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# *Kompetenz-Kompetenz*: An Arbitral Tribunal Authority to Decide Its Jurisdiction

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## Abstract

The authority of an arbitral tribunal to establish its own jurisdiction is discussed in this article. Under the Kompetenz-Kompetenz (competence-competence) principle, a tribunal's decision about its jurisdiction must be made within its own purview, at least in the initial stage. The principle permits a tribunal to define its authority's scope and determine its jurisdiction. As it encourages party autonomy, this is one of the fundamental principles of arbitration. The significance of this tribunal power is that it corrects any excesses or inadequacies in jurisdiction by providing a prompt remedy to a party objecting, saving both money and time. The drawback of this power is that if an opposing party is not pleased with the processes, he may still be able to go back to court under the English Arbitration Act and the Model Law. Time, though, is of the essence. The article is supported by a body of secondary, current, and case law literature. It recognizes that parties to an arbitration agreement have the autonomy to decide whether to subject the arbitration procedures to arbitration rules. As a result, the UNCITRAL Rules of Arbitration and the ICC Rules of Arbitration are used as model rules in this article. The ability of an arbitral tribunal to decide on its jurisdiction is distinctive in that it tests that panel's authority. It is undoubtedly a unique power because it contributes to determining the scope of a tribunal's authority and thus acts as its own judge when called upon. This authority is crucial because it allows the arbitration processes to proceed according to plan.

## Keywords

Tribunal, Authority, Jurisdiction, Arbitration Agreement, Autonomy

## 1. Introduction

This article examines an arbitral tribunal's ability to establish its own jurisdiction in international commercial arbitration cases. The first point is that the par-

ties are parties to an international commercial transaction. A party may seek the protection of a recognized legal system when his rights are violated, or the other party fails to uphold its obligations because the parties agreed to establish a clearly defined legal contract. The necessity to draft an arbitration agreement results from the requirement to clarify the parties' rights and obligations under the terms of their contract. The parties' willingness and permission to have their problems arbitrated privately via arbitration demonstrates the voluntary nature of arbitration.

A listed and precise description of the subject matter in dispute must be included in the arbitration agreement so that the arbitral tribunal is aware of the nature of the dispute it will adjudicate.

By agreeing to arbitrate, the parties must abide by the agreement's provisions and may not unilaterally change them. The parties must be understood to have established a mechanism for selecting an arbitral tribunal to undertake their disputes and determine their rights and obligations by agreeing to the arbitration procedure. The sole duty of directing the arbitration to completion is placed on the newly established tribunal. It establishes the points of disagreement between the parties, deliberates, addresses the topics in controversy, gathers evidence, and renders an arbitral decision that is essentially conclusive and binding. According to Chukwumerije (1994), an arbitral tribunal's primary responsibility is to interpret the parties' agreement, including any questions regarding the agreement's legality. The arbitral tribunal must remember that the arbitration agreement and the parties' contract are two distinct instruments that might be evaluated using different standards. According to the court's ruling in the cases of *Ferris & Anor v. Plaister & Anor and Stap & Anor v. Plaister & Anor* (1994), an arbitration clause in a contract is independent of the rest of the agreement and can be severed from it.

This article's sole objective is to ascertain how an arbitral tribunal that has already conducted the arbitration would respond to a challenge brought by the parties whose dispute it is resolving. The study has utilized a qualitative, analytical legal research technique to achieve this objective. This descriptive research style will enable a thorough examination of the case law, related laws, and regulations. Additionally, the doctrinal legal research technique will aid the study's comprehension and appreciation of why parties are allowed to give an arbitral tribunal the authority to establish its own jurisdiction in the first instance. The study uses both primary and secondary sources. The arbitrator's decision defines the parameters of the investigation.

## 2. Duties of an Arbitral Tribunal to the Parties

The assumption of office by an arbitral tribunal and its adherence to its core duties are two sides of the same coin. The arbitrator's decision to accept an appointment as arbitrator binds him to his fundamental duty to conduct arbitration procedures with procedural justice. Both are necessary for existence. When

an arbitrator accepts an appointment, he is obligated to disclose to the parties any substantial facts that may infringe on his work in any way. This obligation is continuous, and disclosure must be provided as difficulties occur.

