



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

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

## Annual report - 2018

Haifa and Hamburg, 25 February 2019

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## **Activity report**

In accordance with the contract between the Minerva Stiftung Gesellschaft für die Forschung m.b.h. and the University of Haifa, we present this report which covers the Center's activities for 2018.

In 2018, the Center was 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 two to four research assistants, depending on project needs. During 2018 the Center hosted three visitors - two from Germany and one from Italy, and three young researchers - from Germany (originally from China), Canada and Albania.

The Center is located in the Terrace ("Madrega") building at the University of Haifa, room 1013. 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 further developing a research community with connections to policy and decision-makers in relevant fields.

The Israeli-based Center team meets every two weeks on Wednesdays. A Young Researchers Forum is held in the morning in which the post-doc, docs, and additional young researchers meet to discuss their "work in progress". Prior to each meeting, one of the young researchers distributes a draft of his/her work, which is presented and discussed among the group. A seminar talk is held in the afternoon, usually given by one of the Center's community or by a scholar who has received a support from the Center. The lectures are open to the public and most of them are streamlined on YouTube (reaching several thousand viewers).

The Israeli PIs hold separate meetings to discuss substantive as well as administrative aspects of the Center's operation; Israeli and German PIs meet during the year via video-conferencing and in person in either Israel or Germany.

## **1. PI Initiated Research**

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

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

This is the final year of a three year project funded by the Israeli Ministry of Science and Technology. It builds on findings from of the evaluation of the Israeli earthquake framework research conducted in 2013-2016 (resulting in two publications\*), which pointed to a significant gap in the preparedness of local authorities for earthquakes. In this project, the aim is 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 project uses knowledge of collaborative planning principles for engaging stakeholders and the public in emergency management, with a special focus on earthquakes. A conceptual framework for disaster management was developed by the research team, emphasizing the role of community, regional and national, as well as civic and business stakeholders in the process of local preparedness. In its first stages, the project explored processes of planning at the local government level. The plan was to piggy back ongoing 'regular planning processes' with elements necessary for emergency readiness, thus advancing the locality's preparedness towards earthquake. The research found that the Israeli planning authorities are well aware of the need for earthquake preparedness – and

that the standards for new development (surrounding which planning processes occur), as well as neighborhood renewal plans meet the preparedness needs. However, old existing neighborhoods (the majority) are totally unprepared and no public engagement efforts are ongoing. Involvement of the public in planning is a sensitive issue for most of the municipalities and decision makers and officials expressed their deep reservations and doubts about engaging the public on the subject of earthquake's preparedness (countering both the academic and professional literature).

Given the above caveats the research focused on stakeholders' involvement rather than "the public" at large. The final stage of the project looks at energy storage for public infrastructure, using an action-research approach jointly with the Haifa municipality. Turning schools into a community resilience center through the use and subsequent storage of solar energy (reducing the ongoing energy costs, providing an educational environmental focus, and, in the face of an earthquake which destroys the electricity grid – having this as a fully powered resilience center from which the locality can operate). Feasibility assessments are being prepared for three schools, identification of stakeholders, and facilitation of meetings comprise this final stage.

Related publication:

Shmueli, D., Ozawa, C. and S. Kaufman, forthcoming. "Mining Collaborative Planning for Disaster Preparedness and Response", *International Journal of Constitutional Law*, Special Issue.

Conference Presentations:

Public Engagement in Preparation of Impending Hazards: addressing the challenges, Association of American Geographers (AAG), New Orleans, Louisiana, May 2018.

Preparing and Responding to Disasters: a planning process for integrating public participation and expert input, (ACSP), Buffalo, NY, October 2018, with C. Ozawa and S. Kaufman.

\*Shmueli, D., Ben Gal, M., Segal, E., Reichman, A., Feitelson, E. " How can regulatory systems be assessed? The case of earthquake preparedness in Israel", Evaluation.

\* Shmueli, D., Segal, E., Ben Gal, M., Feitelson, E., Reichman, A. "Earthquake Readiness in Volatile Regions: the case of Israel", *Natural Hazards*, submitted 8.2017.

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

Led by Prof. Eli Salzberger, team: Adv. Batya Sachs, Adv. Eran Shmueli; funded by Minerva Equipment/Project Grant, 50,000 EUR; time period: 1/1/2017-30/12/2017.

This project began in 2017. It focuses on positive (including comparative) and normative analyses of the institutional structures for governance of the Israeli 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.

New realities of terror attacks, greater exploitation of natural resources and large population density at a cost of risk for health, security and environmental protection, 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 which threats are internal and which 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.

In efforts to address emergency situations, 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, and recent US policy regarding refugees) 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, US, and Japan, as well as in 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 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 currently underway. This creation of a new regime is the basis of a comparative and scientific examination:

- 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 and institutional frameworks?

The research includes a survey of existing institutional models, analyzing their components, discussing the pros and cons and providing an institutional design database. The project includes a background literature review and legal survey research.

On December 14, 2017, we held a workshop with 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 workshop was videotaped and is available on our website [here](#).<sup>1</sup>

In 2018 we processed the workshop outputs and focused on three aspects to be developed to three papers: (1) The history and overview of the structure (lack of structure) of the Israeli institutional arrangements, (2) a comparative overview of the structures in other jurisdictions, and (3) based on the first two - a policy paper with suggestions for the Israeli legislation for the Preparation of the Home Front.

As was mentioned in 2017 report, the project is associated with three recent publications, one on the general theory and two on Israeli counterterrorism law and its reform in the perspective of the rule of law under extreme conditions:

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

Eli M. 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;

Eli M. Salzberger, *Counter-Terrorism Law and the Rule of Law Under Extreme Conditions: Theoretical Insights and the Experience of Israel*, in Julie Alix and Oliver Cagn

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<sup>1</sup> <http://minervaextremelaw.haifa.ac.il/index.php/en/2-uncategorised/269-institutional-structures-for-governance-before-during-after-a-national-emergency>



(eds.), *L'hypothèse De La Guerre Contre Le Terrorism: Implications Juridiques*, Paris: Dalloz, 2017, pp. 43-62.

### **III. Disasters in India – a welcome pretext for the federal government to get rid of state governments?**

Led by Prof. Stefan Voigt.

This is a continuation of a project which began in 2017. The Indian constitution allows the federal government to dismiss a functioning state government, and dissolve the elected state legislature, if the federally appointed governor of a state recommends such a dismissal due to a breakdown of constitutional machinery. Such breakdown could be caused by natural disasters, but also by domestic strife, and communal riots. These constitutional emergency provisions are also known as “President’s rule.” They have been invoked by successive federal governments in over 120 instances since 1950 to impose direct federal rule in the states. The constitutional provision (Article 356) has been criticized for both undermining the federal structure of India, as well as for its rampant abuse by federal governments. We examine the factors that affect the invocation of emergency under Article 356. By studying every single state government ever formed, and those dismissed under Article 356, we analyze if President’s rule is used by federal governments to punish political opponents who have formed state governments. In 2018, the research focused on coding newspaper articles on local riots, and the project continues in 2019.

### **IV. Strategic Litigation Networks and Accountability for Gross Violations of Human Rights**

Led by Prof. Dr. F. Jeßberger; team: Dr. Leonie Steinl, LL.M. (Columbia); Luca Hauffe

The project is funded by the German Research Foundation (Deutsche Forschungsgemeinschaft) until 2021.

The project which started in 2018 aims to examine a novel actor in the area of international criminal justice: strategic litigation networks (SLNs). SLNs are networks composed of NGOs and other non-state actors active in the litigation of human rights and international crimes cases. The project is based on the assumption that SLNs proactively employ international and domestic criminal law and similar norms (such as punitive damages law) to target perpetrators of international crimes in a transnationally coordinated effort and as part of a larger juridical-political strategy transcending the individual case. Arguably, through the 'creative use of law' in international and domestic fora (such as criminal complaints, amicus curiae briefs), SLNs contribute to the 'fight against impunity' of most serious crimes, e.g. genocide, crimes against humanity, and war crimes.

