Israel Law Review **51**(3) 2018, pp 337–338. © Cambridge University Press and The Faculty of Law, The Hebrew University of Jerusalem, 2018.
doi:10.1017/S0021223718000201

Introduction

The *Israel Law Review* is pleased to present its final issue for 2018, which includes a collection of articles, workshop proceedings, the text of the Lionel Cohen Lecture, a book review essay and a book review.

In 'An Unlikely Day in Court? Legal Challenges for the Prosecution of Israeli Settlements under the Rome Statute', Hannes Jöbstl analyses the scope of the jurisdiction of the International Criminal Court over the Israeli settlement enterprise in the West Bank. The author finds that this scope differs fundamentally between acts of direct transfer and indirect transfer because of Israel's status as a non-member state of the Rome Statute and the specific nature of Article 8(2)(b)(viii) of the Statute. The article also examines procedural arguments and holds that the Court's temporal and territorial jurisdiction may be limited to acts of direct population transfer committed after April 2015.

Kyo Arai's 'Between *Consented* and *Un-Contested* Occupation' follows a presentation given during the 12th Annual Minerva/ICRC Conference on International Humanitarian Law, in May 2017, entitled '50 Years after 1967: Evaluating the Past, Present and Future of the Law of Belligerent Occupation', held jointly by the Minerva Center for Human Rights at the Hebrew University of Jerusalem, Tel Aviv University, the Emile Zola Chair for Human Rights at the College of Management Academic Studies, and the International Committee of the Red Cross Delegation to Israel and the Occupied Territories. The article challenges the commonly understood reliance on consent to the presence of foreign military forces as precluding the existence of belligerent occupation. It suggests that weight should be attached to the actual relationship between the occupier and the population in the occupied area, rather than to the subjective judgment of the situation by the parties to the conflict. The article discusses whether and how a state's consent could negate the legal protection of its own people, and highlights situations where the local population needs protection by the law of occupation (or comparable rules) in consensual military occupations.

In 'Temporary Constitutional Amendments as a Means to Undermine the Democratic Order: Insights from the Israeli Experience', Nadav Dishon examines the adoption of temporary measures within the generally rigid constitutional sphere. He contends that as beneficial as temporary constitutionalism may be in some circumstances, its use should be scrutinised with great suspicion, especially when it is employed in weak constitutional regimes. By outlining the history of temporary constitutionalism in the State of Israel, the article illustrates how temporary constitutional amendments can be harnessed to undermine the democratic order, when incumbents can entrench their power against their opponents while avoiding both public accountability and judicial review of their actions. The article outlines several signifiers to monitor and suppress the development of the abusive employment of temporary constitutional amendments.

https://doi.org/10.1017/S0021223718000201 Published online by Cambridge University Press

In December 2017, the Law Faculty of the Hebrew University of Jerusalem held an international expert workshop on 'Territorial Dimensions of Self-Determination', under the auspices of the Faculty's International Law Forum and the Knapp Family Foundation. The proceedings of the workshop are included in this issue. The workshop addressed general questions on the relationship between territory and self-determination and its particular manifestation in the Middle East, as well as comparative experience around the world.

As in every year, it is our pleasure to bring to print the Hebrew University Faculty of Law's annual Lionel Cohen Lecture. This issue features the lecture given in Jerusalem in April 2018 by Sir Terence Etherton, Master of the Rolls, entitled 'The Universality of the Rule of Law as an International Standard'. The lecture addresses the global importance and implications of the rule of law, and discusses promotion of the inherently desirable qualities of legal rules which govern our lives and the importance of access to justice in enforcing those rules. It also considers the close relationship between the rule of law and the promotion and protection of fundamental human rights and dignity. Finally, it examines how a state's commitment to the rule of law may be monitored and the ways in which, in order to prevent abuse or oppression of the public, governments may be held accountable for failing to comply with the rule of law.

The issue concludes with our book review section. In 'Some Reflections on the Theory of Sources of International Law', Ezequiel Heffes explores certain challenges related to the notion of customary international law, through consideration of the various contributions in *Reexamining Customary International Law*, edited by Brian D Lepard (Cambridge University Press 2017) on the legal nature of customary international law, its applicability and regulating principles. The essay focuses on the relevance of the two-element definition of customary international law, and on the current value of the persistent objector theory. Finally, Alexander Orakhelashvili reviews Daniel Costelloe's *Legal Consequences of Peremptory Norms in International Law* (Cambridge University Press 2017).

We wish all our readers a fruitful and enjoyable read.

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