The United Nations War Crimes Commission (UNWCC) was a multilateral organisation with full diplomatic status operating between 1943 and 1948, which identified, classified and assisted national governments of its Member States (and Ethiopia) with the prosecution of war criminals in Europe and East Asia. The Commission mainly addressed mid- and low-level perpetrators of war crimes, in parallel with the more famous (but far less extensive) Nuremberg and Far East trial processes. Its members included René Cassin, the French judge, Baron Wright, the English Law Lord, United States Congressman Herbert Pell and the Chinese once-premier and minister Wellington Koo.

Its main records, including some 1,000 trial records and secondary sources, are online at www.unwcc.org and the indictments against Axis personnel are listed by country bringing the case.

Its 16 Member States processed the indictments of more than 36,000 Axis personnel, resulting in approximately 10,000 convictions in 2,000 national trials. In doing so, the Commission broke new ground in addressing mass atrocity war crimes, including routine prosecutions of sexual violence, torture, corporate crime, environmental destruction and massacres today recognisable as genocide and crimes against humanity. It was a formally constituted multilateral organisation that bridged the gap between international criminal justice and human rights concerns, and domestic judicial processes.

**Contemporary relevance of the UNWCC**

The history of the UNWCC and the approaches it took are not merely a matter of historical interest, but are highly relevant to the problems plaguing international criminal justice today. By increasing the willingness to prosecute (through multilateral normative diplomacy) and to develop judicial capacity (through technical assistance and cooperation), the UNWCC pursued what would today be recognised as ‘complementarity’.\[1\] UN Sustainable Development Goal 16 notes the importance of
‘building effective, accountable institutions at all levels’ to ensure ‘the provision of access to justice for all’. The Strategic Plan of the Office of the Prosecutor of the International Criminal Court (ICC) 2016–2018 repeatedly commits the Office to ‘further enhancing complementarity’, while the European Union’s own 2013 ‘Joint Staff Working Document on Advancing the Principle of Complementarity: Toolkit for bridging the gap between International and National Justice’ suggests that successful international criminal justice ‘must be ensured by taking measures at the national level and by enhancing international cooperation’.

The UNWCC legacy

The UNWCC represents a largely untouched reserve of legal precedent and practice, historical inspiration and institutional innovation that could be of significant use in developing approaches to strengthen the functioning of the ICC and international criminal justice more generally. There are three main areas where it could be of use to practitioners and policy-makers:

Reinvigorating legal thinking

The UNWCC was path-breaking on issues – including prosecution of sexual violence, joint criminal enterprise, crimes against humanity and early expressions of universal jurisdiction – that remain difficult in modern international law.

Since the opening of the Commission’s archives, its findings have already found use in a number of legal processes, including an amicus brief in the prosecution of Hissène Habre and the Extraordinary Chambers in the Courts of Cambodia. However, greater mainstreaming of its contents – by disseminating its archives and making them accessible to lawyers and policy-makers – could significantly bolster prosecutions across the world. This included path-breaking legal opinion on the crime of aggression.

Strengthening political will

The UNWCC was founded on the collective political will of 16 Member States and demonstrated that mass atrocity crimes could be addressed fairly and expeditiously. Wider dissemination of its history can therefore serve as a useful corrective to pessimism about the prospects for international criminal justice.

The history of the UNWCC highlights a strikingly wide range of participants; international justice was not merely an Anglo-American phenomenon, but saw extensive participation from continental European countries (including Poland and Yugoslavia) as well as key foundational roles played by China and India. Recollection of this broader basis for international criminal justice could bolster modern-day support for it.

The scale of the UNWCC’s work – coordinating the indictment and fair, prompt prosecution of thousands of defendants in post-war Europe while avoiding accusations of ‘victor’s justice’ – dwarfs all subsequent UN-supported international
trials put together. Its successes provide an aspirational model for modern large-scale prosecutorial efforts.

Building innovative institutions

The UNWCC engaged in extensive institutional innovation, developing structures and practices that made it highly effective in pursuing war criminals. Although largely forgotten, much of this work could be effectively deployed to solve issues faced by modern international criminal justice.

