

UNCITRAL Working Group III and Fragmentation of ISDS *

Summary

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

The session on September 30, 2022, at the World Arbitration Update featured discussions on the evolving landscape of international arbitration, particularly focusing on investor-state dispute settlement (ISDS) reforms. Ian Laird, co-chair of the event, emphasized the conference's goal of providing an accessible platform for sharing developments in international arbitration, highlighting the diversity of participants and topics covered throughout the week.

Dr. Jose Antonio Rivas introduced the panel, which included experts such as Margie Lisa, Anna Maria Ricci, and Lauren Mandell, who brought various perspectives from academia, government, and private practice. The panel centered on the ongoing discussions within the UN's Working Group 3 regarding ISDS reform, addressing concerns about the system's effectiveness and the need for modernization.

Key topics included the potential establishment of a multilateral investment court, the appointment and conduct of tribunal members, and the management of costs associated with arbitration. The panelists discussed the importance of developing a coherent framework to avoid fragmentation in the system, with references to the need for a code of conduct for arbitrators and the implications of third-party funding.

The discussions underscored the complexities of achieving consensus among diverse stakeholders, with a particular focus on the challenges of reforming procedural and substantive elements of ISDS. The panel concluded with a call for continued dialogue and collaboration among participants to navigate the intricacies of international investment law and to ensure that proposed reforms enhance the effectiveness and fairness of the arbitration process.

Authors

Margie-Lys Jaime, Maria Lucia Casas, Anna Joubin-Bret, Mairee Uran Bidegain, Katerina Florou, Lauren Mandell

Topics

UNCITRAL



Category

WAU

Full Transcript

00:00:01

Welcome everybody to World arbitration

00:00:05

update. It's day, 5 September

00:00:09

30th 2022. We're very pleased

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to offer you. This is

00:00:13

our second world arbitration update.

00:00:17

It's been a fantastic week.

00:00:19

We've had I think over

00:00:22

15 panels already a huge

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variety of topics, some great

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people presenting and so thank

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you to all of our

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moderators and presenters. It's it's

00:00:36

just being a great weekend

00:00:38

today. Should should be a

00:00:39

nice cherry on the icing,

00:00:42

on the cake cherry on

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the sundae of however you

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want to say it and

00:00:46

before I get to today's

00:00:49

panel, I just want to

00:00:51

cover a few administrative matters.

00:00:53

First is to thank our

00:00:56

sponsors we couldn't have done

00:00:59

this. Prince without them. They've

00:01:03

been incredibly supportive and we

00:01:05

need to give them full.

00:01:07

Thanks for all their contributions.

00:01:10

We have also, great group

00:01:12

of supporters, we've listed them

00:01:15

on our website. And of

00:01:16

course, our Advisory board has

00:01:18

played a critical role in

00:01:20

shaping our panels and the

00:01:23

overall conference this year and

00:01:25

we're very grateful to them.

00:01:26

I guess I should introduce

00:01:29

myself. My name is Ian

00:01:30

Laird, I'm partner at Crowell

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& moring here in Washington.

00:01:35

D.c. I'm co-chair of world,

00:01:39

arbitration update along with my

00:01:41

colleague, dr. Jose Antonio Rivas.

00:01:44

And a doctor Revis, will

00:01:46

take us into the session

00:01:48

before that. I just wanted

00:01:51

to talk a little bit

00:01:52

about world arbitration update and

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I'm kind of the objectives

00:01:57

that we've sought to meet.

00:02:01

In creating this Khan conference

00:02:03

in, in the first objective

00:02:05

is, of course to provide

00:02:06

very accessible open forum for

00:02:09

the reporting of new developments

00:02:12

in international arbitration. The virtual

00:02:17

method which is grown up

00:02:18

over the last few years

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with a pandemic. And so

00:02:21

forth, has become a great

00:02:23

means to connect to the

00:02:25

international arbitration community. And also,

00:02:29

if it's played help to

00:02:31

play another role in. And

00:02:32

one of the key objectives

00:02:33

of wow, is to reflect

00:02:36

the full diversity, an incredibly

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varied nature of the international

00:02:44

arbitration Community. One might think

00:02:47

that International arbitration only occurs

00:02:49

in New York or Paris.

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But in fact, the practitioners

00:02:53

and that the people involved

00:02:55

in the international arbitration World

00:02:57

hail from every corner of

00:02:58

the planet. Every country ever,

00:03:01

Regent and we've sought to

00:03:04

reflect that in the way

00:03:05

we structured there the last

00:03:06

5 Days by having panels

00:03:08

and individuals from every part

00:03:11

of the of the planet

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and to fully reflect the

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incredibly diverse nature of international

00:03:17

arbitration. We thought that was

00:03:20

very important to to create

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a conference that very much

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celebrates that diversity, today's panel.

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It is one that really

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goes to the heart of.

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I think the, the Mandate

00:03:33

update folks on developments in

00:03:37

international arbitration. Some of the

00:03:39

biggest development have been occurring

00:03:40

in the investor-state arbitration World.

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We've seen new rules, promulgated

00:03:48

at exit and will have

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a panel at noon today

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DC time. So looking forward

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to that, but also we

00:03:53

seen an incredible output of

00:03:55

activity and energy and Innovation

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occurring, atoms, a Troll and

00:04:01

Toad. These panels will be

00:04:03

looking at that those developed.

00:04:05

So, before I pass over

00:04:07

to Jose Antonio, I just

00:04:08

wanted to reflect on the

00:04:10

incredible work done by its

00:04:12

strategy and Anna Maria. Anna

00:04:16

and Maria Ricci in particular

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for their incredible support and

00:04:21

hard work and making the

00:04:22

conference. The success it is

00:04:25

that without them, that I

00:04:26

absolutely wouldn't, wouldn't wouldn't happen.

00:04:29

So full, full of congratulations

00:04:31

and combinations to them. So

00:04:34

on that note, I just

00:04:35

want to pass it over

00:04:36

to Jose Antonio and will

00:04:38

launch ourselves into this fantastic

00:04:40

panel. Jose Antonio, Thank you,

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Ian. And he was as

00:04:45

a as indicated previously panels

00:04:48

did. This is a team

00:04:50

sport and and the word

00:04:51

we re I'm on break

00:04:53

glad that we're partnering with

00:04:57

you and in this business

00:05:00

venture that that is for

00:05:01

2 to eject. This one

00:05:04

is to update on issues

00:05:05

of public, international law, investment

00:05:07

arbitration and international commercial arbitration

00:05:09

and two is to decentralize

00:05:11

International arbitration. And and that

00:05:14

what? You know what? What

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other better Tunnels in Denton

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that done this. I mean

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this this this is the

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heart of the discussions of

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the investor-state arbitration or dispute

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settlement system on speaker, group

00:05:31

3 discussions in, in this

00:05:33

panel, we have. And I

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am that, this is part

00:05:36
of the job of offer,

00:05:37
our incredible moderator, Margie Lisa,

00:05:41
and Jaime, a butt. But

00:05:42
I cannot stop myself saying

00:05:46
how, how glad I am

00:05:48
having another vampire also YouTube!

00:05:54
Wow! I got the reindeer

00:05:57
from from academic perspective, given

00:06:00
her her writings on on,

00:06:02
on the subject of public

00:06:06
international law and multiple treaties

00:06:13
or purpura lateral treaties and,

00:06:15
and how The investor-state arbitration

00:06:21

system, plus make a mocha

00:06:24

latte Industrial Court. My my

00:06:26

lead to some level of

00:06:27

fragmentation to have Lauren as

00:06:31

well. Lauren model from the

00:06:33

perspective of the reviews that

00:06:38

that possibly Chambers of Commerce

00:06:42

and businesses. In an investigation,

00:06:45

might have Margie. And and,

00:06:49

and of course, my Lucia,

00:06:50

who will be the president

00:06:52

to a butt butt saying

00:06:54

that, let me emphasize and

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I'm presented. Our moderator. Margulis

00:07:01

Jaime is is is senior

00:07:04

adviser at the ministry of

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offer of economy of the

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Republic of Panama and she

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is the the representative of

00:07:13

a stroke. Group three meetings

00:07:18

and she is basically the

00:07:21

presence of a investor-state arbitration

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and I'm sure the future

00:07:25

for the Republic of Panama.

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We are very, very glad

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and to have a Margie

00:07:32

here for many reasons. Not

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only because of her or

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post but also because of

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her background and you'll see

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what I mean, she has

00:07:42

a Ph.D. She's a fellow

00:07:45

of the chartered Institute of

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arbitrators is a professor of

00:07:48

law at the University of

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the Panama. And she has

00:07:52

been acting as a Consulting,

00:07:54

an expert in commercial trade

00:07:56

and investment matters, or practice

00:07:58

has included International Education, Maritime

00:08:02

disputes, commercial arbitration investor-state dispute,

00:08:05

an international trade, she received

00:08:08

her PhD and at 11

00:08:10

International economic Affairs, law from

00:08:12

Universiti divider, I saw it

00:08:18

and I'll let me know.

00:08:19

Patricia 9 international business law

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from the University of Ty.

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She also has an llm

00:08:26

in international business and economic

00:08:29

law and from Georgetown University

00:08:33

mild soap. So she really

00:08:37

somewhat. But somebody who from

00:08:39
practice academic and and and

00:08:42
and life experience can share

00:08:45
a lot, Margie will not

00:08:48
only be at the moderator.

00:08:49
She will also be providing

00:08:51
commentary substantive commentary so she

00:08:55
will be playing at both

00:08:56
Rose and I were very

00:08:59
glad to take this off.

00:09:00
As you know this this

00:09:04
session will be recorded. I

00:09:07
am now authorized by our

00:09:09
developer and also partner in

00:09:13

this venture. Optica 2 to

00:09:19

announce that, we will be

00:09:21

not only recording all the

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panels, but in the near

00:09:25

future, hopefully before the 10th

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of October, will be able

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to, or you will be

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able to look at the

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videos, but also charms hurt

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them, or a researchers or,

00:09:36

or everyone. So, normally, it's

00:09:39

kind of boring to go

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to a website on on

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c 2, hours of a

00:09:43

video, but now you can

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go right where you want.

00:09:46

So, with that said, welcome

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everyone and take it away.

00:09:55

Thank you, cousin, Tonio. And

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I would like to start

00:09:59

by thanking the organizers and

00:10:05

this wonderful week vacation update

00:10:09

is really an honor to

00:10:11

participate for the second time

00:10:13

to the station. So our

00:10:18

sessions 3 and fragmentation of

00:10:23

isps and I hope that

00:10:26
is going to be a

00:10:27
very Dynamic. And turbocat, the

00:10:31
4-0 loss to u.s. nation

00:10:38
is going to be our

00:10:41
prayer Center. So she will

00:10:43
provide a general overview of

00:10:46
where she is at work

00:10:51
and energy. An Energy Efficiency

00:10:56
regulation. She is currently senior

00:11:00
associate of arbitration and international

00:11:02
law strategy in the United

00:11:07
States and Colombia. And she

00:11:09
sounds like she's a professor

00:11:11

of International University of el

00:11:15

Rosario, and coach of the

00:11:17

word competition of the University.

00:11:23

We're going to have that.

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It's going to discuss issues

00:11:33

related to our discussions in

00:11:36

working with three and we'll

00:11:39

start with an R that

00:11:43

she asked. Everybody knows a

00:11:46

secretary of the United Nations

00:11:49

Commission of international trade, Office

00:11:57

of legal, Affairs of the

00:11:59

united nation, which functions as

00:12:02

a secretary for appointment on

00:12:09

24th November. 2017, I'm not

00:12:14

practice law. In Paris and

00:12:18

investment between a resolution to

00:12:23

focus on serving as Council

00:12:26

leader and consolor International Investment

00:12:30

in Rio, 2011, and for

00:12:34

15 years. On our way

00:12:36

to the senior legal advisor

00:12:38

for the United Nations conference

00:12:41

on trade and development degree.

00:12:47

In the private international law

00:12:49

for a master's degree in

00:12:55

international economic and political science

00:13:01

from The Institute. Then we

00:13:07

will have also learned man

00:13:10

do his counsel in the

00:13:13

international trade and International Education

00:13:16

groups At Whitman Hill in

00:13:19

Washington DC in practice as

00:13:22

over in-state investor-state. Dispute settlement.

00:13:27

In addition to a bison

00:13:30

on investment treaty negotiations. And

00:13:33

prior to joining Ask US

00:13:38

government. Most recently, as the

00:13:42

deputy assistant of the US

00:13:44

trade representative for investment depreciable,

00:13:48

advisors to the US trade

00:13:50

representative for an investment loan.

00:13:54

Today, I learned represent the

00:13:57

US Council for International Business.

00:14:01

In the US is an

00:14:07

association of international companies from

00:14:10

every sector of the economy,

00:14:12

dedicated to promoting international trade

00:14:15

and investment. And last but

00:14:18

not least, I will have

00:14:20

a letter in international economic

00:14:28

law at the University of

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Liverpool cheese. Also an adjunct

00:14:32

assistant. Professor of international law

00:14:35

at the Fletcher School of

00:14:37

Law and diplomacy and the

00:14:41

general editor of the Journal

00:14:43

of the word energy, law

00:14:45

and business before, doing it

00:14:47

for several years as a

00:14:52

legal at the energy detector

00:14:57

eight of the week in

00:14:58

Tunisia, as she starts being,

00:15:01

a consultant development Academy, International

00:15:16

International Investment law and International

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Energy on us and International

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Energy negotiator so we have

00:15:35

I know expert on the

00:15:38

topic. So apple and now

00:15:41

the time is passing, and

00:15:45

we'll start with. Who is

00:15:49

going to be a presentation

00:15:52

of working retreat. Thank you,

00:15:57

Marty. Thank you for the

00:15:58

kind introduction on a. Thank

00:16:01

you to Jose Antonio for

00:16:02

inviting me. It is a

00:16:04

real pleasure to hear. Otherwise

00:16:06

they are the wall, and

00:16:08

of course, to be sharing

00:16:09

this panel together with Margie

00:16:11

Anna, Lauren and a Katrina,

00:16:13

I must admit that it

00:16:15

is a heavy for a

00:16:17

presentation of all of you.

00:16:19

But I'll do my doodoo,

00:16:22

a great update of this

00:16:24

Hot Topic. So we'll just

00:16:27

start with the first thing

00:16:29

that I would like to

00:16:30

mention is that investor-state arbitration

00:16:32

and of course is Diaz.

00:16:35

Reform is one of those

00:16:36

hard topics that are currently

00:16:38

being discussed in many parts.

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Particularly of course, the fact

00:16:42

that stakeholders and uses users

00:16:45

of the system in the

00:16:47

recent years have been identifying

00:16:49

some short vowels that have

00:16:51

made them rethink the system

00:16:53

and consider whether there is

00:16:55

a need to renovate or

00:16:57

to reform reform the system

00:16:59

as it is conceived it

00:17:01

today. So some of the

00:17:03

questions today are in everyone's

00:17:06

mind is whether is dies.

00:17:08

He's going to the right

00:17:09

direction or whether the creation

00:17:13

of a multilateral investment sport

00:17:15

or an appeal mechanism is

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Justified. And of course, even

00:17:20

this may be the that

00:17:21

cost of an investment arbitration

00:17:23

as we know it today

00:17:26

So you in the past

00:17:27

few years, I'm to be

00:17:28

exact. It was in Meet

00:17:30

2017. The world has been

00:17:33

witnessing. The investor-state dispute settlement

00:17:36

reform debate on their the

00:17:40

agencies of the United Nations

00:17:42

Commission on International Trade, law

00:17:44

more known as using drugs.

00:17:47

And as some of you

00:17:48

may know this discussion, of

00:17:50

course, it started when they

00:17:52

use it real and thrusts

00:17:54

its World working group 3,

00:17:56

with a broad, mandate to

00:17:59

work, and to the Livery

00:18:01

on the possible, multilateral response

00:18:04

of the system. So these

00:18:06

deliberations of course are taking

00:18:08

place based on many things

00:18:11

or many issues. First of

00:18:13

course concerns that have been

00:18:15

identified of the system. And

00:18:18

of course also a by

00:18:20

the fact that some countries

00:18:21

and regions on nowadays are

00:18:24

developing a new approach. Dispute

00:18:27

settlement on freeze. Dance are

00:18:30

also examining other options for

00:18:33

dispute prevention. And it also

00:18:35

trying to negotiate alternative types

00:18:39
of bilateral investment, treaties, or

00:18:42
even renegotiating or trying to

00:18:44
terminate its existence in best

00:18:47
International Investment agreements. And of

00:18:48
course, you might know that

00:18:50
this is happened in within

00:18:52
the European Union after Acme.

00:18:55
Do the working group of

00:18:56
three by discharging this, man,

00:19:00
the musical it has really

00:19:03
ensured that the devil. Deliberation

00:19:06
some discussions are taking place,

00:19:08
well, of course, benefits from

00:19:10

the widest possible breed of

00:19:13

a bailable expertise from all

00:19:14

stakeholders, they have been leading

00:19:17

by, of course, government. And

00:19:19

of course, they have been

00:19:20

doing so it within consensus-based,

00:19:24

which is, of course, the

00:19:25

more the more important in

00:19:27

his puke settlement system, investor-state

00:19:31

arbitration dispute, settlement East So,

00:19:35

well, on the understanding the

00:19:37

those possible reforms that are

00:19:40

being discussed and of course,

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will be the topic of

00:19:43

this panel will be made

00:19:46

applicable to existen International Investment

00:19:49

agreements. I believe it is

00:19:50

important to a pudding to

00:19:54

the table or to bring

00:19:56

him to the participants attentions.

00:19:58

Some of the statistics of

00:20:00

The Boondocks that established that

00:20:02

nowadays we have more than

00:20:04

a 3300x system in bed,

00:20:08

International Investment agreements a having

00:20:11

two thousand and almost 500

00:20:14

International Investment agreements Imports. Whether

00:20:17

there are bips or other

00:20:19

treaties, of course, we'd investment

00:20:21

a protection. So now entering

00:20:24

into the subject, matter of

00:20:26

this panel. So we tried

00:20:28

there before my options are

00:20:30

being considered part by the

00:20:32

working group 3. So we

00:20:34

have like big topics and,

00:20:36

of course, subtopics that are

00:20:38

developed in in each of

00:20:40

these, a big topics. So

00:20:42

I suffer stopping, we have

00:20:43

dispute prevention and mitigation, and

00:20:46

means of alternative dispute resolution

00:20:47

year. On some topics, we

00:20:50

can find an issues regarding

00:20:54

extraction of local remedies procedures

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to address the claims of

00:21:00

course country claims which is

00:21:02

always a very interest interesting

00:21:04

topic. As point we have

00:21:07

the selection and appointment of

00:21:09

isds tribunal members And here

00:21:12

we can find discussions regarding

00:21:15

the code of conduct, which

00:21:17

we will be discussing that

00:21:20

today. And, of course, those

00:21:23

issues regarding member selection, appointment

00:21:25

done and challenges, we also

00:21:27

have issues regarding cost management.

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Unrelated procedures, of course, third-party

00:21:33

funding which is always a

00:21:34

Hot Topic on the sessions

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of the establishment of community

00:21:39

center, which I really want

00:21:42

a very interesting and a

00:21:45

potential reform. The last do

00:21:48

with your scores are the

00:21:50

the more discussed in the

00:21:54

in the international a scenario.

