Inclusion of Human Rights Clauses in Investment Treaties *

Summary

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

The final day of the Washington Arbitration Update 2024 featured a panel moderated by Maria Lucia Casa, focusing on the integration of human rights clauses in investment treaties. Casa, an expert in international arbitration and public international law, introduced the topic, highlighting the ongoing tension between human rights protections and state obligations to foreign investors.

The discussion centered on the historical imbalance in investment arbitration, where states bear obligations without corresponding responsibilities for investors. Panelists included experts from various backgrounds, who examined recent developments in the field of business and human rights, the necessity for due diligence by companies, and the challenges of integrating human rights considerations into investment treaties.

Andres Milpas provided an overview of the business and human rights landscape, emphasizing the inadequacy of existing regulations to effectively govern corporate behavior and protect human rights. He noted the increasing adoption of domestic laws with extraterritorial effects in countries like France and Germany, aimed at holding corporations accountable for human rights abuses.

Santiago, a human rights lawyer, discussed the legal obligations of investors and the need for clearer standards in investment treaties that incorporate human rights protections. He highlighted the importance of recognizing the socio-political context of investments and the necessity for due diligence to avoid human rights violations.

The panel also addressed the role of states in negotiating investment treaties and the need for coherence between investment law and human rights law. Participants underscored the importance of including binding obligations for investors regarding human rights in treaties to ensure accountability.

Overall, the session fostered a robust dialogue on how to balance investment protection with human rights obligations, suggesting that a more integrated approach could lead to better outcomes for both investors and affected communities.

Authors

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Topics

Human rights, human rights clauses, investment treaties, treaties, international arbitration

Category

WAU

Full Transcript

00:00:07
Good morning, everyone and thank

00:00:09
you for being here. We

00:00:09
are very glad to have

00:00:10
you in this final day

00:00:12
of her world arbitration updates

00:00:14
2020 4th. It is my

00:00:16
pleasure to introduce these amazing

00:00:19
Fanta that's going to speak

00:00:20
about inclusion of Human Rights

00:00:22
classes in investment treaties. This

00:00:25
panel is going to be

00:00:26
moderated by Maria Lucia Casa.

00:00:28
Maria. Lucia is a Colombian

00:00:30
lawyer specialist in regulation of

00:00:32
renewable energy and Energy Efficiency.

00:00:34
She is also a senior

00:00:36
associate at extra strategy LL

00:00:38
be able to take for

00:00:40
with presents in the United

00:00:41
States animal. What's up. Currently,

00:00:46
she's Adjunct professor of international

00:00:48
arbitration procedure an assistant professor

00:00:51
professor of public international law

00:00:53
at the University of you

00:00:55
and coach of the University

00:00:57
of Saint Joseph International Longwood

00:01:01
Court competition team. So without

00:01:03
further Ado I yield the

00:01:05
floor to Maria Lucia and

00:01:07
thank you everyone. Thank you,

00:01:11
Monica me Longford introduction and

00:01:13
good morning everybody and welcome

00:01:14
to the first session of

00:01:16
the last day of world

00:01:17
arbitration update. It's a great

00:01:19
honor to have you here.

00:01:20

And of course, thank you

00:01:22
also to our own line

00:01:23
participants because we have some

00:01:25
of my participants that are

00:01:28
doing a nice from around

00:01:29
the world. So welcome everybody.

00:01:31
I would like to have

00:01:34
this presentation buy thank a

00:01:36
to the sponsors of the

00:01:38
event. Thank you to FDI

00:01:39
and Panera Consulting also. Thank

00:01:42
you for the organising team

00:01:43
Isabella Wednesday, which are part

00:01:47
of the organising team mouth

00:01:48
of the world Apart chapter

00:01:49
of world arbitration updates. And

00:01:52
of course, thank you to

00:01:53
our co-organizers off of the

00:01:55
ground before introducing the great

00:01:58
line of penalties that we

00:01:59
have today. I will like

00:02:01
to give a few remarks

00:02:02
about the first session that

00:02:05
we have today we have

00:02:07
today in from the bus

00:02:09
is called in clue. You're

00:02:10
not human rights classes in

00:02:12
investment treaties for sure. This

00:02:15
is a topic that has

00:02:16
generated a lot of discussions

00:02:18
and a lot of interest

00:02:20
over the years. We have

00:02:22
him from an existing tension

00:02:24
between the protection of human

00:02:26
rights in one hand and

00:02:27
on the other Estates obligations

00:02:30
the word for word doors

00:02:31
foreign investors. And of course,

00:02:34
we can see during an

00:02:35
imbalance that exist today between

00:02:39

investment meeting doesn't arbitration between

00:02:41
obligations that it states have

00:02:43
and writes that investors has

00:02:46
on their investment re so

00:02:48
traditionally how investment arbitration has

00:02:52
been working is that International

00:02:55
Investment agreements impose obligations in

00:02:57
States? But not an Investor's

00:03:00
so this has been of

00:03:02
course a point of a

00:03:04
lot of criticisms about the

00:03:06
balance of the system. However

00:03:08
in the past years we

00:03:10
have been seen on an

00:03:12
absurd of being a chance

00:03:14
on this approach and this

00:03:16
is something that we are

00:03:17
going to discuss here how

00:03:19
we can balance the system

00:03:21
and how these have been

00:03:23
changes have been changing in

00:03:25
the past last year's. So

00:03:28
some of the questions that

00:03:29
we will like to ask

00:03:31
our panelists today is how

00:03:33
to balance the system. Is

00:03:35
it possible to have a

00:03:36
human rights issues in the

00:03:38
ocean? And is it mandatory

00:03:40
for companies to perform due

00:03:42
diligence in their operations? Luckily?

00:03:45
I'm not the one that

00:03:46
will have to answer these

00:03:47
but for these we have

00:03:49
five experts that will be

00:03:51
helping at weekdays a task.

00:03:55
Super spy. I'm going to

00:03:58
introduce our panelists. So on

00:04:00
my right we have one

00:04:02
of my penis. She's a

00:04:03

lawyer from when you were

00:04:04
in Seattle. I want to

00:04:06
hold some Ella Lim from

00:04:07
Columbia University. She's currently the

00:04:10
coordinator of the investment arbitration

00:04:12
group at the hands of

00:04:14
the lessons. I will take

00:04:15
a little time before joining

00:04:17
the public sector want to

00:04:19
work as head of Regulatory

00:04:20
Affairs of traffic and she

00:04:22
owes her work as a

00:04:23
solution of arbitration and dispute

00:04:26
resolution of a curmudgeon. Want

00:04:29
to have been up jump

00:04:30
professor of investment arbitration and

00:04:32
human rights in the master

00:04:33
of international law at the

00:04:35
University of the Los Angeles

00:04:36
and I believe that her

00:04:38
perspective is highly appreciated here

00:04:41
because she couldn't see who

00:04:42
works in the defense of

00:04:44
Colombian investment arbitration. So welcome

00:04:46
one. We also have under

00:04:49
his Milpas Andres Andres holds

00:04:53
a PhD in law from

00:04:54
University of Notre Dame a

00:04:57
master in international law from

00:04:59
Georgetown University. And he's a

00:05:01
specialist in administrative law and

00:05:03
a lawyer from University of

00:05:05
the presiding currently. He's a

00:05:07
professor and researcher at the

00:05:09
faculty of Law and political

00:05:11
science of University of Italy

00:05:14
Shinto being a consultant to

00:05:15
companies in the implementation of

00:05:17
Human Rights you Villages processes.

00:05:19
He has also been a

00:05:21

beast in professor at the

00:05:23
University in United States in

00:05:25
Mexico Guatemalan and his ulcer

00:05:28
and culture of books and

00:05:29
articles on business and human

00:05:30
rights inter-american human rights system

00:05:33
international law and human rights

00:05:35
philosophy. We also have some

00:05:39
some theocracies torium in human

00:05:43
rights lawyer seems 2018. He

00:05:46
leads to LaGuardia from Delta

00:05:48
to business and human rights

00:05:50
dispute resolution illegal in training

00:05:52
his practice focuses on Advertising

00:05:55
companies on the implementation of

00:05:57
Human Rights you diligence that.

00:05:58
He signed up regulatory instruments

00:06:00
and the participation of economic

00:06:03
actors in transitional Justice in

00:06:06
2023. He completed an llm

00:06:08
in international human rights law

00:06:10
at Oxford University Welcome Center.

00:06:14
On Wheels to have said

00:06:16
he said he released lawyer

00:06:19
from University of the Presario.

00:06:20
He's a specialist in environmental

00:06:23
law from University of the

00:06:24
looks that matter. He said

00:06:26
he's head of the treaty

00:06:27
section of the Ministry of

00:06:29
Foreign Affairs, which is the

00:06:31
area in charge of all

00:06:32
the issues related to the

00:06:34
negotiation the approval implementation and

00:06:37
ruination of trees as well

00:06:39
as providing advice to various

00:06:41
government entities in any other

00:06:43
mother of public international law

00:06:45
in which the Republic of

00:06:46
Colombia is involved during the

00:06:49

last four years has been

00:06:51
a professor at University of

00:06:52
indifferent subjects related to public

00:06:56
international law and also since

00:06:59
2012. He has been engaged

00:07:02
to the Philips e Joseph

00:07:03
Woodward competition first the second

00:07:06
best. And then since 2015

00:07:09
as a trainer of the

00:07:10
team of University, So today

00:07:16
as you may see from

00:07:18
the profiles and the experiences

00:07:20
of our panelists, we will

00:07:22
have a panel with different

00:07:24
perspective. We have Italian meat

00:07:26
for beef and also practical

00:07:28
experience. And also we have

00:07:31
expects property investment arbitration which

00:07:34
even if investment arbitration is

00:07:36
part of public international law.

00:07:38
We have not he's in

00:07:39
the past years. Not all

00:07:41
investment arbitration experts are also

00:07:43
expressed some public international law.

00:07:45
So it's also great to

00:07:47
have said here which is

00:07:48
going to give us the

00:07:50
public international law perspective. So

00:07:53
I would like to begin

00:07:54
this panel by asking a

00:07:56
few questions to our panelists.

00:07:58
So I think that it

00:08:00
will be a great idea

00:08:01
to start with them days

00:08:02
with an overview. So unless

00:08:04
you are the one who

00:08:06
has the most Academy, knowledge

00:08:08
here on the subject. So

00:08:09
I think it could be

00:08:10
a great way to start

00:08:11

point. If you could Enlighten

00:08:13
us with the current state

00:08:15
of affairs in the field

00:08:16
on business and human rights

00:08:17
on how these might be

00:08:19
related to us. So could

00:08:21
you please provide us some

00:08:22
of the recent developments on

00:08:25
of the area? Thank you.

00:08:28
Are you seeing how you

00:08:29
hearing me? Whine? Yes, okay.

00:08:31
Thank you for the invitation.

00:08:33
I'm very glad to be

00:08:35
here on these very interesting

00:08:37
discussion because it's not easy

00:08:39
getting from the academy perspective

00:08:41
to analyze this tension between

00:08:43
investment and human rights. My

00:08:46
intervention is going to be

00:08:48
like that. The target of

00:08:50
my intervention is to provide

00:08:52
an overview of the business

00:08:54
and human rights, and then

00:08:57
to reach the investment part

00:09:00
that you can wear specialized

00:09:01
section, right? So maybe he's

00:09:03
going to be very introductory

00:09:06
for some of Youth but

00:09:07
it is just so everyone

00:09:08
can have the same same

00:09:10
ideology of the business human

00:09:12
right? Because that's where I'm

00:09:14
coming from and I think

00:09:15
this is worth we're seeing

00:09:17
the interest of including human

00:09:19
rights Closet in investment to

00:09:21
make investors are responsible for

00:09:24
human rights abuses or birthday.

00:09:26
human rights violations to three

00:09:29
parts of my intervention the

00:09:32

first creations and other business

00:09:39
associations affect human rights for

00:09:43
allowing us to enjoy more

00:09:49
higher standard of Human Rights

00:09:51
than ever because of the

00:09:52
wealth that corporations can creating

00:09:55
suicides but that is also

00:09:59
the interests of a b

00:10:05
c d from that your

00:10:06
activities during violating human rights

00:10:08
and that are created to

00:10:15
regulate corporations are not enough

00:10:17
to regulate corporations because of

00:10:20
that trust National nature of

00:10:22
their activities in of the

00:10:23
structure of the corporation's so

00:10:25
we have A double problem

00:10:27
with the reality that showing

00:10:29
us human rights abuses his

00:10:31
candles like men that happened

00:10:33
in the 90s with Nike

00:10:35
or apple or the fast

00:10:38
fashion is candles a or

00:10:40
destructive sector and on the

00:10:42
other hand there is no

00:10:43
three problem domestic laws. Are

00:10:45
they become an officiant because

00:10:48
the states are to regulate

00:10:51
corporations efficiently to face this

00:10:54
problem the spackling and Regulatory

00:10:57
problems are the secondary school

00:10:59
by ragi Can drug you

00:11:00
at the altar of that

00:11:02
guiding principles in business and

00:11:03
human rights that governance Gump

00:11:06
the recent government jobs in

00:11:08
space in which corporations are

00:11:11
not being regulated in their

00:11:13
respective nations of their behavior

00:11:16
is unclear to respond to

00:11:19

these violations and to these

00:11:20
regulatory problems. We are seeing

00:11:23
some responses. Get responses are

00:11:27
coming from three different perspect

00:11:30
one from the domestic law

00:11:32
perspective how we can address

00:11:35
this was National nature corporation

00:11:37
international law from Advocate. If

00:11:41
it works like you notes

00:11:42
responses from them is that

00:11:46
increasing a creation of norms

00:11:49
with extraterritorial effects that we

00:11:51
know International load that he's

00:11:53
an exception because the jurisdiction

00:11:54
of the states east Territorial

00:11:56
and we're seeing an increase

00:11:59
and amount of norms for

00:12:01
Shirley in Europe to reach

00:12:03
corporations V on the 33

00:12:05
sing which B are incorporated

00:12:07
or even when there where

00:12:08
they have a TV. Ocean

00:12:11
we have the National Action

00:12:12
plants that are more public

00:12:14
policies oriented to give Clarity

00:12:17
to corporations and investors about

00:12:19
their social spectations when they're

00:12:21
investing in domestic law in

00:12:24
domestic address dick. So I'm

00:12:26
not going to be dealing

00:12:26
with that that is one

00:12:28
possible answer is domestic law

00:12:30
with X-Rated. We have just

00:12:34
for the sake of example,

00:12:35
France Germany UK and Australia

00:12:38
in Port Orange that are

00:12:41
regulating business with Express really

00:12:44
expect as a mandatory element,

00:12:48
but also Canada and the

00:12:50
European Union soon-to-be law directive

00:12:53

about a sustainability that are

00:12:56
I seen one of the

00:12:58
most interesting responses of the

00:13:00
world to the business and

00:13:01
human rights forms of response.

00:13:10
Buffalo for those that are

00:13:12
not from your ride with

00:13:13
international law is a non-binding

00:13:15
law that a seems to

00:13:17
be more about reference setting

00:13:19
reference or standards of Behaviour

00:13:21
movie for Netflix. Not even

00:13:23
if only to States won

00:13:25
two different software instruments are

00:13:27
very important the oecd guidelines

00:13:30
for Multinational Enterprises in The

00:13:32
Guiding principles in business and

00:13:34
human rights the first one

00:13:36
1976 and last year and

00:13:41
guiding principles in business and

00:13:43
human rights approved in 2011.

00:13:45
And I think the guiding

00:13:48
principles have become the focal

00:13:50
point of all their business

00:13:51
and human rights discussion investment

00:13:54
treaties design because these trees

00:13:57
are in for free due

00:13:59
diligence gation based on the

00:14:01
guiding principles in business and

00:14:03
human rights in Fort Wright.

00:14:10
We were seeing printer for

00:14:12
Tatian of Human Rights treaties

00:14:14
for sampling to remain consistent

00:14:15
how that court is interpreting

00:14:18
an existing Treaty of indirectly

00:14:26
obligations to non-state actors like

00:14:29
Corporation. Oh, so we have

00:14:30
a draft of a tree

00:14:32
on business and human rights.

00:14:33
We have that they're drop

00:14:35

of the tree is not

00:14:38
yet. Of course binding but

00:14:39
would be an order in

00:14:40
for ten a answer the

00:14:42
answer to this problem. And

00:14:45
finally what I want to

00:14:46
the Indian couple in the

00:14:48
next minute is investment and

00:14:50
trade treaties how this field

00:14:53
that is so far away

00:14:54
sometimes of Human Rights is

00:14:56
being transformed to address the

00:14:59
problems of Human Rights, right?

00:15:04
That's the starting point is

00:15:07
the report of John Runge

00:15:08
of 2013 in which he

00:15:10
realized. Cooling problems related with

00:15:14
investment and human rights. The

00:15:16
first one are the instability

00:15:18
classes. Right? And the second

00:15:20
one is the policy incoherent

00:15:21
in States right now. We

00:15:23
should have concerned that I

00:15:24
would not is that tree

00:15:26
to shopping. We're seeing investment

00:15:28
play me some history ideas.

00:15:32
Immunity Clause the police incoherence

00:15:34
and the tree shop. These

00:15:37
are classes include investment trees

00:15:40
that has the intention to

00:15:42
prevent Jose State from adopting

00:15:45
beliefs vegetation to enhance human

00:15:46
rights protection, right? So they're

00:15:49
in some ways taking out

00:15:52
the regulatory power of the

00:15:53
national state if they move

00:15:57
for the change the domestic

00:15:59
legislation in for example, as

00:16:01
to improve the labor standards

00:16:03
there going to be Shooting

00:16:05

an arbitration panel because of

00:16:07
a violation of an investment

00:16:09
true or not discriminatory these

00:16:13
classes there a problem. So

00:16:15
that's the exact second problem

00:16:18
is the police incoherent that

00:16:20
we're seeing that in the

00:16:21
process of negotiation of trees

00:16:23
in state. There is no

00:16:25
centralized Authority that Maple Shade

00:16:27
Trees and some entities are

00:16:30
negotiating treaties of investment or

00:16:32
trade with glasses that are

00:16:34
not very good for human

00:16:36
rights and human rights treaties

00:16:39
are doing that right. There

00:16:41
is a fragmentation inside the

00:16:43
states and international law and

00:16:45
it's a matter of policing

00:16:46
of you and the third

00:16:48
problem is a free shopping,

00:16:50
right that is a Dia

00:16:51
of corporation that change their

00:16:53
structure to benefit from the

00:16:55
protection of particular investment treaties,

00:16:58
right? And that is not

00:17:00
their problem that is making

00:17:02
very hard to relate. Investors

00:17:05
in their compliance with human

00:17:07
rights. How is responding to

00:17:11
these challenges? So I'm going

00:17:13
to send you to do

00:17:15
ideas or prettiest we have.

00:17:19
483 the first idea is

00:17:23
that received its investment trees

00:17:25
are conditioning the protected investment

00:17:28
on the compliant with domestic

00:17:30
standards and domestic standards are

00:17:33
related mad. Sometimes with human

00:17:35
rights for environmental or labor

00:17:37

law or gender laws. So

00:17:38
that fortification of the protected

00:17:42
investment. I respond to these

00:17:45
problems that were seen on

00:17:47
the front of your response

00:17:51
is the investment trees inclusion

00:17:57
of voluntary a corporate social

00:17:59
responsibility classes on investment treaties,

00:18:02
but they're not they're not

00:18:07
requirements binding party has important

00:18:10
facts. At their response from

00:18:12
in Batman 3 free disable

00:18:14
Lucian is to required for

00:18:16
sustainable contributions development contributions from

00:18:21
the investment. So everyone is

00:18:23
an example from Brazil model

00:18:25
treaty you your investment has

00:18:27
24 use positive impacts on

00:18:30
the development of our country

00:18:31
and the most creative anyone

00:18:36
is requiring investors to observe

00:18:39
recognize International standards in human

00:18:42
rights issue. Right now. We

00:18:43
have these for a kind

00:18:46
of responses from investment trees

00:18:48
because of the sake of

00:18:49
time. I'm just going to

00:18:50
end with the last one

00:18:51
and I'm not going to

00:18:52
be able to develop each

00:18:53
one of them but he's

00:18:54
the last text requiring investors

00:18:57
to comply with the provisions

00:18:59
under some of the examples

00:19:01
that I think are very

00:19:03
interesting especially the Touch model

00:19:05
of a vehicle if it's

00:19:07
it's a really want a

00:19:09
tree to see about We

00:19:12
are seen to idea is

00:19:15

the creation of applications on

00:19:16
investors on environmental labor environmental

00:19:19
law labor law or human

00:19:21
rights issues V John David

00:19:23
guiding principles, right investment re

00:19:26
re require more than what

00:19:28
is required by The Guiding

00:19:29
principles example would be shocked

00:19:33
investment of the year for

00:19:38
the 2016 ride. The creation

00:19:41
of applications on investors. The

00:19:43
other is a piece of

00:19:48
Belgium and Luxembourg in which

00:19:50
are you a teen sex

00:19:52
act in accordance with International

00:19:54
parts Part A Part B.

00:20:00
So it is expected from

00:20:03
investors to act according to

00:20:06
International standards in which the

00:20:09
Contracting parties. Already applied. So

00:20:12
it's a very hard standard

00:20:14
because he indirectly investors based

00:20:20
on International standards coming from

00:20:22
free sample from international human

00:20:24
rights treaties would be especially

00:20:28
the data model 2019 that

00:20:31
includes one of you diligence

00:20:32
Publications in the process of

00:20:34
investment right were seen and

00:20:36
I see that might be

00:20:38
a trend in which we're

00:20:39
going to see more often

00:20:40
in Batman trees that included

00:20:42
as an application for the

00:20:43
investment performance or Gilligan process

00:20:48
to avoid impacts on human

00:20:52
rights. I'm going to stop

00:20:53
there because my time, thank

00:20:55
you. Thank you Jesus for

00:20:58
these overview. I think that

00:21:01

eats very valuable the point

00:21:04
of you erase about the

00:21:05
lack of coherence in institutions

00:21:08
actually negotiated, which I think

00:21:11
it's on and we can

00:21:21
move to set him because

00:21:22
he's actually part of the

00:21:26
3D section of the Ministry

00:21:28
of Foreign Affairs and he

00:21:29
actually negotiated pretty investment treaties,

00:21:33
which is part of the

00:21:35
of the point that you

00:21:36
raised. There is no connection

00:21:39
or interaction sometimes between the

00:21:43
institutions in the government. So

00:21:45
I think your perspective sir

00:21:48
this discussion on a forced

00:21:52
to continue as some of

00:21:53
the points raised by Andres,

00:21:55
so different background different from

00:22:01
some of us actually you

00:22:03
all do you understand investment

00:22:05
arbitration, you are more an

00:22:07
expert on public international law.

