

## Practical Steps in CSR and Human Rights Assessment \*

### Summary

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

The Washington Arbitration Update session focused on Corporate Social Responsibility (CSR) and human rights assessments, emphasizing the evolving legal landscape surrounding these issues. The session began with acknowledgments of sponsors and supporting organizations, highlighting the forum's mission to disseminate knowledge on public international law and arbitration across five continents.

Dr. Doug Cassel moderated the panel, introducing a distinguished group of experts: Elise Gruel Digs, Nathan Langford, Ray Lindsey, and Stefan Burbach. The discussion centered around the transition of human rights from a governmental concern to a recognized obligation for businesses, with an emphasis on the increasing legal requirements for human rights due diligence in various jurisdictions, particularly in Europe.

Elise Gruel Digs provided an overview of the "galaxy of norms" related to business and human rights, illustrating the complexity and variability of legal frameworks across different countries. She noted the patchwork of legislation, including France's 2017 Vigilance Law, which mandates large companies to implement human rights due diligence measures. This law has prompted significant shifts in corporate practices and legal interpretations.

Stefan Burbach focused on the French experience, discussing the implications of the Vigilance Law and the challenges it presents for businesses regarding compliance and stakeholder engagement. He emphasized the need for companies to develop comprehensive vigilance plans to identify and mitigate human rights risks in their operations and supply chains.

Nathan Langford and Ray Lindsey explored practical advice for businesses navigating human rights due diligence. They highlighted the importance of integrating human rights considerations into corporate compliance programs and the necessity for ongoing stakeholder engagement. They discussed how recent legal developments, including the EU's Corporate Sustainability Due Diligence directive, reflect a growing expectation for companies to respect human rights actively.

The panel also touched on the intersection of business and human rights with international investment arbitration, noting that emerging treaties increasingly incorporate human rights obligations for investors. Doug Cassel concluded by stressing the need for arbitration lawyers to adapt to these evolving standards and prepare for their implications in future disputes.

In closing, panelists expressed optimism about the potential for businesses to lead in human rights protection, emphasizing the importance of aligning corporate practices with universal values and addressing the broader societal challenges that are currently at a crossroads. The session ended with an invitation for attendees to engage in breakout discussions on these critical topics.

### **Authors**

Douglas Cassel, Nathan Lankford, Stephane Brabant, Elise Groulx Diggs

### **Topics**

CSR, corporate social responsibility, human rights, due diligence

### **Category**

WAU

### **Full Transcript**

00:00:03

Hello everyone. We are at

00:00:05

the world arbitration update and

00:00:07

this is the session on

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practical steps in. CSR Corporate

00:00:14

social responsibility and human rights

00:00:16

assessment. First of all, we

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would like to thank our

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sponsors their right there in

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front of your eyes and

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screens you would be would

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be almost impossible to make

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the world arbitration update sustainable

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unless we we received some

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sponsorship. So we're very grateful

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to all of them. We're

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also very grateful to our

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Supporting organizations, we have over

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50 supporting organizations of world

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arbitration update our mission. Our

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mission is twofold one is

00:00:52

to update on issues of

00:00:55

public international law and also

00:01:00

International commercial and investor State

00:01:04

arbitration with an emphasis to

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the broad International Community and

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when I say the broad

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arbitration and International Community, we're

00:01:16

really mean it because each

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of our panels has no

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no fee for any attendee.

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So we are really reaching

00:01:25

the five continents of Asia

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Oceania the Americas Europe and

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Africa and our days, as

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you know are divided in

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in five days of the

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week the first one for

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the Americas the second one

00:01:42

for Africa the third one

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for Asia the fourth one

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for Europe and the fifth

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one or just topics that

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are combined and their for

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everyone. So today's is the

00:01:58

Americas and this is our

00:02:00

second panel and with us,

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we have a really true

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and an exceptional panel of

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expert I will not do

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the introductions. Simply introduce our

00:02:13

our moderator who has been

00:02:15

a force behind all the

00:02:18

panels that we have done

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in World arbitration update as

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well as as in the

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Washington arbitration week, which is

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a sister form of wow.

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This is a doctor sell

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professor casel and also he's

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counseling expaliding Professor Casella is

00:02:39  
a widely recognized desperate on

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business and human rights international

00:02:46  
human rights. As well as

00:02:49  
public international law. He has

00:02:52  
taught in the fields for

00:02:53  
for many years for decades

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actually most recently at the

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Notre Dame law school where

00:03:01  
he was a presidential fellow.

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He has also taught and

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lecture on subjects of Human

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Rights and business on at

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leading University including in Belgium

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England hungry Mexican Spain, and

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he has published more than

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100 scholarly articles and reviews.

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also on the field of

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practice of law. He has

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represented international law expert he

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has Also represent the retired

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Diplomat and also he has

00:03:37

a participated and acted in

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drafting of omic. I mean

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amitiv curia innate cases before

00:03:45

the United States Supreme Court

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an advice in two others

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like I could keep on

00:03:51

going but I really don't

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want to embarrass dog. He

00:03:55

has been a force behind

00:03:57

this panel. He knows best

00:04:00

who or have written and

00:04:02

and moved the needle forward

00:04:04

in terms of business and

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human rights and and I'm

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grateful that he's here with

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that. I will turn to

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dog not before apologizing to

00:04:16

everyone because I never said

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who I was which I

00:04:19

will do now. My name

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is Jose Antonio us and

00:04:22

a co-chair of world arbitration

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update and together with Ian.

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Lyric who's the other chair

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of The world arbitration update

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we have created this this

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forum, which has now its

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second edition. So hopefully you'll

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be engaged and and completely

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enjoy it and thank you.

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Dog and the floor is

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yours. Thank you very much,

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Jose Antonio for that embarrassing

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introduction. We now have the

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privilege of listing to an

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All-Star lineup of people who

00:05:02

really are an experts in

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the field of business and

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human rights. I apologize for

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not giving the introductions that

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each of them deserve because

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if I were to do

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so we'd have no time

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for the substance of the

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panel. So I will just

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say briefly in alphabetical order.

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That Stephon burbaugh is with

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Trinity International. He is listed

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by Chambers as a senior

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Statesman among global leaders in

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business and human rights and

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for the rest of his

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introduction and that of our

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other panel members. I refer

00:05:38

you to the web pages

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of their effect their respective

00:05:42

law firms that are listed

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in the program. Elise gruel

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digs is with among other

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places Bedford Road Chambers. Now

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Chambers the rating agency lists

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her as a an eminent

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practitioner among global leaders in

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business and human rights and

00:05:59

among her many other activities.

00:06:01

She was the founder of

00:06:04

the advisory committee on business

00:06:06

and human rights of the

00:06:07

American Bar Association. Nathan Langford

00:06:11

who we will refer to

00:06:12

in this panel as Nate

00:06:14

is founder and practice lead

00:06:17

at Miller and Chevalier of

00:06:19

the business and human rights

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practice. And Ray Lindsey because

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Eli comes alphabetically after the

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other name other names is

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also listed by Chambers in

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band 1 of business and

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human rights. She is the

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co-head of public international law

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and the bhr the business

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and human rights, which I

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will call bhr practices at

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Clifford chance. I will give

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an extremely brief topical intervention

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on the subject that business

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and human rights is in

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a period of what I'll

00:06:54

call ethical change. 30 years

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ago Human Rights was widely

00:06:58

considered a matter for governments.

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Not for businesses. 10 years

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ago human rights had become

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recognized as relevant to business.

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But as only a responsibility

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of business mostly a soft

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law responsibility. Today human rights

00:07:16

is increasingly recognized as a

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hard law obligation of business.

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There are National laws requiring

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human rights due diligence and

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various European States. The EU

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corporate sustainability due diligence-directed is

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expected to be approved in

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2023 recently since we're on

00:07:38

the day of the Americas

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there is case law of

00:07:41

the inter-american human rights in

00:07:43

the mosquito divers versus Honduras

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case. There's also a treaty

00:07:47

in the Western Hemisphere. Yes,

00:07:49

kasu agreement both of which

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impose human rights due diligence

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obligations. On top of the

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expansion or the hardening of

00:08:00

business and human rights Norms

00:08:01

human rights. The concept is

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also expanding only in July

00:08:06

of this year the UN

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General Assembly recognized a new

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Universal human right namely the

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human right to a clean

00:08:15

healthy and sustainable environment, which

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of course is very relevant

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to the topic of business

00:08:21

and human rights. These Trends

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I suggest are likely to

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continue in time and to

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expand geographically and we'll hear

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more about that in the

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panel, which will go for

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the next 90 minutes or

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so. We will focus on

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the legal developments in business

00:08:39

and human rights and how

00:08:41

they affect advice to business

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clients. We will only briefly

00:08:46

link to International arbitration at

00:08:49

the end. We focus on

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business and human rights because

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we expect that while many

00:08:54

of you are familiar with

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International arbitration. You may be

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less. So with respect to

00:09:00

business and human rights law.

00:09:03

Our format is that each

00:09:04

panelist will speak briefly followed

00:09:07

by comments from another panelist.

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Elise will begin with an

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overview of business and human

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rights Norms, which she depicts

00:09:16

as a galaxy of norms.

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That's Stefan will then shift

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from Elisa's broad overview to

00:09:23

a specific country experience namely

00:09:26

that of France under the

00:09:28

law division Lance enacted in

00:09:30

2017, which in effect requires

00:09:33

large French French companies to

00:09:36

engage in human rights due

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diligence. Nate and Ray in

00:09:41

that order will then each

00:09:42

address issues in in the

00:09:44

business and human rights advice.

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They give to clients and

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the kinds of questions clients

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raised. as part of his

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response Stephan will then comment

00:09:56

on broader Trends in the

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field. I will then spend

00:10:00

only a few minutes on

00:10:02

how this all relates to

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International arbitration, and we will

00:10:06

then have closing remarks by

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each panelist and if time

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permits questions and answers And

00:10:14

so with that at least

00:10:15  
the floor is yours for

00:10:17  
nine minutes. Thanks a lot.

00:10:18  
Nine minutes. Okay. Thanks a

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lot that okay. So I

00:10:23  
want to talk to you

00:10:23  
about a framework a human

00:10:25  
rights framework and businessman rights.

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So over the last decade

00:10:30  
in my practice as an

00:10:31  
international human rights lawyer focusing

00:10:33  
on business and human rights.

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I have noticed a remarkable

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expansion of corporate line liability

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together with soft law responsibility

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that has taken a variety

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of forms, the current legislative

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situation reveals a global Patchwork.

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There's a wide variation and

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purpose framing enforcement and interpretation

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of legislation. Let me give

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you a few examples. We

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have and friends as Doug

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says Stephan will go extensively

00:11:04

about that law, but I

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cannot not mention it because

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it's the first one of

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its kind adopted in 2017.

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It offers a general framework

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covering issues. Of Human Rights

00:11:14

and environment health and safety

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and in the workplace fundamental

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freedom and civil rights. It's

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incorporated into the commercial code

00:11:23

of France. But the the

00:11:26

law can be litigated in

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front of civil tribunals not

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just before commercial instances as

00:11:32

first and visited in the

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UK in 2015. It adopted

00:11:36

the modern slavery act that

00:11:39

law touches upon both criminal

00:11:42

and labor laws and it

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also touches upon corporate reporting.

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It was recently amended in

00:11:49

2019 to reinforce its framework

00:11:51

and obligations. We have the

00:11:53

US, California transparency Act. Of

00:11:57

2015 that amended the US

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Tariff Act of 1930 with

00:12:01

the power given the custom

00:12:03

and border patrol the act

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as the board at the

00:12:06

border with power of impounding

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shipments negotiating with suppliers. This

00:12:12

US law represents a different

00:12:14

Reporting System compared to that

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of the UK. Both the

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US and the EU have

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new regulations on conflict mineral

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and conflict Timber also including

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corporate reporting and affecting trade

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law Australia in 2018 adopted

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a modern slavery act like

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the UK that mandates companies

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that have an annual income

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of more than a hundred

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million dollars to publish an

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annual statement on their risk

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associated with modern slavery throughout

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their operations and Supply chains

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and on the measure, they

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intend to adopt to face

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the risk to mitigate and

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prevent them in 2021. The

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Germans adopted a law in

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corporate due diligence and their

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supply chain the new law

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and dates Corporation to fulfill

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their duty of due diligence

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and their supply chains relative

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to International recognized human rights

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and also a number of

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environmental Norm in 2022. The

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Norwegian transparency act that requires

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company to promote respect for

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Human Rights was adopted also

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promotes decent working condition including

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a provision on living wage.

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On 24 of February 2022

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the European presented its draft

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directive and due diligence ironically

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and I say that without

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humor the same day the

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war on Ukraine started then

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so it's easy to remember

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the date. It proposed us

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to put in place a

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series of due diligence

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measures relative to risk of

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serious harms to Human Rights

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and environment including combating climate

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change recently. Some amendments were

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proposed to that directive. They're

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pretty extensive. The result that

00:13:56

we have is a patchwork

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of legislation not a coherent

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legal approach different laws and

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different jurisdictions different Focus different

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Frameworks different and enforcement mechanisms.

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And then there is also

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built onto this a patchwork

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of soft law. Most coherent

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of soft laws are the

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ungps and the oecd guidelines

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of 2011 all this leads

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to a confusion and Lack

00:14:22

of systematic and enforcement only

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reinforces the confusion. As a

00:14:28

human rights using the language

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of the ungp this is

00:14:32

what I call the governance

00:14:35

Gap. I mean quoting. John

00:14:42

Radke was talking about that

00:14:45

government enforcement Norms were adopted

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to paleate this kind of

00:14:49

gas and eventually shape hardlock.

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and I I should of

00:15:09

families were having some trouble

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hearing you Global Connection not

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strong build from consensus and

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can go fast and be

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adopted facts and this new

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world are orders Sovereign are

00:15:27

no longer the only Room

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Makers and that's worthy of

00:15:32

mentioned. Oh, I'm at maximum

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maximum and that can you

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hear me now now what

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to say and what to

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do because I'm connected. Yes,

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we can hear you can

00:15:42

and where did I where

00:15:44

did you lose me? I

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was just the last minute

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or so. Okay, so I'm

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gonna just repeat a few

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points. I was talking about

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the patchwork of legislation that

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was not coherent and the

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legal approach of this Patchwork

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makes that we have different

00:16:02

jurisdiction different Focus different framework

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enforcement mechanism that vary from

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jurisdiction to jurisdiction. There is

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also that's also built onto

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a patchwork of soft law

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the most coherent one is

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the ungp's and the oecd

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guidelines of 2011 all this

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leads to confusion and the

00:16:22

lack of systematic enforcement only

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reinforces the confusion as a

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human rights lawyer using the

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language of the ungp this

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is what I call as

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John Reggie to find it

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that governance Gap made of

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mixture of nuclear body of

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laws, and we can enforcement

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Norms were adopted to palliate

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this Gap a soft lock

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and be adopted quickly to

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fill the normative gaps and

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eventually shape the law soft

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law helps advice. Events and

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begin reforming institutions solved law

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is flexible Global in scope

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and build from consensus. And

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this New World Order Sovereign

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are no longer the Only

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Rule makers to answer the

00:17:03

rising challenges of economic globalization.

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We suggest that the world

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will benefit from a matching

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process of legal globalization that

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will encourage and development of

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an international body of law

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that reinforces progressively a regime

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of corporate liability the French

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duty of vigilance and all

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the other laws being adopted

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in Europe as well as

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the case law expanding the

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duty of care and several

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jurisdictions like Canada the UK

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and Netherlands amongst others lately

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in all contribute greatly to

00:17:34

this process and need to

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evolve in the same direction

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mirroring Trends in international law.

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The Galaxy of norms to

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make sense of the space

00:17:44

Professor Reagan and I proposed

00:17:46

a tool that helps better

00:17:48

understand the space described above.

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We called it business and

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human rights as a galaxy

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of Norm. It's a global

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map of soft and hard

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law and Norms viewed together.

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It proposes legal tool to

00:18:00

help lawyers navigate and interpret

00:18:02

this new universe this extraordinary

00:18:04

this expanding Galaxy is made

00:18:06  
of hard law such as

00:18:07  
binding National legislation in several

00:18:10  
countries, for example to combat

00:18:12  
corruption and forced labor, soft

00:18:14  
law and international Lawrence as

00:18:17  
the UN guiding principles that

00:18:19  
underline the second pillar to

00:18:21  
create a responsibility for Corporation

00:18:23  
to respect human rights. It

00:18:25  
also includes the oecd guiding

00:18:27  
principles on multinational Enterprise combined

00:18:30  
with private voluntary initiatives as

00:18:32  
well as jurisprudence her case

00:18:35  
law and the duty of

00:18:35  
care as a corporate standard

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setting of conduct. possible business

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conduct often with extraterritorial reach

00:18:44  
all these solar systems of

00:18:46  
norms should push corporations to

00:18:48  
adopt diligence Frameworks to ensure

00:18:51  
responsible business conduct and respect

00:18:53  
for human rights as required

00:18:55  
by the second pillar of

00:18:56  
the ungp Our framework suggests

00:18:59  
that these new laws and

00:19:00  
proposed Frameworks on human rights

00:19:02  
and environmental due diligence should

00:19:04  
be seen as part of

00:19:05  
the business and human rights

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Galaxy of Norm that Galaxy

00:19:09  
offers guidance on how these

00:19:10  
laws should be construed and

00:19:12  
applied these new bodies of

00:19:14  
law show attendance see the

00:19:16  
Harden the legal liabilities of

00:19:18  
multinational corporations throughout their goal

00:19:21  
their Global Supply Chain at

00:19:23  
the same time and in

00:19:24  
parallel, there is an expansion

00:19:25

of legal obligations for corporations

00:19:27

to report publicly on policies.

00:19:30

They Adopt A prevent and

00:19:31

manage those risks. These non-financial

00:19:34

reporting obligations are becoming the

00:19:36

norm in National legislation and

00:19:38

also an international soft law

00:19:40

this creates powerful incentives for

00:19:44

Corporation to adopt and implement

00:19:45

the corporate social responsibility programs

00:19:48

that are Showed showcase and

00:19:51

their sustainability and CSR reports

00:19:54

and our galaxy framework. We

00:19:56

suggest that the duty of

00:19:57

care is evolving continuously and

00:20:00

in parallel in many jurisdictions,

00:20:02

so that corporations need to

00:20:03

develop compatible policies and measures

00:20:06

that apply consistently to all

00:20:08

the territories and countries where

00:20:10

they operate the Galaxy is

00:20:12

designed to identify both the

00:20:14

hard law and the soft

00:20:15

law together and look at

00:20:16

emerging Norms try to map

00:20:19

how they interact are they

00:20:21

conflicting converging or whether they

00:20:23

are big gaps sort the

00:20:25

Norms looking at different types

00:20:27

of Duties imposed by hard

00:20:28

law and the norms and

00:20:30

looking at the enforcement mechanism

00:20:32

and we list five rings

00:20:35

of liabilities the ring one,

00:20:37

which is responsibility here. Yes.

00:20:40

Don't think we I don't

00:20:42

think we have time for

00:20:43

the Five Rings. Okay. That's

00:20:45

okay. That's okay true. And

00:20:46

now we'll proceed to Nate

00:20:48

who has three minutes to

00:20:50

to question immigration is on

00:20:53

a lease. Thank you hear

00:20:58

me in the end. Yes.

00:20:59

Yes. Thank you. Thank you.

00:21:00

It was great about that.

00:21:02

I have no idea what

00:21:03

happened. No worries. No worries.

00:21:06

Um, so yeah. Thanks Doug

00:21:07

and thanks Jose Antonio for

00:21:09

for inviting me and bringing

00:21:11

together this great group. I

00:21:13

I want to say I

00:21:15

guess just in response to

00:21:16  
at least I just I

00:21:18  
love how you think of

00:21:20  
this as a Galaxy. I

00:21:22  
mean, I think it really

00:21:22  
captures that this is dynamic.

00:21:25  
It's complex. It's bright and

00:21:29  
as a science fiction geek

00:21:31  
myself, I get it on

00:21:33  
that level too. I think

00:21:36  
it's a great concept. I

00:21:39  
think it's very important. Obviously.

00:21:42  
I think we all agree

00:21:43  
that that lawyers advising multinational

00:21:49

companies these days. It's really

00:21:51

important for us to understand

00:21:52

the Spectrum. And I think

00:21:55

particularly for our people involved

00:21:57

in arbitration and arbitrators being

00:22:00

able to identify what are

00:22:02

genuine human rights issues. And

00:22:04

what what standards should businesses,

00:22:07

you know be reasonably held

00:22:09

to these days can be

00:22:10

very helpful for your practice.

