



## Non-Disputing Party Submissions, Amicus Curiae and Challenges of Non-Disputing Parties to Access Confidential Information. \*

### 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 focused on the complexities surrounding non-disputing parties' submissions and amicus curiae in arbitration, particularly regarding access to confidential information. Dr. Jose Antonio Rivas, the moderator and co-chair of the event, introduced the session by acknowledging the diverse participation from various countries and the importance of discussing transparency in arbitration.

The panel featured distinguished experts, including Macmood Abu SL, Jennifer Howard McCandless, and Pedro Ramirez, who shared their insights on the procedural and legal challenges related to third-party submissions in both international commercial arbitration and investor-state disputes. Key topics included the evolving acceptance of amicus curiae submissions, the criteria for their relevance, and the implications of confidentiality in arbitration processes.

The discussion highlighted the increasing interest from states in submitting their interpretations of treaties, especially in investment disputes, and the procedural mechanisms that allow for such submissions. The panelists emphasized the need for clarity in the rules governing third-party interventions, the importance of balancing public interest with the confidentiality of arbitration, and the potential impact of these submissions on the interpretation of international law.

Participants also addressed the challenges faced by less experienced states in navigating arbitration, the role of interagency processes in the U.S. for preparing submissions, and the common themes emerging in non-disputing party submissions. The session concluded with a call for continued dialogue on these critical issues, underscoring the importance of transparency and inclusivity in arbitration practices.

### Authors

José Antonio Rivas, Alvaro Peralta, Pedro Ramirez, Mahmoud Abuwasel, Jennifer Haworth McCandless



## Topics

WAW

## Category

WAW

## Full Transcript

00:00:11

Well, good morning, everyone, and

00:00:13

welcome back to day 5

00:00:17

of Washington arbitration week. We're

00:00:21

here again at the Washington

00:00:24

offices of Baker, Botts and

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just wanted to thank Baker

00:00:29

Botts for their hospitality and

00:00:33

for helping us organize these

00:00:36

great sessions. This morning, we

00:00:40

just came from an excellent

00:00:41

session talkin about government Council



00:00:46

and its cases and had

00:00:50

a really good group here

00:00:51

for a Friday morning and

00:00:52

I think you're over 50

00:00:54

folks were online. So I

00:00:56

think we're off to a

00:00:57

great start for the final

00:00:58

day and we have even

00:00:59

more folks here in the

00:01:00

room and DC then our

00:01:02

first session. So great to

00:01:05

have you all here. Thank

00:01:06

you for attending. We have



00:01:09

a really interesting session, Right

00:01:12

now and let me introduce

00:01:14

it is titled. Non disputing

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parties, submissions Amicus curiae and

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challenges of non disputing parties

00:01:23

to access confidential information. And

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we have a very able

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moderator, a new timer. First

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time he's ever done this,

00:01:32

not very experienced but you

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know, we're going to give

00:01:36

him a chance. You have

00:01:38

dr. Jose Antonio Rivas is



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my colleague and co-chair of

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Washington, arbitration week. He has

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all sorts of notable credentials

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as well as being the

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co-chair of the conference. He

00:01:54

is the managing partner of

00:01:57

his law firm strategy here

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in Washington DC and Bogota,

00:02:01

he is an adjunct professor

00:02:05

at Georgetown University Law, Center,

00:02:08

just down the block from

00:02:09

here. He is a former

00:02:12

counsel at the international center



00:02:16  
for the settlement of investment

00:02:17  
disputes here in Washington exit,

00:02:19  
as we all know, and

00:02:21  
is very experienced as both

00:02:23  
counsel and arbitrator now, and

00:02:27  
he has worked in the

00:02:30  
is d, s space for

00:02:34  
over 15 years old or

00:02:37  
plus. I guess I should

00:02:39  
also note that he was

00:02:41  
a negotiator for the Colombian

00:02:43  
government as well. You fit

00:02:45  
that in somewhere in that



00:02:47

the biography. So, you know,

00:02:50

we we have the extraordinary

00:02:53

honor of Heaven Was antoniou.

00:02:55

Leave this panel and a

00:02:57

fantastic group of us then.

00:02:59

After microphone off to her

00:03:02

off to Jose Antonio and

00:03:04

we'll get going Thank you,

00:03:07

Ian and and just making

00:03:10

sure that everyone here here's

00:03:12

me and and they're also

00:03:13

online. If somebody doesn't hear

00:03:15

online please let let us



00:03:17

know. Thank you and thank

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you for your for no

00:03:22

cord sharing this know for

00:03:24

now five years your your

00:03:27

support has been incredible and

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I would like to thank

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of all the sponsors and

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only attendees. And we have

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a full room. We have

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people from from from Switzerland

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and Nino coming from Peru

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coming from various countries and

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and and the US it



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is so it is pretty

00:03:48

amazing to to see how

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the father is here. I

00:03:51

know that the some some

00:03:53

folks deep prefer the chilly

00:03:55

weather of Washington, d.c. to

00:03:58

the sunny weather of Miami.

00:04:00

So thank you for, for

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loving us and that being

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said, We have a wonderful

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panel related to none disputing

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a party submissions and and

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and also Amicus curiae submissions



00:04:20  
as well as the issue

00:04:22  
of transparency that that is

00:04:25  
how the the title is

00:04:28  
is a nice frame and

00:04:30  
before going into the introductions

00:04:33  
of of our incredible panelist,

00:04:36  
I would like to say

00:04:38  
a few words of how

00:04:38  
this this not, this party

00:04:40  
should mention title, came about.

00:04:42  
It was a name from

00:04:45  
a conversation that I had

00:04:46  
with, with David, from the



00:04:48

state department. And, and the

00:04:50

also thinking about the tremendous

00:04:53

experience that the US has

00:04:56

in submitting those not displaying

00:04:59

party submissions, but other states

00:05:00

as well that like Canada

00:05:02

and other states. Also in

00:05:03

Latin America, mainly, mainly On

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the on the basis of

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but not the like treaties

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which allow for non disputing

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parties submissions so that has

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become a practice and it



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has become a way to

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not necessarily apply the law

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to the facts with pastry.

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Determine the law goes the

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at the jurisdictional but also

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Auntie level and Anna procedural

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level. So it's a, it's

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a wealth of information I

00:05:37

need to do. And there's

00:05:38

also an interest by the

00:05:40

state party's to namely oversee.

00:05:45

What is being interpreted by

00:05:48

and how, how will the,



00:05:49  
the tribunals are applying the

00:05:51  
trees that they made? So

00:05:53  
that that's one. But then

00:05:54  
you have the question of

00:05:55  
what about those trees that

00:05:57  
don't have a provision for

00:06:00  
non disputing parties in missions,

00:06:02  
like the old p. I

00:06:03  
t stand and now they're

00:06:04  
saying that. at any any

00:06:07  
state that is a party

00:06:09  
to an investment treaty and

00:06:11  
and this is a general



00:06:13  
definition both include bilateral investment

00:06:15  
treaties as well as a

00:06:18  
Chapters of Investments for 403,

00:06:23  
traded for chapters, on investment

00:06:25  
of free, trade agreements. What,

00:06:28  
what? About those know, those

00:06:29  
parties that are members to

00:06:32  
be items that don't have

00:06:33  
a provision on, how to

00:06:34  
submit a not disputing parties

00:06:37  
in Mission and that be

00:06:38  
done. Should the tribunal hear

00:06:41  
the roar septum and a



00:06:45

ears from Old w20 Law.

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A set of requirements for

00:06:51

Amicus curiae brief submission. An

00:06:56

end end up with that

00:06:59

basic question of, why are

00:07:00

the rules for those submissions?

00:07:01

Are they entitle or not

00:07:03

Etc. And then submit, and

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then comes the question of

00:07:08

of confidentiality. How would you

00:07:11

address those matches that are

00:07:14

confidential some Treaties do not

00:07:17

provide transparency rules as as



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as enough to like type

00:07:22

of trees so they should

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not be allowed or not

00:07:25

allowed to have been in

00:07:27

cases and not not so

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recently ago, where were there?

00:07:34

What the basis of the

00:07:36

tree of the district was?

00:07:37

Abolishing the Centre. And the

00:07:40

question came about how, how?

00:07:42

And if Should the non

00:07:48

non non State just being

00:07:50

party, be able to submit



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those. So all those questions

00:07:56

I didn't respond for me

00:07:58

because I won't have to

00:07:59

answer those questions. They will

00:08:01

answer that. So I'm in

00:08:06

addition to that, we are

00:08:08

also very privileged because within

00:08:11

our kind of this we

00:08:12

have also the views of

00:08:14

a practitioner's who have also

00:08:17

done this at least the

00:08:18

the the third-party submissions from

00:08:21

an international commercial arbitration. So



00:08:23

we'll play our a little

00:08:25

bit with that. So would

00:08:27

that end with many promises?

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Let me introduce her or

00:08:30

wonderful panelist So I will

00:08:35

introduce him in in order

00:08:36

of appearance, Mac, mood Abu

00:08:39

SL is the managing partner

00:08:43

of what you. And I

00:08:45

believe that that might be

00:08:48

related to what are the

00:08:49

origins of that firm about

00:08:56

Washington arbitration week is that



00:08:59

we are a community and

00:09:01

the, and the wish I

00:09:02

was just just put the

00:09:05

flag in town and we're

00:09:07

welcoming a new firm as

00:09:08

we would welcome any other

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firm to our arbitration scene.

00:09:13

So he we are, he

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is a Harvard graduate and

00:09:17

a solicitor of the Supreme

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Court of Victoria Australia by

00:09:21

the ADR Institute of Canada

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and registered with the difc



00:09:28  
court and a d g

00:09:31  
m. Of United Emirates Emirates.

00:09:37  
He has acted in commercial

00:09:39  
of attrition across various Musicians,

00:09:42  
and Industry, and the Council

00:09:45  
on investor-state arbitration under various

00:09:48  
treaties against States. So, we

00:09:51  
have at least Commercial International

00:09:52  
nutrition and Industrial arbitration. From

00:09:56  
the Investor's perspective, is an

00:10:01  
attorney adviser with the office

00:10:03  
of the international thing and

00:10:04  
investment disputes of the US



00:10:07

state department. He represent the

00:10:10

United States before International tribunals

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including the year and US

00:10:14

end tribunal the international court

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of justice and before investor-state

00:10:19

arbitration tribunals and advises the

00:10:22

state department on International legal

00:10:24

issues, arising in the areas

00:10:26

of international arbitration claim, settlement

00:10:29

and treaty law and negotiations

00:10:32

at the state department and

00:10:37

altering other agencies in Canada

00:10:39

in terms of 3D word.



00:10:42

International law is not 22.

00:10:44

Some nerds like me is

00:10:46

like Disney World, I mean,

00:10:47

if it is it is

00:10:48

it must be fun. Jennifer.

00:10:55

Howard McCandless is an International

00:11:00

District partner at Baker Botts.

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And she has been a

00:11:03

staunch supporter of Washington arbitration

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week in ever since her

00:11:08

past life. And she, of

00:11:12

course, has is a Washington

00:11:13

in with nearly 25 years



00:11:15

of experience serving as legal

00:11:16

counsel in complex litigation, for

00:11:19

National immigration cases, focusing in

00:11:22

particular, on in Disturbed situation.

00:11:24

But she has also done

00:11:25

International commercial arbitration. She has

00:11:27

successfully represented both private-sector, investors

00:11:32

and starting and international patient

00:11:33

at various rules are both

00:11:37

in English and Spanish and

00:11:39

she has no that works

00:11:43

in cases. And I am

00:11:44

of of of sectors including



00:11:46

a TriCity, mining oil and

00:11:48

gas infrastructure real estate development

00:11:51

and financial services pretty much

00:11:54

around around the globe. And

00:11:58

last but not least, Pedro

00:12:01

Ramirez is a senior associate

00:12:03

Expressions. He has acted as

00:12:06

counseling best investment treaty and

00:12:08

Commercial arbitration under the ocean.

00:12:11

Is the exit and other

00:12:13

major institutional rules and across

00:12:15

a variety of sectors, including

00:12:17

oil and gas. Renewable energy



00:12:19  
for the Niagara culture. Telecommunications

00:12:22  
airport services and financial services

00:12:24  
has represented in several claims

00:12:28  
against various Latin American States,

00:12:30  
including Bolivia Chile, Colombia and

00:12:33  
Venezuela and how to make

00:12:36  
sure your promises, we will

00:12:38  
start with the backboard first.

00:12:42  
In the first of all,

00:12:43  
I would like to ask

00:12:45  
my list of international commercial

00:12:48  
arbitration if you could please

00:12:51  
identify how our third-party submissions



00:12:55

made. And, and, and the

00:12:57

and in general terms, how

00:12:59

is the process? Thank you,

00:13:03

Jose Antonio, and thank you

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for the kind, welcome, because

00:13:14

there is not a commercial

00:13:19

arbitration as much as theirs.

00:13:22

And that's one of the

00:13:24

reasons for the Russell reasons

00:13:26

to start, adopting the practice

00:13:30

in basic and basic principle

00:13:35

of the quartz is the

00:13:39

most common, youth largest, one



00:13:41  
of their things. Courts are

00:13:44  
looking at that, have a

00:13:46  
public interest. And so, someone

00:13:49  
that does not transpose to

00:13:53  
commercial arbitration because it is

00:13:55  
a private dispute is usually

00:13:58  
involved. In third place with

00:14:02  
machines. Have their own complications

00:14:04  
because of the complexities with

00:14:07  
arbitration. Agreements granting jurisdiction to

00:14:11  
the tribunal competence competence. And

00:14:13  
then all the problems that

00:14:14  
go from there and do



00:14:16  
enforcement and set aside arbitration

00:14:18  
Awards, love you, most particularly

00:14:20  
those working or Arbiter doesn't

00:14:22  
General working on an international

00:14:25  
context of bees are usually

00:14:28  
very careful because they don't

00:14:30  
know whether arbitration award is

00:14:31  
going to be in the

00:14:32  
forest. And no a lot

00:14:34  
of countries are a lot

00:14:35  
of jurisdictions that I reserved

00:14:37  
on the proper party. Celebration

00:14:42  
or the tribunal has jurisdiction



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Salon to open up a

00:14:46

can of worms and say,

00:14:47

well maybe they're not disputing

00:14:50

parties. Never signed on Christian

00:14:52

agreement. They can they can

00:14:53

be part of this process.

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That's something a tribunal would

00:14:56

be very reserved with. No,

00:14:58

I vent because Joey and

00:15:03

we spend so much time,

00:15:11

arguing on what an authority

00:15:16

considers is right or wrong

00:15:18

or what a lot of



00:15:22

construction is, a lot of

00:15:24

the times we're looking at

00:15:25

delays for issuing permits ride,

00:15:28

or delays in issuing, completion

00:15:31

certificates. And we argue or

00:15:36

the floor beside, we are

00:15:38

getting better position on time

00:15:40

or wasn't that we bring

00:15:43

in our legal experts to

00:15:45

advise on what the regulations

00:15:46

say and I'm bringing our

00:15:47

expert witnesses to say, how

00:15:49

old is a lot of



00:15:51

that time and cost spend

00:15:54

on hypothesizing. Whether the story

00:15:58

that issued the particular government

00:16:00

did so in time and

00:16:03

it was like it was

00:16:03

we can just ask the

00:16:05

authority is the fuse box

00:16:10

in the horse. The closest

00:16:12

isn't available. Is the world

00:16:14

going to live for and

00:16:15

what they can do outside

00:16:18

the rules? So did the

00:16:23

process is useful and and



00:16:25

the litigation and then there's

00:16:28

a story behind it and

00:16:29

there was a reason why

00:16:30

it's utilized book also be

00:16:32

used for in the pros

00:16:33

of commercial. And now there

00:16:37

has been, there has been

00:16:40

more welcoming environment for these

00:16:42

sorts of processes over the

00:16:45

past years. There have been

00:16:46

tons in private commercial arbitration

00:16:48

to do if I like

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climate arbitration, Sports arbitration. And



00:16:54

here in the United States

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are rising religious, arbitration arbitration,

00:16:59

according to rules of a

00:17:00

lot of those arbitration matters,

00:17:05

have a sense of public

00:17:06

interest. Hook me up. I'm

00:17:09

going, I'm speaking to her

00:17:10

over the past few years.

00:17:15

There have there has been

00:17:16

increased interest in and getting

00:17:18

public opinion and some of

00:17:19

these are private arbitration medicine

00:17:21

because they do if I



00:17:22

called and recently, in March

00:17:26

of this year, of the

00:17:27

German arbitration, Provide us the

00:17:31

pimento rules for involvement of

00:17:34

non disputing parties and their

00:17:39

grounds, for being able to

00:17:41

put that in, there are

00:17:50

matters that may affect their

00:17:52

party this summer. So, procedural

00:17:55

rules of civil procedure rules.

00:17:58

So we can transfer into

00:18:01

the arbitration process to the

00:18:07

point of reference remains clear.



00:18:08

If we're talking about to

00:18:10

make a screw or talk

00:18:11

about, I think that may

00:18:13

have a public interest behind

00:18:14

them and so usually and

00:18:18

if there's if those of

00:18:20

Court procedure taking place relating

00:18:22

to arbitration and enforcement are

00:18:25

satisfied, then you may have

00:18:26

an amicus curiae submission from

00:18:28

ICC or The Lawyers Association

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action. If they want to

00:18:37

provide the feedback of arbitration,



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please in terms of I

00:18:45

know the spelling for your

00:18:46

submissions that is usually where

00:18:49

it is supply chain and

00:18:52

someone in that supply chain

00:18:54

will face the ramifications of

00:18:56

this particular war and they

00:18:58

want to have their say

00:19:00

Adopt the former I make

00:19:04

a story with their there's

00:19:07

been War interest as private

00:19:09

as far as commercial arbitration

00:19:11

starts touching on a public-interest



00:19:14

Meadows, like climate or religion

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or sports are becoming more

00:19:26

welcome. As jurisdictions fight online,

00:19:30

arbitration process more with their

00:19:33

internal civil procedure, and I'm

00:19:36

not sure if that were

00:19:37

also reflected in common law

00:19:38

jurisdictions. But at least the

00:19:40

civil procedure, the civil law

00:19:42

countries do have a friend

00:19:44

of trying to ensure a

00:19:47

parallel approaching both arbitration and

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litigation Caesars in the country's.



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Thank you, Mike moh. I'll

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just put questions out there

00:19:58

in the air now, but

00:20:01

before you to think about

00:20:03

it, before in a welcoming

00:20:05

also Jennifer to, not this

00:20:07

time, the questions that I

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have were that that that

00:20:09

are brought to my mind

00:20:12

from listening to you are,

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is, is the black, or

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the traditional lack of openness

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to Amicus curiae or other



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parties and missions within International

00:20:25

commercial arbitration. Jutsu the fact

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that we are in a

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normally contract contract between contract

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particle Contracting parties setting, where

00:20:38

confidentiality plays a huge role.

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So that's that's one question

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in the are there? And

00:20:45

the other question is Is

00:20:48

this somehow changing? According to

00:20:51

some of the rules of

00:20:52

arbitration of arbitration Centre is,

00:20:57

is there, an is there,



00:20:58  
an opening for certain interest

00:21:01  
groups to come in matters

00:21:04  
of public interest public policy

00:21:06  
environmental issues? And I, I

00:21:09  
know that, that, that might

00:21:10  
be a whole thing for

00:21:12  
a different panel, but but

00:21:14  
I just want to put

00:21:15  
out there for your ear,

00:21:17  
your thoughts on Jennifer and

00:21:18  
he coming. Or do I

00:21:22  
have other questions? I had

00:21:23  
a question which is more



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like it in your experience.

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Have you been in situations

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in? Which is an amicus

00:21:31

or third-party submission have been

00:21:33

presented and if so how

00:21:36

has that worked out with?

