

## INTRODUCTION

In this final issue for the year 2020 of the *Israel Law Review* we present three articles and two book review essays.

In ‘International Adjudication and Its Discontents: A Pluralist Approach to International Tribunal Backlash’, Henry Lovat addresses conceptual challenges that hamper systematic research into the causes of international tribunal backlash. Building on existing literature, Lovat sets out a working definition of international tribunal backlash, tailored to facilitate multi-method empirical research. Drawing on international relations’ pluralist turn, Lovat provides an analytically eclectic theoretical basis for causal analysis of international tribunal backlash.

Natia Kalandarishvili-Mueller’s ‘Transforming a Prima Facie NIAC into an IAC: Finding the Answer in IHL’ addresses the classification of conflicts under international humanitarian law. Kalandarishvili-Mueller argues that attributing responsibility to a state is best done via the overall control test as developed by the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia in the *Tadić* case. This test provides a more realistic benchmark to generate the required evidence than the complete dependence or effective control tests, and is less likely to enable states to avoid responsibilities by acting through armed groups in a prima facie non-international conflict on the territory of another state. The article critically discusses the different control tests and advances the claim that Article 4 of the Third Geneva Convention of 1949 and Article 29 of the Fourth Geneva Convention of 1949 themselves contain a threshold of control that can be leveraged to identify foreign state participation in a prima facie non-international armed conflict.

In the third article, ‘From Apology to Functionalism: A Retrospective Look at the Military Campaign against the Self-Declared Islamic State’, Tal Mimran discusses the military campaign against the Islamic State (Daesh), in an attempt to illustrate the gaps in the international legal framework that regulates the use of force. The article proposes that in cases where several players exercise power in the same territory, a *functional* approach to statehood is preferable to a binary approach. It suggests that the Islamic State could have been treated functionally as a state for the purposes of self-defence or collective security measures, rather than considered in terms of legal doctrines of unclear status that might undermine the international legal system that they intend to protect.

Also in this issue are two book review essays. In ‘Boundaries of Criminal Liability: Participation in Crime, Preparatory Offences and Omissions’ Miriam Gur-Arye reflects on *Core Concepts in Criminal Law and Criminal Justice: Anglo-German Dialogues*, edited by Kai Ambos and others (Cambridge University Press 2020). Gur-Arye focuses on the topics of omissions, preparatory offences, and participation in crime, all of which extend typical criminal liability. Her contribution discusses the comparative German and Anglo-American perspectives

on these issues as discussed in the book, and adds the Israeli perspective. Gur-Arye indicates similarities and underlying considerations that justify the criminalisation of omissions, preparatory offences, and participation in crime. She suggests that the extension of criminal liability in these contexts is justified and should be considered in light of two main notions: control over the commission of the offence, and liberty (or personal freedom).

Finally, Roberta Arnold's review essay 'International Humanitarian Law and Non-State Actors: A Contradiction of Terms?' considers *International Humanitarian Law and Non-State Actors*, edited by Ezequiel Heffes, Marcos D Kotlik and Manuel J Ventura (Springer 2020). Arnold questions the position taken in the collection that, in the promotion of respect for international humanitarian law by all the parties involved in an armed conflict, the new role of non-state actors should be given due consideration from a legal standpoint. She assesses critically the advantages and disadvantages of increased recognition (and potential legitimisation) of non-state actors, with a particular focus on non-state armed groups. Arnold discusses the implications of this trend for the exercise of rights and for the obligation to ensure fundamental guarantees, especially in relation to the powers to detain and to adjudicate.

We hope you enjoy this collection and that you and your families remain safe and healthy!

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