



The Interplay between the ICJ/PCIJ Judgments and Investment Arbitration

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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 Week panel featured notable discussions surrounding the interplay between public international law and investment arbitration, moderated by Jose Antonio Rivas. Key speakers included Kyra, a litigator and international arbitrator, and Reza, who presented insights on the influence of investor-state dispute settlement (ISDS) jurisprudence on the International Court of Justice (ICJ).

Reza highlighted that while there are few citations of ISDS cases in ICJ judgments, the influence of ISDS on ICJ decision-making is significant, particularly through the experiences of judges who have acted in both capacities. He noted that the ICJ has cited ISDS decisions only in the context of distinguishing them from its own cases, indicating a lack of direct acknowledgment of ISDS's influence.

The panel also examined the procedural and substantive differences between the two systems, emphasizing how the ICJ maintains a formal approach to hearings compared to the more flexible practices in investment arbitration. The discussion underscored the importance of cross-examination and the evolving nature of oral arguments in both forums.

Participants explored the challenges of coherence and consistency in international law, with some expressing concerns about the fragmentation of legal principles. The dialogue emphasized the necessity for continued engagement and understanding between public international law and investment arbitration, recognizing that both systems operate within the broader context of international law.

Overall, the session fostered a rich exchange of ideas about the future of international dispute resolution and the potential for greater integration between these two legal frameworks.

Authors

Kiran N. Gore, Clara Brillembourg, H el ene Ruiz Fabri, Yannick Radi, Jos e Antonio Rivas



Topics

ICJ, PCIJ, ICJ Judgments, PCIJ Judgments, Investment Arbitration, Arbitration, Interplay

Category

WAW

Full Transcript

00:00:28

This is one of our

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animals that truly shows our

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commitment to public international law

00:00:37

and as well invest arbitration,

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by the way, I didn't

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lose myself. My name is

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Jose Antonio Rivas, one of

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the co-founders of of Washington

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arbitration week. I teach at

00:00:53

the Georgetown Law Center investment

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re arbitration public international law



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and and I see Jay

00:01:00

judgment and I have the

00:01:02

pleasure of introducing Kyra and

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she is she has lots

00:01:08

of hats and they're already

00:01:10

at my herbal. She is

00:01:12

a litigator, but she's also

00:01:15

an international arbitrator is a

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Management Consultant and can counsel

00:01:21

and she's also a lecture

00:01:24

at GW on topics that

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range from the National Commercial

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of attrition International treaty arbitration



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and and the and Arsenal

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all she's also an editor

00:01:37

and a very very very

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hard. So she's up to.

00:01:44

That's a good thing. That's

00:01:45

what about thing as my

00:01:49

order a doctoral thesis supervisor

00:01:52

would say that our vacation

00:02:02

week from the beginning and

00:02:04

and she she has I

00:02:06

think that I unique perspective

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because she came to to

00:02:11

enter public international law first



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having being a litigator and

00:02:15

also having entered International arbitration

00:02:17

through International commercial arbitration. But

00:02:19

then and this is this

00:02:22

is what I would suggest

00:02:23

everyone does and Anna 14

00:02:25

know not everyone does it

00:02:27

say then then she she

00:02:30

she and you will correct

00:02:32

me if I'm wrong. She

00:02:33

became enamored with the Vienna

00:02:35

convention on the dogs treaties

00:02:36

and she's really a true



00:02:41
convert. She's up there saying

00:02:43
that she is a public

00:02:44
international law lawyer. She has

00:02:47
written extensively on on the

00:02:49
On the Vienna convention on

00:02:50
the law of treaties and

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published a book which is

00:02:55
now a convention on the

00:02:58
law of treaties and and

00:02:59
I've had the pleasure of

00:03:00
working with with Karen and

00:03:03
I wish you were here

00:03:06
because they say they have



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been generous in supporting Washington

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arbitration week from from first

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edition by publishing some of

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the blogs about this panel.

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So we hope that this

00:03:18

time we'll also get the

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panel's so I will keep

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I would love to keep

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on going but I know

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I don't think that lets

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you I would appreciate that

00:03:30

much. They're so cute and

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you have the floor and



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thank you for for moderating

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a panel and she will

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introduce everyone I would say.

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I'm not a public International

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lawyer, but you just told

00:03:42

everybody in this room that

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I asked so leave it

00:03:45

at that. Let me start

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by introducing some of our

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speakers. So today's program has

00:03:52

speeding in a hybrid manor

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Washington arbitration because truly Global

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so we have two of



00:03:58
our speakers virtually joining us

00:04:00
from Europe and we have

00:04:02
this lovely panel here as

00:04:04
well in person. So I'll

00:04:05
start with the first we

00:04:08
have. Dr. He's a senior

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legal adviser and in this

00:04:14
capacity, he deals with public

00:04:17
international law and he's also

00:04:20
the range from ICC on

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Safari Land at harbor station

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is truly a privilege to

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have somebody joining us at



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University. She has published extensively

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on international law and settlement

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and has its. Legal practice

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especially acting as arbitrator under

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the auspices of exit on

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Central and various Regional agreements

00:04:57

and now turn to my

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right and we are very

00:05:01

privileged to have our friends

00:05:02

here are Professor doctor Yannick

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Robby who joined us from

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Europe four friends. He's a

00:05:07

professor of international law at



00:05:09

the University of Louisville and

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sell jump and I guess

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professor at the International Investment

00:05:14

arbitration at Law School in

00:05:16

Paris. He's a member of

00:05:18

the panel of arbitrators. He

00:05:19

has experience in proceedings governed

00:05:21

by rules and rules and

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has published extensively on arbitration

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matters. Most notably. He's the

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author of rules and practices

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of International Investment law in

00:05:33

arbitration at text book published



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by the welcome again to

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Washington arbitration me Kelly. We

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have someone local we have

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terrible a she's a partner

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at Filippo eggs International litigation

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arbitration practice where she advises

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currency International disputes with other

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sea foreign investors and also

00:05:54

and proceedings for us courts

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of range of activities. He

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was awarded 2001 MVP of

00:06:02

the year for international arbitration

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by law 360. I didn't



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know we had an MVP

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of the year. But if

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there's no war to get

00:06:09

that sounds like the ones

00:06:10

to get it graduation and

00:06:12

also she's ranked amongst the

00:06:15

top thirty-five women attorneys and

00:06:17

international arbitration. We're really here

00:06:20

with us three of us

00:06:26

who I will add to

00:06:28

his bio to tell you

00:06:29

that he is a reason

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we are all here in



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addition to being assholes houndour

00:06:33

of Washington arbitration Beach part

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of his vision stems from

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his very diverse. So he's

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going through his career and

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I don't think I could

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name them all and I

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have no biome in front

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of me but ranging from

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and its third-party funds or

00:06:46

governments lawyer. Tuition fee not

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a global law firm and

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now being an entrepreneur running



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his own Law Firm here

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in Washington DC as well

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as being a lecturer and

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academic Georgetown law schools are

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really trip lives too hot

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not have only had a

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few on the panel and

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lead us and bring us

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together. But also guide us

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in that situation of arbitration

00:07:11

in arbitration related topics. Today's

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channel is what I'll call

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one of our signature panels



00:07:17
of the week. It's inspired

00:07:19
in part by a panel

00:07:20
that several of us participated

00:07:22
in last year's Washington arbitration

00:07:24
be in Florida public international

00:07:26
law on investment arbitration this

00:07:29
year. We're delving more deeply

00:07:31
and I think in part

00:07:32
because some brainstorming but yeah,

00:07:33
and I specifically International court

00:07:39
of justice and pcij judgments

00:07:42
and invest an arbitration both

00:07:46
directions where the Ice Jay



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practice and influence. Investment arbitration

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at vice-versa where investment arbitration

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practice is beginning to Windsor

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Men's Warehouse in influencing icj

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practice and on my way

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over to 345 this morning,

00:08:01

what was breathing and I

00:08:01

was walking down the street

00:08:03

after dropping my kids off

00:08:04

at school. I was thinking

00:08:04

about well, why is there

00:08:06

such an interplay and in

00:08:07

part? It's because of the



00:08:08
stakeholders in the actors one

00:08:11
is that you have a

00:08:11
lot of repeat after me

00:08:13
you are the states to

00:08:14
appear in ibj proceeding to

00:08:16
my son also due to

00:08:19
related or a socio-political economic

00:08:22
etcetera circumstance has also become

00:08:25
respondents aged and investment arbitration

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on possibly related topics or

00:08:29
because of possibly related elements.

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You also have a duplicity

00:08:34
at times of the same



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individuals acting as counsel and

00:08:39
proceedings before I see Jay

00:08:41
and highest. Yes proceeding and

00:08:43
possibly an arbitrator's or judges

00:08:46
in some instances and I

00:08:47
see Jay and Ists proceeding

00:08:50
so you do have a

00:08:51
lot of stakeholders over by

00:08:53
and that can influence not

00:08:54
only how judgments and precedents

00:08:57
interplay with each other but

00:08:58
also have procedure and practice

00:09:00
at your place. The other



00:09:01

is really about the illogical

00:09:04

dimensions in some ways. So

00:09:06

with that we are going

00:09:07

to take a two part

00:09:08

of her finery presentation to

00:09:11

our virtual speakers are going

00:09:13

to introduce to us the

00:09:15

ideas about the Centre plays.

00:09:17

We will most I have

00:09:18

some supplies from one of

00:09:19

our speakers. So I hope

00:09:20

that everybody can see them

00:09:21

and I cuz I'm clearly



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is not what troubles you

00:09:23

thought and then we're going

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to have a discussion with

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those were in this room

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to highlight various aspects including

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procedural substances and stylistic and

00:09:33

sociological about that interplay between

00:09:35

hi CJ public international law

00:09:37

practice and I have just

00:09:38

the way I can the

00:09:41

floor over to Reza And

00:09:43

I hope that you're able

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to come out your slides.



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Otherwise, I'll help you. Thank

00:09:48

you so much cuter on

00:09:50

full of the introduction and

00:09:51

thank you all for being

00:09:53

here today a good day

00:09:56

everyone. My name is a

00:09:57

razor if that's all it

00:09:59

is a great pleasure to

00:10:01

deliver this presentation on the

00:10:03

occasion of space for diction

00:10:06

of the Washington arbitration week.

00:10:07

My contribution today is about

00:10:12

the impact of isps jurisprudence



00:10:16
on the icj's decision-making and

00:10:20
to adhere to that carefully

00:10:21
crafted time schedule set by

00:10:23
our wonderful moderate. I will

00:10:25
be using Showtime forms of

00:10:28
certain times throughout my presentation.

00:10:30
So needless to say is

00:10:32
the S stands for investor-state

00:10:33
dispute settlement and I see

00:10:35
Jay refers to the international

00:10:37
court of justice. I will

00:10:39
do my presentation into sections

00:10:43
in Section 1. I analyzed



00:10:45
the current situation whether as

00:10:48
we stand now RC jet

00:10:50
decision-making is influenced by the

00:10:53
isds your students and in

00:10:57
the second part of my

00:10:58
presentation, I will analyze the

00:11:01
future impact of isps, whether

00:11:05
it's going to impact licj

00:11:06
decision-making in the future or

00:11:08
not. I will be speaking

00:11:09
about 12 minutes and I'll

00:11:11
be using summer slice to

00:11:12
present certain facts and figures



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and also the office of

00:11:15

empirical evidence to the first

00:11:18

section of a presentation then

00:11:19

and the current situation to

00:11:22

analyze whether the icj decision-making

00:11:24

is impacted by the S

00:11:27

case. No one has to

00:11:30

look for some evidence to

00:11:32

me. Undoubtedly the most concrete

00:11:35

piece of evidence to look

00:11:37

through is actually citation. RISD

00:11:40

s. Woods and decisions cited

00:11:43

in icj's judgments and I



00:11:46

have a specially on CJ

00:11:53

has referred to is DS

00:11:55

cases just on a very

00:11:58

few young just a few

00:12:00

occasions very few. And I

00:12:03

want what I say a

00:12:03

few I I mean it

00:12:05

but more importantly those few

00:12:08

citations have been mostly as

00:12:11

a function of the parties

00:12:12

pleadings. So the icj actually

00:12:14

mentioned these important decisions and

00:12:17

his judgments only for the



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purpose of primarily for the

00:12:21

purpose of distinguishing them actually

00:12:24

illegally from the case at

00:12:26

hand certified mail. My first

00:12:32

slide with you. To show

00:12:35

how it's done in practice

00:12:36

and that's a slight you

00:12:39

see three investment treaty decisions

00:12:42

refer to in icj Judgment

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of the icj only refer

00:12:47

to them for the purpose

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of distinguishing them legally and

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factually from the preceding at



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hand. So the main end

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the bank Benchmark the most

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concrete bench mod to analyze

00:13:03

where the highest years has

00:13:05

an impact on Ice BJ's

00:13:06

judgment and decision-making process is

00:13:09

to see whether the icj

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is referring to these important

00:13:14

decisions of isps triburos approvingly.

00:13:16

And that's why you can

00:13:18

see an actual impact by

00:13:23

my count that has happened

00:13:26

only once and that quite



00:13:28
recently and its judgment and

00:13:31
reason judgment on such an

00:13:33
Iranian assets the court set

00:13:37
the workout set up it

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has long been recognized and

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international law that the bona

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fide a non-discriminatory exercise of

00:13:45
such a regulatory powers are

00:13:47
the government aimed at the

00:13:49
protection of legitimate public vulva

00:13:51
is not deemed appropriate rate

00:13:53
or compound simple and then

00:13:55
it refer to Three Awards



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by International courts and tribunals

00:14:00

a very old the road

00:14:02

by the German Venezuela Claims

00:14:04

Commission 1903 high-profile case of

00:14:08

Iran US vs. Iran and

00:14:11

finally a very famous investment

00:14:13

Treaty of wood siluca vs

00:14:15

Czech Republic. So I didn't

00:14:19

vestment treat your practitioner might

00:14:22

consider this as a welcome

00:14:24

approach citation of one finally

00:14:27

one investment Treaty of wood

00:14:28

approvingly alicja judgment, but Fu



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Panda that is not really

00:14:34

pleasant as it might First

00:14:36

Look firstly that the best

00:14:39

award was not given that

00:14:40

this thing recognition. It was

00:14:42

cited alongside an ancient award

00:14:44

run that 120 years ago.

00:14:46

And now that would buy

00:14:48

the IU SCT, so it

00:14:49

wasn't even given the stingray

00:14:52

a singular word and not

00:14:53

even a distinct recognition a

00:14:54

second and more importantly bear



00:14:57

in mind that since 1989

00:15:00

when the icj decided the

00:15:02

LC case. This was the

00:15:03

first opportunity actually to discuss

00:15:05

matters of investment Richelieu, extensively

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and discuss all the hundreds

00:15:11

of words that that considered

00:15:13

is DS to have been

00:15:16

rendered as of now. 90

00:15:17

special investment region arbitrations. I

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can stop back room bearing

00:15:22

in mind that the last

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opportunity the get that the



00:15:26
prospects is not very promising

00:15:28
and see if you review

00:15:30
the party's pleadings. That they

00:15:33
they they cited many investment

00:15:35
Treaty of woods and decisions

00:15:37
in support of their allegations.

00:15:38
And when you will retransmit,

00:15:40
you see that there is

00:15:41
only one of them that

00:15:43
is getting an approval citation

00:15:45
in the Court's judgment ensure

00:15:50
that it's not very promising

00:15:52
that 0000 mentioned in the



00:15:57

icj's judgment on setting to

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rain in assets. But what

00:16:01

is the reason for this

00:16:02

day of citation of investment

00:16:05

Treaty of using I see

00:16:06

Jay strothman just went to

00:16:09

flag the issues because I

00:16:10

think they would be covered

00:16:11

more deeply by a professor

00:16:13

why I was just flat

00:16:15

free points. Presley it is

00:16:19

that the only CJ we

00:16:20

all know that has a



00:16:21
very gorgeous citation approach now

00:16:24
given the proliferation of an

00:16:27
international courts and tribunals the

00:16:30
icj charges want to keep

00:16:31
their own concentration and the

00:16:33
concert rhaetian of others and

00:16:34
the icj and not on

00:16:36
the international courts and tribunals.

00:16:37
That's the first and second

00:16:40
item, which I tried to

00:16:42
discuss further in my in

00:16:44
the second part of my

00:16:44
presentation is that the kind



00:16:48

of disputes that are brought

00:16:50

before investment research do not

00:16:52

usually trust pie in front

00:16:55

of international court of justice

00:16:56

and sadly definitely icj is

00:17:00

not alien to the criticisms

00:17:02

that exist against the legitimacy

00:17:04

of the treaty arbitration system

00:17:07

and I have some views

00:17:13

regarding the reformed that should

00:17:14

be exercised with regard to

00:17:15

this regime but these You

00:17:17

have to wait for another



00:17:19

day. But this is something

00:17:21

that I see Jay definitely

00:17:22

doesn't view when referring to

00:17:25

when considering to refer to

00:17:27

the jurisprudence of isds Tribune.

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No, would it be right

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to stop at this and

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say okay because there is

00:17:35

no citation than is Diaz

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has no impact on the

00:17:38

decision-making process of icj. I

00:17:41

think it would be short-sighted

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to stop at this and



00:17:45
actually I think that influences

00:17:48
by the highest your system

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on Ice e-judge decision-making but

00:17:52
you see the situation is

00:17:53
influence without a distinct acknowledgement.

00:17:58
Why do many things could

00:18:00
be said in this respect

00:18:01
today? I want to emphasize

00:18:03
and focus on the role

00:18:05
of repeat its play individuals

00:18:08
who currently act as icj

00:18:11
members, but also used to

00:18:15
act like I'm currently at



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arbitrators in distressed a dispute

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settlement arbitrations. What up saying

00:18:25

that I have in mind.

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Voice rules of the icj

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as of 2018 regarding double-height

00:18:31

a point, but it's a

00:18:36

fact of legal life that

00:18:37

a judge when he or

00:18:39

she practices in an area

00:18:41

of low for an extended.

00:18:42

Of time he or she

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brings that experience the Practical

00:18:46

experience to the next field



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and we have seen it.

00:18:49

We have done it. I'm

00:18:52

going to refer to an

00:18:53

example to to show how

00:18:55

it's done in practice Coast

00:18:57

example of giving you consent

00:19:00

and I sat for my

00:19:02

CJ chart referring to a

00:19:04

nice E&J case is proceeding,

00:19:06

but I think it nevertheless

00:19:08

demonstrates the point of making

00:19:14

In the movie to proceedings

00:19:17

Mobile versus Canada during the



00:19:19
hearing of the president of

00:19:22
the highest tribe you want

00:19:23
to ask why member of

00:19:25
the icj a.m. To 2000

00:19:26
industry rank is happening in

00:19:28
2017 off the puppies. That's

00:19:31
that's the bit that the

00:19:33
parties have a dispute about

00:19:34
the rest of the Carter

00:19:35
effect of mobile one proceedings.

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It's not dealt with at

00:19:39
some length are the international

00:19:41
court of justice and its



00:19:42

judgment between Nicaragua and Colombia

00:19:45

in March of 2016. I

00:19:47

am going to put the

00:19:48

same point to cancel for

00:19:50

Canada who by the looks

00:19:52

of it and actually thought

00:19:53

about that case. I think

00:19:55

it might be a relevance

00:19:56

to the point you're making

00:19:57

and then it's interesting when

00:19:59

you read the decision on

00:20:02

jurisdiction and admissibility on mobile

00:20:05

2 and you refer to



00:20:06

progress 192 192. You will

00:20:09

see how this plays out

00:20:11

in practice do the judgments

00:20:13

that the that the president

00:20:14

of the Is this tribunal

00:20:15

was a member has been

00:20:17

in the boats and has

00:20:18

been relied on in this

00:20:19

investor State case to resolve

00:20:25

the party dispute over the

00:20:26

issue of STD Carter and

00:20:28

do we have do we

00:20:30

have to repeat players now



00:20:31
the next to slide if

00:20:34
you look at these are

00:20:35
five current members of the

00:20:38
icj and my slide shows

00:20:40
that their level of Engagement

00:20:41
investor-state arbitration both as arbitrators

00:20:45
and as members of the

00:20:47
extended album, tea and that

00:20:49
is reflected in the individual

00:20:52
opinions that these members issue

00:20:57
alongside the document documents of

00:21:00
the icj. So, although there

00:21:05
is no citation of if



00:21:06

you think of citation you

00:21:08

come across a situation of

00:21:09

unrequited love if you will,

00:21:12

so that's the fact that

00:21:14

the investor investor-state arbitration show

00:21:17

a reasonable amount of affection

00:21:19

to roast is your students

00:21:20

ficj but not the other

00:21:22

way around so that citations

00:21:24

account on a one-way basis.

00:21:25

But if you bearing view

00:21:26

the the role of the

00:21:28

repeat players, you will see



00:21:30

that there is influence without

00:21:34

Express acknowledgements possible presentation to

00:21:41

analyze the future impact of

00:21:43

a SDS on the icj's

00:21:46

decision-making and to do so,

00:21:48

I will Consider full elements

00:21:52

element one is to bear

00:21:56

in mind that the kind

00:21:59

of disputes that because the

00:22:01

linchpin of the investment treaty

00:22:02

new system is investment and

00:22:05

these disputes do not usually

00:22:07

arise in front of the



00:22:08

icj with the exception of

00:22:12

the south in the Rain

00:22:12

the assets case. This only

00:22:14

happens very rarely in cases

00:22:17

my personal attraction and Elsie

00:22:19

2001 lecture by Francisco. Tarrega,

00:22:30

viconia set the following Questions

00:22:34

relating to major areas of

00:22:36

international rules such as those

00:22:38

dealing with trade finance and

00:22:40

Investments are never brought the

00:22:42

food. I see Jay has

00:22:46

some truth to it. And



00:22:47

this is something to to

00:22:48

to bear in mind when

00:22:50

you're considering the future impacts

00:22:52

of August. Yes on icj

00:22:54

secondly and the second element

00:22:56

which is inextricably linked to

00:22:58

the first one is that

00:22:59

there are not so many

00:23:00

in. It's National instruments cancer

00:23:03

intersection at on the court

00:23:04

regarding International to come only

00:23:08

through the issues. And if

00:23:12

you think of that Treaty



00:23:13
of Amity the 1955 Treaty

00:23:15
of Amity between Iran and

00:23:16
the United States, which was

00:23:18
the the the constant instrument.

