

Influence Of The Iran-U.S Claims Tribunal On Public International Law And Investment Law *

Summary

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

The panel at the 2022 World Arbitration Update focused on the influence of the Iran-U.S. Claims Tribunal on public international law and investment law. The session began with a welcome from Ian Laird, who introduced the topic and acknowledged the support of sponsors for the conference, which featured 19 panels over 11 weeks covering various aspects of international arbitration.

Co-chair Jose Antonio Rivas emphasized the importance of diversity in international arbitration, highlighting the need for a broad understanding of legal traditions and practices. The discussion was framed around the historical context of the Iran-U.S. Claims Tribunal, established in 1981 following a crisis in U.S.-Iran relations, primarily concerning the detention of American hostages and the freezing of Iranian assets.

Heather Dark, a legal adviser at the tribunal, provided a detailed overview of its jurisdiction, which is limited to disputes arising from the two states' declarations and contractual arrangements, as well as claims by private parties. The panelists included experts addressing various issues such as jurisdiction, nationality, indirect expropriation, and damages, each presenting insights into the tribunal's jurisprudence and its implications for international law.

Key points discussed included the tribunal's flexible approach to jurisdiction compared to other international arbitration bodies, the significance of its decisions on indirect expropriation, and the development of standards for damages. The panelists noted the tribunal's influence on investment law, particularly in shaping the understanding of lawful versus unlawful expropriation and the standards for compensation.

The session concluded with a discussion on the potential replication of the tribunal's model for other interstate disputes and its relevance for the proposed multilateral investment court, highlighting the need for consensus among states to establish effective dispute resolution mechanisms. The panelists expressed optimism about the tribunal's legacy and its contributions to the evolution of international arbitration.

Authors

Heather Clark, Reza Eftekhari, Aniruddha Rajput, Damien Charlotin, Kabir Duggal

Topics

US-Iran Tribunal

Category

WAU

Full Transcript

00:00:02

Well, good morning and Welcome

00:00:05

to our next panel in

00:00:08

the 2022 World, arbitration update.

00:00:12

It is the 9th or

00:00:16

28th of September 2022, and

00:00:19

we have the privilege of

00:00:20

presenting to you. A panel

00:00:24

that I think will be

00:00:25

of particular interest to everyone

00:00:28

in the arbitration field before

00:00:31

there was investor-state arbitration. There

00:00:33

was the Iran us claims

00:00:34

tribunal and today the topic

00:00:37

of our panel is influence

00:00:39

of the Iran. Us claims

00:00:40

tribunal on public international law

00:00:42

and investment law. And we

00:00:44

have a fantastic group of

00:00:47

panelists to talk on that

00:00:50

topic. And I'm personally very

00:00:53

much looking forward to hearing

00:00:55

their insights into that topic

00:00:59

before that a few administrative.

00:01:01

Appoints, we, we just wanted

00:01:05

to thank our sponsors. We've

00:01:08

had a real swell of

00:01:11

support for World arbitration update

00:01:14

meet. We just need to

00:01:15

recognize our sponsors for their

00:01:17

incredible support and input into

00:01:20

this year's conference. As folks

00:01:23

know, we had this is

00:01:24

a 11-week conference with 19

00:01:26

different panels on an array

00:01:28

of topics related to International

00:01:30

arbitration. One of the things

00:01:34

that were very proud of

00:01:34

his, the, the objectives of

00:01:38

world arbitration update, which is

00:01:39

very much focused on recognizing

00:01:41

the diversity of international arbitration.

00:01:44

And the fact that International

00:01:47

arbitration could be found basically

00:01:49

in every corner of the

00:01:50

world and it has a

00:01:52

huge variety of different cultures

00:01:56

and legal Traditions supporting it.

00:02:00

And and Providing input into

00:02:03

it. And part of the

00:02:04

that the desire of an

00:02:07

objective, wow, is reflected in

00:02:10

the fact that we have

00:02:11

tried to cover off a

00:02:13

range of topics in different

00:02:16

regions of the world. We

00:02:17

had some excellent panels yesterday

00:02:18

on sub-Saharan Africa and Mina

00:02:22

this morning. The panel was

00:02:24

in Singapore, is it just

00:02:28

being a fantastic conference? And

00:02:31

I just wanted to thank

00:02:33

in that. In that light,

00:02:34

my colleague, I guess I

00:02:37

should have introduced myself. My

00:02:38

name is Ian Laird. I'm

00:02:40

partner here at the Chrome

00:02:43

molding in Washington, d.c. my

00:02:45

co-chair and the real brains

00:02:49

behind wow is a doctor

00:02:52

Jose Antonio Rivas, who's on

00:02:54

the screen and his great.

00:02:55

Team strategy, LLP Anna, Anna

00:03:00

Maria, Lucia. Turn a fantastic

00:03:02

job, hurting all the cats

00:03:05

and making the trains run

00:03:06

on time. To mix a

00:03:06

bunch of metaphor is so

00:03:08

full, dacia and kudos to

00:03:10

them for their excellent work.

00:03:12

So let me pass on

00:03:14

to Jose Antonio and we

00:03:18

can start to kick off.

00:03:20

This morning's panel was the

00:03:22

Antonio. Thank you. Thank you

00:03:24

again. And thank you for

00:03:25

your kind words. This is

00:03:27

this is as, you know,

00:03:28

a team effort and the

00:03:29

and the and I very

00:03:32

much enjoy new our collaboration

00:03:35

and partnership in this in

00:03:36

this very ambitious project that

00:03:40

which is at the world

00:03:41

arbitration update. As soon as

00:03:43

you mentioned, that are our

00:03:45

objectives are 12 updates of

00:03:48

the International Community on issues

00:03:51

of public, international, law, investment,

00:03:54

treaty arbitration, and the international

00:03:55

commercial arbitration. And the other

00:03:58

objective, is that the centralization

00:04:00

and I said it, This

00:04:02

morning in our previous panel

00:04:03

on, on the Ukraine that

00:04:06

crisis created by the Russian

00:04:08

invasion when I when I

00:04:10

looked at the screen and

00:04:11

when I reflected on the

00:04:13

legal traditions and faces and

00:04:18

and the and without any

00:04:20

remorse, this is this is

00:04:23

how how diversity looks like.

00:04:25

So we're really proud of

00:04:29

having a diverse diverse. Pinal

00:04:37

Vista in in many respects,

00:04:39

legal traditions and cultural Traditions

00:04:43

are nationalities here. We are.

00:04:48

We are. And in the

00:04:52

panel on the ranch us

00:04:54

claims tribunal and Anna was

00:04:57

commenting with the with our

00:04:58

panelists, a few minutes ago.

00:05:00

How this this topic came

00:05:03

to fruition at, within the

00:05:05

notion of of of bringing

00:05:07

topics of public International that

00:05:09

interrelated investor arbitration the Rams

00:05:13

claims tribunal and its jurisprudence

00:05:15

is one that that has

00:05:17

a strongly influence and best

00:05:20

transportation and public international law.

00:05:22

Seems to be like, a

00:05:24

lot of work being done

00:05:26

in in, in, in the

00:05:29

NBA, in the tribunal and

00:05:32

sometimes, not not, not enough,

00:05:37

being publicized and, and, and

00:05:39

updating the International Community, about

00:05:41

the impact of of, of,

00:05:43

of of that, I've been

00:05:45

alone in the US, we

00:05:46

would know much about it

00:05:48

because it involves the us,

00:05:50

but I think that It's

00:05:51

in the, why why? The

00:05:53

world is important for everyone

00:05:54

to know. So I have

00:05:55

had many requests by by

00:05:56

many and various continents reaching

00:05:59

out and saying, no to

00:06:00

you. Are you recording this?

00:06:02

Because, because it's not in

00:06:03

my time zone etcetera. So,

00:06:05

rest assured that, that, that

00:06:07

that will be posting this

00:06:08

video. And and we will

00:06:12

be launching a new app

00:06:14

so that people can term

00:06:16

search the, the, the actual

00:06:20

recording. So, with that, I

00:06:22

would like to introduce Heather

00:06:23

dark. And who is that

00:06:25

a legal adviser at the

00:06:26

Iran? United States games, tribunal,

00:06:29

Heather has as a together

00:06:31

with us being sort of

00:06:32

the brains of the real

00:06:34

brains behind this, this, this

00:06:35

panel we have been exchanging,

00:06:39

jurisprudence comments articles, to choose

00:06:44

what I believe they are

00:06:45

the strongest, and most confident

00:06:48

that panelist to talk about

00:06:49

this. This case law and

00:06:52

jurisprudence boats from the Run

00:06:55

claims tribunal tell but also

00:06:57

from investor arbitration and academics

00:07:00

as as well. Also, Heather

00:07:02

has not only been at

00:07:05

the resting stop, you know,

00:07:06

she was also an attorney

00:07:10

and Associate at White &

00:07:12

case. She has been assisting

00:07:14

legal counsel at the permanent

00:07:15

Court of arbitration. She has

00:07:17

also know, by the way

00:07:19

work and intellectual property matters

00:07:23

as a consultant. And and

00:07:27

when I, when I look

00:07:28

at what she has done,

00:07:29

it is quite quite impressive

00:07:31

to know, know the breadth

00:07:32

of her knowledge. And that

00:07:33

I were really, really lucky

00:07:35

to have her here and

00:07:36

to have partner with her

00:07:37

to put together this panel.

00:07:38

So I want to embarrass

00:07:41

you any anymore. And by

00:07:44

the way, she's also a

00:07:50

A scientist at 2 in

00:07:52

in the sense of a

00:07:53

physics. So so we will

00:07:56

learn every little detail. Went

00:08:00

when we get closer to

00:08:01

a panel at 1, all

00:08:03

I can say is, wow.

00:08:04

Anyway, let's set. Let's move

00:08:07

forward. And Heather, you have

00:08:10

the floor and we're really

00:08:11

happy to have you here.

00:08:13

Wonderful. Thank you. Jose Antonio,

00:08:16

and thank you and for

00:08:18

the warm welcome, and for

00:08:20

the opportunity to moderate the

00:08:21

panel today. I'm actually going

00:08:25

to start with a little

00:08:25

bit of a description of

00:08:27

the of the tribunal itself

00:08:29

cuz I know that. Some

00:08:29

of our audience members will

00:08:30

be familiar, but others may

00:08:32

not. And then I'll go

00:08:34

on to introduce our panel

00:08:35
is cuz I kind of

00:08:36
forgot as the context for

00:08:37
their respective experiences. And then

00:08:41
I will explain how we'll

00:08:43
proceed for for today session.

00:08:46
So I'm to start with

00:08:47
the description of the tribunal

00:08:50
was established in 1981. So

00:08:51
that's more than 40 years

00:08:53
ago, as part of a

00:08:55
negotiated settlement to a severe

00:08:57
crisis in relations between Iran

00:08:59
and the United States. I

00:09:01

previously, they had had quite

00:09:03

close economic military and geopolitical

00:09:05

ties and the immediate, cause

00:09:08

of the crisis, was the

00:09:10

Detention of 50 to American

00:09:12

citizens in the United States

00:09:14

Embassy in Tehran and that

00:09:16

was between November 1979 and

00:09:18

January 1981, as well as

00:09:21

the measures that were taken

00:09:23

by the United States in

00:09:24

response, which included the freezing

00:09:27

of billions of dollars worth

00:09:28

of Iranian assets. So the

00:09:32

the settlement of this of

00:09:34

this crisis and relations was

00:09:35

Express in the form of

00:09:36

two declarations, and these are

00:09:39

declarations by the government of

00:09:40

Algeria who acted as an

00:09:41

intermediary in the negotiations and

00:09:44

the two states that run

00:09:46

in the United States. Agree

00:09:47

to be bound by these

00:09:48

declarations. The first, we thought

00:09:51

the general declaration and that's

00:09:52

it, that the substance of

00:09:53

obligations with the parties and

00:09:55

then I, what might be

00:09:56

most interesting for us today

00:09:57

is the claim settlement declaration,

00:09:59

which established the tribunal itself.

00:10:02

And the tribunal is best

00:10:05

described as a kind of

00:10:06

standing International arbitral tribunal as

00:10:10

it looks a lot like

00:10:11

a permanent body, but it

00:10:12

really isn't one. It has

00:10:13

actually quite limited jurisdiction in

00:10:16

terms of the subject, matter

00:10:17

of the disputes, the time.

00:10:19

Concerned, and the parties. And

00:10:23

most importantly, when it's completed,

00:10:24

all of its work, it

00:10:25

will cease to exist. And

00:10:29

the last point I wanted

00:10:30

to make sure in this

00:10:31

little brief introduction. Is that

00:10:33

the work that we're doing

00:10:33

today at the tribunal relates

00:10:36

exclusively to disputes between the

00:10:38

two states? And those really

00:10:41

either to the interpretation and

00:10:42
performance of the LJ's declarations

00:10:45
that I just described or

00:10:47
two contractual Arrangements between the

00:10:49
two states, for the purchase

00:10:50
and sale of goods and

00:10:51
service. Since they think that

00:10:53
tells you a bit about

00:10:54
the nature of the tribunal

00:10:55
as well. And I previously

00:10:59
in this is that may

00:11:01
be most relevant to today's

00:11:02
die discussion. The tribunal dealt

00:11:04
with a very large number

00:11:05

of claims by private parties

00:11:07

against one or the other

00:11:08

government into this category which

00:11:11

formed the bulk of the

00:11:13

tribunals docket until the the

00:11:15

early 90s, I will be

00:11:17

the focus of the discussion

00:11:18

today because that concerns be

00:11:20

the influence of business, body

00:11:23

of jurisprudence on public international

00:11:26

law and investment law. So

00:11:30

now, I will introduce our

00:11:31

our panelists. I'll begin to

00:11:34

describe them in the order

00:11:36

that they will. They will

00:11:37

speak. So I will begin

00:11:38

with Benicar brezza at the

00:11:40

car. Who is my, my

00:11:41

friend and colleague at the

00:11:42

tribunal, he will be addressing

00:11:45

issues of jurisdiction. He holds

00:11:48

a ba and a master's

00:11:49

degree from Shahid. Beheshti University

00:11:51

in Tehran as well as

00:11:53

a PhD from Leiden University.

00:11:54

He has acted as counsel

00:11:57

and various commercial, and investor-state

00:11:59

arbitration and has also been

00:12:02

acting at the legal adviser,

00:12:03

and he was been acting

00:12:05

as legal adviser at the

00:12:06

eye used at the tribunal

00:12:08

since 2013, He recently published

00:12:11

a book with Brill that

00:12:13

addresses, the role of the

00:12:14

domestic, love the whole state

00:12:16

and determining the jurisdiction rs9,

00:12:18

Materia, of investment, treaty tribunals,

00:12:21

the welcome weather. The next

00:12:25

time, we will hear from

00:12:26

Demi, Charlotte song, who will

00:12:28

be addressing you on issues

00:12:29

of nationality. So dumb, you

00:12:32

have studied and Columbia and

00:12:35

recently completed his PhD at

00:12:36

Cambridge. He is among other

00:12:39

things a lecture at SSA

00:12:41

in Paris, and also a

00:12:43

senior analyst for publication that,

00:12:45

I'm guessing many of us

00:12:47

read on it, on a

00:12:48

daily basis. The investment arbitration

00:12:50

reporter. The one of the

00:12:53

most interesting things about the

00:12:56
tribunal is that particularly in

00:12:58
the early years is that

00:12:59
almost all of its output

00:13:01
has been made public. So

00:13:03
not just towards. But I

00:13:04
mean the wards before that

00:13:05
the bulk of the published

00:13:06
material, And I would done

00:13:09
is done. He's he's performed,

00:13:10
it's really fascinating, a quantitative

00:13:12
analysis of the tribunals output

00:13:14
which he's captured in an

00:13:15
article which was published in

00:13:17

the Journal of international dispute

00:13:18

settlement, which I highly recommend

00:13:20

reading on this is called

00:13:22

a data analysis of the

00:13:24

Iran, US Bank tribunals jurisprudence

00:13:27

lessons for international disputes settlement

00:13:29

today. Okay. Next we have

00:13:36

any British rushclips who is

00:13:39

a member of the international

00:13:40

law commission and also the

00:13:42

consultant for Withers LLP in

00:13:44

London. He holds a PhD

00:13:46

in international law from the

00:13:47

National University of Singapore and

00:13:50

he began his studies at

00:13:51

the iOS lock College in

00:13:52

Pune in India. He has

00:13:55

acted as counsel in many

00:13:56

cases including before the international

00:13:58

court of justice of the

00:13:59

Supreme Court of India. And

00:14:02

he was also a member

00:14:03

of the study group that

00:14:04

was constituted by the law

00:14:06

Commission of India. To address

00:14:08

the 2015 model bit prepared

00:14:12

by India, he is also

00:14:15

the author of a book

00:14:16

entitled, the protection of foreign

00:14:17

investment in India and investment,

00:14:19

treaty arbitration. That's been published

00:14:21

with clear. So he will

00:14:23

be addressing you today on

00:14:24

indirect tax preparation, which was

00:14:28

also the subject of a

00:14:29

very thought-provoking piece that he

00:14:30

published in the exit review.

00:14:31

Entitled problems with the jurisprudence

00:14:34

of the year on us

00:14:35

claims tribunal on indirect expropriation,

00:14:37

welcome any Rita. And last

00:14:42

but certainly not least, we'll

00:14:44

hear from Kabir dugl kabira

00:14:47

teaches on various aspects of

00:14:49

international dispute settlement of Columbia

00:14:51

and up for them. He

00:14:52

holds but not one but

00:14:54

two phds, one from an

00:14:56

STD from Harvard Law School

00:14:57

and a PhD from Leiden

00:14:59

University and he began his

00:15:01

academic subject 3 at the

00:15:03

government law College in Mumbai.

00:15:04

I like to go back

00:15:05

to the very beginning, not

00:15:09

high school, just University, don't

00:15:11

worry. He is also a

00:15:14

senior adviser with the international

00:15:16

arbitration group, but Arnold &

00:15:17

Porter in New York and

00:15:19

act. Both as arbitrator and

00:15:20

his Council and various investors

00:15:22

State and Commercial cases and

00:15:24

Kabir. We'll be rounding out

00:15:25

our discussion today with a

00:15:27

presentation on Damages. So welcome

00:15:29

to Deer And the last

00:15:32

but not least, we will,

00:15:33

the plan for today, is

00:15:35

that each of the panelists

00:15:37

will speak for approximately 10

00:15:39

minutes but we will then

00:15:41

take questions from you. The

00:15:43

audience via the chat so

00:15:45

you can put them in

00:15:45

just directly into the public

00:15:47

chat and I will carefully

00:15:49

select. See the juiciest questions

00:15:50

for the for the panelists.

00:15:52

And then to close I

00:15:55

I want to give each

00:15:56

of our panel, has an

00:15:57

opportunity to to spend a

00:15:59

few minutes, making kind of

00:16:00

concluding observations on on the

00:16:02

discussion today cuz everybody will

00:16:04

be discussing quite discreet topics

00:16:06

but to be nice kind

00:16:07

of have a, a bigger

00:16:08

picture at the end of

00:16:09

today's discussion. And then we

00:16:12

will make sure that at

00:16:13

the end. We still have

00:16:14

time for some sort of

00:16:16

informal interactions in the bigger

00:16:18

rooms. So I think that's

00:16:20

it from me. And so

00:16:22

let's begin Reza, you have

00:16:24

the floor. Thank you, thank

00:16:27

you so much. Have a

00:16:28

slime So we say everyone,

00:16:50

this is it's a great

00:16:53

honor to be able to

00:16:54

trust you on the occasion

00:16:56

of poltava tration. Update 2022,

00:16:59

I'm grateful to the very

00:17:02

competent chest is let me

00:17:04

know if it's a privilege

00:17:12

to play a part in

00:17:14

this today is to open

00:17:19

the panel discussion on the

00:17:20

England's national day and more

00:17:27

specifically. I'm going to talk

00:17:29

about the jurisdiction of these

00:17:31

two institutions and fruit to

00:17:35

see to what extent the

00:17:37

practice of all usdt. Please

00:17:42

bear with me. As I

00:17:43

use the shortened form of

00:17:45

iusd or Iran. Us claims

00:17:47

tribunal and told me that,

00:17:55

so you would appreciate that.

00:18:01

Before I embarked upon my

00:18:04

puppy. As the first speaker

00:18:06

on the panel, I have

00:18:07

to say something about the

00:18:09

thing of This Woman's Work.

00:18:13

Always gives professionals some level

00:18:17

up. You keep asking yourself

00:18:20

to what extent, I shall

00:18:22

what my kitties for this

00:18:27

office. I did not have

00:18:28

to wait for long to

00:18:30

find some very first references.

