

**Expert Testimony - Method of Presentation of Evidence in
International Commercial Arbitration**

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Abstract

Present thesis aims to analyze an expert testimony as a method of presentation of evidence in the international commercial arbitration, particularly, evidence of the party- and tribunal-appointed experts.

The paper discusses the general features of the presentation of evidence by experts, requirements that they should suit, the procedure of the appointment of experts by parties and tribunal. Another issue of the vital importance in the presentation of experts' evidence described in the present paper is the methods of presentation of evidence. Methods analyzed in the paper encompass the written reports submitted by the experts, traditional and non-traditional methods of presentation of evidence by experts. The author investigated the methods of presentation of expert evidence and paid a special attention to expert joint conferencing as a recently emerged and frequently applied method that is currently rather efficient and popular in the presentation of evidence in arbitration.

The scope of the present thesis is to highlight the problems arising in the course of the presentation of evidence by experts and to suggest possible ways for their resolution. The importance of the topic of the present thesis is significant because arbitration has become an popular method of dispute resolution and expert testimony is an integral part of the process of presentation of evidence in arbitration, which needs more investigation.

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List of Abbreviations

AAA	American Arbitration Association
IBA	International Bar Association
IBA Rules	the Arbitration Rules on Taking of Evidence in the International Commercial Arbitration adopted by a resolution of the International Bar Association Council on June 1, 1999
ICC	The international Chamber of Commerce
ICC Rules	the Arbitration Rules of Conciliation and Arbitration of the International Chamber of Commerce, in force as from June 1, 1975
LCIA	London Court of International Arbitration
UNCITRAL	United Nations Commission for the International Trade Law
UNCITRAL Rules	the Arbitration Rules adopted on April 28, 1976 by the United Nations Commission on International Trade Law

INTRODUCTION

Arbitration as one of the methods of alternative dispute resolution is becoming more and more popular and taking into account its numerous advantages as a method of dispute settlement each day more parties decide to resort to it. The stage of presentation of evidence, in our case presentation of expert evidence, where necessary, is its inseparable part.

This is a matter of nature of the dispute when the expertise in determination of facts and issues that require special knowledge is needed which can make parties resort to assistance of the expert. Consequently, it makes the expert's participation in the arbitration proceedings unavoidable. In those cases when the expert in the particular field should be called for assistance, the knowledge of details of his appointment as well as the problems that may arise thereafter is of significant help for the parties of the arbitration.

Objective of the current research is to clarify the most important issues of the expert presentation of evidence in the international commercial arbitration. The research starts from the terminological definition of the expert and specification of the requirements to him/her. In the conclusion of the paragraph, the role of the expert in the presentation of evidence is emphasized. The paper also discusses the common issues and differences in the presentation of expert evidence in the countries of common law and civil law tradition. Next chapters discuss the appointment of experts by the tribunal and the parties, as well as particular methods of presentation of expert evidence and examination of experts, such as direct examination in the form of written/oral expert report and the hearing of the expert, expert's cross-, redirect, recross-examinations.

The above-mentioned issues are investigated through comparison of the clauses of the arbitration rules. The comparison helped expose the existing discrepancy in different rules and specify the significant differences on appointment of experts and obtainment of evidence from them, if any exist, which helps determine the problems arising out of that discrepancy.

The present paper makes an attempt to provide the conditional classification of the types of the problems arising out of the presentation of evidence by experts. Moreover, the possible approaches to the resolution of the mentioned problems are also determined.

The sources used for the current research encompass the major arbitration rules (the AAA, IBA, ICC, LCIA, UNCITRAL Rules), books and articles of the well-known and respected scholars and practitioners (Thomas E. Carbonneau, Martin Hunter, Alan Redfern, Tibor Varady, *etc*), as well as relevant cases and internet databases.

The methodology of the present thesis consists of the comparative legal method, legal analysis and legal modeling methods.

1 General Overview of Presentation of Evidence by Experts

1.1 Requirements to Experts and their Role in International Commercial Arbitration

One of the reasons the parties opt for arbitration is because the arbitrators as a rule possess special knowledge needed for the resolution of the particular case. However, in case the arbitral tribunal does not possess proper expertise in the particular field, the tribunal should refer to the assistance of the expert. According to R. Pietrowski, expert evidence along with other areas, is also used to prove such matters as content of the municipal law, correct translation of the foreign legislation, variations in the geographical names.¹ When the tribunal needs the opinion in a particular area, it has two methods of action: to appoint its own expert/experts or parties can appoint their own experts. In either case experts should be independent and objective in their opinion.² The third method can be derived from the second one when the parties appoint their own expert and his evidence appears to be in conflict after its cross-examination or any other method of its testing, the tribunal can appoint its neutral expert who will evaluate the evidence given by the party-appointed expert. The number of the experts the parties can appoint is limited and the parties usually decide this number in advance.³

“Expert is a person who has specialized knowledge based on his or her training, study or experience and may give opinion evidence that is wholly or substantially based on that knowledge.”⁴

“An expert is defined as anyone who has special knowledge of a certain subject and is, accordingly, capable of giving an authorized opinion on a fact or matter within the scope of his knowledge.”⁵

¹ Robert Pietrowski, “Evidence in International Commercial Arbitration”, *Arbitration International* 22, no. 3 (2006): 396.

² Pietrowski, *supra* note 1, at 397.

³ Alan Redfern, Martin Hunter, Nigel Blackaby, and Constantine Partasides, *Law and Practice of International Commercial Arbitration*, 4th ed. (London: Sweet&Maxwell, 2004), 309.

⁴ Stephen Mason, *Electronic Evidence. Disclosure, Discovery and Admissibility*, 1st ed. (United Kingdom: LexisNexis Butterworths, 2007), 124.

Judging by the above stated, the testimony the expert is giving about the particular disputed issues should be related to the area of his expertise and he cannot give the testimony on the issues that are outside of that area.

