

Party-Appointed Experts in International
Commercial and Investment Arbitration
Impact on Proceedings, Problems and Solutions

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Introduction

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1 INTRODUCTION TO THE PROBLEM

In adjudication, legal disputes are resolved by judges or arbitrators, considering the facts of the case (*Vakîâ, Sachverhalt*) and ascertaining the relevant legal rules for the specific case. This act of the adjudicator is called *a subsumption*.⁽¹⁾

The establishment of facts⁽²⁾ is the first step in any case, without regard to its criminal, civil, or international law character. Judges and arbitrators need facts and the law to perform their decision-making duty.⁽³⁾ This is also true for international commercial arbitration⁽⁴⁾ and international investment arbitration⁽⁵⁾ disputes.⁽⁶⁾

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With the rightly established facts, the corresponding legal position can be determined (*Da mihi um, dabo tibi ius*).⁽⁷⁾,⁽⁸⁾ The arbitrator's duty can only be diligently fulfilled if the facts have been concretely established.⁽⁹⁾

The facts in an arbitration case are mainly derived from the parties' submissions.⁽¹⁰⁾ In addition, if the relevant procedure allows so, facts may be inquired by the arbitrators.⁽¹¹⁾

In principle, the parties to a dispute need to prove the disputed relevant facts.⁽¹²⁾ Proof is the act of convincing the arbitrator that the facts underlying the party's claim are genuine and honest.⁽¹³⁾ In addition to the facts, the law is also subject to proof in international disputes. To prove the facts, the parties must provide evidence.⁽¹⁴⁾ Evidence in arbitration cases mainly consists of documents, witnesses, expert opinions and sight or subject inspections.⁽¹⁵⁾

Facts are generally determined based on contractual terms, documents related to a contract and its performance such as price, delivery terms. Additionally, entity (private) records, public records, meeting notes and correspondence between parties are of essence.⁽¹⁶⁾ If the matters of the case are related to scientific, technical, or complex legal knowledge, experts are used to understand the facts and enable the arbitrators to obtain a better understanding thereof.⁽¹⁷⁾ The opinion of experts is a means of obtaining

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evidence that helps an arbitral tribunal establish the facts of a case or understand complex issues.⁽¹⁸⁾

A significant part of disputes in international commercial and investment arbitration⁽¹⁹⁾ involve more and more factual situations that require special or technical knowledge.⁽²⁰⁾ Moreover, complex legal issues may need to be critically opined on.

As a matter of fact, if arbitral tribunals want to assess facts to apply the corresponding legal rules correctly, the opinion of an architect and engineer in a construction dispute or an accountant in a financial dispute will be required unless the arbitrator has the required knowledge or understanding of the relevant subject.⁽²¹⁾

As statistics show, a significant portion of arbitrators across the globe are lawyers with extended knowledge in one or more industries.⁽²²⁾ Nevertheless, this knowledge rarely goes beyond a general understanding of industry-related issues.⁽²³⁾ Thus, at this stage, arbitrators will

need to use the experts' opinions in the form of a report while

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resolving the issues in the case and rendering the award because they will not have the relevant expertise to decide on the matter. ⁽²⁴⁾

Despite being able to research themselves from various sources or ask a fellow from the corresponding field, arbitrators are expected to rely on something other than their personal information, save for exceptional situations. ⁽²⁵⁾ In most arbitration laws and in practice, it is mandatory for an award to include reasoning. ⁽²⁶⁾ Since arbitrators must indicate, *inter alia*, the *ratio* on which the award is based, a firm ratio is sometimes only possible with the help of an expert opinion. ⁽²⁷⁾

Therefore, it is clear that experts assist arbitral tribunals in the adjudication process and, even indirectly, have the potential to imperatively influence the proceedings and impact their outcome. ⁽²⁸⁾

It is even argued that after the selection of arbitrators, choosing an expert is the second most crucial aspect of arbitral proceedings. ⁽²⁹⁾ The 2022 Queen Mary and Pinsent Masons survey revealed that 76% of the respondents selected technical expertise (tribunal/counsel/experts) as the most crucial procedural element once an arbitration commenced. ⁽³⁰⁾

A diligent arbitral tribunal would care about the personality and qualifications of the expert. For this reason, there is a strong argument that the experts and their reports

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should be impartial, independent, and objective, just as arbitrators or judges themselves are. However, as will be demonstrated below, in most scenarios, meeting these requirements is a challenging task for experts appointed by the parties.

