



## Time to Update the New York Convention to Ensure Efficiency and Fairness in the Enforcement of Arbitral Awards? \*

### Summary

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

The session at Washington Arbitration Week featured a panel discussion on the New York Convention, which governs the recognition and enforcement of foreign arbitral awards. Key participants included Dana, an academic and legal practitioner, Joseph from Skadden, and Alexandra from Lewis Baach, who provided insights into the Convention's success and potential areas for improvement.

The panel highlighted that the New York Convention, established in 1958, has garnered widespread acceptance, with 772 state parties, representing a significant portion of the global community. The discussion emphasized the Convention's role in ensuring that foreign arbitral awards are treated equally to domestic awards, fostering international trade and legal cooperation.

There was debate on whether the Convention needs updating, considering its success and the evolving nature of international arbitration. Suggestions included the possibility of creating a Secretariat to guide interpretation and application, although many panelists expressed skepticism about its necessity due to the existing wealth of judicial decisions that provide guidance.

The panel also explored procedural challenges, such as the differences in enforcement between the New York Convention and the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID). They noted the stricter judicial review process for ICSID awards, which could serve as a model for enhancing the New York Convention's procedures.

The conversation turned to the implications of artificial intelligence (AI) in arbitration, particularly concerning the authenticity of evidence. The potential for AI-generated evidence to complicate disputes and the need for robust verification processes were discussed. The panelists agreed that while AI poses challenges, existing procedural frameworks could adapt to address these issues without necessitating amendments to the



New York Convention itself.

Overall, the session underscored the importance of the New York Convention in international arbitration while acknowledging the need for ongoing dialogue about its application and the impact of emerging technologies on the arbitration landscape. Participants were encouraged to continue discussions informally after the session, emphasizing the collaborative spirit of the arbitration community.

### **Authors**

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### **Topics**

WAW

### **Category**

WAW

### **Full Transcript**

00:01:25

Excuse me. Can someone on

00:01:30

mute the mic? Not too

00:01:38

long ago. Next to Dana,

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we were very excited to

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have you on. Are you

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on as a fellow and

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an atom Professor for International



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Education at the American University

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Washington College of Law? He

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is also the founder and

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partner has Boutique law firm

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in DC and what he

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represents next to your. We

00:02:04

have Joseph Joe who came

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here from New York. He's

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an associate in international arbitration

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department at Skadden. Joe serves

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on the arbitration and international

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law Committees of the New

00:02:16

York City Bar Association. He



00:02:18  
is a regional representative. I'll

00:02:20  
take us young and editor

00:02:24  
for Clover. And last but

00:02:26  
not least, we have our

00:02:27  
dear Alexandra Bedrosian. He was

00:02:29  
an associate at Lewis back

00:02:30  
out middlemas, which is a

00:02:32  
discreet Boutique firm in DC

00:02:34  
was previously with us. That's

00:02:37  
why I, I refer to

00:02:38  
my dear So we have

00:02:49  
just a few housekeeping matters

00:02:50  
before we get into it.



00:02:52

So, we obviously have you

00:02:53

all here in the room.

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We also have some online.

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Participants Kelby is with our

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team's helpfully, you know, as

00:03:04

well. If you don't know,

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this session is being recorded.

00:03:06

So just be aware of

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that. We would love for

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everyone to chime in with

00:03:12

questions. We had a little

00:03:14

bit of a a set

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up with Mike that does



00:03:16  
not allow so much interaction.

00:03:18  
So what we'll do is

00:03:19  
we'll Reserve time at the

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end and and make sure

00:03:22  
that everyone can ask some

00:03:23  
questions would be great if

00:03:24  
you could ask these questions

00:03:26  
because we don't have that

00:03:27  
much time with each other

00:03:28  
and that's that's about it

00:03:31  
in terms of housekeeping matters.

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So let's just go get

00:03:34  
right into it, the New



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York convention. Also, if you

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know, no one at the

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convention and enforcement of foreign

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arbitral Awards, it's one of

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the United Nations agreements that

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establishes standard For recognizing and

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enforcing arbitration Awards the convention.

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For those of you who

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don't know but must be

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will know at was established

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in 1958 and really it's

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principal. Aim is that it's

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an actual that foreign and



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domestic arbitration Awards will not

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be discriminated against. So parties

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me to ensure that that

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such a way as a recognized

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and generally capable of enforcement

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and their jurisdiction in the

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same way as domestic Awards

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and the convention has, has

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been instrumental in the key.

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In international arbitration has been

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called The Corner Store, Cornerstone

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International arbitration. So with that,

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pick the topic of our



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panel today is still need

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to update it. Let's just

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before we ask that question,

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maybe if you want, I'll,

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I'll start with you. Can

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you just tell us a

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little bit about the vast

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success that the convention has

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enjoyed. And therefore, also maybe

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ask the question. Is there

00:04:43

a need to update it

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at all? No, thank you.

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I will I would have



00:04:49

to almost give back this

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question, true to you and

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to everybody in the room

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because I think that's precisely

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the reason why we are

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here and do we need

00:05:00

to update the convention that

00:05:01

has been so, vastly successful

00:05:03

less than your convention. The

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New York convention today, has

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772 State parties to it

00:05:11

and keeping in mind that

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there are only about 194



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195 countries in the world.

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I think that the New

00:05:23

York manager is probably representing

00:05:25

the vast majority of countries

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around the world in mind

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that, oftentimes, the reason why

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I stayed It does not

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ratify the New York convention

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may be due to all

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sorts of reasons which are

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not necessarily reasons. Directly related

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to the fact that their

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legal system or their previous



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position to betray. She is

00:05:48  
in a meaningful way different

00:05:51  
than what the New York

00:05:52  
convention says. So in that

00:05:56  
sense I think the New

00:05:57  
York Metro the very large

00:05:58  
concerns. Is another interesting fact

00:06:01  
about the fact that the

00:06:04  
international Society has been growing

00:06:05  
and developing over the years

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Constantly new states have become

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parties to the New York

00:06:12  
convention. So this has been



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a gradual development of our

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International society. That today, call

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me nights in 172 and

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S8 you say to get

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ready to ratify the convention

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date, most likely will go

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to ratify it and it'll

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say that I can say

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that in the last few

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years countries live timor-leste in

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Suriname have a chicken Stan.

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Have this convention in case

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specifically of Timor, leste. Probably,



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you know, that is a

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country that emerged out of

00:06:47  
a very, very, very, very

00:06:49  
terrible. Very violent Civil War

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and has been having all

00:06:54  
sorts of problems over the

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years apart, one of the

00:06:58  
key goals and objectives. They

00:07:00  
have had over the last

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10 years, was precisely to

00:07:03  
to become part of the

00:07:05  
New York convention because it

00:07:06  
is seen as an instrument



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To Foster and strengthen Economic

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Development to too close to

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this context. I also want

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to remind everybody that the

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New York America is not

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the only treaty that exists

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for issues related to recognition

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app for smartphone, opposite of

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what we also have the

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so-called Panama come back and

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knowledge about the 1975 Panama

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combat relevant, and important being

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applied. However, the Panama convention



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at this point, it's only

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about nineteen states that are

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parties to the convention. So

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my phone, it had does

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not have the same success

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as the New York convention

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and infect the awesome interesting

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differences between Italy and the

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same or similar things happened

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with it. Geneva Convention from

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1961, the European convention on

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International commercial arbitration I need

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to look my list here



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because there are about 31

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States parties to the treaty

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at this point. And what

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I find really interesting is

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that in both cases and

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the European Commission in the

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last few years, I have

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not noticed any important new

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ratifications of that treaty. So,

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it's, these are not tragedies

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that sort of taking Pace

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with a New York convention.

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Hopefully, that sort of helps



00:08:36  
to provide the context of

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where we are within your

00:08:39  
commission, very much of the

00:08:43  
conversation. So all of our

00:08:45  
panelists are, well aware that

00:08:46  
they can jump in at

00:08:47  
any time if they want

00:08:48  
to add the, thank you

00:08:50  
for those those setting the

00:08:52  
scene words. But I also

00:08:55  
have a question. How would

00:08:57  
one even go about making

00:09:00  
changes to the New York



00:09:02

convention? How would one go

00:09:03

about doing that? Without throwing

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away the proverbial? In the

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bath water or whatever that

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expression, as we all know

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what I meant, you could

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maybe say a few words

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to that. Just working, it

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should be working. I think,

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I think if we have

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problems with the online will

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even States whose statehood is

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not universally recognized accede to



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our purport to accede to

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the New York convention, like

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the state of Palestine did

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so, and in ten years

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ago, so it's just another

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example of how joining this

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convention is also a status

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symbol that you're part of

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the community of nations. In

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terms of amending it, we

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look to the Vienna convention

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on the law of treaties

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articles, 40 and 41 which



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states that if the treaty

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says nothing about its procedure

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for amending, which senior connection

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doesn't it. It's free to

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the parties to the to

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the treaty to amend. Either

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all of them, can sign

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a new treaty that immense

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it or certain parts certain

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countries can do an intercessory

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Amendment 7th Amendment only between

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themselves and it's it's Rare

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that there aren't very many



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examples of like big multilateral

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treaty is going through and

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an amendment like this. I

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mean, what we're all those

00:10:40  
of you follow the field

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CD Howard call, it may

00:10:43  
be the debacle with the

00:10:44  
energy Charter treaty as different

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groups of countries are are

00:10:47  
trying to mend and that

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they can't agree on anything.

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But that. That would be

00:10:55  
the way the way for



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doing a free market states

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can negotiate an end and

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try to amend the only

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kind of good example. I

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can think of something like

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this happening is the general

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agreement on tariffs and trade

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that the Gat in nineteen

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forty-seven, different groups of states,

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have done amendments to it,

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that Supply only between themselves.

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So periodically, you have different

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region. Countries are from different



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regions of the world including

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free trade agreements that only

00:11:27

applied between themselves and you

00:11:29

lower. Tariffs, even even lower.

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Lower than what what the

00:11:35

guy that provides. So it

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is legally possible to imagine

00:11:39

your convention. Whether it happens

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as a matter of practical

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reality and international politics. Thank

00:11:47

you. We just got to

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information chat from somebody online.

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We just have to be



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Careful with the mic stand

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and not come too close

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but also but also speak

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loud and clear. The path

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of an audio issues and

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there was also a question

00:11:59

about the areas of improvement

00:12:00

which we will dive into

00:12:01

right now. We just wanted

00:12:03

to go to see it

00:12:03

up first and see how

00:12:04

would you even do that?

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But let's talk about what



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are the potential areas that

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what one would even approve,

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the New York convention and

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in doing so, you know,

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we can SSS be gone

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as you mentioned are, you

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know, there are other conventions

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regarding the enforcement of arbitral

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awards such as the convention.

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So maybe in looking at

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the potential areas we would

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want to improve. We can

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also look at these other



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convention. See, if we would

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want to borrow something from

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their Dana in terms of

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potential wish list or areas

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of improve, One potential idea.

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Do you think that there's

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any value in having a

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Secretariat similar to what you

00:12:42

have on the Beast convention

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under the New York convention?

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Sensitive to the audio issues.

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I'm going to follow the

00:12:52

instructions. It's lovely to be



00:12:54

here with all of you

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today and part of Washington,

00:12:58

a creation weekend. Thank you

00:12:59

for hosting on the issue

00:13:03

of Secretariat for the New

00:13:07

York convention. I think I'm

00:13:10

wearing my arbitrator hat and

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that I'll come back to

00:13:13

that in some of the

00:13:15

discussions that we have. But

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I think that the better

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guide to council and parties

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with respect to the interpretation



00:13:25  
of the New York convention

00:13:26  
and its application by courts

00:13:28  
around the world. Are in

00:13:30  
fact the decisions themselves rather

00:13:33  
than a secretary yet because

00:13:35  
I think there's such diversions

00:13:37  
not in a in a

00:13:40  
way that makes it lack

00:13:42  
tangibility and reliability. And and

00:13:47  
To treat its success is

00:13:49  
because it is so well

00:13:51  
understood and applied that said

00:13:53  
it is applied slightly differently



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in different countries and so

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I would be, I would

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be reluctant to suggest that

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a secretary at should be

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appointed for guidance on the

00:14:07

New York convention. And I

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would instead suggest that you

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look to sources for how

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National courts have interpreted and

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applied it. And fortunately there

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are many available sources online

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these days that are publicly

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available near the first being



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on the Enterprise website. We

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may speak about some of

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these resources later but the

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fact that so many of

00:14:32  
these resources are available, I

00:14:34  
think ways against the need

00:14:36  
for a secretary at this

00:14:37  
time. Know we've revised it,

00:14:40  
I don't know. We could

00:14:41  
maybe revise that answer. Thank

00:14:48  
you for that. I see

00:14:49  
it when he's dumping well,

00:14:51  
I am. I I totally



00:14:53

agree with my colleague here

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because it's, it's true. It's

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really hard to create a

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Secretariat for specifically, something like

00:15:04

the New York convention, which

00:15:06

has a very limited scope

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anyway, so maybe you should.

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Maybe also just take a

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step back at this point

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and realized it, then your

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commission is really just about

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recognition and enforcement. Of what

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weather of two things of



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a mutual agreement and of

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a towards, it's very limited

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and that sense it does

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not really provide much more

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than that which, which to

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some extent and listen to

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all the problems that I

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I, I hope I I

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assume we will discuss it

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on this on this round

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table as well. But what

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could an institution after this?

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And to some extent, they



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are already a number of

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Institutions that have taken pretty

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much the lead in terms

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of commercial arbitration on all

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to investment arbitration, of course,

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and administer proceedings, that n

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l arbitral awards that potentially

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can be recognized and enforce,

00:16:01

the New York convention. So

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probably create another situation would

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really not, not not not.

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Interesting point, but just access

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to the information on the



00:16:19

New York convention. I believe

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that they are is in

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fact a lot of work

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that can still be done

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because and that is also

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that place to read what

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the annual convention is in

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your comment. Really speaks to

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both constituents in in this

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world of international commercial arbitration

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on the one hand, the

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arbitrators or uncleaned arbitration practitioners,

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but primarily the arbitrator's they



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need to know what happened

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to the W could potentially

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be recognized and enforce that

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has a direct impact on

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what's that same time. The

00:16:56

New York convention speaks to

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the job just to the

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National judges and the national

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Josh's sometimes. They they need

00:17:08

to learn and and and

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understand really how the New

00:17:12

York convention first then you'll

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come it has only very



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very few articles and it's

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only like like 13 or

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14 articles and and the

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really important. It's only about

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7 or so that it's

00:17:24

a very short International treaty.

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But it is a very

00:17:28

complex 3D at the time

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of application and and Josh's

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need the support. There's a

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lot of information available in

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English language to wish. I

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were to agree, of course



00:17:37  
about how many more languages

00:17:39  
than English on the world.

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And I think there's still

00:17:43  
a lot of work to

00:17:44  
do to disseminate the New

00:17:46  
York convention. So, but I'm

00:17:50  
not sure if I would

00:17:52  
be the suitability of the

00:17:53  
best place in the United

00:17:54  
Nations has tried this effect

00:17:55  
in the past, but with

00:17:57  
mixed results. I mean do

00:17:59  
I hear speaking about you



00:18:01

know, the importance of up

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collecting information without a note

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to give a bar over?

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You would there be a

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role and administrative role in

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collecting? All the cases of

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different jurisdictions just to have

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one Central data point and

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show how the New York

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of commission has been applied

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throughout the world, how to

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do the parents feel about

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that? Both this sort of



00:18:24  
collecting compilation aspect to this,

00:18:26  
but also the educational aspect

00:18:28  
SSS University. So I know

00:18:32  
firsthand that in most law

00:18:36  
schools. The New York convention

00:18:37  
or International commercial arbitration. At

00:18:39  
this point is, is it

00:18:41  
a little aspect of the

00:18:43  
attorneys, realize the importance about

00:18:51  
dispute settlement of their career?

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And that has an impact

00:19:00  
on the arbitration practitioners. But

00:19:03  
again, I see an impact



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on the job, just because

00:19:05

people that enter the Judiciary

00:19:07

and work as judges in

00:19:09

the different countries, they probably

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never, really get exposed to

00:19:13

the knowledge of all of

00:19:23

the functioning of working with

00:19:25

that would be great because

00:19:29

we tend to be so

00:19:31

happy when we get back

00:19:32

toward where we that's it.

00:19:35

We did it for you.

00:19:36

And then, you know, I



00:19:38

have a very different perspective

00:19:39

because as, as most of

00:19:41

us know, this is not

00:19:42

where the story ends ends

00:19:43

with, with a client actually

00:19:45

collecting actually having a boy,

00:19:46

forcing actually having the money

00:19:48

back on that bank account.

00:19:49

So, yes, there's also that

00:19:51

some awareness, you know, raising

00:19:53

that could potentially be aided

00:19:55

by, by Industries in or

00:19:58

maybe other But you said



00:19:59

I wanted to to Pivot

00:20:03

and I promise I will

00:20:05

get to you. Just one

00:20:05

question to to Alex before

00:20:08

because you are currently in

00:20:10

for saying in the US

00:20:12

District of Columbia, you are

00:20:15

enforcement exit award. And I

00:20:17

I was wondering if you

00:20:18

could just hear from your

00:20:19

perspective, as counsel, whether there's

00:20:21

anything, any, any lessons learned

00:20:23

anything you would like to



00:20:23

to, to see if there

00:20:28

are two important differences between

00:20:32

exit Awards, in New York

00:20:33

convention Awards, during a enforcement

00:20:35

one is the even more

00:20:37

limited scope of judicial review

00:20:39

for exit Awards, and the

00:20:40

other is an even longer

00:20:41

statute of limitations, regarding judicial

00:20:45

review. So article 54 of

00:20:47

the exit convention obligates, each

00:20:49

Contracting state to recognize and

00:20:52

accept convention, award and enforce.



00:20:54

Its enforced in monetary obligations

00:20:57

in the award as a

00:20:58

You were a final, judgments

00:21:00

of a quart of that

00:21:01

state. So a court must

00:21:03

treat an exit award as

00:21:04

if it were already a

00:21:06

judgment that the court itself

00:21:07

or a sister court has

00:21:08

issued. Whereas in the New

00:21:11

York convention, it's kind of

00:21:12

a process for converting, an

00:21:14

arbitration award into a, a,



00:21:17

a court judgment and therefore,

00:21:20

and actions to enforce the

00:21:21

exit towards the scope of

00:21:22

judicial review is even more

00:21:23

limited, although, like from your

00:21:26

convention Awards and exit enforcement

00:21:28

actions, the court can't look

00:21:30

at the merits of the

00:21:31

arbitration. Dispute it also technically

00:21:34

is not supposed to examine

00:21:36

the truck for tribunal jurisdiction

00:21:38

or other procedural. Questions that

00:21:40

happened in in the arbitration,



00:21:41

the court where these would

00:21:45

be grounds for challenge under

00:21:47

Article 5 of the New

00:21:48

York convention, the court can

00:21:50

do little more than just

00:21:51

examine the awards authenticity. And

00:21:54

enforce, its the accept the

00:21:57

award letter and an exit.

00:21:58

Face can make very limited

00:22:00

challenges such as to the

00:22:01

authenticity of the award that's

00:22:03

presented or the possibility that

00:22:05

an offset might apply to



00:22:07  
the monetary obligations there in,

00:22:09  
but even for offsets we're

00:22:12  
not have to be Undisputed

00:22:14  
amounts. So a sovereign, for

00:22:16  
example, that's lost an excellent

00:22:18  
case, it can't then during

00:22:19  
the award proceedings in there,

00:22:22  
in the enforcement proceedings in

00:22:23  
US courts say well the

00:22:24  
investor actually owes you know,

00:22:26  
\$500 in back taxes. So

00:22:29  
it all evens out. I

00:22:30  
don't have to pay anything,



00:22:31  
it has to be in

00:22:32  
an amount. That's not disputed,

00:22:35  
by the word creditor or

00:22:37  
has been already adjudicated as

00:22:40  
correct by the court. Regarding

00:22:44  
statute of, limitations, section, 207

00:22:47  
of the federal police in

00:22:48  
the US, the federal arbitration

00:22:49  
act implements in New York

00:22:52  
convention. It contains a three-year

00:22:54  
statute of limitations, but it'll

00:22:59  
have to be treated as

00:23:00  
if they were already Court.



