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Final Av. Buen Pastor, Boleíta Norte, Caracas, Venezuela
cierc@uma.edu.ve
Teléfonos: (+58 212) 232.5255 / 232.5142 – Fax: (+58 212) 232.5623
web: www.cierc.com

Dirección del Centro de Investigación y Estudios para la Resolución de Controversias

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Principia

Nota Editorial

¡Bienvenido a *Principia*!

Desde el Centro de Investigación y Estudios para la Resolución de Controversias ("CIERC") nos complace presentar la sexta edición de *Principia*.

La publicación de esta edición de *Principia* no habría sido posible sin la labor de todos los miembros del equipo que hacen posible presentar un producto de calidad académica, que cumple la misión de difundir conocimiento académico sobre los medios alternativos de solución de controversias.

El Consejo Editorial de Principia es esencial para lograr estos objetivos, por lo cual nos enorgullece contar con un grupo diverso de miembros que agregan valor a esta publicación. Es por esto que nos alegra anunciar dos nuevos destacados profesionales que se unen al Consejo Editorial en esta edición: Krystle Baptista Serna y Ricardo Chirinos. Agradecemos nuevamente a los demás miembros miembros del Consejo Editorial por su continuo apoyo a *Principia*.

En esta entrega la Subdirectora de Estudios del CIERC entrevista a Mélanie Riofrio Piché, la Secretaria General del Centro Internacional de Arbitraje de Madrid ("CIAM"), que nos da una interesante perspectiva de una mujer líder en arbitraje internacional y sobre su rol en el CIAM.

Veremos también un trabajo de la Dra. Crina Baltag, donde analiza la importancia de los votos salvados en el arbitraje y su impacto posible en la nulidad y el reconocimiento y ejecución de los laudos arbitrales.

Luego, encontrarán un trabajo en coautoría de José Pedro Barnola y Carol Jiménez López, cursantes del Programa de Estudios Avanzados en Arbitraje ("PREAA") en el cual hacen un interesante estudio sobre la oportunidad que presenta la junta preliminar en el procedimiento arbitral para asegurar la eficiencia y eficacia del arbitraje.

Con la autoría del profesor Diego Thomás Castagnino podrán leer sobre las principales novedades que ofrece el Reglamento de Arbitraje Acelerado que fue adoptado el 21 de julio de 2021 por la CNUDMI, y que entró en vigor a partir del 19 de septiembre de 2021.

Veremos el trabajo del profesor Jorge Hernán Gil Echeverry, quien analiza la legislación venezolana en el contexto de los principios constitucionales para el desarrollo de los medios alternos de solución de conflictos y la escasez de desarrollo legislativo de los mismos.

En otro trabajo, Carol Jiménez López hace un estudio sobre los límites a la confidencialidad en el arbitraje, específicamente en el ámbito de la corrupción y otros hechos delictivos en el procedimiento arbitral.

Finalmente, José Gregorio Torrealba presenta un trabajo sobre la posibilidad de un doble control del laudo bajo la Ley de Arbitraje Comercial venezolana, con el recurso de nulidad y la oposición a la solicitud de reconocimiento y ejecución, y las consecuencias de esta posibilidad.

Agradecemos a todos los árbitros revisores, a los miembros de la Dirección Editorial y al Consejo Editorial que hacen que *Principia* sea posible.

¡Nos vemos en el No. 7!

Magdalena Maninat Lizarraga
Directora Editorial de *Principia*

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Dissenting opinions in international arbitration: More than an opinion?

Crina Baltag[*]

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Resumen: Las opiniones disidentes han ganado aceptación en el arbitraje internacional mediante reglas de arbitraje y leyes permitiéndolos, ya sea aceptando directamente la posibilidad de emitirlos, o indirectamente refiriéndose a 'laudos arbitrales decididos por mayoría de votos'. El seminario del 2003 de Freshfields dictado por Alan Redfern sobre opiniones disidentes llamó la atención sobre los beneficios y las preocupaciones, en particular, aquellas opiniones disidentes dirigidas a señalar irregularidades en el procedimiento arbitral. Más recientemente, durante el procedimiento para anular el laudo arbitral de Vantage Deep Water Co. v. Petrobas Am., Inc., la Corte del Distrito Sur de Texas rechazó el argumento de Petrobras de que 'el procedimiento arbitral había sido [tan] "fudamentalmente viciado..." que "produjo la extraordinaria opinión disidente consignada" por el Sr., Gaitis'. Mientras que es aceptado que las opiniones disidentes no tienen efectos legales, y en particular ningún efecto legal parecido a los laudos arbitrales, pueden lograr impactar significativamente a lograr la nulidad y el reconocimiento y ejecución de los laudos arbitrales.

