



## Influence of Public International Law in Investment Arbitration \*

### Summary

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

The panel discussion at Washington Arbitration Week focused on the influence of public international law on investment arbitration, highlighting the critical role international law plays in resolving investment disputes. The panelists included esteemed experts in the field, such as Professor Dr. Jana Karakatsanis, Huron Court, Jose Antonio, and Josh Simmons, each addressing different aspects of public international law's impact on investment arbitration.

The discussion began with an overview of how investment treaty arbitration relies heavily on international law, particularly concerning the interpretation and application of treaties. The panelists emphasized the importance of understanding the sources of international law and how tribunals select and interpret these sources in their decisions. A significant point raised was the interplay between customary international law and investment treaty law, illustrating the complexities involved in applying these legal frameworks.

Professor Karakatsanis initiated the conversation by discussing the sources of international law, pointing out that many investment disputes are not covered by explicit international agreements, necessitating a reliance on customary international law. He also examined the role of general principles of law recognized by civilized nations in investment arbitration, noting the challenges of applying domestic law to international contexts.

Huron Court shifted the focus to the interpretation of treaties in investment arbitration, highlighting the historical context of the Vienna Convention on the Law of Treaties and its relevance to current practices. She noted the increasing use of these treaty rules in arbitral decisions, which reflects a growing trend toward transparency and consistency in investment disputes.

Jose Antonio discussed substantive investment treaty obligations, specifically addressing the principles of fair and equitable treatment and most-favored-nation treatment. He referenced historical cases that have shaped the understanding of these principles and their application in modern arbitration.

Josh Simmons concluded the presentations by addressing the topic of damages in



investment arbitration. He outlined the principles of full reparation and restitution, emphasizing the challenges tribunals face in applying these concepts consistently. Simmons also discussed the implications of using ex post information in determining damages, particularly in light of market fluctuations and unforeseen events.

Throughout the discussion, the panelists engaged in a lively exchange of ideas, exploring the nuances of public international law and its application in investment arbitration. They highlighted the need for greater clarity and consistency in how international law is interpreted and applied in this context, recognizing the evolving nature of both investment treaties and international law. The session concluded with an engaging Q&A segment, allowing participants to delve deeper into the complexities of these legal issues.

### **Authors**

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### **Topics**

Public international law

### **Category**

WAW

### **Full Transcript**

00:00:04

Oh Johnny virtually. So we

00:00:07

thank you. And we welcome

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you to this panel discussion.

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Our topic this afternoon is

00:00:14

the influence of public international

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law on vacation. And this

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is a great topic because

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I think the often take

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for granted the role of

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public international law and invest

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in arbitration essential, it is

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to the proper resolution of

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investing. Do you know in

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most investment treaty arbitration? The

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tribunal is mandated to resolve

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the dispute before. It largely

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on the basis of international

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law, so cordingley, it should

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apply the law treaties, to

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determine the scope and application

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of the relevant investment protection.

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And defense has had. Sometimes

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this exercise involves assessing the

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existence of an application to

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make international law is relied

00:01:01

on, or the necessity defense

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is involved. And if the

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respondent is found to have

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breached its obligations under international

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law in the tribunal turns,

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to the international laws, state

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responsibility to determine whether and

00:01:15

to what extent reparations are.

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Okay, so this is the

00:01:18

role of international law that

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we've come to expect But

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arguably there's a lot more

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to think about. We sometimes

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don't spend enough time considering

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for example, what international law

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sources, investment treaties started, tribunal's

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are relying on and how

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they go about selecting those

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sources, how tribunals are interpreting

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and applying the resources and

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whether they're doing it properly

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and whether tribunals are adequately

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addressing, the sometimes complicated interplay

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between public international law and

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investment treaty law. So, fortunately

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that is the task of

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our panelists today as they

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will explore the influence of

00:02:00

public international law, on investment

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arbitration, in many important areas

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to point on process. Before

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we begin, our panel discussion

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will proceed as follows. Each

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Palace will present on the

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influence of a particular area

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of public international law. State

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responsibility substitute of investment treaty,

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obligations damages and following each

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presentation, there will be an

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opportunity for the remaining four

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panelist to provide comments and

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reaction after the last round

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of discussion, we hope to

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have about 10 to 15

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minutes for questions and answers.

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Please note that this year,

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there will be no virtual

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break out, so I'll just

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do those on Zoom, but

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we will have no, no

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breakouts. And also a very,

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unfortunately, we learn just a

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couple hours ago that Professor

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Dupuis. I cannot join the

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panel discussion virtually, but we

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have adjusted accordingly, and we

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hope to express his voice

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in other ways, in the

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panel discussion. Let me know

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turn to introducing our various

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team group of a panel

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and I'll introduce them in

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the order. They will be

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speaking today. I'll start with

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Professor dr. Jana karate. He

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will start off our discussion

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on the topic of public

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International sources. Professor Rowdy is

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Professor of public international law

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at the University of Law

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School in Paris. He is

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also invited professor at the

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Hague Academy of international law

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of expertise and interest include

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State responsibility, International arbitration. National

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investment, law energy law in

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space locks. He's the author

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of several Publications in the

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field in these fields including

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recently rules and practices and

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international investors, applauded arbitration. He's

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a member of exit panel

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of arbitrators and among many

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other prominent experts for dispute

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settlement panels under trade agreements

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concluded by the EU. Huron

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Court will next address, the

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interpretation of treaties investment arbitration.

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She is an arbitrator dispute,

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resolution consultant and counsel with

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many years experience, advising government,

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corporations institutions and individuals on

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public and private. International law

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International Development, investment strategies, International

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dispute, resolution and legal investigation

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and compliance efforts before us

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courts ad hoc arbitration, panel's

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commercial and investment, tribunal's and

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investigate. The key to the

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authorities. After working for various

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Law Firm, she now has

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their own independent law practice

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and she's also as a

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professorial lecture in La, i

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g w focuses on public,

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international law for National dispute

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resolution constitutional law, civil procedure

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and written by the Vienna

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convention on All treaties investor,

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State Street evolution. Next will

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will will, then cover for

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passenger, peas, topic as best

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we can. Then Jose Antonio

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will discuss substance of investment

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treaty obligations. We know, damn,

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well, he is founding partner

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at X strategy in Washington

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DC and in Bogota and

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share of the arbitration and

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international law practice at sperm.

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He works his International Council

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and investment and Commercial disputes

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under all the major International

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arbitration rules. He serves as

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an arbitrator and provides advice

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on public international law and

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investment loss. Our clients State

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companies and investors as well

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know he is the co-founder

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of Washington arbitration we and

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the world arbitration update Jose,

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Antonio was a former lead

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negotiator of investment research Columbia

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and former exit legal counsel.

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He also teaches a course

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on investment arbitration is Georgetown

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where he obtained his doctorate.

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And last but not least,

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Josh Simmons will be presenting

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on Damages in arbitration investment

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arbitration, Josh's of counsel, at

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Wiley in DC. He has

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extensive experience in treaty and

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Commercial arbitration. Proceedings around the

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world. He has represented foreign

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sovereigns and international investors across

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a broad range. Josh also

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advises companies on National Security

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Law, Public international law and

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transnational, litigation in US, courts

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beaches, international arbitration as an

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Adjunct professor at the University

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of Virginia, School of Law.

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And prior to joining Wylie,

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Josh served as senior advisor

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in the office of the

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legal adviser at the US

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state department. So with those

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introductions will will turn first

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to Yonkers going to percent

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on international law sources. Take

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it away in the 4-week

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today so good and general

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principles of law. So I

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will not enter into that

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content. I will look at

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it from the perspective of

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the sources of international so

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we have about 10 minutes

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so I would be pretty

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straightforward. I'm a nice tree

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issues. Why does it matter

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to take a look at

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Sea Isle in general principles

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and general principles? So why

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does it matter first, despite

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the fact that we have

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a great number of international

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division of estate relationships are

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not covered by an international

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agreement, which makes a particular

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customer International internationally. Listen to

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scream and we all know

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that I appreciate it. I'm

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not self-sufficient. And there is

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often, I need to realign

00:08:15

either switch, application, either. As

00:08:22

a matter of applicable room

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either when International restart of

00:08:26

the applicable or when India

00:08:28

are provision, there is a

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reference to see a frontal

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lobe which is pretty, right?

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Of course we can relate

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to and substantiate the content

00:08:41

of So two main reasons

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why she is an insurance

00:08:46

risk of a blue iPhone

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interplay between cilmi International women's.

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Second interplay between Cil and

00:09:01

practice and I will. So

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Cil and international events that

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led to the formation of

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Cassandra International with two different

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approaches in after practice, some

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tribunals have suggested, or I

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give you that. International Investment

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agreements in and open self.

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Country can make a customer

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international law, orders, I've argued

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suggested that I can contribute

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to the CIA process. The

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first approached from the public

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International perspective is very controversial.

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I will not that into

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this one. Now we can

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do it later, I would

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focus on the second approach.

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The contribution of ideas to

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a decision. That process is

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more famous magicians wear that

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out by o.t. genesis a

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constitutive case, the court that

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case was discussing a multilateral

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treaty. So when applying addition

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Score. Phil react to be

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cautious and if I didn't

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buy and buy another, so

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what are those conditions? So

00:10:44

I would discuss those conditions

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shortly. I will not enjoy

00:10:46

to the DJ do I

00:10:48

purchase. Obviously, there's no reasoning

00:10:51

as to be a job

00:10:52

to, depending on which provision

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school. We are looking at

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Chris Isaak radio character. So

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this condition in our field

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is the normative brightness of

00:11:09

a provision. In the question,

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arises whether this number to

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Fitness resources from considering that

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it has Second condition settled

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by the courts. There should

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be a widespread and representative

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participation to the convention at,

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including that also states are

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affected the games by analogy.

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We can say that there

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were widespread and workers and

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participation to treaty practice in

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our field of those special

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issue. Is that Set condition

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outside the context of the

00:12:00

convention. That should be an

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extensive and virtually uniform stay

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at practice to hear this

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requires to look at Tasty

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creation and also important to

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look into domestic speaker systems.

