



Editorial

Welcome to the IALS Student Law Review

Welcome to the Autumn 2018 issue of the Institute of Advanced Legal Studies Student Law Review (ISLRev). For this issue of the law review at the start of the new academic session we are pleased to present new writing on a range of international, legal, financial, social and jurisdictional topics.

Sharaban Tahura Zaman considers the significance of the Paris Agreement, 2015 in the global climate regulatory regime, explaining how it inscribed a new pragmatic regulatory framework through Nationally Determined Contributions with the intention of delivering adequate mitigation actions and ratchet them up over time so that by the second half of the century carbon neutrality can be achieved. The discussion in the article develops under three broad themes. The first part briefly dwells upon the changing context of the climate governance regime from the top-down to the bottom-up approaches. Then, the second part examines the legal character of the ‘bottom-up pledge and review’ approach of NDCs through the lens of international law. The third part identifies the key strengths and weaknesses of NDCs’ ‘bottom-up pledge and review’ approach to effectively address mitigation issues.

Lei Zhang discusses China’s efforts to develop a coherent and comprehensive financial system corresponding to the worldwide financial boom, considering the potential role of the floating charge as a security mechanism in financial system regulation and insolvency process, enabling creditors to control loan risks and consequently lowers the cost of credit to debtors. The importation of the floating charge was contemplated to improve the financing ability of companies and therefore accelerate the financial liquidity in the Chinese market economy. It was expected to facilitate the development of privately-owned small and medium enterprises under “policy-lending” context, where the Chinese government controlled bank lending mainly towards state-owned enterprises. However, those conceptual advantages can only be achieved if the floating charge can operate in the host legal environment efficiently and harmoniously. The author explains that since the floating charge is a product of equity, there are many problems faced by Chinese legislators.

Callum Ross describes recent declarations made by the World Health Organisation in the Montevideo Roadmap 2018-2030 and makes the case for a reinvigorated willingness to explore how law can be used as a tool to combat the severe risk that non-communicable diseases pose to society. He argues that the World Health Organisation are now encouraging governments to utilise legal instruments to tackle non-communicable diseases, which is the right approach to take. He examines the issues of free personal choice and the ‘nanny state’ argument in relation to the question of whether governments should implement stronger legal interventions to prevent the harm of non-communicable diseases.

Arohi Kashyap analyses the level of implementation and intervention of the International Horizontal Judicial System in sovereign disputes, referring in particular to the International Court of Justice and the Permanent Court of Arbitration. The paper considers the binding and horizontal nature of the International Judicial System, with detailed reference to three important international sovereign dispute cases, i.e. Nicaragua v. USA, Cambodia v. Thailand (Temple of Preah Vihear case) and the South China Sea Dispute. The author argues that the judicial bodies in international law give judgments and awards without any legal force or backing for implementation making the judgments no more than strict guidelines. The paper highlights the importance of an enforceable International Judicial System in sovereign disputes and suggests that the present system cannot fulfil this requirement.

Thanapat Chatinakrob explains the definition and the object and purpose of a material breach under Article 60 of the Vienna Convention on the law of treaties by exploring its development from the principle *inadimplenti non est adimplendum* to ‘fundamental’ and ‘material’ breaches. The article outlines the way material breach works in practise, including its scope, the kinds of breaches made and procedures to be followed, by analysing decisions by international courts and tribunals and the *travaux préparatoire* of the Vienna Conferences. The author provides an analysis of the exclusion of ‘humanitarian character’ to prevent the entitlement of Article 60, proposing some observations to treaties that might involve a humanitarian character, especially human rights treaties.

Sia Vatanchi compares and contrasts the national English and Canadian preference provisions in relation to bankruptcy and insolvency process – suggesting that although both nations are common law countries and share a similar history, the currently state of preference law in London is less effective and sensible than Ottawa’s. The author explains that an emphasis on the subjective motivation of the debtor has proven to be a challenging task for the office-holder to demonstrate, particularly when combined with the defence of commercial pressure. These features have helped to manufacture a regime whereby the *pari passu* principle underlying preference law is not realised as best possible. Until Parliament institutes reforms aimed at developing a more objective and effects focused system, which requires a greater embracement of the equal-sharing model, English preference law will remain outdated and ineffective.

Shiqing Yu explores the challenges the Belt and Road Initiative (The Silk Road Economic Belt and the 21st-century Maritime Silk Road) faces in China and the necessity to combat those risks. She suggests further that particular attention needs to be paid to these issues to allow us to understand the related challenges in advance to be able to implement effective methods to reduce and/or prevent these risks from emerging.

Many thanks to all those who submitted their articles for inclusion in this issue of the ISLRev. We hope that the readers of the ISLRev find the new voices, views and insights interesting and informative. If you would like to write a piece in response to an article in this issue or propose a new paper on other current topics to the ISLRev, your submissions will be very welcome, Our editorial board is composed of Doctoral Research students keen to receive scholarly articles, case notes or comments for potential publication.

I would also like to thank our Associate Editors and Peer Reviewers for their time, knowledge and expertise during the submission stage and for helping to ensure the quality of content of the ISLRev.

We expect our next issue to be published in the spring 2019, please do submit your papers for consideration as soon as possible. Submissions can be made through the ISLRev’s online submission form at: <http://sasojs.da.ulcc.ac.uk/lawreview/user/register> or by email to: ials.islr@sas.ac.uk

Best wishes to all,

Lovina Otudor (Editor-in-Chief, IALS Student Law Review)

