harbor any doubts about

00:20:36

the willingness or capability to

00:20:38

perform the role without biased

00:20:40

towards any of the parties

00:20:41

be they are circumstances which

00:20:44

in the view of a

00:20:46

reasonable and informed person give



00:20:48
rise to justifiable doubts about

00:20:50
the reality. That's That's very

00:20:55
very important because you see

00:20:56
like with a if the

00:20:58
arbitrator thing like well, you

00:20:59
know, there's no conflict. I

00:21:01
can take this case but

00:21:02
yet it's if if you

00:21:04
still have things there that

00:21:06
reasonable informed person justifiably think

00:21:11
that it's impossible still should

00:21:13
not take the matter under

00:21:16
the code. And the one



00:21:18

that I thought was really

00:21:20

important as well was the

00:21:21

lack the necessity available time

00:21:26

to adequately perform. They will

00:21:28

I could go more into

00:21:29

details when they have questions

00:21:30

because this is important we

00:21:32

see there's some arbitrators just

00:21:35

keep on taking one I

00:21:37

check last time. I had

00:21:38

like 20 cases. I think

00:21:39

it's it's very unfortunatable to

00:21:41

have so many cases open



00:21:42
and when others could basically

00:21:46
think those cases so if

00:21:47
you're not available, you should

00:21:49
not take the case. um

00:21:54
so, um we have we

00:21:58
have here like the duty

00:22:03
now I cannot read my

00:22:04
screen because it's it's okay,

00:22:06
so we ask okay. Is

00:22:14
that where I was I

00:22:16
think so. Yeah. So now

00:22:20
you look at the duty

00:22:22
of for the lawyers, you



00:22:25

said the lawyers have to

00:22:26

be acting with integrity. And

00:22:29

of course the clients have

00:22:31

the right to hire and

00:22:32

fire the lawyer and also

00:22:34

the prohibition of exported communication

00:22:36

and Article 15 for instance

00:22:39

a lawyer. Shall we find

00:22:40

from knowingly making false affirmations

00:22:43

both in the reading submission

00:22:46

and also before in all

00:22:47

pleadings before the tribe, you

00:22:49

know. also, you're not allowed



00:22:51

to do any citation that

00:22:53

distort the meaning of the

00:22:54

law and sometimes there are

00:22:57

lawyers was seriously overly zealously

00:23:00

and they are doing different

00:23:01

interpretation into they distort the

00:23:04

meaning of the law with

00:23:05

that under the code article

00:23:07

one 132 When You Reach

00:23:11

There are a few things

00:23:12

that could happen to you

00:23:13

first. If it's a small

00:23:15

bridge, I think would go



00:23:16
and caution the lawyer verbally

00:23:18
and in writing be you

00:23:21
can draw inference when evaluating

00:23:23
the evidence and see lawyers

00:23:27
come back into consideration when

00:23:28
you are drafting the award

00:23:31
but the D is what's

00:23:34
really interesting where the the

00:23:36
tribunal would actually have a

00:23:37
duty to contact the boss

00:23:40
association with this lawyer. Is

00:23:42
that meeting to submit some

00:23:45
form of complain, but the



00:23:46

only problem is some jurisdictions.

00:23:48

You need to be a

00:23:49

lawyer to build before the

00:23:50

child, you know other jurisdictions,

00:23:52

you don't need to be

00:23:52

a lawyer. So therefore what

00:23:54

if you have an engineer,

00:23:55

who do you contact so

00:23:56

I don't know the answer

00:23:57

that I guess that's that

00:23:59

will be up for discussions

00:24:00

where my co-panel is can

00:24:02

further discuss and then finally



00:24:04

they can end up other

00:24:06

measures that they find necessary.

00:24:08

And a quick few words.

00:24:09

I wanted to say the

00:24:10

third thing we see happening

00:24:12

was in 2020 accident on

00:24:14

situated. They released the draft

00:24:16

code of conduct for adjudicators.

00:24:18

Then here again, it's only

00:24:20

adjudications. Meanwhile the Spanish code

00:24:22

covered everyone and I didn't

00:24:24

have time to go into

00:24:25

everyone. You can take a



00:24:26

look at it. Even third

00:24:28

party funders they cover so

00:24:30

the code was developed. This

00:24:32

code here exceed on Central

00:24:35

code is for isds reform

00:24:37

and all member states are

00:24:39

involved and the draft actually

00:24:42

addresses Independence in partiality of

00:24:44

Traders and adjudicators. And it

00:24:47

is based on a comparative

00:24:49

views and standards for that.

00:24:52

Of course that they find

00:24:54

in investment treaties or nutrition



00:24:55

rules Etc. I won't say

00:24:57

much about this because my

00:24:58

colleague in yashia will go

00:25:00

very deep into it because

00:25:01

he's been before unsuitual and

00:25:04

can really add the conversation.

00:25:07

So the question is are

00:25:09

we ready for a universal

00:25:10

code? I said not yet

00:25:11

because I don't believe that

00:25:12

we already when you look

00:25:15

at the 2019 code of

00:25:17

best practice by the Spanish



00:25:18
of nutrition Club. It covers

00:25:20
all the seedings all the

00:25:22
parties in the proceedings while

00:25:23
the exit code and unsecure

00:25:25
code covers only the Educators

00:25:27
and and also all the

00:25:30
codes it's just soft floor

00:25:33
and unless they are adopted

00:25:37
somehow the parties are not

00:25:39
going to follow them and

00:25:40
what we would like to

00:25:42
see perhaps in the goal

00:25:43
to have this universal code



00:25:45
of conduct is perhaps for

00:25:47
the exceed and once told

00:25:48
to start looking up the

00:25:50
codes that actually impose some

00:25:54
duties on the party representative

00:25:56
and that's it for me.

00:26:02
Thank you very much Rose.

00:26:03
And that was a wonderful

00:26:05
overview of the activity in

00:26:08
this area in recent years.

00:26:09
Now. Let's turn it over

00:26:11
to Todd who I think

00:26:13
has some specific case study



00:26:17
examples of ethics and action

00:26:19
and some thoughts on those

00:26:21
top. Thanks, Ben. I'm gonna

00:26:25
just talk about a couple

00:26:26
of things. We all have

00:26:28
so much time. So I'll

00:26:30
try to go quickly so

00:26:32
we can just switch to

00:26:33
the first slide Maria. I

00:26:36
only have two slides by

00:26:36
the way. So this shouldn't

00:26:38
take too long. I was

00:26:39
looking at article for the



00:26:41

on Central draft code of

00:26:42

conduct for arbitrators in a

00:26:44

national investment disputes the other

00:26:45

day and I posted something

00:26:46

an orgy man and everybody

00:26:48

thought it was interesting. So

00:26:50

they thought maybe I should

00:26:51

just chat about that again,

00:26:52

maybe reprise it. So when

00:26:54

you see this this what

00:26:56

we've gone on too far

00:27:00

There you go. So article

00:27:01

for the draft code. so



00:27:04

I wasn't at the entrestrial

00:27:06

proceedings. Unfortunately, I really wanted

00:27:07

to but I just didn't

00:27:08

work out you can see

00:27:10

an article four. There's three

00:27:11

options that have been given

00:27:12

for the double heading problem.

00:27:15

One is this full prohibition

00:27:18

idea. The other is a

00:27:19

modified prohibition. And then this

00:27:21

other one is disclosure. When

00:27:23

I look at this I

00:27:23

think of like when I



00:27:24

was a bureaucrat and when

00:27:26

you wanted the your decision

00:27:28

maker to do what you

00:27:29

wanted you gave them two

00:27:30

more extreme examples for one

00:27:32

and three and then that

00:27:33

would kind of force them

00:27:34

to choose to so, I'm

00:27:36

not sure if that's what

00:27:37

they were aiming for here

00:27:38

the people who drafted this

00:27:39

but I the thought crosses

00:27:41

my mind. I think the



00:27:44

problem though is at any

00:27:46

prohibition whether it be this

00:27:47

a full version or the

00:27:49

modified version is really unnecessary

00:27:52

of especially if you consider

00:27:54

what the targeted Mischief is

00:27:55

is supposed to be here.

00:27:56

I think it's already addressed.

00:27:59

Let's say perhaps an article

00:28:00

3 e there's an admonition

00:28:03

there that says you shouldn't

00:28:05

use your powers to advance

00:28:06

any personal or private interest.



00:28:09

It seems to be that

00:28:10

pretty much covers it. There's

00:28:12

also some problems with a

00:28:14

top-down approach to world-making which

00:28:16

is a bigger problem. Not

00:28:18

just with this particular provision,

00:28:19

but with codes generally it's

00:28:21

that it operates on a

00:28:23

default sort of assumption that

00:28:24

more is always better and

00:28:26

I think it largely ignores

00:28:28

the potential impacts in terms

00:28:29

of the complex interplay of



00:28:31
incentives and that exist many

00:28:34
of which are already in

00:28:36
play without a code it

00:28:37
indeed. It reminds me of

00:28:38
high exfamous observation that the

00:28:40
Curious task of Economics is

00:28:43
to demonstrate to men how

00:28:44
little they really know about

00:28:46
what they imagine they can

00:28:47
design Of examples of core

00:28:50
design here the idea in

00:28:52
the prohibition that you would

00:28:54
have the same treaty as



00:28:56
a condition. Well, that's completely

00:28:57
Superfluous. If you think of

00:29:01
the fact that the same

00:29:02
legals condition would certainly cover

00:29:04
it. But what about the

00:29:05
same this the same legal

00:29:07
issue provision or in square

00:29:10
brackets the substantially same legal

00:29:12
issues provision. Well, I'm my

00:29:15
opinion. I think it's it's

00:29:16
not only just unwieldy. It's

00:29:17
also practically unnecessary. it's unwieldy

00:29:21
in the sense that it



00:29:24

covers everything as Mark Cantor

00:29:26

replying to myogenic discussion pointed

00:29:28

out he gave a Litany

00:29:30

of examples. He said that

00:29:32

and all of these you'd

00:29:34

find in almost every treaty

00:29:35

arbitration treaty interpretation of the

00:29:38

Deanna convention the relationship between

00:29:41

national law and international law

00:29:42

the role of good faith

00:29:44

under international law bifurcation tryification

00:29:48

of proceedings and procedural issues

00:29:50

surrounding it elements of the



00:29:52

legal standard for challenge in

00:29:53

the arbitrator elements of a

00:29:55

legal standard for granted provisional

00:29:56

measures of a legal standing

00:29:58

for applications to dismiss. burdens

00:30:01

of proof test for investment

00:30:05

due process substantive challenges it

00:30:08

goes on and on. What

00:30:11

the question then becomes what

00:30:14

legal issue whether you call

00:30:16

it substantial or not wouldn't

00:30:18

be covered under this catch-all.

00:30:20

It seems like everything would



00:30:21

be covered and again if

00:30:23

I go back to The

00:30:25

Mischief that this this double

00:30:27

had in provision appears to

00:30:29

be concerned about it's covered

00:30:31

by the idea of advancing

00:30:33

one's personal private interest. So

00:30:36

let's think about this in

00:30:37

a scenario sense. Let's think

00:30:38

about scenario one. So acting

00:30:40

is an arbitrator in case

00:30:41

a Mister X cajole is

00:30:44

colleagues into rendering findings of



00:30:46

law. upon which he hopes

00:30:49

to realize counsel in case

00:30:50

b now does anyone seriously

00:30:52

think that the case be

00:30:54

tribunal members are going to

00:30:56

be amenable to basing that

00:30:58

tribunal's legal findings on a

00:31:00

case a award after they

00:31:01

learned that Mr. X sat

00:31:03

on the case a Tribunal.

00:31:05

I think Mr. X would

00:31:07

probably be Aptoide any mention

00:31:08

of the case award. So



00:31:10

as to avoid placing the

00:31:11

case be arbitrators and a

00:31:14

very uncomfortable position placing them

00:31:16

in such a division. It

00:31:17

seems to me it actually

00:31:18

only serve as an impediment

00:31:19

to achieving the desired result

00:31:22

for Mr. X's client. Scenario

00:31:25

2 acting as counseling case

00:31:27

b Mr. X exhausts his

00:31:30

arsenal of arguments seeking to

00:31:32

convince the case b tribunal

00:31:33

of a position that he



00:31:35
sitting as an arbitrator in

00:31:36
case a is working hard

00:31:38
to convince his fellow tribunal

00:31:40
members to adopt. He doesn't

00:31:42
disclosed to anybody the fact

00:31:43
that he's serving both roles

00:31:45
can currently. And somehow IA

00:31:48
reporter gar, the administrators. Nobody

00:31:51
seems to call into the

00:31:52
fact so Mr. X buys

00:31:54
his time expecting that the

00:31:55
case a is going to

00:31:56
wrap up in time for



00:31:57

him to submit the case

00:31:58

the case award the case

00:32:01

b tribunal as Council and

00:32:02

win the day unfortunately, or

00:32:04

let's say maybe Fortunately for

00:32:08

Mr. X case b goes

00:32:11

sub Judas well before case

00:32:12

a tribunal rendered his award

00:32:14

and that's the end of

00:32:15

the story. So given other

00:32:17

really is no scenario on

00:32:18

which a double Hatter can

00:32:20

reasonably expect the benefit from



00:32:22

seeking to rely on findings

00:32:23

made as an arbitrator and

00:32:25

another case in which she

00:32:26

serves as counsel. It seems

00:32:28

to be that there really

00:32:29

is no reason to require

00:32:30

disclosure of an issue conflict

00:32:33

in this of this nature

00:32:35

when the only thing that

00:32:36

are two cases have in

00:32:37

common is let's say they're

00:32:38

both about exploration. What case

00:32:41

isn't about exploration? So I



00:32:44

wonder if there aren't unexpected

00:32:46

results here. somebody suggested to

00:32:50

me offline in that Optima

00:32:51

discussion that perhaps what we're

00:32:53

doing here is we're sort

00:32:55

of pushing an arbitrator's Guild

00:32:58

which will become even more

00:32:59

cloistered from the rest of

00:33:00

the arbitral community and if

00:33:02

that happens because people have

00:33:04

to choose either strictly only

00:33:07

Council or strictly on the

00:33:08

arbitrator, you might Maria you



00:33:17
the second slide a recent

00:33:19
example of this occurs in

00:33:21
the and I US District

00:33:25
Court for southern district of

00:33:26
Florida decision involving the famous

00:33:28
Panama Canal arbitrations and in

00:33:32
that scenario you have challenges

00:33:34
that go nowhere because I

00:33:36
I think I almost thought

00:33:38
that the judge was going

00:33:38
to say that he had

00:33:40
a big fat nothing burger

00:33:41
here, but he he restrained



00:33:43

himself and actually just used

00:33:44

judicial language, but The examples

00:33:47

you see there were all

00:33:48

mentioned. They were all mooted

00:33:49

in that case. But the

00:33:52

judge just didn't see anything

00:33:53

that Rose to the level

00:33:55

that was applicable under the

00:33:56

under the US Federal standard.

00:33:59

Um what I found most

00:34:01

interesting though about it is

00:34:03

the experts you were used.

00:34:05

So first you have Jack



00:34:06

Coe and then you have

00:34:08

giorgetti. Then you have Gary

00:34:10

Bourne and you have Jack

00:34:12

again and you have chair

00:34:14

again. Then you have Gary

00:34:15

again. And then Stevens was

00:34:18

able. All of those opinions

00:34:21

can be found in that

00:34:23

one single case. where they

00:34:25

all discussed and debated what

00:34:27

code applies and whether our

00:34:31

Traders should or shouldn't be

00:34:33

Appointing each other to tribunals



00:34:35

as a tribunal member not

00:34:38

as Council necessarily or serving

00:34:40

for terminally as counsel and

00:34:41

arbitrary Trader and unrelated cases

00:34:43

now, very interesting and the

00:34:45

best part is as you

00:34:46

can see by that little

00:34:47

pink thing there at the

00:34:48

bottom. That's my short URL.

00:34:50

I created for the case.

00:34:51

You can read all those

00:34:52

opinions yourself. I think it's

00:34:54

a Juris Mundus Monday if



00:34:56

I recall correctly. So that's

00:34:58

it for me. I hope

00:34:59

I kept it under 10

00:35:00

minutes and I hope I

00:35:01

stimulated everybody. Thank you Todd.

00:35:07

And I think we'll have

00:35:08

much to talk about that.

