Journal of Arbitration Studies, Vol. 23 No. 3
September, 2013, pp. 25~38

Received : August, 12, 2013
Revised : August, 26, 2013
Accepted : August, 25, 2013

The Principle of Confidentiality in Arbitration: A Necessary Crisis

Bernardo M. Cremades*
Rodrigo Cortés**

Confidentiality has always been considered one of the most important aspects of arbitral proceedings and until recently a principle that could never be ignored. However, under the shadow of the increasing number of arbitral cases in which States are involved, there has recently been a tendency towards publicity, not only in investment protection arbitrations but also in commercial arbitrations. That said, many questions arise: in the event of a conflict between confidentiality and publicity, which should prevail? What role does the arbitrator play in this conflict? Does confidentiality provide more benefits than harm.

Key Words : Arbitration, Confidentiality, Publicity, Award, Commercial Arbitration, Investments Arbitration

< Contents >

* A Practicing Attorney and International Arbitrator, founding partner of the firm B. Cremades and Associates of Madrid and a professor of Universidad de Madrid, Spain
** An Associate Lawyer at B. Cremades and Associates and practicing attorney in international arbitration, Spain

I. Introduction to Confidentiality in Arbitration

There is an old Latin saying that "aliud est tacere, aliud celare" (to conceal is one thing; to be silent another), that, whilst applicable to any aspect of life and the Law, acquires particular relevance in arbitration where privacy and confidentiality have, since its inception, played a very important role.

There is consensus amongst all the participants in arbitration (be they arbitrators, institutions or the litigating parties) as to the reasons why arbitration is chosen over the traditional judicial dispute resolution practices. If a survey were to be conducted amongst these participants the result would probably be a list enumerating the advantages: the speed and flexibility of the process; lower cost; greater guarantee of settlement due to the specialisation of the arbitrators (as opposed to civil judges); the possibility of continuity of the commercial relationship between the disputing parties; etc., but without doubt they would highlight confidentiality as one of the most salient aspects of arbitration. Arbitration has always been characterised, amongst other things, by this singular essential, yet alluring, characteristic[79].

It is well known that in the vast majority of judicial systems around the world the information and results of proceedings in courts of ordinary jurisdiction are, with very few exceptions, in the public domain[80]. In such a globalized and interdependent society as ours it is practically impossible to maintain privacy in the court cases and judicial matters which are brought before judges and State courts. On the other hand, arbitral proceedings, except for investor-State arbitration, are almost always confidential and publicity is only to be found exceptionally.

---

79) UNCITRAL notes on the organization of arbitratral procedure; José Rosell, *Confidentiality and arbitration,* Croatian Arbitration Yearbook, Vol. 9 2002; Francisco González de Cossío, *Arbitraje,* México, D.F.: Editorial Porrúa, 2004.; Hans Bagner, *The Confidentiality Conundrum in International Arbitration,* ICC international Court of arbitration bulletin, vol. 12 num. 1, 2001; Eric Loquin, *Les Obligations de confidentialité dans l'arbitrage,* Revue de l'Arbitrage, 2006; *A. Edwards, Confidentiality in Arbitration, fact or fiction?,* International arbitration law review, 2001.

80) Xavier Andrade Cadena, *Las Ventajas del Arbitraje Internacional: una Perspectiva Ecuatoriana*, http://www.servilex.com.pe/arbitraje/colaboraciones/ventajas_internacional.php#_Toc52207605.

Confidentiality in arbitration is based on the private nature of the dispute: private relationships mean private disputes[81]. Added to this is the logical desire of the parties not to make their differences public[82]. Recourse to the ordinary courts traditionally impedes privacy whereas arbitration allows the parties to sidestep the publicity of official court proceedings in matters that are very sensitive both in terms of public opinion as well as competitors. Furthermore, the parties reach an understanding more readily when there are no external interferences.

Whilst confidentiality is the predominating characteristic in commercial arbitrations where both parties are companies, it is a different matter altogether when the State is involved. Since the State is submitted to public law and control, its arbitrations must be public. This will be discussed later in this paper.