00:22:13

Uh, the important of the

00:22:15

importance of these hard laws

00:22:17

in the Galaxy I think

00:22:18

is is really self-evident and

00:22:20

I think it it fits

00:22:22

with the traditional role of

00:22:24

lawyers and Enterprise risk management

00:22:26

Frameworks in terms of managing

00:22:28

legal risks traditional legal risks.

00:22:31

I feel like most of

00:22:32

my discussions on these topics

00:22:34

and the Galaxy really focus

00:22:36

on what do we make

00:22:38

of the soft law part?

00:22:39

How should we really think

00:22:40

about that? And I think

00:22:41  
that a couple of themes

00:22:43  
that these mention that I

00:22:44  
just want to reinforce and

00:22:46  
agree with is that I

00:22:48  
I really think of it

00:22:50  
in terms of emphasizing a

00:22:55  
few key things that the

00:22:57  
with the importance of this

00:22:59  
soft law framework, is that

00:23:01  
they are applied to your

00:23:05  
company and are shaping the

00:23:08  
hard laws and I think

00:23:09  
that you you heard from

00:23:10

Elise about that Sovereign nations

00:23:14

are no longer the only

00:23:15

Soul rulemakers these days that

00:23:17

you sort of see where

00:23:18

hard law is going by

00:23:20

looking at these and then

00:23:21

I think it's also important

00:23:23

to soft fall apart of

00:23:25

it in terms of Frameworks

00:23:26

that are applied to your

00:23:27

company by stakeholders that affect

00:23:30

your access to markets to

00:23:32

financing and to customers Um,

00:23:35

I think a great example

00:23:37  
of this and is one

00:23:39  
that at least mentioned is

00:23:40  
how us enforcement agencies right

00:23:43  
now prohibiting the import of

00:23:45  
goods made with forced labor

00:23:47  
in their official guidance on

00:23:49  
how they enforce this. They

00:23:50  
refer to ILO standards. They

00:23:52  
refer to oecd standards that

00:23:54  
incorporate ungp Concepts. So you

00:23:56  
really see these things making

00:23:57  
their way into that. That

00:23:59  
official guidance as well ESG

00:24:02

ratings you see these picked

00:24:04

up there And then finally,

00:24:07

I really emphasize like this

00:24:08

is this is about the

00:24:09

right thing to do companies

00:24:10

have made commitments to the

00:24:13

ungps to respect the human

00:24:15

rights of stakeholders and these

00:24:17

standards provide practical tools to

00:24:19

actually do that and prevent

00:24:20

adverse impacts to stakeholders. So

00:24:24

I think just to try

00:24:25

to respect your time Doug

00:24:26

the bottom line is, you

00:24:29

know, really emphasizing that it

00:24:31

helps to manage potential legal

00:24:32

liability. Binding commitments with your

00:24:35

business partners and expectations of

00:24:38

other stakeholders and then your

00:24:39

company's own commitments is the

00:24:41

way I think this really

00:24:43

is very important for us

00:24:45

all to understand. Thanks very

00:24:47

much, Nate and we'll hear

00:24:48

more from you when you're

00:24:50

up as a presenter. Now,

00:24:51

we now we go to

00:24:52

Stefan who has six minutes

00:24:55

to speak to us in

00:24:58

English about France. Thanks a

00:25:01

lot for saying that indeed

00:25:02

this old ways. It'll be

00:25:03

different when it is in

00:25:04

the foreign language, but that's

00:25:05

why my best in fact,

00:25:07

you said that the runner

00:25:08

Plaza in which some French

00:25:10

companies were mentioned by the

00:25:12

way was in 2013. So

00:25:14

just after the UN guiding

00:25:16  
principles and several commitments from

00:25:18  
companies with voluntary CSR policies.

00:25:23  
These prove to some extent

00:25:24  
that binding regulation on respect

00:25:26  
of Human Rights including the

00:25:28  
supply chain was a key.

00:25:30  
In conformity with the duty

00:25:32  
to protect provided by ungp's

00:25:34  
France. Adopted the French vigilance

00:25:38  
law on human rights and

00:25:39  
environment. Soft human rights law

00:25:43  
into Harlow extra territoriality and

00:25:45  
challenging the corporate VL. This

00:25:48  
was seen as a legal

00:25:49  
Revolution. Thus necessary change of

00:25:53  
mindset for business and lawyers.

00:25:56  
That also concerns tribunals and

00:25:58  
courts including in International Investment

00:26:01  
arbitration. Covenant and John murgey,

00:26:05  
where are the origin of

00:26:06  
this changing World humanity and

00:26:08  
dignity in business. In France,

00:26:11  
as some of the countries

00:26:13  
vigilances at the heart of

00:26:15  
the Galaxy very well described

00:26:16  
by Elise Galaxy of norms

00:26:19

the Galaxy not easy to

00:26:20

handle for business and lawyers.

00:26:23

Hollow is the heart of

00:26:24

legality, but cannot stand alone

00:26:26

another for business because they

00:26:29

need financing and compliance now

00:26:31

for courts. Because they will

00:26:33

interpret in the light of

00:26:34

ungp's Harris agreement. Three point

00:26:39

sentence others of no regulation

00:26:42

and this is exactly the

00:26:44

case of what is happening

00:26:45

in France. French insurance flow

00:26:49

Is a 2017 and was

00:26:51

a compromise companies were rather

00:26:53

against the burning though, and

00:26:55

there are still some of

00:26:56

them against their heart directive

00:26:58

and these for competition reasons.

00:27:00

the very famous Level Playing

00:27:03

Field As a result there

00:27:05

was a short low in

00:27:06

front of four articles, but

00:27:08

some terms were so unclear

00:27:10

especially in article 3 that

00:27:11

the Constitutional Court decided to

00:27:13

delete it. So there were

00:27:15

three remaining articles but still

00:27:17

is not because sometimes we're

00:27:20

so unclear that you could

00:27:21

not provide for some criminal

00:27:23

offense that there is a

00:27:24

still need to interpret those

00:27:26

forms, and they will have

00:27:27

to be done by business

00:27:28

and lawyers and courts. But

00:27:31

so far no decisions except

00:27:33

procedural. The law focuses on

00:27:36

prevention the duty of diligence

00:27:38

and also role of ngos

00:27:40

and chorus who have a

00:27:42

role to play as indeed

00:27:44

maybe asked by anyone to

00:27:46

require a company to comply

00:27:49

with these obligations before it

00:27:51

goes to litigation. Concerning civil

00:27:54

liability. The law says clearly

00:27:56

that any continuing failure to

00:27:59

comply with its obligations as

00:28:01

listed. But indeed subject to

00:28:04

interpretation, that's what we call

00:28:05

a name Fault by the

00:28:07

law would make the company's

00:28:09

severely liable. It is stored

00:28:11

and a blasted compensate for

00:28:13

the defined severe damage that

00:28:16

the compliance with the sublugations

00:28:18

would have been made possible

00:28:19

to avoid. The Lloyd cells

00:28:22

obviously describes some limits and

00:28:25

content of the liability. What

00:28:29

are those obligations in simple

00:28:30

words they are about 265

00:28:32

Companies Incorporated in France, which

00:28:35

must each year design. Implement

00:28:38

effectively to be interpreted and

00:28:41

public on publish. It means

00:28:43

make public a plan called

00:28:46

vigilance plan. Due diligence is

00:28:49

said in some other instances,

00:28:50

but in front of these

00:28:51

called vigilance plan in which

00:28:52

we challenged. Possible reasonable vegetables

00:28:57

measures which will make the

00:28:59

company to be able to

00:29:00

identify all risk. It means

00:29:02

potential negative impacts on people.

00:29:05

And to prevent severe violations

00:29:07

of human rights, I insist

00:29:08

to identify all the risk

00:29:10

and to prevent civil violation

00:29:12

of Human Rights. And these

00:29:15

resulting from this activities but

00:29:17

also from the activities from

00:29:18

those companies it directly and

00:29:20

directly controlled decision-making power. It

00:29:23

supplies and subconscious and you

00:29:26

can say with whom it

00:29:27

maintained established commercial relationship. But

00:29:30

at the difference of what

00:29:31

has been said in different

00:29:33

instances, it was made clear

00:29:35

that is not because it

00:29:36

is said established commercial relationship

00:29:38

that there is a ranking.

00:29:39

He should not be stopped

00:29:42

at night one. It can

00:29:43

go to rank two and

00:29:44

fathers. The plan should be

00:29:47

designed with stake orders. It

00:29:49

could be an advantage to

00:29:50

avoid liability or to mitigate.

00:29:52

And include and there is

00:29:54

no no choice because that's

00:29:56

the basis for obligations from

00:29:57

company a mapping. We identify

00:30:00

analyze and then prioritize always

00:30:05

As a result today 20%

00:30:07

are in existent some are

00:30:09

vague of those plan and

00:30:11

there is a lack of

00:30:12

prioritization when some companies and

00:30:15

that's the case today with

00:30:16

McDonald's France in injunction. As

00:30:19

I mentioned earlier with the

00:30:20

role of State before litigation

00:30:22

has been asked to produce

00:30:23

a plan because there was

00:30:25

none. Secondly, they must do

00:30:27

companies subject to do the

00:30:30

plumbers do regular assessment of

00:30:31

mapping of risk and sending

00:30:33

the affiliate subcontractors and suppliers.

00:30:36

It makes sense. Thirdly, which

00:30:38

is the most important one.

00:30:39

They must take appropriate actions.

00:30:42

To mitigate the risk or

00:30:44

to prevent of course serious

00:30:45

impacts violations. This can be

00:30:47

linked to the idea in

00:30:49

a young girl in principles

00:30:50

of causing contributing and linkage.

00:30:53

And in fact the modifications

00:30:55

of directive we just read

00:30:57

and it is a transmitted

00:30:59

Mesa a very useful document.

00:31:00

Does it identify now back

00:31:02

in a directive the linkage

00:31:04

country between linkage and and

00:31:06

closing? They had some first

00:31:09

decisions. I mean, but there

00:31:11

is no real decisions. It's

00:31:13

only procedural. It's a fact

00:31:15

before litigation. The court has

00:31:18

been held by some ngos.

00:31:21

To ask to some companies

00:31:23

to comply with the obligations

00:31:24

person to the law. for

00:31:26

example for two dialogue Uganda

00:31:29

They've been asked to review

00:31:30

the shortcoming in its plan.

00:31:34

Also, it has been asked

00:31:35

to implement X Corporation indentatives.

00:31:39

In fact, there were climate

00:31:41

Duty on breaches of vigilance

00:31:43

for its Affiliates in Uganda

00:31:45

and Tanzania. One can say

00:31:50

that. In fact, it is

00:31:51

interesting to see that the

00:31:52

parliament in Europe the 15th

00:31:54

of September 2002 as the

00:31:56

nonce the violation of Human

00:31:58

Rights by that company in

00:32:00

Uganda and Tanzania. Teleperformance the

00:32:04

risk of violence of some

00:32:05

workers rights. So it has

00:32:07

been asked that it should

00:32:09

be included in the plan

00:32:10

EDF, but the place is

00:32:12

closed now Wind Farm project.

00:32:14

There was no free Power

00:32:16

informed consent. You see a

00:32:18

reference to some self-load to

00:32:19

some extent soft too hard.

00:32:20

It depends. And there's no

00:32:23

there's no vigilance to communities.

00:32:25

But the that's the long

00:32:26

story because NCP the twelve

00:32:29

of July decided to close

00:32:30

deal. And before that the

00:32:33

second of June 2022 still

00:32:35

in fact the sale of

00:32:37

energy by ADF was refused

00:32:38

by the company in Mexico.

00:32:40

So the the fine is

00:32:41

closed. Still time for apologize,

00:32:43

but can you bring it

00:32:45

to a close please? You're

00:32:46

a bit over time no

00:32:47

time for climate order to

00:32:49

change the to adapt its

00:32:52

plan to the 1.5 degrees.

00:32:53

Suez civil liability for consultations

00:32:57

communities Casino asked to adapt

00:33:01

its policy not correctly implemented

00:33:02

and that's about it. So

00:33:04

that's a closing and today

00:33:06

so much to happen in

00:33:07

months to come several EU

00:33:10

directive to become fidget and

00:33:12

corporate sustainability. ESG false label

00:33:14

full labor green deal and

00:33:17

taxonomy that will be in

00:33:18

the three months to come

00:33:19

quite some work for all

00:33:21

of us. Thank you very

00:33:23

much Stefan, and now release

00:33:25

you have three minutes to

00:33:26

comment on. Stefan's presentation You're

00:33:32

muted Elise. You need to

00:33:34

unmute. Elise Hear me now.

00:33:40

Now we can yes good

00:33:42

good. Thanks a lots of

00:33:44

fun for this excellent presentation.

00:33:45

So I I have a

00:33:49

lot of good things to

00:33:50

say about this log is

00:33:51

this law was the driving

00:33:52

engine of huge changes in

00:33:54

Europe. I remember back in

00:33:56

2014 2015 when all the

00:33:59

big companies in France were

00:34:00

so opposed to that law.

00:34:02

They were basically enraged and

00:34:05

the thought that they could

00:34:06

be controlled by such a

00:34:08

law and finally when the

00:34:10

law was adopted in 2017,

00:34:11

they Some of them rallied

00:34:14

very fast others not so

00:34:16

fast, but they are rallying

00:34:18

to the law and they

00:34:19

are trying to do what

00:34:21

they can to to abide

00:34:23

by the law where the

00:34:26

weakness of implementation has been

00:34:28

happening in my opinion as

00:34:29

a human rights lawyer is

00:34:31

the stakeholder engagement. There's been

00:34:33

very weak stakeholder engagement and

00:34:35

I believe if they were

00:34:36

reinforcing that aspect of the

00:34:39

law, which is very clear

00:34:41

in the law, but it's

00:34:42

even clearer in the European

00:34:44

directive. I think they would

00:34:46

gather information and they would

00:34:48

be much better equipped to

00:34:51

deal with the the most

00:34:52

Salient risk that they need

00:34:54

in their in their operations

00:34:57

as Stefan say the obligation

00:34:59

is to prevent It's it's

00:35:02

to address all risk, but

00:35:04

to really prevent all the

00:35:07

Salient risk. There is no

00:35:09

room for error. They have

00:35:11

to prevent these risks. They

00:35:12

have to do a mapping

00:35:14

of their supply chain. They

00:35:16

have to identify where the

00:35:19

risks are to the different

00:35:21

objects of the law, which

00:35:22

is as I said, I

00:35:23

mean environment human rights safety

00:35:26

at work and civil liberties

00:35:28

that they have to make

00:35:30

sure that their actions prevent

00:35:32

the occurrence of severe harm

00:35:35

and risk, so there's there's

00:35:37

no room to let these

00:35:39

risks happen. And that's what

00:35:42

the plan is supposed to

00:35:43

make happen. So if there

00:35:44

is no plan I could

00:35:46

almost say there is a

00:35:47

presumption that they're not doing

00:35:49

their job. I mean it's

00:35:50

not stated that way but

00:35:52

suffice that an association goes

00:35:54

before a court saying we

00:35:56

have suffered such damage and

00:35:58

there's no plan then the

00:35:59

court will turn around and

00:36:01

see where is your plan?

00:36:02

You have to provide a

00:36:03

plan. So these associations can

00:36:06

can sue you so I

00:36:09

mean this is this is

00:36:11

how European law is build.

00:36:13

This is very much part

00:36:15

of the argument of the

00:36:16

Galaxy that once you have

00:36:18

one of these laws. That

00:36:21  
was built in part of

00:36:23  
the British model of the

00:36:24  
UK modern slavery Act of

00:36:26  
2015 but very different because

00:36:28  
it belongs to different system

00:36:30  
these different systems operate a

00:36:33  
gravitational force on each other

00:36:35  
and the Galaxy starts to

00:36:38  
expand you see other Norms

00:36:39  
appearing other laws appearing other

00:36:42  
I mean case law developing

00:36:44  
and then you have a

00:36:47  
space that's becoming busier and

00:36:50

busier and busier and the

00:36:53

liability is becoming more expensive

00:36:55

in the case of the

00:36:57

French law like very much

00:36:59

at least. I'm afraid your

00:37:01

time as expired. Well, no

00:37:04

go to Nate for six

00:37:06

minutes on issues arise a

00:37:08

lot of advice to clients.

00:37:10

And of course, you'll have

00:37:10

some words later Elise Nate

00:37:13

the floors. Now you're immune.

00:37:18

Thank you. Thank you Doug.

00:37:19

So I I think what

00:37:22  
what I hope is of

00:37:24  
interest to people is is

00:37:25  
some some flavor of what

00:37:28  
it looks like for companies

00:37:30  
that take this area seriously,

00:37:32  
like what do they do

00:37:33  
in Practical terms? and in

00:37:36  
my experience most practical bhr

00:37:40  
advice is based on a

00:37:42  
combination of two things first

00:37:45  
is applying the UN guiding

00:37:47  
principle framework. Because of how

00:37:50  
universally accepted it is and

00:37:52

how integrated it is and

00:37:53

to so many hard law

00:37:55

expectations and and secondly incorporating

00:37:58

traditional best practices of corporate

00:38:02

compliance programs, which I think

00:38:04

many of us are familiar

00:38:05

with in in other contexts,

00:38:08

but applying them to the

00:38:10

bhr set of risks. so

00:38:16

As you know as we

00:38:17

talked about earlier at the

00:38:18

ungp framework is focused fundamentally

00:38:20

on respecting the human rights

00:38:22

of stakeholders. And what is

00:38:24

this respect concept really mean

00:38:27

and practice. Well first it

00:38:30

means having a clear policy

00:38:32

commitment from Senior Management that

00:38:35

the company's committed to respecting

00:38:37

the human rights of its

00:38:38

stakeholders meaning that it commits

00:38:40

to not interfere with stakeholders

00:38:43

enjoyment of their rights, and

00:38:45

of course The the primary

00:38:47

responsibility of countries governments to

00:38:51

protect human rights it stays

00:38:53

with them but it's up

00:38:54

to companies not to interfere

00:38:55

that should be in a

00:38:56

policy statement. so I can

00:39:00

accompany this this responsibility to

00:39:02

respect requires due diligence to

00:39:06

assess your risks and to

00:39:08

mitigate them which is clearly

00:39:10

is incorporated into the the

00:39:11

French laws that we were

00:39:13

talking about in many of

00:39:14

these other norms and the

00:39:15

Galaxy. Um, and then third

00:39:18

to facilitate effective remedy when

00:39:20

a company has caused actual

00:39:23

adverse impacts. And so so

00:39:26

this this framework means that

00:39:28

companies in Practical terms start

00:39:30

with a general policy commitment

00:39:32

and it's either a standalone

00:39:35

commitment or a policy statement

00:39:37

or policy and its own

00:39:39

or into incorporated into a

00:39:41

code of conduct. And due

00:39:44

diligence that concept is really

00:39:46

where I see companies spending

00:39:48

the most. Time most effort

00:39:51

most resources on due diligence

00:39:54

and so what is due

00:39:55

diligence mean? I think for

00:39:57

some people coming from other

00:39:58

fields, you hear the words

00:40:00

due diligence you may think

00:40:02

of oh, this is something

00:40:03

we do to vet a

00:40:05

particular supplier that we're thinking

00:40:07

about hiring or an agent

00:40:09

to make sure that they're

00:40:10

not going to engage in

00:40:11

misconduct or something like this.

00:40:14

um in the bhr world

00:40:16

the concept of due diligence

00:40:18

is much much broader, so

00:40:20

It really encompasses many different

00:40:23

aspects of what are traditionally

00:40:25

thought of as components of

00:40:26

a broader compliance program. So

00:40:29

it includes assessment of risks.

00:40:33

Acting on the findings of

00:40:35

your risks so that you

00:40:36

mitigate them. And then monitoring

00:40:39

to make sure that those

00:40:40

efforts are effective. And that

00:40:43

your your efforts continuously improve

00:40:45

over time and then finally

00:40:48

communicating with stakeholders so that

00:40:51

there's more accountability and transparency

00:40:54

about what you're doing in

00:40:55

this area which again you

00:40:57

can see all of these

00:40:58

Concepts reinforced in taking shape

00:41:01

and hard laws like the

00:41:02

the French law. and so

00:41:05

When you think of how

00:41:07

broad this due diligence concept

00:41:09

is you see you can

00:41:10

start to see how there

00:41:11

are many opportunities to leverage

00:41:12

companies existing corporate compliance programs

00:41:15

to address these types of

00:41:18

risks. And so I'll just

00:41:19

give one example here just

00:41:20

in a practical level to

00:41:22

hopefully bring this to life,

00:41:23

but for risk assessments Let's

00:41:27

say you have a particular

00:41:28

operation that you are concerned

00:41:32

about the human rights risks

00:41:35

to stakeholders there. What what

00:41:38

kind of existing processes in

00:41:40

your compliance program? Can you

00:41:41

leverage to help assess that

00:41:43

now many companies would already

00:41:45

be say sending sending attorneys

00:41:47

Auditors, whatever their to assess

00:41:51

other types of risks like

00:41:52

in an anti-corruption risk assessment.