00:35:09

Once the the primary presentations

00:35:12

are done. But let's go

00:35:13

ahead and move on to

00:35:14

Ignacio who has been a

00:35:16

speak about some related topics

00:35:18

of arbitrator conflicts. Ignacio Thank



00:35:26

you very much, Ben and

00:35:27

good morning to everyone. I'm

00:35:31

happy. That we hear with

00:35:34

you today honor to be

00:35:36

part of these. Washington arbitration

00:35:39

week which I think it's

00:35:40

a very important occasion for

00:35:43

all those practicing International arbitration

00:35:46

investment arbitration. In Washington DC

00:35:50

indeed. I celebrate the idea

00:35:52

that Jose Antonio and Ian

00:35:55

had about creating a Washington

00:35:58

arbitration week. It was very



00:36:01

much needed. I think that

00:36:04

somehow I'm going to disappoint

00:36:07

some people in the audience

00:36:09

because I'm not going to

00:36:10

be talking very specifically about

00:36:14

the new reform process or

00:36:17

the court of conduct. I

00:36:19

mean we can do it

00:36:20

in the And question and

00:36:22

answer section, but my presentation

00:36:26

is more on the policy

00:36:28

sides of things and and

00:36:30

what can be done in



00:36:32

order to improve. our International

00:36:39

arbitration practice but specifically our

00:36:41

investment arbitration practice and well,

00:36:45

we all know that challenges

00:36:48

to arbitrate those. It's a

00:36:50

very costly to the parties.

00:36:54

Thank you, Maria. I'm going

00:36:55

to get there and going

00:36:57

to let you know but

00:36:58

you can leave these on

00:37:00

the screen. It's fine. Thank

00:37:02

you. I was saying that

00:37:04

it's very costly for for



00:37:06

the partisan International arbitration. To

00:37:10

challenge an arbitrate. I mean,

00:37:12

I think that we we

00:37:13

need to depart from from

00:37:14

that point. and that Any

00:37:18

season practitioner notes that by

00:37:21

challenge challenging one every traitor?

00:37:24

a body risk upsetting the

00:37:27

entirety of the Agricultural Tribunal

00:37:30

or at least it's going

00:37:31

to upset that. arbitrator for

00:37:36

the remaining of the proceedings

00:37:38

and I also need to



00:37:41

say that a challenge is

00:37:44

expensive is expensive because it's

00:37:47

expensive in time. It will

00:37:49

stop the proceedings. And it's

00:37:52

expensive in. In actual natural

00:37:59

money of the top of

00:38:01

my head I can I

00:38:02

can say that. Maybe it's

00:38:05

going to cost. Something close

00:38:09

to \$100,000 to each body.

00:38:11

It's going to cause some

00:38:13

thousand dollars to the arbitrator.

00:38:15

I mean in arbitrate those



00:38:18

fees for the arbitrators to

00:38:20

make the decision. It might

00:38:22

go to the center it

00:38:24

creates. Also a reputational costs.

00:38:29

so the question is how

00:38:33

What is that? It can

00:38:34

be done in order to

00:38:36

prevent these this kind of

00:38:39

situations, and I I wanted

00:38:42

to to bring to your

00:38:44

attention. the the experience of

00:38:48

a rule the country but

00:38:51

not I said party in



00:38:53

an arbitration, but and the

00:38:56

situation that currently takes place

00:39:00

in that country as a

00:39:02

consequence of the thousands of

00:39:04

arbitrations that they entertain every

00:39:07

year and maybe I'm not

00:39:09

sure whether those in the

00:39:11

audience are aware, but Peru

00:39:14

is a country in which

00:39:16

The disputes between the states

00:39:20

the domestic disputes between the

00:39:22

states and the state contractors

00:39:25

according to procurement laws have



00:39:27
to be decided through arbitration.

00:39:29
And not by recalls to

00:39:32
the local courts or administrative

00:39:34
Tribune, so Peru has Southern

00:39:37
of arbitrations every year. And

00:39:40
maybe I would suggest that

00:39:43
is even be sure that

00:39:44
the international arbitration. Um world

00:39:50
and and because of that

00:39:52
I think that they have

00:39:54
created some practices that I

00:39:58
I would consider to be

00:39:59
good practicing International arbitration. and



00:40:04
in Peru arbitral institutions are

00:40:08
required and in turn every

00:40:11
Traders are required. to produce

00:40:14
a full disclosure and however,

00:40:17
the full disclosure is not

00:40:20
left to the individual decision

00:40:23
of the arbitrators, but it's

00:40:25
prompted. Through very specific questions

00:40:28
that are being asked from

00:40:30
the arbitrators. And this is

00:40:32
the policy suggestions that I

00:40:35
would like to make. because

00:40:37
and maybe If we go



00:40:41

one slide up Maria, Lucia.

00:40:46

Anyways, one more please or

00:40:48

two more. What that's the

00:40:51

one the exit? In the

00:40:55

next the exit disclosure form.

00:40:56

Thank you very much. When

00:40:58

we see when we look

00:40:59

at the Easter actually disclosure

00:41:01

from we're going to see

00:41:02

that it's There is a

00:41:05

promise by the arbitrators to

00:41:07

keep themselves. I mean to

00:41:09

keep the information obtaining the



00:41:11
arbitration confidential or judge fairly

00:41:15
as between the parties. and

00:41:17
then they Can or cannot

00:41:21
attach a statement in which

00:41:23
they are going to disclose

00:41:26
the information that they deem

00:41:28
necessary to be disclosed? so

00:41:33
The decision making on what

00:41:36
information is going to be

00:41:37
shared with the parties is

00:41:38
the information that the individual

00:41:41
arbitrator decides to share. in

00:41:46
Peru because of the number



00:41:47
of cases the regulations have

00:41:49
gone one step further and

00:41:51
I would like to say

00:41:52
that this is not something

00:41:53
that is novel in even

00:41:56
in international arbitration during the

00:41:59
presentation Ben mentioned that I

00:42:03
was part of the ICC

00:42:05
committee for dispute involving States

00:42:08
and state entities and one

00:42:10
of the suggestions then was

00:42:12
to to have a disclosure

00:42:17
form similar to the one



00:42:18

that I'm going to suggest

00:42:21

And maybe this is something

00:42:22

that has already been adopted

00:42:23

in some institutional arbitrations in

00:42:27

the United States, but I'm

00:42:29

not aware of any. but

00:42:31

if we go down a

00:42:32

couple of slides I would

00:42:34

like to share with you

00:42:35

the kind of questions that

00:42:36

are one up, please

00:42:39

there. No one down. Yes.

00:42:46

Another one, please. Next this



00:42:54
is the thank you very

00:42:55
much. The one that begins

00:42:57
with one. Yes. for example

00:42:59
in Peru, the arbitrators are

00:43:02
going to Need to State

00:43:05
the number of arbitrations institutional

00:43:08
or ad-hoc in which they

00:43:10
have been appointed arbitrated by

00:43:12
the parties in the arbitration

00:43:13
or by companies Associated to

00:43:15
the parties or entities related

00:43:18
to the parties in the

00:43:19
last five years. Also, they



00:43:22

are going to be required

00:43:23

to provide detailed information regarding

00:43:26

the dates on which they

00:43:27

were appointed. the party that

00:43:30

appointed and the starts and

00:43:33

end date of the arbitration.

00:43:37

they are going to be

00:43:40

the they're going to be

00:43:41

required to State the number

00:43:42

of arbitrations. in which they

00:43:47

are participating with other arbitrators

00:43:49

in the case, and if

00:43:51

we go to the next



00:43:53

Slide, please. They will need

00:43:57

to inform the parties if

00:43:59

they are currently sitting or

00:44:02

they have set sat in

00:44:04

a case. With the in

00:44:07

which they were appointed by

00:44:07

one of the attorneys in

00:44:09

the case, and then in

00:44:10

general, they will have to

00:44:11

inform the parties of any

00:44:13

professional relationship with the parties

00:44:16

that representative lawyers advices. A

00:44:20

I said I started Trader



00:44:22
in Peru and in several

00:44:24
cases and and I can

00:44:26
tell you that this is

00:44:27
a guideline that helps. First

00:44:30
of all the arbitrator himself

00:44:31
to assess what it can

00:44:33
be important for the party

00:44:34
to to know. And secondly

00:44:37
it provides. The opportunity for

00:44:41
the Paris to understand and

00:44:43
avoid the need to come

00:44:46
through the internet. In order

00:44:49
to assess whether there is



00:44:51

a conflict of interest or

00:44:52

not. in a situation what

00:44:56

I what I think is

00:44:56

that in the current state

00:44:59

of the practice Lisa somehow

00:45:02

of a practical shift in

00:45:05

the burden of proof it

00:45:07

is for the parties to

00:45:09

discover possible conflicts when we

00:45:12

should try to avoid the

00:45:14

conflict. to begin with so

00:45:21

I mean to conclude. I'm

00:45:26

I'm bringing this to your



00:45:28
consideration because I think that

00:45:30
the arbitration Community should should

00:45:34
avoid the real conflicts of

00:45:38
the perceived conflict of interest.

00:45:41
Before those conflicts take place.

00:45:44
And I know that this

00:45:46
idea of putting various specific

00:45:48
questions to the party has

00:45:49
been entertained in international arbitration

00:45:52
and I'm wondering whether we

00:45:54
are at the time in

00:45:56
which that kind of information

00:45:59
is going to be disclosed.



00:46:02

And I speak now from

00:46:04

from my perspective. And my

00:46:07

personal experience. If you just

00:46:11

sign a form you can

00:46:14

hide information. on the other

00:46:18

hand if you if you

00:46:21

need to respond questions. you

00:46:25

a person will be almost

00:46:26

in a position or in

00:46:28

a situation of lying to

00:46:30

those reading the statement. So

00:46:33

it increases the burden on

00:46:36

the arbitration arbitrator to reveal



00:46:39
the information that it can

00:46:41
be that can be important

00:46:43
for the parties for for

00:46:45
the parties to understand whether

00:46:47
conflict of interest exists or

00:46:49
not. And as I said,

00:46:51
it's a policy suggestion at

00:46:54
the end of the day,

00:46:55
it's going to be for

00:46:56
the states that are currently

00:46:58
negotiating these these new code

00:47:02
of conduct either at ancitral

00:47:04
or before exit to adopt



00:47:07

a policy like this. But

00:47:09

more importantly the message that

00:47:13

I would like to compare

00:47:14

to you. All is first

00:47:15

of all that nobody no

00:47:17

one likes to bring a

00:47:18

challenge that challenges are very

00:47:22

costly for the parties bringing

00:47:24

the challenge not only in

00:47:28

In money, but also reputation

00:47:32

time. and so I believe

00:47:36

that the Avatar Community should

00:47:39

work together in order to



00:47:41
anticipate this kind of problems

00:47:43
because at the end of

00:47:44
the day when when those

00:47:46
challenges are revealed. It is

00:47:50
the the entire arbitration Community

00:47:53
the one that suffer the

00:47:55
consequences. And thank you. Thank

00:48:02
you Ignacio. Now. We'll turn

00:48:06
the floor over to Daniel.

00:48:07
I think we'll focus a

00:48:09
bit more on regulation of

00:48:12
Council ethics and international arbitration

00:48:16
Daniel. Well, thank you very



00:48:18

much Ben. Not sure we

00:48:22

will do this for reasons.

00:48:23

I will explain I think

00:48:24

and which have already been

00:48:26

touched upon by Rose in

00:48:30

her first presentation. I will

00:48:33

probably more focus on whether

00:48:35

it's actually necessary or even

00:48:36

feasible to put into place

00:48:39

this kind of, you know,

00:48:41

universal code of ethics for

00:48:43

our for console in arbitration

00:48:45

in international arbitration specifically. so



00:48:49
but first of all, I

00:48:50
mean I think Rose actually

00:48:52
touched already quite nicely on

00:48:54
this point a clear difficulty

00:48:57
about ethics for console in

00:49:00
international arbitration is certainly that

00:49:03
we all come from different

00:49:04
legal traditions. We have different

00:49:06
legal education. We have our

00:49:08
own ethical rules, you know

00:49:11
the boss that we admitted

00:49:13
to and I'm only speaking

00:49:15
about people who are million



00:49:16

only one bar because already

00:49:17

if you're admitted. I don't

00:49:18

know in Paris in New

00:49:19

York. This does already create

00:49:21

problems and I'm not sure

00:49:22

how people solve those. So

00:49:24

I'm speaking only yes in

00:49:25

my capacity. Yes a pure

00:49:27

French admitted lawyer in Paris

00:49:31

and will Point probably a

00:49:33

little bit too difficulties, which

00:49:34

I can see in this

00:49:36

kind of idea often universal



00:49:39

code. The first problem is

00:49:42

that you know, we see

00:49:44

things differently what is entirely

00:49:46

acceptable. For Anglo-Saxon lawyers for

00:49:49

instance seems to be obviously

00:49:52

Barbarian for Continental concentrate lawyers

00:49:57

French lawyers German lawyers or

00:50:00

people like this. This has

00:50:03

been quite nicely explained in

00:50:05

several Publications. Where actually they

00:50:08

go to different specific ideas

00:50:11

just to name two of

00:50:13

them preparation of Witnesses on



00:50:18

one hand and you know

00:50:19

document production procedures on the

00:50:21

other hand. You just don't

00:50:24

Lift this thing in the

00:50:26

same way. So there's already

00:50:29

a first problem. It's not

00:50:31

specific to International arbitration born

00:50:34

the way it actually comes

00:50:35

up all the time where

00:50:37

International lawyers or lawyers from

00:50:40

different backgrounds will have to

00:50:42

come together and to work

00:50:44

together or against each other



00:50:45

an International tribunals International court

00:50:48

of justice and problem we

00:50:51

do or we did have

00:50:52

the same problem with in

00:50:53

Europe where lawyers actually can

00:50:55

circulate quite freely and provide

00:50:58

services also in other countries

00:50:59

and well in Europe, it

00:51:01

was actually solved by adopting

00:51:03

a European code of ethics

00:51:05

by the professional or a

00:51:07

kind of you know, the

00:51:08

Council of Law Society of



00:51:11

European countries, which has adopted

00:51:13

European code of ethics and

00:51:15

which today is included for

00:51:16

instance an integral part to

00:51:19

the French code of ethics.

00:51:21

And which tries to solve

00:51:23

some of the problems with

00:51:25

the under European level, however,

00:51:28

under International level so International

00:51:30

arbitration, but first of all,

00:51:32

it's actually quite interesting to

00:51:34

see that none of the

00:51:35

arbitral rules, which we know



00:51:39

if you usually practice with

00:51:41

the exception to the LCRA

00:51:42

rules, which have you know,

00:51:44

included some general principles speak

00:51:47

about ethical obligations Council specifically

00:51:51

on Council, it's quite often.

00:51:53

It doesn't go any further

00:51:54

than to say. Well the

00:51:56

parties can be represented by

00:51:57

console. But this also means

00:51:59

that the party just not

00:52:00

necessarily mean to be represented

00:52:02

by Council and then the



00:52:03

question already Rises why Council

00:52:06

working for a party should

00:52:07

have specific obligation to the

00:52:10

tribunal or to the other

00:52:11

party and the other party

00:52:13

represent in itself should not

00:52:16

have the same kind of

00:52:17

obligations. So quite often. The

00:52:20

auditor rules I actually signed

00:52:22

about those issues. And that's

00:52:25

certainly not fully accidental. Because

00:52:28

and this has been quite

00:52:29

nice shown by the tribunal



00:52:31

in the Run Patrol versus

00:52:33

Romania case. Well the role

00:52:35

of console and the role

00:52:37

of arbitrators which are regulated

00:52:38

which we have seen are

00:52:40

quite different. So we as

00:52:42

Council of our main obligations

00:52:44

not so much to the

00:52:45

tribunal but to the clients.

00:52:47

This is my understanding you

00:52:49

have to present the client's

00:52:50

case in the best way

00:52:52

possible still respecting the obligations



00:52:55

which the rules which are

00:52:57

fixed for the official process.

00:53:02

So the national rules of

00:53:04

Ethics are different of course,

00:53:07

but of course there has

00:53:09

been on the other hand

00:53:10

a development of quite a

00:53:11

number of soft law rules

00:53:13

Rose has actually provided quite

00:53:17

useful list. I just wanted

00:53:19

to add the it's already

00:53:20

a 1919 United Nations Declaration

00:53:24

on the wall of lawyers



00:53:25

in society. So already fixes

00:53:27

a little bit our I

00:53:29

mean our rules which should

00:53:31

be respected by all lawyers

00:53:33

in the exercise of their

00:53:35

profession, but then we have

00:53:36

the other well known rules

00:53:38

it certainly starts with the

00:53:40

2010. Hey principles, which are

00:53:44

not specifically touch it at

00:53:47

International arbitration, but it all

00:53:49

kind of international tribunal International

00:53:52

Court activities. So stay to



00:53:54

States or invest the state,

00:53:56

but you have a number

00:53:58

of others. I do certainly

00:54:01

include the IBA rules on

00:54:03

representational partition International arbitration and

00:54:05

the IBA rules and conflicts

00:54:07

of rules which touch upon

00:54:08

issues. Of ethics and at

00:54:13

the end of the day,

00:54:13

I mean the Spanish. Code

00:54:16

for arbitration which process already

00:54:18

mentioned too is certainly a

00:54:21

last example or more recent



00:54:23

example of these kind of

00:54:25

principles. So developing soft floor

00:54:28

is certainly not bad the

00:54:30

only issue I do have

00:54:31

with this. is that It

00:54:35

actually levels down the different

00:54:37

ethical obligations. We all have

00:54:41

and every I mean pretty

00:54:44

much. All of the codes

00:54:46

start with the kind of

00:54:47

General reservation saying well, this

00:54:50

does not override any of

00:54:53

the other ethical rules, which



00:54:55

are lower will have to

00:54:56

respect in its own jurisdiction.