00:21:37

In that case, if you

00:21:38

have been, if you represented

00:21:39

a party in the preceding

00:21:40

number Which will see it

00:21:47

happen often, but it's not

00:21:50

as straightforward as we talked

00:21:53

about it, then if you



00:21:56

want to go, do you

00:21:57

want to get from point

00:21:58

A to point B? And

00:22:00

then, the problem is that

00:22:02

there are ways to get

00:22:04

to point B, but it

00:22:05

just called with the process

00:22:06

so much. So, for example,

00:22:08

You want to get an

00:22:10

Undisputed party? So much. The

00:22:12

other side doesn't accept you

00:22:13

want the power capacity so

00:22:18

we have to resort to



00:22:19

the point and then you

00:22:23

better get it between your

00:22:25

application proceedings and domestic court

00:22:27

because you want to enforce

00:22:29

that something to get to

00:22:30

a point where to get

00:22:32

to get the point it

00:22:37

doesn't happen. But that is

00:22:39

the problem is because there

00:22:41

are no snow white spell

00:22:44

acceptance or application of rules

00:22:46

to Dusty's issues. So you

00:22:59

can have these processes, the



00:23:01

tribunal can Resort you so

00:23:03

that they're comfortable. It does

00:23:09

happen, but Papa's still comes

00:23:10

with bosses in that sense.

00:23:12

Southern should answer or have

00:23:21

you become reality is given

00:23:26

the limitations of your parole

00:23:37

in convoluted into the world.

00:23:43

I mean I I am

00:23:44

I was under the impression

00:23:46

that there were the word

00:23:48

means to get the third

00:23:50

party submissions or parties that



00:23:53

proved an interest into it.

00:23:54

And there are processes within

00:23:56

with International. Commercial arbitration perhaps

00:23:59

under the ICC rules Etc.

00:24:01

But not not I'm not

00:24:03

entirely sure that your interest

00:24:05

groups that that might not

00:24:08

be related to the party,

00:24:09

but this is an area

00:24:11

where we're at work. Surprising

00:24:13

there might be something to

00:24:15

learn buy International commercial arbitration

00:24:19

from investor-state arbitration. So let's



00:24:21

let's move into investor arbitration

00:24:23

and and let us know

00:24:25

if you could describe the

00:24:31

process to prepare and on

00:24:33

disputing parties in Mission know,

00:24:35

how does it work internally

00:24:37

by Council? And that how

00:24:39

does the interagency process works?

00:24:42

Because of course council is,

00:24:46

is one, but, but, but

00:24:47

they're not the whole state

00:24:49

even though they were presented.

00:24:53

Right. Well, thanks. Thanks to



00:24:56

you also, and, and the

00:24:57

organizers of Washington arbitration, wait,

00:24:59

for the invitation and salsa

00:25:01

Baker Botts for hosting and

00:25:03

also appearing today in my

00:25:07

personal capacities. So, my remarks

00:25:09

don't necessarily represent the views

00:25:11

of the US government. It's

00:25:15

all I'll speak to the

00:25:16

practice and and, and also

00:25:17

some the process that that

00:25:21

we need to undergo for

00:25:22

filing. One of these, not



00:25:23  
disputing parties, submissions and intervention,

00:25:26  
as a non disputing parties

00:25:28  
has been a key part

00:25:30  
of us, International Patrician practice,

00:25:32  
most investment agreements and investment

00:25:35  
chapters in Free Trade Agreement.

00:25:38  
Search a promotion agreement contained

00:25:40  
a provision to allow treaty

00:25:41  
Partners to better not respondents

00:25:44  
in the given case to

00:25:45  
provide their views. Respecting the

00:25:47  
interpretation of certain provisions. And

00:25:49  
of course as you know



00:25:50  
and i s d s

00:25:51  
often critical issues, revolve around

00:25:53  
matters of interpretation being that

00:25:57  
treaties are negotiated agreements between

00:26:00  
states. We feel that it

00:26:01  
is important for driving us

00:26:02  
to hear. I'm not disputing

00:26:04  
parties, respecting interpretations of their

00:26:08  
treaties. The first MVP that

00:26:12  
the state department filed in

00:26:13  
person and I'll do the

00:26:14  
state department does represent the

00:26:17  
nation in investment treaty cases,



00:26:19

and that also includes interventions

00:26:21

of the party into the

00:26:23

first, not disputing parties Mission

00:26:25

Apartments in 1999, metal, clad

00:26:28

be Mexico. Arbitration this was

00:26:31

a case. Under the NASA

00:26:33

relating to an investment in

00:26:35

a landfill property and the

00:26:38

United States provided his views,

00:26:39

respecting and directs its preparation

00:26:41

under customary International international law,

00:26:43

as well as matters of

00:26:45

the following. Case. United States



00:26:49

has provided submissions and under

00:26:53

numerous other treaties including the

00:26:55

Central America, Dominican Republic Free

00:26:59

Trade Agreement or cast. If

00:27:00

you are also under Trade

00:27:02

promotion agreements with Peru Colombia,

00:27:05

In Panama. as far as

00:27:09

a free trade, agreements with

00:27:10

Korea, Morocco in Daman India,

00:27:12

ideas with your guy and

00:27:14

Rwanda and this year we

00:27:17

father 109 dispute Mission and

00:27:20

that does not include oral



00:27:21  
submissions that we been making

00:27:23  
recently in hearings and since

00:27:25  
some of the cases that

00:27:26  
come up under A Treatise,

00:27:27  
that also does not include

00:27:28  
diplomatic notes that we prepare

00:27:30  
in our office, which hospice

00:27:32  
service alert purpose of providing

00:27:34  
our interpretation of tree permissions,

00:27:37  
There's also related filings outside

00:27:39  
of arbitration. And one example

00:27:41  
is the cargo be Mexico

00:27:43  
matter in which United States



00:27:44

express its views on the

00:27:47

proper interpretation of the NASA

00:27:49

in Canadian courts and beyond

00:27:52

that we mix emissions in

00:27:53

ad hoc annulment, committee cases

00:27:55

and one example is a

00:27:57

Siemens, the Argentina case, and

00:27:59

that was regarding the interpretation

00:28:00

of the excerpt. What is

00:28:02

a party? But of course,

00:28:04

it's not one of our

00:28:05

investment treaties but nevertheless. So

00:28:09

we do take these filings



00:28:10

seriously and it's something that

00:28:12

we we do take the

00:28:13

opportunity to to comment on

00:28:15

the interpretation of A Treatise.

00:28:18

11 possible for the process.

00:28:21

For getting one of these

00:28:22

files that involves an interagency

00:28:24

review process and it can

00:28:27

be quite expensive. Not necessarily

00:28:29

lengthy, but it just depends

00:28:30

on the issues. But it'll

00:28:33

work begins with my office

00:28:34

and it all stood in



00:28:35

else. Dude, is the office

00:28:37

of Internet. International Investment disputes

00:28:39

within the legal department of

00:28:42

the state department. And we,

00:28:44

when we routinely monitor cases

00:28:48

that come up under a

00:28:48

tree teasing. So when we

00:28:50

are aware that there is

00:28:51

a case that will that

00:28:54

will require some kind of

00:28:57

interpretation of other legal issue

00:28:59

when it treated. Then we

00:29:01

communicate with counsel in the



00:29:02

fall assessment of the legal

00:29:05

positions taken by the parties.

00:29:06

And we dropped the NDP,

00:29:07

then from there goes on

00:29:09

to other officers. When the

00:29:10

state department, it goes to

00:29:12

the offices that have equities,

00:29:14

you know, that are different

00:29:16

from ours, that includes for

00:29:17

instance, LT, who are treaty

00:29:20

expert at State, another State

00:29:24

offices, led the illegal office

00:29:26

on economic Affairs and led



00:29:30

with their client EB, which

00:29:32

is the Bureau of Economic

00:29:33

and Business Affairs. Also routinely

00:29:35

negotiate and coordinates of Hugo

00:29:36

Str. The office of the

00:29:38

US trade representative for negotiating.

00:29:41

These these agreements when that's

00:29:44

done, then it goes to

00:29:45

our front office to ensure

00:29:47

that there are no overarching

00:29:49

concern for the state department.

00:29:51

So that's only the clearance

00:29:52

process would have stayed. Then



00:29:53

it leaves date and it

00:29:55

goes to the interagency group

00:29:56

group of agencies that have

00:30:00

interest in Heist and that

00:30:03

really berries by matter, depending

00:30:05

on the subject matter, it

00:30:07

includes the Department of Commerce

00:30:08

treasury ustr for Economic and

00:30:12

Business matters. And let me

00:30:15

get, let me hear, Let

00:30:16

Me interrupt you and not

00:30:17

not to stop you but

00:30:18

to ask you more punctual



00:30:20  
question. So you have a

00:30:23  
first draft of the, of

00:30:24  
the S&P, right? So you

00:30:27  
think you know where has

00:30:28  
all the should have you?

00:30:33  
You I, I might have

00:30:34  
that. You have to circulate

00:30:35  
it among his agency, or

00:30:38  
this other agencies in a

00:30:41  
rosapetra. How much time in

00:30:44  
advance. I'm just trying to

00:30:45  
figure out in Practical matters.

00:30:47  
If it's I mean, there's



00:30:51

there's always, there's no reason

00:30:52

case. So ultimately, how much

00:30:55

timing Advance. Do you need

00:30:56

to do this? Really does.

00:30:59

Barry get to case? It

00:31:01

could be something that could

00:31:02

take a matter of days.

00:31:03

You could be some kind

00:31:04

of takes matter of weeks,

00:31:04

depends on the issue, whether

00:31:06

there's issues of interpretation that

00:31:08

are novel, and that hasn't

00:31:09

been that we haven't really,



00:31:10

you know, of hind on

00:31:12

previously. Typically, you know, there

00:31:15

are many issues covered in

00:31:16

our ndp's that we routinely,

00:31:18

you know, Pine on. And

00:31:20

so, that's something that kind

00:31:21

of government. Why'd, you know,

00:31:23

a lot of these different

00:31:24

agencies are familiar with these

00:31:25

issues on these topics. And

00:31:26

so it doesn't really require

00:31:28

a heavy lift and those

00:31:29

instances. But you know, sometimes



00:31:31

we do face issues, of

00:31:33

Novel interpretation under the treaties.

00:31:36

And in that case, it

00:31:36

does take a little bit

00:31:37

more time it just really

00:31:39

berries. Some other typical offices

00:31:47

that we'll get our draft

00:31:48

will be, do you know,

00:31:49

Department of Justice and then

00:31:50

also Regulatory Agencies such as

00:31:52

the Food and Drug Administration

00:31:53

FDA with the Environmental Protection

00:31:57

Agency EPA which have had



00:32:01

some of their regulations, do

00:32:02

the basis of Clans in

00:32:03

the past as well. So

00:32:05

we find particularly useful part

00:32:08

of the process. It's in

00:32:10

my experience in private practice

00:32:12

is uncommon to to see

00:32:14

to have one of these

00:32:16

submissions kind of reviewed by

00:32:17

such a large group with

00:32:19

such varied perspectives. And so

00:32:21

get into the point of

00:32:22

the Prius panel about, I



00:32:24

think Joe and he was

00:32:24

mentioning, you know, the difficulty

00:32:26

and his friend kind of

00:32:27

unity in in, in government,

00:32:29

postures and interpretations. It's something

00:32:31

that we do take pride

00:32:33

in the fact that we

00:32:33

have such a carefully coordinated

00:32:35

out of the machinery for

00:32:37

for handling, these types of

00:32:38

things. So, in the end,

00:32:40

by the way, this energy

00:32:41

interagency Also, is not limited



00:32:43

to the SDS contacts. It's

00:32:45

kind of an executive branch

00:32:46

process for developing policy and

00:32:49

legal issues and medicine for

00:32:51

nefarious. Thank you, thank you,

00:32:54

Alberto and one question that,

00:32:58

that, that you may want

00:33:00

to think about him for

00:33:01

the next round is what

00:33:03

are the topics that the

00:33:05

most are most common in

00:33:08

in that process me know,

00:33:10

now, with with, with almost



00:33:14

your, your your Sentry Will

00:33:16

consent to your neighbor's Sherry

00:33:17

and the piece. You might

00:33:22

be able to identify talk

00:33:25

that are occurring and the

00:33:28

question is, what are those,

00:33:32

what those, maybe it's a

00:33:34

trousseau and then. That question

00:33:35

also, am I going to

00:33:36

everyone if you find recurring

00:33:38

topic. But would that let

00:33:40

me, let me ask I

00:33:44

think, let me ask. San



00:33:49

Pedro, if you have any

00:33:50

comments, concerning, Alvarado's words, like,

00:33:58

it was very interesting insight

00:34:00

into how this works from

00:34:02

the intervening third-party perspective. I'm

00:34:05

usually on the receiving end

00:34:06

on the side of of

00:34:08

the disputing parties. I do

00:34:10

have a couple of reactions.

00:34:12

I guess, the first one

00:34:15

is to Simply start framing

00:34:17

these third-party submissions into two

00:34:21

broad buckets. I think what



00:34:23

you've described would fall into

00:34:25

one category of participation where

00:34:27

we have entities seeking to

00:34:30

comment on treating interpretation and

00:34:33

perhaps contribute to creating customary

00:34:36

international law have OnPoint discussions

00:34:39

about legal issues that the

00:34:41

Tribunal We'll have to drink

00:34:44

age with and then we

00:34:45

have the two different kind

00:34:48

of third-party intervention where perhaps

00:34:51

is an issue related to

00:34:54

the environment or human rights



00:34:56

issues related to the dispute.

00:34:58

But the mainstream a bit

00:35:00

farther from legal or factual

00:35:04

issue squarely before before the

00:35:07

tribunal and then other was

00:35:10

hearing, you mention, you know,

00:35:11

all of the experience that

00:35:13

at the office has had

00:35:15

with, with preparing these types

00:35:17

of submissions. I made me

00:35:19

think of an analogous example

00:35:20

or someone analogous example. I

00:35:24

know on the SDS space



00:35:26  
that the European commission has

00:35:27  
intervened in a lot of

00:35:30  
arbitration settlements with comments about

00:35:35  
fiction in light of the

00:35:38  
ruling. And they've been pretty.

00:35:42  
Participating in a lot of

00:35:44  
these disputes and and have

00:35:46  
not had a lot of

00:35:47  
success in terms of Swing

00:35:49  
tribunals on jurisdictional issues. And

00:35:51  
and I'm not implying that

00:35:52  
the Estates Apartments contributions are

00:35:55  
not available, but I wonder



00:35:57

if there's any sort of

00:35:58

internal mechanism to track the

00:36:01

the long-term impact. If you

00:36:04

will have all of these

00:36:05

interpretations in Independence about treaty

00:36:09

interpretations, I might be tricky

00:36:11

because these are things that

00:36:12

develop over time, but I

00:36:14

wonder if there's a way

00:36:16

to measure the impact of

00:36:18

the work. Skip song. I

00:36:25

guess taking your your last

00:36:27

question. We we routinely monitor,



00:36:29

as I mentioned above all

00:36:31

the cases and Rise Under

00:36:32

A Treatise and and it's

00:36:34

something that we certainly do

00:36:35

keep track of. Yes, I

00:36:36

have, you know, I'm going

00:36:38

to a point that was

00:36:39

made by my calling, the

00:36:40

last panel, transparency, really is

00:36:41

key in these situations particularly

00:36:43

when thinking about, you know

00:36:48

that the cases that come

00:36:49

up and understanding Under A



00:36:51

Treatise, you know what, what

00:36:53

cases are out there that

00:36:54

we need to know about.

00:36:56

And so kind of better

00:36:57

chance of keeping that transparency

00:36:58

with our treaty Partners is

00:36:59

really critical for us to

00:37:00

try to maintain that track

00:37:02

record and if and if

00:37:05

the situation arises dad being

00:37:08

a princess of one of

00:37:09

our earlier treaties which does

00:37:10

not have one of the



00:37:11  
mandatory MVP provision. Then those

00:37:14  
cases it's it's a matter

00:37:16  
of kind of communicating with

00:37:18  
Council and arbitrators to inform

00:37:19  
them of the usefulness of

00:37:22  
the role of an NDP

00:37:23  
in that case as early

00:37:24  
on as possible. But it's

00:37:27  
it's it's something that we

00:37:28  
do keep track of an

00:37:29  
end and we do response

00:37:31  
to 22 changes in our

00:37:34  
interpretations overtime, that that are



00:37:37

kind of made into more

00:37:38

modern. You are not disputing

00:37:40

parties missions with something that

00:37:41

we were very reactive to

00:37:42

to council with with a

00:37:53

tremendous experience in investor with

00:37:56

tracing representing State and and,

00:37:58

and Jennifer. I would like

00:38:01

to ask, you know, from

00:38:02

the perspective of a state

00:38:05

party, investor-state arbitration base arbitration

00:38:10

proceeding in in what way

00:38:11

my pain on. Play Party



00:38:15  
submission. Be relevant in determining.

00:38:17  
The meaning of a particular

00:38:18  
provision of a treaty have

00:38:20  
more questions, but let's start

00:38:22  
with that one. Thank you

00:38:30  
and thank you for your

00:38:33  
work. And all of this

00:38:41  
is well it's a great

00:38:43  
honor to be here. I'm

00:38:43  
delighted to be able to

00:38:44  
speak with this in the

00:38:51  
past. So my responses and

00:39:05  
I'm speaking having had experience



00:39:07

representing States. I was also

00:39:09

represent investor, so my comments

00:39:12

are far more generic and

00:39:13

general, but from that. I'm

00:39:16

looking at specifically not disputing

00:39:20

parties, not disputing treating party.

00:39:22

So this is like the

00:39:24

United States but they're not

00:39:28

a party in the party.

00:39:40

Tradition Mission would be from

00:39:42

the United States. Other. Party

00:39:52

submission. That's not a dynasty.

00:39:54

Were the tribunal to hear



00:40:05

from the other party. That

00:40:07

is a non-party to dispute

00:40:09

by the same party who

00:40:11

negotiated the treaty to hear

00:40:13

their views on the interpretation

00:40:14

of the trees. So that

00:40:16

the tribunal can take that

00:40:18

into consideration but in Serie

00:40:21

A shooting party as an

00:40:23

interest in the outcome of

00:40:25

the dispute, getting a non

00:40:28

disputing party is also someone

00:40:31

who is interpreted and negotiated



00:40:34

the treaty to give their

00:40:35

views can have an impact

00:40:37

on the truck since both

00:40:40

parties in negotiating the treaty

00:40:51

Has no interest cuz they

00:40:53

might, it is if it's

00:40:55

a treaty between two countries

00:40:56

is supposed to have to

00:40:57

be a Caster that has

00:40:59

multiple parties. They may have

00:41:04

an interest, there is there

00:41:06

investor who is not as

00:41:16

if there were no interest



00:41:17

but the same time you

00:41:18

have two parties who negotiated

00:41:19

the treaty then you get

00:41:21

the night. I, I want

00:41:29

to go shake things up

00:41:30

a little bit. Make it

00:41:32

very practical of words without

00:41:35

disclosing any, any sensitive information

00:41:37

following comments are unrelated to

00:41:43

any ongoing arbitration of which,

00:41:45

you know, I am counsel.

00:41:47

But I've had the experience

00:41:48

of of, of representing A



00:41:52  
state, which I'm not representing

00:41:54  
now, in which there was,

00:41:58  
there was a question as

00:42:00  
to whether there could be

00:42:02  
an amicus Curie at work

00:42:04  
by the state, the not

00:42:12  
disputing State parties to the

00:42:14  
treaty and I'm part of

00:42:16  
the question was, was whether

00:42:20  
because the investor has the

00:42:25  
same nationality of that state.