Abstract: Dissenting opinions have increasingly gained acceptance in international arbitration, with arbitration rules and laws allowing them, by either providing directly for such a possibility, or indirectly, by referring to 'arbitral awards taken with majority of votes.' Alan Redfern's seminal 2003 Freshfields Lecture on dissenting opinions has highlighted the benefits, as well as the concerns with dissenting opinions, in particular, with those directed to alleged irregularities in the arbitral procedure. More recently, in the motion to set aside the arbitral award in Vantage Deep Water Co. v. Petrobras Am., Inc., the US District Court for the Southern District of Texas has rejected Petrobras' argument that 'the arbitral process was [so] "fundamentally flawed" ... that "produced the extraordinary Dissent filed" by Mr Gaitis.' While it is accepted that dissenting opinions have no legal effects, and in particular no legal effects similar to arbitral awards, they can have significant impact on the set aside and recognition and enforcement of arbitral awards.

Palabras Claves: Voto salvado | Laudo arbitral | Anulación | Reconocimiento y ejecución

Keywords: Dissenting opinions | Arbitral award | Set aside | Recognition and enforcement

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[*] Dr., Crina Baltag is Associate Professor (Docent) in International Arbitration at Stockholm University, and director of the master program in International Commercial Arbitration Law. Dr Baltag sits as arbitrator and is appointed as expert in commercial and investment arbitrations.

Dissenting opinions are generally accepted in international arbitration[1]. For example, Article 24(2) of the Brazilian Arbitration Act refers to the following: "a dissenting arbitrator may, if he so wishes, render a separate decision."

Other arbitration laws, such as the 1996 English Arbitration Act, in Section 52(3), refer to the fact that "[t]he award shall be in writing signed by all the arbitrators or all those assenting to the award."

Similarly to the English Arbitration Act, the 2018 Swedish Arbitration Act provides in Section 31 that "[i]t suffices that the award is signed by a majority of the arbitrators, provided that the reason why all of the arbitrators have not signed the award is noted therein."

Germany is one of the few jurisdictions in which dissenting opinions are considered to be in breach of public policy, constituting, thus, a ground for the set aside of the arbitral award under Article 1059(2) of the German Civil Procedure Code[2].

Arbitration rules usually contain no express provision concerning dissenting opinions[3]. In the practice of the International Court of Arbitration of the International Chamber of Commerce (ICC), the issue of dissenting opinions have been discussed since 1985 and later reviewed in 2000[4].

Initially, it was suggested that dissenting opinions should be excluded, as in some jurisdictions they are prohibited under the arbitration laws. The current ICC Arbitration Rules have opted for allowing arbitrators to dissent. Article 32(1) of the 2021 ICC Arbitration Rules provides that "[w]hen the arbitral tribunal is composed of more than one arbitrator, an award is made by a majority decision", thus indirectly allowing for the possibility that arbitrators issue dissenting opinions.

The 1988 ICC Final Report on Dissenting and Separate Opinions has also raised the interesting issue of the scru-

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* Crina Baltag is Associate Professor (Docent) in International Arbitration at Stockholm University, and director of the master program in International Commercial Arbitration Law. Dr Baltag sits as arbitrator and is appointed as expert in commercial and investment arbitrations.

[1]See also Article 57 of the Statute of the International Court of Justice which provides that: *"If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion".*

[2] See Martina Magnarelli, Gregorio Pettazzi and Federico Parise Kuhnle, "I dissent – can I? A Closer Look at the Higher Regional Court of Frankfurt's decision of 16 January 2020 from a German-Italian Perspective", Kluwer Arbitration Blog, 20 March 2021. Available at: I dissent – can i? a closer look at the higher regional court of frankfurt's decision of 16 january 2020 from a german-italian perspective - kluwer arbitration blog.