If, as we have said before, in arbitration the general rule is privacy and confidentiality, there is now a current of opinion calling into question that privacy and confidentiality are intrinsic attributes of arbitration. This can be explained mainly by the exponential growth of investment arbitrations and those in which the State is party to the proceedings.

This question mark as to confidentiality is indeed extending to commercial arbitrations, hitherto considered eminently private and thus confidential. This confidentiality may be rooted in the express desire of the parties, by reason of an express provision in the procedural rules applicable to the arbitration or by mandate of the applicable substantive law.

Needless to say, as a matter of private justice, it is confidentiality which sets arbitration apart from other systems of public justice. This has, till now, practically always been the case. The private nature of the dispute naturally justifies confidentiality in the majority of cases. However, in today's globalized world and market, the increasing demand for transparency in commercial activities is beginning to undermine this hitherto virtually untouchable principle of confidentiality.

---

81) A. Redfern, M. Hunter, N. Blackaby and C. Partisades: *Law and Practice of International Commercial Arbitration,* Sweet & Maxwell (2004).

82) Emanuel Gaillard, *Le Principe de Confidentialité de l'Arbitrage Commercial International,* Recueil Dalloz, 1987

II. Historical Evolution of the Principle of Confidentiality

The jurisdictional supervision of awards in the ordinary courts, on the one hand, and the public disclosure of information provided in commercial and international arbitrations in which the State or a State entity is a party, are now made public globally through the internet. This, accordingly, has led to an unprecedented crisis for confidentiality in arbitration.

Up to the end of the nineteen eighties there was an almost indisputable, though unwritten, assumption that the private nature of the arbitral proceedings obliged the participants to maintain confidentiality.[83] This assumption was affirmed without consideration of whether private or public interests were involved. At the end of the nineties, however, a growing number of people involved in arbitration began to question this tradition. The mere fact that the arbitration was private did not necessarily mean that it was confidential as a matter of course. The fact that the parties involved in an arbitral proceedings could stipulate, modify, or, where called for, suppress confidentiality naturally implied that confidentiality does not have to be an inherent characteristic of arbitration present in every single case. The syllogism is clear: if confidentiality can be agreed, then there is no presumption of confidentiality, ergo if there is no presumption of confidentiality then it is not essential.[84]

Privacy is usually present in commercial arbitrations the world over. For a long time it was commonly held that where privacy was recognized, confidentiality was automatically guaranteed. This, however, has ceased to be a commonly shared belief and is now being replaced by new way of thinking.

Nowadays, examples of this break from the idea of confidentiality as an inevitable element of arbitration are appearing principally in Anglo-Saxon countries (the US, the UK and Australia)[85], and more clearly in international

83) Enrique Chavez Bardales, *Nuevas Perspectivas sobre la Privacidad y Confidencialidad en el arbitraje Internacional,* Lima Arbitration no. 3 - 2008 / 2009.

84) Jan Paulsson and Nigel Radwing, *The Trouble with Confidentiality,* Arbitration International, vol. 11, no. 3, 1995

85) José F. Merino Merchán, *Confidencialidad y Arbitraje,* Spain Arbitration Review 2/2008.

commercial arbitrations than in domestic arbitrations. However, it is not exclusively an Anglo-Saxon phenomenon. The Supreme Court of Sweden[86], for example, has recently asserted that confidentiality cannot be deemed inherent to arbitration[87] [88] and that if the parties want confidentiality then it can be expressly agreed[89].

In general terms, domestic legislators and international treaties have not expressly recognized the right to confidentiality in arbitration. Is explicit statutory recognition of confidentiality necessary? We believe that it is not. Arbitrators, parties, counsel, etc., are strictly bound not to disclose any information gained throughout the proceedings. The basis of the principle of confidentiality is to be found at the very core of arbitration and, in general, of alternative dispute resolution. Historically, the majority of these extrajudicial forms of dispute resolution have been played out within a clearly private context and where privacy has occupied the centre stage. This contrasts sharply with the imperative of publicity in judicial proceedings.

