

Inclusion of Human Rights Clauses in Investment Treaties *

Summary

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

The session at the Washington Arbitration Update focused on the integration of human rights clauses within investment treaties, moderated by Maria Lucia Casa, a Colombian lawyer and academic. The panel featured five experts who discussed the complex relationship between human rights and investment arbitration, highlighting the historical imbalance where investment treaties primarily protect investors without imposing reciprocal obligations on them.

Key points included the need for greater coherence between investment law and human rights, with panelists emphasizing the increasing recognition of human rights in investment arbitration. They noted that traditional investment agreements impose obligations on states but often neglect the responsibilities of investors, leading to criticisms of the system's fairness. Recent developments suggest a shift towards including human rights considerations in investment treaties, with examples from various jurisdictions, including European initiatives and specific provisions in treaties such as the Canada-Colombia Free Trade Agreement.

Panelists raised critical questions about the feasibility of enforcing human rights obligations on investors and the challenges of integrating these norms into existing legal frameworks. They discussed the necessity for due diligence processes for investors and the potential for treaty provisions that require compliance with international human rights standards. The conversation also touched on the role of arbitrators in interpreting treaties in a manner that acknowledges human rights implications.

Overall, the session underscored the evolving landscape of investment arbitration, where human rights considerations are becoming increasingly relevant, and highlighted the ongoing need for legal reform to achieve a more balanced approach in investment treaties.

Authors

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Topics

Human rights, human rights clauses, investment treaties, human rights and investment treaties, investment

Category

WAU

Full Transcript

00:00:07

Good morning, everyone and thank

00:00:09

you for being here. We

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are very glad to have

00:00:10

you in this final day

00:00:12

of her world arbitration updates

00:00:14

2020 4th. It is my

00:00:16

pleasure to introduce these amazing

00:00:19

Fanta that's going to speak

00:00:20

about inclusion of Human Rights

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classes in investment treaties. This

00:00:25

panel is going to be

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moderated by Maria Lucia Casa.

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Maria. Lucia is a Colombian

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lawyer specialist in regulation of

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renewable energy and Energy Efficiency.

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She is also a senior

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associate at extra strategy LL

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be able to take for

00:00:40

with presents in the United

00:00:41

States animal. What's up. Currently,

00:00:46

she's Adjunct professor of international

00:00:48

arbitration procedure an assistant professor

00:00:51

professor of public international law

00:00:53

at the University of you

00:00:55

and coach of the University

00:00:57

of Saint Joseph International Longwood

00:01:01

Court competition team. So without

00:01:03

further Ado I yield the

00:01:05

floor to Maria Lucia and

00:01:07

thank you everyone. Thank you,

00:01:11

Monica me Longford introduction and

00:01:13

good morning everybody and welcome

00:01:14

to the first session of

00:01:16

the last day of world

00:01:17

arbitration update. It's a great

00:01:19

honor to have you here.

00:01:20

And of course, thank you

00:01:22

also to our own line

00:01:23

participants because we have some

00:01:25

of my participants that are

00:01:28

doing a nice from around

00:01:29

the world. So welcome everybody.

00:01:31

I would like to have

00:01:34

this presentation buy thank a

00:01:36

to the sponsors of the

00:01:38

event. Thank you to FDI

00:01:39

and Panera Consulting also. Thank

00:01:42

you for the organising team

00:01:43

Isabella Wednesday, which are part

00:01:47

of the organising team mouth

00:01:48

of the world Apart chapter

00:01:49
of world arbitration updates. And

00:01:52
of course, thank you to

00:01:53
our co-organizers off of the

00:01:55
ground before introducing the great

00:01:58
line of penalties that we

00:01:59
have today. I will like

00:02:01
to give a few remarks

00:02:02
about the first session that

00:02:05
we have today we have

00:02:07
today in from the bus

00:02:09
is called in clue. You're

00:02:10
not human rights classes in

00:02:12
investment treaties for sure. This

00:02:15
is a topic that has

00:02:16
generated a lot of discussions

00:02:18
and a lot of interest

00:02:20
over the years. We have

00:02:22
him from an existing tension

00:02:24
between the protection of human

00:02:26
rights in one hand and

00:02:27
on the other Estates obligations

00:02:30
the word for word doors

00:02:31
foreign investors. And of course,

00:02:34
we can see during an

00:02:35
imbalance that exist today between

00:02:39
investment meeting doesn't arbitration between

00:02:41

obligations that it states have

00:02:43

and writes that investors has

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on their investment re so

00:02:48

traditionally how investment arbitration has

00:02:52

been working is that International

00:02:55

Investment agreements impose obligations in

00:02:57

States? But not an Investor's

00:03:00

so this has been of

00:03:02

course a point of a

00:03:04

lot of criticisms about the

00:03:06

balance of the system. However

00:03:08

in the past years we

00:03:10

have been seen on an

00:03:12

absurd of being a chance

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on this approach and this

00:03:16

is something that we are

00:03:17

going to discuss here how

00:03:19

we can balance the system

00:03:21

and how these have been

00:03:23

changes have been changing in

00:03:25

the past last year's. So

00:03:28

some of the questions that

00:03:29

we will like to ask

00:03:31

our panelists today is how

00:03:33

to balance the system. Is

00:03:35

it possible to have a

00:03:36

human rights issues in the

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ocean? And is it mandatory

00:03:40

for companies to perform due

00:03:42

diligence in their operations? Luckily?

00:03:45

I'm not the one that

00:03:46

will have to answer these

00:03:47

but for these we have

00:03:49

five experts that will be

00:03:51

helping at weekdays a task.

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Super spy. I'm going to

00:03:58

introduce our panelists. So on

00:04:00

my right we have one

00:04:02

of my penis. She's a

00:04:03

lawyer from when you were

00:04:04

in Seattle. I want to

00:04:06

hold some Ella Lim from

00:04:07

Columbia University. She's currently the

00:04:10

coordinator of the investment arbitration

00:04:12

group at the hands of

00:04:14

the lessons. I will take

00:04:15

a little time before joining

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the public sector want to

00:04:19

work as head of Regulatory

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Affairs of traffic and she

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owes her work as a

00:04:23

solution of arbitration and dispute

00:04:26

resolution of a curmudgeon. Want

00:04:29

to have been up jump

00:04:30
professor of investment arbitration and

00:04:32
human rights in the master

00:04:33
of international law at the

00:04:35
University of the Los Angeles

00:04:36
and I believe that her

00:04:38
perspective is highly appreciated here

00:04:41
because she couldn't see who

00:04:42
works in the defense of

00:04:44
Colombian investment arbitration. So welcome

00:04:46
one. We also have under

00:04:49
his Milpas Andres Andres holds

00:04:53
a PhD in law from

00:04:54
University of Notre Dame a

00:04:57

master in international law from

00:04:59

Georgetown University. And he's a

00:05:01

specialist in administrative law and

00:05:03

a lawyer from University of

00:05:05

the presiding currently. He's a

00:05:07

professor and researcher at the

00:05:09

faculty of Law and political

00:05:11

science of University of Italy

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Shinto being a consultant to

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companies in the implementation of

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Human Rights you Villages processes.

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He has also been a

00:05:21

beast in professor at the

00:05:23

University in United States in

00:05:25

Mexico Guatemalan and his ulcer

00:05:28

and culture of books and

00:05:29

articles on business and human

00:05:30

rights inter-american human rights system

00:05:33

international law and human rights

00:05:35

philosophy. We also have some

00:05:39

some theocracies torium in human

00:05:43

rights lawyer seems 2018. He

00:05:46

leads to LaGuardia from Delta

00:05:48

to business and human rights

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dispute resolution illegal in training

00:05:52

his practice focuses on Advertising

00:05:55

companies on the implementation of

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Human Rights you diligence that.

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He signed up regulatory instruments

00:06:00

and the participation of economic

00:06:03

actors in transitional Justice in

00:06:06

2023. He completed an llm

00:06:08

in international human rights law

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at Oxford University Welcome Center.

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On Wheels to have said

00:06:16

he said he released lawyer

00:06:19

from University of the Presario.

00:06:20

He's a specialist in environmental

00:06:23

law from University of the

00:06:24

looks that matter. He said

00:06:26

he's head of the treaty

00:06:27

section of the Ministry of

00:06:29

Foreign Affairs, which is the

00:06:31

area in charge of all

00:06:32

the issues related to the

00:06:34

negotiation the approval implementation and

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ruination of trees as well

00:06:39

as providing advice to various

00:06:41

government entities in any other

00:06:43

mother of public international law

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in which the Republic of

00:06:46

Colombia is involved during the

00:06:49

last four years has been

00:06:51

a professor at University of

00:06:52

indifferent subjects related to public

00:06:56

international law and also since

00:06:59

2012. He has been engaged

00:07:02

to the Philips e Joseph

00:07:03

Woodward competition first the second

00:07:06

best. And then since 2015

00:07:09

as a trainer of the

00:07:10

team of University, So today

00:07:16

as you may see from

00:07:18

the profiles and the experiences

00:07:20

of our panelists, we will

00:07:22

have a panel with different

00:07:24

perspective. We have Italian meat

00:07:26

for beef and also practical

00:07:28

experience. And also we have

00:07:31

expects property investment arbitration which

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even if investment arbitration is

00:07:36

part of public international law.

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We have not he's in

00:07:39

the past years. Not all

00:07:41

investment arbitration experts are also

00:07:43

expressed some public international law.

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So it's also great to

00:07:47

have said here which is

00:07:48

going to give us the

00:07:50

public international law perspective. So

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I would like to begin

00:07:54

this panel by asking a

00:07:56

few questions to our panelists.

00:07:58

So I think that it

00:08:00

will be a great idea

00:08:01

to start with them days

00:08:02

with an overview. So unless

00:08:04

you are the one who

00:08:06

has the most Academy, knowledge

00:08:08

here on the subject. So

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I think it could be

00:08:10

a great way to start

00:08:11

point. If you could Enlighten

00:08:13

us with the current state

00:08:15

of affairs in the field

00:08:16

on business and human rights

00:08:17

on how these might be

00:08:19

related to us. So could

00:08:21

you please provide us some

00:08:22

of the recent developments on

00:08:25

of the area? Thank you.

00:08:28

Are you seeing how you

00:08:29

hearing me? Whine? Yes, okay.

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Thank you for the invitation.

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I'm very glad to be

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here on these very interesting

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discussion because it's not easy

00:08:39

getting from the academy perspective

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to analyze this tension between

00:08:43

investment and human rights. My

00:08:46

intervention is going to be

00:08:48

like that. The target of

00:08:50

my intervention is to provide

00:08:52

an overview of the business

00:08:54

and human rights, and then

00:08:57

to reach the investment part

00:09:00

that you can wear specialized

00:09:01

section, right? So maybe he's

00:09:03

going to be very introductory

00:09:06

for some of Youth but

00:09:07

it is just so everyone

00:09:08

can have the same same

00:09:10

ideology of the business human

00:09:12

right? Because that's where I'm

00:09:14

coming from and I think

00:09:15

this is worth we're seeing

00:09:17

the interest of including human

00:09:19

rights Closet in investment to

00:09:21

make investors are responsible for

00:09:24

human rights abuses or birthday.

00:09:26

human rights violations to three

00:09:29

parts of my intervention the

00:09:32

first creations and other business

00:09:39

associations affect human rights for

00:09:43

allowing us to enjoy more

00:09:49

higher standard of Human Rights

00:09:51

than ever because of the

00:09:52

wealth that corporations can creating

00:09:55

suicides but that is also

00:09:59

the interests of a b

00:10:05

c d from that your

00:10:06

activities during violating human rights

00:10:08

and that are created to

00:10:15

regulate corporations are not enough

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to regulate corporations because of

00:10:20

that trust National nature of

00:10:22

their activities in of the

00:10:23

structure of the corporation's so

00:10:25

we have A double problem

00:10:27

with the reality that showing

00:10:29

us human rights abuses his

00:10:31

candles like men that happened

00:10:33

in the 90s with Nike

00:10:35

or apple or the fast

00:10:38

fashion is candles a or

00:10:40

destructive sector and on the

00:10:42

other hand there is no

00:10:43

three problem domestic laws. Are

00:10:45

they become an officiant because

00:10:48

the states are to regulate

00:10:51

corporations efficiently to face this

00:10:54

problem the spackling and Regulatory

00:10:57

problems are the secondary school

00:10:59

by ragi Can drug you

00:11:00

at the altar of that

00:11:02

guiding principles in business and

00:11:03

human rights that governance Gump

00:11:06

the recent government jobs in

00:11:08

space in which corporations are

00:11:11

not being regulated in their

00:11:13

respective nations of their behavior

00:11:16

is unclear to respond to

00:11:19

these violations and to these

00:11:20

regulatory problems. We are seeing

00:11:23

some responses. Get responses are

00:11:27

coming from three different perspect

00:11:30

one from the domestic law

00:11:32

perspective how we can address

00:11:35

this was National nature corporation

00:11:37

international law from Advocate. If

00:11:41

it works like you notes

00:11:42

responses from them is that

00:11:46

increasing a creation of norms

00:11:49

with extraterritorial effects that we

00:11:51

know International load that he's

00:11:53

an exception because the jurisdiction

00:11:54

of the states east Territorial

00:11:56

and we're seeing an increase

00:11:59

and amount of norms for

00:12:01

Shirley in Europe to reach

00:12:03

corporations V on the 33

00:12:05

sing which B are incorporated

00:12:07

or even when there where

00:12:08

they have a TV. Ocean

00:12:11

we have the National Action

00:12:12

plants that are more public

00:12:14

policies oriented to give Clarity

00:12:17

to corporations and investors about

00:12:19

their social spectations when they're

00:12:21

investing in domestic law in

00:12:24

domestic address dick. So I'm

00:12:26

not going to be dealing

00:12:26

with that that is one

00:12:28

possible answer is domestic law

00:12:30

with X-Rated. We have just

00:12:34

for the sake of example,

00:12:35

France Germany UK and Australia

00:12:38

in Port Orange that are

00:12:41

regulating business with Express really

00:12:44

expect as a mandatory element,

00:12:48

but also Canada and the

00:12:50

European Union soon-to-be law directive

00:12:53

about a sustainability that are

00:12:56

I seen one of the

00:12:58

most interesting responses of the

00:13:00

world to the business and

00:13:01

human rights forms of response.

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Buffalo for those that are

00:13:12

not from your ride with

00:13:13

international law is a non-binding

00:13:15

law that a seems to

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be more about reference setting

00:13:19

reference or standards of Behaviour

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movie for Netflix. Not even

00:13:23

if only to States won

00:13:25

two different software instruments are

00:13:27

very important the oecd guidelines

00:13:30
for Multinational Enterprises in The

00:13:32
Guiding principles in business and

00:13:34
human rights the first one

00:13:36
1976 and last year and

00:13:41
guiding principles in business and

00:13:43
human rights approved in 2011.

00:13:45
And I think the guiding

00:13:48
principles have become the focal

00:13:50
point of all their business

00:13:51
and human rights discussion investment

00:13:54
treaties design because these trees

00:13:57
are in for free due

00:13:59
diligence gation based on the

00:14:01
guiding principles in business and

00:14:03
human rights in Fort Wright.

00:14:10
We were seeing printer for

00:14:12
Tatian of Human Rights treaties

00:14:14
for sampling to remain consistent

00:14:15
how that court is interpreting

00:14:18
an existing Treaty of indirectly

00:14:26
obligations to non-state actors like

00:14:29
Corporation. Oh, so we have

00:14:30
a draft of a tree

00:14:32
on business and human rights.

00:14:33
We have that they're drop

00:14:35
of the tree is not

00:14:38

yet. Of course binding but

00:14:39

would be an order in

00:14:40

for ten a answer the

00:14:42

answer to this problem. And

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finally what I want to

00:14:46

the Indian couple in the

00:14:48

next minute is investment and

00:14:50

trade treaties how this field

00:14:53

that is so far away

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sometimes of Human Rights is

00:14:56

being transformed to address the

00:14:59

problems of Human Rights, right?

00:15:04

That's the starting point is

00:15:07

the report of John Runge

00:15:08
of 2013 in which he

00:15:10
realized. Cooling problems related with

00:15:14
investment and human rights. The

00:15:16
first one are the instability

00:15:18
classes. Right? And the second

00:15:20
one is the policy incoherent

00:15:21
in States right now. We

00:15:23
should have concerned that I

00:15:24
would not is that tree

00:15:26
to shopping. We're seeing investment

00:15:28
play me some history ideas.

00:15:32
Immunity Clause the police incoherence

00:15:34
and the tree shop. These

00:15:37

are classes include investment trees

00:15:40

that has the intention to

00:15:42

prevent Jose State from adopting

00:15:45

believes vegetation to enhance human

00:15:46

rights protection, right? So they're

00:15:49

in some ways taking out

00:15:52

the regulatory power of the

00:15:53

national state if they move

00:15:57

for the change the domestic

00:15:59

legislation in for example, as

00:16:01

to improve the labor standards

00:16:03

there going to be Shooting

00:16:05

an arbitration panel because of

00:16:07

a violation of an investment

00:16:09

true or not discriminatory these

00:16:13

classes there a problem. So

00:16:15

that's the exact second problem

00:16:18

is the police incoherent that

00:16:20

we're seeing that in the

00:16:21

process of negotiation of trees

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in state. There is no

00:16:25

centralized Authority that Maple Shade

00:16:27

Trees and some entities are

00:16:30

negotiating treaties of investment or

00:16:32

trade with glasses that are

00:16:34

not very good for human

00:16:36

rights and human rights treaties

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are doing that right. There

00:16:41

is a fragmentation inside the

00:16:43

states and international law and

00:16:45

it's a matter of policing

00:16:46

of you and the third

00:16:48

problem is a free shopping,

00:16:50

right that is a Dia

00:16:51

of corporation that change their

00:16:53

structure to benefit from the

00:16:55

protection of particular investment treaties,

00:16:58

right? And that is not

00:17:00

their problem that is making

00:17:02

very hard to relate. Investors

00:17:05
in their compliance with human

00:17:07
rights. How is responding to

00:17:11
these challenges? So I'm going

00:17:13
to send you to do

00:17:15
ideas or prettiest we have.

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483 the first idea is

00:17:23
that received its investment trees

00:17:25
are conditioning the protected investment

00:17:28
on the compliant with domestic

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standards and domestic standards are

00:17:33
related mad. Sometimes with human

00:17:35
rights for environmental or labor

00:17:37
law or gender laws. So

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that fortification of the protected

00:17:42

investment. I respond to these

00:17:45

problems that were seen on

00:17:47

the front of your response

00:17:51

is the investment trees inclusion

00:17:57

of voluntary a corporate social

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responsibility classes on investment treaties,

00:18:02

but they're not they're not

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requirements binding party has important

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facts. At their response from

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in Batman 3 free disable

00:18:14

Lucian is to required for

00:18:16

sustainable contributions development contributions from

00:18:21

the investment. So everyone is

00:18:23

an example from Brazil model

00:18:25

treaty you your investment has

00:18:27

24 use positive impacts on

00:18:30

the development of our country

00:18:31

and the most creative anyone

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is requiring investors to observe

00:18:39

recognize International standards in human

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rights issue. Right now. We

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have these for a kind

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of responses from investment trees

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because of the sake of

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time. I'm just going to

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end with the last one

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and I'm not going to

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be able to develop each

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one of them but he's

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the last text requiring investors

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to comply with the provisions

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under some of the examples

00:19:01

that I think are very

00:19:03

interesting especially the Touch model

00:19:05

of a vehicle if it's

00:19:07

it's a really want a

00:19:09

tree to see about We

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are seen to idea is

00:19:15

the creation of applications on

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investors on environmental labor environmental

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law labor law or human

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rights issues V John David

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guiding principles, right investment re

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re require more than what

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is required by The Guiding

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principles example would be shocked

00:19:33

investment of the year for

00:19:38

the 2016 ride. The creation

00:19:41

of applications on investors. The

00:19:43

other is a piece of

00:19:48

Belgium and Luxembourg in which

00:19:50

are you a teen sex

00:19:52

act in accordance with International

00:19:54
parts Part A Part B.

00:20:00
So it is expected from

00:20:03
investors to act according to

00:20:06
International standards in which the

00:20:09
Contracting parties. Already applied. So

00:20:12
it's a very hard standard

00:20:14
because he indirectly investors based

00:20:20
on International standards coming from

00:20:22
free sample from international human

00:20:24
rights treaties would be especially

00:20:28
the data model 2019 that

00:20:31
includes one of you diligence

00:20:32
Publications in the process of

00:20:34
investment right were seen and

00:20:36
I see that might be

00:20:38
a trend in which we're

00:20:39
going to see more often

00:20:40
in Batman trees that included

00:20:42
as an application for the

00:20:43
investment performance or Gilligan process

00:20:48
to avoid impacts on human

00:20:52
rights. I'm going to stop

00:20:53
there because my time, thank

00:20:55
you. Thank you Jesus for

00:20:58
these overview. I think that

00:21:01
eats very valuable the point

00:21:04

of you erase about the

00:21:05

lack of coherence in institutions

00:21:08

actually negotiated, which I think

00:21:11

it's on and we can

00:21:21

move to set him because

00:21:22

he's actually part of the

00:21:26

3D section of the Ministry

00:21:28

of Foreign Affairs and he

00:21:29

actually negotiated pretty investment treaties,

00:21:33

which is part of the

00:21:35

of the point that you

00:21:36

raised. There is no connection

00:21:39

or interaction sometimes between the

00:21:43

institutions in the government. So

00:21:45

I think your perspective sir

00:21:48

this discussion on a forced

00:21:52

to continue as some of

00:21:53

the points raised by Andres,

00:21:55

so different background different from

00:22:01

some of us actually you

00:22:03

all do you understand investment

00:22:05

arbitration, you are more an

00:22:07

expert on public international law.

