

Taking Stock Of The ECT Modernization Process: Fit For The 21st Century?

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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 conference featured a panel discussion on the modernization of the Energy Charter Treaty (ECT), which is significant in the realm of investor-state dispute settlement. The session was moderated by Dr. Jose Antonio Rivas, an accomplished arbitration practitioner, and included key speakers: Lucas Sticher, Nico's Lubrano, Marine Carlson, and Daniela.

The panelists discussed the ongoing modernization process of the ECT, which began during the pandemic and aims to align the treaty with contemporary standards, particularly regarding sustainability and energy transition. They highlighted the need for clarity in investment protection provisions and the challenges posed by the European Union's legal framework, particularly concerning the supremacy of EU law over international obligations.

Daniella provided an overview of the ECT, emphasizing its significance in promoting energy trade and investment protection. She noted the existence of over 150 cases since the treaty's inception and the necessity for modernization to address inconsistencies in tribunal interpretations and align with the Paris Agreement.

Lucas elaborated on the negotiation process and the complexities involved, particularly regarding the definitions of economic activities in the energy sector and the potential exclusion of fossil fuel investments from protection under the treaty. He mentioned the introduction of a flexibility mechanism allowing contracting parties to tailor their commitments.

The discussion also touched on the implications of the ECT's modernization for investors and the potential fragmentation of the treaty landscape, especially as some EU member states express intentions to withdraw. The panelists expressed concerns about the enforceability of awards in light of recent EU court rulings and the shifting political landscape.

Overall, the panel underscored the importance of the ECT modernization process in

adapting to current energy challenges while balancing the interests of investors and states. The conversation highlighted the evolving nature of international investment law and the need for ongoing dialogue among stakeholders.

Authors

Jose Antonio Rivas, Daniela Ghicajanu, Guy Lentz, Nikos Lavranos, Marinn Carlson

Topics

ECT, energy charter treaty

Category

WAU

Full Transcript

00:00:13

Well, good morning, and welcome

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to World arbitration update. This

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is day four of our

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2022 conference and we're starting

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out today with a fantastic

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topic. One that has generated

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a great deal of interest

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in the international arbitration community

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in particular, those who are

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interested in investor-state dispute settlement.

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And that is today's panel,

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this morning's panel titled taking

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stock of the ECT modernization

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process with the question fit

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for the 21st century and

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of course the energy Charter

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treaty has been a leading

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instrument in the world of

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investor-state dispute settlement. We've seen

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a number of new cases

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over the last year in

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the energy field, particularly with

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her Back to Renewables, it

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has resulted in numerous a

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leading cases. And in terms

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of the degeneration of a

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lot of new law and

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new thinking, and a lot

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of controversy, it's being an

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interesting time. The last 3

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years under the energy Charter

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treaty, and we have a

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fantastic panel today and actually

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I should introduce myself. My

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name is Ian, Laird partner

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Crowell & moring in Washington

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DC, and I'm co-chair of

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world, arbitration update with my

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colleague. Dr. Jose Antonio Rivas

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from strategy LLP. So welcome

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on behalf of both of

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us. We have up on

00:02:07

the the board here, a

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list of our sponsors. And

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and as a first kind

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of a Mystery of matter,

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just wanted to thank our

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sponsors for their a huge

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support that we couldn't have

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done it without them as

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well as are. Our numerous

00:02:24

supporters were listed on our

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website, we've had a fantastic

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uptake and support for World

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arbitration update in the second

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year. And really I think

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a lot of it goes

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to a part of the

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focus of world arbitration update

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which is to provide updates

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to the international arbitration community

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in a in an easy-to-access

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manner you know as you

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know this is not a

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pay conference weed. We are

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going to be having a

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new service shortly to provide

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access to recordings of our

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session. We really are attempting

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to support and broaden access

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to Fantastic experts in this

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field and I think we

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would be really succeeded without

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him. This group isn't is

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a good example, as well

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as we're trying to protect

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respect. And and, and as

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well as reflect the incredible

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diversity of the international arbitration

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world of international arbitration. Now,

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stretches to every corner of

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the planet in terms of

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different cultures legally. And otherwise,

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the international arbitration world has

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grown incredibly. And we also

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have set up over the

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course of the 19 panels

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over the course of this

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week. An example of that

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I'm trying to have panels

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and different regions covering different

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topics that are topical to

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those regions and we hope

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to do that in the

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future. And today's panel is

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is one of our highlights

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of the conference. This is

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really very cutting-edge topic and

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we have a great group

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of folks who've agreed to

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come and speak to all

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of us today about About

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this topic and I'm going

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to pass off to Jose

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Antonio now, and he is

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the moderator of this panel,

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but not only that, he

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is a very accomplished arbitration

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practitioner himself. He has a

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sjd from Georgetown University Law

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Center here in Washington, d.c.

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he followed that by becoming

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a council. It said for

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many years working on some

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of the leading cases that

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many of you know and

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has now found his own

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firm X strategy and he

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has an incredible experience and

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it's really a privilege to

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work with the Jose Antonio

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on this conference. I just

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wanted to say that last

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final note that extra G

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has LLP has his firm

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has really done a fantastic

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job. Organizing the conference, you

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seen the Maria Lucia's name

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and That they really have

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heard of the cats. And

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there's, there's nothing harder than

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herding cats in the international

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arbitration Community. They've done it,

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Master play in it, and

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with Grace, and with great

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humor. So I thanks, thanks

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to both of them. So,

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on that note, I will

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pass off to Jose Antonio

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and will kick off this.

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Fantastic early morning panel at

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least in d.c. on the

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energy Charter Treaty of very

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much and thank you. Thank

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you. And how grateful we

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are for all the supporting

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organizations and the, or our

00:05:53
sponsors. And it takes takes

00:05:58
more than a village to,

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to, to, to put up

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a conference. Like this. I

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know that that many have

00:06:05
been contributing from the curating

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that the whole program proposing

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teams, providing it. Mation Etc,

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recommending speakers. So thank you

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to everyone who has been

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involved and that within that

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group are are for sale.

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All of our speakers today,

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including Marine Carlson and Nico's

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number on Nostrand and Lucas

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are Stitcher. And and Daniela

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is a new. Thank you

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very much. I would like

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to go ahead and and

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I need to do something

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before going there. Basically we

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have been we have been

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in water protection update and

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also in its history events

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are at the Washington arbitration

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with we have had a

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focus. Every every the dictionary

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version we have had a

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full could focus on the

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development of what are known

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to be. Entry, you cases

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investment arbitration and we have

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also had a focus on

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on on how are the

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tension between international law and

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European Regional law, and that

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we have also had a

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conversation about the eighties in

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the EU and the some

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of the cases that have

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made it to the specialized

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news at because of the

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challenges that they pose a.

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44 recognition within Europe as

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well as as for enforcement

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within Europe. And and and

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outside, and this this year,

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given that the modernization. Negotiations

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were launched during the pandemic,

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not not this year but

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but but last year we

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would consider that it was

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a key and and that

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newsworthy development. And we had

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to have that discussion about

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the consequences and process and

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the outcome and the consequences

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for investors Etc. So in

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front of you really have

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a series of individuals, three

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of them are European and

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two of us from the

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Americas. Who have who have

00:08:53

really thought and lived that

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modernization process either. Because like,

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in the case of a

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blue cast, he has been

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part of the organization process

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and negotiations or or because

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they have been closely at

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what that process as Niko's

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because in a past life,

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he was himself enable. She

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had her or because because

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they they were a part

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of the European commission at

00:09:26
like in the case of

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Daniela or because like in

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the case of of marine

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they have had to watch

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this because because of her

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obligations of councils and that

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also arbitrator or liking my

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case because because of the

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conference and also because I

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have full disclosure also have

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Science in Boulder in in,

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in cases related to Amtrak

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in Triune mattress. So with

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that, I would like to

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put this focus and honest

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and on the speakers and

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say a few words about

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them cuz it's really worth

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knowing who we have in

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front of us. And we'll

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start with, Lucas teacher at,

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he is a senior investment

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policy officer with the Austrian

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Ministry of Labor, and economy

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and represent Australia in various

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European and international or on

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an investment treaty issues such

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as the EU, the oecd

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Elantra. He has served as

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chair of the ECT and

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retarded tree modernization group since

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July 2020. Next we have

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a steal steal in Europe,

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we have Nico's Lubrano's, he

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is an expert in investment

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law and arbitration who has

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expertise in advising deteriorating negotiating

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drafting legislation providing expert witness

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report these lines or both

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investors and states. He combines

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his experience as an arbitrator

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and mediator legal consultant and

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former policy maker and chief

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negotiator for bilateral investment treaty.

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He has a PHD degree

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from Maastricht, University in 2008

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and 2009. Nickels was a

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Max Weber fellow of the

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EU in Florence and he's

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a problem. Contribute to the

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floor blog, among many other

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things. We have also with

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outside Marine person who has

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really been an incredible to

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order of the of the

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new wave Call forms both

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the world of attrition update

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and Washington arbitration the week

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and that has always provided

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ideas for both forms and,

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and is impressively the co-chair

00:11:52

of the global arbitration trade

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and advocacy, practice at sidley

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Austin, she has focused her

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practice investment, treaty arbitration. For

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more than 20 years representing,

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both claimants investors and respondent

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government including in ECT cases

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and bilateral investment. Treaty cases

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in the energy. Sector Marine

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is also an adjunct professor

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at George Washington University and

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the American University law school.

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And last but not least

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is Daniela. Who is a

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fellow at the Corolla Institute

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at Georgetown law school or

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she focuses on investment Law

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& policy? She was part

00:12:37
of the international Patrician T-Mobile

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us. Honda of a legal

00:12:42
services of to be US

00:12:44
citizens. Daniela specialize in the

00:12:46
EU law and international relations

00:12:48
at College of Europe and

00:12:51
Georgetown law welcomed what is

00:12:54
really impressive panel and that

00:12:57
will start with Daniela who

00:12:59
will be our present her

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in order to update us.

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And everyone on the latest

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developments goes in, the ECT

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motorization is more of a

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contextualization and also relevant cases

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call ctct framework. Thank you

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very much and send you

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a good morning. Good afternoon,

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good evening. So I will

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start with outline a brief

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presentation of the city because

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I'm mindful that we have

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an audience that has acknowledged

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about the act more expert,

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but not so expert. So

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I don't even know who

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view the modernization process than

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what's happening with the investment

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distance because we have Lucas

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will tell more about the

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process itself and the content

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and the contact, then the

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problems with the enforcement, you'll

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see that as challenges and

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opportunities. At least for my

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side, I see them as

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challenges and opportunities and I'll

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explain you. Why? Now also

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the current state of affairs

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and I will leave you

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with a question. That is

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very, very dear to my

00:14:23

heart. Next wifey. So the

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energy Charter treaty, I think

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we can pay for those

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who don't know if you

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trade and investment treaty and

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it has 54 signatures signature

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parties. At the end of

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June 2022. Also the European

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Union and you're awesome are

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parts of the city and

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district is now and in

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the European Union law as

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agreement and you'll find it

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interesting term for those who

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are not acquainted with the

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city, the regional economic integration

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organization which is basically the

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European Union which 3D came

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in the nineties to promote

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energy corporation and energy trade

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between European States and other

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energy producers. Now, is the

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ECT exist contains Provisions, covering

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protection of foreign investment of

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the longest urination, rules for

00:15:37
trading energy, efficient mechanism, the

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source of all evil these

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days between, Contracting parties, and

00:15:46
foreign investors and contract and

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also the promotion of Justin.

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Give us some numbers since

00:15:55
it entered into force in

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1998. Until this moment that

00:15:59
there were 150 cases and

00:16:01
pending 54th and Spain is

00:16:06
the one having the record

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it. So, are you see

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they're on my side that

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I could see if Kim

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is a necessity because of

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the moment when was drafted

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the energy charge, a 3D

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wasn't the line with what

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is today, the Paris agreement

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So that's a must today.

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That's that's that's one of

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the reasons. But also there

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there were some inconsistencies between

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how did the Treaty and

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especially the investment protection Clauses.

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They were interpreted by different

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arbitral tribunals National courts and

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the recently by the courts

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of Justice of the European

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Union. And last but not

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least, he was concerned on

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the protection and the e

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c t lie. And in

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two years, we had an

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agreement in principle, a text

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with leaked, fortunately or unfortunately

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in 2022. So Lucas will

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tell me more about it.

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That being said, the Contracting

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parties are supposed to meet

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in November to discuss the

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latest text and to stop

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it. Now, what's happening at

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the level of the you

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we can do, this is

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the treaty, and this is

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how it looks. We have

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the members and The Observers

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and thank you to the

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Secretariat mdc-t for this comprehensive

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maps, please, what's happening at

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the level of the year.

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So there is a problem,

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there's a problem of the

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beginning. When the treaty was

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drafted, there was no connection

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Claus for those who are

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not acquainted with. What's the

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disconnection Claus is the respective

00:18:00

Claus that's basically exclude, the

00:18:05

application of the city in

00:18:06

any and introduce you. As

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I said, the EU and

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you are members of the

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Act. Only member states are

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members with one exception until

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now Italy, which would you

00:18:21

in 2015, but He was

00:18:24

still apply, just because of

00:18:27

these not now and not

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ubit, one. Will ask what

00:18:38

the problem with it. Well,

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the problem is the investment.

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So on the left side

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of the visitation, you'll see

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some Buzz words, but it

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started with the intra evit

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where you are with actually

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and it is considered Prime

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heading Supremacy over any interest

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in you. And that comes

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from an old you through

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the rooms of the court

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of justice, the principles of

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Primacy of EU law and

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economy of the alarm. And

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Did for those who are

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not acquainted with the you

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lost because I know that

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we have people also from

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the US and other jurisdictions.

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The promise you it's over

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Anakin 69 not only National

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but they'll still be constitutional

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North and then you're calling

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me of. You said it

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comes from the from an

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old case of the court

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of justice where the court

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stated that the European Union

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law. The Community Law Baghdad

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is a closed system. So

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for the member states you

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are. It's a super national

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law and income story last

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year, the European court of

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justice said that yes. Is

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it either? But when it

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concerns, when it concerns and

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it becomes he lost For

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a specific in Chinese distance

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between an investor and member

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states of the European Union.

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The court of justice has

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the right to interpret. Then

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we have a choice between

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non-eu parties or between a

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you party and Antonia party

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and that should be a

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problem until last year when

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he said the scene that

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it doesn't matter if you

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are ignoring you probably want

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to change course, you're a

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word in the European Union.

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That might be a problem

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because no, straight and I

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won't be there an actual

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the word or judgments just

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come straight. There is a

00:21:03

distance between Ukraine Ambassador and

00:21:06

the Republic of Moldova, part

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of your connection was the

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city of arbitration with Paris.

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And the fact that the

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I want to change course,

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and that there were an

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annulment proceedings before the French

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courts. This is how to

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their word and had the

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ability to interpret and to

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respond to some three preliminary

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questions from the from the

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Philippines. And I should constantly

00:21:44

when the arbitration world and

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the world were still recovering

00:21:48

and trying to understand, come

00:21:50

straight, we had feel holding,

00:21:51

this is not an easy

00:21:54

case, but it's in my

00:21:57

opinion, actually, it closes the

00:21:59

circle or what's happening in

00:22:01

the European Union. This summer,

00:22:04

we have it worse than

00:22:06

the only the only a

00:22:10

word green power versus Spain.

00:22:12

That's a word where the

00:22:14

entire objection was was admitted

00:22:19

by the rest of the

00:22:21

64 cases. There is there

00:22:23

were only rejection vitavit cases

00:22:27

with also. Now, just to

00:22:32

mention, I took a move

00:22:36

to the next flight. That

00:22:40

there are challenges and opportunities

00:22:42

in the enforcement side and

00:22:45

one challenge is in the

00:22:48

EU because we have some

00:22:50

principles that might come into

00:22:53

question. If there is a

00:22:55

possibility to enforce and these

00:22:56

are the principles with your

00:22:57

cooperation between the national Court,

00:22:59

autonomy. And promise you if

00:23:01

you lost and as being

00:23:04

from Luxembourg in July this

00:23:08

year, stated it cannot eat.

00:23:12

It could not enforce the

00:23:14

word because of these principles

00:23:21

into a corporation. So now

00:23:23

you could take me to

00:23:24

out with come straight, that

00:23:25

might be a problem. The

00:23:27

opportunity. In my opinion is

00:23:29

balding, enforcement, outside in you,

00:23:32

and my seat in the

00:23:35

US courts and the UK

00:23:37

courts in the u.s. courts

00:23:39

will already have some precedent.

00:23:43

Let's see if there is

00:23:44

any enforcement and we can

00:23:47

see and Convention. We have

00:23:52

come straight cells which was

00:23:55

allowed last year, in December

00:23:59

by the district court for

00:24:01

the District of Columbia uke

00:24:03

chords. The problem might be

00:24:05

the workmen might be with

00:24:07

the cab yet because well

00:24:09

be UK Supreme Court after

00:24:11

brexit. Allow the enforcement of

00:24:14

Nicola but the European commission

00:24:17

didn't like it. So I

00:24:20

started a new Kingsman action

00:24:22

and that being said come

00:24:25

straight was rendered after brexit,

00:24:27

which might give Food For

00:24:31

Thought for our audience, if

00:24:33

that can be enforced or

00:24:35

not. Jack glass slide on

00:24:40

the current state of affairs,

00:24:41

we have member states, which

00:24:44

are not members anymore. Then

00:24:48

we have pollen which has

00:24:51

dropped legislation to withdraw in

00:24:53

the Netherlands. When I was

00:24:54

that they might withdraw and

00:24:56

some latest developments from Germany,

00:24:58

Germany. And a case where

00:25:03

the Bible to Berlin stated

00:25:05

that the German civil procedure

00:25:07

to call doesn't apply. If

00:25:10

there is an accident arbitration

00:25:13

nature, where is Oberlin from

00:25:20

K2, cases against actually, because

00:25:25

there is a conflict with

00:25:27

the intro you rules, because

00:25:30

there is a Mia and

00:25:31

you're holding, it doesn't matter

00:25:33

to the word, the Germany.

00:25:37

And that's what a presentation,

00:25:41

I knew with Lucas and

00:25:44

thank you very much. Thank

00:25:50

you very much and Daniella.

00:25:52

Was, I believe a terrific

00:25:55

effort of of conciseness given

00:25:58

that you are referring to

00:25:59

a multi-jurisdictional, Court decisions. And

00:26:07

also in parallel with to

00:26:09

the new setting up a

00:26:11

little more education process note,

00:26:13

note that the reference to

00:26:15

the, the principles related to

00:26:20

be you and Primacy of

00:26:23

the EU and on the

00:26:25

dance floor and so forth.

00:26:27

That you mention are all

00:26:29

within that the world of

00:26:31

the EU law. Not necessarily

00:26:33

within the world of strictly

00:26:35

of public international law and

00:26:37

and the Vienna convention on

00:26:38

the law of treaties, which

00:26:41

which, which of course was

00:26:43

was not reference in in

00:26:45

some of the decisions that

00:26:46

that that you alluded to

00:26:48

it with that. I'd like

00:26:50

to welcome a new cash

00:26:53

app work for comments and

00:26:56

he's inside. Fresh out of

00:26:59

the oven concerning the modernization

00:27:01

process of the ACT. Welcome,

00:27:05

Lucas. Thank you very much.

