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## ***East West Street***

On the Origins of "Genocide" and "Crimes Against Humanity"  
with Philippe Sands  
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57 minutes, 36 seconds

Speaker: Philippe Sands

Transcribed by: Samantha Munoz

[Holocaust Living History Workshop](#)

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Time Transcription

0:00 [UCTv - University of California Television / [www.uctv.tv](http://www.uctv.tv)]

0:04 [Read Write Think Dream / The Library Channel / [www.uctv.tv/library-channel](http://www.uctv.tv/library-channel)]

0:15 Philippe Sands: *East West Street* took me nearly six years to write. It's about the lives of four men and it seeks to understand how their particular circumstances contributed to the road they took and how the roads thus traveled changed the system of international law that is my daily work. The book touches, however, on a more personal theme. How these interweaving lives affected the path that I have taken, whether directly or indirectly. And below all of these issues, lies a far bigger question which is really the central theme of what this book is about.

0:58 Philippe Sands: It's about identity. Who are we? Who am I? Individual or member of the group, and how do we wish the law to protect us as individuals or as members of a group? *East West Street* came about entirely by chance. In the spring of 2010, an invitation arrived from the Ukraine - from the law faculty of the University in a city that used to be Lehmbourg during the Austro-Hungarian Empire until 1918 and then Lwów during the Polish years until 1939. Then Lviv after 1945.

1:44 Philippe Sands: When I'd come and visit and deliver a public lecture on the work I have done on the cases I have been involved in on the crimes against humanity and genocide and on the Nuremberg trial. "Yes," I said, "I'd be delighted to come." I had long been fascinated by the trial and by the myths of Nuremberg by the words, the images, the sounds, the lengthy transcripts, the grim evidence, the memoirs, the diaries, and extraordinary films like *Judgement at Nuremberg* which won an Oscar 1961. Memorable for many reasons. Not least Spencer Tracy's momentary unexpected flirtation with Marlene Dietrich, and the fantastic line from the closing judgment in the case: we stand for truth, justice, and the value of a single human life.

2:40 Philippe Sands: But there's also the fact that the Nuremberg judgment blew a wind-- a powerful wind, into the sales of a germinal human rights movement. It opened up the possibility that the leaders of a country could be brought to justice before an international court. This was something that had never happened before in human history. It's probably my work as a barrister, rather than my writings, that caused the invitation to be sent. In the summer of 1998, I'd been involved in the negotiations in Rome, in Italy, that led to the creation of the International Criminal Court. A body with jurisdiction over both genocide and crimes against humanity, as well as other crimes. The essential difference between these two concepts is on who is protected and why. Assume ten thousand people are killed, murdered, exterminated. The systematic killing of such numbers of individuals will always be a crime-- a crime against humanity.

3:51 Philippe Sands: But will it be a genocide? That depends on the intention of the killers and the ability of prosecutors to prove that intention. To establish the crime of genocide it's necessary to show that the act of killing is motivated by a special intention. Namely the intention to destroy a group in whole or in part. If a criminal prosecutor cannot prove that a number of people have been killed with an intent to destroy the group of which those people are a member then genocide will not have been established. And so you have these two crimes operating side by side and

overlapping. Every genocide will also be a crime against humanity. But not every crime against humanity will be a genocide. And that difference has given rise to a sort of pecking order, a league table, with genocide seen by many as the crime of crimes more serious than any other.

