



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

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

## **Biennial report - 2014-2015**

**Haifa and Hamburg, 18 March 2016**

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## Activity report

The Minerva Center for the Rule of Law under Extreme Conditions (RLuEC) began operating in January 2013. In March 2014 we held our first board meeting. At the end of this year we will hold the second. According to the contract between the Minerva Stiftung Gesellschaft für die Forschung m.b.h., and the University of Haifa, we are honored to present this detailed report, covering the Centers' activities since the previous board meeting. Therefore, this report covers the second and third years of its operation (2014-2015).

As stated in previous reports, the Center is managed by four professors from the University of Haifa (three from the Faculty of Law: Prof. Gad Barzilai, Prof. Amnon Reichman and Prof. Eli Salzberger, and one from the Department of Geography and Environmental Studies: Prof. Deborah Shmueli), in cooperation with four professors from the University of Hamburg's Faculty of Law: Prof. Florian Jeßberger, Prof. Stefan Oeter, Prof. Hans-Heinrich Trute and Prof. Stefan Voigt. It adopts an interdisciplinary approach to the study of the rule of law under three categories of extreme conditions: war and terror including cyber attacks; natural and man-made disasters; and socio-economic acute crises, fostering multifaceted empirical and theoretical research based on various methodologies – qualitative and quantitative – to study the rule of law as a social structure.

At present, the Center is home to a team of eight PIs, one academic coordinator (working part-time as researcher, administrator and website manager), eight young scholars (doctoral students and post-doctoral researchers), two project heads and six to eight research assistants, depending on project needs.

The Center is located [in the Terrace \("Madrega"\) building at the University of Haifa](#). The Center's offices were allocated to the Center in 2013 and renovated during 2013-2014 (completed in June 2014). The space includes one large meeting room with five working

stations, a conference table and a small separate office for the academic coordinator. With the generous help of a one-time contribution from Minerva Stiftung, the Center is now equipped with computers, printers, one large monitor for presentations (television screen) and basic office equipment.

As was reported in the first annual report, the Center operates along three main lines of activities: 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 developing a research community with connections to policy and decision-makers and officials in relevant fields.

The Center's staff holds monthly meetings which are dedicated to substantive as well as administrative aspects of the Center's operation and weekly meetings for presentations of scholarly works.

## ***1. PI Initiated Research***

As specified below, the Minerva Center for the Rule of Law under Extreme Conditions decided to conduct research on three levels of resolution: low, mid and high. The first step, which is concluded by a conference in Hamburg taking place this month, was a mid-resolution study of 12 countries. Below please find details of the research on the three levels of resolution conducted so far

### **Low Resolution**

#### **I. Determinants of Emergency Constitutions**

(Lead PI: *Prof. Stefan Voigt*, together with Prof. Christian Björnskov from Aarhus University in Denmark). Emergency provisions in a large number of constitutions around the world were examined; the main components of numerous emergency constitutions and how they have changed over time are discussed. A published article and the full study can be downloaded from <http://ssrn.com/abstract=2697144> \_

See also: [Dr. Alkmini Fotiadous in Constitution-Making and Constitutional Change blog](#)

## **II. International Law and Extreme Conditions and Economic Analysis**

**(Prof. Eli Salzberger)**

As reported in our last annual report, *Prof. Voigt* organized a workshop on International law and the rule of law under extreme conditions (March 2012); following which *Prof. Salzberger* wrote a conceptual paper, analyzing the different formats in which the rule of law in international law and in national law respond to extreme conditions and offers philosophical and methodological tools for economic analysis of the issue. The paper will be published in a book containing a collection of papers presented at the workshop.

### **Mid Resolution**

The 2014-5 timeframe has included a number of mid-resolution projects and events:

## **III. Comparative Research of Legal Frameworks for Emergencies**

The **Comparative Research of Legal Frameworks** related to extreme conditions in democracies has been completed. The research analyzed legal arrangements for dealing with emergencies along two dimensions: temporal - before, during and after an emergency, and type - natural disaster; terrorism and belligerencies including cyber; and political and economic meltdowns. The research focuses on positive law as is reflected in legal provisions of constitutions and primary legislation. A database of constitutional and general legislative arrangements for emergency powers in twelve countries is available online. The researched countries were: Argentina, Britain, Germany, Greece, India, Israel, Japan, New Zealand, Poland, South Africa, Turkey, and the USA. The data can be viewed [here](#), as a complete booklet, or as separated files on the Center's web site, under [Databases](#). An article, which develops a normative framework based on this database is being written, with *Prof. Reichman* as the lead author.

This comparative research is the basis for an upcoming international conference planned for March 2016, whereby leading researchers from the researched countries, as well as

European researchers at-large will participate, comment and jointly forge the next research stage. It is aimed at examining the legal tools in more depth and with higher resolution, as well as analyzing emergency governance or ‘law in action’ through select case studies (see “Research plans -Conferences” on p. 32).

*As reported in the first biennial report, the Center’s PIs were awarded two grants totaling 2.7 Million Shekels for three years from the Israeli Ministry of Science and Technology. These grants have generated two major research projects (one mid-resolution and the other high):*

#### **IV. Law, Cyber and Extreme Conditions**

**(Funded by the Israel Ministry of Science and Technology; Total Budget: 1,700,000 NIS (around 354,000 Euros); time period: 16/12/2013 – 15/12/2016; lead PI: Prof. Amnon Reichman)**

This project explores both theoretical and practical issues regarding control, regulation and legal aspects of cyber disasters. It maps existing rules and regulations, explores the differences and similarities between political units (national and international) and the possible similarities to other disasters and with an aim to suggest amendments and improvements to the existing legal regime.

Cyberspace has become an integral part of the nerve system of functioning modern states as more and more infrastructure systems are digitized and connected via electronic communication systems. Therefore, a severe cyber-attack or malfunction has the potential for arresting the operation of critical systems that control key elements of modern democracies, and equally important, may destroy or corrupt essential databases. Such an event may result in catastrophe, with the potential to undermine not only public order, but also the very existence of the rule of law. Questions as to the liability of state agencies and other stakeholders (including those outside the boundaries of the state) to damages resulting from cyber-attacks, the legal authority of the various state agencies to manage and coordinate their acts during a cyber attack, and the legal powers of state agencies to regulate cyber space attacks are all critical questions that are being analyzed. Moreover,

cyber attacks threaten the law itself, because the legal system is now enmeshed in cyberspace: court cases, laws and regulations, decisions of administrative agencies and databases with paramount legal significance, such as the land registry, lists of those eligible to vote, lists of those who may or may not enter or exit the state, lists of those targeted for investigation by various authorities and of course the management of fees, taxes and accounts – are all digitized and therefore susceptible to cyber attack.

Cyber attacks on infrastructure and the collapse and corruption of legally significant databases are considered an extreme condition – an emergency posing grave challenges to the legal system. The research examines the legal and institutional structures and regulations governing who is responsible and able to do what in a cyber emergency, where some ‘regular’ rules do not apply and the balance between public and individual legal rights may shift. The research focuses not only on the state and its agencies and the lines of responsibility and accountability, but also on possible modes of public-private cooperation.

The research examines both defensive and offensive actions, before, during and after a cyber disaster, and employs qualitative analytic tools over primary and secondary data resources and legal databases, as well as interviews and simulations with stakeholders. It explores differences and similarities among nations and the possible similarities to other disasters and aims to suggest amendments and improvements to the existing legal regime.

Identification of regulatory agencies in Israel in the area of cybersecurity, which focuses on critical infrastructures, has been completed. The findings highlight the need for a better characterization of the legal interfaces between the various agencies. This will be one of the research foci for 2015. In addition, a comparative study of 14 countries is underway and will be completed in 2015. The study examines various aspects of regulations, such as regulation through information, licensing, civil liability, criminal liability, taxes, insurance and internalization of international norms. The results will be uploaded into a computerized database.

## **High Resolution**

### **V. Evaluating Israel's Regulatory Framework for Earthquake Preparedness, Response and Recovery**

**(Funded by the *Israel Ministry of Science and Technology*; Total Budget: 400,000 NIS (around 83,000 Euros); time period: 1/12/2013-30/11/2016; lead PI: *Prof. Deborah Shmueli*)**

This project aims to identify, map and conceptualize Israel's current regulatory framework – norms and institutions – that directly governs earthquake preparedness, response and recovery, and then evaluate it with an emphasis on evaluating processes for public engagement which are put forth within the regulatory scheme.

