



NATIONAL LAW UNIVERSITY, JODHPUR

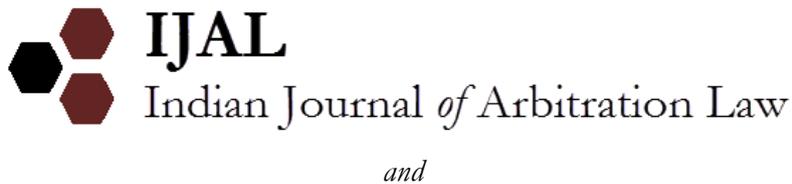
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THE 5TH GARY B. BORN ESSAY COMPETITION  
ON INTERNATIONAL ARBITRATION, 2020

THEMES:

- I. THE CASE FOR OR AGAINST: APPELLATE TRIBUNALS IN ARBITRATION
- II. THE 'RED FLAG' OF CORRUPTION IN INTERNATIONAL ARBITRATION
- III. DOUBLE HATTING IN INTERNATIONAL ARBITRATION

Organised by:



## ABOUT NLUJ

National Law University, Jodhpur (**NLUJ** or **University**) is one of India's premier law schools, situated in the vibrant and colourful city of Jodhpur, Rajasthan. It was established in 1999 as part of a vision of excellence in legal education through innovative methods of learning and focus on interdisciplinary studies. The University offers two unique fiveyear integrated undergraduate programs: B.B.A., LL.B.(Hons.), and B.A., LL.B.(Hons.). These integrated programs include highly demanding honors courses in various facets of law such as Constitutional Law, Business Law, International Trade Law, Criminal Law, and Intellectual Property Rights Law. The University also offers one year LL.M. programs in Corporate Laws, IPR and Technology Laws, International Trade Laws, Banking and Finance, and Cyber Law, and LL.D., and Ph.D. programs.

The diverse student body consists of some of the most meritorious students from the country, selected on the basis of a competitive entrance examination. The teaching faculty comprises both young and experienced academicians who have received their education at leading universities in India, and have contributed to India's growing body of legal academia.

## ABOUT CARTAL

The Centre for Advanced Research & Training in Arbitration Law (**'CARTAL'** or **'Centre'**) is established by the University to promote research and scholarship in specialized fields of arbitration law. The Centre seeks to empower students with a theoretical and practical understanding of arbitration law. The Centre also provides a platform for academicians, professionals and law students to interact and discuss contemporary issues in arbitration law. The mandate of the Centre is achieved by the organization of workshops, conferences and guest lectures to facilitate the understanding of such issues.

In October 2019, the Centre organized the 4th CARTAL Conference on International Arbitration with the theme “*Navigating Murky Waters: Uncertainties in International Arbitration*” (**'Conference'**). SIAC, ICC, Young ICCA, AFIA, MCIA, CIArb, VIAC, SARCO, Bar Association of India, and Society of Indian Law Firms joined as the Institutional Partners of the Conference. The Conference received an overwhelming response from the arbitration community from across the globe, and covered the following in the course of three panel discussions (*see [report](#)*): (1) *Human Rights and Environment Protection Concerns in International Investment Arbitration*, (2) *Taking of Evidence in International Arbitration: Prague Rules vs. IBA Rules*, and (3) *Towards Institutional Arbitration in India*. Hon'ble Justice (retd.) Madan B. Lokur, former Judge of the Supreme Court of India and Judge of Supreme Court of Fiji, graced the Conference as the Guest of Honour. CARTAL has also organised several lectures, workshops and round table discussions in the past and continues to do so with regular frequency. Further details regarding CARTAL and its activities are available [here](#).

## ABOUT IJAL

The Indian Journal of Arbitration Law (**IJAL**) is a bi-annual, open-access, student-run journal published by CARTAL. IJAL is widely recognized as the leading Indian dispute resolution journal and an excellent source of reference in the field of international arbitration. IJAL's Board of Advisers comprises some of the preeminent authorities in international arbitration including Mr. Alexis Mourre, Prof. Emmanuel Gaillard, Prof. Gabrielle Kaufmann-Kohler, Mr. Gary B. Born, Prof. Martin Hunter, and Prof. W. Michael Reisman.