As in litigation, in international commercial arbitration, experts are either appointed by the arbitral tribunal *ex officio* or, upon request, by the parties. International commercial arbitration is a field in which civil and common law legal traditions collide, and question marks appear in some areas.

Currently, in international arbitration proceedings, on average, experts are involved in two-thirds of arbitrations, and there is a tendency to rely more on party-appointed experts. ⁽³¹⁾ Experts are appointed by the parties in 90% of arbitrations and 10% of arbitrations by the tribunal. ⁽³²⁾ In particular, the expert opinion submitted by the parties leads to some problems (*party-appointed experts*). ⁽³³⁾

Where the experts are appointed by parties, realistically, the relevant party selects an expert who will strengthen their hand in terms of their case. ⁽³⁴⁾ Naturally, there is a beneficial relationship because the party will directly pay the expert. It is likely that this situation causes the expert to preserve his/her opinion and, as argued by practitioners and scholars, engage in some advocacy, which could lead to the expert not being impartial or independent and the report not being objective. ⁽³⁵⁾

Blackaby et al. assert that 'one of the most unsatisfactory features of procedure in international commercial arbitration is the prevailing practice whereby the parties present conflicting expert evidence on matters of complex technical opinion'. ⁽³⁶⁾

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The use of party-appointed experts is deemed a crucial part of international arbitration and not something that can be ostracised from the procedure. ⁽³⁷⁾ Contrary to procedural rules specific to evidence at state courts, the absence of regulations regarding the burden of proof, the standard of proof, the admissibility of or the weight to be given to expert opinion, and factors affecting admissibility or weight are the reasons for issues. ⁽³⁸⁾

A common framework that predictably regulates the use of party-appointed experts and their roles and duties in the process is needed. ⁽³⁹⁾ Due to the problems described above, the focus is to improve and strengthen the effective use of party-appointed experts through rules and methods.

In the United Nations Commission on International Trade Law (UNCITRAL) Model Law, statutory laws of states, ICSID Convention and Rules, UNCITRAL Arbitration Rules, and the rules of many arbitral institutions, provisions are minimal and mostly non-existent. ⁽⁴⁰⁾

Some of the arbitration institutions like the ICC, German Arbitration Institute (DIS) and Belgian Centre for Arbitration and Mediation (CEPANI) stand out in the world of international dispute resolution in terms of the level of a certain degree of specific rules governing expert nomination, selection and appointment, the factors to consider in selecting them and the procedures to be followed to ensure their use.

Additionally, the Chartered Institute of Arbitrator's Protocol for the Use of Party-Appointed Experts Witnesses in International Arbitration (CI Arb Protocol) and the IBA Rules on the Taking of Evidence in International Arbitration (IBA Rules) and the DIS Practice Note on the Use of Experts in Arbitration (DIS Practice Note) also merit special attention for its detailed rules on party-appointed experts, which are important and widely used in international disputes. ⁽⁴¹⁾

There must be coherence in practice governing different aspects of expert use and clarity in the rules and practices to be followed in this respect. ⁽⁴²⁾ The main aim of establishing rules and methods is to ensure the neutrality and objectivity of the experts and cost-efficiency in the proceedings, thereby leading to a more qualified result. ⁽⁴³⁾ In

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this regard, some non-binding rules and methods have been proposed to overcome the flaws related to experts. For example, the expert's impartiality and objectivity declaration, the experts joining together to prepare a joint opinion instead of a unilateral written report by each expert or expert conferencing.

However, more than non-binding rules and methods are required to ensure the effective functioning of the expert mechanism. In the absence of formal rules of evidence in arbitration, the lack of a code of conduct and the procedures governing experts vary between cases, which leads to critics even discussing the legitimacy of arbitration as a dispute resolution mechanism between investors and states. ⁽⁴⁴⁾ Hence, much more detailed legal provisions are needed in arbitration laws to strengthen the framework.

In addition, a mandatory examination procedure is required to prove that the rules and methods are working correctly. The arbitral tribunal and the parties will perform this procedure during the hearing phase. First, the arbitral tribunal should always examine the experts' competencies and experience and whether they understand the issues of dispute in the case, the facts and the subject for which a statement of expertise is sought. Subsequently, in the cross-examination process, the attorneys of the parties will cross-examine the expert presented by the opposing party and their opinion and will want to create a negative opinion before the arbitral tribunal regarding the competence, impartiality, and objectivity of the expert and, ultimately, the opinion he ⁽⁴⁵⁾ presented. Thus, it is necessary to conduct an examination when party-appointed experts have been relied upon.