III. Commercial vs. Investment Arbitration

Although confidentiality is accepted as a characteristic and indisputable aspect of commercial arbitration, this unshakeable belief is now beginning to shatter: publicity is gaining ground in certain sectors of arbitration. Such is the case with investment arbitration.

Investment arbitration has experienced a marked evolution in recent years. A significant number of States with emerging economies have sought to take

86) Swedish Supreme Court award of October 27, 2010 *(Bulgarian Foreign Trade Bank Ltd vAl Trade Finance Inc.).*

87) José Carlos Fernández Rozas, *Crisis del Paradigma de la Confidencialidad en el Arbitraje Comercial,* http://www.legaltoday.com/practica-juridica/civil/arbitraje/crisis-del-paradigma-de-la-confidencialidad-en-el-arbitraje-comercial

88) José Carlos Fernández Rozas, *Trayectoria y Contornos del Mito de la Confidencialidad en el Arbitraje Comercial,* Revista de Arbitraje Comercial y de Inversiones, vol. II (2).

89) Edouard Bertrand, *The Confidentiality of Arbitration: Evolution or Mutation Following ESSO/BHP v. Plowman,* Revue de Droit International des affaires, no. 2 1996; Yves Fortier, *The Occasionally Unwarranted Assumption of Confidentiality,* Arbitration International, vol. 15, no. 2 1999.

advantage of the global market. These States have required immense public works to develop their economy. Similarly, new ways to tap natural resources have brought about a steep rise in the number of States which have found themselves immersed in arbitrations.

This rise of investment arbitration has created tension between privacy and confidentiality (two elements deeply rooted in commercial arbitration) and the public interest and transparency required in actions in which a State is involved. As we have said, the confidentiality of commercial arbitrations between companies must give way when a public element comes to the fore; for example in the renowned ESSO AUSTRALIA RESOURCES vs. PLOWMAN[90] case where the conclusion which the Australian court reached was that because the Australian State was involved in the arbitration "confidentiality could not be deemed a fundamental attribute and the legitimate interest of the public in obtaining information with regard to public authority matters must prevail". The defence of public interest thus becomes a boundary which the confidentiality of the arbitration may not surpass. In arbitrations in which the State and its public bodies intervene, confidentiality ceases to be an absolute value and consideration is given to the concerns public interest.

As the State is under compulsion by public law and control, its arbitrations must, necessarily, be public (at least in part). This is the case with the Peruvian OSCE (Supervisory Body for State Contracting)[91]. This Council establishes that those arbitrations in which disputes concerning public contracting are settled will be in the public arena and published on the institution's webpage. The ICC, for its part, publishes a guide to arbitral awards for lawyers and arbitrators.

With investment arbitrations, the secrecy and confidentiality of commercial arbitration is no longer a prerogative (usually for reasons of domestic parliamentary control)[92] and arbitrators' decisions have a potentially great impact

90) José F. Merino Merchán, *Confidencialidad y Arbitraje,* Spain Arbitration Review 2/2008.
91) Mariela Guerinoni, *Hacia un arbitraje transparente,* http://edicionespropuesta.blogspot.com.es/2011/08/hacia-un-arbitraje-transparente.html
92) Rodolfo Dávalos, *La Proyectada Corte de Arbitraje de la OHADAC,* Revista de Arbitraje comercial y de Inversiones, vol. 4, 2011; Bernardo M. Cremades, *La participación de los estados en el arbitraje internacional,* conference paper for the Latin American and Caribbean conference on commercial arbitration, La Habana, 2010.

on public opinion. When a State intervenes, the traditional right to confidentiality in commercial arbitration is eliminated when publicity is legally required.

When arbitrations involve State parties, confidentiality is relative to the outcome of the arbitration, that is, the award. It is logical that, whereas the different stages of the arbitral proceedings may be confidential, the result of the arbitration must necessarily be public. And this is why a tendency is emerging towards publication of the award both in the international arena and within the domestic context of States.