00:21:55

We have a suggestion and

00:22:00

of course, I moved electrical

00:22:01

permit in the Sun. So

00:22:05

the last working session of

00:22:07

the working group 3 was

00:22:09

held two weeks ago. So

00:22:11

this panel, of course, he's

00:22:13

very pregnant ladies. Very recently,

00:22:18

it was between September 5th

00:22:20

and September 16th and it

00:22:23

was very exciting, of course,

00:22:24

because it was the first

00:22:25

team person meeting since the

00:22:27

start of the from them,

00:22:28

just to give you like,

00:22:30

an understanding on how it

00:22:32

work discussion. And in this

00:22:35

location also delegates, a were

00:22:38

able to listen to session

00:22:40

remove the only intervene with

00:22:43

Commons, if they were attending

00:22:45

the station in person. So

00:22:48

well as to the topics

00:22:49

that were discussed and of

00:22:52

course this is going to

00:22:53

be the mother of this

00:22:56

panel. We have the following

00:22:58

topics. First we have the

00:23:00

standing of the lateral mechanism

00:23:02

where where we can find

00:23:05

the issues regarding selection and

00:23:07

appointment of is this tribunal

00:23:09

members and related matters. We

00:23:12

also have multilateral instrument of

00:23:14

isds Reform, we also have

00:23:17

a those procedural rules and

00:23:19

cross-cutting issues where we can

00:23:21

find the issues regarding our

00:23:23

location. Last concert teams there

00:23:25

by funding an assessment of

00:23:27

Damages, which is very important

00:23:29

topic and it is my

00:23:31

understanding that regarding this topic,

00:23:33

they have a way forward

00:23:36

to work on a draft

00:23:37

text that will include some

00:23:39

professional guidelines, an explanatory notes

00:23:42

on issues such as a

00:23:44

speculative statement requirements by Iration.

00:23:47

But such as the use

00:23:49

of DCF experts on Coors

00:23:57

the proper evaluation, they regard

00:23:59

a proposal work interest rate

00:24:02

soup topics. As I mentioned,

00:24:07

before we have third-party funding

00:24:09

and some of these structures

00:24:10

that have been given to

00:24:11

the secret area on this

00:24:13

issue, is to prepare provisions

00:24:15

on, on some categories such

00:24:21

as to provide a broad

00:24:22

definition of what is there

00:24:24

by phone. So you can

00:24:25

ensure like an adequate disclosure

00:24:27

on, of course, a boy

00:24:29

with this any potential conflict

00:24:32
of interest. Also think through

00:24:34
the permit is Brule a

00:24:36
word by third-party funding will

00:24:39
be generally allowed, but this

00:24:41
will be a limited by

00:24:43
some conditions on the specific

00:24:45
terms of of the funding.

00:24:47
Such as a tool to

00:24:50
be to clarify, that the

00:24:51
third party founder or its

00:24:53
Representatives, must not have control

00:24:56
or influence over the management

00:24:57
of the claim. On the

00:24:59

death are performing, more must

00:25:01

refrain to choose, and to

00:25:04

be representative by its own

00:25:07

legal, a representative, which of

00:25:09

course, these are issues, there

00:25:11

are always some people that

00:25:14

work in the industry. But

00:25:15

of course there is a

00:25:16

need to clarify if the

00:25:19

suspects have to have like

00:25:20

a two-year-old on that and

00:25:22

we also have some discussions

00:25:24

about draft provision and guidelines

00:25:26

on investment mediation, the code

00:25:28

of conduct as a measure

00:25:29

before. And lastly device recent

00:25:32

3 which I think it

00:25:33

is a very interesting proposition.

00:25:35

But of course 360 like

00:25:37

meet to Define clearly the

00:25:39

scope of the services who

00:25:41

will be the beneficiaries it,

00:25:43

where it will be 4

00:25:45

Less developed countries develop in

00:25:47

space. Dora states with limited

00:25:49

experience investor-state arbitration disputes weather.

00:25:54

I mean which conflict of

00:25:57

interest may arise truck throws.

00:26:00

Its location. Of course on

00:26:02

cost and Finance in which

00:26:04

case I think one of

00:26:06

the great issues on on

00:26:08

this reform how we are

00:26:11

going to finance all these

00:26:13

these ideas behind the telescope.

00:26:15

So as you can see,

00:26:17

of course this is a

00:26:18

very ambitious process, one wish

00:26:22

her, but at least we'll

00:26:23

die deeper into a few

00:26:25

moments. So, I think we

00:26:27

thought and of course, it

00:26:30

taking into account, the time,

00:26:31

I'll do the floor to

00:26:32

Marty on to the experts

00:26:34

that will Enlighten you about

00:26:36

the discussions that took place

00:26:38

a few weeks ago. Thank

00:26:41

you. Thank you so much,

00:26:41

Melissa and buy. Your presentation

00:26:45

is to you're being really

00:26:47

busy in the past 25

00:26:48

years in 2017. When did

00:26:54

you started that? At least

00:26:56

for me, it was clear.

00:26:59

That question was not whether

00:27:01

or not I need to

00:27:04

be reformed but how it

00:27:07

was going to give it

00:27:08

form and how deep is

00:27:10

going to be entirely on

00:27:19

some of these topics about

00:27:24

that on some of the

00:27:30

aspects that we just discuss

00:27:33

two weeks ago. Work on

00:27:41

Damages that you mention the

00:27:44

40 medications and importance of

00:27:47

mediation provision that we have

00:27:51

been discussed by at least

00:27:55

the past two years and

00:27:57

modeling. Thank you very much.

00:28:06

So, at the outset, I

00:28:09

would like to thank the

00:28:12

wow, for inviting me and

00:28:15

giving me the opportunity to

00:28:17

share a few Thoughts with

00:28:20

you. And I want you

00:28:23

to start out by saying

00:28:24

that I have to take

00:28:27

a bit of an issue

00:28:27

with the title because I

00:28:31

don't think that we are

00:28:33

fragmenting. But brother, that we

00:28:36

are trying to carry out

00:28:37

that you say, a very

00:28:38

complicated and complex task of

00:28:44

reforming, a sophisticated system and

00:28:48

just trying to do it

00:28:49

in a coherent manner. So

00:28:51

if we look at the

00:28:53

various pieces and of course

00:28:55

you can already see where

00:28:57

I'm aiming at that, they

00:28:59

are indeed pieces of a

00:29:00
puzzle but that this puzzle

00:29:02
is meant to be put

00:29:03
together. I'm to show a

00:29:06
coherent picture. When we look

00:29:09
at it, when all the

00:29:10
pieces are put together, we

00:29:12
will have a comprehensive and

00:29:13
coherent picture. This is really

00:29:16
what's the working group is

00:29:17
trying to do? And what

00:29:20
I do if you allow

00:29:21
me, rather than spending much

00:29:25
time on the different elements

00:29:27
of the different elements of

00:29:31
the form that you have

00:29:35
explained it very well. So

00:29:38
very happy and so much

00:29:40
detail giving us. We need

00:29:42
what what is needed? Where

00:29:44
are? We are in the

00:29:45
development of oldies are reformed

00:29:48
elements, very briefly about the

00:29:54
process. We we have since

00:29:58
the beginning try to have

00:30:00
a very inclusive process and

00:30:02
also a very I tried

00:30:06

to be efficient in the

00:30:09

sense that we're not here

00:30:11

to replicate or duplicate what

00:30:15

is being done? Elsewhere. This

00:30:17

is something I would really

00:30:19

want for exercise at the

00:30:20

stage where the dictionary form

00:30:23

with the Amendments of the

00:30:25

exit of the Christian rules

00:30:27

has entered into force in

00:30:29

July and I was referring

00:30:32

to this going to be

00:30:33

a panel presenting this with

00:30:36

these amendments. I would really

00:30:40

like to emphasize the fact

00:30:41

that we are working very

00:30:44

closely with stick Secretariat, particularly

00:30:47

under development of the code

00:30:49

of conduct will be talking

00:30:51

about later. But also obviously,

00:30:55

if they are all ready

00:30:56

and will be more and

00:30:58

more involved in the development

00:30:59

of the Appellate mechanism, which

00:31:01

if you recall is supposed

00:31:04

to be trans, The whole

00:31:06

to apply not only to

00:31:08

the the judgments of the

00:31:10

first instance, our investment court

00:31:13

but also to the beach

00:31:17

with the view of bringing

00:31:22

back the coherence that would

00:31:25

otherwise be disturbed or further

00:31:31

further, take it out of

00:31:35

my system which is already

00:31:37

in essence more investment for

00:31:43

you to bear in mind

00:31:48

is that we are working

00:31:50

with except for instance, that

00:31:53

I will be working closely

00:32:01

with the world. Are already

00:32:06

visible form elements. We are

00:32:10

not going to designer redo

00:32:14

our own little reform and

00:32:17

let me take an example,

00:32:19

mediation. What's the working group

00:32:22

has been working on? So

00:32:24

far is that are pink

00:32:27

mediation provision into existing and

00:32:32

future investment treaties. But no

00:32:34

read during mediation who why

00:32:38

it has just produced its

00:32:40

own ists mediation rules. And

00:32:44

so it doesn't make sense

00:32:46

to have the working group

00:32:48

in, uncitral repeating, exactly what's

00:32:51

been done somewhere else. I'm

00:32:53

still the same is going

00:32:55

to happen with the improvements

00:32:57

that keeps. It has just

00:32:58

produced to is procedural rules

00:33:01

because the rules are And

00:33:07

the rules amendments that were

00:33:09

focusing on cost and duration

00:33:13

of the process will, of

00:33:14

course, be taken on board

00:33:16

to make sure we don't

00:33:17

end up with the uncitral

00:33:20

faster procedures and the exit,

00:33:24

past the procedures that go

00:33:26

further apart. The idea is

00:33:28

indeed and always that direction

00:33:31

into which the working group

00:33:32

is going is to build

00:33:34

on what is being done.

00:33:35

So that we do not

00:33:36

further disclosures together. So having

00:33:45

said that what I would

00:33:55

like to focus on in

00:33:56

my presentation is the because

00:33:59

I'm pretty sure Lauren is

00:34:00

going to speak about the

00:34:02

code of conduct at some

00:34:03

point or another I would

00:34:06

like to focus my a

00:34:08

presentation on the delivery mechanism

00:34:10

for this week form and

00:34:14

this is to put together

00:34:16

the different pieces of the

00:34:21

puzzle. So what you seen

00:34:23

earlier on the institutional elements

00:34:27

of Go to previous channel,

00:34:32

elements of Reform one is

00:34:34

this? The other one is

00:34:38

transversal and also apply to

00:34:44

state-to-state disputes at the request

00:34:46

of Summer. Member states, were

00:34:49

very keen on strengthening. The

00:34:51

state-to-state system are two investment

00:34:56

arbitration and to the first

00:34:58

instance working out for investment

00:35:00

and then be Advising Center

00:35:03

that's at 2. And then

00:35:07

we have all the procedure

00:35:09

elements. Some of which you

00:35:11

have already seen in The

00:35:12

Incident Management, for example, security

00:35:15
for costs to a location

00:35:17
or the possibility to bring

00:35:19
counterclaim or early dismissal of

00:35:22
planes. Manifesting without either married.

00:35:25
Or what are we doing

00:35:26
here? Putting these elements into.

00:35:31
What will you look like

00:35:34
a tractor and isps chapter

00:35:37
in an investment? Why is

00:35:40
because, if you don't have

00:35:41
that in the treaty, particularly

00:35:44
in the 3000 old treaties

00:35:47
that are there, and that

00:35:49

nobody wishes to reopen and

00:35:51

we would never benefit from

00:35:54

these ratings, and he's positive

00:35:59

amendments to the system that

00:36:01

are being done in the

00:36:02

next. I want to reply

00:36:10

to commercial arbitration, but that

00:36:13

would otherwise be lost for

00:36:16

the three teams that don't

00:36:17

have them in the presidents

00:36:19

that are so few examples

00:36:22

about time, I'm putting out

00:36:24

here to show you that.

00:36:25

Yes, that is already and

00:36:28

tickseed approach to funding to

00:36:31

early dismissal to the accountant.

00:36:35

Playing Pandora course, all of

00:36:37

this will be included into

00:36:40

the reform element as a

00:36:42

replacement of existing Provisions in

00:36:45

investment treaties that are not

00:36:48

up to this level of

00:36:49

development in CS and an

00:36:53

adaptation to developments in is

00:36:56

BS because they back to

00:36:59

the early nineties, where none

00:37:02

of these issues were actually

00:37:03
contemplated. Orbeez elements together. Very

00:37:14
good animation and I was

00:37:16
hoping that I could do

00:37:18
the putting together myself, but

00:37:19
no I can't just point

00:37:22
at the different colors in

00:37:24
the center. You have what

00:37:26
we call, the multilateral framework

00:37:30
convention and this framework convention,

00:37:33
we could have designed as

00:37:35
the compass thing as sort

00:37:36
of a circle into which

00:37:38
fits all the elements. But

00:37:40

we prefer to look at

00:37:42

it as the central piece

00:37:44

of the puzzle because the

00:37:46

various elements of Reform are

00:37:48

going to pitch into and

00:37:51

to sit with the with

00:37:55

the multilateral framework convention. The

00:37:58

reform will be achieved even

00:38:00

if all the elements are

00:38:03

not there, even if all

00:38:05

the elements are not subscribed

00:38:08

to buy, So let me

00:38:11

just go back to the

00:38:13

different pieces of puzzle. You

00:38:15

remember my piece of the

00:38:17

puzzle which is called Bessemer

00:38:22

Court, very well with the

00:38:24

special piece on the delivery

00:38:28

mechanism, but not Old Country.

00:38:32

Sign on to the investment

00:38:34

Court, the system is still

00:38:36

coherent and they're still, it

00:38:38

would still be operational. Similarly,

00:38:41

for the Appellate mechanism, similarly,

00:38:45

which obviously is not going

00:38:49

to be used by old

00:38:50

country but will still be

00:38:52
connected directly to the framework

00:38:56
convention. So how are we

00:38:58
in visiting this framework convention?

00:39:01
We're not quite sure as

00:39:03
yet, as to the content

00:39:05
of the framework convention itself.

00:39:07
Will it have core Provisions

00:39:09
that apply across the board?

00:39:11
Or will it just be

00:39:12
what it says? It's for

00:39:14
the time, being a framework

00:39:15
that holds all the other

00:39:17
elements together and we're not

00:39:21

sure because what's the state

00:39:24

have been insisting? He is

00:39:26

keeping a degree of flexibility.

00:39:29

And of course, the understanding

00:39:39

of what is flexible is

00:39:40

not equally shared and some

00:39:46

states consider that, you know,

00:39:48

the flexibility goals included in

00:39:52

through various Provisions, that can

00:39:54

be negotiated where they want

00:39:56

to see. I'm going no

00:40:02

I'm not going to use

00:40:04

double acting. I'm going to

00:40:06

use a degree of flexibility

00:40:10

that goes very much into

00:40:13

four different elements of each

00:40:16

piece of puzzle. At the

00:40:19

flexibility can also be at

00:40:21

the level of what piece

00:40:23

of the puzzle. Do I

00:40:24

add? Do I log into

00:40:26

the most electrifying? What convention

00:40:28

that I'm dealing with a

00:40:38

framework convention that will have

00:40:40

the usual, you know, Committee

00:40:43

of the parties that will

00:40:46

Will be a mechanism to

00:40:48

have. All the partying is

00:40:50

continuing to monitor the way

00:40:52

it works, including towards the

00:40:54

future, and future developments, that

00:40:57

might not necessarily be finished

00:40:59

in 2026. When the working

00:41:02

group is supposed to deliver

00:41:03

a reform and the other

00:41:08

thing is that with or

00:41:13

without your permission will have

00:41:16

annexes or protocols. And this

00:41:19

is the way we will

00:41:21

link the pieces of the

00:41:23

puzzle to the central piece.

00:41:25

It will be through these

00:41:27

protocol mechanisms. So either you

00:41:31

a deer to the framework.

00:41:33

Convention, one or two or

00:41:37

three out of seven different,

00:41:40

protocols, that will be put,

00:41:42

that will be made available

00:41:44

for steak. Idea to what

00:41:48

we have to keep in

00:41:49

mind. And that's where we

00:41:50

going back to my title

00:41:52

with, which I take issue,

00:41:53

which is a fragmentation, is

00:41:56

that we don't end up

00:41:57

with a reverse light, which

00:41:58

is totally impractical and which

00:42:02

results in something, which is

00:42:04

difficult for investors to navigate

00:42:08

system with talking about is

00:42:12

meant to give certainty and

00:42:16

to give reassurance and security

00:42:20

to investors. So, if you

00:42:22

end up with a reform,

00:42:23

which is full of little

00:42:25

pieces and where you have

00:42:27

to have a degree in

00:42:28

Neuroscience, to be able to

00:42:30

link what country has a

00:42:33

year to this, and what

00:42:34

country has agreed to that

00:42:36

before. I mean, if you

00:42:39

don't have the degree higher

00:42:41

sophisticated lawyers to be able

00:42:44

to tell you, if you

00:42:45

invest in, This is what

00:42:47

you would have on your

00:42:48

menu. This is not the

00:42:50

purpose and we haven't a

00:42:52

good example of which is

00:42:53

an example of the reform

00:42:55

of the double tax treaties,

00:42:59

that has been undertaken by

00:43:01

the oecd. We have now

00:43:04

seen how it works. It

00:43:07

has a, of course, the

00:43:09

Kiss Beauty is a good

00:43:11

template for us to know

00:43:13

that you can tackle 3,000-plus

00:43:16

existing treaties with the framework

00:43:18

convention, which remain flexible from

00:43:21

the state. But we also

00:43:23

see Mouse. Some of the

00:43:24

defect in this too much

00:43:27

flexibility, which result in having

00:43:30

country, you know, when you

00:43:32

go see it in this

00:43:33

and the deer in the

00:43:34

back taking this, not taking

00:43:35

that and this makes it

00:43:36

extremely difficult to navigate. So,

00:43:39

that's going to be a

00:43:40

very clearly where the working

00:43:45

group Fragmentation. And hence our,

00:43:51

our constant objectives of making

00:43:58

sure that holder reform elements

00:44:00

as having developed and stick

00:44:03

and remain together in a

00:44:05

clear picture of the reform

00:44:08

results. Thank you very much.

00:44:10

Thank you. Thank you. I

00:44:13

think you're right. That the

00:44:16

framework convention or elements features.

00:44:22

Otherwise we will have just

00:44:25

different pieces of the puzzle.

00:44:28

Not being able to how

00:44:30

to is going to work

00:44:33

for all of us because

00:44:35

so far we have been

00:44:37

working in different text and

00:44:39

we will talk about about

00:44:41

that bed. A different, a

00:44:44

different parts of the day.

00:44:48

If we are not able

00:44:51

to really, you know, Country

00:44:55

Estates to really, you know,

00:44:57

who joins a list. A

00:44:59

quart of Provisions that is

00:45:02

going to work for everybody

00:45:03

even if we need to

00:45:05

be flexible person in some

00:45:09

of the reports just as

00:45:10

soon as you mentioned, we

00:45:12

didn't fill out report or

00:45:13

the Appellate because we know

00:45:16

that we have to be

00:45:19

purchased views in the country.

00:45:28

So, definitely for the needed

00:45:32

to come with me to

00:45:34

work in this. What did

00:45:35

I drop framework convention on

00:45:37

to see how the other

00:45:39

pieces are going to defeat

00:45:42

in disposal, either supercouples or

00:45:46

to Annex as you mention.

00:45:47

So one of these pieces

00:45:52

of the Apostles that you

00:45:55

mention, if he could have

00:45:56

condoms and we have been

00:45:57

working in the sax now

00:46:01

for for several several meetings,

00:46:04

actually, I was hoping, you

00:46:06

know, I did last meeting

00:46:07

to finalize with the draft

00:46:10

of the code of conduct

00:46:11

as I'm sure many other

00:46:13

countries that we'll be able

00:46:17

to finish up to finalize

00:46:19

because there's different views regarding

00:46:22

song. Santa Fe code of

00:46:29

conduct. Other 50%. So it's

00:46:34

two or three articles that

00:46:36

Conflict for for some of

00:46:41

the countries and also the

00:46:44

potential impact on the right.

00:46:48

One of these articles in

00:46:51

particular have changed dramatically since

00:46:55

the first edition of the

00:46:58

code of conduct, which has

00:46:59

been, we haven't had several

00:47:03

versions of this article is

00:47:06

Adam So at first it

00:47:14

and the secret that are

00:47:15

really, really good work trying

00:47:18

to different shape of you.