00:22:09

We know that investment arbitration

00:22:11

is part of folic International.

00:22:13

Oh, but you are more

00:22:14

focused to hear from you

00:22:21

how you see their interaction

00:22:23

between The befriend regimes of

00:22:27

international law of investment and

00:22:31

at the same time these

00:22:39

two regimes and how you

00:22:41

seen this could be sold

00:22:42

in the near future. I'm

00:22:48

things I'm going to because

00:22:49

I think that you introduced

00:22:50

these just that I want

00:22:52

to write an English at

00:22:55

first of all, I think

00:23:00

it's going to be interesting.

00:23:02

So take that in mind.

00:23:25

That's a major disclaimer for

00:23:27

what I'm going to say.

00:23:28

And that's you because I'm

00:23:30

in my in my role

00:23:32

as I have to make

00:23:34

sure that the treaties are

00:23:36

we could go here in

00:23:37

the gym themselves evil expression,

00:23:45

please. So so that's where

00:23:49

I'm coming from and that's

00:23:50

why I'm going to try

00:23:51

to explain. Why is he

00:23:53

the Investments are the problem

00:23:55

which is a modder. all

00:24:01

the Disney songs Call Dreamscapes,

00:24:04

because coming from a 3D

00:24:06

background should prefer hard loss

00:24:09

solution as you were trying

00:24:10

to think of a heart.

00:24:14

I think something between in

00:24:17

the middle, which is basically

00:24:19

a better understanding on the

00:24:21

part of practitioners physically to

00:24:29

learn how to interpret treaty

00:24:31

provision more efficiently and not

00:24:34

how it has been doing

00:24:35

up until this point in

00:24:37

the most investment case and

00:24:42

I'm going to try to

00:24:43

explain what I mean when

00:24:46

I'm saying this. First of

00:24:48

all, I want to say

00:24:49

that I do understand where

00:24:51

investment is coming from where

00:24:53

the problem is being generated

00:24:54

because investment is so hard

00:24:57

in that window is so

00:24:58

difficult that have to become

00:25:01

specialized investment. So that's something

00:25:04

that we can't be true

00:25:06

and perhaps are out there.

00:25:11

I'm in states have to

00:25:27

deal with this issue. They

00:25:29

do not want to have

00:25:30

to deal with Investments and

00:25:31

I'm going to touch up

00:25:35

on some of it is

00:25:35

that the agency is healing

00:25:39

but the point is that

00:25:42

when we have something here.

00:25:47

We'll have to think about

00:25:48

what's happening in human life.

00:25:50

We have to take the

00:25:53

seasons of humor. My stock.

00:26:01

We have to take something

00:26:11

that's in Batman 3 free

00:26:16

trade agreements, but we have

00:26:18

more than 3,000 ft his

00:26:20

inauguration and those obligations have

00:26:23

to be taken into account

00:26:24

when Columbus, Texas region information.

00:26:27

But when you bring the

00:26:29

case before our panel and

00:26:31

dragon basement panel that they

00:26:38

have to fulfill its take

00:26:41

a case of specific things

00:26:42
that I have. I like

00:26:43
to highlight because I was

00:26:45
kind of Lies with the

00:26:46
decision which is a call.

00:26:48
I'm sure that Echo. Do

00:26:50
you know what a core

00:26:53
is but one of them

00:27:01
that we have the best

00:27:02
International lawyer in the receiving

00:27:04
department. And even with Phillip

00:27:07
songs in the final decision

00:27:08
was taken how it was

00:27:09
taken my point. We have

00:27:17

a tension between to his

00:27:19

position Interstate 83. Which were

00:27:28

the exceptions in the Columbia

00:27:30

Columbia was acting under an

00:27:40

exception of the tree and

00:27:41

accepting specifically provided for in

00:27:43

this position 22.1, which is

00:27:48

basically to protect me a

00:27:50

decision taken her to protect

00:27:53

the innocent with me because

00:27:55

it was made to protect

00:27:56

your bar. It was to

00:28:01

protect her. It's a completely

00:28:13

normal case perhaps in your

00:28:15

case. It could be interesting

00:28:17

but the logic behind this

00:28:19

position 2201 was not an

00:28:24

exception. But whether a permission

00:28:27

for the government to take

00:28:28

a legitimate public policy, but

00:28:31

that didn't mean that it

00:28:32

was not going to reach

00:28:33

international law if they take

00:28:34

out if they took a

00:28:36

measure to protect the environment.

00:28:38

How do you write to

00:28:39

that because they come further

00:28:41

decision to Annex at 11,

00:28:42

which use the word exception.

00:28:46

When you retake order it

00:28:48

actually says that the reason

00:28:50

is because one of them

00:28:51

contains the word exception and

00:28:52

the other one doesn't contain

00:28:54

the word exemption. Okay, when

00:28:57

you read article 231 of

00:28:58

the treaties, which is their

00:29:01

General interpretation of treaties, you

00:29:04

find that the first way

00:29:06

to interpret. You can say

00:29:11

that that's a way to

00:29:13

interpret. Okay, we are using

00:29:15

the fact that this was

00:29:17

young 2201 wasn't trained in

00:29:20

chapter 22, which is the

00:29:23

chapter explicitly call exception exception.

00:29:28

So if the decision was

00:29:36

in the chapter of exception,

00:29:37

it's simply that you have

00:29:39

the right to conclude that

00:29:42

that wasn't an exception. Anyone

00:29:46

who practices international law when

00:29:49

you read this was young

00:29:50

22 / 1.3, you know

00:29:55
where the decision comes from

00:29:56
because it's exactly the same

00:29:59
language as our equals 20

00:30:01
of a cup. And when

00:30:03
is a virtually identical it's

00:30:05
the same thing. You are

00:30:28
going to eat you are

00:30:29
not going to be committing

00:30:30
crimes or not till around

00:30:31
4. I'm doing this in

00:30:35
a convention that you can

00:30:36
apply to a right to

00:30:37
that which is 31.3 C

00:30:39
equals 31.3 c / B

00:30:42
that General international law applicable

00:30:46
between the parties should be

00:30:48
taken into account to keep

00:30:49
in to interpret as position

00:30:51
within a 3, so It's

00:30:55
important. This was him twenty-two.

00:30:57
Oh one point three was

00:30:59
not an exception. It's simply

00:31:02
impossible to understand. I'm sure

00:31:06
if he sent hundreds to

00:31:07
International if they understand I

00:31:20
mean, Books that song you

00:31:25

want it? It's only one

00:31:27

case. There are other cases

00:31:29

where the final Mansions article

00:31:36

31 points PC to say

00:31:37

that should not be recognized

00:31:41

violation of other obligations of

00:31:43

us can fact families can

00:31:49

in fact I write two

00:31:50

more coherent decision towards other

00:31:53

three year old gay. When

00:31:58

we took it with human

00:31:59

rights investment, I think that

00:32:02

most of the questions go

00:32:04

through the gate and be

00:32:10

doing more on their own

00:32:11

site, but police should also

00:32:14

be taking that into account.

00:32:16

When we are negotiating treaties,

00:32:18

I am the ones that

00:32:20

I am part of the

00:32:21

ones that we should be

00:32:24

more clear in this position

00:32:25

that we shoot into that

00:32:30

interpretation within 3 days shooting

00:32:32

to be done without trees

00:32:40

art treat. But when we

00:32:43

seek a quarrel with my

00:32:46

concern with the code, is

00:32:47

that perhaps because he is

00:32:50

one of the best if

00:32:51

we have to look that

00:32:58

shouldn't have happened if the

00:33:01

one that's today in Port

00:33:08

and that same. All their

00:33:19

treaties with. I mean I

00:33:20

can write but still up.

00:33:24

So I don't know what

00:33:26

this would be because I

00:33:28

know they ask me what

00:33:30

I think that. If prisons

00:33:34

practicing investment arbitration understand that

00:33:38

they are also working and

00:33:39

that would be a great

00:33:43

idea, But I think we

00:33:51

can do more in the

00:33:52

drafting of trees. And as

00:33:54

you were saying negotiators should

00:33:56

not be simply negotiators because

00:34:00

that allows for But I

00:34:05

also believe that soaked though

00:34:06

has a major role in

00:34:08

Asia. Because if a place

00:34:12

is also start accepting this

00:34:14

reality and understand this reality

00:34:17

we are not going to

00:34:20

see are so against considering

00:34:24

when cases are are being

00:34:29

heard before untraveled forget them.

00:34:31

So I think I'm going

00:34:35

to leave the microwave from

00:34:37

here. Thank you, sir Hugh

00:34:41

and I think that I

00:34:43

had some of the stuff

00:34:45

so we can take that

00:34:55

one or we could work.

00:35:05

How does an arbitration interacts

00:35:08

with the other regimes of

00:35:10

public international law and of

00:35:11

course fees also team. This

00:35:14

also comes with the different

00:35:17

interpretations that arbitrators could give

00:35:21

to to investment treaties that

00:35:23

he has made a lot

00:35:29

of sound because of course

00:35:31

in that case. Some people

00:35:33

have the view that the

00:35:35

treaty is very clear that

00:35:37

exception Clause. It's an exception.

00:35:40

Exception, of course interpretation in

00:35:45

that case. Of course, of

00:35:55

course, of course, they need

00:36:00

to renegotiate some of the

00:36:03

wording of our current treaties,

00:36:05

of course brings a lot

00:36:11

of questions like the mechanism

00:36:19

that the more appropriate mechanisms

00:36:21

to protect human rights, maybe

00:36:25

maybes not maybe we can

00:36:27

go to commercial arbitration and

00:36:29

see cases out of the

00:36:30

bank which Did they solve

00:36:42

the case before getting substance

00:36:45

commercial arbitration something more to

00:36:49

hear it for the protection

00:36:50
of Human Rights. So so

00:36:51
thank you for for your

00:36:53
balabal remarks. Now we are

00:36:55
moving to do something comes

00:36:59
from he has a lot

00:37:05
of practical experience on the

00:37:07
structuring of the private sector

00:37:17
and of course by private

00:37:19
sector of the system how

00:37:24
to use Allegiance. I know

00:37:31
that Andres mention that most

00:37:34
of the time is not

00:37:35
an obligation and we are

00:37:36

talking about so of course

00:37:40

A lot of work, but

00:37:48

I want to see how

00:37:49

you know how these could

00:38:01

be related to. Good morning,

00:38:04

everybody. Thank you, Mary Lucia

00:38:06

and organizers of the event

00:38:09

for inviting me. And I'm

00:38:13

going to talk about day

00:38:15

of obligation of Human Rights

00:38:16

due diligence are from the

00:38:19

Investor's perspective and in order

00:38:23

to do so, I might

00:38:24

have to bite my presentation

00:38:25

in three parts. So the

00:38:29

first part is the origins

00:38:30

of the tension between Forge

00:38:32

investment in the human rights.

00:38:33

The second one is the

00:38:34

human rights to do this

00:38:35

again salon on the third

00:38:37

part is the discussion about

00:38:39

if it's a duchy or

00:38:41

an obligation that investors have

00:38:44

to comply with human rights

00:38:46

due diligence. This is an

00:38:48

ongoing debate. I think we're

00:38:49

not going to solve it

00:38:50

today. But the idea is

00:38:51

to open the discussion and

00:38:53

to explore some of the

00:38:54

solutions and the possibilities on

00:38:58

score of the Padres and

00:39:01

how to impose obligations on

00:39:03

private actors. The last families

00:39:06

have mentioned the whole system

00:39:09

has been structured about around

00:39:12

space. So that's the main

00:39:14

subject of international law states

00:39:16

and the big question here

00:39:17

is how can we imposed

00:39:18

human rights obligations to corporations?

00:39:22

So first the origins of

00:39:24

Fortune investment in human rights,

00:39:26

it has it has been

00:39:28

asserted that investment Provisions are

00:39:30

generally aim to facilitate the

00:39:32

flow of investment between countries

00:39:34

creating the standard protection particles

00:39:36

driving prosperity and inclusive Economic

00:39:38

Development instead of this narrative

00:39:40

critical legal Theory and historical

00:39:43

evidence showed that international law

00:39:45

was designed by one formation

00:39:48

investors and corporations. It's ordinary

00:39:52

operation is deeply implicated in

00:39:54

the logic of capitalism economic

00:39:56

profit. European nations imposed economic

00:40:00

cultural and political institutions on

00:40:03

diverse territories including foreign direct

00:40:06

investment rules that legitimize the

00:40:09

condition for Corporation to extract

00:40:11

natural resources and explode labor

00:40:13

without legal consequences. So he

00:40:16

won't want one point is

00:40:17

that they Tia is not

00:40:19

to make preparations protect human

00:40:23

rights. That's the that's the

00:40:25

beauty of the states that

00:40:26

have an equation of the

00:40:26

stage b instead to prevent

00:40:29

causing the humid right harms.

00:40:31

And if the damage is

00:40:33

caused then make them liable

00:40:35

for the cost of they

00:40:36

have for the harm that

00:40:37

they have called second the

00:40:40

human rights of diligence landscape.

00:40:43

Do underneath one of the

00:40:46

initiatives to address these problems

00:40:47

are the guiding principles of

00:40:49

business and human rights has

00:40:51

just mentioned lunch and launched

00:40:53

in 2011 by the US.

00:40:57

The second pillar of The

00:40:58

Guiding principles refers to the

00:41:00

corporate responsibility to respect human

00:41:03

rights. This principal is grounded

00:41:06

in the global standard of

00:41:07

expected conduct the business respect

00:41:10

human rights whether they operate

00:41:13

This killer has been criticized

00:41:15

for its soft language and

00:41:17

being grounded on social rather

00:41:20

than legal norms. Nonetheless, John

00:41:23

Russia claims, his intention was

00:41:25

to move beyond the concept

00:41:27

of shackles of traditional international

00:41:29

human rights law and influence

00:41:31

by legal experts from law

00:41:34

firms private law firms introduced

00:41:36

due diligence language into the

00:41:39

protect respect and remedy framework.

00:41:43

The language of due diligence

00:41:45

has deep roots in legal

00:41:47

traditions. Under the logic of

00:41:49

the guiding principle discharging their

00:41:52
responsibility to respect human rights

00:41:53
would require human rights due

00:41:55
diligence. According to the guiding

00:41:58
principles of Human Rights division

00:42:00
setup process that investors and

00:42:02
business carry out to identify

00:42:04
prevent mitigate an account for

00:42:07
how they got where they

00:42:08
are best human right in

00:42:09
the content of this principle

00:42:13
reproduces. The old idea that

00:42:15
you diligence is the standard

00:42:16
of conduct required to discharge

00:42:19

a legal obligation involving a

00:42:21

process of Investigation conducted by

00:42:23

private parties to identify risk

00:42:26

of producing a damaged. Definition

00:42:29

of human rights to division

00:42:30

is an allocation of the

00:42:33

general principle of law that

00:42:35

Demands a diligent conduct from

00:42:37

a private party to proceed

00:42:39

and prevent the consolidation of

00:42:40

the risk between a particular

00:42:42

deity that businesses are the

00:42:44

ones to conduct the process

00:42:46

to identify prevent and mitigate

00:42:49

the risk to the operation,

00:42:50

but there is to harm

00:42:52

people. The rationale behind human

00:42:57

rights due diligence reflects that

00:42:59

this concept is a unique

00:43:01

regulatory technique to strengthen businesses

00:43:04

compliance with obligations to prevent

00:43:07

causing carbs. Mirroring, the legal

00:43:10

Frameworks enacted worldwide UK legislation

00:43:13

Germany Norway excetera imposing taxes

00:43:18

on corporations to report social

00:43:19

impacts on the charge mandatory

00:43:21

human rights due diligence Latin

00:43:23

America reacted quickly to this

00:43:25

trend evacuating for similar regulations.

00:43:27

However, imposing mandatory human rights

00:43:31

due diligence across the regions

00:43:32

has several challenge you to

00:43:35

a particular context no rule

00:43:37

of law Society impunity set

00:43:40

the tropical sensation of The

00:43:43

Guiding principles. Somebody has called

00:43:45

them is taking place. I

00:43:48

will hide like now recent

00:43:50

regulatory development shaping the legal

00:43:52

landscape regarding human rights to

00:43:54

eat. First lost in passing

00:43:58

mandatory human rights due diligence

00:44:00

incorporation. There has been dropped

00:44:02

bills passed in Mexico Colombia

00:44:04

Peru in the last couple

00:44:05

of years. None of none

00:44:07

of them has been approved

00:44:08

by the Congress only Brazil

00:44:10

draft Bill 572 from stock

00:44:14

2022 is currently under consideration

00:44:16

and in article seven states

00:44:20

that corporations have a duty

00:44:23

to a.m. I thought mind

00:44:28

up the duty to comply

00:44:28

with mandatory due diligence to

00:44:31

identify prevent money for and

00:44:34

repair human rights violations, including

00:44:37

social rights legal rights and

00:44:40

environmental rights. The second friend

00:44:43

used very particular from the

00:44:46

Latin American region is the

00:44:47

hardening of guiding principles by

00:44:49

Court decisions while not formal

00:44:52

president's the university understood as

00:44:55

Alpharetta statements of Daddy's courts

00:45:00

and tribunals increase soft binding

00:45:03

net for the parties to

00:45:05

the case and increase increase

00:45:07

its relevance for other actors.

00:45:10

Some examples three standards of

00:45:13

incorporating in the inter-american court

00:45:15

of Human Rights be at

00:45:16

the rulings. The first one

00:45:18

is that the states must

00:45:19

protect we should understand that

00:45:21

as regulate and super bright

00:45:22

third parties from corporate activities

00:45:25

with the potential of harming

00:45:26

human rights second most related

00:45:30

to the presentation defining the

00:45:31

scope of businesses duty to

00:45:34

respect human rights and human

00:45:36

rights due diligence in compensation

00:45:38

has orders to have an

00:45:39

impact on business operations the

00:45:42

latest ruling that the tribunal

00:45:47

was very specific on on

00:45:49

on signal from the language

00:45:51

used to describe. This is

00:45:52

standard. I forward this due

00:45:55

diligence the standard is applicable

00:45:57

to actions of both public

00:45:59

and private entities. So there's

00:46:01

no discussion now that it's

00:46:02

only occasionally States and the

00:46:07

second one is a human

00:46:08

rights due diligence should include

00:46:09

an assessment of the actual

00:46:11

and potential impact activities on

00:46:13

human rights as part of

00:46:15

the medication to prevent environmental

00:46:17

Hearts to human rights as

00:46:19

part of the obligation to

00:46:20

prevent and there is where

00:46:23

the Tribune is already starting

00:46:24

to connect to Julian's do

00:46:27

a hard loss of allocation.

00:46:30

We will see the ruling

00:46:32

Haiti versus Colombia. You should

00:46:35

be out in the next

00:46:36

couple of months how the

00:46:37

tribunal interpret interpret this this

00:46:40

is this treaty human Columbia.

00:46:45

The Constitutional court has incorporated

00:46:46

to binding stop rules through

00:46:49

all the other jurisprudence mostly

00:46:51

in cases regarding indigenous people.

00:46:54

The first one is that

00:46:55

there is a corporate duty

00:46:57

to report to perform due

00:46:58

diligence. You can read that

00:47:00

that the famous wouldn't su123

00:47:03

from 2018 with very clear

00:47:05

about that that do teeth

00:47:06

under the judges most able

00:47:08

to eat human right duties

00:47:09

against a part of the

00:47:10

evidence to determine diabetes. Last

00:47:14

but not least in recent

00:47:15

years various approaches to regulations

00:47:17

of business conduct have evolved

00:47:18

as an alternative to the

00:47:19

traditional model focusing on the

00:47:22

conduct of domestic businesses and

00:47:24

soft low approach international human

00:47:26

rights law some of the

00:47:28

Alternatives include the incorporation of

00:47:31

contractor classes human rights contractual

00:47:34

Clauses that trade investment agreements

00:47:38

and human rights obligations just

00:47:41

talked about and The Binding

00:47:44

to negotiations in there in

00:47:45

the in the of The

00:47:46

Binding draft treaty that is

00:47:48

taking place in Geneva. We'll

00:47:50

see where that takes. Bugattis

00:47:54

Polanski, that's what we have

00:47:56
nowadays regarding the regulation of

00:47:59
human rights to diligence is

00:48:01
hard becoming Harder Than You

00:48:02
by reputation and we have

00:48:05
a specific obligations in National

00:48:09
loss and we have a

00:48:10
full box of options that

00:48:15
we can start exploring. I'm

00:48:17
the third point is the

00:48:18
investor Duty slash obligation to

00:48:21
perform human rights. We didn't

00:48:22
particularly in the context of

00:48:25
investment arbitration arbitrations have a

00:48:30

Dottie under international law as

00:48:32

we sought to prefer a

00:48:33

human rights due diligence to

00:48:35

prevent harm from materializing and

00:48:38

to ensure that their expectations

00:48:39

are legitimate to comply with

00:48:42

this duty. The investor must

00:48:44

investigate the host country's political

00:48:46

economic and social context that

00:48:49

should be obvious, but they

00:48:51

don't do it and that's

00:48:53

what we're trying to do

00:48:54

change nowadays, even though these

00:48:56

are very sophisticated. Investors actress

00:49:00

tribunal to decide whether the

00:49:04

investors benefit from the protection

00:49:06

of the treaty or the

00:49:07

nice compensation when they bet

00:49:09

when the investment is made

00:49:10

we don't want to see

00:49:12

during the risk of breaching

00:49:13

human rights. They're acting now

00:49:18

we have like almost 6

00:49:20

7 8 decisions were the

00:49:22

tribunes have made or try

00:49:24

to make connect the human

00:49:27

rights international human rights system

00:49:30

with the investment for East

00:49:32

Orange direct investment system. Most

00:49:39

famous quote two are trying

00:49:52

to play with with the

00:49:54

treaties tensions and interpretation to

00:49:57

South America in Bolivia, Bolivia.

