

International commercial arbitration- The Limits of the Public Policy ground for setting aside or non-enforcement of arbitration awards by national courts *

Summary

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

The Washington Arbitration Update (WAU) session held in Doha 2024 focused on the intricate topic of international commercial arbitration, particularly the public policy grounds for setting aside or refusing enforcement of arbitration awards by national courts. The session was led by co-founder Jose Antonio Rivas and featured moderator Stathis Papadopoulos, who introduced a distinguished panel of experts.

The discussion highlighted the contentious nature of public policy in international arbitration, noting that it is often invoked as a reason for annulment or non-enforcement of awards. Papadopoulos articulated the tension between proponents of a restrictive versus expansive interpretation of public policy, emphasizing that this divergence significantly impacts the predictability and finality of arbitral awards.

Dr. Reza Eftekhari provided insights into the evolving perceptions of public policy in the Middle East, revealing a trend towards a more pro-enforcement stance in jurisdictions that have historically been skeptical of international arbitration. He cited several recent cases from Egypt, Iran, Saudi Arabia, and the UAE, which illustrate a narrowing interpretation of public policy grounds for refusal of enforcement.

The panel also addressed the socio-political context influencing public policy interpretations, including the role of Sharia law and historical judicial perspectives. Eftekhari identified four key reasons for the expansive interpretation of public policy in the region, including the historical development of judicial understanding, socio-political dynamics, and the influence of Sharia.

Further contributions from Constantine Christy and Stella M. Tzavara discussed procedural aspects and the role of institutions like the ICC in safeguarding the enforceability of awards. They emphasized the importance of ensuring that arbitral awards comply with public policy to avoid annulment.

Overall, the session underscored the need for ongoing dialogue among stakeholders, including judges, lawyers, and legislators, to harmonize the application of public policy in international arbitration and enhance its predictability and effectiveness across jurisdictions. The discussions concluded with an acknowledgment of the complexities involved in navigating public policy in arbitration, particularly in light of varying national laws and international obligations.

Authors

Stavros Michalopoulos, Stella Leptourgou, Ilias Bantekas, Konstantin Christie, Reza Eftekhar

Topics

International Commercial Arbitration, International Arbitration, Limits of Public Policy, Public Policy, Setting aside awards, Non-enforcement, non-enforcement of awards, arbitration awards, national courts

Category

WAU

Full Transcript

00:00:00

We are sir. Okay, so

00:00:08

So good afternoon, everyone. This

00:00:10

is world of attrition update.

00:00:14

From Doha 2024 and it

00:00:18

is with great pleasure that

00:00:20

I will be introducing the

00:00:22

moderator. But before that me

00:00:24

and share with you that

00:00:25

my name is Jose Antonio

00:00:26

Rivas. I am one of

00:00:29

the co-founders of world over

00:00:31

Jason update which was founded

00:00:34

for years ago. This is

00:00:36

a fourth edition of world

00:00:37

over Jason update. And the

00:00:39

first time that that we

00:00:41

have an in-person panel from

00:00:45

Doha much of it has

00:00:48

been Thanks to our moderator

00:00:50

stop at Lowe's and I

00:00:57

would like also to share

00:00:59

with you that I am

00:01:01

parked strategy here in Washington

00:01:03

DC and also professor of

00:01:07

investment treaty arbitration public international

00:01:10

law and icj judgments and

00:01:14

For today's Final we have

00:01:15

a great topic at which

00:01:17

is international commercial arbitration the

00:01:20

limits of the public policy

00:01:21

ground for setting aside or

00:01:24

not enforcement of arbitration Awards

00:01:27

by not a national courts.

00:01:29

This is a very tropical

00:01:34
themed considering that today. There

00:01:38
are various jurisdictions in the

00:01:40
world that are seeing annulment

00:01:44
or set aside request via

00:01:48
parties that that that have

00:01:51
had the awards against them

00:01:54
in various places both in

00:01:57
Europe, but also in may

00:01:59
as well as in the

00:02:01
United States among other places

00:02:03
with that I would love

00:02:05
to introduce her and establish

00:02:06
who is who has it

00:02:11

a vast experience in construction

00:02:12

and Engineering disputes and has

00:02:15

considerable experience advising contractors employers

00:02:18

and developers and government institutions

00:02:20

with a particular focus on

00:02:23

large-scale projects in the infrastructure

00:02:26

energy oil and gas sectors

00:02:28

starters is a senior associate

00:02:32

of dla Piper in Doha.

00:02:34

He's also an arbitrator. He's

00:02:37

a member of the young

00:02:38

arbitrators form at the public

00:02:39

international law group. He is

00:02:42

also a qualified solicitor of

00:02:47

the senior courts of England

00:02:48

and Wales. And also qualified

00:02:51

in in in Greece apart

00:02:55

from that. It is with

00:02:56

great pleasure that he was

00:02:59

also my student at Georgetown

00:03:00

law and and it's a

00:03:03

fascinating that now he's doing

00:03:05

full force International arbitration from

00:03:08

Doha so stop take it

00:03:12

away and thank you for

00:03:13

being here. You better match

00:03:16

Professor Davis. I can only

00:03:17

call you Professor. Dave was

00:03:19

given the history in Georgetown

00:03:21

long time ago. It is

00:03:23

a great pleasure to see

00:03:24

you again after all these

00:03:25

years again to everyone and

00:03:29

welcome to the fourth world

00:03:31

arbitration update conference or as

00:03:33

I like to call it

00:03:34

the world arbitration week 2

00:03:38

weeks actually would have been

00:03:39

all over the world with

00:03:41

a view to informing the

00:03:43

world about International arbitration and

00:03:45

more importantly expanding it in

00:03:48

in the four corners of

00:03:50

the globe. This is the

00:03:52

first time that the conference

00:03:53

is taking place in the

00:03:54

Middle East and in Doha

00:03:56

and we at dla Piper

00:03:59

and gauhar very happy to

00:04:01

be organized and get along

00:04:02

with the World Trade Organization.

00:04:04

We hope that this is

00:04:05

the beginning of a very

00:04:06

fruitful collaboration. We're very excited

00:04:10
to be doing it and

00:04:11
hopefully we can do it

00:04:12
again next year. Let's go

00:04:15
Topic of this conference before

00:04:16
I introduce the speakers. I'd

00:04:18
like to make a couple

00:04:19
of introductory remarks as Professor

00:04:22
Eva said the topic is

00:04:24
the limits of the public

00:04:26
policy ground for setting aside

00:04:27
or not enforcement of arbitration

00:04:30
Awards by national course as

00:04:33
an irritation practitioner is well

00:04:36

aware that a policy especially

00:04:40

in this region is one

00:04:41

of the murkiest most hotly-debated

00:04:43

concept and international arbitration which

00:04:47

however on the path. However,

00:04:48

it has very real consequences

00:04:51

as it is one of

00:04:53

the most commonly invoked reasons

00:04:54

for set aside or refusal

00:04:56

of enforcement people use it

00:04:59

very very happy parties use

00:05:01

it very often in general.

00:05:03

I always like to say

00:05:04

that a person's Aura States

00:05:05

views on the limits of

00:05:06

public policy basically reflective using

00:05:09

arbitration the proponents of an

00:05:12

otoscope of public policy or

00:05:14

the you revealed that you

00:05:15

View of the international public

00:05:18

policy generally tend to favor

00:05:21

at least in my view

00:05:22

the finality of arbitral awards

00:05:24

and the predictability of the

00:05:27

arbitral process as well as

00:05:29

the proliferation of the arbitration

00:05:30

on the conferring. We have

00:05:32

the proponents of an expansive

00:05:34

approach a public policy who

00:05:36

focus on the wording of

00:05:37

the New York convention that

00:05:39

allow Sports 49 Portsmouth of

00:05:40

awards that is against the

00:05:42

public policy of that state

00:05:44

that gives in their view

00:05:47

the understanding that only state

00:05:50

courts can protect both substantive

00:05:53

and procedural public policy and

00:05:55

the Integrity of the legal

00:05:56

system insistence text to me

00:05:58

system of that state and

00:06:00

as a result, they stay

00:06:01

for granting them a higher

00:06:03

degree of deference. The limits

00:06:06

between the two trends that

00:06:08

I have set out is

00:06:09

going to be the main

00:06:09

topic of our discussion. Thankfully

00:06:12

we have a stellar panel

00:06:13

of speakers with like mustard

00:06:14

a starting to my ride

00:06:16

Professor. He has a Dr.

00:06:19

Reza eftekhari who is joining

00:06:21

us from the line. Mr.

00:06:25

Constantine Christy and me spell

00:06:27

elliptigo in case you have

00:06:28

not noticed we have an

00:06:29

absolute majority of people here

00:06:32

that was entirely coincidental. I

00:06:34

assure you she's a professor

00:06:42

of law at how much

00:06:44

bin Khalifa University at the

00:06:46

Kaiser foundation and actually Professor

00:06:48

me, but she's also an

00:06:49

adjunct professor at Georgetown University.

00:06:51

He will provide a brief

00:06:54

historical overview of public policy

00:06:56

and perceptions regarding the approach

00:06:59

of the public policy without

00:07:00

stay and the He-man. Let's

00:07:04

see whether he gives a

00:07:06

more optimistic view with respect

00:07:09

to the concept of public

00:07:10

policy when it comes to

00:07:11

recognition of arbitral awards. It's

00:07:25

coincidental you sure it's always

00:07:29

a paradox with a policy

00:07:30

in the paradoxes that wild

00:07:32

states make policies for investment

00:07:34

for Commerce protract business at

00:07:37

the same time some time

00:07:39

ago that left. what are

00:07:42

the limitations to that to

00:07:43

the court nor the courts

00:07:44

where judges do they might

00:07:46

look at certain other issues

00:07:49

and then they will take

00:07:50

this shoes decisions that something

00:07:51

Falls within the public policy

00:07:53

and therefore that then would

00:07:55

hinder inhibit the actual State

00:07:57

policies and I don't know

00:07:59

that you can you can

00:08:00

make a multibillion-dollar policies, but

00:08:02

then I can judge has

00:08:03

to decide you needed Willie

00:08:04

or something or not on

00:08:07

the base of public policy

00:08:07

between the actual policy makers

00:08:12

and those deciding what is

00:08:14

public policy and we saw

00:08:16

that 80's 90's and not

00:08:18

until the early 2000s were

00:08:20

quartz made the life-or-death decisions

00:08:23

about issues affecting affecting at

00:08:26

least a policies and Rancho

00:08:30

When we did research I

00:08:32

can place a d2000 we

00:08:34

look at the before the

00:08:35

second perspective of how many

00:08:37

cases there are and based

00:08:39

on those cases with look

00:08:40

at what the law and

00:08:42

public policy was originally and

00:08:43

globally me see that there

00:08:49

are very few cases since

00:08:50

the old are the late

00:08:52

2010 and 2008. And the

00:08:57

reason in my opinion is

00:08:58

is because that isn't it

00:09:00
is closed. So now there's

00:09:01
a consonant between what steaks

00:09:03
theater policy perspective and what

00:09:06
the hell are the chords

00:09:07
to do. Not sure how

00:09:08
that has come about. I

00:09:10
think I'm more sophisticated yet.

00:09:11
He's certainly have lawyers now

00:09:13
be more Savvy about what

00:09:14
they feel might be a

00:09:16
public policy risk or disaster

00:09:17
at some point. So let's

00:09:19
go to the Gap. What's

00:09:22

a few cases and maybe

00:09:24

I'll call and see if

00:09:25

that's true. But that seems

00:09:27

to be the trend is

00:09:31

coming to Nashville Court is

00:09:34

about going to be a

00:09:36

factor in the public policy.

00:09:46

We have National visions. And

00:09:49

for those of you who

00:09:49

are not from the golf

00:09:50

National Visions essential foundations of

00:09:55

policy of the state. Now,

00:09:56

they do sit out the

00:09:57

policy of the state in

00:09:58

terms of what they want

00:09:59

to do for the next

00:10:00

10-20 years, but at the

00:10:02

same time they can be

00:10:03

used as setting out public

00:10:05

policy to third degree in

00:10:10

what the courts do to

00:10:11

use as that I do

00:10:14

what I want to ask

00:10:15

is if you want to

00:10:16

see what new convention. It

00:10:18

was 5 when I always

00:10:20

sure what this means in

00:10:22
terms of our 25 and

00:10:23
I are the student many

00:10:24
years ago and London Dior

00:10:26
Northbound on the new provincial

00:10:27
to 5. When we look

00:10:38
at this public policy in

00:10:40
Article 5 new invention to

00:10:42
the public policy of the

00:10:44
enforcement state. Is this public

00:10:50
policy exception an exception to

00:10:53
the general rule under international

00:10:54
law that states cannot use

00:10:56
our domestic law to override

00:10:58

the international legal obligations. That

00:11:00

is that is that me

00:11:00

on what's what's your question

00:11:02

can can States use the

00:11:03

public policy exception article 52

00:11:05

Escape their obligation the general

00:11:07

international law not in that

00:11:12

respect. My my view is

00:11:14

that it's a negative know

00:11:15

that there are certain reasons

00:11:17

one is that the public

00:11:19

policy rules have to be

00:11:20

transparent insert why because of

00:11:23

General principle International. You can't

00:11:24

have none until you can

00:11:26

get away with it. They

00:11:28

know if you override that

00:11:29

the ship is fine secondly.

00:11:32

State laws have to be

00:11:34

proportionate whether it's a policy

00:11:36

statement or whether it's a

00:11:38

it's a mandatory. Have to

00:11:39

be proportionate and the personality

00:11:41

is actually the Benchmark of

00:11:43

a of a good application

00:11:45

for Low by the porch.

00:11:47

We know now, especially when

00:11:50

you before but then after

00:11:51

Germany versus Italy before the

00:11:53

icj, we know that Judgment

00:11:58

of national porch after the

00:12:00

state and its active the

00:12:01

state they can incur State

00:12:03

responsibility for the state doesn't

00:12:04

matter that we have a

00:12:06

separation of other powers sports

00:12:08

are part of the state

00:12:10

Machinery. So therefore they can

00:12:11

they can they can get

00:12:12

this taken care of their

00:12:13
responsibilities. The answer to the

00:12:18
first question is whether or

00:12:19
not public policy notified. Can

00:12:21
you use an exception to

00:12:23
availability under international law is

00:12:25
it shouldn't be no because

00:12:27
public policy in effect, even

00:12:28
if it has to be

00:12:30
curtailed by President rules of

00:12:32
public international law. But once

00:12:42
again, very enlightening speech and

00:12:45
I really like the public

00:12:47
international law touch that you

00:12:50

used in this particular case.

00:12:51

I presume that you were

00:12:53

talking about also be a

00:12:56

possibility which basically forbids States

00:13:01

from Avoca international law to

00:13:05

give me national law to

00:13:07

invade public International obligation. The

00:13:11

question of course is to

00:13:13

what extent is the enforcement

00:13:15

of an award Republic International

00:13:17

obligation of this is something

00:13:18

that we would say that

00:13:20

we will discuss a day

00:13:21

that we will discuss at

00:13:23

a later stage and this

00:13:24

is the real separation between

00:13:28

More internationally focused in all

00:13:31

50 states and the account

00:13:39

is it was when someone

00:13:43

brings an international arbitration International

00:13:45

Boulevard to is a matter

00:13:51

of it does not involve.

00:13:54

It does not eat stop

00:13:56

having an international product or

00:13:57

whatever. We do have a

00:13:59

New York convention, which is

00:14:00

an international treaty that has

00:14:01

been accepted the ratified. So

00:14:03

it is a very very

00:14:04

interesting God point of discussion.

00:14:06

I would like to question.

00:14:08

Did you mention that that

00:14:10

is a consonance right now

00:14:11

between what's the state? I

00:14:14

presume you mean the executive

00:14:16

branch in public policy and

00:14:19

what the judges consider as

00:14:21

public policy and I was

00:14:23

wondering do you also see

00:14:25

that in the Middle East

00:14:27

or is it to something?

00:14:28

I thought you encounter any

00:14:30

other parts of the world.

00:14:32

Mostly they just explained that

00:14:34

really well. I think you're

00:14:37

the best. OK send you

00:14:38

a turnaround in the in

00:14:43

the in the way that

00:14:45

the important issues to look

00:14:46

at their role in Germany

00:14:47

public policy more than anything

00:14:53

else. But at the same

00:14:54

time, I think my mother

00:14:55

is now so I can

00:14:57

meet at least we have

00:14:59

the charges were having and

00:15:01

so they feel that their

00:15:03

place in looking at public

00:15:04

policy has to be limited

00:15:05

except with the state and

00:15:07

make a meal out of

00:15:09

a certain issue and the

00:15:18

could go first and then

00:15:21

we have a second place

00:15:22

behind Santa Claus. And even

00:15:29

general principles of justice and

00:15:32

escaped from that show in

00:15:37

your view at least since

00:15:40

the best. Okay. So you

00:15:41

said it's more less than

00:15:43

fair approach rather than consoles.

00:15:46

I understand the point. Okay.

00:15:48

Thank you very much for

00:15:50

that. We will continue this

00:15:52

discussion later on. However, I

00:15:54

would like to hear from

00:15:56

our second speaker Doctor Who

00:16:01

is joining us a line.

00:16:02

Am I correct to say

00:16:04

that you aren't in the

00:16:04

Netherlands or am I correct?

00:16:07

Yes. That's correct. Thank you.

00:16:10

She miss dr. Iftikhar. He

00:16:13

is a senior legal adviser

00:16:14

at the internet as the

00:16:17

Iran us claims tribunal Board

00:16:21

of Public international law of

00:16:25

nerds versus zombie in my

00:16:28

opinion this as an equal

00:16:31

and equal value and the

00:16:33

strength of law. That's how

00:16:35

many people disagree but you

00:16:38

know, that's what I think

00:16:38

he has that has dealt

00:16:42

with the public international law

00:16:43

on contractual Interstate disputes, and

00:16:46

he's a practitioner International Investment

00:16:48

on Commercial arbitration including icci

00:16:51

that. I thought he is

00:16:54

the author of the book

00:16:55

the role of domestic love

00:16:57

the whole state in determining

00:16:58

the jurisdiction of that. I

00:17:00

joined them at area of

00:17:01

investment treaty tribunals the partial

00:17:04

Revival of the localization Theory.

00:17:07

I think that was published

00:17:09

in 2021 will continue discussing

00:17:13

the development of public policy

00:17:16

as a ground for setting

00:17:18

aside or refusing enforcement is

00:17:20

going to focus on the

00:17:21

Middle East on the gulf

00:17:22

and he will focus on

00:17:26

the positive developments in favor

00:17:27

of the creation but also

00:17:29

described the lingering perceptions on

00:17:31

public policy that favor a

00:17:33

more expansive interpretation in that

00:17:36

region in that sense. It

00:17:37

would be interesting to see

00:17:38

how your views a different

00:17:41

or or a or a

00:17:43

single line with what profession

00:17:45

contest as actually said Dr.

00:17:47

You have before Thank you

00:17:51

very much. Just a good

00:17:52

day everyone. My name is

00:17:53

araiza. If that far it's

00:17:55

a great honor to give

00:17:57

this presentation on the occasion

00:18:00

of the fourth edition of

00:18:01

old arbitration update the panel

00:18:03

discussion of the public policy

00:18:05

Crown in post-war proceedings before

00:18:09

finalizing my notes for this

00:18:11

seminar. I leave for the

00:18:14

most leading Publications on International

00:18:17

commercial arbitration to see what

00:18:20

has been said on the

00:18:21

ground of public policy. What

00:18:24

occurred to me immediately was

00:18:25

that all these authoritative sources

00:18:28

have a Relentless focus on

00:18:31

certain jurisdictions such as France

00:18:34

Switzerland Singapore the United Kingdom

00:18:37

and the United States and

00:18:39

have admired the pro enforcement

00:18:42

regimes and also have made

00:18:46

clear that these countries the

00:18:49

legal system of these countries

00:18:50

interpreter term public policy quite

00:18:53

naturally unsurprising firstly these countries

00:18:58

that judicial system in the

00:18:59

legal system associated with these

00:19:01

countries are the vanguards of

00:19:04

international commercial arbitration and second-year

00:19:06

and maybe more importantly these

00:19:09

countries host of the most

00:19:11

popular states in international arbitration.