[3] An example of rules providing for the possibility of having dissenting opinion in the arbitration proceeding are the China International Economic and Trade Arbitration Commission (CIETAC) Arbitration Rules of 2015, which provide in Article 49(5) that: *"A written dissenting opinion shall be kept with the file and may be appended to the award. Such dissenting opinion shall not form a part of the award".*

[4] Available at: Icc digital library (iccwbo.org).

tiny of dissenting opinions[5]. Article 34 of the ICC Rules provide that the arbitral tribunal, before signing any award, shall submit the draft award to the Court, who may lay down modifications as to the form of the award and, without affecting the arbitral tribunal's liberty of decision, may also draw its attention to points of substance. The 1988 ICC Final Report on Dissenting and Separate Opinions explains that

> The Court of Arbitration to look at a dissenting opinion at the same time as it scrutinises the award of the majority arbitrators, with the primary objective of determining whether or not there are any 'points of substance' (the phrase used in Article 21 of the ICC Rules) that should be drawn to the attention of the majority. If the dissenting opinion discloses any weakness in the reasoning of the award, then it must surely be advantageous for the majority arbitrators to be aware of the doubts held by the Court of Arbitration, and be given an opportunity to reconsider their position. Accordingly, the Working Party recommends that the Court of Arbitration should continue its current practice of looking at dissenting opinions, where they are available at the time of scrutiny of the majority award itself.

Nonetheless, the Final Report makes it clear that as a dissenting opinion not being 'part of the award'[6], should not be subject to scrutiny. In any case, what it appears to be useful, as highlighted by the Final Report, is the fact that it can be useful – and also respectful towards the other arbitrators – to make available the (draft) dissent prior to finalizing the arbitral award, and that the ICC would consider such dissenting opinion as part of the scrutiny of the award.

Alan Redfern, in his 2003 seminal Freshfields Lecture, published later as a journal article in Arbitration International[7], refers to three types of dissenting opinions. The "good dissent" is the dissenting opinion which is short, polite and, above all, restrained to relevant issues which usually concern the merits of the arbitration or the jurisdiction of the tribunal[8]. Alan Redfern explains that "[t]he advantage of the "good dissents" is that they permit an arbitrator to express disagreement, without what may be seen as a show of conceit, or petulance."[9] The "the bad dissent" is the dissent that, unlike the "good dissent", uses a language which is not appropriate for the arbitration environment[10]. The "the ugly dissents" are the ones that "attack the way in which the arbitration itself was conducted."[11]

[5] International Chamber of Commerce, "Final Report on Dissenting and Separate Opinions" (International Court of Arbitration Bulletin Vol 2, No 1). Available at: Icc digital library (iccwbo.org)
[6] See also Article 49(5) of the CIETAC Arbitration Rules.
[7] Alan Redfern, "The 2003 Freshfields -Lecture Dissenting Opinions in International Commercial Arbitration: The Good, the Bad and the Ugly" (Arbitration International, Volume 20, 2004), 223–242.
[8] Redfern, *Dissenting Opinions in International Commercial Arbitration*, 226.
[9] Redfern, *Dissenting Opinions in International Commercial Arbitration*, 228.
[10] Redfern, *Dissenting Opinions in International Commercial Arbitration,* 228.
[11] Redfern, *Dissenting Opinions in International Commercial Arbitration ,* 229.

Generally, the grounds for the set aside of an arbitral award are related to irregularities in the arbitration process. For example, Section 34 of the 2018 Swedish Arbitration Act provides, among others, that an award may be wholly or partially set aside upon the request of a party:

1. if it is not covered by a valid arbitration agreement between the parties;
2. if the arbitrators have made the award after the expiration of the time limit set by the parties;
3. if the arbitrators have exceeded their mandate, in a manner that probably influenced the outcome;
4. if the arbitration, according to Section 47, should not have taken place in Sweden;
5. if an arbitrator was appointed in a manner that violates the parties' agreement or this Act,
6. if an arbitrator was unauthorized to adjudicate the dispute due to any circumstance set forth in Sections 7 or 8; or
7. if, without fault of the party, there otherwise occurred an irregularity in the course of the proceedings which probably influenced the outcome of the case.