00:23:01

Judgments, the statute of limitations

00:23:05

for enforcing court, judgment supplies.

00:23:07

Not the one from the

00:23:08

federal arbitration act, these are

00:23:09

usually much longer and a

00:23:12

few weeks ago, a federal

00:23:13

court in DC found that

00:23:14

the applicable limitations. Is comes

00:23:17

from the DC enforcement of

00:23:19

foreign judgments acts when she's

00:23:20

12 years. So three years

00:23:22

versus 12 years and I

00:23:23

know we have some investigators



00:23:25

in the room. I mean,

00:23:26

this is as real practical

00:23:27

impact cuz once your client

00:23:30

wins, you need time to

00:23:33

try to find assets, may

00:23:35

be negotiated settlement, things like

00:23:37

that. So that the longer

00:23:38

limitations. Is it is very

00:23:40

is a very practical important.

00:23:44

One question. Do you think

00:23:47

it would be one universal

00:23:51

Saturday of limitations? In the

00:23:59

convention itself. While it gets



00:24:03

to yes, it would be

00:24:05

good. If it it's debatable,

00:24:07

whether it's stepped, it would

00:24:10

be good. Definitely it runs

00:24:14

up against the issue of

00:24:16

the local procedure for confirming

00:24:18

an award in National courts.

00:24:20

And how do you harmonize

00:24:21

that? Absolutely. But if statute

00:24:23

of limitation the procedural issue

00:24:25

or is it a substance

00:24:26

of issue that should be

00:24:27

assimilated with an article 5?



00:24:29

So that this has been

00:24:30

debated here and there, but

00:24:32

the prevailing view is that,

00:24:33

it's a local procedural issue

00:24:35

that's left to the to

00:24:36

the member states. And we'll

00:24:40

we'll get through some of

00:24:41

the language of Article. 5

00:24:43

is well, will deflect some

00:24:44

of the, the, the language

00:24:45

that had historically some debate,

00:24:50

but before we do that.

00:24:51

So let's talk a little



00:24:54

bit about waiver us over

00:24:56

him and see and specifically

00:24:58

a question that we discussed

00:25:00

in preparation to this panel

00:25:02

is is a ship, a

00:25:03

New York convention, be modified

00:25:05

to clarify, whether it's a

00:25:07

state certification, all the convention,

00:25:09

constitutional waiver to sovereign immunity

00:25:11

against the confirmation action. And

00:25:14

I know that, you know,

00:25:15

this in case you wanted

00:25:16

to touch upon so Yes.



00:25:18

Thank you so much for

00:25:20

the Guinness. Want to say

00:25:21

thank you to Hughes Hubbard

00:25:23

Watchdog tration week for the

00:25:24

invite also to my fellow

00:25:26

colleagues here. Also, I just

00:25:28

want to have a disclaimer,

00:25:29

the views expressed today, or

00:25:31

mine alone and automatic firms.

00:25:32

Then put that out there.

00:25:33

Yeah, I know it's a

00:25:35

question. I think one case

00:25:37

that is often cited when



00:25:39

it comes to, this issue

00:25:40

is cat Nest, which is

00:25:42

where the DC court of

00:25:44

appeals agreed with the DC

00:25:45

District Court that if a

00:25:47

foreign state of Greece, arbitrate

00:25:49

in a country, that is

00:25:50

a signatory of the New

00:25:51

York convention, and it weighs

00:25:53

sovereign immunity in all other

00:25:56

signatory countries, and its reasoning.

00:25:58

The District Court here, cited

00:26:00

to a second circuit decision



00:26:03

explaining that when a country

00:26:04

becomes a signatory to the

00:26:05

convention, by the very provisions

00:26:07

of the convention, the signatory

00:26:09

states must have contemplated the

00:26:11

force in options in other

00:26:13

states where States, Ukraine, how

00:26:16

to greet our between free.

00:26:17

Which is a signatory country

00:26:19

and therefore, the Court held

00:26:21

that. It should also have

00:26:22

anticipated enforcement actions in the

00:26:25

United States, which is also



00:26:26  
at 620 Country Meadow Court

00:26:29  
decision that received from across

00:26:31  
the country, including another second

00:26:33  
circuit decision where the second

00:26:36  
circuit held that signing the

00:26:38  
New York conventional loan without

00:26:40  
an arbitration award was not

00:26:43  
sufficient to waive sovereign immunity.

00:26:44  
Unless the cause of action

00:26:46  
was just the language closely

00:26:49  
related to the claim of

00:26:50  
the enforcement of the arbitral

00:26:51  
award. And so that's what



00:26:53

to wear to the station

00:26:53

comes into play. I see

00:26:55

because you see, all the

00:26:56

other hand, there are u.s.

00:26:57

courts that have found that

00:26:59

by finding a waiver of

00:27:01

sovereign. Immunity when Stateside International

00:27:03

treaties, that do not have

00:27:05

that tie into enforcement. And

00:27:07

so there was one in

00:27:08

the southern district of New

00:27:09

York where in the rears

00:27:11

versus, Deutsche, Bahn AG where



00:27:13  
it had to do with

00:27:14  
the treaty about legal litigation

00:27:16  
around railways. I'm a real

00:27:18  
we litigation and the Court

00:27:20  
held at signing. Did not

00:27:21  
imply. Italy, waves, album, immunity.

00:27:23  
And so, that's what it

00:27:24  
where I think the distinction

00:27:25  
comes into play. No, I

00:27:29  
mean, the New York convention

00:27:30  
was created to enforce arbitration

00:27:33  
Awards, rendered a signatory States

00:27:34  
and being allowed to waive,



00:27:37

your sovereign, immunity or Sorry's.

00:27:38

Not to refuse enforcement in

00:27:41

the u.s.a. station. Sovereign immunity

00:27:42

could perhaps open up doors

00:27:45

to, you know, waiting sovereign

00:27:48

immunity and other horsemen entreaties,

00:27:51

like the Panama convention which

00:27:52

field are mentioned earlier. They

00:27:54

said convention, on my couch,

00:27:56

just mentioned the New York

00:27:58

convention is focus on Commercial

00:28:01

arbitration. So there was an

00:28:02

argument that signing, it has



00:28:04

nothing to do with waiver

00:28:06

sovereign immunity. And so, that's

00:28:07

simply not done with the

00:28:08

convention. So there's a lot

00:28:10

of back-and-forth there in a

00:28:11

lot of considerations to Grapple

00:28:13

with him. And I know

00:28:18

Alex, you had some some

00:28:19

other thoughts with you wanted

00:28:20

to mention just on the

00:28:21

topic of, you know the

00:28:22

issues that might come up

00:28:23

with respect to enforcement against



00:28:26  
sovereigns. Fortunately or unfortunately depending

00:28:30  
on whom you represent, there

00:28:31  
are many tools that sovereigns

00:28:33  
have to avoid or delay

00:28:35  
complying with Awards to least

00:28:37  
in the US in terms

00:28:39  
of sovereign immunity obviously only

00:28:41  
assets that The Sovereign uses

00:28:44  
for a commercial purpose in

00:28:45  
the US can be used,

00:28:46  
there are a couple of

00:28:49  
lesser while no one wants

00:28:50  
from experience that, I'd like



00:28:51

to briefly discuss one is,

00:28:53

you can't do prejudgment attachment

00:28:57

of assets belonging to a

00:28:59

sovereign Is it on unless

00:29:02

the Sovereign has explicitly consented

00:29:04

to that, which is rare.

00:29:05

So this means that award

00:29:07

creditors who locate a sovereigns

00:29:09

assets, can't freeze them while

00:29:11

they then go through the

00:29:12

enforcement of the, for the

00:29:14

confirmation process and this poses

00:29:17

a practical problem because then



00:29:19

the Sovereign can alienate the

00:29:20

assets. And by the time

00:29:22

you get your award confront

00:29:23

confirms do know that there's

00:29:25

nothing left there, but it

00:29:27

also creates a jurisdictional problem

00:29:29

and potentially a fatal one.

00:29:31

Depending on how one pending

00:29:33

case in the Supreme Court

00:29:34

goes. It means basically, there

00:29:38

are two ways to get

00:29:39

jurisdiction over a foreign defendant

00:29:41

in US court. One is



00:29:42

quasi in rem, where the

00:29:46

defendant doesn't have any relevant

00:29:48

contacts in the, in the

00:29:49

US that relate to the

00:29:50

underlying dispute, but it has

00:29:52

property. And so you got

00:29:54

quasi in rem by freezing,

00:29:56

the property is not allowed

00:29:58

against sovereigns, the others in

00:30:01

personam jurisdiction. And this requires

00:30:03

the defendant to have contact

00:30:05

with the US that relate

00:30:06

to the underlying dispute. This



00:30:08

is pretty rare for sovereigns

00:30:10

to have this. And for

00:30:12

that very reason, Currently the

00:30:14

US foreign Sovereign immunities act

00:30:16

has an exception to this

00:30:19

requirement. It's for arbitration confirmation

00:30:23

actions. It says that in

00:30:25

personam jurisdiction, automatically exist. If

00:30:27

you're trying to enforce an

00:30:29

award, regardless of, if the

00:30:30

Sovereign doesn't have any other

00:30:31

relevant contacts with the US

00:30:33

relating to the dispute, there



00:30:35  
is a pending case in

00:30:36  
the Supreme Court CC Davis

00:30:38  
vs India that seeks to

00:30:40  
eliminate this exception and if

00:30:43  
it succeeds, it would mean

00:30:44  
that in a ward creditor

00:30:46  
could not enforce an award

00:30:47  
Against The Sovereign in the

00:30:49  
US unless the Sovereign had

00:30:50  
contact with the US that

00:30:52  
relate to the dispute. And

00:30:54  
not only has this rare,

00:30:55  
but it would make arbitration



00:30:57

Superfluous. Cuz if, if the

00:30:59

Sovereign has contacts with the

00:31:00

us that are related to

00:31:01

the underlying disputes, you can

00:31:03

sue, the Sovereign in the

00:31:04

US anyway and not have

00:31:06

to go through arbitration. So

00:31:07

I hope the Supreme Courts

00:31:09

are rejects this case cuz

00:31:10

otherwise I might be game

00:31:11

over for trying to enforce.

00:31:14

Again, sovereigns one other quick

00:31:17

quick. Anecdote on this sovereigns



00:31:20

have the unique ability to

00:31:21

create facts that they then

00:31:23

try to sight. And in

00:31:24

India Ward confirmation at proceedings.

00:31:27

I'm Jim and I were

00:31:29

enforcing against India, and its

00:31:32

after we filed the enforcement

00:31:33

petition, India mobilize, its unique,

00:31:36

Sovereign resources, like it's prosecutors

00:31:39

and investigators to start to

00:31:43

investigate and prosecute people involved

00:31:45

in the underlying transaction. And

00:31:47

then it came to the



00:31:47

court and said, hey, there's

00:31:50

this big investigation going on

00:31:51

depending on this, it might

00:31:53

reveal that there was corruption.

00:31:55

So the underlying arbitration agreement

00:31:57

was invalid North against public

00:31:59

policy, as if this investigation

00:32:01

is fell from the sky

00:32:02

as opposed to The Sovereign

00:32:05

doing it. But yeah. So

00:32:08

it it takes a lot

00:32:09

of creativity and being able

00:32:12

to anticipate and react to



00:32:13

unforeseen situations when you're trying

00:32:15

to extract money out of

00:32:17

a sovereign to pay an

00:32:19

arbitration award. Thank you for

00:32:22

the thought. I I want

00:32:23

to give your Aunt Dana,

00:32:25

an opportunity to weigh in

00:32:26

if you want to. I'm

00:32:27

the Sovereign. If you would

00:32:33

like to lie, I saw

00:32:33

that. You were getting your

00:32:34

book out. So well I

00:32:46

think sovereign immunity is most



00:32:48  
often and appropriately discussed under

00:32:51  
the the sovereign immunity statute

00:32:53  
that governs. The piano in

00:32:55  
the in the country here.

00:32:56  
It's the foreign Sovereign immunities

00:32:58  
act and I'm curious to

00:33:00  
hear how the Supreme Court

00:33:02  
could somehow unravel, 15, 10

00:33:08  
1610 a 60 arbitration exception.

00:33:11  
Is that is that actually

00:33:13  
the relief sought or? How

00:33:14  
are they going about with

00:33:16  
trying to avoid the arbitration?



00:33:20

Except Yeah, it's it's, it's

00:33:24

1605, a six-person, a couple

00:33:31

of different statues, that interact

00:33:33

to say, personal jurisdiction, exist

00:33:34

SAS to any Sovereign that

00:33:37

doesn't have immunity. And one

00:33:38

of the ways not to

00:33:39

have immunity as if you're

00:33:41

being sued to enforce an

00:33:42

arbitration award. The case at

00:33:44

the Supreme Court, argues that

00:33:46

that statute is unconstitutional. Under

00:33:50

the 5th Amendment, which requires



00:33:53

due process before any property

00:33:57

is taken away from a

00:33:59

person. And due process has

00:34:01

it mean to be the

00:34:02

minimum contacts. So, the argument

00:34:04

is that a sovereign is

00:34:06

also a person within the

00:34:08

meaning of the 5th Amendment.

00:34:10

So it is also entitled

00:34:11

to Do you process a

00:34:14

minimum contacts and atlases? And

00:34:16

I can't be legislated away

00:34:17

by the foreign Sovereign immunities



00:34:19

act, the way the way

00:34:21

it has been Okay, we

00:34:25

were going to delve into

00:34:27

a little bit more, the

00:34:28

text of the commission and

00:34:30

looking at some of the

00:34:31

terms that have historically post

00:34:32

know are subject to debate

00:34:34

and for that, I needed

00:34:36

some slides and the person

00:34:37

was going to put up

00:34:38

slides to stop down his

00:34:39

room. So I'm just going



00:34:40

to always think if we

00:34:49

we just wanted to look

00:34:51

at the the perfect, the

00:34:53

article to just scroll down.

00:34:58

Just bear with us for

00:34:59

a second and also perfect.

00:35:00

Alright great. Apparently there was

00:35:03

another just just speak I

00:35:05

guess as clearly as you

00:35:06

can as loud you towards

00:35:07

the the microphone up so

00:35:09

perfect. Joseph we have article

00:35:14

to here and you know



00:35:15  
there's some language in there

00:35:16  
will be doing a fair

00:35:18  
amount of us dissecting of

00:35:19  
language here but bear with

00:35:20  
us. Every one we do

00:35:21  
have. If you if you

00:35:22  
stick with us through this

00:35:23  
text relaxer size, we promise

00:35:25  
you're going to get a

00:35:26  
little bit of brain candy

00:35:26  
with a video. So I'm

00:35:29  
going to do the same

00:35:30  
thing when I do with



00:35:31  
little children. Let's talk about

00:35:36  
Article, 2 and and, and

00:35:38  
some of the language that,

00:35:39  
you know, the word, I

00:35:41  
think you going to talk

00:35:42  
about the, please let me

00:35:45  
know if it's okay. I

00:35:46  
got you telling me, I'm

00:35:47  
walking. I sweetie, the vegetable

00:35:49  
part of that, before you

00:35:51  
get to the desert in

00:35:54  
writing, as you can see

00:35:56  
an article to writing, Quite



00:35:58

a bit. I'd be remiss

00:35:59

if I didn't mention a

00:36:01

seminal case, he recalled due

00:36:02

to come through, which many

00:36:03

of you are probably familiar

00:36:04

with its an eleventh circuit

00:36:06

decision. That was eventually a

00:36:08

reverse by the Supreme Court,

00:36:09

but it does show, it

00:36:12

does show ways in which

00:36:15

the courts are currently grappling

00:36:17

with this, in writing language,

00:36:20

the eleventh circuit held that



00:36:22

because the New York convention

00:36:24

apply to only two parties

00:36:26

that actually signed an arbitration

00:36:27

agreement, the convention precluded the

00:36:29

use of Equitable, estoppel documents

00:36:31

to bring in and compel

00:36:32

arbitration among parties. That did

00:36:34

not sign. The electrician agreement,

00:36:36

the US Supreme Court. However,

00:36:38

held at the newer convention

00:36:39

does not preclude parties, who

00:36:41

did not sign an arbitration

00:36:42

agreement from seeking, to compel



00:36:44

arbitration under state, law Equitable,

00:36:46

estoppel doctrines, the court concluded

00:36:48

that nothing in the text

00:36:50

here for Hibbetts that and

00:36:52

that decision actually lines more

00:36:54

with the enforcement of international

00:36:57

arbitration. Under the New York

00:36:59

convention and DeSoto arbitration act,

00:37:02

which does permit parties to

00:37:03

use, Equitable, estoppel and other

00:37:05

state law Doctrine. When seeking

00:37:07

to enforce arbitration agreements, I

00:37:10

want to note that the



00:37:11  
eleventh circuit decision before the

00:37:14  
US Supreme Court, reversed it.

00:37:15  
And I should conflicted with

00:37:16  
the internationally accepted liberal approach

00:37:19  
that we see when it

00:37:20  
comes to this in writing

00:37:21  
climate antonym for sin of

00:37:24  
arbitration agreements, generally courts. In

00:37:27  
other jurisdictions, have consistently interpreted

00:37:29  
this convention to mean that

00:37:32  
a party consent. Arbitration is

00:37:33  
not necessarily evidence by signature,

00:37:36  
and so we see Court



00:37:37

decision from Australia. Canada is

00:37:39

real. Sort of go in

00:37:40

that direction and so the

00:37:42

ultimate result of you to

00:37:44

come through also aligns. So

00:37:46

that's sort of this, my

00:37:47

32 cents on the handwriting

00:37:58

I also would like to

00:37:59

add about talking about this

00:38:00

writing. Requirement did not occur

00:38:02

to you, I think it

00:38:03

is interesting because we are

00:38:04

thinking about how to modify



00:38:06

how to amend the New

00:38:07

York. I mean, how to

00:38:08

add, how to how to

00:38:10

strengthen the New York convention.

00:38:11

And if you compare the

00:38:13

text of the New York

00:38:14

convention, red, 1958, And everybody

00:38:19

required to swear. This is

00:38:20

writing requirement and you see

00:38:23

the developments of the concert

00:38:24

remodel that that happened many

00:38:27

years. After what you see

00:38:28

that there is an opening



00:38:30

up to what's other forms

00:38:31

of of this writing requirement.

00:38:34

Even beyond the specific question

00:38:38

off, non-signatories pissy. And I,

00:38:42

I think this is, in

00:38:44

fact, a good illustration about

00:38:45

what has happened in international

00:38:48

commercial arbitration over the years.

00:38:49

It's not just by looking

00:38:53

at the New York convention

00:38:54

at the end of the

00:38:56

text, but also to the

00:38:58

other developments that have happened



00:38:59

specifically in in on such

00:39:01

others were in the in

00:39:02

the United Nations Commission on

00:39:04

on International Trade law, which

00:39:11

insect is broadly. Accepted by

00:39:17

by managers. I'm out at

00:39:19

least 100 your station, 19.

00:39:21

Jurisdictions worldwide are inspiring very

00:39:25

closely that domestic laws on

00:39:27

arbitration in the motor locks.

00:39:29

And there is where many

00:39:31

of those developments have taken

00:39:33

place that we are now.



00:39:34

Today, you're commenting also a

00:39:36

pain and I, and I

00:39:37

think this point that you

00:39:38

made is, is very strong

00:39:39

there different countries, have experimented,

00:39:42

even with non-signatory clarifying up

00:39:47

to what degree is a

00:39:48

party is announcing her and

00:39:50

what agreements even if it's

00:39:54

a difficult to prove because

00:39:55

I'm not really a written

00:39:56

there that I can have,

00:39:59

can have an impact. So,



00:40:01

so I think that is

00:40:03

a good illustration about how

00:40:04

International commercial arbitration really has

00:40:06

developed. And and what has

00:40:08

happened. So if you look

00:40:09

at, or if any of

00:40:11

you looks at the New

00:40:12

York Met, You should always

00:40:14

ought to have the text

00:40:15

of the uncertain monologue. Besides

00:40:17

an Autobot, some domestic restrictions

00:40:19

have done it this way.