As stated above, when sovereign States are involved, arbitrators' decisions have a very significant impact on public opinion. The atmosphere of confidentiality or secrecy surrounding international commercial arbitration disappears. Their determinations must be made known to public opinion and must be subject the parliamentary control of their respective countries.

Transparency in public contracting is essential because of the public interest and public resources involved. Transparency, nonetheless, goes far beyond the publication of awards. In some cases, even, the participation of so-called amici curie in deliberations before the arbitrators has been admitted[93].

It is important to manage transparency in arbitral proceedings in which States are involved, not just for the management of arbitral processes per se, but also to ensure that the execution of those contracts to which the State is party is more efficient.

IV. Confidentiality in Different Systems

In spite of the importance of confidentiality in arbitration, a report by the ICC Commission on International Arbitration published in 2002 revealed that only Hong Kong, Spain, Nigeria, Romania, Taiwan, Zambia and Bermuda contained

93) José Carlos Fernández Rozas, *Crisis del Paradigma de la Confidencialidad en el Arbitraje Comercial,* http://www.legaltoday.com/practica-juridica/civil/arbitraje/crisis-del-paradigma-de-la-confidencialidad-en-el-arbitraje-comercial; Iñigo Iruretagoiena, *Atenuación de los Rasgos de Confidencialidad y Privacidad del Arbitraje de Inversión,* Revista de Arbitraje comercial y de Inversiones, vol.1, 2008.

specific regulations in their respective legislation for the principle of confidentiality[94].

In light of the crisis in the principle of confidentiality in arbitration mentioned already, and in order to preserve confidentiality as a distinctive element of arbitration, some institutional rules previously silent on confidentiality have been amended for the purposes of imposing on the parties the obligation of confidentiality that guarantees the privacy of all data and information presented in the arbitration.

As already noted, as a general rule, international commercial arbitrations are confidential, either by virtue of the lex arbitri, express stipulation by the parties or by virtue of the arbitral rules chosen. In spite of the lack of uniformity the importance of confidentiality is evident in that the majority of arbitration rules (ICC, LCIA, ICSID, UNCITRAL, etc.)[95], make express reference to this.

Confidentiality is traditionally considered almost part and parcel of arbitration. In light of this, one would expect the arbitral regulation (state legislation or institutional regulations) to be quite clear in this regard. However, the reality is far from being as widespread as one would expect.

There is no denying, however, the importance of confidentiality. The majority of arbitral regulations make express mention (in a greater or lesser degree) of it. For example, the ICC in the new 2012 Rules (the previous one in force since 1998 was somewhat vague) regulates, amongst other issues, the possibility that, at the request of either of the parties, the arbitral tribunal issues orders with regard to confidentiality of the arbitral proceedings or the protection of commercial secrets and confidential information; the hearings will not be open to third parties to the proceedings; the work of the ICC's International Court of Arbitration is confidential; the award is not of a public nature, etc.

The LCIA, for its part, establishes that meetings and hearings will be private unless the parties agree or the Tribunal decides otherwise; it establishes a

94) Fernando Canturrias Salaverrry y Roque Caivano, *La nueva ley de arbitraje peruana,* Revista Peruana de arbitraje, 2008; ICC Commission on international arbitration "Report on confidentiality as a purported obligation of the parties in arbitration", en document 420/20-009 Rev, 2009.

95) Tomás Leonard, *Transparencia en arbitraje internacional de inversiones,* Winston & Strawn LLP, www.pge.gob.ec/es/documentos/doc.../281-tomas-leonard.html

presumption of confidentiality on the parties and the arbitrator; and, except by written express agreement of the parties, it establishes that confidentiality extends to the award. The UNCITRAL Rules, whilst not setting forth a general duty of confidentiality of the parties, do set forth that hearings are not open except when the parties agree to the contrary; the arbitral tribunal may require each witness or expert to withdraw during the statement of other witnesses, except, in principle, it should not be required of a witness or expert party to an arbitration to withdraw; the rules submit the publication of the award to the consent of the parties; the award will become public when one of the parties has the legal obligation to make it known to protect or exercise a right; The ICSID prohibits the publication of awards without the consent of the parties. 96)

It is thus that the majority of arbitration regulations today contain references to confidentiality in one way or another.

