Politics, International Justice, and the Responsibility of Jews to Behave Morally and Protect Their Interests

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The recent Iron Swords War has highlighted many flaws with the political order in general and the international criminal justice system in particular. Attempts to indict Israeli leaders in the International Criminal Court alongside preposterous accusations of genocide have led many to conclude that the politicized system is built on a (anti-Semitic?) bias against Israel. In this article, I hope to show how these well-founded concerns were already raised by rabbinic scholars in the earliest days of the League of Nations. I further argue that these problems have continued to confound many Jews who were otherwise tempted to support a system that promised a new world order.

Jewish Internationalists and Dreams of a New World Order

On November 12, 1917, while World War I continued to rage, R. Avraham Yitzchak Hakohen Kook sent a letter to his son R. Tzvi Yehuda: God's light has finally pierced into our dark world. The redemption has begun.[1]

What inspired this proclamation? Ten days earlier, the British foreign minister issued the Balfour Declaration establishing support for the "establishment in Palestine of a national home for the Jewish people." The British soon afterward conquered Palestine from the Turks, ending 400 years of Ottoman control of the Holy Land and raising hopes of Zionists around the world.

R. Kook had been waiting for this moment. Now dwelling in London, he had been delivering Bible-laced sermons praising British patriotism and their fight against Germany.[2] With the declaration of the world's great power, he wrote to Seidel, the messianic process has begun! The Lord,

who is “master of battles and sprouts salvations,” had delivered.[3] It’s true, he conceded, the bloody war had revealed the depravity of modernity and its European delegates. God, however, had now made it possible for people of uplifted spirit to bring about a new era.

A few years later, the Balfour Declaration was incorporated by the newly established League of Nations into its broad mandate system that would govern territories of collapsed empires. Belgium controlled Rwanda and Burundi; the French oversaw Syria and Lebanon; and the British governed Palestine and Transjordan, to name a few prominent examples. The goal of the mandate system, at least as proclaimed by its founders, was to end the colonialist era of exploitation. At the base level, this would entail protecting the rights of the local inhabitants through a system of international law. More ambitiously, the mandate system would facilitate the founding of new states. Concomitantly, various treaties were enacted to ensure minority rights in all nation-states, new and old. Taken together, a new world order was sought to preserve peace between states and prevent persecution of minorities within them.

Many Jews, including some avowed Zionists, were deeply involved in these movements.[4] One such figure was a rising academic star and legal activist, the Polish-born Hirsch Tzvi Lauterpacht (1897–1960). In the days after World War I, Lauterpacht had witnessed the horrible November 1918 pogrom in Lemberg, a contested city within the newly independent Poland. The war was over, yet Jews continued to be slaughtered.[5]

As borders were getting drawn anew across the globe, Lauterpacht dedicated his life to providing protections for minorities in these new states. He believed that Britain could use its imperial power to bring lasting peace, including support for both Jewish nationalism in Palestine and rights for Jews and other minorities throughout Europe.[6] Lauterpacht would become a leading law professor at Cambridge and later a judge on the International Court of Justice. He is credited with establishing that international law prohibited territorial conquest through warfare; that’s precisely the expansionist “discretionary wars,” to use rabbinic terms, that Kook wanted to end. Lauterpacht also helped establish that those who waged aggressive warfare could be placed on trial. His advocacy directly led to the Nuremberg trials against Nazi figures after World War II. This was a deeply personal case for Lauterpacht. His parents, siblings, and extended family were all killed in the Holocaust.[7]

Another prominent international jurist who escaped Europe before the war and worked with Lauterpacht on the Nuremberg trials was Jacob Robinson (1889–1977). Robinson was born in a small village in the Russian empire to an Orthodox Jewish family from distinguished rabbinic lineage. Like many others, he sought solutions to the “Jewish problem” after the antisemitic violence in Kishinev and elsewhere. After earning his law degree, he was drafted into the Russian army in 1914. He was captured by the Germans and spent the next three years in eight different German POW camps. Somehow surviving, he returned home to the newly independent Lithuania, where he not only led a Hebrew-language school but was also elected to the Lithuanian parliament. Robinson became a renowned advocate for national minority rights, playing critical advocacy roles in the Congress of European National Minorities and at the League of Nations. Throughout the 1920s, he promoted a “pan-Europa” transnational community that would allow minorities to peacefully live within whatever national borders they found themselves.[8] At the same time, he was also the de facto leader of Lithuanian Zionism. Ben-Gurion even deemed him as “the most important man in Lithuania.”[9]

For many Jews, international governance presented an enticing alternative to pacifism toward achieving the prophetic visions of a new world order. We don’t need to naively declare that violence is never justified. Instead, we can work to create an institutional system that will find alternative methods for conflict resolution. If peace efforts fail, then these bodies will act to ensure that any belligerent aggressors face justice. The world can together agree upon what military actions are acceptable. They will provide direction for moral dilemmas alongside clarity for determining which sides were right or wrong. For many, this was, and is, an alluring vision of prophetic proportions.[10]

Yet could international governance deliver on these high hopes? Could world powers, in fact, now provide justice for the Jewish people and other persecuted groups?

Two Excommunicated Rabbis and the Changing Self-Image of the Jew

In August 1920, a book ban was issued by the leaders of the ultra-Orthodox community of Jerusalem. The author of the prohibited book was none other than Rabbi Abraham Isaac Kook, who had recently returned from London to assume the position of the Chief Rabbi of Jerusalem. Once settled, R. Tzvi Yehuda published his father's major treatise, *Orot* (Lights), which included his reflections on the Great War from Switzerland and his hopes for a new era in international relations.

What raised the ire of his critics to ban this book? R. Kook had equated the spiritual merits accrued by youthful physical training to those gained by piously reciting Psalms or mystical enchantments. This was not the first time R. Kook had aroused controversy for praising the ethos of self-defense. In the first years of the twentieth century, Jews—usually immigrants fleeing from the pogroms in Russia—founded different groups to build character based on physical toil and exercise. "Muscular Jews" could work the land and fight for themselves. Kook wrote enthusiastically about the importance of Jewish self-defense, viewing the phenomenon as "heartwarming."[11] While recognizing that these groups were led by secular Jews, he embraced their efforts. He mourned for two that were killed in 1911 as "holy martyrs," despite the fact that both had abandoned the religious lifestyles of their upbringing.[12] For R. Kook, physical strength was a sign of renewed Jewish vigor to develop the homeland and instill fear in its enemies.