00:50:09

47 International Investment reviews have

00:50:13

established that investor is entitled

00:50:15

to protect office limited legitimate

00:50:17

expectations provided first that it

00:50:20

exercise due diligence and second

00:50:23

that it's legitimate expectations were

00:50:26

reasonable in light of the

00:50:27

sink to stances. The circumstances

00:50:30

are not legal in nature.

00:50:35

So not only the legal

00:50:36

framework, but they should also

00:50:38

include the social cultural and

00:50:41

economic environment of the whole

00:50:42

state of the best rate.

00:50:44

Among other factor is not

00:50:46

the same do we have

00:50:47

to do today to see

00:50:48

if you were going to

00:50:48

make an investment in Hawaii

00:50:50

and Canada? Are you going

00:50:51

to buy your investment in

00:50:52

city of Columbia? another country

00:50:59

I need the recent ruling

00:51:00

of Red Eagle versus Colombia

00:51:02

with regular was very clear

00:51:04

that the system. Stylish to

00:51:07

protect opotamus system, you know

00:51:13

that there's a new rule

00:51:15

every day. There's a new

00:51:18

ruling a new law. So

00:51:20

it's very complicated, but that's

00:51:22

not not that it's not

00:51:23

an excuse. So the system

00:51:26

established to protect the epidermis

00:51:27

is a really complex which

00:51:28

requires the investor to pay

00:51:29

close attention and learn how

00:51:31

it works. The treaty does

00:51:34

not prohibit complexity rather imposes

00:51:38

on an investor than to

00:51:39

act with care and due

00:51:41

diligence. So here you see

00:51:42

how that are gonna start

00:51:43

bringing these General principle of

00:51:46

law on private law to

00:51:48

the human rights. These questions

00:51:49

were from my point of

00:51:50

view. I think it's it's

00:51:52

a it's a fast that

00:51:53

we should explore when you

00:51:55

see. Lawmaking process on which

00:52:01

involved he's playing with different

00:52:03

standards for the Constitution. So

00:52:05

it's not this this Purity

00:52:07

law really interesting. Is it

00:52:11

is it can be problematic?

00:52:14

Toto to finish up with

00:52:16

a Bob Dylan is a

00:52:17

general principle of law. Providing

00:52:21

legislators with a regulatory technique

00:52:24

and a source of normative

00:52:25

power to add wrestlers from

00:52:27

the responsibilities of businesses for

00:52:29

human rights violations. It is

00:52:32

an obligation included in National

00:52:34

laws and a standard of

00:52:36

interpretation in the analysis of

00:52:38

arbitral Tribunal. So I am

00:52:42

going to finish with three

00:52:43

questions. I want to put

00:52:46

healing in the discussion. Try

00:52:49

to remagine the system. I'm

00:52:51

not a fan of destroying

00:52:53

things. I want to see

00:52:54

everything. But I know that

00:52:57

it needs some adjustments and

00:52:58

we are some some food

00:53:01

for thought so we can

00:53:02

start thinking about how can

00:53:04

we improve and rematch in

00:53:05

the system? The first one

00:53:07

is how can we measure

00:53:08

or wired? What what is

00:53:10

the effectiveness effectiveness of including

00:53:14

human rights classes on Beats

00:53:16

to make investors respect human

00:53:18

rights? Paper is one thing

00:53:23

but then enforcement is another

00:53:25

we have that problem. I

00:53:26

think through all the areas

00:53:28

of international law. Second what

00:53:31

extent can an investor claim

00:53:33

that his legitimate expectations were

00:53:35

violated when you diligence but

00:53:37

not was not performed. Insert

00:53:40

the 3D interpretation, but Nash,

00:53:43

but by National Defense agencies

00:53:45

the election of the tribunal

00:53:47

in reference to human rights

00:53:49

chase the outcomes of the

00:53:51

dispute. Thank you. They need

00:53:56

some guys. I think that

00:53:57

was super enlightened. I think

00:53:59

that's just to channel open

00:54:02

question. Simba's mother of attrition

00:54:09

of course has been created

00:54:11

for investors to have for

00:54:16

Tracy's claim. So I think

00:54:19

that taking into account the

00:54:22

presentation of Santiago an additional

00:54:24

issue that race here and

00:54:27

that of course concerned someone

00:54:28

could be like a suitable

00:54:31

to raise human rights argument

00:54:33

is the challenge. to the

00:54:37

signup process would be teams

00:54:39

will actually receive compensation on

00:54:41

this date has not been

00:54:42

a System created for that

00:54:44

so we can of course

00:54:46

try to modify the system

00:54:50

and includes Allegations upon investors

00:54:55

and investment treaties, but at

00:54:56

the end we will have

00:54:58

that procedural Challenge on how

00:55:01

can actually receive compensation or

00:55:05

claim compensation for potential violations

00:55:09
on a leash on these

00:55:19
discussions. So now I think

00:55:20
that we could move to

00:55:22
our experts today on can

00:55:28
you tell us how many

00:55:36
that perhaps nowadays Columbia is

00:55:44
dealing with some cases not

00:55:46
involved. To hear your remarks

00:55:53
on these maybe you can

00:55:56
tell us a little beads

00:55:57
on how we can make

00:55:58
House Columbia make human rights

00:56:02
argument with arbitration. And also

00:56:08

I think your perspective arbitrators

00:56:16

are also ready for these

00:56:17

to cure these kind of

00:56:19

argument. Thank you. My name

00:56:23

is yeah and thank you

00:56:24

to everyone attending here and

00:56:26

virtually told you I am

00:56:29

part of the agency that

00:56:31

represents Columbia endorsement arbitration cases

00:56:34

international league and I think

00:56:38

that the last question that

00:56:40

Santiago posed as the perfect

00:56:42

pot the way to talk

00:56:43

to start talking about what

00:56:45

10 states do or what

00:56:47

is Columbia doing regarding the

00:56:49

incorporation of Human Rights related

00:56:52

topics and environmental topics and

00:56:55

investment arbitration, I think as

00:56:58

and raise and since you

00:56:59

pointed out usually the system

00:57:02

has seeing as a fragmented

00:57:04

system or investment arbitration is

00:57:06

in one side and then

00:57:08

human rights environmental issues are

00:57:10

on other side, but as

00:57:11

we have Here today. This

00:57:16

is not a fragmented system

00:57:17

and even do some people

00:57:19

see it as a fragmented

00:57:20

system. The reality is that

00:57:23

any investment cases. We see

00:57:25

every time more how human

00:57:29

rights issues environmental issues are

00:57:32

or have an impact investment

00:57:34

arbitration cases. So I would

00:57:37

like to re-sign three cases

00:57:40

where Columbia has been using

00:57:43

human rights and environmental defense

00:57:47

has to present before the

00:57:49

arbitral tribunals in order to

00:57:52

Define Columbia Association and the

00:57:54

measures that he'd adopted and

00:57:56

that the investors were challenging.

00:57:58

So I think that you

00:58:00

can see the defenses from

00:58:02

the state from 2.06. No

00:58:04

defenses and unmarried base defenses.

00:58:08

Columbia has tried as self-appointed

00:58:10

out to use the car

00:58:13

buy Provisions that some trees

00:58:16

have so for example, since

00:58:18

you was talking about article

00:58:20

22013 of the free trade

00:58:23

agreement with Canada, which is

00:58:25

a carve-out provision for the

00:58:27

entire agreement. Basically states that

00:58:30

for the purpose of chapter

00:58:32

8 which is the chapter

00:58:33

related to investment Provisions. If

00:58:36

measures are not applied in

00:58:37

an arbitrary or with unjustifiable

00:58:40

discrimination between Buster's. Nothing in

00:58:44

the agreement shall be construed

00:58:45

to prevent a party. So

00:58:47

he refers a Colombia from

00:58:49

adopting or enforcing measures necessary

00:58:52

to on the first tablet

00:58:54

that they have to protect

00:58:56

human animal or plant life

00:58:58

or health which the parties

00:59:01

understand to include environmental measures.

00:59:03

So as you see our

00:59:07

that the Colombian team on

00:59:08

the Canada team that Matt

00:59:10

and try to draft the

00:59:11

Free Trade Agreement were very

00:59:13

straightforward in establishing a carve-out

00:59:17

provision that recently said the

00:59:20

stations that are made or

00:59:22

measures are taken by the

00:59:24

by the states to protect

00:59:26

environmental purposes are legitimate. And

00:59:29

if they are not taken

00:59:32

in an arbitrary fashion or

00:59:34

just cream discriminating between Buster's

00:59:37

then the state or those

00:59:41

measures not be subject to

00:59:44

chapter 8 was which is

00:59:46

a chapter related to investment

00:59:48

protection in all the cases

00:59:53

related to listen to the

00:59:54

band Paramore Richard kordel Red

00:59:58

Eagle and Galway. presented the

01:00:02
defense of article 22013 Ambassador

01:00:06
additional defense where Columbia Association

01:00:10
was an article 2201 prevented

01:00:14
the tribunal to actually go

01:00:16
into the matter and Yep,

01:00:20
I was really going to

01:00:21
the matter and decide because

01:00:23
this were measures that were

01:00:24
attacking for environmental purposes. But

01:00:27
what we have seen in

01:00:29
the record of the station

01:00:30
first, but then it was

01:00:31
upheld by Carly and will

01:00:34

not upheld but it was

01:00:35

the Red Eagle Tribune. I'll

01:00:37

take what they occurred a

01:00:39

tribunal said I'm said we

01:00:40

are in agreement. Would that

01:00:41

cord a tribunal interpretation of

01:00:44

particles 2201 is that defense

01:00:48

is regarding the starboard provision

01:00:50

are no jurisdictional defenses. They

01:00:53

are married base defenses on

01:00:55

the tribunal on the tribunal

01:00:57

will only analyze those defensive

01:01:00

the tribunal Puente that would

01:01:01

invade Eagle. Once the tribunal

01:01:04

has agreed that Columbia or

01:01:09

that the state actually is

01:01:11

internationally liable and then they

01:01:13

will see if I come

01:01:14

22013 applied to the dispute.

01:01:18

An exception the dispute so

01:01:21

ugly and I are going

01:01:22

okay Columbia presented a defense

01:01:26

based on this part of

01:01:27

our profession and there was

01:01:28

another student party as measured

01:01:30

by time. I die Canada

01:01:33

basically resented it stays regarding

01:01:39

the profession and said this

01:01:41

profession should be construed as

01:01:43

a safety net versus it's

01:01:45

the last resort to states

01:01:47

have to protect environmental issues

01:01:49

before the tribunal and what

01:01:53

kind of day it is

01:01:53

the exception applies because the

01:01:58

estate's actually proves that it

01:02:00

has taken the provisioning good-faith

01:02:02

right for the right purposes

01:02:04

here environmental purposes in a

01:02:06

non-discriminatory fashion. Then there's no

01:02:09

violation of the fhfj and

01:02:12

no estate liability and what

01:02:14

that means is that there

01:02:16

will be no payment. Compensation

01:02:19

from the state because of

01:02:21

the measures it took to

01:02:23

protect the environment but as

01:02:25

we can see the tribunal

01:02:27

departed from God because even

01:02:29

though they're cold. Do you

01:02:31

know I know live this

01:02:32

Private Probation what he just

01:02:34

stated was that What he

01:02:38

found out was that. The

01:02:42

provision was used by Columbia

01:02:45

only as a jurisdictional defense

01:02:48

and therefore it says a

01:02:49

jurisdictional defense. It is not

01:02:51

acceptable. It will be a

01:02:53

married baby fence, but then

01:02:55

didn't analyze that depends on

01:02:59

the merits of the case

01:03:00

and stages on the basic

01:03:04

saying up in water if

01:03:05

it's not a sexual offense

01:03:08

and that is very Troublesome

01:03:11

because the tribunal invite Eagle

01:03:13

even though it says the

01:03:16

rationale behind a car the

01:03:18

tribunal was right what it

01:03:19

says is I'm not going

01:03:20

to use it as a

01:03:21

jurisdictional defense because it is

01:03:23

not a jurisdictional defense, but

01:03:25

it says if I find

01:03:27

Columbia liable In the Maurice

01:03:30

face, I will analyze if

01:03:32

the car towed provision is

01:03:33

applicable or not. And what

01:03:35

will normally happen is if

01:03:37

the car bird provision is

01:03:38

applicable then no compensation will

01:03:42

be required from Columbia to

01:03:43

the investor. So I think

01:03:45

actually care about salvation is

01:03:48

like this and treat. These

01:03:49

are very important and are

01:03:50

very important for the defenses

01:03:52

of the states in order

01:03:54

for states to have you

01:03:56

know, a different range of

01:03:58

options in order to present

01:04:01

an adequate defense before the

01:04:03

international Tribunal. but human bites

01:04:08

are environmental issues are not

01:04:10

only important regarding carve our

01:04:12

Provisions because what we have

01:04:14

seen is that even though

01:04:16

there are cases where the

01:04:17

trees do not provide for

01:04:18

environmental care about Provisions or

01:04:20

human rights carve-out provisions. Just

01:04:24

a half to bring today

01:04:27

attention of the charge, you

01:04:28

know, their human rights and

01:04:31

environmental concerns that surround a

01:04:34

dispute that has those concerns

01:04:36

around it. And this is

01:04:37

important because states are more

01:04:40

often in a sticky position

01:04:42

because they have to protect

01:04:44

the investment but they have

01:04:45

also to protect human rights

01:04:47

vis-a-vis their normal citizens. So

01:04:51

it is important for States

01:04:52

2% human rights are environmental

01:04:55

argument, even though there's not

01:04:57

a carve-out profession and we

01:04:59

see this for example Medina

01:05:01

coronavirus medical where there was

01:05:03

a Private Probation, but even

01:05:04

though in those cases Colombia

01:05:06

did not only priests and

01:05:09

environmental issues regarding to the

01:05:10

carpet profession, but also for

01:05:12

example regarding the due diligence

01:05:17

Requirements from companies when they

01:05:20

invest in Columbia. Santiago was

01:05:21

talking about and right now

01:05:24

we also have another interesting

01:05:26

case. I'm going to talk

01:05:27

really quickly about this is

01:05:28

a drink or three against

01:05:33

Colombia. It's regarding them diversion

01:05:38

of the Bruno in Surrey

01:05:40

on what you know, how

01:05:43

is being a baby betta

01:05:44

dishu. There was a ruling

01:05:47

from the Constitutional Court biking

01:05:49

2017 that suspended the project

01:05:52

and suspended the diversion of

01:05:53

the average over there now

01:05:54

and even though Columbia right

01:05:56

now is preparing their country

01:05:59

Memorial, of course. This is

01:06:04

this case is under the

01:06:05

investment treaty with Switzerland. So,

01:06:09

you know, there's no carpet

01:06:10

probation. But even though there's

01:06:12

no carpet provision, of course

01:06:14

showing to the tribunal the

01:06:17

human rights about grown-up this

01:06:19

dispute the importance of trade

01:06:23

my change considerations in this

01:06:26

industry because we're talking about

01:06:28

that why you people that

01:06:30

watch eat out which is

01:06:31

a very special place in

01:06:34

Columbia. They need to protect

01:06:36

water and rivers in the

01:06:39

way. He does because of

01:06:40

that what you do and

01:06:44

do what you people do

01:06:45

not have access to water

01:06:46

on a regular basis. Those

01:06:49

things are arguments. Columbia will

01:06:53

for sure make during the

01:06:54

arbitration because it is important

01:06:56

to prevent sometimes that case

01:06:59

in a bigger picture to

01:07:00

the tribunal in order for

01:07:02

them to actually understand. The

01:07:04

legitimacy of the measures that

01:07:06

were taken by personable in

01:07:07

this case the Constitutional Court

01:07:09

here in Columbia. Thank you.

01:07:15

Wanna I think all of

01:07:17

us are really looking forward

01:07:18

to see how tribunals actually

01:07:20

deal with these kind of

01:07:22

arguments human rights arguments. Mayes

01:07:26

round the facts of the

01:07:27

case, even if the investment

01:07:29

treaties applicable to the particular

01:07:32

dispute and really have a

01:07:34

provision Express Express probation on

01:07:37

this. I think of course

01:07:38

is Argentina cheese, what's up

01:07:41

first case, but give us

01:07:43

hope, but of course they

01:07:49

were not able to find

01:07:50

any provision on the basement

01:07:52

3D with an obligation on

01:07:54

investors. So he gave us

01:07:56

hope it was it was,

01:08:10

we'll see. We'll see how

01:08:15

Deal with this kind of

01:08:16

arguments. I think that we

01:08:17

are really looking forward to

01:08:18

see how they deal with

01:08:20
it. I didn't have the

01:08:28
chance to before he's hooking

01:08:29
up with presents in Washington

01:08:42
DC and he's also co-founder

01:08:45
of world arbitration updates on

01:08:47
Washington arbitration week. So thank

01:08:49
you again because you are

01:08:50
one of them behind this

01:08:53
event has to act as

01:09:04
counsel of real story. Underbar

01:09:09
use he was formerly Associated

01:09:17
of investment treaties for the

01:09:19
Republic of Colombia. So he

01:09:21

has a lot of knowledge

01:09:22
on that and he was

01:09:24
former you keep legal Cuts.

01:09:25
So we have the face

01:09:33
of a business the interaction

01:09:38
of investment arbitration with human

01:09:43
rights and environmental. And of

01:09:46
course, we we have raised

01:09:48
a lot of legal issues

01:09:50
on this area. So I'm

01:09:53
going to give you a

01:09:54
hard position to try to

01:09:56
give us a few Solutions

01:09:59
or not Solutions in itself,

01:10:01

but a few maybe tools

01:10:04

on how we can maybe

01:10:08

Make a better system on

01:10:10

maybe we can we can

01:10:11

balance on the International System.

01:10:14

So I would like to

01:10:16

ask you two questions that

01:10:18

I needs Provisions. You think

01:10:21

I'm being included in contracts

01:10:23

or investment agreements about the

01:10:32

proposed treaty architecture that incorporates

01:10:35

human rights obligations on investors

01:10:39

to everyone and I apologize

01:10:46
for the lateness and to

01:10:50
the moderator it is it

01:10:53
is really a dream like

01:10:57
Feeling to be in Bogota

01:10:59
my home City and see

01:11:01
this this room full of

01:11:03
people. So welcome to World

01:11:06
arbitration update as a matter

01:11:08
of fact, we've been trying

01:11:10
to do this at this

01:11:11
level for 3 years so

01:11:15
excited and I'm sure that

01:11:20
my co-founder in later than

01:11:21

never one behind wall levitation

01:11:23

update. He's excited by by

01:11:25

the fact that the not

01:11:28

only International commercial arbitration brings

01:11:30

people to the floor, but

01:11:31

also human rights do with

01:11:34

that. Let me get into

01:11:37

the question that you posed.

01:11:39

The presentation that I have

01:11:42

is for human rights environment

01:11:44

and labor obligations in investment

01:11:46

arbitration. At this stage at

01:11:50

this juncture. I think there

01:11:51

are two questions based on

01:11:54

the conversation that that both

01:11:56

Santiago one question is about

01:12:02

the system the system of

01:12:04

investor-state arbitration currently. There are

01:12:07

many calls against the system

01:12:10

in terms of it is

01:12:12

a imbalance system. It is

01:12:14

a system that that does

01:12:17

not allowed to regulate certain

01:12:19

issues on the environment of

01:12:21

health of it is a

01:12:22

system that has inconsistencies between

01:12:25

certain specific decisions that are

01:12:30

handed under the same exact

01:12:34

same pipek sunpointe place and

01:12:37

Siemens on the one hand

01:12:38

and an another case also

01:12:42

under the Argentina Germany bilateral

01:12:46

investment treaty. So that that

01:12:51

that is that is one

01:12:52

of the criticism of the

01:12:54

system and and the other

01:12:55

issue is what what could

01:12:58

be beneficial for the defense

01:13:01

of the state. Let's say

01:13:03

take Columbia considering that there

01:13:06

are human rights and environmental

01:13:08

aspects involved. So those two

01:13:11

Wishes the system and and

01:13:12

the defense of the state

01:13:13

and whether human rights have

01:13:16

any any any role to

01:13:19

play on that so Just

01:13:23

too I'm just posing the

01:13:25

question and I'm give you

01:13:26

a going to give you

01:13:27

the answer right away instead

01:13:28

of making you wait. There's

01:13:30

there's a there's a strong

01:13:32

sense at least for my

01:13:33

part that International Investment treaties

01:13:37

both. bilateral investment treaties and

01:13:41

chapters of free trade agreements

01:13:44

should include Obligations for investors

01:13:50

on human rights in respect

01:13:52

of human might why because

01:13:54

that would sell does not

01:13:56

exist except in a few

01:13:58

nonprofit entities who have more

01:14:03

than 3,300 3D so there

01:14:05

should be no obligations for

01:14:06

investors and investment treaties. Basically

01:14:10

not perhaps every every every

01:14:13

human right but at least

01:14:14

a minimum standard of customary

01:14:17

international law on the environment

01:14:18

on labor and out, of

01:14:21

course an essential human rights

01:14:22

and and we'll I'll share

01:14:24

with you the the the

01:14:27

languages that are proposing. So

01:14:31

why why you getting there

01:14:34

why why you getting there

01:14:35

and and the and what

01:14:37

are the objections one of

01:14:38

the big objections is well

01:14:40

human rights and the protection

01:14:43

of the environment and the

01:14:45

protection of a minimum standards

01:14:46

on labor. They are part

01:14:49

of the local law and

01:14:52

as such when you make

01:14:54

the investment, you are bound

01:14:56

to respect local or so.

01:14:57

If the state has all

01:14:59

that power why you need

01:15:01

to elevate human rights into

01:15:04

International Investment treaties. Why doing

01:15:06

that you already have? No

01:15:08

the power of local law

01:15:09

the short answer to that

01:15:11

is One technical the that

01:15:19

that could be interesting when

01:15:20

making the investment but actually

01:15:23

not during the performance of

01:15:24

the investment which is what

01:15:26

the clause on respecting local

01:15:30

law when making the investment.

