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Introduction

This issue of the *Israel Law Review* features five articles, three of which relate to the ongoing war between Russia and Ukraine. Gregory Gordon's 'Charging Aggression as a Crime against Humanity? Revisiting the Proposal after Russia's Invasion of Ukraine' considers the proposal to treat aggression as falling within Article 7(1)(k) of the Rome Statute of the International Criminal Court (ICC), the crimes against humanity residual clause. The article resuscitates a proposal to this effect made in 2010 by Benjamin Ferencz, applying it to the Russian invasion of Ukraine in 2022. Gordon argues that Russian leaders could be charged with using illegal force as a crime against humanity under the residual clause. This approach would have practical advantages as the initiation of aggression inside the Kremlin links liability to Putin much more directly for the killing of Ukrainian civilians. Further, charging aggression as a crime against humanity offers the possibility of ICC participation and reparations for victims. There are theoretical advantages, too, with utilitarian and retributive objectives better satisfied. Gordon further argues that Ferencz's approach is preferable to recently proposed alternatives, such as using aggression merely as a gravity/liability modes/sentencing enhancer or alleging breach of the right to self-determination as the residual clause gravamen.

Two other articles on the Russia-Ukraine war are based on presentations made at the 17th Annual Minerva Conference on International Humanitarian Law held in Jerusalem in November 2022 under the theme 'The War against Ukraine and IHL'. Shani Friedman, in 'To Blockade or Not To Blockade? The Legal Status of Russia's Suspension of Shipping in the Sea of Azov', explores the legal situation relating to the Sea of Azov in the light of the Russian suspension of shipping on 24 February 2022. The article examines the legality of this suspension, in particular whether it is governed by the law of naval blockade under the laws of naval warfare. It analyses the situation from the perspectives of international humanitarian law and the law of the sea, and examines how the interaction between the two legal regimes affects the analysis. Friedman maintains that the Russian conduct does not constitute a naval blockade but may be an accepted practice within the legal regime of naval warfare. In addition, she holds that the law of the sea affects both the laws of naval warfare and the status of the Sea of Azov. Finally, the article queries the relevance and applicability of the legal concept of naval blockade in modern international law.

'The Effect of Russia's Invasion of Ukraine on Non-Human Animals: International Humanitarian Law Perspectives' by Saba Pipia examines aspects of the non-human death toll arising from the war in Ukraine, namely the destruction of animals or damage to their habitats. The article studies three patterns of animal suffering documented during Russia's invasion of Ukraine: (i) targeting zoos and killing zoo animals; (ii) extermination of the

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Black Sea dolphin population; and (iii) eating pigeons or other pets in besieged localities, and seeks to analyse these patterns in the light of applicable rules of international humanitarian law. Pipia discusses how, and to what extent, international law can provide protection for animals in armed conflict and, if so, whether there are any gaps in the applicable international humanitarian law rules related to the protection of animals.

The fourth article in this issue focuses on constitutional law. In 'How Misuse of Emergency Powers Dismantled the Rule of Law in Hungary' Gábor Mészáros describes how the Hungarian government has been using the concept of emergencies to expand its political power instead of upholding constitutionalism and the rule of law. This strategy has given the government almost unlimited power to enact emergency decrees, even when the state and the population are not in immediate danger. Mészáros focuses on the ninth amendment to the Fundamental Law of Hungary. The amendment granted the executive branch even more authority during exceptional times by allowing the government to prolong the 'state of exception' indefinitely and, accordingly, to maintain pandemic-related emergency measures to respond to potential consequences of the war in Ukraine. As a result, the executive body has been able to exert significant political control without proper parliamentary oversight.

The final article in this issue, by Richard Steinberg, is based on his Bob and Sally Shafton Memorial Lecture, delivered at the Hebrew University in March 2022. 'Politics and Justice at the International Criminal Court' considers the ICC as a legal institution nested in international politics. Politics shaped the Rome Statute, which is rooted in norms and rules of European lineage and security interests of party states. Politics constrain and influence the operation of the Court. A brief history shows that the geographic distribution of ICC investigations and prosecutions in the application of the Rome Statute is skewed towards Africa, a structural bias that has catalysed a legitimation crisis. Subsequent exercises of expansive jurisdiction aimed at nationals of non-African, non-party states, including Israel and some of the world's great powers, have dampened African complaints and advanced the ICC agenda but, at the same time, intensified powerful non-party state antagonism towards the Court. To survive, the Court organs must follow legal mandates, yet be responsive to pressing international political demands, continuously risking both the Court's legitimacy as a legal institution and adverse political reactions by antagonised governments. The tension between law and politics at the ICC cannot be resolved, but management of it can help the ICC to survive.

We wish you all an interesting read.

Professor Malcolm N Shaw KC
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