



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

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

## **Annual report - 2016**

**Haifa and Hamburg, 31 March 2017**

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## **Activity report**

The Minerva Center for the Rule of Law under Extreme Conditions (RLuEC) began operating in January 2013. In accordance with the contract between the Minerva Stiftung Gesellschaft für die Forschung m.b.h. and the University of Haifa, we are honored to present this report, covering the Centers' activities for 2016.

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. The Principal Investigators embrace 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), one project head and four to six research assistants, depending on project needs.

The Center is located in the Terrace ("Madrega") building at the University of Haifa, room 1013. The Center activities include: 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 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

### I. Law, Cyber and Extreme Conditions

**Led by Prof. Amnon Reichman, funded by the *Israel Ministry of Science and Technology*, 1,700,000 NIS (around 354,000 Euros), 16.12.2013 – 15.12.2016.**

The project explored both theoretical and practical issues regarding control, regulation and legal aspects of cyber disasters. It also mapped existing rules and regulations and explored the differences and similarities between political units (national and international).

As part of the project, the Minerva Center for the RLuc conducted a 17 day visiting fellows workshop that brought together 22 cyber researchers from different countries to discuss research related to cyber and law under extreme conditions.

Outcomes of this project include 5 published papers, 2 submitted and 11 in preparation. It was the catalyst and provided funds for the development of a database of **Regulatory Framework for Preparedness, Response and Recovery**, with empirical data from the cyber projects among the database inputs. In addition, the expertise developed at the Haifa University Faculty of Law in legal cyber issues was largely advanced by this project, and in 2016 the University was chosen to lead a new National Cyber Policy and Law Research Center, together with the National Cyber Bureau in the Israeli Prime Minister's Office. This new center (headed by Prof. Niva Elkin-Koren and Prof. Tal Zarsky from the Faculty of Law) will cooperate with the Minerva Center for the RLuc in the future.

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

**Led by Prof. Deborah Shmueli, funded by the *Israel Ministry of Science and Technology*, 400,000 NIS (around 83,000 Euros), 1.12.2013 - 30.11.2016.**

The research identified, mapped and conceptualized Israel's current regulatory context which governs earthquake preparedness, response and recovery. The research team developed a Regulatory Systems Assessment (RSA) methodology using best practices from international sources and applied it to the Israeli system. Stakeholder engagement processes were utilized for the evaluation itself. The final recommendations identified gaps between what exists and what is desired based on the literature review and the regulatory evaluation. The recommendations offer ways for strengthening the regulatory context, thus, contributing to Israel's preparedness on the state, community and private sector, and the interaction among the three. The Final report of this project was submitted to the Ministry and is available on the Minerva website (in Hebrew) under "Publications" >> "Scientific Reports" (direct link [here](#), an English version will be available in April 2017). Three papers based on this project are in preparation. The empirical data is being uploaded to the **Regulatory Framework for Preparedness, Response and Recovery database** that was constructed in the framework of the Cyber project above.

## **III. Local Protocols for Emergency Preparedness in Wadi Ara, a Mixed Arab-Jewish Region**

**Led by Prof. Deborah Shmueli, funded by the *Minerva Stiftung (small projects)*, 15,000 Euros; 1.3.2016 - 31.12.2016.**

This is a *law in action project around social political unrest and extreme conditions focused on Wadi A'ra*, a mixed Jewish-Arab region in northern Israel. The project is a collaborative effort between the Minerva Center and Givat Haviva - the Center for a

Shared Society<sup>1</sup> and the Jewish -Arab Center at the University of Haifa.

The project was catalyzed by events in Israel at large and northern Israel (the location of our Minerva Center) in particular. 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 Wadi Ar'a becomes volatile. This area is likely to suffer from extreme conditions of social conflict escalation.

The research was carried out in three stages:

1. Preliminary research included a literature review and preliminary narrative interviews:
  - a. Existing protocols worldwide for emergency preparedness and management of extreme escalation of conflict in deeply-divided societies.
  - b. Rapid social conflict escalation processes in Israel in recent years, including narrative research of how these processes are perceived by the parties involved.
  - c. Procedures and protocols that exist in Israel for the management of extreme escalation of social conflict and for inter-municipalities and regional collaboration under extreme conditions
2. Mapping the stakeholders, agencies and organizations from all sectors that ought to take part in an inclusive, integrated action for emergency preparedness for extreme conditions in the Wadi A'ra area
3. Conducting an assessment of the views, needs and interests of all stakeholders.

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<sup>1</sup> 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.

#### **IV. Database**

**Led by Prof. Amnon Reichman and Prof. Deborah Shmueli. The Minerva Center for the Rule of Law under Extreme Conditions International, Interactive Database System: Regulatory Framework for Emergencies Preparedness, Response and Recovery**

The two research projects funded by the Ministry of Science and Technology in 2013-2016 mentioned above (Law, Cyber and Extreme Conditions and Evaluating Israel's Regulatory Framework for Earthquake Preparedness, Response and Recovery), yielded a large corpus of data on regulatory bodies and legal tools for dealing with Cyber (in 12 countries) and earthquakes (in Israel) threats. This led to a vision, now becoming a reality, to develop an interactive computerized database that will enable researchers, as well as practitioners, to use the data, update it and create more data for other extreme conditions.

The computerized database system is in the last stages of construction and the empirical data is in the process of being uploaded. The database is an interactive, searchable, comprehensive, visual and verbal tool that provides the ability to easily pose queries to the database either textually and/or using the graphic interface.

The system can create diagrams of regulatory bodies and the relations among them, as well as connect to links with additional data connected to these bodies, such as websites, laws, governmental decisions and other legal documents.

In addition, the database is designed to include events of extreme conditions that will be marked on a world map. In the future we hope to enlarge the database to include other extreme conditions (other natural disasters such as floods, fires, storms and pandemics), socio-economic meltdowns, and national security challenges (terrorism, armed conflicts...) in different countries in the world. The system enables collaboration with authorized affiliates - other researchers and Centers – who will be able to use and add data (with explicit permission).

## 2. Research Projects and Researchers Selected for Support

### 2.1. Graduate and Post-graduate Young Researchers

#### I. Young Researchers who Completed their Affiliation with the Center in 2016

Three young researchers completed their formal affiliation with the Center: Dr. Yaniv Roznai, Dr. Suha Jubran-Ballan and Dr. Olga Frishman. We maintain strong ties with all three.

**a. Dr. Yaniv Roznai** completed two years of as a post-doctoral researcher. In his first year he worked on the limitations on constitutional amendment powers, which prohibits any changes or modifications of the constitution during an emergency. In his second year he analyzed the connection between constitution-making and crisis and whether indeed a constitution drafted in times of crisis was truly drafted by “sober” constitution-makers.

His research at the Center yielded the following publications:

- Yaniv Roznai, “The Insecurity of Human Security”, 32(1) *Wisconsin International Law Journal* 95-141 (2014).
- 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)(Hebrew)
- Yaniv Roznai and Hillel Sommer, “‘Mother of all Rights’: the constitutional Right to Life”, 19 *Mishpat VeAsakim* 626-537 (August 2016) (Hebrew)
- Yaniv Roznai, *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*. Oxford University Press, 2017.
- Yaniv Roznai, Book Review: “Sofia Ranchordas, Constitutional Sunsets and Experimental Legislation”, Edward Elgar, 2014, *American Journal of Comparative Law* 64 (2016): 790-794.
- Yaniv Roznai, “Unamendability and The Genetic Code of The Constitution”, 27(2) *European Review of Public Law* (ERPL/REDP) (summer/été 2015): 775-825.

Also accepted for publication:



- 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)

**b. Dr. Suha Jubran-Ballan** completed two years as a post-doctoral researcher. In her first year she focused on international obligations of states in the midst of an economic crisis. She presented her work at the International Society of Public Law (ICON-S) 2015 Conference “Public Law in an Uncertain World,” in New York, July 1–3, 2015. During her second year she worked on the issue of “Economic Crises and Foreign Investors: Between Necessity and Reparation”. She presented a draft paper on this issue at one of the Center's seminars.

During her fellowship she wrote the following:

- Suha Ballan-Jubran, “Investment Treaty Arbitration and Institutional Backgrounds: An Empirical Study”, 34 *Wisconsin International Law Journal* (2016):31
- 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” (ready for submission)

**c. Dr. Olga Frishman** did not complete the first year of her post-doc. She was offered a promising position at the Ministry of Justice and decided to halt her academic career.

Olga presented her work:

- “Perceived Emergencies and the Law” at the ICON-S Israel Annual Conference of the International Society of Public Law, Hebrew University, Jerusalem, 15.5.2016.

