

TABLE OF CONTENTS

PREFACE	
Albert Jan van den Berg, General Editor	v
ICCA CONGRESS 2016	vii
TABLE OF CONTENTS	ix
KEYNOTE ADDRESS: In Defense of Bilateral Investment Treaties	
Judge Stephen M. Schwebel	1

Opening Plenary Session

Chairs: Lucy Reed and Meg Kinnear
Rapporteurs: James Freda and Tobias Lehmann

Setting the Scene: What Are the Myths? What Are the Realities?
What Are the Challenges

James Freda and Tobias Lehmann	
Report on the Opening Plenary Session	15
Annex: “Precision” and “Justice” Stream Panel Propositions	22

Arbitration and Decision-Making: Live Empirical Study

Susan D. Franck, James Freda, Kellen Lavin, Tobias Lehmann and Anne van Aaken	
International Arbitration: Demographics, Precision and Justice	33
Annex: Survey Materials	121

A. PRECISION STREAM

A-1 Proof: A Plea for Precision

Chair: David Brynmor Thomas
Rapporteur: Timothy L. Foden

Anne Véronique Schlaepfer	
The Burden of Proof in International Arbitration	127

TABLE OF CONTENTS

Jennifer Smith and Sara Nadeau-Séguin The Illusive Standard of Proof in International Commercial Arbitration	134
Richard Kreindler Practice and Procedure Regarding Proof: The Need for More Precision	156
<i>A-2 Early Stages of the Arbitral Process: Interim Measures and Document Production</i>	
<i>Chair: John Barkett</i>	
<i>Rapporteur: Natalie Reid</i>	
Natalie L. Reid and John Barkett Report on the Session Early Stages of the Arbitral Process: Interim Measures and Document Production	185
Murray L. Smith Reliance Document Management	190
Stephen L. Drymer and Valérie Gobeil Document Production in International Arbitration: Communicating Between Ships in the Night	205
Nicolas Swerdloff, Hagit Elul and Andreas Baum Arbitrators' Power to Sanction Non-Compliance in Discovery in International Commercial Arbitration	221
Hilary Heilbron QC Interim Measures in International Commercial Arbitration – Useful Weapon or Tactical Missile: By What Standards Should Arbitral Tribunals Fire the Shots?	241
Francisco González de Cosío Interim Measures in Arbitration: Towards a Better Injury Standard	260
Robert Sills The Continuing Role of the Courts in the Era of the Emergency Arbitrator	278

TABLE OF CONTENTS

A-3 Matters of Evidence: Witness and Experts

Chair: Nathalie Voser

Rapporteur: Nicholas Lingard

Nicholas Lingard	
Report on the Session Matters of Evidence: Witness and Experts	299
Laurence Shore	
Do Witness Statements Matter – And If So, How Can They Be Improved?	302
Judith Levine	
Can Arbitrators Choose Who to Call as Witnesses? (And What Can Be Done If They Don't Show Up?)	315
Santiago Dellepiane, Lucia Quesada and Pablo T. Spiller	
A Primer on Damages Assessment: Towards a Framework for Fair Compensation	357
Howard Rosen	
How Useful Are Party-Appointed Experts in International Arbitration?	379
Annex I: Sachs Protocol and Traditional System	409
Annex II: Arbitration Rules and the Expert Witness	411
Annex III: Summary of Valuation Approaches in ICSID Decisions	417
Annex IV: Spreadsheet for Joint Expert Meetings	429

A-4 Treaty Arbitration: Pleading and Proof of Fraud and Comparable Forms of Abuse

Chair: Klaus Reichert SC

Rapporteur: Elizabeth Karanja

Klaus Reichert SC	
Introduction to the Session Treaty Arbitration: Pleading and Proof of Fraud and Comparable Forms of Abuse	433
Elizabeth Karanja	
Report on the Session Treaty Arbitration: Pleading and Proof of Fraud and Comparable Forms of Abuse	439
Aloysius Llamzon and Anthony Sinclair	
Investor Wrongdoing in Investment Arbitration: Standards Governing Issues of Corruption, Fraud, Misrepresentation and Other Investor Misconduct	451

TABLE OF CONTENTS

Utku Coşar	
Claims of Corruption in Investment Treaty Arbitration: Proof, Legal Consequences and Sanctions	531

Carolyn B. Lamm, Eckhard R. Hellbeck and M. Imad Khan	
Pleading and Proof of Fraud and Comparable Forms of Abuse in Treaty Arbitration	557

B. JUSTICE STREAM

B-1 Who Are the Arbitrators?