At its 38th session, the United Nations Commission on International Trade Law (UNCITRAL) Working Group III requested the Secretariat to consider how possible work on 'damages and compensation' could be undertaken, stressing the role of experts (A/CN.9/1004, paragraph 104). Accordingly, the Working Group declared, among others, 'to consider whether to undertake work on the development of *treaty provisions, guidelines, or standards* for tribunals to address the following issues ... viii. The issue of the selection of experts and their ethical regime ...'

Thus, the question this book will try to answer is as follows: 'What principles, rules or methods can solve the issues arising out of the use of party-appointed experts?'

Considering the sources encountered in international arbitration, only some provisions refer to party-appointed experts, and no clear duties and obligations are codified in institutional rules and national laws. Thus, remedies against experts appointed by the parties are limited, and tribunals are left with the challenging task of assessing their competence to decide such issues, as well as assessing disqualification requests or, primarily, the weight of two different professional opinions. This leads to both parties' efforts being wasted and the tribunal being placed in a difficult position, which in the end results in timely and costly judgments. ⁽⁴⁶⁾

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2 AIM

This book aims to examine the importance and impact of both tribunal-appointed and party-appointed experts in the realm of international arbitration proceedings (*Chapters 1–2*), identify the problems resulting from the use of party-appointed experts in international arbitration proceedings (*Chapter 3*), examine the already proposed solutions to the issues (*Chapter 4*), and critically assess which solutions would overcome the shortcomings to the problems encountered in practice, especially to the problems that lead to inefficiency of the proceedings (*Chapters 4–5*).

In particular, this thesis aims to achieve the following objectives:

- Determining the underlying reasons that lead to problems in practice originating from the use of party-appointed experts.
- Suggesting solutions to the issues in practice arising from the use of party-appointed experts.
- Contributing to the more effective use of party-appointed experts in international arbitration proceedings.

- Preventing the annulment of arbitral awards and the denial of recognition and enforcement of arbitral awards due to issues relating to party-appointed experts.

3 SCOPE AND LIMITS

This thesis discusses both tribunal-appointed and party-appointed experts who have an essential place in international commercial and investment arbitration, their qualifications, functions and roles, impact on proceedings, problems and possible solutions within the scope of modern international commercial and international investment arbitration rules and practice. In principle, a comparison between court-appointed and tribunal-appointed experts and the use of experts before courts is not included in the scope of this study. The liability of experts in international arbitration will also not be examined.

The author is conscious that experts are being encountered in the proceedings at domestic courts in litigation, and many other international courts and tribunals such as the Court of Justice of the European Union (CJEU),⁽⁴⁷⁾ World Trade Organization (WTO),⁽⁴⁸⁾ International Court of Justice (ICJ),⁽⁴⁹⁾ Permanent Court of Arbitration (PCA), International Criminal Court (ICrC), the International Tribunal for the Law of the Sea

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(ITLOS),⁽⁵⁰⁾ and Iran-United States Claims Tribunal, however, will in principle not include those aspects, as it would enlarge the thesis to a multi-volume study. Nevertheless, references will be made in the footnotes as deemed fruitful since similarities can be drawn and applied uniformly in international dispute resolution.⁽⁵¹⁾ For convenience reasons, while referring to investment and commercial arbitration, the term 'international arbitration' will be used.

The relationships of the experts with the arbitral tribunal and the parties, their role in the proceedings, and their contribution to the formation of the arbitral award will be evaluated, considering various legislations, arbitration rules, and soft law instruments. Additionally, problems in practice will be discussed, and solutions will be proposed. Furthermore, after the arbitral award, the effect of the expert and the expert opinion on set-aside and recognition and enforcement procedures will also be examined.

In this direction, international rules and practices, as well as legislation, case law, and practices of many jurisdictions, such as Türkiye, Germany, Switzerland, England, the USA, France, and Singapore, will be analysed and examined within the scope of the study. In this respect, the court practices of experts in countries subject to different legal systems will be mentioned only in a limited way and to the extent necessary in order to understand the notion of experts, analyse similarities and draw conclusions to propose solutions to the problems.