It should be emphasized that not only an individual but also an organization can be an expert.⁶ The expert must be independent and neutral.⁷ Moreover, the person shall qualify for becoming an expert. According to R. Kreindler, expert's qualification should suit the following criteria (availability of one or more criteria): appropriate knowledge, skills, experience, training, education or qualifications.⁸ At the beginning of the testimony the tribunal should clarify whether the expert suits the above mentioned requirements. In order to support the stated requirements the expert should be required to submit an appropriate proof: diploma or certificate can be the proof of knowledge, training and education. For the qualifications the experts have to submit any document confirming academic qualifications, publications, papers written while studying or going through a training, proof of membership of professional or other relevant institutions.⁹ As regarding the experience, the following proofs should be taken into account: work experience in the same area, as the area of expertise, employment history, current employment, duties, data about the number of cases the expert dealt with and a number of cases he/she testified in.¹⁰

⁵ Rafael Eyzaguirre Echeverria, "Evidence by Experts during Arbitration", in *Preventing delay and disruption of Arbitration; Effective Proceedings in construction cases*, Berg, Albert Jan van den (Deventer (the Netherlands): Kluwer Law and Taxation Publishers, 1991), 526.

⁶ Yves Derains et al., *A Guide to the New ICC Rules of Arbitration* (The Hague/London/Boston: Kluwer Law International, 1998), 260.

⁷ Derains, *supra* note 6.

⁸ Richard H. Kreindler, "Benefiting from Oral Testimony of Expert Witnesses: Traditional and Emerging Techniques", in *Arbitration and Oral Evidence*, ed. Laurent Levy, V.V. Veeder (Paris: ICC Publishing S.A., 2005), 94.

⁹ Documents for small business and professionals, "Expert witnesses", <http://www.docstoc.com/docs/18577964/EXPERT-WITNESSES> (accessed March 20, 2010).

¹⁰ *Ibid.*

The arbitral tribunal should decide whether the selected expert matches all the requirements for being appointed as an expert and give the testimony at the hearing.¹¹ However, R. Kreindler says the absence of experience or training solely cannot be the reason for disqualification of the expert, although his other qualifications (though not formal or academic) must match the area of the expertise.

When the witnesses give the testimony they should only give evidence about the facts that they know, which they witnessed and they are not allowed to evaluate those facts or give them any kind of meaning. After the witnesses give the evidence, only tribunal is entitled to evaluation of those facts and making the conclusion. Although this is not the case with the experts because the experts are called to evaluate the facts of the case on the basis of their appropriate education, training, etc. Moreover, the expert is not allowed to give the evidence about the issues that are within the common knowledge of the arbitral tribunal or on the final issues of the case.¹²

What is also relevant, the tribunal is not bound by the opinion of the expert, which bears the form of consultation rather than the binding conclusion. Moreover, the appointment of the expert, even on parties' request, is not binding for a tribunal and it resorts to it only in case the expert's help could be useful in establishing additional facts of the case.¹³

In the case *Starret Housing Corporation v. the Government of Islamic Republic of Iran* the matters of expert's qualifications and the character of expert's report were raised. In the case the tribunal after having checked expert's qualifications appointed him to conduct the expertise on the valuation of the claimant's property. Although, according to arbitrators, the expert's prior experience showed his professionalism in work, the parties questioned admissibility of the

¹¹Kreindler, *supra* note 8, at 95.

¹²Mason, *supra* note 4, at 353.

¹³Pietrowski, *supra* note 1, at 397.

evidence given in his report, although they did not challenge his qualifications. Nevertheless, the tribunal did not disqualify the expert from proceedings giving the reasoning in its award that in any case the expert's report could never be considered to be binding. The arbitral tribunal should always evaluate the report taking into account the admissibility, relevance and weight of the evidence that was offered in the report along with other circumstances of the case and the case should be resolved according to the convictions of the arbitrators with taking into account the parties' comments on it.¹⁴

Participation of experts in the arbitration, where unavoidable, plays a significant role. Experts are called to assist the tribunal where it does not possess relevant knowledge or has insufficient knowledge in the particular field. The experts either appointed by the parties or by the arbitral tribunal should stay impartial and neutral as concerning both tribunal and the parties, as well as expert's opinion on the disputed matters shall be objective and fair. Moreover, in order to be qualified as an expert and in order the evidence is admissible, it must be proved that the expert is competent enough and possesses appropriate knowledge or experience that help him analyze the disputed facts which the relies on in his/her reasoning.

1.2 Admissibility of Expert Evidence

The general rules regarding presentation of evidence in arbitration should be applied to the admissibility of the expert's evidence. As concluded in *Manday v. Protea Assurance* case¹⁵ in order for evidence to be admissible the expert shall be competent to conduct expertise and give his opinion, shall possess appropriate knowledge and experience or shall rely on the experience of the scholars in the same field. However, the expert cannot refer to the opinions of the other

¹⁴ *Starret Housing Corporation, et al. v. the Government of the Islamic Republic of Iran* (1987).

¹⁵ *Manday v. Protea Assurance* (1976).

scholars not possessing the proper knowledge himself. Moreover, the evidence presented by the expert shall be relevant and reliable concerning the facts of dispute.

According to Art. 9 of the IBA Rules on Taking of Evidence in International Commercial Arbitration the arbitral tribunal shall determine the admissibility of evidence presented in the arbitration. According to the rules, admissibility of the expert report means compliance with a number of criteria, such as relevance to proceedings, reliability, appropriate qualifications of the expert and his/her proper area of expertise.¹⁶ Another specific requirement regarding the admissibility of expert's evidence concerns the evidence given by the expert at the hearing that goes beyond the scope of his/her written report, which should be held inadmissible. However, if the opposing party will be granted sufficient time for preparation and presentation of its own evidence on the same issue, such evidence can be allowed and be held admissible.¹⁷

The case of *Egemetal v. Fuchs*,¹⁸ resembles the foregoing discussion about expert's required qualifications. In *Egemetal v. Fuchs*, the defendant challenged the admissibility of evidence presented by the tribunal-appointed expert on the following grounds: first, that he was not qualified to provide expert opinion evidence and, second, opinion provided by the expert was unreliable. Both were admitted as the admissibility criteria and were supported by the tribunal.

1.3 Comparison of Presentation of Evidence by Experts in Civil and Common Law Systems

The procedure of appointment of experts may differ in civil and common law systems. These differences are emphasized by a number of authoritative scholars, such as: M. Hunter¹⁹, M.

¹⁶ James S. Fellin and James A. Mercolini, "Accounting Experts and the Rules of Evidence". *Pennsylvania CPA Journal* 71, no. 3 (2000), <http://www.kluwerlaw.com/> (accessed March 20, 2010).

¹⁷ Redfern, *supra* note, at 313.

¹⁸ *Egemetal v. Fuchs*.