00:18:34

Speaking in the context of

00:18:48

the occurrence of a refer

00:18:52

to one of the five

00:18:53

year old. It said to

00:18:56

follow me. Public housing versus

00:19:00

described an entire operation. Is

00:19:05

the point of managers by

00:19:47

the government and the manager

00:19:50

of the mountain? This is

00:20:02

remarkable since the recall and

00:20:10

final job in private adoption

00:20:14

was shut down for the

00:20:16

last hour Steve being relied

00:20:23

upon. So what you're talkin

00:20:26

about a very much relevance

00:20:30

Now, they said my topics

00:20:33

today. My specific topic today

00:20:34

is the jurisdictional? Yes, yes,

00:20:55

I want specifically. So I

00:20:59

will talk about. I will

00:21:05

address the nation state concentration,

00:21:08

the basis of the allowable.

00:21:22

The old religious picture frame.

00:21:24

Look at the CSP, it's

00:21:27

really resembles a set of

00:21:28

preparations state to state and

00:21:33

investor-state arbitration. They are very

00:21:36

skinny. I should say when

00:21:40

the sea is groundbreaking, it

00:21:54

directed by Chase against the

00:21:56

state before and yet, anyways,

00:22:17

That thinks that there are

00:22:18

however, a few main difference

00:22:20

between the princess. That dispute

00:22:36

settlement, probation and investment treaties

00:22:38

are usually by Other Nation.

00:22:49

CSD however, does not Avail

00:22:52

yourself of such a luxury.

00:22:55

It's more self-contained. And it's

00:22:57

self-regulated more and more. So,

00:23:00

it's like you, but somehow,

00:23:02

I, please from the subject

00:23:04

matter to design its own

00:23:13

jurisdiction, especially in the First

00:23:16

Years, first and second, That

00:23:29

provides for a procedural. Remind

00:23:35

you of Westmont regions are

00:23:43

Prostitute of Tupac's, the procedure

00:23:46

protection of the steak and

00:23:59

a outstanding. There was no

00:24:02

reason. For the fire has

00:24:19

to be borne in mind

00:24:20

when referring to the president.

00:24:43

Yes, we had did not

00:24:45

have the substantive. Now, it's

00:24:53

on to the second, the

00:24:56

nature of a rising off

00:25:07

to dialysis, which was dealing

00:25:19

with outstanding outstanding respected. because,

00:25:54

The parties. Cases could be

00:26:09

the proper source of information.

00:26:10

So they already that's what

00:26:21

defined as a result of

00:26:23

best. They just brought home,

00:26:26

some very vague and extra

00:26:29

creation are the measures of

00:26:31

property rights to be able

00:26:35

to squeeze as many slaves

00:26:37

as they could before. The

00:26:39

tribunal, the oldest made the

00:26:44

work of the Triangular, more

00:26:46

General in comparison to West

00:26:50

Chester. No, I'm driving to

00:26:55

Worcester and up my presentation

00:26:56

with subject to place a

00:27:06

rising a complex operation, and

00:27:10

other measures. I was going

00:27:15

to talk about. There is

00:27:20

Darkness as down or coach

00:27:22

of them. That's the linchpin

00:27:24

of differences of your actions.

00:27:34

Show me faces of you

00:27:35

regarding what investment is, the

00:27:37

definition of investment is the

00:27:47

concept with which is why

00:27:48

the 45 So did your

00:28:10

station of the tribunal as

00:28:12

much Road subject, matter voice.

00:28:17

this is very important because

00:28:19

example, if you want to

00:28:20

rely on you, Find the

00:28:45

legal basis to treat violations

00:28:58

of substantive. Because there are

00:29:11

substandard standard go to Pago.

00:29:59

Investor-state arbitration don't have to

00:30:05

resolve claims based on customer.

00:30:09

One, that could be exceptions.

00:30:20

This is in contrast, the

00:30:21

game today. Are you asleep?

00:30:23

Because I've been robbed other

00:30:34

than a general rule. 34,

00:30:38

if you're deciding a case

00:30:46

based on a situation, where

00:30:57

is provided for the operation

00:31:07

for the standards of creation

00:31:11

and formula. So in conclusion,

00:31:23

I would say papa Reliance

00:31:26

on the work to find

00:31:34

the right match to be

00:31:38

well-suited, but you get a

00:31:58

picture of what does that

00:32:11

pool supposed to be position?

00:32:15

Has to be considered from

00:32:17

the Merrick angle of the

00:32:18

and thanks. This is the

00:32:20

problem. Pull up the deer

00:32:22

Hannah list of a refrain

00:32:25

from spreading back. That's about

00:32:29

it. Thank you. Thank you

00:32:38

very much Reza. And that

00:32:40

was excellent on time, and

00:32:44

it gives us a little

00:32:45

bit of food for thought,

00:32:46

for one of the later

00:32:47

presentations that will come. I'm

00:32:49

not going to name any

00:32:50

names. But before we get

00:32:51

there, we will hear first

00:32:53

from dumb, yay, on the

00:32:55

issues of nationality and so

00:32:56

dumb. Yeah, you have the

00:32:57

floor. Sure, some slides that

00:33:03

have if I can hear

00:33:07

me from texting and white

00:33:15

background with black hair. I

00:33:37

don't care a lot of

00:33:38

with subject was that was

00:33:40

respecting National claims by Jewel

00:33:44

Nationals against one of their

00:33:45

own State. I don't think

00:33:47

that we might take for

00:33:49

granted know today has been

00:33:50

cycling was not with my

00:33:52

friends. What happened today a

00:34:05

lot about the season 32

00:34:07

a 18ft, which present-day states

00:34:13
did the fa-18 claim against

00:34:26
one of their home state.

00:34:28
And I talked to Nene

00:34:29
and practice. Dad said the

00:34:49
27th. Which was one of

00:34:52
the writers of the animals

00:35:01
that come in at the

00:35:14
time then you can see

00:35:16
the Hague Convention of states

00:35:27
to decide who was our

00:35:30
Nationals at days older than

00:35:32
having to deal with that.

00:35:37
Was kind of really no

00:35:38

claim against a puddle National

00:35:40

Convention was about to be

00:36:01

over here. Is that maybe

00:36:16

one of us? Is it

00:36:25

real? And I picked you

00:36:27

National in Chief of the

00:36:28

purpose of And eventually the

00:36:31

number of the words imply

00:36:48

that effective naturalization test, they

00:36:51

do, do I have finally

00:37:07

before the season 13 temperature

00:37:10

ruled on a drill National

00:37:12

fancy made by Justin said,

00:37:18

don't know what is a

00:37:20

real affection? Aeronauts weather Nationals

00:37:36

magic protection. That it is.

00:38:07

What's what's your? What's a

00:38:09

governing? What's going on? Never

00:38:30

sighted and then you got

00:38:32

a piece of paper with

00:38:33

her. I'll be going through

00:38:34

a certain letter about the

00:38:42

time in fact that Noteboom

00:38:44

and majoring both of us

00:38:45

if we don't get the

00:38:55

money anyway. And anyways This

00:39:13

decision was a companion was

00:39:15
emptied. Most claims were all

00:39:27
the marriage would do fruit

00:39:28
mold. And then years later

00:39:29
they wear, that's all I

00:39:37
see, is a signal that

00:39:50
surprising. Because the Old National

00:40:02
Bank, Show me to go

00:40:13
to the rest of it.

00:40:14
In that case, where you

00:40:38
see your very eyes shift

00:40:40
is B on Titan versus

00:40:41
Dominican Republic, where's the majority?

00:40:43
And you could not file

00:40:50

a customer interest represented as

00:41:01

to what extent customer interest

00:41:13

I think majority, but at

00:41:27

that time, when Valentine was

00:41:29

adopted, the word in back

00:41:31

at was not available and

00:41:33

they update the claimants in

00:41:34

an article by Google every

00:41:39

treatment of you adults, peace

00:41:41

award. You can probably still

00:41:42

want to get back out

00:41:42

of it. If you believe

00:41:51

that such as I ever

00:41:52

heard it in in all

00:42:02

the cases and belted dress,

00:42:03

and most recently played that

00:42:13

most relevant to us yet,

00:42:16

because they are very stupid.

00:42:22

All the cases at the

00:42:25

truth from claiming an investment

00:42:32

arbitration but the reasoning and

00:42:35

written very recently in August

00:42:37

2020 to drive me. How

00:42:38

many verses Christopher which was

00:42:40

the deciding order a Dometic

00:42:42

for in domestic investment that

00:42:44

customer And they finally have

00:42:51
to say that I'm sick

00:42:52
of the best proof to

00:43:01
do. You prove that your

00:43:02
nationality? Which one is it

00:43:08
the tight spot as the

00:43:13
tribunal just to say or

00:43:14
do you focus on the

00:43:15
investment which was a split

00:43:18
in Ballantyne versus the Dominican

00:43:19
Republic. And finally, that's that's

00:43:22
what I find the most

00:43:22
of the Avengers actually never

00:43:27
been applied to my knowledge,

00:43:31

even mentioned it so far

00:43:33

mostly because that's so far.

00:43:36

I just found, I found

00:43:37

that the dummy. The nationality

00:43:40

was that of the rest

00:43:40

of the state said it,

00:43:42

we were thrilled to see

00:43:43

many cases of your nose.

00:43:48

one of us and then

00:43:49

we'll try to come about

00:43:50

physics and say, hey, the

00:43:52

national wonderful. Thank you very

00:44:03

much, a salad. And I

00:44:14

will give the floor onto

00:44:15

a tiny Buddha. Thank you,

00:44:18

heather. I missed also take

00:44:20

this opportunity to thank a

00:44:22

prophecy. Young lady. It was

00:44:24

sent to me, reverse for

00:44:26

this very kind invitation and

00:44:28

strategy for all the hard

00:44:30

work can organizing the Spanish.

00:44:33

My thoughts today in the

00:44:35

next 10 minutes is try

00:44:36

to explore the relevance of

00:44:38

the jurisprudence of Iran. Us

00:44:40

claims tribunal in relation to

00:44:42

extrapolation, which within itself. Also

00:44:46

included in Direct Express Creation

00:44:48

in the jurisprudence of investment

00:44:51

treaty operations and also generally

00:44:53

in the context of General

00:44:55

International Is a good International

00:45:00

lawyer the starting-point for an

00:45:02

interpretation or to be the

00:45:03

treaty, which is going to

00:45:05

form the basis of the

00:45:06

dispute. See if you're trying

00:45:09

to understand the precise nature

00:45:11

and scope of the determinations

00:45:14

made by the Iran, us

00:45:15

claims tribunal in the context

00:45:17

of indirect expropriation and expectations

00:45:20

and the stocking Point. What

00:45:23

could be the text which

00:45:24

form the basis of the

00:45:26

decisions taken by the Iranians

00:45:27

claims Tribunal. And the starting

00:45:31

point there. We what it

00:45:32

what was Article 2 of

00:45:35

the Claims Settlement declaration about

00:45:37

which has I love elaborately

00:45:39

spoke about Article 2 of

00:45:43

the Claims Settlement declaration rather

00:45:47

broad close in order to

00:45:49

test the actions of one

00:45:51

of the state's. Although technically

00:45:53

often it would be in

00:45:55

the jurisprudence of the year

00:45:56

on us claims travel, only

00:45:58

one state of the, it

00:46:00

was meant to be one

00:46:00

of the states. So, the

00:46:04

standard which article two proposed

00:46:06

was Earth, it had other

00:46:08

standard for the one, which

00:46:09

is putting in, from the

00:46:10

perspective of expropriation is a

00:46:12

expropriation and other measures affecting

00:46:16

property rights. No, it is

00:46:19

the catch. What's the standard

00:46:22

provides in Article 2 of

00:46:23

the claim settlement declaration? Is

00:46:26

expropriation on the one hand

00:46:28

and other measures affecting property

00:46:32

rights on the other? These

00:46:35

two terms fall on two

00:46:37

ends of the spectrum of

00:46:38

its proprietary actions. Or other

00:46:40

just the actions or measures,

00:46:42

which estate might undertake An

00:46:45

expropriation by itself is where

00:46:47

the state takes the property.

00:46:49

That is a property has

00:46:51

been transferred to the state

00:46:52

or queen if it's instrumentalities

00:46:53

that would be a classical

00:46:55

case of expropriation or nationalization.

00:47:00

On the other hand, any

00:47:02

other measure affecting property is

00:47:05

Broad enough where by any

00:47:07

measure which is going to

00:47:08

affect the interests of the

00:47:09

investor in a measure, which

00:47:10
is going to affect the

00:47:11
property, might create rights. That

00:47:14
is what was conceptualized by

00:47:16
Article, 2 of the Iran,

00:47:18
US states travel. These two

00:47:21
analogies of this kind of

00:47:22
Clauses that we find. There

00:47:25
are some investment treaties entered

00:47:26
into by France, which contains

00:47:28
any other measures affecting property

00:47:30
rights meaning it doesn't matter.

00:47:32
What was the nature of

00:47:33
the matter as long as

00:47:35

lost with suffered? The hosts

00:47:36

take those responsible to compensate

00:47:38

for the loss that comes

00:47:40

to mind in particular is

00:47:41

the is the France Mexico,

00:47:43

bilateral investment. So, you can

00:47:47

have this other side where

00:47:48

the nature of the measure

00:47:49

is mostly irrelevant inconsequential. What,

00:47:53

what lies in between is

00:47:56

the standard of indirect expropriation.

00:47:58

Find me a safe. Who's

00:48:00

really the black hole? And

00:48:02

it is that black hole

00:48:03

or black hole, is normally

00:48:05

something that exists in the

00:48:07

space which is black and

00:48:08

it sucks up everything and

00:48:09

we don't know where things

00:48:10

came from and where have

00:48:12

they are chemically gone. Indirect

00:48:14

expropriation seems to be in

00:48:16

the jurisprudence of investment driving

00:48:18

with some kind of this

00:48:19

black hole. Nothing. You don't

00:48:22

even screams tribunal was never

00:48:23

deciding indirect expropriation cases because

00:48:27

it was either deciding expropriation

00:48:29

cases or it was applying

00:48:30

an extremely broad standard which

00:48:32

meant any other interference with

00:48:34

property rights, which is, by

00:48:36

itself out. Stand Indirect expropriation

00:48:40

Judah, Kelly is something in

00:48:42

between and that's what most

00:48:44

investment treaties provide. But we

00:48:48

do see in the jurisprudence

00:48:49

of investment treaty, not so

00:48:50

much anymore. But in the

00:48:51

past as one might say,

00:48:53

during the early hey days

00:48:54

of investment arbitration and investment

00:48:57

arbitration was new and every

00:48:59

effort was made to expand

00:49:00

the treatment standard investment treaties

00:49:02

as much as one can.

00:49:05

The jurisprudence of Iran us

00:49:07

claims tribunal turned out to

00:49:08

be quite helpful and hand.

00:49:11

How did it turn out

00:49:12

to be helpful in handy.

00:49:13

Something needs to be explored

00:49:14

as well. Rosa went to

00:49:18

doubt the decision in in

00:49:19

started housing, which is, of

00:49:21

course, one of the most

00:49:22

cited examples of all definitions

00:49:24

of indirect expropriation. Just to

00:49:27

remind you audience. Again, the

00:49:28

news claims tribunal wasn't decided

00:49:30

until expropriation cases, as, Under

00:49:33

the Sea, a bilateral investment

00:49:34

treaty So what does it

00:49:37

started housing? The tribunal held

00:49:39

was even if the title

00:49:40

of the property remains with

00:49:42

the with the person wore

00:49:43

all the investor. If the

00:49:45

value of the property is

00:49:47

lost than that amounts to

00:49:49

an expropriation. No started housing

00:49:53

is not the starting point

00:49:54

of this little students. The

00:49:55

real starting point is IIT

00:49:57

versus Iran where for the

00:49:59

first time this possibility of

00:50:01

indirect expropriation, without using the

00:50:04

word indirect expropriation was expressed

00:50:07

Interesting. It wasn't expressed in

00:50:10

a Judicial decision, it was

00:50:12
expressed in a separate in

00:50:14
a second. So, the parties

00:50:17
had come to a settlement,

00:50:18
the matter was closed, but

00:50:21
one of the arbitrator said,

00:50:22
I still want to write

00:50:23
a separate opinion. It's pretty

00:50:26
much like you prepare for

00:50:28
an exam and the exam

00:50:29
is canceled, but you still

00:50:30
insist that. I want to

00:50:31
write the exact And that

00:50:34
too, when you don't know

00:50:34

what the question paper was,

00:50:36

but you still decide to

00:50:37

write whatever, you know. And

00:50:39

it's really helpful to know,

00:50:40

the permanent Court of international

00:50:42

arbitration International lawyers. They say

00:50:44

used to be motorized in

00:50:45

the past but they nevertheless

00:50:46

tried to guide them. And

00:50:48

one of the guidance to

00:50:49

the judges of the permanent

00:50:50

Court of international Justice bows

00:50:52

that you can right to

00:50:53

dissent, against to this positive

00:50:55
against the decision of the

00:50:57
Court. Let me find her

00:50:59
is, there's no decision because

00:51:01
parties of Simply entered into

00:51:02
a settlement. But when arbitrators,

00:51:04
nevertheless, he decides, who decides

00:51:06
to write, probably a nice

00:51:07
American Law Journal article, which

00:51:09
ends up as a dissenting

00:51:10
opinion, separate opinion, rather trying

00:51:13
to alter the course of

00:51:15
the Jewish groups. And what

00:51:17
we find is that the

00:51:18

same case is being cited

00:51:19

there after multiple times and

00:51:21

it made its way through

00:51:22

the jurisprudence of the invest

00:51:25

in 5 minutes. American made

00:51:28

it to the jurisprudence of

00:51:29

investment tribals you to come

00:51:30

across them. Some shocking things,

00:51:33

which came across one of

00:51:34

what one of which was

00:51:35

infected versus Mexico. The tribunal

00:51:38

announced that the Judas Prudence

00:51:40

of Iran, us claims tribunal

00:51:41

is customary, international law. Laurel

00:51:44

Elementary point when asked if

00:51:46

something is customary international law,

00:51:48

show me open your you

00:51:49

receive messages yet, he's very

00:51:51

open users and the state

00:51:53

practice to prove that the

00:51:54

custom but since courts and

00:51:56

tribunals are the adjudicators that

00:51:58

can very well see. Once

00:51:59

we declare something to be

00:52:00

accustomed, it is a custom.

00:52:02

I'm reminded of the of

00:52:04

the instant when I was

00:52:05

telling my Milo one of

00:52:07

the teachers to its British

00:52:09

Parliament is Sovereign, it can

00:52:11

do everything except converting a

00:52:12

man into a woman and

00:52:14

a woman into a man

00:52:15

for real. Now, I can

00:52:17

even do. So, we do

00:52:18

see that kind of Indian

00:52:20

students with Sandy. This ain't

00:52:21

a Judas, Prudence gets picked

00:52:22

up in half an ounce.

00:52:23

Customary. International law has problems

00:52:26

with any such announcement. The

00:52:29

other problem is it is

00:52:30

not just the standard that

00:52:31

was applied. It was also

00:52:33

the substantive law which was

00:52:35

supplied Article 5 of the

00:52:37

same claim settlement decoration provides

00:52:40

first choice of flow and

00:52:41

all it starts. If I

00:52:43

could start by saying respect

00:52:45

for the law, Kisses. Are

00:52:47

to be decided by the

00:52:48

respective glow choice of floor.

00:52:50

Closes, of course, it has

00:52:51

a reference to international law,

00:52:53

but then it also makes

00:52:54

a difference to create another

00:52:55

commercial practice. Several several decisions

00:53:00

of the Iranians claims tribunal,

00:53:01

have from time to time

00:53:03

pointing out. If they have

00:53:04

applied Lexmark khuntoria rather than

00:53:06

public international law, search, what

00:53:10

are the elements of public

00:53:11

international law investors boots. In

00:53:14

fact, in most of these

00:53:15

cases, when the expropriation has

00:53:17

been discussed and in some

00:53:18

reference to scholarly discussion, what

00:53:22

I think's going to be

00:53:22

interesting me about the American

00:53:24

jurisprudence under the domestic constitutional

00:53:27

law. So that's the strange

00:53:32

and the doubtful origin and

00:53:34

Genesis of the Wayne which

00:53:35

team that expropriation description has

00:53:39

been used from varicose. Not

00:53:40

supposed to have existed but

00:53:42

this time now In the

00:53:45

investment arbitration jurisprudence that I

00:53:47

said during the early days,

00:53:48

when the party was on

00:53:50

and efforts were being made

00:53:51

to expand the treatment standards,

00:53:53

this was seen as an

00:53:54

effort to expand the standard

00:53:56

of expropriation and what came

00:53:57

into currency was the sole

00:53:58

effects of cream according to

00:54:01

fix. It didn't matter why

00:54:03

I stay to them to

00:54:04

take in a regulation, losses

00:54:06

suffered, you have to pay

00:54:07

compensation. This will effect of

00:54:10

effects. Doctrine, was one of

00:54:12

the major reasons of criticism

00:54:14

from States. And what we

00:54:16

do, see a backlash against

00:54:18

several other things in one

00:54:19

of the major things being

00:54:20

the sole affect what we,

00:54:22

no seen jurisprudence is a

00:54:24

realignment in investment treaty arbitration.