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

Three researchers – Alyssa-Nurit McBride, Rivka Brot, Myriam Feinberg and Olga Shteiman continue their research at the Center in 2016:

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 is working on: **A comparative study of Refugee Law in the Developing World** in which, by using archival research, she examines Somali refugees in Kenya, Rwandan refugees in the Democratic Republic of the Congo, Burmese refugees in Thailand and Afghan refugees in Pakistan. [Her proposal is available via this link.](#)

Nurit spent the spring doing an exhaustive review of secondary sources related to her project. In summer 2016, with the generous support offered by the Minerva Stiftung (small projects), she went to Geneva to gather archival data from the home office of the UNHCR. She also took subsequent trips to London and New York and collected additional data, interviews, and refugee narratives. She has been processing the considerable amount of historical documents during the autumn and winter months. Currently, she is finishing the first draft of an article focusing on two of the four cases she is researching, Kenya and Thailand. It will be submitted for publication shortly. As part of her doctoral studies she will submit three articles to referred journals. The second article will focus on the other two cases of her research - Pakistan and the DRC and then the final article which will be a synthesis and broader conclusions of the overall research. Barring any major delays, she should meet the requirements for her PhD by spring 2018 though additional time may be required for publication and approvals.

### Post-Doctoral Researchers

**a. Myriam Feinberg:** focused in 2016 on a Cyber-related research: **Who should regulate Cyber-terrorism – France and Israel as a case study of a multilevel regime and the protection of the rule of law?**

Myriam has expanded her research of multi-level regulatory regimes in the field of security to the complex context of cyber security, and will contribute to the broader question of whether international regulation can increase the protection of human rights and procedural safeguards while promoting accountability.

Normative conflicts surrounding regulation of cyber terrorism are of critical import. They can constitute a threat to international peace and security, which triggers jurisdiction by the Security Council and allows the Security Council to adopt enforcement measures, which States are obligated to implement. Yet, other actors, including the European Union and the Council of Europe, have also developed their own regime to address the threat, which might contain different requirements for states. This multiplication of regimes has the potential to create conflict especially due to the non-territorial nature of cyber terrorism and the lack of a clear legal framework of the phenomenon (compared to 'general' terrorism, more clearly regulated) which requires international regulation. Yet, the involvement of international and regional organizations in cyber terrorism raises questions of legitimacy and efficiency: the intergovernmental nature of international law often prevents rule of law safeguards, and the lack of enforcement mechanisms of international norms further complicates punishment of the suspects. This situation also raises questions of attribution of responsibility for failure to prevent cyber attacks, which can form the grounds for a lack of accountability. In a multilevel regime, it is easier for parties to blame other actors involved if a wrong has been committed: in the 2008 Kadi case, Member States used article 103 of the UN Charter to argue that their obligations under the Security Council resolutions prevented them from abiding by their European human rights obligations. The European court rejected this supremacy in favor of the protection of human rights and fundamental freedoms, but not all regulatory regime for security and counterterrorism contain such review mechanisms.

The research project examines one specific country, France, which is a member of the

EU, the UN and the Council of Europe, and uses Israel, which is not part of the European organizations, as a comparison, in order to assess which regime might be preferable. The benchmark for the analysis is the rule of law – and in particular the issue of accountability – so that it is possible to identify the regime that best promotes the rule of law while ensuring maximum security. The research focusses on normative conflicts including those stemming from issues of jurisdiction of cyber space and issues of responsibility of the actors involved in addressing cyber terrorism. The question of ‘who regulates’ will therefore be extended to ‘who should regulate.’ In particular, it considers the impact of human rights standards through regional organizations that can set obligations for states and might be used as grounds to challenge obligations stemming from the UN Charter. It will also contrast the advantages of international regulation with potential (or existing) review mechanisms with the checks and balances that do exist in domestic regimes, especially for states, such as Israel, which are not part of European organizations.

The first part of the research consists of an empirical analysis of the regulatory regimes of France and Israel against cyber terrorism. It builds on the data collected by the Minerva Center, which will be extended, to rate their compliance with and promotion of rule of law, focusing on aspects of transparency in the adoption process; accountability for the measures adopted; and the presence of review mechanisms. The second part of the research will consist of a more theoretical analysis on issues of responsibility in multi-level regulatory regimes.

Myriam’s activities 2015-2016:

### **Conferences**

- "Terrorism, the permanent exception", Law, Violence and Exception Workshop, Centre de Recherche Français à Jérusalem, November 2015.
- "Normative conflicts between international and domestic law", Minerva Center, University of Haifa, seminar, March 2016.
- "Terrorism, the permanent exception", ICON-S Israel conference, Hebrew University, May 2016. Focused on the events in Paris and Brussels and the

response of the international community.

- "Counterterrorism and the refugee crisis", Conference on Human Insecurity, State Fragility and Complex Humanitarian Crises in the Mediterranean, organized by the Van Leer Institute and the Minerva Center for the Rule of Law Under Extreme Conditions, June 2016.
- "Online incitement to terrorism at the Cyber Regulation" summer session of the Minerva Center for the Rule of Law Under Extreme Conditions, University of Haifa, July 2016.

**Publications:**

- Myriam Feinberg, "The Legality of the International Coalition against ISIS: The Fluidity of International Law", *Justice* 57, Winter 2015 – 2016, p.24.
- The Special Issue of the International Journal of Human Rights Law, which she edited in 2015, was published in January 2016 by Routledge as a book : Myriam Feinberg, Laura Niada-Avshalom, and Brigit Toebe (eds), *National Security, Public Health: Exceptions to Human Rights?* Abingdon: Routledge, 2016.
- Myriam Feinberg, *Sovereignty in the Age of Global Terrorism: The Role of International Organisations*, Nijhoff Law Specials 91, Brill Publishers, June 2016. This is a monograph, based on her PhD thesis, which came out in May 2016.

An article on the duty to cooperate against terrorism was submitted for peer review in an international journal.

Now she intends to return to her original research: **When national security emergencies become the norm: the protection of the rule of law in international counterterrorism** ([proposal available here](#)), which was mentioned in our 2014-2015 report.

**b. Dr. 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)**

(the [proposal available here](#)).

The focus of Rivka's study is the relationship between law and space at the Jewish DP camps. 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.

Activities 2016:

**Conference Presentations:**

- In May 2016 she presented her work at the University of Haifa, in an international academic conference marking the 70th anniversary of the (end) of the first Nuremberg Trial.
- "A Question for History not for Court?" The Judenrät and Jewish Ghetto Police the 5th Global Conference on Genocide, at the International Network of Genocide Scholars, June 2016.
- "Law at the Crossroads: Legal Autonomy in the Jewish Refugee Camps, the American Zone of Occupation in Germany" Israeli Law and History Association annual conference, Jerusalem, October 2016.
- Upon request, she also presented her research at the Department of Jewish History and Contemporary Jewry – Hebrew University, Jerusalem, the Department of Jewish History at Tel Aviv University, and The Israeli Bar Association (Tel-Aviv district).
- "The Gray Zone in Court", Department of Jewish History, University of Haifa, January 2017.

**Publications:**

- Revision of: "Conflict of Jurisdictions – The Struggle for Jewish DPs for Legal Autonomy. The article will be published in June/July 2017.
- Edited her future book's transcription, which will be published by the Open University Publishing. The transcript, based on her dissertation was awarded in December 2016 the Goldberg Prize for an excelling, original, theoretical manuscript for 2016, on the Junior Scholar Track.

During this time she continued her archival research both in the US and Israel. With the generous support offered by the Minerva Stiftung (small projects), she spent a few weeks in NYC and Washington DC (July-August 2016) working at several archives. She is continuing her archival work mainly in Israel hoping to produce two articles: the first one dealing with the rule of law in Jewish refugee camps in the American Zone of occupied Germany, and the second focusses on the socio-legal meanings of the unique phenomenon of legal aid, both individual and collective, for Jewish refugees in Germany.

**c. Dr. Olga Shteiman:**

Olga continues her research on **Disaster preparedness among new Immigrants to**

**Israel: Perceptions, attitudes and actual behavior** ([proposal available here](#))

This research explores the unique characteristics and needs of various ethno-cultural groups in Israel in the context of disaster preparedness. She explores: a) whether cultural background differences moderate the relationship between psycho-social factors and disaster preparedness; b) how do new immigrants to Israel act towards and perceive their disaster preparedness? She aims to provide a coherent and updated description of the status of new immigrants disaster preparedness as a basis for future improvements.

