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INTRODUCTION

We are proud to present the first issue of the *Israel Law Review* for the year 2020. This issue features articles on topics of international humanitarian law, the law of the sea, administrative law and the history of international criminal law.

The first three articles follow presentations made at the 13th Minerva/ICRC Conference on International Humanitarian Law, held at the Hebrew University of Jerusalem on 12–13 November 2018. The conference focused on evaluating recent developments in the law and practice related to detention.

In 'Non-State Armed Groups and the Power to Detain in Non-International Armed Conflict', Joshua Joseph Niyo proposes that there exists a legal power for armed groups to intern persons for imperative security reasons while engaged in armed conflict. He argues that this authorisation exists in the frameworks of both international humanitarian law and international human rights law, just as it does for states engaged in such conflicts. Niyo proposes that such a legal power is particularly strong for armed groups in control of territory, and can be inferred from certain customary law claims, treaty provisions and case law.

Maria Gavrilova also examines detention by non-state armed groups. In 'Administrative Detention by Non-State Armed Groups: Legal Basis and Procedural Safeguards' she analyses key arguments in the scholarly debate on the legal basis for administrative detention. She concludes that neither side of the debate can demonstrate either the existence or the absence of the authorisation in question, and that the debate itself has limited practical value in regulating the conduct of non-state armed groups. At the same time, she argues, the practice of states suggests a gradual transformation of the so-called 'inherent power' to intern into a customary provision that provides a legal basis for administrative detention carried out by such groups.

In 'Bringing Terrorists to Justice in the Context of Armed Conflict: Interaction between International Humanitarian Law and the UN Conventions Against Terrorism', Alejandro Sánchez Frías analyses two regimes that may constitute a legal basis for cooperation in criminal matters against acts of terror committed during armed conflicts, namely criminal responsibility for violations of international humanitarian law, and the United Nations framework of anti-terrorist conventions. Sánchez Frías challenges the view that international humanitarian law is the only framework applicable to acts committed during armed conflict, and suggests that other regimes concerning such acts can serve as a complementary tool in international efforts for the prevention and suppression of terrorism.

In another part of this issue Shani Friedman sheds light on a lacuna in the law and in international adjudication, regarding the entitlement of coastal states to the exclusive economic zone (EEZ). In 'The Concept of Entitlement to an Exclusive Economic Zone as Reflected in International Judicial Decisions', Friedman analyses the implicit requirement under the UN

Convention on the Law of the Sea of a proclamation in order to establish such entitlement. She argues that despite the requirement for proclamation, there is no clear definition of this act in international law that clarifies its legal status. Nonetheless, failure to heed the requirement can affect the establishment of the EEZ, which in turn affects the rights and jurisdiction of coastal states in the zone. It can also affect the competence of judicial institutions to decide on matters such as delimitation of overlapping zones.

Domestic public law is also featured in this issue. Yossi Nehushtan's 'The True Meaning of Rationality as a Distinct Ground of Judicial Review in United Kingdom Public Law' highlights overlooked differences between reasonableness and rationality, indicating the nature of rationality as a distinct ground of judicial review and explaining why it should not be used as a mega-ground of review. He argues that reasonableness is essentially a balancing and weighing exercise, and that the most accurate way of understanding rationality review in public law is to perceive it as 'instrumental rationality' or as a 'suitability test' which reviews the logical and causal connection between means and end. This 'instrumental' perception of rationality is already applied in UK public law as part of the proportionality test. Unlike reasonableness, rationality is not a weighing and balancing test; thus it is wrong to use the concepts of 'reasonableness review' and 'rationality review' indistinguishably, or to use rationality as a mega-ground of review.

Finally, Ziv Bohrer takes William Schabas' portrayal of the aborted attempt to try the German Kaiser as a point of departure to examine certain elements of the forgotten history of international criminal law. In 'The (Failed) Attempt to Try the Kaiser and the Long (Forgotten) History of International Criminal Law: Thoughts Following *The Trial of the Kaiser* by William A Schabas', Bohrer argues that international criminal tribunals are not a modern innovation; nor are 'crimes against humanity', 'aggression' or the universal jurisdiction doctrine. Bohrer discusses reasons for the non-remembrance of the long history of ICL and the significance of acknowledging that history.

Before concluding, it is our pleasure to announce that the recipient of the 2019 prize for best unsolicited article published by the *Review* is Antal Berkes, for his article 'Human Rights Obligations of the Territorial State in the Cyberspace of Areas Outside Its Effective Control', published in issue 52(2). Congratulations, Antal!

We wish you all a pleasant and enlightening reading!

Professor Malcolm N Shaw QC
Professor Yuval Shany
Editors-in-Chief
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