Specifically, the project aims to inquire into the SNLs' operation methods, their role within the international system of criminal justice and their impact on the broader perception and development of international criminal justice. Drawing on a mix of research methods, including desk studies and field work (qualitative interviews), the research team will seek to formulate an overall theoretical framework for classifying and thus gathering a better understanding of what currently stands as a diverse and unsystematic muddle of initiatives, objectives, and (legal) techniques. Research questions include: What are the aims of SLNs and what impact do they have? What procedural mechanisms or 'gateways' do SLNs use? Which legal arguments do SLNs apply and how can they be systematized? In particular, what weight is assigned to international and comparative law in their legal arguments (systematic pattern of cross-referencing)? Specific areas for in-depth-analysis will be selected where, arguably, SLNs offer competing narratives to the state-centered and state-driven international system of criminal justice. These areas will include (a) accountability of (transnational) corporations and their employees for their involvement in human rights violations and international crimes; (b) accountability for international crimes, in particular torture, in the so-called 'war on terror'; and (c) accountability for sexual- and gender-based crimes under international law.

## **V. National Research and Knowledge Center for Emergency Preparedness**

Led by Prof. Deborah Shmueli (Center Head); Dr. Michal Ben Gal (research coordinator) Law group led by Prof. Eli Saltzberger, team of 85 researchers, Prof. Gad Barzilai, Prof. Amnon Reichman members of Law group. Funded by the Ministry of Science and Technology and the National Emergency Management Administration of the Ministry of Defense, 3,000,000 NIS, 2018-2020. Partial funding to Law group (Minerva) on competitive research basis.

**THE NATIONAL KNOWLEDGE AND RESEARCH CENTER FOR EMERGENCY READINESS** with eighty-five researchers was established in January 2018 by the Israel Ministry of Science and Technology and the National Emergency Management Authority (NEMA) of the Ministry of Defense. Core institutions involved are University of Haifa (the Center hub), the Technion and the Hebrew University, together with researchers from Rafael Advanced Defense Systems, Madatech, the Israel National Museum of Science, Technology & Space, Rambam Hospital, Tel Hai College, and the Israel School for Humanitarian Aid; with partners from the municipality of Haifa and NATAN International Humanitarian Aid. The Center's mission is to provide a state-of-the-art scientific research institute to serve as a think-tank for policy framers, decision-makers, the academic community and practitioners from all sectors. The two intertwined functions of the Center are 1) independently generated, cutting-edge and multi-disciplinary research, and 2) solicited real-time response to requests by NEMA, government ministries, elected officials, NGOs and other stakeholders.

The Center provides three levels of knowledge:

- Basic Science – both theoretical and empirical, regarding generic understandings of emergencies as such, the variables that differentiate between various types of emergencies, and the interplay between emergencies and 'normalcy'. Basic science is currently lacking, since it requires long-term commitment, of the kind that the Center can generate (and then reap the fruits of the investment). Attention will be paid to

case studies (of single events from a comparative perspective using comparative data) and to theories that allow for comparing one event to another.

- Synergy – one of the outputs of the cross-disciplinary and cross-institutional Center structure is the development of a language embracing a more comprehensive perspective on emergency management. Since emergencies are often studied in an insulated manner by one discipline or another, developing a common language among disciplines will not only catalyze a richer, more robust understanding of the interaction among the many components necessary for better emergency management, but will also assist distinct state institutions, which also, on occasion, operate in an insular manner, to establish a more comprehensive approach.
- Comparative international studies and transferal of applicable transnational experience to the Israeli context. This level is crucial for policy recommendations, which the Center will generate in response to requests or pursuant to the internal research agenda.

Conceptually the Center is structured similarly to Minerva but along two axes: the nature of the extreme condition (man and nature and belligerencies) and the time period (before, during, and after). Coping with a disaster in each timeframe is approached through the multiple disciplines and their research frames, and a multidisciplinary lens. The research goals include not only understanding and documenting the current situation (the 'what is') but also normative analysis – including critical and constructive evaluations and suggestions for improvement (the 'what ought to be').

The Center is comprised of 8 disciplinary research groups: **Social Science; Public Health and Emergency Medicine; Welfare and Social Work; Engineering, Technology, and Planning; Risk Assessment and Management; Environment; Law; and Public Policy.** The Law and Public Policy groups have a dual role: they receive the research outputs of the other six groups, assess their implications for law and policy and make recommendations, providing a built-in operational pipeline aspect to the research. This ensures the integrative dimension critical for the success of the Center. Minerva PIs lead/participate

in the Law and Public Policy groups.

## **VI. Database**

In 2018 the first phase of the International Database of Regulatory Framework for Emergencies Preparedness, Response and Recovery was completed. It is on-line and ready for use at:

<http://minervasrv.hevra.haifa.ac.il:8080/>.

In parallel, a new database is being developed within the framework of the new National Knowledge and Research Center for Emergency Readiness. This database is part of the new center's website, will be linked with the Minerva website, and will include three types of data:

- (1) Publication repository: data on bibliographic sources on emergency readiness retrievable by: a. research topic (Engineering Technology and Planning; Environment; Law; Public Health and Emergency Medicine; Public Policy; Risk Assessment and Management; Social Science; and Welfare and Social Work). The Law and Public Policy components are Minerva-related. b. Emergency type (Natural, Man-made, Belligerencies) and c. specific disaster (Fire, Flood, Earthquake, Epidemic, Environmental, Chemical, Nuclear, Cyber, War, Terror).
- (2) Links to other related databases
- (3) Case studies

## **2. Research Projects and Researchers Selected for Support**

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

In 2018, the Minerva Center for the RLuc supported two doctoral students and five post-doctoral researchers.

## **I. Doctoral Students**

### **a. Denard Veshi: The collective action in the management of refugee flow: an economic and legal comparative approach**

Denard is enrolled in the European Doctoral program in Law and Economy (EDLE) for excellent students focusing on Law and Economics, supervised by Prof. Eli Salzberger. He began his affiliation at the Center in 2015. His research aims to analytically study refugee law on the municipal, supranational, and international levels. It applies a multidisciplinary approach, focusing on the economic analysis of refugee law and on the protection of refugee rights. The thesis highlights the humanitarian approach through case-law study. In addition, it offers a law and economics model constructed around the assumption that refugees might aim to maximize their net benefits. It also focuses on the most important “push” factors (e.g. protection of national security and the safeguarding of the national job market) that impact legislatures when enacting and modifying refugee laws. Furthermore, this project identifies the economic advantages and disadvantages of a centralized supranational (e.g. EU) asylum law that results in the elimination of competition between legal orders in refugee law and the removal of negative externalities caused by “asylum shopping”.

The principal goal of this project is to analytically explore and identify the diverse variables that impact the “push” and “pull” factors which influence the decision of persecuted individuals to flee. More specifically, this project aims to analyze the “demand and supply” in the refugee market. While “push” factors influence the decision of refugees to leave or flee, the “pull” factors are potentially controlled variables by host countries (e.g. the national refugee policy). This project aspires to investigate those segments of the issue which have not received due attention by applying a multidisciplinary approach to construct a positive analysis of the “refugee market”, as well as a normative model which takes in consideration the protection of refugee rights. In the concluding section, an eventual balance between European security and economic stability on the one hand and protection of refugee rights on the other will be suggested.

### **b. Jian Jiang: Vulnerabilities, cybersecurity, and the role of law and regulation herein**

Jian is enrolled in the European Doctoral program in Law and Economy (EDLE) for excellent students focusing on Law and Economics. His supervisor is Dr. Alan Miller of the Law Faculty. Jian began his PhD affiliation with the Center in October 2016.

The issue of cybersecurity prefigures a host of new problems created by information technology, network interconnection, and the expanding globalization of markets. Vulnerabilities, as a kind of by-product of software, have not received enough societal attention, but acted as the cause of many cybersecurity problems. The general idea of this thesis is to study the ultimate source of the problems of vulnerabilities and cybersecurity so as to define the role of law and regulation.

Vulnerability is a complex problem for which the market may fail to produce a solution. On the one hand, software producers do not have adequate incentives to keep the number of vulnerabilities at the social optimal level because they do not bear fully the external costs. On the other hand, in a world of positive switching costs and network effects, individual users cannot react swiftly according to market principles when they are not satisfied with the flawed products.