The research is conducted in two formats: 1) online investigation - survey in virtual space with internet forms; 2) offline investigation - respondents completed hard copies of the survey. 414 participants were recruited; 214 of them (51.7%) completed the survey online. Preliminary results are being analyzed.

**III. New Young Researchers**

The **2016 call for proposals**, published on December 15<sup>th</sup> 2015 drew **2** PhD and **12** post-doctoral proposals from which three applicants were selected:

**PhD Candidate:**

**a. Assaf Derri: The Israeli-Palestinian Conflict: A State of Exception**

Advisor: Prof. Gad Barzilai

Giorgio Agamben has spotlighted the absence of a comprehensive legalistic theory of the state of exception, in the very beginning of his book which bears the same title.<sup>2</sup> Agamben argues that this theoretical lacunae is due to the reluctance of scholars from engaging this liminal concept which exists on the very borderline that separates and connects the legal and the political, in much the same way as real political events such as civil war, rebellion etc. Indeed, surveying modern scholarship and ongoing intellectual disputes in the field of International Humanitarian Law (IHL, or as it is sometimes referred to: the law of war) proves that up until now there remain unsolved

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<sup>2</sup> Agamben, Giorgio. *State of Exception*. Chicago & London: The University of Chicago Press, 2005

fundamental issues, for example the classification of violent political events such as civil war, as an international or non-international armed conflict; the classification of rebels, terrorists or guerilla warriors as belligerents or civilians, and so forth. These questions have crucial implications to the lives, statuses and wellbeing of millions of people around the globe who live in conflict ridden areas.

In my study, I engage these legal issues and others related to them, through the theoretical framework of the state of exception which was developed by Agamben and other scholars. The main subject-matter is the ongoing Israeli-Palestinian conflict which offers a remarkable example for the complexity, almost impossibility, of framing and conceptualizing such 'internal'-liminal conflicts. As the Israeli Supreme Court decision on the subject of targeted killings demonstrates, engaging such matters from a conventional legal perspective is almost certain to wind up in a jurisprudential deadlock. The fact of the matter is that such armed conflicts inevitably involve a fundamental clash between opposing legal systems, the forming one endeavoring to depose the other, with no supreme legal sovereign to settle the clash and furnish the rivaling communities with a warranted decisive legal solution.

In my study I propose a different, somewhat hybrid approach which combines, in addition to the traditional legal IHL framework, concepts and structures from the field of political theory, aiming at establishing a comprehensive paradigm for viewing and defining the Israeli-Palestinian conflict as what it eventually is: *sui generis*, a unique case which nevertheless holds a potential of providing general insights which will be applicable to varying states of liminal domestic conflict.

An additional contribution which I believe the study will be able to generate is a better understanding of the theoretical inquiry into the concept of the state of exception, which is an ongoing process, long way from conclusion. This task will be achieved, hopefully, precisely through the same detailed examination of the Israeli-Palestinian conflict and its various legalistic aspects. The study is, in that sense, a bidirectional project, moving back and forth from the real conflict and the people who shape it (and shaped by it) to the theory and back.



**Post-doctoral Researchers:****a. Dr. Maya Mark: *Between The Rule of Law and the Law of the Ruler: A political Biography of the Prevention of Terrorism Ordinance* ([proposal available here](#)).**

The first act of terrorism in the history of Israel - the terrorism ordinance, and the way in which the government reacted to it - makes the ordinance, and the legal and political process in which it was created and shaped, an important and interesting case study for the study of the rule of law under extreme conditions. The first stage of the proposed study analyzes the legal, political and historical context in which the terrorism ordinance was legislated. The second stage of the proposed study will reflect on theoretical questions regarding the Rule of Law under terrorism. More specifically, the research discusses the three main issues delineated below: Firstly, the balance between maintaining the rule of law and presenting the government with the necessary tools to deal with terrorism. In the case of the Prevention of Terrorism Ordinance, the state was called upon for the first time to determine how it would cope with acts of terrorism. The dispute over the content of the order raised the fundamental question of the proper balance between the government's need to obtain all necessary authorities to deal with terror and the democratic principle of the rule of law.

Secondly, The Terrorism Ordinance, as a case study, offers important insight on the boundaries of the rule of law as a legal term. The dispute over the Terrorism Ordinance broke out several months before the first elections for parliament and became a key issue in the elections while generating a public battle between political forces that threw all their weight into the debate. The rule of law represents the crux of the argument over the terrorism ordinance, when both sides of the debate use, and in some cases exploit, the rule of law as an argument and a justification for their viewpoint. In this sense, the rule of law emerges as an elusive concept charged with different meanings and as an ideological standpoint that is subject to interpretation. Thirdly, the research argues that anti-terrorism laws may - in certain cases - serve as a juridical instrument toward a political end, which weakens the rule of law in the pursuit of a

political agenda. This political agenda delineates the boundaries of a camp and of a discourse and also, in particular, defines and marks those who are located beyond the borders of the camp and the discourse.

**b. Dr. Alex Altshuler: Strategic, administrative, regulatory, psycho-social and cultural aspects of disaster risk reduction and emergency management ([proposal available here](#))**

Alex's research focuses on strategic, administrative, regulatory, psycho-social and cultural aspects of disaster risk reduction and emergency management. His professional and academic identity is rooted in the field of community social work and he focuses on integrated emergency preparedness as both scientific and social mission. He wishes his research to assist in developing comprehensive regulation and effective programs aimed to enhance preparedness for various types of emergencies and minimize their potential consequences. These measures may substantially decrease the social vulnerability in the face of emergencies and be of special significance for the most vulnerable and weakened groups of any society. His main research questions are twofold: 1) What factors have served as key determinants of the Israeli legislative and regulatory processes concerning disaster risk reduction (DRR) over the past decade (2006-2016)? 2) What components may constitute integrated assessment of human perception of large-scale emergencies, and how may this assessment contribute to the effectiveness of the Israeli emergency preparedness policy? The evidence-based answers to the above research questions may significantly improve knowledge on the key areas of the disaster risk reduction (DRR) field – 1) legislation and regulation, 2) public perceptions and their policy implications.

## **2.2. External Research Funded by the Center**

In response to the call publicized on December 2015, the following projects received support in 2016:

**a. Dr. Benedetta Berti: The Evolving Nature of Forced Displacement and the**

### **Challenges to the International Humanitarian System**

Globally, the number of people who have been forced to leave their homes to escape war, violence and persecution is at an all-time high. If a decade ago there were 37.5 million refugees and internally displaced persons (IDPs) worldwide, today there are almost 60 million people who have been uprooted due to violent conflict. This means that 1 out of every 122 people on this planet is today either a refugee/asylum seeker or an internally displaced person. Relying on field-work, interviews, statistical evidence and existing policy and scholarly work, the research studies how the evolution of warfare is driving this trend and examines the challenges to the existing templates of humanitarian assistance.

The research is timely and relevant at both the scholarly and the policy level. It tackles the evolving nature of warfare and the future of violence from an innovative and insightful angle. It does so by focusing on the internal tools of warfare employed against civilians and their global impact. The emphasis on how wars against civilians and forced displacement affect the international order has clear and long-lasting policy implications and relevance. More specifically, the project raises a number of important questions, including: what accounts for the rising numbers of refugees and IDPs? Are these trends bringing the international humanitarian system to the brink of collapse and, if so, what can be done to fix it? How should democratic states respond to ongoing wars against civilians? What are the main legal, ethical, strategic and political considerations in place? In doing so, the project contributes to a number of substantial policy debates, from how to reform the international humanitarian system to how to re-think military intervention.

### **b. Dr. Yael Berda: Economic Crisis, Emergency Law and the Institutional Effect: Contemporary Lessons of Colonial Legacies of Economic Regulation during Crises In Israel, India, Ghana & Malaysia**

How does economic regulation in crisis affect state legitimacy to suspend civil and

political rights? What are the differences between uses of emergency legislation for economic reasons, than for threats to security of the state? How do these emergency legal tools affect trajectories of democracy and civil rights in new states?

This project, combines insights of scholarship on legal transplants in comparative law with research on the global and transnational diffusion of institutional and policy practices. In the aftermath of this last decade of economic emergencies, this project explicates the relationship between economic emergencies and erosion of democratic practices through historical and institutional perspectives that have not yet been explored.

Through exploration of historical administrative documents in four former British Colonies and the early independent states that succeeded them, the research examines the legal diffusion of emergency laws regulating economic activity. It traces how these colonial legacies have shaped the use of emergency laws against citizens in the first decade following their independence. A historical database of emergency legal interventions in economic issues is being developed which will enable bridging the existing gap between literature on emergency laws and economic crises, and explore the similarities and differences between the use of emergency laws for security reasons and the use of emergency laws to control or stabilize economies. Using administrative and institutional daily practices and routines as the vantage point for understanding legal diffusion of emergency laws in economic crisis, offers an innovative analysis that makes use of massive administrative data and correspondence that has not yet been studied.

