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Editorial

Editorial: Israel: Cry, the Beloved Country; Vital Statistics; Book Review EditorS; In This Issue; In This Issue – Reviews

Israel: Cry, the Beloved Country

Israel, like many other democracies today, is a deeply polarized society. The operating principle of public discourse is typically: 'Art thou for us or for our adversaries' (Joshua 5:13). Whether it is the never-ending Arab-Israeli conflict and the 55-year Occupation of the Territories (even how to call them both is a divisive issue), or questions of church and state resulting from Israel's self-definition as Jewish and democratic, one could predict with unerring certainty who one would find on either side of the verbal, political and at times physical barricades. In recent times, the figure of Mr Netanyahu and the legal woes he is facing have deepened the polarization.

It is thus telling that, in the recent eruption in response to Netanyahu's new government plan to reform the judicial system, not only have the protesters' numbers risen to an unprecedented scale but one finds, both in Israel and in the Jewish communities around the world, prominent figures and many individuals – card-carrying Zionists of a centre/right conviction – who one would never expect to see on the anti-government side of the current barricade. Even the former President of the state, a lifelong Likud member, alongside many others of the Menachem Begin old guard, have publicly expressed deep concerns. In the international arena, too, long-time friendly and supportive states are shifting sides.

It should not come as a surprise. For there is a widespread (and not entirely unfounded) perception that the government plan, outlined by the newly-minted Minister of Justice, is the Israeli January 6th. The widespread revulsion in the US and elsewhere towards the January 6th insurrection was not fuelled by the unruliness or even the violence of the events. It was fuelled by what was perceived as an assault on the core values and institutions of American democracy. And that same feeling, shared even by staunch 'Israel for better or worse' defenders of the state, is present in the objections to the proposed reform: an assault on the core values and institutions of Israeli democracy. (One would be remiss in thinking and writing about democracy in Israel without facing the serious and vexed issues, predating these reforms, resulting from the long-term Occupation by Israel of Palestinian territories. But that will have to wait for another day.)

As a measure of the state of alarm, in an unusual step for a sitting Chief Justice, the current incumbent recently gave a speech in a professional forum that was broadcast live on Israeli media. She expressed the views of many, including some of the most trenchant and sober critics of the Court: what is masquerading as a 'Reform' plan is, both in intention and effect, a plan to shatter some of the most fundamental foundations of the separation of powers and the rule of law, without which no state can legitimately claim to be democratic.

For lay persons, the four principal suggested reforms (and there are more to come, it has been announced) may seem innocent enough: making all judicial appointments a privilege of the government in power (well, isn't that the case in the US and elsewhere?); requiring a supermajority of judges to strike down parliamentary legislation (not, on its face, an unreasonable proposal), but then also allowing the Parliament to override – even by a majority of one – constitutional decisions of the Court (does Canada or Finland not have similar override provisions?; and, finally, prohibiting the judiciary from using the criterion of 'unreasonableness' or even extreme unreasonableness when scrutinizing actions of ministers and public servants (isn't that a mere technical issue, grist to the mills of law professors?).

So what about this 'whataboutism' argument that there are parallels to the proposed measures in well-respected democracies? The Princeton scholar Kim Scheppele, discussing Hungary, has characterized this argument as a kind of Frankenstein syndrome. You take a leg from this country, a hand from another and a nose from yet another, and you end up with a creature that exists nowhere else and would be acceptable in no country that claims democratic credentials.

The cumulative effect of the planned reform is to dismantle fundamental features of the separation of powers and of checks and balances: by removing various judicial and legal checks designed to prevent a legislature, even if democratically elected, from establishing a 'tyranny of the majority' and allowing the executive branch to take measures – employing the police, the taxman and all other administrators – which are subject to fatally weakened judicial scrutiny. Particularly at risk are protections of individuals and minority rights.

Rules alone do not define a democracy: political culture and democratic normative habits play an important role too. The proposed deep politicization of all judicial appointments, compromising directly or indirectly judicial independence, is all the more alarming in the eyes of the critics for its implications in the governing coalition. This particular government is dependent on partners, who hold key sensitive ministries, and whose (overtly racist and supremacist) agenda and declared policies are way beyond the political consensus. Indeed, these partners' policies were anathema to all Israeli governments, both left and right, as recently as two or three years ago. They will now have a free, or freer, hand to pursue their agenda, in some instances perhaps irreversibly. The direct attacks from the highest echelons of the government on senior civil servants, such as the Attorney General, are already evidence of this licence.