¹⁹ Martin Hunter, "Expert Conferencing and New Methods in International Arbitration 2006: Back to Basics?", in *International Commercial Arbitration. A Transnational Perspective* by Tibor Varady, John J. Barcelo III, Arthur T. von Mehren (USA: Thomson/West, 4th ed., 2009), 537.

Rubino-Sammartano²⁰, C. Buehring-Uhle²¹. In civil law countries, it is common that the tribunal appoints an expert who is usually selected from the tribunal panel's list. In the civil law system, it is assumed that all matters should be decided by the tribunal and not delegated to anyone else. Thus, the parties are deprived of the opportunity to appoint their own expert or experts. The expert appointed by the arbitral tribunal in the civil law system has a set of responsibilities, which encompass the examination of documents, inspection of the sites and interviewing of the witnesses of both parties. In the civil law tradition, the experts can perform some tasks that in the common law are relied on the pre-trial discovery.²²

Unlike the civil law tradition, in the common law countries, the parties' right to the acknowledgement of their autonomy is guaranteed. Thus, they are given the opportunity to retain the experts themselves but the experts are supposed to be independent at the same time, though such independence is more apparent than real taking into account the fact that the expert's fees are paid by the parties.²³ As a confirmation of the apparent independence of the expert is the absence of the requirement for experts appointed by the parties to submit their statement of independence, although such requirement is explicitly envisaged in Art. 6(2) of the IBA Rules for the tribunal-appointed expert.

Although there are some differences in civil and common law systems concerning the appointment of experts, there are number of issues common to both civil and common law systems. The tribunal can appoint its own expert in both systems. Although in common law system, as a rule, experts should not be appointed without the approval of the parties. In both

²⁰ Mauro Rubino-Sammartano, *International Arbitration Law and Practice*, 2nd ed. (The Hague/London/Boston: Kluwer Law International, 2001), 695.

²¹ Christian Buehring-Uhle, *Arbitration and Mediation in International Business* (The Hague/London/Boston: Kluwer Law International, 1996), 106.

²² Ibid.

²³ Phillip Capper, *International Arbitration: a Handbook*, 3rd ed. (London: LLP, 2004), 103.

common and civil law systems, the parties can question the tribunal-appointed expert. In both systems, the experts prepare a written or oral report to the tribunal that should be presented to the parties as well. After submission of the expert report, the experts may be asked to appear at the hearing to explain it and for interrogation by the tribunal and the parties.²⁴

All in all the appointment of the experts by the tribunal is more common in the civil law than in the common law system where the parties' autonomy principle is guaranteed and the parties are given the opportunity to appoint expert witnesses themselves. The foreseen opportunity for the parties to appoint their own expert witnesses guarantees more fair and unprejudiced examination of the disputed issues along with more efficient procedure of resolution of the dispute.

²⁴ Buehring-Uhle, *supra* note 21.

2 Procedure of Appointment of Experts

2.1 Appointment of Experts by Parties (Expert Witnesses)

Authoritative scholars define a few categories of experts, in particular, R. Kreindler proposes the following categories:

1. the party-appointed expert;
2. the tribunal-appointed expert designated with the consensus of the parties;
3. the tribunal-appointed expert designated without the consensus of the parties.²⁵

In the process of the appointment of an expert, the parties have the priority first as comparing to the arbitral tribunal. If the parties cannot decide on the appointment of the expert, the arbitral tribunal would present to them the list of the persons and institutions that specialize in the giving of expertise in the arbitration. If the parties cannot choose among those stated in the list, the arbitral tribunal can help the parties determine the expert.²⁶

Another option for the appointment of the expert by the parties is the joint appointment of the single expert. The appointment of the single expert has a number of advantages. It assists parties in reaching the result faster and in a more fair way than the result that could be reached by the two opposing experts or the result based on the tribunal-appointed single expert's evidence. The reason for that is that the tribunal may be not fair enough in analyzing the evidence given by its expert and take his/her opinion for granted.²⁷ If the parties jointly appoint a single expert, he/she is supposed to be the only one to present the evidence and questioned if the tribunal does not order otherwise which saves time and guarantees more objective and efficient way of resolution of the dispute.

²⁵ Kreindler, *supra* note 8, at 88.

²⁶ Redfern, *supra* note 3, at 310.

²⁷ Paul D. Friedland, *Arbitration Clauses for International Contracts*, 2nd ed. (New York: Juris Publishing, 2007), 154.

2.2 Appointment of Experts by Arbitral Tribunal

The tradition of the appointment of experts by the arbitral tribunal was derived from the civil law tradition where in litigation the experts are always appointed by the court to report on the disputed issues of mostly technical matter²⁸, whereas the parties are deprived of the right to appoint expert witnesses. Where the arbitral tribunal does not wish or cannot resolve the case without the additional assistance of the expert on technical matters and if the parties do not designate their experts²⁹, the tribunal can take advantage of its right to appoint the expert.

To clarify the issue of the appointment of experts by the parties, we should move to analyzing the arbitration rules, all of which resemble the civil law tradition of the possibility of arbitral tribunal to appoint an expert. Thus, Art. 27(1) of the UNCITRAL Arbitration Rules, Art. 6(1) of the IBA Rules, Art. 20(4) of the ICC Rules, Art. 22(1) of the AAA Rules, Art. 21(1) LCIA Rules stipulate that the arbitral tribunal may appoint one or more experts.

As a rule, that is the arbitrator who selects the expert, but the arbitrator is bound by the approval of the parties. The arbitrator should comply with the wishes of the parties who can either approve the selected expert or request the particular expert chosen by the parties to be appointed as an expert.³⁰ The obligation of the tribunal to consult with parties to obtain their consent is stipulated in Art. 20(4) of the ICC Rules and Art. 21.1³¹ of the LCIA Rules, unlike any other arbitration rules. Thereby, the requirement to consult the parties on the appointment of the expert by the tribunal create two groups of experts - those designated by the tribunal with or

²⁸ Derains, *supra* note 6, at 258.

²⁹ Eric Schaefer, Herman Herbist, and Christophe Imhoos, *ICC Arbitration in Practice* (The Hague: Kluwer Law International; Berne: Staempfli Publishers, 2005), 105.

³⁰ Peter V. Eijssvoogel, *Evidence in International Proceedings* (London: Graham & Trotman/Martinus Nijhoff and Young Lawyers International Association, 1994), 142.