The research is a comparative historical study of colonial emergency laws used for economic regulation in four former British Colonies, and their trajectories in the post-colonial independent states: Israel, India, Ghana and Malaysia. It is the first empirical study to engage the institutional theory of diffusion in the social sciences with literature

on legal transplantation.

The core of the research revolves around these questions: How much of the prior administrative practices regulating economic activity do states carry over from the colonial past, and how much do they break with these legacies? What role do colonial laws that regulated economic activity play in the governance of postcolonial states? How has economic intervention and regulation in the colonial epoch effected democratization and civil liberties in the independent states?

**c. Dr. Natalie R. Davidson: The Changing Definition of Torture: A Socio-Legal Inquiry**

On May 23, 2014, the U.N. Committee against Torture issued concluding observations on a report filed by the Holy See, one of the members of the Convention Against Torture. It found that the widespread sexual abuse of minors by Catholic clergy in various countries amounts to torture prohibited by the Convention, and issued a series of recommendations to the Vatican so as to better prevent sexual abuses, prosecute the guilty and provide redress to victims. The Vatican responded by arguing that the purpose of the Convention is to prevent and punish state-sponsored violence and not “purely private acts” such as the sexual abuse of a minor by a cleric, which in its view is properly dealt with by domestic law. It expressed dismay at what it saw as the Committee’s unilateral expansion and dilution of the meaning of torture.

The Vatican’s argument that the prohibition of torture under international law does not cover “purely private acts” cannot be easily dismissed. Human rights bodies have traditionally interpreted torture as requiring both the involvement of an official actor, and a specific purpose, such as obtaining information. While some human rights bodies have broadened the concept of “public official,” the category has primarily been extended to organizations wielding authority comparable to the state.

This project exposes and examines how activists and international judges are promoting a new definition of torture in international human rights law. By framing sexual abuses

by clergy as well as domestic violence as forms of torture, these actors challenge the traditional conception of the prohibition of torture as concerning the way public power is exercised, and promote profound changes in one of the key tenets of international human rights law. While attention has been drawn in recent years to expansions in the definition of torture in international criminal law, the more dramatic change occurring in the interpretation of the Convention Against Torture, the central international document on the subject, has gone largely unnoticed. In order to understand the causes of this change and begin assessing its desirability, this project adopts a socio-legal perspective at two levels. First, drawing on the work of constructivist international relations scholars who see norms of behavior as socially constructed artifacts, it explores the role of non-governmental organizations (NGOs) in promoting a new definition of torture, and the processes by which human rights bodies become receptive to and in turn promote this definition. Second, drawing on critical legal scholars' understanding of law as a site which not only is the product of social forces but in turn contributes to the social construction of the world, the project considers how the new definition of torture shapes societal understandings of violence. By studying the broadening of the definition of torture and considering some of its potential benefits and costs, my project aims not only to identify little-noticed yet significant legal developments, but also to contribute to the sociology of human rights as well as to normative debates about the design of international human rights law.

**d. Prof. Eyal Ben Ari: International Humanitarian Law and Armed Violence:**

**Perspectives of Israeli Ground Level Commanders**

Previous large-scale research carried out jointly with other colleagues focused on the Israeli military in the Second Palestinian Uprising. The focus was on the formal and informal dynamics of forces up to the level of battalions and their actions vis-a-vis Palestinian militants and civilians, Jewish settlers and international entities. A key issue had to do with the combination of organized violence and restraining factors that characterizes the Israeli armed forces. This current project is a direct extension of this

previous work. It builds on past research to gauge and examine the changes that the Israeli ground forces have undergone in terms of the way older and newer forms of restraints on organized violence (IHL being one among them) are perceived and acted upon by the ground troops.

**e. Dr. Adi Hercowitz-Amir: When the state is “under attack” by unwanted migratory flows: The disputed legality of Israeli asylum policy and the role of the courts**

Over the past thirty years asylum has become one of the main issues in the politics of industrialized democracies albeit its changing context (Gibney, 2004). Traditionally, the rationale of the asylum system was to provide refuge for Jews fleeing Nazi persecution before and during the Second World War as well as for political refugees from the Cold War communist states. Yet, at the time refugee law was developed after the Second World War, refugees were perceived to be a passing problem and not a phenomenon that would persist (Kritzman-Amir, 2008). Following the collapse of the communist states, and due to various regional conflicts such as the Balkan wars in the 1990's followed by armed conflicts and civil unrest in other regions such as Africa and the Middle East, the influx of asylum seekers into industrialized countries increased significantly. Claiming asylum became a primal form of migration from the world's periphery to Europe, North America, South Asia and Australia (Statham, 2003). As the phenomenon unfolded, the legal category of “refugee” which was framed in a very narrow manner in the post Second World War Refugee Convention no longer provided adequate solutions to all persons in need of protection today (Kritzman-Amir, 2008; Banulescu-Bogdan and Fratzke, 2015).

Perhaps more than any other category of migrants, asylum seekers strengthen the tension between the commitment of democratic nation-states to humanitarian principles and universal rights on the one hand, and the interests of national communities based on ties of common descent and ethnicity on the other hand

(Raijman and Kemp, 2011; Guild, 2002; Statham, 2003). As opposed to economic migrants who are governed by the principle of state sovereignty, refugees are an exception to that principle and are addressed by human rights considerations as defined by international law obligations (Kritzman-Amir, 2008; Dauvergne, 1999).

The state of affairs in which the courts are an active player in the asylum seeker policy arena raises several intriguing questions which this research examines:

- (1) What are the main issues the courts deliberate on in this field?
- (2) What stance (restrictionist/expansionist) do they take on asylum seeker issues?
- (3) Does the stance differ according to various factors such as: hierarchy of the court, number of asylum seekers in country, the nationality in question?
- (4) Who are the main actors addressing the courts?
- (5) How is the discourse between the various actors and the courts portrayed?
- (6) To what level do international legal obligations and local directives have a part when debating protection of rights and executing official procedures regarding asylum seekers?
- (7) What are the outcomes of the courts' deliberations?
- (8) And last, on what sets of values and norms are these decisions justified?

This study wishes to examine what role do the courts play in shaping asylum policy in Israel and towards which direction are they driving?

#### **f. Mr. Peter Inalegwu Awodi: Counter Terrorism Laws and Human Rights: Interrogating State-Civil Society Relations in Nigeria and Kenya**

The upsurge in the spate of terrorism in Nigeria and Kenya and these countries' responses by formulating and establishing various counter terrorism laws and institutions to mitigate the trend have become a fundamental topic of concern to scholars and observers as it concerns the effects of these legal emergency regulative measures in the suffocation of human rights. However, there is a dearth of research on the implications of these legal counter terrorism security frameworks on civil society



organizations in Nigeria and Kenya. In this light, this study comparatively interrogates the various elements associated with or implicated in the interface between the counter terrorism legislations of the Nigerian and Kenyan governments and the capacity of civil society organizations to carry out their mandate in both countries. Primarily, this study examines and juxtaposes how the operations of civil society organizations were violated in the implementation of counter terrorism laws; the perception of civil society organizations by these states and their security agencies in the context of counter terrorism; responses of the civil society organizations to these counter terrorism measures and implications of their deployment on state-civil society relations in Nigeria and Kenya. To achieve this, the survey research of the ex-post-facto type is adopted using the Multi-stage Sampling technique. Also, secondary data is being examined, complemented by in-depth Interviews and analyzed using content analysis.

**g. Dr. Itamar Mann: Mediterranean Emergencies and the Rule of Law**

So far, the main product of Itamar's research under the umbrella of Mediterranean emergencies is his book, *Humanity at Sea: Unauthorized Migration and the Foundations of International Law*. The book is forthcoming as part of Cambridge University Press's series in international law, *Cambridge Studies in International and Comparative Law* (2016).

Referring to case studies starting from the mid-20th century and concluding at the present, the book explores instances in which state authorities have intercepted migrants on the high seas. Through these examples, the book offers a theory of human rights revolving around the notion of what he calls "the human rights encounter." According to this account, human rights are not grounded in positive legal instruments. Rather, they are grounded in an experience of obligation that individual members of humanity in extreme risk can trigger; and on an existential commitment that all humans deserve some modicum of protection.

