

## Introduction

As we begin 2023, the *Israel Law Review* dons a new appearance. This is particularly befitting in this issue of the *Review*, which features articles discussing modern-day manifestations of familiar topics.

In ‘Military Artificial Intelligence and the Principle of Distinction: A State Responsibility Perspective’, Magdalena Pacholska examines the debate on the applicability of the law on state responsibility to the operation of autonomous weapons systems. Pacholska argues that any challenges in ascribing state responsibility for violations of the principles of distinction in cases involving autonomous weapons systems would not be caused by the incorporation of artificial intelligence, but from pre-existing systemic shortcomings of international humanitarian law. The article reiterates the centrality of command responsibility in attributing state responsibility for the effects of deploying such systems, but proposes that should fully autonomous weapon systems ever be fielded, their conduct should be attributed to the fielding state by conceptualising them as state organs.

In another article addressing the implications of the use of artificial intelligence for traditional bodies of law, Agata Kleczkowska’s ‘Autonomous Weapons and the Right to Self-Defence’ claims that there are no legal grounds to exclude autonomous weapons *a priori* from being employed to exercise the right to self-defence. In general, the legality of using such weapons depends on how they were pre-programmed by humans and whether they were activated under proper circumstances. The article first discusses how human control over autonomous weapons affects the legality of their use. It then analyses the criteria of necessity and proportionality in the exercise of the right to self-defence in the context of employing such weapons. Finally, it investigates the use of autonomous weapons for anticipatory, pre-emptive or preventive self-defence.

Ya’ara Mordecai’s ‘When the Cannons Roar, Tort Laws are Silent? A Re-examination of Section 5B of the Civil Wrongs (Liability of the State) Law’ examines the legality under international human rights law, the law of occupation and Israeli tort law, of section 5B of the Civil Wrongs (Liability of the State) Law, which precludes the Palestinian residents of the Gaza Strip, members of terrorist organisations and their agents from obtaining compensation for injuries suffered as a result of the negligent conduct of Israeli security forces. The article considers the amendments made in the said section and its interpretation by Israeli courts when addressing the state’s tort liability towards nationals of enemy states and members of terrorist organisations. The article uses case law following the 2018 protests near the Israel–Gaza border as a case study to emphasise the legal difficulties arising from the Law and the


need for its re-examination. The article concludes by proposing to replace the identification of Gaza's residents as enemy state nationals, for the purposes of applying state liability in tort, by the adoption of an individual examination mechanism in relation to members of terrorist organisations. This change would better fulfil the purposes underlying the state's tort liability exemptions, while increasing Israel's compliance with its legal obligations.

In 'Extraterritorial, Universal, or Transnational Human Rights Law?', Dalia Palombo challenges the limited reliance of international human rights adjudication on the paradigm of extraterritoriality. This paradigm recognises only limited circumstances in which states bear extraterritorial human rights obligations: namely situations of effective control over a territory, or authority and control over a person. This leaves several cases of cross-border human rights abuses that are barred on jurisdictional grounds. The problem is particularly acute regarding obligations of a global character, which are, by their very nature, completely unrelated to the control that states exercise over territories or people. Palombo analyses the competing paradigms of universality and transnationality as they have been adopted by domestic courts. She argues that international human rights adjudication should reconceptualise extraterritoriality against the background of universality and transnationality to address global crises.

The final article in this issue is Silvia Dimitrova's 'Rethinking "Jurisdiction" in International Human Rights Law in Rescue Operations at Sea in the Light of *AS and Others v Italy* and *AS and Others v Malta: A New Right to be Rescued at Sea?*'. Dimitrova analyses how the two decisions of the Human Rights Committee interpreted the concept of 'jurisdiction', and juxtaposes this analysis against the approaches taken in other international legal regimes. The article theorises on the impact of these two decisions in helping to crystallise a new 'right to be rescued at sea'.

To conclude this introduction, we are pleased to announce that the *Israel Law Review* Prize, awarded annually to the best unsolicited article published in the journal during the previous calendar year, for 2022 has been awarded to Dr Grażyna Baranowska for her article 'The Rights of the Families of Missing Persons: Going Beyond International Humanitarian Law', published in (2021) 55 *Israel Law Review* 25–49. Congratulations, Grażyna!

We wish you all an interesting read.

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