00:40:20

Just just to clarify that



00:40:23

Alright, thank you for that.

00:40:26

I left there any more

00:40:28

takers on the article to

00:40:29

I believe we're going to

00:40:30

move on to article 3.

00:40:32

I could I could talk

00:40:34

about it more about articles

00:40:35

too, but not sure if

00:40:36

you have time come countries,

00:40:45

take steps that go far

00:40:46

beyond what I was just

00:40:47

talking about using, don't to

00:40:49

the mother-in-law and some Innovations,



00:40:51

they take a step further

00:40:52

and there. Then you see,

00:40:54

again, questions arising? Well, is

00:40:57

this still in the spirit

00:40:58

of the new command and

00:41:00

invest some interest, but let's

00:41:02

move on because it's a

00:41:04

whole chapter Simon Article 5,

00:41:10

but you will also get

00:41:12

a movie before Article 5.

00:41:14

I wanted Alex. You had

00:41:16

something to match my first

00:41:17

picture article 3. Couple of



00:41:20

each Contracting State can apply

00:41:32

its The procedure to award

00:41:34

enforcement actions. And some States

00:41:39

including the US they apply

00:41:40

to award confirmation actions. The

00:41:43

same rules of procedure that

00:41:44

they apply to General civil

00:41:46

actions and in practice this

00:41:49

can result in arbitration award

00:41:52

confirmation actions being more difficult

00:41:54

or burdensome than General civil

00:41:56

actions. Because the two are

00:41:58

very different and you're applying



00:41:59

the rules that are meant

00:42:01

for 4 for the ladder.

00:42:02

For example, I'm in general

00:42:05

civil actions, the court is

00:42:07

for the first time, a

00:42:08

judicata in the rights and

00:42:09

obligations of of the parties.

00:42:12

And because of this, there

00:42:14

are a lot of safeguards

00:42:15

mainly there has to be

00:42:16

some connection between the underlying

00:42:20

dispute and the, the US.

00:42:21

And also, there are multiple



00:42:23

levels of review and this

00:42:28

doesn't really, so silly. Personal

00:42:30

jurisdiction, Forum non conveniens, these

00:42:33

types of things. And These

00:42:36

technically these have been applied

00:42:38

to award confirmation actions but

00:42:40

they're most likely to Bar

00:42:44

the the actions from going

00:42:46

forward because often the underlying

00:42:49

disputes between the parties who

00:42:51

wants arbitration, has no connection

00:42:53

with the US. And the

00:42:55

reason why the award creditor



00:42:57

chose the US for confirmation

00:42:59

was because the, the order

00:43:01

has assets there, and in

00:43:03

terms of multiple levels of

00:43:04

review, I mean, think about

00:43:06

it. The parties have already

00:43:07

had a first instance, adjudication,

00:43:10

for the arbitration, then you're

00:43:12

talking about District Court. Appeals

00:43:13

court Supreme, Court's, you're talkin

00:43:15

about four levels of of

00:43:17

proceedings. If you apply the

00:43:19

same, you a multi-tiered review,



00:43:21

22, arbitration enforcement actions. So

00:43:24

I would argue that the

00:43:26

application of procedural rules for

00:43:28

General civil actions to award

00:43:30

confirmation actions result in a

00:43:33

de facto discrimination against toward

00:43:35

confirmation actions at the convention.

00:43:37

Doesn't prohibit this article 3

00:43:39

just says you can't discriminate

00:43:41

discriminate between domestic and foreign

00:43:43

force mean actions. It doesn't

00:43:46

say anything about discriminating between

00:43:48

arbitration Foresman actions and in



00:43:50  
general actions. But finally I

00:43:53  
will say during the drafting

00:43:55  
of the convention, they did

00:43:56  
try to have have a

00:43:59  
uniform uniform procedural, rules that

00:44:02  
all countries must apply to

00:44:03  
arbitration actions but this was

00:44:06  
rejected and I'll be on

00:44:10  
vandenburgh wrote that it resulted

00:44:13  
in a bauble, like confusion

00:44:15  
during the negotiations and trying

00:44:17  
to figure out worldwide rules

00:44:19  
of procedure. I see a



00:44:23

lot of nothing had them

00:44:25

and feel free to jump

00:44:26

in with any more stories

00:44:27

on on that. But if

00:44:30

not just if you wanted

00:44:31

to and maybe you can

00:44:32

do an article 3 and

00:44:34

do you want a 22

00:44:36

to briefly mentions? Okay. We

00:44:39

can also go jump, Jump,

00:44:40

Street 2. Yeah, that is

00:44:45

right Article 4 and it

00:44:46

was number three in my



00:44:47

notes about the the language

00:44:52

of Julie certified copy of

00:44:53

it. So she wanted to

00:44:57

share your notes as maybe

00:44:58

your War Stories on that.

00:44:59

I'll keep it brief and

00:45:00

we have a lot more

00:45:01

interesting things to cover later,

00:45:03

but for this one, you'll

00:45:04

see duly certified copy. Duly

00:45:06

authenticated original War. These tend

00:45:09

to be a little more

00:45:10

ambiguous than you would expect.



00:45:11

It's light out sheet of

00:45:14

varying interpretations of what exactly

00:45:16

it means to be duly

00:45:17

certified, duly authenticated across different

00:45:20

jurisdictions. And so you will

00:45:22

see that, you know, some

00:45:24

jurisdictions, a strict interpretation of

00:45:25

this requirement has led to

00:45:27

enforcement's being denied, it was

00:45:29

submitted copies of the war

00:45:30

not certified in a very

00:45:32

specific, no jurisdiction specific man

00:45:34

are required by the court.



00:45:36

Even if y'all sent to

00:45:37

City of the documents are

00:45:39

not in dispute, so it

00:45:40

can be a very inefficient

00:45:41

additional hurt. For a lot

00:45:44

of parties and there's a

00:45:46

need. Also, perhaps some might

00:45:47

say to adapt this provision

00:45:49

to the digital nature of

00:45:51

proceedings today. Special post covid.

00:45:52

Lot of things are online.

00:45:54

There aren't a lot of

00:45:55

things that would be duly



00:45:56  
certified in the old, I

00:45:58  
guess, the old Paradigm. And

00:45:59  
so another additional procedural hurdle

00:46:02  
that may delay enforcement today.

00:46:05  
I am looking at the

00:46:06  
time and I want to

00:46:07  
make sure we leave time

00:46:08  
at the end for questions

00:46:09  
and there are so many

00:46:10  
more topics to cover. I'm

00:46:12  
looking at the palace. I

00:46:13  
want to make you make

00:46:14  
sure we should we should



00:46:16

we say straight to public

00:46:18

policies. That would that be

00:46:19

okay if we want to

00:46:21

say a few words of

00:46:22

public policy do with you?

00:46:23

What you want to open

00:46:24

it up on the on

00:46:26

the discussion of the Mets.

00:46:28

In article 52, a few

00:46:31

sentences, you can see an

00:46:43

article 50, the convention has

00:46:50

the term public policy as

00:46:52

you all familiar with, but



00:46:53

it doesn't exactly play policy,

00:46:55

is Eliza to each jurisdiction

00:46:56

to interpret the term. To

00:47:01

interpret the term according to

00:47:03

its own legal tradition to

00:47:04

put spools and so this

00:47:06

can also lead to varying

00:47:07

interpretations across jurisdictions. It's worth

00:47:09

noting that in practice still

00:47:11

a lot of Courts across

00:47:11

the world have interpreted public

00:47:13

policy to align the concepts

00:47:16

of international public policy. And



00:47:18

so in most cases, the

00:47:20

breach of domestic law alone

00:47:21

would not be considered sufficient

00:47:22

grounds to deny enforcement award

00:47:25

in a distinction between domestic

00:47:28

and international policy. Domestic policy

00:47:31

reflects the core principles and

00:47:33

values of one specific jurisdiction.

00:47:35

Where, as soon as I

00:47:36

see you, you know, a

00:47:37

compass is only the principles

00:47:39

and values deemed essential truth,

00:47:40

which restrictions legal framework specify



00:47:45  
one way or the other,

00:47:45  
and so, that can create

00:47:47  
some unpredictability for parties. I

00:47:50  
also just want to quickly

00:47:51  
add that there could be

00:47:53  
a risk. Just exception could

00:47:55  
be used or abused or

00:47:57  
invoked as a pretext to

00:47:58  
refuse enforcement on grounds. Protectionism

00:48:01  
or other improper reason. So

00:48:03  
there could be an argument

00:48:05  
to clarify this to prevent

00:48:07  
that and none of the



00:48:08  
convention member states have asked

00:48:10  
you to find a policy

00:48:11  
except for Australia, the UAE.

00:48:14  
So, I'm very limited cases.

00:48:15  
You see countries actually grappling

00:48:17  
with this. So that's what

00:48:19  
I would say about that

00:48:20  
before. So for 2 to

00:48:26  
look at the language in

00:48:27  
sorry that was Article 5,

00:48:30  
right but they're under the

00:48:33  
second. Okay, about the Mets.

00:48:42  
Okay, we're good. And we



00:48:46

wanted to see if the

00:48:47

scussion because the the met

00:48:48

in this in this article

00:48:50

has caused, let me know.

00:48:51

I don't like a lot

00:48:52

of debate and end. It,

00:48:53

it, it comes in a

00:48:54

lot of different ways, but

00:48:55

the question is one of

00:48:56

what difference should you know?

00:48:58

Of course, of secondary jurisdiction

00:49:00

gift to the courts of

00:49:01

us, the primary jurisdiction. Maybe



00:49:05

we can have made you.

00:49:08

You have have. This is

00:49:10

about where you going to

00:49:11

be talking like that. You've

00:49:12

been very patiently waiting. I

00:49:13

want you to just T

00:49:13

up the subject a little

00:49:14

bit while we tee up

00:49:16

the video and maybe you

00:49:17

can talk a little bit

00:49:18

until I seen Forrest. Hear

00:49:19

what is what is the

00:49:20

big deal with the Mets?



00:49:21

Why are we, why is

00:49:22

everybody up in arms about

00:49:23

the premise of this panel

00:49:27

is, should we revise the

00:49:28

New York convention? So when

00:49:29

you see the word met

00:49:30

that that's always asertywna hints

00:49:34

like is there is the

00:49:35

wiggle room here? May versus

00:49:37

shall generally? In a treaty

00:49:39

is is a is a

00:49:41

cause to pause and a

00:49:44

lot of what gives the



00:49:46

New York convention strength is

00:49:47

its use of the word

00:49:48

shall and makes it really,

00:49:51

you know, enforceable around the

00:49:52

world. But when it comes

00:49:54

to the use of May

00:49:56

and article 51 e f,

00:50:00

I'm seeing correctly behind me.

00:50:05

51 e is where the

00:50:08

issue of an award that

00:50:11

was set aside or an

00:50:12

old in the primary jurisdiction.

00:50:13

Being the jurisdiction where the



00:50:16

arbitration took place. And therefore,

00:50:19

the primary jurisdiction of the

00:50:22

primary source of primary jurisdiction

00:50:24

of the courts in the

00:50:25

country with the arbitration took

00:50:27

place. If those courts, or

00:50:30

if that courts and whatever

00:50:32

available appeals conclude, that the

00:50:36

award should be set aside

00:50:37

or an older or not

00:50:39

enforced, whatever the terminology maybe

00:50:42

should that be a permissive

00:50:46

basis for another Court of



00:50:49  
secondary jurisdiction? In another part

00:50:51  
of the world to essentially

00:50:54  
come out the same way,

00:50:55  
as the court of primary

00:50:57  
jurisdiction or should they Exercise,

00:51:02  
their discretion, using the word

00:51:04  
may to come out differently.

00:51:07  
And so I would say

00:51:09  
generally the trend has been

00:51:11  
that where a an award

00:51:15  
has been set aside or

00:51:16  
noldor somehow not enforced in

00:51:20  
the primary jurisdiction off in.



00:51:21

The secondary jurisdiction will give

00:51:23

a substantial amount of difference

00:51:25

to what the primary jurisdiction

00:51:27

ports, concluded serve under the

00:51:32

premise that the year that

00:51:33

they had, that the closest

00:51:35

look at it but I

00:51:37

think that any court and

00:51:42

we can discuss this further

00:51:43

in the secondary jurisdiction. You

00:51:45

know, looks at the award

00:51:47

primarily under all of the

00:51:49

components of Article 5, not



00:51:52  
just 5 1 e, but

00:51:53  
all you short handed, the

00:51:56  
seven grounds under Article 5

00:51:57  
that are bases to refuse

00:52:00  
enforcement. And the discretionary option

00:52:05  
in 51 G of May,

00:52:07  
because it was not enforced

00:52:09  
at the seat. Is sometimes

00:52:11  
not honored because the reasons

00:52:15  
for the set aside or

00:52:16  
no mint at the seat,

00:52:18  
maybe political or something very

00:52:21  
unique to that jurisdiction. That



00:52:25

does not transfer and apply

00:52:27

in the courts of the

00:52:28

countries of a secondary jurisdiction

00:52:30

or or anywhere outside that

00:52:33

country. And in those were

00:52:34

circumstances courts, have exercised, their

00:52:37

discretion, which I'm not in

00:52:40

favor of amending, that allows

00:52:43

this Accord a secondary jurisdiction

00:52:44

to come out differently. But

00:52:47

majority is the majority of

00:52:49

the cases actually do often,

00:52:51

you know, results have the



00:52:54

same results as the primary,

00:52:55

but I think that discussion

00:52:56

should be maintained. I bet

00:53:00

someone disagrees I would actually

00:53:02

be, I agree. I think

00:53:04

that was a great overview

00:53:05

and I think that there

00:53:07

is a lot of instances

00:53:08

in which having that discretionary

00:53:10

permissive language, which actually does

00:53:12

a Ford States, the ability

00:53:14

to circumvent or situations like

00:53:16

that. And I'm sure you're



00:53:18

all thinking about, there's a

00:53:20

case in the second circuit

00:53:21

call Miso vs. Timex way.

00:53:24

Actually did come into play,

00:53:25

it was very useful because

00:53:26

us courts have previously, you

00:53:30

know, recognized the potential limited

00:53:32

exception for extraordinary circumstances were

00:53:34

without friends would be repugnant

00:53:36

to you. No fundamental Notions

00:53:38

of what is decent in

00:53:39

that country. And in comiso

00:53:41

versus pemex, there was an



00:53:42  
instance where it right before

00:53:43  
you ought to try doing,

00:53:44  
it was going to rule

00:53:45  
in favor of Chamisa Mexico,

00:53:47  
past two laws. That were

00:53:49  
essentially this way that the

00:53:51  
claims and soap mxr vodka

00:53:53  
tour in Mexico obtained. At

00:53:55  
the other side went to

00:53:56  
sdny and the coordinates. You

00:53:58  
know why I found that.

00:53:59  
Tell you I thought it

00:54:01  
was repugnant to the US



00:54:03  
public policy principles. It was

00:54:04  
not entitled to deference the

00:54:05  
second circuit affirmed that. So

00:54:07  
that's one example, I think

00:54:09  
the day and it was

00:54:10  
maybe a looting to we're

00:54:11  
having. Permissive language, could actually

00:54:13  
be beneficial I put into

00:54:19  
effect when we when you

00:54:20  
talk about this issue, this

00:54:22  
problem in May of May

00:54:24  
in article 551e immediately comes

00:54:32  
to mind. Also article 7



00:54:34  
of the New York convention.

00:54:35  
And in fact, it in,

00:54:38  
in the United States at

00:54:39  
least Atticus, Evan Ross, some

00:54:43  
of the times and I'll

00:54:44  
put Unity to recognize and

00:54:47  
enforce an opposite of what

00:54:48  
the heck being set aside

00:54:49  
at the seed? And what

00:54:53  
about then also happens? Is

00:54:56  
that not necessarily? And I

00:54:58  
think that was 11 interesting

00:54:59  
point in this premix cases



00:55:01  
where in the end it

00:55:02  
says, it says that you

00:55:03  
don't even need. So sometimes

00:55:05  
my the question arises to

00:55:08  
me while what role really

00:55:10  
Place article 7. So there's

00:55:12  
also a? On August 7th,

00:55:14  
I need to sing Well,

00:55:18  
is it is it really

00:55:19  
necessary? For example, you're not

00:55:21  
allowed to go 5 because

00:55:23  
it's Dana Point it out

00:55:24  
the mayor's probably enough that



00:55:27

some discretion local courts do

00:55:30

not have automatically mechanically the,

00:55:34

the the freedom to do

00:55:36

just reject recognition and enforcement.

00:55:39

And this is because the

00:55:42

New York, imagine at the

00:55:43

end of the day, it's

00:55:44

a pro enforcement regime. It

00:55:46

does set a sort of

00:55:47

Maximum ceiling of requirements analysis.

00:55:54

Test that the local courts.

00:55:56

Mate. I can undertake, but

00:55:58

as long as the state's



00:55:59

do anything, that is even

00:56:01

more profit ratio of the

00:56:02

other states can go and

00:56:04

I think that is, in

00:56:05

fact, very important advantage of

00:56:08

the New York convention. It's

00:56:09

it's really a little Treasure

00:56:11

of the New York invention.

00:56:12

That is Dana says we

00:56:15

should not modify and not

00:56:16

him. What is eccentricity? I

00:56:19

am, I'm still puzzled about

00:56:20

what exactly is behind article



00:56:23

7. Do we need a

00:56:24

do not need. It seems

00:56:26

that in some other countries

00:56:27

are big is 7 is

00:56:28

more heralded as more important

00:56:31

ground but in the United

00:56:34

States it seems that they

00:56:36

can get along without effect

00:56:38

upon him. A commission does

00:56:39

not have an equivalent to

00:56:41

a 97 of the New

00:56:44

York convention. Then let's maybe

00:56:46

also a subject of discussion.



00:56:50

Well, thank you for for

00:56:53

playing a little bit for

00:56:54

giving us different views and

00:56:55

night. I did promise you

00:56:56

some brain candy. So we

00:56:57

wanted to keep it up

00:56:58

with in the question of

00:57:00

you know what can we

00:57:02

we run around a little

00:57:03

bit but yes we could

00:57:04

tip the video that be

00:57:05

great and we wanted to

00:57:07

come up with a hypo



00:57:09

with everybody's favorite subject, which

00:57:12

is AI artificial intelligence. And

00:57:15

the reason how this sort

00:57:16

of relates back to that

00:57:17

is that artificial intelligence is

00:57:21

the ability with a, i,

00:57:22

to create the fakes. That

00:57:26

may lead International tribunal to

00:57:28

take a closer look into,

00:57:30

you know, the authenticity of

00:57:32

evidence. Then, you know, has

00:57:35

previously been the case. So

00:57:36

let's just pause the thought



00:57:39  
of how this relates back

00:57:40  
to the, to the New

00:57:41  
York convention and let's just

00:57:42  
bring up perfect. This is

00:57:45  
what you will see. It's,

00:57:48  
it's a video. You'll see

00:57:49  
if it's true. All fake.

00:57:51  
I hope that you can

00:57:52  
tell what it is. Otherwise,

00:57:54  
I seriously question the teaching

00:57:56  
of history in this country,

00:57:57  
but let's, let's look at

00:57:58  
it and If the moon



00:58:07  
landing, maybe you need that

00:58:08  
as contacts. There's a second

00:59:16  
part to this, just about

00:59:18  
another minute. I think it

01:00:14  
was full, but it looks

01:00:19  
pretty good. That's that's the

01:00:21  
kind of dealing with. I

01:00:22  
mean, obviously, this example is

01:00:24  
an obvious one where we

01:00:25  
can tell, but bring it

01:00:27  
back to bring it back

01:00:29  
from space and moon. After

01:00:30  
we have a second time



01:00:31

and space later, if you're

01:00:32

interested in the closing that

01:00:35

Francis has come and get

01:00:36

back to our discussion of

01:00:37

the New York convention, right?