Similarly, the grounds for resisting the recognition of arbitral awards, as stated in Article V of the 1958 New York Convention, refer to procedural irregularities in most of their part. For example, Article V(1)(b) provides that

> Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that: ...
>
> (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case...

These grounds are, essentially, concerned with the arbitration process and, as explained by Alan Redfern, the "ugly dissents" are "dangerous, precisely because one of the few grounds on which an arbitral award may be annulled, or refused recognition and enforcement, is failure to observe the requirements of due process[12]".

Following Alan Redfern's classification, an example of "ugly dissent" is the dissenting opinion of arbitrator James Gaitis *Vantage v. Petrobras,* relied on by Petrobras for the –unsuccessful– set aside of the award. As presented by Petrobras, the arbitral procedure was "fundamentally flawed" and this was confirmed by the very dissenting opinion of arbitrator Gaitis. Co-arbitrator James Gaitis, in his dissenting opinion has highlighted, in a brief paragraph, the purported shortcomings of the arbitration proceedings, and in the footnote to

[12] Redfern, *Dissenting Opinions in International Commercial Arbitration,* 229.

this paragraph, including a reference to the need of a dissenting opinion. Given its brevity, the dissent is reproduced in full below:

> I object to, and I dissent from, the tribunal majority's Final Award This Objection and Dissent is based not only on my differing conclusions regarding the merits of the parties' dispute, but also on my belief and conclusion that the prehearing, hearing, and posthearing processes that led to the issuance of the Final Award have denied the Respondents in this proceeding the fundamental fairness and due process protections meant to be provided to arbitrating parties by Sections 10(a)(1), 10(a)(2), 10(a)(3), 10(a)(4), and Chapters 2 and 3 of the Federal Arbitration Act, 9 U.S.C. §1, *et seq*.
>
> FN1: In keeping with advice I have long-endorsed relating to the conduct of domestic and international commercial arbitrations in the United States, this Objection and Dissent is intended simply to generally advise the parties of the generic reasons why I cannot join in the Final Award. *See The College of Commercial Arbitrators Guide to Best Practices in Commercial Arbitration* (James M. Gaitis et al. eds. JURIS 4th ed. 2017) at 322 (stating that when arbitrators issue dissenting opinions they should do so "dispassionately and discreetly"); *The College of Commercial Arbitrators Guide to Best Practices in Commercial Arbitration* (James M. Gaitis et al. eds. JURIS 3rd ed. 2013) at 249 (same); *The College of Commercial Arbitrators Guide to Best Practices in Commercial Arbitration* (James M. Gaitis et al. eds. JURIS 2nd ed. 2010) at 184 (same). I emphasize that the brevity of this Objection and Dissent and the fact that I have not participated in the drafting of the tribunal majority's Final Award should not be interpreted to mean that I agree with any particular representation made in the Final Award, regardless of whether the pertinent representation pertains to the relevant substantive facts, the applicable law, or the procedural events (and nonevents) leading up to the issuance of the Final Award and this Objection and Dissent[13].

The dissent attacks not only the merits of the case –"[d]issent is based not only on my differing conclusions regarding the merits of the parties' dispute"-, but the "fundamental fairness and due process protections", without providing any support for such assertions. Such omission of the evidence is somehow explained in the footnote of the dissenting opinion, as arbitrator Gaitis explains that the dissenting opinion is meant to "generally advise the parties of the generic reasons why I cannot join in the Final Award" and that "when arbitrators issue dissenting opinions they should do so "dispassionately and discreetly"".