00:19:15

So it is critical to

00:19:17

understand how public policy is

00:19:20

understood and applied in these

00:19:21

legal systems. What does substantial

00:19:24

focus on these countries in

00:19:27

there is much more limited

00:19:29

focus on what what is

00:19:31

going on elsewhere in the

00:19:32

world. Lucky need this full

00:19:36

version of board arbitration update

00:19:38

has provided us with the

00:19:39

opportunity to have a more

00:19:41

global view regarding International arbitration.

00:19:43

I don't have any myself

00:19:45
of this opportunity to explore

00:19:48
how public policy is understood

00:19:51
and applied in the Middle

00:19:52
East and for this I'm

00:19:54
grateful to talk to Jose

00:19:56
Antonio Rivas and papa cellular.

00:19:58
And they're dedicated team of

00:20:00
attrition update in the next

00:20:04
12 minutes or so. I'm

00:20:06
going to explain in general

00:20:08
terms how public policies viewed

00:20:10
your post about proceedings in

00:20:12
various Middle East and jurisdictions.

00:20:15

If you read articles written

00:20:18

by jurist with a middle

00:20:21

eastern background 35 years ago

00:20:24

in various journals of international

00:20:27

arbitration, you would sense doubt

00:20:30

reservation and sometimes pessimism regarding

00:20:33

International arbitration. Today. Perception has

00:20:38

substantially changed. There are approximately

00:20:42

15 countries in the Middle

00:20:45

East with a predominantly Hispanic

00:20:47

population of these fifteen countries

00:20:51

14 have joined the New

00:20:53

York convention. Iraq was the

00:20:56

latest country to become a

00:20:57

contractor in the state in

00:20:58

2021 again, I don't have

00:21:01

these fifteen countries 9 have

00:21:04

adopted the uncitral model law

00:21:06

on International commercial arbitration Qatar

00:21:09

was the latest to come

00:21:11

on board in 2017 by

00:21:13

adopting the uncitral model or

00:21:16

International commercial arbitration. So the

00:21:18

most significant instruments the key

00:21:21

instruments International commercial arbitration have

00:21:24

gone its significance appreciation in

00:21:27

the Middle East. But more

00:21:29

importantly and more connected to

00:21:32

our topic boots in the

00:21:34

Middle East National courts in

00:21:36

the Middle East generally speaking

00:21:37

have tended to apply the

00:21:41

New York convention in a

00:21:43

positive way and more specifically

00:21:46

in the ground of public

00:21:48

policy has been really relatively

00:21:50

interpreted narrowly in the last

00:21:53

decade in various jurisdictions in

00:21:55

the Middle East. and since

00:21:58

this is all application update,

00:21:59

let me give you some

00:22:01

fresh examples Egypt in 2020

00:22:04

a court in Cairo upheld

00:22:06

an award run that against

00:22:08

the state entity in favor

00:22:11

of a weighty let Consortium

00:22:13

in the value of around

00:22:15

500 million dollars and rejected

00:22:18

the argument that this award

00:22:22

against that Egyptian State entity

00:22:25

has been rendered in violation

00:22:27

of Egyptian public policy Iran

00:22:30

in 2016 in Tehran not

00:22:34

only made a distinction between

00:22:36

domestic public policy International public

00:22:39

policy interest in reference to

00:22:42

various guards issued by multiple

00:22:45

International Organization on the interpretation

00:22:48

of the Tampa Bay policy

00:22:49

officials to officials in the

00:22:54

Judiciary to translate the Judgment

00:22:58

and send it to eat

00:22:59

in order to promote harmonization

00:23:01

in the application of the

00:23:02

new convention Saudi Arabia in

00:23:05

2020 for the administrative Minister

00:23:10

of Justice reported that out

00:23:12
of 88 application a loan

00:23:14
application proceeding. They are only

00:23:17
five of them were partially

00:23:20
or fully with none of

00:23:22
them being based on public

00:23:23
policy or Sharia law and

00:23:25
finally the United Arab departing

00:23:29
from past jurisprudence in 2023,

00:23:32
or maybe 20 22 the

00:23:34
Abu Dhabi Court of cassation

00:23:35
dismissed the allegation that failure

00:23:40
by Darby from \$5 to

00:23:42
sign all the pages of

00:23:43
the original would violate procedural

00:23:47
public policy. So these are

00:23:48
quite fresh examples from from

00:23:50
the region various various countries

00:23:52
in the region and how

00:23:54
they have approached the ground

00:23:56
of public policy and Miss

00:23:57
various applications based on this

00:23:59
ground mentioned in in in

00:24:02
the New York conventional Wholesale

00:24:03
in arbitration act but it

00:24:08
is a fact of life

00:24:10
and it is no secret

00:24:11

that the ground of public

00:24:13

policy is a more effective

00:24:16

weapon in the hands of

00:24:17

the parties that resists enforcement

00:24:20

or the validity of the

00:24:21

arbitration award and post our

00:24:23

proceedings in a various Middle

00:24:25

Eastern jurisdiction. And in my

00:24:29

opinion, of course what what

00:24:31

I say this I say

00:24:33

this in comparison to the

00:24:35

pro enforcement regimes that let

00:24:36

you know, right at the

00:24:37

beginning of my presentation in

00:24:39

my opinion. There are four

00:24:41

reasons for this more expansive

00:24:44

interpretation of the ground of

00:24:47

public policy. There is a

00:24:51

historical understanding in the minds

00:24:55

of Judges regarding the notion

00:24:56

of public policy. Secondly, the

00:24:59

socio-political context of public policy

00:25:02

study the role of sharia.

00:25:05

Unfortunately, the past experiences went

00:25:08

with International arbitration against estate

00:25:11

entities go briefly through each

00:25:15

of these four reasons fasty

00:25:17

of the judicial understanding the

00:25:20

historical judicial understanding of the

00:25:22

time public policy from the

00:25:24

time that's the notion of

00:25:26

public policy is introduced to

00:25:29

a given legal system Say

00:25:31

by virtue of the enactment

00:25:32

of a civil code up

00:25:34

until that country becomes a

00:25:36

member of the new convention

00:25:37

or adults T uncitral model

00:25:40

Lou on International commercial arbitration.

00:25:42

The notion of public policy

00:25:44

has a time sometimes a

00:25:47

good number of decades to

00:25:49

make a history. So one.

00:25:52

Country, right if I sing

00:25:53

you a convention or adopt

00:25:55

the term public policy has

00:25:59

already a deep-seated effect on

00:26:03

the minds of the judges

00:26:04

that are the ultimate applicants

00:26:06

of his act and the

00:26:08

convention and that deep-seated effect

00:26:11

is effectively much more influential

00:26:16

in the minds of the

00:26:17

judges that any admirable valuable

00:26:21

but still not buying the

00:26:22

efforts on the part of

00:26:23

international organizations that issue various

00:26:26

non-binding guidelines. Bear in mind

00:26:30

that we are not talkin

00:26:32

about the countries that have

00:26:33

devised this whole International arbitration

00:26:35

machinery and can accommodate themselves

00:26:38

with the new developments easily

00:26:41

more easily. What countries that

00:26:43

have simply importantly International operation

00:26:47

as a result of this

00:26:49

you can see that in

00:26:50

various on various occasions Notions

00:26:55

regarding for instance procedure public

00:26:57

policy have found a successful

00:27:00

application in postal or proceedings

00:27:02

in the Middle East if

00:27:03

I want to identify two

00:27:05

common themes of an in

00:27:07

multiple jurisdictions, for instance, if

00:27:09

the court recognizes that it

00:27:12

does not have subject matter

00:27:13

or territorial jurisdiction with with

00:27:16

respect to the dispute or

00:27:18

the parties there too and

00:27:20

I didn't force my proceedings.

00:27:22

They would dismiss their enforcement

00:27:25

application on the basis of

00:27:27

public. I see because they

00:27:29

would deem your sexual matters

00:27:30

as matters of public policy.

00:27:32

And secondly, you can see

00:27:34

that if the arbitral tribunal

00:27:35

fails to abide by the

00:27:37

technicalities and formalities regarding domestic

00:27:40

Awards and judgments again, but

00:27:43

quotes various schools in the

00:27:45

Middle East have refused to

00:27:48

recognize ring. I won't because

00:27:50
of the violation of procedure

00:27:54
public policy and this has

00:27:55
been to come and see

00:27:56
me the various Middle Eastern

00:27:57
jurisdictions. That was the first

00:27:59
reason the second reason is

00:28:02
the socio-political context of public

00:28:05
policy, which is the proverbial

00:28:08
unruly horse, which is a

00:28:09
philosophical terms and cannot be

00:28:11
detached from its social play

00:28:13
socio-political context and part of

00:28:15
the political context is the

00:28:17

government's mother in in a

00:28:21

Middle Eastern countries, which I

00:28:24

should say very very very

00:28:26

general terms and I should

00:28:28

emphasize disqualifier the role of

00:28:32

the public sector in the

00:28:34

economy of various Middle East

00:28:36

in jurisdictions is much larger,

00:28:38

when you compare it to

00:28:40

the roles of public sector

00:28:41

in Europe North America and

00:28:42

Southeast Asia and this magnitude

00:28:45

of the role of the

00:28:46

public sector and economic undertakings

00:28:50

associated with public figures has

00:28:53

effectively in practice materialized in

00:28:58

the form of a lot

00:29:00

of demand for Public Policy

00:29:01

sometimes in the form of

00:29:03

Economic and public policy and

00:29:06

one shot of this large

00:29:09

understanding of public policy has

00:29:11

been in effect that in

00:29:13

multiple jurisdictions against in the

00:29:15

last decade many arbitral awards

00:29:18

have been annulled or refused

00:29:20

enforcement because domestically applicable conditions

00:29:24

for referring arbitration for referring

00:29:28

puse involving State entities to

00:29:31

arbitration have not been observed

00:29:33

so you can see many

00:29:34

of these examples in the

00:29:36

in the last decade. Sadly

00:29:39

Sharia as I mentioned at

00:29:41

the beginning of my presentation.

00:29:42

There are about fifteen countries

00:29:44

predominantly populated by Muslims in

00:29:48

the Middle East and that

00:29:49

means that she has a

00:29:51

significant role in the legislation

00:29:53

in in this countries, including

00:29:56

a lots of international arbitration.

00:29:57

And as a result ulcer

00:29:59

ulcer matters of Anthony matters

00:30:01

regarding public policy and you

00:30:04

can see that the tax

00:30:06

domestic of friction acts. You

00:30:08

can see Sherry has been

00:30:10

mentioned alongside public policy. For

00:30:13

example, if I'm not mistaken

00:30:14

article 50 pack of two

00:30:16

and I'll take a 65

00:30:17

lb of to be of

00:30:18

the Saudi arbitration act the

00:30:20

new arbitration Act of Saudi

00:30:22

Arabia. Shari has been sighted

00:30:24

have been mentioned in public

00:30:26

policy and one option of

00:30:30

that application of sharia in

00:30:31

the context of portable proceedings

00:30:33

in various countries noticed that

00:30:35

we are there but many

00:30:36

countries in the Middle East

00:30:37

has been Arbitral Awards in

00:30:39

Katy in a compound interest

00:30:42

or even simple interest have

00:30:44

been partially or fully of

00:30:47

an all door refused Foresman

00:30:50

the jurisdiction. I'm finally this

00:30:54

is something that you really

00:30:55

have to put yourself in

00:30:56

the shoes of the a

00:30:58

middle-eastern jurisdiction Middle Eastern terrorists

00:31:01

My Generation unto generation. Probably

00:31:04

before me you have been

00:31:05

educated abroad up by reading

00:31:07

arbitral Awards run that in

00:31:08

the 1960s and 1980s against

00:31:11

various a state entities in

00:31:13

the Middle East State and

00:31:14

State entities in the Middle

00:31:16

East and those are goats

00:31:18

have against the state entities

00:31:19

have been perceived to sometimes

00:31:21

contain Twitter languages and in

00:31:23

faith and in favor of

00:31:25

the that the foreign exchange

00:31:28

now, but we are talking

00:31:29

about the historical impact stuff.

00:31:31

Understanding that understanding and then

00:31:34

that perception and that's a

00:31:37

That is something that are

00:31:38

almost all countries in the

00:31:40

Middle East have some level

00:31:41

of experience with and that

00:31:43

is also another factor that

00:31:45

has contributed to a more

00:31:47

reserved approach towards that against

00:31:52

State entities that are associated

00:31:54

with the recognition or enforcement

00:31:57

form or that the foreign

00:31:58

that is reviewing the validity

00:32:00

of the orbits were so

00:32:01

these are the four reasons

00:32:02

that I think have had

00:32:04

an impact on a more

00:32:06

expensive reading of the ground

00:32:09

of public policy in place

00:32:10

of our proceedings in the

00:32:11

Middle Eastern countries. Let me

00:32:14

conclude by saying that in

00:32:16

the last 35 years there

00:32:19

have been a remarkable developments

00:32:21

in the application of the

00:32:23

new convention in the in

00:32:26

the Middle East and can

00:32:27

you see the countries you

00:32:28

can see that your wrists

00:32:31

are reporting with pride and

00:32:32

excitement a pro arbitration approach

00:32:34

of their countries, but as

00:32:36

I try to show There

00:32:37

is still room for improvement.

00:32:38

I thinking of the promotion

00:32:41

of the harmonization in the

00:32:43

application of the new convention

00:32:44

all the reasons. I identified

00:32:48

the implicate respectively the Judiciary

00:32:50

the legislative power that sorry

00:32:54

that the Judiciary to execute

00:32:56

if the electricity power and

00:32:57

architect the Academia and when

00:33:00

you want to find a

00:33:01

solution, it is very important

00:33:02

to bring all these stakeholders

00:33:04

together so you can it

00:33:06

is only then that you

00:33:07

can find a proper solution

00:33:09

for the interpretation of the

00:33:12

time public policy by sharing

00:33:16

and anecdotes. Regarding for example

00:33:20

how it is important to

00:33:22

hear the judges of The

00:33:24

Ultimate applicants the new convention

00:33:25

and listen to what they

00:33:28

have to say in this

00:33:29

Regard in the margins of

00:33:31

the seminar. I met a

00:33:32

judge who happened to be

00:33:34

entrusted with applying the new

00:33:36

convention and he told me

00:33:38

that he was from an

00:33:39

intersection. It told me that

00:33:41

look up the new convention

00:33:44

is now part of my

00:33:45

legal system and I have

00:33:47

to apply it and I

00:33:48

really tend to interpret the

00:33:50

Tampa Bay policy. Not really

00:33:52

but at the same time

00:33:53

the domestic Judicial Discipline regulations

00:33:57

in my country, that would

00:33:59

say if a judge fast

00:34:02

abide by the face to

00:34:04

observe the mandatory lose area

00:34:07

in his or her judgment.

00:34:10

He has committed misconduct. So

00:34:12

it was complain that my

00:34:14

hands are tied and these

00:34:16

regulations do not make a

00:34:17

distinction between situations. You're applying

00:34:19

an International Convention on a

00:34:22

totally domestic settings. So when

00:34:25

you hear them you become

00:34:27

familiar with their day-to-day entanglement,

00:34:30

and it is only then

00:34:31

that you can find proper

00:34:32

solutions for actual problems. That's

00:34:36

me. Thank you very much

00:34:37

for your attention. I'll beat

00:34:38

you on the floor back

00:34:39

to US dollars. Thank you

00:34:42

very much. I want to

00:34:44

collect what you said right

00:34:48

now with what Professor bantek

00:34:50

I said because that spoke

00:34:54

to you that says that

00:34:55

there is no difference between

00:34:57

between excuse me, applying Sharia

00:35:03

law when enforcing Winnipeg International

00:35:05

Convention or when you know

00:35:07

interpreting domestic law will probably

00:35:09

not be unfortunately not be

00:35:12

particularly moved by the articles

00:35:15

of State responsibility Vienna convention

00:35:20

on the law of treaties.

00:35:21

You're going to say, well

00:35:22

if I don't get temperature

00:35:23

in your loss, I'm going

00:35:24

to be I'm going to

00:35:25

be with misconduct whether I

00:35:29

should be accused of misconduct

00:35:30

in accordance with international law

00:35:31

is of no interest or

00:35:33

so. I understand I wanted

00:35:37

to ask you one question

00:35:38

based on what you said.

00:35:40

Oh, I'm basically add another

00:35:42

parameters. You mentioned the the

00:35:43

perceptions of the judges prior

00:35:50

to the introduction of the

00:35:52

of the ratification of the

00:35:54

New York convention in the

00:35:55

particular in a particular State.

00:35:57

I would like to have

00:35:58

the perception of the lawyers

00:35:59

as well. We recently actually

00:36:02

had a case where the

00:36:04

arbitrator ask us. Do you

00:36:06

want us to sign every

00:36:09

single of the thousands of

00:36:10

pages of the award and

00:36:12

you know, based on the

00:36:15

New York convention will you

00:36:17

know anyone would have said

00:36:18

no, it's not necessary. But

00:36:20

however, do we really want

00:36:25
to take a chance when

00:36:27
the client is actually it

00:36:29
when the clan section depending

00:36:30
on my question is do

00:36:32
you see in the next

00:36:34
20 or 30 years? Do

00:36:36
you see any changes in

00:36:37
that perception? Yes, of course.

00:36:43
I would say that the

00:36:45
trend is moving towards Pro

00:36:49
enforcement in in the Middle

00:36:51
East and the experiences that

00:36:54
we have had. So if

00:36:56

you did make a distinction

00:36:57

between the offshore and onshore

00:36:58

jurisdiction, you see that the

00:37:00

offshore jurisdictions are doing it

00:37:02

much more liberally, but the

00:37:04

onshore jurisdictions have to be

00:37:06

a little bit more conservative,

00:37:07

but I think they would

00:37:09

also come on board with

00:37:11

the passage of time and

00:37:12

seminars like this when we

00:37:14

can gather all the stakeholders.

00:37:16

These are these are really

00:37:18

really helpful. And so if

00:37:21

you if you look back

00:37:22

like 30 35 years ago,

00:37:24

there were many more limitations

00:37:26

and these limitations are being

00:37:29

removed one after the other

00:37:30

at this is not an

00:37:31

imitation, which is sustainable. So,

00:37:33

this is Amir the example

00:37:37

we are talking about is

00:37:38

a mere technicality is not

00:37:39

something it is not because

00:37:41

I think we would be

00:37:42

hearing the Fantastic cases from

00:37:45

Switzerland from Al Constantine are

00:37:48

not something which are connected

00:37:51

to the most basic morals

00:37:54

of of the of the

00:37:55

countries in the Middle East.

00:37:56

So these days will be

00:37:57

things that I think will

00:37:58

be handled much more efficiently

00:38:00

in the future. I have

00:38:03

one last question before moving

00:38:05

on and you actually going

00:38:06

to beat me to it

00:38:08

to an extent because you

00:38:10

mentioned onshore and offshore jurisdictions

00:38:11

for the benefit of watching.

00:38:16

We had it comes back.

