



## **International Investment Treaties and Provisions Sensitive to Climate Change, and the Technology Revolution: A close look at Aerospace, Seabed Mining Disputes, and the Environment. \***

### **Summary**

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

The session at Washington Arbitration Week, led by co-founder Jose Antonio Rivas, focused on the evolving landscape of international investment arbitration, particularly in light of climate change and technological advancements. Rivas highlighted the growth of the event since its inception during the pandemic, emphasizing its commitment to free education and global participation.

The discussion featured a panel of experts, including Minaj, Chloe Baldwin, Maria Banda, and Christian Depot, who brought diverse perspectives from their backgrounds in international law, investment arbitration, and environmental law. They addressed critical issues such as the viability of the current investment treaty arbitration system, the need for reforms, and the implications of emerging technologies like seabed and space mining.

Key themes included the tension between state regulatory rights and investor protections, the importance of corporate social responsibility, and the challenges posed by new technologies that require updated legal frameworks. The panelists discussed the necessity for investment treaties to evolve to better address environmental concerns and the obligations of investors, particularly in light of international treaties on climate change and biodiversity.

The conversation underscored the need for clear definitions of "territory" in investment treaties as it relates to activities in space and seabeds, as well as the complexities of calculating damages in these new contexts. The experts agreed on the importance of aligning investment law with environmental goals and the dynamic nature of both investment expectations and legal frameworks.

In conclusion, the session highlighted the urgent need for a collaborative approach to reform investment treaties, ensuring they are adaptable to contemporary global challenges while fostering sustainable development and protecting public interests.



## Authors

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## Topics

International Investment Treaties, Climate Change, Technology, Technology Evolution, Technology Revolution, Aerospace, Seabed Mining Disputes, Environment, Climate Evolution

## Category

WAW

## Full Transcript

00:00:00

Ian made Start again. Welcome

00:00:07

everyone. Better so welcome everyone

00:00:16

today. Is that our second

00:00:18

day of Washington arbitration week.

00:00:20

I see some familiar faces

00:00:22

from yesterday and new faces

00:00:24

from today. My name is

00:00:27

that I was indicating is

00:00:29

Jose Antonio Rivas. I am



00:00:30

one of the co-founders of

00:00:33

Washington arbitration week together within

00:00:36

layered. I am a member

00:00:38

of so strange yellow pee,

00:00:40

which is a an international

00:00:42

boutique Law Firm both in

00:00:44

International Investment arbitration and investment

00:00:48

in Commercial International commercial arbitration

00:00:51

and public international law and

00:00:58

and Bogota and together with

00:01:00

my co-founder Young Lyric from

00:01:02

calling morning and end with

00:01:05

the a group of very



00:01:08

steamed and an ineligible advisors

00:01:11

we found The Washington arbitration

00:01:16

week 4 years ago in

00:01:17

the middle of covid and

00:01:18

the on so far so

00:01:20

good. This year may be

00:01:22

the biggest one in terms

00:01:23

of numbers were fully in

00:01:24

person. But hopefully we'll keep

00:01:29

on growing and this is

00:01:30

a testament of of of

00:01:31

the international Tradesmen Community 1st

00:01:34

in Washington arbitration with today.



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I would like to thank

00:01:40

you. I know some of

00:01:41

our or all of our

00:01:42

sponsors at which you might

00:01:43

see on on the screen,

00:01:45

it would really be impossible

00:01:48

to do it without our

00:01:49

sponsors. Why because Washington arbitration

00:01:53

week is I believe a

00:01:56

forum that has nothing to

00:01:59

Envy to the major International

00:02:02

arbitration Forum in the world.

00:02:04

You would see here. We



00:02:08

need the stars of international

00:02:10

arbitration both commercial and Industrial

00:02:12

state. But there's 11 Lou

00:02:15

tablet which which distinguish us

00:02:17

from other forms at which

00:02:20

is that it's completely free.

00:02:21

We're strong believer in education

00:02:24

about the NIT charging at

00:02:27

Georgetown University Law Center. We

00:02:31

have been doing that for

00:02:32

more than 10 years indeed

00:02:34

investment re arbitration and and

00:02:36

the more people that we



00:02:39

can reach in the world

00:02:41

or the better. So anybody

00:02:42

can come to DC anybody

00:02:45

can connect and I we

00:02:47

have people today here from

00:02:49

Sevilla Spain from from China

00:02:52

from France from the UK

00:02:54

from India, which is which

00:02:57

is part of our International

00:02:58

arbitration committee also being watched

00:03:01

from the pond with people

00:03:03

from Haiti here. So so

00:03:04

we we trying to make



00:03:05

a difference in terms of

00:03:06

education and we thought our

00:03:08

sponsors this this would be

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simply not be possible. So

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I would like to to

00:03:15

give and I want to

00:03:16

do this every time but

00:03:17

I think it's it's it's

00:03:18

a it's fair to say

00:03:20

no. Thank you to to

00:03:22

Norton Rosa to prefer to

00:03:24

CRA to Greenberg touring to

00:03:27

hashkafa for scroll and Mooring



00:03:32  
strategy Whelan Chevrolet. Willie Wiley,

00:03:36  
I'm sorry that white &

00:03:38  
case Allen & overy at

00:03:40  
2 jams at compass lexecon

00:03:42  
and I bake her box

00:03:44  
and decorate a Cornerstone research

00:03:47  
Pillsbury 3, speaker box under

00:03:52  
our hosts. Thank you today

00:03:54  
Covington SRM the men's group

00:03:58  
and then Fox PWC Gallagher

00:04:02  
Steptoe and suturing you might

00:04:05  
wonder what she's doing is

00:04:06  
we we enter into an



00:04:08  
agreement is not an international

00:04:09  
arbitration firm, and I will

00:04:11  
enter into an agreement a

00:04:12  
few days ago. For people

00:04:14  
to receive lower rates when

00:04:17  
they come to DC it's

00:04:19  
kind of an Airbnb. So

00:04:20  
next time that you come

00:04:21  
to DC you will have

00:04:22  
a way to skip scenes

00:04:25  
in the hotel lines and

00:04:26  
someone anyway enough of the

00:04:29  
propaganda. Let's get down to



00:04:32

it. Today's topic is is

00:04:35

one that has has been

00:04:40

bugging us and and me

00:04:42

in particular. I have a

00:04:43

background not only as an

00:04:45

international arbitration practitioner and as

00:04:48

an arbitrator, but before you

00:04:49

do that my past life

00:04:51

are I used to be

00:04:52

an investment treaty negotiated. I

00:04:55

negotiated for the Colombian government

00:04:57

as a chief negotiator many

00:05:00

of the investment research today



00:05:02  
in Port & and I

00:05:04  
things are now to do

00:05:05  
today in the world. There's

00:05:07  
a lot of questioning about

00:05:10  
the viability of the Penn

00:05:14  
treaty arbitration system. No, should

00:05:16  
we have one? Should we

00:05:17  
not the European communities? Is

00:05:19  
it at proposing to dismantle

00:05:21  
investment arbitration system as we

00:05:25  
know it and they're proposing

00:05:26  
a court in in the

00:05:28  
world of investment arbitration Oakland



00:05:30  
Espen dispute settlement. Not everyone

00:05:35  
is on board and that

00:05:37  
we know that that their

00:05:39  
negotiations in on speaker group

00:05:41  
three, but those local stations

00:05:42  
are procedural Mandy. And and

00:05:45  
when I hate when I

00:05:46  
listen to what is being

00:05:48  
negotiated and and the procedural

00:05:51  
modifications that they're putting together

00:05:53  
all of those seem to

00:05:55  
be a fairly reasonable not

00:05:57  
know the little girl that



00:06:01

seems to be very very

00:06:03

on-point good effort. But is

00:06:07

there anything new there and

00:06:10

and the world moves forward

00:06:12

at a pace that I

00:06:15

don't believe we'll ever be

00:06:17

able to to patch up

00:06:19

us lawyers. show Sprint and

00:06:23

just to give you an

00:06:24

example your notion of the

00:06:28

the right to regulate which

00:06:30

today is being with us

00:06:32

as a as a staunch



00:06:34

example of the defense of

00:06:37

legislative policies of the state

00:06:39

which now is one of

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the flags in in the

00:06:43

negotiations and in three days

00:06:44

the right to regulate that's

00:06:47

not new. There are examples

00:06:50

of three days before the

00:06:52

2000 work the right to

00:06:53

regulate was in preambles and

00:06:55

so on and so forth

00:06:55

is not an invention of

00:06:57

of any state in Europe



00:06:59

or in any other has

00:07:01

been there for a while.

00:07:02

So what what's new? So

00:07:05

what are we when we

00:07:06

ask the question of what

00:07:07

is new Wii Wii? We

00:07:12

don't get to. some Global

00:07:17

concern and and technology and

00:07:21

advancement on the global concerns

00:07:24

we have for instance the

00:07:26

concern about climate change the

00:07:28

concern about the protection of

00:07:31

the environment and then we



00:07:33

have the existence at where

00:07:36

the notion that perhaps only

00:07:39

state mostly are being sued

00:07:42

in investor arbitration. Right, they

00:07:47

seldom we see. States suing

00:07:51

investors is the is the

00:07:53

system balance. What about human

00:07:55

rights? What about older of

00:07:58

the gation concerning is jior

00:08:00

concerning concerning Corporate social responsibility

00:08:02

that that may be important

00:08:06

in today's world. Should they

00:08:08

be considered now, those are



00:08:11

some social concerns? The other

00:08:13

ones are environmental global concerns

00:08:16

and then we getting to

00:08:17

the technology aspect of of

00:08:19

today's world today as opposed

00:08:22

to 20 or 15 years

00:08:24

ago. There is something called

00:08:27

space mining I went when

00:08:30

you think about space mining

00:08:32

first time. I I I

00:08:34

sent this at a home

00:08:36

dinner table sales space mining

00:08:38

amazed. Is that more of



00:08:39

a cartoonish a kind of

00:08:42

thought no space mining can

00:08:45

be a reality. What about

00:08:48

seabed mining? Today's world is

00:08:52

different from that 20 years

00:08:54

ago. You couldn't do seabed

00:08:57

mining 20 years ago as

00:08:58

you can do it today.

00:09:00

So those those new areas

00:09:04

of Technology of science pose

00:09:07

many questions and the main

00:09:09

one in the Africans. And

00:09:11

on one of our speakers



00:09:12

will be able to address

00:09:13

it is is the current

00:09:15

investment treaty protection system. Solid

00:09:21

enough to protect and encourage

00:09:25

investment in those areas to

00:09:28

so beyond the uncitral Beyond

00:09:32

many of the current discussion.

00:09:34

There's a whole world to

00:09:37

explore in terms of PSG.

00:09:41

Corporate social responsibility technology advancements

00:09:44

and perhaps applications for or

00:09:47

investors in Disney World. So

00:09:49

this panel will attempt touching



00:09:53  
touching some of those issues

00:09:56  
because they are vast do

00:09:59  
today with us. I would

00:10:01  
like to welcome my good

00:10:03  
friend and that my good

00:10:05  
friend Minaj who is globe-trotting

00:10:08  
the world I do. I'm

00:10:11  
not sure where she's in

00:10:12  
London or in Asia or

00:10:14  
in between. She's not in

00:10:15  
an airplane Menards is a

00:10:17  
barrister and and I I'm

00:10:23  
very proud for you here.



00:10:24

My friend that we have

00:10:26

only met a few times

00:10:26

but we've had very very

00:10:29

good communication. She was also

00:10:31

a negotiator I could go

00:10:34

on and on. She's a

00:10:35

crack average graduate and you

00:10:39

might recognize her face or

00:10:41

her when you see her

00:10:42

post on LinkedIn you will

00:10:44

you will recognize her one

00:10:46

because she whenever she says

00:10:48

something is Meaningful on to



00:10:51  
whatever she says something sporty

00:10:52  
invented, which is something that

00:10:55  
some people really cannot do.

00:10:57  
I mean I I I

00:10:58  
barely say that I'm ordered

00:11:00  
to do this for that

00:11:01  
but she goes way beyond

00:11:02  
that do my last welcome.

00:11:04  
Also we have and Chloe

00:11:08  
Baldwin. She is an associate

00:11:12  
from Steptoe & Johnson, and

00:11:16  
Chloe is a former Australian

00:11:22  
diplomat. And also intriguing negotiator.



00:11:25

She now represents both stubborn

00:11:29

and private-sector clients International Investment

00:11:31

and trade disputes before joining

00:11:34

us as I was explaining.

00:11:35

She served as a senior

00:11:36

legal officer in the Australian

00:11:37

office of international law where

00:11:39

she acted as counsel for

00:11:40

Australian international trade and investment

00:11:43

disputes and was a delegate

00:11:44

in bilateral and multilateral free

00:11:47

trade negotiations. We also have

00:11:50

with us Maria Banda who



00:11:53

is a senior associate in

00:11:54

the Washington DC office of

00:11:56

Gibson Dunn & Crutcher where

00:11:58

she focused on complex cross-border

00:12:00

disputes, including International arbitration and

00:12:03

public international law and is

00:12:05

a member of the firm's

00:12:06

ESG group. She has work

00:12:08

on climate change and international

00:12:10

environmental law for more than

00:12:12

15 years, and she has

00:12:14

published extensively in the space.

00:12:19

She's way more than that.



00:12:21

I can show you. What

00:12:22

was she she she is

00:12:24

also published and very knowledgeable

00:12:29

in terms of ESG and

00:12:32

the end. I know that's

00:12:33

why she's here at one

00:12:35

of her biggest concern is

00:12:36

Inez is an international environmental

00:12:38

law and and also last

00:12:42

but not least, is a

00:12:44

Christian. Depot he is a

00:12:48

senior managing director of the

00:12:50

Washington DC office of Nera



00:12:52  
economic Consulting a damages expert

00:12:56  
in himself is a leading

00:12:59  
Authority in complex dispute and

00:13:01  
Quantum of harm assessment mattress,

00:13:03  
and he has over 27

00:13:05  
years of experience covering 24

00:13:08  
countries is global arbitration review

00:13:11  
and financier worldwide rank doctor

00:13:14  
among one of the world's

00:13:17  
leading commercial arbitration expert. He

00:13:19  
has testified many how many

00:13:21  
high-profile matter in telecommunications Mining

00:13:25  
and renewable energy sector than



00:13:27

one of his tasks here

00:13:29

is how to translate all

00:13:31

this novel team Phillies into

00:13:33

damages. Why because in in

00:13:36

Washington arbitration week, we we

00:13:38

strongly believe that it's not

00:13:40

only a matter of Publishing

00:13:42

a beautiful award but actually

00:13:44

making it happen for the

00:13:47

client either it being the

00:13:49

state or for the investor

00:13:51

beautiful or doesn't mean much

00:13:54

if you cannot enforce it



00:13:56

and if you cannot claim

00:13:57

damages or or or prevent

00:14:00

them being claimed so with

00:14:02

that I would like to

00:14:04

give to start or around

00:14:07

and ask a man has

00:14:12

one the one small anecdote.

00:14:20

I happen to negotiate the

00:14:23

investment chapter of the FTA

00:14:25

between Colombia and and and

00:14:28

Canada and very briefly at

00:14:31

one of the Objectives of

00:14:34

the Canadian delegation I can



00:14:36

Speak to about this, you

00:14:37

know, this has been more

00:14:38

than 10 years was to

00:14:40

include a corporate social responsibility

00:14:43

clause in the treaty and

00:14:46

that the corporate social responsibility

00:14:47

has had very soft language.

00:14:53

So it was the language

00:14:55

of of the Clause was

00:14:57

or is something like The

00:15:00

parties will promote social corporate

00:15:05

responsibility by the companies when

00:15:08

they make investments in the



00:15:10

other state self lower low

00:15:12

language try and promote. There

00:15:17

was no hard language. And

00:15:19

of course the Colombian delegation,

00:15:21

we we read it and

00:15:22

we are now we like

00:15:24

the presumption was that this

00:15:27

was in the Years 2007

00:15:30

to 2008. The presumption was

00:15:33

that we might not like

00:15:35

it because I thought you

00:15:36

might know has had issues

00:15:39

concerning security and that those



00:15:41

ages even more but I

00:15:42

would think that Corporate social

00:15:44

responsibility is is a is

00:15:47

a positive thing. We want

00:15:49

investors to be responsible make

00:15:51

a qualified investment. Right? And

00:15:54

I indeed we like it

00:15:55

so much. Why don't we

00:15:57

make it hard loan? And

00:16:02

we came back to the

00:16:03

table and say yes, we

00:16:04

like it so much. It's

00:16:05

make it hard lump. And



00:16:07

then our counterparts which are

00:16:09

good friends. Now for the

00:16:10

negotiation said, oh no, no.

00:16:12

No, that's too much. No

00:16:16

heart. No, that's too much.

00:16:20

And because it wasn't our

00:16:21

proposal we we agreed to

00:16:24

it being soft law. So

00:16:29

so the moral of the

00:16:30

story is that Corporate social

00:16:33

responsibility standards and he has

00:16:35

t standards are. Aspiring goals

00:16:41

in in many trees, but



00:16:43  
in most of the trees

00:16:44  
that have this type of

00:16:46  
obligations, but it when it

00:16:49  
comes down to making it

00:16:51  
hard love ligations negotiators get

00:16:54  
scared and States get scared

00:16:57  
in most of the trees.

00:16:58  
And today we have mine

00:17:00  
us who actually has been

00:17:03  
counseled to some of the

00:17:06  
negotiations which have indeed made

00:17:09  
or created Harlow vacations for

00:17:12  
investors. So we got that



00:17:14  
from you unless you have

00:17:15  
a sore. I'm delighted to

00:17:22  
be here and be back

00:17:24  
today because I should miss

00:17:26  
the cookies and Washington a

00:17:27  
meeting on Friday. I am

00:17:30  
very much and loans and

00:17:31  
you could get a 63

00:17:32  
in the background. I am

00:17:34  
about to get to the

00:17:35  
place. So tense my calls

00:17:38  
David even faster because I

00:17:45  
sent a request for a



00:17:54

shins and pooping a lot,

00:17:57

but I actually Of course,

00:18:00

I was answering you and

00:18:02

I knew each other before

00:18:03

we ain't even that when

00:18:06

I was running around trying

00:18:07

to figure out how cute

00:18:09

is a mage in Africa.

00:18:10

I was told what was

00:18:12

happening in Columbia. And I

00:18:15

remember you knew where I

00:18:16

was going to go see

00:18:18

a thing I had was



00:18:24  
this incredible model coming out

00:18:26  
of Columbia and Columbia for

00:18:31  
other more important to be

00:18:36  
pursued but to hear about

00:18:38  
this Little Tree Sushi, which

00:18:40  
was saving the way for

00:18:41  
the future was very exciting

00:18:44  
and I I still remember

00:18:46  
the UK Colombiana a b

00:18:48  
of this computer Dr. Muciaccia

00:18:50  
negotiation was with a different

00:18:54  
from anything. If so, It

00:19:00  
is it was very very



00:19:01

and credible to Antonio's classes

00:19:07

because I had to be

00:19:08

totally kids were with Columbia

00:19:11

St. RT cross the world

00:19:14

when I was a good

00:19:16

see a single helping advice,

00:19:17

which I will be speaking

00:19:20

about that before I get

00:19:23

to the Tri-Cities. Who's he

00:19:27

fighting her right eye. I

00:19:28

do have a habit of

00:19:30

indulging at the dentist appointment

00:19:33

and I'm afraid I do



00:19:35

not have anything to do

00:19:36

with Marquez today if it

00:19:38

goes, yeah, I tried desperately

00:19:40

hard to pitch in to

00:19:42

Love in the Time of

00:19:43

Cholera, but it wasn't working.

00:19:44

So instead I I saw

00:19:47

saw it in Charles Dickens.

00:19:50

I'm sure you might have

00:19:53

come across his book A

00:19:56

Tale of Two Cities and

00:19:58

I was thinking of Using

00:20:01

it as a team of



00:20:03

two treaties and I will

00:20:06

be talkin bout to tri-c's

00:20:07

that I have at least

00:20:10

half of the purpose of

00:20:11

the gation. It is a

00:20:18

very interesting way. If you

00:20:24

remember your first aid class

00:20:26

9 literature class in Charlotte

00:20:30

sickens you remember the very

00:20:35

first Passage, It was the

00:20:39

best of times it was

00:20:41

the worst of times. It

00:20:44

was the age of wisdom.