4 RESEARCH METHODOLOGY

In this study, more than one research method was used, such as theoretical, comparative, and qualitative research. In this context, sources and elements of international arbitration proceedings, like statutes of states, international arbitration rules, court and arbitration decisions, guidelines, surveys, and doctrinal works, will be used.

Considering, researching and analysing all these data sets, the problems and elements that will serve a more effective and efficient use of experts will be determined theoretically and practically. In other words, possible issues in laws and rules will be determined from the relevant texts, expert-sourced problems in the arbitration practice will be determined by court decisions and arbitral awards published in free and paid databases, and suggestions will be presented to these problems both on the basis of norm (i.e., principles, guidelines, rules) and practice (i.e., method).

5 LITERATURE REVIEW AND GAP ANALYSIS

Among others, *Schneider, Jones, and Kantor* have been addressing the issues of international arbitration experts for more than 30 years.

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Kantor argued that 'no protocol or code can regulate the ability of a party to hire an expert who is just a good actor or actress'⁽⁵²⁾ and 'who is able to appear objective while delivering fundamentally partisan evidence'.⁽⁵³⁾

Although the IBA Rules and the CIArb Protocol have concretely tried to prevent the problems over the years, they have left unanswered how an expert can, in fact, be independent and not merely show independence.⁽⁵⁴⁾ The IBA Rules require the report to contain a statement on the party-appointed expert's independence. It is not clear from the language of Article 5 whether any lack of independence in that regard would disqualify or discredit the conclusions submitted by the party-appointed expert.

Thus, there appears to be a significant disagreement on certain aspects of the use of party-appointed experts in the arbitral procedure, while certain vital legal concepts relevant to experts have different meanings for different individuals involved in the same legal system. Disagreements range from the roles played by party-appointed or tribunal-appointed experts, the use of invisible experts, admissibility, the burden of proof and the merits of methods such as cross-examination to the definitions of terms such as independence, impartiality and neutrality.

