

## INTRODUCTION

This last issue for volume 46 (2013) of the *Israel Law Review*, like the previous issue, presents a collection of articles on the interplay between domestic and international criminal law, emanating from the Project on the Impact of International Courts on Domestic Criminal Procedures in Mass Atrocity Cases (DOMAC). The three-year project was led by five universities – University of Amsterdam, Hebrew University of Jerusalem, University College London, Reykjavik University and University of Westminster – and funded by the European Research Council (under Framework Program 7). In addition, the issue offers a contribution on the new sentencing law adopted by Israel in 2012.

The DOMAC cluster of articles opens with Patrícia Pinto Soares' 'Positive Complementarity and the Law Enforcement Network: Drawing Lessons from the Ad Hoc Tribunals' Completion Strategy'. The article proposes a two-pronged approach to complementarity in the International Criminal Court (ICC), which distinguishes between legal and policy dimensions. On the basis of the analysis of the situations in the Democratic Republic of Congo, Uganda and Colombia, Pinto Soares argues that the ICC Prosecutor has taken controversial decisions from the viewpoint of complementarity *stricto sensu* and that of positive complementarity, which may leave intact the impunity gap and harm the legitimacy of the ICC. The article proposes to draw on the ad hoc tribunals' completion strategy in order to optimise efforts and resources within the ICC system.

In 'How International Courts Shape Domestic Justice: Lessons from Rwanda and Sierra Leone', Sigall Horovitz assesses the impact of the International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone (SCSL) on national atrocity-related judicial proceedings in their target countries. The article also compares the national impact of the 'purely international' ICTR to that of the 'hybrid' SCSL and tries to identify features that affect the national impact of an international tribunal, noting the importance of understanding the interactions between international and national justice systems, given the shift at the ICC towards 'positive complementarity'.

Two other articles in the DOMAC cluster look further away from the ad hoc tribunals. Silvia Borelli, in 'Domestic Investigation and Prosecution of Atrocities Committed during Military Operations: The Impact of Judgments of the European Court of Human Rights', assesses the extent to which the Court's rulings on violations of the procedural obligations under Articles 2 and 3 of the European Convention on Human Rights (ECHR) to investigate unlawful killings, disappearances, acts of torture or other ill-treatment have, in fact, led to an improvement in the capability of the domestic legal systems of states parties to ensure accountability for such abuses. On the basis of the four case studies examined, Borelli concludes that the Court's judgments, coupled with the supervisory powers of the Committee of Ministers, have the potential to

have a very great impact on the capability of domestic legal systems to deal with gross violations of fundamental human rights, and have led to clear and positive changes within the domestic legal systems of the respondent states. Nevertheless, in order for the ECHR to achieve its full potential in the most politically charged cases, the European Court should adopt a more proactive approach to its remedial powers by ordering specific remedial measures, to include in particular the opening or reopening of investigations.

Ximena Medellín-Urquiaga examines 'The Normative Impact of the Inter-American Court of Human Rights on Latin-American National Prosecution of Mass Atrocities'. She queries whether the decisions of the Inter-American Court can have a significant normative impact on the prosecution of international crimes in domestic jurisdictions. The article argues that such an impact is possible provided that the domestic courts have a specific judicial identity, better aligned with the idea of neo-constitutionalism. In this context, international law and regional human rights jurisprudence become relevant argumentative resources, which can be incorporated into judicial decisions in order to ensure the effective prosecution of gross human rights violations and international crimes.

Yuval Shany's 'How Can International Criminal Courts Have a Greater Impact on National Criminal Proceedings? Lessons from the First Two Decades of International Criminal Justice in Operation' closes the DOMAC collection, with an overview and analysis of the findings in individual case studies. It offers some general observations on the impact of international courts on domestic criminal processes in the aftermath of mass atrocity situations, and discusses the structural deficiencies that may have led until now to sub-optimal levels of cooperation and division of labour between international and national criminal procedures. These include the lack of a comprehensive legal response to mass atrocities, inadequate allocation of resources, the absence of ultimate responsibility over the international response and legitimacy deficits. On the basis of these critical observations, the article introduces some general recommendations for future policy planners.

The final article of this issue is 'Statutory Sentencing Reform in Israel: Exploring the Sentencing Law of 2012' by Julian Roberts and Oren Gazal-Ayal. Their article describes and explores the new Sentencing Act, which introduces statutory directions for courts to follow when sentencing, using words rather than numbers. The article identifies retributivism as the penal philosophy underpinning the new law, which directs the court to construct an individualised proportionate sentencing range appropriate to the case under consideration. Once this is established, the court follows additional directions regarding the factors and principles related to sentencing. The statute also contains a methodology to implement a proportional approach to sentencing as well as detailed guidance on sentencing factors. The article concludes by speculating on whether the law is likely to achieve its goals of promoting more consistent and principled sentencing.

We wish you an enlightening and stimulating read.

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*Editors-in-Chief*