01:15:31

So that's a technical technical

01:15:35

answer. The other answer is

01:15:37

it hasn't worked because tribunals

01:15:39

have been very very timid

01:15:41

when reading that falls to

01:15:44

Ashley rely on local law

01:15:46

and then applied either in

01:15:53

direct request of arbitration brought

01:15:57

by the state, which is

01:15:58

there have been only a

01:15:59

few less than 5 and

01:16:01

in counterclaims. So fabulous have

01:16:05

been extremely timid tribunal has

01:16:07

been timid so that that

01:16:11

tool has not helped and

01:16:14

I we are still in

01:16:15

front of a of a

01:16:17

system that is in Balance.

01:16:18

So let's let's look into

01:16:20
that in the first you

01:16:23
have that presentation on the

01:16:25
screen investment trees are often

01:16:28
drafted and most often drafted

01:16:30
they include obligations for the

01:16:32
state. Concerning the investor. They

01:16:36
don't include allegations by the

01:16:37
investors considering the investment and

01:16:41
protect us even write the

01:16:42
part of the problem. Is

01:16:43
that most investment treaties as

01:16:44
I say their lack of

01:16:46
medications are investors to respect

01:16:48

human rights environment and Labor

01:16:50

Standard, and then the other

01:16:52

part is is is if

01:16:54

if you do not have

01:16:56

a treaty that includes those

01:17:00

applications the the most the

01:17:02

more Optimistic that you could

01:17:06

be is that the tribunal

01:17:09

has a an awareness of

01:17:12

the fact that international law

01:17:15

is applicable law because it

01:17:18

is applicable only to look

01:17:19

into the articles of the

01:17:21

sea convention. There's a reference

01:17:23

to international law normally make

01:17:26

a reference to International the

01:17:28

vit the free trade agreements

01:17:30

or international law. So there's

01:17:31

no doubt that that that

01:17:33

international law. If if you

01:17:38

if you don't include those

01:17:39

type of Provisions in the

01:17:42

most that you could get

01:17:42

is that the tribunal goes

01:17:45

as far as our Vassar

01:17:46

and Anna and they would

01:17:47

say yes is international law.

01:17:50

We are we have jurisdiction

01:17:52

to hear a counterclaim or

01:17:57

a request for recreation that

01:17:58

indicates that the investor has

01:18:00

human rights or Environmental Protections.

01:18:04

We have jurisdiction to hear

01:18:06

that we can listen to

01:18:08

it. But then when the

01:18:10

time comes to address the

01:18:12

issue of marriage and they

01:18:16

go through the 3D they

01:18:17

made page one page to

01:18:19

a Tetra when they get

01:18:20
to the treaty they will

01:18:22
be unable unable to not

01:18:24
able to find The provision

01:18:28
that requires the investor to

01:18:31
respect human rights and that's

01:18:33
what happened. They said yes,

01:18:35
they went into the human

01:18:39
right of provision of water.

01:18:40
They decide what we cannot

01:18:43
find where the the the

01:18:44
obligation is because it wasn't

01:18:47
there. So the tribunal is

01:18:49
tied in terms of the

01:18:51
the substantive application because it's

01:18:54
not in the treaty. So

01:18:56
let's move forward. On the

01:19:00
presentation out. So these are

01:19:03
only a few examples of

01:19:05
similar cases where this has

01:19:08
happened. So the middle example

01:19:11
is the bathroom which I

01:19:12
have just referred to the

01:19:14
upper example is not true

01:19:17
G Energy versus Colombia in

01:19:19
that case the defensive of

01:19:24
Columbia counterclaim, which was not

01:19:30

was not heard by the

01:19:32

tribunal it was on the

01:19:34

the the relation to the

01:19:37

impact on Regional development. And

01:19:42

and the tribunal basically said

01:19:44

that he didn't it didn't

01:19:45

have a basis to hear

01:19:49

that counterclaim. It did not

01:19:51

consider that as part of

01:19:55

the jurisdiction Frank then we

01:19:57

go to the case, which

01:20:01

is Lopez that case there

01:20:07

is the issue was was

01:20:09

was quite similar when the

01:20:11
state's alleged violations to the

01:20:16
environment committed by the restaurant.

01:20:20
The tribunal found that there

01:20:24
were no obligations for investors

01:20:26
to respect the environment in

01:20:27
the treaty. So again, if

01:20:29
it really doesn't say so

01:20:30
you can not submit that

01:20:32
flame. So that is that

01:20:36
is a case and up

01:20:38
just a point of connection

01:20:42
with with that Juan has

01:20:43
a presentation the system which

01:20:48

involves thousands of investment treaties

01:20:52

today some some protections and

01:20:59

sometimes the protections are not

01:21:02

used and and that's that's

01:21:04

a fair criticism against like

01:21:07

in the case of of

01:21:09

a Gordo in that particular

01:21:11

case I can I I

01:21:15

am the most aspects aligned

01:21:18

with the third-party submission. They

01:21:22

are at why because of

01:21:27

the Year free trade agreement

01:21:29

between Columbia and Canada and

01:21:31

chief investment chapter there and

01:21:35

I can tell you about

01:21:38

is a carve-out to be

01:21:41

red is a car but

01:21:43

to be applied negotiators of

01:21:46

treaties do not include Provisions

01:21:49

that mean nothing and and

01:21:52

that is that was the

01:21:54

effect that the echo to

01:21:55

Trevino gave to the provision

01:21:57

ultimately exception that refers to

01:22:07

Many things including the environment

01:22:09

but it's an exception that

01:22:11

is basically that comes from

01:22:13

from the general exception under

01:22:16

WTO agreements. Really? That's that,

01:22:18

it's Genesis. I need an

01:22:20

exception for the whole tree

01:22:22

is an exception if you're

01:22:25

flying exception when you're not

01:22:26

liable. And suddenly that Obsession

01:22:30

lacked any effect until and

01:22:33

I am wondering, you know,

01:22:34

just wondering because because I

01:22:37

know that that decision that

01:22:39

war word was wasn't stealing

01:22:41

heavily criticized. Why is why

01:22:44

has the tribunal taking so

01:22:46

long to finalize its is

01:22:50

Beauty in terms of Damages

01:22:52

that. Lost my mind because

01:22:55

he has been more than

01:22:56

two years, but one has

01:22:58

a figures so that's that's

01:22:59

unknown, but let's look into

01:23:05

What else does the system

01:23:07

has the system has also

01:23:08

a few trees that have

01:23:10

obligations on human right? Let's

01:23:12

and let's move forward. So

01:23:15

this release include obligations on

01:23:17

human rights and we have

01:23:19

spotted them. There may be

01:23:20

more these are specific application

01:23:22

on human rights, but but

01:23:24

there's only a handful of

01:23:25

those less than 10. So

01:23:28

Thursday miroku Nigeria bilateral investment

01:23:31

treaty shall apply precautionary principle

01:23:37

to the environment environmental impact

01:23:40

assessment and two decisions taken

01:23:42

in relation to a proposed

01:23:43

investment of this application for

01:23:45

the investor economic community of

01:23:48

West African States ecowas supplementary

01:23:52

act on your best friend

01:23:53

also has a hard law

01:23:55

obligations and and here these

01:23:58

are examples of hard on

01:24:01

human rights the the Canada.

01:24:04

Columbia Free Trade Agreement chapter

01:24:08

investment is is one that

01:24:10

I'm very close to because

01:24:11

I am negotiating and on

01:24:13

that on that treaty just

01:24:16

a quick anecdote. When the

01:24:17

Canadians came to the to

01:24:19

the Colombian team and said

01:24:20

we want to include an

01:24:22

obligation on social corporate responsibility

01:24:27

and be sure to include

01:24:31

applications for the for the

01:24:34

state and eventually no ultimately

01:24:38

for the investors the word

01:24:41

ultimately that they were concerned

01:24:43

because they thought that we

01:24:45

would say no, which I

01:24:46

know that's too much for

01:24:48

us. Actually we said yes,

01:24:50

and then why don't we

01:24:51

include over the part of

01:24:52

occasions for the investor and

01:24:54

when we said that they

01:24:56

said no no, no. No,

01:24:56

that's too much that that

01:24:58

was the response that what

01:24:59

that's too much for us.

01:25:00

Why because that would make

01:25:02

that ultimately A lot of

01:25:06

interest in mining and someone

01:25:08

would have to comply with

01:25:09

certain the heart of obligation.

01:25:10

So it wasn't our proposal

01:25:12

but we took it as

01:25:13

far as we could it

01:25:14

wasn't one of our trade

01:25:15

lines. We don't have any

01:25:16

of the tree. So we

01:25:18

made the proposal to make

01:25:19

hard law of allegations on

01:25:20

on on human right they

01:25:22

didn't take it. But but

01:25:24

in any event, it was

01:25:26

progress in the right direction.

01:25:27

So the Columbia Canada investment

01:25:31

tree has a soft obligation

01:25:34

on human rights and corporate

01:25:35
social responsibility. That was almost

01:25:38
twenty years ago. And what

01:25:41
what what what is concerning

01:25:45
is that in 20 years?

01:25:49
We're still the most modern

01:25:52
investment treaty in in human

01:25:55
rights and corporate social responsibility

01:25:56
is is this one and

01:26:00
there should be progress in

01:26:01
terms of the Colombian bilateral

01:26:03
investment treaty. So no formerly

01:26:05
formerly. We have no strategy

01:26:08
at some stage. We we

01:26:10

we who sponsored The Proposal

01:26:12
proposal in Congress for the

01:26:13
p i t would have

01:26:14
a human rights obligations for

01:26:16
investment for investors and informally

01:26:20
were saying this should be

01:26:20
done. You should be done

01:26:22
within the Columbian bilateral investment

01:26:23
treaty. I'm not wait not

01:26:26
wait until the The model

01:26:30
comes from Europe or comes

01:26:32
from somewhere else because these

01:26:34
are discussions that are intimate

01:26:36
to to the concerns of

01:26:41

Columbia. There's indigenous populations. There's

01:26:44

a journeyman's of fauna and

01:26:46

Flora and Life to protect

01:26:48

in Colombia. There are so

01:26:49

many reasons why Columbia should

01:26:51

include this type of application.

01:26:53

So two years ago in

01:26:54

the 204. It might have

01:26:56

made better know this two

01:26:58

or three years ago were

01:26:59

proposed this in Congress and

01:27:01

that wasn't adopted hopefully under

01:27:04

current circumstances at the Myrtle

01:27:07

Beach food include a provision

01:27:08

on that and I'm not

01:27:13

going to go into the

01:27:15

into into describing each one

01:27:17

of these Provisions that are

01:27:19

hardly you can read them

01:27:20

if it's going to the

01:27:21

next This is this is

01:27:25

the article that that is

01:27:27

being proposed. It reads the

01:27:29

investors shall respect the minimum

01:27:32

International environmental Labour and human

01:27:35

rights standards when making and

01:27:39

operating its investments in the

01:27:41

whole state. I don't think

01:27:43

perhaps you can be calibrated.

01:27:45

But that is I believe

01:27:50

a an article that that

01:27:52

could provide sufficient grounding at

01:27:56

for the time that if

01:27:57

a tribunal finds itself. Yes,

01:27:59

I have jurisdiction and then

01:28:01

it goes into the next

01:28:02

step this article would would

01:28:03

include sit but they have

01:28:05

to at least not now

01:28:07

is not whether they could

01:28:09

not they have to respect

01:28:10

human rights and that has

01:28:11

that could have liability implications

01:28:16

for the investor. It could

01:28:17

have damaged has implications for

01:28:18

the investor and then the

01:28:20

question becomes which is what

01:28:21

what the government that was

01:28:23

three years ago. Not this

01:28:25

one to pass one. Why

01:28:28

why do we need this?

01:28:32

wooden. Tracy negative effect of

01:28:37

of of of scaring the

01:28:42

investors and and and stop

01:28:45

the capital Imports and the

01:28:48

answer to that is What

01:28:51

are the government what do

01:28:53

you want? Do you want

01:28:55

qualified investment that is respectful

01:28:57

of the environment of Human

01:28:59

Rights and sophisticated green type

01:29:02

of investment or do you

01:29:03

want any type of investment

01:29:05

and I think the answer

01:29:07

is always so I see

01:29:10

no reason why she has

01:29:15

no hard for investment abbreviation

01:29:19

for the investors. when you

01:29:23

put this on the ground

01:29:25

at with Council for investors,

01:29:28

and some of them are

01:29:30

friends and in credibly smart,

01:29:32

the the objection is well,

01:29:34

you already have that to

01:29:35

local law that may be

01:29:38

true to some extent by

01:29:39

the fact is that as

01:29:41

I said before tribunals are

01:29:43

very Timid in applying simply

01:29:47

local law when when deciding

01:29:50
marriage and and if you

01:29:52
need a support for that

01:29:54
statement about four or five

01:29:57
years ago at published a

01:29:58
book chapter on counterclaims and

01:30:02
the finding was that most

01:30:04
of the counters names that

01:30:05
relied on local law where

01:30:07
all timidly not embraced by

01:30:10
the tribunal to make any

01:30:13
Merit base decision. So next

01:30:21
one, which is the final

01:30:23
one. So so this is

01:30:26

this is only how to

01:30:28

do things. So one of

01:30:30

the big objections when you

01:30:32

when you think work because

01:30:34

when you think about including

01:30:38

investor obligations on respect of

01:30:41

human rights in an investment

01:30:43

treaty is that an investment

01:30:45

treaty or a Treaty definition

01:30:47

is a instruments of a

01:30:51

public international law, which is

01:30:53

negotiated and agreed upon between

01:30:56

two parties one state and

01:30:58

another estate Adventure. You can

01:31:01

also make a treaty with

01:31:03

the organization or a corporation

01:31:08

or not. A subject of

01:31:12

public international law at least

01:31:15

not a classic one. So

01:31:16

they do not negotiate treaties

01:31:18

so that the obligations that

01:31:20

come from the the treaty

01:31:23

in principle are not binding

01:31:25

on an individual's because they

01:31:27

don't sign it right. So

01:31:29

why do the challenges how

01:31:30

to make sure that the

01:31:33

individual or the corporation provides

01:31:35

their consent to respecting international

01:31:40

human rights under the bitso

01:31:42

is to include an Annex

01:31:50

a confirmation of investor obligations

01:31:53

the way it would work

01:31:55

is Even though the treaty

01:31:58

is between two states. You

01:32:01

have the treaty on the

01:32:02

one hand and then the

01:32:06

trephine only the states that

01:32:07

say Canada and let's say

01:32:09

Columbia and who are they?

01:32:17

New Zealand and New Zealand

01:32:27

And and and there's a

01:32:29

dispute at the time when

01:32:31

the request arbitration is submitted

01:32:34

the treaty would require that

01:32:37

they also submit an Annex

01:32:38

in which they confirmed that

01:32:41

they are bound to respect

01:32:42

investor-state obligations. It is very

01:32:45

investment investor obligations on human

01:32:47

rights. If they do not

01:32:49

consent to that if you

01:32:50

do that as a requirement

01:32:52

of consent for the investor

01:32:54
for the for the state

01:32:55
then the requirements for there

01:32:59
to be a consent by

01:33:02
the state would not be

01:33:03
complied with so on the

01:33:05
one hand you have an

01:33:07
offer of the state and

01:33:08
the offer says You can

01:33:11
submit a dispute on investment

01:33:13
to arbitration if you comply

01:33:16
with this requirement. Have you

01:33:19
ever had? once the investor

01:33:23
says I accept your your

01:33:28
your offer. It has to

01:33:30
comply with that requirement in

01:33:33
order for the exception of

01:33:34
the operate a wood that

01:33:36
you would not normally have

01:33:37
the state's consent, but also

01:33:40
the investors consent to comply

01:33:43
with investor obligations on human

01:33:45
rights and with that my

01:33:48
timer, thank you. Thank you

01:33:52
for company. So I would

01:33:53
like to a last question

01:33:56
to each of our panelists.

01:33:57

It will be the same

01:33:58

question for all of you.

01:33:59

So you will have only

01:34:00

Thirty Seconds to hear or

01:34:16

analyze human rights arguments on

01:34:19

investments arbitration case, so maybe

01:34:26

I'm not in addition to

01:34:28

the proposal that too has

01:34:28

been explained in detail out.

01:34:31

I would say greater awareness

01:34:34

of of of basic

01:34:39

principles of public international law

01:34:40

and human rights. I think

01:34:42

the. That would would would

01:34:45

take us very far when

01:34:47

I already refer to their

01:34:49

decision the tools are there.

01:34:52

Unfortunately the word not not

01:34:54

fully used by by by

01:34:56

the tribunal but I strongly

01:34:59

think that there is some

01:35:01

level of sinus bye-bye tribunals

01:35:05

of making your making the

01:35:09

connection between no investors that

01:35:11

is not a sign. It's

01:35:14

not a separate World from

01:35:16

public International. It is part

01:35:18
of public international law and

01:35:22
human rights are making the

01:35:24
connection. Would would would take

01:35:29
us a long way? I

01:35:33
will do. I think creativity

01:35:35
to do these kinds of

01:35:37
connections that was Antonio and

01:35:38
the other colleagues have just

01:35:39
mentioned attitude. It's in the

01:35:41
unit also have like some

01:35:43
kind of attitude to to

01:35:45
engage in discussions on my

01:35:47
my my 13 keys. I

01:35:50

think with that we should

01:35:51

move forward from to get

01:35:52

like kind of pure theory

01:35:55

of Law and not be

01:35:56

naive that. That's always neutral

01:35:59

tabloids impartial. So we need

01:36:01

to take me to remind

01:36:03

her also political discussions. So

01:36:05

I invite practitioners negotiators academics

01:36:10

because that would also give

01:36:15

us back the context the

01:36:16

whole pictures when we have

01:36:17

these kinds of discussions. I

01:36:20

think that we mainly need

01:36:22

two things. The first is

01:36:23

tools we need tools and

01:36:25

investment arbitrations that kind of

01:36:27

open the door a little

01:36:29

bit First Dates 2% human

01:36:31

rights and environmental defenses in

01:36:34

investment arbitration cases and also

01:36:36

2% counterclaims, if that's the

01:36:41

case and the state has

01:36:42

a strong case in a

01:36:43

counterclaim against an ambassador, but

01:36:46

it also thing we need

01:36:47

courage and courage from The

01:36:51
representatives of the state of

01:36:54
the representatives of the investors.

01:36:57
They are I think that

01:36:59
they also need to be

01:37:00
aware of the trends that

01:37:02
are happening any bus in

01:37:05
arbitration. I mean International arbitration

01:37:06
in general and I think

01:37:08
we also need courage from

01:37:10
the tribunal's I think that

01:37:12
the decision was a decision

01:37:16
that was a split decision

01:37:19
taken by the president was

01:37:22

the arbitrator appointed but Columbia,

01:37:25

which was Philip chance we

01:37:26

have already auditions, but I

01:37:30

think that we need courage

01:37:31

from the arbitrator's to actually

01:37:33

be able to put a

01:37:35

Step Beyond and keep full

01:37:39

feeling. I'm moving the ball

01:37:42

regarding human rights and environmental

01:37:44

defensive investment application. 255 Wards

01:37:52

in 30 seconds to say

01:37:53

if I got it in

01:37:54

there s soap formation accompaniment

01:37:59

and a reminder. So I

01:38:00

think we should entirely and

01:38:04

the Arbiters actually have in

01:38:05

mind or take into consideration

01:38:07

when they're interpreting treaties the

01:38:10

end of Batman for development

01:38:16

24-hour Estates. We don't want

01:38:18

investment for the sake of

01:38:19

investment itself and that conditions

01:38:22

that kind of investment and

01:38:23

therefore that's Hive of bees

01:38:25

hang of trees we want

01:38:26

to endorse. So I think

01:38:31

that would bother was right

01:38:33

in the sense that there

01:38:34

were no obligations. I wouldn't

01:38:37

like the Fortress 3 navigation

01:38:40

for States like in human

01:38:41

rights and therefore we need

01:38:45

better the scent of pretty

01:38:46

but we need to take

01:38:47

it. Las estancia's our responsibilities

01:38:54

are mandatory for state or

01:38:56

even if they're among the

01:38:57

34 investors, of course would

01:39:00

suggest the last one that

01:39:02

is the most creative in

01:39:04

a brace of that Edition

01:39:06

fighting is going to be

01:39:07

very hard to reach consensus

01:39:09

on. And we have to

01:39:10

overcome the problem also of

01:39:12

legal personality of investors writing

01:39:14

that idea. Where can I

01:39:15

locate obligations on investors to

01:39:17

retrieve the right word formation.

01:39:20

This is my role as

01:39:22

a professor and we need

01:39:23

to form better International lawyers

01:39:25

that have the general idea

01:39:28

in mind that always human

01:39:30

rights special occasion or investment

01:39:32

is vis-a-vis 10 of a

01:39:38

right and last ate the

01:39:41

last two accompaniment at we

01:39:43

need more help to investors

01:39:46

like that since I was

01:39:47

doing With the social spectations

01:39:53

and law but they're unclear

01:39:56

even in the trees by

01:39:57

themselves. So we need a

01:39:58

lot of more accompaniment to

01:40:00

them and finally my fat

01:40:02

last before it reminder set

01:40:04
reminder that investment is not

01:40:06
the ideal system for human

01:40:08
rights issues. Right? I mean,

01:40:10
we would love to see

01:40:11
more of these but they're

01:40:12
not the DLCs can we

01:40:14
would prefer you bring system

01:40:16
for human rights issues, but

01:40:18
more is here better. So

01:40:21
why not and you really

01:40:23
do have a new investment

01:40:24
at better than nothing for

01:40:26
baking soda? Well, thank a

01:40:31

thank you for the Antonio

01:40:32

Santiago that have to run

01:40:35

to the airport for your

01:40:37

grade. And of course, thank

01:40:39

you for participants to join

01:40:41

us for decide. You're welcome

01:40:42

to stay for the next

01:40:43

month. I will start being

01:40:44

5 10 minutes. Good morning,

00:00:08

everyone and thank you for

00:00:09

being here. We are very

00:00:10

glad to have you in

00:00:11

this final day of her

00:00:12



world arbitration updates 2020 4th.

