

INTRODUCTION

This issue of the *Israel Law Review* focuses on an area of law which features prominently in this journal, reflecting the breadth of interest in it both generally and in the context of Israel within its region.

The first two articles – ‘Challenges to Humanitarian Action in Contemporary Conflicts: Israel, the Middle East and Beyond’ by the President of the International Committee of the Red Cross (ICRC), Peter Maurer, and ‘International Humanitarian Law and the Israeli Supreme Court’ by former President of the Israeli Supreme Court, Aharon Barak – are based on lectures hosted by the ICRC and the Minerva Center for Human Rights at the Hebrew University of Jerusalem in July 2013.

Three other articles in this issue emanate from presentations made during the 7th Annual Minerva/ICRC Jerusalem Conference on International Humanitarian Law, on ‘Conduct of Hostilities and Law Enforcement’. In ‘“Thou Shall Not Kill”: The Use of Lethal Force in Non-International Armed Conflicts’, David Kretzmer, Aviad Ben-Yehuda and Meirav Furth examine whether a state involved in an internal armed conflict may employ lethal force against combatants of the enemy, even when it would be feasible to apprehend them. The authors respond to this question in the negative, arguing for a distinction between the law applicable to international armed conflicts and the law applicable to non-international armed conflicts, and emphasising that the jurisprudence on closing the gap between the two types of conflict relates only to humanitarian norms and has never addressed extension of the permissive norms of the law of armed conflict to non-international conflicts. They also argue that in an internal armed conflict, the only context in which the state may deviate from regular norms of law enforcement is in the actual context of hostilities, where the application of such norms is not feasible. In other contexts its human rights obligations prevail.

In ‘The Role of Necessity in International Humanitarian and Human Rights Law’, Lawrence Hill-Cawthorne demonstrates that considerations of necessity play a prominent role in both international humanitarian law and in international human rights law, albeit with differing consequences. He then applies this necessity-based analysis to suggest a principled way to rationalise the relationship between the two legal regimes, illustrating how this approach would operate in practice. The article shows that by emphasising the role of necessity in each legal regime, an approach can be adopted that reconciles the two in a manner that is sympathetic to their object and purpose.

In ‘The Military Response to Criminal Violent Extremist Groups: Aligning Use of Force Presumptions with Threat Reality’, Geoffrey Corn and Tanweer Kaleemullah posits that when the nature of the threat presented by organised criminal gangs and their destabilising effects exceeds the normal law enforcement response and compels the state to resort to regular military

force to restore order, international humanitarian law provides the only viable legal regulatory framework for such operations. However, the risk of excessive use of force inherent in this legal framework necessitates a carefully tailored package of rules of engagement to mitigate the risk that the effort to restore order will result in unjustified deprivation of life, liberty and property.

The final article in this issue is a last instalment from the Project on the Impact of International Courts on Domestic Criminal Procedures in Mass Atrocity Cases (DOMAC), which generated articles published in issues 46(2) and 46(3) of this journal. The three-year project was led by five universities – Amsterdam University, Hebrew University of Jerusalem, University College of London, University of Reykjavik and the University of Westminster – and funded by the European Research Council (under Framework Program 7). In ‘The Role of the International Court of Justice in the Enforcement of the Obligation of States to Investigate and Prosecute Serious Crimes at the National Level’, Thordis Ingadottir explores how the International Court of Justice can play a role in enforcing the obligation of states to investigate and prosecute individuals for serious human rights violations and grave breaches of international humanitarian law. She analyses the Court’s jurisprudence with regard to the obligation to investigate and prosecute serious crimes at the national level; national criminal jurisdiction with respect to prosecution of serious crimes, as well as immunities from that jurisdiction; and the obligation of states to cooperate in criminal matters with other jurisdictions. Noting a varied record in the past, Ingadottir finds that, more recently, states have demonstrated an increased willingness to use the Court as an avenue for enforcement, while the Court has proven to be more willing to utilise its powers.

This range of contributions demonstrates the constantly evolving challenges to international humanitarian law, and illustrates the continued relevance of this body of law to contemporary developments. We invite authors conducting research in international humanitarian law and related topics to consider the *Israel Law Review* as an interested and interesting outlet for their work.

Sir Nigel Rodley and Professor Yuval Shany
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Dr Yaël Ronen
Academic Editor