- 4:58 Philippe Sands: In the years that follow the Nuremberg trial the gates of international justice creaked open rather slowly. And after five decades of quiescence during the Cold War chill that followed Nuremberg, only then did things begin to happen. Cases from the former Yugoslavia and Rwanda soon landed on my desk in London. And others followed. Relating to the allegations in the Congo, Libya, Afghanistan, Chechnya, Iran, Syria, Lebanon, Sierra Leone, Guantanamo, Iraq, and others. It's a long and sad list that reflects the failure of good intentions in Courtroom 600 of Nuremberg's Palace of Justice. I became involved in far too many cases about mass killing, I've seen far too many mass graves.
- 5:55 Philippe Sands: Some of the cases involved crimes against humanity, others involved genocide, respectively the killing of individuals on a large scale and the destruction of groups. These two distinct crimes with their different emphasis grew side by side. Although over time genocide has emerged as, in the eyes of many, the most serious. Occasionally, I would pick up hints about the real origins of these two crimes and the purposes of the two terms, and their connection to arguments that were first made in 1945 in Courtroom 600, but I never really looked into what had happened. And so the invitation from Lviv gave me an opportunity to look into these matters.
- 7:05 Philippe Sands: Though I could say that I made the trip to give a lecture but that would not be true. I gave the lecture, went to the city of Lviv, because of this person. Leon Buchholz who was my grandfather. He was born in the city of Lemberg in 1904. In his wonderful slim volume *Mój Lwów*, the Polish poet Józef Wittlin wrote this book in 1946 but it was only published in English in 2016. *A City of Lions* captured the essence of the city in those years. Wittlin describes the essence of being a Lvovian as an extraordinary mixture of nobility and roguery, of wisdom and imbecility, of poetry and vulgarity. But, Wittlin concludes, I know people for whom the Lwów was a cup of gall. And it was a cup of gall for my grandfather. The city was a place buried deep, part of a hidden hinterland of which he never spoke to me. Leon's silence barely covered the wounds of a family that he left behind in 1914 when he moved to Vienna as the Russians invaded the city of Lemberg and then lost forever after 1939. Yet the moment I first set foot in the city in 2010, in the Autumn, it felt incredibly familiar. A bit like a lost relative.
- 8:33 Philippe Sands: What haunts are the gaps left within us by the secrets of others. So wrote the psychoanalysts Nicholas Abraham and Mária Török. Those are the words with which I opened *East West Street*. And my grandfather Leon's secret was that he came from a huge family, one that was centered in Lemberg and its environment. The family grew and grew until 1939 when war came again to the city. And from the spring of 1945, he lived the rest of his long life, until the 1990s, believing that he was the only survivor from Lemberg and from Galicia, where his family came from. In 1939 he was banished from Vienna because he was a Jew. He traveled to Paris, which was where he lived when I came to know him. I always thought of him as a Frenchman. I'd always assumed that he had left Vienna for Paris with his wife, Rita, my grandmother, and his one-year-old daughter Ruth, my mother.

- 9:50 Philippe Sands: But in the course of my research, as I prepared the lecture for Lviv in 2010, I discovered that this was not the case. Leon in fact left Vienna and made his way to Paris by himself. Only then in 2010, having access to family papers for the first time, did I learn that his daughter had traveled to Paris a few months after him and that his wife remained in Vienna for another three years. From this, I formed a sense that something else had intervened in their lives before the three separated in January 1939. It's a sort of litigator's instinct. Why did Leon leave Vienna by himself? How on earth did my mother, Ruth, get to Paris by herself as a one-year-old? And why did my grandmother Rita remain in Vienna, allowing herself to be separated from her only child? These and other big questions hung in the air. I returned time and again to the documents that I found among my grandfather's papers looking for clues. As a litigator, which is a sort of lesser amateur historian come psychiatrist you learn that every scrap of paper or photograph is capable of hiding information that is not immediately knowable.
- 11:24 Philippe Sands: I like to call this the "muck of evidence" and it's something that I've come to love. I've learned that you need to look carefully and must always keep an open mind. You must attend to the unexpected, you must find the dots, try to join them, and persist, persist, persist. Because nothing is ever only what it seems. And two items really stood out. This was one of them. It's actually a tiny scrap of thin yellow paper. No more than an inch and a half by an inch and a half. One side was blank and the other side bore the writing that you can see. "Miss E. M. Tilney / Menuka / Blue Bell Rd / Norwich / Angleterr".
- 12:20 Philippe Sands: The second item was this equally small image, a black and white photograph. Taken in 1949, not quite square. It showed a middle-aged man looking intently into the camera. On the back of the photograph, in blue ink, was written "Herzliche grüße aus Wien" Warmest wishes, from Vienna. September 1949." And there was a signature. The writing was firm, but it was, at least initially, completely indecipherable. When I first saw these items, I asked my mother who was Miss Tilney. Who was this man? And she said, "I did--I don't know." And I didn't believe her. I retained the scraps thinking that they might in due course shed light on what had happened in 1939 to my grandfather. I pinned them above the wall on my desk and would return to them from time to time and they remained there for four years.
- 13:28 Philippe Sands: I turned in the summer of 2010 to the lecture that I had to write for Lviv. I've taken you on a little personal detour but you'll recall the lecture I was to deliver was on the subject of crimes against humanity and genocide. So let me take you to the first of several coincidences. In preparing that lecture I was immensely surprised to discover that the man who put the term "crimes against humanity" into international law came from the city of Lviv. Indeed he came from the very same university and law faculty that had invited me. And remarkably, the folks who invited me had no idea.
- 14:16 Philippe Sands: His name was Hersch Lauterpacht. He was born in a small town called Żółkiew about fifteen miles north of Lviv. He moved to the city when he was fourteen in 1911 and then enrolled at the university law faculty where he remained for four years. In 1919 he moved to Vienna, he studied with the great philosopher of law Hans Kelsen. And then in 1923, he moved to London where he became a renowned academic at the London School of Economics and then moved to Cambridge

