OPEN PEER REVIEW

Requirements Governing Compliance with the Principle of Transparency and the Principle of Confidentiality in International Arbitration Agreements (A Comparative Study in Iranian and German Law)

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1. Round 1

1.1. Reviewer 1

Reviewer:

In the introduction, the statement “arbitration may perhaps be regarded as the most common method of adjudicating disputes in the field of international commercial law” requires empirical support or authoritative doctrinal citation. The phrase “may perhaps” also introduces unnecessary ambiguity into an academic legal argument. The authors should either provide statistical evidence from institutions such as the ICC, LCIA, SIAC, or ICSID, or reformulate the sentence more cautiously and precisely.

The paragraph beginning with “This issue initially attracted attention as a result of the friction between arbitral confidentiality and the principle of transparency in international investment agreements” correctly identifies the historical origin of the debate but fails to distinguish transparency in investor-state arbitration from transparency in purely commercial arbitration. This distinction is foundational in contemporary arbitration scholarship. The manuscript should clarify that transparency obligations in investment arbitration arise partly from the public-law dimension of disputes involving sovereign states and public resources.

The article repeatedly uses the concepts of “transparency” and “confidentiality” without establishing a consistent conceptual hierarchy. For example, in the section “The Concept and Elements of the Principle of Transparency,” the manuscript moves from WTO transparency to investment arbitration transparency without explaining whether the latter is derived from public international law, procedural fairness, or administrative legitimacy. A clearer theoretical framework is necessary to prevent conceptual fragmentation.

The sentence “Transparency is synonymous with predictability, information, consultation, efficiency, and the legitimacy of power” is excessively broad and theoretically problematic because transparency is not universally synonymous with these

concepts. Rather, it is often considered a facilitating mechanism for them. The authors should revise this sentence and engage with governance literature more carefully to avoid conceptual overextension.

The discussion of the "Waste Management II" and "Tecmed" cases lacks proper case citation formatting and analytical depth. Merely mentioning the cases is insufficient for a scholarly legal article. The manuscript should identify the arbitral institution, procedural posture, tribunal reasoning, and legal principle derived from each award. In addition, direct engagement with the tribunals' interpretation of fair and equitable treatment would significantly strengthen the analysis.

The paragraph discussing the "Jesse Lewis decision issued in 1921" is analytically disconnected from the surrounding discussion. The manuscript does not sufficiently explain why this case is doctrinally relevant to modern international investment arbitration transparency standards. The authors should either establish a stronger jurisprudential connection or remove this historical example to maintain coherence.

The paragraph discussing "transparency in decision-making" under bilateral investment treaties raises an important issue but does not engage with the tension between sovereign regulatory discretion and investor expectations. This omission is particularly problematic because regulatory change is central to many investment disputes. The authors should incorporate analysis of regulatory chill and balancing public interest with investor protection.

The discussion of Metalclad v. Mexico accurately identifies transparency as a core principle under NAFTA Article 1105; however, the article fails to critically engage with scholarly controversy surrounding the tribunal's expansive interpretation of transparency obligations. The authors should discuss criticisms that Metalclad excessively broadened fair and equitable treatment protections.

Authors revised the manuscript and uploaded the document.

1.2. Reviewer 2

Reviewer:

The section on confidentiality contains an important doctrinal claim in the sentence "Today, the confidentiality of arbitration is regarded as an implied term in arbitration agreements," but this proposition is not universally accepted across jurisdictions. The manuscript later acknowledges divergence in Australian and American law, which creates internal inconsistency. The authors should clarify that implied confidentiality is jurisdiction-specific rather than universally recognized.

The reference to "Article 25(Gollnick et al.) of the UNCITRAL Arbitration Rules" appears to contain a serious citation error because Gollnick et al. concerns skeletal muscle physiology rather than arbitration law. This reference is entirely unrelated to the subject matter of the article and substantially undermines the academic credibility of the manuscript. The authors must immediately correct all erroneous references and thoroughly review the bibliography for citation integrity.

The discussion regarding third-party participation under Article 37(2) of the ICSID Arbitration Rules is relevant, but the manuscript does not explain the relationship between amicus curiae participation and transparency obligations. The authors should analyze how third-party participation changes the traditionally private nature of arbitration and whether this development weakens party autonomy.

In the patent arbitration section, the sentence "arbitration provides no guarantee of secrecy" is highly significant but insufficiently developed. The authors should analyze the practical implications of judicial enforcement proceedings, disclosure obligations to patent offices, and evidentiary disclosure in subsequent litigation. This section would benefit greatly from concrete examples involving patent licensing disputes or FRAND-related arbitration.

The manuscript mentions that "under English law, there is an implied agreement concerning confidentiality," yet no leading authority such as Dolling-Baker v Merrett or Ali Shipping v Shipyard Trogir is cited. Since the article positions itself as a legal comparative study, omission of landmark authorities weakens the doctrinal foundation of the analysis.

The comparative discussion of German law is underdeveloped. The paragraph beginning "From a comparative perspective, in German law…" provides only a descriptive overview and does not analyze German judicial attitudes toward confidentiality, arbitrability of IP disputes, or enforcement procedures. The article should include discussion of the German Code of Civil Procedure (ZPO), especially provisions governing arbitral proceedings and enforcement.

The manuscript repeatedly refers to “foreign investment arbitration” and “international commercial arbitration” interchangeably, despite the fact that these are structurally distinct regimes with different sources of legitimacy and procedural expectations. The authors should consistently distinguish between investor-state arbitration and private commercial arbitration throughout the manuscript to avoid doctrinal confusion.

The section concerning Iranian domestic law correctly references the Foreign Investment Promotion and Protection Act, but the analysis remains descriptive rather than critical. The article should evaluate whether Iranian legal practice genuinely satisfies international transparency standards or whether practical administrative opacity still creates barriers for foreign investors despite formal legislative provisions.

Authors revised the manuscript and uploaded the document.

2. Revised

Editor’s decision: Accepted.
Editor in Chief’s decision: Accepted.