00:27:08

Good morning and good afternoon,

00:27:09

everyone. Thanks a lot to

00:27:12

the organizers for inviting me

00:27:13

to. This is my first

00:27:14

participation in this at this

00:27:16

update abandoned doing this is

00:27:17

a great honor, fixings to

00:27:20

the leader for very ably

00:27:22

setting the scene, which makes,

00:27:24

of course, my truck much

00:27:26

easier. When explaining the Rhythm

00:27:28

method band has taken over

00:27:29

the last. Yes. So my

00:27:32

brief overview of what is

00:27:35

being discussed and how it

00:27:36

is. We discussed would have

00:27:37

cost more than a scratch

00:27:39

the surface, but it look

00:27:40

forward to in-depth discussion in

00:27:42

the course of this Penny

00:27:49

session. Let me offer a

00:27:51

few explanations on the process

00:27:53

itself, so it's already indicated

00:27:55

by the Nilla. And I

00:27:58

will see it when you

00:27:59

be started negotiations. During the

00:28:01

pandemic, everybody was sitting at

00:28:03

home. Just as I'm doing

00:28:05

right now. We have to

00:28:07

assume which means that we

00:28:12

saw each other for the

00:28:12

first time in person at

00:28:14

some point in 2022. So

00:28:15

very very early before we

00:28:17

actually could use it as

00:28:19

a negotiation skills. Of course

00:28:20

we have to get up

00:28:22

very early 6 in the

00:28:25

morning. I think the outcome

00:28:29

is quite quite interesting in

00:28:32

many respects. Much has been

00:28:34

said medley from the Viewpoint

00:28:36

of the European Union but

00:28:39

what is being greedy at

00:28:40

the core of the negotiation

00:28:42

was the question to what

00:28:43

extent amendments me to be

00:28:45

Implement in order to align

00:28:47

the Issa TV with the

00:28:48

Paris agreement. Is this again

00:28:50

a very European discussion but

00:28:52

of course, is there an

00:28:53

entrance on the tax proposals

00:28:55

that were I submitted not

00:28:59

want to move the station

00:29:00

itself, it was Mary, kills

00:29:03

process. No, Outsiders were allowed

00:29:05

on the Contracting parties. Documents

00:29:08

were not supposed to be

00:29:10

made public, that they really,

00:29:11

as has been mentioned already

00:29:13

in the introduction to this

00:29:15

conference Penny and the the

00:29:19

scope of the musicians, very

00:29:21

focused to be agreed on

00:29:22

a secret list of topics

00:29:23

at the outside of the

00:29:25

negotiations. Which had stood at

00:29:28

the foot of main areas.

00:29:30

Definitions, investor protection substantive law,

00:29:34

ICS. But only in a

00:29:36

very select men are. So

00:29:39

just to do to make

00:29:41

this here establishment of a

00:29:43

court as it is now

00:29:45

implemented in you treat, your

00:29:46

practice was not on the

00:29:48

agenda development. The question of

00:29:54

Rio that has been elusive.

00:29:56

Already obsolete, probation sentence for

00:29:59

investment in my Priest River

00:30:02

View on jobs, come off

00:30:03

then. Say a couple of

00:30:07

brats on the Shelf. Definition

00:30:10

street is cup, investor protection,

00:30:12

is this related, Provisions ends

00:30:16

a radio that is in

00:30:18

for you application. So when

00:30:21

it comes to the tree

00:30:22

disco, when we discussed the

00:30:23

definitions, one topic was really

00:30:27

at the corner of introversion,

00:30:29

negotiations. And that is the

00:30:31

topic of definition of economic

00:30:34

activity in the energy sector

00:30:35

important as most of you

00:30:38

video where, you know, that

00:30:40

foreign investments to be covered

00:30:42

by the city, it does

00:30:43

not only need to reclaim

00:30:47

Insanity 106 which are very

00:30:49

similar to our investment agreements

00:30:52

related to so-called economic activity

00:30:56

in geometry. And in order

00:30:58

to qualify as an economic

00:30:59

activity in the energy sector,

00:31:01

economic activity must be related

00:31:04

to a so-called energy material

00:31:06

or products and what constitutes

00:31:09

an energy. Metering product is

00:31:11

regulated in an Annex, Annex

00:31:15

p.m. 1 p.m. to is

00:31:18

a very tightly long list

00:31:19

of different and a cheater

00:31:21

products. And as a set

00:31:24

in order to be covered

00:31:25

by the treaty and investors

00:31:26

must relate to such an

00:31:28

energy between the big discussion

00:31:30

was to what extent it.

00:31:33

Is it appropriate to have

00:31:34

fossil fuel and Seamus recent

00:31:37

products. Covered basically one being

00:31:44

led by Mr. Text Publix.

00:31:47

I'm very comfortable. How to

00:31:49

speak about it, which which

00:31:52

which which state route able

00:31:54

to proposal to the exclusion

00:31:59

of the transition, exclusion of

00:32:02

investor protections for a fossil

00:32:04

fuel divestment and I love

00:32:07

you and I like him

00:32:08

that's more or less took

00:32:10

the position. We appreciate your

00:32:12

your demands, we appreciate the

00:32:14

concerns. We also signed up

00:32:16

for the Paris agreement, but

00:32:16

we just don't see the

00:32:18

necessity to go. That far

00:32:20

is a different topic or

00:32:22

less. So, we, we, we

00:32:25

came to a point where

00:32:26

it was. There is no

00:32:27

content on this topic. What

00:32:29

we'd been proposed in Pittsburgh,

00:32:32

which was finally accepted by

00:32:34

the contract, he probably suspects

00:32:35

ability. To agree to disagree

00:32:37

and make individual flexible solutions

00:32:42

for individual needs of different

00:32:46

countries puppies. So they started

00:32:50

discussions that we introduced a

00:32:52

flexibility mechanism for using it.

00:32:55

So cold, in the winter,

00:32:58

to try to treat them

00:32:59

and I'm the base of

00:33:01

the FedEx individually. Contracting parties

00:33:04

can exclude the application of

00:33:06

part three, which is the

00:33:09

substantive investment of the city

00:33:11

to setting for selfie Envy

00:33:14

tourism products. So far is

00:33:18

Union UK and some extent

00:33:21

Switzerland to Avail themselves of

00:33:22

this possibility of the stones,

00:33:26

but it's also a forward-looking

00:33:28

Solutions. We are using an

00:33:31

X which means that if

00:33:33

further amendments, Excuses. If you

00:33:37

were implemented you do not

00:33:40

need a treatment. It's can

00:33:44

be can be brought about

00:33:45

in the basis of a

00:33:46

simple decision of these each

00:33:49

conference which requires unanimity. But

00:33:51

still you have wet Lindsay,

00:33:54

ratification procedures in domestic Apartments.

00:33:57

Now looking preps this issue

00:34:02

from a broader perspective but

00:34:03

not right so far investment

00:34:06

protection. Agreements have been based

00:34:10

on the idea that any

00:34:11

of us could basically was

00:34:12

with some exceptions, but still

00:34:17

there was no distinction between

00:34:18

good and bad economic activities,

00:34:20

to shoot and try the

00:34:22

protection of the of the

00:34:24

treaty nothing's DC context. A

00:34:27

different, of course, it will

00:34:29

be interesting to see to

00:34:32

what extent is influenza State.

00:34:34

Practice 3 to practice in

00:34:36

other. Clearance. Now, moving on

00:34:38

with my reef overview of

00:34:40

the, of the outcomes of

00:34:44

the, of the negotiations, just

00:34:47

a few Birds on the

00:34:48

other investment Banks related probation.

00:34:51

So on the definition of

00:34:53

investor be included, a substantive

00:34:56

business requirements. In the Home

00:34:59

State, shooting a list of

00:35:01

factors that are to be

00:35:02

taken to County order to

00:35:04

establish the substantive business activity

00:35:07

investment. Now needs to be

00:35:09

made in accordance with state

00:35:11

law. We have verified parents

00:35:14

Pittsburgh treatment. So the should

00:35:18

take quite complicated structure of

00:35:20

print. Out of a one

00:35:21

has been replaced by two

00:35:23

paragraphs, basically sitting out the

00:35:30

application, transcript impeachment, the other

00:35:33

paragraph, formatting for a list

00:35:35
that Specifies situations. That constitute

00:35:39
a breach of that pretty

00:35:41
standard internet expression is not

00:35:44
defined. There is there is

00:35:47
a definition of the second

00:35:48
two. More than free to

00:35:51
practice. I should say, including

00:35:53
a car fault for not

00:35:55
this military measures for the

00:35:57
public. Good. Should not constitute

00:36:01
interact expiration unless it's a

00:36:04
circumstances, warrant it different assessment

00:36:07
on MSN. ICS permissions, disrespect

00:36:15

me Provisions, as well as

00:36:17

substantive law, probations from other

00:36:19

traditional, not be implemented. So

00:36:22

the focus is reading out

00:36:23

on this connection, it was

00:36:27

decided to delete a 16ft

00:36:31

city. The new premier professional

00:36:37

security protection and security clarifies

00:36:40

that it only concerns facing

00:36:42

security security. Last but not

00:36:45

least, the umbrella closest limited

00:36:48

to, to contact reaches the

00:36:52

exercise through the through governmental

00:36:55

Authority. Moving on to ICS

00:36:59

the discussions focused on transparency

00:37:01

security for CrossFit by defending

00:37:04

the nation of Damages and

00:37:07

brothers came Subway starts with

00:37:11

the last topic. Frivolous James

00:37:12

match inspiration was obviously taken

00:37:15

from exit for mabbette ratio

00:37:17

refer to Bumper 5 and

00:37:19

your complete the practice. So

00:37:21

you can basically have to

00:37:22

tractions one exit, inspires one

00:37:25

relating to claims manifesting public

00:37:28

married. The other one related

00:37:31

to James and founded. As

00:37:33

a matter of law, the

00:37:36

search party funding obligations. Basically

00:37:42

Implement a similar similar Provisions

00:37:46

has been discussed in exit.

00:37:50

I'm aware of the time.

00:37:52

That is obviously a limited

00:37:54

resource for today. So I

00:37:56

will move on to a

00:38:01

topic that is of more

00:38:02

interest in this room that

00:38:03

has already touched upon by

00:38:05

Daniela. And that is the

00:38:09

issue of Rio Rio stands

00:38:11

for regional economic integration organization.

00:38:14

And on this topic it

00:38:17

wasn't discussion to what extent

00:38:18

is desirable to verify the

00:38:21

scope of application of DCT

00:38:23

among members of a real,

00:38:24

that is in itself. A

00:38:26

country party to this state

00:38:27

to another table better contract

00:38:32

pockets of the city one,

00:38:33

to carry 5 p.m. ceiling

00:38:35

issue of intra you application.

00:38:38

And a decision was made

00:38:40

Do this so I can

00:38:42

use. If you would have

00:38:43

contained a provision that clarifies

00:38:46

that entire area. After you

00:38:49

26 on investor-state dispute settlement,

00:38:51

should not apply between members

00:38:56

of the European Union international

00:38:58

relations and the d e

00:39:01

c t. That's a hopefully

00:39:07

clarifies a long-standing controversial issue.

00:39:11

And I would also like

00:39:14

to conclude my remarks, Olivia

00:39:19

provide, a useful, of course.

00:39:20

I'm very happy to touch

00:39:23

with some other topics that

00:39:26

you today or go to

00:39:28

to appointment details, with the

00:39:30

topic sign racing metro station

00:39:32

to thank you very much.

00:39:34

Thank you very much, new

00:39:36

cast for, for doing a

00:39:39

fast-paced, and their clothes look

00:39:44

into the negotiations themselves, but

00:39:47

also the outcome and, and

00:39:49

finally, doubling down on, on

00:39:51

the status of the dispute

00:39:56

settlement, as as as, as

00:39:57

seen from the perspective of

00:40:00

the modernization negotiation. Now, I

00:40:07

would like to ask you

00:40:07

a question on lunch for

00:40:09

a very brief answer on,

00:40:11

on, on the following. Which

00:40:13

is do you have any

00:40:14

comments with respect to the

00:40:16

notion of of, of a

00:40:17

modernization? Is it, is this

00:40:19

a, a, a, a, a

00:40:21

an amendment to the treaty

00:40:23

from, from your perspective, or,

00:40:24

or, or what, what, what

00:40:27

is it from from, from

00:40:29

your Viewpoint? Now, 2. Well,

00:40:37

thanks for inviting me again.

00:40:42

I'll be at the last

00:40:43

year, a wonderful debate and

00:40:46

I hope it will have

00:40:47

this here again. Well, you

00:40:51

know, I think, in a

00:40:53

way, what I find ironic

00:40:55

is that I mean, obviously

00:40:57

the negotiation of directives of

00:41:02

the EU and the member

00:41:03

states are we're not exactly

00:41:06

the same as the other

00:41:09

half. Let's say twenty-five p

00:41:12

ect Contracting parties.

00:41:14

I think that's really important

00:41:15

to recognize rights and that

00:41:17

makes it I think very

00:41:19

difficult and in the sense

00:41:21

that the EU under pressure

00:41:23

from Parliament Sergio's etc etc

00:41:27

and also because we wanted

00:41:29

to push his own you

00:41:31

like see Terry station policy

00:41:33

through and harmonized also, in

00:41:37

terms with its Sita, Project

00:41:40

and see tomorrow, it had

00:41:43

to do to a man

00:41:45

if you like in a

00:41:47

multilateral agreements. The treaty, but

00:41:51

actually to a large extent

00:41:53

related to the internal if

00:41:58

you like plurilateral situation. Right?

00:42:01

So, you, if you have

00:42:02

to see, I think the,

00:42:04

this whole project, if you

00:42:06

like, kind of like, with

00:42:08

two circles you have the

00:42:09

Outer Circle that relates to

00:42:12

the multilateral covering all the

00:42:14

elements that Luke has mentioned

00:42:16

with regards to all parties.

00:42:21

Right? Like for instance, the

00:42:23

other, the narrow, a PT

00:42:25

standards or the sustainable development,

00:42:28

chapter that is included and

00:42:31

the Paris agreement to the

00:42:32

elements at cetera at cetera.

00:42:34

They're the removal of the

00:42:36

empty PO box companies as

00:42:40

investor. I think that's all,

00:42:41
you know, applicable across the

00:42:43
board but then you have

00:42:44
the internal Circle B. Which

00:42:50
applies then in particular, or

00:42:53
has he is that you

00:42:56
right? And we should note

00:42:57
in this context, it makes

00:42:59
it more complicated than it

00:43:00
really has left. Already the

00:43:04
ECT couple of years ago,

00:43:05
right? So even within the

00:43:08
Circle of you, plus you

00:43:11
member states. You don't have

00:43:12
even all of them on

00:43:13
board, right? And, of course,

00:43:15
we have come to the

00:43:16
later. You have the UK

00:43:18
as well being outside the

00:43:20
circle largely. I would say

00:43:22
completely depending on where you

00:43:24
are. So, I think that

00:43:26
makes it very complicated. So

00:43:28
yes, you can say it's

00:43:30
a treat your man. That,

00:43:31
but if you like, it's

00:43:32
a multiple of treaty and

00:43:35

management relating to particular circles.

00:43:40

And I think that makes

00:43:42

it very complicated and also

00:43:47

difficult, because obviously, the elephant

00:43:50

in the room and we

00:43:51

come to that in a

00:43:52

minute is, of course, the

00:43:53

whole issue about the cases.

00:43:56

The isps provisions etcetera, etcetera,

00:43:58

and you would like to

00:44:01

make the easy comparison with

00:44:03

the termination agreement with regard

00:44:05

to the interview B, but

00:44:07

that doesn't Exactly because of

00:44:11

this multilateral non-eu Contracting parties

00:44:16

to the city. So it's

00:44:17

a very complicated amendment process

00:44:22

that very much. I think

00:44:24

goes into the direction of

00:44:26

a Alucard a management depending

00:44:32

on where you are. And

00:44:32

I think that is probably

00:44:34

also the new approach receive

00:44:36

that. Also with regard to

00:44:37

the Anza, child working group

00:44:39

3 that we will see

00:44:41

more kind of like up

00:44:43

in a Lockhart selection by

00:44:46

difference, Contracting parties. Depending on

00:44:50

what they want depending on

00:44:51

where they are in their

00:44:53

thinking and in their kind

00:44:55

of like investment strategy practice.

00:44:59

Reform. Status. Thank you. Thank

00:45:04

you. ECT which, which, I

00:45:14

understand you. Also extending to

00:45:17

the negotiations, group, three of

00:45:21

us to draw is, is

00:45:22

is one that want to

00:45:24

have in mind. Let me,

00:45:26

let me, let let's go,

00:45:28

let's go into the notion

00:45:30

of what. What is the

00:45:33

geography, geography? I mean, the

00:45:37

different groups of of cases.

00:45:41

That, that can be identified

00:45:44

following this modernization process went

00:45:50

when when an end, what

00:45:53

we entered into Force, which

00:45:55

which hasn't happened yet. But,

00:45:57

but what, what, what is

00:45:58

the geography of those in

00:46:00

that? And by that I

00:46:01

mean I could you comment

00:46:02

on Cases, that are easy,

00:46:06

G cases that are past

00:46:09

cases, but possibly it and

00:46:11

also present cases and you

00:46:14

have just a few minutes

00:46:15

for for doing that about

00:46:18

45 and I know that

00:46:20

that that I needed. But

00:46:22

I know that you can

00:46:23

do it. Well, thanks. But

00:46:26

I would like to start

00:46:27

also for the purpose of

00:46:29

understanding for our audience because

00:46:32

I was looking at the

00:46:33

text, I think it's important

00:46:34

to mention exactly what is

00:46:39

written in the leaks text

00:46:41

because I think that's really

00:46:42

important when you look at

00:46:43

the leaks text and coming

00:46:45

back to what I said,

00:46:46

previously, it is interesting to

00:46:48

note that this provision which

00:46:51

is just one sentence saying

00:46:53

for greater certainty. Article 726

00:46:58

a Tetra Tech Rochelle X

00:46:59

among the members of the

00:47:02

EU and obviously article 26

00:47:05

is the isds probation. Interesting.

00:47:09

Lee, you find this in

00:47:12

the new article, 24 under

00:47:16

General exceptions. So it's a

00:47:17

general exception article. So you

00:47:19

don't find this which I

00:47:21

was think it would be

00:47:22

the natural place in article,

00:47:25

26 itself or in an

00:47:27

Annex know, you find it

00:47:29

in the general exceptions provision,

00:47:34

which, I find is quite

00:47:35

interesting and it's just so

00:47:37

and that raises a host

00:47:40

of questions. Namely, apparently, and

00:47:44

I mentioned already, if you

00:47:45

like to make the comparison

00:47:47

with the termination agreement, there

00:47:50

seems to be no transitional.

00:47:53

This seems also to be

00:47:54

no cut off date. Specifically.

00:47:58

Mentioned so arguably this can

00:48:02

apply potentially Rachel, Rachel Rachel

00:48:07

actively. Hopefully not but obviously

00:48:12

in the future from the

00:48:15

moment it entered the forest.