00:38:17

We had a, right before

00:38:19

this one on at Bay

00:38:22

City on offshore court and

00:38:24

international court system such as

00:38:25

a d i m see

00:38:26

that do you say do

00:38:29

you in your experience? Do

00:38:30

you say any dialogue or

00:38:32

an exchange of used between

00:38:34

onshore and offshore courts when

00:38:37

it comes to these matters?

00:38:41

I will of course because

00:38:42

in the in the offshore

00:38:46

jurisdictions, if I if I

00:38:49

if I understand that correctly

00:38:50

if my understanding is correct

00:38:52

in that regard. The law

00:38:54

applied is different and the

00:38:56

judges that apply the law

00:38:57

roll so different with a

00:38:58

different backgrounds and education. So

00:39:01

in the end it wouldn't

00:39:04

be like two ships passing

00:39:05

each other in the dark.

00:39:06

But if he'll be something

00:39:08

that will create a dialogue

00:39:10

in in the future and

00:39:14

I think when not only

00:39:16

that the offshore jurisdictions in

00:39:18

the same country, but when

00:39:19

you have examples from other

00:39:21

countries in the region it

00:39:24

it would be encouraging also

00:39:26

for the offshore jurisdictions in

00:39:28

the country. We are implying

00:39:30

it it would also encourage

00:39:32

them to interpret the term

00:39:34

public policy with regard to

00:39:36

these technicalities and formalities much

00:39:39

more restrictive Lee. Sewing in

00:39:43

brief. Yes. I think that.

00:39:45

We'll definitely did the what

00:39:49

they bring what they come

00:39:51

in low background brings 222

00:39:52

discussion to the dialogue would

00:39:54

be would be a positive

00:39:55

take-away. Thank you very much.

00:40:02

We would like to move

00:40:08

on from the Middle East

00:40:10

and move on to other

00:40:12

jurisdictions some more liberal stations.

00:40:17

Actually, we would like to

00:40:20

find someone who will be

00:40:22

able to guide us with

00:40:23

respect to both sir. Constantine.

00:40:25

Christy is a partner at

00:40:28

the intern. The global off

00:40:31

from Peter and Kim. He's

00:40:33

in Switzerland is a u.s.

00:40:35

Qualified lawyer with many years

00:40:37

of experience in arbitration commercial

00:40:39

and investor-state focusing on a

00:40:42

number of you know sectors

00:40:43

but primarily Nolan gas in

00:40:45
the automotive industry. He will

00:40:48
speak about recent developments in

00:40:51
Switzerland on the 26th and

00:40:53
are Russia and also discussed

00:40:56
certain thorny issues, especially with

00:41:00
* according to Sanchez Good

00:41:07
afternoon, stick to the camera.

00:41:11
And if so, if everybody

00:41:14
can hear me well with

00:41:16
many things to Starbucks and

00:41:18
for making me want to

00:41:19
read Greek. My name is

00:41:21
Connor and I am one

00:41:32

of those arbitration kids but

00:41:36

long ago, I grew up

00:41:37

a partially emotional partially States

00:41:40

and them nothing Justified place

00:41:46

on this matter of patrician

00:41:48

update because according to I

00:41:51

think Mary. A survey last

00:41:55

10 Geneva was within top

00:41:58

5 arbitration which means that

00:42:01

switch one and number of

00:42:05

cases from different parties and

00:42:08

the Supreme Court before everyone

00:42:13

perhaps those who were set

00:42:18

aside proceedings. They found it

00:42:20

one level and all the

00:42:22

cases go directly to the

00:42:23

Supreme Court. slides All right.

00:42:37

So the as I've been

00:42:40

foreshadowed by Reza, there's quite

00:42:44

an attraction between New Yorker

00:42:46

article V. Somebody called it

00:42:49

and Article 5 of course

00:42:54

and public policy except what

00:42:56

you see on the screen

00:42:57

is basically the legal basis

00:42:59

for the application of the

00:43:00

same principles for Success With

00:43:02

Private international law and have

00:43:05

to say immediately that's just

00:43:08

as friends in common law

00:43:10

and civil law cases. And

00:43:24

actually that's one of the

00:43:27

reasons Has a very Progressive

00:43:37

commercial code and civil code

00:43:40

and also at their April

00:43:42

arbitration position in terms of

00:43:44

review of set aside Ward

00:43:46

be there is a possibility

00:43:49

to opt out from the

00:43:51

109 screen simply means that

00:44:01

the article 23 of the

00:44:04

Swiss gold will be buying

00:44:10

an RV trailer. The chances

00:44:15

of success on your screen.

00:44:16

I was trying to be

00:44:20

a little bit already from

00:44:28

now on call me to

00:44:29

get very low chances Rocky

00:44:31

less than 5% orange laces

00:44:39

statistics and 0.9% for sports

00:44:44

why I'm saying that it's

00:44:46

a simple man in roughly

00:44:49

220. I've been heard on

00:44:53

public policy that been only

00:44:55

two of us. We have

00:44:56

been satisfied and will come

00:44:58

to see me something. now

00:45:02

the notion of public policy

00:45:03

and I had to review

00:45:08

little bit of people giving

00:45:10

a speech but essentially it's

00:45:12

nothing that refers to widely

00:45:21

recognized system of values, which

00:45:22

is common to many legal

00:45:24

systems. It's logical has to

00:45:27

be fair to Justice and

00:45:31

the federal Supreme Court Supreme

00:45:34
tribunal. This is perhaps the

00:45:46
most important Point Avenue and

00:45:58
actual traumatic impact on the

00:46:01
outcome of that decision. The

00:46:03
Supreme Court will not set

00:46:05
aside. Coming back to the

00:46:10
Article 5 of New York

00:46:12
convention that has been mentioned

00:46:17
by the state legislature legislature,

00:46:25
which actually does want to

00:46:27
promote that say the arbitration

00:46:28
and me we haven't which

00:46:30
one's a periodic review of

00:46:32

a law applicable to arbitration

00:46:35

arbitration wrvo public policy of

00:46:46

enforcing state. So Switzerland take

00:46:50

the phones with Notions of

00:46:51

justice and then of course,

00:46:53

it looks at other overall

00:46:54

positions mature legal systems in

00:47:02

trying to understand what this

00:47:06

was no Notions of Justice

00:47:07

would be so they don't

00:47:09

just show them the other

00:47:18

Some of the examples that

00:47:20

come up here and take

00:47:23

me to bring to your

00:47:23

attention is one interesting one

00:47:26

is on the back of

00:47:28

it would be a violation

00:47:31

of public policy for decision

00:47:32

does a firm in existence

00:47:35

of a contract just experience.

00:47:44

It stated that has been

00:47:49

the case where a decision

00:47:51

was because he was against

00:47:58

public policy to try to

00:47:59

enforce the basic make a

00:48:01

defective band for my profession.

00:48:05

2 insulation there's no automatic

00:48:16

qualification European commission price list

00:48:28

trailer of descendants 3 in

00:48:30

some of the cases where

00:48:32

it's been confirmed that this

00:48:34

would not constitute a violation

00:48:36

who gets permission in is

00:48:57

I love the ferry was

00:49:00

the compound interest Provisions that

00:49:03

quite often being involved. Muscle

00:49:11

conditions in this region. Am

00:49:23

I one of my kids

00:49:24

is an arbitral tribunal has

00:49:27

an interest rate of 25%

00:49:35

Make a claim for violation,

00:49:37

but then one has to

00:49:43

remember that unlike some other

00:49:46

jurisdictions, even if there is

00:49:48

a formation and setting aside

00:49:51

of the arbitral award for

00:49:53

public policy on the other

00:49:54

reason then the arbitration basically

00:50:00

the arbitral award goes back

00:50:02

to the same arbitral tribunal.

00:50:04

So the same members on

00:50:07

the panel will have to

00:50:08

then review the decision of

00:50:10

the Supreme Court and we'll

00:50:12

have some in their work.

00:50:13

So that means that there's

00:50:15

a certain risk, of course

00:50:16

as well that the arbitral

00:50:17

tribunal members who are human

00:50:19

beings that might be annoyed

00:50:21

too and they can maybe

00:50:23

some you used to take

00:50:25

really long hard. Look what

00:50:28

it's worth it going first

00:50:29

all the way to the

00:50:30

Supreme Court decision set aside

00:50:33

all knowing full. Well that

00:50:34
the same. This is not

00:50:49
the case and it's a

00:50:50
completely different panel. So. There's

00:51:03
also some procedural public policy

00:51:06
or context which needs to

00:51:08
be involved here to Supreme

00:51:11
Court recognizes that they and

00:51:15
their excessive formalism like in

00:51:17
some countries. You see, I

00:51:19
believe it was a green

00:51:20
China there would have to

00:51:21
be if this is Base

00:51:23
main line China in China

00:51:29

and Russia. No, I want

00:51:57

to switch to another is

00:52:00

civil law jurisdiction, which is

00:52:02

quite interesting has been widely

00:52:04

used lately and this is

00:52:07

the Russian Federation and its

00:52:10

recent decision making process that

00:52:14

applies public policy to anti-suit

00:52:20

injunction regulation oil anti arbitration

00:52:23

regulation article 248 of the

00:52:27

Russian procedure commercial procedural code.

00:52:31

allows Party City conjunctions when

00:52:34

they Bowl in legal proceedings

00:52:38

for arbitrations outside of Russia

00:52:43

and try to physically Chicken

00:52:47

and Junction against large wardrobe.

00:52:49

You don't want to make

00:52:50

sure that the Russian party

00:53:01

against such violations of such

00:53:04

decisions and granting such a

00:53:11

sweet thing Johnson's is no

00:53:17

longer. Although this law in

00:53:20

2020 and 2020 been confirmed

00:53:24

by the court decision 2021

00:53:28

before the war in the

00:53:36

Ukraine in February 2022. There

00:53:41

has been now and you

00:53:42

develop when you sense that

00:53:43

there is no longer a

00:53:45

need for to prove by

00:53:48

Russian entity involved that seeking

00:53:50

the injunction to to say

00:53:52

that it has been thanks.

00:53:53

It's it's just enough to

00:53:56

broadly suggest that is experiencing

00:53:59

some sort of restrictive measures

00:54:00

and these can be as

00:54:02

broad as to say that

00:54:03

the little girl from the

00:54:06

country and the Russian various

00:54:12

States and other parties have

00:54:13

been quite successful in using

00:54:15

this provision in order to

00:54:17

seek. The Junction and of

00:54:22

course according to the law

00:54:24

of recognition and enforcement of

00:54:29

these awards are you should

00:54:33

spy anti-suit injunction will be

00:54:35

tonight. So this is why

00:54:38

the concern and just recently

00:54:45

important post at 1.5 billion

00:54:48

dollar against the gas in

00:54:54

case it's injunction in the

00:54:58

case. So I'll leave it

00:55:00

there and then thank you

00:55:02

very much. Thank you very

00:55:07

much. 0% was indeed quite

00:55:13

startling. I just want to

00:55:17

point out first of all

00:55:17

that's in the driveway, so

00:55:19

that your medicine is basically

00:55:23

existing in even the most

00:55:26

liberal of the jurisdiction as

00:55:30

by way of example, it

00:55:31

was a recent decision in

00:55:32

and before the English courts

00:55:35

that set aside in a

00:55:36

ward that was essentially, you

00:55:39

know, who killed by corruption

00:55:41

and try it was very

00:55:43

recent than the it was

00:55:45

somewhat criticized by the 33

00:55:47

show that there is a

00:55:48

limit on that limit is

00:55:49

corruption in Switzerland is you

00:55:56

have a plan in the

00:56:01

process of drafting and arbitration

00:56:03

Clause go to the process

00:56:04

of drafting whatever you're thinking

00:56:06

of the sheets. Dust in

00:56:11

the mind of a lawyer

00:56:12

the public policy exception work

00:56:15

more as a destabilizing factor

00:56:18

or in case you went

00:56:20

on as a safety net

00:56:21

in case we lose. In

00:56:27

certain cases if your example

00:56:30

if you think that there

00:56:31

are some issues of public

00:56:31

policy the question is, okay.

00:56:33

Maybe I'm going to go

00:56:35

to the shop at racially

00:56:36

baluchova tration, but you know

00:56:37

if I choose a more

00:56:39

stricter jurisdiction, maybe I can

00:56:42

have the other work that

00:56:43

aside if it's something that

00:56:44

you know, you were any

00:56:45

other lawyer would take into

00:56:47

account? I think honestly most

00:56:51

lawyers will take a position

00:56:53

that unless you have a

00:56:55

specific. Your jurisdiction way which

00:56:59

are dealing with such a

00:57:01

rush to give one example

00:57:03

or another jurisdiction where you

00:57:05

you may be actually being

00:57:09

favored by a wide-ranging or

00:57:13

why the interpretation of the

00:57:15

public policy and then just

00:57:22

advise your client to go

00:57:23

for one of the one

00:57:24

of the major centers of

00:57:26

arbitration. Where are you? You

00:57:28

know, you have a statement

00:57:29

that work you have a

00:57:30

stable jurisprudence way. You can

00:57:31

actually speak what will happen

00:57:36

with that award. Thank you

00:57:39

very much. Anybody much last

00:57:44

but not least. We have

00:57:47

a Stella to go back

00:57:49

further its title of Miss

00:57:51

letter, which accomplishment sometime maybe

00:57:53

longer than her speech. So

00:57:54

I will try to keep

00:57:56

it to the essentials. She's

00:57:58

a joke mollified lawyer in

00:58:00

Paris and happens. She's counseling

00:58:03

charge of the Middle East

00:58:04

team at the Secretariat of

00:58:05

the ICC International Court of

00:58:07

arbitration in Paris any of

00:58:17

more than 100 arbitral Awards

00:58:20

She's also the founder of

00:58:21

our betrothal between Greece and

00:58:24

to promote what you know

00:58:29

as the Arbitration amongst amongst

00:58:33

women in the country. She

00:58:34

will speak about the procedural

00:58:36

aspects of public policy from

00:58:38

the point of view and

00:58:38

arbitration tutition more specifically she

00:58:41

will explain how the ICC

00:58:43

in particular deals with issues

00:58:45

of public policy in Terraria

00:58:48

to avert a potential set

00:58:50

aside and the order refusal

00:58:52

of enforcement of that floor

00:58:56

is yours, and I know

00:59:07

and for once I may

00:59:09

not contribute to diversity for

00:59:12

my greatness and I will

00:59:22

be discussing this very interesting

00:59:24

question from the institution of

00:59:28

bad boy. So what is

00:59:30

the role of By stressing

00:59:43

the first and foremost is

00:59:46

to ensure that any awards

00:59:48

rendered under its auspices is

00:59:50

valid and enforceable place on

00:59:55

the ICC under article for

00:59:56

the two of the icy

00:59:58

Road has very helpfully explained

01:00:01

by Michael Connelly. The breach

01:00:03

of public policy is how

01:00:20

to stop at several rules

01:00:21

and practices in order to

01:00:24

protect the Integrity of the

01:00:26

process. Different stages on the

01:00:32

proceedings from the constitution of

01:00:35

instances where the role of

01:00:44

the ICC is more active

01:00:46

more and more essential. So

01:00:49

starting with a constitutional tribunal

01:00:51

considerations of equal treatment of

01:00:57

the party's Express grumpy situation

01:01:21

to power stick measures. Public

01:01:31

policy violation. So let me

01:01:34

give you just a company

01:01:43

has claimed against both responded

01:01:56

but also as a failed

01:02:19

to join dominated party favor

01:02:21

in principle would confirm the

01:02:25

card is right there. Let's

01:02:32

approach has in the past

01:02:33

week for treatment of the

01:02:43
parties in the constitution of

01:02:44
the federal and why was

01:02:46
that because we did not

01:02:49
have aligned interests Were Somehow

01:02:51
forced to share the same

01:02:53
perpetrator choose, but who was

01:02:56
appointed by the court while

01:02:59
at the same time. So

01:03:02
having this in mind and

01:03:06
in order to safeguard the

01:03:08
awards nominated by slaiman and

01:03:21
appointing acquired traits. So they

01:03:47
want to share I'm sorry

01:03:49
and arbitration agreement to provide

01:03:50
for 5 and 1 and

01:03:59
before 4. So either procedure.

01:04:10
I'd read them in their

01:04:12
vacation agreements were to befall

01:04:13
those that would lead to

01:04:14
a mile equal representation of

01:04:16
the two sides within the

01:04:17
tribunal with claimant 31 arbitrator

01:04:22
and responses are so many

01:04:32
parts of the eye. Interpretation

01:04:46
agreement know what was the

01:04:48
rationale behind the board's decision

01:04:50

would be dismissed country limits

01:05:21

to the institution spot words

01:05:23

and the base by disregarding

01:05:33

The First Agreement as Express

01:05:35

close. East Asian so we

01:05:47

can see that the IC

01:05:49

courts enjoys wide discretion at

01:05:52

the stage of the Constitution

01:05:53

of the tribunal, especially when

01:05:55

you see arise and even

01:05:58

the part of the agreement

01:05:59

May at times not a

01:06:08

garden party or parties on

01:06:12

the other games on switch

01:06:21

protector and Turning now to

01:06:30

give Awards. Maybe just a

01:06:33

very brief reminder buffets under

01:06:36

the ICC rules and they

01:06:37

should be reviewed by the

01:06:41

agency and approved by the

01:06:43

ice report before it'll actually

01:06:44

be issued and let's fight

01:06:46

to the party. So the

01:06:48

extent possible and what does

01:07:05

d i c Port do

01:07:07

when it identifies potential violations

01:07:10

public policy at this stage

01:07:12
of the Security pension to

01:07:17
those deficiencies amazed ultimately depend

01:07:21
on the circumstances. Please read

01:07:28
this test on a case-by-case

01:07:30
basis. So it would depend

01:07:31
on the importance of the

01:07:33
deficiencies of arbitration, etc. Etc.

01:07:39
It difficult exam phone that

01:07:42
was mentioned by before it

01:07:44
would be particularly careful and

01:07:46
stay where there are allegations

01:07:52
of corruption and I will

01:08:05
make sure that they seem

01:08:06

like we are the test

01:08:08

that is applicable in the

01:08:09

jurisdiction and it's very interesting

01:08:16

to hear the different approaches.

01:08:27

And especially in cases related

01:08:30

to them shift their stands

01:08:36

for word for option and

01:08:37

this shift has an important

01:08:40

impact on the way. They

01:08:41

approached me about words and

01:08:44

Jason. Sober short article last

01:08:49

T20 of the French Bulldog

01:08:51

see the procedure Awards or

01:08:57

enforcement would be contrary to

01:08:58

International public policy traditionally French

01:09:02

ports as most receptions in

01:09:08

the presence of corruption allegations

01:09:13

Lisa Pro Boats. allowing to

01:09:49

establish whether the relation or

01:09:50

in person would be compatible

01:09:53

with In the series of

01:09:59

recent decision essentially relating to

01:10:03

corruption and money-laundering with a

01:10:05

special mention to the car

01:10:11

is Old Court of Appeals

01:10:12

to the side or refuse

01:10:13

the enforcement of February and

01:10:17
that the recognition or enforcement.

01:10:57
I see whether there are

01:11:02
serious and precise indices of

01:11:05
corruption or or money laundry.

01:11:08
And it looks like to

01:11:09
mention two other recent decisions.

01:11:11
Those are issued in investment

01:11:14
cases against Libya and effectively,

01:11:17
where are the first part

01:11:19
again? I'd be Awards on

01:11:21
the ground of violation of

01:11:23
international public policy. But only

01:11:33
after having lost for the

01:11:36

first time before the parts

01:11:38

of a few interesting link

01:11:40

again, they did not prevent

01:11:41

the French Court from all

01:11:44

the new elements produced by

01:11:46

the respective States and in

01:11:47

both cases that the court

01:11:49

concluded that there had in

01:11:51

fact been corruption and that

01:11:53

therefore we can see that

01:11:59

the powers of the French

01:12:00

judge aren't very expensive now.

