

International Law and the Holocaust:

A Historical Survey

Syllabus

Dr. Rotem Giladi

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rotem.giladi@helsinki.fi

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? Through examination of the life, work, and actions of Jewish international lawyers, the course seeks to answer these and similar questions.

Designed for non-lawyers, the course begins with 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 explore the advent of human rights in the 1948 *Universal Declaration of Human Rights*, the reform of the laws of war in the 1949 *Geneva Conventions*, the making of the 1948 *Genocide Convention*, early international criminal law initiatives and the design for international peace and security contained in the *United Nations Charter*. In these inquiries, our focus is the wartime and postwar Jewish imagination: our focus, that is, is on individual Jewish international lawyers – and on Jewish organisations engaged in international law advocacy. What role did individual Jewish jurists (such as Hersch Zvi Lautepacht, Raphael Lemkin, Rene Cassin, or organizations such as the American Jewish Committee or the World Jewish Congress) assign international law before, during and after the holocaust? What role did they play in the postwar reform of international law? And what is the legacy of their effort?

Meetings 1-2: Preliminary Inquiries

Reading

1. Jan Klabbers, *International Law* (2013) 3-40, 67-72, 88-90, 107-123
2. Thomas Buergenthal, *International Law and the Holocaust* 28 October 2003, <http://www.ushmm.org/m/pdfs/20050428-buergenthal.pdf>

Meetings 3-4: International Law in the Interwar Period

Reading

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

2. Mark Lewis, *The Birth of the New Justice: The Internationalization of Crime and Punishment 1919-1950* (2014) 14-26
3. Howard B. Calderwood, 'The Proposed Generalization of the Minorities Regime', 26 *Am. Pol. Sci. Rev.* 1088-1098 (1934)
4. Carole Fink, *Defending the Rights of Others: The Great Powers, the Jews, and International Minority Protection, 1878-1938* (337-358)
5. 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: **Please read** Articles 2, 4 and Regulations 42-46 (<https://www.icrc.org/ihl/INTRO/195>)

Meetings 5-6: Early and Late Responses to the Holocaust: From Bernheim to Nuremberg

Reading

1. 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
2. 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
3. Michael R. Marrus, 'A Jewish Lobby at Nuremberg: Jacob Robinson and the Institute of Jewish Affairs', 1945-1946, 27 *Cardozo Law Review* 1651-1665
4. 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
5. *Constitution of the International Military Tribunal*. **Please read** Articles 13-14, (<http://avalon.law.yale.edu/imt/imtconst.asp>)

Meetings 7-8: Redemption? (Jewish International Lawyers after the Holocaust and) the Reform of International Law

Reading

1. Mark Lewis, *The Birth of the New Justice: The Internationalization of Crime and Punishment 1919-1950* (2014) 150-180
2. Mark Mazower, 'The Strange Triumph of Human Rights, 1933-1950', 47 *The Historical Journal* (2004) 379-398
3. Nathan Feinberg & Jacob Stoyanovski, 'Introduction', 1 *Jewish Y.B. Int'l L.* (1948) v-vi.
4. R. Giladi, 'Not Our Salvation': Israel, the Genocide Convention, and the World Court 1950-1951, 26(3) *Diplomacy & Statecraft* 473-493 (2015)

Meeting 9: Final Perspectives

Reading: to be assigned.