00:42:27  
Whether there was an underlying

00:42:31  
interest by the state which



00:42:35

is a non-party to the

00:42:36

arbitration to read the provisions

00:42:40

in in such a way

00:42:42

as to favorites on National

00:42:44

and that within that is

00:42:49

not my view I must

00:42:51

say but for those who

00:42:54

are knee or not necessarily

00:42:58

that familiar with the no

00:43:02

disputing, What is reading? A

00:43:07

state party submissions in the

00:43:10

tradition of the US were

00:43:11

or kind of Raven many



00:43:13  
countries in Latin America, that

00:43:14  
is not initially crazy view,

00:43:16  
show, that, that could be

00:43:19  
well, why would you and

00:43:21  
why would you ask what

00:43:23  
you want? Would you open

00:43:24  
a proceeding or the submission

00:43:27  
of the other state in

00:43:29  
to this proceeding, see if

00:43:31  
they have the same nationality

00:43:32  
as the investor? So I

00:43:34  
just put the the question

00:43:36  
out there and I need



00:43:38

that particular case RV was

00:43:41

well then the interests are

00:43:45

not necessarily a line and

00:43:47

there's a higher interest by

00:43:49

the state to Ashley interpret

00:43:51

or weed the the, the

00:43:53

the provisions, as the intended

00:43:55

them in the treaty. But

00:43:57

that's sometimes is hard to

00:43:59

understand by some who might

00:44:01

not be in in, in

00:44:03

the tradition that I'm I

00:44:04

would like to go ask



00:44:06

Alice by the one Jennifer

00:44:07

and everyone. What what are

00:44:08

your views on that question?

00:44:12

From my perspective, I think

00:44:15

that there is a tension

00:44:17

there potentially, but I think

00:44:23

in the end the state

00:44:25

is there interest is going

00:44:27

to be more that is

00:44:29

episodic and a single situation.

00:44:31

I think a state is

00:44:32

going to be more concerned

00:44:36

with the immediate case of



00:44:38

their investors is bringing the

00:44:40

case. But the state also

00:44:41

has interests in long-term over

00:44:44

the course of time. So

00:44:49

while that might be a

00:44:51

short-term interest, there's also no

00:44:52

longer interested, Yeah. So it

00:44:58

had to be clear. We

00:44:58

we file not as being

00:45:00

part of submissions not to

00:45:02

support a US investor against

00:45:04

the foreign state or to

00:45:05

support a responded stayed. In



00:45:08  
any case it's it's it's

00:45:09  
really a purely to provide

00:45:12  
legal interpretation, that would serve

00:45:13  
as a guidance to the

00:45:14  
tribunal. Obviously, as masters of

00:45:17  
our treaties tape, have an

00:45:19  
interest in ensuring that their

00:45:20  
treaties or at least we

00:45:23  
do that, our treaties are

00:45:24  
interpreted accurately and I understand

00:45:28  
attention that your raise and

00:45:29  
I think it's understandable and

00:45:31  
it might be thinking of



00:45:34

you were speaking. I was

00:45:34

thinking that the Inception of

00:45:37

the b a t program

00:45:38

in the United States in

00:45:39

the early 1980s, written about

00:45:45

in our articles. I mean,

00:45:47

this one of the impetus

00:45:50

is of that was to

00:45:52

support an establishment of expropriation

00:45:55

of a standard of course

00:45:56

for free. 90 customary international

00:45:57

law. Clearly there was an

00:46:00

interest in ensuring that there



00:46:02

was that sufficient protection for

00:46:03

u.s. ambassadors abroad. Obviously. That

00:46:06

was in 1981. So you

00:46:09

know things have changed for

00:46:10

many reasons. You know why

00:46:12

we want to ensure their

00:46:13

treaties are interpreted correctly and

00:46:15

I want to see if

00:46:15

one of them is contributing

00:46:17

to a customer International log

00:46:19

rules. But certainly the Deep

00:46:22

the biggest game is to

00:46:24

provide guidance to tribunals in



00:46:25

in addressing these issues under

00:46:28

trees. Thank you, I do.

00:46:31

And I think without him

00:46:33

a very spontaneously, you used

00:46:36

to provide at your comment

00:46:37

now would like to go

00:46:39

to Two bedroom and asking

00:46:44

him about some of the

00:46:50

considerations from the parties perspective.

00:46:53

Whenever a third party seeks

00:46:55

to participate in an investor-state

00:46:57

dispute, some of the issues

00:47:00

related to perhaps no cars



00:47:02  
relevance confidentiality happy happy to

00:47:07  
comment. So, as I previewed,

00:47:12  
I'll, I'll address more than

00:47:14  
the second bucket of of

00:47:16  
interventions that we see. I

00:47:19  
think we, we can all

00:47:21  
imagine that. These might be

00:47:23  
common in cases, having to

00:47:25  
do with mining or extractive,

00:47:27  
Industries cases. The touch on

00:47:28  
policy issues. Public Health, various

00:47:34  
facets of public authorities, attempted

00:47:37  
to touch you. Often have



00:47:41

Oregon. Stations with a with

00:47:44

an interest in, in these

00:47:46

issues trying to intervene. And

00:47:48

I would take over all

00:47:50

a lot of these third-party

00:47:52

submissions are seeking to support

00:47:53

the respondents stated position in

00:47:57

some way. They're there. Of

00:47:58

course exceptions but we think

00:47:59

the vast majority favored. Favored,

00:48:02

the respondent into from a

00:48:04

claimant investor perspective. You often

00:48:08

see them resisting the submission



00:48:11  
or at least try to

00:48:11  
narrow them in some way.

00:48:12  
And I think, going through

00:48:15  
the exit arbitration rules framework

00:48:18  
is useful in in analyzing

00:48:21  
how to address these types

00:48:22  
of requests. The 2006 Extreme

00:48:26  
Rules layout series of factors

00:48:29  
that are beetles should take

00:48:31  
into account. When, when evaluating

00:48:33  
these, the mission first one

00:48:36  
is, will this help the

00:48:38  
tribunal determine irrelevant factual or



00:48:41

legal issue? I'm bringing A

00:48:42

New Perspective will or some

00:48:44

expertise some insights. And what

00:48:49

you often see in the

00:48:50

procedural fight is focusing on

00:48:53

those two. Two things is

00:48:55

is this really addressing irrelevant

00:48:57

factual or legal issue? There

00:48:59

may be an interest by

00:49:03

Western NGO in intervening illuminated

00:49:10

particular factual point. But will

00:49:12

they contribute to to sexual

00:49:16

development when they may not



00:49:17

have access to the records

00:49:18

from the particular region? Will

00:49:22

they bring a different perspective?

00:49:24

There have been several tribunal's

00:49:27

that have held that. The

00:49:29

party's already represented by experienced

00:49:32

counsel, there's already an opportunity

00:49:34

to submit bug reports and

00:49:37

have legal expert comments on

00:49:39

the relevant issues. What is

00:49:42

being added by an additional

00:49:45

submission? There are concerns about

00:49:47

potential duplication in terms of



00:49:49  
arguments and then another factor

00:49:52  
of the tribunal will consider

00:49:53  
is will this address of

00:49:55  
matter within the scope of

00:49:56  
the dispute. And I think

00:49:57  
this is a big one

00:49:58  
because often we see third-party

00:50:02  
request bed that raised human

00:50:06  
rights are environmental issues which

00:50:08  
may be tangentially related but

00:50:10  
I thought it might be

00:50:12  
debatable, whether these are really

00:50:13  
issues that are squarely before



00:50:15  
the tribunal issues that the

00:50:16  
tribunal has to decide if

00:50:19  
it has jurisdiction to decide.

00:50:20  
So is there Most investors

00:50:27  
are not requesting reinstatement of

00:50:30  
a canceled potentially controversial project.

00:50:32  
They may be requesting compensation

00:50:34  
or there may be a

00:50:35  
discussion about the legality of

00:50:37  
particular State measures will be

00:50:40  
submissions. Really address matters within

00:50:43  
within the scope of another

00:50:46  
big factor is whether the



00:50:47  
third party has a significant

00:50:50  
interest in the case. If

00:50:54  
threshold is too low, then

00:50:56  
you can see a scenario

00:50:57  
in which most institutions with

00:51:01  
a with an academic or

00:51:03  
policy interest could intervene, in

00:51:05  
a lot of these cases

00:51:05  
at the best excuses to

00:51:07  
touch on on public interest

00:51:09  
issues, pretty regularly. And there's

00:51:13  
also a mechanism of experts

00:51:16  
in arbitration. I think if,



00:51:17

if a particular NGO does

00:51:21

have expertise on an issue,

00:51:22

then there's a possibility of

00:51:24

requesting, an expert report and

00:51:26

and entering evidence through through

00:51:29

the regular proceeding evidence that

00:51:31

can be tested your cross-examination.

00:51:33

And then the overarching Consideration

00:51:38

to tribunals will will will

00:51:43

way is whether the submission

00:51:45

will just run up to

00:51:46

the proceedings and perhaps one

00:51:49

of the parties I think



00:51:52

we can all agree that

00:51:52

arbitration proceedings, already too long,

00:51:55

too expensive. With the timing

00:51:59

of requests can be important

00:52:00

is in the requests coming

00:52:02

at a late stage in

00:52:04

which one of the parties

00:52:05

has to be simultaneously. Respond

00:52:08

to the submission while preparing

00:52:10

the other substance in filing

00:52:12

is really close to the

00:52:13

hearing, I think there could

00:52:16

be different opinions about the



00:52:18

the benefits by additional Civil

00:52:22

Society participation and on the

00:52:26

other hand potential costs and

00:52:28

important to the parties. In

00:52:29

the end of the tribunal,

00:52:30

everyone must review more more

00:52:33

paper Thank you for thank

00:52:36

you very much because I

00:52:37

think while speaking you have

00:52:40

touched upon most of the

00:52:44

elements today's more modern rules

00:52:50

on Amika. Scarier interventions are

00:52:56

demanding you know that there



00:52:59

must be a proven interest,

00:53:01

you have to identify who

00:53:03

you are or where you

00:53:03

getting your funds from. You

00:53:05

have to make sure that

00:53:06

that your intervention does not

00:53:08

disrupt the proceedings, you have

00:53:12

to make sure that that

00:53:14

it it's, it's irrelevant it

00:53:17

cetera. And there might be

00:53:19

even be in position by

00:53:21

the, by the, by the

00:53:22

Tribunal. Limits to the intervention.



00:53:27

So I think, I think

00:53:28

that's everything that you have

00:53:30

said is very relevant. My,

00:53:32

my understanding is, is that

00:53:37

At least in the investor

00:53:38

or or even in international

00:53:41

commercial arbitration. There might be

00:53:43

something not necessarily to embrace

00:53:46

a third-party purchase patient. I

00:53:50

want I want to ask

00:53:52

one question to know to,

00:53:54

to all of you in

00:53:57

terms of. Is it about



00:54:03

No disputing parties in missions

00:54:05

in in within the framework

00:54:07

of NAFTA, like three because

00:54:09

they're there if there is

00:54:11

there's a right or the

00:54:13

state with a party to

00:54:14

the deal would apply to

00:54:16

the true but not to

00:54:17

the dispute to submit their

00:54:19

their their their brief. Let's

00:54:21

talk about investment treaties like

00:54:24

by latching best country in

00:54:25

which you do not provide



00:54:26

for the words that scenario.

00:54:28

And the question is, do

00:54:30

you think that the state

00:54:33

that is not a party

00:54:35

to this tree has a

00:54:36

better right to intervene? Or

00:54:39

it should be simply treated

00:54:41

as any other third-party? They

00:54:46

have to provide a ride.

00:54:46

If he doesn't provide that

00:54:48

they should be into intervening

00:54:49

and therefore know what, what

00:54:53

should be the status of



00:54:54

the investor State Road. Just

00:54:57

No, show me that, that

00:54:59

that you you are an

00:55:02

effect. Somebody who should be

00:55:04

intervening, they should have their

00:55:05

lawyer and as far as

00:55:08

for the one and it

00:55:10

in the room and I

00:55:13

know that I know that

00:55:14

should be asking two questions

00:55:15

that I will. Do you

00:55:18

think that the third-party submission

00:55:20

in the state party submission



00:55:24

is one but somehow could

00:55:28

level the playing field between

00:55:31

say a state that doesn't

00:55:34

have that much experience in

00:55:35

investor arbitration. An end. Yes,

00:55:43

let me that. That's really

00:55:44

question. I mean, if you

00:55:46

have a hundred and a

00:55:48

half and the peace which,

00:55:51

which have searched is, is

00:55:54

somehow that helpful for the

00:55:56

state that has his first

00:55:57

arbitration. And you think that's



00:56:01  
fair from the Investor's perspective,

00:56:02  
anybody looking at the first

00:56:10  
one, the second one I

00:56:11  
think is on the second

00:56:13  
point is to hire hire

00:56:14  
experienced counsel and then you

00:56:15  
have the experience, even if

00:56:17  
the state itself doesn't have

00:56:19  
a lot of experience, that's

00:56:20  
my my advice there, but

00:56:22  
with respect to the first

00:56:22  
one interesting enough in the

00:56:24  
new rules. The new rules



00:56:27  
will 68. And it said,

00:56:29  
arbitration rules actually answers your

00:56:32  
question and it says, in

00:56:35  
68, won the tribunal shall

00:56:37  
permit shell shop. Hermit a

00:56:40  
party to a treaty that

00:56:41  
is not a party to

00:56:42  
the dispute. To make a

00:56:44  
submission on the interpretation of

00:56:45  
the tree at issue in

00:56:46  
the dispute and upon which

00:56:47  
consent to arbitrations base. So

00:56:50  
I read that to mean,



00:56:51

if a state who is

00:56:52

a non disputing party, wants

00:56:55

to submit independent, you know

00:56:57

of the right under a

00:56:58

treaty that ended, exit can

00:57:00

extreme rules in the arbitration

00:57:02

rules now into as of

00:57:04

2022. They have that, right?

00:57:06

And then there's the second

00:57:10

option or second component of

00:57:11

it is the tribunal May

00:57:13

after Consulting with the party's

00:57:14

invite a non disputing treating



00:57:16

party to make such as

00:57:17

Mission which I understand to

00:57:19

mean they can ask if

00:57:21

a state could submit something

00:57:23

that that's if both parties

00:57:25

agree which I It would

00:57:26

be unlikely but if a

00:57:29

treaty party asks, I understand

00:57:34

this to mean that the

00:57:35

tribunal shall grab that, right?

00:57:37

They shall be heard, interesting

00:57:39

Lee enough and this is

00:57:40

it looking also at the



00:57:43  
history of this. I'll be

00:57:45  
in front of short but

00:57:46  
in any case in recent

00:57:47  
but there was a proposition

00:57:50  
to have not only it

00:57:51  
be a submission on the

00:57:52  
interpretation that right? But also

00:57:54  
on the application, the latter

00:57:57  
of which was struck. So

00:57:58  
it's left is only the

00:58:00  
right with respect the interpretation

00:58:01  
and I know the United

00:58:02  
States only. Gibson's view on



00:58:06

the interpretation of a treaty

00:58:07

and not its application. But

00:58:09

I don't know if that's

00:58:10

true for every state in

00:58:11

but it is true in

00:58:12

the context of the arbitration

00:58:14

rules. Now that it's limited

00:58:17

to interpretation does exist on

00:58:19

the rules with the second

00:58:21

interpretation. So, 11-1 run for

00:58:32

the water in it, which

00:58:33

is my Miss. I should

00:58:35

have asked you Alvaro to



00:58:36

frame the type of friend

00:58:41

appears that you have and

00:58:42

I think that that that

00:58:43

Jennifer has clarified it, but

00:58:45

it would be good as

00:58:46

you supposed to clarify in

00:58:47

terms of Education. That would

00:58:54

be very useful for are

00:58:55

the participants. But I go

00:58:58

back to, to my initial

00:59:00

question. And what about the

00:59:01

Legacy? What about the Legacy?

00:59:04

That do not have that



00:59:07

that that provision which solves

00:59:09

issue. So I'm just trying

00:59:11

to know play, Maurice, the

00:59:14

professor will you change the

00:59:16

time? But I want to

00:59:18

go back to you earlier

00:59:18

to see what about those

00:59:20

cases. Those those pre 2022.

00:59:23

Pitching rotation rule cases. Yet,

00:59:28

so ugly with with the

00:59:32

United States experienced. You know,

00:59:34

we have model of the

00:59:35

it text from any particular



00:59:38

the 2004 and 2012 model.

00:59:40

T i teas contain language

00:59:42

providing pad and GPS. Maybe

00:59:44

submit may be submitted of

00:59:48

Idaho oral or written. But

00:59:50

then usually, that's a governing

00:59:51

law provision. That also contains

00:59:53

language regarding Howard joint, decision

00:59:58

of the parties is buying

00:59:59

another tribunal. And so that

01:00:00

joint decision really could take

01:00:01

the form of an FTP.

01:00:04

Commission, note, you know what



01:00:06

have you so there's different

01:00:07

ways but you know, that's

01:00:11

kind of going through a

01:00:12

question about the earlier but

01:00:15

investment agreements and then I'll

01:00:17

know regarding this your second

01:00:19

point about house baby can

01:00:21

manage even without experience or

01:00:24

national British. I have, I

01:00:25

would have went into article,

01:00:26

31 of the United States,

01:00:29

considers that article, 31 does

01:00:31

reflects customary, international law, and



01:00:33

interpretation, and it provides that,

01:00:36

you know, we're pretty parties

01:00:37

have a common understanding through

01:00:40

subsequent, practice, our agreement, with

01:00:44

respect to interpretation of a

01:00:45

treaty than that should be

01:00:46

taking. It must be taken

01:00:47

into account by a tribunal

01:00:48

and that's something bad that

01:00:51

really carries weight for various

01:00:53

reasons. But, you know, of

01:00:54

course, that the concept of

01:00:55

State practice is critical for,



01:00:57

you know, at least, Two

01:01:00

reasons why. It's one of

01:01:01

the components in addition to

01:01:02

obtaining a Juris for establishing

01:01:05

customary international law and so

01:01:07

ndp's. And other documents that

01:01:08

is in the position of

01:01:11

a party on a treaty

01:01:13

can be taken into account

01:01:14

to assess that establishment of

01:01:17

customary international law. And then

01:01:19

there's to the extent that

01:01:22

there is an argument that



01:01:23

there is an emerging World

01:01:24

customary international law. Then what

01:01:27

a state United States interpretation

01:01:30

of a treaty can also

01:01:32

signaled a persistent objection to

01:01:34

that if the state does

01:01:35

agree with that kind of

01:01:36

concert is at Azzurro customary.

01:01:37

International law is going to

01:01:39

shrink before I can get

01:01:42

into a little bit cuz

01:01:48

I also want to welcome

01:01:49

a respected in this from



01:01:51

the same question of pre

01:01:53

2022. Extreme Rules of our

01:01:55

profession which provide the answer

01:01:56

what what, what would be

01:01:58

your perspective? Those trees that

01:02:00

are none left alive, 3D

01:02:03

not providing for non disputing

01:02:06

parties admissions. So, what, what,

01:02:14

what's your your response as

01:02:17

counsel for the investor? The

01:02:19

counsel for the state? No

01:02:23

raises their hand and say,

01:02:25

well, we should welcome the



01:02:26  
other party submissions and let's

01:02:28  
let's make it cuz they

01:02:31  
got. No transparency. No, brains

01:02:38  
are different Etc. And speaking,

01:02:41  
from a purely personal point

01:02:43  
of view, I think I

01:02:46  
agree with Jennifer Alvarez. Comments

01:02:50  
about this particular type of

01:02:52  
submission. I do think that

01:02:54  
other tree tea parties have

01:02:56  
a longer-term interests beyond the

01:02:59  
the specific tissue a tissue

01:03:01  
in Illuminating, how to interpret



01:03:05

a particular treaty? I think

01:03:07

there is a clear benefit

01:03:09

in hearing from, from those

01:03:11

three parties, where I think

01:03:13

we run into issues is

01:03:15

the the commission's that stray

01:03:18

from the from the relevant

01:03:20

issues from the scope. And

01:03:22

that I think we're Council

01:03:24

may have more than to

01:03:27

fight it but I think

01:03:29

there's a there's a difference

01:03:31

when the submissions are clearly



01:03:33

on point and within within

01:03:37

the scope of What occurred?