References

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- 2 In this book, the phrase 'establishment of facts' is used rather than finding the facts, or fact-finding. For a critical evaluation of the term 'facts' used in international adjudication, see Bernardino, 'The Discursive Construction of Facts in International Adjudication'.
- 3 Kurkela, Turunen, and Conflict Management Institute, *Due Process in International Commercial Arbitration*, 174; Lew, 'The Need for Expert Evidence?', 246; Amaral, 'Burden of Proof and Adverse Inferences in International Arbitration: Proposal for an Inference Chart', 1; Feutrill and Rubins, 'The Preparation of Expert Evidence in International Commercial Arbitration: Practical Aspects', 314.
- 4 The term 'International commercial arbitration' in this thesis refers to the resolution of a commercial dispute between real and legal persons from two different states through arbitration. The term 'commercial' should be given a wide interpretation to cover not only matters arising from all contractual or non-contractual relationships of a commercial nature, but also ordinary relationships between non-commercial real or legal persons.
- 5 The term 'international investment arbitration' in this thesis refers to the resolution of a dispute between a real or legal person who is qualified as an investor according to the relevant legal instrument (Licence, Statute, Bilateral Investment Treaty or Multilateral Investment Treaty) and a state via arbitration. For more details, see Dolzer, Kriebbaum, and Schreuer, *Principles of International Investment Law*.
- 6) Knoblach, *Sachverhaltsermittlung in Der Internationalen Wirtschaftsschiedsgerichtsbarkeit*, 41.
- 7) Give me the facts and I will give you the law.
- 8) Kurkela, Turunen, and Conflict Management Institute, *Due Process in International Commercial Arbitration*, 142.
- 9) Grando, *Evidence, Proof, and Fact-Finding in WTO Dispute Settlement*, 10–11.
- 10) Pekcanitez and Yeşilirmak, 'Tahkim', 2704.
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- 13 Atalay, 'İspat', 1585–1586; Atalay, 'Delil Kavramı Üzerine', 129; Arslan et al., *Medenî Usul Hukuku*, 405; Alangoya, Yıldırım, and Deren-Yıldırım, *Medeni Usul Hukukunun Esasları*, 294.
- 14 Atalay, 'Delil Kavramı Üzerine', 130; Atalay, 'Pekcanitez Usûl', 2021, 1730; Yeğengil, *Tahkim (L'Arbitrage)*, 302; Akıncı, *Milletlerarası Tahkim*, 342; Ağırman, *Millî & Milletlerarası Tahkim*, 455; Redfern et al., 'The Standards and Burden of Proof in International Arbitration', 318.
- 15 Lew, Mistelis, and Kröll, *Comparative International Commercial Arbitration*, 564; Lew, 'The Need for Expert Evidence?', 246; Yeşilirmak, *Türkiye'de Ticari Hayatın ve Yatırım Ortamının İyileştirilmesi İçin Uyuşmazlıkların Etkin Çözümünde Doğrudan Görüşme, Arabuluculuk, Hakem-Bilirkişilik ve Tahkim: Sorunlar ve Çözüm Önerileri*, 114–115; Wach and Petsch, 'Der Sachverständigenbeweis Im Schiedsverfahren: Grenzen Der Gestaltungsfreiheit von Parteien Und Schiedsgericht', 91; Hacıbekiroğlu, *Milletlerarası Tahkim Hukukunda Deliller ve Delillerin Değerlendirilmesi*, 18; Akıncı, *Milletlerarası Tahkim*, 342; Korkmaz, 'Güncel Tartışmalar Ekseninde Tahkimde Tanık Delilinin Güvenilirliği', 647; Bacanlı, 'Bir Alternatif Uyuşmazlık Çözüm Yolu Olarak İstanbul Tahkim ve Arabuluculuk Merkezi (ISTAC) Tahkim Yargılamasında Delillerin İbrazi ve Değerlendirilmesi', 96; Hobér and Sussman, *Cross-Examination in International Arbitration*, 24–25.
- 16) Lew, 'The Need for Expert Evidence?', 247.
- 17 Kurkela, Turunen, and Conflict Management Institute, *Due Process in International Commercial Arbitration*, 169; Karadaş, *Ulusal (İç) Tahkim*, 182.
- 18 Weigand and Baumann, *Practitioner's Handbook on International Commercial Arbitration*, para. 1.281; Mosk, 'The Role of Facts in International Dispute Resolution (Volume 304)', 41. 'Sometimes the determination of facts is based on opinions – for example, the opinions of experts.'; Meier, 'Germany', 1, para. 5.
- 19) This argument is not exclusive to arbitration; it could also apply to other international courts and tribunals.
- 20 Born, *International Commercial Arbitration*, 2448; Blackaby et al., *Redfern & Hunter on International Arbitration*, para. 6.135. Schneider and Scherer, 'Art. 184', 2096; Wach and Petsch, 'Der Sachverständigenbeweis Im Schiedsverfahren: Grenzen Der Gestaltungsfreiheit von Parteien Und Schiedsgericht', 92; Khodykin and Mulcahy, *A Guide to the IBA Rules on the Taking of Evidence in International Arbitration*, 281; Proske, *Expert Witness Conferencing in Schiedsverfahren*, 1; Balkar, *Milletlerarası Ticari Tahkim ve Etik*, 165; Feutrill and Rubins, 'The Preparation of Expert Evidence in International Commercial Arbitration: Practical Aspects', 307.