³¹ LCIA Rules, Art. 21.1: "...unless otherwise agreed by the parties in writing, the Arbitral Tribunal:
a) may appoint one or more experts."

without consent of the parties - discussed by R.H. Kreindler.³² The fees of the tribunal-appointed arbitrators are the part of the costs for arbitration as determined in the UNCITRAL Rules³³ and ICC Rules³⁴, which means that the tribunal cannot without consent and approval of the parties appoint an expert.

The tribunal-appointed expert is to fulfil the terms of reference defined for him/her by the tribunal. Terms of reference indicate the questions, which the expert is expected to clarify, issues that the expert has to assess, as well as sets the timetable for the expertise.³⁵ The requirement of the terms of reference is stipulated in Art. 27(1) of the UNCITRAL Rules, Art. 6(1) of the IBA Rules and Art. 20(4) of the ICC Rules. The terms of reference should be communicated to the parties before giving it to the expert.

Apart from the above-mentioned cases of the appointment of the expert by the arbitral tribunal, the arbitration rules provide the arbitral tribunal with the right to appoint the expert in cases when the expert witnesses present the conflicting evidence and the tribunal should decide whose testimony is more convincing.³⁶ The mission of such an expert is to evaluate the expert witnesses' reports and help the tribunal successfully resolve the dispute. The tribunal cannot designate the neutral expert without the prior consent of the parties.³⁷

Designation of the neutral expert by the tribunal is considered to be also the method of examination of the party-appointed experts that will be discussed in the next chapter. The right to appointment of the neutral expert is granted to the tribunal by the arbitration rules. Such a right is

³² Kreindler, *supra* note 8.

³³ UNCITRAL Rules, Art. 21(3): "fees and expenses...shall be paid out of the deposits payable by the parties...and shall form part of the costs for the arbitration."

³⁴ Appendix III to the Rules, Art. 1(11): "Before any expertise ordered by the Arbitral Tribunal can be commenced, the parties or one of them, shall pay an advance on costs fixed by the arbitral tribunal sufficient to cover the expected fees and expenses of the expert determined by the Arbitral Tribunal."

³⁵ Tibor Varady, John J. Barcelo III, Arthur T. von Mehren, *Documents and Supplement to International Commercial Arbitration* (USA: WEST, 4th Edition, 2009), 74.

³⁶ Thomas E. Carbonneau, *Handbook on International Arbitration and ADR* (USA: JurisNet, 2006), 144.

³⁷ *Ibid.*

envisaged either explicitly (as in Art. 20(4)³⁸ of the ICC Rules, Art. 21.1³⁹ of the LCIA Rules concerning the appointment of the experts by the tribunal in general) or by means of interpretation of other clauses of the rules (as in Art. 16(1) of the AAA Rules) when the tribunal is given the right to conduct the arbitration in whatever manner it considers to be appropriate.⁴⁰

As a rule, the arbitration rules provide for the option of the tribunal to appoint its expert(s) under the following requirements: consultation of the parties and giving the opportunity to the parties to question the expert(s) afterwards⁴¹. The right of the parties to interrogate the expert appointed by the arbitral tribunal means their right to cross-examine the expert. Cross-examination as a method of presentation of evidence by the experts will be the focus issue of Chapter 3.

2.3 Requirement to Experts to Testify at the Hearing

The arbitration rules state the requirement to experts both appointed by the parties and arbitral tribunal to testify at the hearing and be interrogated by them. This requirement concerns, in particular, tribunal-appointed experts. Thus, Art. 21.2 of the LCIA Rules requires mandatory presence of the expert at the hearing. Expert's participation in the hearings is mandatory unless the parties agree otherwise in a written form and if the arbitral tribunal does not consider his/her presence at the hearing(s) necessary. Art. 27(4) of the UNCITRAL and Art. 22(4) of the AAA Rules envisage the similar rule on mandatory presence of the tribunal-appointed expert at the hearing provided so requested by the parties. Unlike UNCITRAL and AAA Rules, Art. 6(6) of

³⁸ ICC Rules, Art. 20(4): "The Arbitral Tribunal after having consulted the parties, may appoint one or more experts."

³⁹ See Art. 21.1 in note 30, *supra*.

⁴⁰ AAA Rules, Art. 16(1): "the tribunal may conduct the arbitration in whatever manner it considers appropriate, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case."

⁴¹ Derains, *supra* note 6, at 257.

the IBA Rules foresees also the mandatory presence of the tribunal-appointed expert at the hearing upon request of the tribunal itself.

Regarding the parties-appointed experts, only the IBA Rules on Evidence mention the mandatory requirement to the party-appointed expert to appear at the hearing unless parties agree otherwise and the arbitral tribunal accepts their agreement:

*“Each Party-Appointed Expert shall appear for testimony at an Evidentiary Hearing, unless the Parties agree otherwise and the Arbitral Tribunal accepts this agreement”.*⁴²

Moreover, according to Art. 5(3) and 5(5) of the IBA Rules, the arbitral tribunal may order that the parties-appointed experts meet and discuss their reports before the hearing. If the experts do not appear for the testimony at the hearing, their expert reports shall be disregarded. The parties may agree that the experts will not appear at the hearing, though it does not mean that the expert’s report is correct and should be taken into consideration by the tribunal. So, the analyzed arbitration rules envisage the procedure of appointment of the expert by the arbitral tribunal and introduce the procedure of cross-examination of the expert by giving the right to the parties to comment on the expert’s report and interrogate the expert at the hearing.

⁴² Art. 5(4) of the IBA Rules.

3 Methods of Presentation of Evidence by Experts

3.1 Traditional Methods of Presentation of Expert Evidence

Presentation of the evidence by experts can take place in various ways: by depositions (common for arbitration in the US), by submission of the written reports (also called direct examination), presentation of the oral evidence at the hearing followed by cross-examination, redirect examination and re-cross-examination, expert conferencing, confrontation and in some cases the appointment of the neutral expert by the arbitral tribunal. These methods can be classified as traditional and non-traditional ones.⁴³ To the traditional methods of presentation of evidence in the international commercial arbitration belong old and rather efficient methods of presentation of evidence, such as: submission of the expert report, direct examination, cross-examination, redirect examination and re-cross-examination while joint conferencing and confrontation belong to the non-traditional methods.

