

# The post-Holocaust Development of Legal Remedies as a Learning Process

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## Working Paper

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### Holocaust Remedies and Modern Human Rights Law

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This article briefly discusses the profound influence of the Holocaust on public international law. Among others, it includes a short description of the development of international human rights treaties and the significance of the Nuremberg Trials.



## Remark

This paper was written by Lilach Rosen, a student of the project-related international Summer School organized by the Chair of Public Law and International Law (Prof. Dr. Thilo Marauhn) in 2023 as part of the project funded by the Foundation Remembrance, Responsibility and Future (EVZ) and the Federal Ministry of Finance (BMF) on “The post-Holocaust Development of Legal Remedies as a Learning Process” (“post-Holocaust Remedies” project). The work and results of the Summer School participant are reproduced here almost unedited, which is why there may be deviations in the citation style, for example.







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*“Remember the past, live the present, believe in the future.”*

*(Aba Kovner)*

## A. Introduction

The Holocaust stands as one of the most devastating events in human history. The atrocities that occurred during this time spurred a global transformation in legal matters, particularly regarding the protection of human rights. In this work, I will discuss the profound influence of the Holocaust on international law. This exploration will cover its historical development, briefly examine international treaties, delve into the significance of the Nuremberg Trials, and assess the contemporary landscape. The term “Holocaust” has its origins in the Bible and signifies turmoil and destruction. In the context of our discussion, it refers to the systematic genocide of the Jewish population by Nazi Germany and its allies.<sup>1</sup> Their goal was the complete extermination of the Jewish people, ultimately culminating in the tragic loss of six million lives. This mass extermination was driven by an anti-Semitic ideology rooted in “race theory”. This belief system facilitated the persecution and slaughter of not only Jews but also other groups, including disabled people, Romani people (often referred to as “gypsies”), those opposing the regime, and more.<sup>2</sup>

From 1933 to 1941, as the Nazis ascended to power, they instituted a policy that consistently and increasingly stripped away and violated the rights of Jews. Part of this policy included the seizure of Jewish property. Many Germans, including members of the Nazi Party, took over Jewish-owned businesses, properties, factories, and other assets. Jews were forced to wear a yellow star, segregated from the rest of the population, banned from certain public spaces, and subjected to various other repressive actions. This cruel policy which began in Nazi Germany was later adopted by several European states.<sup>3</sup>

The Jewish community found itself forced into a corner and had no refuge; no one was spared by the Nazis. Their main objective was the utter eradication of the Jewish community, and the sole “offense” of the victims was their Jewish background. Between 1941 and 1945, the Nazis and their collaborators relentlessly pursued this cruel objective.<sup>4</sup>

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<sup>1</sup> Cf. Yad Vashem. Shoah Resource Center. Holocaust.

<sup>2</sup> See Yad Vashem. The World Holocaust Remembrance Center. What was the Holocaust? Overview – How Vast was the Crime.

<sup>3</sup> Cf. Yad Vashem. The World Holocaust Remembrance Center. Nazi Germany and the Jews 1933-1939 – Antisemitism.

<sup>4</sup> Yad Vashem. The World Holocaust Remembrance Center. Rise of the Nazis and Beginning of Persecution.



## B. Holocaust and Human Rights Law

After the Holocaust, the atrocities committed shocked the international community and triggered a strong call for international commitment to prevent such a tragedy from happening again anywhere. The body of law that currently encompasses all matters related to human rights is a direct consequence of the impact of the Holocaust. The Holocaust played a pivotal role in reshaping the existing legal framework within the international system concerning human rights.

### I. Nuremberg Trials

In 1945, for the first time in history, a trial for war crimes against humanity took place before the International Military Tribunal.<sup>5</sup> There was already a call after the First World War to prosecute the then-German emperor Kaiser Wilhelm II as a war criminal. Article 227 of the Treaty of Versailles provided for the establishment of an international tribunal, and the German Reich had committed itself to hand over the Kaiser in 1919. However, the emperor fled to the Netherlands, which refused to hand him over to the Allies.<sup>6</sup>

The Nuremberg Trials transformed the legal landscape and established a precedent whereby individuals could be prosecuted for war crimes, crimes against humanity, and genocide. This precedent laid the groundwork for subsequent trials in international courts and the development of treaties.<sup>7</sup>

### II. The Genocide Convention of 1948

“Never again” – The Holocaust served as the catalyst for the establishment of legal standards concerning genocide. Following the Holocaust, the world witnessed the atrocities committed against the Jewish people. Consequently, in 1948, the United Nations adopted the first treaty, known as the Genocide Convention. This treaty unequivocally declares genocide to be a crime under international law (Article I). It provides a precise definition of genocide in Article II and obliges states that have ratified the treaty to take measures to prevent genocide, prosecute those responsible for these heinous acts, and impose suitable penalties on the perpetrators. The primary aim of the treaty is to prevent future atrocities like the Holocaust from occurring.<sup>8</sup>

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<sup>5</sup> Sambells and Randall, 2021.

<sup>6</sup> Steenhard, 2014.

<sup>7</sup> Kibler, 2019.

<sup>8</sup> Cf. United Nations. Office on Genocide Prevention and the Responsibility to Protect.