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Which in terms of evidence

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is quite a chance later

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for standard condition, that's just

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messed it up in your

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urine has the acceptance of

00:12:27

the practice as low. from

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a positivist apparent terrorist point

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of view, this is a

00:12:36  
challenge because the practice which

00:12:40  
results from the treaty is

00:12:44  
not contentment choking uterus, estate

00:12:49  
entering to an International Investment

00:12:51  
agreement, This is also an

00:12:57  
issue, which I can't be

00:12:59  
discussed in our field. Can

00:13:04  
be seen as contributing to

00:13:07  
the rain, to National Louis

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Theroux that what it has

00:13:12  
been in the past in

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an average home price in

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a before practice. So we

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witnessed in the past years

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that states in the three

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days, they say practice and

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why do they do? So

00:13:36

what they do? So because

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as you know, I betrayed

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the most, I was strong,

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very strong tendency to refer,

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not to stray practice, but

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to our betrothal practice when

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they discussed customary international law,

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International point of view is

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not so much that the

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Reliant cast a bit forward.

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The Reliant pasta before, what

00:14:01

which themselves do not discuss?

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Say, practice in between Practice

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coming replacing say, practice and

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more fundamentally. customary international law

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being replaced by Joy Springs

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Customs, which is international We

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all know why I've been

00:14:38

driving it like this because

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evidencing customer International is different

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amount. So it's up to

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the claimant to customer International.

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They made a distinction between

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existence and contract. So evidencing

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existence of Cheyenne, it's up

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to the Tremont, but I

00:15:17

didn't sing the continent this

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is too, but we can

00:15:22

still use on the content

00:15:24

of my customer International interesting.

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Lee here right now also

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say that has a role

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to play in this respect

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the 13th or reasoning at

00:15:38

the king to do. You

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handle Victoria Principal Now, let's

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move to general principles. So

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here I will talk. Only

00:15:49

about general principles of law

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recognized by civilized Nations. I

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don't think of anachronistic formulation

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of ice cream. 68 of,

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I suggest a trip into

00:16:03

gymnastic legal systems and actually

00:16:07

I'm driving. Right criticized for

00:16:11

the way they review, the

00:16:13



content of domestic assistance for

00:16:17

two main reasons for the

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lack of methadone. What's the

00:16:24

content of a domestic law

00:16:26

or the phrase to see

00:16:31

the similarity between a domestic

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issues, which are necessary in

00:16:37

relation to general principles of

00:16:39

real recognize, real fighting games,

00:16:47

2018 up, sister and more

00:16:55

generally to make sense of

00:16:56

what is necessary to make

00:16:58

history for a distinction. So

00:17:02



first of all, it is

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necessary to make a distinction

00:17:05

between those situation. Both cases

00:17:07

where driving on real life

00:17:09

on general principles of law.

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Recognizes you like Nation, search

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Enzo situation where the directly

00:17:18

rely on domestic assistance on

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domestic Law Without arguing that

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there is because nice, nice

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nice, nice. The second important.

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Distinction is the room, is

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it a gut feeling? Is

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it to interpretation of vague

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Provisions? Or is it about

00:17:37

consuming? An interpretation which has

00:17:40

been reached on a normal

00:17:42

basis? Are we talkin about

00:17:46

legality speaking? Or are we

00:17:48

talkin about visiting us? So

00:17:51

we can play out with

00:17:52

these distinctions at frenchtons. If

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we take this Jack fitting

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room in the Reliance on

00:18:01

General principle from a legal

00:18:04

point of view, discussing the

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similarity. This is Alycia initiate.

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This is a legal issue

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is not as big when

00:18:16

is used as the confirmation

00:18:21

to an interpretation, which has

00:18:23

already been reached. How to

00:18:26

hang from a legitimacy perspective

00:18:28

when you rely on domestic

00:18:37

law to confirm an interpretation

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which has already reached. This

00:18:43

comes as a limit of

00:18:49

relying on a domestic gross

00:18:51

Elementary value of the public

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law anality can discuss later.

00:19:02

Are we stuck here for

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the time being? And I

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sent you all for your

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teeth. Thank you very much.

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Thank you for sharing those

00:19:09

insights will turn out as

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some comments and reaction from

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from KO, panelist. Maybe we'll

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start with you to pick

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up on the idea of

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identifying and horrifying public international

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law. And this is something

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that the ioc, the international

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commission has been doing for

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about seventy-five years. We just

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celebrated their 75th anniversary of

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their statue, last week, actually.

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And, and one aspect, where

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this is happened in particular

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with relations Olof treatises the

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Vienna convention on the law

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of treaties which was entered

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into Force, about fifty some-odd

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yourself a few years ago

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but it's open for Signature

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52 years ago and More

00:19:54  
in my I made my

00:19:56  
mark Slater but the codification

00:19:58  
process has also Brought in

00:20:02  
to relieve the issue about

00:20:03  
us, Mary international law and

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how much of this codification

00:20:07  
reflects customary international law? The

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US importantly is not a

00:20:11  
signatory to the Vienna convention

00:20:13  
on the law of treaties,

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got the US and many

00:20:15  
of its arbitral submissions and

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and also on the state

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Department's website. So maybe Josh

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has use on this, there's

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a Q&A section on the

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website, it says does the

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Vienna conventions of all trees

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apply or does the US

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response is no? Understand it

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to be reflective of customary

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international law and more broadly

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and amazingly that Q&A on

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the state department's website is

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what is cited by participants

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and investor-state dispute. So if

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we talked about like international

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law, we've devolves at least

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from my perspective into a

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a he said she said

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of Q&A on the state

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department's website in the United

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States. When I was, when

00:21:02

I was working on the

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book on the Via CLT,

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I wanted to find something

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more Authority than all. I

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could find was the references

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to the website, which on

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top of that is a

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archives page. It's not even

00:21:12

a current was, he's like,

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from 10 years ago and

00:21:18

it comes up in the,

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in the, in the way-back

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machine as an archive, which

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is what participants in these

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disputes site to there are

00:21:25

letters that can be referred

00:21:27

to from the 1970s including

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State Department submissions and international

00:21:31



disputes that also referred to

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The Binding nature of the

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bclc as a reflection of

00:21:36

parts of it as a

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reflection of customary international law.

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Because if we think about

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the sources of law, it,

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if it comes very convoluted

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because as Professor Yannick has

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referred you, there is there

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first, well, there needs to

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be consensus and if you

00:21:57

a reflection of practice and

00:21:58



then consensus, as to its

00:22:00

binding nature and how do

00:22:01

Arrive or or understand that

00:22:03

in a very evolving Universe,

00:22:06

where consensus is changing, State

00:22:09

practices is changing. And most

00:22:12

interesting Lee, the sources can

00:22:14

sometimes be quite stuff self-referential,

00:22:16

including amongst, arbitral decision-making, and

00:22:19

and also party submissions. Oftentimes,

00:22:22

you'll also find party submissions

00:22:23

in particular State party submit

00:22:25

as becoming a source of

00:22:27



reference for future litigants. So,

00:22:29

throw that out there is

00:22:31

Food For Thought for now.

00:22:33

Josh, you can tell us

00:22:34

all about this website department

00:22:36

on the format of thank

00:22:44

you. Thank you. May I

00:22:49

have to investigate us us

00:23:04

courts, have embraced the Vienna

00:23:09

convention. As customary international law

00:23:13

on. And I believe there

00:23:15

might be some limited to

00:23:19

statements by the state department.

00:23:35



Western court of appeals for

00:23:38

the DC circuit cases, that

00:23:41

may have refer at some

00:23:42

stage. What extent the reactions

00:23:59

of, but I have concerning

00:24:01

the customary international law. and

00:24:08

as a source of investment

00:24:10

treaty arbitration and as a

00:24:13

source of of used to

00:24:16

refer to in cases, I

00:24:19

believe that that was very

00:24:24

well when I was first

00:24:27

which which you might have

00:24:35



read or or I believe

00:24:43

that after after one or

00:24:45

two cases, you're the first,

00:24:46

he was actually the first

00:24:47

case of the pacification prices.

00:24:49

If you look into the

00:24:56

weeds of that for, there's

00:24:57

a reference to National Fitness

00:24:58

being customer. And no to

00:25:04

those, those are both of

00:25:05

you, ask that, that may

00:25:07

have any nature of DNA

00:25:09

on public international law and

00:25:11



and live in in general

00:25:13

practice. And that is kind

00:25:16

of Study in terms of,

00:25:28

where is the practice? Where

00:25:31

is it in New York

00:25:31

City? Because you have 3,000

00:25:34

and 300 + 3D investment

00:25:39

treaties that that all have

00:25:41

a common tile called National

00:25:43

treatment doesn't mean that that

00:25:45

3 elements are there so

00:25:48

disrespect. I would, I would

00:25:51

say The United States needs

00:25:57



to be very careful and

00:26:00

I realized that the distinction

00:26:02

between our refractors and say

00:26:04

practice which is it, which

00:26:05

is precisely what, what's up?

00:26:07

What should be embraced us

00:26:09

customary? Because customer thinks he

00:26:11

takes a very rigorous process

00:26:14

to prove that it is

00:26:18

there... Thank you, thank you.

00:26:23

We're going to shift gears

00:26:24

a little bit, and go

00:26:25

back to Huron to talk

00:26:26



about the influence of tree

00:26:27

law. In investment arbitration. In

00:26:34

my book witches come out

00:26:36

in September that lie, kindly

00:26:39

mentioned in the in his

00:26:40

introduction, the Vienna convention on

00:26:44

the law of treaties Finds

00:26:45

Its Source in the very

00:26:47

early days of the international

00:26:48

lock mission of the year.

00:26:50

When the ioc was first

00:26:52

formed in 1948, one of

00:26:56

the first things that they

00:26:57



did was come up with

00:26:59

a list of the most

00:27:00

important topics of international law

00:27:02

that are worthy of codification.

