

Institution: SOAS University of London		
Unit of Assessment: 28 – History		
Title of case study: Secret history of War Crimes trials: lessons for ending impunity today		
Period when the underpinning research was undertaken: 2008–present		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Dr Dan Plesch	Professor Director of Centre for International Studies and reader	2020-present 2005–present
Shanti Sattler	Research Assistant, Deputy Director War Crimes Project	2013–2014
Leah Owen	Research Assistant	2015
Dr Hanns Kendall	Research Assistant	2018
Period when the claimed impact occurred: 2014–31 July 2020		
Is this case study continued from a case study submitted in 2014? N		
<p>1. Summary of the impact (indicative maximum 100 words)</p> <p>SOAS research on the 1943–1948 United Nations War Crimes Commission raised public awareness of and altered understandings of the wartime Allied response to Nazi crimes. The findings were used to develop contemporary approaches to ending impunity for those who commit gross violations of human rights, and led to the Commission's archival records – sealed for over 65 years – becoming accessible to the public through partnerships with Holocaust education networks and museums. Featured in a Netflix documentary on the Holocaust and described by a leading jurist as 'a new and positive paradigm in international criminal law', the work built the capacity of law students and practitioners, and informed the approach and work of the Office of the High Commissioner for Human Rights.</p>		
<p>2. Underpinning research (indicative maximum 500 words)</p> <p>WWII war crimes prosecutions are typically thought of as involving a few dozen high-level perpetrators at Nuremberg and elsewhere, but this is an incomplete and misleading history. It omits the role of the 1943–1948 United Nations War Crimes Commission (UNWCC), which worked in parallel to the more famous Nuremberg and Far-East trial processes – identifying, classifying and assisting national governments with the trials of war criminals in Europe and East Asia. It supported thousands of prosecutions and tens of thousands of indictments for war crimes and crimes against humanity, including the Holocaust. After the war, Western leaders decided to stop legal processes against the Nazis in order to rebuild Germany in the early Cold War. The UNWCC files were kept classified as part of this process, a move that impeded subsequent trial processes. During the International Criminal Tribunal for the Former Yugoslavia (1993–2017) for example, the lack of access to precedents and case law on rape as a war crime severely hindered prosecutorial efforts.</p> <p>Research conducted since 2008 by Dr Dan Plesch (Director & Reader, SOAS Centre for International Studies and Diplomacy since 2005) with the support of research assistants Shanti Sattler (2013–2014), Leah Owen (2015) and Hanns Kendall (2018), has focused on bringing to light the role of the UNWCC as well as to presenting it as a model for international cooperation on prosecuting war crimes.</p>		

In order to produce a more accurate historical record of the period, Plesch undertook detailed research using UNWCC archives, identifying new key historical, legal, and political findings. The research led to gradual and successive declassification of the UNWCC archives between 2011 and 2014. However, the original archives were often illegible, and their limited indexing and finding aids were difficult to use. As part of these efforts to increase their accessibility, Plesch and Owen also digitally cleaned, sorted and made the UNWCC archives searchable using OCR (optical character recognition) software. The researchers worked to further maximise the 455,000-page digital archives' accessibility by making full-text search possible, breaking up the archive thematically (by type of document and by country), and producing an augmented archival guide. [3.1].

Among the project's chief findings were the discovery that the UNWCC assisted with over 30,000 indictments. This was far more than Nuremberg, UN-supported, and International Criminal Court caseloads combined. Analysis indicated that indictments were secured using an innovative system of case review and international cooperation [3.2, 3.3]. These trials were well-researched, and directed against individual soldiers and units for 'low-level' crimes, rather than solely against generals and heads of state [3.2, 3.4, 3.5].

They also found that the UNWCC broke new ground in pursuing a wide range of war crimes, including routine prosecutions of sexual violence, torture (including waterboarding) and large-scale massacres that are today recognized as genocide and crimes against humanity. Many of the Commission's founding staff went on to become key figures in fields such as human rights and international law [3.4, 3.5].