Yet his latest expression of praise for profane labor and physical strength—comparing it to a classic religious act of beseeching God for assistance—was too much for those who viewed the Jewish hero as pious, pensive, and passive. They wanted R. Kook out of Palestine. The controversy quickly spread throughout the Jewish world, with competing images of Jews and Judaism at stake.[13]

Unlike several of R. Kook's apologetic defenders, one of his most strident supporters felt that R. Kook didn't go far enough. What's the benefit, he asked, of simply reciting Psalms as a protective charm or incantation?

> It is unquestionable that to strengthen Jewish boys to enable them to defend themselves against their pursuers (with God's help) is a greater mitzvah (religious deed) than reciting Psalms.… Reciting Psalms is the task of the indolent; calisthenics is the task of the industrious.

Prayer, he added, can have a valuable role, but only alongside self-defense training. He further accused R. Kook's critics of timidity and suggested they instead go back to Europe. Their cowardice was only causing fear among the Jewish residents from antisemitic Arabs, who looked upon diffident Jewish neighbors as "dead meat."[14]

R. Kook's defender, Rabbi Hayim Hirschensohn (1857–1935), knew something about rabbinic bans. He himself had left Jerusalem two decades earlier following controversies over his own publications. Unlike most of the prominent Zionists of this era, Hirschensohn was born in the Land of Israel. His parents were proto-Zionists (*?ovevei Tziyon*) who had immigrated from Pinsk in 1847. They helped develop Jewish settlement in the cities of Safed and Jerusalem before Herzl was even born. The

younger Hirschensohn followed in their footsteps by organizing the acquisition and development of properties around the country. He later became a founding member of the religious Zionist movement, Mizrachi.

As a scholar, R. Hirschensohn aroused the ire of traditionalists in Jerusalem. This was partly because of his outspoken advocacy for reviving Hebrew as a spoken language, including his founding, with Eliezer Ben-Yehuda, of an organization toward that goal. (He and Ben-Yehuda were the first two families to enforce Hebrew-speaking in their homes). He also displayed openness toward analyzing classic rabbinic texts from a critical historical lens. These factors, among others, led to his formal excommunication by the old-school rabbis of Jerusalem. Needing to make a living, Hirschensohn was forced to leave his birthplace.

So, in 1904, the same year that R. Kook immigrated to Jaffa, R. Hirschensohn made it to Hoboken, New Jersey, where he served as a rabbi for the rest of his life. During World War I and its aftermath, he attests, he was deeply engrossed in pastoral work with veterans and their families, for which he received a letter of commendation. R. Hirschensohn remained active in various Zionist organizations and maintained correspondence with the great rabbinic figures in Palestine. Yet he died in relative obscurity, with his writings becoming well-known only in the past couple of decades. His works remain particularly important because in the wake of the horrors of World War I and the excitement of the Balfour Declaration, he wrote several books dedicated to establishing the legal groundwork for a democratic state within Jewish thought, including addressing the dilemmas of war and conquest.[15]

The Jewish Legion and the Hasmonean Spirit of Self-Determination

The 1920 excommunication controversy was not the first time that Rabbis Kook and Hirschensohn had supported Jews taking up arms. Both men had endorsed enlistment during World War I in the so-called Jewish Legion, battalions within the British army composed of Jewish volunteers from England, North America, and other countries to fight in Palestine. They were created upon the initiative of Joseph Trumpeldor and Vladimir Jabotinsky. Trumpeldor was a veteran of the Russo-Japanese War in which he lost his left arm and received four medals of bravery, making him the most decorated Jewish veteran of the Russian Army. Jabotinsky was a Russian writer who made Bialik's poem on the Kishinev pogrom famous by translating it into Russian. More significantly, he had been an organizer of Jewish self-defense organizations and an advocate for minority rights in Europe, seeking to protect the Jewish people with both law and shield.[16]

During World War I, Trumpeldor and Jabotinsky sought British permission for Jews to fight the Ottomans in Palestine. After protracted negotiations, including those of Chaim Weizmann, the Legion finally formed and played a minor role in completing the British conquest of Palestine in 1918. Its fighters included David Ben-Gurion, later Israel's first prime minister; Eliyahu Golomb, the founder of the pre-state Haganah defense force; and Berl Katznelson, a future labor leader.

The Legion did not accomplish much and soon disbanded, yet it transformed the image of the Jew into someone who could fight for himself and his homeland. The chaplain of the Legion was Reverend Leib Falk (1889–1957), who grew up in Boisk and studied in the school of R. Kook and Seidel. In a Hanukka holiday sermon, Falk reflected on the significance of the first Jewish military corps that had fought in nearly eighteen hundred years:

> The whole world was watching [and] were looking on us, but they see now the Maccabean spirit revived, they see now that Israel is not only powerful with his voice, but he has also a mighty arm.... The Jewish soldier upholds now the honour of our nation. The Jewish warrior saved our national honour which was at stake.[17]

While the troops were still in England, R. Kook visited Falk and his men. Previously, R. Kook had opposed the enlistment of yeshiva students (frequently new immigrants from eastern Europe) into the British army because of their inability to maintain a religious lifestyle.[18] Yet he bestowed Jewish Legion fighters with blessings of strength while deeming them as the bearers of the beginning of salvation.[19] Years later, when the Jewish Legion's flag was brought to Palestine for a grand ceremony, R. Kook compared it to the banners that the Israelites used in the desert on their way to conquering the Land of Israel.[20]

Yet it was R. Hirschensohn who penned the most extensive treatise in support of the Legion. Even though Jews were fighting within a foreign army, he nonetheless deemed fighting in Palestine as within the category of an "obligatory war" for the liberation of the homeland. Earlier rabbinic Zionist figures were concerned that military activity may violate talmudic oaths that prohibited the Jews during their exile period from "rebelling against the nations" or "rising up together in force." [21] They thus advocated for a peaceful settlement through land acquisitions. R. Hirschensohn was not deterred by this talmudic prohibition; it applied, in his mind, only to rebellions in foreign lands, not to conquering the Holy Land. This was especially true since the British had recognized the right of the Jews to establish a state in Palestine. This was not treason, but rather a deeply honorable fight by soldiers for their homeland which had been taken from their people centuries beforehand. Most significant about his declaration was the negation of the talmudic impulses against militarism as binding on the Jewish people in the current era. It was a holy deed, in his mind, not just to settle the land, but to fight for it.[22]

A Temple of Peace Without Sacrifices?

