

ISRAEL/PALESTINE: INTERNATIONAL LAW AND HUMAN RIGHTS ISSUES

LWMTPI

2014-2015

The module is intended to serve as a comprehensive case-study which complements several other modules that are taught on the LL.M. programme, including Public International Law (LWMTPU), International Humanitarian Law (LWMTAC), and International Human Rights Law (LWMTU).

The first seminar provides general context regarding the background for the establishment of the State of Israel and its divergent border arrangements. The following five seminars are divided to two parts. The *first* part of the module (the 'external' dimension) considers the applicable legal regimes in the territories occupied by Israel since 1967, analysing Israeli High Court of Justice jurisprudence, primarily during the 'Second Palestinian Intifada'. Particular attention shall be devoted to legal challenges mounted against the construction of the West Bank barrier; the discussion will consider the narratives employed by the International Court of Justice in its *Wall* advisory opinion and by the Israeli Supreme Court in its *Maarabe* judgment, questioning the extent to which they relate to (il)legality of Israeli settlements in the West Bank. The last seminar in this segment of the module considers Palestine's application to become a member state of the UN and the resolution(s) of the Palestinian refugee question. The *second* part of the module (the 'internal' dimension) explores issues arising from Israel's self-defined character as a 'Jewish and democratic' State, appraising legal challenges regarding individual and collective rights of Palestinian/Arab citizens of Israel, and juxtaposing Jewish 'Aliyah' with non-Jewish immigration to Israel.

TEACHING STAFF

Dr. Reuven (Ruvi) Ziegler

SEMINARS/MODULE STRUCTURE

The module is taught by way of six two-hour seminars in the Spring Term. You will find below readings for each seminar: *at a minimum*, you must be *fully prepared* to discuss all of the discussion questions listed for each seminar.

The seminars will run as follows:

1. Context, partition, and borders
2. The 'Second Palestinian Intifada' and the Israeli High Court of Justice (HCJ)*
3. The West Bank Barrier: between the HCJ and the ICJ
4. The application of the State of Palestine for UN Membership and the question of refugees
5. Israel as a 'Jewish and democratic' state and the rights of its Arab/Palestinian citizens
6. Jewish 'Aliyah' and Non-Jewish Immigration to Israel

* As an additional part of this seminar, students will be expected to attend a special screening of [*'the law in these parts'*](#) which will take place in the regular seminar time-slot between seminars 1 and 2.

PRESENTATIONS

In addition to participating in class discussions, *all students will be required* to prepare one short presentation (10-15 minutes), examining a specific case that relates to a topic being covered. Depending on the number of students who take the module, the presentations will either be prepared individually or in pairs. *It is expected that students will research the topic of their case study independently, going beyond the readings set for the class.*

The aim of the presentations is to get students to interact directly with the law ‘in practice’, as well as developing presentation and research skills. *Presentations are non-assessed, but are compulsory.* Formative feedback will be provided on all presentations.

There will be no presentation in the first seminar. The presentations schedule will be decided in the first seminar.

TEXTS/MATERIALS

There are no set textbooks for the module *as such*. Every effort has been made to ensure that the listed readings for every class are either available via online resources or in the library. Pre-publication and selected other materials will be posted in PDF form on the Blackboard site for the module. For queries, please contact Dr. Ziegler.

USEFUL SOURCES

- [Avalon Project: Documents in Law, History, and Diplomacy](#)
- [Israeli Parliament \(Knesset\), Basic Laws database](#)
- [Israel Supreme Court, English language database](#)
- [Palestinian Information Centre](#)
- [Permanent Observer Mission of Palestine to the United Nations](#)
- [UN General Assembly Resolutions](#)
- [UN Security Council Resolutions](#)

ASSESSMENT

This module is assessed by way of an assessed essay of **8 pages** (formatted in accordance with the School of Law’s Assessed Work Rules), which will count for 100% of the module mark. Details of this assignment will be published on the module’s Blackboard page.

SEMINAR ONE

CONTEXT, PARTITION, AND BORDERS

QUESTIONS FOR DISCUSSION

- Analyse the divergent statuses of Israel's borders in light of its armistice, interim, and peace agreements; think about the distinguishing features of the Israeli-Palestinian situation.
- To what extent do Israel's Declaration of Independence and its admission to the UN as a member state adhere to the terms of UNGA Resolution 181?