00:22:09
We know that investment arbitration

00:22:11
is part of folic International.

00:22:13
Oh, but you are more

00:22:14
focused to hear from you

00:22:21
how you see their interaction

00:22:23
between The befriend regimes of

00:22:27
international law of investment and

00:22:31
at the same time these

00:22:39
two regimes and how you

00:22:41
seen this could be sold

00:22:42
in the near future. I'm

00:22:48
things I'm going to because

00:22:49
I think that you introduced

00:22:50
these just that I want

00:22:52
to write an English at

00:22:55
first of all, I think

00:23:00

it's going to be interesting.

00:23:02
So take that in mind.

00:23:25
That's a major disclaimer for

00:23:27
what I'm going to say.

00:23:28
And that's you because I'm

00:23:30
in my in my role

00:23:32
as I have to make

00:23:34
sure that the treaties are

00:23:36
we could go here in

00:23:37
the gym themselves evil expression,

00:23:45
please. So so that's where

00:23:49
I'm coming from and that's

00:23:50
why I'm going to try

00:23:51
to explain. Why is he

00:23:53
the Investments are the problem

00:23:55
which is a modder. all

00:24:01
the Disney songs Call Dreamscapes,

00:24:04
because coming from a 3D

00:24:06
background should prefer hard loss

00:24:09
solution as you were trying

00:24:10
to think of a heart.

00:24:14
I think something between in

00:24:17
the middle, which is basically

00:24:19
a better understanding on the

00:24:21
part of practitioners physically to

00:24:29
learn how to interpret treaty

00:24:31
provision more efficiently and not

00:24:34
how it has been doing

00:24:35
up until this point in

00:24:37
the most investment case and

00:24:42
I'm going to try to

00:24:43
explain what I mean when

00:24:46
I'm saying this. First of

00:24:48
all, I want to say

00:24:49
that I do understand where

00:24:51
investment is coming from where

00:24:53
the problem is being generated

00:24:54
because investment is so hard

00:24:57
in that window is so

00:24:58
difficult that have to become

00:25:01

specialized investment. So that's something

00:25:04
that we can't be true

00:25:06
and perhaps are out there.

00:25:11
I'm in states have to

00:25:27
deal with this issue. They

00:25:29
do not want to have

00:25:30
to deal with Investments and

00:25:31
I'm going to touch up

00:25:35
on some of it is

00:25:35
that the agency is healing

00:25:39
but the point is that

00:25:42
when we have something here.

00:25:47
We'll have to think about

00:25:48
what's happening in human life.

00:25:50
We have to take the

00:25:53
seasons of humor. My stock.

00:26:01
We have to take something

00:26:11
that's in Batman 3 free

00:26:16
trade agreements, but we have

00:26:18
more than 3,000 ft his

00:26:20
inauguration and those obligations have

00:26:23
to be taken into account

00:26:24
when Columbus, Texas region information.

00:26:27
But when you bring the

00:26:29
case before our panel and

00:26:31
dragon basement panel that they

00:26:38
have to fulfill its take

00:26:41
a case of specific things

00:26:42
that I have. I like

00:26:43
to highlight because I was

00:26:45
kind of Lies with the

00:26:46
decision which is a call.

00:26:48
I'm sure that Echo. Do

00:26:50
you know what a core

00:26:53
is but one of them

00:27:01
that we have the best

00:27:02
International lawyer in the receiving

00:27:04
department. And even with Phillip

00:27:07
songs in the final decision

00:27:08
was taken how it was

00:27:09

taken my point. We have

00:27:17
a tension between to his

00:27:19
position Interstate 83. Which were

00:27:28
the exceptions in the Columbia

00:27:30
Columbia was acting under an

00:27:40
exception of the tree and

00:27:41
accepting specifically provided for in

00:27:43
this position 22.1, which is

00:27:48
basically to protect me a

00:27:50
decision taken her to protect

00:27:53
the innocent with me because

00:27:55
it was made to protect

00:27:56
your bar. It was to

00:28:01
protect her. It's a completely

00:28:13
normal case perhaps in your

00:28:15
case. It could be interesting

00:28:17
but the logic behind this

00:28:19
position 2201 was not an

00:28:24
exception. But whether a permission

00:28:27
for the government to take

00:28:28
a legitimate public policy, but

00:28:31
that didn't mean that it

00:28:32
was not going to reach

00:28:33
international law if they take

00:28:34
out if they took a

00:28:36
measure to protect the environment.

00:28:38
How do you write to

00:28:39
that because they come further

00:28:41
decision to Annex at 11,

00:28:42
which use the word exception.

00:28:46
When you retake order it

00:28:48
actually says that the reason

00:28:50
is because one of them

00:28:51
contains the word exception and

00:28:52
the other one doesn't contain

00:28:54
the word exemption. Okay, when

00:28:57
you read article 231 of

00:28:58
the treaties, which is their

00:29:01
General interpretation of trees, you

00:29:04
find that the first way

00:29:06

to interpret. You can say

00:29:11
that that's a way to

00:29:13
interpret. Okay, we are using

00:29:15
the fact that this was

00:29:17
young 2201 wasn't trained in

00:29:20
chapter 22, which is the

00:29:23
chapter explicitly call exception exception.

00:29:28
So if the decision was

00:29:36
in the chapter of exception,

00:29:37
it's simply that you have

00:29:39
the right to conclude that

00:29:42
that wasn't an exception. Anyone

00:29:46
who practices international law when

00:29:49
you read this was young

00:29:50
22 / 1.3, you know

00:29:55
where the decision comes from

00:29:56
because it's exactly the same

00:29:59
language as our equals 20

00:30:01
of a cup. And when

00:30:03
is a virtually identical it's

00:30:05
the same thing. You are

00:30:28
going to eat you are

00:30:29
not going to be committing

00:30:30
crimes or not till around

00:30:31
4. I'm doing this in

00:30:35
a convention that you can

00:30:36
apply to a right to

00:30:37
that which is 31.3 C

00:30:39
equals 31.3 c / B

00:30:42
that General international law applicable

00:30:46
between the parties should be

00:30:48
taken into account to keep

00:30:49
in to interpret as position

00:30:51
within a 3, so It's

00:30:55
important. This was him twenty-two.

00:30:57
Oh one point three was

00:30:59
not an exception. It's simply

00:31:02
impossible to understand. I'm sure

00:31:06
if he sent hundreds to

00:31:07
International if they understand I

00:31:20

mean, Books that song you

00:31:25
want it? It's only one

00:31:27
case. There are other cases

00:31:29
where the final Mansions article

00:31:36
31 points PC to say

00:31:37
that should not be recognized

00:31:41
violation of other obligations of

00:31:43
us can fact families can

00:31:49
in fact I write two

00:31:50
more coherent decision towards other

00:31:53
three year old gay. When

00:31:58
we took it with human

00:31:59
rights investment, I think that

00:32:02
most of the questions go

00:32:04
through the gate and be

00:32:10
doing more on their own

00:32:11
site, but police should also

00:32:14
be taking that into account.

00:32:16
When we are negotiating treaties,

00:32:18
I am the ones that

00:32:20
I am part of the

00:32:21
ones that we should be

00:32:24
more clear in this position

00:32:25
that we shoot into that

00:32:30
interpretation within 3 days shooting

00:32:32
to be done without trees

00:32:40
art treat. But when we

00:32:43
seek a quarrel with my

00:32:46
concern with the code, is

00:32:47
that perhaps because he is

00:32:50
one of the best if

00:32:51
we have to look that

00:32:58
shouldn't have happened if the

00:33:01
one that's today in Port

00:33:08
and that same. All their

00:33:19
treaties with. I mean I

00:33:20
can write but still up.

00:33:24
So I don't know what

00:33:26
this would be because I

00:33:28
know they ask me what

00:33:30

I think that. If prisons

00:33:34
practicing investment arbitration understand that

00:33:38
they are also working and

00:33:39
that would be a great

00:33:43
idea, But I think we

00:33:51
can do more in the

00:33:52
drafting of trees. And as

00:33:54
you were saying negotiators should

00:33:56
not be simply negotiators because

00:34:00
that allows for But I

00:34:05
also believe that soaked though

00:34:06
has a major role in

00:34:08
Asia. Because if a place

00:34:12
is also start accepting this

00:34:14
reality and understand this reality

00:34:17
we are not going to

00:34:20
see are so against considering

00:34:24
when cases are are being

00:34:29
heard before untraveled forget them.

00:34:31
So I think I'm going

00:34:35
to leave the microwave from

00:34:37
here. Thank you, sir Hugh

00:34:41
and I think that I

00:34:43
had some of the stuff

00:34:45
so we can take that

00:34:55
one or we could work.

00:35:05
How does an arbitration interacts

00:35:08
with the other regimes of

00:35:10
public international law and of

00:35:11
course fees also team. This

00:35:14
also comes with the different

00:35:17
interpretations that arbitrators could give

00:35:21
to to investment treaties that

00:35:23
he has made a lot

00:35:29
of sound because of course

00:35:31
in that case. Some people

00:35:33
have the view that the

00:35:35
treaty is very clear that

00:35:37
exception Clause. It's an exception.

00:35:40
Exception, of course interpretation in

00:35:45

that case. Of course, of

00:35:55
course, of course, they need

00:36:00
to renegotiate some of the

00:36:03
wording of our current treaties,

00:36:05
of course brings a lot

00:36:11
of questions like the mechanism

00:36:19
that the more appropriate mechanisms

00:36:21
to protect human rights, maybe

00:36:25
maybes not maybe we can

00:36:27
go to commercial arbitration and

00:36:29
see cases out of the

00:36:30
bank which Did they solve

00:36:42
the case before getting substance

00:36:45
commercial arbitration something more to

00:36:49
hear it for the protection

00:36:50
of Human Rights. So so

00:36:51
thank you for for your

00:36:53
balabal remarks. Now we are

00:36:55
moving to do something comes

00:36:59
from he has a lot

00:37:05
of practical experience on the

00:37:07
structuring of the private sector

00:37:17
and of course by private

00:37:19
sector of the system how

00:37:24
to use Allegiance. I know

00:37:31
that Andres mention that most

00:37:34
of the time is not

00:37:35
an obligation and we are

00:37:36
talking about so of course

00:37:40
A lot of work, but

00:37:48
I want to see how

00:37:49
you know how these could

00:38:01
be related to. Good morning,

00:38:04
everybody. Thank you, Mary Lucia

00:38:06
and organizers of the event

00:38:09
for inviting me. And I'm

00:38:13
going to talk about day

00:38:15
of obligation of Human Rights

00:38:16
due diligence are from the

00:38:19
Investor's perspective and in order

00:38:23

to do so, I might

00:38:24
have to bite my presentation

00:38:25
in three parts. So the

00:38:29
first part is the origins

00:38:30
of the tension between Forge

00:38:32
investment in the human rights.

00:38:33
The second one is the

00:38:34
human rights to do this

00:38:35
again salon on the third

00:38:37
part is the discussion about

00:38:39
if it's a duchy or

00:38:41
an obligation that investors have

00:38:44
to comply with human rights

00:38:46
due diligence. This is an

00:38:48
ongoing debate. I think we're

00:38:49
not going to solve it

00:38:50
today. But the idea is

00:38:51
to open the discussion and

00:38:53
to explore some of the

00:38:54
solutions and the possibilities on

00:38:58
score of the Padres and

00:39:01
how to impose obligations on

00:39:03
private actors. The last families

00:39:06
have mentioned the whole system

00:39:09
has been structured about around

00:39:12
space. So that's the main

00:39:14
subject of international law states

00:39:16
and the big question here

00:39:17
is how can we imposed

00:39:18
human rights obligations to corporations?

00:39:22
So first the origins of

00:39:24
Fortune investment in human rights,

00:39:26
it has it has been

00:39:28
asserted that investment Provisions are

00:39:30
generally aim to facilitate the

00:39:32
flow of investment between countries

00:39:34
creating the standard protection particles

00:39:36
driving prosperity and inclusive Economic

00:39:38
Development instead of this narrative

00:39:40
critical legal Theory and historical

00:39:43

evidence showed that international law

00:39:45
was designed by one formation

00:39:48
investors and corporations. It's ordinary

00:39:52
operation is deeply implicated in

00:39:54
the logic of capitalism economic

00:39:56
profit. European nations imposed economic

00:40:00
cultural and political institutions on

00:40:03
diverse territories including foreign direct

00:40:06
investment rules that legitimize the

00:40:09
condition for Corporation to extract

00:40:11
natural resources and explode labor

00:40:13
without legal consequences. So he

00:40:16
won't want one point is

00:40:17
that they Tia is not

00:40:19
to make preparations protect human

00:40:23
rights. That's the that's the

00:40:25
beauty of the states that

00:40:26
have an equation of the

00:40:26
stage b instead to prevent

00:40:29
causing the humid right harms.

00:40:31
And if the damage is

00:40:33
caused then make them liable

00:40:35
for the cost of they

00:40:36
have for the harm that

00:40:37
they have called second the

00:40:40
human rights of diligence landscape.

00:40:43
Do underneath one of the

00:40:46
initiatives to address these problems

00:40:47
are the guiding principles of

00:40:49
business and human rights has

00:40:51
just mentioned lunch and launched

00:40:53
in 2011 by the US.

00:40:57
The second pillar of The

00:40:58
Guiding principles refers to the

00:41:00
corporate responsibility to respect human

00:41:03
rights. This principal is grounded

00:41:06
in the global standard of

00:41:07
expected conduct the business respect

00:41:10
human rights whether they operate

00:41:13
This killer has been criticized

00:41:15

for its soft language and

00:41:17
being grounded on social rather

00:41:20
than legal norms. Nonetheless, John

00:41:23
Russia claims, his intention was

00:41:25
to move beyond the concept

00:41:27
of shackles of traditional international

00:41:29
human rights law and influence

00:41:31
by legal experts from law

00:41:34
firms private law firms introduced

00:41:36
due diligence language into the

00:41:39
protect respect and remedy framework.

00:41:43
The language of due diligence

00:41:45
has deep roots in legal

00:41:47
traditions. Under the logic of

00:41:49
the guiding principle discharging their

00:41:52
responsibility to respect human rights

00:41:53
would require human rights due

00:41:55
diligence. According to the guiding

00:41:58
principles of Human Rights division

00:42:00
setup process that investors and

00:42:02
business carry out to identify

00:42:04
prevent mitigate an account for

00:42:07
how they got where they

00:42:08
are best human right in

00:42:09
the content of this principle

00:42:13
reproduces. The old idea that

00:42:15
you diligence is the standard

00:42:16
of conduct required to discharge

00:42:19
a legal obligation involving a

00:42:21
process of Investigation conducted by

00:42:23
private parties to identify risk

00:42:26
of producing a damaged. Definition

00:42:29
of human rights to division

00:42:30
is an allocation of the

00:42:33
general principle of law that

00:42:35
Demands a diligent conduct from

00:42:37
a private party to proceed

00:42:39
and prevent the consolidation of

00:42:40
the risk between a particular

00:42:42
deity that businesses are the

00:42:44

ones to conduct the process

00:42:46
to identify prevent and mitigate

00:42:49
the risk to the operation,

00:42:50
but there is to harm

00:42:52
people. The rationale behind human

00:42:57
rights due diligence reflects that

00:42:59
this concept is a unique

00:43:01
regulatory technique to strengthen businesses

00:43:04
compliance with obligations to prevent

00:43:07
causing carbs. Mirroring, the legal

00:43:10
Frameworks enacted worldwide UK legislation

00:43:13
Germany Norway excetera imposing taxes

00:43:18
on corporations to report social

00:43:19
impacts on the charge mandatory

00:43:21
human rights due diligence Latin

00:43:23
America reacted quickly to this

00:43:25
trend evacuating for similar regulations.

00:43:27
However, imposing mandatory human rights

00:43:31
due diligence across the regions

00:43:32
has several challenge you to

00:43:35
a particular context no rule

00:43:37
of law Society impunity set

00:43:40
the tropical sensation of The

00:43:43
Guiding principles. Somebody has called

00:43:45
them is taking place. I

00:43:48
will hide like now recent

00:43:50
regulatory development shaping the legal

00:43:52
landscape regarding human rights to

00:43:54
eat. First lost in passing

00:43:58
mandatory human rights due diligence

00:44:00
incorporation. There has been dropped

00:44:02
bills passed in Mexico Colombia

00:44:04
Peru in the last couple

00:44:05
of years. None of none

00:44:07
of them has been approved

00:44:08
by the Congress only Brazil

00:44:10
draft Bill 572 from stock

00:44:14
2022 is currently under consideration

00:44:16
and in article seven states

00:44:20
that corporations have a duty

00:44:23

to a.m. I thought mind

00:44:28
up the duty to comply

00:44:28
with mandatory due diligence to

00:44:31
identify prevent money for and

00:44:34
repair human rights violations, including

00:44:37
social rights legal rights and

00:44:40
environmental rights. The second friend

00:44:43
used very particular from the

00:44:46
Latin American region is the

00:44:47
hardening of guiding principles by

00:44:49
Court decisions while not formal

00:44:52
president's the university understood as

00:44:55
Alpharetta statements of Daddy's courts

00:45:00
and tribunals increase soft binding

00:45:03
net for the parties to

00:45:05
the case and increase increase

00:45:07
its relevance for other actors.

00:45:10
Some examples three standards of

00:45:13
incorporating in the inter-american court

00:45:15
of Human Rights be at

00:45:16
the rulings. The first one

00:45:18
is that the states must

00:45:19
protect we should understand that

00:45:21
as regulate and super bright

00:45:22
third parties from corporate activities

00:45:25
with the potential of harming

00:45:26
human rights second most related

00:45:30
to the presentation defining the

00:45:31
scope of businesses duty to

00:45:34
respect human rights and human

00:45:36
rights due diligence in compensation

00:45:38
has orders to have an

00:45:39
impact on business operations the

00:45:42
latest ruling that the tribunal

00:45:47
was very specific on on

00:45:49
on signal from the language

00:45:51
used to describe. This is

00:45:52
standard. I forward this due

00:45:55
diligence the standard is applicable

00:45:57
to actions of both public

00:45:59

and private entities. So there's

00:46:01
no discussion now that it's

00:46:02
only occasionally States and the

00:46:07
second one is a human

00:46:08
rights due diligence should include

00:46:09
an assessment of the actual

00:46:11
and potential impact activities on

00:46:13
human rights as part of

00:46:15
the medication to prevent environmental

00:46:17
Hearts to human rights as

00:46:19
part of the obligation to

00:46:20
prevent and there is where

00:46:23
the Tribune is already starting

00:46:24
to connect to Julian's do

00:46:27
a hard loss of allocation.

00:46:30
We will see the ruling

00:46:32
Haiti versus Colombia. You should

00:46:35
be out in the next

00:46:36
couple of months how the

00:46:37
tribunal interpret interpret this this

00:46:40
is this treaty human Columbia.

00:46:45
The Constitutional court has incorporated

00:46:46
to binding stop rules through

00:46:49
all the other jurisprudence mostly

00:46:51
in cases regarding indigenous people.

00:46:54
The first one is that

00:46:55
there is a corporate duty

00:46:57
to report to perform due

00:46:58
diligence. You can read that

00:47:00
that the famous wouldn't su123

00:47:03
from 2018 with very clear

00:47:05
about that that do teeth

00:47:06
under the judges most able

00:47:08
to eat human right duties

00:47:09
against a part of the

00:47:10
evidence to determine diabetes. Last

00:47:14
but not least in recent

00:47:15
years various approaches to regulations

00:47:17
of business conduct have evolved

00:47:18
as an alternative to the

00:47:19

traditional model focusing on the

00:47:22
conduct of domestic businesses and

00:47:24
soft low approach international human

00:47:26
rights law some of the

00:47:28
Alternatives include the incorporation of

00:47:31
contractor classes human rights contractual

00:47:34
Clauses that trade investment agreements

00:47:38
and human rights obligations just

00:47:41
talked about and The Binding

00:47:44
to negotiations in there in

00:47:45
the in the of The

00:47:46
Binding draft treaty that is

00:47:48
taking place in Geneva. We'll

00:47:50
see where that takes. Bugattis

00:47:54
Polanski, that's what we have

00:47:56
nowadays regarding the regulation of

00:47:59
human rights to diligence is

00:48:01
hard becoming Harder Than You

00:48:02
by reputation and we have

00:48:05
a specific obligations in National

00:48:09
loss and we have a

00:48:10
full box of options that

00:48:15
we can start exploring. I'm

00:48:17
the third point is the

00:48:18
investor Duty slash obligation to

00:48:21
perform human rights. We didn't

00:48:22
particularly in the context of

00:48:25
investment arbitration arbitrations have a

00:48:30
Dottie under international law as

00:48:32
we sought to prefer a

00:48:33
human rights due diligence to

00:48:35
prevent harm from materializing and

00:48:38
to ensure that their expectations

00:48:39
are legitimate to comply with

00:48:42
this duchy. The investor must

00:48:44
investigate the host country's political

00:48:46
economic and social context that

00:48:49
should be obvious, but they

00:48:51
don't do it and that's

00:48:53
what we're trying to do

00:48:54

change nowadays, even though these

00:48:56
are very sophisticated. Investors actress

00:49:00
tribunal to decide whether the

00:49:04
investors benefit from the protection

00:49:06
of the treaty or the

00:49:07
nice compensation when they bet

00:49:09
when the investment is made

00:49:10
we don't want to see

00:49:12
during the risk of breaching

00:49:13
human rights. They're acting now

00:49:18
we have like almost 6

00:49:20
7 8 decisions were the

00:49:22
tribunes have made or try

00:49:24
to make connect the human

00:49:27
rights international human rights system

00:49:30
with the investment for East

00:49:32
Orange direct investment system. Most

00:49:39
famous quote two are trying

00:49:52
to play with with the

00:49:54
treaties tensions and interpretation to

00:49:57
South America in Bolivia, Bolivia.

