Reflective Journal LSAS 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 provides you the 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 London Summer Arbitration School on Friday, 21 June 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** (+/- 10 words is fine).
* **The submitted document must not exceed 6390 words and not fall below 5310 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, 20 June 2024, 17h30 BST** following the instructions on the learning platform: <https://adam.unibas.ch/goto_adam_crs_1735149.html> (tab “Reflective Journal”).
* Late submissions cannot be taken into account.

# Class 1: Introduction to Comparative International Arbitration

1. Is it possible to define "international arbitration"? If yes, what could be a possible definition? If not, is it at least possible to describe its key characteristics?
2. Why is arbitration often preferred over settlement of disputes in (domestic / international) courts?
3. The London Summer Arbitration School follows a comparative approach: What elements can be compared when discussing various arbitral mechanisms? And what is the added value of comparing different arbitration mechanisms?

# Class 2: Conceptual Foundations of Arbitration

1. What are three most important new things you have learned about arbitration during this class?
2. What is the importance of consent in arbitration and how can it be expressed?
3. Why in some cases resorting to domestic courts is better than resorting to arbitration?

# Class 3: Banking and Finance Arbitration

1. Are international arbitration of banking and finance disputes any different from other disputes, and if so, how?
2. When is arbitration preferable to litigation of banking and finance disputes, and when not?
3. How if at all could international arbitration be made more friendly towards banking and finance disputes?

# Class 4: Institutional and Ad Hoc Commercial Arbitration

1. In your opinion is either mode of arbitration – institutional or *ad hoc* – preferable and why?
2. Do you agree that arbitrations under the UNCITRAL Rules are truly *ad hoc*? What if they are administered by the Permanent Court of Arbitration?
3. Do you believe that there should be any practical significance to the distinction between *ad hoc* and institutional arbitration, such as improved enforceability of awards from reputable institutions?

# Class 5: Commodities Arbitration

1. In your opinion, why is GAFTA arbitration more advantageous than going to court?
2. Does a party have to be a GAFTA member to arbitrate before GAFTA?
3. What are the advantages and disadvantages of trade arbitration?

# Class 6: Jurisdiction of Arbitral Tribunals

1. Consent is the fundamental principle underlying an arbitral tribunal’s jurisdiction. In modern investor-state arbitration, in what form and at what time is consent typically expressed, both by the state and the investor? Are there other possibilities?
2. There are typically limits to a host state’s consent articulated in the instrument expressing its consent. What are the principal limitations, and how can a state invoke them to its advantage during arbitral proceedings? Formulate your answer by reference to the provisions of the U.K.-Colombia BIT.
3. What are the main policy and practical considerations behind the notion that an investor-state arbitral tribunal’s jurisdiction is limited to investment disputes? Why, in principle, should it not adjudicate a broader range of issues?

# Class 7: Public International Law Issues in Arbitration

1. What are the principal areas of public international law that arise in many investor-state arbitrations? How can issues under the law of treaties arise in investor-state arbitration and under the U.K.-Colombia BIT in particular?
2. Drawing on the discussion from the previous class, what is the extent of an investor-state tribunal’s power to determine issues that concern the legal relations between sovereign states? Why do any limitations exist?
3. With reference to the U.K.-Colombia BIT, how can issues relating to territory arise in an arbitration under that instrument? How is public international law relevant in the definition of territory and in the treaty’s scope of application?

# Class 8: Construction Arbitration

1. What are the specific features of construction disputes that call for specific solutions?
2. What are the various methods of dispute resolution in construction and how do they relate to arbitration?
3. Arbitration is an expensive, inefficient and opaque dispute resolution method for construction disputes. Specialist construction courts would be a much better forum for the resolution of such disputes. Comment!

# Class 9: Arbitration in the Digital Economy

1. What specific features of the digital transformation of mature industries, and the digitalisation of the economy (including the digitisation of activities and the increasing use of online and networked services), will raise specific and novel issues relating to arbitration?
2. What fields of arbitration and dispute settlement are already impacted by the use of digital technologies, including web3 and artificial intelligence?
3. What is the impact, on arbitration as a field and on arbitration proceedings specifically, of further developments in the digital economy (including web3, tokenisation, distributed storage mechanisms, and artificial intelligence)?

# Class 10: Outer Space Arbitration

1. What specific issues and considerations should arbitrators and parties take into account when instituting arbitral proceedings in relation to a dispute arising from activities in outer space?
2. What arbitration procedures and frameworks are available to parties in relation to a dispute arising from activities in outer space?
3. In your opinion, is arbitration the mechanism most suited to the settlement of disputes arising from activities in outer space? Why or why not?

# Class 11: Maritime Arbitration

1. What factors make maritime arbitration distinctive?
2. How is an *ad hoc* London maritime arbitration commenced and how might the LMAA (London Maritime Arbitrators Association) Terms be introduced to govern the procedure?
3. Does maritime arbitration have an image problem?