In response to the dissent, the majority of the arbitral tribunal confirmed that both the presiding arbitrator, William

[13] See Vantage Deepwater Company, Vantage Deepwater Drilling, Inc. v. Petrobras America Inc., Petrobras Venezuela Investments & Services, BV Petróleo Brasileiro S.A. (Petrobras Brazil), Order of 17 May 2019 of the US District Court for the Southern District of Texas. Available at: https://www.govinfo.gov/content/pkg/uscourts-txsd-4_18-cv-02246/pdf/uscourts-txsd-4_18-cv-02246-0.pdf.

W. Park, and the other co-arbitrator, Charles N. Brower, "remained independent and impartial throughout the proceedings" and that "the pre-hearing, hearing, and post-hearing processes leading to the issuance of this Final Award have been conducted with full respect for all Parties' rights to fundamental fairness and due process protections".

> 527. The Majority have carefully considered the Objection to, and Dissent from, the Majority's Final Award, initially provided by Arbitrator Gaitis to his Tribunal colleagues and the AAA immediately following the Chairman's communication of proposed tentative conclusions on jurisdiction, liability and limitation of damages.
>
> 528. Arbitrator Gaitis subsequently confirmed and supplemented that Objection and Dissent, indicating to his Tribunal colleagues, and to the ICDR/AAA, an intention not to sign the Award.
>
> 529. The Chairman and Judge Brower each confirms that he has remained independent and impartial throughout the proceedings. The Chairman and Judge Brower each confirms that the pre-hearing, hearing, and post-hearing processes leading to the issuance of this Final Award have been conducted with full respect for all Parties' rights to fundamental fairness and due process protections meant to be provided to arbitrating parties by Chapters 1, 2 and 3 of the Federal Arbitration Act. Neither the Chairman nor Judge Brower has noted any evidence that these proceedings denied the Parties fundamental fairness and due process protections[14].

The court rejected this argument explaining that arbitrator Gaitis put forward no argument to sustain such conclusion of a flawed procedure. Furthermore, the court held that "Petrobras does not point to a case, nor does the court find one where a dissenting opinion provides grounds for vacatur of the majority's arbitration award." Even more, as highlighted by the court, there is nothing in the file to "support the position that Petrobras was denied a fair Arbitration or that the arbitration was fundamentally flawed".

Another example of an "ugly dissent" is the opinion of arbitrator Hándl in *Czech Republic v. CME,*[15] and which was raised in the context of the set aside proceedings of the arbitral award.

Pursuant to the opinion, the dissenting arbitrator was excluded from the deliberations of the arbitral tribunal. In the set aside proceedings before the Swedish Court of Appeal, all members of the tribunals had to depose as witnesses.

[14] International Centre for Dispute Resolution, Case No. 01-15-0004-8503 [Vantage Deepwater Company, Vantage Deepwater Drilling, Inc. v. Petrobras America Inc., Petrobras Venezuela Investments & Services, BV Petróleo Brasileiro S.A. (Petrobras Brazil)]. Final Award of 29 June 2018, 527-529. Available at https://images.law.com/contrib/content/uploads/documents/401/9302/Petrobras-award.pdf.

[15] The details of the case are available at https://www.italaw.com/cases/281, and the decision of the Swedish Court of Appeal at https://www.italaw.com/sites/default/files/case-documents/ita0182.pdf.

The Court rejected the arguments put forward by the Czech Republic highlighting the fact that the deliberations of an arbitral tribunal have no express provision under the Swedish Arbitration Act, and that arbitrator cannot indefinitely prolong the deliberations in an attempt to get to an unanimous decision.

The Court also concluded that the position of the Czech Republic regarding the exclusion of arbitrator Hándl from the deliberations is unfounded and ungrounded, and stressed that by submitting this argument the deliberations of the arbitral tribunal have become public. On this latter point, the Court emphasized the fact that while arbitration can be transparent, deliberations must always be confidential[16].

Continuing with Alan Redfern's classification, an example of "good dissent" is the one discussed in *F Ltd. v M Ltd.* [2009] EWHC 275 (TCC), although it led to the court ordering the remit of the award to the arbitral tribunal.

The underlying arbitral tribunal proceeded to set off the amount awarded to claimant against the one awarded to respondent, although the dissenting arbitrator had highlighted that there was no pleaded basis for such offset.