Furthermore, much attention has been given to the so-called “responsible disclosure” by the public, which is in line with legal and ethical requirements. Meanwhile, as the media advocates for more responsible disclosures, there are fast growing markets for vulnerabilities and exploits, which are either illegal or illegitimate. Media and many scholars believe that it is the participation of the government that boosts the growth of the cyber-weapon market. After the recent WannaCry crisis, the public voice, which is calling for the quitting of governmental branches like NSA, is getting louder and louder.

This research considers the nature of the problems above, trying to find possible explanations and solutions. Two main research questions are:

- Should the involvement of government agencies in the vulnerability market be regulated? Or is there any other party that should be made responsible for the illegal trading of vulnerabilities and exploits?
- What is the optimal legal standard for assessing whether the software producer was careful enough?

The research explores the ways in which law and regulation might serve to best respond to the challenges of vulnerabilities and cybersecurity at the lowest social cost.

## **II. Post-doctoral Researchers**

Three post-doctoral researchers completed their formal affiliation with the Center in 2018 (Maya Mark, David Vitale and Emil Israel, although Emil, who was appointed to a tenure-track faculty position at the Technion, Israel Institute of Technology, continues to be part of the team as an affiliated researcher). In addition, the Center participated in joint-support of one post-doctoral fellow of the Center for Cyber Law & Policy at the University of Haifa (Sharon Bar-Ziv).

The 2018 call for proposals drew 15 proposals for a post-doctoral appointments. Two post-doctoral positions were continued (Nadav Dagan and Idit Shafran Gitelman (part-time). Three new post-docs were accepted and began in October 2018: Yahli Sharshevsky, Ronnen Ben Arie and Anna Evangelidi (jointly with the Center for Cyber Law & Policy).

### **a. Dr. Maya Mark: Between the rule of law and the law of the ruler: a political biography of the prevention of terrorism ordinance**

Maya began her post-doc fellowship at the Center in October 2016 and continued through August 2018. Her research is an interdisciplinary project of Law and History. 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 study analyzes the legal, political and historical context in which the terrorism ordinance was legislated. The second stage reflects 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. The archival research is complete and includes locating, documenting and analyzing the relevant primary sources. She has finished writing the historical part of the research and sketched the theoretical framework for its analysis. On December 2017, she presented a paper based on this work at the Minerva center seminar.

**b. Dr. David Vitale: Public resource allocation in socio-economic crises: a trust-based perspective on judicial review**

David was appointed as a post-doc fellow at the Center in 2017 and did his research with us between October 2017 and August 2018. His research uses the concepts of trust and trustworthiness to develop a novel and valuable perspective on the judicial review by constitutional courts of public resource allocation decisions. He is especially interested in the relevance of such a perspective during/following socio-economic crises

like the 2008 Global Financial Crisis.

Social scientists have long stressed the importance of public trust in government to well-functioning democracies. Research has shown that trust encourages public cooperation, affecting the public's willingness to accept authority decisions, its feelings of obligation to obey laws and its performance evaluations of authority figures. Given the link between trust and public cooperation, many scholars have called for greater attention to be paid by lawyers and lawmakers to the concept of trust. Thus, this research addresses two principal questions:

- Can (and if so, how) trust be used to analyze public resource allocation disputes?
- Can (and if so, how) trust be used to define an appropriate role for constitutional courts in such disputes (both in normal financial circumstances as well as during/following socio-economic crises)?

**c. Dr. Emil Israel: Tools and mechanisms for public engagement in local authorities with regard to earthquake preparedness, response and recovery**

Emil Israel was a part-time post-doc fellow at the Center since November 2017, working with Prof. Shmueli and Dr. Michal Ben Gal on the MOST project mentioned above. In 2018 he was accepted as a faculty member at the Technion, Israel Institute of Technology, and ended his post-doc affiliation. Nevertheless, he continues to take part in the research (see: Tools and mechanisms for public engagement in local authorities with regard to earthquake preparedness, response and recovery).

**d. Dr. Sharon Bar Ziv: Confronting the cyber risks of re-identification attacks in governmental personal data transfers: theory and practice in Israel**

The "Big Data"<sup>2</sup> evolution has brought with it substantial changes in both the public and private realms. Among others, this age has brought with it substantial

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<sup>2</sup> (here defined as the use of machine learning, statistical analysis, and other data mining techniques to extract hidden information and surprising correlations from very large and diverse data sets)

pressures on governmental and public authorities to release and share the datasets at their disposal, or at least share them with selected research institutions.

Israel is no exception. Similar to many other countries, Israel has initiated steps to share the wealth of data gathered by government within government and outside of it, in several interesting contexts. For instance, databases of the Central Bureau of Statistics (CBS); the Ministry of Education and Ministry of Health, allow external researchers to conduct studies based upon them.

There is no doubt that these agencies control vast sensitive information pertaining to the Israeli public, a substantial part of it collected without the data subjects' actual consent. In many instances, the Israeli government provides various forms of access to the personal data the government obtained. This is carried out by creating actual and virtual research rooms, releasing some files to the general public, and others to trusted parties who undertake legal and other commitments.

Supposedly, such databases and the data transfers should have been subjected to the limitations set out in Israel's Privacy Protection Act. However, the "identifiability" of information is the key to subjecting data to the laws of privacy and data protection, as prescribed by various laws worldwide, including the Israeli Privacy Act.<sup>3</sup> Yet in most instances, the relevant personal data is de-identified prior to transfer. Therefore, once anonymized, the relevant privacy-related regulations do not apply. In fact, "anonymization" proves to be a central measure to circumvent the data protection regime in Israel.

For years, it was widely held that once data sets are anonymized, they posed no privacy risk. Unfortunately, the notion of perfect anonymization has been exposed as a myth. Over the past twenty years, researchers have shown that individuals can be identified in many different data sets once thought to have been "anonymized." As the amount of data available for analysis has increased exponentially, researchers have

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<sup>3</sup> Privacy Protection Act, 5341-1981, SH No. 1011 p.128 (Isr.).

shown that almost any attribute, when combined with publicly available background information, can be linked back to an individual (when specific dynamics unfold).

Anonymization generates key questions with which policymakers and scholars from a variety of fields are currently struggling. In Israel, however, this issue has received very limited regulatory and academic attention. **This research focuses on legal issues underlying the protection of anonymized data from de-anonymization (or re-identification) attacks in Israel and in accordance to Israeli law.** Such attacks might originate from external adversaries (such as one of Israel's enemies), business entities or even internal parties with the government. **This research is concerned with possible attacks on centralized anonymized databases and the lack of harmonization in dealing with this challenge.** Using de-anonymization tools hackers could potentially gain access to sensitive information in large magnitude. This risk is imminent in light of concerns raised by scholars as to the ability to truly anonymize data. Thus, the main question this research wishes to examine **how should governmental agencies prepare themselves in light of the cyber threats to sensitive data? What are the boundaries of their actions and what steps must they consider?**

#### **e. Dr. Nadav Dagan: Emergency, power and proper authorization**

Nadav Dagan began his post-doc fellowship at the Center in October 2017 and continues through 2019. His normative research explores two main fields of law that regulate governmental powers and the exercise thereof in national emergencies: vires and discretion. The requirements of due authorization as well as discretion law are of special importance during large-scale emergencies, since situations of this sort dramatically increase the tendency to centralize powers and control.

During emergencies the general public and political institutions may show an increased propensity to grant the executive all tools deemed necessary to deal with the evolving emergency, including extraordinary measures, or acquiesce to governments' demands. Hence, new powers may be granted to the authorities by the legislature, and the government usually pushes to deepen and widen its discretion as per existing powers

as far as it possibly can.

Exploring the complementary and closely connected fields of vires and discretion, this research aims to construct a normative framework for legal examination of which powers are (and should be) conferred on government officials and how these powers ought to be exercised in times of emergency. The research presently focuses on the legal requirement of authorization in public law.

This stage of the research concentrates on the nature of governmental powers during national emergencies and the justifications for the legal requirement of authorization, with special emphasis on statutory authorization. In particular, it investigates various theoretical and doctrinal approaches that can be classified into one of two broad categories: legality and non-legality, inclusive of prerogative powers and contra-legal acts.