Chair: Adriana Braghetta

Rapporteur: Ricardo Dalmaso Marques

Ricardo Dalmaso Marques	
“To Diversify or Not to Diversify”? Report on the Session Who Are the Arbitrators?	579

Christophe Seraglini	
Who Are the Arbitrators? Myths, Reality and Challenges	589

Darius J. Khambata	
Tensions Between Party Autonomy and Diversity	612

Jacomijn J. van Haersolte-van Hof	
Diversity in Diversity	638

V.V. Veeder	
Who Are the Arbitrators?	652

*B-2 Premise: Arbitral Institutions Can Do More to
Further Legitimacy. True or False?*

Chair: Salim Moollan

Rapporteur: Belinda McRae

Belinda McRae	
Introduction to the Session Arbitral Institutions Can Do More to Foster Legitimacy. True or False?	663

Survey: Arbitral Institutions Can Do More to Foster Legitimacy. True or False?	667
---	-----

TABLE OF CONTENTS

***B-3 Treaty Arbitration: Is the Playing Field Level and Who Decides
Whether It Is Anyway?***

***Chair: Anna Joubin-Bret
Rapporteur: Neeti Sachdeva***

Catherine M. Amirfar	
Treaty Arbitration: Is the Playing Field Level and Who Decides Whether It Is Anyway?	755
Annex: Bibliography of Empirical Studies Regarding BITs and FDI	774
David D. Caron	
Investment Disputes and the Public Interest	776

***B-4 Universal Arbitration: An Aspiration Within Reach or a
Sisyphean Goal?***

***Chair: Dushyant Dave
Rapporteur: Kathleen Claussen***

Kathleen Claussen	
Report on the Session Universal Arbitration: An Aspiration Within Reach or a Sisyphean Goal?	785
Stephan W. Schill	
Developing a Framework for the Legitimacy of International Arbitration	789

***Plenary Session: Spotlight on International Arbitration in Miami
and the United States***

***Chair: John Barkett
Rapporteur: Frank Cruz-Alvarez***

Frank Cruz-Alvarez	
Introduction to the Session Spotlight on International Arbitration in Miami and the United States	831
Eduardo Palmer	
Miami's Favorable International Arbitration Climate	837
Rachael Kent and Marik String	
Availability of Class Arbitration Under US Law	853

TABLE OF CONTENTS

Jack J. Coe Jr.
A Progress Report on the Restatement of the Law (Third) on the
U.S. Law of International Commercial Arbitration 877

Daniel E. González and María Eugenia Ramírez
Enforcement of International Arbitral Awards in Florida and the
United States: Judicial Consistency 881

*Breakout Sessions on Arbitral Legitimacy: The Users’
And Judges’ Perspectives*

*Chairs: José Astigarraga, Melanie van Leeuwen, Joseph Matthews and
Edna Sussman*

*Rapporteurs: Luis González García, Amanda Lees, Ruth Mosch and
L Andrew S. Riccio*

Amanda Lees, Luis González García, L Andrew S. Riccio and Ruth Mosch
Report on the Breakout Sessions on Arbitral Legitimacy:
The Users’ and Judges’ Perspectives 901

*Lunch Seminar:
Latin America: Hottest Issues, Country by Country*

Chair: R. Doak Bishop

Rapporteur: Ricardo Dalmaso Marques

Ricardo Dalmaso Marques
Report on the Lunch Seminar Latin America: Hottest Issues,
Country by Country 913

*Lunch Seminar:
Power of Arbitration to Fill Gaps in the
Arbitration Agreement and Underlying Contract*

Chair: John H. Rooney, Jr.

Rapporteur: Elodie Dulac

Alan Scott Rau
“Gap Filling” by Arbitrators 935

Cristiano de Sousa Zanetti
Filling the Gaps: A Civil Law Tradition 1006

TABLE OF CONTENTS

Closing Plenary

Rapporteurs: James Freda and Tobias Lehmann

Legitimacy: Examined Against Empirical Data

Chair: Jan Paulsson

James Freda and Tobias Lehmann
Report on the Closing Plenary Session 1027

Where We Have Been, Where We Should Go

Chair: Albert Jan van den Berg

Sundaresh Menon SC, Chief Justice of Singapore
Where We Have Been, Where We Should Go 1033

LIST OF PARTICIPANTS 1041

LIST OF ICCA OFFICERS AND GOVERNING BOARD MEMBERS 1097