LEGITIMATION

The UNWCC, through its First Committee of Facts and Evidence, provides an interesting model for reviewing evidence in atrocity crime cases. Under the UNWCC, states had their war crimes indictments validated at a pre-trial stage by a panel drawn from fellow Member States. This improved transparency, averted problems of legal basis that might endanger trial outcomes, and created a type of ‘peer review’ system to encourage fair trials.

TODAY’S INTERNATIONAL CRIMINAL JUSTICE SYSTEM

There are a number of ways in which such a system might help to improve the efficiency and effectiveness of the functioning of today’s international criminal justice system. First, peer review of evidence by a group of eminent jurists, appointed by UN Member States, could help the UN Security Council decide whether to make a referral to the ICC. Second, a peer review system could assist the ICC Prosecutor to decide whether to take a self-initiated case for endorsement by pre-trial chamber. Third, a functioning peer review system today could contribute to reducing the politicisation of domestic trials of individuals accused of committing atrocity crimes by ensuring that evidence passes an objective ‘de facto’ prima facie standard for review based on UNWCC principles.[2] Fourth, such a pre-trial review system would address the underlying difficulty of trying to assure that national systems of justice are balanced and impartial in prosecuting crimes against humanity, especially if the accused authorities are still in power. Last, such a system could be part of an effort to resuscitate the concept of providing independent expert advice to domestic justice institutions, an approach that remains undeveloped in existing judicial structures and treaty regimes today.

EVIDENCE COLLECTION

The UNWCC and its constituent bodies put considerable effort into gathering and acting as a clearing-house for information regarding war crimes, both while they were ongoing (gathering information on concentration camps and, through its Member States, debriefing refugees from occupied countries about war crimes they had suffered) and after the Second World War ended (sharing information on the location and status of captured war criminals). Both models, especially the debriefing of refugees, could be incorporated into modern-day international bodies (see Annex below).

TECHNICAL ASSISTANCE

Assistance to judiciaries and judicial infrastructure is key to implementing positive complementarity, provided the political will to act is present in the state concerned.
While not directly involved in rebuilding legal infrastructure, the UNWCC enacted a range of inexpensive but effective measures such as legal advice, sharing best practice and even specimen forms detailing the information necessary for Member States to report war crimes. This provides several useful functions that could be drawn upon in modern international criminal justice, either individually by existing bodies, or in a new organisation such as a technical assistance organisation that could be called upon when needed to play an intermediary role between states and the ICC by providing tailor-made packages of support to strengthen the capacity of domestic judicial systems.

Conclusion

The positive experience of the UNWCC in acting as a service provider for national jurisdictions in a decentralised and cooperative system of justice has, to some degree, been lost in today’s complex system of international criminal justice. This short paper has highlighted a number of areas derived from the UNWCC experience that might help improve the efficiency, effectiveness and value for money of today’s international justice system by strengthening complementarity. In light of EU Member States’ and other states’ commitment to the ICC and international criminal justice, these ideas, wholly consistent with the core concept of the centrality of domestic jurisdiction, could be explored in more detail with a view to determining which ones could most usefully be deployed to strengthen the functioning of international criminal justice today.


Introduction

The National Offices Conference was one of the key events in the history of the UNWCC – a summit bringing together representatives of all 16 national offices that worked with the Commission in the Royal Courts of Justice, in May and June 1945, with the aim of coordinating and giving impetus to the unprecedented set of war crimes trials that were planned.

What follows is a selection of passages from the Conference that illustrate the issues, problems and opportunities faced by the Commission’s Member States. While many of these were specific to the context and specificities encountered by an international criminal justice effort stretching from Belgrade to the Pacific, and have less relevance today (difficulties in shipping bulky dossiers to other countries, for example, are largely solved by modern digital communication), many others have significant resonance today.[3]

The following had representatives present at the Commission: Australia, Belgium, Canada, China, Czechoslovakia, France, Greece, India, Luxembourg, the
Netherlands, New Zealand, Norway, Poland, the United Kingdom, the United States, Yugoslavia and military groups. Also active in the Commission were Denmark and Ethiopia.