Renewed Jewish warfare naturally meant that Jews would need to think about the legacy of biblical warfare. Like R. Kook, R. Hirschensohn sought to neutralize the ethos behind the Bible's total wars, albeit more radically. First, he contended, any remnant of the Canaanite nations has long been lost, thereby making the commandments irrelevant. Second, while the commandment to conquer the land is eternal, the clause to "leave no one alive" among the land's inhabitants was only applicable to Joshua's generation, when such military tactics were necessary to conquer the land and remove the fears of the Israelite people. Once completed, however, no such clause existed; as such, we don't find Kings David or Solomon fighting total wars against the local inhabitants.[23]

Even if we could identify the seven Canaanite nations, he further argued, we would not wipe them out because such behavior is morally unacceptable in our era. "It is prohibited to violate international law that regulates the conduct of war by charter. God forbid that Israel be regarded by the nations as barbaric murderers who violate international law and the norms of civilization."[24] The continued history of biblical warfare—alongside our moral intuitions—proves that this biblical verse was a temporary provision, not a permanent commandment.

Given his embrace of the norms of civilization to reject this biblical model of warfare, one might expect that R. Hirschensohn would be enthusiastic about the postwar treaties to prevent armed conflicts. Yet R. Hirschensohn expressed doubts that these proposals to resolve international conflicts would be more successful than earlier treaties. [25] Those rules, which governed hostile conduct, seemed utterly ineffective during the Great War. Hirschensohn was skeptical that the efforts of American president Woodrow Wilson and the League of Nations, meant to prevent the outbreak of war, would be any more effective. Ultimately, these bodies were subject to the political interests of powerful nations, which would thwart any real attempt at justice.

Indeed, an early glimpse of this problem emerged in the aftermath of the post-war Lemberg pogrom. Wilson initially pushed hard for strict provisions of minority rights as a condition for Polish sovereignty. He pulled back when a related measure was proposed that would possibly sanction racial segregation in America.[26] Protecting minority rights was important, but only if it didn't endanger American interests.

Instead of a politicized court, R. Hirschensohn desired to build, in the spirit of the prophets, a new house of worship on Jerusalem's Temple Mount. It would feature song and prayer but leave out the animal sacrifices mandated in the Bible. The Temple would serve as a "House of Peace" to advocate for each nation to thrive within its own borders without succumbing to the evil excesses of nationalism. He penned an extensive essay to resolving how Jews could walk onto the Temple Mount in light of heavy ritual restrictions against treading on its sanctified grounds. Hirschensohn sought to ensure that Zionism would have a center for religious and moral development that would guide Jewish nationalism. It would also serve as a model for nationalist movements around the world.[27]

Yet he also had a political agenda: If the Jews did not develop the Temple Mount, it would not remain closed to all. Instead, it would be controlled by foreigners and Arab Muslims. The Jews would be left standing, as they had throughout centuries of exile, by the Dung Gate, with all that this name entails.

R. Kook rejected this proposal. While agreeing that Jewish nationalism must be rooted in a religious spirit, he disallowed stepping on the Temple Mount, let alone building on it. He further criticized R. Hirschensohn for eliminating the use of animal sacrifices. Hirschensohn had written that the restoration of the sacrifices "would make us the object of ridicule before all the nations of the world. Instead of being a light to the nations, they would think of us as an unenlightened people who walk in darkness."[28] In R. Kook's mind, this was a religious reform corrupted by the ideals of European philosophy. We should leave the Temple Mount alone and instead build a synagogue next to the Western Wall that could serve as a house of prayer and peace.[29]

R. Hirschensohn, in reply, accused Kook of making a religious and political error that was equivalent to the 1903 "Uganda plan" to grant the Jews a state in Eastern Africa. Just as you can't temporarily replace the Holy Land with some other territory, you can't replace the heart of the Temple Mount with its outer western wall! Either Jews settle their territory or someone else will. As for R. Kook's jibe that he was overly influenced by Western norms, R. Hirschensohn replied that there is no doubt that the Great War had shown the failings of European culture. Nonetheless, the prophets repeatedly asserted that God did not truly desire animal sacrifices.[30] With all the failings of Western culture, knowledge and wisdom would not recede backward, or as he put it, that "which is uncivilized will not suddenly become civilized!"[31] In any case, the mission of the hour was to purchase all holy sites toward ensuring our political and spiritual future.[32]

The Value of Treaties

R. Herschensohn's idyllic visions for a "Temple of Peace" are stirring yet fantastical. He also does not offer a sufficient answer as to how it would avoid the politicization that plagues other international bodies. It's possible that this was more a theoretical exercise than an actual plan.[33]

Nonetheless, his writing reflects a deep ambivalence on the potential success of international bodies to execute justice in a world of competing nationalistic claims. On the one hand, there is a genuine desire to promote humanistic values that will avoid a repetition of the unnecessary bloodshed of the Great War. On the other hand, R. Hirschensohn recognizes that political interests will dominate international bodies. Therefore, to achieve equity, Jews need to take hold of what belongs to them,

such as the Temple Mount, based on their own values and interests. Otherwise, someone else will decide based on their interests, not justice.