00:00:15

It is my pleasure to

00:00:17

introduce these amazing Fanta that's

00:00:19

going to speak about inclusion

00:00:22

of Human Rights classes in

00:00:23

investment treaties. This panel is

00:00:25

going to be moderated by

00:00:27

Maria Lucia Casa. Maria. Lucia

00:00:29

is a Colombian lawyer specialist

00:00:31

in regulation of renewable energy

00:00:33

and Energy Efficiency. She is

00:00:35

also a senior associate at

00:00:37

extra strategy LL be able

00:00:39

to take for with presents

00:00:41

in the United States animal.

00:00:42

What's up. Currently, she's Adjunct

00:00:47

professor of international arbitration procedure

00:00:50

an assistant professor professor of

00:00:52

public international law at the

00:00:54

University of you and coach

00:00:57

of the University of Saint

00:00:58

Joseph International Longwood Court competition

00:01:01

team. So without further Ado

00:01:04

I yield the floor to

00:01:05

Maria Lucia and thank you

00:01:08

everyone. Thank you, Monica me

00:01:11

Longford introduction and good morning

00:01:13

everybody and welcome to the

00:01:15

first session of the last

00:01:16

day of world arbitration update.

00:01:18

It's a great honor to

00:01:20

have you here. And of

00:01:21

course, thank you also to

00:01:23

our own line participants because

00:01:24

we have some of my

00:01:25

participants that are doing a

00:01:28

nice from around the world.

00:01:29

So welcome everybody. I would

00:01:33

like to have this presentation

00:01:35

buy thank a to the

00:01:37

sponsors of the event. Thank

00:01:38

you to FDI and Panera

00:01:40

Consulting also. Thank you for

00:01:42

the organising team Isabella Wednesday,

00:01:46

which are part of the

00:01:47

organising team mouth of the

00:01:49

world Apart chapter of world

00:01:50

arbitration updates. And of course,

00:01:52

thank you to our co-organizers

00:01:55

off of the ground before

00:01:57

introducing the great line of

00:01:58

penalties that we have today.

00:02:00

I will like to give

00:02:01

a few remarks about the

00:02:03

first session that we have

00:02:05

today we have today in

00:02:08

from the bus is called

00:02:10

in clue. You're not human

00:02:11

rights classes in investment treaties

00:02:13

for sure. This is a

00:02:15

topic that has generated a

00:02:17

lot of discussions and a

00:02:18

lot of interest over the

00:02:20

years. We have him from

00:02:22

an existing tension between the

00:02:25

protection of human rights in

00:02:26

one hand and on the

00:02:28

other Estates obligations the word

00:02:30

for word doors foreign investors.

00:02:32

And of course, we can

00:02:34

see during an imbalance that

00:02:36

exist today between investment meeting

00:02:40

doesn't arbitration between obligations that

00:02:43

it states have and writes

00:02:45

that investors has on their

00:02:46

investment re so traditionally how

00:02:49

investment arbitration has been working

00:02:52

is that International Investment agreements

00:02:56

impose obligations in States? But

00:03:00

not an Investor's so this

00:03:02

has been of course a

00:03:03

point of a lot of

00:03:05

criticisms about the balance of

00:03:07

the system. However in the

00:03:09

past years we have been

00:03:10

seen on an absurd of

00:03:13

being a chance on this

00:03:14

approach and this is something

00:03:16

that we are going to

00:03:17

discuss here how we can

00:03:20

balance the system and how

00:03:21

these have been changes have

00:03:24

been changing in the past

00:03:26

last year's. So some of

00:03:28

the questions that we will

00:03:30

like to ask our panelists

00:03:32

today is how to balance

00:03:34

the system. Is it possible

00:03:36

to have a human rights

00:03:37

issues in the ocean? And

00:03:39

is it mandatory for companies

00:03:41

to perform due diligence in

00:03:43

their operations? Luckily? I'm not

00:03:45

the one that will have

00:03:46

to answer these but for

00:03:48

these we have five experts

00:03:50

that will be helping at

00:03:52

weekdays a task. Super spy.

00:03:57

I'm going to introduce our

00:03:58

panelists. So on my right

00:04:01

we have one of my

00:04:02

penis. She's a lawyer from

00:04:04

when you were in Seattle.

00:04:04

I want to hold some

00:04:07

Ella Lim from Columbia University.

00:04:08

She's currently the coordinator of

00:04:11

the investment arbitration group at

00:04:13

the hands of the lessons.

00:04:14

I will take a little

00:04:15

time before joining the public

00:04:17

sector want to work as

00:04:19

head of Regulatory Affairs of

00:04:21

traffic and she owes her

00:04:23

work as a solution of

00:04:24

arbitration and dispute resolution of

00:04:27

a curmudgeon. Want to have

00:04:29

been up jump professor of

00:04:30

investment arbitration and human rights

00:04:33

in the master of international

00:04:34

law at the University of

00:04:35

the Los Angeles and I

00:04:37

believe that her perspective is

00:04:39

highly appreciated here because she

00:04:41

couldn't see who works in

00:04:43
the defense of Colombian investment

00:04:45
arbitration. So welcome one. We

00:04:48
also have under his Milpas

00:04:50
Andres Andres holds a PhD

00:04:53
in law from University of

00:04:55
Notre Dame a master in

00:04:57
international law from Georgetown University.

00:05:00
And he's a specialist in

00:05:02
administrative law and a lawyer

00:05:04
from University of the presiding

00:05:05
currently. He's a professor and

00:05:08
researcher at the faculty of

00:05:10
Law and political science of

00:05:11

University of Italy Shinto being

00:05:14

a consultant to companies in

00:05:16

the implementation of Human Rights

00:05:17

you Villages processes. He has

00:05:20

also been a beast in

00:05:22

professor at the University in

00:05:23

United States in Mexico Guatemalan

00:05:26

and his ulcer and culture

00:05:28

of books and articles on

00:05:30

business and human rights inter-american

00:05:31

human rights system international law

00:05:34

and human rights philosophy. We

00:05:39

also have some some theocracies

00:05:42

torium in human rights lawyer

00:05:43

seems 2018. He leads to

00:05:47

LaGuardia from Delta to business

00:05:49

and human rights dispute resolution

00:05:51

illegal in training his practice

00:05:54

focuses on Advertising companies on

00:05:56

the implementation of Human Rights

00:05:57

you diligence that. He signed

00:05:59

up regulatory instruments and the

00:06:01

participation of economic actors in

00:06:03

transitional Justice in 2023. He

00:06:07

completed an llm in international

00:06:09

human rights law at Oxford

00:06:11

University Welcome Center. On Wheels

00:06:15

to have said he said

00:06:17

he released lawyer from University

00:06:20

of the Presario. He's a

00:06:21

specialist in environmental law from

00:06:23

University of the looks that

00:06:24

matter. He said he's head

00:06:27

of the treaty section of

00:06:28

the Ministry of Foreign Affairs,

00:06:29

which is the area in

00:06:31

charge of all the issues

00:06:33

related to the negotiation the

00:06:35

approval implementation and ruination of

00:06:38

trees as well as providing

00:06:40

advice to various government entities

00:06:42

in any other mother of

00:06:44

public international law in which

00:06:45

the Republic of Colombia is

00:06:47

involved during the last four

00:06:49

years has been a professor

00:06:51

at University of indifferent subjects

00:06:55

related to public international law

00:06:57

and also since 2012. He

00:07:01

has been engaged to the

00:07:02

Philips e Joseph Woodward competition

00:07:05

first the second best. And

00:07:07

then since 2015 as a

00:07:09

trainer of the team of

00:07:10

University, So today as you

00:07:17

may see from the profiles

00:07:18

and the experiences of our

00:07:20

panelists, we will have a

00:07:22

panel with different perspective. We

00:07:25

have Italian meat for beef

00:07:27

and also practical experience. And

00:07:31

also we have expects property

00:07:32

investment arbitration which even if

00:07:35

investment arbitration is part of

00:07:37

public international law. We have

00:07:38

not he's in the past

00:07:40

years. Not all investment arbitration

00:07:42

experts are also expressed some

00:07:44

public international law. So it's

00:07:46

also great to have said

00:07:47

here which is going to

00:07:49

give us the public international

00:07:50

law perspective. So I would

00:07:54

like to begin this panel

00:07:55

by asking a few questions

00:07:57

to our panelists. So I

00:07:59

think that it will be

00:08:00

a great idea to start

00:08:01

with them days with an

00:08:03

overview. So unless you are

00:08:04

the one who has the

00:08:06

most Academy, knowledge here on

00:08:08

the subject. So I think

00:08:10

it could be a great

00:08:11

way to start point. If

00:08:12

you could Enlighten us with

00:08:14

the current state of affairs

00:08:15

in the field on business

00:08:17

and human rights on how

00:08:18

these might be related to

00:08:19

us. So could you please

00:08:21

provide us some of the

00:08:23

recent developments on of the

00:08:25

area? Thank you. Are you

00:08:29

seeing how you hearing me?

00:08:30

Whine? Yes, okay. Thank you

00:08:32

for the invitation. I'm very

00:08:34

glad to be here on

00:08:36

these very interesting discussion because

00:08:38

it's not easy getting from

00:08:40

the academy perspective to analyze

00:08:42

this tension between investment and

00:08:44

human rights. My intervention is

00:08:48

going to be like that.

00:08:50

The target of my intervention

00:08:51

is to provide an overview

00:08:53

of the business and human

00:08:54

rights, and then to reach

00:08:58

the investment part that you

00:09:00

can wear specialized section, right?

00:09:02

So maybe he's going to

00:09:04

be very introductory for some

00:09:06

of Youth but it is

00:09:07

just so everyone can have

00:09:10

the same same ideology of

00:09:11

the business human right? Because

00:09:13

that's where I'm coming from

00:09:14

and I think this is

00:09:16

worth we're seeing the interest

00:09:18

of including human rights Closet

00:09:20

in investment to make investors

00:09:22

are responsible for human rights

00:09:24

abuses or birthday. human rights

00:09:27

violations to three parts of

00:09:30

my intervention the first creations

00:09:39

and other business associations affect

00:09:41

human rights for allowing us

00:09:46

to enjoy more higher standard

00:09:50

of Human Rights than ever

00:09:52

because of the wealth that

00:09:53

corporations can creating suicides but

00:09:56

that is also the interests

00:10:01

of a b c d

00:10:05

from that your activities during

00:10:07

violating human rights and that

00:10:14

are created to regulate corporations

00:10:16

are not enough to regulate

00:10:18

corporations because of that trust

00:10:21

National nature of their activities

00:10:22

in of the structure of

00:10:24

the corporation's so we have

00:10:26

A double problem with the

00:10:28

reality that showing us human

00:10:30

rights abuses his candles like

00:10:31

men that happened in the

00:10:34

90s with Nike or apple

00:10:36

or the fast fashion is

00:10:38

candles a or destructive sector

00:10:41

and on the other hand

00:10:43

there is no three problem

00:10:44

domestic laws. Are they become

00:10:46

an officiant because the states

00:10:48

are to regulate corporations efficiently

00:10:52

to face this problem the

00:10:55

spackling and Regulatory problems are

00:10:57

the secondary school by ragi

00:11:00

Can drug you at the

00:11:01

altar of that guiding principles

00:11:03

in business and human rights

00:11:04

that governance Gump the recent

00:11:06

government jobs in space in

00:11:10

which corporations are not being

00:11:11

regulated in their respective nations

00:11:14

of their behavior is unclear

00:11:17

to respond to these violations

00:11:19

and to these regulatory problems.

00:11:22

We are seeing some responses.

00:11:26

Get responses are coming from

00:11:28

three different perspectives one from

00:11:31

the domestic law perspective how

00:11:33

we can address this was

00:11:36

National nature corporation international law

00:11:39

from Advocate. If it works

00:11:42

like you notes responses from

00:11:44

them is that increasing a

00:11:47

creation of norms with extraterritorial

00:11:50

effects that we know International

00:11:52

load that he's an exception

00:11:53

because the jurisdiction of the

00:11:55

states east Territorial and we're

00:11:57

seeing an increase and amount

00:11:59

of norms for Shirley in

00:12:02

Europe to reach corporations V

00:12:04

on the 33 sing which

00:12:06

B are incorporated or even

00:12:08

when there where they have

00:12:09

a TV. Ocean we have

00:12:11

the National Action plants that

00:12:13

are more public policies oriented

00:12:16

to give Clarity to corporations

00:12:18

and investors about their social

00:12:20

spectations when they're investing in

00:12:22

domestic law in domestic address

00:12:24

dick. So I'm not going

00:12:26

to be dealing with that

00:12:27

that is one possible answer

00:12:29

is domestic law with X-Rated.

00:12:31

We have just for the

00:12:35

sake of example, France Germany

00:12:37

UK and Australia in Port

00:12:40

Orange that are regulating business

00:12:43

with Express really expect as

00:12:47

a mandatory element, but also

00:12:49

Canada and the European Union

00:12:51

soon-to-be law directive about a

00:12:54

sustainability that are I seen

00:12:57

one of the most interesting

00:12:58

responses of the world to

00:13:00

the business and human rights

00:13:01

forms of response. Buffalo for

00:13:11

those that are not from

00:13:12

your ride with international law

00:13:13

is a non-binding law that

00:13:16

a seems to be more

00:13:17

about reference setting reference or

00:13:19

standards of Behaviour movie for

00:13:22

Netflix. Not even if only

00:13:23

to States won two different

00:13:26

software instruments are very important

00:13:28

the oecd guidelines for Multinational

00:13:31

Enterprises in The Guiding principles

00:13:34

in business and human rights

00:13:35

the first one 1976 and

00:13:38

last year and guiding principles

00:13:42

in business and human rights

00:13:43

approved in 2011. And I

00:13:47

think the guiding principles have

00:13:49

become the focal point of

00:13:51

all their business and human

00:13:52

rights discussion investment treaties design

00:13:56

because these trees are in

00:13:58

for free due diligence gation

00:14:01

based on the guiding principles

00:14:02

in business and human rights

00:14:03

in Fort Wright. We were

00:14:11

seeing printer for Tatian of

00:14:13

Human Rights treaties for sampling

00:14:14

to remain consistent how that

00:14:16

court is interpreting an existing

00:14:19

Treaty of indirectly obligations to

00:14:27

non-state actors like Corporation. Oh,

00:14:30

so we have a draft

00:14:31

of a tree on business

00:14:33

and human rights. We have

00:14:34

that they're drop of the

00:14:36

tree is not yet. Of

00:14:38

course binding but would be

00:14:40

an order in for ten

00:14:41

a answer the answer to

00:14:43

this problem. And finally what

00:14:46

I want to the Indian

00:14:47

couple in the next minute

00:14:48

is investment and trade treaties

00:14:51

how this field that is

00:14:53

so far away sometimes of

00:14:55

Human Rights is being transformed

00:14:57

to address the problems of

00:14:59

Human Rights, right? That's the

00:15:05

starting point is the report

00:15:07

of John Runge of 2013

00:15:09

in which he realized. Cooling

00:15:13

problems related with investment and

00:15:15

human rights. The first one

00:15:16

are the instability classes. Right?

00:15:19

And the second one is

00:15:20

the policy incoherent in States

00:15:22

right now. We should have

00:15:24

concerned that I would not

00:15:25

is that tree to shopping.

00:15:27

We're seeing investment play me

00:15:29

some history ideas. Immunity Clause

00:15:32

the police incoherence and the

00:15:34

tree shop. These are classes

00:15:38

include investment trees that has

00:15:41

the intention to prevent Jose

00:15:43

State from adopting beliefs vegetation

00:15:46

to enhance human rights protection,

00:15:47

right? So they're in some

00:15:49

ways taking out the regulatory

00:15:53

power of the national state

00:15:54

if they move for the

00:15:57

change the domestic legislation in

00:16:00

for example, as to improve

00:16:02

the labor standards there going

00:16:04

to be Shooting an arbitration

00:16:06

panel because of a violation

00:16:08

of an investment true or

00:16:09

not discriminatory these classes there

00:16:14

a problem. So that's the

00:16:16

exact second problem is the

00:16:18

police incoherent that we're seeing

00:16:20

that in the process of

00:16:22

negotiation of trees in state.

00:16:24

There is no centralized Authority

00:16:26

that Maple Shade Trees and

00:16:28

some entities are negotiating treaties

00:16:31

of investment or trade with

00:16:33

glasses that are not very

00:16:35

good for human rights and

00:16:36

human rights treaties are doing

00:16:40

that right. There is a

00:16:41

fragmentation inside the states and

00:16:44

international law and it's a

00:16:45

matter of policing of you

00:16:47

and the third problem is

00:16:49

a free shopping, right that

00:16:51

is a Dia of corporation

00:16:52

that change their structure to

00:16:54

benefit from the protection of

00:16:56

particular investment treaties, right? And

00:16:59

that is not their problem

00:17:00

that is making very hard

00:17:03

to relate. Investors in their

00:17:06

compliance with human rights. How

00:17:08

is responding to these challenges?

00:17:12

So I'm going to send

00:17:13

you to do ideas or

00:17:15

prettiest we have. 483 the

00:17:21

first idea is that received

00:17:24

its investment trees are conditioning

00:17:26

the protected investment on the

00:17:29

compliant with domestic standards and

00:17:31

domestic standards are related mad.

00:17:34

Sometimes with human rights for

00:17:35

environmental or labor law or

00:17:37

gender laws. So that fortification

00:17:41

of the protected investment. I

00:17:43

respond to these problems that

00:17:46

were seen on the front

00:17:48

of your response is the

00:17:51

investment trees inclusion of voluntary

00:17:57

a corporate social responsibility classes

00:18:00

on investment treaties, but they're

00:18:02

not they're not requirements binding

00:18:09

party has important facts. At

00:18:11

their response from in Batman

00:18:13

3 free disable Lucian is

00:18:14

to required for sustainable contributions

00:18:17

development contributions from the investment.

00:18:22

So everyone is an example

00:18:24

from Brazil model treaty you

00:18:26

your investment has 24 use

00:18:28

positive impacts on the development

00:18:31

of our country and the

00:18:33

most creative anyone is requiring

00:18:37

investors to observe recognize International

00:18:40

standards in human rights issue.

00:18:42

Right now. We have these

00:18:44

for a kind of responses

00:18:47

from investment trees because of

00:18:49

the sake of time. I'm

00:18:49

just going to end with

00:18:50

the last one and I'm

00:18:51

not going to be able

00:18:52

to develop each one of

00:18:53

them but he's the last

00:18:55

text requiring investors to comply

00:18:58

with the provisions under some

00:19:01

of the examples that I

00:19:02

think are very interesting especially

00:19:04
the Touch model of a

00:19:06
vehicle if it's it's a

00:19:08
really want a tree to

00:19:10
see about We are seen

00:19:13
to idea is the creation

00:19:15
of applications on investors on

00:19:18
environmental labor environmental law labor

00:19:20
law or human rights issues

00:19:22
V John David guiding principles,

00:19:24
right investment re re require

00:19:26
more than what is required

00:19:28
by The Guiding principles example

00:19:31
would be shocked investment of

00:19:34

the year for the 2016

00:19:40

ride. The creation of applications

00:19:42

on investors. The other is

00:19:44

a piece of Belgium and

00:19:48

Luxembourg in which are you

00:19:51

a teen sex act in

00:19:53

accordance with International parts Part

00:20:00

A Part B. So it

00:20:02

is expected from investors to

00:20:05

act according to International standards

00:20:07

in which the Contracting parties.

00:20:11

Already applied. So it's a

00:20:13

very hard standard because he

00:20:15

indirectly investors based on International

00:20:21

standards coming from free sample

00:20:23

from international human rights treaties

00:20:25

would be especially the data

00:20:28

model 2019 that includes one

00:20:31

of you diligence Publications in

00:20:33

the process of investment right

00:20:35

were seen and I see

00:20:37

that might be a trend

00:20:38

in which we're going to

00:20:39

see more often in Batman

00:20:41

trees that included as an

00:20:42

application for the investment performance

00:20:46

or Gilligan process to avoid

00:20:51

impacts on human rights. I'm

00:20:53

going to stop there because

00:20:54

my time, thank you. Thank

00:20:58

you Jesus for these overview.

00:21:00

I think that eats very

00:21:02

valuable the point of you

00:21:04

erase about the lack of

00:21:06

coherence in institutions actually negotiated,

00:21:10

which I think it's on

00:21:15

and we can move to

00:21:21

set him because he's actually

00:21:25

part of the 3D section

00:21:27

of the Ministry of Foreign

00:21:28

Affairs and he actually negotiated

00:21:30

pretty investment treaties, which is

00:21:34

part of the of the

00:21:35

point that you raised. There

00:21:38

is no connection or interaction

00:21:41

sometimes between the institutions in

00:21:44

the government. So I think

00:21:46

your perspective sir this discussion

00:21:51

on a forced to continue

00:21:53

as some of the points

00:21:54

raised by Andres, so different

00:21:58

background different from some of

00:22:02

us actually you all do

00:22:04

you understand investment arbitration, you

00:22:06

are more an expert on

00:22:08

public international law. We know

00:22:10

that investment arbitration is part

00:22:12

of folic International. Oh, but

00:22:13

you are more focused to

00:22:20

hear from you how you

00:22:22

see their interaction between The

00:22:26

befriend regimes of international law

00:22:28

of investment and at the

00:22:31

same time these two regimes

00:22:39

and how you seen this

00:22:42

could be sold in the

00:22:43

near future. I'm things I'm

00:22:49

going to because I think

00:22:50

that you introduced these just

00:22:52

that I want to write

00:22:53

an English at first of

00:22:55

all, I think it's going

00:23:01

to be interesting. So take

00:23:24

that in mind. That's a

00:23:25

major disclaimer for what I'm

00:23:27

going to say. And that's

00:23:29

you because I'm in my

00:23:31

in my role as I

00:23:32

have to make sure that

00:23:35

the treaties are we could

00:23:36

go here in the gym

00:23:37

themselves evil expression, please. So

00:23:47

so that's where I'm coming

00:23:49

from and that's why I'm

00:23:51

going to try to explain.