Finally, the model offered by the UNWCC has direct relevance to contemporary discussions about international criminal justice, particularly regarding legal precedents and the concept of 'complementarity' in international courts – meaning that international courts should be complementary to national courts and address very specific cases. Research with Professor Thomas G Weiss of the City University of New York [3.6] found that complementarity bolsters the expertise and capacity of national courts to try their own nationals [3.5, 3.6].

By making this rich trove of material on the Allied response to the Holocaust publicly available, the researchers paved the way for a radical re-understanding of international cooperation on prosecuting war crimes.

3. References to the research (indicative maximum of six references)

3.1. Plesch, D. (2016). *UNWCC Archives Online*, <http://www.unwcc.org/unwcc-archives/>

3.2. Plesch, D. (2017). *Human Rights After Hitler: The Lost History of Prosecuting Axis War Crimes*. Washington D.C.: Georgetown University Press. ISBN: 9781626164314. Submitted to REF2021.

Positive academic reviews from authoritative sources; 1] Witkowski, Victoria (2018) – *European Review of History* 26:2, pp. 365–366; 2) Buchanan, Tom (2018) – *Comparative Legal History*, 6:1, pp. 154–156

3.3. Plesch, D. (2010). *America, Hitler and the UN: How the Allies Won World War II and Forged a Peace*. London: I.B. Tauris. ISBN: 9781848853089. Available on request.

Positive academic review from an authoritative source: Brown, Kerry (2012) – *International Affairs* 88:2, pp. 420–422

3.4. Plesch, D. and Sattler, S. (2014). 'New Paradigm of Customary International Criminal Law: The UN War Crimes Commission of 1943–1948 and its Associated Courts and Tribunals'. *Criminal Law Forum*, 25(1–2), pp. 17–43. <https://doi.org/10.1007/s10609-014-9223-2> **Peer-reviewed**

3.5. Plesch, D. (2015). 'Building on the 1943–48 United Nations War Crimes Commission.' In: D. Plesch and T.G. Weiss, eds, *Wartime Origins and the Future United Nations*. Oxon; New York: Routledge, pp. 79-98 (Global Institutions). ISBN: 9780415712651. Available on request.

Positive practitioner review from authoritative source: Georgios Kostakos for ACUNS: <https://acuns.org/review-of-wartime-origins-and-the-future-united-nations/>

3.6. Weiss, T.G., Plesch, D. and Owen, L. (2016). 'The UN War Crimes Commission and International Law: Revisiting World War II Precedents and Practice'. In: Ziccardi Capaldo, G., ed., *Global Community: Yearbook of International Law and Jurisprudence 2015*. Oxford: Oxford University Press, pp. 71–109. ISBN: 9780190647759. Submitted to REF2021. **Peer-reviewed**

4. Details of the impact (indicative maximum 750 words)

The researchers engaged with practitioner groups (e.g., International Bar Association and 9 Bedford Row); international bodies including the UN, museums/educator networks Yad Vashem, the World Holocaust Remembrance Centre and the Wiener Holocaust Library; mass media outlets; and the public. They raised awareness and understanding among practitioners – including lawyers and policy makers – and the general public on the history and role of the UNWCC and informed a new paradigm for international criminal law. Justice Richard Goldstone, first chief prosecutor of the International Criminal Tribunals for Rwanda and Yugoslavia stated he 'would have benefited immeasurably from access to this rich material', particularly on gender-related war crimes, had it been accessible earlier [3.4]. The newly accessible archives are therefore an important resource for historical and contemporary legal understanding, which had been largely unavailable before the team's research.

4.1. Improving awareness and engagement with the history of the UNWCC

The UNWCC archives were made publicly available in April 2017, hosted by the Wiener Holocaust Library (WHL) in London, with user guidance on Plesch's public website. Between July 2019 and July 2020, the website had 83,582 visits [5.1].