University. In 1945 he published a book that laid a foundation for modern human rights. He gave it the title, *An International Bill of the Rights of Man*. And it was truly a revolutionary work. The first book that set out a list of rights for all human beings under international law -- something that did not then exist.

- 15:16 Philippe Sands: His draft bill gave rights to his own personal credo, that individual human beings are the ultimate unit of all law. In 1945 after the war in Europe ended, Churchill, Roosevelt, and Stalin agreed that there would be a criminal trial for the leading Nazis. The British hired Hersch Lauterpacht to join their prosecution team to work with Robert Jackson, who was going to be the chief prosecutor. In July 1945 Justice Jackson -- a Supreme Court Justice traveled from the United States to London to draft the charter of the Nuremberg tribunal. The four powers: The U.S., Britain, France, and the Soviet Union were in disagreement about the list of crimes over which the tribunal would exercise jurisdiction. On July the 29th, Jackson left his hotel room at Claridge's, in Mayfair in the center of London and was driven up to Cambridge to have lunch with the Lauterpachts. They sat together in the garden of Lauterpacht's home on Cranmer Road and they had tea together. This is Lauterpacht in his garden. The two men discussed the problems of the list of crimes. Lauterpacht suggested that it might be a good idea to insert titles to help public understanding and add legitimacy and Jackson reacted rather positively to the idea so Lauterpacht offered another in relation to atrocities committed against civilians. Lauterpacht has, of course, an academic interest in this subject but he also has a deeply personal interest because he has no news about his family in Lemberg -- his parents, his brother, his sister, and a large number of other relatives. As an emerging Englishman, he says nothing to Jackson about the personal element.
- 17:24 Philippe Sands: "Why not?", says Lauterpacht, "Why not refer to these crimes as crimes against humanity?" You can see the words here in his own hand. The term will cover atrocities committed against individuals on a large scale: torture, murder, disappearance and introduce a totally new concept in international law. On August the 8th 1945 these words, "crimes against humanity" are incorporated into the Nuremberg charter. They become Article six, paragraph C, and history is made. Preparing the Lviv lecture required me to focus also on genocide, as you know and this brought me to a second surprising discovery. The man who invented the word, literally in 1944 also came from Lviv and studied at the very same university and the very same law faculty as Lauterpacht. His name was Raphael Lemkin. He arrived at Lwów University in 1921, two years after Lauterpacht had left. And in 1926 he obtained his doctorate in criminal law. After law school, he became a public prosecutor in Warsaw. In 1933 he wrote a paper for a League of Nations meeting in Madrid which proposed a new international crime to combat what he then called "barbarity and vandalism" against people.
- 19:17 Philippe Sands: Unlike Lauterpacht, his focus was not on the protection of individuals but on the protection of groups. His ideas bounced around but of course, nothing came of them. The timing was terrible, Adolf Hitler had just taken power in Germany. Six years later in 1939, when Germany invades Poland, Lemkin is in Warsaw. He escapes, makes his way initially to Sweden and then to the United States and to academic refuge at Duke University in Durham, North Carolina where he has been offered a visiting professorship. On his travels, three-quarters of the way around the world -- he travels the long route, he has very little money and no personal

possessions. But he travels with a vast amount of luggage. His luggage is filled with paper, thousands and thousands of decrees that were promulgated by the Nazis in occupied Europe. He's gathered these materials while living in Sweden and he now carts them around the world. In America, he analyzes the decrees and in 1942 he is offered a contract to write a book that will describe the patterns of behavior that he has found. In discerning of an underlying master plan.