00:54:58

And there are difficulties for

00:55:00

this because for instance in

00:55:02

France preparation of witnesses is

00:55:05

just a practice which was

00:55:06

which is not admissible under

00:55:08

our ethical obligations. And then

00:55:12

so far that the Paris

00:55:13

bar adopted a specific resolution

00:55:17

in order to adapt this

00:55:19

principle for arbitration procedures. Actually

00:55:23

they said well, of course



00:55:24

French lawyers would be unfairly

00:55:28

traded if they could not

00:55:29

prepare their Witnesses compared to

00:55:31

the practice which is entirely

00:55:33

accepted in other jurisdictions. So

00:55:35

for arbitration, it's okay, right?

00:55:41

The other I mean, it

00:55:42

does not only level down

00:55:43

the principle it also settles

00:55:47

a certain. Agreement between all

00:55:50

of us but the procedure

00:55:52

and the principles which we

00:55:54

should follow are mainly Anglo-Saxon



00:55:56

oriented. Right. So let's I

00:56:00

mean and we as Continental

00:56:02

laws we just accepted because

00:56:04

we just used the same

00:56:05

processes or the time specifically

00:56:08

in exit document production is

00:56:09

a very good example, but

00:56:12

here I just wanted to

00:56:13

point also to the prag

00:56:15

rules for for the efficient

00:56:17

conduct of arbitration procedures where

00:56:19

the orbital tribunal is supposed

00:56:22

to have a much more



00:56:23

active role also in collecting

00:56:26

evidence and stuff like that,

00:56:27

which will certainly also influence

00:56:30

the the ethical rules of

00:56:33

lawyers which have to be

00:56:35

committed there another problem of

00:56:38

those software instruments for me

00:56:41

that they actually only tortured

00:56:44

The the efficiency of the

00:56:46

arbitral procedure or the Integrity

00:56:48

of the orbital procedure mainly

00:56:50

the relations between Council and

00:56:53

the article 12, you know,



00:56:54

that's not so much speak

00:56:55

about the obligations. We as

00:56:57

lawyers have I mean to

00:57:02

our clients? Right obligations, like

00:57:05

professionalism competence integrity. And that's

00:57:10

maybe very difficult to be

00:57:12

implemented even in an orbital

00:57:14

process. I mean There's a

00:57:17

good example a very reasoned

00:57:19

example in a case in

00:57:21

the case the suture investors

00:57:23

Madagascar, which is just an

00:57:25

annulment and the annulment hearing



00:57:27

is online. It's just put

00:57:29

it online. It's on YouTube

00:57:31

and Madagascar and this procedure

00:57:33

the enormous procedure for instance

00:57:35

claims that the orbital tribunal

00:57:37

should have exercised. It's in

00:57:38

a powers. In order to

00:57:41

ensure that Madagascar is correctly

00:57:44

represented by the arbitrary by

00:57:47

the console which represented Madagascar

00:57:49

so in principle Madagascar is

00:57:51

now claiming. Well the council

00:57:53

we had was bad. We



00:57:55

didn't do a good job.

00:57:57

But you know. How far

00:57:59

does it go I mean

00:57:59

it's it's certainly on the

00:58:01

one hand a responsibility of

00:58:03

the party to to engage

00:58:05

console. But it's also in

00:58:08

responsibility of the council not

00:58:10

to accept a case where

00:58:13

actually thinks well, this actually

00:58:14

goes over my capacity and

00:58:16

more knowledge. So that's a

00:58:19

very tricky issue and I'm



00:58:20

not sure that any of

00:58:21

those. Soft law instruments has

00:58:24

actually tackled these problems. And

00:58:27

that's a real reason for

00:58:28

this too and that comes

00:58:30

back roses also spoken about

00:58:32

this who will implement those

00:58:34

rules. But of course the

00:58:36

orbital tribunal can and must

00:58:38

ensure the integrity of its

00:58:41

own process. But that's not

00:58:43

actually everything right. I mean

00:58:45

it can certainly go to



00:58:47
some extent to draw inferences

00:58:49
or whatever by Council conduct.

00:58:53
But you know on the

00:58:54
other hand, I mean if

00:58:54
the console is actually you

00:58:57
know. doing applications or requests

00:59:01
which will only prolong the

00:59:03
procedure at the end of

00:59:04
the day the tribunal will

00:59:05
decide. Well, this will be

00:59:06
handled and the cost or

00:59:08
at the end of the

00:59:09
day and the party will



00:59:10
probably be responsible for for

00:59:13
more of the costs and

00:59:14
the other party, but why

00:59:16
should the party? You know

00:59:18
take up the risk of

00:59:20
its Council work. so that's

00:59:24
also an issue and Roses

00:59:27
also spoken about the the

00:59:31
remedies which are for seen

00:59:33
in the Spanish code. I

00:59:35
mean this shows already also

00:59:37
the difficulty the tribunal count.

00:59:41
Impose any kind of sanctions



00:59:43

or so on Console that's

00:59:46

normally within the responsibility only

00:59:48

of the professional organizations law

00:59:51

societies Etc. But on the

00:59:53

other hand if console actually

00:59:55

overstep there there duty to

00:59:59

the tribunal very cautious with

01:00:01

the tribunal or whatever. And

01:00:04

that's normally a problem with

01:00:06

at least an internal law

01:00:07

is not solved directly between

01:00:09

counsel and the tribunal but

01:00:11

only by kind of mediation



01:00:12
with the loss of society

01:00:14
in front of the batune

01:00:15
actually plays a very important

01:00:17
role in those conflicts and

01:00:19
we don't have this in

01:00:21
an office of tribunal. So

01:00:22
how would an orbital tribunal

01:00:24
be able to deal with

01:00:25
these issues except by you

01:00:28
know, essentialing the party for

01:00:30
its Council conduct. So there

01:00:33
are actually quite a lot

01:00:34
of difficulties even if tribunals



01:00:36
are not very shy in

01:00:39
imposing certain remedies in order

01:00:43
to safeguard their own opposite

01:00:46
process. everything which goes beyond

01:00:48
that is clearly out the

01:00:51
reach of an orbital tribunal

01:00:52
and without any kind of

01:00:54
international bar, which we don't

01:00:56
have and I think it's

01:00:56
a good thing that we

01:00:57
don't have these kind of

01:00:59
things but it's impossible to

01:01:03
you know to impose such



01:01:04
a code and to make

01:01:05
it work. Thank you. All

01:01:09
right. Thank you Daniel. And

01:01:10
thanks to everyone for for

01:01:12
a very interesting overview of

01:01:15
some of these issues. I

01:01:17
want to one of my

01:01:18
takeaways from the various presentations

01:01:20
here is that And everyone

01:01:24
seems to acknowledge or all

01:01:26
the panelists at least seem

01:01:27
to acknowledge that there's some

01:01:28
issues that are not ripe



01:01:30
or even fit for codification.

01:01:34
And I'm just wondering and

01:01:36
I'll start with Todd on

01:01:38
this but I'd also like

01:01:39
ignacio's views because he touched

01:01:41
on this issue a bit

01:01:41
less. Are there any issues

01:01:44
that are fit for codification

01:01:47
in this realm of that

01:01:49
Vapes whether with respect to

01:01:50
arbitrators or with respect to

01:01:52
counsel or should we really

01:01:54
just leave it to you



01:01:57

know practice in real time

01:01:59

commentary Etc. What do you

01:02:03

think Todd? I'm inclined towards

01:02:04

the ladder because the question

01:02:06

isn't even so much a

01:02:07

should but rather it could

01:02:08

as Danielle just suggested or

01:02:12

I should say explained of

01:02:14

It it seems infeasible. To

01:02:19

actually be attempting to do

01:02:21

so. I understand why organizations.

01:02:26

Like on Ted would want

01:02:27

to do this. But I'm



01:02:30
just not sure that it's

01:02:31
a great idea. Why would

01:02:33
they want to do it?

01:02:34
Well, because There's been complaints

01:02:36
obviously about investor State arbitrators.

01:02:39
I don't think many of

01:02:40
them if any of them

01:02:41
are founded well-founded but this

01:02:46
appear this is basically it

01:02:47
has the appearance of doing

01:02:48
something. It's a it's a

01:02:51
it's an old, you know,

01:02:52
political saw that basically the



01:02:54

best government is the one

01:02:55

that appears to be doing

01:02:55

something whether they actually are

01:02:57

doing something doesn't really matter.

01:02:58

They just have to appear

01:02:59

to be doing something and

01:03:01

drawing up codes is a

01:03:02

great way to appear to

01:03:03

be doing something for institution,

01:03:05

but that doesn't mean that

01:03:08

it's practical or that the

01:03:10

there aren't unforeseen consequences as

01:03:13

I suggested with my reference



01:03:15
to to Hayek. So I

01:03:19
suppose I would have to

01:03:20
say no. There's this there

01:03:22
really isn't anything we all

01:03:22
have our bar ethics. And

01:03:25
if anything it seems to

01:03:27
me that perhaps we could

01:03:30
focus on getting people to

01:03:33
be more steadfast and true

01:03:34
to their own to their

01:03:35
existing ethics requirements rather than

01:03:37
trying to pile on new

01:03:39
ones that maybe people will



01:03:41

adhere no more strictly to

01:03:42

as well and we should

01:03:44

always contemplate of course that

01:03:45

in the end of the

01:03:46

day whether that be for

01:03:48

counsel or whether it be

01:03:50

for arbitrators. There are other

01:03:51

more tangible means of sanction

01:03:54

such as overturning in a

01:03:56

ward or a costs penalty.

01:03:59

So we have mechanisms. Maybe

01:04:02

we should just learn to

01:04:03

use them better. And what



01:04:07
do you think Ignacio? Sorry,

01:04:12
you're on mute Ignacio. Yes

01:04:15
report that. Thank you Ben

01:04:19
for the question and I

01:04:20
think that first of all,

01:04:22
I think that I have

01:04:23
a the opposite view I

01:04:26
I really think that that

01:04:30
a code of conduct is

01:04:32
necessary. and I'm not sure

01:04:38
that it cannot be enforced.

01:04:39
I mean first of all,

01:04:40
I agree with Daniel that



01:04:41
is better not to create

01:04:42
an international bar. And lawyers

01:04:45
should be. I mean lawyers

01:04:49
conduct should be sent to

01:04:50
the the local parts for

01:04:52
for the locals part or

01:04:53
the bus the bus where

01:04:54
they are bar or register

01:04:58
should decide. The contact but

01:05:02
that doesn't mean that the

01:05:04
tribunal doesn't have any power

01:05:05
to enforce. It means as

01:05:07
Daniel suggested. First of all,



01:05:10
the trivial can make an

01:05:14
award on costs to the

01:05:15
party. And we all accept

01:05:19
I think in international arbitration

01:05:20
that Trevino's having had in

01:05:22
powers. and the tribunal's inherent

01:05:26
power should permit the the

01:05:29
members of the Trevino to

01:05:31
make some kind of to

01:05:36
to pass a sanction to

01:05:37
to that lawyer and finally

01:05:40
the file or the contact

01:05:43
can be sent to the



01:05:44
specific bar. And and I'm

01:05:48
not sure I wanted the

01:05:49
tribunals with the tribunals in

01:05:51
the future are going to

01:05:51
take a more active role

01:05:53
because we are a small

01:05:55
community and and we all

01:05:57
try to avoid. issues in

01:06:01
which we That could affect

01:06:06
our colleagues. This is a

01:06:08
small community, but At the

01:06:11
same time. I think that

01:06:11
there are some contacts that



01:06:13
should not be tolerated. I

01:06:16
have one specific case in

01:06:18
which I was counsel for

01:06:19
one state and A council

01:06:23
on the other side created

01:06:25
a document in order to

01:06:26
obtain jurisdiction. And it's not

01:06:29
something that I'm saying that

01:06:31
happened, but an expert was

01:06:34
hired. And these expert Tracked

01:06:39
Down the document. And find

01:06:42
out that the document had

01:06:43
been created the night before.



01:06:46
by the lawyers involved in

01:06:47
the case and should we

01:06:52
sanction these kind of practices?

01:06:55
that affects everyone not only

01:06:59
those that acted illegally, but

01:07:04
also the other members of

01:07:07
the international electrician practice my

01:07:09
response to that is yes.

01:07:11
I think that the count

01:07:13
of conduct is going to

01:07:14
be mandatory for those practicing.

01:07:18
Say before exit. And at

01:07:22
the end of the day



01:07:22

said God guideline, but without

01:07:25

the guideline we cannot unfortunately

01:07:27

leave. the decision making about

01:07:34

whether our conduct is ethical

01:07:36

or not or not to

01:07:38

ourselves. Unfortunately, some some practitioners

01:07:42

are. I mean are willing

01:07:48

to enforce that rules very

01:07:53

strongly and some other practitioners

01:07:55

do not so I think

01:07:58

that at least habitual tribunals

01:08:00

and the institution have some

01:08:02

power. in in case of



01:08:05
ethical breaches and I will

01:08:10
also wanted to make a

01:08:11
very short point if I'm

01:08:12
permit it. about why exit

01:08:16
or ancitrol are dealing with

01:08:18
discussed code of conducts and

01:08:20
and it's this comes from

01:08:23
the from a need been

01:08:27
expressed by different states and

01:08:30
I can tell you that

01:08:32
being in the ancient meeting

01:08:34
last week or two weeks

01:08:37
ago. The need for a



01:08:40
code of conduct was overwhelmingly

01:08:43
supported by those attending either

01:08:45
in person or or through

01:08:51
through the internet so I

01:08:55
think also that that we

01:08:57
as the arbitration Community should

01:08:59
hear what other stakeholders. are

01:09:05
also saying and and try

01:09:08
not to close to ourself.

01:09:10
Because this is not just

01:09:11
about those practicing investment arbitration,

01:09:15
but it is also about

01:09:17
legitimacy of the system. All



01:09:27

right. So we we have

01:09:28

a question from Jose Antonio

01:09:31

what an international code of

01:09:34

conduct adopted? An investor State

01:09:37

arbitration deflate one of the

01:09:39

reasons to push for a

01:09:40

permanent investment Court in replacement

01:09:43

of arbitration tribunals. Rose I'll

01:09:50

let you take that one.

01:09:53

I don't think I'm looking

01:09:56

at I don't think it

01:09:57

would be placed it. I

01:09:58

think you would it work



01:10:00
in complement. For instance. I

01:10:02
wanted to add to what

01:10:04
Master said I too was

01:10:06
before on situo and I

01:10:07
follow the debate and I

01:10:12
think the fact that you

01:10:13
have all the members States

01:10:15
involved. This is the first

01:10:16
time like for instance. This

01:10:18
is so many African States

01:10:19
giving the opinion with the

01:10:22
process and taking They can

01:10:26
charge I would say by



01:10:27
submitting different proposal really really

01:10:30
show us in the International

01:10:32
Community that the states already

01:10:35
to see changes and I

01:10:36
think that if you look

01:10:38
at how if we want

01:10:40
this universal code of conduct

01:10:42
work, eventually, you'll have to

01:10:44
go through the national laws.

01:10:46
And the reason I say

01:10:48
this you see the the

01:10:50
model world the on social

01:10:52
model. We still have a



01:10:55
new state signing. Every every

01:10:57
day or getting to to

01:10:59
be part of the unsuitual

01:11:01
group, so I think the

01:11:03
fact that on Central is

01:11:05
is taking the lead with

01:11:07
this isds form getting all

01:11:10
its members involved and then

01:11:12
now exceed is trying to

01:11:14
you know, come in in

01:11:15
conjunction with constitute. I think

01:11:17
we we can get somewhere

01:11:19
and I actually believe like,



01:11:20
yes you we need to

01:11:23
have a code of conduct

01:11:25
because my experience for instance

01:11:29
in coming from both civil

01:11:33
law and and common law

01:11:34
and having practice in Paris

01:11:36
and in Africa and and

01:11:38
I could say there are

01:11:40
some commonality. We all know

01:11:41
that the Army Traders they

01:11:43
need to be independent. We

01:11:44
all know that the lawyers

01:11:44
have to be here to



01:11:46
go. So I think they

01:11:47
could we could get some

01:11:48
middle ground. It's on social

01:11:52
they've done they have many

01:11:53
different treaties having us trying

01:11:56
to look. Now we have

01:11:57
a mediation the Singapore convention.

01:12:00
So I think it could

01:12:01
take years to get to

01:12:03
get all the states who

01:12:04
agree to a standard, but

01:12:06
I think eventually we can

01:12:08
get there. So to answer



01:12:09
houses question. I don't think

01:12:10
it's going to affect it.

01:12:11
I think it will complement

01:12:12
it. if I may if

01:12:15
I think that if the

01:12:18
If the double hunting provision

01:12:19
is takes form of a

01:12:21
Prohibition. You're actually driving arbitrators

01:12:24
into a guild and therefore

01:12:27
the only answer to the

01:12:29
problem described in the Panama

01:12:32
cases would therefore be to

01:12:33
have an international tribunal. So



01:12:35
in a sense going down

01:12:37
that road actually gets you

01:12:39
to a standing tribe, you

01:12:40
know. Yeah, so anyway. Just

01:12:44
a little bit to what

01:12:45
taught said in order to

01:12:47
bring some piece of mind.