00:20:45

It was the age of

00:20:47

foolishness. It was the epoch

00:20:50

of belief. It was the

00:20:53

epoch of incredible. It was

00:20:57

a season of light. It

00:21:00

was a season of Darkness.

00:21:02

It was a spring of

00:21:03

hope it was the winter

00:21:05

of despair. We had everything

00:21:08

before us. We had nothing

00:21:11

before us. I mentioned this

00:21:15

simply because if it is

00:21:17

the best of times and



00:21:19

it's pretty easy to go

00:21:20

out. Sometimes it is the

00:21:22

best of time for us

00:21:23

to speak about it talking

00:21:26

about the challenges that confront

00:21:27

Us in terms of all

00:21:29

these developments relation to climate

00:21:32

change. May I see bad

00:21:36

space all the issues that

00:21:39

the initial template in 1959

00:21:43

of the first day I

00:21:45

couldn't even imagine. But it

00:21:50

is still the worst of



00:21:51  
times because we are indeed

00:21:53  
facing these challenges and the

00:21:56  
treaties are also very hard

00:21:59  
to keep up. Treaties sometimes

00:22:06  
sometimes has given you to

00:22:12  
put them to keep up

00:22:14  
with the changes that are

00:22:16  
Sioux Falls base in Alba.

00:22:18  
Love. Today is very difficult.

00:22:21  
before I launch into a

00:22:23  
place my spirit says in

00:22:25  
either to treaties the table

00:22:27  
to treat you that I



00:22:28

promised to speak about I

00:22:30

did want to make a

00:22:31

preliminary, because the big question

00:22:35

is who does the illness

00:22:37

lie on As the World

00:22:40

goes on. Is it the

00:22:43

arbitrations that need to adopt

00:22:45

the treaty or is it

00:22:47

you need something to go

00:22:47

see each other's to revisit

00:22:49

that treated as a museum

00:22:52

Relic in the safe box

00:22:55

for the next 10 years



00:22:57

when clearly is Provisions need

00:23:00

to be be the church

00:23:01

very important issue to bear

00:23:06

in mind as we look

00:23:07

at the two treatises that

00:23:09

I will be up going

00:23:11

through a very pretty. Please

00:23:13

take the time I have

00:23:15

today. Now, I think it's

00:23:18

important to remember. To take

00:23:22

only the first we have

00:23:25

had the privilege of being

00:23:29

counseled entreaty alterations and also



00:23:34  
sitting at the arbitration and

00:23:36  
treaty obligations, but once I

00:23:45  
realized if there is one

00:23:47  
bad, at least you read

00:23:49  
this at that tree, it

00:23:51  
has to be the negotiations

00:23:53  
because I needed the most

00:23:58  
creative server Pascal how to

00:24:00  
get around the words of

00:24:02  
the tree. She so if

00:24:04  
you go out with me,

00:24:04  
please revisit recent statement, I

00:24:10  
would look, Without further Ado



00:24:14  
that I mentioned this place

00:24:20  
you're going to have to

00:24:21  
experience. This is pretty good.

00:24:24  
Sorry, I will then. time

00:24:29  
to shut the screen up

00:24:30  
this so I hope I

00:24:34  
can look like we click

00:24:35  
this and Get this right?

00:24:40  
I just text me to

00:24:41  
call Mesa. I'm afraid I'm

00:24:43  
not going to be able

00:24:44  
to bring up the take

00:24:50  
you to which was the



00:24:51

o.c. Investment. Now a lot

00:24:55

of you'd screw if they

00:24:57

if you do snooze the

00:25:00

wifey investment treaty. Please do

00:25:04

it because until 2011 I

00:25:08

can do that. They would

00:25:10

suck if people do I

00:25:11

see investment treaty either. I

00:25:17

see the all I see

00:25:18

is the organisations of Islamic

00:25:20

countries, which was essentially of

00:25:22

political block created amongst the

00:25:25

Islamic countries to promote cohesion.



00:25:28

In 1981, they decided to

00:25:32

negotiate a treaty they called

00:25:34

the investment treaty investment agreement

00:25:37

among member states space authority

00:25:44

to this treaty and it's

00:25:46

across the Middle East Africa

00:25:47

Asia and I can see

00:25:50

someone has come to the

00:25:51

rescue. Thank you to the

00:25:55

angels with put that up

00:25:56

or a bilateral investment treaty,

00:26:07

but I would invite you

00:26:09

to read it in your



00:26:10  
own private time because you

00:26:12  
got to look at the

00:26:13  
Vintage of the treaty in

00:26:15  
1981. When two of the

00:26:20  
member states of the UIC

00:26:22  
Iraq and Iran were at

00:26:24  
War and I encounter this

00:26:28  
particular Tracy when I was

00:26:30  
canceled for Indonesia, and Indonesia

00:26:34  
had just received a flame

00:26:37  
under the oic's investment Rishi

00:26:41  
and having having looked about

00:26:43  
over a thousand trees cheese



00:26:45

prior to that. I just

00:26:48

pranked you don't even know

00:26:49

existed. So if you're sitting

00:26:52

in the audience on Prince

00:26:53

taking water and the osc

00:26:55

investment treaty, please don't despair.

00:26:59

I knew about it. Let's

00:27:01

say it was quite an

00:27:02

interesting learning table now, but

00:27:10

we're looking at you interesting

00:27:14

articles. The first one is

00:27:17

Oscar 9, which is always

00:27:19

on point and the provision



00:27:24

of the stuffed and that's

00:27:36

just a treaty claim that

00:27:38

we know about was in

00:27:39

1987. And the first time

00:27:42

jurisdiction was affirmed under a

00:27:45

bilateral investment treaty was 1990.

00:27:50

But I keep reminding people

00:27:51

tweeting to go see a

00:27:53

pictures are not Clairvoyance account

00:27:55

see into the future. We

00:27:57

have a treaty text that

00:28:01

is dealing with industrial applications

00:28:04

the topic we are talking



00:28:06  
about in 2023 and if

00:28:09  
you look at it, so

00:28:14  
I don't read it. Sugar

00:28:29  
Creek pool acid need to

00:28:31  
stop at Publix order a

00:28:32  
model to show to the

00:28:35  
public interest each load. So

00:28:38  
he's also refrain from exercising

00:28:40  
restrictive practices and from trying

00:28:43  
to achieve being gained through

00:28:45  
and over me to interpret

00:28:48  
but I think it's speaking

00:28:54  
about any of this. A



00:29:05

bit too much others might

00:29:08

be just clocking to have

00:29:09

pink and gray wolf and

00:29:10

ask does this mean at

00:29:12

how does it fit in

00:29:13

with the investor-state dispute resolution,

00:29:17

which I will come to

00:29:19

an Apple. I would like

00:29:21

the person who has their

00:29:23

hand on the screenshot to

00:29:26

take us to article 17.

00:29:29

The article 17 is the

00:29:31

dispute resolution provision. This is



00:29:39  
a curious position because there

00:29:43  
is a provision and then

00:29:49  
there is no that's just

00:29:50  
because we play in in

00:30:03  
my case with the best

00:30:05  
ones. I encountered on the

00:30:06  
device. See any Indians are

00:30:15  
a case was whether there

00:30:18  
is even an attack to

00:30:21  
say provision in article 17.

00:30:24  
I'm not going to get

00:30:26  
into that huge be interesting

00:30:28  
debate surprised to see comfort



00:30:31

in history and look out

00:30:33

the other odd case where

00:30:35

are represented in Tunisia and

00:30:38

easiest position as well clearly.

00:30:46

Even if it was that

00:30:47

was he will turn into

00:30:48

volume and the investor in

00:30:51

that case. I behaved in

00:30:53

such a manner that it

00:30:56

had violated article 9 be

00:30:59

just looked at by The

00:31:00

Lacs. Indonesia and I could

00:31:04

not benefit from bringing in



00:31:08  
the Centre. She claimed on

00:31:09  
The Tracey. know if you

00:31:13  
spend a lot of time

00:31:14  
navigating this treaty you will

00:31:16  
need new to stay there

00:31:17  
to bring it if there

00:31:29  
is one indeed under article

00:31:31  
17 is not expressly stated

00:31:36  
by the tribunal in the

00:31:38  
other garage because it had

00:31:48  
acted in the manner that

00:31:49  
violated or Salon in 2023,

00:32:07  
but here is something Cross



00:32:10

over 40 years ago. They

00:32:18

did put in some kind

00:32:20

of dispute and although they

00:32:23

didn't bake cakes wrestling tubing

00:32:25

what happens when an investor

00:32:27

is in breach of those

00:32:28

violations and the dispute resolution

00:32:31

system a arbitral tribunal connected

00:32:35

the dots and denied the

00:32:36

claim. So I think it's

00:32:39

really important sample of even

00:32:45

having industrial applications out in

00:32:51

a tree in Abel's a



00:32:54  
tribunal to draw session connectivity

00:32:58  
between different provisions of the

00:33:01  
treaty. That is 1981. I'm

00:33:06  
afraid I'm going to time

00:33:07  
travel a little bed and

00:33:10  
go to 2007. And again,

00:33:13  
if if the person who's

00:33:16  
monitoring the the bring up

00:33:20  
the investment agreement from 2007,

00:33:25  
I'd be very grateful or

00:33:27  
I can drop you off.

00:33:29  
Thank you so much, and

00:33:39  
I'm requesting assassin who who



00:33:43

has They are on the

00:33:46

on the on the system

00:33:48

to really take us to

00:33:49

article 11 and Article 13

00:33:52

pays off the tree. She

00:33:53

has a region within Africa

00:34:01

in a juice with salt

00:34:05

East African States across quite

00:34:09

a lot of section of

00:34:11

Africa and this was his

00:34:14

original investment treaty to deal

00:34:17

with intra, investment and I

00:34:21

have the privilege to advise



00:34:23

the regional grouping in 2006

00:34:28

and 2007 any confidences safe

00:34:32

suffice to say that when

00:34:34

we started working with the

00:34:36

text was very different and

00:34:39

this particular text that you

00:34:42

were seeing it in front

00:34:43

of you in Hindi. Available

00:34:45

publicly and he is very

00:34:48

different checks. It is a

00:34:49

very detailed tax. I would

00:34:51

say in some instances quite

00:34:53

inspired by the North American



00:34:56

tree. That's a really looking

00:35:00

at the de Fleury of

00:35:03

Industry State claims that had

00:35:06

Arisen in in North America

00:35:08

in particular the look bad.

00:35:11

This is 2007 and he

00:35:13

is off today APPL versus

00:35:23

Sri Lanka, which of the

00:35:24

first time we even had

00:35:26

dinner and a few decisions

00:35:31

during the night and early

00:35:34

2000's you started ready having

00:35:36

the metal cause of this



00:35:37

world and you start a

00:35:38

new people started looking at

00:35:40

would want to this treaty

00:35:41

provisions mean. What is what

00:35:44

is the balance? Between states

00:35:46

and investor, right? And what

00:35:50

kameza to the table is

00:35:53

recorded debate in in in

00:35:56

in the negotiations that were

00:35:58

happening on the question that

00:36:00

this book to states with.

00:36:01

Well, you know, what do

00:36:02

you want to do with



00:36:04

investor obligations needed to leave

00:36:08

it within the realm just

00:36:09

domestic law or do you

00:36:12

want to put something at

00:36:14

the level of international law

00:36:16

at the treaty level? Where

00:36:17

you going to let your

00:36:18

mom cut down? What does

00:36:21

it mean if you can

00:36:22

stop in any any obligations

00:36:26

with what does it mean

00:36:27

for the dispute resolution probation

00:36:30

at 7. So again, I



00:36:35

didn't have to follow to

00:36:36

look into the future either

00:36:37

because I had not come

00:36:38

across the OIC of being

00:36:40

in this particular time that

00:36:42

happened much later in 2012

00:36:44

or 2 lb if I

00:36:47

could just take you to

00:36:48

clean, it's a very simple

00:36:51

statement and I think you

00:36:56

got the wrong wrong going

00:36:58

to talk to that you

00:36:59

looking at 10. Nothing, but



00:37:14

a different application on page

00:37:17

10. to the treaty Schleich

00:37:29

Schleich share my screen G

00:37:42

Okay. Right. I think it's

00:37:47

my magic trick. so heavy

00:37:55

all this is this is

00:37:56

what I want you to

00:37:57

see all school packet yet.

00:37:58

If you can read about

00:38:05

it and Busters and investments

00:38:08

will comply with applicable domestic

00:38:11

measures of the Memphis State

00:38:12

in Michigan. That's because you



00:38:19

know, you looking at a

00:38:21

treaty negotiations with the taxi

00:38:23

States. I need to sign

00:38:25

off on it and in

00:38:26

a way you do need

00:38:27

to State the obvious which

00:38:28

is why of course he

00:38:29

wants to to meet with

00:38:33

all the domestic rules and

00:38:35

regulations of the whole state

00:38:36

probation. off the Cabeza investment

00:38:48

agreement and here I wanted

00:38:51

to take you to also



00:38:53

28 All right, you do

00:38:59

have very clear Provisions as

00:39:02

to what happens to the

00:39:04

first thing you see is

00:39:05

in subsection 3 why you

00:39:07

talk about well, look if

00:39:09

it brings a stage 888

00:39:13

needs to select a particular,

00:39:16

Florida. You willing you will

00:39:25

then be liable to acknowledge

00:39:28

the fact that you can

00:39:32

be liable for any breach

00:39:36

of that obligation. So it's



00:39:40

it's a it's a very

00:39:41

important point that Bless you.

00:39:48

You you material yourself. Can

00:39:54

you hear me now? Yes.

00:39:57

Sorry about this the point.

00:40:01

Is that the Eagles. And

00:40:08

and somehow you meet yourself

00:40:11

again. You keep going off.

00:40:30

It has it makes it

00:40:32

very clear what the consequences

00:40:34

are because what it says

00:40:35

here is the state can

00:40:37

then use the violation of



00:40:40  
that particular provision to bring

00:40:43  
a fine Scotch Plain brought

00:40:45  
to such off and all

00:40:46  
the symbol playing now. Andaman

00:40:56  
has somehow you can. Do

00:41:00  
you have me now? How

00:41:03  
to say that I'll be

00:41:04  
Revisited this briefing for this

00:41:06  
particular and Conference I can

00:41:10  
see so many jobs already

00:41:12  
in in in the connection

00:41:15  
between these last two states

00:41:16  
obligation as well as the



00:41:18  
hospital either 28900 you with

00:41:22  
how it can be improved

00:41:23  
but the point is not

00:41:28  
whether it is waterproof or

00:41:30  
the safety rules will work

00:41:33  
or not is a different

00:41:34  
issue, but I think what

00:41:36  
it does is make my

00:41:39  
point that I did at

00:41:40  
the start of this particular

00:41:41  
presentation, which was you need

00:41:44  
to revisit. This is already

00:41:46  
60 years ago. So when



00:41:48

I look at You know

00:41:51

this commission said the commission

00:41:53

that's been for you see

00:41:53

which is Cutting Edge in

00:41:55

20 2007 with the way

00:41:59

things have moved on to

00:42:02

remain the same and me

00:42:04

when we visit them. So,

00:42:06

you know as we look

00:42:08

ahead and I'm conscious I'm

00:42:10

very close to running out

00:42:12

of options Jose Antonio station

00:42:14

in terms of timing. We



00:42:17

need to look at these

00:42:19

historical examples that I touch

00:42:21

down. Attempts to try and

00:42:26

give effect to the principle

00:42:28

that somehow we need to

00:42:30

do with industrial applications at

00:42:32

reaching level. Not just in

00:42:37

the domestic law How We

00:42:40

Do It? Another question, whether

00:42:45

the same text can stand

00:42:48

the test of time particularly

00:42:49

when issues are rapidly develop

00:42:53

is another debate all together.



00:42:56

So would not I would

00:42:58

like to conclude my presentation

00:43:01

and you know, how long

00:43:03

the Honda pro box to

00:43:04

a Jose Antonio as Minaj

00:43:08

and thank you very much.

00:43:09

And yes, the commercial reminder

00:43:12

setting is there may be

00:43:14

also a second version of

00:43:17

a commercial agreement at which

00:43:19

has a further develop the

00:43:22

provisions starting around. I believe

00:43:27

the article 23 and and



00:43:29  
the question of architecture of

00:43:31  
obligation is is a key

00:43:34  
one. We're going to be

00:43:35  
going to move now into

00:43:37  
into something. That is a

00:43:39  
somehow connected. Investors obligations are

00:43:44  
are connected very much to

00:43:46  
the first treaty the old

00:43:48  
ic3d or something or buy

00:43:53  
something that that is is

00:43:56  
common to many legal systems

00:43:58  
or its present name a

00:43:59  
legal system, which is the



00:44:01  
public purpose. And then when

00:44:07  
we think in terms of

00:44:08  
public purpose very few areas

00:44:13  
other than the environment. Bring

00:44:18  
the thought of having a

00:44:19  
public purpose or a public

00:44:22  
goal in terms of of

00:44:24  
of international environmental law. So

00:44:28  
I would like to to

00:44:29  
ask her employer now moving

00:44:31  
into a completely different area,

00:44:33  
which is more technological driven

00:44:37  
and also based on her



00:44:38

experience negotiating treaties and trade

00:44:41

and also investment in connecting

00:44:44

that to the to the

00:44:46

advancement of technology in seabed

00:44:48

mining and and and also

00:44:50

space mining at what what

00:44:53

are the challenges that those

00:44:56

two areas may be bringing

00:44:59

two two Nations when they

00:45:03

try to protect Investments there

00:45:06

and they be protected is

00:45:08

a framework that we have

00:45:09

today one that is is



00:45:13  
that all use useful or

00:45:15  
or not at all. Thank

00:45:19  
you and good morning everyone

00:45:20  
and it's it's a real

00:45:21  
pleasure to be here today.

00:45:22  
Unfortunately, I don't I don't

00:45:25  
have any poetic stocks with

00:45:27  
Dickens. I think this topic

00:45:29  
is more to stop by

00:45:30  
5 and then classic literature

00:45:32  
but nonetheless very fascinating and

00:45:36  
you know that the topics

00:45:37  
it today is investment treaties



00:45:39

and provision sensitive to climate

00:45:40

change and a technology Revolution.

00:45:42

That's how does an enormous

00:45:44

amount of ground sea and

00:45:46

air I would say and

00:45:48

we really could have a

00:45:49

whole week dedicated on these

00:45:51

these topics alone, but I

00:45:52

want to stay on two

00:45:55

examples that really highlight the

00:45:57

intersection between technology and climate

00:45:59

change and it's deep seeded

00:46:01

Mining and space mining and



00:46:03

these these activities. I think

00:46:05

you're really pushing the boundaries

00:46:06

of of traditional mining above

00:46:11

and beyond and Below as

00:46:13

well as what we understand

00:46:15

to be Investments and traditional.

00:46:17

I stay in Bozeman and

00:46:19

I think these two things

00:46:20

have come into prominence to

00:46:22

the two primary reasons as

00:46:24

the development of technology and

00:46:26

the United States in ways

00:46:31

never before and the mining



00:46:32

of those resources are also

00:46:34

technically possible and more feasible

00:46:37

now than ever and alongside

00:46:40

that is is the growth

00:46:41

of Clean Energy Technologies, and

00:46:43

it's increasing the demand for

00:46:44

certain minerals minerals, which we

00:46:47

have now discovered. Thanks to

00:46:48

the the first limb of

00:46:49

technology that are available on

00:46:51

on the seabed and you

00:46:52

know how to stay sober

00:46:54

there are significant differences, of



00:46:56

course in the actual mining

00:46:58

of the seabed versus out

00:46:59

of space both areas present

00:47:02

interesting questions as a matter

00:47:04

of international law and particularly

00:47:05

its intersection with investor-state investment

00:47:10

treaty disputes. The reason for

00:47:13

this is that fundamentally the

00:47:14

international legal framework the boys

00:47:16

have bees resources which developed

00:47:21

between the 1960s in the

00:47:22

1980s. If you think back

00:47:25

that's when Nick was launched.



00:47:27

We had the cold all

00:47:28

we had the space race

00:47:30

forty to sixty years later

00:47:32

of technology and climate change

00:47:34

in both really develop an

00:47:36

arguably requiring you thinking so

00:47:40

I'm going to give a

00:47:41

brief description of the bed

00:47:43

and spice mining because if

00:47:44

you're anything like me I

00:47:45

had a brief outline of

00:47:49

the legal framework and then

00:47:50

I just want to touch



00:47:50  
very quickly conscious of the

00:47:52  
time on some of the

00:47:53  
challenges that are that are

00:47:55  
facing a unit rate a

00:47:57  
negotiated as but States and

00:47:58  
investors in looking at where

00:48:01  
they're investing. Sorry deep seabed

00:48:03  
mining. So the deep sea

00:48:06  
is the largest habitat, I

00:48:08  
think for life and the

00:48:10  
planet and it has a

00:48:11  
variety of unique species ecosystems.