- 20:48 Philippe Sands: The book is published in November 1944. He gives it the title, *Axis Rule of Occupied Europe*, and chapter nine of that book is given, as its title, a totally new word which he has invented and which you can see on the screen in his hand. Genocide. It refers to the destruction of groups. It is, in his view, the Nazi master plan. And he has played around with various ideas before settling on this amalgam of the Greek word *genos*, meaning tribe or race, and the Latin word *cide*. In the summer of 1945, Lemkin is based in Washington and hired by the U.S. government to work on war crimes. And he begins to work directly with Robert Jackson's team but entirely separately from Hersch Lauterpacht. He pushes for his idea of genocide, a crime for which he wants the senior Nazis to be indicted. In his view, the destruction of groups is a matter for the Nuremberg tribunal and it is the greatest of crimes.
- 22:12 Philippe Sands: In August 1945, when the Nuremberg charter is adopted after Jackson's visit to Lauterpacht in Cambridge, Lemkin is hugely disappointed that the charter includes crimes against humanity, the killing of individuals, but makes no mention of genocide or indeed, of the destruction of groups. He flies to London where the indictments of the individual defendants are being prepared. He is persistent and he constantly presses for the crime of genocide to be included. There is strong opposition to the concept of genocide from Robert Jackson's office under huge pressure from Southern U.S. Senators who are concerned about discrimination against African Americans and the term being invoked by them in the United States. And the British, too, are deeply concerned that the victims of colonial rule over many decades, if not centuries, will also turn to the concept of genocide to use against the British. And somehow against the odds, Lemkin's word makes it into the indictment and he describes himself as greatly pleased. The indictment alleges that the Nazis have conducted deliberate and systematic genocide.
- 23:34 Philippe Sands: And this is the first time ever that the word is used in an international legal instrument, or indeed, under any legal instrument. And it comes with an agreed definition -- Lemkin's definition: the extermination of racial and religious groups. The indictment mentions Jews, Poles, Gypsies, and others. And it includes the ill-treatment and murder of civilians in occupied territories including Lemberg and Wolkowysk, where his parents lived. Although, like Lauterpacht, has no news at all about the fate of his family or his brothers. On October the 18th, 1945 the indictment is filed at the tribunal in Nuremberg. "I went to London," he would later say, "and I succeeded in having inscribed the charge of genocide against the Nazi war criminals in Nuremberg." The trial opens on the 20th of November 1945, Lauterpacht is present in the courtroom that day as part of the British team pushing for the protection of individuals. Lemkin remains in Washington working with the American teams pushing, from a distance, for genocide, the protection of groups. One of the men, one of the 22 men in the dock that day is this man. His name is Hans Frank and he is the fourth man in my story and my book. He too is a lawyer and from the late 1920s, 1928, he served as Adolf Hitler's personal lawyer. He was an early Nazi.

- 25:32 Philippe Sands: In 1933 he became Bavarian Minister of Justice and two years later at an academic conference of lawyers in Berlin, for the German Academy of Law, of which he was the president he set out his credo. "The community," he funded "takes precedence over the egoism of the individual." In his case, community precedence will lead to mass killing. In October 1939, he becomes Governor-General of Nazi-occupied Poland. In August 1942, he travels to Lemburg and to the district of Galicia which has been newly incorporated into the Government General. He hosts a concert which finishes with the performance of Beethoven's *Ninth Symphony* and he then gives a series of speeches in which he announces the elimination of the city's entire Jewish population and that of the surrounding regions, about half a million human beings.
- 26:41 Philippe Sands: Amongst those who will be caught up in the horrors that follow, in the weeks and months ahead, after Frank's visit, are the families and the friends and the teachers of Lauterpacht and Lemkin, as well as my grandfather's family. For each family there will be only a single survivor -- and Frank becomes the connector between the three men. Three years later, in May 1945, Frank is caught by the U.S. Army in Bavaria near his home south of Munich. He has with him his diaries which will become very important in the trial, 42 volumes, and a fantastic collection of artwork.
- 27:40 Philippe Sands: When I say fantastic, I mean fantastic. It includes this painting for example by Leonardo Da Vinci *Cecilia Gallerani, The Lady with an Ermine*. This painting hangs in Frank's private rooms in the Wawel Castle in Kraków for five years. Today it is once again back at the Wawel. I've come to know Frank's son Nicolas, who tells me that as a young boy his father made him stand before this painting in his father's office and slick down his hair and part it like Cecilia. And Nicholas was frightened of the animal because he thought it was a rat; it is in fact an ermine But Frank is now in the dock and accused. He's charged on three counts, including crimes against humanity and genocide. On that first day of the trial, the Soviet prosecutor takes the judges to what happened in Lehmberg in the days following Frank's visit.
- 28:45 Philippe Sands: The prosecutor describes the murders, the torture, and the other forms of ill-treatment at concentration camps and other establishments in the Eastern countries. He calls them acts of genocide and he evokes explicitly the events at the heart of Lehmberg in August 1942 in the days following Frank's visit. More than 130,000 people tortured and shot in a short period. He tells the Tribunal, 8,000 children killed in just two months at the Janowska camp right in the middle of the city. As the words are spoken Lauterpacht who is in court and Lemkin who is at a distance in Washington do not know whether the victims who are being referred to being include of their own families and they are not yet aware that the man they are prosecuting, Hans Frank, may be directly implicated in the murder of their entire families. And I have to say, as a litigator who appears frequently in court, including the international criminal court -- I find it extraordinary to imagine being in court on that day faced with such a defendant and not knowing the fate of your own family.
- 30:05 Philippe Sands: The day of course is remarkable at another level because it becomes the first time in history that the terms genocide and crimes against humanity are used in any court of law. I know Lauterpacht to be in the courtroom on that day and I know that Frank was there and I wonder if there is a photograph. I asked Lauterpacht's son Eli [Elihu] and he says none exists but rather as with the responses of my mother, I don't believe him. I persist, like Lemkin. I spend a day at