00:50:09
47 International Investment reviews have

00:50:13
established that investor is entitled

00:50:15
to protect office limited legitimate

00:50:17
expectations provided first that it

00:50:20
exercise due diligence and second

00:50:23
that it's legitimate expectations were

00:50:26
reasonable in light of the

00:50:27
sink to stances. The circumstances

00:50:30
are not legal in nature.

00:50:35
So not only the legal

00:50:36
framework, but they should also

00:50:38
include the social cultural and

00:50:41
economic environment of the whole

00:50:42
state of the best rate.

00:50:44
Among other factor is not

00:50:46
the same do we have

00:50:47
to do today to see

00:50:48
if you were going to

00:50:48
make an investment in Hawaii

00:50:50

and Canada? Are you going

00:50:51
to buy your investment in

00:50:52
city of Columbia? another country

00:50:59
I need the recent ruling

00:51:00
of Red Eagle versus Colombia

00:51:02
with regular was very clear

00:51:04
that the system. Stylish to

00:51:07
protect opotamus system, you know

00:51:13
that there's a new rule

00:51:15
every day. There's a new

00:51:18
ruling a new law. So

00:51:20
it's very complicated, but that's

00:51:22
not not that it's not

00:51:23
an excuse. So the system

00:51:26
established to protect the epidermis

00:51:27
is a really complex which

00:51:28
requires the investor to pay

00:51:29
close attention and learn how

00:51:31
it works. The treaty does

00:51:34
not prohibit complexity rather imposes

00:51:38
on an investor than to

00:51:39
act with care and due

00:51:41
diligence. So here you see

00:51:42
how that are gonna start

00:51:43
bringing these General principle of

00:51:46
law on private law to

00:51:48
the human rights. These questions

00:51:49
were from my point of

00:51:50
view. I think it's it's

00:51:52
a it's a fast that

00:51:53
we should explore when you

00:51:55
see. Lawmaking process on which

00:52:01
involved he's playing with different

00:52:03
standards for the Constitution. So

00:52:05
it's not this this Purity

00:52:07
law really interesting. Is it

00:52:11
is it can be problematic?

00:52:14
Toto to finish up with

00:52:16
a Bob Dylan is a

00:52:17
general principle of law. Providing

00:52:21

legislators with a regulatory technique

00:52:24
and a source of normative

00:52:25
power to add wrestlers from

00:52:27
the responsibilities of businesses for

00:52:29
human rights violations. It is

00:52:32
an obligation included in National

00:52:34
laws and a standard of

00:52:36
interpretation in the analysis of

00:52:38
arbitral Tribunal. So I am

00:52:42
going to finish with three

00:52:43
questions. I want to put

00:52:46
healing in the discussion. Try

00:52:49
to remagine the system. I'm

00:52:51
not a fan of destroying

00:52:53
things. I want to see

00:52:54
everything. But I know that

00:52:57
it needs some adjustments and

00:52:58
we are some some food

00:53:01
for thought so we can

00:53:02
start thinking about how can

00:53:04
we improve and rematch in

00:53:05
the system? The first one

00:53:07
is how can we measure

00:53:08
or wired? What what is

00:53:10
the effectiveness effectiveness of including

00:53:14
human rights classes on Beats

00:53:16
to make investors respect human

00:53:18
rights? Paper is one thing

00:53:23
but then enforcement is another

00:53:25
we have that problem. I

00:53:26
think through all the areas

00:53:28
of international law. Second what

00:53:31
extent can an investor claim

00:53:33
that his legitimate expectations were

00:53:35
violated when you diligence but

00:53:37
not was not performed. Insert

00:53:40
the 3D interpretation, but Nash,

00:53:43
but by National Defense agencies

00:53:45
the election of the tribunal

00:53:47
in reference to human rights

00:53:49

chase the outcomes of the

00:53:51
dispute. Thank you. They need

00:53:56
some guys. I think that

00:53:57
was super enlightened. I think

00:53:59
that's just to channel open

00:54:02
question. Simba's mother of attrition

00:54:09
of course has been created

00:54:11
for investors to have for

00:54:16
Tracy's claim. So I think

00:54:19
that taking into account the

00:54:22
presentation of Santiago an additional

00:54:24
issue that race here and

00:54:27
that of course concerned someone

00:54:28
could be like a suitable

00:54:31
to raise human rights argument

00:54:33
is the challenge. to the

00:54:37
signup process would be teams

00:54:39
will actually receive compensation on

00:54:41
this date has not been

00:54:42
a System created for that

00:54:44
so we can of course

00:54:46
try to modify the system

00:54:50
and includes Allegations upon investors

00:54:55
and investment treaties, but at

00:54:56
the end we will have

00:54:58
that procedural Challenge on how

00:55:01
can actually receive compensation or

00:55:05
claim compensation for potential violations

00:55:09
on a leash on these

00:55:19
discussions. So now I think

00:55:20
that we could move to

00:55:22
our experts today on can

00:55:28
you tell us how many

00:55:36
that perhaps nowadays Columbia is

00:55:44
dealing with some cases not

00:55:46
involved. To hear your remarks

00:55:53
on these maybe you can

00:55:56
tell us a little beads

00:55:57
on how we can make

00:55:58
House Columbia make human rights

00:56:02

argument with arbitration. And also

00:56:08
I think your perspective arbitrators

00:56:16
are also ready for these

00:56:17
to cure these kind of

00:56:19
argument. Thank you. My name

00:56:23
is yeah and thank you

00:56:24
to everyone attending here and

00:56:26
virtually told you I am

00:56:29
part of the agency that

00:56:31
represents Columbia endorsement arbitration cases

00:56:34
international league and I think

00:56:38
that the last question that

00:56:40
Santiago posed as the perfect

00:56:42
pot the way to talk

00:56:43
to start talking about what

00:56:45
10 states do or what

00:56:47
is Columbia doing regarding the

00:56:49
incorporation of Human Rights related

00:56:52
topics and environmental topics and

00:56:55
investment arbitration, I think as

00:56:58
and raise and since you

00:56:59
pointed out usually the system

00:57:02
has seeing as a fragmented

00:57:04
system or investment arbitration is

00:57:06
in one side and then

00:57:08
human rights environmental issues are

00:57:10
on other side, but as

00:57:11
we have Here today. This

00:57:16
is not a fragmented system

00:57:17
and even do some people

00:57:19
see it as a fragmented

00:57:20
system. The reality is that

00:57:23
any investment cases. We see

00:57:25
every time more how human

00:57:29
rights issues environmental issues are

00:57:32
or have an impact investment

00:57:34
arbitration cases. So I would

00:57:37
like to re-sign three cases

00:57:40
where Columbia has been using

00:57:43
human rights and environmental defense

00:57:47

has to present before the

00:57:49
arbitral tribunals in order to

00:57:52
Define Columbia Association and the

00:57:54
measures that adopted and that

00:57:56
the investors were challenging. So

00:57:59
I think that you can

00:58:00
see the defenses from the

00:58:02
state from 2.06. No defenses

00:58:06
and unmarried base defenses. Columbia

00:58:09
has tried as self-appointed out

00:58:11
to use the car buy

00:58:13
Provisions that some trees have

00:58:17
so for example, since you

00:58:19
was talking about article 22013

00:58:22
of the free trade agreement

00:58:24
with Canada, which is a

00:58:25
carve-out provision for the entire

00:58:27
agreement. Basically states that for

00:58:31
the purpose of chapter 8

00:58:32
which is the chapter related

00:58:34
to investment Provisions. If measures

00:58:36
are not applied in an

00:58:37
arbitrary or with unjustifiable discrimination

00:58:40
between Buster's. Nothing in the

00:58:44
agreement shall be construed to

00:58:46
prevent a party. So he

00:58:47
refers a Colombia from adopting

00:58:50
or enforcing measures necessary to

00:58:52
on the first tablet that

00:58:54
they have to protect human

00:58:57
animal or plant life or

00:58:59
health which the parties understand

00:59:01
to include environmental measures. So

00:59:04
as you see our that

00:59:07
the Colombian team on the

00:59:08
Canada team that Matt and

00:59:10
try to draft the Free

00:59:11
Trade Agreement were very straightforward

00:59:14
in establishing a carve-out provision

00:59:17
that recently said the stations

00:59:21

that are made or measures

00:59:23
are taken by the by

00:59:24
the states to protect environmental

00:59:27
purposes are legitimate. And if

00:59:30
they are not taken in

00:59:32
an arbitrary fashion or just

00:59:35
cream discriminating between Buster's then

00:59:38
the state or those measures

00:59:41
not be subject to chapter

00:59:45
8 was which is a

00:59:47
chapter related to investment protection

00:59:48
in all the cases related

00:59:53
to listen to the band

00:59:54
Paramore Richard kordel Red Eagle

00:59:59
and Galway. presented the defense

01:00:04
of article 22013 Ambassador additional

01:00:07
defense where Columbia Association was

01:00:10
an article 2201 prevented the

01:00:14
tribunal to actually go into

01:00:16
the matter and Yep, I

01:00:20
was really going to the

01:00:21
matter and decide because this

01:00:24
were measures that were attacking

01:00:25
for environmental purposes. But what

01:00:27
we have seen in the

01:00:29
record of the station first,

01:00:30
but then it was upheld

01:00:31
by Carly and will not

01:00:34
upheld but it was the

01:00:36
Red Eagle Tribune. I'll take

01:00:38
what they occurred a tribunal

01:00:39
said I'm said we are

01:00:40
in agreement. Would that cord

01:00:41
a tribunal interpretation of particles

01:00:45
2201 is that defense is

01:00:48
regarding the starboard provision are

01:00:50
no jurisdictional defenses. They are

01:00:53
married base defenses on the

01:00:55
tribunal on the tribunal will

01:00:57
only analyze those defensive the

01:01:00

tribunal Puente that would invade

01:01:02
Eagle. Once the tribunal has

01:01:05
agreed that Columbia or that

01:01:09
the state actually is internationally

01:01:11
liable and then they will

01:01:13
see if I come 22013

01:01:16
applied to the dispute. An

01:01:19
exception the dispute so ugly

01:01:21
and I are going okay

01:01:22
Columbia presented a defense based

01:01:26
on this part of our

01:01:27
profession and there was another

01:01:28
student party as measured by

01:01:31
time. I die Canada basically

01:01:34
resented it stays regarding the

01:01:39
profession and said this profession

01:01:42
should be construed as a

01:01:43
safety net versus it's the

01:01:45
last resort to states have

01:01:47
to protect environmental issues before

01:01:49
the tribunal and what kind

01:01:53
of day it is the

01:01:55
exception applies because the estate's

01:01:59
actually proves that it has

01:02:00
taken the provisioning good-faith right

01:02:03
for the right purposes here

01:02:04
environmental purposes in a non-discriminatory

01:02:06
fashion. Then there's no violation

01:02:10
of the fhfj and no

01:02:12
estate liability and what that

01:02:14
means is that there will

01:02:16
be no payment. Compensation from

01:02:20
the state because of the

01:02:21
measures it took to protect

01:02:23
the environment but as we

01:02:25
can see the tribunal departed

01:02:28
from God because even though

01:02:30
they're cold. Do you know

01:02:31
I know live this Private

01:02:33
Probation what he just stated

01:02:35

was that What he found

01:02:38
out was that. The provision

01:02:42
was used by Columbia only

01:02:45
as a jurisdictional defense and

01:02:48
therefore it says a jurisdictional

01:02:49
defense. It is not acceptable.

01:02:52
It will be a married

01:02:54
baby fence, but then didn't

01:02:56
analyze that depends on the

01:03:00
merits of the case and

01:03:01
stages on the basic saying

01:03:04
up in water if it's

01:03:06
not a sexual offense and

01:03:08
that is very Troublesome because

01:03:11
the tribunal invite Eagle even

01:03:14
though it says the rationale

01:03:17
behind a car the tribunal

01:03:18
was right what it says

01:03:19
is I'm not going to

01:03:20
use it as a jurisdictional

01:03:21
defense because it is not

01:03:23
a jurisdictional defense, but it

01:03:25
says if I find Columbia

01:03:27
liable In the Maurice face,

01:03:30
I will analyze if the

01:03:32
car towed provision is applicable

01:03:33
or not. And what will

01:03:36
normally happen is if the

01:03:37
car bird provision is applicable

01:03:39
then no compensation will be

01:03:42
required from Columbia to the

01:03:43
investor. So I think actually

01:03:45
care about salvation is like

01:03:48
this and treat. These are

01:03:49
very important and are very

01:03:51
important for the defenses of

01:03:52
the states in order for

01:03:54
states to have you know,

01:03:56
a different range of options

01:03:58
in order to present an

01:04:01

adequate defense before the international

01:04:03
Tribunal. but human bites are

01:04:08
environmental issues are not only

01:04:10
important regarding carve our Provisions

01:04:13
because what we have seen

01:04:14
is that even though there

01:04:16
are cases where the trees

01:04:17
do not provide for environmental

01:04:19
care about Provisions or human

01:04:21
rights carve-out provisions. Just a

01:04:24
half to bring today attention

01:04:28
of the charge, you know,

01:04:29
their human rights and environmental

01:04:31
concerns that surround a dispute

01:04:34
that has those concerns around

01:04:36
it. And this is important

01:04:38
because states are more often

01:04:41
in a sticky position because

01:04:43
they have to protect the

01:04:44
investment but they have also

01:04:45
to protect human rights vis-a-vis

01:04:47
their normal citizens. So it

01:04:51
is important for States 2%

01:04:53
human rights are environmental argument,

01:04:56
even though there's not a

01:04:57
carve-out profession and we see

01:04:59
this for example Medina coronavirus

01:05:02
medical where there was a

01:05:03
Private Probation, but even though

01:05:05
in those cases Colombia did

01:05:07
not only priests and environmental

01:05:09
issues regarding to the carpet

01:05:10
profession, but also for example

01:05:13
regarding the due diligence Requirements

01:05:18
from companies when they invest

01:05:20
in Columbia. Santiago was talking

01:05:22
about and right now we

01:05:24
also have another interesting case.

01:05:26
I'm going to talk really

01:05:27
quickly about this is a

01:05:29

drink or three against Colombia.

01:05:33
It's regarding them diversion of

01:05:38
the Bruno in Surrey on

01:05:40
what you know, how is

01:05:43
being a baby betta dishu.

01:05:44
There was a ruling from

01:05:47
the Constitutional Court biking 2017

01:05:50
that suspended the project and

01:05:52
suspended the diversion of the

01:05:53
average over there now and

01:05:55
even though Columbia right now

01:05:57
is preparing their country Memorial,

01:06:00
of course. This is this

01:06:04
case is under the investment

01:06:07
treaty with Switzerland. So, you

01:06:09
know, there's no carpet probation.

01:06:10
But even though there's no

01:06:12
carpet provision, of course showing

01:06:15
to the tribunal the human

01:06:18
rights about grown-up this dispute

01:06:20
the importance of trade my

01:06:23
change considerations in this industry

01:06:27
because we're talking about that

01:06:28
why you people that watch

01:06:30
eat out which is a

01:06:31
very special place in Columbia.

01:06:34
They need to protect water

01:06:37
and rivers in the way.

01:06:39
He does because of that

01:06:42
what you do and do

01:06:44
what you people do not

01:06:45
have access to water on

01:06:47
a regular basis. Those things

01:06:51
are arguments. Columbia will for

01:06:53
sure make during the arbitration

01:06:55
because it is important to

01:06:57
prevent sometimes that case in

01:06:59
a bigger picture to the

01:07:00
tribunal in order for them

01:07:02
to actually understand. The legitimacy

01:07:05

of the measures that were

01:07:06
taken by personable in this

01:07:08
case the Constitutional Court here

01:07:10
in Columbia. Thank you. Wanna

01:07:16
I think all of us

01:07:17
are really looking forward to

01:07:18
see how tribunals actually deal

01:07:21
with these kind of arguments

01:07:23
human rights arguments. Mayes round

01:07:26
the facts of the case,

01:07:27
even if the investment treaties

01:07:31
applicable to the particular dispute

01:07:33
and really have a provision

01:07:35
Express Express probation on this.

01:07:37
I think of course is

01:07:39
Argentina cheese, what's up first

01:07:42
case, but give us hope,

01:07:44
but of course they were

01:07:49
not able to find any

01:07:51
provision on the basement 3D

01:07:52
with an obligation on investors.

01:07:55
So he gave us hope

01:07:57
it was it was, we'll

01:08:13
see. We'll see how Deal

01:08:15
with this kind of arguments.

01:08:16
I think that we are

01:08:17
really looking forward to see

01:08:18
how they deal with it.

01:08:20
I didn't have the chance

01:08:28
to before he's hooking up

01:08:29
with presents in Washington DC

01:08:42
and he's also co-founder of

01:08:45
world arbitration updates on Washington

01:08:47
arbitration week. So thank you

01:08:49
again because you are one

01:08:51
of them behind this event

01:08:53
has to act as counsel

01:09:04
of real story. Underbar use

01:09:09
he was formerly Associated of

01:09:17
investment treaties for the Republic

01:09:19

of Colombia. So he has

01:09:21
a lot of knowledge on

01:09:22
that and he was former

01:09:24
you keep legal Cuts. So

01:09:27
we have the face of

01:09:33
a business the interaction of

01:09:38
investment arbitration with human rights

01:09:43
and environmental. And of course,

01:09:46
we we have raised a

01:09:49
lot of legal issues on

01:09:50
this area. So I'm going

01:09:53
to give you a hard

01:09:54
position to try to give

01:09:56
us a few Solutions or

01:09:59
not Solutions in itself, but

01:10:01
a few maybe tools on

01:10:04
how we can maybe Make

01:10:08
a better system on maybe

01:10:10
we can we can balance

01:10:12
on the International System. So

01:10:15
I would like to ask

01:10:17
you two questions that I

01:10:18
needs Provisions. You think I'm

01:10:22
being included in contracts or

01:10:24
investment agreements about the proposed

01:10:32
treaty architecture that incorporates human

01:10:36
rights obligations on investors to

01:10:44
everyone and I apologize for

01:10:48
the lateness and to the

01:10:50
moderator it is it is

01:10:53
really a dream like Feeling

01:10:58
to be in Bogota my

01:11:00
home City and see this

01:11:01
this room full of people.

01:11:03
So welcome to World arbitration

01:11:06
update as a matter of

01:11:08
fact, we've been trying to

01:11:10
do this at this level

01:11:11
for 3 years so excited

01:11:19
and I'm sure that my

01:11:20

co-founder in later than never

01:11:22
one behind wall levitation update.

01:11:24
He's excited by by the

01:11:26
fact that the not only

01:11:28
International commercial arbitration brings people

01:11:30
to the floor, but also

01:11:31
human rights do with that.

01:11:35
Let me get into the

01:11:37
question that you posed. The

01:11:41
presentation that I have is

01:11:42
for human rights environment and

01:11:44
labor obligations in investment arbitration.

01:11:49
At this stage at this

01:11:50
juncture. I think there are

01:11:51
two questions based on the

01:11:54
conversation that that both Santiago

01:11:57
one question is about the

01:12:02
system the system of investor-state

01:12:04
arbitration currently. There are many

01:12:07
calls against the system in

01:12:11
terms of it is a

01:12:12
imbalance system. It is a

01:12:14
system that that does not

01:12:17
allowed to regulate certain issues

01:12:20
on the environment of health

01:12:21
of it is a system

01:12:22
that has inconsistencies between certain

01:12:26
specific decisions that are handed

01:12:32
under the same exact same

01:12:35
pipek sunpointe place and Siemens

01:12:38
on the one hand and

01:12:39
an another case also under

01:12:42
the Argentina Germany bilateral investment

01:12:46
treaty. So that that that

01:12:51
is that is one of

01:12:53
the criticism of the system

01:12:54
and and the other issue

01:12:56
is what what could be

01:12:58
beneficial for the defense of

01:13:01
the state. Let's say take

01:13:03

Columbia considering that there are

01:13:07
human rights and environmental aspects

01:13:09
involved. So those two Wishes

01:13:11
the system and and the

01:13:13
defense of the state and

01:13:14
whether human rights have any

01:13:16
any any role to play

01:13:19
on that so Just too

01:13:23
I'm just posing the question

01:13:25
and I'm give you a

01:13:26
going to give you the

01:13:27
answer right away instead of

01:13:29
making you wait. There's there's

01:13:31
a there's a strong sense

01:13:32
at least for my part

01:13:34
that International Investment treaties both.