As to the *deposition of expert testimony*, it takes place in advance of the hearing before the tribunal. If the deposition of experts takes place, the expert's written report, his/her deposition testimony and testimony before the tribunal will be compared.⁴⁴ Generally, the deposition is applied to learn more about the expert, his/her qualifications, training, experience, work on the case and expert's opinions on the given case.⁴⁵ M. S. Reeves supports the idea that the main goal of deposition from the point of view of the opposing party is similar to cross-examination which

⁴³Andrew Valentine, "Witness Conferencing in International Arbitration", *International Arbitration Newsletter* (February 2010), <http://www.dlapiper.com/witness-conferencing-in-international-arbitration/> (accessed March 21, 2010).

⁴⁴David Nolte, "Improving Your Expert Deposition Results Easy", *Los Angeles Lawyer* (2004), http://fulcrum.com/Improving_Expert_Deposition_Results.htm (accessed March 20, 2010).

⁴⁵Michael S. Reeves, "*Deposition of experts*", <http://www.gorbyreeves.com/pdf/Reeves-DepositionExperts.pdf> (accessed March 20, 2010).

is to make the tribunal reject the expert, discredit, limit or exclude his testimony.⁴⁶ The deposition of experts is not widely known and found its application only in the United States.

In general, the first and frequently the only stage in the process of obtaining evidence from experts is the *direct examination* (called also “examination-in-chief” in some countries).⁴⁷ Direct examination includes submission of the expert report and interrogation of the expert witness by the calling party or its counsel at the hearing. Direct examination is usually performed to elicit evidence in support of facts favorable to the party presenting that evidence. In direct examination, it is generally prohibited to ask leading questions not to help the expert answer the questions in a way favorable for one of the parties. The process of the direct examination is often rehearsed in front of a video camera and/or mock tribunal.⁴⁸

Expert report as a method of presentation of expert evidence in the international commercial arbitration or a method of direct examination is the most important and unavoidable method of presentation of expert evidence. The arbitration rules specify the obligation of the expert to furnish the oral or written expert report as a conclusion of the undertaken expertise. As a rule, the expert report should be presented to the tribunal and the parties in the written form, as required in Art. 27(1) of the UNCITRAL Rules, Art 6(4) of the IBA Rules and Art. 22(1) of the AAA Rules regarding the tribunal-appointed expert or in Art. 5(1) of the IBA Rules regarding the party-appointed expert; whereas, Art. 21.2 of the LCIA Rules are less strict, specifying the requirement for the expert report to be submitted in either oral or written form. As to the ICC Rules, its Art. 20(4) does not impose any requirement either to written or oral form of the report. Moreover, the rules also mention the requirements whom the report shall be submitted to and

⁴⁶ Reeves, *supra* note 45.

⁴⁷ Black’s law dictionary, 8th ed, 2004, s.v. “direct examination”.

⁴⁸ Hunter, *supra* note 19, at 540

parties' opportunity to interrogate the expert on his report. Thus, Art. 16 of the UNCITRAL Rules, Art. 6.5 of the IBA Rules, Art. 22.3 of the AAA Rules guarantee the right of the parties to analyze and comment on the expert report. Moreover, the right of the parties to interrogate the tribunal-appointed expert at the hearing is also foreseen in the rules (Art. 16 of the UNCITRAL Rules, Art. 20.4 of the ICC Rules, Art. 22.4 of the AAA Rules, Art. 6.6 of the IBA Rules, Art. 21.2 of the LCIA Rules).

Content of the expert report is given in Art. 5(2) of the IBA Rules. According to Art. 5(2) the *expert report* submitted by the party-appointed expert shall contain the following:

1. The full name and address of the party-appointed expert, evidence of any relations with the appointing or opposing party in the past or present, description of the qualifications, training, experience of the expert;
2. Statement of the facts on which the expert is basing his/her opinions and conclusions: description of the method, evidence and information used for the conclusions;
3. An affirmation of the truth of the expert report;
4. The signature of the party-appointed expert, date and place.

The report of the expert appointed by the tribunal in its turn, presumably, shall contain by analogy with the expert witness report the same information or, at least, as foreseen in Art. 6(4) of the IBA Rules, the report shall describe the method, evidence and information used for coming to the expert's opinion.⁴⁹

The parties shall always be given the opportunity to comment on the report submitted either by the tribunal-appointed expert or by the opposing party's expert or question the expert at the hearing. This rule is stated in Art. 6(5) of the IBA Rules, Art. 27(3) of the UNCITRAL Rules,

⁴⁹ IBA Rules on Evidence, Art. 5(2).

Art. 22(3) of the AAA Rules, Art. 21.2 of the LCIA Rules. Depriving the party of the right to comment on the expert's report or/and interrogate expert at the hearing, may result in the infringement of the due process requirements. Thus, in *Paklito Investment LTD. v. Kloekner East Asia LTD*⁵⁰ the standards of due process of presentation of evidence were infringed by depriving the party of the right to adduce evidence to rebut the evidence presented by the tribunal-appointed expert. In this case, the enforcement of the award was denied on the grounds of infringement of the due arbitration process because of the failure of the tribunal to give the parties an opportunity to comment on the opinion of the expert and interrogate the expert at the hearing.

If the conflicting evidence is presented by the expert witnesses, they should appear at the hearing for their interrogation by the arbitral tribunal. After submission of the written report the expert witness can present the oral evidence at the hearing, where he can be questioned by the calling party, then he can be cross-examined by the opposing party, re-examined by the appointing party and at the re-cross-examination questioned by the opposing party again. The expert reports give the possibility to the parties to familiarize with the advantages and disadvantages of their case based on the expert's opinion. The tribunal and the parties can take a hard copy of the report and find the issues that can be argued and supported by their arguments.

The next but not less important method of presentation of expert evidence is *cross-examination* of experts. Cross-examination is the examination of the expert by the opposing party. It is very important that the questioning at the cross-examination does not go beyond the scope of direct examination and the questions should be limited only to the matters discussed at the direct examination.⁵¹ Any new evidence that emerges during cross-examination is to be discussed at the redirect examination and re-cross-examination. The cross-examiners question

⁵⁰ *Paklito Investment LTD. v. Kloekner East Asia LTD* (1993).

⁵¹ Black's law dictionary, 8th ed., 2004, s.v. "cross-examination".

the experts on the merits of the expert's opinion by asking them a series of closed questions that limit the experts in their answers and do not allow to expand their answers to the field that does not concern the expertise itself.⁵² Thus, leading questions are not permitted at the cross-examination.