00:23:21
If you will in five

00:23:22
icj cases. Was even 780

00:23:25
2018 dime. Doesn't make the

00:23:28
prospect of Reliance Eliza J

00:23:31
decisions about the future very

00:23:36
promising. So the prospect is

00:23:39
dim. If you look at

00:23:39
that, the first element is

00:23:41
the criticisms that exist against



00:23:44

the legitimacy of the investment

00:23:47

treaty law system. Of course,

00:23:50

one of the I see

00:23:51

Jake a dog is the

00:23:54

assistant voice being stretched into

00:23:55

it solve. It might think

00:23:57

that okay is DS system

00:23:59

suffers from the lack of

00:24:01

institutional legitimacy, and there are

00:24:03

also social concerns as concerns

00:24:05

about the consistency in the

00:24:07

movie theater or concerns that

00:24:08

exist. Various Brands a particular



00:24:14

body bike a bike route

00:24:18

Freon investor-state dispute settlement the

00:24:20

phone set buy on Central

00:24:22

but to be frank we

00:24:25

have a long way to

00:24:27

get to a meaningful concrete

00:24:30

comprehensive and long-standing resolution of

00:24:34

the concerns that exist today

00:24:36

the oldest elements spoke against

00:24:40

of a positive Prospect regarding

00:24:42

the Reliance by icj is

00:24:48

Deus a decisions and I

00:24:49

was in the future but



00:24:50

there is a fourth element

00:24:51

very important one and that's

00:24:53

the experience the Practical and

00:24:56

the teaching experience of icj

00:24:58

charges and how that materializes

00:25:00

in their individual opinions. And

00:25:03

you have to burn viewed.

00:25:04

This is this is a

00:25:05

very same of fact it

00:25:07

goes without saying these are

00:25:08

the numbers that form the

00:25:10

quotes. They are inspired by

00:25:12

is DS there is no



00:25:14

doubts that the whole court

00:25:16

and the whole judgment would

00:25:18

be inspired by the is

00:25:20

deer stag woods and decision.

00:25:21

And then that's a slight.

00:25:22

I want to show you

00:25:24

instances of investment various investment

00:25:27

treaty avoids being referred to

00:25:31

by the individual members of

00:25:33

the court in their individual

00:25:35

happiness. I'm saying individual to

00:25:36

capture all the titles. That

00:25:38

could be the 50 Cent



00:25:38

me been carrying all the

00:25:40

titles that could be there

00:25:41

and in the next slide.

00:25:42

I want to just highlight

00:25:44

three individual opinions were substantial

00:25:49

reference has been given to

00:25:50

is Deus vult and decisions

00:25:53

and you can see one

00:25:54

of them more than 10

00:25:55

times one of the other

00:25:56

one so and the separate

00:25:58

opinion of touchy 25 is

00:26:03

Deus. It wasn't that a



00:26:04

cat just like 8 months

00:26:06

ago. So this is something

00:26:08

to seriously taking you. And

00:26:12

if you think of the

00:26:13

Judgment by the icj in

00:26:16

certain Iranian assets, if you

00:26:18

look at the the separate

00:26:20

opinions seven of the 15

00:26:22

cult members refer to is

00:26:24

Deus about in the sea

00:26:25

than in the individual opinion.

00:26:29

So this is a very

00:26:30

important fact to be borne



00:26:32

in mind. So that concludes

00:26:34

the second section and the

00:26:37

whole of my presentation now,

00:26:38

I'm eagerly waiting to hear

00:26:40

my co-pilot. Thank you very

00:26:42

much for your attention. You

00:26:44

so much residence super fascinating

00:26:47

that you really highlight of

00:26:48

the human dimension of I

00:26:50

see Jay and i s

00:26:51

t s practice and I

00:26:52

think we'll talk about that

00:26:53

more as we go on



00:26:54

Sunday. We're going to turn

00:26:55

now to the other primary

00:26:57

presentation my virtual secret to

00:27:00

talk to us about Paw

00:27:01

Patrol inside for please tell

00:27:03

Amanda ready. Thank you very

00:27:06

much. I would like for

00:27:07

us to thank the organizer

00:27:09

is a especially having invited

00:27:12

me together with I didn't

00:27:18

have a chance to listen

00:27:19

to the last year. So

00:27:22

I decided to enter into



00:27:23

the Cupcake Shop assuming that

00:27:26

it could be interesting. I

00:27:31

have one question regarding this

00:27:44

and the other way because

00:27:53

we just see that Cindy

00:27:57

Long's to which has been

00:28:00

ongoing for some years now,

00:28:01

which is the question of

00:28:02

judicial precedent. And the reason

00:28:04

why there is Which site

00:28:06

to each other and this

00:28:08

debate was triggered by the

00:28:09

debate of fragmentation of international



00:28:11

law the anxiety that existed

00:28:14

about the fact that they'd

00:28:16

be different quotes could come

00:28:17

with different solutions regarding the

00:28:19

same Norms all the same

00:28:21

sets of spot until I

00:28:23

think that's an to take

00:28:24

him to come visit was

00:28:25

like, why would I use

00:28:30

DS arbitrator be anxious to

00:28:32

start the icj all day

00:28:33

or just decide the icj

00:28:35

and all the extras that



00:28:36

the icj does not fight

00:28:38

them eventually. So this is

00:28:41

the human way of asking

00:28:42

the question, but I think

00:28:45

it's interesting to talk to

00:28:46

to keep in mind this

00:28:48

Resonance of this discussion of

00:28:49

President, which regarding is DSS

00:28:52

is too full and you

00:28:55

have this internal vitamin D

00:28:58

baby shots did for example

00:28:59

animated by a Crosman color

00:29:01

knowing whether there should be



00:29:04

a system of press. With

00:29:05

an iOS D S and

00:29:07

R and B side of

00:29:08

building address prison, which is

00:29:12

not only whether court order

00:29:16

and somehow crossed. She lies

00:29:18

and you have all this

00:29:20

debate, which is the positive

00:29:21

side of fragmentation about to

00:29:23

cross that you like that

00:29:24

they would this debate be

00:29:30

especially important for a isda.

00:29:33

It is important of criticism



00:29:39
regarding the lack of continuity

00:29:41
and the consistency of the

00:29:44
case law and older we

00:29:46
might come with a lot

00:29:47
of good explanation for this

00:29:48
so-called inconsistency and the lack

00:29:52
of continued she's never the

00:29:54
less. You have a nice.

00:29:55
In this direction and this

00:29:56
is a recurring theme in

00:29:58
the discussions about the result

00:30:00
of the SDS. The finding

00:30:06
ways of finding this consistency



00:30:09

and other the interplay with

00:30:11

the court of idic G

00:30:13

could be one aspect of

00:30:14

this debate and it is

00:30:17

needless to call TW reasons

00:30:18

why the icj among other

00:30:25

court because why the icj

00:30:30

especially and the or is

00:30:32

it the motel problem of

00:30:34

fighting other International course, of

00:30:38

course, and it's not true

00:30:40

only for investment arbitrators fighting

00:30:43

the decisions of other Quest.



00:30:44

Is there a way of

00:30:46

burrowing legitimacy Authority and that

00:30:49

it is especially true of

00:30:51

the point of your various,

00:30:54

but you could see that

00:30:55

other course have I taken

00:30:57

the use of citing the

00:30:59

icj to borrow or so

00:31:00

itchy and legitimacy, especially a

00:31:03

fundamental question of it. Depreciation

00:31:06

the background principles of international

00:31:11

law and so is the

00:31:18

wealth of borrowing part of



00:31:20

its Authority in addition of

00:31:22

Cordell. CJ has a general

00:31:23

competence. It means that it

00:31:25

can deal with a lot

00:31:26

of stuff is all over

00:31:27

all topics. And even if

00:31:30

you'll have some exclusive jurisdiction

00:31:32

to have some questions and

00:31:40

and this is also why

00:31:42

it can be fought so

00:31:44

easily no way because in

00:31:45

the decision you deal with

00:31:46

many different legal question. Necessarily



00:31:50
related to to the subject

00:31:52
matter of the of the

00:31:53
dispute and of course and

00:31:58
I will not insist on

00:32:00
that. Define inciting the icj

00:32:08
aspiration to unification the fact

00:32:12
of having some general principle,

00:32:14
which could be a guiding

00:32:15
principle. And this is of

00:32:18
course very important. But at

00:32:22
the same time if we

00:32:23
try to make a diagnosis,

00:32:25
I will not be able



00:32:25
to make it as a

00:32:29
systematic as I need that

00:32:31
just simply because you have

00:32:33
too many a worse. I

00:32:34
think I see she has

00:32:36
less citations. That's why I

00:32:39
expect my voice of you

00:32:45
would be quiet relaxing a

00:32:47
stake in this in this

00:32:49
regard we have first to

00:32:51
take into account the sector

00:32:53
which has the origin mansion

00:32:54
by the fact that most



00:32:57

of the time of citation

00:32:58

comes on board is on

00:33:00

the word because the party

00:33:02

has put forward the argument.

00:33:05

The party is at present

00:33:06

in the decision has the

00:33:07

legal Authority that I don't

00:33:09

you date on this legal

00:33:10

Authority and the arbitrator's decision.

00:33:17

We can either take it

00:33:19

don't touch support the reasoning

00:33:21

or they can engage in

00:33:22

two distinguishing play a big



00:33:26

role. And there is. So,

00:33:29

which is better. I went

00:33:31

to the quality of session

00:33:32

of versed addicted you say

00:33:35

it but the authorities which

00:33:38

has not which have not

00:33:40

been put out by the

00:33:42

parties. If you're between a

00:33:46

nice since your decision is

00:33:47

especially I can call that

00:33:49

case it becomes very difficult

00:33:54

to fight it and so

00:33:57

you have to take into



00:33:58

account this by us and

00:34:00

this is not the only

00:34:00

by us that you can

00:34:02

have in the process of

00:34:03

a citation. And I fully

00:34:06

agree with that site additions

00:34:08

are a good restaurant to

00:34:10

access the insurance, but it's

00:34:13

a double-edged sword from the

00:34:17

quantitative point of view, of

00:34:19

course, but also and especially

00:34:21

for a qualitative or quantitative

00:34:24

count that there is a



00:34:31

kind of instrument Allison in

00:34:33

citations, you could begin to

00:34:35

siteone the decision of the

00:34:37

icj and then type the

00:34:41

sentence with biking Galaxy J.

00:34:43

And the sentence with fight

00:34:45

this sentence I can get

00:34:46

sentenced yet. Hey sis did

00:34:54

the width in the show

00:34:56

Psych rotation was chosen is

00:34:58

lost. And that you are

00:35:00

not even sure that the

00:35:02

decision itself has really been



00:35:03

considered and you do not

00:35:05

have just the quotation which

00:35:07

has become like a a

00:35:09

vestara grass in introduction and

00:35:12

I'm not sure that all

00:35:13

he does not have any

00:35:14

pictures of right decision of

00:35:18

the Chocolate Factory. The decision

00:35:24

has been right to treat

00:35:25

you just extract one ID

00:35:27

and that's it. So I'm

00:35:29

not sure if we have

00:35:35

to be careful about the



00:35:37
numbers because the numbers can

00:35:39
be misleading in terms of

00:35:41
real real influence at some

00:35:44
point. What is has been

00:35:45
repeatedly put it is somehow

00:35:47
that just did it in

00:35:49
a way which might not

00:35:50
be related to what it

00:35:52
meant initially. So, this is

00:35:55
Jose Baez you can find

00:35:57
in in in the citation.

00:36:00
Consider also the quantity with

00:36:03
Wills Point not so many



00:36:05

decisions by the ICC on

00:36:06

the PC ID with people

00:36:09

have made the cemetery and

00:36:12

been able to come with

00:36:14

a list of her 628

00:36:16

decisions which were in deep.

00:36:18

But at the same time

00:36:21

you from a quiet at

00:36:27

this point has you ever

00:36:29

approaches to two quotations of

00:36:33

the sometimes because the investment

00:36:39

professionals are like the international

00:36:42

court of justice. They may



00:36:43

have to sew legal questions,

00:36:45

which are not necessarily related

00:36:46

to Investments as such. Become

00:36:50

a hodda me have to

00:36:51

so procedural issues. They can

00:36:54

have to sold nationally teachers.

00:36:56

They can have two soap

00:36:57

dishes with track. Of course

00:36:59

the round the core principle

00:37:01

of the core standards of

00:37:02

investment Club. But which are

00:37:04

which also belong to more

00:37:05

general question of international law



00:37:08

and still I would say

00:37:10

that so that we may

00:37:13

have to make a distinction

00:37:14

between case where a general

00:37:19

principle is at issue like

00:37:22

the principal of preparation formulated

00:37:24

in the throes of a

00:37:25

free case, but we can

00:37:27

also have the cases where

00:37:30

private property was at stake

00:37:33

but not the case of

00:37:36

the icj was not based

00:37:38

on an economy at the



00:37:40

same time these issues at

00:37:42

stake or close to what

00:37:44

can occur in an investment

00:37:45

case or cases like you're

00:37:48

not home at 2. Tell

00:37:50

me an interesting necklace Alicia

00:37:52

or or Sioux City where

00:37:56

cases where the ICC was

00:37:58

close to West Indy with

00:38:01

issues which are of Interest

00:38:02

S4 can be of interest

00:38:04

for Investments. Right? We all

00:38:06

know that are not in



00:38:08

this matter as such and

00:38:10

then you have very very

00:38:12

few cases where the ICT

00:38:14

dealt with a investment issues.

00:38:17

And is that already mentioned

00:38:19

this you find mostly Elsie

00:38:22

and I recently and that's

00:38:28

so it doesn't have so

00:38:31

many opportunities to deal with

00:38:33

issues with this meant to

00:38:38

say I'll be treated as

00:38:39

I think we have to

00:38:41

take into account all these



00:38:42

variables to assess the extent

00:38:46

to which the result. A

00:38:51

real interplay between the icg

00:38:53

and investment 30 this interplay.

00:38:58

It could become more important

00:38:59

as to no more cases

00:39:03

when they did the Lucy

00:39:04

related to investment issues, but

00:39:07

this has not been so

00:39:08

much the case so far.

00:39:11

So my diagnosis. Not you're

00:39:15

very optimistic, but my point

00:39:17

was not to be optimistic



00:39:18

or pessimistic. It was more

00:39:20

22 through the game shake

00:39:23

the cash question and asked

00:39:26

why I didn't think we

00:39:28

should be bothered worried by

00:39:30

the fact that there are

00:39:31

not so many fire stations

00:39:32

on one side or on

00:39:34

the other. I thank you

00:39:35

for your attention. Thank you

00:39:38

so much. I'll and I

00:39:39

especially take the point that

00:39:40

sometime citations don't actually believe



00:39:42

means an engagement or having

00:39:45

read the original Source material.

00:39:46

Our decision decision. Is that

00:39:50

Hallmark example of that one?

00:39:53

Let me turn to the

00:39:54

panel here. If anyone wants

00:39:55

to react directly to the

00:39:56

reservoir Islands comments before we

00:39:59

go into stops the related

00:40:01

stop it. Maybe 10-15 minutes.

00:40:05

Thanks elements things right with

00:40:08

you. The fact that Indian

00:40:11

icj a guy CJ an



00:40:12

arbitral tribunal do not deal

00:40:14

with the same a dispute

00:40:16

in charge of subject matter.

00:40:17

And in that sense there

00:40:18

is little room for interaction.

00:40:20

But at the same time

00:40:21

they both deal with their

00:40:23

own International treaties and the

00:40:26

disrespect anything that we would

00:40:28

expect them to enter into

00:40:30

a greater Dialogue on those

00:40:32

general public international issues. We

00:40:34

stay relevant on both sides.



00:40:38

Just a follow-up on the

00:40:43

point. That was just made.

00:40:44

I think that what we

00:40:46

see here is what we

00:40:47

see in most poorest. Well,

00:40:48

at least what I see

00:40:49

in most Parts in my

00:40:50

view is the pragmatism right-wing

00:40:52

when the other court says

00:40:54

something that supports the point

00:40:55

that are the conclusion which

00:40:57

you have reached you adopted

00:40:59

and side to it when



00:41:00

it differs from the conclusion

00:41:02

what you have reached, you

00:41:04

know you that you either

00:41:05

don't say to it or

00:41:06

you see a distinction and

00:41:09

I myself do take some

00:41:11

issue with some of the

00:41:12

distinctions that have been made

00:41:13

in is DS where they

00:41:15

say that some of the

00:41:17

public international law that icj

00:41:19

judgments don't apply because they

00:41:21

are there dealing with disputes



00:41:23

between states or treaties that

00:41:27

involve to State parties and

00:41:29

here were dealing with you

00:41:30

do a dispute between a

00:41:31

state and an investor, but

00:41:33

they forget that that dispute

00:41:34

is based also on a

00:41:36

treaty and the terms Are

00:41:39

governed by a treaty between

00:41:41

two states so involved in

00:41:43

both instances, you're dealing with

00:41:45

a treaty which establishes the

00:41:47

terms and conditions of the



00:41:49
dispute between states which in

00:41:53
ists happens to obviously have

00:41:57
a direct connection to investor.

00:41:58
So I think sometimes that

00:42:00
distinction is pressed to a

00:42:03
bit too far. I may

00:42:18
have a raining in public

00:42:23
international law that way so

00:42:25
I couldn't agree more in

00:42:32
terms of Arts of public

00:42:34
investment treaty arbitration is a

00:42:38
child of of public international

00:42:39
law. It's not private. Those



00:42:48
investment treaty disputes they are

00:42:51
there wouldn't be a dispute.

00:42:55
Call investment treaty arbitration. If

00:42:59
it wasn't public international law

00:43:01
the consent is offered in

00:43:05
a treaty and it is

00:43:07
accepted in a request for

00:43:08
a patrician January from the

00:43:11
start work work. We're in

00:43:13
a system that is part

00:43:14
of public international law now

00:43:16
going back to the to

00:43:17
the discussion on whether or



00:43:21

not we should be mortified

00:43:24

by cross-references both from public

00:43:31

international law dicj and investment

00:43:35

re tribunals. I'm a little

00:43:40

bit of Optimus and it

00:43:42

in the sense that I'm

00:43:43

not mortified by by the

00:43:46

icj Northside thing investor-state arbitration

00:43:50

tribunal some might want Change

00:43:55

faster than you might be

00:43:57

possible. Of course. We have

00:43:59

the obvious yellow case. Where

00:44:02

were they was was was



00:44:04

bothering trying to change everything.

00:44:09

And I have been sending

00:44:11

the Barcelona traction case and

00:44:13

he failed. Because there was

00:44:19

a a customer International rule

00:44:22

that. They didn't want to

00:44:24

change and they didn't know

00:44:27

how many years but more

00:44:28

than three years after after

00:44:30

by Shania traffic. It did

00:44:31

not change it in yellow

00:44:32

that being said and I

00:44:35

would older older very important



00:44:39
information. That Reza has shared

00:44:41
with us in terms of

00:44:42
how many arbitrators are also.

00:44:47
Judges in the icj at

00:44:48
cetera. The reason why I'm

00:44:51
not that it's Mystic on

00:44:53
the influence of investment treaty

00:44:56
arbitration in the icj is

00:44:58
perhaps because there are some

00:45:01
games that you can actually

00:45:02
find within icj decisions were

00:45:06
they might excite the investment

00:45:10
treaty AutoZone Rewards, but if



00:45:14

you look closely and I'll

00:45:16

give you an example when

00:45:17

it's time for me to

00:45:18

talk later. You follow the

00:45:22

rush. Now, you look closely.

00:45:24

They might not fight it

00:45:26

but there's some logical basis

00:45:30

that is very similar to

00:45:31

Backcountry arbitration. So while not

00:45:34

fighting technically citing technical Authority

00:45:39

when you start thinking and

00:45:42

and the concluding proportionality test

00:45:46

Reasonable measures Etc. You start



00:45:50
finding some gems that leads

00:45:52
you to a very easy

00:45:54
to compute. This is not

00:45:56
this is not set. This

00:46:01
this there is a rational

00:46:02
there's a logic to it

00:46:03
and I think that were

00:46:06
judges and arbitrators at the

00:46:07
very least would look at

00:46:09
what has happened before to

00:46:12
be better prepared for their

00:46:13
case. So what that that's

00:46:16
why I'm going roughly by



00:46:17

the citation figures and I'm

00:46:19

rather optimistic on one side

00:46:22

or the other side. I

00:46:23

might be pessimistic on the

00:46:26

other way around but that's

00:46:28

an old custom ISM either

00:46:37

way another great example of

00:46:39

what you're describing is the

00:46:40

core the factory test on

00:46:42

reparations and damages that Helen

00:46:44

also alluded to Go into

00:46:47

that stuff for dip discussion

00:46:49

will start with your thoughts.



00:46:53

I think you're going to

00:46:54

talk to book unreasonable expectations

00:46:58

and legitimate expectations and what

00:46:59

those principles might. Mean and

00:47:03

how they relate to one

00:47:04

another light on. There we

00:47:37

go. I want to talk

00:47:39

to Tuesday's really and and

00:47:43

I'm really thankful to Jamaica

00:47:47

because we went back and

00:47:48

forth as to whether we

00:47:49

were going to do the

00:47:51

interplay on on you. weather



00:48:02

whether we're going to do

00:48:03

mostly in the in the

00:48:05

interplay, we're going to talk

00:48:07

about the influence of public

00:48:09

international law and I see

00:48:11

a judgement in investment re

00:48:13

arbitration or or both and

00:48:16

I was more of the

00:48:17

public international law on investment

00:48:21

arbitration and and and he

00:48:23

kept on going in and

00:48:25

now I'm very thankful because

00:48:27

because there's something to be



00:48:29

said on that and the

00:48:31

and the decision is really

00:48:33

on certain Iranian assets of

00:48:35

Islamic Republic of Iran versus

00:48:38

United States of America that

00:48:40

we don't have time to

00:48:41

go to the whole decision

00:48:42

on this is this is

00:48:43

a case which name Lee

00:48:52

Box has explained by the

00:48:55

fort. took away or or

00:49:00

or or or forgot that

00:49:03

some Iranian entities had their



00:49:07
own legal personality and three

00:49:10
of them simply as as

00:49:11
up as entities that were

00:49:15
an extension of the of

00:49:17
the Iranian government and the

00:49:18
and as a result of

00:49:20
that they were in some

00:49:24
cases treated as a rental

00:49:27
around would argue that manner

00:49:32
and I'm here and of

00:49:35
course took issue with that

00:49:36
and at the end of

00:49:38
the day the decision was



00:49:40
was favorable to run but

00:49:41
in in getting to that

00:49:43
place at one of the

00:49:45
claims was that the US

00:49:48
treated Iran in a reasonable

00:49:51
Manner and when you look

00:49:52
into the arguments that Iran

00:49:54
has put before the court

00:49:56
there is a reference to

00:49:58
there be a reasonable measures

00:50:01
and how do you define

00:50:03
those are reasonable men, so

00:50:05
I want to be I



00:50:08

want I want to read

00:50:09

a passage to you from

00:50:13

the decision in that case.