An arbitral tribunal must maintain its impartiality and independence throughout its mandate. *Weissfisch v. Julius* et al. (2006), is a pertinent example. In addition, the tribunal must guarantee secrecy to the extent required by the parties to the arbitration agreement. The parties are supposed to be handled fairly by a tribunal that acts independently, impartially, and legally. In the case ***Athletic Union of Constantinople v. National Basketball Association* (2002)**, C. J. Morris explored the principles of openness and fairness between parties to an arbitration process.

An arbitration panel must disclose to the parties to an arbitration agreement. This obligation exists for the duration of the tribunal's existence. Binder (2010) argues that an arbitrator whose name is being considered for appointment owes an essential responsibility of disclosure to the parties to an arbitration agreement. In ***Metal Distributors (UK) Ltd v. ZCCM Investment Holdings Plc* [2005]**, the court opined that when an arbitrator accepts an appointment, the arbitrator must provide the parties with a statement of disclosure. A statement of disclosure is the arbitrator's assurance to the parties that the arbitrator has disclosed any issues that may be perceived as influencing the arbitral's decision-making. These concerns may pertain to the arbitrator's present or former commercial operations or relationships with the parties.

The arbitrator must inform the parties of any previous dealings or work done for either one or both parties. The parties are then responsible for determining whether the disclosed statement will likely interfere with the arbitrator's judgment of their rights and obligations in the arbitration.

The need to reveal is a continuing duty that an arbitrator must uphold during his whole term of office as the case develops. This is because new evidence in the case and witness statements may reveal information the arbitrator did not have access to earlier. For instance, the arbitrator may discover that one of the witnesses called by a party is a business partner. In such a situation, the arbitrator must immediately issue a declaration to that effect, and it is up to the parties to determine whether the problems addressed in the statement of disclosure leave the arbitrator in a compromised position.

As the case develops throughout the arbitrator's term, the arbitrator should uphold the ongoing disclosure duty. This is so that new evidence in the case and witness testimony may reveal details that the arbitrator was unaware of. For instance, the arbitrator might learn that one of the witnesses a party is calling is the business partner of the arbitrator. The arbitrator should declare to that effect in such a situation, and it is up to the parties to conclude whether they think the problems addressed in the statement of disclosure put the arbitrator in a precarious position.

Several arbitration rules require disclosure. The ICC Rules, SCC Arbitration Rules, 1999, and The AAA International Arbitration Rules, 2001 provide that

arbitrators may not only owe the parties a duty of disclosure but also the institution and the other members of the arbitration team if an arbitration agreement adopts the rules of an arbitration institution to govern the arbitration proceedings. An arbitral tribunal must execute its general duty of disclosure under Article 17(2) of The SCC Rules of Arbitration (2010). This ethical and fiduciary responsibility of care is owed by an arbitrator to the parties to an arbitration proceeding as stated in IBA Ethics for International Arbitrators, 1987; IBA Guidelines on Conflicts of Interest in International Arbitration, 2004.

The Law Reform (Miscellaneous Provisions) (Scotland) Act (1990) defines the duty of disclosure as the promise made by an arbitrator to the parties that, having agreed to preside over the arbitration proceedings, the arbitrator is required to conduct himself fairly, diligently, and skillfully. One method to ensure justice without sacrificing his professionalism is to promise to be objective and independent.

To establish the boundaries of its jurisdiction, the arbitral tribunal must identify the topics the parties are arguing about. These qualities are essential because they aid in defining the terms of the arbitration agreement and the scope of the arbitral panel's jurisdiction. Additionally, the characteristics show that parties to a contract can construct numerous arbitration clauses with different tribunals chosen to address various aspects of a disagreement at any time. The parties need to ensure that the arbitration agreements they form are in accordance with the legal system they wish to subject their arbitration to, which would provide the validity of the agreements.

Each arbitrator is responsible for ensuring they uphold the minimum standard of conduct expected of someone performing legal tasks. A party can fulfill this commitment by adhering to the values and standards of candor, objectivity, and independence and maintaining confidentiality to the extent necessary. This is crucial while the arbitrator carries out their procedural obligations. Following these guidelines prevents parties from personally challenging the arbitrator.