00:47:21

So those who are more

00:47:23

for me recently or Banning

00:47:28

orders more Flexible rice and

00:47:36

effects of abuse, or some

00:47:38

of the countries that really

00:47:41

thinks that we are. Disclosure

00:47:46

from the part of the

00:47:49

arbitrator's will be enough and

00:47:52

then the parties will choose.

00:47:53

So now we're like you

00:47:58

don't. So we are approaching

00:48:01

and I think that's the

00:48:02

weekend. I would like to

00:48:05

hear from Lauren which is

00:48:08

not represented investor site in

00:48:11

this is us to provide

00:48:14

you know, review of the

00:48:17

best sellers. And how is

00:48:19

he that we could arrive

00:48:21

to a final text abbreviation

00:48:24

for Edition Lauren. Thank you

00:48:30

very much, Margie and this

00:48:32

is the first time I'm

00:48:33

speaking, thank you for the

00:48:34

organisers. Antonio the wild Founders

00:48:39

and organized and also including

00:48:42

especially on a uilleann pleasure

00:48:44

to be on the same

00:48:45

panel with you and the

00:48:46

others here. I think there's

00:48:50

a lot of enthusiasm for

00:48:51

the code of conduct in

00:48:52

the working group. Here's a

00:48:54

widespread recognition that there's a

00:48:57

gap in the International Investment

00:48:59

law framework. Where is there

00:49:00

is no existing agreed, multilateral

00:49:05

instrument negotiated by States the

00:49:09

rules of the road for

00:49:10

arbitrators. Obviously, there are guidelines

00:49:13

than coughing some interest there.

00:49:15

Other state or states for

00:49:19

investor-state dispute settlement. Business, which

00:49:30

is located on the private

00:49:33

sector business side. I also

00:49:34

representing United States for six

00:49:36

years as a group and

00:49:39

also in negotiations. And I,

00:49:42

I do try to mediate,

00:49:44

I think between kind of

00:49:45

investor perspective mistake respected. As

00:49:48

I'm saying this. I'm looking

00:49:49
at my background, but I

00:49:50
have to serve big green

00:49:51
on the left and the

00:49:52
right on the right and

00:49:53
I aspire to. Kind of

00:49:55
balance. I probably don't achieve

00:49:56
it, I try. But my

00:49:58
comments were informed by my

00:49:59
girlfriend experience as well. That's

00:50:02
that, I do not speak

00:50:02
for the code again. I

00:50:08
like the comment that you

00:50:10
made margins were 85% there

00:50:12

and then that were in

00:50:13

the toughest issues. Unfortunately my

00:50:15

experience in the trade negotiations

00:50:16

this is sort of how

00:50:18

it goes right that you

00:50:19

have a a process where

00:50:21

you make a lot of

00:50:22

progress on the sort of

00:50:23

the lower hanging fruit issues,

00:50:25

where there is General agreement

00:50:26

or or not significant gaps.

00:50:29

What is the last 15%?

00:50:31

Really? That is the most

00:50:32

challenging and that it's difficult

00:50:35

to sort of predict how

00:50:36

it goes particularly in this

00:50:38

form form into a noxious

00:50:43

to put a preponderance of

00:50:44

news. On one side, the

00:50:45

other to try to achieve

00:50:46

consensus, which is a very

00:50:48

difficult process. I think we

00:50:51

were in the most recent

00:50:54

discussions in Vienna. You know,

00:50:57

my estimation is that we're

00:50:58

moving more slowly than many

00:51:02

delegates at Hope. And with

00:51:04
respect to that remaining 15%,

00:51:07
I'm not sure we see

00:51:09
the end in sight yet.

00:51:10
I don't know that I

00:51:10
can answer the question that

00:51:12
you post Margie, has all

00:51:14
been wondering if it was

00:51:15
all points in Prince of

00:51:18
where I think the discussions

00:51:20
were at the end of

00:51:21
the meetings in Vienna on

00:51:22
the Cove. I think number

00:51:24
one at the most significant,

00:51:26

they're working group has not

00:51:28

yet bridge the gap. On

00:51:29

I think has been recognized

00:51:32

as the most divisive issue

00:51:33

in the Cove in that

00:51:34

is the so-called double padding

00:51:36

question. And depending on one's

00:51:40

perspective, you can see the

00:51:41

start of prevalence Muse on

00:51:42

this side or that side,

00:51:43

but I think clearly there's

00:51:45

remains a significant S. I

00:51:49

think it's concerning from this

00:51:53

perspective that the working for

00:51:55

you didn't have time to

00:51:56

discuss the whole codes that

00:51:58

the code has eleven articles.

00:52:00

And in the session of

00:52:02

the working group, we reached

00:52:04

nine of them didn't got

00:52:06

some, for example, two very

00:52:08

important Provisions. No one governing

00:52:11

Disclosure by arbitrators complex and

00:52:14

raises many questions and then

00:52:16

another article on how do

00:52:18

you ensure compliance with the

00:52:20

condo. So not answering your

00:52:26
question. There are two significant

00:52:30
obstacles that have not been

00:52:31
vetted and soul into work

00:52:33
Christmas Day and then the

00:52:35
third and the complete perhaps

00:52:40
that there was the opportunity

00:52:41
to not have the opportunity

00:52:43
to address the the commentary

00:52:45
for the car which is

00:52:47
a draft document that was

00:52:49
drafted by the ocean. That

00:52:52
meant to guide the interpretation

00:52:56
of the code itself. And

00:52:59

that will obviously be a

00:52:59

very critical documents to understanding

00:53:01

how the global operating factor

00:53:03

into that document to the

00:53:05

great credit. I think of

00:53:06

the of Anna and her

00:53:07

staff has been here for

00:53:10

so long with you, but

00:53:12

it's not been working at

00:53:18

this stage because it has

00:53:19

not been translated in all

00:53:21

of the new and languages,

00:53:22

right? I'm to protect with

00:53:30

confidence that the, the cold

00:53:32

will be completed in July

00:53:34

of 2023 is when it

00:53:36

has been projected and that

00:53:38

would be, I think I

00:53:38

made your appointment because this

00:53:40

would be the second time

00:53:41

that we projected deadline for

00:53:44

the Post, where it would

00:53:45

not have been meant. Not

00:53:46

the first deadline was in

00:53:48

July of 2020, to the

00:53:51

delegates are working on, trying

00:53:54

to get these gaps in

00:53:56

Vienna in informal session, which

00:53:58

are the second. There's an

00:54:01

enormous effort expended to break

00:54:04

down to manageable chunks. So

00:54:08

they can be, I think

00:54:09

address in this timeframe, but

00:54:12

I do think there's a

00:54:13

question of Tennessee done, friend.

00:54:17

And I will, I do

00:54:19

want to make one, right?

00:54:21

I got there. I think

00:54:23

there is a broader issue.

00:54:29

A lot of issues on

00:54:30
the table and not a

00:54:31
lot of time in. This

00:54:32
is the disorder, where the

00:54:34
rubber meets the road, right?

00:54:35
But I think the challenge

00:54:38
of meeting our deadlines we

00:54:39
could have a loaded and

00:54:43
we're not with standing in

00:54:45
for a lot of time

00:54:50
to get done. If I

00:54:58
have a moment to say

00:55:00
again I think there was

00:55:02
a queen those would like

00:55:07

a kind of broad from

00:55:08

Edition on double padding and

00:55:10

those that are interested in

00:55:11

a kind of more narrow

00:55:13

Taylor, regulation of double padding,

00:55:16

including some examples of prohibitions,

00:55:19

but also more disclosure, I

00:55:23

will say that from my

00:55:24

perspective, there had been a

00:55:26

decision in the That effectively

00:55:31

the consensus was along the

00:55:33

lines of a narrow modified

00:55:37

advance for not a total

00:55:39

ban in person three of

00:55:42
the code of conduct which

00:55:43
was from the summer of

00:55:45
2021. There were these three

00:55:46
options, right? There was a

00:55:47
total ban a circle, modified

00:55:50
band and then the disclosure

00:55:51
option, no band, just for

00:55:52
an adult hiding in that

00:55:55
version was replaced with Summer

00:55:57
by was written for a

00:55:59
different version, which now only

00:56:01
has one option. Effective leader,

00:56:02
does not have a full

00:56:06

prohibition, it has, I think

00:56:08

it modified preposition that is

00:56:10

intended to identify. What are

00:56:12

the what are the times

00:56:13

of double-headed scenarios? That raised

00:56:14

the, the greatest hits of

00:56:16

Interest have a certain person,

00:56:18

a ban in those areas

00:56:19

outside of those areas. Let's

00:56:21

rely on the kind of

00:56:22

background in the code independent

00:56:24

personality that the other circumstances

00:56:26

before Aladdin could be a

00:56:30

problem. I think the concern

00:56:46

as a member functions as

00:56:56

a complete de facto a

00:56:58

band and I can get

00:56:59

it. I don't want to

00:57:00

waste time and I know

00:57:01

there's a lot to stay

00:57:02

here and all the reasons

00:57:03

for that but I think

00:57:03

that's a widely-held view. And

00:57:05

there's a major city. Is

00:57:07

it a drafting problems? That

00:57:08

a conceptual problem is very

00:57:10

difficult to assess how the

00:57:13

current tracking of article for

00:57:15

squares with what has happened

00:57:17

before in the direction. I

00:57:18

think I seen the working

00:57:20

group, I just got the

00:57:22

double padding. Lyrics Temple. I

00:57:31

mean I know the audience

00:57:33

can't have these feelings of

00:57:35

how do, you know, if

00:57:36

you discussion tsar and and

00:57:39

how difficult sometimes it's enough

00:57:42

for for the 40 States

00:57:44

and Iran, the stakeholders to

00:57:48

really, you know, get a

00:57:50

consensus on son of the

00:57:52

topics different voices. They had.

00:57:57

So I don't know. Lauren

00:57:59

at 14 years of time,

00:58:00

if there's another procedure Elite

00:58:04

matter that you would like

00:58:05

to you, but I'm just

00:58:08

too picky. I know if

00:58:10

you would like to address.

00:58:18

You like to stuff? Before

00:58:22

I do that, I know

00:58:22

if your hand is raised

00:58:24

with myself and with my

00:58:38

queen, so I'm not far

00:58:47

from agreeing with you. That,

00:58:48

the way the text has

00:58:51

a bolt has gotten us

00:58:52

into this sort of difficulty

00:58:55

to bridge the different positions

00:58:58

because on the one hand,

00:59:00

we have the garbage bags

00:59:03

that we are expecting from

00:59:04

arbitrators who had a previous

00:59:08

position as counsel and years

00:59:21

And those who said he

00:59:23

does not have any from

00:59:25
the concurrence of proceeding. So,

00:59:28
yes, that's quite bridge in

00:59:35
the sense that we're not

00:59:37
talking about can use zero,

00:59:40
but please, please, please, bear

00:59:48
in mind, that it's the

00:59:49
first time that the working

00:59:52
group was discussing the code

00:59:54
of conduct in person before.

00:59:57
We are all sitting behind

00:59:58
our screens in 2D and

01:00:01
not enough real life 3D

01:00:03
and you know, you don't

01:00:06

get behind the screen. You

01:00:09

negotiate when you are able

01:00:10

to sit down with colleagues

01:00:12

in the area and traffic,

01:00:14

I'll take your pain and

01:00:16

and Bryson and I wanted

01:00:20

to add Following up on

01:00:22

point is that this is

01:00:28

how you build the, the

01:00:32

buying by an hour. And

01:00:35

it can be very frustrating

01:00:36

at times to hear people

01:00:37

with repeating. The same thing

01:00:39

for the same time, you

01:00:41

know making comments or look

01:00:43

for something that we have

01:00:44

already moved from but this

01:00:47

is how you make sure

01:00:48

that's the different delegation sort

01:00:50

of internalized and and and

01:00:52

and buy into a process

01:00:55

and will be able to

01:00:57

go alone since we don't

01:00:59

allow this this Of course

01:01:01

not very efficient regurgitated sister

01:01:05

in news or you're just

01:01:07

to have it said, but

01:01:09
this is part of me.

01:01:10
I would say, the regurgitation

01:01:12
is part of our digestion

01:01:13
in someone. That's what I

01:01:16
wanted to. Thank you. Thank

01:01:19
you so much. Thank you

01:01:21
so much. You know, if

01:01:32
you know, if you would

01:01:35
like to address of the

01:01:37
topics I know there is

01:01:41
so many, but No. Absolutely.

01:01:44
Thank you again. March 2nd,

01:01:47
Hall of honors, since I'm

01:01:48

going to go see why

01:01:49

I said that. I think

01:01:50

it's just the nature of

01:01:51

the Beast that I think

01:01:53

the important this sitting in

01:01:58

my bedroom for 2 years

01:02:00

at 5 in the morning,

01:02:01

trying to, you know, negotiate

01:02:03

these mules now and I

01:02:08

think there's a lot of

01:02:08

Hope in the working group,

01:02:19

and then jump in the

01:02:20

room, you know, Margie and

01:02:24

of course we've been in

01:02:26

this discussion now since November

01:02:28

of 2017 and my perception

01:02:43

That was one of the

01:02:45

reasons why the the working

01:02:46

group has given a mandate

01:02:47

in the first place by

01:02:48

the commission to explore. I

01:02:51

guess, it's because it's not

01:03:00

explicit to the behind the

01:03:02

curtain about this divided between

01:03:04

those who support of court

01:03:05

and knows it's not something

01:03:07

has changed significantly Over time.

01:03:09

However, you open the door

01:03:13

and many, many other states

01:03:15

should have barged into the

01:03:16

room with their own ideas

01:03:18

on reform. And there on

01:03:20

priorities, I was born in

01:03:22

for some of the Court

01:03:23

was not so sure. It's

01:03:24

off of mine and they

01:03:25

have now over the last

01:03:26

five years. Suppose the seemingly

01:03:28

endless number of reforms, it's

01:03:31

very hard to even group

01:03:33
them into categories. How many

01:03:35
before him have been proposed

01:03:36
by States? Boy that there

01:03:44
were two long until discussion

01:03:46
the court occupied less than

01:03:48
one full day of those

01:03:49
two weeks of discussion and

01:03:51
the remainder of the key

01:03:52
needs to focus on lots

01:03:54
of other reform ideas and

01:03:55
here is the link to

01:03:56
procedural reforms, procedural reform. We're

01:04:01
one basket of of the

01:04:02

reform that we discussed in

01:04:04

Vienna in here, know. Maybe

01:04:08

I'll just go right to

01:04:09

the point of what do

01:04:10

you make of the discussion

01:04:11

on procedural forms? There were

01:04:13

three different reforms that was

01:04:14

for the focus of this

01:04:15

basket. Early dismissal claims for

01:04:20

example, early dismissal on the

01:04:22

basis of claims and manifestly

01:04:24

without legal Merit as the

01:04:27

allocation of cost in arbitration.

01:04:30

At least you a third

01:04:32

party funding that we didn't

01:04:34

have time to discuss a

01:04:35

couple of the other issues

01:04:36

procedure was born there on

01:04:38

the table. I'm all highlight

01:04:45

cuz I like to do

01:04:45

pork loin want a lot

01:04:48

of enthusiasm. I think I'm

01:04:49

just keeping you informed Korea.

01:04:51

The Korea had him intersessional

01:04:53

meeting last year that I

01:04:56

think stimulated a lot of

01:04:57

useful debate about. How do

01:04:59

you not just think about

01:05:00

structural reform, you know, replacing

01:05:02

the existing system? How can

01:05:03

you use tools some existing

01:05:06

tools and some dude, getting

01:05:08

through ad hoc operation, since

01:05:12

I think there's a lot

01:05:12

of view. Second I think

01:05:16

there was agreement in Vienna

01:05:19

on a number of key

01:05:20

points on East Michigan hero

01:05:21

forms. I'll highlight them on

01:05:24

early dismissal. I think there

01:05:25

is General support for a

01:05:27
mechanism. Again, what does it

01:05:29
look like? Is it a

01:05:30
treaty provision? Is it? The

01:05:32
vision in a multilateral framework

01:05:34
is indicated. Early stages, what

01:05:46
would look something like what

01:05:47
does but perhaps as a

01:05:56
default rule on having the

01:05:59
unsuccessful party bear, the cost

01:06:01
of the proceedings, there was

01:06:02
a very well that is.

01:06:05
But what guys and should

01:06:08
we give arbitrators when the

01:06:10

side and allocation of cost?

01:06:11

What kinds of b e

01:06:12

r e of my day

01:06:13

considering making allocation decisions. I

01:06:17

think there was interested in

01:06:17

considering not just the outcome

01:06:19

but also to the parties

01:06:21

in some ways it reflects

01:06:33

some of the policy challenges

01:06:35

that discussion, Third-party funding for

01:06:47

access to justice issue. And

01:06:58

then there is the question

01:06:59

of, how do we regulate

01:07:02

reach a consensus at all

01:07:09

on that question. Moving quickly,

01:07:12

to take away, does the

01:07:14

working group have the mandate

01:07:16

to negotiate? All these different

01:07:17

Pedro Farms on the table?

01:07:21

This band with the question,

01:07:22

as I mentioned, there were

01:07:23

three of the five four

01:07:26

forms that were on the

01:07:27

table. Indiana in addition, to

01:07:29

working group requested, the, I,

01:07:31

I was looking at on

01:07:32

a, in the secretary that

01:07:33

Winston, during this discussion, the

01:07:35

working group members, the state

01:07:37

delegations, requested that the Secretary

01:07:38

of undertake work on what

01:07:40

I found it to be

01:07:41

at least 15 to 20.

01:07:43

Your phone topics, including, for

01:07:45

example, finding joint reputation by

01:07:48

freedy parties, waiver fork in

01:07:51

the road, exhaustion, domestic, rabbit.

01:07:52

Go on and on, and

01:07:55

on. And I think the

01:07:56

coast Provisions, even if we're

01:07:58

in, now favorable in person,

01:08:00

circumstances will take considerable time.

01:08:01

And yet, we have this

01:08:03

chicken clock, right? That we

01:08:05

have many other reforms in

01:08:06

addition to cheat on the

01:08:08

table. How can it be

01:08:09

done? I will say for

01:08:11

my perspective that I think

01:08:12

prioritization is an order that

01:08:14

there needs to be a

01:08:15

sort of difficult conversation at

01:08:17

some point of the working

01:08:18

group on figuring out, how

01:08:20

we're going to get for

01:08:21

the priority will form a

01:08:23

identify, get those done so

01:08:26

that we don't make the

01:08:27

perfect the enemy if you

01:08:29

could come. And then finally

01:08:31

going back to honest comments

01:08:33

about this issue of fragmentation

01:08:36

or not, I think there

01:08:38

is a sort of be

01:08:39

careful what you wish for

01:08:39

scenario. Here that division of

01:08:42

the working group. Perhaps all

01:08:44

of these different forums MTG

01:08:46

procedural reform, structural forms, all

01:08:48

of it, Honda and often

01:08:55

she will drop out of

01:08:56

some of these reforms and

01:08:59

it did not contact. I

01:09:00

think I agree with that

01:09:02

sort of coherent framework in

01:09:09

which all these different options

01:09:11

and often are arranged. But

01:09:14

as for whether we result

01:09:16

in Greater fragmentation or lesser,

01:09:18

I think it depends upon

01:09:19

a number of things. You

01:09:20

don't know yet how much

01:09:22

flexibility are staying warm. I'm

01:09:27

opting into options 17, +

01:09:31

14 + within often 1714

01:09:34

choosing option, A or option.

01:09:35

One option. See about the

01:09:37

there is, no, are desirous

01:09:41

of that kind of flexibility,

01:09:42

I think it might be.