01:12:48
I mean, I don't think

01:12:49
that the total prohibition is

01:12:51
going to be adopted. I

01:12:53
think the position states took

01:12:55
in the deliberations were very

01:12:57
reasonable. and I think that



01:13:01
some form of clarification it's

01:13:04
going to to be adopted

01:13:06
but it's not going to

01:13:08
be the total prohibition at

01:13:10
all. I mean, that is

01:13:11
my My view and very

01:13:13
quickly. I'm sorry for taking

01:13:15
more time. Maybe Ben. I

01:13:17
know that you want to

01:13:18
give the floor to Tanya.

01:13:19
It's something that robes said

01:13:22
about the need to. Make

01:13:26
these codes into local law.



01:13:29

I mean, I I really

01:13:30

believe that that is not

01:13:31

necessary. The the Mauritius conventions

01:13:36

indeed shows that it's not

01:13:38

necessary because when these International

01:13:41

Agreements are adopted by States

01:13:44

And that through the internalization

01:13:48

of the international law in

01:13:49

their own legal systems is

01:13:51

going to become low. so

01:13:55

I think it's going to

01:13:56

be more effective than just

01:13:58

going through the Congressional approval



01:14:00

Case by case. the local

01:14:05

bar by bite for instance.

01:14:07

I don't know. I'm looking

01:14:10

into. The future because like

01:14:12

Daniel mentioned earlier with the

01:14:15

you know in France where

01:14:17

I'm also licensed to practice

01:14:19

law we have different. Code

01:14:22

of conduct and and humans

01:14:24

you see him mentioned about

01:14:25

some kind of arbitration or

01:14:26

mediation between the better year

01:14:28

if they're but we also



01:14:30
have some unwitting rules for

01:14:33
instance. You will not see

01:14:35
a French lawyer come into

01:14:37
try to write another French

01:14:38
lawyer. It's just just me

01:14:41
just don't do that. So

01:14:42
you when you look at

01:14:43
arbitrators, we we are likely

01:14:46
to recommend our own friends

01:14:47
and we know and who

01:14:49
may be another lawyer if

01:14:50
there is something that's being

01:14:52
done. How do you how



01:14:54

do you get to sanction

01:14:56

this arbitrator for instance in

01:14:58

France? So I think I

01:14:59

think we need to the

01:15:01

national law. It's not an

01:15:02

abandonment because it may take

01:15:05

it may take years but

01:15:06

it will be properly done

01:15:08

where now the boss your

01:15:12

stations won't you know, they

01:15:13

can just apply that's my

01:15:16

opinion. I don't know. Thank

01:15:19

you. Rosem. I'm gonna ask



01:15:20

one last question to Daniel

01:15:22

and then I think we

01:15:23

need to open up to

01:15:24

to our audience test questions.

01:15:26

So Daniel you had expressed

01:15:29

a pretty clear opinion that

01:15:31

it would neither be I

01:15:34

think possible nor appropriate to

01:15:36

have an international code of

01:15:38

conduct for counsel or an

01:15:40

international ethical code for Council.

01:15:43

Does that same view apply

01:15:45

to the code of conduct



01:15:46
for adjudicators that's been proposed

01:15:50
by accident on Central? I

01:15:53
don't think so because they're

01:15:54
on the right quite different

01:15:55
position. Right? I mean, these

01:15:57
are the people who are

01:15:58
supposed to do justice and

01:16:01
the obligations. These are the

01:16:05
process are quite different. I

01:16:06
think it's much easier to

01:16:08
fix, you know conflict rules

01:16:10
or specific requirements on education

01:16:14
professionalism, etc. For arbitrators, which



01:16:19
are already in the rules

01:16:20
right the code of conduct

01:16:23
which then goes onwards to

01:16:24
say. Well you shouldn't speak

01:16:25
to the party. I mean

01:16:26
that's a little bit self-evident

01:16:28
to me. I don't know.

01:16:29
I don't know why we

01:16:30
need to write it down

01:16:31
somewhere. We all know that

01:16:32
it's an appropriate, right and

01:16:33
actually every time it happens.

01:16:35
We are all complain about



01:16:36
the fact that it did

01:16:37
happen. So why do we

01:16:39
need to have it written

01:16:40
down? I do have more

01:16:41
problem with you know, a

01:16:42
code of conduct for lawyers.

01:16:46
I mean counsel to be

01:16:47
discussed by States or by

01:16:51
exit or whatever. I mean,

01:16:52
this is clearly for me

01:16:54
against all one of the

01:16:56
basic principles, which is independence.

01:16:58
Why should States be able



01:17:00

to put this actually on

01:17:02

the table like this it

01:17:04

should Actually us lawyers preparing

01:17:07

in fixing our own code

01:17:09

of conduct for ourselves. Right.

01:17:12

Thank you Daniel. I know

01:17:13

there's lots more to say

01:17:14

about this, but I've been

01:17:15

instructed to take us to

01:17:17

the breakout room. So, you

01:17:19

know, thank you talk the

01:17:20

speakers for for your contributions.

01:17:23

Thank you. Thank you very



01:17:27

much. I think we'll see

01:17:30

everyone in the breakout room

01:17:31

shortly. In thank you Ben.

01:17:35

Thank you so much. We

01:17:37

are going to I'm quickly

01:17:40

going to explain the the

01:17:42

logic of the breakout rooms,

01:17:45

but before doing that I

01:17:47

would really like to thank

01:17:49

you Ben for moderating this

01:17:51

this panel because as we

01:17:53

saw there's no single Opinion

01:17:58

and this there's no consensus



01:18:00
and and that's why it's

01:18:02
such an interesting panel. I

01:18:04
mean there's there's a there

01:18:07
are backgrounds as many of

01:18:10
you are arbitrators where all

01:18:12
so many of you have

01:18:12
been counsel background in terms

01:18:15
of who you have represented

01:18:17
and that in somehow shapes

01:18:19
some some vision of investors

01:18:23
said arbitration public international law

01:18:25
and as as we saw

01:18:26
in this panel, it was



01:18:27

fascinating to to see how

01:18:29

how there's no one single

01:18:32

consensus on whether there should

01:18:34

be an Ethics code applied

01:18:37

to council or solely to

01:18:39

adjudicators. But in any event,

01:18:42

thank you, Ignacio Danielle Rose

01:18:46

Todd and and of course

01:18:47

been for doing such a

01:18:49

fabulous job in presenting the

01:18:51

issues and and featuring all

01:18:55

the different perspective. And with

01:18:58

that now we're going to



01:19:00
into our breakout rooms. What

01:19:03
I would ask you to

01:19:04
do as as panelist is

01:19:06
make sure that when you

01:19:09
receive Mutation to go into

01:19:11
breakout rooms, you do accept

01:19:13
it and say yes, because

01:19:15
otherwise you're gonna stay in

01:19:16
the main room. And and

01:19:19
once we do that, you'll

01:19:21
be able to sort of

01:19:22
network or socialize or talk

01:19:24
further about your issues concerning



01:19:26
and ethics code with our

01:19:29
steamed audience. Thank you very

01:19:31
much and well have fun

01:19:33
in the breakout rooms. Thank

01:19:36
you very much. Thank you.

01:19:39
Thank you. welcome, this is

00:00:05
wow, second edition 2021 our

00:00:11
panel today is about to

00:00:14
speak on issues of ethics

00:00:16
and international arbitration. my name

00:00:22
Is Jose Antonio Rivas? I'm

00:00:24
co-founder of Washington arbitration week

00:00:28
together with Ian Laird from



00:00:30

crawlin Mooring. I am a

00:00:34

partner at astrology LLP, which

00:00:36

is a boutique Law Firm

00:00:38

here in Washington DC in

00:00:40

international arbitration both investor State

00:00:44

and Commercial arbitration and matters

00:00:47

of public international law. I

00:00:50

have the task of introducing

00:00:53

Ben love who is a

00:00:56

partner at boys Schiller and

00:01:00

flexner. Ben is a today's

00:01:04

moderator and he has done

00:01:06

quite a bit of coordination



00:01:08
and and work towards putting

00:01:11
this panel together. So Kudos

00:01:14
and thanks to Ben. I

00:01:16
would like to say that

00:01:17
Ben is a recognized he's

00:01:20
recognized as a global leader

00:01:21
in international arbitration and public

00:01:24
international law. He has represented

00:01:26
clients in more than 50

00:01:28
commercial and investment these Foods

00:01:30
under all major arbitral rules,

00:01:32
including some of the most

00:01:34
high profile matters submitted to



00:01:37

International arbitration over the past

00:01:39

decade Ben has assisted clients,

00:01:41

you know, obtaining farewell settlements

00:01:44

securing Awards in excess of

00:01:46

1 billion dollars on multiple

00:01:48

occasions and defeating several attempts

00:01:50

to know high value exit

00:01:52

Awards. He has particular experience

00:01:54

in these boots relating to

00:01:55

the exploitation production distribution sale

00:01:58

and purchase of hydrocarbons and

00:02:00

natural resources. Well as related

00:02:03

infrastructure, this includes numerous matters



00:02:06

in Latin America, Europe Asia

00:02:07

and Africa, involving mining sector

00:02:09

Upstream hydrocarbon sectors and agreements

00:02:12

to supply natural resources, including

00:02:15

natural gas pipeline and LNG

00:02:18

and other Commodities. He also

00:02:21

teaches investment law and arbitration

00:02:24

are proofing law school, and

00:02:25

he he also has a

00:02:27

presence in Washington DC as

00:02:29

well as in New York,

00:02:31

and I could keep on

00:02:33

going, but I do not



00:02:34

want to embarrass Ben by

00:02:36

by reading his whole set

00:02:38

of a conference. So Ben

00:02:39

with you our moderator take

00:02:43

the floor and thank you

00:02:45

so much for being in

00:02:46

Washington arbitration week. Thank you

00:02:50

Jose. And thank you to

00:02:52

others who helped facilitate and

00:02:55

organized this panel. It's my

00:02:58

pleasure to serve as moderator

00:03:00

today. Of course, we're going

00:03:02

to be talking about ethics



00:03:04
and international arbitration and you

00:03:07
know, not just arbitrator ethics

00:03:08
but also Council ethics and

00:03:10
other participants in the arbitral

00:03:12
process with the central question,

00:03:16
which will you know get

00:03:18
to throughout this panel of

00:03:20
whether we are now at

00:03:22
a time where a code

00:03:24
of ethics for you know,

00:03:26
one or all of these

00:03:27
actors is necessary and it's

00:03:30
my pleasure to introduce our



00:03:33

distinguish panel of speakers first,

00:03:36

we have rules Remo who

00:03:38

is the founding partner of

00:03:40

remmel international law Boutique law

00:03:44

firm and Washington, DC. Rose

00:03:46

was a full Fulbright scholar

00:03:48

at the University of Ghana

00:03:49

a school of law where

00:03:52

she taught investment in international

00:03:53

commercial arbitration general principles of

00:03:56

arbitration and contemporary issues and

00:03:59

arbitration amongst other subjects. Rose

00:04:04

focuses her practice on investor



00:04:07

State arbitration International Business Law

00:04:10

commercial litigation and international commercial

00:04:13

arbitration. She was also an

00:04:16

Adjunct professor at the University

00:04:19

of Perry do Pantheon assess

00:04:22

and University dues where she

00:04:25

taught fundamentals of the English

00:04:27

and American legal systems as

00:04:29

well as international business law.

00:04:32

Rose was recently appointed ABA

00:04:35

advisor to the uniform law

00:04:37

commission study committee on the

00:04:40

Singapore convention on mediation and



00:04:43

she has been appointed president

00:04:44

co-arbitrator and Sol arbitrator in

00:04:48

investor State and Commercial disputes

00:04:51

involving African States. Rose is

00:04:54

also a barrister and solicitor

00:04:56

of the Supreme Court of

00:04:57

Ghana and was appointed to

00:04:59

the permanent Court of arbitration

00:05:00

by Haiti. And next our

00:05:04

next speaker will be Todd

00:05:06

Weiler who is an independent

00:05:08

International arbitrator based out of

00:05:10

Canada. Todd has well over



00:05:14

20 years of experience working

00:05:16

in investment investor State disputes.

00:05:20

Mainly as Council. He is

00:05:24

a prolific speaker and author

00:05:26

he holds llms from the

00:05:29

University of Ottawa and Michigan

00:05:31

and international trade and International

00:05:33

Investment law respectively as well

00:05:36

as an sjd from Michigan

00:05:38

which yielded a 2013 book

00:05:43

entitled interpretation of International Investment

00:05:47

law a book that is

00:05:48

celebrated for its historically informed



00:05:51
approach to treaty interpretation. Todd

00:05:55
now spends most of his

00:05:56
time serving as arbitrator and

00:05:58
Consulting as an expert in

00:06:00
on International Investment law and

00:06:04
in international disputes. Our third

00:06:10
speaker will be Ignacio Totorola.

00:06:13
And Ignacio is a founding

00:06:15
partner of GST's Washington DC

00:06:19
office. He has a distinguished

00:06:21
career of 25 years as

00:06:24
a dispute resolution attorney in

00:06:26
which he has served as



00:06:27

lead counsel, Sol arbitrator chairman

00:06:30

and tribunal member and

00:06:32

more than 70 high stakes

00:06:34

International arbitrations. He has been

00:06:37

named a leading arbitration practitioner

00:06:39

in Latin America and worldwide

00:06:40

by Chambers Latin America Chambers

00:06:43

Global and legal 500 annually

00:06:45

since 2015. Ignacio has extensive

00:06:49

experience in complex international law

00:06:52

matters under most if not

00:06:54

all the major arbitral rules

00:06:56

and in a variety of



00:06:57

Industries. He formally defended Argentina

00:07:01

Bolivia and Ecuador gets investment

00:07:04

disputes and his trained government

00:07:06

officials from these and other

00:07:08

countries under the auspices of

00:07:10

unpad and is a frequent

00:07:14

lecture at the Columbia University

00:07:16

centers for sustainable investment where

00:07:20

he transformed government officials on

00:07:23

preventing and defending themselves against

00:07:25

investment disputes. Um Ignacio also

00:07:29

served as a diplomat and

00:07:31

as Council for the government



00:07:33

of Argentina with respect to

00:07:36

its exit disputes and on

00:07:39

behalf of Argentina, he negotiated

00:07:41

the 2010 arbitration rules. The

00:07:47

2012 ICC rules for disputes

00:07:51

involving States state entities and

00:07:53

represented Argentina before the WTO

00:07:56

the Young Ted investment committee

00:07:58

and the oecd investment committee.

00:08:01

And last but not least

00:08:03

we have Daniel Müller who

00:08:05

is a founding partner of

00:08:06

Pharr avocado and Paris Daniel



00:08:09
is a member of the

00:08:10
Paris bar and has expensive

00:08:13
extensive experience representing an advocating

00:08:17
for States as Council on

00:08:20
numerous occasions, before International courts

00:08:22
of tribunals, including a number

00:08:25
of cases before the icj

00:08:28
the international Tribunal for the

00:08:31
law of the sea and

00:08:32
various arbitral tribunals. Daniel has

00:08:35
also represented investors and states

00:08:38
and investors State disputes before

00:08:40
Dixit tribunals and before tribunals



00:08:43
operating on the ncertral rules

00:08:45
and among Daniels many Publications

00:08:47
is a recent one on

00:08:50
ethics in investment treaty disputes.

00:08:54
So with that I will

00:08:56
yield the floor to Rose

00:08:58
who will start us off

00:08:59
with an overview of the

00:09:00
topic at Hand Rose. Thank

00:09:04
you. Thank you so much.

00:09:04
Ben. I picked the opportunity

00:09:06
to also think Jose is

00:09:09
always thought of me and



00:09:11

put me on this flat

00:09:12

platform. So thank you so

00:09:13

much. If I can share

00:09:16

my screen, I'm just going

00:09:18

to go straight into it

00:09:19

because I know we don't

00:09:20

we have a lot to

00:09:23

say. Okay, great. I was

00:09:50

about to get very very

00:09:51

worried. I said, oh my

00:09:53

God, I can't find the

00:09:54

slides. My job will be

00:09:55

quite easy because I am



00:09:58

going to leave the heavy

00:10:00

duty to yeah sure to

00:10:01

Todd and and Danielle who?

00:10:04

Come I'll just give just

00:10:06

a quick overview of what

00:10:09

we are looking at when

00:10:10

we talk about ethics in

00:10:11

international arbitration. I will skip

00:10:15

the first few slides because

00:10:16

I think Just giving you

00:10:20

a background and then go

00:10:22

inside the presentation probably best.