V. The Appropriateness of Confidentiality and its Potential Risks

Maintaining confidentiality as a characteristic and inviolable feature of the arbitral proceedings is not without its detractors.

1. The Risk of Excessive Confidentiality

As stated at the beginning of this article, there exists a Latin saying that asserts “aliud est tacere, aliud celar” (to conceal is one thing; to be silent another). Whilst it is true that confidentiality is a very important element in arbitration, raising this confidentiality to a kind of indispensable and inviolable element of the institution, to a dogma of faith, can be accompanied by certain dangers. Confidentiality should not, in any event be synonymous with secrecy.

There is a risk of seeing confidentiality as an instrument to mask the

96) However, ICSID must publish excerpts of the ICSID Tribunal's legal reasoning since the year of 2006 when the ICSID Arbitration Rules have been amended.

arbitrators' incorrect or unethical decisions[97], or decisions that violate the principles that should govern the course of the arbitral proceedings.

There is also the risk of arming the arbitrators with a "shield" that has the effect of making it impossible to review the merits of the award. Certainly, on occasion, faced with an application for annulment, the award becomes knowledge of the courts of justice and thus acquires publicity[98]. However, the fact that the merits of the cause cannot be "rearbitrated" leads to a situation where awards that may be formally impeccable but blatantly unjust or containing misguided interpretations of substantive law are beyond jurisdictional control

If confidentiality were absolute and inviolable, the guarantee that the publicity of the ordinary courts implies for the parties would be lost. The secrecy of the proceedings could not only cover up inappropriate conduct by the arbitrators, it could also lead to the conduct of the litigants being categorized as illegal or at least "extralegal" (tax fraud, agreements contravening free competition, etc.). Sensu contrario, indiscriminate publicity may imply that the parties may make public competitor information which should never come to light, thus prejudicing the position of the opposing litigating party.

The standards of professional ethics, understood as principles that should guide the actions of all professionals and be present in the exercise of any duty, take on special relevance when dealing with the work performed by the arbitrators. Confidentiality occupies a prominent position.

Up to what point can an arbitrator assess the existence of this type of abuse? The good arbitrator stakes his professional prestige as an arbitrator on the performance of his duties and accordingly should impose his ethical values, never bowing down to the demands of a specific case. In this way correct arbitral conduct is essential from three standpoints: the arbitrator, the staff of the arbitration centre managing the proceedings, and the arbitral institution itself. The arbitrator, as a decision maker, assumes a responsibility. Were this not so,

---

97) José Carlos Fernández Rozas, *Crisis del Paradigma de la Confidencialidad en el Arbitraje Comercial,* http://www.legaltoday.com/practica-juridica/civil/arbitraje/crisis-del-paradigma-de-la-confidencialidad-en-el-arbitraje-comercial

98) Christoph Müller, *La confidentialité en arbitrage commercial international: un trompe-l'oeil? On est souvent satisfait d'être trompé par soi-même,* ASA Bulletin, vol. 23, no. 2, 2005.

entering into an arbitral proceedings would be equivalent to suffering silently the consequences of an award, however absurd the award may be.

2. Arbitral Decisions as a Contribution to Jurisprudence

On a different note, when confidentiality is viewed as an insurmountable barrier to outside knowledge this is without doubt an obstacle to the development of the Law in areas in which there is more frequent recourse to arbitration. If the publication of legal settlements constitutes a fundamental part of Law, such as jurisprudence, why is it not the same case with arbitral decisions? Why prevent jurisprudence benefiting from the awards?