00:41:55

And so one one Trend

00:41:56

I've seen is companies using

00:41:58

those as an opportunity to

00:41:59

to more broadly assess risks,

00:42:01

including human rights risks. And

00:42:03

and what's interesting about that

00:42:05

is that you can't just

00:42:06

apply traditional Concepts to The

00:42:09

bhr world you have to

00:42:11

keep in mind what really

00:42:12

makes it special about the

00:42:13

ungp framework is that it

00:42:17

requires much broader. Engagement with

00:42:21

rights holders those whose lives

00:42:26

may be adversely impacted by

00:42:28

the company's operations so much

00:42:30

more engagement with workers community

00:42:32

members to understand where the

00:42:33

risks and possible impacts are.

00:42:37

um, and then uh and

00:42:40

other obvious areas third-party controls

00:42:41

and I think this may

00:42:42

and you're just relationships with

00:42:45

business partners, and so you

00:42:48

can obviously having having a

00:42:51

processes in praise to conduct

00:42:54

risk, it due diligence on

00:42:56

those business partners and also

00:42:58

to build in the right

00:42:58

safe guards into contracts, which

00:43:00

I'm sure is relevant to

00:43:01

to many people from an

00:43:03

arbitration perspective leveraging those existing

00:43:06

processes in terms of your

00:43:08

business relationships to capture that

00:43:10

but again going farther because

00:43:12

it you're looking not just

00:43:14

at your direct impacts, but

00:43:16

sometimes farther up your supply

00:43:17

chain. So risk mapping your

00:43:19

supply chain. Is is very

00:43:22

much prioritized into challenging area

00:43:24

that I see a lot

00:43:25

of companies. Spending a lot

00:43:28

of time and effort with

00:43:29

and I guess just to

00:43:30

to wrap up up this

00:43:33

sort of like intro. I

00:43:34

mean I could obviously talk

00:43:35

all day about this and

00:43:36

I think all of us

00:43:37

could on this panel, but

00:43:39

I think you know, just

00:43:42

when I think about this

00:43:44

in Practical terms, I think

00:43:45

about opportunities to leverage existing

00:43:47

compliance program processes to address

00:43:49

this risk area and an

00:43:51

effective efficient feasible way, but

00:43:54

to not lose sight of

00:43:55

the fact that you need

00:43:56

a rights holder perspective involved

00:43:58

which will shape these things

00:44:00

differently and that you will

00:44:02

need more transparency communication to

00:44:05

facilitate accountability and and the

00:44:07

right kind of stakeholder engagement,

00:44:09

but I hope this is

00:44:11

helpful, but I love to

00:44:13

hear but Ray or others

00:44:14

have to say on this

00:44:15

topic, too. Thank you very

00:44:18

much Nate, and that's exactly

00:44:20

what we hope to proceed

00:44:22

to now Ray you seem

00:44:24

to be. Coming back into

00:44:27

the screen and the floor

00:44:29

is yours for six minutes

00:44:31

of issues that arise in

00:44:33

your advice to clients. Um,

00:44:37

thanks Doug and thanks Nate

00:44:40

at least and Stephan for

00:44:42

those great overviews of what

00:44:44

this all means and As

00:44:47

Nate has touched on human

00:44:50

rights due diligence under the

00:44:51

UN guiding principles is very

00:44:53

different from other forms of

00:44:54

human of due diligence in

00:44:56

the sense that the focus

00:44:58

of it is impacts by

00:44:59

business on rights of people

00:45:02

and that's very much at

00:45:03

the core of any due

00:45:05

diligence exercise that's aligned with

00:45:07

ungp or the oecd guidelines

00:45:09

or some of the new

00:45:10

legal requirements that's coming into

00:45:11

effect. And so risks to

00:45:14

the business itself, which would

00:45:15

generally be the focus of

00:45:17

business and of their lawyers

00:45:18

is a secondary part of

00:45:20

it. It's a legitimate part

00:45:21

of what you're doing, but

00:45:22

the focus of Human Rights

00:45:24

due diligence is really to

00:45:25

identify and then address an

00:45:27

account for impacts on people

00:45:29

and to remediate when appropriate

00:45:31

so in addition to the

00:45:33

idea of a process that

00:45:34

maybe built into Enterprise risk

00:45:36

management hrdd under the UN

00:45:39

guiding principles does incorporate concepts

00:45:42

of the actions that are

00:45:43

expected once potential an actual

00:45:46

impacts have been identified by

00:45:47

the company those impacts on

00:45:48

people and in order to

00:45:50

understand what those are and

00:45:51

how to address them that

00:45:53

requires human rights expertise to

00:45:56

understand the standards that are

00:45:58

applying and what those impacts

00:45:59

might be and what the

00:46:00

company companies relationship with them

00:46:02

could be assessing what the

00:46:04

company's involvement with them is

00:46:06

whether it's causing contributing or

00:46:08

linked to the impact because

00:46:09

that is relevant to an

00:46:12

identification of what Question is

00:46:13

expected Under The Guiding principles

00:46:15

to address those impacts. And

00:46:18

so it's what's happened with

00:46:21

I think the French vigilance

00:46:23

law and others will correct

00:46:24

me and the draft corporate

00:46:26

sustainability due diligence directive is

00:46:28  
an aim by states to

00:46:31  
build due diligence obligations that

00:46:34  
reflect that are grounded in

00:46:35  
and reflect the expectations of

00:46:37  
the UN guiding principles and

00:46:38  
the oecd guidelines for Multinational

00:46:40  
Enterprises, but that is really

00:46:42  
challenging because the responsibility to

00:46:45  
respect human rights is not

00:46:46  
a legal obligation on companies.

00:46:49  
It reflects a societal norm.

00:46:51  
And what the legislatures are

00:46:53  
having to do is translate

00:46:54

Concepts that are not legal

00:46:56

in nature in The Guiding

00:46:58

principles into legal obligations on

00:47:00

companies and that can be

00:47:02

quite proved to be quite

00:47:03

clunky because as the UN

00:47:06

working group has reported to

00:47:08

the general assembly in its

00:47:10

discussion on human rights due

00:47:11

diligence. It's not a science.

00:47:13

It is an art and

00:47:15

I think this is one

00:47:15

of the real challenges for

00:47:17

businesses is The really difficult

00:47:20

human rights challenges the impact

00:47:23

that create real dilemmas for

00:47:25

business if they are involved

00:47:26

with them. Those are the

00:47:28

really tricky ones that businesses

00:47:29

have to work through and

00:47:31

that requires a real appreciation

00:47:33

of what it is you

00:47:34

can do with the information

00:47:35

that you you gather in

00:47:37

your due diligence the feedback

00:47:38

that you're getting from stakeholders

00:47:40

and then working way through

00:47:43

those in order to prevent

00:47:45

mitigate or if necessary remediate

00:47:48

those impacts. And it's that

00:47:50

process I think is proving

00:47:52

Troublesome certainly in the EU

00:47:53

context the current corporate sustainability

00:47:56

due diligence proposal in court

00:48:00

seeks to incorporate the elements

00:48:02

of The Guiding principles in

00:48:03

the oecd guidelines, but has

00:48:05

been criticized for being quite

00:48:06

prescriptive as to the steps

00:48:07

that should be taken to

00:48:08

address impacts. It doesn't in

00:48:11

its current and it's in

00:48:12

its original form really adequately

00:48:14

account for this nature of

00:48:16

the involvement of the company

00:48:17

to assess whether it's a

00:48:19

causal connection or a contribution

00:48:23

or a linkage and it's

00:48:25

it has a tendency to

00:48:26

encourage sort of tick back

00:48:27

tick box compliance based approaches

00:48:31

using contracts Etc in a

00:48:34

cascading fashion now contracts and

00:48:36

and other forms of Leverage

00:48:38  
are very legitimate mechanisms for

00:48:40  
companies to use to try

00:48:42  
and manage human rights impacts

00:48:43  
and risks. But as I

00:48:45  
said, this is more not

00:48:46  
than a science because template

00:48:48  
Clauses in Supply chains will

00:48:50  
rarely make a practical difference

00:48:53  
to whether to the people's

00:48:56  
rights at the end of

00:48:56  
a supply chain what's really

00:48:58  
important is for businesses to

00:49:00  
understand the nature of the

00:49:01

impacts with which they're involved

00:49:03

and to really think through

00:49:04

how they can address those

00:49:05

in a meaningful way and

00:49:07

that can be very challenging

00:49:08

when when the actual impact

00:49:11

may be quite far down

00:49:12

your supply or value chain.

00:49:15

So in relation to this,

00:49:16

it's really important for internal

00:49:19

stakeholders within companies for a

00:49:21

cross-functional approach to these issues.

00:49:23

So you require the human

00:49:24

rights expertise. You need to

00:49:26

be talking to your lawyers

00:49:27

the business people on the

00:49:28

ground need to understand what

00:49:29

they're doing. The sustainability function

00:49:31

will have a role the

00:49:33

human rights function your security

00:49:34

people. If you're in a

00:49:35

high risk area and all

00:49:37

those constituencies need to be

00:49:38

brought into the picture to

00:49:40

and sort of get the

00:49:41

idea of Human Rights due

00:49:43

diligence under the organization skin.

00:49:44

So it's as much about

00:49:48

With capacity within organizations to

00:49:50

really understand what human rights

00:49:52

impacts look like and what

00:49:53

the expectations are on the

00:49:54

business to deal with them

00:49:55

and making sure that that

00:49:56

is implemented throughout those systems.

00:49:58

Whether it's in plans to

00:50:00

address adverse impacts preventive plans

00:50:03

corrective action plans and through

00:50:05

contracts, but all of that

00:50:07

as I say is it

00:50:08

requires very subtle application of

00:50:10

those instruments depending on the

00:50:12

information that's come out for

00:50:14

human rights due diligence exercise.

00:50:15

And also it's very much

00:50:19

an ongoing method of identifying

00:50:22

and addressing adverse impacts. Ultimately

00:50:25

a Stefan said, you know,

00:50:26

the idea is to prevent

00:50:27

adverse human rights impacts. And

00:50:29

so if done properly it

00:50:31

can be a way of

00:50:32

for example companies avoiding themselves

00:50:35

being on the end of

00:50:35

claims of having caused hip

00:50:38

impacts or harm and therefore

00:50:41

potentially of having these issues

00:50:42

sucked into arbitration now, I'm

00:50:44

not an arbitration expert and

00:50:46

I know Doug is going

00:50:47

to Correct. Anything that I

00:50:49

get wrong and certainly expand

00:50:51

on and improve what I

00:50:52

have to say, but my

00:50:53

understanding is that There are

00:50:56

now efforts to incorporate elements

00:50:57

of to place obligations of

00:51:01

a social environmental nature on

00:51:03

investors in the context of

00:51:05

International Investment are agreements. So

00:51:07

that in future those might

00:51:09

give rise to arbitrations and

00:51:10

claims that would evolve companies

00:51:13

failures to adhere to those

00:51:14

standards. This might include an

00:51:17

obligation to undertake human rights

00:51:18

due diligence Etc. And so

00:51:21

you may see in the

00:51:23

future that these might form

00:51:24

the basis of claims. It

00:51:25

seems to me that all

00:51:26

so in an arbitration context

00:51:27

now that we have these

00:51:29

National laws that impose human

00:51:30

rights due diligence obligations that

00:51:33

depending on the applicable law

00:51:34

in a particular arbitration that

00:51:36

a tribunal might well have

00:51:37

reason to look at whether

00:51:39

a company has in fact

00:51:40

that here to the home

00:51:41

States requirements on its due

00:51:43

diligence because under for example,

00:51:45

the csdd any company making

00:51:47

an investment would be required

00:51:49

to undertake human rights due

00:51:51

diligence in relation to that

00:51:52

and obviously timing on that.

00:51:55

Is key and secondly as

00:51:57

I understand it human rights

00:51:58

arguments may also be raised

00:52:00

against investors in the context

00:52:02

of where they've raised human

00:52:04

rights issues in arbitrations or

00:52:05

in the context of counterclaims

00:52:07

where the argument might be

00:52:10

that that a company has

00:52:12

impacted on human rights and

00:52:14

therefore should not be entitled.

00:52:15

To recourse under the investment

00:52:17

arbitration agreement, even though the

00:52:20

state may have been deficient

00:52:22

in meeting its only obligations

00:52:23

and an example of that

00:52:25

is there's a Peruvian case

00:52:28

Bear Creek. I think where

00:52:29

Philippe Sands had a dissenting

00:52:31

opinion where he took account

00:52:33

of the fact that there

00:52:35

had been unrest in relationship

00:52:38

mining concession and whether the

00:52:40

company had contributed to the

00:52:42

fact that the concession was

00:52:43

then brought to an end

00:52:45

and there was an alleged

00:52:47

expropriation that the company's compensation

00:52:51

was reduced. The award was

00:52:52

reduced by half to reflect

00:52:54

that the fact The company

00:52:55

had not properly established its

00:52:58

social license to operate. I

00:53:00

think what comes out of

00:53:01

that is. having looked at

00:53:04

That part of the distinct

00:53:06

sending opinion is that one

00:53:08

of the challenges I think

00:53:09

in arbitrations is an understanding

00:53:12

of the state Duty and

00:53:14

obligations in human rights and

00:53:15

the corporate responsibility respect and

00:53:17

then these overlays of domestic

00:53:19

legal requirements and how they're

00:53:20

all going to intersect to

00:53:22

affect particular claims Etc. And

00:53:24

then last but not least.

00:53:25

I think we can expect

00:53:25

to see commercial arbitrations where

00:53:28

the kinds of contracts that

00:53:30

Nate talked about contain human

00:53:31

rights related Provisions including to

00:53:33

implement the outcome of due

00:53:35

diligence and whether companies have

00:53:37

been in breach of those

00:53:37

and of course last but

00:53:39

not least the missing part

00:53:41

continues to be the fact

00:53:43

that all of these measures

00:53:44

are supposed to be effective

00:53:45

in protecting rights and the

00:53:47

fact that you know, a

00:53:48

lot of these the implementation

00:53:50

of hrdd either on a

00:53:52

voluntary basis or through legislation

00:53:54

is not demonstrably yet improving

00:53:57

the lot of those who

00:53:59

are affected by business activities

00:54:00

and secondly that most arbitrations

00:54:07

obviously do not really give

00:54:08

opportunity to those who are

00:54:11

affected to bring claims where

00:54:12

their rights have been infringed.

00:54:14

I've probably gone on way

00:54:15

too long and Douglas is

00:54:16

now over tutor put me

00:54:18

right on arbitration. Thank you

00:54:21

very much. Ray now return

00:54:23

back to Stefan who has

00:54:25

three minutes. If you wish

00:54:27

to comment on what Ray

00:54:29

said you could do that

00:54:30

or if you wish to

00:54:31

look more broadly than the

00:54:34

French experience. You described earlier

00:54:36

the floor is your Estefan.

00:54:39

Yeah, thank you very much.

00:54:40

I think so much has

00:54:41

been saved by a knight

00:54:43  
and Ray it would be

00:54:45  
impossible in three minutes to

00:54:47  
come into those excellent things

00:54:48  
one or two point first

00:54:51  
the ungp's he's still applicable

00:54:55  
and this is what I

00:54:56  
said to any french companies,

00:54:57  
whatever the size of the

00:54:59  
company whatever the second activity

00:55:00  
is, whatever the number of

00:55:02  
employees whatever the turnover. Ungp's

00:55:06  
will still apply first. And

00:55:08  
this is what I said

00:55:09

to my clients. I say

00:55:10

careful you better apply ungp's

00:55:13

if it goes further than

00:55:15

French law for example, so

00:55:16

it means that if you

00:55:17

comply with your ntps, then

00:55:19

you will comply with French

00:55:20

law, but at least you

00:55:22

might go further which is

00:55:23

the case, by the way.

00:55:25

That might be the same

00:55:26

with a directive to come

00:55:28

there are many modifications and

00:55:31

a draft directives to be

00:55:32

published to be released soon.

00:55:35

But this is something important.

00:55:38

The second thing is many

00:55:41

issues concerning the burden of

00:55:44

proof. The burden of proof

00:55:47

is a key issue and

00:55:48

it is been pointed out

00:55:51

in a draft directive of

00:55:53

the new one of 13th

00:55:54

September 2022. where they are

00:55:58

now some some real thoughts

00:56:02

on how to deal with

00:56:03

that. So that's victims. Would

00:56:07

have less to do in

00:56:09

terms that companies have some

00:56:11

obligation to communicate and publish

00:56:13

their plans and therefore the

00:56:15

publish and they make it

00:56:16

known publicly what they ought

00:56:18

to do and they have

00:56:20

no choice than to do

00:56:20

that. So this might have

00:56:23

some role to play in

00:56:25

a burden of group. I

00:56:26

won't expand too much on

00:56:27

that. Then the social license

00:56:30

arbitration and other issues in

00:56:34

get back to what race

00:56:36

says concerning the Cozy and

00:56:37

contributing and linkage. In fact,

00:56:39

this is very interesting to

00:56:41

see that that new directive

00:56:43

the new draft. As I

00:56:44

said earlier. We'll write those

00:56:46

issues. So instead of establish

00:56:49

commercial relationship in a supply

00:56:52

chain. It is now accepted

00:56:55

that the reference shall be

00:56:57

causing contributing and linkage with

00:56:59

the consequences attached to those

00:57:02

Notions and this is very

00:57:03

interesting. I like what you

00:57:06

say Ray to understand on

00:57:08

how to do indeed. It

00:57:11

is not an easy thing

00:57:12

for business because all we

00:57:14

speak about is the real

00:57:15

big change in the mindset

00:57:17

for business and for lawyers,

00:57:19

and they are still a

00:57:21

lot of a lot to

00:57:22

do with these awareness for

00:57:24

business and lawyers should continue

00:57:26

to to be done very

00:57:28

very seriously. Concerning the social

00:57:31

license indeed that social license

00:57:34

is a strange notion to

00:57:36

some extent but it makes

00:57:38

us lawyers and business, but

00:57:40

Forest laws to have think

00:57:41

twice. Is not anymore to

00:57:43

advise clients and on it

00:57:45

on the on a legal

00:57:46

license to some extent but

00:57:47

also on the social license

00:57:49

and the social license is

00:57:51

not only Hollow as it

00:57:53

would be the case for

00:57:54

us in France and in

00:57:55

Europe, but as I understand

00:57:57

the way that we think

00:57:59

and we consider those issues

00:58:00

can sometimes be different between

00:58:03

where the countries have Harlow

00:58:05

and where the countries like

00:58:06

in the US way. It

00:58:07

is less Hollow or some

00:58:09

other countries. But again, I

00:58:11

want to say that we

00:58:13

speak of universal values. And

00:58:15

for these I would claim

00:58:16

that ungp is whatever Harlow

00:58:18

shall still be there and

00:58:20

shall be used. In fact

00:58:21

the surf flow ungp's and other

00:58:23

soft flow shall be used

00:58:25

by course and tribunals and

00:58:27

it is a case already

00:58:27

in France. And this is

00:58:29

new to use some public

00:58:30

some sort of public international

00:58:32

law for business and for

00:58:34

decisions in business. This is

00:58:36

very strange and very new.

00:58:37

Sorry. That's French. This is

00:58:39

very new. Nail concerning arbitration

00:58:42

I think dog that would

00:58:43

be so much to say

00:58:44

but I'm afraid my time

00:58:45

has elapsed. So I will

00:58:47

close there indeed there is

00:58:50

this word and the shield

00:58:52

in International Investment arbitration and

00:58:55

why because the state is

00:58:57

always in some sort of

00:58:58

defense and as we know

00:59:01

because protection of investors protection

00:59:03

of Human Rights, that's to

00:59:05

some extent have to be

00:59:06

equal that's what has been

00:59:07

decided in some decisions, but

00:59:09

in reality brities and dog

00:59:12

that's for you to expand

00:59:14

the it is still have

00:59:16

a lot to do in

00:59:17

order to really take into

00:59:19

account that well balanced between

00:59:21

those two issues merci Goku

00:59:25

Thank you very much Stefan.

00:59:26

I'm now going to expand

00:59:28

a bit on the relevance

00:59:31

of what you've just heard

00:59:32

to International Investment arbitration going

00:59:35

a bit beyond what the

00:59:37

helpful introduction that Ray gave.