00:23:51

Why is he the Investments

00:23:54

are the problem which is

00:23:58

a modder. all the Disney

00:24:02

songs Call Dreamscapes, because coming

00:24:05

from a 3D background should

00:24:08

prefer hard loss solution as

00:24:10

you were trying to think

00:24:11

of a heart. I think

00:24:17

something between in the middle,

00:24:18

which is basically a better

00:24:20

understanding on the part of

00:24:21

practitioners physically to learn how

00:24:29

to interpret treaty provision more

00:24:32

efficiently and not how it

00:24:34

has been doing up until

00:24:36

this point in the most

00:24:40

investment case and I'm going

00:24:43

to try to explain what

00:24:45

I mean when I'm saying

00:24:46

this. First of all, I

00:24:48

want to say that I

00:24:50

do understand where investment is

00:24:52

coming from where the problem

00:24:53

is being generated because investment

00:24:56

is so hard in that

00:24:57

window is so difficult that

00:24:59

have to become specialized investment.

00:25:03

So that's something that we

00:25:04

can't be true and perhaps

00:25:07

are out there. I'm in

00:25:25

states have to deal with

00:25:27

this issue. They do not

00:25:29

want to have to deal

00:25:30

with Investments and I'm going

00:25:33

to touch up on some

00:25:35

of it is that the

00:25:36

agency is healing but the

00:25:41

point is that when we

00:25:43

have something here. We'll have

00:25:48

to think about what's happening

00:25:49

in human life. We have

00:25:52

to take the seasons of

00:25:56

humor. My stock. We have

00:26:02

to take something that's in

00:26:14

Batman 3 free trade agreements,

00:26:17

but we have more than

00:26:18

3,000 ft his inauguration and

00:26:21

those obligations have to be

00:26:23

taken into account when Columbus,

00:26:24

Texas region information. But when

00:26:29

you bring the case before

00:26:30

our panel and dragon basement

00:26:32

panel that they have to

00:26:39

fulfill its take a case

00:26:41

of specific things that I

00:26:42

have. I like to highlight

00:26:44

because I was kind of

00:26:46

Lies with the decision which

00:26:47

is a call. I'm sure

00:26:49

that Echo. Do you know

00:26:51

what a core is but

00:26:53

one of them that we

00:27:02
have the best International lawyer

00:27:03
in the receiving department. And

00:27:06
even with Phillip songs in

00:27:07
the final decision was taken

00:27:09
how it was taken my

00:27:15
point. We have a tension

00:27:17
between to his position Interstate

00:27:20
83. Which were the exceptions

00:27:29
in the Columbia Columbia was

00:27:38
acting under an exception of

00:27:40
the tree and accepting specifically

00:27:42
provided for in this position

00:27:44
22.1, which is basically to

00:27:49

protect me a decision taken

00:27:51

her to protect the innocent

00:27:54

with me because it was

00:27:55

made to protect your bar.

00:27:57

It was to protect her.

00:28:11

It's a completely normal case

00:28:13

perhaps in your case. It

00:28:16

could be interesting but the

00:28:18

logic behind this position 2201

00:28:23

was not an exception. But

00:28:25

whether a permission for the

00:28:27

government to take a legitimate

00:28:29

public policy, but that didn't

00:28:32

mean that it was not

00:28:32

going to reach international law

00:28:34

if they take out if

00:28:35

they took a measure to

00:28:36

protect the environment. How do

00:28:38

you write to that because

00:28:40

they come further decision to

00:28:41

Annex at 11, which use

00:28:43

the word exception. When you

00:28:47

retake order it actually says

00:28:49

that the reason is because

00:28:50

one of them contains the

00:28:52

word exception and the other

00:28:53

one doesn't contain the word

00:28:55

exemption. Okay, when you read

00:28:57

article 231 of the treaties,

00:29:00

which is their General interpretation

00:29:03

of trees, you find that

00:29:04

the first way to interpret.

00:29:11

You can say that that's

00:29:12

a way to interpret. Okay,

00:29:13

we are using the fact

00:29:16

that this was young 2201

00:29:18

wasn't trained in chapter 22,

00:29:21

which is the chapter explicitly

00:29:25

call exception exception. So if

00:29:32

the decision was in the

00:29:36

chapter of exception, it's simply

00:29:38

that you have the right

00:29:40

to conclude that that wasn't

00:29:42

an exception. Anyone who practices

00:29:47

international law when you read

00:29:49

this was young 22 /

00:29:51

1.3, you know where the

00:29:55

decision comes from because it's

00:29:57

exactly the same language as

00:30:00

our equals 20 of a

00:30:01

cup. And when is a

00:30:04

virtually identical it's the same

00:30:05

thing. You are going to

00:30:28

eat you are not going

00:30:30
to be committing crimes or

00:30:30
not till around 4. I'm

00:30:33
doing this in a convention

00:30:35
that you can apply to

00:30:37
a right to that which

00:30:38
is 31.3 C equals 31.3

00:30:41
c / B that General

00:30:45
international law applicable between the

00:30:47
parties should be taken into

00:30:48
account to keep in to

00:30:50
interpret as position within a

00:30:52
3, so It's important. This

00:30:57
was him twenty-two. Oh one

00:30:58

point three was not an

00:31:00

exception. It's simply impossible to

00:31:02

understand. I'm sure if he

00:31:06

sent hundreds to International if

00:31:19

they understand I mean, Books

00:31:24

that song you want it?

00:31:25

It's only one case. There

00:31:28

are other cases where the

00:31:33

final Mansions article 31 points

00:31:36

PC to say that should

00:31:40

not be recognized violation of

00:31:42

other obligations of us can

00:31:47

fact families can in fact

00:31:49

I write two more coherent

00:31:51

decision towards other three year

00:31:54

old gay. When we took

00:31:58

it with human rights investment,

00:32:00

I think that most of

00:32:02

the questions go through the

00:32:04

gate and be doing more

00:32:10

on their own site, but

00:32:12

police should also be taking

00:32:14

that into account. When we

00:32:17

are negotiating treaties, I am

00:32:19

the ones that I am

00:32:21

part of the ones that

00:32:22

we should be more clear

00:32:24

in this position that we

00:32:26

shoot into that interpretation within

00:32:31

3 days shooting to be

00:32:32

done without trees art treat.

00:32:41

But when we seek a

00:32:44

quarrel with my concern with

00:32:46

the code, is that perhaps

00:32:48

because he is one of

00:32:51

the best if we have

00:32:52

to look that shouldn't have

00:32:59

happened if the one that's

00:33:06

today in Port and that

00:33:10

same. All their treaties with.

00:33:20

I mean I can write

00:33:21

but still up. So I

00:33:26

don't know what this would

00:33:27

be because I know they

00:33:28

ask me what I think

00:33:31

that. If prisons practicing investment

00:33:35

arbitration understand that they are

00:33:38

also working and that would

00:33:42

be a great idea, But

00:33:50

I think we can do

00:33:51

more in the drafting of

00:33:52

trees. And as you were

00:33:54

saying negotiators should not be

00:33:56

simply negotiators because that allows

00:34:01

for But I also believe

00:34:05

that soaked though has a

00:34:07

major role in Asia. Because

00:34:10

if a place is also

00:34:12

start accepting this reality and

00:34:16

understand this reality we are

00:34:20

not going to see are

00:34:22

so against considering when cases

00:34:27

are are being heard before

00:34:29

untraveled forget them. So I

00:34:34

think I'm going to leave

00:34:35

the microwave from here. Thank

00:34:41

you, sir Hugh and I

00:34:42
think that I had some

00:34:44
of the stuff so we

00:34:55
can take that one or

00:34:56
we could work. How does

00:35:06
an arbitration interacts with the

00:35:08
other regimes of public international

00:35:11
law and of course fees

00:35:13
also team. This also comes

00:35:15
with the different interpretations that

00:35:18
arbitrators could give to to

00:35:22
investment treaties that he has

00:35:28
made a lot of sound

00:35:29
because of course in that

00:35:31

case. Some people have the

00:35:34

view that the treaty is

00:35:36

very clear that exception Clause.

00:35:37

It's an exception. Exception, of

00:35:43

course interpretation in that case.

00:35:46

Of course, of course, of

00:35:59

course, they need to renegotiate

00:36:02

some of the wording of

00:36:03

our current treaties, of course

00:36:10

brings a lot of questions

00:36:12

like the mechanism that the

00:36:21

more appropriate mechanisms to protect

00:36:24

human rights, maybe maybes not

00:36:26

maybe we can go to

00:36:28

commercial arbitration and see cases

00:36:30

out of the bank which

00:36:40

Did they solve the case

00:36:43

before getting substance commercial arbitration

00:36:46

something more to hear it

00:36:50

for the protection of Human

00:36:51

Rights. So so thank you

00:36:52

for for your balabal remarks.

00:36:54

Now we are moving to

00:36:56

do something comes from he

00:37:04

has a lot of practical

00:37:06

experience on the structuring of

00:37:08

the private sector and of

00:37:18

course by private sector of

00:37:23

the system how to use

00:37:30

Allegiance. I know that Andres

00:37:32

mention that most of the

00:37:34

time is not an obligation

00:37:35

and we are talking about

00:37:37

so of course A lot

00:37:41

of work, but I want

00:37:48

to see how you know

00:37:53

how these could be related

00:38:01

to. Good morning, everybody. Thank

00:38:06

you, Mary Lucia and organizers

00:38:08

of the event for inviting

00:38:11

me. And I'm going to

00:38:14

talk about day of obligation

00:38:15

of Human Rights due diligence

00:38:17

are from the Investor's perspective

00:38:21

and in order to do

00:38:23

so, I might have to

00:38:24

bite my presentation in three

00:38:25

parts. So the first part

00:38:30

is the origins of the

00:38:31

tension between Forge investment in

00:38:32

the human rights. The second

00:38:34

one is the human rights

00:38:35

to do this again salon

00:38:36

on the third part is

00:38:37

the discussion about if it's

00:38:40

a duty or an obligation

00:38:42

that investors have to comply

00:38:45

with human rights due diligence.

00:38:47

This is an ongoing debate.

00:38:48

I think we're not going

00:38:50

to solve it today. But

00:38:51

the idea is to open

00:38:52

the discussion and to explore

00:38:53

some of the solutions and

00:38:56

the possibilities on score of

00:39:00

the Padres and how to

00:39:01

impose obligations on private actors.

00:39:04

The last families have mentioned

00:39:08

the whole system has been

00:39:10

structured about around space. So

00:39:13

that's the main subject of

00:39:14

international law states and the

00:39:16

big question here is how

00:39:17

can we imposed human rights

00:39:19

obligations to corporations? So first

00:39:23

the origins of Fortune investment

00:39:25

in human rights, it has

00:39:27

it has been asserted that

00:39:29

investment Provisions are generally aim

00:39:31

to facilitate the flow of

00:39:32

investment between countries creating the

00:39:34

standard protection particles driving prosperity

00:39:37

and inclusive Economic Development instead

00:39:40

of this narrative critical legal

00:39:41

Theory and historical evidence showed

00:39:44

that international law was designed

00:39:46

by one formation investors and

00:39:49

corporations. It's ordinary operation is

00:39:53

deeply implicated in the logic

00:39:55

of capitalism economic profit. European

00:39:59

nations imposed economic cultural and

00:40:01

political institutions on diverse territories

00:40:04

including foreign direct investment rules

00:40:07

that legitimize the condition for

00:40:10

Corporation to extract natural resources

00:40:12

and explode labor without legal

00:40:14

consequences. So he won't want

00:40:17

one point is that they

00:40:18

Tia is not to make

00:40:21

preparations protect human rights. That's

00:40:24

the that's the beauty of

00:40:25

the states that have an

00:40:26

equation of the stage b

00:40:27

instead to prevent causing the

00:40:30

humid right harms. And if

00:40:32

the damage is caused then

00:40:34

make them liable for the

00:40:35

cost of they have for

00:40:37

the harm that they have

00:40:38

called second the human rights

00:40:40

of diligence landscape. Do underneath

00:40:45

one of the initiatives to

00:40:46

address these problems are the

00:40:48

guiding principles of business and

00:40:50

human rights has just mentioned

00:40:52

lunch and launched in 2011

00:40:55

by the US. The second

00:40:58

pillar of The Guiding principles

00:40:59

refers to the corporate responsibility

00:41:01

to respect human rights. This

00:41:04

principal is grounded in the

00:41:06

global standard of expected conduct

00:41:08

the business respect human rights

00:41:10

whether they operate This killer

00:41:13

has been criticized for its

00:41:15

soft language and being grounded

00:41:18

on social rather than legal

00:41:20

norms. Nonetheless, John Russia claims,

00:41:24

his intention was to move

00:41:26

beyond the concept of shackles

00:41:28

of traditional international human rights

00:41:30

law and influence by legal

00:41:32

experts from law firms private

00:41:35

law firms introduced due diligence

00:41:37

language into the protect respect

00:41:40

and remedy framework. The language

00:41:43

of due diligence has deep

00:41:46

roots in legal traditions. Under

00:41:49

the logic of the guiding

00:41:50

principle discharging their responsibility to

00:41:53

respect human rights would require

00:41:54

human rights due diligence. According

00:41:58

to the guiding principles of

00:41:59

Human Rights division setup process

00:42:00

that investors and business carry

00:42:03

out to identify prevent mitigate

00:42:06

an account for how they

00:42:07

got where they are best

00:42:08

human right in the content

00:42:12

of this principle reproduces. The

00:42:13

old idea that you diligence

00:42:15

is the standard of conduct

00:42:17

required to discharge a legal

00:42:19

obligation involving a process of

00:42:21

Investigation conducted by private parties

00:42:24

to identify risk of producing

00:42:26

a damaged. Definition of human

00:42:30

rights to division is an

00:42:31

allocation of the general principle

00:42:34

of law that Demands a

00:42:35

diligent conduct from a private

00:42:37

party to proceed and prevent

00:42:39

the consolidation of the risk

00:42:41

between a particular deity that

00:42:43

businesses are the ones to

00:42:45

conduct the process to identify

00:42:47

prevent and mitigate the risk

00:42:50

to the operation, but there

00:42:51

is to harm people. The

00:42:55

rationale behind human rights due

00:42:57

diligence reflects that this concept

00:43:00

is a unique regulatory technique

00:43:02

to strengthen businesses compliance with

00:43:05

obligations to prevent causing carbs.

00:43:09

Mirroring, the legal Frameworks enacted

00:43:11

worldwide UK legislation Germany Norway

00:43:15

excetera imposing taxes on corporations

00:43:18

to report social impacts on

00:43:20

the charge mandatory human rights

00:43:21

due diligence Latin America reacted

00:43:24

quickly to this trend evacuating

00:43:26

for similar regulations. However, imposing

00:43:29

mandatory human rights due diligence

00:43:31

across the regions has several

00:43:33

challenge you to a particular

00:43:35

context no rule of law

00:43:37

Society impunity set the tropical

00:43:43

sensation of The Guiding principles.

00:43:44

Somebody has called them is

00:43:46

taking place. I will hide

00:43:48

like now recent regulatory development

00:43:51

shaping the legal landscape regarding

00:43:53

human rights to eat. First

00:43:56

lost in passing mandatory human

00:44:00

rights due diligence incorporation. There

00:44:01

has been dropped bills passed

00:44:03

in Mexico Colombia Peru in

00:44:05

the last couple of years.

00:44:06

None of none of them

00:44:07

has been approved by the

00:44:09

Congress only Brazil draft Bill

00:44:12

572 from stock 2022 is

00:44:15

currently under consideration and in

00:44:18

article seven states that corporations

00:44:22

have a duty to a.m.

00:44:27

I thought mind up the

00:44:28

duty to comply with mandatory

00:44:29

due diligence to identify prevent

00:44:33

money for and repair human

00:44:36

rights violations, including social rights

00:44:38

legal rights and environmental rights.

00:44:42

The second friend used very

00:44:45

particular from the Latin American

00:44:46

region is the hardening of

00:44:48

guiding principles by Court decisions

00:44:50

while not formal president's the

00:44:54

university understood as Alpharetta statements

00:44:57

of Daddy's courts and tribunals

00:45:00

increase soft binding net for

00:45:04

the parties to the case

00:45:05

and increase increase its relevance

00:45:08

for other actors. Some examples

00:45:12

three standards of incorporating in

00:45:14

the inter-american court of Human

00:45:15

Rights be at the rulings.

00:45:17

The first one is that

00:45:18

the states must protect we

00:45:20
should understand that as regulate

00:45:22
and super bright third parties

00:45:24
from corporate activities with the

00:45:25
potential of harming human rights

00:45:27
second most related to the

00:45:30
presentation defining the scope of

00:45:32
businesses duty to respect human

00:45:34
rights and human rights due

00:45:36
diligence in compensation has orders

00:45:39
to have an impact on

00:45:40
business operations the latest ruling

00:45:43
that the tribunal was very

00:45:48
specific on on on signal

00:45:50

from the language used to

00:45:52

describe. This is standard. I

00:45:53

forward this due diligence the

00:45:56

standard is applicable to actions

00:45:58

of both public and private

00:45:59

entities. So there's no discussion

00:46:01

now that it's only occasionally

00:46:05

States and the second one

00:46:07

is a human rights due

00:46:08

diligence should include an assessment

00:46:10

of the actual and potential

00:46:12

impact activities on human rights

00:46:14

as part of the medication

00:46:16

to prevent environmental Hearts to

00:46:18

human rights as part of

00:46:20

the obligation to prevent and

00:46:22

there is where the Tribune

00:46:23

is already starting to connect

00:46:25

to Julian's do a hard

00:46:27

loss of allocation. We will

00:46:31

see the ruling Haiti versus

00:46:33

Colombia. You should be out

00:46:36

in the next couple of

00:46:37

months how the tribunal interpret

00:46:38

interpret this this is this

00:46:43

treaty human Columbia. The Constitutional

00:46:46

court has incorporated to binding

00:46:48

stop rules through all the

00:46:49

other jurisprudence mostly in cases

00:46:52

regarding indigenous people. The first

00:46:55

one is that there is

00:46:56

a corporate duty to report

00:46:57

to perform due diligence. You

00:47:00

can read that that the

00:47:01

famous wouldn't su123 from 2018

00:47:04

with very clear about that

00:47:05

that do teeth under the

00:47:07

judges most able to eat

00:47:08

human right duties against a

00:47:09

part of the evidence to

00:47:11

determine diabetes. Last but not

00:47:14

least in recent years various

00:47:16

approaches to regulations of business

00:47:17

conduct have evolved as an

00:47:19

alternative to the traditional model

00:47:20

focusing on the conduct of

00:47:22

domestic businesses and soft law

00:47:24

approach international human rights law

00:47:26

some of the Alternatives include

00:47:30

the incorporation of contractor classes

00:47:32

human rights contractual Clauses that

00:47:35

trade investment agreements and human

00:47:39

rights obligations just talked about

00:47:42

and The Binding to negotiations

00:47:44

in there in the in

00:47:45

the of The Binding draft

00:47:48

treaty that is taking place

00:47:49

in Geneva. We'll see where

00:47:51

that takes. Bugattis Polanski, that's

00:47:56

what we have nowadays regarding

00:47:58

the regulation of human rights

00:47:59

to diligence is hard becoming

00:48:02

Harder Than You by reputation

00:48:04

and we have a specific

00:48:07

obligations in National loss and

00:48:10

we have a full box

00:48:14

of options that we can

00:48:15

start exploring. I'm the third

00:48:17

point is the investor Duty

00:48:19

slash obligation to perform human

00:48:22

rights. We didn't particularly in

00:48:24

the context of investment arbitration

00:48:27

arbitrations have a Dottie under

00:48:31

international law as we sought

00:48:32

to prefer a human rights

00:48:34

due diligence to prevent harm

00:48:36

from materializing and to ensure

00:48:38

that their expectations are legitimate

00:48:40

to comply with this duty.

00:48:43

The investor must investigate the

00:48:45
host country's political economic and

00:48:47
social context that should be

00:48:49
obvious, but they don't do

00:48:51
it and that's what we're

00:48:53
trying to do change nowadays,

00:48:55
even though these are very

00:48:56
sophisticated. Investors access tribunal to

00:49:03
decide whether the investors benefit

00:49:05
from the protection of the

00:49:06
treaty or the nice compensation

00:49:09
when they bet when the

00:49:10
investment is made we don't

00:49:11
want to see during the

00:49:12

risk of breaching human rights.

00:49:14

They're acting now we have

00:49:18

like almost 6 7 8

00:49:21

decisions were the tribunals have

00:49:23

made or try to make

00:49:25

connect the human rights international

00:49:29

human rights system with the

00:49:30

investment for East Orange direct

00:49:34

investment system. Most famous quote

00:49:49

two are trying to play

00:49:53

with with the treaties tensions

00:49:56

and interpretation to South America

00:49:58

in Bolivia, Bolivia. 47 International

00:50:11

Investment reviews have established that

00:50:13

investor is entitled to protect

00:50:16

office limited legitimate expectations provided

00:50:19

first that it exercise due

00:50:21

diligence and second that it's

00:50:24

legitimate expectations were reasonable in

00:50:26

light of the sink to

00:50:27

stances. The circumstances are not

00:50:34

legal in nature. So not

00:50:36

only the legal framework, but

00:50:38

they should also include the

00:50:39

social cultural and economic environment

00:50:42

of the whole state of

00:50:43

the best rate. Among other

00:50:45

factor is not the same

00:50:46

do we have to do

00:50:47

today to see if you

00:50:48

were going to make an

00:50:49

investment in Hawaii and Canada?