01:00:38

And a particular date that

01:00:41

the discussion off. You know

01:00:42

that secondary course in secondary

01:00:45

jurisdiction, what happens? If you

01:00:48

know there, there's been creation

01:00:49

of it of a deep

01:00:51

fake and and it appears

01:00:54

and in the secondary question



01:00:56  
is that How do how

01:00:59  
do we, how do we

01:01:00  
deal with? This is a

01:01:02  
A fun little example, but

01:01:04  
this might be one of

01:01:05  
those, those those cases where,

01:01:06  
where, you know, but I

01:01:10  
brought a review by the

01:01:11  
secondary core, sorry necessary, in

01:01:12  
case new evidence comes up.

01:01:16  
Well, I can just say

01:01:18  
that I think this comes

01:01:19  
up both in the context



01:01:21  
of the actual arbitration itself

01:01:23  
with respect to the evidence

01:01:24  
that submitted as well as

01:01:26  
perhaps at the at the

01:01:28  
confirmation stage. If, if new

01:01:30  
evidence comes to new so-called

01:01:33  
evidence comes to life and

01:01:35  
I think that in the

01:01:37  
context of an arbitration, you

01:01:39  
know, there's been a lot

01:01:41  
said about the potential for

01:01:42  
AI to create alternative evidence,

01:01:47  
alternative facts, and who Bears



01:01:53

the onus of finding the

01:01:56

truth, right? And ultimately that

01:01:58

falls on the tribunal but

01:02:00

the tribunal is working with

01:02:02

a limited data sets of

01:02:05

what has been presented by

01:02:07

the parties. And so yeah

01:02:09

there's the potential for increasingly

01:02:12

more disputes regarding the Genesee

01:02:16

and authenticity of the evidence

01:02:18

that has been submitted in

01:02:19

the arbitration and needing to

01:02:21

have, you know, essentially many



01:02:23

hearings on, on, on the

01:02:26

authenticity and validity of the

01:02:29

evidence much more so than

01:02:31

perhaps in the past. And

01:02:33

as AI continues to evolve,

01:02:36

although I think it's already

01:02:37

evolved to the point that

01:02:39

as we've seen in this

01:02:40

video. I mean, it can

01:02:41

be very persuasive, you know,

01:02:43

it becomes in a he-said-she-said

01:02:46

and and and how do

01:02:48

you robustly authenticate evidence in



01:02:53

this era of AI and

01:02:56

we will be seeing more

01:02:57

and more of that in

01:02:58

the arbitration and it in

01:03:00

the arbitration World, generally, and

01:03:03

it may lead, who knows?

01:03:05

But it may lead to

01:03:06

courts, taking a closer. Look

01:03:09

at the evidence, underlying the

01:03:12

arbitration which presumptively they are

01:03:15

not really. Do the decisions

01:03:18

by the tribunal regarding fact

01:03:20

and law, whether right or



01:03:21

wrong or supposed to be

01:03:23

respected, generally speaking. But in

01:03:25

this new world of a

01:03:26

eyewear, You know, there are

01:03:32

parallel universes of the fax.

01:03:35

Those could be raised at

01:03:37

any stage and that shouldn't

01:03:40

necessarily make it a new

01:03:43

ground or give more legitimacy

01:03:45

to to aidanova review as

01:03:49

opposed to a review, you

01:03:51

know, with discretion to the

01:03:52

the, the fact-finding by the



01:03:54

tribunal. But we just really

01:03:55

don't know how that's going

01:03:57

to play out yet. I

01:04:03

agree with you completely fair

01:04:06

point, but but I do

01:04:08

think that Awards will increasingly

01:04:11

discuss if there has been

01:04:13

a robust debate between the

01:04:16

parties as 2072, City, or

01:04:18

in his ability of evidence

01:04:21

presented, you just When the

01:04:25

tribunal decides to rely on

01:04:27

evidence and its evidence has



01:04:30  
been disputed in this context,

01:04:32  
they may elaborate more. You

01:04:34  
know, more specificity as to

01:04:36  
why they found that evidence

01:04:38  
authentic, legitimate and reliable and

01:04:41  
persuasive and hopefully that would

01:04:44  
allow a court to give

01:04:46  
the same. You know, deference

01:04:51  
or you no discretion to

01:04:54  
only address the the grounds

01:04:57  
at set off set out

01:04:58  
in the New York convention

01:04:59  
Article 5 and not create.



01:05:02

Yet another Avenue for perhaps

01:05:04

side litigation challenging enforcement of

01:05:08

awards. Yeah. I mean, if

01:05:11

I can add on, I

01:05:12

think, I mean this is

01:05:13

crazy because like they just

01:05:15

said, it's constantly evolving and

01:05:17

every single day, it seems

01:05:18

like there's a new layer

01:05:20

of nuance and complexity to

01:05:22

a, I will talk to

01:05:23

achieve. I think the Deep

01:05:24

fakes have been around for



01:05:25  
years. But even just in

01:05:26  
the first year, since Chief

01:05:28  
ET came about, we had

01:05:29  
liked songs being created using

01:05:31  
the voices of current singers.

01:05:33  
We've had entire screenplays and

01:05:36  
TV shows being written by

01:05:37  
the South Park episode us

01:05:40  
until you ridden by jockey

01:05:41  
Petey. So I think that

01:05:43  
like, you know, as the

01:05:44  
years go by or months

01:05:46  
weeks, go by every species



01:05:48  
shoes developments in this fear.

01:05:49  
And so will be inevitable.

01:05:50  
I think I gained alluded

01:05:52  
to that a. I will

01:05:53  
be an integral assess in

01:05:56  
legal practice in arbitration. I

01:05:58  
personally feel sorry. I personally

01:06:01  
feel that the fear of

01:06:02  
AI is a little overblown.

01:06:04  
I think that it's sort

01:06:06  
of like the oven up

01:06:07  
the calculator and how that

01:06:08  
affected math, right? So Didn't



01:06:11  
totally annihilate, the practice of

01:06:13  
order filled out that Maddox

01:06:15  
is actually just enhanced it

01:06:16  
or ways to you know

01:06:18  
you had to find ways

01:06:18  
to get around cheating and

01:06:19  
what not but their ways

01:06:20  
to become more complex and

01:06:22  
more later in that field.

01:06:23  
How do you likewise for

01:06:24  
arbitration to? I mean, we've

01:06:26  
always had issues with falsification

01:06:29  
of evidence of, you know,



01:06:30  
fabricated evidence deepfakes. And so

01:06:33  
I don't know if inside

01:06:34  
your question tomorrow that you

01:06:35  
are alluding to is that

01:06:36  
should we be adding on

01:06:39  
to the New York convention

01:06:39  
to put her? I say,

01:06:41  
I I think that you'll

01:06:43  
defining and proving that an

01:06:46  
arbitral award was impacted by

01:06:48  
AI generated by AI. It's

01:06:50  
a very technical technically challenging

01:06:53  
context-dependent process. And I don't



01:06:55

know if you don't because

01:06:56

the technology is evolving, so

01:06:58

rapidly. I don't know if

01:07:00

I'm betting specific Newgrounds into

01:07:02

the convention with that silly

01:07:03

help. And if anything, ironically

01:07:05

enough, it could be outdated

01:07:07

because of how constantly evolving

01:07:09

this this technology is And

01:07:12

we also have in the

01:07:13

New York convention things like

01:07:14

Article 5 to be, which

01:07:17

some view, as a catch-all



01:07:18

in a cautious way, which

01:07:20

could be used to address

01:07:21

things, like fabricated evidence in

01:07:24

a i a divorce in

01:07:25

stage and so those are

01:07:28

my two cents there an

01:07:35

interesting discussion generators generator question

01:07:38

for me. What do you

01:07:40

think should be? Then maybe

01:07:42

include the provision like sort

01:07:45

of a sanction two parties

01:07:47

that you say I to

01:07:48

create fake sin. They are



01:07:50  
arbitrations. And I'm asking this

01:07:52  
because I will be concerned

01:07:55  
about the costs. Also, so

01:07:57  
if, if in the future

01:07:58  
as you're saying, it's a

01:08:03  
party may use AI to

01:08:05  
generate evidence or to modify

01:08:08  
documents. That could be used

01:08:09  
as evidence and and the

01:08:11  
other party was would use

01:08:12  
a. I I would have

01:08:14  
to use is actually at

01:08:15  
the end of the day,



01:08:16  
in order to be able

01:08:17  
to defend itself and to

01:08:18  
identify these situations. But it's

01:08:21  
just a long time, so

01:08:23  
much information. How are you

01:08:24  
going to go through it

01:08:25  
in order to to assess

01:08:26  
whether there may be a

01:08:27  
risk and some documents are

01:08:29  
some some sources of that.

01:08:31  
So that this has a

01:08:32  
very important Financial implication as

01:08:35  
well. And I have really



01:08:39  
thought about this but maybe

01:08:41  
a potential revision of the

01:08:43  
New York Mets, you should

01:08:44  
look into that and look

01:08:45  
into the financial implications. This

01:08:47  
all has for the parties

01:08:48  
and try to protect the

01:08:49  
party so that they can

01:08:50  
trust worthy or that they

01:08:52  
have trust in using Arbitration

01:08:55  
transnational esm eken, ISM, to

01:08:57  
do that is because of

01:08:59  
you. The sanctions of a



01:09:05

word that's rarely used in

01:09:08

the context of an actual

01:09:09

arbitration much more. So in

01:09:12

court or and in other

01:09:15

Realms, leave it there. But

01:09:17

the, the one mechanism that

01:09:19

I think is used that

01:09:20

is sometimes I defacto sanction

01:09:24

is when you get to

01:09:27

the cost of Ward and

01:09:29

the cost of a proceeding

01:09:32

with respect to the authenticity

01:09:35

of evidence, that could be



01:09:37  
something that a tribunal could

01:09:38  
take into account. That said,

01:09:41  
if there are competing Drone

01:09:45  
footage of the site, are

01:09:48  
we really going to go

01:09:49  
back to the expense of

01:09:51  
having the tribunal do a

01:09:53  
physical site visit because It's

01:09:57  
impossible to determine which Drone

01:10:01  
footage, is the more reliable

01:10:04  
one. What do you do

01:10:06  
in that circumstance? And and

01:10:09  
I guess expert testimony on



01:10:11  
the reliability is it will

01:10:13  
be expensive. But is what's

01:10:15  
the best evidence that question

01:10:17  
is going to come up

01:10:17  
more and more when you

01:10:19  
have competing evidence created. However,

01:10:23  
it may have been through

01:10:26  
the use of artificial intelligence

01:10:27  
or just technology, you know,

01:10:29  
technology has been an asset

01:10:31  
and almost every aspect of

01:10:32  
business, including arbitration, but there

01:10:35  
are dangers. And now we're



01:10:37

dealing very much with the

01:10:38

dangers of technology in the

01:10:41

context of arbitration. Maybe that's

01:10:45

a really good point to

01:10:47

for now pause because we

01:10:50

are running up on our

01:10:51

time. There's so many more

01:10:52

things have been covered. We

01:10:53

could spend another 4 hours

01:10:54

and public policy alone, week

01:10:56

covered provisional measures a lot

01:10:58

of other things, but we

01:11:00

have one minute left and



01:11:02  
there are a lot of

01:11:02  
time to have a little

01:11:03  
bit of wiggle room. If

01:11:04  
there are any questions in

01:11:06  
the audience, also, look at

01:11:07  
the chat, but please feel

01:11:09  
free to I'll probably have

01:11:13  
to repeat it back. Sorry.

01:11:14  
So keep it brief. So

01:11:16  
I can repeat it back

01:11:17  
section on a I get

01:11:25  
the New York inventions. Actually.

01:11:26  
The right then you took



01:11:28

the dress that it would

01:11:29

seem to me that the

01:11:29

rules and orders is actually

01:11:33

the right behind you. If

01:11:34

there are already in place

01:11:36

to address the tribunals analysis

01:11:38

of operation of a, I

01:11:39

have it. Thank you for

01:11:46

the New York convention is

01:11:49

the right then your place

01:11:51

to address questions of AI

01:11:52

and whether the rules or

01:11:53

procedural, orders broad discretion of



01:11:56  
the arbitrator's, there might be

01:11:57  
a better better, place a

01:11:58  
deal with it. I think

01:12:00  
I think that's a very

01:12:01  
good point and I do

01:12:02  
think that the context of

01:12:04  
the arbitration procedural orders were

01:12:07  
the procedures agreed upon with

01:12:09  
respect to evidence and and

01:12:10  
and everything. With respect to,

01:12:12  
the arbitration is a better

01:12:13  
place to address these issues,

01:12:15  
then an amendment to the



01:12:17

New York convention, which is

01:12:19

one of the, you know,

01:12:21

arguably best drafted conventions, we

01:12:23

have. And this is an

01:12:25

evolving topic that is very

01:12:27

hard to legislate or or

01:12:30

deal with it in a

01:12:31

treaty form, but the procedural

01:12:34

orders can and I think

01:12:36

increasingly will address how evidentiary

01:12:41

issues are handled. When it

01:12:43

comes to weather has a

01:12:46

eye or other integrity and



01:12:48  
authenticity issues much more so

01:12:50  
than perhaps in the past.

01:12:52  
So, it's true. However, taking

01:12:59  
also the, the parallelism to

01:13:02  
the discussion about corrupt and

01:13:04  
arbitration. Just another topic that

01:13:06  
we haven't really touched upon

01:13:08  
extensively but it's also and

01:13:10  
the room in in in

01:13:13  
some recognition enforcement proceedings and

01:13:15  
allegations of corruption emerged and

01:13:19  
sorrowful Realty gate before the

01:13:22  
enforcement Corps and and could



01:13:29  
lead to rejection of recognition

01:13:30  
and enforcement or and then

01:13:34  
if it's at the seat,

01:13:35  
it would be back at

01:13:37  
all setting aside of the

01:13:39  
arbitral award and I saw

01:13:41  
the fear that with artificial

01:13:44  
intelligence in the future may

01:13:46  
also arise desoto's of of

01:13:49  
situations as well. And of

01:13:50  
course, if I M Tribune,

01:13:56  
What happens if that boss

01:13:57  
today or was not detected



01:14:00  
at the time. And so

01:14:02  
then in recognition for Smart

01:14:03  
in may also arise and

01:14:05  
with corruption allegations at least

01:14:07  
I think there is some

01:14:09  
some discussion in the community

01:14:11  
about how far local courts

01:14:13  
than can effectively reopen this

01:14:16  
discussion and apply their standards

01:14:18  
to this analysis. Previously even

01:14:21  
by the arbitral tribunal boss

01:14:22  
address to some extent and

01:14:24  
really difficult discussions that in



01:14:29

a hypothetical revision of the

01:14:31

New York. Imagine they should

01:14:32

definitely at least to some

01:14:34

extent be part of the

01:14:35

consideration. Nice. I like a

01:14:38

little color I think that's

01:14:39

a very good question and

01:14:40

I think that we can

01:14:41

see how us courts have

01:14:44

been handling it too as

01:14:45

a sort of parallel there.

01:14:47

And you see that in

01:14:48

like the Northern District of



01:14:49

Texas International Court of trade.

01:14:51

There are Judges, who have

01:14:52

issued procedural, guidance on a.

01:14:55

I and that's what is

01:14:56

one way that they've been

01:14:57

handling. So I think I

01:14:58

could be one way of

01:14:59

going about it. Given how

01:15:01

fast is evolving? How you

01:15:03

know, Alex mentioned earlier like

01:15:04

the inertial? It comes to

01:15:06

changing treaty sometimes. So yeah,

01:15:08

I can ask a question.



01:15:14

Yeah. And just even though

01:15:15

it's not spelled out in

01:15:16

the New York convention at

01:15:18

least in in US courts,

01:15:20

if a party didn't raise

01:15:22

a complaint in the arbitration

01:15:23

that they're generally held to

01:15:25

a wave that in the

01:15:26

contrave it, at wave, it

01:15:27

in the end. They are

01:15:28

confirmation proceedings. I'd like to

01:15:31

maybe close with an anecdote

01:15:32

on this. John John Townsend.



01:15:34

And I did a case

01:15:36

once where the never responded

01:15:39

yet serve with arbitration papers.

01:15:40

And it's like, okay, who

01:15:43

who to the claim of

01:15:43

the, who are you? I've

01:15:44

I've never heard of you.

01:15:45

This contract is a complete

01:15:47

forgery. What is this? And

01:15:48

that the claimant, then I'm

01:15:50

produces a video of the

01:15:52

contract signing because of the

01:15:55

disease. Are all contract signings



01:15:58  
done on video for a

01:15:59  
garden-variety commercial disputes, and it

01:16:02  
emerged that the person on

01:16:04  
the video who look like

01:16:05  
the CEO of the respondents

01:16:06  
signing. The contract was an

01:16:08  
imposter wearing a silicone mask

01:16:11  
think so, but as the

01:16:15  
other than the cost of

01:16:17  
War, do you couldn't do

01:16:18  
it give the sanctions that

01:16:19  
that the the forager deserved

01:16:22  
so that was like a



01:16:27  
precursor to a I face.

01:16:28  
So the system was resilient

01:16:30  
on and I have confidence

01:16:31  
that, you know, it'll be

01:16:32  
resilient to take whatever technological

01:16:35  
advances throw at it. Thanks

01:16:37  
for sharing that were surrounded

01:16:39  
by something. We need to

01:16:44  
repeat next year either. Repeat

01:16:47  
the pain. And I want

01:16:48  
to see that video. Exactly.

01:17:04  
Is already giving me like

01:17:05  
that. Cuz at 2:30 we



01:17:07  
have another fantastic panel on

01:17:10  
Aviation and space dust you.

01:17:12  
So we can stay with

01:17:13  
topics of space to stick

01:17:14  
around if you liked it

01:17:15  
even if he doesn't sign

01:17:16  
up, it doesn't matter. We

01:17:17  
won't tell anyone. I know

01:17:18  
that we have not a

01:17:19  
question but I am also

01:17:20  
getting a little bit of

01:17:21  
pressure here. So I invite

01:17:22  
everybody. We still have questions



01:17:23

and I apologize for the

01:17:25

online participants. All of these

01:17:27

people have online profiles. The

01:17:29

good thing I said, you

01:17:30

can send questions to them

01:17:31

and the good thing for

01:17:33

the people who are here

01:17:34

in the room, please, feel

01:17:35

free to just grab them

01:17:36

and have a Either coffee

01:17:37

or drink and ask it

01:17:39

questions and apologies that can

01:17:40

take more questions. Thank you



01:17:41  
all for your participation. Either

01:17:37  
coffee or drink and ask

01:17:39  
it questions and apologies that

01:17:40  
can take more questions. Thank

01:17:41  
you all for your participation.

00:01:25  
Excuse me. Can someone on

00:01:30  
mute the mic? Not too

00:01:38  
long ago. Next to Dana,

00:01:40  
we were very excited to

00:01:42  
have you on. Are you

00:01:43  
on as a fellow and

00:01:44  
an atom Professor for International

00:01:46  
Education at the American University



00:01:48

Washington College of Law? He

00:01:50

is also the founder and

00:01:51

partner has Boutique law firm

00:01:53

in DC and what he

00:01:55

represents next to your. We

00:02:04

have Joseph Joe who came

00:02:06

here from New York. He's

00:02:07

an associate in international arbitration

00:02:09

department at Skadden. Joe serves

00:02:13

on the arbitration and international

00:02:15

law Committees of the New

00:02:16

York City Bar Association. He

00:02:18

is a regional representative. I'll



00:02:20

take us young and editor

00:02:24

for Clover. And last but

00:02:26

not least, we have our

00:02:27

dear Alexandra Bedrosian. He was

00:02:29

an associate at Lewis back

00:02:30

out middlemas, which is a

00:02:32

discreet Boutique firm in DC

00:02:34

was previously with us. That's

00:02:37

why I, I refer to

00:02:38

my dear So we have

00:02:49

just a few housekeeping matters

00:02:50

before we get into it.