**f. Dr. Idit Shafran Gittleman: Political theories of the rule of law under extreme conditions**

Idit Shafran\_Gittleman is a part-time post-doctoral scholar at the Center since October 2017. The famous Latin phrase *inter arma enim silent leges* ("in times of war, the laws fall silent") demonstrates an approach by which war is not part of civilized human life, subject to laws of decency and morality, but rather an outburst of primeval instincts of aggression or survival, therefore not subject to any set of rules. War strips man of all dress of human civilization, and takes him back to his primal, primitive, pre-civilized form.

At least *prima facie*, the existences of just war theories, as well as laws of war, stand in some contradiction to this approach. They reflect the view according to which even at times of war there are basic human rules that should be maintained and observed, and that some actions should never be performed, whatever the circumstances. Indeed, putting moral realism supporters aside, it is widely agreed that both the law, as well as morality, speak, and should be speaking, *inter arma* as well.

However, we do tend to accommodate some flexibility to the rules under extreme circumstances or severe conditions, sometimes allowing violation of human rights for

example, under such conditions, when unavoidable in order to prevent greater harm, or when characterized as security measures.

This tension between the approach according to which at times of such conditions the law should be silent, and the insistence that even when facing extreme conditions, we should nevertheless maintain the rule of law, at least to a certain degree, is present not only with regard to war-time, but also to other sorts of extreme conditions times such as natural disasters, etc.

During such times, it is often the case that states announce a "state of emergency" which allows them to either apply a whole different set of laws, or to amend the existing laws. For example, article 16 of the French constitution provides for "exceptional powers" (Pouvoirs exceptionnels) to the president in times of acute crisis. In Israel too, the continuation of the emergency regulations is approved every six months since the country's establishment in 1948, since, according to the state: "There's a fundamental need for the laws due to the war on terror".

The research reviews the different political theories facing this question. It first maps the theories, locating them on an imaginary graph at the one end of which stands the view that there should be no changes in the rule of law even under extreme conditions, while at the other end stands the view reflected by the above mentioned Latin phrase. The aim is to conclude with a normative theory of the role which law should play under extreme conditions.

#### **g. Dr. Yahli Shereshevsky: Informal Jus ad bellum lawmaking**

Yahli's project focuses on the continuous debate over the right to self-defense against an imminent armed attack by non-state actors. The law on the use of force against non-state actors is vague and the path of traditional lawmaking and soft law initiatives have proven futile since the relevant actors cannot reach an agreement on the substance of such outputs. Under these circumstances any significant gap filling initiative has a potential to be influential and relevant states have strong incentive to use informal lawmaking technics to influence the law.

The project mainly explores the involvement of former state officials as significant actors in these new lawmaking initiatives. While state unilateral lawmaking initiatives are expected to be influential, their perceived partiality might decrease their persuasive force. Academic works by former state officials, while still associated with state interests, might receive greater legitimacy in the international legal community. The proposed project focuses on the role Sir Daniel Bethlehem's article in the *American Journal of International Law* as a focal point of reference in the legal battle over the use of force in such situations. The project offers a unique account on the way in which academic work is used by states to justify their legal positions. It uses this concrete example to explore the importance of allegedly neutral sources that are not directly produced by states as legitimizing tools of state positions in contemporary international law making.

#### **h. Dr. Ronnen Ben-Arie : City at war: Haifa in the aftermath of the 1948 War**

Cities are known to be targets of war and violence and the urban space often functions as a vehicle of war and terror, as cities are becoming more and more the primary space in which war, terror and violence are taking place and war itself is becoming more and more urbanized. However, the transformation and management of cities and of urban life and the city's resilience that enables its perseverance and sustainability through the conditions of war and its aftermath, still lack research and conceptualization. The research addresses this lacuna by exploring the concrete and specific practices, regulations, procedures and policies that were implemented during and following the 1948 war in the city of Haifa, intended to restore order and sustain urban life. The 1948 war was a time of extreme conditions for the city of Haifa. After decades of rapid development and growth, within a short time the city transformed completely. Throughout the years of the war (1947-1949), the city lost half of its population, as around 70,000 Arab-Palestinian residents, out of a total population of 145,000, fled or were forced out of the city and only 3,500 remained. At the same time and during the few years following the war, tens of thousands of Jewish immigrants arrived in the City and by 1951 its population again reached the total of 147,000. The City, its population and its

management have radically transformed, yet municipal functions were sustained through these transformations. The research explores and analyses the sustainability of the City through radical transformations during a time of extreme conditions. The research pays particular attention to the management of the City as a whole and the connections and relations among the different parts of the City and its neighborhoods; to the continuity of operation of major urban infrastructures and industries; to the utilization, reconstruction and rehabilitation of the derelict parts of the city and abandoned properties through their habitation by incoming migrants; and the interrelations among the different levels of governance, the municipal and the national, and the various authorities and organizations involved.

**i. Dr. Anna Evangelidi: From drones to cyberspace: the evolving concept of warfare and the legal challenges**

This project is motivated by the constant development towards weapon technologies that seek to achieve more and have greater consequences with less and less risk, as manifested in the use of unmanned aerial vehicles (UAVs) or drones and promised by the advancement of increasingly autonomous weapon technology, which represent models of violence that challenge the fundamental legal and ethical premises of the existing law of armed conflict (LOAC). Against this background, this research considers the rise of cyberspace as a more and more prominent means and method of warfare, and the range of cyber activities that pave the way for the increasing militarization of cyberspace. Concerned about the legal argumentation which tends to concede too much to the dubious promises of advanced and sophisticated weapon technology, and which claims to speak to humanitarian sensitivities, this research suggests that there are still important questions to be asked and answered. With that in mind, it explores the multi-layered structure of the cyber domain and unpacks the essential and unique features of a realm that is at once virtual and real, intangible and physical, and examines what this means for the law conceptually and normatively. In this context, it considers whether the ways of conceptualizing and understanding more traditional forms of warfare and kinetic



hostilities are well-suited to the peculiarities and particularities of cyberspace, and looks at the contribution of the work of expert groups like the Tallinn Manual on International Law applicable to Cyber Warfare in that respect. In the rapidly evolving world of conflict, the research also examines how the adversarial relationship of those found on the opposite ends of cyber activities is shaped both at the collective and the individual levels, and how the lines between the military sphere and the civilian lifeworld in cyberspace are re-drawn.

Anna is also a post-doc affiliate at the Center for Cyber, Law and Policy in Haifa University

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

In 2018 the Center continued its support for projects accepted in the 2017 call as follows:

### **a. Prof. Dr. Michael Brzoska: Weather-related disasters and violent conflict**

One of the consequences of climate change is an increase in extreme weather events, such as storms, droughts, floods and heatwaves. A good number of such events lead to destruction and death. The study of weather-related disasters has recently become more prominent as a way to analyze potential links between climate change and violent conflict with important new studies published. The study of the social consequences of disasters seems particularly promising to further our knowledge about structural conditions, conflict dynamics and particular mechanisms linking weather-related disasters and violent conflict. While in principle not different in terms of their environmental consequences, weather-related disasters are already stressing social and political fabrics of affected societies in more immediate ways than slow-onset consequences of climate change.

Important studies on the link between weather-related disasters and violent conflict were published in recent years, However, evidence of the link between climate change and violent conflict remains contested. Much seems to depend on the case, technicalities of the chosen method and interpretations of the relative weight of climate change-related factors to other factors. A good example of this complexity are the

strongly diverging views of the role of a drought in Northeastern Syria between 2007 and 2011 for the onset of the civil war in Syria, which began in the spring of 2011. While some see the drought and the ensuing income losses and migration from Northeastern Syria to other parts of the country as crucial factors leading up to the protests against the government, others dismiss this narrative as unconvincing. They argue that for the population who rose in opposition to the government, the economic effects of the drought had few consequences and, furthermore, that the opposition's main concerns were political repression as well as the regime's violent reaction to its demands for more rights and freedom.