00:54:27

The tribunal just said, soleffect

00:54:30

Doctrine is not the only

00:54:31

test. It is one of

00:54:33

the tests and it is

00:54:35
a part of a broader

00:54:36
gamut of tests that be

00:54:37
with a flag. The other

00:54:39
tests, the word of life

00:54:41
is nature of the measure

00:54:42
and see if the measure

00:54:45
is a little legitimate public

00:54:47
interest, Bona fides, non-discriminatory matter.

00:54:50
If it is a legitimate

00:54:52
public interest measure, then we

00:54:54
would probably hold such a

00:54:56
measure and irrespective of the

00:54:58
consequences of the measure on

00:55:00
the foreign investor. Investment tribunal,

00:55:03
to introduce the night of

00:55:04
the neutralization test. That is

00:55:06
the investment. What we completely

00:55:08
effaced and I T B

00:55:12
on the form. The core

00:55:13
of this to the students.

00:55:15
They think you say Tony,

00:55:16
the fundamental elements of the

00:55:18
property that ought to be

00:55:19
lost but then the question

00:55:21
is, what the fundamental elements

00:55:22
mean is it complete destruction,

00:55:24

of ocean, destruction, destruction of

00:55:27

core elements, destruction of ancillary

00:55:29

elements. What is core, what

00:55:32

is ancillary a lot of

00:55:34

questions? But what we do

00:55:35

see, is in the realignment

00:55:37

off the cutest poodles in

00:55:39

Investment Drive units. And that's

00:55:41

the alignment is an effort.

00:55:43

Their investment tribunals are now

00:55:45

trying to a lot to

00:55:46

keep them self a little

00:55:47

bit away from the effect

00:55:49

of Euro Honduras, claims tribunal

00:55:50

on the, interpretation of indirect

00:55:53

expropriation, what they do. However,

00:55:56

Is the use the definition

00:55:58

which is a very nice

00:55:59

description. But apart from that

00:56:02

nice description as to what

00:56:04

in that expropriation is badussy,

00:56:06

that'll try. Those are clearly

00:56:08

depart from the social effects.

00:56:10

Queen and have moved towards

00:56:11

the nature of the measure

00:56:13

and then use the leaf

00:56:15

extract win as only one

00:56:16
of the one of them.

00:56:18
I think it's probably an

00:56:20
interesting, a shift in the

00:56:22
jurisprudence and open it. So

00:56:24
happens, that men tribal streetwear

00:56:26
necessarily expand the scope of

00:56:28
treatment standards than they have,

00:56:30
to be food than they

00:56:31
are to be softened. First,

00:56:32
take a more reasonable approach

00:56:34
and I think it's really

00:56:35
about finding a balance of

00:56:43
just protecting my investments all

00:56:45

the time for protecting regulations

00:56:47

on the time with a

00:56:48

beautiful balance. That's what investment

00:56:50

should I invest? Bilateral, investment.

00:56:51

Treaty was in that and

00:56:54

I do think this shift

00:56:55

of the stunts. Fencing from

00:56:57

the date on us claims

00:56:59

tribunal. And realignment is a

00:57:01

healthy move in in the

00:57:03

jurisprudence of investment tribunal, which

00:57:05

also shows that the investment

00:57:07

tribunal has matured and thank

00:57:09

you very much. Thank you

00:57:12

very much, says, that, excellent

00:57:14

presentation. And it's, it's interesting

00:57:16

to to, to hear from

00:57:18

Donnie about how the picture

00:57:20

is maybe a bit more

00:57:20

mixed about, whether tribunal I

00:57:23

said distancing themselves from from

00:57:25

the tribunal's jurisprudence and then

00:57:26

an expropriation, maybe the the

00:57:27

trend is a bit more

00:57:29

clear. That's an interesting Counterpoint.

00:57:31

So are our next step

00:57:34

for the center is a

00:57:35

Doug and I his spies

00:57:37

are up on the screen

00:57:37

so he's ready to go

00:57:38

Austin. Think you let me

00:57:41

just start off by saying

00:57:42

any conference that's called. Wow.

00:57:44

Just wow. That's awesome and

00:57:48

I'm very grateful to my

00:57:49

buddies. Ian. Jose Antonio Heather,

00:57:54

thank you for the invitation

00:57:55

really timely and fun topics.

00:57:57

I'm delighted to be here

00:57:59

and to my fellow panelists.

00:58:01

You know, it's always tough

00:58:02

to English. You know, I

00:58:04

always joke and cap last

00:58:06

reason to Beauty, but that's

00:58:07

only to make me feel

00:58:08

good about my life. I'm

00:58:11

going to be talkin about

00:58:12

the impact of the Iran

00:58:14

us claims tribunal. When it

00:58:16

comes to damages, this is

00:58:18

the topic that makes my

00:58:20

head hurt. And so I

00:58:22

thought, why not talk about

00:58:23

it, right? Sucker for punishment,

00:58:25

but it is a very

00:58:29

complicated and unsettled area. I

00:58:33

would actually stay in international

00:58:35

law at large. So I

00:58:38

think it's worth exploring and

00:58:40

seeing how the IUSB. He

00:58:44

has influenza thinking in this

00:58:46

area. No, I need my

00:58:49

buddy, I need to just

00:58:50

mentioned, we should always start

00:58:52

off with the treaty. And

00:58:53

I think that is a

00:58:54

good place to start in

00:58:57

the past and owner of

00:58:59

Heather, and Ian. I would

00:59:01

put up the Canadian model

00:59:03

3D but they changed it

00:59:05

to your ago and they

00:59:07

stay the same thing and

00:59:08

many more words in that

00:59:09

annoyed me. So we will

00:59:11

now call Logan Marika, the

00:59:13

going to look at the

00:59:14

American model B. And just

00:59:17

to get an example of

00:59:19

what are representative, treaty tells

00:59:22

us on damages, the answer

00:59:24

has very little, you're likely

00:59:28

going to find any indication

00:59:30

of Damages, only. And to

00:59:33

go Taylor Swift. You will

00:59:34

never ever find anything except

00:59:37

in the expropriation clothes where

00:59:40

you're touring in. The example

00:59:43

you see in front of

00:59:44

you article 61, you know,

00:59:46

you cannot explore. Unless which

00:59:49

is amazing to use double

00:59:51

negatives to say a positive.

00:59:52

But why not you meet

00:59:54

these conditions public purpose, non-discrimination

00:59:57

due process of law and

00:59:59

then they tell us you

01:00:00

got to be compensation. The

01:00:04

relevant article for resume. The

01:00:05

damages perspective is 6 to

01:00:08

move your toes. That the

01:00:10

damages shall be fair market

01:00:12

value without linking, the notion

01:00:16

of compensation to tell me

01:00:19

the Konami to a financial

01:00:21

term and they're giving an

01:00:23

indication of when do you

01:00:25

value the investment? Beer, said

01:00:28

it's the date before the

01:00:29

Explorer creation took place. The

01:00:34

only standard deviation The tool

01:00:39

for expropriation. The compensation must

01:00:44

be an economic model, the

01:00:47

fair market value, right? Which

01:00:49

Economist will tell you is

01:00:50

understood as a willing buyer

01:00:52

in willing seller and beautiful

01:00:55

that evaluation date must be

01:00:57

the date before the explosion

01:00:59

took place. Is this leads

01:01:02

to the medical question? What

01:01:04

do you do for non-explosive

01:01:06

creation, standards? And as a

01:01:09

Judas prudence's, interestingly developed, what

01:01:14

if you don't meet the

01:01:15

conditions given in 61 right

01:01:19

now while you can explore.

01:01:21

We're now. If you need

01:01:23

to condition your Explorer, creation

01:01:25

becomes, if you don't meet

01:01:29

one of more than 50

01:01:30

conditions expropriation, as unlawful stand

01:01:34

for in unlawful expropriation, do

01:01:38

we apply the same fair

01:01:40
market value compensation and be

01:01:49
able to see and believe

01:01:51
that as a question for

01:01:52
folks to think about whether

01:01:54
or not you agree with

01:01:55
that. But this is what

01:01:58
treaty tell, Dustin, you know,

01:02:00
again, to follow my friend

01:02:02
and you don't suggestion, right?

01:02:03
The other big sores Beckham's

01:02:05
costume. Let's look at what

01:02:07
custom tell us when it

01:02:09
comes to compensation for damages.

01:02:12

And we're going to look

01:02:13

at the most mispronounced case

01:02:16

in international law, what most

01:02:20

English speakers will call a

01:02:21

speech or Sue or chores

01:02:23

down Factory case which makes

01:02:26

every international law lawyers because

01:02:29

the appropriate pronunciation is the

01:02:31

horse hoof, polish nail polish

01:02:44

should be pronounced in the

01:02:46

nearest horse to factory case,

01:02:48

right? This is it permanent

01:02:50

Court of international. Justice case

01:02:53

to be really getting back

01:02:55
in time. It's a case.

01:02:56
Don't know a lot about,

01:02:57
it's just worth talking about

01:03:00
this after World War one,

01:03:03
right? This is the shitty.

01:03:05
Between World War 1 and

01:03:07
right, before World War Two,

01:03:08
was really nasty things happening

01:03:10
with one of the Lesser

01:03:15
species. That is going to

01:03:16
be signed in Geneva to

01:03:18
obviously, they're going to call

01:03:19
it the Geneva Convention, but

01:03:21

not be famous, Treaty of

01:03:23

War Geneva conventions. Just the

01:03:25

convention signed in Geneva. Fix

01:03:27

this province from in Germany

01:03:30

and gives it to Poland,

01:03:32

right? Europeans doing what you,

01:03:34

Europeans love, changing maps of

01:03:36

countries. So the German flag

01:03:39

down Polish flag out of

01:03:42

the Germans live today. And

01:03:44

it was after the war,

01:03:45

when he was a little

01:03:47

concerned that the people that

01:03:49

may not be warm fuzzy

01:03:51

feeling within the new country.

01:03:53

And so the treaty again

01:03:55

to go Taylor Swift child

01:03:57

has something, which he probably

01:03:58

wouldn't say today that Poland,

01:04:01

you can never ever, ever

01:04:04

nationalize German Property Brothers was

01:04:07

to protect, The nostrils that

01:04:10

live that thing that has

01:04:21

Factory in the question. If

01:04:24

you cannot do something and

01:04:29

you do what the fee,

01:04:30

he tells you, you can.

01:04:31

What is the standard And

01:04:35

the permanent Court of international

01:04:37

Justice. The standard is reparation,

01:04:41

the treaty told us the

01:04:46

standard Aspire Market. Customary international

01:04:49

law is telling you that

01:04:51

the standard is reparation Stratton

01:04:53

engine is illegal. Not an

01:04:55

economic concept. The legal concept

01:04:59

tells you, you wipe out

01:05:00

the unlawful Right. That's what

01:05:07

they told us. We see

01:05:07

what your 3D tells you.

01:05:09

If you see what custom

01:05:11

tells you and me, see

01:05:12

how, damages perspective you have

01:05:14

two different Notions Recreation, can

01:05:18

be understood as fair market

01:05:19

value. That is possible, but

01:05:22

the standard is different. Why

01:05:25

is this significant? This is

01:05:27

significant because Iran Us games

01:05:32

tribunal, enters in the commode

01:05:43

telling you that there is

01:05:45

a distinction when it comes

01:05:47

to lawful and unlawful expropriation

01:05:50

over love will explode, creation

01:05:53

be applied, the creepy standard

01:05:56

fair market value creation. We're

01:06:01

going to apply the customary

01:06:03

international law reparations. And then

01:06:08

they do something interesting. You

01:06:12

do remember when we looked

01:06:13

at the US model B

01:06:15

with tools that the valuation.

01:06:17

If you look at it,

01:06:18

it's going to be the

01:06:20

deet before the ticket. Bonobo

01:06:24

apes. Big fingers are now

01:06:29

being told that unlawful expropriation.

01:06:34

We're going to give an

01:06:35

investor in choice to see

01:06:38

what valuation did. They want

01:06:41

to select? Write. This is

01:06:44

how the Iran us claims

01:06:46

tribunal developed a theory to

01:06:50

make a distinction between meeting

01:06:52

the PT conditions for a

01:06:54

standard and not meeting the

01:06:56

treaty condition. And why is

01:06:58

this significant? This is significant

01:07:01

because you see after 9/11

01:07:05

The Budapest Airport getting nationalized

01:07:08
and then getting very private

01:07:09
Dice and getting very private

01:07:11
eye stupid and Airport has

01:07:15
now become much more valuable

01:07:17
than the lease private ization

01:07:19
takes place. The airport is

01:07:22
worth 2.6 billion dollars. That's

01:07:25
a lot of money. I

01:07:26
would take it down and

01:07:27
be happy in your is

01:07:31
critical because if you apply

01:07:33
the treaty standard, you're going

01:07:36
to be valuing it at

01:07:37

the time of Daikin, Wendy

01:07:39

Mass, it was a lot

01:07:40

less valuable than if you

01:07:43

were applying at a future

01:07:46

date because you have the

01:07:47

benefit of this much higher

01:07:49

value. Now, And what is

01:07:51

the score do? Forgive me?

01:07:53

What does this tribunal do?

01:07:55

This tribunal draws inspiration. And

01:08:00

if you will see this,

01:08:01

in the third part of

01:08:03

Phillips petroleum gas unlawful expropriation,

01:08:10

you can draw on the

01:08:12

customary, international law to the

01:08:15

investor can benefit from this

01:08:17

increased by you in the

01:08:19

acid. And whether or not

01:08:22

you agree on this, will

01:08:24

depend on how you see

01:08:25

the world and reasonable Minds

01:08:27

can get into fistfights and

01:08:29

how strongly they feel about

01:08:30

this. Should we really be

01:08:32

moving the standards? Or should

01:08:34

we apply with the creepypastas?

01:08:37

Scooby-Doo Lee need a different

01:08:39

state. What is the Practical

01:08:41

purpose of giving the same

01:08:43

damages for somebody who followed

01:08:45

the treaty, was it? Somebody

01:08:46

who didn't? I need that

01:08:47

as mad as questions for

01:08:49

you to own your own

01:08:50

basis of how you see

01:08:51

the world come to the

01:08:52

confusion, but we are also

01:08:55

standards. And again, we see

01:08:58

the same distinction, some tribunals

01:09:01

Della Fe dnf and full

01:09:04

protection and security. We're going

01:09:06

to apply the treaty standard

01:09:07

by analogy other Stellar snow.

01:09:10

We are going to apply

01:09:12

the customary international law standard.

01:09:14

We can thank the Iran.

01:09:17

Us games tribunal, he'll be

01:09:20

making our lives more complicated.

01:09:22

Now it comes from a

01:09:23

good place that comes from

01:09:25

a place of trying to

01:09:26

figure stuff out. But it's

01:09:31

also a great moment to

01:09:32

be alive because we don't

01:09:34

have a clear answer on

01:09:35

what we have to do

01:09:36

with some of these things.

01:09:37

And states are asking stand

01:09:40

to be, woefully not feel

01:09:43

about these things. And so,

01:09:46

I leave that Porky Pig.

01:09:49

And I passed the floor

01:09:51

back to Heather. Thank you.

01:09:54

Thank you. Thank you very

01:09:55

much. Could be very interesting

01:09:59

Food For Thoughts and I

01:10:00

really like the images. I

01:10:04
wish I were a student

01:10:05
in your class. So we

01:10:08
are now at the the

01:10:09
portion of our session today,

01:10:10
where the audience you should

01:10:12
feel free to, to lob

01:10:14
some questions at the, at

01:10:15
the tribunal start, not at

01:10:17
the tribunal at the at

01:10:18
the panelists. So please feel

01:10:21
free to put those into

01:10:22
the public chat and I'll

01:10:24
get it says started with

01:10:25

maybe just said of drawing

01:10:27

some friends from everybody's presentations.

01:10:29

We heard of the beginning

01:10:31

that the tribunal had a

01:10:33

lot more latitude. This is

01:10:35

Lorenzo said that the truck

01:10:36

you had a lot more

01:10:37

latitude than you already are

01:10:38

difficult is DS. Tribunal in

01:10:40

terms of its of its

01:10:41

jurisdiction dummy. Also mentioned that

01:10:45

the tribunal felt more comfortable

01:10:47

referring to kind of a

01:10:48

broader set of sources in

01:10:49

reaching its decision. And maybe

01:10:51

that also links to the

01:10:52

to the The applicable law

01:10:56

Clause, perhaps of the, of,

01:10:58

the tribunal being quite brought

01:10:59

show me sick. I think

01:11:01

the tribunal has characterized it

01:11:02

as such and I need

01:11:04

you to also made the

01:11:05

point that they were, they

01:11:07

were applying a different standard.

01:11:09

They were not applying the

01:11:09

same standard that that many

01:11:11
ICS tribunals are applying. And

01:11:15
then I could be your

01:11:16
basically, the tribunal at the

01:11:18
lawyers busy at. Let's say

01:11:19
that there's been a lot

01:11:22
more work for the Lorry.

01:11:23
So we have all these

01:11:24
kind of the soft sheets

01:11:26
of the, of the user

01:11:27
pay. Maybe not the critiques

01:11:29
of the use of the

01:11:30
tribunal service Prudence in is

01:11:32
DS. So, I think it

01:11:34

would all Alaba an open-ended

01:11:36

question to the, to the

01:11:37

panelists and for whoever wants

01:11:38

to address it. But why

01:11:40

has it been so influential?

01:11:41

If they're all these important

01:11:43

distinctions? Anybody who wants to

01:11:47

have a go, at least

01:12:00

of the most frequent investment.

01:12:02

I think I'll be creatures.

01:12:10

We have busted me to

01:12:11

do not least three investment

01:12:13

arbitration cases. Linked was a

01:12:21

driving over early and Victoria

01:12:22

do each of the council

01:12:24

b as a secret to

01:12:26

reach one of them. Clearly

01:12:42

I'm glad director DeMille took

01:12:45

it because he has data

01:12:47

to support it and I

01:12:48

was going to say the

01:12:48

pretty much more interesting book

01:12:56

about international law is a

01:12:57

belief system, and his one-pieces

01:12:59

was based on Seth's self-referential.

01:13:01

You're trying to refer to

01:13:03

yourself. In fact, some of

01:13:06

some of the judges of

01:13:07

the icj also have had

01:13:09

to face this criticism of

01:13:11

referring to their own opinion

01:13:12

from the time, but then,

01:13:19

the investment arbitration jurisprudence started

01:13:22

picking up in the cases.

01:13:23

Talking, it wasn't much material

01:13:26

to rely upon And the

01:13:28

tribunals have to make out

01:13:30

something of the of the

01:13:32

of the body often called

01:13:34

the Broad Street languages. Now,

01:13:36

somebody would say, well you

01:13:37

should have applied the interview

01:13:39

me to send should have

01:13:40

interpreted. It only has worked

01:13:42

with text means rather than

01:13:43

trying to broaden. It beyond

01:13:45

what it is, but they

01:13:46

had this handed you the

01:13:47

spoons, and some of them

01:13:49

were a part of creation

01:13:50

of this. So I can

01:13:52

be found problem with probably

01:13:55

more convenient to Simply start

01:13:57

referring to it. And now

01:13:58
she may have to do

01:13:59
the screen to the morn

01:14:00
main source of interpretation of

01:14:03
several investment region, standings. I

01:14:07
just talked with a very

01:14:09
quick reaction, but again, going

01:14:12
last. You have the benefit

01:14:13
of saying, everybody before me

01:14:14
was correct and they are

01:14:16
reasons that Mimi could particularly

01:14:21
significant Point. Number one. Temporarily.