To publicise the archives, the team engaged with Holocaust education institutions and networks and ran events, including a book launch [3.2] with the WHL. They also helped answer user inquiries, culminating in an archives training event with WHL staff and 9 interested members of the public. The WHL director commented that the archive was being 'consulted for a diverse array of projects', with 8 researchers accessing it for projects leading to further awareness of related topics, such as 're-emigre jurists and their impact on war crimes trials and the German Constitution; cross border fighting in the East and West zones of postwar Europe, female perpetrators in Auschwitz and war crimes in Poland and Southern France' [5.2].

Some of the documents were sent to the archives at Jerusalem-based Yad Vashem for their input. One of Yad Vashem's head archivists stated that 'the archival documentation of the UN commission, presented publicly for the first time, in your book [3.2].. provide a unique perceptive to such an important part of our history. This material will greatly enrich archival collections and enable...future research on this important topic' [5.3].

Researchers also informed documentary makers. Plesch featured as an on-screen expert in Netflix's *Greatest Events of World War II in Color* (Ep. 9: 'Liberation of Buchenwald'). Netflix do not release viewership figures, but the distribution deal covers 190 countries, including the US [5.4]. Plesch also consulted for Guerilla Film's documentary *Getting Away with Murder*, due for release in 2021 (photography completed 2019). The Guerilla Films' Director and Chairman confirmed: 'Dr Plesch conveys imperative evidence that is unknown to most people. For example, Hitler was an indicted war criminal at the time of his death; the Americans pulled back regarding a rigorous legal process in the prosecution of the Nazis for fear that the same legislation would be used in the USA to prosecute American citizens for lynching African Americans in the southern States.' [5.5].

Extensive media coverage [5.6] created public engagement in the UK and US that significantly increased awareness of this 'missing' history in international law. The 2017 launch of the UNWCC archives was covered by national news sites including US National Public Radio's *Morning Edition* [5.6a] and the *Guardian* [5.6b]. The article 'Opening of UN files on Holocaust will "rewrite chapters of history"', saw over 7,000 engagements on Facebook and was shared more than 500 times [5.6c]. It was covered by the (UK) *Times* [5.6d] and the *Associated Press* [5.6e]. This engagement

promoted dialogue about the archive's contemporary significance, with one Facebook commentator stating: 'Maybe this could be given to that group that is allegedly moving around Melbourne wearing those Nazi arm bands and teach them a little history lesson' [5.6c p3].

4.2. *Informing a new paradigm of international criminal law*

The project also contributed to thinking both on specific legal cases, and on institutional design and thinking around practice in international criminal law more broadly. The research showed clearly how national and regional courts can be objective and effective: legitimising valuable legal justice processes in Africa, instead of assuming that cases can only be tried justly in the Hague.

4.2.1 *Increasing the knowledge of lawyers in training and legal practitioners*

Kim Thuy Seelinger of UC Berkeley's Human Rights Center (HRC) is Director of the *Sexual Violence Program*, which supports national trials in which the crystallization of sexual violence as a war crime has arisen. The Program team incorporated UNWCC material related to sexual violence into amicus curiae briefs (advisory legal opinions proffered by 'non-litigants' – persons with strong interest in or views on the subject matter of an action, but not a party to the action) provided in relation to two cases: 1) Senegal's case against Hissène Habré, the former President of Chad and 2) Uganda's case against Thomas Kwoyelo. Both briefs were used as internal information material. Kim Thuy Seelinger asked Plesch to act as an advisor on the Sexual and Gender-Based Violence (SGBV) Customary International Law Project. Through this appointment, 150 indictments and 14,600 pages of trial transcripts were made available for the Human Rights Center's SGBV timeline project, currently in development [5.7].

Plesch also engaged with various legal firms, delivering presentations at Doughty Street Chambers (June 2019, with Justice Richard Goldstone: 40 attendees) and 9 Bedford Row (9BR) (September 2019, 30 attendees). These are leading chambers, in the UK and internationally, with specialist barristers in international criminal law, extradition, financial and regulatory law. The barrister who leads international criminal law at 9BR described the latter event on Twitter as 'fascinating' and offering 'unique insights' into international law concepts such as complementarity [5.8]. In February 2020, 9BR invited Plesch to join as 'A Door Tenant' – bringing his research into the modern relevance of the 1943–1948 UN War Crimes Commission to strengthen the chamber's work on complex international cases [5.9].