National standards on evidence-gathering

**Australia**

‘The investigation of Australian cases has been concerned mainly with members of the Australian Army. A questionnaire has been circulated amongst all units which are likely to have information and the questionnaire has then been read out to all ranks on parade by their company commanders.

Any men who claim to have knowledge which may be of use are questioned by a member of the Commission’s staff. After questioning, all men who have useful information are brought before the Commission and examined on oath. Any information which reaches the Commission from any other source, e.g. by letters from civilians, is followed up: Information from native sources is usually obtained through the patrol officers or other officials who are stationed throughout Papua New Guinea, etc. In the majority of cases in the past, natives have been examined by the Commission through interpreters, but practical difficulties may lead to a variation of this procedure. All evidence given by witnesses examined on oath is recorded, signed by the witness, and countersigned by the Commissioner.’ (Annex II)

**China**

‘The investigation of war crimes in China was carried out in two ways. In the first place, the victims and eye-witnesses were requested to report to the Chinese National Office. Notices to this effect were published in leading newspapers in free China and special forms were prepared and made available for those who wished to make use of them. In the second place, orders were issued to all local governments and field commanders to collect evidence of war crimes which occurred within their respective districts. By the time of the Conference three thousand cases had come under investigation.

Regarding the difficulties of preparing evidence, victims and eye-witnesses did not readily respond to the Government’s call with many victims doubting that the perpetrators would face justice. More Chinese victims and eye-witnesses would have been willing to furnish information had they had more confidence in the swift implementation of justice.’ (pp 8–9)

**The Netherlands**

‘The Prime Minister gave the NL delegate the authority to inform the Conference that a law had just been passed setting up an elaborate organisation to obtain all the evidence available from the whole country as soon as possible. They would have a National Office in Holland with a branch in London and there would be a large number of sub-offices in different parts of the Netherlands. Flying squads of
investigation officers would be sent by the Chairman of the National Office to those places where investigation was particularly required.’ (p 7)

**France – trial system**

‘It was hoped to produce some dossiers to the Commission shortly. A central organisation drew up the charges and the results of their investigations were sent to the Commission in London. The regional services in France were being re-organised. The investigation of crimes was dealt with by the public prosecuting authorities who were assisted by the regional delegates. A preliminary enquiry was made before it was decided whether to compile a dossier for transmission to London. The public prosecuting authorities kept the dossiers up to date and forwarded them to the military commanders of the different districts. It was they who decided whether there was a good case. The system operated under the guarantees of the French legal system and there was no question of an ad hoc law. All the great principles of justice were conserved and maintained, which was a point he particularly wished to stress.’ (p 10)

**Poland – evidence-gathering and obstacles**

‘M. Lach (Poland) said that since his National Office was formed in 1945, they had been mainly engaged in drawing up reports and collecting material. Information had been smuggled to them from Poland through the Underground Movement and through many other ways. Their task was difficult even now in view of their being away from Poland. They had begun to collect material more broadly and also from people who had been brought to this country.’ (p 11)

**UK practice on witnesses**

‘What was the state of preparation in regard to the production of living witnesses?

Mr. P.H.S. KENT (United Kingdom) replied that in practically every case dealt with by the United Kingdom, the evidence was based on information from a man of confidence. Information was supplied from many sources. Lists of witnesses were compiled and were sent to the appropriate authorities and as soon as a witness arrived in this country, he was made available for examination. An affidavit was taken and they were then in a position to prove their ease. That process was only in its early stages as information became available from the prisoner-of-war camps. They would be able to produce one or two living witnesses at most trials, possibly supported by some affidavits.’ (p 6)

**US evidence-gathering**

Lieutenant Colonel J V Hodgson (US) presented a detailed summary of the US system, and the precise systems including standardised forms and reporting pathways. While it is too long to discuss in detail here – it is case-specific and largely superseded by modern information handling processes – it nonetheless provides an
extremely useful insight into how the Commission functioned, especially together with Hodgson’s report on standardised procedures, in Annex VII. This spurs an extensive discussion on how this may be orchestrated (pp 13–17).

