



**Minerva Center for the Rule of Law
under Extreme Conditions**

Minerva Center for the Rule of Law under Extreme Conditions

Annual report - 2020

Haifa and Hamburg, April 2021

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In accordance with the contract between the Minerva Stiftung Gesellschaft für die Forschung m.b.h. and the University of Haifa, we present this report which covers the Center's activities for 2020.

Personnel and framework of activity

The past year -2020 Corona year - was marked by intensive online activity at the Center. The team included:

- Eight (8) PIs: Prof. Eli Salzberger, Prof. Gad Barzilai, , Dr. Itaman Mann, Prof. Stefan Oeter (Hamburg), Prof. Amnon Reichman, Prof. Deborah Shmueli and Prof. Anne van Aaken (Hamburg) with the participation of Prof. Florian Jessberger who moved from the University of Hamburg to Humboldt University.
- Seven (7) young scholars - post-doctoral researchers (see page 9)
- One academic coordinator (Dr. Michal Ben Gal), working part-time as researcher, administrator and website manager
- One project head (Adv. Ido Rosenzweig), and two to four research assistants, depending on project needs.

In addition, the Center hosted one young MA researcher (Lavinia Parsi) from Università degli Studi di Milano, Italy, who came for a study and research period in 2020. Due to COVID-19, the Center did not host other guests from abroad.

The Center is located in the Terrace ("Madrega") building at the University of Haifa, room 1013. Center activities include: 1) research initiated by the principal investigators; 2) support for research projects and related activities conducted by external researchers, including graduate students, post-doctoral and established researchers; and 3) conferences, workshops and round tables, supporting and complementing the research activities of the PIs, and further developing a research community with connections to policy and decision-makers in relevant fields.

The Israeli-based Center team meets every two weeks on Wednesdays. A Young Researchers Forum is held in the morning in which the post-doc, docs, and additional

young researchers meet to discuss their “work in progress”. Prior to each meeting, one of the young researchers distributes a draft of his/her work, which is presented and discussed among the group. A seminar talk is held in the afternoon, usually given by one of the members of the Center’s community or by a scholar who has received a support from the Center. The lectures are open to the public and most of them are streamlined on YouTube (reaching several thousand viewers).

The Israeli PIs hold separate meetings to discuss substantive as well as administrative aspects of the Center’s operation; This year, one conference and PIs meeting were held in Hamburg in February 2020; all other Center activities were on-line.

1. PI Initiated Research

I. Towards an Israeli doctrine and legislative-regulative framework dealing with emergencies

Led by Prof. Eli Salzberger and Prof. Shlomo Mizrahi (from the School of Political Science at the University of Haifa), with our post-doc, Dr. Robert Neufeld; time period: 1/1/2019-30/12/2020.

Funded by the National Emergency Knowledge and Research Center (Supported by the Israel Ministry of Science and Technology and The National Emergency Management Authority, Ministry of Defense)

2020 was the final year of this three year research project. During Israel's short history the country has experienced numerous emergencies, most of which were related to national security incidents. It is surprising, therefore, that Israel lacks a solid doctrine and comprehensive legislative and regulative framework dealing with preparation towards emergencies, handling and mitigating such emergencies and recovering from them. Furthermore, the legislation that does exist on the law-books is far from reflecting reality, creating a dangerous gap between the law in the books and law in action. The Covid-19 proved the case. Initially there was no central management of the crises and

when the government looked for an integrating body it did not think at all of the National Emergency Management Authority and finally assigned the task to the National Security Council, which is an advisory (rather than an operative) body assigned to advise in matters of foreign affairs and national security.

The research is meant to fill these lack and gap. Based on a comparative study of the emergencies doctrines and legislative frameworks in other countries, as well as the current Israeli formal and practiced frameworks, and following thorough interviews with key individuals related to the emergency realm (which were completed last year) we put forward a legislation proposal to deal with the structure and management of the emergency field. It will be based on proposed policy research analysis of the main regulatory and coordination problems that characterize emergency management in Israel and the alternatives to deals with them, producing also a policy paper with policy recommendations.

II. National Research and Knowledge Center for Emergency Preparedness

THE NATIONAL KNOWLEDGE AND RESEARCH CENTER FOR EMERGENCY READINESS with eighty-five researchers was established in January 2018 by the Israel Ministry of Science and Technology and the National Emergency Management Authority (NEMA) of the Ministry of Defense. The Center operates in integrative parallel to the Minerva Center for RLuEC.

Overview of the Center is available on its website: <http://muchanut.haifa.ac.il>.

Outlines of research at the Center is available on its website: <http://muchanut.haifa.ac.il>

>> [Center Research](#)

Led by Prof. Deborah Shmueli (Center Head); Dr. Michal Ben Gal (research coordinator), team of 85 researchers divided into 8 methodological groups, Law group led by Prof. Eli Saltzberger, whereas Prof. Gad Barzilai, Prof. Amnon Reichman are members of group.

Funded by the Ministry of Science and Technology and the National Emergency Management Administration of the Ministry of Defense, 3,000,000 NIS, 2018-2020.

Partial funding to Law group (Minerva) on competitive research basis. Additional 700,000 NIS were granted for the Center by the Israeli Ministry of Science and Technology for 2021.

The Center's contributions to the effort during the COVID-19 pandemic were in two strata: 1) Streaming insights, data, and recommendations for Decision Makers and Supporting Teams, based on research on coping with epidemics in general, and Covid-19 in particular. 2) Characterizing issues that require addressing and answering decision-makers' questions (in the National Security Council (NSC), Ministry of Science Tzevet 19; National Emergency Management Administration (RACHEL), and other governmental institutions and think tanks).

In addition, the Center's website (<http://muchanut.haifa.ac.il>) collects up-to-date knowledge including information sources, articles, lectures, position papers and various publications.

1) Research - short, medium and long term

A. The Knowledge Center is conducting a number of studies on preparing and dealing with the Corona crisis. Some deal in the short and medium term, and some in the long term. Some began before the outbreak of the crisis and expanded / changed to engage in Corona, and others began with the outbreak of the crisis.

List of Research Projects:

- "The day after" – multi-disciplinary strategies for coping, gradual exit and crisis recovery, including the following surveys:
 - From SARS/MERS to COVID-19: A Comparative Overview of Policy Learning in Four East-Asian Polities (S. Korea, Taiwan, Hong Kong, Singapore) and Israel
 - The Impact of COVID-19 on Well-being (Collaboration with the International Institute for Applied Systems Analysis (IIASA), Laxenburg, Austria) and the impact of COVID-19 on well-being in Israel
 - Comparative Study of European Strategies (Switzerland, Austria, Italy, Greece)
 - Survey of Israeli Public Health Professionals Reactions to Policies (May 2020)

- Using crowd-sourcing surveys for input from the public on the ongoing crisis management
- Smart and portable autonomous structures to deal with epidemic - a reserve of isolation and treatment facilities
- Building social resilience and trust in the era of the Corona virus epidemic and global risks: an integrative approach of man and society
- The domino effect in the tourism industry of the Corona virus: analysis and recommendations
- Corona epidemic characteristics among low-income, refugee and new immigrant populations
- Agent-based simulation of the spatial spread of the Corona virus in major cities in Israel
- Corona epidemic - estimating the economic costs of various coping measures. sensitivity analysis
- Personal, community and national resilience in Israel during the Corona crisis
- Post-traumatic stress response, uncertainty, world assumptions and loss of resources in the end and after the corona epidemic
- Is it possible to study at such a time? Examining the relationship between parents' meta abilities and learning ability from their children's home during the corona pandemic
- Poverty in the Corona: Challenges and struggles of people living in poverty following the Corona epidemic
- The interplay between government and public in an emergency
- Developing community-urban resilience in local authorities and planning urban space in emergencies
- A legal-regulatory series on dealing with emergencies in Israel

B. bi-weekly summary of insights, key findings, and action suggestions from 70 studies funded by the Ministry of Science and Technology (Center and non-Center research):

The Ministry of Science and Technology has chosen to fund 70 studies on a variety of topics that have been found to be crucial to addressing the short and short-term corona crisis. In order to streamline the gathering of insights from these studies and to inform the Ministry of Science and Technology of information gathered and to assist in dealing with the crisis in real time, the Center provided decision makers with a bi-weekly summary which included:

- Interesting statistics and findings that emerge during the research
- Findings that seem surprising or contradictory to accepted beliefs
- Key insights that have crystallized up to the point in time of the report
- Action suggestions that have crystallized up to the point in time of the report
- Comments on numerous draft legislation and regulations related to the Covid-19 crises

2. Short answers to questions that arise from decision-makers and others

The Knowledge Center employs around 90 researchers with expertise in a variety of emergency areas. These researchers are able to characterize issues that need to be addressed in the NSC and other entities, as well as to answer questions from the National Security Council, Ministry of Science and Technology (Tzevet – 19 for Minister who is a member of the Corona Cabinet), National Emergency Management Administration (RACHEL) and other bodies.