00:48:17

Let's say it will enter

00:48:18

into Force by the end

00:48:19

of next year, for instance

00:48:21

for a tent already, makes

00:48:25

it very difficult. We do

00:48:26

not have liked of the

00:48:28

termination agreement. That it says,

00:48:30

the cutoff date is the

00:48:32

Acme adjustment in March 2018.

00:48:35

Meaning, you know, all the

00:48:38

cases that have been concluded

00:48:40

before the Judgment right are

00:48:42

done. And will not be

00:48:44

touched and everything that has

00:48:46

been initiated after the judgment.

00:48:49

Will either be done through

00:48:51

the facilitator system or they

00:48:56

are simply prohibited right that

00:48:59

was a very clear-cut kind

00:49:02

of situation. We don't have

00:49:05

that at least hopefully. Maybe

00:49:10

some for the Declaration for

00:49:12

explanations may be attached, but

00:49:13

the league text, I don't

00:49:15

find it. So that raises

00:49:16

the question. So when you

00:49:18

have the old cases, so

00:49:20

meaning cases, that have been

00:49:22

concluded before it enters into

00:49:26

Force. Let's say 31st January,

00:49:30

31st December next year. So,

00:49:35

I'll give you would say,

00:49:36

they would continue under the.

00:49:38

I would call ordinary rules

00:49:40

situation and arguably, that could

00:49:49

be fully enforced and recognized.

00:49:53

Well, here we start again.

00:49:54

At least outside to you.

00:49:56

I'm not so sure if

00:49:58

they could be still and

00:50:01

forcing recognized inside the EU.

00:50:03

We come to that in

00:50:04

a minute because of the

00:50:05

cgu, judgments, right? And no

00:50:12

question that you don't have

00:50:14

to answer it. But but

00:50:15

when you, when you, when

00:50:16

you don't have to answer

00:50:19

it because I think that

00:50:19

he could linger in this

00:50:21

space, you know, alluding to

00:50:22

your ear, your background here.

00:50:25

As we can see that,

00:50:27

I'm put my set of

00:50:28

professors at if someone came

00:50:31

to me and said, well,

00:50:32

there's there's no language in

00:50:35

in in the treaty indicating

00:50:37

that this General exception applies

00:50:39

retroactively. I would ask if

00:50:42

it is their explicit language

00:50:44

indicating that this exception applies

00:50:48

retroactively and then you know

00:50:50

that than the actual be.

00:50:52

Well yes there is. Who

00:50:53

are the reason and depending

00:50:55

on the answer you said,

00:50:56

well, you must you must

00:50:57

then look into into the

00:50:59

general rules of of or

00:51:02

general principles of treaty law

00:51:06

of the Vienna convention on

00:51:07

the law of treaties. So

00:51:09

that I would stop there.

00:51:10

We don't have the, the

00:51:13

official text but but but

00:51:15

logic would would go that

00:51:17

route. Sorry for acting and

00:51:19

a time, please. Please go

00:51:20

ahead and and be mindful

00:51:22

that the most you really

00:51:23

have three minutes to sort

00:51:26

of Raphael. And there's so

00:51:31

much to say, no. I

00:51:31

mean, I would like to

00:51:34

speak to the talking about

00:51:39

planets, Venus vs. Mars, Venus

00:51:44

being the Earth, Mars, or

00:51:46

Venus being the EU must

00:51:48

being on the rest of

00:51:49

the world. And I think

00:51:50

that's, that's a problem. The

00:51:51

problem is that If you

00:51:53

look at the experience and

00:51:54

the jurisprudence of the CG,

00:51:56

you will see that the

00:51:57

European court has no problem

00:52:00

to go retroactively and take

00:52:02

away all the rides at

00:52:04

position that's being done in

00:52:05

like me and that's been

00:52:06

done in all other cases,

00:52:07

right? So from the European

00:52:10

perspective and that of course

00:52:11

directly goes into the domestic

00:52:14

court of the EU member

00:52:16

state that will have to

00:52:17

recognize and enforce. Any of

00:52:19

such a what is a

00:52:21

clear danger that it would

00:52:22

apply retroactively on a public

00:52:24

international law. And I would

00:52:27

say, generally with regard to

00:52:29

you would Clearly say, well

00:52:32

know, they are kind of

00:52:34

like rights legitimate expectations and

00:52:37

from a rule of law

00:52:43

perspective, that you would not

00:52:44

take those right away retroactively

00:52:46

but the reality is within

00:52:49

the EU, I'm not so

00:52:50

sure about this. This would

00:52:51

be my answer. But the

00:52:54

more complicated issue are the

00:52:57

only going cases Danielle, alluded

00:53:00

to the numbers. There are

00:53:01

shoots number of dozens of

00:53:03

cases. In CT cases, both

00:53:05

and extra, CT cases, pending,

00:53:09

and they are turning out

00:53:11

all the time. You've seen

00:53:12

a couple of other cases

00:53:13

already. We have the Rockhopper

00:53:16

case. We have the G

00:53:18

case, you're more cases, coming

00:53:20

out another case against Spain

00:53:21

just a few days ago.

00:53:23

So, they are out there,

00:53:25

but it doesn't really mean

00:53:29

that you actually will be

00:53:31

able to enforce a recognized.

00:53:34

It actually, if it comes

00:53:35

to the moment that these

00:53:39

proceedings are concluded after the

00:53:43

entry into force of the

00:53:44

city, Within the EU and

00:53:47

for the EU member states

00:53:48

and the EU, I have

00:53:50

serious doubts, whether domestic court's

00:53:55

in the EU member states

00:53:57

would be allowed under the

00:54:00

European Court, to still recognize

00:54:02

and forth and even if

00:54:03

it's for the new cases

00:54:10

after entering into force of

00:54:12

this revised act, I think

00:54:15

for Android ZTE cases, it's

00:54:19

arguably over. Although that is

00:54:22

still the issue of you

00:54:23

might come to that later

00:54:24

and I stopped here about

00:54:26

my idea about is the

00:54:28

analogos application of the sunset

00:54:31

Clause golf as a rule

00:54:34

of law, natural law, principal.

00:54:36

Thank you very much to

00:54:44

embrace the format, and be

00:54:47

able to identify answers in

00:54:50

his truck from entering in

00:54:51

the, in this form of.

00:54:52

But I think that you

00:54:53

do that wonderful job Marine.

00:54:55

You're mostly invited to make

00:54:58

comments on, on the set

00:55:02

of geography of cases, the

00:55:04

past current and end in

00:55:07

future cases as you still

00:55:09

wish. And yeah, happy to

00:55:12

take that on. And I

00:55:13

have to say, To maybe

00:55:16

go back to the beginning

00:55:17

of a third of the

00:55:18

overview of this entire process

00:55:20

in the subject of our

00:55:21

conversation. I really have to

00:55:22

give to give credit to

00:55:24

Lucas and then the entire

00:55:25

modernization project as I teach

00:55:28

investment for the arbitration and

00:55:30

investment treaty law. I often

00:55:33

find myself saying that the

00:55:36

tribunals are confronted with interpreting

00:55:38

the texts in front of

00:55:39

them. And if you don't

00:55:40

like it, where the tribunals

00:55:41

are coming out with us

00:55:42

chat with those texts, maybe

00:55:44

we should have better text

00:55:45

and I feel like the

00:55:47

the the project that losses

00:55:49

has undertaken with all of

00:55:51

his collar is essentially ticked-off

00:55:53

kind of the wish list

00:55:54

of all, all the better

00:55:56

text write, the text that

00:55:58

solve these problems that have

00:56:00

come up in the cases

00:56:00

and doesn't in a remarkably

00:56:02

short time. So all the

00:56:03

credit in the world for

00:56:04

that. I got to get

00:56:08

through a multilateral renegotiation process

00:56:11

in two years, I would

00:56:13

not have thought actually possible

00:56:15

in the circumstances. And so

00:56:19

what we're now thinking about

00:56:20

though and the taxonomy is

00:56:22

it that Nico said out

00:56:23

is what does this mean

00:56:25

going forward? What does this

00:56:26

mean for anybody who's holding

00:56:28

a judgement in an act

00:56:29

case in particular in an

00:56:31

entry u? E c k

00:56:33

what does this mean for

00:56:35

the parties that are still

00:56:37

in the middle of litigating,

00:56:39

next case as this transaction

00:56:42

happens? And then what is

00:56:44

this mean? Going forward? And

00:56:45

I think, I generally agree

00:56:46

with the taxonomy is it?

00:56:48

That Nico says set out.

00:56:49

We were joking before the

00:56:51

panel began that for Outsiders.

00:56:54

You are not in the

00:56:55

in the EU and not

00:56:56

fully steep, in the Primacy

00:57:01

of the supremacy of the

00:57:03

feu system. A lot of

00:57:06

The discussion from off man

00:57:08

on has just involved shaking

00:57:10

your head and thinking. Okay,

00:57:12

let them do them but

00:57:15

it but it doesn't work

00:57:15

that way because I'm Daniela

00:57:18

pointed out does not involve

00:57:20

any and yet it became

00:57:24

it became the occasion for

00:57:27

the CJ. You two to

00:57:29

take a position on the

00:57:31

applicability of the, ECT Gentry

00:57:33

you disputes, and to bring

00:57:36

into question, the ability to

00:57:37

enforce even a nun in

00:57:40

Tracy, in the end that

00:57:45

I think it was. Well,

00:57:47

it's only that, it's only

00:57:49

the most recent of many

00:57:50

surprises for those of us

00:57:52

watching from the outside of

00:57:54

the eu's face. And I

00:57:56

think maybe we just, we

00:57:57

simply have to accept Nikos

00:57:58

has ruled that. The eu's

00:58:00

system is going to Take

00:58:03

this approach, apply retroactively, even

00:58:06

if 64 tribunals have disagreed.

00:58:08

With that notion conveniently gave

00:58:11

us save the track record.

00:58:15

So far, is 6 dozens

00:58:18

to one, but Danielle pointed

00:58:21

out that, it's actually 60421.

00:58:22

So my thought is that

00:58:24

pending tribunals in pending cases

00:58:27

are likely to continue to

00:58:28

take that approach. And not

00:58:30

accept the idea of retroactive

00:58:32

application of these transitional Provisions,

00:58:35

whether it's like me to

00:58:36

come story or the transition

00:58:38

in the ACT mechanism itself.

00:58:41

But going forward, I think

00:58:45

we're certainly going to see

00:58:46

enforcement pushed to the United

00:58:47

States for this pending cases

00:58:49

and for the concluded one.

00:58:51

So we'll see important push

00:58:52

the United States in the

00:58:53

UK or anyplace else that

00:58:54

will take them outside to

00:58:55

eat you. And and then

00:58:58

I think we have to

00:59:00

look ahead and think we'll

00:59:01

for Investors who are imagining

00:59:03

a future in which they

00:59:04

might someday need to bring

00:59:05

a case under the ACT.

00:59:06

Maybe they should be structuring

00:59:08

themselves through the UK turkey

00:59:11

through other easy team member

00:59:14

states. So is to just

00:59:16

not run into this vacuum.

00:59:19

In the end the use

00:59:21

face and potentially get the

00:59:24

benefit of the treaties. I

00:59:26

was also thinking is as

00:59:27

Daniela was speaking about the

00:59:28

Curiosity of Italy situation, they

00:59:31

withdrew from the act and

00:59:33

they now find themselves actually

00:59:34

worse off right because they've

00:59:36

got they've got the full

00:59:38

application of the sunset clause.

00:59:39

For 20 years, Do they

00:59:42

get the benefit of all

00:59:43

these amended and and much

00:59:45

improved investment treaty Provisions or

00:59:49

Drew or the only have

00:59:51
to live with defending disputes

00:59:53
under the old. And certainly

00:59:56
I think we'll start to

00:59:57
see fun things play out

00:59:58
there so I think it's

01:00:00
going to be interesting to

01:00:00
see the season. The the

01:00:02
cases reacts to the tribunals

01:00:04
react and over the longer-term

01:00:05
investors react San Antonio near

01:00:15
me. The curse of Zoom.

01:00:19
Thank you. Thank you, thank

01:00:21
you. Thank you so much.

01:00:21

And apologies for that. I

01:00:24

was saying thank you. And

01:00:25

and I wanted to to

01:00:27

ask you was Nicholas Andrew

01:00:30

sized on the notion of

01:00:33

activity. in in, in the,

01:00:39

in some of the no

01:00:40

possibly rulings by by the

01:00:43

Sea je, you as well

01:00:47

as it in some of

01:00:48

the believe that that that

01:00:51

you also meant and Nico's

01:00:52

going to buy some of

01:00:53

the European commission's decision in

01:00:58

terms of applications of of,

01:01:00

of, of the fuse on

01:01:04

a CT and also it

01:01:05

to use on an entry

01:01:06

interview, it how How does

01:01:12

the notion of activity? Apply

01:01:17

would be potentially be interpreted

01:01:22

in US courts in other

01:01:25

systems of of, of the

01:01:26

world? And, and I and

01:01:27

I admit that, that I

01:01:28

hadn't thought about that question

01:01:30

until now. So for all

01:01:33

purposes, this is not a

01:01:35

preconceived question, but I, I,

01:01:37

I find it very, very

01:01:39

interesting, given the way that

01:01:42

the Supreme Court in the

01:01:44

US and an appeals court

01:01:46

have given to to the

01:01:50

rule of law. Yeah. Yeah.

01:01:56

Of course is is is

01:01:57

is a question for you

01:01:58

were in The District Court

01:02:03

was not impressed with the

01:02:05

the retroactive application focused on

01:02:10

retroactivity Visa V. Romania's. Entry

01:02:13

into the EU is supposed

01:02:15

to as the retroactivity of

01:02:16

itself, I guess. I mean,

01:02:24

The US courts of not

01:02:27

the place where I want

01:02:27

to spend your where I

01:02:29

want everything to turn on

01:02:30

having to make arguments under

01:02:31

the Vienna convention. Any, any

01:02:35

any national Court where you're

01:02:38

facing an enforcement procedure, it's

01:02:40

going to be a difficult

01:02:40

place to start explaining international

01:02:42
law principles of retroactivity or

01:02:45
not or frankly explaining that

01:02:47
you use system or not.

01:02:48
And many what we've seen

01:02:51
actually is that many of

01:02:52
the US courts have simply

01:02:53
said, oh let's wait and

01:02:54
see, right? We understand this

01:02:57
is being litigated. We understand

01:02:58
the tribunals considering this issue.

01:03:02
We understand their courts cans

01:03:03
in the you considering this

01:03:04
issue will wait there. Now

01:03:06
going to be at the

01:03:07
point where they have to

01:03:08
stop waiting and actually decide

01:03:09
and so I think we

01:03:11
we don't yet know exactly

01:03:13
how the US courts are

01:03:14
going to deal with this

01:03:17
set of very you Centric

01:03:19
rules and decisions and changes.

01:03:23
And and I think we

01:03:25
could, we could get sort

01:03:26
of a complicated spaghetti for

01:03:28
a bit as courts. Take

01:03:30

different approaches to trying to

01:03:31

sort, sort out how to

01:03:32

understand what is happening on

01:03:34

the other side of the

01:03:35

pot. But they will have

01:03:37

to start confronting it down

01:03:38

because they say it's your

01:03:39

fully pushed it off and

01:03:41

issued a bunch of stays

01:03:42

in the number of the

01:03:42

cases and they're not going

01:03:44

to get confronted with it's

01:03:45

time to decide. Thank you,

01:03:48

thank you, thank you very

01:03:49
much. And yes, I mean

01:03:51
did Time time is often

01:03:55
a real concerning in in

01:03:57
the US court system. So

01:03:59
so I think that, I

01:04:04
like to view it as

01:04:05
an unlike other systems were,

01:04:06
where were you could be

01:04:09
decades before things, get decide

01:04:11
at some stage at some

01:04:12
stage courts, believe that that

01:04:14
that that that goes hand-in-hand

01:04:16
with with potential, what we

01:04:19

like to call India international

01:04:21

law of denial of justice

01:04:23

but but but do you

01:04:28

want to share your views

01:04:31

on enforcement in in in

01:04:32

the UK or or other

01:04:36

and non-eu jurisdictions? Yes. Yes,

01:04:42

thanks. Well, I think just

01:04:46

threw while I'm there, rainbows

01:04:47

was speaking. And I think

01:04:50

at the end of the

01:04:51

day you probably have to

01:04:55

make also a distinction between

01:04:58

exit Awards and none exit

01:05:01

towards. I think, probably I

01:05:04

hope arguably that exit towards

01:05:07

based on exit convention should

01:05:11

be or should provide a,

01:05:14

a, a stronger legal basis

01:05:17

for at least, that was

01:05:21

the idea for rubber stamping

01:05:22

and exit the ward before

01:05:23

domestic court's, right? At least

01:05:26

outside to eat you. So

01:05:28

I think what side you

01:05:31

are probably fine and I

01:05:33

think I reread the UK

01:05:37

Supreme Court decision in McCulloch.

01:05:41

A few days ago on

01:05:43

this point and I think

01:05:44

they made a very good

01:05:47

point here in my perspective

01:05:50

and very balanced public international

01:05:54

law argument saying, well, you

01:05:57

know, the UK, is it

01:06:01

Romania Sweden, R&B half the

01:06:08

obligations to what all excited

01:06:11

about his right? And therefore,

01:06:13

those International vacations should be

01:06:17

fulfilled in receipt? Of course,

01:06:20

we have gotten this new

01:06:21

concept of electoral relations that

01:06:27

was thrown out there recently

01:06:30

in the, in the, in

01:06:32

the EU. I wasn't sure

01:06:38

if you have the view

01:06:40

that that may be. The

01:06:42

exact convention is simply a

01:06:44

bundle of the lateral allegations.

01:06:47

You can get again until

01:06:50

this multi-faceted 3, lotto situation

01:06:53

that I mentioned before potentially,

01:06:55

right? I'm so I think

01:06:56

that's one thing. So I

01:06:57

think on the exit what

01:06:59

side I would feel more

01:07:01

comfortable and I would hold

01:07:02

that all those 150-plus. Exit

01:07:06

Contracting parties would follow through

01:07:08

on the North side. The

01:07:11

words I think we run

01:07:13

into more problems because hear

01:07:15

clearly the Old Republic exception,

01:07:20

through the New York convention,

01:07:21

opens the door White. Well,

01:07:25

opens the door wide open.

01:07:26

I'm not sure if you

01:07:27
can say that in any

01:07:27
event. So, that is a

01:07:29
possibility here. I think that

01:07:32
tribunals at domestic. Court's might

01:07:37
go in different directions at

01:07:39
different jurisdiction. To Vincent. I'm

01:07:41
thinking of Switzerland, right? Swiss

01:07:44
quartz being in the geographical

01:07:48
vicinity of Luxembourg, right, and

01:07:52
Europe. And also being pressured

01:07:54
by the EU in two

01:07:56
completely different other matters. International

01:07:58
All Metals Corporation, I could

01:08:00

imagine that maybe Swiss courts

01:08:02

might be more open to

01:08:05

watch saying, well, you know,

01:08:07

we understand that you love,

01:08:08

you understand you and therefore,

01:08:11

you know, from Old Republic

01:08:12

perspective, we might really kind

01:08:15

of like except that what's

01:08:17

going on right now. I

01:08:19

don't think that's going to

01:08:20

happen, but I could imagine

01:08:21

that this could be A

01:08:24

direction that yeah I don't

01:08:27

think that would happen probably

01:08:28
in the UK, but of

01:08:32
course they are other. Many

01:08:33
jurisdictions are no Alexey, Singapore,

01:08:35
all the countries that are

01:08:37
a bit farther away from

01:08:39
the EU. And they might

01:08:41
not be so inclined to

01:08:42
42 in any event, but

01:08:44
focusing on the UK I

01:08:47
think as Marine also said,

01:08:49
I think the UK would

01:08:50
be a really interesting place

01:08:52
to enforce it. Obviously still

01:08:57

there, that is still a

01:08:58

little bit, the issue due

01:08:59

to what extent maybe you

01:09:01

law and CG jurisprudence still

01:09:04

might be applicable, you know?

