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Introduction

As 2025 comes to a conclusion, with a measure of relief following the ceasefire in Gaza, we are pleased to offer this double issue of the *Israel Law Review*, featuring scholarship relating to the Hamas attack of 7 October 2023 and the subsequent conflict in Gaza. Most the articles in this issue were first presented at the 19th annual IHL Conference held by the Hebrew University's Minerva Center for Human Rights, titled 'The Gaza War and International Law: Norms and Institutions', on 17–18 December 2024.

The opening article is an expanded version of the Keynote Address by Claus Kreß at the December 2024 Conference, 'At the Outer Limits of the Right of Self-Defence and Beyond: Israel's Use of Force in the Gaza Strip since 7 October 2023 and the *Jus contra Bellum*'. The article addresses the genuine legal uncertainty concerning the applicability of the right of self-defence when an armed attack by a non-state organisation emanates from the territory of a state, or a territory destined for the realisation of the right to self-determination of a people, which has proven unable to prevent said armed attack. The article examines the tension between the legally protected interests of the state that is the victim of the armed attack and those of the 'host people' of the non-state attacker.

Two more articles in this issue concern the laws on the use of force and were presented at the December 2024 Conference. Gal Cohen's '*Jus ad Bellum* Applicability During "Ongoing Armed Conflicts": Gaza as a Test Case' rejects the Israeli 'displacement' approach whereby *jus ad bellum* does not play a role during an ongoing armed conflict, as unsupported by the sources of international law. Cohen offers explanations for Israel's reliance on 'displacement' despite its shaky foundations. Acknowledging the challenges in applying *jus ad bellum* during hostilities, the article analyses Israel's reliance on the right of self-defence, focusing on the implications of the various approaches to *jus ad bellum* proportionality for the use of force in self-defence in Gaza.

In the other article, 'Self-Defence and Non-State Actors: An Inquiry into the Morphology of the Right of Self-Defence in International Law', Nicholas Tsagourias examines whether states may use force in self-defence against non-state actors operating from the territory of another state. After mapping the prevailing approaches to self-defence in response to a non-state armed attack – focusing on attribution, Article 3(g) of the Definition of Aggression, and the 'unable or unwilling' doctrine – Tsagourias argues that these approaches give rise to normative, methodological and practical difficulties, and often leave states without an effective right to defend themselves. He contends that self-defence is a primary rule of international law permitting the use of force in response to an armed attack as a

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factual occurrence, irrespective of the identity of the attack's perpetrator, and even when the latter is a non-state actor operating from within the territory of another state. In such cases, self-defence also functions simultaneously as a circumstance precluding wrongfulness.

Jens Iverson's 'Why Israel Should Protect, Supply and Rebuild Water Resources and Infrastructure in the Gaza Strip: Law, Ethics and Prudence' is another article presented in December 2024. Iverson argues that Israel is obligated by both international law and ethics to continue providing water to the Gaza Strip before, during and after the 7 October 2023 conflict. Iverson further argues that to do so is the most prudent policy choice. He maintains that humanising action, such as the provision of water security, is the best way to overcome the powerful dehumanising discourse that currently dominates 'pro-Israel' and 'pro-Palestine' communities.

In 'Applying Precautions in Target Verification with AI Decision Support Systems', Renato Wolf examines how the obligation to take precautionary measures to verify targets under international humanitarian law (IHL) can be applied with artificial intelligence decision support systems (AI-DSS). In the article, also presented in December 2024, Wolf uses the reported deployment of systems such as 'Lavender' and 'Where's Daddy?' by Israel in the Gaza War as an illustrative example, and evaluates how precautions to verify can reduce the risk of false positives in each of these stages. He argues that precautions to verify must be applied at all stages and discusses factors that affect their feasibility. The article concludes that, while human oversight remains essential, precautions specific to AI-DSS outside the realm of the human operator are possible and, at times, necessary to ensure compliance with IHL.

William Thomas Worster's 'Assurances on the Use of Exported Arms in the Gaza Conflict' is another contribution from the December 2024 conference. It critiques the assessment by exporting states of assurances that exported arms will not be misused by recipient states, with a focus on the Gaza conflict. Building on the arms export obligations in the Geneva Conventions, and the implementation of those export obligations in the Arms Trade Treaty and EU Common Position, Worster offers a transferable due diligence framework for evaluating assurances. He also draws on assessment of non-refoulment assurances. The article articulates the relevant criteria for a due diligence risk assessment of arms exports assurances, and applies that framework to the US arms exports in relation to the Gaza conflict on the basis of National Security Memorandum 20. The article tentatively concludes that the US assessment was not in compliance with international standards.

Avraham Russell Shalev's 'Hamas' October 7th Genocide: Legal Analysis and the Weaponisation of Reverse Accusations – A Study in Modern Genocide Recognition and Denial' analyses the 7 October 2023 Hamas attack on Israel through the lens of the Genocide Convention, arguing that this action constitutes genocide under international law. Drawing on international case law, the article demonstrates how Hamas' actions meet both the physical element and specific intent requirements for genocide, evidenced by its ideology, systematic policies and leadership statements. The article also argues that accusations of genocide against Israel have functioned as a rhetorical shield to deflect recognition of Hamas' own genocidal actions.

The penultimate contribution to this issue and final contribution from the December 2024 conference is Monika Polzin's 'Did the ICJ Act Ultra Vires? The Orders on the Convention on the Prevention and Punishment of the Crime of Genocide in

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the Gaza Strip', in which she argues that the orders on provisional measures issued by the International Court of Justice (ICJ) in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* are highly problematic from a legal perspective. Polzin suggests that the ICJ acted outside the scope of its authority by adopting a very vague but progressive interpretation of the Genocide Convention, combined with a novel application of Article 41 of the ICJ Statute. An overall analysis indicates that the attempt by the ICJ to act as the ultimate genocide-prevention body by enforcing a general duty to minimise human suffering in Gaza is a laudable exercise to protect civilians, but one that is outside the scope of the Genocide Convention or the judicial authority of the ICJ.

This issue concludes with the Keynote Address given by Michael Walzer during the Minerva Center for Human Rights' 18th Annual IHL Conference held in Jerusalem in May 2024. In 'The Asymmetry Trap', Walzer explores the moral challenges of asymmetric warfare, especially in Israel's war with Hamas. He argues that insurgents embed among civilians, forcing high-tech armies into a 'trap' where fighting inevitably kills. Hamas bears moral responsibility for using civilians as cover, but Israel must still fight carefully – minimising civilian harm, accepting some risk to its soldiers, and ensuring humanitarian aid. Walzer criticises sieges, indiscriminate bombing and revenge-driven warfare, and emphasises that responsibility for the suffering lies both with insurgents, who are accountable for deaths resulting from their tactics, and with state armies, which must minimise harm and accept risk to protect civilians.

We wish all our readers an instructive and interesting read.

Professor Malcolm N Shaw KC
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Editors-in-Chief

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Academic Editor

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