01:12:04

They're not limited by any

01:12:06

made by the Tribunal And

01:12:09

yes, he has presented to

01:12:10

the tribunal or even in

01:12:11

the arguments before the tribunal

01:12:13

of you are the one

01:12:17

you just brought you an

01:12:21

old party supposed to be

01:12:22

like at 2 to call

01:12:24

Megan Pott's ablation review performed

01:12:30

by the French Quarter in

01:12:31

the presence of corruption allegations.

01:12:33

And of course the number

01:12:35

of recent awards that have

01:12:37

been any assessment. The agency

01:13:01
maintains this is what guides

01:13:10
any decision to be at

01:13:12
the very beginning until the

01:13:14
very end up. There is

01:13:22
a tribunal so the ice

01:13:24
is rolling and where and

01:13:26
when the other side but

01:13:28
its decision is ultimately in

01:13:29
the best interest and public

01:13:35
policy and that's very much.

01:13:37
Thank you very much. The

01:13:47
selection of arbitrators in the

01:13:50
concepts and the concept of

01:13:51

body autonomy and how that

01:13:55

flashes with via quality of

01:13:58

arms. I would be because

01:14:00

you don't have to pay

01:14:01

but it would be interesting

01:14:02

to fuck interested to find

01:14:04

out what the sheet of

01:14:06

the arbitration was and whether

01:14:08

the award was set aside

01:14:09

their because certain jurisdictions say

01:14:14

that's part of guilt on

01:14:15

the weekends. We alternate public

01:14:17

policy ground and it's even

01:14:19

higher than any equality in

01:14:21

all that if for example

01:14:22

the parties selected this this

01:14:26

approach discipline this method for

01:14:28

the selection of arbitrators and

01:14:30

that should be respected and

01:14:32

the and the intervention of

01:14:35

the approval of this approach

01:14:36

or the rejection of this

01:14:38

approach is something that you

01:14:39

know, Make slaw and competitive

01:14:42

Lord so difficult, I would

01:14:45

also like to point out

01:14:47

if I was very interested

01:14:49

to share about the new

01:14:50

Cottage cases. They were very

01:14:52

interesting. It would be good

01:14:53

to know what the standard

01:14:56

of proof was in these

01:14:58

cases because everybody will know

01:15:01

what special interests of investors

01:15:02

and Corruption is impossible to

01:15:05

prove sometimes for the tribunals.

01:15:08

Excuse me for a slightly

01:15:11

lower standards of Corrections, the

01:15:13

lower standard of proof. However,

01:15:16

I don't want to monopolize

01:15:17

the conversation will open the

01:15:19

floor to questions from our

01:15:23

online or in person or

01:15:27

through are there any question

01:15:31

from the crowd? No. Anyone

01:15:38

online. Give me yes, please.

01:15:42

Thank you so much for

01:15:43

the conference. I think this

01:15:44

kind of options is really

01:15:45

dumb sometimes and substantive issues

01:15:49

like Regent Endora Drive application.

01:16:12

I think you can meet

01:16:14

you cuz I'm pretty country

01:16:18

music reality show me if

01:16:20

I can save the new

01:16:32

case go in France about

01:16:34

how Appreciate the job done

01:16:45

by going into a Max

01:16:48

can be sent kind of

01:16:50

trick you I know that

01:16:52

Jen when you have the

01:16:53

application practitioners are very particular

01:16:55

when it comes to read

01:16:57

all of that, but I

01:17:00

truly think if we stick

01:17:02

our public life arbitration friendly

01:17:16

in the way that you

01:17:17

wouldn't be with you if

01:17:18

anything doesn't actually said the

01:17:20

system so I think what

01:17:23

happens if you push it

01:17:26

by 6 p.m. Other institutions

01:17:28

into also focusing on this

01:17:30

kind of situation and trying

01:17:32

to manage a best if

01:17:34

there are any cases of

01:17:36

potential I'm done. So, I

01:17:41

think that's it. Still the

01:17:52

French quotes with have to

01:17:53

learn from the Swiss from

01:17:56

the Swiss Supreme Court on

01:17:57

how to get gas stations.

01:18:00

I would say very high

01:18:02

in a way without explaining

01:18:05

how they intend to be

01:18:10

switched in this scholarship. And

01:18:23

just the stuff about the

01:18:26

lawyers to know when it

01:18:29

comes to public love working

01:18:35

on a case in which

01:18:39

we have a British voice.

01:18:49

Is there any formalities that

01:19:02

the bodies would like us

01:19:04

to take a shower? I

01:19:11

wasn't actually requested that. And

01:19:21

I'm speaking about the case

01:19:23

which was one month or

01:19:33

something and I was like

01:19:38

this and you shouldn't just

01:19:41

be pushing and being like

01:19:44

as a general intensity concert.

01:19:57

What does the name of

01:19:58

the reason for selling the

01:20:10

song? I will judge was

01:20:24

actually okay. Let's see. What

01:20:34

study music but this was

01:20:35

one month ago with a

01:20:37

notable institution and very very

01:20:44

good comments. And I will

01:20:51

Briefly summarize them or calling

01:20:54

here is basically focused on

01:20:57

the last speech and said

01:20:59

that the analysis of corruption

01:21:03

basically is a top by

01:21:07

the front porch is a

01:21:09

positive step in the right

01:21:10

direction in the analysis of

01:21:12

public policy. And that is

01:21:14

something that I need to

01:21:15

do when discussion going to

01:21:16

professional contact us a speech

01:21:18

that it's one thing to

01:21:20

have a separate approach. Justin

01:21:21

Bieber throughout the tribunal did

01:21:24

another and quite another thing

01:21:26

to actually engage and see

01:21:28

whether this is a public

01:21:30

policy issue and whether it

01:21:31

has been proven adequately the

01:21:33

comments about the French courts

01:21:36

were very very poignant. In

01:21:37

my opinion. I would like

01:21:39

to see how it French

01:21:41

is charged with respond to

01:21:43
them. Probably not ready and

01:21:51
I do think that the

01:21:53
drafting of the decisions he's

01:21:54
a matter in which you

01:21:55
know cross cross cultural exchanges

01:21:58
would be very helpful and

01:22:01
on the matter of how

01:22:02
lawyers interpretations of public policy.

01:22:04
Once again, I am do

01:22:06
agree with you that To

01:22:08
the extent that something has

01:22:09
been settled with World example

01:22:11
drafting be awarded the name

01:22:13

of the administration in do

01:22:14

bodies like them, you know

01:22:15

saddled definitively. I think that

01:22:18

Lord I also think that

01:22:19

lawyer should accept and say

01:22:21

and tell their client. You

01:22:23

know what this is what's

01:22:23

happening. However, as you better

01:22:26

go pointed out lawyers wheel

01:22:29

of my many lawyers tend

01:22:30

to be a little bit

01:22:31

more conservative with the client's

01:22:33

interests in the more, you

01:22:36

know, it's a personal question

01:22:41

to Professor. When Lloyd when

01:22:45

the lawyers themselves are actually

01:22:46

a little bit on the

01:22:49

conservative side will that serve

01:22:52

the development of international arbitration

01:22:54

in the long run professoressa

01:22:57

car? If you can give

01:22:58

a very brief response and

01:23:00

then I think that we're

01:23:01

we're good to go on

01:23:02

that we will be able

01:23:03

to come to meeting on

01:23:05

the matter of you know,

01:23:06
the developer on this development

01:23:07
based on made by your

01:23:09
tongue Yes, of course. This

01:23:13
was exactly one of the

01:23:15
awards that was in my

01:23:16
mind was issued in 2012.

01:23:18
And it's from that time

01:23:20
that this matter of formality

01:23:22
that has in still in

01:23:24
itself in the understand Yiddish

01:23:27
understanding of Judges has materialized

01:23:29
itself as a matter of

01:23:30
public policy and you're definitely

01:23:34

right that I think other

01:23:36

commentators that have also provide

01:23:38

their comments on the issue

01:23:39

agree with you are definitely

01:23:41

right that the lawyers have

01:23:42

to be conservative because all

01:23:44

the award is for is

01:23:45

for their enforcement. And so

01:23:47

they cannot take any chances

01:23:49

at. At that point but

01:23:51

they'd appoint that I tried

01:23:52

to convey it towards the

01:23:55

end of my presentation was

01:23:57

exactly for this reason that

01:23:58

we have to have the

01:23:59

holistic review. So oldest a

01:24:02

hold us can come forward

01:24:03

and they can hear each

01:24:04

other and it is only

01:24:08

through convening oldies oldies stay.

01:24:11

Told us that you can

01:24:12

come to a reasonable and

01:24:16

workable solution for the interpretation

01:24:19

of the 10 public policy.

01:24:20

Sometimes it is in the

01:24:22

form of a revision of

01:24:24

the arbitration act. Sometimes you

01:24:27

need all your decision from

01:24:30

a fire quote in the

01:24:31

country to settle the matter.

01:24:34

So it's not only in

01:24:36

the hands of the lawyers

01:24:38

that have to follow what's

01:24:40

going on and have to

01:24:41

be more conservative but more

01:24:43

in there in the hands

01:24:44

of the executive Apollo 72

01:24:48

just that even also did

01:24:49

you just Sherry together with

01:24:50

Academia? Agree 100%. It's fixing

01:24:55
multi-stakeholder approach. But at the

01:24:58
end of the day the

01:24:59
buck stops with the legend

01:25:01
with the legislator. That's my

01:25:02
that's my personal view. But

01:25:04
I understand your opinion. There

01:25:05
has to be a dialogue

01:25:07
in order to reach the

01:25:09
result requested Professor will give

01:25:14
the floor to you unless

01:25:15
there is anything else? Thank

01:25:19
you very much. I wanted

01:25:23
to interview before before concluding

01:25:25

I wanted to ask you

01:25:26
a one one one last

01:25:28
question. And if I'm a

01:25:29
patient's allows no from from

01:25:34
all the speakers and especially

01:25:36
supposed to be for for

01:25:39
faster than Takis and and

01:25:41
and those words Stella and

01:25:43
and and and and raisin

01:25:45
and everyone in general in

01:25:48
there is an investment contract

01:25:54
case, which you may have

01:25:56
you met and I don't

01:25:57
know which is well Judy

01:25:59

free versus Kenya. I mean

01:26:03

that in that decision there

01:26:05

is a reference to the

01:26:06

facting include the corruption and

01:26:09

the parts of the rationale

01:26:11

of the tribunal refers to

01:26:12

International public policy as well

01:26:14

as a as to the

01:26:16

violation of General principle of

01:26:20

law of good faith and

01:26:22

and you said if it

01:26:24

does going to find elements

01:26:27

of on the one hand

01:26:28

public international law by reference

01:26:30

to the general principle of

01:26:31

law of good faith and

01:26:33

on and on the other

01:26:34

hand, it does from my

01:26:36

perspective combined a a perspective

01:26:40

also of of international contract

01:26:44

law by referring to International

01:26:46

public policy. My question is

01:26:48

whether on the side of

01:26:50

a of public policy in

01:26:53

addition to corruption all there

01:26:56

are other other examples could

01:26:59

also be included such as

01:27:00

fraud or as as as

01:27:03

a funds obtained through money

01:27:09

laundering or traffic of arms

01:27:11

Etc. So I wanted to

01:27:12

get a better sense whether

01:27:14

the the Notions or exam

01:27:18

was that may be applicable

01:27:19

from the perspective of violation

01:27:22

of the general principle of

01:27:24

law such as of good

01:27:26

faith and might also be

01:27:27

transferable to the notion in

01:27:30

which is more of a

01:27:31
contract notion of public policy.

01:27:34
I wonder what you think

01:27:35
and if I might be

01:27:37
misguided or or we're on

01:27:39
the right track. Thank you.

01:27:44
But that case ready to

01:27:46
eat for Ecology. I remember

01:27:49
correctly because it was whether

01:27:51
or not that particular practice

01:27:52
was something which was consistent

01:27:55
with Kenny and it's a

01:27:57
custom radar weather map for

01:27:59
bribery that would be would

01:28:09

be an issue of public

01:28:10

policy. But of course no

01:28:11

weight with good faith. It's

01:28:13

on the contract is outside

01:28:21

the contract even if everything

01:28:23

that constitutes a general principle

01:28:24

of law is out there

01:28:26

in available. It will have

01:28:27

to be applied to person

01:28:29

that in your estimation in

01:28:30

the end and another speakers.

01:28:32

Well, then you can have

01:28:33

something which is a violation

01:28:35

of the mandatory laws in

01:28:36

violation of public policy. But

01:28:38

if it doesn't make any

01:28:39

consequences, nothing significant about the

01:28:42

application then applying it would

01:28:44

be a violation of public

01:28:45

policy. Thank you very much.

01:28:48

I'm sorry if I if

01:28:54

I mean in the context

01:28:56

of investment treaty arbitrations across

01:29:00

the case that you mention.

01:29:01

It's a investment contract case

01:29:03

investment treaty case, but in

01:29:04

in the context of investment,

01:29:05

which arbitrations which are based

01:29:09

upon investment treaties you always

01:29:11

have in the Galaxy requirement

01:29:13

old as always you have

01:29:14

a Express or implied the

01:29:15

college requirement. Meaning that an

01:29:17

investor wants to be a

01:29:19

legible to be able to

01:29:21

pursue its flame on the

01:29:24

merits has to show that

01:29:25

it has made it as

01:29:27

investment in accordance with the

01:29:28

laws of the house to

01:29:29

stay and it is free

01:29:32

that person that many investment

01:29:34

treaty. Try bills have approached

01:29:35

them. Including why masses of

01:29:40

Corruption of Ulster at the

01:29:42

state and you can see

01:29:44

cases like Phoenix Inn in

01:29:46

2009, which was dismissed on

01:29:48

the basis of the lack

01:29:50

of good faith or 2013

01:29:52

Metal Tech vs. Pakistan has

01:30:00

proven and it was the

01:30:02

tribe nred an initiative that

01:30:06

they took the muscles in

01:30:08

their hands. They followed it

01:30:09

up and that they rely

01:30:11

not only on the Notions

01:30:13

of illegality in general, but

01:30:15

you can put it in

01:30:16

the framework of Corruption of

01:30:17

fruit bowls are to be

01:30:19

on the safe side the

01:30:20

tribunal also relied on International

01:30:22

International public policy serve to

01:30:26

make sure that the water

01:30:27

is ran that is not

01:30:28

something that the tribunal has

01:30:30

because what when you dismiss

01:30:32

the case on the basis

01:30:33

of illegality and you implicated

01:30:36

the domestic law of the

01:30:37

house the state you don't

01:30:37

want to Deny jurisdiction red

01:30:42

restriction Exodus. I think five

01:30:43

in all those conservative in

01:30:44

that case. They also refer

01:30:45

to International pool with policy.

01:30:47

So it depends. Depends on

01:30:51

the legal system that is

01:30:52

applied to this specific question

01:30:54

at hand. I think what

01:30:55

is domestic lower than you

01:30:56

have many of these Notions

01:30:57

that can be used like

01:30:59

a bribery fruit lack of

01:31:01

good faith. It really depends

01:31:02

on the domestic law applicable.

01:31:05

I would like to hear

01:31:07

Constantine view on the matter.

01:31:09

Thank you. I just wanted

01:31:11

to come in. I mean

01:31:13

it cannot be within the

01:31:14

context of investment application or

01:31:17

commercial construction should not be

01:31:19

too easy for the whole

01:31:21

states to take Investments referred

01:31:24

by corruption, but let's be

01:31:26

honest about it, but they

01:31:27

contract is Brookfield by corrosion.

01:31:28

The whole project is done

01:31:30

and then comes and says,

01:31:32

oh, I'm sorry. We will

01:31:34

not pay for this contract

01:31:35

will not pay for this

01:31:36

project because it was procured

01:31:38

through a bride that Daddy

01:31:42

comes to eating. This is

01:31:43

why your connections as I

01:31:45

just mentioned a bit actually

01:31:46

looks at the place of

01:31:48

the Norsemen and the public

01:31:49

policy in their country. So

01:31:50

it has to be I

01:31:51

think rightly suggested by all

01:31:55

the speakers and today it

01:31:57

has to be balanced truck

01:31:58

and it has to be

01:31:59

dialogue among all the stakeholders

01:32:01

or the application of these

01:32:03

principles but in a half

01:32:05

I need York reaction or

01:32:07

some of the cases which

01:32:09

were quite interesting this fella

01:32:10

mentions and introns. I'm all

01:32:13

for an active role Juicery

01:32:15

in review of some of

01:32:16

these cases. But if they

01:32:17

do then they have to

01:32:18

really get into the facts

01:32:20

and actually do appreciate that

01:32:21

that in the judge would

01:32:24

look at all the facts

01:32:25

of the case. So I

01:32:30

think you've Starburst friends on

01:32:42

the other side and just

01:32:45

to answer of the psyche

01:32:47

of the French French Love

01:32:50

Actually the standard that he

01:32:53

Supply is weathered enforcement commission

01:32:55

off the award would be

01:32:58

contrary to International public policy

01:33:01

and this applies in the

01:33:02

same way and everything. I'm

01:33:06

under the weather and forcing

01:33:14

the fight against Hillary. It's

01:33:20

in the contract. So I

01:33:25

think that's in the system.

01:33:34

36th one understood why I

01:33:40

do tend to agree with

01:33:41

Constantine in this particular case

01:33:44

that When discussing matters of

01:33:48

public policy again, it is

01:33:50

not a matter of triangle

01:33:52

is not a matter of

01:33:53

a knee-jerk reaction. There should

01:33:55

follow a basic understanding of

01:33:59

What role do we want

01:34:01

public policy to have? What

01:34:04

is the content of public

01:34:06

policy? And is that public

01:34:08

policy bridge in this case

01:34:10

in this case or not?

01:34:11

Otherwise if there is no

01:34:15

stability in there is no

01:34:17

stability in arbitration. And there

01:34:20

is no benefit in having

01:34:22

an artificial process that you

01:34:24

know, may that's kind of

01:34:26

provide no certainty as to

01:34:27

the result with respect. At

01:34:28

least. They should probably call

01:34:29

him. I think we are

01:34:32

done here professionally bus unless

01:34:34

you have any other questions

01:34:35

we would like to thank

01:34:36

the world arbitration update for

01:34:39

its excellent. Excuse me organization.

01:34:44

There are many more events

01:34:45

to follow if I'm right

01:34:47

and it ended Yesterday, thank

01:34:54

you. Thank you stop loose

01:34:55

and thank you and Reza

01:34:57

as well as Stella and

01:35:00

Constantine or this pretty amazing

01:35:03

panel and and for going

01:35:05

to various jurisdictions as well

01:35:08

as as the public policy

01:35:11
exception and and the reasons

01:35:12
to stay outside on a

01:35:19
ward. Yes indeed. There are

01:35:22
there are many other panels

01:35:23
that the next panel that

01:35:26
we will be having a

01:35:28
is just give you the

01:35:30
second. I will tell you

01:35:32
right away looking at our

01:35:35
calendar. next panel that will

01:35:38
work will be having is

01:35:40
the panel in effective cross-examination

01:35:45
an expert expert witness says

01:35:48
this this this will be

01:35:50
in More so an end

01:35:54
and then we will have

01:35:55
the we'll have a snow.

01:35:59
Sorry, we'll have the Washington

01:36:01
d.c. We're having at at

01:36:02
1 p.m. Impact on investment

01:36:04
arbitration of the Us and

01:36:07
other countries elections in 2024.