## 3. The Objective Appraisal of an Arbitral Tribunal's Independence and Impartiality

According to the IBA Guidelines on Conflicts of Interest in International Arbitration, an arbitral tribunal is required to operate within the bounds of its authority and in accordance with the fundamental principles of fair play, impartiality, and independence.

Legal systems and arbitration rules require the arbitral tribunal to be impartial and independent. According to the Model Law, an arbitral tribunal must treat all parties equally and allow them to argue their case. This is a fundamental requirement that cannot be waived. In the case of *Corporacion Transnacional de Inversiones, S.A. de C.V.*, et al. *v. STET International, S.p.A. and STET International Netherlands, N.V., CLOUT* (1999), Judge Lax ruled that Article 18 of the Model Law was intended to protect a party from egregious and unjustified conduct by an arbitral tribunal. Per Section 33 of the 1996 English Arbitration

Act, the tribunal must act fairly and impartially between the parties. In the context of arbitration, eminent scholars have defined independence and impartiality (Binder, 2010).

Unbiassability is a flexible ideal because it relates to a person's attitude of mind and behavior. According to Yu and Shore (2003), independence is both a requirement for that attitude and an essential external manifestation of what is needed as a precondition of that attitude. Independence objectively assesses the relationship between the parties and designated arbitrators. The objective test of impartiality is whether a reasonable person may conclude that an arbitral tribunal's actions are biased.

In the case of *Porter v. Magill* (2001), Lord Hope of Craighead referred to this test. His Lordship evaluated whether a rational, well-informed observer would conclude that the tribunal was biased after considering the evidence. When an arbitral tribunal meets privately with one of the parties in chambers without the presence of the other, bias may occur in this scenario. The absent party may claim that such behavior indicates a preference on the part of the tribunal.

The Swedish Arbitration Act (2019), a non-Model Law, lists situations that could indicate partiality on the part of an arbitral tribunal. These consist of:

1) The arbitrator or anyone associated with the arbitrator may stand to gain or lose financially or otherwise from resolving the dispute.

2) The arbitrator or anyone associated with the arbitrator serves on the board of a business or other organization that is a party, or in any other capacity, represents a party or anyone who would stand to gain or lose by resolving the dispute.

3) The arbitrator has taken a side in the dispute or helped a party prepare for or conduct the case, whether acting as an expert or otherwise.

4) The arbitrator accepted payment or made a demand for payment in contravention of the Act (Bagner & Rosengren, 2006).

If an arbitral tribunal loses its independence, it will be viewed as biased. Lord Hope of Craighead remarked on the intimate connection between independence and impartiality as indicated by the European Court in *Findlay v. United Kingdom* (1997) in *Porter v. Magill* (2001). An arbitral tribunal must treat each party with justice to be impartial and independent. If an arbitral tribunal breaches this responsibility, a party may bring a claim against the arbitral tribunal on a personal basis.

## 4. The Causes & Deadlines for Filing Objections

The resolution of an arbitral tribunal's excess or deficiency of jurisdiction necessitates initiating a jurisdictional challenge. A violation of the jurisdiction that an arbitral tribunal has under an arbitration agreement occurs when there is either insufficient or excessive jurisdiction. A party may want to stop this breach when applying for a jurisdictional challenge against an arbitral tribunal. Suppose the parties to an arbitration agreement do not consent. In that case, an arbitral tribunal's exercise of authority outside its jurisdiction may constitute a basis for a

jurisdictional challenge. Although it is not uncommon for a claimant to object, it is customary for a respondent to question the jurisdiction of an arbitral panel. For instance, the claimant sought to contest the arbitral tribunal's jurisdiction in *Primetrade AG v. Ythan* (2006).