This weariness toward international political bodies is also reflected in R. Herschensohn's extended 1926 treatise on the standing of international treaties. Nations should be careful before signing treaties, he believed, because once they commit, they are liable to punishment for breaking their word. This is why the Israelites were punished by God for violating the covenant at Sinai and breaking His law. So too, he asserted, Germany got its due in World War I because Kaiser Wilhelm had treated the 1839 Treaty of London that granted sovereignty and neutrality to Belgium as "a scrap of paper."[34] The Allies were justified in resisting Germany since treaties are only binding when they are reciprocally observed.[35]

Yet treaties are not the only obligations that are binding on the Jewish people. So, too, are the ethical practices of "civilizations."[36] While he doesn't fully translate that term, it seems that he has in mind the widespread moral sentiments of modern civilized nations.[37] Violating these standards, in his mind, constitutes a grave desecration of the reputation of God and His people. Considering these beliefs, we can further understand his rejection of the models of fighting against Amalek and the Canaanite nations. Whether or not there is a treaty against total war or genocide, Jews must hold themselves to the highest standards of morality and build a stellar reputation.[38]

So what would a Jewish state do in this era of treaties? R. Hirschensohn argued that it should make accords with as many foreign nations as possible—in Europe, America, and Africa. Like R. Kook, R. Hirschensohn asserted that imperialist excursions beyond Israel's borders had no place in contemporary Jewish law and that all wars required moral justification.[39] Nations must stick to their own borders. As such, there was a confluence here between the religious value of international peace and Jewish national interests.

What about Arabs living within Palestine? R. Hirschensohn claimed that permanently ceding territory in the Holy Land would violate the biblical mandate to conquer the land. He also believed that Jews should not quickly initiate negotiations that would put them in a position of weakness.[40] Yet he recognized that despite the Jewish historical claim to the land and the Balfour Declaration, there was an Arab population who had legitimate conflicting claims to the same territory. This was primarily because they were residents in the land. At the end of the day, the strongest claim to any territory is based on settlement. Given these competing legitimate claims, he suggests that Jews should form long-term peaceful accords with their neighbors. One day, he hoped, the Jews could peacefully get full control of the territory. In the meantime, it was in the interests of all parties involved to have peaceful relations.[41]

Independent of one's assessment of R. Hirschensohn's particular strategy, the framework of his analysis is particularly striking. On the one hand, he embraces positive developments in international mores. Judaism is a peace-promoting religion that should support all initiatives to reduce animosity and bloodshed, even with those competing for hold of the Holy Land. This entails integrating new values—including democracy, minority rights, and conventions to limit the horrors of war—by finding support for them in traditional Jewish texts.

On the other hand, he understood that it was far from clear that international institutions will have the ability to promote and enforce these values. There are too many national interests at stake to make this possible.[42] Thus, Jews must wisely develop a strategy that will endorse refined values while actively promoting their own political interests. In his time, this meant taking hold of their homeland through the purchase of holy locations and the settlement of the Land of Israel.

Arab Riots in Palestine and the Triumph of British Political Interests

The most pressing question, however, was whether force would also be necessary to reestablish Jewish sovereignty in Palestine. Both Rabbis Kook and Hirschensohn hoped that a combination of Jewish political initiatives and international diplomacy would be sufficient. Yet this was not meant to be. In March 1920, Trumpeldor was sent to help protect Tel Hai, an upper Galilean settlement that ended up under French control in the unstable period after World War I, leaving those Jewish settlers suddenly outside of British auspices. In a chaotic confrontation with Arab Bedouins from Syria, Trumpeldor was killed, alongside five other Jews, including a couple of other Jewish Legion veterans. His alleged dying words become immortalized as the fighting spirit of the new Jew: "No matter, it is worth dying for the country."[43]

Trumpeldor would become lionized by Zionist writers like Hayim Yosef Brenner, who eulogized this "symbol of pure heroism" for teaching that it is good to die for the national cause. Tamares the pacifist had opposed the Jewish Legion and saw Trumpeldor's legacy as the embodiment of force and ultranationalism, but his views were hardly noticed.[44] The self-image of Jews was being transformed. A few years later, Jabotinsky would break away from the Zionist Organization and establish the revisionist Zionist organization "Betar." The name commemorated the last fighting ground of the Jewish people in the second century, but also paid homage to the fallen hero of Tel Hai, with the letters of Betar standing for "the covenant of Joseph Trumpeldor."

Jewish-Arab tensions were also rising in Jerusalem. Jabotinsky warned the local British military governor of an upcoming slaughter, this time by Arabs against their Jewish neighbors. Jabotinsky and other founders of the Jewish Legion had been busy training the Jews in calisthenics and self-defense; it was their group, among others, for whom Kook's praise in *Orot* had earned him the scorn of the local ultra-Orthodox leaders just a few months later. When the riots started in Jerusalem's Old City, however, his men were not around. Several Jews were killed and over two hundred more were wounded. Two sisters were raped.

Long aware of the self-defense groups, the British governor nonetheless arrested Jabotinsky and his men for carrying illegal weapons, with Jabotinsky receiving a fifteen-year jail sentence. Hirschensohn, from afar, would cite the case as an example of the ways in which a civilized justice system can become corrupt.[45]

R. Kook joined others in demanding Jabotinsky's release as he and his comrades threatened to go on a hunger strike. R. Kook saluted their brave efforts but warned that Jewish law strictly prohibits taking such drastic protest measures.[46] Jabotinsky stopped the hunger strike. Soon afterward, his sentence was commuted, alongside those of many of the Arab rioters. R. Kook protested to the British high commissioner that the Arabs should be punished politically for the violence, but to no avail.[47]

For now, the international community stayed the course with British plans for Palestine and affirmed the Balfour Declaration in the San Remo conference a month later. Yet Arab-Jewish tensions remained high and in May 1921, riots would break out again, this time in Jaffa. Forty-seven Jews were killed, and over 140 more wounded. Among the dead was the writer Brenner, who had been busy editing the letters of Trumpeldor.

Yet the biggest turning point was 1929. Arab-Jewish tensions over control of the Western Wall had existed for several years but escalated after a march in Jerusalem's Old City on Tisha B'Av, Judaism's annual day of mourning for the Temple's destruction. R. Kook, who had protested restrictions on Jewish access to the wall for several years, supported the march, telling a local newspaper that the youth had demonstrated "national pride and Maccabean zealousness" toward defending Jewish rights to the holy site.[48] Arab riots soon broke out in Jerusalem, Hebron, Safed, and other locations.

The riots left the Jewish community particularly vulnerable since most of its leadership was in Zurich for the sixteenth Zionist Congress. Beyond working with the remaining Zionist authorities to secure British protection for the Jewish settlements, R. Kook sent a brief letter through the head of the Jewish Telegraphic Agency. “To the entire Jewish world: All of the Jewish community in the Land of Israel is in danger. Act to save us in any way you can as fast as you can.”[49] The sense of urgency was palpable.