00:27:04

It came up with Ten

00:27:05

such topics, three of them

00:27:07

were selected for immediate work

00:27:09

and one of them was

00:27:10

studying codification of the law

00:27:12

treaties that process. Again, if

00:27:16

he if you put it

00:27:16

into time context it began

00:27:18

shortly after the un's formation

00:27:21



again. In a time. Very

00:27:23

different era post WWII era

00:27:25

when a lot of the

00:27:27

nation-states we know if they

00:27:29

did not yet exist and

00:27:31

therefore not participants in a

00:27:32

lot of these processes. I

00:27:35

think reflecting on those sources.

00:27:37

Not only for purposes of

00:27:39

treaty law, but also customary

00:27:41

international law, and other sources

00:27:42

of public international law is

00:27:43

really illuminating because it means

00:27:45



that there are many participants

00:27:47

and players in international law,

00:27:49

on and practice today, that

00:27:52

simply did not literally have

00:27:53

a seat at the table.

00:27:54

When a lot of the

00:27:55

institutions that today, such as

00:27:57

that you and that we

00:27:58

are quite critical of Holden

00:28:00

to drive, a lot of

00:28:02

the practice and and both

00:28:04

of international relations, international law,

00:28:07

Etc. I throw that out

00:28:08



there for her for consideration

00:28:10

as the background piece matter

00:28:13

as for the law of

00:28:15

treaties, the codification and the

00:28:17

work at the ilc took

00:28:19

nearly twenty years. It was

00:28:20

about 18, 17 or 18

00:28:21

years. Back and forth. They

00:28:23

were special rapper. Chores assigned

00:28:25

to this topic. By the

00:28:26

ioc there. Four of them.

00:28:28

Successive fours. And each one

00:28:31

had interesting me enough, a

00:28:32



different approach. Some thought that

00:28:35

confiscation would involve preparing draft

00:28:39

articles for consideration and use

00:28:41

ice by others. Very few

00:28:45

of those are a Taurus.

00:28:46

That a treaty on the

00:28:47

law of treaties, was the

00:28:48

appropriate, way to conduct that

00:28:49

codification and then there was

00:28:51

some back-and-forth, right? Because what

00:28:52

we ended up with was

00:28:54

the pclc, which is the

00:28:55

treaty on the law of

00:28:56



treaties. So, in 1969, when

00:29:01

the vclt open for Signature,

00:29:03

it while it's looks interesting

00:29:05

as well, it's actual substance

00:29:07

of provisions and I'll talk

00:29:08

about the substitute for Visions,

00:29:09

were not considered fairly controversial,

00:29:11

many UN member states signed

00:29:14

without objection on its terms.

00:29:17

It did take about 11

00:29:19

years for it to enter

00:29:20

into Force if you get

00:29:21

the consensus of That was

00:29:23



required but also there is

00:29:27

it it happened a bit

00:29:29

slowly but without much resistance.

00:29:32

So what does that tell

00:29:33

us about the reflection of

00:29:35

the principles in the bclc?

00:29:36

And how does that reflect

00:29:38

upon it as a source

00:29:39

of international law? Well, few

00:29:41

things, first being that it

00:29:43

means that the work of

00:29:46

the ilc was productive because

00:29:47

they're there. A mandate was

00:29:49



to codify existing practice on

00:29:52

the law of treaties and

00:29:53

not to develop New York,

00:29:54

controversial principles on that. So

00:29:56

what was the, what is

00:29:57

the vclt contain their rules

00:29:59

on the entry into force

00:30:00

of treaties? The exit from

00:30:02

treaties was incredibly important today.

00:30:05

As Jose, Antonio mentioned, we

00:30:06

have 3300 d, i t

00:30:09

then growing investment agreements and

00:30:12

growing. I think daily. It

00:30:14



also means that the rules

00:30:16

and interpretation which are employed

00:30:18

at height extensively those write

00:30:19

articles, 31 through 33, Are

00:30:22

incredibly instrumental as we think

00:30:24

about our Patrol practice and

00:30:26

other practice, but interpretation of

00:30:28

treaties and and their various

00:30:30

other source rules including on

00:30:32

territorial application of treaties, for

00:30:36

example, which are becoming increasingly

00:30:37

more important and are fragmented

00:30:40

world's. I come back to

00:30:41



where I started with my

00:30:42

remarks and, and remind you

00:30:44

that we're in a very

00:30:44

different world today. Then when

00:30:47

we were, when the vclt

00:30:48

was being developed and then

00:30:50

signed and entered into Force,

00:30:52

if you look at arbitral

00:30:55

practice in particular in our

00:30:57

book, we to tell the

00:30:58

more than 350 decisions in

00:31:01

order as of investor seat

00:31:02

tribunals, Mike micro editor asked,

00:31:04



make sure love conducted that

00:31:05

research and and the more

00:31:08

than 350 some other positions

00:31:09

and orders reflect that will

00:31:12

number one that he's DLT

00:31:13

rules are used a lot.

00:31:15

Some of them are used

00:31:16

a lot more than others,

00:31:17

including the ones in the

00:31:18

interpretation of trees. Do in

00:31:20

particular article, 31 32 33

00:31:23

and under something to be

00:31:25

harnessed in that. I look

00:31:26



at this from a very

00:31:27

forward-looking respected and if we

00:31:29

had so much are virtual

00:31:30

practice to draw from and

00:31:33

we have an increasing Trend

00:31:34

towards transparency and investment agreements

00:31:38

and also an investment disputes

00:31:39

and how those proceedings and

00:31:41

submissions are conducted and users

00:31:43

more information to harness for

00:31:45

future purposes. So if we

00:31:47

could come back to the

00:31:48

lens of public international law

00:31:49



and more broadly, it means

00:31:51

that is DS practices of

00:31:53

interest to all participants in

00:31:55

public international law. And it's

00:31:57

not just those were interested

00:31:58

in International Investment law because

00:32:00

we have so many examples

00:32:02

of putting these rules and

00:32:04

an articles into practice more.

00:32:06

So, in other fields, my

00:32:10

last point that I might

00:32:11

make for the moment is,

00:32:12

we do have a very

00:32:13



crowded space, right? We have

00:32:15

3300 International Investment agreements. We

00:32:18

have an increasing number of

00:32:19

states that are participating in

00:32:21

an international law. Arena each

00:32:24

of the various fields of

00:32:26

public international law. As we

00:32:27

look at everything from climate

00:32:29

law, to space law, to

00:32:31

investment law, has more and

00:32:33

more instruments play. So, how

00:32:35

do we Reconcile amongst all

00:32:39

those very in various instruments

00:32:41



and what do we do?

00:32:42

When human rights law and

00:32:44

investment loss start to interplay

00:32:46

together because issues that are

00:32:47

relevant to both are at

00:32:49

issue in particular and investor-state

00:32:52

dispute. And even their this

00:32:54

is this is my thesis

00:32:55

and right? So dcot is

00:33:04

interpretive guidance that article 31

00:33:06

and the ilc refer to

00:33:07

this in a recent report,

00:33:08

a 2006 report on 5,

00:33:10



mentation and international law, and

00:33:11

how to resolve it is

00:33:13

that well, you never, none

00:33:15

of these instruments are ever

00:33:16

rendered. Irrelevant. It's just that

00:33:17

which which one of the

00:33:20

instruments that you are looking

00:33:21

at has greater importance to

00:33:23

the contacts and purpose that

00:33:24

a stop to be achieved.

00:33:25

So we look at Mishima

00:33:27

attraction in this increasingly crowded

00:33:29

space investor-state tribunals and other

00:33:33



decision-makers can conduct an analysis

00:33:35

for. They, look at the

00:33:36

very Instruments in treaties that

00:33:38

they they have a sources

00:33:39

of Law and guidance, choose

00:33:42

pick, and choose the parts

00:33:43

that are most important to

00:33:47

the particular context. That's at

00:33:48

issue. And meanwhile, the other

00:33:50

instruments stay but perhaps fall

00:33:52

into the background but never

00:33:54

become irrelevant. So, if we

00:33:56

look at how to deal

00:33:57



with this increasingly crowded space,

00:33:59

I think there's more Innovation,

00:34:01

that is needed, but the

00:34:01

vclt remains quite instructive for

00:34:04

future practice. So, I'm quite

00:34:06

optimistic. I think the plc

00:34:08

offer is a very Constant

00:34:12

source of rules and guidance.

00:34:14

At the same time, I

00:34:15

think there's room for Innovation

00:34:16

and something that you are

00:34:17

seeing happening in the law

00:34:19

of treaties. Now, is that

00:34:20



states are being much more

00:34:21

directive. So while the Beast

00:34:23

guilty, offers default guidance on

00:34:25

how to enter into Force,

00:34:26

how to exit from treaties

00:34:27

so how to interpret treaty.

00:34:30

So on and so forth.

00:34:30

What we are seeing an

00:34:32

investment agreements is specialized guidance

00:34:35

on what should happen so

00:34:36

soon after and usmca is

00:34:38

a great example, right? The

00:34:40

the usmca provides for how

00:34:43



the sunset of NAFTA would

00:34:45

be conducted. And you know,

00:34:47

if you've still got plans

00:34:48

to make, you've got six

00:34:49

more months to make them

00:34:50

at the moment because there

00:34:51

was a three-year Sunset. The

00:34:53

same time that the trees

00:34:55

are also. Now, starting to

00:34:56

specialized interpretive guidance, on what,

00:34:59

what are the sources of

00:35:00

interpretation and what I've been

00:35:01

really impressed by his sometimes,

00:35:03



and there is there's one

00:35:04

example, it's the Kazakhstan hungry

00:35:06

git, that was entered into

00:35:08

in 2020. Specifically says This

00:35:11

treaty is to be interpreted

00:35:12

using the rules of the

00:35:13

bclt, so it's so that

00:35:15

kind of very directive guidance

00:35:17

is useful for participants in

00:35:19

these kinds of dispute. Still

00:35:20

stuck there for now, obviously,

00:35:22

open it up. Now for

00:35:31

Manson reaction are you and

00:35:37



the guy to search one

00:35:50

is to be considered as

00:35:52

a general rule between station.