01:36:10
So that's that's an exciting

01:36:12
panel given that we're having

01:36:14
a list a list of

01:36:18
high number of elections in

01:36:20

the world including the us

01:36:22

but also in Mexico Venezuela

01:36:24

and other countries in in

01:36:26

in Europe, etcetera Indian in

01:36:29

South Asia, so looking forward

01:36:31

to having you in those

01:36:33

panels and there's also a

01:36:35

workshop later on on how

01:36:36

to write a brief in

01:36:37

international arbitration. So really it

01:36:42

it's a it's amazing that

01:36:44

you were able to put

01:36:46

it together and do her

01:36:48

and hopefully you'll enjoy the

01:36:50
rest of your day and

01:36:52
wherever you are. Either in

01:36:54
the in in the Run

01:36:56
us claims tribunal in The

01:36:58
Hague or endure. So take

01:37:01
care, and thank you. Walmart,

01:37:04
swing for me world arbitration

01:37:07
update.com Jubilee for The Superficial

01:37:09
future events and you very

01:37:11
much everyone, bye-bye. We are

00:00:00
sir. Okay, so So good

00:00:09
afternoon, everyone. This is world

00:00:11
of attrition update. From Doha

00:00:15
2024 and it is with

00:00:18
great pleasure that I will

00:00:21
be introducing the moderator. But

00:00:23
before that me and share

00:00:24
with you that my name

00:00:25
is Jose Antonio Rivas. I

00:00:28
am one of the co-founders

00:00:30
of world over Jason update

00:00:32
which was founded for years

00:00:35
ago. This is a fourth

00:00:37
edition of world over Jason

00:00:38
update. And the first time

00:00:40
that that we have an

00:00:43

in-person panel from Doha much

00:00:48

of it has been Thanks

00:00:49

to our moderator stop at

00:00:52

Lowe's and I would like

00:00:58

also to share with you

00:00:59

that I am parked strategy

00:01:02

here in Washington DC and

00:01:05

also professor of investment treaty

00:01:08

arbitration public international law and

00:01:11

icj judgments and For today's

00:01:14

Final we have a great

00:01:15

topic at which is international

00:01:18

commercial arbitration the limits of

00:01:20

the public policy ground for

00:01:22

setting aside or not enforcement

00:01:25

of arbitration Awards by not

00:01:28

a national courts. This is

00:01:31

a very tropical themed considering

00:01:35

that today. There are various

00:01:39

jurisdictions in the world that

00:01:41

are seeing annulment or set

00:01:45

aside request via parties that

00:01:50

that that have had the

00:01:53

awards against them in various

00:01:56

places both in Europe, but

00:01:58

also in may as well

00:02:00

as in the United States

00:02:02

among other places with that

00:02:04

I would love to introduce

00:02:05

her and establish who is

00:02:08

who has it a vast

00:02:11

experience in construction and Engineering

00:02:13

disputes and has considerable experience

00:02:16

advising contractors employers and developers

00:02:20

and government institutions with a

00:02:22

particular focus on large-scale projects

00:02:25

in the infrastructure energy oil

00:02:27

and gas sectors starters is

00:02:30

a senior associate of dla

00:02:32

Piper in Doha. He's also

00:02:35

an arbitrator. He's a member

00:02:37

of the young arbitrators form

00:02:39

at the public international law

00:02:40

group. He is also a

00:02:44

qualified solicitor of the senior

00:02:47

courts of England and Wales.

00:02:48

And also qualified in in

00:02:52

in Greece apart from that.

00:02:55

It is with great pleasure

00:02:58

that he was also my

00:02:59

student at Georgetown law and

00:03:01

and it's a fascinating that

00:03:04

now he's doing full force

00:03:06

International arbitration from Doha so

00:03:09

stop take it away and

00:03:12

thank you for being here.

00:03:15

You better match Professor Davis.

00:03:17

I can only call you

00:03:18

Professor. Dave was given the

00:03:20

history in Georgetown long time

00:03:22

ago. It is a great

00:03:23

pleasure to see you again

00:03:24

after all these years again

00:03:27

to everyone and welcome to

00:03:29

the fourth world arbitration update

00:03:32

conference or as I like

00:03:34

to call it the world

00:03:35

arbitration week 2 weeks actually

00:03:38

would have been all over

00:03:40

the world with a view

00:03:41

to informing the world about

00:03:43

International arbitration and more importantly

00:03:46

expanding it in in the

00:03:49

four corners of the globe.

00:03:50

This is the first time

00:03:52

that the conference is taking

00:03:53

place in the Middle East

00:03:55

and in Doha and we

00:03:58

at dla Piper and gauhar

00:04:00

very happy to be organized

00:04:01

and get along with the

00:04:02

World Trade Organization. We hope

00:04:05

that this is the beginning

00:04:05

of a very fruitful collaboration.

00:04:08

We're very excited to be

00:04:10

doing it and hopefully we

00:04:11

can do it again next

00:04:13

year. Let's go Topic of

00:04:15

this conference before I introduce

00:04:17

the speakers. I'd like to

00:04:18

make a couple of introductory

00:04:20

remarks as Professor Eva said

00:04:23

the topic is the limits

00:04:25

of the public policy ground

00:04:27

for setting aside or not

00:04:29

enforcement of arbitration Awards by

00:04:31

national course as an irritation

00:04:34

practitioner is well aware that

00:04:39

a policy especially in this

00:04:40

region is one of the

00:04:41

murkiest most hotly-debated concept and

00:04:45

international arbitration which however on

00:04:48

the path. However, it has

00:04:49

very real consequences as it

00:04:52

is one of the most

00:04:53

commonly invoked reasons for set

00:04:55

aside or refusal of enforcement

00:04:56

people use it very very

00:05:00

happy parties use it very

00:05:01

often in general. I always

00:05:03

like to say that a

00:05:04

person's Aura States views on

00:05:06

the limits of public policy

00:05:07

basically reflective using arbitration the

00:05:11

proponents of an otoscope of

00:05:12

public policy or the you

00:05:14

revealed that you View of

00:05:16

the international public policy generally

00:05:20

tend to favor at least

00:05:21

in my view the finality

00:05:23

of arbitral awards and the

00:05:25

predictability of the arbitral process

00:05:28

as well as the proliferation

00:05:29

of the arbitration on the

00:05:31

conferring. We have the proponents

00:05:33

of an expansive approach a

00:05:35

public policy who focus on

00:05:36

the wording of the New

00:05:37

York convention that allow Sports

00:05:39

49 Portsmouth of awards that

00:05:41

is against the public policy

00:05:43

of that state that gives

00:05:46

in their view the understanding

00:05:49

that only state courts can

00:05:51

protect both substantive and procedural

00:05:53

public policy and the Integrity

00:05:55

of the legal system insistence

00:05:57

text to me system of

00:05:59

that state and as a

00:06:00

result, they stay for granting

00:06:02

them a higher degree of

00:06:04

deference. The limits between the

00:06:07

two trends that I have

00:06:08

set out is going to

00:06:09

be the main topic of

00:06:10

our discussion. Thankfully we have

00:06:12

a stellar panel of speakers

00:06:13

with like mustard a starting

00:06:16

to my ride Professor. He

00:06:17

has a Dr. Reza eftekhari

00:06:19

who is joining us from

00:06:22

the line. Mr. Constantine Christy

00:06:26

and me spell elliptigo in

00:06:28

case you have not noticed

00:06:29

we have an absolute majority

00:06:30

of people here that was

00:06:33

entirely coincidental. I assure you

00:06:35

she's a professor of law

00:06:43

at how much bin Khalifa

00:06:44

University at the Kaiser foundation

00:06:46

and actually Professor me, but

00:06:48

she's also an adjunct professor

00:06:50

at Georgetown University. He will

00:06:52

provide a brief historical overview

00:06:54

of public policy and perceptions

00:06:57

regarding the approach of the

00:06:59

public policy without stay and

00:07:02

the He-man. Let's see whether

00:07:04

he gives a more optimistic

00:07:07

view with respect to the

00:07:09

concept of public policy when

00:07:11

it comes to recognition of

00:07:13

arbitral awards. It's coincidental you

00:07:25

sure it's always a paradox

00:07:29
with a policy in the

00:07:30
paradoxes that wild states make

00:07:33
policies for investment for Commerce

00:07:35
protract business at the same

00:07:37
time some time ago that

00:07:39
left. what are the limitations

00:07:42
to that to the court

00:07:44
nor the courts where judges

00:07:45
do they might look at

00:07:46
certain other issues and then

00:07:50
they will take this shoes

00:07:51
decisions that something Falls within

00:07:52
the public policy and therefore

00:07:54
that then would hinder inhibit

00:07:56
the actual State policies and

00:07:58
I don't know that you

00:07:59
can you can make a

00:08:00
multibillion-dollar policies, but then I

00:08:02
can judge has to decide

00:08:03
you needed Willie or something

00:08:06
or not on the base

00:08:07
of public policy between the

00:08:11
actual policy makers and those

00:08:13
deciding what is public policy

00:08:14
and we saw that 80's

00:08:17
90's and not until the

00:08:19

early 2000s were quartz made

00:08:21

the life-or-death decisions about issues

00:08:24

affecting affecting at least a

00:08:26

policies and Rancho When we

00:08:31

did research I can place

00:08:32

a d2000 we look at

00:08:35

the before the second perspective

00:08:36

of how many cases there

00:08:38

are and based on those

00:08:39

cases with look at what

00:08:41

the law and public policy

00:08:42

was originally and globally me

00:08:49

see that there are very

00:08:50

few cases since the old

00:08:51
are the late 2010 and

00:08:53
2008. And the reason in

00:08:57
my opinion is is because

00:08:59
that isn't it is closed.

00:09:00
So now there's a consonant

00:09:01
between what steaks theater policy

00:09:04
perspective and what the hell

00:09:06
are the chords to do.

00:09:08
Not sure how that has

00:09:09
come about. I think I'm

00:09:10
more sophisticated yet. He's certainly

00:09:12
have lawyers now be more

00:09:13
Savvy about what they feel

00:09:15
might be a public policy

00:09:16
risk or disaster at some

00:09:18
point. So let's go to

00:09:19
the Gap. What's a few

00:09:23
cases and maybe I'll call

00:09:25
and see if that's true.

00:09:26
But that seems to be

00:09:28
the trend is coming to

00:09:31
Nashville Court is about going

00:09:35
to be a factor in

00:09:37
the public policy. We have

00:09:48
National visions. And for those

00:09:49
of you who are not

00:09:49

from the golf National Visions

00:09:51

essential foundations of policy of

00:09:55

the state. Now, they do

00:09:57

sit out the policy of

00:09:57

the state in terms of

00:09:58

what they want to do

00:10:00

for the next 10-20 years,

00:10:01

but at the same time

00:10:02

they can be used as

00:10:03

setting out public policy to

00:10:05

third degree in what the

00:10:10

courts do to use as

00:10:12

that I do what I

00:10:14

want to ask is if

00:10:15

you want to see what

00:10:17

new convention. It was 5

00:10:18

when I always sure what

00:10:21

this means in terms of

00:10:22

our 25 and I are

00:10:23

the student many years ago

00:10:24

and London Dior Northbound on

00:10:27

the new provincial to 5.

00:10:28

When we look at this

00:10:38

public policy in Article 5

00:10:41

new invention to the public

00:10:43

policy of the enforcement state.

00:10:47

Is this public policy exception

00:10:52

an exception to the general

00:10:53

rule under international law that

00:10:55

states cannot use our domestic

00:10:57

law to override the international

00:10:58

legal obligations. That is that

00:11:00

is that me on what's

00:11:01

what's your question can can

00:11:02

States use the public policy

00:11:04

exception article 52 Escape their

00:11:06

obligation the general international law

00:11:08

not in that respect. My

00:11:13

my view is that it's

00:11:14

a negative know that there

00:11:17

are certain reasons one is

00:11:18

that the public policy rules

00:11:20

have to be transparent insert

00:11:22

why because of General principle

00:11:23

International. You can't have none

00:11:25

until you can get away

00:11:27

with it. They know if

00:11:29

you override that the ship

00:11:30

is fine secondly. State laws

00:11:33

have to be proportionate whether

00:11:35

it's a policy statement or

00:11:37

whether it's a it's a

00:11:38

mandatory. Have to be proportionate

00:11:40

and the personality is actually

00:11:42
the Benchmark of a of

00:11:45
a good application for Low

00:11:46
by the porch. We know

00:11:49
now, especially when you before

00:11:50
but then after Germany versus

00:11:53
Italy before the icj, we

00:11:54
know that Judgment of national

00:11:58
porch after the state and

00:12:01
its active the state they

00:12:02
can incur State responsibility for

00:12:04
the state doesn't matter that

00:12:05
we have a separation of

00:12:07
other powers sports are part

00:12:09

of the state Machinery. So

00:12:10

therefore they can they can

00:12:12

they can get this taken

00:12:13

care of their responsibilities. The

00:12:17

answer to the first question

00:12:18

is whether or not public

00:12:20

policy notified. Can you use

00:12:22

an exception to availability under

00:12:24

international law is it shouldn't

00:12:26

be no because public policy

00:12:28

in effect, even if it

00:12:29

has to be curtailed by

00:12:31

President rules of public international

00:12:33

law. But once again, very

00:12:43

enlightening speech and I really

00:12:46

like the public international law

00:12:48

touch that you used in

00:12:51

this particular case. I presume

00:12:52

that you were talking about

00:12:53

also be a possibility which

00:13:00

basically forbids States from Avoca

00:13:02

international law to give me

00:13:05

national law to invade public

00:13:08

International obligation. The question of

00:13:12

course is to what extent

00:13:13

is the enforcement of an

00:13:16

award Republic International obligation of

00:13:18

this is something that we

00:13:19

would say that we will

00:13:20

discuss a day that we

00:13:21

will discuss at a later

00:13:23

stage and this is the

00:13:25

real separation between More internationally

00:13:30

focused in all 50 states

00:13:34

and the account is it

00:13:41

was when someone brings an

00:13:43

international arbitration International Boulevard to

00:13:46

is a matter of it

00:13:53

does not involve. It does

00:13:55

not eat stop having an

00:13:56

international product or whatever. We

00:13:58

do have a New York

00:13:59

convention, which is an international

00:14:01

treaty that has been accepted

00:14:02

the ratified. So it is

00:14:04

a very very interesting God

00:14:05

point of discussion. I would

00:14:07

like to question. Did you

00:14:08

mention that that is a

00:14:10

consonance right now between what's

00:14:13

the state? I presume you

00:14:15

mean the executive branch in

00:14:17

public policy and what the

00:14:20

judges consider as public policy

00:14:22

and I was wondering do

00:14:23

you also see that in

00:14:26

the Middle East or is

00:14:27

it to something? I thought

00:14:29

you encounter any other parts

00:14:31

of the world. Mostly they

00:14:33

just explained that really well.

00:14:35

I think you're the best.

00:14:37

OK send you a turnaround

00:14:41

in the in the in

00:14:44

the way that the important

00:14:45

issues to look at their

00:14:46

role in Germany public policy

00:14:48
more than anything else. But

00:14:54
at the same time, I

00:14:54
think my mother is now

00:14:57
so I can meet at

00:14:57
least we have the charges

00:14:59
were having and so they

00:15:02
feel that their place in

00:15:04
looking at public policy has

00:15:05
to be limited except with

00:15:06
the state and make a

00:15:08
meal out of a certain

00:15:09
issue and the cold goes

00:15:19
first and then we have

00:15:21

a second place behind Santa

00:15:22

Claus. And even general principles

00:15:30

of justice and escaped from

00:15:35

that show in your view

00:15:38

at least since the best.

00:15:40

Okay. So you said it's

00:15:41

more less than fair approach

00:15:43

rather than consoles. I understand

00:15:46

the point. Okay. Thank you

00:15:49

very much for that. We

00:15:51

will continue this discussion later

00:15:52

on. However, I would like

00:15:55

to hear from our second

00:15:56

speaker Doctor Who is joining

00:16:01
us a line. Am I

00:16:03
correct to say that you

00:16:04
aren't in the Netherlands or

00:16:05
am I correct? Yes. That's

00:16:07
correct. Thank you. She miss

00:16:12
dr. Iftikhar. He is a

00:16:13
senior legal adviser at the

00:16:16
internet as the Iran us

00:16:18
claims tribunal Board of Public

00:16:22
international law of nerds versus

00:16:27
zombie in my opinion this

00:16:29
as an equal and equal

00:16:32
value and the strength of

00:16:34

law. That's how many people

00:16:37

disagree but you know, that's

00:16:38

what I think he has

00:16:40

that has dealt with the

00:16:42

public international law on contractual

00:16:44

Interstate disputes, and he's a

00:16:46

practitioner International Investment on Commercial

00:16:48

arbitration including icci that. I

00:16:52

thought he is the author

00:16:54

of the book the role

00:16:56

of domestic law the whole

00:16:57

state in determining the jurisdiction

00:16:59

of that. I joined them

00:17:00

at area of investment treaty

00:17:03

tribunals the partial Revival of

00:17:05

the localization Theory. I think

00:17:08

that was published in 2021

00:17:10

will continue discussing the development

00:17:15

of public policy as a

00:17:17

ground for setting aside or

00:17:19

refusing enforcement is going to

00:17:21

focus on the Middle East

00:17:22

on the gulf and he

00:17:25

will focus on the positive

00:17:26

developments in favor of the

00:17:28

creation but also described the

00:17:29

lingering perceptions on public policy

00:17:32

that favor a more expansive

00:17:34

interpretation in that region in

00:17:37

that sense. It would be

00:17:37

interesting to see how your

00:17:39

views a different or or

00:17:42

a or a single line

00:17:44

with what profession contest as

00:17:46

actually said Dr. You have

00:17:49

before Thank you very much.

00:17:51

Just a good day everyone.

00:17:53

My name is araiza. If

00:17:54

that far it's a great

00:17:56

honor to give this presentation

00:17:58

on the occasion of the

00:18:00

fourth edition of old arbitration

00:18:02

update the panel discussion of

00:18:04

the public policy Crown in

00:18:06

post-war proceedings before finalizing my

00:18:10

notes for this seminar. I

00:18:12

leave for the most leading

00:18:15

Publications on International commercial arbitration

00:18:18

to see what has been

00:18:20

said on the ground of

00:18:21

public policy. What occurred to

00:18:24

me immediately was that all

00:18:27

these authoritative sources have a

00:18:29

Relentless focus on certain jurisdictions

00:18:32

such as France Switzerland Singapore

00:18:35

the United Kingdom and the

00:18:37

United States and have admired

00:18:41

the pro enforcement regimes and

00:18:44

also have made clear that

00:18:47

these countries the legal system

00:18:49

of these countries interpreter term

00:18:52

public policy quite naturally unsurprising

00:18:56

firstly these countries that judicial

00:18:59

system in the legal system

00:19:00

associated with these countries are

00:19:02

the vanguards of international commercial

00:19:05

arbitration and second-year and maybe

00:19:07

more importantly these countries host

00:19:10

of the most popular states

00:19:13

in international arbitration. So it

00:19:17

is critical to understand how

00:19:18

public policy is understood and

00:19:20

applied in these legal systems.