Robinson and other activists organized mass rallies, sent urgent telegrams, and penned editorials to get the League of Nations to act. They called on the mandate’s commission to protect the Jewish people, noting their centuries-long connection to the Holy Land. They further demanded the removal of British officials who had not come to their rescue. No response came. In the end, more than 130 Jews were killed over two hot August weeks.

Lauterpacht, the rising jurist now teaching at University College of London, lamented the tepid British response and its failure to ascribe full blame to the Arab side. Why did the British fail to protect the Jews? Lauterpacht’s answer was telling: even the mighty British empire had to cower before the prospect of a religious war with all of Islam. Britain cares about minority rights. But it had to take into consideration its own political interests in placating the feelings of the millions of Muslims that lived within its empire.[50]

Lauterpacht’s conclusion was reached after the publication of the findings of the Shaw Commission that investigated the riots. The Muslim mufti, Haj Amin al Husseini, blamed the Jews for provoking the rioters. Kook forcefully retorted these claims and accused the Husseini of incitement. While expressing hope and belief that most of the Arabs wanted to continue to live in peace with the Jews, he insisted on Jewish rights to their holy sites and encouraged their settlement.[51] A similar sentiment was expressed by Hirschensohn, who further encouraged Jews to learn Arabic so that they could build personal relations with their Arab neighbors and thereby circumvent the incitement of their leaders.

After their investigations, the Shaw commission concluded that the Arabs were the guilty instigators. Nonetheless, they argued that the broader cause of the violence was Jewish immigration. How could the British recognize that the Arabs were guilty of violence yet punish the Jews politically? Many in Britain had concluded that the Balfour Declaration was a mistake and against their interests. The solution came in the White Paper issued by Colonial Secretary Passfield in October 1930. Britain must restrict Jewish immigration and land purchases to ensure that the Jews remain a minority and do not negatively impact the Arab economy – or broader Arab support for Britain. R. Kook, for his part, condemned Britain for its treachery. He wondered aloud if his Majesty’s government had abandoned its esteemed role in the world’s redemption. Deliverance, he asserted, would come in other ways.[52]

It certainly didn’t come from Britain. Ultimately, after another extended period of violence later in the decade, the British would issue, on the eve of the Holocaust, an even more restrictive immigration policy (the 1939 “white paper”) which essentially undermined the Balfour Declaration and their entire mandate. Weizmann appealed to the League of Nations, but to no avail.

Stung by the betrayal of the British, Zionists learned what R. Hirschensohn had declared several years beforehand: when it comes to international politics, interests will trump justice.

“The Generation Is Not Ready”: The Education of Jacob Robinson

If the mandate failed to protect Jews in Palestine, it did little better in Europe. The idea behind the minority rights treaties was a sense of reciprocity between different states: “I protect your minority;

you protect my minority." Yet as the interwar period progressed, it became clear that attempts to protect minority rights in Europe were no guarantee to help the stateless Jews. Jewish loyalty was regularly suspect in these new ethnic states, with Jews suffering discrimination and persecution in Hungary, Poland, Romania, and elsewhere. As Robinson darkly quipped about the interwar period, European reciprocity meant "I hit my Jews, you hit your Jews."[53] Recognizing the failure of the interwar treaties to protect Jews or other minorities, Robinson recognized that the only real solution for European Jewry was to emigrate to Palestine, or as in his case, to flee to America.

While Lauterpacht would continue to promote international legal protections as a judge on the International Court of Justice, his colleague Robinson became more skeptical of its potential efficacy. After Israel's founding, Robinson served as a leading adviser on diplomacy and international law to the Israeli delegation at the United Nations. He was weary of the prospects of the UN providing real solutions to human rights problems. Its Genocide Convention, developed in the wake of the Holocaust, was too vague and lacked any enforcement mechanism that would make it efficient. Moreover, it and other UN initiatives would be manipulated by Israel's Arab neighbors and minorities to attack the Jewish state, even as these countries would do nothing to respect the human rights of minorities in their own lands.

While he remained a prominent, albeit somewhat reluctant, international jurist, Robinson understood that national interests and politics would forever play a problematic role in international law. Toward the end of his life, he would assert that while local protections for minorities remained important, the globalized system had failed. Recalling his childhood yeshiva education, he cited the talmudic expression *lo ikhshar dara* (the generation is not prepared) to assert that the world had been insufficiently ready to weave minority rights into its social fabric.[54]

In the coming decades, rabbinic scholars would collectively take a similarly ambivalent but increasingly critical view of such international bodies.[55] Many were thankful for the essential role of the UN in the eventual establishment of the State of Israel after World War II. This was despite it coming way too late to save the six million Jews killed in the Holocaust and not preventing the Jews from still having to go to war to gain what the international community had been promising for over thirty years.[56] Going beyond particular Jewish interests, others appreciated the attempt by international organizations to reduce warfare and limit the atrocities committed when war occurs. They further noted that despite the imbalance of power between strong nations and weak ones, the United Nations and other bodies still promote the important idea that even the smallest of nations have basic rights that should not be trampled upon.[57]

One scholar, Rabbi Shaul Yisraeli, even went so far as to assert that Jewish law would obligate Israel to observe all international treaties limiting warfare—including a total ban on war—provided that all parties equally respect these obligations. In the meantime, he noted, *lo ikhshar dara*, the generation is not ready to reciprocally implement such measures.[58]

Aspirations are not a measure of success. The criteria must be whether treaties are loyally followed by their signatories and if international bodies prevent moral mayhems. In the years that have passed since R. Hirschensohn wrote, these institutions were entirely ineffective in preventing the continued pogroms in Europe after World War I, the horror of the Holocaust, and the forced migration of 850,000 Jewish residents from Arab countries in the 1950s and 1960s, to name just a few egregious examples. When preparing to attack Israel in May 1967, the Egyptian army demanded that UN peacekeeping forces immediately leave the Sinai area; the UN forces hastily left without even an appeal by the UN secretary-general to Egyptian leaders.[59] In 1975, the UN General Assembly passed a resolution declaring that "Zionism is a form of racism," with the support of the USSR, Arab- and Muslim-majority countries, and many African countries, essentially rejecting, again, the justice of the Balfour Declaration. (The resolution was repealed only in 1991.) Many observers also accuse these bodies of unfairly singling out Israel for censure in its complex and protracted struggle with Palestinians while ignoring many travesties around the world.[60] This alleged bias has, in part, led many rabbis and Zionists to severely question whether these international bodies can ever provide

justice in the Middle East and around the world.[61]