01:09:07

We don't know exactly. You

01:09:08

know it depends really on

01:09:10

the timing and I want

01:09:11

to come back to that

01:09:12

I think it really I

01:09:13

think the pants when you

01:09:15

initiated your case and when

01:09:19

did you get you or

01:09:19

what? I think when you

01:09:21

are really if you like

01:09:22

in the in the Face

01:09:25

prior to the outcome of

01:09:27

the ECT negotiations. I think

01:09:30

you are already really better

01:09:33

protected if you like by

01:09:34

your legitimate expectations and by

01:09:36

the rule of law retroactivity.

01:09:40

But I think the moment

01:09:42

let's say you start now

01:09:44

a case right? You initiated

01:09:48

a case or maybe just

01:09:50

before the summer break that's

01:09:52

a first all goes though

01:09:54

so I'm not so sure.

01:09:55

You know that might be

01:09:56

arguments made you a reading

01:10:00

star, your reading, ER reporter,

01:10:03

you know, that things are

01:10:04

going on there so you

01:10:06

cannot Legitimately claim that you

01:10:09

didn't know that potentially things

01:10:12

will drastically change for you.

01:10:14

Write this could be really

01:10:17

not hope that this is

01:10:18

going to happen, but this

01:10:19
could be an argument that

01:10:22
can be made a good

01:10:23
picture. Maybe buy some Domestic

01:10:25
Court somewhere. So I think

01:10:29
the timing here is is,

01:10:32
is a really crucial and

01:10:33
the same? I think applies

01:10:34
over 3. God, when did

01:10:36
you get your award? When

01:10:38
was it issued, right? And

01:10:41
the closer you get to

01:10:42
the Tipping Point, right? In

01:10:46
terms of when this thing

01:10:48
enters into fours, or when

01:10:49
it was out there, the

01:10:51
less likely, or the more

01:10:53
problems you will probably get.

01:10:56
But this is again, something

01:10:58
over lunch and we must

01:11:01
wait, what comes out, but

01:11:04
I don't know maybe Lucas,

01:11:06
I don't know what have

01:11:07
you discovered? This internally, or

01:11:09
with other, I don't know.

01:11:10
It would be interesting to

01:11:11
open this app because I

01:11:12

wasn't in the room. I'm

01:11:14

sure them. Somebody must have

01:11:15

raised these kind of issues.

01:11:17

Call back. That's not, that's

01:11:20

a that's a fair question.

01:11:22

Let me, let me let

01:11:25

me ask each of you

01:11:28

to give you your sense

01:11:34

of how does the potential

01:11:38

outcome of the modernization process

01:11:43

and and granted, we don't

01:11:46

know how the text will

01:11:49

be, because we only have

01:11:50

a leak text. But let's

01:11:53

let's let's assume for a

01:11:54

second that that it's somehow

01:11:57

somehow. It's not that different

01:11:59

from what was leaked, but

01:12:02

we know that he may

01:12:03

be completely different but but

01:12:05

but but if it is

01:12:06

possible that it has some

01:12:07

similarities to what was leaked

01:12:08

and thunder. And let's let's

01:12:11

let's think about whether those

01:12:14

the investors Andy, you and,

01:12:18

and outside of the EU

01:12:20

within the framework of BCG,

01:12:23

what will, of course, have

01:12:25

effective that our investors are

01:12:29

they left in terms of

01:12:30

consequences consequences and and are

01:12:33

they better off? Are they

01:12:35

not? I mean this this

01:12:37

involves many variables including transitioning

01:12:41

into into new energies and

01:12:43

I'm going to go now.

01:12:48

Living out at some stage

01:12:50

of us refuse etcetera. So

01:12:51

so I will ask it

01:12:54

what he should reflect at.

01:12:55

And give me an answer

01:12:56

each one, no more than

01:12:59

2 minutes because we have

01:13:01

to somehow be respectful with

01:13:03

time with with, with her

01:13:04

organs. So let's let's start

01:13:08

with Lucas and then we

01:13:09

go with Daniella marine and

01:13:10

then and then, Thank you

01:13:14

very much for severe. Thanks

01:13:16

to Lord for this fascinating

01:13:17

conversation. Grows issues like primitive

01:13:20

fuel or retroactivity burritos. To

01:13:23

my profession has the last

01:13:26

two previous elba's about, I

01:13:27

will send tense of time

01:13:31

when assessing a package will

01:13:40

need to be mindful that

01:13:41

the political landscape has changed.

01:13:43

The currently city is a

01:13:47

two-headed worm, four states. That

01:13:49

is pregnant of course if

01:13:51

he lives to be different

01:13:54

but I think the reception

01:13:55

recognition among countries and something

01:13:58

needs to be changed and

01:13:59

as far as I see,

01:14:01

it text to testing a

01:14:08

sustainable Way Forward. Maintain a

01:14:15

system of Miss protection. And

01:14:17

the energy sector are inclined

01:14:20

to think that it's supposed

01:14:22

package for use of the

01:14:24

system for investors, as well

01:14:25

as first because basically, it

01:14:28

increases Nikki certainty, the Party

01:14:31

City fake, it's it cost

01:14:35

inconsistent interpretation in case, it

01:14:38

was explained by Daniela and

01:14:41

chicken off the wish list

01:14:43

as described Marine, both sides,

01:14:48

you know, as a stage

01:14:50

much better, the scope of

01:14:52

the space that is according

01:14:56

to you by the treaty.

01:14:58

And of course, from investors

01:15:00

back, if it is easier

01:15:01

to calculate the chances for

01:15:05

success in litigation, which is,

01:15:08

of course, important because it

01:15:10

has financial implications weather weather.

01:15:14

Likes the different that the

01:15:17

distinction between the so-called green

01:15:19

Investments and faucet from vestments.

01:15:23

Test prep's for medical. It

01:15:24

would seem to know. That's,

01:15:26

I don't know any free

01:15:29

before that hasn't been changed

01:15:30

in light of Paris agreement

01:15:33

locations. So one minute like

01:15:36

it, but it's a preview

01:15:40

of what is probably happening

01:15:45

in the future in which

01:15:46

practice. Thank you, thank you.

01:15:49

Thank you. Lucas, a Daniela.

01:15:51

So I think the modernization

01:15:55

had to happen because it's

01:15:57

because Mansion did political landscape

01:16:00

changed, the priorities of states

01:16:02

are different from the images,

01:16:04

of the beginning of energy,

01:16:16

transition decarbonisation didn't think of

01:16:19

it, dad being sad, the

01:16:22

fact that we needed. And

01:16:23

I think the treated doctors,

01:16:25

they learned some lessons from

01:16:27

these interpretations of the tribunal

01:16:29

that we have, because Nicholas

01:16:31

was mentioning to text, we

01:16:32

have the right to regulate

01:16:33

have. It was not in

01:16:40

the old biddies, don't don't

01:16:42

say that. Then you have

01:16:44

the sustainability clause, which in

01:16:47

my opinion, it's a need

01:16:49

if you want to be

01:16:51

in. And the Paris agreement

01:16:52

in the European Union Station

01:16:57

on my person with you.

01:17:05

And I think that will

01:17:07

affect and I tend to

01:17:10

agree with Nico, that there

01:17:12

is a lot of uncertainties

01:17:13

with worrying about what's happening.

01:17:16

What's the moment zero? Are

01:17:19

we going to be creative?

01:17:28

But also there is a

01:17:30

person from Treasure from the

01:17:32

outside world saying that the

01:17:34

UN member states. Should we

01:17:36

be City? I don't see

01:17:38

it happening, especially with the

01:17:40

political landscape that happening now

01:17:42

in the against. That's why

01:17:44

there's no deal. But there

01:17:48

was a note from the

01:17:49

IMF yesterday. Published saying that

01:17:53

Cindy energy transition and investment

01:17:55

in green and sustainable Finance

01:17:59

being part of the city

01:18:01

as it is. Now speaking.

01:18:05

That doesn't stimulate energy transition

01:18:08

rather than continuing to invest

01:18:10

in fossil fuels. So yeah,

01:18:12

there's no perfect sweetie. So

01:18:14

that the the Beauty and

01:18:17

the problem, thank you. Will

01:18:30

turning down. It is easy

01:18:32

to look at the text

01:18:33

and and look at what's

01:18:35
happening to the ACT is

01:18:36
a hole and think to

01:18:38
answer the question you post

01:18:39
better and better off. It

01:18:41
is easy to look at

01:18:42
and see if they've lost

01:18:44
this. And they've lost that

01:18:44
or they lost the ability

01:18:47
to bring claims related to

01:18:49
fossil fuels. I'm just letting

01:18:51
you know what time. But

01:18:54
I suppose that if we

01:18:56
should take a step back

01:18:57

from that analysis, you do

01:19:00

have a point that Lucas

01:19:00

made, which is you got

01:19:01

some more clarity about, which

01:19:02

claims will, or won't fly.

01:19:04

Whether it's about public debt,

01:19:07

or whether it's about judicial

01:19:09

decisions are things, I got

01:19:10

you now know that certain

01:19:11

things are off the table.

01:19:12

So there's more clarity in

01:19:13

the provision. They don't waste

01:19:16

illegal to use on pursuing

01:19:17

a claim that won't succeed.

01:19:19

And then there's the really

01:19:22

met a question that I

01:19:24

think was posed by the

01:19:25

title of a blog post.

01:19:27

At Nico's wrote witches who

01:19:30

is this about saving the

01:19:32

ECT itself was it as

01:19:35

Daniel is that necessary in

01:19:37

order to preserve things, she

01:19:38

is functional entity going forward

01:19:40

and to stop what might

01:19:42

have might have otherwise been

01:19:44

a flow of of States

01:19:46

leaving the ACT. Did we

01:19:51

succeeded that? I don't know.

01:19:52

We won't know yet for

01:19:55

a bit yet. As we

01:19:57

know, Poland has. Now, it's

01:19:58

saying that it's going to

01:19:58

leave or make noises about

01:20:00

leaving Spain. In the Netherlands,

01:20:02

may still feel grumpy about

01:20:03

the whole process but if,

01:20:06

if it does indeed for

01:20:08

the quote, save, the easy

01:20:09

teeth, and investors are better

01:20:10

off. So, so, I think

01:20:13

we have to think about

01:20:14

the question at multiple levels

01:20:16

of utility Thank you, say,

01:20:21

thank you. Thank you, Maureen.

01:20:23

And them Negroes. And and

01:20:27

that undoubtedly, the world has

01:20:33

changed in many of your

01:20:34

comments also made me think

01:20:36

about the, the situation in

01:20:38

in in, in, in Ukraine,

01:20:40

given given the invasion at

01:20:43

cetera. But I, I want

01:20:45

you. I don't I don't

01:20:46

want to lunch in your

01:20:47

yet, another set of whole

01:20:49

discussion, but but that is

01:20:52

also very practical and pragmatic

01:20:53

questions and Sophia would there

01:20:56

be. Will there be any

01:20:57

CT and how important is

01:20:59

there. There is one Nico's.

01:21:01

I just final comments 2

01:21:03

minutes and then we'll move

01:21:05

into that the time in

01:21:08

part of our of our

01:21:10

panel but I would like

01:21:13

to see you will not

01:21:16

believe me, but I really

01:21:17

would like to add Positively.

01:21:20

I find it very difficult.

01:21:21

As I wrote in previous

01:21:24

blocks, I find it's still

01:21:26

very ironic and I still

01:21:28

don't understand it. Why the

01:21:30

EU? And the member states,

01:21:32

essentially disconnected from the ACT,

01:21:36

whereas they achieved essentially, all

01:21:38

the objectives that were mentioned

01:21:40

right. In terms of modernizing

01:21:42
it sits arising, I find

01:21:44
this a pity. I find

01:21:46
it the bat signal to

01:21:47
be honest, and even more.

01:21:50
So we haven't raised that,

01:21:51
but I was just checking.

01:21:52
There is also a new

01:21:55
article 17 piece now, which

01:21:58
also explicitly excludes subsidies on

01:22:01
the scope of the alarm.

01:22:05
Obesity, as I read it,

01:22:07
at least in terms of

01:22:09
off isds provisions. And then,

01:22:12
of course, I think makes

01:22:13
it difficult in terms of

01:22:14
renewable energy Investments. That's how

01:22:18
I see it. But Nanny

01:22:19
event. What I see is

01:22:23
that I think that will

01:22:25
be a shift to the

01:22:27
extent that they will be

01:22:29
emotional vacation coming up as

01:22:33
much as possible. I think

01:22:34
they will be restructuring as

01:22:36
much as possible and at

01:22:38
the end of the day,

01:22:39

well yeah, the ACT will

01:22:42

obviously lose some of its

01:22:45

importance because the sheer number

01:22:48

of cases are going to

01:22:49

go down significantly. And that

01:22:51

is of course what was

01:22:53

the main goal of this

01:22:54

whole operation, obviously, from State

01:22:57

inspector? And that may be

01:22:59

good because it may save

01:23:00

some taxpayer money but I

01:23:03

still would caution, because as

01:23:05

I said, it creates a

01:23:07

plural actual situation where some

01:23:11

countries are still in the

01:23:12

ACT, some countries are partially

01:23:15

in the ECT and some

01:23:17

are not at all anymore

01:23:19

in the act. And I

01:23:21

don't think that is a

01:23:23

good development because it actually

01:23:27

goes into the issue of

01:23:30

in the direction of fragmentation,

01:23:32

right? And that is exactly

01:23:34

what we try to avoid.

01:23:35

For instance, if you want

01:23:38

to talk to me and

01:23:40

trying to harmonize thing so

01:23:41

I find it still kind

01:23:43

of sheets. Are frantic how

01:23:45

all this, from Annie, you

01:23:48

perspective, EU member states perspective,

01:23:50

this is Don. I wish

01:23:51

I would have hoped that

01:23:53

having achieved 99% of all

01:23:56

your objectives except maybe in

01:23:59

the is DS signed. The

01:24:03

EU. And the member states

01:24:04

should have stayed in the

01:24:06

city fully and fully committed

01:24:08

there and actually support. It's

01:24:12

because we need the, the

01:24:13

investments in the renewable energy

01:24:15

sector show. Hopefully I'm wrong.

01:24:19

I personally I think at

01:24:22

the end of the day

01:24:23

investors also because of the

01:24:27

substandard will not be better

01:24:31

off. That's my conclusion. Thank

01:24:36

you very much and thank

01:24:37

you very much. And I

01:24:39

would like, I I saw

01:24:40

some some some non-verbal language

01:24:43

from from Lucas. And if

01:24:46

you, if you want, if

01:24:47

you, if you have any

01:24:48

any comments, I, I don't

01:24:50

want to, I don't want

01:24:51

to steal those up from

01:24:52

the, from the audience, just

01:24:54

30 seconds to save, you

01:24:55

know, if not, that's also

01:24:57

absolutely fine. Good, that's good.

01:25:01

Well, thank you very, very

01:25:05

much to each one of

01:25:06

you. In the order that

01:25:08

I see you on my

01:25:09

screen Marine. Thank you, thank

01:25:12

you so much for your

01:25:14

for another beautiful Yu-Gi-Oh of

01:25:16

Washington. D.c. now that the

01:25:18

sun has come out and

01:25:21

the station's you from from

01:25:23

Washington, d.c. Daniela, which happens

01:25:26

to be the same place

01:25:27

Shoreview Nikos has from Europe

01:25:30

and and of course, Lucas

01:25:32

thank you very much. It

01:25:34

has been a pleasure and

01:25:36

an honor to be with

01:25:37

you. I had a lot

01:25:39
of fun by asking questions

01:25:41
that I wanted to ask

01:25:42
and some of that some

01:25:43
that I didn't know that

01:25:44
I was going to ask,

01:25:45
Frankie if it was not

01:25:47
great, this recording will be

01:25:50
up at some stage for

01:25:51
people to, to learn you

01:25:53
a Tetra. And now we

01:25:56
might be moving to I

01:26:00
think to breakout rooms possibly,

01:26:03
we will only be there

01:26:05

for a few minutes. Perhaps

01:26:07

five or eight minutes for

01:26:08

people to relax a little

01:26:09

bit. There's no recording there.

01:26:12

We don't have to speak

01:26:14

about the DCP, but we're

01:26:18

also not, so thank you

01:26:21

for your time for your

01:26:23

organization. This has been a

01:26:24

truly, truly great panel and

01:26:26

also for the preparation that

01:26:28

I know you did. For

01:26:28

this panel will be on

01:26:33
the next two panels will

01:26:36
be on Tosh a one-on-one

01:26:38
space law. So stay tuned.

01:26:41
It was a great pleasure.

01:26:44
Thank you, all. Well, good

00:00:14
morning, and welcome to World

00:00:17
arbitration update. This is day

00:00:20
four of our 2022 conference

00:00:23
and we're starting out today

00:00:25
with a fantastic topic. One

00:00:29
that has generated a great

00:00:31
deal of interest in the

00:00:33
international arbitration community in particular,

00:00:36

those who are interested in

00:00:38

investor-state dispute settlement. And that

00:00:41

is today's panel, this morning's

00:00:44

panel titled taking stock of

00:00:47

the ECT modernization process with

00:00:50

the question fit for the

00:00:52

21st century and of course

00:00:55

the energy Charter treaty has

00:00:57

been a leading instrument in

00:01:01

the world of investor-state dispute

00:01:03

settlement. We've seen a number

00:01:08

of new cases over the

00:01:10

last year in the energy

00:01:12

field, particularly with her Back

00:01:14
to Renewables, it has resulted

00:01:16
in numerous a leading cases.

00:01:21
And in terms of the

00:01:23
degeneration of a lot of

00:01:28
new law and new thinking,

00:01:30
and a lot of controversy,

00:01:32
it's being an interesting time.

00:01:35
The last 3 years under

00:01:36
the energy Charter treaty, and

00:01:38
we have a fantastic panel

00:01:41
today and actually I should

00:01:44
introduce myself. My name is

00:01:45
Ian, Laird partner Crowell &

00:01:48

moring in Washington DC, and

00:01:50

I'm co-chair of world, arbitration

00:01:52

update with my colleague. Dr.