01:14:26
This is the closest that

01:14:28
we have to the rise

01:14:30
of the spike in the

01:14:31
investment jurisprudence. So it just

01:14:34
makes sense to look at

01:14:36
what is happening closest In

01:14:39
Time. Some of the players

01:14:41
with similar ideas, get cross-fertilize

01:14:45
endure. This temporal reality of

01:14:48
the second thing is investment

01:14:50
review notes, especially in the

01:14:52
early days are beginning with

01:14:54
the blank slate. And you

01:14:57
know, why you can make

01:14:59
stuff are going to see,

01:15:01

make sure. But that's good.

01:15:02

That's what you can do

01:15:05

something even though they are

01:15:11

significant differences. That are a

01:15:13

lot of similarities that should

01:15:15

not be ignored which is

01:15:16

why he wants to join

01:15:17

the icj jurisprudence is that

01:15:20

up. There is very different

01:15:22

No, we don't want the

01:15:23

mix Game Commission. The reality,

01:15:26

there is also different, but

01:15:28

when you see, you can

01:15:31

definitely draw inspiration to put.

01:15:34

It mildly is the cherry

01:15:36

picking of course. But that

01:15:38

is a part of life,

01:15:39

right? In a non-presidential, presidential

01:15:42

in terms of jurisprudence president

01:15:45

system, that will inevitably be

01:15:47

some amount of. I like

01:15:48

this reasoning. I don't like

01:15:50

this. So I'll focus on

01:15:50

those and ignore this. But

01:15:52

you are still trying to

01:15:54

create a legal regime anchored

01:15:56

in something. Proving what has

01:16:01

already been said? I should

01:16:03

just add that. There is

01:16:05

no secret that specially in

01:16:06

the yes we can only

01:16:13

observe the commonly referred to

01:16:16

as the right to directed

01:16:27

lot. A claim against the

01:16:28

estate and has counseled cases

01:16:36

similar, what was great? This

01:16:47

was a great option is

01:16:48

not only for the office.

01:16:59

This was a great acid

01:17:02

and they broke. A list

01:17:12
of states. Those are some

01:17:24
very interesting observations and I

01:17:25
might just add one of

01:17:26
my own, the tribunal's decisions

01:17:29
were not on you. Monday

01:17:31
at the time that personal

01:17:33
knowledge, that personal aspects probably

01:17:35
had quite a lot to

01:17:36
quite a lot to do

01:17:37
with. It is a send

01:17:38
me a set of the

01:17:38
beginning. That's very interesting and

01:17:41
very disrespectful, a true true,

01:18:02

everything else that commercial routes

01:18:15

So we have a few

01:18:16

questions in the in the

01:18:18

chat over. This will be

01:18:21

a fun one and maybe

01:18:22

one not for rezza and

01:18:24

not for myself that I

01:18:26

missing questions. But is it

01:18:28

possible to predict the lifespan

01:18:30

in the lifespan of the

01:18:31

I use to it's been

01:18:32

going for more than 40

01:18:33

years. So I think it

01:18:34

was envisaged to go for

01:18:35

a few years. I'm does

01:18:37

anyone want to Hazard a

01:18:39

guess on how long the

01:18:40

tribunal will keep chugging? I

01:18:47

think it would be unpleasant

01:18:48

address the questions. Well, actually

01:18:54

the legal in the United

01:19:01

States and if he scored

01:19:02

them to decide when they

01:19:04

should be, what you're doing

01:19:13

right now. But as one

01:19:30

of the Iranian Netherlands head

01:19:37

of state at a reception,

01:19:38

this is the right question

01:19:40

to be addressed. I've been

01:19:46

having to Bill Proline everything

01:19:49

no secrets here. But based

01:19:50

on my conversation, with people

01:19:52

involved in everything would never

01:19:56

have been allowed to remain

01:19:59

in case. There's also a

01:20:00

lot of the heavy attack

01:20:01

of the Gated, so there

01:20:03

might be but there is

01:20:07

never, I don't know. I

01:20:14

just wanted to say that

01:20:15

if Heather and Reza can

01:20:16

give an answer than we

01:20:17

might have lost a step

01:20:18

back to an astrologer. And

01:20:20

I don't think any of

01:20:21

any one of us is

01:20:22

back so I can't respond

01:20:24

to that. Oh, I think

01:20:28

a judge Broward when he

01:20:30

retired from the Tribune Almeda,

01:20:31

an estimate to think of

01:20:32

something like seventy years and

01:20:34

that was on the face

01:20:36

of the basis of the

01:20:36
number of us standing in

01:20:37
cases and the amount of

01:20:39
time he predicted that it

01:20:40
would take to be results.

01:20:41
But there are many different

01:20:44
factors involved in in that

01:20:46
in that decision. So something

01:20:49
is coming up in a

01:20:50
few of the questions in

01:20:52
the chat and then I

01:20:53
will let you do your

01:20:54
concluding observations if we still

01:20:56
want to go that extra

01:20:57

but such what extent do

01:21:01

you think that the, the

01:21:02

model of the IU SCT

01:21:04

I could be replicated or

01:21:06

developed for other kinds of

01:21:08

Interstate disputes and also perhaps

01:21:13

to inform the possibility of

01:21:16

his son, multilateral investment court.

01:21:18

So those are the two

01:21:20

separate questions, I guess Interstate

01:21:22

disputes end and has a

01:21:23

new mechanism for for something

01:21:25

like SPS. Let me take

01:21:30

a stab at it. Disputes.

01:21:35

And I think the suggestion

01:21:36

here seems very specific to

01:21:39

what is happening right now.

01:21:44

There are plans, there's a

01:21:45

planet Columbia University in collaboration

01:21:48

with the government of Ukraine,

01:21:50

to explore possibilities of a

01:21:53

mixed claim Commission. As a

01:22:00

person who is optimistic about

01:22:01

life at large, I put

01:22:03

a big question mark on

01:22:05

that because you're either going

01:22:07

to need both states to

01:22:09

agree. As was the case

01:22:10

in the Iran. Us claims

01:22:12

tribunal and the jury is

01:22:14

out on that or you

01:22:16

going to need the security

01:22:17

Council to authorize that. And

01:22:19

there is a veto Power

01:22:21

by one of the five

01:22:22

states. And so I can

01:22:23

request in Markham. so, I

01:22:27

thoughts my thoughts out, there

01:22:30

can be replicated or Bmac,

01:22:35

that's a loaded question. When

01:22:38

we talkin about the model,

01:22:40

what do you mean? The

01:22:42

Iran Us game? Tribunal came

01:22:44

out with a very specific

01:22:47

political background and so the

01:22:53

structure kind of made sense

01:22:55

to make sure there isn't

01:22:58

a consensus. If there's going

01:22:59

to be one, make what

01:23:00

is going to be many

01:23:01

Megs? And the many a

01:23:02

it seems under the European

01:23:05

version. It's the latter each

01:23:10

make having its own jurisprudence,

01:23:11

but I'll put that aside.

01:23:12

But you need consensus across

01:23:15

stakeholders and the query there

01:23:18

is, do we have that

01:23:19

consensus? Among those taken to

01:23:22

agree on them? And I

01:23:24

think that guys. If the

01:23:27

point is, we have a

01:23:29

state-to-state mechanism giving rides and

01:23:31

it seems to be working

01:23:32

these Wy Yeah. To that

01:23:36

extent. We can draw inspiration

01:23:37

began role model, bb political

01:23:41

considerations in the make. That

01:23:43

me make it look very

01:23:45

different from how the Iran

01:23:47

us claim tribunal came out.

01:23:49

This was a wolfley rambling

01:23:52

answer, but I hope that

01:23:54

was some to Aaron's in

01:23:56

what I said in somebody

01:23:59

politics politics, politics. If I

01:24:04

may add a few things,

01:24:05

I think there's a legal

01:24:07

element to the question or

01:24:09

the answer and there's a

01:24:10

political element to the answer.

01:24:13

The legal aid in Memphis

01:24:14

that the Iranians claims tribunal

01:24:16

wasn't unprecedented. So all the

01:24:19

claims tribunal equally us claims

01:24:22

to Italy. Mexico claims tribunal

01:24:25

us England claims tribunal. It's

01:24:31

not even in the interval.

01:24:33

44 for the water pressure.

01:24:36

In terms of the Warsaw

01:24:38

instances of such, a type

01:24:42

of such a strange gravel

01:24:44

being created. Conceptually theoretically legally

01:24:48

is there. No sticker. They

01:24:50

could be one created based

01:24:53

on 10. Some of these

01:24:54

proceedings and of course, the

01:24:55

year on us claims tribunal

01:24:56

can be good model to

01:24:58

emulate. And that also takes

01:25:01

one to the political side

01:25:02

of the question that they

01:25:03

would be willing. We don't

01:25:06

know what's going to happen

01:25:07

but the vein, which things

01:25:10

are progressing. It is possible

01:25:11

that everybody may want to

01:25:13

have a respectful exit. And

01:25:15

these claims tribunal. Awesome thing

01:25:17

to be a good respectful

01:25:19

exit for all the boarding

01:25:21

pass. And honestly, for both

01:25:25

Iran. And the United States,

01:25:26

it was a respectful, a

01:25:27

king's it, and it was

01:25:28

so respectful and none of

01:25:29

them signed on to be

01:25:30

able to use the card.

01:25:31

It's not a creepy. It's

01:25:33

a decoration of Algeria. I

01:25:35

think that these two countries

01:25:36

that goes big alliances when

01:25:42

there's a possibility that we

01:25:43

both can have judge from

01:25:44

a side. One each and

01:25:46

then he will decide the

01:25:50

case. Take a certain approach

01:25:54

which, which is arbitration used

01:25:56

to work in the past

01:25:57

and that brings me to

01:25:58

the, to the next question

01:26:00

of the, of the multilateral

01:26:02

investment Co. I must say

01:26:04

I'm a bit too, not

01:26:04
in sync with the lingo.

01:26:06
So, when I heard the

01:26:07
meat guy was a bit

01:26:08
taken aback, but then I

01:26:10
got it. So with the

01:26:12
mix, I think without making

01:26:15
a mickey of it because

01:26:16
I didn't Europeans really serious

01:26:17
about it. So we shouldn't

01:26:18
we should do that and

01:26:20
they're really pushing hard. So

01:26:22
if we do have such

01:26:24
a format, what comes to

01:26:26

my mind is the move

01:26:28

from the permanent Court of

01:26:29

arbitration to the creation of

01:26:31

the permanent Court of international

01:26:32

Justice around that time. If

01:26:35

you look at the developments

01:26:36

that led to 1907 the

01:26:39

Hague convention and then which

01:26:41

was the PCM and eventually

01:26:43

the public court of international

01:26:45

Justice, one of the concerns

01:26:47

of States was International arbitration

01:26:50

according to them both highly

01:26:51
politicized. Representatives from each of

01:26:55
them, on the tribunal and

01:26:57
then an Empire, he was

01:26:58
calling a who decide it

01:27:00
was almost like having an

01:27:01
advocate on your side and

01:27:02
then the empire was supposed

01:27:04
to take a decision. That

01:27:06
was a very unhealthy situation

01:27:08
and then they thought, let's

01:27:09
have a cord with a

01:27:11
definite than you were not

01:27:13
bound to State. It would

01:27:14

be random collection of people

01:27:16

seem to have a certain

01:27:17

degree of clarity consistency. And

01:27:19

what we do see today,

01:27:21

if you look at the

01:27:21

criticism of ice, this one

01:27:23

of the criticism is, if

01:27:24

you get the right track

01:27:25

Friday. You can get the

01:27:26

right to work. So it's

01:27:28

about the orientation of your

01:27:30

appointee of the chairs. So

01:27:31

that all these factors and

01:27:32

they want to get rid

01:27:33
of all these factors. If

01:27:35
that's the goal then, I

01:27:37
doubt if Iran us claims

01:27:38
tribunal, is going to be

01:27:39
a good model for them.

01:27:40
I think the good model

01:27:42
for them would be something

01:27:43
like things Master, court of

01:27:44
justice. Something like that. Like,

01:27:46
the international Tribunal for the

01:27:48
law of the sea impression

01:27:49
I get is the vein

01:27:51
which the qualifications for, for

01:27:53
the potential appointees are being

01:27:55
discussed, or would be discussed

01:27:57
for ought to be discussed.

01:27:58
It would be more than

01:28:00
the kind of international criminal

01:28:01
court. I know it's a

01:28:03
different creature altogether but I

01:28:04
think Record a detailed rules

01:28:06
about what qualification? The judge

01:28:08
should possess. So we might

01:28:10
have something where they would

01:28:12
be more qualifications to do,

01:28:14
have a filter of bison

01:28:15

and and take care of

01:28:17

her on this. Would anyone

01:28:24

else like to make a

01:28:25

comment on this on this

01:28:26

topic? We are over the

01:28:33

time that we should have

01:28:34

finished our informal networking. But

01:28:36

I understand from the organisers,

01:28:38

but there isn't another panel

01:28:39

right after hours. So we

01:28:40

have a little bit of

01:28:41

a buffer. I had promised

01:28:44

our panelists, the big could

01:28:45

make some concluding observations. So

01:28:48

if anybody would like to

01:28:49

do that, to have some

01:28:50

sort of deep thoughts about

01:28:51

what we talked about today,

01:28:52

please say, go ahead. Stick

01:28:55

up your hand. Please go

01:28:56

ahead. Reza. Just very briefly

01:29:01

because some of the boys

01:29:03

that I wanted to make

01:29:04

with rest when the questions

01:29:06

are we today that the

01:29:09

influence of the great bulk

01:29:21

of the discussion was cute.

01:29:23

And no. So I just

01:29:30

want to say a few

01:29:31

words and fast because now

01:29:33

we are working. So I

01:29:36

think the practice of the

01:29:38

tribunal on state-to-state cases could

01:29:41

be relied upon on second

01:29:43

message or other. It's not

01:29:48

like the station. but old

01:30:12

saying, matches of responsibilities, as

01:30:15

compensation, Around 60 Alexis such

01:30:23

as these are there. The

01:30:30

other airing that International tribunal

01:30:33

has availed himself. So talk

01:30:39

about damages and compensation, and

01:30:42

he also raised the issue

01:30:45

of increase in the value

01:30:47

of the property from the

01:30:49

time that the breach was

01:30:51

committed to the date of

01:30:53

the award and interesting that

01:30:55

they would love to talk

01:30:58

about you. So it must

01:31:01

be validation upsets and musical

01:31:03

instruments. So I booked it

01:31:17

would be interesting to reflect

01:31:18

the latest. Think your oven?

01:31:28

Any, any other volunteers for

01:31:30

some concluding observations, a society

01:31:41

of influence of one body,

01:31:43

quite fascinating. And I'm glad

01:31:47

that we took the time

01:31:48

to try to but that's

01:31:52

a really good idea. What

01:31:53

is influence the matter? What,

01:31:55

what does manservant, who do

01:31:57

you build up and build

01:31:58

a Flareon? Ex the drug

01:31:59

that could explain why some

01:32:05

things are you. Why? So

01:32:07

I'm not in what is

01:32:09

exactly why. I just know

01:32:16

he's been crafted the time

01:32:21

Just a quick point, maybe

01:32:23

they might be a lesson

01:32:25

procedurally for us, International lawyers.

01:32:28

When we look at the

01:32:29

influence of the use of

01:32:30

it, on your screen driving

01:32:32

in the best speed up

01:32:35

Christian. And I see that

01:32:37

because I spend a long

01:32:38

time being litigated under domestic

01:32:40

law before being an international

01:32:41

lawyer. And whenever I spend

01:32:43

time with domestic, lawyers are

01:32:45

all private, International lawyers. I

01:32:47

think you'll find that they're

01:32:48

sticklers for procedures. That always

01:32:51

trying to see if I'm

01:32:53

going to refer a case

01:32:54

that this case really apply

01:32:56

here. And I must say

01:32:58

the more and more time

01:33:01

I spend in international law

01:33:02

realize, you can be pretty

01:33:04

flexible to pick things that

01:33:05
you like, as long as

01:33:07
you sound cool, that's really

01:33:09
the most rudest way of

01:33:10
putting it, which is one

01:33:12
of the structural flaws in

01:33:14
public international law. As you

01:33:16
can, as you compared to

01:33:17
private International and private International

01:33:19
lawyers, I'm reminded of a

01:33:21
lecture. Given by boan law

01:33:22
about humility International and sing

01:33:26
be public, International doors, need

01:33:28
to be a little more

01:33:29

humble look around and learn

01:33:31

from others because it's might

01:33:32

help, Aruna, one profession. And

01:33:36

just to make a final

01:33:37

point in which I didn't

01:33:39

make before, he's an estimate.

01:33:41

Kodak twists, here on one

01:33:43

of the arbitrators, and I

01:33:45

think I should find him

01:33:46

because it's on record match

01:33:50

concerned about Regal principal. Because

01:33:53

there was money in the

01:33:54

security account, the money was

01:33:56

going to be paid. So

01:33:57

we don't have to really

01:33:58

bother about a high standard.

01:33:59

It was a pretty flexible

01:34:01

standard than we were going

01:34:03

by pretty much what cause

01:34:04

he didn't use the word

01:34:05

back to what he described

01:34:07

could be categorized as exact

01:34:08

Red Bull. The Indian tigers

01:34:17

prudence's is of no use.

01:34:19

There are elements which could

01:34:20

Inspire, but one has to

01:34:22

be careful and as they

01:34:24

often say, take it with

01:34:25

a pinch of salt, If

01:34:27

if I can just read

01:34:28

very quickly be at 2,

01:34:30

to you about that. I

01:34:31

say something and had to

01:34:40

be the final ID, that

01:34:42

whatever you decide to prove

01:34:45

it to me. I think

01:34:47

that that's a lot of

01:34:48

what we talked about today.

01:34:50

Pick up for me and

01:34:53

by saying, I agree with

01:34:55

what everybody's had Concise like

01:35:02

the early decisions of the

01:35:04

eye use time, 15 minutes

01:35:12

before we should have been

01:35:13

better. Thank you very much

01:35:15

to our panelists, to our

01:35:17

audience, to the organisers. This

01:35:19

was a lot of fun,

01:35:20

this is very great and

01:35:21

I think I'll hand the

01:35:22

floor to Jose Antonio who's

01:35:24

just popped up on the

01:35:24

screen. Thank you. Thank you,

01:35:27

Heather. And thank you very

01:35:29

much in the order that

01:35:31

you appear Reza and Adam

01:35:35

mer and the new that

01:35:40

as well as as Kabir

01:35:42

it was a, it was

01:35:43

a true pleasure to have

01:35:45

a a discussion to hear

01:35:49

your thoughts from. No. Initially,

01:35:52

I am a baseline as

01:35:55

to, the know, the history

01:35:58

and the jurisdiction of the

01:36:03

tribunal was created to in-depth

01:36:05

analysis. As as as you

01:36:07

all day there with respect

01:36:08

to the jurisdiction of the

01:36:10

tribunal, with respect to its

01:36:13

framework of the differences. Reza

01:36:16

explain between from a framework

01:36:20

on an international law between

01:36:24

the tribunal and and Investor-state

01:36:27

arbitration tribunals, and they going

01:36:29

to issues of nationality which

01:36:31

which of course are not

01:36:32

that that I'm watching is

01:36:34

as that man explained, some

01:36:39

of those cases, I happen

01:36:40

to be on the Valentine's,

01:36:41

get to happen to be

01:36:42

counseled. So it's, it's close

01:36:44

to home and then going

01:36:47

into into the analysis of

01:36:50

of expropriation and then ending

01:36:52

up in in Damages by

01:36:56

my own little take on

01:36:57

on the on the use

01:36:59

of the year and us

01:37:02

the claims tribunal, as a

01:37:04

source of international law is,

01:37:06

is you know why? I'm

01:37:11

not that surprised that it

01:37:12
that it cited as a

01:37:13
source because it's it it

01:37:14
is it is indeed a

01:37:16
rigorous tribunal on one hand

01:37:20
and and even if we

01:37:21
try to go to the

01:37:23
quintessential article, 38 of of

01:37:27
of of the icj statute

01:37:30
in a 38 one day

01:37:32
it is it is purely

01:37:35
a Mac Dre source of

01:37:38
international law. So white, why

01:37:40
not using them with within

01:37:42

a week with some Rick

01:37:44

Ross, it is. So I

01:37:47

I think this this is

01:37:48

of course, parts of international

01:37:52

law and hopefully will be

01:37:54

no will retreating sources and

01:37:58

citations. And all of the

01:38:00

above that with with the

01:38:01

match of solidity, in any

01:38:03

event, we're very thankful for

01:38:05

for, for the amazing contribution.