Rwanda, Syria, and the Education of Samantha Power

The "failure to protect" critique against international bodies has extended well beyond Jews and Israel. It has also been leveled against Pol Pot's terror in Cambodia, Saddam Hussein's destruction of the Kurds in northern Iraq, the Bosnian Serbs' eradication of non-Serbs, the Rwandan Hutus' systematic extermination of the Tutsi minority, and the systematic killing of ethnic Darfuri people in Western Sudan. There are many reasons given for these failures. Some assert that the diffusion of responsibilities to prevent war crimes absolves too many specific international players of taking the lead.[62] Yet it's also clear that the politics of these bodies regularly prevents them from acting. To take the most obvious example, the UN Security Council, with veto power given to its five permanent members, is helpless in addressing Chinese human rights abuses or the 2014 Russian invasion of Crimea and its subsequent invasion of all of Ukraine. As historian Paul Kennedy has documented, the granting of additional privileges to great powers is inherent to the UN system and, more fundamentally, to any international body that is dependent on its member-states to provide its funding and soldiers.[63] Despite its improvements over the League of Nations, the UN cannot circumvent the political nature of any international body.

There was no greater critic of the Western response to these twentieth-century atrocities than Samantha Power. Her award-winning, best-selling book *"A Problem from Hell": America and the Age of Genocide* extensively documented these cases, including the 1994 ethnic cleansing in Rwanda. Power showed how political considerations led the Clinton administration to ignore the plight of the hundreds of thousands of Tutsis who were killed and raped over four months. U.S. officials, for example, purposely avoided utilizing the "G-word" (genocide) in describing the atrocities because that might obligate them—morally, if not legally—to intervene under the 1948 Genocide Convention. This treaty, whose potential effectiveness was doubted by Robinson, as we noted, was the culmination of years of work by Lauterpacht and especially Raphael Lemkin, another European Jew who had fled Europe and became a leading international jurist. They believed it would succeed in committing countries to prevent and punish "crimes against humanity," a term coined by Lauterpacht.[64] It was signed and affirmed by well over a hundred nations, including leading superpowers. None of those signatures helped when the Hutus began their slaughter.

Power singled out senior administration officials like National Security Adviser Anthony Lake, who had written a well-known critique of immoral realpolitik considerations in previous eras of American foreign policy yet had now fallen into the same trap. Power's book helped inspire the 2005 "Responsibility to Protect" declaration of all UN member states to prevent genocide, war crimes, ethnic cleansing, and crimes against humanity.

Two decades later, Power became the American ambassador to the United Nations under President Barack Obama. A civil war was raging in Syria, with the UN Security Council unable to act because Russia vetoed any measures against the Syrian government. Then Syria used chemical weapons against her own citizens. Such weapons have long been banned under international law with a nearly universal and unprecedented endorsement from countries around the world. This had been a declared "red line" of Obama, even as he was wary of an unpopular excursion of American troops into another bloody Middle East conflict. According to one aide, Obama even noted, "People always say never again, but they never want to do anything." [65]

Yet Power wanted to act. She declared in the UN that the international system had broken down in Syria, with one side being gassed and the other feeling it could get away with it. Claiming that all alternative options were exhausted, she called for limited military strikes. "If violation of a universal

agreement to ban chemical weapons is not met with the meaningful response, other regimes will seek to acquire or use them to protect or extend their power."[66] At stake, in other words, was whether treaties had teeth or were just another scrap of paper.

In the end, Obama called off airstrikes, instead electing to work with the Russians to get the Syrians to give up their chemical weapons. Subsequently, Obama's aides have testified about the many political and strategic considerations that led the White House to abandon this limited military action. Some have further asserted that Obama did not want to risk ruining negotiations with the Iranians over their nuclear ambitions.[67] Whatever the reason, America, followed by others, backed away. Syria, with Russian support in both the UN and on the battlefield, continued to commit atrocities in places like Aleppo, including the repeated use of chemical weapons it hid from international inspectors.

Power, for her part, was left to Twitter to share her indignation while delivering scathing speeches at the Security Council against the Russians. "Aleppo will join the ranks of those events in world history that define modern evil, that stain our conscience decades later. Halabja, Rwanda, Srebrenica, and now, Aleppo.… Are you truly incapable of shame?" Powerful words, but international treaties were meant to be backed by more than speeches and 140-character tweets. The Russian ambassador retorted by calling her Mother Theresa and called it a day. Since then, critics of American policy have labeled Power a hypocrite and questioned whether she should have resigned.[68]

In her memoir, aptly titled *The Education of an Idealist*, Power admirably lays out her conflicting feelings. Perhaps American intervention would have failed and uselessly endangered American soldiers. Or perhaps the administration, and the entire system, simply failed.

The ultimate result was pretty bad: the Syrian regime, with Russian and Iranian support, massacred hundreds of thousands more while causing a flood of refugees which has left them homeless and Europe politically unstable. Western inaction also left the roughly 30 million Kurds quite vulnerable to the whims of the despotic leaders of four countries in which they reside, one hundred years after the 1920 Treaty of Sèvres, signed between the Allies and the defeated Ottomans, called for an independence referendum in their territory. Despite all the treaties and promises they were given over the century, they have neither a state nor minority rights.

These examples only strengthen R. Hirschensohn's basic claim: International laws and treaties provide no guarantee that justice will be executed or that the innocent will be protected. Sometimes they will help, which is a good thing, but many times they will not. Even people with the best of intentions like Lake and Power fall into the trap of allowing power and politics to color, if not shape, international legal bodies.