This project contributes to the growing body of literature which argues that both structural conditions of societies, such as poverty and the fragility of institutions, and the dynamics of conflicts need to be at the center of the analysis of the links between climate change and violent conflict. On the basis of a differing approach to the study of the consequences of climate change, conflicts are shaped by people, their agency based on their material capabilities as well as their perceptions about differences with other people in terms of interests, goals and values. Major changes in natural environments through climate change are likely to alter such perceptions. However, the outcome of the complex social and political processes which are set in motion by environmental change are not determined.

Seen from this perspective of conflict analysis, the prime challenge of research on the effects of climate change on violent conflict is to identify the circumstances under which environmental change is likely to lead to violent conflict and where it is likely to be managed peacefully. An important tool for such analysis is the search for mechanisms that drive the dynamics of conflict beyond single cases. In order to contribute to this effort, this project focuses on a review of the ten most deadly weather-related disasters between 2000 and 2016 and their relation to violent conflict with the goal to identify important mechanisms.

**b. Barbara Korte: Countering terrorism via criminal law in autocracies and democracies**

Barbara spent six months at the Center, from October 2017 to March 2018, participating in Center events, giving a seminar talk and conducting the following research. Her project analyses the different approaches to countering terrorism through criminal law in two democracies and two autocracies. It tests the hypothesis that based on freedom from democratic election, authoritarian legislators adopt legislation criminalizing terrorism and related offences that are capable of or even intended to forestall a broader range of otherwise non-criminal activities of political opposition, dissidents or religious groups, far beyond the scope of actual terrorism-related activity. The hypothesis is tested by a comparison of terrorism and related offences in the criminal codes of authoritarian Russia and China and democratic Germany and the USA. Benchmarks for evaluating that alleged overbreadth of terrorism legislation are the test of reasonable notice of the prohibited conduct and the existence of a clear delineation of the intended limitations of the offences' scope of application.

The research is split into two parts. The first paper deals with the legal definitions of terrorism over time in the four countries ("Legal definitions of terrorism: criminalizing a contested concept or criminalizing contestation itself?"), primarily focussing on the criminalization of actual terrorist activity. Its most important finding is that by virtue of basing terrorism-offence definitions on existing offences for the *actus reus* and adding various elements mostly referring to the terrorist purpose and consequences Germany and the USA forestall applicability of the terms of the offence to otherwise non-criminal behaviour. Russia and China, on the other hand, in their definitions do not require the *actus reus* to constitute a self-standing offence. Hence, by referring to purpose, consequences and methods of terrorism rather than to an independently criminal *actus reus* their offence definitions allow for application to otherwise non-criminal behaviour such as dissident, opposition or religious activities. In the first paper, the starting hypothesis is therefore confirmed.

The second phase of the research (also resulting in a paper) focuses on prevention of terrorism through criminal law, analysing the different national approaches to extending the range of adjudicable preparatory activities and to predating criminal

liability. Unlike with definitions of “terrorism”, here the differences between the jurisdictions do not correlate with regime type. Rather, each legislator has chosen a different approach to establishing criminal liability before an actual act of terrorism occurs. Similarities between all jurisdictions are the establishment of individual criminal liability based on either individual activities or self-alignment with certain types of organizations. Differences regard the types of organizations listed and the threshold between *actum internum* and *externum* with regard to individual activity. The national approaches differ to a great extent, as does the direction of the fallout of over-inclusiveness towards dissidents, religious observers or other - ordinary - criminals.

These findings contribute not only to our understanding of the differing political instrumentalization of terrorism and related offences across regime types. They also illustrate that terrorist and preparatory activity pose substantial challenges for legislators across the board *per se*, regardless of the otherwise outstanding credentials in terms of the rule of law. Most importantly, the findings challenge us to reconsider whether criminalizing preparatory activities can be seen as a struggle between protecting national security and individual constitutional rights that is resolvable. They suggest that, instead, we might have to accept that there will always be fallout of offence over-inclusiveness and the real question to be decided by legislators is which direction is most acceptable for that fallout.

### **c. Dr. Itamar Man: “Island of legality”: refugee processing in Chios**

In recent years, the EU has established refugee and migrant processing centers in a number of locations in the Mediterranean region, in the Aegean islands and in Southern Italy. During the summer of 2017, the researcher and his team conducted preliminary research on the island of Chios, revealing the potential of socio-legal studies around the hotspots for uncovering micro-level legal processes of region formation. They participated as legal consultants and Arabic translators and integrated into the work of the German organization Refugee Law Clinics Abroad (RLCA). They found that the hotspot has become a site for transnational encounters between refugees, volunteers, European

administrators, and local Greek populations, from which unexpected results often emerge. These “assemblages” of persons and legal rules provide an excellent “laboratory” for “integration from below.”

For example, the translation of legal procedures has become a particularly interesting site to examine emerging regional dynamics. Refugee-translators often perform a form of solidarity, above and beyond the seemingly technical task they are assigned for. On the other hand, they may be asked to determine where a certain person comes from, and thus to engage in a form of perceived disloyalty to the refugees as a group.

Family rights also generate interesting regional dynamics. After the height of the migration crisis and the entry of refugees into Europe, the right to family unification is under constant political pressure. At the same time, extended families located on both sides of the Mediterranean and severed by differing citizenship and legal statuses have become networks for proto-political activities: information exchange, financial support, and cultural regeneration. The transnational legal terrain, in other words, has interestingly posed family and state against each other, with relationships constantly being renegotiated and reconstructed through formations of partially overlapping membership.

In this project the researchers plan to continue to examine both subjects through interviews as well as participant-observer tasks within legal aid organizations such as RLCA. To ensure the feasibility of this work, they have also established solid relations with a number of Greek lawyers doing cutting-edge legal work related to the hotspots, including, e.g., Giota Massouridou.

**e. Emanuela Gillard: The interplay of sanctions and counter-terrorism measures with principled humanitarian action, the Israeli regulatory framework**

This work explores and suggests ways of reducing the tensions between sanctions and counter-terrorism measures and humanitarian action. In recent years a number of UN sanctions and international counterterrorism measures have required states to

ensure that funds and other assets do not directly or indirectly benefit groups designated under such instruments. Frequently, these same groups are the Non State Armed Groups (NSAG) parties to armed conflict that exercise control over civilian populations. The prohibitions on providing any support to designated groups are framed extremely broadly, and can potentially include relief supplies that are diverted to such groups or that otherwise benefit them; payments that humanitarian actors must make to such groups to be able to operate; and even the provision of medical assistance to wounded and sick members of the groups.

Violations of these prohibitions are criminalized. Restrictions with similar effects are also frequently included in states' funding agreements with humanitarian actors. Private actors, including the banking sector, must comply with the same sanctions and counterterrorism restrictions. To minimize the risk of liability, they have imposed restrictions on the services they offer to humanitarian actors operating in 'high-risk' countries. Overlooked until fairly recently, these restrictions, as well as increased costs for financial services, are having a significant impact on the capacity of humanitarian actors to operate in certain contexts. All these measures are significantly affecting humanitarian actors' capacity to carry out essential humanitarian activities in accordance with humanitarian principles.

This situation raises legal and policy questions. The challenge is not new. It has been addressed in academic literature and policy circles for a number of years now. However, there has been limited progress in going to the next step and finding ways of addressing the tension. There are numerous reasons for this: the Security Council's close guarding of its role in designing and implementing sanctions; states' sensitivities in relation to counter-terrorism measures; the difficulties for states to elaborate a coherent position on a topic that falls within the competence of numerous departments; but also humanitarian actors' apparent incapacity to develop a common position and to provide information on the actual adverse impact of sanctions and counter-terrorism measures on their operations.

A further and overarching reason is the complexity of the applicable legal

framework. At the international level, restrictions arise from sanctions and counter-terrorism measures and, although the end result is the same – a risk that humanitarian action may be considered criminal material support to a designated group – the restrictions are not co-terminous and the ways of addressing the problem are different. At the national level, states have adopted different approaches to implementing their international obligations. Some may have adopted autonomous sanctions; others may have inserted exemptions for humanitarian action.

There has been some research of the approaches adopted by different states, but it has focused principally on that of key donor states to humanitarian action. Surprisingly, considering it in a context directly related to a situation where a NSAG, designated as terrorist by a number of states, Israel's national regulatory framework has not been considered – or at least not in English or French writings.

