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

**A-2 Early Stages of the Arbitral Process: Interim Measures and Document Production**

*Chair: John Barkett*  
*Rapporteur: Natalie Reid*

Natalie L. Reid and John Barkett  

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 Vosser  
**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
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  
Pleasing 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

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

V.V. Veeider  
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?*  
Annex: Bibliography of Empirical Studies Regarding BITs and FDI

David D. Caron  
*Investment Disputes and the Public Interest*

**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?*

Stephan W. Schill  
*Developing a Framework for the Legitimacy of International Arbitration*

**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*

Eduardo Palmer  
*Miami’s Favorable International Arbitration Climate*

Rachael Kent and Marik String  
*Availability of Class Arbitration Under US Law*
# TABLE OF CONTENTS

Jack J. Coe Jr.

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

**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

xiv
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