01:38:09

I think that this has

01:38:10

been a true nature of

01:38:13

a panel that that that

01:38:15

we touch upon many aspects,

01:38:18

including current political consequences, and

01:38:23

perhaps influence of the year

01:38:26

on us claims tribunal in,

01:38:27

in, in the current crisis,

01:38:30

who knows whether response will

01:38:32

be used in in the,

01:38:33

in current complex and hopefully

01:38:36

will. Now we're going to

01:38:40

go into the Into the

01:38:43

year breakout rooms and the,

01:38:46

and the actually let me

01:38:48

see what will try to

01:38:51

breakout rooms. And if not

01:38:52

11 breakout room in formal

01:38:55

discussion, and let me know

01:38:56

that that from now on

01:38:58

the recording stops. And we'll

01:39:00

just, we can talk about

01:39:01

the weather and all the

01:39:02

colors of, of, of the,

01:39:03

of the rooms where you

01:39:05

are the graphics are or

01:39:07

whatever you want. So, thank

01:39:09

you very much, and it

01:39:09

was a pleasure to have

01:39:10

you. Well, good morning and

00:00:04

Welcome to our next panel

00:00:07

in the 2022 World, arbitration

00:00:12

update. It is the 9th

00:00:16

or 28th of September 2022,

00:00:19

and we have the privilege

00:00:20

of presenting to you. A

00:00:23

panel that I think will

00:00:25

be of particular interest to

00:00:27

everyone in the arbitration field

00:00:30

before there was investor-state arbitration.

00:00:32

There was the Iran us

00:00:34

claims tribunal and today the

00:00:37

topic of our panel is

00:00:38

influence of the Iran. Us

00:00:40

claims tribunal on public international

00:00:42

law and investment law. And

00:00:44

we have a fantastic group

00:00:47

of panelists to talk on

00:00:50

that topic. And I'm personally

00:00:53

very much looking forward to

00:00:54

hearing their insights into that

00:00:58

topic before that a few

00:01:00

administrative. Appoints, we, we just

00:01:05

wanted to thank our sponsors.

00:01:08

We've had a real swell

00:01:11

of support for World arbitration

00:01:14

update meet. We just need

00:01:15

to recognize our sponsors for

00:01:17

their incredible support and input

00:01:19

into this year's conference. As

00:01:22

folks know, we had this

00:01:23

is a 11-week conference with

00:01:25

19 different panels on an

00:01:27

array of topics related to

00:01:29

International arbitration. One of the

00:01:33

things that were very proud

00:01:34

of his, the, the objectives

00:01:37

of world arbitration update, which

00:01:39

is very much focused on

00:01:40
recognizing the diversity of international

00:01:44
arbitration. And the fact that

00:01:46
International arbitration could be found

00:01:48
basically in every corner of

00:01:50
the world and it has

00:01:52
a huge variety of different

00:01:55
cultures and legal Traditions supporting

00:02:00
it. And and Providing input

00:02:02
into it. And part of

00:02:04
the that the desire of

00:02:06
an objective, wow, is reflected

00:02:10
in the fact that we

00:02:11
have tried to cover off

00:02:13
a range of topics in

00:02:15
different regions of the world.

00:02:16
We had some excellent panels

00:02:18
yesterday on sub-Saharan Africa and

00:02:21
Mina this morning. The panel

00:02:24
was in Singapore, is it

00:02:28
just being a fantastic conference?

00:02:31
And I just wanted to

00:02:33
thank in that. In that

00:02:34
light, my colleague, I guess

00:02:37
I should have introduced myself.

00:02:38
My name is Ian Laird.

00:02:39
I'm partner here at the

00:02:43

Chrome molding in Washington, d.c.

00:02:44

my co-chair and the real

00:02:49

brains behind wow is a

00:02:52

doctor Jose Antonio Rivas, who's

00:02:53

on the screen and his

00:02:55

great. Team strategy, LLP Anna,

00:02:59

Anna Maria, Lucia. Turn a

00:03:02

fantastic job, hurting all the

00:03:04

cats and making the trains

00:03:05

run on time. To mix

00:03:06

a bunch of metaphor is

00:03:07

so full, dacian and kudos

00:03:10

to them for their excellent

00:03:11

work. So let me pass

00:03:13

on to Jose Antonio and

00:03:17

we can start to kick

00:03:19

off. This morning's panel was

00:03:22

the Antonio. Thank you. Thank

00:03:24

you again. And thank you

00:03:25

for your kind words. This

00:03:27

is this is as, you

00:03:27

know, a team effort and

00:03:29

the and the and I

00:03:32

very much enjoy new our

00:03:34

collaboration and partnership in this

00:03:36

in this very ambitious project

00:03:40

that which is at the

00:03:41

world arbitration update. As soon

00:03:43

as you mentioned, that are

00:03:44

our objectives are 12 updates

00:03:48

of the International Community on

00:03:50

issues of public, international, law,

00:03:53

investment, treaty arbitration, and the

00:03:55

international commercial arbitration. And the

00:03:57

other objective, is that the

00:03:59

centralization and I said it,

00:04:01

This morning in our previous

00:04:03

panel on, on the Ukraine

00:04:05

that crisis created by the

00:04:07

Russian invasion when I when

00:04:10

I looked at the screen

00:04:11

and when I reflected on

00:04:12

the legal traditions and faces

00:04:18

and and the and without

00:04:19

any remorse, this is this

00:04:22

is how how diversity looks

00:04:25

like. So we're really proud

00:04:29

of having a diverse diverse.

00:04:35

Pinal Vista in in many

00:04:38

respects, legal traditions and cultural

00:04:42

Traditions are nationalities here. We

00:04:46

are. We are. And in

00:04:52

the panel on the ranch

00:04:53

us claims tribunal and Anna

00:04:57

was commenting with the with

00:04:58

our panelists, a few minutes

00:05:00

ago. How this this topic

00:05:03

came to fruition at, within

00:05:05

the notion of of of

00:05:06

bringing topics of public International

00:05:08

that interrelated investor arbitration the

00:05:12

Rams claims tribunal and its

00:05:14

jurisprudence is one that that

00:05:17

has a strongly influence and

00:05:20

best transportation and public international

00:05:22

law. Seems to be like,

00:05:24

a lot of work being

00:05:26
done in in, in, in

00:05:29
the NBA, in the tribunal

00:05:31
and sometimes, not not, not

00:05:35
enough, being publicized and, and,

00:05:39
and updating the International Community,

00:05:40
about the impact of of,

00:05:43
of, of of that, I've

00:05:45
been alone in the US,

00:05:46
we would know much about

00:05:47
it because it involves the

00:05:49
us, but I think that

00:05:51
It's in the, why why?

00:05:52
The world is important for

00:05:54

everyone to know. So I

00:05:55

have had many requests by

00:05:56

by many and various continents

00:05:58

reaching out and saying, no

00:06:00

to you. Are you recording

00:06:01

this? Because, because it's not

00:06:03

in my time zone etcetera.

00:06:05

So, rest assured that, that,

00:06:06

that that will be posting

00:06:08

this video. And and we

00:06:11

will be launching a new

00:06:14

app so that people can

00:06:15

term search the, the, the

00:06:18

actual recording. So, with that,

00:06:22

I would like to introduce

00:06:23

Heather dark. And who is

00:06:24

that a legal adviser at

00:06:26

the Iran? United States games,

00:06:28

tribunal, Heather has as a

00:06:31

together with us being sort

00:06:32

of the brains of the

00:06:34

real brains behind this, this,

00:06:35

this panel we have been

00:06:39

exchanging, jurisprudence comments articles, to

00:06:43

choose what I believe they

00:06:45

are the strongest, and most

00:06:47

confident that panelist to talk

00:06:49

about this. This case law

00:06:52

and jurisprudence boats from the

00:06:54

Run claims tribunal tell but

00:06:57

also from investor arbitration and

00:06:59

academics as as well. Also,

00:07:02

Heather has not only been

00:07:05

at the resting stop, you

00:07:06

know, she was also an

00:07:10

attorney and Associate at White

00:07:11

& case. She has been

00:07:13

assisting legal counsel at the

00:07:15

permanent Court of arbitration. She

00:07:17

has also know, by the

00:07:19

way work and intellectual property

00:07:21

matters as a consultant. And

00:07:26

and when I, when I

00:07:28

look at what she has

00:07:29

done, it is quite quite

00:07:30

impressive to know, know the

00:07:32

breadth of her knowledge. And

00:07:33

that I were really, really

00:07:34

lucky to have her here

00:07:35

and to have partner with

00:07:37

her to put together this

00:07:38

panel. So I want to

00:07:41

embarrass you any anymore. And

00:07:44

by the way, she's also

00:07:46
a A scientist at 2

00:07:52
in in the sense of

00:07:53
a physics. So so we

00:07:55
will learn every little detail.

00:07:59
Went when we get closer

00:08:01
to a panel at 1,

00:08:02
all I can say is,

00:08:04
wow. Anyway, let's set. Let's

00:08:06
move forward. And Heather, you

00:08:09
have the floor and we're

00:08:11
really happy to have you

00:08:12
here. Wonderful. Thank you. Jose

00:08:16
Antonio, and thank you and

00:08:17

for the warm welcome, and

00:08:20

for the opportunity to moderate

00:08:21

the panel today. I'm actually

00:08:25

going to start with a

00:08:25

little bit of a description

00:08:27

of the of the tribunal

00:08:28

itself cuz I know that.

00:08:29

Some of our audience members

00:08:30

will be familiar, but others

00:08:32

may not. And then I'll

00:08:34

go on to introduce our

00:08:35

panel is cuz I kind

00:08:36

of forgot as the context

00:08:37

for their respective experiences. And

00:08:41

then I will explain how

00:08:43

we'll proceed for for today

00:08:44

session. So I'm to start

00:08:47

with the description of the

00:08:49

tribunal was established in 1981.

00:08:51

So that's more than 40

00:08:53

years ago, as part of

00:08:55

a negotiated settlement to a

00:08:56

severe crisis in relations between

00:08:58

Iran and the United States.

00:09:00

I previously, they had had

00:09:03

quite close economic military and

00:09:05

geopolitical pies and the immediate,

00:09:08

cause of the crisis, was

00:09:09

the Detention of 50 to

00:09:12

American citizens in the United

00:09:13

States Embassy in Tehran and

00:09:15

that was between November 1979

00:09:17

and January 1981, as well

00:09:21

as the measures that were

00:09:22

taken by the United States

00:09:23

in response, which included the

00:09:26

freezing of billions of dollars

00:09:28

worth of Iranian assets. So

00:09:32

the the settlement of this

00:09:33

of this crisis and relations

00:09:35

was Express in the form

00:09:36

of two declarations, and these

00:09:39

are declarations by the government

00:09:40

of Algeria who acted as

00:09:41

an intermediary in the negotiations

00:09:43

and the two states that

00:09:45

run in the United States.

00:09:46

Agree to be bound by

00:09:48

these declarations. The first, we

00:09:51

thought the general declaration and

00:09:52

that's it, that the substance

00:09:53

of obligations with the parties

00:09:54

and then I, what might

00:09:56

be most interesting for us

00:09:57

today is the claim settlement

00:09:59

declaration, which established the tribunal

00:10:01

itself. And the tribunal is

00:10:05

best described as a kind

00:10:06

of standing International arbitral tribunal

00:10:09

as it looks a lot

00:10:11

like a permanent body, but

00:10:12

it really isn't one. It

00:10:13

has actually quite limited jurisdiction

00:10:15

in terms of the subject,

00:10:17

matter of the disputes, the

00:10:19

time. Concerned, and the parties.

00:10:21

And most importantly, when it's

00:10:24
completed, all of its work,

00:10:25
it will cease to exist.

00:10:29
And the last point I

00:10:30
wanted to make sure in

00:10:31
this little brief introduction. Is

00:10:33
that the work that we're

00:10:33
doing today at the tribunal

00:10:35
relates exclusively to disputes between

00:10:38
the two states? And those

00:10:40
really either to the interpretation

00:10:42
and performance of the LJ's

00:10:44
declarations that I just described

00:10:46
or two contractual Arrangements between

00:10:49

the two states, for the

00:10:50

purchase and sale of goods

00:10:51

and service. Since they think

00:10:53

that tells you a bit

00:10:54

about the nature of the

00:10:55

tribunal as well. And I

00:10:59

previously in this is that

00:11:00

may be most relevant to

00:11:02

today's discussion. The tribunal

00:11:03

dealt with a very large

00:11:04

number of claims by private

00:11:06

parties against one or the

00:11:08

other government into this category

00:11:11

which formed the bulk of

00:11:13

the tribunals docket until the

00:11:14

the early 90s, I will

00:11:17

be the focus of the

00:11:18

discussion today because that concerns

00:11:20

be the influence of business,

00:11:22

body of jurisprudence on public

00:11:25

international law and investment law.

00:11:29

So now, I will introduce

00:11:31

our our panelists. I'll begin

00:11:34

to describe them in the

00:11:36

order that they will. They

00:11:37

will speak. So I will

00:11:38

begin with Benicar brezza at

00:11:40
the car. Who is my,

00:11:41
my friend and colleague at

00:11:42
the tribunal, he will be

00:11:44
addressing issues of jurisdiction. He

00:11:48
holds a ba and a

00:11:49
master's degree from Shahid. Beheshti

00:11:51
University in Tehran as well

00:11:53
as a PhD from Leiden

00:11:54
University. He has acted as

00:11:57
counsel and various commercial, and

00:11:59
investor-state arbitration and has also

00:12:01
been acting at the legal

00:12:02
adviser, and he was been

00:12:04

acting as legal adviser at

00:12:06

the eye used at the

00:12:08

tribunal since 2013, He recently

00:12:11

published a book with Brill

00:12:12

that addresses, the role of

00:12:14

the domestic, love the whole

00:12:15

state and determining the jurisdiction

00:12:18

rs9, Materia, of investment, treaty

00:12:20

tribunals, the welcome weather. The

00:12:24

next time, we will hear

00:12:26

from Demi, Charlotte song, who

00:12:28

will be addressing you on

00:12:29

issues of nationality. So dumb,

00:12:32

you have studied and Columbia

00:12:34

and recently completed his PhD

00:12:36

at Cambridge. He is among

00:12:39

other things a lecture at

00:12:41

SSA in Paris, and also

00:12:43

a senior analyst for publication

00:12:45

that, I'm guessing many of

00:12:47

us read on it, on

00:12:47

a daily basis. The investment

00:12:49

arbitration reporter. The one of

00:12:53

the most interesting things about

00:12:55

the tribunal is that particularly

00:12:58

in the early years is

00:12:59

that almost all of its

00:13:00
output has been made public.

00:13:02
So not just towards. But

00:13:04
I mean the wards before

00:13:05
that the bulk of the

00:13:06
published material, And I would

00:13:09
done is done. He's he's

00:13:10
performed, it's really fascinating, a

00:13:11
quantitative analysis of the tribunals

00:13:13
output which he's captured in

00:13:15
an article which was published

00:13:17
in the Journal of international

00:13:18
dispute settlement, which I highly

00:13:20
recommend reading on this is

00:13:22

called a data analysis of

00:13:24

the Iran, US Bank tribunals

00:13:26

jurisprudence lessons for international disputes

00:13:29

settlement today. Okay. Next we

00:13:36

have any British rushclips who

00:13:39

is a member of the

00:13:40

international law commission and also

00:13:42

the consultant for Withers LLP

00:13:43

in London. He holds a

00:13:46

PhD in international law from

00:13:47

the National University of Singapore

00:13:49

and he began his studies

00:13:51

at the iOS lock College

00:13:52

in Pune in India. He

00:13:55

has acted as counsel in

00:13:56

many cases including before the

00:13:58

international court of justice of

00:13:59

the Supreme Court of India.

00:14:00

And he was also a

00:14:03

member of the study group

00:14:04

that was constituted by the

00:14:05

law Commission of India. To

00:14:07

address the 2015 model bit

00:14:11

prepared by India, he is

00:14:15

also the author of a

00:14:16

book entitled, the protection of

00:14:17

foreign investment in India and

00:14:18
investment, treaty arbitration. That's been

00:14:21
published with clear. So he

00:14:23
will be addressing you today

00:14:24
on indirect tax preparation, which

00:14:27
was also the subject of

00:14:28
a very thought-provoking piece that

00:14:30
he published in the exit

00:14:31
review. Entitled problems with the

00:14:33
jurisprudence of the year on

00:14:35
us claims tribunal on indirect

00:14:36
expropriation, welcome any Rita. And

00:14:42
last but certainly not least,

00:14:43
we'll hear from Kabir dugl

00:14:46

kabira teaches on various aspects

00:14:48

of international dispute settlement of

00:14:50

Columbia and up for them.

00:14:52

He holds but not one

00:14:54

but two phds, one from

00:14:55

an STD from Harvard Law

00:14:57

School and a PhD from

00:14:58

Leiden University and he began

00:15:01

his academic subject 3 at

00:15:03

the government law College in

00:15:04

Mumbai. I like to go

00:15:05

back to the very beginning,

00:15:06

not high school, just University,

00:15:10

don't worry. He is also

00:15:13

a senior adviser with the

00:15:16

international arbitration group, but Arnold

00:15:17

& Porter in New York

00:15:18

and act. Both as arbitrator

00:15:20

and his Council and various

00:15:22

investors State and Commercial cases

00:15:23

and Kabir. We'll be rounding

00:15:25

out our discussion today with

00:15:27

a presentation on Damages. So

00:15:28

welcome to Deer And the

00:15:32

last but not least, we

00:15:33

will, the plan for today,

00:15:35

is that each of the

00:15:36

panelists will speak for approximately

00:15:39

10 minutes but we will

00:15:41

then take questions from you.

00:15:42

The audience via the chat

00:15:44

so you can put them

00:15:45

in just directly into the

00:15:46

public chat and I will

00:15:49

carefully select. See the juiciest

00:15:50

questions for the for the

00:15:51

panelists. And then to close

00:15:54

I I want to give

00:15:56

each of our panel, has

00:15:57

an opportunity to to spend

00:15:59

a few minutes, making kind

00:16:00

of concluding observations on on

00:16:02

the discussion today cuz everybody

00:16:04

will be discussing quite discreet

00:16:05

topics but to be nice

00:16:06

kind of have a, a

00:16:08

bigger picture at the end

00:16:09

of today's discussion. And then

00:16:12

we will make sure that

00:16:13

at the end. We still

00:16:14

have time for some sort

00:16:16

of informal interactions in the

00:16:18

bigger rooms. So I think

00:16:20

that's it from me. And

00:16:22

so let's begin Reza, you

00:16:23

have the floor. Thank you,

00:16:25

thank you so much. Have

00:16:27

a slime So we say

00:16:49

everyone, this is it's a

00:16:52

great honor to be able

00:16:54

to trust you on the

00:16:56

occasion of poltava tration. Update

00:16:58

2022, I'm grateful to the

00:17:01

very competent chest is let

00:17:04

me know if it's a

00:17:11

privilege to play a part

00:17:14

in this today is to

00:17:18

open the panel discussion on

00:17:20

the England's national day and

00:17:26

more specifically. I'm going to

00:17:29

talk about the jurisdiction of

00:17:31

these two institutions and fruit

00:17:33

to see to what extent

00:17:36

the practice of all usdt.

00:17:41

Please bear with me. As

00:17:43

I use the shortened form

00:17:45

of iusd or Iran. Us

00:17:47

claims tribunal and told me

00:17:54

that, so you would appreciate

00:17:56

that. Before I embarked upon

00:18:03

my puppy. As the first

00:18:06

speaker on the panel, I

00:18:07

have to say something about

00:18:09

the thing of This Woman's

00:18:10

Work. Always gives professionals some

00:18:17

level up. You keep asking

00:18:19

yourself to what extent, I

00:18:22

shall what my kitties for

00:18:26

this office. I did not

00:18:28

have to wait for long

00:18:29

to find some very first

00:18:32

references. Speaking in the context

00:18:48

of the occurrence of a

00:18:49

refer to one of the

00:18:53

five year old. It said

00:18:56

to follow me. Public housing

00:18:59

versus described an entire operation.