TREATIES/DECLARATIONS

- [British Mandate for Palestine](#) (24 July 1922)
- [Covenant of the League of Nations](#), art. 22 (28 June 1919)
- [Declaration of Principles on Interim Self-government Arrangements](#) (13 September 1993)

AGREEMENTS

- [Egypt-Israel General Armistice Agreement](#) (24 February 1949)
- [Egypt-Israel Peace Treaty](#) (26 March 1979)
- [Jordan-Israel General Armistice Agreement](#) (3 April 1949)
- [Jordan-Israel Peace Treaty](#) (26 October 1994)
- [Lebanon-Israel General Armistice Agreement](#) (23 March 1949)
- [PLO-Israel interim Agreement on the West Bank and the Gaza Strip](#) (28 September 1995)
- [Syria-Israel General Armistice Agreement](#) (20 July 1949)

UN RESOLUTIONS

- [UNGA Resolution 181 \(II\)](#) (29 November 1947) (Partition Plan for Palestine)
- [UNGA Resolution 273 \(III\)](#) (11 May 1949) (including Israel's [documents and explanations](#))
- [UNSC Resolution 242](#) (22 November 1967)
- [UNSC Resolution 338](#) (22 October 1973)
- [UNSC Resolution 476](#) (30 June 1980)
- [UNSC Resolution 478](#) (20 August 1980)

LEGISLATION

- [Areas of Jurisdictions and Powers Ordinance](#) (22 September 1948)
- [Proclamation no. 1 \(Assumption of Control by the IDF\) and Proclamation no. 2 \(Regulation of Administration and Law\)](#) (7 June 1967)
- [Basic Law: Jerusalem, Capital of Israel](#) (20 August 1980)

SECONDARY SOURCES

- [Discussion concerning the application of Israel for admission to membership of the UN](#) (17 December 1948) (referring to Foreign Minister of Israel, *Letter to the UN Secretary General*, 29 November 1948)
- [Maps of the Israeli-Palestinian Conflict](#) (BBC website)
- Palestine Royal Commission, [Report to the League of Nations](#) (July 1937) ch. 12
- Special Committee on Palestine, [Report to the General Assembly](#) (3 September 1947)

SEMINAR TWO

THE 'SECOND PALESTINIAN INTIFADA' AND THE ISRAELI HIGH COURT OF JUSTICE (HCJ)

PRESENTATION

- Appraise the jurisprudence of the Israeli HCJ during the 'Second Palestinian Intifada' in light of *Ja'mait Ascan* (1983). Is Kretzmer's critique in *The Occupation of Justice* (2002) justified?

QUESTIONS FOR DISCUSSION

- Critically analyse the application of the principle of proportionality in HCJ I/P jurisprudence.
- In the *Barake* judgment, CJ Barak denounces the notion that 'when the cannon roar, the muses are silent'. Evaluate the extent to which HCJ jurisprudence reflects this denouncement.
- Consider the HCJ's approach to the conduct of hostilities in the Gaza Strip after the 2005 'disengagement' as reflected in its *PCAT* and *Al-Bassiouni* judgments.

TREATIES/AGREEMENTS

- [Convention \(IV\) Respecting the Laws and Customs of War on Land and its Annex](#) arts. 42-56 (The Hague, 18 October 1907)
- [Convention Relative to the Protection of Civilian Persons in Time of War](#), (Geneva, 12 August 1949)

LEGISLATION

- [Basic Law: The Judiciary](#), s. 15(d)(2)

CASE-LAW

- [HCJ 9132/07 Al-Bassiouni v. Prime Minister of Israel](#) (30 January 2008)
- [HCJ 7015/02 Ajuri et al v. IDF Commander in the West Bank](#) (3 September 2002)
- [HCJ 393/82 Ja'mait Ascan v. IDF Commander in the West Bank](#) (28 December 1983)
- [HCJ 3114/02 et al Barake et al v. Minister of Defence](#) (14 April 2002)
- [HCJ 10356/02 Haas v. IDF Commander in the West Bank](#) (4 March 2004)
- [HCJ 3239/02 Marab v. IDF Commander in the West Bank](#) (5 February 2003)
- [HCJ 769/02 PCAT v. Government of Israel](#) (13 December 2006)