Like the instruments mentioned above, the ICC Rules and UNCITRAL Rules allow an arbitral tribunal to decide on its own jurisdiction. In accordance with the ICC Rules, for example, an arbitrator who accepts an appointment agrees to follow the ICC Rules when performing its duties. While the claim the arbitrator is dealing with falls under his purview, it is feasible for the respondent to bring concerns in its counterclaim that fall outside his purview. In a situation like this, the arbitrator should only address matters that fall under his purview. If the parties agree that the same arbitrator should handle the entire issue, they may agree to expand their jurisdiction. Any of the parties may contest the arbitrator's jurisdiction if he ignores that he lacks the authority to decide an issue and nevertheless does so.

A claim of jurisdiction must be made per UNCITRAL Rules Article 21(3) and (4) no later than filing a defense or, in the case of a counterclaim, in reply to the counterclaim.

According to Article 11 of The ICC Arbitration Rules (2012), the Secretariat must receive the justifications for a challenge to an arbitral tribunal's jurisdiction in writing within a certain time frame. The arbitral tribunal is encouraged to approach the jurisdictional issue as a preliminary matter on which a decision may be taken before the final award, even though it may link the issue of the jurisdictional objection to the merits of the disputes and make one judgment in the final award. The most common way to pursue these challenges is for the challenging party to make a challenge as soon as it learns of the challenge's grounds. Unnecessary waiting could result in the side anticipating losing the arbitration by abusing the procedure.

As per section 33 of The English Arbitration Act of 1996, it is incumbent upon an arbitral tribunal to operate within the boundaries of its jurisdiction. The desire of the parties for the arbitral tribunal to establish specific rights and obligations on their behalf should not be misconstrued as an indication of the arbitral tribunal's unrestricted jurisdiction. The case of *Glencore v. Agros* [1999] highlights the necessity of establishing boundaries regarding the subject matter that an arbitral tribunal is authorized to address and those that fall outside its jurisdiction. If a party perceives that an arbitral tribunal lacks jurisdiction, it possesses the right to object promptly. The legal precedent established by the *Margulead Ltd v. Exide Technologies* (2005) case is relevant to this context.

According to Webster and Buhler (2014), if a party fails to challenge an arbitral tribunal promptly, it may lead to the party waiving its rights. The case of *Rustal Trading Ltd v. Gill & Duffus SA* (2000) prompted Judge Moore-Bick to highlight the purpose of section 73(1) of the English Arbitration Act, which mandates a party to promptly raise any objections regarding the constitution of the tribunal or the conduct of the proceedings as soon as they become aware of it

or should have been aware of it in a reasonable manner.

According to Section 31(2) of the English Arbitration Act, it is deemed most suitable to bring forth a challenge at the earliest possible moment when the pleader becomes aware that an arbitral tribunal has exceeded its jurisdiction. According to the English Arbitration Act, raising a challenge before an arbitral tribunal regarding its excess of jurisdiction is mandatory as soon as a party becomes aware of the anomaly. The Arbitration Act in English law confers significant discretionary power to an arbitral tribunal to modify the timeframe for objecting according to section 31(1) and (2). Section 31(3) is the legal provision that establishes this authority. This section confers upon an arbitral tribunal the authority to exercise its discretion, contingent upon the unique circumstances of each case, to permit the raising of a jurisdictional challenge beyond the designated time frame.

Article 18 of The ICC Arbitration Rules (2012) confers authority upon an arbitral tribunal to formulate its own Terms of Reference, which may encompass the subject matter that the tribunal addresses. Based on the presented scenario, it can be inferred that the arbitral tribunal's jurisdiction will be ascertained in the initial phase. Hence, it is imperative that any objection to the arbitral tribunal's authority, as stipulated in the Terms of Reference, be presented promptly, preferably before the parties endorse the Terms of Reference.

At this juncture of the proceedings, the tribunal has the authority to decide on its jurisdiction initially, albeit not conclusively, in accordance with the principle of competence-competence (Binder, 2010). The concept of competence-competence is a manifestation of the authority of an arbitral tribunal to make determinations regarding its jurisdiction, as exemplified by the French legal system (Redfern et al., 2015). The concept of competence-competence, which pertains to jurisdiction, is designed to defer court intervention in the arbitration proceedings until the arbitral tribunal has rendered its decision on the challenge, as per Park's (2012) analysis. The authority of an arbitral tribunal is commonly denoted in practical terms through the German concept of Kompetenz-Kompetenz, which can be understood as the "jurisdiction to determine jurisdiction."