00:01:56

Jose Antonio Rivas from strategy

00:02:00

LLP. So welcome on behalf

00:02:04

of both of us. We

00:02:07

have up on the the

00:02:08

board here, a list of

00:02:11

our sponsors. And and as

00:02:13

a first kind of a

00:02:13

Mystery of matter, just wanted

00:02:15

to thank our sponsors for

00:02:17

their a huge support that

00:02:19

we couldn't have done it

00:02:20

without them as well as

00:02:22

are. Our numerous supporters were

00:02:26

listed on our website, we've

00:02:28

had a fantastic uptake and

00:02:29

support for World arbitration update

00:02:33

in the second year. And

00:02:38

really I think a lot

00:02:38

of it goes to a

00:02:40

part of the focus of

00:02:42

world arbitration update which is

00:02:44

to provide updates to the

00:02:46

international arbitration community in a

00:02:48

in an easy-to-access manner you

00:02:53

know as you know this

00:02:53

is not a pay conference

00:02:55

weed. We are going to

00:02:56

be having a new service

00:02:57

shortly to provide access to

00:02:59

recordings of our session. We

00:03:02

really are attempting to support

00:03:06

and broaden access to Fantastic

00:03:09

experts in this field and

00:03:11

I think we would be

00:03:12

really succeeded without him. This

00:03:14

group isn't is a good

00:03:15

example, as well as we're

00:03:17

trying to protect respect. And

00:03:19

and, and as well as

00:03:22

reflect the incredible diversity of

00:03:26

the international arbitration world of

00:03:27

international arbitration. Now, stretches to

00:03:29

every corner of the planet

00:03:31

in terms of different cultures

00:03:33

legally. And otherwise, the international

00:03:39

arbitration world has grown incredibly.

00:03:42

And we also have set

00:03:44

up over the course of

00:03:45

the 19 panels over the

00:03:47

course of this week. An

00:03:49

example of that I'm trying

00:03:51

to have panels and different

00:03:52

regions covering different topics that

00:03:54

are topical to those regions

00:03:55

and we hope to do

00:03:57

that in the future. And

00:03:59

today's panel is is one

00:04:01

of our highlights of the

00:04:03

conference. This is really very

00:04:05

cutting-edge topic and we have

00:04:08

a great group of folks

00:04:11

who've agreed to come and

00:04:12

speak to all of us

00:04:13

today about About this topic

00:04:14

and I'm going to pass

00:04:16

off to Jose Antonio now,

00:04:18

and he is the moderator

00:04:21

of this panel, but not

00:04:22

only that, he is a

00:04:23

very accomplished arbitration practitioner himself.

00:04:28

He has a sjd from

00:04:31

Georgetown University Law Center here

00:04:34

in Washington, d.c. he followed

00:04:36

that by becoming a council.

00:04:38

It said for many years

00:04:40

working on some of the

00:04:41

leading cases that many of

00:04:43

you know and has now

00:04:46

found his own firm X

00:04:48

strategy and he has an

00:04:53

incredible experience and it's really

00:04:55

a privilege to work with

00:04:56

the Jose Antonio on this

00:04:58

conference. I just wanted to

00:05:00

say that last final note

00:05:03

that extra G has LLP

00:05:06

has his firm has really

00:05:07

done a fantastic job. Organizing

00:05:09

the conference, you seen the

00:05:11

Maria Lucia's name and That

00:05:15

they really have heard of

00:05:16

the cats. And there's, there's

00:05:17

nothing harder than herding cats

00:05:20

in the international arbitration Community.

00:05:21

They've done it, Master play

00:05:23

in it, and with Grace,

00:05:24

and with great humor. So

00:05:27

I thanks, thanks to both

00:05:29

of them. So, on that

00:05:31

note, I will pass off

00:05:32

to Jose Antonio and will

00:05:33

kick off this. Fantastic early

00:05:36

morning panel at least in

00:05:37

d.c. on the energy Charter

00:05:39

Treaty of very much and

00:05:44

thank you. Thank you. And

00:05:46

how grateful we are for

00:05:50

all the supporting organizations and

00:05:52

the, or our sponsors. And

00:05:55

it takes takes more than

00:05:58

a village to, to, to,

00:06:00

to put up a conference.

00:06:01

Like this. I know that

00:06:02

that many have been contributing

00:06:06

from the curating that the

00:06:09

whole program proposing teams, providing

00:06:13

it. Mation Etc, recommending speakers.

00:06:17

So thank you to everyone

00:06:18

who has been involved and

00:06:20

that within that group are

00:06:24

are for sale. All of

00:06:25

our speakers today, including Marine

00:06:30

Carlson and Nico's number on

00:06:33

Nostrand and Lucas are Stitcher.

00:06:35

And and Daniela is a

00:06:38

new. Thank you very much.

00:06:40

I would like to go

00:06:42

ahead and and I need

00:06:44

to do something before going

00:06:46

there. Basically we have been

00:06:50

we have been in water

00:06:52

protection update and also in

00:06:54

its history events are at

00:06:55

the Washington arbitration with we

00:06:57

have had a focus. Every

00:07:00

every the dictionary version we

00:07:03

have had a full could

00:07:04

focus on the development of

00:07:11

what are known to be.

00:07:15

Entry, you cases investment arbitration

00:07:19

and we have also had

00:07:22

a focus on on on

00:07:23

how are the tension between

00:07:26

international law and European Regional

00:07:32

law, and that we have

00:07:34

also had a conversation about

00:07:36

the eighties in the EU

00:07:40

and the some of the

00:07:42

cases that have made it

00:07:45

to the specialized news at

00:07:49

because of the challenges that

00:07:50

they pose a. 44 recognition

00:07:54

within Europe as well as

00:07:56

as for enforcement within Europe.

00:07:59

And and and outside, and

00:08:01

this this year, given that

00:08:04

the modernization. Negotiations were launched

00:08:11
during the pandemic, not not

00:08:14
this year but but but

00:08:15
last year we would consider

00:08:19
that it was a key

00:08:20
and and that newsworthy development.

00:08:24
And we had to have

00:08:25
that discussion about the consequences

00:08:30
and process and the outcome

00:08:33
and the consequences for investors

00:08:35
Etc. So in front of

00:08:37
you really have a series

00:08:40
of individuals, three of them

00:08:44
are European and two of

00:08:47

us from the Americas. Who

00:08:51

have who have really thought

00:08:54

and lived that modernization process

00:08:57

either. Because like, in the

00:08:59

case of a blue cast,

00:09:01

he has been part of

00:09:03

the organization process and negotiations

00:09:09

or or because they have

00:09:10

been closely at what that

00:09:13

process as Niko's because in

00:09:16

a past life, he was

00:09:16

himself enable. She had her

00:09:18

or because because they they

00:09:22

were a part of the

00:09:24

European commission at like in

00:09:26

the case of Daniela or

00:09:28

because like in the case

00:09:30

of of marine they have

00:09:32

had to watch this because

00:09:34

because of her obligations of

00:09:37

councils and that also arbitrator

00:09:40

or liking my case because

00:09:41

because of the conference and

00:09:43

also because I have full

00:09:47

disclosure also have Science in

00:09:52

Boulder in in, in cases

00:09:54

related to Amtrak in Triune

00:09:56

mattress. So with that, I

00:10:00

would like to put this

00:10:02

focus and honest and on

00:10:04

the speakers and say a

00:10:06

few words about them cuz

00:10:07

it's really worth knowing who

00:10:09

we have in front of

00:10:10

us. And we'll start with,

00:10:13

Lucas teacher at, he is

00:10:15

a senior investment policy officer

00:10:17

with the Austrian Ministry of

00:10:19

Labor, and economy and represent

00:10:22

Australia in various European and

00:10:23

international or on an investment

00:10:27

treaty issues such as the

00:10:28

EU, the oecd Elantra. He

00:10:31

has served as chair of

00:10:33

the ECT and retarded tree

00:10:36

modernization group since July 2020.

00:10:40

Next we have a steal

00:10:44

steal in Europe, we have

00:10:46

Nico's Lubrano's, he is an

00:10:49

expert in investment law and

00:10:52

arbitration who has expertise in

00:10:55

advising deteriorating negotiating drafting legislation

00:10:59

providing expert witness report these

00:11:01

lines or both investors and

00:11:03

states. He combines his experience

00:11:05

as an arbitrator and mediator

00:11:07

legal consultant and former policy

00:11:11

maker and chief negotiator for

00:11:13

bilateral investment treaty. He has

00:11:15

a PHD degree from Maastricht,

00:11:16

University in 2008 and 2009.

00:11:21

Nickels was a Max Weber

00:11:23

fellow of the EU in

00:11:25

Florence and he's a problem.

00:11:27

Contribute to the floor blog,

00:11:29

among many other things. We

00:11:32

have also with outside Marine

00:11:34

person who has really been

00:11:36

an incredible to order of

00:11:38

the of the new wave

00:11:40

Call forms both the world

00:11:41

of attrition update and Washington

00:11:43

arbitration the week and that

00:11:45

has always provided ideas for

00:11:48

both forms and, and is

00:11:50

impressively the co-chair of the

00:11:53

global arbitration trade and advocacy,

00:11:56

practice at sidley Austin, she

00:11:59

has focused her practice investment,

00:12:02

treaty arbitration. For more than

00:12:03

20 years representing, both claimants

00:12:06

investors and respondent government including

00:12:09

in ECT cases and bilateral

00:12:12

investment. Treaty cases in the

00:12:14

energy. Sector Marine is also

00:12:15

an adjunct professor at George

00:12:19

Washington University and the American

00:12:21

University law school. And last

00:12:24

but not least is Daniela.

00:12:26

Who is a fellow at

00:12:29

the Corolla Institute at Georgetown

00:12:31

law school or she focuses

00:12:34

on investment Law & policy?

00:12:35

She was part of the

00:12:37

international Patrician T-Mobile us. Honda

00:12:41

of a legal services of

00:12:43

to be US citizens. Daniela

00:12:45

specialize in the EU law

00:12:47

and international relations at College

00:12:49

of Europe and Georgetown law

00:12:52

welcomed what is really impressive

00:12:55

panel and that will start

00:12:57

with Daniela who will be

00:13:00

our present her in order

00:13:02

to update us. And everyone

00:13:04

on the latest developments goes

00:13:08

in, the ECT motorization is

00:13:11

more of a contextualization and

00:13:13

also relevant cases call ctct

00:13:17

framework. Thank you very much

00:13:25

and send you a good

00:13:28

morning. Good afternoon, good evening.

00:13:30

So I will start with

00:13:36

outline a brief presentation of

00:13:39

the city because I'm mindful

00:13:41

that we have an audience

00:13:43

that has acknowledged about the

00:13:45

act more expert, but not

00:13:47

so expert. So I don't

00:13:50

even know who view the

00:13:51

modernization process than what's happening

00:13:55

with the investment distance because

00:13:57

we have Lucas will tell

00:14:00

more about the process itself

00:14:02

and the content and the

00:14:04

contact, then the problems with

00:14:07

the enforcement, you'll see that

00:14:08

as challenges and opportunities. At

00:14:10

least for my side, I

00:14:11

see them as challenges and

00:14:13

opportunities and I'll explain you.

00:14:14

Why? Now also the current

00:14:17

state of affairs and I

00:14:19

will leave you with a

00:14:20
question. That is very, very

00:14:22
dear to my heart. Next

00:14:25
wifey. So the energy Charter

00:14:30
treaty, I think we can

00:14:34
pay for those who don't

00:14:39
know if you trade and

00:14:40
investment treaty and it has

00:14:43
54 signatures signature parties. At

00:14:47
the end of June 2022.

00:14:49
Also the European Union and

00:14:52
you're awesome are parts of

00:14:54
the city and district is

00:14:57
now and in the European

00:14:58

Union law as agreement and

00:15:02

you'll find it interesting term

00:15:05

for those who are not

00:15:06

acquainted with the city, the

00:15:07

regional economic integration organization which

00:15:10

is basically the European Union

00:15:12

which 3D came in the

00:15:15

nineties to promote energy corporation

00:15:20

and energy trade between European

00:15:24

States and other energy producers.

00:15:27

Now, is the ECT exist

00:15:30

contains Provisions, covering protection of

00:15:33

foreign investment of the longest

00:15:35

urination, rules for trading energy,

00:15:38

efficient mechanism, the source of

00:15:41

all evil these days between,

00:15:44

Contracting parties, and foreign investors

00:15:47

and contract and also the

00:15:50

promotion of Justin. Give us

00:15:53

some numbers since it entered

00:15:56

into force in 1998. Until

00:15:58

this moment that there were

00:15:59

150 cases and pending 54th

00:16:03

and Spain is the one

00:16:07

having the record it. So,

00:16:11

are you see they're on

00:16:12

my side that I could

00:16:13
see if Kim is a

00:16:16
necessity because of the moment

00:16:18
when was drafted the energy

00:16:20
charge, a 3D wasn't the

00:16:22
line with what is today,

00:16:23
the Paris agreement So that's

00:16:26
a must today. That's that's

00:16:29
that's one of the reasons.

00:16:30
But also there there were

00:16:32
some inconsistencies between how did

00:16:35
the Treaty and especially the

00:16:37
investment protection Clauses. They were

00:16:40
interpreted by different arbitral tribunals

00:16:43

National courts and the recently

00:16:45

by the courts of Justice

00:16:46

of the European Union. And

00:16:48

last but not least, he

00:16:51

was concerned on the protection

00:16:53

and the e c t

00:16:54

lie. And in two years,

00:17:02

we had an agreement in

00:17:05

principle, a text with leaked,

00:17:07

fortunately or unfortunately in 2022.

00:17:11

So Lucas will tell me

00:17:13

more about it. That being

00:17:16

said, the Contracting parties are

00:17:18

supposed to meet in November

00:17:19

to discuss the latest text

00:17:22

and to stop it. Now,

00:17:26

what's happening at the level

00:17:27

of the you we can

00:17:29

do, this is the treaty,

00:17:32

and this is how it

00:17:33

looks. We have the members

00:17:35

and The Observers and thank

00:17:39

you to the Secretariat mdc-t

00:17:40

for this comprehensive maps, please,

00:17:45

what's happening at the level

00:17:49

of the year. So there

00:17:51

is a problem, there's a

00:17:52

problem of the beginning. When

00:17:53

the treaty was drafted, there

00:17:54

was no connection Claus for

00:17:56

those who are not acquainted

00:17:58

with. What's the disconnection Claus

00:17:59

is the respective Claus that's

00:18:03

basically exclude, the application of

00:18:06

the city in any and

00:18:07

introduce you. As I said,

00:18:10

the EU and you are

00:18:12

members of the Act. Only

00:18:16

member states are members with

00:18:18

one exception until now Italy,

00:18:20

which would you in 2015,

00:18:23

but He was still apply,

00:18:25

just because of these not

00:18:30

now and not ubit, one.

00:18:37

Will ask what the problem

00:18:39

with it. Well, the problem

00:18:40

is the investment. So on

00:18:45

the left side of the

00:18:46

visitation, you'll see some Buzz

00:18:49

words, but it started with

00:18:53

the intra evit where you

00:18:56

are with actually and it

00:18:59

is considered Prime heading Supremacy

00:19:03

over any interest in you.

00:19:06

And that comes from an

00:19:08

old you through the rooms

00:19:09

of the court of justice,

00:19:10

the principles of Primacy of

00:19:13

EU law and economy of

00:19:15

the alarm. And Did for

00:19:18

those who are not acquainted

00:19:19

with the you lost because

00:19:21

I know that we have

00:19:22

people also from the US

00:19:24

and other jurisdictions. The promise

00:19:28

you it's over Anakin 69

00:19:32

not only National but they'll

00:19:34
still be constitutional North and

00:19:37
then you're calling me of.

00:19:38
You said it comes from

00:19:40
the from an old case

00:19:42
of the court of justice

00:19:43
where the court stated that

00:19:46
the European Union law. The

00:19:48
Community Law Baghdad is a

00:19:50
closed system. So for the

00:19:53
member states you are. It's

00:19:55
a super national law and

00:19:57
income story last year, the

00:20:02
European court of justice said

00:20:04

that yes. Is it either?

00:20:06

But when it concerns, when

00:20:13

it concerns and it becomes

00:20:16

he lost For a specific

00:20:18

in Chinese distance between an

00:20:20

investor and member states of

00:20:22

the European Union. The court

00:20:24

of justice has the right

00:20:26

to interpret. Then we have

00:20:29

a choice between non-eu parties

00:20:31

or between a you party

00:20:33

and Antonia party and that

00:20:35

should be a problem until

00:20:36

last year when he said

00:20:39

the scene that it doesn't

00:20:41

matter if you are ignoring

00:20:44

you probably want to change

00:20:45

course, you're a word in

00:20:47

the European Union. That might

00:20:49

be a problem because no,

00:20:53

straight and I won't be

00:20:55

there an actual the word

00:20:58

or judgments just come straight.

00:21:00

There is a distance between

00:21:03

Ukraine Ambassador and the Republic

00:21:06

of Moldova, part of your

00:21:10

connection was the city of

00:21:12
arbitration with Paris. And the

00:21:15
fact that the I want

00:21:18
to change course, and that

00:21:19
there were an annulment proceedings

00:21:21
before the French courts. This

00:21:23
is how to their word

00:21:30
and had the ability to

00:21:32
interpret and to respond to

00:21:35
some three preliminary questions from

00:21:38
the from the Philippines. And

00:21:43
I should constantly when the

00:21:45
arbitration world and the world

00:21:47
were still recovering and trying

00:21:49

to understand, come straight, we

00:21:50

had feel holding, this is

00:21:52

not an easy case, but

00:21:56

it's in my opinion, actually,

00:21:58

it closes the circle or

00:22:00

what's happening in the European

00:22:03

Union. This summer, we have

00:22:06

it worse than the only

00:22:07

the only a word green

00:22:11

power versus Spain. That's a

00:22:13

word where the entire objection

00:22:15

was was admitted by the

00:22:19

rest of the 64 cases.

00:22:22

There is there were only

00:22:24

rejection vitavit cases with also.

00:22:28

Now, just to mention, I

00:22:36

took a move to the

00:22:36

next flight. That there are

00:22:41

challenges and opportunities in the

00:22:43

enforcement side and one challenge

00:22:47

is in the EU because

00:22:49

we have some principles that

00:22:51

might come into question. If

00:22:54

there is a possibility to

00:22:55

enforce and these are the

00:22:56

principles with your cooperation between

00:22:58

the national Court, autonomy. And

00:23:00

promise you if you lost

00:23:01

and as being from Luxembourg

00:23:07

in July this year, stated

00:23:10

it cannot eat. It could

00:23:12

not enforce the word because

00:23:20

of these principles into a

00:23:21

corporation. So now you could

00:23:23

take me to out with

00:23:24

come straight, that might be

00:23:26

a problem. The opportunity. In

00:23:28

my opinion is balding, enforcement,

00:23:31

outside in you, and my

00:23:34

seat in the US courts

00:23:36
and the UK courts in

00:23:39
the u.s. courts will already

00:23:40
have some precedent. Let's see

00:23:43
if there is any enforcement

00:23:45
and we can see and

00:23:50
Convention. We have come straight

00:23:52
cells which was allowed last

00:23:58
year, in December by the

00:23:59
district court for the District

00:24:01
of Columbia uke chords. The

00:24:04
problem might be the workmen

00:24:06
might be with the cab

00:24:07
yet because well be UK

00:24:10

Supreme Court after brexit. Allow

00:24:12

the enforcement of Nicola but

00:24:16

the European commission didn't like

00:24:17

it. So I started a

00:24:21

new Kingsman action and that

00:24:24

being said come straight was

00:24:26

rendered after brexit, which might

00:24:29

give Food For Thought for

00:24:31

our audience, if that can

00:24:34

be enforced or not. Jack

00:24:38

glass slide on the current

00:24:40

state of affairs, we have

00:24:43

member states, which are not

00:24:45

members anymore. Then we have

00:24:48

pollen which has dropped legislation

00:24:51

to withdraw in the Netherlands.