Information on the Center website

The Center's website has two special pages added to the Corona crisis in [English](#) and Hebrew, which include: links to data sites, articles, research and recent events, as well as articles and videos of the Center's staff. In addition, the Center [Library](#) on the site is being updated and expanded with new scientific articles.

III. Databases

A database within the framework of the new National Knowledge and Research Center for Emergency Readiness that was developed in 2018 continues to grow. This database is part of [the new center's website](#) (see under "Resources") and is linked with the Minerva website. It includes three types of data:

(1) Publication repository: data on bibliographic sources on emergency readiness retrievable by: A) research topic (Engineering Technology and Planning; Environment; Law; Public Health and Emergency Medicine; Public Policy; Risk Assessment and Management; Social Science; and Welfare and Social Work). The Law and Public Policy components are Minerva products. B) Emergency type (Natural, Man-made,

Belligerencies) and c. specific disaster (Fire, Flood, Earthquake, Epidemic, Environmental, Chemical, Nuclear, Cyber, War, Terror).

(2) Links to other related databases

(3) Case studies and emergency events

2. Research Projects and Researchers Selected for Support

2.1. Post-doctoral Researchers

In 2020 the Center sponsored and hosted seven (7) post-doctoral researchers, of whom 5 were affiliated from October 2019 until September 2020 (Shelly Aviv Yeini, Tamar Megiddo, Rottem Rosenberg Rubins, Oren Shlomo, and Robert Neufeld), one started in October 2018 and continues to 2020 (Ronnen Ben Arie), and one (Omri Grinberg) began in October 2019. Shelly Aviv Yeini is a joint appointment with the HCGES (Haifa Center for German and European Studies), and Robert Neufeld is a joint appointment with the National Research and Knowledge Center for Emergency Preparedness, mentioned above. Ronnen Ben Arie continues (part-time, without a scholarship). Following are details about the post-docs and their research projects.

A) Dr. Shelly Aviv Yeini

1) The Term "War" in Modern International Law

The term "war" in the legal context is considered a term of the past that has no substance in modern international law. The desire to abandon the term has a clear rationale—historically, war was triggered by a formal declaration and fought between states, allowing parties with more power to manipulate the application of international humanitarian law, which would commence only upon a declaration of war. However, the post–Geneva Convention understanding of hostilities has largely changed, most notably in the adoption of the notion of "armed conflict", which is based on factual assessment rather than on a declaration in both international and non-international contexts.

However, this research would suggest that the term "war" is still in use by many states, international courts, international institutions, and legal scholars. The term "war"

has not ceased to exist in the context of international law; rather, it has evolved to indicate an escalation in the intensity of hostilities within the paradigm of “armed conflict”. This new use of the term “war” has significant explanatory value because the term “armed conflict”, especially in the international context, covers a wide spectrum of intensity. While the intensity of hostilities is not relevant to the application of international humanitarian law, once an armed conflict has started, any escalation of intensity and efforts to prevent such an escalation may still be important in various arenas, including the provision of humanitarian aid, humanitarian intervention, the planning of military objectives, and the perception of urgency by international tribunals. This research is highly relevant in context of the definition of extreme conditions vis-à-vis the rule of law.

2) The Persistent Objector Doctrine: Contradicting an Objection

The Persistent Objector Doctrine (POD) in international law provides that the rule of Customary International Law (CIL) would not oblige a state if it had persistently objected to the development of such rule of CIL. While the requirement of 'persistency' has been discussed in the legal literature, the term 'contradiction' with reference to such consistency, which disqualifies a state from Persistent Objector (PO) status, has not. Therefore, it is not clear what type of behavior would represent a contradiction to the persistency of an objection and interfere with PO status.

This research suggests that while substantive contradictions should disqualify a state's PO status, a minor contradiction should not affect its PO status. Given the modern political reality of the contestation and plurality of voices among a state's branches and institution, some amount of contradiction should be allowed otherwise POD would be practically nullified. Therefore, the research suggests guidelines to differentiate minor contradictions from substantive ones, as only the latter would impair PO status. Such guidelines include the direct connection between the contradiction and the rule in question; the proximity of the statement or action to international relations; the position of the initiator of the contradiction within the inner hierarchy; the legitimacy of the

contradictory act (whether the initiator of the contradiction acted with authority); the influence of the contradiction over a state's behavior; and the accumulation of minor contradictions.

b) Dr. Tamar Megiddo

1) Inclusion and Representation: The Settlement of Property Claims of the Dispossessed in the Aftermath of an Armed Conflict

(with Eyal Benvenisti, Tel Aviv University, published in *Theoretical Inquiries in Law*, 21(2), 397-425 (2020))

This project examines the authority of states to settle individual private property claims in post–conflict negotiations towards settlement. It is analyzing this question by exploring the limits of states' authority to take or limit private property rights for the public good. It argues that this authority rests on two cumulative justifications: the inclusion of the property owners among the public that stands to benefit from the public good, and their representation by the government that decides on the taking of the property. In post–conflict settlement, the negotiating states may redistribute both private property and the public good between and within their respective communities. Their authority to redistribute continues to rest on the same justifications of inclusion and representation. Hence, their authority extends only to the redistribution of property of owners who are members of the respective communities that negotiate the agreement, and who are represented by a negotiating government.

2) Babysitter Justice

With the rise of populist politics around the world, progressive, activist courts have been a primary target of criticism by populist politicians and thinkers. Plausibly, one consequence of the threatened legitimacy of courts may be a renewed reluctance to rule on politically high-stakes issues. This project studies one course of action to which courts may resort in such situations: evading ruling on the merits of a case, preferring, rather, to “babysit” it, in the hope that the underlying conflict resolves itself without explicit judicial

intervention. By “babysitting” a case, a court keeps a case pending, refraining from ruling on its merits for an extended period of time. During that time, the court might hold occasional hearings, urge the parties to negotiate, or require them to report on the underlying dispute.

The court’s choice to keep cases pending rather than rule on their merits raises concerns, as the court’s formal mandate is to decide the cases brought to it and not preside over negotiations, and given that rights may continue to be gravely violated in the interim. Simultaneously, the value of the court’s function as an arena for inter-party engagement should not be easily dismissed.

The practice of judicial evasion from ruling on the merits has received little scholarly attention. There is a robust literature on the strategy of, and conditions under which courts have expanded their judicial review powers. Voluminous scholarship also exists with respect to the motives for instigating, and the benefits for parties who engage in public interest litigation. However, the research argues that there is an important qualitative difference between cases where a final decision on the merits is realistically anticipated – and cases where it is not (e.g., babysitting), regardless of the favorability of such decision.

