Reflective Journal BWAS 2024

First and last name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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# Aims of the reflective journal

* The reflective journal helps you understand and remember key issues and gives you a chance to record your developing understanding and ideas about the various topic dealt with during the Basel Winter Arbitration School.
* The journal will be assessed to make sure it demonstrates substantive reflective comments on the topics covered, with an analysis and evaluation of the respective concepts. There will be no grade for the journal, just pass or fail.
* The submission of a reflective journal that respects the instructions set out below is a prerequisite for being awarded the Certificate of Completion of the Basel Winter Arbitration School on Friday, 10 February 2024.

# Instructions

* You can skip up to 3 questions (either one entire class or questions from different classes).
* **Your response to each question listed below must be 150 words long** (+/- 20 words is fine).
* **The submitted document must not exceed 6’700 words and not fall below 5’000 words**; this is a strict requirement!
* Please do not include references or footnotes; your answers should summarize your ideas and thoughts that you draw from the readings, classes and discussions.
* Please use this template for the reflective journal and indicate your name, the date of submission and the total word count above.
* Please submit the journal on **Thursday, 9 February 2024 by 17h00 CET** in **Word format** using the upload link on the learning platform: <https://adam.unibas.ch/goto_adam_crs_1622957.html>
* Late submissions will not be accepted.

# Class 1: Conceptual Foundations of International Adjudication

1. What are the distinctive features of international arbitration as a method of dispute resolution?
2. What means of alternative dispute resolution other than arbitration do you know?
3. What procedural elements make various arbitration frameworks different (you may wish to draw a list of “comparative items” which may serve you as an analytical grid when listening to the following lectures)?

# Class 2: Ever More Transparent? A History of International Arbitration

1. What are the rationales of transparency in arbitration, and do we need to distinguish be-tween inter-state, “mixed” (notably investor-state), and commercial arbitration?
2. To what does “transparency” in arbitration refer (i.e. what exactly is made transparent)? What are the historic milestones?
3. Do you agree with the statement by Charles H. Brower II (in the readings, para. 5)? Brower says that the distinction between arbitration and judicial settlement “remains fundamental”, due to “the range of interests brought to bear”. In arbitration, interests beyond the two parties’ interests play no role, and therefore “arbitral tribunals may see the disputing parties as their sole audience”.

# Class 3: Permanent Court of Arbitration

1. What features of the PCA have contributed most in your opinion to its continuing success as a dispute resolution forum in modern times?
2. What is the common element among the many different kinds of cases that the PCA handles?
3. What other areas or kinds of cases do you think might be brought to the PCA in the future?

# Class 4: The Hague Rules on Business and Human Rights

1. What are the reasons that businesses, rights-holders, and other stakeholders might agree to submit business-and-human-rights (BHR) disputes to arbitration, whether in particular cases or in a systematic manner?
2. What aspects of BHR disputes drove the development of specialized arbitration rules in the Hague Rules? Do you agree that specialized rules are required?
3. What opportunities and challenges do you see for the development of BHR arbitration as a means of access to remedy?

# Class 5: International Administrative Law & Dispute Resolution

1. Why should labour disputes within international organizations not be brought before national courts of justice?
2. What type of disputes are brought before international administrative tribunals and who has access to those tribunals?
3. Is immunity of national jurisdiction of international organizations a denial of justice?

# Class 6: Investor-State Arbitration

1. What are the three most important things you want to remember about the system of investor-State dispute settlement?
2. What makes the ICSID Convention particularly suitable to settle disputes between investors and States?
3. Do you think the criticisms of the system of investor-State dispute settlement are justified?

# Class 7: Enforcement of Awards

1. Why should arbitration lawyers always keep in mind the recognition and enforcement of an arbitral award and what measures can be taken in this context?
2. Why is the 1958 New York Convention considered the most successful treaty in private international law and how has it contributed to the success of international arbitration as a dispute resolution mechanism?
3. Do you agree that the 1958 New York Convention should not be reformed or modernized, and if so, why?

# Class 8: Arbitration under the Law of the Sea Convention

1. Please comment on the following: Although the system created in article 287 UNCLOS is unusual with its combination of compulsory dispute settlement together with a choice of forum, it is – all things considered – a helpful approach. Or do you see disadvantages?
2. Please comment on the following: Once the arbitral tribunal is operational, the measures decided upon earlier by the International Tribunal for the Law of the Sea (ITLOS) will evaporate and may need to be re-established by the arbitral tribunal.
3. Please comment on the following: The system in Part XV is unfavourable to developing countries, as it pushes Parties towards arbitration which is quite costly.

# Class 9: Diversity in Arbitration

1. Please comment on the following: Given the format and organizational structure of arbitration as well as the idea of party autonomy, it is unlikely that the ideal of diversity will ever be reached.
2. Please comment on the following: The Appointing Authority is by law an impartial agent whose decisions on the appointment of arbitrators cannot be influenced.
3. Please comment on the following: Given the lack of diversity and the slow change arbitration is not a career for me, because ... (or perhaps it is a career for you?).

# Class 10: Arbitration in Sports

1. Is arbitration (always) the right solution to solve sports disputes? What are the potential disadvantages (especially for athletes) compared to state court litigation?
2. Should there be “open” lists of CAS arbitrators / not lists at all?
3. Assuming that sports arbitration is different from commercial arbitration, should there be - in the Swiss arbitration law - provisions specific to sports arbitration? For instance, should the Swiss Supreme Court have a broader power of review of CAS awards?

# Class 11: WIPO Arbitration

1. What in your opinion makes IP arbitration different compared to other forms of Arbitration?
2. What types of disputes can be submitted to the WIPO Arbitration and Mediation Center?
3. Do you think that IP disputes are arbitrable? Consider in particular contractual IP disputes.