00:19:23

What does substantial focus on

00:19:25

these countries in there is

00:19:28

much more limited focus on

00:19:30

what what is going on

00:19:31

elsewhere in the world. Lucky

00:19:34

need this full version of

00:19:36

board arbitration update has provided

00:19:39

us with the opportunity to

00:19:40

have a more global view

00:19:42

regarding International arbitration. I don't

00:19:44

have any myself of this

00:19:46

opportunity to explore how public

00:19:49

policy is understood and applied

00:19:52

in the Middle East and

00:19:53

for this I'm grateful to

00:19:55

talk to Jose Antonio Rivas

00:19:57

and papa cellular. And they're

00:19:59

dedicated team of attrition update

00:20:03

in the next 12 minutes

00:20:05

or so. I'm going to

00:20:06

explain in general terms how

00:20:09

public policies viewed your post

00:20:11

about proceedings in various Middle

00:20:13

East and jurisdictions. If you

00:20:16

read articles written by jurist

00:20:20

with a middle eastern background

00:20:22

35 years ago in various

00:20:25

journals of international arbitration, you

00:20:28

would sense doubt reservation and

00:20:31

sometimes pessimism regarding International arbitration.

00:20:35

Today. Perception has substantially changed.

00:20:40

There are approximately 15 countries

00:20:44

in the Middle East with

00:20:45

a predominantly Hispanic population of

00:20:49

these fifteen countries 14 have

00:20:52

joined the New York convention.

00:20:54

Iraq was the latest country

00:20:56

to become a contractor in

00:20:58

the state in 2021 again,

00:21:00

I don't have these fifteen

00:21:02

countries 9 have adopted the

00:21:05

uncitral model law on International

00:21:07

commercial arbitration Qatar was the

00:21:10

latest to come on board

00:21:11

in 2017 by adopting the

00:21:14

uncitral model or International commercial

00:21:16

arbitration. So the most significant

00:21:19
instruments the key instruments International

00:21:22
commercial arbitration have gone its

00:21:25
significance appreciation in the Middle

00:21:28
East. But more importantly and

00:21:31
more connected to our topic

00:21:33
boots in the Middle East

00:21:35
National courts in the Middle

00:21:36
East generally speaking have tended

00:21:39
to apply the New York

00:21:41
convention in a positive way

00:21:44
and more specifically in the

00:21:47
ground of public policy has

00:21:49
been really relatively interpreted narrowly

00:21:52
in the last decade in

00:21:53
various jurisdictions in the Middle

00:21:55
East. and since this is

00:21:58
all application update, let me

00:22:00
give you some fresh examples

00:22:02
Egypt in 2020 a court

00:22:05
in Cairo upheld an award

00:22:07
run that against the state

00:22:09
entity in favor of a

00:22:11
weighty let Consortium in the

00:22:15
value of around 500 million

00:22:16
dollars and rejected the argument

00:22:20
that this award against that

00:22:23

Egyptian State entity has been

00:22:26

rendered in violation of Egyptian

00:22:28

public policy Iran in 2016

00:22:31

in Tehran not only made

00:22:35

a distinction between domestic public

00:22:38

policy International public policy interest

00:22:40

in reference to various guards

00:22:44

issued by multiple International Organization

00:22:47

on the interpretation of the

00:22:48

Tampa Bay policy officials to

00:22:53

officials in the Judiciary to

00:22:55

translate the Judgment and send

00:22:58

it to eat in order

00:23:00

to promote harmonization in the

00:23:02

application of the new convention

00:23:03

Saudi Arabia in 2020 for

00:23:07

the administrative Minister of Justice

00:23:10

reported that out of 88

00:23:13

application a loan application proceeding.

00:23:15

They are only five of

00:23:18

them were partially or fully

00:23:20

with none of them being

00:23:22

based on public policy or

00:23:24

Sharia law and finally the

00:23:25

United Arab departing from past

00:23:30

jurisprudence in 2023, or maybe

00:23:33

20 22 the Abu Dhabi

00:23:35

Court of cassation dismissed the

00:23:38

allegation that failure by Darby

00:23:41

from \$5 to sign all

00:23:42

the pages of the original

00:23:44

would violate procedural public policy.

00:23:48

So these are quite fresh

00:23:49

examples from from the region

00:23:51

various various countries in the

00:23:52

region and how they have

00:23:54

approached the ground of public

00:23:56

policy and Miss various applications

00:23:58

based on this ground mentioned

00:24:01

in in in the New

00:24:02

York conventional Wholesale in arbitration

00:24:04
act but it is a

00:24:09
fact of life and it

00:24:10
is no secret that the

00:24:12
ground of public policy is

00:24:14
a more effective weapon in

00:24:17
the hands of the parties

00:24:18
that resists enforcement or the

00:24:21
validity of the arbitration award

00:24:22
and post our proceedings in

00:24:24
a various Middle Eastern jurisdiction.

00:24:27
And in my opinion, of

00:24:31
course what what I say

00:24:32
this I say this in

00:24:33

comparison to the pro enforcement

00:24:35

regimes that let you know,

00:24:36

right at the beginning of

00:24:37

my presentation in my opinion.

00:24:40

There are four reasons for

00:24:42

this more expansive interpretation of

00:24:46

the ground of public policy.

00:24:50

There is a historical understanding

00:24:53

in the minds of Judges

00:24:56

regarding the notion of public

00:24:57

policy. Secondly, the socio-political context

00:25:01

of public policy study the

00:25:04

role of sharia. Unfortunately, the

00:25:06

past experiences went with International

00:25:09

arbitration against estate entities go

00:25:14

briefly through each of these

00:25:16

four reasons fasty of the

00:25:18

judicial understanding the historical judicial

00:25:21

understanding of the time public

00:25:23

policy from the time that's

00:25:26

the notion of public policy

00:25:27

is introduced to a given

00:25:29

legal system Say by virtue

00:25:31

of the enactment of a

00:25:33

civil code up until that

00:25:35

country becomes a member of

00:25:37

the new convention or adults

00:25:39

The UNCITRAL model Law on

00:25:40

International commercial arbitration. The notion

00:25:43

of public policy has a

00:25:45

time sometimes a good number

00:25:47

of decades to make a

00:25:49

history. So one. Country, right

00:25:53

if I sing you a

00:25:54

convention or adopt the term

00:25:57

public policy has already a

00:26:00

deep-seated effect on the minds

00:26:04

of the judges that are

00:26:05

the ultimate applicants of his

00:26:07

act and the convention and

00:26:09

that deep-seated effect is effectively

00:26:12

much more influential in the

00:26:17

minds of the judges that

00:26:18

any admirable valuable but still

00:26:21

not buying the efforts on

00:26:22

the part of international organizations

00:26:24

that issue various non-binding guidelines.

00:26:28

Bear in mind that we

00:26:31

are not talkin about the

00:26:32

countries that have devised this

00:26:34

whole International arbitration machinery and

00:26:37

can accommodate themselves with the

00:26:40

new developments easily more easily.

00:26:42

What countries that have simply

00:26:44

importantly International operation as a

00:26:48

result of this you can

00:26:49

see that in various on

00:26:52

various occasions Notions regarding for

00:26:56

instance procedure public policy have

00:26:57

found a successful application in

00:27:01

postal or proceedings in the

00:27:02

Middle East if I want

00:27:03

to identify two common themes

00:27:06

of an in multiple jurisdictions,

00:27:08

for instance, if the court

00:27:10

recognizes that it does not

00:27:12

have subject matter or territorial

00:27:14

jurisdiction with with respect to

00:27:17

the dispute or the parties

00:27:19

there too and I didn't

00:27:21

force my proceedings. They would

00:27:23

dismiss their enforcement application on

00:27:26

the basis of public. I

00:27:28

see because they would deem

00:27:29

your sexual matters as matters

00:27:31

of public policy. And secondly,

00:27:33

you can see that if

00:27:35

the arbitral tribunal fails to

00:27:36

abide by the technicalities and

00:27:38

formalities regarding domestic Awards and

00:27:41

judgments again, but quotes various

00:27:44

schools in the Middle East

00:27:45

have refused to recognize ring.

00:27:50

I won't because of the

00:27:52

violation of procedure public policy

00:27:55

and this has been to

00:27:56

come and see me the

00:27:56

various Middle Eastern jurisdictions. That

00:27:58

was the first reason the

00:28:00

second reason is the socio-political

00:28:03

context of public policy, which

00:28:06

is the proverbial unruly horse,

00:28:08

which is a philosophical terms

00:28:10

and cannot be detached from

00:28:12

its social play socio-political context

00:28:14

and part of the political

00:28:16

context is the government's mother

00:28:18

in in a Middle Eastern

00:28:21

countries, which I should say

00:28:24

very very very general terms

00:28:27

and I should emphasize disqualifier

00:28:30

the role of the public

00:28:33

sector in the economy of

00:28:35

various Middle East in jurisdictions

00:28:37

is much larger, when you

00:28:39

compare it to the roles

00:28:40

of public sector in Europe

00:28:41

North America and Southeast Asia

00:28:43

and this magnitude of the

00:28:45

role of the public sector

00:28:47

and economic undertakings associated with

00:28:51

public figures has effectively in

00:28:55

practice materialized in the form

00:28:59

of a lot of demand

00:29:00

for Public Policy sometimes in

00:29:02

the form of Economic and

00:29:04

public policy and one shot

00:29:07

of this large understanding of

00:29:10

public policy has been in

00:29:12

effect that in multiple jurisdictions

00:29:14

against in the last decade

00:29:16

many arbitral awards have been

00:29:18

annulled or refused enforcement because

00:29:21

domestically applicable conditions for referring

00:29:24

arbitration for referring puse involving

00:29:30

State entities to arbitration have

00:29:32

not been observed so you

00:29:34

can see many of these

00:29:35

examples in the in the

00:29:36

last decade. Sadly Sharia as

00:29:40

I mentioned at the beginning

00:29:41

of my presentation. There are

00:29:43

about fifteen countries predominantly populated

00:29:47

by Muslims in the Middle

00:29:48

East and that means that

00:29:49

she has a significant role

00:29:51

in the legislation in in

00:29:54

this countries, including a lots

00:29:56

of international arbitration. And as

00:29:58

a result ulcer ulcer matters

00:30:00

of Anthony matters regarding public

00:30:02

policy and you can see

00:30:04

that the tax domestic of

00:30:06

friction acts. You can see

00:30:08

Sherry has been mentioned alongside

00:30:12

public policy. For example, if

00:30:14

I'm not mistaken article 50

00:30:15
pack of two and I'll

00:30:16
take a 65 lb of

00:30:18
to be of the Saudi

00:30:19
arbitration act the new arbitration

00:30:21
Act of Saudi Arabia. Shari

00:30:22
has been sighted have been

00:30:25
mentioned in public policy and

00:30:27
one option of that application

00:30:30
of sharia in the context

00:30:32
of portable proceedings in various

00:30:34
countries noticed that we are

00:30:35
there but many countries in

00:30:37
the Middle East has been

00:30:38

Arbitral Awards in Katy in

00:30:40

a compound interest or even

00:30:43

simple interest have been partially

00:30:45

or fully of an all

00:30:47

door refused Foresman the jurisdiction.

00:30:51

I'm finally this is something

00:30:54

that you really have to

00:30:55

put yourself in the shoes

00:30:57

of the a middle-eastern jurisdiction

00:31:00

Middle Eastern terrorists My Generation

00:31:02

unto generation. Probably before me

00:31:04

you have been educated abroad

00:31:06

up by reading arbitral Awards

00:31:08

run that in the 1960s

00:31:09

and 1980s against various a

00:31:12

state entities in the Middle

00:31:13

East State and State entities

00:31:15

in the Middle East and

00:31:16

those are goats have against

00:31:19

the state entities have been

00:31:20

perceived to sometimes contain Twitter

00:31:22

languages and in faith and

00:31:24

in favor of the that

00:31:26

the foreign exchange now, but

00:31:28

we are talking about the

00:31:29

historical impact stuff. Understanding that

00:31:33

understanding and then that perception

00:31:34
and that's a That is

00:31:38
something that are almost all

00:31:39
countries in the Middle East

00:31:40
have some level of experience

00:31:41
with and that is also

00:31:44
another factor that has contributed

00:31:45
to a more reserved approach

00:31:49
towards that against State entities

00:31:53
that are associated with the

00:31:55
recognition or enforcement form or

00:31:58
that the foreign that is

00:31:58
reviewing the validity of the

00:32:00
orbits were so these are

00:32:01

the four reasons that I

00:32:03

think have had an impact

00:32:04

on a more expensive reading

00:32:07

of the ground of public

00:32:10

policy in place of our

00:32:11

proceedings in the Middle Eastern

00:32:12

countries. Let me conclude by

00:32:15

saying that in the last

00:32:17

35 years there have been

00:32:19

a remarkable developments in the

00:32:21

application of the new convention

00:32:23

in the in the Middle

00:32:26

East and can you see

00:32:27

the countries you can see

00:32:29

that your wrists are reporting

00:32:31

with pride and excitement a

00:32:33

pro arbitration approach of their

00:32:34

countries, but as I try

00:32:36

to show There is still

00:32:38

room for improvement. I thinking

00:32:40

of the promotion of the

00:32:42

harmonization in the application of

00:32:43

the new convention all the

00:32:46

reasons. I identified the implicate

00:32:49

respectively the Judiciary the legislative

00:32:52

power that sorry that the

00:32:54

Judiciary to execute if the

00:32:56

electricity power and architect the

00:32:57

Academia and when you want

00:33:00

to find a solution, it

00:33:01

is very important to bring

00:33:03

all these stakeholders together so

00:33:05

you can it is only

00:33:07

then that you can find

00:33:08

a proper solution for the

00:33:11

interpretation of the time public

00:33:14

policy by sharing and anecdotes.

00:33:19

Regarding for example how it

00:33:21

is important to hear the

00:33:23

judges of The Ultimate applicants

00:33:24
the new convention and listen

00:33:28
to what they have to

00:33:29
say in this Regard in

00:33:30
the margins of the seminar.

00:33:31
I met a judge who

00:33:33
happened to be entrusted with

00:33:35
applying the new convention and

00:33:37
he told me that he

00:33:39
was from an intersection. It

00:33:41
told me that look up

00:33:43
the new convention is now

00:33:45
part of my legal system

00:33:46
and I have to apply

00:33:47

it and I really tend

00:33:49

to interpret the Tampa Bay

00:33:51

policy. Not really but at

00:33:52

the same time the domestic

00:33:55

Judicial Discipline regulations in my

00:33:58

country, that would say if

00:33:59

a judge fast abide by

00:34:03

the face to observe the

00:34:05

mandatory lose area in his

00:34:09

or her judgment. He has

00:34:10

committed misconduct. So it was

00:34:14

complain that my hands are

00:34:15

tied and these regulations do

00:34:17

not make a distinction between

00:34:18

situations. You're applying an International

00:34:20

Convention on a totally domestic

00:34:23

settings. So when you hear

00:34:25

them you become familiar with

00:34:28

their day-to-day entanglement, and it

00:34:30

is only then that you

00:34:31

can find proper solutions for

00:34:33

actual problems. That's me. Thank

00:34:36

you very much for your

00:34:37

attention. I'll beat you on

00:34:38

the floor back to US

00:34:40

dollars. Thank you very much.

00:34:42

I want to collect what

00:34:46

you said right now with

00:34:48

what Professor bantek I said

00:34:50

because that spoke to you

00:34:54

that says that there is

00:34:55

no difference between between excuse

00:35:01

me, applying Sharia law when

00:35:04

enforcing Winnipeg International Convention or

00:35:06

when you know interpreting domestic

00:35:08

law will probably not be

00:35:10

unfortunately not be particularly moved

00:35:13

by the articles of State

00:35:16

responsibility Vienna convention on the

00:35:20

law of treaties. You're going

00:35:21

to say, well if I

00:35:22

don't get temperature in your

00:35:23

loss, I'm going to be

00:35:24

I'm going to be with

00:35:27

misconduct whether I should be

00:35:29

accused of misconduct in accordance

00:35:30

with international law is of

00:35:32

no interest or so. I

00:35:35

understand I wanted to ask

00:35:37

you one question based on

00:35:39

what you said. Oh, I'm

00:35:41

basically add another parameters. You

00:35:43

mentioned the the perceptions of

00:35:47

the judges prior to the

00:35:51

introduction of the of the

00:35:53

ratification of the New York

00:35:54

convention in the particular in

00:35:56

a particular State. I would

00:35:58

like to have the perception

00:35:59

of the lawyers as well.

00:36:00

We recently actually had a

00:36:03

case where the arbitrator ask

00:36:05

us. Do you want us

00:36:07

to sign every single of

00:36:09

the thousands of pages of

00:36:11

the award and you know,

00:36:13

based on the New York

00:36:15
convention will you know anyone

00:36:18
would have said no, it's

00:36:19
not necessary. But however, do

00:36:25
we really want to take

00:36:26
a chance when the client

00:36:28
is actually it when the

00:36:29
clan section depending on my

00:36:32
question is do you see

00:36:33
in the next 20 or

00:36:35
30 years? Do you see

00:36:36
any changes in that perception?

00:36:41
Yes, of course. I would

00:36:44
say that the trend is

00:36:46
moving towards Pro enforcement in

00:36:50
in the Middle East and

00:36:52
the experiences that we have

00:36:55
had. So if you did

00:36:56
make a distinction between the

00:36:57
offshore and onshore jurisdiction, you

00:36:59
see that the offshore jurisdictions

00:37:00
are doing it much more

00:37:02
liberally, but the onshore jurisdictions

00:37:05
have to be a little

00:37:06
bit more conservative, but I

00:37:09
think they would also come

00:37:10
on board with the passage

00:37:11

of time and seminars like

00:37:13

this when we can gather

00:37:15

all the stakeholders. These are

00:37:17

these are really really helpful.

00:37:20

And so if you if

00:37:22

you look back like 30

00:37:23

35 years ago, there were

00:37:24

many more limitations and these

00:37:27

limitations are being removed one

00:37:30

after the other at this

00:37:30

is not an imitation, which

00:37:32

is sustainable. So, this is

00:37:34

Amir the example we are

00:37:37

talking about is a mere

00:37:38
technicality is not something it

00:37:40
is not because I think

00:37:41
we would be hearing the

00:37:43
Fantastic cases from Switzerland from

00:37:46
Al Constantine are not something

00:37:49
which are connected to the

00:37:52
most basic morals of of

00:37:54
the of the countries in

00:37:55
the Middle East. So these

00:37:56
days will be things that

00:37:57
I think will be handled

00:38:00
much more efficiently in the

00:38:01
future. I have one last

00:38:04

question before moving on and

00:38:06

you actually going to beat

00:38:07

me to it to an

00:38:08

extent because you mentioned onshore

00:38:11

and offshore jurisdictions for the

00:38:14

benefit of watching. We had

00:38:16

it comes back. We had

00:38:18

a, right before this one

00:38:19

on at Bay City on

00:38:23

offshore court and international court

00:38:25

system such as a d

00:38:26

i m see that do

00:38:28

you say do you in

00:38:29

your experience? Do you say

00:38:30

any dialogue or an exchange

00:38:32

of used between onshore and

00:38:36

offshore courts when it comes

00:38:38

to these matters? I will

00:38:41

of course because in the

00:38:43

in the offshore jurisdictions, if

00:38:48

I if I if I

00:38:49

understand that correctly if my

00:38:51

understanding is correct in that

00:38:52

regard. The law applied is

00:38:55

different and the judges that

00:38:56

apply the law roll so

00:38:58

different with a different backgrounds

00:38:59

and education. So in the

00:39:02

end it wouldn't be like

00:39:04

two ships passing each other

00:39:06

in the dark. But if

00:39:07

he'll be something that will

00:39:08

create a dialogue in in

00:39:12

the future and I think

00:39:14

when not only that the

00:39:17

offshore jurisdictions in the same

00:39:18

country, but when you have

00:39:20

examples from other countries in

00:39:22

the region it it would

00:39:24

be encouraging also for the

00:39:26

offshore jurisdictions in the country.