An important role of the modern, regulatory state is to mitigate the risks involved in large-scale disasters, such as earthquakes, through legislation, regulation, and their enforcement. Such regulatory landscape is myriad and complex – institutional layers and legal norms may overlap, conflict, or leave gaps. This research aims to identify, map and conceptualize Israel's current regulatory framework – norms and institutions – that directly governs earthquake preparedness, response and recovery, and then appraise it while developing an evaluation methodology, with an emphasis on assessing processes for public engagement. The research will identify gaps between what exists and what is desired and will offer ways for strengthening the regulatory framework, thus, contributing to Israel's preparedness on the state, community and private levels and the interaction between the three.

During 2014, the research team mapped the regulatory bodies in Israel and the existing laws and regulations for coping with earthquakes hazards. The mapping consists of two documents: Database and charts. **The database** consists of tables listing laws, regulations, directives and governmental decisions governing **who** has **what authority** to do what, before, during and after an earthquake (or other disasters) in Israel. The items in the tables are marked according to a typology developed by *Prof. Reichman*: (1) direct control (2) regulation by information (3) licensing (4) criminal liability (5) civil liability (6) taxation and subsidization (7) dispute resolution mechanisms. Most entries in the table



are linked to the original sources. **The charts** portray the regulatory bodies and the relations among them (subordination, responsibility, authority etc.). The work was presented in a workshop of earthquake preparedness researchers, organized by the *Ministry of Science and Technology* on December, 2014, and in a *round table workshop* with Israeli practitioners on December 2015, and can be [viewed here](#) (in Hebrew). The chart can be viewed [here](#).

At the same time, the research team focused this year on identifying normative criteria for evaluating the existing regulatory system. To this end, the researchers identified needs and demands on regulatory systems (looking at select systems internationally) and criteria for evaluation. Findings from this stage were presented to participants in the workshop, and will be further validated through interviews with stakeholders and practitioners.

This project is conducted collaboratively with researchers from the Department of Geography at the Hebrew University. The principal investigators form an interdisciplinary group with expertise in law, economics, planning, public policy and geography.

## **VI. Emergency environmental exemptions**

**(Lead PI: Prof. Deborah Shmueli)**

Emergency environmental exemptions (on the federal, state and city levels) in connection with Hurricane Sandy (New York) with the objective of identifying the distinction between law on the books vs law in action during/after emergencies in addition to future policies and lessons for other situations and locations. Currently the work has identified the set of institutions, organizational entities, norms and procedures through which official and non-official entities interact and coordinate which lead to/implement exemptions.

The second project (funded by the Israeli Ministry of Science and Technology) aims to identify, map and conceptualize Israel's current regulatory framework – norms and institutions – that directly governs earthquake preparedness, response and recovery, and

then evaluate it with an emphasis on evaluating processes for public engagement which are put forth within the regulatory scheme.

## ***2. Research Projects and Researchers Selected for Support***

### **2.1. Graduate and post-graduate young researchers**

The **2014 call** for proposals, published on January 25<sup>th</sup>, 2014 drew 16 graduate and post-graduate proposals, from which five research projects were selected by the PIs in March 2014: PhD: Alyssa-Nurit McBride, Post-docs: Guy Lurie (second year), Yaniv Roznai, Suha Jubran-Ballan, Michal Saliternik and Sigall Horovitz.

The **2015 call** for proposals, published on January 15<sup>th</sup> 2015 drew 16 graduate and post-graduate proposals, from which eight research projects were selected by the PIs in May 2015: PhD: Alyssa-Nurit McBride, Denard Veshi; Post-docs: Yaniv Roznai (second year), Suha Jubran-Ballan (second year), Olga Frishman, Myriam Feinberg, Rivka Brot and Olga Shteiman.

### **I. Young Researchers who ended their affiliation with the Center in 2014-2015**

Three young researchers ended their formal affiliation with the Center (but ties are ongoing):

**Dr Guy Lurie** completed two years of a post-doctoral position. His research challenges the historical narrative on the modern inception of the state of exception, showing its centrality in the long process of creating the early-modern French state. He pointed to several historical insights that this state of exception has for the contemporary debate: just as some scholars fear in the present, the French medieval state of exception often served as a pretext meant to change the legal order, turning the exception into the ordinary.

At the time of his stay at the Center he wrote and published the following papers:

- [Guy Lurie, "Medieval Emergencies and the Contemporary Debate," \*Athens Journal of Law\*, 1 \(January 2015\): 53-68](#) [The article appeared also in D. A. Frenkel and N. Varga eds., *Law and History* (Athens: ATINER, 2015), 27-48].

- Guy Lurie, Amnon Reichman and Yair Sagy, “Institutional Realism: The Hidden Importance of Agencification,” (working title of an article).
- Guy Lurie, “Economic Responses to Environmental Crises: Louis II in Dauphiné (1447-1456),” (working title of an article).

**Dr. Michal Saliternik** completed one year of a post-doctoral position.

Michal’s main research interests are in the areas of international law, international conflict resolution, and post-conflict transitions. In 2014 her research focused on the role of international law in promoting human rights and justice considerations in peace processes. In particular, she examines how international law can ensure that the burden of peace will be equitably allocated among various domestic groups, and how it can protect the rights of ethnic minorities, women, the poor, and other vulnerable populations.

At the time of her stay at the Center she wrote/ published the following articles:

- Michal Saliternik, *Reducing the Price of Peace: The Human Rights Responsibilities of Third Party Facilitators*, 48 *Vanderbilt Journal of Transnational Law* 179 (2015).
- Michal Saliternik, *'Perpetuating Democratic Peace: Procedural Justice in Peace Negotiations'* (revised and resubmitted to the *European Journal of International Law*, awaiting final decision)

**Dr. Sigall Horovitz** completed one year of a post-doctoral position. Sigall’s research areas include transitional justice and international criminal law, with a special focus on Africa and Israel-Palestine. At the time of her stay at the Center she wrote and published the following:

- Sigall Horovitz, *International Criminal Courts in Action: The ICTR’s Effect on Death Penalty and Reconciliation in Rwanda* (accepted for publication in *George Washington international law review*)
- Sigall Horovitz, *The Or Commission and the Israeli-Palestinian Conflict: A Transitional Justice Moment in Comparative Perspective’* (accepted for publication after translation to *Hebrew in Law, Society and Culture*)

- Sigall Horovitz, *Conceptualizing Reconciliation Through the Victim's Experience: The Case of Rwanda* (submitted to Zmanim (hebrew))

## **II. Continuing Doctoral Students and Post-doctoral Researchers**

Three young researchers – Alyssa-Nurit McBride, Dr. Yaniv Roznai and Dr. Suha Jubran-Ballan continue their research at the Center in 2015:

### **Doctoral Student:**

**a. Alyssa-Nurit McBride:** A Comparative Study of Refugee Law in the Developing World: Implications of Protracted Refugee Situations on the Efficacy of Refugee Law

Advisors: Prof. Deborah Shmueli and Prof. Nurit Kliot

Alyssa-Nurit McBride submitted her doctoral proposal in July 2014 on *International Law, Protracted Refugee Crises in Africa, and Local Host Communities: Evidence from Kakuma and Dadaab, Kenya*. Unfortunately, in 2014 she had a severe accident and underwent a year of convalescence and rehabilitation. Her health has improved but she will not be able to do her planned field research in Africa. Working with her advisors, she submitted a new research proposal: **A comparative study of Refugee Law in the Developing World** in which by using archival research, she will examine Somali refugees in Kenya, Rwandan refugees in the Democratic Republic of the Congo, Burmese refugees in Thailand and Afghan refugees in Pakistan. [Her new proposal was approved and is available via this link.](#)

Thanks to a generous donation obtained by the Rectors office, she will receive a scholarship from the University of Haifa for another 6 months.

### **Post-doctoral Researchers:**

**b. Dr. Yaniv Roznai** completed a year's work on the limitations on constitutional amendment powers, which prohibits any changes or modification of the constitution during emergency ([Proposal is available via this link](#)).