The paper explores an Israeli case study in order to illustrate and analyze the practice of judicial babysitting. In 2007, a petition was filed with the Supreme Court of Israel against the pushback policy exercised by the IDF against migrants and asylum seekers crossing the Israeli-Egyptian border. This practice was alleged to violate the non-refoulement principle, which prohibits the deportation of person to a place where she faces risk to her life or liberty. Although voicing its discomfort with the practice in hearings, the court kept the case pending for almost four years, declining to issue an interim injunction. In 2011 the government decided to halt the practice. Shortly after, the court finally ruled that the petition has exhausted itself and should be denied. By babysitting the case, the court achieved several things: (1) it avoided having to render a decision and commit to a specific normative position and thus exposing itself to political criticism; (2) it was able to convey to the government certain signals which triggered

reconsideration of its position, even without issuing an explicit decision; (3) it was also able to provide litigants with certain benefits, including, primarily, a forum in which the government was bound to engage with them.

The government was able to avoid an adverse decision at the price of having to undertake certain steps which it might not otherwise wish to take. Following the court's guidance, it promulgated and later amended a procedure regulating the pushback policy and occasionally reported on its implementation. Nonetheless, the government was forced to operate under some legal uncertainty as the court refrained from legitimizing its practice.

As for the petitioners, even though they were not able to obtain the judicial decision they were hoping for, they were able to utilize the proceedings to generate support for their cause otherwise. Among others, the proceedings served as a measure to force the government's attention and responsiveness to their arguments; as an axis around which to beckon the intervention of international bodies, including UN bodies and global NGOs, and to generate public awareness and media attention.

Nevertheless, babysitting continues to suggest certain foundational difficulties. First, the court clearly did not fulfill its role as a settler of disputes. Arguably, the petitioners' right to access to justice also includes a right to have their case decided, not only heard. Second, babysitting did a disservice to the court's role as a guide for behavior and as an institution entrusted with furthering the coherence of the law and its implementation on the ground. Further, when deciding to babysit, the court seems to operate on a certain tentative assessment of the facts and the law, but this remains preliminary, unspecified and unreasoned.

Third, the deterring factor of babysitting vis-à-vis the government that is attached to the threat of an adverse ruling may over time erode if the court often resorts to babysitting and rarely acts on the threat. Finally, and most importantly, the court's refusal to rule on the case and even to issue an interim injunction allowed for the pushback of over 600 individuals, some of which are known to have been held incommunicado in Egypt or deported back to their countries, tortured or killed. This, most starkly,

was babysitter justice's highest price

The contribution of the paper is threefold. First, at the descriptive level, by calling attention to the phenomenon of judicial babysitting that is likely to expand in the present political climate. Second, by conceptualizing the practice of babysitting, mapping and categorizing the conditions under which a court may engage in babysitting and evaluating the practice's implications for litigants. Finally, from a theoretical and normative point of view, by evaluating the implications of this practice for democratic checks and balances and rights' protection.

c) Rottem Rosenberg Rubins

From a state of exception to hyper-legality: Israeli counterterrorism law in the post-two-state era

The research is based on the case study of Israel/Palestine and focuses on Israel's comprehensive 2016 Counterterrorism Bill. This legislation was adopted to allow Israel to cope with security offences within the confines of its conventional criminal procedure, rather than by using emergency measures. The case study combines a critical analysis of the Bill with an empirical study of the decisions made on the ground in accordance with this legislation.

Using a methodology of Critical Analysis of Law, Rottem identifies the underlying logic of the Counterterrorism Bill and the type of relationship it envisions between Israel and Palestinians living under Israeli occupation. She demonstrates that such Palestinian residents are the main group targeted by the legislation, which views them not as an external enemy but rather as "homegrown terrorists", who are neither "insiders" nor complete "outsiders" to the Israeli political community. However, the legislation is also likely to apply to two other groups that present a particular threat in the eyes of the state, namely, Palestinian citizens of Israel and Jewish settlers living in the occupied territories. The legislation is largely preventative by nature and focuses on averting anticipated violence incited by these three groups. While striking a new balance between emergency

powers and conventional criminal measures, the legislation also constitutes a strategic combination between the two types of measures, allowing the state to apply them interchangeably. This model for preventing terrorism is consistent with what Hussein (2007) has termed “hyper-legality” – an inflation of laws and legal mechanisms that causes the subjects of power to be over-regulated rather than abandoned by the rule of law.

To test these hypotheses, Rottem is conducting an empirical study of the judicial and administrative decisions reached in cases involving the three identified groups of presumed enemies, examining both the concrete decisions and the judicial discourse characterizing each group.

d) Oren Shlomo

From Contested Sovereignty to Urban Politics: Palestinian Rights-Claiming and 'Accessing the State' in post-Oslo East Jerusalem

This research explores new forms of Palestinian encounters with the state and the local government in Jerusalem, hypothesizing their shifting in the post-Oslo era from non-recognition and rejection of Israeli rule, to the utilization of civil society and legal apparatus to make claims on the state for social and urban rights. The analysis facilitates an assessment of the implications of this development in relation to Palestinians’ partial inclusion in state apparatus and the restructuring of their political positioning, the development of civil sentiment between the Palestinians and state agencies, and the overall restructuring of urban politics, governance and modes of control and resistance under the extreme urban and political conditions in Arab Jerusalem. (See [seminar talk with Oren on January 6, 2021](#))

e) Robert s. Neufeld

Towards an Israeli doctrine and legislative-regulative framework dealing with emergencies

(see PI initiated research above)

f) Dr. Ronnen Ben-Arie**City at war: Haifa in the aftermath of the 1948 War**

Cities are known to be targets of war and violence and the urban space often functions as a vehicle of war and terror, as cities are becoming more and more the primary space in which war, terror and violence are taking place and war itself is becoming more and more urbanized. However, the transformation and management of cities and of urban life and the city's resilience that enables its perseverance and sustainability through the conditions of war and its aftermath, still lack research and conceptualization. The research addresses this lacuna by exploring the concrete and specific practices, regulations, procedures and policies that were implemented during and following the 1948 war in the city of Haifa, intended to restore order and sustain urban life. The 1948 war was a time of extreme conditions for the city of Haifa. After decades of rapid development and growth, within a short time the city transformed completely. Throughout the years of the war (1947-1949), the city lost half of its population, as around 70,000 Arab-Palestinian residents, out of a total population of 145,000, fled or were forced out of the city and only 3,500 remained. At the same time and during the few years following the war, tens of thousands of Jewish immigrants arrived in the City and by 1951 its population again reached the total of 147,000. The City, its population and its management have radically transformed, yet municipal functions were sustained through these transformations. The research explores and analyses the sustainability of the City through radical transformations during a time of extreme conditions. The research pays particular attention to the management of the City as a whole and the connections and relations among the different parts of the City and its neighborhoods; to the continuity of operation of major urban infrastructures and industries; to the utilization, reconstruction and rehabilitation of the derelict parts of the city and abandoned properties through their habitation by incoming migrants; and the interrelations among the different levels of governance, the municipal and the national, and the various authorities and organizations involved.

II. External Research Funded by the Center

In 2020 the Center supported the following projects:

a) Zachary Kaufman: The Law and Politics of Bystanders and Upstanders

Third parties play a significant—and underappreciated—role in the commission of crimes and the spread of non-criminal crises. The magnitude of these emergencies often increases when “bystanders” remain passive or, worse, actively facilitate. Conversely, calamities can sometimes be thwarted, or at least mitigated, by “upstanders” (people who intervene to help others in need).

This research concentrates on the law (and, to a lesser extent, politics) addressing bystanders and upstanders. The research features domestic and foreign case studies in which a person is aware of another person who is exposed to, or has suffered, grave physical harm. These situations involve, among other crises, genocide (Zachary's area of specialization). After canvassing the analytical space, he proposes using a combination of positive incentives (“carrots”) and negative incentives (“sticks”) to prompt would-be bystanders amid emergencies to act instead as upstanders. His legal prescriptions include strengthening, spreading, and standardizing domestic “Bad Samaritan laws” as well as introducing the first international Bad Samaritan law. His social prescriptions include creating what he calls “upstander commissions” to identify and “upstander prizes” to honor and reward upstanders. The research also introduces original typologies of bystanders and upstanders that promote greater nuance in their classifications and a corresponding range of legal (and moral) responsibilities. These typologies are designed to maximize generalizability to a variety of crimes and non-criminal crises. (For additional information on these typologies, please see Zachary's article, *Protectors of Predators or Prey: Bystanders and Upstanders amid Sexual Crimes*).