00:10:26

Um International arbitration we know



00:10:28

is a why Global practice

00:10:31

and we have different legal

00:10:34

Traditions, but two main legal

00:10:37

tradition that would say at

00:10:39

least I see in my

00:10:40

practice is a lot of

00:10:41

the common law versus the

00:10:44

civil law. And by having

00:10:47

those different type of legal

00:10:50

tradition, I would say that

00:10:51

because some form of lack

00:10:53

of uniformity in the applicable

00:10:55

ethical rules when we talk



00:10:57
about ethics in international arbitration.

00:11:02
So with that we see

00:11:05
that in the past few

00:11:07
years that's been many different

00:11:10
proposals as to how to

00:11:12
handle or how to properly

00:11:15
present ethics in the international

00:11:18
arbitration Community First we can

00:11:22
look generally for the ethic

00:11:24
rules for arbitrators and and

00:11:27
Council we could say that

00:11:29
the IBA guidelines on the

00:11:30
conflict of interest is usually



00:11:33

what many of us we

00:11:35

look to when we are

00:11:38

speaking of the conflict of

00:11:40

interest in partiality and all

00:11:42

those green line yellow orange

00:11:45

and all the other stuff

00:11:46

that we know that the

00:11:47

idea guidelines will provide us.

00:11:48

These are cool very cold

00:11:51

principle, but it's still a

00:11:53

guideline. It's it's just a

00:11:55

soft law on the other

00:11:56

hand when we look at



00:11:57

the lawyers regulation. It has

00:12:01

not been consistent at all.

00:12:02

Mainly because we know that

00:12:04

the lawyers are attached to

00:12:05

their own particular jurisdictions. And

00:12:07

this is where you will

00:12:08

have the difference between the

00:12:10

common law and the civil

00:12:11

law what should be ethical

00:12:12

what's not and and the

00:12:15

tribunal doesn't have any coercive

00:12:16

power anyway to force these

00:12:18

lawyers to abide by any



00:12:20

set of rules. So then

00:12:23

then what we've seen that

00:12:26

many have had different proposals.

00:12:28

So one of the proposals

00:12:30

that many suggestions to have

00:12:32

a universal code of ethics

00:12:34

for counseling International arbitration with

00:12:38

this code. They are proposing

00:12:39

to have Global arbitration ethics

00:12:43

kind of body to review

00:12:45

any conducts of lawyers and

00:12:47

arbitrators are all the participant

00:12:50

in international arbitration. With that



00:12:53

also we see in 2014

00:12:55

LCI revised its arbitration rule

00:12:57

by providing guidelines to the

00:12:59

parties legal representative that are

00:13:03

mandatory in all lcio arbitrations

00:13:06

and the Tripoli has done

00:13:07

the same thing as well

00:13:08

by providing some standards. But

00:13:12

we have another code. This

00:13:14

code has not gotten a

00:13:15

lot of attention. Maybe Ignacio

00:13:17

can correct me from wrong

00:13:18

because it's it's the Spanish



00:13:20

arbitration Club code always very

00:13:23

well well of it, but

00:13:25

it has not gotten much

00:13:27

attention. So the Spanish objection

00:13:30

Club has two codes one

00:13:32

was in 2005 when 2019

00:13:34

the 2005 was really focusing

00:13:38

more on arbitral Institution. The

00:13:44

2000 the 2019 on the

00:13:47

other hand after they've reviewed

00:13:50

the 2005 they realized that

00:13:52

the international audition Community. They

00:13:56

were seeking to have all



00:13:57
participants in arbitration to to

00:14:00
have some kind of Standards

00:14:02
when it comes to Independence

00:14:03
in partiality transparency and professionalism.

00:14:06
So therefore by 2019 the

00:14:10
Spanish obituary. Hey, we might

00:14:12
as well come up with

00:14:13
the new code and that's

00:14:14
20 19 code and I

00:14:17
personally have gone through the

00:14:19
code. I think it's phenomenal

00:14:20
now the CBP the code

00:14:23
of best practice. It's a



00:14:25

set of soft rules a

00:14:27

compilation of lots of recommendation

00:14:29

that the Spanish arbitration club

00:14:32

would provide to the International

00:14:36

Community and the rules deals

00:14:38

with arbitral institutions. I'll be

00:14:41

Traders lawyers experts And as

00:14:44

well as to party funders,

00:14:45

and I thought that was

00:14:46

extremely interesting to see that

00:14:48

they've thought and I must

00:14:50

say that when you look

00:14:51

at the the code and



00:14:54
you see a lot of

00:14:55
people in the International Community

00:14:58
high profile individuals who are

00:15:01
engaged in the drafting of

00:15:02
the code, but yet it's

00:15:04
still not binding unless the

00:15:07
parties adopted in in the

00:15:09
arbitration agreement or you put

00:15:12
it in the Tor as

00:15:13
the arbitrator so you're not

00:15:14
gonna have to be able

00:15:16
to enforce the code. Quickly,

00:15:20
I'll tell you here. It



00:15:21

has about six sections and

00:15:24

four annexes. So. It's it's

00:15:28

a code that I would

00:15:29

encourage everyone to take a

00:15:30

look at because I think

00:15:31

it covers. It's actually a

00:15:33

precursor. I would say if

00:15:35

I may of the idea

00:15:37

to have a universal code

00:15:38

of conduct for all the

00:15:40

participants in the international arbitration.

00:15:43

I'll go to some of

00:15:45

the sections that I thought



00:15:46

was very essential for instance

00:15:48

the arbitral institution section. This

00:15:51

is like section one. It's

00:15:54

on the one hand. It

00:15:55

says that show institution. They

00:15:57

are there to organize administer

00:15:59

beautician process while applying to

00:16:01

principle of Independence in partiality

00:16:03

transparency and on the other

00:16:05

hand, they have these duty

00:16:07

to ensure the process and

00:16:09

fairness of words. So therefore

00:16:11

the Spanish arbitration Club felt



00:16:14
the need they are beautician

00:16:16
institution obituaries needed to be

00:16:19
regulated as well. I won't

00:16:21
have time to go into

00:16:21
the the rules for those

00:16:25
regulations, but we can take

00:16:26
a look at them. If

00:16:27
you have some times. I

00:16:29
just will set the stage

00:16:30
for my co-presentatives. The second

00:16:32
one is the section three.

00:16:35
We're showing to you the

00:16:36
duties of the arbitrators not



00:16:38
different from what we know

00:16:39
but there's one duty they

00:16:41
call duty of abstention. That

00:16:43
will go through a little

00:16:44
bit so you can have

00:16:45
an idea what the Spanish

00:16:47
Obsession Club did in this

00:16:50
code. Basically, I'll arbitrators are

00:16:53
the key to ensuring good

00:16:55
outcome in an arbitration. The

00:16:57
mission is to resolve disputes

00:16:59
by applying the procedural and

00:17:01
substance of rules that applied



00:17:03
in each case. So essentially

00:17:05
the trust that they will

00:17:08
fulfill their mission within specialty

00:17:10
independence without services in towards

00:17:13
any of the parts. He's

00:17:14
essential for arbitration to be

00:17:17
showing as a good system

00:17:19
of justice. So that's the

00:17:22
main reason why they needed

00:17:26
to Rose could I could

00:17:29
I yeah, I don't mean

00:17:30
to interrupt you but there

00:17:31
are two points. I'd like



00:17:32

to make as moderate at

00:17:34

the moment one is I

00:17:35

wanted to see whether you

00:17:36

could put your slides into

00:17:38

presentation modes so that they

00:17:39

fill the screen because I

00:17:40

I a couple of questions

00:17:42

about the visibility but then

00:17:44

I thought I might also

00:17:45

ask anyone who's not speaking

00:17:47

to put their microphone on

00:17:49

mute because we're getting a

00:17:50

bit of background noise from



00:17:51
someone on the line. Okay,

00:17:55
how do I do that

00:17:56
then? It should be. I

00:18:00
mean if you most likely

00:18:03
if you press into view.

00:18:06
Or you get a slight

00:18:07
Joy To Think? Okay. Advance

00:18:17
sharing option. I don't know

00:18:18
little no no not not

00:18:20
in Zoom, but in in

00:18:22
PowerPoint itself, if you very

00:18:25
bottom right hand corner that

00:18:26
little square should do it.



00:18:27

You can press you can

00:18:30

press F5. Okay, that that

00:18:33

helps try that. Okay. No,

00:18:36

that's I have I have

00:18:38

a Mac and five. No

00:18:40

having much you go to

00:18:43

slideshow. I mean you if

00:18:46

you click slideshow. Yeah. You

00:18:51

have it. It's at the

00:18:52

top of your toolbar. Okay.

00:18:57

In the middle and you

00:18:59

slide I seen you slide.

00:19:00

No no further over to



00:19:01

the right. It is between

00:19:03

animations and review. later No,

00:19:08

no. Slide show my God.

00:19:13

No, you missed it. Slideshow.

00:19:15

You're moreover there's something slideshow

00:19:21

right there. Click that one

00:19:23

rose. You should if you

00:19:29

be able to click that

00:19:29

little box and they're far

00:19:31

right hand corner. That should

00:19:32

do it. And my assistant

00:19:36

is not here. Always this

00:19:41

what an embarrassment. Rose if



00:19:44
you go down At the

00:19:46
right side you see like

00:19:48
a little image that looks

00:19:50
like a glass of wine.

00:19:52
If you know more in

00:19:54
the right no, no. that

00:19:57
one Okay, that one yeah.

00:19:59
Oh, yes. Thank you Maria.

00:20:05
Thank you. Is that Maria?

00:20:06
Yeah. Yeah. Let me hear

00:20:08
what Okay, my apologies. So

00:20:12
I'll go straight to the

00:20:17
some of the example with



00:20:19

article 74 of the codices

00:20:21

that the all arbitrators all

00:20:24

arbitrator candidate must without under

00:20:27

delay. We refuse their appointment

00:20:32

if a they Harbor any

00:20:35

doubts about the willingness or

00:20:37

capability to perform the role

00:20:39

without biased towards any of

00:20:41

the parties be they are

00:20:43

circumstances which in the view

00:20:45

of a reasonable and informed

00:20:47

person give rise to justifiable

00:20:49

doubts about the reality. That's



00:20:54

That's very very important because

00:20:56

you see like with a

00:20:57

if the arbitrator thing like

00:20:59

well, you know, there's no

00:21:00

conflict. I can take this

00:21:01

case but yet it's if

00:21:03

if you still have things

00:21:06

there that reasonable informed person

00:21:08

justifiably think that it's impossible

00:21:12

still should not take the

00:21:14

matter under the code. And

00:21:17

the one that I thought

00:21:19

was really important as well



00:21:20

was the lack the necessity

00:21:23

available time to adequately perform.

00:21:27

They will I could go

00:21:28

more into details when they

00:21:30

have questions because this is

00:21:32

important we see there's some

00:21:34

arbitrators just keep on taking

00:21:36

one I check last time.

00:21:38

I had like 20 cases.

00:21:39

I think it's it's very

00:21:40

unfortunatable to have so many

00:21:41

cases open and when others

00:21:44

could basically think those cases



00:21:47
so if you're not available,

00:21:48
you should not take the

00:21:50
case. um so, um we

00:21:57
have we have here like

00:22:01
the duty now I cannot

00:22:04
read my screen because it's

00:22:05
it's okay, so we ask

00:22:12
okay. Is that where I

00:22:15
was I think so. Yeah.

00:22:19
So now you look at

00:22:20
the duty of for the

00:22:24
lawyers, you said the lawyers

00:22:26
have to be acting with



00:22:28
integrity. And of course the

00:22:30
clients have the right to

00:22:32
hire and fire the lawyer

00:22:33
and also the prohibition of

00:22:35
exported communication and Article 15

00:22:39
for instance a lawyer. Shall

00:22:40
we find from knowingly making

00:22:41
false affirmations both in the

00:22:45
reading submission and also before

00:22:46
in all pleadings before the

00:22:49
tribe, you know. also, you're

00:22:51
not allowed to do any

00:22:52
citation that distort the meaning



00:22:54

of the law and sometimes

00:22:56

there are lawyers was seriously

00:22:58

overly zealously and they are

00:23:00

doing different interpretation into they

00:23:03

distort the meaning of the

00:23:04

law with that under the

00:23:06

code article one 132 When

00:23:09

You Reach There are a

00:23:12

few things that could happen

00:23:12

to you first. If it's

00:23:15

a small bridge, I think

00:23:16

would go and caution the

00:23:17

lawyer verbally and in writing



00:23:19

be you can draw inference

00:23:22

when evaluating the evidence and

00:23:24

see lawyers come back into

00:23:27

consideration when you are drafting

00:23:30

the award but the D

00:23:33

is what's really interesting where

00:23:35

the the tribunal would actually

00:23:37

have a duty to contact

00:23:39

the boss association with this

00:23:42

lawyer. Is that meeting to

00:23:44

submit some form of complain,

00:23:46

but the only problem is

00:23:47

some jurisdictions. You need to



00:23:49

be a lawyer to build

00:23:50

before the child, you know

00:23:51

other jurisdictions, you don't need

00:23:52

to be a lawyer. So

00:23:53

therefore what if you have

00:23:54

an engineer, who do you

00:23:56

contact so I don't know

00:23:57

the answer that I guess

00:23:58

that's that will be up

00:24:00

for discussions where my co-panel

00:24:02

is can further discuss and

00:24:04

then finally they can end

00:24:05

up other measures that they



00:24:07

find necessary. And a quick

00:24:09

few words. I wanted to

00:24:10

say the third thing we

00:24:11

see happening was in 2020

00:24:13

accident on situated. They released

00:24:15

the draft code of conduct

00:24:17

for adjudicators. Then here again,

00:24:19

it's only adjudications. Meanwhile the

00:24:22

Spanish code covered everyone and

00:24:24

I didn't have time to

00:24:25

go into everyone. You can

00:24:26

take a look at it.

00:24:27

Even third party funders they



00:24:29

cover so the code was

00:24:31

developed. This code here exceed

00:24:34

on Central code is for

00:24:36

isds reform and all member

00:24:38

states are involved and the

00:24:40

draft actually addresses Independence in

00:24:43

partiality of Traders and adjudicators.

00:24:46

And it is based on

00:24:48

a comparative views and standards

00:24:51

for that. Of course that

00:24:53

they find in investment treaties

00:24:55

or nutrition rules Etc. I

00:24:57

won't say much about this



00:24:58

because my colleague in yashia

00:24:59

will go very deep into

00:25:01

it because he's been before

00:25:03

unsuitual and can really add

00:25:05

the conversation. So the question

00:25:08

is are we ready for

00:25:09

a universal code? I said

00:25:11

not yet because I don't

00:25:12

believe that we already when

00:25:15

you look at the 2019

00:25:16

code of best practice by

00:25:17

the Spanish of nutrition Club.

00:25:19

It covers all the seedings



00:25:21

all the parties in the

00:25:22

proceedings while the exit code

00:25:24

and unsecure code covers only

00:25:26

the Educators and and also

00:25:29

all the codes it's just

00:25:32

soft floor and unless they

00:25:34

are adopted somehow the parties

00:25:39

are not going to follow

00:25:40

them and what we would

00:25:41

like to see perhaps in

00:25:43

the goal to have this

00:25:44

universal code of conduct is

00:25:46

perhaps for the exceed and



00:25:48

once told to start looking

00:25:49

up the codes that actually

00:25:52

impose some duties on the

00:25:55

party representative and that's it

00:25:57

for me. Thank you very

00:26:03

much Rose. And that was

00:26:05

a wonderful overview of the

00:26:07

activity in this area in

00:26:09

recent years. Now. Let's turn

00:26:11

it over to Todd who

00:26:12

I think has some specific

00:26:14

case study examples of ethics

00:26:19

and action and some thoughts



00:26:21
on those top. Thanks, Ben.

00:26:25
I'm gonna just talk about

00:26:26
a couple of things. We

00:26:28
all have so much time.

00:26:30
So I'll try to go

00:26:31
quickly so we can just

00:26:33
switch to the first slide

00:26:34
Maria. I only have two

00:26:36
slides by the way. So

00:26:37
this shouldn't take too long.

00:26:39
I was looking at article

00:26:40
for the on Central draft

00:26:41
code of conduct for arbitrators



00:26:43
in a national investment disputes

00:26:45
the other day and I

00:26:45
posted something an orgy man

00:26:47
and everybody thought it was

00:26:48
interesting. So they thought maybe

00:26:51
I should just chat about

00:26:51
that again, maybe reprise it.

00:26:52
So when you see this

00:26:55
this what we've gone on

00:26:57
too far There you go.

00:27:00
So article for the draft

00:27:02
code. so I wasn't at

00:27:05
the entrestrial proceedings. Unfortunately, I



00:27:07

really wanted to but I

00:27:08

just didn't work out you

00:27:10

can see an article four.