Itamar will expand his regional focus on the Mediterranean area, which has become central to many discussions on global crises. Alongside the migration crisis, these include revolutions, civil wars, and the rise of terrorist-controlled areas in North Africa; and a debt crisis in Greece (alongside ongoing economic instability in Italy, Spain, and Portugal). While his main focus will be on migration, several of these different aspects of the Mediterranean crises will play out in three articles:

1. The Social Contract and the Law of the Sea
2. International Law and Population Control
3. Counter-Regionalism in the Mediterranean Space

The research addresses some of the most urgent policy issues worldwide. While legal scholars are now starting to understand the major role migration and refugee issues will play in the foreseeable future, legal studies in this field are often conducted within existing doctrinal frameworks. This project, on the other hand, engages a variety of disciplines from the humanities and social sciences. It marshals philosophical insights (particularly article 1), history (article 2), and ethnography (article 3). This interdisciplinary approach will be advanced by the help of co-authors who have the necessary disciplinary and linguistic proficiencies.

#### **h. Dr. Ittai Bar-Siman-Tov: Temporary Legislation as a Tool for Legal Regulation of Emergencies**

Temporary (or “sunset”) legislation statutes that are enacted for a limited time and are set to expire unless their validity is actively extended is recently gaining increasing attention in the jurisprudence field and in legal scholarship more generally. One of the main reasons for this recent interest is that temporary legislation is seen as a central tool for legal regulation of emergencies. And indeed, temporary legislation has become a prevalent tool in the antiterrorism legislation enacted in the U.S. and in many other countries in the post 9/11 era, as well as in legislation responding to other types of crises, such as economic emergencies.

This study – the first empirical study of temporary legislation in Israel – explores the relationship between temporary legislation and emergencies in Israel. Initial findings suggest that temporary legislation is becoming increasingly popular in the Knesset (the Israeli Parliament). To give but a brief example: from 2010 to October 2015 alone, the Knesset enacted 105 temporary laws, with the last (19th) Knesset enacting 15.41% of its laws as temporary legislation. The Knesset has employed temporary legislation as a means to deal with regulatory challenges in a wide range of regulatory areas: from counterterrorism measures, to the economic crisis of the 1980s, to the recent housing crisis. This study examines empirically, to what extent the use of temporary legislation can be tied to emergencies in Israel. It also explores empirically how the Knesset is employing temporary legislation as a tool for legal regulation of emergencies. Finally, it will explore, normatively, if, when and how, temporary legislation should be used as a means for legal regulation of emergencies.

#### **i. Moran Zaga: Between the political borders and the socio-political conflicts in the Arab world**

This research investigated the link between the political borders and the socio-political conflicts in the Arab world. Such understanding hopes to contribute to the analysis of these extreme situations and perhaps point to more effective tools for reaction.

Since the creation and independence of the Arab states, the region has suffered from significant socio-political conflicts that challenged the very essence of the state's notion. Two representing examples are the prominent and on-going venture of IS (the Islamic State organization – ISIS) and the Kurds ambitions for self-determination – both revoking the current status of the political division in the Arab world.

These conflicts and many more threaten the stability of the Middle East and cause mass killing, mass migration and socio-economic deterioration for a vast amount of population. They reveal inherent concepts of religion, social patterns and political structures.

In order to analyze this link effectively, the research is being conducted in 3 steps:

Step 1 - Examining and interpreting the historical background of the borders and the local concepts (- almost completed).

Step 2 - Examining prominent case-studies of conflicts and analyzing their link to the settings of the political borders.

Step 3 - Suggesting a new approach for conflict analyses, dedicated and adjusted to the Arab world.

The main research question is: what are the implications of the territorial division in the Arab Middle East on socio-political conflicts?

The main hypothesis of the study is that political borders that does not correlate with the local border concepts and the social patterns of their period lead to inner imbalance that can deteriorate to a violent conflict.

#### **J. Deborah Housen-Couriel: The Regulation of Cybersecurity Professions as a National Strategic Priority: Four Regulatory Models**

Countries have similar challenges in meeting cybersecurity workforce challenges, and nearly all are cognizant in their national cybersecurity strategies of serious gaps in capacity at present and in the coming years regarding national and global cybersecurity needs and professional talent gaps in meeting these needs. The development of a cybersecurity professional workforce is broadly perceived as a core national security competence. Yet each country takes a different approach to resolution of this challenge, reflecting different national strategic interests, priorities and capabilities. The four approaches analyzed in this study are based on comparative research of the commonalities and differences of the twelve countries and two organizations reviewed. These models may be described as progressive or “nested”, in the sense that each contains encompasses elements that characterize its predecessor in the analytical scale.

The models and the countries and organizations which they characterize are as follows: recommended, informal training schemes (national policies note the importance of professional development in the context of capacity-building and may showcase voluntary professional training schemes, yet the training and accreditation is left to the private sector); government information sharing with the private sector (national workforce policies are ingrained, promoted and supported by formal and regular government feedback to the private sector and the public); recommended accreditation (accreditation of professionals is strongly supported, recommended and subsidized in the context of a national strategy); and “nearly-mandatory” accreditation (whereby accreditation schemes are recommended and sponsored and are either a de jure or de facto requirement for some professionals). The details regarding each of the strategies are reviewed on a country-by-country basis, with special characteristics of each reviewed and analyzed. Moreover, a basket of best practices from among the countries surveyed is included at the conclusion of the study – probably better identified as “probable best practices”, as the overall assessment of the degree of success of each in achieving a higher level of cybersecurity, as well as the metrics of such an assessment, remain as future topics for research.

#### **k. Deborah Housen-Couriel: The ‘Chilling Effect’ of Digital Profiling on Freedom of Expression in Cyberspace: A Comparative View**

One of the critical challenges to the rule of law at present is the balancing of societal interests between national security considerations and the fundamental freedom of expression in cyberspace. National legal systems have undertaken this balancing dilemma in many contexts prior to the advent and ubiquitous use of the internet – today, by nearly half of the world’s population – yet the new challenges posed on each side of the dilemma are difficult ones. On the one hand, hostile uses of the internet continue to rise dramatically: cybercrime, and data breaches in particular; nation-state

abuse of the internet for the purposes of espionage and disruption of other nations' commercial, economic and political life; and the use of the internet and cyberspace in general on the part of terrorists. On the other hand, concerns around the preservation of individual liberties in cyberspace are concurrently deepening. The privacy of individuals' personal data, freedom of association online, and protection from the social and legal implications of surveillance by governments have all come to the fore as issues that engage governments, commercial entities, third-sector groups and individuals. The scope of these issues encompasses a broad, even daunting range of legal concerns. In this study, we focus on one aspect of the present range of challenges. That is, the balance being considered in the legislation of the twelve countries analyzed between the authorities granted to governmental bodies to survey individuals for security needs and the degree to which this surveillance curtails the freedom of expression of these individuals. Specifically, we explore the legal ramifications of "digital profiling" of individuals in cyberspace, and the ways in which national legislation permitting such profiling impinges upon their freedom of expression. It should be emphasized that this is a separate analysis from that of privacy rights under national surveillance legislation, which is currently a leading issue explored in legal and policy contexts as well as the academic literature.

### **I. Deborah Housen-Couriel: New Property Rights in Cyberspace and their Implications for Cybersecurity: A Comparative Analysis**

Both the burgeoning quantity of electronic data over the past decades and the corollary exposure of this data to cybercrime and other forms of hostile activity in cyberspace indicate an urgent need to regulate rights and obligations with respect to many new types of data that may constitute threat vectors and vulnerabilities in cyberspace. The academic literature has not yet undertaken a systematic analysis of possible regulatory approaches and their coordination, including types of data that may be defined as national security assets, corporate-owned assets, intellectual property and individuals'

digital property. The development of regulation regarding such digital assets has been inconsistent and lacks coordinated regulatory approaches at both the international and domestic levels. Can such digital assets be treated, for example, as critical infrastructure requiring particular legal and regulatory protections? Should international and domestic legal systems address response mechanisms when such assets are exposed or compromised? This study undertakes a comparative analysis of regulatory approaches regarding these questions. Further research will be necessary to follow the necessary regulatory developments in this context, including the developments regarding new types of digital property rights, and to evaluate their degree of success in ensuring property rights in the present digital era.

**m. Osnat Broshi-Chen: Creativity and Innovation in Managing Security-induced Tourism Crises: A Strategic Perspective of an Israeli Tourism Case.**

This study aims at advancing aspects of strategic policy and regulation as to security-induced tourism crises, due to extreme conditions of terrorism or war. The resilience of the state of Israel and its' tourism sector being responsible to various adjacent economic and social activities, is at the heart of this study. It introduces a new strategic perspective based on creativity and innovation while encountering security-induced tourism crises. Such extreme conditions call for change in the systematic management and mitigation of crisis which includes prevention, preparation for, response and recovery from such crises, over conservative, reactive and "trail-and-error" based strategies that represent the Israeli case.