The research will culminate in a book tentatively titled *The “Law and Politics of Bystanders and Opstanders”* with Cambridge University Press. A series of law review articles and op-ed pieces that are building to this book were already published so far by *Foreign Policy*, the *San Francisco Chronicle*, the *Boston Globe*, the *Stanford Law & Policy Review*, and the *Southern California Law Review*.

**b) Ori Sharon: Climate Change, Sinking Islands, and Disappearing Sovereignities:
the Rule of International Law Under Extreme Conditions of Our Ecological Crisis**

In August 2016, the International Geological Congress formally recognized that the world has entered a new geological era, the Anthropocene. The new designation signifies a shift in human-nature relationships. Once governed by nature, humankind has now risen to the position of itself being a force of nature. Unfortunately, this new status has been achieved at great cost. Like other forces of nature, man's power is unchecked and chaotic, decimating ecosystems at an unprecedented rate. According to scientific estimates, if not stopped, the procession of human-induced ecological disturbances will render many regions of the Earth uninhabitable by the end of the century.

To address these global catastrophes, states need to work together. Unfortunately, our system of international law, that collection of norms that determines the "rules of the game" for interstate cooperation, has been developed during periods of relative ecological balance. It is therefore not surprising that the instruments and doctrines of international law are ill-equipped to address the political realities of a world in constant ecological flux.

This research is the second of three articles aimed at developing innovative theoretical legal frameworks for the stresses and extreme conditions that result from global climatic challenges. In particular, this research addresses one of the most pressing climate-related challenges in international law: the potential disappearance of Small Islands Developing States (SIDS). Sea levels are rising. In the last century alone, the sea has risen fifteen centimeters. As greenhouse gas emissions escalate and global temperatures rise, sea level is expected to rise at an accelerating rate. By the end of this century, according to some estimates, sea level will rise an additional two meters. At that level, one billion people will be exposed to environmental and climatic risks like floods, king tides, and superstorms. For SIDS, climate change poses an existential threat. As low-lying island territories, SIDS are extremely vulnerable to changes in sea level. If

sea levels continue to rise, many SIDS may become uninhabitable or even submerged. As the oceans cover their territories, according to conventional legal thinking, the statehood of SIDS will cease. Under the Montevideo Convention on the Rights and Duties of States (Montevideo Convention), territory is a criterion for statehood. No territory, scholars argue, means no state.

This legal outcome is extremely unjust. In effect, it means that the most disadvantaged countries of the world will pay the price for actions taken by the richest and most powerful nations on Earth. With a combined population of 65 million and nonindustrial economies, SIDS have contributed less than 0.03 percent of total CO2 emissions worldwide, but few other nations will suffer from the harsh consequences of climate change as much as SIDS will. If SIDS are to lose their territory and their sovereignty, they will be victimized for acts they did not commit. Not only will their people become landless refugees, their only means for maintaining self-determination and exercising political rights will be taken away as well. To mitigate the injury to SIDS, this study develops a novel, equity- based doctrine for recognizing a new legal subject in international law – the non-territorial state.

[See here](#) for Ori Sharon's talk about his research at the Center's seminar (in Hebrew)

c) Ina Kubbe and Rosa da Costa: The Role of Corruption and Human Rights Violations in Migratory Flows: Impact and Perceptions

The research aim is to identify and explore the ways in which migration, and particularly irregular and mixed migration flows, are affected by corruption and human rights violations. Through the use of a variety of methodologies, it seeks to illustrate these effects and demonstrate how the link between migration, corruption and human rights violations is manifested in specific settings. Through critical analysis and the data gathered, the project will contribute towards better legal and policy responses. Conceived as a pilot project, it will initially focus on four European countries - Germany, Sweden, Denmark and the United Kingdom.

d) Stavros-Evdokimos Pantazopoulos: The Role of International Courts and Tribunals in Adjudicating Wartime Environmental Damage

Parts of the natural environment have been used as a weapon or suffered reverberating effects during wars since ancient times. More recently, resembling the practices of Iraqi troops when they were retreating from Kuwait during the early 1990's Gulf War, ISIS fighters blew up eighteen oil wells in June 2016, creating a vast black cloud stretching over tens of kilometres. The toxic black smoke was so thick that was referred to by locals as the 'Daesh winter'. Notwithstanding the fact that environment, the 'silent' victim of warfare, has suffered great damages in times of war, remedies for wartime environmental damage are not readily available for various reasons. To begin with, the enforcement of the laws of war is inherently fraught with difficulties and in many past wars violations either went unnoticed or were not dealt with for political reasons. In addition, wartime environmental damage is usually difficult to assess in the aftermath of the armed conflict, despite -and because of- its lasting impact. In the same vein, issues of causation and proof only serve to further complicate matters. Last but not least, remedying environmental damage ranks lower than other priorities at the post-conflict phase, such as addressing humanitarian needs, notwithstanding the fact that recent conflicts have showcased that the protection of the environment can act as a catalyst for a sustainable peace, since a competition over natural resources was the primary reason that led to the outbreak of the armed conflict in the first place.

In the light of the above, this research project examines how international courts and tribunals (ICTs) have dealt with the issue of environmental damage caused during an armed conflict, either of an international or of a non-international character, the main objective being to identify their strengths and weaknesses in their effort to uphold the rule of law. As mentioned above, environmental protection does not usually rank high at the post-conflict phase and this partly serves as an explanation of why it remains at the backstage. As a In addition, the research will survey the factors that enable and empower ICTs to bring within the remit of their competence wartime environmental damage issues, as well as to inquire how their engagement with those issues

has influenced their legitimacy in the eyes of their respective audiences.

[See here Stavros's talk at the Center's seminar](#)

e) Emre Turkut and Sabina Garahan: The 'Reasonable Suspicion' Test of Turkey's Post-coup Emergency Rule Under the ECHR

(Support for publication of: Turkut, Emre and Garahan, Sabina (2020). "The 'Reasonable Suspicion' test of Turkey's Post-coup Emergency Rule under the ECHR". *Netherlands Quarterly of Human Rights* 38(4), 264-282.

<https://journals.sagepub.com/doi/10.1177/0924051920967182>)

Since the 15 July 2016 failed coup, Turkey has seen the mass arrests and detention of hundreds of thousands of people; among them are judges and prosecutors, military personnel, police officers, journalists, lawyers, human rights defenders and opposition politicians that have been deprived of their liberty on an array of terrorism-related charges. While this has raised numerous human rights issues, this article focuses on those pertaining to pre-trial restrictions imposed on the right to liberty and security of individuals during the post-coup state of emergency. Building on the theory and use of the reasonableness concept in the field of pre-trial detention through a particular focus on the 'reasonable suspicion' test under Article 5 § 1 (c) of the European Convention on Human Rights ('ECHR' or 'the Convention'), the article analyses the role of the European Court of Human Rights ('the Court' or 'the ECtHR') in enforcing the guarantees of the right to liberty in the Turkish post-coup cases of Mehmet Hasan Altan, Şahin Alpay, Alparslan Altan and Kavala. Against the background of pre-existing Convention standards on pre-trial reasonable suspicion in emergency settings, it finds that the ECtHR has adopted a stronger supervisory stance regarding the compatibility of Turkish post-coup detention practices than the more hesitant approach shown in the prior emergency context of Northern Ireland. While these decisions give some cause for optimism in the hope for a judicial boldness on the part of the ECtHR in condemning Turkey's detention practices during the state of emergency, the article argues that there is further

scope for the Court to strengthen its protection in this respect. Notably, despite the positive aspects in the Court's approach, by continuing to support the notion that the Turkish legal landscape is capable of addressing Article 5 violations and not tackling the underlying structural issues so clearly at play, the Court leaves a glaring gap in rights protection for those seeking justice.

f) Dov Shinar: Media Coverage of COVID-19: A collection of academic and professional sources on the culture and behavior of printed, broadcast, digital and social media in reporting the COVID-19 crisis

This project contributes a basic collection of sources on the culture and behavior of printed, broadcast, digital, and social media with relation to COVID-19. It is intended to help explore social and cultural implications of crises ranging from sporadic experiments to more focused and systematic projects, and to assist researchers, teachers, students, media professionals and general audiences interested in COVID-19.