Justice Richard Goldstone – Former Chief Prosecutor of the United Nations International Criminal Tribunals for the former Yugoslavia and Rwanda and chair of the 2020 official review of the International Criminal Court – co-authored a blog with Plesch and SOAS's Prof Clark based on Plesch's research [5.10]. Goldstone noted that Plesch's research had 'rediscovered the history and work of the UNWCC', which 'made a profound impact on my understanding of customary international law and on my outlook on the past and future of international criminal justice. Change is not swift but I see an increased awareness of the use of these historic precedents and practice to help face today's problems' [5.11].

4.2.2 *Informing policymaking for war crimes investigations in Africa and the Middle East*

In March 2018, the Office of the High Commissioner for Human Rights (UN-OHCHR) asked Plesch to brief a group of 20 internal staff. The meeting was hosted by Assistant Secretary General for Human Rights Andrew Gilmour and Head of Rule of Law Mona Rishmawi. Gilmour had previously described the UNWCC as 'absurdly neglected'. In relation to Plesch's findings on the Commission, Mr Gilmour wrote 'I recognize [their] tremendous potential importance . . . because of the lessons it contains for future investigations of war crimes and crimes against humanity. At a time when we are discussing "hybrid courts" in places like South Sudan and Central African Republic; joint investigation of war crimes in the Democratic Republic of Congo, Yemen and Mali; and have begun work on an accountability mechanism (IIIM) for Syria, I am convinced that there is a lot that could be gained by the United Nations in obtaining a greater understanding of the absurdly neglected UNWCC. I would like my office to have greater interaction . . . in order to take this further, and see how we can use the lessons learned from the UNWCC in our efforts to achieve accountability for war crimes in many places where they are currently being committed' [5.12].

5. Sources to corroborate the impact (indicative maximum of 10 references)

- 5.1. Screenshot of visitor data for <http://www.unwcc.org>
- 5.2. Email from the director at the Wiener Library.
- 5.3. Letter from one of Yad Vashem's Head Archivists, July 2019.
- 5.4. Netflix Picks Up Greatest Events of World War Two in Colour – Variety, 29 Oct19
- 5.5. Email from the director of *Getting Away with Murder(s)*.
- 5.6. Media file:
 - a. 'War Crimes Archive Reveals Early Evidence Of Holocaust Death Camps', NPR, 18 April 2017.
 - b. 'Opening of UN files on Holocaust will "rewrite chapters of history"', The Guardian, 18 April 2017.
 - c. Facebook statistics and comments:
<https://www.facebook.com/theguardian/posts/10155325540806323>
 - d. 'UN had secret crime sheet on Hitler', Times, 19 April 2017
<https://www.thetimes.co.uk/article/un-had-secret-crime-sheet-on-hitler-x6m2b0gmg>
 - e. 'London library makes World War II war crimes searches easier', AP, 21 April 2017.
 - f. A sampling of UNWCC media coverage can be found here: <http://www.unwcc.org/unwcc-in-the-news/>
- 5.7. Email from the Director, Sexual Violence Programme Human Rights Center Jan 2018
- 5.8. Tweet by Barrister at 9 Bedford Row, 25 September 2019
- 5.9. Dr Dan Plesch profile page – 9 Bedford Row: <https://www.9bedfordrow.co.uk/our-team/door-tenants-and-pupils/dr-dan-plesch/>
- 5.10. Justice for war criminals and human rights abusers: Beyond the Nuremberg – ICC model, - Bedford Row International, 31 July 2019: <http://9bri.com/justice-for-war-criminals-and-human-rights-abusers-beyond-the-nuremberg-icc-model/>
- 5.11. Email from Justice Goldstone, October 2020.
- 5.12. Email from Andrew Gilmour, Assistant Secretary General, UNOHCHR, June 2017