00:48:13  
It's also home to what's



00:48:15  
called Polly metallic nodules, which

00:48:18  
if you look at a

00:48:18  
picture of basically look like

00:48:20  
black and the scattered on

00:48:23  
the seafloor, the mining of

00:48:25  
these nodules can provide access

00:48:27  
to most any such as

00:48:29  
a nickel copper and Cobalt.

00:48:31  
Sorry that was quite a

00:48:32  
mouthful and these minerals are

00:48:35  
essential components the batteries and

00:48:37  
other technologies that if he's

00:48:38  
mating targets to reduce greenhouse



00:48:40

gas emissions. I want to

00:48:43

go into it for today's

00:48:44

purposes, but there is a

00:48:45

debate as to the environmental

00:48:49

consequences of deep seabed mining

00:48:51

particularly because the tickets are

00:48:54

still people are still trying

00:48:56

to work out exactly what

00:48:58

the consequences Space mining on

00:49:02

the other hand is the

00:49:04

process of Excavating extracting or

00:49:06

recovering resources from space. So

00:49:08

the Moon is the immediate



00:49:10

focus with resources in cold

00:49:13

include regulus and helium-3. Please

00:49:16

don't ask me what exactly

00:49:17

they are for the longest

00:49:20

time, but I guess he's

00:49:21

really on mining asteroids sewing

00:49:23

in 2021 has discovered to

00:49:25

metal-rich asteroid quite close to

00:49:27

us as reserves of iron

00:49:29

nickel and Cobalt could exceed

00:49:31

the global reserves of those

00:49:32

metals are even more spice

00:49:35

mining is out in earliest



00:49:36

stage seabed mining. These are

00:49:39

obviously new methods to address

00:49:41

natural resource depletion and to

00:49:43

contribute to achieving sustainable development

00:49:45

goals price of these areas

00:49:49

as I mentioned are traditionally

00:49:52

the province of state-to-state Engagement.

00:49:54

So they both go ahead

00:49:55

with the governed by International

00:49:57

treaties with respect to seabed

00:49:59

mining you have I'm close

00:50:00

to the United Nations convention

00:50:02

on the law of the



00:50:02

sea and it provides that

00:50:05

the seabed and ocean floor

00:50:07

are beyond the limits of

00:50:08

national jurisdiction and all the

00:50:10

common Heritage of mankind. You

00:50:13

also see that language in

00:50:14

the outer space treaty, which

00:50:17

is about a space should

00:50:19

be carried on for the

00:50:20

benefit of the interest of

00:50:21

all countries and she'll be

00:50:22

the proudest moment. I'm all

00:50:25

the treaties particularly with us



00:50:27

space such as the liability

00:50:29

convention the rescue agreement the

00:50:31

moon agreement if I sound

00:50:33

like a children's book Goodnight

00:50:35

Moon and they're close to

00:50:37

relax real agreements such as

00:50:38

the automatic codes which is

00:50:40

entered into by several countries.

00:50:43

I think those around 28

00:50:44

signature he's now in and

00:50:45

was originally set up by

00:50:46

NASA You also have domestic

00:50:51

legislation. Sorry with respect to



00:50:53

seabed mining. I'll give you

00:50:56

a very very brief overview,

00:50:58

but I'm not embarrassing International

00:51:01

seabed Authority and Company can

00:51:05

only apply for an exploration

00:51:07

or exploitation permit to the

00:51:09

is a and they have

00:51:10

to have a sponsoring state

00:51:12

that state has to have

00:51:13

certain regulations and laws covering

00:51:16

obligations liability that type of

00:51:19

thing on the spaceside what

00:51:21

we've seen recently since 2015



00:51:24

is countries increasingly passing domestic

00:51:27

legislation granting companies are in

00:51:29

a slice of spice resources,

00:51:30

they extract and providing the

00:51:32

licensing racing games. The common

00:51:36

theme across B eat at

00:51:38

in space mining is is

00:51:41

really that these rural resources

00:51:42

and mocked as belonging not

00:51:44

belonging to any stubborn. But

00:51:46

for the benefit of mankind.

00:51:48

The flip side of that

00:51:49

is you now see private



00:51:50  
commercial potties and investing significant

00:51:53  
financial and Technical Resources is

00:51:57  
really pushing the boundaries of

00:51:58  
traditional investment activity and it

00:52:01  
gives rise to specific challenges.

00:52:02  
I'm going to touch that

00:52:04  
you said hi level and

00:52:06  
I'd be happy to discuss

00:52:07  
my colleagues time he have

00:52:12  
it but the king wanted

00:52:14  
to have some ice oveis

00:52:15  
is investment treaties often require

00:52:18  
Investments to be made in



00:52:20

the territory of the heist.

00:52:22

What does that mean? When

00:52:26

you have international treaties specifically

00:52:28

saying that space and the

00:52:30

seabed outside of outside of

00:52:33

any territory of I think

00:52:36

respondents States and if a

00:52:39

dispute which will rise would

00:52:40

say that's even in space

00:52:41

mining activities during full within

00:52:44

its territory and they Proclaim

00:52:46

his investors. I think we

00:52:48

try and take the position



00:52:49

that if it's within Estates

00:52:51

jurisdictional control that could amount

00:52:55

to territory. So for example,

00:52:56

if a state sponsor of

00:52:59

the seabed mining contract in

00:53:00

the limit of a other

00:53:02

license before the is a

00:53:03

is this sufficient or if

00:53:06

an investor launches a space

00:53:07

object from the territory of

00:53:09

the state mine came out

00:53:11

of stasis is not sufficient

00:53:13

to say that I think



00:53:15

is they continue to negotiate

00:53:16

and am in the investment

00:53:17

treaties need to think about

00:53:19

these types of issues and

00:53:21

continues and consider specifying in

00:53:23

more detail. What are trained

00:53:25

means sometime treaties do Define

00:53:29

it. They usually Define it

00:53:30

in respect of international law.

00:53:32

Sometimes they recently Plus which

00:53:35

leads us back to the

00:53:36

same problem because I'm close

00:53:37

to pacifically that the speed



00:53:39

that is he's not part

00:53:40

of national territory. So United

00:53:44

States states could specify bet

00:53:46

territory does not include blocks

00:53:48

of see that might be

00:53:49

a neural activity or vice

00:53:51

versa explicit Libre to application

00:53:55

of their respective domestic laws,

00:53:56

which has a lot of

00:53:58

these activities. as kind of

00:54:01

item is which which I

00:54:11

think that would be fair

00:54:12

to ask you to request



00:54:15

an answer or now it

00:54:19

say that we have The

00:54:22

Investments by private companies in

00:54:26

seabed mining or in in

00:54:29

outer space mining and say

00:54:33

that for most part everything

00:54:35

goes fine. There's no there's

00:54:38

no interruption. There's there's nothing

00:54:40

to complain on and just

00:54:42

like the wild west boundary

00:54:44

of of investment sweat outer

00:54:47

space warranty bit, but then

00:54:49

it might become a time



00:54:50

and this is sort of

00:54:51

a question also for Maria

00:54:52

at some stage that might

00:54:54

come a time when the

00:54:56

the public concern or the

00:54:59

public order may be put

00:55:01

at risk because of this

00:55:02

activities in outer space or

00:55:04

in Sea Bay at an

00:55:05

inn in the seabed mining

00:55:06

and at some stage there

00:55:09

could be some type of

00:55:10

intervention by one or more



00:55:13

State Farm claims by the

00:55:15

investors in outer space or

00:55:17

any bad that they have

00:55:19

been affected by Act so

00:55:23

I don't want an answer

00:55:24

now because I know that

00:55:25

that the questions complex, but

00:55:28

what? protective safeguards international law

00:55:36

offer other than investment traditional

00:55:41

investment trees might not offer

00:55:42

anything there. That's that's should

00:55:45

have been lingering question what

00:55:46

would happen when the environment



00:55:48

on the one hand and

00:55:50

this this wild west investment

00:55:54

arm are colliding and I'll

00:55:57

leave it there. But but

00:55:58

now it's it's a it's

00:55:59

a very interesting question and

00:56:01

one that is actually being

00:56:02

played out to some extent

00:56:04

at the moment with Nara

00:56:07

which is a small Pacific

00:56:08

Islands off the coast of

00:56:10

Australia and and they swim

00:56:12

to the company Nori sushi



00:56:15  
on increased sources for the

00:56:18  
for the exploitation of of

00:56:21  
seabed mining part of the

00:56:23  
rules of the AIA stand

00:56:24  
on clusters that that triggered

00:56:26  
a two-year period for the

00:56:28  
is a to develop regulations

00:56:29  
including as to what would

00:56:32  
be safe and how to

00:56:34  
do that. That. Expired in

00:56:36  
July so so technically Nohrian

00:56:40  
are rude could apply for

00:56:42  
the permit and try and



00:56:44

push it through to stop

00:56:45

mining as I mentioned kind

00:56:47

of berry and grape is

00:56:48

this a huge amount of

00:56:50

opposition to the seabed mining

00:56:52

as well as for it

00:56:54

and any have an alliance

00:56:56

of state to who have

00:56:58

signed EverQuest a moratorium on

00:57:01

deep-sea mining. We have steak

00:57:03

sitting said, please tell me

00:57:04

that you have states that

00:57:06

stay. Well. Let's just put



00:57:07

it on hold until we

00:57:08

work out. So this is

00:57:10

actually very timely because he's

00:57:13

very much in favor of

00:57:15

deep seabed Mining and has

00:57:17

publicly said that it will

00:57:18

help contribute to climate change

00:57:21

goals and that it's going

00:57:22

to try and push ahead.

00:57:23

So I think we will

00:57:24

see this exact circumstances. I

00:57:28

can't predict what the outcome

00:57:29

will be, but it's it's



00:57:30  
certainly alive alive issue. But

00:57:35  
let me let me try

00:57:36  
very quickly to Christian in

00:57:38  
terms of now that we're

00:57:40  
pushing the boundaries of technology

00:57:42  
and that were pushing the

00:57:44  
boundaries of of seabed Mining

00:57:45  
and and space mining is

00:57:49  
it you or is it

00:57:50  
at all conceivable to create

00:57:53  
a a diamond has economic

00:57:55  
model that that would allow

00:57:59  
was to ever think about



00:58:02

what could be the damages

00:58:04

that? Graphs International Community would

00:58:08

claim out of those out

00:58:10

of those activities. Change it

00:58:13

to it's definitely challenging how

00:58:15

and say yes or no

00:58:16

depends on the circumstances, but

00:58:18

it's extremely challenging for various

00:58:22

reasons damages. You wanted to

00:58:26

see what the legitimate expectations

00:58:28

were off in master and

00:58:31

these topics seabed mining space

00:58:34

mining and by meant everything



00:58:36

is very Dynamic changes. So

00:58:38

investor might have to position

00:58:40

them. When I invested the

00:58:42

regime was X I want

00:58:44

ex now changed it to

00:58:45

why I'm going to calculate

00:58:46

that difference. So Grace, is

00:58:49

it really too important questions

00:58:51

that are this is a

00:58:52

dynamic and new environment, which

00:58:55

means is what is the

00:58:56

counterfactual world. When was the

00:58:58

investment made where would where



00:59:00  
the legitimate expectation and then

00:59:03  
also very important. How do

00:59:04  
you even for cash if

00:59:06  
somebody work to talk about

00:59:07  
lost profit of expropriation? How

00:59:10  
you value this what your

00:59:11  
French Marc Cohn? Space mining

00:59:13  
and let Lexie but the

00:59:15  
last company that sold right

00:59:17  
and it's just a challenging

00:59:20  
its pants in his fans

00:59:22  
in the circumstances. He decided

00:59:24  
to extremes say no it's



00:59:25

not possible because we don't

00:59:26

know anything about it. Looks

00:59:28

like the Wild West in

00:59:38

Damages to use your terminology

00:59:40

because it doesn't mean like

00:59:42

why would have made millions

00:59:43

billions of dollars with my

00:59:45

spaceventure when in fact they

00:59:48

claim in my life, even

00:59:49

if it's based on anything

00:59:51

extreme amount of capital investment

01:00:03

and the uncertainty and Technology.

01:00:07

So the answer could be



01:00:09

this business so such a

01:00:11

risky investment that you might

01:00:14

you might not even you

01:00:16

might simply go into sunk

01:00:18

cost and perhaps not even

01:00:19

that but Imma speculating. I

01:00:23

know that I'm completely speculating

01:00:25

but let me let me

01:00:26

let me go in and

01:00:28

ask Maria a couple of

01:00:32

questions. So especially in in

01:00:38

them International environmental law is

01:00:42

in constant development and is



01:00:44

quite broad vast. And before

01:00:48

we get to investment treaty

01:00:50

reforms or or proposals. They're

01:00:52

related to environmental law. Could

01:00:54

you provide a bit more

01:00:56

of a background on the

01:00:58

relevant trees and and how

01:00:59

they intersect with with investment

01:01:01

law. And good morning everyone

01:01:06

both here and online. I'm

01:01:09

delighted to be here if

01:01:11

I can share my screen.

01:01:13

Let's see. Yes, this is



01:01:27

just a snippet of the

01:01:30

environmental treaties out there or

01:01:33

Emmy has been around many

01:01:35

cases for nearly a hundred

01:01:36

years are part of the

01:01:38

now domestic backdrop of the

01:01:40

fabric that makes up Investments

01:01:42

last decade has seen an

01:01:46

incredible amount of treating aching

01:01:49

and soon the last decade.

01:01:50

We went from a horse

01:01:52

the 2015 Paris agreement on

01:01:54

climate change through a number



01:01:55  
of other treaties including the

01:01:58  
new framework on biodiversity, which

01:02:00  
was. Just a year ago

01:02:01  
and you high seas treaty

01:02:03  
which might affect deep seabed

01:02:05  
Mining and now we're looking

01:02:07  
for adoption of a new

01:02:08  
treaty to ban plastic pollution.

01:02:10  
Are we have next year

01:02:12  
and he does not just

01:02:14  
the number of treaties that

01:02:16  
are coming to place that

01:02:17  
is significant scale. That states



01:02:22  
are taking off. And so

01:02:23  
I'll talk mostly about the

01:02:26  
climate contacts. We're under the

01:02:28  
Paris agreement governments have committed

01:02:30  
to keep the global temperature

01:02:32  
rise to know more than

01:02:34  
1.5 degrees Celsius and that

01:02:36  
it is now generally agreed

01:02:37  
would entail basically next zero

01:02:39  
emissions by 2050. This is

01:02:42  
a Monumental task and one

01:02:45  
of the obligations that the

01:02:46  
states have taken under the



01:02:47

Paris agreement is to have

01:02:49

nationally determined contributions with your

01:02:52

set individually by every state

01:02:54

but those contributions have to

01:02:57

increase in ambition overtime is

01:02:59

so the system by definition

01:03:01

is going to be a

01:03:03

very Dynamic why which includes

01:03:06

the non-aggression principle and in

01:03:08

addition there is agreement to

01:03:10

keep consistent with a goal

01:03:13

of low-carbon development and climate

01:03:15

resilient development. It conserves 30%



01:03:25

of land sea and Marine

01:03:28

area and sodium plication. Some

01:03:30

of this are just shoot

01:03:32

for what it will mean

01:03:33

for both governments. And for

01:03:35

investment. Now there is a

01:03:39

cost to these multilateral agreements

01:03:41

for example estimates that the

01:03:44

cost of climate mitigation will

01:03:46

be 5 trillion dollars every

01:03:49

year that will be required

01:03:50

under the global biodiversity framework.

01:03:53

There is an annual projected



01:03:55

cost of 700 billion every

01:03:57

year between now and 2030

01:03:59

in biodiversity and so much

01:04:02

of this will need to

01:04:03

come from the private sector

01:04:04

and much would we need

01:04:05

to flow into developing and

01:04:07

emerging market? And in order

01:04:09

for that to happen? What

01:04:11

we need is a healthy

01:04:12

investment treaty regime that will

01:04:14

support these kinds of Frozen.

01:04:15

So when you think about



01:04:16

it from that perspective of

01:04:17

climate and environmental law and

01:04:21

investment logo And enhance basically

01:04:24

this is functional basically get

01:04:27

you but then there's a

01:04:29

flip side. Of course. I'm

01:04:30

about to go play some

01:04:35

thank you for for putting

01:04:39

the environment and the goals

01:04:43

of the girls behind all

01:04:46

this environmental International environmental agreement

01:04:49

in perspective and I say

01:04:51

this because you sometimes in



01:04:54  
in investment arbitration were too

01:04:56  
focus on on the provisions

01:04:57  
were too focus on the

01:04:58  
proceedings and unders. There's a

01:05:00  
goal behind all this there's

01:05:03  
a there's a goal for

01:05:04  
2050 and our goals for

01:05:07  
many years to come and

01:05:09  
investment arbitration as part of

01:05:11  
a broader International economic losses

01:05:14  
than wins have the same

01:05:15  
time. It is is part

01:05:17  
of a broader public international



01:05:18

law system. And and if

01:05:22

we understand it. Way it

01:05:24

starts to make sense that

01:05:25

we need investment to reach

01:05:28

some goals in terms of

01:05:29

of be better prepared for

01:05:32

climate change and to protect

01:05:33

the environment. It's it's kind

01:05:36

of an ironic that 50

01:05:38

of the 50 cases have

01:05:41

about 50 cases against Spain

01:05:43

are precisely related to Renewables.

01:05:48

And most of them are



01:05:52

are are being fought against

01:05:55

them forcement and and the

01:05:57

provisions There's liability were Provisions

01:06:03

to subsidize renewable energy and

01:06:05

its butt moving alone. What

01:06:10

about I asked you I

01:06:12

asked that question that that

01:06:15

I've been very curious about

01:06:16

and I think that it's

01:06:18

a difficult question are there

01:06:19

are Provisions or minimum International

01:06:25

environmental standards. identify as those

01:06:35

that should be complied with



01:06:38  
one by state and to

01:06:40  
buy investors and I don't

01:06:42  
know whether that's a fair

01:06:43  
question, but but I'm going

01:06:45  
to post it anyway any

01:06:48  
questions we talked earlier, but

01:06:59  
if it cost you a

01:07:00  
fence was being one of

01:07:01  
those principle that is a

01:07:04  
decision making now the question

01:07:12  
is how do those principles

01:07:14  
Charles Winery jean seeped into

01:07:17  
not a regime and into



01:07:18  
what the tribunal's are interpreted

01:07:19  
and right now A tribunal

01:07:22  
as we heard of the

01:07:23  
outfit is governed by Is

01:07:28  
governed by the treaty before

01:07:30  
it and save the treaty

01:07:32  
that is before it does

01:07:33  
not make provision for certain

01:07:35  
extraneous considerations. And it may

01:07:37  
be basically restricting what it

01:07:39  
can do and you're one

01:07:41  
of the things that we

01:07:42  
talked about is this that



01:07:44  
there's clearly a tension between

01:07:47  
Greece of received tension between

01:07:49  
the objectives of one regime

01:07:51  
and yet and I think

01:07:53  
this is spelled out quite

01:07:54  
clearly in the ipcc's report

01:07:58  
from last year, which says

01:08:00  
while there is tremendous potential

01:08:02  
for team is moving to

01:08:03  
support the objectives of the

01:08:04  
Paris agreement by the concerns

01:08:13  
about the existing trees. So

01:08:14  
there are over 2,000 older



01:08:17  
generation treaties in place treaties

01:08:19  
that we're not necessarily which

01:08:25  
has led to a hole

01:08:27  
Array of Reform proposals and

01:08:31  
there's no time to go

01:08:32  
into any of these details.

01:08:34  
But what we're seeing is

01:08:35  
the new generation Tweety's are

01:08:37  
trying to be sickly include

01:08:40  
Gambler Provisions or carve out

01:08:43  
or even specific commitments to

01:08:45  
action. That would be physically

01:08:47  
allow for those kinds of



01:08:48

considerations to even come into

01:08:51

play international tribunal said one

01:08:54

of those treaties negotiated back

01:08:58

in 2008. It was the

01:08:59

Canada Columbia agreement which try

01:09:04

to basically anticipate some of

01:09:05

these issues by including a

01:09:08

gat based carve out which

01:09:11

would basically provide for a

01:09:14

breeder room to wait so

01:09:17

long as the measures are

01:09:18

not musically arbitrator discriminatory now

01:09:20

old enough to have been



01:09:23

tested in practice and in

01:09:26

case I would equal Oral-B

01:09:29

Columbia where the tribunal's said.