The research investigates the period of the Second Intifada (2000-2003) which was Israel's most devastating security-induced tourism crisis. At the core of the research are two aspects that stem from one another. The first focuses on the strategic level; whereas, the other focuses on the outcomes of that strategy. In consequence, both vision, conduct along with their outcomes are being presented. This is an elaborate analysis of the crisis' management and mitigation that shed light on the efficacy and viability of the measures taken.

### 3. Conferences and Additional Activities

#### I. Conferences and Workshops

In 2016 we held the following events:

- January 10-11, 2016  
Crisis, Emergency and Risk Communications in the 21st Century: An Interdisciplinary Seminar.  
Hadassah Academic College in Jerusalem, Wagner College in Staten Island, New York and the Minerva Center for the Rule of Law under Extreme Conditions
- January 12, 2016  
Syrian Refugees in Europe: Causes and Consequences of a Foretold Crisis. A workshop and public discussion, with Haifa Center for German and European Studies.
- March 11-13, 2016  
Constitutional and Legal Regulation of Emergencies in Democracies, International workshop, Hamburg  
[See Abstract](#)
- May 15, 2016  
ICON-S Israel, Annual conference of the International Society of Public Law; session on constitutional Law in times of crisis with post-doctoral fellows of the Minerva Center for the Rule of Law under Extreme Conditions
- June 5-6, 2016  
Minerva Center for the Rule of Law under Extreme Conditions - Advisory board meeting and [Mini-Seminar](#)
- June 21, 2016  
Human Insecurity, State Fragility and Complex Humanitarian Crises in the Mediterranean. The Van Leer Institute, Jerusalem and the Minerva Center for the Study of the Rule of Law under Extreme Conditions, University of Haifa.  
See [Program here](#) and Video of the event [here](#).
- June 26, 2016  
Experts workshop: Evaluating Israel's Regulatory Framework for Earthquake



## Preparedness, Response and Recovery

- June 29, 2016 – July 18, 2016  
[Cyber Regulation, Policy and Theory](#), Visiting fellows workshop
- July 18-19 2016  
[Symposium on Constitutionalism under Extreme Conditions](#). The Minerva Center for the Rule of Law under Extreme Conditions, in collaboration with Boston College Law School, under the auspices of Israeli Association of Public Law.
- September 7- 19, 2016  
[Young Researchers Workshop on Terrorism and Belligerency](#)
- November 2, 2016  
[The 2016 Israeli Counterterrorism Law - the New Legal Reality and Implications on Democracy and the Rule of Law in Israel](#)  
Workshop conducted jointly with the Israel Democracy Institute (in Hebrew)
- December 14, 2016  
Workshop: November 2016 Fires in Haifa (see here for [Hebrew program](#))
- December 28, 2016  
Book launch: Dr. Myriam Feinberg, [Sovereignty in the Age of Global Terrorism, The Role of International Organisations](#)  
[See here for more details about the book](#)  
Streamline of the event see here: [Part A](#) and [part B](#)  
Link to a post about the book in [Opinio Juris](#)

## II. Seminars and Lectures

Our 2016 seminars were given by Center researchers, visitors and grant recipients, as well as by outside lecturers whose research topics are relevant to the Center. This year, the lectures in the Center are given as a colloquium to BA and MA students at the Law Faculty in the University of Haifa. Some of the lectures were streamlined and available to watch on the Center [YouTube channel](#).

## List of lectures given:

- 09.11.2016: [Prof. Eli Salzberger: The Rule of Law under Extreme Conditions – Theoretical Perspectives](#)
- 23.11.2016: Amnon Reichman: The Rule of Law under Extreme Conditions – Overview of Israeli Law and Institution
- 07.12.2016: [Dr. Maria Varaki: Rule of Law challenges in Greece and Turkey. Different Crisis, Similar Issues?](#)
- 21.12.2016: [Dr. Itamar Man: Three Genres of International Criminal Justice](#)
- 25.5.2016: Tobias Ackermann, Research associate at the Institute for International Law of Peace and Armed Conflict at Ruhr University Bochum: “[The Effects of Armed Conflicts on Bilateral Investment Treaties](#)”
- 18.5.2016: Dr. Yaniv Roznai: “Emergency Unamendability”
- 13.4.2016: Dr. Suha Jubran Ballan, Post-Doctoral fellow at the Center: Economic Crises and Foreign Investors: Between Necessity and Reparation
- 6.4.2016: Dr. Denard Veshi: The European management of the refugee flow: an economic and legal comparative approach
- 6.4.2016: Abhishek Mishra: Extrajudicial Killings: Normative study to determine the impact on State and Democracy in changing World Order
- 30.3.2016: Dr. Rivka Brot, Post-Doctoral fellow at the Center: Law and Order at the Space of Exception: Administration of Law in Jewish Refugee Camps in the American Occupation Zone in Germany, 1945-1949.
- 6.3. 2016: Ehud Segal, Post-Doctoral fellow at the Center: Evaluating Israel’s Regulatory Framework for Earthquake Preparedness, Response and Recovery.
- 9.3. 2016: Dr. Myriam Feinberg, Post-Doctoral fellow at the Center: Who should regulate Cyber-terrorism – France and Israel as a case study of a multilevel regime and the protection of the rule of law.
- 06.01. 2016: Alyssa-Nurit McBride: Refugee Law in the Developing World: The Implications of Protracted Refugee Situations on the Efficacy of Refugee Law.

**Cyber forum seminars:**

- 28.12.2016: Cyber ransom attacks Adv. Yoram Hacoheh, Israeli Internet Association and other experts (Hebrew)
- 08.12.2016 : [Professor Yochai Benkler, Harvard Law School](#)
- 18.5.2016 : Adv. Amit Ashkenazi and Adv. Deborah Housen-Couriel - [Should the cyber profession be licensed?](#) (Hebrew)
- 13.4.2016: Avi Yariv, CEO of Bungee International Projects (BIP) Ltd. - [The Challenges for Regulation in the Cyber and Intelligence Era](#)
- 6.3. 2016: Prof. Jane Bambauer, University of Arizona: "Other People's Papers"
- Prof. Derek Bambauer, University of Arizona: “Cybersecurity for Idiots” For more details see here: [Eng](#)
- 20.1. 2016: Prof. Kenneth A. Bamberger: Privacy on the Ground . (See [here](#) for

more details)

### III. Visiting Scholars

In 2016 the Center hosted three visiting scholars:

**Tobias Ackermann** is a research associate at the Institute for International Law of Peace and Armed Conflict at Ruhr University Bochum working on “The Effects of Armed Conflicts on Bilateral Investment Treaties”. The Center funded his travel and accommodations for one week (between 20.5.2016 - 6.6.2016 ) to present his work.

**Abhishek Mishra** is a Ph.D Candidate at University of Hamburg, Germany, working on “Extrajudicial Killings: Normative study to determine the impact on State and Democracy in changing World Order”. The Center funded his travel and accommodations for six weeks (between 1.3.2016 - 12.4.2016) to work with Prof. Barzilai and present his work.

**Denard Veshi** is a PhD candidate in the EDLE (European Doctorate in Law and Economics) program, working on “The European management of the refugee flow: an economic and legal comparative approach”. The Center funded his accommodations for a couple of months (between 2.4.2016 - 27.5.2016) to work with Prof. Salzberger and present his work.

In addition, the Center hosted three senior scholars and three young researchers who came from Europe to Israel to participate in the Young Researchers Workshop on Terrorism and Belligerency we held in September 7- 19 as follows:

#### Senior scholars:

**Dr. Emanuela-Chiara Gillard** is a Senior Research Fellow at the Oxford Institute for Ethics, Law and Armed Conflict, and an Associate Fellow in Chatham House’s International Law Programme. In the workshop she talked about “Counter-Terrorism Measures and Principled Humanitarian Action” (see [Link to video](#)).

**Prof. Laurie Blank** is the Director of the International Humanitarian Law Clinic in Emory University, School of Law, Atlanta. In the workshop she talked about: Protection of U.N. Facilities during Armed Conflict and the Limits of Inviolability.

**Prof. Robert Roth** from the Faculty of Law, Geneva Academy of IHL and HR. In the workshop he talked about Criminal Law Responses to Terrorism: a Contemporary and Critical Assessment (see [Link to video](#)).

