INTERNATIONAL COMMERCIAL ARBITRATION DISPUTE BETWEEN INVESTOR-STATE BODIES: A CASE STUDY OF NAFTA RULES ON THE ISSUE OF CONFIDENTIALITY

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By

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ABSTRACT

Confidentiality has been recognized widely as the most attractive characteristic that describes international commercial arbitration. Arbitration's confidential character has been assumed based on the privacy of the hearings. However, this presumption has been proven wrong in arbitrations between private and public actors ("investor-state arbitration"). Both national courts and international tribunals have acknowledged and enforced a public interest exception on the basis of the principle that the public holds the right to be privy to information and to the outcome of the arbitration particularly when the subject-matter of the dispute concerns them. The present research carried out an assessment of the basis of which the limits within the public interest exception to confidentiality may apply. In addition, it carried out an analysis of the advantages of the moral and legal expectations of public participation as well as the risks of the politicization of the arbitrated dispute coupled with the disclosure of trade secrets and of transparency and openness in investor-state arbitral proceedings. The research presented that public interest exception to confidentiality is an invaluable and significant development not only resulting to democratic governance, but also to the eradication of the indiscriminate disclosure of information, the identification and definition of the accurate range of its application which should be confined only to cases where it is fully justified to do so.
ABSTRAK

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