During this year he published the following:

### **Published:**

- Yaniv Roznai, The Eternal Territory? On Ukraine's Unamendable Provision and Territorial Integrity, 16(3) *German Law Journal* 542-580 (2015) (with Silvia Suteu).
- Yaniv Roznai, 'A Bird is Known by its Feathers' – On the Importance and Complexities of Definitions in Legislation, 2(2) *The Theory and Practice of Legislation* (former Legisprudence) 145-169 (2014).
- Yaniv Roznai, The Insecurity of Human Security, 32(1) *Wisconsin International Law Journal* 95-141 (2014).
- Yaniv Roznai, Revolutionary Lawyering, 11 *Hamishpat* 303-344 (2015) (with Karin Peer Fridman in Hebrew)

**Accepted for publication:**

- Yaniv Roznai, Unconstitutional Constitutional Amendment - The Limits of Amendment Powers (Oxford University Press, under contract).
- Yaniv Roznai, Unamendability and The Genetic Code of The Constitution, *European Review of Public Law* (forthcoming 2016).
- Yaniv Roznai, Access to Justice 2.0: Access to Legislation and Beyond, 3(3) *The Theory and Practice of Legislation* (forthcoming 2016) (with Nadiv Mordechay)
- Yaniv Roznai, Constituent power, in *Comparative Constitutional Theory* (Gary Jacobsohn and Miguel Schor eds., Elgar Comparative Constitutional series, forthcoming 2016/2017).
- Yaniv Roznai, The Spectrum of Constitutional Amendment Powers, in *Comparative Constitutional Amendment* (forthcoming as a peer-reviewed edited collection)
- Yaniv Roznai, Necrocracy or Democracy? Assessing Objections to Formal Unamendability, in *An Unconstitutional Constitution? Unamendability in Constitutional Democracies* (Springer, 2017)
- Yaniv Roznai, The Eternal Territory? The Crimean Crisis and Ukraine's Territorial Integrity as an Unamendable Constitutional Principle, 16(3) *German Law Journal* 542-580 (2015) (with Silvia Suteu).
- Yaniv Roznai, Book Review: Sofia Ranchordas, *Constitutional Sunsets and Experimental Legislation*, Edward Elgar, 2014, *American Journal of Comparative Law* (forthcoming, 2016).
- Yaniv Roznai, The Mother of all Rights?: The Constitutional Right to Life, *IDC Law Review* (forthcoming 2016) (with Hillel Sommer)

**Work in progress:**

- Yaniv Roznai, Emergency Unamendability: a Study of the Prohibition on Amending Constitutions during States of Emergency
- Yaniv Roznai, The Regulation of Cyber-war in International Law (with Daniel Benoliel)

His next project is to analyze the connection between constitution-making and crisis and whether indeed constitution drafted in times of crisis was truly drafted by “sober” constitution-makers.

He is also working on the Hurricane Sandy project, looking at the emergency exemptions.

**c. Dr. Suha Ballan-Jubran** focused last year on international obligations of states going through an economic crisis. During that year she wrote and published the following:

- Suha Ballan-Jubran, Investment Treaty Arbitration and Institutional Backgrounds: An Empirical Study, 34 *Wisconsin International law Journal* (2016, *forthcoming*)
- Suha Ballan-Jubran, How Institutions Matter: on the Judicial Reasoning of Investment Treaty Arbitration. (*ready for submission*)
- Suha Ballan-Jubran, Investment Treaty Arbitration and Economic Crises: Between Necessity and Reparation (*Work in progress*)

This year she is working on Investment Treaty Arbitration and Economic Crises: Between Necessity and Reparation. (see [link](#))

**II. New Post-doctoral Researchers in 2015**

**d. Olga Frishman** proposed two projects:

**d(1) Decisions of the Constitutional Court of the Russian Federation as a Microcosm of Rule of Law under Extreme Conditions** ([proposal available here](#))

This research ‘marries’ two bodies of scholarship. The first is psychological literature that discusses the ways people react to situations of emergency. The second discusses the legal aspects of emergency such as declarations of a state of emergency, emergency laws

and regulations, as well as executive acts in times of emergency. In the research, she explores how the two interconnect and influence each other.

**d(2) Emergency Consciousness and the Law** ([proposal available here](#)).

Here Olga studies the Constitutional Court of the Russian Federation After the dissolution of the Soviet Union in the beginning of the 90's, when Russia became a democracy. Although fragile and weak, Western observers expected the democracy to grow and develop. This democratic period lasted approximately until March 2000 when Vladimir Putin was elected as president. During this decade, Russia experienced a variety of extreme conditions. The research examines the actions of the Constitutional Court of the Russian Federation during those different extreme conditions and explore whether the Court's actions were influenced by such conditions. Using the democratic period of Russia as a microcosm, the study will aim to expose possible variations in judgments from the Court, as the representative of the rule of law, throughout these differing extreme conditions. In other words, the question posed is whether the Court reacts differently to distinct extreme conditions.

**e. Myriam Feinberg: When national security emergencies become the norm: the protection of the rule of law in international counterterrorism** ([proposal available here](#))

Myriam's' post-doctoral research is a continuation of her PhD thesis, that focused on the concept of State sovereignty in the context of international counterterrorism since September 11, 2001. In her PhD, Myriam asked, whether the increasing role of international and regional organizations in counterterrorism had affected the concept of State sovereignty. She then continued her study as a post-doctoral fellow at the Global Trust project at Tel Aviv University, where she worked on the issue of responsibility in international counterterrorism. Her current project at the Minerva Center for the RLUeC examines whether the legal regulation of international terrorism is evolving towards a better protection of the rule of law, when after a decade of executive measures and lack of judicial review, the security 'emergency' seems to have become the norm.

**f. Rivka Brot: Law and Order at the “Space of Exception:” Administration of Law in Jewish Displaced Persons (DP) Camps in the American Occupation Zone in Germany (1945-1949) ([proposal available here](#)).**

The focus of Rivka’s study is the relationship between law and space at a Jewish DP camp. She explores the mechanism through which Jews turned the camp into a space of law and order, regulating their everyday lives, their material, physical, and emotional problems, their relationship with the German population, occupation authorities, relief agencies, and the Jewish collective in its entirety.

**g. Olga Shteiman: Disaster preparedness among new Immigrants to Israel: Perceptions, attitudes and actual behavior ([proposal available here](#))**

Olga’s research explores the unique characteristics and needs of various ethno-cultural groups in Israel in the context of disaster preparedness. Her goals are: a) To explore whether cultural background differences moderate the relationship between psycho-social factors and disaster preparedness; b) To examine if and to what extent do new immigrants to Israel act towards and perceive their disaster preparedness and c) To provide a coherent and updated description of the status of new immigrants disaster preparedness as a basis for future improvements.

**h. Ehud Segal: Evaluating Israel’s Regulatory Framework for Earthquake Preparedness, Response and Recovery**

Ehud’s research is a part of the PI’s initiative Earthquake project described above. His work focuses on the normative aspects of regulations for earthquake preparedness (the “ought to be”), as well as on evaluation of the regulatory framework **as a system** (as opposed to an evaluation of specific regulations).



## **2.2. External Research Funded by the Center (following calls publicized on December 2014 and December 2015)**

### **a. Research Projects**

#### **a1. The Rule of Law and State of National and/or International Emergency Caused by Strikes in Essential Services and/or of Essential Employees**

Researcher: Prof. Moti Mironi, Faculty of Law, University of Haifa

An outline of this research as was reported in 2014 annual report and the proposal is available [here](#). He has submitted an article stemming from the research:

Mordehai (Moti) Mironi and Björn Scheuermann, “Strike Law in the Digital Realm: Critical Digital Infrastructures and IT Service – The Overlooked Essential Service” was submitted to *First Monday*. Prof. Mironi is now working on a law review article in Hebrew. The article is devoted to the situation in Israel. Nevertheless it includes an examination, albeit limited in scope, as to the ways strikes in essential services are dealt with and regulated from comparative and international perspective.

