

INTRODUCTION

This issue of the *Israel Law Review* opens with two articles based on presentations given at the conference on ‘Indirect Victims of Conflict: IHL Protections of the Rights and Interests of Relatives’, held by the Hebrew University’s Minerva Center for Human Rights in Jerusalem in November 2020. In the first of those, ‘Casting a Legal Safety Net: A Human Security Approach to Assisting Families Following Armed Conflict’, Emily Camins calls for a human security approach in the consideration of the shortcomings of existing legal frameworks in addressing vulnerability following armed conflict, and in the development of frameworks that help to build resilience and address threats. The article identifies several structural issues and features of the legal framework that overlook or entrench the vulnerability of families; the author suggests that supplementing the existing legal regime with a victim assistance framework could help to address the vulnerability of families and others harmed by armed conflict.

The other article emanating from the conference is Patryk Gacka’s ‘Injuring Family Relations through Gross Violations of International Human Rights and Humanitarian Law’. The article concerns the difficulty in distinguishing victims and non-victims in the context of gross violations of international humanitarian and international human rights law. On the one hand, mass atrocities lead to widespread victimisation of individuals, groups and communities who suffer from various types of harm and damage incurred in the process of their commission. On the other hand, clearly not every person affected by an ongoing conflict and mass criminality should be considered a crime victim. The article addresses the conceptual dilemmas by casting light on the place and function of indirect victimhood in international criminal law. It identifies two theoretical models of victimhood and illustrates how they have been put into practice by international and hybrid courts and tribunals in their respective reparative and punitive regimes.

Two other articles in this issue discuss the 2020 decision by the Constitutional Tribunal of Poland in which it held that the legislation which permitted abortion in cases of ‘fatal foetal anomaly’ was an unconstitutional interference with the right to life of the foetus. Magdalena Furgalska and Fiona de Londras, in ‘Rights, Lawfare and Reproduction: Reflections on the Polish Constitutional Tribunal’s Abortion Decision’, argue that this decision is part of a broader scheme of Polish and transnational anti-abortion lawfare. Such lawfare seeks both to (re)shape Polish law in an anti-abortion mould, and to take advantage of ‘gaps’ in European and international human rights law standards on abortion in order to claim rights compliance for law and policy which, in reality, restricts access to abortion in a manner that is incompatible with international human rights law.

In ‘When Legal Fundamentalism Meets Political Justice: The Case of Poland’, Tomasz Tadeusz Koncewicz takes a broader look at the decision, and argues that it is the most serious attempt to discredit and degrade the Polish Constitution of 1997, and stands as the ultimate

weaponisation of judicial review. The article argues that by contextualising the decision, one can grasp the extent to which the constitutional profile of a state has been altered by methods of unconstitutional capture. The analysis identifies important systemic signposts which constitute a cautionary tale of the institutional fragility that is relevant for liberal democracies.


Finally, the *Israel Law Review* is pleased to feature in this issue the 2022 Lionel Cohen Lecture by The Rt Hon The Lord Burnett of Maldon, Lord Chief Justice of England and Wales. The lecture, which was delivered in the Faculty of Law at the Hebrew University of Jerusalem on 30 May 2022, explores the independence and accountability of the judiciary.

We hope you have an enjoyable read.

Professor Malcolm N Shaw KC

Professor Yuval Shany

Editors-in-Chief

Professor Yaël Ronen 

Academic Editor