00:50:50

Are you going to buy

00:50:51

your investment in city of

00:50:53

Columbia? another country I need

00:50:59

the recent ruling of Red

00:51:00

Eagle versus Colombia with regular

00:51:03

was very clear that the

00:51:04

system. Stylish to protect opotamus

00:51:08

system, you know that there's

00:51:14

a new rule every day.

00:51:15

There's a new ruling a

00:51:19

new law. So it's very

00:51:21

complicated, but that's not not

00:51:22

that it's not an excuse.

00:51:25

So the system established to

00:51:26

protect the epidermis is a

00:51:27

really complex which requires the

00:51:29

investor to pay close attention

00:51:30

and learn how it works.

00:51:32

The treaty does not prohibit

00:51:35

complexity rather imposes on an

00:51:38

investor than to act with

00:51:40

care and due diligence. So

00:51:42

here you see how that

00:51:43

are gonna start bringing these

00:51:45

General principle of law on

00:51:47

private law to the human

00:51:48

rights. These questions were from

00:51:50

my point of view. I

00:51:51

think it's it's a it's

00:51:52

a fast that we should

00:51:53

explore when you see. Lawmaking

00:51:59

process on which involved he's

00:52:01

playing with different standards for

00:52:04

the Constitution. So it's not

00:52:05

this this Purity law really

00:52:08

interesting. Is it is it

00:52:11

can be problematic? Toto to

00:52:15

finish up with a Bob

00:52:16

Dylan is a general principle

00:52:18

of law. Providing legislators with

00:52:22

a regulatory technique and a

00:52:24

source of normative power to

00:52:26

add wrestlers from the responsibilities

00:52:28

of businesses for human rights

00:52:30

violations. It is an obligation

00:52:32

included in National laws and

00:52:34

a standard of interpretation in

00:52:37

the analysis of arbitral Tribunal.

00:52:41

So I am going to

00:52:42

finish with three questions. I

00:52:44

want to put healing in

00:52:46

the discussion. Try to remagine

00:52:50

the system. I'm not a

00:52:52

fan of destroying things. I

00:52:53

want to see everything. But

00:52:56

I know that it needs

00:52:57

some adjustments and we are

00:52:59

some some food for thought

00:53:01

so we can start thinking

00:53:03

about how can we improve

00:53:04

and rematch in the system?

00:53:06

The first one is how

00:53:08

can we measure or wired?

00:53:09

What what is the effectiveness

00:53:11

effectiveness of including human rights

00:53:14

classes on Beats to make

00:53:17

investors respect human rights? Paper

00:53:21

is one thing but then

00:53:23

enforcement is another we have

00:53:25

that problem. I think through

00:53:27

all the areas of international

00:53:29

law. Second what extent can

00:53:32

an investor claim that his

00:53:33

legitimate expectations were violated when

00:53:36

you diligence but not was

00:53:37

not performed. Insert the 3D

00:53:41

interpretation, but Nash, but by

00:53:43

National Defense agencies the election

00:53:46

of the tribunal in reference

00:53:48

to human rights chase the

00:53:50

outcomes of the dispute. Thank

00:53:53

you. They need some guys.

00:53:56

I think that was super

00:53:57

enlightened. I think that's just

00:53:59

to channel open question. Simba's

00:54:09

mother of attrition of course

00:54:10

has been created for investors

00:54:14

to have for Tracy's claim.

00:54:18

So I think that taking

00:54:20

into account the presentation of

00:54:23

Santiago an additional issue that

00:54:25

race here and that of

00:54:27

course concerned someone could be

00:54:30

like a suitable to raise

00:54:32

human rights argument is the

00:54:35

challenge. to the signup process

00:54:38

would be teams will actually

00:54:40

receive compensation on this date

00:54:42

has not been a System

00:54:43

created for that so we

00:54:46

can of course try to

00:54:49

modify the system and includes

00:54:52

Allegations upon investors and investment

00:54:55

treaties, but at the end

00:54:56

we will have that procedural

00:54:59

Challenge on how can actually

00:55:03

receive compensation or claim compensation

00:55:06

for potential violations on a

00:55:09

leash on these discussions. So

00:55:19

now I think that we

00:55:21

could move to our experts

00:55:26

today on can you tell

00:55:35

us how many that perhaps

00:55:41

nowadays Columbia is dealing with

00:55:44

some cases not involved. To

00:55:52

hear your remarks on these

00:55:54

maybe you can tell us

00:55:56

a little beads on how

00:55:57

we can make House Columbia

00:56:00

make human rights argument with

00:56:04

arbitration. And also I think

00:56:08

your perspective arbitrators are also

00:56:16

ready for these to cure

00:56:18

these kind of argument. Thank

00:56:22

you. My name is yeah

00:56:23

and thank you to everyone

00:56:25

attending here and virtually told

00:56:28

you I am part of

00:56:29

the agency that represents Columbia

00:56:32

endorsement arbitration cases international league

00:56:37

and I think that the

00:56:39

last question that Santiago posed

00:56:41

as the perfect pot the

00:56:42

way to talk to start

00:56:44

talking about what 10 states

00:56:46

do or what is Columbia

00:56:47

doing regarding the incorporation of

00:56:50

Human Rights related topics and

00:56:53

environmental topics and investment arbitration,

00:56:56

I think as and raise

00:56:58

and since you pointed out

00:56:59

usually the system has seeing

00:57:03

as a fragmented system or

00:57:05

investment arbitration is in one

00:57:07

side and then human rights

00:57:09

environmental issues are on other

00:57:10

side, but as we have

00:57:13

Here today. This is not

00:57:16

a fragmented system and even

00:57:18

do some people see it

00:57:20

as a fragmented system. The

00:57:22

reality is that any investment

00:57:24

cases. We see every time

00:57:27

more how human rights issues

00:57:29

environmental issues are or have

00:57:33

an impact investment arbitration cases.

00:57:35

So I would like to

00:57:37

re-sign three cases where Columbia

00:57:41

has been using human rights

00:57:44

and environmental defense has to

00:57:48

present before the arbitral tribunals

00:57:50

in order to Define Columbia

00:57:53

Association and the measures that

00:57:55

he'd adopted and that the

00:57:56

investors were challenging. So I

00:57:59

think that you can see

00:58:00

the defenses from the state

00:58:02

from 2.06. No defenses and

00:58:06

unmarried base defenses. Columbia has

00:58:09

tried as self-appointed out to

00:58:12

use the car buy Provisions

00:58:14

that some trees have so

00:58:17

for example, since you was

00:58:19

talking about article 22013 of

00:58:23

the free trade agreement with

00:58:24

Canada, which is a carve-out

00:58:26

provision for the entire agreement.

00:58:29

Basically states that for the

00:58:31

purpose of chapter 8 which

00:58:33

is the chapter related to

00:58:34

investment Provisions. If measures are

00:58:36

not applied in an arbitrary

00:58:38
or with unjustifiable discrimination between

00:58:41
Buster's. Nothing in the agreement

00:58:44
shall be construed to prevent

00:58:46
a party. So he refers

00:58:48
a Colombia from adopting or

00:58:50
enforcing measures necessary to on

00:58:53
the first tablet that they

00:58:54
have to protect human animal

00:58:58
or plant life or health

00:58:59
which the parties understand to

00:59:01
include environmental measures. So as

00:59:04
you see our that the

00:59:07
Colombian team on the Canada

00:59:09

team that Matt and try

00:59:10

to draft the Free Trade

00:59:12

Agreement were very straightforward in

00:59:15

establishing a carve-out provision that

00:59:18

recently said the stations that

00:59:21

are made or measures are

00:59:23

taken by the by the

00:59:24

states to protect environmental purposes

00:59:27

are legitimate. And if they

00:59:31

are not taken in an

00:59:32

arbitrary fashion or just cream

00:59:36

discriminating between Buster's then the

00:59:39

state or those measures not

00:59:42

be subject to chapter 8

00:59:46

was which is a chapter

00:59:47

related to investment protection in

00:59:52

all the cases related to

00:59:54

listen to the band Paramore

00:59:55

Richard Kordel Red Eagle and

00:59:59

Galway. presented the defense of

01:00:04

article 22013 Ambassador additional defense

01:00:07

where Columbia Association was an

01:00:11

article 2201 prevented the tribunal

01:00:14

to actually go into the

01:00:16

matter and Yep, I was

01:00:20

really going to the matter

01:00:22

and decide because this were

01:00:24

measures that were attacking for

01:00:25

environmental purposes. But what we

01:00:27

have seen in the record

01:00:29

of the station first, but

01:00:31

then it was upheld by

01:00:32

Carly and will not upheld

01:00:35

but it was the Red

01:00:36

Eagle Tribune. I'll take what

01:00:38

they occurred a tribunal said

01:00:39

I'm said we are in

01:00:40

agreement. Would that cord a

01:00:42

tribunal interpretation of particles 2201

01:00:46

is that defense is regarding

01:00:49

the starboard provision are no

01:00:50

jurisdictional defenses. They are married

01:00:53

base defenses on the tribunal

01:00:55

on the tribunal will only

01:00:57

analyze those defensive the tribunal

01:01:01

Puente that would invade Eagle.

01:01:02

Once the tribunal has agreed

01:01:06

that Columbia or that the

01:01:09

state actually is internationally liable

01:01:12

and then they will see

01:01:14

if I come 22013 applied

01:01:17

to the dispute. An exception

01:01:19

the dispute so ugly and

01:01:21

I are going okay Columbia

01:01:24

presented a defense based on

01:01:26

this part of our profession

01:01:27

and there was another student

01:01:29

party as measured by time.

01:01:31

I die Canada basically resented

01:01:38

it stays regarding the profession

01:01:40

and said this profession should

01:01:42

be construed as a safety

01:01:43

net versus it's the last

01:01:46

resort to states have to

01:01:48

protect environmental issues before the

01:01:50

tribunal and what kind of

01:01:53

day it is the exception

01:01:55

applies because the estate's actually

01:01:59

proves that it has taken

01:02:00

the provisioning good-faith right for

01:02:03

the right purposes here environmental

01:02:05

purposes in a non-discriminatory fashion.

01:02:07

Then there's no violation of

01:02:10

the fhfj and no estate

01:02:13

liability and what that means

01:02:14

is that there will be

01:02:16

no payment. Compensation from the

01:02:20

state because of the measures

01:02:22

it took to protect the

01:02:23

environment but as we can

01:02:25

see the tribunal departed from

01:02:29

God because even though they're

01:02:30

cold. Do you know I

01:02:31

know live this Private Probation

01:02:33

what he just stated was

01:02:35

that What he found out

01:02:38

was that. The provision was

01:02:43

used by Columbia only as

01:02:46

a jurisdictional defense and therefore

01:02:48

it says a jurisdictional defense.

01:02:50

It is not acceptable. It

01:02:53

will be a married baby

01:02:54

fence, but then didn't analyze

01:02:58

that depends on the merits

01:03:00

of the case and stages

01:03:02

on the basic saying up

01:03:04

in water if it's not

01:03:07

a sexual offense and that

01:03:09

is very Troublesome because the

01:03:12

tribunal invite Eagle even though

01:03:14

it says the rationale behind

01:03:17

a car the tribunal was

01:03:18

right what it says is

01:03:19

I'm not going to use

01:03:20

it as a jurisdictional defense

01:03:22

because it is not a

01:03:23

jurisdictional defense, but it says

01:03:25

if I find Columbia liable

01:03:29

In the Maurice face, I

01:03:31

will analyze if the car

01:03:32

towed provision is applicable or

01:03:33

not. And what will normally

01:03:36

happen is if the car

01:03:38

bird provision is applicable then

01:03:40

no compensation will be required

01:03:42

from Columbia to the investor.

01:03:44

So I think actually care

01:03:47

about salvation is like this

01:03:49

and treat. These are very

01:03:49

important and are very important

01:03:51

for the defenses of the

01:03:52

states in order for states

01:03:55

to have you know, a

01:03:56

different range of options in

01:03:59

order to present an adequate

01:04:02

defense before the international Tribunal.

01:04:05

but human bites are environmental

01:04:09

issues are not only important

01:04:10

regarding carve our Provisions because

01:04:13

what we have seen is

01:04:15

that even though there are

01:04:16

cases where the trees do

01:04:18

not provide for environmental care

01:04:19

about Provisions or human rights

01:04:21

carve-out provisions. Just a half

01:04:25

to bring today attention of

01:04:28

the charge, you know, their

01:04:30

human rights and environmental concerns

01:04:32

that surround a dispute that

01:04:35

has those concerns around it.

01:04:36

And this is important because

01:04:38

states are more often in

01:04:41

a sticky position because they

01:04:43

have to protect the investment

01:04:44

but they have also to

01:04:45

protect human rights vis-a-vis their

01:04:48

normal citizens. So it is

01:04:51

important for States 2% human

01:04:54

rights are environmental argument, even

01:04:56

though there's not a carve-out

01:04:57

profession and we see this

01:05:00

for example Medina coronavirus medical

01:05:02

where there was a Private

01:05:03

Probation, but even though in

01:05:05

those cases Colombia did not

01:05:07

only priests and environmental issues

01:05:09

regarding to the carpet profession,

01:05:11

but also for example regarding

01:05:13

the due diligence Requirements from

01:05:19

companies when they invest in

01:05:20

Columbia. Santiago was talking about

01:05:22

and right now we also

01:05:24

have another interesting case. I'm

01:05:26

going to talk really quickly

01:05:27

about this is a drink

01:05:29

or three against Colombia. It's

01:05:34

regarding them diversion of the

01:05:38

Bruno in Surrey on what

01:05:41

you know, how is being

01:05:43

a baby betta dishu. There

01:05:45

was a ruling from the

01:05:47

Constitutional Court biking 2017 that

01:05:50

suspended the project and suspended

01:05:52

the diversion of the average

01:05:54

over there now and even

01:05:56

though Columbia right now is

01:05:57

preparing their country Memorial, of

01:06:01

course. This is this case

01:06:05

is under the investment treaty

01:06:07

with Switzerland. So, you know,

01:06:09

there's no carpet probation. But

01:06:12

even though there's no carpet

01:06:13

provision, of course showing to

01:06:15

the tribunal the human rights

01:06:18

about grown-up this dispute the

01:06:20

importance of trade my change

01:06:24

considerations in this industry because

01:06:27

we're talking about that why

01:06:29

you people that watch eat

01:06:30

out which is a very

01:06:31

special place in Columbia. They

01:06:35

need to protect water and

01:06:38

rivers in the way. He

01:06:39

does because of that what

01:06:42

you do and do what

01:06:44

you people do not have

01:06:45

access to water on a

01:06:47

regular basis. Those things are

01:06:51

arguments. Columbia will for sure

01:06:53

make during the arbitration because

01:06:56

it is important to prevent

01:06:57

sometimes that case in a

01:06:59

bigger picture to the tribunal

01:07:01

in order for them to

01:07:02

actually understand. The legitimacy of

01:07:05

the measures that were taken

01:07:06

by personable in this case

01:07:08

the Constitutional Court here in

01:07:10

Columbia. Thank you. Wanna I

01:07:16

think all of us are

01:07:17

really looking forward to see

01:07:19

how tribunals actually deal with

01:07:21

these kind of arguments human

01:07:24

rights arguments. Mayes round the

01:07:26

facts of the case, even

01:07:28

if the investment treaties applicable

01:07:31

to the particular dispute and

01:07:33

really have a provision Express

01:07:36

Express probation on this. I

01:07:37

think of course is Argentina

01:07:39

cheese, what's up first case,

01:07:43

but give us hope, but

01:07:45

of course they were not

01:07:50

able to find any provision

01:07:51

on the basement 3D with

01:07:52

an obligation on investors. So

01:07:55

he gave us hope it

01:08:03

was it was, we'll see.

01:08:13

We'll see how Deal with

01:08:15

this kind of arguments. I

01:08:16

think that we are really

01:08:17

looking forward to see how

01:08:19

they deal with it. I

01:08:27

didn't have the chance to

01:08:28

before he's hooking up with

01:08:30

presents in Washington DC and

01:08:42

he's also co-founder of world

01:08:46

arbitration updates on Washington arbitration

01:08:48

week. So thank you again

01:08:49

because you are one of

01:08:51

them behind this event has

01:08:55

to act as counsel of

01:09:05

real story. Underbar use he

01:09:15

was formerly Associated of investment

01:09:18

treaties for the Republic of

01:09:19

Colombia. So he has a

01:09:21

lot of knowledge on that

01:09:23

and he was former you

01:09:24

keep legal Cuts. So we

01:09:27

have the face of a

01:09:33

business the interaction of investment

01:09:39

arbitration with human rights and

01:09:43

environmental. And of course, we

01:09:46

we have raised a lot

01:09:49
of legal issues on this

01:09:51
area. So I'm going to

01:09:53
give you a hard position

01:09:55
to try to give us

01:09:56
a few Solutions or not

01:10:00
Solutions in itself, but a

01:10:02
few maybe tools on how

01:10:05
we can maybe Make a

01:10:08
better system on maybe we

01:10:10
can we can balance on

01:10:12
the International System. So I

01:10:16
would like to ask you

01:10:17
two questions that I needs

01:10:19

Provisions. You think I'm being

01:10:22

included in contracts or investment

01:10:24

agreements about the proposed treaty

01:10:33

architecture that incorporates human rights

01:10:37

obligations on investors to everyone

01:10:44

and I apologize for the

01:10:48

lateness and to the moderator

01:10:51

it is it is really

01:10:53

a dream like Feeling to

01:10:58

be in Bogota my home

01:11:00

City and see this this

01:11:02

room full of people. So

01:11:04

welcome to World arbitration update

01:11:07

as a matter of fact,

01:11:09

we've been trying to do

01:11:10

this at this level for

01:11:12

3 years so excited and

01:11:19

I'm sure that my co-founder

01:11:21

in later than never one

01:11:22

behind wall levitation update. He's

01:11:24

excited by by the fact

01:11:26

that the not only International

01:11:29

commercial arbitration brings people to

01:11:31

the floor, but also human

01:11:32

rights do with that. Let

01:11:35

me get into the question

01:11:38

that you posed. The presentation

01:11:42
that I have is for

01:11:42
human rights environment and labor

01:11:44
obligations in investment arbitration. At

01:11:49
this stage at this juncture.

01:11:51
I think there are two

01:11:51
questions based on the conversation

01:11:54
that that both Santiago one

01:12:01
question is about the system

01:12:03
the system of investor-state arbitration

01:12:05
currently. There are many calls

01:12:08
against the system in terms

01:12:11
of it is a imbalance

01:12:14
system. It is a system

01:12:15

that that does not allowed

01:12:17

to regulate certain issues on

01:12:20

the environment of health of

01:12:22

it is a system that

01:12:23

has inconsistencies between certain specific

01:12:27

decisions that are handed under

01:12:33

the same exact same pipek

01:12:36

sunpointe place and Siemens on

01:12:38

the one hand and an

01:12:40

another case also under the

01:12:42

Argentina Germany bilateral investment treaty.

01:12:50

So that that that is

01:12:51

that is one of the

01:12:53
criticism of the system and

01:12:55
and the other issue is

01:12:56
what what could be beneficial

01:12:59
for the defense of the

01:13:01
state. Let's say take Columbia

01:13:04
considering that there are human

01:13:07
rights and environmental aspects involved.

01:13:09
So those two Wishes the

01:13:11
system and and the defense

01:13:13
of the state and whether

01:13:15
human rights have any any

01:13:17
any role to play on

01:13:20
that so Just too I'm

01:13:24

just posing the question and

01:13:26

I'm give you a going

01:13:27

to give you the answer

01:13:27

right away instead of making

01:13:29

you wait. There's there's a

01:13:31

there's a strong sense at

01:13:33

least for my part that

01:13:34

International Investment treaties both. bilateral

01:13:40

investment treaties and chapters of

01:13:43

free trade agreements should include

01:13:47

Obligations for investors on human

01:13:51

rights in respect of human

01:13:52

might why because that would

01:13:55

sell does not exist except

01:13:58

in a few nonprofit entities

01:14:01

who have more than 3,300

01:14:03

3D so there should be

01:14:05

no obligations for investors and

01:14:08

investment treaties. Basically not perhaps

01:14:11

every every every human right

01:14:13

but at least a minimum

01:14:15

standard of customary international law

01:14:17

on the environment on labor

01:14:20

and out, of course an

01:14:21

essential human rights and and

01:14:23

we'll I'll share with you

01:14:24

the the the languages that

01:14:29
are proposing. So why why

01:14:33
you getting there why why

01:14:34
you getting there and and

01:14:36
the and what are the

01:14:37
objections one of the big

01:14:39
objections is well human rights

01:14:42
and the protection of the

01:14:43
environment and the protection of

01:14:45
a minimum standards on labor.

01:14:47
They are part of the

01:14:50
local law and as such

01:14:53
when you make the investment,

01:14:54
you are bound to respect

01:14:56

local or so. If the

01:14:58

state has all that power

01:15:00

why you need to elevate

01:15:02

human rights into International Investment

01:15:05

trees. Why doing that you

01:15:07

already have? No the power

01:15:08

of local law the short

01:15:10

answer to that is One

01:15:13

technical the that that could

01:15:19

be interesting when making the

01:15:20

investment but actually not during

01:15:23

the performance of the investment

01:15:25

which is what the clause

01:15:27

on respecting local law when

01:15:30

making the investment. So that's

01:15:33

a technical technical answer. The

01:15:36

other answer is it hasn't

01:15:37

worked because tribunals have been

01:15:39

very very timid when reading

01:15:43

that falls to Ashley rely

01:15:45

on local law and then

01:15:51

applied either in direct request

01:15:56

of arbitration brought by the

01:15:57

state, which is there have

01:15:58

been only a few less

01:16:00

than 5 and in counterclaims.