00:19:05

Is the point of managers

00:19:47

by the government and the

00:19:49

manager of the mountain? This

00:20:01

is remarkable since the recall

00:20:10

and final job in private

00:20:12

adoption was shut down for

00:20:16

the last hour Steve being

00:20:22

relied upon. So what you're

00:20:25

talkin about a very much

00:20:27

relevance Now, they said my

00:20:32

topics today. My specific topic

00:20:34

today is the jurisdictional? Yes,

00:20:54

yes, I want specifically. So

00:20:57

I will talk about. I

00:21:05

will address the nation state

00:21:07

concentration, the basis of the

00:21:19

allowable. The old religious picture

00:21:23

frame. Look at the CSP,

00:21:26

it's really resembles a set

00:21:28

of preparations state to state

00:21:32

and investor-state arbitration. They are

00:21:36

very skinny. I should say

00:21:39

when the sea is groundbreaking,

00:21:50

it directed by Chase against

00:21:56

the state before and yet,

00:22:02

anyways, That thinks that there

00:22:18

are however, a few main

00:22:20

difference between the princess. That

00:22:35

dispute settlement, probation and investment

00:22:38

treaties are usually by Other

00:22:41

Nation. CSD however, does not

00:22:51

Avail yourself of such a

00:22:54

luxury. It's more self-contained. And

00:22:57

it's self-regulated more and more.

00:22:59

So, it's like you, but

00:23:01

somehow, I, please from the

00:23:04

subject matter to design its

00:23:13

own jurisdiction, especially in the

00:23:16

First Years, first and second,

00:23:28

That provides for a procedural.

00:23:33

Remind you of Westmont regions

00:23:41

are Prostitute of Tupac's, the

00:23:45

procedure protection of the steak

00:23:56

and a outstanding. There was

00:24:01

no reason. For the fire

00:24:08

has to be borne in

00:24:20

mind when referring to the

00:24:22

president. Yes, we had did

00:24:45

not have the substantive. Now,

00:24:53

it's on to the second,

00:24:54

the nature of a rising

00:25:06

off to dialysis, which was

00:25:19

dealing with outstanding outstanding respected.

00:25:52

because, The parties. Cases could

00:26:09

be the proper source of

00:26:10

information. So they already that's

00:26:20

what defined as a result

00:26:23

of best. They just brought

00:26:25

home, some very vague and

00:26:27

extra creation are the measures

00:26:31

of property rights to be

00:26:35

able to squeeze as many

00:26:37

slaves as they could before.

00:26:39

The tribunal, the oldest made

00:26:44

the work of the Triangular,

00:26:45

more General in comparison to

00:26:48

West Chester. No, I'm driving

00:26:54

to Worcester and up my

00:26:55

presentation with subject to place

00:27:06

a rising a complex operation,

00:27:09

and other measures. I was

00:27:15

going to talk about. There

00:27:20

is Darkness as down or

00:27:22

coach of them. That's the

00:27:24

linchpin of differences of your

00:27:33

actions. Show me faces of

00:27:35

you regarding what investment is,

00:27:36

the definition of investment is

00:27:46

the concept with which is

00:27:48

why the 45 So did

00:28:10

your station of the tribunal

00:28:11

as much Road subject, matter

00:28:14

voice. this is very important

00:28:18

because example, if you want

00:28:20

to rely on you, Find

00:28:45

the legal basis to treat

00:28:57

violations of substantive. Because there

00:29:11

are substandard standard go to

00:29:39

Pago. Investor-state arbitration don't have

00:30:03

to resolve claims based on

00:30:07

customer. One, that could be

00:30:11

exceptions. This is in contrast,

00:30:21

the game today. Are you

00:30:22

asleep? Because I've been robbed

00:30:33

other than a general rule.

00:30:35

34, if you're deciding a

00:30:46

case based on a situation,

00:30:56

where is provided for the

00:31:06

operation for the standards of

00:31:09

creation and formula. So in

00:31:23

conclusion, I would say papa

00:31:25

Reliance on the work to

00:31:34

find the right match to

00:31:38

be well-suited, but you get

00:31:58

a picture of what does

00:32:11

that pool supposed to be

00:32:13

position? Has to be considered

00:32:16

from the Merrick angle of

00:32:18

the and thanks. This is

00:32:20

the problem. Pull up the

00:32:22

deer Hannah list of a

00:32:25

refrain from spreading back. That's

00:32:29

about it. Thank you. Thank

00:32:38

you very much Reza. And

00:32:39

that was excellent on time,

00:32:41

and it gives us a

00:32:45

little bit of food for

00:32:46

thought, for one of the

00:32:47

later presentations that will come.

00:32:48

I'm not going to name

00:32:50

any names. But before we

00:32:51

get there, we will hear

00:32:53

first from dumb, yay, on

00:32:54

the issues of nationality and

00:32:56

so dumb. Yeah, you have

00:32:57

the floor. Sure, some slides

00:33:03

that have if I can

00:33:04

hear me from texting and

00:33:15

white background with black hair.

00:33:37

I don't care a lot

00:33:38
of with subject was that

00:33:39
was respecting National claims by

00:33:43
Jewel Nationals against one of

00:33:45
their own State. I don't

00:33:47
think that we might take

00:33:49
for granted know today has

00:33:50
been cycling was not with

00:33:52
my friends. What happened today

00:34:05
a lot about the season

00:34:06
32 a 18ft, which present-day

00:34:10
states did the fa-18 claim

00:34:25
against one of their home

00:34:28
state. And I talked to

00:34:29

Nene and practice. Dad said

00:34:39

the 27th. Which was one

00:34:52

of the writers of the

00:34:54

animals that come in at

00:35:14

the time then you can

00:35:16

see the Hague Convention of

00:35:17

states to decide who was

00:35:29

our Nationals at days older

00:35:31

than having to deal with

00:35:34

that. Was kind of really

00:35:38

no claim against a puddle

00:35:39

National Convention was about to

00:36:01

be over here. Is that

00:36:14

maybe one of us? Is

00:36:25

it real? And I picked

00:36:26

you National in Chief of

00:36:28

the purpose of And eventually

00:36:30

the number of the words

00:36:47

imply that effective naturalization test,

00:36:51

they do, do I have

00:37:06

finally before the season 13

00:37:08

temperature ruled on a drill

00:37:11

National fancy made by Justin

00:37:18

said, don't know what is

00:37:20

a real affection? Aeronauts weather

00:37:34

Nationals magic protection. That it

00:38:07

is. What's what's your? What's

00:38:09

a governing? What's going on?

00:38:29

Never sighted and then you

00:38:32

got a piece of paper

00:38:33

with her. I'll be going

00:38:34

through a certain letter about

00:38:42

the time in fact that

00:38:43

Noteboom and majoring both of

00:38:45

us if we don't get

00:38:55

the money anyway. And anyways

00:39:13

This decision was a companion

00:39:14

was emptied. Most claims were

00:39:26

all the marriage would do

00:39:27

fruit mold. And then years

00:39:29

later they wear, that's all

00:39:37

I see, is a signal

00:39:50

that surprising. Because the Old

00:40:01

National Bank, Show me to

00:40:13

go to the rest of

00:40:14

it. In that case, where

00:40:38

you see your very eyes

00:40:39

shift is B on Titan

00:40:41

versus Dominican Republic, where's the

00:40:43

majority? And you could not

00:40:49

file a customer interest represented

00:40:52

as to what extent customer

00:41:03

interest I think majority, but

00:41:27

at that time, when Valentine

00:41:29

was adopted, the word in

00:41:31

back at was not available

00:41:32

and they update the claimants

00:41:34

in an article by Google

00:41:39

every treatment of you adults,

00:41:40

peace award. You can probably

00:41:42

still want to get back

00:41:42

out of it. If you

00:41:50

believe that such as I

00:41:51

ever heard it in in

00:42:01

all the cases and belted

00:42:03

dress, and most recently played

00:42:09

that most relevant to us

00:42:15

yet, because they are very

00:42:16

stupid. All the cases at

00:42:25

the truth from claiming an

00:42:31

investment arbitration but the reasoning

00:42:34

and written very recently in

00:42:36

August 2020 to drive me.

00:42:38

How many verses Christopher which

00:42:40

was the deciding order a

00:42:42

Domestic for in domestic investment

00:42:44

that customer And they finally

00:42:50

have to say that I'm

00:42:52

sick of the best proof

00:43:00

to do. You prove that

00:43:01

your nationality? Which one is

00:43:08

it the tight spot as

00:43:12

the tribunal just to say

00:43:14

or do you focus on

00:43:15

the investment which was a

00:43:17

split in Ballantyne versus the

00:43:19

Dominican Republic. And finally, that's

00:43:22

that's what I find the

00:43:22

most of the Avengers actually

00:43:26

never been applied to my

00:43:30

knowledge, even mentioned it so

00:43:32

far mostly because that's so

00:43:36

far. I just found, I

00:43:37

found that the dummy. The

00:43:39

nationality was that of the

00:43:40

rest of the state said

00:43:41

it, we were thrilled to

00:43:43

see many cases of your

00:43:45

nose. one of us and

00:43:49

then we'll try to come

00:43:50

about physics and say, hey,

00:43:52

the national wonderful. Thank you

00:44:03

very much, a salad. And

00:44:13

I will give the floor

00:44:15

onto a tiny Buddha. Thank

00:44:18

you, heather. I missed also

00:44:20

take this opportunity to thank

00:44:21

a prophecy. Young lady. It

00:44:24

was sent to me, reverse

00:44:25

for this very kind invitation

00:44:27

and strategy for all the

00:44:29

hard work can organizing the

00:44:31

Spanish. My thoughts today in

00:44:34

the next 10 minutes is

00:44:36

try to explore the relevance

00:44:38

of the jurisprudence of Iran.

00:44:40

Us claims tribunal in relation

00:44:42

to extrapolation, which within itself.

00:44:45

Also included in Direct Express

00:44:47

Creation in the jurisprudence of

00:44:50

investment treaty operations and also

00:44:53

generally in the context of

00:44:55

General International Is a good

00:44:59

International lawyer the starting-point for

00:45:01

an interpretation or to be

00:45:03

the treaty, which is going

00:45:04

to form the basis of

00:45:06

the dispute. See if you're

00:45:09

trying to understand the precise

00:45:11

nature and scope of the

00:45:13

determinations made by the Iran,

00:45:14

us claims tribunal in the

00:45:17

context of indirect expropriation and

00:45:19

expectations and the stocking Point.

00:45:22

What could be the text

00:45:24

which form the basis of

00:45:26

the decisions taken by the

00:45:27

Iranians claims Tribunal. And the

00:45:30

starting point there. We what

00:45:32

it what was Article 2

00:45:34

of the Claims Settlement declaration

00:45:36

about which has I love

00:45:38

elaborately spoke about Article 2

00:45:42

of the Claims Settlement declaration

00:45:45

rather broad close in order

00:45:49

to test the actions of

00:45:51

one of the state's. Although

00:45:53
technically often it would be

00:45:54
in the jurisprudence of the

00:45:56
year on us claims travel,

00:45:58
only one state of the,

00:45:59
it was meant to be

00:46:00
one of the states. So,

00:46:04
the standard which article two

00:46:05
proposed was Earth, it had

00:46:07
other standard for the one,

00:46:09
which is putting in, from

00:46:10
the perspective of expropriation is

00:46:12
a expropriation and other measures

00:46:15
affecting property rights. No, it

00:46:19

is the catch. What's the

00:46:21

standard provides in Article 2

00:46:23

of the claim settlement declaration?

00:46:25

Is expropriation on the one

00:46:28

hand and other measures affecting

00:46:31

property rights on the other?

00:46:34

These two terms fall on

00:46:36

two ends of the spectrum

00:46:38

of its proprietary actions. Or

00:46:40

other just the actions or

00:46:42

measures, which estate might undertake

00:46:45

An expropriation by itself is

00:46:47

where the state takes the

00:46:48

property. That is a property

00:46:50

has been transferred to the

00:46:52

state or queen if it's

00:46:53

instrumentalities that would be a

00:46:55

classical case of expropriation or

00:46:58

nationalization. On the other hand,

00:47:01

any other measure affecting property

00:47:04

is Broad enough where by

00:47:06

any measure which is going

00:47:08

to affect the interests of

00:47:09

the investor in a measure,

00:47:10

which is going to affect

00:47:11

the property, might create rights.

00:47:13

That is what was conceptualized

00:47:15

by Article, 2 of the

00:47:17

Iran, US states travel. These

00:47:21

two analogies of this kind

00:47:22

of Clauses that we find.

00:47:24

There are some investment treaties

00:47:26

entered into by France, which

00:47:28

contains any other measures affecting

00:47:30

property rights meaning it doesn't

00:47:32

matter. What was the nature

00:47:33

of the matter as long

00:47:34

as lost with suffered? The

00:47:36

hosts take those responsible to

00:47:38

compensate for the loss that

00:47:40

comes to mind in particular

00:47:41

is the is the France

00:47:42

Mexico, bilateral investment. So, you

00:47:46

can have this other side

00:47:48

where the nature of the

00:47:49

measure is mostly irrelevant inconsequential.

00:47:53

What, what lies in between

00:47:54

is the standard of indirect

00:47:57

expropriation. Find me a safe.

00:47:59

Who's really the black hole?

00:48:01

And it is that black

00:48:03

hole or black hole, is

00:48:04

normally something that exists in

00:48:06

the space which is black

00:48:08

and it sucks up everything

00:48:09

and we don't know where

00:48:10

things came from and where

00:48:12

have they are chemically gone.

00:48:14

Indirect expropriation seems to be

00:48:16

in the jurisprudence of investment

00:48:18

driving with some kind of

00:48:19

this black hole. Nothing. You

00:48:21

don't even screams tribunal was

00:48:23

never deciding indirect expropriation cases

00:48:26

because it was either deciding

00:48:28

expropriation cases or it was

00:48:30

applying an extremely broad standard

00:48:32

which meant any other interference

00:48:34

with property rights, which is,

00:48:36

by itself out. Stand Indirect

00:48:39

expropriation Judah, Kelly is something

00:48:42

in between and that's what

00:48:44

most investment treaties provide. But

00:48:47

we do see in the

00:48:48

jurisprudence of investment treaty, not

00:48:50

so much anymore. But in

00:48:51

the past as one might

00:48:53

say, during the early hey

00:48:54

days of investment arbitration and

00:48:57

investment arbitration was new and

00:48:58

every effort was made to

00:48:59

expand the treatment standard investment

00:49:02

treaties as much as one

00:49:03

can. The jurisprudence of Iran

00:49:06

us claims tribunal turned out

00:49:08

to be quite helpful and

00:49:09

hand. How did it turn

00:49:12

out to be helpful in

00:49:13

handy. Something needs to be

00:49:14

explored as well. Rosa went

00:49:18

to doubt the decision in

00:49:19

in started housing, which is,

00:49:21

of course, one of the

00:49:21

most cited examples of all

00:49:23

definitions of indirect expropriation. Just

00:49:27

to remind you audience. Again,

00:49:28

the news claims tribunal wasn't

00:49:30

decided until expropriation cases, as,

00:49:32

Under the Sea, a bilateral

00:49:34

investment treaty So what does

00:49:37

it started housing? The tribunal

00:49:38

held was even if the

00:49:40

title of the property remains

00:49:41

with the with the person

00:49:43

wore all the investor. If

00:49:45

the value of the property

00:49:46

is lost than that amounts

00:49:49

to an expropriation. No started

00:49:53

housing is not the starting

00:49:54

point of this little students.

00:49:55

The real starting point is

00:49:57

IIT versus Iran where for

00:49:59

the first time this possibility

00:50:01

of indirect expropriation, without using

00:50:03

the word indirect expropriation was

00:50:06

expressed Interesting. It wasn't expressed

00:50:10

in a Judicial decision, it

00:50:12

was expressed in a separate

00:50:13

in a second. So, the

00:50:17

parties had come to a

00:50:18
settlement, the matter was closed,

00:50:20
but one of the arbitrator

00:50:22
said, I still want to

00:50:23
write a separate opinion. It's

00:50:25
pretty much like you prepare

00:50:28
for an exam and the

00:50:28
exam is canceled, but you

00:50:30
still insist that. I want

00:50:31
to write the exact And

00:50:34
that too, when you don't

00:50:34
know what the question paper

00:50:36
was, but you still decide

00:50:37
to write whatever, you know.

00:50:38

And it's really helpful to

00:50:40

know, the permanent Court of

00:50:41

international arbitration International lawyers. They

00:50:44

say used to be motorized

00:50:45

in the past but they

00:50:46

nevertheless tried to guide them.

00:50:47

And one of the guidance

00:50:49

to the judges of the

00:50:50

permanent Court of international Justice

00:50:51

bows that you can right

00:50:53

to dissent, against to this

00:50:55

positive against the decision of

00:50:57

the Court. Let me find

00:50:59

her is, there's no decision

00:51:00

because parties of Simply entered

00:51:02

into a settlement. But when

00:51:04

arbitrators, nevertheless, he decides, who

00:51:05

decides to write, probably a

00:51:07

nice American Law Journal article,

00:51:09

which ends up as a

00:51:10

dissenting opinion, separate opinion, rather

00:51:12

trying to alter the course

00:51:14

of the Jewish groups. And

00:51:17

what we find is that

00:51:17

the same case is being

00:51:19

cited there after multiple times

00:51:21

and it made its way

00:51:22

through the jurisprudence of the

00:51:25

invest in 5 minutes. American

00:51:27

made it to the jurisprudence

00:51:28

of investment tribals you to

00:51:30

come across them. Some shocking

00:51:32

things, which came across one

00:51:34

of what one of which

00:51:35

was infected versus Mexico. The

00:51:38

tribunal announced that the Judas

00:51:39

Prudence of Iran, us claims

00:51:41

tribunal is customary, international law.

00:51:44

Laurel Elementary point when asked

00:51:46

if something is customary international

00:51:47

law, show me open your

00:51:49

you receive messages yet, he's

00:51:50

very open usurers and the

00:51:52

state practice to prove that

00:51:54

the custom but since courts

00:51:56

and tribunals are the adjudicators

00:51:58

that can very well see.

00:51:59

Once we declare something to

00:52:00

be accustomed, it is a

00:52:02

custom. I'm reminded of the

00:52:04

of the instant when I

00:52:05

was telling my Milo one

00:52:07

of the teachers to its

00:52:09

British Parliament is Sovereign, it

00:52:11

can do everything except converting

00:52:12

a man into a woman

00:52:13

and a woman into a

00:52:15

man for real. Now, I

00:52:16

can even do. So, we

00:52:18

do see that kind of

00:52:19

Indian students with Sandy. This

00:52:21

ain't a Judas, Prudence gets

00:52:22

picked up in half an

00:52:23

ounce. Customary. International law has

00:52:26

problems with any such announcement.

00:52:28

The other problem is it

00:52:30

is not just the standard

00:52:31

that was applied. It was

00:52:33

also the substantive law which

00:52:35

was supplied Article 5 of

00:52:37

the same claim settlement decoration

00:52:39

provides first choice of flow

00:52:40

and all it starts. If

00:52:42

I could start by saying

00:52:44

respect for the law, Kisses.

00:52:47

Are to be decided by

00:52:48

the respective glow choice of

00:52:50

floor. Closes, of course, it

00:52:51

has a reference to international

00:52:52

law, but then it also

00:52:54

makes a difference to create

00:52:55

another commercial practice. Several several

00:52:59

decisions of the Iranians claims

00:53:01

tribunal, have from time to

00:53:03

time pointing out. If they

00:53:04

have applied Lexmark khuntoria rather

00:53:06

than public international law, search,

00:53:08

what are the elements of

00:53:11

public international law investors boots.

00:53:13

In fact, in most of

00:53:15

these cases, when the expropriation

00:53:17

has been discussed and in

00:53:18

some reference to scholarly discussion,

00:53:20

what I think's going to

00:53:22

be interesting me about the

00:53:24

American jurisprudence under the domestic

00:53:26

constitutional law. So that's the

00:53:31

strange and the doubtful origin

00:53:33

and Genesis of the Wayne

00:53:35

which team that expropriation description

00:53:37

has been used from varicose.