This research is about the Israeli regulatory framework. Key elements of the research include:

- Analysis of Israel's framework for implementing UN sanctions;
- Analysis of any autonomous sanctions Israel may have imposed and of their potential adverse impact on humanitarian action;
- Analysis of Israel's framework for implementing international counterterrorism obligations such as those under the 1999 Convention for the Suppression of the Financing of Terrorism and Security Council resolution 1373;
- Analysis of additional counter-terrorism measures adopted by Israel and their potential adverse impact on humanitarian action; and
- Analysis of any domestic court decisions addressing these issues.

In addition to the above projects, the Center supported two projects in cooperation with the Center for Cyber, Law and Policy (CCLP) at the University of Haifa:

**f. Dr. Gilad Yadin: Beyond cyberlaw**

Virtual reality is here. In just a few years, the technology moved from science fiction to the Internet, from specialized research facilities to living rooms. The new virtual reality environments are connected, collaborative and social, built to deliver a subjective psychological effect that believably simulates spatial physical reality. Cognitive research shows that this effect is powerful enough so that virtual reality users act and interact in ways that mirror real-world social and moral norms and behavior. Contemporary cyberlaw theory is largely based on the notion that cyberspace is exceptional enough to warrant its own specific rules. This premise, a descendant of early cyberspace exceptionalism, may be dramatically undermined by the advent of virtual reality. The technology brings cyberspace conceptually and concretely close to the real world, blurring legally significant distinctions between cyberspace behavior and physical behavior, between “real”, “not real” and “virtually real”.

There is an opportunity here. Some of the cyberspace-specific legal regimes that developed over the last twenty years are seriously flawed, especially in criminal law contexts. Computer hacking legislation is overly broad and vague, effecting the criminalization of minor Internet infractions and chilling digital freedoms; cyberharassment and cyberstalking laws are poorly enforced and ineffective, turning cyberspace into a hostile environment for many people; government cybersurveillance norms have seriously upset the balance between public security and individual privacy, putting society on the path to an Orwellian surveillance state.

Virtual reality brings a new understanding of the human cyberspace behavior continuum that counteracts cyberspace exceptionalism, undermining contemporary cyberlaw theory and presenting an opportunity to move away from problematic cyberspace-specific legal regimes, back towards the well-established laws of the real world.



**g. Dr. Mashor Housh and Prof. Ofira Ayalon: Cyber-security of water distribution systems: attacks, detection, algorithms, and policy Implications**

Modern infrastructure systems are often controlled by Supervisory Control and Data Acquisition (SCADA) system and Programmable Logic Controllers (PLCs). As such, with the SCADA becoming a central component of WDSs, these systems can be subjected to cyber and cyber-physical attacks. For example, shutting/opening valves or pumps which might risk the water supply, damage equipment, or even inject chemicals (chlorine, fluoride, etc.) above desirable limits.

We develop a specially tailored algorithm for identifying cyber-attacks based on detailed hydraulic understanding of the WDS combined with a machine learning event detection system for identification of complex cyber-attacks that cannot be fully identified by the hydraulic based rules alone. As such, this algorithm will utilize the unique characteristics of the WDS (e.g. hydraulic laws) as opposed to a straightforward application of anomaly detection methodologies. This research is comprised of several stages. The first stage of the research focuses on conceptualizing surveillance in the 'always on' society and offers a theoretical framework to understand the trends that led to its potential existence. The second stage of the research focuses on the various legal aspects that always-on devices raise, while focusing mainly on the right to privacy. It will scrutinize the current American perception of informational privacy, and value various notions of privacy violations as reflected in legal proceedings and the American legal framework. The third stage will turn these theoretical arguments into mathematical formulations via what is termed as Differential Privacy. The expected outcome is a toolkit in the form of technological standards. In other words, this research will provide mathematical mechanisms to "measure" the protection of privacy and aid in determining what should constitute as sufficient security to address the concerns that always on devices raise while preserving the value of the obtained data.

The 2018 call for proposals drew 16 proposals, seven of which were chosen for support. The funding for these projects was delayed until the decision about the continuation of the Center's activities for another period of six years was accepted. Therefore, details about these projects will be presented in 2019 report.

### **3. Conferences and Additional Activities**

#### **I. Conferences and Workshops**

In 2018 the following events were held at the Center:

7.11.2018: Book event: [The ABC of OPT](#) - Hedi Viterbo, Michael Sfard and Orna Ben Naftali (in [Hebrew](#)).

[Invitation is available at this link](#)

7.6.2018: International Symposium on [Legal Challenges of Terror](#). (With the Aptowitz Center for Risk, Liability and Insurance and the Center for Cyber, Law and Policy)

[Link to the program and videos of the events is available at this link](#)

7.3.2018: A Year and a Half after the Fires in Haifa: Workshop co-sponsored by the Geography and Environmental Studies Department at the University of Haifa (Hebrew).

[Link to the program \(in Hebrew\) is available at this link](#)

2.3.2018: "International Law in a Time of Crisis": A personal conversation with Judge Ganna Yudkivska, the European Court of Human Rights interviewed by Dr. Itamar Mann. Link to the invitation (Hebrew) is available [here](#)

February 4-18, 2018: [The 2nd Young Researchers Workshop on Terrorism and Belligerency](#)

[Link to the program and videos of the workshop is available at this link](#)

#### **II. Seminars and Lectures**

2018 seminars were given by Center researchers, visitors and grant recipients, as well as by outside lecturers whose research topics are relevant to the Center. Some of the lectures were streamed live and available to watch on the Center [YouTube channel](#). In 2018 we had around 3,100 views in the channel, 13,000 minutes, from which only 17%

of viewers were from Israel. Other leading viewer countries were: 3% from Germany, 1.1% from Belgium and 1.1% from Italy. This is a significant increase from the 2017 statistics: around 1,500 views, 4518 minutes, 36% from Israel and the other leading countries: 18% from the US, 12% from the UK, and 8.7% from Italy )

List of lectures:

19.12.2018: Adv. [Tom Gal: Armed Groups - Objects or Subjects of International Law?](#)

[Link to streamline on YouTube](#)

5.12.2018: [Prof. Gideon Aran, The Smile of the Human Bomb: New Perspectives on Suicide Terrorism](#)

[Link to streamline on YouTube](#)

21.11.2018: Adv. Efrat Bergman-Sapir - The Public Committee against Torture in Israel: With Authority and Permission: Torture in ISA (Israel Security Agency) Interrogations (Hebrew)

31.10.2018: Prof. Eli Salzberger: Introduction for the Rule of Law under Extreme Conditions

30.5. 2018: Dr. David Vitale - The Homelessness State of Emergency

[Link to streamline in YouTube](#)

23.5.2018: Adv. Hassan Jabareen: Can the Court Normalize the Exception? On Territoriality Cases of Palestinians Citizens of Israel

[Link to streamline in YouTube](#)

9.4.2018: Adv. Deborah Housen-Couriel - Cybersecurity Regulation: A Case Study

[Link to streamline in YouTube](#)

25.3.2018: Dr. Nadav Dagan - Reasonableness and the Legal Control of Administrative Discretion

[Link to streamline in YouTube](#)

14.3.2018: Nuri McBride : The Application of International Refugee Law in Thailand and Kenya

[Link to stremline in YouTube](#)

28.2.2018: Barbara Korte: Legal definitions of terrorism: criminalizing a contested concept or criminalizing contestation itself?

[Link to streamline on YouTube](#)

17.1.2018: [Prof. Dr. Michael Brzoska](#): Weather-related Disasters and Violent Conflicts  
[Link to streamline on YouTube](#)

3.1.2018: Dr. Dafne Richemond-Barak: Underground Warfare  
[Link to streamline on YouTube](#)

### **III. Visiting Scholars**

In 2018 the Center hosted three visiting scholars:

#### **Prof. Dr. Michael Brzoska**

Michael Brzoska, was the scientific Director of the The Institute for Peace Research and Security Policy is an interdisciplinary research institute at the University of Hamburg from February 2006 to September 2016 and is now retired. In his visit, Michael Brzoska presented his paper on: Weather-related Disasters and Violent Conflicts (Brzoska, Michael. "Weather-related disasters and violent conflict." In *SIPRI Yearbook 2017*, pp. 300-315. Oxford Univ. Press, 2017).