The deep roots driving the judicial reforms is the sense that the centre-left, having lost power in the democratic arena, is imposing its values through the legal system with judges acculturated within that liberal worldview and dominated by the non-Sephardi elites. And make no mistake, the Israeli legal and judicial system, like many others, is far from perfect. Its critics from the left and right have been in no shortage, both in academia and the legal establishment itself. To give but a few examples, the very basis of judicial review of legislation in a state that has no formal constitution is problematic. In addition, the range of issues that the Israeli Supreme Court considers as justiciable is wider than anywhere else, involving it in deciding issues better left to the political arena. The composition of the Court in identitarian and ideological terms does not adequately reflect Israeli multicultural society. And the list does not end here. All these criticisms and others are not without merit. There is, thus, much to fix. A judicious and balanced reform of the judicial system would have broad support.

But the scorched earth approach reflected in the current proposals is no less, and perhaps even more, perilous than a mob storming a parliament. The fact that enemies of Israel (and there are many) will jump on the bandwagon should not prevent lovers and supporters of the state from raising their voice.

JHHW

Vital Statistics

It is an annual custom for us to publish in the first issue of the year the statistics on manuscript submission, acceptance and publication from the previous year. Not only is it of interest to us as Editors and you as readers to note any shifts in submission and publication trends, but it is also important to us that we maintain a good degree of transparency in relation to our authors and readers.

In 2022, we were (happy) 'prisoners' of our mailbox – the pool of articles submitted to EJIL – even more than in many previous years as we published very few commissioned articles (just on 5 per cent of the total number of articles published). This means that the statistics for our 2022 volume speak almost entirely of the contents of our 'mailbox', the unsolicited manuscripts delivered through our online submission system or in response to a call for papers (as was the case for the Inequalities Symposium published in the first issue of the year).

Here then are the 2022 EJIL statistics for manuscripts submitted, accepted and published according to region, language and gender. We see no major deviations or changes in submission trends from recent years. We know where we would like to see differences in the future: we would welcome more submissions from regions that are underrepresented in Table 1. The percentage of submissions by women remains fairly constant (Table 3), although we see a higher acceptance rate for 2022 (41% compared to 31% in 2021). We are happy with the fact that the large majority of submissions as well as accepted and published articles come from non-English speaking countries (Table 2): whilst most authors may choose

Table 1: Regional origin (in percentages of total)

	All submissions	Accepted articles	Published articles
Europe	43	57	51
United Kingdom	14	20	19
Oceania	4	4	3
Africa	2	0	2
Asia	27	15	15
South America	1	0	2
North America	9	4	8

Table 2: Linguistic origin (in percentages of total)

	All submissions*	Accepted articles**	Published articles **
English-speaking countries	32	27	31
Non-English-speaking countries	68	73	69

* Number of submissions; ** Number of authors

Table 3: Gender (in percentages of total)

	All submissions*	Accepted articles**	Published articles **
Male	63	59	62
Female	37	41	38

* Number of submissions; ** Number of authors

to write for EJIL in English, the journal is written in a more linguistically diverse world.

SMHN and JHHW

Book Review EditorS

Christian Tams has been EJIL's Book Review Editor since 2018. In that work, he has been masterfully assisted by Gail Lythgoe. In recognition of her significant intellectual contribution to book reviewing in EJIL, Gail has now become Co-Editor of the Book Review section.

SMHN and JHHW

In This Issue

This issue, and this volume, open with the EJIL Foreword by *Antony Anghie*. Anghie walks us through the long march of Third World Approaches to International Law (TWAIL) scholarship and offers a sweeping, systematic and personal account of

TWAIL's evolution and its restoration and rethinking of international law. Looking towards the future, Anghie argues that TWAIL not only concerns the Third World but also aims at addressing historical, present and new forms of inequality and suffering in the world, with the goal of achieving global solidarity and justice.

In our Articles section, *Anne Saab* contributes a critique of the discourse of fear invoked in international human rights law to frame climate change. While fearful representations of climate change are justified, Saab argues that such discourses have the adverse effects of generating fatigue and denialism and concealing questions about agency and responsibility.