the archives of Getty Images going through hundreds and hundreds of glass-plate images each of which has to be taken out of its protective paper sleeve. Finally, after many hours, I find what it is that I am looking for. A photograph taken from an unusual perspective in the Nuremberg courtroom. Lauterpacht sits at the British table in the top left-hand corner, his elbows are on the table. His hands are clenched under his chin. He's attentive, sitting directly behind Soviet prosecutor at counsel's lectern.

- 31:24 Philippe Sands: If you turn to the bottom right-hand corner you'll see the defendants, the familiar large figure of Hermann Goering in his light, in his light-colored suit, and if you move along the bench, six to Goering's left, just before the image is cut-off by the protruding balcony, you can see the semi-bowed head of Hans Frank. Divided by no more than a few tables and chairs. Lauterpacht and Frank are together in the same room. The trial lasts for a full year and judgment is handed down over two days. On September the 30th, and October the 1st 1946. The 70th anniversary of that remarkable two days was recently marked in Courtroom 600 of Nuremberg's Palace of Justice, which is still a working courtroom as well as a museum. And if you're in the vicinity, it is very well worth visiting. I hope you'll understand why I might be a bit reluctant to avoid revealing everything that transpired over the course of a remarkable year in court. As the lives of the three men became increasingly and unbelievably intertwined. Suffice it to say that the connections were entirely unexpected. A series of happenings that the writer and historian Antony Beevor have described as of "being of a kind that no novel could possibly ever match." The point that I am making tonight is that those personal journeys of those men coincided in ways that produced an outcome that changed the course of legal history and then changed history itself.
- 33:21 Philippe Sands: The ideas and endeavors of Lauterpacht and Lemkin influenced politics, history, culture, my life, and each of your lives. The concepts of crimes against humanity and genocide entered our world, our daily lives, although to many it seems that those two terms have existed forever. They have not. They are both inventions -- a product of creative and inventive minds and intellects. Two men driven by their own experiences forged on the anvil of a single city. Quite why Lauterpacht opted for the protection of the individual and what caused Lemkin, on the other hand, to embrace the protection of the group is a matter of speculation. Their backgrounds were similar. They studied at the same university. They walked the same streets. They had the very same teachers. If you want to understand the origins of these crimes and trace them, you need to go to Lehmberg and to events of the First World War. You need to visit the law faculty and you can trace, as I have done over a great amount of time, the origins to a single teacher two men had in common.
- 34:47 Philippe Sands: Professor Juliusz Makarewicz, a Polish professor of criminal law. You can even follow the line to a particular building. And, go further into the very room where Juliusz Makarewicz taught, sharing his ideas on the treatment of minorities. I found the room and as you can see, it is still a working classroom. Even more remarkable perhaps, despite their common origins, their common interests, their common journeys, their roles in the Nuremberg trials, and the fact that at least two occasions I've been able to locate them in the same city on the same day, it seems that Hersch Lauterpacht and Raphael Lemkin never actually met. But the concepts they put into international law, crimes against humanity and genocide, inform my working life and I'm quite sure that my quest to understand Lauterpacht and Lemkin is



driven in some way by my own personal history and that of my family. By stories that have been buried away in family crypts no doubt for protective reasons.