#### **Emanuela Gillard**

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.

From 2007 to 2012 she was Chief of the Protection of Civilians Section in the Policy Development and Studies Branch of the United Nations Office for Coordination of Humanitarian Affairs. The Section works with the United Nations and other key partners to promote and enhance the protection of civilians in armed conflict. Her research interests include international humanitarian law, with a particular focus on the protection of civilians and mechanisms for promoting compliance; the role of the Security Council in enhancing the protection of civilians; and principled humanitarian action. In her visit she participated in the 2<sup>nd</sup> young researchers workshop, where she presented her work on: "Chatham House Report on Proportionality in The Conduct of Hostilities", participated in a panel on: Counter-Terrorism and Humanitarian Assistance

and commented on the young researchers presentations.

### **Barbara Korte**

Barbara Korte is a PhD candidate at Goethe University Frankfurt, Frankfurt am Main (Germany). Barbara was invited for a short visit research stay at the Center. With additional funding for a short term research grant she obtained from the Minerva Stiftung, she was able to come for a six months research visit. Her work on “Countering terrorism via criminal law in autocracies and democracies” is described under External Researchers funded by Center above.

## **IV. Website and Facebook**

As was mentioned in previous reports, 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 website is maintained by Dr. Michal Ben-Gal, among her many other responsibilities, with some technical help for databases maintenance. 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 2018**

(Including 2017 publications not mentioned in 2017 report)

Bjørnskov, Christian, and Stefan Voigt, "The Determinants of Emergency Constitutions." (November 30, 2015). Available at SSRN: <http://ssrn.com/abstract=2697144>  
(Forthcoming in *International Journal of Constitutional Law* 2018)

Bar-Siman-Tov, Ittai. "Temporary legislation, better regulation, and experimentalist governance: An empirical study." *Regulation & Governance* 12, no. 2 (2018): 192-219. <https://doi.org/10.1111/rego.12148>

Bjørnskov, Christian and Voigt, Stefan, More Power to Government = More People Killed? – On Some Unexpected Effects of Constitutional Emergency Provisions during Natural Disasters (June 3, 2018). Available at SSRN: <https://ssrn.com/abstract=3189749> or <http://dx.doi.org/10.2139/ssrn.3189749>

Bjørnskov, Christian, and Stefan Voigt. (2018). "Why do governments call a state of emergency? On the determinants of using emergency constitutions". *European Journal of Political Economy*, 54, 110-123.

Bjørnskov, Christian, and Stefan Voigt. "The architecture of emergency constitutions." *International Journal of Constitutional Law* 16, no. 1 (2018): 101-127.

Davidson, Natalie R., "Alien Tort Statute Litigation and Transitional Justice: Bringing the Marcos Case back to the Philippines". *International Journal of Transitional Justice* (2017) ijx006

Davidson, Natalie R. "Shifting the Lens on Alien Tort Statute Litigation: Narrating US Hegemony in Filártiga and Marcos." *European Journal of International Law* 28.1 (2017): 147-172.

Eger, Thomas, Stefan Oeter, Stefan Voigt (eds.), *The International Law and the Rule of Law Under Extreme Conditions*, Mohr Siebeck (2017), pp. 3-56

Eger, Thomas, Stefan Oeter, and Stefan Voigt (eds.), *International Law and the Rule of Law under Extreme Conditions: An Economic Perspective*. Contributions to the XIVth Travemünde Symposium on the Economic Analysis of Law (March 27–29, 2014). Mohr Siebeck (2017).

Feinberg, Myriam, States of emergency in France and Israel – terrorism, "permanent emergencies", and democracy. *Zeitschrift für Politikwissenschaft* (2018): 28(4), 495-506. (DOI : 10.1007/s41358-018-0147-y)

Feinberg, Myriam, "Terrorist and Refugee in the Mediterranean – A European Dilemma," *Journal of Levantine Studies* 8, no. 2, Winter (2018) 163-188.

Gutmann, Jerg, and Stefan Voigt. "The Heterogeneous Effects of Natural Disasters on Human Rights." (2017). (. Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3049032](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3049032))

Harašta, Jakub. "Legally critical: Defining critical infrastructure in an interconnected

world." *International Journal of Critical Infrastructure Protection* 21 (2018): 47-56.

Jeßberger, Florian, "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.

Lemke, Matthias, *Demokratie im Ausnahmezustand. Wie Regierungen ihre Macht ausweiten*. Campus Verlag GmbH, Frankfurt/New York, 2017

Oeter, Stefan. The Kurds between Discrimination, Autonomy and Self-Determination, in: Peter Hilpold (ed.), *Autonomy and Self-Determination: Between Legal Assertions and Utopian Aspirations*, Cheltenham: Edward Elgar, 2018, pp. 208-246.

Oeter, Stefan. Legitimationsfragen rechtserhaltender Gewalt im globalen Staatensystem. Eine völkerrechtliche Perspektive, in: Sarah Jäger/Arnulf von Scheliha (Hrsg.), *Recht in der Bibel und in kirchlichen Traditionen* (Frieden und Recht Bd.1), Wiesbaden: Springer VS, (2018) pp. 96-119.

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Veshi, Denard. "Long-Term Care in Some Western European Countries: The Role of Public and Private Sectors" *Politica del diritto* 48.4 (2017):721-740.

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## II. Publications Forthcoming

Albert, Richard and Yaniv Roznai (eds.), *Constitutionalism under Extreme Conditions: Law, Emergency, and Exception* (under contract with Springer, Ius Gentium: Comparative Perspectives on Law and Justice Series).

Bar-Siman-Tov, Ittai and Gaya Harari. "Temporary Legislation's Finest Hour?: Towards a Proper Model of Temporary Legislation in Israel" (Hebrew), Forthcoming in 41 *Tel Aviv University Law Review* ("luney Mishpat") (2018), available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3064829](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3064829)

Housen-Couriel, Deborah, "New Property Rights in Cyberspace: Testamentary Transferability of Digital Property Rights". Accepted for publication in *International Journal of Law and Information Technology*

Jeßberger Florian. & Werle, G., "Principles of International Criminal Law", Accepted for publication in Oxford University Press, Oxford, 4th edition.

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Shmueli, Deborah, Ozawa, Connie, and Sanda Kaufman, forthcoming. "Mining



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Yemini, Moran, "The New Irony of Free Speech" (September 11, 2018). Forthcoming in *Columbia Science and Technology Law Review*, Vol. 20, 2019. Available at SSRN: <https://ssrn.com/abstract=3247735>

### III. Publications Submitted for Review

Abraham Eschel, Haim. "Tort Liability for Belligerent Wrongs" (submitted to the *Oxford Journal of Legal Studies*)

Berti, Benedetta. "Forced Displacement, Humanitarian Challenges and the evolution of conflict in the Middle East" (submitted to *Mediterranean Politics Journal*).

Housh, Mashur, and Ziv Ohar. "Model-based approach for Cyber-Physical Attacks Detection in Water Distribution Systems" (submitted to *Water Research*).

Taormina R. et al.<sup>4</sup>, (2018) "Battle of the Attack Detection Algorithms: Disclosing Cyber Attacks on Water Distribution Networks". (submitted to *Water Resources Planning and Management*).

Shmueli, Deborah, Ehud Segal, Michal Ben Gal, Eran Feitelson, Amnon Reichman. "Earthquake Preparedness in Volatile Regions: when response overshadows mitigation, the case of Israel" (submitted to *Natural Hazards*)

### V. Conference Presentations 2018

Jeßberger, Florian. "Peace through punishment?" (Conference "Twenty Years of the ICC's Rome Statute - Utopia, Reality, Crisis), Liverpool 2018.

Jeßberger, Florian. "Universal jurisdiction and international crimes - constraints & best practices" (Workshop DROI, ILE, DLI, European Parliament), Brussels 2018.

Jeßberger, Florian. "ICC and substantive criminal law - towards progressive development or cautious reluctance?" (Conference „The International Criminal Court in Turbulent

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<sup>4</sup> 36 authors, including Mashor Housh and Ziv Ohar from Dept. of Nat. Res. and Environmental Manag., Univ. of Haifa, Grant supported by the Center for Cyber Law and Policy and the Minerva Center

Times“), The Hague 2018.