SECONDARY SOURCES

- Aharon Barak, '[Human Rights in Times of Terror -- A Judicial Point of View](#)' (2008) 28(4) Legal Studies 493
- Robert H. Bork, '[Barak's Rule](#)' (2007) Azure 125 (review of Aharon Barak, *The Judge in a Democracy* (Princeton University Press, Princeton, 2006))
- David Kretzmer, '[The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories](#)' (SUNY Press, New York, 2002) esp. ch. 1
- David Kretzmer, '[Targeted Killing of Suspected Terrorists: Extra-Judicial Executions or Legitimate Means of Defence?](#)' (2005) 16(2) European Journal of International Law 171

- Yuval Shany, ['The Law Applicable to Non-Occupied Gaza: A Comment on *Bassiouni v. Prime Minister of Israel*](#) (2009) 42(1) Israel Law Review 101
- Reuven (Ruv) Ziegler, ['HCJ 7015/02 *Ajuri et al v IDF Commander in the West Bank*](#) (2002) 36 Israel Law Review 179
- Reuven (Ruv) Ziegler, 'The Israeli Supreme Court During the Second Palestinian Intifada: Tight-rope between rigorous scrutiny and benign restraint' [will be available on blackboard]

SEMINAR THREE

THE WEST BANK BARRIER: BETWEEN THE HCJ AND THE ICJ

PRESENTATION

- Compare and contrast the divergent narratives underlying the construction of the West Bank Barrier as reflected in HCJ and ICJ jurisprudence, including Judge Buergenthal's dissent.

QUESTIONS FOR DISCUSSION

- Critically assess the interrelations of international human rights law and international humanitarian law as reflected in HCJ and ICJ jurisprudence.
- Has the (il)legality of Israeli settlements in the West Bank impact the legality of the Barrier? Should it?
- Consider the role that the ICJ Advisory opinion plays in the *Maarabe* judgment.

TREATIES/AGREEMENTS

- [Convention \(IV\) Respecting the Laws and Customs of War on Land and its Annex](#), The Hague, 18 October 1907, arts. 42-56
- [Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Geneva](#), 12 August 1949, art. 49(f) (read also the [ICRC commentary](#))

CASE-LAW

- [HCJ 4481/91 Bargil et al v. Government of Israel et al](#) (25 August 1993)
- [HCJ 2056/04 Beit Sourik Village Council v. IDF Commander in the West Bank](#) (30 June 2004)
- [HCJ 390/79 Duweikat v. Minister of Defence](#) (22 October 1979)
- [HCJ 7957/04 Maarabe et al v. Prime Minister of Israel et al](#) (15 September 2005)
- [HCJ 8414/05 Yassin et al v. Government of Israel et al](#) (4 September 2007)
- ICJ, [Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory](#), Advisory Opinion (9 July 2004) (read also the [Declaration of Judge Buergenthal](#))

SECONDARY SOURCES

- [‘Agora: ICJ Advisory Opinion on Construction of a Wall in the Occupied Palestinian Territory’](#) (2005) 99(1) American Journal of International Law: contributions by Lori Damrosch and Bernard Oxman; Geoffrey Watson; Michal Pomerance; Richard A. Falk; Ruth Wedgwood; Sean D. Murphy; Iain Scobbie; David Kretzmer; Ardi Imseis; Michael Dennis.
- Malcolm D Evans and Susan C Breau, [‘Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory: Advisory Opinion’](#) (2005) 54 International and Comparative Law Quarterly 1003-1013
- Jean-Francois Gareau, [‘Shouting at the Wall: Self-Determination and the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory’](#) (2005) 18 Leiden Journal of International Law 489
- See generally Victor Kattan (ed), *The Palestine Question in International Law* (BIICL, 2008)
- [Map of the West Bank Barrier](#) (Btselem site)
- Theodor Meron, Memorandum: [‘Settlement in Administered Territory’](#) (14 September 1967)

SEMINAR FOUR

THE APPLICATION OF THE STATE OF PALESTINE FOR UN MEMBERSHIP AND THE QUESTION OF REFUGEES

PRESENTATION

- Critically appraise the status of ‘the State of Palestine’ under international law.