00:50:17

I don't work from the

00:50:18

arguments that the That you

00:50:26

ran before the court and

00:50:29

basically Rodman teams that were

00:50:31

measured to be reasonable. There

00:50:33

must be a nap or

00:50:35

an appropriate correlation between the

00:50:37

state's public policy objective and

00:50:41

measure adopted to a chili

00:50:43

noting that in a setting



00:50:45
reasonableness tribunals also refer to

00:50:49
the concept of proportionality. So

00:50:52
where does this come from

00:50:55
that. That's one of the

00:50:56
biggest question. So if you

00:50:59
have looked into investor-state arbitration

00:51:02
Awards, you might note that

00:51:06
that is a rule that

00:51:10
was put before other Parties

00:51:13
by the tribunal in Occidental

00:51:15
and there's no citation there.

00:51:22
Then you go into the

00:51:23
decision, right you going to



00:51:25

the decision let's go and

00:51:27

look into the decision to

00:51:29

proportionality has there being some

00:51:33

correlation between the objective that

00:51:37

the state 6 and the

00:51:39

measure that it imposes if

00:51:42

that correlation is is is

00:51:43

too far apart. Then the

00:51:46

measure is not proportional and

00:51:48

then investor morning to the

00:51:51

Occidental tribunals. the investor could

00:51:55

say well I was mistreated

00:51:57

my The way I was



00:51:59

treated was was too harsh.

00:52:01

They could have done something

00:52:03

else with me. So and

00:52:10

then we go into into

00:52:12

the actual. Conclusion of the

00:52:17

Court says 147 148 149

00:52:27

in view of the core

00:52:28

of this is of course

00:52:29

a summary of the Court.

00:52:32

The measure is unreasonable within

00:52:34

the meaning of the Treaty

00:52:36

of Amity. If it doesn't

00:52:37

it does not pursue a



00:52:39
legitimate public purpose. That's your

00:52:42
jacket. We're not there. We're

00:52:43
not in the Charlotte area

00:52:44
yet. There is no relationship

00:52:47
between the purpose pursued and

00:52:49
the measure and now we're

00:52:51
getting closer. And if its

00:52:56
adverse impact is manifestly excessive

00:52:58
in relation to the purpose

00:53:01
Pursuit. So the two last

00:53:03
paragraph paragraph 148 and 149.

00:53:06
Are are those that I

00:53:10
wouldn't dare saying this for



00:53:14

sure but why we can

00:53:15

start assimilating to the proportionality

00:53:17

test to some extent. There's

00:53:19

no citation. There's no reference

00:53:21

to The Accidental versus Ecuador

00:53:23

case but in the thinking

00:53:26

of the Court it is

00:53:28

Alyssa Matthew almost impossible that

00:53:31

some logic will not go

00:53:33

into the into the thoughts

00:53:34

of the arbitrator's from one

00:53:37

end to the other. It

00:53:38

is a natural process. I



00:53:40

mean, I'm not I cannot

00:53:42

claim that I am. An

00:53:46

individual that stings and sprayed

00:53:48

it on his own all

00:53:50

the time influenced by what

00:53:52

I read by by what

00:53:54

I watch the same process

00:53:56

may happen. Here. It is

00:53:57

there's no citation. So that

00:53:59

that's why I'm saying that

00:54:00

they may be getting there

00:54:03

other evidence of that influence.

00:54:05

Well as as Reza's indicated,



00:54:08

the the separate opinions are

00:54:10

there and and as we

00:54:13

know today separate opinions might

00:54:15

be a majority opinion in

00:54:16

some case. That's not good.

00:54:20

But but it does happen

00:54:22

in the law. So that's

00:54:24

that's my first one and

00:54:25

then I can I can

00:54:26

later on move on into

00:54:29

the the other interplay the

00:54:31

influence of public international law

00:54:34

in West Virginia arbitration where



00:54:36
there's also I'm taking a

00:54:42
nap on basis of some

00:54:45
rules of being considered or

00:54:50
investment tribunals. And yes, I'm

00:54:57
mindful that we started about

00:54:58
20 minutes late. So if

00:54:59
you are awesome, I think

00:55:06
it's a great transition point

00:55:08
for us to go to

00:55:08
Yummy thinking about the human

00:55:11
element and its lenses individuals

00:55:16
in the things that they

00:55:17
have selected and thought about



00:55:18

not only as individuals but

00:55:22

also as an institution, what

00:55:23

is that sociological to mention

00:55:25

really? Thank you. Thank you,

00:55:30

Karen many. Thanks for letting

00:55:34

me know today. So I

00:55:36

will indeed look at it

00:55:37

from a sociological perspective. Focusing

00:55:42

on both sides of the

00:55:43

coin so the interaction of

00:55:45

dicjk throw in a before

00:55:46

practice and the other way

00:55:49

around and I will address



00:55:50

to main issues. So first

00:55:52

of all, I would like

00:55:53

to get back to initial

00:55:55

Ellen Touch phone, which is

00:55:56

why does it matter? I

00:55:59

think I will try to

00:56:01

sink in chance of interaction

00:56:02

between the icj and after

00:56:04

practice and then I will

00:56:05

move on to discussing the

00:56:07

reason why Indian tourist attraction

00:56:11

between the court and advertising

00:56:14

or at least you focus



00:56:15

on the words that India

00:56:17

has while working is worse

00:56:19

and see what matters may

00:56:20

be issued which I think

00:56:23

is a foundational issue. Why

00:56:27

do we care about the

00:56:29

dialogue between the isolation album

00:56:30

still practice in every right

00:56:32

to care about that? And

00:56:33

I think that these bags

00:56:34

are fundamental question, which is

00:56:35

the extent to which the

00:56:37

icj and belong to the



00:56:40

same universe or not. It's

00:56:42

only if you consider that

00:56:44

the universe is important issues

00:56:49

of coherence and fragmentation, I

00:56:51

also So I think there

00:56:57

is enough pictures. I didn't

00:56:58

hear you mention that both

00:57:00

of you like that with

00:57:03

our talking about many investment

00:57:05

treaty arbitration. And I think

00:57:06

that the participation of the

00:57:08

seed as of 1959 with

00:57:10

the conclusion of the first



00:57:11

guy to begin timing in

00:57:12

Pakistan has really attached International

00:57:17

Investment arbitration to notify his

00:57:21

respect and is likely explains

00:57:23

why for instance the tribunal

00:57:24

in Phoenix argue that Indian

00:57:27

deities cannot be read and

00:57:29

interpreted in isolation from Quebec

00:57:32

International General principle. That being

00:57:38

said it seems that some

00:57:41

disagree on that only pays

00:57:43

them are very cautious in

00:57:46

considering arbitral tribunal in day-to-day



00:57:49

as belonging to the same

00:57:50

universe. Don't you look at

00:57:57

International International commission and the

00:58:01

report on the fragmentation of

00:58:03

international law and use the

00:58:09

term exotic to characterize as

00:58:14

if it was something very

00:58:16

nice. You look at investment

00:58:20

experts you're so fine some

00:58:22

religion and some skepticism about

00:58:24

the fact that they belong

00:58:26

to the same universe that

00:58:32

is dramatically different from anything



00:58:36
previously known in the international

00:58:39
sphere again, as is investment

00:58:41
wannabe tration was its own

00:58:44
Universe. This is not the

00:58:48
issue. That's an issue with

00:58:50
matters in practice as his

00:58:52
insurance is per game whether

00:58:54
or not the dialog it

00:58:55
is irrelevant. I'm not in

00:58:57
whether we should worry about

00:58:58
the fragmentation in particular as

00:59:01
regard General International. Second point

00:59:06
so why is there so



00:59:08

listen a indicator of the

00:59:11

icj and indicates a low

00:59:13

of arbitral tribunal as regard

00:59:16

is so obviously and this

00:59:21

is something that both Ellen

00:59:23

and raise a stress test

00:59:24

subject matter of the dispute

00:59:27

a very different which plays

00:59:28

a role in why there

00:59:29

is not messy pets. I

00:59:34

think that other reason so

00:59:35

I will look at it

00:59:35

from the true perspective starting



00:59:37
with a d a s

00:59:39
pass library then toothpaste more

00:59:42
generally. So why there is

00:59:44
there any tourist attractions in

00:59:47
dicjk? So I think that

00:59:48
two main reasons one pertain

00:59:51
to the perception that the

00:59:53
court has of itself as

00:59:58
of a between a dry

00:59:59
sauna start with depression that

01:00:02
do course as officer. Do

01:00:05
we know that the core

01:00:06
is the principal of a



01:00:08

Judicial organ of the United

01:00:10

Nations article 92 of the

01:00:12

UN Charter, but you know

01:00:13

where the cord goes one

01:00:15

step further looking at it

01:00:17

as the organ of international

01:00:20

law discussed by the force

01:00:22

in the Crawford Channel Cay.

01:00:25

So this explains that this

01:00:27

was my Seafood by Mendelssohn

01:00:29

why the eye feature regarded

01:00:31

as the Supreme tribunal? This

01:00:39

is somehow the way to



01:00:41

cause you so why would

01:00:43

a serpent go to bother

01:00:45

to take into account \$22

01:00:48

with other International court and

01:00:51

to be fair in the

01:00:53

Kaysville is not only very

01:00:55

little on the case as

01:01:01

they got the case will

01:01:11

seconds Reason, I think the

01:01:15

perception that the court as

01:01:18

of arbitral tribunal as powerful

01:01:26

as a sister that I'm

01:01:28

not sure that I see



01:01:29

Jay look at our field

01:01:30

as a system in percentage

01:01:32

of pressure in that order

01:01:35

quote or feeling is just

01:01:37

a collection of individuals specific

01:01:42

regime's existing in isolation or

01:01:46

being their own Bible with

01:01:49

the word with p i

01:01:50

t stands out. So the

01:01:52

perception of the court that

01:01:54

there is no such thing

01:01:54

as International Investment for navigation

01:01:57

system. Second reason why I



01:02:04
think the court is a

01:02:06
very reluctant. Consistency obviously, I

01:02:14
think driving or driving out

01:02:17
to Treasures which is a

01:02:18
real medicine. This becomes difficult

01:02:20
for court to rely on

01:02:22
any disagreement. So if you

01:02:29
use what do you focus

01:02:35
on what do you rely

01:02:36
on insects the fragmented contacts

01:02:38
or something that you stayed?

01:02:43
And then what's your favorite

01:02:47
tea? That's the case of



01:02:50
arbitral tribunals have taking into

01:02:53
account the game the lack

01:02:54
of coherence. So course they

01:02:57
rely on plastic judicial decision

01:02:59
not a little shed light

01:03:00
of meaning but also to

01:03:02
convince that they made the

01:03:03
right interpreted. Chorizo. It's a

01:03:05
matter of conviction persuasion argumentation.

01:03:08
Any disrespect. That's true. The

01:03:11
fragmentation of caseload contacting juice

01:03:14
doesn't help in convincing the

01:03:17
audience and that the right



01:03:20

choice was was made. No,

01:03:23

let's look at the shoot

01:03:25

the reasons why there was

01:03:26

little from the perspective of

01:03:28

arbitral tribunal. So why they're

01:03:30

leasing reference to the icj

01:03:31

caseload in in our fit?

01:03:33

What I think are the

01:03:35

key word. Is it originated

01:03:37

e&n diversity and I seen

01:03:39

this as an impact both

01:03:40

in terms of knowledge and

01:03:41

again argumentation. It's obvious that



01:03:45

we all come from different

01:03:47

backgrounds or do we may

01:03:49

have different hats and that's

01:03:52

the beauty. I think I've

01:03:53

ever seen that nice exchange

01:03:56

of views. And in any

01:03:57

experience with the point is

01:03:59

that our Point of Departure

01:04:01

has different meaning in that

01:04:03

case that some have a

01:04:04

better knowledge of international General

01:04:07

and specific a better knowledge

01:04:09

of the case law. I



01:04:10

see Jay and PCH. So

01:04:13

we all know that the

01:04:15

Court's supposed to know the

01:04:16

low you handed it to

01:04:18

hear but but is that

01:04:19

the court does not always

01:04:21

a d i c k

01:04:24

slow and pch in a

01:04:34

way of the primary responsibility

01:04:36

to bring to be pragmatic

01:04:38

and to bring the CD

01:04:41

case do which is best

01:04:43

for the distance of the



01:04:44

interests of their clients and

01:04:45

maybe they do not do

01:04:47

that sufficiently and this matter

01:04:51

of knowledge 10% goes to

01:04:53

arbitration and to consult in

01:04:57

in the preceding. Can you

01:05:04

see clearly when you go

01:05:05

through a word when there

01:05:07

is a topic International you're

01:05:08

sitting on the day and

01:05:11

in particular when you look

01:05:12

at dissenting opinion, and again,

01:05:17

I think it's a matter



01:05:18
of argumentation and persuasion. Began

01:05:23
referring to Pasta Vita rewards

01:05:25
referring to Tasha before The

01:05:26
Season's yeah, he's not going

01:05:27
to shed light on. This

01:05:29
is too and I need

01:05:31
to back up to justify

01:05:32
the chores that you made

01:05:33
to convince your body programming.

01:05:36
Our feeling is that the

01:05:37
audience is very diverse. So

01:05:41
you don't choose to send

01:05:42
two depending on the part



01:05:44

of your dreams. You want

01:05:45

to convince any disrespect relying

01:05:47

on dicjk slow major very

01:05:49

powerful concession to when you're

01:05:51

speaking to the Quebec International

01:05:52

part of the audience that

01:05:54

the authority is not as

01:05:56

important when you're on a

01:05:58

box of the address of

01:06:00

arbitral tribunal. So that's also

01:06:02

an additional reason. I think

01:06:04

why there is no Death

01:06:05

Match reference to itek slow



01:06:07

in orbit room just to

01:06:11

complete if you were also

01:06:12

on the human factor individual

01:06:15

the fact that has mentioned

01:06:19

in particular. Constantly you used

01:06:25

to have arbitrators sitting on

01:06:28

the IC Key Bank so

01:06:29

I can do even though

01:06:31

they cannot destroy now. Let

01:06:34

us be traitorous day after

01:06:35

his background and his knowledge.

01:06:37

And I seen that they

01:06:38

already have the potential to



01:06:39

be a chance for the

01:06:41

prospect relation between what are

01:06:58

some of the procedural advocacy

01:07:00

and other cross-pollination that you

01:07:03

see a thank you. Yes.

01:07:07

So I've been asked

01:07:08

to speak to you about

01:07:09

the interplay in terms of

01:07:11

how to fix the practice

01:07:12

between the two regimes on

01:07:14

from a practitioner's perspective. So

01:07:17

what we see is that

01:07:18

they are changing on duty.



01:07:21

Combination of at least two

01:07:23

things one is the the

01:07:25

inner play that in the

01:07:26

cross fertilization that we've been

01:07:27

speaking about today influencing one

01:07:30

in the other the other

01:07:31

is that they're both respond

01:07:33

to the same on external

01:07:35

circumstances of the increasing use

01:07:38

and demands of international dispute

01:07:41

resolution in both of those

01:07:42

are leading them in some

01:07:44

ways closer together and in



01:07:46
some ways further apart. So

01:07:48
I'm going to focus on

01:07:49
three ways in which I

01:07:50
see them coming together and

01:07:52
three ways where these these

01:07:54
in her place and pressures

01:07:55
are driving them apart in

01:07:57
terms of the process. So

01:07:59
is in relation to coming

01:08:01
together, the first issue is

01:08:04
the examination of witnesses and

01:08:07
experts in ICS. It has

01:08:11
had an influence I would



01:08:12

argue on the icj, especially

01:08:16

if we talked about the

01:08:17

human factor by c h

01:08:18

i just participating sometimes in

01:08:20

international Such a p i

01:08:24

c j has become progressively

01:08:25

more open to cross-examination previously.

01:08:29

There was very little if

01:08:31

any cross-examination in court proceedings.

01:08:33

I can remember in the

01:08:36

pulp Mills case many years

01:08:38

ago where Council had a

01:08:41

technical experts which were advising



01:08:44

them on both sides. And

01:08:46

the question was put between

01:08:47

Council and with the court.

01:08:49

How should we handle them?

01:08:50

The decision was ultimately reach

01:08:52

that they those experts were

01:08:54

presented as part of the

01:08:56

legal team that was been

01:08:58

presenting to the court in

01:09:00

the oral hearing this then

01:09:03

resulted in some separate opinions

01:09:06

when the Judgment was released

01:09:08

raising this issue and questioning



01:09:10

how you know how the

01:09:12

technical experts should be presented

01:09:14

to the court because of

01:09:15

course when they are part

01:09:16

of the team, there's no

01:09:17

opportunity for cross-examination in ICS.

01:09:21

We know that cross-examination has

01:09:23

been very prevalent who it's

01:09:25

been a long long time

01:09:27

intrical aspect of those proceedings.

01:09:31

And in many ways formed

01:09:33

the core of the oral

01:09:35

hearings were it takes up



01:09:36

mute most of the time

01:09:37

and attention of those that

01:09:39

are there and I think

01:09:41

again as we talked about

01:09:43

the human factor, the icj

01:09:45

judges have seen both how

01:09:47

it can be handled that

01:09:49

it can be done in

01:09:50

the context of counsel representing

01:09:52

states that is appropriate and

01:09:54

also that it can be

01:09:55

done in the context of

01:09:56

mixed civil and common law



01:09:58

system or people are coming

01:10:00

from different kind of legal

01:10:03

and practical approaches as to

01:10:04

how these things should be

01:10:05

conducted. And of course, we

01:10:07

know that common law lawyers

01:10:08

in many instances are more

01:10:09

familiar with this practice of

01:10:12

cross-examination. So now we do

01:10:14

see that the court is

01:10:16

very much increasingly using cross-examination

01:10:19

both with Witnesses and with

01:10:21

experts It has now become



01:10:22

a much more regular process.

01:10:25

The second way in which

01:10:26

we see them coming together

01:10:28

on this inner play coming

01:10:30

into practice is on a

01:10:32

presentation in oral argument. The

01:10:35

icj has historically had a

01:10:38

very formal oral hearing and

01:10:41

proceeding and also as part

01:10:43

of this there's a requirement

01:10:44

that the arguments be translated

01:10:48

between the two official you

01:10:49

and language is adopted by



01:10:51

the court of French and

01:10:52

English. This has resulted in

01:10:54

that Council have to prepare

01:10:57

their speeches in advanced present

01:10:59

those peaches to the translators

01:11:01

before they're their presentation to

01:11:05

the court and then more

01:11:07

or less in order to

01:11:08

facilitate, you know, the orderly

01:11:10

conduct of the preceding sticks

01:11:12

to that free prepared speech

01:11:14

Now by contrast we see

01:11:16

in investment arbitration that the



01:11:18

oral presentations are much more

01:11:20

at Hawk much more flexible

01:11:22

even with the use of

01:11:24

translation. Which also has its

01:11:27

own technical issues and is

01:11:29

not without problems, but it's

01:11:31

certainly a much more flexible.

01:11:33

Roisin. I do see that

01:11:37

the court is moving in

01:11:38

the direction of allowing Council

01:11:40

to provide kind of less

01:11:42

rigid presentations and also becoming

01:11:46

more open to the use



01:11:47

of other languages as we've

01:11:48

seen in the recent dive

01:11:50

hearings involving Venezuela where Spanish

01:11:53

was permitted which you know

01:11:55

after many decades is is

01:11:57

I think a welcome change

01:12:00

The third way in which

01:12:02

I see them coming together

01:12:05

in terms of practice is

01:12:07

that years ago? I would

01:12:09

say in both regimes you

01:12:11

counseled attitude and approach was

01:12:13

generally one of being highly



01:12:15
polite and to put it

01:12:16
in a certain way kind

01:12:18
of white gloves. And this

01:12:20
was because again going to

01:12:22
the Cuban and institutional factors,

01:12:24
it was more or less

01:12:25
a small Club of people

01:12:27
who often interacted and this

01:12:29
was particularly true in the

01:12:31
case of the icj where

01:12:34
you had a group of

01:12:35
practitioners in academics who one

01:12:38
day would be arguing on



01:12:40
opposite sides of the court

01:12:42
and the next day would

01:12:43
be on the same team.

01:12:44
And so there was this

01:12:46
a mutual respect and professionalism

01:12:49
because they knew that they

01:12:50
would have these feature interactions

01:12:52
along with other factors and

01:12:55
I I recall again many

01:12:57
years ago in the Nicaragua

01:12:59
work in the Sprouts Costa

01:13:00
Rica case is one of

01:13:01
the earlier ones there been



01:13:02

several in which Ian Brownlee

01:13:05

and left but I would

01:13:07

often disagree on issues of

01:13:08

substance and they would have

01:13:10

very strong views on those

01:13:12

issues of substance, but they

01:13:13

would always be mutually respectful

01:13:16

and stick to the substance

01:13:18

in their disagreements because it's

01:13:20

again one day they would

01:13:22

be on the same side

01:13:23

in the next day. They

01:13:23

be on opposite sides and



01:13:25

there was this mutual respect

01:13:27

and understanding among the practitioners.

01:13:29

Now what we see is

01:13:31

that overtime certainly ICS has

01:13:35

expanded to be much more

01:13:37

exclusive which is very welcome

01:13:38

and the icj has more

01:13:41

slowly also expanded from this

01:13:44

small Club of practitioners and

01:13:47

we all welcome and once

01:13:49

that increasing inclusivity and diversity

01:13:53

and hopefully there will be

01:13:54

more of it in the



01:13:55

future. But with that I

01:13:57

would argue with that expansion

01:13:59

has become an egg. Expansion

01:14:00

in the kind of social

01:14:02

mores of how counsel approach

01:14:04

advocacy in there and approached

01:14:07

their interactions and conduct themselves

01:14:11

again, I think arguably what

01:14:15

we see is that have

01:14:16

as both have expanded the

01:14:18

white gloves have more often

01:14:19

come off in the boxing

01:14:21

gloves have come on and



01:14:25

I will and I would

01:14:28

say that while I think

01:14:30

I welcome that variety the

01:14:32

variety that comes with inclusivity

01:14:33

with diversity and with different

01:14:36

advocacy a protest in my

01:14:38

view the most successful and

01:14:40

convincing approach is to continue

01:14:43

to take the high road

01:14:44

and to have respectful disagreement.