While the 'Indian' in the name of the journal indicates the source of publication, the journal itself has consistently focussed on topics of global interest and relevance. Each issue of IJAL endeavours to cover a wide range of transnational debates and developments in international commercial arbitration and investment treaty arbitration. IJAL has successfully published seven volumes and continues to host contributions from globally renowned experts. To promote free dissemination of knowledge and empowerment, the journal follows an open-access policy. All the articles from the journal's archives can be accessed [here](#). At the same time, IJAL is available on widely-used online legal databases such as Kluwer Arbitration, HeinOnline and Westlaw.

## ABOUT THE COMPETITION

The Gary B. Born Essay Competition on International Arbitration encourages law students to explore forward-looking issues in international arbitration. In 2019, CARTAL successfully conducted the 4th edition of the Gary B. Born Essay Competition on International Arbitration, which included the following themes: (1) *Making India an 'Arbitration Hub': Issues and Implications*, (2) *Settling into a post-Achmea Europe*, and (3) *Mandatory Arbitration Policies for Employment Disputes*.

In keeping with previous years, CARTAL is organising the 5th Gary B. Born Essay Competition (**Competition**) to encourage research and literature in international arbitration. To this effect, the themes of the fifth edition of the competition aim to foster research on some of the contemporary developments in international arbitration, and are listed below:

### 1. **The Case for or against: Appellate Tribunals in Arbitration**

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (**New York Convention**) and the UNCITRAL Model Law on International Commercial Arbitration (**Model Law**) effectively exclude judicial reassessment of the arbitrators' decision on the merits. However, neither the New York Convention, nor the Model Law debars the parties from agreeing to subject their arbitral award to an appeal through arbitration. Having said that, appellate tribunals in arbitration have both advantages and disadvantages. While such appeal mechanism is aimed at ensuring not only procedural, but also substantive correctness of arbitral awards, appeals certainly increase the cost of proceedings and, arguably, impact the finality and delay the execution of the arbitral award. Resultantly, there are divergent views with regards to appellate tribunals in arbitration, and despite some support from scholars, international arbitral institutions refrain from inclusion of provisions that could introduce and regulate appellate tribunals. Participants may discuss questions relating to the various existing appellant mechanisms in arbitration, proposals for new models, and the advantages and disadvantages of the concept.

### 2. **The 'Red Flag' of Corruption in International Arbitration**

Corruption has grown as a silent epidemic plaguing international business and commerce. Consequently, issues of corruption are being increasingly brought before arbitral tribunals for adjudication in both commercial and investment treaty settings. While resolution of such issues may seem simple and straightforward for tribunals owing to the development of international legal frameworks against corruption, the reality is that claims and defences based on allegations of corruption require tribunals to address difficult factual and legal issues at practically every stage of

the arbitral process. Participants may discuss questions related to the mandate of tribunal in considering and deciding the existence of corruption, the circumstances that form potential ‘red flags’ indicating corruption, the general principles that may guide the arbitrators on the evidentiary aspects, and the consequences of corruption-tainted arbitral awards, and propose possible theoretical and practical solutions to some of the existing controversies.

### **3. Double Hatting in International Arbitration**

Since Prof. Philippe Sands QC first spoke about the concept of “double-hatting” at the 2009 conference of the International Bar Association, it has sparked spirited debates in the international arbitration community. “Double-hatting” refers to where arbitrators in one arbitration act as counsels in another arbitration, and is considered problematic particularly since it could create issue conflicts, wherein the arbitrator’s relationship with the subject matter of the arbitration precludes the arbitrator from approaching the case with an open mind. Additionally, it has been argued that arbitrators may have incentives to decide in favour of parties that can later appoint them in other cases. On the other hand, it has been argued that a strict ban on double hatting would adversely affect the arbitrator pool, since newly nominated arbitrators would often be unwilling to sacrifice other sources of income until they have become established. Recently, the Secretariats of ICSID and UNCITRAL released the first draft of the Code of Conduct for Adjudicators in Investor-State Dispute Settlement (**‘Code’**), and Article 6 of the Code addresses the “*limit on multiple roles*”. Participants are encouraged to analyse the concept and impact of double-hatting in international arbitration, and to focus on question of whether and how the practice of double-hatting is to be regulated in international arbitration?

