Editorial

1 INTRODUCTION TO VOLUME 6(2)

As Editors-in-Chief, it has been a great pleasure for us to work alongside the Convenors of the Cambridge International and European Law Conference 2017 to bring you our second issue of the Cambridge International Law Journal (CILJ). We leave it to the Conference Convenors to guide you through the conference papers and to acknowledge those who contributed to the success of the event. For our own part, we would like to thank: our Honourary Editor-in-Chief – Professor Eyal Benvenisti, Advisors, Academic Review Board, Treasurer – Michael Dafei, Managing Editors – John Adenitire, Ya Lan Chang, Raffael Fasel, Ridhi Kabra, Natalie Jones, Editors and the team at Edward Elgar Publishing. As we end our tenure as Editors-in-Chief, we are confident that the Journal will be left in the capable hands of our successors, Ya Lan Chang and Richard Clements.

Lan Nguyen and Niall O'Connor
Editors-in-Chief

2 INTRODUCTION TO THE CONFERENCE

You cannot step twice into the same river for everything changes and nothing remains still. It seems particularly apposite to open this, the 2017 Conference Issue of the Cambridge International Law Journal, by paraphrasing Heraclitus' famous aphorism. Transformation and change were central to the theme of this year's Conference, but the year also heralded significant change for the Journal itself. During the summer of 2016, the Cambridge Journal of International and Comparative Law underwent a metamorphosis, emerging splendidly in September from its out-of-term chrysalis as the Cambridge International Law Journal. This titular transformation was also reflected in the renaming of the Journal's annual conference as 'The Cambridge International and European Law Conference', which, this year, was held on 23 and 24 March 2017 at the Cambridge Faculty of Law.

The theme of the Conference was: 'Transforming Institutions'. Transformative processes litter the landscapes of contemporary international and European law: the seemingly intractable migrant crisis in the Mediterranean, the ongoing process of the United Kingdom's departure from the European Union, questions as to the correct role of the European Court of Human Rights in an age of enhanced subsidiarity, and ongoing international and regional attempts to deal with the legacy of the global financial crisis of 2007–8. These are but a few examples of phenomena which currently exert significant transformative influence on international and European institutions. By choosing the theme of 'Transforming Institutions', we sought to convene a conference that would bring together a broad range of contributions exploring such phenomena, the transformations that they cause to institutions, institutional responses to such transformative processes and the transformation of institutional functions over time.

Judging by the response we received to the Conference's Call for Papers, it would seem that there was high demand for such a forum. We were fortunate enough to receive nearly

200 abstracts of high quality. This presented us with a very trying task of paper selection. Due to constraints of capacity and the need to create coherent panels, which would permit useful, constructive discussions, a number of excellent papers unfortunately could not be included in the final programme.

Opening the Conference, The Whewell Professor of International Law at Cambridge, Professor Eyal Benvenisti, welcomed our first keynote speaker, Professor Jan Klabbers, whose keynote presentation was based on his article, which is the opening contribution to this issue. Over the following two days of the Conference, we saw the presentation and discussion of 45 papers of extremely high quality. In total, we welcomed over 100 participants to the Conference. Delegates and speakers included practitioners, graduate students, early career researchers and established academics. Australian, American and Canadian universities were all represented at the Conference alongside a strong cohort from continental Europe and, of course, the British Isles. With the facilitation of our panel chairs, the sessions produced lively and thoughtful discussions of the papers presented. Professor Kenneth Armstrong, Professor of European Law at Cambridge and Director of the Centre for European Legal Studies (CELS), provided our keynote address on the second day of the Conference and delivered the Conference's closing remarks.

3 FOREWORD TO THE PRESENT ISSUE

This issue of the Cambridge International Law Journal serves to showcase some of the scholarship presented at this year's Conference. The seven articles that follow were selected through a rigorous peer-review process. Authors of the selected papers were also afforded the opportunity to revise and update their papers for publication. In Professor Jan Klabbers' contribution to this issue, upon which his opening keynote presentation was based, he outlines the manner in which international organisations tend to cooperate and compete with each other as independent, autonomous actors. He examines the doctrinal and theoretical issues raised by this and concludes that the current functionalist understanding of the law of international organisations is of little use when seeking to understand or explain these inter-organisational interactions. In the next contribution, Professors Rob van Gestel and Jurgen de Poorter consider the procedure by which national courts can refer preliminary questions to the Court of Justice of the European Union. This study draws on the authors' analysis of case law, responses to a questionnaire issued to the highest administrative courts in the EU and interviews conducted with judges from apex administrative courts in ten EU member states. The authors question whether this preliminary reference procedure does, in fact, create the dialogue that it is supposed to and they propose explanations as to why it may not.