00:36:03

When you catch a beach

00:36:05

for practice, this is not

00:36:09

always the case that is

00:36:12

used as a whole as

00:36:14

a general rule, sometimes it

00:36:17

focuses more on either. I'm

00:36:19

a sort of interpretation impression

00:36:22

being that there is kind

00:36:23

of a Yorkie sometimes be

00:36:28

characterized as exercise. Fragmentation, so

00:36:35



yes, be taken together. Do

00:36:56

something to National former Chinese

00:37:00

guidance. This is it. Cuz

00:37:10

what does it mean to

00:37:10

take into account? Enterprise. That

00:37:15

any of you treat her?

00:37:17

Any tribunal? We likely a

00:37:19

magician? First part is that

00:37:21

would be groups over the

00:37:23

creatures. In group was driving,

00:37:24

was a different idea of

00:37:26

what it means to take

00:37:28

into account a dimensional. What

00:37:29



it means to take into

00:37:30

account what it means to

00:37:32

provide guidance. But there are

00:37:40

also limited Hornet. Rationalized away

00:37:44

is convicted to be more

00:37:47

in line with public and

00:37:52

to be more in line

00:37:53

with this idea of a

00:37:54

system integration, which is thank

00:38:02

you for writing under article

00:38:19

31 of the Vienna convention

00:38:21

on the law of trees,

00:38:22

when when thought in investor-state

00:38:26



arbitration practice, And how are

00:38:29

you should buy them somehow?

00:38:31

He bounced that it always

00:38:32

makes me think about the

00:38:34

the the living of roster

00:38:38

Vale in in in Waterbury

00:38:42

industrial relation cases. I mean

00:38:44

he he took our approach

00:38:45

of which was more more

00:38:47

purpose based, whereas his to

00:38:51

arbitrators appoint as arbitrators by

00:38:54

the parties to a very

00:38:56

exegetical. Psalms 80 in terms

00:39:08



of of, well, It seems

00:39:14  
to me that I'm not.

00:39:15  
I'm not indicating that. It's

00:39:17  
right or wrong. But it

00:39:18  
seems to me that there

00:39:19  
is a general consensus. That

00:39:26  
the older technically, they should

00:39:29  
not be her actual it

00:39:30  
seems to me that the

00:39:32  
first approach is The Texas

00:39:35  
coach and a respect of

00:39:39  
that approach. But public international

00:39:42  
law professor. he took into

00:39:46



account that the reading of

00:39:48

of the of the Preamble

00:39:50

and and I'll consider well,

00:39:52

I should go more for

00:39:54

her purpose and the disagreement

00:39:57

was so fundamental that he

00:39:58

ended up leaving the tribunal

00:40:00

and that interpretation which, which

00:40:06

really related to weather in

00:40:11

North. you, if you could

00:40:14

be Legit legitimately a person,

00:40:22

swing under the exit system.

00:40:26

Despite being only by a

00:40:29



national of the Same Old

00:40:30

State. Is is one that.

00:40:36

Seems now to be accepted

00:40:41

Crucible approach, which is everything

00:40:50

all at once. I think

00:40:53

it's a flaw of arbitral

00:40:55

practice and advocacy more so

00:40:57

than the decision-makers. Because if

00:40:59

you look at the way

00:41:00

we conduct investor-state, dispute resolution

00:41:03

typically, the parties have a

00:41:07

shot or two shots to

00:41:09

make all their arguments that

00:41:11



they intend to make, including

00:41:13

those on how interpretation is

00:41:14

to be approached. So they

00:41:16

have various arguments regardless of

00:41:18

whether they intend to Resorts

00:41:19

that hierarchical e, they need

00:41:21

to make all of them

00:41:22

at once. Then the other

00:41:23

side respond to all of

00:41:24

them at once and then

00:41:26

there might be a second

00:41:26

round of the same thing.

00:41:28

So what that leaves the

00:41:29



tribunal the decision-makers with is

00:41:32

needing to Wade through that

00:41:35

morass? Various approaches all at

00:41:37

once. Even if a more

00:41:39

hierarchical approach or dogmatic a

00:41:42

praetorian, I was some kind

00:41:43

of systematic approach could be

00:41:44

the more coherent way to

00:41:46

deal with it. I think

00:41:47

it's a reflection of what

00:41:49

we have counseled. Sometimes do

00:41:51

that that we make make

00:41:52

a bit of a mess

00:41:53



of it sometimes, which makes

00:41:55

it more difficult for The

00:41:56

Interpreter and the one who

00:41:58

needs to decide how the

00:41:58

application is to be taken

00:42:00

into account. If I could

00:42:03

just have one thing on

00:42:03

that in, this is picking

00:42:04

up on Yonex differentiation between

00:42:07

State, practice an arbitral practice.

00:42:10

The practice of the approach,

00:42:12

the Vienna convention on the

00:42:13

law of trees as different

00:42:14



as a matter, as a

00:42:15

public International lawyer. For example,

00:42:17

representing the government going to

00:42:23

be limited in some instances,

00:42:25

to the advocacy, that presented

00:42:27

to them. It might not

00:42:28

approach it as holistically as

00:42:30

public international law. Thank you,

00:42:33

good. Once everyone, we're going

00:42:35

to move now to a

00:42:36

topic of the topic of

00:42:38

State responsibility which address to

00:42:44

replicate what he might have

00:42:47



said probably not as well

00:42:49

as the best way we

00:42:51

thought to start was literally

00:42:54

read his words from a

00:42:56

recent article. He's put out,

00:42:57

it was in the exit

00:42:59

review on 37's, the special

00:43:02

issue in the 20th anniversary

00:43:03

of RC well aware that

00:43:05

the draft articles responsibility. He

00:43:08

provided the concluding remarks memorialized

00:43:11

in a paper that Miss

00:43:13

entitled, a reference text partially

00:43:16



victim of its own success.

00:43:17

And so I'll just read

00:43:20

just a couple short excerpt,

00:43:21

hopefully the right ones to

00:43:22

give you a gist of

00:43:23

what, what you would say

00:43:25

what is point is. And

00:43:26

then I think other panelists

00:43:27

make May react by noting

00:43:31

that the draft Application of

00:43:33

the law of responsibility is

00:43:35

aimed at relations between two

00:43:36

or more States each with

00:43:38



equal sovereignty intended to be

00:43:40

applied solely within the framework

00:43:41

of public international law. It

00:43:43

is not in his self

00:43:44

conceived served in the context

00:43:46

of a dispute between two

00:43:47

parties. Only one of which

00:43:48

is a sovereign state and

00:43:50

the other illegal person primarily

00:43:52

subject to the internal law

00:43:53

of another state. And he

00:43:56

goes on to say, he

00:43:57

actually quotes Crawford, who notes

00:44:02



and there's a fundamental and

00:44:06

often misunderstood difference between two

00:44:09

parts of the text of

00:44:11

the draft articles. Crawford says,

00:44:13

in particular, part one is

00:44:15

different and scope for parts,

00:44:16

two and three. And the

00:44:17

difference is extremely relevant to

00:44:19

investment treaty arbitration. Then Professor

00:44:21

Duke, we fix it up

00:44:22

and says indeed this point

00:44:23

remains absolutely Central a number

00:44:26

of tribunal, still seem to

00:44:27



have difficulties drawing all. The

00:44:31

consequences from this difference. Then

00:44:33

Professor Duke, we goes on

00:44:35

later to talk a bit

00:44:36

about the difference. More, he

00:44:37

says, the second part of

00:44:39

the draft articles, to find

00:44:40

the consequences for a state,

00:44:42

having violated, one of his

00:44:43

obligations, but in relation to

00:44:45

one or more other states,

00:44:47

not in relation to a

00:44:48

foreign private person, who is

00:44:50



a national of another state.

00:44:51

And it is particularly concerned

00:44:53

with the conditions of operation

00:44:55

for the damage caused by

00:44:56

the violation. Then finally is

00:44:58

his main set of Point

00:45:00

here in his article is

00:45:01

that both sets of Articles,

00:45:03

meaning Parts, two and three

00:45:04

of the draft articles and

00:45:06

not to use, but by

00:45:07

analogy cuz he says they

00:45:09

don't apply directly to individuals

00:45:10



but only the states. And

00:45:13

with that set-up, I'll try

00:45:14

to turn it over to

00:45:14

Josh who I know has

00:45:15

some views on how this

00:45:18

is perhaps Distortion by tribunal's

00:45:20

plays out in the damage

00:45:21

is wrong. So I might

00:45:25

start by disagreeing that it's

00:45:26

a distortion. I do agree

00:45:29

that Principle of separation between

00:45:32

Parts 1 and part. 2

00:45:33

are important, if it's good

00:45:35



to clarify that part 2

00:45:37

of the dry particles at

00:45:38

the possibility of play state-to-state

00:45:40

relations or say as opposed

00:45:44

to investors State relationship. Why

00:45:51

is it that Professor between

00:45:54

asking this too but why

00:45:56

is it that it still

00:45:57

applies by analogy? What does

00:45:59

that mean? I think the

00:46:01

answer probably comes from article

00:46:03

33 of the draft articles

00:46:05

of State responsibility. So I'm

00:46:07



article 33 to States. This

00:46:11

part again, Park part 1,

00:46:14

part 2 is without prejudice

00:46:16

to any right arising from

00:46:18

the international responsibilities of a

00:46:19

state which may accrue directly

00:46:22

to any person or entity

00:46:24

other than a state. This

00:46:26

is effectively, the recognizes that

00:46:30

there might be an application

00:46:31

is not state-to-state and goes

00:46:35

on to explain that when

00:46:38

an obligation of reparation exist

00:46:40



towards the State Rep race

00:46:42

and does not necessarily a

00:46:44

crew to that State's benefit

00:46:46

to someone else. Even in

00:46:49

a state-to-state relationship, Human rights.