01:03:40

You must decide. Thank you.

01:03:43

I just want to throw

01:03:44

one one last thing. One

01:03:46

last question for the state

01:03:50

abbreviation is experiencing not disputing

01:03:55

parties in Mission with which

01:03:58

is what. What are the

01:03:59

if any, you know, the

01:04:01

common themes that you see

01:04:02

in the spring party. So

01:04:05

do most of the common



01:04:08  
things that you might see

01:04:09  
there that you would like

01:04:12  
to refer to. And that's,

01:04:15  
that's one question. The obvious

01:04:17  
question is, which ones do

01:04:18  
you stay away from Hey

01:04:22  
buddy, Jennifer the state. Involving

01:04:36  
itself or its own benefit

01:04:38  
or or their sports or

01:04:41  
then Buster's. Reservations on the

01:04:43  
state thing about a great

01:04:51  
process that are not of

01:04:59  
a monolift work for this



01:05:01

for this process is and

01:05:03

what are you seeing with

01:05:04

some jurisdictions? And another place

01:05:07

is the Ministry of Foreign

01:05:10

Affairs is taking the lead

01:05:13

role in the process but

01:05:14

they only act as a

01:05:15

medium where the actual decision

01:05:18

making is coming from the

01:05:19

government. Agency is responsible for

01:05:22

the breach industry, Maritime taxation,

01:05:26

whatever it is and so

01:05:28

you may have You may



01:05:31

have an approach that is

01:05:34

not a collective approach by

01:05:37

the stadium. It's an approach.

01:05:38

That is weighted more towards

01:05:42

the interest of the agency

01:05:45

that gives himself responsible for

01:05:47

the beach. Those situations involvement

01:05:52

by the state, may not

01:05:55

be particularly for the interests

01:05:57

of the state because it's

01:05:58

different agencies trying to manage

01:06:02

their own way either out

01:06:04

of the store and to



01:06:06

better position. Opens. And then

01:06:08

from the Investor's perspective, we've

01:06:10

seen situations where one agency

01:06:13

is compassionate within the seven

01:06:15

compassionate with the investor and

01:06:19

her quite happy with what

01:06:20

other agencies in. So I

01:06:23

think spending the frame of

01:06:25

reference, then the one we

01:06:27

talked about the state reference

01:06:28

to stay, not every action

01:06:32

has as well centralized. The

01:06:35

procedure has the United States,



01:06:36  
there are jurisdictions where things

01:06:39  
do got a little segregated

01:06:43  
and how their approach and

01:06:45  
that could either be used

01:06:46  
for the benefit of the

01:06:48  
investor or when considering the

01:06:52  
state has to be taken

01:06:54  
into account in the Pro

01:06:56  
tripping, but That's my hood.

01:06:58  
I mean I I think

01:06:59  
I think that's that you're

01:07:00  
coming and it would also

01:07:02  
put some or perhaps it



01:07:05

would be very useful for

01:07:06

which I've been in terms

01:07:07

of those. Then them knowing

01:07:10

know what is the process

01:07:12

of the ndp's in in

01:07:14

the state that is making

01:07:15

that that NDP was that

01:07:17

that causes maybe one with,

01:07:19

with the interagency consultations and

01:07:22

have a breadth of knowledge

01:07:24

behind me or it may

01:07:25

be Amor Amor number one

01:07:29

in the state that the



01:07:34  
example of Canada, or the

01:07:35  
example of the US has,

01:07:36  
has made a strong impression

01:07:38  
in other countries and countries

01:07:40  
know now, and no one

01:07:41  
likes America, make make an

01:07:43  
effort to to, to provide

01:07:45  
their own comments not necessarily

01:07:47  
in for no for their

01:07:49  
industrial. But but one that

01:07:51  
that emphasizes, what should be

01:07:54  
the interpretation of the treaty

01:07:55  
now moving Waiting on to,



01:07:58  
to the, to the last

01:08:00  
question in terms of what

01:08:02  
may be the themes that

01:08:03  
you mostly seen and the

01:08:04  
piece. That's, that's something that

01:08:07  
that might be very useful.

01:08:08  
And are there any things

01:08:10  
that states without naming any

01:08:14  
state in particular that the

01:08:16  
states may be inclined to

01:08:19  
stay away from that? You

01:08:22  
have me have seen in

01:08:23  
your experience. Any takers. I'll



01:08:29

pick it up so they

01:08:31

are and if he's really

01:08:32

do cover, a very wide

01:08:34

range of issues related to

01:08:36

its jurisdiction. Merits damages causation

01:08:39

and it's in bars part

01:08:44

us missions. Really do confirm

01:08:46

interpretations of fire submissions. Obviously

01:08:49

a lot of issues to

01:08:50

keep popping up. And so

01:08:51

we take that into to

01:08:52

our interpretations of those. And

01:08:54

a few examples of jurisdiction



01:08:56

are for instance, definition of

01:08:58

investment in a row relevant

01:09:00

Security. Application of limitations. Waiver

01:09:03

of Rights, preliminary acquirements for

01:09:06

the submission of crime stopper,

01:09:07

tration non retroactivity, and one

01:09:11

example is ever. So often

01:09:13

there are several of their

01:09:14

new topics that we addressed.

01:09:15

I want examples in the

01:09:16

start of the Dominican Republic

01:09:18

case, under the cast, aware

01:09:20

of what we can from



01:09:22

the long-standing policy there to

01:09:24

include of denial of benefits,

01:09:26

provisions and investment agreements. But

01:09:27

you know, We did we

01:09:29

provide interpretation of whether shell

01:09:31

companies fall into the category

01:09:34

of Investments that are included,

01:09:37

are included in In-N-Out denial

01:09:39

of benefits information. Obviously, substantive

01:09:44

protection issues, come up a

01:09:46

lot and that's something that

01:09:47

we do. We typically, take

01:09:50

up our opportunities to provide



01:09:52  
interpretation and that includes minimum

01:09:54  
standard of treatment under customary.

01:09:55  
International law corporation, National treatment,

01:09:58  
most-favored-nation treatment, and pretty much.

01:10:02  
Almost all submissions contain our

01:10:05  
view on the minimum standard

01:10:09  
of treatment contains. And they

01:10:12  
generally confirm our view that

01:10:13  
customer international law, has crystallized

01:10:15  
to establish a minimum standard

01:10:17  
of treatment, and a few

01:10:18  
areas, which include fair. And

01:10:19  
Equitable treatment for protection and



01:10:21

security, and something else that

01:10:25

did. It comes up alive.

01:10:28

Confirmation that an arbitral tribunals

01:10:31

formulation of a purported rule

01:10:34

customer International all that does

01:10:35

not consider consider or conduct

01:10:38

a full examination of State,

01:10:39

practice and opinions. Jurors heard

01:10:41

that should not be relied

01:10:42

upon as evidence of customer

01:10:44

international law. That seems to

01:10:46

be something that gets confused

01:10:48

often and investment treaty disputes.



01:10:51

And there's also less common

01:10:54

more novel issues that come

01:10:55

up, Environmental Protection Provisions. We

01:10:57

had to interpret those and

01:10:59

particularly under the us through

01:11:01

the VA in the rank

01:11:02

02 case. And then also

01:11:05

Central Security has come up

01:11:07

in the state of Oklahoma

01:11:07

case and attribution in with

01:11:10

capital. So they're staying away

01:11:15

from anything. I can't say

01:11:17

it's our practice or experience



01:11:19  
to really try to stay

01:11:19  
away from things. I mean,

01:11:21  
typically it is in our

01:11:22  
interest to just interpret Provisions

01:11:24  
that greatly as possible. So

01:11:25  
we can, so we do.

01:11:26  
But again, we conduct a

01:11:27  
full assessment of the In

01:11:29  
the cases and it depends

01:11:31  
on her. Really. What are

01:11:32  
the the critical issues of

01:11:33  
the state regarding the station

01:11:34  
Lockwood? Having looked at industry



01:11:45

State arbitration, not disputing price

01:11:47

of missions. And also the

01:11:51

interest, why, why not displaying

01:11:53

parties? And also, I make

01:11:55

this area or meet you

01:11:57

would like to intervene going

01:12:00

back into the International, International

01:12:03

commercial arbitration space. Have you

01:12:09

have you seen or or

01:12:11

do you foresee seeing that

01:12:15

the public interest groups at

01:12:17

maybe getting away into the

01:12:20

arbitration space? In in commercial



01:12:24

contract matters more than they

01:12:26

used to is? Is that

01:12:27

changing or or what? What

01:12:28

are your thoughts on that?

01:12:30

Well, if I think I

01:12:32

I I briefly touched on

01:12:34

a few and expand on

01:12:37

those now for speaking, I

01:12:41

talked about, now, that's and

01:12:45

then the commercial private space

01:12:47

is attracting 2000. And that's

01:12:57

harder than that when we

01:13:05

started judgments from Porch, Looking



01:13:08

Frandsen, otherwise hold in government

01:13:11

is responsible for 45. And

01:13:15

do you have these sorts

01:13:18

of the obligations that manifested

01:13:22

without expectation right into the

01:13:29

private commercial weekend? If we

01:13:32

can adopt the, if we

01:13:34

could adopt the conceptual obligations

01:13:39

and hold elements responsible for

01:13:40

those? Then why is it

01:13:42

not that weaken translate transposed

01:13:44

into the commercial private space?

01:13:47

and if it fits within



01:13:51

the culture of, I'm going

01:14:01

to jump zone in terms

01:14:02

of another example, religious arbitration

01:14:06

or logical based on a

01:14:11

few logic rules and that

01:14:13

there are examples of those

01:14:16

cases where a religious institutions

01:14:19

to provide their important to

01:14:23

5. Patricia employment. Based on

01:14:31

a certain set of theological

01:14:32

rules And where the local

01:14:37

religious institution of Boston Church

01:14:41

Catholic Church in to that



01:14:46  
dispute. This is a very,

01:14:50  
very interesting and lots of

01:14:58  
food. I'm just my brain

01:15:02  
is thinking in terms of,

01:15:03  
well, on the one hand,

01:15:05  
you might have an issue

01:15:06  
with the arbitral claws because

01:15:09  
consent was, was, was limited

01:15:12  
to contract a Tetra, but

01:15:15  
all the other hand, you

01:15:17  
might know, at the end

01:15:18  
of the day, have issues

01:15:19  
with enforcing, the award is



01:15:21

public policy was, simply not

01:15:23

at all, taking into account,

01:15:24

but we want some of

01:15:27

it now. So I would

01:15:30

like to stop at least

01:15:32

Mike Mike. I'd welcome the

01:15:35

Elgin. If you have any

01:15:37

question, concerning any of the

01:15:39

public that would touch please.

01:15:41

This is the time. Do

01:15:45

I need and you have

01:15:48

a microphone app. Thank you

01:15:54

on the distinction between interpretation



01:15:58  
and application on the u.s.

01:16:01  
been careful. Not to touch

01:16:03  
on questions. About the gation

01:16:05  
with what I have perceived

01:16:06  
from the practice of the

01:16:08  
you as I please have

01:16:10  
Isabelle, the Columbian arbitration sees

01:16:14  
that you do prevent yourself

01:16:17  
from dealing with application questions

01:16:19  
but you closely monitor what's

01:16:22  
happening in the arbitration and

01:16:24  
one can see and evolution

01:16:26  
of the things your address.



01:16:29

In the first written statement

01:16:35

and sometimes somebody that you

01:16:38

asked to appear again in

01:16:39

the hearing, so good. You

01:16:42

in fact, that's what the

01:16:46

interest of the parties in

01:16:47

the truck. Don't seem to

01:16:48

be progressively in order to

01:16:51

determine which Aspects of the

01:16:57

23rd Edition questions that do

01:16:59

you want to address or

01:17:00

is this something that you

01:17:01

independent from the interested parties?



01:17:05

I would prioritize. Yeah, I

01:17:10

think it's rather independent of

01:17:13

the, of the position of

01:17:14

the parties. I mean, as

01:17:16

you know, we do communicate

01:17:17

routinely with our treaty partners

01:17:19

and also claimed his household

01:17:20

to talk about, but they're

01:17:22

legal positions, are in the

01:17:23

cases. And you know, how

01:17:24

often do inform us of

01:17:25

what the critical disagreements are

01:17:27

on on legal interpretation issue.



01:17:29

So, we'll take into account

01:17:30

for sure. But ultimately, I

01:17:35

think it's not surprising that

01:17:36

states, you know, conducts investment

01:17:38

policy, you know, based on

01:17:40

you know what their, you

01:17:42

know, foreign policy posture is

01:17:44

might be at any given

01:17:45

time in those things involve

01:17:47

and they change the time

01:17:48

and you know it's never

01:17:49

static and so it's definitely

01:17:51

something dead that becomes a



01:17:53  
communication with the parties. It

01:17:55  
never becomes a matter of

01:17:57  
application. As you know it's

01:17:59  
always really have narrowed in

01:18:01  
on what you know how

01:18:03  
the treaty needs to be

01:18:05  
interpreted so that it's So

01:18:07  
that it's accurate and that

01:18:08  
particular instance and we do

01:18:10  
that over and over again,

01:18:10  
so that there is consistency

01:18:13  
and in that way. But

01:18:16  
again the Assassin is very



01:18:18

much into an inn that

01:18:19

we do internalize it and

01:18:22

and we communicate, as I

01:18:23

mentioned with our own policy

01:18:26

girls with and state department

01:18:28

and then Beyonce Department as

01:18:29

well. So, Thank you, Alberto.

01:18:32

I I will. Because this

01:18:39

is no, this is we

01:18:41

have the good thing about

01:18:42

this is that we have

01:18:43

about 60 people in this

01:18:46

conference. I know that you're



01:18:47  
not cc29 here and and

01:18:49  
and 30 + online is

01:18:52  
a question online. And we

01:18:54  
did promise them that they're

01:18:56  
part of the conference show.

01:18:57  
The question here is what?

01:18:59  
And, and the answer must

01:19:01  
be like at 2 minutes.

01:19:03  
Maximum 2 minutes answer at

01:19:05  
what kind of objections to

01:19:07  
NDP Solutions may come from

01:19:10  
Siberia. I mean, I can

01:19:14  
take that quickly, I think



01:19:16

it has a lot of

01:19:17

the objections of disgust from

01:19:21

the claimant perspective, a few

01:19:23

others. I seen they all

01:19:27

go back. I think to

01:19:28

the the main overarching requirement

01:19:31

of relevance and is this

01:19:33

something the tribunal must decide

01:19:35

preparing for the panel, I

01:19:38

noticed a few award discussions

01:19:41

of third-party submissions where the

01:19:43

tribunal is either Quickly, he

01:19:48

mentions the fact that there



01:19:49  
had been submissions from from

01:19:51  
third parties but didn't really

01:19:53  
apply them to the substance

01:19:55  
of the award or explicitly

01:19:57  
stated that they were not

01:19:58  
very helpful because we straight

01:20:01  
from from the issues. I

01:20:03  
think it's not surprising when

01:20:05  
tribunals reacting that way. If

01:20:07  
the submissions are more like

01:20:09  
ships passing through the night

01:20:10  
and not really engaging with

01:20:12  
with the actual issue. So



01:20:13

I think scope relevance whether

01:20:17

it's dealing with a factual

01:20:18

or legal issue and under

01:20:21

the new rules, which Jennifer

01:20:23

mentioned also look into whether

01:20:28

the parties are receiving assistance

01:20:31

from eating party. Whether there's

01:20:34

any affiliations with, I think

01:20:36

there's a recognition to of

01:20:38

trying to determine what we

01:20:41

talkin about a neutral submission

01:20:42

or or something else. Will

01:20:45

a question? Yes, indeed, please



01:20:48

look into the the rules,

01:20:49

but also look into the

01:20:51

requirements to submit to. I

01:20:53

m. So one question Just

01:21:04

give us a second thought.

01:21:05

I'd give you the microphone

01:21:07

so that your your hood

01:21:08

in Thailand and hair done,

01:21:14

I would not ask that

01:21:15

question. I have just been

01:21:17

a brief one pony touched

01:21:19

on it in terms of

01:21:20

the invocation of amateur career



01:21:21

on non disputing party. Is

01:21:24

my understanding that if we

01:21:25

are if there's a sort

01:21:27

of a over traditional understanding

01:21:30

of a created being a

01:21:32

standalone, the cat has them

01:21:33

although it could be in

01:21:36

directly considered as an ally

01:21:38

of one of the party

01:21:39

at, in essence of the

01:21:40

independent mcalexander can be involved,

01:21:42

either, but party or tribunal's.

01:21:45

Have you seen any instances



01:21:46

that? I'm could create an

01:21:48

extra bluenose independently indoors and

01:21:51

Korea because it is my

01:21:52

understanding that exit arbitration rules

01:21:54

under the rule of 37.

01:21:56

The tribunal's recognized at, you

01:21:59

know, Decree as an independent

01:22:00

contributions and he was a

01:22:02

case of Argentina. Verse says

01:22:04

this to his kennel that

01:22:06

that that there was a

01:22:07

sort of a contention, whether

01:22:08

or not a true blue



01:22:09

nose can do it independently

01:22:10

in order to understand some

01:22:11

of the scientific no data

01:22:13

there, Sorry is the question.

01:22:18

Whether tribunals have the power

01:22:20

to catch? I did as

01:22:29

a mechanism that provide different

01:22:31

perspective for tribunal's, why not

01:22:33

tribunal's, do it independently in

01:22:35

order to strike a balance

01:22:36

between efficiency or transparency, that's

01:22:40

interesting, I don't know under

01:22:44

Under the exit rules, whether



01:22:46  
there's an explosive mechanism for

01:22:48  
that. It, it makes me

01:22:49  
think of the example of

01:22:50  
experts, which I know is

01:22:54  
a common mechanism, and it

01:22:56  
might be that via an

01:23:00  
expert or beetles can invite

01:23:01  
submissions or or elucidate certain

01:23:04  
issues and and it obviously

01:23:05  
provides the parties with enough

01:23:07  
opportunity to comment as well.

01:23:08  
So it might be a

01:23:10  
similar mechanism. Maybe not exactly



01:23:11  
through the Amicus Channel perhaps

01:23:15  
with similar results. I just

01:23:19  
added that it from my

01:23:20  
experience to, this is something

01:23:22  
that often comes up and,

01:23:23  
you know very early on

01:23:24  
in the proceedings as such

01:23:26  
as I'm done, dropping a

01:23:28  
procedural order. So usually it's

01:23:29  
it's stipulated in procedure or

01:23:31  
the weather in front of

01:23:33  
the timing for some, for

01:23:34  
these type of submission. So



01:23:35

I think that's part of

01:23:36

the point where this would

01:23:36

be negotiated between the parties

01:23:38

in, the tribunal will come

01:23:39

in and waiting. On that

01:23:40

to me, I would really

01:23:44

like to continue and we

01:23:47

owe for those that know

01:23:48

me, I would really like

01:23:48

to continue because there's there's

01:23:50

there's so many questions like

01:23:52

that that are open here

01:23:54

and we have an incredible



01:23:55

on this bench but we

01:24:00

can. So because there's another

01:24:03

panel and I would like

01:24:06

everyone to give a round

01:24:08

of applause to our experts

01:24:11

How do you say? Thank

01:24:16

you. And I apologize for

01:24:18

those questions that were not

01:24:19

raised, but but I know

01:24:22

that my next next motor,

01:24:25

it will kill me if

01:24:26

I continue. Well, good morning,

00:00:12

everyone, and welcome back to



00:00:15  
day 5 of Washington arbitration

00:00:19  
week. We're here again at

00:00:23  
the Washington offices of Baker,

00:00:26  
Botts and just wanted to

00:00:28  
thank Baker Botts for their

00:00:31  
hospitality and for helping us

00:00:34  
organize these great sessions. This

00:00:37  
morning, we just came from

00:00:41  
an excellent session talkin about

00:00:44  
government Council and ists cases

00:00:48  
and had a really good

00:00:51  
group here for a Friday

00:00:52  
morning and I think you're



00:00:53  
over 50 folks were online.