Generally, the role of the arbitrator is undertaken by highly qualified jurists with experience in the matters under consideration[99]. To condemn arbitral decisions to oblivion (very often of great juridical content)[100] would imply leaving important doctrinal reflections that would shed great light on future cases in limbo. The vast intellectual effort of the arbitrators would thus have a very limited life.

Awards constitute, in many cases, highly noteworthy juridical works[101] and keeping them private deprives the Law of the opportunity to benefit from their content. The publication of awards could provide an incentive to ordinary courts to taking greater care in the drafting of their decisions. A large number of arbitral awards are characterized by their very high quality and their publication would also encourage the arbitrators, similarly, to make the extra effort in the knowledge that they will be in the public domain.

In our view, then, awards should be published once the arbitral proceedings are concluded, unless the parties have agreed otherwise. This is for the sake, apart from what we have just mentioned, of transparency of public management

---

99) Juan Monroy Gálvez, *¿Confidencialidad del Proceso Arbitral?* http://www.estudiomonroy.com/articulos/art_per_confid_proc_arbi.htm

100) Derik Latorre Boza, La Privacidad del Arbitraje, http://blog.pucp.edu.pe/item/48525/la-privacidad-del-arbitraje

101) Mario Castillo Freyre, *Confidencialidad en el Arbitraje,* http://www.castillofreyre.com/biblio_arbitraje/vol8/cap13.pdf

(in those arbitrations in which a State is party) and for reasons of transparency of the arbitral tribunals themselves (understood as arbitrators and institutions) and of those who comprise them.

References

Edwards, "*Confidentiality in Arbitration, fact or fiction?", International arbitration law review*, 2001.

Redfern, M. Hunter, N. Blackaby and C. *Partisades: Law and Practice of International Commercial Arbitration,* Sweet & Maxwell, 2004.

Bernardo M. Cremades, *La participación de los estados en el arbitraje internacional,* conferencia dictada en el Congreso Latinoamericano y caribeño de arbitraje comercial internacional, la Habana, 2010.

Christoph Müller, *"La confidentialité en arbitrage commercial international: un trompe-l'oeil? On est souvent satisfait d'être trompé par soi-même", ASA Bulletin*, vol. 23, no. 2, 2005.

Cindy Buys, "*The tensions between confidentiality and transparency in international arbitration", American Review of International Arbitration,* Vol. 14, No. 121, 2003.

Derik Latorre Boza, "La Privacidad del Arbitraje", Retrieved from http://blog.pucp.edu.pe/item/48525/la-privacidad-del-arbitraje

Edouard Bertrand, *The Confidentiality of Arbitration: Evolution or Mutation Following ESSO/BHP v. Plowman,* Revue de Droit International des affaires, No. 2, 1996.

Emanuel Gaillard, *Le Principe de Confidentialité de l'Arbitrage Commercial International,* en Recueil Dalloz, 1987.

Enrique Chávez Bardales, *Nuevas Perspectivas sobre la Privacidad y Confidencialidad en el arbitraje Internacional,* Lima Arbitration no. 3 - 2008 / 2009.

Enrique Chávez Bardales, *Privacidad y confidencialidad en el Arbitraje Comercial Internacional,* Revista Ibroamericana de Arbitraje.

Eric Loquin, *Les Obligations de confidentialité dans l'arbitrage,* Revue de l'Arbitrage, 2006.

Fernando Cantuarias Salaverry, *Algunos cortos apuntes acerca de la nueva ley de*

arbitraje peruana, Revista Internacional de Arbitraje, No. 10, Bogotá, 2009.

Fernando Canturrias Salaverrry y Roque Caivano, *La nueva ley de arbitraje peruana,* Revista Peruana de arbitraje, 2008.

Francisco González de Cossío, *Arbitraje,* México, D.F.: Editorial Porrúa, 2004.

Hans Bagner, "*The Confidentiality Conundrum in International Arbitration", ICC international Court of arbitration bulletin,* Vol. 12, No. 1, 2001.

ICC Commission on international arbitration *"Report on confidentiality as a purported obligation of the parties in arbitration",* document 420/20-009 Rev, 2009.