Jeßberger, Florian. “Counter-terrorism and humanitarian assistance“ (Workshop on terrorism and belligerency; University of Haifa), Haifa 2018.

Jeßberger, Florian. “It is not a crime to be on the list, but ...’: Targeted sanctions and the criminal law’ (International conference, MPI Freiburg und Queen Mary University), London 2018.

Oeter, Stafan. Organization of two panels and introductory speeches on “The History and Future of Peace Operations” and “Third Party Claims in Peace Operations”, 21st Congress of the International Society for Military Law and the Law of War, Lisbon, 15-19 May 2018.

Oeter, Stafan. Presentation on “Terrorism, Laws of Armed Conflict and War Crimes Prosecution”, Workshop “The Legal Challenges of Terror”, University of Haifa, 7 June 2018.

Oeter, Stafan. Keynote Speech on “Das Verbot exzessiver Kollateralschäden nach Art. 15 (5) (b) ZP I: Gibt das Völkerrecht uns Steine statt Brot?“, Module weekend of the Master Course ‘International Relations and International Law’, Führungsakademie der Bundeswehr (General Staff Academy of the German Armed Forces), Hamburg, 7 July 2018.

Oeter, Stafan. Presentation on “Zum Potenzial des Konzepts der Responsibility While Protecting“, 4th Session of Working Group 3 of the Consultation Process “Orientierungswissen zum gerechten Frieden“, Forschungsstätte der Evangelischen Studiengemeinschaft, Heidelberg, 11 July 2018.

Oeter, Stafan. Presentation on „Right to Self-Determination and Creation of New States“, Joint Conference of the German and French Societies of International Law „The Versailles Treaty: French and German Perspectives on International Law on the Occasion of the Centenary“, Université de Strasbourg, 28-29 Sept. 2018.

Oeter, Stafan. Presentation on “Specifying the Proportionality Test and the Standard of Due Precaution – Problems of Prognostic Assessment in Determining What “May be Expected” and “Anticipated” Means?“, Conference “Necessity and Proportionality in International Peace and Security Law“, West Point Lieber Institute for Law and Land Warfare, West Point (NY), 29-31 Oct. 2018.

Oeter, Stafan. Keynote Speech “The Annexation of Crimea: An International Law Perspective“, Symposium “Crimean Crime – Consequences for International Law and Politics“, Faculty of International Relations, Univ. of Lviv, Lviv (Ukraine), 9 Nov. 2018,

Oeter, Stafan. Presentation on “Military Cultures and Routines as Determinants in Peace Operations – A Lawyers’ Perspective“, Symposium “Protecting Soldiers or Civilians?”

Western Ways of War”, Univ. of Hamburg, Hamburg, 27 Nov. 2018.

Oeter, Stefan. Presentation on “Verteidigung als gesamtstaatlicher Ansatz oder Primat des Militärischen im Verteidigungsfall?”, Conference of the ‘Deutsche Gesellschaft für Wehrrecht und Humanitäres Völkerrecht’ on „Die Wiederkehr der Landes- und Bündnisverteidigung“, Berlin, 29-30 Nov. 2018.

Shmueli, Deborah, Ozawa, Connie, and Kaufman, Sanda. “Public Engagement in Preparation of Impending Hazards: addressing the challenge”. American Association of Geographers (AAG), New Orleans, Louisiana, 2018

Shmueli, Deborah, Ozawa, Connie, and Kaufman, Sanda.” Preparing and Responding to Disasters: a planning process for integrating public participation and expert input”. ACSP, Buffalo, New York, 2018

Shmueli, Deborah. Presentation of the National Knowledge and Research Center for Emergency Readiness as head of Center. Conference: 10 years to the establishment of the National Emergency Management Authority and Inauguration of the National Knowledge and Research Center for Emergency Readiness. Binyanai Hauma, Jerusalem, January 2018

Shmueli, Deborah. “Research and Disaster Readiness” – presenting the National for Knowledge and Research Center for Emergency Readiness. Haifa Conference: How Cities prepare for Natural Disasters and Cyber Emergencies, HaNamal, Haifa, 2018

Shmueli, Deborah. “National Knowledge and Research Center for Emergency Readiness – concept and vision”. Nicosia Risk Forum, Nicosia, Cyprus, 2018

Voigt, Stefan. “When Does Terror induce a State of Emergency? And what are the Effects?” Annual Danish Public Choice Society Conference (January 2018, Copenhagen)

Voigt, Stefan. “Emergency Constitutions – Who has them, who uses them, and are they effective?” invited lecture at University of Hong Kong (September 2018)

Voigt, Stefan. “Emergency Constitutions – Who has them, who uses them, and are they effective?” Keynote lecture in 12th CESifo workshop on political economy (December 2018)

## **VI. Proposals Submitted and in Review**

### **I. To Minerva**

**Media, Law & Human Rights in Extreme Conditions**- proposal submitted with Hadassah Academic College Jerusalem to the Minerva-Gentner Symposium call.

**Small project: Legal Aspects of Humanitarian Aid Missions** international conference and a round table discussion- proposal submitted for Equipment/project funds for Minerva Centers in the Social Sciences and the Humanities at the Israeli universities

### **II. To Outside Funding Agencies:**

DIP Pre-Proposal (accepted – full submission pending):

Workgroup on Rightlessness in Comparative and International Law

Principal Investigators: Prof. Gad Barzilai, Prof. Başak Çalı, Dr. Itamar Mann, Prof. Mehrdad Payandeh

## **5. Research Plan for 2019**

### **I. Ongoing PI Initiated Research**

The PIs will continue their low, mid and high resolution study on the rule of law under extreme conditions. The coming year will focus on institutional designs in the framework of the project mentioned in section 1 above.

We plan to continue our work in line with the original Center concept, undertaking important low, mid and high resolution research, but at the same time developing additional methodological tools and conceptual frameworks to tackle the new challenges and developments. More specifically, within the existing framework we plan to focus on:

1. Extending the mid-resolution study to additional countries, combining also non-democracies, and making the results available to decision-makers, the scientific community, and the public in large, in a more interactive and accessible modes.
2. Extending the low-resolution study which focused on constitutions, also to statutory analysis (which encompass significant challenges as unlike constitutions, databases of legislation worldwide are still not complete).

3. Selecting new themes for high resolution studies, focusing mainly on Israel. Among the themes we plan to examine are: the responses to the 'Israeli' refugee crises; institutional structure of decision-making under declared and undeclared extreme conditions, and the legal aspects of preparedness (in cooperation with the new NATIONAL KNOWLEDGE AND RESEARCH CENTER FOR EMERGENCY READINESS) reflected by public as well as private law norms.
4. Further development of our Database: stage II of 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 (natural disasters such as floods, fires, storms and pandemics; socio-economic meltdowns; and national security challenges), as well as additional countries. The system will enable collaboration with authorized affiliates - other researchers and centers – who will be able to use and add data (with explicit permission).
5. To study the notion of the rule of law under extreme conditions in international law, from both a theoretical prism and in practice. **Dr. Itamar Mann, Faculty of Law, University of Haifa, who specializes in international law and has already contributed to the Center projects in recent years, has joined the Center as a PI.** His CV is available by [this link](#).
6. To extend our methodologies to encompass the behavioral approach to law (for example, the differences between behavior under natural extreme conditions and man-made extreme conditions). To promote this goal, **Prof. Dr. Anne van Aaken**, has joined the Center as a PI. Anne is Alexander von Humboldt Professor, Chair for Law and Economics, Legal Theory, Public International Law and European Law within the Faculty of Law at the University of Hamburg, Director of the Institute of Law and Economics. More information about her is available by [this link](#).

## II. On-going Seminars

In 2018-2019 seminar talks will continue. 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](#)”.

## III. 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”**

The mid-resolution study which was the first collective study of the Minerva team was concluded in an international workshop held in Hamburg in March, 2016. A book (lead by Eli Salzberger and Amnon Reichman, with Maya Mark - Post-Doc fellow at the Center) is now in final stages of preparations for publication. 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).