QUESTIONS FOR DISCUSSION

- Analyse the gaps in implementation of UNGA Resolution 181, and its contemporary significance in light of the right to self-determination.
- Consider the possible resolution(s) of the Palestinian refugee question in light of UN resolutions and proposals, including the Geneva Accords.

TREATIES/AGREEMENTS/DECLARATIONS

- [Convention on the Rights and Duties of States](#) (Montevideo, 26 December 1933)
- [Convention Relating to the Status of Refugees](#), art. 1D (Geneva, 28 July 1951)
- [Declaration of Independence](#) (Algiers, 15 November 1988)
- [Draft Palestinian Permanent Constitution](#) (2003)
- Geneva Accords, [Draft Permanent Status Agreement](#) (October 2003)
- [International Covenant on Civil and Political Rights](#), art. 1
- [International Criminal Court](#) (Statute of), art. 12
- Prime Minister of Israel, [Speech at the United Nations](#) (23 September 2011)
- President of the State of Palestine and Chairman of the Executive Committee of the PLO, [Application of Palestine for admission to membership in the United Nations](#) (23 September 2011) ([Speech at the United Nations](#))
- [Request for admission of Palestine to UNESCO](#) (30 November 2012)
- [Statement concerning disengagement from the West Bank and Palestinian Self-Determination](#) (Jordan) (31 July 1988)

UN RESOLUTIONS

- [UNGA Resolution 181 \(2\)](#) (29 November 1947)
- [UNGA Resolution 194 \(3\)](#), art. 11 (11 December 1948)
- [UNGA Resolution 3210 \(39\)](#) (14 October 1974)
- [UNGA Resolution 3236 \(39\)](#) (22 November 1974)
- [UNGA Resolution 177 \(43\)](#) (15 December 1988)
- [UNGA Resolution 19 \(67\)](#) (29 November 2012)

CASE-LAW

- International Court of Justice, [Conditions of Admission of a State to the United Nations](#), Advisory Opinion (28 May 1948)
- International Criminal Court, Office of the Prosecutor, [Situation in Palestine](#) (3 April 2012)

SECONDARY SOURCES

- Susan Akram, [‘Palestinian Refugees and their Legal Status: Rights, Politics, and Implications for a Just Solution’](#) (2002) 31(3) *Journal of Palestine Studies* 36
 - Francis A. Boyle, [‘The Creation of the State of Palestine’](#) (1990) 1(1) *European Journal of International Law* 301
 - John Cerone, [‘Legal Implications of the UN General Assembly Vote to Accord Palestine the Status of Observer State’](#) 16(37) *ASIL Insights* (7 December 2012)
 - James Crawford, [‘The Creation of the State of Palestine: Too Much Too Soon?’](#) (1990) 1(1) *European Journal of International Law* 307
 - Chaim Gans, [‘A Just Zionism: On The Morality of the Jewish State’](#) (OUP, 2008) ch. 4
 - Guy S. Goodwin-Gill, [‘Opinion re The Palestine Liberation Organization, the future State of Palestine, and the question of popular representation’](#) (10 August 2011)
 - Guy S. Goodwin-Gill, [‘Palestinian Statehood and the International Law of Democracy’](#) (7 September 2011)
 - Human Rights Committee, [‘General Comment No. 12: The Right of Self-Determination of Peoples \(Art. 1\)’](#) (1984)
 - Robert McCorquodale, [‘Self-Determination: A Human Rights Approach’](#) (1994) 43 *International and Comparative Law Quarterly* 857
 - UNHCR, [‘Revised Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees’](#) (Geneva, October 2009)
 - Yaffa Zilbershats and Nimra Goren-Amitai, [‘Return of Palestinian Refugees to the State of Israel’](#) (Metzilah, 2011)
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SEMINAR FIVE

ISRAEL AS A 'JEWISH AND DEMOCRATIC' STATE AND RIGHTS OF ITS ARAB/PALESTINIAN CITIZENS

PRESENTATION

- Compare and contrast the characterisation of the State of Israel as reflected in the following documents: *constitution by consensus*, the *future vision of the Palestinian Arabs in Israel*, and the proposed *Basic law: Israel – the Nation-State of the Jewish People*.