01:13:39
bilateral investment treaties and chapters

01:13:42
of free trade agreements should

01:13:45
include Obligations for investors on

01:13:51
human rights in respect of

01:13:52
human might why because that

01:13:54
would sell does not exist

01:13:56
except in a few nonprofit

01:14:00
entities who have more than

01:14:03
3,300 3D so there should

01:14:05
be no obligations for investors

01:14:07
and investment treaties. Basically not

01:14:11
perhaps every every every human

01:14:13
right but at least a

01:14:15
minimum standard of customary international

01:14:17
law on the environment on

01:14:20
labor and out, of course

01:14:21
an essential human rights and

01:14:22
and we'll I'll share with

01:14:24
you the the the languages

01:14:29
that are proposing. So why

01:14:32
why you getting there why

01:14:34
why you getting there and

01:14:36
and the and what are

01:14:37
the objections one of the

01:14:39

big objections is well human

01:14:41
rights and the protection of

01:14:43
the environment and the protection

01:14:45
of a minimum standards on

01:14:47
labor. They are part of

01:14:49
the local law and as

01:14:53
such when you make the

01:14:54
investment, you are bound to

01:14:56
respect local or so. If

01:14:58
the state has all that

01:14:59
power why you need to

01:15:01
elevate human rights into International

01:15:05
Investment trees. Why doing that

01:15:06
you already have? No the

01:15:08
power of local law the

01:15:10
short answer to that is

01:15:13
One technical the that that

01:15:19
could be interesting when making

01:15:20
the investment but actually not

01:15:23
during the performance of the

01:15:24
investment which is what the

01:15:26
clause on respecting local law

01:15:30
when making the investment. So

01:15:33
that's a technical technical answer.

01:15:36
The other answer is it

01:15:37
hasn't worked because tribunals have

01:15:39
been very very timid when

01:15:42
reading that falls to Ashley

01:15:45
rely on local law and

01:15:47
then applied either in direct

01:15:54
request of arbitration brought by

01:15:57
the state, which is there

01:15:58
have been only a few

01:15:59
less than 5 and in

01:16:02
counterclaims. So fabulous have been

01:16:05
extremely timid tribunal has been

01:16:07
timid so that that tool

01:16:12
has not helped and I

01:16:14
we are still in front

01:16:15
of a of a system

01:16:17

that is in Balance. So

01:16:19
let's let's look into that

01:16:21
in the first you have

01:16:24
that presentation on the screen

01:16:26
investment trees are often drafted

01:16:28
and most often drafted they

01:16:30
include obligations for the state.

01:16:33
Concerning the investor. They don't

01:16:36
include allegations by the investors

01:16:38
considering the investment and protect

01:16:41
us even write the part

01:16:43
of the problem. Is that

01:16:43
most investment treaties as I

01:16:45
say their lack of medications

01:16:47
are investors to respect human

01:16:48
rights environment and Labor Standard,

01:16:50
and then the other part

01:16:52
is is is if if

01:16:54
you do not have a

01:16:56
treaty that includes those applications

01:17:00
the the most the more

01:17:05
Optimistic that you could be

01:17:07
is that the tribunal has

01:17:09
a an awareness of the

01:17:13
fact that international law is

01:17:16
applicable law because it is

01:17:18
applicable only to look into

01:17:20
the articles of the sea

01:17:22
convention. There's a reference to

01:17:23
international law normally make a

01:17:26
reference to International the vit

01:17:28
the free trade agreements or

01:17:30
international law. So there's no

01:17:31
doubt that that that international

01:17:35
law. If if you if

01:17:38
you don't include those type

01:17:40
of Provisions in the most

01:17:42
that you could get is

01:17:43
that the tribunal goes as

01:17:45
far as our Vassar and

01:17:46

Anna and they would say

01:17:47
yes is international law. We

01:17:51
are we have jurisdiction to

01:17:53
hear a counterclaim or a

01:17:57
request for recreation that indicates

01:17:59
that the investor has human

01:18:02
rights or Environmental Protections. We

01:18:04
have jurisdiction to hear that

01:18:06
we can listen to it.

01:18:08
But then when the time

01:18:11
comes to address the issue

01:18:12
of marriage and they go

01:18:16
through the 3D they made

01:18:18
page one page to a

01:18:19
Tetra when they get to

01:18:20
the treaty they will be

01:18:22
unable unable to not able

01:18:25
to find The provision that

01:18:29
requires the investor to respect

01:18:32
human rights and that's what

01:18:33
happened. They said yes, they

01:18:37
went into the human right

01:18:39
of provision of water. They

01:18:41
decide what we cannot find

01:18:43
where the the the obligation

01:18:46
is because it wasn't there.

01:18:47
So the tribunal is tied

01:18:50
in terms of the the

01:18:51
substantive application because it's not

01:18:54
in the treaty. So let's

01:18:57
move forward. On the presentation

01:19:01
out. So these are only

01:19:04
a few examples of similar

01:19:07
cases where this has happened.

01:19:08
So the middle example is

01:19:11
the bathroom which I have

01:19:13
just referred to the upper

01:19:15
example is not true G

01:19:17
Energy versus Colombia in that

01:19:20
case the defensive of Columbia

01:19:25

counterclaim, which was not was

01:19:30
not heard by the tribunal

01:19:32
it was on the the

01:19:35
the relation to the impact

01:19:38
on Regional development. And and

01:19:42
the tribunal basically said that

01:19:44
he didn't it didn't have

01:19:45
a basis to hear that

01:19:49
counterclaim. It did not consider

01:19:52
that as part of the

01:19:55
jurisdiction Frank then we go

01:19:58
to the case, which is

01:20:01
Lopez that case there is

01:20:07
the issue was was was

01:20:09
quite similar when the state's

01:20:12
alleged violations to the environment

01:20:16
committed by the restaurant. The

01:20:23
tribunal found that there were

01:20:24
no obligations for investors to

01:20:26
respect the environment in the

01:20:27
treaty. So again, if it

01:20:29
really doesn't say so you

01:20:30
can not submit that flame.

01:20:32
So that is that is

01:20:36
a case and up just

01:20:39
a point of connection with

01:20:42
with that Juan has a

01:20:44
presentation the system which involves

01:20:49
thousands of investment treaties today

01:20:54
some some protections and sometimes

01:21:00
the protections are not used

01:21:03
and and that's that's a

01:21:04
fair criticism against like in

01:21:07
the case of of a

01:21:09
Gordo in that particular case

01:21:12
I can I I am

01:21:15
the most aspects aligned with

01:21:19
the third-party submission. They are

01:21:22
at why because of the

01:21:27
Year free trade agreement between

01:21:30

Columbia and Canada and chief

01:21:32
investment chapter there and I

01:21:35
can tell you about is

01:21:40
a carve-out to be red

01:21:41
is a car but to

01:21:44
be applied negotiators of treaties

01:21:47
do not include Provisions that

01:21:50
mean nothing and and that

01:21:53
is that was the effect

01:21:54
that the echo to Trevino

01:21:56
gave to the provision ultimately

01:21:59
exception that refers to Many

01:22:07
things including the environment but

01:22:10
it's an exception that is

01:22:11
basically that comes from from

01:22:14
the general exception under WTO

01:22:16
agreements. Really? That's that, it's

01:22:18
Genesis. I need an exception

01:22:20
for the whole tree is

01:22:23
an exception if you're flying

01:22:25
exception when you're not liable.

01:22:27
And suddenly that Obsession lacked

01:22:30
any effect until and I

01:22:33
am wondering, you know, just

01:22:34
wondering because because I know

01:22:38
that that decision that war

01:22:39
word was wasn't stealing heavily

01:22:41
criticized. Why is why has

01:22:45
the tribunal taking so long

01:22:46
to finalize its is Beauty

01:22:51
in terms of Damages that.

01:22:54
Lost my mind because he

01:22:56
has been more than two

01:22:57
years, but one has a

01:22:58
figures so that's that's unknown,

01:23:00
but let's look into What

01:23:06
else does the system has

01:23:07
the system has also a

01:23:09
few trees that have obligations

01:23:11
on human right? Let's and

01:23:12

let's move forward. So this

01:23:16
release include obligations on human

01:23:18
rights and we have spotted

01:23:19
them. There may be more

01:23:20
these are specific application on

01:23:22
human rights, but but there's

01:23:24
only a handful of those

01:23:25
less than 10. So Thursday

01:23:28
miroku Nigeria bilateral investment treaty

01:23:32
shall apply precautionary principle to

01:23:38
the environment environmental impact assessment

01:23:41
and two decisions taken in

01:23:42
relation to a proposed investment

01:23:44
of this application for the

01:23:45
investor economic community of West

01:23:49
African States ecowas supplementary act

01:23:52
on your best friend also

01:23:53
has a hard law obligations

01:23:57
and and here these are

01:23:59
examples of hard on human

01:24:01
rights the the Canada. Columbia

01:24:06
Free Trade Agreement chapter investment

01:24:08
is is one that I'm

01:24:10
very close to because I

01:24:12
am negotiating and on that

01:24:14
on that treaty just a

01:24:16
quick anecdote. When the Canadians

01:24:18
came to the to the

01:24:19
Colombian team and said we

01:24:20
want to include an obligation

01:24:23
on social corporate responsibility and

01:24:29
be sure to include applications

01:24:32
for the for the state

01:24:34
and eventually no ultimately for

01:24:38
the investors the word ultimately

01:24:42
that they were concerned because

01:24:44
they thought that we would

01:24:45
say no, which I know

01:24:46
that's too much for us.

01:24:48
Actually we said yes, and

01:24:50

then why don't we include

01:24:51
over the part of occasions

01:24:53
for the investor and when

01:24:55
we said that they said

01:24:56
no no, no. No, that's

01:24:57
too much that that was

01:24:58
the response that what that's

01:24:59
too much for us. Why

01:25:01
because that would make that

01:25:03
ultimately A lot of interest

01:25:06
in mining and someone would

01:25:08
have to comply with certain

01:25:09
the heart of obligation. So

01:25:11
it wasn't our proposal but

01:25:13
we took it as far

01:25:14
as we could it wasn't

01:25:15
one of our trade lines.

01:25:15
We don't have any of

01:25:17
the tree. So we made

01:25:18
the proposal to make hard

01:25:19
law of allegations on on

01:25:21
on human right they didn't

01:25:23
take it. But but in

01:25:25
any event, it was progress

01:25:26
in the right direction. So

01:25:28
the Columbia Canada investment tree

01:25:32
has a soft obligation on

01:25:34
human rights and corporate social

01:25:35
responsibility. That was almost twenty

01:25:38
years ago. And what what

01:25:41
what what is concerning is

01:25:45
that in 20 years? We're

01:25:49
still the most modern investment

01:25:53
treaty in in human rights

01:25:55
and corporate social responsibility is

01:25:58
is this one and there

01:26:00
should be progress in terms

01:26:01
of the Colombian bilateral investment

01:26:04
treaty. So no formerly formerly.

01:26:06
We have no strategy at

01:26:09

some stage. We we we

01:26:10
who sponsored The Proposal proposal

01:26:12
in Congress for the p

01:26:14
i t would have a

01:26:15
human rights obligations for investment

01:26:17
for investors and informally were

01:26:20
saying this should be done.

01:26:21
You should be done within

01:26:22
the Columbian bilateral investment treaty.

01:26:24
I'm not wait not wait

01:26:27
until the The model comes

01:26:31
from Europe or comes from

01:26:32
somewhere else because these are

01:26:34
discussions that are intimate to

01:26:37
to the concerns of Columbia.

01:26:41
There's indigenous populations. There's a

01:26:44
journeyman's of fauna and Flora

01:26:46
and Life to protect in

01:26:48
Colombia. There are so many

01:26:49
reasons why Columbia should include

01:26:52
this type of application. So

01:26:53
two years ago in the

01:26:54
204. It might have made

01:26:57
better know this two or

01:26:58
three years ago were proposed

01:27:00
this in Congress and that

01:27:01
wasn't adopted hopefully under current

01:27:05
circumstances at the Myrtle Beach

01:27:07
food include a provision on

01:27:09
that and I'm not going

01:27:13
to go into the into

01:27:16
into describing each one of

01:27:17
these Provisions that are hardly

01:27:19
you can read them if

01:27:20
it's going to the next

01:27:24
This is this is the

01:27:25
article that that is being

01:27:27
proposed. It reads the investors

01:27:29
shall respect the minimum International

01:27:33
environmental Labour and human rights

01:27:36

standards when making and operating

01:27:39
its investments in the whole

01:27:41
state. I don't think perhaps

01:27:44
you can be calibrated. But

01:27:48
that is I believe a

01:27:50
an article that that could

01:27:53
provide sufficient grounding at for

01:27:56
the time that if a

01:27:57
tribunal finds itself. Yes, I

01:27:59
have jurisdiction and then it

01:28:01
goes into the next step

01:28:02
this article would would include

01:28:04
sit but they have to

01:28:05
at least not now is

01:28:07
not whether they could not

01:28:09
they have to respect human

01:28:10
rights and that has that

01:28:12
could have liability implications for

01:28:16
the investor. It could have

01:28:17
damaged has implications for the

01:28:19
investor and then the question

01:28:20
becomes which is what what

01:28:21
the government that was three

01:28:23
years ago. Not this one

01:28:25
to pass one. Why why

01:28:28
do we need this? wooden.

01:28:35
Tracy negative effect of of

01:28:37
of of scaring the investors

01:28:42
and and and stop the

01:28:46
capital Imports and the answer

01:28:49
to that is What are

01:28:52
the government what do you

01:28:53
want? Do you want qualified

01:28:56
investment that is respectful of

01:28:57
the environment of Human Rights

01:28:59
and sophisticated green type of

01:29:02
investment or do you want

01:29:03
any type of investment and

01:29:06
I think the answer is

01:29:07
always so I see no

01:29:11

reason why she has no

01:29:15
hard for investment abbreviation for

01:29:19
the investors. when you put

01:29:23
this on the ground at

01:29:26
with Council for investors, and

01:29:29
some of them are friends

01:29:30
and in credibly smart, the

01:29:33
the objection is well, you

01:29:34
already have that to local

01:29:36
law that may be true

01:29:38
to some extent by the

01:29:39
fact is that as I

01:29:41
said before tribunals are very

01:29:45
Timid in applying simply local

01:29:47
law when when deciding marriage

01:29:51
and and if you need

01:29:52
a support for that statement

01:29:55
about four or five years

01:29:57
ago at published a book

01:30:00
chapter on counterclaims and the

01:30:02
finding was that most of

01:30:04
the counters names that relied

01:30:06
on local law where all

01:30:07
timidly not embraced by the

01:30:11
tribunal to make any Merit

01:30:14
base decision. So next one,

01:30:22
which is the final one.

01:30:24
So so this is this

01:30:27
is only how to do

01:30:28
things. So one of the

01:30:30
big objections when you when

01:30:33
you think work because when

01:30:36
you think about including investor

01:30:38
obligations on respect of human

01:30:42
rights in an investment treaty

01:30:43
is that an investment treaty

01:30:46
or a Treaty definition is

01:30:49
a instruments of a public

01:30:51
international law, which is negotiated

01:30:55
and agreed upon between two

01:30:56

parties one state and another

01:30:59
estate Adventure. You can also

01:31:01
make a treaty with the

01:31:03
organization or a corporation or

01:31:09
not. A subject of public

01:31:12
international law at least not

01:31:15
a classic one. So they

01:31:17
do not negotiate treaties so

01:31:19
that the obligations that come

01:31:21
from the the treaty in

01:31:23
principle are not binding on

01:31:26
an individual's because they don't

01:31:27
sign it right. So why

01:31:29
do the challenges how to

01:31:31
make sure that the individual

01:31:33
or the corporation provides their

01:31:36
consent to respecting international human

01:31:40
rights under the bitso is

01:31:46
to include an Annex a

01:31:52
confirmation of investor obligations the

01:31:54
way it would work is

01:31:57
Even though the treaty is

01:31:58
between two states. You have

01:32:01
the treaty on the one

01:32:02
hand and then the trephine

01:32:06
only the states that say

01:32:08
Canada and let's say Columbia

01:32:10
and who are they? New

01:32:18
Zealand and New Zealand And

01:32:28
and and there's a dispute

01:32:30
at the time when the

01:32:32
request arbitration is submitted the

01:32:35
treaty would require that they

01:32:37
also submit an Annex in

01:32:39
which they confirmed that they

01:32:41
are bound to respect investor-state

01:32:43
obligations. It is very investment

01:32:46
investor obligations on human rights.

01:32:48
If they do not consent

01:32:49
to that if you do

01:32:51

that as a requirement of

01:32:52
consent for the investor for

01:32:55
the for the state then

01:32:56
the requirements for there to

01:33:00
be a consent by the

01:33:02
state would not be complied

01:33:03
with so on the one

01:33:05
hand you have an offer

01:33:07
of the state and the

01:33:08
offer says You can submit

01:33:11
a dispute on investment to

01:33:14
arbitration if you comply with

01:33:16
this requirement. Have you ever

01:33:19
had? once the investor says

01:33:24
I accept your your your

01:33:28
offer. It has to comply

01:33:31
with that requirement in order

01:33:33
for the exception of the

01:33:34
operate a wood that you

01:33:36
would not normally have the

01:33:37
state's consent, but also the

01:33:40
investors consent to comply with

01:33:43
investor obligations on human rights

01:33:46
and with that my timer,

01:33:49
thank you. Thank you for

01:33:52
company. So I would like

01:33:53
to a last question to

01:33:56
each of our panelists. It

01:33:57
will be the same question

01:33:58
for all of you. So

01:33:59
you will have only Thirty

01:34:01
Seconds to hear or analyze

01:34:16
human rights arguments on investments

01:34:20
arbitration case, so maybe I'm

01:34:26
not in addition to the

01:34:28
proposal that too has been

01:34:29
explained in detail out. I

01:34:31
would say greater awareness of

01:34:34
of of of basic principles

01:34:39
of public international law and

01:34:41

human rights. I think the.

01:34:42
That would would would take

01:34:45
us very far when I

01:34:47
already refer to their decision

01:34:51
the tools are there. Unfortunately

01:34:53
the word not not fully

01:34:55
used by by by the

01:34:57
tribunal but I strongly think

01:35:00
that there is some level

01:35:02
of sinus bye-bye tribunals of

01:35:06
making your making the connection

01:35:09
between no investors that is

01:35:12
not a sign. It's not

01:35:14
a separate World from public

01:35:17
International. It is part of

01:35:18
public international law and human

01:35:22
rights are making the connection.

01:35:26
Would would would take us

01:35:29
a long way? I will

01:35:33
do. I think creativity to

01:35:36
do these kinds of connections

01:35:37
that was Antonio and the

01:35:39
other colleagues have just mentioned

01:35:40
attitude. It's in the unit

01:35:42
also have like some kind

01:35:43
of attitude to to engage

01:35:45
in discussions on my my

01:35:47
my 13 keys. I think

01:35:50
with that we should move

01:35:51
forward from to get like

01:35:53
kind of pure theory of

01:35:55
Law and not be naive

01:35:56
that. That's always neutral tabloids

01:35:59
impartial. So we need to

01:36:01
take me to remind her

01:36:03
also political discussions. So I

01:36:05
invite practitioners negotiators academics because

01:36:14
that would also give us

01:36:15
back the context the whole

01:36:16
pictures when we have these

01:36:17

kinds of discussions. I think

01:36:21
that we mainly need two

01:36:22
things. The first is tools

01:36:24
we need tools and investment

01:36:26
arbitrations that kind of open

01:36:28
the door a little bit

01:36:29
First Dates 2% human rights

01:36:32
and environmental defenses in investment

01:36:34
arbitration cases and also 2%

01:36:37
counterclaims, if that's the case

01:36:41
and the state has a

01:36:42
strong case in a counterclaim

01:36:44
against an ambassador, but it

01:36:46
also thing we need courage

01:36:48
and courage from The representatives

01:36:52
of the state of the

01:36:55
representatives of the investors. They

01:36:58
are I think that they

01:36:59
also need to be aware

01:37:00
of the trends that are

01:37:03
happening any bus in arbitration.

01:37:05
I mean International arbitration in

01:37:07
general and I think we

01:37:09
also need courage from the

01:37:10
tribunal's I think that the

01:37:14
decision was a decision that

01:37:17
was a split decision taken

01:37:20
by the president was the

01:37:23
arbitrator appointed but Columbia, which

01:37:25
was Philip chance we have

01:37:26
already auditions, but I think

01:37:30
that we need courage from

01:37:31
the arbitrator's to actually be

01:37:33
able to put a Step

01:37:36
Beyond and keep full feeling.

01:37:40
I'm moving the ball regarding

01:37:43
human rights and environmental defensive

01:37:46
investment application. 255 Wards in

01:37:52
30 seconds to say if

01:37:53
I got it in there

01:37:55

s soap formation accompaniment and

01:37:59
a reminder. So I think

01:38:02
we should entirely and the

01:38:04
Arbiters actually have in mind

01:38:06
or take into consideration when

01:38:08
they're interpreting treaties the end

01:38:10
of Batman for development 24-hour

01:38:17
Estates. We don't want investment

01:38:18
for the sake of investment

01:38:20
itself and that conditions that

01:38:22
kind of investment and therefore

01:38:23
that's Hive of bees hang

01:38:25
of trees we want to

01:38:26
endorse. So I think that

01:38:31
would bother was right in

01:38:33
the sense that there were

01:38:34
no obligations. I wouldn't like

01:38:37
the Fortress 3 navigation for

01:38:40
States like in human rights

01:38:41
and therefore we need better

01:38:45
the scent of pretty but

01:38:47
we need to take it.

01:38:51
Las estancia's our responsibilities are

01:38:54
mandatory for state or even

01:38:56
if they're among the 34

01:38:57
investors, of course would suggest

01:39:01
the last one that is

01:39:03
the most creative in a

01:39:05
brace of that Edition fighting

01:39:07
is going to be very

01:39:07
hard to reach consensus on.

01:39:09
And we have to overcome

01:39:10
the problem also of legal

01:39:13
personality of investors writing that

01:39:15
idea. Where can I locate

01:39:16
obligations on investors to retrieve

01:39:18
the right word formation. This

01:39:21
is my role as a

01:39:22
professor and we need to

01:39:24
form better International lawyers that

01:39:26

have the general idea in

01:39:29
mind that always human rights

01:39:30
special occasion or investment is

01:39:32
vis-a-vis 10 of a right

01:39:40
and last ate the last

01:39:41
two accompaniment at we need

01:39:43
more help to investors like

01:39:46
that since I was doing

01:39:51
With the social spectations and

01:39:54
law but they're unclear even

01:39:56
in the trees by themselves.