[See report here](#)

3. Conferences and Additional Activities

I. Conferences and Workshops

In 2020 the following events were held by the Center:

- February 27-28, 2020
Symposium: [Perpetuating the State of Emergency: Punitive Responses to Terrorism, 20 Years after 9/11](#). University of Hamburg, Warburg Haus.
- May 24, 2020
Webinar: [Democracy in the Time of Corona](#) (With Law Faculty and The Center for Cyber Law & Policy University of Haifa, Hebrew)
See [invitation here](#)
- July 22, July 27 and July 29, 2020
International Webinar: [Twenty Five Years since Oslo: Contemporary Forms of Governance, Control and Resistance in Israel and Palestine in Israel and Palestine](#)
- August 26, 2020
[Debating Futures for Israel/Palestine](#): Online discussion with Peter Beinart (following "Twenty Five Years since Oslo" webinar above)
- September 24
1st Early Career Researchers Virtual Conference of ["What are YOU going to do with THAT?" podcast](#)
- October 13, 2020
[Coping with Coronavirus: It's All About Governance. A special webinar for the International Day for Disaster Risk Reduction](#) With the National Knowledge and Research Center for Emergency Readiness. (In Hebrew)
- December 9, 2020
[The Abraham Accords and Middle Eastern Crises: Legal and Political Aspects](#)

II. Seminars and Lectures

2020 seminars were given by Center researchers, visitors and grant recipients, as well as by outside lecturers whose research topics are relevant to the Center. All the lectures were streamed live and recorded, now available to watch on the Center's [YouTube channel](#).

List of lectures:

- January 1, 2020 at 14:15 - 15:45
Yaniv Roznai: [Who will Save the Redheads? Towards an Anti-Bully Theory of](#)

[Judicial Review and the Protection of Democracy](#)

- January 29, 2020 at 14:15 - 15:45
Margit Cohn : [Fuzziness in Emergency Law.](#)
- April 13, 2020
Yoav Mehozai: [Israel almost stopped using Emergency Regulations. Until the Corona.](#) (in Hebrew)
- April 16, 2020
Itamar Mann: [Disentangling Displacements: Historical Justice for Mizrahis and Palestinians in Israel.](#)
- April 19, 2020
Gad Barzilai: [Democracies amid Legal Emergencies: Why models are limited, but some are useful.](#)
- April 22, 2020
Rottem Rosenberg-Rubins: [From a state of exception to hyper-legality: Israeli counter-terrorism law in the post-two-state era.](#)
- April 26, 2020
Amnon Reichman: [Judicial Review and the Coronavirus.](#)
- April 30, 2020
Itay Epshtain: [Normative Challenges of the COVID-19 Pandemic Humanitarian Response and Human Rights Protection.](#)
- May 4, 2020
Stefan Voigt, Christian Bjørnskov and Nir Kosti: [Declarations of state of emergency and government responses to the COVID-19 pandemic.](#)
- May 19, 2020
Amnon Reichman: [Israeli Emergency Law.](#)
- May 20, 2020
Ori Sharon: [State Extinction through Climate Change](#) (in Hebrew).
- June 3 at 14:15
Stavros Pantazopoulos: [Wartime Environmental Damage Before International Courts and Tribunals:Strengthening the Environmental Rule of Law.](#)
- June 18, 2020
Dr. Orly Stern: [International Humanitarian Law's Principle of Distinction and](#)

[Women in Armed Groups](#). (With [Forum Dvora](#) and [ALMA](#)).

- June 18, 2020
Prof. Dr. Jan Soeffner: [A state of Exception Beyond Carl Schmitt: Corona in Germany](#). (with the Haifa Center for German and European Studies ([HCGES](#))).
- September 9, 2020
Dr. [Ittai Bar-Siman-Tov](#): [Covid-19 Meets Politics: The Novel Coronavirus as a Novel Challenge for Legislatures](#).
- October 28, 2020 at 14:15
Eli Salzberger: [Introduction to the Rule of Law under Extreme Conditions](#) (in Hebrew).
- November 11, 2020
Robert Neufeld and Eli Salzberger: [Management of Emergencies in Israel: Towards a Comprehensive Doctrine and Legislative-Regulative Framework](#) (in Hebrew)
- December 2, 2020
Prof. Michael Birnhack: [Constitutional Engineering and Privacy Engineering](#)
- December 23, 2020
Antal Berkes: [Compliance by tribunals of armed opposition groups with international law](#)

III. Visiting Scholars

In 2020 the Center hosted one visiting young researcher:

Ms Lavinia Parsi

Lavinia Parsi is a MA student at Università degli Studi di Milano who won a scholarship from her university to conduct a thesis research abroad. Lavinia's thesis is about the legality of torture:

Given the extraordinary circumstances the Israel authorities face, national-security policies tend to sacrifice individual rights for the sake of collective safety.

Torture and other inhumane treatments are, in fact, ordinarily used by the Israeli Security Service and the Israeli Police Service in the context of interrogation and detention of those suspected of being involved in terroristic activities. As reports from the UNCAT,

the UNHRC, Amnesty International and Human Rights Watch prove, these strategies often come to the point of entailing grave breaches of major norms of international and domestic law, constituting war crimes and crimes against humanity. However, the highest jurisprudences, authoritative scholars and the administrative branch itself have created a narrative where torture cannot be recognized as such and the perpetrators are systematically relieved from criminal responsibility.

In particular, three tools are being used to create an appearance of legality on torture. First, the Supreme Court is progressively promoting a distortion of the definition of torture, drifting from the one agreed upon in international understandings and treaties (of which Israel has long been a contracting party).

Secondly, the administrative branch is creating a parallel justice system based on a wide use of prosecutorial discretion, a visible shift of the burden of proof on the side of the victims, and a system of confirmations and consultations in the ISA hierarchy, which ultimately makes officers' accountability an unreachable objective.

Lastly, an extremely large and inconsistent interpretation of necessity defense. In this sense, the allowance of an *ex ante* regulation of the cases where necessity may be applied, promoted by the Supreme Court itself, implies a dilution of key features of this legal defense, as the immediacy and concreteness of the danger threatened. Moreover, authoritative scholars and judges are theorizing the qualification of necessity not as an excuse (i.e. a relief from criminal responsibility, in light of the particular circumstances which make us deem the author's behavior as reasonable), but rather as a justification (where the circumstances are altered to the point of removing the qualification of unjustness from the action itself, qualifying it as entirely coherent with the legal system).

The certainty of impunity, together with the influence played by the judiciary positions, contributes in qualifying torture as intrinsically legitimate and therefore in making it socially perceived as acceptable, in a vicious circle; such an entanglement of executive and judiciary organs strongly departs from the norms agreed upon nationally and internationally, resulting in a blatant and dramatic breaking of the rule of law.

Moreover, the development of these permissive doctrines in scientific terms

contributes to their pacific and prolific circulation, as it admittedly happened with the migration of the Israeli authorities' narrative to the American system *post* 9/11.