00:24:53

When I was that they

00:24:55

might withdraw and some latest

00:24:57

developments from Germany, Germany. And

00:25:01

a case where the Bible

00:25:03

to Berlin stated that the

00:25:06

German civil procedure to call

00:25:07

doesn't apply. If there is

00:25:10

an accident arbitration nature, where

00:25:16

is Oberlin from K2, cases

00:25:22

against actually, because there is

00:25:26

a conflict with the intro

00:25:27

you rules, because there is

00:25:30

a Mia and you're holding,

00:25:32

it doesn't matter to the

00:25:34

word, the Germany. And that's

00:25:40

what a presentation, I knew

00:25:42

with Lucas and thank you

00:25:45

very much. Thank you very

00:25:51

much and Daniella. Was, I

00:25:53

believe a terrific effort of

00:25:56

of conciseness given that you

00:25:59

are referring to a multi-jurisdictional,

00:26:01

Court decisions. And also in

00:26:08

parallel with to the new

00:26:10

setting up a little more

00:26:11

education process note, note that

00:26:13

the reference to the, the

00:26:17

principles related to be you

00:26:21

and Primacy of the EU

00:26:24

and on the dance floor

00:26:27

and so forth. That you

00:26:28

mention are all within that

00:26:30

the world of the EU

00:26:31

law. Not necessarily within the

00:26:34

world of strictly of public

00:26:36

international law and and the

00:26:38

Vienna convention on the law

00:26:39

of treaties, which which, which

00:26:41
of course was was not

00:26:44
reference in in some of

00:26:45
the decisions that that that

00:26:47
you alluded to it with

00:26:49
that. I'd like to welcome

00:26:51
a new cash app work

00:26:54
for comments and he's inside.

00:26:57
Fresh out of the oven

00:26:59
concerning the modernization process of

00:27:03
the ACT. Welcome, Lucas. Thank

00:27:07
you very much. Good morning

00:27:08
and good afternoon, everyone. Thanks

00:27:11
a lot to the organizers

00:27:12

for inviting me to. This

00:27:13

is my first participation in

00:27:15

this at this update abandoned

00:27:17

doing this is a great

00:27:19

honor, fixings to the leader

00:27:21

for very ably setting the

00:27:23

scene, which makes, of course,

00:27:25

my truck much easier. When

00:27:26

explaining the Rhythm method band

00:27:29

has taken over the last.

00:27:30

Yes. So my brief overview

00:27:33

of what is being discussed

00:27:35

and how it is. We

00:27:36

discussed would have cost more

00:27:38

than a scratch the surface,

00:27:39

but it look forward to

00:27:40

in-depth discussion in the course

00:27:47

of this Penny session. Let

00:27:50

me offer a few explanations

00:27:52

on the process itself, so

00:27:53

it's already indicated by the

00:27:56

Nilla. And I will see

00:27:59

it when you be started

00:28:00

negotiations. During the pandemic, everybody

00:28:02

was sitting at home. Just

00:28:03

as I'm doing right now.

00:28:06

We have to assume which

00:28:11

means that we saw each

00:28:12

other for the first time

00:28:13

in person at some point

00:28:14

in 2022. So very very

00:28:16

early before we actually could

00:28:18

use it as a negotiation

00:28:19

skills. Of course we have

00:28:22

to get up very early

00:28:24

6 in the morning. I

00:28:28

think the outcome is quite

00:28:30

quite interesting in many respects.

00:28:32

Much has been said medley

00:28:35

from the Viewpoint of the

00:28:37

European Union but what is

00:28:39

being greedy at the core

00:28:40

of the negotiation was the

00:28:42

question to what extent amendments

00:28:44

me to be Implement in

00:28:46

order to align the Issa

00:28:47

TV with the Paris agreement.

00:28:50

Is this again a very

00:28:51

European discussion but of course,

00:28:53

is there an entrance on

00:28:54

the tax proposals that were

00:28:56

I submitted not want to

00:29:00

move the station itself, it

00:29:01

was Mary, kills process. No,

00:29:03

Outsiders were allowed on the

00:29:05

Contracting parties. Documents were not

00:29:09

supposed to be made public,

00:29:10

that they really, as has

00:29:12

been mentioned already in the

00:29:14

introduction to this conference Penny

00:29:17

and the the scope of

00:29:20

the musicians, very focused to

00:29:21

be agreed on a secret

00:29:23

list of topics at the

00:29:24

outside of the negotiations. Which

00:29:26

had stood at the foot

00:29:29

of main areas. Definitions, investor

00:29:32

protection substantive law, ICS. But

00:29:35

only in a very select

00:29:37

men are. So just to

00:29:40

do to make this here

00:29:41

establishment of a court as

00:29:44

it is now implemented in

00:29:46

you treat, your practice was

00:29:48

not on the agenda development.

00:29:52

The question of Rio that

00:29:55

has been elusive. Already obsolete,

00:29:58

probation sentence for investment in

00:30:01

my Priest River View on

00:30:03

jobs, come off then. Say

00:30:07

a couple of brats on

00:30:09

the Shelf. Definition street is

00:30:11

cup, investor protection, is this

00:30:14

related, Provisions ends a radio

00:30:17

that is in for you

00:30:19

application. So when it comes

00:30:21

to the tree disco, when

00:30:22

we discussed the definitions, one

00:30:25

topic was really at the

00:30:27

corner of introversion, negotiations. And

00:30:30

that is the topic of

00:30:31

definition of economic activity in

00:30:34

the energy sector important as

00:30:38

most of you video where,

00:30:39

you know, that foreign investments

00:30:41

to be covered by the

00:30:42

city, it does not only

00:30:44

need to reclaim Insanity 106

00:30:49

which are very similar to

00:30:51

our investment agreements related to

00:30:54

so-called economic activity in geometry.

00:30:56

And in order to qualify

00:30:58

as an economic activity in

00:31:01

the energy sector, economic activity

00:31:03

must be related to a

00:31:04

so-called energy material or products

00:31:07

and what constitutes an energy.

00:31:10

Metering product is regulated in

00:31:12

an Annex, Annex p.m. 1

00:31:16

p.m. to is a very

00:31:18

tightly long list of different

00:31:20

and a cheater products. And

00:31:23

as a set in order

00:31:24

to be covered by the

00:31:25

treaty and investors must relate

00:31:27

to such an energy between

00:31:28

the big discussion was to

00:31:31

what extent it. Is it

00:31:33

appropriate to have fossil fuel

00:31:35

and Seamus recent products. Covered

00:31:37

basically one being led by

00:31:44

Mr. Text Publix. I'm very

00:31:47

comfortable. How to speak about

00:31:50

it, which which which which

00:31:53

state route able to proposal

00:31:55

to the exclusion of the

00:32:00

transition, exclusion of investor protections

00:32:02

for a fossil fuel divestment

00:32:05

and I love you and

00:32:07

I like him that's more

00:32:09

or less took the position.

00:32:10

We appreciate your your demands,

00:32:13

we appreciate the concerns. We

00:32:14

also signed up for the

00:32:16

Paris agreement, but we just

00:32:17

don't see the necessity to

00:32:19

go. That far is a

00:32:21

different topic or less. So,

00:32:24

we, we, we came to

00:32:26

a point where it was.

00:32:27

There is no content on

00:32:28

this topic. What we'd been

00:32:30

proposed in Pittsburgh, which was

00:32:33

finally accepted by the contract,

00:32:34

he probably suspects ability. To

00:32:36

agree to disagree and make

00:32:39

individual flexible solutions for individual

00:32:44
needs of different countries puppies.

00:32:47
So they started discussions that

00:32:51
we introduced a flexibility mechanism

00:32:53
for using it. So cold,

00:32:55
in the winter, to try

00:32:59
to treat them and I'm

00:33:00
the base of the FedEx

00:33:01
individually. Contracting parties can exclude

00:33:04
the application of part three,

00:33:07
which is the substantive investment

00:33:10
of the city to setting

00:33:12
for selfie Envy tourism products.

00:33:15
So far is Union UK

00:33:19

and some extent Switzerland to

00:33:21

Avail themselves of this possibility

00:33:24

of the stones, but it's

00:33:27

also a forward-looking Solutions. We

00:33:30

are using an X which

00:33:31

means that if further amendments,

00:33:36

Excuses. If you were implemented

00:33:39

you do not need a

00:33:41

treatment. It's can be can

00:33:45

be brought about in the

00:33:46

basis of a simple decision

00:33:48

of these each conference which

00:33:50

requires unanimity. But still you

00:33:52

have wet Lindsay, ratification procedures

00:33:55

in domestic Apartments. Now looking

00:33:59

preps this issue from a

00:34:02

broader perspective but not right

00:34:04

so far investment protection. Agreements

00:34:08

have been based on the

00:34:10

idea that any of us

00:34:11

could basically was with some

00:34:13

exceptions, but still there was

00:34:18

no distinction between good and

00:34:19

bad economic activities, to shoot

00:34:21

and try the protection of

00:34:22

the of the treaty nothing's

00:34:26

DC context. A different, of

00:34:28

course, it will be interesting

00:34:29

to see to what extent

00:34:33

is influenza State. Practice 3

00:34:35

to practice in other. Clearance.

00:34:37

Now, moving on with my

00:34:39

reef overview of the, of

00:34:42

the outcomes of the, of

00:34:46

the negotiations, just a few

00:34:48

Birds on the other investment

00:34:50

Banks related probation. So on

00:34:52

the definition of investor be

00:34:54

included, a substantive business requirements.

00:34:57

In the Home State, shooting

00:35:00

a list of factors that

00:35:02

are to be taken to

00:35:03

County order to establish the

00:35:05

substantive business activity investment. Now

00:35:08

needs to be made in

00:35:09

accordance with state law. We

00:35:12

have verified parents Pittsburgh treatment.

00:35:15

So the should take quite

00:35:19

complicated structure of print. Out

00:35:20

of a one has been

00:35:22

replaced by two paragraphs, basically

00:35:24

sitting out the application, transcript

00:35:32

impeachment, the other paragraph, formatting

00:35:35

for a list that Specifies

00:35:37

situations. That constitute a breach

00:35:39

of that pretty standard internet

00:35:43

expression is not defined. There

00:35:45

is there is a definition

00:35:48

of the second two. More

00:35:50

than free to practice. I

00:35:51

should say, including a car

00:35:54

fault for not this military

00:35:55

measures for the public. Good.

00:35:59

Should not constitute interact expiration

00:36:02

unless it's a circumstances, warrant

00:36:06

it different assessment on MSN.

00:36:09

ICS permissions, disrespect me Provisions,

00:36:16

as well as substantive law,

00:36:18

probations from other traditional, not

00:36:20

be implemented. So the focus

00:36:23

is reading out on this

00:36:26

connection, it was decided to

00:36:28

delete a 16ft city. The

00:36:35

new premier professional security protection

00:36:39

and security clarifies that it

00:36:41

only concerns facing security security.

00:36:44

Last but not least, the

00:36:46

umbrella closest limited to, to

00:36:50

contact reaches the exercise through

00:36:53

the through governmental Authority. Moving

00:36:58

on to ICS the discussions

00:37:00

focused on transparency security for

00:37:02

CrossFit by defending the nation

00:37:05

of Damages and brothers came

00:37:09

Subway starts with the last

00:37:11

topic. Frivolous James match inspiration

00:37:14

was obviously taken from exit

00:37:16

for mabbette ratio refer to

00:37:18

Bumper 5 and your complete

00:37:20

the practice. So you can

00:37:21

basically have to tractions one

00:37:24

exit, inspires one relating to

00:37:27

claims manifesting public married. The

00:37:29

other one related to James

00:37:31

and founded. As a matter

00:37:33

of law, the search party

00:37:37

funding obligations. Basically Implement a

00:37:44

similar similar Provisions has been

00:37:47

discussed in exit. I'm aware

00:37:51

of the time. That is

00:37:53

obviously a limited resource for

00:37:55

today. So I will move

00:37:59

on to a topic that

00:38:01

is of more interest in

00:38:03

this room that has already

00:38:04

touched upon by Daniela. And

00:38:08

that is the issue of

00:38:09

Rio Rio stands for regional

00:38:12

economic integration organization. And on

00:38:15

this topic it wasn't discussion

00:38:18

to what extent is desirable

00:38:19

to verify the scope of

00:38:22

application of DCT among members

00:38:24

of a real, that is

00:38:25

in itself. A country party

00:38:26

to this state to another

00:38:28

table better contract pockets of

00:38:32

the city one, to carry

00:38:34

5 p.m. ceiling issue of

00:38:36

intra you application. And a

00:38:39

decision was made Do this

00:38:41

so I can use. If

00:38:42

you would have contained a

00:38:44

provision that clarifies that entire

00:38:49

area. After you 26 on

00:38:50

investor-state dispute settlement, should not

00:38:53

apply between members of the

00:38:57

European Union international relations and

00:39:00

the d e c t.

00:39:02

That's a hopefully clarifies a

00:39:08

long-standing controversial issue. And I

00:39:12

would also like to conclude

00:39:15

my remarks, Olivia provide, a

00:39:19

useful, of course. I'm very

00:39:21

happy to touch with some

00:39:23

other topics that you today

00:39:26

or go to to appointment

00:39:29

details, with the topic sign

00:39:31

racing metro station to thank

00:39:33

you very much. Thank you

00:39:35

very much, new cast for,

00:39:37

for doing a fast-paced, and

00:39:42

their clothes look into the

00:39:45

negotiations themselves, but also the

00:39:47

outcome and, and finally, doubling

00:39:50

down on, on the status

00:39:52

of the dispute settlement, as

00:39:57

as as, as seen from

00:39:59

the perspective of the modernization

00:40:01

negotiation. Now, I would like

00:40:07

to ask you a question

00:40:08

on lunch for a very

00:40:10

brief answer on, on, on

00:40:12

the following. Which is do

00:40:14

you have any comments with

00:40:15

respect to the notion of

00:40:16

of, of a modernization? Is

00:40:19

it, is this a, a,

00:40:20

a, a, a an amendment

00:40:22

to the treaty from, from

00:40:23

your perspective, or, or, or

00:40:25

what, what, what is it

00:40:28

from from, from your Viewpoint?

00:40:31

Now, 2. Well, thanks for

00:40:38

inviting me again. I'll be

00:40:42

at the last year, a

00:40:43

wonderful debate and I hope

00:40:46

it will have this here

00:40:48

again. Well, you know, I

00:40:52

think, in a way, what

00:40:54

I find ironic is that

00:40:56

I mean, obviously the negotiation

00:41:00

of directives of the EU

00:41:02

and the member states are

00:41:04

we're not exactly the same

00:41:07

as the other half. Let's

00:41:11

say twenty-five p e c

00:41:13

t Contracting parties. I think

00:41:14

that's really important to recognize

00:41:16

rights and that makes it

00:41:18

I think very difficult and

00:41:20

in the sense that the

00:41:22

EU under pressure from Parliament

00:41:25

Sergio's etc etc and also

00:41:28

because we wanted to push

00:41:29

his own you like see

00:41:32

Terry station policy through and

00:41:35

harmonized also, in terms with

00:41:37

its Sita, Project and see

00:41:41

tomorrow, it had to do

00:41:44

to a man if you

00:41:45

like in a multilateral agreements.

00:41:49

The treaty, but actually to

00:41:53

a large extent related to

00:41:55

the internal if you like

00:41:59

plurilateral situation. Right? So, you,

00:42:01

if you have to see,

00:42:02

I think the, this whole

00:42:05

project, if you like, kind

00:42:07

of like, with two circles

00:42:08

you have the Outer Circle

00:42:10

that relates to the multilateral

00:42:12

covering all the elements that

00:42:15

Luke has mentioned with regards

00:42:18

to all parties. Right? Like

00:42:23

for instance, the other, the

00:42:24

narrow, a PT standards or

00:42:27

the sustainable development, chapter that

00:42:30

is included and the Paris

00:42:32

agreement to the elements at

00:42:33

cetera at cetera. They're the

00:42:34

removal of the empty PO

00:42:38

box companies as investor. I

00:42:41

think that's all, you know,

00:42:42

applicable across the board but

00:42:44

then you have the internal

00:42:47

Circle B. Which applies then

00:42:51

in particular, or has he

00:42:54

is that you right? And

00:42:57

we should note in this

00:42:58

context, it makes it more

00:42:59

complicated than it really has

00:43:02

left. Already the ECT couple

00:43:04

of years ago, right? So

00:43:06

even within the Circle of

00:43:10

you, plus you member states.

00:43:12

You don't have even all

00:43:13
of them on board, right?

00:43:14
And, of course, we have

00:43:15
come to the later. You

00:43:17
have the UK as well

00:43:19
being outside the circle largely.

00:43:22
I would say completely depending

00:43:24
on where you are. So,

00:43:25
I think that makes it

00:43:26
very complicated. So yes, you

00:43:29
can say it's a treat

00:43:30
your man. That, but if

00:43:31
you like, it's a multiple

00:43:33
of treaty and management relating

00:43:37

to particular circles. And I

00:43:41

think that makes it very

00:43:44

complicated and also difficult, because

00:43:48

obviously, the elephant in the

00:43:50

room and we come to

00:43:51

that in a minute is,

00:43:53

of course, the whole issue

00:43:54

about the cases. The isps

00:43:57

provisions etcetera, etcetera, and you

00:44:00

would like to make the

00:44:01

easy comparison with the termination

00:44:03

agreement with regard to the

00:44:06

interview B, but that doesn't

00:44:08

Exactly because of this multilateral

00:44:12

non-eu Contracting parties to the

00:44:16

city. So it's a very

00:44:18

complicated amendment process that very

00:44:24

much. I think goes into

00:44:26

the direction of a Alucard

00:44:28

a management depending on where

00:44:32

you are. And I think

00:44:33

that is probably also the

00:44:35

new approach receive that. Also

00:44:37

with regard to the Anza,

00:44:38

child working group 3 that

00:44:40

we will see more kind

00:44:42

of like up in a

00:44:44

Lockhart selection by difference, Contracting

00:44:48

parties. Depending on what they

00:44:50

want depending on where they

00:44:52

are in their thinking and

00:44:54

in their kind of like

00:44:56

investment strategy practice. Reform. Status.

00:45:02

Thank you. Thank you. ECT

00:45:13

which, which, I understand you.

00:45:15

Also extending to the negotiations,

00:45:20

group, three of us to

00:45:22

draw is, is is one

00:45:23

that want to have in

00:45:24

mind. Let me, let me,

00:45:26

let let's go, let's go

00:45:28

into the notion of what.

00:45:32

What is the geography, geography?

00:45:36

I mean, the different groups

00:45:39

of of cases. That, that

00:45:42

can be identified following this

00:45:47

modernization process went when when

00:45:51

an end, what we entered

00:45:54

into Force, which which hasn't

00:45:56

happened yet. But, but what,

00:45:57

what, what is the geography

00:45:59

of those in that? And

00:46:00

by that I mean I

00:46:01

could you comment on Cases,

00:46:04

that are easy, G cases

00:46:07

that are past cases, but

00:46:10

possibly it and also present

00:46:13

cases and you have just

00:46:15

a few minutes for for

00:46:16

doing that about 45 and

00:46:20

I know that that that

00:46:21

I needed. But I know

00:46:23

that you can do it.