00:02:52

So, we obviously have you



00:02:53

all here in the room.

00:02:55

We also have some online.

00:02:56

Participants Kelby is with our

00:02:59

team's helpfully, you know, as

00:03:04

well. If you don't know,

00:03:05

this session is being recorded.

00:03:06

So just be aware of

00:03:08

that. We would love for

00:03:10

everyone to chime in with

00:03:12

questions. We had a little

00:03:14

bit of a set

00:03:15

up with Mike that does

00:03:16

not allow so much interaction.



00:03:18

So what we'll do is

00:03:19

we'll Reserve time at the

00:03:20

end and and make sure

00:03:22

that everyone can ask some

00:03:23

questions would be great if

00:03:24

you could ask these questions

00:03:26

because we don't have that

00:03:27

much time with each other

00:03:28

and that's that's about it

00:03:31

in terms of housekeeping matters.

00:03:32

So let's just go get

00:03:34

right into it, the New

00:03:36

York convention. Also, if you



00:03:38

know, no one at the

00:03:40

convention and enforcement of foreign

00:03:42

arbitral Awards, it's one of

00:03:44

the United Nations agreements that

00:03:46

establishes standard For recognizing and

00:03:48

enforcing arbitration Awards the convention.

00:03:52

For those of you who

00:03:53

don't know but must be

00:03:53

will know at was established

00:03:55

in 1958 and really it's

00:03:57

principal. Aim is that it's

00:03:59

an actual that foreign and

00:04:01

domestic rabbit Awards will not



00:04:03  
be discriminated against. So parties

00:04:05  
me to ensure that that

00:04:07  
such a wart a recognized

00:04:08  
and generally capable of enforcement

00:04:10  
and their jurisdiction in the

00:04:12  
same way as domestic Awards

00:04:13  
and the convention has, has

00:04:16  
been instrumental in the key.

00:04:17  
In international patient has been

00:04:19  
called The Corner Store, Cornerstone

00:04:22  
International arbitration. So with that,

00:04:27  
pick the topic of our

00:04:28  
panel today is still need



00:04:30  
to update it. Let's just

00:04:32  
before we ask that question,

00:04:33  
maybe if you want, I'll,

00:04:35  
I'll start with you. Can

00:04:37  
you just tell us a

00:04:37  
little bit about the vast

00:04:39  
success that the convention has

00:04:40  
enjoyed. And therefore, also maybe

00:04:42  
ask the question. Is there

00:04:43  
a need to update it

00:04:44  
at all? No, thank you.

00:04:46  
I will I would have

00:04:49  
to almost give back this



00:04:51

question, true to you and

00:04:53

to everybody in the room

00:04:54

because I think that's precisely

00:04:57

the reason why we are

00:04:58

here and do we need

00:05:00

to update the convention that

00:05:01

has been so, vastly successful

00:05:03

less than your convention. The

00:05:06

New York convention today, has

00:05:08

772 State parties to it

00:05:11

and keeping in mind that

00:05:16

there are only about 194

00:05:18

195 countries in the world.



00:05:20

I think that the New

00:05:23

York manager is probably representing

00:05:25

the vast majority of countries

00:05:26

around the world in mind

00:05:30

that, oftentimes, the reason why

00:05:32

I stayed It does not

00:05:35

ratify the New York convention

00:05:36

may be due to all

00:05:38

sorts of reasons which are

00:05:39

not necessarily reasons. Directly related

00:05:42

to the fact that their

00:05:43

legal system or their previous

00:05:45

position to betray. She is



00:05:48  
in a meaningful way different

00:05:51  
than what the New York

00:05:52  
convention says. So in that

00:05:56  
sense I think the New

00:05:57  
York Metro the very large

00:05:58  
concerns. Is another interesting fact

00:06:01  
about the fact that the

00:06:04  
international Society has been growing

00:06:05  
and developing over the years

00:06:08  
Constantly new states have become

00:06:11  
parties to the New York

00:06:12  
convention. So this has been

00:06:14  
a gradual development of our



00:06:17

International society. That today, call

00:06:20

me nights in 172 and

00:06:23

S8 you say to get

00:06:25

ready to ratify the convention

00:06:26

date, most likely will go

00:06:28

to ratify it and it'll

00:06:30

say that I can say

00:06:31

that in the last few

00:06:31

years countries live timor-leste in

00:06:35

Suriname have a chicken Stan.

00:06:38

Have this convention in case

00:06:43

specifically of Timor, leste. Probably,

00:06:44

you know, that is a



00:06:45

country that emerged out of

00:06:47

a very, very, very, very

00:06:49

terrible. Very violent Civil War

00:06:51

and has been having all

00:06:54

sorts of problems over the

00:06:55

years apart, one of the

00:06:58

key goals and objectives. They

00:07:00

have had over the last

00:07:02

10 years, was precisely to

00:07:03

to become part of the

00:07:05

New York convention because it

00:07:06

is seen as an instrument

00:07:08

To Foster and strengthen Economic



00:07:11

Development to too close to

00:07:15

this context. I also want

00:07:16

to remind everybody that the

00:07:18

New York America is not

00:07:19

the only treaty that exists

00:07:21

for issues related to recognition

00:07:22

app for smartphone, opposite of

00:07:24

what we also have the

00:07:26

so-called Panama come back and

00:07:27

knowledge about the 1975 Panama

00:07:33

combat relevant, and important being

00:07:40

applied. However, the Panama convention

00:07:44

at this point, it's only



00:07:45  
about nineteen states that are

00:07:46  
parties to the convention. So

00:07:48  
my phone, it had does

00:07:50  
not have the same success

00:07:51  
as the New York convention

00:07:52  
and infect the awesome interesting

00:07:55  
differences between Italy and the

00:07:56  
same or similar things happened

00:07:58  
with it. Geneva Convention from

00:08:00  
1961, the European convention on

00:08:03  
International commercial arbitration I need

00:08:07  
to look my list here

00:08:08  
because there are about 31



00:08:11

States parties to the treaty

00:08:14

at this point. And what

00:08:17

I find really interesting is

00:08:18

that in both cases and

00:08:20

the European Commission in the

00:08:22

last few years, I have

00:08:24

not noticed any important new

00:08:27

ratifications of that treaty. So,

00:08:29

it's, these are not tragedies

00:08:30

that sort of taking Pace

00:08:32

with a New York convention.

00:08:33

Hopefully, that sort of helps

00:08:36

to provide the context of



00:08:38

where we are within your

00:08:39

commission, very much of the

00:08:43

conversation. So all of our

00:08:45

panelists are, well aware that

00:08:46

they can jump in at

00:08:47

any time if they want

00:08:48

to add the, thank you

00:08:50

for those those setting the

00:08:52

scene words. But I also

00:08:55

have a question. How would

00:08:57

one even go about making

00:09:00

changes to the New York

00:09:02

convention? How would one go



00:09:03  
about doing that? Without throwing

00:09:05  
away the proverbial? In the

00:09:08  
bath water or whatever that

00:09:10  
expression, as we all know

00:09:11  
what I meant, you could

00:09:15  
maybe say a few words

00:09:16  
to that. Just working, it

00:09:20  
should be working. I think,

00:09:21  
I think if we have

00:09:23  
problems with the online will

00:09:24  
even States whose statehood is

00:09:32  
not universally recognized accede to

00:09:35  
our purport to accede to



00:09:36  
the New York convention, like

00:09:38  
the state of Palestine did

00:09:39  
so, and in ten years

00:09:41  
ago, so it's just another

00:09:42  
example of how joining this

00:09:44  
convention is also a status

00:09:47  
symbol that you're part of

00:09:48  
the community of nations. In

00:09:50  
terms of amending it, we

00:09:53  
look to the Vienna convention

00:09:55  
on the law of treaties

00:09:56  
articles, 40 and 41 which

00:10:02  
states that if the treaty



00:10:03

says nothing about its procedure

00:10:05

for amending, which senior connection

00:10:06

doesn't it. It's free to

00:10:08

the parties to the to

00:10:10

the treaty to amend. Either

00:10:14

all of them, can sign

00:10:15

a new treaty that immense

00:10:17

it or certain parts certain

00:10:18

countries can do an intercessory

00:10:22

Amendment 7th Amendment only between

00:10:24

themselves and it's it's Rare

00:10:30

that there aren't very many

00:10:31

examples of like big multilateral



00:10:34  
treaty is going through and

00:10:36  
an amendment like this. I

00:10:38  
mean, what we're all those

00:10:40  
of you follow the field

00:10:41  
CD Howard call, it may

00:10:43  
be the debacle with the

00:10:44  
energy Charter treaty as different

00:10:46  
groups of countries are are

00:10:47  
trying to mend and that

00:10:50  
they can't agree on anything.

00:10:51  
But that. That would be

00:10:55  
the way the way for

00:10:56  
doing a free market states



00:10:58

can negotiate an end and

00:11:00

try to amend the only

00:11:02

kind of good example. I

00:11:03

can think of something like

00:11:04

this happening is the general

00:11:07

agreement on tariffs and trade

00:11:08

that the Gat in nineteen

00:11:10

forty-seven, different groups of states,

00:11:13

have done amendments to it,

00:11:16

that Supply only between themselves.

00:11:19

So periodically, you have different

00:11:22

region. Countries are from different

00:11:23

regions of the world including



00:11:25

free trade agreements that only

00:11:27

applied between themselves and you

00:11:29

lower. Tariffs, even even lower.

00:11:34

Lower than what what the

00:11:35

guy that provides. So it

00:11:38

is legally possible to imagine

00:11:39

your convention. Whether it happens

00:11:42

as a matter of practical

00:11:43

reality and international politics. Thank

00:11:47

you. We just got to

00:11:48

information chat from somebody online.

00:11:51

We just have to be

00:11:52

careful with the mic stand



00:11:53  
and not come too close

00:11:54  
but also but also speak

00:11:56  
loud and clear. The path

00:11:57  
of an audio issues and

00:11:59  
there was also a question

00:11:59  
about the areas of improvement

00:12:00  
which we will dive into

00:12:01  
right now. We just wanted

00:12:03  
to go to see it

00:12:03  
up first and see how

00:12:04  
would you even do that?

00:12:05  
But let's talk about what

00:12:07  
are the potential areas that



00:12:08

what one would even approve,

00:12:10

the New York convention and

00:12:13

in doing so, you know,

00:12:14

we can SSS be gone

00:12:16

as you mentioned are, you

00:12:17

know, there are other conventions

00:12:19

regarding the enforcement of arbitral

00:12:20

awards such as the convention.

00:12:22

So maybe in looking at

00:12:24

the potential areas we would

00:12:25

want to improve. We can

00:12:26

also look at these other

00:12:27

convention. See, if we would



00:12:28  
want to borrow something from

00:12:29  
their Dana in terms of

00:12:31  
potential wish list or areas

00:12:33  
of improve, One potential idea.

00:12:36  
Do you think that there's

00:12:37  
any value in having a

00:12:39  
Secretariat similar to what you

00:12:42  
have on the Beast convention

00:12:43  
under the New York convention?

00:12:47  
Sensitive to the audio issues.

00:12:50  
I'm going to follow the

00:12:52  
instructions. It's lovely to be

00:12:54  
here with all of you



00:12:55

today and part of Washington,

00:12:58

a creation weekend. Thank you

00:12:59

for hosting on the issue

00:13:03

of Secretariat for the New

00:13:07

York convention. I think I'm

00:13:10

wearing my arbitrator hat and

00:13:12

that I'll come back to

00:13:13

that in some of the

00:13:15

discussions that we have. But

00:13:17

I think that the better

00:13:19

guide to council and parties

00:13:22

with respect to the interpretation

00:13:25

of the New York convention



00:13:26

and its application by courts

00:13:28

around the world. Are in

00:13:30

fact the decisions themselves rather

00:13:33

than a secretary yet because

00:13:35

I think there's such diversions

00:13:37

not in a in a

00:13:40

way that makes it lack

00:13:42

tangibility and reliability. And and

00:13:47

To treat its success is

00:13:49

because it is so well

00:13:51

understood and applied that said

00:13:53

it is applied slightly differently

00:13:55

in different countries and so



00:13:56

I would be, I would

00:14:00

be reluctant to suggest that

00:14:02

a secretary at should be

00:14:04

appointed for guidance on the

00:14:07

New York convention. And I

00:14:09

would instead suggest that you

00:14:10

look to sources for how

00:14:13

National courts have interpreted and

00:14:15

applied it. And fortunately there

00:14:17

are many available sources online

00:14:20

these days that are publicly

00:14:23

available near the first being

00:14:25

on the Enterprise website. We



00:14:28

may speak about some of

00:14:29

these resources later but the

00:14:31

fact that so many of

00:14:32

these resources are available, I

00:14:34

think ways against the need

00:14:36

for a secretary at this

00:14:37

time. Know we've revised it,

00:14:40

I don't know. We could

00:14:41

maybe revise that answer. Thank

00:14:48

you for that. I see

00:14:49

it when he's dumping well,

00:14:51

I am. I I totally

00:14:53

agree with my colleague here



00:14:56

because it's, it's true. It's

00:14:57

really hard to create a

00:14:59

Secretariat for specifically, something like

00:15:04

the New York convention, which

00:15:06

has a very limited scope

00:15:07

anyway, so maybe you should.

00:15:09

Maybe also just take a

00:15:11

step back at this point

00:15:12

and realized it, then your

00:15:13

commission is really just about

00:15:14

recognition and enforcement. Of what

00:15:17

weather of two things of

00:15:18

a mutual agreement and of



00:15:21

a towards, it's very limited

00:15:23

and that sense it does

00:15:25

not really provide much more

00:15:27

than that which, which to

00:15:31

some extent and listen to

00:15:33

all the problems that I

00:15:34

I, I hope I I

00:15:35

assume we will discuss it

00:15:37

on this on this round

00:15:38

table as well. But what

00:15:40

could an institution after this?

00:15:42

And to some extent, they

00:15:44

are already a number of



00:15:45

Institutions that have taken pretty

00:15:47

much the lead in terms

00:15:49

of commercial arbitration on all

00:15:51

to investment arbitration, of course,

00:15:53

and administer proceedings, that n

00:15:57

l arbitral awards that potentially

00:15:59

can be recognized and enforce,

00:16:01

the New York convention. So

00:16:04

probably create another situation would

00:16:07

really not, not not not.

00:16:16

Interesting point, but just access

00:16:18

to the information on the

00:16:19

New York convention. I believe



00:16:21  
that they are is in

00:16:23  
fact a lot of work

00:16:24  
that can still be done

00:16:25  
because and that is also

00:16:29  
that place to read what

00:16:30  
the annual convention is in

00:16:31  
your comment. Really speaks to

00:16:33  
both constituents in in this

00:16:37  
world of international commercial arbitration

00:16:39  
on the one hand, the

00:16:41  
arbitrators or uncleaned arbitration practitioners,

00:16:45  
but primarily the arbitrator's they

00:16:47  
need to know what happened



00:16:48

to the W could potentially

00:16:49

be recognized and enforce that

00:16:51

has a direct impact on

00:16:52

what's that same time. The

00:16:56

New York convention speaks to

00:16:57

the job just to the

00:16:58

National judges and the national

00:17:00

Josh's sometimes. They they need

00:17:08

to learn and and and

00:17:10

understand really how the New

00:17:12

York convention first then you'll

00:17:13

come it has only very

00:17:14

very few articles and it's



00:17:16  
only like like 13 or

00:17:18  
14 articles and and the

00:17:20  
really important. It's only about

00:17:22  
7 or so that it's

00:17:24  
a very short International treaty.

00:17:26  
But it is a very

00:17:28  
complex 3D at the time

00:17:30  
of application and and Josh's

00:17:31  
need the support. There's a

00:17:33  
lot of information available in

00:17:34  
English language to wish. I

00:17:36  
were to agree, of course

00:17:37  
about how many more languages



00:17:39  
than English on the world.

00:17:41  
And I think there's still

00:17:43  
a lot of work to

00:17:44  
do to disseminate the New

00:17:46  
York convention. So, but I'm

00:17:50  
not sure if I would

00:17:52  
be the suitability of the

00:17:53  
best place in the United

00:17:54  
Nations has tried this effect

00:17:55  
in the past, but with

00:17:57  
mixed results. I mean do

00:17:59  
I hear speaking about you

00:18:01  
know, the importance of up



00:18:02  
collecting information without a note

00:18:04  
to give a bar over?

00:18:05  
You would there be a

00:18:06  
role and administrative role in

00:18:08  
collecting? All the cases of

00:18:09  
different jurisdictions just to have

00:18:11  
one Central data point and

00:18:14  
show how the New York

00:18:14  
of commission has been applied

00:18:15  
throughout the world, how to

00:18:17  
do the parents feel about

00:18:18  
that? Both this sort of

00:18:24  
collecting compilation aspect to this,



00:18:26

but also the educational aspect

00:18:28

SSS University. So I know

00:18:32

firsthand that in most law

00:18:36

schools. The New York convention

00:18:37

or International commercial arbitration. At

00:18:39

this point is, is it

00:18:41

a little aspect of the

00:18:43

attorneys, realize the importance about

00:18:51

dispute settlement of their career?

00:18:58

And that has an impact

00:19:00

on the arbitration practitioners. But

00:19:03

again, I see an impact

00:19:04

on the job, just because



00:19:05

people that enter the Judiciary

00:19:07

and work as judges in

00:19:09

the different countries, they probably

00:19:11

never, really get exposed to

00:19:13

the knowledge of all of

00:19:23

the functioning of working with

00:19:25

that would be great because

00:19:29

we tend to be so

00:19:31

happy when we get back

00:19:32

toward where we that's it.

00:19:35

We did it for you.

00:19:36

And then, you know, I

00:19:38

have a very different perspective



00:19:39

because as, as most of

00:19:41

us know, this is not

00:19:42

where the story ends ends

00:19:43

with, with a client actually

00:19:45

collecting actually having a boy,

00:19:46

forcing actually having the money

00:19:48

back on that bank account.

00:19:49

So, yes, there's also that

00:19:51

some awareness, you know, raising

00:19:53

that could potentially be aided

00:19:55

by, by Industries in or

00:19:58

maybe other But you said

00:19:59

I wanted to to Pivot



00:20:03  
and I promise I will

00:20:05  
get to you. Just one

00:20:05  
question to to Alex before

00:20:08  
because you are currently in

00:20:10  
for saying in the US

00:20:12  
District of Columbia, you are

00:20:15  
enforcement exit award. And I

00:20:17  
I was wondering if you

00:20:18  
could just hear from your

00:20:19  
perspective, as counsel, whether there's

00:20:21  
anything, any, any lessons learned

00:20:23  
anything you would like to

00:20:23  
to, to see if there



00:20:28

are two important differences between

00:20:32

exit Awards, in New York

00:20:33

convention Awards, during a forcement

00:20:35

one is the even more

00:20:37

limited scope of judicial review

00:20:39

for exit Awards, and the

00:20:40

other is an even longer

00:20:41

statute of limitations, regarding judicial

00:20:45

review. So article 54 of

00:20:47

the exit convention obligates, each

00:20:49

Contracting state to recognize and

00:20:52

accept convention, award and enforce.

00:20:54

Its enforced in monetary obligations



00:20:57

in the award as a

00:20:58

You were a final, judgments

00:21:00

of a quart of that

00:21:01

state. So a court must

00:21:03

treat an exit award as

00:21:04

if it were already a

00:21:06

judgment that the court itself

00:21:07

or a sister court has

00:21:08

issued. Whereas in the New

00:21:11

York convention, it's kind of

00:21:12

a process for converting, an

00:21:14

arbitration award into a, a,

00:21:17

a court judgment and therefore,



00:21:20

and actions to enforce the

00:21:21

exit towards the scope of

00:21:22

judicial review is even more

00:21:23

limited, although, like from your

00:21:26

convention Awards and exit enforcement

00:21:28

actions, the court can't look

00:21:30

at the merits of the

00:21:31

arbitration. Dispute it also technically

00:21:34

is not supposed to examine

00:21:36

the truck for tribunal jurisdiction

00:21:38

or other procedural. Questions that

00:21:40

happened in in the arbitration,

00:21:41

the court where these would



00:21:45  
be grounds for challenge under

00:21:47  
Article 5 of the New

00:21:48  
York convention, the court can

00:21:50  
do little more than just

00:21:51  
examine the awards authenticity. And

00:21:54  
enforce, its the accept the

00:21:57  
award letter and an exit.