01:39:57
So we need a lot

01:39:58
of more accompaniment to them

01:40:00
and finally my fat last

01:40:02
before it reminder set reminder

01:40:05
that investment is not the

01:40:07
ideal system for human rights

01:40:08
issues. Right? I mean, we

01:40:10
would love to see more

01:40:11
of these but they're not

01:40:13
the DLCs can we would

01:40:14
prefer you bring system for

01:40:16
human rights issues, but more

01:40:19
is here better. So why

01:40:21
not and you really do

01:40:23
have a new investment at

01:40:25
better than nothing for baking

01:40:26
soda? Well, thank a thank

01:40:31
you for the Antonio Santiago

01:40:33
that have to run to

01:40:35
the airport for your grade.

01:40:37
And of course, thank you

01:40:39
for participants to join us

01:40:41
for decide. You're welcome to

01:40:43
stay for the next month.

01:40:44
I will start being 5

01:40:45
10 minutes. Good morning, everyone

00:00:08
and thank you for being

00:00:09
here. We are very glad

00:00:10
to have you in this

00:00:11

final day of her world

00:00:13
arbitration updates 2020 4th. It

00:00:16
is my pleasure to introduce

00:00:17
these amazing Fanta that's going

00:00:20
to speak about inclusion of

00:00:22
Human Rights classes in investment

00:00:23
treaties. This panel is going

00:00:25
to be moderated by Maria

00:00:27
Lucia Casa. Maria. Lucia is

00:00:29
a Colombian lawyer specialist in

00:00:31
regulation of renewable energy and

00:00:33
Energy Efficiency. She is also

00:00:35
a senior associate at extra

00:00:37
strategy LL be able to

00:00:39
take for with presents in

00:00:41
the United States animal. What's

00:00:42
up. Currently, she's Adjunct professor

00:00:48
of international arbitration procedure an

00:00:50
assistant professor professor of public

00:00:52
international law at the University

00:00:54
of you and coach of

00:00:57
the University of Saint Joseph

00:00:59
International Longwood Court competition team.

00:01:02
So without further Ado I

00:01:04
yield the floor to Maria

00:01:06
Lucia and thank you everyone.

00:01:10
Thank you, Monica me Longford

00:01:12
introduction and good morning everybody

00:01:13
and welcome to the first

00:01:15
session of the last day

00:01:17
of world arbitration update. It's

00:01:19
a great honor to have

00:01:20
you here. And of course,

00:01:21
thank you also to our

00:01:23
own line participants because we

00:01:24
have some of my participants

00:01:26
that are doing a nice

00:01:28
from around the world. So

00:01:30
welcome everybody. I would like

00:01:33
to have this presentation buy

00:01:35

thank a to the sponsors

00:01:37
of the event. Thank you

00:01:39
to FDI and Panera Consulting

00:01:41
also. Thank you for the

00:01:42
organising team Isabella Wednesday, which

00:01:46
are part of the organising

00:01:48
team mouth of the world

00:01:49
Apart chapter of world arbitration

00:01:51
updates. And of course, thank

00:01:52
you to our co-organizers off

00:01:55
of the ground before introducing

00:01:57
the great line of penalties

00:01:59
that we have today. I

00:02:00
will like to give a

00:02:02
few remarks about the first

00:02:04
session that we have today

00:02:05
we have today in from

00:02:08
the bus is called in

00:02:10
clue. You're not human rights

00:02:11
classes in investment treaties for

00:02:14
sure. This is a topic

00:02:15
that has generated a lot

00:02:17
of discussions and a lot

00:02:19
of interest over the years.

00:02:21
We have him from an

00:02:23
existing tension between the protection

00:02:25
of human rights in one

00:02:27
hand and on the other

00:02:28
Estates obligations the word for

00:02:30
word doors foreign investors. And

00:02:33
of course, we can see

00:02:34
during an imbalance that exist

00:02:37
today between investment meeting doesn't

00:02:40
arbitration between obligations that it

00:02:43
states have and writes that

00:02:45
investors has on their investment

00:02:47
re so traditionally how investment

00:02:50
arbitration has been working is

00:02:53
that International Investment agreements impose

00:02:56
obligations in States? But not

00:03:00

an Investor's so this has

00:03:02
been of course a point

00:03:04
of a lot of criticisms

00:03:05
about the balance of the

00:03:07
system. However in the past

00:03:09
years we have been seen

00:03:12
on an absurd of being

00:03:13
a chance on this approach

00:03:15
and this is something that

00:03:16
we are going to discuss

00:03:18
here how we can balance

00:03:20
the system and how these

00:03:22
have been changes have been

00:03:24
changing in the past last

00:03:26
year's. So some of the

00:03:28
questions that we will like

00:03:30
to ask our panelists today

00:03:32
is how to balance the

00:03:34
system. Is it possible to

00:03:36
have a human rights issues

00:03:37
in the ocean? And is

00:03:39
it mandatory for companies to

00:03:41
perform due diligence in their

00:03:43
operations? Luckily? I'm not the

00:03:45
one that will have to

00:03:46
answer these but for these

00:03:48
we have five experts that

00:03:50
will be helping at weekdays

00:03:53
a task. Super spy. I'm

00:03:57
going to introduce our panelists.

00:03:59
So on my right we

00:04:01
have one of my penis.

00:04:02
She's a lawyer from when

00:04:04
you were in Seattle. I

00:04:05
want to hold some Ella

00:04:07
Lim from Columbia University. She's

00:04:10
currently the coordinator of the

00:04:11
investment arbitration group at the

00:04:13
hands of the lessons. I

00:04:14
will take a little time

00:04:16

before joining the public sector

00:04:18
want to work as head

00:04:20
of Regulatory Affairs of traffic

00:04:22
and she owes her work

00:04:23
as a solution of arbitration

00:04:25
and dispute resolution of a

00:04:27
curmudgeon. Want to have been

00:04:29
up jump professor of investment

00:04:31
arbitration and human rights in

00:04:33
the master of international law

00:04:34
at the University of the

00:04:35
Los Angeles and I believe

00:04:38
that her perspective is highly

00:04:39
appreciated here because she couldn't

00:04:42
see who works in the

00:04:43
defense of Colombian investment arbitration.

00:04:46
So welcome one. We also

00:04:49
have under his Milpas Andres

00:04:51
Andres holds a PhD in

00:04:54
law from University of Notre

00:04:56
Dame a master in international

00:04:58
law from Georgetown University. And

00:05:01
he's a specialist in administrative

00:05:03
law and a lawyer from

00:05:04
University of the presiding currently.

00:05:06
He's a professor and researcher

00:05:08
at the faculty of Law

00:05:10
and political science of University

00:05:11
of Italy Shinto being a

00:05:14
consultant to companies in the

00:05:16
implementation of Human Rights you

00:05:18
Villages processes. He has also

00:05:21
been a beast in professor

00:05:22
at the University in United

00:05:24
States in Mexico Guatemalan and

00:05:26
his ulcer and culture of

00:05:29
books and articles on business

00:05:30
and human rights inter-american human

00:05:32
rights system international law and

00:05:35
human rights philosophy. We also

00:05:39

have some some theocracies torium

00:05:42
in human rights lawyer seems

00:05:44
2018. He leads to LaGuardia

00:05:47
from Delta to business and

00:05:49
human rights dispute resolution illegal

00:05:52
in training his practice focuses

00:05:54
on Advertising companies on the

00:05:56
implementation of Human Rights you

00:05:57
diligence that. He signed up

00:05:59
regulatory instruments and the participation

00:06:02
of economic actors in transitional

00:06:04
Justice in 2023. He completed

00:06:08
an llm in international human

00:06:10
rights law at Oxford University

00:06:11
Welcome Center. On Wheels to

00:06:15
have said he said he

00:06:18
released lawyer from University of

00:06:20
the Presario. He's a specialist

00:06:22
in environmental law from University

00:06:24
of the looks that matter.

00:06:26
He said he's head of

00:06:27
the treaty section of the

00:06:28
Ministry of Foreign Affairs, which

00:06:30
is the area in charge

00:06:32
of all the issues related

00:06:33
to the negotiation the approval

00:06:36
implementation and ruination of trees

00:06:38
as well as providing advice

00:06:40
to various government entities in

00:06:43
any other mother of public

00:06:44
international law in which the

00:06:46
Republic of Colombia is involved

00:06:47
during the last four years

00:06:49
has been a professor at

00:06:52
University of indifferent subjects related

00:06:56
to public international law and

00:06:59
also since 2012. He has

00:07:01
been engaged to the Philips

00:07:03
e Joseph Woodward competition first

00:07:05
the second best. And then

00:07:07

since 2015 as a trainer

00:07:09
of the team of University,

00:07:14
So today as you may

00:07:17
see from the profiles and

00:07:19
the experiences of our panelists,

00:07:21
we will have a panel

00:07:23
with different perspective. We have

00:07:25
Italian meat for beef and

00:07:27
also practical experience. And also

00:07:31
we have expects property investment

00:07:33
arbitration which even if investment

00:07:35
arbitration is part of public

00:07:37
international law. We have not

00:07:39
he's in the past years.

00:07:40
Not all investment arbitration experts

00:07:43
are also expressed some public

00:07:45
international law. So it's also

00:07:46
great to have said here

00:07:47
which is going to give

00:07:49
us the public international law

00:07:51
perspective. So I would like

00:07:54
to begin this panel by

00:07:56
asking a few questions to

00:07:58
our panelists. So I think

00:07:59
that it will be a

00:08:00
great idea to start with

00:08:02
them days with an overview.

00:08:03
So unless you are the

00:08:05
one who has the most

00:08:06
Academy, knowledge here on the

00:08:08
subject. So I think it

00:08:10
could be a great way

00:08:11
to start point. If you

00:08:12
could Enlighten us with the

00:08:14
current state of affairs in

00:08:15
the field on business and

00:08:17
human rights on how these

00:08:18
might be related to us.

00:08:21
So could you please provide

00:08:22
us some of the recent

00:08:24

developments on of the area?

00:08:26
Thank you. Are you seeing

00:08:29
how you hearing me? Whine?

00:08:30
Yes, okay. Thank you for

00:08:33
the invitation. I'm very glad

00:08:34
to be here on these

00:08:36
very interesting discussion because it's

00:08:38
not easy getting from the

00:08:40
academy perspective to analyze this

00:08:42
tension between investment and human

00:08:44
rights. My intervention is going

00:08:48
to be like that. The

00:08:50
target of my intervention is

00:08:51
to provide an overview of

00:08:54
the business and human rights,

00:08:56
and then to reach the

00:08:58
investment part that you can

00:09:00
wear specialized section, right? So

00:09:02
maybe he's going to be

00:09:04
very introductory for some of

00:09:06
Youth but it is just

00:09:07
so everyone can have the

00:09:10
same same ideology of the

00:09:12
business human right? Because that's

00:09:13
where I'm coming from and

00:09:15
I think this is worth

00:09:16
we're seeing the interest of

00:09:18
including human rights Closet in

00:09:20
investment to make investors are

00:09:23
responsible for human rights abuses

00:09:25
or birthday. human rights violations

00:09:28
to three parts of my

00:09:30
intervention the first creations and

00:09:39
other business associations affect human

00:09:42
rights for allowing us to

00:09:46
enjoy more higher standard of

00:09:50
Human Rights than ever because

00:09:52
of the wealth that corporations

00:09:54
can creating suicides but that

00:09:59
is also the interests of

00:10:01

a b c d from

00:10:06
that your activities during violating

00:10:08
human rights and that are

00:10:14
created to regulate corporations are

00:10:17
not enough to regulate corporations

00:10:19
because of that trust National

00:10:21
nature of their activities in

00:10:23
of the structure of the

00:10:24
corporation's so we have A

00:10:26
double problem with the reality

00:10:28
that showing us human rights

00:10:30
abuses his candles like men

00:10:32
that happened in the 90s

00:10:34
with Nike or apple or

00:10:37
the fast fashion is candles

00:10:39
a or destructive sector and

00:10:42
on the other hand there

00:10:43
is no three problem domestic

00:10:45
laws. Are they become an

00:10:46
officiant because the states are

00:10:48
to regulate corporations efficiently to

00:10:53
face this problem the spackling

00:10:56
and Regulatory problems are the

00:10:58
secondary school by ragi Can

00:11:00
drug you at the altar

00:11:01
of that guiding principles in

00:11:03
business and human rights that

00:11:05
governance Gump the recent government

00:11:07
jobs in space in which

00:11:10
corporations are not being regulated

00:11:12
in their respective nations of

00:11:15
their behavior is unclear to

00:11:17
respond to these violations and

00:11:20
to these regulatory problems. We

00:11:23
are seeing some responses. Get

00:11:26
responses are coming from three

00:11:29
different perspect one from the

00:11:31
domestic law perspective how we

00:11:34
can address this was National

00:11:36
nature corporation international law from

00:11:40

Advocate. If it works like

00:11:42
you notes responses from them

00:11:44
is that increasing a creation

00:11:48
of norms with extraterritorial effects

00:11:50
that we know International load

00:11:52
that he's an exception because

00:11:53
the jurisdiction of the states

00:11:55
east Territorial and we're seeing

00:11:57
an increase and amount of

00:12:00
norms for Shirley in Europe

00:12:02
to reach corporations V on

00:12:05
the 33 sing which B

00:12:06
are incorporated or even when

00:12:08
there where they have a

00:12:09
TV. Ocean we have the

00:12:11
National Action plants that are

00:12:13
more public policies oriented to

00:12:16
give Clarity to corporations and

00:12:18
investors about their social spectations

00:12:21
when they're investing in domestic

00:12:23
law in domestic address dick.

00:12:25
So I'm not going to

00:12:26
be dealing with that that

00:12:28
is one possible answer is

00:12:29
domestic law with X-Rated. We

00:12:33
have just for the sake

00:12:35
of example, France Germany UK

00:12:38
and Australia in Port Orange

00:12:40
that are regulating business with

00:12:43
Express really expect as a

00:12:47
mandatory element, but also Canada

00:12:50
and the European Union soon-to-be

00:12:51
law directive about a sustainability

00:12:55
that are I seen one

00:12:57
of the most interesting responses

00:12:59
of the world to the

00:13:00
business and human rights forms

00:13:08
of response. Buffalo for those

00:13:11
that are not from your

00:13:12
ride with international law is

00:13:14

a non-binding law that a

00:13:16
seems to be more about

00:13:18
reference setting reference or standards

00:13:20
of Behaviour movie for Netflix.

00:13:22
Not even if only to

00:13:23
States won two different software

00:13:26
instruments are very important the

00:13:29
oecd guidelines for Multinational Enterprises

00:13:32
in The Guiding principles in

00:13:34
business and human rights the

00:13:35
first one 1976 and last

00:13:39
year and guiding principles in

00:13:42
business and human rights approved

00:13:44
in 2011. And I think

00:13:47
the guiding principles have become

00:13:49
the focal point of all

00:13:51
their business and human rights

00:13:52
discussion investment treaties design because

00:13:56
these trees are in for

00:13:58
free due diligence gation based

00:14:01
on the guiding principles in

00:14:02
business and human rights in

00:14:04
Fort Wright. We were seeing

00:14:11
printer for Tatian of Human

00:14:13
Rights treaties for sampling to

00:14:15
remain consistent how that court

00:14:16
is interpreting an existing Treaty

00:14:19
of indirectly obligations to non-state

00:14:28
actors like Corporation. Oh, so

00:14:30
we have a draft of

00:14:32
a tree on business and

00:14:33
human rights. We have that

00:14:35
they're drop of the tree

00:14:36
is not yet. Of course

00:14:38
binding but would be an

00:14:40
order in for ten a

00:14:41
answer the answer to this

00:14:43
problem. And finally what I

00:14:46
want to the Indian couple

00:14:48
in the next minute is

00:14:49

investment and trade treaties how

00:14:52
this field that is so

00:14:54
far away sometimes of Human

00:14:55
Rights is being transformed to

00:14:58
address the problems of Human

00:15:00
Rights, right? That's the starting

00:15:06
point is the report of

00:15:07
John Runge of 2013 in

00:15:10
which he realized. Cooling problems

00:15:13
related with investment and human

00:15:15
rights. The first one are

00:15:17
the instability classes. Right? And

00:15:19
the second one is the

00:15:20
policy incoherent in States right

00:15:23
now. We should have concerned

00:15:24
that I would not is

00:15:25
that tree to shopping. We're

00:15:27
seeing investment play me some

00:15:30
history ideas. Immunity Clause the

00:15:33
police incoherence and the tree

00:15:34
shop. These are classes include

00:15:39
investment trees that has the

00:15:41
intention to prevent Jose State

00:15:43
from adopting beliefs vegetation to

00:15:46
enhance human rights protection, right?

00:15:48
So they're in some ways

00:15:50
taking out the regulatory power

00:15:53
of the national state if

00:15:56
they move for the change

00:15:58
the domestic legislation in for

00:16:00
example, as to improve the

00:16:02
labor standards there going to

00:16:04
be Shooting an arbitration panel

00:16:07
because of a violation of

00:16:08
an investment true or not

00:16:12
discriminatory these classes there a

00:16:14
problem. So that's the exact

00:16:17
second problem is the police

00:16:19
incoherent that we're seeing that

00:16:21
in the process of negotiation

00:16:22

of trees in state. There

00:16:24
is no centralized Authority that

00:16:27
Maple Shade Trees and some

00:16:29
entities are negotiating treaties of

00:16:31
investment or trade with glasses

00:16:34
that are not very good

00:16:35
for human rights and human

00:16:39
rights treaties are doing that

00:16:40
right. There is a fragmentation

00:16:42
inside the states and international

00:16:44
law and it's a matter

00:16:46
of policing of you and

00:16:48
the third problem is a

00:16:49
free shopping, right that is

00:16:51
a Dia of corporation that

00:16:52
change their structure to benefit

00:16:55
from the protection of particular

00:16:57
investment treaties, right? And that

00:16:59
is not their problem that

00:17:01
is making very hard to

00:17:03
relate. Investors in their compliance

00:17:06
with human rights. How is

00:17:10
responding to these challenges? So

00:17:13
I'm going to send you

00:17:14
to do ideas or prettiest

00:17:16
we have. 483 the first

00:17:22
idea is that received its

00:17:24
investment trees are conditioning the

00:17:27
protected investment on the compliant

00:17:30
with domestic standards and domestic

00:17:32
standards are related mad. Sometimes

00:17:34
with human rights for environmental

00:17:35
or labor law or gender

00:17:38
laws. So that fortification of

00:17:42
the protected investment. I respond

00:17:44
to these problems that were

00:17:46
seen on the front of

00:17:48
your response is the investment

00:17:52
trees inclusion of voluntary a

00:17:58
corporate social responsibility classes on

00:18:01

investment treaties, but they're not

00:18:06
they're not requirements binding party

00:18:09
has important facts. At their

00:18:11
response from in Batman 3

00:18:13
free disable Lucian is to

00:18:15
required for sustainable contributions development

00:18:20
contributions from the investment. So

00:18:22
everyone is an example from

00:18:24
Brazil model treaty you your

00:18:26
investment has 24 use positive

00:18:29
impacts on the development of

00:18:31
our country and the most

00:18:35
creative anyone is requiring investors

00:18:38
to observe recognize International standards

00:18:41
in human rights issue. Right

00:18:43
now. We have these for

00:18:44
a kind of responses from

00:18:47
investment trees because of the

00:18:49
sake of time. I'm just

00:18:50
going to end with the

00:18:50
last one and I'm not

00:18:51
going to be able to

00:18:52
develop each one of them

00:18:54
but he's the last text

00:18:55
requiring investors to comply with

00:18:58
the provisions under some of

00:19:01
the examples that I think

00:19:02
are very interesting especially the

00:19:04
Touch model of a vehicle

00:19:06
if it's it's a really

00:19:08
want a tree to see

00:19:10
about We are seen to

00:19:13
idea is the creation of

00:19:15
applications on investors on environmental

00:19:18
labor environmental law labor law

00:19:20
or human rights issues V

00:19:22
John David guiding principles, right

00:19:25
investment re re require more

00:19:27
than what is required by

00:19:29
The Guiding principles example would

00:19:31

be shocked investment of the

00:19:34
year for the 2016 ride.

00:19:40
The creation of applications on

00:19:42
investors. The other is a

00:19:44
piece of Belgium and Luxembourg

00:19:49
in which are you a

00:19:51
teen sex act in accordance

00:19:53
with International parts Part A

00:20:00
Part B. So it is

00:20:02
expected from investors to act

00:20:05
according to International standards in

00:20:09
which the Contracting parties. Already

00:20:11
applied. So it's a very

00:20:13
hard standard because he indirectly

00:20:16
investors based on International standards

00:20:21
coming from free sample from

00:20:23
international human rights treaties would

00:20:27
be especially the data model

00:20:29
2019 that includes one of

00:20:31
you diligence Publications in the

00:20:33
process of investment right were

00:20:35
seen and I see that

00:20:37
might be a trend in

00:20:39
which we're going to see

00:20:40
more often in Batman trees

00:20:41
that included as an application

00:20:43
for the investment performance or

00:20:46
Gilligan process to avoid impacts

00:20:52
on human rights. I'm going

00:20:53
to stop there because my

00:20:54
time, thank you. Thank you

00:20:58
Jesus for these overview. I

00:21:01
think that eats very valuable

00:21:03
the point of you erase

00:21:04
about the lack of coherence

00:21:06
in institutions actually negotiated, which

00:21:11
I think it's on and

00:21:20
we can move to set

00:21:21
him because he's actually part

00:21:25
of the 3D section of

00:21:27

the Ministry of Foreign Affairs

00:21:28
and he actually negotiated pretty

00:21:31
investment treaties, which is part

00:21:34
of the of the point

00:21:36
that you raised. There is

00:21:38
no connection or interaction sometimes

00:21:42
between the institutions in the

00:21:45
government. So I think your

00:21:47
perspective sir this discussion on

00:21:51
a forced to continue as

00:21:53
some of the points raised

00:21:54
by Andres, so different background

00:22:01
different from some of us

00:22:02
actually you all do you

00:22:04
understand investment arbitration, you are

00:22:07
more an expert on public

00:22:08
international law. We know that

00:22:10
investment arbitration is part of

00:22:12
folic International. Oh, but you

00:22:13
are more focused to hear

00:22:21
from you how you see

00:22:22
their interaction between The befriend

00:22:27
regimes of international law of

00:22:29
investment and at the same

00:22:31
time these two regimes and

00:22:40
how you seen this could

00:22:42
be sold in the near

00:22:44
future. I'm things I'm going

00:22:49
to because I think that

00:22:50
you introduced these just that

00:22:52
I want to write an

00:22:54
English at first of all,

00:22:55
I think it's going to

00:23:01
be interesting. So take that

00:23:24
in mind. That's a major

00:23:26
disclaimer for what I'm going

00:23:27
to say. And that's you

00:23:29
because I'm in my in

00:23:31
my role as I have

00:23:34
to make sure that the

00:23:35

treaties are we could go

00:23:37
here in the gym themselves

00:23:38
evil expression, please. So so

00:23:47
that's where I'm coming from

00:23:50
and that's why I'm going

00:23:51
to try to explain. Why

00:23:52
is he the Investments are

00:23:54
the problem which is a

00:23:59
modder. all the Disney songs

00:24:03
Call Dreamscapes, because coming from

00:24:06
a 3D background should prefer

00:24:08
hard loss solution as you

00:24:10
were trying to think of

00:24:14
a heart. I think something

00:24:17
between in the middle, which

00:24:19
is basically a better understanding

00:24:20
on the part of practitioners

00:24:21
physically to learn how to

00:24:30
interpret treaty provision more efficiently

00:24:33
and not how it has

00:24:35
been doing up until this

00:24:37
point in the most investment

00:24:41
case and I'm going to

00:24:43
try to explain what I

00:24:45
mean when I'm saying this.