01:14:50

Now in terms of how

01:14:52

I see them getting further

01:14:53

apart again three topics. The



01:14:57

first is well before I

01:15:00

get into the topics. I

01:15:01

think a lot of this

01:15:02

again. I talked it we

01:15:04

talked about the interplay for

01:15:05

the interplay has its limitations.

01:15:07

I see where I see

01:15:08

them getting further part is

01:15:09

I would argue more from

01:15:11

external pressures of the more

01:15:14

demand for their services and

01:15:16

more use of international dispute

01:15:19

resolution. And the interesting part



01:15:21
is out. Of course, the

01:15:22
icj is inherently limited and

01:15:26
how it can respond and

01:15:27
expand to deal with that

01:15:29
increasing you it's a set

01:15:31
number of Judges. It's a

01:15:33
set number of Staff who

01:15:34
work there. It's a set

01:15:36
rules and schedule of what

01:15:37
it can accommodate. Whereas an

01:15:39
ICS you can have ever

01:15:41
more arbitrators Evermore tribunal and

01:15:44
there are many different in



01:15:45
our International arbitration institutions ready

01:15:48
to support and expands and

01:15:50
Beast. In response to the

01:15:51
increasing demand. So for example

01:15:54
of evidence in Britain's leading

01:15:57
what we've seen the court

01:16:00
that whereas when is DST

01:16:02
says there's been an evolution

01:16:04
of ever more complex cases

01:16:06
and more and more evidence

01:16:08
being presented to the tribunal

01:16:10
often resulting in expanded pleadings

01:16:13
with thousands of pages of



01:16:15
exhibits and evidence. Now, we

01:16:17
have the court going in

01:16:19
the opposite direction where it

01:16:20
has specifically limited pleadings to

01:16:23
750 Pages. It's not clear

01:16:27
of this limitation apply strictly

01:16:29
to the main cleaning itself

01:16:30
for all volumes of the

01:16:32
of the bleeding on the

01:16:34
sounds like quite a lot

01:16:36
on but if you think

01:16:36
about it, if you have

01:16:38
a say a 350 page



01:16:40
pleading and each exhibit is

01:16:42
one page. That means you

01:16:45
can have one exhibit cited

01:16:47
per page of the bleeding

01:16:48
and Has results in a

01:16:51
lot of creative engineering by

01:16:54
by counsel mainly having to

01:16:57
be quite conservative in in

01:16:59
supporting the statements that they're

01:17:01
making before the court with

01:17:03
evidence and secondly extreme excerpting

01:17:06
which as we know often

01:17:08
at when things are excerpted



01:17:10
too far, you lose a

01:17:11
lot of the fundamental contacts

01:17:13
and things can be misused

01:17:15
and misapplied. The second is

01:17:19
evidence in hearing so used

01:17:21
to have been securing here

01:17:23
there. I see increasing Divergence

01:17:25
where the court is by

01:17:26
contrast more permissive than an

01:17:29
investment arbitration in a mess

01:17:32
when arbitration hearings generally do

01:17:35
not allow the use of

01:17:36
new evidence at the hearing



01:17:37
or in the lead-up to

01:17:39
the hearing and it if

01:17:40
it's allowed at all. It's

01:17:42
under a kind of exceptional

01:17:43
circumstances that you have to

01:17:45
argue for and substantiate. Whereas

01:17:50
Ic] any source that is

01:17:53
publicly available can be raised

01:17:56
in the oral argument which

01:17:59
you can imagine leads to

01:18:00
much more surprises before what

01:18:03
is normally a fight being

01:18:05
rigid environment then and investment



01:18:08
arbitration. And then the third

01:18:11
way in which I see

01:18:12
them going diverging more is

01:18:16
in provisional measures again, you

01:18:18
have the court more frequently

01:18:20
seen cases where provisional measures

01:18:22
are quite urgent and quite

01:18:24
important as we have a

01:18:26
lot of issues of Interstate

01:18:28
aggression War Etc. And this

01:18:33
has forced to move much

01:18:34
faster than it has done

01:18:36
in the past and arguably



01:18:38

in that process has had

01:18:39

to give up some to

01:18:40

process opportunities. Now what we

01:18:45

see more in in this

01:18:47

trend is that the court

01:18:48

allows the applicant to present

01:18:49

the request for provisional measures

01:18:51

a hearing is quickly sat.

01:18:53

There is no written response

01:18:55

by the other party and

01:18:58

then they go to the

01:18:59

oral hearing the application again

01:19:01

presents their course, they're at



01:19:03
their case orally and then

01:19:04
for the first time the

01:19:06
other party presents its view

01:19:08
on on the very For

01:19:10
informational mattress request being made

01:19:12
on the same day. There

01:19:14
is no possibility for the

01:19:16
applicant to respond to those

01:19:18
counter-arguments which have been raised

01:19:20
for the first time that

01:19:21
day and then a decision

01:19:23
is released. Now, we see

01:19:26
an investment arbitration that there



01:19:29
is usually much more opportunity

01:19:31
for the parties to present

01:19:33
their case and Advocates both

01:19:35
in writing and orally and

01:19:38
again, this is I think

01:19:39
because the tribunals are more

01:19:41
able to act nimbly flexibly

01:19:44
convening more quickly under her

01:19:46
tongue out with virtual conferencing

01:19:48
a more Adept at of

01:19:49
ability to use, you know,

01:19:51
it's evidence and and pleadings

01:19:54
in a way that allows



01:19:55
for more but a fast

01:19:59
process but with you Noah,

01:20:00
perhaps arguably a bit more

01:20:02
due process in in in

01:20:03
in the process. So that's

01:20:09
the kind of quick overview.

01:20:10
I would say of where

01:20:11
I see them coming together

01:20:12
and going further apart as

01:20:14
a result of the interplay

01:20:15
between each other in the

01:20:16
interplay with what I think

01:20:18
is going to continue to



01:20:19

be increasing use of both

01:20:21

regimes by by the party's.

01:20:25

I do think that this

01:20:27

interplay is likely to increase

01:20:29

over time because these demands

01:20:31

are going to increase over

01:20:33

time and as we've has

01:20:35

been mentioned many times today

01:20:36

because you see both counsel

01:20:39

and the charges are arbitrators

01:20:41

kind of moving between Both

01:20:43

Worlds and taking the things

01:20:45

that they learn from one



01:20:46
world and applying it to

01:20:47
the other but we have

01:20:48
to not recognize. I think

01:20:50
that'll be slowed or or

01:20:52
affected by the limitation placed

01:20:54
by the Court's recent double

01:20:57
having restriction. Thank you. Carla

01:21:00
was fascinating. I haven't forgotten

01:21:03
that we have colleagues with

01:21:04
us. Virtually. You're probably itching

01:21:06
to react to every message

01:21:07
from said I'm also mindful

01:21:09
of the time. So I



01:21:10

just very briefly before we

01:21:12

closed the session and maybe

01:21:13

we can leave questions and

01:21:14

answers for mingling and mixing

01:21:16

after we formally food. But

01:21:18

before we do that, let

01:21:19

me try and back to

01:21:20

Reza and then see them

01:21:22

in the comments. Thank you

01:21:29

very much. I think what

01:21:30

is very amazing about this

01:21:34

panel is that the almost

01:21:36

all agree on the human



01:21:38
factor in the significance of

01:21:39
the human factor and all

01:21:41
the discussion all that reminds

01:21:42
me of a quotation in

01:21:44
a movie that I saw

01:21:45
a few. Yes. I tried

01:21:47
to kill. Well, I counseled

01:21:49
refer to his client and

01:21:52
he said that the eyes

01:21:53
of the Lord human eyes.

01:21:55
So this is a very

01:21:57
important factor that we have

01:21:58
to always a bear in



01:21:59
mind. I have three comments

01:22:02
for a unique Clara and

01:22:06
Jose and maybe a question

01:22:08
for Atlanta. First of all,

01:22:11
it was amazing what you

01:22:13
said Jose about the sub

01:22:15
starting a specs on the

01:22:16
fact that what matters is

01:22:17
actual influence not a citation

01:22:20
that being expressly made. This

01:22:23
is very important in this

01:22:24
is something that I completely

01:22:25
agree with you. I think



01:22:27

you're afraid to f e

01:22:28

t so I confine myself

01:22:29

to motz's relating to a

01:22:31

PT. So when the court

01:22:34

was discussing the gist of

01:22:35

the Court's judgment was on

01:22:36

the issue of reasonableness of

01:22:37

substantive matters affecting the notion

01:22:42

of reasonableness three elements that

01:22:44

the quote sent out and

01:22:46

if you review the jurisprudence

01:22:47

of investment research articles on

01:22:49

on matters of the issues



01:22:52
of fair and Equitable treatment

01:22:53
when they when they were

01:22:54
interpreting Reasonableness attend the Powerpuff

01:22:58
one of the ECT you

01:23:01
can see a trend as

01:23:03
starting from siluca and in

01:23:05
the car fixed after bitwit

01:23:07
solute, and then you have

01:23:09
a case against Costa Rica

01:23:10
in 2012. And then you

01:23:11
have Nicolas against Romania. I'm

01:23:14
in the context of the

01:23:15
ECT. You also have many



01:23:16
of those getting to the

01:23:17
2020 Olympics taking rreef against

01:23:21
spank. You see that Trend

01:23:23
it's getting more sophisticated the

01:23:25
dice to dissect of the

01:23:27
reasonableness notion and the quote

01:23:29
goes along the same way

01:23:31
without citing any of these

01:23:33
tribunals. This is very important.

01:23:34
This is very interesting but

01:23:36
you mentioned so I thought

01:23:38
I should share that with

01:23:39
you and then to jaunich



01:23:42

about the the fact that

01:23:43

these two regimes they both

01:23:46

play Within the territory of

01:23:48

public international law and I

01:23:51

had a third section for

01:23:52

my presentation, but I have

01:23:53

to exercise a nuclear option.

01:23:55

Not referring to it, but

01:23:56

the comments made me provide

01:23:59

an opportunity for me to

01:24:00

also refer to some of

01:24:02

my discussions and I just

01:24:04

want to don't don't don't



01:24:05

be afraid. I'm looking to

01:24:06

see if it's a whole

01:24:07

section, but I'm just going

01:24:09

to say that the contributions

01:24:11

by investor-state dispute settlement tribunals

01:24:14

in the areas that they

01:24:17

are not so these are

01:24:19

areas which old acquaintance tribunals

01:24:21

on the international plane to

01:24:22

refer to they did they

01:24:23

make contributions by the contributions

01:24:25

of investing in more specific.

01:24:29

Put it on the issue



01:24:30
of compensation location of Riders

01:24:32
by my count icj has

01:24:34
only awarded compensation in full

01:24:36
cases. And so when do

01:24:38
occasion arises the best source

01:24:40
to refer to is the

01:24:42
investment disputes settlement because they

01:24:45
have dealt with almost every

01:24:48
conceivable head of damage in

01:24:50
every imaginable factual scenario. This

01:24:53
is a very good source

01:24:54
and if you refer to

01:24:55
the eye I suggest all



01:24:57
together just a responsibility for

01:24:58
international wrong from Act of

01:24:59
2001. And that's even before

01:25:01
the Baby Boomers olders Ice-T

01:25:03
simple words that start with

01:25:05
reference to that you let

01:25:06
the fire and also a

01:25:09
more general area is the

01:25:11
interpretation and if you refer

01:25:13
to the ioc articles of

01:25:16
conclusion since of secret agreement

01:25:18
as practice of 2018, you

01:25:20
see specific references to the



01:25:22

practice of us dies and

01:25:24

subsequent criminal subsequent practice of

01:25:26

treating deportation. So it to

01:25:28

borrow the times of the

01:25:29

generals in the military when

01:25:31

they want to buy a

01:25:32

new weapon systems. They just

01:25:35

don't consider whether it is

01:25:36

nice and you in a

01:25:37

small portable said whether they

01:25:39

are battle-tested and I think

01:25:40

these are investment Treaty of

01:25:42

the Woods by being inside



01:25:43

of you by being sighted

01:25:45

by a very important organ

01:25:47

of international do the name

01:25:48

did the IRC. They are

01:25:49

indeed battle-tested and they could

01:25:51

be relied upon by the

01:25:53

icj. Whether they refer refer

01:25:57

to express your not happy

01:25:58

and I want one important

01:26:00

point that I mentioned was

01:26:02

about the difference in in

01:26:04

probably probable difference in add

01:26:06

to notes and that the



01:26:08

issue is. I understand that

01:26:11

the modern treaties are much

01:26:13

more sophisticated in terms of

01:26:14

the formulation of Standards standards

01:26:16

of treatment, but dead all

01:26:19

the duration of the ideas,

01:26:20

which are mainly is still

01:26:22

the basis of the Shadows

01:26:30

that are set out in

01:26:32

the FC ends. So this

01:26:35

is all I wanted to

01:26:36

share this as some food

01:26:38

for thought for future discussion



01:26:40

to elicit some discussion to

01:26:42

what extent of substantive law

01:26:43

makes a difference in the

01:26:45

distance of the protection and

01:26:47

I'm going back to the

01:26:50

other one final question maybe

01:26:51

for a land because it

01:26:53

was also Bothering my mind

01:26:55

I didn't have an announcer

01:26:56

for and maybe Alan can

01:26:57

help me with that. I

01:27:00

used you as a reference

01:27:01

that's exceptionally mentioned, but it's



01:27:07

interesting that in the boat

01:27:10

rentals by interested or arbitration

01:27:12

tribunals. They have heart problems,

01:27:14

especially as of the baby

01:27:17

as of 1990 they get

01:27:18

a lot of references in

01:27:20

the icj judgments, and I'm

01:27:23

wondering why what was the

01:27:25

different is what makes the

01:27:27

difference that the is DSS

01:27:28

does not get proper references,

01:27:29

but the interstate arbitrations they

01:27:32

get reference because they are



01:27:33
interested or because there is

01:27:34
another concern or observation. Thank

01:27:37
you very much. Thank you,

01:27:40
brother. So now I can

01:27:41
be super Minds all the

01:27:42
time. I turn to Allen's

01:27:43
have the very last word.

01:27:47
Clarification maybe I was wrong

01:27:53
mentioning the show of optimism

01:27:55
or pessimism because it was

01:27:57
value judgment, which had nothing

01:27:58
to do in the world.

01:27:59
This was not my point.



01:28:02

I don't know either one

01:28:03

of your other and just

01:28:05

interested in in in in

01:28:07

in reflecting on that and

01:28:09

I found the discussion Rene

01:28:10

ice when you share the

01:28:13

view, which was the express

01:28:15

that we are the public

01:28:16

did I mention of isds

01:28:18

decide that it belongs to

01:28:19

to international law and and

01:28:22

sometimes I'm disturbed with people

01:28:25

who poos International and investment



01:28:28

law breakers for me. We

01:28:29

are in the same real

01:28:31

ID to dialogue is absolutely

01:28:34

necessary and education as well

01:28:37

and that I could see

01:28:40

and the line the fact

01:28:42

that is so many people

01:28:42

have progressed in her getting

01:28:44

knowledge. Still that indeed it

01:28:49

can only three Godfather dialogues

01:28:52

but I do the same

01:28:53

time I stick to to

01:28:55

to the idea that most



01:28:57

of the time quotations or

01:29:00

abortionist a cute pick and

01:29:02

choose what is useful for

01:29:03

your case and you just

01:29:05

dropped the rest. And so

01:29:07

this about your sister did

01:29:13

the results of the game

01:29:15

as it is currently no

01:29:17

no problem with that but

01:29:19

it is difficult to find

01:29:21

real Saturn has was underlined

01:29:26

by the fact remains extremely

01:29:32

extremely important and we wouldn't



01:29:35

have this debate it with

01:29:36

if we wouldn't have had

01:29:38

more and more public International

01:29:39

lawyers clean the room in

01:29:41

Investments date of the tradition

01:29:43

and more and more. Game

01:29:48

experience in in in this

01:29:50

one last Mansion this time

01:29:54

for it in the chat

01:29:58

that I need to test

01:30:00

that to you found in

01:30:02

in certain Iranian assets. It

01:30:04

looks like exactly the same



01:30:06

structure as the necessary tests

01:30:08

regarding conception w250 test at

01:30:12

the European Court of Human

01:30:13

Rights and and the roots

01:30:16

of this test is in

01:30:17

the German County child care

01:30:19

and still I would say

01:30:22

what is important is that

01:30:23

the good ideas can can

01:30:25

can move and can translate

01:30:27

from one system to to

01:30:28

another and this is where

01:30:30

I share what you call



01:30:32
yourself. You're too busy. Maybe

01:30:34
it was my fault that

01:30:35
you're the most important and

01:30:40
are able to import ID

01:30:42
if they helped and then

01:30:45
make the case law of

01:30:46
progress. Distance I think that's

01:30:49
all I want discussion. That

01:30:50
is so bad. It's the

01:30:51
case. Okay, do final final

01:30:56
word back to Jose Antonio?

01:30:57
And then we close? What

01:31:04
one thing that I want



01:31:05
to say is I am

01:31:06
and this is not flattery.

01:31:07
I'm really honored to be

01:31:08
in this time. I mean

01:31:09
like with with with Clara

01:31:11
and and one thing that

01:31:16
I missed indicating which was

01:31:18
a promise was was the

01:31:20
influence of of the public

01:31:23
international law in investor-state arbitration

01:31:25
and one example is the

01:31:27
you ran in and ever

01:31:28
since the USA game start.



01:31:38

You can look into the

01:31:40

Iran versus u.s. Tribunal and

01:31:44

you will see that the

01:31:46

definition of fair and Equitable

01:31:48

treatment is is textbook waste

01:31:53

waste management to type of

01:31:58

definition where they go through

01:32:00

the process, they go through

01:32:01

arbitrary an unreasonable measures and

01:32:05

they at the end they

01:32:06

referred to the dealer expectations.

01:32:08

That's a textbook. And you

01:32:12

go back a few years



01:32:14

and a vsd clearly states

01:32:17

that there is no customer

01:32:19

International on legitimate expectations. So

01:32:24

the question now becomes And

01:32:29

who is aware of how

01:32:39

potent the icj ruling Tsar?

01:32:44

And they want to use

01:32:46

that to defend the sting.

01:32:50

What would you do? And

01:32:55

that's what that's one of

01:32:56

the reasons why when you

01:32:57

read a memorial from respondent

01:33:01

or from Play Man invests



01:33:04
arbitration normally in the different

01:33:07
part of the Greece. I

01:33:10
would say normally look at

01:33:12
the damage part 90 80%

01:33:14
of the time. the source

01:33:17
of factory cases cited in

01:33:19
the first paragraph because it

01:33:23
is an authority. So what

01:33:24
would you do with regard

01:33:25
to fair and Equitable trade?

01:33:26
Yes, the notion of legitimate

01:33:29
expectation being at a slow

01:33:31
construct has been there were



01:33:34

a number of years now.

01:33:38

What might happen is if

01:33:40

you're defending a state and

01:33:41

claiming spousal brings you an

01:33:44

argument that that's terrible treatment

01:33:46

include legitimate expectations. If it

01:33:50

is part of their duty

01:33:51

to say, well the icj

01:33:53

has just said that is

01:33:54

not part of customary international

01:33:55

law if it's a gem

01:33:59

or stayed but my point

01:34:01

is not so much a



01:34:02

dog see your own Advocate

01:34:04

and you use whatever it

01:34:07

takes to to to defend

01:34:09

your client. My point is

01:34:10

more related to an issue

01:34:13

that the unique touched upon

01:34:14

consistency. We do not have

01:34:19

An investor State appellate body.

01:34:21

We do not have an

01:34:23

investor State what we may

01:34:27

not have it ever end

01:34:30

and the icj at least

01:34:31

concerning customary international law or



01:34:36
or general rules of international

01:34:37
law may play a very

01:34:39
important role. It is very

01:34:42
easy investor-state arbitration tribunals to

01:34:46
to participate as to what

01:34:50
is customary international law. You

01:34:51
see it in PMS versus

01:34:53
Argentina work or the Tribune

01:34:55
referring to National treatment as

01:34:57
customary international law which definite

01:35:02
answer but let's just put

01:35:04
a? Likely there. Do you

01:35:08
have the icj who might



01:35:11

go through a more rigorous

01:35:13

process as to what it

01:35:16

may be calling customer International

01:35:18

what not. This this is

01:35:20

it is not a matter

01:35:22

of law or the icj

01:35:24

or the world for it

01:35:26

is the court that may

01:35:29

be closer to looking into

01:35:32

what is general international law.

01:35:34

What is customary International what

01:35:36

are general principles of Law

01:35:37

and and the yes, we



01:35:39
have it. So I believe

01:35:42
that it plays a fundamental

01:35:43
role in terms of its

01:35:45
influence in investor arbitration. And

01:35:48
the last thing I will

01:35:49
say is I'm really really

01:35:50
glad that are walked us

01:35:52
through All the influence because

01:35:54
11 very positive elements of

01:35:58
investor arbitration is that in

01:36:00
a live system with a

01:36:02
dynamic system which one thing

01:36:05
it or not? It is



01:36:06

having into us a recorded

01:36:08

with without clothes when I

01:36:09

was thinking, you know, I

01:36:11

love him to not public

01:36:12

international law, but but is

01:36:14

it really effective looking to

01:36:16

enforcement of the Nicaragua versus

01:36:18

versus of the u.s. Case

01:36:20

and I think whether or

01:36:22

not affected You might be

01:36:25

getting a more effective now,

01:36:27

but the investor Street investment

01:36:29

re arbitration it is it



01:36:31

is one of the systems

01:36:34

in international that has the

01:36:35

highest level of the lights.