In the next piece, Catherine Warin and Zheni Zhekova use the example of the Afghanistan–EU Joint Way Forward to examine the use of non-binding agreements by the EU in the context of the migration crisis. The authors demonstrate that there are a number of drawbacks to this trend and argue for more transparency regarding the negotiation and implementation of such agreements. Following this, Dominik Dürsthaus' article explores the 'constitutionalisation' of EU private international law. In a thought-provoking piece, he examines whether the EU courts have been implementing principles and values of EU integration by purposively interpreting EU private international law rules. Leonie M Huijbers' article shifts the focus away from EU law towards the Council of Europe. Huijbers seeks to understand the European Court of Human Rights' (ECHR) shift towards a more procedural style of review. She locates

this procedural shift in the context of the enhanced role of subsidiarity in the protection of ECHR rights in light of Protocols 15 and 16 and suggests a way forward for the Strasbourg Court's procedural approach in this age of subsidiarity.

In his contribution to this issue, Desmond Johnson considers the concept of institutional balance in the constitutional order of the EU. Proposing a republican model of institutional balance as constitutional dialogue, Johnson examines the coordinate increases in the powers of the majoritarian European Parliament and the non-majoritarian European Agencies. The article asks whether these seemingly contradictory developments can be legitimated under this conception of institutional balance. The final article in this issue is by Anastasia Karatzia and Menelaos Markakis. The authors examine the role of the European Commission in the operation of the European Stability Mechanism (ESM). Their article presents an account of the legal framework in which the Commission and European Central Bank operate with regard to the ESM, arguing that it is neither fully developed nor clear.

4 SOME WORDS OF THANKS

We wish to thank all of those to whom the success of this year's Conference is owed. We are extremely grateful to the Barristers of Monckton Chambers for the very generous support that they provided to the Conference. We were delighted to welcome the head of Chambers, Mr Phillip Moser QC, to the conference dinner where his after-dinner address was engaging, informative and entertaining. Anneli Howard was kind enough to chair Panel 4, 'Institutional Transformations and the Court of Justice of the European Union' and Christopher Muttukumuru provided his expert and experienced insight on Panel 1, 'Transformations in International Criminal Law'. Thanks to Edward Elgar Publishing, the publishers of the Cambridge International Law Journal, who we were pleased to welcome to both days of the Conference. Thanks also to Hart Publishing for their presence at the conference and their support.

We are grateful to the Honorary Editor-in-Chief of the Cambridge International Law Journal, Professor Eyal Benvenisti, for his remarks in opening the Conference. We also very much appreciate the support given to us by the Cambridge Centre for European Legal Studies (CELS), in the organisation and running of the Conference. Sincere thanks are due to the Director of CELS, Professor Kenneth Armstrong. Besides delivering one of our keynote presentations and closing the Conference, Professor Armstrong was also a constant source of advice and guidance throughout the planning and preparation stages. We are also extremely grateful to Professor Jan Klabbers for his attendance at the Conference and for his engaging keynote presentation.

Our thanks go to the Faculty of Law at Cambridge for facilitating us in our use of the David Williams Building as a conference venue and for the support that was provided throughout the event. We particularly wish to thank the members of the Faculty and others who very kindly volunteered their time to chair our panel sessions. Their involvement in the conference allowed for enriching and informed discussion and exchange of ideas. As Conference Convenors, we are very grateful to our Conference Assistants: Sriparna Choudhury, Tafadzwa Chiposi, Beatriz Espernaca, Shivangelie Ramoutar and Paridhi Singh. Their tireless efforts and hard work were central to the success of the Conference (and the sanity of the Conference Convenors).

It was an absolute pleasure to work on this project with the Journal's Editors-in-Chief, Lan Nguyen and Niall O'Connor. Lan and Niall were extremely supportive

throughout the process as was the Journal's Treasurer, Michael Dafel, who displayed saint-like patience throughout our dealings with him. In organising the Conference, we also benefited from the sage advice of former Conference Convenors, Rajiv Shah, Oliver Butler and Clara Rauchegger. Many thanks indeed are due to all of them. Thanks also to the Editorial Board and peer reviewers for their work in the preparation of this issue for publication. Finally, thanks to everyone who attended and participated in this year's Conference. We hope that it was as enjoyable and engaging an experience for you as it was for us.

Darren Harvey and Darragh Coffey
Conference Convenors