IV. Website, Facebook, Twitter and YouTube

As was mentioned in previous reports, the Center has a website (<http://minervaextremelaw.haifa.ac.il>) and a Facebook page on which relevant items are posted, such as upcoming events at the Center, other academic events and media coverage of extreme conditions from which legal issues arise. In 2019 we added a [Twitter page](#) as well. Most Facebook and Twitter items also appear on the website, alongside information on the Center's publications, research activities, the research team, ongoing research and funding opportunities, events and calls for proposals.

Most of the lectures at the Center are streamlined or recorded, edited and uploaded to [the Center's YouTube channel](#). Website is maintained by Dr. Michal Ben-Gal, with some technical help; Facebook and Twitter are maintained by Ido Rosenzweig and Yulya Zaslavskaya. All recordings and editing are done by Ido and Michal.

In 2020 we had around 4,767 viewers in the channel viewing 448.3 hours of broadcast, from which only 10.7% of viewers were from Israel. Other countries are not specified by YouTube – meaning a wide distribution. To compare, 2019 statistics was 5,271 viewers, 280 hours, 18% from Israel.

4. Publications and Submissions

I. Publications 2020

Albert, Richard and Roznai, Yaniv (eds). *Constitutionalism Under Extreme Conditions. Law, Emergency, Exception*. Springer (2020). <https://doi.org/10.1007/978-3-030-49000-3>

Aviv Yeini, Shelly. "Promoting Peace in International Law: Bringing States to the Mediation Table." *Colum. J. Transnat'l L.* 58 (2019): 623.

Aviv Yeini, Shelly. The Law Enforcement Paradigm under the Laws of Armed Conflict:

Conceptualizing *Yesh Din v. IDF Chief of Staff*, 10 *HARVARD NATIONAL SECURITY JOURNAL* 461 (2019)

Backhaus, S., Gross, M. L., Waismel-Manor, I., Cohen, H., & Canetti, D. (2020). A cyberterrorism effect? Emotional reactions to lethal attacks on critical infrastructure. *Cyberpsychology, Behavior, and Social Networking*, 23(9), 595-603. Published Online: 8 Sep 2020 <https://doi-org.ezproxy.haifa.ac.il/10.1089/cyber.2019.0692>

Barzilai, Gad. "Uncertainty and the Emergency Legislation of The COVID19 Law" *ICON* (Hebrew) (2021)

Barzilai, Gad. "A Land of Conflict: Law as a Means of Hegemony." *Israel Studies* 25, no. 3 (2020): 201-212.

Bjørnskov, Christian, and Stefan Voigt. "Is constitutionalized media freedom only window dressing? Evidence from terrorist attacks", *Public Choice* 1-28 (2020)

Bjørnskov, Christian, and Stefan Voigt. "When does terror induce a state of emergency? And what are the effects?." *Journal of conflict resolution* 64, no. 4 (2020): 579-613.

Felsenstein, D., Shmueli, D., and Thomas, D. 2020. "Cascades - Mapping the multi-disciplinary landscape in a post-pandemic world", *International Journal of Disaster Risk Reduction*, Vol. 51, 101842

Horovitz, Sigall, 'Attempted Transitional Justice and Historical Dialogue: The Case of Israel's Or Commission', in *Historical Dialogue and the Prevention of Mass Atrocities*, eds. Elazar Barkan, Constantin Goschler and James E. Waller (Routledge, 2020), p. 50.

Jessberger, F. and Geneuss, J. (eds.), *Why Punish Perpetrators of Mass Atrocities? Theories of Punishment in International Criminal Law*, Cambridge University Press, 2020.

Jessberger, F., Present State and Future Perspectives of International Criminal Justice (in German), in E. Hoven & M. Kubiciel (eds.), *Future Perspectives of Criminal Law (Festschrift für Thomas Weigend)*, Nomos 2020.

Jessberger, F. and Geneuss, J., The Need for a Robust and Consistent Theory of International Punishment, in: F. Jeßberger & J. Geneuss (eds.), *Why Punish Perpetrators of Mass Atrocities?* Cambridge University Press, 2020

Megiddo, Tamar, Online Activism, Digital Domination, and the Rule of Trolls (September 26, 2019). 58 *Columbia Journal of Transnational Law* 394 (2020). Available at SSRN: <https://ssrn.com/abstract=3459983> or <http://dx.doi.org/10.2139/ssrn.3459983>

Megiddo Tamar and Benvenisti Eyal, Inclusion and Representation: The Settlement of Property Claims in the Aftermath of Armed Conflict. *Theoretical Inquiries in Law*, 21(2), 397-425 (2020)

Oeter, Stefan. Verteidigung als gesamtstaatlicher Ansatz oder Primat des Militärischen im Verteidigungsfall?, in: Sebastian Graf Kielmannsegg/Heike Krieger/Stefan Sohm (Hrsg.), *Die Wiederkehr der Landes- und Bündnisverteidigung*. Neue Rechtsfragen eines alten Szenarios, Baden-Baden: Nomos 2020, S. 209-233

Oeter, Stefan. Soziale Medien und die Beeinflussung politischer Prozesse durch auswärtige Mächte, in: Roland Broemel/Arne Pilniok (Hrsg.), *Die digitale Gesellschaft als Herausforderung für das Recht in der Demokratie*, Tübingen: Mohr Siebeck 2020, S. 73-94.

Oeter, Stefan. Plädoyer für die Normierung roter Linien des nicht mehr Hinnehmbaren – Rechtswissenschaftliche Perspektive, in: Matthias Rogg/Sophie Scheidt/Hartwig von Schubert (Hrsg.), *Ethische Herausforderungen digitalen Wandels in bewaffneten Konflikten*, Hamburg: German Institute for Defence and Strategic Studies 2020, S. 97-112

Shereshevsky, Yahli, "International Decision: "HCJ 3003/18 Yesh Din–Volunteers for Human Rights v. Chief of General Staff, Israel Defense Forces (IDF)." *The American Journal of International Law* 113, no. 2 (2019): 361-368.

Felsenstein, D., Shmueli, D, and D. Thomas (Eds). Special Issue: Cascading Effects in Disaster Risk Science: Multi-Disciplinary Perspectives, *International Journal of Disaster Risk Reduction*, (2020)

Felsenstein, D., Shmueli, D., and Thomas, D. "Cascades - Mapping the multi- disciplinary landscape in a post-pandemic world", *International Journal of Disaster Risk Reduction*, Vol. 51, (2020) 101842

Mann, I. *Eichmann's Mistake: The Problem of Thoughtlessness in International Criminal Law*, Canadian Journal of Law and Jurisprudence (2020), 154-181

Mann, I., *Disentangling Displacements: Historical Justice for Mizrahis and Palestinians in Israel*, Theoretical Inquiries in Law (2020), 427-458

Mann, I., *The Right to Perform Rescue: Jurisprudence and Drowning*, German Law Journal (2020), 598-619

Rosenthal, Maoz, Barzilai, Gad and Meydani, Assaf. "Judicial Review in a Defective Democracy: Judicial Review and Judicial Nominations in Constitutional Courts" *Journal of Law and Courts* 9 (1) (Spring 2021) (English)

Salzberger, E. [Counter-Terrorism Law and the Rule of Law Under Extreme Conditions: Theoretical Insights and Israeli Law and Jurisprudence](#), in OJK/Muller, *Krise der Liberalen Demokratie, Kritik und Forschrift im Rechtsstaat*, Band 49, Wien: Linde Verlag 2019, pp. 163-190

Salzberger, E. The Weimar Constitution and Legal Culture and Israeli Law and Jurisprudence, in Thomas Kleinlein and Christopher Ohler (eds.), *Weimar international Kontext und Rezeption der Verfassung von 1919* , Mohr Siebeck 2020, pp. 233-261

Salzberger, E. Israel at 70: The Relations Between Religion and the State, Democracy and the Israeli Legal System, in Regina Polak (ed.), *Israel's 70th Anniversary: Insights and Perspectives, Religion and Transformation in Contemporary European Society*, Volume 19, Vienna University Press, 2020, pp. 45-65.