00:24:47
First of all, I want

00:24:49
to say that I do

00:24:50
understand where investment is coming

00:24:52
from where the problem is

00:24:53
being generated because investment is

00:24:56
so hard in that window

00:24:57
is so difficult that have

00:25:01
to become specialized investment. So

00:25:03
that's something that we can't

00:25:05
be true and perhaps are

00:25:10
out there. I'm in states

00:25:26
have to deal with this

00:25:28
issue. They do not want

00:25:29
to have to deal with

00:25:30
Investments and I'm going to

00:25:34

touch up on some of

00:25:35
it is that the agency

00:25:38
is healing but the point

00:25:41
is that when we have

00:25:43
something here. We'll have to

00:25:48
think about what's happening in

00:25:50
human life. We have to

00:25:52
take the seasons of humor.

00:26:00
My stock. We have to

00:26:02
take something that's in Batman

00:26:14
3 free trade agreements, but

00:26:17
we have more than 3,000

00:26:19
ft his inauguration and those

00:26:22
obligations have to be taken

00:26:23
into account when Columbus, Texas

00:26:25
region information. But when you

00:26:29
bring the case before our

00:26:31
panel and dragon basement panel

00:26:32
that they have to fulfill

00:26:39
its take a case of

00:26:42
specific things that I have.

00:26:43
I like to highlight because

00:26:44
I was kind of Lies

00:26:46
with the decision which is

00:26:47
a call. I'm sure that

00:26:49
Echo. Do you know what

00:26:52
a core is but one

00:27:01
of them that we have

00:27:02
the best International lawyer in

00:27:03
the receiving department. And even

00:27:07
with Phillip songs in the

00:27:08
final decision was taken how

00:27:09
it was taken my point.

00:27:16
We have a tension between

00:27:18
to his position Interstate 83.

00:27:27
Which were the exceptions in

00:27:29
the Columbia Columbia was acting

00:27:39
under an exception of the

00:27:40
tree and accepting specifically provided

00:27:42
for in this position 22.1,

00:27:45

which is basically to protect

00:27:49
me a decision taken her

00:27:52
to protect the innocent with

00:27:54
me because it was made

00:27:56
to protect your bar. It

00:27:57
was to protect her. It's

00:28:12
a completely normal case perhaps

00:28:14
in your case. It could

00:28:17
be interesting but the logic

00:28:19
behind this position 2201 was

00:28:24
not an exception. But whether

00:28:26
a permission for the government

00:28:28
to take a legitimate public

00:28:30
policy, but that didn't mean

00:28:32
that it was not going

00:28:33
to reach international law if

00:28:34
they take out if they

00:28:35
took a measure to protect

00:28:36
the environment. How do you

00:28:39
write to that because they

00:28:40
come further decision to Annex

00:28:42
at 11, which use the

00:28:43
word exception. When you retake

00:28:47
order it actually says that

00:28:49
the reason is because one

00:28:51
of them contains the word

00:28:52
exception and the other one

00:28:53
doesn't contain the word exemption.

00:28:56
Okay, when you read article

00:28:58
231 of the treaties, which

00:29:00
is their General interpretation of

00:29:03
trees, you find that the

00:29:04
first way to interpret. You

00:29:11
can say that that's a

00:29:12
way to interpret. Okay, we

00:29:15
are using the fact that

00:29:16
this was young 2201 wasn't

00:29:20
trained in chapter 22, which

00:29:22
is the chapter explicitly call

00:29:26
exception exception. So if the

00:29:35

decision was in the chapter

00:29:36
of exception, it's simply that

00:29:39
you have the right to

00:29:40
conclude that that wasn't an

00:29:42
exception. Anyone who practices international

00:29:47
law when you read this

00:29:49
was young 22 / 1.3,

00:29:52
you know where the decision

00:29:56
comes from because it's exactly

00:29:58
the same language as our

00:30:00
equals 20 of a cup.

00:30:02
And when is a virtually

00:30:04
identical it's the same thing.

00:30:19
You are going to eat

00:30:28
you are not going to

00:30:30
be committing crimes or not

00:30:31
till around 4. I'm doing

00:30:34
this in a convention that

00:30:36
you can apply to a

00:30:37
right to that which is

00:30:38
31.3 C equals 31.3 c

00:30:42
/ B that General international

00:30:45
law applicable between the parties

00:30:47
should be taken into account

00:30:48
to keep in to interpret

00:30:51
as position within a 3,

00:30:52
so It's important. This was

00:30:57
him twenty-two. Oh one point

00:30:58
three was not an exception.

00:31:00
It's simply impossible to understand.

00:31:04
I'm sure if he sent

00:31:06
hundreds to International if they

00:31:19
understand I mean, Books that

00:31:24
song you want it? It's

00:31:26
only one case. There are

00:31:28
other cases where the final

00:31:33
Mansions article 31 points PC

00:31:36
to say that should not

00:31:40
be recognized violation of other

00:31:42
obligations of us can fact

00:31:48

families can in fact I

00:31:49
write two more coherent decision

00:31:52
towards other three year old

00:31:54
gay. When we took it

00:31:58
with human rights investment, I

00:32:01
think that most of the

00:32:03
questions go through the gate

00:32:05
and be doing more on

00:32:11
their own site, but police

00:32:13
should also be taking that

00:32:14
into account. When we are

00:32:17
negotiating treaties, I am the

00:32:20
ones that I am part

00:32:21
of the ones that we

00:32:22
should be more clear in

00:32:25
this position that we shoot

00:32:27
into that interpretation within 3

00:32:31
days shooting to be done

00:32:34
without trees art treat. But

00:32:43
when we seek a quarrel

00:32:44
with my concern with the

00:32:46
code, is that perhaps because

00:32:49
he is one of the

00:32:51
best if we have to

00:32:53
look that shouldn't have happened

00:32:59
if the one that's today

00:33:07
in Port and that same.

00:33:18
All their treaties with. I

00:33:20
mean I can write but

00:33:22
still up. So I don't

00:33:26
know what this would be

00:33:27
because I know they ask

00:33:29
me what I think that.

00:33:32
If prisons practicing investment arbitration

00:33:35
understand that they are also

00:33:38
working and that would be

00:33:42
a great idea, But I

00:33:50
think we can do more

00:33:51
in the drafting of trees.

00:33:53
And as you were saying

00:33:54

negotiators should not be simply

00:33:57
negotiators because that allows for

00:34:04
But I also believe that

00:34:06
soaked though has a major

00:34:08
role in Asia. Because if

00:34:11
a place is also start

00:34:13
accepting this reality and understand

00:34:17
this reality we are not

00:34:20
going to see are so

00:34:22
against considering when cases are

00:34:27
are being heard before untraveled

00:34:30
forget them. So I think

00:34:34
I'm going to leave the

00:34:36
microwave from here. Thank you,

00:34:41
sir Hugh and I think

00:34:42
that I had some of

00:34:44
the stuff so we can

00:34:55
take that one or we

00:34:57
could work. How does an

00:35:06
arbitration interacts with the other

00:35:09
regimes of public international law

00:35:11
and of course fees also

00:35:13
team. This also comes with

00:35:16
the different interpretations that arbitrators

00:35:20
could give to to investment

00:35:22
treaties that he has made

00:35:29
a lot of sound because

00:35:30
of course in that case.

00:35:32
Some people have the view

00:35:34
that the treaty is very

00:35:36
clear that exception Clause. It's

00:35:38
an exception. Exception, of course

00:35:44
interpretation in that case. Of

00:35:47
course, of course, of course,

00:35:59
they need to renegotiate some

00:36:03
of the wording of our

00:36:04
current treaties, of course brings

00:36:11
a lot of questions like

00:36:16
the mechanism that the more

00:36:21
appropriate mechanisms to protect human

00:36:24

rights, maybe maybes not maybe

00:36:27
we can go to commercial

00:36:29
arbitration and see cases out

00:36:30
of the bank which Did

00:36:41
they solve the case before

00:36:43
getting substance commercial arbitration something

00:36:48
more to hear it for

00:36:50
the protection of Human Rights.

00:36:51
So so thank you for

00:36:53
for your balabal remarks. Now

00:36:55
we are moving to do

00:36:56
something comes from he has

00:37:05
a lot of practical experience

00:37:06
on the structuring of the

00:37:16
private sector and of course

00:37:18
by private sector of the

00:37:23
system how to use Allegiance.

00:37:30
I know that Andres mention

00:37:32
that most of the time

00:37:34
is not an obligation and

00:37:36
we are talking about so

00:37:37
of course A lot of

00:37:42
work, but I want to

00:37:49
see how you know how

00:37:58
these could be related to.

00:38:04
Good morning, everybody. Thank you,

00:38:06
Mary Lucia and organizers of

00:38:09
the event for inviting me.

00:38:12
And I'm going to talk

00:38:14
about day of obligation of

00:38:16
Human Rights due diligence are

00:38:18
from the Investor's perspective and

00:38:22
in order to do so,

00:38:23
I might have to bite

00:38:24
my presentation in three parts.

00:38:26
So the first part is

00:38:30
the origins of the tension

00:38:31
between Forge investment in the

00:38:32
human rights. The second one

00:38:34
is the human rights to

00:38:35

do this again salon on

00:38:36
the third part is the

00:38:38
discussion about if it's a

00:38:40
duchy or an obligation that

00:38:43
investors have to comply with

00:38:45
human rights due diligence. This

00:38:47
is an ongoing debate. I

00:38:49
think we're not going to

00:38:50
solve it today. But the

00:38:51
idea is to open the

00:38:52
discussion and to explore some

00:38:54
of the solutions and the

00:38:57
possibilities on score of the

00:39:00
Padres and how to impose

00:39:02
obligations on private actors. The

00:39:05
last families have mentioned the

00:39:08
whole system has been structured

00:39:11
about around space. So that's

00:39:13
the main subject of international

00:39:15
law states and the big

00:39:17
question here is how can

00:39:18
we imposed human rights obligations

00:39:19
to corporations? So first the

00:39:24
origins of Fortune investment in

00:39:25
human rights, it has it

00:39:27
has been asserted that investment

00:39:29
Provisions are generally aim to

00:39:31
facilitate the flow of investment

00:39:32
between countries creating the standard

00:39:35
protection particles driving prosperity and

00:39:37
inclusive Economic Development instead of

00:39:40
this narrative critical legal Theory

00:39:42
and historical evidence showed that

00:39:44
international law was designed by

00:39:46
one formation investors and corporations.

00:39:51
It's ordinary operation is deeply

00:39:54
implicated in the logic of

00:39:55
capitalism economic profit. European nations

00:39:59
imposed economic cultural and political

00:40:01
institutions on diverse territories including

00:40:04

foreign direct investment rules that

00:40:08
legitimize the condition for Corporation

00:40:10
to extract natural resources and

00:40:13
explode labor without legal consequences.

00:40:15
So he won't want one

00:40:17
point is that they Tia

00:40:18
is not to make preparations

00:40:22
protect human rights. That's the

00:40:24
that's the beauty of the

00:40:25
states that have an equation

00:40:26
of the stage b instead

00:40:28
to prevent causing the humid

00:40:30
right harms. And if the

00:40:32
damage is caused then make

00:40:34
them liable for the cost

00:40:36
of they have for the

00:40:37
harm that they have called

00:40:38
second the human rights of

00:40:40
diligence landscape. Do underneath one

00:40:45
of the initiatives to address

00:40:46
these problems are the guiding

00:40:49
principles of business and human

00:40:50
rights has just mentioned lunch

00:40:52
and launched in 2011 by

00:40:55
the US. The second pillar

00:40:58
of The Guiding principles refers

00:41:00
to the corporate responsibility to

00:41:02
respect human rights. This principal

00:41:05
is grounded in the global

00:41:06
standard of expected conduct the

00:41:09
business respect human rights whether

00:41:11
they operate This killer has

00:41:14
been criticized for its soft

00:41:16
language and being grounded on

00:41:18
social rather than legal norms.

00:41:22
Nonetheless, John Russia claims, his

00:41:24
intention was to move beyond

00:41:27
the concept of shackles of

00:41:28
traditional international human rights law

00:41:30
and influence by legal experts

00:41:33

from law firms private law

00:41:35
firms introduced due diligence language

00:41:38
into the protect respect and

00:41:41
remedy framework. The language of

00:41:44
due diligence has deep roots

00:41:46
in legal traditions. Under the

00:41:49
logic of the guiding principle

00:41:51
discharging their responsibility to respect

00:41:53
human rights would require human

00:41:55
rights due diligence. According to

00:41:58
the guiding principles of Human

00:41:59
Rights division setup process that

00:42:01
investors and business carry out

00:42:03
to identify prevent mitigate an

00:42:07
account for how they got

00:42:08
where they are best human

00:42:09
right in the content of

00:42:12
this principle reproduces. The old

00:42:14
idea that you diligence is

00:42:15
the standard of conduct required

00:42:18
to discharge a legal obligation

00:42:19
involving a process of Investigation

00:42:22
conducted by private parties to

00:42:24
identify risk of producing a

00:42:26
damaged. Definition of human rights

00:42:30
to division is an allocation

00:42:32
of the general principle of

00:42:34
law that Demands a diligent

00:42:36
conduct from a private party

00:42:37
to proceed and prevent the

00:42:39
consolidation of the risk between

00:42:41
a particular deity that businesses

00:42:43
are the ones to conduct

00:42:45
the process to identify prevent

00:42:48
and mitigate the risk to

00:42:50
the operation, but there is

00:42:52
to harm people. The rationale

00:42:56
behind human rights due diligence

00:42:58
reflects that this concept is

00:43:00
a unique regulatory technique to

00:43:02

strengthen businesses compliance with obligations

00:43:05
to prevent causing carbs. Mirroring,

00:43:09
the legal Frameworks enacted worldwide

00:43:12
UK legislation Germany Norway excetera

00:43:16
imposing taxes on corporations to

00:43:19
report social impacts on the

00:43:20
charge mandatory human rights due

00:43:22
diligence Latin America reacted quickly

00:43:24
to this trend evacuating for

00:43:26
similar regulations. However, imposing mandatory

00:43:30
human rights due diligence across

00:43:32
the regions has several challenge

00:43:34
you to a particular context

00:43:36
no rule of law Society

00:43:39
impunity set the tropical sensation

00:43:43
of The Guiding principles. Somebody

00:43:45
has called them is taking

00:43:47
place. I will hide like

00:43:49
now recent regulatory development shaping

00:43:52
the legal landscape regarding human

00:43:54
rights to eat. First lost

00:43:58
in passing mandatory human rights

00:44:00
due diligence incorporation. There has

00:44:02
been dropped bills passed in

00:44:03
Mexico Colombia Peru in the

00:44:05
last couple of years. None

00:44:07
of none of them has

00:44:08
been approved by the Congress

00:44:09
only Brazil draft Bill 572

00:44:13
from stock 2022 is currently

00:44:15
under consideration and in article

00:44:18
seven states that corporations have

00:44:22
a duty to a.m. I

00:44:27
thought mind up the duty

00:44:28
to comply with mandatory due

00:44:30
diligence to identify prevent money

00:44:33
for and repair human rights

00:44:36
violations, including social rights legal

00:44:39
rights and environmental rights. The

00:44:43
second friend used very particular

00:44:45

from the Latin American region

00:44:46
is the hardening of guiding

00:44:49
principles by Court decisions while

00:44:52
not formal president's the university

00:44:55
understood as Alpharetta statements of

00:44:58
Daddy's courts and tribunals increase

00:45:01
soft binding net for the

00:45:04
parties to the case and

00:45:06
increase increase its relevance for

00:45:08
other actors. Some examples three

00:45:12
standards of incorporating in the

00:45:14
inter-american court of Human Rights

00:45:15
be at the rulings. The

00:45:17
first one is that the

00:45:19
states must protect we should

00:45:20
understand that as regulate and

00:45:22
super bright third parties from

00:45:24
corporate activities with the potential

00:45:26
of harming human rights second

00:45:28
most related to the presentation

00:45:31
defining the scope of businesses

00:45:33
duty to respect human rights

00:45:34
and human rights due diligence

00:45:36
in compensation has orders to

00:45:39
have an impact on business

00:45:40
operations the latest ruling that

00:45:43
the tribunal was very specific

00:45:48
on on on signal from

00:45:50
the language used to describe.

00:45:52
This is standard. I forward

00:45:54
this due diligence the standard

00:45:56
is applicable to actions of

00:45:58
both public and private entities.

00:46:00
So there's no discussion now

00:46:02
that it's only occasionally States

00:46:06
and the second one is

00:46:07
a human rights due diligence

00:46:08
should include an assessment of

00:46:11
the actual and potential impact

00:46:12
activities on human rights as

00:46:15

part of the medication to

00:46:16
prevent environmental Hearts to human

00:46:18
rights as part of the

00:46:20
obligation to prevent and there

00:46:22
is where the Tribune is

00:46:24
already starting to connect to

00:46:26
Julian's do a hard loss

00:46:28
of allocation. We will see

00:46:31
the ruling Haiti versus Colombia.

00:46:33
You should be out in

00:46:36
the next couple of months

00:46:37
how the tribunal interpret interpret

00:46:39
this this is this treaty

00:46:43
human Columbia. The Constitutional court

00:46:46
has incorporated to binding stop

00:46:48
rules through all the other

00:46:50
jurisprudence mostly in cases regarding

00:46:52
indigenous people. The first one

00:46:55
is that there is a

00:46:56
corporate duty to report to

00:46:58
perform due diligence. You can

00:47:00
read that that the famous

00:47:01
wouldn't su123 from 2018 with

00:47:04
very clear about that that

00:47:06
do teeth under the judges

00:47:07
most able to eat human

00:47:09
right duties against a part

00:47:10
of the evidence to determine

00:47:11
diabetes. Last but not least

00:47:14
in recent years various approaches

00:47:16
to regulations of business conduct

00:47:18
have evolved as an alternative

00:47:19
to the traditional model focusing

00:47:22
on the conduct of domestic

00:47:23
businesses and soft low approach

00:47:25
international human rights law some

00:47:27
of the Alternatives include the

00:47:30
incorporation of contractor classes human

00:47:32
rights contractual Clauses that trade

00:47:37
investment agreements and human rights

00:47:39

obligations just talked about and

00:47:43
The Binding to negotiations in

00:47:44
there in the in the

00:47:45
of The Binding draft treaty

00:47:48
that is taking place in

00:47:49
Geneva. We'll see where that

00:47:51
takes. Bugattis Polanski, that's what

00:47:56
we have nowadays regarding the

00:47:58
regulation of human rights to

00:48:00
diligence is hard becoming Harder

00:48:02
Than You by reputation and

00:48:04
we have a specific obligations

00:48:08
in National loss and we

00:48:10
have a full box of

00:48:14
options that we can start

00:48:15
exploring. I'm the third point

00:48:18
is the investor Duty slash

00:48:20
obligation to perform human rights.

00:48:22
We didn't particularly in the

00:48:24
context of investment arbitration arbitrations

00:48:30
have a Dottie under international

00:48:31
law as we sought to

00:48:33
prefer a human rights due

00:48:34
diligence to prevent harm from

00:48:36
materializing and to ensure that

00:48:38
their expectations are legitimate to

00:48:42
comply with this duchy. The

00:48:43
investor must investigate the host

00:48:45
country's political economic and social

00:48:47
context that should be obvious,

00:48:49
but they don't do it

00:48:51
and that's what we're trying

00:48:54
to do change nowadays, even

00:48:56
though these are very sophisticated.

00:48:59
Investors actress tribunal to decide

00:49:03
whether the investors benefit from

00:49:05
the protection of the treaty

00:49:07
or the nice compensation when

00:49:09
they bet when the investment

00:49:10
is made we don't want

00:49:12

to see during the risk

00:49:12
of breaching human rights. They're

00:49:16
acting now we have like

00:49:18
almost 6 7 8 decisions

00:49:22
were the tribunes have made

00:49:24
or try to make connect

00:49:25
the human rights international human

00:49:29
rights system with the investment

00:49:31
for East Orange direct investment

00:49:35
system. Most famous quote two

00:49:50
are trying to play with

00:49:53
with the treaties tensions and

00:49:56
interpretation to South America in

00:50:04
Bolivia, Bolivia. 47 International Investment

00:50:12
reviews have established that investor

00:50:14
is entitled to protect office

00:50:16
limited legitimate expectations provided first

00:50:19
that it exercise due diligence

00:50:21
and second that it's legitimate

00:50:24
expectations were reasonable in light

00:50:27
of the sink to stances.