00:21:58  
Face can make very limited

00:22:00  
challenges such as to the

00:22:01  
authenticity of the award that's

00:22:03  
presented or the possibility that

00:22:05  
an offset might apply to

00:22:07  
the monetary obligations there in,



00:22:09

but even for offsets we're

00:22:12

not have to be Undisputed

00:22:14

amounts. So a sovereign, for

00:22:16

example, that's lost an excellent

00:22:18

case, it can't then during

00:22:19

the award proceedings in there,

00:22:22

in the enforcement proceedings in

00:22:23

US courts say well the

00:22:24

investor actually owes you know,

00:22:26

\$500 in back taxes. So

00:22:29

it all evens out. I

00:22:30

don't have to pay anything,

00:22:31

it has to be in



00:22:32

an amount. That's not disputed,

00:22:35

by the word creditor or

00:22:37

has been already adjudicated as

00:22:40

correct by the court. Regarding

00:22:44

statute of, limitations, section, 207

00:22:47

of the federal police in

00:22:48

the US, the federal arbitration

00:22:49

act implements in New York

00:22:52

convention. It contains a three-year

00:22:54

statute of limitations, but it'll

00:22:59

have to be treated as

00:23:00

if they were already Court.

00:23:01

Judgments, the statute of limitations



00:23:05  
for enforcing court, judgment supplies.

00:23:07  
Not the one from the

00:23:08  
federal arbitration act, these are

00:23:09  
usually much longer and a

00:23:12  
few weeks ago, a federal

00:23:13  
court in DC found that

00:23:14  
the applicable limitations. Is comes

00:23:17  
from the DC enforcement of

00:23:19  
foreign judgments acts when she's

00:23:20  
12 years. So three years

00:23:22  
versus 12 years and I

00:23:23  
know we have some investigators

00:23:25  
in the room. I mean,



00:23:26

this is as real practical

00:23:27

impact cuz once your client

00:23:30

wins, you need time to

00:23:33

try to find assets, may

00:23:35

be negotiated settlement, things like

00:23:37

that. So that the longer

00:23:38

limitations. Is it is very

00:23:40

is a very practical important.

00:23:44

One question. Do you think

00:23:47

it would be one universal

00:23:51

Saturday of limitations? In the

00:23:59

convention itself. While it gets

00:24:03

to yes, it would be



00:24:05

good. If it's debatable,

00:24:07

whether it's stepped, it would

00:24:10

be good. Definitely it runs

00:24:14

up against the issue of

00:24:16

the local procedure for confirming

00:24:18

an award in National courts.

00:24:20

And how do you harmonize

00:24:21

that? Absolutely. But if statute

00:24:23

of limitation the procedural issue

00:24:25

or is it a substance

00:24:26

of issue that should be

00:24:27

assimilated with an article 5?

00:24:29

So that this has been



00:24:30  
debated here and there, but

00:24:32  
the prevailing view is that,

00:24:33  
it's a local procedural issue

00:24:35  
that's left to the to

00:24:36  
the member states. And we'll

00:24:40  
we'll get through some of

00:24:41  
the language of Article. 5

00:24:43  
is well, will deflect some

00:24:44  
of the, the, the language

00:24:45  
that had historically some debate,

00:24:50  
but before we do that.

00:24:51  
So let's talk a little

00:24:54  
bit about waiver us over



00:24:56

him and see and specifically

00:24:58

a question that we discussed

00:25:00

in preparation to this panel

00:25:02

is is a ship, a

00:25:03

New York convention, be modified

00:25:05

to clarify, whether it's a

00:25:07

state certification, all the convention,

00:25:09

constitutional waiver to sovereign immunity

00:25:11

against the confirmation action. And

00:25:14

I know that, you know,

00:25:15

this in case you wanted

00:25:16

to touch upon so Yes.

00:25:18

Thank you so much for



00:25:20

the Guinness. Want to say

00:25:21

thank you to Hughes Hubbard

00:25:23

Watchdog tration week for the

00:25:24

invite also to my fellow

00:25:26

colleagues here. Also, I just

00:25:28

want to have a disclaimer,

00:25:29

the views expressed today, or

00:25:31

mine alone and automatic firms.

00:25:32

Then put that out there.

00:25:33

Yeah, I know it's a

00:25:35

question. I think one case

00:25:37

that is often cited when

00:25:39

it comes to, this issue



00:25:40

is cat Nest, which is

00:25:42

where the DC court of

00:25:44

appeals agreed with the DC

00:25:45

District Court that if a

00:25:47

foreign state of Greece, arbitrate

00:25:49

in a country, that is

00:25:50

a signatory of the New

00:25:51

York convention, and it weighs

00:25:53

sovereign immunity in all other

00:25:56

signatory countries, and its reasoning.

00:25:58

The District Court here, cited

00:26:00

to a second circuit decision

00:26:03

explaining that when a country



00:26:04

becomes a signatory to the

00:26:05

convention, by the very provisions

00:26:07

of the convention, the signatory

00:26:09

states must have contemplated the

00:26:11

force in options in other

00:26:13

states where States, Ukraine, how

00:26:16

to greet our between free.

00:26:17

Which is a signatory country

00:26:19

and therefore, the Court held

00:26:21

that. It should also have

00:26:22

anticipated enforcement actions in the

00:26:25

United States, which is also

00:26:26

at 620 Country Meadow Court



00:26:29

decision that received from across

00:26:31

the country, including another second

00:26:33

circuit decision where the second

00:26:36

circuit held that signing the

00:26:38

New York conventional loan without

00:26:40

an arbitration award was not

00:26:43

sufficient to waive sovereign immunity.

00:26:44

Unless the cause of action

00:26:46

was just the language closely

00:26:49

related to the claim of

00:26:50

the enforcement of the arbitral

00:26:51

award. And so that's what

00:26:53

to wear to the station



00:26:53

comes into play. I see

00:26:55

because you see, all the

00:26:56

other hand, there are u.s.

00:26:57

courts that have found that

00:26:59

by finding a waiver of

00:27:01

sovereign. Immunity when Stateside International

00:27:03

treaties, that do not have

00:27:05

that tie into enforcement. And

00:27:07

so there was one in

00:27:08

the southern district of New

00:27:09

York where in the rears

00:27:11

versus, Deutsche, Bahn AG where

00:27:13

it had to do with



00:27:14  
the treaty about legal litigation

00:27:16  
around railways. I'm a real

00:27:18  
we litigation and the Court

00:27:20  
held at signing. Did not

00:27:21  
imply. Italy, waves, album, immunity.

00:27:23  
And so, that's what it

00:27:24  
where I think the distinction

00:27:25  
comes into play. No, I

00:27:29  
mean, the New York convention

00:27:30  
was created to enforce arbitration

00:27:33  
Awards, rendered a signatory States

00:27:34  
and being allowed to waive,

00:27:37  
your sovereign, immunity or Sorry's.



00:27:38

Not to refuse enforcement in

00:27:41

the u.s.a. station. Sovereign immunity

00:27:42

could perhaps open up doors

00:27:45

to, you know, waiting sovereign

00:27:48

immunity and other horsemen entreaties,

00:27:51

like the Panama convention which

00:27:52

field are mentioned earlier. They

00:27:54

said convention, on my couch,

00:27:56

just mentioned the New York

00:27:58

convention is focus on Commercial

00:28:01

arbitration. So there was an

00:28:02

argument that signing, it has

00:28:04

nothing to do with waiver



00:28:06  
sovereign immunity. And so, that's

00:28:07  
simply not done with the

00:28:08  
convention. So there's a lot

00:28:10  
of back-and-forth there in a

00:28:11  
lot of considerations to Grapple

00:28:13  
with him. And I know

00:28:18  
Alex, you had some some

00:28:19  
other thoughts with you wanted

00:28:20  
to mention just on the

00:28:21  
topic of, you know the

00:28:22  
issues that might come up

00:28:23  
with respect to enforcement against

00:28:26  
sovereigns. Fortunately or unfortunately depending



00:28:30

on whom you represent, there

00:28:31

are many tools that sovereigns

00:28:33

have to avoid or delay

00:28:35

complying with Awards to least

00:28:37

in the US in terms

00:28:39

of sovereign immunity obviously only

00:28:41

assets that The Sovereign uses

00:28:44

for a commercial purpose in

00:28:45

the US can be used,

00:28:46

there are a couple of

00:28:49

lesser while no one wants

00:28:50

from experience that, I'd like

00:28:51

to briefly discuss one is,



00:28:53

you can't do prejudgment attachment

00:28:57

of assets belonging to a

00:28:59

sovereign Is it on unless

00:29:02

the Sovereign has explicitly consented

00:29:04

to that, which is rare.

00:29:05

So this means that award

00:29:07

creditors who locate a sovereigns

00:29:09

assets, can't freeze them while

00:29:11

they then go through the

00:29:12

enforcement of the, for the

00:29:14

confirmation process and this poses

00:29:17

a practical problem because then

00:29:19

the Sovereign can alienate the



00:29:20

assets. And by the time

00:29:22

you get your award confront

00:29:23

confirms do know that there's

00:29:25

nothing left there, but it

00:29:27

also creates a jurisdictional problem

00:29:29

and potentially a fatal one.

00:29:31

Depending on how one pending

00:29:33

case in the Supreme Court

00:29:34

goes. It means basically, there

00:29:38

are two ways to get

00:29:39

jurisdiction over a foreign defendant

00:29:41

in US court. One is

00:29:42

quasi in rem, where the



00:29:46  
defendant doesn't have any relevant

00:29:48  
contacts in the, in the

00:29:49  
US that relate to the

00:29:50  
underlying dispute, but it has

00:29:52  
property. And so you got

00:29:54  
quasi in rem by freezing,

00:29:56  
the property is not allowed

00:29:58  
against sovereigns, the others in

00:30:01  
personam jurisdiction. And this requires

00:30:03  
the defendant to have contact

00:30:05  
with the US that relate

00:30:06  
to the underlying dispute. This

00:30:08  
is pretty rare for sovereigns



00:30:10  
to have this. And for

00:30:12  
that very reason, Currently the

00:30:14  
US foreign Sovereign immunities act

00:30:16  
has an exception to this

00:30:19  
requirement. It's for arbitration confirmation

00:30:23  
actions. It says that in

00:30:25  
personam jurisdiction, automatically exist. If

00:30:27  
you're trying to enforce an

00:30:29  
award, regardless of, if the

00:30:30  
Sovereign doesn't have any other

00:30:31  
relevant contacts with the US

00:30:33  
relating to the dispute, there

00:30:35  
is a pending case in



00:30:36  
the Supreme Court CC Davis

00:30:38  
vs India that seeks to

00:30:40  
eliminate this exception and if

00:30:43  
it succeeds, it would mean

00:30:44  
that in a ward creditor

00:30:46  
could not enforce an award

00:30:47  
Against The Sovereign in the

00:30:49  
US unless the Sovereign had

00:30:50  
contact with the US that

00:30:52  
relate to the dispute. And

00:30:54  
not only has this rare,

00:30:55  
but it would make arbitration

00:30:57  
Superfluous. Cuz if, if the



00:30:59

Sovereign has contacts with the

00:31:00

us that are related to

00:31:01

the underlying disputes, you can

00:31:03

sue, the Sovereign in the

00:31:04

US anyway and not have

00:31:06

to go through arbitration. So

00:31:07

I hope the Supreme Courts

00:31:09

are rejects this case cuz

00:31:10

otherwise I might be game

00:31:11

over for trying to enforce.

00:31:14

Again, sovereigns one other quick

00:31:17

quick. Anecdote on this sovereigns

00:31:20

have the unique ability to



00:31:21

create facts that they then

00:31:23

try to sight. And in

00:31:24

India Ward confirmation at proceedings.

00:31:27

I'm Jim and I were

00:31:29

enforcing against India, and its

00:31:32

after we filed the enforcement

00:31:33

petition, India mobilize, its unique,

00:31:36

Sovereign resources, like it's prosecutors

00:31:39

and investigators to start to

00:31:43

investigate and prosecute people involved

00:31:45

in the underlying transaction. And

00:31:47

then it came to the

00:31:47

court and said, hey, there's



00:31:50

this big investigation going on

00:31:51

depending on this, it might

00:31:53

reveal that there was corruption.

00:31:55

So the underlying arbitration agreement

00:31:57

was invalid North against public

00:31:59

policy, as if this investigation

00:32:01

is fell from the sky

00:32:02

as opposed to The Sovereign

00:32:05

doing it. But yeah. So

00:32:08

it it takes a lot

00:32:09

of creativity and being able

00:32:12

to anticipate and react to

00:32:13

unforeseen situations when you're trying



00:32:15

to extract money out of

00:32:17

a sovereign to pay an

00:32:19

arbitration award. Thank you for

00:32:22

the thought. I I want

00:32:23

to give your Aunt Dana,

00:32:25

an opportunity to weigh in

00:32:26

if you want to. I'm

00:32:27

the Sovereign. If you would

00:32:33

like to lie, I saw

00:32:33

that. You were getting your

00:32:34

book out. So well I

00:32:46

think sovereign immunity is most

00:32:48

often and appropriately discussed under



00:32:51  
the the sovereign immunity statute

00:32:53  
that governs. The piano in

00:32:55  
the in the country here.

00:32:56  
It's the foreign Sovereign immunities

00:32:58  
act and I'm curious to

00:33:00  
hear how the Supreme Court

00:33:02  
could somehow unravel, 15, 10

00:33:08  
1610 a 60 arbitration exception.

00:33:11  
Is that is that actually

00:33:13  
the relief sought or? How

00:33:14  
are they going about with

00:33:16  
trying to avoid the arbitration?

00:33:20  
Except Yeah, it's it's, it's



00:33:24

1605, a six-person, a couple

00:33:31

of different statues, that interact

00:33:33

to say, personal jurisdiction, exist

00:33:34

SAS to any Sovereign that

00:33:37

doesn't have immunity. And one

00:33:38

of the ways not to

00:33:39

have immunity as if you're

00:33:41

being sued to enforce an

00:33:42

arbitration award. The case at

00:33:44

the Supreme Court, argues that

00:33:46

that statute is unconstitutional. Under

00:33:50

the 5th Amendment, which requires

00:33:53

due process before any property



00:33:57

is taken away from a

00:33:59

person. And due process has

00:34:01

it mean to be the

00:34:02

minimum contacts. So, the argument

00:34:04

is that a sovereign is

00:34:06

also a person within the

00:34:08

meaning of the 5th Amendment.

00:34:10

So it is also entitled

00:34:11

to Do you process a

00:34:14

minimum contacts and atlases? And

00:34:16

I can't be legislated away

00:34:17

by the foreign Sovereign immunities

00:34:19

act, the way the way



00:34:21

it has been Okay, we

00:34:25

were going to delve into

00:34:27

a little bit more, the

00:34:28

text of the commission and

00:34:30

looking at some of the

00:34:31

terms that have historically post

00:34:32

know are subject to debate

00:34:34

and for that, I needed

00:34:36

some slides and the person

00:34:37

was going to put up

00:34:38

slides to stop down his

00:34:39

room. So I'm just going

00:34:40

to always think if we



00:34:49

we just wanted to look

00:34:51

at the the perfect, the

00:34:53

article to just scroll down.

00:34:58

Just bear with us for

00:34:59

a second and also perfect.

00:35:00

Alright great. Apparently there was

00:35:03

another just just speak I

00:35:05

guess as clearly as you

00:35:06

can as loud you towards

00:35:07

the the microphone up so

00:35:09

perfect. Joseph we have article

00:35:14

to here and you know

00:35:15

there's some language in there



00:35:16  
will be doing a fair

00:35:18  
amount of us dissecting of

00:35:19  
language here but bear with

00:35:20  
us. Every one we do

00:35:21  
have. If you if you

00:35:22  
stick with us through this

00:35:23  
text relaxer size, we promise

00:35:25  
you're going to get a

00:35:26  
little bit of brain candy

00:35:26  
with a video. So I'm

00:35:29  
going to do the same

00:35:30  
thing when I do with

00:35:31  
little children. Let's talk about



00:35:36

Article, 2 and and, and

00:35:38

some of the language that,

00:35:39

you know, the word, I

00:35:41

think you going to talk

00:35:42

about the, please let me

00:35:45

know if it's okay. I

00:35:46

got you telling me, I'm

00:35:47

walking. I sweetie, the vegetable

00:35:49

part of that, before you

00:35:51

get to the desert in

00:35:54

writing, as you can see

00:35:56

an article to writing, Quite

00:35:58

a bit. I'd be remiss



00:35:59

if I didn't mention a

00:36:01

seminal case, he recalled due

00:36:02

to come through, which many

00:36:03

of you are probably familiar

00:36:04

with its an eleventh circuit

00:36:06

decision. That was eventually a

00:36:08

reverse by the Supreme Court,

00:36:09

but it does show, it

00:36:12

does show ways in which

00:36:15

the courts are currently grappling

00:36:17

with this, in writing language,

00:36:20

the eleventh circuit held that

00:36:22

because the New York convention



00:36:24

apply to only two parties

00:36:26

that actually signed an arbitration

00:36:27

agreement, the convention precluded the

00:36:29

use of Equitable, estoppel documents

00:36:31

to bring in and compel

00:36:32

arbitration among parties. That did

00:36:34

not sign. The electrician agreement,

00:36:36

the US Supreme Court. However,

00:36:38

held at the newer convection

00:36:39

does not preclude parties, who

00:36:41

did not sign an arbitration

00:36:42

agreement from seeking, to compel

00:36:44

arbitration under state, law Equitable,



00:36:46  
estoppel doctrines, the court concluded

00:36:48  
that nothing in the text

00:36:50  
here for Hibbetts that and

00:36:52  
that decision actually lines more

00:36:54  
with the enforcement of international

00:36:57  
arbitration. Under the New York

00:36:59  
convention and DeSoto arbitration act,

00:37:02  
which does permit parties to

00:37:03  
use, Equitable, estoppel and other

00:37:05  
state law Doctrine. When seeking

00:37:07  
to enforce arbitration agreements, I

00:37:10  
want to note that the

00:37:11  
eleventh circuit decision before the



00:37:14

US Supreme Court, reversed it.

00:37:15

And I should conflicted with

00:37:16

the internationally accepted liberal approach

00:37:19

that we see when it

00:37:20

comes to this in writing

00:37:21

climate antonym for sin of

00:37:24

arbitration agreements, generally courts. In

00:37:27

other jurisdictions, have consistently interpreted

00:37:29

this convention to mean that

00:37:32

a party consent. Arbitration is

00:37:33

not necessarily evidence by signature,

00:37:36

and so we see Court

00:37:37

decision from Australia. Canada is



00:37:39

real. Sort of go in

00:37:40

that direction and so the

00:37:42

ultimate result of you to

00:37:44

come through also aligns. So

00:37:46

that's sort of this, my

00:37:47

32 cents on the handwriting

00:37:58

I also would like to

00:37:59

add about talking about this

00:38:00

writing. Requirement did not occur

00:38:02

to you, I think it

00:38:03

is interesting because we are

00:38:04

thinking about how to modify

00:38:06

how to amend the New



00:38:07

York. I mean, how to

00:38:08

add, how to how to

00:38:10

strengthen the New York convention.

00:38:11

And if you compare the

00:38:13

text of the New York

00:38:14

convention, red, 1958, And everybody

00:38:19

required to swear. This is

00:38:20

writing requirement and you see

00:38:23

the developments of the concert

00:38:24

remodel that that happened many

00:38:27

years. After what you see

00:38:28

that there is an opening

00:38:30

up to what's other forms



00:38:31

of of this writing requirement.

00:38:34

Even beyond the specific question

00:38:38

off, non-signatories pissy. And I,

00:38:42

I think this is, in

00:38:44

fact, a good illustration about

00:38:45

what has happened in international

00:38:48

commercial arbitration over the years.