01:09:43

Create significant augmentation question of,

01:09:47

how does that play in

01:09:56

Princess occupation? Apologies for speaking

01:09:59

with your phones on the

01:10:08

table. Thank you a lot

01:10:12

and 44 days, summary of

01:10:14

the issues and her actually

01:10:22

disgust me. We had a

01:10:26

whole discussion, a particular issue

01:10:29

on whether or not it

01:10:30

was suspended or procedural because

01:10:34

it has to be. But

01:10:37

also and I recall these

01:10:39

from the first meeting, there

01:10:41

was a whole discussion that

01:10:42

why you were focusing only

01:10:44

on procedural issues and not

01:10:46

a substantive issues because they

01:10:49

were substantive issues that needed

01:10:50

to be reformed. But first,

01:10:53

it is taken by security

01:11:00

and police electrician by the

01:11:02

biggest one. And she just

01:11:10

A book on contract renegotiations

01:11:15

and International Investment arbitrations that.

01:11:18

I think it will be

01:11:18

useful for these discussions. Why

01:11:23

procedural issues on why not

01:11:26

substantive amendments and how it

01:11:29

could be feat. You know,

01:11:30

Dee Dee the words that

01:11:32

were having at working tree.

01:11:36

And then also the word

01:11:39

that are doing this takes

01:11:40

on a substantive reforms. Thank

01:11:46

you very much Margie, and

01:11:48

thanks a lot. Also, for

01:11:50

making reference to the book

01:11:52

that was very delightful to

01:11:55

listen to all those presentations.

01:11:56

I'm a bit of the

01:11:57

elephant in the room because

01:11:58

nothing, even because I'm both

01:12:01

in academic and I will

01:12:02

not focus on procedure eye

01:12:04

with a fine. Of course,

01:12:05

very important, especially frivolous claims,

01:12:07

and third-party funding, and all

01:12:09

the issues that can create.

01:12:10

First sentence sentence for the

01:12:12

use of the system, because

01:12:13

let's remember that after all,

01:12:15

it's a system to deliver

01:12:16

Justice and not to be

01:12:17

gamed for other purposes. And

01:12:20

I am very supportive of

01:12:21

all those procedural reform, Stone,

01:12:23

frivolous claims and third-party funding.

01:12:24

I believe that. It's great

01:12:26

that they working group is

01:12:29

doing so much better work

01:12:30

on this missing and the

01:12:32

claims are fabulous of the

01:12:34

state and they even to

01:12:36

provide an expedited process for

01:12:37

that. I think that is

01:12:41

a great dad said there

01:12:42

is a link between the

01:12:43

rivals claims and third-party funding.

01:12:46

We can see, for example,

01:12:48

in the case, of course,

01:12:50

of the revised, they could

01:12:51

rules and a similar Trends

01:12:53

and deceit alike and all

01:12:54

this other individual treaties. And

01:12:56

there is the strands of

01:12:58

dismissing, frivolous claims and the

01:13:00

working group in El, Centro

01:13:01

has even made. I believe

01:13:04

the third-party funding and potential

01:13:06

factor to consider while assessing

01:13:09

effect. So I think this

01:13:11

is all very good news

01:13:12
and the kind of start

01:13:14
linking out to substance abuse

01:13:16
issues. I understand, of course,

01:13:17
there's so much on the

01:13:18
plate of the delegate that

01:13:20
it's hard to address, both

01:13:21
procedure that is already very

01:13:22
loaded and substance, but I

01:13:24
want to I pick up

01:13:25
on that Anna's very like

01:13:28
a whole sleeve optimistic, Mutual

01:13:31
authorization note. So then we'll

01:13:35
Slaughter investment Port. There are

01:13:37

some similarities with a multilateral

01:13:39

framework convention in the sense

01:13:41

that they're both Frameworks. That

01:13:43

can foster cell motility relation.

01:13:45

It depends, of course on

01:13:46

how they will be implemented.

01:13:47

Indian But I think that

01:13:50

there is some Potential from

01:13:53

the most investment cord that

01:13:55

you lead to further motorization.

01:13:59

Of course, before I offer

01:14:03

to you my own take

01:14:04

on things I would like

01:14:05

to thank very, very warmly,

01:14:06
the organizer. So for inviting

01:14:08
me to this breaker panel,

01:14:09
it is really a pleasure

01:14:10
and an honor to be

01:14:12
with such great experts and

01:14:15
great colleagues of International Investment

01:14:17
low. And I would like

01:14:18
to thank all so very

01:14:19
much as men go and

01:14:21
get to put together. This

01:14:23
amazing book in the show,

01:14:25
some material and now we're

01:14:27
also in the child if

01:14:28
you want a. So it

01:14:30
sounds and it's a great

01:14:31
book. I contributed a chapter

01:14:33
that I'm going to prison

01:14:35
very briefly to do today.

01:14:37
And it brings a Post-It,

01:14:39
note about the Vienna convention,

01:14:42
the last 3 days, and

01:14:42
how it can help prevent

01:14:44
further, fragmentation of the system,

01:14:47
how we can actually go

01:14:48
out all the rules for

01:14:49
new problems. How we can

01:14:51

use that very well established

01:14:54

rules of the Vienna convention

01:14:55

to address some problems that

01:14:57

we're facing now and United

01:14:59

vs reform. So I didn't

01:15:03

book celebrate the 4th of

01:15:04

years from the answering to

01:15:05

source of the Vienna convention

01:15:06

on the law of treaties.

01:15:07

And indeed IT addresses the

01:15:09

role of the Vicente in

01:15:11

investor-state dispute settlement, and explore

01:15:13

the tools of the trade

01:15:14

offers to throw more discipline

01:15:17
to this field. That is

01:15:18
still, let's face it on

01:15:20
their development. So my question

01:15:24
because I don't like a

01:15:26
Democrat, just be a little

01:15:28
bit provocative enough to address

01:15:37
this. So cold in the

01:15:38
Diplomatic crisis of isds that

01:15:40
has been going on for

01:15:41
quite a while. I believe

01:15:43
that there are other said,

01:15:45
they're very important, but I

01:15:46
won't say that there are

01:15:46

enough and my shop there,

01:15:49

I am adopting a policy

01:15:50

approach. Its why is he

01:15:52

has reformed saying that we

01:15:55

need to focus a lot

01:15:56

on the inconsistencies in the

01:15:58

interpretation of investment beauty standards?

01:16:00

Because we're in very different

01:16:04

ways standards. Sometimes have the

01:16:07

same or very similar wording

01:16:09

across different trees or even

01:16:11

sometimes days on the very

01:16:13

same Trading. So we need

01:16:15

to be reminded by the

01:16:16

kind of just reviewing arbitration

01:16:18

Awards. An old man and

01:16:20

set aside and proceedings are

01:16:23

limited. In terms of going

01:16:24

into the merits of the

01:16:25

case. They did not show

01:16:27

the engagement limited review on

01:16:29

the basis of inconsistent or

01:16:32

incorrect decisions that are designed

01:16:35

to look into procedural deficiencies

01:16:39

major, perfect opportunity to address

01:16:46

those interpreted inconsistency and the

01:16:49

Vienna convention could offer the

01:16:51

tools things out of the

01:16:53

safe tools to achieve more

01:16:54

consistency. And how can this

01:16:57

be done? This can be

01:16:59

done. I believe through and

01:17:01

evolutionary interpretation of the relevant

01:17:05

investment treaties by focusing on

01:17:07

the specific rules of the

01:17:08

facility. That provides for an

01:17:11

emphasis on subsequent agreements and

01:17:13

subsequent practice of the party.

01:17:18

What if I'm quite peculiar

01:17:19

about the multilateral investment cord

01:17:22

that make, is that even

01:17:23

though it's prefers to cure

01:17:24

the centralization and the resulting

01:17:27

in several types of inconsistencies

01:17:29

in his development, is also

01:17:31

based on a series of

01:17:32

bilateral agreements that include the

01:17:34

so-called investment court system that

01:17:37

I believe in the answer,

01:17:38

you know, is covered by

01:17:39

the framework of the Meg.

01:17:41

The different icy mechanisms included

01:17:44

in different rediscovered by the

01:17:46

overarching framework. So the gold

01:17:48

agreement on the Meg So

01:17:50

how can the establishment of

01:17:52

the make for the gradual

01:17:54

centralization of the ICS systems

01:17:58

into the multilateral investment guarantee

01:17:59

Integrity consistency? Since we will

01:18:04

have various Awards, the difference

01:18:07

I see is tribunal will

01:18:09

have rendered in the meantime.

01:18:14

And I believe that we

01:18:15

can do that by looking

01:18:16

into the vclt and subsequent

01:18:18

agreement to subsequent practice. This

01:18:22

can be done for one

01:18:22

network effects of the treaties,

01:18:24

including the ICS mechanism. As

01:18:26

a first step toward establishing

01:18:28

the Meg and indeed the

01:18:30

husband versus bilateralism professor. She

01:18:38

has talked about the fact

01:18:40

of multilateral framework and she

01:18:42

said that even though we

01:18:44

have been bilateral structure of

01:18:46

various treaties essentially in practice

01:18:49

tribunals act, as if there's

01:18:51

an overarching body, In contrast,

01:18:58

Professor Smither in Monroe, have

01:19:00

been more in favor. Bilateralism,

01:19:03

in what sense do, in

01:19:04

the sense that they pointed

01:19:05

efficiencies in this system in

01:19:07

perspective of going to go

01:19:09

to Integrity Integrity by taking

01:19:13

into account, third-party International agreement

01:19:16

when interpreting and investment agreement.

01:19:18

So Professor Smith how great

01:19:21

and the great article on

01:19:22

the use of third-party investment

01:19:25

agreements and separate the agreement

01:19:26

that the tribunal has in

01:19:28
front of it. And they

01:19:29
say that we need to

01:19:30
be cautious about that because

01:19:32
their agreements that they represent

01:19:34
a significant great and break

01:19:36
from the past like sitter,

01:19:37
for example, and the European

01:19:39
Union, Just mention that I

01:19:44
follow the reverse path of

01:19:46
realization compared to the previews,

01:19:48
decentralized resine of a talk

01:19:51
with acacian where we have

01:19:53
one of arbitral tribunal that

01:19:56

are based on bilateral 3

01:19:57

and they engage in Cross

01:19:59

reading interpretation with the fox

01:20:01

away. I said, I said

01:20:02

to promote multilateralism with a

01:20:07

make multilateral planning, but it

01:20:09

is still operational. So it

01:20:11

has an operational and evolutionary

01:20:13

character because it is a

01:20:15

lateral and investment treaty that

01:20:20

provides for the investment court

01:20:23

system. So things that make

01:20:27

results from the shared interest

01:20:29

and intentions go back to,

01:20:31

you know, what is the

01:20:32

intention of the parties, to

01:20:33

the treaty to promote, evolutionary,

01:20:35

interpretation of the treaties that

01:20:37

are under this framework, do

01:20:39

they make the screen more

01:20:40

convention? What do we do

01:20:43

to promote this natural and

01:20:49

evolutionary interpretation of the underlying

01:20:51

Agreements are providing for the

01:20:53

ICS? We look into subsequent

01:20:56

agreement to subsequent practice. For

01:20:58

example, we can see already.

01:20:59

The city parties have issued

01:21:02

a joint and separate the

01:21:03

three of instruments to subsequent

01:21:04

agreements. In the sense of

01:21:06

article, 31 of the BC

01:21:07

NDP not authorize the parties

01:21:10

to issue, subsequent binding notes

01:21:12

of interpretation. That will indeed

01:21:15

find the tribunals and operating

01:21:19

on their Sita. And apart

01:21:22

from, I believe that could

01:21:23

be even more Innovative apart

01:21:25

from Meadows and kiboko, subsequent

01:21:27

agreement of the parties to

01:21:29

the treaty. The question is

01:21:31

about the role and legal

01:21:33

effect of Xarelto. The Contracting

01:21:35

parties to trade he's providing

01:21:38

for the Meg. So what

01:21:39

kind of contract is could

01:21:41

establish the agreement of the

01:21:43

parties that falls under the

01:21:45

General in Santa Rosa to

01:21:46

rule of article, 31 of

01:21:49

the VCR tape. How to

01:21:51

make an overarching multilateral framework

01:21:53

system. We need to look

01:21:55

into septic contractors in The

01:21:57

Wider way. Meaning that the

01:22:00

question is if for example

01:22:01

the you engage Us in

01:22:04

subsequent practice and it's a

01:22:06

you Vietnam Investments are treated.

01:22:08

Does this African practice potentially

01:22:11

binds? That you are also

01:22:13

in a third-party treaty endorses,

01:22:15

the makers will, for example,

01:22:18

they use Singapore investment treaty.

01:22:24

So what question is, whether

01:22:26

such a septic contractors could

01:22:27

establish the agreement of the

01:22:28

parties to the third party.

01:22:30

Treaty with regard to an

01:22:31

interpretation that is given by

01:22:35

the parties to the other

01:22:36

traded providing for ICS. I

01:22:42

also believe that. Since the

01:22:46

victim does not specify what

01:22:48

type of condor qualify the

01:22:50

subsequent practice under the visibility,

01:22:51

we need to look into

01:22:54

the draft conclusions of the

01:22:55

international commission. I have 2018.

01:22:58

Say that it's not only

01:22:59

active, but also passive, the

01:23:02

state assets practice that qualifies

01:23:04

as assets. Gauntlet qualifier subsequent

01:23:07

practice. And don't wait. We

01:23:12

also need to look into

01:23:13

the practice of the make

01:23:15

itself as an international organization.

01:23:18

The party's to eat have

01:23:20

delegated authority. So to summarize,

01:23:24

how would I propose to

01:23:26

make this network? Not allow

01:23:29

the rain supposed to expect

01:23:30

or straight of 3D, providing

01:23:32

for the ICS as a

01:23:33

first step towards the makeup.

01:23:35

Irracional, I believe that a

01:23:36

way to do that to

01:23:37

look into the interpretation given

01:23:40

in subsequent agreements, and subsequent

01:23:42

practice across the board in

01:23:44

the various treaties, providing for

01:23:45

ICS and leading up to

01:23:47

this. Make it supposed to

01:23:49

be include a provision in

01:23:51

the make started saying that

01:23:53

for matters of systemic importance

01:23:55

and the treaties falling under

01:23:57

the competence of the longest

01:23:59

using third-party. This should be

01:24:01

consulted in the course of

01:24:03

a dispute and in reaction

01:24:05

to a joined in 76

01:24:06

statement issued under one of

01:24:08

such treaties. Barbie's do not

01:24:11

react to the matter consulted

01:24:13

upon with a certain number

01:24:15

of days in a. Of

01:24:17

time, their silence could be

01:24:18

construed as tacit acceptance of

01:24:21
the tribunals interpretation or the

01:24:23
parties interpretive statement on the

01:24:25
matter concerns. So it looks

01:24:32
into potential ways of incorporating

01:24:34
The evolutionary interpretation of the

01:24:36
system and making bringing more

01:24:39
consistency to the interpretation of

01:24:41
investment treaties operating under that

01:24:45
make this bill has a

01:24:46
bit of an aspirational nature.

01:24:47
So thanks a lot for

01:24:49
your attention and I look

01:24:50
forward to engaging more with

01:24:51

all of you. Thank you.

01:24:53

Thank you for sharing your

01:24:56

views on the content of

01:24:59

their book discussion. I would

01:25:07

just like to share. Also,

01:25:09

I have a chapter or

01:25:11

not book that is on

01:25:13

the investor-state dispute settlement before

01:25:15

we form a source at

01:25:17

the school. So I also

01:25:19

have a title of its

01:25:22

reform replaced. Or is that

01:25:24

the school chapter? It's cooler

01:25:30

in case of features and

01:25:32

the organizers have been wonderful

01:25:39

to share with you to

01:25:41

the stars of this hot

01:25:43

topics and I'm sure that

01:25:45

it will be more discussion

01:25:47

next year. Hopefully we could

01:25:50

celebrate that. Code of conducts

01:25:54

approved for next year. So

01:25:57

that is A goal for

01:26:01

next year. So if you

01:26:04

want to share some final

01:26:06

words from Margie and and

01:26:14

thank you in the order

01:26:15
that I see you. My

01:26:19
dear Lucia Lauren and I

01:26:23
can't believe that. Now, I

01:26:25
hope that I did not

01:26:26
say it as badly as

01:26:29
I said in the beginning.

01:26:30
So it was it was

01:26:32
truly a.m. It's a pleasure

01:26:35
to hear your comments, and

01:26:38
also, I'm amused, but but,

01:26:43
but, but glad that that

01:26:45
the, the one concern that

01:26:50
many may have in their

01:26:55

mind, or at least one

01:26:57

of the concerns. What was

01:26:58

George Strait on address? In

01:27:00

this, in this panel, which

01:27:02

is that whether we will

01:27:04

we will hopefully end up

01:27:06

with with a cohesive, okay?

01:27:08

No doubt structure or whether

01:27:11

we might have the falls

01:27:13

into a more difficult to

01:27:16

to to address a fragmented

01:27:20

system and it is, it

01:27:23

is a challenge, it is

01:27:25

an enormous challenge in, in,

01:27:26
in the, in a date,

01:27:28
an age where were Really

01:27:32
all the stakeholders are at

01:27:35
the table in there. There,

01:27:36
there might have been a

01:27:38
time in the in where

01:27:42
were were not all the

01:27:44
stakeholders might have been in

01:27:46
the table but I but

01:27:47
my general sense is that

01:27:48
are Beyond struggled 3. We

01:27:51
have a business in a

01:27:52
business business groups. We have,

01:27:54

we have the states, we

01:27:56

have so many stakeholders. Of

01:27:58

course, I mean that everyone

01:27:59

wants to have a greater

01:28:01

greater voice. But but, but

01:28:04

I think that there's there.

01:28:06

There has been an enormous

01:28:07

enormous work by by the

01:28:10

states and by the Secretariat

01:28:12

to create the legitimacy and

01:28:15

that is very difficult to

01:28:17

manage in the middle of

01:28:20

a pandemic. So it's not

01:28:23

an easy task. I would

01:28:26

like to thank the presenter

01:28:29

montelucia. I think that you

01:28:32

set the stage. Great Manor

01:28:35

Lauren a thank you for

01:28:37

a note for being candid

01:28:38

us to do the challenges.

01:28:39

And also putting the the

01:28:41

the the the focus on

01:28:43

on some of the challenges

01:28:44

concerning the, that the code

01:28:47

of conduct. Hopefully that 15%

01:28:49

to 15% of the 5%

01:28:52

of the 2% of the

01:28:53

1% is always is always

01:28:55

the most difficult part of

01:28:57

any negotiation. And I and

01:28:58

I talk from experience and

01:28:59

we need it. I'm not

01:29:01

surprised and let alone negotiations

01:29:04

with the, with a hundred

01:29:06

plus a number of other

01:29:08

parties. And and thank you

01:29:13

so much for or bringing

01:29:14

some of the, the more

01:29:16

serve reserve, the thoughts about

01:29:19

how to deal with with

01:29:21

a system that that may

01:29:23

have different levels of applications

01:29:26

by many my my only

01:29:29

sort of reaction to your

01:29:31

The suggestion is that, that

01:29:34

clearly it seems that we

01:29:38

will be moving for dr.

01:29:41

And we would be moving

01:29:43

from the system work. Now

01:29:45

we are in at Hawks

01:29:47

tribunals are strictly inter parties

01:29:54

will be moving into a

01:29:57

system where where the the

01:30:00

decision the Judgment would have

01:30:03

a systemic effect, enhance your

01:30:06

suggestion for giving way for

01:30:09

non non-expiring. Partings to have.

01:30:13

Also there are words over

01:30:16

there voice with that at.

01:30:18

This is a session that

01:30:19

that would be a lot

01:30:21

of fun to to have

01:30:23

a A a breakout room.

01:30:27

I'm not discarding it. We

01:30:31

may want to meet by

01:30:33

Lucia can manage that. I

01:30:35

I unfortunately won't be able

01:30:37

to stay during the breakout

01:30:38

room, I invite all the

01:30:40

panelists to stay in the

01:30:41

break. Courtrooms a lot of

01:30:43

things happened about but I

01:30:45

won't be able to because

01:30:46

I have to go to

01:30:47

our next session which is

01:30:48

the the same person exit

01:30:50

Amendment rules session and it's

01:30:53

not I'm not in there.