This sad but important truth does not mean that we should simply dismiss the ethics that international law aspires to implement. While displaying great skepticism about the efficacy of the system, R. Hirschensohn affirmed many of the values of "civilized society." He sought to prove how Judaism may incorporate concepts like democracy and minority rights in order to make them valuable to Jews on their own terms, independent of their enforcement in broader international society. If, for example, forsaking total war tactics is an upright decision, then Jews should integrate and implement those values for integral reasons, let alone for preserving our reputation as an ethical people.[69]

At the same time, Jews should not be naive about the prospects of international bodies providing them with support or protection. In practice, self-help is the prevailing rule of world affairs. Jews cannot wait for others to deliver justice. In an international order deeply impacted, if not driven, by interests, then Jews need to proactively do what it takes to protect themselves.

Notes

[1] *Iggerot HaRaayah*, vol. 3, no. 852, 131–33. See Yitzhak Krauss, "*HaTeguvot HaTeologiyot al Hatzharat Balfour*," *Sefer Bar Ilan* 28/29 (5761): 81–104.

[2] See *Ginzei HaRaayah*, *Iggerot*, 157–59. See also Ari Schwat, "*Sibot Erekh HaGvurah HaFizit VeHaTzvait BaMishnat HaRav Kook*," in *Nero Yair* (Mitzpeh Yericho, 5773), 353–394.

[3] *Iggerot HaRaayah*, vol. 3, no. 871, 155–159.

[4] James Loeffler and Moria Paz, eds., *The Law of Strangers: Jewish Lawyers and International Law in the Twentieth Century* (Cambridge, 2019).

[5] See Jeffrey Veidlinger, *In the Midst of Civilized Europe* (Metropolitan, 2021).

[6] James Loeffler, *Rooted Cosmopolitans: Jews and Human Rights in the Twentieth Century* (New Haven, 2018), 22–27.

[7] Oona A. Hathaway and Scott J. Shapiro, *The Internationalists* (New York, 2018), 298–305.

[8] Loeffler, *Rooted Cosmopolitans*, 31–50.

[9] Omry Kaplan-Feuereisen and Richard Mann, "At the Service of the Jewish Nation: Jacob Robinson and International Law," *Osteuropa* 58:8/10 (August-October 2008): 164.

[10] See Lauterpacht's May 1950 speech given in Jerusalem, cited by Loeffler, *Rooted Cosmopolitans*, 176.

[11] *Iggerot HaRaayah*, vol. 2, 54.

[12] *Maamarei HaRaayah*, vol. 1, 89–93. See Hagi Ben-Artzi, *He?adash Yitkadesh* (Tel Aviv, 2010), 70–73.

[13] On the controversy, Mirsky, *Rav Kook*, 167–169, and the introduction to *Orot*, trans. Bezalel Naor (Jerusalem, 2015).

[14] *?iddushei HaRav Hayim Hirschensohn LaMasekhta Horayot*, vol. 3, 33a (letter 23). The letter is dated November 1924. On Hirschensohn's letter and Kook's reply, see Naor's introduction to *Orot*.

[15] Luz, *Wresting with an Angel*, 222, regards Hirschensohn as the only religious-Zionist thinker who was systematically engaging in political thinking.

[16] Colin Schindler, *The Rise of the Israeli Right: From Odessa to Hebrew* (Cambridge, 2015), chapter 7.

[17] Cited in Michael Keren and Shlomit Keren, *We are Coming, Unafraid: The Jewish Legions and the Promised Land in the First World War* (Lanham, MD, 2010), 116.

[18] Kook's letter to Chief Rabbi Hertz is found in *Iggerot HaRaayah*, vol. 3, no. 859. See Rosenak, *HaRav Kook*, 156–160.

[19] *Iggerot HaRaayah*, vol. 3, no. 974. Kook further advised Falk on how to maintain standards of dietary law observance.

[20] Ari Shvat, *Leharim et HaDegel*, chapter 11.

[21] Warren Ze'ev Harvey, "Rabbi Reines on the Conquest of Canaan and Zionism," in *The Gift of the Land and the Fate of the Canaanites*, ed. Katell Berthelot et al. (Oxford, 2014), 386–398.

[22] *Malki BaKodesh*, vol. 1, 18–22, 142–163.

[23] Hayim Hirschensohn, *Eleh Divrei HaBrit*, 70, 79. Kook had also tentatively suggested this idea but ultimately rejected it. See Kook, *Tov Ro'i: Sota*, 22. For another openly apologetic attempt to limit the meaning of this commandment to not require annihilation, see Rabbi Tzvi Mecklenberg, *HaKetav VeHaKabbala* on Deuteronomy 20:16.

[24] Hirschensohn, *Eleh Divrei HaBrit*, 70.

[25] *Malki BaKodesh*, vol. 1, 15–16.

[26] Loeffler, *Rooted Cosmopolitans*, 14–15.

[27] *Malki BaKodesh*, vol. 2, 5–31 (which includes part of Kook's letter), especially pp. 26–28.

[28] *Ibid*., vol. 1, 11.

[29] *Iggerot HaRaayah*, vol. 4, 23–25. Also printed in *Malki BaKodesh*, vol. 4, 4–5. On the relation of these passages to the depiction of a future Temple in Herzl's utopian novel, *Old-New Land*, see Eyal Ben-Eliyahu, "*Lehakim Binyan ?adash*?" *Cathedra* 128 (Tamuz 5768), 101–112.

[30] *Malki BaKodesh*, vol. 1, 62–64. See also p. 56.

[31] *Ibid*., vol. 4, 8.

[32] *Ibid*., vol. 2, 28. He emphasizes that these holy sites should be utilized for the search of wisdom, not extremism. On the history of Jewish attempts to purchase holy sites in Palestine, including areas around the Temple Mount, see Dotan Goren, *UVa LeTziyon Goel* (Beit El, 2017).

[33] This is implied in Hirschensohn's follow-up letter.

[34] Hirschensohn, *Eleh Divrei HaBrit*, introduction.

[35] *Ibid*., 8. The importance of reciprocity is made explicit in *Midrash Sho?er Tov* on Psalms 60:2 regarding the wartime behavior of King David.

[36] Hirschensohn, *Eleh Divrei HaBrit*, 13–14.

[37] Hirschensohn may have in mind the notion of the "standards of civilization" that circulated since the nineteenth century within international legal circles and has made a recent revival. See David P.

Fidler, “The Return of the Standard of Civilization,” *Chicago Journal of International Law* 2:1 (2001): 137–157.

