Of the many qualities of Thomas Wälde, two really stood out: his natural tendency to adopt a transnational perspective and his preference for the virtual world of the Internet. Thomas was a truly transnational lawyer. No matter what problem of international business or investment law he was facing, Thomas refused to think in categories. He was interested in the broader picture. Both in his work as an academic teacher and as an arbitrator and author of legal opinions, he always adopted transnational and interdisciplinary approaches in order to achieve results that would stand up against the challenges of a globalized business world. It is not surprising, therefore, that Thomas has participated in the lively, sometimes even ‘tumultuous’ debate about the existence and doctrinal justification of the New Lex Mercatoria (NLM), the idea of a transnational, ‘a-national’ business law. The NLM theory transcends the boundaries of the traditional theory of legal sources and accepts that law may develop ‘bottom-up’, i.e. out of the contract practice, customs and habits of international business instead of ‘top-down’, i.e. through the democratic authority of domestic legislatures. For a scholar like Thomas Wälde, whose legal thinking always transcended traditional dogmatic and doctrinal boundaries, the existence of the NLM was a matter of great interest and utmost importance:

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1 Thomas has criticized what he called the ‘atomistic character to legal scholardom’. In his view, there are only few scholars and academic schools that ‘transcend this narrow focus, often borne out of the desire to build up confidence by mastering perfectly a mini-area’, see Wälde, T.W., book review of: ‘Souveraineté étatique et marchés internationaux à la fin du 20ème siècle—Mélanges en l'honneur de Philippe Kahn, Dijon 2000’, www.dundee.ac.uk/cepmlp/journal/html/Reviews/review56.html (last checked 3 May 2011).


The idea that the “state” is an essential part of any “law” is a product of the statist period in European (mainly) history—say from 1648 to 1945 and somewhat beyond. It is deeply anchored in our mental apparatus because we have been brainwashed to see the state as an essential part of law. But—Jan Dalhuisen’s book is I think the best explanation of this—this is not written in stone, but the product of a particular period in history. States did exist before 1648 and are likely to exist after 2003, but it seems they do have a somewhat lessened role in omnipotent regulation of everything in transnational business relationships. This process—can be called globalisation—is what explains why the lex mercatoria concept is re-emerging, with the idea that as in other sectors of society, many relationships are in the process of privatisation, or de-nationalisation. This does not mean that the state—or states acting in coordination through international organisations are about to disappear, but simply that we have to understand that the current and evolving organisation of transnational business relationships involves less of a role of the state and the states than it used to be. And this, naturally, requires an intellectual concept to free oneself from the intellectual concepts we are used to and which reflect a now past organisation of the economic relationships. Karl Marx, were he a neo-liberal global economist would have no problem in understanding that as the economic relationships and the role of state changes, so the understanding of the system of legal rules governing such relationships has to change as well.\(^4\)

Apart from his natural tendency to approach legal problems from a transnational and interdisciplinary perspective, Thomas Wälde was also a great believer in the virtues of the Internet. OGEMID and TDM are both proof of Thomas’ firm conviction that the ‘Open Access’ environment of the Web provides the ideal basis for a worldwide forum on international business and investment law. It was but another proof of his remarkable foresight that Thomas understood very early on that the Internet has an enormous ‘potential for user-friendly, rapid and effective searches and availability of large databases to [the] users’.\(^5\) At the Center for Transnational Law (CENTRAL) at Cologne University,\(^6\) a research team has merged these two ideas—the transnationalization of international business and the Open Access environment of the Internet combined with modern database technology—into a new concept, a web-based platform for the ‘Creeping Codification’\(^7\) of the NLM, the ‘TransLex Principles’ at www.trans-lex.org.

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\(^6\) See www.central-koeln.de.

\(^7\) See for this concept Berger, supra note 3, p. 255 et seq.