In common law countries where the parties have the opportunity to control the case by appointing their own experts, they do not have the cross-examination procedure as a mandatory procedure and the counsels of such parties can raise the objection to the suggestion of cross-examination of the parties' experts due to the absence of vices in their expertise.⁵³ If there is need in clarification of the issues that emerged during the previous stages, cross-examination is followed by the redirect examination and re-cross-examination. Redirect examination (also called "reexamination") is the questioning of the expert witness by the *appointing party* on the new issues discovered at the cross-examination. At the redirect examination, questions may not go beyond the scope of the cross-examination.⁵⁴ As regarding the re-cross-examination, it is the questioning of an expert by the *opposing party* on all new facts revealed at the cross-examination and asked at the redirect examination. In general, the purpose of the cross-examination is to discover the contradictions in expert's testimony given in his report and at his direct and cross-examinations. In that way the opposing party is seeking favorable for it testimony or trying to lessen the weight of disadvantageous testimony.

The more stages/methods of presentation evidence are brought in action, the longer and more expensive the process becomes. However, it means that there is greater possibility for

⁵² Hunter, *supra* note 19, at 540.

⁵³ *Ibid.*

⁵⁴ Black's law dictionary, 8th ed., 2004, s.v. "redirect examination".

clarification of the disputed issues and successful contribution of the expert testimony to the resolution of the case.

3.2 Joint Expert Conferencing as a Non-traditional Method of Presentation of Expert Evidence

After the analysis of the traditional techniques of expert examination, we should move to the conferencing as a non-traditional method. This method is widely offered and discussed as an effective method by such scholars and practitioners as Doug Jones, Martin Hunter, Alan Redfern, Andrew Stephenson.

Joint Conferencing (or method of “hot tubbing”⁵⁵). Conferencing is a technique when the opposing experts give testimony on common topics and issues simultaneously. After all the experts undergo the process of presenting their own opinion, the other experts can question him/her and comment his report. Afterwards, the process of cross- and reexamination is allowed when the counsels can be involved.

Andrew Valentine separates two types of expert conferencing, differing on the chair of examination, which can be either tribunal itself or a counsel.

*Tribunal as moderator.*⁵⁶ In this method the tribunal is supposed to lead the examination which means that the arbitrators should know all the facts of the case before the examination starts. Examination consists of a discussion on a particular topic among experts representing both parties. Counsels are not excluded from the process and may participate during or after the

⁵⁵ Doug Jones, “Party Appointed Expert Witnesses in International Arbitration: a Protocol at Last” , *Arbitration International* 24, no. 1 (2008): 147; Stephenson, Andrew, Andrew Barraclough, “Experts Ease their Tensions in the Hot Tub” , Clayton Utz Projects Insights Newsletter (May 2005), http://www.claytonutz.com/publications/newsletters/projects_insights/20050505/experts_ease_their_tensions_in_the_hot_tub.page (accessed March 21, 2010).

⁵⁶ Valentine, *supra* 42.

tribunal's questions. The process of joint conferencing with a tribunal as a moderator continues until the parties are satisfied with the obtained evidence.

*Simultaneous conferencing.*⁵⁷ Simultaneous conferencing means the cross-examination combined with the panel discussion. The counsel leads the process of the examination of both experts at the same session. The counsel cross-examines the opposing expert, and then he can move to cross-examination of the expert appointed by his party for rebuttal. Afterwards, the counsel turns to the opposing expert again basing his/her questions on what he/she heard from the expert witnesses representing the calling party. After both experts on the same topic have given their testimony, they move to a new issue and the same procedure starts.⁵⁸ The process repeats until the counsel finishes and the tribunal cannot intervene before that. The advantage of the present method is that during the joint conferencing cross-examination proceeds into reexamination and both procedures take place simultaneously which saves time and money because there is no need to conduct two separate sessions.⁵⁹

When the expert joint conferencing method is applied, experts should submit their written expert reports simultaneously with the written statements of the witnesses or, at least, in advance of the hearing. After submission of the expert reports, the experts are required to meet with the parties in order to decide on the matters they agree and disagree. The meeting shall be followed by the preparation of the agenda on the matters that the experts do not agree on to come directly to the discussion of all the disputed issues.⁶⁰ After the testimony of the witnesses of fact, the

⁵⁷ Valentine, *supra* 42.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ IBA Rules, Art. 5(3): "The arbitral Tribunal in its discretion may order that any Party-Appointed Experts who have submitted Expert Reports on the same or related issues meet and confer on such issues. At such meeting, the Party-Appointed Experts shall attempt to reach agreement on those issues as *to which they had differences* of opinion in their Expert Reports, and they shall record in writing any such issues *on which they reach agreement*".

expert witnesses are invited for interrogation. They are seated alongside each other at the witness table and the chairman of the tribunal (in case of the joint conferencing with an arbitrator as a moderator) questions the experts on the matters of the agenda item by item.⁶¹ They are requested to explain in their own words the basis for reaching their opinions and to answer each other's questions on the disputed issues. In that way the experts are encouraged to debate with each other on the matters they disagree. Another debate can be encouraged between the counsel and the opposing party's expert. As a rule, the arbitral tribunal does not adopt the expert conferencing method if the parties through their counsels do not agree to it.⁶²

There are a number of *advantages* in applying the expert conferencing method:

- It raises the possibility of less cost- and time-consuming proceedings;
- It creates less stressful environment for both, experts and the appointing parties,⁶³ due to the fact that counsels can not consult the experts and their participation in the expert conferencing is limited when the method of arbitrator as a moderator is applied and the counsel can interrogate the experts only after the chairman questions the expert witnesses himself;
- It is easier for the arbitral tribunal to recall and compare the opinions given by experts at the same time than when a week period time separates their hearing⁶⁴;
- It encourages the resolution of the case because the parties witness at the joint conferencing the weak and strong points in their positions⁶⁵;

⁶¹ Hunter, *supra* note 19, at 539.

⁶² Ibid, 538.

⁶³ Stephenson, *supra* note 55.

⁶⁴ Ibid.

⁶⁵ Stephenson, *supra* note 55.

- It identifies and narrows down the issues that need additional preparation and discussion in the arbitration, those issues that are to be determined in the arbitration are highlighted at the joint-conferencing;⁶⁶
- It separates the evidence given by the party itself and by its expert;
- It gives the possibility to experts to communicate on the differing issues and to better understand the issues they are presenting for other experts and while being questioned by the other experts;
- It helps the arbitral tribunal limit the number of the disputed issues between the experts, understand and efficiently use the expert evidence.⁶⁷

The *problems* of expert conferencing technique that may emerge in application of the joint conferencing method is the problem with determination of the chair of proceedings – the chair of the arbitral tribunal or the counsel. The parties should determine the chair of the joint experts conferencing before the hearing starts.