- 21 Blackaby et al., *Redfern & Hunter on International Arbitration*, para. 6.133; Schütze, Tscherning, and Wais, *Handbuch Des Schiedsverfahrens: Praxis Der Deutschen Und Internationalen Schiedsgerichtsbarkeit*, 222; Akıncı, *Milletlerarası Tahkim*, 339; Abdel Wahab, 'Party Appointed Experts in International Commercial Arbitration', 181; Knoblach, *Sachverhaltsermittlung in Der Internationalen Wirtschaftsschiedsgerichtsbarkeit*, 189; O'Malley, *Rules of Evidence in International Arbitration*, 174; Ziya Akıncı and Ejder Yılmaz in Akıncı and Ekmen, 'Tartışmalar', 200–201; Can and Tuna, *Milletlerarası Tahkim Hukuku*, 412; Ağırman, *Milli & Milletlerarası Tahkim*, 459, 461; Geisinger, 'Advocacy in International Commercial Arbitration: What For?', 15; Meier, 'Germany', 3.1.2, para. 4; Borris et al., 'New York Convention, Article V [Grounds for Refusal of Recognition and Enforcement of Arbitral Awards]', para. 191; Ashford, *Handbook on International Commercial Arbitration*, 295; For instance, LMAA has a number of expert arbitrators in maritime dispute, see Erdoğan and Meral, 'Londra Deniz Ticareti Hakemleri Birliği(LMAA) Tahkimi İlişkin Genel Bir Değerlendirme', 1073.
- 22 Blackaby et al., *Redfern & Hunter on International Arbitration*, para. 6.135; Can and Tuna, *Milletlerarası Tahkim Hukuku*, 412; Industries such as energy, environment, intellectual property; ICC, ICC Arbitration and ADR Commission Report Resolving Climate Change Related Disputes through Arbitration and ADR, 2019, 19, para. 5.8 <https://iccwbo.org/wp-content/uploads/sites/3/2019/11/icc-arbitration-adr-commission-report-on-resolving-climate-change-related-disputes-english-version.pdf> (accessed 24 September 2025); In the construction industry, engineers and architects who have appropriate arbitral practice training, are also being appointed as arbitrators; O'Malley, *Rules of Evidence in International Arbitration*, 174; Abdel Wahab, 'Party Appointed Experts in International Commercial Arbitration', 183; Reiner and Aschauer, 'ICC Rules', 135; Knoblach, *Sachverhaltsermittlung in Der Internationalen Wirtschaftsschiedsgerichtsbarkeit*, 48–49; Uluç, *Corruption in International Arbitration*, 163.
- 23 Khodykin and Mulcahy, *A Guide to the IBA Rules on the Taking of Evidence in International Arbitration*, 281; Munday, *Cross & Tapper on Evidence*, 541.
- 24 Lew, 'The Need for Expert Evidence?', 246; see Wilske and Gack, 'Expert Evidence in International Commercial Arbitration', 88; Proske, *Expert Witness Conferencing in Schiedsverfahren*, 1; for the same view for quantum issues see Jones, 'Redefining the Role and Value of Expert Evidence', 39. See Lee, 'Selecting the Expert Witness as an Arbitrator in Patent Arbitrations'.
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- 27 Schütze, Tscherning, and Wais, *Handbuch Des Schiedsverfahrens: Praxis Der Deutschen Und Internationalen Schiedsgerichtsbarkeit*, 222.
- 28 Respondents in the recent 'Evidence in International Arbitration Report' released on 6 September 2023, overwhelmingly (82%) considered that experts have a significant impact on the outcome of the case. See Australian Centre for International Commercial Arbitration and FTI Consulting, 'Evidence in International Arbitration Report'; Tanriver, *Hukukumuzda Bilirkişilik*, 26; Wach and Petsch, 'Der Sachverständigenbeweis Im Schiedsverfahren: Grenzen Der Gestaltungsfreiheit von Parteien Und Schiedsgericht', 98; O'Malley, *Rules of Evidence in International Arbitration*, 168; Oetiker, 'Commentary on Art. 26-30 Swiss Rules of Arbitration', 313; Weiss and Bürgi Locatelli, 'Der Vom Schiedsgericht Bestellte Experte-Ein Überblick Aus Sicht Eines Internationalen Schiedsgerichts Mit Sitz in Der Schweiz', 499.
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- 30 '2022 International Arbitration Survey: Future of International Energy Arbitration Survey Report', 32.
- 31 For statistical proof see '2012 International Arbitration Survey: Present and Preferred Practices in the Arbitral Process', 26; Ünüvar, 'Experts: Investment Arbitration'; O'Malley, *Rules of Evidence in International Arbitration*, 145; Wilske and Markert, *Beck'scher Online-Kommentar ZPO*, § 1049 paras 9–10; Abdel Wahab, 'Party Appointed Experts in International Commercial Arbitration', 182; Webster and Bühler, *Handbook of ICC Arbitration: Commentary, Precedents, Materials*, 445; For reasons see Webster and Bühler, *Handbook of UNCITRAL Arbitration*, 421, 449, para. 29–04; Trittmann and Kasolowsky, 'Taking Evidence in Arbitration Proceedings Between Common Law and Civil Law Traditions', 330–340; Jones, 'Ineffective Use of Expert Evidence in Construction Arbitration', 2; Proske, *Expert Witness Conferencing in Schiedsverfahren*, 26.
- 32 '2012 International Arbitration Survey: Present and Preferred Practices in the Arbitral Process', 29; In another recent survey, 96% of respondents argued for a right to rely on party-appointed expert evidence in 'BCLP 2021 Survey', 9 ('BCLP Survey'); For similar results see IBA Arbitration Guidelines and Rules Subcommittee, 'Report on the Reception of the IBA Arbitration Soft Law Products', (International Bar Association, 2016), para. 45. (https://res.cloudinary.com/lbresearch/image/upload/v1474620896/soft_law_products_report_238116_954.pdf (accessed 24 September 2025)); Similarly Kurkela, Turunen, and Conflict Management Institute, *Due Process in International Commercial Arbitration*, 170.
- 33 To be dealt with in detail in Chapter 4; For critiques see Mosk, 'The Role of Facts in International Dispute Resolution (Volume 304)', 21.
- 34 The BCLP Survey shows that party-appointed experts are preferred in arbitration because parties and their representatives know more about the dispute and are more comfortable selecting the appropriate expert to assist them and the tribunal on the expertise required issues. The BCLP Survey was conducted with 289 international respondents, of whom the majority (75%) were from a common law background, and 44% were experts in various fields. See 'BCLP 2021 Survey', 17; Knoblach, *Sachverhaltsermittlung in Der Internationalen Wirtschaftsschiedsgerichtsbarkeit*, 280–281.
- 35 Kesikli, 'Milletlerarası Ticari Tahkimde Delillerin Değerlendirilmesi', 214.
- 36 Blackaby et al., *Redfern and Hunter on International Arbitration*, para. 6.138.
- 37 Nessi, 'Expert Witness: Role and Independence', 72; Roney, 'Cross-Examination of Experts', 111.