00:46:24

Well, thanks. But I would

00:46:27

like to start also for

00:46:28

the purpose of understanding for

00:46:31

our audience because I was

00:46:32

looking at the text, I

00:46:33

think it's important to mention

00:46:37

exactly what is written in

00:46:40

the leaks text because I

00:46:42

think that's really important when

00:46:43

you look at the leaks

00:46:43

text and coming back to

00:46:45

what I said, previously, it

00:46:48

is interesting to note that

00:46:49

this provision which is just

00:46:51

one sentence saying for greater

00:46:54

certainty. Article 726 a Tetra

00:46:58

Tech Rochelle X among the

00:47:01

members of the EU and

00:47:03

obviously article 26 is the

00:47:06

isds probation. Interesting. Lee, you

00:47:10

find this in the new

00:47:13

article, 24 under General exceptions.

00:47:17

So it's a general exception

00:47:18

article. So you don't find

00:47:20

this which I was think

00:47:22

it would be the natural

00:47:22

place in article, 26 itself

00:47:26

or in an Annex know,

00:47:28

you find it in the

00:47:31

general exceptions provision, which, I

00:47:34

find is quite interesting and

00:47:35

it's just so and that

00:47:38

raises a host of questions.

00:47:41

Namely, apparently, and I mentioned

00:47:45

already, if you like to

00:47:46

make the comparison with the

00:47:47

termination agreement, there seems to

00:47:50

be no transitional. This seems

00:47:54

also to be no cut

00:47:56

off date. Specifically. Mentioned so

00:48:00

arguably this can apply potentially

00:48:04

Rachel, Rachel Rachel actively. Hopefully

00:48:11

not but obviously in the

00:48:14

future from the moment it

00:48:16
entered the forest. Let's say

00:48:17
it will enter into Force

00:48:18
by the end of next

00:48:19
year, for instance for a

00:48:24
tent already, makes it very

00:48:25
difficult. We do not have

00:48:27
liked of the termination agreement.

00:48:28
That it says, the cutoff

00:48:32
date is the Acme adjustment

00:48:33
in March 2018. Meaning, you

00:48:36
know, all the cases that

00:48:39
have been concluded before the

00:48:41
Judgment right are done. And

00:48:43

will not be touched and

00:48:45

everything that has been initiated

00:48:47

after the judgment. Will either

00:48:49

be done through the facilitator

00:48:52

system or they are simply

00:48:56

prohibited right that was a

00:48:59

very clear-cut kind of situation.

00:49:03

We don't have that at

00:49:06

least hopefully. Maybe some for

00:49:11

the Declaration for explanations may

00:49:13

be attached, but the league

00:49:14

text, I don't find it.

00:49:15

So that raises the question.

00:49:16

So when you have the

00:49:19

old cases, so meaning cases,

00:49:21

that have been concluded before

00:49:25

it enters into Force. Let's

00:49:27

say 31st January, 31st December

00:49:32

next year. So, I'll give

00:49:35

you would say, they would

00:49:36

continue under the. I would

00:49:38

call ordinary rules situation and

00:49:47

arguably, that could be fully

00:49:50

enforced and recognized. Well, here

00:49:54

we start again. At least

00:49:55

outside to you. I'm not

00:49:57

so sure if they could

00:49:59

be still and forcing recognized

00:50:02

inside the EU. We come

00:50:03

to that in a minute

00:50:04

because of the cgu, judgments,

00:50:06

right? And no question that

00:50:13

you don't have to answer

00:50:14

it. But but when you,

00:50:15

when you, when you don't

00:50:18

have to answer it because

00:50:19

I think that he could

00:50:20

linger in this space, you

00:50:21

know, alluding to your ear,

00:50:23

your background here. As we

00:50:26

can see that, I'm put

00:50:28

my set of professors at

00:50:30

if someone came to me

00:50:31

and said, well, there's there's

00:50:34

no language in in in

00:50:35

the treaty indicating that this

00:50:38

General exception applies retroactively. I

00:50:42

would ask if it is

00:50:43

their explicit language indicating that

00:50:46

this exception applies retroactively and

00:50:49

then you know that than

00:50:51

the actual be. Well yes

00:50:52

there is. Who are the

00:50:53

reason and depending on the

00:50:55

answer you said, well, you

00:50:57

must you must then look

00:50:58

into into the general rules

00:51:01

of of or general principles

00:51:03

of treaty law of the

00:51:06

Vienna convention on the law

00:51:07

of treaties. So that I

00:51:10

would stop there. We don't

00:51:12

have the, the official text

00:51:14

but but but logic would

00:51:15

would go that route. Sorry

00:51:18

for acting and a time,

00:51:19

please. Please go ahead and

00:51:21

and be mindful that the

00:51:23

most you really have three

00:51:25

minutes to sort of Raphael.

00:51:27

And there's so much to

00:51:31

say, no. I mean, I

00:51:32

would like to speak to

00:51:34

the talking about planets, Venus

00:51:41

vs. Mars, Venus being the

00:51:44

Earth, Mars, or Venus being

00:51:47

the EU must being on

00:51:49

the rest of the world.

00:51:50

And I think that's, that's

00:51:51

a problem. The problem is

00:51:52
that If you look at

00:51:53
the experience and the jurisprudence

00:51:55
of the CG, you will

00:51:57
see that the European court

00:51:58
has no problem to go

00:52:00
retroactively and take away all

00:52:03
the rides at position that's

00:52:05
being done in like me

00:52:06
and that's been done in

00:52:07
all other cases, right? So

00:52:08
from the European perspective and

00:52:11
that of course directly goes

00:52:13
into the domestic court of

00:52:15

the EU member state that

00:52:17

will have to recognize and

00:52:18

enforce. Any of such a

00:52:20

what is a clear danger

00:52:21

that it would apply retroactively

00:52:23

on a public international law.

00:52:25

And I would say, generally

00:52:27

with regard to you would

00:52:31

Clearly say, well know, they

00:52:33

are kind of like rights

00:52:35

legitimate expectations and from a

00:52:43

rule of law perspective, that

00:52:44

you would not take those

00:52:45

right away retroactively but the

00:52:47
reality is within the EU,

00:52:49
I'm not so sure about

00:52:50
this. This would be my

00:52:51
answer. But the more complicated

00:52:56
issue are the only going

00:52:58
cases Danielle, alluded to the

00:53:00
numbers. There are shoots number

00:53:02
of dozens of cases. In

00:53:04
CT cases, both and extra,

00:53:07
CT cases, pending, and they

00:53:11
are turning out all the

00:53:12
time. You've seen a couple

00:53:13
of other cases already. We

00:53:15

have the Rockhopper case. We

00:53:17

have the G case, you're

00:53:19

more cases, coming out another

00:53:20

case against Spain just a

00:53:22

few days ago. So, they

00:53:24

are out there, but it

00:53:27

doesn't really mean that you

00:53:30

actually will be able to

00:53:33

enforce a recognized. It actually,

00:53:34

if it comes to the

00:53:36

moment that these proceedings are

00:53:40

concluded after the entry into

00:53:43

force of the city, Within

00:53:46

the EU and for the

00:53:47

EU member states and the

00:53:49

EU, I have serious doubts,

00:53:51

whether domestic court's in the

00:53:56

EU member states would be

00:53:58

allowed under the European Court,

00:54:00

to still recognize and forth

00:54:03

and even if it's for

00:54:09

the new cases after entering

00:54:11

into force of this revised

00:54:13

act, I think for Android

00:54:16

ZTE cases, it's arguably over.

00:54:20

Although that is still the

00:54:22

issue of you might come

00:54:23
to that later and I

00:54:24
stopped here about my idea

00:54:27
about is the analogos application

00:54:29
of the sunset Clause golf

00:54:32
as a rule of law,

00:54:34
natural law, principal. Thank you

00:54:39
very much to embrace the

00:54:46
format, and be able to

00:54:47
identify answers in his truck

00:54:51
from entering in the, in

00:54:52
this form of. But I

00:54:52
think that you do that

00:54:53
wonderful job Marine. You're mostly

00:54:56

invited to make comments on,

00:54:59

on the set of geography

00:55:02

of cases, the past current

00:55:06

and end in future cases

00:55:07

as you still wish. And

00:55:09

yeah, happy to take that

00:55:12

on. And I have to

00:55:14

say, To maybe go back

00:55:16

to the beginning of a

00:55:17

third of the overview of

00:55:18

this entire process in the

00:55:20

subject of our conversation. I

00:55:22

really have to give to

00:55:23

give credit to Lucas and

00:55:24

then the entire modernization project

00:55:26

as I teach investment for

00:55:29

the arbitration and investment treaty

00:55:31

law. I often find myself

00:55:33

saying that the tribunals are

00:55:36

confronted with interpreting the texts

00:55:38

in front of them. And

00:55:39

if you don't like it,

00:55:40

where the tribunals are coming

00:55:41

out with us chat with

00:55:42

those texts, maybe we should

00:55:44

have better text and I

00:55:46

feel like the the the

00:55:47

project that losses has undertaken

00:55:50

with all of his collar

00:55:51

is essentially ticked-off kind of

00:55:54

the wish list of all,

00:55:55

all the better text write,

00:55:57

the text that solve these

00:55:59

problems that have come up

00:56:00

in the cases and doesn't

00:56:01

in a remarkably short time.

00:56:02

So all the credit in

00:56:04

the world for that. I

00:56:07

got to get through a

00:56:08

multilateral renegotiation process in two

00:56:12

years, I would not have

00:56:14

thought actually possible in the

00:56:15

circumstances. And so what we're

00:56:19

now thinking about though and

00:56:21

the taxonomy is it that

00:56:22

Nico said out is what

00:56:24

does this mean going forward?

00:56:25

What does this mean for

00:56:27

anybody who's holding a judgement

00:56:28

in an act case in

00:56:30

particular in an entry u?

00:56:32

E c k what does

00:56:34

this mean for the parties

00:56:36

that are still in the

00:56:37

middle of litigating, next case

00:56:41

as this transaction happens? And

00:56:43

then what is this mean?

00:56:44

Going forward? And I think,

00:56:46

I generally agree with the

00:56:47

taxonomy is it? That Nico

00:56:49

says set out. We were

00:56:50

joking before the panel began

00:56:52

that for Outsiders. You are

00:56:55

not in the in the

00:56:56

EU and not fully steep,

00:56:57

in the Primacy of the

00:57:02

supremacy of the feu system.

00:57:04

A lot of The discussion

00:57:07

from off man on has

00:57:08

just involved shaking your head

00:57:10

and thinking. Okay, let them

00:57:12

do them but it but

00:57:15

it doesn't work that way

00:57:16

because I'm Daniela pointed out

00:57:19

does not involve any and

00:57:23

yet it became it became

00:57:24

the occasion for the CJ.

00:57:27

You two to take a

00:57:30

position on the applicability of

00:57:31

the, ECT Gentry you disputes,

00:57:34

and to bring into question,

00:57:36

the ability to enforce even

00:57:38

a nun in Tracy, in

00:57:43

the end that I think

00:57:46

it was. Well, it's only

00:57:48

that, it's only the most

00:57:49

recent of many surprises for

00:57:51

those of us watching from

00:57:52

the outside of the eu's

00:57:55

face. And I think maybe

00:57:56

we just, we simply have

00:57:57

to accept Nikos has ruled

00:57:59

that. The eu's system is

00:58:01

going to Take this approach,

00:58:03

apply retroactively, even if 64

00:58:07

tribunals have disagreed. With that

00:58:09

notion conveniently gave us save

00:58:14

the track record. So far,

00:58:15

is 6 dozens to one,

00:58:18

but Danielle pointed out that,

00:58:21

it's actually 60421. So my

00:58:23

thought is that pending tribunals

00:58:26

in pending cases are likely

00:58:27

to continue to take that

00:58:28

approach. And not accept the

00:58:31

idea of retroactive application of

00:58:34

these transitional Provisions, whether it's

00:58:35

like me to come story

00:58:36

or the transition in the

00:58:39

ACT mechanism itself. But going

00:58:44

forward, I think we're certainly

00:58:45

going to see enforcement pushed

00:58:47

to the United States for

00:58:48

this pending cases and for

00:58:51

the concluded one. So we'll

00:58:52

see important push the United

00:58:53

States in the UK or

00:58:53

anyplace else that will take

00:58:54

them outside to eat you.

00:58:55

And and then I think

00:58:59

we have to look ahead

00:59:00

and think we'll for Investors

00:59:02

who are imagining a future

00:59:03

in which they might someday

00:59:05

need to bring a case

00:59:06

under the ACT. Maybe they

00:59:08

should be structuring themselves through

00:59:09

the UK turkey through other

00:59:13

easy team member states. So

00:59:16

is to just not run

00:59:16

into this vacuum. In the

00:59:20

end the use face and

00:59:23

potentially get the benefit of

00:59:24

the treaties. I was also

00:59:26

thinking is as Daniela was

00:59:27

speaking about the Curiosity of

00:59:29

Italy situation, they withdrew from

00:59:31

the act and they now

00:59:33

find themselves actually worse off

00:59:35

right because they've got they've

00:59:37

got the full application of

00:59:38

the sunset clause. For 20

00:59:40

years, Do they get the

00:59:42

benefit of all these amended

00:59:44

and and much improved investment

00:59:47

treaty Provisions or Drew or

00:59:49

the only have to live

00:59:52
with defending disputes under the

00:59:53
old. And certainly I think

00:59:56
we'll start to see fun

00:59:57
things play out there so

00:59:59
I think it's going to

01:00:00
be interesting to see the

01:00:01
season. The the cases reacts

01:00:03
to the tribunals react and

01:00:04
over the longer-term investors react

01:00:14
San Antonio near me. The

01:00:18
curse of Zoom. Thank you.

01:00:20
Thank you, thank you. Thank

01:00:21
you so much. And apologies

01:00:23

for that. I was saying

01:00:24

thank you. And and I

01:00:26

wanted to to ask you

01:00:27

was Nicholas Andrew sized on

01:00:32

the notion of activity. in

01:00:38

in, in the, in some

01:00:39

of the no possibly rulings

01:00:42

by by the Sea je,

01:00:44

you as well as it

01:00:47

in some of the believe

01:00:50

that that that you also

01:00:51

meant and Nico's going to

01:00:53

buy some of the European

01:00:55

commission's decision in terms of

01:00:58

applications of of, of, of

01:01:00

the fuse on a CT

01:01:04

and also it to use

01:01:05

on an entry interview, it

01:01:08

how How does the notion

01:01:13

of activity? Apply would be

01:01:19

potentially be interpreted in US

01:01:22

courts in other systems of

01:01:25

of, of the world? And,

01:01:26

and I and I admit

01:01:28

that, that I hadn't thought

01:01:29

about that question until now.

01:01:31

So for all purposes, this

01:01:34
is not a preconceived question,

01:01:37
but I, I, I find

01:01:38
it very, very interesting, given

01:01:40
the way that the Supreme

01:01:43
Court in the US and

01:01:45
an appeals court have given

01:01:47
to to the rule of

01:01:50
law. Yeah. Yeah. Of course

01:01:56
is is is is a

01:01:57
question for you were in

01:01:58
The District Court was not

01:02:03
impressed with the the retroactive

01:02:07
application focused on retroactivity Visa

01:02:12

V. Romania's. Entry into the

01:02:13

EU is supposed to as

01:02:15

the retroactivity of itself, I

01:02:19

guess. I mean, The US

01:02:26

courts of not the place

01:02:27

where I want to spend

01:02:28

your where I want everything

01:02:29

to turn on having to

01:02:31

make arguments under the Vienna

01:02:32

convention. Any, any any national

01:02:36

Court where you're facing an

01:02:39

enforcement procedure, it's going to

01:02:40

be a difficult place to

01:02:41

start explaining international law principles

01:02:43

of retroactivity or not or

01:02:46

frankly explaining that you use

01:02:47

system or not. And many

01:02:51

what we've seen actually is

01:02:52

that many of the US

01:02:53

courts have simply said, oh

01:02:54

let's wait and see, right?

01:02:55

We understand this is being

01:02:57

litigated. We understand the tribunals

01:03:01

considering this issue. We understand

01:03:02

their courts cans in the

01:03:03

you considering this issue will

01:03:04

wait there. Now going to

01:03:07

be at the point where

01:03:07

they have to stop waiting

01:03:08

and actually decide and so

01:03:11

I think we we don't

01:03:11

yet know exactly how the

01:03:13

US courts are going to

01:03:14

deal with this set of

01:03:18

very you Centric rules and

01:03:20

decisions and changes. And and

01:03:24

I think we could, we

01:03:25

could get sort of a

01:03:27

complicated spaghetti for a bit

01:03:29

as courts. Take different approaches

01:03:31

to trying to sort, sort

01:03:32

out how to understand what

01:03:34

is happening on the other

01:03:34

side of the pot. But

01:03:37

they will have to start

01:03:37

confronting it down because they

01:03:38

say it's your fully pushed

01:03:40

it off and issued a

01:03:41

bunch of stays in the

01:03:42

number of the cases and

01:03:44

they're not going to get

01:03:44

confronted with it's time to

01:03:45

decide. Thank you, thank you,

01:03:48

thank you very much. And

01:03:49

yes, I mean did Time

01:03:55

time is often a real

01:03:56

concerning in in the US

01:03:58

court system. So so I

01:04:02

think that, I like to

01:04:04

view it as an unlike

01:04:05

other systems were, where were

01:04:08

you could be decades before

01:04:10

things, get decide at some

01:04:11

stage at some stage courts,

01:04:13

believe that that that that

01:04:14

that goes hand-in-hand with with

01:04:17

potential, what we like to

01:04:19

call India international law of

01:04:22

denial of justice but but

01:04:24

but do you want to

01:04:29

share your views on enforcement

01:04:31

in in in the UK

01:04:33

or or other and non-eu

01:04:37

jurisdictions? Yes. Yes, thanks. Well,

01:04:44

I think just threw while

01:04:46

I'm there, rainbows was speaking.

01:04:48

And I think at the

01:04:51

end of the day you

01:04:54

probably have to make also

01:04:56

a distinction between exit Awards

01:05:00

and none exit towards. I

01:05:02

think, probably I hope arguably

01:05:05

that exit towards based on

01:05:09

exit convention should be or

01:05:13

should provide a, a, a

01:05:14

stronger legal basis for at

01:05:20

least, that was the idea

01:05:21

for rubber stamping and exit

01:05:23

the ward before domestic court's,

01:05:24

right? At least outside to

01:05:27

eat you. So I think

01:05:29

what side you are probably

01:05:32

fine and I think I

01:05:34

reread the UK Supreme Court

01:05:39

decision in McCulloch. A few

01:05:42

days ago on this point

01:05:43

and I think they made

01:05:46

a very good point here

01:05:48

in my perspective and very

01:05:51

balanced public international law argument

01:05:57

saying, well, you know, the

01:05:58

UK, is it Romania Sweden,

01:06:06

R&B half the obligations to

01:06:09

what all excited about his

01:06:11

right? And therefore, those International

01:06:15

vacations should be fulfilled in

01:06:18

receipt? Of course, we have

01:06:20

gotten this new concept of

01:06:23

electoral relations that was thrown

01:06:28

out there recently in the,

01:06:31

in the, in the EU.