### III. Universal Declaration of Human Rights of 1948

Prior to 1940, the concept of “human rights” was primarily found in literature.<sup>9</sup> After the Holocaust, however, the entire world was confronted with the horrors caused by Nazi Germany, which systematically denied the basic human rights of Jews and other victim groups. The international community recognized the imperative need to safeguard these rights.<sup>10</sup> In 1948, the UN General Assembly adopted the non-legally binding Universal Declaration of Human Rights (UDHR), which opened the stage for the adoption of legally binding human rights conventions that were subsequently agreed upon.<sup>11</sup>

It is clear that the UDHR was profoundly influenced by the horrors of the Holocaust, as the term “human rights” carries an emotional and profound resonance closely linked to that tragic event.<sup>12</sup> The UDHR comprises 30 articles delineating the rights of all individuals, encompassing fundamental rights such as freedom, security, the right to life, the prohibition of discrimination, and the prohibition of torture, among others.<sup>13</sup> These rights are extended to every person, irrespective of their identity. This commitment to protecting the human rights of every individual arises in response to the actions of the Nazis, who targeted and murdered people based on their race, religion, and nationality. Consequently, the purpose of the UDHR is to guarantee these rights to every person and to prevent harm to various groups, particularly minority groups.<sup>14</sup>

### IV. The Impact of the Holocaust on the Development of Human Rights

As previously mentioned, the disturbing atrocities of the Holocaust triggered numerous developments on the international stage and in the legal field. In addition to what has already been discussed, one can observe significant implications for the advancement of human rights. A notable example is the 1951 Refugee Convention, which emerged in the wake of the First and Second World Wars when countless individuals were forced to flee their homelands and seek refuge. These displaced individuals encountered numerous challenges along the way. Consequently, this convention was established to provide the minimum standards aimed at safeguarding the rights of those who fled their countries due to wars, conflicts, persecution, murder, and similar circumstances. It also outlines the obligations of states to provide protection and asylum to such individuals.<sup>15</sup>

Furthermore, International Holocaust Remembrance Day has been established to commemorate the lives of the six million Jews who died during the Holocaust. However, another significant purpose of this Memorial Day is to educate and promote the study of the Holocaust. The objective is to draw lessons from history and endeavor to prevent the recurrence of such hate crimes in the future.<sup>16</sup>

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<sup>9</sup> Morsink, 2019.

<sup>10</sup> United Nations. Universal Declaration of Human Rights. History of the Declaration.

<sup>11</sup> United Nations. Universal Declaration of Human Rights.

<sup>12</sup> Morsink, 2019.

<sup>13</sup> United Nations. Universal Declaration of Human Rights.

<sup>14</sup> Welch, 2015.

<sup>15</sup> UNHCR. About UNHCR – The 1951 Refugee Convention.

<sup>16</sup> UNESCO. International Day of Commemoration in Memory of the Victims of the Holocaust.



## C. Conclusion

The Holocaust serves as a stark reminder of one of the darkest chapters in human history, a consequence of hatred, unchecked power, antisemitism, and discrimination. The Holocaust has left an indelible mark on our collective memory, serving as the foundation for the establishment of laws designed to safeguard human rights, with the unwavering goal of preventing such atrocities from ever happening again.

Today, the international community upholds the principles of human rights without discrimination, acknowledges personal accountability for war crimes against humanity, upholds human dignity, combats discrimination, and provides protection to refugees, among other critical measures. All these efforts are aimed at ensuring that the horrors endured by the Jewish people during the Holocaust are never repeated.



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## Project “The post-Holocaust Development of Legal Remedies as a Learning Process (Post-Holocaust Remedies)”

The research project “The post-Holocaust Development of Legal Remedies as a Learning Process (Post-Holocaust Remedies)” is carried out by the Chair for Public Law and International Law, Justus Liebig University (JLU) Giessen in cooperation with scholars from Reichmann University in Herzliya/Israel and the Instituto Colombo-Alemán para la Paz (CAPAZ) in Bogotá/Colombia. The project, conducted by Prof. Dr. Thilo Marauhn and Dr. Ayşe-Martina Böhringer, began in late summer 2022 and is dedicated to the in-depth analysis of compensation law in connection with the Holocaust and the legal framework that has been developed since 1945 for dealing with the consequences of Nazi crimes.

The project, funded by the Foundation Remembrance, Responsibility and Future (EVZ) and the Federal Ministry of Finance (BMF) from August 2022 until June 2024 as part of the Education Agenda NS-Injustice, focuses on the critical analysis of the development of political and legal instruments in dealing with the consequences of the Nazi atrocities. The following questions, among others, are addressed: After the atrocities of the Holocaust, what lessons can be learned from the compensation law measures taken to date? Which instruments are suitable for legal remedies? An important main feature of this project is the international summer school, which offered students from Israel, Colombia and Germany the opportunity to take an in-depth look at the legal process of addressing Nazi crimes. The program covered two weeks each at Reichmann University in Herzliya, Israel and JLU Giessen and included a variety of courses and excursions to relevant institutions to ensure a practice-oriented perspective. The summer school took place from 18.08.2023 to 14.09.2023. This unique way of teaching the subject of this project should also inspire future generations to engage in research-based learning, practice-oriented knowledge transfer and academic responsibility.

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