

Editorial

Miriam Goldby and Andromachi Georgosouli*

As founders and general editors of the Transnational Commercial Law Review it is our pleasure to welcome you to this first issue which has finally come to fruition after over two years of preparatory work. The idea for the journal was conceived in 2016 and after much debate and some discussion with reputable publishers we decided that we did not want to miss an opportunity to create a publication that was both a home for high-quality peer-reviewed academic work and platinum open-access (meaning that it can be accessed and shared by anyone anywhere without charging authors an open-access fee). We therefore decided to self-publish thus opening a Pandora's box of bureaucratic pitfalls and baffling obstacles none of which, thankfully, have proven insurmountable.

The Review is intended as a vehicle for the dissemination of finalised versions of the excellent research work-in-progress presented as part of the academic programme of the QMUL-UNIDROIT Institute of Transnational Commercial Law (ITCL). The centrepiece of the programme is the Lecture Series, launched towards the end of 2017, featuring research presentations by established academic researchers. The series has to date featured eight lectures, the earlier among which have resulted in contributions to this issue. Two major conferences have also been organised under the auspices of the Institute, one which took place in Oxford in April 2018 and one in London in September 2019. One of the excellent papers presented at the Oxford conference appears in this issue and we look forward to publishing several of the papers presented at the London conference in the next.

We are grateful to Professor Sir **Roy Goode**, the founder of the Centre for Commercial Law Studies and of the Institute for his inaugural speech at the launch event of the Institute on the 14th of September 2017, which is published in this issue. To celebrate the scholarly achievement of the late Professor **Alberto Mazzoni** in the

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same issue we have also included his inaugural lecture ‘International Commercial Law Today: Old Habits and New Challenges’ which was delivered at the same event and the first lecture of the ITCL series. In it, he explores the question of whether the rise in protectionist sentiment over the past few years might threaten the role of international commercial law in the future and, if so, to what extent.

Lord Neuberger’s article provides a reflection on the ways in which the UK Supreme Court has developed English commercial law in recent years. These developments can only occur in the course of resolving the tension between the need for certainty and predictability and the need for the law to keep pace with change, thus delivering a fair outcome. In recent times the Court has had to resolve this tension in a number of commercial disputes, many of them transnational, and the article discusses and explains the reasoning behind the most important of these decisions. The final part of Lord Neuberger’s article focuses especially on Supreme Court decisions relevant to international commercial arbitration and cross-border insolvency.

In her essay ‘A Sociology of International Commercial Law’, Professor **Susan Block-Lieb** provides an introduction to a range of themes that she examines in greater detail in her book *Global Lawmakers: International Organizations in the Crafting of World Markets*, (2017, CUP—co-authored with Terence Halliday) and a fascinating insight into the theoretical foundations of their sociological approach to the study of international commercial law.

The article by Professor **Michael Bridge** deals with the vexed issue of the effectiveness of *force majeure* clauses, focussing on the particular circumstances of the recent *Classic Maritime* case, which involved a situation where the contract would not have been performed even had the *force majeure* event not occurred. He contrasts the effect of an exclusion clause, which provides a defence for non-performance where the failure to perform is *caused* by the *force majeure* event, and a cancellation clause which lays down the right to cancel the contract upon the occurrence of such an event. He highlights drafting issues and the different approaches adopted by drafters of transnational standard contract terms.

Professor **Christine Chappuis**’s article ‘Is there Life after the End of the Contract’ examines the somewhat mis-named ‘post-contractual’ obligations of

various types that tend to appear in transnational contracts and reflects upon their nature and the justifications for their enforceability, despite the primary contractual obligations having been discharged. She also considers appropriate methods for drafting ‘post-contractual’ clauses effectively.

In their article, ‘The Bangladesh Accord Arbitrations: Arbitrating Business and Human Rights Disputes’ **Judith Levine** and **Ashwita Ambast** interrogate the use of international arbitration for the resolution of disputes involving violation of human rights in a business context. Specifically, they provide a critical analysis of the treatment of three procedural hurdles: the silence of the arbitration clause on key issues, the degree of transparency and confidentiality applicable to the arbitrations, and the establishment of an efficient procedure to address mass claims.

Last, but by no means least, we are very pleased to be able to include in this issue also an excellent review of Sir Roy’s two most recent books, by Professor **Philip Rawlings**, recently retired from the Centre for Commercial Law Studies, but who thankfully has not relinquished entirely his academic pursuits. He remains a much-loved and much-missed colleague and friend.

We hope that you enjoy this first issue of the Transnational Commercial Law Review.