01:30:55

They're so I'll be running

01:30:56

between places in Washington DC

01:30:58

and, and thank you so

01:31:00

much. You will be seeing

01:31:03

in the publication of the

01:31:05

of the video. Bye-bye. And

01:31:09

feel free to stay in

01:31:10

the in the breakout room,

01:31:11

in end my Lucia with

01:31:12

Majid bye-bye. Welcome everybody to

00:00:03

World arbitration update. It's day,

00:00:07

5 September 30th 2022. We're

00:00:11

very pleased to offer you.

00:00:12

This is our second world

00:00:16

arbitration update. It's been a

00:00:18

fantastic week. We've had I

00:00:21

think over 15 panels already

00:00:24

a huge variety of topics,

00:00:28

some great people presenting and

00:00:32

so thank you to all

00:00:33

of our moderators and presenters.

00:00:35

It's it's just being a

00:00:37

great weekend today. Should should

00:00:39

be a nice cherry on

00:00:41

the icing, on the cake

00:00:43

cherry on the sundae of

00:00:44

however you want to say

00:00:45

it and before I get

00:00:48

to today's panel, I just

00:00:51

want to cover a few

00:00:52

administrative matters. First is to

00:00:54

thank our sponsors we couldn't

00:00:59

have done this. Prince without

00:01:02

them. They've been incredibly supportive

00:01:04

and we need to give

00:01:06

them full. Thanks for all

00:01:09

their contributions. We have also,

00:01:11

great group of supporters, we've

00:01:14

listed them on our website.

00:01:16

And of course, our Advisory

00:01:17

board has played a critical

00:01:19

role in shaping our panels

00:01:22
and the overall conference this

00:01:25
year and we're very grateful

00:01:26
to them. I guess I

00:01:28
should introduce myself. My name

00:01:30
is Ian Laird, I'm partner

00:01:32
at Crowell & moring here

00:01:35
in Washington. D.c. I'm co-chair

00:01:38
of world, arbitration update along

00:01:40
with my colleague, dr. Jose

00:01:43
Antonio Rivas. And a doctor

00:01:45
Revis, will take us into

00:01:47
the session before that. I

00:01:50
just wanted to talk a

00:01:52

little bit about world arbitration

00:01:54

update and I'm kind of

00:01:57

the objectives that we've sought

00:02:00

to meet. In creating this

00:02:02

Khan conference in, in the

00:02:04

first objective is, of course

00:02:05

to provide very accessible open

00:02:08

forum for the reporting of

00:02:12

new developments in international arbitration.

00:02:13

The virtual method which is

00:02:18

grown up over the last

00:02:19

few years with a pandemic.

00:02:21

And so forth, has become

00:02:22

a great means to connect

00:02:25

to the international arbitration community.

00:02:28

And also, if it's played

00:02:30

help to play another role

00:02:31

in. And one of the

00:02:32

key objectives of wow, is

00:02:35

to reflect the full diversity,

00:02:37

an incredibly varied nature of

00:02:43

the international arbitration Community. One

00:02:46

might think that International arbitration

00:02:48

only occurs in New York

00:02:50

or Paris. But in fact,

00:02:52

the practitioners and that the

00:02:54

people involved in the international

00:02:56

arbitration World hail from every

00:02:58

corner of the planet. Every

00:03:00

country ever, Regent and we've

00:03:03

sought to reflect that in

00:03:05

the way we structured there

00:03:06

the last 5 Days by

00:03:07

having panels and individuals from

00:03:09

every part of the of

00:03:11

the planet and to fully

00:03:13

reflect the incredibly diverse nature

00:03:16

of international arbitration. We thought

00:03:19

that was very important to

00:03:21

to create a conference that

00:03:22

very much celebrates that diversity,

00:03:25

today's panel. It is one

00:03:28

that really goes to the

00:03:30

heart of. I think the,

00:03:32

the Mandate update folks on

00:03:36

developments in international arbitration. Some

00:03:38

of the biggest development have

00:03:40

been occurring in the investor-state

00:03:43

arbitration World. We've seen new

00:03:45

rules, promulgated at exit and

00:03:48

will have a panel at

00:03:50

noon today DC time. So

00:03:51

looking forward to that, but

00:03:53

also we seen an incredible

00:03:54

output of activity and energy

00:03:58

and Innovation occurring, atoms, a

00:04:00

Troll and Toad. These panels

00:04:02

will be looking at that

00:04:04

those developed. So, before I

00:04:06

pass over to Jose Antonio,

00:04:07

I just wanted to reflect

00:04:09

on the incredible work done

00:04:12

by its strategy and Anna

00:04:15

Maria. Anna and Maria Ricci

00:04:17

in particular for their incredible

00:04:19

support and hard work and

00:04:22

making the conference. The success

00:04:25

it is that without them,

00:04:26

that I absolutely wouldn't, wouldn't

00:04:28

wouldn't happen. So full, full

00:04:30

of congratulations and combinations to

00:04:33

them. So on that note,

00:04:35

I just want to pass

00:04:36

it over to Jose Antonio

00:04:37

and will launch ourselves into

00:04:39

this fantastic panel. Jose Antonio,

00:04:43

Thank you, Ian. And he

00:04:44

was as a as indicated

00:04:46

previously panels did. This is

00:04:48

a team sport and and

00:04:51
the word we're I'm

00:04:53
on break glad that we're

00:04:55
partnering with you and in

00:04:59
this business venture that that

00:05:01
is for 2 to eject.

00:05:03
This one is to update

00:05:04
on issues of public, international

00:05:06
law, investment arbitration and international

00:05:08
commercial arbitration and two is

00:05:10
to decentralize International arbitration. And

00:05:13
and that what? You know

00:05:14
what? What other better Tunnels

00:05:19
in Denton that done this.

00:05:21

I mean this this this

00:05:22

is the heart of the

00:05:23

discussions of the investor-state arbitration

00:05:27

or dispute settlement system on

00:05:31

speaker, group 3 discussions in,

00:05:33

in this panel, we have.

00:05:34

And I am that, this

00:05:35

is part of the job

00:05:36

of offer, our incredible moderator,

00:05:39

Margie Lisa, and Jaime, a

00:05:42

butt. But I cannot stop

00:05:43

myself saying how, how glad

00:05:48

I am having another vampire

00:05:50

also YouTube! Wow! I got

00:05:56

the reindeer from from academic

00:05:59

perspective, given her her writings

00:06:01

on on, on the subject

00:06:03

of public international law and

00:06:08

multiple treaties or purpura lateral

00:06:15

treaties and, and how The

00:06:18

investor-state arbitration system, plus make

00:06:23

a mocha latte Industrial Court.

00:06:25

My my lead to some

00:06:27

level of fragmentation to have

00:06:29

Lauren as well. Lauren model

00:06:32

from the perspective of the

00:06:35

reviews that that possibly Chambers

00:06:41
of Commerce and businesses. In

00:06:44
an investigation, might have Margie.

00:06:48
And and, and of course,

00:06:49
my Lucia, who will be

00:06:52
the president to a butt

00:06:53
butt saying that, let me

00:06:56
emphasize and I'm presented. Our

00:07:00
moderator. Margulis Jaime is is

00:07:02
is senior adviser at the

00:07:05
ministry of offer of economy

00:07:07
of the Republic of Panama

00:07:08
and she is the the

00:07:10
representative of a stroke. Group

00:07:17

three meetings and she is

00:07:20

basically the presence of a

00:07:22

investor-state arbitration and I'm sure

00:07:25

the future for the Republic

00:07:27

of Panama. We are very,

00:07:30

very glad and to have

00:07:32

a Margie here for many

00:07:35

reasons. Not only because of

00:07:36

her or post but also

00:07:37

because of her background and

00:07:39

you'll see what I mean,

00:07:41

she has a Ph.D. She's

00:07:44

a fellow of the chartered

00:07:46

Institute of arbitrators is a

00:07:48

professor of law at the

00:07:48

University of the Panama. And

00:07:50

she has been acting as

00:07:53

a Consulting, an expert in

00:07:55

commercial trade and investment matters,

00:07:57

or practice has included International

00:08:01

Education, Maritime disputes, commercial arbitration

00:08:03

investor-state dispute, an international trade,

00:08:07

she received her PhD and

00:08:09

at 11 International economic Affairs,

00:08:11

law from Universiti divider, I

00:08:17

saw it and I'll let

00:08:19

me know. Patricia 9 international

00:08:20

business law from the University

00:08:23

of Ty. She also has

00:08:26

an llm in international business

00:08:28

and economic law and from

00:08:31

Georgetown University mild soap. So

00:08:37

she really somewhat. But somebody

00:08:39

who from practice academic and

00:08:42

and and and life experience

00:08:44

can share a lot, Margie

00:08:47

will not only be at

00:08:49

the moderator. She will also

00:08:50

be providing commentary substantive commentary

00:08:55

so she will be playing

00:08:55

at both Rose and I

00:08:58

were very glad to take

00:09:00

this off. As you know

00:09:03

this this session will be

00:09:05

recorded. I am now authorized

00:09:08

by our developer and also

00:09:11

partner in this venture. Optica

00:09:18

2 to announce that, we

00:09:20

will be not only recording

00:09:22

all the panels, but in

00:09:25

the near future, hopefully before

00:09:27

the 10th of October, will

00:09:29

be able to, or you

00:09:31

will be able to look

00:09:32

at the videos, but also

00:09:33

charms hurt them, or a

00:09:35

researchers or, or everyone. So,

00:09:38

normally, it's kind of boring

00:09:40

to go to a website

00:09:41

on on c 2, hours

00:09:43

of a video, but now

00:09:44

you can go right where

00:09:46

you want. So, with that

00:09:48

said, welcome everyone and take

00:09:52

it away. Thank you, cousin,

00:09:56

Tonio. And I would like

00:09:59

to start by thanking the

00:10:01

organizers and this wonderful week

00:10:07

vacation update is really an

00:10:10

honor to participate for the

00:10:13

second time to the station.

00:10:16

So our sessions 3 and

00:10:21

fragmentation of isps and I

00:10:25

hope that is going to

00:10:26

be a very Dynamic. And

00:10:30

turbocat, the 4-0 loss to

00:10:33

u.s. nation is going to

00:10:40

be our prayer Center. So

00:10:43

she will provide a general

00:10:45

overview of where she is

00:10:50

at work and energy. An

00:10:55

Energy Efficiency regulation. She is

00:10:58

currently senior associate of arbitration

00:11:01

and international law strategy in

00:11:06

the United States and Colombia.

00:11:09

And she sounds like she's

00:11:10

a professor of International University

00:11:14

of el Rosario, and coach

00:11:17

of the word competition of

00:11:21

the University. We're going to

00:11:27

have that. It's going to

00:11:31

discuss issues related to our

00:11:35

discussions in working with three

00:11:37

and we'll start with an

00:11:41

R that she asked. Everybody

00:11:45

knows a secretary of the

00:11:48

United Nations Commission of international

00:11:50

trade, Office of legal, Affairs

00:11:58

of the united nation, which

00:12:01

functions as a secretary for

00:12:04

appointment on 24th November. 2017,

00:12:12

I'm not practice law. In

00:12:16

Paris and investment between a

00:12:21

resolution to focus on serving

00:12:25

as Council leader and consolator

00:12:29

International Investment in Rio, 2011,

00:12:33

and for 15 years. On

00:12:36

our way to the senior

00:12:37

legal advisor for the United

00:12:40

Nations conference on trade and

00:12:42

development degree. In the private

00:12:48

international law for a master's

00:12:54

degree in international economic and

00:13:00

political science from The Institute.

00:13:02

Then we will have also

00:13:08

learned man do his counsel

00:13:12

in the international trade and

00:13:15

International Education groups At Whitman

00:13:18

Hill in Washington DC in

00:13:20

practice as over in-state investor-state.

00:13:26

Dispute settlement. In addition to

00:13:29

a bison on investment treaty

00:13:31

negotiations. And prior to joining

00:13:36

Ask US government. Most recently,

00:13:41

as the deputy assistant of

00:13:44

the US trade representative for

00:13:46

investment depreciable, advisors to the

00:13:49

US trade representative for an

00:13:51

investment loan. Today, I learned

00:13:56

represent the US Council for

00:13:59

International Business. In the US

00:14:05

is an association of international

00:14:08

companies from every sector of

00:14:12

the economy, dedicated to promoting

00:14:14
international trade and investment. And

00:14:18
last but not least, I

00:14:19
will have a letter in

00:14:26
international economic law at the

00:14:28
University of Liverpool cheese. Also

00:14:31
an adjunct assistant. Professor of

00:14:34
international law at the Fletcher

00:14:36
School of Law and diplomacy

00:14:39
and the general editor of

00:14:43
the Journal of the word

00:14:44
energy, law and business before,

00:14:47
doing it for several years

00:14:51
as a legal at the

00:14:55

energy detector eight of the

00:14:57

week in Tunisia, as she

00:15:00

starts being, a consultant development

00:15:08

Academy, International International Investment law

00:15:20

and International Energy on us

00:15:27

and International Energy negotiator so

00:15:33

we have I know expert

00:15:37

on the topic. So apple

00:15:40

and now the time is

00:15:44

passing, and we'll start with.

00:15:46

Who is going to be

00:15:49

a presentation of working retreat.

00:15:57

Thank you, Marty. Thank you

00:15:58

for the kind introduction on

00:15:59

a. Thank you to Jose

00:16:01

Antonio for inviting me. It

00:16:04

is a real pleasure to

00:16:05

hear. Otherwise they are the

00:16:07

wall, and of course, to

00:16:09

be sharing this panel together

00:16:10

with Margie Anna, Lauren and

00:16:13

a Katrina, I must admit

00:16:14

that it is a heavy

00:16:15

for a presentation of all

00:16:19

of you. But I'll do

00:16:20

my doodoo, a great update

00:16:23

of this Hot Topic. So

00:16:26

we'll just start with the

00:16:28

first thing that I would

00:16:29

like to mention is that

00:16:31

investor-state arbitration and of course

00:16:33

is Diaz. Reform is one

00:16:36

of those hard topics that

00:16:37

are currently being discussed in

00:16:39

many parts. Particularly of course,

00:16:42

the fact that stakeholders and

00:16:44

uses users of the system

00:16:46

in the recent years have

00:16:48

been identifying some short vowels

00:16:51

that have made them rethink

00:16:52

the system and consider whether

00:16:55

there is a need to

00:16:56

renovate or to reform reform

00:16:59

the system as it is

00:17:01

conceived it today. So some

00:17:03

of the questions today are

00:17:05

in everyone's mind is whether

00:17:07

is dies. He's going to

00:17:09

the right direction or whether

00:17:12

the creation of a multilateral

00:17:14

investment sport or an appeal

00:17:16

mechanism is Justified. And of

00:17:19

course, even this may be

00:17:21

the that cost of an

00:17:22

investment arbitration as we know

00:17:24

it today So you in

00:17:26

the past few years, I'm

00:17:28

to be exact. It was

00:17:29

in Meet 2017. The world

00:17:33

has been witnessing. The investor-state

00:17:35

dispute settlement reform debate on

00:17:39

their the agencies of the

00:17:41

United Nations Commission on International

00:17:43

Trade, law more known as

00:17:45

using drugs. And as some

00:17:48

of you may know this

00:17:49

discussion, of course, it started

00:17:52
when they use it real

00:17:53
and thrusts its World working

00:17:55
group 3, with a broad,

00:17:57
mandate to work, and to

00:18:00
the Livery on the possible,

00:18:02
multilateral response of the system.

00:18:05
So these deliberations of course

00:18:08
are taking place based on

00:18:10
many things or many issues.

00:18:12
First of course concerns that

00:18:14
have been identified of the

00:18:17
system. And of course also

00:18:19
a by the fact that

00:18:20

some countries and regions on

00:18:22

nowadays are developing a new

00:18:25

approach. Dispute settlement on freeze.

00:18:29

Dance are also examining other

00:18:32

options for dispute prevention. And

00:18:35

it also trying to negotiate

00:18:37

alternative types of bilateral investment,

00:18:40

treaties, or even renegotiating or

00:18:43

trying to terminate its existence

00:18:45

in best International Investment agreements.

00:18:48

And of course, you might

00:18:50

know that this is happened

00:18:51

in within the European Union

00:18:53

after Acme. Do the working

00:18:56

group of three by discharging

00:18:59

this, man, the musical it

00:19:02

has really ensured that the

00:19:04

devil. Deliberation some discussions are

00:19:07

taking place, well, of course,

00:19:09

benefits from the widest possible

00:19:12

breed of a bailable expertise

00:19:14

from all stakeholders, they have

00:19:16

been leading by, of course,

00:19:18

government. And of course, they

00:19:20

have been doing so it

00:19:22

within consensus-based, which is, of

00:19:25

course, the more the more

00:19:26

important in his puke settlement

00:19:29

system, investor-state arbitration dispute, settlement

00:19:33

East So, well, on the

00:19:36

understanding the those possible reforms

00:19:38

that are being discussed and

00:19:41

of course, will be the

00:19:43

topic of this panel will

00:19:45

be made applicable to existen

00:19:47

International Investment agreements. I believe

00:19:50

it is important to a

00:19:53

pudding to the table or

00:19:55

to bring him to the

00:19:56

participants attentions. Some of the

00:19:59

statistics of The Boondocks that

00:20:02

established that nowadays we have

00:20:03

more than a 3300x system

00:20:07

in bed, International Investment agreements

00:20:10

a having two thousand and

00:20:12

almost 500 International Investment agreements

00:20:16

Imports. Whether there are bips

00:20:18

or other treaties, of course,

00:20:20

we'd investment a protection. So

00:20:23

now entering into the subject,

00:20:26

matter of this panel. So

00:20:28

we tried there before my

00:20:29

options are being considered part

00:20:31

by the working group 3.

00:20:33

So we have like big

00:20:35

topics and, of course, subtopics

00:20:37

that are developed in in

00:20:39

each of these, a big

00:20:41

topics. So I suffer stopping,

00:20:43

we have dispute prevention and

00:20:45

mitigation, and means of alternative

00:20:47

dispute resolution year. On some

00:20:49

topics, we can find an

00:20:51

issues regarding extraction of local

00:20:55

remedies procedures to address the

00:20:59

claims of course country claims

00:21:01

which is always a very

00:21:03

interest interesting topic. As point

00:21:07

we have the selection and

00:21:08

appointment of isds tribunal members

00:21:12

And here we can find

00:21:13

discussions regarding the code of

00:21:16

conduct, which we will be

00:21:19

discussing that today. And, of

00:21:21

course, those issues regarding member

00:21:24

selection, appointment done and challenges,

00:21:26

we also have issues regarding

00:21:29

cost management. Unrelated procedures, of

00:21:32

course, third-party funding which is

00:21:34

always a Hot Topic on

00:21:36

the sessions of the establishment

00:21:39

of community center, which I

00:21:41

really want a very interesting

00:21:44

and a potential reform. The

00:21:47

last do with your scores

00:21:49

are the the more discussed

00:21:51

in the in the international

00:21:55

a scenario. We have a

00:21:57

suggestion and of course, I

00:22:01

moved electrical permit in the

00:22:03

Sun. So the last working

00:22:06

session of the working group

00:22:08

3 was held two weeks

00:22:09

ago. So this panel, of

00:22:13

course, he's very pregnant ladies.