00:27:11

There's three options that have

00:27:12

been given for the double

00:27:13

heading problem. One is this

00:27:17

full prohibition idea. The other

00:27:19

is a modified prohibition. And

00:27:20

then this other one is

00:27:21

disclosure. When I look at

00:27:23

this I think of like

00:27:24

when I was a bureaucrat

00:27:25

and when you wanted the



00:27:27

your decision maker to do

00:27:29

what you wanted you gave

00:27:30

them two more extreme examples

00:27:31

for one and three and

00:27:33

then that would kind of

00:27:34

force them to choose to

00:27:35

so, I'm not sure if

00:27:36

that's what they were aiming

00:27:38

for here the people who

00:27:39

drafted this but I the

00:27:40

thought crosses my mind. I

00:27:44

think the problem though is

00:27:45

at any prohibition whether it



00:27:47

be this a full version

00:27:48

or the modified version is

00:27:51

really unnecessary of especially if

00:27:53

you consider what the targeted

00:27:54

Mischief is is supposed to

00:27:56

be here. I think it's

00:27:58

already addressed. Let's say perhaps

00:28:00

an article 3 e there's

00:28:03

an admonition there that says

00:28:04

you shouldn't use your powers

00:28:06

to advance any personal or

00:28:07

private interest. It seems to

00:28:09

be that pretty much covers



00:28:11

it. There's also some problems

00:28:13

with a top-down approach to

00:28:15

world-making which is a bigger

00:28:17

problem. Not just with this

00:28:19

particular provision, but with codes

00:28:20

generally it's that it operates

00:28:23

on a default sort of

00:28:24

assumption that more is always

00:28:25

better and I think it

00:28:27

largely ignores the potential impacts

00:28:29

in terms of the complex

00:28:30

interplay of incentives and that

00:28:33

exist many of which are



00:28:35

already in play without a

00:28:36

code it indeed. It reminds

00:28:38

me of high exfamous observation

00:28:40

that the Curious task of

00:28:42

Economics is to demonstrate to

00:28:43

men how little they really

00:28:45

know about what they imagine

00:28:46

they can design Of examples

00:28:49

of core design here the

00:28:51

idea in the prohibition that

00:28:53

you would have the same

00:28:55

treaty as a condition. Well,

00:28:57

that's completely Superfluous. If you



00:29:00

think of the fact that

00:29:01

the same legal condition would

00:29:03

certainly cover it. But what

00:29:05

about the same this the

00:29:07

same legal issue provision or

00:29:08

in square brackets the substantially

00:29:11

same legal issues provision. Well,

00:29:14

I'm my opinion. I think

00:29:16

it's it's not only just

00:29:17

unwieldy. It's also practically unnecessary.

00:29:20

it's unwieldy in the sense

00:29:22

that it covers everything as

00:29:25

Mark Cantor replying to myogenic



00:29:27

discussion pointed out he gave

00:29:29

a Litany of examples. He

00:29:31

said that and all of

00:29:33

these you'd find in almost

00:29:34

every treaty arbitration treaty interpretation

00:29:37

of the Deanna convention the

00:29:40

relationship between national law and

00:29:42

international law the role of

00:29:44

good faith under international law

00:29:45

bifurcation tryification of proceedings and

00:29:49

procedural issues surrounding it elements

00:29:51

of the legal standard for

00:29:52

challenge in the arbitrator elements



00:29:55
of a legal standard for

00:29:55
granted provisional measures of a

00:29:58
legal standing for applications to

00:30:00
dismiss. burdens of proof test

00:30:03
for investment due process substantive

00:30:07
challenges it goes on and

00:30:09
on. What the question then

00:30:13
becomes what legal issue whether

00:30:15
you call it substantial or

00:30:17
not wouldn't be covered under

00:30:19
this catch-all. It seems like

00:30:21
everything would be covered and

00:30:22
again if I go back



00:30:23

to The Mischief that this

00:30:26

this double had in provision

00:30:28

appears to be concerned about

00:30:30

it's covered by the idea

00:30:32

of advancing one's personal private

00:30:34

interest. So let's think about

00:30:36

this in a scenario sense.

00:30:38

Let's think about scenario one.

00:30:39

So acting is an arbitrator

00:30:41

in case a Mister X

00:30:43

cajole is colleagues into rendering

00:30:45

findings of law. upon which

00:30:48

he hopes to realize counsel



00:30:50
in case b now does

00:30:52
anyone seriously think that the

00:30:53
case be tribunal members are

00:30:56
going to be amenable to

00:30:57
basing that tribunal's legal findings

00:30:59
on a case a award

00:31:01
after they learned that Mr.

00:31:02
X sat on the case

00:31:04
a Tribunal. I think Mr.

00:31:06
X would probably be Aptoid

00:31:08
any mention of the case

00:31:09
award. So as to avoid

00:31:10
placing the case be arbitrators



00:31:12
and a very uncomfortable position

00:31:14
placing them in such a

00:31:16
division. It seems to me

00:31:17
it actually only serve as

00:31:19
an impediment to achieving the

00:31:21
desired result for Mr. X's

00:31:23
client. Scenario 2 acting as

00:31:26
counseling case b Mr. X

00:31:29
exhausts his arsenal of arguments

00:31:31
seeking to convince the case

00:31:32
b tribunal of a position

00:31:34
that he sitting as an

00:31:36
arbitrator in case a is



00:31:37

working hard to convince his

00:31:39

fellow tribunal members to adopt.

00:31:41

He doesn't disclosed to anybody

00:31:43

the fact that he's serving

00:31:44

both roles can currently. And

00:31:46

somehow IA reporter gar, the

00:31:50

administrators. Nobody seems to call

00:31:51

into the fact so Mr.

00:31:53

X buys his time expecting

00:31:55

that the case a is

00:31:56

going to wrap up in

00:31:57

time for him to submit

00:31:58

the case the case award



00:32:00

the case b tribunal as

00:32:02

Council and win the day

00:32:03

unfortunately, or let's say maybe

00:32:07

Fortunately for Mr. X case

00:32:10

b goes sub Judas well

00:32:12

before case a tribunal rendered

00:32:13

his award and that's the

00:32:14

end of the story. So

00:32:15

given other really is no

00:32:17

scenario on which a double

00:32:19

Hatter can reasonably expect the

00:32:21

benefit from seeking to rely

00:32:22

on findings made as an



00:32:24
arbitrator and another case in

00:32:26
which she serves as counsel.

00:32:28
It seems to be that

00:32:29
there really is no reason

00:32:29
to require disclosure of an

00:32:32
issue conflict in this of

00:32:34
this nature when the only

00:32:36
thing that are two cases

00:32:37
have in common is let's

00:32:38
say they're both about exploration.

00:32:40
What case isn't about exploration?

00:32:43
So I wonder if there

00:32:45
aren't unexpected results here. somebody



00:32:49

suggested to me offline in

00:32:51

that Optima discussion that perhaps

00:32:52

what we're doing here is

00:32:54

we're sort of pushing an

00:32:56

arbitrator's Guild which will become

00:32:58

even more cloistered from the

00:33:00

rest of the arbitral community

00:33:01

and if that happens because

00:33:04

people have to choose either

00:33:05

strictly only Council or strictly

00:33:08

on the arbitrator, you might

00:33:16

Maria you the second slide

00:33:18

a recent example of this



00:33:20

occurs in the and I

00:33:24

US District Court for southern

00:33:26

district of Florida decision involving

00:33:28

the famous Panama Canal arbitrations

00:33:30

and in that scenario you

00:33:33

have challenges that go nowhere

00:33:35

because I I think I

00:33:37

almost thought that the judge

00:33:38

was going to say that

00:33:39

he had a big fat

00:33:40

nothing burger here, but he

00:33:42

he restrained himself and actually

00:33:44

just used judicial language, but



00:33:46

The examples you see there

00:33:48

were all mentioned. They were

00:33:49

all mooted in that case.

00:33:50

But the judge just didn't

00:33:53

see anything that Rose to

00:33:55

the level that was applicable

00:33:55

under the under the US

00:33:57

Federal standard. Um what I

00:34:00

found most interesting though about

00:34:02

it is the experts you

00:34:04

were used. So first you

00:34:06

have Jack Coe and then

00:34:07

you have giorgetti. Then you



00:34:10

have Gary Bourne and you

00:34:12

have Jack again and you

00:34:13

have chair again. Then you

00:34:15

have Gary again. And then

00:34:17

Stevens was able. All of

00:34:20

those opinions can be found

00:34:22

in that one single case.

00:34:25

where they all discussed and

00:34:26

debated what code applies and

00:34:29

whether our Traders should or

00:34:31

shouldn't be Appointing each other

00:34:34

to tribunals as a tribunal

00:34:37

member not as Council necessarily



00:34:39

or serving for terminally as

00:34:41

counsel and arbitrary Trader and

00:34:42

unrelated cases now, very interesting

00:34:45

and the best part is

00:34:46

as you can see by

00:34:47

that little pink thing there

00:34:48

at the bottom. That's my

00:34:49

short URL. I created for

00:34:51

the case. You can read

00:34:52

all those opinions yourself. I

00:34:54

think it's a Juris Mundus

00:34:56

Monday if I recall correctly.

00:34:57

So that's it for me.



00:34:59

I hope I kept it

00:35:00

under 10 minutes and I

00:35:01

hope I stimulated everybody. Thank

00:35:06

you Todd. And I think

00:35:07

we'll have much to talk

00:35:08

about that. Once the the

00:35:10

primary presentations are done. But

00:35:13

let's go ahead and move

00:35:13

on to Ignacio who has

00:35:15

been a speak about some

00:35:16

related topics of arbitrator conflicts.

00:35:20

Ignacio Thank you very much,

00:35:26

Ben and good morning to



00:35:29

everyone. I'm happy. That we

00:35:33

hear with you today honor

00:35:36

to be part of these.

00:35:37

Washington arbitration week which I

00:35:40

think it's a very important

00:35:41

occasion for all those practicing

00:35:45

International arbitration investment arbitration. In

00:35:48

Washington DC indeed. I celebrate

00:35:52

the idea that Jose Antonio

00:35:54

and Ian had about creating

00:35:57

a Washington arbitration week. It

00:36:00

was very much needed. I

00:36:04

think that somehow I'm going



00:36:06

to disappoint some people in

00:36:09

the audience because I'm not

00:36:10

going to be talking very

00:36:12

specifically about the new reform

00:36:16

process or the court of

00:36:19

conduct. I mean we can

00:36:20

do it in the And

00:36:21

question and answer section, but

00:36:24

my presentation is more on

00:36:27

the policy sides of things

00:36:29

and and what can be

00:36:32

done in order to improve.

00:36:34

our International arbitration practice but



00:36:40
specifically our investment arbitration practice

00:36:43
and well, we all know

00:36:46
that challenges to arbitrate those.

00:36:50
It's a very costly to

00:36:52
the parties. Thank you, Maria.

00:36:55
I'm going to get there

00:36:56
and going to let you

00:36:57
know but you can leave

00:36:59
these on the screen. It's

00:37:02
fine. Thank you. I was

00:37:04
saying that it's very costly

00:37:06
for for the partisan International

00:37:08
arbitration. To challenge an arbitrate.



00:37:11

I mean, I think that

00:37:12

we we need to depart

00:37:14

from from that point. and

00:37:16

that Any season practitioner notes

00:37:20

that by challenge challenging one

00:37:22

every traitor? a body risk

00:37:26

upsetting the entirety of the

00:37:28

Agricultural Tribunal or at least

00:37:31

it's going to upset that.

00:37:34

arbitrator for the remaining of

00:37:36

the proceedings and I also

00:37:41

need to say that a

00:37:43

challenge is expensive is expensive



00:37:46
because it's expensive in time.

00:37:48
It will stop the proceedings.

00:37:51
And it's expensive in. In

00:37:56
actual natural money of the

00:38:01
top of my head I

00:38:02
can I can say that.

00:38:04
Maybe it's going to cost.

00:38:08
Something close to \$100,000 to

00:38:11
each body. It's going to

00:38:12
cause some thousand dollars to

00:38:14
the arbitrator. I mean in

00:38:17
arbitrate those fees for the

00:38:19
arbitrators to make the decision.



00:38:21

It might go to the

00:38:23

center it creates. Also a

00:38:26

reputational costs. so the question

00:38:31

is how What is that?

00:38:34

It can be done in

00:38:35

order to prevent these this

00:38:39

kind of situations, and I

00:38:41

I wanted to to bring

00:38:43

to your attention. the the

00:38:47

experience of a rule the

00:38:50

country but not I said

00:38:52

party in an arbitration, but

00:38:54

and the situation that currently



00:38:59

takes place in that country

00:39:01

as a consequence of the

00:39:03

thousands of arbitrations that they

00:39:06

entertain every year and maybe

00:39:08

I'm not sure whether those

00:39:11

in the audience are aware,

00:39:12

but Peru is a country

00:39:15

in which The disputes between

00:39:19

the states the domestic disputes

00:39:22

between the states and the

00:39:24

state contractors according to procurement

00:39:26

laws have to be decided

00:39:27

through arbitration. And not by



00:39:30

recalls to the local courts

00:39:33

or administrative Tribune, so Peru

00:39:36

has Southern of arbitrations every

00:39:39

year. And maybe I would

00:39:42

suggest that is even be

00:39:44

sure that the international arbitration.

00:39:49

Um world and and because

00:39:52

of that I think that

00:39:53

they have created some practices

00:39:57

that I I would consider

00:39:59

to be good practicing International

00:40:01

arbitration. and in Peru arbitral

00:40:08

institutions are required and in



00:40:10

turn every Traders are required.

00:40:13

to produce a full disclosure

00:40:16

and however, the full disclosure

00:40:19

is not left to the

00:40:21

individual decision of the arbitrators,

00:40:24

but it's prompted. Through very

00:40:27

specific questions that are being

00:40:30

asked from the arbitrators. And

00:40:32

this is the policy suggestions

00:40:34

that I would like to

00:40:36

make. because and maybe If

00:40:40

we go one slide up

00:40:42

Maria, Lucia. Anyways, one more



00:40:47

please or two more. What

00:40:50

that's the one the exit?

00:40:54

In the next the exit

00:40:56

disclosure form. Thank you very

00:40:57

much. When we see when

00:40:58

we look at the Easter

00:41:00

actually disclosure from we're going

00:41:02

to see that it's There

00:41:05

is a promise by the

00:41:06

arbitrators to keep themselves. I

00:41:09

mean to keep the information

00:41:10

obtaining the arbitration confidential or

00:41:13

judge fairly as between the



00:41:16

parties. and then they Can

00:41:20

or cannot attach a statement

00:41:23

in which they are going

00:41:24

to disclose the information that

00:41:27

they deem necessary to be

00:41:29

disclosed? so The decision making

00:41:35

on what information is going

00:41:37

to be shared with the

00:41:38

parties is the information that

00:41:40

the individual arbitrator decides to

00:41:43

share. in Peru because of

00:41:46

the number of cases the

00:41:48

regulations have gone one step



00:41:50

further and I would like

00:41:52

to say that this is

00:41:53

not something that is novel

00:41:56

in even in international arbitration

00:41:58

during the presentation Ben mentioned

00:42:03

that I was part of

00:42:04

the ICC committee for dispute

00:42:07

involving States and state entities

00:42:09

and one of the suggestions

00:42:11

then was to to have

00:42:16

a disclosure form similar to

00:42:18

the one that I'm going

00:42:19

to suggest And maybe this



00:42:22

is something that has already

00:42:23

been adopted in some institutional

00:42:25

arbitrations in the United States,

00:42:27

but I'm not aware of

00:42:29

any. but if we go

00:42:31

down a couple of slides

00:42:33

I would like to share

00:42:34

with you the kind of

00:42:35

questions that are one one

00:42:38

up, please there. No one

00:42:42

down. Yes. Another one, please.

00:42:53

Next this is the thank

00:42:55

you very much. The one



00:42:56

that begins with one. Yes.

00:42:58

for example in Peru, the

00:43:01

arbitrators are going to Need

00:43:04

to State the number of

00:43:06

arbitrations institutional or ad-hoc in

00:43:09

which they have been appointed

00:43:11

arbitrated by the parties in

00:43:13

the arbitration or by companies

00:43:14

Associated to the parties or

00:43:17

entities related to the parties

00:43:19

in the last five years.

00:43:22

Also, they are going to

00:43:23

be required to provide detailed



00:43:25
information regarding the dates on

00:43:27
which they were appointed. the

00:43:30
party that appointed and the

00:43:33
starts and end date of

00:43:34
the arbitration. they are going

00:43:38
to be the they're going

00:43:41
to be required to State

00:43:42
the number of arbitrations. in

00:43:46
which they are participating with

00:43:48
other arbitrators in the case,

00:43:50
and if we go to

00:43:51
the next Slide, please. They

00:43:57
will need to inform the



00:43:58

parties if they are currently

00:44:01

sitting or they have set

00:44:03

sat in a case. With

00:44:05

the in which they were

00:44:07

appointed by one of the

00:44:08

attorneys in the case, and

00:44:09

then in general, they will

00:44:11

have to inform the parties

00:44:13

of any professional relationship with

00:44:15

the parties that representative lawyers

00:44:18

advices. A I said I

00:44:22

started Trader in Peru and

00:44:23

in several cases and and



00:44:25

I can tell you that

00:44:26

this is a guideline that

00:44:28

helps. First of all the

00:44:30

arbitrator himself to assess what

00:44:32

it can be important for

00:44:33

the party to to know.