Before proceeding with analysing the elements highlighted by the dissenting opinion, Coulson J., stated his view on the relevance and effects of dissenting opinion, as follows:

> (a) The existence of a dissenting opinion on a point of law or fact, arising in connection with an issue that has been pleaded or dealt with by the parties in argument, will be irrelevant to any application under section 68. The decision of the Arbitral Tribunal on such a point, albeit by a majority rather than unanimously, could not be challenged for serious irregularity in such circumstances.
>
> (b) A comment or observation in a dissenting opinion, to the effect that an important point has been decided by the majority without reference to the parties, will be a factor to which the court will attach weight in dealing with an application under section 68. Depending on the circumstances, such an observation may have considerable weight, although it is unlikely that it could, on its own, prove determinative.
>
> (c) In circumstances where an argument raised by the dissenting arbitrator has plainly been considered and rejected by the majority, even if it is an argument that the parties did not themselves raise, it may be difficult to say – even if there was a serious irregularity – that there was also a substantial injustice. Regardless of how it arose, the argument will have been considered and rejected by the majority.

As such, the court has pointed out that, at least in the context of Section 68 of

[16] See for example Article 602(1) of the Romanian Civil Procedure Code which expressly provides that "*in all cases, the decision must be preceded by the confidential deliberation of the arbitrator, in the manner provided by the arbitration agreement or, in the absence of this, by the arbitral tribunal*".

the 1996 English Arbitration Act, the existence of a dissenting opinion does not raise a ready presumption of a serious irregularity in the arbitration proceedings.

Nonetheless, the court will look into the issues raised by the dissenting arbitrator, in particular when there is an allegation that the parties have failed to raise an argument, but the existence of a dissent in itself will likely not be determinative. Further, the fact that the tribunal has considered and addressed the issue raised by the dissenting arbitrator, will not trigger a situation of substantial injustice, even if there is serious irregularity.

Evidently, and as often emphasized in the literature on this topic, dissenting opinions bear advantages and may help improve the arbitration process.

Those "good dissents", in the words of Alan Redfern, offer the arbitral tribunal the possibility to revisit its conclusions and reassess the positions of the parties, not necessarily in order to modify its decision, but rather to provide a more articulated reasoning.

For the dissenting arbitrator, the opinion is an important guarantee in ensuring that each arbitrator is free to decide and have her own views on the case, as well as in safeguarding the flexibility of the arbitration proceedings and the parties' autonomy reflected in the appointment of arbitrators.

In a paper on dissenting opinions, Judge Brower and Chip Rosenberg summarize the advantages of having dissenting opinions as follows: they are indeed a significant feature of international arbitration[17], they can ease the deliberation process when the arbitrators cannot reconcile their positions[18], and help a losing party accept the legitimacy of the process knowing that the arguments were considered by the tribunal[19].

Justice Charles Hughe, former US Chief Justice has stated that a dissenting opinion is "an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting judge believes the court to have been betrayed"[20]. In other words, dissenting opinions –more the ones of judges, rather than those of arbitrators– may help advance the law, by stimulating discus-

[17] Charles N. Brower & Charles B. Rosenberg, *The Death of the Two-Headed Nightingale: Why the Paulsson-van den Berg Presumption that Party-Appointed Arbitrators are Untrustworthy is Wrongheaded* [International Arbitration, 2012 29(1)], 27. Available at: https://www.international-arbitration-attorney.com/wp-content/uploads/arbitrationlawcharles_brower_the_death_of_the_twoheaded_nightingale_speech_2.pdf

[18] Brower & Rosenberg, *The Death of The Two-Headed Nightingale,* 33.

[19] Brower & Rosenberg, *The Death of The Two-Headed Nightingale,* 41.

[20] William D. Blake; Hans J. Hacker, "The Brooding Spirit of the Law: Supreme Court Justices Reading Dissents from the Bench," Justice System Journal 31. Available to: https://scholarworks.iupui.edu/bitstream/handle/1805/5531/blake-2010-the-brooding.pdf?sequence=1

sions and opinions on particular issues, which the legislator and/or the courts may take into consideration for future reforms and/or new case law.