The Competition has the gracious support and patronage of Mr. Gary B. Born, who is the chair of the International Arbitration Practice Group of Wilmer Cutler Pickering Hale and Dorr LLP. Mr. Born is also the President of the SIAC’s Court of Arbitration, and is widely regarded as the world’s preeminent authority on international arbitration. He has participated in more than six hundred international arbitrations, including four of the largest ICC arbitrations and several of the most significant *ad hoc* arbitrations in recent history.

## **RULES OF THE COMPETITION**

- There is no registration fee for the competition.
- The competition is open to all students enrolled in an undergraduate or post graduate programme in law (B.C.L., J.D., LL.B., LL.M. or their local equivalent) in any recognised university across the world. Students who have completed an above-mentioned programme or their equivalent in 2020, and post graduate students who are selected for, and will be enrolled in any such programme for 2020-2021 are also eligible to participate.
- To participate in the competition, interested students must e-mail a copy of their completed essays to [editors@ijal.in](mailto:editors@ijal.in) by **2359 hours** on **September 20, 2020** (Indian Standard Time, GMT +5:30). Late submissions shall not be accepted under any circumstances whatsoever.
- No part of the essay should contain any form of identification of the participant, and any such information, if detected, would lead to disqualification.

## **SUBMISSION GUIDELINES**

- The essay must be submitted in Microsoft Word document format (.doc/.docx).
- The essay must contain an abstract, not exceeding 250 words. It must indicate the theme.
- A participant can submit an entry for one theme only.
- Co-authorship is not permitted.
- The word limit is 4500 – 6500 words including footnotes.
- The essay must be accompanied by a separate document containing the following information about the participant:
  - Full name of the participant
  - Theme chosen
  - Participant's current year of study and name of the degree pursued
  - Name and full address of the participant's university
  - Name and full postal address of the participant
  - Phone number of the participant
  - E-mail ID of the participant
- The essay must be original and bona fide work of the participant.
- The essay must be written in English.
- Footnotes must follow the Bluebook system of citation (Harvard, 20th edition).
- The essay should not be submitted for any other competition and/or for any other purposes.

## **OTHER RULES**

- By entering the competition, the participants agree to indemnify the organisers from and against all claims, suits and damages based on any claim of copyright infringement or plagiarism or unauthorised use.
- The essay shall be considered to be property of NLUJ, which reserves the right of publication of the same in any book, journal, or in any other manner as it may deem appropriate, without providing any royalty or compensation.
- The results of the Competition shall be announced in the last week of October 2020 tentatively. The organizers may, at their discretion, hold an award ceremony to release the results on the aforementioned date or otherwise, alone or in conjunction with another event.
- Any further publication after declaration of results shall only be pursued after express permission from the organisers.
- The winners of the Competition authorize the organizers to use their names and photos, if required, for the purpose of publicizing the Competition and its results.

## **PRIZES**

### **First Prize**

- Cash prize of USD 250,
- Letter of Appreciation from Mr. Gary B. Born,
- Signed copy of a book authored by Mr. Born, and
- An opportunity to be considered for publication in the next issue of IJAL.

### **Second Prize**

- Cash prize of USD 125,
- Letter of Appreciation from Mr. Gary B. Born, and
- An opportunity to be considered for publication in the next issue of IJAL.

### **Third Prize**

- Cash prize of USD 75,
- Letter of Appreciation from Mr. Gary B. Born, and
- An opportunity to be considered for publication in the next issue of IJAL.

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