00:00:55  
So I think we're off

00:00:57  
to a great start for

00:00:58  
the final day and we

00:00:59  
have even more folks here

00:01:00  
in the room and DC

00:01:01  
then our first session. So

00:01:04  
great to have you all

00:01:05  
here. Thank you for attending.

00:01:06  
We have a really interesting

00:01:09  
session, Right now and let

00:01:13  
me introduce it is titled.

00:01:17  
Non disputing parties, submissions Amicus



00:01:20

curiae and challenges of non

00:01:23

disputing parties to access confidential

00:01:25

information. And we have a

00:01:28

very able moderator, a new

00:01:30

timer. First time he's ever

00:01:32

done this, not very experienced

00:01:35

but you know, we're going

00:01:35

to give him a chance.

00:01:36

You have dr. Jose Antonio

00:01:39

Rivas is my colleague and

00:01:42

co-chair of Washington, arbitration week.

00:01:45

He has all sorts of

00:01:49

notable credentials as well as



00:01:51

being the co-chair of the

00:01:53

conference. He is the managing

00:01:56

partner of his law firm

00:01:58

strategy here in Washington DC

00:02:00

and Bogota, he is an

00:02:05

adjunct professor at Georgetown University

00:02:08

Law, Center, just down the

00:02:09

block from here. He is

00:02:12

a former counsel at the

00:02:14

international center for the settlement

00:02:16

of investment disputes here in

00:02:18

Washington exit, as we all

00:02:20

know, and is very experienced



00:02:22  
as both counsel and arbitrator

00:02:25  
now, and he has worked

00:02:30  
in the is d, s

00:02:31  
space for over 15 years

00:02:36  
old or plus. I guess

00:02:39  
I should also note that

00:02:40  
he was a negotiator for

00:02:42  
the Colombian government as well.

00:02:43  
You fit that in somewhere

00:02:46  
in that the biography. So,

00:02:49  
you know, we we have

00:02:51  
the extraordinary honor of Heaven

00:02:54  
Was antoniou. Leave this panel



00:02:56

and a fantastic group of

00:02:58

us then. After microphone off

00:03:02

to her off to Jose

00:03:03

Antonio and we'll get going

00:03:05

Thank you, Ian and and

00:03:08

just making sure that everyone

00:03:11

here here's me and and

00:03:12

they're also online. If somebody

00:03:14

doesn't hear online please let

00:03:17

let us know. Thank you

00:03:19

and thank you for your

00:03:21

for no cord sharing this

00:03:23

know for now five years



00:03:25

your your support has been

00:03:28

incredible and I would like

00:03:30

to thank of all the

00:03:32

sponsors and only attendees. And

00:03:35

we have a full room.

00:03:36

We have people from from

00:03:39

from Switzerland and Nino coming

00:03:42

from Peru coming from various

00:03:44

countries and and and the

00:03:46

US it is so it

00:03:47

is pretty amazing to to

00:03:49

see how the father is

00:03:51

here. I know that the



00:03:52

some some folks deep prefer

00:03:54

the chilly weather of Washington,

00:03:57

d.c. to the sunny weather

00:03:59

of Miami. So thank you

00:04:01

for, for loving us and

00:04:03

that being said, We have

00:04:07

a wonderful panel related to

00:04:10

none disputing a party submissions

00:04:15

and and and also Amicus

00:04:18

curiae submissions as well as

00:04:21

the issue of transparency that

00:04:24

that is how the the

00:04:26

title is is a nice



00:04:29  
frame and before going into

00:04:32  
the introductions of of our

00:04:34  
incredible panelist, I would like

00:04:37  
to say a few words

00:04:38  
of how this this not,

00:04:40  
this party should mention title,

00:04:42  
came about. It was a

00:04:43  
name from a conversation that

00:04:46  
I had with, with David,

00:04:47  
from the state department. And,

00:04:50  
and the also thinking about

00:04:52  
the tremendous experience that the

00:04:55  
US has in submitting those



00:04:58

not displaying party submissions, but

00:05:00

other states as well that

00:05:01

like Canada and other states.

00:05:03

Also in Latin America, mainly,

00:05:05

mainly On the on the

00:05:07

basis of but not the

00:05:09

like treaties which allow for

00:05:12

non disputing parties submissions so

00:05:15

that has become a practice

00:05:16

and it has become a

00:05:17

way to not necessarily apply

00:05:21

the law to the facts

00:05:23

with pastry. Determine the law



00:05:25

goes the at the jurisdictional

00:05:29

but also Auntie level and

00:05:33

Anna procedural level. So it's

00:05:35

a, it's a wealth of

00:05:36

information I need to do.

00:05:37

And there's also an interest

00:05:40

by the state party's to

00:05:43

namely oversee. What is being

00:05:47

interpreted by and how, how

00:05:48

will the, the tribunals are

00:05:50

applying the trees that they

00:05:51

made? So that that's one.

00:05:54

But then you have the



00:05:55

question of what about those

00:05:56

trees that don't have a

00:05:59

provision for non disputing parties

00:06:01

in missions, like the old

00:06:02

p. I t stand and

00:06:04

now they're saying that. at

00:06:06

any any state that is

00:06:08

a party to an investment

00:06:10

treaty and and this is

00:06:12

a general definition both include

00:06:14

bilateral investment treaties as well

00:06:16

as a Chapters of Investments

00:06:21

for 403, traded for chapters,



00:06:24

on investment of free, trade

00:06:25

agreements. What, what? About those

00:06:28

know, those parties that are

00:06:31

members to be items that

00:06:32

don't have a provision on,

00:06:34

how to submit a not

00:06:36

disputing parties in Mission and

00:06:37

that be done. Should the

00:06:39

tribunal hear the roar septum

00:06:44

and a ears from Old

00:06:46

w20 Law. A set of

00:06:48

requirements for Amicus curiae brief

00:06:53

submission. An end end up



00:06:58

with that basic question of,

00:07:00

why are the rules for

00:07:01

those submissions? Are they entitle

00:07:03

or not Etc. And then

00:07:05

submit, and then comes the

00:07:07

question of of confidentiality. How

00:07:11

would you address those matches

00:07:14

that are confidential some Treaties

00:07:17

do not provide transparency rules

00:07:18

as as as enough to

00:07:21

like type of trees so

00:07:24

they should not be allowed

00:07:25

or not allowed to have



00:07:27

been in cases and not

00:07:30

not so recently ago, where

00:07:32

were there? What the basis

00:07:35

of the tree of the

00:07:36

district was? Abolishing the Centre.

00:07:39

And the question came about

00:07:42

how, how? And if Should

00:07:47

the non non non State

00:07:50

just being party, be able

00:07:52

to submit those. So all

00:07:53

those questions I didn't respond

00:07:58

for me because I won't

00:07:59

have to answer those questions.



00:08:00

They will answer that. So

00:08:03

I'm in addition to that,

00:08:07

we are also very privileged

00:08:09

because within our kind of

00:08:12

this we have also the

00:08:13

views of a practitioner's who

00:08:16

have also done this at

00:08:18

least the the the third-party

00:08:20

submissions from an international commercial

00:08:23

arbitration. So we'll play our

00:08:25

a little bit with that.

00:08:25

So would that end with

00:08:28

many promises? Let me introduce



00:08:30

her or wonderful panelist So

00:08:34

I will introduce him in

00:08:36

in order of appearance, Mac,

00:08:38

mood Abu SL is the

00:08:42

managing partner of what you.

00:08:44

And I believe that that

00:08:47

might be related to what

00:08:49

are the origins of that

00:08:50

firm about Washington arbitration week

00:08:58

is that we are a

00:08:59

community and the, and the

00:09:02

wish I was just just

00:09:04

put the flag in town



00:09:06

and we're welcoming a new

00:09:08

firm as we would welcome

00:09:09

any other firm to our

00:09:11

arbitration scene. So he we

00:09:14

are, he is a Harvard

00:09:16

graduate and a solicitor of

00:09:18

the Supreme Court of Victoria

00:09:19

Australia by the ADR Institute

00:09:24

of Canada and registered with

00:09:26

the difc court and a

00:09:31

d g m. Of United

00:09:34

Emirates Emirates. He has acted

00:09:38

in commercial of attrition across



00:09:40

various Musicians, and Industry, and

00:09:44

the Council on investor-state arbitration

00:09:47

under various treaties against States.

00:09:50

So, we have at least

00:09:51

Commercial International nutrition and Industrial

00:09:55

arbitration. From the Investor's perspective,

00:09:57

is an attorney adviser with

00:10:02

the office of the international

00:10:03

thing and investment disputes of

00:10:07

the US state department. He

00:10:09

represent the United States before

00:10:11

International tribunals including the year

00:10:13

and US end tribunal the



00:10:16

international court of justice and

00:10:18

before investor-state arbitration tribunals and

00:10:21

advises the state department on

00:10:24

International legal issues, arising in

00:10:26

the areas of international arbitration

00:10:27

claim, settlement and treaty law

00:10:31

and negotiations at the state

00:10:36

department and altering other agencies

00:10:38

in Canada in terms of

00:10:40

3D word. International law is

00:10:43

not 22. Some nerds like

00:10:45

me is like Disney World,

00:10:46

I mean, if it is



00:10:47  
it is it must be

00:10:50  
fun. Jennifer. Howard McCandless is

00:10:59  
an International District partner at

00:11:01  
Baker Botts. And she has

00:11:02  
been a staunch supporter of

00:11:04  
Washington arbitration week in ever

00:11:07  
since her past life. And

00:11:11  
she, of course, has is

00:11:12  
a Washington in with nearly

00:11:14  
25 years of experience serving

00:11:16  
as legal counsel in complex

00:11:18  
Istation, for National immigration cases,

00:11:20  
focusing in particular, on in



00:11:23

Disturbed station. But she has

00:11:24

also done International commercial arbitration.

00:11:26

She has successfully represented both

00:11:29

private-sector, investors and starving and

00:11:32

international patient at various rules

00:11:36

are both in English and

00:11:37

Spanish and she has no

00:11:41

that works in cases. And

00:11:44

I am of of of

00:11:45

sectors including a TriCity, mining

00:11:48

oil and gas infrastructure real

00:11:50

estate development and financial services

00:11:53

pretty much around around the



00:11:56

globe. And last but not

00:12:00

least, Pedro Ramirez is a

00:12:02

senior associate Expressions. He has

00:12:05

acted as counseling best investment

00:12:08

treaty and Commercial arbitration under

00:12:10

the ocean. Is the exit

00:12:12

and other major institutional rules

00:12:15

and across a variety of

00:12:16

sectors, including oil and gas.

00:12:18

Renewable energy for the Niagara

00:12:20

culture. Telecommunications airport services and

00:12:23

financial services has represented in

00:12:27

several claims against various Latin



00:12:30

American States, including Bolivia Chile,

00:12:32

Colombia and Venezuela and how

00:12:35

to make sure your promises,

00:12:37

we will start with the

00:12:39

backboard first. In the first

00:12:42

of all, I would like

00:12:44

to ask my list of

00:12:47

international commercial arbitration if you

00:12:49

could please identify how our

00:12:54

third-party submissions made. And, and,

00:12:56

and the and in general

00:12:58

terms, how is the process?

00:13:02

Thank you, Jose Antonio, and



00:13:05

thank you for the kind,

00:13:05

welcome, because there is not

00:13:17

a commercial arbitration as much

00:13:21

as theirs. And that's one

00:13:23

of the reasons for the

00:13:25

Russell reasons to start, adopting

00:13:28

the practice in basic and

00:13:35

basic principle of the quartz

00:13:38

is the most common, youth

00:13:41

largest, one of their things.

00:13:43

Courts are looking at that,

00:13:45

have a public interest. And

00:13:48

so, someone that does not



00:13:52  
transpose to commercial arbitration because

00:13:55  
it is a private dispute

00:13:57  
is usually involved. In third

00:14:02  
place with machines. Have their

00:14:03  
own complications because of the

00:14:06  
complexities with arbitration. Agreements granting

00:14:10  
jurisdiction to the tribunal competence

00:14:12  
competence. And then all the

00:14:14  
problems that go from there

00:14:15  
and do enforcement and set

00:14:17  
aside arbitration Awards, love you,

00:14:20  
most particularly those working or

00:14:22  
Arbiter doesn't General working on



00:14:24

an international context of bees

00:14:27

are usually very careful because

00:14:30

they don't know whether arbitration

00:14:31

award is going to be

00:14:32

in the forest. And no

00:14:33

a lot of countries are

00:14:35

a lot of jurisdictions that

00:14:37

I reserved on the proper

00:14:40

party. Celebration or the tribunal

00:14:43

has jurisdiction Salon to open

00:14:46

up a can of worms

00:14:47

and say, well maybe they're

00:14:49

not disputing parties. Never signed



00:14:51  
on Christian agreement. They can

00:14:52  
they can be part of

00:14:53  
this process. That's something a

00:14:55  
tribunal would be very reserved

00:14:57  
with. No, I vent because

00:15:00  
Joey and we spend so

00:15:10  
much time, arguing on what

00:15:15  
an authority considers is right

00:15:18  
or wrong or what a

00:15:20  
lot of construction is, a

00:15:23  
lot of the times we're

00:15:25  
looking at delays for issuing

00:15:28  
permits ride, or delays in



00:15:30  
issuing, completion certificates. And we

00:15:36  
argue or the floor beside,

00:15:38  
we are getting better position

00:15:40  
on time or wasn't that

00:15:43  
we bring in our legal

00:15:44  
experts to advise on what

00:15:45  
the regulations say and I'm

00:15:47  
bringing our expert witnesses to

00:15:49  
say, how old is a

00:15:50  
lot of that time and

00:15:52  
cost spend on hypothesizing. Whether

00:15:57  
the story that issued the

00:15:59  
particular government did so in



00:16:02

time and it was like

00:16:03

it was we can just

00:16:04

ask the authority is the

00:16:09

fuse box in the horse.

00:16:10

The closest isn't available. Is

00:16:13

the world going to live

00:16:14

for and what they can

00:16:17

do outside the rules? So

00:16:21

did the process is useful

00:16:24

and and the litigation and

00:16:27

then there's a story behind

00:16:29

it and there was a

00:16:30

reason why it's utilized book



00:16:32

also be used for in

00:16:33

the pros of commercial. And

00:16:35

now there has been, there

00:16:39

has been more welcoming environment

00:16:41

for these sorts of processes

00:16:43

over the past years. There

00:16:46

have been tons in private

00:16:47

commercial arbitration to do if

00:16:49

I like climate arbitration, Sports

00:16:53

arbitration. And here in the

00:16:55

United States are rising religious,

00:16:57

arbitration arbitration, according to rules

00:16:59

of a lot of those



00:17:02

arbitration matters, have a sense

00:17:06

of public interest. Hook me

00:17:09

up. I'm going, I'm speaking

00:17:10

to her over the past

00:17:15

few years. There have there

00:17:16

has been increased interest in

00:17:17

and getting public opinion and

00:17:19

some of these are private

00:17:20

arbitration medicine because they do

00:17:22

if I called and recently,

00:17:24

in March of this year,

00:17:26

of the German arbitration, Provide

00:17:31

us the pimento rules for



00:17:33  
involvement of non disputing parties

00:17:35  
and their grounds, for being

00:17:41  
able to put that in,

00:17:42  
there are matters that may

00:17:51  
affect their party this summer.

00:17:54  
So, procedural rules of civil

00:17:56  
procedure rules. So we can

00:17:59  
transfer into the arbitration process

00:18:03  
to the point of reference

00:18:07  
remains clear. If we're talking

00:18:10  
about to make a screw

00:18:11  
or talk about, I think

00:18:13  
that may have a public



00:18:14

interest behind them and so

00:18:16

usually and if there's if

00:18:20

those of Court procedure taking

00:18:21

place relating to arbitration and

00:18:24

enforcement are satisfied, then you

00:18:26

may have an amicus curiae

00:18:27

submission from ICC or The

00:18:31

Lawyers Association action. If they

00:18:37

want to provide the feedback

00:18:40

of arbitration, please in terms

00:18:44

of I know the spelling

00:18:45

for your submissions that is

00:18:48

usually where it is supply



00:18:51

chain and someone in that

00:18:54

supply chain will face the

00:18:56

ramifications of this particular war

00:18:58

and they want to have

00:18:59

their say Adopt the former

00:19:04

I make a story with

00:19:06

their there's been War interest

00:19:08

as private as far as

00:19:10

commercial arbitration starts touching on

00:19:12

a public-interest Meadows, like climate

00:19:15

or religion or sports are

00:19:25

becoming more welcome. As jurisdictions

00:19:30

fight online, arbitration process more



00:19:32  
with their internal civil procedure,

00:19:34  
and I'm not sure if

00:19:36  
that were also reflected in

00:19:38  
common law jurisdictions. But at

00:19:39  
least the civil procedure, the

00:19:41  
civil law countries do have

00:19:44  
a friend of trying to

00:19:45  
ensure a parallel approaching both

00:19:49  
arbitration and litigation Caesars in

00:19:51  
the country's. Thank you, Mike

00:19:54  
moh. I'll just put questions

00:19:58  
out there in the air

00:19:59  
now, but before you to



00:20:02

think about it, before in

00:20:05

a welcoming also Jennifer to,

00:20:06

not this time, the questions

00:20:08

that I have were that

00:20:09

that that are brought to

00:20:11

my mind from listening to

00:20:14

you are, is, is the

00:20:17

black, or the traditional lack

00:20:20

of openness to Amicus curiae

00:20:22

or other parties and missions

00:20:24

within International commercial arbitration. Jutsu

00:20:28

the fact that we are

00:20:29

in a normally contract contract



00:20:33

between contract particle Contracting parties

00:20:36

setting, where confidentiality plays a

00:20:40

huge role. So that's that's

00:20:42

one question in the are

00:20:44

there? And the other question

00:20:46

is Is this somehow changing?

00:20:50

According to some of the

00:20:51

rules of arbitration of arbitration

00:20:56

Centre is, is there, an

00:20:57

is there, an opening for

00:21:00

certain interest groups to come

00:21:02

in matters of public interest

00:21:05

public policy environmental issues? And



00:21:08

I, I know that, that,

00:21:10

that might be a whole

00:21:12

thing for a different panel,

00:21:13

but but I just want

00:21:15

to put out there for

00:21:16

your ear, your thoughts on

00:21:17

Jennifer and he coming. Or

00:21:21

do I have other questions?