QUESTIONS FOR DISCUSSION

- Evaluate the symbolic and practical significance of section 7A of *Basic Law: The Knesset*, as reflected in the HCJ jurisprudence?
- Consider the role of individual and collective rights in the HCJ 6698/05 *Ka'adan* and HCJ 4112/99 *Adalah* judgments.
- Appraise Israel's compliance with its obligations under Article 27 of the ICCPR as reflected in General Comment no. 23 of the Human Rights Committee.

TREATIES/AGREEMENTS/DECLARATIONS

- [Declaration of Independence \(State of Israel\)](#) (14 May 1948)
- [International Covenant on Civil and Political Rights](#), arts. 2(1), 26, 27
- UNGA, [Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities](#) (18 December 1992)

LEGISLATION

- [Basic Law: Human Dignity and Liberty](#), s. 1, 1A (as amended in 1994)
- [Basic Law: The Knesset, section 7A \(amendment no. 34\)](#) (amendment no. 34) (January 2002)
- [\(Proposed\) Basic Law: Israel - the Nation-State of the Jewish People](#) (1550/19/P)
- [Budgets Foundations Law \(Amendment No. 40\)](#) (2011) ('Nakba law')
- [Cooperative Societies Ordinance \(amendment no. 8\)](#) (2011) ('admissions committees law')

CASE-LAW

- EA (Election Appeal) 1/65 *Yeredor v. Chairman of the Central Electoral Committee (CEC) for the Sixth Knesset* (23 October 1964) ([Hebrew](#))
- [EA 2/84 Neiman v. Chairman of the CEC for the Eleventh Knesset](#) (15 May 1985)
- EA 1/88 *Neiman v Chairman of the CEC for the Twelfth Knesset* (18 October 1988) ([Hebrew](#))
- [HCJ 6698/95 Ka'adan v. Israel Lands Administration et al](#) (8 March 2000) (land acquisition)
- [HCJ 4112/99 Adalah et al v. Municipality of Tel Aviv- Jaffa et al](#) (25 July 2002) (sign-posts)
- HCJ 4797/07 *ACRI v. Airport Authority, General Security Service and Ministry of Transportation* (profiling in airports) (pending) ([analysis](#))
- [EA 561/09 Balad and Ra'am Ta'al v. Chairman of the Central Electoral Committee for the Eighteenth Knesset](#) (7 March 2011)
- HCJ 2504/11 *Adalah et al v. Knesset et al* ('admissions committees law') (pending) ([petition](#))
- HCJ 3429/11 *Alumni Association of the Arab Orthodox School in Haifa et al v. Minister of Finance and others* (5 January 2012) ('Nakba law') ([petition](#)) ([Hebrew](#))

- EA 9255/12 *Central Elections Committee for the nineteenth Knesset v. Hanin Zoabi* (30 December 2012) ([Hebrew](#)) ([summary](#))

SECONDARY SOURCES

- Chaim Gans, *A Just Zionism: [On The Morality of the Jewish State](#)* (OUP, 2008) ch 3
 - Joel Golovensky and Ariel Gilboa, '[Is this land still our land? The expropriation of Zionism](#)' (2009) 36 *Azure*
 - Human Rights Committee, '[General Comment No. 23: Art 27 \(Rights of Minorities\)](#)' (1994)
 - Israel Democracy Institute, [Constitution by Consensus](#) (Jerusalem, 2007)
 - National Committee for the Heads of the Arab Local Authorities in Israel, [The Future Vision of the Palestinian Arabs in Israel](#) (Nazzareth, 2006)
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SEMINAR SIX

JEWISH 'ALIYAH' AND NON-JEWISH IMMIGRATION TO ISRAEL

PRESENTATION

- Compare the 2006 and 2012 judgments of the HCJ regarding restrictions on family unification: what role do demographic considerations play, and are they legitimate?