Young Researchers hosted:

**Anna Evangelidi**, City University London: Putting Unmanned Warfare into Context: The

Use of Drones in Counterterrorism Operations by the United States and Israel.

**Barbara Korte**, Goethe University Frankfurt: Autocrats Versus Terrorists – Unlocking Authoritarian Counter-Terrorism Repertoires Through Constitutional System Design and Agency .

**Ira Ryk-Lakhman**, University College London: Protection and Security of Foreign Investments in Times of Hostilities.

#### **IV. Website and Facebook**

The Center has a website (<http://minervaextremelaw.haifa.ac.il>) and a Facebook page on which relevant items are posted, such as upcoming events at the Center, other academic events and media coverage of extreme conditions from which legal issues arise. Facebook items also appear on the website, alongside information on the Center's publications, research activities, the research team, ongoing research and findings, events and calls for proposals. The "[Databases](#)" section includes overviews of emergency regulations in 12 democracies (as part of the Law and Emergencies Comparative Research on Legal Frameworks Project) and a bibliographic list of related papers and books; data collected about regulations dealing with earthquakes in Israel (in Hebrew). The website is maintained by Dr. Michal Ben-Gal, among her many other responsibilities. Should we determine that the website and facebook page should be upgraded, it would be necessary to hire a dedicated web manager.

## **4. Publications and Submissions**

### **I. Publications 2016**

Dan Rubinfeld and Michal S. Gal, "Access Barriers to Big Data" 59(2) *Arizona L. Rev.* (2017)

Denard Veshi, "Council of Europe: Guide on the decision-making process regarding

medical treatment in end-of-life situations". *Medical Law International* 1-9 (2016)<sup>3</sup>.

Eli M Salzberger, *La Legislation Antiterroriste Israelienne*, 38 Archives de Politique Criminelle (2016) 189-226.

Eli Salzberger, "The Rule of Law Under Extreme Conditions and International Law: A Law and Economics Perspective", in Thomas Eger, Stefan Oeter, Stefan Voigt (eds.), *The International Law and the Rule of Law Under Extreme Conditions*, Mohr Siebeck (2017), pp. 3-56

Florian Jeßberger, "Piracy, Terrorism, and Mercenarism: Reflections on the Malabo Protocol and Regional Jurisdiction over Transnational Crime", in: G. Werle, L. Fernandez und M. Vormbaum (Hrsg.), *The African Criminal Court* (The Hague: Asser Press), 2017, 71-88.

Florian Jeßberger, "Much ado about nothing? Reflections on the present state of international criminal law", *Hamburg Law Review* 2016, 53-66.

Florian Jeßberger, "The Modern Doctrinal Debate on the Crime of Aggression", in: C. Kreß & S. Barriga (Hrsg.), *The Crime of Aggression - a Commentary* (Cambridge: Cambridge University Press), 2016.

Florian Jeßberger, "Corporate Involvement in Slavery and Criminal Responsibility under International Law", *Journal of International Criminal Justice* 14 (2016), 327-341.

Gerhard Werle & Florian Jeßberger, *Völkerstrafrecht*, 4. Auflage (Tübingen: Mohr Siebeck), 2016.

Guy Lurie, "French Citizenship and the Uprisings of 1380-1383". *The Medieval Chronicle* , X (May 2016): 119-140

Ido Kilovaty, "Virtual Violence - Disruptive Cyberspace Operations as 'Attacks' Under International Humanitarian Law", *23 Mich. Telecomm. & Tech. L. Rev.* 113 (2016). Available at: <http://repository.law.umich.edu/mttlr/vol23/iss1/3>

Ido Kilovaty, "ICRC, NATO and the U.S. - Direct Participation in "Hacktivities" - Targeting Private Contractors and Civilians in Cyberspace under the Law of Armed Conflict", *Duke Law & Technology Review*.15 (2016): 1-1.

Menachem Hofnung, "The Price of Counterterrorism Information Gathering: Intelligence Informers in the Israeli Courts" *Mishpat U'Mimshal, [Law and Government in Israel]*<sup>4</sup>, 18 (2017). (Hebrew)

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<sup>3</sup> <http://mli.sagepub.com/content/early/2016/07/21/0968533216659785.full.pdf?jkey=IWxJRKGj1Oner1&keytype=finite>  
<sup>4</sup> מנחם הופנונג, מחיר המידע: קליטה ושיקום של סייעני מערכת הבטחון בערי ישראל, משפט וממשל יח, (תשע"ז)

Myriam Feinberg, "The Legality of the International Coalition against ISIS: The Fluidity of International Law", *JUSTICE* 57, Winter 2015 – 2016, p.24

Myriam Feinberg, Laura Niada-Avshalom, and Brigit Toebes (eds), *National Security, Public Health: Exceptions to Human Rights?* (Abingdon: Routledge, 2016)

Myriam Feinberg, *Sovereignty in the Age of Global Terrorism: The Role of International Organisations*, (Nijhoff Law Specials 91, Brill Publishers, June 2016).

Sigall Horovitz, "International Criminal Courts in Action: The ICTR's Effect on Death Penalty and Reconciliation in Rwanda", *George Washington International Law Review*, Volume 48, Issue 3 (2015).

Sigall Horovitz, "The Or Commission and the Israeli-Palestinian Conflict: A Transitional Justice Moment in Comparative Perspective", *Law, Society and Culture (February, 2017)* 251-289 (Hebrew)<sup>5</sup>

Suha Jubran Ballan, "Investment Treaty Arbitration and Institutional Backgrounds: An Empirical Study", *Wisconsin International Law Journal* 34 (2016): 31.

Yaniv Roznai, "Unamendability and The Genetic Code of The Constitution", 27(2) *European Review of Public Law (ERPL/REDP)* (summer/été 2015): 775-825

Yaniv Roznai, Book Review: Sofia Ranchordas, *Constitutional Sunsets and Experimental Legislation*, Edward Elgar, 2014, *American Journal of Comparative Law* 64 (2016):790-794.

Yaniv Roznai Nadiv Mordechay. "Access to Justice 2.0: Access to legislation and beyond", *The Theory and Practice of Legislation* 3(3) (2015): 333-369.

Yaniv Roznai and Hillel Sommer, "'Mother of all Rights': the constitutional Right to Life", 19 *Mishpat VeAsakim* 626-537 (August 2016) (Hebrew)<sup>6</sup>

Yaniv Roznai, *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*. Oxford University Press, 2017.

## II. Publications Forthcoming

Ido Kilovaty, "World Wide Web of Exploitations: Peacetime Cyber Espionage under International Law - Towards a Contextual Approach", Accepted for publication in

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<sup>5</sup>סיגל הורוביץ, [צדק מעברי בהיעדר מעבר: ועדת אור והשסע האתנו-לאומי בישראל](#), משפט, חברה ותרבות, (מרץ, 2017) 251-259

<sup>6</sup>יניב רוזנאי והלל סומר, "אם כל הזכויות: הזכות החוקתית לחיים". משפט ועסקים יט, תשע"ו (אוגוסט 2016)

*Columbia Science and Technology Law Review.*

Jakub Harašta, “Legal Framework of Critical Infrastructure Protection Is There Room For Cyber?”, Accepted for publication in *International Journal of Critical Infrastructure Protection*

Kubo Macak, “Decoding Article 8 of the International Law Commission’s Articles on State Responsibility: Attribution of Cyber Operations by Non-State Actors”, forthcoming in *Journal of Conflict and Security Law*, 21

Natalie R. Davidson, “Shifting the Lenses on Alien Tort Statute Litigation: Narrating US Hegemony in Filártiga and Marcos”, Accepted for publication in the *European Journal of International Law*

### **III. Publications in Preparation**

Deborah Shmueli, Ehud Segal, Michal Ben Gal, Eran Feitelson, Amnon Reichman, “Earthquake Preparedness in Volatile Regions: when response overshadows mitigation, the case of Israel” (*Natural Hazards or Middle East Studies Journal*)

Deborah Shmueli, Ehud Segal, Michal Ben Gal, Eran Feitelson, Amnon Reichman, “Regulatory Systems’ Assessment Method Applied to Earthquake Preparedness in Israel” (*Policy Science*)

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)

### **IV. Conference Presentations 2016**

Ido Rosenzweig: “Dissemination and collaboration of International Humanitarian Law through innovative tools”, Dissemination of International Humanitarian Law Workshop, organized by the International Committee of the Red Cross and the Italian Red Cross, Solferino/Castiglione, Italy 23-25 June 2016

Myriam Feinberg: “Terrorism the Permanent Exception”, ICON-S Israel, Annual Conference of the International Society of Public Law, Hebrew University, Jerusalem, 15.5.2016

