

## ***International Law and the Holocaust: A Historical Survey***

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How could, and how did, international law deal with such exceptional phenomenon as the Holocaust? And, conversely, what imprint did the Holocaust leave on international law as it developed after 1945? Is international law today better equipped, as a result, to deal with genocide and mass atrocity? The course seeks to answer these and similar questions.

Designed for non-lawyers, the course begins with a philosophical inquiry about the limits of law—perhaps any law, but international law in particular—to contain, deal or come to terms with ultimate evil. This is followed by a survey of the reach, content, and focus of international law before 1939. Here we will ponder on the nature of international law in the age of nationalism, on international minority protection, the League of Nations, the Laws of War, and on early international trials. All this will also facilitate our acquaintance with basic concepts of international law and legal thought.

The course proceeds to examine how the limits of international played out during the Holocaust, and how these limits shaped wartime plans and designs for the postwar world. It looks first at Nuremberg and its legacy. Next, it surveys other postwar developments in international law. Here we look at the advent of human rights in the Universal Declaration of Human Rights, the reform of the laws of war in the 1949 Geneva Conventions, the making of the Genocide Convention, and the design for international peace and security contained in the United Nations Charter. In each case, we shall critically assess the extent to which postwar legal reforms can be attributed to the Holocaust rather than other factors and postwar developments (*e.g.* Cold War, decolonization).

The course then looks at additional types of Holocaust trials: national trials, trials seeking retribution or reparations and trials about historical truth. Through the focus on victims, we will discuss the theories and practice of transitional justice. The course also surveys recent developments in international criminal law—especially the establishment of the International Criminal Court—in the last two decades. By way of conclusion, the course critically reengages the concept of genocide and its utility in contemporary international law.

### **Meeting 1: Preliminary Inquiries** (March 7)

#### **Reading**

Jan Klabbers, *International Law* (2013) 3-40, 67-72, 88-90, 107-123

Thomas Buergenthal, *International Law and the Holocaust* 28 October 2003,  
<http://www.usmmm.org/m/pdfs/20050428-buergenthal.pdf>

### **Meeting 2: International Law in the Interwar Period** (March 14)

#### **Reading**

*Oppenheim's International Law* (Vol.I, 3rd ed., 1920) 14-19

Mark Lewis, *The Birth of the New Justice: The Internationalization of Crime and Punishment 1919-1950* (2014) 14-26

Howard B. Calderwood, 'The Proposed Generalization of the Minorities Regime', 26 *Am. Pol. Sci. Rev.* 1088-1098 (1934)

Carole Fink, *Defending the Rights of Others: The Great Powers, the Jews, and International Minority Protection, 1878-1938* (337-358)

*Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land*, 18 October 1907: Articles 2, 4 and Regulations 42-46 (<https://www.icrc.org/ihl/INTRO/195>)

### **Meeting 3: Early and Late Responses to the Holocaust: From Bernheim to Nuremberg (March 21)**

#### **Reading**

[Greg Burgess, The Human Rights Dilemma in Anti-Nazi Protest: The Bernheim Petition, Minorities Protection, and the 1933 Sessions of the League of Nations](https://www.academia.edu/20240407/The_Human_Rights_Dilemma_in_Anti-Nazi_Protest_The_Bernheim_Petition_Minorities_Protection_and_the_1933_Sessions_of_the_League_of_Nations) [https://www.academia.edu/20240407/The\\_Human\\_Rights\\_Dilemma\\_in\\_Anti-Nazi\\_Protest\\_The\\_Bernheim\\_Petition\\_Minorities\\_Protection\\_and\\_the\\_1933\\_Sessions\\_of\\_the\\_League\\_of\\_Nations](https://www.academia.edu/20240407/The_Human_Rights_Dilemma_in_Anti-Nazi_Protest_The_Bernheim_Petition_Minorities_Protection_and_the_1933_Sessions_of_the_League_of_Nations))

Arieh Ben Tov, *Facing the Holocaust in Budapest: The International Committee of the Red Cross and the Jews in Hungary, 1943-1945* (1988), 72-86

Michael R. Marrus, 'A Jewish Lobby at Nuremberg: Jacob Robinson and the Institute of Jewish Affairs', 1945-1946, 27 *Cardozo Law Review* 1651-1665

Dirk Moses, 'Raphael Lemkin, Culture, and the Concept of Genocide,' in Donald Bloxham & Dirk Moses, eds, *The Oxford Handbook on Genocide Studies* (2010) 19-41

*Constitution of the International Military Tribunal*, Arts.13-14, (<http://avalon.law.yale.edu/imt/imtconst.asp>)

### **Meeting 4: Redemption? (Jewish International Lawyers after the Holocaust and) the Reform of International Law (March 28)**

#### **Reading**

Mark Lewis, *The Birth of the New Justice: The Internationalization of Crime and Punishment 1919-1950* (2014) 150-180

Mark Mazower, 'The Strange Triumph of Human Rights, 1933-1950', 47 *The Historical Journal*, (2004) 379-398

Nathan Feinberg & Jacob Stoyanovski, 'Introduction', 1 *Jewish Y.B. Int'l L.* (1948) v-vi.

R. Giladi, 'Not Our Salvation': *Israel, the Genocide Convention, and the World Court 1950- 1951*, 26(3) *Diplomacy & Statecraft* 473-493 (2015)

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