00:50:28
The circumstances are not legal

00:50:35
in nature. So not only

00:50:36
the legal framework, but they

00:50:38
should also include the social

00:50:40
cultural and economic environment of

00:50:42
the whole state of the

00:50:43
best rate. Among other factor

00:50:45
is not the same do

00:50:47
we have to do today

00:50:47
to see if you were

00:50:48
going to make an investment

00:50:49
in Hawaii and Canada? Are

00:50:51
you going to buy your

00:50:51
investment in city of Columbia?

00:50:54
another country I need the

00:50:59
recent ruling of Red Eagle

00:51:01
versus Colombia with regular was

00:51:03
very clear that the system.

00:51:06
Stylish to protect opotamus system,

00:51:09

you know that there's a

00:51:14
new rule every day. There's

00:51:18
a new ruling a new

00:51:20
law. So it's very complicated,

00:51:21
but that's not not that

00:51:23
it's not an excuse. So

00:51:25
the system established to protect

00:51:26
the epidermis is a really

00:51:27
complex which requires the investor

00:51:29
to pay close attention and

00:51:31
learn how it works. The

00:51:33
treaty does not prohibit complexity

00:51:36
rather imposes on an investor

00:51:38
than to act with care

00:51:40
and due diligence. So here

00:51:42
you see how that are

00:51:43
gonna start bringing these General

00:51:46
principle of law on private

00:51:47
law to the human rights.

00:51:48
These questions were from my

00:51:50
point of view. I think

00:51:51
it's it's a it's a

00:51:52
fast that we should explore

00:51:54
when you see. Lawmaking process

00:52:00
on which involved he's playing

00:52:03
with different standards for the

00:52:04
Constitution. So it's not this

00:52:06
this Purity law really interesting.

00:52:10
Is it is it can

00:52:12
be problematic? Toto to finish

00:52:15
up with a Bob Dylan

00:52:16
is a general principle of

00:52:18
law. Providing legislators with a

00:52:22
regulatory technique and a source

00:52:24
of normative power to add

00:52:26
wrestlers from the responsibilities of

00:52:28
businesses for human rights violations.

00:52:31
It is an obligation included

00:52:33
in National laws and a

00:52:35
standard of interpretation in the

00:52:37

analysis of arbitral Tribunal. So

00:52:41
I am going to finish

00:52:43
with three questions. I want

00:52:44
to put healing in the

00:52:46
discussion. Try to remagine the

00:52:50
system. I'm not a fan

00:52:52
of destroying things. I want

00:52:54
to see everything. But I

00:52:56
know that it needs some

00:52:58
adjustments and we are some

00:52:59
some food for thought so

00:53:02
we can start thinking about

00:53:03
how can we improve and

00:53:05
rematch in the system? The

00:53:07
first one is how can

00:53:08
we measure or wired? What

00:53:10
what is the effectiveness effectiveness

00:53:12
of including human rights classes

00:53:15
on Beats to make investors

00:53:17
respect human rights? Paper is

00:53:22
one thing but then enforcement

00:53:24
is another we have that

00:53:25
problem. I think through all

00:53:27
the areas of international law.

00:53:30
Second what extent can an

00:53:32
investor claim that his legitimate

00:53:34
expectations were violated when you

00:53:36
diligence but not was not

00:53:37
performed. Insert the 3D interpretation,

00:53:42
but Nash, but by National

00:53:44
Defense agencies the election of

00:53:46
the tribunal in reference to

00:53:48
human rights chase the outcomes

00:53:51
of the dispute. Thank you.

00:53:54
They need some guys. I

00:53:56
think that was super enlightened.

00:53:58
I think that's just to

00:54:00
channel open question. Simba's mother

00:54:09
of attrition of course has

00:54:10
been created for investors to

00:54:14

have for Tracy's claim. So

00:54:18
I think that taking into

00:54:21
account the presentation of Santiago

00:54:23
an additional issue that race

00:54:26
here and that of course

00:54:27
concerned someone could be like

00:54:30
a suitable to raise human

00:54:33
rights argument is the challenge.

00:54:37
to the signup process would

00:54:38
be teams will actually receive

00:54:40
compensation on this date has

00:54:42
not been a System created

00:54:43
for that so we can

00:54:46
of course try to modify

00:54:50
the system and includes Allegations

00:54:53
upon investors and investment treaties,

00:54:56
but at the end we

00:54:58
will have that procedural Challenge

00:55:00
on how can actually receive

00:55:04
compensation or claim compensation for

00:55:07
potential violations on a leash

00:55:16
on these discussions. So now

00:55:20
I think that we could

00:55:22
move to our experts today

00:55:27
on can you tell us

00:55:35
how many that perhaps nowadays

00:55:42
Columbia is dealing with some

00:55:45
cases not involved. To hear

00:55:53
your remarks on these maybe

00:55:54
you can tell us a

00:55:56
little beads on how we

00:55:58
can make House Columbia make

00:56:00
human rights argument with arbitration.

00:56:05
And also I think your

00:56:12
perspective arbitrators are also ready

00:56:17
for these to cure these

00:56:19
kind of argument. Thank you.

00:56:22
My name is yeah and

00:56:24
thank you to everyone attending

00:56:25
here and virtually told you

00:56:28

I am part of the

00:56:29
agency that represents Columbia endorsement

00:56:33
arbitration cases international league and

00:56:38
I think that the last

00:56:39
question that Santiago posed as

00:56:41
the perfect pot the way

00:56:42
to talk to start talking

00:56:44
about what 10 states do

00:56:46
or what is Columbia doing

00:56:48
regarding the incorporation of Human

00:56:50
Rights related topics and environmental

00:56:53
topics and investment arbitration, I

00:56:57
think as and raise and

00:56:58
since you pointed out usually

00:57:01
the system has seeing as

00:57:03
a fragmented system or investment

00:57:06
arbitration is in one side

00:57:07
and then human rights environmental

00:57:09
issues are on other side,

00:57:11
but as we have Here

00:57:14
today. This is not a

00:57:16
fragmented system and even do

00:57:18
some people see it as

00:57:20
a fragmented system. The reality

00:57:22
is that any investment cases.

00:57:24
We see every time more

00:57:27
how human rights issues environmental

00:57:30
issues are or have an

00:57:33
impact investment arbitration cases. So

00:57:36
I would like to re-sign

00:57:38
three cases where Columbia has

00:57:42
been using human rights and

00:57:45
environmental defense has to present

00:57:48
before the arbitral tribunals in

00:57:50
order to Define Columbia Association

00:57:54
and the measures that adopted

00:57:56
and that the investors were

00:57:57
challenging. So I think that

00:58:00
you can see the defenses

00:58:01
from the state from 2.06.

00:58:04

No defenses and unmarried base

00:58:07
defenses. Columbia has tried as

00:58:10
self-appointed out to use the

00:58:13
car buy Provisions that some

00:58:15
trees have so for example,

00:58:18
since you was talking about

00:58:19
article 22013 of the free

00:58:23
trade agreement with Canada, which

00:58:25
is a carve-out provision for

00:58:27
the entire agreement. Basically states

00:58:30
that for the purpose of

00:58:31
chapter 8 which is the

00:58:33
chapter related to investment Provisions.

00:58:35
If measures are not applied

00:58:37
in an arbitrary or with

00:58:39
unjustifiable discrimination between Buster's. Nothing

00:58:44
in the agreement shall be

00:58:45
construed to prevent a party.

00:58:47
So he refers a Colombia

00:58:48
from adopting or enforcing measures

00:58:51
necessary to on the first

00:58:54
tablet that they have to

00:58:56
protect human animal or plant

00:58:58
life or health which the

00:59:00
parties understand to include environmental

00:59:02
measures. So as you see

00:59:06
our that the Colombian team

00:59:08
on the Canada team that

00:59:09
Matt and try to draft

00:59:10
the Free Trade Agreement were

00:59:13
very straightforward in establishing a

00:59:16
carve-out provision that recently said

00:59:19
the stations that are made

00:59:22
or measures are taken by

00:59:23
the by the states to

00:59:26
protect environmental purposes are legitimate.

00:59:29
And if they are not

00:59:31
taken in an arbitrary fashion

00:59:33
or just cream discriminating between

00:59:37
Buster's then the state or

00:59:40

those measures not be subject

00:59:44
to chapter 8 was which

00:59:46
is a chapter related to

00:59:48
investment protection in all the

00:59:53
cases related to listen to

00:59:54
the band Paramore Richard kordel

00:59:58
Red Eagle and Galway. presented

01:00:02
the defense of article 22013

01:00:06
Ambassador additional defense where Columbia

01:00:09
Association was an article 2201

01:00:12
prevented the tribunal to actually

01:00:16
go into the matter and

01:00:18
Yep, I was really going

01:00:21
to the matter and decide

01:00:22
because this were measures that

01:00:24
were attacking for environmental purposes.

01:00:26
But what we have seen

01:00:28
in the record of the

01:00:29
station first, but then it

01:00:31
was upheld by Carly and

01:00:33
will not upheld but it

01:00:35
was the Red Eagle Tribune.

01:00:36
I'll take what they occurred

01:00:38
a tribunal said I'm said

01:00:40
we are in agreement. Would

01:00:41
that cord a tribunal interpretation

01:00:44
of particles 2201 is that

01:00:47
defense is regarding the starboard

01:00:49
provision are no jurisdictional defenses.

01:00:52
They are married base defenses

01:00:54
on the tribunal on the

01:00:56
tribunal will only analyze those

01:00:59
defensive the tribunal Puente that

01:01:01
would invade Eagle. Once the

01:01:04
tribunal has agreed that Columbia

01:01:08
or that the state actually

01:01:10
is internationally liable and then

01:01:13
they will see if I

01:01:14
come 22013 applied to the

01:01:18
dispute. An exception the dispute

01:01:21

so ugly and I are

01:01:22
going okay Columbia presented a

01:01:25
defense based on this part

01:01:27
of our profession and there

01:01:28
was another student party as

01:01:30
measured by time. I die

01:01:31
Canada basically resented it stays

01:01:38
regarding the profession and said

01:01:41
this profession should be construed

01:01:43
as a safety net versus

01:01:45
it's the last resort to

01:01:46
states have to protect environmental

01:01:49
issues before the tribunal and

01:01:51
what kind of day it

01:01:53
is the exception applies because

01:01:57
the estate's actually proves that

01:02:00
it has taken the provisioning

01:02:01
good-faith right for the right

01:02:03
purposes here environmental purposes in

01:02:06
a non-discriminatory fashion. Then there's

01:02:09
no violation of the fhfj

01:02:11
and no estate liability and

01:02:14
what that means is that

01:02:15
there will be no payment.

01:02:18
Compensation from the state because

01:02:21
of the measures it took

01:02:22
to protect the environment but

01:02:24
as we can see the

01:02:26
tribunal departed from God because

01:02:29
even though they're cold. Do

01:02:30
you know I know live

01:02:32
this Private Probation what he

01:02:34
just stated was that What

01:02:38
he found out was that.

01:02:41
The provision was used by

01:02:44
Columbia only as a jurisdictional

01:02:47
defense and therefore it says

01:02:49
a jurisdictional defense. It is

01:02:51
not acceptable. It will be

01:02:53
a married baby fence, but

01:02:55

then didn't analyze that depends

01:02:59
on the merits of the

01:03:00
case and stages on the

01:03:03
basic saying up in water

01:03:05
if it's not a sexual

01:03:07
offense and that is very

01:03:10
Troublesome because the tribunal invite

01:03:13
Eagle even though it says

01:03:16
the rationale behind a car

01:03:17
the tribunal was right what

01:03:19
it says is I'm not

01:03:20
going to use it as

01:03:21
a jurisdictional defense because it

01:03:23
is not a jurisdictional defense,

01:03:24
but it says if I

01:03:26
find Columbia liable In the

01:03:29
Maurice face, I will analyze

01:03:31
if the car towed provision

01:03:33
is applicable or not. And

01:03:35
what will normally happen is

01:03:37
if the car bird provision

01:03:38
is applicable then no compensation

01:03:41
will be required from Columbia

01:03:43
to the investor. So I

01:03:45
think actually care about salvation

01:03:48
is like this and treat.

01:03:49
These are very important and

01:03:50
are very important for the

01:03:51
defenses of the states in

01:03:54
order for states to have

01:03:55
you know, a different range

01:03:57
of options in order to

01:04:00
present an adequate defense before

01:04:02
the international Tribunal. but human

01:04:08
bites are environmental issues are

01:04:10
not only important regarding carve

01:04:12
our Provisions because what we

01:04:14
have seen is that even

01:04:15
though there are cases where

01:04:17
the trees do not provide

01:04:18

for environmental care about Provisions

01:04:20
or human rights carve-out provisions.

01:04:24
Just a half to bring

01:04:26
today attention of the charge,

01:04:28
you know, their human rights

01:04:30
and environmental concerns that surround

01:04:33
a dispute that has those

01:04:35
concerns around it. And this

01:04:37
is important because states are

01:04:39
more often in a sticky

01:04:41
position because they have to

01:04:43
protect the investment but they

01:04:45
have also to protect human

01:04:47
rights vis-a-vis their normal citizens.

01:04:49
So it is important for

01:04:52
States 2% human rights are

01:04:55
environmental argument, even though there's

01:04:57
not a carve-out profession and

01:04:59
we see this for example

01:05:00
Medina coronavirus medical where there

01:05:02
was a Private Probation, but

01:05:04
even though in those cases

01:05:05
Colombia did not only priests

01:05:08
and environmental issues regarding to

01:05:10
the carpet profession, but also

01:05:12
for example regarding the due

01:05:14
diligence Requirements from companies when

01:05:20
they invest in Columbia. Santiago

01:05:21
was talking about and right

01:05:24
now we also have another

01:05:25
interesting case. I'm going to

01:05:27
talk really quickly about this

01:05:28
is a drink or three

01:05:30
against Colombia. It's regarding them

01:05:35
diversion of the Bruno in

01:05:40
Surrey on what you know,

01:05:42
how is being a baby

01:05:43
betta dishu. There was a

01:05:45
ruling from the Constitutional Court

01:05:48
biking 2017 that suspended the

01:05:51

project and suspended the diversion

01:05:53
of the average over there

01:05:54
now and even though Columbia

01:05:56
right now is preparing their

01:05:59
country Memorial, of course. This

01:06:04
is this case is under

01:06:05
the investment treaty with Switzerland.

01:06:08
So, you know, there's no

01:06:09
carpet probation. But even though

01:06:12
there's no carpet provision, of

01:06:14
course showing to the tribunal

01:06:16
the human rights about grown-up

01:06:19
this dispute the importance of

01:06:22
trade my change considerations in

01:06:26
this industry because we're talking

01:06:27
about that why you people

01:06:29
that watch eat out which

01:06:31
is a very special place

01:06:33
in Columbia. They need to

01:06:35
protect water and rivers in

01:06:38
the way. He does because

01:06:40
of that what you do

01:06:43
and do what you people

01:06:45
do not have access to

01:06:46
water on a regular basis.

01:06:48
Those things are arguments. Columbia

01:06:53
will for sure make during

01:06:54
the arbitration because it is

01:06:56
important to prevent sometimes that

01:06:59
case in a bigger picture

01:07:00
to the tribunal in order

01:07:02
for them to actually understand.

01:07:03
The legitimacy of the measures

01:07:06
that were taken by personable

01:07:07
in this case the Constitutional

01:07:09
Court here in Columbia. Thank

01:07:15
you. Wanna I think all

01:07:16
of us are really looking

01:07:17
forward to see how tribunals

01:07:20
actually deal with these kind

01:07:22

of arguments human rights arguments.

01:07:24
Mayes round the facts of

01:07:27
the case, even if the

01:07:29
investment treaties applicable to the

01:07:32
particular dispute and really have

01:07:34
a provision Express Express probation

01:07:37
on this. I think of

01:07:37
course is Argentina cheese, what's

01:07:41
up first case, but give

01:07:43
us hope, but of course

01:07:46
they were not able to

01:07:50
find any provision on the

01:07:51
basement 3D with an obligation

01:07:53
on investors. So he gave

01:07:56
us hope it was it

01:08:06
was, we'll see. We'll see

01:08:13
how Deal with this kind

01:08:16
of arguments. I think that

01:08:17
we are really looking forward

01:08:18
to see how they deal

01:08:20
with it. I didn't have

01:08:28
the chance to before he's

01:08:29
hooking up with presents in

01:08:41
Washington DC and he's also

01:08:44
co-founder of world arbitration updates

01:08:46
on Washington arbitration week. So

01:08:48
thank you again because you

01:08:50
are one of them behind

01:08:52
this event has to act

01:09:04
as counsel of real story.

01:09:08
Underbar use he was formerly

01:09:16
Associated of investment treaties for

01:09:18
the Republic of Colombia. So

01:09:21
he has a lot of

01:09:22
knowledge on that and he

01:09:23
was former you keep legal

01:09:25
Cuts. So we have the

01:09:33
face of a business the

01:09:37
interaction of investment arbitration with

01:09:41
human rights and environmental. And

01:09:46

of course, we we have

01:09:48
raised a lot of legal

01:09:49
issues on this area. So

01:09:52
I'm going to give you

01:09:53
a hard position to try

01:09:56
to give us a few

01:09:58
Solutions or not Solutions in

01:10:01
itself, but a few maybe

01:10:03
tools on how we can

01:10:05
maybe Make a better system

01:10:09
on maybe we can we

01:10:11
can balance on the International

01:10:13
System. So I would like

01:10:16
to ask you two questions

01:10:18
that I needs Provisions. You

01:10:21
think I'm being included in

01:10:23
contracts or investment agreements about

01:10:31
the proposed treaty architecture that

01:10:34
incorporates human rights obligations on

01:10:38
investors to everyone and I

01:10:45
apologize for the lateness and

01:10:49
to the moderator it is

01:10:52
it is really a dream

01:10:55
like Feeling to be in

01:10:59
Bogota my home City and

01:11:00
see this this room full

01:11:03
of people. So welcome to

01:11:05
World arbitration update as a

01:11:08
matter of fact, we've been

01:11:09
trying to do this at

01:11:11
this level for 3 years

01:11:12
so excited and I'm sure

01:11:20
that my co-founder in later

01:11:21
than never one behind wall

01:11:23
levitation update. He's excited by

01:11:25
by the fact that the

01:11:26
not only International commercial arbitration

01:11:29
brings people to the floor,

01:11:31
but also human rights do

01:11:32
with that. Let me get

01:11:36

into the question that you

01:11:39
posed. The presentation that I

01:11:42
have is for human rights

01:11:43
environment and labor obligations in

01:11:45
investment arbitration. At this stage

01:11:50
at this juncture. I think

01:11:51
there are two questions based

01:11:53
on the conversation that that

01:11:56
both Santiago one question is

01:12:02
about the system the system

01:12:04
of investor-state arbitration currently. There

01:12:07
are many calls against the

01:12:10
system in terms of it

01:12:12
is a imbalance system. It

01:12:14
is a system that that

01:12:16
does not allowed to regulate

01:12:18
certain issues on the environment

01:12:20
of health of it is

01:12:22
a system that has inconsistencies

01:12:24
between certain specific decisions that

01:12:30
are handed under the same

01:12:33
exact same pipek sunpointe place

01:12:37
and Siemens on the one

01:12:38
hand and an another case

01:12:42
also under the Argentina Germany

01:12:45
bilateral investment treaty. So that

01:12:51
that that is that is

01:12:52
one of the criticism of

01:12:54
the system and and the

01:12:55
other issue is what what

01:12:57
could be beneficial for the

01:13:00
defense of the state. Let's

01:13:03
say take Columbia considering that

01:13:06
there are human rights and

01:13:08
environmental aspects involved. So those

01:13:10
two Wishes the system and

01:13:12
and the defense of the

01:13:13
state and whether human rights

01:13:16
have any any any role

01:13:18
to play on that so

01:13:22

Just too I'm just posing

01:13:25
the question and I'm give

01:13:26
you a going to give

01:13:27
you the answer right away

01:13:28
instead of making you wait.

01:13:29
There's there's a there's a

01:13:31
strong sense at least for

01:13:33
my part that International Investment

01:13:36
treaties both. bilateral investment treaties

01:13:40
and chapters of free trade

01:13:44
agreements should include Obligations for

01:13:49
investors on human rights in

01:13:52
respect of human might why

01:13:53
because that would sell does

01:13:56
not exist except in a

01:13:58
few nonprofit entities who have

01:14:02
more than 3,300 3D so

01:14:04
there should be no obligations

01:14:06
for investors and investment treaties.

01:14:09
Basically not perhaps every every

01:14:13
every human right but at

01:14:14
least a minimum standard of

01:14:16
customary international law on the

01:14:18
environment on labor and out,

01:14:21
of course an essential human

01:14:22
rights and and we'll I'll

01:14:24
share with you the the

01:14:25
the languages that are proposing.

01:14:30
So why why you getting

01:14:33
there why why you getting

01:14:35
there and and the and

01:14:36
what are the objections one

01:14:38
of the big objections is

01:14:40
well human rights and the

01:14:43
protection of the environment and

01:14:45
the protection of a minimum

01:14:46
standards on labor. They are

01:14:48
part of the local law

01:14:52
and as such when you

01:14:53
make the investment, you are

01:14:55

bound to respect local or

01:14:57
so. If the state has

01:14:59
all that power why you

01:15:01
need to elevate human rights

01:15:03
into International Investment trees. Why

01:15:06
doing that you already have?