It is better when all the experts who take part in the expertise procedure are present at the hearing as far as other experts can clearly identify the wrongs of the testifying expert and give the proper reasoning. If an opposing expert witness comments the opinion of the other expert witness, the process will be more effective than when the role of the questioner is undertaken by the counsel who does not have proper qualifications in that field, thus, he cannot compete with the expert witness and will in most cases take expert witness's opinion for granted. Moreover, when expert realizes that there is someone else listening to his/her testimony and he/she possess the same qualifications as he/she does, it forces the expert to say the truth, otherwise, the other

⁶⁶ Friedland, *supra* note 27, at 143.

⁶⁷ *Ibid*, 149.

expert will object to the expertise made by him. In this case the pure human factor takes place and the experts will not lie or exaggerate at the hearing realizing that the other expert is specialized in the same field of expertise, thus, he may object and give the reasoning to his/her opinion.

4 Problems of Presentation of Evidence by Experts in International Commercial Arbitration

After having discussed and analyzed the requirements adduced to the expert, the process of expert's appointment and methods of presentation of evidence by them, we come to the great number of problems arising during the process of presentation of evidence by experts. These problems became a significant concern for parties and have been widely discussed by a number of scholars. These problems can be for convenience classified into a few groups: problems connected with the appointment of experts, with expert's competence, with methods of presentation of expert's evidence.

Problems connected with the appointment of experts concern the problems accompanying the appointment of experts by the tribunal and the parties. On the one hand, if the parties are granted the right to appoint their own experts, it may be rather time-consuming and more expensive⁶⁸ than when there is one single joint expert appointed by the parties or the expert appointed by the arbitral tribunal. On the other hand, the involvement of the parties into the appointment of their own experts being a demonstration of the parties' autonomy reduces the risk of objections to the expert's evidence.⁶⁹ Apart from the mentioned problems there may be the problem of the control of the expert witnesses. The arbitral tribunal in order to control the expert witnesses has a range of possibilities, such as appointment of the neutral expert by the arbitral tribunal; the expert witnesses can be ordered to submit their joint reports or answer the written questions of the opposing party. One of the most efficient ways is the application of the expert joint conferencing method.

⁶⁸ Derains, *supra* note 6, at 260.

⁶⁹ Redfern, *supra* note 3, at 310.

The problem of *neutrality and independence*⁷⁰ of the expert also arises in cases of his/her appointment by tribunal, as well as the parties. Expert's testimony may be not objective enough because the party-appointed expert is paid by the party that retained him/her and, as a consequence, the arbitrators may not take into account the party-appointed expert's testimony because of his possible bias. Therefore, it is less common for counsel to assist expert witnesses in the preparation of reports to the same extent that counsel could assist witnesses of fact in the preparation of written reports, otherwise the neutrality and impartiality of expert would be seriously undermined. When the expert is appointed by the parties, he/she should realize that, though being paid by the parties, his/her primary duty shall be to the tribunal and he/she should be neutral as concerning both parties.

The problem of neutrality and independence also includes the possible links of the expert to one of the parties. That could be family relations, employment or rendering certain services to one of the parties. Otherwise, the expert's report will be disregarded. Thus, in *Helnan International Hotels A/S v. the Arab Republic of Egypt*⁷¹ the claimant asked the arbitral tribunal to disregard the report presented by the respondent's expert witness and admit him unqualified to testify at the hearing because of his employment at the claimant's company that meant his possible bias against the claimant. In the given case, the arbitral tribunal did not disqualify the expert because he was not in employment relations with the claimant any more and the expert left the company in good terms that excluded his possible bias.

In the earlier mentioned case, *Egemetal v. Fuchs*,⁷² shortly after the expert submitted his final report, the claimant challenged the expert before the arbitral tribunal on the ground of the

⁷⁰ Derains, *supra* note 6.

⁷¹ *Helnan International Hotels A/S v. The Arab Republic of Egypt* (2008).

⁷² *Egemetal v. Fuchs*.

lack of expert's independence due to his contacts with the claimant and requested that another expert be appointed. After submission of the draft expert report but before the submission of the final expert report, the expert asked the claimant, supplier of steel, to make an offer for supply of steel to the subsidiary of the company he was employed at. Shortly after the negotiations of the two companies failed, expert's final report was submitted. However, the tribunal excluded that the expert was influenced by the failure of the negotiations. Therefore, the ground for challenging the expert was irrelevant because the final report was only slightly different from its draft.

Problems arising out of the expert's competence. It is quite difficult to find an expert with appropriate knowledge of the necessary area of expertise. If the tribunal appoints the expert, he/she should have adequate level of professional standing as comparing to the experts appointed by the parties and be the one who never had contacts with either party.⁷³ If the duty of appointment of the expert lies on the parties, they should make sure that the selected expert possesses relevant knowledge; otherwise, the tribunal would seek for disqualification of the expert on that ground. Moreover, if the expert is not prepared for giving the expert opinion, exaggerates or overstates his experience, he loses his credibility in front of the parties and it may influence the results of the dispute resolution.⁷⁴

Problems connected with the methods of presentation of expert's evidence. The expert's evidence except the written expert report is obtained through cross-examination, reexamination and re-cross-examination. On the one hand, these additional methods prolong the process of presentation of evidence by experts. However, on the other hand, direct examination in the form of written expert reports and oral testimony at the hearing is not sufficient for resolving the disputed issues and other means of presentation of evidence are highly required if the parties and

⁷³ Carbonneau, *supra* note 36.

⁷⁴ Beresford Hartwell and M. Geoffrey, *The commercial way to justice : the 1996 International Conference of the Chartered Institute of Arbitrators* (The Hague: Kluwer Law International, 1997), 247.

tribunal are willing to reach the most favorable and objective, accordingly, result. Moreover, the cross-examination is the means of testing expert's competence in order to decide whether the expert possesses necessary expertise. Consequently, the cross-examination helps parties expose possible errors or bias of the expert.⁷⁵

The possible ways for reduction of time and saving money are the following:

- resort to a single expert appointed by the tribunal or jointly by the parties⁷⁶;
- agree on the number of experts appointed by the parties. The less, the better;⁷⁷
- agree on the number of rounds for submission of the expert report and on the order of exchange of the reports – simultaneous or sequential;⁷⁸
- order joint conferences of experts;
- order meetings of the experts before the hearing in order to discuss their reports and confer the matters they agree and disagree on;⁷⁹
- preparation of the terms of reference by the tribunal for the expert stating the issues he/she has to clarify and evaluate in order not to receive the answers only for disputed questions; as well as timetable in order to save time and resolve the dispute faster.