In the next section, we commence a year-long Symposium, titled 'Re-Theorizing International Organizations Law'. This Symposium, convened by *Devika Hovell, Jan Klabbers and Guy Fiti Sinclair*, is a sequel to the Symposium on Theorizing International Organizations Law, published in EJIL issue 31:2 in 2020. As the call for papers at the origins of the present symposium reveals, the editors take up the challenge to bring to light reconsiderations, hidden gems and new perspectives in international organizations law. Following the introduction by the organizers, the first instalment of the Symposium contains two articles. The first one, by *Dimitri Van Den Meerssche*, critically explores the legacy of Anne-Marie Leroy at the World Bank. Van Den Meerssche identifies a paradigm shift of professional practices of World Bank lawyers instilled by Leroy, a shift from concerns over legality and accountability to informed risk-taking. He argues that the new mode of lawyering driven by the 'risk appetite' deformalizes international organizations law.

The second article in this Symposium is a contribution by *Fernando Lusa Bordin*, focusing on Finn Seyersted. Seyersted's work is commonly cited in international organizations law literature but mostly in a pro forma manner. Revisiting Seyersted's contribution and legacy, Bordin shows that Seyersted's 'objective theory' has been largely vindicated in practice and explains the conceptual and methodological shortcomings of Seyersted's work that have contributed to his limited influence.

Our Roaming Charges photograph in this issue takes us to a wall in Singapore, suggesting that there are as many kinds of fashion as there are 'contemporary women'.

The issue continues with the rubric A Fresh Look at Old Cases. *Sarah Lattanzi* zooms in on the *Commission v. the United Kingdom* case before the Court of Justice of the European Union (CJEU) and analyses the CJEU's engagement with the *travaux préparatoires* of the Euratom Treaty. Delving into the treaty archive, Lattanzi shows that while the CJEU's reconstruction of the drafting history is incomplete, the Court is innovative in treating the *travaux* as offering evidence to guide treaty interpretation rather than presenting clear outcomes of interpretation.

The last section in this issue is dedicated to the European Society of International Law (ESIL), reflecting the special, collaborative relationship between ESIL and EJIL. This ESIL Corner focuses on the Society's 17th Annual Conference, dedicated to 'In/Exclusiveness of International Law', convened in Utrecht, in September 2022. Organizers *Seline Trevisanut*, *Machiko Kanetake* and *Cedric Ryngaert* reflect on the organizational process, the choice of the theme and the outcome of the conference. *Tendayi Achiume* and *Namira Negm*'s remarks stem from, respectively, the inaugural

and concluding panels. The section concludes with *Alfred Soons*' speech at the welcome reception, which connects the venue with the theme of the conference.

The Last Page resonates with some aspects of the opening article, the Foreword, with a poem by the Nobel-winning Indian author *Rabindranath Tagore*, who describes his hope of freedom for his country. 'Freedom from fear', he exhorts, 'is the freedom I claim for you my motherland!'.

WC

In This Issue – Reviews

Our review section in this issue features two review essays and a regular review. In her essay, *Mavluda Sattorova* engages with three books dealing with international investment issues that arise during armed conflict. Sattorova invites us to understand the corporation as victim, contributor, beneficiary, perpetrator and accomplice of, and in situations of, conflict. Tracing the law's 'troublesome origins, biases and complicities', she unveils a research agenda that tackles questions surrounding the extensive protections for foreign investors and continuing lack of corporate accountability.

Next up is *Cait Storr*'s review essay on 'that little book' referring to Jennings' 1963 *The Acquisition of Territory in International Law*, recently republished by Manchester University Press. Storr offers an overview of how the law relating to territory has aged and argues that 'the work is a prism that refracts the world of early 1960s international law'. This is a deft and insightful essay that observes the 'basic paradox at the heart of international law', which is the universalization of the white liberal capitalist European expert.

The regular review is *Matthias Goldmann*'s review of Bénédicte Savoy's *Afrikas Kampf um seine Kunst. Geschichte einer postkolonialen Niederlage* (now also available in English, as *Africa's Struggle for Its Art: History of a Postcolonial Defeat*). We are always glad to feature reviews of works in languages other than English, but this is an especially timely review of a book by an art historian of narratives surrounding the original looting of works of art from Africa, and contemporary calls for their restitution. Goldmann connects this discourse with debates surrounding the New International Economic Order and the importance for postcolonial nations to reclaim their cultural heritage in international law.

GCL and CJT