00:59:40

As any of you who

00:59:41

are involved in investment arbitration

00:59:43

today. No. The bilateral investment

00:59:48

treaties and other treaties that

00:59:49

create possibilities of investor State

00:59:52

dispute settlement through International arbitration.

00:59:56

The the treaties that are

00:59:57

enforced now almost never make

00:59:59

Express reference to the phrase

01:00:01

or the words human rights

01:00:03

and not surprisingly very few

01:00:06

isds arbitral tribunals to date

01:00:10

have expressed have have pronounced

01:00:14

on issues business and human

01:00:16

rights and frankly in the

01:00:18

rare occasions when they've done.

01:00:19

So in my opinion, they've

01:00:21

mostly got it wrong. It

01:00:24

is as if International Investment

01:00:25

law and business and human

01:00:27

rights law are somehow in

01:00:29

two separate worlds, even though

01:00:30

they're part of the same

01:00:31

public international law. But this

01:00:35

is changing in recent years.

01:00:38

Business and human rights is

01:00:40

now increasingly mentioned in the

01:00:42

operative provisions of new bilateral

01:00:45

and multilateral investment treaties. In

01:00:49

the next three to 10

01:00:50

years these changes in the

01:00:52

treaties combined with the hardening

01:00:55

of business and human rights

01:00:56

law about which you've heard

01:00:58

are likely to become subjects

01:01:00

of litigation in isds arbitrations.

01:01:05

For example of the changes

01:01:06

for example of the changes

01:01:08

that I'm about to note.

01:01:09

You could consult for example

01:01:11

among many others. the 2021

01:01:14

Columbia Spain bilateral investment treaty

01:01:18

the 2019 Dutch model vit

01:01:22

and the 2016, Morocco Nigeria.

01:01:25

vit not all of the

01:01:28

changes. I'm going to mention

01:01:29

are in all of these

01:01:30

treaties and they take different

01:01:32

forms in the different treaties.

01:01:33

But all of the changes

01:01:35

are apparent in at least

01:01:36

some of these recent treaties

01:01:38

now neither the two bips

01:01:41

Columbia Spain or Morocco Nigeria

01:01:43

are yet enforce and the

01:01:45

Dutch model the it has

01:01:47

yet to be applied to

01:01:49

a single new specific vit.

01:01:53

But they all indicate trend

01:01:55

lines that are remarkably different.

01:01:57

From bits of the past

01:01:59

and are likely to continue

01:02:00

expand and enter into force

01:02:04

in the next decade. So

01:02:06

in summary, what are the

01:02:07

changes and they come in

01:02:09

at least? Four areas first,

01:02:11

there are now explicit references

01:02:14

to human rights. Sometimes those

01:02:16

come in the Preamble, but

01:02:17

of course as public International

01:02:19

lawyers know the Preamble is

01:02:21

important for interpretation of the

01:02:23

entire treaty. Secondly, they are

01:02:27

now also in many cases

01:02:28  
in the actual text of

01:02:30  
the operative provisions of bits.

01:02:33  
Second there is clarification of

01:02:36  
the human rights responsibilities of

01:02:38  
states to reaffirm their right

01:02:42  
to regulate. For human rights

01:02:44  
and the environment and as

01:02:45  
I mentioned earlier environment is

01:02:47  
now part of human human

01:02:49  
rights as well. There is

01:02:51  
a reaffirmation in these new

01:02:53  
treaties of the state duty

01:02:55  
to protect human rights and

01:02:57  
of the state duty to

01:02:59  
ensure access to effective remedy

01:03:02  
when you put all of

01:03:03  
those together arbitrators will now

01:03:06  
have license indeed. I would

01:03:08  
suggest a mandate to consider

01:03:11  
issues of human rights when

01:03:13  
they are evaluating State actions

01:03:15  
that affect investors Now thirdly

01:03:20  
with respect to investors, there

01:03:23  
are explicit references to the

01:03:25  
human rights responsibilities. And in

01:03:29  
some cases of obligations of

01:03:31

investors under the ungps the

01:03:34

oecd guidelines and other provisions.

01:03:39

And also there is reference

01:03:41

to civil liability in in

01:03:44

these bits civil liabilities of

01:03:46

investors in their home States

01:03:48

for injuries and loss of

01:03:50

life. They cause in the

01:03:52

host state. Finally in the

01:03:54

particular area of isds. There

01:03:57

are now specific Provisions that

01:04:00

at least one. If not

01:04:02

more tribunal members should be

01:04:04

qualified in the field of

01:04:06

international human rights law. And

01:04:09

the the express provision that

01:04:13

isds recovery may be denied

01:04:16

altogether or instead have the

01:04:19

damages reduced as happened in

01:04:22

Bear Creek as Ray mentioned

01:04:24

because of violations by a

01:04:26

company of its bhr responsibilities

01:04:29

and obligations. So with all

01:04:31

of those Provisions coming into

01:04:32

treaties, it's important that arbitration

01:04:35

lawyers be ready for them

01:04:37

because they will be applied

01:04:39  
in the coming years. Now

01:04:41  
we have time for concluding

01:04:43  
remarks by each of our

01:04:45  
four panelists. I think we

01:04:48  
could go in reverse order

01:04:49  
at this point Ray. Would

01:04:52  
you like to begin with

01:04:52  
two or three minutes of

01:04:54  
closing comments? And thank oh

01:04:58  
thank you Doug and just

01:05:01  
picking up on some of

01:05:02  
the more recent remarks. I

01:05:04  
mean Stefan is is an

01:05:07

indomitable Optimist in terms of

01:05:10

the future of the guiding

01:05:11

principles. I think there's a

01:05:13

real risk to The Guiding

01:05:16

principles approach to Human Rights

01:05:18

due diligence and it's objectives

01:05:20

by if the laws that

01:05:22

are coming into effect are

01:05:24

not crafted very carefully and

01:05:26

if they are taken as

01:05:27

a ceiling by companies rather

01:05:30

than and and it's questionable,

01:05:32

how many are going to

01:05:32

be willing to go beyond

01:05:34

and continue to adhere to

01:05:35

this spirit in terms of

01:05:36

implementation of The Guiding principles.

01:05:37

So I hope Stephanie is

01:05:40

right and then just picking

01:05:42

up on something you you

01:05:43

said Doug is what are

01:05:45

how extensive is the responsibility

01:05:48

to respect human rights? And

01:05:49

I think there's lots of

01:05:50

definitional and language issues that

01:05:54

also come out of the

01:05:55

attempts to translate. The ungp

01:05:58

into legislation for example in

01:06:00

what is in adverse human

01:06:01

rights impact what a company's

01:06:04

responsibilities. When do they translate

01:06:05

into violations Etc? And then

01:06:09

the cut the proposition that

01:06:10

the environment is now part

01:06:12

of international human rights, I

01:06:14

think is controversial. I think

01:06:16

the new right to a

01:06:17

healthy environment is not an

01:06:19

internationally recognized human right my

01:06:21

personal my view but I

01:06:22

don't think international law has

01:06:24

progressed that far there are

01:06:26

differences obviously in some countries

01:06:28

depending on their constitutional positions,

01:06:29

but that's one that's going

01:06:31

to be fought out for

01:06:32

a long time to come.

01:06:32

I think one of the

01:06:33

challenges going forward is obviously

01:06:34

for international lawyers business and

01:06:36

human rights lawyers arbitration lawyers

01:06:37

to be to recognize the

01:06:40

parameters of what they're talking

01:06:41

about. There's going to be

01:06:42  
a lot of scope for

01:06:43  
dispute on some of these

01:06:44  
issues going forward, but I

01:06:45  
think the conflation of international,

01:06:48  
you know, there's there's lots

01:06:49  
of criticism of does International

01:06:51  
Investment law ignore international human

01:06:54  
rights law. I think that

01:06:56  
the attempts to Hose International

01:06:58  
environmental law Concepts into international

01:07:01  
human rights law is one

01:07:03  
that needs to be treated

01:07:04  
very carefully and you'll be

01:07:06

familiar with, you know, the

01:07:07

recent report of the Philippines

01:07:08

Human Rights Commission, which makes

01:07:09

various leaps of logic in

01:07:11

my view in that regard.

01:07:12

So I would just say

01:07:13

that that's an area that

01:07:15

is for discussion and exploration

01:07:17

going forward in the future.

01:07:17

Thanks. Thank you very much

01:07:20

Ray Nate. Thank you. Thank

01:07:25

you. That's fantastic. And I

01:07:26

think you know aside aside

01:07:29  
from these obviously hugely important

01:07:31  
policy discussions. I think that

01:07:32  
one thing if for for

01:07:35  
people who are maybe new

01:07:37  
to this area, I think

01:07:38  
I I think I might

01:07:39  
just end with the plug

01:07:40  
for really reinforcing. I think

01:07:43  
what's a common theme through

01:07:44  
all of the discussions today,

01:07:46  
which is Which is this

01:07:48  
is a really important time

01:07:50  
to really become conversant in

01:07:52

these Concepts and what? what

01:07:55

it looks like for a

01:07:57

company to be living up

01:07:59

to its responsibility to respect

01:08:01

human rights these days because

01:08:04

because it's essential for for

01:08:07

us as lawyers to be

01:08:10

able to serve our clients

01:08:11

that in our traditional roles

01:08:13

where they rely on us

01:08:14

for issue spotting. um in

01:08:18

terms of being able to

01:08:21

see a genuine issue and

01:08:23

to raise it a creativity

01:08:25

in terms of how to

01:08:26

apply. um, these these standards

01:08:30

in the spirit of these

01:08:32

standards to the actual realities

01:08:34

of business and and also

01:08:37

just Independence where we we,

01:08:40

you know, as professionals come

01:08:42

at things and are you

01:08:44

really uniquely positioned to understand

01:08:47

rights holder approaches and to

01:08:49

give voice to them effectively

01:08:51

to help management so that

01:08:54

the right actions can be

01:08:56

taken and and so I

01:08:59

this this trend I see

01:09:01

it only continuing and and

01:09:03

so so it's yeah again,

01:09:05

it's just I think it's

01:09:06

just a crucial time to

01:09:08

really just become Converse and

01:09:09

have familiarity with this area.

01:09:12

Thank you Nathan before we

01:09:13

hear from Stefan and Elise

01:09:14

a housekeeping item that I

01:09:17

neglected to mention earlier when

01:09:19

we conclude with the panelists

01:09:20

standard practice in Washington arbitration

01:09:25

week and I believe in

01:09:26

this update as well is

01:09:28

that we are broken into

01:09:29

small groups where one of

01:09:33

us will be in each

01:09:34

group or maybe two and

01:09:36

some of you as well

01:09:37

for informal chat on any

01:09:39

subject. So with that reminder

01:09:42

what that will begin once

01:09:45

Stefan and Elise have made

01:09:47

their concluding comments Define. Yeah,

01:09:51

thanks a lot. Yeah, in

01:09:53

fact Ray without playing on

01:09:55

words. I have a dream.

01:09:58

And my dream is that

01:10:01

we speak of universal values

01:10:03

human rights is universal. The

01:10:06

ungp's have been adopted and

01:10:08

I will remember all my

01:10:10

life the way it went

01:10:11

on when we were with

01:10:12

ruggy and and all the

01:10:14

team. And you were there

01:10:16

right? And it is not

01:10:18

been easy. Same when we

01:10:20

go to doctored in 2015

01:10:22

and 16 and the IBA

01:10:25

level the Practical guide for

01:10:26

business lawyers, and now that

01:10:27

and other instruments. all based

01:10:30

on ungp's and have a

01:10:33

dream. Is that that Universal

01:10:36

values in human rights can

01:10:37

be implemented in a universal

01:10:39

manner all across the world?

01:10:42

Whatever our culture whatever our

01:10:44

religion whatever our system of

01:10:46

law, whatever our languages. I

01:10:49

dream that we will one

01:10:52

die have those common bases

01:10:53

and common tools as a

01:10:55

unganning principles is a common

01:10:57

tool in order to implement.

01:11:00

Indy Ray I agree with

01:11:01

you, it's a dream. But

01:11:03

I've always thought that to

01:11:05

dream is not necessarily bad

01:11:07

and to have a good

01:11:09

dream when it is a

01:11:10

nice dream. It is something

01:11:12

that we can share. So

01:11:14

indeed, I will remain optimistic

01:11:17

and a dreamer. And that

01:11:19

will work for my dream

01:11:20

to become reality because I'm

01:11:22

not the only one he's

01:11:23

not my only dream. So

01:11:25

how to do for us

01:11:26

as lawyers is to be

01:11:28

convinced that we should act

01:11:29

as wise advisors as just

01:11:32

been insisted and John Sherman

01:11:34

was speaking a lot on

01:11:35

that to demystify Human Rights

01:11:37

and make it for lawyers

01:11:39

that indeed we speak of

01:11:40

social license and legal license

01:11:42

at the same time. And

01:11:44

that when we advise clients

01:11:46

we take the risk sometimes

01:11:47

to say come on. Listen

01:11:50

to me you do a

01:11:52

big m&a transaction, but I

01:11:53

would like to speak on

01:11:54

human rights at the same

01:11:55

time. I can say that

01:11:57

very often other partners in

01:12:00

corporate departments or clients who

01:12:02

say no we have no

01:12:02

time for that. We should

01:12:04

all say we're going to

01:12:05

take some time for that

01:12:06

at least few minutes. Because

01:12:09

this will make the change

01:12:10

the world to change. It

01:12:12

takes time to bring awareness.

01:12:14

It takes time to change

01:12:15

the mindset of people that

01:12:17

will take time. It takes

01:12:18

time to make people not

01:12:20

thinking about short-term money, but

01:12:22

to have long-term plans for

01:12:24  
the planet and for our

01:12:25  
kids and grandkids and others

01:12:27  
that will take time. That's

01:12:28  
a dream as well. I'm

01:12:30  
a real Dreamer. Thank you

01:12:32  
Father. I think we'll need

01:12:33  
to and they're past the

01:12:35  
time to to release and

01:12:38  
congratulations on your on your

01:12:40  
dream at least. And you'll

01:12:42  
need to unmute Elise. Yeah,

01:12:52  
so lights did fine. I'm

01:12:54  
I'm an absolute dreamer. I'm

01:12:56

an idealist. I mean if

01:13:02

you work in human rights,

01:13:03

you have to be an

01:13:04

incredible nurse because it's it's

01:13:05

very hard at time to

01:13:07

on they just stop my

01:13:09

video. I don't know why.

01:13:09

But anyway, I'm maybe because

01:13:11

they can't hear me when

01:13:12

I when I'm that's right.

01:13:13

It's an improvement on your

01:13:15

audio. That's good. So that's

01:13:17

fine. So. What I want

01:13:20

to leave people the thought

01:13:23

I want to leave people

01:13:23

with I mean to prolong

01:13:25

on what's the plan is

01:13:26

saying is that as a

01:13:29

human race we are at

01:13:31

a crossroad right now where

01:13:33

I mean all the problems

01:13:34

are converging. I mean, we

01:13:37

have an incredible economic situation

01:13:40

we have once in a

01:13:44

human kind lifetime Planet prices

01:13:47

climate crisis. We have a

01:13:49

big war where we don't

01:13:51

know where it's gonna and

01:13:52

with the leader that's threatening

01:13:55

nuclear nuclear war and we

01:13:59

have an economic crisis that's

01:14:01

looming and we have rampant

01:14:03

inequality. So in spite of

01:14:05

all the instruments we've built

01:14:07

inequality is just grown So

01:14:09

we have to talk to

01:14:12

business and investors to tell

01:14:14

them that they can really

01:14:16

make a difference here that

01:14:18

if they decide to go

01:14:20  
on the side of Human

01:14:21  
Rights and on the side

01:14:22  
of Environmental Protection, they will

01:14:25  
fend off these fascist leaders

01:14:27  
that are springing up everywhere

01:14:29  
and he's conscious leaders. May

01:14:32  
I remind you all I'm

01:14:34  
not concerned about Economic Development.

01:14:36  
They don't care they don't

01:14:38  
care they pillage their country

01:14:40  
ruin their country. They're very

01:14:42  
dogmatic people. All they want

01:14:44  
is raw power and dominance.

01:14:47

You can see what's happening

01:14:49

in Russia. You can see

01:14:50

what's happening in Iran. You

01:14:52

can see what Trump wanted

01:14:53

to do in the US

01:14:54

but Orban is done to

01:14:56

to hungry what Paul scenario

01:14:59

has done to Brazil. So

01:15:00

business has a choice they

01:15:03

have a choice to side

01:15:04

with human rights and environment

01:15:06

for the future of the

01:15:07

planet or they will just

01:15:09

Bow out and just become

01:15:11  
the puppets of fascists because

01:15:13  
fascism is rising and fascism

01:15:16  
is due to the fact

01:15:17  
that there's been such an

01:15:19  
equality people are lost people

01:15:21  
are are in quest for

01:15:25  
for direction and and I

01:15:27  
believe together with lawyers business

01:15:30  
can play a real leadership

01:15:32  
role in taking the path

01:15:34  
to development to progress to

01:15:36  
sustainability. I believe more and

01:15:39  
more investors understand that they

01:15:41

don't want to invest in

01:15:42

oil and gas anymore or

01:15:43

less and less because they

01:15:45

know this is this is

01:15:46

gone. This is going to

01:15:47

be gone and it's true

01:15:49

for many other fields. So

01:15:52

this is where my green

01:15:54

takes me to find us

01:15:55

that we have to to

01:15:57

appeal to leadership so that

01:15:58

they take the decisions to

01:16:00

support human rights to support

01:16:03

the planet to support sustainability.

01:16:05

If not, we are heading

01:16:07

to a catastrophe which I

01:16:10

really don't want it to

01:16:11

happen. Thank you very much.

01:16:13

At least right now. We'll

01:16:14

be heading to the breakout

01:16:16

sessions and I assume the

01:16:18

administrators will do whatever is

01:16:20

needed to make those happen.

01:16:22

But thank you to all

01:16:23

of the panelists for what

01:16:24

I I have found to

01:16:26

be an engaging and informative

01:16:27  
set of discussions. Thank you

01:16:30  
all. Thank you dog. Thank

01:16:33  
you. Thank you. Thank you

01:16:36  
very much dog. And thank

01:16:37  
you Elise and and Stephan

01:16:40  
Nate and and Ray. This

01:16:44  
has been an incredibly. Rich

01:16:48  
and and useful panel, I

01:16:51  
believe for for any any

01:16:54  
person that would be interested

01:16:56  
in human rights and and

01:16:58  
and business as well as

01:17:00  
well as it's interaction with

01:17:03

the investment arbitration. Not only

01:17:07

because you were you massively

01:17:09

were able to identify the

01:17:15

basis of business and human

01:17:17

rights, but but to go

01:17:18

beyond that how that has

01:17:20

been in many ways implemented

01:17:23

in in many jurisdictions in

01:17:26

particular in France and and

01:17:27

how that is now being

01:17:30

so Heightened in in the

01:17:37

in the investment arbitration world

01:17:39

through bilateral investment treaties that

01:17:42

that that have reference a

01:17:45

specific references to Human Rights

01:17:47

and social corporate responsibilities. There's

01:17:49

there's one one much more

01:17:51

tree that I wanted to

01:17:52

to reference which is the

01:17:56

the free Trader groom between

01:17:59

Canada and Colombia. That one

01:18:00

has a specific reference to

01:18:02

social corporate responsibility standards if

01:18:05

anyone wants to check it

01:18:06

and now we would like

01:18:08

to give way to the

01:18:10

breakout rooms each one will

01:18:12  
be sent to a different

01:18:14  
breakout room, hopefully, so, please

01:18:17  
take it away and let's

01:18:18  
let's move into the breakout

01:18:20  
rooms and thank you very

01:18:20  
much. Thank you. Thank you.

01:18:25  
Thank you. Hello everyone. We

00:00:04  
are at the world arbitration

00:00:06  
update and this is the

00:00:08  
session on practical steps in.