01:36:49

another session after a lunch

01:36:51

break at 8, so maybe

01:36:53

we will see you there

01:36:54

or you so much for

01:37:01

all of your attention and

01:37:02

for joining us this morning,

01:37:03

and I hope to see

01:37:05

you at the remaining programs

01:37:06

today and This is one

00:00:29

of our animals that truly



00:00:33

shows our commitment to public

00:00:36

international law and as well

00:00:39

invest arbitration, by the way,

00:00:44

I didn't lose myself. My

00:00:46

name is Jose Antonio Rivas,

00:00:47

one of the co-founders of

00:00:49

of Washington arbitration week. I

00:00:51

teach at the Georgetown Law

00:00:55

Center investment re arbitration public

00:00:58

international law and and I

00:00:59

see Jay judgment and I

00:01:01

have the pleasure of introducing

00:01:02

Kyra and she is she



00:01:07
has lots of hats and

00:01:09
they're already at my herbal.

00:01:11
She is a litigator, but

00:01:14
she's also an international arbitrator

00:01:17
is a Management Consultant and

00:01:21
can counsel and she's also

00:01:23
a lecture at GW on

00:01:26
topics that range from the

00:01:28
National Commercial of attrition International

00:01:31
treaty arbitration and and the

00:01:33
and Arsenal all she's also

00:01:35
an editor and a very

00:01:38
very very hard. So she's



00:01:43

up to. That's a good

00:01:45

thing. That's what about thing

00:01:46

as my order a doctoral

00:01:51

thesis supervisor would say that

00:02:01

our vacation week from the

00:02:02

beginning and and she she

00:02:05

has I think that I

00:02:07

unique perspective because she came

00:02:09

to to enter public international

00:02:12

law first having being a

00:02:14

litigator and also having entered

00:02:16

International arbitration through International commercial

00:02:18

arbitration. But then and this



00:02:21

is this is what I

00:02:22

would suggest everyone does and

00:02:24

Anna 14 know not everyone

00:02:26

does it say then then

00:02:30

she she she and you

00:02:31

will correct me if I'm

00:02:32

wrong. She became enamored with

00:02:34

the Vienna convention on the

00:02:36

dogs treaties and she's really

00:02:40

a true convert. She's up

00:02:42

there saying that she is

00:02:44

a public international law lawyer.

00:02:46

She has written extensively on



00:02:48

on the On the Vienna

00:02:50

convention on the law of

00:02:51

treaties and published a book

00:02:54

which is now a convention

00:02:57

on the law of treaties

00:02:58

and and I've had the

00:03:00

pleasure of working with with

00:03:01

Karen and I wish you

00:03:05

were here because they say

00:03:06

they have been generous in

00:03:08

supporting Washington arbitration week from

00:03:11

from first edition by publishing

00:03:15

some of the blogs about



00:03:16

this panel. So we hope

00:03:17

that this time we'll also

00:03:18

get the panel's so I

00:03:26

will keep I would love

00:03:27

to keep on going but

00:03:28

I know I don't think

00:03:29

that lets you I would

00:03:30

appreciate that much. They're so

00:03:32

cute and you have the

00:03:33

floor and thank you for

00:03:35

for moderating a panel and

00:03:36

she will introduce everyone I

00:03:39

would say. I'm not a



00:03:40
public International lawyer, but you

00:03:42
just told everybody in this

00:03:43
room that I asked so

00:03:44
leave it at that. Let

00:03:46
me start by introducing some

00:03:48
of our speakers. So today's

00:03:51
program has speeding in a

00:03:53
hybrid manor Washington arbitration because

00:03:56
truly Global so we have

00:03:58
two of our speakers virtually

00:04:00
joining us from Europe and

00:04:01
we have this lovely panel

00:04:03
here as well in person.



00:04:04

So I'll start with the

00:04:05

first we have. Dr. He's

00:04:10

a senior legal adviser and

00:04:14

in this capacity, he deals

00:04:16

with public international law and

00:04:18

he's also the range from

00:04:26

ICC on Safari Land at

00:04:27

harbor station is truly a

00:04:29

privilege to have somebody joining

00:04:30

us at University. She has

00:04:44

published extensively on international law

00:04:47

and settlement and has its.

00:04:49

Legal practice especially acting as



00:04:51

arbitrator under the auspices of

00:04:54

exit on Central and various

00:04:56

Regional agreements and now turn

00:04:58

to my right and we

00:05:00

are very privileged to have

00:05:02

our friends here are Professor

00:05:03

doctor Yannick Robby who joined

00:05:05

us from Europe four friends.

00:05:06

He's a professor of international

00:05:08

law at the University of

00:05:09

Louisville and sell jump and

00:05:12

I guess professor at the

00:05:13

International Investment arbitration at Law



00:05:15

School in Paris. He's a

00:05:17

member of the panel of

00:05:18

arbitrators. He has experience in

00:05:20

proceedings governed by rules and

00:05:23

rules and has published extensively

00:05:26

on arbitration matters. Most notably.

00:05:29

He's the author of rules

00:05:30

and practices of International Investment

00:05:32

law in arbitration at text

00:05:34

book published by the welcome

00:05:36

again to Washington arbitration me

00:05:38

Kelly. We have someone local

00:05:41

we have terrible a she's



00:05:43

a partner at Filippo eggs

00:05:45

International litigation arbitration practice where

00:05:47

she advises currency International disputes

00:05:50

with other sea foreign investors

00:05:53

and also and proceedings for

00:05:55

us courts of range of

00:05:57

activities. He was awarded 2001

00:06:01

MVP of the year for

00:06:03

international arbitration by law 360.

00:06:05

I didn't know we had

00:06:06

an MVP of the year.

00:06:07

But if there's no war

00:06:08

to get that sounds like



00:06:09
the ones to get it

00:06:10
graduation and also she's ranked

00:06:13
amongst the top thirty-five women

00:06:16
attorneys and international arbitration. We're

00:06:18
really here with us three

00:06:26
of us who I will

00:06:27
add to his bio to

00:06:28
tell you that he is

00:06:30
a reason we are all

00:06:30
here in addition to being

00:06:32
assholes houndour of Washington arbitration

00:06:35
Beach part of his vision

00:06:37
stems from his very diverse.



00:06:38

So he's going through his

00:06:39

career and I don't think

00:06:41

I could name them all

00:06:42

and I have no biome

00:06:43

in front of me but

00:06:43

ranging from and its third-party

00:06:45

funds or governments lawyer. Tuition

00:06:50

fee not a global law

00:06:51

firm and now being an

00:06:52

entrepreneur running his own Law

00:06:54

Firm here in Washington DC

00:06:56

as well as being a

00:06:58

lecturer and academic Georgetown law



00:07:02

schools are really trip lives

00:07:03

too hot not have only

00:07:05

had a few on the

00:07:05

panel and lead us and

00:07:06

bring us together. But also

00:07:08

guide us in that situation

00:07:10

of arbitration in arbitration related

00:07:12

topics. Today's channel is what

00:07:15

I'll call one of our

00:07:16

signature panels of the week.

00:07:18

It's inspired in part by

00:07:20

a panel that several of

00:07:21

us participated in last year's



00:07:23

Washington arbitration be in Florida

00:07:25

public international law on investment

00:07:28

arbitration this year. We're delving

00:07:30

more deeply and I think

00:07:32

in part because some brainstorming

00:07:33

but yeah, and I specifically

00:07:38

International court of justice and

00:07:40

pcij judgments and invest an

00:07:43

arbitration both directions where the

00:07:47

Ice Jay practice and influence.

00:07:49

Investment arbitration at vice-versa where

00:07:52

investment arbitration practice is beginning

00:07:54

to Windsor Men's Warehouse in



00:07:55
influencing icj practice and on

00:07:58
my way over to 345

00:08:00
this morning, what was breathing

00:08:01
and I was walking down

00:08:02
the street after dropping my

00:08:03
kids off at school. I

00:08:04
was thinking about well, why

00:08:06
is there such an interplay

00:08:07
and in part? It's because

00:08:08
of the stakeholders in the

00:08:09
actors one is that you

00:08:11
have a lot of repeat

00:08:12
after me you are the



00:08:13

states to appear in ibj

00:08:15

proceeding to my son also

00:08:17

due to related or a

00:08:20

socio-political economic etcetera circumstance has

00:08:24

also become respondents aged and

00:08:27

investment arbitration on possibly related

00:08:29

topics or because of possibly

00:08:30

related elements. You also have

00:08:33

a duplicity at times of

00:08:35

the same individuals acting as

00:08:38

counsel and proceedings before I

00:08:41

see Jay and highest. Yes

00:08:42

proceeding and possibly an arbitrator's



00:08:45
or judges in some instances

00:08:46
and I see Jay and

00:08:49
Ists proceeding so you do

00:08:51
have a lot of stakeholders

00:08:52
over by and that can

00:08:54
influence not only how judgments

00:08:56
and precedents interplay with each

00:08:58
other but also have procedure

00:08:59
and practice at your place.

00:09:01
The other is really about

00:09:02
the illogical dimensions in some

00:09:05
ways. So with that we

00:09:07
are going to take a



00:09:08

two part of her finery

00:09:10

presentation to our virtual speakers

00:09:12

are going to introduce to

00:09:14

us the ideas about the

00:09:16

Centre plays. We will most

00:09:18

I have some supplies from

00:09:19

one of our speakers. So

00:09:20

I hope that everybody can

00:09:21

see them and I cuz

00:09:22

I'm clearly is not what

00:09:23

troubles you thought and then

00:09:24

we're going to have a

00:09:25

discussion with those were in



00:09:27

this room to highlight various

00:09:29

aspects including procedural substances and

00:09:32

stylistic and sociological about that

00:09:34

interplay between hi CJ public

00:09:36

international law practice and I

00:09:38

have just the way I

00:09:40

can the floor over to

00:09:41

Reza And I hope that

00:09:44

you're able to come out

00:09:44

your slides. Otherwise, I'll help

00:09:46

you. Thank you so much

00:09:49

cuter on full of the

00:09:50

introduction and thank you all



00:09:52

for being here today a

00:09:55

good day everyone. My name

00:09:56

is a razor if that's

00:09:58

all it is a great

00:10:00

pleasure to deliver this presentation

00:10:02

on the occasion of space

00:10:04

for diction of the Washington

00:10:07

arbitration week. My contribution today

00:10:10

is about the impact of

00:10:14

isps jurisprudence on the icj's

00:10:18

decision-making and to adhere to

00:10:20

that carefully crafted time schedule

00:10:22

set by our wonderful moderate.



00:10:24

I will be using Showtime

00:10:27

forms of certain times throughout

00:10:29

my presentation. So needless to

00:10:31

say is the S stands

00:10:33

for investor-state dispute settlement and

00:10:35

I see Jay refers to

00:10:36

the international court of justice.

00:10:39

I will do my presentation

00:10:41

into sections in Section 1.

00:10:44

I analyzed the current situation

00:10:46

whether as we stand now

00:10:49

RC jet decision-making is influenced

00:10:52

by the isds your students



00:10:55

and in the second part

00:10:57

of my presentation, I will

00:10:59

analyze the future impact of

00:11:03

isps, whether it's going to

00:11:05

impact licj decision-making in the

00:11:07

future or not. I will

00:11:09

be speaking about 12 minutes

00:11:10

and I'll be using summer

00:11:12

slice to present certain facts

00:11:13

and figures and also the

00:11:15

office of empirical evidence to

00:11:17

the first section of a

00:11:18

presentation then and the current



00:11:20

situation to analyze whether the

00:11:23

icj decision-making is impacted by

00:11:26

the S case. No one

00:11:29

has to look for some

00:11:30

evidence to me. Undoubtedly the

00:11:34

most concrete piece of evidence

00:11:36

to look through is actually

00:11:38

citation. RISD s. Woods and

00:11:41

decisions cited in icj's judgments

00:11:45

and I have a specially

00:11:51

on CJ has referred to

00:11:54

is DS cases just on

00:11:58

a very few young just



00:11:59

a few occasions very few.

00:12:01

And I want what I

00:12:03

say a few I I

00:12:04

mean it but more importantly

00:12:06

those few citations have been

00:12:09

mostly as a function of

00:12:12

the parties pleadings. So the

00:12:14

icj actually mentioned these important

00:12:16

decisions and his judgments only

00:12:19

for the purpose of primarily

00:12:21

for the purpose of distinguishing

00:12:23

them actually illegally from the

00:12:26

case at hand certified mail.



00:12:31

My first slide with you.

00:12:34

To show how it's done

00:12:36

in practice and that's a

00:12:38

slight you see three investment

00:12:41

treaty decisions refer to in

00:12:44

icj Judgment of the icj

00:12:47

only refer to them for

00:12:48

the purpose of distinguishing them

00:12:50

legally and factually from the

00:12:52

preceding at hand. So the

00:12:55

main end the bank Benchmark

00:12:58

the most concrete bench mod

00:13:00

to analyze where the highest



00:13:04

years has an impact on

00:13:05

Ice BJ's judgment and decision-making

00:13:07

process is to see whether

00:13:10

the icj is referring to

00:13:12

these important decisions of isps

00:13:15

triburos approvingly. And that's why

00:13:18

you can see an actual

00:13:19

impact by my count that

00:13:24

has happened only once and

00:13:27

that quite recently and its

00:13:30

judgment and reason judgment on

00:13:32

such an Iranian assets the

00:13:36

court set the workout set



00:13:38
up it has long been

00:13:40
recognized and international law that

00:13:43
the bona fide a non-discriminatory

00:13:44
exercise of such a regulatory

00:13:46
powers are the government aimed

00:13:49
at the protection of legitimate

00:13:50
public vulva is not deemed

00:13:52
appropriate rate or compound simple

00:13:54
and then it refer to

00:13:56
Three Awards by International courts

00:14:00
and tribunals a very old

00:14:02
the road by the German

00:14:03
Venezuela Claims Commission 1903 high-profile



00:14:07

case of Iran US vs.

00:14:10

Iran and finally a very

00:14:12

famous investment Treaty of wood

00:14:14

siluca vs Czech Republic. So

00:14:17

I didn't vestment treat your

00:14:20

practitioner might consider this as

00:14:23

a welcome approach citation of

00:14:26

one finally one investment Treaty

00:14:28

of wood approvingly alicja judgment,

00:14:31

but Fu Panda that is

00:14:33

not really pleasant as it

00:14:35

might First Look firstly that

00:14:38

the best award was not



00:14:40

given that this thing recognition.

00:14:41

It was cited alongside an

00:14:43

ancient award run that 120

00:14:45

years ago. And now that

00:14:47

would buy the IU SCT,

00:14:49

so it wasn't even given

00:14:50

the stingray a singular word

00:14:52

and not even a distinct

00:14:53

recognition a second and more

00:14:55

importantly bear in mind that

00:14:58

since 1989 when the icj

00:15:02

decided the LC case. This

00:15:03

was the first opportunity actually



00:15:05

to discuss matters of investment

00:15:07

Richelieu, extensively and discuss all

00:15:10

the hundreds of words that

00:15:11

that considered is DS to

00:15:15

have been rendered as of

00:15:17

now. 90 special investment region

00:15:18

arbitrations. I can stop back

00:15:21

room bearing in mind that

00:15:22

the last opportunity the get

00:15:26

that the prospects is not

00:15:27

very promising and see if

00:15:29

you review the party's pleadings.

00:15:32

That they they they cited



00:15:34
many investment Treaty of woods

00:15:36
and decisions in support of

00:15:37
their allegations. And when you

00:15:39
will retransmit, you see that

00:15:41
there is only one of

00:15:42
them that is getting an

00:15:43
approval citation in the Court's

00:15:47
judgment ensure that it's not

00:15:52
very promising that 0000 mentioned

00:15:57
in the icj's judgment on

00:15:58
setting to rain in assets.

00:16:00
But what is the reason

00:16:01
for this day of citation



00:16:04
of investment Treaty of using

00:16:06
I see Jay strothman just

00:16:08
went to flag the issues

00:16:09
because I think they would

00:16:10
be covered more deeply by

00:16:12
a professor why I was

00:16:14
just flat free points. Presley

00:16:18
it is that the only

00:16:19
CJ we all know that

00:16:21
has a very gorgeous citation

00:16:23
approach now given the proliferation

00:16:26
of an international courts and

00:16:28
tribunals the icj charges want



00:16:31
to keep their own concentration

00:16:32
and the concert rhaetian of

00:16:33
others and the icj and

00:16:36
not on the international courts

00:16:37
and tribunals. That's the first

00:16:39
and second item, which I

00:16:41
tried to discuss further in

00:16:43
my in the second part

00:16:44
of my presentation is that

00:16:47
the kind of disputes that

00:16:49
are brought before investment research

00:16:51
do not usually trust pie

00:16:54
in front of international court



00:16:56
of justice and sadly definitely

00:16:59
icj is not alien to

00:17:01
the criticisms that exist against

00:17:03
the legitimacy of the treaty

00:17:06
arbitration system and I have

00:17:12
some views regarding the reformed

00:17:14
that should be exercised with

00:17:15
regard to this regime but

00:17:16
these You have to wait

00:17:18
for another day. But this

00:17:21
is something that I see

00:17:22
Jay definitely doesn't view when

00:17:24
referring to when considering to



00:17:26

refer to the jurisprudence of

00:17:28

isds Tribune. No, would it

00:17:32

be right to stop at

00:17:33

this and say okay because

00:17:34

there is no citation than

00:17:36

is Diaz has no impact

00:17:37

on the decision-making process of

00:17:40

icj. I think it would

00:17:42

be short-sighted to stop at

00:17:44

this and actually I think

00:17:47

that influences by the highest

00:17:49

your system on Ice e-juice

00:17:50

decision-making but you see the



00:17:52

situation is influence without a

00:17:56

distinct acknowledgement. Why do many

00:18:00

things could be said in

00:18:01

this respect today? I want

00:18:02

to emphasize and focus on

00:18:05

the role of repeat its

00:18:06

play individuals who currently act

00:18:09

as icj members, but also

00:18:14

used to act like I'm

00:18:16

currently at arbitrators in distressed

00:18:20

a dispute settlement arbitrations. What

00:18:24

up saying that I have

00:18:26

in mind. Voice rules of



00:18:28
the icj as of 2018

00:18:30
regarding double-height a point, but

00:18:34
it's a fact of legal

00:18:37
life that a judge when

00:18:38
he or she practices in

00:18:40
an area of low for

00:18:41
an extended. Of time he

00:18:44
or she brings that experience

00:18:45
the Practical experience to the

00:18:47
next field and we have

00:18:49
seen it. We have done

00:18:50
it. I'm going to refer

00:18:52
to an example to to



00:18:54

show how it's done in

00:18:56

practice Coast example of giving

00:18:59

you consent and I sat

00:19:02

for my CJ chart referring

00:19:03

to a nice E&J case

00:19:05

is proceeding, but I think

00:19:07

it nevertheless demonstrates the point

00:19:09

of making In the movie

00:19:16

to proceedings Mobile versus Canada

00:19:18

during the hearing of the

00:19:21

president of the highest tribe

00:19:23

you want to ask why

00:19:24

member of the icj a.m.



00:19:26

To 2000 industry rank is

00:19:27

happening in 2017 off the

00:19:30

puppies. That's that's the bit

00:19:32

that the parties have a

00:19:33

dispute about the rest of

00:19:34

the Carter effect of mobile

00:19:36

one proceedings. It's not dealt

00:19:39

with at some length are

00:19:40

the international court of justice

00:19:42

and its judgment between Nicaragua

00:19:44

and Colombia in March of

00:19:46

2016. I am going to

00:19:48

put the same point to



00:19:49

cancel for Canada who by

00:19:51

the looks of it and

00:19:52

actually thought about that case.

00:19:54

I think it might be

00:19:55

a relevance to the point

00:19:57

you're making and then it's

00:19:59

interesting when you read the

00:20:00

decision on jurisdiction and admissibility

00:20:04

on mobile 2 and you

00:20:06

refer to progress 192 192.

00:20:09

You will see how this

00:20:10

plays out in practice do

00:20:12

the judgments that the that



00:20:14

the president of the Is

00:20:15

this tribunal was a member

00:20:16

has been in the boats

00:20:18

and has been relied on

00:20:19

in this investor State case

00:20:22

to resolve the party dispute

00:20:26

over the issue of STD

00:20:27

Carter and do we have

00:20:29

do we have to repeat

00:20:30

players now the next to

00:20:32

slide if you look at

00:20:35

these are five current members

00:20:37

of the icj and my



00:20:39

slide shows that their level

00:20:41

of Engagement investor-state arbitration both

00:20:44

as arbitrators and as members

00:20:46

of the extended album, tea

00:20:48

and that is reflected in

00:20:51

the individual opinions that these

00:20:53

members issue alongside the document

00:20:59

documents of the icj. So,

00:21:03

although there is no citation

00:21:06

of if you think of

00:21:07

citation you come across a

00:21:09

situation of unrequited love if

00:21:11

you will, so that's the



00:21:13

fact that the investor investor-state

00:21:15

arbitration show a reasonable amount

00:21:18

of affection to roast is

00:21:19

your students ficj but not

00:21:21

the other way around so

00:21:23

that citations account on a

00:21:24

one-way basis. But if you

00:21:26

bearing view the the role

00:21:28

of the repeat players, you

00:21:30

will see that there is

00:21:33

influence without Express acknowledgements possible

00:21:39

presentation to analyze the future

00:21:42

impact of a SDS on



00:21:45
the icj's decision-making and to

00:21:48
do so, I will Consider

00:21:51
full elements element one is

00:21:54
to bear in mind that

00:21:57
the kind of disputes that

00:22:00
because the linchpin of the

00:22:02
investment treaty new system is

00:22:03
investment and these disputes do

00:22:06
not usually arise in front

00:22:08
of the icj with the

00:22:11
exception of the south in

00:22:12
the Rain the assets case.

00:22:13
This only happens very rarely



00:22:16

in cases my personal attraction

00:22:18

and Elsie 2001 lecture by

00:22:28

Francisco. Tarrega, viconia set the

00:22:32

following Questions relating to major

00:22:35

areas of international rules such

00:22:37

as those dealing with trade

00:22:39

finance and Investments are never

00:22:41

brought the food. I see

00:22:42

Jay has some truth to

00:22:46

it. And this is something

00:22:48

to to to bear in

00:22:50

mind when you're considering the

00:22:51

future impacts of August. Yes



00:22:53

on icj secondly and the

00:22:55

second element which is inextricably

00:22:57

linked to the first one

00:22:59

is that there are not

00:23:00

so many in. It's National

00:23:02

instruments cancer intersection at on

00:23:04

the court regarding International to

00:23:08

come only through the issues.