00:53:40

Not supposed to have existed

00:53:41

but this time now In

00:53:45

the investment arbitration jurisprudence that

00:53:47

I said during the early

00:53:48

days, when the party was

00:53:49

on and efforts were being

00:53:51

made to expand the treatment

00:53:52

standards, this was seen as

00:53:54

an effort to expand the

00:53:55

standard of expropriation and what

00:53:57

came into currency was the

00:53:58

sole effects of cream according

00:54:01

to fix. It didn't matter

00:54:03

why I stay to them

00:54:04

to take in a regulation,

00:54:05

losses suffered, you have to

00:54:07

pay compensation. This will effect

00:54:10

of effects. Doctrine, was one

00:54:11

of the major reasons of

00:54:13

criticism from States. And what

00:54:16

we do, see a backlash

00:54:17

against several other things in

00:54:19

one of the major things

00:54:20

being the sole affect what

00:54:22

we, no seen jurisprudence is

00:54:24

a realignment in investment treaty

00:54:26

arbitration. The tribunal just said,

00:54:29

soleffect Doctrine is not the

00:54:31

only test. It is one

00:54:33

of the tests and it

00:54:35

is a part of a

00:54:35

broader gamut of tests that

00:54:37

be with a flag. The

00:54:39

other tests, the word of

00:54:40

life is nature of the

00:54:42

measure and see if the

00:54:45

measure is a little legitimate

00:54:47

public interest, Bona fides, non-discriminatory

00:54:50

matter. If it is a

00:54:51

legitimate public interest measure, then

00:54:54

we would probably hold such

00:54:56

a measure and irrespective of

00:54:58

the consequences of the measure

00:55:00

on the foreign investor. Investment

00:55:02

tribunal, to introduce the night

00:55:04

of the neutralization test. That

00:55:06

is the investment. What we

00:55:08

completely effaced and I T

00:55:11

B on the form. The

00:55:13

core of this to the

00:55:14

students. They think you say

00:55:16

Tony, the fundamental elements of

00:55:18

the property that ought to

00:55:19

be lost but then the

00:55:21

question is, what the fundamental

00:55:22

elements mean is it complete

00:55:24

destruction, of ocean, destruction, destruction

00:55:27

of core elements, destruction of

00:55:29

ancillary elements. What is core,

00:55:31

what is ancillary a lot

00:55:33

of questions? But what we

00:55:35

do see, is in the

00:55:36

realignment off the cutest poodles

00:55:39

in Investment Drive units. And

00:55:41

that's the alignment is an

00:55:42

effort. Their investment tribunals are

00:55:44

now trying to a lot

00:55:46

to keep them self a

00:55:47

little bit away from the

00:55:48

effect of Euro Honduras, claims

00:55:50

tribunal on the, interpretation of

00:55:53

indirect expropriation, what they do.

00:55:55

However, Is the use the

00:55:58

definition which is a very

00:55:59

nice description. But apart from

00:56:02

that nice description as to

00:56:04

what in that expropriation is

00:56:05

badussy, that'll try. Those are

00:56:08

clearly depart from the social

00:56:09

effects. Queen and have moved

00:56:11

towards the nature of the

00:56:13

measure and then use the

00:56:15

leaf extract win as only

00:56:16

one of the one of

00:56:17

them. I think it's probably

00:56:20

an interesting, a shift in

00:56:22

the jurisprudence and open it.

00:56:24

So happens, that men tribal

00:56:25

streetwear necessarily expand the scope

00:56:28

of treatment standards than they

00:56:30

have, to be food than

00:56:31

they are to be softened.

00:56:32

First, take a more reasonable

00:56:34

approach and I think it's

00:56:35

really about finding a balance

00:56:37

of just protecting my investments

00:56:45

all the time for protecting

00:56:46

regulations on the time with

00:56:48

a beautiful balance. That's what

00:56:49

investment should I invest? Bilateral,

00:56:51

investment. Treaty was in that

00:56:53

and I do think this

00:56:55

shift of the stunts. Fencing

00:56:57

from the date on us

00:56:59

claims tribunal. And realignment is

00:57:01

a healthy move in in

00:57:02

the jurisprudence of investment tribunal,

00:57:05

which also shows that the

00:57:06

investment tribunal has matured and

00:57:08

thank you very much. Thank

00:57:12

you very much, says, that,

00:57:13

excellent presentation. And it's, it's

00:57:15

interesting to to, to hear

00:57:17

from Donnie about how the

00:57:19

picture is maybe a bit

00:57:20

more mixed about, whether tribunal

00:57:23

I said distancing themselves from

00:57:24

from the tribunal's jurisprudence and

00:57:26

then an expropriation, maybe the

00:57:27

the trend is a bit

00:57:28

more clear. That's an interesting

00:57:30

Counterpoint. So are our next

00:57:33

step for the center is

00:57:35

a Doug and I his

00:57:36

spies are up on the

00:57:37

screen so he's ready to

00:57:38

go Austin. Think you let

00:57:41

me just start off by

00:57:41

saying any conference that's called.

00:57:44

Wow. Just wow. That's awesome

00:57:47

and I'm very grateful to

00:57:49

my buddies. Ian. Jose Antonio

00:57:53

Heather, thank you for the

00:57:54

invitation really timely and fun

00:57:57

topics. I'm delighted to be

00:57:58

here and to my fellow

00:58:00

panelists. You know, it's always

00:58:02

tough to English. You know,

00:58:04

I always joke and cap

00:58:05

last reason to Beauty, but

00:58:07

that's only to make me

00:58:08

feel good about my life.

00:58:10

I'm going to be talkin

00:58:12

about the impact of the

00:58:13

Iran us claims tribunal. When

00:58:16

it comes to damages, this

00:58:18

is the topic that makes

00:58:19

my head hurt. And so

00:58:22

I thought, why not talk

00:58:23

about it, right? Sucker for

00:58:25

punishment, but it is a

00:58:28

very complicated and unsettled area.

00:58:32

I would actually stay in

00:58:34
international law at large. So

00:58:38
I think it's worth exploring

00:58:39
and seeing how the IUSB.

00:58:44
He has influenza thinking in

00:58:46
this area. No, I need

00:58:49
my buddy, I need to

00:58:50
just mentioned, we should always

00:58:51
start off with the treaty.

00:58:53
And I think that is

00:58:54
a good place to start

00:58:55
in the past and owner

00:58:58
of Heather, and Ian. I

00:59:01
would put up the Canadian

00:59:02

model 3D but they changed

00:59:05

it to your ago and

00:59:07

they stay the same thing

00:59:08

and many more words in

00:59:09

that annoyed me. So we

00:59:11

will now call Logan Marika,

00:59:13

the going to look at

00:59:14

the American model B. And

00:59:16

just to get an example

00:59:18

of what are representative, treaty

00:59:21

tells us on damages, the

00:59:24

answer has very little, you're

00:59:27

likely going to find any

00:59:30

indication of Damages, only. And

00:59:33

to go Taylor Swift. You

00:59:34

will never ever find anything

00:59:36

except in the expropriation clothes

00:59:39

where you're touring in. The

00:59:43

example you see in front

00:59:43

of you article 61, you

00:59:46

know, you cannot explore. Unless

00:59:49

which is amazing to use

00:59:50

double negatives to say a

00:59:52

positive. But why not you

00:59:54

meet these conditions public purpose,

00:59:56

non-discrimination due process of law

00:59:58

and then they tell us

01:00:00

you got to be compensation.

01:00:03

The relevant article for resume.

01:00:05

The damages perspective is 6

01:00:07

to move your toes. That

01:00:09

the damages shall be fair

01:00:12

market value without linking, the

01:00:15

notion of compensation to tell

01:00:19

me the Konami to a

01:00:20

financial term and they're giving

01:00:23

an indication of when do

01:00:25

you value the investment? Beer,

01:00:27

said it's the date before

01:00:29

the Explorer creation took place.

01:00:31

The only standard deviation The

01:00:38

tool for expropriation. The compensation

01:00:43

must be an economic model,

01:00:46

the fair market value, right?

01:00:49

Which Economist will tell you

01:00:50

is understood as a willing

01:00:52

buyer in willing seller and

01:00:54

beautiful that evaluation date must

01:00:57

be the date before the

01:00:58

explosion took place. Is this

01:01:02

leads to the medical question?

01:01:04

What do you do for

01:01:05

non-explosive creation, standards? And as

01:01:09

a Judas prudence's, interestingly developed,

01:01:12

what if you don't meet

01:01:15

the conditions given in 61

01:01:18

right now while you can

01:01:20

explore. We're now. If you

01:01:23

need to condition your Explorer,

01:01:25

creation becomes, if you don't

01:01:29

meet one of more than

01:01:30

50 conditions expropriation, as unlawful

01:01:33

stand for in unlawful expropriation,

01:01:37

do we apply the same

01:01:39

fair market value compensation and

01:01:49

be able to see and

01:01:50

believe that as a question

01:01:52

for folks to think about

01:01:53

whether or not you agree

01:01:55

with that. But this is

01:01:58

what treaty tell, Dustin, you

01:02:00

know, again, to follow my

01:02:02

friend and you don't suggestion,

01:02:03

right? The other big sores

01:02:04

Beckham's costume. Let's look at

01:02:07

what custom tell us when

01:02:09

it comes to compensation for

01:02:11

damages. And we're going to

01:02:13

look at the most mispronounced

01:02:15

case in international law, what

01:02:19

most English speakers will call

01:02:21

a speech or Sue or

01:02:22

chores down Factory case which

01:02:25

makes every international law lawyers

01:02:28

because the appropriate pronunciation is

01:02:31

the horse hoof, polish nail

01:02:34

polish should be pronounced in

01:02:45

the nearest horse to factory

01:02:47

case, right? This is it

01:02:49

permanent Court of international. Justice

01:02:52

case to be really getting

01:02:54

back in time. It's a

01:02:56

case. Don't know a lot

01:02:57

about, it's just worth talking

01:02:59

about this after World War

01:03:02

one, right? This is the

01:03:04

shity. Between World War 1

01:03:06

and right, before World War

01:03:08

Two, was really nasty things

01:03:10

happening with one of the

01:03:14

Lesser species. That is going

01:03:16

to be signed in Geneva

01:03:18

to obviously, they're going to

01:03:19

call it the Geneva Convention,

01:03:21

but not be famous, Treaty

01:03:23

of War Geneva conventions. Just

01:03:25

the convention signed in Geneva.

01:03:26

Fix this province from in

01:03:30

Germany and gives it to

01:03:31

Poland, right? Europeans doing what

01:03:34

you, Europeans love, changing maps

01:03:36

of countries. So the German

01:03:39

flag down Polish flag out

01:03:41

of the Germans live today.

01:03:43

And it was after the

01:03:45

war, when he was a

01:03:47

little concerned that the people

01:03:49

that may not be warm

01:03:50

fuzzy feeling within the new

01:03:53

country. And so the treaty

01:03:55

again to go Taylor Swift

01:03:56

child has something, which he

01:03:58

probably wouldn't say today that

01:04:00

Poland, you can never ever,

01:04:03

ever nationalize German Property Brothers

01:04:07

was to protect, The nostrils

01:04:10

that live that thing that

01:04:21

has Factory in the question.

01:04:23

If you cannot do something

01:04:28

and you do what the

01:04:30

fee, he tells you, you

01:04:31

can. What is the standard

01:04:34

And the permanent Court of

01:04:36

international Justice. The standard is

01:04:40

reparation, the treaty told us

01:04:46

the standard Aspire Market. Customary

01:04:49

international law is telling you

01:04:51

that the standard is reparation

01:04:52

Stratton engine is illegal. Not

01:04:55

an economic concept. The legal

01:04:58

concept tells you, you wipe

01:05:00

out the unlawful Right. That's

01:05:06

what they told us. We

01:05:07

see what your 3D tells

01:05:09

you. If you see what

01:05:10

custom tells you and me,

01:05:12

see how, damages perspective you

01:05:14

have two different Notions Recreation,

01:05:18

can be understood as fair

01:05:19

market value. That is possible,

01:05:21

but the standard is different.

01:05:24

Why is this significant? This

01:05:26

is significant because Iran Us

01:05:32

games tribunal, enters in the

01:05:35

commode telling you that there

01:05:45

is a distinction when it

01:05:46

comes to lawful and unlawful

01:05:48

expropriation over love will explode,

01:05:52

creation be applied, the creepy

01:05:55

standard fair market value creation.

01:06:01

We're going to apply the

01:06:03

customary international law reparations. And

01:06:08

then they do something interesting.

01:06:11

You do remember when we

01:06:13

looked at the US model

01:06:14

B with tools that the

01:06:16

valuation. If you look at

01:06:18

it, it's going to be

01:06:19

the deed before the ticket.

01:06:24

Bonobo apes. Big fingers are

01:06:29

now being told that unlawful

01:06:32

expropriation. We're going to give

01:06:35

an investor in choice to

01:06:38

see what valuation did. They

01:06:40

want to select? Write. This

01:06:44

is how the Iran us

01:06:46

claims tribunal developed a theory

01:06:49

to make a distinction between

01:06:51

meeting the PT conditions for

01:06:53

a standard and not meeting

01:06:55

the treaty condition. And why

01:06:58

is this significant? This is

01:07:01

significant because you see after

01:07:04

9/11 The Budapest Airport getting

01:07:07

nationalized and then getting very

01:07:09

private Dice and getting very

01:07:11

private eye stupid and Airport

01:07:15

has now become much more

01:07:17

valuable than the lease private

01:07:19

ization takes place. The airport

01:07:21

is worth 2.6 billion dollars.

01:07:24

That's a lot of money.

01:07:25

I would take it down

01:07:26

and be happy in your

01:07:31

is critical because if you

01:07:32

apply the treaty standard, you're

01:07:35

going to be valuing it

01:07:37

at the time of Daikin,

01:07:38

Wendy Mass, it was a

01:07:40

lot less valuable than if

01:07:43

you were applying at a

01:07:45

future date because you have

01:07:47

the benefit of this much

01:07:48

higher value. Now, And what

01:07:51

is the score do? Forgive

01:07:53

me? What does this tribunal

01:07:55

do? This tribunal draws inspiration.

01:07:58

And if you will see

01:08:01

this, in the third part

01:08:02

of Phillips petroleum gas unlawful

01:08:09

expropriation, you can draw on

01:08:12

the customary, international law to

01:08:15

the investor can benefit from

01:08:17

this increased by you in

01:08:19

the acid. And whether or

01:08:21

not you agree on this,

01:08:23

will depend on how you

01:08:25

see the world and reasonable

01:08:27

Minds can get into fistfights

01:08:28

and how strongly they feel

01:08:30

about this. Should we really

01:08:32

be moving the standards? Or

01:08:34

should we apply with the

01:08:35

creepypastas? Scooby-Doo Lee need a

01:08:39

different state. What is the

01:08:40

Practical purpose of giving the

01:08:42

same damages for somebody who

01:08:45

followed the treaty, was it?

01:08:46

Somebody who didn't? I need

01:08:47

that as mad as questions

01:08:49

for you to own your

01:08:50

own basis of how you

01:08:51

see the world come to

01:08:52

the confusion, but we are

01:08:55

also standards. And again, we

01:08:58

see the same distinction, some

01:09:00

tribunals Della Fe dnf and

01:09:03

full protection and security. We're

01:09:05

going to apply the treaty

01:09:07

standard by analogy other Stellar

01:09:10

snow. We are going to

01:09:12

apply the customary international law

01:09:14

standard. We can thank the

01:09:16

Iran. Us games tribunal, he'll

01:09:18

be making our lives more

01:09:21

complicated. Now it comes from

01:09:23

a good place that comes

01:09:25

from a place of trying

01:09:26

to figure stuff out. But

01:09:31

it's also a great moment

01:09:32

to be alive because we

01:09:33

don't have a clear answer

01:09:35

on what we have to

01:09:36

do with some of these

01:09:37

things. And states are asking

01:09:40

stand to be, woefully not

01:09:42

feel about these things. And

01:09:46

so, I leave that Porky

01:09:48

Pig. And I passed the

01:09:51

floor back to Heather. Thank

01:09:52

you. Thank you. Thank you

01:09:55

very much. Could be very

01:09:57

interesting Food For Thoughts and

01:10:00

I really like the images.

01:10:02

I wish I were a

01:10:04

student in your class. So

01:10:06

we are now at the

01:10:09
the portion of our session

01:10:10
today, where the audience you

01:10:12
should feel free to, to

01:10:13
lob some questions at the,

01:10:15
at the tribunal start, not

01:10:17
at the tribunal at the

01:10:18
at the panelists. So please

01:10:21
feel free to put those

01:10:22
into the public chat and

01:10:24
I'll get it says started

01:10:25
with maybe just said of

01:10:27
drawing some friends from everybody's

01:10:28
presentations. We heard of the

01:10:30
beginning that the tribunal had

01:10:33
a lot more latitude. This

01:10:35
is Lorenzo said that the

01:10:36
truck you had a lot

01:10:37
more latitude than you already

01:10:38
are difficult is DS. Tribunal

01:10:39
in terms of its of

01:10:40
its jurisdiction dummy. Also mentioned

01:10:44
that the tribunal felt more

01:10:47
comfortable referring to kind of

01:10:48
a broader set of sources

01:10:49
in reaching its decision. And

01:10:51
maybe that also links to

01:10:52

the to the The applicable

01:10:55

law Clause, perhaps of the,

01:10:57

of, the tribunal being quite

01:10:59

brought show me sick. I

01:11:00

think the tribunal has characterized

01:11:02

it as such and I

01:11:04

need you to also made

01:11:05

the point that they were,

01:11:06

they were applying a different

01:11:08

standard. They were not applying

01:11:09

the same standard that that

01:11:11

many ICS tribunals are applying.

01:11:13

And then I could be

01:11:16

your basically, the tribunal at

01:11:18
the lawyers busy at. Let's

01:11:19
say that there's been a

01:11:22
lot more work for the

01:11:23
Lorry. So we have all

01:11:24
these kind of the soft

01:11:26
sheets of the, of the

01:11:27
user pay. Maybe not the

01:11:28
critiques of the use of

01:11:30
the tribunal service Prudence in

01:11:31
is DS. So, I think

01:11:33
it would all Alaba an

01:11:35
open-ended question to the, to

01:11:37
the panelists and for whoever

01:11:38

wants to address it. But

01:11:39

why has it been so

01:11:41

influential? If they're all these

01:11:42

important distinctions? Anybody who wants

01:11:47

to have a go, at

01:11:48

least of the most frequent

01:12:01

investment. I think I'll be

01:12:10

creatures. We have busted me

01:12:11

to do not least three

01:12:12

investment arbitration cases. Linked was

01:12:21

a driving over early and

01:12:22

Victoria do each of the

01:12:23

council b as a secret

01:12:25

to reach one of them.

01:12:26

Clearly I'm glad director DeMille

01:12:45

took it because he has

01:12:46

data to support it and

01:12:48

I was going to say

01:12:48

the pretty much more interesting

01:12:56

book about international law is

01:12:57

a belief system, and his

01:12:59

one-pieces was based on Seth's

01:13:00

self-referential. You're trying to refer

01:13:03

to yourself. In fact, some

01:13:05

of some of the judges

01:13:07

of the icj also have

01:13:09

had to face this criticism

01:13:10

of referring to their own

01:13:12

opinion from the time, but

01:13:14

then, the investment arbitration jurisprudence

01:13:21

started picking up in the

01:13:23

cases. Talking, it wasn't much

01:13:25

material to rely upon And

01:13:28

the tribunals have to make

01:13:30

out something of the of

01:13:32

the of the body often

01:13:33

called the Broad Street languages.

01:13:35

Now, somebody would say, well

01:13:37

you should have applied the

01:13:38

interview me to send should

01:13:40

have interpreted. It only has

01:13:41

worked with text means rather

01:13:43

than trying to broaden. It

01:13:44

beyond what it is, but

01:13:46

they had this handed you

01:13:47

the spoons, and some of

01:13:49

them were a part of

01:13:50

creation of this. So I

01:13:52

can be found problem with

01:13:55

probably more convenient to Simply

01:13:57

start referring to it. And

01:13:58

now she may have to

01:13:59

do the screen to the

01:14:00

morn main source of interpretation

01:14:03

of several investment region, standings.

01:14:06

I just talked with a

01:14:08

very quick reaction, but again,

01:14:11

going last. You have the

01:14:13

benefit of saying, everybody before

01:14:14

me was correct and they

01:14:16

are reasons that Mimi could

01:14:20

particularly significant Point. Number one.

01:14:24

Temporarily. This is the closest

01:14:28

that we have to the

01:14:29

rise of the spike in

01:14:31

the investment jurisprudence. So it

01:14:34

just makes sense to look

01:14:35
at what is happening closest

01:14:39
In Time. Some of the

01:14:40
players with similar ideas, get

01:14:44
cross-fertilize endure. This temporal reality

01:14:47
of the second thing is

01:14:49
investment review notes, especially in

01:14:52
the early days are beginning

01:14:54
with the blank slate. And

01:14:57
you know, why you can

01:14:59
make stuff are going to

01:15:01
see, make sure. But that's

01:15:02
good. That's what you can

01:15:05
do something even though they

01:15:11
are significant differences. That are

01:15:13
a lot of similarities that

01:15:15
should not be ignored which

01:15:16
is why he wants to

01:15:17
join the icj jurisprudence is

01:15:20
that up. There is very

01:15:21
different No, we don't want

01:15:23
the mix Game Commission. The

01:15:25
reality, there is also different,

01:15:27
but when you see, you

01:15:29
can definitely draw inspiration to

01:15:34
put. It mildly is the

01:15:36
cherry picking of course. But

01:15:38

that is a part of

01:15:38

life, right? In a non-presidential,

01:15:40

presidential in terms of jurisprudence

01:15:44

president system, that will inevitably

01:15:47

be some amount of. I

01:15:48

like this reasoning. I don't

01:15:49

like this. So I'll focus

01:15:50

on those and ignore this.