00:00:13  
CSR Corporate social responsibility and

00:00:16  
human rights assessment. First of

00:00:19  
all, we would like to

00:00:19

thank our sponsors their right

00:00:22

there in front of your

00:00:23

eyes and screens you would

00:00:25

be would be almost impossible

00:00:28

to make the world arbitration

00:00:30

update sustainable unless we we

00:00:32

received some sponsorship. So we're

00:00:34

very grateful to all of

00:00:35

them. We're also very grateful

00:00:37

to our Supporting organizations, we

00:00:42

have over 50 supporting organizations

00:00:44

of world arbitration update our

00:00:48

mission. Our mission is twofold

00:00:51

one is to update on

00:00:54

issues of public international law

00:00:57

and also International commercial and

00:01:03

investor State arbitration with an

00:01:07

emphasis to the broad International

00:01:10

Community and when I say

00:01:12

the broad arbitration and International

00:01:15

Community, we're really mean it

00:01:17

because each of our panels

00:01:19

has no no fee for

00:01:22

any attendee. So we are

00:01:25

really reaching the five continents

00:01:27

of Asia Oceania the Americas

00:01:31

Europe and Africa and our

00:01:34  
days, as you know are

00:01:36  
divided in in five days

00:01:39  
of the week the first

00:01:40  
one for the Americas the

00:01:42  
second one for Africa the

00:01:44  
third one for Asia the

00:01:47  
fourth one for Europe and

00:01:49  
the fifth one or just

00:01:51  
topics that are combined and

00:01:54  
their for everyone. So today's

00:01:57  
is the Americas and this

00:01:59  
is our second panel and

00:02:01  
with us, we have a

00:02:03

really true and an exceptional

00:02:05

panel of expert I will

00:02:07

not do the introductions. Simply

00:02:11

introduce our our moderator who

00:02:14

has been a force behind

00:02:17

all the panels that we

00:02:19

have done in World arbitration

00:02:22

update as well as as

00:02:24

in the Washington arbitration week,

00:02:27

which is a sister form

00:02:29

of wow. This is a

00:02:33

doctor sell professor casel and

00:02:35

also he's counseling expalding Professor

00:02:38

Casella is a widely recognized

00:02:41

desperate on business and human

00:02:44

rights international human rights. As

00:02:49

well as public international law.

00:02:50

He has taught in the

00:02:53

fields for for many years

00:02:54

for decades actually most recently

00:02:57

at the Notre Dame law

00:02:59

school where he was a

00:03:01

presidential fellow. He has also

00:03:05

taught and lecture on subjects

00:03:08

of Human Rights and business

00:03:09

on at leading University including

00:03:13

in Belgium England hungry Mexican

00:03:15

Spain, and he has published

00:03:17

more than 100 scholarly articles

00:03:19

and reviews. also on the

00:03:23

field of practice of law.

00:03:26

He has represented international law

00:03:28

expert he has Also represent

00:03:33

the retired Diplomat and also

00:03:36

he has a participated and

00:03:39

acted in drafting of omic.

00:03:42

I mean amitiv curia innate

00:03:44

cases before the United States

00:03:46

Supreme Court an advice in

00:03:48

two others like I could

00:03:51

keep on going but I

00:03:52

really don't want to embarrass

00:03:53

dog. He has been a

00:03:56

force behind this panel. He

00:03:59

knows best who or have

00:04:01

written and and moved the

00:04:03

needle forward in terms of

00:04:05

business and human rights and

00:04:07

and I'm grateful that he's

00:04:10

here with that. I will

00:04:13

turn to dog not before

00:04:15

apologizing to everyone because I

00:04:17

never said who I was

00:04:18



which I will do now.

00:04:20

My name is Jose Antonio

00:04:22

us and a co-chair of

00:04:25

world arbitration update and together

00:04:29

with Ian. Lyric who's the

00:04:30

other chair of The world

00:04:33

arbitration update we have created

00:04:35

this this forum, which has

00:04:38

now its second edition. So

00:04:40

hopefully you'll be engaged and

00:04:43

and completely enjoy it and

00:04:48

thank you. Dog and the

00:04:50

floor is yours. Thank you

00:04:52

very much, Jose Antonio for

00:04:54  
that embarrassing introduction. We now

00:04:57  
have the privilege of listing

00:04:59  
to an All-Star lineup of

00:05:02  
people who really are an

00:05:03  
experts in the field of

00:05:05  
business and human rights. I

00:05:07  
apologize for not giving the

00:05:08  
introductions that each of them

00:05:10  
deserve because if I were

00:05:12  
to do so we'd have

00:05:13  
no time for the substance

00:05:15  
of the panel. So I

00:05:17  
will just say briefly in

00:05:19

alphabetical order. That Stephon burbaugh

00:05:23

is with Trinity International. He

00:05:26

is listed by Chambers as

00:05:28

a senior Statesman among global

00:05:30

leaders in business and human

00:05:32

rights and for the rest

00:05:34

of his introduction and that

00:05:36

of our other panel members.

00:05:37

I refer you to the

00:05:38

web pages of their effect

00:05:41

their respective law firms that

00:05:43

are listed in the program.

00:05:45

Elise gruel digs is with

00:05:47

among other places Bedford Road

00:05:49

Chambers. Now Chambers the rating

00:05:52

agency lists her as a

00:05:54

an eminent practitioner among global

00:05:57

leaders in business and human

00:05:59

rights and among her many

00:06:00

other activities. She was the

00:06:02

founder of the advisory committee

00:06:05

on business and human rights

00:06:06

of the American Bar Association.

00:06:10

Nathan Langford who we will

00:06:11

refer to in this panel

00:06:13

as Nate is founder and

00:06:16

practice lead at Miller and

00:06:18

Chevalier of the business and

00:06:20

human rights practice. And Ray

00:06:23

Lindsey because Eli comes alphabetically

00:06:25

after the other name other

00:06:27

names is also listed by

00:06:29

Chambers in band 1 of

00:06:31

business and human rights. She

00:06:34

is the co-head of public

00:06:35

international law and the bhr

00:06:38

the business and human rights,

00:06:39

which I will call bhr

00:06:41

practices at Clifford chance. I

00:06:46

will give an extremely brief

00:06:47

topical intervention on the subject

00:06:50

that business and human rights

00:06:51

is in a period of

00:06:53

what I'll call ethical change.

00:06:56

30 years ago Human Rights

00:06:58

was widely considered a matter

00:06:59

for governments. Not for businesses.

00:07:03

10 years ago human rights

00:07:05

had become recognized as relevant

00:07:07

to business. But as only

00:07:09

a responsibility of business mostly

00:07:12

a soft law responsibility. Today

00:07:15

human rights is increasingly recognized

00:07:18

as a hard law obligation

00:07:20

of business. There are National

00:07:23

laws requiring human rights due

00:07:25

diligence and various European States.

00:07:27

The EU corporate sustainability due

00:07:31

diligence-directed is expected to be

00:07:33

approved in 2023 recently since

00:07:37

we're on the day of

00:07:38

the Americas there is case

00:07:40

law of the inter-american human

00:07:42

rights in the mosquito divers

00:07:44

versus Honduras case. There's also

00:07:46

a treaty in the Western

00:07:48

Hemisphere. Yes, kasu agreement both

00:07:51

of which impose human rights

00:07:53

due diligence obligations. On top

00:07:57

of the expansion or the

00:07:59

hardening of business and human

00:08:01

rights Norms human rights. The

00:08:03

concept is also expanding only

00:08:05

in July of this year

00:08:07

the UN General Assembly recognized

00:08:10

a new Universal human right

00:08:12

namely the human right to

00:08:14

a clean healthy and sustainable

00:08:16

environment, which of course is

00:08:19

very relevant to the topic

00:08:20  
of business and human rights.

00:08:23  
These Trends I suggest are

00:08:25  
likely to continue in time

00:08:26  
and to expand geographically and

00:08:29  
we'll hear more about that

00:08:31  
in the panel, which will

00:08:32  
go for the next 90

00:08:34  
minutes or so. We will

00:08:37  
focus on the legal developments

00:08:39  
in business and human rights

00:08:40  
and how they affect advice

00:08:42  
to business clients. We will

00:08:45  
only briefly link to International

00:08:47

arbitration at the end. We

00:08:50

focus on business and human

00:08:51

rights because we expect that

00:08:54

while many of you are

00:08:54

familiar with International arbitration. You

00:08:58

may be less. So with

00:08:59

respect to business and human

00:09:02

rights law. Our format is

00:09:04

that each panelist will speak

00:09:05

briefly followed by comments from

00:09:08

another panelist. Elise will begin

00:09:11

with an overview of business

00:09:13

and human rights Norms, which

00:09:15

she depicts as a galaxy

00:09:17

of norms. That's Stefan will

00:09:19

then shift from Elisa's broad

00:09:22

overview to a specific country

00:09:24

experience namely that of France

00:09:27

under the law division Lance

00:09:29

enacted in 2017, which in

00:09:32

effect requires large French French

00:09:34

companies to engage in human

00:09:37

rights due diligence. Nate and

00:09:40

Ray in that order will

00:09:42

then each address issues in

00:09:43

in the business and human

00:09:45

rights advice. They give to

00:09:47

clients and the kinds of

00:09:48

questions clients raised. as part

00:09:53

of his response Stephan will

00:09:55

then comment on broader Trends

00:09:57

in the field. I will

00:10:00

then spend only a few

00:10:01

minutes on how this all

00:10:03

relates to International arbitration, and

00:10:06

we will then have closing

00:10:07

remarks by each panelist and

00:10:09

if time permits questions and

00:10:12

answers And so with that

00:10:14

at least the floor is

00:10:16

yours for nine minutes. Thanks

00:10:17

a lot. Nine minutes. Okay.

00:10:20

Thanks a lot that okay.

00:10:21

So I want to talk

00:10:23

to you about a framework

00:10:24

a human rights framework and

00:10:26

businessman rights. So over the

00:10:29

last decade in my practice

00:10:31

as an international human rights

00:10:32

lawyer focusing on business and

00:10:34

human rights. I have noticed

00:10:35

a remarkable expansion of corporate

00:10:38

line liability together with soft

00:10:40

law responsibility that has taken

00:10:43

a variety of forms, the

00:10:45

current legislative situation reveals a

00:10:47

global Patchwork. There's a wide

00:10:50

variation and purpose framing enforcement

00:10:53

and interpretation of legislation. Let

00:10:56

me give you a few

00:10:56

examples. We have and friends

00:10:58

as Doug says Stephan will

00:11:01

go extensively about that law,

00:11:04

but I cannot not mention

00:11:06

it because it's the first

00:11:07

one of its kind adopted

00:11:09

in 2017. It offers a

00:11:11

general framework covering issues. Of

00:11:14

Human Rights and environment health

00:11:16

and safety and in the

00:11:18

workplace fundamental freedom and civil

00:11:20

rights. It's incorporated into the

00:11:22

commercial code of France. But

00:11:25

the the law can be

00:11:27

litigated in front of civil

00:11:28

tribunals not just before commercial

00:11:30

instances as first and visited

00:11:33

in the UK in 2015.

00:11:35

It adopted the modern slavery

00:11:38

act that law touches upon

00:11:41

both criminal and labor laws

00:11:43

and it also touches upon

00:11:45

corporate reporting. It was recently

00:11:48

amended in 2019 to reinforce

00:11:50

its framework and obligations. We

00:11:52

have the US, California transparency

00:11:55

Act. Of 2015 that amended

00:11:59

the US Tariff Act of

00:12:00

1930 with the power given

00:12:02

the custom and border patrol

00:12:04

the act as the board

00:12:05

at the border with power

00:12:07

of impounding shipments negotiating with

00:12:10

suppliers. This US law represents

00:12:13  
a different Reporting System compared

00:12:15  
to that of the UK.

00:12:17  
Both the US and the

00:12:18  
EU have new regulations on

00:12:20  
conflict mineral and conflict Timber

00:12:22  
also including corporate reporting and

00:12:25  
affecting trade law Australia in

00:12:28  
2018 adopted a modern slavery

00:12:32  
act like the UK that

00:12:33  
mandates companies that have an

00:12:35  
annual income of more than

00:12:36  
a hundred million dollars to

00:12:38  
publish an annual statement on

00:12:40

their risk associated with modern

00:12:42

slavery throughout their operations and

00:12:45

Supply chains and on the

00:12:46

measure, they intend to adopt

00:12:48

to face the risk to

00:12:49

mitigate and prevent them in

00:12:51

2021. The Germans adopted a

00:12:55

law in corporate due diligence

00:12:56

and their supply chain the

00:12:58

new law and dates Corporation

00:12:59

to fulfill their duty of

00:13:01

due diligence and their supply

00:13:03

chains relative to International recognized

00:13:06

human rights and also a

00:13:07

number of environmental Norm in

00:13:09

2022. The Norwegian transparency act

00:13:12

that requires company to promote

00:13:14

respect for Human Rights was

00:13:15

adopted also promotes decent working

00:13:19

condition including a provision on

00:13:20

living wage. On 24 of

00:13:24

February 2022 the European presented

00:13:26

its draft directive and due

00:13:28

diligence ironically and I say

00:13:30

that without humor the same

00:13:33

day the war on Ukraine

00:13:35

started then so it's easy

00:13:36

to remember the date. It

00:13:38

proposed us to put in

00:13:39

place a series of due

00:13:41

billiona's diligence measures relative to

00:13:43

risk of serious harms to

00:13:45

Human Rights and environment including

00:13:47

combating climate change recently. Some

00:13:51

amendments were proposed to that

00:13:53

directive. They're pretty extensive. The

00:13:55

result that we have is

00:13:57

a patchwork of legislation not

00:13:59

a coherent legal approach different

00:14:02

laws and different jurisdictions different

00:14:04

Focus different Frameworks different and

00:14:07

enforcement mechanisms. And then there

00:14:09

is also built onto this

00:14:11

a patchwork of soft law.

00:14:13

Most coherent of soft laws

00:14:15

are the ungps and the

00:14:17

oecd guidelines of 2011 all

00:14:19

this leads to a confusion

00:14:21

and Lack of systematic and

00:14:23

enforcement only reinforces the confusion.

00:14:28

As a human rights using

00:14:30

the language of the ungp

00:14:31

this is what I call

00:14:33

the governance Gap. I mean

00:14:37

quoting. John Radke was talking

00:14:44

about that government enforcement Norms

00:14:47

were adopted to paleate this

00:14:48

kind of gas and eventually

00:14:49

shape hardlock. and I I

00:14:59

should of families were having

00:15:11

some trouble hearing you Global

00:15:13

Connection not strong build from

00:15:15

consensus and can go fast

00:15:19

and be adopted facts and

00:15:22

this new world are orders

00:15:26

Sovereign are no longer the

00:15:28

only Room Makers and that's

00:15:31

worthy of mentioned. Oh, I'm

00:15:33

at maximum maximum and that

00:15:35

can you hear me now

00:15:35

now what to say and

00:15:37

what to do because I'm

00:15:38

connected. Yes, we can hear

00:15:40

you can and where did

00:15:43

I where did you lose

00:15:44

me? I was just the

00:15:47

last minute or so. Okay,

00:15:50

so I'm gonna just repeat

00:15:52

a few points. I was

00:15:53

talking about the patchwork of

00:15:55

legislation that was not coherent

00:15:57

and the legal approach of

00:16:00

this Patchwork makes that we

00:16:02

have different jurisdiction different Focus

00:16:04

different framework enforcement mechanism that

00:16:07

vary from jurisdiction to jurisdiction.

00:16:09

There is also that's also

00:16:11

built onto a patchwork of

00:16:13

soft law the most coherent

00:16:15

one is the ungp's and

00:16:17

the oecd guidelines of 2011

00:16:19

all this leads to confusion

00:16:22

and the lack of systematic

00:16:23

enforcement only reinforces the confusion

00:16:26

as a human rights lawyer

00:16:28

using the language of the

00:16:29

ungp this is what I

00:16:31

call as John Reggie to

00:16:34

find it that governance Gap

00:16:35

made of mixture of nuclear

00:16:37

body of laws, and we

00:16:38

can enforcement Norms were adopted

00:16:41

to palliate this Gap a

00:16:42

soft law and be adopted

00:16:43

quickly to fill the normative

00:16:45

gaps and eventually shape the

00:16:47

law soft law helps advice.

00:16:50

Events and begin reforming institutions

00:16:52

solved law is flexible Global

00:16:54

in scope and build from

00:16:56

consensus. And this New World

00:16:58

Order Sovereign are no longer

00:17:00

the Only Rule makers to

00:17:02

answer the rising challenges of

00:17:04

economic globalization. We suggest that

00:17:07

the world will benefit from

00:17:08

a matching process of legal

00:17:10

globalization that will encourage and

00:17:13

development of an international body

00:17:14

of law that reinforces progressively

00:17:17

a regime of corporate liability

00:17:19

the French duty of vigilance

00:17:21

and all the other laws

00:17:22

being adopted in Europe as

00:17:24

well as the case law

00:17:25

expanding the duty of care

00:17:26

and several jurisdictions like Canada

00:17:28

the UK and Netherlands amongst

00:17:31

others lately in all contribute

00:17:33

greatly to this process and

00:17:35

need to evolve in the

00:17:36

same direction mirroring Trends in

00:17:39

international law. The Galaxy of

00:17:42

norms to make sense of

00:17:43

the space Professor Reagan and

00:17:45

I proposed a tool that

00:17:47

helps better understand the space

00:17:49

described above. We called it

00:17:51

business and human rights as

00:17:52

a galaxy of Norm. It's

00:17:53

a global map of soft

00:17:55

and hard law and Norms

00:17:57

viewed together. It proposes legal

00:17:59

tool to help lawyers navigate

00:18:01

and interpret this new universe

00:18:03

this extraordinary this expanding Galaxy

00:18:05

is made of hard law

00:18:07

such as binding National legislation

00:18:09

in several countries, for example

00:18:11

to combat corruption and forced

00:18:13

labor, soft law and international

00:18:16

Lawrence as the UN guiding

00:18:17

principles that underline the second

00:18:20

pillar to create a responsibility

00:18:22

for Corporation to respect human

00:18:24

rights. It also includes the

00:18:26

oecd guiding principles on multinational

00:18:28

Enterprise combined with private voluntary

00:18:31

initiatives as well as jurisprudence

00:18:34

her case law and the

00:18:35  
duty of care as a

00:18:37  
corporate standard setting of conduct.

00:18:40  
possible business conduct often with

00:18:43  
extraterritorial reach all these solar

00:18:46  
systems of norms should push

00:18:47  
corporations to adopt diligence Frameworks

00:18:50  
to ensure responsible business conduct

00:18:52  
and respect for human rights

00:18:54  
as required by the second

00:18:55  
pillar of the ungp Our

00:18:57  
framework suggests that these new

00:18:59  
laws and proposed Frameworks on

00:19:01  
human rights and environmental due

00:19:03

diligence should be seen as

00:19:05

part of the business and

00:19:06

human rights Galaxy of Norm

00:19:07

that Galaxy offers guidance on

00:19:10

how these laws should be

00:19:11

construed and applied these new

00:19:14

bodies of law show attendance

00:19:15

see the Harden the legal

00:19:17

liabilities of multinational corporations throughout

00:19:20

their goal their Global Supply

00:19:21

Chain at the same time

00:19:23

and in parallel, there is

00:19:24

an expansion of legal obligations

00:19:26

for corporations to report publicly

00:19:29

on policies. They Adopt A

00:19:31

prevent and manage those risks.

00:19:32

These non-financial reporting obligations are

00:19:35

becoming the norm in National

00:19:37

legislation and also an international

00:19:39

soft law this creates powerful

00:19:42

incentives for Corporation to adopt

00:19:45

and implement the corporate social

00:19:46

responsibility programs that are Showed

00:19:50

showcase and their sustainability and

00:19:53

CSR reports and our galaxy

00:19:55

framework. We suggest that the

00:19:57

duty of care is evolving

00:19:58

continuously and in parallel in

00:20:01

many jurisdictions, so that corporations

00:20:03

need to develop compatible policies

00:20:05

and measures that apply consistently

00:20:08

to all the territories and

00:20:10

countries where they operate the

00:20:12

Galaxy is designed to identify

00:20:13

both the hard law and

00:20:15

the soft law together and

00:20:16

look at emerging Norms try

00:20:18

to map how they interact

00:20:20

are they conflicting converging or

00:20:23

whether they are big gaps

00:20:24

sort the Norms looking at

00:20:26

different types of Duties imposed

00:20:28

by hard law and the

00:20:29

norms and looking at the

00:20:31

enforcement mechanism and we list

00:20:34

five rings of liabilities the

00:20:36

ring one, which is responsibility

00:20:38

here. Yes. Don't think we

00:20:41

I don't think we have

00:20:42

time for the Five Rings.

00:20:44

Okay. That's okay. That's okay

00:20:45

true. And now we'll proceed

00:20:47

to Nate who has three

00:20:49

minutes to to question immigration

00:20:53

is on a lease. Thank

00:20:55

you hear me in the

00:20:58

end. Yes. Yes. Thank you.

00:21:00

Thank you. It was great

00:21:01

about that. I have no

00:21:03

idea what happened. No worries.

00:21:05

No worries. Um, so yeah.