00:38:49

It's not just by looking

00:38:53

at the New York convention

00:38:54

at the end of the

00:38:56

text, but also to the

00:38:58

other developments that have happened

00:38:59

specifically in in on such



00:39:01

others were in the in

00:39:02

the United Nations Commission on

00:39:04

on International Trade law, which

00:39:11

insect is broadly. Accepted by

00:39:17

by managers. I'm out at

00:39:19

least 100 your station, 19.

00:39:21

Jurisdictions worldwide are inspiring very

00:39:25

closely that domestic laws on

00:39:27

arbitration in the motor locks.

00:39:29

And there is where many

00:39:31

of those developments have taken

00:39:33

place that we are now.

00:39:34

Today, you're commenting also a



00:39:36  
pain and I, and I

00:39:37  
think this point that you

00:39:38  
made is, is very strong

00:39:39  
there different countries, have experimented,

00:39:42  
even with non-signatory clarifying up

00:39:47  
to what degree is a

00:39:48  
party is announcing her and

00:39:50  
what agreements even if it's

00:39:54  
a difficult to prove because

00:39:55  
I'm not really a written

00:39:56  
there that I can have,

00:39:59  
can have an impact. So,

00:40:01  
so I think that is



00:40:03

a good illustration about how

00:40:04

International commercial arbitration really has

00:40:06

developed. And and what has

00:40:08

happened. So if you look

00:40:09

at, or if any of

00:40:11

you looks at the New

00:40:12

York Met, You should always

00:40:14

ought to have the text

00:40:15

of the uncertain monologue. Besides

00:40:17

an Autobot, some domestic restrictions

00:40:19

have done it this way.

00:40:20

Just just to clarify that

00:40:23

Alright, thank you for that.



00:40:26

I left there any more

00:40:28

takers on the article to

00:40:29

I believe we're going to

00:40:30

move on to article 3.

00:40:32

I could I could talk

00:40:34

about it more about articles

00:40:35

too, but not sure if

00:40:36

you have time come countries,

00:40:45

take steps that go far

00:40:46

beyond what I was just

00:40:47

talking about using, don't to

00:40:49

the mother-in-law and some Innovations,

00:40:51

they take a step further



00:40:52

and there. Then you see,

00:40:54

again, questions arising? Well, is

00:40:57

this still in the spirit

00:40:58

of the new command and

00:41:00

invest some interest, but let's

00:41:02

move on because it's a

00:41:04

whole chapter Simon Article 5,

00:41:10

but you will also get

00:41:12

a movie before Article 5.

00:41:14

I wanted Alex. You had

00:41:16

something to match my first

00:41:17

picture article 3. Couple of

00:41:20

each Contracting State can apply



00:41:32

its The procedure to award

00:41:34

enforcement actions. And some States

00:41:39

including the US they apply

00:41:40

to award confirmation actions. The

00:41:43

same rules of procedure that

00:41:44

they apply to General civil

00:41:46

actions and in practice this

00:41:49

can result in arbitration award

00:41:52

confirmation actions being more difficult

00:41:54

or burdensome than General civil

00:41:56

actions. Because the two are

00:41:58

very different and you're applying

00:41:59

the rules that are meant



00:42:01  
for 4 for the ladder.

00:42:02  
For example, I'm in general

00:42:05  
civil actions, the court is

00:42:07  
for the first time, a

00:42:08  
judicata in the rights and

00:42:09  
obligations of of the parties.

00:42:12  
And because of this, there

00:42:14  
are a lot of safeguards

00:42:15  
mainly there has to be

00:42:16  
some connection between the underlying

00:42:20  
dispute and the, the US.

00:42:21  
And also, there are multiple

00:42:23  
levels of review and this



00:42:28

doesn't really, so silly. Personal

00:42:30

jurisdiction, Forum non conveniens, these

00:42:33

types of things. And These

00:42:36

technically these have been applied

00:42:38

to award confirmation actions but

00:42:40

they're most likely to Bar

00:42:44

the the actions from going

00:42:46

forward because often the underlying

00:42:49

disputes between the parties who

00:42:51

wants arbitration, has no connection

00:42:53

with the US. And the

00:42:55

reason why the award creditor

00:42:57

chose the US for confirmation



00:42:59

was because the, the order

00:43:01

has assets there, and in

00:43:03

terms of multiple levels of

00:43:04

review, I mean, think about

00:43:06

it. The parties have already

00:43:07

had a first instance, adjudication,

00:43:10

for the arbitration, then you're

00:43:12

talking about District Court. Appeals

00:43:13

court Supreme, Court's, you're talkin

00:43:15

about four levels of of

00:43:17

proceedings. If you apply the

00:43:19

same, you a multi-tiered review,

00:43:21

22, arbitration enforcement actions. So



00:43:24

I would argue that the

00:43:26

application of procedural rules for

00:43:28

General civil actions to award

00:43:30

confirmation actions result in a

00:43:33

de facto discrimination against toward

00:43:35

confirmation actions at the convention.

00:43:37

Doesn't prohibit this article 3

00:43:39

just says you can't discriminate

00:43:41

discriminate between domestic and foreign

00:43:43

force mean actions. It doesn't

00:43:46

say anything about discriminating between

00:43:48

arbitration Foresman actions and in

00:43:50

general actions. But finally I



00:43:53

will say during the drafting

00:43:55

of the convention, they did

00:43:56

try to have have a

00:43:59

uniform uniform procedural, rules that

00:44:02

all countries must apply to

00:44:03

arbitration actions but this was

00:44:06

rejected and I'll be on

00:44:10

vandenburgh wrote that it resulted

00:44:13

in a bauble, like confusion

00:44:15

during the negotiations and trying

00:44:17

to figure out worldwide rules

00:44:19

of procedure. I see a

00:44:23

lot of nothing had them



00:44:25

and feel free to jump

00:44:26

in with any more stories

00:44:27

on on that. But if

00:44:30

not just if you wanted

00:44:31

to and maybe you can

00:44:32

do an article 3 and

00:44:34

do you want a 22

00:44:36

to briefly mentions? Okay. We

00:44:39

can also go jump, Jump,

00:44:40

Street 2. Yeah, that is

00:44:45

right Article 4 and it

00:44:46

was number three in my

00:44:47

notes about the the language



00:44:52  
of Julie certified copy of

00:44:53  
it. So she wanted to

00:44:57  
share your notes as maybe

00:44:58  
your War Stories on that.

00:44:59  
I'll keep it brief and

00:45:00  
we have a lot more

00:45:01  
interesting things to cover later,

00:45:03  
but for this one, you'll

00:45:04  
see duly certified copy. Duly

00:45:06  
authenticated original War. These tend

00:45:09  
to be a little more

00:45:10  
ambiguous than you would expect.

00:45:11  
It's light out sheet of



00:45:14

varying interpretations of what exactly

00:45:16

it means to be duly

00:45:17

certified, duly authenticated across different

00:45:20

jurisdictions. And so you will

00:45:22

see that, you know, some

00:45:24

jurisdictions, a strict interpretation of

00:45:25

this requirement has led to

00:45:27

enforcement's being denied, it was

00:45:29

submitted copies of the war

00:45:30

not certified in a very

00:45:32

specific, no jurisdiction specific man

00:45:34

are required by the court.

00:45:36

Even if y'all sent to



00:45:37

City of the documents are

00:45:39

not in dispute, so it

00:45:40

can be a very inefficient

00:45:41

additional hurt. For a lot

00:45:44

of parties and there's a

00:45:46

need. Also, perhaps some might

00:45:47

say to adapt this provision

00:45:49

to the digital nature of

00:45:51

proceedings today. Special post covid.

00:45:52

Lot of things are online.

00:45:54

There aren't a lot of

00:45:55

things that would be duly

00:45:56

certified in the old, I



00:45:58

guess, the old Paradigm. And

00:45:59

so another additional procedural hurdle

00:46:02

that may delay enforcement today.

00:46:05

I am looking at the

00:46:06

time and I want to

00:46:07

make sure we leave time

00:46:08

at the end for questions

00:46:09

and there are so many

00:46:10

more topics to cover. I'm

00:46:12

looking at the palace. I

00:46:13

want to make you make

00:46:14

sure we should we should

00:46:16

we say straight to public



00:46:18

policies. That would that be

00:46:19

okay if we want to

00:46:21

say a few words of

00:46:22

public policy do with you?

00:46:23

What you want to open

00:46:24

it up on the on

00:46:26

the discussion of the Mets.

00:46:28

In article 52, a few

00:46:31

sentences, you can see an

00:46:43

article 50, the convention has

00:46:50

the term public policy as

00:46:52

you all familiar with, but

00:46:53

it doesn't exactly play policy,



00:46:55

is Eliza to each jurisdiction

00:46:56

to interpret the term. To

00:47:01

interpret the term according to

00:47:03

its own legal tradition to

00:47:04

put spools and so this

00:47:06

can also lead to varying

00:47:07

interpretations across jurisdictions. It's worth

00:47:09

noting that in practice still

00:47:11

a lot of Courts across

00:47:11

the world have interpreted public

00:47:13

policy to align the concepts

00:47:16

of international public policy. And

00:47:18

so in most cases, the



00:47:20

breach of domestic law alone

00:47:21

would not be considered sufficient

00:47:22

grounds to deny enforcement award

00:47:25

in a distinction between domestic

00:47:28

and international policy. Domestic policy

00:47:31

reflects the core principles and

00:47:33

values of one specific jurisdiction.

00:47:35

Where, as soon as I

00:47:36

see you, you know, a

00:47:37

compass is only the principles

00:47:39

and values deemed essential truth,

00:47:40

which restrictions legal framework specify

00:47:45

one way or the other,



00:47:45

and so, that can create

00:47:47

some unpredictability for parties. I

00:47:50

also just want to quickly

00:47:51

add that there could be

00:47:53

a risk. Just exception could

00:47:55

be used or abused or

00:47:57

invoked as a pretext to

00:47:58

refuse enforcement on grounds. Protectionism

00:48:01

or other improper reason. So

00:48:03

there could be an argument

00:48:05

to clarify this to prevent

00:48:07

that and none of the

00:48:08

convention member states have asked



00:48:10  
you to find a policy

00:48:11  
except for Australia, the UAE.

00:48:14  
So, I'm very limited cases.

00:48:15  
You see countries actually grappling

00:48:17  
with this. So that's what

00:48:19  
I would say about that

00:48:20  
before. So for 2 to

00:48:26  
look at the language in

00:48:27  
sorry that was Article 5,

00:48:30  
right but they're under the

00:48:33  
second. Okay, about the Mets.

00:48:42  
Okay, we're good. And we

00:48:46  
wanted to see if the



00:48:47

scussion because the the met

00:48:48

in this in this article

00:48:50

has caused, let me know.

00:48:51

I don't like a lot

00:48:52

of debate and end. It,

00:48:53

it, it comes in a

00:48:54

lot of different ways, but

00:48:55

the question is one of

00:48:56

what difference should you know?

00:48:58

Of course, of secondary jurisdiction

00:49:00

gift to the courts of

00:49:01

us, the primary jurisdiction. Maybe

00:49:05

we can have made you.



00:49:08

You have have. This is

00:49:10

about where you going to

00:49:11

be talking like that. You've

00:49:12

been very patiently waiting. I

00:49:13

want you to just T

00:49:13

up the subject a little

00:49:14

bit while we tee up

00:49:16

the video and maybe you

00:49:17

can talk a little bit

00:49:18

until I seen Forrest. Hear

00:49:19

what is what is the

00:49:20

big deal with the Mets?

00:49:21

Why are we, why is



00:49:22

everybody up in arms about

00:49:23

the premise of this panel

00:49:27

is, should we revise the

00:49:28

New York convention? So when

00:49:29

you see the word met

00:49:30

that that's always asertywna hints

00:49:34

like is there is the

00:49:35

wiggle room here? May versus

00:49:37

shall generally? In a treaty

00:49:39

is is a is a

00:49:41

cause to pause and a

00:49:44

lot of what gives the

00:49:46

New York convention strength is



00:49:47

its use of the word

00:49:48

shall and makes it really,

00:49:51

you know, enforceable around the

00:49:52

world. But when it comes

00:49:54

to the use of May

00:49:56

and article 51 e f,

00:50:00

I'm seeing correctly behind me.

00:50:05

51 e is where the

00:50:08

issue of an award that

00:50:11

was set aside or an

00:50:12

old in the primary jurisdiction.

00:50:13

Being the jurisdiction where the

00:50:16

arbitration took place. And therefore,



00:50:19

the primary jurisdiction of the

00:50:22

primary source of primary jurisdiction

00:50:24

of the courts in the

00:50:25

country with the arbitration took

00:50:27

place. If those courts, or

00:50:30

if that courts and whatever

00:50:32

available appeals conclude, that the

00:50:36

award should be set aside

00:50:37

or an order or not

00:50:39

enforced, whatever the terminology maybe

00:50:42

should that be a permissive

00:50:46

basis for another Court of

00:50:49

secondary jurisdiction? In another part



00:50:51  
of the world to essentially

00:50:54  
come out the same way,

00:50:55  
as the court of primary

00:50:57  
jurisdiction or should they Exercise,

00:51:02  
their discretion, using the word

00:51:04  
may to come out differently.

00:51:07  
And so I would say

00:51:09  
generally the trend has been

00:51:11  
that where a an award

00:51:15  
has been set aside or

00:51:16  
noldor somehow not enforced in

00:51:20  
the primary jurisdiction off in.

00:51:21  
The secondary jurisdiction will give



00:51:23

a substantial amount of difference

00:51:25

to what the primary jurisdiction

00:51:27

ports, concluded serve under the

00:51:32

premise that the year that

00:51:33

they had, that the closest

00:51:35

look at it but I

00:51:37

think that any court and

00:51:42

we can discuss this further

00:51:43

in the secondary jurisdiction. You

00:51:45

know, looks at the award

00:51:47

primarily under all of the

00:51:49

components of Article 5, not

00:51:52

just 5 1 e, but



00:51:53

all you short handed, the

00:51:56

seven grounds under Article 5

00:51:57

that are bases to refuse

00:52:00

enforcement. And the discretionary option

00:52:05

in 51 G of May,

00:52:07

because it was not enforced

00:52:09

at the seat. Is sometimes

00:52:11

not honored because the reasons

00:52:15

for the set aside or

00:52:16

no mint at the seat,

00:52:18

maybe political or something very

00:52:21

unique to that jurisdiction. That

00:52:25

does not transfer and apply



00:52:27  
in the courts of the

00:52:28  
countries of a secondary jurisdiction

00:52:30  
or or anywhere outside that

00:52:33  
country. And in those were

00:52:34  
circumstances courts, have exercised, their

00:52:37  
discretion, which I'm not in

00:52:40  
favor of amending, that allows

00:52:43  
this Accord a secondary jurisdiction

00:52:44  
to come out differently. But

00:52:47  
majority is the majority of

00:52:49  
the cases actually do often,

00:52:51  
you know, results have the

00:52:54  
same results as the primary,



00:52:55

but I think that discussion

00:52:56

should be maintained. I bet

00:53:00

someone disagrees I would actually

00:53:02

be, I agree. I think

00:53:04

that was a great overview

00:53:05

and I think that there

00:53:07

is a lot of instances

00:53:08

in which having that discretionary

00:53:10

permissive language, which actually does

00:53:12

a Ford States, the ability

00:53:14

to circumvent or situations like

00:53:16

that. And I'm sure you're

00:53:18

all thinking about, there's a



00:53:20

case in the second circuit

00:53:21

call Miso vs. Timex way.

00:53:24

Actually did come into play,

00:53:25

it was very useful because

00:53:26

us courts have previously, you

00:53:30

know, recognized the potential limited

00:53:32

exception for extraordinary circumstances were

00:53:34

without friends would be repugnant

00:53:36

to you. No fundamental Notions

00:53:38

of what is decent in

00:53:39

that country. And in comiso

00:53:41

versus pemex, there was an

00:53:42

instance where it right before



00:53:43  
you ought to try doing,

00:53:44  
it was going to rule

00:53:45  
in favor of Chamisa Mexico,

00:53:47  
past two laws. That were

00:53:49  
essentially this way that the

00:53:51  
claims and soap mxr vodka

00:53:53  
tour in Mexico obtained. At

00:53:55  
the other side went to

00:53:56  
sdny and the coordinates. You

00:53:58  
know why I found that.

00:53:59  
Tell you I thought it

00:54:01  
was repugnant to the US

00:54:03  
public policy principles. It was



00:54:04

not entitled to deference the

00:54:05

second circuit affirmed that. So

00:54:07

that's one example, I think

00:54:09

the day and it was

00:54:10

maybe a looking to we're

00:54:11

having. Permissive language, could actually

00:54:13

be beneficial I put into

00:54:19

effect when we when you

00:54:20

talk about this issue, this

00:54:22

problem in May of May

00:54:24

in article 551e immediately comes

00:54:32

to mind. Also article 7

00:54:34

of the New York convention.



00:54:35

And in fact, it in,

00:54:38

in the United States at

00:54:39

least Atticus, Evan Ross, some

00:54:43

of the times and I'll

00:54:44

put Unity to recognize and

00:54:47

enforce an opposite of what

00:54:48

the heck being set aside

00:54:49

at the seed? And what

00:54:53

about then also happens? Is

00:54:56

that not necessarily? And I

00:54:58

think that was 11 interesting

00:54:59

point in this premix cases

00:55:01

where in the end it



00:55:02

says, it says that you

00:55:03

don't even need. So sometimes

00:55:05

my the question arises to

00:55:08

me while what role really

00:55:10

Place article 7. So there's

00:55:12

also a? On August 7th,

00:55:14

I need to sing Well,

00:55:18

is it is it really

00:55:19

necessary? For example, you're not

00:55:21

allowed to go 5 because

00:55:23

it's Dana Point it out

00:55:24

the mayor's probably enough that

00:55:27

some discretion local courts do



00:55:30

not have automatically mechanically the,

00:55:34

the the freedom to do

00:55:36

just reject recognition and enforcement.

00:55:39

And this is because the

00:55:42

New York, imagine at the

00:55:43

end of the day, it's

00:55:44

a pro enforcement regime. It

00:55:46

does set a sort of

00:55:47

Maximum ceiling of requirements analysis.

00:55:54

Test that the local courts.

00:55:56

Mate. I can undertake, but

00:55:58

as long as the state's

00:55:59

do anything, that is even



00:56:01

more profit ratio of the

00:56:02

other states can go and

00:56:04

I think that is, in

00:56:05

fact, very important advantage of

00:56:08

the New York convention. It's

00:56:09

it's really a little Treasure

00:56:11

of the New York invention.

00:56:12

That is Dana says we

00:56:15

should not modify and not

00:56:16

him. What is eccentricity? I

00:56:19

am, I'm still puzzled about

00:56:20

what exactly is behind article

00:56:23

7. Do we need a



00:56:24

do not need. It seems

00:56:26

that in some other countries

00:56:27

are big is 7 is

00:56:28

more heralded as more important

00:56:31

ground but in the United

00:56:34

States it seems that they

00:56:36

can get along without effect

00:56:38

upon him. A commission does

00:56:39

not have an equivalent to

00:56:41

a 97 of the New

00:56:44

York convention. Then let's maybe

00:56:46

also a subject of discussion.

00:56:50

Well, thank you for for



00:56:53

playing a little bit for

00:56:54

giving us different views and

00:56:55

night. I did promise you

00:56:56

some brain candy. So we

00:56:57

wanted to keep it up

00:56:58

with in the question of

00:57:00

you know what can we

00:57:02

we run around a little

00:57:03

bit but yes we could

00:57:04

tip the video that be

00:57:05

great and we wanted to

00:57:07

come up with a hypo

00:57:09

with everybody's favorite subject, which



00:57:12  
is AI artificial intelligence. And

00:57:15  
the reason how this sort

00:57:16  
of relates back to that

00:57:17  
is that artificial intelligence is

00:57:21  
the ability with a, i,

00:57:22  
to create the fakes. That

00:57:26  
may lead International tribunal to

00:57:28  
take a closer look into,

00:57:30  
you know, the authenticity of

00:57:32  
evidence. Then, you know, has

00:57:35  
previously been the case. So

00:57:36  
let's just pause the thought

00:57:39  
of how this relates back



00:57:40  
to the, to the New

00:57:41  
York convention and let's just

00:57:42  
bring up perfect. This is

00:57:45  
what you will see. It's,

00:57:48  
it's a video. You'll see

00:57:49  
if it's true. All fake.