Shmueli, D., Ozawa, C. and S. Kaufman, 2021 (online in 2020). "Collaborative Planning Principles for Disaster Preparedness", *International Journal of Disaster Risk Reduction*, Vol. 52, <https://doi.org/10.1016/j.ijdrr.2020.101981>

Taormina, Riccardo, Stefano Galelli, Nils Ole Tippenhauer, Elad Salomons, Avi Ostfeld, Demetrios G. Eliades, Mohsen Aghashahi et al. (2018). "Battle of the attack detection algorithms: Disclosing cyber attacks on water distribution networks." *Journal of Water Resources Planning and Management* 144, no. 8 (2018): 04018048.

Turkut, Emre and Garahan, Sabina (2020). "The 'Reasonable Suspicion' test of Turkey's Post-coup Emergency Rule under the ECHR". *Netherlands Quarterly of Human Rights* 38(4), 264-282.
<https://journals.sagepub.com/doi/10.1177/0924051920967182>

Werle, G. and Jessberger, F., *Principles of International Criminal Law*, Oxford University Press, 4th edn. 2020.

II. Publications Forthcoming

Aviv Yeini, Shelly and Bendor, Ariel L., Charming Betsy and the Constitution, *CORNELL INTERNATIONAL LAW JOURNAL* (forthcoming, 2021)

Barzilai, Gad, "A Denied Orientalism, A Silent Orientalism in Israel Law" *Haifa Law Journal* (Spring 2021) (Hebrew)

Bjørnskov, Christian, and Stefan Voigt. "Terrorism and emergency constitutions in the Muslim world." Forthcoming in: *Journal of Peace Research* (2021)

Boister, N.; Gless, S.; Jessberger, F. (eds.), *Histories of Transnational Criminal Law*, Oxford University Press, 2021

Housen-Couriel, Deborah, "New Property Rights in Cyberspace: Testamentary Transferability of Digital Property Rights". Accepted for publication in *International Journal of Law and Information Technology*

Jessberger, F., Counter-Terrorism Criminal Law and Humanitarian Assistance (in German), in: H. Kudlich, M. Engelhardt & B. Vogel (Hrsg.), *Festschrift für Ulrich Sieber*, Nomos 2021

Jessberger, F., A Short History of Jurisdiction in Transnational Criminal Law, in: N. Boister, S. Gless & F. Jessberger (eds.), *Histories of Transnational Criminal Law*, Oxford University Press, 2021

Jessberger, F. and Geneuss, J., Peace and Punishment: Reflections from the Perspective of International Criminal Law, in: Y. Shany & K. Ghanayim (eds) *Festschrift for Mordechai Kremnitzer*, Springer, 2021

Mann, Itamar, "The New Anti-Impunity: Border Violence as Crime", *The University of Pennsylvania Journal of International Law*

Mann, Itamar, "The Genocide that Did Not Happen: Keter Aram Tzova and the Question of Cultural Property", *Iyunei Mishpat* (Hebrew)

Mann, Itamar, (with Lihi Yona), "The Executors: Mizrahis and Sovereign Violence in Israel", *Mishpat Umimshal* (Hebrew)

Mann, Itamar, "Humanity as Mask: Citizenship and Human Rights in the 'Refugee Crisis'", *Berkeley Journal of International Law*

Mann, Itamar, "Attack by Design: Australia's Offshore Detention System and the Literature of Atrocity", *European Journal of International Law*

Mann, Itamar, "Voting as a Vehicle for Self-Determination in Palestine and Israel", *Texas Law Review*

Rosenberg Rubins, Rottem, 'Crimmigration and the 'paradox of exclusion'' (revised and resubmitted to the *Oxford Journal of Legal Studies*, 2021).

Rosenberg Rubins, Rottem, "Three wrongs don't make a right: on the near impossibility of post-conviction forensic testing in Israel" (accepted based on abstract for *Wrongful Convictions, Barriers to Exoneration: Comparative Perspectives* (Working title; forthcoming: Routledge).

Salzberger, Eli , Yefet, Carmit Karin, Barzilai, Gad and Mann, Itamar. "Law and COVID-19", *Haifa Law Review*, 2021 (Hebrew)

III. Publications Submitted for Review

Bjørnskov, Christian, and Stefan Voigt. "This Time is Different?-On the Use of Emergency Measures During the Corona Pandemic". No. 36. ILE Working Paper Series, 2020, Submitted to *Eur. J. of Law and Economics*.

Reichman, Amnon and Salzberger, Eli (eds). "The Rule of Law and Extreme Conditions: A Comparative Analysis of Emergency Powers" (submitted to *Oxford University Press*).

Rosenberg Rubins, Rottem, "Financial punishment following amendment 113 to the criminal code" (submitted to *Aley Mishpat*, 2021) (with Efrat Fink) [Hebrew].

Rosenberg Rubins, Rottem, "*Constructing Crimmigration Under International Protection: Criminal Law as Governmentality*" (Book proposal: currently under review at Routledge).

IV. Proposals Submitted

I. To Minerva

Small project: Young Researchers Workshop on "Human Enhancement and Advanced Technologies in Terrorism and Belligerencies" (granted with 45,000 EUR) – to be implemented in 2021 Due to the Coronavirus

Project proposal for the internationalization of Minerva Centers: International Workshops on "Hate Speech – an interdisciplinary approach" 2021 (granted with 22,820 EUR)

V. Conference Presentations

Deborah Shmueli: The day after the coronavirus crisis Multidisciplinary and comparative research on corona exit strategies. ECTT –European Chambers of Commerce, June 18, 2020 Taiwan

Eli Salzberger: Responses to Terrorism 20 Years After 9/11 – Israel. Perpetuating the State of Emergency: Punitive Responses to Terrorism 20 Years After 9/11 Workshop at Universität Hamburg , 27 February 2020

Omri Grinberg: The Bureaucratic Poetics of Palestinians’ Testimonies in Israeli Human Rights. (invited) Seminar presentation at the departmental seminar of the Anthropology Department, University of Haifa. November 26, 2020

Oren Shlomo: From Contested Sovereignty to urban politics? Palestinian protest and urban right claiming in post-Oslo East Jerusalem. Twenty-five years since Oslo: contemporary forms of governance and resistance in Israeli and Palestine, the Minerva Center for the Rule of Law under Extreme Conditions, July 2020 (conference co-organizer).

Robert Neufeld: Comments on Country Reports and Comparative Perspectives. Perpetuating the State of Emergency: Punitive Responses to Terrorism 20 Years After 9/11 Workshop at Universität Hamburg , 27 February 2020

Rottem Rosenberg Rubins: From a state of exception to hyper-legality: Israeli counterterrorism law in the post-two-state era. Twenty-five years since Oslo: contemporary forms of governance and resistance in Israeli and Palestine, the Minerva Center for the Rule of Law under Extreme Conditions, July 2020 (conference co-organizer).

Tamar Megiddo: Online Activism, Digital Domination, and the Rule of Trolls, ICON-S-IL Conference, Haifa University, March 5, 2021

5. Research Plan for 2021

The Covid-19 pandemic crises is still casting a shadow on 2021 plans, although the Center continues full steam forward - through Zoom seminars, meetings and research, in close cooperation with the *National Emergency Knowledge and Research Center*.

Below is our research plans, if COVID-19 allows.

I. Ongoing PI Initiated Research

We plan to continue our work in line with the original Center concept, undertaking important low, mid and high resolutions research, but at the same time developing additional methodological tools and conceptual frameworks to tackle the new challenges and developments. More specifically, within the existing framework we plan to focus on:

1. Extending the mid-resolution study to additional countries, combining also non-democracies, and making the results available to decision-makers, the scientific community, and the public in large, in a more interactive and accessible modes.
2. Extending the low-resolution study which focused on constitutions, also to statutory analysis (which encompass significant challenges as unlike constitutions, databases of legislation worldwide are still not complete).
3. Selecting new themes for high resolution studies, focusing mainly on Israel. Among the themes we plan to examine are: the responses to the 'Israeli' refugee crises; institutional structure of decision-making under declared and undeclared extreme conditions, and the legal aspects of preparedness (in cooperation with the new NATIONAL KNOWLEDGE AND RESEARCH CENTER FOR EMERGENCY READINESS) reflected by public as well as private law norms. In addition, we are considering a joint German-Israeli project examining in comparative perspective laws or legal systems within law or legal system, corresponding to society within society literature.
4. To study the notion of the rule of law under extreme conditions in international law, from both a theoretical prism and in practice.
5. To encompass the behavioral approach to law (for example, the differences between behavior under natural extreme conditions and man-made extreme conditions).