00:21:06

Thanks Doug and thanks Jose

00:21:08

Antonio for for inviting me

00:21:10

and bringing together this great

00:21:11

group. I I want to

00:21:14

say I guess just in

00:21:15

response to at least I

00:21:17  
just I love how you

00:21:19  
think of this as a

00:21:21  
Galaxy. I mean, I think

00:21:22  
it really captures that this

00:21:24  
is dynamic. It's complex. It's

00:21:28  
bright and as a science

00:21:30  
fiction geek myself, I get

00:21:33  
it on that level too.

00:21:34  
I think it's a great

00:21:36  
concept. I think it's very

00:21:40  
important. Obviously. I think we

00:21:42  
all agree that that lawyers

00:21:47  
advising multinational companies these days.

00:21:50

It's really important for us

00:21:52

to understand the Spectrum. And

00:21:54

I think particularly for our

00:21:56

people involved in arbitration and

00:21:58

arbitrators being able to identify

00:22:00

what are genuine human rights

00:22:03

issues. And what what standards

00:22:06

should businesses, you know be

00:22:08

reasonably held to these days

00:22:09

can be very helpful for

00:22:11

your practice. Uh, the important

00:22:15

of the importance of these

00:22:16

hard laws in the Galaxy

00:22:18

I think is is really

00:22:19

self-evident and I think it

00:22:21

it fits with the traditional

00:22:23

role of lawyers and Enterprise

00:22:25

risk management Frameworks in terms

00:22:28

of managing legal risks traditional

00:22:31

legal risks. I feel like

00:22:32

most of my discussions on

00:22:33

these topics and the Galaxy

00:22:35

really focus on what do

00:22:37

we make of the soft

00:22:38

law part? How should we

00:22:40

really think about that? And

00:22:41

I think that a couple

00:22:42  
of themes that these mention

00:22:44  
that I just want to

00:22:45  
reinforce and agree with is

00:22:47  
that I I really think

00:22:50  
of it in terms of

00:22:51  
emphasizing a few key things

00:22:56  
that the with the importance

00:22:59  
of this soft law framework,

00:23:00  
is that they are applied

00:23:05  
to your company and are

00:23:07  
shaping the hard laws and

00:23:09  
I think that you you

00:23:10  
heard from Elise about that

00:23:13

Sovereign nations are no longer

00:23:15  
the only Soul rulemakers these

00:23:17  
days that you sort of

00:23:18  
see where hard law is

00:23:19  
going by looking at these

00:23:20  
and then I think it's

00:23:22  
also important to soft fall

00:23:24  
apart of it in terms

00:23:26  
of Frameworks that are applied

00:23:27  
to your company by stakeholders

00:23:29  
that affect your access to

00:23:31  
markets to financing and to

00:23:33  
customers Um, I think a

00:23:37  
great example of this and

00:23:38

is one that at least

00:23:39

mentioned is how us enforcement

00:23:42

agencies right now prohibiting the

00:23:44

import of goods made with

00:23:46

forced labor in their official

00:23:48

guidance on how they enforce

00:23:50

this. They refer to ILO

00:23:51

standards. They refer to oecd

00:23:53

standards that incorporate ungp Concepts.

00:23:56

So you really see these

00:23:57

things making their way into

00:23:58

that. That official guidance as

00:24:01

well ESG ratings you see

00:24:03

these picked up there And

00:24:06

then finally, I really emphasize

00:24:07

like this is this is

00:24:08

about the right thing to

00:24:09

do companies have made commitments

00:24:11

to the ungps to respect

00:24:15

the human rights of stakeholders

00:24:16

and these standards provide practical

00:24:18

tools to actually do that

00:24:20

and prevent adverse impacts to

00:24:22

stakeholders. So I think just

00:24:25

to try to respect your

00:24:26

time Doug the bottom line

00:24:29

is, you know, really emphasizing

00:24:30

that it helps to manage

00:24:31

potential legal liability. Binding commitments

00:24:35

with your business partners and

00:24:37

expectations of other stakeholders and

00:24:39

then your company's own commitments

00:24:40

is the way I think

00:24:42

this really is very important

00:24:44

for us all to understand.

00:24:46

Thanks very much, Nate and

00:24:48

we'll hear more from you

00:24:48

when you're up as a

00:24:50

presenter. Now, we now we

00:24:52

go to Stefan who has

00:24:54

six minutes to speak to

00:24:57

us in English about France.

00:25:00

Thanks a lot for saying

00:25:01

that indeed this old ways.

00:25:03

It'll be different when it

00:25:04

is in the foreign language,

00:25:05

but that's why my best

00:25:06

in fact, you said that

00:25:08

the runner Plaza in which

00:25:10

some French companies were mentioned

00:25:11

by the way was in

00:25:12

2013. So just after the

00:25:15

UN guiding principles and several

00:25:17

commitments from companies with voluntary

00:25:20

CSR policies. These prove to

00:25:24

some extent that binding regulation

00:25:26

on respect of Human Rights

00:25:27

including the supply chain was

00:25:29

a key. In conformity with

00:25:32

the duty to protect provided

00:25:33

by ungp's France. Adopted the

00:25:37

French vigilance law on human

00:25:39

rights and environment. Soft human

00:25:42

rights law into Harlow extra

00:25:44

territoriality and challenging the corporate

00:25:47

VL. This was seen as

00:25:49

a legal Revolution. Thus necessary

00:25:52

change of mindset for business

00:25:54

and lawyers. That also concerns

00:25:57

tribunals and courts including in

00:26:00

International Investment arbitration. Covenant and

00:26:04

John murgey, where are the

00:26:05

origin of this changing World

00:26:07

humanity and dignity in business.

00:26:10

In France, as some of

00:26:12

the countries vigilances at the

00:26:15

heart of the Galaxy very

00:26:16

well described by Elise Galaxy

00:26:18

of norms the Galaxy not

00:26:20

easy to handle for business

00:26:21

and lawyers. Hollow is the

00:26:24

heart of legality, but cannot

00:26:26

stand alone another for business

00:26:28

because they need financing and

00:26:29

compliance now for courts. Because

00:26:32

they will interpret in the

00:26:34

light of ungp's Harris agreement.

00:26:38

Three point sentence others of

00:26:40

no regulation and this is

00:26:43

exactly the case of what

00:26:44

is happening in France. French

00:26:47

insurance flow Is a 2017

00:26:50

and was a compromise companies

00:26:53

were rather against the burning

00:26:55

though, and there are still

00:26:56

some of them against their

00:26:57

heart directive and these for

00:26:59

competition reasons. the very famous

00:27:02

Level Playing Field As a

00:27:05

result there was a short

00:27:06

low in front of four

00:27:07

articles, but some terms were

00:27:09

so unclear especially in article

00:27:10

3 that the Constitutional Court

00:27:13

decided to delete it. So

00:27:14

there were three remaining articles

00:27:16

but still is not because

00:27:19

sometimes we're so unclear that

00:27:21

you could not provide for

00:27:22

some criminal offense that there

00:27:24

is a still need to

00:27:25

interpret those forms, and they

00:27:27

will have to be done

00:27:28

by business and lawyers and

00:27:29

courts. But so far no

00:27:32

decisions except procedural. The low

00:27:36

focuses on prevention the duty

00:27:38

of diligence and also role

00:27:40

of ngos and chorus who

00:27:42

have a role to play

00:27:43

as indeed maybe asked by

00:27:45

anyone to require a company

00:27:48

to comply with these obligations

00:27:50

before it goes to litigation.

00:27:53

Concerning civil liability. The law

00:27:56

says clearly that any continuing

00:27:58

failure to comply with its

00:27:59

obligations as listed. But indeed

00:28:03

subject to interpretation, that's what

00:28:05

we call a name Fault

00:28:06

by the law would make

00:28:08

the company's severely liable. It

00:28:10

is stored and a blasted

00:28:12  
compensate for the defined severe

00:28:15  
damage that the compliance with

00:28:17  
the sublugations would have been

00:28:18  
made possible to avoid. The

00:28:21  
Lloyd cells obviously describes some

00:28:24  
limits and content of the

00:28:26  
liability. What are those obligations

00:28:30  
in simple words they are

00:28:31  
about 265 Companies Incorporated in

00:28:34  
France, which must each year

00:28:36  
design. Implement effectively to be

00:28:40  
interpreted and public on publish.

00:28:42  
It means make public a

00:28:44

plan called vigilance plan. Due

00:28:48

diligence is said in some

00:28:50

other instances, but in front

00:28:51

of these called vigilance plan

00:28:52

in which we challenged. Possible

00:28:56

reasonable vegetables measures which will

00:28:58

make the company to be

00:28:59

able to identify all risk.

00:29:02

It means potential negative impacts

00:29:03

on people. And to prevent

00:29:06

severe violations of human rights,

00:29:08

I insist to identify all

00:29:10

the risk and to prevent

00:29:11

civil violation of Human Rights.

00:29:13

And these resulting from this

00:29:16

activities but also from the

00:29:18

activities from those companies it

00:29:20

directly and directly controlled decision-making

00:29:22

power. It supplies and subconscious

00:29:25

and you can say with

00:29:26

whom it maintained established commercial

00:29:29

relationship. But at the difference

00:29:31

of what has been said

00:29:32

in different instances, it was

00:29:35

made clear that is not

00:29:36

because it is said established

00:29:38

commercial relationship that there is

00:29:39

a ranking. He should not

00:29:41

be stopped at night one.

00:29:42

It can go to rank

00:29:43

two and fathers. The plan

00:29:46

should be designed with stake

00:29:48

orders. It could be an

00:29:49

advantage to avoid liability or

00:29:51

to mitigate. And include and

00:29:54

there is no no choice

00:29:55

because that's the basis for

00:29:57

obligations from company a mapping.

00:29:59

We identify analyze and then

00:30:02

prioritize always As a result

00:30:06

today 20% are in existent

00:30:08

some are vague of those

00:30:10

plan and there is a

00:30:12

lack of prioritization when some

00:30:14

companies and that's the case

00:30:16

today with McDonald's France in

00:30:18

injunction. As I mentioned earlier

00:30:20

with the role of State

00:30:21

before litigation has been asked

00:30:23

to produce a plan because

00:30:24

there was none. Secondly, they

00:30:27

must do companies subject to

00:30:29

do the plumbers do regular

00:30:31

assessment of mapping of risk

00:30:32  
and sending the affiliate subcontractors

00:30:34  
and suppliers. It makes sense.

00:30:38  
Thirdly, which is the most

00:30:39  
important one. They must take

00:30:41  
appropriate actions. To mitigate the

00:30:43  
risk or to prevent of

00:30:44  
course serious impacts violations. This

00:30:47  
can be linked to the

00:30:48  
idea in a young girl

00:30:50  
in principles of causing contributing

00:30:52  
and linkage. And in fact

00:30:54  
the modifications of directive we

00:30:56  
just read and it is

00:30:57

a transmitted Mesa a very

00:30:59

useful document. Does it identify

00:31:02

now back in a directive

00:31:03

the linkage country between linkage

00:31:06

and and closing? They had

00:31:09

some first decisions. I mean,

00:31:11

but there is no real

00:31:12

decisions. It's only procedural. It's

00:31:15

a fact before litigation. The

00:31:17

court has been held by

00:31:19

some ngos. To ask to

00:31:22

some companies to comply with

00:31:24

the obligations person to the

00:31:25

law. for example for two

00:31:27

dialogue Uganda They've been asked

00:31:29

to review the shortcoming in

00:31:32

its plan. Also, it has

00:31:35

been asked to implement X

00:31:37

Corporation indentatives. In fact, there

00:31:40

were climate Duty on breaches

00:31:42

of vigilance for its Affiliates

00:31:45

in Uganda and Tanzania. One

00:31:49

can say that. In fact,

00:31:51

it is interesting to see

00:31:52

that the parliament in Europe

00:31:53

the 15th of September 2002

00:31:55

as the nonce the violation

00:31:58  
of Human Rights by that

00:31:59  
company in Uganda and Tanzania.

00:32:02  
Teleperformance the risk of violence

00:32:05  
of some workers rights. So

00:32:07  
it has been asked that

00:32:08  
it should be included in

00:32:09  
the plan EDF, but the

00:32:12  
place is closed now Wind

00:32:13  
Farm project. There was no

00:32:15  
free Power informed consent. You

00:32:17  
see a reference to some

00:32:18  
self-load to some extent soft

00:32:20  
too hard. It depends. And

00:32:22

there's no there's no vigilance

00:32:24

to communities. But the that's

00:32:26

the long story because NCP

00:32:28

the twelve of July decided

00:32:30

to close deal. And before

00:32:32

that the second of June

00:32:34

2022 still in fact the

00:32:36

sale of energy by ADF

00:32:38

was refused by the company

00:32:39

in Mexico. So the the

00:32:41

fine is closed. Still time

00:32:43

for apologize, but can you

00:32:44

bring it to a close

00:32:45

please? You're a bit over

00:32:47

time no time for climate

00:32:48

order to change the to

00:32:51

adapt its plan to the

00:32:52

1.5 degrees. Suez civil liability

00:32:55

for consultations communities Casino asked

00:33:00

to adapt its policy not

00:33:01

correctly implemented and that's about

00:33:04

it. So that's a closing

00:33:05

and today so much to

00:33:07

happen in months to come

00:33:08

several EU directive to become

00:33:11

budget and corporate sustainability. ESG

00:33:13

false label full labor green

00:33:16  
deal and taxonomy that will

00:33:18  
be in the three months

00:33:19  
to come quite some work

00:33:20  
for all of us. Thank

00:33:23  
you very much Stefan, and

00:33:24  
now release you have three

00:33:26  
minutes to comment on. Stefan's

00:33:29  
presentation You're muted Elise. You

00:33:34  
need to unmute. Elise Hear

00:33:40  
me now. Now we can

00:33:41  
yes good good. Thanks a

00:33:43  
lots of fun for this

00:33:44  
excellent presentation. So I I

00:33:47  
have a lot of good

00:33:49  
things to say about this

00:33:50  
log is this law was

00:33:51  
the driving engine of huge

00:33:54  
changes in Europe. I remember

00:33:56  
back in 2014 2015 when

00:33:58  
all the big companies in

00:34:00  
France were so opposed to

00:34:01  
that law. They were basically

00:34:04  
enraged and the thought that

00:34:06  
they could be controlled by

00:34:07  
such a law and finally

00:34:09  
when the law was adopted

00:34:10

in 2017, they Some of

00:34:13

them rallied very fast others

00:34:15

not so fast, but they

00:34:17

are rallying to the law

00:34:18

and they are trying to

00:34:20

do what they can to

00:34:22

to abide by the law

00:34:24

where the weakness of implementation

00:34:27

has been happening in my

00:34:29

opinion as a human rights

00:34:30

lawyer is the stakeholder engagement.

00:34:32

There's been very weak stakeholder

00:34:34

engagement and I believe if

00:34:36

they were reinforcing that aspect

00:34:39  
of the law, which is

00:34:40  
very clear in the law,

00:34:41  
but it's even clearer in

00:34:43  
the European directive. I think

00:34:46  
they would gather information and

00:34:48  
they would be much better

00:34:50  
equipped to deal with the

00:34:51  
the most Salient risk that

00:34:54  
they need in their in

00:34:56  
their operations as Stefan say

00:34:58  
the obligation is to prevent

00:35:02  
It's it's to address all

00:35:03  
risk, but to really prevent

00:35:06

all the Salient risk. There

00:35:09

is no room for error.

00:35:10

They have to prevent these

00:35:11

risks. They have to do

00:35:13

a mapping of their supply

00:35:16

chain. They have to identify

00:35:18

where the risks are to

00:35:20

the different objects of the

00:35:22

law, which is as I

00:35:23

said, I mean environment human

00:35:24

rights safety at work and

00:35:27

civil liberties that they have

00:35:29

to make sure that their

00:35:31

actions prevent the occurrence of

00:35:34

severe harm and risk, so

00:35:37

there's there's no room to

00:35:38

let these risks happen. And

00:35:41

that's what the plan is

00:35:42

supposed to make happen. So

00:35:44

if there is no plan

00:35:45

I could almost say there

00:35:47

is a presumption that they're

00:35:49

not doing their job. I

00:35:50

mean it's not stated that

00:35:51

way but suffice that an

00:35:53

association goes before a court

00:35:55

saying we have suffered such

00:35:57  
damage and there's no plan

00:35:58  
then the court will turn

00:36:00  
around and see where is

00:36:01  
your plan? You have to

00:36:02  
provide a plan. So these

00:36:04  
associations can can sue you

00:36:07  
so I mean this is

00:36:09  
this is how European law

00:36:12  
is build. This is very

00:36:14  
much part of the argument

00:36:15  
of the Galaxy that once

00:36:17  
you have one of these

00:36:19  
laws. That was built in

00:36:22

part of the British model

00:36:24

of the UK modern slavery

00:36:25

Act of 2015 but very

00:36:27

different because it belongs to

00:36:29

different system these different systems

00:36:32

operate a gravitational force on

00:36:34

each other and the Galaxy

00:36:37

starts to expand you see

00:36:39

other Norms appearing other laws

00:36:41

appearing other I mean case

00:36:44

law developing and then you

00:36:46

have a space that's becoming

00:36:49

busier and busier and busier

00:36:52

and the liability is becoming

00:36:54

more expensive in the case

00:36:56

of the French law like

00:36:58

very much at least. I'm

00:37:01

afraid your time as expired.

00:37:03

Well, no go to Nate

00:37:05

for six minutes on issues

00:37:07

arise a lot of advice

00:37:09

to clients. And of course,

00:37:10

you'll have some words later

00:37:11

Elise Nate the floors. Now

00:37:17

you're immune. Thank you. Thank

00:37:18

you Doug. So I I

00:37:22

think what what I hope

00:37:23

is of interest to people

00:37:24

is is some some flavor

00:37:28

of what it looks like

00:37:29

for companies that take this

00:37:31

area seriously, like what do

00:37:33

they do in Practical terms?

00:37:35

and in my experience most

00:37:38

practical bhr advice is based

00:37:41

on a combination of two

00:37:43

things first is applying the

00:37:46

UN guiding principle framework. Because

00:37:50

of how universally accepted it

00:37:51

is and how integrated it

00:37:53

is and to so many

00:37:54

hard law expectations and and

00:37:57

secondly incorporating traditional best practices

00:38:01

of corporate compliance programs, which

00:38:04

I think many of us

00:38:05

are familiar with in in

00:38:07

other contexts, but applying them

00:38:09

to the bhr set of

00:38:13

risks. so As you know

00:38:16

as we talked about earlier

00:38:17

at the ungp framework is

00:38:19

focused fundamentally on respecting the

00:38:21

human rights of stakeholders. And

00:38:24

what is this respect concept

00:38:26

really mean and practice. Well

00:38:28

first it means having a

00:38:31

clear policy commitment from Senior

00:38:34

Management that the company's committed

00:38:36

to respecting the human rights

00:38:38

of its stakeholders meaning that

00:38:40

it commits to not interfere

00:38:41

with stakeholders enjoyment of their

00:38:44

rights, and of course The

00:38:46

the primary responsibility of countries

00:38:50

governments to protect human rights

00:38:52

it stays with them but

00:38:54

it's up to companies not

00:38:55

to interfere that should be

00:38:56

in a policy statement. so

00:38:59

I can accompany this this

00:39:01

responsibility to respect requires due

00:39:04

diligence to assess your risks

00:39:07

and to mitigate them which

00:39:09

is clearly is incorporated into

00:39:11

the the French laws that

00:39:12

we were talking about in

00:39:13

many of these other norms

00:39:14

and the Galaxy. Um, and

00:39:17

then third to facilitate effective

00:39:20

remedy when a company has

00:39:21

caused actual adverse impacts. And

00:39:25

so so this this framework

00:39:27

means that companies in Practical

00:39:29

terms start with a general

00:39:31

policy commitment and it's either

00:39:34

a standalone commitment or a

00:39:36

policy statement or policy and

00:39:39

its own or into incorporated

00:39:40

into a code of conduct.

00:39:42

And due diligence that concept

00:39:45

is really where I see

00:39:47

companies spending the most. Time

00:39:50

most effort most resources on

00:39:53

due diligence and so what

00:39:54

is due diligence mean? I

00:39:56

think for some people coming

00:39:58

from other fields, you hear

00:40:00

the words due diligence you

00:40:01

may think of oh, this

00:40:03

is something we do to

00:40:04

vet a particular supplier that

00:40:07

we're thinking about hiring or

00:40:08

an agent to make sure

00:40:10

that they're not going to

00:40:10

engage in misconduct or something

00:40:12

like this. um in the

00:40:16

bhr world the concept of

00:40:17

due diligence is much much

00:40:18

broader, so It really encompasses

00:40:22

many different aspects of what

00:40:24

are traditionally thought of as

00:40:25

components of a broader compliance

00:40:28

program. So it includes assessment

00:40:31

of risks. Acting on the

00:40:34

findings of your risks so

00:40:36

that you mitigate them. And

00:40:39

then monitoring to make sure

00:40:40

that those efforts are effective.