00:47:00

So a state responsibility for

00:47:03

the breach of an obligation

00:47:04

under a treaty concerning. The

00:47:06

protection of Human Rights. May

00:47:08

exist towards all other parties

00:47:10

to the treaty. In other

00:47:12

words, all other state parties

00:47:13

to the treaty, but the

00:47:14



individuals concern should be regarded

00:47:17

as the ultimate beneficiaries. And

00:47:20

in that sense, as a

00:47:21

holders of the relevant rights

00:47:24

individual rights under international law

00:47:27

and they also arise outside

00:47:28

the framework of Human Rights.

00:47:31

one of these examples then

00:47:32

given in the next comment

00:47:33

is that in the case

00:47:36

of rights under bilateral or

00:47:38

Regional investment protection agreement. So

00:47:41

I think why is it

00:47:42



that Principles in North Dakota

00:47:46

State, responsibility can apply by

00:47:47

analogy as if they do,

00:47:50

not applied directly per say

00:47:51

because it's a principal but

00:47:56

they do you apply by

00:47:56

analogy. And I think article

00:47:58

33 of the draft article

00:48:00

states that expressly. So I

00:48:03

don't think it's a distortion

00:48:04

when investment arbitration tribunals are

00:48:08

the principles set forth in

00:48:09

the Articles of State responsibility.

00:48:11



Perhaps they could explain more

00:48:13

precisely that. This is not

00:48:16

an exact application of customary

00:48:18

international law as reflected in

00:48:20

dry. Particles is the responsibility

00:48:22

but the Scientology application is

00:48:26

still correct. Pray, thank you

00:48:29

Josh any other any thoughts

00:48:31

on that a little bit

00:48:35

and put them into context?

00:48:37

So we have primary sources

00:48:38

of international forces and and

00:48:42

I think that beat the

00:48:44



draft articles are intensity secondary

00:48:46

sources it. But what's interesting

00:48:48

is that the that the

00:48:50

draft articles themselves and their

00:48:52

commentary have been extensively once

00:48:54

again extensively relied upon by

00:48:56

investor-state tribunals and then there

00:48:59

is that self-referential propagation of

00:49:02

no sightings you to pry

00:49:04

a system but we cite

00:49:06

to Prior decisions and prior

00:49:08

interpretations and applications of the

00:49:10

draft article. So it's developing

00:49:12



sort of like a shadow.

00:49:14

System of rules and it's

00:49:17

like the metaverse. It's like

00:49:18

there and not there and

00:49:19

it shouldn't be there in

00:49:20

like But there's something to

00:49:26

be said for how these

00:49:27

are not primary sources. But

00:49:29

not only do the Josh

00:49:30

articles themselves but they're commentary

00:49:32

are cited. So extensively by

00:49:34

litigants and investor-state dispute and

00:49:38

as well as its decision

00:49:39



makers, that there's something to

00:49:40

be said for what? This

00:49:41

arbitral practice means for the

00:49:43

field of investment law, but

00:49:45

also for public international law

00:49:47

and more broadly, similar to

00:49:49

the marks, I was making

00:49:50

about the vclt while what

00:49:52

happens in the investor-state contacts

00:49:54

has implications more broadly. So

00:49:56

it's a lot of practice

00:49:57

and we can learn and

00:49:59

grow from that. I think

00:50:14



The subject today subject or

00:50:18

this panels subject is is

00:50:19

the influence of public international

00:50:22

law in investment pediatrician. And

00:50:27

when you see the subject,

00:50:29

I mean you can serve

00:50:30

take each one of of

00:50:32

of the subjects and ask

00:50:35

the question, how what has

00:50:38

been the influence? Do you

00:50:39

take the sources? And now,

00:50:46

we're going through substantive Provisions

00:50:52

at the end. State responsibility

00:51:01



as well. Pointed out, the

00:51:06

influence is almost a direct

00:51:08

but I find that that

00:51:12

a beautiful and your size.

00:51:14

I mean I don't I

00:51:15

don't I don't have any

00:51:17

I don't think that everything

00:51:19

applies. I mean, I necessarily

00:51:21

everything applies, give a few

00:51:24

examples, for instance, in in,

00:51:27

in the latter, part of

00:51:29

the articles on safety responsibility,

00:51:31

on circumstances recruiting rank Runkle

00:51:34



Nest. There we can, the

00:51:37

investment counsel have mostly developed

00:51:44

the notion of necessity of

00:51:48

cases, on a misunderstanding, the

00:51:53

weather necessary measures by necessity

00:51:57

and that was 5, 5,

00:51:58

5, 5 5, Crawford in

00:52:00

in in, in a normal

00:52:02

decision at cetera. But That

00:52:06

is is a specific

00:52:10

example. Now I can see

00:52:14

is some sort of development

00:52:16

mostly in the in the

00:52:19



sanctions and MMA counter measures

00:52:22

regime which had been developed

00:52:24

with that need to me

00:52:27

that is is those are

00:52:31

unlawful, a fax of state

00:52:33

that have breached. and when

00:52:38

I say to me, you

00:52:39

those who I'm referring to

00:52:41

the violations of international or

00:52:43

not to the circumstances precluding

00:52:46

wrongful list, When when the

00:52:50

state reaches of eyelash investment

00:52:53

treaty then, under the Articles,

00:52:57



which at least Article 2

00:52:58

would be customary international law.

00:53:01

Very, very article which determines

00:53:05

what leads do liability attribution,

00:53:08

and a breach of international

00:53:10

law. So I need to

00:53:14

take responsibility and then you

00:53:16

apply the provisions on attribution

00:53:21

the other Provisions. That is

00:53:26

And I understand that that

00:53:29

we're not necessarily dealing. With

00:53:34

a wrongful acts done by

00:53:35

State against another state, that

00:53:38



being said there is still

00:53:40

the notion of breach of

00:53:41

international law. And that's why

00:53:43

I don't have any, I

00:53:45

don't feel violated when when,

00:53:48

when when, when the notion

00:53:50

of applying this investor arbitration

00:53:54

is embraced in general terms.

00:53:59

And yeah. And by the

00:54:01

way, and by the way,

00:54:05

we're very much in many

00:54:12

respects thought of having at

00:54:16

least to some extent in

00:54:18



mind. Did the original comment

00:54:21

invest in Destin arbitration. Grateful,

00:54:33

thank you all. It's a

00:54:34

testament depressing for us to

00:54:36

do, queer, that. Even in

00:54:36

his absence, he can stimulate

00:54:38

such an interesting conversation, but

00:54:40

we do have to move

00:54:41

on to Jose. Antonio to

00:54:43

discuss substitute allegations. Just let

00:54:49

me one second and then

00:54:51

Let me share it with

00:54:53

you somehow. so, Soap in

00:55:49



here. That didn't ask to

00:55:53

speaking in seven or

00:55:57

eight minutes for the the

00:55:59

influence of public international law

00:56:01

on location is a very

00:56:05

difficult. One would be impossible

00:56:07

to just trace each one

00:56:09

of the decisions but what

00:56:11

I, what I would like

00:56:12

to do or, or, or

00:56:13

to do is at least

00:56:16

give give a general overview

00:56:19

of how relevant have been

00:56:23



some of the instruments. Or

00:56:30

Decisions of collisions of international

00:56:33

and use the trim, public

00:56:36

international law, which one is

00:56:42

the world chords the icj.

00:56:44

But beyond that, there has

00:56:46

been a significant influence of

00:56:48

bodies be before the icj

00:56:51

and before even the pcij,

00:56:53

for instance. So what would

00:56:56

I would have preferred to

00:56:59

is out of selected, three

00:57:03

specific, substantive one, most favored

00:57:07



nation. The other one is

00:57:10

fair, and Equitable treatment and

00:57:12

the other one extra creation.

00:57:13

I remember, we could talk

00:57:14

more National treatment and many

00:57:16

others, but this is just

00:57:17

to give a flavor how

00:57:18

much. Relation be in. And

00:57:21

unlike, in the in, in

00:57:24

the case of the articles

00:57:26

on state responsibility, where the

00:57:28

the info, It is a

00:57:31

very straightforward is very direct.

00:57:33



I think that here we

00:57:36  
see in some cases a

00:57:41  
certain Standard in in the

00:57:47  
substantive obligations and then when

00:57:50  
we see how that has

00:57:51  
influence in best investment to

00:57:53  
your station and it changes

00:57:55  
11 principle that, I believe

00:57:58  
that now has been clarified

00:57:59  
but was was relied upon

00:58:04  
was is the Daenerys principle

00:58:10  
which new treaty was what?

00:58:13  
When you look into to

00:58:15



do some historical research, you

00:58:16  
will you go back to

00:58:18  
the Embassy has a truck

00:58:19  
emissions case and there it

00:58:22  
was more of a wasn't

00:58:23  
an investment case. It was

00:58:25  
more of a trade-related case

00:58:27  
and the and the question

00:58:29  
was posed as to what

00:58:30  
is what is that mean,

00:58:32  
what does being of the

00:58:33  
same, kind mean end up

00:58:35  
in the, in some of

00:58:36



the initial cases at that

00:58:40

address whether or not a

00:58:43

state could rely on and

00:58:45

if an important substantive Provisions,

00:58:49

or or dispute settlement, Provisions

00:58:51

from other cases, At normally

00:58:55

work, not only usually States

00:59:00

Council, would, would come with

00:59:03

the argument, a wealthy, the

00:59:05

principles of Engineers, principal prevents,

00:59:08

you from importing, a fair,

00:59:12

and Equitable treatment from a

00:59:13

third treaty into the treaty.