01:15:51

But you are still trying

01:15:53

to create a legal regime

01:15:55

anchored in something. Proving what

01:16:00

has already been said? I

01:16:02

should just add that. There

01:16:04

is no secret that specially

01:16:06
in the yes we can

01:16:12
only observe the commonly referred

01:16:16
to as the right to

01:16:26
directed lot. A claim against

01:16:28
the estate and has counseled

01:16:30
cases similar, what was great?

01:16:47
This was a great option

01:16:48
is not only for the

01:16:49
office. This was a great

01:17:01
acid and they broke. A

01:17:11
list of states. Those are

01:17:24
some very interesting observations and

01:17:25
I might just add one

01:17:26

of my own, the tribunal's

01:17:29

decisions were not on you.

01:17:30

Monday at the time that

01:17:33

personal knowledge, that personal aspects

01:17:35

probably had quite a lot

01:17:36

to quite a lot to

01:17:37

do with. It is a

01:17:38

send me a set of

01:17:38

the beginning. That's very interesting

01:17:41

and very disrespectful, a true

01:18:01

true, everything else that commercial

01:18:04

routes So we have a

01:18:16

few questions in the in

01:18:18

the chat over. This will

01:18:21
be a fun one and

01:18:22
maybe one not for rezza

01:18:24
and not for myself that

01:18:26
I missing questions. But is

01:18:28
it possible to predict the

01:18:29
lifespan in the lifespan of

01:18:31
the I use to it's

01:18:32
been going for more than

01:18:33
40 years. So I think

01:18:34
it was envisaged to go

01:18:35
for a few years. I'm

01:18:37
does anyone want to Hazard

01:18:39
a guess on how long

01:18:40
the tribunal will keep chugging?

01:18:47
I think it would be

01:18:48
unpleasant address the questions. Well,

01:18:54
actually the legal in the

01:19:00
United States and if he

01:19:02
scored them to decide when

01:19:04
they should be, what you're

01:19:12
doing right now. But as

01:19:30
one of the Iranian Netherlands

01:19:37
head of state at a

01:19:38
reception, this is the right

01:19:39
question to be addressed. I've

01:19:46
been having to Bill Proline

01:19:47
everything no secrets here. But

01:19:50
based on my conversation, with

01:19:52
people involved in everything would

01:19:55
never have been allowed to

01:19:59
remain in case. There's also

01:20:00
a lot of the heavy

01:20:01
attack of the Gated, so

01:20:02
there might be but there

01:20:06
is never, I don't know.

01:20:14
I just wanted to say

01:20:15
that if Heather and Reza

01:20:16
can give an answer than

01:20:17
we might have lost a

01:20:18

step back to an astrologer.

01:20:20

And I don't think any

01:20:21

of any one of us

01:20:22

is back so I can't

01:20:24

respond to that. Oh, I

01:20:28

think a judge Broward when

01:20:30

he retired from the Tribune

01:20:31

Almeda, an estimate to think

01:20:32

of something like seventy years

01:20:34

and that was on the

01:20:35

face of the basis of

01:20:36

the number of us standing

01:20:37

in cases and the amount

01:20:39

of time he predicted that

01:20:40
it would take to be

01:20:41
results. But there are many

01:20:43
different factors involved in in

01:20:46
that in that decision. So

01:20:49
something is coming up in

01:20:50
a few of the questions

01:20:51
in the chat and then

01:20:53
I will let you do

01:20:54
your concluding observations if we

01:20:56
still want to go that

01:20:57
extra but such what extent

01:21:00
do you think that the,

01:21:02
the model of the IU

01:21:04

SCT I could be replicated

01:21:06

or developed for other kinds

01:21:08

of Interstate disputes and also

01:21:12

perhaps to inform the possibility

01:21:16

of his son, multilateral investment

01:21:17

court. So those are the

01:21:19

two separate questions, I guess

01:21:20

Interstate disputes end and has

01:21:23

a new mechanism for for

01:21:25

something like SPS. Let me

01:21:30

take a stab at it.

01:21:34

Disputes. And I think the

01:21:36

suggestion here seems very specific

01:21:38

to what is happening right

01:21:39

now. There are plans, there's

01:21:45

a planet Columbia University in

01:21:47

collaboration with the government of

01:21:49

Ukraine, to explore possibilities of

01:21:53

a mixed claim Commission. As

01:21:59

a person who is optimistic

01:22:01

about life at large, I

01:22:03

put a big question mark

01:22:04

on that because you're either

01:22:07

going to need both states

01:22:09

to agree. As was the

01:22:10

case in the Iran. Us

01:22:12

claims tribunal and the jury

01:22:14
is out on that or

01:22:15
you going to need the

01:22:16
security Council to authorize that.

01:22:19
And there is a veto

01:22:20
Power by one of the

01:22:21
five states. And so I

01:22:22
can request in Markham. so,

01:22:27
I thoughts my thoughts out,

01:22:29
there can be replicated or

01:22:34
Bmac, that's a loaded question.

01:22:37
When we talkin about the

01:22:39
model, what do you mean?

01:22:41
The Iran Us game? Tribunal

01:22:44

came out with a very

01:22:46

specific political background and so

01:22:52

the structure kind of made

01:22:55

sense to make sure there

01:22:58

isn't a consensus. If there's

01:22:59

going to be one, make

01:23:00

what is going to be

01:23:01

many Megs? And the many

01:23:02

a it seems under the

01:23:05

European version. It's the latter

01:23:06

each make having its own

01:23:11

jurisprudence, but I'll put that

01:23:12

aside. But you need consensus

01:23:14

across stakeholders and the query

01:23:17

there is, do we have

01:23:18

that consensus? Among those taken

01:23:21

to agree on them? And

01:23:24

I think that guys. If

01:23:27

the point is, we have

01:23:29

a state-to-state mechanism giving rides

01:23:31

and it seems to be

01:23:32

working these Wy Yeah. To

01:23:35

that extent. We can draw

01:23:37

inspiration began role model, bb

01:23:41

political considerations in the make.

01:23:43

That me make it look

01:23:45

very different from how the

01:23:47

Iran us claim tribunal came

01:23:49

out. This was a wolfley

01:23:51

rambling answer, but I hope

01:23:54

that was some to Aaron's

01:23:56

in what I said in

01:23:59

somebody politics politics, politics. If

01:24:04

I may add a few

01:24:05

things, I think there's a

01:24:06

legal element to the question

01:24:08

or the answer and there's

01:24:10

a political element to the

01:24:11

answer. The legal aid in

01:24:14

Memphis that the Iranians claims

01:24:16

tribunal wasn't unprecedented. So all

01:24:19

the claims tribunal equally us

01:24:22

claims to Italy. Mexico claims

01:24:25

tribunal us England claims tribunal.

01:24:27

It's not even in the

01:24:32

interval. 44 for the water

01:24:35

pressure. In terms of the

01:24:38

Warsaw instances of such, a

01:24:41

type of such a strange

01:24:43

gravel being created. Conceptually theoretically

01:24:47

legally is there. No sticker.

01:24:49

They could be one created

01:24:51

based on 10. Some of

01:24:54

these proceedings and of course,

01:24:55

the year on us claims

01:24:56

tribunal can be good model

01:24:57

to emulate. And that also

01:25:00

takes one to the political

01:25:02

side of the question that

01:25:03

they would be willing. We

01:25:06

don't know what's going to

01:25:07

happen but the vein, which

01:25:09

things are progressing. It is

01:25:11

possible that everybody may want

01:25:13

to have a respectful exit.

01:25:14

And these claims tribunal. Awesome

01:25:17

thing to be a good

01:25:18

respectful exit for all the

01:25:21

boarding pass. And honestly, for

01:25:24

both Iran. And the United

01:25:25

States, it was a respectful,

01:25:27

a king's it, and it

01:25:28

was so respectful and none

01:25:29

of them signed on to

01:25:30

be able to use the

01:25:31

card. It's not a creepy.

01:25:32

It's a decoration of Algeria.

01:25:34

I think that these two

01:25:35

countries that goes big alliances

01:25:42

when there's a possibility that

01:25:43

we both can have judge

01:25:44

from a side. One each

01:25:45

and then he will decide

01:25:50

the case. Take a certain

01:25:54

approach which, which is arbitration

01:25:56

used to work in the

01:25:57

past and that brings me

01:25:58

to the, to the next

01:25:59

question of the, of the

01:26:01

multilateral investment Co. I must

01:26:03

say I'm a bit too,

01:26:04

not in sync with the

01:26:05

lingo. So, when I heard

01:26:06

the meat guy was a

01:26:07

bit taken aback, but then

01:26:10

I got it. So with

01:26:12

the mix, I think without

01:26:14

making a mickey of it

01:26:15

because I didn't Europeans really

01:26:17

serious about it. So we

01:26:18

shouldn't we should do that

01:26:19

and they're really pushing hard.

01:26:21

So if we do have

01:26:23

such a format, what comes

01:26:26

to my mind is the

01:26:28

move from the permanent Court

01:26:29

of arbitration to the creation

01:26:31
of the permanent Court of

01:26:32
international Justice around that time.

01:26:35
If you look at the

01:26:35
developments that led to 1907

01:26:39
the Hague convention and then

01:26:40
which was the PCM and

01:26:42
eventually the public court of

01:26:45
international Justice, one of the

01:26:47
concerns of States was International

01:26:49
arbitration according to them both

01:26:51
highly politicized. Representatives from each

01:26:55
of them, on the tribunal

01:26:56
and then an Empire, he

01:26:58

was calling a who decide

01:26:59

it was almost like having

01:27:01

an advocate on your side

01:27:02

and then the empire was

01:27:03

supposed to take a decision.

01:27:05

That was a very unhealthy

01:27:07

situation and then they thought,

01:27:09

let's have a cord with

01:27:11

a definite than you were

01:27:13

not bound to State. It

01:27:14

would be random collection of

01:27:15

people seem to have a

01:27:16

certain degree of clarity consistency.

01:27:19

And what we do see

01:27:20

today, if you look at

01:27:21

the criticism of ice, this

01:27:22

one of the criticism is,

01:27:23

if you get the right

01:27:25

track Friday. You can get

01:27:26

the right to work. So

01:27:28

it's about the orientation of

01:27:29

your appointee of the chairs.

01:27:31

So that all these factors

01:27:32

and they want to get

01:27:32

rid of all these factors.

01:27:34

If that's the goal then,

01:27:36

I doubt if Iran us

01:27:38
claims tribunal, is going to

01:27:39
be a good model for

01:27:40
them. I think the good

01:27:41
model for them would be

01:27:42
something like things Master, court

01:27:44
of justice. Something like that.

01:27:45
Like, the international Tribunal for

01:27:48
the law of the sea

01:27:48
impression I get is the

01:27:50
vein which the qualifications for,

01:27:52
for the potential appointees are

01:27:55
being discussed, or would be

01:27:57
discussed for ought to be

01:27:58

discussed. It would be more

01:28:00

than the kind of international

01:28:01

criminal court. I know it's

01:28:03

a different creature altogether but

01:28:04

I think Record a detailed

01:28:06

rules about what qualification? The

01:28:08

judge should possess. So we

01:28:10

might have something where they

01:28:12

would be more qualifications to

01:28:14

do, have a filter of

01:28:15

bison and and take care

01:28:16

of her on this. Would

01:28:24

anyone else like to make

01:28:25

a comment on this on

01:28:26

this topic? We are over

01:28:33

the time that we should

01:28:34

have finished our informal networking.

01:28:36

But I understand from the

01:28:37

organisers, but there isn't another

01:28:39

panel right after hours. So

01:28:40

we have a little bit

01:28:41

of a buffer. I had

01:28:43

promised our panelists, the big

01:28:45

could make some concluding observations.

01:28:47

So if anybody would like

01:28:49

to do that, to have

01:28:49

some sort of deep thoughts

01:28:51
about what we talked about

01:28:51
today, please say, go ahead.

01:28:55
Stick up your hand. Please

01:28:56
go ahead. Reza. Just very

01:29:01
briefly because some of the

01:29:03
boys that I wanted to

01:29:04
make with rest when the

01:29:05
questions are we today that

01:29:08
the influence of the great

01:29:20
bulk of the discussion was

01:29:22
cute. And no. So I

01:29:30
just want to say a

01:29:31
few words and fast because

01:29:33

now we are working. So

01:29:36

I think the practice of

01:29:38

the tribunal on state-to-state cases

01:29:41

could be relied upon on

01:29:43

second message or other. It's

01:29:48

not like the station. but

01:30:12

old saying, matches of responsibilities,

01:30:14

as compensation, Around 60 Alexis

01:30:23

such as these are there.

01:30:30

The other airing that International

01:30:33

tribunal has availed himself. So

01:30:37

talk about damages and compensation,

01:30:41

and he also raised the

01:30:45

issue of increase in the

01:30:47

value of the property from

01:30:49

the time that the breach

01:30:51

was committed to the date

01:30:53

of the award and interesting

01:30:55

that they would love to

01:30:58

talk about you. So it

01:31:00

must be validation upsets and

01:31:02

musical instruments. So I booked

01:31:17

it would be interesting to

01:31:18

reflect the latest. Think your

01:31:26

oven? Any, any other volunteers

01:31:29

for some concluding observations, a

01:31:40

society of influence of one

01:31:42
body, quite fascinating. And I'm

01:31:47
glad that we took the

01:31:48
time to try to but

01:31:51
that's a really good idea.

01:31:53
What is influence the matter?

01:31:55
What, what does manservant, who

01:31:56
do you build up and

01:31:58
build a Flareon? Ex the

01:31:59
drug that could explain why

01:32:05
some things are you. Why?

01:32:07
So I'm not in what

01:32:08
is exactly why. I just

01:32:10
know he's been crafted the

01:32:17

time Just a quick point,

01:32:23

maybe they might be a

01:32:24

lesson procedurally for us, International

01:32:27

lawyers. When we look at

01:32:29

the influence of the use

01:32:30

of it, on your screen

01:32:31

driving in the best speed

01:32:35

up Christian. And I see

01:32:37

that because I spend a

01:32:38

long time being litigated under

01:32:39

domestic law before being an

01:32:41

international lawyer. And whenever I

01:32:43

spend time with domestic, lawyers

01:32:45

are all private, International lawyers.

01:32:47

I think you'll find that

01:32:48

they're sticklers for procedures. That

01:32:51

always trying to see if

01:32:52

I'm going to refer a

01:32:53

case that this case really

01:32:56

apply here. And I must

01:32:58

say the more and more

01:33:01

time I spend in international

01:33:02

law realize, you can be

01:33:03

pretty flexible to pick things

01:33:05

that you like, as long

01:33:06

as you sound cool, that's

01:33:09

really the most rudest way

01:33:10
of putting it, which is

01:33:12
one of the structural flaws

01:33:14
in public international law. As

01:33:15
you can, as you compared

01:33:16
to private International and private

01:33:19
International lawyers, I'm reminded of

01:33:21
a lecture. Given by boan

01:33:22
law about humility International and

01:33:26
sing be public, International doors,

01:33:28
need to be a little

01:33:28
more humble look around and

01:33:30
learn from others because it's

01:33:32
might help, Aruna, one profession.

01:33:34

And just to make a

01:33:36

final point in which I

01:33:38

didn't make before, he's an

01:33:40

estimate. Kodak twists, here on

01:33:43

one of the arbitrators, and

01:33:44

I think I should find

01:33:46

him because it's on record

01:33:48

match concerned about Regal principal.

01:33:53

Because there was money in

01:33:54

the security account, the money

01:33:56

was going to be paid.

01:33:57

So we don't have to

01:33:58

really bother about a high

01:33:59

standard. It was a pretty

01:34:01

flexible standard than we were

01:34:03

going by pretty much what

01:34:04

cause he didn't use the

01:34:05

word back to what he

01:34:06

described could be categorized as

01:34:08

exact Red Bull. The Indian

01:34:17

tigers prudence's is of no

01:34:18

use. There are elements which

01:34:20

could Inspire, but one has

01:34:22

to be careful and as

01:34:24

they often say, take it

01:34:24

with a pinch of salt,

01:34:26

If if I can just

01:34:28
read very quickly be at

01:34:29
2, to you about that.

01:34:30
I say something and had

01:34:40
to be the final ID,

01:34:41
that whatever you decide to

01:34:45
prove it to me. I

01:34:46
think that that's a lot

01:34:48
of what we talked about

01:34:49
today. Pick up for me

01:34:51
and by saying, I agree

01:34:54
with what everybody's had Concise

01:35:01
like the early decisions of

01:35:03
the eye use time, 15

01:35:12
minutes before we should have

01:35:13
been better. Thank you very

01:35:15
much to our panelists, to

01:35:17
our audience, to the organisers.

01:35:19
This was a lot of

01:35:19
fun, this is very great

01:35:21
and I think I'll hand

01:35:22
the floor to Jose Antonio

01:35:23
who's just popped up on

01:35:24
the screen. Thank you. Thank

01:35:27
you, Heather. And thank you

01:35:28
very much in the order

01:35:31
that you appear Reza and

01:35:34

Adam mer and the new

01:35:39
that as well as as

01:35:41
Kabir it was a, it

01:35:43
was a true pleasure to

01:35:45
have a a discussion to

01:35:48
hear your thoughts from. No.

01:35:51
Initially, I am a baseline

01:35:55
as to, the know, the

01:35:57
history and the jurisdiction of

01:36:00
the tribunal was created to

01:36:04
in-depth analysis. As as as

01:36:06
you all day there with

01:36:08
respect to the jurisdiction of

01:36:10
the tribunal, with respect to

01:36:12

its framework of the differences.

01:36:16

Reza explain between from a

01:36:19

framework on an international law

01:36:23

between the tribunal and and

01:36:26

Investor-state arbitration tribunals, and they

01:36:29

going to issues of nationality

01:36:31

which which of course are

01:36:32

not that that I'm watching

01:36:33

is as that man explained,

01:36:37

some of those cases, I

01:36:40

happen to be on the

01:36:41

Valentine's, get to happen to

01:36:42

be counseled. So it's, it's

01:36:43

close to home and then

01:36:47

going into into the analysis

01:36:49

of of expropriation and then

01:36:52

ending up in in Damages

01:36:53

by my own little take

01:36:57

on on the on the

01:36:59

use of the year and

01:37:02

us the claims tribunal, as

01:37:04

a source of international law

01:37:05

is, is you know why?

01:37:10

I'm not that surprised that

01:37:12

it that it cited as

01:37:13

a source because it's it

01:37:14

it is it is indeed

01:37:16

a rigorous tribunal on one

01:37:20

hand and and even if

01:37:21

we try to go to

01:37:23

the quintessential article, 38 of

01:37:27

of of of the icj

01:37:29

statute in a 38 one

01:37:32

day it is it is

01:37:34

purely a Mac Dre source

01:37:38

of international law. So white,

01:37:40

why not using them with

01:37:42

within a week with some

01:37:43

Rick Ross, it is. So

01:37:45

I I think this this

01:37:48

is of course, parts of

01:37:52

international law and hopefully will

01:37:54

be no will retreating sources

01:37:58

and citations. And all of

01:38:00

the above that with with

01:38:01

the match of solidity, in

01:38:03

any event, we're very thankful

01:38:05

for for, for the amazing

01:38:08

contribution. I think that this

01:38:10

has been a true nature

01:38:12

of a panel that that

01:38:14

that we touch upon many

01:38:17

aspects, including current political consequences,

01:38:23

and perhaps influence of the

01:38:25

year on us claims tribunal

01:38:27

in, in, in the current

01:38:29

crisis, who knows whether response

01:38:32

will be used in in

01:38:33

the, in current complex and

01:38:36

hopefully will. Now we're going

01:38:39

to go into the Into

01:38:43

the year breakout rooms and

01:38:46

the, and the actually let

01:38:47

me see what will try

01:38:50

to breakout rooms. And if

01:38:52

not 11 breakout room in

01:38:53

formal discussion, and let me

01:38:56

know that that from now

01:38:57

on the recording stops. And

01:38:59

we'll just, we can talk

01:39:01

about the weather and all

01:39:02

the colors of, of, of

01:39:03

the, of the rooms where

01:39:04

you are the graphics are

01:39:07

or whatever you want. So,

01:39:08

thank you very much, and

01:39:09

it was a pleasure to

01:39:10

have you.