In order to decide the case in an efficient and objective way the parties are advised to:

- resort to the joint report submitted by the parties-appointed experts;
- require the experts to submit their report in writing;

⁷⁵ David Brown, "Oral Evidence and Experts in Arbitration". In *Arbitration and Oral Evidence*, ed. Laurent Levy, V.V. Veeder, (Paris: ICC Publishing S.A., 2005), 80.

⁷⁶ Yves Derains, C. Newmark, "ICC Task Force on Reducing Time and Costs in Arbitration, Techniques for Controlling Time and Costs in Arbitration", *Kluwer Law International* (2007), <http://www.kluwerlaw.com/> (accessed March 20, 2010).

⁷⁷ Derains, *supra* note 76.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

- apply a combination of methods for expert’s examination where any doubts or unreasoned assumptions still exist;
- submission of the statement of independence by the party-appointed expert in order to avoid the number of cases where the expert can be suspected in being not fair enough concerning the opposing party;
- organize joint meetings of the experts without the presence of the parties and their counsels in order to find the issues they agree and disagree on in a less stressful environment;⁸⁰
- conduct a thorough examination of the expert in order to elicit the lack of training, experience, knowledge, skills in the area of expertise.⁸¹

The resolution of the problems arising in presentation of evidence by experts is a crucial point in resolution of the dispute itself, in time and expenses spent for that and in the final result, favourable for both parties.

⁸⁰ Gary B. Born, “Procedures in International Arbitration. Procedural Conduct of International Arbitral Proceedings”. *Kluwer Law International* (2009). <http://www.kluwerlaw.com/> (accessed March 20, 2010).

⁸¹Fellin, *supra* note 15.

CONCLUSION

Presentation of evidence by experts plays a crucial role in the international commercial arbitration. The purpose of presenting evidence by the expert is to assist the arbitral tribunal in finding disputed issues of opinion in the field that requires special knowledge.⁸² As a rule, one of the aims of the parties in resorting to arbitration is to have their dispute resolved by the arbitrators who are usually selected according to the issue in dispute. In case the arbitral tribunal does not possess relevant expertise, the arbitral tribunal has got two methods to proceed: it can appoint an expert(s) or give the right to the parties to appoint their own expert whose testimony will be examined by applying any of the techniques for its examination including the appointment by the tribunal of its own expert. Both, tribunal and parties-appointed experts have to present their opinion by submitting their written expert report or by presentation of evidence orally at the hearing. Moreover, the experts should be properly examined in the course of cross-examination that may be followed by a redirect examination and re-cross-examination. The examination of the expert at the cross-examination is conducted by the opposing party and aims to elicit the inadmissible evidence, discredit, limit or exclude expert's testimony.⁸³ At the redirect examination, the expert is interrogated by the calling party on all the new issues that emerged during the cross-examination. In case of re-cross-examination the questioning of the expert by the opposing party takes place on all the new issues that emerged during the cross-examination.

Along with traditional methods of presentation of evidence by experts, there is a group of non-traditional methods that includes expert conferencing discussed in the paper.

In the traditional way of presentation of evidence by the expert at the hearing, expert witnesses of both parties are heard at the separate hearings between which there can be a significant difference

⁸² Redfern, *supra* note 3, 294.

⁸³ Reeves, *supra* note 44.

in time. Thus, parties recently started to resort to a new and rather efficient method of presentation of evidence called joint conferencing or “hot tubbing”⁸⁴. At the joint conferencing the experts are brought together into the same room and hear each other speaking. The author made an attempt based on the well-known sources to highlight the advantages of joint conferencing for application in the presentation of evidence. Thus, the purpose of the joint conferencing is the reduction of the number of differences existing between the opposing adversarial experts during the hearing. Moreover, it saves time and, accordingly, it saves arbitration costs, as well.

The differences between civil and common law traditions are also mentioned in the paper. In the civil law system the arbitral tribunal appoints the expert who examines documents, inspects sites, interviews witnesses of both parties. In general, the expert in civil law system performs the tasks that in common law system are performed by pre-trial discovery.⁸⁵ However, this is not a rare case when the parties appoint their expert witnesses in arbitration in a civil law country.

Based on the conducted research a list of problems is given as a conclusion to the topic of presentation of expert evidence. Thus, the last chapter encompasses the problems that may arise during the process of presentation of evidence by experts in the international commercial arbitration, as well as possible ways for resolution of the problems.

Key problems arise at the stage of selection of the expert, expert’s appointment and presentation of evidence by the expert. The most significant problems concern expert’s impartiality and neutrality issues, reduction of time and costs in arbitration, as well as influence of the expert opinion on the objectivity and efficiency of the dispute resolution. Thus, in order to

⁸⁴ Jones, *supra* note 55, at 147.

⁸⁵ Buehring-Uhle, *supra* note 20, at 106.

resolve these problems the parties and the tribunal are offered to resort to a single expert appointed by the tribunal or jointly by the parties and to require parties-appointed experts to submit the joint expert report;⁸⁶ to set the requirement to the experts to submit their report in writing, rather than rely on the oral testimony; order meetings of the experts before the hearing to discuss their reports and confer the matters they agree and disagree on;⁸⁷ conduct joint conferences of experts instead of traditional time-consuming oral hearings; require the expert to submit his/her statement of independence as concerning the both parties; preparation by the arbitral tribunal of the terms of reference for the expert stating the issues he/she has to clarify and evaluate in order not to receive the answers only for disputed questions, as well as timetable with the time for submission of the expert's report and testimony at the hearings, etc.

In order to make the process of presentation of evidence by the experts more efficient, more research in the certain area should be conducted. Thus, joint conferencing as a non-traditional method of presentation of expert's evidence should be investigated better. It is advisable that the joint conferencing method be included into the rules of arbitration along with its detailed rules. Only in case the parties decide to resort to the most efficient ways of presentation of expert evidence, the reduction of time and amount of money spent for arbitration can be guaranteed.

⁸⁶ Derains, *supra* note 77.

⁸⁷ *Ibid.*

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