The Model Law's Article 13(1) and (2) prescribe a restricted duration during which a party is entitled to initiate a personal objection against an arbitrator before an arbitral tribunal. The temporal constraint imposed on an arbitral tribunal's ability to consider a personal challenge is a procedural measure designed to prevent inefficiency and enable the tribunal to operate within its prescribed temporal boundaries. Moreover, the Model Law authorizes a dual course of action during this phase of the proceedings, facilitating the arbitral tribunal's progress with minimal interruption. The arbitral tribunal can proceed with the arbitration process concurrently with the ongoing court application against the arbitral tribunal. The Model Law's provision of a prescribed time limit for contesting the arbitral tribunal's decision bolsters the arbitration process's finality.

According to Article 4 of The UNCITRAL Model Law on ICA (International Commercial Arbitration) of 1985, if a party fails to comply with the specified

time limit, it may be deemed to have relinquished its right to contest the arbitral tribunal's decision.

The process for disputing the authority of an arbitral tribunal is outlined in Section 31 of the Arbitration Act of England. It is possible to initiate a jurisdictional challenge before submitting a statement of claim. This stage represents the optimal opportunity to raise an objection to the arbitral tribunal's jurisdiction. A successful challenge at this juncture would effectively terminate the proceedings before they commence.

This approach is equitable for all involved parties, as it saves time and financial resources. Section 30(4) of the English Act provides that an arbitral tribunal can render an award on jurisdiction or address the objection to its jurisdiction in the award on the merits when faced with such an objection. The crucial aspect pertains to whether the tribunal has adequately addressed all the concerns raised by the parties involved. The discretion to assign significance to pertinent evidence lies solely with the arbitral tribunal. There is no obligation to consider all evidence that has been submitted.

In the case of *Azov Shipping Co. v. Baltic Shipping Co.* [1999], Rix J delineated three potential courses of action that a party may pursue under the English Arbitration Act when contesting an arbitral tribunal's jurisdiction. According to Rix J, in cases where an arbitrator's substantive jurisdiction is challenged, the challenging party has several courses of action available to them under the Act. Section 30 of the Act provides that an individual may consent to the dispute resolution process before an arbitrator regarding their competence and jurisdiction matters. The entity in question may engage in such behavior while retaining the option to contest the arbitrator's decision regarding its capability.

In an alternative approach, the party may opt to refrain from presenting arguments before the arbitrator and instead endeavor to facilitate the resolution of the initial jurisdictional issue by the court, according to Section 32.

The third alternative available to an individual contesting an arbitrator's jurisdiction is to maintain a distance and challenge the legitimacy of the arbitration by initiating legal proceedings in court for a declaration, injunction, or other suitable remedy as per Section 72 of the Act. If such a scenario arises, the individual is placed in a comparable situation to a participant in arbitration proceedings who contests an award according to Section 67, citing the absence of substantive jurisdiction, as was the case in the Azov Shipping matter.

Rix J identified three options in the Azov Shipping case, and it is commonly observed that the first option is the preferred course of action in practical applications. The second alternative is typically employed as an atypical measure rather than a standard practice. The third alternative of maintaining a distance precludes the opposing party from presenting their arguments before the arbitral tribunal, thereby challenging its jurisdiction. The initial approach of participating in the arbitration process and submitting a challenge before the tribunal affords the tribunal the chance to render a decision on its own authority in the primary stage. It is imperative that the arbitral tribunal is allowed to examine the

matters related to the challenge and subsequently render a verdict.

## 5. Observations

The authority of an arbitral tribunal to ascertain both judicial precedent and legislative enactments bolster its jurisdiction. As per Article 1458 of the Nouveau Code de procedure civile (NCPC), a court must declare its incapability of addressing an objection against the jurisdiction of an arbitral tribunal once the tribunal commences its proceedings on the matter. According to Article 186 of the Loi federale sur le droit international prive (LDIP), the Swiss position allows an arbitral tribunal to decide on its jurisdiction through an interlocutory ruling. In arbitration proceedings, the arbitral tribunal shall adhere to the *lex arbitri* when addressing an objection to its jurisdiction that arises during said proceedings.