QUESTIONS FOR DISCUSSION

- Is the distinction drawn by Gans and others between the *law of return* and measures restricting family unification and/or naturalisation justified? Can the *law of return* be justified based on liberal principles?
- Consider the significance of the use of the term 'infiltrators' in legal and political discourse concerning African asylum seekers.

TREATIES/AGREEMENTS

- [Convention Relating to the Status of Refugees](#), arts. 1A(2), 31, 33

LEGISLATION

- [Citizenship and Entry into Israel Law \(temporary order\)](#) (31 July 2003)
- [Citizenship and Entry into Israel Law \(amendment no. 2\) \(temporary order\)](#) (21 March 2007)
- [The Law of Return](#) (5 July 1950)
- [The Law of Return \(amendment no. 2\)](#) (10 March 1970)
- [Nationality Law](#) (1 April 1952)
- [Prevention of Infiltration Act \(amendment no. 3\) \(temporary order\)](#) (10 January 2012)
- Prevention of Infiltration Act (amendment no. 4) (temporary order) (10 December 2013) ([Hebrew](#)) ([analysis](#))

CASE-LAW

- [HCJ 7052/03 et al Adalah- The Legal Centre for Arab Minority Rights in Israel et al v. Minister of the Interior et al](#) (14 May 2006)
- [HCJ 466/07, 5030/07 Zehava Galon et al v. Minister of the Interior et al](#) (11 January 2012)
- [HCJ 7146/12 Adam et al v. Knesset et al](#) (15 September 2013)
- HCJ 8140/13 *Uzi Ornan v. Minister of the Interior* ([Hebrew](#)) ([response by the petitioner](#)) (9 December 2012)
- HCJ 8425/13 *Anon et al v. Knesset et al* (pending) ([Hebrew](#)) ([report](#))

SECONDARY SOURCES

- Howard Adelman, 'The Law of Return and the Right of Return' in Rafiqul Islam and Jahid Hossain Bhuiyan (eds), [An Introduction to International Refugee Law](#) (Brill, 2013) ch 11
- Daphne Barak-Erez, 'Israel: Citizenship and Immigration Law in the vise of Security, Nationality and Human Rights' (2008) 6 International Journal of Constitutional Law 184

- Yonatan (Jonathan) Berman and Reuven (Ruvi) Ziegler, 'Detention of Asylum Seekers in Israel: The unholy Union of Securitisation and Demography' in Amy Nethery and Stephanie J. Silverman (eds), *Immigration Detention: The Global Journey of a Policy* (forthcoming 2015) [will be available on blackboard]
- Dan Ernst, ['The Meaning and Liberal Justifications of Israel's Law of Return'](#) (2009) 42(3) Israel Law Review 564
- Chaim Gans, *A Just Zionism: On The Morality of the Jewish State* (OUP, 2008) ch. 5
- Ruth Gavison, ['The Law of Return at Sixty Years: History, Ideology, Justification'](#) (Metzila, 2010)
- Tally Kritzman-Amir, ['Otherness' as the Underlying Principle in Israel's Asylum Regime'](#) (2009) 42(3) Israel Law Review 603
- Liav Orgad, ['Love and War: Family Migration in Time of National Emergency'](#) (2008-2009) 23 Georgetown Journal of Immigration Law 85
- Yoav Peled, ['Citizenship Betrayed: Israel's Emerging Immigration and Citizenship Regime'](#) (2007) 8(2) Theoretical Inquiries in Law 603
- Reuven (Ruvi) Ziegler, ['A Matter of Definition: On 'Infiltrators' and Asylum Seekers in Israel'](#) (26 January 2011)
- Reuven (Ruvi) Ziegler, ['The New Amendment to the Prevention of Infiltration Act-Defining Asylum Seekers as Criminals'](#) (16 January 2012)
- Reuven (Ruvi) Ziegler, ['Quashing Legislation Mandating Lengthy Detention of Asylum-Seekers: A Resolute Yet Cautious Israeli Supreme Court Judgment'](#) (22 September 2013)
- Reuven (Ruvi) Ziegler, ['The Prevention of Infiltration \(Amendment no. 4\) Bill: A malevolent response to the Israeli Supreme Court judgment'](#) (4 December 2013)