01:09:31

This is all fair and

01:09:34

well, but ultimately there is

01:09:35

still a duty to compensate

01:09:37

and Canada had no disputing

01:09:41

parties statements now has done

01:09:45

along with many other countries

01:09:46

and try to embed a

01:09:53

number of other positions throughout

01:09:57

peppered throughout the treaty that

01:09:58

would basically allow for greater



01:10:01  
consideration of environmental and climate

01:10:03  
treaty makers playing catch-up right

01:10:08  
away with that particular occasion

01:10:15  
querious to the principal Spectrum

01:10:25  
application information you have an

01:10:33  
exception should be the same

01:10:37  
as you don't have an

01:10:39  
exception, but that's another question

01:10:42  
that you might have some

01:10:46  
streaming the investment Provisions at

01:10:51  
related to the environment and

01:10:53  
the provisions to protect the

01:10:55  
environment and investment treaties as



01:10:56

as as explained by by

01:10:58

Maria. I mean Maria is

01:11:02

far more knowledgeable than I

01:11:03

am on this particular topic.

01:11:05

But I I think what

01:11:06

we are saying and I

01:11:07

completely agree is is this

01:11:09

idea of ketchup and it's

01:11:10

unfortunately as mine I said

01:11:13

this morning and Maria is

01:11:15

Tracy's have a long shelf

01:11:17

life and it's it's a

01:11:22

process to amend the treaty



01:11:23  
to be to add new

01:11:25  
Provisions into it. And so

01:11:28  
I think going forward and

01:11:30  
insights are obviously a lot

01:11:32  
more Savvy as an environmental

01:11:34  
issues of growing about incorporating.

01:11:37  
And I think there's going

01:11:38  
to be a real balance

01:11:39  
in a load of disputes

01:11:41  
and treaties that will come

01:11:44  
in the future is to

01:11:45  
Wed a right to regulate

01:11:47  
the investor Expectations vs. Environment



01:11:51

live at niacc with her

01:11:52

example see that there really

01:11:55

three three parties that the

01:11:56

investor has the state and

01:11:58

there's this International I think

01:12:01

it's going to be a

01:12:01

real question as to what

01:12:05

role do his buddies plays

01:12:07

well in considering environmental obligations

01:12:10

and who is heading the

01:12:11

stand and what is it

01:12:13

that the investor has to

01:12:15

adhere to in particular to



01:12:18  
speed so particular sectors? And

01:12:21  
I thank you. I'm slowly.

01:12:22  
I would like to turn

01:12:23  
to Christian that we have

01:12:33  
not gone through obligations of

01:12:36  
investors ESG and all the

01:12:40  
types of applications obligations to

01:12:43  
safeguard the public order as

01:12:45  
we saw it and I

01:12:46  
see you have gone through

01:12:48  
seabed Mining and and and

01:12:49  
do also mining in space

01:12:54  
and I don't have gone



01:12:54

through some of the general

01:12:57

public international law as well

01:12:59

as environmental obligations in 3D.

01:13:02

So two questions for you

01:13:04

is is it possible to

01:13:07

think about models that would

01:13:09

allow us to calculate damages

01:13:11

in those three areas that

01:13:13

I'm just committed by by

01:13:15

states on the other hand

01:13:17

have damages that I might

01:13:19

be committed by Lester's which

01:13:21

is the second question of



01:13:25  
time and I'm running out

01:13:26  
of time here. So I'll

01:13:28  
call addressing both had one

01:13:29  
person wanted to say man

01:13:32  
us. If you need a

01:13:33  
second career, maybe teacher linked

01:13:35  
in class. I'll be the

01:13:36  
first to join if I

01:13:38  
read one more time half

01:13:39  
the pleasure threats to speak

01:13:41  
watching that racially. It seems

01:13:43  
a little boring. There you

01:13:45  
go. I also agree. You



01:13:48  
know this whole discussion is

01:13:49  
is spring of hope winter

01:13:51  
of Despair spring of Hope

01:13:53  
is like, this is Miss

01:13:54  
my grey sure. He's a

01:13:55  
very very important provisions and

01:13:57  
I I don't think there

01:13:58  
are legitimate reasons to questions

01:14:01  
does so the intentions are

01:14:03  
good. The winter of Despair

01:14:05  
comes when things go sideways

01:14:07  
in master does not sign

01:14:10  
the treaty investors in there



01:14:13

and things go sideways. And

01:14:15

so the question then is

01:14:16

what are you doing? Can

01:14:18

you Can you calculate damages

01:14:21

and I don't think the

01:14:22

answer can be no, you

01:14:23

can't or yes. Yes, you

01:14:24

can I think somewhere in

01:14:26

between. It depends on the

01:14:28

specific circumstances. The one thing

01:14:30

I wanted size before milking

01:14:32

a little bit. I bought

01:14:33

some of the issues that



01:14:34

I mean I'm counting as

01:14:36

a damage experts in in

01:14:39

in Damages calculations both on

01:14:42

the employment side on the

01:14:44

respondents. I am I always

01:14:46

say, you know, I'm my

01:14:47

worst enemy on the claim

01:14:48

inside because I'm questioning myself

01:14:49

all the time, but just

01:14:52

from our investment treaty point

01:14:55

of view, it would be

01:14:56

helpful that if the treaty

01:14:58

itself clearly articulate what generally



01:15:03

investor can expect nice a

01:15:07

general-purpose cuz you probably can

01:15:10

just point down and say

01:15:12

okay you can expect the

01:15:13

return of 3% or you

01:15:16

going to get a subsidy

01:15:16

of x-rite. But these are

01:15:20

Dynamic topics. We don't know

01:15:22

much about the consequences of

01:15:24

seabed mining even less space

01:15:28

mining if we're looking at

01:15:30

satellites to going into space

01:15:32

if we're looking on the



01:15:33

Environmental Protection and you mention

01:15:36

the Spanish renewable cases and

01:15:38

mean they're well-known there many

01:15:40

of them that is because

01:15:41

these are very is our

01:15:42

important Provisions, but their Dynamic

01:15:44

Provisions. So what I'm seeing

01:15:47

from the damaged side is

01:15:49

well off and on the

01:15:51

cleaning side as well. When

01:15:52

I invested the regime was

01:15:54

now it's. Show me Taco

01:15:58

like this Prophet difference in



01:15:59

between and that's mine and

01:16:01

you got to pay me

01:16:01

and you know, I would

01:16:06

want to look at it

01:16:07

and say well let's just

01:16:08

understand what the legitimate expectations

01:16:10

were. And that's where a

01:16:12

big Battlefield in those damages

01:16:14

are because if I'm telling

01:16:16

you that. You and master

01:16:18

you have a legitimate expectation

01:16:20

to get what I want

01:16:21

make it up every turn



01:16:22  
to 5% We're subsidizing you

01:16:25  
or whatever whatever. How much

01:16:28  
change would say you change.

01:16:30  
Provision. Those expectations are still

01:16:34  
being matched. The claim is

01:16:36  
the death of the state

01:16:38  
change to probation and there

01:16:39  
was a change in profit.

01:16:40  
That's the claim that could

01:16:41  
be billion dollars, but ain't

01:16:43  
you say that your legitimate

01:16:44  
expectations were the two making

01:16:46  
3% you're making free precise



01:16:47  
claims of zero. Is it

01:16:52  
a is it a billion?

01:16:53  
Is it zero and that

01:16:54  
all hinges on legitimate expectations.

01:16:57  
So I think that's one

01:16:58  
important thing that I'd like

01:17:00  
to see I'd like to

01:17:02  
salsa see it from from

01:17:03  
from from from the folks

01:17:05  
that do damage analysis more

01:17:06  
look at the legitimate expectation

01:17:08  
not just pull up a

01:17:10  
spreadsheet inside before it was



01:17:12

pissed after. This is the

01:17:14

this is the difference and

01:17:16

I think it's damage experts

01:17:17

behalf of Roland G. To

01:17:19

it's not just legal liability.

01:17:22

The other thing I saw

01:17:24

yours is a very long-term

01:17:26

Investments. You're not getting up

01:17:28

on morning. And so I'm

01:17:29

going to invest in space

01:17:30

mining that could be over

01:17:33

a period of five years

01:17:34

and years even long are



01:17:35

you looking for in Masters?

01:17:37

What is that investment decision

01:17:39

May cuz if it's in

01:17:40

May if it's made in

01:17:41

2010 the expectations and if

01:17:44

it's made in 2015, but

01:17:46

the fact is you start

01:17:47

a problem being on 5

01:17:48

and you're still thinking about

01:17:49

him in in in 2020.

01:17:51

So when what is what

01:17:54

are we how do we

01:17:55

Define investment was made is



01:17:58  
the first dollar is the

01:17:59  
point of no return. What

01:18:01  
is even the point of

01:18:02  
no return. Is it the

01:18:03  
last dollar bin? They must

01:18:04  
complete it. So that's an

01:18:05  
important thing again feeding back

01:18:07  
to legitimate expectation feeding back

01:18:09  
to the calling of counter-factual

01:18:11  
worlds. A few obvious things

01:18:14  
that are mostly residing less

01:18:16  
less on the treaty site

01:18:18  
more on the on the



01:18:20

damn attracts bird is before

01:18:24

we going to modeling damages.

01:18:29

Let's understand properly what the

01:18:32

claim and financial status Ross

01:18:36

operational status by understand the

01:18:39

business case you mention there's

01:18:42

a space mining companies that

01:18:43

went belly-up. We see it

01:18:45

all the time. So he

01:18:46

doesn't actually these Peter should

01:18:48

not be used for me

01:18:50

Chris Koenig. I'd say I'm

01:18:53

going to get an exploration



01:18:54  
permit Or even exploitation permit

01:18:58  
and I do nothing. And

01:19:01  
then I'm on Point Estates

01:19:02  
going to stay cuz you

01:19:03  
got to do something and

01:19:06  
then you pull my car

01:19:06  
my so I'm suing because

01:19:08  
I would have made billions

01:19:09  
but it should not be

01:19:11  
that there is. As part

01:19:17  
of of of the damage

01:19:19  
assessment damn checks picture really.

01:19:20  
Look at what what what



01:19:22

is this? What is this

01:19:23

investment in that is part

01:19:26

if you do your if

01:19:27

it's a night for Tatian

01:19:29

then If it's an expropriation

01:19:34

Rogers mix expropriation, you need

01:19:36

to do the fair market

01:19:37

value assessment. So you need

01:19:38

to understand the business case

01:19:40

anyway value. BMX probation case

01:19:48

what is the fair market

01:19:49

value of space mining as

01:19:52

really really difficult and there's



01:19:59  
literature on I disagree with

01:20:00  
that if there's little Johnny

01:20:02  
cuz you can always use

01:20:03  
a discounted cash flow model.

01:20:05  
You can save the world.

01:20:07  
You can model everything. It's

01:20:09  
just in the discount rate.

01:20:10  
I'm on point. If you

01:20:12  
do not have profit projections

01:20:14  
don't really know you have

01:20:16  
to fess up to that.

01:20:17  
I'm not saying you should

01:20:18  
walk away from it all



01:20:19  
together. I'm not saying if

01:20:21  
there's a wrongdoing you can

01:20:22  
measure they should be awarded

01:20:23  
a mission at all, but

01:20:24  
it's a it's a challenge

01:20:26  
that we ask the expert

01:20:28  
need to think about. Maybe

01:20:30  
is there a way we

01:20:32  
can make sure that if

01:20:33  
if we're using a DCF

01:20:35  
model will be validated and

01:20:37  
it makes sense. Is there

01:20:39  
another Benchmark that we can



01:20:40

use to to support that

01:20:42

tacos with the discount rate?

01:20:47

Make sure he's a highly

01:20:48

risky investment the discount rate

01:20:50

to reflect that the discount

01:20:52

rate reflects the riskiness something

01:20:54

that you're not reflect the

01:20:56

fact that we do not

01:20:57

know how much profit is

01:20:59

an investment with a make

01:21:01

maybe just a few more

01:21:04

things you Coast exposed exposed

01:21:09

creation valuations have come up



01:21:11  
repeatedly, I contact a little

01:21:15  
bit of Interest a time

01:21:16  
where the claim is that

01:21:18  
based on you? Cuz I'm

01:21:20  
it makes sense. I'm not

01:21:21  
questioning that decision or I

01:21:23  
wasn't even part of it.

01:21:24  
So I would know enough

01:21:25  
about if it's a UK

01:21:27  
size. You can claim for

01:21:28  
the hire of the tuna.

01:21:30  
Either Adidas The Valley Of

01:21:32  
The Lost Valley at the



01:21:33  
time of expropriation or the

01:21:35  
time of the war. So

01:21:37  
it's it is so the

01:21:38  
difference is in in in

01:21:40  
a if if he do

01:21:41  
your valuation at the time

01:21:44  
of wrongdoing you only consider

01:21:46  
information that was available at

01:21:47  
that time to think about

01:21:49  
uation. If you do a

01:21:50  
date of a board, it's

01:21:52  
exposed to the wrongdoing of

01:21:53  
course is much more information.



01:21:55

Go to space mining again.

01:21:57

Let's say somebody got guests

01:22:00

expropriated in in 2023 on

01:22:03

on on space mining at

01:22:06

7 today to for more

01:22:07

than 10 years from now,

01:22:08

maybe 10 years from now

01:22:10

space mining is Ethan and

01:22:13

I don't want to stay

01:22:14

while I might have to

01:22:15

have business in 2023 before

01:22:18

I would have made 20

01:22:19

billion dollars in in 2030



01:22:22  
or 2040 and so can

01:22:25  
we really do that? I

01:22:26  
say use you quotes with

01:22:29  
care. Really understand brother on

01:22:33  
the information exposed information is

01:22:36  
is relevant here and would

01:22:38  
have changed at the fair

01:22:40  
market value. Craig takeaways always

01:22:46  
carefully considered legitimate expectations off

01:22:49  
of the master doesn't matter

01:22:52  
where they where they run

01:22:53  
the claim and our response

01:22:54  
are with you and your



01:22:57

Mustang was made at a

01:22:58

clear Sunset guideline Orman win.

01:23:01

Expectation where should children form?

01:23:04

Examine business case before washing

01:23:07

the damages understand whether whether

01:23:10

there was a positive business

01:23:12

case for their departure might

01:23:15

have been dormant is out.

01:23:16

The funders is hopocan masculine

01:23:18

and look at your valuation

01:23:21

technique. You can do an

01:23:23

income approach Market approach and

01:23:25

cost approach to determine what



01:23:26  
that he is the DCF

01:23:28  
model is not always the

01:23:29  
answer. I know it's the

01:23:31  
favorite model. Everything is not

01:23:33  
always the answer. I like

01:23:34  
it. I've used it but

01:23:36  
sometimes it's just not right

01:23:38  
because we shouldn't just populated

01:23:41  
spreadsheet with numbers and then

01:23:43  
say in my opinion that's

01:23:44  
reasonable. I think we need

01:23:46  
to get more reason. Why

01:23:48  
is that number make sense?



01:23:52

Is there any way we

01:23:53

can substantiate that if we

01:23:55

come up with a billion

01:23:56

dollars give me point you

01:23:57

somebody to the actual that

01:23:59

makes sense because I like

01:24:00

cliensy errand and then do

01:24:08

your proper discount rate and

01:24:10

be careful when you use

01:24:12

Xposed information if it comes

01:24:15

with limitations kind of things,

01:24:17

but these are very challenging

01:24:18

question. Again, it's on the



01:24:21

claim inside type. I wracked

01:24:23

my brains how to do

01:24:23

it on the response. I

01:24:24

done carefully considering what what

01:24:27

can be downloaded the valuation

01:24:30

Construction. your new Tuesday Antonio

01:24:56

Can you hear me now?

01:24:59

Sorry for that. I'm going

01:25:01

to ask one one minute

01:25:02

question to each one of

01:25:04

our panelists to my mass.

01:25:05

What? At what modifications if

01:25:10

any would you include in



01:25:12

entreaties that have hard law

01:25:15

of allegations for investors? I

01:25:17

mean, how would you make

01:25:18

them more accessible enforceable, if

01:25:22

any 222 Maria what if

01:25:29

you have to choose a

01:25:31

core set of 4 International

01:25:34

environmental law principles that investors

01:25:37

have to comply with what

01:25:40

would those be and how

01:25:44

to play? How would you

01:25:49

incorporate a protection app for

01:25:52

Investments that are related to



01:25:55

see Bud Mining and under

01:25:57

and the space mining and

01:26:01

an end to Christian? Your

01:26:07

valuation analysis apply also for

01:26:11

Publications that have to to

01:26:14

be complied with by investors.

01:26:17

So you've had about 50

01:26:19

seconds to think about these

01:26:21

things. You have a floor

01:26:24

one minute because our other

01:26:31

people are looking at us

01:26:32

in in. Not not so

01:26:34

gracious way. Well, I still



01:26:37  
trying to be very quick

01:26:38  
when I think they're out

01:26:40  
there to such as ways

01:26:41  
you can link it one

01:26:42  
is in terms of shots

01:26:44  
after seeing the DD right

01:26:46  
to bring it to him.

01:26:47  
And the other is to

01:26:48  
create an element by the

01:26:51  
state can bring the car

01:26:52  
down to claim or or

01:26:54  
some kind of statue of

01:26:55  
things have been to the



01:26:57

Triad of a different levels.

01:27:00

I'm and I would suggest

01:27:01

it. If you are going

01:27:04

to elevate the treaty breach

01:27:06

weather is domestic or environmental

01:27:08

to eat. You bring it

01:27:11

into the realm of the

01:27:11

bit then you

01:27:13

need to have consequences associated

01:27:14

with it, and it depends

01:27:16

on your volume. Maria so

01:27:31

I might in a virtual

01:27:32

question. I need to comply



01:27:36  
with International environmental law principles

01:27:38  
core or the question is

01:27:41  
Which principle has been embodied

01:27:44  
International agreements as an investor

01:27:48  
relation. What we're seeing right

01:27:49  
now is increasing references to

01:27:52  
compliance with mandatory domestic laws,

01:27:54  
which is a knock-knock joke

01:27:55  
and then voluntary compliance a

01:27:59  
recommended compliance with for example,

01:28:01  
do you in guiding principles

01:28:02  
in business and human rights

01:28:03  
as your dad since we



01:28:04

have not moved that far

01:28:05

away in the last 20

01:28:06

years some physical recommendations on

01:28:08

one level and then military

01:28:10

supplies to the other level.

01:28:14

I think in the short-term

01:28:16

Traders are not going to

01:28:19

be able to be changed

01:28:20

immediately and I think making

01:28:22

use of insulting Provisions in

01:28:25

a license or a contract

01:28:26

to start covering off some

01:28:28

of these issues. You know,



01:28:29

is it in the territory?

01:28:30

What's the relationship between International

01:28:33

and domestic Laura and what

01:28:35

my trump I think the

01:28:36

other immediate investigation States could

01:28:41

take his to make use

01:28:42

of the specialized Paw Patrol

01:28:44

rules, for example, the PCA

01:28:45

in 2011 developed and that

01:28:52

provides the scientific and Technical

01:28:54

experts. And I think this

01:28:55

is going to be gradual

01:28:56

step by step until we



01:28:58  
get Specific protections old or

01:29:01  
unite the treaty catch up.

01:29:03  
I think there are a

01:29:04  
number of steps we can

01:29:04  
take in the interim. Richmond

01:29:10  
make sure I understand correctly

01:29:11  
you're asking whether to stay

01:29:13  
could actually in force against

01:29:15  
the investor. Is that is

01:29:17  
that your question yet? I

01:29:21  
think the modeling the deal

01:29:23  
were all thinking is the

01:29:24  
same but the model is



01:29:25  
different because she would have

01:29:27  
to serve the citizens with

01:29:29  
if your plaid full reparation

01:29:31  
standard rate on the investor

01:29:33  
side is the financial position

01:29:36  
the repair to financial position.