The present analysis reveals that the principle of the authority of an arbitral tribunal to decide on its jurisdiction has been widely acknowledged and embraced across Model Law and non-Model Law jurisdictions, as per Binder's (2010) research. The discourse indicates that the principle of competence-competence holds significant importance in this context. Section 30(1) of the English Arbitration Act and Article 16(1) of the Model Law both allow jurisdiction to be brought before the arbitral tribunal during the ongoing arbitration proceedings. Through this approach, an arbitral tribunal can conduct an inquiry into its jurisdictional authority during the ongoing proceedings, thereby streamlining the arbitration process and conserving resources and time for the involved parties. According to Tweeddale and Tweeddale (2007), the determination made by an arbitral tribunal concerning a challenge to its jurisdiction will retain its status as final and binding upon the involved parties unless one of the parties objects. Most legal systems that endorse international commercial arbitration, along with certain arbitration regulations, acknowledge the ability of an arbitral tribunal to make decisions regarding its jurisdiction, primarily during the initial stages of the arbitration process. This is evident in the UNCITRAL, ICC, and LCIA Rules. To establish the power of an arbitral tribunal, the parties involved in an arbitration agreement must exhibit a clear and precise intention for the tribunal to possess such authority.

When faced with a challenge, an arbitral tribunal may address it as a preliminary matter or incorporate it into its final decision as part of the main case. The stance that an arbitral tribunal has the authority to decide on its jurisdiction, encompassing any objections regarding the existence or legality of the arbitration agreement, is reinforced by Article 16(1) of the Model Law. The Ontario Court of Justice ruled in the *Rio Algom Inc. v. Sammi Steel Co. CLOUT* (1991) that an arbitral tribunal possessed the initial authority to ascertain its jurisdiction and the extent of its power under Article 16 of the Model Law.

Section 30 of the English Arbitration Act confers authority upon an arbitral tribunal to issue an initial award while determining its jurisdiction. According to

The English Arbitration Act of 1996, Section 30(1) confers authority upon an arbitral tribunal to make determinations regarding its jurisdiction, and such decisions are conclusive unless subject to appeal or review by a court. According to the Swiss Private International Law Act of 1987, Switzerland prohibits a party from interrogating an arbitrator regarding their jurisdiction to address an issue unless the issue was not previously known to said party before the arbitrator's appointment. In contrast to Swiss legislation, English law allows either party to contest the jurisdiction of an arbitral tribunal, even if said party was involved in the selection of the tribunal. The Swiss Law provides direction regarding the legal framework that the arbitral tribunal should employ when confronted with a jurisdictional matter that pertains to either the law chosen by the parties or the regulations of law that are most closely related to the dispute. However, the Model Law does not provide a definitive answer regarding the law that should be applied in such circumstances (Binder, 2010).

As per the Model Law, the arbitral tribunal holds the authority to determine its jurisdiction and may choose to apply the law of the seat of arbitration for the same. This is because the tribunal's jurisdiction, as stipulated in Article 16(1), is based on territoriality, as indicated in Article 1(2) of the Model Law. To operationalize Article 16(1) of the Model Law, a legally binding arbitration agreement is a prerequisite to ensure adherence to the parties' contractual obligations. Article 16(1) states that the arbitral tribunal can decide a jurisdictional objection. The legal matter of ***Dalimpex Ltd v. Janicki*** and ***Agros Trading Spolka Z.O.O. v. Dalimpex Ltd*** **(2003)** is under consideration. According to the Ontario Court of Appeal, in situations where ambiguity exists, it may be advantageous to defer any matters concerning the legitimacy or presence of the arbitration agreement to the arbitral tribunal for initial determination, as outlined in article 16(1) of the Model Law.

The absence of a valid arbitration agreement may result in the arbitral tribunal being deemed to lack jurisdiction. The jurisdiction of an arbitral tribunal may be exceeded if it endeavors to establish the rights and obligations of an individual who is not a party to the arbitration agreement. Additionally, if the tribunal addresses a dispute that the parties have not mutually agreed to be resolved by the tribunal, it may be acting outside its jurisdiction. Moreover, an arbitral tribunal that does not comply with the designated time constraints, including the timeframe for rendering an award, is susceptible to being contested for want of jurisdiction.