00:44:37

And secondly it provides. The

00:44:40

opportunity for the Paris to

00:44:42

understand and avoid the need

00:44:45

to come through the internet.

00:44:48

In order to assess whether

00:44:50

there is a conflict of

00:44:52

interest or not. in a



00:44:54

situation what I what I

00:44:56

think is that in the

00:44:58

current state of the practice

00:45:01

Lisa somehow of a practical

00:45:04

shift in the burden of

00:45:06

proof it is for the

00:45:07

parties to discover possible conflicts

00:45:11

when we should try to

00:45:13

avoid the conflict. to begin

00:45:17

with so I mean to

00:45:22

conclude. I'm I'm bringing this

00:45:27

to your consideration because I

00:45:29

think that the arbitration Community



00:45:33

should should avoid the real

00:45:38

conflicts of the perceived conflict

00:45:39

of interest. Before those conflicts

00:45:43

take place. And I know

00:45:45

that this idea of putting

00:45:47

various specific questions to the

00:45:49

party has been entertained in

00:45:50

international arbitration and I'm wondering

00:45:53

whether we are at the

00:45:55

time in which that kind

00:45:58

of information is going to

00:46:00

be disclosed. And I speak

00:46:04

now from from my perspective.



00:46:06

And my personal experience. If

00:46:11

you just sign a form

00:46:13

you can hide information. on

00:46:17

the other hand if you

00:46:20

if you need to respond

00:46:21

questions. you a person will

00:46:26

be almost in a position

00:46:27

or in a situation of

00:46:29

lying to those reading the

00:46:33

statement. So it increases the

00:46:35

burden on the arbitration arbitrator

00:46:38

to reveal the information that

00:46:41

it can be that can



00:46:43

be important for the parties

00:46:44

for for the parties to

00:46:46

understand whether conflict of interest

00:46:48

exists or not. And as

00:46:51

I said, it's a policy

00:46:52

suggestion at the end of

00:46:54

the day, it's going to

00:46:55

be for the states that

00:46:57

are currently negotiating these these

00:47:01

new code of conduct either

00:47:03

at ancitral or before exit

00:47:06

to adopt a policy like

00:47:09

this. But more importantly the



00:47:11
message that I would like

00:47:13
to compare to you. All

00:47:14
is first of all that

00:47:16
nobody no one likes to

00:47:18
bring a challenge that challenges

00:47:21
are very costly for the

00:47:23
parties bringing the challenge not

00:47:26
only in In money, but

00:47:31
also reputation time. and so

00:47:36
I believe that the Avatar

00:47:38
Community should work together in

00:47:41
order to anticipate this kind

00:47:43
of problems because at the



00:47:44

end of the day when

00:47:45

when those challenges are revealed.

00:47:50

It is the the entire

00:47:52

arbitration Community the one that

00:47:54

suffer the consequences. And thank

00:47:57

you. Thank you Ignacio. Now.

00:48:05

We'll turn the floor over

00:48:06

to Daniel. I think we'll

00:48:08

focus a bit more on

00:48:09

regulation of Council ethics and

00:48:14

international arbitration Daniel. Well, thank

00:48:18

you very much Ben. Not

00:48:21

sure we will do this



00:48:22

for reasons. I will explain

00:48:24

I think and which have

00:48:26

already been touched upon by

00:48:28

Rose in her first presentation.

00:48:32

I will probably more focus

00:48:34

on whether it's actually necessary

00:48:36

or even feasible to put

00:48:38

into place this kind of,

00:48:40

you know, universal code of

00:48:42

ethics for our for console

00:48:44

in arbitration in international arbitration

00:48:47

specifically. so but first of

00:48:50

all, I mean I think



00:48:51

Rose actually touched already quite

00:48:53

nicely on this point a

00:48:56

clear difficulty about ethics for

00:48:58

console in international arbitration is

00:49:02

certainly that we all come

00:49:04

from different legal traditions. We

00:49:06

have different legal education. We

00:49:08

have our own ethical rules,

00:49:10

you know the boss that

00:49:13

we admitted to and I'm

00:49:14

only speaking about people who

00:49:15

are million only one bar

00:49:16

because already if you're admitted.



00:49:18

I don't know in Paris

00:49:19

in New York. This does

00:49:20

already create problems and I'm

00:49:22

not sure how people solve

00:49:23

those. So I'm speaking only

00:49:25

yes in my capacity. Yes

00:49:26

a pure French admitted lawyer

00:49:30

in Paris and will Point

00:49:32

probably a little bit too

00:49:34

difficulties, which I can see

00:49:35

in this kind of idea

00:49:37

often universal code. The first

00:49:41

problem is that you know,



00:49:43

we see things differently what

00:49:45

is entirely acceptable. For Anglo-Saxon

00:49:48

lawyers for instance seems to

00:49:51

be obviously Barbarian for Continental

00:49:54

concentrate lawyers French lawyers German

00:49:59

lawyers or people like this.

00:50:01

This has been quite nicely

00:50:04

explained in several Publications. Where

00:50:07

actually they go to different

00:50:09

specific ideas just to name

00:50:12

two of them preparation of

00:50:14

Witnesses on one hand and

00:50:19

you know document production procedures



00:50:21
on the other hand. You

00:50:23
just don't Lift this thing

00:50:25
in the same way. So

00:50:29
there's already a first problem.

00:50:30
It's not specific to International

00:50:32
arbitration born the way it

00:50:34
actually comes up all the

00:50:36
time where International lawyers or

00:50:39
lawyers from different backgrounds will

00:50:42
have to come together and

00:50:43
to work together or against

00:50:45
each other an International tribunals

00:50:47
International court of justice and



00:50:49

problem we do or we

00:50:52

did have the same problem

00:50:52

with in Europe where lawyers

00:50:55

actually can circulate quite freely

00:50:57

and provide services also in

00:50:59

other countries and well in

00:51:00

Europe, it was actually solved

00:51:01

by adopting a European code

00:51:04

of ethics by the professional

00:51:06

or a kind of you

00:51:08

know, the Council of Law

00:51:09

Society of European countries, which

00:51:13

has adopted European code of



00:51:15

ethics and which today is

00:51:16

included for instance an integral

00:51:18

part to the French code

00:51:19

of ethics. And which tries

00:51:22

to solve some of the

00:51:23

problems with the under European

00:51:26

level, however, under International level

00:51:29

so International arbitration, but first

00:51:32

of all, it's actually quite

00:51:32

interesting to see that none

00:51:35

of the arbitral rules, which

00:51:38

we know if you usually

00:51:40

practice with the exception to



00:51:41
the LCRA rules, which have

00:51:43
you know, included some general

00:51:45
principles speak about ethical obligations

00:51:49
Council specifically on Council, it's

00:51:52
quite often. It doesn't go

00:51:54
any further than to say.

00:51:55
Well the parties can be

00:51:56
represented by console. But this

00:51:59
also means that the party

00:52:00
just not necessarily mean to

00:52:01
be represented by Council and

00:52:03
then the question already Rises

00:52:04
why Council working for a



00:52:06

party should have specific obligation

00:52:08

to the tribunal or to

00:52:11

the other party and the

00:52:13

other party represent in itself

00:52:15

should not have the same

00:52:17

kind of obligations. So quite

00:52:19

often. The auditor rules I

00:52:21

actually signed about those issues.

00:52:24

And that's certainly not fully

00:52:26

accidental. Because and this has

00:52:29

been quite nicely shown by

00:52:30

the tribunal in the Run

00:52:32

Patrol versus Romania case. Well



00:52:35
the role of console and

00:52:36
the role of arbitrators which

00:52:38
are regulated which we have

00:52:39
seen are quite different. So

00:52:41
we as Council of our

00:52:44
main obligations not so much

00:52:45
to the tribunal but to

00:52:46
the clients. This is my

00:52:48
understanding you have to present

00:52:50
the client's case in the

00:52:51
best way possible still respecting

00:52:54
the obligations which the rules

00:52:56
which are fixed for the



00:52:58
official process. So the national

00:53:04
rules of Ethics are different

00:53:06
of course, but of course

00:53:08
there has been on the

00:53:10
other hand a development of

00:53:11
quite a number of soft

00:53:12
law rules Rose has actually

00:53:16
provided quite useful list. I

00:53:19
just wanted to add the

00:53:20
it's already a 1919 United

00:53:22
Nations Declaration on the wall

00:53:24
of lawyers in society. So

00:53:26
already fixes a little bit



00:53:28

our I mean our rules

00:53:30

which should be respected by

00:53:32

all lawyers in the exercise

00:53:34

of their profession, but then

00:53:36

we have the other well

00:53:37

known rules it certainly starts

00:53:39

with the 2010. Hey principles,

00:53:43

which are not specifically touch

00:53:47

it at International arbitration, but

00:53:48

it all kind of international

00:53:50

tribunal International Court activities. So

00:53:54

stay to States or invest

00:53:56

the state, but you have



00:53:58

a number of others. I

00:54:00

do certainly include the IBA

00:54:02

rules on representational partition International

00:54:04

arbitration and the IBA rules

00:54:06

and conflicts of rules which

00:54:08

touch upon issues. Of ethics

00:54:10

and at the end of

00:54:13

the day, I mean the

00:54:14

Spanish. Code for arbitration which

00:54:18

process already mentioned too is

00:54:20

certainly a last example or

00:54:22

more recent example of these

00:54:25

kind of principles. So developing



00:54:27

soft floor is certainly not

00:54:29

bad the only issue I

00:54:31

do have with this. is

00:54:33

that It actually levels down

00:54:36

the different ethical obligations. We

00:54:40

all have and every I

00:54:43

mean pretty much. All of

00:54:45

the codes start with the

00:54:46

kind of General reservation saying

00:54:49

well, this does not override

00:54:53

any of the other ethical

00:54:54

rules, which are lower will

00:54:56

have to respect in its



00:54:57

own jurisdiction. And there are

00:54:59

difficulties for this because for

00:55:02

instance in France preparation of

00:55:04

witnesses is just a practice

00:55:06

which was which is not

00:55:07

admittable under our ethical obligations.

00:55:11

And then so far that

00:55:13

the Paris bar adopted a

00:55:16

specific resolution in order to

00:55:18

adapt this principle for arbitration

00:55:21

procedures. Actually they said well,

00:55:24

of course French lawyers would

00:55:26

be unfairly traded if they



00:55:29
could not prepare their Witnesses

00:55:30
compared to the practice which

00:55:32
is entirely accepted in other

00:55:34
jurisdictions. So for arbitration, it's

00:55:37
okay, right? The other I

00:55:42
mean, it does not only

00:55:43
level down the principle it

00:55:45
also settles a certain. Agreement

00:55:49
between all of us but

00:55:51
the procedure and the principles

00:55:53
which we should follow are

00:55:55
mainly Anglo-Saxon oriented. Right. So

00:56:00
let's I mean and we



00:56:01

as Continental laws we just

00:56:03

accepted because we just used

00:56:05

the same processes or the

00:56:07

time specifically in exit document

00:56:09

production is a very good

00:56:10

example, but here I just

00:56:13

wanted to point also to

00:56:14

the prag rules for for

00:56:17

the efficient conduct of arbitration

00:56:18

procedures where the orbital tribunal

00:56:21

is supposed to have a

00:56:22

much more active role also

00:56:25

in collecting evidence and stuff



00:56:27

like that, which will certainly

00:56:29

also influence the the ethical

00:56:33

rules of lawyers which have

00:56:35

to be committed there another

00:56:37

problem of those software instruments

00:56:40

for me that they actually

00:56:42

only tortured The the efficiency

00:56:46

of the arbitral procedure or

00:56:47

the Integrity of the orbital

00:56:49

procedure mainly the relations between

00:56:51

Council and the article 12,

00:56:53

you know, that's not so

00:56:55

much speak about the obligations.



00:56:57

We as lawyers have I

00:57:01

mean to our clients? Right

00:57:04

obligations, like professionalism competence integrity.

00:57:10

And that's maybe very difficult

00:57:11

to be implemented even in

00:57:13

an orbital process. I mean

00:57:16

There's a good example a

00:57:18

very reasoned example in a

00:57:20

case in the case the

00:57:22

suture investors Madagascar, which is

00:57:24

just an annulment and the

00:57:26

annulment hearing is online. It's

00:57:29

just put it online. It's



00:57:30

on YouTube and Madagascar and

00:57:33

this procedure the enormous procedure

00:57:35

for instance claims that the

00:57:36

orbital tribunal should have exercised.

00:57:38

It's in a powers. In

00:57:41

order to ensure that Madagascar

00:57:43

is correctly represented by the

00:57:46

arbitrary by the console which

00:57:48

represented Madagascar so in principle

00:57:51

Madagascar is now claiming. Well

00:57:52

the council we had was

00:57:53

bad. We didn't do a

00:57:55

good job. But you know.



00:57:58

How far does it go

00:57:59

I mean it's it's certainly

00:58:00

on the one hand a

00:58:01

responsibility of the party to

00:58:04

to engage console. But it's

00:58:07

also in responsibility of the

00:58:09

council not to accept a

00:58:12

case where actually thinks well,

00:58:13

this actually goes over my

00:58:15

capacity and more knowledge. So

00:58:18

that's a very tricky issue

00:58:19

and I'm not sure that

00:58:20

any of those. Soft law



00:58:24
instruments has actually tackled these

00:58:25
problems. And that's a real

00:58:28
reason for this too and

00:58:29
that comes back roses also

00:58:31
spoken about this who will

00:58:33
Implement those rules. But of

00:58:36
course the orbital tribunal can

00:58:38
and must ensure the Integrity

00:58:40
of its own process. But

00:58:43
that's not actually everything right.

00:58:45
I mean it can certainly

00:58:46
go to some extent to

00:58:48
draw inferences or whatever by



00:58:51

Council conduct. But you know

00:58:53

on the other hand, I

00:58:54

mean if the console is

00:58:55

actually you know. doing applications

00:59:01

or requests which will only

00:59:02

prolong the procedure at the

00:59:04

end of the day the

00:59:05

tribunal will decide. Well, this

00:59:06

will be handled and the

00:59:07

cost or at the end

00:59:08

of the day and the

00:59:10

party will probably be responsible

00:59:13

for for more of the



00:59:14

costs and the other party,

00:59:15

but why should the party?

00:59:17

You know take up the

00:59:20

risk of its Council work.

00:59:24

so that's also an issue

00:59:25

and Roses also spoken about

00:59:28

the the remedies which are

00:59:33

for seen in the Spanish

00:59:34

code. I mean this shows

00:59:36

already also the difficulty the

00:59:38

tribunal count. Impose any kind

00:59:42

of sanctions or so on

00:59:44

Console that's normally within the



00:59:47
responsibility only of the professional

00:59:49
organizations law societies Etc. But

00:59:53
on the other hand if

00:59:54
console actually overstep there there

00:59:58
duty to the tribunal very

01:00:00
cautious with the tribunal or

01:00:02
whatever. And that's normally a

01:00:04
problem with at least an

01:00:07
internal law is not solved

01:00:08
directly between counsel and the

01:00:10
tribunal but only by kind

01:00:12
of mediation with the loss

01:00:13
of society in front of



01:00:15

the batune actually plays a

01:00:16

very important role in those

01:00:18

conflicts and we don't have

01:00:19

this in an office of

01:00:21

tribunal. So how would an

01:00:23

orbital tribunal be able to

01:00:24

deal with these issues except

01:00:27

by you know, essentialing the

01:00:29

party for its Council conduct.

01:00:32

So there are actually quite

01:00:34

a lot of difficulties even

01:00:35

if tribunals are not very

01:00:37

shy in imposing certain remedies



01:00:42
in order to safeguard their

01:00:45
own opposite process. everything which

01:00:48
goes beyond that is clearly

01:00:50
out the reach of an

01:00:51
orbital tribunal and without any

01:00:53
kind of international bar, which

01:00:55
we don't have and I

01:00:56
think it's a good thing

01:00:57
that we don't have these

01:00:59
kind of things but it's

01:01:01
impossible to you know to

01:01:03
impose such a code and

01:01:05
to make it work. Thank



01:01:07

you. All right. Thank you

01:01:09

Daniel. And thanks to everyone

01:01:11

for for a very interesting

01:01:13

overview of some of these

01:01:15

issues. I want to one

01:01:18

of my takeaways from the

01:01:19

various presentations here is that

01:01:22

And everyone seems to acknowledge

01:01:25

or all the panelists at

01:01:27

least seem to acknowledge that

01:01:27

there's some issues that are

01:01:29

not ripe or even fit

01:01:32

for codification. And I'm just



01:01:35

wondering and I'll start with

01:01:37

Todd on this but I'd

01:01:38

also like ignacio's views because

01:01:40

he touched on this issue

01:01:41

a bit less. Are there

01:01:43

any issues that are fit

01:01:46

for codification in this realm

01:01:49

of that Vapes whether with

01:01:50

respect to arbitrators or with

01:01:52

respect to counsel or should

01:01:54

we really just leave it

01:01:55

to you know practice in

01:01:58

real time commentary Etc. What



01:02:02

do you think Todd? I'm

01:02:03

inclined towards the ladder because

01:02:05

the question isn't even so

01:02:06

much a should but rather

01:02:07

it could as Danielle just

01:02:10

suggested or I should say

01:02:12

explained of It it seems

01:02:17

infeasible. To actually be attempting

01:02:21

to do so. I understand

01:02:22

why organizations. Like on Ted

01:02:27

would want to do this.