- 36:16 Philippe Sands: Along the way, I managed to conduct a bit of family detective work. I managed to discover who Miss Tilmy was -- you're looking at her. I came to understand why my mother and I and my brother have reason to be deeply grateful for this remarkable human being. A woman of great courage. A missionary for the Surrey Chapel in Norwich, a place into which she was born. Her father was a preacher. She was motivated by a particular, and some would say, peculiar interpretation of chapter ten, verse one of Paul's Letter to the Romans. It seems that it is this single line which prompted her to travel to Vienna and save my mother's life, in bringing her from Vienna to Paris in the summer of 1939.
- 37:10 Philippe Sands: But I also identified the identity of the man in a bow tie. That was a different kind of German. It took me first to the East and then to the West. Across rivers, across an ocean, through dozens of old Austrian telephone directories, hiring a remarkable private detective in Vienna. But the final winning clue was provided by Facebook. And that took me to an attic in Massapequa, Long Island where I found this photograph. It would be the critical clue to emerge that offered the key to unlocking a family mystery. A single image taken in a garden in Vienna at Number 4 Brahmsplatz, a house owned by the Wittgenstein family in the Spring of 1941 of my grandmother with two men in white socks. One of them being the man in the bowtie. And he was her lover. That discovery then catalyzed another. The identity of the man who was my grandfather's true love, his best friend, Max.
- 38:35 Philippe Sands: Such efforts took several years and involved a huge amount of assistance from a range of remarkable individuals around the world. These are the requirements of an exercise in personal archeological enterprise. Unexpectedly, as the research went on, I also learned of an even more direct connection between my family and the Lauterpachts and the Lemkins. I was immensely surprised to discover that my great-grandmother, Amalia Buchholz, was actually born and lived in the small town of Żólkiew where Hersch Lauterpacht was born and lived. Even more remarkably, I discovered that they were born and lived on the very same street. Lemberger Strasse, just a few hundred yards apart. Lauterpacht's son Eli [Elihu], you see, was my first teacher of international law and was my mentor. I worked with him throughout the rest of my academic and professional life as a barrister. We first worked together in 1982 but it was only, only in 2014 that we learned that we could trace our roots to this particular street. Joseph Roth, the great writer, called this street *East West Street* and hence the title of the book.
- 40:10 Philippe Sands: But in the course of that research I went further. And if I discovered that Amalia Buchholz, my great grandmother started life on the Lauterpacht Street, she ended her life on a Lemkin Street, in September 1942, in the kingdom of Hans Frank. The last street down which she walked in the company of the three sisters of Sigmund Freud was Himmelfahrt Strasse, the "street to heaven", that was the street that led from the railway platform at a place called Treblinka to a gas chamber. Just two weeks later Lemkin's parents Bella and Josef walked down the very same street and perished in the very same gas chamber. Curiously then, my great-grandmother's life was caught, book-ended, between the Lauterpachts and the Lemkins, as, it might be said, albeit in a very different way, is mine.