#### **a2. The Price of Counterterrorism Information Gathering: Intelligence Informers in the Israeli Courts**

Researcher: Menachem Hofnung, the Hebrew University of Jerusalem

This research (proposal [available here](#)) questions the social and economic costs of using cohorts of local informers to ensure military control of a hostile territory. The findings of the research reveal an interesting juxtaposition: a strong Jewish population being encouraged to settle in the West Bank, while simultaneously a constant flow of a relatively weak population of thousands of informants and their extended families (funded by the State of Israel) being resettled within Israel. The price of territorial expansion into the periphery (the territories) is the weakening of the center (Israel within the Green Line), creating a completely different political and demographic reality than that which existed between the Jordan and the sea just a generation ago.

Publications:

Menachem Hofnung, The Price of Intelligence Collection: Collaborators in the Service of Israeli Security Forces Article in Hebrew has been accepted for publication on *Mishpat U'Mimshal*, [Law and Government in Israel] journal. Another article in English will be submitted soon to review.

### **a3. Twentieth-Century Partitions: Legacies of British Rule. Research and Workshop.**

Researchers: Dr. Ayelet Ben-Yishai, Dr. Alexandre Kedar, Dr. Ornit Shani.

This research ([proposal available here](#)) deals with the partition of territories under the British Administration in 1947 and 1948 in India and Palestine and the role played by law in the partition process and the attempts to facilitate a peaceful transition and transfer of power in the time leading up to partition. The researchers are working on a portrayal of the histories of partition in the twentieth century as cultural, historical and legal phenomena that are intricately tied to colonial discourses and practices. They gave a very interesting presentation of work in progress at the Center's seminar on January 30, 2016.

### **a4. A Case Study of the Global Rule of Law's Impact on Transitional Politics: The Marcos Class Action.**

Researcher: Natalie R. Davidson

This project, part of Natalie R. Davidson's PhD dissertation, is partially supported by the Center. It consists of a case study of the political implications of transnational human rights litigation for the countries in which the litigated human rights abuses occurred. The proposal is [available here](#).

Two papers from this research are underway and acknowledge Center support:

Natalie Davidson: "Shifting the Lenses on Alien Tort Statute Litigation: Historical Narrative in Filártiga and Marcos" (submitted to *the European Journal of International Law*)

Natalie Davidson: [Alien Tort Statute Litigation and Transitional Justice: Bringing the Marcos Case back to the Philippines](#) (posted on our website). She presented this very interesting work at the Center's seminar on April 15, 2015. Another related paper is posted on our website:

Natalie Davidson: [Judging the Marcos Regime in U.S. Courts: ATS Litigation as Postcolonial Law](#)

**a5. Who Decides on the Emergency? Comparing Institutional Response Capacities in the US Executive and the UK Parliament Post 9/11.**

Researcher: Karin Loevy.

(Minor contribution to on-going research, proposal [available here](#))

Legal and political theory debates about the question of ‘exception’ dominated the first ten years following September 11 2001. Central to these debates was the argument for, or against suspending certain aspects of the law in order to deal with security threats. Today, we are no longer faced with the binary distinction between normal times and exceptional times, but with the political and legal processes entailed by emergency powers over time. The shift in focus from exceptional moments to long-term processes of normalization requires a new descriptive theory of emergencies as a dynamic field of public law. The research is a step towards such theory. In a book, supported by the Center, the researcher argues that emergencies are better understood not as ad hoc moments of deviance, but as dynamic and long term processes, characterized by norm production and mobilization, implicated by various response agents, and carrying long-term effects on future response environments.

Karin gave an excellent presentation at the Center on June 24, 2015.

**a6. Colonial Rule and Colonial Law in a Time of War: Palestine Emergency Legislation, 1939-1945.**

Researcher: Hadas Fischer-Rosenberg

This project (proposal [available here](#)) is concerned with surveying and analyzing the legal basis of a colonial state of emergency - that of British-ruled Palestine during the Second World War - while contextualizing it vis-à-vis its metropole counterpart, namely British wartime emergency regime. Hadas will present her work at the Center in 2016.

### **2.3. Databases**

#### **a. Geographical Database Construction, Documentation and Information Center.**

Prof. Moshe Inbar

The **Center for Research, Documentation and Information of Natural Hazards in Israel**, was founded in 2013-2014 by Prof. Moshe Inbar, Department of Geography and Environmental Studies, University of Haifa. Minerva funded the creation of a database of natural disasters in Israel since 1948. The database (in Hebrew) is available on line (<http://geo.haifa.ac.il/~ina/>) and is linked to the Minerva Center for the Rule of Law under Extreme Conditions' site (see [Databases](#)). The database contains data on occurrences of floods, earthquakes, fires, droughts and storms, damages caused, images and sources of information. A translation of the site's materials is underway.

#### **b. GIS Digital Spatial Data Project**

Dr. Anna Brook

With a generous contribution of the Minerva Stiftung Gesellschaft für die Forschung m.b.H., we embarked on establishing a GIS (Geographic Information System) dataset for Minerva Center research. Dr. Brook, from the Department of Geography and Environmental Studies, University of Haifa, is involved in a research project (outside our Center) whose outcomes allowed the use of available data, such as satellite images, aerial photos, GPS, topographic data, Atmospheric and meteorological data and more, integrate and manipulate them, and make them available for disaster mapping for the Minerva Center. An interim report on the project is available via [this link](#). The database is online and available [in this link](#). It still needs some work, but it can already be used as an important tool for research.

This project supplements Prof. Moshe Inbar's database and both projects are interfaced.

#### **c. An Empirical Database on Regulatory Preparedness for Cybersecurity Emergencies: A Comparative Approach**

Deborah Housen-Couriel, Adv.

The goals of this database project are threefold: (1) to identify regulatory initiatives in at least 14 countries and international organizations dealing with cybersecurity preparedness challenges and their resulting socio-economic ramifications; (2) to compare and contrast the emerging regulatory models in 6 core areas of regulatory preparedness for cyber emergencies; and (3) to glean best practices from existing regulatory models and the comparative analysis of these models.

The expected output is the creation of a database that maps and analyzes those regulatory tools for promoting preparedness for cybersecurity emergencies that promote the rule of law by balancing cybersecurity priorities with civil and proprietary rights. The database will include, at this initial stage of research, fourteen countries and international organizations. It will extend to a comparative analysis of best practices that are of general relevance and application for promoting the rule of law in the context of extreme conditions caused by illegitimate cyber activity.

### ***3. Conferences and Additional Activities***

#### **I. Conferences, workshops and seminars**

##### **a. Round tables: Law and Emergencies in Israel, February 17<sup>th</sup>, 2014**

On February 17<sup>th</sup>, 2014 the Center held a round table conference on “Law and Emergencies in Israel”. Around 70 practitioners attended the conference, mostly legal advisors of Israeli ministries and organizations dealing with emergency situations. The conference included lectures by the Center’s PIs: *Prof. Salzberger* spoke about legal challenges of extreme conditions from a theoretical point of view, *Prof. Reichman* presented preliminary findings from the comparative research regarding law and emergencies, and *Prof. Barzilai* presented a social-legal perspective. Following these presentations, three practitioners from the Ministry of Justice, the (then) Home Front Defense Ministry and the Jerusalem Municipality presented the challenges they face in their practice.

The second part of the conference was led by *Prof. Shmueli*. The participants were divided into three groups; each was presented with a different scenario of an emergency situation. The program and scenarios can be found in our website under “[Past events](#)”, or via link [here for the program](#) (Hebrew) and [here](#) for the scenarios (English). The program is also attached as Appendix 1.

Each group conducted a discussion, led by the Center’s PIs, about the legal challenges in each scenario, before, during and after the event. The conference ended with insights gleaned by two of the participants, one from a legal, the other from a practical point of view. Minutes from the conference (in Hebrew) are available [on our website](#).

##### **b. International Law and the Rule of Law under Extreme Conditions, Travemünde symposium on the Economic Analysis of Law, 27-29 March 2014**

The Minerva Center for the RLUeC German PIs encouraged the Institute of Law and Economics in the University of Hamburg to dedicate its annual conference held in Travemünde on the Baltic Sea, to the international law aspects of the rule of law under

extreme conditions. This conference program is attached as appendix 2, and can be found on our website site, under “[Past Events](#)”, or via link, [here](#). Some of the papers can be found under “[Discussion papers](#)”. The papers presented at the conference are due to be published as a volume, edited by *Prof. Stefan Voigt*.