01:16:03

So fabulous have been extremely

01:16:05

timid tribunal has been timid

01:16:08

so that that tool has

01:16:12

not helped and I we

01:16:14

are still in front of

01:16:16

a of a system that

01:16:17

is in Balance. So let's

01:16:20

let's look into that in

01:16:21

the first you have that

01:16:24

presentation on the screen investment

01:16:27

trees are often drafted and

01:16:28

most often drafted they include

01:16:31

obligations for the state. Concerning

01:16:34

the investor. They don't include

01:16:36

allegations by the investors considering

01:16:39

the investment and protect us

01:16:41

even write the part of

01:16:43

the problem. Is that most

01:16:44

investment treaties as I say

01:16:45

their lack of medications are

01:16:47

investors to respect human rights

01:16:48

environment and Labor Standard, and

01:16:51

then the other part is

01:16:52

is is if if you

01:16:55

do not have a treaty

01:16:58

that includes those applications the

01:17:01

the most the more Optimistic

01:17:06

that you could be is

01:17:08

that the tribunal has a

01:17:10

an awareness of the fact

01:17:14

that international law is applicable

01:17:17

law because it is applicable

01:17:19

only to look into the

01:17:20

articles of the sea convention.

01:17:22

There's a reference to international

01:17:24

law normally make a reference

01:17:26

to International the vit the

01:17:29

free trade agreements or international

01:17:31

law. So there's no doubt

01:17:32

that that that international law.

01:17:37

If if you if you

01:17:38

don't include those type of

01:17:40

Provisions in the most that

01:17:42

you could get is that

01:17:43

the tribunal goes as far

01:17:45

as our Vassar and Anna

01:17:47

and they would say yes

01:17:47

is international law. We are

01:17:51

we have jurisdiction to hear

01:17:53

a counterclaim or a request

01:17:57

for recreation that indicates that

01:17:59

the investor has human rights

01:18:02

or Environmental Protections. We have

01:18:05

jurisdiction to hear that we

01:18:07

can listen to it. But

01:18:09

then when the time comes

01:18:11

to address the issue of

01:18:13

marriage and they go through

01:18:16

the 3D they made page

01:18:18

one page to a Tetra

01:18:20

when they get to the

01:18:21

treaty they will be unable

01:18:22

unable to not able to

01:18:25

find The provision that requires

01:18:29

the investor to respect human

01:18:32

rights and that's what happened.

01:18:35

They said yes, they went

01:18:38

into the human right of

01:18:39
provision of water. They decide

01:18:42
what we cannot find where

01:18:43
the the the obligation is

01:18:46
because it wasn't there. So

01:18:48
the tribunal is tied in

01:18:50
terms of the the substantive

01:18:53
application because it's not in

01:18:54
the treaty. So let's move

01:18:57
forward. On the presentation out.

01:19:01
So these are only a

01:19:04
few examples of similar cases

01:19:07
where this has happened. So

01:19:09
the middle example is the

01:19:11

bathroom which I have just

01:19:13

referred to the upper example

01:19:15

is not true G Energy

01:19:17

versus Colombia in that case

01:19:20

the defensive of Columbia counterclaim,

01:19:28

which was not was not

01:19:31

heard by the tribunal it

01:19:33

was on the the the

01:19:36

relation to the impact on

01:19:38

Regional development. And and the

01:19:42

tribunal basically said that he

01:19:44

didn't it didn't have a

01:19:45

basis to hear that counterclaim.

01:19:50

It did not consider that

01:19:52

as part of the jurisdiction

01:19:56

Frank then we go to

01:19:58

the case, which is Lopez

01:20:02

that case there is the

01:20:08

issue was was was quite

01:20:10

similar when the state's alleged

01:20:14

violations to the environment committed

01:20:17

by the restaurant. The tribunal

01:20:23

found that there were no

01:20:24

obligations for investors to respect

01:20:26

the environment in the treaty.

01:20:27

So again, if it really

01:20:29

doesn't say so you can

01:20:30

not submit that flame. So

01:20:33

that is that is a

01:20:36

case and up just a

01:20:41

point of connection with with

01:20:43

that Juan has a presentation

01:20:44

the system which involves thousands

01:20:51

of investment treaties today some

01:20:55

some protections and sometimes the

01:21:01

protections are not used and

01:21:03

and that's that's a fair

01:21:04

criticism against like in the

01:21:07

case of of a Gordo

01:21:10

in that particular case I

01:21:13
can I am the

01:21:16
most aspects aligned with the

01:21:19
third-party submission. They are at

01:21:22
why because of the Year

01:21:28
free trade agreement between Columbia

01:21:30
and Canada and chief investment

01:21:33
chapter there and I can

01:21:35
tell you about is a

01:21:40
carve-out to be red is

01:21:43
a car but to be

01:21:44
applied negotiators of treaties do

01:21:47
not include Provisions that mean

01:21:51
nothing and and that is

01:21:53

that was the effect that

01:21:55

the echo to Trevino gave

01:21:56

to the provision ultimately exception

01:22:03

that refers to Many things

01:22:08

including the environment but it's

01:22:10

an exception that is basically

01:22:11

that comes from from the

01:22:14

general exception under WTO agreements.

01:22:17

Really? That's that, it's Genesis.

01:22:18

I need an exception for

01:22:21

the whole tree is an

01:22:24

exception if you're flying exception

01:22:25

when you're not liable. And

01:22:28

suddenly that Obsession lacked any

01:22:31
effect until and I am

01:22:33
wondering, you know, just wondering

01:22:35
because because I know that

01:22:38
that decision that war word

01:22:39
was wasn't stealing heavily criticized.

01:22:42
Why is why has the

01:22:45
tribunal taking so long to

01:22:48
finalize its is Beauty in

01:22:51
terms of Damages that. Lost

01:22:55
my mind because he has

01:22:56
been more than two years,

01:22:57
but one has a figures

01:22:58
so that's that's unknown, but

01:23:01

let's look into What else

01:23:06

does the system has the

01:23:07

system has also a few

01:23:09

trees that have obligations on

01:23:11

human right? Let's and let's

01:23:12

move forward. So this release

01:23:16

include obligations on human rights

01:23:18

and we have spotted them.

01:23:19

There may be more these

01:23:21

are specific application on human

01:23:23

rights, but but there's only

01:23:24

a handful of those less

01:23:26

than 10. So Thursday miroku

01:23:29

Nigeria bilateral investment treaty shall

01:23:34

apply precautionary principle to the

01:23:38

environment environmental impact assessment and

01:23:41

two decisions taken in relation

01:23:43

to a proposed investment of

01:23:44

this application for the investor

01:23:46

economic community of West African

01:23:49

States ecowas supplementary act on

01:23:52

your best friend also has

01:23:53

a hard law obligations and

01:23:57

and here these are examples

01:23:59

of hard on human rights

01:24:01

the the Canada. Columbia Free

01:24:06

Trade Agreement chapter investment is

01:24:10

is one that I'm very

01:24:11

close to because I am

01:24:12

negotiating and on that on

01:24:14

that treaty just a quick

01:24:17

anecdote. When the Canadians came

01:24:18

to the to the Colombian

01:24:20

team and said we want

01:24:21

to include an obligation on

01:24:23

social corporate responsibility and be

01:24:30

sure to include applications for

01:24:33

the for the state and

01:24:34

eventually no ultimately for the

01:24:38

investors the word ultimately that

01:24:42

they were concerned because they

01:24:44

thought that we would say

01:24:45

no, which I know that's

01:24:47

too much for us. Actually

01:24:49

we said yes, and then

01:24:50

why don't we include over

01:24:52

the part of occasions for

01:24:53

the investor and when we

01:24:55

said that they said no

01:24:56

no, no. No, that's too

01:24:57

much that that was the

01:24:58

response that what that's too

01:25:00

much for us. Why because

01:25:02

that would make that ultimately

01:25:05

A lot of interest in

01:25:07

mining and someone would have

01:25:08

to comply with certain the

01:25:09

heart of obligation. So it

01:25:11

wasn't our proposal but we

01:25:13

took it as far as

01:25:14

we could it wasn't one

01:25:15

of our trade lines. We

01:25:16

don't have any of the

01:25:17

tree. So we made the

01:25:18

proposal to make hard law

01:25:19

of allegations on on on

01:25:21

human right they didn't take

01:25:23

it. But but in any

01:25:25

event, it was progress in

01:25:27

the right direction. So the

01:25:29

Columbia Canada investment tree has

01:25:32

a soft obligation on human

01:25:34

rights and corporate social responsibility.

01:25:35

That was almost twenty years

01:25:38

ago. And what what what

01:25:41

what is concerning is that

01:25:46

in 20 years? We're still

01:25:50

the most modern investment treaty

01:25:53

in in human rights and

01:25:56

corporate social responsibility is is

01:25:58

this one and there should

01:26:00

be progress in terms of

01:26:01

the Colombian bilateral investment treaty.

01:26:04

So no formerly formerly. We

01:26:07

have no strategy at some

01:26:09

stage. We we we who

01:26:11

sponsored The Proposal proposal in

01:26:12

Congress for the p i

01:26:14

t would have a human

01:26:15

rights obligations for investment for

01:26:18

investors and informally were saying

01:26:20

this should be done. You

01:26:21

should be done within the

01:26:22

Columbian bilateral investment treaty. I'm

01:26:25

not wait not wait until

01:26:27

the The model comes from

01:26:31

Europe or comes from somewhere

01:26:33

else because these are discussions

01:26:34

that are intimate to to

01:26:38

the concerns of Columbia. There's

01:26:42

indigenous populations. There's a journeyman's

01:26:45

of fauna and Flora and

01:26:47

Life to protect in Colombia.

01:26:49

There are so many reasons

01:26:50

why Columbia should include this

01:26:52

type of application. So two

01:26:54

years ago in the 204.

01:26:55

It might have made better

01:26:57

know this two or three

01:26:58

years ago were proposed this

01:27:00

in Congress and that wasn't

01:27:02

adopted hopefully under current circumstances

01:27:05

at the Myrtle Beach food

01:27:08

include a provision on that

01:27:09

and I'm not going to

01:27:13

go into the into into

01:27:16

describing each one of these

01:27:17

Provisions that are hardly you

01:27:20

can read them if it's

01:27:20

going to the next This

01:27:24
is this is the article

01:27:26
that that is being proposed.

01:27:27
It reads the investors shall

01:27:30
respect the minimum International environmental

01:27:33
Labour and human rights standards

01:27:36
when making and operating its

01:27:39
investments in the whole state.

01:27:42
I don't think perhaps you

01:27:44
can be calibrated. But that

01:27:48
is I believe a an

01:27:51
article that that could provide

01:27:53
sufficient grounding at for the

01:27:56
time that if a tribunal

01:27:58

finds itself. Yes, I have

01:27:59

jurisdiction and then it goes

01:28:01

into the next step this

01:28:02

article would would include sit

01:28:04

but they have to at

01:28:06

least not now is not

01:28:07

whether they could not they

01:28:09

have to respect human rights

01:28:10

and that has that could

01:28:13

have liability implications for the

01:28:16

investor. It could have damaged

01:28:18

has implications for the investor

01:28:19

and then the question becomes

01:28:20

which is what what the

01:28:22

government that was three years

01:28:23

ago. Not this one to

01:28:25

pass one. Why why do

01:28:29

we need this? wooden. Tracy

01:28:36

negative effect of of of

01:28:37

of scaring the investors and

01:28:43

and and stop the capital

01:28:47

Imports and the answer to

01:28:49

that is What are the

01:28:52

government what do you want?

01:28:54

Do you want qualified investment

01:28:56

that is respectful of the

01:28:58

environment of Human Rights and

01:29:00
sophisticated green type of investment

01:29:03
or do you want any

01:29:04
type of investment and I

01:29:06
think the answer is always

01:29:07
so I see no reason

01:29:11
why she has no hard

01:29:16
for investment abbreviation for the

01:29:19
investors. when you put this

01:29:24
on the ground at with

01:29:26
Council for investors, and some

01:29:29
of them are friends and

01:29:30
in credibly smart, the the

01:29:33
objection is well, you already

01:29:34

have that to local law

01:29:36

that may be true to

01:29:38

some extent by the fact

01:29:40

is that as I said

01:29:41

before tribunals are very Timid

01:29:46

in applying simply local law

01:29:48

when when deciding marriage and

01:29:51

and if you need a

01:29:53

support for that statement about

01:29:56

four or five years ago

01:29:57

at published a book chapter

01:30:00

on counterclaims and the finding

01:30:03

was that most of the

01:30:04

counters names that relied on

01:30:06

local law where all timidly

01:30:08

not embraced by the tribunal

01:30:11

to make any Merit base

01:30:15

decision. So next one, which

01:30:22

is the final one. So

01:30:26

so this is this is

01:30:27

only how to do things.

01:30:28

So one of the big

01:30:30

objections when you when you

01:30:33

think work because when you

01:30:36

think about including investor obligations

01:30:39

on respect of human rights

01:30:42

in an investment treaty is

01:30:44

that an investment treaty or

01:30:46

a Treaty definition is a

01:30:49

instruments of a public international

01:30:51

law, which is negotiated and

01:30:55

agreed upon between two parties

01:30:57

one state and another estate

01:30:59

Adventure. You can also make

01:31:02

a treaty with the organization

01:31:05

or a corporation or not.

01:31:11

A subject of public international

01:31:13

law at least not a

01:31:15

classic one. So they do

01:31:17

not negotiate treaties so that

01:31:19

the obligations that come from

01:31:21

the the treaty in principle

01:31:24

are not binding on an

01:31:26

individual's because they don't sign

01:31:27

it right. So why do

01:31:29

the challenges how to make

01:31:32

sure that the individual or

01:31:34

the corporation provides their consent

01:31:36

to respecting international human rights

01:31:40

under the bitso is to

01:31:46

include an Annex a confirmation

01:31:52

of investor obligations the way

01:31:54

it would work is Even

01:31:57

though the treaty is between

01:31:59

two states. You have the

01:32:01

treaty on the one hand

01:32:02

and then the trephine only

01:32:07

the states that say Canada

01:32:08

and let's say Columbia and

01:32:10

who are they? New Zealand

01:32:19

and New Zealand And and

01:32:28

and there's a dispute at

01:32:30

the time when the request

01:32:33

arbitration is submitted the treaty

01:32:36

would require that they also

01:32:37

submit an Annex in which

01:32:39

they confirmed that they are

01:32:41

bound to respect investor-state obligations.

01:32:44

It is very investment investor

01:32:46

obligations on human rights. If

01:32:48

they do not consent to

01:32:50

that if you do that

01:32:51

as a requirement of consent

01:32:53

for the investor for the

01:32:55

for the state then the

01:32:58

requirements for there to be

01:33:00

a consent by the state

01:33:02

would not be complied with

01:33:03

so on the one hand

01:33:06

you have an offer of

01:33:07

the state and the offer

01:33:08

says You can submit a

01:33:12

dispute on investment to arbitration

01:33:14

if you comply with this

01:33:16

requirement. Have you ever had?

01:33:20

once the investor says I

01:33:24

accept your your your offer.

01:33:29

It has to comply with

01:33:31

that requirement in order for

01:33:33

the exception of the operate

01:33:35

a wood that you would

01:33:37

not normally have the state's

01:33:38

consent, but also the investors

01:33:41

consent to comply with investor

01:33:43
obligations on human rights and

01:33:46
with that my timer, thank

01:33:49
you. Thank you for company.

01:33:52
So I would like to

01:33:54
a last question to each

01:33:56
of our panelists. It will

01:33:57
be the same question for

01:33:58
all of you. So you

01:33:59
will have only Thirty Seconds

01:34:01
to hear or analyze human

01:34:17
rights arguments on investments arbitration

01:34:20
case, so maybe I'm not

01:34:27
in addition to the proposal

01:34:28

that too has been explained

01:34:30

in detail out. I would

01:34:32

say greater awareness of of

01:34:35

of of basic principles of

01:34:39

public international law and human

01:34:41

rights. I think the. That

01:34:43

would would would take us

01:34:45

very far when I already

01:34:48

refer to their decision the

01:34:51

tools are there. Unfortunately the

01:34:54

word not not fully used

01:34:55

by by by the tribunal

01:34:57

but I strongly think that

01:35:00

there is some level of

01:35:02

sinus bye-bye tribunals of making

01:35:08

your making the connection between

01:35:10

no investors that is not

01:35:12

a sign. It's not a

01:35:15

separate World from public International.

01:35:17

It is part of public

01:35:19

international law and human rights

01:35:22

are making the connection. Would

01:35:28

would would take us a

01:35:30

long way? I will do.

01:35:33

I think creativity to do

01:35:36

these kinds of connections that

01:35:38

was Antonio and the other

01:35:39

colleagues have just mentioned attitude.

01:35:41

It's in the unit also

01:35:42

have like some kind of

01:35:43

attitude to to engage in

01:35:45

discussions on my my my

01:35:47

13 keys. I think with

01:35:50

that we should move forward

01:35:52

from to get like kind

01:35:53

of pure theory of Law

01:35:55

and not be naive that.

01:35:57

That's always neutral tabloids impartial.

01:36:00

So we need to take

01:36:02

me to remind her also

01:36:03

political discussions. So I invite

01:36:06

practitioners negotiators academics because that

01:36:14

would also give us back

01:36:15

the context the whole pictures

01:36:16

when we have these kinds

01:36:17

of discussions. I think that

01:36:21

we mainly need two things.

01:36:22

The first is tools we

01:36:24

need tools and investment arbitrations

01:36:27

that kind of open the

01:36:28

door a little bit First

01:36:29

Dates 2% human rights and

01:36:32

environmental defenses in investment arbitration

01:36:35

cases and also 2% counterclaims,

01:36:38

if that's the case and

01:36:41

the state has a strong

01:36:42

case in a counterclaim against

01:36:44

an ambassador, but it also

01:36:47

thing we need courage and

01:36:48

courage from The representatives of

01:36:53

the state of the representatives

01:36:55

of the investors. They are

01:36:58

I think that they also

01:36:59

need to be aware of

01:37:00

the trends that are happening

01:37:04

any bus in arbitration. I

01:37:06

mean International arbitration in general

01:37:07
and I think we also

01:37:09
need courage from the tribunal's

01:37:10
I think that the decision

01:37:15
was a decision that was

01:37:17
a split decision taken by

01:37:20
the president was the arbitrator

01:37:24
appointed but Columbia, which was

01:37:25
Philip chance we have already

01:37:26
auditions, but I think that

01:37:30
we need courage from the

01:37:31
arbitrator's to actually be able

01:37:33
to put a Step Beyond

01:37:36
and keep full feeling. I'm

01:37:40

moving the ball regarding human

01:37:43

rights and environmental defensive investment

01:37:47

application. 255 Wards in 30

01:37:52

seconds to say if I

01:37:54

got it in there s

01:37:55

soap formation accompaniment and a

01:37:59

reminder. So I think we

01:38:02

should entirely and the Arbiters

01:38:05

actually have in mind or

01:38:06

take into consideration when they're

01:38:08

interpreting treaties the end of

01:38:15

Batman for development 24-hour Estates.

01:38:18

We don't want investment for

01:38:19

the sake of investment itself

01:38:20

and that conditions that kind

01:38:22

of investment and therefore that's

01:38:24

Hive of bees hang of

01:38:25

trees we want to endorse.

01:38:27

So I think that would

01:38:32

bother was right in the

01:38:33

sense that there were no

01:38:35

obligations. I wouldn't like the

01:38:38

Fortress 3 navigation for States

01:38:40

like in human rights and

01:38:44

therefore we need better the

01:38:45

scent of pretty but we

01:38:47

need to take it. Las

01:38:52

estancia's our responsibilities are mandatory

01:38:55

for state or even if

01:38:57

they're among the 34 investors,

01:38:58

of course would suggest the

01:39:02

last one that is the

01:39:03

most creative in a brace

01:39:05

of that Edition fighting is

01:39:07

going to be very hard

01:39:08

to reach consensus on. And

01:39:10

we have to overcome the

01:39:11

problem also of legal personality

01:39:13

of investors writing that idea.

01:39:15

Where can I locate obligations

01:39:17

on investors to retrieve the

01:39:18

right word formation. This is

01:39:21

my role as a professor

01:39:22

and we need to form

01:39:24

better International lawyers that have

01:39:26

the general idea in mind

01:39:29

that always human rights special

01:39:30

occasion or investment is vis-a-vis

01:39:37

10 of a right and

01:39:40

last ate the last two

01:39:42

accompaniment at we need more

01:39:44

help to investors like that

01:39:47

since I was doing With

01:39:52

the social expectations and law

01:39:54

but they're unclear even in

01:39:56

the trees by themselves. So

01:39:58

we need a lot of

01:39:58

more accompaniment to them and

01:40:01

finally my fat last before

01:40:03

it reminder set reminder that

01:40:05

investment is not the ideal

01:40:07

system for human rights issues.

01:40:09

Right? I mean, we would

01:40:11

love to see more of

01:40:11

these but they're not the

01:40:13

DLCs can we would prefer

01:40:14

you bring system for human

01:40:17

rights issues, but more is

01:40:19

here better. So why not

01:40:21

and you really do have

01:40:23

a new investment at better

01:40:25

than nothing for baking soda?

01:40:30

Well, thank a thank you

01:40:31

for the Antonio Santiago that

01:40:34

have to run to the

01:40:35

airport for your grade. And

01:40:38

of course, thank you for

01:40:40

participants to join us for

01:40:41

decide. You're welcome to stay

01:40:43

for the next month. I



01:40:44
will start being 5 10

01:40:45
minutes.