00:21:22

I had a question which

00:21:25

is more like it in

00:21:27

your experience. Have you been

00:21:28

in situations in? Which is

00:21:30

an amicus or third-party submission



00:21:33  
have been presented and if

00:21:35  
so how has that worked

00:21:36  
out with? In that case,

00:21:38  
if you have been, if

00:21:39  
you represented a party in

00:21:40  
the preceding number Which will

00:21:46  
see it happen often, but

00:21:50  
it's not as straightforward as

00:21:52  
we talked about it, then

00:21:54  
if you want to go,

00:21:57  
do you want to get

00:21:58  
from point A to point

00:21:59  
B? And then, the problem



00:22:01

is that there are ways

00:22:04

to get to point B,

00:22:04

but it just called with

00:22:05

the process so much. So,

00:22:07

for example, You want to

00:22:10

get an Undisputed party? So

00:22:11

much. The other side doesn't

00:22:13

accept you want the power

00:22:15

capacity so we have to

00:22:18

resort to the point and

00:22:22

then you better get it

00:22:23

between your application proceedings and

00:22:26

domestic court because you want



00:22:28

to enforce that something to

00:22:30

get to a point where

00:22:31

to get to get the

00:22:32

point it doesn't happen. But

00:22:39

that is the problem is

00:22:40

because there are no snow

00:22:44

white spell acceptance or application

00:22:46

of rules to Dusty's issues.

00:22:48

So you can have these

00:23:00

processes, the tribunal can Resort

00:23:02

you so that they're comfortable.

00:23:08

It does happen, but Papa's

00:23:10

still comes with bosses in



00:23:11  
that sense. Southern should answer

00:23:14  
or have you become reality

00:23:25  
is given the limitations of

00:23:27  
your parole in convoluted into

00:23:42  
the world. I mean I

00:23:44  
I am I was under

00:23:45  
the impression that there were

00:23:47  
the word means to get

00:23:49  
the third party submissions or

00:23:52  
parties that proved an interest

00:23:54  
into it. And there are

00:23:55  
processes within with International. Commercial

00:23:58  
arbitration perhaps under the ICC



00:24:00

rules Etc. But not not

00:24:02

I'm not entirely sure that

00:24:04

your interest groups that that

00:24:07

might not be related to

00:24:08

the party, but this is

00:24:10

an area where we're at

00:24:12

work. Surprising there might be

00:24:14

something to learn buy International

00:24:18

commercial arbitration from investor-state arbitration.

00:24:20

So let's let's move into

00:24:22

investor arbitration and and let

00:24:24

us know if you could

00:24:29

describe the process to prepare



00:24:33

and on disputing parties in

00:24:34

Mission know, how does it

00:24:36

work internally by Council? And

00:24:39

that how does the interagency

00:24:40

process works? Because of course

00:24:43

council is, is one, but,

00:24:47

but, but they're not the

00:24:48

whole state even though they

00:24:50

were presented. Right. Well, thanks.

00:24:54

Thanks to you also, and,

00:24:56

and the organizers of Washington

00:24:59

arbitration, wait, for the invitation

00:25:00

and salsa Baker Botts for



00:25:02  
hosting and also appearing today

00:25:07  
in my personal capacities. So,

00:25:08  
my remarks don't necessarily represent

00:25:10  
the views of the US

00:25:11  
government. It's all I'll speak

00:25:15  
to the practice and and,

00:25:16  
and also some the process

00:25:20  
that that we need to

00:25:21  
undergo for filing. One of

00:25:22  
these, not disputing parties, submissions

00:25:24  
and intervention, as a non

00:25:27  
disputing parties has been a

00:25:29  
key part of us, International



00:25:31

Patrician practice, most investment agreements

00:25:34

and investment chapters in Free

00:25:37

Trade Agreement. Search a promotion

00:25:39

agreement contained a provision to

00:25:41

allow treaty Partners to better

00:25:43

not respondents in the given

00:25:44

case to provide their views.

00:25:46

Respecting the interpretation of certain

00:25:48

provisions. And of course as

00:25:50

you know and i s

00:25:50

d s often critical issues,

00:25:52

revolve around matters of interpretation

00:25:54

being that treaties are negotiated



00:25:59

agreements between states. We feel

00:26:01

that it is important for

00:26:02

driving us to hear. I'm

00:26:04

not disputing parties, respecting interpretations

00:26:08

of their treaties. The first

00:26:11

MVP that the state department

00:26:13

filed in person and I'll

00:26:14

do the state department does

00:26:15

represent the nation in investment

00:26:18

treaty cases, and that also

00:26:19

includes interventions of the party

00:26:22

into the first, not disputing

00:26:24

parties Mission Apartments in 1999,



00:26:27  
metal, clad be Mexico. Arbitration

00:26:30  
this was a case. Under

00:26:32  
the NASA relating to an

00:26:34  
investment in a landfill property

00:26:36  
and the United States provided

00:26:39  
his views, respecting and directs

00:26:41  
its preparation under customary International

00:26:42  
international law, as well as

00:26:45  
matters of the following. Case.

00:26:49  
United States has provided submissions

00:26:51  
and under numerous other treaties

00:26:53  
including the Central America, Dominican

00:26:57  
Republic Free Trade Agreement or



00:26:59  
cast. If you are also

00:27:01  
under Trade promotion agreements with

00:27:03  
Peru Colombia, In Panama. as

00:27:08  
far as a free trade,

00:27:10  
agreements with Korea, Morocco in

00:27:11  
Daman India, ideas with your

00:27:13  
guy and Rwanda and this

00:27:17  
year we father 109 dispute

00:27:19  
Mission and that does not

00:27:20  
include oral submissions that we

00:27:22  
been making recently in hearings

00:27:24  
and since some of the

00:27:25  
cases that come up under



00:27:26

A Treatise, that also does

00:27:28

not include diplomatic notes that

00:27:30

we prepare in our office,

00:27:31

which hospice service alert purpose

00:27:33

of providing our interpretation of

00:27:35

tree permissions, There's also related

00:27:38

filings outside of arbitration. And

00:27:40

one example is the cargo

00:27:41

be Mexico matter in which

00:27:44

United States express its views

00:27:45

on the proper interpretation of

00:27:48

the NASA in Canadian courts

00:27:50

and beyond that we mix



00:27:52

emissions in ad hoc annulment,

00:27:54

committee cases and one example

00:27:57

is a Siemens, the Argentina

00:27:58

case, and that was regarding

00:27:59

the interpretation of the excerpt.

00:28:01

What is a party? But

00:28:04

of course, it's not one

00:28:05

of our investment treaties but

00:28:06

nevertheless. So we do take

00:28:09

these filings seriously and it's

00:28:12

something that we we do

00:28:13

take the opportunity to to

00:28:15

comment on the interpretation of



00:28:17

A Treatise. 11 possible for

00:28:20

the process. For getting one

00:28:22

of these files that involves

00:28:23

an interagency review process and

00:28:26

it can be quite expensive.

00:28:28

Not necessarily lengthy, but it

00:28:30

just depends on the issues.

00:28:31

But it'll work begins with

00:28:34

my office and it all

00:28:35

stood in else. Dude, is

00:28:36

the office of Internet. International

00:28:38

Investment disputes within the legal

00:28:41

department of the state department.



00:28:42

And we, when we routinely

00:28:47

monitor cases that come up

00:28:48

under a tree teasing. So

00:28:49

when we are aware that

00:28:50

there is a case that

00:28:51

will that will require some

00:28:56

kind of interpretation of other

00:28:59

legal issue when it treated.

00:29:00

Then we communicate with counsel

00:29:02

in the fall assessment of

00:29:04

the legal positions taken by

00:29:05

the parties. And we dropped

00:29:06

the NDP, then from there



00:29:08

goes on to other officers.

00:29:09

When the state department, it

00:29:11

goes to the offices that

00:29:14

have equities, you know, that

00:29:15

are different from ours, that

00:29:16

includes for instance, LT, who

00:29:19

are treaty expert at State,

00:29:22

another State offices, led the

00:29:26

illegal office on economic Affairs

00:29:28

and led with their client

00:29:32

EB, which is the Bureau

00:29:33

of Economic and Business Affairs.

00:29:34

Also routinely negotiate and coordinates



00:29:36

of Hugo Str. The office

00:29:38

of the US trade representative

00:29:39

for negotiating. These these agreements

00:29:42

when that's done, then it

00:29:45

goes to our front office

00:29:46

to ensure that there are

00:29:49

no overarching concern for the

00:29:50

state department. So that's only

00:29:52

the clearance process would have

00:29:53

stayed. Then it leaves date

00:29:54

and it goes to the

00:29:56

interagency group group of agencies

00:30:00

that have interest in Heist



00:30:01

and that really berries by

00:30:04

matter, depending on the subject

00:30:06

matter, it includes the Department

00:30:08

of Commerce treasury ustr for

00:30:11

Economic and Business matters. And

00:30:14

let me get, let me

00:30:15

hear, Let Me interrupt you

00:30:17

and not not to stop

00:30:18

you but to ask you

00:30:19

more punctual question. So you

00:30:22

have a first draft of

00:30:23

the, of the S&P, right?

00:30:27

So you think you know



00:30:28

where has all the should

00:30:32

have you? You I, I

00:30:34

might have that. You have

00:30:34

to circulate it among his

00:30:37

agency, or this other agencies

00:30:41

in a rosapetra. How much

00:30:44

time in advance. I'm just

00:30:45

trying to figure out in

00:30:47

Practical matters. If it's I

00:30:50

mean, there's there's always, there's

00:30:52

no reason case. So ultimately,

00:30:53

how much timing Advance. Do

00:30:55

you need to do this?



00:30:57

Really does. Barry get to

00:31:00

case? It could be something

00:31:02

that could take a matter

00:31:02

of days. You could be

00:31:03

some kind of takes matter

00:31:04

of weeks, depends on the

00:31:06

issue, whether there's issues of

00:31:07

interpretation that are novel, and

00:31:09

that hasn't been that we

00:31:10

haven't really, you know, of

00:31:11

hind on previously. Typically, you

00:31:14

know, there are many issues

00:31:16

covered in our ndp's that



00:31:17

we routinely, you know, Pine

00:31:20

on. And so, that's something

00:31:21

that kind of government. Why'd,

00:31:22

you know, a lot of

00:31:23

these different agencies are familiar

00:31:25

with these issues on these

00:31:26

topics. And so it doesn't

00:31:27

really require a heavy lift

00:31:29

and those instances. But you

00:31:30

know, sometimes we do face

00:31:31

issues, of Novel interpretation under

00:31:35

the treaties. And in that

00:31:36

case, it does take a



00:31:37

little bit more time it

00:31:38

just really berries. Some other

00:31:46

typical offices that we'll get

00:31:47

our draft will be, do

00:31:48

you know, Department of Justice

00:31:50

and then also Regulatory Agencies

00:31:51

such as the Food and

00:31:53

Drug Administration FDA with the

00:31:55

Environmental Protection Agency EPA which

00:31:59

have had some of their

00:32:01

regulations, do the basis of

00:32:02

Clans in the past as

00:32:03

well. So we find particularly



00:32:06

useful part of the process.

00:32:08

It's in my experience in

00:32:11

private practice is uncommon to

00:32:13

to see to have one

00:32:16

of these submissions kind of

00:32:17

reviewed by such a large

00:32:18

group with such varied perspectives.

00:32:19

And so get into the

00:32:22

point of the Prius panel

00:32:23

about, I think Joe and

00:32:24

he was mentioning, you know,

00:32:26

the difficulty and his friend

00:32:27

kind of unity in in,



00:32:29

in government, postures and interpretations.

00:32:31

It's something that we do

00:32:32

take pride in the fact

00:32:33

that we have such a

00:32:34

carefully coordinated out of the

00:32:36

machinery for for handling, these

00:32:38

types of things. So, in

00:32:40

the end, by the way,

00:32:41

this energy interagency Also, is

00:32:43

not limited to the SDS

00:32:44

contacts. It's kind of an

00:32:45

executive branch process for developing

00:32:48

policy and legal issues and



00:32:50  
medicine for nefarious. Thank you,

00:32:54  
thank you, Alberto and one

00:32:58  
question that, that, that you

00:32:59  
may want to think about

00:33:00  
him for the next round

00:33:01  
is what are the topics

00:33:04  
that the most are most

00:33:07  
common in in that process

00:33:09  
me know, now, with with,

00:33:12  
with almost your, your your

00:33:15  
Sentry Will consent to your

00:33:16  
neighbor's Sherry and the piece.

00:33:21  
You might be able to



00:33:23  
identify talk that are occurring

00:33:26  
and the question is, what

00:33:31  
are those, what those, maybe

00:33:33  
it's a trousseau and then.

00:33:35  
That question also, am I

00:33:36  
going to everyone if you

00:33:37  
find recurring topic. But would

00:33:39  
that let me, let me

00:33:41  
ask I think, let me

00:33:47  
ask. San Pedro, if you

00:33:49  
have any comments, concerning, Alvarado's

00:33:53  
words, like, it was very

00:33:59  
interesting insight into how this



00:34:00

works from the intervening third-party

00:34:04

perspective. I'm usually on the

00:34:05

receiving end on the side

00:34:08

of of the disputing parties.

00:34:09

I do have a couple

00:34:11

of reactions. I guess, the

00:34:14

first one is to Simply

00:34:16

start framing these third-party submissions

00:34:21

into two broad buckets. I

00:34:22

think what you've described would

00:34:24

fall into one category of

00:34:26

participation where we have entities

00:34:29

seeking to comment on treating



00:34:32

interpretation and perhaps contribute to

00:34:34

creating customary international law have

00:34:37

OnPoint discussions about legal issues

00:34:41

that the Tribunal We'll have

00:34:43

to drink age with and

00:34:44

then we have the two

00:34:47

different kind of third-party intervention

00:34:50

where perhaps is an issue

00:34:53

related to the environment or

00:34:55

human rights issues related to

00:34:57

the dispute. But the mainstream

00:35:00

a bit farther from legal

00:35:04

or factual issue squarely before



00:35:06

before the tribunal and then

00:35:09

other was hearing, you mention,

00:35:10

you know, all of the

00:35:12

experience that at the office

00:35:14

has had with, with preparing

00:35:16

these types of submissions. I

00:35:17

made me think of an

00:35:19

analogous example or someone analogous

00:35:22

example. I know on the

00:35:24

SDS space that the European

00:35:27

commission has intervened in a

00:35:30

lot of arbitration settlements with

00:35:34

comments about fiction in light



00:35:38

of the ruling. And they've

00:35:41

been pretty. Participating in a

00:35:43

lot of these disputes and

00:35:45

and have not had a

00:35:47

lot of success in terms

00:35:48

of Swing tribunals on jurisdictional

00:35:51

issues. And and I'm not

00:35:52

implying that the Estates Apartments

00:35:54

contributions are not available, but

00:35:57

I wonder if there's any

00:35:57

sort of internal mechanism to

00:35:59

track the the long-term impact.

00:36:03

If you will have all



00:36:04  
of these interpretations in Independence

00:36:08  
about treaty interpretations, I might

00:36:11  
be tricky because these are

00:36:12  
things that develop over time,

00:36:13  
but I wonder if there's

00:36:14  
a way to measure the

00:36:17  
impact of the work. Skip

00:36:24  
song. I guess taking your

00:36:26  
your last question. We we

00:36:27  
routinely monitor, as I mentioned

00:36:30  
above all the cases and

00:36:31  
Rise Under A Treatise and

00:36:33  
and it's something that we



00:36:34  
certainly do keep track of.

00:36:35  
Yes, I have, you know,

00:36:37  
I'm going to a point

00:36:39  
that was made by my

00:36:39  
calling, the last panel, transparency,

00:36:41  
really is key in these

00:36:42  
situations particularly when thinking about,

00:36:45  
you know that the cases

00:36:48  
that come up and understanding

00:36:50  
Under A Treatise, you know

00:36:52  
what, what cases are out

00:36:54  
there that we need to

00:36:55  
know about. And so kind



00:36:57

of better chance of keeping

00:36:57

that transparency with our treaty

00:36:59

Partners is really critical for

00:37:00

us to try to maintain

00:37:02

that track record and if

00:37:04

and if the situation arises

00:37:06

dad being a princess of

00:37:08

one of our earlier treaties

00:37:10

which does not have one

00:37:11

of the mandatory MVP provision.

00:37:13

Then those cases it's it's

00:37:16

a matter of kind of

00:37:17

communicating with Council and arbitrators



00:37:19

to inform them of the

00:37:21

usefulness of the role of

00:37:23

an NDP in that case

00:37:24

as early on as possible.

00:37:25

But it's it's it's something

00:37:28

that we do keep track

00:37:29

of an end and we

00:37:30

do response to 22 changes

00:37:32

in our interpretations overtime, that

00:37:35

that are kind of made

00:37:37

into more modern. You are

00:37:39

not disputing parties missions with

00:37:41

something that we were very



00:37:41

reactive to to council with

00:37:52

with a tremendous experience in

00:37:55

investor with tracing representing State

00:37:57

and and, and Jennifer. I

00:38:01

would like to ask, you

00:38:02

know, from the perspective of

00:38:04

a state party, investor-state arbitration

00:38:08

base arbitration proceeding in in

00:38:11

what way my pain on.

00:38:14

Play Party submission. Be relevant

00:38:16

in determining. The meaning of

00:38:18

a particular provision of a

00:38:19

treaty have more questions, but



00:38:21

let's start with that one.

00:38:22

Thank you and thank you

00:38:31

for your work. And all

00:38:41

of this is well it's

00:38:43

a great honor to be

00:38:43

here. I'm delighted to be

00:38:44

able to speak with this

00:38:45

in the past. So my

00:39:04

responses and I'm speaking having

00:39:07

had experience representing States. I

00:39:09

was also represent investor, so

00:39:10

my comments are far more

00:39:12

generic and general, but from



00:39:14

that. I'm looking at specifically

00:39:18

not disputing parties, not disputing

00:39:21

treating party. So this is

00:39:24

like the United States but

00:39:28

they're not a party in

00:39:30

the party. Tradition Mission would

00:39:41

be from the United States.

00:39:50

Other. Party submission. That's not

00:39:53

a dynasty. Were the tribunal

00:40:04

to hear from the other

00:40:06

party. That is a non-party

00:40:09

to dispute by the same

00:40:11

party who negotiated the treaty



00:40:12  
to hear their views on

00:40:13  
the interpretation of the trees.

00:40:15  
So that the tribunal can

00:40:18  
take that into consideration but

00:40:19  
in Serie A shooting party

00:40:23  
as an interest in the

00:40:25  
outcome of the dispute, getting

00:40:28  
a non disputing party is

00:40:30  
also someone who is interpreted

00:40:32  
and negotiated the treaty to

00:40:34  
give their views can have

00:40:36  
an impact on the truck

00:40:38  
since both parties in negotiating



00:40:41  
the treaty Has no interest

00:40:52  
cuz they might, it is

00:40:54  
if it's a treaty between

00:40:55  
two countries is supposed to

00:40:57  
have to be a Caster

00:40:58  
that has multiple parties. They

00:41:03  
may have an interest, there

00:41:06  
is there investor who is

00:41:07  
not as if there were

00:41:16  
no interest but the same

00:41:17  
time you have two parties

00:41:18  
who negotiated the treaty then

00:41:21  
you get the night. I,



00:41:28

I want to go shake

00:41:30

things up a little bit.

00:41:31

Make it very practical of

00:41:34

words without disclosing any, any

00:41:36

sensitive information following comments are

00:41:42

unrelated to any ongoing arbitration

00:41:44

of which, you know, I

00:41:46

am counsel. But I've had

00:41:47

the experience of of, of

00:41:50

representing A state, which I'm

00:41:53

not representing now, in which

00:41:56

there was, there was a

00:41:59

question as to whether there



00:42:02

could be an amicus Curie

00:42:04

at work by the state,

00:42:10

the not disputing State parties

00:42:14

to the treaty and I'm

00:42:15

part of the question was,

00:42:18

was whether because the investor

00:42:24

has the same nationality of

00:42:26

that state. Whether there was

00:42:29

an underlying interest by the

00:42:34

state which is a non-party

00:42:36

to the arbitration to read

00:42:39

the provisions in in such

00:42:42

a way as to favorites



00:42:43

on National and that within

00:42:48

that is not my view

00:42:50

I must say but for

00:42:54

those who are knee or

00:42:57

not necessarily that familiar with

00:43:00

the no disputing, What is

00:43:06

reading? A state party submissions

00:43:09

in the tradition of the

00:43:11

US were or kind of

00:43:12

Raven many countries in Latin

00:43:13

America, that is not initially

00:43:16

crazy view, show, that, that

00:43:19

could be well, why would



00:43:20

you and why would you

00:43:22

ask what you want? Would

00:43:24

you open a proceeding or

00:43:26

the submission of the other

00:43:28

state in to this proceeding,

00:43:30

see if they have the

00:43:31

same nationality as the investor?