Iñigo Iruretagoiena, *Atenuación de los Rasgos de Confidencialidad y Privacidad del Arbitraje de Inversión,* Revista de Arbitraje comercial y de Inversiones, Vol. 1, 2008.

Jan Paulsson y Nigel Radwing, "*The Trouble with Confidentiality", en Arbitration International,* Vol. 11 No. 3, 1995,

Jean Denis Bredin, *Le secret de délibéré arbitral,* Études offertes à Pierre Bellet, París, 1991.

Jean-Paul Beraudo, *La confidentialité et le délibéré",* Les Arbitres Internationaux, París, 2005.

Jorge Fábrega, *Arbitraje en el área Iberoamericana,* XII Jornadas Iberoamericanas de Derecho Procesal.

Jorge Santiestevan, "*El Arbitraje con el Estado",* Retrieved *from* http://www.arbitrajecomercial.com/BancoConocimiento/A/arbitraje_con_el_estado/arbitraje_con_el_estado.asp

José Carlos Fernández Rozas, "*Crisis del Paradigma de la Confidencialidad en el Arbitraje Comercial",* Retrieved *from* http://www.legaltoday.com/practica-juridica/civil/arbitraje/crisis-del-paradigma-de-la-confidencialidad-en-el-arbitraje-comercial

José Carlos Fernández Rozas, *Trayectoria y Contornos del Mito de la Confidencialidad en el Arbitraje Comercial,* Revista de Arbitraje Comercial y de Inversiones, Vol. 2, No. 2..

José Emilio Nunes Pinto, *A confidencialidad na arbitragem,* Revista de Arbitragem e Mediaçao, No. 6, 2005.

José F. Merino Merchán, *Confidencialidad y Arbitraje,* Spain Arbitration Review 2/2008.

José Rosell, *Confidentiality and arbitration,* en Croatian Arbitration Yearbook, Vol. 9 2002.

Juan Monroy Gálvez, "*Confidencialidad del Proceso Arbitral?",* Retrieved *from* http://www.estudiomonroy.com/articulos/art_per_confid_proc_arbi.htm

Julio César Rivera, *Arbitraje Comercial. Internacional y Doméstico,* LexisNexis, 2007.

Mariela Guerinoni, "Hacia un arbitraje transparente", Retrieved from http://edicionespropuesta.blogspot.com.es/2011/08/hacia-un-arbitraje-transparente.html

Mario Castillo Freyre, "*Confidencialidad en el Arbitraje", Retrieved from* http://www.castillofreyre.com/biblio_arbitraje/Vol8/cap13.pdf

Mauro Rubino-Sanmartano, *International Arbitration. Law and Practice,* Kluwer Law International, 2001.

Rodolfo Dávalos, *La Proyectada Corte de Arbitraje de la OHADAC,* Revista de Arbitraje comercial y de Inversiones, Vol. 4, 2011.

Roque J. Caivano, El deber de confidencialidad de los árbitros en el arbitraje comercial desde un enfoque comparativo, Lima Arbitration, No. 4, 2010/2011

Thomas Clay, *L'arbitre,* Paris, 2001.

Tomás Leonard, "*Transparencia en arbitraje internacional de inversiones,* Winston & Strawn LLP", Retrived from www.pge.gob.ec/es/documentos/doc.../281-tomas-leonard.html

United Nations Commission on International Trade Law, Working Group II (Arbitration and Conciliation), 2013, S*ettlement of Commercial Disputes: Preparation of a Legal standard on Transparency in Treaty-based Investor-State Arbitration.*

Xavier Andrade Cadena, "*Las Ventajas del Arbitraje Internacional: una Perspectiva Ecuatoriana",* Retrieved from http://www.servilex.com.pe/ arbitraje/ colaboraciones/ventajas_internacional.php#_Toc52207605

Yves Fortier, "The Occasionally Unwarranted Assumption of Confindentiality", *Arbitration International,* Vol. 15, No. 2. 1999.