00:39:28

We are implying it it

00:39:31

would also encourage them to

00:39:32

interpret the term public policy

00:39:35

with regard to these technicalities

00:39:38

and formalities much more restrictive

00:39:40

Lee. Sewing in brief. Yes.

00:39:44

I think that. We'll definitely

00:39:46

did the what they bring

00:39:50

what they come in low

00:39:51

background brings 222 discussion to

00:39:53

the dialogue would be would

00:39:55

be a positive take-away. Thank

00:40:00

you very much. We would

00:40:07

like to move on from

00:40:08

the Middle East and move

00:40:11

on to other jurisdictions some

00:40:14

more liberal stations. Actually, we

00:40:19

would like to find someone

00:40:21

who will be able to

00:40:22

guide us with respect to

00:40:23

both sir. Constantine. Christy is

00:40:27

a partner at the intern.

00:40:31

The global off from Peter

00:40:32

and Kim. He's in Switzerland

00:40:33

is a u.s. Qualified lawyer

00:40:36

with many years of experience

00:40:38
in arbitration commercial and investor-state

00:40:40
focusing on a number of

00:40:42
you know sectors but primarily

00:40:44
Nolan gas in the automotive

00:40:46
industry. He will speak about

00:40:49
recent developments in Switzerland on

00:40:52
the 26th and are Russia

00:40:54
and also discussed certain thorny

00:40:57
issues, especially with * according

00:41:00
to Sanchez Good afternoon, stick

00:41:10
to the camera. And if

00:41:12
so, if everybody can hear

00:41:14
me well with many things

00:41:17

to Starbucks and for making

00:41:18

me want to read Greek.

00:41:20

My name is Connor and

00:41:31

I am one of those

00:41:32

arbitration kids but long ago,

00:41:36

I grew up a partially

00:41:38

emotional partially States and them

00:41:40

nothing Justified place on this

00:41:47

matter of patrician update because

00:41:49

according to I think Mary.

00:41:54

A survey last 10 Geneva

00:41:57

was within top 5 arbitration

00:41:59

which means that switch one

00:42:03

and number of cases from

00:42:07

different parties and the Supreme

00:42:09

Court before everyone perhaps those

00:42:13

who were set aside proceedings.

00:42:19

They found it one level

00:42:20

and all the cases go

00:42:23

directly to the Supreme Court.

00:42:34

slides All right. So the

00:42:39

as I've been foreshadowed by

00:42:41

Reza, there's quite an attraction

00:42:45

between New Yorker article V.

00:42:48

Somebody called it and Article

00:42:53

5 of course and public

00:42:54

policy except what you see

00:42:57

on the screen is basically

00:42:57

the legal basis for the

00:42:59

application of the same principles

00:43:01

for Success With Private international

00:43:02

law and have to say

00:43:06

immediately that's just as friends

00:43:09

in common law and civil

00:43:12

law cases. And actually that's

00:43:26

one of the reasons Has

00:43:36

a very Progressive commercial code

00:43:38

and civil code and also

00:43:41

at their April arbitration position

00:43:43

in terms of review of

00:43:45

set aside Ward be there

00:43:49

is a possibility to opt

00:43:50

out from the 109 screen

00:43:54

simply means that the article

00:44:03

23 of the Swiss gold

00:44:06

will be buying an RV

00:44:13

trailer. The chances of success

00:44:15

on your screen. I was

00:44:19

trying to be a little

00:44:20

bit already from now on

00:44:28

call me to get very

00:44:30

low chances Rocky less than

00:44:32

5% orange laces statistics and

00:44:42

0.9% for sports why I'm

00:44:45

saying that it's a simple

00:44:46

man in roughly 220. I've

00:44:52

been heard on public policy

00:44:53

that been only two of

00:44:55

us. We have been satisfied

00:44:56

and will come to see

00:44:59

me something. now the notion

00:45:02

of public policy and I

00:45:04

had to review little bit

00:45:08

of people giving a speech

00:45:11

but essentially it's nothing that

00:45:13

refers to widely recognized system

00:45:22

of values, which is common

00:45:23

to many legal systems. It's

00:45:25

logical has to be fair

00:45:27

to Justice and the federal

00:45:31

Supreme Court Supreme tribunal. This

00:45:44

is perhaps the most important

00:45:47

Point Avenue and actual traumatic

00:45:59

impact on the outcome of

00:46:01

that decision. The Supreme Court

00:46:04

will not set aside. Coming

00:46:10

back to the Article 5

00:46:12

of New York convention that

00:46:15

has been mentioned by the

00:46:21

state legislature legislature, which actually

00:46:26

does want to promote that

00:46:27

say the arbitration and me

00:46:29

we haven't which one's a

00:46:30

periodic review of a law

00:46:34

applicable to arbitration arbitration wrvo

00:46:37

public policy of enforcing state.

00:46:47

So Switzerland take the phones

00:46:50

with Notions of justice and

00:46:52

then of course, it looks

00:46:53

at other overall positions mature

00:47:01

legal systems in trying to

00:47:04

understand what this was no

00:47:06

Notions of Justice would be

00:47:08

so they don't just show

00:47:10
them the other Some of

00:47:19
the examples that come up

00:47:20
here and take me to

00:47:23
bring to your attention is

00:47:24
one interesting one is on

00:47:27
the back of it would

00:47:31
be a violation of public

00:47:31
policy for decision does a

00:47:34
firm in existence of a

00:47:36
contract just experience. It stated

00:47:45
that has been the case

00:47:49
where a decision was because

00:47:55
he was against public policy

00:47:59

to try to enforce the

00:48:00

basic make a defective band

00:48:03

for my profession. 2 insulation

00:48:12

there's no automatic qualification European

00:48:19

commission price list trailer of

00:48:29

descendants 3 in some of

00:48:30

the cases where it's been

00:48:32

confirmed that this would not

00:48:35

constitute a violation who gets

00:48:46

permission in is I love

00:48:59

the ferry was the compound

00:49:01

interest Provisions that quite often

00:49:04

being involved. Muscle conditions in

00:49:12

this region. Am I one

00:49:23

of my kids is an

00:49:25

arbitral tribunal has an interest

00:49:27

rate of 25% Make a

00:49:36

claim for violation, but then

00:49:43

one has to remember that

00:49:44

unlike some other jurisdictions, even

00:49:48

if there is a formation

00:49:50

and setting aside of the

00:49:51

arbitral award for public policy

00:49:53

on the other reason then

00:49:56

the arbitration basically the arbitral

00:50:01

award goes back to the

00:50:03

same arbitral tribunal. So the

00:50:04

same members on the panel

00:50:08

will have to then review

00:50:09

the decision of the Supreme

00:50:10

Court and we'll have some

00:50:12

in their work. So that

00:50:14

means that there's a certain

00:50:15

risk, of course as well

00:50:16

that the arbitral tribunal members

00:50:18

who are human beings that

00:50:20

might be annoyed too and

00:50:21

they can maybe some you

00:50:24

used to take really long

00:50:27

hard. Look what it's worth

00:50:28
it going first all the

00:50:30
way to the Supreme Court

00:50:30
decision set aside all knowing

00:50:34
full. Well that the same.

00:50:35
This is not the case

00:50:49
and it's a completely different

00:50:50
panel. So. There's also some

00:51:04
procedural public policy or context

00:51:08
which needs to be involved

00:51:09
here to Supreme Court recognizes

00:51:11
that they and their excessive

00:51:16
formalism like in some countries.

00:51:18
You see, I believe it

00:51:20

was a green China there

00:51:21

would have to be if

00:51:22

this is Base main line

00:51:24

China in China and Russia.

00:51:56

No, I want to switch

00:51:58

to another is civil law

00:52:01

jurisdiction, which is quite interesting

00:52:03

has been widely used lately

00:52:05

and this is the Russian

00:52:09

Federation and its recent decision

00:52:12

making process that applies public

00:52:17

policy to anti-suit injunction regulation

00:52:21

oil anti arbitration regulation article

00:52:25

248 of the Russian procedure

00:52:28

commercial procedural code. allows Party

00:52:33

City conjunctions when they Bowl

00:52:36

in legal proceedings for arbitrations

00:52:41

outside of Russia and try

00:52:44

to physically Chicken and Junction

00:52:48

against large wardrobe. You don't

00:52:49

want to make sure that

00:52:50

the Russian party against such

00:53:02

violations of such decisions and

00:53:05

granting such a sweet thing

00:53:12

Johnson's is no longer. Although

00:53:18

this law in 2020 and

00:53:21

2020 been confirmed by the

00:53:25
court decision 2021 before the

00:53:29
war in the Ukraine in

00:53:37
February 2022. There has been

00:53:41
now and you develop when

00:53:43
you sense that there is

00:53:44
no longer a need for

00:53:46
to prove by Russian entity

00:53:49
involved that seeking the injunction

00:53:50
to to say that it

00:53:52
has been thanks. It's it's

00:53:55
just enough to broadly suggest

00:53:58
that is experiencing some sort

00:53:59
of restrictive measures and these

00:54:01

can be as broad as

00:54:03

to say that the little

00:54:03

girl from the country and

00:54:07

the Russian various States and

00:54:13

other parties have been quite

00:54:14

successful in using this provision

00:54:16

in order to seek. The

00:54:20

Junction and of course according

00:54:23

to the law of recognition

00:54:28

and enforcement of these awards

00:54:30

are you should spy anti-suit

00:54:34

injunction will be tonight. So

00:54:37

this is why the concern

00:54:38

and just recently important post

00:54:46

at 1.5 billion dollar against

00:54:51

the gas in case it's

00:54:56

injunction in the case. So

00:55:00

I'll leave it there and

00:55:01

then thank you very much.

00:55:03

Thank you very much. 0%

00:55:10

was indeed quite startling. I

00:55:16

just want to point out

00:55:17

first of all that's in

00:55:18

the driveway, so that your

00:55:19

medicine is basically existing in

00:55:25

even the most liberal of

00:55:28

the jurisdiction as by way

00:55:30
of example, it was a

00:55:31
recent decision in and before

00:55:34
the English courts that set

00:55:35
aside in a ward that

00:55:37
was essentially, you know, who

00:55:40
killed by corruption and try

00:55:43
it was very recent than

00:55:44
the it was somewhat criticized

00:55:46
by the 33 show that

00:55:48
there is a limit on

00:55:49
that limit is corruption in

00:55:54
Switzerland is you have a

00:55:57
plan in the process of

00:56:01
drafting and arbitration Clause go

00:56:04
to the process of drafting

00:56:05
whatever you're thinking of the

00:56:07
sheets. Dust in the mind

00:56:11
of a lawyer the public

00:56:13
policy exception work more as

00:56:16
a destabilizing factor or in

00:56:19
case you went on as

00:56:20
a safety net in case

00:56:22
we lose. In certain cases

00:56:27
if your example if you

00:56:30
think that there are some

00:56:31
issues of public policy the

00:56:32

question is, okay. Maybe I'm

00:56:35
going to go to the

00:56:35
shop at racially baluchova tration,

00:56:37
but you know if I

00:56:38
choose a more stricter jurisdiction,

00:56:41
maybe I can have the

00:56:42
other work that aside if

00:56:44
it's something that you know,

00:56:45
you were any other lawyer

00:56:46
would take into account? I

00:56:49
think honestly most lawyers will

00:56:53
take a position that unless

00:56:55
you have a specific. Your

00:56:58
jurisdiction way which are dealing

00:57:00

with such a rush to

00:57:02

give one example or another

00:57:04

jurisdiction where you you may

00:57:07

be actually being favored by

00:57:10

a wide-ranging or why the

00:57:14

interpretation of the public policy

00:57:16

and then just advise your

00:57:22

client to go for one

00:57:23

of the one of the

00:57:24

major centers of arbitration. Where

00:57:27

are you? You know, you

00:57:28

have a statement that work

00:57:29

you have a stable jurisprudence

00:57:31

way. You can actually speak

00:57:35

what will happen with that

00:57:36

award. Thank you very much.

00:57:41

Anybody much last but not

00:57:46

least. We have a Stella

00:57:47

to go back further its

00:57:50

title of Miss letter, which

00:57:51

accomplishment sometime maybe longer than

00:57:54

her speech. So I will

00:57:55

try to keep it to

00:57:56

the essentials. She's a joke

00:57:59

mollified lawyer in Paris and

00:58:00

happens. She's counseling charge of

00:58:03

the Middle East team at

00:58:04

the Secretariat of the ICC

00:58:06

International Court of arbitration in

00:58:08

Paris any of more than

00:58:17

100 arbitral Awards She's also

00:58:21

the founder of our betrothal

00:58:23

between Greece and to promote

00:58:25

what you know as the

00:58:30

Arbitration amongst amongst women in

00:58:33

the country. She will speak

00:58:35

about the procedural aspects of

00:58:37

public policy from the point

00:58:38

of view and arbitration tution

00:58:39

more specifically she will explain

00:58:41

how the ICC in particular

00:58:44

deals with issues of public

00:58:46

policy in Terraria to avert

00:58:49

a potential set aside and

00:58:51

the order refusal of enforcement

00:58:53

of that floor is yours,

00:58:56

and I know and for

00:59:08

once I may not contribute

00:59:10

to diversity for my greatness

00:59:12

and I will be discussing

00:59:23

this very interesting question from

00:59:26

the institution of bad boy.

00:59:28

So what is the role

00:59:30

of By stressing the first

00:59:45

and foremost is to ensure

00:59:47

that any awards rendered under

00:59:49

its auspices is valid and

00:59:51

enforceable place on the ICC

00:59:56

under article for the two

00:59:57

of the icy Road has

01:00:00

very helpfully explained by Michael

01:00:02

Connelly. The breach of public

01:00:04

policy is how to stop

01:00:20

at several rules and practices

01:00:22

in order to protect the

01:00:25

Integrity of the process. Different

01:00:31

stages on the proceedings from

01:00:34

the constitution of instances where

01:00:44

the role of the ICC

01:00:44

is more active more and

01:00:46

more essential. So starting with

01:00:51

a constitutional tribunal considerations of

01:00:55

equal treatment of the party's

01:00:57

Express grumpy situation to power

01:01:21

stick measures. Public policy violation.

01:01:33

So let me give you

01:01:34

just a company has claimed

01:01:55

against both responded but also

01:01:57

as a failed to join

01:02:20

dominated party favor in principle

01:02:22

would confirm the card is

01:02:25

right there. Let's approach has

01:02:33

in the past week for

01:02:42

treatment of the parties in

01:02:44

the constitution of the federal

01:02:45

and why was that because

01:02:48

we did not have aligned

01:02:50

interests Were Somehow forced to

01:02:52

share the same perpetrator choose,

01:02:56

but who was appointed by

01:02:57

the court while at the

01:02:59

same time. So having this

01:03:05

in mind and in order

01:03:06

to safeguard the awards nominated

01:03:20

by slaiman and appointing acquired

01:03:22

traits. So they want to

01:03:47

share I'm sorry and arbitration

01:03:49

agreement to provide for 5

01:03:51

and 1 and before 4.

01:03:59

So either procedure. I'd read

01:04:11

them in their vacation agreements

01:04:12

were to befall those that

01:04:14

would lead to a mile

01:04:15

equal representation of the two

01:04:16

sides within the tribunal with

01:04:18

claimant 31 arbitrator and responses

01:04:23

are so many parts of

01:04:33

the eye. Interpretation agreement know

01:04:47

what was the rationale behind

01:04:49

the board's decision would be

01:04:57

dismissed country limits to the

01:05:22

institution spot words and the

01:05:23

base by disregarding The First

01:05:34

Agreement as Express close. East

01:05:45

Asian so we can see

01:05:47

that the IC courts enjoys

01:05:51

wide discretion at the stage

01:05:52

of the Constitution of the

01:05:53

tribunal, especially when you see

01:05:57

arise and even the part

01:05:59

of the agreement May at

01:06:00

times not a garden party

01:06:09

or parties on the other

01:06:13

games on switch protector and

01:06:28

Turning now to give Awards.

01:06:31

Maybe just a very brief

01:06:34

reminder buffets under the ICC

01:06:36

rules and they should be

01:06:40

reviewed by the agency and

01:06:42

approved by the ice report

01:06:43

before it'll actually be issued

01:06:45

and let's fight to the

01:06:47

party. So the extent possible

01:06:53
and what does d i

01:07:06
c Port do when it

01:07:08
identifies potential violations public policy

01:07:11
at this stage of the

01:07:12
Security pension to those deficiencies

01:07:18
amazed ultimately depend on the

01:07:22
circumstances. Please read this test

01:07:28
on a case-by-case basis. So

01:07:31
it would depend on the

01:07:32
importance of the deficiencies of

01:07:34
arbitration, etc. Etc. It difficult

01:07:40
exam phone that was mentioned

01:07:42
by before it would be

01:07:44

particularly careful and stay where

01:07:52

there are allegations of corruption

01:07:53

and I will make sure

01:08:05

that they seem like we

01:08:07

are the test that is

01:08:08

applicable in the jurisdiction and

01:08:11

it's very interesting to hear

01:08:17

the different approaches. And especially

01:08:28

in cases related to them

01:08:30

shift their stands for word

01:08:36

for option and this shift

01:08:38

has an important impact on

01:08:40

the way. They approached me

01:08:43

about words and Jason. Sober

01:08:48

short article last T20 of

01:08:50

the French Bulldog see the

01:08:51

procedure Awards or enforcement would

01:08:58

be contrary to International public

01:08:59

policy traditionally French ports as

01:09:03

most receptions in the presence

01:09:12

of corruption allegations Lisa Pro

01:09:24

Boats. allowing to establish whether

01:09:49

the relation or in person

01:09:51

would be compatible with In

01:09:58

the series of recent decision

01:10:00

essentially relating to corruption and

01:10:04

money-laundering with a special mention

01:10:06
to the car is Old

01:10:11
Court of Appeals to the

01:10:12
side or refuse the enforcement

01:10:15
of February and that the

01:10:34
recognition or enforcement. I see

01:11:01
whether there are serious and

01:11:03
precise indices of corruption or

01:11:06
or money laundry. And it

01:11:08
looks like to mention two

01:11:10
other recent decisions. Those are

01:11:12
issued in investment cases against

01:11:15
Libya and effectively, where are

01:11:18
the first part again? I'd

01:11:20

be Awards on the ground

01:11:22

of violation of international public

01:11:24

policy. But only after having

01:11:34

lost for the first time

01:11:36

before the parts of a

01:11:38

few interesting link again, they

01:11:41

did not prevent the French

01:11:42

Court from all the new

01:11:45

elements produced by the respective

01:11:46

States and in both cases

01:11:48

that the court concluded that

01:11:50

there had in fact been

01:11:51

corruption and that therefore we

01:11:59

can see that the powers

01:12:00
of the French judge aren't

01:12:01
very expensive now. They're not

01:12:04
limited by any made by

01:12:07
the Tribunal And yes, he

01:12:09
has presented to the tribunal

01:12:11
or even in the arguments

01:12:12
before the tribunal of you

01:12:16
are the one you just

01:12:20
brought you an old party

01:12:21
supposed to be like at

01:12:22
2 to call Megan Pott's

01:12:25
ablation review performed by the

01:12:30
French Quarter in the presence

01:12:32
of corruption allegations. And of

01:12:34
course the number of recent

01:12:36
awards that have been any

01:12:46
assessment. The agency maintains this

01:13:10
is what guides any decision

01:13:11
to be at the very

01:13:13
beginning until the very end

01:13:14
up. There is a tribunal

01:13:22
so the ice is rolling

01:13:24
and where and when the

01:13:26
other side but its decision

01:13:28
is ultimately in the best

01:13:30
interest and public policy and

01:13:36

that's very much. Thank you

01:13:39

very much. The selection of

01:13:48

arbitrators in the concepts and

01:13:51

the concept of body autonomy

01:13:52

and how that flashes with

01:13:57

via quality of arms. I

01:14:00

would be because you don't

01:14:01

have to pay but it

01:14:02

would be interesting to fuck

01:14:03

interested to find out what

01:14:06

the sheet of the arbitration

01:14:07

was and whether the award

01:14:08

was set aside their because

01:14:11

certain jurisdictions say that's part

01:14:15
of guilt on the weekends.