00:40:42

And that your your efforts

00:40:44

continuously improve over time and

00:40:47

then finally communicating with stakeholders

00:40:50

so that there's more accountability

00:40:52

and transparency about what you're

00:40:54

doing in this area which

00:40:56

again you can see all

00:40:57

of these Concepts reinforced in

00:40:59

taking shape and hard laws

00:41:01

like the the French law.

00:41:04

and so When you think

00:41:07

of how broad this due

00:41:08

diligence concept is you see

00:41:09

you can start to see

00:41:10

how there are many opportunities

00:41:11

to leverage companies existing corporate

00:41:14

compliance programs to address these

00:41:17

types of risks. And so

00:41:18

I'll just give one example

00:41:20

here just in a practical

00:41:21

level to hopefully bring this

00:41:22

to life, but for risk

00:41:25

assessments Let's say you have

00:41:28

a particular operation that you

00:41:31

are concerned about the human

00:41:33

rights risks to stakeholders there.

00:41:36

What what kind of existing

00:41:38

processes in your compliance program?

00:41:41

Can you leverage to help

00:41:42

assess that now many companies

00:41:44

would already be say sending

00:41:46

sending attorneys Auditors, whatever their

00:41:50

to assess other types of

00:41:52

risks like in an anti-corruption

00:41:53

risk assessment. And so one

00:41:56

one Trend I've seen is

00:41:57

companies using those as an

00:41:58

opportunity to to more broadly

00:42:01

assess risks, including human rights

00:42:02

risks. And and what's interesting

00:42:04

about that is that you

00:42:05

can't just apply traditional Concepts

00:42:08  
to The bhr world you

00:42:11  
have to keep in mind

00:42:11  
what really makes it special

00:42:13  
about the ungp framework is

00:42:16  
that it requires much broader.

00:42:20  
Engagement with rights holders those

00:42:22  
whose lives may be adversely

00:42:27  
impacted by the company's operations

00:42:29  
so much more engagement with

00:42:30  
workers community members to understand

00:42:33  
where the risks and possible

00:42:34  
impacts are. um, and then

00:42:38  
uh and other obvious areas

00:42:40

third-party controls and I think

00:42:42

this may and you're just

00:42:44

relationships with business partners, and

00:42:48

so you can obviously having

00:42:50

having a processes in praise

00:42:53

to conduct risk, it due

00:42:55

diligence on those business partners

00:42:57

and also to build in

00:42:58

the right safe guards into

00:42:59

contracts, which I'm sure is

00:43:01

relevant to to many people

00:43:02

from an arbitration perspective leveraging

00:43:06

those existing processes in terms

00:43:08

of your business relationships to

00:43:09

capture that but again going

00:43:11

farther because it you're looking

00:43:14

not just at your direct

00:43:15

impacts, but sometimes farther up

00:43:17

your supply chain. So risk

00:43:18

mapping your supply chain. Is

00:43:21

is very much prioritized into

00:43:23

challenging area that I see

00:43:24

a lot of companies. Spending

00:43:27

a lot of time and

00:43:28

effort with and I guess

00:43:30

just to to wrap up

00:43:31

up this sort of like

00:43:33

intro. I mean I could

00:43:34

obviously talk all day about

00:43:35

this and I think all

00:43:37

of us could on this

00:43:37

panel, but I think you

00:43:41

know, just when I think

00:43:44

about this in Practical terms,

00:43:45

I think about opportunities to

00:43:46

leverage existing compliance program processes

00:43:49

to address this risk area

00:43:50

and an effective efficient feasible

00:43:53

way, but to not lose

00:43:55

sight of the fact that

00:43:56

you need a rights holder

00:43:57

perspective involved which will shape

00:43:59

these things differently and that

00:44:01

you will need more transparency

00:44:03

communication to facilitate accountability and

00:44:07

and the right kind of

00:44:08

stakeholder engagement, but I hope

00:44:11

this is helpful, but I

00:44:12

love to hear but Ray

00:44:14

or others have to say

00:44:15

on this topic, too. Thank

00:44:17

you very much Nate, and

00:44:19

that's exactly what we hope

00:44:21

to proceed to now Ray

00:44:23

you seem to be. Coming

00:44:25

back into the screen and

00:44:28

the floor is yours for

00:44:30

six minutes of issues that

00:44:32

arise in your advice to

00:44:35

clients. Um, thanks Doug and

00:44:39

thanks Nate at least and

00:44:41

Stephan for those great overviews

00:44:43

of what this all means

00:44:44

and As Nate has touched

00:44:48

on human rights due diligence

00:44:50

under the UN guiding principles

00:44:52

is very different from other

00:44:54

forms of human of due

00:44:55

diligence in the sense that

00:44:57

the focus of it is

00:44:58

impacts by business on rights

00:45:01

of people and that's very

00:45:03

much at the core of

00:45:04

any due diligence exercise that's

00:45:07

aligned with ungp or the

00:45:08

oecd guidelines or some of

00:45:10

the new legal requirements that's

00:45:11

coming into effect. And so

00:45:14

risks to the business itself,

00:45:15

which would generally be the

00:45:16

focus of business and of

00:45:18

their lawyers is a secondary

00:45:20

part of it. It's a

00:45:21

legitimate part of what you're

00:45:22

doing, but the focus of

00:45:23

Human Rights due diligence is

00:45:25

really to identify and then

00:45:26

address an account for impacts

00:45:28

on people and to remediate

00:45:30

when appropriate so in addition

00:45:32

to the idea of a

00:45:34

process that maybe built into

00:45:35

Enterprise risk management hrdd under

00:45:39

the UN guiding principles does

00:45:40

incorporate concepts of the actions

00:45:42

that are expected once potential

00:45:45

an actual impacts have been

00:45:46

identified by the company those

00:45:48

impacts on people and in

00:45:50

order to understand what those

00:45:51

are and how to address

00:45:52

them that requires human rights

00:45:55

expertise to understand the standards

00:45:58

that are applying and what

00:45:59

those impacts might be and

00:46:00

what the company companies relationship

00:46:02

with them could be assessing

00:46:04

what the company's involvement with

00:46:05

them is whether it's causing

00:46:07

contributing or linked to the

00:46:09

impact because that is relevant

00:46:10

to an identification of what

00:46:13

Question is expected Under The

00:46:14

Guiding principles to address those

00:46:16

impacts. And so it's what's

00:46:21

happened with I think the

00:46:22

French vigilance law and others

00:46:24

will correct me and the

00:46:25

draft corporate sustainability due diligence

00:46:27

directive is an aim by

00:46:29

states to build due diligence

00:46:33

obligations that reflect that are

00:46:35

grounded in and reflect the

00:46:36

expectations of the UN guiding

00:46:38

principles and the oecd guidelines

00:46:39

for Multinational Enterprises, but that

00:46:41

is really challenging because the

00:46:44

responsibility to respect human rights

00:46:46

is not a legal obligation

00:46:48

on companies. It reflects a

00:46:50

societal norm. And what the

00:46:52

legislatures are having to do

00:46:53

is translate Concepts that are

00:46:56

not legal in nature in

00:46:57

The Guiding principles into legal

00:46:59

obligations on companies and that

00:47:01

can be quite proved to

00:47:03

be quite clunky because as

00:47:05

the UN working group has

00:47:06

reported to the general assembly

00:47:09

in its discussion on human

00:47:10

rights due diligence. It's not

00:47:12

a science. It is an

00:47:14

art and I think this

00:47:15

is one of the real

00:47:16

challenges for businesses is The

00:47:20

really difficult human rights challenges

00:47:22

the impact that create real

00:47:24

dilemmas for business if they

00:47:25

are involved with them. Those

00:47:27

are the really tricky ones

00:47:29

that businesses have to work

00:47:30

through and that requires a

00:47:32

real appreciation of what it

00:47:34

is you can do with

00:47:34

the information that you you

00:47:36

gather in your due diligence

00:47:37

the feedback that you're getting

00:47:39

from stakeholders and then working

00:47:43

way through those in order

00:47:44

to prevent mitigate or if

00:47:47

necessary remediate those impacts. And

00:47:50

it's that process I think

00:47:51

is proving Troublesome certainly in

00:47:53

the EU context the current

00:47:55

corporate sustainability due diligence proposal

00:47:59

in court seeks to incorporate

00:48:01

the elements of The Guiding

00:48:02

principles in the oecd guidelines,

00:48:04

but has been criticized for

00:48:05

being quite prescriptive as to

00:48:07

the steps that should be

00:48:08

taken to address impacts. It

00:48:10

doesn't in its current and

00:48:12

it's in its original form

00:48:13

really adequately account for this

00:48:15

nature of the involvement of

00:48:17

the company to assess whether

00:48:18

it's a causal connection or

00:48:21

a contribution or a linkage

00:48:23

and it's it has a

00:48:25

tendency to encourage sort of

00:48:27

tick back tick box compliance

00:48:30

based approaches using contracts Etc

00:48:33

in a cascading fashion now

00:48:35

contracts and and other forms

00:48:37

of Leverage are very legitimate

00:48:39

mechanisms for companies to use

00:48:41

to try and manage human

00:48:42

rights impacts and risks. But

00:48:45

as I said, this is

00:48:46

more not than a science

00:48:47

because template Clauses in Supply

00:48:49

chains will rarely make a

00:48:52

practical difference to whether to

00:48:55

the people's rights at the

00:48:56

end of a supply chain

00:48:57

what's really important is for

00:49:00

businesses to understand the nature

00:49:01

of the impacts with which

00:49:02

they're involved and to really

00:49:04

think through how they can

00:49:05

address those in a meaningful

00:49:06

way and that can be

00:49:07

very challenging when when the

00:49:10

actual impact may be quite

00:49:12

far down your supply or

00:49:13

value chain. So in relation

00:49:16

to this, it's really important

00:49:17

for internal stakeholders within companies

00:49:21

for a cross-functional approach to

00:49:22

these issues. So you require

00:49:24

the human rights expertise. You

00:49:25

need to be talking to

00:49:26

your lawyers the business people

00:49:28

on the ground need to

00:49:29

understand what they're doing. The

00:49:30

sustainability function will have a

00:49:32

role the human rights function

00:49:33

your security people. If you're

00:49:35

in a high risk area

00:49:36

and all those constituencies need

00:49:38

to be brought into the

00:49:39

picture to and sort of

00:49:41

get the idea of Human

00:49:42

Rights due diligence under the

00:49:43

organization skin. So it's as

00:49:45

much about With capacity within

00:49:49

organizations to really understand what

00:49:51

human rights impacts look like

00:49:53

and what the expectations are

00:49:54

on the business to deal

00:49:55

with them and making sure

00:49:56

that that is implemented throughout

00:49:58

those systems. Whether it's in

00:49:59

plans to address adverse impacts

00:50:02

preventive plans corrective action plans

00:50:04

and through contracts, but all

00:50:06

of that as I say

00:50:07

is it requires very subtle

00:50:09

application of those instruments depending

00:50:12

on the information that's come

00:50:13

out for human rights due

00:50:14

diligence exercise. And also it's

00:50:18

very much an ongoing method

00:50:21

of identifying and addressing adverse

00:50:23

impacts. Ultimately a Stefan said,

00:50:25

you know, the idea is

00:50:27

to prevent adverse human rights

00:50:28

impacts. And so if done

00:50:30

properly it can be a

00:50:32

way of for example companies

00:50:33

avoiding themselves being on the

00:50:35

end of claims of having

00:50:37

caused hip impacts or harm

00:50:39

and therefore potentially of having

00:50:41

these issues sucked into arbitration

00:50:43

now, I'm not an arbitration

00:50:45

expert and I know Doug

00:50:47

is going to Correct. Anything

00:50:48

that I get wrong and

00:50:50

certainly expand on and improve

00:50:52

what I have to say,

00:50:52

but my understanding is that

00:50:55

There are now efforts to

00:50:56

incorporate elements of to place

00:51:00

obligations of a social environmental

00:51:03

nature on investors in the

00:51:05

context of International Investment are

00:51:06

agreements. So that in future

00:51:08

those might give rise to

00:51:09

arbitrations and claims that would

00:51:12

evolve companies failures to adhere

00:51:14

to those standards. This might

00:51:16

include an obligation to undertake

00:51:18

human rights due diligence Etc.

00:51:21

And so you may see

00:51:22

in the future that these

00:51:24

might form the basis of

00:51:25

claims. It seems to me

00:51:26

that all so in an

00:51:27

arbitration context now that we

00:51:28

have these National laws that

00:51:30

impose human rights due diligence

00:51:31

obligations that depending on the

00:51:33

applicable law in a particular

00:51:34

arbitration that a tribunal might

00:51:37

well have reason to look

00:51:38

at whether a company has

00:51:40

in fact that here to

00:51:41

the home States requirements on

00:51:43

its due diligence because under

00:51:44

for example, the csdd any

00:51:47

company making an investment would

00:51:49

be required to undertake human

00:51:50

rights due diligence in relation

00:51:52

to that and obviously timing

00:51:54

on that. Is key and

00:51:56

secondly as I understand it

00:51:58

human rights arguments may also

00:51:59

be raised against investors in

00:52:02

the context of where they've

00:52:03

raised human rights issues in

00:52:05

arbitrations or in the context

00:52:06

of counterclaims where the argument

00:52:09

might be that that a

00:52:12

company has impacted on human

00:52:13

rights and therefore should not

00:52:14

be entitled. To recourse under

00:52:16

the investment arbitration agreement, even

00:52:19

though the state may have

00:52:20

been deficient in meeting its

00:52:22

only obligations and an example

00:52:25

of that is there's a

00:52:27

Peruvian case Bear Creek. I

00:52:29

think where Philippe Sands had

00:52:30

a dissenting opinion where he

00:52:32

took account of the fact

00:52:33

that there had been unrest

00:52:36

in relationship mining concession and

00:52:39

whether the company had contributed

00:52:41

to the fact that the

00:52:43

concession was then brought to

00:52:45

an end and there was

00:52:46

an alleged expropriation that the

00:52:49

company's compensation was reduced. The

00:52:52

award was reduced by half

00:52:53

to reflect that the fact

00:52:55

The company had not properly

00:52:57

established its social license to

00:52:59

operate. I think what comes

00:53:00

out of that is. having

00:53:02

looked at That part of

00:53:05

the distinct sending opinion is

00:53:07

that one of the challenges

00:53:09

I think in arbitrations is

00:53:11

an understanding of the state

00:53:13

Duty and obligations in human

00:53:15

rights and the corporate responsibility

00:53:16

respect and then these overlays

00:53:18

of domestic legal requirements and

00:53:20

how they're all going to

00:53:21

intersect to affect particular claims

00:53:23

Etc. And then last but

00:53:24

not least. I think we

00:53:25

can expect to see commercial

00:53:27

arbitrations where the kinds of

00:53:29

contracts that Nate talked about

00:53:31

contain human rights related Provisions

00:53:32

including to implement the outcome

00:53:34

of due diligence and whether

00:53:36

companies have been in breach

00:53:37

of those and of course

00:53:38

last but not least the

00:53:40

missing part continues to be

00:53:42

the fact that all of

00:53:44

these measures are supposed to

00:53:45

be effective in protecting rights

00:53:46

and the fact that you

00:53:48

know, a lot of these

00:53:48

the implementation of hrdd either

00:53:51

on a voluntary basis or

00:53:53

through legislation is not demonstrably

00:53:56

yet improving the lot of

00:53:58

those who are affected by

00:53:59

business activities and secondly that

00:54:05

most arbitrations obviously do not

00:54:08

really give opportunity to those

00:54:10

who are affected to bring

00:54:12

claims where their rights have

00:54:13

been infringed. I've probably gone

00:54:14

on way too long and

00:54:15

Douglas is now over tutor

00:54:18

put me right on arbitration.

00:54:20

Thank you very much. Ray

00:54:22

now return back to Stefan

00:54:25

who has three minutes. If

00:54:27

you wish to comment on

00:54:28

what Ray said you could

00:54:30

do that or if you

00:54:31

wish to look more broadly

00:54:33

than the French experience. You

00:54:35

described earlier the floor is

00:54:37

your Estefan. Yeah, thank you

00:54:39

very much. I think so

00:54:41

much has been saved by

00:54:42

a knight and Ray it

00:54:45

would be impossible in three

00:54:46

minutes to come into those

00:54:47

excellent things one or two

00:54:50

point first the ungp's he's

00:54:54

still applicable and this is

00:54:55

what I said to any

00:54:56

french companies, whatever the size

00:54:58

of the company whatever the

00:55:00

second activity is, whatever the

00:55:01

number of employees whatever the

00:55:03

turnover. Ungp's will still apply

00:55:07

first. And this is what

00:55:09

I said to my clients.

00:55:10

I say careful you better

00:55:12

apply ungp's if it goes

00:55:14

further than French law for

00:55:16

example, so it means that

00:55:17

if you comply with your

00:55:18

ntps, then you will comply

00:55:20

with French law, but at

00:55:21

least you might go further

00:55:22

which is the case, by

00:55:23

the way. That might be

00:55:25

the same with a directive

00:55:27

to come there are many

00:55:29

modifications and a draft directives

00:55:32

to be published to be

00:55:34  
released soon. But this is

00:55:36  
something important. The second thing

00:55:39  
is many issues concerning the

00:55:43  
burden of proof. The burden

00:55:46  
of proof is a key

00:55:48  
issue and it is been

00:55:49  
pointed out in a draft

00:55:52  
directive of the new one

00:55:53  
of 13th September 2022. where

00:55:57  
they are now some some

00:56:00  
real thoughts on how to

00:56:03  
deal with that. So that's

00:56:05  
victims. Would have less to

00:56:08

do in terms that companies

00:56:10

have some obligation to communicate

00:56:13

and publish their plans and

00:56:14

therefore the publish and they

00:56:16

make it known publicly what

00:56:18

they ought to do and

00:56:19

they have no choice than

00:56:20

to do that. So this

00:56:22

might have some role to

00:56:24

play in a burden of

00:56:25

group. I won't expand too

00:56:27

much on that. Then the

00:56:29

social license arbitration and other

00:56:32

issues in get back to

00:56:35

what race says concerning the

00:56:37

Cozy and contributing and linkage.

00:56:38

In fact, this is very

00:56:40

interesting to see that that

00:56:42

new directive the new draft.

00:56:44

As I said earlier. We'll

00:56:46

write those issues. So instead

00:56:48

of establish commercial relationship in

00:56:51

a supply chain. It is

00:56:53

now accepted that the reference

00:56:56

shall be causing contributing and

00:56:58

linkage with the consequences attached

00:57:01

to those Notions and this

00:57:03

is very interesting. I like

00:57:06

what you say Ray to

00:57:07

understand on how to do

00:57:09

indeed. It is not an

00:57:12

easy thing for business because

00:57:13

all we speak about is

00:57:15

the real big change in

00:57:16

the mindset for business and

00:57:18

for lawyers, and they are

00:57:20

still a lot of a

00:57:21

lot to do with these

00:57:23

awareness for business and lawyers

00:57:25

should continue to to be

00:57:27

done very very seriously. Concerning

00:57:30

the social license indeed that

00:57:33

social license is a strange

00:57:35

notion to some extent but

00:57:37

it makes us lawyers and

00:57:39

business, but Forest laws to

00:57:41

have think twice. Is not

00:57:43

anymore to advise clients and

00:57:44

on it on the on

00:57:46

a legal license to some

00:57:47

extent but also on the

00:57:48

social license and the social

00:57:50

license is not only Hollow

00:57:53

as it would be the

00:57:53

case for us in France

00:57:54

and in Europe, but as

00:57:56

I understand the way that

00:57:58

we think and we consider

00:58:00

those issues can sometimes be

00:58:02

different between where the countries

00:58:04

have Harlow and where the

00:58:05

countries like in the US

00:58:06

way. It is less Hollow

00:58:08

or some other countries. But

00:58:10

again, I want to say

00:58:12

that we speak of universal

00:58:14

values. And for these I

00:58:16

would claim that ungp is

00:58:17

whatever Harlow shall still be

00:58:19

there and shall be used.

00:58:21

In fact the surflow ungp's

00:58:23

and other soft flow shall

00:58:25

be used by course and

00:58:26

tribunals and it is a

00:58:27

case already in France. And

00:58:28

this is new to use

00:58:30

some public some sort of

00:58:31

public international law for business

00:58:34

and for decisions in business.

00:58:35

This is very strange and

00:58:37

very new. Sorry. That's French.