01:29:38  
Whatever might have Bean on

01:29:41  
the Stateside you would have

01:29:42  
to consider what full reparation

01:29:44  
means that they have to

01:29:46  
take means to get rid

01:29:50  
of pollution some other ways

01:29:51  
or whatever the situation are



01:29:53

very high-level. It's the same

01:29:55

but I think in the

01:29:56

details, I never worked on

01:29:57

that kind of relationship to

01:29:59

an interesting thing because I

01:30:00

just haven't seen it ever

01:30:01

but I think that the

01:30:03

remodeling of thinking will be

01:30:05

somewhat there from you. unmute

01:30:19

Thank you. A domestic law

01:30:26

might teach her something in

01:30:29

terms of Damages and environmental

01:30:30

hazards or or spill over



01:30:33

to Tetra that have gone

01:30:34

wrong in in certain jurisdictions

01:30:37

might be useful and read

01:30:38

that note. I really want

01:30:40

to thank each one of

01:30:41

the speakers Maria Chloe and

01:30:43

Christian and Menards from London

01:30:45

to welcome Round of Applause

01:30:49

to our speakers, and thank

01:30:51

you. And the next title

01:30:57

on Damages will be here.

01:31:01

Very close. SMS. Take care

00:00:00

Ian made Start again. Welcome



00:00:07  
everyone. Better so welcome everyone

00:00:16  
today. Is that our second

00:00:18  
day of Washington arbitration week.

00:00:20  
I see some familiar faces

00:00:22  
from yesterday and new faces

00:00:24  
from today. My name is

00:00:27  
that I was indicating is

00:00:29  
Jose Antonio Rivas. I am

00:00:30  
one of the co-founders of

00:00:33  
Washington arbitration week together within

00:00:36  
layered. I am a member

00:00:38  
of so strange yellow pee,

00:00:40  
which is a an international



00:00:42

boutique Law Firm both in

00:00:44

International Investment arbitration and investment

00:00:48

in Commercial International commercial arbitration

00:00:51

and public international law and

00:00:58

and Bogota and together with

00:01:00

my co-founder Young Lyric from

00:01:02

calling morning and end with

00:01:05

the a group of very

00:01:08

steamed and an ineligible advisors

00:01:11

we found The Washington arbitration

00:01:16

week 4 years ago in

00:01:17

the middle of covid and

00:01:18

the on so far so



00:01:20

good. This year may be

00:01:22

the biggest one in terms

00:01:23

of numbers were fully in

00:01:24

person. But hopefully we'll keep

00:01:29

on growing and this is

00:01:30

a testament of of of

00:01:31

the international Tradesmen Community 1st

00:01:34

in Washington arbitration with today.

00:01:38

I would like to thank

00:01:40

you. I know some of

00:01:41

our or all of our

00:01:42

sponsors at which you might

00:01:43

see on on the screen,



00:01:45

it would really be impossible

00:01:48

to do it without our

00:01:49

sponsors. Why because Washington arbitration

00:01:53

week is I believe a

00:01:56

forum that has nothing to

00:01:59

Envy to the major International

00:02:02

arbitration Forum in the world.

00:02:04

You would see here. We

00:02:08

need the stars of international

00:02:10

arbitration both commercial and Industrial

00:02:12

state. But there's 11 Lou

00:02:15

tablet which which distinguish us

00:02:17

from other forms at which



00:02:20

is that it's completely free.

00:02:21

We're strong believer in education

00:02:24

about the NIT charging at

00:02:27

Georgetown University Law Center. We

00:02:31

have been doing that for

00:02:32

more than 10 years indeed

00:02:34

investment re arbitration and and

00:02:36

the more people that we

00:02:39

can reach in the world

00:02:41

or the better. So anybody

00:02:42

can come to DC anybody

00:02:45

can connect and I we

00:02:47

have people today here from



00:02:49

Sevilla Spain from from China

00:02:52

from France from the UK

00:02:54

from India, which is which

00:02:57

is part of our International

00:02:58

arbitration committee also being watched

00:03:01

from the pond with people

00:03:03

from Haiti here. So so

00:03:04

we we trying to make

00:03:05

a difference in terms of

00:03:06

education and we thought our

00:03:08

sponsors this this would be

00:03:10

simply not be possible. So

00:03:13

I would like to to



00:03:15  
give and I want to

00:03:16  
do this every time but

00:03:17  
I think it's it's it's

00:03:18  
a it's fair to say

00:03:20  
no. Thank you to to

00:03:22  
Norton Rosa to prefer to

00:03:24  
CRA to Greenberg touring to

00:03:27  
hashkafa for scroll and Mooring

00:03:32  
strategy Whelan Chevrolet. Willie Wiley,

00:03:36  
I'm sorry that white &

00:03:38  
case Allen & overy at

00:03:40  
2 jams at compass lexecon

00:03:42  
and I bake her box



00:03:44  
and decorate a Cornerstone research

00:03:47  
Pillsbury 3, speaker box under

00:03:52  
our hosts. Thank you today

00:03:54  
Covington SRM the men's group

00:03:58  
and then Fox PWC Gallagher

00:04:02  
Steptoe and suturing you might

00:04:05  
wonder what she's doing is

00:04:06  
we we enter into an

00:04:08  
agreement is not an international

00:04:09  
arbitration firm, and I will

00:04:11  
enter into an agreement a

00:04:12  
few days ago. For people

00:04:14  
to receive lower rates when



00:04:17

they come to DC it's

00:04:19

kind of an Airbnb. So

00:04:20

next time that you come

00:04:21

to DC you will have

00:04:22

a way to skip scenes

00:04:25

in the hotel lines and

00:04:26

someone anyway enough of the

00:04:29

propaganda. Let's get down to

00:04:32

it. Today's topic is is

00:04:35

one that has has been

00:04:40

bugging us and and me

00:04:42

in particular. I have a

00:04:43

background not only as an



00:04:45  
international arbitration practitioner and as

00:04:48  
an arbitrator, but before you

00:04:49  
do that my past life

00:04:51  
are I used to be

00:04:52  
an investment treaty negotiated. I

00:04:55  
negotiated for the Colombian government

00:04:57  
as a chief negotiator many

00:05:00  
of the investment research today

00:05:02  
in Port & and I

00:05:04  
things are now to do

00:05:05  
today in the world. There's

00:05:07  
a lot of questioning about

00:05:10  
the viability of the Penn



00:05:14  
treaty arbitration system. No, should

00:05:16  
we have one? Should we

00:05:17  
not the European communities? Is

00:05:19  
it at proposing to dismantle

00:05:21  
investment arbitration system as we

00:05:25  
know it and they're proposing

00:05:26  
a court in in the

00:05:28  
world of investment arbitration Oakland

00:05:30  
Espan dispute settlement. Not everyone

00:05:35  
is on board and that

00:05:37  
we know that that their

00:05:39  
negotiations in on speaker group

00:05:41  
three, but those local stations



00:05:42

are procedural Mandy. And and

00:05:45

when I hate when I

00:05:46

listen to what is being

00:05:48

negotiated and and the procedural

00:05:51

modifications that they're putting together

00:05:53

all of those seem to

00:05:55

be a fairly reasonable not

00:05:57

know the little girl that

00:06:01

seems to be very very

00:06:03

on-point good effort. But is

00:06:07

there anything new there and

00:06:10

and the world moves forward

00:06:12

at a pace that I



00:06:15

don't believe we'll ever be

00:06:17

able to to patch up

00:06:19

us lawyers. show Sprint and

00:06:23

just to give you an

00:06:24

example your notion of the

00:06:28

the right to regulate which

00:06:30

today is being with us

00:06:32

as a as a staunch

00:06:34

example of the defense of

00:06:37

legislative policies of the state

00:06:39

which now is one of

00:06:41

the flags in in the

00:06:43

negotiations and in three days



00:06:44

the right to regulate that's

00:06:47

not new. There are examples

00:06:50

of three days before the

00:06:52

2000 work the right to

00:06:53

regulate was in preambles and

00:06:55

so on and so forth

00:06:55

is not an invention of

00:06:57

of any state in Europe

00:06:59

or in any other has

00:07:01

been there for a while.

00:07:02

So what what's new? So

00:07:05

what are we when we

00:07:06

ask the question of what



00:07:07

is new Wii Wii? We

00:07:12

don't get to. some Global

00:07:17

concern and and technology and

00:07:21

advancement on the global concerns

00:07:24

we have for instance the

00:07:26

concern about climate change the

00:07:28

concern about the protection of

00:07:31

the environment and then we

00:07:33

have the existence at where

00:07:36

the notion that perhaps only

00:07:39

state mostly are being sued

00:07:42

in investor arbitration. Right, they

00:07:47

seldom we see. States suing



00:07:51

investors is the is the

00:07:53

system balance. What about human

00:07:55

rights? What about older of

00:07:58

the gation concerning is jior

00:08:00

concerning concerning Corporate social responsibility

00:08:02

that that may be important

00:08:06

in today's world. Should they

00:08:08

be considered now, those are

00:08:11

some social concerns? The other

00:08:13

ones are environmental global concerns

00:08:16

and then we getting to

00:08:17

the technology aspect of of

00:08:19

today's world today as opposed



00:08:22  
to 20 or 15 years

00:08:24  
ago. There is something called

00:08:27  
space mining I went when

00:08:30  
you think about space mining

00:08:32  
first time. I I I

00:08:34  
sent this at a home

00:08:36  
dinner table sales space mining

00:08:38  
amazed. Is that more of

00:08:39  
a cartoonish a kind of

00:08:42  
thought no space mining can

00:08:45  
be a reality. What about

00:08:48  
seabed mining? Today's world is

00:08:52  
different from that 20 years



00:08:54

ago. You couldn't do seabed

00:08:57

mining 20 years ago as

00:08:58

you can do it today.

00:09:00

So those those new areas

00:09:04

of Technology of science pose

00:09:07

many questions and the main

00:09:09

one in the Africans. And

00:09:11

on one of our speakers

00:09:12

will be able to address

00:09:13

it is is the current

00:09:15

investment treaty protection system. Solid

00:09:21

enough to protect and encourage

00:09:25

investment in those areas to



00:09:28

so beyond the uncitral Beyond

00:09:32

many of the current discussion.

00:09:34

There's a whole world to

00:09:37

explore in terms of PSG.

00:09:41

Corporate social responsibility technology advancements

00:09:44

and perhaps applications for or

00:09:47

investors in Disney World. So

00:09:49

this panel will attempt touching

00:09:53

touching some of those issues

00:09:56

because they are vast do

00:09:59

today with us. I would

00:10:01

like to welcome my good

00:10:03

friend and that my good



00:10:05

friend Minaj who is globe-trotting

00:10:08

the world I do. I'm

00:10:11

not sure where she's in

00:10:12

London or in Asia or

00:10:14

in between. She's not in

00:10:15

an airplane Menards is a

00:10:17

barrister and and I I'm

00:10:23

very proud for you here.

00:10:24

My friend that we have

00:10:26

only met a few times

00:10:26

but we've had very very

00:10:29

good communication. She was also

00:10:31

a negotiator I could go



00:10:34  
on and on. She's a

00:10:35  
crack average graduate and you

00:10:39  
might recognize her face or

00:10:41  
her when you see her

00:10:42  
post on LinkedIn you will

00:10:44  
you will recognize her one

00:10:46  
because she whenever she says

00:10:48  
something is Meaningful on to

00:10:51  
whatever she says something sporty

00:10:52  
invented, which is something that

00:10:55  
some people really cannot do.

00:10:57  
I mean I I I

00:10:58  
barely say that I'm ordered



00:11:00  
to do this for that

00:11:01  
but she goes way beyond

00:11:02  
that do my last welcome.

00:11:04  
Also we have and Chloe

00:11:08  
Baldwin. She is an associate

00:11:12  
from Steptoe & Johnson, and

00:11:16  
Chloe is a former Australian

00:11:22  
diplomat. And also intriguing negotiator.

00:11:25  
She now represents both stubborn

00:11:29  
and private-sector clients International Investment

00:11:31  
and trade disputes before joining

00:11:34  
us as I was explaining.

00:11:35  
She served as a senior



00:11:36

legal officer in the Australian

00:11:37

office of international law where

00:11:39

she acted as counsel for

00:11:40

Australian international trade and investment

00:11:43

disputes and was a delegate

00:11:44

in bilateral and multilateral free

00:11:47

trade negotiations. We also have

00:11:50

with us Maria Banda who

00:11:53

is a senior associate in

00:11:54

the Washington DC office of

00:11:56

Gibson Dunn & Crutcher where

00:11:58

she focused on complex cross-border

00:12:00

disputes, including International arbitration and



00:12:03  
public international law and is

00:12:05  
a member of the firm's

00:12:06  
ESG group. She has work

00:12:08  
on climate change and international

00:12:10  
environmental law for more than

00:12:12  
15 years, and she has

00:12:14  
published extensively in the space.

00:12:19  
She's way more than that.

00:12:21  
I can show you. What

00:12:22  
was she she she is

00:12:24  
also published and very knowledgeable

00:12:29  
in terms of ESG and

00:12:32  
the end. I know that's



00:12:33

why she's here at one

00:12:35

of her biggest concern is

00:12:36

Inez is an international environmental

00:12:38

law and and also last

00:12:42

but not least, is a

00:12:44

Christian. Depot he is a

00:12:48

senior managing director of the

00:12:50

Washington DC office of Nera

00:12:52

economic Consulting a damages expert

00:12:56

in himself is a leading

00:12:59

Authority in complex dispute and

00:13:01

Quantum of harm assessment mattress,

00:13:03

and he has over 27



00:13:05

years of experience covering 24

00:13:08

countries is global arbitration review

00:13:11

and financier worldwide rank doctor

00:13:14

among one of the world's

00:13:17

leading commercial arbitration expert. He

00:13:19

has testified many how many

00:13:21

high-profile matter in telecommunications Mining

00:13:25

and renewable energy sector than

00:13:27

one of his tasks here

00:13:29

is how to translate all

00:13:31

this novel team Phillies into

00:13:33

damages. Why because in in

00:13:36

Washington arbitration week, we we



00:13:38  
strongly believe that it's not

00:13:40  
only a matter of Publishing

00:13:42  
a beautiful award but actually

00:13:44  
making it happen for the

00:13:47  
client either it being the

00:13:49  
state or for the investor

00:13:51  
beautiful or doesn't mean much

00:13:54  
if you cannot enforce it

00:13:56  
and if you cannot claim

00:13:57  
damages or or or prevent

00:14:00  
them being claimed so with

00:14:02  
that I would like to

00:14:04  
give to start or around



00:14:07

and ask a man has

00:14:12

one the one small anecdote.

00:14:20

I happen to negotiate the

00:14:23

investment chapter of the FTA

00:14:25

between Colombia and and and

00:14:28

Canada and very briefly at

00:14:31

one of the Objectives of

00:14:34

the Canadian delegation I can

00:14:36

speak to about this, you

00:14:37

know, this has been more

00:14:38

than 10 years was to

00:14:40

include a corporate social responsibility

00:14:43

clause in the treaty and



00:14:46  
that the corporate social responsibility

00:14:47  
has had very soft language.

00:14:53  
So it was the language

00:14:55  
of of the Clause was

00:14:57  
or is something like The

00:15:00  
parties will promote social corporate

00:15:05  
responsibility by the companies when

00:15:08  
they make investments in the

00:15:10  
other state self lower low

00:15:12  
language try and promote. There

00:15:17  
was no hard language. And

00:15:19  
of course the Colombian delegation,

00:15:21  
we we read it and



00:15:22

we are now we like

00:15:24

the presumption was that this

00:15:27

was in the Years 2007

00:15:30

to 2008. The presumption was

00:15:33

that we might not like

00:15:35

it because I thought you

00:15:36

might know has had issues

00:15:39

concerning security and that those

00:15:41

ages even more but I

00:15:42

would think that Corporate social

00:15:44

responsibility is is a is

00:15:47

a positive thing. We want

00:15:49

investors to be responsible make



00:15:51  
a qualified investment. Right? And

00:15:54  
I indeed we like it

00:15:55  
so much. Why don't we

00:15:57  
make it hard loan? And

00:16:02  
we came back to the

00:16:03  
table and say yes, we

00:16:04  
like it so much. It's

00:16:05  
make it hard lump. And

00:16:07  
then our counterparts which are

00:16:09  
good friends. Now for the

00:16:10  
negotiation said, oh no, no.

00:16:12  
No, that's too much. No

00:16:16  
heart. No, that's too much.



00:16:20

And because it wasn't our

00:16:21

proposal we we agreed to

00:16:24

it being soft law. So

00:16:29

so the moral of the

00:16:30

story is that Corporate social

00:16:33

responsibility standards and he has

00:16:35

t standards are. Aspiring goals

00:16:41

in in many trees, but

00:16:43

in most of the trees

00:16:44

that have this type of

00:16:46

obligations, but it when it

00:16:49

comes down to making it

00:16:51

hard love ligations negotiators get



00:16:54  
scared and States get scared

00:16:57  
in most of the trees.

00:16:58  
And today we have mine

00:17:00  
us who actually has been

00:17:03  
counseled to some of the

00:17:06  
negotiations which have indeed made

00:17:09  
or created Harlow vacations for

00:17:12  
investors. So we got that

00:17:14  
from you unless you have

00:17:15  
a sore. I'm delighted to

00:17:22  
be here and be back

00:17:24  
today because I should miss

00:17:26  
the cookies and Washington a



00:17:27  
meeting on Friday. I am

00:17:30  
very much and loans and

00:17:31  
you could get a 63

00:17:32  
in the background. I am

00:17:34  
about to get to the

00:17:35  
place. So tense my calls

00:17:38  
David even faster because I

00:17:45  
sent a request for a

00:17:54  
shins and pooping a lot,

00:17:57  
but I actually Of course,

00:18:00  
I was answering you and

00:18:02  
I knew each other before

00:18:03  
we ain't even that when



00:18:06

I was running around trying

00:18:07

to figure out how cute

00:18:09

is a mage in Africa.

00:18:10

I was told what was

00:18:12

happening in Columbia. And I

00:18:15

remember you knew where I

00:18:16

was going to go see

00:18:18

a thing I had was

00:18:24

this incredible model coming out

00:18:26

of Columbia and Columbia for

00:18:31

other more important to be

00:18:36

pursued but to hear about

00:18:38

this Little Tree Sushi, which



00:18:40  
was saving the way for

00:18:41  
the future was very exciting

00:18:44  
and I I still remember

00:18:46  
the UK Colombiana a b

00:18:48  
of this computer Dr. Muciaccia

00:18:50  
negotiation was with a different

00:18:54  
from anything. If so, It

00:19:00  
is it was very very

00:19:01  
and credible to Antonio's classes

00:19:07  
because I had to be

00:19:08  
totally kids were with Columbia

00:19:11  
St. RT cross the world

00:19:14  
when I was a good



00:19:16  
see a single helping advice,

00:19:17  
which I will be speaking

00:19:20  
about that before I get

00:19:23  
to the Tri-Cities. Who's he

00:19:27  
fighting her right eye. I

00:19:28  
do have a habit of

00:19:30  
indulging at the dentist appointment

00:19:33  
and I'm afraid I do

00:19:35  
not have anything to do

00:19:36  
with Marquez today if it

00:19:38  
goes, yeah, I tried desperately

00:19:40  
hard to pitch in to

00:19:42  
Love in the Time of



00:19:43

Cholera, but it wasn't working.

00:19:44

So instead I I saw

00:19:47

saw it in Charles Dickens.

00:19:50

I'm sure you might have

00:19:53

come across his book A

00:19:56

Tale of Two Cities and

00:19:58

I was thinking of Using

00:20:01

it as a team of

00:20:03

two treaties and I will

00:20:06

be talkin bout to tri-c's

00:20:07

that I have at least

00:20:10

half of the purpose of

00:20:11

the gation. It is a



00:20:18

very interesting way. If you

00:20:24

remember your first aid class

00:20:26

9 literature class in Charlotte

00:20:30

sickens you remember the very

00:20:35

first Passage, It was the

00:20:39

best of times it was

00:20:41

the worst of times. It

00:20:44

was the age of wisdom.

00:20:45

It was the age of

00:20:47

foolishness. It was the epoch

00:20:50

of belief. It was the

00:20:53

epoch of incredible. It was

00:20:57

a season of light. It



00:21:00

was a season of Darkness.

