A few thoughts and (critical) comments on the ICC Commission Report for Construction Industry Arbitrations
Introductory (provocative?) remarks

• Has international Arbitration started to **overflow** with Reports, Best Practice Guides, and Guidelines?

• Is there actually a risk that arbitration loses its key element of **flexibility** and derails towards “**judicialization**”?  

• Within this context, how easy is it, in practice, to say that the expression “**there is no single right way to conduct a construction arbitration**” (and an arbitration in general) holds true?
Case Management Conference

• It is absolutely necessary in all (?) construction arbitrations.
• We need more than one Case Management Conferences (the second maybe more important than the first one).
• A Case Management Conference’s efficiency fully depends on the extent of the arbitrators’ knowledge of the dispute.
Timetable, practicability of steps and hearing date / procedures

• Due process vs expeditiousness & cost efficiency
• Is this a real or a pseudo-dilemma?
• If one has to choose, one must choose in favor of due process.
Splitting the case (Bifurcation)

• Splitting the case needs to be carefully considered.
• Several criteria should be taken into account.
• “In dubio pro non-splitting the case”
Witnesses

• “Fake” experts vs witnesses of facts (What should be the best approach?)
Experts

• By no means substitution of the Arbitral Tribunal
• Best efforts so as the parties agree on issues and facts upon which expert opinion is required
• Party-appointed vs Tribunal-appointed experts (another pseudo-dilemma? - key issues “party autonomy”, “transparency”, “interaction”)
Arbitrators’ contribution to settle the dispute

• Arbitrators’ contribution to the dispute’s settlement is a “taboo” we have not yet fully overcome.
Arbitrators – Counsels/Parties

• “It takes two to tango”

• What counsels expect from arbitrators?

• What arbitrators expect from counsels?

• The goal is to fully satisfy, or at least make our best efforts to satisfy everyone’s expectations.

• Arbitration is not only as good as the arbitrators, but also as good as the level of fulfillment of both arbitrators and counsels/parties expectations.
Thank you