00:22:17

Very recently, it was between

00:22:19

September 5th and September 16th

00:22:22

and it was very exciting,

00:22:23

of course, because it was

00:22:25

the first team person meeting

00:22:26

since the start of the

00:22:28

from them, just to give

00:22:30

you like, an understanding on

00:22:32

how it work discussion. And

00:22:34

in this location also delegates,

00:22:37

a were able to listen

00:22:39

to session remove the only

00:22:42

intervene with Commons, if they

00:22:44

were attending the station in

00:22:46

person. So well as to

00:22:49

the topics that were discussed

00:22:50

and of course this is

00:22:52

going to be the mother

00:22:56

of this panel. We have

00:22:58

the following topics. First we

00:23:00

have the standing of the

00:23:01

lateral mechanism where where we

00:23:04

can find the issues regarding

00:23:06

selection and appointment of is

00:23:09

this tribunal members and related

00:23:10

matters. We also have multilateral

00:23:13

instrument of isds Reform, we

00:23:16

also have a those procedural

00:23:18

rules and cross-cutting issues where

00:23:21

we can find the issues

00:23:22

regarding our location. Last concert

00:23:24

teams there by funding an

00:23:26

assessment of Damages, which is

00:23:28

very important topic and it

00:23:31

is my understanding that regarding

00:23:32

this topic, they have agria

00:23:35

way forward to work on

00:23:37

a draft text that will

00:23:38

include some professional guidelines, an

00:23:40

explanatory notes on issues such

00:23:43

as a speculative station requirements

00:23:47

by Iration. But such as

00:23:48

the use of DCF experts

00:23:56

on Coors the proper evaluation,

00:23:57

they regard a promposal work

00:24:02

interest rate soup topics. As

00:24:06

I mentioned, before we have

00:24:08

third-party funding and some of

00:24:10

these structures that have been

00:24:11

given to the secret area

00:24:12

on this issue, is to

00:24:14

prepare provisions on, on some

00:24:17

categories such as to provide

00:24:22

a broad definition of what

00:24:23

is there by phone. So

00:24:25

you can ensure like an

00:24:26

adequate disclosure on, of course,

00:24:29

a boy with this any

00:24:31

potential conflict of interest. Also

00:24:34

think through the permit is

00:24:35

Brule a word by third-party

00:24:37

funding will be generally allowed,

00:24:40

but this will be a

00:24:42

limited by some conditions on

00:24:45

the specific terms of of

00:24:46
the funding. Such as a

00:24:48
tool to be to clarify,

00:24:51
that the third party founder

00:24:52
or its Representatives, must not

00:24:55
have control or influence over

00:24:57
the management of the claim.

00:24:58
On the death are performing,

00:25:00
more must refrain to choose,

00:25:04
and to be representative by

00:25:06
its own legal, a representative,

00:25:08
which of course, these are

00:25:10
issues, there are always some

00:25:13
people that work in the

00:25:15

industry. But of course there

00:25:16

is a need to clarify

00:25:17

if the suspects have to

00:25:19

have like a two-year-old on

00:25:21

that and we also have

00:25:23

some discussions about draft provision

00:25:25

and guidelines on investment mediation,

00:25:28

the code of conduct as

00:25:29

a measure before. And lastly

00:25:31

device recent 3 which I

00:25:33

think it is a very

00:25:34

interesting proposition. But of course

00:25:36

360 like meet to Define

00:25:39

clearly the scope of the

00:25:40

services who will be the

00:25:42

beneficiaries it, where it will

00:25:44

be 4 Less developed countries

00:25:46

develop in space. Dora states

00:25:48

with limited experience investor-state arbitration

00:25:51

disputes weather. I mean which

00:25:56

conflict of interest may arise

00:25:59

truck throws. Its location. Of

00:26:01

course on cost and Finance

00:26:03

in which case I think

00:26:06

one of the great issues

00:26:07

on on this reform how

00:26:10

we are going to finance

00:26:12

all these these ideas behind

00:26:14

the telescope. So as you

00:26:17

can see, of course this

00:26:18

is a very ambitious process,

00:26:20

one wish her, but at

00:26:23

least we'll die deeper into

00:26:25

a few moments. So, I

00:26:27

think we thought and of

00:26:28

course, it taking into account,

00:26:30

the time, I'll do the

00:26:32

floor to Marty on to

00:26:33

the experts that will Enlighten

00:26:35

you about the discussions that

00:26:37

took place a few weeks

00:26:39

ago. Thank you. Thank you

00:26:41

so much, Melissa and buy.

00:26:44

Your presentation is to you're

00:26:45

being really busy in the

00:26:48

past 25 years in 2017.

00:26:53

When did you started that?

00:26:55

At least for me, it

00:26:58

was clear. That question was

00:27:00

not whether or not I

00:27:02

need to be reformed but

00:27:06

how it was going to

00:27:08

give it form and how

00:27:09

deep is going to be

00:27:11

entirely on some of these

00:27:19

topics about that on some

00:27:30

of the aspects that we

00:27:32

just discuss two weeks ago.

00:27:40

Work on Damages that you

00:27:42

mention the 40 medications and

00:27:46

importance of mediation provision that

00:27:51

we have been discussed by

00:27:53

at least the past two

00:27:56

years and modeling. Thank you

00:28:05

very much. So, at the

00:28:08

outset, I would like to

00:28:10

thank the wow, for inviting

00:28:14

me and giving me the

00:28:16

opportunity to share a few

00:28:18

Thoughts with you. And I

00:28:22

want you to start out

00:28:23

by saying that I have

00:28:26

to take a bit of

00:28:27

an issue with the title

00:28:29

because I don't think that

00:28:32

we are fragmenting. But brother,

00:28:35

that we are trying to

00:28:37

carry out that you say,

00:28:38

a very complicated and complex

00:28:42

task of reforming, a sophisticated

00:28:46

system and just trying to

00:28:48

do it in a coherent

00:28:50

manner. So if we look

00:28:53

at the various pieces and

00:28:55

of course you can already

00:28:56

see where I'm aiming at

00:28:58

that, they are indeed pieces

00:29:00

of a puzzle but that

00:29:02

this puzzle is meant to

00:29:03

be put together. I'm to

00:29:06

show a coherent picture. When

00:29:08

we look at it, when

00:29:10

all the pieces are put

00:29:11

together, we will have a

00:29:12
comprehensive and coherent picture. This

00:29:15
is really what's the working

00:29:17
group is trying to do?

00:29:18
And what I do if

00:29:21
you allow me, rather than

00:29:23
spending much time on the

00:29:26
different elements of the different

00:29:30
elements of the form that

00:29:32
you have explained it very

00:29:36
well. So very happy and

00:29:39
so much detail giving us.

00:29:41
We need what what is

00:29:43
needed? Where are? We are

00:29:45
in the development of oldies

00:29:47
are reformed elements, very briefly

00:29:54
about the process. We we

00:29:57
have since the beginning try

00:30:00
to have a very inclusive

00:30:01
process and also a very

00:30:05
I tried to be efficient

00:30:09
in the sense that we're

00:30:11
not here to replicate or

00:30:13
duplicate what is being done?

00:30:15
Elsewhere. This is something I

00:30:18
would really want for exercise

00:30:20
at the stage where the

00:30:22

dictionary form with the Amendments

00:30:25
of the exit of the

00:30:26
Christian rules has entered into

00:30:28
force in July and I

00:30:30
was referring to this going

00:30:33
to be a panel presenting

00:30:35
this with these amendments. I

00:30:39
would really like to emphasize

00:30:41
the fact that we are

00:30:42
working very closely with stick

00:30:46
Secretariat, particularly under development of

00:30:49
the code of conduct will

00:30:50
be talking about later. But

00:30:53
also obviously, if they are

00:30:56

all ready and will be

00:30:57

more and more involved in

00:30:58

the development of the Appellate

00:31:00

mechanism, which if you recall

00:31:03

is supposed to be trans,

00:31:05

The whole to apply not

00:31:07

only to the the judgments

00:31:10

of the first instance, our

00:31:12

investment court but also to

00:31:15

the beach with the view

00:31:21

of bringing back the coherence

00:31:24

that would otherwise be disturbed

00:31:30

or further further, take it

00:31:35

out of my system which

00:31:37

is already in essence more

00:31:42

investment for you to bear

00:31:48

in mind is that we

00:31:50

are working with except for

00:31:52

instance, that I will be

00:32:01

working closely with the world.

00:32:05

Are already visible form elements.

00:32:08

We are not going to

00:32:11

designer redo our own little

00:32:15

reform and let me take

00:32:18

an example, mediation. What's the

00:32:21

working group has been working

00:32:23

on? So far is that

00:32:26

are pink mediation provision into

00:32:30

existing and future investment treaties.

00:32:33

But no read during mediation

00:32:37

who why it has just

00:32:39

produced its own ists mediation

00:32:44

rules. And so it doesn't

00:32:45

make sense to have the

00:32:47

working group in, uncitral repeating,

00:32:50

exactly what's been done somewhere

00:32:52

else. I'm still the same

00:32:54

is going to happen with

00:32:56

the improvements that keeps. It

00:32:58

has just produced to is

00:33:00
procedural rules because the rules

00:33:04
are And the rules amendments

00:33:08
that were focusing on cost

00:33:12
and duration of the process

00:33:14
will, of course, be taken

00:33:15
on board to make sure

00:33:17
we don't end up with

00:33:18
the uncitral faster procedures and

00:33:23
the exit, past the procedures

00:33:25
that go further apart. The

00:33:27
idea is indeed and always

00:33:30
that direction into which the

00:33:32
working group is going is

00:33:33
to build on what is

00:33:35
being done. So that we

00:33:36
do not further disclosures together.

00:33:44
So having said that what

00:33:54
I would like to focus

00:33:55
on in my presentation is

00:33:58
the because I'm pretty sure

00:34:00
Lauren is going to speak

00:34:01
about the code of conduct

00:34:02
at some point or another

00:34:05
I would like to focus

00:34:07
my a presentation on the

00:34:09
delivery mechanism for this week

00:34:12

form and this is to

00:34:15

put together the different pieces

00:34:21

of the puzzle. So what

00:34:23

you seen earlier on the

00:34:25

institutional elements of Go to

00:34:30

previous channel, elements of Reform

00:34:33

one is this? The other

00:34:38

one is transversal and also

00:34:43

apply to state-to-state disputes at

00:34:46

the request of Summer. Member

00:34:48

states, were very keen on

00:34:50

strengthening. The state-to-state system are

00:34:54

two investment arbitration and to

00:34:58

the first instance working out

00:34:59

for investment and then be

00:35:02

Advising Center that's at 2.

00:35:06

And then we have all

00:35:08

the procedure elements. Some of

00:35:10

which you have already seen

00:35:12

in The Incident Management, for

00:35:14

example, security for costs to

00:35:16

a location or the possibility

00:35:18

to bring counterclaim or early

00:35:21

dismissal of planes. Manifesting without

00:35:24

either married. Or what are

00:35:25

we doing here? Putting these

00:35:30

elements into. What will you

00:35:33

look like a tractor and

00:35:36

isps chapter in an investment?

00:35:38

Why is because, if you

00:35:40

don't have that in the

00:35:42

treaty, particularly in the 3000

00:35:46

old treaties that are there,

00:35:49

and that nobody wishes to

00:35:50

reopen and we would never

00:35:53

benefit from these ratings, and

00:35:56

he's positive amendments to the

00:36:00

system that are being done

00:36:02

in the next. I want

00:36:10

to reply to commercial arbitration,

00:36:11

but that would otherwise be

00:36:14

lost for the three teams

00:36:17

that don't have them in

00:36:18

the presidents that are so

00:36:20

few examples about time, I'm

00:36:23

putting out here to show

00:36:25

you that. Yes, that is

00:36:27

already and tickseed approach to

00:36:30

funding to early dismissal to

00:36:33

the accountant. Playing Pandora course,

00:36:36

all of this will be

00:36:37

included into the reform element

00:36:41

as a replacement of existing

00:36:44

Provisions in investment treaties that

00:36:46
are not up to this

00:36:49
level of development in CS

00:36:51
and an adaptation to developments

00:36:56
in is BS because they

00:36:58
back to the early nineties,

00:37:01
where none of these issues

00:37:03
were actually contemplated. Orbeez elements

00:37:10
together. Very good animation and

00:37:16
I was hoping that I

00:37:17
could do the putting together

00:37:18
myself, but no I can't

00:37:20
just point at the different

00:37:22
colors in the center. You

00:37:25

have what we call, the

00:37:27

multilateral framework convention and this

00:37:32

framework convention, we could have

00:37:34

designed as the compass thing

00:37:36

as sort of a circle

00:37:37

into which fits all the

00:37:39

elements. But we prefer to

00:37:41

look at it as the

00:37:43

central piece of the puzzle

00:37:44

because the various elements of

00:37:48

Reform are going to pitch

00:37:49

into and to sit with

00:37:53

the with the multilateral framework

00:37:56

convention. The reform will be

00:37:59

achieved even if all the

00:38:02

elements are not there, even

00:38:05

if all the elements are

00:38:06

not subscribed to buy, So

00:38:10

let me just go back

00:38:12

to the different pieces of

00:38:14

puzzle. You remember my piece

00:38:17

of the puzzle which is

00:38:18

called Bessemer Court, very well

00:38:23

with the special piece on

00:38:27

the delivery mechanism, but not

00:38:31

Old Country. Sign on to

00:38:33

the investment Court, the system

00:38:36

is still coherent and they're

00:38:38

still, it would still be

00:38:39

operational. Similarly, for the Appellate

00:38:43

mechanism, similarly, which obviously is

00:38:48

not going to be used

00:38:50

by old country but will

00:38:52

still be connected directly to

00:38:54

the framework convention. So how

00:38:58

are we in visiting this

00:38:59

framework convention? We're not quite

00:39:02

sure as yet, as to

00:39:04

the content of the framework

00:39:06

convention itself. Will it have

00:39:08

core Provisions that apply across

00:39:10

the board? Or will it

00:39:12

just be what it says?

00:39:13

It's for the time, being

00:39:14

a framework that holds all

00:39:16

the other elements together and

00:39:20

we're not sure because what's

00:39:23

the state have been insisting?

00:39:25

He is keeping a degree

00:39:28

of flexibility. And of course,

00:39:38

the understanding of what is

00:39:39

flexible is not equally shared

00:39:44

and some states consider that,

00:39:47

you know, the flexibility goals

00:39:49

included in through various Provisions,

00:39:53

that can be negotiated where

00:39:55

they want to see. I'm

00:40:02

going no I'm not going

00:40:03

to use double acting. I'm

00:40:05

going to use a degree

00:40:09

of flexibility that goes very

00:40:12

much into four different elements

00:40:14

of each piece of puzzle.

00:40:18

At the flexibility can also

00:40:20

be at the level of

00:40:21

what piece of the puzzle.

00:40:23

Do I add? Do I

00:40:25

log into the most electrifying?

00:40:27

What convention that I'm dealing

00:40:29

with a framework convention that

00:40:39

will have the usual, you

00:40:42

know, Committee of the parties

00:40:44

that will Will be a

00:40:47

mechanism to have. All the

00:40:49

partying is continuing to monitor

00:40:51

the way it works, including

00:40:53

towards the future, and future

00:40:56

developments, that might not necessarily

00:40:58

be finished in 2026. When

00:41:01

the working group is supposed

00:41:03

to deliver a reform and

00:41:06

the other thing is that

00:41:09

with or without your permission

00:41:14

will have annexes or protocols.

00:41:18

And this is the way

00:41:20

we will link the pieces

00:41:23

of the puzzle to the

00:41:24

central piece. It will be

00:41:26

through these protocol mechanisms. So

00:41:29

either you a deer to

00:41:32

the framework. Convention, one or

00:41:36

two or three out of

00:41:38

seven different, protocols, that will

00:41:41

be put, that will be

00:41:43

made available for steak. Idea

00:41:47

to what we have to

00:41:48

keep in mind. And that's

00:41:49

where we going back to

00:41:51

my title with, which I

00:41:52

take issue, which is a

00:41:54

fragmentation, is that we don't

00:41:57

end up with a reverse

00:41:58

light, which is totally impractical

00:42:00

and which results in something,

00:42:03

which is difficult for investors

00:42:07

to navigate system with talking

00:42:11

about is meant to give

00:42:14

certainty and to give reassurance

00:42:18

and security to investors. So,

00:42:22

if you end up with

00:42:23

a reform, which is full

00:42:25

of little pieces and where

00:42:26

you have to have a

00:42:28

degree in Neuroscience, to be

00:42:30

able to link what country

00:42:33

has a year to this,

00:42:34

and what country has agreed

00:42:36

to that before. I mean,

00:42:38

if you don't have the

00:42:39

degree higher sophisticated lawyers to

00:42:44

be able to tell you,

00:42:45

if you invest in, This

00:42:46

is what you would have

00:42:47

on your menu. This is

00:42:50

not the purpose and we

00:42:51

haven't a good example of

00:42:53

which is an example of

00:42:54

the reform of the double

00:42:58

tax treaties, that has been

00:43:00

undertaken by the oecd. We

00:43:03

have now seen how it

00:43:06

works. It has a, of

00:43:09

course, the Kiss Beauty is

00:43:11

a good template for us

00:43:12

to know that you can

00:43:13

tackle 3,000-plus existing treaties with

00:43:17

the framework convention, which remain

00:43:20

flexible from the state. But

00:43:22

we also see Mouse. Some

00:43:24

of the defect in this

00:43:25

too much flexibility, which result

00:43:29

in having country, you know,

00:43:32

when you go see it

00:43:33

in this and the deer

00:43:33

in the back taking this,

00:43:35

not taking that and this

00:43:36

makes it extremely difficult to

00:43:38

navigate. So, that's going to

00:43:40

be a very clearly where

00:43:43

the working group Fragmentation. And

00:43:50

hence our, our constant objectives

00:43:57

of making sure that holder

00:43:59

reform elements as having developed

00:44:01

and stick and remain together

00:44:04

in a clear picture of

00:44:07

the reform results. Thank you

00:44:09

very much. Thank you. Thank

00:44:12

you. I think you're right.

00:44:15

That the framework convention or

00:44:20

elements features. Otherwise we will

00:44:24

have just different pieces of

00:44:26

the puzzle. Not being able

00:44:29

to how to is going

00:44:31

to work for all of

00:44:33

us because so far we

00:44:36

have been working in different

00:44:38

text and we will talk

00:44:40

about about that bed. A

00:44:43

different, a different parts of

00:44:46

the day. If we are

00:44:50

not able to really, you

00:44:53

know, Country Estates to really,

00:44:56

you know, who joins a

00:44:58

list. A quart of Provisions

00:45:01

that is going to work

00:45:02

for everybody even if we

00:45:04

need to be flexible person

00:45:06

in some of the reports

00:45:10

just as soon as you

00:45:11

mentioned, we didn't fill out

00:45:12

report or the Appellate because

00:45:16

we know that we have

00:45:19

to be purchased views in

00:45:22

the country. So, definitely for

00:45:30

the needed to come with

00:45:34

me to work in this.

00:45:35

What did I drop framework

00:45:36

convention on to see how

00:45:37

the other pieces are going

00:45:40

to defeat in disposal, either

00:45:44

supercouples or to Annex as

00:45:47

you mention. So one of

00:45:50

these pieces of the Apostles

00:45:53

that you mention, if he

00:45:55

could have condoms and we

00:45:57

have been working in the

00:45:59

sax now for for several

00:46:03

several meetings, actually, I was

00:46:06

hoping, you know, I did

00:46:07

last meeting to finalize with

00:46:09

the draft of the code

00:46:11

of conduct as I'm sure

00:46:12

many other countries that we'll

00:46:15

be able to finish up

00:46:18

to finalize because there's different

00:46:21

views regarding song. Santa Fe

00:46:29

code of conduct. Other 50%.

00:46:34

So it's two or three

00:46:35

articles that Conflict for for

00:46:41

some of the countries and

00:46:42

also the potential impact on

00:46:46

the right. One of these

00:46:50

articles in particular have changed

00:46:54

dramatically since the first edition

00:46:58

of the code of conduct,

00:46:58

which has been, we haven't

00:47:02

had several versions of this

00:47:05

article is Adam So at

00:47:12

first it and the secret

00:47:14

that are really, really good

00:47:16

work trying to different shape

00:47:20

of you. So those who

00:47:22

are more for me recently

00:47:27

or Banning orders more Flexible

00:47:35

rice and effects of abuse,

00:47:37

or some of the countries

00:47:39

that really thinks that we

00:47:42

are. Disclosure from the part

00:47:48

of the arbitrator's will be

00:47:50

enough and then the parties

00:47:53

will choose. So now we're

00:47:57

like you don't. So we

00:47:59

are approaching and I think

00:48:01

that's the weekend. I would

00:48:05

like to hear from Lauren

00:48:07

which is not represented investor

00:48:11

site in this is us

00:48:13

to provide you know, review

00:48:16

of the best sellers. And

00:48:18

how is he that we

00:48:19
could arrive to a final

00:48:21
text abbreviation for Edition Lauren.

