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Introduction

Despite a year of unprecedented upheaval worldwide, the *Israel Law Review* and the Minerva Center for Human Rights at the Hebrew University of Jerusalem are proud to have been operating continuously and, with the cooperation of authors, reviewers and production support, to offer a set of articles relating to the journal's core themes.

The first article in issue 54(2) is Michael Newton's 'Absolutist Admissibility at the ICC: Revalidating Authentic Domestic Investigations', based on a presentation given at the Minerva Center and ICRC Conference on Military Justice and Armed Conflict, held in Jerusalem on 11–12 November 2019. Newton discusses current jurisprudential trends in the International Criminal Court (ICC) that appear to empower the Office of the Prosecutor (OTP) to override domestic investigative authorities in a manner that violates the letter and spirit of the Rome Statute. Newton argues that while no provision of the Rome Statute permits the OTP to substitute its unfettered judgment over the good-faith discretion of domestic prosecutors, ICC judges have created de facto institutional jurisdictional primacy by relying upon mere assertions regarding the insufficiency of domestic efforts. This trend is particularly problematic at the liminal phase from the preliminary examination to an authorised investigation. Newton holds that good-faith exercise of domestic prosecutorial discretion should not be constrained by post hoc Court-created straitjackets. The article recommends reform and proffers a suggestion for harmonising domestic investigative efforts within the structure and intent of the Rome Statute.

Another article emerging from the Minerva/ICRC Military Justice and Armed Conflict Conference is Diletta Marchesi's 'The War Crimes of Denying Judicial Guarantees and the Uncertainties Surrounding Their Material Elements'. The article takes as its point of departure the ICC trial in the *Al Hassan* case, in which, for the first time in the history of international criminal justice, a defendant is being tried for the war crime of sentencing or execution without due process in the context of a non-international armed conflict. The article discusses this crime and its equivalent in the law of international armed conflict, the war crime of denying a fair trial. Marchesi notes that both offences prohibit states and armed non-state actors from depriving prisoners of war and civilians of certain minimum judicial guarantees, but the provisions that regulate the two crimes present interpretative and practical issues that have not yet received sufficient consideration. Marchesi identifies and examines issues posed by the material elements of the war crimes of denying judicial guarantees and warns of the pitfalls hidden by the interpretation of the offences.

A third article in this issue addressing matters of international criminal law is Tomer Levinger's 'Denying the Right of Return as a Crime Against Humanity'. This article holds that the denial of a person's right of return to their country may constitute a crime against humanity. The article builds upon two justifications for the right of return: its grounding in the human

need to belong, and its purpose as a means of preventing rightlessness. Levinger contends that the human interests underlying these justifications are reflected by the notion of humanness ingrained within the law of crimes against humanity. Therefore, denial of the right of return is also an assault against humanness as such, and thus constitutes a crime against humanity. The article considers the proceedings before the ICC with regard to the situation in Bangladesh/Myanmar, where the Pre-Trial Chamber and Prosecutor have argued in support of regarding the denial of the right of the Rohingya peoples to return to Myanmar a crime against humanity. Levinger attempts to offer support for what may be an important doctrinal development in ICC jurisprudence.

Thibault Moulin's 'Doctors Playing Gods? The Legal Challenges in Regulating the Experimental Stage of Cybernetic Human Enhancement' assesses the legality of experiments involving brain-computer interfaces in light of international humanitarian law and international human rights law. Moulin gives specific attention to those experimentations carried out on members of the armed forces, noting the special need to determine how such experimentation can comply with this legal framework, given the military hierarchy and the unique nature of the military forces as protecting national security at the risk of their own lives.

This issue closes with 'The Nation State Law and the Arabic Language in Israel: Downgrading, Replicating or Upgrading?' by Mohammed Wattad. This article examines whether – and, if so, how – the provision in Israel's 2018 Nation State Law (NSL) entitled 'languages' affects the status in Israel of the Arabic language. It notes that prior to the enactment of the NSL the legal status of Arabic had never been decisively determined. The High Court of Israel has always been divided on this matter, particularly between judges who perceived Arabic as an official language and other judges who deemed it solely as having 'special legal status'. Even judges who perceived Arabic as one of the state's official languages were in dispute among themselves on the question regarding the meaning, scope and consequences of such recognition. Wattad contends that the NSL perpetuates the legal status of Arabic as prescribed in already existing laws and case law.

We wish you all an interesting read and good health.

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