The UNWCC and related institutions: summary of the UNWCC’s purpose and approach (Chairman’s Speech)

‘The time had come when the mere collection of information must be changed into action and action meant the trial of criminals and their conviction, sentence and punishment where appropriate. To be effective justice had to be expeditious. Punishment of the criminals would serve the double purpose of retribution to satisfy the people's demand for justice and of warning and example to deter such crimes in future.

The machinery for the punishment of war criminals involved a complex interlocking system comprising the Commission, the National Offices, and the Military. The Commission constituted at the meeting of the Ministers, or other representatives of the United Nations, in October 1943, was not the creation or creature of any one Foreign Office. When it was charged with investigating crimes it was not provided with machinery for investigating in the full sense. From the outset its primary function had been regarded as that of committing magistrate, to examine the evidence submitted to it, to decide whether there was a prima facie case and report it to the governments accordingly.

The Commission served also as a central clearing house for records and in its capacity as a Central Advisory Bureau harmonised the work of the various agencies and led to a completer cooperation and effectiveness. Above all it brought an impartial judgment at the international level, thus preventing criticism on the grounds that people were listed as criminals by the Commission on the partial unchecked statement of a single Government or nation.

It was necessary, however, to have some body or bodies to conduct the detailed detective enquiries in the appropriate localities. That duty was imposed on the National Offices. The Commission had no effective control over these Offices, although, since April, 1944, it had served in a general advisory capacity to them. If the National Offices failed to perform their duty properly in collecting material for charges and reporting charges to the Commission, the whole System would break down or be ineffective. Their most important task now was to gather information from repatriated prisoners-of-war and released survivors of the concentration camps. In addition there was the enormous unexplored fields in the liberated countries. The National Offices would have to send investigating teams to co-operate with the Military in checking facts and tracking down witnesses and criminals.

The purpose of the present Conference was to enable the representatives of the different National Offices to moot, compare notes and discuss the whole position, with the object of pooling information and improving their methods, thus inducing a feeling of solidarity and co-operation and a common purpose which should be invaluable in the work which still lay ahead.’ (pp 1–2)

Crowcass – central registry in Paris
‘Lt.-Col, WOODALL (G-1 Division, S.H.A.E.F.) said it might be of interest to describe what had been done by the Central Registry in Paris, which was called “Crowcass”, because it covered both war criminals and security suspects. S.H.A.E.F. had put on them the task, during the Supreme Commander’s period of responsibility, of arresting and detaining war criminals, and it became evident that to be able to give the information which might be required they would need a registry of some sort. They therefore devised a central registry on the Hollerith system, divided into two parts, a Wanted section and a Detained section. That central registry was concerned not so much with crimes as with criminals, although naturally the crimes of which the criminals were accused appeared in it.

They had had from many sources, and notably from the War Crimes Commission, lists of wanted war criminals, and those lists were put into the Wanted section, being put on cards which were punched to record a large number of things – the description of the wanted man, the description of the crime, the place where it was committed, and so on.

The Wanted section was more complete at the moment than the Detained section. The Army Groups and other organisations concerned had been very busy recently. They had detained a large number of criminals and of security suspects, regarding whom reports were gradually coming in. Those reports went into the Detained section, and another card was made out giving the description and the place where the man was detained, so that when inquiries were made the whereabouts of any criminal would be known. As they worked up the Detained section, whenever an inquiry came in for a wanted war criminal or a new list came in from the Commission, they would look at their Detained section to see whether they had got him or them; if not, the name or names would go down on the Wanted list.’ (p 17)

List of relevant Annexes

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Notes

[1] Complementarity is the notion that internationalised courts such as the ICC should be ‘complementary to national jurisdictions’, functioning as a court of last resort where countries are unable or unwilling to conduct prosecutions themselves. Positive complementarity refers to a policy of positive cooperation between international bodies and nations in order to bring about trials, either by encouraging states to prosecute atrocity crimes (making them more willing), or providing them with the assistance they need to do so (making them more able).

[2] The ‘prima facie standard’ of review applied by the First Committee of the UNWCC looked at:

- whether the charges disclosed the existence of a war crime;
- whether the information contained sufficient material to identify the alleged offender; and
- whether there was good reason to assume that, if put on trial, the alleged offender would be convicted.