00:48:29
Thank you very much, Margie

00:48:31
and this is the first

00:48:32
time I'm speaking, thank you

00:48:34
for the organisers. Antonio the

00:48:37
wild Founders and organized and

00:48:40
also including especially on a

00:48:43
uilleann pleasure to be on

00:48:45
the same panel with you

00:48:46
and the others here. I

00:48:50
think there's a lot of

00:48:50
enthusiasm for the code of

00:48:52

conduct in the working group.

00:48:54

Here's a widespread recognition that

00:48:55

there's a gap in the

00:48:57

International Investment law framework. Where

00:49:00

is there is no existing

00:49:02

agreed, multilateral instrument negotiated by

00:49:07

States the rules of the

00:49:10

road for arbitrators. Obviously, there

00:49:12

are guidelines than coughing some

00:49:14

interest there. Other state or

00:49:18

states for investor-state dispute settlement.

00:49:29

Business, which is located on

00:49:32

the private sector business side.

00:49:34

I also representing United States

00:49:36
for six years as a

00:49:38
group and also in negotiations.

00:49:41
And I, I do try

00:49:43
to mediate, I think between

00:49:45
kind of investor perspective mistake

00:49:47
respected. As I'm saying this.

00:49:48
I'm looking at my background,

00:49:50
but I have to serve

00:49:51
big green on the left

00:49:52
and the right on the

00:49:53
right and I aspire to.

00:49:55
Kind of balance. I probably

00:49:56
don't achieve it, I try.

00:49:57

But my comments were informed

00:49:59

by my girlfriend experience as

00:50:00

well. That's that, I do

00:50:02

not speak for the code

00:50:06

again. I like the comment

00:50:10

that you made margins were

00:50:11

85% there and then that

00:50:13

were in the toughest issues.

00:50:13

Unfortunately my experience in the

00:50:16

trade negotiations this is sort

00:50:17

of how it goes right

00:50:18

that you have a a

00:50:20

process where you make a

00:50:21

lot of progress on the

00:50:23

sort of the lower hanging

00:50:24

fruit issues, where there is

00:50:25

General agreement or or not

00:50:27

significant gaps. What is the

00:50:30

last 15%? Really? That is

00:50:32

the most challenging and that

00:50:33

it's difficult to sort of

00:50:36

predict how it goes particularly

00:50:37

in this form form into

00:50:41

a noxious to put a

00:50:43

preponderance of news. On one

00:50:44

side, the other to try

00:50:46

to achieve consensus, which is

00:50:48

a very difficult process. I

00:50:50

think we were in the

00:50:54

most recent discussions in Vienna.

00:50:56

You know, my estimation is

00:50:58

that we're moving more slowly

00:50:59

than many delegates at Hope.

00:51:03

And with respect to that

00:51:04

remaining 15%, I'm not sure

00:51:08

we see the end in

00:51:09

sight yet. I don't know

00:51:10

that I can answer the

00:51:11

question that you post Margie,

00:51:12

has all been wondering if

00:51:14

it was all points in

00:51:17

Prince of where I think

00:51:18

the discussions were at the

00:51:20

end of the meetings in

00:51:22

Vienna on the Cove. I

00:51:23

think number one at the

00:51:25

most significant, they're working group

00:51:27

has not yet bridge the

00:51:28

gap. On I think has

00:51:31

been recognized as the most

00:51:32

divisive issue in the Cove

00:51:34

in that is the so-called

00:51:35

double padding question. And depending

00:51:39

on one's perspective, you can

00:51:41

see the start of prevalence

00:51:42

Muse on this side or

00:51:43

that side, but I think

00:51:44

clearly there's remains a significant

00:51:46

S. I think it's concerning

00:51:50

from this perspective that the

00:51:54

working for you didn't have

00:51:56

time to discuss the whole

00:51:57

codes that the code has

00:51:59

eleven articles. And in the

00:52:01

session of the working group,

00:52:03

we reached nine of them

00:52:05

didn't got some, for example,

00:52:07

two very important Provisions. No

00:52:10

one governing Disclosure by arbitrators

00:52:13

complex and raises many questions

00:52:15

and then another article on

00:52:17

how do you ensure compliance

00:52:19

with the condo. So not

00:52:23

answering your question. There are

00:52:30

two significant obstacles that have

00:52:31

not been vetted and soul

00:52:32

into work Christmas Day and

00:52:35

then the third and the

00:52:38

complete perhaps that there was

00:52:41

the opportunity to not have

00:52:43

the opportunity to address the

00:52:44

the commentary for the car

00:52:46

which is a draft document

00:52:48

that was drafted by the

00:52:50

ocean. That meant to guide

00:52:55

the interpretation of the code

00:52:58

itself. And that will obviously

00:52:59

be a very critical documents

00:53:01

to understanding how the global

00:53:03

operating factor into that document

00:53:05

to the great credit. I

00:53:06

think of the of Anna

00:53:07

and her staff has been

00:53:09

here for so long with

00:53:10

you, but it's not been

00:53:13

working at this stage because

00:53:19

it has not been translated

00:53:20

in all of the new

00:53:21

and languages, right? I'm to

00:53:30

protect with confidence that the,

00:53:31

the cold will be completed

00:53:33

in July of 2023 is

00:53:35

when it has been projected

00:53:37

and that would be, I

00:53:38

think I made your appointment

00:53:39

because this would be the

00:53:41

second time that we projected

00:53:43
deadline for the Post, where

00:53:45
it would not have been

00:53:46
meant. Not the first deadline

00:53:47
was in July of 2020,

00:53:48
to the delegates are working

00:53:52
on, trying to get these

00:53:54
gaps in Vienna in informal

00:53:57
session, which are the second.

00:54:00
There's an enormous effort expended

00:54:02
to break down to manageable

00:54:07
chunks. So they can be,

00:54:08
I think address in this

00:54:11
timeframe, but I do think

00:54:13

there's a question of Tennessee

00:54:14

done, friend. And I will,

00:54:19

I do want to make

00:54:20

one, right? I got there.

00:54:22

I think there is a

00:54:23

broader issue. A lot of

00:54:29

issues on the table and

00:54:31

not a lot of time

00:54:31

in. This is the disorder,

00:54:33

where the rubber meets the

00:54:34

road, right? But I think

00:54:37

the challenge of meeting our

00:54:38

deadlines we could have a

00:54:40

loaded and we're not with

00:54:45

standing in for a lot

00:54:50

of time to get done.

00:54:51

If I have a moment

00:54:58

to say again I think

00:55:02

there was a queen those

00:55:06

would like a kind of

00:55:07

broad from Edition on double

00:55:09

padding and those that are

00:55:11

interested in a kind of

00:55:12

more narrow Taylor, regulation of

00:55:15

double padding, including some examples

00:55:19

of prohibitions, but also more

00:55:21

disclosure, I will say that

00:55:23

from my perspective, there had

00:55:26

been a decision in the

00:55:29

That effectively the consensus was

00:55:33

along the lines of a

00:55:34

narrow modified advance for not

00:55:38

a total ban in person

00:55:42

three of the code of

00:55:43

conduct which was from the

00:55:44

summer of 2021. There were

00:55:46

these three options, right? There

00:55:47

was a total ban a

00:55:49

circle, modified band and then

00:55:51

the disclosure option, no band,

00:55:52

just for an adult hiding

00:55:54

in that version was replaced

00:55:56

with Summer by was written

00:55:58

for a different version, which

00:56:00

now only has one option.

00:56:01

Effective leader, does not have

00:56:06

a full prohibition, it has,

00:56:08

I think it modified preposition

00:56:09

that is intended to identify.

00:56:11

What are the what are

00:56:12

the times of double-headed scenarios?

00:56:14

That raised the, the greatest

00:56:15

hits of Interest have a

00:56:17

certain person, a ban in

00:56:19

those areas outside of those

00:56:20

areas. Let's rely on the

00:56:22

kind of background in the

00:56:23

code independent personality that the

00:56:26

other circumstances before Aladdin could

00:56:30

be a problem. I think

00:56:45

the concern as a member

00:56:48

functions as a complete de

00:56:57

facto a band and I

00:56:59

can get it. I don't

00:57:00

want to waste time and

00:57:01

I know there's a lot

00:57:01

to stay here and all

00:57:03

the reasons for that but

00:57:03

I think that's a widely-held

00:57:04

view. And there's a major

00:57:06

city. Is it a drafting

00:57:08

problems? That a conceptual problem

00:57:09

is very difficult to assess

00:57:11

how the current tracking of

00:57:14

article for squares with what

00:57:16

has happened before in the

00:57:17

direction. I think I seen

00:57:20

the working group, I just

00:57:21

got the double padding. Lyrics

00:57:30

Temple. I mean I know

00:57:33

the audience can't have these

00:57:34

feelings of how do, you

00:57:36

know, if you discussion tsar

00:57:38

and and how difficult sometimes

00:57:40

it's enough for for the

00:57:44

40 States and Iran, the

00:57:45

stakeholders to really, you know,

00:57:49

get a consensus on son

00:57:52

of the topics different voices.

00:57:57

They had. So I don't

00:57:58

know. Lauren at 14 years

00:58:00

of time, if there's another

00:58:02

procedure Elite matter that you

00:58:05

would like to you, but

00:58:06

I'm just too picky. I

00:58:10

know if you would like

00:58:13

to address. You like to

00:58:19

stuff? Before I do that,

00:58:22

I know if your hand

00:58:24

is raised with myself and

00:58:37

with my queen, so I'm

00:58:45

not far from agreeing with

00:58:48

you. That, the way the

00:58:50

text has a bolt has

00:58:52

gotten us into this sort

00:58:54

of difficulty to bridge the

00:58:58

different positions because on the

00:59:00

one hand, we have the

00:59:01

garbage bags that we are

00:59:03

expecting from arbitrators who had

00:59:07

a previous position as counsel

00:59:10

and years And those who

00:59:22

said he does not have

00:59:23

any from the concurrence of

00:59:27

proceeding. So, yes, that's quite

00:59:34

bridge in the sense that

00:59:36

we're not talking about can

00:59:38

use zero, but please, please,

00:59:47

please, bear in mind, that

00:59:48

it's the first time that

00:59:51
the working group was discussing

00:59:53
the code of conduct in

00:59:55
person before. We are all

00:59:58
sitting behind our screens in

01:00:00
2D and not enough real

01:00:03
life 3D and you know,

01:00:05
you don't get behind the

01:00:07
screen. You negotiate when you

01:00:10
are able to sit down

01:00:11
with colleagues in the area

01:00:13
and traffic, I'll take your

01:00:16
pain and and Bryson and

01:00:18
I wanted to add Following

01:00:22

up on point is that

01:00:27

this is how you build

01:00:31

the, the buying by an

01:00:34

hour. And it can be

01:00:35

very frustrating at times to

01:00:37

hear people with repeating. The

01:00:39

same thing for the same

01:00:40

time, you know making comments

01:00:42

or look for something that

01:00:44

we have already moved from

01:00:46

but this is how you

01:00:47

make sure that's the different

01:00:49

delegation sort of internalized and

01:00:52

and and and buy into

01:00:54
a process and will be

01:00:56
able to go alone since

01:00:58
we don't allow this this

01:01:01
Of course not very efficient

01:01:03
regurgitated sister in news or

01:01:06
you're just to have it

01:01:08
said, but this is part

01:01:10
of me. I would say,

01:01:11
the regurgitation is part of

01:01:13
our digestion in someone. That's

01:01:16
what I wanted to. Thank

01:01:18
you. Thank you so much.

01:01:20
Thank you so much. You

01:01:27

know, if you know, if

01:01:35

you would like to address

01:01:36

of the topics I know

01:01:40

there is so many, but

01:01:43

No. Absolutely. Thank you again.

01:01:45

March 2nd, Hall of honors,

01:01:48

since I'm going to go

01:01:48

see why I said that.

01:01:50

I think it's just the

01:01:51

nature of the Beast that

01:01:52

I think the important this

01:01:54

sitting in my bedroom for

01:01:59

2 years at 5 in

01:02:00

the morning, trying to, you

01:02:02

know, negotiate these mules now

01:02:04

and I think there's a

01:02:08

lot of Hope in the

01:02:09

working group, and then jump

01:02:20

in the room, you know,

01:02:21

Margie and of course we've

01:02:25

been in this discussion now

01:02:26

since November of 2017 and

01:02:30

my perception That was one

01:02:45

of the reasons why the

01:02:46

the working group has given

01:02:47

a mandate in the first

01:02:48

place by the commission to

01:02:50

explore. I guess, it's because

01:02:52

it's not explicit to the

01:03:01

behind the curtain about this

01:03:03

divided between those who support

01:03:05

of court and knows it's

01:03:06

not something has changed significantly

01:03:09

Over time. However, you open

01:03:12

the door and many, many

01:03:14

other states should have barged

01:03:16

into the room with their

01:03:17

own ideas on reform. And

01:03:20

there on priorities, I was

01:03:21

born in for some of

01:03:22
the Court was not so

01:03:23
sure. It's off of mine

01:03:24
and they have now over

01:03:26
the last five years. Suppose

01:03:27
the seemingly endless number of

01:03:29
reforms, it's very hard to

01:03:32
even group them into categories.

01:03:34
How many before him have

01:03:35
been proposed by States? Boy

01:03:43
that there were two long

01:03:45
until discussion the court occupied

01:03:47
less than one full day

01:03:49
of those two weeks of

01:03:50

discussion and the remainder of

01:03:52

the key needs to focus

01:03:53

on lots of other reform

01:03:54

ideas and here is the

01:03:56

link to procedural reforms, procedural

01:04:00

reform. We're one basket of

01:04:01

of the reform that we

01:04:03

discussed in Vienna in here,

01:04:06

know. Maybe I'll just go

01:04:09

right to the point of

01:04:10

what do you make of

01:04:10

the discussion on procedural forms?

01:04:12

There were three different reforms

01:04:14

that was for the focus

01:04:15
of this basket. Early dismissal

01:04:18
claims for example, early dismissal

01:04:22
on the basis of claims

01:04:23
and manifestly without legal Merit

01:04:25
as the allocation of cost

01:04:29
in arbitration. At least you

01:04:32
a third party funding that

01:04:34
we didn't have time to

01:04:35
discuss a couple of the

01:04:35
other issues procedure was born

01:04:37
there on the table. I'm

01:04:44
all highlight cuz I like

01:04:45
to do pork loin want

01:04:47

a lot of enthusiasm. I

01:04:49

think I'm just keeping you

01:04:49

informed Korea. The Korea had

01:04:52

him intersessional meeting last year

01:04:55

that I think stimulated a

01:04:56

lot of useful debate about.

01:04:57

How do you not just

01:04:59

think about structural reform, you

01:05:01

know, replacing the existing system?

01:05:03

How can you use tools

01:05:05

some existing tools and some

01:05:07

dude, getting through ad hoc

01:05:10

operation, since I think there's

01:05:12

a lot of view. Second

01:05:16

I think there was agreement

01:05:17

in Vienna on a number

01:05:19

of key points on East

01:05:21

Michigan hero forms. I'll highlight

01:05:22

them on early dismissal. I

01:05:25

think there is General support

01:05:26

for a mechanism. Again, what

01:05:29

does it look like? Is

01:05:30

it a treaty provision? Is

01:05:32

it? The vision in a

01:05:33

multilateral framework is indicated. Early

01:05:45

stages, what would look something

01:05:46

like what does but perhaps

01:05:49
as a default rule on

01:05:57
having the unsuccessful party bear,

01:06:00
the cost of the proceedings,

01:06:02
there was a very well

01:06:05
that is. But what guys

01:06:08
and should we give arbitrators

01:06:09
when the side and allocation

01:06:11
of cost? What kinds of

01:06:12
b e r e of

01:06:12
my day considering making allocation

01:06:15
decisions. I think there was

01:06:17
interested in considering not just

01:06:18
the outcome but also to

01:06:20

the parties in some ways

01:06:32

it reflects some of the

01:06:34

policy challenges that discussion, Third-party

01:06:45

funding for access to justice

01:06:48

issue. And then there is

01:06:59

the question of, how do

01:07:01

we regulate reach a consensus

01:07:08

at all on that question.

01:07:09

Moving quickly, to take away,

01:07:14

does the working group have

01:07:15

the mandate to negotiate? All

01:07:17

these different Pedro Farms on

01:07:20

the table? This band with

01:07:22

the question, as I mentioned,

01:07:23

there were three of the

01:07:25

five four forms that were

01:07:27

on the table. Indiana in

01:07:28

addition, to working group requested,

01:07:30

the, I, I was looking

01:07:32

at on a, in the

01:07:33

secretary that Winston, during this

01:07:34

discussion, the working group members,

01:07:36

the state delegations, requested that

01:07:38

the Secretary of undertake work

01:07:40

on what I found it

01:07:41

to be at least 15

01:07:42

to 20. Your phone topics,

01:07:44
including, for example, finding joint

01:07:47
reputation by freedy parties, waiver

01:07:50
fork in the road, exhaustion,

01:07:52
domestic, rabbit. Go on and

01:07:55
on, and on. And I

01:07:56
think the coast Provisions, even

01:07:58
if we're in, now favorable

01:07:59
in person, circumstances will take

01:08:01
considerable time. And yet, we

01:08:03
have this chicken clock, right?

01:08:05
That we have many other

01:08:06
reforms in addition to cheat

01:08:07
on the table. How can

01:08:09
it be done? I will

01:08:10
say for my perspective that

01:08:12
I think prioritization is an

01:08:13
order that there needs to

01:08:14
be a sort of difficult

01:08:16
conversation at some point of

01:08:17
the working group on figuring

01:08:19
out, how we're going to

01:08:20
get for the priority will

01:08:22
form a identify, get those

01:08:26
done so that we don't

01:08:27
make the perfect the enemy

01:08:29
if you could come. And

01:08:30

then finally going back to

01:08:32

honest comments about this issue

01:08:35

of fragmentation or not, I

01:08:38

think there is a sort

01:08:38

of be careful what you

01:08:39

wish for scenario. Here that

01:08:40

division of the working group.

01:08:43

Perhaps all of these different

01:08:45

forums MTG procedural reform, structural

01:08:48

forms, all of it, Honda

01:08:49

and often she will drop

01:08:56

out of some of these

01:08:57

reforms and it did not

01:08:59

contact. I think I agree

01:09:01

with that sort of coherent

01:09:08

framework in which all these

01:09:10

different options and often are

01:09:12

arranged. But as for whether

01:09:15

we result in Greater fragmentation

01:09:17

or lesser, I think it

01:09:19

depends upon a number of

01:09:20

things. You don't know yet

01:09:20

how much flexibility are staying

01:09:23

warm. I'm opting into options

01:09:30

17, + 14 + within

01:09:32

often 1714 choosing option, A

01:09:35

or option. One option. See

01:09:37

about the there is, no,

01:09:39

are desirous of that kind

01:09:41

of flexibility, I think it

01:09:43

might be. Create significant augmentation

01:09:45

question of, how does that

01:09:56

play in Princess occupation? Apologies

01:09:59

for speaking with your phones

01:10:08

on the table. Thank you

01:10:12

a lot and 44 days,

01:10:14

summary of the issues and

01:10:21

her actually disgust me. We

01:10:25

had a whole discussion, a

01:10:28

particular issue on whether or

01:10:30

not it was suspended or

01:10:32

procedural because it has to

01:10:35

be. But also and I

01:10:38

recall these from the first

01:10:40

meeting, there was a whole

01:10:42

discussion that why you were

01:10:43

focusing only on procedural issues

01:10:46

and not a substantive issues

01:10:48

because they were substantive issues

01:10:50

that needed to be reformed.