00:21:02

It was a spring of

00:21:03

hope it was the winter

00:21:05

of despair. We had everything

00:21:08

before us. We had nothing

00:21:11

before us. I mentioned this

00:21:15

simply because if it is

00:21:17

the best of times and

00:21:19

it's pretty easy to go

00:21:20

out. Sometimes it is the

00:21:22

best of time for us

00:21:23

to speak about it talking

00:21:26

about the challenges that confront



00:21:27

Us in terms of all

00:21:29

these developments relation to climate

00:21:32

change. May I see bad

00:21:36

space all the issues that

00:21:39

the initial template in 1959

00:21:43

of the first day I

00:21:45

couldn't even imagine. But it

00:21:50

is still the worst of

00:21:51

times because we are indeed

00:21:53

facing these challenges and the

00:21:56

treaties are also very hard

00:21:59

to keep up. Treaties sometimes

00:22:06

sometimes has given you to



00:22:12

put them to keep up

00:22:14

with the changes that are

00:22:16

Sioux Falls base in Alba.

00:22:18

Love. Today is very difficult.

00:22:21

before I launch into a

00:22:23

place my spirit says in

00:22:25

either to treaties the table

00:22:27

to treat you that I

00:22:28

promised to speak about I

00:22:30

did want to make a

00:22:31

preliminary, because the big question

00:22:35

is who does the illness

00:22:37

lie on As the World



00:22:40  
goes on. Is it the

00:22:43  
arbitrations that need to adopt

00:22:45  
the treaty or is it

00:22:47  
you need something to go

00:22:47  
see each other's to revisit

00:22:49  
that treated as a museum

00:22:52  
Relic in the safe box

00:22:55  
for the next 10 years

00:22:57  
when clearly is Provisions need

00:23:00  
to be be the church

00:23:01  
very important issue to bear

00:23:06  
in mind as we look

00:23:07  
at the two treatises that



00:23:09

I will be up going

00:23:11

through a very pretty. Please

00:23:13

take the time I have

00:23:15

today. Now, I think it's

00:23:18

important to remember. To take

00:23:22

only the first we have

00:23:25

had the privilege of being

00:23:29

counseled entreaty alterations and also

00:23:34

sitting at the arbitration and

00:23:36

treaty obligations, but once I

00:23:45

realized if there is one

00:23:47

bad, at least you read

00:23:49

this at that tree, it



00:23:51

has to be the negotiations

00:23:53

because I needed the most

00:23:58

creative server Pascal how to

00:24:00

get around the words of

00:24:02

the tree. She so if

00:24:04

you go out with me,

00:24:04

please revisit recent statement, I

00:24:10

would look, Without further Ado

00:24:14

that I mentioned this place

00:24:20

you're going to have to

00:24:21

experience. This is pretty good.

00:24:24

Sorry, I will then. time

00:24:29

to shut the screen up



00:24:30  
this so I hope I

00:24:34  
can look like we click

00:24:35  
this and Get this right?

00:24:40  
I just text me to

00:24:41  
call Mesa. I'm afraid I'm

00:24:43  
not going to be able

00:24:44  
to bring up the take

00:24:50  
you to which was the

00:24:51  
o.c. Investment. Now a lot

00:24:55  
of you'd screw if they

00:24:57  
if you do snooze the

00:25:00  
wifey investment treaty. Please do

00:25:04  
it because until 2011 I



00:25:08

can do that. They would

00:25:10

suck if people do I

00:25:11

see investment treaty either. I

00:25:17

see the all I see

00:25:18

is the organisations of Islamic

00:25:20

countries, which was essentially of

00:25:22

political block created amongst the

00:25:25

Islamic countries to promote cohesion.

00:25:28

In 1981, they decided to

00:25:32

negotiate a treaty they called

00:25:34

the investment treaty investment agreement

00:25:37

among member states space authority

00:25:44

to this treaty and it's



00:25:46  
across the Middle East Africa

00:25:47  
Asia and I can see

00:25:50  
someone has come to the

00:25:51  
rescue. Thank you to the

00:25:55  
angels with put that up

00:25:56  
or a bilateral investment treaty,

00:26:07  
but I would invite you

00:26:09  
to read it in your

00:26:10  
own private time because you

00:26:12  
got to look at the

00:26:13  
Vintage of the treaty in

00:26:15  
1981. When two of the

00:26:20  
member states of the UIC



00:26:22

Iraq and Iran were at

00:26:24

War and I encounter this

00:26:28

particular Tracy when I was

00:26:30

canceled for Indonesia, and Indonesia

00:26:34

had just received a flame

00:26:37

under the oic's investment Rishi

00:26:41

and having having looked about

00:26:43

over a thousand trees cheese

00:26:45

prior to that. I just

00:26:48

pranked you don't even know

00:26:49

existed. So if you're sitting

00:26:52

in the audience on Prince

00:26:53

taking water and the osc



00:26:55

investment treaty, please don't despair.

00:26:59

I knew about it. Let's

00:27:01

say it was quite an

00:27:02

interesting learning table now, but

00:27:10

we're looking at you interesting

00:27:14

articles. The first one is

00:27:17

Oscar 9, which is always

00:27:19

on point and the provision

00:27:24

of the stuffed and that's

00:27:36

just a treaty claim that

00:27:38

we know about was in

00:27:39

1987. And the first time

00:27:42

jurisdiction was affirmed under a



00:27:45  
bilateral investment treaty was 1990.

00:27:50  
But I keep reminding people

00:27:51  
tweeting to go see a

00:27:53  
pictures are not Clairvoyance account

00:27:55  
see into the future. We

00:27:57  
have a treaty text that

00:28:01  
is dealing with industrial applications

00:28:04  
the topic we are talking

00:28:06  
about in 2023 and if

00:28:09  
you look at it, so

00:28:14  
I don't read it. Sugar

00:28:29  
Creek pool acid need to

00:28:31  
stop at Publix order a



00:28:32

model to show to the

00:28:35

public interest each load. So

00:28:38

he's also refrain from exercising

00:28:40

restrictive practices and from trying

00:28:43

to achieve being gained through

00:28:45

and over me to interpret

00:28:48

but I think it's speaking

00:28:54

about any of this. A

00:29:05

bit too much others might

00:29:08

be just clocking to have

00:29:09

pink and gray wolf and

00:29:10

ask does this mean at

00:29:12

how does it fit in



00:29:13

with the investor-state dispute resolution,

00:29:17

which I will come to

00:29:19

an Apple. I would like

00:29:21

the person who has their

00:29:23

hand on the screenshot to

00:29:26

take us to article 17.

00:29:29

The article 17 is the

00:29:31

dispute resolution provision. This is

00:29:39

a curious position because there

00:29:43

is a provision and then

00:29:49

there is no that's just

00:29:50

because we play in in

00:30:03

my case with the best



00:30:05

ones. I encountered on the

00:30:06

device. See any Indians are

00:30:15

a case was whether there

00:30:18

is even an attack to

00:30:21

say provision in article 17.

00:30:24

I'm not going to get

00:30:26

into that huge be interesting

00:30:28

debate surprised to see comfort

00:30:31

in history and look out

00:30:33

the other odd case where

00:30:35

are represented in Tunisia and

00:30:38

easiest position as well clearly.

00:30:46

Even if it was that



00:30:47

was he will turn into

00:30:48

volume and the investor in

00:30:51

that case. I behaved in

00:30:53

such a manner that it

00:30:56

had violated article 9 be

00:30:59

just looked at by The

00:31:00

Lacs. Indonesia and I could

00:31:04

not benefit from bringing in

00:31:08

the Centre. She claimed on

00:31:09

The Tracey. know if you

00:31:13

spend a lot of time

00:31:14

navigating this treaty you will

00:31:16

need new to stay there



00:31:17

to bring it if there

00:31:29

is one indeed under article

00:31:31

17 is not expressly stated

00:31:36

by the tribunal in the

00:31:38

other garage because it had

00:31:48

acted in the manner that

00:31:49

violated or Salon in 2023,

00:32:07

but here is something Cross

00:32:10

over 40 years ago. They

00:32:18

did put in some kind

00:32:20

of dispute and although they

00:32:23

didn't bake cakes wrestling tubing

00:32:25

what happens when an investor



00:32:27

is in breach of those

00:32:28

violations and the dispute resolution

00:32:31

system a arbitral tribunal connected

00:32:35

the dots and denied the

00:32:36

claim. So I think it's

00:32:39

really important sample of even

00:32:45

having industrial applications out in

00:32:51

a tree in Abel's a

00:32:54

tribunal to draw session connectivity

00:32:58

between different provisions of the

00:33:01

treaty. That is 1981. I'm

00:33:06

afraid I'm going to time

00:33:07

travel a little bed and



00:33:10

go to 2007. And again,

00:33:13

if if the person who's

00:33:16

monitoring the the bring up

00:33:20

the investment agreement from 2007,

00:33:25

I'd be very grateful or

00:33:27

I can drop you off.

00:33:29

Thank you so much, and

00:33:39

I'm requesting assassin who who

00:33:43

has They are on the

00:33:46

on the on the system

00:33:48

to really take us to

00:33:49

article 11 and Article 13

00:33:52

pays off the tree. She



00:33:53

has a region within Africa

00:34:01

in a juice with salt

00:34:05

East African States across quite

00:34:09

a lot of section of

00:34:11

Africa and this was his

00:34:14

original investment treaty to deal

00:34:17

with intra, investment and I

00:34:21

have the privilege to advise

00:34:23

the regional grouping in 2006

00:34:28

and 2007 any confidences safe

00:34:32

suffice to say that when

00:34:34

we started working with the

00:34:36

text was very different and



00:34:39  
this particular text that you

00:34:42  
were seeing it in front

00:34:43  
of you in Hindi. Available

00:34:45  
publicly and he is very

00:34:48  
different checks. It is a

00:34:49  
very detailed tax. I would

00:34:51  
say in some instances quite

00:34:53  
inspired by the North American

00:34:56  
tree. That's a really looking

00:35:00  
at the de Fleury of

00:35:03  
Industry State claims that had

00:35:06  
Arisen in in North America

00:35:08  
in particular the look bad.



00:35:11

This is 2007 and he

00:35:13

is off today APPL versus

00:35:23

Sri Lanka, which of the

00:35:24

first time we even had

00:35:26

dinner and a few decisions

00:35:31

during the night and early

00:35:34

2000's you started ready having

00:35:36

the metal cause of this

00:35:37

world and you start a

00:35:38

new people started looking at

00:35:40

would want to this treaty

00:35:41

provisions mean. What is what

00:35:44

is the balance? Between states



00:35:46

and investor, right? And what

00:35:50

kameza to the table is

00:35:53

recorded debate in in in

00:35:56

in the negotiations that were

00:35:58

happening on the question that

00:36:00

this book to states with.

00:36:01

Well, you know, what do

00:36:02

you want to do with

00:36:04

investor obligations needed to leave

00:36:08

it within the realm just

00:36:09

domestic law or do you

00:36:12

want to put something at

00:36:14

the level of international law



00:36:16  
at the treaty level? Where

00:36:17  
you going to let your

00:36:18  
mom cut down? What does

00:36:21  
it mean if you can

00:36:22  
stop in any any obligations

00:36:26  
with what does it mean

00:36:27  
for the dispute resolution probation

00:36:30  
at 7. So again, I

00:36:35  
didn't have to follow to

00:36:36  
look into the future either

00:36:37  
because I had not come

00:36:38  
across the OIC of being

00:36:40  
in this particular time that



00:36:42  
happened much later in 2012

00:36:44  
or 2 lb if I

00:36:47  
could just take you to

00:36:48  
clean, it's a very simple

00:36:51  
statement and I think you

00:36:56  
got the wrong wrong going

00:36:58  
to talk to that you

00:36:59  
looking at 10. Nothing, but

00:37:14  
a different application on page

00:37:17  
10. to the treaty Schleich

00:37:29  
Schleich share my screen G

00:37:42  
Okay. Right. I think it's

00:37:47  
my magic trick. so heavy



00:37:55  
all this is this is

00:37:56  
what I want you to

00:37:57  
see all school packet yet.

00:37:58  
If you can read about

00:38:05  
it and Busters and investments

00:38:08  
will comply with applicable domestic

00:38:11  
measures of the Memphis State

00:38:12  
in Michigan. That's because you

00:38:19  
know, you looking at a

00:38:21  
treaty negotiations with the tax

00:38:23  
States. I need to sign

00:38:25  
off on it and in

00:38:26  
a way you do need



00:38:27

to State the obvious which

00:38:28

is why of course he

00:38:29

wants to to meet with

00:38:33

all the domestic rules and

00:38:35

regulations of the whole state

00:38:36

probation. off the Cabeza investment

00:38:48

agreement and here I wanted

00:38:51

to take you to also

00:38:53

28 All right, you do

00:38:59

have very clear Provisions as

00:39:02

to what happens to the

00:39:04

first thing you see is

00:39:05

in subsection 3 why you



00:39:07

talk about well, look if

00:39:09

it brings a stage 888

00:39:13

needs to select a particular,

00:39:16

Florida. You willing you will

00:39:25

then be liable to acknowledge

00:39:28

the fact that you can

00:39:32

be liable for any breach

00:39:36

of that obligation. So it's

00:39:40

it's a it's a very

00:39:41

important point that Bless you.

00:39:48

You you material yourself. Can

00:39:54

you hear me now? Yes.

00:39:57

Sorry about this the point.



00:40:01

Is that the Eagles. And

00:40:08

and somehow you meet yourself

00:40:11

again. You keep going off.

00:40:30

It has it makes it

00:40:32

very clear what the consequences

00:40:34

are because what it says

00:40:35

here is the state can

00:40:37

then use the violation of

00:40:40

that particular provision to bring

00:40:43

a fine Scotch Plain brought

00:40:45

to such off and all

00:40:46

the symbol playing now. Andaman

00:40:56

has somehow you can. Do



00:41:00

you have me now? How

00:41:03

to say that I'll be

00:41:04

Revisited this briefing for this

00:41:06

particular and Conference I can

00:41:10

see so many jobs already

00:41:12

in in in the connection

00:41:15

between these last two states

00:41:16

obligation as well as the

00:41:18

hospital either 28900 you with

00:41:22

how it can be improved

00:41:23

but the point is not

00:41:28

whether it is waterproof or

00:41:30

the safety rules will work



00:41:33  
or not is a different

00:41:34  
issue, but I think what

00:41:36  
it does is make my

00:41:39  
point that I did at

00:41:40  
the start of this particular

00:41:41  
presentation, which was you need

00:41:44  
to revisit. This is already

00:41:46  
60 years ago. So when

00:41:48  
I look at You know

00:41:51  
this commission said the commission

00:41:53  
that's been for you see

00:41:53  
which is Cutting Edge in

00:41:55  
20 2007 with the way



00:41:59

things have moved on to

00:42:02

remain the same and me

00:42:04

when we visit them. So,

00:42:06

you know as we look

00:42:08

ahead and I'm conscious I'm

00:42:10

very close to running out

00:42:12

of options Jose Antonio station

00:42:14

in terms of timing. We

00:42:17

need to look at these

00:42:19

historical examples that I touch

00:42:21

down. Attempts to try and

00:42:26

give effect to the principle

00:42:28

that somehow we need to



00:42:30  
do with industrial applications at

00:42:32  
reaching level. Not just in

00:42:37  
the domestic law How We

00:42:40  
Do It? Another question, whether

00:42:45  
the same text can stand

00:42:48  
the test of time particularly

00:42:49  
when issues are rapidly develop

00:42:53  
is another debate all together.

00:42:56  
So would not I would

00:42:58  
like to conclude my presentation

00:43:01  
and you know, how long

00:43:03  
the Honda pro box to

00:43:04  
a Jose Antonio as Minaj



00:43:08

and thank you very much.

00:43:09

And yes, the commercial reminder

00:43:12

setting is there may be

00:43:14

also a second version of

00:43:17

a commercial agreement at which

00:43:19

has a further develop the

00:43:22

provisions starting around. I believe

00:43:27

the article 23 and and

00:43:29

the question of architecture of

00:43:31

obligation is is a key

00:43:34

one. We're going to be

00:43:35

going to move now into

00:43:37

into something. That is a



00:43:39  
somehow connected. Investors obligations are

00:43:44  
are connected very much to

00:43:46  
the first treaty the old

00:43:48  
ic3d or something or buy

00:43:53  
something that that is is

00:43:56  
common to many legal systems

00:43:58  
or its present name a

00:43:59  
legal system, which is the

00:44:01  
public purpose. And then when

00:44:07  
we think in terms of

00:44:08  
public purpose very few areas

00:44:13  
other than the environment. Bring

00:44:18  
the thought of having a



00:44:19

public purpose or a public

00:44:22

goal in terms of of

00:44:24

of international environmental law. So

00:44:28

I would like to to

00:44:29

ask her employer now moving

00:44:31

into a completely different area,

00:44:33

which is more technological driven

00:44:37

and also based on her

00:44:38

experience negotiating treaties and trade

00:44:41

and also investment in connecting

00:44:44

that to the to the

00:44:46

advancement of technology in seabed

00:44:48

mining and and and also



00:44:50

space mining at what what

00:44:53

are the challenges that those

00:44:56

two areas may be bringing

00:44:59

two two Nations when they

00:45:03

try to protect Investments there

00:45:06

and they be protected is

00:45:08

a framework that we have

00:45:09

today one that is is

00:45:13

that all use useful or

00:45:15

or not at all. Thank

00:45:19

you and good morning everyone

00:45:20

and it's it's a real

00:45:21

pleasure to be here today.



00:45:22

Unfortunately, I don't I don't

00:45:25

have any poetic stocks with

00:45:27

Dickens. I think this topic

00:45:29

is more to stop by

00:45:30

5 and then classic literature

00:45:32

but nonetheless very fascinating and

00:45:36

you know that the topics

00:45:37

it today is investment treaties

00:45:39

and provision sensitive to climate

00:45:40

change and a technology Revolution.

00:45:42

That's how does an enormous

00:45:44

amount of ground sea and

00:45:46

air I would say and



00:45:48

we really could have a

00:45:49

whole week dedicated on these

00:45:51

these topics alone, but I

00:45:52

want to stay on two

00:45:55

examples that really highlight the

00:45:57

intersection between technology and climate

00:45:59

change and it's deep seeded

00:46:01

Mining and space mining and

00:46:03

these these activities. I think

00:46:05

you're really pushing the boundaries

00:46:06

of of traditional mining above

00:46:11

and beyond and Below as

00:46:13

well as what we understand



00:46:15  
to be Investments and traditional.

00:46:17  
I stay in Bozeman and

00:46:19  
I think these two things

00:46:20  
have come into prominence to

00:46:22  
the two primary reasons as

00:46:24  
the development of technology and

00:46:26  
the United States in ways

00:46:31  
never before and the mining

00:46:32  
of those resources are also

00:46:34  
technically possible and more feasible

00:46:37  
now than ever and alongside

00:46:40  
that is is the growth

00:46:41  
of Clean Energy Technologies, and



00:46:43

it's increasing the demand for

00:46:44

certain minerals minerals, which we

00:46:47

have now discovered. Thanks to

00:46:48

the the first limb of

00:46:49

technology that are available on

00:46:51

on the seabed and you

00:46:52

know how to stay sober

00:46:54

there are significant differences, of

00:46:56

course in the actual mining

00:46:58

of the seabed versus out

00:46:59

of space both areas present

00:47:02

interesting questions as a matter

00:47:04

of international law and particularly



00:47:05

its intersection with investor-state investment

00:47:10

treaty disputes. The reason for

00:47:13

this is that fundamentally the

00:47:14

international legal framework the boys

00:47:16

have bees resources which developed

00:47:21

between the 1960s in the

00:47:22

1980s. If you think back

00:47:25

that's when Nick was launched.

00:47:27

We had the cold all

00:47:28

we had the space race

00:47:30

forty to sixty years later

00:47:32

of technology and climate change

00:47:34

in both really develop an



00:47:36  
arguably requiring you thinking so

00:47:40  
I'm going to give a

00:47:41  
brief description of the bed

00:47:43  
and spice mining because if

00:47:44  
you're anything like me I

00:47:45  
had a brief outline of

00:47:49  
the legal framework and then

00:47:50  
I just want to touch

00:47:50  
very quickly conscious of the

00:47:52  
time on some of the

00:47:53  
challenges that are that are

00:47:55  
facing a unit rate a

00:47:57  
negotiated as but States and



00:47:58

investors in looking at where

00:48:01

they're investing. Sorry deep seabed

00:48:03

mining. So the deep sea

00:48:06

is the largest habitat, I

00:48:08

think for life and the

00:48:10

planet and it has a

00:48:11

variety of unique species ecosystems.

00:48:13

It's also home to what's

00:48:15

called Polly metallic nodules, which

00:48:18

if you look at a

00:48:18

picture of basically look like

00:48:20

black and the scattered on

00:48:23

the seafloor, the mining of



00:48:25  
these nodules can provide access

00:48:27  
to most any such as

00:48:29  
a nickel copper and Cobalt.