II. Planned conferences and workshops

1. On June 23, June 28 and June 30, 2020 we plan an on-line 3 days workshop titled: **Relations between 'the State' and Civil Society/NGOs in Times of COVID-19: Insights and Lessons for Future Emergencies**. This interdisciplinary event will examine if and how the unique challenges posed by the COVID-19 crisis have influenced relations between states and non-governmental organizations (NGOs) and other civil society actors. [See here](#)
2. On October 3-17 we plan to conduct The 4th Young Researchers Workshop on Terrorism and Belligerency, Following the success of the previous workshops ([see here](#)). This year, the workshop will focus on theoretical or practical legal issues related to “**Human Enhancement and Advanced Technologies in Terrorism and Belligerencies**” from varied perspectives, such as: history, philosophy, sociology, geography, technology, economics, and politics.

Human enhancement and advanced technologies have already had significant effects over the framework of terrorism and belligerency, and these effects are expected to increase rapidly in the coming years. Such effects include internal and external mechanisms such as computerized exoskeleton, advanced prostheses, and cognitive advancement. The purpose of this workshop is to convene a group of scholars for a discussion on human enhancement and advanced technologies and their relation to law and policy regarding terrorism / belligerency. For more details see [here](#).

3. Thanks to the generous grant from the Minerva Stiftung in the framework of its internationalization call for proposal (mentioned above), we will conduct two International Workshops titled: “**Hate Speech – an interdisciplinary approach**”. The project will address questions of hate speech from interdisciplinary perspectives and fields: legal, sociological, psychological, historical and philosophical. Analyzing hate speech, its origins, support-systems which allow it to exist and develop, the boundaries vis-à-vis the right for freedom of speech, and the attempts to prevent and confine its harms. By examining the phenomena through these varied lenses, we hope to offer policy recommendations on a few of these key elements.

Although hate speech is by no means a new phenomenon, and although its contours are not easily defined, recent years have shown an alarming rise in such incidents, especially through the introduction of social networks such as Facebook, Twitter and Instagram, accessible via Google searches. Recent reports by the Fundamental Rights Agency, the OSCE, and the FBI, show that this is not a local phenomenon, but rather a global one. Hate speech is aimed at groups on the basis of their race (i.e., racism), their foreign origin (xenophobia), and their ethnic or religious affiliation (such as anti-Semitism and Islamophobia). Hate speech, a wrong on its own, also leads in many cases to physical violence and other types of hate crimes.

Recently the United Nations' human rights system has addressed this issue from different angles, including by the special rapporteurs on racial discrimination, freedom of expression, and freedom of religion. In fact, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has a report on this in June 2020.

While sharing a constitutional commitment to human dignity as a constitutive right (or legal value), and an international commitment to the relevant human rights treaties, Israel and Germany differ in the legal and political mechanisms each uses to fight hate speech. Therefore, a comparison in the definitions – given the possible tension with freedom of expression and association, as well as with contractual rights of social platforms to define the terms of use – will be illuminating. The assumption here is that a more holistic approach than either country has employed offers a better promise to address the phenomenon, while protecting free speech. This proposal will therefore focus on the comparison between the two approaches (informed by the various dimensions outlined above), on the critical analysis of each approach, and on the lessons that may be learned from each other.

This project will include two workshop sessions, one in Israel and the other in Germany, with the same group of participants. The workshop will be structured to comply with curriculum requirements, in order to offer the possibility of taking it for credit, as part of the formal education of the young researchers. To that end, a group of 6 – 10 young researchers (master students, PhD candidates, post-doc fellows) will be selected through a competitive process and a call for submissions. These young researchers will explore different angles of hate speech under the competent supervision designated researchers selected by Minerva Center for the Rule of Law under Extreme Conditions, in collaboration with the Institute for Democracy and Civil Society.

The two workshops will be followed by a meeting between the leading participants (supervisors) of the project in order to finalize the conclusions and approve any policy papers produced from the project. This meeting will be conducted in either of the institutions, or via online conference (or combination of both options).

4. Thanks to another generous grant from the Minerva Stiftung (mentioned above), we will conduct an International Research Workgroup on “**Rightlessness in Comparative and International Law**”.

This project aims to form an international workgroup which will meet at the *Minerva Center for the Rule of Law under Extreme Conditions* in order to discuss and study the topic of rightlessness in international and comparative law. We believe this framing may significantly advance our understanding of gaps in the rule of law that are generated in extreme conditions, contribute to the Center's mandate and advance

internationalization. The two-day workshop, aims to include 10 researchers from around the world, and result in a Special Issue of a leading peer reviewed journal.

Purpose of Workgroup

In a tradition stretching back to Hannah Arendt, scholars in law, the social sciences, and the humanities have debated the notion of “rightlessness.”¹ While this conversation has been influential, the notion of rightlessness it captures is most often that of *de-facto* conditions: situations in which law posits rights protections, which are systematically left unenforced (for political, economic, cultural or other reasons). Contrary to prevailing accounts, we intend at the *Minerva Center for the Rule of Law under Extreme Conditions* to generate discussion of *de-jure* rightlessness, i.e. cases in which extant law generates conditions in which individuals or populations are not granted rights *at all*.² In such cases, rights are not enforced because the law does not protect them. The project aims to propose this notion as a contribution to the study of the failings of the rule of law, perhaps as a preliminary stage for a larger grant application.

The workgroup aims to discuss three clusters of research questions: (1) *Identifying rightlessness* – where in the international and comparative law terrain do we find rightlessness? (2) *Explaining rightlessness* – why does rightlessness occur in the first place? (3) *Responding to rightlessness* – how can rightlessness be mitigated or overcome?

Our collective work will produce a taxonomy concerning different instances of rightlessness and their respective relationships with time and space. Researchers will be invited in areas of interest ranging through statelessness, unauthorized migration, the law of armed conflict, national security law, environmental law, criminal law, and the law of the sea. Rather than a specialized study of human rights as a sub-discipline of international law, the workgroup will engage in broad cross-disciplinary studies of rightlessness at the intersections of multiple legal regimes.³

¹ Hannah Arendt, *The Origins of Totalitarianism*, First edition (New York: Harcourt, Brace, Jovanovich, 1973); Ayten Gündoğdu, *Rightlessness in an Age of Rights: Hannah Arendt And The Contemporary Struggles Of Migrants* (Oxford ; New York: Oxford University Press, 2015); Lyndsey Stonebridge, *Placeless People: Writings, Rights, and Refugees* (Oxford, New York: Oxford University Press, 2018).

² One of the applying PIs has begun to explore the theme of *de-jure* rightlessness in Itamar Mann, “Maritime Legal Black Holes: Migration and Rightlessness in International Law,” *European Journal of International Law* 29, no. 2 (July 23, 2018): 347–72.

³ On the notion of “regime” see Andreas Fischer-Lescano and Gunther Teubner, “Regime-Collisions: The Vain Search for Legal Unity in the Fragmentation of Global Law,” *Michigan Journal of International Law* 25 (2004 2003): 999.

III. On-going Seminars

In 2019-2020 seminar talks will continue. The lectures will be given by our post-docs, supported researchers and others. The lectures will be announced in advance to wide audiences, both academic and practitioners, and on our website under “[Upcoming Events](#)”.

Financial report

In a separate file