00:23:11

And if you think of

00:23:13

that Treaty of Amity the

00:23:14

1955 Treaty of Amity between

00:23:16

Iran and the United States,

00:23:17

which was the the the



00:23:19
constant instrument. If you will

00:23:21
in five icj cases. Was

00:23:24
even 780 2018 dime. Doesn't

00:23:27
make the prospect of Reliance

00:23:31
Eliza J decisions about the

00:23:35
future very promising. So the

00:23:38
prospect is dim. If you

00:23:39
look at that, the first

00:23:41
element is the criticisms that

00:23:43
exist against the legitimacy of

00:23:45
the investment treaty law system.

00:23:49
Of course, one of the

00:23:51
I see Jake a dog



00:23:53

is the assistant voice being

00:23:55

stretched into it solve. It

00:23:56

might think that okay is

00:23:58

DS system suffers from the

00:24:00

lack of institutional legitimacy, and

00:24:02

there are also social concerns

00:24:04

as concerns about the consistency

00:24:06

in the movie theater or

00:24:08

concerns that exist. Various Brands

00:24:13

a particular body bike a

00:24:17

bike route Freon investor-state dispute

00:24:19

settlement the phone set buy

00:24:21

on Central but to be



00:24:24

frank we have a long

00:24:26

way to get to a

00:24:28

meaningful concrete comprehensive and long-standing

00:24:32

resolution of the concerns that

00:24:35

exist today the oldest elements

00:24:38

spoke against of a positive

00:24:41

Prospect regarding the Reliance by

00:24:44

icj is Deus a decisions

00:24:49

and I was in the

00:24:49

future but there is a

00:24:50

fourth element very important one

00:24:52

and that's the experience the

00:24:55

Practical and the teaching experience



00:24:57
of icj charges and how

00:24:59
that materializes in their individual

00:25:02
opinions. And you have to

00:25:03
burn viewed. This is this

00:25:05
is a very same of

00:25:06
fact it goes without saying

00:25:08
these are the numbers that

00:25:10
form the quotes. They are

00:25:12
inspired by is DS there

00:25:14
is no doubts that the

00:25:15
whole court and the whole

00:25:16
judgment would be inspired by

00:25:19
the is deer stag woods



00:25:20

and decision. And then that's

00:25:22

a slight. I want to

00:25:24

show you instances of investment

00:25:26

various investment treaty avoids being

00:25:30

referred to by the individual

00:25:32

members of the court in

00:25:34

their individual happiness. I'm saying

00:25:36

individual to capture all the

00:25:37

titles. That could be the

00:25:38

50 Cent me been carrying

00:25:39

all the titles that could

00:25:40

be there and in the

00:25:42

next slide. I want to



00:25:43

just highlight three individual opinions

00:25:48

were substantial reference has been

00:25:50

given to is Deus vult

00:25:52

and decisions and you can

00:25:54

see one of them more

00:25:55

than 10 times one of

00:25:56

the other one so and

00:25:58

the separate opinion of touchy

00:25:59

25 is Deus. It wasn't

00:26:04

that a cat just like

00:26:06

8 months ago. So this

00:26:08

is something to seriously taking

00:26:11

you. And if you think



00:26:13

of the Judgment by the

00:26:14

icj in certain Iranian assets,

00:26:17

if you look at the

00:26:19

the separate opinions seven of

00:26:21

the 15 cult members refer

00:26:23

to is Deus about in

00:26:25

the sea than in the

00:26:27

individual opinion. So this is

00:26:29

a very important fact to

00:26:32

be borne in mind. So

00:26:33

that concludes the second section

00:26:36

and the whole of my

00:26:37

presentation now, I'm eagerly waiting



00:26:39

to hear my co-pilot. Thank

00:26:42

you very much for your

00:26:42

attention. You so much residence

00:26:45

super fascinating that you really

00:26:48

highlight of the human dimension

00:26:50

of I see Jay and

00:26:51

i s t s practice

00:26:52

and I think we'll talk

00:26:53

about that more as we

00:26:54

go on Sunday. We're going

00:26:55

to turn now to the

00:26:56

other primary presentation my virtual

00:26:58

secret to talk to us



00:27:01

about Paw Patrol inside for

00:27:02

please tell Amanda ready. Thank

00:27:06

you very much. I would

00:27:07

like for us to thank

00:27:08

the organizer is a especially

00:27:09

having invited me together with

00:27:13

I didn't have a chance

00:27:19

to listen to the last

00:27:21

year. So I decided to

00:27:23

enter into the Cupcake Shop

00:27:24

assuming that it could be

00:27:30

interesting. I have one question

00:27:42

regarding this and the other



00:27:51

way because we just see

00:27:56

that Cindy Long's to which

00:27:59

has been ongoing for some

00:28:00

years now, which is the

00:28:02

question of judicial precedent. And

00:28:04

the reason why there is

00:28:05

Which site to each other

00:28:07

and this debate was triggered

00:28:09

by the debate of fragmentation

00:28:10

of international law the anxiety

00:28:13

that existed about the fact

00:28:15

that they'd be different quotes

00:28:17

could come with different solutions



00:28:19
regarding the same Norms all

00:28:20
the same sets of spot

00:28:22
until I think that's an

00:28:24
to take him to come

00:28:24
visit was like, why would

00:28:29
I use DS arbitrator be

00:28:31
anxious to start the icj

00:28:33
all day or just decide

00:28:34
the icj and all the

00:28:36
extras that the icj does

00:28:37
not fight them eventually. So

00:28:40
this is the human way

00:28:42
of asking the question, but



00:28:44

I think it's interesting to

00:28:46

talk to to keep in

00:28:47

mind this Resonance of this

00:28:49

discussion of President, which regarding

00:28:51

is DSS is too full

00:28:55

and you have this internal

00:28:56

vitamin D baby shots did

00:28:59

for example animated by a

00:29:00

Crosman color knowing whether there

00:29:03

should be a system of

00:29:04

press. With an iOS D

00:29:06

S and R and B

00:29:07

side of building address prison,



00:29:09

which is not only whether

00:29:14

court order and somehow crossed.

00:29:18

She lies and you have

00:29:19

all this debate, which is

00:29:20

the positive side of fragmentation

00:29:22

about to cross that you

00:29:24

like that they would this

00:29:29

debate be especially important for

00:29:32

a isda. It is important

00:29:34

of criticism regarding the lack

00:29:41

of continuity and the consistency

00:29:43

of the case law and

00:29:45

older we might come with



00:29:46

a lot of good explanation

00:29:48

for this so-called inconsistency and

00:29:52

the lack of continued she's

00:29:53

never the less. You have

00:29:54

a nice. In this direction

00:29:56

and this is a recurring

00:29:57

theme in the discussions about

00:29:59

the result of the SDS.

00:30:05

The finding ways of finding

00:30:07

this consistency and other the

00:30:10

interplay with the court of

00:30:12

idic G could be one

00:30:14

aspect of this debate and



00:30:16

it is needless to call

00:30:18

TW reasons why the icj

00:30:25

among other court because why

00:30:29

the icj especially and the

00:30:31

or is it the motel

00:30:33

problem of fighting other International

00:30:36

course, of course, and it's

00:30:40

not true only for investment

00:30:41

arbitrators fighting the decisions of

00:30:43

other Quest. Is there a

00:30:45

way of burrowing legitimacy Authority

00:30:48

and that it is especially

00:30:50

true of the point of



00:30:54

your various, but you could

00:30:55

see that other course have

00:30:56

I taken the use of

00:30:58

citing the icj to borrow

00:31:00

or so itchy and legitimacy,

00:31:02

especially a fundamental question of

00:31:05

it. Depreciation the background principles

00:31:08

of international law and so

00:31:18

is the wealth of borrowing

00:31:19

part of its Authority in

00:31:21

addition of Cordell. CJ has

00:31:23

a general competence. It means

00:31:25

that it can deal with



00:31:26
a lot of stuff is

00:31:27
all over all topics. And

00:31:29
even if you'll have some

00:31:31
exclusive jurisdiction to have some

00:31:33
questions and and this is

00:31:41
also why it can be

00:31:42
fought so easily no way

00:31:45
because in the decision you

00:31:46
deal with many different legal

00:31:48
question. Necessarily related to to

00:31:51
the subject matter of the

00:31:53
of the dispute and of

00:31:55
course and I will not



00:31:59

insist on that. Define inciting

00:32:07

the icj aspiration to unification

00:32:11

the fact of having some

00:32:12

general principle, which could be

00:32:14

a guiding principle. And this

00:32:18

is of course very important.

00:32:21

But at the same time

00:32:22

if we try to make

00:32:24

a diagnosis, I will not

00:32:25

be able to make it

00:32:26

as a systematic as I

00:32:30

need that just simply because

00:32:32

you have too many a



00:32:33

worse. I think I see

00:32:35

she has less citations. That's

00:32:38

why I expect my voice

00:32:45

of you would be quiet

00:32:46

relaxing a stake in this

00:32:48

in this regard we have

00:32:51

first to take into account

00:32:52

the sector which has the

00:32:53

origin mansion by the fact

00:32:56

that most of the time

00:32:57

of citation comes on board

00:33:00

is on the word because

00:33:02

the party has put forward



00:33:03

the argument. The party is

00:33:05

at present in the decision

00:33:07

has the legal Authority that

00:33:08

I don't you date on

00:33:09

this legal Authority and the

00:33:11

arbitrator's decision. We can either

00:33:19

take it don't touch support

00:33:20

the reasoning or they can

00:33:21

engage in two distinguishing play

00:33:25

a big role. And there

00:33:27

is. So, which is better.

00:33:30

I went to the quality

00:33:32

of session of versed addicted



00:33:34
you say it but the

00:33:36
authorities which has not which

00:33:39
have not been put out

00:33:41
by the parties. If you're

00:33:44
between a nice since your

00:33:47
decision is especially I can

00:33:48
call that case it becomes

00:33:54
very difficult to fight it

00:33:55
and so you have to

00:33:57
take into account this by

00:33:59
us and this is not

00:34:00
the only by us that

00:34:01
you can have in the



00:34:02

process of a citation. And

00:34:05

I fully agree with that

00:34:06

site additions are a good

00:34:09

restaurant to access the insurance,

00:34:11

but it's a double-edged sword

00:34:14

from the quantitative point of

00:34:19

view, of course, but also

00:34:20

and especially for a qualitative

00:34:22

or quantitative count that there

00:34:31

is a kind of instrument

00:34:33

Allison in citations, you could

00:34:35

begin to siteone the decision

00:34:37

of the icj and then



00:34:38

type the sentence with biking

00:34:42

Galaxy J. And the sentence

00:34:44

with fight this sentence I

00:34:46

can get sentenced yet. Hey

00:34:53

sis did the width in

00:34:55

the show Psych rotation was

00:34:58

chosen is lost. And that

00:35:00

you are not even sure

00:35:01

that the decision itself has

00:35:03

really been considered and you

00:35:05

do not have just the

00:35:06

quotation which has become like

00:35:08

a a vestara grass in



00:35:10

introduction and I'm not sure

00:35:13

that all he does not

00:35:14

have any pictures of right

00:35:15

decision of the Chocolate Factory.

00:35:19

The decision has been right

00:35:25

to treat you just extract

00:35:26

one ID and that's it.

00:35:28

So I'm not sure if

00:35:30

we have to be careful

00:35:36

about the numbers because the

00:35:39

numbers can be misleading in

00:35:40

terms of real real influence

00:35:43

at some point. What is



00:35:45
has been repeatedly put it

00:35:46
is somehow that just did

00:35:48
it in a way which

00:35:50
might not be related to

00:35:52
what it meant initially. So,

00:35:54
this is Jose Baez you

00:35:57
can find in in in

00:35:58
the citation. Consider also the

00:36:02
quantity with Wills Point not

00:36:04
so many decisions by the

00:36:06
ICC on the PC ID

00:36:07
with people have made the

00:36:10
cemetery and been able to



00:36:13

come with a list of

00:36:14

her 628 decisions which were

00:36:17

in deep. But at the

00:36:20

same time you from a

00:36:26

quiet at this point has

00:36:27

you ever approaches to two

00:36:32

quotations of the sometimes because

00:36:38

the investment professionals are like

00:36:40

the international court of justice.

00:36:42

They may have to sew

00:36:43

legal questions, which are not

00:36:45

necessarily related to Investments as

00:36:48

such. Become a hodda me



00:36:51

have to so procedural issues.

00:36:53

They can have to sold

00:36:55

nationally teachers. They can have

00:36:56

two soap dishes with track.

00:36:58

Of course the round the

00:37:00

core principle of the core

00:37:01

standards of investment Club. But

00:37:04

which are which also belong

00:37:05

to more general question of

00:37:07

international law and still I

00:37:10

would say that so that

00:37:11

we may have to make

00:37:14

a distinction between case where



00:37:17

a general principle is at

00:37:21

issue like the principal of

00:37:22

preparation formulated in the throes

00:37:25

of a free case, but

00:37:27

we can also have the

00:37:29

cases where private property was

00:37:33

at stake but not the

00:37:35

case of the icj was

00:37:37

not based on an economy

00:37:39

at the same time these

00:37:41

issues at stake or close

00:37:43

to what can occur in

00:37:45

an investment case or cases



00:37:47

like you're not home at

00:37:48

2. Tell me an interesting

00:37:51

necklace Alicia or or Sioux

00:37:54

City where cases where the

00:37:58

ICC was close to West

00:38:00

Indy with issues which are

00:38:02

of Interest S4 can be

00:38:04

of interest for Investments. Right?

00:38:06

We all know that are

00:38:07

not in this matter as

00:38:09

such and then you have

00:38:11

very very few cases where

00:38:13

the ICT dealt with a



00:38:16

investment issues. And is that

00:38:18

already mentioned this you find

00:38:20

mostly Elsie and I recently

00:38:26

and that's so it doesn't

00:38:30

have so many opportunities to

00:38:32

deal with issues with this

00:38:37

meant to say I'll be

00:38:39

treated as I think we

00:38:41

have to take into account

00:38:42

all these variables to assess

00:38:45

the extent to which the

00:38:47

result. A real interplay between

00:38:52

the icg and investment 30



00:38:56
this interplay. It could become

00:38:59
more important as to no

00:39:02
more cases when they did

00:39:03
the Lucy related to investment

00:39:06
issues, but this has not

00:39:08
been so much the case

00:39:09
so far. So my diagnosis.

00:39:15
Not you're very optimistic, but

00:39:17
my point was not to

00:39:18
be optimistic or pessimistic. It

00:39:20
was more 22 through the

00:39:23
game shake the cash question

00:39:24
and asked why I didn't



00:39:27

think we should be bothered

00:39:29

worried by the fact that

00:39:30

there are not so many

00:39:31

fire stations on one side

00:39:33

or on the other. I

00:39:35

thank you for your attention.

00:39:37

Thank you so much. I'll

00:39:38

and I especially take the

00:39:40

point that sometime citations don't

00:39:42

actually believe means an engagement

00:39:44

or having read the original

00:39:45

Source material. Our decision decision.

00:39:50

Is that Hallmark example of



00:39:52

that one? Let me turn

00:39:53

to the panel here. If

00:39:54

anyone wants to react directly

00:39:56

to the reservoir Islands comments

00:39:58

before we go into stops

00:40:00

the related stop it. Maybe

00:40:03

10-15 minutes. Thanks elements things

00:40:06

right with you. The fact

00:40:10

that Indian icj a guy

00:40:12

CJ an arbitral tribunal do

00:40:14

not deal with the same

00:40:15

a dispute in charge of

00:40:16

subject matter. And in that



00:40:18

sense there is little room

00:40:19

for interaction. But at the

00:40:20

same time they both deal

00:40:22

with their own International treaties

00:40:26

and the disrespect anything that

00:40:27

we would expect them to

00:40:29

enter into a greater Dialogue

00:40:31

on those general public international

00:40:33

issues. We stay relevant on

00:40:36

both sides. Just a follow-up

00:40:42

on the point. That was

00:40:43

just made. I think that

00:40:45

what we see here is



00:40:47

what we see in most

00:40:47

poorest. Well, at least what

00:40:48

I see in most Parts

00:40:49

in my view is the

00:40:51

pragmatism right-wing when the other

00:40:53

court says something that supports

00:40:55

the point that are the

00:40:56

conclusion which you have reached

00:40:58

you adopted and side to

00:41:00

it when it differs from

00:41:01

the conclusion what you have

00:41:03

reached, you know you that

00:41:04

you either don't say to



00:41:06

it or you see a

00:41:07

distinction and I myself do

00:41:10

take some issue with some

00:41:12

of the distinctions that have

00:41:13

been made in is DS

00:41:15

where they say that some

00:41:16

of the public international law

00:41:18

that icj judgments don't apply

00:41:20

because they are there dealing

00:41:22

with disputes between states or

00:41:26

treaties that involve to State

00:41:28

parties and here were dealing

00:41:30

with you do a dispute



00:41:31

between a state and an

00:41:32

investor, but they forget that

00:41:33

that dispute is based also

00:41:35

on a treaty and the

00:41:38

terms Are governed by a

00:41:40

treaty between two states so

00:41:42

involved in both instances, you're

00:41:44

dealing with a treaty which

00:41:47

establishes the terms and conditions

00:41:48

of the dispute between states

00:41:53

which in its happens to

00:41:55

obviously have a direct connection

00:41:57

to investor. So I think



00:41:59

sometimes that distinction is pressed

00:42:01

to a bit too far.

00:42:10

I may have a raining

00:42:22

in public international law that

00:42:24

way so I couldn't agree

00:42:26

more in terms of Arts

00:42:34

of public investment treaty arbitration

00:42:37

is a child of of

00:42:38

public international law. It's not

00:42:41

private. Those investment treaty disputes

00:42:50

they are there wouldn't be

00:42:52

a dispute. Call investment treaty

00:42:56

arbitration. If it wasn't public



00:43:00

international law the consent is

00:43:04

offered in a treaty and

00:43:06

it is accepted in a

00:43:08

request for a patrician January

00:43:09

from the start work work.

00:43:12

We're in a system that

00:43:14

is part of public international

00:43:15

law now going back to

00:43:16

the to the discussion on

00:43:18

whether or not we should

00:43:22

be mortified by cross-references both

00:43:30

from public international law dicj

00:43:32

and investment re tribunals. I'm



00:43:40

a little bit of Optimus

00:43:41

and it in the sense

00:43:42

that I'm not mortified by

00:43:46

by the icj Northside thing

00:43:48

investor-state arbitration tribunal some might

00:43:53

want Change faster than you

00:43:57

might be possible. Of course.

00:43:58

We have the obvious yellow

00:44:01

case. Where were they was

00:44:04

was was bothering trying to

00:44:06

change everything. And I have

00:44:10

been sending the Barcelona traction

00:44:12

case and he failed. Because



00:44:16

there was a a customer

00:44:20

International rule that. They didn't

00:44:24

want to change and they

00:44:25

didn't know how many years

00:44:28

but more than three years

00:44:29

after after by Shania traffic.

00:44:31

It did not change it

00:44:32

in yellow that being said

00:44:34

and I would older older

00:44:37

very important information. That Reza

00:44:40

has shared with us in

00:44:42

terms of how many arbitrators

00:44:44

are also. Judges in the



00:44:48

icj at cetera. The reason

00:44:51

why I'm not that it's

00:44:52

Mystic on the influence of

00:44:54

investment treaty arbitration in the

00:44:57

icj is perhaps because there

00:45:00

are some games that you

00:45:02

can actually find within icj

00:45:05

decisions were they might excite

00:45:07

the investment treaty AutoZone Rewards,

00:45:13

but if you look closely

00:45:15

and I'll give you an

00:45:17

example when it's time for

00:45:18

me to talk later. You



00:45:22

follow the rush. Now, you

00:45:24

look closely. They might not

00:45:25

fight it but there's some

00:45:28

logical basis that is very

00:45:30

similar to Backcountry arbitration. So

00:45:33

while not fighting technically citing

00:45:36

technical Authority when you start

00:45:40

thinking and and the concluding

00:45:43

proportionality test Reasonable measures Etc.

00:45:49

You start finding some gems

00:45:51

that leads you to a

00:45:53

very easy to compute. This

00:45:55

is not this is not



00:45:57

set. This this there is

00:46:02

a rational there's a logic

00:46:03

to it and I think

00:46:05

that were judges and arbitrators

00:46:07

at the very least would

00:46:09

look at what has happened

00:46:11

before to be better prepared

00:46:13

for their case. So what

00:46:15

that that's why I'm going

00:46:16

roughly by the citation figures

00:46:19

and I'm rather optimistic on

00:46:22

one side or the other

00:46:23

side. I might be pessimistic



00:46:24

on the other way around

00:46:27

but that's an old custom

00:46:36

ISM either way another great

00:46:39

example of what you're describing

00:46:40

is the core the factory

00:46:41

test on reparations and damages

00:46:43

that Helen also alluded to

00:46:46

Go into that stuff for

00:46:48

dip discussion will start with

00:46:52

your thoughts. I think you're

00:46:54

going to talk to book

00:46:55

unreasonable expectations and legitimate expectations

00:46:59

and what those principles might.



00:47:02

Mean and how they relate

00:47:04

to one another light on.