00:48:31  
Sorry that was quite a

00:48:32  
mouthful and these minerals are

00:48:35  
essential components the batteries and

00:48:37  
other technologies that if he's

00:48:38  
mating targets to reduce greenhouse

00:48:40  
gas emissions. I want to

00:48:43  
go into it for today's

00:48:44  
purposes, but there is a

00:48:45  
debate as to the environmental

00:48:49  
consequences of deep seabed mining



00:48:51  
particularly because the tickets are

00:48:54  
still people are still trying

00:48:56  
to work out exactly what

00:48:58  
the consequences Spice mining on

00:49:02  
the other hand is the

00:49:04  
process of Excavating extracting or

00:49:06  
recovering resources from space. So

00:49:08  
the Moon is the immediate

00:49:10  
focus with resources in cold

00:49:13  
include regulus and helium-3. Please

00:49:16  
don't ask me what exactly

00:49:17  
they are for the longest

00:49:20  
time, but I guess he's



00:49:21

really on mining asteroids sewing

00:49:23

in 2021 has discovered to

00:49:25

metal-rich asteroid quite close to

00:49:27

us as reserves of iron

00:49:29

nickel and Cobalt could exceed

00:49:31

the global reserves of those

00:49:32

metals are even more scarce

00:49:35

mining is out in earliest

00:49:36

stage seabed mining. These are

00:49:39

obviously new methods to address

00:49:41

natural resource depletion and to

00:49:43

contribute to achieving sustainable development

00:49:45

goals price of these areas



00:49:49

as I mentioned are traditionally

00:49:52

the province of state-to-state Engagement.

00:49:54

So they both go ahead

00:49:55

with the governed by International

00:49:57

treaties with respect to seabed

00:49:59

mining you have I'm close

00:50:00

to the United Nations convention

00:50:02

on the law of the

00:50:02

sea and it provides that

00:50:05

the seabed and ocean floor

00:50:07

are beyond the limits of

00:50:08

national jurisdiction and all the

00:50:10

common Heritage of mankind. You



00:50:13

also see that language in

00:50:14

the outer space treaty, which

00:50:17

is about a space should

00:50:19

be carried on for the

00:50:20

benefit of the interest of

00:50:21

all countries and she'll be

00:50:22

the proudest moment. I'm all

00:50:25

the treaties particularly with us

00:50:27

space such as the liability

00:50:29

convention the rescue agreement the

00:50:31

moon agreement if I sound

00:50:33

like a children's book Goodnight

00:50:35

Moon and they're close to



00:50:37

relax real agreements such as

00:50:38

the automatic codes which is

00:50:40

entered into by several countries.

00:50:43

I think those around 28

00:50:44

signature he's now in and

00:50:45

was originally set up by

00:50:46

NASA You also have domestic

00:50:51

legislation. Sorry with respect to

00:50:53

seabed mining. I'll give you

00:50:56

a very very brief overview,

00:50:58

but I'm not embarrassing International

00:51:01

seabed Authority and Company can

00:51:05

only apply for an exploration



00:51:07

or exploitation permit to the

00:51:09

is a and they have

00:51:10

to have a sponsoring state

00:51:12

that state has to have

00:51:13

certain regulations and laws covering

00:51:16

obligations liability that type of

00:51:19

thing on the spaceside what

00:51:21

we've seen recently since 2015

00:51:24

is countries increasingly passing domestic

00:51:27

legislation granting companies are in

00:51:29

a slice of spice resources,

00:51:30

they extract and providing the

00:51:32

licensing racing games. The common



00:51:36

theme across B eat at

00:51:38

in space mining is is

00:51:41

really that these rural resources

00:51:42

and mocked as belonging not

00:51:44

belonging to any stubborn. But

00:51:46

for the benefit of mankind.

00:51:48

The flip side of that

00:51:49

is you now see private

00:51:50

commercial potties and investing significant

00:51:53

financial and Technical Resources is

00:51:57

really pushing the boundaries of

00:51:58

traditional investment activity and it

00:52:01

gives rise to specific challenges.



00:52:02

I'm going to touch that

00:52:04

you said hi level and

00:52:06

I'd be happy to discuss

00:52:07

my colleagues time he have

00:52:12

it but the king wanted

00:52:14

to have some ice oveis

00:52:15

is investment treaties often require

00:52:18

Investments to be made in

00:52:20

the territory of the heist.

00:52:22

What does that mean? When

00:52:26

you have international treaties specifically

00:52:28

saying that space and the

00:52:30

seabed outside of outside of



00:52:33

any territory of I think

00:52:36

respondents States and if a

00:52:39

dispute which will rise would

00:52:40

say that's even in space

00:52:41

mining activities during full within

00:52:44

its territory and they Proclaim

00:52:46

his investors. I think we

00:52:48

try and take the position

00:52:49

that if it's within Estates

00:52:51

jurisdictional control that could amount

00:52:55

to territory. So for example,

00:52:56

if a state sponsor of

00:52:59

the seabed mining contract in



00:53:00

the limit of a other

00:53:02

license before the is a

00:53:03

is this sufficient or if

00:53:06

an investor launches a space

00:53:07

object from the territory of

00:53:09

the state mine came out

00:53:11

of stasis is not sufficient

00:53:13

to say that I think

00:53:15

is they continue to negotiate

00:53:16

and am in the investment

00:53:17

treaties need to think about

00:53:19

these types of issues and

00:53:21

continues and consider specifying in



00:53:23

more detail. What are trained

00:53:25

means sometime treaties do Define

00:53:29

it. They usually Define it

00:53:30

in respect of international law.

00:53:32

Sometimes they recently Plus which

00:53:35

leads us back to the

00:53:36

same problem because I'm close

00:53:37

to pacifically that the speed

00:53:39

that is he's not part

00:53:40

of national territory. So United

00:53:44

States states could specify bet

00:53:46

territory does not include blocks

00:53:48

of see that might be



00:53:49

a neural activity or vice

00:53:51

versa explicit Libre to application

00:53:55

of their respective domestic laws,

00:53:56

which has a lot of

00:53:58

these activities. as kind of

00:54:01

item is which which I

00:54:11

think that would be fair

00:54:12

to ask you to request

00:54:15

an answer or now it

00:54:19

say that we have The

00:54:22

Investments by private companies in

00:54:26

seabed mining or in in

00:54:29

outer space mining and say



00:54:33

that for most part everything

00:54:35

goes fine. There's no there's

00:54:38

no interruption. There's there's nothing

00:54:40

to complain on and just

00:54:42

like the wild west boundary

00:54:44

of of investment sweat outer

00:54:47

space warranty bit, but then

00:54:49

it might become a time

00:54:50

and this is sort of

00:54:51

a question also for Maria

00:54:52

at some stage that might

00:54:54

come a time when the

00:54:56

the public concern or the



00:54:59

public order may be put

00:55:01

at risk because of this

00:55:02

activities in outer space or

00:55:04

in Sea Bay at an

00:55:05

inn in the seabed mining

00:55:06

and at some stage there

00:55:09

could be some type of

00:55:10

intervention by one or more

00:55:13

State Farm claims by the

00:55:15

investors in outer space or

00:55:17

anty bad that they have

00:55:19

been affected by Act so

00:55:23

I don't want an answer



00:55:24

now because I know that

00:55:25

that the questions complex, but

00:55:28

what? protective safeguards international law

00:55:36

offer other than investment traditional

00:55:41

investment trees might not offer

00:55:42

anything there. That's that's should

00:55:45

have been lingering question what

00:55:46

would happen when the environment

00:55:48

on the one hand and

00:55:50

this this wild west investment

00:55:54

arm are colliding and I'll

00:55:57

leave it there. But but

00:55:58

now it's it's a it's



00:55:59  
a very interesting question and

00:56:01  
one that is actually being

00:56:02  
played out to some extent

00:56:04  
at the moment with Nara

00:56:07  
which is a small Pacific

00:56:08  
Islands off the coast of

00:56:10  
Australia and and they swim

00:56:12  
to the company Nori sushi

00:56:15  
on increased sources for the

00:56:18  
for the exploitation of of

00:56:21  
seabed mining part of the

00:56:23  
rules of the AIA stand

00:56:24  
on clusters that that triggered



00:56:26

a two-year period for the

00:56:28

is a to develop regulations

00:56:29

including as to what would

00:56:32

be safe and how to

00:56:34

do that. That. Expired in

00:56:36

July so so technically Nohrian

00:56:40

are rude could apply for

00:56:42

the permit and try and

00:56:44

push it through to stop

00:56:45

mining as I mentioned kind

00:56:47

of berry and grape is

00:56:48

this a huge amount of

00:56:50

opposition to the seabed mining



00:56:52  
as well as for it

00:56:54  
and any have an alliance

00:56:56  
of state to who have

00:56:58  
signed EverQuest a moratorium on

00:57:01  
deep-sea mining. We have steak

00:57:03  
sitting said, please tell me

00:57:04  
that you have states that

00:57:06  
stay. Well. Let's just put

00:57:07  
it on hold until we

00:57:08  
work out. So this is

00:57:10  
actually very timely because he's

00:57:13  
very much in favor of

00:57:15  
deep seabed Mining and has



00:57:17

publicly said that it will

00:57:18

help contribute to climate change

00:57:21

goals and that it's going

00:57:22

to try and push ahead.

00:57:23

So I think we will

00:57:24

see this exact circumstances. I

00:57:28

can't predict what the outcome

00:57:29

will be, but it's it's

00:57:30

certainly alive alive issue. But

00:57:35

let me let me try

00:57:36

very quickly to Christian in

00:57:38

terms of now that we're

00:57:40

pushing the boundaries of technology



00:57:42

and that were pushing the

00:57:44

boundaries of of seabed Mining

00:57:45

and and space mining is

00:57:49

it you or is it

00:57:50

at all conceivable to create

00:57:53

a a diamond has economic

00:57:55

model that that would allow

00:57:59

was to ever think about

00:58:02

what could be the damages

00:58:04

that? Graphs International Community would

00:58:08

claim out of those out

00:58:10

of those activities. Change it

00:58:13

to it's definitely challenging how



00:58:15  
and say yes or no

00:58:16  
depends on the circumstances, but

00:58:18  
it's extremely challenging for various

00:58:22  
reasons damages. You wanted to

00:58:26  
see what the legitimate expectations

00:58:28  
were off in master and

00:58:31  
these topics seabed mining space

00:58:34  
mining and by meant everything

00:58:36  
is very Dynamic changes. So

00:58:38  
investor might have to position

00:58:40  
them. When I invested the

00:58:42  
regime was X I want

00:58:44  
ex now changed it to



00:58:45

why I'm going to calculate

00:58:46

that difference. So Grace, is

00:58:49

it really too important questions

00:58:51

that are this is a

00:58:52

dynamic and new environment, which

00:58:55

means is what is the

00:58:56

counterfactual world. When was the

00:58:58

investment made where would where

00:59:00

the legitimate expectation and then

00:59:03

also very important. How do

00:59:04

you even for cash if

00:59:06

somebody work to talk about

00:59:07

lost profit of expropriation? How



00:59:10

you value this what your

00:59:11

French Marc Cohn? Space mining

00:59:13

and let Lexie but the

00:59:15

last company that sold right

00:59:17

and it's just a challenging

00:59:20

its pants in his fans

00:59:22

in the circumstances. He decided

00:59:24

to extremes say no it's

00:59:25

not possible because we don't

00:59:26

know anything about it. Looks

00:59:28

like the Wild West in

00:59:38

Damages to use your terminology

00:59:40

because it doesn't mean like



00:59:42

why would have made millions

00:59:43

billions of dollars with my

00:59:45

spaceventure when in fact they

00:59:48

claim in my life, even

00:59:49

if it's based on anything

00:59:51

extreme amount of capital investment

01:00:03

and the uncertainty and Technology.

01:00:07

So the answer could be

01:00:09

this business so such a

01:00:11

risky investment that you might

01:00:14

you might not even you

01:00:16

might simply go into sunk

01:00:18

cost and perhaps not even



01:00:19

that but Imma speculating. I

01:00:23

know that I'm completely speculating

01:00:25

but let me let me

01:00:26

let me go in and

01:00:28

ask Maria a couple of

01:00:32

questions. So especially in in

01:00:38

them International environmental law is

01:00:42

in constant development and is

01:00:44

quite broad vast. And before

01:00:48

we get to investment treaty

01:00:50

reforms or or proposals. They're

01:00:52

related to environmental law. Could

01:00:54

you provide a bit more



01:00:56

of a background on the

01:00:58

relevant trees and and how

01:00:59

they intersect with with investment

01:01:01

law. And good morning everyone

01:01:06

both here and online. I'm

01:01:09

delighted to be here if

01:01:11

I can share my screen.

01:01:13

Let's see. Yes, this is

01:01:27

just a snippet of the

01:01:30

environmental treaties out there or

01:01:33

Emmy has been around many

01:01:35

cases for nearly a hundred

01:01:36

years are part of the



01:01:38

now domestic backdrop of the

01:01:40

fabric that makes up Investments

01:01:42

last decade has seen an

01:01:46

incredible amount of treating aching

01:01:49

and soon the last decade.

01:01:50

We went from a horse

01:01:52

the 2015 Paris agreement on

01:01:54

climate change through a number

01:01:55

of other treaties including the

01:01:58

new framework on biodiversity, which

01:02:00

was. Just a year ago

01:02:01

and you high seas treaty

01:02:03

which might affect deep seabed



01:02:05

Mining and now we're looking

01:02:07

for adoption of a new

01:02:08

treaty to ban plastic pollution.

01:02:10

Are we have next year

01:02:12

and he does not just

01:02:14

the number of treaties that

01:02:16

are coming to place that

01:02:17

is significant scale. That states

01:02:22

are taking off. And so

01:02:23

I'll talk mostly about the

01:02:26

climate contacts. We're under the

01:02:28

Paris agreement governments have committed

01:02:30

to keep the global temperature



01:02:32

rise to know more than

01:02:34

1.5 degrees Celsius and that

01:02:36

it is now generally agreed

01:02:37

would entail basically next zero

01:02:39

emissions by 2050. This is

01:02:42

a Monumental task and one

01:02:45

of the obligations that the

01:02:46

states have taken under the

01:02:47

Paris agreement is to have

01:02:49

nationally determined contributions with your

01:02:52

set individually by every state

01:02:54

but those contributions have to

01:02:57

increase in ambition overtime is



01:02:59

so the system by definition

01:03:01

is going to be a

01:03:03

very Dynamic why which includes

01:03:06

the non-aggression principle and in

01:03:08

addition there is agreement to

01:03:10

keep consistent with a goal

01:03:13

of low-carbon development and climate

01:03:15

resilient development. It conserves 30%

01:03:25

of land sea and Marine

01:03:28

area and sodium plication. Some

01:03:30

of this are just shoot

01:03:32

for what it will mean

01:03:33

for both governments. And for



01:03:35

investment. Now there is a

01:03:39

cost to these multilateral agreements

01:03:41

for example estimates that the

01:03:44

cost of climate mitigation will

01:03:46

be 5 trillion dollars every

01:03:49

year that will be required

01:03:50

under the global biodiversity framework.

01:03:53

There is an annual projected

01:03:55

cost of 700 billion every

01:03:57

year between now and 2030

01:03:59

in biodiversity and so much

01:04:02

of this will need to

01:04:03

come from the private sector



01:04:04

and much would we need

01:04:05

to flow into developing and

01:04:07

emerging market? And in order

01:04:09

for that to happen? What

01:04:11

we need is a healthy

01:04:12

investment treaty regime that will

01:04:14

support these kinds of Frozen.

01:04:15

So when you think about

01:04:16

it from that perspective of

01:04:17

climate and environmental law and

01:04:21

investment logo And enhance basically

01:04:24

this is functional basically get

01:04:27

you but then there's a



01:04:29

flip side. Of course. I'm

01:04:30

about to go play some

01:04:35

thank you for for putting

01:04:39

the environment and the goals

01:04:43

of the girls behind all

01:04:46

this environmental International environmental agreement

01:04:49

in perspective and I say

01:04:51

this because you sometimes in

01:04:54

in investment arbitration were too

01:04:56

focus on on the provisions

01:04:57

were too focus on the

01:04:58

proceedings and unders. There's a

01:05:00

goal behind all this there's



01:05:03

a there's a goal for

01:05:04

2050 and our goals for

01:05:07

many years to come and

01:05:09

investment arbitration as part of

01:05:11

a broader International economic losses

01:05:14

than wins have the same

01:05:15

time. It is is part

01:05:17

of a broader public international

01:05:18

law system. And and if

01:05:22

we understand it. Way it

01:05:24

starts to make sense that

01:05:25

we need investment to reach

01:05:28

some goals in terms of



01:05:29

of be better prepared for

01:05:32

climate change and to protect

01:05:33

the environment. It's it's kind

01:05:36

of an ironic that 50

01:05:38

of the 50 cases have

01:05:41

about 50 cases against Spain

01:05:43

are precisely related to Renewables.

01:05:48

And most of them are

01:05:52

are are being fought against

01:05:55

them enforcement and and the

01:05:57

provisions There's liability were Provisions

01:06:03

to subsidize renewable energy and

01:06:05

its butt moving alone. What



01:06:10  
about I asked you I

01:06:12  
asked that question that that

01:06:15  
I've been very curious about

01:06:16  
and I think that it's

01:06:18  
a difficult question are there

01:06:19  
are Provisions or minimum International

01:06:25  
environmental standards. identify as those

01:06:35  
that should be complied with

01:06:38  
one by state and to

01:06:40  
buy investors and I don't

01:06:42  
know whether that's a fair

01:06:43  
question, but but I'm going

01:06:45  
to post it anyway any



01:06:48

questions we talked earlier, but

01:06:59

if it cost you a

01:07:00

fence was being one of

01:07:01

those principle that is a

01:07:04

decision making now the question

01:07:12

is how do those principles

01:07:14

Charles Winery jean seeped into

01:07:17

not a regime and into

01:07:18

what the tribunal's are interpreted

01:07:19

and right now A tribunal

01:07:22

as we heard of the

01:07:23

outfit is governed by Is

01:07:28

governed by the treaty before



01:07:30

it and save the treaty

01:07:32

that is before it does

01:07:33

not make provision for certain

01:07:35

extraneous considerations. And it may

01:07:37

be basically restricting what it

01:07:39

can do and you're one

01:07:41

of the things that we

01:07:42

talked about is this that

01:07:44

there's clearly a tension between

01:07:47

Greece of received tension between

01:07:49

the objectives of one regime

01:07:51

and yet and I think

01:07:53

this is spelled out quite



01:07:54

clearly in the ipcc's report

01:07:58

from last year, which says

01:08:00

while there is tremendous potential

01:08:02

for team is moving to

01:08:03

support the objectives of the

01:08:04

Paris agreement by the concerns

01:08:13

about the existing trees. So

01:08:14

there are over 2,000 older

01:08:17

generation treaties in place treaties

01:08:19

that we're not necessarily which

01:08:25

has led to a hole

01:08:27

Array of Reform proposals and

01:08:31

there's no time to go



01:08:32

into any of these details.

01:08:34

But what we're seeing is

01:08:35

the new generation Tweety's are

01:08:37

trying to be sickly include

01:08:40

Gambler Provisions or carve out

01:08:43

or even specific commitments to

01:08:45

action. That would be physically

01:08:47

allow for those kinds of

01:08:48

considerations to even come into

01:08:51

play international tribunal said one

01:08:54

of those treaties negotiated back

01:08:58

in 2008. It was the

01:08:59

Canada Columbia agreement which try



01:09:04  
to basically anticipate some of

01:09:05  
these issues by including a

01:09:08  
gat based carve out which

01:09:11  
would basically provide for a

01:09:14  
breeder room to wait so

01:09:17  
long as the measures are

01:09:18  
not musically arbitrator discriminatory now

01:09:20  
old enough to have been

01:09:23  
tested in practice and in

01:09:26  
case I would equal Oral-B

01:09:29  
Columbia where the tribunal's said.

01:09:31  
This is all fair and

01:09:34  
well, but ultimately there is



01:09:35

still a duty to compensate

01:09:37

and Canada had no disputing

01:09:41

parties statements now has done

01:09:45

along with many other countries

01:09:46

and try to embed a

01:09:53

number of other positions throughout

01:09:57

peppered throughout the treaty that

01:09:58

would basically allow for greater

01:10:01

consideration of environmental and climate

01:10:03

treaty makers playing catch-up right

01:10:08

away with that particular occasion

01:10:15

querious to the principal Spectrum

01:10:25

application information you have an



01:10:33  
exception should be the same

01:10:37  
as you don't have an

01:10:39  
exception, but that's another question

01:10:42  
that you might have some

01:10:46  
streaming the investment Provisions at

01:10:51  
related to the environment and

01:10:53  
the provisions to protect the

01:10:55  
environment and investment treaties as

01:10:56  
as as explained by by

01:10:58  
Maria. I mean Maria is

01:11:02  
far more knowledgeable than I

01:11:03  
am on this particular topic.