00:43:33

So I just put the

00:43:35

the question out there and

00:43:38

I need that particular case

00:43:39

RV was well then the

00:43:44

interests are not necessarily a

00:43:46

line and there's a higher



00:43:47

interest by the state to

00:43:50

Ashley interpret or weed the

00:43:53

the, the the provisions, as

00:43:54

the intended them in the

00:43:56

treaty. But that's sometimes is

00:43:58

hard to understand by some

00:44:01

who might not be in

00:44:03

in, in the tradition that

00:44:04

I'm I would like to

00:44:05

go ask Alice by the

00:44:06

one Jennifer and everyone. What

00:44:08

what are your views on

00:44:09

that question? From my perspective,



00:44:15

I think that there is

00:44:16

a tension there potentially, but

00:44:19

I think in the end

00:44:24

the state is there interest

00:44:26

is going to be more

00:44:28

that is episodic and a

00:44:30

single situation. I think a

00:44:31

state is going to be

00:44:33

more concerned with the immediate

00:44:37

case of their investors is

00:44:39

bringing the case. But the

00:44:41

state also has interests in

00:44:42

long-term over the course of



00:44:44  
time. So while that might

00:44:50  
be a short-term interest, there's

00:44:52  
also no longer interested, Yeah.

00:44:57  
So it had to be

00:44:58  
clear. We we file not

00:45:00  
as being part of submissions

00:45:01  
not to support a US

00:45:04  
investor against the foreign state

00:45:05  
or to support a responded

00:45:08  
stayed. In any case it's

00:45:09  
it's it's really a purely

00:45:11  
to provide legal interpretation, that

00:45:13  
would serve as a guidance



00:45:14  
to the tribunal. Obviously, as

00:45:16  
masters of our treaties tape,

00:45:18  
have an interest in ensuring

00:45:20  
that their treaties or at

00:45:22  
least we do that, our

00:45:23  
treaties are interpreted accurately and

00:45:26  
I understand attention that your

00:45:29  
raise and I think it's

00:45:30  
understandable and it might be

00:45:32  
thinking of you were speaking.

00:45:34  
I was thinking that the

00:45:35  
Inception of the b a

00:45:37  
t program in the United



00:45:38

States in the early 1980s,

00:45:43

written about in our articles.

00:45:46

I mean, this one of

00:45:48

the impetus is of that

00:45:51

was to support an establishment

00:45:53

of expropriation of a standard

00:45:55

of course for free. 90

00:45:56

customary international law. Clearly there

00:45:59

was an interest in ensuring

00:46:01

that there was that sufficient

00:46:03

protection for u.s. ambassadors abroad.

00:46:04

Obviously. That was in 1981.

00:46:07

So you know things have



00:46:10  
changed for many reasons. You

00:46:11  
know why we want to

00:46:12  
ensure their treaties are interpreted

00:46:14  
correctly and I want to

00:46:15  
see if one of them

00:46:15  
is contributing to a customer

00:46:18  
International log rules. But certainly

00:46:20  
the Deep the biggest game

00:46:23  
is to provide guidance to

00:46:24  
tribunals in in addressing these

00:46:27  
issues under trees. Thank you,

00:46:31  
I do. And I think

00:46:33  
without him a very spontaneously,



00:46:35

you used to provide at

00:46:37

your comment now would like

00:46:38

to go to Two bedroom

00:46:43

and asking him about some

00:46:50

of the considerations from the

00:46:52

parties perspective. Whenever a third

00:46:53

party seeks to participate in

00:46:56

an investor-state dispute, some of

00:46:59

the issues related to perhaps

00:47:01

no cars relevance confidentiality happy

00:47:07

happy to comment. So, as

00:47:11

I previewed, I'll, I'll address

00:47:13

more than the second bucket



00:47:15

of of interventions that we

00:47:17

see. I think we, we

00:47:20

can all imagine that. These

00:47:22

might be common in cases,

00:47:25

having to do with mining

00:47:26

or extractive, Industries cases. The

00:47:28

touch on policy issues. Public

00:47:31

Health, various facets of public

00:47:37

authorities, attempted to touch you.

00:47:39

Often have Oregon. Stations with

00:47:43

a with an interest in,

00:47:46

in these issues trying to

00:47:46

intervene. And I would take



00:47:49  
over all a lot of

00:47:51  
these third-party submissions are seeking

00:47:53  
to support the respondents stated

00:47:55  
position in some way. They're

00:47:57  
there. Of course exceptions but

00:47:59  
we think the vast majority

00:48:00  
favored. Favored, the respondent into

00:48:03  
from a claimant investor perspective.

00:48:05  
You often see them resisting

00:48:10  
the submission or at least

00:48:11  
try to narrow them in

00:48:12  
some way. And I think,

00:48:14  
going through the exit arbitration



00:48:17

rules framework is useful in

00:48:19

in analyzing how to address

00:48:21

these types of requests. The

00:48:25

2006 Extreme Rules layout series

00:48:28

of factors that are beetles

00:48:30

should take into account. When,

00:48:31

when evaluating these, the mission

00:48:34

first one is, will this

00:48:37

help the tribunal determine irrelevant

00:48:40

factual or legal issue? I'm

00:48:42

bringing A New Perspective will

00:48:44

or some expertise some insights.

00:48:46

And what you often see



00:48:50

in the procedural fight is

00:48:52

focusing on those two. Two

00:48:54

things is is this really

00:48:56

addressing irrelevant factual or legal

00:48:59

issue? There may be an

00:49:02

interest by Western NGO in

00:49:06

intervening illuminated particular factual point.

00:49:11

But will they contribute to

00:49:13

to sexual development when they

00:49:17

may not have access to

00:49:18

the records from the particular

00:49:20

region? Will they bring a

00:49:23

different perspective? There have been



00:49:25

several tribunal's that have held

00:49:28

that. The party's already represented

00:49:30

by experienced counsel, there's already

00:49:33

an opportunity to submit bug

00:49:36

reports and have legal expert

00:49:37

comments on the relevant issues.

00:49:41

What is being added by

00:49:44

an additional submission? There are

00:49:47

concerns about potential duplication in

00:49:49

terms of arguments and then

00:49:51

another factor of the tribunal

00:49:52

will consider is will this

00:49:54

address of matter within the



00:49:55

scope of the dispute. And

00:49:57

I think this is a

00:49:58

big one because often we

00:50:01

see third-party request bed that

00:50:06

raised human rights are environmental

00:50:07

issues which may be tangentially

00:50:10

related but I thought it

00:50:12

might be debatable, whether these

00:50:13

are really issues that are

00:50:14

squarely before the tribunal issues

00:50:16

that the tribunal has to

00:50:17

decide if it has jurisdiction

00:50:20

to decide. So is there



00:50:25

Most investors are not requesting

00:50:28

reinstatement of a canceled potentially

00:50:31

controversial project. They may be

00:50:33

requesting compensation or there may

00:50:35

be a discussion about the

00:50:36

legality of particular State measures

00:50:38

will be submissions. Really address

00:50:42

matters within within the scope

00:50:44

of another big factor is

00:50:47

whether the third party has

00:50:49

a significant interest in the

00:50:51

case. If threshold is too

00:50:56

low, then you can see



00:50:57

a scenario in which most

00:51:00

institutions with a with an

00:51:02

academic or policy interest could

00:51:04

intervene, in a lot of

00:51:05

these cases at the best

00:51:07

excuses to touch on on

00:51:09

public interest issues, pretty regularly.

00:51:11

And there's also a mechanism

00:51:15

of experts in arbitration. I

00:51:17

think if, if a particular

00:51:19

NGO does have expertise on

00:51:21

an issue, then there's a

00:51:23

possibility of requesting, an expert



00:51:26

report and and entering evidence

00:51:28

through through the regular proceeding

00:51:30

evidence that can be tested

00:51:31

your cross-examination. And then the

00:51:35

overarching Consideration to tribunals will

00:51:41

will will way is whether

00:51:44

the submission will just run

00:51:46

up to the proceedings and

00:51:47

perhaps one of the parties

00:51:50

I think we can all

00:51:52

agree that arbitration proceedings, already

00:51:54

too long, too expensive. With

00:51:58

the timing of requests can



00:52:00

be important is in the

00:52:02

requests coming at a late

00:52:03

stage in which one of

00:52:04

the parties has to be

00:52:06

simultaneously. Respond to the submission

00:52:09

while preparing the other substance

00:52:11

in filing is really close

00:52:13

to the hearing, I think

00:52:15

there could be different opinions

00:52:17

about the the benefits by

00:52:20

additional Civil Society participation and

00:52:25

on the other hand potential

00:52:27

costs and important to the



00:52:29

parties. In the end of

00:52:30

the tribunal, everyone must review

00:52:32

more more paper Thank you

00:52:35

for thank you very much

00:52:36

because I think while speaking

00:52:40

you have touched upon most

00:52:43

of the elements today's more

00:52:48

modern rules on Amika. Scarier

00:52:52

interventions are demanding you know

00:52:58

that there must be a

00:53:00

proven interest, you have to

00:53:02

identify who you are or

00:53:03

where you getting your funds



00:53:04

from. You have to make

00:53:06

sure that that your intervention

00:53:07

does not disrupt the proceedings,

00:53:10

you have to make sure

00:53:12

that that it it's, it's

00:53:16

irrelevant it cetera. And there

00:53:18

might be even be in

00:53:20

position by the, by the,

00:53:21

by the Tribunal. Limits to

00:53:27

the intervention. So I think,

00:53:28

I think that's everything that

00:53:29

you have said is very

00:53:30

relevant. My, my understanding is,



00:53:33  
is that At least in

00:53:38  
the investor or or even

00:53:40  
in international commercial arbitration. There

00:53:42  
might be something not necessarily

00:53:46  
to embrace a third-party purchase

00:53:48  
patient. I want I want

00:53:51  
to ask one question to

00:53:53  
know to, to all of

00:53:55  
you in terms of. Is

00:53:59  
it about No disputing parties

00:54:04  
in missions in in within

00:54:07  
the framework of NAFTA, like

00:54:08  
three because they're there if



00:54:11

there is there's a right

00:54:12

or the state with a

00:54:14

party to the deal would

00:54:16

apply to the true but

00:54:16

not to the dispute to

00:54:18

submit their their their their

00:54:19

brief. Let's talk about investment

00:54:22

treaties like by latching best

00:54:25

country in which you do

00:54:25

not provide for the words

00:54:27

that scenario. And the question

00:54:30

is, do you think that

00:54:31

the state that is not



00:54:35  
a party to this tree

00:54:35  
has a better right to

00:54:37  
intervene? Or it should be

00:54:40  
simply treated as any other

00:54:43  
third-party? They have to provide

00:54:46  
a ride. If he doesn't

00:54:48  
provide that they should be

00:54:48  
into intervening and therefore know

00:54:52  
what, what should be the

00:54:53  
status of the investor State

00:54:55  
Road. Just No, show me

00:54:58  
that, that that you you

00:55:01  
are an effect. Somebody who



00:55:03  
should be intervening, they should

00:55:05  
have their lawyer and as

00:55:07  
far as for the one

00:55:09  
and it in the room

00:55:10  
and I know that I

00:55:14  
know that should be asking

00:55:15  
two questions that I will.

00:55:16  
Do you think that the

00:55:19  
third-party submission in the state

00:55:23  
party submission is one but

00:55:25  
somehow could level the playing

00:55:30  
field between say a state

00:55:33  
that doesn't have that much



00:55:34  
experience in investor arbitration. An

00:55:40  
end. Yes, let me that.

00:55:44  
That's really question. I mean,

00:55:45  
if you have a hundred

00:55:47  
and a half and the

00:55:49  
peace which, which have searched

00:55:52  
is, is somehow that helpful

00:55:55  
for the state that has

00:55:57  
his first arbitration. And you

00:56:00  
think that's fair from the

00:56:01  
Investor's perspective, anybody looking at

00:56:09  
the first one, the second

00:56:10  
one I think is on



00:56:12

the second point is to

00:56:13

hire hire experienced counsel and

00:56:15

then you have the experience,

00:56:17

even if the state itself

00:56:18

doesn't have a lot of

00:56:19

experience, that's my my advice

00:56:21

there, but with respect to

00:56:22

the first one interesting enough

00:56:23

in the new rules. The

00:56:26

new rules will 68. And

00:56:29

it said, arbitration rules actually

00:56:31

answers your question and it

00:56:33

says, in 68, won the



00:56:36

tribunal shall permit shell shop.

00:56:39

Hermit a party to a

00:56:41

treaty that is not a

00:56:42

party to the dispute. To

00:56:43

make a submission on the

00:56:44

interpretation of the tree at

00:56:46

issue in the dispute and

00:56:47

upon which consent to arbitrations

00:56:49

base. So I read that

00:56:51

to mean, if a state

00:56:52

who is a non disputing

00:56:53

party, wants to submit independent,

00:56:57

you know of the right



00:56:57

under a treaty that ended,

00:56:59

exit can extreme rules in

00:57:02

the arbitration rules now into

00:57:04

as of 2022. They have

00:57:06

that, right? And then there's

00:57:09

the second option or second

00:57:11

component of it is the

00:57:12

tribunal May after Consulting with

00:57:14

the party's invite a non

00:57:16

disputing treating party to make

00:57:17

such as Mission which I

00:57:18

understand to mean they can

00:57:20

ask if a state could



00:57:22

submit something that that's if

00:57:24

both parties agree which I

00:57:25

It would be unlikely but

00:57:29

if a treaty party asks,

00:57:33

I understand this to mean

00:57:35

that the tribunal shall grab

00:57:37

that, right? They shall be

00:57:38

heard, interesting Lee enough and

00:57:40

this is it looking also

00:57:42

at the history of this.

00:57:44

I'll be in front of

00:57:45

short but in any case

00:57:47

in recent but there was



00:57:49

a proposition to have not

00:57:51

only it be a submission

00:57:52

on the interpretation that right?

00:57:54

But also on the application,

00:57:56

the latter of which was

00:57:57

struck. So it's left is

00:57:59

only the right with respect

00:58:00

the interpretation and I know

00:58:02

the United States only. Gibson's

00:58:05

view on the interpretation of

00:58:06

a treaty and not its

00:58:07

application. But I don't know

00:58:10

if that's true for every



00:58:10  
state in but it is

00:58:12  
true in the context of

00:58:13  
the arbitration rules. Now that

00:58:16  
it's limited to interpretation does

00:58:18  
exist on the rules with

00:58:21  
the second interpretation. So, 11-1

00:58:32  
run for the water in

00:58:33  
it, which is my Miss.

00:58:34  
I should have asked you

00:58:35  
Alvaro to frame the type

00:58:40  
of friend appears that you

00:58:41  
have and I think that

00:58:42  
that that Jennifer has clarified



00:58:45

it, but it would be

00:58:46

good as you supposed to

00:58:47

clarify in terms of Education.

00:58:53

That would be very useful

00:58:54

for are the participants. But

00:58:58

I go back to, to

00:58:59

my initial question. And what

00:59:01

about the Legacy? What about

00:59:03

the Legacy? That do not

00:59:06

have that that that provision

00:59:08

which solves issue. So I'm

00:59:11

just trying to know play,

00:59:12

Maurice, the professor will you



00:59:15

change the time? But I

00:59:17

want to go back to

00:59:18

you earlier to see what

00:59:19

about those cases. Those those

00:59:21

pre 2022. Pitching rotation rule

00:59:25

cases. Yet, so ugly with

00:59:31

with the United States experienced.

00:59:34

You know, we have model

00:59:35

of the it text from

00:59:37

any particular the 2004 and

00:59:39

2012 model. T i teas

00:59:41

contain language providing pad and

00:59:44

GPS. Maybe submit may be



00:59:46

submitted of Idaho oral or

00:59:49

written. But then usually, that's

00:59:51

a governing law provision. That

00:59:52

also contains language regarding Howard

00:59:57

joint, decision of the parties

00:59:58

is buying another tribunal. And

01:00:00

so that joint decision really

01:00:01

could take the form of

01:00:02

an FTP. Commission, note, you

01:00:05

know what have you so

01:00:07

there's different ways but you

01:00:11

know, that's kind of going

01:00:12

through a question about the



01:00:13

earlier but investment agreements and

01:00:17

then I'll know regarding this

01:00:18

your second point about house

01:00:20

baby can manage even without

01:00:24

experience or national British. I

01:00:25

have, I would have went

01:00:25

into article, 31 of the

01:00:27

United States, considers that article,

01:00:31

31 does reflects customary, international

01:00:32

law, and interpretation, and it

01:00:35

provides that, you know, we're

01:00:36

pretty parties have a common

01:00:39

understanding through subsequent, practice, our



01:00:42

agreement, with respect to interpretation

01:00:44

of a treaty than that

01:00:45

should be taking. It must

01:00:47

be taken into account by

01:00:48

a tribunal and that's something

01:00:49

bad that really carries weight

01:00:52

for various reasons. But, you

01:00:54

know, of course, that the

01:00:54

concept of State practice is

01:00:56

critical for, you know, at

01:00:58

least, Two reasons why. It's

01:01:01

one of the components in

01:01:02

addition to obtaining a Juris



01:01:03  
for establishing customary international law

01:01:06  
and so ndp's. And other

01:01:08  
documents that is in the

01:01:10  
position of a party on

01:01:11  
a treaty can be taken

01:01:14  
into account to assess that

01:01:16  
establishment of customary international law.

01:01:18  
And then there's to the

01:01:21  
extent that there is an

01:01:22  
argument that there is an

01:01:23  
emerging World customary international law.

01:01:26  
Then what a state United

01:01:29  
States interpretation of a treaty



01:01:31  
can also signaled a persistent

01:01:33  
objection to that if the

01:01:34  
state does agree with that

01:01:35  
kind of concert is at

01:01:36  
Azzurro customary. International law is

01:01:38  
going to shrink before I

01:01:41  
can get into a little

01:01:42  
bit cuz I also want

01:01:48  
to welcome a respected in

01:01:51  
this from the same question

01:01:52  
of pre 2022. Extreme Rules

01:01:55  
of our profession which provide

01:01:56  
the answer what what, what



01:01:58  
would be your perspective? Those

01:02:00  
trees that are none left

01:02:02  
alive, 3D not providing for

01:02:04  
non disputing parties admissions. So,

01:02:14  
what, what, what's your your

01:02:16  
response as counsel for the

01:02:18  
investor? The counsel for the

01:02:23  
state? No raises their hand

01:02:24  
and say, well, we should

01:02:25  
welcome the other party submissions

01:02:27  
and let's let's make it

01:02:28  
cuz they got. No transparency.

01:02:36  
No, brains are different Etc.



01:02:40

And speaking, from a purely

01:02:42

personal point of view, I

01:02:45

think I agree with Jennifer

01:02:48

Alvarez. Comments about this particular

01:02:52

type of submission. I do

01:02:54

think that other tree tea

01:02:56

parties have a longer-term interests

01:02:58

beyond the the specific tissue

01:03:01

a tissue in Illuminating, how

01:03:05

to interpret a particular treaty?