- 41:17 Philippe Sands: How does one begin to understand these points of connection? The ideas of these two remarkable men, Lauterpacht and Lemkin are of a continuing relevance today. The relationship between the individual and the group has been contested across the ages. And I was reminded of this when I came across a letter written by Eliot - by Lauterpacht to his son Eli [Elihu], as he was preparing a draft of the closing arguments that were to be delivered by Sir Hartley Shawcross, the British Attorney General, in July 1946. Having recently learned that all but one member of his Lemberg family had been murdered on the orders of Hans Frank, the man he was prosecuting, it must have been a time of intense anguish and of personal grief but also of professional challenge. And so, to his son Eli [Elihu] he explained that he was able to find solace and strength in music, and in particular, in what he described, as the strains of Johann Sebastian Bach, and in particular his *Matthew Passion*.
- 42:34 Philippe Sands: Remarkably, at that very same moment, in the summer of 1946, Hans Frank told the US Army psychologist who was attending to his needs, Dr. Gustav Gilbert, that in these most trying of times, as the trial reached its climax, he took refuge in the imagined listening to music - Bach and the *Matthew Passion*. You really couldn't invent it. How remarkable, the two men on opposite sides of the same courtroom would take solace in the same piece of music. I've come to understand the work's resonance for Lauterpacht, who was fluent in German. The libretto of the *Matthew Passion* reflects Bach's emphasis of a pietist's belief in the vital role of the individual. Every aria but one in the *Matthew Passion* is sung as ich, I, and the three landmark choruses are sung in the first person. In this way, Bach is signaling the bypassing of the priest celebrant, and the church - the group - the bypassing of the group allowing the individual a direct connection with God. For Frank, on the other hand, with his scathing disregard of the integrity of the individual, the connection is more difficult to understand, not least given the works scathing attack on the Catholic faith to which Frank had converted just a year earlier, following a failed suicide attempt.
- 44:24 Philippe Sands: Lauterpacht believed that we should concentrate on the protection of the individual at all times and would surely argue even today that Lemkin's invention of the concept of genocide has been practically useless, and is and will always be politically dangerous. That it will replace the tyranny of the state with the tyranny of the group and in a way, my own work as a practicing litigator concords with that view. I've observed for myself how the focus on the protection of one group against another tends to reinforce the sense of them and us - tends to amplify the power of group identity and association, which is a source both of sustenance and danger. How does this happen? In seeking to prove that a genocide has occurred in law you have to establish the existence and expression of an intent to destroy a group in whole or in part. I have seen for myself firsthand how that process tends to reinforce both the sense of victimhood of the targeted group and hatred towards the perpetrators as a group. But I also understand, of course, what it was that Lemkin was trying to do, and he was surely right to recognize a reality that in most, if not all cases, mass atrocity is targeted not against individuals, but against human beings who happen to be a member of a group that is hated at a particular moment in time and place.
- 46:14 Philippe Sands: Lemkin would say, and it is a deeply powerful argument, that the law must reflect that reality. That it must also recognize and give legitimacy to that feeling that we all have of association with one or more groups. This profoundly strong

sentiment was brought home to me recently. I was writing an article for the Financial Times magazine, a profile of a man called Dr. Jan Kizilhan who is the remarkable German doctor, psychologist, who has established a program to assist 1,100 Yazidi women and girls who were enslaved, tortured, and massively, and systematically raped by individuals associated with Isis. He created a program that brought 1,100 of them to Germany for medical and psychological treatment. Dr. Kizilhan identifies a connection between the possibility of justice and the future well-being of victims. For him, characterizing such atrocities as a genocide is a vital necessary first step and so he welcomed the use of the word by the European Parliament and by the Obama administration as to what was happening in northern Iraq. Calling it a genocide, Dr. Kizilhan told me, recognizes the group's identity - recognizes what is being done to it and, most importantly - recognizes its right to exist as a group.

- 47:58 Philippe Sands: The implication for him is that crimes against humanity just isn't enough. But I am concerned about the hierarchy that has emerged, one that puts genocide atop the list of horrors, so that a mere crime against humanity, or war crime, is seen somehow as a lesser evil. Call something a genocide and it will invariably be on page one of our newspapers. Call it a crime against humanity and, if it's in the papers at all, it'll be at page 13 or some such place. That is the power of the word invented by Raphael Lemkin, much of whose archive is located here in the United States. What's the enduring legacy of these two terms after Nuremberg? There was a quiescence. Five decades passed before international criminal justice was catalyzed by the events in the former Yugoslavia, and in Rwanda, by the arrest of Senator Pinochet in London, by the creation of the International Criminal Court, by the events in New York, and Washington on September the 11th, and by the actions that followed - taking us through Afghanistan, and Iraq, into the world of Isis, and other horrors. And today, once more, a poison of xenophobia and nationalism is coursing its way through the veins of Europe and elsewhere. I see it on journeys to the central and eastern parts of the European continent, to Hungary, to Poland, to the Ukraine. Those of you who have seen my film, *My Nazi Legacy*, a BBC Storyville documentary, which is also on Netflix, would have seen me in a faraway field watching people dressed in SS uniforms celebrating, in 2014, the creation of the Waffen SS Galician Division in 1943.
- 50:14 Philippe Sands: It's impossible for me not to have gone through the experience of writing *East West Street* an immersion, sort of total immersion, in the world of the years between 1914 and 1945 and not feel an acute sense of anxiety as to what is stirring closer to home, my home and yours. It is possible also to smell change in the air, a move to a vicious and deeply damaging identity politics. Brexit in Britain taking back control, and President Trump in the United States making America great again, are surely a reflection too of the unhappy, dangerous, xenophobic, nationalistic direction we seem to be taking. And so, that's the context today that I oscillate - between the views of Lauterpacht and Lemkin - between the place of the individual and the place of the group - my own sense of identity and the identity of others - between the realism of Lemkin and the idealism of Lauterpacht. I can see the force of both arguments, and I can recognize acutely the tension, and the struggle between the individual, and the group - between crimes against humanity, and genocide. International law today embraces both concepts.
- 51:45 Philippe Sands: I end *East West Street* in a long-ago place of mass killing. And I find myself standing there, caught between polls - between my head and my heart -