00:58:39

This is very new. Nail

00:58:41

concerning arbitration I think dog

00:58:43

that would be so much

00:58:44

to say but I'm afraid

00:58:45

my time has elapsed. So

00:58:46

I will close there indeed

00:58:49

there is this word and

00:58:51

the shield in International Investment

00:58:53

arbitration and why because the

00:58:56

state is always in some

00:58:58

sort of defense and as

00:59:00

we know because protection of

00:59:02

investors protection of Human Rights,

00:59:04

that's to some extent have

00:59:06

to be equal that's what

00:59:07

has been decided in some

00:59:08

decisions, but in reality brities

00:59:11

and dog that's for you

00:59:13

to expand the it is

00:59:15

still have a lot to

00:59:16

do in order to really

00:59:18

take into account that well

00:59:20

balanced between those two issues

00:59:23

merci Goku Thank you very

00:59:25

much Stefan. I'm now going

00:59:28

to expand a bit on

00:59:29

the relevance of what you've

00:59:31

just heard to International Investment

00:59:33

arbitration going a bit beyond

00:59:36

what the helpful introduction that

00:59:38

Ray gave. As any of

00:59:41

you who are involved in

00:59:42

investment arbitration today. No. The

00:59:46

bilateral investment treaties and other

00:59:49

treaties that create possibilities of

00:59:51

investor State dispute settlement through

00:59:54

International arbitration. The the treaties

00:59:57

that are enforced now almost

00:59:58

never make Express reference to

01:00:01

the phrase or the words

01:00:02

human rights and not surprisingly

01:00:05

very few isds arbitral tribunals

01:00:09

to date have expressed have

01:00:13

have pronounced on issues business

01:00:16

and human rights and frankly

01:00:17

in the rare occasions when

01:00:19

they've done. So in my

01:00:20

opinion, they've mostly got it

01:00:22

wrong. It is as if

01:00:24

International Investment law and business

01:00:27

and human rights law are

01:00:28

somehow in two separate worlds,

01:00:30

even though they're part of

01:00:31

the same public international law.

01:00:35

But this is changing in

01:00:36

recent years. Business and human

01:00:39

rights is now increasingly mentioned

01:00:41

in the operative provisions of

01:00:44

new bilateral and multilateral investment

01:00:47

treaties. In the next three

01:00:49

to 10 years these changes

01:00:52

in the treaties combined with

01:00:54

the hardening of business and

01:00:56

human rights law about which

01:00:57

you've heard are likely to

01:00:59

become subjects of litigation in

01:01:02

isds arbitrations. For example of

01:01:06

the changes for example of

01:01:08

the changes that I'm about

01:01:09

to note. You could consult

01:01:11

for example among many others.

01:01:13

the 2021 Columbia Spain bilateral

01:01:17

investment treaty the 2019 Dutch

01:01:20

model vit and the 2016,

01:01:23

Morocco Nigeria. vit not all

01:01:28

of the changes. I'm going

01:01:28

to mention are in all

01:01:30

of these treaties and they

01:01:31

take different forms in the

01:01:32

different treaties. But all of

01:01:34

the changes are apparent in

01:01:36

at least some of these

01:01:38

recent treaties now neither the

01:01:40

two bits Columbia Spain or

01:01:42

Morocco Nigeria are yet enforce

01:01:45

and the Dutch model the

01:01:46

it has yet to be

01:01:47

applied to a single new

01:01:50

specific vit. But they all

01:01:54

indicate trend lines that are

01:01:55

remarkably different. From bits of

01:01:58

the past and are likely

01:02:00

to continue expand and enter

01:02:03

into force in the next

01:02:04

decade. So in summary, what

01:02:07

are the changes and they

01:02:08

come in at least? Four

01:02:10

areas first, there are now

01:02:12

explicit references to human rights.

01:02:15

Sometimes those come in the

01:02:17

Preamble, but of course as

01:02:18

public International lawyers know the

01:02:20

Preamble is important for interpretation

01:02:23

of the entire treaty. Secondly,

01:02:26

they are now also in

01:02:28

many cases in the actual

01:02:29

text of the operative provisions

01:02:31

of bits. Second there is

01:02:34

clarification of the human rights

01:02:36

responsibilities of states to reaffirm

01:02:41

their right to regulate. For

01:02:43

human rights and the environment

01:02:45

and as I mentioned earlier

01:02:46

environment is now part of

01:02:48

human human rights as well.

01:02:51

There is a reaffirmation in

01:02:53

these new treaties of the

01:02:54

state duty to protect human

01:02:56

rights and of the state

01:02:58

duty to ensure access to

01:03:00

effective remedy when you put

01:03:03

all of those together arbitrators

01:03:05

will now have license indeed.

01:03:08

I would suggest a mandate

01:03:09

to consider issues of human

01:03:12

rights when they are evaluating

01:03:14

State actions that affect investors

01:03:18

Now thirdly with respect to

01:03:20

investors, there are explicit references

01:03:25

to the human rights responsibilities.

01:03:28

And in some cases of

01:03:29

obligations of investors under the

01:03:32

ungps the oecd guidelines and

01:03:37

other provisions. And also there

01:03:40

is reference to civil liability

01:03:42

in in these bits civil

01:03:45

liabilities of investors in their

01:03:47

home States for injuries and

01:03:50

loss of life. They cause

01:03:51

in the host state. Finally

01:03:53

in the particular area of

01:03:55

isds. There are now specific

01:03:58

Provisions that at least one.

01:04:01

If not more tribunal members

01:04:03

should be qualified in the

01:04:05

field of international human rights

01:04:08

loan. And the the express

01:04:12

provision that isds recovery may

01:04:16

be denied altogether or instead

01:04:19

have the damages reduced as

01:04:21

happened in Bear Creek as

01:04:23

Ray mentioned because of violations

01:04:26

by a company of its

01:04:27

bhr responsibilities and obligations. So

01:04:31

with all of those Provisions

01:04:32

coming into treaties, it's important

01:04:34

that arbitration lawyers be ready

01:04:36

for them because they will

01:04:38

be applied in the coming

01:04:40

years. Now we have time

01:04:42

for concluding remarks by each

01:04:45

of our four panelists. I

01:04:48

think we could go in

01:04:49

reverse order at this point

01:04:50

Ray. Would you like to

01:04:52

begin with two or three

01:04:54

minutes of closing comments? And

01:04:57

thank oh thank you Doug

01:05:00

and just picking up on

01:05:02

some of the more recent

01:05:03

remarks. I mean Stefan is

01:05:05

is an indomitable Optimist in

01:05:09

terms of the future of

01:05:11

the guiding principles. I think

01:05:12

there's a real risk to

01:05:15

The Guiding principles approach to

01:05:17

Human Rights due diligence and

01:05:19

it's objectives by if the

01:05:22

laws that are coming into

01:05:23

effect are not crafted very

01:05:25

carefully and if they are

01:05:27

taken as a ceiling by

01:05:28

companies rather than and and

01:05:31

it's questionable, how many are

01:05:32

going to be willing to

01:05:33

go beyond and continue to

01:05:34

adhere to this spirit in

01:05:36

terms of implementation of The

01:05:37

Guiding principles. So I hope

01:05:39

Stephanie is right and then

01:05:41

just picking up on something

01:05:42

you you said Doug is

01:05:44

what are how extensive is

01:05:48

the responsibility to respect human

01:05:49

rights? And I think there's

01:05:50

lots of definitional and language

01:05:54

issues that also come out

01:05:54

of the attempts to translate.

01:05:57

The ungp into legislation for

01:05:59

example in what is in

01:06:01

adverse human rights impact what

01:06:03

a company's responsibilities. When do

01:06:05

they translate into violations Etc?

01:06:08

And then the cut the

01:06:10

proposition that the environment is

01:06:11

now part of international human

01:06:14

rights, I think is controversial.

01:06:15

I think the new right

01:06:17

to a healthy environment is

01:06:18

not an internationally recognized human

01:06:20

right my personal my view

01:06:22

but I don't think international

01:06:24

law has progressed that far

01:06:25

there are differences obviously in

01:06:27

some countries depending on their

01:06:28

constitutional positions, but that's one

01:06:30

that's going to be fought

01:06:31

out for a long time

01:06:32

to come. I think one

01:06:33

of the challenges going forward

01:06:34

is obviously for international lawyers

01:06:35

business and human rights lawyers

01:06:36

arbitration lawyers to be to

01:06:39

recognize the parameters of what

01:06:41

they're talking about. There's going

01:06:42

to be a lot of

01:06:42  
scope for dispute on some

01:06:43  
of these issues going forward,

01:06:45  
but I think the conflation

01:06:46  
of international, you know, there's

01:06:49  
there's lots of criticism of

01:06:50  
does International Investment law ignore

01:06:53  
international human rights law. I

01:06:55  
think that the attempts to

01:06:57  
Hose International environmental law Concepts

01:07:00  
into international human rights law

01:07:02  
is one that needs to

01:07:03  
be treated very carefully and

01:07:05  
you'll be familiar with, you

01:07:06

know, the recent report of

01:07:08

the Philippines Human Rights Commission,

01:07:09

which makes various leaps of

01:07:11

logic in my view in

01:07:12

that regard. So I would

01:07:13

just say that that's an

01:07:14

area that is for discussion

01:07:16

and exploration going forward in

01:07:17

the future. Thanks. Thank you

01:07:19

very much Ray Nate. Thank

01:07:24

you. Thank you. That's fantastic.

01:07:26

And I think you know

01:07:27

aside aside from these obviously

01:07:29

hugely important policy discussions. I

01:07:32

think that one thing if

01:07:34

for for people who are

01:07:36

maybe new to this area,

01:07:37

I think I I think

01:07:39

I might just end with

01:07:40

the plug for really reinforcing.

01:07:42

I think what's a common

01:07:44

theme through all of the

01:07:46

discussions today, which is Which

01:07:48

is this is a really

01:07:49

important time to really become

01:07:51

conversant in these Concepts and

01:07:54

what? what it looks like

01:07:56

for a company to be

01:07:58

living up to its responsibility

01:08:00

to respect human rights these

01:08:02

days because because it's essential

01:08:05

for for us as lawyers

01:08:09

to be able to serve

01:08:10

our clients that in our

01:08:12

traditional roles where they rely

01:08:14

on us for issue spotting.

01:08:17

um in terms of being

01:08:21

able to see a genuine

01:08:22

issue and to raise it

01:08:24

a creativity in terms of

01:08:26

how to apply. um, these

01:08:29

these standards in the spirit

01:08:32

of these standards to the

01:08:33

actual realities of business and

01:08:36

and also just Independence where

01:08:38

we we, you know, as

01:08:41

professionals come at things and

01:08:43

are you really uniquely positioned

01:08:45

to understand rights holder approaches

01:08:49

and to give voice to

01:08:50

them effectively to help management

01:08:53

so that the right actions

01:08:56

can be taken and and

01:08:58

so I this this trend

01:09:00

I see it only continuing

01:09:02

and and so so it's

01:09:05

yeah again, it's just I

01:09:06

think it's just a crucial

01:09:07

time to really just become

01:09:08

Converse and have familiarity with

01:09:10

this area. Thank you Nathan

01:09:13

before we hear from Stefan

01:09:14

and Elise a housekeeping item

01:09:16

that I neglected to mention

01:09:17

earlier when we conclude with

01:09:20

the panelists standard practice in

01:09:23

Washington arbitration week and I

01:09:25

believe in this update as

01:09:27

well is that we are

01:09:28

broken into small groups where

01:09:32

one of us will be

01:09:34

in each group or maybe

01:09:35

two and some of you

01:09:37

as well for informal chat

01:09:39

on any subject. So with

01:09:41

that reminder what that will

01:09:44

begin once Stefan and Elise

01:09:46

have made their concluding comments

01:09:48

Define. Yeah, thanks a lot.

01:09:52

Yeah, in fact Ray without

01:09:55

playing on words. I have

01:09:56

a dream. And my dream

01:09:59

is that we speak of

01:10:02

universal values human rights is

01:10:04

universal. The ungp's have been

01:10:07

adopted and I will remember

01:10:09

all my life the way

01:10:10

it went on when we

01:10:12

were with rugby and and

01:10:13

all the team. And you

01:10:15

were there right? And it

01:10:17

is not been easy. Same

01:10:20

when we go to doctored

01:10:21

in 2015 and 16 and

01:10:24

the IBA level the Practical

01:10:26

guide for business lawyers, and

01:10:27

now that and other instruments.

01:10:30

all based on ungp's and

01:10:32

have a dream. Is that

01:10:34

that Universal values in human

01:10:37

rights can be implemented in

01:10:38

a universal manner all across

01:10:40

the world? Whatever our culture

01:10:43

whatever our religion whatever our

01:10:45

system of law, whatever our

01:10:47

languages. I dream that we

01:10:50

will one die have those

01:10:52

common bases and common tools

01:10:55

as a unganning principles is

01:10:57

a common tool in order

01:10:58

to implement. Indy Ray I

01:11:01

agree with you, it's a

01:11:02

dream. But I've always thought

01:11:05

that to dream is not

01:11:06

necessarily bad and to have

01:11:09

a good dream when it

01:11:10

is a nice dream. It

01:11:11

is something that we can

01:11:13

share. So indeed, I will

01:11:16

remain optimistic and a dreamer.

01:11:19

And that will work for

01:11:20

my dream to become reality

01:11:21

because I'm not the only

01:11:22

one he's not my only

01:11:23

dream. So how to do

01:11:26

for us as lawyers is

01:11:27

to be convinced that we

01:11:29

should act as wise advisors

01:11:30

as just been insisted and

01:11:33

John Sherman was speaking a

01:11:35

lot on that to demystify

01:11:37

Human Rights and make it

01:11:38

for lawyers that indeed we

01:11:40

speaking of social license and

01:11:41

legal license at the same

01:11:43

time. And that when we

01:11:45

advise clients we take the

01:11:47

risk sometimes to say come

01:11:48

on. Listen to me you

01:11:51

do a big m&a transaction,

01:11:53

but I would like to

01:11:53

speaking on human rights at

01:11:55

the same time. I can

01:11:57

say that very often other

01:11:59

partners in corporate departments or

01:12:01

clients who say no we

01:12:02

have no time for that.

01:12:03

We should all say we're

01:12:05

going to take some time

01:12:06

for that at least few

01:12:07

minutes. Because this will make

01:12:10

the change the world to

01:12:11

change. It takes time to

01:12:13

bring awareness. It takes time

01:12:15

to change the mindset of

01:12:16

people that will take time.

01:12:18

It takes time to make

01:12:19

people not thinking about short-term

01:12:21

money, but to have long-term

01:12:23

plans for the planet and

01:12:24  
for our kids and grandkids

01:12:27  
and others that will take

01:12:28  
time. That's a dream as

01:12:29  
well. I'm a real Dreamer.

01:12:32  
Thank you Father. I think

01:12:33  
we'll need to and they're

01:12:35  
past the time to to

01:12:37  
release and congratulations on your

01:12:39  
on your dream at least.

01:12:41  
And you'll need to unmute

01:12:43  
Elise. Yeah, so lights did

01:12:54  
fine. I'm I'm an absolute

01:12:55  
dreamer. I'm an idealist. I

01:13:01

mean if you work in

01:13:02

human rights, you have to

01:13:03

be an incredible nurse because

01:13:05

it's it's very hard at

01:13:06

time to on they just

01:13:08

stop my video. I don't

01:13:09

know why. But anyway, I'm

01:13:10

maybe because they can't hear

01:13:12

me when I when I'm

01:13:13

that's right. It's an improvement

01:13:15

on your audio. That's good.

01:13:17

So that's fine. So. What

01:13:20

I want to leave people

01:13:21

the thought I want to

01:13:23

leave people with I mean

01:13:24

to prolong on what's the

01:13:26

plan is saying is that

01:13:27

as a human race we

01:13:30

are at a crossroad right

01:13:32

now where I mean all

01:13:34

the problems are converging. I

01:13:36

mean, we have an incredible

01:13:38

economic situation we have once

01:13:43

in a human kind lifetime

01:13:45

Planet prices climate crisis. We

01:13:49

have a big war where

01:13:51

we don't know where it's

01:13:51

gonna and with the leader

01:13:54

that's threatening nuclear nuclear war

01:13:58

and we have an economic

01:14:00

crisis that's looming and we

01:14:02

have rampant inequality. So in

01:14:05

spite of all the instruments

01:14:06

we've built inequality is just

01:14:08

grown So we have to

01:14:11

talk to business and investors

01:14:13

to tell them that they

01:14:15

can really make a difference

01:14:17

here that if they decide

01:14:19

to go on the side

01:14:21

of Human Rights and on

01:14:22  
the side of Environmental Protection,

01:14:24  
they will fend off these

01:14:26  
fascist leaders that are springing

01:14:28  
up everywhere and he's conscious

01:14:31  
leaders. May I remind you

01:14:32  
all I'm not concerned about

01:14:35  
Economic Development. They don't care

01:14:37  
they don't care they pillage

01:14:39  
their country ruin their country.

01:14:41  
They're very dogmatic people. All

01:14:44  
they want is raw power

01:14:46  
and dominance. You can see

01:14:48  
what's happening in Russia. You

01:14:50  
can see what's happening in

01:14:51  
Iran. You can see what

01:14:52  
Trump wanted to do in

01:14:54  
the US but Orban is

01:14:56  
done to to hungry what

01:14:58  
Paul scenario has done to

01:14:59  
Brazil. So business has a

01:15:02  
choice they have a choice

01:15:03  
to side with human rights

01:15:05  
and environment for the future

01:15:07  
of the planet or they

01:15:09  
will just Bow out and

01:15:11  
just become the puppets of

01:15:12

fascists because fascism is rising

01:15:15

and fascism is due to

01:15:17

the fact that there's been

01:15:19

such an equality people are

01:15:20

lost people are are in

01:15:23

quest for for direction and

01:15:27

and I believe together with

01:15:29

lawyers business can play a

01:15:31

real leadership role in taking

01:15:33

the path to development to

01:15:35

progress to sustainability. I believe

01:15:38

more and more investors understand

01:15:40

that they don't want to

01:15:41

invest in oil and gas

01:15:43

anymore or less and less

01:15:44

because they know this is

01:15:45

this is gone. This is

01:15:47

going to be gone and

01:15:48

it's true for many other

01:15:50

fields. So this is where

01:15:53

my green takes me to

01:15:54

find us that we have

01:15:55

to to appeal to leadership

01:15:58

so that they take the

01:15:59

decisions to support human rights

01:16:02

to support the planet to

01:16:04

support sustainability. If not, we

01:16:06  
are heading to a catastrophe

01:16:09  
which I really don't want

01:16:11  
it to happen. Thank you

01:16:12  
very much. At least right

01:16:14  
now. We'll be heading to

01:16:15  
the breakout sessions and I

01:16:17  
assume the administrators will do

01:16:19  
whatever is needed to make

01:16:20  
those happen. But thank you

01:16:22  
to all of the panelists

01:16:24  
for what I have

01:16:25  
found to be an engaging

01:16:26  
and informative set of discussions.

01:16:30

Thank you all. Thank you

01:16:32

dog. Thank you. Thank you.

01:16:35

Thank you very much dog.

01:16:37

And thank you Elise and

01:16:38

and Stephan Nate and and

01:16:42

Ray. This has been an

01:16:45

incredibly. Rich and and useful

01:16:50

panel, I believe for for

01:16:52

any any person that would

01:16:56

be interested in human rights

01:16:57

and and and business as

01:16:59

well as well as it's

01:17:01

interaction with the investment arbitration.

01:17:05

Not only because you were

01:17:08

you massively were able to

01:17:14

identify the basis of business

01:17:16

and human rights, but but

01:17:18

to go beyond that how

01:17:19

that has been in many

01:17:21

ways implemented in in many

01:17:25

jurisdictions in particular in France

01:17:27

and and how that is

01:17:29

now being so Heightened in

01:17:36

in the in the investment

01:17:38

arbitration world through bilateral investment

01:17:41

treaties that that that have

01:17:44

reference a specific references to

01:17:46

Human Rights and social corporate

01:17:48

responsibilities. There's there's one one

01:17:50

much more tree that I

01:17:52

wanted to to reference which

01:17:55

is the the free Trader

01:17:58

groom between Canada and Colombia.

01:18:00

That one has a specific

01:18:01

reference to social corporate responsibility

01:18:04

standards if anyone wants to

01:18:06

check it and now we

01:18:07

would like to give way

01:18:09

to the breakout rooms each

01:18:12

one will be sent to

01:18:13

a different breakout room, hopefully,

01:18:15

so, please take it away

01:18:17

and let's let's move into

01:18:19

the breakout rooms and thank

01:18:20

you very much. Thank you.

01:18:25

Thank you. Thank you.