01:11:05  
But I I think what



01:11:06

we are saying and I

01:11:07

completely agree is is this

01:11:09

idea of ketchup and it's

01:11:10

unfortunately as mine I said

01:11:13

this morning and Maria is

01:11:15

Tracy's have a long shelf

01:11:17

life and it's it's a

01:11:22

process to amend the treaty

01:11:23

to be to add new

01:11:25

Provisions into it. And so

01:11:28

I think going forward and

01:11:30

insights are obviously a lot

01:11:32

more Savvy as an environmental



01:11:34  
issues of growing about incorporating.

01:11:37  
And I think there's going

01:11:38  
to be a real balance

01:11:39  
in a load of disputes

01:11:41  
and treaties that will come

01:11:44  
in the future is to

01:11:45  
Wed a right to regulate

01:11:47  
the investor Expectations vs. Environment

01:11:51  
live at niacc with her

01:11:52  
example see that there really

01:11:55  
three three parties that the

01:11:56  
investor has the state and

01:11:58  
there's this International I think



01:12:01  
it's going to be a

01:12:01  
real question as to what

01:12:05  
role do his buddies plays

01:12:07  
well in considering environmental obligations

01:12:10  
and who is heading the

01:12:11  
stand and what is it

01:12:13  
that the investor has to

01:12:15  
adhere to in particular to

01:12:18  
speed so particular sectors? And

01:12:21  
I thank you. I'm slowly.

01:12:22  
I would like to turn

01:12:23  
to Christian that we have

01:12:33  
not gone through obligations of



01:12:36

investors ESG and all the

01:12:40

types of applications obligations to

01:12:43

safeguard the public order as

01:12:45

we saw it and I

01:12:46

see you have gone through

01:12:48

seabed Mining and and and

01:12:49

do also mining in space

01:12:54

and I don't have gone

01:12:54

through some of the general

01:12:57

public international law as well

01:12:59

as environmental obligations in 3D.

01:13:02

So two questions for you

01:13:04

is is it possible to



01:13:07  
think about models that would

01:13:09  
allow us to calculate damages

01:13:11  
in those three areas that

01:13:13  
I'm just committed by by

01:13:15  
states on the other hand

01:13:17  
have damages that I might

01:13:19  
be committed by Lester's which

01:13:21  
is the second question of

01:13:25  
time and I'm running out

01:13:26  
of time here. So I'll

01:13:28  
call addressing both had one

01:13:29  
person wanted to say man

01:13:32  
us. If you need a



01:13:33  
second career, maybe teacher linked

01:13:35  
in class. I'll be the

01:13:36  
first to join if I

01:13:38  
read one more time half

01:13:39  
the pleasure threats to speak

01:13:41  
watching that racially. It seems

01:13:43  
a little boring. There you

01:13:45  
go. I also agree. You

01:13:48  
know this whole discussion is

01:13:49  
is spring of hope winter

01:13:51  
of Despair spring of Hope

01:13:53  
is like, this is Miss

01:13:54  
my grey sure. He's a



01:13:55  
very very important provisions and

01:13:57  
I I don't think there

01:13:58  
are legitimate reasons to questions

01:14:01  
does so the intentions are

01:14:03  
good. The winter of Despair

01:14:05  
comes when things go sideways

01:14:07  
in master does not sign

01:14:10  
the treaty investors in there

01:14:13  
and things go sideways. And

01:14:15  
so the question then is

01:14:16  
what are you doing? Can

01:14:18  
you Can you calculate damages

01:14:21  
and I don't think the



01:14:22

answer can be no, you

01:14:23

can't or yes. Yes, you

01:14:24

can I think somewhere in

01:14:26

between. It depends on the

01:14:28

specific circumstances. The one thing

01:14:30

I wanted size before milking

01:14:32

a little bit. I bought

01:14:33

some of the issues that

01:14:34

I mean I'm counting as

01:14:36

a damage experts in in

01:14:39

in Damages calculations both on

01:14:42

the employment side on the

01:14:44

respondents. I am I always



01:14:46

say, you know, I'm my

01:14:47

worst enemy on the claim

01:14:48

inside because I'm questioning myself

01:14:49

all the time, but just

01:14:52

from our investment treaty point

01:14:55

of view, it would be

01:14:56

helpful that if the treaty

01:14:58

itself clearly articulate what generally

01:15:03

investor can expect nice a

01:15:07

general-purpose cuz you probably can

01:15:10

just point down and say

01:15:12

okay you can expect the

01:15:13

return of 3% or you



01:15:16

going to get a subsidy

01:15:16

of x-rite. But these are

01:15:20

Dynamic topics. We don't know

01:15:22

much about the consequences of

01:15:24

seabed mining even less space

01:15:28

mining if we're looking at

01:15:30

satellites to going into space

01:15:32

if we're looking on the

01:15:33

Environmental Protection and you mention

01:15:36

the Spanish renewable cases and

01:15:38

mean they're well-known there many

01:15:40

of them that is because

01:15:41

these are very is our



01:15:42  
important Provisions, but their Dynamic

01:15:44  
Provisions. So what I'm seeing

01:15:47  
from the damaged side is

01:15:49  
well off and on the

01:15:51  
cleaning side as well. When

01:15:52  
I invested the regime was

01:15:54  
now it's. Show me Taco

01:15:58  
like this Prophet difference in

01:15:59  
between and that's mine and

01:16:01  
you got to pay me

01:16:01  
and you know, I would

01:16:06  
want to look at it

01:16:07  
and say well let's just



01:16:08  
understand what the legitimate expectations

01:16:10  
were. And that's where a

01:16:12  
big Battlefield in those damages

01:16:14  
are because if I'm telling

01:16:16  
you that. You and master

01:16:18  
you have a legitimate expectation

01:16:20  
to get what I want

01:16:21  
make it up every turn

01:16:22  
to 5% We're subsidizing you

01:16:25  
or whatever whatever. How much

01:16:28  
change would say you change.

01:16:30  
Provision. Those expectations are still

01:16:34  
being matched. The claim is



01:16:36

the death of the state

01:16:38

change to probation and there

01:16:39

was a change in profit.

01:16:40

That's the claim that could

01:16:41

be billion dollars, but ain't

01:16:43

you say that your legitimate

01:16:44

expectations were the two making

01:16:46

3% you're making free precise

01:16:47

claims of zero. Is it

01:16:52

a is it a billion?

01:16:53

Is it zero and that

01:16:54

all hinges on legitimate expectations.

01:16:57

So I think that's one



01:16:58

important thing that I'd like

01:17:00

to see I'd like to

01:17:02

salsa see it from from

01:17:03

from from from the folks

01:17:05

that do damage analysis more

01:17:06

look at the legitimate expectation

01:17:08

not just pull up a

01:17:10

spreadsheet inside before it was

01:17:12

pissed after. This is the

01:17:14

this is the difference and

01:17:16

I think it's damage experts

01:17:17

behalf of Roland G. To

01:17:19

it's not just legal liability.



01:17:22

The other thing I saw

01:17:24

yours is a very long-term

01:17:26

Investments. You're not getting up

01:17:28

on morning. And so I'm

01:17:29

going to invest in space

01:17:30

mining that could be over

01:17:33

a period of five years

01:17:34

and years even long are

01:17:35

you looking for in Masters?

01:17:37

What is that investment decision

01:17:39

May cuz if it's in

01:17:40

May if it's made in

01:17:41

2010 the expectations and if



01:17:44  
it's made in 2015, but

01:17:46  
the fact is you start

01:17:47  
a problem being on 5

01:17:48  
and you're still thinking about

01:17:49  
him in in in 2020.

01:17:51  
So when what is what

01:17:54  
are we how do we

01:17:55  
Define investment was made is

01:17:58  
the first dollar is the

01:17:59  
point of no return. What

01:18:01  
is even the point of

01:18:02  
no return. Is it the

01:18:03  
last dollar bin? They must



01:18:04

complete it. So that's an

01:18:05

important thing again feeding back

01:18:07

to legitimate expectation feeding back

01:18:09

to the calling of counter-factual

01:18:11

worlds. A few obvious things

01:18:14

that are mostly residing less

01:18:16

less on the treaty site

01:18:18

more on the on the

01:18:20

damn attracts bird is before

01:18:24

we going to modeling damages.

01:18:29

Let's understand properly what the

01:18:32

claim and financial status Ross

01:18:36

operational status by understand the



01:18:39  
business case you mention there's

01:18:42  
a space mining companies that

01:18:43  
went belly-up. We see it

01:18:45  
all the time. So he

01:18:46  
doesn't actually these Peter should

01:18:48  
not be used for me

01:18:50  
Chris Koenig. I'd say I'm

01:18:53  
going to get an exploration

01:18:54  
permit Or even exploitation permit

01:18:58  
and I do nothing. And

01:19:01  
then I'm on Point Estates

01:19:02  
going to stay cuz you

01:19:03  
got to do something and



01:19:06  
then you pull my car

01:19:06  
my so I'm suing because

01:19:08  
I would have made billions

01:19:09  
but it should not be

01:19:11  
that there is. As part

01:19:17  
of of of the damage

01:19:19  
assessment damn checks picture really.

01:19:20  
Look at what what what

01:19:22  
is this? What is this

01:19:23  
investment in that is part

01:19:26  
if you do your if

01:19:27  
it's a night for Tatian

01:19:29  
then If it's an expropriation



01:19:34

Rogers mix expropriation, you need

01:19:36

to do the fair market

01:19:37

value assessment. So you need

01:19:38

to understand the business case

01:19:40

anyway value. BMX probation case

01:19:48

what is the fair market

01:19:49

value of space mining as

01:19:52

really really difficult and there's

01:19:59

literature on I disagree with

01:20:00

that if there's little Johnny

01:20:02

cuz you can always use

01:20:03

a discounted cash flow model.

01:20:05

You can save the world.



01:20:07

You can model everything. It's

01:20:09

just in the discount rate.

01:20:10

I'm on point. If you

01:20:12

do not have profit projections

01:20:14

don't really know you have

01:20:16

to fess up to that.

01:20:17

I'm not saying you should

01:20:18

walk away from it all

01:20:19

together. I'm not saying if

01:20:21

there's a wrongdoing you can

01:20:22

measure they should be awarded

01:20:23

a mission at all, but

01:20:24

it's a it's a challenge



01:20:26

that we ask the expert

01:20:28

need to think about. Maybe

01:20:30

is there a way we

01:20:32

can make sure that if

01:20:33

if we're using a DCF

01:20:35

model will be validated and

01:20:37

it makes sense. Is there

01:20:39

another Benchmark that we can

01:20:40

use to to support that

01:20:42

tacos with the discount rate?

01:20:47

Make sure he's a highly

01:20:48

risky investment the discount rate

01:20:50

to reflect that the discount



01:20:52

rate reflects the riskiness something

01:20:54

that you're not reflect the

01:20:56

fact that we do not

01:20:57

know how much profit is

01:20:59

an investment with a make

01:21:01

maybe just a few more

01:21:04

things you Coast exposed exposed

01:21:09

creation valuations have come up

01:21:11

repeatedly, I contact a little

01:21:15

bit of Interest a time

01:21:16

where the claim is that

01:21:18

based on you? Cuz I'm

01:21:20

it makes sense. I'm not



01:21:21  
questioning that decision or I

01:21:23  
wasn't even part of it.

01:21:24  
So I would know enough

01:21:25  
about if it's a UK

01:21:27  
size. You can claim for

01:21:28  
the hire of the tuna.

01:21:30  
Either Adidas The Valley Of

01:21:32  
The Lost Valley at the

01:21:33  
time of expropriation or the

01:21:35  
time of the war. So

01:21:37  
it's it is so the

01:21:38  
difference is in in in

01:21:40  
a if if he do



01:21:41

your valuation at the time

01:21:44

of wrongdoing you only consider

01:21:46

information that was available at

01:21:47

that time to think about

01:21:49

uation. If you do a

01:21:50

date of a board, it's

01:21:52

exposed to the wrongdoing of

01:21:53

course is much more information.

01:21:55

Go to space mining again.

01:21:57

Let's say somebody got guests

01:22:00

expropriated in in 2023 on

01:22:03

on on space mining at

01:22:06

7 today to for more



01:22:07

than 10 years from now,

01:22:08

maybe 10 years from now

01:22:10

space mining is Ethan and

01:22:13

I don't want to stay

01:22:14

while I might have to

01:22:15

have business in 2023 before

01:22:18

I would have made 20

01:22:19

billion dollars in in 2030

01:22:22

or 2040 and so can

01:22:25

we really do that? I

01:22:26

say use you quotes with

01:22:29

care. Really understand brother on

01:22:33

the information exposed information is



01:22:36

is relevant here and would

01:22:38

have changed at the fair

01:22:40

market value. Craig takeaways always

01:22:46

carefully considered legitimate expectations off

01:22:49

of the master doesn't matter

01:22:52

where they where they run

01:22:53

the claim and our response

01:22:54

are with you and your

01:22:57

Mustang was made at a

01:22:58

clear Sunset guideline Orman win.

01:23:01

Expectation where should children form?

01:23:04

Examine business case before washing

01:23:07

the damages understand whether whether



01:23:10

there was a positive business

01:23:12

case for their departure might

01:23:15

have been dormant is out.

01:23:16

The funders is hopocan masculine

01:23:18

and look at your valuation

01:23:21

technique. You can do an

01:23:23

income approach Market approach and

01:23:25

cost approach to determine what

01:23:26

that he is the DCF

01:23:28

model is not always the

01:23:29

answer. I know it's the

01:23:31

favorite model. Everything is not

01:23:33

always the answer. I like



01:23:34

it. I've used it but

01:23:36

sometimes it's just not right

01:23:38

because we shouldn't just populated

01:23:41

spreadsheet with numbers and then

01:23:43

say in my opinion that's

01:23:44

reasonable. I think we need

01:23:46

to get more reason. Why

01:23:48

is that number make sense?

01:23:52

Is there any way we

01:23:53

can substantiate that if we

01:23:55

come up with a billion

01:23:56

dollars give me point you

01:23:57

somebody to the actual that



01:23:59

makes sense because I like

01:24:00

clients errand and then do

01:24:08

your proper discount rate and

01:24:10

be careful when you use

01:24:12

Exposed information if it comes

01:24:15

with limitations kind of things,

01:24:17

but these are very challenging

01:24:18

question. Again, it's on the

01:24:21

claim inside type. I wracked

01:24:23

my brains how to do

01:24:23

it on the response. I

01:24:24

done carefully considering what what

01:24:27

can be downloaded the valuation



01:24:30

Construction. your new Tuesday Antonio

01:24:56

Can you hear me now?

01:24:59

Sorry for that. I'm going

01:25:01

to ask one one minute

01:25:02

question to each one of

01:25:04

our panelists to my mass.

01:25:05

What? At what modifications if

01:25:10

any would you include in

01:25:12

entreaties that have hard law

01:25:15

of allegations for investors? I

01:25:17

mean, how would you make

01:25:18

them more accessible enforceable, if

01:25:22

any 222 Maria what if



01:25:29

you have to choose a

01:25:31

core set of 4 International

01:25:34

environmental law principles that investors

01:25:37

have to comply with what

01:25:40

would those be and how

01:25:44

to play? How would you

01:25:49

incorporate a protection app for

01:25:52

Investments that are related to

01:25:55

see Bud Mining and under

01:25:57

and the space mining and

01:26:01

an end to Christian? Your

01:26:07

valuation analysis apply also for

01:26:11

Publications that have to to



01:26:14  
be complied with by investors.

01:26:17  
So you've had about 50

01:26:19  
seconds to think about these

01:26:21  
things. You have a floor

01:26:24  
one minute because our other

01:26:31  
people are looking at us

01:26:32  
in in. Not not so

01:26:34  
gracious way. Well, I still

01:26:37  
trying to be very quick

01:26:38  
when I think they're out

01:26:40  
there to such as ways

01:26:41  
you can link it one

01:26:42  
is in terms of shots



01:26:44  
after seeing the DD right

01:26:46  
to bring it to him.

01:26:47  
And the other is to

01:26:48  
create an element by the

01:26:51  
state can bring the car

01:26:52  
down to claim or or

01:26:54  
some kind of statue of

01:26:55  
things have been to the

01:26:57  
Triad of a different levels.

01:27:00  
I'm and I would suggest

01:27:01  
it. If you are going

01:27:04  
to elevate the treaty breach

01:27:06  
weather is domestic or environmental



01:27:08  
to eat. You bring it

01:27:11  
into the realm of the

01:27:11  
b i t then you

01:27:13  
need to have consequences associated

01:27:14  
with it, and it depends

01:27:16  
on your volume. Maria so

01:27:31  
I might in a virtual

01:27:32  
question. I need to comply

01:27:36  
with International environmental law principles

01:27:38  
core or the question is

01:27:41  
Which principle has been embodied

01:27:44  
International agreements as an investor

01:27:48  
relation. What we're seeing right



01:27:49

now is increasing references to

01:27:52

compliance with mandatory domestic laws,

01:27:54

which is a knock-knock joke

01:27:55

and then voluntary compliance a

01:27:59

recommended compliance with for example,

01:28:01

do you in guiding principles

01:28:02

in business and human rights

01:28:03

as your dad since we

01:28:04

have not moved that far

01:28:05

away in the last 20

01:28:06

years some physical recommendations on

01:28:08

one level and then military

01:28:10

supplies to the other level.



01:28:14

I think in the short-term

01:28:16

Traders are not going to

01:28:19

be able to be changed

01:28:20

immediately and I think making

01:28:22

use of insulting Provisions in

01:28:25

a license or a contract

01:28:26

to start covering off some

01:28:28

of these issues. You know,

01:28:29

is it in the territory?

01:28:30

What's the relationship between International

01:28:33

and domestic Laura and what

01:28:35

my trump I think the

01:28:36

other immediate investigation States could



01:28:41

take his to make use

01:28:42

of the specialized Paw Patrol

01:28:44

rules, for example, the PCA

01:28:45

in 2011 developed and that

01:28:52

provides the scientific and Technical

01:28:54

experts. And I think this

01:28:55

is going to be gradual

01:28:56

step by step until we

01:28:58

get Specific protections old or

01:29:01

unite the treaty catch up.

01:29:03

I think there are a

01:29:04

number of steps we can

01:29:04

take in the interim. Richmond



01:29:10  
make sure I understand correctly

01:29:11  
you're asking whether to stay

01:29:13  
could actually in force against

01:29:15  
the investor. Is that is

01:29:17  
that your question yet? I

01:29:21  
think the modeling the deal

01:29:23  
were all thinking is the

01:29:24  
same but the model is

01:29:25  
different because she would have

01:29:27  
to serve the citizens with

01:29:29  
if your plaid full reparation

01:29:31  
standard rate on the investor

01:29:33  
side is the financial position



01:29:36  
the repair to financial position.

01:29:38  
Whatever might have been on

01:29:41  
the Stateside you would have

01:29:42  
to consider what full reparation

01:29:44  
means that they have to

01:29:46  
take means to get rid

01:29:50  
of pollution some other ways

01:29:51  
or whatever the situation are

01:29:53  
very high-level. It's the same

01:29:55  
but I think in the

01:29:56  
details, I never worked on

01:29:57  
that kind of relationship to

01:29:59  
an interesting thing because I



01:30:00

just haven't seen it ever

01:30:01

but I think that the

01:30:03

remodeling of thinking will be

01:30:05

somewhat there from you. unmute

01:30:19

Thank you. A domestic law

01:30:26

might teach her something in

01:30:29

terms of Damages and environmental

01:30:30

hazards or or spill over

01:30:33

to Tetra that have gone

01:30:34

wrong in in certain jurisdictions

01:30:37

might be useful and read

01:30:38

that note. I really want

01:30:40

to thank each one of



01:30:41  
the speakers Maria Chloe and

01:30:43  
Christian and Menards from London

01:30:45  
to welcome Round of Applause

01:30:49  
to our speakers, and thank

01:30:51  
you. And the next title

01:30:57  
on Damages will be here.

01:31:01  
Very close. SMS. Take care