00:47:36

There we go. I want

00:47:39

to talk to Tuesday's really

00:47:41

and and I'm really thankful

00:47:45

to Jamaica because we went

00:47:47

back and forth as to

00:47:48

whether we were going to

00:47:50

do the interplay on on

00:47:52

you. weather whether we're going

00:48:03

to do mostly in the

00:48:05

in the interplay, we're going

00:48:07

to talk about the influence



00:48:09
of public international law and

00:48:10
I see a judgement in

00:48:12
investment re arbitration or or

00:48:15
both and I was more

00:48:16
of the public international law

00:48:19
on investment arbitration and and

00:48:22
and he kept on going

00:48:25
in and now I'm very

00:48:26
thankful because because there's something

00:48:29
to be said on that

00:48:30
and the and the decision

00:48:32
is really on certain Iranian

00:48:34
assets of Islamic Republic of



00:48:37

Iran versus United States of

00:48:39

America that we don't have

00:48:40

time to go to the

00:48:41

whole decision on this is

00:48:43

this is a case which

00:48:48

name Lee Box has explained

00:48:55

by the fort. took away

00:49:00

or or or or or

00:49:01

forgot that some Iranian entities

00:49:06

had their own legal personality

00:49:09

and three of them simply

00:49:11

as as up as entities

00:49:14

that were an extension of



00:49:16
the of the Iranian government

00:49:18
and the and as a

00:49:19
result of that they were

00:49:21
in some cases treated as

00:49:26
a rental around would argue

00:49:28
that manner and I'm here

00:49:35
and of course took issue

00:49:36
with that and at the

00:49:37
end of the day the

00:49:39
decision was was favorable to

00:49:41
run but in in getting

00:49:43
to that place at one

00:49:44
of the claims was that



00:49:46

the US treated Iran in

00:49:49

a reasonable Manner and when

00:49:52

you look into the arguments

00:49:53

that Iran has put before

00:49:55

the court there is a

00:49:57

reference to there be a

00:50:00

reasonable measures and how do

00:50:03

you define those are reasonable

00:50:04

men, so I want to

00:50:06

be I want I want

00:50:09

to read a passage to

00:50:11

you from the decision in

00:50:16

that case. I don't work



00:50:18

from the arguments that the

00:50:24

That you ran before the

00:50:27

court and basically Rodman teams

00:50:31

that were measured to be

00:50:32

reasonable. There must be a

00:50:34

nap or an appropriate correlation

00:50:36

between the state's public policy

00:50:40

objective and measure adopted to

00:50:42

a chili noting that in

00:50:44

a setting reasonableness tribunals also

00:50:47

refer to the concept of

00:50:50

proportionality. So where does this

00:50:54

come from that. That's one



00:50:56

of the biggest question. So

00:50:58

if you have looked into

00:51:00

investor-state arbitration Awards, you might

00:51:05

note that that is a

00:51:09

rule that was put before

00:51:11

other Parties by the tribunal

00:51:14

in Occidental and there's no

00:51:19

citation there. Then you go

00:51:23

into the decision, right you

00:51:25

going to the decision let's

00:51:26

go and look into the

00:51:27

decision to proportionality has there

00:51:31

being some correlation between the



00:51:36
objective that the state 6

00:51:39
and the measure that it

00:51:40
imposes if that correlation is

00:51:43
is is too far apart.

00:51:45
Then the measure is not

00:51:47
proportional and then investor morning

00:51:51
to the Occidental tribunals. the

00:51:54
investor could say well I

00:51:56
was mistreated my The way

00:51:59
I was treated was was

00:52:01
too harsh. They could have

00:52:02
done something else with me.

00:52:04
So and then we go



00:52:10
into into the actual. Conclusion

00:52:17
of the Court says 147

00:52:25
148 149 in view of

00:52:27
the core of this is

00:52:29
of course a summary of

00:52:30
the Court. The measure is

00:52:33
unreasonable within the meaning of

00:52:35
the Treaty of Amity. If

00:52:37
it doesn't it does not

00:52:38
pursue a legitimate public purpose.

00:52:41
That's your jacket. We're not

00:52:43
there. We're not in the

00:52:44
Charlotte area yet. There is



00:52:46
no relationship between the purpose

00:52:48
pursued and the measure and

00:52:51
now we're getting closer. And

00:52:55
if its adverse impact is

00:52:57
manifestly excessive in relation to

00:53:00
the purpose Pursuit. So the

00:53:02
two last paragraph paragraph 148

00:53:06
and 149. Are are those

00:53:09
that I wouldn't dare saying

00:53:13
this for sure but why

00:53:15
we can start assimilating to

00:53:16
the proportionality test to some

00:53:18
extent. There's no citation. There's



00:53:21
no reference to The Accidental

00:53:23
versus Ecuador case but in

00:53:26
the thinking of the Court

00:53:27
it is Alyssa Matthew almost

00:53:30
impossible that some logic will

00:53:32
not go into the into

00:53:34
the thoughts of the arbitrator's

00:53:36
from one end to the

00:53:37
other. It is a natural

00:53:39
process. I mean, I'm not

00:53:41
I cannot claim that I

00:53:43
am. An individual that stings

00:53:47
and sprayed it on his



00:53:49

own all the time influenced

00:53:51

by what I read by

00:53:53

by what I watch the

00:53:55

same process may happen. Here.

00:53:56

It is there's no citation.

00:53:58

So that that's why I'm

00:54:00

saying that they may be

00:54:02

getting there other evidence of

00:54:04

that influence. Well as as

00:54:06

Reza's indicated, the the separate

00:54:10

opinions are there and and

00:54:12

as we know today separate

00:54:14

opinions might be a majority



00:54:16

opinion in some case. That's

00:54:20

not good. But but it

00:54:21

does happen in the law.

00:54:22

So that's that's my first

00:54:24

one and then I can

00:54:26

I can later on move

00:54:28

on into the the other

00:54:30

interplay the influence of public

00:54:33

international law in West Virginia

00:54:35

arbitration where there's also I'm

00:54:41

taking a nap on basis

00:54:44

of some rules of being

00:54:48

considered or investment tribunals. And



00:54:51

yes, I'm mindful that we

00:54:58

started about 20 minutes late.

00:54:59

So if you are awesome,

00:55:06

I think it's a great

00:55:07

transition point for us to

00:55:08

go to Yummy thinking about

00:55:11

the human element and its

00:55:13

lenses individuals in the things

00:55:16

that they have selected and

00:55:18

thought about not only as

00:55:21

individuals but also as an

00:55:22

institution, what is that sociological

00:55:24

to mention really? Thank you.



00:55:30

Thank you, Karen many. Thanks

00:55:31

for letting me know today.

00:55:34

So I will indeed look

00:55:37

at it from a sociological

00:55:38

perspective. Focusing on both sides

00:55:43

of the coin so the

00:55:44

interaction of dicjk throw in

00:55:46

a before practice and the

00:55:49

other way around and I

00:55:50

will address to main issues.

00:55:52

So first of all, I

00:55:53

would like to get back

00:55:53

to initial Ellen Touch phone,



00:55:56

which is why does it

00:55:58

matter? I think I will

00:56:01

try to sink in chance

00:56:02

of interaction between the icj

00:56:04

and after practice and then

00:56:05

I will move on to

00:56:06

discussing the reason why Indian

00:56:08

tourist attraction between the court

00:56:13

and advertising or at least

00:56:15

you focus on the words

00:56:16

that India has while working

00:56:18

is worse and see what

00:56:19

matters may be issued which



00:56:23

I think is a foundational

00:56:24

issue. Why do we care

00:56:28

about the dialogue between the

00:56:30

isolation album still practice in

00:56:31

every right to care about

00:56:32

that? And I think that

00:56:33

these bags are fundamental question,

00:56:35

which is the extent to

00:56:37

which the icj and belong

00:56:40

to the same universe or

00:56:41

not. It's only if you

00:56:43

consider that the universe is

00:56:45

important issues of coherence and



00:56:50

fragmentation, I also So I

00:56:56

think there is enough pictures.

00:56:58

I didn't hear you mention

00:56:59

that both of you like

00:57:01

that with our talking about

00:57:03

many investment treaty arbitration. And

00:57:06

I think that the participation

00:57:08

of the seed as of

00:57:09

1959 with the conclusion of

00:57:11

the first guy to begin

00:57:12

timing in Pakistan has really

00:57:14

attached International Investment arbitration to

00:57:18

notify his respect and is



00:57:22

likely explains why for instance

00:57:24

the tribunal in Phoenix argue

00:57:26

that Indian deities cannot be

00:57:29

read and interpreted in isolation

00:57:31

from Quebec International General principle.

00:57:36

That being said it seems

00:57:41

that some disagree on that

00:57:43

only pays them are very

00:57:44

cautious in considering arbitral tribunal

00:57:48

in day-to-day as belonging to

00:57:50

the same universe. Don't you

00:57:57

look at International International commission

00:58:01

and the report on the



00:58:02
fragmentation of international law and

00:58:07
use the term exotic to

00:58:12
characterize as if it was

00:58:14
something very nice. You look

00:58:18
at investment experts you're so

00:58:21
fine some religion and some

00:58:23
skepticism about the fact that

00:58:25
they belong to the same

00:58:26
universe that is dramatically different

00:58:34
from anything previously known in

00:58:38
the international sphere again, as

00:58:40
is investment wannabe tration was

00:58:43
its own Universe. This is



00:58:47

not the issue. That's an

00:58:49

issue with matters in practice

00:58:52

as his insurance is per

00:58:53

game whether or not the

00:58:54

dialog it is irrelevant. I'm

00:58:57

not in whether we should

00:58:58

worry about the fragmentation in

00:58:59

particular as regard General International.

00:59:05

Second point so why is

00:59:07

there so listen a indicator

00:59:11

of the icj and indicates

00:59:13

a low of arbitral tribunal

00:59:15

as regard is so obviously



00:59:20

and this is something that

00:59:21

both Ellen and raise a

00:59:24

stress test subject matter of

00:59:26

the dispute a very different

00:59:28

which plays a role in

00:59:29

why there is not messy

00:59:30

pets. I think that other

00:59:34

reason so I will look

00:59:35

at it from the true

00:59:36

perspective starting with a d

00:59:38

a s pass library then

00:59:41

toothpaste more generally. So why

00:59:44

there is there any tourist



00:59:45

attractions in dicjk? So I

00:59:48

think that two main reasons

00:59:50

one pertain to the perception

00:59:52

that the court has of

00:59:54

itself as of a between

00:59:59

a dry sauna start with

01:00:01

depression that do course as

01:00:02

officer. Do we know that

01:00:05

the core is the principal

01:00:07

of a Judicial organ of

01:00:09

the United Nations article 92

01:00:11

of the UN Charter, but

01:00:13

you know where the cord



01:00:15

goes one step further looking

01:00:16

at it as the organ

01:00:19

of international law discussed by

01:00:21

the force in the Crawford

01:00:23

Channel Cay. So this explains

01:00:26

that this was my Seafood

01:00:28

by Mendelssohn why the eye

01:00:31

feature regarded as the Supreme

01:00:33

tribunal? This is somehow the

01:00:40

way to cause you so

01:00:43

why would a serpent go

01:00:44

to bother to take into

01:00:47

account \$22 with other International



01:00:49
court and to be fair

01:00:52
in the Kaysville is not

01:00:54
only very little on the

01:00:57
case as they got the

01:01:01
case will seconds Reason, I

01:01:15
think the perception that the

01:01:18
court as of arbitral tribunal

01:01:20
as powerful as a sister

01:01:26
that I'm not sure that

01:01:29
I see Jay look at

01:01:30
our field as a system

01:01:31
in percentage of pressure in

01:01:35
that order quote or feeling



01:01:36
is just a collection of

01:01:39
individuals specific regime's existing in

01:01:45
isolation or being their own

01:01:47
Bible with the word with

01:01:50
p i t stands out.

01:01:51
So the perception of the

01:01:53
court that there is no

01:01:54
such thing as International Investment

01:01:57
for navigation system. Second reason

01:02:02
why I think the court

01:02:05
is a very reluctant. Consistency

01:02:11
obviously, I think driving or

01:02:16
driving out to Treasures which



01:02:18

is a real medicine. This

01:02:20

becomes difficult for court to

01:02:21

rely on any disagreement. So

01:02:28

if you use what do

01:02:34

you focus on what do

01:02:36

you rely on insects the

01:02:37

fragmented contacts or something that

01:02:43

you stayed? And then what's

01:02:47

your favorite tea? That's the

01:02:50

case of arbitral tribunals have

01:02:52

taking into account the game

01:02:54

the lack of coherence. So

01:02:56

course they rely on plastic



01:02:58
judicial decision not a little

01:03:00
shed light of meaning but

01:03:01
also to convince that they

01:03:03
made the right interpreted. Chorizo.

01:03:05
It's a matter of conviction

01:03:06
persuasion argumentation. Any disrespect. That's

01:03:10
true. The fragmentation of caseload

01:03:13
contacting juice doesn't help in

01:03:15
convincing the audience and that

01:03:19
the right choice was was

01:03:21
made. No, let's look at

01:03:25
the shoot the reasons why

01:03:26
there was little from the



01:03:27
perspective of arbitral tribunal. So

01:03:29
why they're leasing reference to

01:03:31
the icj caseload in in

01:03:33
our fit? What I think

01:03:35
are the key word. Is

01:03:36
it originated e&n diversity and

01:03:39
I seen this as an

01:03:39
impact both in terms of

01:03:40
knowledge and again argumentation. It's

01:03:44
obvious that we all come

01:03:47
from different backgrounds or do

01:03:49
we may have different hats

01:03:50
and that's the beauty. I



01:03:52

think I've ever seen that

01:03:54

nice exchange of views. And

01:03:57

in any experience with the

01:03:59

point is that our Point

01:04:01

of Departure has different meaning

01:04:02

in that case that some

01:04:04

have a better knowledge of

01:04:05

international General and specific a

01:04:08

better knowledge of the case

01:04:10

law. I see Jay and

01:04:11

PCH. So we all know

01:04:14

that the Court's supposed to

01:04:15

know the low you handed



01:04:17

it to hear but but

01:04:19

is that the court does

01:04:21

not always a d i

01:04:24

c k slow and pch

01:04:25

in a way of the

01:04:35

primary responsibility to bring to

01:04:38

be pragmatic and to bring

01:04:39

the CD case do which

01:04:41

is best for the distance

01:04:44

of the interests of their

01:04:45

clients and maybe they do

01:04:47

not do that sufficiently and

01:04:49

this matter of knowledge 10%



01:04:52

goes to arbitration and to

01:04:55

consult in in the preceding.

01:05:02

Can you see clearly when

01:05:05

you go through a word

01:05:06

when there is a topic

01:05:07

International you're sitting on the

01:05:09

day and in particular when

01:05:12

you look at dissenting opinion,

01:05:13

and again, I think it's

01:05:18

a matter of argumentation and

01:05:19

persuasion. Began referring to Pasta

01:05:24

Vita rewards referring to Tasha

01:05:26

before The Season's yeah, he's



01:05:27

not going to shed light

01:05:28

on. This is too and

01:05:31

I need to back up

01:05:31

to justify the chores that

01:05:33

you made to convince your

01:05:34

body programming. Our feeling is

01:05:37

that the audience is very

01:05:38

diverse. So you don't choose

01:05:42

to send two depending on

01:05:43

the part of your dreams.

01:05:44

You want to convince any

01:05:45

disrespect relying on dicjk slow

01:05:48

major very powerful concession to



01:05:50

when you're speaking to the

01:05:52

Quebec International part of the

01:05:53

audience that the authority is

01:05:56

not as important when you're

01:05:57

on a box of the

01:05:59

address of arbitral tribunal. So

01:06:01

that's also an additional reason.

01:06:03

I think why there is

01:06:05

no Death Match reference to

01:06:06

itek slow in orbit room

01:06:09

just to complete if you

01:06:12

were also on the human

01:06:13

factor individual the fact that



01:06:17
has mentioned in particular. Constantly

01:06:22
you used to have arbitrators

01:06:27
sitting on the IC Key

01:06:28
Bank so I can do

01:06:30
even though they cannot destroy

01:06:32
now. Let us be traitorous

01:06:34
day after his background and

01:06:36
his knowledge. And I seen

01:06:38
that they already have the

01:06:39
potential to be a chance

01:06:40
for the prospect relation between

01:06:42
what are some of the

01:06:58
procedural advocacy and other cross-pollination



01:07:02

that you see a thank

01:07:06

you. Yes. So I I've

01:07:08

been asked to speak to

01:07:09

you about the interplay in

01:07:10

terms of how to fix

01:07:11

the practice between the two

01:07:13

regimes on from a practitioner's

01:07:15

perspective. So what we see

01:07:18

is that they are changing

01:07:20

on duty. Combination of at

01:07:23

least two things one is

01:07:24

the the inner play that

01:07:26

in the cross fertilization that



01:07:27

we've been speaking about today

01:07:29

influencing one in the other

01:07:31

the other is that they're

01:07:32

both respond to the same

01:07:34

on external circumstances of the

01:07:37

increasing use and demands of

01:07:39

international dispute resolution in both

01:07:42

of those are leading them

01:07:43

in some ways closer together

01:07:45

and in some ways further

01:07:47

apart. So I'm going to

01:07:48

focus on three ways in

01:07:50

which I see them coming



01:07:51
together and three ways where

01:07:52
these these in her place

01:07:54
and pressures are driving them

01:07:56
apart in terms of the

01:07:58
process. So is in relation

01:08:01
to coming together, the first

01:08:04
issue is the examination of

01:08:05
witnesses and experts in ICS.

01:08:10
It has had an influence

01:08:12
I would argue on the

01:08:14
icj, especially if we talked

01:08:16
about the human factor by

01:08:18
c h i just participating



01:08:19
sometimes in international Such a

01:08:24
p i c j has

01:08:24
become progressively more open to

01:08:27
cross-examination previously. There was very

01:08:30
little if any cross-examination in

01:08:33
court proceedings. I can remember

01:08:35
in the pulp Mills case

01:08:37
many years ago where Council

01:08:41
had a technical experts which

01:08:43
were advising them on both

01:08:45
sides. And the question was

01:08:47
put between Council and with

01:08:48
the court. How should we



01:08:50
handle them? The decision was

01:08:51
ultimately reach that they those

01:08:53
experts were presented as part

01:08:55
of the legal team that

01:08:57
was been presenting to the

01:08:59
court in the oral hearing

01:09:00
this then resulted in some

01:09:05
separate opinions when the Judgment

01:09:07
was released raising this issue

01:09:09
and questioning how you know

01:09:12
how the technical experts should

01:09:14
be presented to the court

01:09:15
because of course when they



01:09:16
are part of the team,

01:09:17
there's no opportunity for cross-examination

01:09:19
in ICS. We know that

01:09:22
cross-examination has been very prevalent

01:09:24
who it's been a long

01:09:25
long time intricate aspect of

01:09:30
those proceedings. And in many

01:09:32
ways formed the core of

01:09:34
the oral hearings were it

01:09:35
takes up most of

01:09:37
the time and attention of

01:09:38
those that are there and

01:09:41
I think again as we



01:09:43
talked about the human factor,

01:09:44
the icj judges have seen

01:09:46
both how it can be

01:09:47
handled that it can be

01:09:49
done in the context of

01:09:51
counsel representing states that is

01:09:53
appropriate and also that it

01:09:55
can be done in the

01:09:55
context of mixed civil and

01:09:58
common law system or people

01:10:00
are coming from different kind

01:10:02
of legal and practical approaches

01:10:04
as to how these things



01:10:05
should be conducted. And of

01:10:06
course, we know that common

01:10:07
law lawyers in many instances

01:10:08
are more familiar with this

01:10:12
practice of cross-examination. So now

01:10:14
we do see that the

01:10:15
court is very much increasingly

01:10:17
using cross-examination both with Witnesses

01:10:20
and with experts It has

01:10:22
now become a much more

01:10:23
regular process. The second way

01:10:26
in which we see them

01:10:27
coming together on this inner



01:10:29

play coming into practice is

01:10:31

on a presentation in oral

01:10:34

argument. The icj has historically

01:10:37

had a very formal oral

01:10:41

hearing and proceeding and also

01:10:43

as part of this there's

01:10:44

a requirement that the arguments

01:10:47

be translated between the two

01:10:49

official you and language is

01:10:50

adopted by the court of

01:10:51

French and English. This has

01:10:53

resulted in that Council have

01:10:56

to prepare their speeches in



01:10:58
advanced present those peaches to

01:11:00
the translators before they're their

01:11:03
presentation to the court and

01:11:06
then more or less in

01:11:08
order to facilitate, you know,

01:11:09
the orderly conduct of the

01:11:11
preceding sticks to that free

01:11:13
prepared speech Now by contrast

01:11:15
we see in investment arbitration

01:11:18
that the oral presentations are

01:11:20
much more at Hawk much

01:11:21
more flexible even with the

01:11:23
use of translation. Which also



01:11:26

has its own technical issues

01:11:28

and is not without problems,

01:11:30

but it's certainly a much

01:11:32

more flexible. Roisin. I do

01:11:36

see that the court is

01:11:38

moving in the direction of

01:11:39

allowing Council to provide kind

01:11:41

of less rigid presentations and

01:11:44

also becoming more open to

01:11:46

the use of other languages

01:11:47

as we've seen in the

01:11:49

recent dive hearings involving Venezuela

01:11:52

where Spanish was permitted which



01:11:55

you know after many decades

01:11:56

is is I think a

01:11:57

welcome change The third way

01:12:01

in which I see them

01:12:03

coming together in terms of

01:12:06

practice is that years ago?

01:12:08

I would say in both

01:12:10

regimes you counseled attitude and

01:12:12

approach was generally one of

01:12:14

being highly polite and to

01:12:16

put it in a certain

01:12:17

way kind of white gloves.

01:12:19

And this was because again



01:12:21

going to the Cuban and

01:12:22

institutional factors, it was more

01:12:25

or less a small Club

01:12:26

of people who often interacted

01:12:29

and this was particularly true

01:12:31

in the case of the

01:12:32

icj where you had a

01:12:35

group of practitioners in academics

01:12:37

who one day would be

01:12:39

arguing on opposite sides of

01:12:41

the court and the next

01:12:43

day would be on the

01:12:44

same team. And so there



01:12:45
was this a mutual respect

01:12:48
and professionalism because they knew

01:12:50
that they would have these

01:12:51
feature interactions along with other

01:12:53
factors and I I recall

01:12:56
again many years ago in

01:12:58
the Nicaragua work in the

01:13:00
Sprouts Costa Rica case is

01:13:01
one of the earlier ones

01:13:02
there been several in which

01:13:04
Ian Brownlee and left but

01:13:06
I would often disagree on

01:13:08
issues of substance and they



01:13:10

would have very strong views

01:13:11

on those issues of substance,

01:13:13

but they would always be

01:13:14

mutually respectful and stick to

01:13:17

the substance in their disagreements

01:13:19

because it's again one day

01:13:21

they would be on the

01:13:22

same side in the next

01:13:23

day. They be on opposite

01:13:24

sides and there was this

01:13:25

mutual respect and understanding among

01:13:28

the practitioners. Now what we

01:13:31

see is that overtime certainly



01:13:34

ICS has expanded to be

01:13:36

much more exclusive which is

01:13:38

very welcome and the icj

01:13:40

has more slowly also expanded

01:13:43

from this small Club of

01:13:45

practitioners and we all welcome

01:13:48

and once that increasing inclusivity

01:13:51

and diversity and hopefully there

01:13:54

will be more of it

01:13:55

in the future. But with

01:13:57

that I would argue with

01:13:58

that expansion has become an

01:14:00

egg. Expansion in the kind



01:14:01

of social mores of how

01:14:03

counsel approach advocacy in there

01:14:06

and approached their interactions and

01:14:09

conduct themselves again, I think

01:14:14

arguably what we see is

01:14:15

that have as both have

01:14:17

expanded the white gloves have

01:14:19

more often come off in

01:14:20

the boxing gloves have come

01:14:22

on and I will and

01:14:27

I would say that while

01:14:29

I think I welcome that

01:14:30

variety the variety that comes



01:14:33
with inclusivity with diversity and

01:14:35
with different advocacy a protest

01:14:37
in my view the most

01:14:39
successful and convincing approach is

01:14:42
to continue to take the

01:14:43
high road and to have

01:14:46
respectful disagreement. Now in terms

01:14:51
of how I see them

01:14:52
getting further apart again three

01:14:56
topics. The first is well

01:15:00
before I get into the

01:15:00
topics. I think a lot

01:15:02
of this again. I talked



01:15:04

it we talked about the

01:15:05

interplay for the interplay has

01:15:06

its limitations. I see where

01:15:08

I see them getting further

01:15:09

part is I would argue

01:15:10

more from external pressures of

01:15:12

the more demand for their

01:15:15

services and more use of

01:15:18

international dispute resolution. And the

01:15:20

interesting part is out. Of

01:15:22

course, the icj is inherently

01:15:25

limited and how it can

01:15:26

respond and expand to deal



01:15:29

with that increasing you it's

01:15:31

a set number of Judges.