00:59:17



If safer in a good

00:59:20

mood, treatment is not in

00:59:22

the tree so that that

00:59:23

was the way it was

00:59:24

argued in him. And in

00:59:25

many cases and I'm going

00:59:28

back into a party at

00:59:29

one of the notion is

00:59:31

that he clarifies is that

00:59:33

the the ginger itself was

00:59:38

more about trade and the

00:59:40

gender analogy. One can say

00:59:42

whether gender may have been

00:59:44



about trade here, we are

00:59:45  
in in the gender of

00:59:47  
investment and that's how you

00:59:49  
can see some of the

00:59:50  
decisions he invested arbitration. Yes

00:59:54  
and buying beer, another, which

00:59:57  
allow the importation of substantive

01:00:00  
Provisions, that maybe not included

01:00:04  
in the applicable 3D, but

01:00:06  
they may be in creating

01:00:08  
surgery. So that that's one

01:00:09  
example if we move forward

01:00:11  
just too. So there would

01:00:13



say there has been that

01:00:15

there is an influence now,

01:00:17

it's not very notable in

01:00:18

Emerson because it's generally accepted

01:00:20

that that's how you would

01:00:24

apply the principles we move

01:00:26

forward and I will look

01:00:29

into their nipple treatment. It's

01:00:31

almost impossible to think about

01:00:33

area code for treatment without

01:00:36

making some reference to some

01:00:41

of what Parties investment treaty

01:00:44

obligation, considered to be at

01:00:46



some stage in history. The

01:00:47

standard and the famous race.

01:00:50

In this case is near

01:00:52

versus Mexico by by national

01:00:56

commission. U.s. Mexico, the case

01:00:59

is is almost 100 years

01:01:02

old, not yet. But the

01:01:08

case involved a US citizen

01:01:10

who was killed by an

01:01:11

armed man in in in

01:01:12

the road and on Durango

01:01:14

Mexico and And that the

01:01:18

the case involves the questions

01:01:21



as to whether or not

01:01:22

there has been a lot

01:01:23

of dust as whether or

01:01:24

not there has been a

01:01:26

significant flaw in the in

01:01:28

the whole Michigan system, provision

01:01:31

of Justice. The Tribunal. The

01:01:37

tribunal ultimately and Melissa, some

01:01:40

of the nearest and I

01:01:42

am pretty sure that many

01:01:44

of you know, it, but

01:01:46

I need to cheer. The

01:01:47

tribunal ultimately refer to this

01:01:50



standard MTG to be one

01:01:53

of us, an outrage or,

01:01:54

or bad faith or willful

01:01:56

neglect of Duty efficiency of

01:01:59

governmental action so far short

01:02:03

of international standards that every

01:02:06

reasonable and impartial, man, would

01:02:08

react readily recognize its insufficiency.

01:02:11

Of course. A lot of

01:02:13

things have gone under the

01:02:15

reach, a little water has

01:02:16

gone under the bridge and

01:02:17

and that's one of the

01:02:18



beauties of customer International know

01:02:20

that things have evolved at

01:02:27

2 a.m. know. So demanding

01:02:30

standard have let two decisions.

01:02:36

That, that, that would question

01:02:41

whether you really need to

01:02:42

request that that the high-level

01:02:45

that we can also talk

01:02:46

about. DLC from the, the

01:02:52

icj, the standard is not

01:02:56

phrase in the same manner,

01:02:58

but you still need to

01:03:00

shock. At least your prizes

01:03:02



a sense of Draco priority,

01:03:08

the influence of this decisions

01:03:11

is is palpable, but my

01:03:16

take from it is is

01:03:17

especially with respect to the

01:03:19

nature of public international law

01:03:21

which is which involves and

01:03:24

that's why one of the

01:03:27

decisions that I would be

01:03:28

looking for is is is

01:03:30

that they ran a US

01:03:31

Visa and under their development,

01:03:36

concerning a fair and Equitable

01:03:38



treatment to see how it

01:03:40

has evolved and and where

01:03:42

we stand now that the

01:03:46

third third substantive provision that,

01:03:49

or discipline that I would

01:03:51

like to refer to is

01:03:55

Inspiration. Yeah, they may be,

01:04:02

of course, decisions of the

01:04:06

icj, but, but I've ever

01:04:07

believed that the strongest influence

01:04:09

has been provided by the

01:04:12

Iran, USA tribunal, and then

01:04:16

and there that you can,

01:04:17



you can actually see and

01:04:19

language in in early language

01:04:20

of jurisprudence. If I may

01:04:24

at least, at least two

01:04:27

examples, one in indirect filtration,

01:04:30

and the other one concerning

01:04:33

the high standard of substantial

01:04:36

depravation, the words are not

01:04:38

exactly the same reasons here

01:04:41

in in start housing versus

01:04:44

Iran. What the The tribunal

01:04:48

indicated was ultimately that the

01:04:53

reactants needed not to be

01:04:57



one of 18 as such

01:05:00  
or one of change of

01:05:04  
a vehicle title. But the,

01:05:06  
a sufficient interference was a

01:05:09  
warning to Friendship of such

01:05:11  
a degree that the consequences

01:05:14  
could be similar as to

01:05:17  
render the rights of the

01:05:19  
owner useless could lead also

01:05:22  
to assure face. So that

01:05:23  
there's, there's a link between

01:05:25  
that and the current status

01:05:28  
of investor-state arbitration and work

01:05:31



for the last one. It

01:05:34

keep its versus Iran. language

01:05:40

is not necessarily substantive substantial

01:05:43

the privation, but the Jesus

01:05:47

of of what the tribunal

01:05:49

was constructing was very much

01:05:54

in line with the notion

01:05:55

that That he could not

01:05:58

be a simple information, could

01:06:01

not be simply ephemeral and

01:06:03

then you, you, you build

01:06:05

more into the high side

01:06:07

of that has now. Been

01:06:08



canceled. Any investor arbitration are.

01:06:10

You can trace it to

01:06:12

those days cuz it's the

01:06:16

Iran. Us claims tribunal is

01:06:19

still has jurisdiction so and

01:06:23

there it is still development

01:06:24

on this issue. What I

01:06:26

would recommend is Going to

01:06:30

the world arbitration updating page

01:06:34

and there's a video. Precisely

01:06:36

tracking how the influence of

01:06:39

the Rams claims tribunal has

01:06:41

us taking place in two

01:06:43



subjects while it's rationed and

01:06:45

the other one nationality. And

01:06:48

I would love to talk

01:06:48

about National TV. That goes

01:06:50

beyond the scope of the

01:06:54

other motor with me today.

01:06:56

So I was outside the

01:07:05

scope, but us around claims

01:07:07

tribunal, it's not just substance

01:07:09

substance of influence, but also

01:07:10

procedural influence and investor-state dispute

01:07:13

in particular with the internet.

01:07:20

Yeah, I like to be

01:07:23



safe medicine and director of

01:07:32

customer international law in relation

01:07:35

to regulatory measures in the

01:07:37

palace, our Doctrine and clear,

01:07:43

those aspects. And this is

01:07:46

where affected in Albuquerque practice

01:07:48

when they refer to customary

01:07:50

international law, and a customer

01:07:56

International under international law. I'm

01:07:59

not sure which things are

01:08:00

the protection of the public

01:08:00

interest objective, which is non-discriminatory,

01:08:03

which is entertaining, our cousins

01:08:04



with your process. Is not

01:08:07

an indirect appropriation, whatever the

01:08:10

impact on the investor. But

01:08:14

if you look at the

01:08:15

view of customer International by

01:08:17

the tribunal, which is not

01:08:25

a indirect quotation, unless it

01:08:28

has an impact on the

01:08:30

investor. So you have two

01:08:32

different views of customary international

01:08:34

law, which are quite different

01:08:36

and which has quite an

01:08:37

important practical impact for steaks

01:08:40



and an investor. So, two

01:08:43

points in relationship to increasing

01:08:46

that introduced recently adopted, those

01:08:49

two approaches are taken on

01:08:51

board to a friend sends.

01:08:52

You should take the approach

01:08:53

of India, this is their

01:08:55

purchase metanx. Regulatory measures never

01:08:58

to be considered as an

01:08:59

indirect approach of the US

01:09:02

of the exception to that.

01:09:06

When the impact is too

01:09:08

severe on the investor. So

01:09:11



there is a difference unless

01:09:13

found in which state only

01:09:16

refer to customer International. Malaysian,

01:09:19

Ringgit Malaysian, I will strongly

01:09:21

recommend National is Map of

01:09:43

India and other countries that

01:09:44

is also in line with

01:09:48

the logical of public international

01:09:51

law. If it happens quite

01:09:54

often to the extent that

01:09:59

States may not be in

01:10:01

agreement with the certain interpretations,

01:10:04

which, which is, by the

01:10:06



way, the beauty of this

01:10:07

system that is an example

01:10:13

of how certain lines of

01:10:15

jurisprudence, which are not shared

01:10:17

by States. May be rejected,

01:10:19

say, well, we, we, we

01:10:21

do not want your creation

01:10:23

regulatory action or or, or

01:10:26

or or, or at the

01:10:35

end of the 2000 mini

01:10:37

trees being in rejecting the

01:10:38

moccasin adoption. We do not

01:10:42

want him as a way

01:10:44



to import this week, that

01:10:45

one provision. And that's, that's

01:10:49

the beauty of discussion of

01:10:51

sources. So what you, whatever

01:10:53

you want to say in

01:10:54

the tree, will it we're

01:10:55

not going to the doctor.

01:10:56

So, the states have this

01:10:57

power of a green to

01:10:59

treaties and reacting to it.

01:11:01

And That was a great.

01:11:06

Thank you. Thank you removed.

01:11:07

Your last topic of discussion.