### **c. Advisory Board Meeting and Mini-Seminar**

In June 29-June 30 2014 we held a mini-seminar to accompany the biennial board meeting. The program of the seminar is available at our website under “[Past events](#)”, or via link [here](#).

### **d. The Israeli Democracy in War - Is the ‘Edge’ Protected?**

On November 5, 2014, a short time after the military activities in Gaza of the summer of 2014 (called: “Protective Edge”) ended, the Minerva Center for RLuc held a conference on four aspects of the military activities:

- The legality of the Israeli military activities during operation “Protective Edge” according to international law
- The limits of freedom of Speech during armed conflicts
- Review, supervision, and investigations during and after armed conflicts
- Rehabilitation and resilience – the day after / day before

The Program of the conference and video recordings, as well as a summary of the proceedings are available at our website – [in Hebrew](#). The program in English and recordings with English translation are available [here](#).

### **e. Public Law in the Eye of the Storm - The Annual conference of the Israeli Association of Public Law (Hebrew)<sup>1</sup>**

In January 1-3, 2015, the Minerva Center for the RLuc participated in a session on “Freedom of Speech in Times of Crisis” at the annual conference.

The program (Hebrew) is available [here](#).

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<sup>1</sup> המשפט הציבורי בעין הסערה : הכנס השנתי של העמותה למשפט ציבורי

#### **f. Law, violence and exception**

On November 24, 2015, the Center held a workshop with French scholars from CRFJ - the Centre de Recherche Français in Jerusalem. The workshop, that took place in Jerusalem ten days after the deadly terrorist attacks in Paris (November 13, 2015), gave a unique opportunity to the Centers researchers to meet with French scholars and discuss theoretical issues of violence and extreme conditions. The program of the workshop is available [here](#).

#### **g. The Regulatory System for Coping with Earthquakes in Israel: normative vs the existing situation**

On December 2, 2015 we held a round table workshop with Israeli practitioners dealing with regulating mitigation of earthquakes damages, response to it and recovery after. About 20 people, representing different local and national authorities, as well as the academia, participated in the workshop. The workshop consisted on two tables: “Mitigation”, and “preparedness, response and recovery”. Each table was presented with a mapping of the Israeli responsible bodies and lists of “best practice” issues that need to be addressed, and the discussions focused on gaps between what should be done and the existing situation. Minutes from the workshop will be a basis for further research. The program of the workshop (in Hebrew) is available [here](#).

#### **h. The Algorithmic State: Cyber Challenges to Democracy**

On December 10-11, 2015, we held a two-day international conference and workshop, together with the Haifa Center for Law and Technology. The event aimed at mapping and examining the growing challenges that pursuing cyber security pose on civil rights and liberties, and explored new strategies to address them. See [Overview](#) of the conference, [Program](#) of the first day and of the [Round tables](#) on the second day.



## **II. Seminars, Talks and Lectures**

Our 2014-2015 seminars were given by Center researchers, visitors and grant recipients, as well as by outside lecturers whose research topics are relevant to the Center.

### **List of lectures given:**

- **Refugee Law in the Developing World: The Implications of Protracted Refugee Situations on the Efficacy of Refugee Law** - Alyssa-Nurit McBride:
- **Twentieth-Century Partitions: An Interim Report.** - Dr. Ayelet Ben-Yishai, Dr. Alexandre Kedar, Dr. Ornit Shani. [See abstract](#)
- **How Institutions Matter: on the Judicial Reasoning of Investment Treaty Arbitration Awards** - Dr. Suha Jubran - Ballan
- **The phenomenon of Foreign Fighters: a new challenge for the world between effective protection and legal safeguards** - Federica Maiorana (Guest at the Minerva Center). [See Abstract](#)
- **Law and (Dis)Order of Public Health Emergency Response** - Prof. Leslie E. Gerwin, Program in Law and Public Affairs, Princeton University, Benjamin N. Cardozo School of Law, Yeshiva University
- **The organization of intelligence** - Stephan Michel (with Prof. Stefan Voigt, Hamburg University)
- **The Rule of Law and State of Emergency Caused by Strikes of Essential Employees** - Prof. Moti Mironi
- **Who Decides on the Emergency? Comparing Institutional Response Capacities in the US Executive and the UK Parliament Post 9/11** - Dr. Karin Loevy (NYU School of Law) (see [abstract](#))
- **Investment Treaty Arbitration and Economic Crises: between Necessity and Reparation** - Suha Jubran Ballan
- **Expanding Legal Geographies: A Call for a Critical Comparative Approach** - Dr. Alexandre (Sandy) Kedar (see [paper](#))
- **Alien Tort Statute Litigation and Transitional Justice: Bringing the Marcos Case back to the Philippines** - Natalie Davidson (see [draft of paper](#))
- **The Price of Counterterrorism Information Gathering: Intelligence Informers in the Israeli Courts** - Prof. Menachem Hofnung, the Hebrew University of Jerusalem (see [draft of paper](#) submitted for evaluation to Mishpat UMimshal (Hebrew))

- **The Ethics of Insurgency- What's Wrong with Human Shields?-** Prof. Michael Gross, School of Political Science, The University of Haifa. (See [Prof. Gross's blog on the subject](#))
- **Terrorism as a Crime under International Law** - Klaas Rick, University of Hamburg
- **Revolutionary lawyering** - Dr. Yaniv Roznai, The Minerva Center for the RLuc
- **Procedural justice in peace negotiations** - Dr. Michal Saliternik, The Minerva Center for the RLuc
- **Responses to Environmental Crises, Louis II in Dauphiné (1447-1456)** - Dr. Guy Lurie, The Minerva Center for the RLuc
- **The use of death penalty in post-conflicts countries and its influence on reconciliation processes** – Dr. Sigall Horovitz, The Minerva Center for the RLuc
- **The Rise to Power of Sanjay Gandhi During the 'Emergency' in India, 1975-1977** - Itamar Baumer, Department of Asian Studies, University of Haifa.
- **Unconstitutional constitutional amendments: towards a theory of unamendability** -Dr. Yaniv Roznai , The Minerva Center for the RLuc
- **Public Order and Emergency in Early Twentieth Century Britain** - Patrick Graham, PhD student in the School of Law at Queen Mary, University of London.
- **History of Emergency Laws** - Dr. Guy Lurie, The Minerva Center for the RLuc

### Cyber Forum

After being awarded the *Ministry of Science and Technology* grant in Infrastructure Research in the Field of "Advanced Computing and Cyber Security", the Minerva Center for the RLuc, together with the Haifa Center for Law & Technology (HCLT) launched a joint forum, dedicated to the study of cyber regulation. The main goal of the Forum is to promote research activities in the fields of Cyberspace, Extreme Conditions and Law and Technology. The Cyber Forum meets once a month for academic and practical “Chatham house rules” debates and discussions, on recent developments in cyber and law regarding extreme conditions. The Cyber forum’s blog is linked to our website (under [Blogs of interest](#)) and is available via a direct link [here](#).

### **III. Visiting Scholars**

**Patrick Graham**, a PhD student in the School of Law at Queen Mary, University of London is working on “Public Order and Emergency in Britain, 1908–27”. The Center funded his travel and accommodations for one week (between November 13-21, 2014) to present his work at the Center.

**Klaas Rick**, a PhD student from Hamburg University, supervised by *Prof. Jessberger*. Klaas was awarded a 6 month Minerva fellowship grant to conduct his research at our Center, starting October 1<sup>st</sup> 2014. His focusses on “Terrorism as a Crime under International Law”.

**Stephan Michel**, a PhD student from Hamburg University, supervised by *Prof. Stefan Voigt*. Stephan was awarded a Minerva fellowship grant to conduct part of his research on the “Analysis of Intelligence Services” at our Center. He stayed with us between the 21<sup>st</sup> of June and 19<sup>th</sup> of July 2015, working on his research, and gave a talk at the Center on July 15<sup>th</sup>.

**Federica Maiorana**, Laurea magistrale in Law, University of Roma Tre, is working on “The phenomenon of Foreign Fighters: a new challenge for the world between effective protection and legal safeguards”. We funded her travel and accommodations for one week (between November 8-15<sup>th</sup>, 2015) to present her work at the Center.