For example, the dissenting opinion of Lord Denning in Candler v. Crane, Christmas & Co [1951] 2 KB 164, seminal judgment of tort law, served as ground for the judgment of the House of Lords in Hedley Byrne & Co Ltd v. Heller & Partners Ltd [1963] UKHL 4. However, even if we acknowledge the evident stimulating and forward-thinking effects of the "good" dissenting opinions, this may be of less value in arbitration, as arbitral awards are usually confidential, while it is generally agreed that there is no doctrine of precedent in international arbitration.

Dissenting opinions are, without doubt, important for the arbitration procedure. Parties have the guarantee that they are being heard, while the arbitral tribunal can overcome deadlocks in their deliberations and in the decisión-making process, ensuring the efficiency of the proceedings.

However, the "ugly dissents", as Alan Redfern has coined them, may become a tool which may be misused by the parties, by raising unfounded challenges to the arbitral award.

It is important to highlight that the "good" or "ugly" character of a dissent is not based on whether an arbitral award is set aside or refused recognition and enforcement, but on whether the dissenting arbitrator, in providing her individual opinion, has raised a procedural irregularity in the proceedings and, in doing so, has brought robust evidence, from the case record, in support for such position.

Article 3(3) of the Chartered Institute of Arbitrators Practice Guidelines on Drafting Arbitral Awards provides that

> An arbitrator may issue a dissenting or separate opinion to explain a disagreement with the outcome and/or the reasoning of the majority, as long as it is not prohibited under the arbitration agreement, including any arbitration rules and/or the lex arbitri. Dissenting or separate opinions should be carefully drafted to avoid any appearance of bias[21].

Paragraph 3 of the comments to Article 3 explains that

> a) An arbitrator may wish to make an individual separate opinion expressing disagreement with the reasoning and/or the conclusions of the majority. There is no required form in which dissenting or concurring opinions should be made. They may be annexed to the final award or included in the award itself; however, they do not have any legal effect and they do not form part of an award.
>
> b) It is good practice for an arbitrator to issue a written draft of any separate opinion for consideration by the other

[21] Chartered Institute of Arbitrators, Practice Guidelines on Drafting Arbitral Awards, Part I-General. Available at: https://acica.org.au/wp-content/uploads/2020/04/guideline-10-drafting-arbitral-awards-part-i-general-2016.pdf

> arbitrators before any award is made. The separate opinion should not disclose any details of the deliberations. It should be clearly identified as the personal opinion of its author; it should be limited to explaining the basis of the opinion; and it should not raise any new arguments that the arbitrator failed to raise at the deliberations.

While the CIArb Guidelines summarize the proper conduct in issuing dissenting opinions, the *Vantage v. Petrobras* case has perhaps highlighted the need for a proper checklist for arbitrators in drafting their dissents.

El Centro de Investigación y Estudios para la Resolución de Controversias (CIERC) de la Universidad Monteávila, nace de la iniciativa de reconocidos profesores y profesionales venezolanos y extranjeros vinculados a la Universidad Monteávila, la Universidad Católica Andrés Bello y el Instituto de Estudios Superiores de Administración (IESA), con el fin de fomentar la utilización de los Medios Alternativos de Resolución de Controversias como vía efectiva para reducir la conflictividad que caracteriza nuestras relaciones comerciales, familiares y personales e incluso, contribuir activamente a solucionar la crisis de justicia e institucionalidad que enmarca nuestro sistema judicial.

El CIERC presenta así diversas herramientas de investigación y formación académica y profesional, orientadas, ante todo, al desarrollo de una metodología efectiva de gerencia y control de riesgos y conflictos, y a fomentar y promover los medios alternativos al litigio judicial para la resolución de controversias, no sólo invitando a las partes a utilizarlos, sino particularmente promoviendo y participando activamente en la formación de árbitros, mediadores y negociadores.

Como parte de las herramientas de investigación y formación académica que promueve el CIERC, nace la necesidad de realizar una publicación que conjugue diferentes artículos de opinión, académicos y de información acerca del desarrollo de los diferentes mecanismos alternativos de resolución, para seguir fomentando el estudio y el desarrollo intelectual en esta área.