00:57:51  
I hope that you can

00:57:52  
tell what it is. Otherwise,

00:57:54  
I seriously question the teaching

00:57:56  
of history in this country,

00:57:57  
but let's, let's look at

00:57:58  
it and If the moon

00:58:07  
landing, maybe you need that



00:58:08  
as contacts. There's a second

00:59:16  
part to this, just about

00:59:18  
another minute. I think it

01:00:14  
was full, but it looks

01:00:19  
pretty good. That's that's the

01:00:21  
kind of dealing with. I

01:00:22  
mean, obviously, this example is

01:00:24  
an obvious one where we

01:00:25  
can tell, but bring it

01:00:27  
back to bring it back

01:00:29  
from space and moon. After

01:00:30  
we have a second time

01:00:31  
and space later, if you're



01:00:32  
interested in the closing that

01:00:35  
Francis has come and get

01:00:36  
back to our discussion of

01:00:37  
the New York convention, right?

01:00:38  
And a particular date that

01:00:41  
the discussion off. You know

01:00:42  
that secondary course in secondary

01:00:45  
jurisdiction, what happens? If you

01:00:48  
know there, there's been creation

01:00:49  
of it of a deep

01:00:51  
fake and and it appears

01:00:54  
and in the secondary question

01:00:56  
is that How do how



01:00:59

do we, how do we

01:01:00

deal with? This is a

01:01:02

A fun little example, but

01:01:04

this might be one of

01:01:05

those, those those cases where,

01:01:06

where, you know, but I

01:01:10

brought a review by the

01:01:11

secondary core, sorry necessary, in

01:01:12

case new evidence comes up.

01:01:16

Well, I can just say

01:01:18

that I think this comes

01:01:19

up both in the context

01:01:21

of the actual arbitration itself



01:01:23  
with respect to the evidence

01:01:24  
that submitted as well as

01:01:26  
perhaps at the at the

01:01:28  
confirmation stage. If, if new

01:01:30  
evidence comes to new so-called

01:01:33  
evidence comes to life and

01:01:35  
I think that in the

01:01:37  
context of an arbitration, you

01:01:39  
know, there's been a lot

01:01:41  
said about the potential for

01:01:42  
AI to create alternative evidence,

01:01:47  
alternative facts, and who Bears

01:01:53  
the onus of finding the



01:01:56  
truth, right? And ultimately that

01:01:58  
falls on the tribunal but

01:02:00  
the tribunal is working with

01:02:02  
a limited data sets of

01:02:05  
what has been presented by

01:02:07  
the parties. And so yeah

01:02:09  
there's the potential for increasingly

01:02:12  
more disputes regarding the Genesee

01:02:16  
and authenticity of the evidence

01:02:18  
that has been submitted in

01:02:19  
the arbitration and needing to

01:02:21  
have, you know, essentially many

01:02:23  
hearings on, on, on the



01:02:26  
authenticity and validity of the

01:02:29  
evidence much more so than

01:02:31  
perhaps in the past. And

01:02:33  
as AI continues to evolve,

01:02:36  
although I think it's already

01:02:37  
evolved to the point that

01:02:39  
as we've seen in this

01:02:40  
video. I mean, it can

01:02:41  
be very persuasive, you know,

01:02:43  
it becomes in a he-said-she-said

01:02:46  
and and and how do

01:02:48  
you robustly authenticate evidence in

01:02:53  
this era of AI and



01:02:56

we will be seeing more

01:02:57

and more of that in

01:02:58

the arbitration and it in

01:03:00

the arbitration World, generally, and

01:03:03

it may lead, who knows?

01:03:05

But it may lead to

01:03:06

courts, taking a closer. Look

01:03:09

at the evidence, underlying the

01:03:12

arbitration which presumptively they are

01:03:15

not really. Do the decisions

01:03:18

by the tribunal regarding fact

01:03:20

and law, whether right or

01:03:21

wrong or supposed to be



01:03:23  
respected, generally speaking. But in

01:03:25  
this new world of a

01:03:26  
eyewear, You know, there are

01:03:32  
parallel universes of the fax.

01:03:35  
Those could be raised at

01:03:37  
any stage and that shouldn't

01:03:40  
necessarily make it a new

01:03:43  
ground or give more legitimacy

01:03:45  
to to aidanova review as

01:03:49  
opposed to a review, you

01:03:51  
know, with discretion to the

01:03:52  
the, the fact-finding by the

01:03:54  
tribunal. But we just really



01:03:55

don't know how that's going

01:03:57

to play out yet. I

01:04:03

agree with you completely fair

01:04:06

point, but but I do

01:04:08

think that Awards will increasingly

01:04:11

discuss if there has been

01:04:13

a robust debate between the

01:04:16

parties as 2072, City, or

01:04:18

in his ability of evidence

01:04:21

presented, you just When the

01:04:25

tribunal decides to rely on

01:04:27

evidence and its evidence has

01:04:30

been disputed in this context,



01:04:32  
they may elaborate more. You

01:04:34  
know, more specificity as to

01:04:36  
why they found that evidence

01:04:38  
authentic, legitimate and reliable and

01:04:41  
persuasive and hopefully that would

01:04:44  
allow a court to give

01:04:46  
the same. You know, deference

01:04:51  
or you no discretion to

01:04:54  
only address the the grounds

01:04:57  
at set off set out

01:04:58  
in the New York convention

01:04:59  
Article 5 and not create.

01:05:02  
Yet another Avenue for perhaps



01:05:04  
side litigation challenging enforcement of

01:05:08  
awards. Yeah. I mean, if

01:05:11  
I can add on, I

01:05:12  
think, I mean this is

01:05:13  
crazy because like they just

01:05:15  
said, it's constantly evolving and

01:05:17  
every single day, it seems

01:05:18  
like there's a new layer

01:05:20  
of nuance and complexity to

01:05:22  
a, I will talk to

01:05:23  
achieve. I think the Deep

01:05:24  
fakes have been around for

01:05:25  
years. But even just in



01:05:26  
the first year, since Chief

01:05:28  
ET came about, we had

01:05:29  
liked songs being created using

01:05:31  
the voices of current singers.

01:05:33  
We've had entire screenplays and

01:05:36  
TV shows being written by

01:05:37  
the South Park episode us

01:05:40  
until you ridden by jockey

01:05:41  
Petey. So I think that

01:05:43  
like, you know, as the

01:05:44  
years go by or months

01:05:46  
weeks, go by every species

01:05:48  
shoes developments in this fear.



01:05:49

And so will be inevitable.

01:05:50

I think I gained alluded

01:05:52

to that a. I will

01:05:53

be an integral assess in

01:05:56

legal practice in arbitration. I

01:05:58

personally feel sorry. I personally

01:06:01

feel that the fear of

01:06:02

AI is a little overblown.

01:06:04

I think that it's sort

01:06:06

of like the oven up

01:06:07

the calculator and how that

01:06:08

affected math, right? So Didn't

01:06:11

totally annihilate, the practice of



01:06:13

order filled out that Maddox

01:06:15

is actually just enhanced it

01:06:16

or ways to you know

01:06:18

you had to find ways

01:06:18

to get around cheating and

01:06:19

what not but their ways

01:06:20

to become more complex and

01:06:22

more later in that field.

01:06:23

How do you likewise for

01:06:24

arbitration to? I mean, we've

01:06:26

always had issues with falsification

01:06:29

of evidence of, you know,

01:06:30

fabricated evidence deepfakes. And so



01:06:33

I don't know if inside

01:06:34

your question tomorrow that you

01:06:35

are alluding to is that

01:06:36

should we be adding on

01:06:39

to the New York convention

01:06:39

to put her? I say,

01:06:41

I I think that you'll

01:06:43

defining and proving that an

01:06:46

arbitral award was impacted by

01:06:48

AI generated by AI. It's

01:06:50

a very technical technically challenging

01:06:53

context-dependent process. And I don't

01:06:55

know if you don't because



01:06:56  
the technology is evolving, so

01:06:58  
rapidly. I don't know if

01:07:00  
I'm betting specific Newgrounds into

01:07:02  
the convention with that silly

01:07:03  
help. And if anything, ironically

01:07:05  
enough, it could be outdated

01:07:07  
because of how constantly evolving

01:07:09  
this this technology is And

01:07:12  
we also have in the

01:07:13  
New York convention things like

01:07:14  
Article 5 to be, which

01:07:17  
some view, as a catch-all

01:07:18  
in a cautious way, which



01:07:20

could be used to address

01:07:21

things, like fabricated evidence in

01:07:24

a i a divorce in

01:07:25

stage and so those are

01:07:28

my two cents there an

01:07:35

interesting discussion generators generator question

01:07:38

for me. What do you

01:07:40

think should be? Then maybe

01:07:42

include the provision like sort

01:07:45

of a sanction two parties

01:07:47

that you say I to

01:07:48

create fake sin. They are

01:07:50

arbitrations. And I'm asking this



01:07:52

because I will be concerned

01:07:55

about the costs. Also, so

01:07:57

if, if in the future

01:07:58

as you're saying, it's a

01:08:03

party may use AI to

01:08:05

generate evidence or to modify

01:08:08

documents. That could be used

01:08:09

as evidence and and the

01:08:11

other party was would use

01:08:12

a. I I would have

01:08:14

to use is actually at

01:08:15

the end of the day,

01:08:16

in order to be able



01:08:17  
to defend itself and to

01:08:18  
identify these situations. But it's

01:08:21  
just a long time, so

01:08:23  
much information. How are you

01:08:24  
going to go through it

01:08:25  
in order to to assess

01:08:26  
whether there may be a

01:08:27  
risk and some documents are

01:08:29  
some some sources of that.

01:08:31  
So that this has a

01:08:32  
very important Financial implication as

01:08:35  
well. And I have really

01:08:39  
thought about this but maybe



01:08:41

a potential revision of the

01:08:43

New York Mets, you should

01:08:44

look into that and look

01:08:45

into the financial implications. This

01:08:47

all has for the parties

01:08:48

and try to protect the

01:08:49

party so that they can

01:08:50

trust worthy or that they

01:08:52

have trust in using Arbitration

01:08:55

transnational esm eken, ISM, to

01:08:57

do that is because of

01:08:59

you. The sanctions of a

01:09:05

word that's rarely used in



01:09:08

the context of an actual

01:09:09

arbitration much more. So in

01:09:12

court or and in other

01:09:15

Realms, leave it there. But

01:09:17

the, the one mechanism that

01:09:19

I think is used that

01:09:20

is sometimes I defacto sanction

01:09:24

is when you get to

01:09:27

the cost of Ward and

01:09:29

the cost of a proceeding

01:09:32

with respect to the authenticity

01:09:35

of evidence, that could be

01:09:37

something that a tribunal could



01:09:38

take into account. That said,

01:09:41

if there are competing Drone

01:09:45

footage of the site, are

01:09:48

we really going to go

01:09:49

back to the expense of

01:09:51

having the tribunal do a

01:09:53

physical site visit because It's

01:09:57

impossible to determine which Drone

01:10:01

footage, is the more reliable

01:10:04

one. What do you do

01:10:06

in that circumstance? And and

01:10:09

I guess expert testimony on

01:10:11

the reliability is it will



01:10:13

be expensive. But is what's

01:10:15

the best evidence that question

01:10:17

is going to come up

01:10:17

more and more when you

01:10:19

have competing evidence created. However,

01:10:23

it may have been through

01:10:26

the use of artificial intelligence

01:10:27

or just technology, you know,

01:10:29

technology has been an asset

01:10:31

and almost every aspect of

01:10:32

business, including arbitration, but there

01:10:35

are dangers. And now we're

01:10:37

dealing very much with the



01:10:38  
dangers of technology in the

01:10:41  
context of arbitration. Maybe that's

01:10:45  
a really good point to

01:10:47  
for now pause because we

01:10:50  
are running up on our

01:10:51  
time. There's so many more

01:10:52  
things have been covered. We

01:10:53  
could spend another 4 hours

01:10:54  
and public policy alone, week

01:10:56  
covered provisional measures a lot

01:10:58  
of other things, but we

01:11:00  
have one minute left and

01:11:02  
there are a lot of



01:11:02  
time to have a little

01:11:03  
bit of wiggle room. If

01:11:04  
there are any questions in

01:11:06  
the audience, also, look at

01:11:07  
the chat, but please feel

01:11:09  
free to I'll probably have

01:11:13  
to repeat it back. Sorry.

01:11:14  
So keep it brief. So

01:11:16  
I can repeat it back

01:11:17  
section on a I get

01:11:25  
the New York inventions. Actually.

01:11:26  
The right then you took

01:11:28  
the dress that it would



01:11:29  
seem to me that the

01:11:29  
rules and orders is actually

01:11:33  
the right behind you. If

01:11:34  
there are already in place

01:11:36  
to address the tribunals analysis

01:11:38  
of operation of a, I

01:11:39  
have it. Thank you for

01:11:46  
the New York convention is

01:11:49  
the right then your place

01:11:51  
to address questions of AI

01:11:52  
and whether the rules or

01:11:53  
procedural, orders broad discretion of

01:11:56  
the arbitrator's, there might be



01:11:57

a better better, place a

01:11:58

deal with it. I think

01:12:00

I think that's a very

01:12:01

good point and I do

01:12:02

think that the context of

01:12:04

the arbitration procedural orders were

01:12:07

the procedures agreed upon with

01:12:09

respect to evidence and and

01:12:10

and everything. With respect to,

01:12:12

the arbitration is a better

01:12:13

place to address these issues,

01:12:15

then an amendment to the

01:12:17

New York convention, which is



01:12:19

one of the, you know,

01:12:21

arguably best drafted conventions, we

01:12:23

have. And this is an

01:12:25

evolving topic that is very

01:12:27

hard to legislate or or

01:12:30

deal with it in a

01:12:31

treaty form, but the procedural

01:12:34

orders can and I think

01:12:36

increasingly will address how evidentiary

01:12:41

issues are handled. When it

01:12:43

comes to weather has a

01:12:46

eye or other integrity and

01:12:48

authenticity issues much more so



01:12:50

than perhaps in the past.

01:12:52

So, it's true. However, taking

01:12:59

also the, the parallelism to

01:13:02

the discussion about corrupt and

01:13:04

arbitration. Just another topic that

01:13:06

we haven't really touched upon

01:13:08

extensively but it's also and

01:13:10

the room in in in

01:13:13

some recognition enforcement proceedings and

01:13:15

allegations of corruption emerged and

01:13:19

sorrowful Realty gate before the

01:13:22

enforcement Corps and and could

01:13:29

lead to rejection of recognition



01:13:30  
and enforcement or and then

01:13:34  
if it's at the seat,

01:13:35  
it would be back at

01:13:37  
all setting aside of the

01:13:39  
arbitral award and I saw

01:13:41  
the fear that with artificial

01:13:44  
intelligence in the future may

01:13:46  
also arise desoto's of of

01:13:49  
situations as well. And of

01:13:50  
course, if I M Tribune,

01:13:56  
What happens if that boss

01:13:57  
today or was not detected

01:14:00  
at the time. And so



01:14:02

then in recognition for Smart

01:14:03

in may also arise and

01:14:05

with corruption allegations at least

01:14:07

I think there is some

01:14:09

some discussion in the community

01:14:11

about how far local courts

01:14:13

than can effectively reopen this

01:14:16

discussion and apply their standards

01:14:18

to this analysis. Previously even

01:14:21

by the arbitral tribunal boss

01:14:22

address to some extent and

01:14:24

really difficult discussions that in

01:14:29

a hypothetical revision of the



01:14:31

New York. Imagine they should

01:14:32

definitely at least to some

01:14:34

extent be part of the

01:14:35

consideration. Nice. I like a

01:14:38

little color I think that's

01:14:39

a very good question and

01:14:40

I think that we can

01:14:41

see how us courts have

01:14:44

been handling it too as

01:14:45

a sort of parallel there.

01:14:47

And you see that in

01:14:48

like the Northern District of

01:14:49

Texas International Court of trade.



01:14:51

There are Judges, who have

01:14:52

issued procedural, guidance on a.

01:14:55

I and that's what is

01:14:56

one way that they've been

01:14:57

handling. So I think I

01:14:58

could be one way of

01:14:59

going about it. Given how

01:15:01

fast is evolving? How you

01:15:03

know, Alex mentioned earlier like

01:15:04

the inertial? It comes to

01:15:06

changing treaty sometimes. So yeah,

01:15:08

I can ask a question.

01:15:14

Yeah. And just even though



01:15:15  
it's not spelled out in

01:15:16  
the New York convention at

01:15:18  
least in in US courts,

01:15:20  
if a party didn't raise

01:15:22  
a complaint in the arbitration

01:15:23  
that they're generally held to

01:15:25  
a wave that in the

01:15:26  
contrave it, at wave, it

01:15:27  
in the end. They are

01:15:28  
confirmation proceedings. I'd like to

01:15:31  
maybe close with an anecdote

01:15:32  
on this. John John Townsend.

01:15:34  
And I did a case



01:15:36  
once where the never responded

01:15:39  
yet serve with arbitration papers.

01:15:40  
And it's like, okay, who

01:15:43  
who to the claim of

01:15:43  
the, who are you? I've

01:15:44  
I've never heard of you.

01:15:45  
This contract is a complete

01:15:47  
forgery. What is this? And

01:15:48  
that the claimant, then I'm

01:15:50  
produces a video of the

01:15:52  
contract signing because of the

01:15:55  
disease. Are all contract signings

01:15:58  
done on video for a



01:15:59  
garden-variety commercial disputes, and it

01:16:02  
emerged that the person on

01:16:04  
the video who look like

01:16:05  
the CEO of the respondents

01:16:06  
signing. The contract was an

01:16:08  
imposter wearing a silicone mask

01:16:11  
think so, but as the

01:16:15  
other than the cost of

01:16:17  
War, do you couldn't do

01:16:18  
it give the sanctions that

01:16:19  
that the the forager deserved

01:16:22  
so that was like a

01:16:27  
precursor to a I face.



01:16:28

So the system was resilient

01:16:30

on and I have confidence

01:16:31

that, you know, it'll be

01:16:32

resilient to take whatever technological

01:16:35

advances throw at it. Thanks

01:16:37

for sharing that were surrounded

01:16:39

by something. We need to

01:16:44

repeat next year either. Repeat

01:16:47

the pain. And I want

01:16:48

to see that video. Exactly.

01:17:04

Is already giving me like

01:17:05

that. Cuz at 2:30 we

01:17:07

have another fantastic panel on



01:17:10

Aviation and space dust you.

01:17:12

So we can stay with

01:17:13

topics of space to stick

01:17:14

around if you liked it

01:17:15

even if he doesn't sign

01:17:16

up, it doesn't matter. We

01:17:17

won't tell anyone. I know

01:17:18

that we have not a

01:17:19

question but I am also

01:17:20

getting a little bit of

01:17:21

pressure here. So I invite

01:17:22

everybody. We still have questions

01:17:23

and I apologize for the



01:17:25  
online participants. All of these

01:17:27  
people have online profiles. The

01:17:29  
good thing I said, you

01:17:30  
can send questions to them

01:17:31  
and the good thing for

01:17:33  
the people who are here

01:17:34  
in the room, please, feel

01:17:35  
free to just grab them

01:17:36  
and have a Either coffee

01:17:37  
or drink and ask it

01:17:39  
questions and apologies that can

01:17:40  
take more questions. Thank you

01:17:41  
all for your participation. Either



01:17:37  
coffee or drink and ask

01:17:39  
it questions and apologies that

01:17:40  
can take more questions. Thank

01:17:41  
you all for your participation.