#### **IV. Website**

The Center website (<http://minervaextremelaw.haifa.ac.il>) is expanding and a Hebrew version has been added. In addition to information on the Center's activities the research team, ongoing research and outputs, events and calls for proposals, we post current and relevant media reports on legal issues related to extreme conditions, both in [English](#) and [Hebrew](#). "Discussion Papers" posts relevant papers, most of which were presented at Center events. The "[Databases](#)" section includes now overviews of 12 democracies (as part of the Law and Emergencies Comparative Research on Legal Frameworks Project), a bibliographic list of related papers and books, and a link to the natural hazards database. It is still a work in progress and at this point is being maintained by Dr. Michal Ben-Gal, among her many other responsibilities. Should we determine that we want to upgrade it, we would need to fund a web manager.

#### **4. Publications and Submissions**

##### **I. Published**

Christian Bjørnskov and Stefan Voigt, "The Determinants of Emergency Constitutions" (November 30, 2015). Available at SSRN: <http://ssrn.com/abstract=2697144>

Denard Veshi, "The cost of long-term care in Italy: the role of the public and private sector". *Politica del diritto / a.* XLVI, n. 2, giugno 2015 (Italian)<sup>2</sup>

Guy Lurie, "Medieval Emergencies and the Contemporary Debate," [\*Athens Journal of Law\*, 1](#) (January 2015).

Guy Lurie, "Citizenship in Late Medieval Champagne: The Towns of Châlons, Reims, and Troyes (1417 – c. 1435)," *French Historical Studies*, 38:3 (2015): 365-390..

Guy Lurie, "Appointment of Arab Judges to the Courts in Israel" *Mishpat U'Mimshal*, [Law and Government in Israel], 16 (2015): 307-315- [Hebrew].<sup>3</sup>

Michal Saliternik, *Reducing the Price of Peace: The Human Rights Responsibilities of Third Party Facilitators*, 48 VANDERBILT JOURNAL OF TRANSNATIONAL LAW 179 (2015).

Yaniv Roznai, The Insecurity of Human Security, 32(1) *Wisconsin International Law Journal* 95-141 (2014).

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<sup>2</sup> <https://www.rivisteweb.it/issn/0032-3063>

<sup>3</sup> גיא לוריא, מינוי שופטים ערביים לבתי המשפט בישראל. *משפט וממשל* ט"ז, 307-315 (תשע"ה)

Yaniv Roznai, 'A Bird is Known by its Feathers' – On The Importance and Complexities of Definitions in Legislation, 2(2) *The Theory and Practice of Legislation* (former *Legisprudence*) 145-169 (2014).

Yaniv Roznai and Silvia Suteu, "The Eternal Territory? On Ukraine's Unamendable Provision and Territorial Integrity", 16(3) *German Law Journal* 542-580 (2015)

Yaniv Roznai and Karin Peer Fridman, "Revolutionary Lawyering", 11 *Hamishpat* 303-344 (2015)<sup>4</sup>

## **II. Accepted**

Eli M. Salzberger: "The Rule of Law in International Law and Extreme Conditions" a book containing a collection of papers presented at the Travemünde symposium on the Economic Analysis of Law, 27-29 March 2014. (forthcoming).

Guy Lurie, "French Citizenship and the Uprisings of 1380-1383," *The Medieval Chronicle*, X (forthcoming, 2016).

Hans-Heinrich Trute: "How to deal with pandemics", a book containing a collection of papers presented at the Travemünde symposium on the Economic Analysis of Law, 27-29 March 2014. (forthcoming).

Ido Kilovaty, "ICRC, NATO and the U.S. – Direct Participation in Hacktivities – Targeting Private Contractors and Civilians in Cyberspace under International Humanitarian Law", *Duke Law and Technology Review* (forthcoming 2016).

Menachem Hofnung, "The Price of Counterterrorism Information Gathering: Intelligence Informers in the Israeli Courts" *Mishpat U'Mimshal*, [*Law and Government in Israel*]<sup>5</sup> (forthcoming, 2016). (Hebrew),

Yaniv Roznai and Nadiv Mordechay, "Access to Justice 2.0: Access to Legislation and Beyond", 3(3) *Hukim* (*The Theory and Practice of Legislation*) (forthcoming 2016)

Sigall Horovitz, "International Criminal Courts in Action: The ICTR's Effect on Death Penalty and Reconciliation in Rwanda" *George Washington International Law Review*, (forthcoming, 2016)

Sigall Horovitz, "The Or Commission and the Israeli-Palestinian Conflict: A Transitional Justice Moment in Comparative Perspective", *Law, Society and Culture*<sup>6</sup>, (forthcoming, 2016) (Hebrew)

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<sup>4</sup> יניב רוזנאי וקארין פאר-פרידמן, עריכת דין מהפכנית המשפט (תשע"ה)

<sup>5</sup> מנחם הופנונג, מחיר המידע: קליטה ושיקום של סייעני מערכת הבטחון בערי ישראל, משפט וממשל

<sup>6</sup> משפט, חברה ותרבות

Suha Jubran-Ballan, "Investment Treaty Arbitration and Institutional Backgrounds: An Empirical Study" *34 Wisconsin International Law Journal* (forthcoming 2016)

Yaniv Roznai, *Unconstitutional Constitutional Amendment - The Limits of Amendment Powers* (Oxford University Press, under contract).

Yaniv Roznai, Unamendability and The Genetic Code of The Constitution, *European Review of Public Law* (forthcoming 2016).

Yaniv Roznai, Constituent power, in *Comparative Constitutional Theory* (Gary Jacobsohn and Miguel Schor eds., Elgar Comparative Constitutional series, forthcoming 2016/2017).

Yaniv Roznai, The Spectrum of Constitutional Amendment Powers, in *Comparative Constitutional Amendment* (forthcoming as a peer-reviewed edited collection)

Yaniv Roznai, Necrocracy or Democracy? Assessing Objections to Formal Unamendability, in *An Unconstitutional Constitution? Unamendability in Constitutional Democracies* (Springer, 2017)

Yaniv Roznai, Book Review: Sofia Ranchordas, *Constitutional Sunsets and Experimental Legislation*, Edward Elgar, 2014, *American Journal of Comparative Law* (forthcoming, 2016).

"Yaniv Roznai, The Mother of all Rights": The Constitutional Right to Life, *IDC Law Review* (forthcoming 2016) (with Hillel Sommer)

### **III. Submitted**

Menachem Hofnung, "The Price of Intelligence Collection: Collaborators in the Service of Israeli Security Forces"<sup>7</sup> Michal Saliternik, "*Perpetuating Democratic Peace: Procedural Justice in Peace Negotiations*" (revised and resubmitted to the *European Journal of International Law*).

Sigall Horovitz, *Conceptualizing Reconciliation Through the Victim's Experience: The Case of Rwanda* (submitted to *Zmanim*<sup>8</sup>).

### **IV. Minerva Research Presented at Conferences**

Eli M. Salzberger: "The Rule of Law Under Extreme Conditions and International Law: Introductory Notes", *International Law and the Rule of Law under Extreme Conditions*, Travemünde symposium on the Economic Analysis of Law, 27-29 March 2014

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<sup>7</sup> Hebrew version-accepted for publication in *Mishpat U'Mimshal*; English version - submitted for review

<sup>8</sup> זמנים, רבעון להסטוריה

Guy Lurie, “Responses to Environmental Crises: Louis II in Dauphiné (1447-1456),” presentation at the 2015 International Medieval Congress, University of Leeds, Britain, July 6, 2015.

Guy Lurie, “Responses to Environmental Crises: Louis II in Dauphiné (1447-1456),” presentation at the 2015 annual conference of the Historical Society of Israel at Tel-Aviv University, June 11-12, 2015.

Guy Lurie, “Responses to Environmental Crises: Louis II in Dauphiné (1447-1456),” Presentation at the Workshop – The Coldest Decade of the Millennium? The Spörer Minimum, the Climate during the 1430s, and its Economic, Social and Cultural Impact, University of Bern, Switzerland, December 4-5, 2014.

Guy Lurie, “Medieval Emergencies and the Contemporary Debate,” presentation at the 11th Annual International Conference on Law, ATINER, Athens, Greece, July 14-17, 2014.