01:11:08



Joshua address damages. It's fitting

01:11:15

that damage has come at

01:11:17

the end, right? Because they

01:11:18

come at the end of

01:11:19

every case. But I would

01:11:20

say that it's on the

01:11:21

topic of the influence of

01:11:23

public international law and it's

01:11:25

one of the most important

01:11:27

influences because investors would not

01:11:30

bring claims there was not

01:11:31

a principle of Separation but

01:11:35

it is one of the

01:11:37



most contentious issues as well

01:11:39

and I think the contentious

01:11:40

this arises from the opposite

01:11:42

problem that was a Tonio

01:11:44

just mentioned which is there

01:11:47

are certain principles of international

01:11:48

law that are unclear and

01:11:50

then striking a struggle to

01:11:53

understand what they are very

01:12:03

great difficulty. So I think

01:12:05

there's a different relationship between

01:12:07

reparation and and an SNR

01:12:09

tration. I'm today, I want

01:12:12



to focus on three questions

01:12:14

1. What is reparation? Was

01:12:17

it mean to wise important

01:12:19

and three house it implemented

01:12:22

in about arbitration. The first

01:12:24

what is full reparation international

01:12:28

law requires that the state

01:12:30

responsible from unlawful act must

01:12:32

make restitution by putting the

01:12:34

injured party into the position

01:12:36

that it would be in

01:12:37

if the wrongful act and

01:12:39

not her. This is an

01:12:41



article 6 possibility. And in

01:12:44

many cases it's it's brought

01:12:47

through reference to the toys,

01:12:48

aisle Factory Case by the

01:12:49

permanent Court of international Justice

01:12:51

jackets. It's almost 100 years

01:12:54

old. Professor Dupuis makes an

01:12:57

interesting contribution when he discusses.

01:13:00

Why? Because olfactory case is

01:13:03

sometimes not appreciate it or

01:13:05

not actually applied investment arbitration,

01:13:08

but I think some tribunals

01:13:10

in at least one and

01:13:12



Danver versus Argentina recognize that

01:13:14  
the choice is not a

01:13:16  
source of customary international law

01:13:19  
but it was a statement

01:13:20  
of it and so I

01:13:22  
think the reason that the

01:13:24  
chores out Factory quotation is

01:13:27  
used too often is because

01:13:28  
it's accurate and still survives

01:13:31  
today. So here's the statement.

01:13:33  
Reparation must quote, wipe out

01:13:36  
all the consequences of the

01:13:37  
illegal act and re-establish the

01:13:40



situation, which would in all

01:13:42

probability, have existed. If the

01:13:44

ACT had not been committed

01:13:46

against restitution is the preferred

01:13:50

preferred remedy of the condensation

01:13:58

accomplished. Restitution This is frequently

01:14:03

referred to as the prop

01:14:04

for World, a hypothetical context,

01:14:07

it's easy to understand the

01:14:09

concept but it's difficult to

01:14:11

apply and this is an

01:14:13

area where I think that's

01:14:14

an arbitration has added Clarity,

01:14:16



what principle means and I'll

01:14:21

give one example. So even

01:14:22

from the days of the

01:14:23

separating, from sessions from Daniel

01:14:29

emergency putting out lost prophets

01:14:32

and modern economics and advances

01:14:35

in understanding. So that doesn't

01:14:39

make much sense that has

01:14:40

been set aside. That's not

01:14:42

a principle. That's what it's

01:14:44

how it had been applied

01:14:45

by some and we moved

01:14:49

on from that. But that

01:14:52



doesn't mean that everything is

01:14:53

resolved. And so, why is

01:14:57

full reparation important? There are

01:14:59

two fundamental purpose. Has one

01:15:01

is to the States from

01:15:04

unlawful acts and violating their

01:15:05

treaty obligations in the second

01:15:08

is to restore those who

01:15:09

are harmed position. They would

01:15:12

have been in without the

01:15:12

violation. This goes to the

01:15:15

heart of the rule of

01:15:16

law. If there's not reparations

01:15:19



picking up on Jose, Antonio's

01:15:28

points about procreation, I'm going

01:15:30

to focus on that because

01:15:31

it's the clearest conceptually vacations.

01:15:41

So there's been some often

01:15:46

in the investment application cases.

01:15:48

There's the debate between a

01:15:49

lawful or unlawful expropriation. And

01:15:53

I think that there's an

01:15:56

interesting article by Steven rattner,

01:15:58

which I would recommend that

01:16:00

suggested that freezing sometimes sounds

01:16:03

wrong. But really the issue

01:16:05



in the best arbitration is

01:16:07

is it a treaty compliant

01:16:10

expropriation or a treaty violative

01:16:13

expropriation. So awful as uses

01:16:17

a catchphrase the point here

01:16:19

is that there's no doubt

01:16:20

that the states I'm awfully

01:16:25

take property satisfy their obligations.

01:16:29

Freely entered into at an

01:16:31

international level, and not scenario.

01:16:34

It's important for states to

01:16:35

be able to assess in

01:16:36

advance, what the compensation. They

01:16:39



would need to pay an

01:16:42

investment treaty as is typically

01:16:43

the case requires payment of

01:16:45

compensation. What the situation is

01:16:49

different. When the state pays,

01:16:50

no compensation was not even

01:16:52

make an offer compensation. That

01:16:55

is where tribunals have focused

01:16:57

on the concept of creation.

01:16:59

Probably the most famous decision

01:17:02

is in the yukos Ace,

01:17:04

and they're the tribunal said,

01:17:06

quote, conflating the measure of

01:17:08



Damages. For a lawful, taking

01:17:11

the measure of Damages for

01:17:12

unlawful, taking is on its

01:17:15

face and unconvincing up. Why

01:17:18

not why should compensation be

01:17:20

different The reason goes back

01:17:24

to the purposeful reparation, the

01:17:26

first place, there is no

01:17:27

difference between the compensation. That

01:17:31

flows for acts that comply

01:17:32

with trees as compared to

01:17:34

acts that don't comply with

01:17:35

the trees, it would be

01:17:37



no incentive. How is this

01:17:43

principle of full reparation implemented?

01:17:45

This is an area where

01:17:47

I think there has been

01:17:48

an advance and understanding. I'm

01:17:50

10 years ago, I wrote

01:17:51

an article about tort of

01:17:53

more exact science and valuation

01:17:56

in the best for State

01:17:56

arbitration. And I think the

01:17:58

fuel has moved in that

01:18:00

direction. In the past decade,

01:18:01

I'm going to focus on

01:18:02



one example. Is there a

01:18:04

lot of issues that come

01:18:05

up with a question about

01:18:07

the example is the date

01:18:09

of valuation and the role

01:18:11

of ex post information or

01:18:14

data that arose after. Remember

01:18:18

that full reparation does not

01:18:19

start with compensation starts with

01:18:22

the concept of restitution, if

01:18:24

we had a time machine,

01:18:25

this would be easy to

01:18:27

go back in time and

01:18:28



give the property back. That

01:18:30

would be restitution is and

01:18:32

it's clear is conceptual sense.

01:18:43

and, This is this where

01:18:47

the split comes in the

01:18:48

position of investors is that

01:18:50

states should pay for any

01:18:52

increase in value after the

01:18:54

expropriation. When it's an unlawful

01:18:56

expropriation, the position of states

01:18:58

is that the treaty most

01:19:01

investment agreements required only compensation

01:19:04

has of the day to

01:19:05



take it, so you should

01:19:06

not get the increase in

01:19:08

value is right. I think

01:19:12

the debate has been about

01:19:14

what's the proper evaluation day.

01:19:17

It should be the date

01:19:19

of the taking for the

01:19:20

date of the award. And

01:19:22

there's been a few decisions

01:19:24

that have shed important light.

01:19:25

On this thing, suggests that

01:19:27

a better focus is on.

01:19:29

Whether and how the tribunal

01:19:32



should use Xposed information. If

01:19:42

you do a valuation on

01:19:44

the date of the expropriation

01:19:45

but you use information from

01:19:48

later. For example, if it's

01:19:51

a gold mine, price of

01:19:52

gold goes up. Tribunal says

01:19:54

we'll use that will do

01:19:56

a date of expiration but

01:19:58

we will use the gold,

01:19:59

the actual gold price. That's

01:20:02

the same thing as at

01:20:03

the date of the award

01:20:04



valuation and that distinction is

01:20:07

lost. Sometimes the question is

01:20:09

how do you and when

01:20:11

do you use Xposed information

01:20:15

Professor? Brigitte Stern, her dissenting

01:20:17

opinion and keep her axe

01:20:19

versus Bolivia. Highlights. That is

01:20:23

often inconsistent in the way

01:20:25

the tribunal's pick and choose.

01:20:26

Which information should they use?

01:20:28

Which information should they not

01:20:29

use after the expropriation? I

01:20:32

think more recently the tribunal's

01:20:34



decision and Conoco versus Venezuela

01:20:36

makes important things. It expands

01:20:40

on Professor Stearns logic. It's

01:20:43

finds that the Exxon Tay

01:20:46

information. In other words, the

01:20:47

information existing at the time

01:20:48

of the expropriation sets, the

01:20:50

bottom line. And the ex

01:20:53

post in formation and be

01:20:55

taken into account. And here's

01:20:57

the key point when how

01:20:59

which information the tribunal explained

01:21:02

that the focus should be

01:21:04



on causation, causation, including mitigating

01:21:10

factors like intervening or concurrent

01:21:12

causes contributory negligence of proportionality.

01:21:15

This is an important principle.

01:21:20

Causation of proportionality, come from

01:21:23

concepts of reparation under international

01:21:26

law. You see them, the

01:21:28

ability to focus and I'll

01:21:32

give to very extreme examples.

01:21:35

Are you mentioned the gold?

01:21:36

Mine when there's a commodity

01:21:37

price at issue is very

01:21:39

easy to observe that price,

01:21:41



the investor and the state

01:21:43

knew that the value depended

01:21:45

on that price at the

01:21:45

time of the day. So

01:21:47

there, Causation is probably satisfy

01:21:50

you would take him to

01:21:52

the tribunal should take into

01:21:54

account the information. Let me

01:21:56

give you another extreme example.