01:10:52

But first, it is taken

01:10:54

by security and police electrician

01:11:02

by the biggest one. And

01:11:09

she just A book on

01:11:12
contract renegotiations and International Investment

01:11:16
arbitrations that. I think it

01:11:18
will be useful for these

01:11:21
discussions. Why procedural issues on

01:11:25
why not substantive amendments and

01:11:28
how it could be feat.

01:11:30
You know, Dee Dee the

01:11:32
words that were having at

01:11:35
working tree. And then also

01:11:38
the word that are doing

01:11:39
this takes on a substantive

01:11:42
reforms. Thank you very much

01:11:47
Margie, and thanks a lot.

01:11:49

Also, for making reference to

01:11:51

the book that was very

01:11:54

delightful to listen to all

01:11:55

those presentations. I'm a bit

01:11:57

of the elephant in the

01:11:57

room because nothing, even because

01:12:00

I'm both in academic and

01:12:02

I will not focus on

01:12:02

procedure eye with a fine.

01:12:04

Of course, very important, especially

01:12:06

frivolous claims, and third-party funding,

01:12:08

and all the issues that

01:12:10

can create. First sentence sentence

01:12:12

for the use of the

01:12:12

system, because let's remember that

01:12:14

after all, it's a system

01:12:16

to deliver Justice and not

01:12:17

to be gamed for other

01:12:18

purposes. And I am very

01:12:20

supportive of all those procedural

01:12:22

reform, Stone, frivolous claims and

01:12:24

third-party funding. I believe that.

01:12:26

It's great that they working

01:12:29

group is doing so much

01:12:30

better work on this missing

01:12:31

and the claims are fabulous

01:12:33

of the state and they

01:12:35
even to provide an expedited

01:12:37
process for that. I think

01:12:40
that is a great dad

01:12:41
said there is a link

01:12:42
between the rivals claims and

01:12:45
third-party funding. We can see,

01:12:48
for example, in the case,

01:12:49
of course, of the revised,

01:12:50
they could rules and a

01:12:52
similar Trends and deceit alike

01:12:54
and all this other individual

01:12:55
treaties. And there is the

01:12:57
strands of dismissing, frivolous claims

01:12:59

and the working group in

01:13:01

El, Centro has even made.

01:13:03

I believe the third-party funding

01:13:05

and potential factor to consider

01:13:07

while assessing effect. So I

01:13:11

think this is all very

01:13:12

good news and the kind

01:13:13

of start linking out to

01:13:15

substance abuse issues. I understand,

01:13:17

of course, there's so much

01:13:18

on the plate of the

01:13:19

delegate that it's hard to

01:13:20

address, both procedure that is

01:13:22

already very loaded and substance,

01:13:23
but I want to I

01:13:25
pick up on that Anna's

01:13:27
very like a whole sleeve

01:13:29
optimistic, Mutual authorization note. So

01:13:35
then we'll Slaughter investment Port.

01:13:36
There are some similarities with

01:13:38
a multilateral framework convention in

01:13:40
the sense that they're both

01:13:41
Frameworks. That can foster cell

01:13:44
motility relation. It depends, of

01:13:45
course on how they will

01:13:46
be implemented. Indian But I

01:13:49
think that there is some

01:13:51

Potential from the most investment

01:13:54

cord that you lead to

01:13:56

further motorization. Of course, before

01:14:02

I offer to you my

01:14:04

own take on things I

01:14:05

would like to thank very,

01:14:06

very warmly, the organizer. So

01:14:08

for inviting me to this

01:14:09

breaker panel, it is really

01:14:10

a pleasure and an honor

01:14:11

to be with such great

01:14:14

experts and great colleagues of

01:14:16

International Investment low. And I

01:14:18

would like to thank all

01:14:18

so very much as men

01:14:20

go and get to put

01:14:22

together. This amazing book in

01:14:25

the show, some material and

01:14:26

now we're also in the

01:14:27

child if you want a.

01:14:29

So it sounds and it's

01:14:31

a great book. I contributed

01:14:33

a chapter that I'm going

01:14:34

to prison very briefly to

01:14:36

do today. And it brings

01:14:39

a Post-It, note about the

01:14:40

Vienna convention, the last 3

01:14:42
days, and how it can

01:14:43
help prevent further, fragmentation of

01:14:46
the system, how we can

01:14:47
actually go out all the

01:14:49
rules for new problems. How

01:14:51
we can use that very

01:14:52
well established rules of the

01:14:54
Vienna convention to address some

01:14:57
problems that we're facing now

01:14:58
and United vs reform. So

01:15:02
I didn't book celebrate the

01:15:03
4th of years from the

01:15:04
answering to source of the

01:15:05

Vienna convention on the law

01:15:06

of treaties. And indeed IT

01:15:09

addresses the role of the

01:15:10

Vicente in investor-state dispute settlement,

01:15:12

and explore the tools of

01:15:14

the trade offers to throw

01:15:16

more discipline to this field.

01:15:18

That is still, let's face

01:15:19

it on their development. So

01:15:24

my question because I don't

01:15:26

like a Democrat, just be

01:15:28

a little bit provocative enough

01:15:35

to address this. So cold

01:15:37

in the Diplomatic crisis of

01:15:39

isds that has been going

01:15:41

on for quite a while.

01:15:42

I believe that there are

01:15:44

other said, they're very important,

01:15:45

but I won't say that

01:15:46

there are enough and my

01:15:48

shop there, I am adopting

01:15:50

a policy approach. Its why

01:15:52

is he has reformed saying

01:15:54

that we need to focus

01:15:55

a lot on the inconsistencies

01:15:57

in the interpretation of investment

01:16:00

beauty standards? Because we're in

01:16:03

very different ways standards. Sometimes

01:16:07

have the same or very

01:16:08

similar wording across different trees

01:16:11

or even sometimes days on

01:16:12

the very same Trading. So

01:16:15

we need to be reminded

01:16:15

by the kind of just

01:16:17

reviewing arbitration Awards. An old

01:16:20

man and set aside and

01:16:21

proceedings are limited. In terms

01:16:23

of going into the merits

01:16:25

of the case. They did

01:16:26

not show the engagement limited

01:16:28

review on the basis of

01:16:30

inconsistent or incorrect decisions that

01:16:34

are designed to look into

01:16:38

procedural deficiencies major, perfect opportunity

01:16:45

to address those interpreted inconsistency

01:16:49

and the Vienna convention could

01:16:50

offer the tools things out

01:16:52

of the safe tools to

01:16:54

achieve more consistency. And how

01:16:57

can this be done? This

01:16:59

can be done. I believe

01:17:00

through and evolutionary interpretation of

01:17:04

the relevant investment treaties by

01:17:06

focusing on the specific rules

01:17:08

of the facility. That provides

01:17:10

for an emphasis on subsequent

01:17:12

agreements and subsequent practice of

01:17:14

the party. What if I'm

01:17:19

quite peculiar about the multilateral

01:17:21

investment cord that make, is

01:17:22

that even though it's prefers

01:17:24

to cure the centralization and

01:17:26

the resulting in several types

01:17:28

of inconsistencies in his development,

01:17:31

is also based on a

01:17:32

series of bilateral agreements that

01:17:33

include the so-called investment court

01:17:35

system that I believe in

01:17:37

the answer, you know, is

01:17:39

covered by the framework of

01:17:40

the Meg. The different icy

01:17:42

mechanisms included in different rediscovered

01:17:45

by the overarching framework. So

01:17:47

the gold agreement on the

01:17:49

Meg So how can the

01:17:52

establishment of the make for

01:17:53

the gradual centralization of the

01:17:55

ICS systems into the multilateral

01:17:59

investment guarantee Integrity consistency? Since

01:18:04

we will have various Awards,

01:18:05
the difference I see is

01:18:08
tribunal will have rendered in

01:18:10
the meantime. And I believe

01:18:14
that we can do that

01:18:15
by looking into the vclt

01:18:17
and subsequent agreement to subsequent

01:18:19
practice. This can be done

01:18:22
for one network effects of

01:18:24
the treaties, including the ICS

01:18:26
mechanism. As a first step

01:18:27
toward establishing the Meg and

01:18:29
indeed the husband versus bilateralism

01:18:36
professor. She has talked about

01:18:39
the fact of multilateral framework

01:18:42
and she said that even

01:18:43
though we have been bilateral

01:18:45
structure of various treaties essentially

01:18:48
in practice tribunals act, as

01:18:50
if there's an overarching body,

01:18:56
In contrast, Professor Smither in

01:18:59
Monroe, have been more in

01:19:02
favor. Bilateralism, in what sense

01:19:03
do, in the sense that

01:19:04
they pointed efficiencies in this

01:19:06
system in perspective of going

01:19:09
to go to Integrity Integrity

01:19:10

by taking into account, third-party

01:19:14

International agreement when interpreting and

01:19:17

investment agreement. So Professor Smith

01:19:20

how great and the great

01:19:21

article on the use of

01:19:23

third-party investment agreements and separate

01:19:26

the agreement that the tribunal

01:19:27

has in front of it.

01:19:28

And they say that we

01:19:30

need to be cautious about

01:19:31

that because their agreements that

01:19:33

they represent a significant great

01:19:35

and break from the past

01:19:36

like sitter, for example, and

01:19:39
the European Union, Just mention

01:19:43
that I follow the reverse

01:19:45
path of realization compared to

01:19:48
the previews, decentralized resine of

01:19:50
a talk with acacian where

01:19:52
we have one of arbitral

01:19:55
tribunal that are based on

01:19:56
bilateral 3 and they engage

01:19:58
in Cross reading interpretation with

01:20:01
the fox away. I said,

01:20:02
I said to promote multilateralism

01:20:04
with a make multilateral planning,

01:20:08
but it is still operational.

01:20:10

So it has an operational

01:20:12

and evolutionary character because it

01:20:15

is a lateral and investment

01:20:20

treaty that provides for the

01:20:22

investment court system. So things

01:20:26

that make results from the

01:20:29

shared interest and intentions go

01:20:30

back to, you know, what

01:20:32

is the intention of the

01:20:33

parties, to the treaty to

01:20:34

promote, evolutionary, interpretation of the

01:20:36

treaties that are under this

01:20:38

framework, do they make the

01:20:40

screen more convention? What do

01:20:43

we do to promote this

01:20:47

natural and evolutionary interpretation of

01:20:51

the underlying Agreements are providing

01:20:53

for the ICS? We look

01:20:55

into subsequent agreement to subsequent

01:20:57

practice. For example, we can

01:20:59

see already. The city parties

01:21:00

have issued a joint and

01:21:02

separate the three of instruments

01:21:04

to subsequent agreements. In the

01:21:05

sense of article, 31 of

01:21:07

the BC NDP not authorize

01:21:09

the parties to issue, subsequent

01:21:11
binding notes of interpretation. That

01:21:13
will indeed find the tribunals

01:21:18
and operating on their Sita.

01:21:21
And apart from, I believe

01:21:22
that could be even more

01:21:23
Innovative apart from Meadows and

01:21:26
kiboko, subsequent agreement of the

01:21:28
parties to the treaty. The

01:21:30
question is about the role

01:21:32
and legal effect of Xarelto.

01:21:34
The Contracting parties to trade

01:21:37
he's providing for the Meg.

01:21:38
So what kind of contract

01:21:40
is could establish the agreement

01:21:42
of the parties that falls

01:21:44
under the General in Santa

01:21:46
Rosa to rule of article,

01:21:47
31 of the VCR tape.

01:21:51
How to make an overarching

01:21:52
multilateral framework system. We need

01:21:55
to look into septic contractors

01:21:57
in The Wider way. Meaning

01:21:59
that the question is if

01:22:01
for example the you engage

01:22:04
Us in subsequent practice and

01:22:05
it's a you Vietnam Investments

01:22:08

are treated. Does this African

01:22:10

practice potentially binds? That you

01:22:12

are also in a third-party

01:22:14

treaty endorses, the makers will,

01:22:17

for example, they use Singapore

01:22:19

investment treaty. So what question

01:22:25

is, whether such a septic

01:22:26

contractors could establish the agreement

01:22:28

of the parties to the

01:22:29

third party. Treaty with regard

01:22:31

to an interpretation that is

01:22:33

given by the parties to

01:22:35

the other traded providing for

01:22:38

ICS. I also believe that.

01:22:44

Since the victim does not

01:22:46

specify what type of condor

01:22:49

qualify the subsequent practice under

01:22:51

the visibility, we need to

01:22:53

look into the draft conclusions

01:22:55

of the international commission. I

01:22:57

have 2018. Say that it's

01:22:59

not only active, but also

01:23:00

passive, the state assets practice

01:23:03

that qualifies as assets. Gauntlet

01:23:06

qualifier subsequent practice. And don't

01:23:11

wait. We also need to

01:23:12

look into the practice of

01:23:14

the make itself as an

01:23:17

international organization. The party's to

01:23:19

eat have delegated authority. So

01:23:23

to summarize, how would I

01:23:25

propose to make this network?

01:23:28

Not allow the rain supposed

01:23:29

to expect or straight of

01:23:31

3D, providing for the ICS

01:23:33

as a first step towards

01:23:34

the makeup. Irracional, I believe

01:23:36

that a way to do

01:23:37

that to look into the

01:23:39

interpretation given in subsequent agreements,

01:23:42

and subsequent practice across the

01:23:43

board in the various treaties,

01:23:45

providing for ICS and leading

01:23:47

up to this. Make it

01:23:49

supposed to be include a

01:23:50

provision in the make started

01:23:52

saying that for matters of

01:23:54

systemic importance and the treaties

01:23:57

falling under the competence of

01:23:58

the longest using third-party. This

01:24:00

should be consulted in the

01:24:03

course of a dispute and

01:24:04

in reaction to a joined

01:24:05

in 76 statement issued under

01:24:07

one of such treaties. Barbie's

01:24:11

do not react to the

01:24:12

matter consulted upon with a

01:24:15

certain number of days in

01:24:16

a. Of time, their silence

01:24:18

could be construed as tacit

01:24:20

acceptance of the tribunals interpretation

01:24:22

or the parties interpretive statement

01:24:24

on the matter concerns. So

01:24:31

it looks into potential ways

01:24:33

of incorporating The evolutionary interpretation

01:24:36

of the system and making

01:24:38

bringing more consistency to the

01:24:40
interpretation of investment treaties operating

01:24:43
under that make this bill

01:24:45
has a bit of an

01:24:46
aspirational nature. So thanks a

01:24:48
lot for your attention and

01:24:49
I look forward to engaging

01:24:50
more with all of you.

01:24:52
Thank you. Thank you for

01:24:55
sharing your views on the

01:24:58
content of their book discussion.

01:25:05
I would just like to

01:25:08
share. Also, I have a

01:25:11
chapter or not book that

01:25:12

is on the investor-state dispute

01:25:14

settlement before we form a

01:25:16

source at the school. So

01:25:18

I also have a title

01:25:21

of its reform replaced. Or

01:25:23

is that the school chapter?

01:25:27

It's cooler in case of

01:25:31

features and the organizers have

01:25:38

been wonderful to share with

01:25:40

you to the stars of

01:25:41

this hot topics and I'm

01:25:44

sure that it will be

01:25:45

more discussion next year. Hopefully

01:25:49

we could celebrate that. Code

01:25:54
of conducts approved for next

01:25:56
year. So that is A

01:26:00
goal for next year. So

01:26:02
if you want to share

01:26:05
some final words from Margie

01:26:13
and and thank you in

01:26:15
the order that I see

01:26:16
you. My dear Lucia Lauren

01:26:21
and I can't believe that.

01:26:24
Now, I hope that I

01:26:25
did not say it as

01:26:28
badly as I said in

01:26:30
the beginning. So it was

01:26:32

it was truly a.m. It's

01:26:35

a pleasure to hear your

01:26:37

comments, and also, I'm amused,

01:26:43

but but, but, but glad

01:26:44

that that the, the one

01:26:47

concern that many may have

01:26:55

in their mind, or at

01:26:56

least one of the concerns.

01:26:57

What was George Strait on

01:26:59

address? In this, in this

01:27:01

panel, which is that whether

01:27:02

we will we will hopefully

01:27:05

end up with with a

01:27:07

cohesive, okay? No doubt structure

01:27:11

or whether we might have

01:27:13

the falls into a more

01:27:16

difficult to to to address

01:27:19

a fragmented system and it

01:27:23

is, it is a challenge,

01:27:24

it is an enormous challenge

01:27:25

in, in, in the, in

01:27:27

a date, an age where

01:27:29

were Really all the stakeholders

01:27:34

are at the table in

01:27:36

there. There, there might have

01:27:37

been a time in the

01:27:39

in where were were not

01:27:44
all the stakeholders might have

01:27:46
been in the table but

01:27:47
I but my general sense

01:27:48
is that are Beyond struggled

01:27:49
3. We have a business

01:27:52
in a business business groups.

01:27:53
We have, we have the

01:27:56
states, we have so many

01:27:57
stakeholders. Of course, I mean

01:27:59
that everyone wants to have

01:28:00
a greater greater voice. But

01:28:04
but, but I think that

01:28:05
there's there. There has been

01:28:06

an enormous enormous work by

01:28:09

by the states and by

01:28:11

the Secretariat to create the

01:28:13

legitimacy and that is very

01:28:16

difficult to manage in the

01:28:19

middle of a pandemic. So

01:28:21

it's not an easy task.

01:28:23

I would like to thank

01:28:27

the presenter montelucia. I think

01:28:32

that you set the stage.

01:28:34

Great Manor Lauren a thank

01:28:37

you for a note for

01:28:37

being candid us to do

01:28:38

the challenges. And also putting

01:28:40

the the the the the

01:28:42

focus on on some of

01:28:44

the challenges concerning the, that

01:28:47

the code of conduct. Hopefully

01:28:48

that 15% to 15% of

01:28:51

the 5% of the 2%

01:28:53

of the 1% is always

01:28:54

is always the most difficult

01:28:56

part of any negotiation. And

01:28:58

I and I talk from

01:28:59

experience and we need it.

01:29:00

I'm not surprised and let

01:29:02

alone negotiations with the, with

01:29:05

a hundred plus a number

01:29:07

of other parties. And and

01:29:10

thank you so much for

01:29:13

or bringing some of the,

01:29:15

the more serve reserve, the

01:29:17

thoughts about how to deal

01:29:20

with with a system that

01:29:23

that may have different levels

01:29:25

of applications by many my

01:29:28

my only sort of reaction

01:29:30

to your The suggestion is

01:29:34

that, that clearly it seems

01:29:37

that we will be moving

01:29:38

for dr. And we would

01:29:43

be moving from the system

01:29:44

work. Now we are in

01:29:47

at Hawks tribunals are strictly

01:29:53

inter parties will be moving

01:29:56

into a system where where

01:29:57

the the decision the Judgment

01:30:03

would have a systemic effect,

01:30:05

enhance your suggestion for giving

01:30:08

way for non non-expiring. Partings

01:30:13

to have. Also there are

01:30:14

words over there voice with

01:30:18

that at. This is a

01:30:19

session that that would be

01:30:20

a lot of fun to

01:30:22

to have a A a

01:30:26

breakout room. I'm not discarding

01:30:30

it. We may want to

01:30:32

meet by Lucia can manage

01:30:34

that. I I unfortunately won't

01:30:37

be able to stay during

01:30:38

the breakout room, I invite

01:30:40

all the panelists to stay

01:30:41

in the bread. Courtrooms a

01:30:42

lot of things happened about

01:30:45

but I won't be able

01:30:46

to because I have to

01:30:47

go to our next session

01:30:48

which is the the same

01:30:49

person exit Amendment rules session

01:30:52

and it's not I'm not

01:30:54

in there. They're so I'll

01:30:55

be running between places in

01:30:57

Washington DC and, and thank

01:31:00

you so much. You will

01:31:02

be seeing in the publication

01:31:05

of the of the video.

01:31:06

Bye-bye. And feel free to

01:31:09

stay in the in the

01:31:10

breakout room, in end my



01:31:12

Lucia with Majid bye-bye.