01:06:34

I wasn't sure if you

01:06:39

have the view that that

01:06:41

may be. The exact convention

01:06:43

is simply a bundle of

01:06:45

the lateral allegations. You can

01:06:48

get again until this multi-faceted

01:06:51

3, lotto situation that I

01:06:53

mentioned before potentially, right? I'm

01:06:56

so I think that's one

01:06:57
thing. So I think on

01:06:58
the exit what side I

01:07:00
would feel more comfortable and

01:07:02
I would hold that all

01:07:04
those 150-plus. Exit Contracting parties

01:07:08
would follow through on the

01:07:10
North side. The words I

01:07:12
think we run into more

01:07:14
problems because hear clearly the

01:07:18
Old Republic exception, through the

01:07:20
New York convention, opens the

01:07:22
door White. Well, opens the

01:07:25
door wide open. I'm not

01:07:26

sure if you can say

01:07:27

that in any event. So,

01:07:29

that is a possibility here.

01:07:30

I think that tribunals at

01:07:36

domestic. Court's might go in

01:07:38

different directions at different jurisdiction.

01:07:40

To Vincent. I'm thinking of

01:07:42

Switzerland, right? Swiss quartz being

01:07:46

in the geographical vicinity of

01:07:50

Luxembourg, right, and Europe. And

01:07:53

also being pressured by the

01:07:54

EU in two completely different

01:07:56

other matters. International All Metals

01:07:59

Corporation, I could imagine that

01:08:01
maybe Swiss courts might be

01:08:03
more open to watch saying,

01:08:06
well, you know, we understand

01:08:07
that you love, you understand

01:08:09
you and therefore, you know,

01:08:12
from Old Republic perspective, we

01:08:14
might really kind of like

01:08:15
except that what's going on

01:08:18
right now. I don't think

01:08:19
that's going to happen, but

01:08:20
I could imagine that this

01:08:22
could be A direction that

01:08:24
yeah I don't think that

01:08:27

would happen probably in the

01:08:29

UK, but of course they

01:08:32

are other. Many jurisdictions are

01:08:34

no Alexey, Singapore, all the

01:08:36

countries that are a bit

01:08:37

farther away from the EU.

01:08:40

And they might not be

01:08:41

so inclined to 42 in

01:08:44

any event, but focusing on

01:08:45

the UK I think as

01:08:48

Marine also said, I think

01:08:49

the UK would be a

01:08:51

really interesting place to enforce

01:08:55

it. Obviously still there, that

01:08:58
is still a little bit,

01:08:59
the issue due to what

01:09:00
extent maybe you law and

01:09:02
CG jurisprudence still might be

01:09:05
applicable, you know? We don't

01:09:07
know exactly. You know it

01:09:09
depends really on the timing

01:09:10
and I want to come

01:09:11
back to that I think

01:09:12
it really I think the

01:09:13
pants when you initiated your

01:09:17
case and when did you

01:09:19
get you or what? I

01:09:20
think when you are really

01:09:22
if you like in the

01:09:23
in the Face prior to

01:09:26
the outcome of the ECT

01:09:28
negotiations. I think you are

01:09:30
already really better protected if

01:09:34
you like by your legitimate

01:09:35
expectations and by the rule

01:09:37
of law retroactivity. But I

01:09:41
think the moment let's say

01:09:43
you start now a case

01:09:46
right? You initiated a case

01:09:48
or maybe just before the

01:09:50

summer break that's a first

01:09:53

all goes though so I'm

01:09:54

not so sure. You know

01:09:55

that might be arguments made

01:09:57

you a reading star, your

01:10:01

reading, ER reporter, you know,

01:10:03

that things are going on

01:10:05

there so you cannot Legitimately

01:10:08

claim that you didn't know

01:10:10

that potentially things will drastically

01:10:13

change for you. Write this

01:10:15

could be really not hope

01:10:18

that this is going to

01:10:19

happen, but this could be

01:10:20

an argument that can be

01:10:22

made a good picture. Maybe

01:10:24

buy some Domestic Court somewhere.

01:10:26

So I think the timing

01:10:30

here is is, is a

01:10:32

really crucial and the same?

01:10:34

I think applies over 3.

01:10:35

God, when did you get

01:10:36

your award? When was it

01:10:38

issued, right? And the closer

01:10:41

you get to the Tipping

01:10:44

Point, right? In terms of

01:10:46

when this thing enters into

01:10:48

fours, or when it was

01:10:49

out there, the less likely,

01:10:52

or the more problems you

01:10:54

will probably get. But this

01:10:57

is again, something over lunch

01:10:59

and we must wait, what

01:11:03

comes out, but I don't

01:11:04

know maybe Lucas, I don't

01:11:06

know what have you discovered?

01:11:07

This internally, or with other,

01:11:10

I don't know. It would

01:11:11

be interesting to open this

01:11:12

app because I wasn't in

01:11:13

the room. I'm sure them.

01:11:14

Somebody must have raised these

01:11:16

kind of issues. Call back.

01:11:20

That's not, that's a that's

01:11:21

a fair question. Let me,

01:11:23

let me let me ask

01:11:25

each of you to give

01:11:33

you your sense of how

01:11:35

does the potential outcome of

01:11:39

the modernization process and and

01:11:44

granted, we don't know how

01:11:47

the text will be, because

01:11:49

we only have a leak

01:11:50

text. But let's let's let's

01:11:53

assume for a second that

01:11:55

that it's somehow somehow. It's

01:11:59

not that different from what

01:12:00

was leaked, but we know

01:12:02

that he may be completely

01:12:03

different but but but but

01:12:05

if it is possible that

01:12:06

it has some similarities to

01:12:08

what was leaked and thunder.

01:12:10

And let's let's let's think

01:12:12

about whether those the investors

01:12:17

Andy, you and, and outside

01:12:20

of the EU within the

01:12:22

framework of BCG, what will,

01:12:25

of course, have effective that

01:12:26

our investors are they left

01:12:30

in terms of consequences consequences

01:12:32

and and are they better

01:12:33

off? Are they not? I

01:12:36

mean this this involves many

01:12:38

variables including transitioning into into

01:12:42

new energies and I'm going

01:12:45

to go now. Living out

01:12:49

at some stage of us

01:12:50

refuse etcetera. So so I

01:12:53

will ask it what he

01:12:54

should reflect at. And give

01:12:56

me an answer each one,

01:12:58

no more than 2 minutes

01:12:59

because we have to somehow

01:13:02

be respectful with time with

01:13:03

with, with her organs. So

01:13:06

let's let's start with Lucas

01:13:08

and then we go with

01:13:09

Daniella marine and then and

01:13:11

then, Thank you very much

01:13:15

for severe. Thanks to Lord

01:13:16

for this fascinating conversation. Grows

01:13:18

issues like primitive fuel or

01:13:20

retroactivity burritos. To my profession

01:13:25

has the last two previous

01:13:26

elba's about, I will send

01:13:28

tense of time when assessing

01:13:37

a package will need to

01:13:40

be mindful that the political

01:13:41

landscape has changed. The currently

01:13:45

city is a two-headed worm,

01:13:47

four states. That is pregnant

01:13:49

of course if he lives

01:13:52

to be different but I

01:13:54

think the reception recognition among

01:13:56

countries and something needs to

01:13:58

be changed and as far

01:14:01
as I see, it text

01:14:03
to testing a sustainable Way

01:14:13
Forward. Maintain a system of

01:14:16
Miss protection. And the energy

01:14:18
sector are inclined to think

01:14:21
that it's supposed package for

01:14:23
use of the system for

01:14:24
investors, as well as first

01:14:26
because basically, it increases Nikki

01:14:29
certainty, the Party City fake,

01:14:33
it's it cost inconsistent interpretation

01:14:36
in case, it was explained

01:14:39
by Daniela and chicken off

01:14:43

the wish list as described

01:14:45

Marine, both sides, you know,

01:14:49

as a stage much better,

01:14:51

the scope of the space

01:14:55

that is according to you

01:14:57

by the treaty. And of

01:14:59

course, from investors back, if

01:15:01

it is easier to calculate

01:15:02

the chances for success in

01:15:06

litigation, which is, of course,

01:15:08

important because it has financial

01:15:10

implications weather weather. Likes the

01:15:16

different that the distinction between

01:15:17

the so-called green Investments and

01:15:21

faucet from vestments. Test prep's

01:15:23

for medical. It would seem

01:15:25

to know. That's, I don't

01:15:28

know any free before that

01:15:29

hasn't been changed in light

01:15:31

of Paris agreement locations. So

01:15:34

one minute like it, but

01:15:37

it's a preview of what

01:15:41

is probably happening in the

01:15:46

future in which practice. Thank

01:15:49

you, thank you. Thank you.

01:15:49

Lucas, a Daniela. So I

01:15:53

think the modernization had to

01:15:56

happen because it's because Mansion

01:15:58

did political landscape changed, the

01:16:01

priorities of states are different

01:16:03

from the images, of the

01:16:05

beginning of energy, transition decarbonisation

01:16:18

didn't think of it, dad

01:16:21

being sad, the fact that

01:16:22

we needed. And I think

01:16:24

the treated doctors, they learned

01:16:26

some lessons from these interpretations

01:16:28

of the tribunal that we

01:16:30

have, because Nicholas was mentioning

01:16:32

to text, we have the

01:16:33

right to regulate have. It

01:16:39

was not in the old

01:16:41

biddies, don't don't say that.

01:16:42

Then you have the sustainability

01:16:45

clause, which in my opinion,

01:16:47

it's a need if you

01:16:49

want to be in. And

01:16:51

the Paris agreement in the

01:16:53

European Union Station on my

01:17:03

person with you. And I

01:17:07

think that will affect and

01:17:10

I tend to agree with

01:17:11

Nico, that there is a

01:17:12

lot of uncertainties with worrying

01:17:14
about what's happening. What's the

01:17:16
moment zero? Are we going

01:17:19
to be creative? But also

01:17:30
there is a person from

01:17:31
Treasure from the outside world

01:17:33
saying that the UN member

01:17:35
states. Should we be City?

01:17:37
I don't see it happening,

01:17:39
especially with the political landscape

01:17:41
that happening now in the

01:17:42
against. That's why there's no

01:17:45
deal. But there was a

01:17:48
note from the IMF yesterday.

01:17:51

Published saying that Cindy energy

01:17:54

transition and investment in green

01:17:56

and sustainable Finance being part

01:18:00

of the city as it

01:18:02

is. Now speaking. That doesn't

01:18:05

stimulate energy transition rather than

01:18:08

continuing to invest in fossil

01:18:10

fuels. So yeah, there's no

01:18:13

perfect sweetie. So that the

01:18:15

the Beauty and the problem,

01:18:18

thank you. Will turning down.

01:18:30

It is easy to look

01:18:32

at the text and and

01:18:34

look at what's happening to

01:18:35

the ACT is a hole

01:18:36

and think to answer the

01:18:39

question you post better and

01:18:40

better off. It is easy

01:18:42

to look at and see

01:18:42

if they've lost this. And

01:18:44

they've lost that or they

01:18:45

lost the ability to bring

01:18:47

claims related to fossil fuels.

01:18:50

I'm just letting you know

01:18:51

what time. But I suppose

01:18:54

that if we should take

01:18:56

a step back from that

01:18:57

analysis, you do have a

01:19:00

point that Lucas made, which

01:19:01

is you got some more

01:19:01

clarity about, which claims will,

01:19:03

or won't fly. Whether it's

01:19:06

about public debt, or whether

01:19:07

it's about judicial decisions are

01:19:10

things, I got you now

01:19:10

know that certain things are

01:19:11

off the table. So there's

01:19:13

more clarity in the provision.

01:19:14

They don't waste illegal to

01:19:17

use on pursuing a claim

01:19:18
that won't succeed. And then

01:19:20
there's the really met a

01:19:23
question that I think was

01:19:24
posed by the title of

01:19:26
a blog post. At Nico's

01:19:28
wrote witches who is this

01:19:31
about saving the ECT itself

01:19:33
was it as Daniel is

01:19:35
that necessary in order to

01:19:37
preserve things, she is functional

01:19:39
entity going forward and to

01:19:42
stop what might have might

01:19:43
have otherwise been a flow

01:19:45
of of States leaving the

01:19:46
ACT. Did we succeeded that?

01:19:51
I don't know. We won't

01:19:52
know yet for a bit

01:19:55
yet. As we know, Poland

01:19:57
has. Now, it's saying that

01:19:58
it's going to leave or

01:19:59
make noises about leaving Spain.

01:20:01
In the Netherlands, may still

01:20:02
feel grumpy about the whole

01:20:03
process but if, if it

01:20:07
does indeed for the quote,

01:20:08
save, the easy teeth, and

01:20:09

investors are better off. So,

01:20:12

so, I think we have

01:20:13

to think about the question

01:20:15

at multiple levels of utility

01:20:20

Thank you, say, thank you.

01:20:21

Thank you, Maureen. And them

01:20:24

Negroes. And and that undoubtedly,

01:20:29

the world has changed in

01:20:33

many of your comments also

01:20:35

made me think about the,

01:20:36

the situation in in in,

01:20:39

in, in Ukraine, given given

01:20:43

the invasion at cetera. But

01:20:44

I, I want you. I

01:20:45

don't I don't want to

01:20:46

lunch in your yet, another

01:20:47

set of whole discussion, but

01:20:50

but that is also very

01:20:52

practical and pragmatic questions and

01:20:54

Sophia would there be. Will

01:20:56

there be any CT and

01:20:58

how important is there. There

01:21:00

is one Nico's. I just

01:21:02

final comments 2 minutes and

01:21:05

then we'll move into that

01:21:07

the time in part of

01:21:09

our of our panel but

01:21:13

I would like to see

01:21:15

you will not believe me,

01:21:16

but I really would like

01:21:17

to add Positively. I find

01:21:20

it very difficult. As I

01:21:23

wrote in previous blocks, I

01:21:25

find it's still very ironic

01:21:27

and I still don't understand

01:21:29

it. Why the EU? And

01:21:31

the member states, essentially disconnected

01:21:34

from the ACT, whereas they

01:21:37

achieved essentially, all the objectives

01:21:39

that were mentioned right. In

01:21:41

terms of modernizing it sits

01:21:43
arising, I find this a

01:21:45
pity. I find it the

01:21:46
bat signal to be honest,

01:21:48
and even more. So we

01:21:50
haven't raised that, but I

01:21:52
was just checking. There is

01:21:53
also a new article 17

01:21:56
piece now, which also explicitly

01:21:59
excludes subsidies on the scope

01:22:02
of the alarm. Obesity, as

01:22:06
I read it, at least

01:22:09
in terms of off isds

01:22:10
provisions. And then, of course,

01:22:12

I think makes it difficult

01:22:14

in terms of renewable energy

01:22:16

Investments. That's how I see

01:22:18

it. But Nanny event. What

01:22:22

I see is that I

01:22:25

think that will be a

01:22:26

shift to the extent that

01:22:28

they will be emotional vacation

01:22:31

coming up as much as

01:22:34

possible. I think they will

01:22:35

be restructuring as much as

01:22:37

possible and at the end

01:22:38

of the day, well yeah,

01:22:41
the ACT will obviously lose

01:22:43
some of its importance because

01:22:47
the sheer number of cases

01:22:48
are going to go down

01:22:49
significantly. And that is of

01:22:52
course what was the main

01:22:53
goal of this whole operation,

01:22:55
obviously, from State inspector? And

01:22:59
that may be good because

01:23:00
it may save some taxpayer

01:23:01
money but I still would

01:23:04
caution, because as I said,

01:23:05
it creates a plural actual

01:23:08

situation where some countries are

01:23:11

still in the ACT, some

01:23:14

countries are partially in the

01:23:15

ECT and some are not

01:23:18

at all anymore in the

01:23:19

act. And I don't think

01:23:21

that is a good development

01:23:26

because it actually goes into

01:23:28

the issue of in the

01:23:31

direction of fragmentation, right? And

01:23:34

that is exactly what we

01:23:35

try to avoid. For instance,

01:23:37

if you want to talk

01:23:38

to me and trying to

01:23:40

harmonize thing so I find

01:23:42

it still kind of sheets.

01:23:45

Are frantic how all this,

01:23:47

from Annie, you perspective, EU

01:23:49

member states perspective, this is

01:23:51

Don. I wish I would

01:23:52

have hoped that having achieved

01:23:53

99% of all your objectives

01:23:58

except maybe in the is

01:23:59

DS signed. The EU. And

01:24:03

the member states should have

01:24:04

stayed in the city fully

01:24:07

and fully committed there and

01:24:09

actually support. It's because we

01:24:12

need the, the investments in

01:24:14

the renewable energy sector show.

01:24:16

Hopefully I'm wrong. I personally

01:24:21

I think at the end

01:24:23

of the day investors also

01:24:26

because of the substandard will

01:24:30

not be better off. That's

01:24:33

my conclusion. Thank you very

01:24:36

much and thank you very

01:24:38

much. And I would like,

01:24:39

I I saw some some

01:24:41

some non-verbal language from from

01:24:43

Lucas. And if you, if

01:24:46
you want, if you, if

01:24:48
you have any any comments,

01:24:49
I, I don't want to,

01:24:50
I don't want to steal

01:24:51
those up from the, from

01:24:53
the audience, just 30 seconds

01:24:55
to save, you know, if

01:24:57
not, that's also absolutely fine.

01:24:59
Good, that's good. Well, thank

01:25:04
you very, very much to

01:25:05
each one of you. In

01:25:08
the order that I see

01:25:08
you on my screen Marine.

01:25:11

Thank you, thank you so

01:25:12

much for your for another

01:25:15

beautiful Yu-Gi-Oh of Washington. D.c.

01:25:17

now that the sun has

01:25:19

come out and the station's

01:25:22

you from from Washington, d.c.

01:25:24

Daniela, which happens to be

01:25:26

the same place Shoreview Nikos

01:25:28

has from Europe and and

01:25:32

of course, Lucas thank you

01:25:33

very much. It has been

01:25:35

a pleasure and an honor

01:25:36

to be with you. I

01:25:38
had a lot of fun

01:25:39
by asking questions that I

01:25:42
wanted to ask and some

01:25:43
of that some that I

01:25:44
didn't know that I was

01:25:45
going to ask, Frankie if

01:25:46
it was not great, this

01:25:48
recording will be up at

01:25:51
some stage for people to,

01:25:52
to learn you a Tetra.

01:25:55
And now we might be

01:25:58
moving to I think to

01:26:01
breakout rooms possibly, we will

01:26:04

only be there for a

01:26:05

few minutes. Perhaps five or

01:26:07

eight minutes for people to

01:26:09

relax a little bit. There's

01:26:11

no recording there. We don't

01:26:13

have to speak about the

01:26:14

DCP, but we're also not,

01:26:19

so thank you for your

01:26:22

time for your organization. This

01:26:24

has been a truly, truly

01:26:25

great panel and also for

01:26:27

the preparation that I know

01:26:28

you did. For this panel

01:26:29

will be on the next



01:26:35

two panels will be on

01:26:36

Tosh a one-on-one space law.

01:26:38

So stay tuned. It was

01:26:43

a great pleasure. Thank you,

01:26:45

all.