

## INTRODUCTION

This issue of the *Israel Law Review* opens with Yehuda Z Blum's 'The Status of Judea and Samaria Revisited: A Response to Eyal Benvenisti'. This is a rejoinder to Benvenisti's article 'An Article that Changed the Course of History?', published in issue 50(3) of the *Review*, which in turn was a reflection on Blum's 1968 article 'The Missing Reversioner: Reflections on the Status of Judea and Samaria'.

This issue also features four articles based on presentations given during the 11th Annual Minerva/ICRC Jerusalem Conference on Contemporary Challenges in International Humanitarian Law held at the Hebrew University of Jerusalem in November 2016.

In 'The Duty to Investigate Violations of the Right to Life in Armed Conflicts in the Jurisprudence of the Inter-American Court of Human Rights' Giovanna Frisso explores how the Inter-American Court of Human Rights has addressed allegations of violations of the right to life during armed conflict and, in particular, allegations regarding the obligation to investigate. The article notes that international humanitarian law (IHL) was initially used by the Court to strengthen the general obligations of states to protect the rights guaranteed by the American Convention on Human Rights. Later IHL began to inform the interpretation of specific rights. This change has been more significant in relation to the interpretation of the right to life than in relation to the right of access to justice, which also encompasses the duty to investigate allegations of violations of the right to life during an armed conflict. The different ways in which the Court has addressed the relationship between IHL and international human rights law have been informed by an effort to ensure the widest protection possible of individual rights.

In 'Living in a Legal Vacuum: The Case of Israel's Legal Position and Policy towards Gaza Residents', Michal Luft examines Israel's position regarding the legal status of Gaza residents following the 2005 Disengagement as reflected in the regulation of their movements and of the movement of goods. Relying on dozens of policy papers, regulations and procedures, as well as on numerous judgments of Israeli courts, the article reveals that Israel maintains an ambiguous position under which Gaza residents are merely 'foreign residents' who have no particular rights vis-à-vis Israel. This position creates a legal vacuum in the protection afforded to Gaza residents and is therefore incompatible with both the reality of Israel's continuous control over Gaza and the object and norms of international humanitarian law.

Kosuke Onishi's 'Rethinking the Permissive Function of Military Necessity in Internal Non-International Armed Conflict' holds that although military necessity justifies deviation from international human rights law because the latter is inadequate for dealing with the necessities arising out of armed conflict, IHL allows use of force that is often excessive. In some instances this violence is tempered by the *jus ad bellum*, but this body of law does not apply in internal non-international armed conflicts. Accordingly, conduct that is lawful under

humanitarian law should not necessarily be viewed as lawful also under international human rights law. The article explores the potential for international human rights law to play a similar tempering role in such conflicts.

A final contribution emanating from the 2016 Conference is 'NGO Fact-finding for IHL Enforcement: In Search of a New Model' by Gerald M Steinberg and Anne Herzberg. The article maintains that fact-finding activities of international NGOs fail to impact on armed conflicts, mainly because of the weaknesses of these organisations in the realm of fact-finding and the tension between such activities and emphasis on political advocacy. The article analyses both objective and subjective aspects of NGO fact-finding during armed conflict, including mandates and methodology, selection, application of legal standards, military expertise and sourcing. It offers case studies of Amnesty International and Human Rights Watch publications on the conflicts in Yemen, Ukraine and the 2014 Gaza War. The article concludes with recommendations for NGOs and the actors with which they interact.

Another contribution to this issue is Gary Wihl's 'Civil Disobedience in Democratic Regimes', which provides a fresh interpretation of John Rawls's discussion of civil disobedience in *A Theory of Justice*. The discussion gains new importance in light of recent movements of mass dissent and protest. The article focuses on Rawls's analysis of civil disobedience as a form of speech deployed by a well-defined minority in an effort to correct an injustice perpetrated by a majority. It argues that for Rawls, civil disobedience as a speech function departs from the principle of protected free speech. His discussion of civil disobedience circumvents arguments in the legal literature that attempt to justify certain types of illegal activity with reference to moral conscience or natural law. Nevertheless, the focus on civil disobedience as speech encounters forms of coercive and resistant public opinion in the public sphere. The article uses narratives by Martin Luther King and Norman Mailer on acts of civil disobedience to illuminate forms of coercion that must be considered in extending and re-evaluating Rawls's original contributions.

Finally, in the book review essay 'The International Legal Status of Armed Groups: Can One Be Determined Outside the Scope of Armed Conflict?', Tom Gal evaluates Daragh Murray's *Human Rights Obligations of Non-State Armed Groups* (Hart 2016), focusing in particular on Murray's attempt to provide a complete overview of the legal framework that enables armed groups to acquire international legal status, and preferably outside the framework of armed conflict.

We wish all our readers an enjoyable and fruitful read.

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