Myriam Feinberg: “counterterrorism and the refugee crisis”, Conference on Human Insecurity, State Fragility and Complex Humanitarian Crises in the Mediterranean, organized by the Van Leer Institute and the Minerva Center for the Rule of Law Under Extreme Conditions, 21.6.2016

Olga Frishman: “Perceived Emergencies and the Law”, ICON-S Israel, Annual Conference of the International Society of Public Law, Hebrew University, Jerusalem, 15.5.2016

Suha Jubran Ballan: "Investment Treaty Arbitration and Economic Crises: Between Necessity and Reparation", ICON-S 2016 Conference on “Borders, Otherness and Public Law”, Berlin, June 17-19, 2016

Yaniv Roznai: “Emergency Unamendability “ ICON-S Israel, Annual Conference of the International Society of Public Law, Hebrew University, Jerusalem, 15.5.2016

Yaniv Roznai: “The Spectrum of Constitutional Amendment Powers”, and: “We the Limited People? Four Routes of Limiting Constitution-Making Powers” ICON-S 2016 Conference on “Borders, Otherness and Public Law”, Berlin, June 17-19, 2016

## 5. Research Plan for 2017

### I. Ongoing PI Initiated Research

#### **Tools and mechanisms for public engagement in local authorities with regard to earthquake preparedness, response and recovery**

Led by Prof. Deborah Shmueli, funded by the *Israel Ministry of Science and Technology*, 200,000 NIS (around 51,500 Euros), 1/12/2016-30/11/2019.

Findings from of the evaluation of the Israeli framework research mentioned above pointed to a large gap in the preparedness of local authorities to earthquakes.

This research aims to explore international experience with stakeholder engagement and participation mechanisms for earthquakes (and other large-scale disasters) for three stages: preparedness (before), response (during) and recovery processes (after), and then suggest a framework for Israel, focusing on the preparation stage within local authorities. The research distinguishes between two types of ‘publics’: a) the general populous, and b) stakeholders and planners. The research will address frameworks/models for both, and test it through action research in one locality as a test



case.

**Institutional structures for governance of the home front in times of emergencies**

(Funded by Minerva Equipment/Project Grant: Total Budget: 50,000 EUR; time period: 1/1/2017-30/12/2017; lead PI: Prof. Eli Salzberger)

The research question focuses on positive (including comparative) and normative analyses of the institutional structures for governance of the home front in times of emergencies. The research is being conducted in house at the Center, together with government legal practitioners who are at this moment grappling with new major legislative initiatives.

The distinctions between emergency situations and routine events prevailing in legal regimes are no longer as clear as they used to be. Terrorist or rocket attacks on civilians which Israel has faced for years, regrettably have also become common in other countries. Ramifications of climate change and greater exploitation of natural resources, and greater density of populated areas has resulted in natural events such as tsunamis, earthquakes, hurricanes or flooding, turning into larger-scale disasters than they might have been in the past. Influxes of immigrants are perceived by some as a threat to national stability. Such new realities blur established distinctions and upset the legal order: The home front becomes a battlefield; civilians become terrorists, others become rescuers. Civilian uprising turns into a national threat; it is no longer clear what threats are internal and what are external; and the 'mighty state' alone proves inadequate at providing the population with necessary preparedness, protection and basic needs, and must rely on coordination with NGOs and the private sector for help.

We are witnessing governments (i.e. France, Belgium and the US regarding terror, Austria, Hungary and other EU countries regarding the immigration crises, Japan regarding natural/nuclear disaster , in their efforts to address emergency situations, applying measures which may infringe on civil and human rights - e.g. the freedom of movement, property rights, equality, transparency and the right of the public to know.

At the same time, definitions of legal yardsticks such as ‘proportionality’ or ‘necessity’ become unclear. The justification of using extreme measures is the focus of much public, political and academic debate; governance of extreme situations in the face of maintaining democratic values is both unclear and challenging.

In this context, one of the main questions relates to institutional design:

- Who is or should be the executive body authorized and responsible to lead and determine the measures to be taken in an emergency?
- What is the scope of this body’s discretion and the means at its disposal?
- Is it necessary to declare an emergency in order for such authorized body to take measures? Who declares, and which measures?
- Should it be one centralized body responsible for disaster preparation and mitigation of impacts, coordination of response and rehabilitation (pre-during-post disaster) or separate institutions design to tackle different types of emergencies?
- Should the same body be responsible for all types of threats?
- Should the same body be responsible for providing the population with all basic needs - i.e. shelter, food, energy and water as well as rescue and evacuation?
- Or should the structure be a decentralized, or networked system?

Countries have developed different emergency regimes and institutional structures, based on the prevailing type of emergency the country is likely to experience, internal politics, legal doctrine and other factors. Yet, today’s changing and escalating situations upset and push the limits of emergency powers, bringing countries to question their current regimes. This is evident for example in the UK, France, USA, and even Japan, as well as Israel.

The Israeli Ministry of Defense is in the midst of amending the legal tools with which emergency situations in Israel are handled. A new anti-terror law (The Counter Terrorism Law 5775-2016) has just been enacted by the Knesset (came into effect on November 1, 2016). This bill replaces old British legislation that has been in force since the British Mandate and legislation of the Provisional Council from 1948. Furthermore, a new draft bill for the Preparation of the Home Front (3rd draft) was published in June 2016. This bill introduces significant changes to the structure of responsibilities for mitigation and preparedness for all types of emergencies in Israel. Other amendments in

emergency legislation are also in the process. This creation of a new regime calls for a comparative and scientific examinations: what is the state of the law and institutional structure and decision-making procedures in other jurisdictions? How one might analyze the optimal/ideal legal framework?

The research will include a survey of existing institutional models, analyze their components, discuss the pros and cons and provide an institutional design database. The project will include background literature review, legal survey research and workshops which will bring together researchers and legal practitioners from targeted countries to analyze the models and designs and suggest concepts which will assist legal advisors in crafting desirable models suited to their countries. The countries will be chosen together with the relevant Israeli government ministries who are very much interested in a comparative project of this sort and in input of the Minerva Center towards the final draft of the new Israeli legislation.

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

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

Funding agency: DFG Deutsche Forschungsgemeinschaft

The proposed research is a multidisciplinary and comparative endeavor, which aims to account for the shaping of the Israeli and Palestinian Authority's (PA) land regimes and for their legal, planning and geographical features during their formative periods, providing a much-needed historical context to the current day tensions and transformations. We use the term 'land regime' to denote the set of laws, plans and regulations, institutions and practices which determine land allocation, use, possession, ownership, and control. While land, as a physical feature is immovable, its significance,

the values attributed to it and its uses change over time. The study of this spatial-temporal nexus is crucial not only to holistically understand the two separate, yet interconnected, land systems, but simultaneously to address critical questions which shed light on current land and socio-political power structures in both societies and in their mutual interactions.

### **III. Upcoming Conferences**

#### **Institutional structures for governance of the home front in times of emergencies**

International workshop with scholars and practitioners (within the framework of the research project under the same title – see above)

### **IV. On-going Seminars**

In 2017-2018 we intend to continue with our seminar talks in 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](#)".

### **V. Minerva Center Edited Volumes in Preparation**

**"Regulation of disasters and Crisis Under Uncertainty"** The International Journal for Constitutional Law has expressed interest in publishing an edited volume on the "Regulation of disasters and Crisis Under Uncertainty" following the conference held under this title at the Minerva Center for the Rule of Law under Extreme Conditions in June 2013. Leading this publication is Prof. Gad Barzilai and Dr. Suha Jubran-Ballan. The list of contributors to this volume includes: Gad Barzilai, Michael Faure, Kenneth Feinberg, Sanda Kaufman, Connie Ozawa, Amnon Reichman, Yaniv Roznai, Deborah Shmueli, and Eli Salzberger.

#### **"Constitutional and Legal Regulation of Emergencies in Democracies"**

Following the international workshop we held in Hamburg in March, 2016 we intend to

publish a volume under this title. Leading this publication is Prof. Amnon Reichman. The list of contributors include: Dr. Alan Greene (UK); Prof. Matczak P., Chmielewski P.J.F, Adam Mickiewicz and Abgarowicz G. (Poland); Prof. Jeremy Finn and Prof. W. John Hopkins (New Zealand); Dr. Antonios E. Kouroutakis (Greece); Dr. Matthias Lemke (Germany); Dr. Fumito Tomooka (Japan); Dr. Olivier Cahn (France); Dr. Andrej Zwitter (Netherlands) and Prof. Amichai Cohen (Israel).

**Financial report: in a separate file**