01:21:59

A state expropriate, Zoom the

01:22:02

company Zoom one month before

01:22:04

the covid-19 start, right? As

01:22:08

everyone know what happened to

01:22:09



the value of Zoom after

01:22:10  
covid. It went up a

01:22:13  
lot. Did anyone expect covid

01:22:16  
not directly? Not really not

01:22:19  
the way it happened. So

01:22:21  
that's that's like a Black

01:22:22  
Swan event. That probably fails

01:22:25  
to causation test fails the

01:22:27  
proportionality test. I think that

01:22:31  
is the right way for

01:22:32  
this debate to proceed on,

01:22:34  
so I can get Conoco

01:22:35  
decision was important there. Are

01:22:38



a lot of different other,

01:22:38

a lot of other different

01:22:40

issues where this comes into

01:22:41

play. I've just chosen the

01:22:43

Expo, some formation and evaluation

01:22:45

day. But the key point

01:22:47

back to our topic influence

01:22:48

of public international law and

01:22:50

tradition, is that there are

01:22:52

some issues like, right where

01:22:54

the concept for the principal

01:22:56

under public international law. Is

01:22:59

clear sexually simple but it's

01:23:03



very difficult to apply. And

01:23:05

in those circumstances, I think

01:23:07

invest in arbitration in serve

01:23:09

an important role in clarifying.

01:23:11

What's the principle of international

01:23:13

law? Again, at the very

01:23:17

beginning, I'm not saying the

01:23:19

arbitral practice in any way

01:23:21

creates or changes international law.

01:23:25

But is clarify what that

01:23:28

principle of international law means

01:23:29

in light of specific facts.

01:23:31

Great, thank you very much.

01:23:36



Well, we're coming close to

01:23:39  
the ground on uncommons. Anyone

01:23:45  
has them on the panel

01:23:46  
one minute tops, maybe 30

01:23:48  
seconds earlier at 2 p.m.

01:23:58  
analogy when we have to

01:24:08  
same conception of by analogy

01:24:09  
that Professor 23. Your point

01:24:12  
is that all things being

01:24:14  
equal, part, 2, and 3/4

01:24:16  
ply. That's my understanding. Why?

01:24:21  
This is a source of

01:24:25  
inspiration, but This requires more

01:24:28



than adjustments, this requires friends

01:24:30

things to take into account,

01:24:31

the context that just proves

01:24:40

which have developed eating. I

01:24:41

need to see this conception

01:24:44

of by an allergy to

01:24:46

move away from public International.

01:24:50

if I understood you correctly,

01:24:51

that's a good point and

01:24:53

it brings up my 1-minute

01:24:55

remark, which is that Going

01:24:58

back to the question of

01:24:59

unlawful vs. Unlawful treaty compliance

01:25:01



versus treaty. Violet says, what

01:25:04

is the international obligation that

01:25:06

has been breached and invest

01:25:08

in arbitration? It is a

01:25:09

treaty obligation and so, that

01:25:12

treaty is between two State

01:25:14

parties. And then, if you

01:25:16

look at the commentary of

01:25:18

the article, 33 and dry

01:25:20

particles of a responsibility and

01:25:22

recognizes that when a State

01:25:24

Bridge has its International obligations

01:25:26

against another state, that's the

01:25:29



benefit, or the remedy might

01:25:31

accrue to a different person

01:25:33

invest in arbitration. That tends

01:25:35

to be the investor. So

01:25:37

I think that's that's how

01:25:39

the analogy applies. Pics of

01:25:42

the Triangular nature of investment

01:25:44

treaties. You only have two

01:25:46

parties that are involved in

01:25:48

negotiating and entering into those

01:25:50

obligations and and what their

01:25:52

contents, maybe, but you actually

01:25:53

have a complete Outsider who's

01:25:55



seeking to reap the benefits

01:25:57

of that. Negotiated Three months.

01:26:04

Great. Thank you. Let's let's

01:26:06

leave it there. What I'd

01:26:06

like to do is give

01:26:08

you another pound of meat

01:26:09

in in a bit. Maybe

01:26:10

take a few minutes for

01:26:11

questions and we'll start from

01:26:14

any questions in the room

01:26:16

and then like this. I

01:26:25

kind of think you very

01:26:26

much, very insightful, bring sting

01:26:28



discussion public International or not

01:26:38

because I'll be completing public

01:26:41

international law and spending the

01:26:43

day. Investors have to bring

01:26:46

a case against the state.

01:26:47

So we are talking about

01:26:49

public international law blog Asians

01:26:51

rights, over his part of

01:26:53

public international law and we

01:26:55

have investor who has a

01:26:57

standing to bring a claim

01:26:59

against the state. So maybe

01:27:01

that somehow results, all these

01:27:03



issues that we discussed in

01:27:05

terms of the articles, What

01:27:13

would a is awesome that

01:27:15

I don't have any conflicts

01:27:19

with a big international law

01:27:26

and I think that that

01:27:28

the the basis and the

01:27:31

similarities are are very here.

01:27:36

Unlike in other areas of

01:27:39

specialized, there you have a

01:27:50

more specialized system of of

01:27:53

international law. Hear the The

01:27:57

influence is, is way more

01:28:00



ear. That being said, the

01:28:03

investment treaty arbitration investment investment

01:28:09

international law. Has certain peculiarities

01:28:11

that you have mentioned one.

01:28:13

There is international, right? Of

01:28:16

recourse, all the investors because

01:28:18

I have to go and

01:28:22

knock at the door National

01:28:24

tribunals, that doesn't happen at

01:28:26

the, that doesn't happen. It

01:28:29

doesn't happen. human rights, you

01:28:34

do, but before, but before

01:28:37

before tribunals, I mean, you

01:28:38



can go before the commission

01:28:39

that the UN attached are

01:28:41

the reports but it's not

01:28:44

Take me to speak education

01:28:45

in India. I think that

01:28:51

there are their areas of

01:28:52

specialization here and there are

01:28:54

things that that, that that

01:28:55

investment. International law, but I

01:29:04

absolutely think it is part

01:29:06

of the question. Baby, I

01:29:12

miss you. When you look,

01:29:15

when you do the exercise

01:29:17



of Looking into potential tribunal

01:29:22

members because there you go.

01:29:24

And then he becomes an

01:29:32

issue because what is the

01:29:33

arbitrator answer, which is not

01:29:44

my own been, one of

01:29:45

the chapters of our Book

01:29:47

of Esther, Freddy's origins of

01:29:48

Washburn University argues and then

01:29:51

I'm paraphrasing here, use that

01:29:53

investment treaties are not trees

01:29:55

at all. Actually they're just

01:29:56

contract Square on public. International

01:29:59



law is only applied by

01:30:01

analogy. So I mean, it's

01:30:03

not my argument, maybe it

01:30:09

it's all like a bowl

01:30:10

by analogy. Curious to hear

01:30:14

what the states, think about

01:30:16

that. Great either reactions or

01:30:35

make chicken please. Address. Of

01:31:05

course, against recreational. I think

01:32:12

that would be a great

01:32:13

topic for an entire panel

01:32:15

is corruption. Is important. Issue

01:32:17

is typically it has not

01:32:19



been addressed. As a matter

01:32:21  
of Remedy, usually wanted section

01:32:25  
in Pandora in this ability.

01:32:27  
But their tribunal certainly are

01:32:31  
trying to understand I even

01:32:34  
outside of the domestic national

01:32:36  
law, rotations of corruption. How

01:32:40  
do general principles of Law

01:32:42  
and how do they apply?

01:32:44  
And whilst I think that

01:32:47  
sound, it's an important in

01:32:49  
developing question. That should be

01:32:51  
on a panel next year.

01:32:53



There's one award, which is

01:33:02

called pick it was. As

01:33:06

as, as Josh explain the,

01:33:08

the, the issue was resolved

01:33:11

at the, I believe, at

01:33:12

the Jersey Shore level because

01:33:13

the investment was predicated to

01:33:16

be tainted by corruption. So

01:33:20

that being said, I put

01:33:22

a memory doesn't Do me

01:33:26

wrong. I believe that the

01:33:28

cost at the cost level.

01:33:30

There is a tribunal found

01:33:32



a way where were some

01:33:35

of the war that would

01:33:38

not necessarily go to write

01:33:49

the, if the part of

01:33:52

the cost of location, I

01:33:54

believe, that was somehow related

01:33:57

to a special fun of

01:34:00

of the UN on corruption.

01:34:02

I am not entirely sure,

01:34:04

I may be wrong but

01:34:05

you may want to look

01:34:06

at the site International Investment

01:34:14

in the sense that in

01:34:16



many treaties, as part of

01:34:17

the definition of an investment

01:34:18

shop to compliance with the

01:34:20

message what the time in

01:34:21

this week. So this crazy

01:34:25

Is not fulfilled, my tell

01:34:29

you and even when you

01:34:31

have a treaty, which does

01:34:32

not contain this requirement some

01:34:35

5 months, I've been ready

01:34:36

to concede that this is

01:34:37

inherent to the definition of

01:34:39

an investment increased. Great, thank

01:34:51



you. I think we can

01:34:51

take one more question from

01:34:52

the room if there is

01:34:53

one. And then we'll we

01:34:54

got one virtual. Anyone else

01:34:56

have Now, okay, we'll go

01:34:59

to the the our last

01:35:00

question is from Eric brougher.

01:35:03

I thank you very much

01:35:05

for very interesting panel. One

01:35:06

question, how far do you

01:35:07

think an arbitral tribunal can

01:35:09

rely on article 31 3,

01:35:10



C of the vclt based

01:35:12

on your lan? Ovid. I

01:35:15

even if the parties make

01:35:16

no reference to it without

01:35:18

running the risk of acting

01:35:19

Ultra extra. If you got

01:35:21

a question to what extent,

01:35:25

and in tribunal has drawn

01:35:26

a public international law, even

01:35:29

if he's having raised it,

01:35:31

but I'm excited that we

01:35:33

discuss this with him when

01:35:34

I'm back at the University

01:35:35



of my PhD students. But

01:35:41

I mean We going to

01:35:45

be Creole, then what matters

01:35:47

is that the tribunal is

01:35:48

your coach invited to the

01:35:49

parties to express their views

01:35:51

on what brings on on

01:35:54

the table. So as long

01:35:55

as this precise requirements, We

01:35:45

going to be Creole, then

01:35:46

what matters is that the

01:35:47

tribunal is your coach invited

01:35:49

to the parties to express

01:35:50



their views on what brings

01:35:54

on on the table. So

01:35:55

as long as this precise

01:35:57

requirements,