According to Tweeddale and Tweeddale (2007), if an arbitral tribunal operates beyond its jurisdictional boundaries, it may prompt an objection from one of the parties involved in order to correct the situation. The arbitral tribunal is obligated to ensure that it is fully aware of the scope of its mandate and responsibilities towards the parties involved. The International Criminal Court, as per ICC Case No. 1776, is obligated to refrain from intentionally disregarding its prescribed duties in favor of the agenda of a singular entity. Engaging in such a performance of its responsibilities would be equivalent to behaving in a manner

that lacks sincerity or honesty. Certain nations, including England, Canada, Australia, and New Zealand, can hold an arbitral tribunal accountable for their actions on an individual basis. Instances may arise where the arbitrator is compelled to deviate from their mandate despite their lack of intention to do so due to external pressure exerted by the appointing party. An illustrative example can be found in the legal dispute between Himpurna California Energy Ltd and The Republic of Indonesia, as documented in the 2000 Yearbook Commercial Arbitration, Volume XXV-2000.

An arbitral tribunal's power to decide on its own jurisdiction is distinct from its other powers. This is because while the tribunal's other powers are utilized to settle the dispute between the parties, this particular power determines its jurisdiction. The inquiry pertains to the extent to which the tribunal is proceeding in a suitable direction. Consequently, it can be characterized as a unique authority that enables the tribunal to delineate the scope of its jurisdiction and thus assumes the role of an arbiter when challenged. The authority mentioned above holds significant value as it facilitates the smooth progression of arbitration proceedings by granting an arbitral tribunal the ability to ascertain its jurisdiction while simultaneously carrying out the arbitration proceedings. Moreover, it enhances the autonomy of the international commercial arbitration procedure by internally resolving issues related to its jurisdiction. By raising a jurisdictional challenge before an arbitral tribunal, a party can expeditiously obtain redress while simultaneously reducing costs and conserving time.

## 6. Conclusion

If an inquiry pertaining to an arbitral tribunal's jurisdiction arises throughout the arbitration process's progression, the tribunal assumes responsibility for addressing it initially. Through this approach, the arbitral tribunal possesses the ability to verify and ascertain its own jurisdiction. This is an assessment of its legal authority. The exceptional aspect of this approach lies in its ability to achieve its objective without impinging upon the proceedings of an arbitral tribunal. The provision of arbitration is deemed inevitable in situations where an arbitral tribunal is devoid of authority, is contested, or when there is a need for construing, preserving, or executing the agreement between the parties.

The present article has provided an overview of the historical and contextual underpinnings that give rise to the powers of an arbitral tribunal. The matter has also addressed the fundamental behavior principles expected of an arbitral tribunal. Consequently, this signifies establishing the tribunal's authority to ascertain its legal authority and how it is anticipated to comport itself throughout the arbitration. This article acknowledges the arbitration agreement as a fundamental international commercial arbitration process component. The entirety of the arbitration's structural framework is fashioned through the mutual agreement of the involved parties. The parties possess the autonomous authority to govern the resolution of disputes arising from their international commercial agreements, including selecting an adjudicating body. The capacity of parties to devise their

mechanism for resolving disputes is a discernible and appealing characteristic of arbitration.

As per Tweeddale and Tweeddale (2007), the arbitral tribunal is obligated to ascertain whether it is operating within the confines of its jurisdiction when challenged. This is achieved by examining its ontological status, which gives rise to a state of uncertainty. The authority of an arbitral tribunal to make decisions regarding its jurisdiction, along with the concept of party autonomy, is a fundamental aspect of the international commercial arbitration process. This principle reinforces the impartiality and self-governance of the international commercial arbitration process.

If an inquiry about an arbitral tribunal's jurisdiction arises throughout the process, the tribunal assumes primary responsibility for addressing it. Through this mechanism, the arbitral tribunal can conduct an assessment and establish its jurisdiction promptly and efficiently, thereby advancing and legitimizing the arbitration process.

## Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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