01:15:07
No the power of local

01:15:09
law the short answer to

01:15:10
that is One technical the

01:15:18
that that could be interesting

01:15:19
when making the investment but

01:15:22
actually not during the performance

01:15:24
of the investment which is

01:15:26
what the clause on respecting

01:15:28
local law when making the

01:15:31
investment. So that's a technical

01:15:34
technical answer. The other answer

01:15:37
is it hasn't worked because

01:15:38
tribunals have been very very

01:15:40
timid when reading that falls

01:15:43
to Ashley rely on local

01:15:46
law and then applied either

01:15:52
in direct request of arbitration

01:15:56
brought by the state, which

01:15:58
is there have been only

01:15:58
a few less than 5

01:16:00
and in counterclaims. So fabulous

01:16:04
have been extremely timid tribunal

01:16:07
has been timid so that

01:16:11
that tool has not helped

01:16:13
and I we are still

01:16:15
in front of a of

01:16:16
a system that is in

01:16:18
Balance. So let's let's look

01:16:20
into that in the first

01:16:22
you have that presentation on

01:16:25
the screen investment trees are

01:16:27
often drafted and most often

01:16:29
drafted they include obligations for

01:16:31
the state. Concerning the investor.

01:16:35

They don't include allegations by

01:16:37
the investors considering the investment

01:16:40
and protect us even write

01:16:42
the part of the problem.

01:16:43
Is that most investment treaties

01:16:44
as I say their lack

01:16:46
of medications are investors to

01:16:48
respect human rights environment and

01:16:49
Labor Standard, and then the

01:16:51
other part is is is

01:16:53
if if you do not

01:16:55
have a treaty that includes

01:17:00
those applications the the most

01:17:02
the more Optimistic that you

01:17:06
could be is that the

01:17:08
tribunal has a an awareness

01:17:12
of the fact that international

01:17:15
law is applicable law because

01:17:18
it is applicable only to

01:17:19
look into the articles of

01:17:21
the sea convention. There's a

01:17:22
reference to international law normally

01:17:25
make a reference to International

01:17:27
the vit the free trade

01:17:29
agreements or international law. So

01:17:31
there's no doubt that that

01:17:32
that international law. If if

01:17:37
you if you don't include

01:17:39
those type of Provisions in

01:17:41
the most that you could

01:17:42
get is that the tribunal

01:17:43
goes as far as our

01:17:45
Vassar and Anna and they

01:17:47
would say yes is international

01:17:50
law. We are we have

01:17:52
jurisdiction to hear a counterclaim

01:17:56
or a request for recreation

01:17:58
that indicates that the investor

01:18:00
has human rights or Environmental

01:18:03
Protections. We have jurisdiction to

01:18:06

hear that we can listen

01:18:08
to it. But then when

01:18:10
the time comes to address

01:18:12
the issue of marriage and

01:18:15
they go through the 3D

01:18:17
they made page one page

01:18:19
to a Tetra when they

01:18:20
get to the treaty they

01:18:21
will be unable unable to

01:18:24
not able to find The

01:18:28
provision that requires the investor

01:18:31
to respect human rights and

01:18:33
that's what happened. They said

01:18:35
yes, they went into the

01:18:38
human right of provision of

01:18:40
water. They decide what we

01:18:42
cannot find where the the

01:18:44
the obligation is because it

01:18:46
wasn't there. So the tribunal

01:18:49
is tied in terms of

01:18:51
the the substantive application because

01:18:53
it's not in the treaty.

01:18:55
So let's move forward. On

01:19:00
the presentation out. So these

01:19:03
are only a few examples

01:19:05
of similar cases where this

01:19:08
has happened. So the middle

01:19:10
example is the bathroom which

01:19:12
I have just referred to

01:19:13
the upper example is not

01:19:16
true G Energy versus Colombia

01:19:19
in that case the defensive

01:19:24
of Columbia counterclaim, which was

01:19:29
not was not heard by

01:19:32
the tribunal it was on

01:19:34
the the the relation to

01:19:37
the impact on Regional development.

01:19:41
And and the tribunal basically

01:19:43
said that he didn't it

01:19:45
didn't have a basis to

01:19:48

hear that counterclaim. It did

01:19:51
not consider that as part

01:19:55
of the jurisdiction Frank then

01:19:57
we go to the case,

01:20:01
which is Lopez that case

01:20:06
there is the issue was

01:20:09
was was quite similar when

01:20:11
the state's alleged violations to

01:20:15
the environment committed by the

01:20:17
restaurant. The tribunal found that

01:20:23
there were no obligations for

01:20:25
investors to respect the environment

01:20:26
in the treaty. So again,

01:20:28
if it really doesn't say

01:20:30
so you can not submit

01:20:32
that flame. So that is

01:20:35
that is a case and

01:20:38
up just a point of

01:20:41
connection with with that Juan

01:20:43
has a presentation the system

01:20:48
which involves thousands of investment

01:20:52
treaties today some some protections

01:20:57
and sometimes the protections are

01:21:02
not used and and that's

01:21:04
that's a fair criticism against

01:21:06
like in the case of

01:21:08
of a Gordo in that

01:21:11
particular case I can I

01:21:15
I am the most aspects

01:21:18
aligned with the third-party submission.

01:21:21
They are at why because

01:21:24
of the Year free trade

01:21:28
agreement between Columbia and Canada

01:21:31
and chief investment chapter there

01:21:34
and I can tell you

01:21:36
about is a carve-out to

01:21:41
be red is a car

01:21:43
but to be applied negotiators

01:21:46
of treaties do not include

01:21:48
Provisions that mean nothing and

01:21:52

and that is that was

01:21:54
the effect that the echo

01:21:55
to Trevino gave to the

01:21:57
provision ultimately exception that refers

01:22:04
to Many things including the

01:22:09
environment but it's an exception

01:22:11
that is basically that comes

01:22:13
from from the general exception

01:22:15
under WTO agreements. Really? That's

01:22:17
that, it's Genesis. I need

01:22:19
an exception for the whole

01:22:21
tree is an exception if

01:22:24
you're flying exception when you're

01:22:26
not liable. And suddenly that

01:22:29
Obsession lacked any effect until

01:22:32
and I am wondering, you

01:22:34
know, just wondering because because

01:22:37
I know that that decision

01:22:39
that war word was wasn't

01:22:40
stealing heavily criticized. Why is

01:22:44
why has the tribunal taking

01:22:45
so long to finalize its

01:22:50
is Beauty in terms of

01:22:51
Damages that. Lost my mind

01:22:55
because he has been more

01:22:56
than two years, but one

01:22:57
has a figures so that's

01:22:59
that's unknown, but let's look

01:23:03
into What else does the

01:23:07
system has the system has

01:23:08
also a few trees that

01:23:10
have obligations on human right?

01:23:11
Let's and let's move forward.

01:23:15
So this release include obligations

01:23:17
on human rights and we

01:23:18
have spotted them. There may

01:23:20
be more these are specific

01:23:21
application on human rights, but

01:23:23
but there's only a handful

01:23:25
of those less than 10.

01:23:27

So Thursday miroku Nigeria bilateral

01:23:31
investment treaty shall apply precautionary

01:23:36
principle to the environment environmental

01:23:39
impact assessment and two decisions

01:23:41
taken in relation to a

01:23:43
proposed investment of this application

01:23:45
for the investor economic community

01:23:48
of West African States ecowas

01:23:50
supplementary act on your best

01:23:52
friend also has a hard

01:23:55
law obligations and and here

01:23:58
these are examples of hard

01:24:00
on human rights the the

01:24:02
Canada. Columbia Free Trade Agreement

01:24:07
chapter investment is is one

01:24:10
that I'm very close to

01:24:11
because I am negotiating and

01:24:13
on that on that treaty

01:24:15
just a quick anecdote. When

01:24:17
the Canadians came to the

01:24:19
to the Colombian team and

01:24:20
said we want to include

01:24:21
an obligation on social corporate

01:24:27
responsibility and be sure to

01:24:31
include applications for the for

01:24:33
the state and eventually no

01:24:35
ultimately for the investors the

01:24:40
word ultimately that they were

01:24:43
concerned because they thought that

01:24:45
we would say no, which

01:24:46
I know that's too much

01:24:47
for us. Actually we said

01:24:49
yes, and then why don't

01:24:50
we include over the part

01:24:52
of occasions for the investor

01:24:54
and when we said that

01:24:55
they said no no, no.

01:24:56
No, that's too much that

01:24:58
that was the response that

01:24:59
what that's too much for

01:25:00

us. Why because that would

01:25:02
make that ultimately A lot

01:25:06
of interest in mining and

01:25:08
someone would have to comply

01:25:09
with certain the heart of

01:25:10
obligation. So it wasn't our

01:25:12
proposal but we took it

01:25:13
as far as we could

01:25:14
it wasn't one of our

01:25:15
trade lines. We don't have

01:25:16
any of the tree. So

01:25:17
we made the proposal to

01:25:19
make hard law of allegations

01:25:20
on on on human right

01:25:22
they didn't take it. But

01:25:24
but in any event, it

01:25:26
was progress in the right

01:25:27
direction. So the Columbia Canada

01:25:30
investment tree has a soft

01:25:33
obligation on human rights and

01:25:35
corporate social responsibility. That was

01:25:37
almost twenty years ago. And

01:25:40
what what what what is

01:25:44
concerning is that in 20

01:25:47
years? We're still the most

01:25:51
modern investment treaty in in

01:25:55
human rights and corporate social

01:25:56
responsibility is is this one

01:25:58
and there should be progress

01:26:01
in terms of the Colombian

01:26:03
bilateral investment treaty. So no

01:26:05
formerly formerly. We have no

01:26:08
strategy at some stage. We

01:26:10
we we who sponsored The

01:26:11
Proposal proposal in Congress for

01:26:13
the p i t would

01:26:14
have a human rights obligations

01:26:16
for investment for investors and

01:26:19
informally were saying this should

01:26:20
be done. You should be

01:26:21

done within the Columbian bilateral

01:26:23
investment treaty. I'm not wait

01:26:25
not wait until the The

01:26:30
model comes from Europe or

01:26:32
comes from somewhere else because

01:26:33
these are discussions that are

01:26:35
intimate to to the concerns

01:26:40
of Columbia. There's indigenous populations.

01:26:43
There's a journeyman's of fauna

01:26:45
and Flora and Life to

01:26:47
protect in Colombia. There are

01:26:49
so many reasons why Columbia

01:26:51
should include this type of

01:26:53
application. So two years ago

01:26:54
in the 204. It might

01:26:56
have made better know this

01:26:57
two or three years ago

01:26:59
were proposed this in Congress

01:27:01
and that wasn't adopted hopefully

01:27:03
under current circumstances at the

01:27:06
Myrtle Beach food include a

01:27:08
provision on that and I'm

01:27:13
not going to go into

01:27:13
the into into describing each

01:27:17
one of these Provisions that

01:27:18
are hardly you can read

01:27:20
them if it's going to

01:27:21
the next This is this

01:27:25
is the article that that

01:27:26
is being proposed. It reads

01:27:28
the investors shall respect the

01:27:32
minimum International environmental Labour and

01:27:35
human rights standards when making

01:27:38
and operating its investments in

01:27:40
the whole state. I don't

01:27:43
think perhaps you can be

01:27:45
calibrated. But that is I

01:27:49
believe a an article that

01:27:52
that could provide sufficient grounding

01:27:55
at for the time that

01:27:57

if a tribunal finds itself.

01:27:59
Yes, I have jurisdiction and

01:28:01
then it goes into the

01:28:01
next step this article would

01:28:03
would include sit but they

01:28:05
have to at least not

01:28:06
now is not whether they

01:28:08
could not they have to

01:28:10
respect human rights and that

01:28:11
has that could have liability

01:28:15
implications for the investor. It

01:28:17
could have damaged has implications

01:28:18
for the investor and then

01:28:19
the question becomes which is

01:28:21
what what the government that

01:28:23
was three years ago. Not

01:28:24
this one to pass one.

01:28:27
Why why do we need

01:28:29
this? wooden. Tracy negative effect

01:28:37
of of of of scaring

01:28:42
the investors and and and

01:28:45
stop the capital Imports and

01:28:48
the answer to that is

01:28:50
What are the government what

01:28:53
do you want? Do you

01:28:55
want qualified investment that is

01:28:57
respectful of the environment of

01:28:59
Human Rights and sophisticated green

01:29:02
type of investment or do

01:29:03
you want any type of

01:29:04
investment and I think the

01:29:06
answer is always so I

01:29:09
see no reason why she

01:29:14
has no hard for investment

01:29:18
abbreviation for the investors. when

01:29:23
you put this on the

01:29:24
ground at with Council for

01:29:28
investors, and some of them

01:29:29
are friends and in credibly

01:29:31
smart, the the objection is

01:29:34

well, you already have that

01:29:35
to local law that may

01:29:37
be true to some extent

01:29:38
by the fact is that

01:29:40
as I said before tribunals

01:29:43
are very Timid in applying

01:29:47
simply local law when when

01:29:50
deciding marriage and and if

01:29:52
you need a support for

01:29:54
that statement about four or

01:29:57
five years ago at published

01:29:58
a book chapter on counterclaims

01:30:02
and the finding was that

01:30:03
most of the counters names

01:30:05
that relied on local law

01:30:06
where all timidly not embraced

01:30:10
by the tribunal to make

01:30:12
any Merit base decision. So

01:30:16
next one, which is the

01:30:22
final one. So so this

01:30:26
is this is only how

01:30:27
to do things. So one

01:30:30
of the big objections when

01:30:32
you when you think work

01:30:34
because when you think about

01:30:37
including investor obligations on respect

01:30:41
of human rights in an

01:30:42
investment treaty is that an

01:30:45
investment treaty or a Treaty

01:30:47
definition is a instruments of

01:30:51
a public international law, which

01:30:52
is negotiated and agreed upon

01:30:55
between two parties one state

01:30:58
and another estate Adventure. You

01:31:01
can also make a treaty

01:31:02
with the organization or a

01:31:08
corporation or not. A subject

01:31:12
of public international law at

01:31:14
least not a classic one.

01:31:16
So they do not negotiate

01:31:17

treaties so that the obligations

01:31:20
that come from the the

01:31:22
treaty in principle are not

01:31:25
binding on an individual's because

01:31:27
they don't sign it right.

01:31:28
So why do the challenges

01:31:30
how to make sure that

01:31:32
the individual or the corporation

01:31:35
provides their consent to respecting

01:31:39
international human rights under the

01:31:41
bitso is to include an

01:31:50
Annex a confirmation of investor

01:31:53
obligations the way it would

01:31:55
work is Even though the

01:31:58
treaty is between two states.

01:32:00
You have the treaty on

01:32:02
the one hand and then

01:32:05
the trephine only the states

01:32:07
that say Canada and let's

01:32:09
say Columbia and who are

01:32:12
they? New Zealand and New

01:32:25
Zealand And and and there's

01:32:29
a dispute at the time

01:32:31
when the request arbitration is

01:32:33
submitted the treaty would require

01:32:36
that they also submit an

01:32:38
Annex in which they confirmed

01:32:41
that they are bound to

01:32:42
respect investor-state obligations. It is

01:32:45
very investment investor obligations on

01:32:47
human rights. If they do

01:32:49
not consent to that if

01:32:50
you do that as a

01:32:51
requirement of consent for the

01:32:53
investor for the for the

01:32:55
state then the requirements for

01:32:59
there to be a consent

01:33:01
by the state would not

01:33:03
be complied with so on

01:33:05
the one hand you have

01:33:06

an offer of the state

01:33:08
and the offer says You

01:33:10
can submit a dispute on

01:33:13
investment to arbitration if you

01:33:15
comply with this requirement. Have

01:33:19
you ever had? once the

01:33:22
investor says I accept your

01:33:26
your your offer. It has

01:33:30
to comply with that requirement

01:33:32
in order for the exception

01:33:34
of the operate a wood

01:33:36
that you would not normally

01:33:37
have the state's consent, but

01:33:40
also the investors consent to

01:33:42
comply with investor obligations on

01:33:45
human rights and with that

01:33:47
my timer, thank you. Thank

01:33:52
you for company. So I

01:33:53
would like to a last

01:33:55
question to each of our

01:33:56
panelists. It will be the

01:33:58
same question for all of

01:33:59
you. So you will have

01:34:00
only Thirty Seconds to hear

01:34:15
or analyze human rights arguments

01:34:18
on investments arbitration case, so

01:34:21
maybe I'm not in addition

01:34:27
to the proposal that too

01:34:28
has been explained in detail

01:34:30
out. I would say greater

01:34:33
awareness of of of of

01:34:37
basic principles of public international

01:34:40
law and human rights. I

01:34:42
think the. That would would

01:34:43
would take us very far

01:34:46
when I already refer to

01:34:49
their decision the tools are

01:34:51
there. Unfortunately the word not

01:34:54
not fully used by by

01:34:56
by the tribunal but I

01:34:58

strongly think that there is

01:35:01
some level of sinus bye-bye

01:35:05
tribunals of making your making

01:35:09
the connection between no investors

01:35:11
that is not a sign.

01:35:14
It's not a separate World

01:35:16
from public International. It is

01:35:18
part of public international law

01:35:19
and human rights are making

01:35:24
the connection. Would would would

01:35:29
take us a long way?

01:35:32
I will do. I think

01:35:34
creativity to do these kinds

01:35:37
of connections that was Antonio

01:35:38
and the other colleagues have

01:35:39
just mentioned attitude. It's in

01:35:41
the unit also have like

01:35:42
some kind of attitude to

01:35:45
to engage in discussions on

01:35:47
my my my 13 keys.

01:35:49
I think with that we

01:35:51
should move forward from to

01:35:52
get like kind of pure

01:35:54
theory of Law and not

01:35:56
be naive that. That's always

01:35:58
neutral tabloids impartial. So we

01:36:01
need to take me to

01:36:02
remind her also political discussions.

01:36:05
So I invite practitioners negotiators

01:36:09
academics because that would also

01:36:14
give us back the context

01:36:16
the whole pictures when we

01:36:17
have these kinds of discussions.

01:36:20
I think that we mainly

01:36:22
need two things. The first

01:36:23
is tools we need tools

01:36:25
and investment arbitrations that kind

01:36:27
of open the door a

01:36:28
little bit First Dates 2%

01:36:31
human rights and environmental defenses

01:36:33

in investment arbitration cases and

01:36:36
also 2% counterclaims, if that's

01:36:41
the case and the state

01:36:42
has a strong case in

01:36:43
a counterclaim against an ambassador,

01:36:45
but it also thing we

01:36:47
need courage and courage from

01:36:51
The representatives of the state

01:36:53
of the representatives of the

01:36:56
investors. They are I think

01:36:59
that they also need to

01:36:59
be aware of the trends

01:37:02
that are happening any bus

01:37:05
in arbitration. I mean International

01:37:06
arbitration in general and I

01:37:08
think we also need courage

01:37:10
from the tribunal's I think

01:37:11
that the decision was a

01:37:16
decision that was a split

01:37:17
decision taken by the president

01:37:21
was the arbitrator appointed but

01:37:24
Columbia, which was Philip chance

01:37:26
we have already auditions, but

01:37:28
I think that we need

01:37:30
courage from the arbitrator's to

01:37:32
actually be able to put

01:37:35
a Step Beyond and keep

01:37:39
full feeling. I'm moving the

01:37:42
ball regarding human rights and

01:37:44
environmental defensive investment application. 255

01:37:51
Wards in 30 seconds to

01:37:53
say if I got it

01:37:54
in there s soap formation

01:37:58
accompaniment and a reminder. So

01:38:00
I think we should entirely

01:38:04
and the Arbiters actually have

01:38:05
in mind or take into

01:38:07
consideration when they're interpreting treaties

01:38:09
the end of Batman for

01:38:15
development 24-hour Estates. We don't

01:38:18

want investment for the sake

01:38:19
of investment itself and that

01:38:21
conditions that kind of investment

01:38:22
and therefore that's Hive of

01:38:24
bees hang of trees we

01:38:26
want to endorse. So I

01:38:31
think that would bother was

01:38:32
right in the sense that

01:38:33
there were no obligations. I

01:38:37
wouldn't like the Fortress 3

01:38:39
navigation for States like in

01:38:41
human rights and therefore we

01:38:45
need better the scent of

01:38:46
pretty but we need to

01:38:47
take it. Las estancia's our

01:38:53
responsibilities are mandatory for state

01:38:56
or even if they're among

01:38:57
the 34 investors, of course

01:38:59
would suggest the last one

01:39:02
that is the most creative

01:39:04
in a brace of that

01:39:06
Edition fighting is going to

01:39:07
be very hard to reach

01:39:08
consensus on. And we have

01:39:10
to overcome the problem also

01:39:12
of legal personality of investors

01:39:14
writing that idea. Where can

01:39:15
I locate obligations on investors

01:39:17
to retrieve the right word

01:39:20
formation. This is my role

01:39:22
as a professor and we

01:39:23
need to form better International

01:39:25
lawyers that have the general

01:39:28
idea in mind that always

01:39:30
human rights special occasion or

01:39:31
investment is vis-a-vis 10 of

01:39:38
a right and last ate

01:39:41
the last two accompaniment at

01:39:43
we need more help to

01:39:45
investors like that since I

01:39:47

was doing With the social

01:39:52
spectations and law but they're

01:39:55
unclear even in the trees

01:39:57
by themselves. So we need

01:39:58
a lot of more accompaniment

01:39:59
to them and finally my

01:40:02
fat last before it reminder

01:40:04
set reminder that investment is

01:40:06
not the ideal system for

01:40:08
human rights issues. Right? I

01:40:09
mean, we would love to

01:40:11
see more of these but

01:40:12
they're not the DLCs can

01:40:14
we would prefer you bring

01:40:16
system for human rights issues,

01:40:18
but more is here better.

01:40:20
So why not and you

01:40:22
really do have a new

01:40:23
investment at better than nothing

01:40:26
for baking soda? Well, thank

01:40:31
a thank you for the

01:40:32
Antonio Santiago that have to

01:40:34
run to the airport for

01:40:37
your grade. And of course,

01:40:39
thank you for participants to

01:40:40
join us for decide. You're

01:40:42
welcome to stay for the

01:40:43
next month. I will start

01:40:44
being 5 10 minutes.