Guy Lurie, “Citizenship in Late Medieval France: Institutional Decision-Making or Discursive,” presentation at the 'Middle-Ages Now!' annual conference, Bar-Ilan University, April 3, 2014 [Hebrew].

Hans-Heinrich Trute: “How to deal with pandemics”, *International Law and the Rule of Law under Extreme Conditions*, Travemünde symposium on the Economic Analysis of Law, 27-29 March 2014

Ido Kilovaty, “Peacetime Cyber Espionage and International Law”. Cornell Law School Inter-University Graduate Student Conference, Cornell Law, Ithaca, NY, April 16-17, 2015

Ido Kilovaty, “Peacetime Cyber Espionage and International Law”. Georgetown Law SJD Seminar, Washington DC, April 6, 2015

Jakub Harasta, Výroční konference Českého centra excelence pro kyberkriminalitu a kybenetickou bezpečnost (Annual conference of the Czech center of excellence for Cyber Crime and Cyber Security), Cyber defence, Brno, 29th April 2015.

Kubo Mačák, “Attribution Matters: Responsibility for Cyber Operations of Non-State Actors under International Law”. Presentation at the Oxford Intelligence Group Conference on Decoding the Human: Social Science Approaches to Cyber Espionage and Cyber Crime, Oxford, 15 June 2015.

Kubo Mačák, “State Responsibility for Cyber Operations Conducted by Non-State Actors”. Presentation at the conference on Non-State Actors and Responsibility in Cyberspace: State Responsibility, Individual Criminal Responsibility and Questions of Evidence, Sheffield, 18 September 2015.

Suha Jubran Ballan, “How Institutions Matter: On Managing the Legitimacy Concerns of Investment Treaty Arbitration”. *The International Society of Public Law (ICON·S) 2015 Conference “Public Law in an Uncertain World”*, New York, July 1–3, 2015.

Yaniv Roznai, “Temporal Unamendability: A study of the prohibition on amending constitutions during emergencies,” *the Annual Conference of the IVR International Association of Legal and Social Philosophy* which focused on *De-juridiciation: Appearance and Disappearance of Law at a Time of Crisis* (26 October 2014, LSE).

Yaniv Roznai, “Necrocracy or Democracy? Assessing Objections to Formal Unamendability”, International Society of Public Law (Icon·S) Workshop on Unamendable Constitutional Provisions (Koç University Law School, 9 June 2015).

Yaniv Roznai, Towards a Theory of Unamendability

- Tel-Aviv University, The Department of Political Science (Tel-Aviv University, 4 January 2016).
- Hebrew University Faculty of Law Staff Seminar (Hebrew University, 28 October 2015)

Yaniv Roznai, “The Nature of Constitutional Amendment Powers”, Law and Society Association 2015 Annual Meeting (Seattle, 28 May 2015).

Yaniv Roznai, “The Spectrum of Constitutional Amendment Powers”, International Association of Constitutional Law, Workshop on Comparative Constitutional Amendment (Boston College Law School, 15 May 2015).

Yaniv Roznai, Temporal Unamendability: a Study of the Prohibition on Amending Constitutions during States of Emergency, 4<sup>th</sup> American Society of Comparative Law Younger Comparativists Committee Conference (Florida State University, 17 April 2015).

Yaniv Roznai, “We the Limited People – on the nature and scope of constitution-making powers” NYU Law Schools’ Global Fellows Forum (NYU, 10 March 2015).

Yaniv Roznai, “The Eternal Territory? On Ukraine’s Unamendable Provision and Territorial Integrity” Between the Law, Power and Principle – Self-Determination, Constitution Making and the Crisis in Ukraine (University of California Berkeley, 13 February 2015).



## ***Research Plan for 2016***

The Minerva Center for the Rule of Law under Extreme Conditions workplan for 2016, includes continuing and new research endeavors as well as seminars, workshops and conferences.

On December 15, 2015 we published a call for proposals, encouraging scholars to apply with research projects related to the rule of law under extreme conditions in seven categories: Graduate students (doctoral and master) scholarships for applicable theses research, post-doctoral fellowships / visiting researchers (short and longer term), seed money for research proposals, support for on-going research, workshops, colloquia and conferences, development of empirical databases, and publications of relevant research products. The deadline for proposal submission is February 20, 2016. Decisions will be announced in April 2016.

### **I. Ongoing PI Initiated Research and collaborations between Haifa and Hamburg**

#### **a. Law and Emergencies –comparative research on legal frameworks**

As was reported on page 4, the first phase of the Comparative Research on Legal Frameworks related to extreme conditions in democracies is almost complete. Both Israeli and German partners will collaborate to publish an edited volume of papers related to the topic, following the conference that took place in Hamburg in March 11-12. The next phase is planned to continue research in both high and low resolution, as well as strengthen the connection between them. This was discussed in a meeting among the eight PIs in March, 2016, during which the following was agreed upon:

#### **High resolution:**

Three options:

1. Round tables with practitioners or legal advisors in Germany and Israel – Prof. Trute will approach some German practitioners but is not optimistic about their willingness to cooperate.
2. Case study comparison (ideas raised were Cyber (Prof. Trute and Reichman) and Earthquakes (Prof. Trute and Shmueli).

3. Issue comparisons: Court decisions/judicial review, Compensation.

**Low resolution:**

Prof. Voigt will draft a summary of ideas.

**Other ideas discussed:**

A proposal to translate emergency laws in the EU

Strengthen the connection between mid to low resolution – glean variables from mid resolution - to low resolution or vice versa.

Strengthen the connection between low and high resolution – zoom in on 1-2 case studies

The final stage will be a theorization and identification of positive and normative models of emergency law and public engagement policies.

**b. Evaluating Israel's Regulatory Framework for Earthquake Preparedness, Response and Recovery** (Funded by the Ministry of Science and Technology, lead *PI*: Prof. Shmueli)

and

**c. Law, Cyber and Extreme Conditions** (Funded by the Ministry of Science and Technology, lead *PI*: Prof. Reichman)

will continue according to their second/third year work plans.

**d. Development of an Interactive Database System**, serving three current projects: Earthquakes, Cyber and Comparative Legal Frameworks. The database will allow queries and provide visual as well as verbal responses.

**II. New Cyber projects.**

The Cyber research in the Center will include the following projects:

Name	Affiliation	Topic
Myriam Feinberg	Minerva post-doc 2015-2016	Who should regulate Cyber-terrorism – France and Israel as a case study of a multilevel regime and the protection of the rule of law'
Milena Bodych	University of Warsaw, Warsaw University	Cyber Crime, cyber security and human rights
Michal Gal	University of Haifa	Access to information of big data behemoths
Nicolò Bussolati	University of Amsterdam	Application of traditional modes of liability for participation in "digital" criminal

		organizations
Ganit Ashkenazi	University of Haifa	The Modern Data Titans – Will encouraging competition between them solve the social welfare problems arising?
Yafit Lev-Aretz	Information Law Institute in New York University School of Law	Data Philanthropy
Julieta Corremas	None	The Fine Line between Cyber-Sabotage and Cyberwar
Sharon Adler	None	potential advantages, possibilities and limitations to adopting certain Public-Private Partnership models in Cyber Security in Israel
Tomer Shadmy	Bar-Ilan University	Participating in the Design of Social Media Networks' Algorithms as Application of Political Rights for the Cyber Age
Karni Alexandra Chagal	University of Haifa (PhD candidate)	Don't Judge Me, I'm an Algorithm- What Legal Liability Rules Apply to the Actions of Robots and Algorithms?
Rachel Aridor-Hershkovitz	University of Haifa (PhD Candidate)	Public-Private Partnerships (PPPs) for increasing Cybersecurity in the United States: Conceptual Framework, Efficiency and suitability to the Cyber Ecosystem
Nizan Geslevich Packin	None	Financial Institutions and Cyber Security: Too Big To Fail, 2.0?

### **III. Proposals Submitted to Outside Funding Agencies and awaiting evaluation**

**a. Trilateral Projects between German, Israeli and Palestinian Researchers,** (lead PIs: *Prof. Stefan Voigt* and *Prof. Deborah Shmueli*), passed first round, awaiting final decision.

Funding agency: DFG Deutsche Forschungsgemeinschaft

Unfortunately, this proposal was not accepted for funding by the DFG. The reviews were positive and Prof. Voigt is following up for clarification.

