

Israel on Trial Leadership Course 2022

# Session 1 - The UN, international law and issues of legitimacy

23 September 2021

Dr. Dov Jacobs: Human Rights and International Criminal Law

Law is intertwined with politics

Talking about “abuse of international law” is itself founded on a biased premise: that law is good, apolitical and moral, and politics come in and “abuses” it. However, law is neither inherently good nor bad. It is, rather, a tool in the hands of various political stakeholders and a continuation of politics by the means of law. The interrelation between law and politics is therefore unavoidable and this is the context in which to understand that interdependence.

Human Rights and International Law: a shift in the NGO discourse

The link between politics and the human rights discourse dates back to ‘law of war’ theories with the example of Francisco de Vitoria theorizing that natural law applies to everyone, including the indigenous people, in the context of the colonization of Latin America by the Spanish.

The language of human rights has always hidden other interests and motives.

A shift in the NGO discourse is important to identify and understand how the human rights discourse has been prevalent since the 1970s: a shift from reference to morality to reference to violations of international law.

International Criminal Law, the International Criminal Court and the notion of double standards

International Criminal Law (ICL) (dealing with war crimes, genocides, crimes against humanity, crimes of aggression) and the idea of double standards has been part and parcel of ICL from the very beginning, since it implies the notion of the victor’s justice. The example of the Nuremberg Trial is striking: only the Nazis were prosecuted and the allies’ war crimes in Germany were not even considered. It was the same for the International Criminal Tribunal for Rwanda which only prosecuted the Hutus. It is important to keep in mind this issue of the inherent selectivity of international criminal justice when trying to devise strategic litigation choices in particular situations where international criminal courts intervene.

(Recommended reading: next page)

## Recommended reading

- Koskenniemi, Martti, "The Politics of international Law", 1 EJIL (1994); <http://ejil.org/pdfs/1/1/1144.pdf>
- Interview: Martti Koskenniemi on International Law and the Rise of the Far right; <http://opiniojuris.org/2018/12/10/interview-martti-koskenniemi-on-international-law-and-the-rise-of-the-far-right/>
- [Joining-Rome-Statute-Matters.pdf \(icc-cpi.int\)](#)
- [UICCEng.pdf \(icc-cpi.int\)](#)
- [The ICC's controversial ruling on "Palestine" – pushing the boundaries of law – thinc.](#)
- [The Response of the ICC Prosecutor to the Amici Curiae – An Analysis – thinc.](#)
- [ICC "Situation in Palestine" – the Prosecutor's Unbalanced Approach – thinc.](#)

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