between intellect and instinct, recognizing the need to value the inherent worth of every human being, but understanding too, very directly, the pull of tribal loyalty and recognizing finally the essential truth of the notion that we are, each of us, haunted by the gaps left within us by the secrets of others, but also by the possibility that the mere knowing of the existence of such a haunting will not necessarily destroy us but actually make us stronger. Thank you very much.

- 52:49 Speaker 1: I'm curious to know what you would think of Poland's new anti-Holocaust law.
- 52:59 Philippe Sands: Sure, and I'm horrified by Poland's new Holocaust law but I'll take it further. I am married to an American and over the years I've come to appreciate, and understand, and embrace the ideas of the First Amendment. Which as a Brit, you normally wouldn't do, at least not so explicitly. And so, I have come also to be deeply unhappy with laws in various countries that criminalize Holocaust denial for example, and I think the logic of doing things like criminalizing Holocaust denial is you then make it much easier for others to pass their own laws which criminalize other forms of denial or statement. So, there are aspects, of course, of the law which I understand. I mean the references, often invariably inadvertent to Polish concentration camps, is obviously historically false - in the sense that it implies that the camps were controlled by, or on behalf of, Poland. And of course, they were not. They were located, as I know all too well, on the territory of Poland. But I think criminalizing those kinds of statements will end up backfiring - just as criminalizing denial of the Holocaust will end up backfiring.
- 54:36 Philippe Sands: So, I don't like it, but I understand why they've done it against the background of others doing the same thing, in respect of the things they don't like other people saying. It's, it's a slow slippage into a bad place. So, I wouldn't do it. The book's coming out in Polish actually, it's come out this week in Polish and I'm going to Warsaw and Krakow in May to talk about it. And I'm going to be very interested to see what the reaction is. No doubt something would have slipped into the Polish version of *East West Street* that someone won't like somewhere, just as people in - some people in the Ukraine - don't like some of the things that have slipped into the Ukrainian edition. So these are very complex and difficult moments.
- 55:25 Speaker 2: Why hasn't the United Nations put together a force to stop Pol Pot and other people like him?
- 55:36 Philippe Sands: Some governments have no objection to those things happening. The United Nations is nothing more than the sum of its parts, and if some of the permanent members - the UK, the US, China, Russia, France, say no there will not be an intervention - no there will not be a UN force, it won't happen. That's why, right now in relation to Syria, we have a stalemate at the United Nations. So the easy thing is to blame the United Nations for not doing anything but actually, the finger of blame should go to states and governments. If there was a political will to do something, something would happen. It's not that the United Nations is stopping it from happening. It's that somewhere there is a government, or two, or more that doesn't want it to happen. And the history of the world since 1945, paved with good intentions, is that there will always be two or more sides to every conflict. And we see that very directly now in relation to the Kurds and Syria and northern Iraq. And it's a reflection of that political reality that allows the horrors to continue.

*East West Street: On the Origins of "Genocide" and "Crimes Against Humanity" (2018)*  
Holocaust Living History Workshop

- 56:51 [East West Street: On the Origins of "Genocide" and "Crimes Against Humanity February 28, 2018]
- 56:58 [Featuring Phillippe Sands, QC - Author, Filmmaker, Professor of Laws, and Director of the Centre on International Courts and Tribunals University College London]
- 57:03 [Presented by The Holocaust Living History Workshop - Deborah Hertz, Ph.D. Director, The Jewish Studies Program UC San Diego - Susanne Hillman, Program Coordinator, The Holocaust Living History Workshop]
- 57:08 [UC San Diego Library - Interim Audrey Geisel University Librarian, Tammy N. Dearie - Interim Director of Communications and Outreach, Nicole Kolupailo]
- 57:14 [UCTV - Producer, Shannon Bradley - Camera Operators, Marci Bretts, John Menier - Editor, John Menier]
- 57:18 [The views, contents, and opinions expressed herein do not necessarily represent those of the University of California]
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