[38] This might even mean upholding agreements made under false pretenses. Following talmudic precedent, he noted that Joshua chose to maintain his peace treaty with the Gibeonites, one of the Canaanite nations, in spite of the fact they had fooled the Israelites into thinking that they came from distant lands. While the treaty was not compulsory, the Israelites kept their promise since others would think they don’t keep their word. See Hirschensohn, *Eleh Divrei HaBrit*, 71–72.

[39] *Malki BaKodesh*, vol. 1, 143–149.

[40] *Eleh Divrei HaBrit*, 175–176.

[41] *Ibid*., 37–38.

[42] For a similar attitude in more recent writing, see Rabbi Yaakov Ariel, *Halakha BeYamenu* (Ashkelon, Machon HaTorah VeHaAretz, 5770), 378.

43 Regarding the veracity of this final statement and Trumpeldor’s broader relationship to Judaism, see Moshe Nahmani, *HaGibbor HaLeumi: Perakim Be?ayav shel Yosef Trumpeldor* (2020), 131–256.

[44] See Tamares, *Shelosha Zivugim Bilti Hagunim* (Pietrkow, 1930), 9, 40, 60–61.

[45] *Malki BaKodesh*, vol. 2, 159–160.

[46] *Otzrot HaRaayah*, vol. 1, 393–395.

[47] *Iggerot HaRaayah*, vol. 5, 333.

[48] As cited in Hillel Cohen, *1929: Year Zero of the Arab-Israeli Conflict* (Brandeis, 2015), Kindle location 1755. See also Kook’s testimony to the British investigation commission published in *Otzrot HaRaayah*, ed. Moshe Tzuriel, vol. 2, 359–360. On Kook’s reaction to the 1929 riots, see Yosef Sharvit, “*HaRav Kook UMeoraot* 5689,” *Sinai* 97 (5745): 153–185.

[49] Central Zionist Archives, A176/11.

[50] Loeffler, *Rooted Cosmopolitans*, 28–30, 49–50.

[51] *Iggerot HaRaayah*, vol. 5, 143 and *Maamarei HaRaayah*, 252–53. See also Mirsky, *Rav Kook*, 196–202 and Shtamler, *Ayin BeAyin*, 199–201. R. Kook also told that Zionist Congress that he regretted how the fight over the Western Wall became such a flash point. See Cohen, *1929*, Kindle location 4665–4680, based on documents found in Central Zionist Archives S100/10.

[52] Kook, *?azon HaGeula* (Jerusalem, 5701), 46–47.

[53] Ibid., 56–57.

[54] Jacob Robinson, “International Protection of Minorities: A Global View,” *Israeli Yearbook on Human Rights* (1971): 61–91. See Loeffler, *Rooted Cosmopolitans*, 171–201 and Gil Rubin, “The End of Minority Rights: Jacob Robinson and the ‘Jewish Question’ in World War II,” *Simon Dubnow Institute Yearbook* 11 (2012): 55–71. Rubin dubs Robinson’s later career as one of a “reluctant

internationalist." See his article, "A State of Their Own: Jewish Internationalism and Human Rights," *Marginalia*, June 6, 2018.

[55] For a survey of positions, see Amos Israel-Vleeschhouwer, "*Ya?as HaHalakha LaMishpat HaBeinleumi*" (unpublished PhD diss., Tel Aviv University, 2011).

[56] See Soloveitchik, *Kol Dodi Dofek*, 31–32.

[57] See Rabbi Hayim David HaLevi, *Dat UMedina*, 21–22, 37–38.

[58] Rabbi Shaul Yisraeli, *Amud HaYemini*, *siman* 16, 195.

[59] Michael B. Oren, *Six Days of War: June 1967 and the Making of the Modern Middle East*, 67–75.

[60] See, for example, Dore Gold, *Tower of Babble: How the United Nations Has Fueled Global Chaos* (Forum, 2004); Justin S. Gruenberg, "An Analysis of United Nations Security Council Resolutions: Are All Countries Treated Equally?," *Case Western Reserve Journal of International Law* 513 (2009): 41. Gerald M. Steinberg, "The UN, the ICJ and the Separation Barrier: War by Other Means," *Israel Law Review* 38:1–2 (Winter-Spring 2005): 331–347.

[61] See, for example, Rabbi Avraham Sharir, "*Etika Tzeva'it al pi Halakhah*," *Te?umin* 25 (5765), 436 and Rabbi Avraham Sherman, "*HaMishpat HaBeinleumi (BaMil?ama) LeOhr Mishpetei HaTorah* ," *Torah SheBe'al Peh* 44 (5764), 74. See also Rabbi Yaakov Ariel, *Halakha BeYamenu*, 378.

[62] André Nollkaemper, "'Failures to Protect' in International Law," in *The Oxford Handbook of the Use of Force in International Law*, ed. Marc Weller (Oxford, 2015), 439.

[63] Paul Kennedy, *The Parliament of Man* (Vintage, 2007), Kindle Location 495.

[64] See Ana Filipa Vrdoljak, "Human Rights and Genocide: The Work of Lauterpacht and Lemkin in Modern International Law," *The European Journal of International Law* 20:4 (2010): 1163–1194.

[65] Ben Rhodes, "Inside the White House During the Syrian 'Red Line' Crisis," *Atlantic*, June 3, 2018.

[66] "The Ambassador to the UN's Case against the UN," *Atlantic*, Sept 6, 2013; "Samantha Power's Case for Striking Syria," *Washington Post*, Sept 7, 2013.

[67] See Natasha Bertrand and Michael B Kelley, "The Startlingly Simple Reason Obama Ignores Syria," *Business Insider*, June 4, 2015.

[68] See, for example, Tony Badran, "'Ambassador Samantha Power Lied to My Face about Syria,' by Kassem Eid," *Tablet*, February 27, 2018 and Steve Bloomfield, "The Obama Administration's Misadventures in Foreign Policy," *Prospect Magazine*, November 2019.

[69] An exemplar of this idea was Israel's first Ashkenazic chief rabbi, Yitzhak Herzog, who wrote about Jewish law while in dialogue with international norms and ethical standards. See R. Herzog's essay on minority rights in Israel, "*Zehuyot HaMi'utim Lefi HaHalakha*," *Tehumin* 2, 169–179.