**b. A high resolution law in action project around social political unrest and extreme conditions.**

**(Lead PI: Prof. Deborah Shmueli)**

Funding agency: Minerva Equipment/Project Grant 2016; European Commission, Civil Society Facility (EupopAid)

The project is catalyzed by recent events in Israel at large and northern Israel (the location of our Minerva Center) in particular. The project will try to develop protocols, in a collaborative fashion, for dealing with such extreme conditions for municipalities and citizens in Vadi Ar'a - a region populated with both Arab and Jewish villages.

The deep gaps and hostility between the Arab population and the Jewish State are distinctively apparent in this region, where the Muslims, who are the minority group in Israel, are the majority group in the region. The Arab towns and villages in the region have sub-par physical and social infrastructures in comparison with the Jewish settlements, villages and Kibbutzim. When clashes between Arabs and Jews anywhere in Israel erupt, the situation in Vadi Ar'a becomes volatile. This area is likely to suffer from extreme conditions of social conflict escalation.

The project proposed is a collaborative effort between the Minerva Center and Givat Haviva - the Center for a Shared Society. Givat Haviva aims to build an inclusive, socially cohesive society in Israel by engaging divided communities in collective action towards the advancement of a sustainable, thriving Israeli democracy based on mutual responsibility, civic equality and a shared vision of the future. It is a non-profit organization founded in 1949 by the Kibbutz Federation.

The project submitted to Minerva (for 15, 000 EUROS) proposed:

- a. Conduct preliminary research on procedures and protocols that exist on the regional and local levels, for the management of extreme escalation of social conflict and for inter-municipalities and regional collaboration under extreme conditions.
- b. Map the stakeholders, agencies and organizations from all sectors that take, or should take part in emergency preparedness for extreme conditions in the Vadi A'ra region.
- c. Conduct an assessment of the needs and interests of all stakeholders.
- d. Conduct interviews with community members and authority's representatives, and a workshop with all stakeholders to evaluate the regulatory scheme of the region and its influence on the resilience of the population.

- e. Conduct a deliberative, collaborative and inclusive process including relevant professionals' sub-forums to jointly compose protocols and procedures.

The proposal to the European Commission, Civil Society Facility (EupopAid) is much more extensive.

#### **IV. Conferences**

Two Workshops already took place in January 2016 and will be reported in in the next annual report:

- a. **Crisis, Emergency and Risk Communications in the 21st Century:** An Interdisciplinary Seminar, with Hadassah Academic College in Jerusalem and Wagner College in Staten Island, New York, January 10-11, 2016 (see [here](#) on our website).
- b. **Syrian Refugees in Europe: Causes and Consequences of a Foretold Crisis.** A workshop and public discussion, in cooperation with the Haifa Center for German and European Studies. January 12, 2016 (see [here](#) on our website).

Four events are planned for 2016:

- c. **International conference: Law and Emergencies – a comparative research of democratic countries – March 11-13, 2016**

The mid-resolution comparative research will be culminated in an international conference bringing together legal scholars who focus on emergency situations in the different countries. The conference goals are to enable a scholarly discussion on different models of regulations and legal mechanisms for coping with emergency situations, and encourage a comparison of the various legal solutions and structures. The conference is planned for the summer 2015 at the University of Hamburg in Germany.

- d. **A joint workshop with Van Leer Institute on "Human Insecurity, State Fragility and Complex Humanitarian Crises in the Mediterranean".** The workshop (tentatively scheduled for June 2016) will serve as the basis for preparation of a special issue submission tackling the topic of State fragility in the Middle East and North Africa region, as well as the bigger issue of re-thinking intervention and crisis response.

**e. Second workshop on the Regulatory System for Coping with Earthquakes in Israel.**

At this round table (June 26, 2016) engaging stakeholders in the regulatory system in Israel, Center research findings will be presented and evaluated collaboratively with participants. Specifically, research findings address gaps between what exists and what is desired and the participating decision-makers and practitioners will prioritize the gaps and suggest ways for strengthening the regulatory framework.

**f. Symposium on Constitutionalism under Extreme Conditions, July 18, 2016, in collaboration with Boston College Law School, under the auspices of Israeli Association of Public Law.**

Constitutions are often made, broken or changed under extreme conditions, whether war, secession, emergency or another extraordinary circumstance. Over the past 40 years alone, more than 200 constitutions have been introduced in this way—and the number rises dramatically when we consider constitutional changes, both successful and failed, under extreme conditions.

Constitutional change during times of crisis raises a number of concerns. Fear or uncertainty may compel decisions on a compressed schedule without sufficient attention to fundamental freedoms, leading to the expansion of executive powers or even the suspension of democracy as it has been practiced. The separation of powers often fails to fulfill its purpose under these circumstances, as legislatures and even courts “rally around the flag” and in so doing may fail to exercise their constitutional functions.

Yet constitutions are intended to be stable and to survive during times of crisis. They are often designed expressly to accommodate or respond to unforeseen circumstances, whether the crisis lasts for short or long periods of time. Constitutions authorize resort to emergency powers and in some cases to a temporary “constitutional dictatorship” as the regime seeks to restore the status quo ante emergency.

How are we to understand the role of constitutions during times of crisis? Do different kinds of crises call for different solutions? Can constitutions even shape the conduct of political actors during such extreme conditions?

Papers are welcomed on any subject of constitutionalism under extreme conditions from comparative, doctrinal, historical, philosophical, sociological and theoretical perspectives. A non-exhaustive list of possible subjects includes:

- The resilience of constitutions to internal/external shocks
- Constitutional states of exception
- Abusive constitutionalism under extreme conditions
- Constitutional design for war, siege and emergency
- Designing, constraining and exercising extraordinary powers
- Judicial review during emergencies
- Constitutional rights protection under extreme conditions
- Constitution-making/amending under extreme conditions
- Sunset/sunrise/temporary constitutional provisions
- Constitutional responses to financial crisis

Purpose of Symposium: to convene a group of scholars for a high-level discussion on enduring and emerging questions on constitutionalism and emergencies. This full-day Symposium will offer participants a balanced combination of rigorous scholarly discussion and more relaxed social interaction.

Structure: This full-day Symposium will feature seven papers selected through this Call for Papers, with one discussant assigned to each paper, for a total of fourteen participants. The day will begin at 9:00am with welcoming remarks over a continental breakfast. Each of the seven papers will be allocated one hour of time for group discussion. The assigned discussant will critique the paper for up to 15 minutes, followed by a 45 minute group discussion. The paper author will not present her/his paper but will have the opportunity to respond to questions over the course of the hour devoted to her/his paper. Lunch will be served from 12:30pm to 1:30pm. The Keynote address is scheduled for 5:30pm. Dinner will follow at 6:30pm.

Publication: The conveners intend to publish the papers in an edited book or as a special issue of a law journal. Discussants may also be invited to submit stand-alone papers.

**f. Cyber project seminar** will bring together legal consultants of cyber authorities from different countries, the EU and NATO to present the Minerva Center's Cyber regulation research products and discuss various issues arising from the research.

## **V. Seminars**

In 2016-2017 we intend to continue with our seminar talks within our weekly team meetings.

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](#)".



## **2015 Fiscal report <sup>9</sup>**

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<sup>9</sup> 2014 fiscal report was sent on March 2014

## **Appendixes: Workshops and symposia - 2014-2015**

### **Programs and lists of participants**

**Appendix 1:** Round tables: Law and Emergencies in Israel, February 17<sup>th</sup> 2014

(See [here](#))

**Appendix 2:** International Law and the Rule of Law under Extreme Conditions,  
Travemünde symposium on the Economic Analysis of Law, 27-29 March  
2014 (see [here](#))

**Appendix 3:** Advisory Board Meeting and Mini-Seminar (see [here](#))

**Appendix 4:** The Israeli Democracy in War - Is the 'Edge' Protected? (see [here](#))

**Appendix 5:** Law, violence and exception (see [here](#))

**Appendix 6:** The Regulatory System for Coping with Earthquakes in Israel: normative vs  
the existing situation (see [here](#))

**Appendix 7:** The Algorithmic State: Cyber Challenges to Democracy (see  
[Overview](#), [Program](#) and [Round tables](#))