01:03:06

I think there is a

01:03:07

clear benefit in hearing from,

01:03:10

from those three parties, where



01:03:13

I think we run into

01:03:14

issues is the the commission's

01:03:18

that stray from the from

01:03:19

the relevant issues from the

01:03:21

scope. And that I think

01:03:22

we're Council may have more

01:03:26

than to fight it but

01:03:29

I think there's a there's

01:03:30

a difference when the submissions

01:03:33

are clearly on point and

01:03:35

within within the scope of

01:03:38

What occurred? You must decide.

01:03:41

Thank you. I just want



01:03:44

to throw one one last

01:03:45

thing. One last question for

01:03:47

the state abbreviation is experiencing

01:03:54

not disputing parties in Mission

01:03:55

with which is what. What

01:03:59

are the if any, you

01:04:01

know, the common themes that

01:04:02

you see in the spring

01:04:05

party. So do most of

01:04:07

the common things that you

01:04:09

might see there that you

01:04:12

would like to refer to.

01:04:13

And that's, that's one question.



01:04:16

The obvious question is, which

01:04:18

ones do you stay away

01:04:18

from Hey buddy, Jennifer the

01:04:34

state. Involving itself or its

01:04:37

own benefit or or their

01:04:40

sports or then Buster's. Reservations

01:04:42

on the state thing about

01:04:46

a great process that are

01:04:58

not of a monolift work

01:05:00

for this for this process

01:05:02

is and what are you

01:05:04

seeing with some jurisdictions? And

01:05:06

another place is the Ministry



01:05:10  
of Foreign Affairs is taking

01:05:13  
the lead role in the

01:05:13  
process but they only act

01:05:15  
as a medium where the

01:05:17  
actual decision making is coming

01:05:19  
from the government. Agency is

01:05:21  
responsible for the breach industry,

01:05:24  
Maritime taxation, whatever it is

01:05:27  
and so you may have

01:05:31  
You may have an approach

01:05:32  
that is not a collective

01:05:36  
approach by the stadium. It's

01:05:38  
an approach. That is weighted



01:05:41

more towards the interest of

01:05:44

the agency that gives himself

01:05:46

responsible for the beach. Those

01:05:50

situations involvement by the state,

01:05:55

may not be particularly for

01:05:56

the interests of the state

01:05:57

because it's different agencies trying

01:06:02

to manage their own way

01:06:03

either out of the store

01:06:05

and to better position. Opens.

01:06:07

And then from the Investor's

01:06:09

perspective, we've seen situations where

01:06:12

one agency is compassionate within



01:06:15  
the seven compassionate with the

01:06:17  
investor and her quite happy

01:06:19  
with what other agencies in.

01:06:21  
So I think spending the

01:06:25  
frame of reference, then the

01:06:26  
one we talked about the

01:06:27  
state reference to stay, not

01:06:31  
every action has as well

01:06:34  
centralized. The procedure has the

01:06:36  
United States, there are jurisdictions

01:06:38  
where things do got a

01:06:40  
little segregated and how their

01:06:44  
approach and that could either



01:06:46

be used for the benefit

01:06:47

of the investor or when

01:06:50

considering the state has to

01:06:54

be taken into account in

01:06:55

the Pro tripping, but That's

01:06:58

my hood. I mean I

01:06:58

I think I think that's

01:07:00

that you're coming and it

01:07:01

would also put some or

01:07:05

perhaps it would be very

01:07:06

useful for which I've been

01:07:07

in terms of those. Then

01:07:08

them knowing know what is



01:07:11

the process of the ndp's

01:07:13

in in the state that

01:07:15

is making that that NDP

01:07:17

was that that causes maybe

01:07:18

one with, with the interagency

01:07:21

consultations and have a breadth

01:07:24

of knowledge behind me or

01:07:25

it may be Amor Amor

01:07:26

number one in the state

01:07:30

that the example of Canada,

01:07:35

or the example of the

01:07:36

US has, has made a

01:07:37

strong impression in other countries



01:07:39

and countries know now, and

01:07:41

no one likes America, make

01:07:42

make an effort to to,

01:07:44

to provide their own comments

01:07:46

not necessarily in for no

01:07:49

for their industrial. But but

01:07:50

one that that emphasizes, what

01:07:53

should be the interpretation of

01:07:54

the treaty now moving Waiting

01:07:57

on to, to the, to

01:07:59

the last question in terms

01:08:01

of what may be the

01:08:02

themes that you mostly seen



01:08:04

and the piece. That's, that's

01:08:06

something that that might be

01:08:08

very useful. And are there

01:08:10

any things that states without

01:08:14

naming any state in particular

01:08:15

that the states may be

01:08:17

inclined to stay away from

01:08:19

that? You have me have

01:08:22

seen in your experience. Any

01:08:25

takers. I'll pick it up

01:08:30

so they are and if

01:08:31

he's really do cover, a

01:08:34

very wide range of issues



01:08:35

related to its jurisdiction. Merits

01:08:38

damages causation and it's in

01:08:43

bars part us missions. Really

01:08:45

do confirm interpretations of fire

01:08:47

submissions. Obviously a lot of

01:08:49

issues to keep popping up.

01:08:51

And so we take that

01:08:52

into to our interpretations of

01:08:54

those. And a few examples

01:08:55

of jurisdiction are for instance,

01:08:58

definition of investment in a

01:09:00

row relevant Security. Application of

01:09:01

limitations. Waiver of Rights, preliminary



01:09:05  
acquirements for the submission of

01:09:06  
crime stopper, traction non retroactivity,

01:09:08  
and one example is ever.

01:09:12  
So often there are several

01:09:13  
of their new topics that

01:09:15  
we addressed. I want examples

01:09:16  
in the start of the

01:09:16  
Dominican Republic case, under the

01:09:19  
cast, aware of what we

01:09:22  
can from the long-standing policy

01:09:23  
there to include of denial

01:09:25  
of benefits, provisions and investment

01:09:27  
agreements. But you know, We



01:09:29

did we provide interpretation of

01:09:30

whether shell companies fall into

01:09:32

the category of Investments that

01:09:35

are included, are included in

01:09:38

In-N-Out denial of benefits information.

01:09:41

Obviously, substantive protection issues, come

01:09:45

up a lot and that's

01:09:47

something that we do. We

01:09:49

typically, take up our opportunities

01:09:51

to provide interpretation and that

01:09:53

includes minimum standard of treatment

01:09:55

under customary. International law corporation,

01:09:57

National treatment, most-favored-nation treatment, and



01:10:00

pretty much. Almost all submissions

01:10:03

contain our view on the

01:10:07

minimum standard of treatment contains.

01:10:10

And they generally confirm our

01:10:13

view that customer international law,

01:10:14

has crystallized to establish a

01:10:17

minimum standard of treatment, and

01:10:18

a few areas, which include

01:10:19

fair. And Equitable treatment for

01:10:21

protection and security, and something

01:10:25

else that did. It comes

01:10:26

up alive. Confirmation that an

01:10:30

arbitral tribunals formulation of a



01:10:33  
purported rule customer International all

01:10:35  
that does not consider consider

01:10:36  
or conduct a full examination

01:10:38  
of State, practice and opinions.

01:10:40  
Jurors heard that should not

01:10:42  
be relied upon as evidence

01:10:43  
of customer international law. That

01:10:46  
seems to be something that

01:10:47  
gets confused often and investment

01:10:51  
treaty disputes. And there's also

01:10:52  
less common more novel issues

01:10:55  
that come up, Environmental Protection

01:10:56  
Provisions. We had to interpret



01:10:58  
those and particularly under the

01:11:00  
us through the VA in

01:11:02  
the rank 02 case. And

01:11:05  
then also Central Security has

01:11:06  
come up in the state

01:11:07  
of Oklahoma case and attribution

01:11:09  
in with capital. So they're

01:11:11  
staying away from anything. I

01:11:17  
can't say it's our practice

01:11:18  
or experience to really try

01:11:19  
to stay away from things.

01:11:20  
I mean, typically it is

01:11:22  
in our interest to just



01:11:22  
interpret Provisions that greatly as

01:11:25  
possible. So we can, so

01:11:26  
we do. But again, we

01:11:27  
conduct a full assessment of

01:11:28  
the In the cases and

01:11:31  
it depends on her. Really.

01:11:31  
What are the the critical

01:11:32  
issues of the state regarding

01:11:33  
the station Lockwood? Having looked

01:11:45  
at industry State arbitration, not

01:11:46  
disputing price of missions. And

01:11:49  
also the interest, why, why

01:11:51  
not displaying parties? And also,



01:11:54

I make this area or

01:11:56

meet you would like to

01:11:58

intervene going back into the

01:12:01

International, International commercial arbitration space.

01:12:08

Have you have you seen

01:12:10

or or do you foresee

01:12:13

seeing that the public interest

01:12:16

groups at maybe getting away

01:12:19

into the arbitration space? In

01:12:23

in commercial contract matters more

01:12:25

than they used to is?

01:12:27

Is that changing or or

01:12:28

what? What are your thoughts



01:12:29  
on that? Well, if I

01:12:31  
think I I I briefly

01:12:34  
touched on a few and

01:12:35  
expand on those now for

01:12:38  
speaking, I talked about, now,

01:12:42  
that's and then the commercial

01:12:45  
private space is attracting 2000.

01:12:54  
And that's harder than that

01:12:58  
when we started judgments from

01:13:06  
Porch, Looking Frandsen, otherwise hold

01:13:11  
in government is responsible for

01:13:12  
45. And do you have

01:13:18  
these sorts of the obligations



01:13:20  
that manifested without expectation right

01:13:24  
into the private commercial weekend?

01:13:31  
If we can adopt the,

01:13:33  
if we could adopt the

01:13:35  
conceptual obligations and hold elements

01:13:39  
responsible for those? Then why

01:13:41  
is it not that weaken

01:13:43  
translate transposed into the commercial

01:13:46  
private space? and if it

01:13:50  
fits within the culture of,

01:13:58  
I'm going to jump zone

01:14:01  
in terms of another example,

01:14:05  
religious arbitration or logical based



01:14:10  
on a few logic rules

01:14:12  
and that there are examples

01:14:15  
of those cases where a

01:14:17  
religious institutions to provide their

01:14:22  
important to 5. Patricia employment.

01:14:29  
Based on a certain set

01:14:32  
of theological rules And where

01:14:35  
the local religious institution of

01:14:40  
Boston Church Catholic Church in

01:14:45  
to that dispute. This is

01:14:50  
a very, very interesting and

01:14:52  
lots of food. I'm just

01:15:01  
my brain is thinking in



01:15:02  
terms of, well, on the

01:15:04  
one hand, you might have

01:15:06  
an issue with the arbitral

01:15:08  
claws because consent was, was,

01:15:11  
was limited to contract a

01:15:14  
Tetra, but all the other

01:15:15  
hand, you might know, at

01:15:18  
the end of the day,

01:15:19  
have issues with enforcing, the

01:15:20  
award is public policy was,

01:15:22  
simply not at all, taking

01:15:24  
into account, but we want

01:15:27  
some of it now. So



01:15:29

I would like to stop

01:15:31

at least Mike Mike. I'd

01:15:34

welcome the Elgin. If you

01:15:37

have any question, concerning any

01:15:39

of the public that would

01:15:40

touch please. This is the

01:15:41

time. Do I need and

01:15:47

you have a microphone app.

01:15:52

Thank you on the distinction

01:15:56

between interpretation and application on

01:15:59

the u.s. been careful. Not

01:16:02

to touch on questions. About

01:16:05

the gation with what I



01:16:06

have perceived from the practice

01:16:08

of the you as I

01:16:10

please have Isabelle, the Columbian

01:16:12

arbitration sees that you do

01:16:16

prevent yourself from dealing with

01:16:18

application questions but you closely

01:16:21

monitor what's happening in the

01:16:23

arbitration and one can see

01:16:25

and evolution of the things

01:16:27

your address. In the first

01:16:30

written statement and sometimes somebody

01:16:37

that you asked to appear

01:16:38

again in the hearing, so



01:16:41

good. You in fact, that's

01:16:44

what the interest of the

01:16:47

parties in the truck. Don't

01:16:48

seem to be progressively in

01:16:51

order to determine which Aspects

01:16:54

of the 23rd Edition questions

01:16:58

that do you want to

01:16:59

address or is this something

01:17:01

that you independent from the

01:17:03

interested parties? I would prioritize.

01:17:10

Yeah, I think it's rather

01:17:13

independent of the, of the

01:17:14

position of the parties. I



01:17:15

mean, as you know, we

01:17:16

do communicate routinely with our

01:17:18

treaty partners and also claimed

01:17:19

his household to talk about,

01:17:21

but they're legal positions, are

01:17:23

in the cases. And you

01:17:24

know, how often do inform

01:17:25

us of what the critical

01:17:26

disagreements are on on legal

01:17:28

interpretation issue. So, we'll take

01:17:29

into account for sure. But

01:17:32

ultimately, I think it's not

01:17:35

surprising that states, you know,



01:17:37  
conducts investment policy, you know,

01:17:40  
based on you know what

01:17:42  
their, you know, foreign policy

01:17:44  
posture is might be at

01:17:45  
any given time in those

01:17:46  
things involve and they change

01:17:47  
the time and you know

01:17:48  
it's never static and so

01:17:51  
it's definitely something dead that

01:17:53  
becomes a communication with the

01:17:55  
parties. It never becomes a

01:17:57  
matter of application. As you

01:17:58  
know it's always really have



01:18:00

narrowed in on what you

01:18:02

know how the treaty needs

01:18:04

to be interpreted so that

01:18:06

it's So that it's accurate

01:18:08

and that particular instance and

01:18:10

we do that over and

01:18:10

over again, so that there

01:18:13

is consistency and in that

01:18:14

way. But again the Assassin

01:18:18

is very much into an

01:18:19

inn that we do internalize

01:18:21

it and and we communicate,

01:18:23

as I mentioned with our



01:18:24

own policy girls with and

01:18:27

state department and then Beyonce

01:18:29

Department as well. So, Thank

01:18:32

you, Alberto. I I will.

01:18:38

Because this is no, this

01:18:39

is we have the good

01:18:42

thing about this is that

01:18:43

we have about 60 people

01:18:45

in this conference. I know

01:18:47

that you're not cc29 here

01:18:49

and and and 30 +

01:18:50

online is a question online.

01:18:53

And we did promise them



01:18:55  
that they're part of the

01:18:56  
conference show. The question here

01:18:58  
is what? And, and the

01:19:01  
answer must be like at

01:19:02  
2 minutes. Maximum 2 minutes

01:19:04  
answer at what kind of

01:19:06  
objections to NDP Solutions may

01:19:09  
come from Siberia. I mean,

01:19:14  
I can take that quickly,

01:19:15  
I think it has a

01:19:17  
lot of the objections of

01:19:19  
disgust from the claimant perspective,

01:19:22  
a few others. I seen



01:19:24  
they all go back. I

01:19:28  
think to the the main

01:19:30  
overarching requirement of relevance and

01:19:32  
is this something the tribunal

01:19:34  
must decide preparing for the

01:19:38  
panel, I noticed a few

01:19:39  
award discussions of third-party submissions

01:19:43  
where the tribunal is either

01:19:45  
Quickly, he mentions the fact

01:19:49  
that there had been submissions

01:19:50  
from from third parties but

01:19:52  
didn't really apply them to

01:19:54  
the substance of the award



01:19:56

or explicitly stated that they

01:19:58

were not very helpful because

01:20:00

we straight from from the

01:20:01

issues. I think it's not

01:20:04

surprising when tribunals reacting that

01:20:06

way. If the submissions are

01:20:08

more like ships passing through

01:20:09

the night and not really

01:20:10

engaging with with the actual

01:20:13

issue. So I think scope

01:20:15

relevance whether it's dealing with

01:20:18

a factual or legal issue

01:20:19

and under the new rules,



01:20:21

which Jennifer mentioned also look

01:20:25

into whether the parties are

01:20:29

receiving assistance from eating party.

01:20:33

Whether there's any affiliations with,

01:20:36

I think there's a recognition

01:20:38

to of trying to determine

01:20:39

what we talkin about a

01:20:41

neutral submission or or something

01:20:43

else. Will a question? Yes,

01:20:47

indeed, please look into the

01:20:48

the rules, but also look

01:20:50

into the requirements to submit

01:20:53

to. I m. So one



01:20:57

question Just give us a

01:21:05

second thought. I'd give you

01:21:06

the microphone so that your

01:21:07

your hood in Thailand and

01:21:11

hair done, I would not

01:21:15

ask that question. I have

01:21:16

just been a brief one

01:21:18

pony touched on it in

01:21:19

terms of the invocation of

01:21:21

amateur career on non disputing

01:21:23

party. Is my understanding that

01:21:25

if we are if there's

01:21:26

a sort of a over



01:21:27  
traditional understanding of a created

01:21:32  
being a standalone, the cat

01:21:33  
has them although it could

01:21:34  
be in directly considered as

01:21:37  
an ally of one of

01:21:38  
the party at, in essence

01:21:40  
of the independent mcalexander can

01:21:42  
be involved, either, but party

01:21:43  
or tribunal's. Have you seen

01:21:45  
any instances that? I'm could

01:21:47  
create an extra bluenose independently

01:21:49  
indoors and Korea because it

01:21:52  
is my understanding that exit



01:21:53

arbitration rules under the rule

01:21:55

of 37. The tribunal's recognized

01:21:58

at, you know, Decree as

01:22:00

an independent contributions and he

01:22:02

was a case of Argentina.

01:22:03

Verse says this to his

01:22:05

kennel that that that there

01:22:06

was a sort of a

01:22:07

contention, whether or not a

01:22:08

true blue nose can do

01:22:09

it independently in order to

01:22:11

understand some of the scientific

01:22:12

no data there, Sorry is



01:22:17  
the question. Whether tribunals have

01:22:19  
the power to catch? I

01:22:29  
did as a mechanism that

01:22:30  
provide different perspective for tribunal's,

01:22:32  
why not tribunal's, do it

01:22:34  
independently in order to strike

01:22:36  
a balance between efficiency or

01:22:37  
transparency, that's interesting, I don't

01:22:41  
know under Under the exit

01:22:45  
rules, whether there's an explosive

01:22:47  
mechanism for that. It, it

01:22:49  
makes me think of the

01:22:49  
example of experts, which I



01:22:53

know is a common mechanism,

01:22:56

and it might be that

01:22:57

via an expert or beetles

01:23:01

can invite submissions or or

01:23:03

elucidate certain issues and and

01:23:04

it obviously provides the parties

01:23:07

with enough opportunity to comment

01:23:08

as well. So it might

01:23:09

be a similar mechanism. Maybe

01:23:11

not exactly through the Amicus

01:23:13

Channel perhaps with similar results.

01:23:19

I just added that it

01:23:20

from my experience to, this



01:23:21

is something that often comes

01:23:22

up and, you know very

01:23:23

early on in the proceedings

01:23:26

as such as I'm done,

01:23:27

dropping a procedural order. So

01:23:29

usually it's it's stipulated in

01:23:30

procedure or the weather in

01:23:32

front of the timing for

01:23:33

some, for these type of

01:23:34

submission. So I think that's

01:23:35

part of the point where

01:23:36

this would be negotiated between

01:23:37

the parties in, the tribunal



01:23:38

will come in and waiting.

01:23:40

On that to me, I

01:23:43

would really like to continue

01:23:45

and we owe for those

01:23:47

that know me, I would

01:23:48

really like to continue because

01:23:49

there's there's there's so many

01:23:51

questions like that that are

01:23:53

open here and we have

01:23:55

an incredible on this bench

01:23:59

but we can. So because

01:24:03

there's another panel and I

01:24:05

would like everyone to give



01:24:08

a round of applause to

01:24:09

our experts How do you

01:24:14

say? Thank you. And I

01:24:17

apologize for those questions that

01:24:18

were not raised, but but

01:24:22

I know that my next

01:24:24

next motor, it will kill

01:24:26

me if I continue.