01:02:29

But I'm just not sure

01:02:30

that it's a great idea.



01:02:32

Why would they want to

01:02:33

do it? Well, because There's

01:02:35

been complaints obviously about investor

01:02:38

State arbitrators. I don't think

01:02:40

many of them if any

01:02:41

of them are founded well-founded

01:02:43

but this appear this is

01:02:47

basically it has the appearance

01:02:48

of doing something. It's a

01:02:50

it's a it's an old,

01:02:52

you know, political saw that

01:02:53

basically the best government is

01:02:54

the one that appears to



01:02:55
be doing something whether they

01:02:56
actually are doing something doesn't

01:02:58
really matter. They just have

01:02:59
to appear to be doing

01:03:00
something and drawing up codes

01:03:02
is a great way to

01:03:03
appear to be doing something

01:03:04
for institution, but that doesn't

01:03:07
mean that it's practical or

01:03:09
that the there aren't unforeseen

01:03:12
consequences as I suggested with

01:03:14
my reference to to Hayek.

01:03:17
So I suppose I would



01:03:19

have to say no. There's

01:03:20

this there really isn't anything

01:03:22

we all have our bar

01:03:23

ethics. And if anything it

01:03:27

seems to me that perhaps

01:03:30

we could focus on getting

01:03:31

people to be more steadfast

01:03:34

and true to their own

01:03:35

to their existing ethics requirements

01:03:36

rather than trying to pile

01:03:38

on new ones that maybe

01:03:40

people will adhere no more

01:03:42

strictly to as well and



01:03:43
we should always contemplate of

01:03:45
course that in the end

01:03:46
of the day whether that

01:03:47
be for counsel or whether

01:03:49
it be for arbitrators. There

01:03:51
are other more tangible means

01:03:53
of sanction such as overturning

01:03:56
in a ward or a

01:03:58
costs penalty. So we have

01:04:01
mechanisms. Maybe we should just

01:04:03
learn to use them better.

01:04:06
And what do you think

01:04:07
Ignacio? Sorry, you're on mute



01:04:13

Ignacio. Yes report that. Thank

01:04:18

you Ben for the question

01:04:19

and I think that first

01:04:22

of all, I think that

01:04:23

I have a the opposite

01:04:25

view I I really think

01:04:27

that that a code of

01:04:31

conduct is necessary. and I'm

01:04:37

not sure that it cannot

01:04:39

be enforced. I mean first

01:04:40

of all, I agree with

01:04:40

Daniel that is better not

01:04:42

to create an international bar.



01:04:44

And lawyers should be. I

01:04:48

mean lawyers conduct should be

01:04:50

sent to the the local

01:04:51

parts for for the locals

01:04:53

part or the bus the

01:04:54

bus where they are bar

01:04:55

or register should decide. The

01:05:01

contact but that doesn't mean

01:05:03

that the tribunal doesn't have

01:05:05

any power to enforce. It

01:05:06

means as Daniel suggested. First

01:05:09

of all, the trivial can

01:05:12

make an award on costs



01:05:14
to the party. And we

01:05:18
all accept I think in

01:05:19
international arbitration that Trevino's having

01:05:22
had in powers. and the

01:05:24
tribunal's inherent power should permit

01:05:27
the the members of the

01:05:30
Trevino to make some kind

01:05:32
of to to pass a

01:05:37
sanction to to that lawyer

01:05:39
and finally the file or

01:05:42
the contact can be sent

01:05:44
to the specific bar. And

01:05:46
and I'm not sure I



01:05:49
wanted the tribunals with the

01:05:50
tribunals in the future are

01:05:51
going to take a more

01:05:52
active role because we are

01:05:54
a small community and and

01:05:56
we all try to avoid.

01:05:59
issues in which we That

01:06:05
could affect our colleagues. This

01:06:07
is a small community, but

01:06:10
At the same time. I

01:06:11
think that there are some

01:06:12
contacts that should not be

01:06:13
tolerated. I have one specific



01:06:17
case in which I was

01:06:18
counsel for one state and

01:06:22
A council on the other

01:06:23
side created a document in

01:06:26
order to obtain jurisdiction. And

01:06:29
it's not something that I'm

01:06:30
saying that happened, but an

01:06:33
expert was hired. And these

01:06:37
expert Tracked Down the document.

01:06:41
And find out that the

01:06:43
document had been created the

01:06:44
night before. by the lawyers

01:06:47
involved in the case and



01:06:51
should we sanction these kind

01:06:53
of practices? that affects everyone

01:06:58
not only those that acted

01:07:03
illegally, but also the other

01:07:05
members of the international electrician

01:07:08
practice my response to that

01:07:09
is yes. I think that

01:07:12
the count of conduct is

01:07:14
going to be mandatory for

01:07:16
those practicing. Say before exit.

01:07:20
And at the end of

01:07:22
the day said God guideline,

01:07:24
but without the guideline we



01:07:26
cannot unfortunately leave. the decision

01:07:30
making about whether our conduct

01:07:36
is ethical or not or

01:07:37
not to ourselves. Unfortunately, some

01:07:41
some practitioners are. I mean

01:07:47
are willing to enforce that

01:07:49
rules very strongly and some

01:07:54
other practitioners do not so

01:07:56
I think that at least

01:07:59
habitual tribunals and the institution

01:08:01
have some power. in in

01:08:04
case of ethical breaches and

01:08:09
I will also wanted to



01:08:10

make a very short point

01:08:12

if I'm permit it. about

01:08:15

why exit or ancitrol are

01:08:18

dealing with discussed code of

01:08:19

conducts and and it's this

01:08:21

comes from the from a

01:08:26

need been expressed by different

01:08:29

states and I can tell

01:08:31

you that being in the

01:08:34

ancient meeting last week or

01:08:36

two weeks ago. The need

01:08:40

for a code of conduct

01:08:41

was overwhelmingly supported by those



01:08:44
attending either in person or

01:08:48
or through through the internet

01:08:52
so I think also that

01:08:56
that we as the arbitration

01:08:58
Community should hear what other

01:09:02
stakeholders. are also saying and

01:09:07
and try not to close

01:09:08
to ourself. Because this is

01:09:11
not just about those practicing

01:09:14
investment arbitration, but it is

01:09:17
also about legitimacy of the

01:09:20
system. All right. So we

01:09:27
we have a question from



01:09:30

Jose Antonio what an international

01:09:33

code of conduct adopted? An

01:09:37

investor State arbitration deflate one

01:09:39

of the reasons to push

01:09:40

for a permanent investment Court

01:09:41

in replacement of arbitration tribunals.

01:09:47

Rose I'll let you take

01:09:50

that one. I don't think

01:09:55

I'm looking at I don't

01:09:56

think it would be placed

01:09:57

it. I think you would

01:09:58

it work in complement. For

01:10:02

instance. I wanted to add



01:10:03

to what Master said I

01:10:05

too was before on situo

01:10:07

and I follow the debate

01:10:09

and I think the fact

01:10:12

that you have all the

01:10:14

members States involved. This is

01:10:16

the first time like for

01:10:18

instance. This is so many

01:10:18

African States giving the opinion

01:10:21

with the process and taking

01:10:25

They can charge I would

01:10:27

say by submitting different proposal

01:10:29

really really show us in



01:10:31
the International Community that the

01:10:34
states already to see changes

01:10:36
and I think that if

01:10:37
you look at how if

01:10:40
we want this universal code

01:10:42
of conduct work, eventually, you'll

01:10:44
have to go through the

01:10:45
national laws. And the reason

01:10:47
I say this you see

01:10:48
the the model world the

01:10:51
on social model. We still

01:10:54
have a new state signing.

01:10:56
Every every day or getting



01:10:59
to to be part of

01:11:00
the unsuitual group, so I

01:11:02
think the fact that on

01:11:04
Central is is taking the

01:11:06
lead with this isds form

01:11:08
getting all its members involved

01:11:11
and then now exceed is

01:11:13
trying to you know, come

01:11:15
in in conjunction with constitute.

01:11:17
I think we we can

01:11:18
get somewhere and I actually

01:11:19
believe like, yes you we

01:11:23
need to have a code



01:11:25
of conduct because my experience

01:11:28
for instance in coming from

01:11:31
both civil law and and

01:11:33
common law and having practice

01:11:35
in Paris and in Africa

01:11:37
and and I could say

01:11:38
there are some commonality. We

01:11:41
all know that the Army

01:11:42
Traders they need to be

01:11:43
independent. We all know that

01:11:44
the lawyers have to be

01:11:45
here to go. So I

01:11:46
think they could we could



01:11:48

get some middle ground. It's

01:11:51

on social they've done they

01:11:53

have many different treaties having

01:11:55

us trying to look. Now

01:11:57

we have a mediation the

01:11:59

Singapore convention. So I think

01:12:01

it could take years to

01:12:02

get to get all the

01:12:04

states who agree to a

01:12:05

standard, but I think eventually

01:12:07

we can get there. So

01:12:09

to answer houses question. I

01:12:10

don't think it's going to



01:12:11
affect it. I think it

01:12:12
will complement it. if I

01:12:15
may if I think that

01:12:16
if the If the double

01:12:18
hunting provision is takes form

01:12:21
of a Prohibition. You're actually

01:12:23
driving arbitrators into a guild

01:12:25
and therefore the only answer

01:12:28
to the problem described in

01:12:31
the Panama cases would therefore

01:12:33
be to have an international

01:12:34
tribunal. So in a sense

01:12:36
going down that road actually



01:12:38
gets you to a standing

01:12:40
tribe, you know. Yeah, so

01:12:42
anyway. Just a little bit

01:12:45
to what taught said in

01:12:47
order to bring some piece

01:12:48
of mind. I mean, I

01:12:49
don't think that the total

01:12:50
prohibition is going to be

01:12:51
adopted. I think the position

01:12:54
states took in the deliberations

01:12:56
were very reasonable. and I

01:13:00
think that some form of

01:13:02
clarification it's going to to



01:13:05
be adopted but it's not

01:13:07
going to be the total

01:13:09
prohibition at all. I mean,

01:13:10
that is my My view

01:13:13
and very quickly. I'm sorry

01:13:14
for taking more time. Maybe

01:13:16
Ben. I know that you

01:13:18
want to give the floor

01:13:18
to Tanya. It's something that

01:13:21
robes said about the need

01:13:24
to. Make these codes into

01:13:28
local law. I mean, I

01:13:29
I really believe that that



01:13:31

is not necessary. The the

01:13:34

Mauritius conventions indeed shows that

01:13:37

it's not necessary because when

01:13:39

these International Agreements are adopted

01:13:42

by States And that through

01:13:46

the internalization of the international

01:13:49

law in their own legal

01:13:51

systems is going to become

01:13:52

low. so I think it's

01:13:56

going to be more effective

01:13:57

than just going through the

01:13:59

Congressional approval Case by case.

01:14:04

the local bar by bite



01:14:07

for instance. I don't know.

01:14:09

I'm looking into. The future

01:14:10

because like Daniel mentioned earlier

01:14:14

with the you know in

01:14:16

France where I'm also licensed

01:14:18

to practice law we have

01:14:20

different. Code of conduct and

01:14:23

and humans you see him

01:14:24

mentioned about some kind of

01:14:25

arbitration or mediation between the

01:14:28

better year if they're but

01:14:30

we also have some unwitting

01:14:32

rules for instance. You will



01:14:34
not see a French lawyer

01:14:36
come into try to write

01:14:38
another French lawyer. It's just

01:14:40
just me just don't do

01:14:41
that. So you when you

01:14:43
look at arbitrators, we we

01:14:45
are likely to recommend our

01:14:47
own friends and we know

01:14:48
and who may be another

01:14:50
lawyer if there is something

01:14:51
that's being done. How do

01:14:53
you how do you get

01:14:55
to sanction this arbitrator for



01:14:57
instance in France? So I

01:14:58
think I think we need

01:15:00
to the national law. It's

01:15:02
not an abandonment because it

01:15:04
may take it may take

01:15:06
years but it will be

01:15:07
properly done where now the

01:15:11
boss your stations won't you

01:15:13
know, they can just apply

01:15:15
that's my opinion. I don't

01:15:17
know. Thank you. Rosem. I'm

01:15:20
gonna ask one last question

01:15:21
to Daniel and then I



01:15:22

think we need to open

01:15:23

up to to our audience

01:15:25

test questions. So Daniel you

01:15:28

had expressed a pretty clear

01:15:30

opinion that it would neither

01:15:33

be I think possible nor

01:15:35

appropriate to have an international

01:15:38

code of conduct for counsel

01:15:40

or an international ethical code

01:15:41

for Council. Does that same

01:15:44

view apply to the code

01:15:46

of conduct for adjudicators that's

01:15:49

been proposed by accident on



01:15:51

Central? I don't think so

01:15:53

because they're on the right

01:15:55

quite different position. Right? I

01:15:56

mean, these are the people

01:15:57

who are supposed to do

01:15:59

justice and the obligations. These

01:16:04

are the process are quite

01:16:06

different. I think it's much

01:16:07

easier to fix, you know

01:16:09

conflict rules or specific requirements

01:16:13

on education professionalism, etc. For

01:16:18

arbitrators, which are already in

01:16:20

the rules right the code



01:16:22
of conduct which then goes

01:16:23
onwards to say. Well you

01:16:25
shouldn't speak to the party.

01:16:25
I mean that's a little

01:16:26
bit self-evident to me. I

01:16:28
don't know. I don't know

01:16:29
why we need to write

01:16:30
it down somewhere. We all

01:16:32
know that it's an appropriate,

01:16:33
right and actually every time

01:16:34
it happens. We are all

01:16:36
complain about the fact that

01:16:37
it did happen. So why



01:16:38

do we need to have

01:16:39

it written down? I do

01:16:41

have more problem with you

01:16:42

know, a code of conduct

01:16:43

for lawyers. I mean counsel

01:16:47

to be discussed by States

01:16:49

or by exit or whatever.

01:16:52

I mean, this is clearly

01:16:54

for me against all one

01:16:56

of the basic principles, which

01:16:58

is independence. Why should States

01:17:00

be able to put this

01:17:01

actually on the table like



01:17:03

this it should Actually us

01:17:05

lawyers preparing in fixing our

01:17:08

own code of conduct for

01:17:10

ourselves. Right. Thank you Daniel.

01:17:12

I know there's lots more

01:17:14

to say about this, but

01:17:15

I've been instructed to take

01:17:16

us to the breakout room.

01:17:18

So, you know, thank you

01:17:19

talk the speakers for for

01:17:21

your contributions. Thank you. Thank

01:17:26

you very much. I think

01:17:30

we'll see everyone in the



01:17:31
breakout room shortly. In thank

01:17:35
you Ben. Thank you so

01:17:36
much. We are going to

01:17:38
I'm quickly going to explain

01:17:41
the the logic of the

01:17:43
breakout rooms, but before doing

01:17:47
that I would really like

01:17:48
to thank you Ben for

01:17:50
moderating this this panel because

01:17:53
as we saw there's no

01:17:55
single Opinion and this there's

01:17:59
no consensus and and that's

01:18:01
why it's such an interesting



01:18:03

panel. I mean there's there's

01:18:05

a there are backgrounds as

01:18:10

many of you are arbitrators

01:18:11

where all so many of

01:18:12

you have been counsel background

01:18:14

in terms of who you

01:18:16

have represented and that in

01:18:18

somehow shapes some some vision

01:18:21

of investors said arbitration public

01:18:24

international law and as as

01:18:26

we saw in this panel,

01:18:27

it was fascinating to to

01:18:28

see how how there's no



01:18:30
one single consensus on whether

01:18:33
there should be an Ethics

01:18:35
code applied to council or

01:18:38
solely to adjudicators. But in

01:18:42
any event, thank you, Ignacio

01:18:44
Danielle Rose Todd and and

01:18:47
of course been for doing

01:18:48
such a fabulous job in

01:18:50
presenting the issues and and

01:18:52
featuring all the different perspective.

01:18:57
And with that now we're

01:19:00
going to into our breakout

01:19:02
rooms. What I would ask



01:19:04
you to do as as

01:19:05
panelist is make sure that

01:19:07
when you receive Mutation to

01:19:10
go into breakout rooms, you

01:19:12
do accept it and say

01:19:14
yes, because otherwise you're gonna

01:19:16
stay in the main room.

01:19:17
And and once we do

01:19:20
that, you'll be able to

01:19:22
sort of network or socialize

01:19:24
or talk further about your

01:19:25
issues concerning and ethics code

01:19:27
with our steamed audience. Thank



01:19:31
you very much and well

01:19:32
have fun in the breakout

01:19:34
rooms. Thank you very much.

01:19:36
Thank you. Thank you.