- 38) Mbengue and Das, 'Rules Governing the Use of Experts in International Disputes', 451; Yıldızlı, *Uluslararası Tahkimde Zararın Değerlendirilmesi*, 122.
- 39) Nessi, 'Expert Witness: Role and Independence', 72; Ünüvar, 'Experts: Investment Arbitration', para. 57.
- 40) Patocchi, Paolo Michele and Niedermaier, 'UNCITRAL Rules', 1183 fn. 529; Blackaby and Wilbraham, 'Practical Issues Relating to the Use of Expert Evidence in Investment Treaty Arbitration', 656; Waincymer, *Procedure and Evidence in International Arbitration*, 945; Abdel Wahab, 'Party Appointed Experts in International Commercial Arbitration', 191; Nessi, 'Expert Witness: Role and Independence', 101; Jones, 'Redefining the Role and Value of Expert Evidence', 24.
- 41) Only 35% of practitioners share the view, that the IBA Rules provide sufficient protection against party-appointed experts not being objective, in 'BCLP 2021 Survey', 9.
- 42) de Chazournes et al., 'The Expert in the International Adjudicative Process: Introduction to the Special Issue', 339.
- 43) Wach and Petsch, 'Der Sachverständigenbeweis Im Schiedsverfahren: Grenzen Der Gestaltungsfreiheit von Parteien Und Schiedsgericht', 92; Nessi, 'Expert Witness: Role and Independence', 101; Jones, 'Ineffective Use of Expert Evidence in Construction Arbitration', 4.
- 44) See Hodgson and Stewart, 'Experts in Investor-State Arbitration: The Tribunal as Gatekeeper', 458.
- 45) For better readability, the male form is used in the text. Nevertheless, all information in this document refers to members of both genders on equal terms.
- 46) Knoblach, *Sachverhaltsermittlung in Der Internationalen Wirtschaftsschiedsgerichtsbarkeit*, 282.
- 47) See Van Damme, 'The Assessment of Expert Evidence in International Adjudication', 402.
- 48) See Valles, 'Different Forms of Expert Involvement in WTO Dispute Settlement Proceedings', 367-378; Plant, 'Expert Evidence and the Challenge of Procedural Reform in International Dispute Settlement', 464-472.
- 49) See Bennouna, 'Experts Before the International Court of Justice: What For?', 345-351; White, *The Use of Experts by International Tribunals*, 109; see Corfu Channel (*United Kingdom of Great Britain and Northern Ireland v. Albania*) where the court made use of, among other, naval experts. <https://www.icj-cij.org/en/case/1> (accessed 3 June 2022).
- 50) See Gautier, 'Experts Before ITLOS: An Overview of the Tribunal's Practice'.
- 51) Mbengue and Das, 'Rules Governing the Use of Experts in International Disputes', 434.
- 52) Kantor, 'A Code of Conduct for Party-Appointed Experts in International Arbitration: Can One Be Found?', 335.
- 53) Kantor, 335.
- 54) Jones, 'Ineffective Use of Expert Evidence in Construction Arbitration', 7.

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