01:15:32

It's a set number of

01:15:34

Staff who work there. It's

01:15:35

a set rules and schedule

01:15:37

of what it can accommodate.

01:15:38

Whereas an ICS you can

01:15:40

have ever more arbitrators Evermore

01:15:42

tribunal and there are many

01:15:45

different in our International arbitration

01:15:46

institutions ready to support and

01:15:49

expands and Beast. In response

01:15:51

to the increasing demand. So



01:15:54

for example of evidence in

01:15:57

Britain's leading what we've seen

01:15:59

the court that whereas when

01:16:01

is DST says there's been

01:16:03

an evolution of ever more

01:16:05

complex cases and more and

01:16:07

more evidence being presented to

01:16:09

the tribunal often resulting in

01:16:12

expanded pleadings with thousands of

01:16:14

pages of exhibits and evidence.

01:16:16

Now, we have the court

01:16:18

going in the opposite direction

01:16:19

where it has specifically limited



01:16:22
pleadings to 750 Pages. It's

01:16:26
not clear of this limitation

01:16:27
apply strictly to the main

01:16:30
cleaning itself for all volumes

01:16:32
of the of the bleeding

01:16:33
on the sounds like quite

01:16:35
a lot on but if

01:16:36
you think about it, if

01:16:38
you have a say a

01:16:39
350 page pleading and each

01:16:41
exhibit is one page. That

01:16:44
means you can have one

01:16:45
exhibit cited per page of



01:16:48

the bleeding and Has results

01:16:51

in a lot of creative

01:16:53

engineering by by counsel mainly

01:16:57

having to be quite conservative

01:16:58

in in supporting the statements

01:17:01

that they're making before the

01:17:02

court with evidence and secondly

01:17:04

extreme excerpting which as we

01:17:07

know often at when things

01:17:09

are excerpted too far, you

01:17:11

lose a lot of the

01:17:11

fundamental contacts and things can

01:17:14

be misused and misapplied. The



01:17:18
second is evidence in hearing

01:17:20
so used to have been

01:17:21
securing here there. I see

01:17:24
increasing Divergence where the court

01:17:26
is by contrast more permissive

01:17:28
than an investment arbitration in

01:17:31
a mess when arbitration hearings

01:17:33
generally do not allow the

01:17:35
use of new evidence at

01:17:37
the hearing or in the

01:17:39
lead-up to the hearing and

01:17:40
it if it's allowed at

01:17:41
all. It's under a kind



01:17:42
of exceptional circumstances that you

01:17:44
have to argue for and

01:17:47
substantiate. Whereas Icj any source

01:17:52
that is publicly available can

01:17:55
be raised in the oral

01:17:57
argument which you can imagine

01:17:59
leads to much more surprises

01:18:02
before what is normally a

01:18:04
fight being rigid environment then

01:18:07
and investment arbitration. And then

01:18:10
the third way in which

01:18:11
I see them going diverging

01:18:14
more is in provisional measures



01:18:17

again, you have the court

01:18:19

more frequently seen cases where

01:18:21

provisional measures are quite urgent

01:18:23

and quite important as we

01:18:25

have a lot of issues

01:18:26

of Interstate aggression War Etc.

01:18:31

And this has forced to

01:18:33

move much faster than it

01:18:35

has done in the past

01:18:36

and arguably in that process

01:18:39

has had to give up

01:18:40

some to process opportunities. Now

01:18:44

what we see more in



01:18:46
in this trend is that

01:18:47
the court allows the applicant

01:18:49
to present the request for

01:18:50
provisional measures a hearing is

01:18:52
quickly sat. There is no

01:18:54
written response by the other

01:18:56
party and then they go

01:18:59
to the oral hearing the

01:19:00
application again presents their course,

01:19:02
they're at their case orally

01:19:04
and then for the first

01:19:05
time the other party presents

01:19:07
its view on on the



01:19:09
very For informational mattress request

01:19:11
being made on the same

01:19:13
day. There is no possibility

01:19:16
for the applicant to respond

01:19:18
to those counter-arguments which have

01:19:19
been raised for the first

01:19:21
time that day and then

01:19:22
a decision is released. Now,

01:19:25
we see an investment arbitration

01:19:28
that there is usually much

01:19:30
more opportunity for the parties

01:19:32
to present their case and

01:19:34
Advocates both in writing and



01:19:36

orally and again, this is

01:19:38

I think because the tribunals

01:19:40

are more able to act

01:19:42

nimbly flexibly convening more quickly

01:19:45

under her tongue out with

01:19:47

virtual conferencing a more Adept

01:19:49

at of ability to use,

01:19:51

you know, it's evidence and

01:19:53

and pleadings in a way

01:19:54

that allows for more but

01:19:58

a fast process but with

01:20:00

you Noah, perhaps arguably a

01:20:02

bit more due process in



01:20:03

in in in the process.

01:20:06

So that's the kind of

01:20:09

quick overview. I would say

01:20:11

of where I see them

01:20:12

coming together and going further

01:20:13

apart as a result of

01:20:14

the interplay between each other

01:20:16

in the interplay with what

01:20:18

I think is going to

01:20:19

continue to be increasing use

01:20:20

of both regimes by by

01:20:23

the party's. I do think

01:20:27

that this interplay is likely



01:20:28
to increase over time because

01:20:31
these demands are going to

01:20:32
increase over time and as

01:20:35
we've has been mentioned many

01:20:36
times today because you see

01:20:37
both counsel and the charges

01:20:40
are arbitrators kind of moving

01:20:42
between Both Worlds and taking

01:20:44
the things that they learn

01:20:45
from one world and applying

01:20:47
it to the other but

01:20:48
we have to not recognize.

01:20:49
I think that'll be slowed



01:20:51

or or affected by the

01:20:54

limitation placed by the Court's

01:20:56

recent double having restriction. Thank

01:21:00

you. Carla was fascinating. I

01:21:01

haven't forgotten that we have

01:21:03

colleagues with us. Virtually. You're

01:21:05

probably itching to react to

01:21:06

every message from said I'm

01:21:08

also mindful of the time.

01:21:09

So I just very briefly

01:21:11

before we closed the session

01:21:13

and maybe we can leave

01:21:13

questions and answers for mingling



01:21:15
and mixing after we formally

01:21:17
food. But before we do

01:21:19
that, let me try and

01:21:20
back to Reza and then

01:21:21
see them in the comments.

01:21:24
Thank you very much. I

01:21:30
think what is very amazing

01:21:32
about this panel is that

01:21:35
the almost all agree on

01:21:37
the human factor in the

01:21:38
significance of the human factor

01:21:40
and all the discussion all

01:21:42
that reminds me of a



01:21:43
quotation in a movie that

01:21:45
I saw a few. Yes.

01:21:46
I tried to kill. Well,

01:21:48
I counseled refer to his

01:21:52
client and he said that

01:21:53
the eyes of the Lord

01:21:54
human eyes. So this is

01:21:56
a very important factor that

01:21:58
we have to always a

01:21:59
bear in mind. I have

01:22:01
three comments for a unique

01:22:05
Clara and Jose and maybe

01:22:07
a question for Atlanta. First



01:22:11

of all, it was amazing

01:22:12

what you said Jose about

01:22:14

the sub starting a specs

01:22:16

on the fact that what

01:22:16

matters is actual influence not

01:22:19

a citation that being expressly

01:22:22

made. This is very important

01:22:23

in this is something that

01:22:24

I completely agree with you.

01:22:25

I think you're afraid to

01:22:28

fe t so I

01:22:29

confine myself to motz's relating

01:22:31

to a PT. So when



01:22:33
the court was discussing the

01:22:35
gist of the Court's judgment

01:22:36
was on the issue of

01:22:37
reasonableness of substantive matters affecting

01:22:41
the notion of reasonableness three

01:22:44
elements that the quote sent

01:22:45
out and if you review

01:22:47
the jurisprudence of investment research

01:22:49
articles on on matters of

01:22:50
the issues of fair and

01:22:52
Equitable treatment when they when

01:22:54
they were interpreting Reasonableness attend

01:22:58
the Powerpuff one of the



01:22:59

ECT you can see a

01:23:02

trend as starting from siluca

01:23:04

and in the car fixed

01:23:06

after bitwit solute, and then

01:23:08

you have a case against

01:23:09

Costa Rica in 2012. And

01:23:11

then you have Nicolas against

01:23:13

Romania. I'm in the context

01:23:15

of the ECT. You also

01:23:16

have many of those getting

01:23:17

to the 2020 Olympics taking

01:23:19

rreef against spank. You see

01:23:22

that Trend it's getting more



01:23:24

sophisticated the dice to dissect

01:23:26

of the reasonableness notion and

01:23:29

the quote goes along the

01:23:31

same way without citing any

01:23:32

of these tribunals. This is

01:23:34

very important. This is very

01:23:35

interesting but you mentioned so

01:23:37

I thought I should share

01:23:38

that with you and then

01:23:40

to jaunich about the the

01:23:43

fact that these two regimes

01:23:46

they both play Within the

01:23:47

territory of public international law



01:23:49
and I had a third

01:23:51
section for my presentation, but

01:23:53
I have to exercise a

01:23:54
nuclear option. Not referring to

01:23:56
it, but the comments made

01:23:58
me provide an opportunity for

01:23:59
me to also refer to

01:24:02
some of my discussions and

01:24:03
I just want to don't

01:24:05
don't don't be afraid. I'm

01:24:06
looking to see if it's

01:24:07
a whole section, but I'm

01:24:09
just going to say that



01:24:10
the contributions by investor-state dispute

01:24:13
settlement tribunals in the areas

01:24:16
that they are not so

01:24:17
these are areas which old

01:24:20
acquaintance tribunals on the international

01:24:21
plane to refer to they

01:24:23
did they make contributions by

01:24:25
the contributions of investing in

01:24:27
more specific. Put it on

01:24:29
the issue of compensation location

01:24:31
of Riders by my count

01:24:33
icj has only awarded compensation

01:24:34
in full cases. And so



01:24:38

when do occasion arises the

01:24:39

best source to refer to

01:24:41

is the investment disputes settlement

01:24:45

because they have dealt with

01:24:46

almost every conceivable head of

01:24:49

damage in every imaginable factual

01:24:52

scenario. This is a very

01:24:53

good source and if you

01:24:54

refer to the eye I

01:24:56

suggest all together just a

01:24:57

responsibility for international wrong from

01:24:59

Act of 2001. And that's

01:25:00

even before the Baby Boomers



01:25:01
olders Ice-T simple words that

01:25:04
start with reference to that

01:25:05
you let the fire and

01:25:08
also a more general area

01:25:10
is the interpretation and if

01:25:13
you refer to the ioc

01:25:14
articles of conclusion since of

01:25:17
secret agreement as practice of

01:25:19
2018, you see specific references

01:25:22
to the practice of us

01:25:24
dies and subsequent criminal subsequent

01:25:25
practice of treating deportation. So

01:25:27
it to borrow the times



01:25:29

of the generals in the

01:25:30

military when they want to

01:25:32

buy a new weapon systems.

01:25:34

They just don't consider whether

01:25:35

it is nice and you

01:25:37

in a small portable said

01:25:38

whether they are battle-tested and

01:25:40

I think these are investment

01:25:41

Treaty of the Woods by

01:25:43

being inside of you by

01:25:44

being sighted by a very

01:25:45

important organ of international do

01:25:47

the name did the IRC.



01:25:48

They are indeed battle-tested and

01:25:50

they could be relied upon

01:25:51

by the icj. Whether they

01:25:55

refer refer to express your

01:25:58

not happy and I want

01:25:59

one important point that I

01:26:01

mentioned was about the difference

01:26:03

in in probably probable difference

01:26:05

in add to notes and

01:26:07

that the issue is. I

01:26:09

understand that the modern treaties

01:26:12

are much more sophisticated in

01:26:14

terms of the formulation of



01:26:16

Standards standards of treatment, but

01:26:18

dead all the duration of

01:26:20

the ideas, which are mainly

01:26:21

is still the basis of

01:26:23

the Shadows that are set

01:26:31

out in the FC ends.

01:26:34

So this is all I

01:26:36

wanted to share this as

01:26:37

some food for thought for

01:26:39

future discussion to elicit some

01:26:41

discussion to what extent of

01:26:43

substantive law makes a difference

01:26:44

in the distance of the



01:26:45
protection and I'm going back

01:26:48
to the other one final

01:26:51
question maybe for a land

01:26:52
because it was also Bothering

01:26:54
my mind I didn't have

01:26:55
an announcer for and maybe

01:26:57
Alan can help me with

01:26:58
that. I used you as

01:27:01
a reference that's exceptionally mentioned,

01:27:06
but it's interesting that in

01:27:08
the boat rentals by interested

01:27:11
or arbitration tribunals. They have

01:27:14
heart problems, especially as of



01:27:16
the baby as of 1990

01:27:18
they get a lot of

01:27:19
references in the icj judgments,

01:27:22
and I'm wondering why what

01:27:25
was the different is what

01:27:26
makes the difference that the

01:27:27
is DSS does not get

01:27:29
proper references, but the interstate

01:27:31
arbitrations they get reference because

01:27:33
they are interested or because

01:27:34
there is another concern or

01:27:36
observation. Thank you very much.

01:27:39
Thank you, brother. So now



01:27:40

I can be super Minds

01:27:42

all the time. I turn

01:27:43

to Allen's have the very

01:27:44

last word. Clarification maybe I

01:27:52

was wrong mentioning the show

01:27:54

of optimism or pessimism because

01:27:56

it was value judgment, which

01:27:58

had nothing to do in

01:27:59

the world. This was not

01:28:01

my point. I don't know

01:28:02

either one of your other

01:28:04

and just interested in in

01:28:06

in in in reflecting on



01:28:08

that and I found the

01:28:09

discussion Rene ice when you

01:28:12

share the view, which was

01:28:13

the express that we are

01:28:15

the public did I mention

01:28:17

of isds decide that it

01:28:19

belongs to to international law

01:28:21

and and sometimes I'm disturbed

01:28:24

with people who poos International

01:28:27

and investment law breakers for

01:28:29

me. We are in the

01:28:30

same real ID to dialogue

01:28:33

is absolutely necessary and education



01:28:37
as well and that I

01:28:40
could see and the line

01:28:41
the fact that is so

01:28:42
many people have progressed in

01:28:44
her getting knowledge. Still that

01:28:48
indeed it can only three

01:28:50
Godfather dialogues but I do

01:28:53
the same time I stick

01:28:55
to to to the idea

01:28:56
that most of the time

01:28:57
quotations or abortionist a cute

01:29:01
pick and choose what is

01:29:02
useful for your case and



01:29:04

you just dropped the rest.

01:29:06

And so this about your

01:29:07

sister did the results of

01:29:15

the game as it is

01:29:16

currently no no problem with

01:29:18

that but it is difficult

01:29:20

to find real Saturn has

01:29:23

was underlined by the fact

01:29:28

remains extremely extremely important and

01:29:34

we wouldn't have this debate

01:29:36

it with if we wouldn't

01:29:37

have had more and more

01:29:39

public International lawyers clean the



01:29:41

room in Investments date of

01:29:43

the tradition and more and

01:29:45

more. Game experience in in

01:29:50

in this one last Mansion

01:29:53

this time for it in

01:29:57

the chat that I need

01:30:00

to test that to you

01:30:01

found in in certain Iranian

01:30:03

assets. It looks like exactly

01:30:05

the same structure as the

01:30:06

necessary tests regarding conception w250

01:30:11

test at the European Court

01:30:13

of Human Rights and and



01:30:15
the roots of this test

01:30:17
is in the German County

01:30:18
child care and still I

01:30:21
would say what is important

01:30:23
is that the good ideas

01:30:24
can can can move and

01:30:26
can translate from one system

01:30:28
to to another and this

01:30:30
is where I share what

01:30:31
you call yourself. You're too

01:30:32
busy. Maybe it was my

01:30:34
fault that you're the most

01:30:37
important and are able to



01:30:41

import ID if they helped

01:30:44

and then make the case

01:30:46

law of progress. Distance I

01:30:48

think that's all I want

01:30:49

discussion. That is so bad.

01:30:51

It's the case. Okay, do

01:30:55

final final word back to

01:30:57

Jose Antonio? And then we

01:30:59

close? What one thing that

01:31:04

I want to say is

01:31:05

I am and this is

01:31:06

not flattery. I'm really honored

01:31:08

to be in this time.



01:31:09

I mean like with with

01:31:10

with Clara and and one

01:31:15

thing that I missed indicating

01:31:18

which was a promise was

01:31:20

was the influence of of

01:31:21

the public international law in

01:31:24

investor-state arbitration and one example

01:31:26

is the you ran in

01:31:27

and ever since the USA

01:31:29

game start. You can look

01:31:39

into the Iran versus u.s.

01:31:42

Tribunal and you will see

01:31:45

that the definition of fair



01:31:48

and Equitable treatment is is

01:31:50

textbook waste waste management to

01:31:56

type of definition where they

01:31:59

go through the process, they

01:32:01

go through arbitrary an unreasonable

01:32:04

measures and they at the

01:32:06

end they referred to the

01:32:07

dealer expectations. That's a textbook.

01:32:12

And you go back a

01:32:14

few years and a vsd

01:32:16

clearly states that there is

01:32:18

no customer International on legitimate

01:32:22

expectations. So the question now



01:32:25
becomes And who is aware

01:32:37
of how potent the icj

01:32:41
ruling Tsar? And they want

01:32:46
to use that to defend

01:32:48
the sting. What would you

01:32:51
do? And that's what that's

01:32:55
one of the reasons why

01:32:56
when you read a memorial

01:33:00
from respondent or from Play

01:33:03
Man invests arbitration normally in

01:33:06
the different part of the

01:33:08
Greece. I would say normally

01:33:11
look at the damage part



01:33:12

90 80% of the time.

01:33:17

the source of factory cases

01:33:18

cited in the first paragraph

01:33:22

because it is an authority.

01:33:23

So what would you do

01:33:24

with regard to fair and

01:33:25

Equitable trade? Yes, the notion

01:33:28

of legitimate expectation being at

01:33:30

a slow construct has been

01:33:33

there were a number of

01:33:34

years now. What might happen

01:33:39

is if you're defending a

01:33:40

state and claiming spousal brings



01:33:43

you an argument that that's

01:33:45

terrible treatment include legitimate expectations.

01:33:48

If it is part of

01:33:51

their duty to say, well

01:33:52

the icj has just said

01:33:53

that is not part of

01:33:55

customary international law if it's

01:33:58

a gem or stayed but

01:34:00

my point is not so

01:34:01

much a dog see your

01:34:03

own Advocate and you use

01:34:06

whatever it takes to to

01:34:08

to defend your client. My



01:34:10

point is more related to

01:34:12

an issue that the unique

01:34:14

touched upon consistency. We do

01:34:18

not have An investor State

01:34:20

appellate body. We do not

01:34:22

have an investor State what

01:34:25

we may not have it

01:34:27

ever end and the icj

01:34:31

at least concerning customary international

01:34:34

law or or general rules

01:34:37

of international law may play

01:34:39

a very important role. It

01:34:42

is very easy investor-state arbitration



01:34:44

tribunals to to participate as

01:34:49

to what is customary international

01:34:51

law. You see it in

01:34:52

PMS versus Argentina work or

01:34:55

the Tribune referring to National

01:34:56

treatment as customary international law

01:34:58

which definite answer but let's

01:35:04

just put a? Likely there.

01:35:07

Do you have the icj

01:35:10

who might go through a

01:35:13

more rigorous process as to

01:35:15

what it may be calling

01:35:16

customer International what not. This



01:35:19
this is it is not

01:35:21
a matter of law or

01:35:23
the icj or the world

01:35:25
for it is the court

01:35:28
that may be closer to

01:35:30
looking into what is general

01:35:33
international law. What is customary

01:35:35
International what are general principles

01:35:37
of Law and and the

01:35:39
yes, we have it. So

01:35:41
I believe that it plays

01:35:42
a fundamental role in terms

01:35:45
of its influence in investor



01:35:47
arbitration. And the last thing

01:35:48
I will say is I'm

01:35:49
really really glad that are

01:35:51
walked us through All the

01:35:53
influence because 11 very positive

01:35:58
elements of investor arbitration is

01:36:00
that in a live system

01:36:02
with a dynamic system which

01:36:04
one thing it or not?

01:36:05
It is having into us

01:36:07
a recorded with without clothes

01:36:09
when I was thinking, you

01:36:10
know, I love him to



01:36:11
not public international law, but

01:36:13
but is it really effective

01:36:15
looking to enforcement of the

01:36:17
Nicaragua versus versus of the

01:36:19
u.s. Case and I think

01:36:21
whether or not affected You

01:36:25
might be getting a more

01:36:26
effective now, but the investor

01:36:28
Street investment re arbitration it

01:36:30
is it is one of

01:36:31
the systems in international that

01:36:35
has the highest level of

01:36:36
the lights. another session after



01:36:50
a lunch break at 8,

01:36:52
so maybe we will see

01:36:54
you there or you so

01:37:01
much for all of your

01:37:02
attention and for joining us

01:37:03
this morning, and I hope

01:37:04
to see you at the

01:37:06
remaining programs today and