01:14:16
We alternate public policy ground

01:14:18
and it's even higher than

01:14:20
any equality in all that

01:14:21
if for example the parties

01:14:23
selected this this approach discipline

01:14:27
this method for the selection

01:14:29
of arbitrators and that should

01:14:30
be respected and the and

01:14:34
the intervention of the approval

01:14:35
of this approach or the

01:14:37
rejection of this approach is

01:14:38
something that you know, Make

01:14:41

slaw and competitive Lord so

01:14:43

difficult, I would also like

01:14:46

to point out if I

01:14:48

was very interested to share

01:14:49

about the new Cottage cases.

01:14:51

They were very interesting. It

01:14:52

would be good to know

01:14:53

what the standard of proof

01:14:57

was in these cases because

01:15:00

everybody will know what special

01:15:01

interests of investors and Corruption

01:15:04

is impossible to prove sometimes

01:15:07

for the tribunals. Excuse me

01:15:08

for a slightly lower standards

01:15:12

of Corrections, the lower standard

01:15:14

of proof. However, I don't

01:15:16

want to monopolize the conversation

01:15:18

will open the floor to

01:15:20

questions from our online or

01:15:26

in person or through are

01:15:30

there any question from the

01:15:33

crowd? No. Anyone online. Give

01:15:39

me yes, please. Thank you

01:15:42

so much for the conference.

01:15:43

I think this kind of

01:15:44

options is really dumb sometimes

01:15:46

and substantive issues like Regent

01:15:54

Endora Drive application. I think

01:16:13

you can meet you cuz

01:16:14

I'm pretty country music reality

01:16:19

show me if I can

01:16:20

save the new case go

01:16:32

in France about how Appreciate

01:16:38

the job done by going

01:16:47

into a Max can be

01:16:49

sent kind of trick you

01:16:51

I know that Jen when

01:16:52

you have the application practitioners

01:16:54

are very particular when it

01:16:56

comes to read all of

01:16:59

that, but I truly think

01:17:01

if we stick our public

01:17:03

life arbitration friendly in the

01:17:16

way that you wouldn't be

01:17:17

with you if anything doesn't

01:17:19

actually said the system so

01:17:21

I think what happens if

01:17:24

you push it by 6

01:17:26

p.m. Other institutions into also

01:17:29

focusing on this kind of

01:17:31

situation and trying to manage

01:17:33

a best if there are

01:17:35

any cases of potential I'm

01:17:38

done. So, I think that's

01:17:45

it. Still the French quotes

01:17:52

with have to learn from

01:17:53

the Swiss from the Swiss

01:17:56

Supreme Court on how to

01:17:58

get gas stations. I would

01:18:00

say very high in a

01:18:03

way without explaining how they

01:18:05

intend to be switched in

01:18:12

this scholarship. And just the

01:18:24

stuff about the lawyers to

01:18:27

know when it comes to

01:18:29

public love working on a

01:18:36

case in which we have

01:18:39

a British voice. Is there

01:19:01

any formalities that the bodies

01:19:03

would like us to take

01:19:04

a shower? I wasn't actually

01:19:14

requested that. And I'm speaking

01:19:22

about the case which was

01:19:23

one month or something and

01:19:37

I was like this and

01:19:41

you shouldn't just be pushing

01:19:43

and being like as a

01:19:45

general intensity concert. What does

01:19:58

the name of the reason

01:20:10

for selling the song? I

01:20:22

will judge was actually okay.

01:20:26

Let's see. What study music

01:20:34

but this was one month

01:20:35

ago with a notable institution

01:20:39

and very very good comments.

01:20:50

And I will Briefly summarize

01:20:52

them or calling here is

01:20:55

basically focused on the last

01:20:58

speech and said that the

01:21:01

analysis of corruption basically is

01:21:06

a top by the front

01:21:07

porch is a positive step

01:21:09

in the right direction in

01:21:11

the analysis of public policy.

01:21:12

And that is something that

01:21:14

I need to do when

01:21:15

discussion going to professional contact

01:21:17

us a speech that it's

01:21:19

one thing to have a

01:21:20

separate approach. Justin Bieber throughout

01:21:23

the tribunal did another and

01:21:25

quite another thing to actually

01:21:26

engage and see whether this

01:21:29

is a public policy issue

01:21:31

and whether it has been

01:21:32

proven adequately the comments about

01:21:34

the French courts were very

01:21:36

very poignant. In my opinion.

01:21:38

I would like to see

01:21:40

how it French is charged

01:21:42

with respond to them. Probably

01:21:44

not ready and I do

01:21:51

think that the drafting of

01:21:53

the decisions he's a matter

01:21:54

in which you know cross

01:21:56

cross cultural exchanges would be

01:21:59

very helpful and on the

01:22:01

matter of how lawyers interpretations

01:22:03

of public policy. Once again,

01:22:05

I am do agree with

01:22:06

you that To the extent

01:22:09

that something has been settled

01:22:10

with World example drafting be

01:22:12

awarded the name of the

01:22:13

administration in do bodies like

01:22:14

them, you know saddled definitively.

01:22:17

I think that Lord I

01:22:18

also think that lawyer should

01:22:19

accept and say and tell

01:22:22

their client. You know what

01:22:23

this is what's happening. However,

01:22:24

as you better go pointed

01:22:27

out lawyers wheel of my

01:22:29

many lawyers tend to be

01:22:31

a little bit more conservative

01:22:32

with the client's interests in

01:22:35

the more, you know, it's

01:22:36

a personal question to Professor.

01:22:42

When Lloyd when the lawyers

01:22:45

themselves are actually a little

01:22:47

bit on the conservative side

01:22:49

will that serve the development

01:22:53

of international arbitration in the

01:22:55

long run professor's car? If

01:22:57

you can give a very

01:22:59

brief response and then I

01:23:00

think that we're we're good

01:23:02
to go on that we

01:23:03
will be able to come

01:23:04
to meeting on the matter

01:23:05
of you know, the developer

01:23:06
on this development based on

01:23:08
made by your tongue Yes,

01:23:12
of course. This was exactly

01:23:14
one of the awards that

01:23:16
was in my mind was

01:23:17
issued in 2012. And it's

01:23:19
from that time that this

01:23:20
matter of formality that has

01:23:23
in still in itself in

01:23:25
the understand Yiddish understanding of

01:23:28
Judges has materialized itself as

01:23:30
a matter of public policy

01:23:31
and you're definitely right that

01:23:34
I think other commentators that

01:23:37
have also provide their comments

01:23:39
on the issue agree with

01:23:40
you are definitely right that

01:23:42
the lawyers have to be

01:23:43
conservative because all the award

01:23:45
is for is for their

01:23:45
enforcement. And so they cannot

01:23:48
take any chances at. At

01:23:50

that point but they'd appoint

01:23:52

that I tried to convey

01:23:54

it towards the end of

01:23:56

my presentation was exactly for

01:23:58

this reason that we have

01:23:59

to have the holistic review.

01:24:00

So oldest a hold us

01:24:03

can come forward and they

01:24:04

can hear each other and

01:24:06

it is only through convening

01:24:09

oldies oldies stay. Told us

01:24:12

that you can come to

01:24:13

a reasonable and workable solution

01:24:17

for the interpretation of the

01:24:19
10 public policy. Sometimes it

01:24:22
is in the form of

01:24:23
a revision of the arbitration

01:24:25
act. Sometimes you need all

01:24:29
your decision from a fire

01:24:31
quote in the country to

01:24:32
settle the matter. So it's

01:24:35
not only in the hands

01:24:37
of the lawyers that have

01:24:39
to follow what's going on

01:24:40
and have to be more

01:24:41
conservative but more in there

01:24:44
in the hands of the

01:24:44

executive Apollo 72 just that

01:24:48

even also did you just

01:24:49

Sherry together with Academia? Agree

01:24:53

100%. It's fixing multi-stakeholder approach.

01:24:56

But at the end of

01:24:59

the day the buck stops

01:25:00

with the legend with the

01:25:01

legislator. That's my that's my

01:25:03

personal view. But I understand

01:25:05

your opinion. There has to

01:25:06

be a dialogue in order

01:25:08

to reach the result requested

01:25:11

Professor will give the floor

01:25:14

to you unless there is

01:25:15

anything else? Thank you very

01:25:19

much. I wanted to interview

01:25:24

before before concluding I wanted

01:25:26

to ask you a one

01:25:27

one one last question. And

01:25:29

if I'm a patient's allows

01:25:32

no from from all the

01:25:34

speakers and especially supposed to

01:25:38

be for for faster than

01:25:40

Takis and and and those

01:25:42

words Stella and and and

01:25:43

and and raisin and everyone

01:25:45

in general in there is

01:25:49

an investment contract case, which

01:25:55

you may have you met

01:25:56

and I don't know which

01:25:57

is well Judy free versus

01:26:00

Kenya. I mean that in

01:26:04

that decision there is a

01:26:05

reference to the faxing include

01:26:07

the corruption and the parts

01:26:10

of the rationale of the

01:26:11

tribunal refers to International public

01:26:13

policy as well as a

01:26:15

as to the violation of

01:26:18

General principle of law of

01:26:21

good faith and and you

01:26:24

said if it does going

01:26:25

to find elements of on

01:26:27

the one hand public international

01:26:29

law by reference to the

01:26:31

general principle of law of

01:26:32

good faith and on and

01:26:34

on the other hand, it

01:26:34

does from my perspective combined

01:26:37

a a perspective also of

01:26:40

of international contract law by

01:26:45

referring to International public policy.

01:26:47

My question is whether on

01:26:50

the side of a of

01:26:51

public policy in addition to

01:26:54

corruption all there are other

01:26:57

other examples could also be

01:26:59

included such as fraud or

01:27:02

as as as a funds

01:27:05

obtained through money laundering or

01:27:09

traffic of arms Etc. So

01:27:11

I wanted to get a

01:27:13

better sense whether the the

01:27:16

Notions or exam was that

01:27:18

may be applicable from the

01:27:21

perspective of violation of the

01:27:23

general principle of law such

01:27:25

as of good faith and

01:27:27

might also be transferable to

01:27:28

the notion in which is

01:27:31

more of a contract notion

01:27:32

of public policy. I wonder

01:27:34

what you think and if

01:27:36

I might be misguided or

01:27:38

or we're on the right

01:27:40

track. Thank you. But that

01:27:45

case ready to eat for

01:27:48

Ecology. I remember correctly because

01:27:50

it was whether or not

01:27:51

that particular practice was something

01:27:54

which was consistent with Kenny

01:27:55

and it's a custom radar

01:27:58

weather map for bribery that

01:28:05

would be would be an

01:28:09

issue of public policy. But

01:28:11

of course no weight with

01:28:12

good faith. It's on the

01:28:13

contract is outside the contract

01:28:21

even if everything that constitutes

01:28:24

a general principle of law

01:28:25

is out there in available.

01:28:26

It will have to be

01:28:28

applied to person that in

01:28:29

your estimation in the end

01:28:31

and another speakers. Well, then

01:28:32

you can have something which

01:28:34

is a violation of the

01:28:35

mandatory laws in violation of

01:28:37

public policy. But if it

01:28:39

doesn't make any consequences, nothing

01:28:41

significant about the application then

01:28:43

applying it would be a

01:28:44

violation of public policy. Thank

01:28:48

you very much. I'm sorry

01:28:50

if I if I mean

01:28:54

in the context of investment

01:28:58

treaty arbitrations across the case

01:29:00
that you mention. It's a

01:29:01
investment contract case investment treaty

01:29:04
case, but in in the

01:29:05
context of investment, which arbitrations

01:29:06
which are based upon investment

01:29:10
treaties you always have in

01:29:11
the Galaxy requirement old as

01:29:13
always you have a Express

01:29:15
or implied the college requirement.

01:29:16
Meaning that an investor wants

01:29:18
to be a legible to

01:29:20
be able to pursue its

01:29:23
flame on the merits has

01:29:25
to show that it has

01:29:26
made it as investment in

01:29:28
accordance with the laws of

01:29:29
the house to stay and

01:29:30
it is free that person

01:29:32
that many investment treaty. Try

01:29:34
bills have approached them. Including

01:29:39
why masses of Corruption of

01:29:41
Ulster at the state and

01:29:43
you can see cases like

01:29:44
Phoenix Inn in 2009, which

01:29:47
was dismissed on the basis

01:29:49
of the lack of good

01:29:50

faith or 2013 Metal Tech

01:29:52

vs. Pakistan has proven and

01:30:01

it was the tribe nred

01:30:03

an initiative that they took

01:30:07

the muscles in their hands.

01:30:08

They followed it up and

01:30:10

that they rely not only

01:30:12

on the Notions of illegality

01:30:14

in general, but you can

01:30:15

put it in the framework

01:30:17

of Corruption of fruit bowls

01:30:19

are to be on the

01:30:19

safe side the tribunal also

01:30:21

relied on International International public

01:30:24

policy serve to make sure

01:30:26

that the water is ran

01:30:28

that is not something that

01:30:29

the tribunal has because what

01:30:31

when you dismiss the case

01:30:33

on the basis of illegality

01:30:34

and you implicated the domestic

01:30:36

law of the house the

01:30:37

state you don't want to

01:30:38

Deny jurisdiction red restriction Exodus.

01:30:42

I think five in all

01:30:43

those conservative in that case.

01:30:45

They also refer to International

01:30:46

pool with policy. So it

01:30:48

depends. Depends on the legal

01:30:51

system that is applied to

01:30:53

this specific question at hand.

01:30:54

I think what is domestic

01:30:56

lower than you have many

01:30:57

of these Notions that can

01:30:58

be used like a bribery

01:31:00

fruit lack of good faith.

01:31:02

It really depends on the

01:31:03

domestic law applicable. I would

01:31:07

like to hear Constantine view

01:31:08

on the matter. Thank you.

01:31:10

I just wanted to come

01:31:11

in. I mean it cannot

01:31:13

be within the context of

01:31:15

investment application or commercial construction

01:31:18

should not be too easy

01:31:20

for the whole states to

01:31:22

take Investments referred by corruption,

01:31:25

but let's be honest about

01:31:26

it, but they contract is

01:31:27

Brookfield by corrosion. The whole

01:31:30

project is done and then

01:31:31

comes and says, oh, I'm

01:31:33

sorry. We will not pay

01:31:34

for this contract will not

01:31:36
pay for this project because

01:31:37
it was procured through a

01:31:39
bride that Daddy comes to

01:31:43
eating. This is why your

01:31:44
connections as I just mentioned

01:31:45
a bit actually looks at

01:31:47
the place of the Norsemen

01:31:49
and the public policy in

01:31:50
their country. So it has

01:31:51
to be I think rightly

01:31:52
suggested by all the speakers

01:31:55
and today it has to

01:31:57
be balanced truck and it

01:31:59

has to be dialogue among

01:32:00

all the stakeholders or the

01:32:02

application of these principles but

01:32:04

in a half I need

01:32:06

York reaction or some of

01:32:08

the cases which were quite

01:32:10

interesting this fella mentions and

01:32:11

introns. I'm all for an

01:32:14

active role Juicery in review

01:32:16

of some of these cases.

01:32:16

But if they do then

01:32:18

they have to really get

01:32:19

into the facts and actually

01:32:20

do appreciate that that in

01:32:23

the judge would look at

01:32:25

all the facts of the

01:32:26

case. So I think you've

01:32:31

Starburst friends on the other

01:32:42

side and just to answer

01:32:46

of the psyche of the

01:32:47

French French Love Actually the

01:32:51

standard that he Supply is

01:32:53

weathered enforcement commission off the

01:32:56

award would be contrary to

01:32:59

International public policy and this

01:33:01

applies in the same way

01:33:02

and everything. I'm under the

01:33:12

weather and forcing the fight

01:33:18

against Hillary. It's in the

01:33:22

contract. So I think that's

01:33:26

in the system. 36th one

01:33:35

understood why I do tend

01:33:40

to agree with Constantine in

01:33:43

this particular case that When

01:33:47

discussing matters of public policy

01:33:49

again, it is not a

01:33:51

matter of triangle is not

01:33:53

a matter of a knee-jerk

01:33:54

reaction. There should follow a

01:33:57

basic understanding of What role

01:34:01

do we want public policy

01:34:02

to have? What is the

01:34:05

content of public policy? And

01:34:07

is that public policy bridge

01:34:08

in this case in this

01:34:10

case or not? Otherwise if

01:34:14

there is no stability in

01:34:16

there is no stability in

01:34:18

arbitration. And there is no

01:34:20

benefit in having an artificial

01:34:22

process that you know, may

01:34:24

that's kind of provide no

01:34:26

certainty as to the result

01:34:27

with respect. At least. They

01:34:28

should probably call him. I

01:34:31

think we are done here

01:34:32

professionally bus unless you have

01:34:35

any other questions we would

01:34:36

like to thank the world

01:34:38

arbitration update for its excellent.

01:34:39

Excuse me organization. There are

01:34:44

many more events to follow

01:34:46

if I'm right and it

01:34:48

ended Yesterday, thank you. Thank

01:34:55

you stop loose and thank

01:34:56

you and Reza as well

01:34:58

as Stella and Constantine or

01:35:01
this pretty amazing panel and

01:35:04
and for going to various

01:35:07
jurisdictions as well as as

01:35:08
the public policy exception and

01:35:11
and the reasons to stay

01:35:18
outside on a ward. Yes

01:35:21
indeed. There are there are

01:35:22
many other panels that the

01:35:24
next panel that we will

01:35:27
be having a is just

01:35:30
give you the second. I

01:35:31
will tell you right away

01:35:32
looking at our calendar. next

01:35:37

panel that will work will

01:35:39

be having is the panel

01:35:41

in effective cross-examination an expert

01:35:46

expert witness says this this

01:35:49

this will be in More

01:35:53

so an end and then

01:35:54

we will have the we'll

01:35:58

have a snow. Sorry, we'll

01:36:00

have the Washington d.c. We're

01:36:02

having at at 1 p.m.

01:36:03

Impact on investment arbitration of

01:36:05

the Us and other countries

01:36:07

elections in 2024. So that's

01:36:11

that's an exciting panel given

01:36:13

that we're having a list

01:36:17

a list of high number

01:36:19

of elections in the world

01:36:21

including the us but also

01:36:23

in Mexico Venezuela and other

01:36:25

countries in in in Europe,

01:36:27

etcetera Indian in South Asia,

01:36:30

so looking forward to having

01:36:32

you in those panels and

01:36:34

there's also a workshop later

01:36:35

on on how to write

01:36:37

a brief in international arbitration.

01:36:39

So really it it's a

01:36:42

it's amazing that you were

01:36:46

able to put it together

01:36:47

and do her and hopefully

01:36:49

you'll enjoy the rest of

01:36:51

your day and wherever you

01:36:52

are. Either in the in

01:36:55

in the Run us claims

01:36:57

tribunal in The Hague or

01:36:59

endure. So take care, and

01:37:02

thank you. Walmart, swing for

01:37:05

me world arbitration update.com Jubilee

01:37:08

for The Superficial future events

01:37:10

and you very much everyone,

01:37:12
bye-bye.