CONTENTS

List of Figures  page xi
List of Tables  xii
List of Contributors  xiii
Foreword  xix
Hugh Thirlway

1 Unseen Actors in International Courts and Tribunals: Challenging the Legitimacy of International Adjudication  1
Freya Baetens

PART I INSTITUTIONAL PERSPECTIVES 29

2 The International Court of Justice  31
Nathalie Wiles

3 The International Tribunal for the Law of the Sea  43
Philippe Gautier

4 International Arbitral Institutions  51
Bridie McAsey

5 The World Trade Organization  70
Daniel Ari Baker and Gabrielle Marceau

6 The International Criminal Court  92
Philipp Ambach

7 The European Court of Human Rights  108
Ledi Bianku and Peter Kempees

8 The Court of Justice of the European Union  121
Caroline Heeren
PART II NOMINATION AND APPOINTMENT 137

9 Gatekeeper Secretariats 139
KATHLEEN CLAUSSEN

10 Appointing Authorities: Self-Appointment, Party Appointment and Non-Appointment 164
PETER TZENG

11 Before The Law: Assessing the Process and Impact of Judicial Screening Bodies 189
BRIAN MCGARRY AND JOSEF OSTŘANSKÝ

PART III CASE MANAGEMENT AND DEFERENCE TO THE BENCH 215

12 The Essence of Adjudication: Legitimacy of Case Managers in International Arbitration 217
CHRISTINE SIM

13 Procedural Reforms at The Court of Arbitration of The International Chamber of Commerce: How to Ensure that Party Autonomy Will Continue Serving as a Legitimization Tool 238
GIACOMO MARCHISIO

14 Will an Investment Court Be a Better Fact-Finder? The Case of Expert Evidence 250
MATTHEW W. SWINEHART

15 Unseen and Unsung: Language Services at the International Criminal Court and Their Impact on Institutional Legitimacy 272
LEIGH SWIGART

16 Rights and Expertise: Assessing the Managerial Approach of the Court of Justice of the European Union to Conflict Adjudication 297
MARIE-CATHERINE PETERSMANN

PART IV CONFIDENTIALITY AND TRANSPARENCY 321

17 The Politics of Invisibility: Why Are International Judicial Bureaucrats Obscured from View? 323
TOMMASO SOAVE
## CONTENTS

18 Unseen Actors as Unseen Experts: Ghosts in International Adjudication 347  
**Guillaume Gros**

19 Arbitral Institutions’ Response to Perceived Legitimacy Deficits: Promoting Diversity, Transparency and Expedition in Investor-State Arbitration 371  
**Ksenia Polonskaya**

20 Identifying the Voices of Unseen Actors in Investor-State Dispute Settlement 392  
**Damien Charlotin**

### PART V  ETHICS AND ACCOUNTABILITY 427

21 Physicians’ Impact on the Legitimacy of the International Criminal Court 429  
**Giovanna Maria Frisso**

22 Screening Powers in Investment Arbitration: Questions of Legal Change and Legitimacy 452  
**Relja Radović**

23 Legitimacy and the Role of Legal Officers in Chambers at International and Hybrid Criminal Courts and Tribunals 475  
**Marko Divac Öberg**

24 The Référendaire as Unseen Actor: A Comparative Look at the Court of Justice of the EU, the US Supreme Court and International Arbitral Tribunals 496  
**Gillian Cahill**

### PART VI  EXTERNAL INFLUENCES AND ACTIVITIES 515

25 ‘Outside Activities’ and Workload Management as Unseen Actors (and Factors) in International Adjudication 517  
**Catherine H. Gibson**

26 The Legitimacy of Private Lawyers Representing States Before International Tribunals 544  
**Andreas R. Ziegler and Kabre R. Jonathan**

27 Online Reporters and Databases: Four Narratives of Their Roles in Investor-State Dispute Settlement 566  
**Pietro Ortolani**
CONTENTS

28 Bilateral Committees in EU Trade and Investment Agreements: Platforms for the Reassertion of State Control Over Investor-State Adjudication?  591
HANNES LENK

Epilogue: An Unseen Actor Speaks  611
Index  613