

Introduction

On 3 January 1945, the Polish War Crimes Office in London submitted an indictment to the United Nations War Crimes Commission that charged Adolf Hitler and twenty-three other German leaders with war crimes.¹ Though it was not the first to charge Hitler – three weeks earlier the Czechoslovak Office had filed charges – the indictment was the extraordinary result of over five years of debate, in various fora, on the nature of war crimes, on who could be charged, on the laws that could be applied, and on jurisdiction.² In a manner that complemented Raphael Lemkin's thinking on genocide in his *Axis Rule in Occupied Europe* (released seven weeks earlier in the United States), the indictment explained and theorised German policy against Jews.³

For Lemkin, genocide was not restricted to the physical extermination of a group, though that was its most radical manifestation. Rather, the neologism signified a range of acts that aimed at the 'disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups'.⁴ In Lemkin's formulation, the end point was the liquidation of a group, but that liquidation was not necessarily physical. The Polish indictment explained how Jews, through the issuance of laws and decrees by the accused, were legislated to the status of 'capitis deminutio', which had the ultimate goal of the 'biological

¹ WHL, UNWCC Archive, Reel 14 (0968). Charge Files, Poland vs Germans. Charge File 34, 5 January 1945. (The file was registered by the UNWCC on 5 January.) Also see Reel 41. Poland: Correspondence with National Offices, Litawski to Secretary General 3 January 1945. The twenty-four accused were charged with violating the 1907 Hague Convention IV.

² Dan Plesch first highlighted that Hitler had been charged with war crimes at the UNWCC. The front page of the Czechoslovak indictment against Hitler and four other German leaders is reprinted in Plesch, *Human Rights*, 159.

³ Also see Lemkin, *Genocide*. Available at www.unz.com/print/FreeWorld-1945apr-00039/

⁴ Lemkin, *Axis Rule*, 79.

extermination of Jews in Poland'.⁵ By referring to Roman Law and framing German policy as condemning Jews to civil death, the indictment sought to show that Germany's incremental anti-Jewish actions had a singular aim.⁶

The difficulty in finding an appropriate language to describe German anti-Jewish policy was one which only fully emerged once that policy was officially recognised. For much of the early part of the war, the scope and scale of German atrocities against Jews were either marginalised or omitted from the dominant war narrative on both sides of the Atlantic.⁷ This marginalisation was punctured in late June and early July 1942 and again in late November and December 1942 when reports mainly, but not exclusively, from the Polish Underground State were disseminated in London. The 17 December 1942 UN Declaration against German atrocities publicly and officially recognised the German programme of extermination of Europe's Jews. The struggle to ensure that those who committed war crimes would face justice at the end of the war, required, in the first instance, for those war crimes to be recognised as such, for evidence to be gathered and for witnesses to submit depositions.

The notion of war crimes at the start of the global conflagration was underdeveloped. The UNWCC did not define 'war crimes', as to do so would require 'limitation and exclusion', but over the course of the war, different jurists offered definitions, including Hersch Lauterpacht, Marcel de Baer, and Manfred Lachs.⁸ The lack of an authoritative definition allowed jurists to think innovatively in relation to existing international law, most notably the 1907 Hague Conventions, and in regards to the statements and declarations of senior Allied leaders. This lack of a definition provided scope for jurists to contest the restricted conceptualisation of war crimes favoured by Foreign Office officials, but also raised the practical problem of how the accused should be charged and under what law. The 'Versailles list' of war crimes developed by the Inter-Allied Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties in 1919 provided a guide on the practical level but did not solve the conceptual problem of defining war crimes in an abstract, universal manner.⁹ The issue of defining war crimes was

⁵ WHL, UNWCC Archive, Reel 14 (0968). Charge Files, Poland vs Germans. Charge File 34, 5 January 1945.

⁶ The Charge File makes arguments that prefigure Giorgio Agamben's contentions in *Homo Sacer: Sovereign Power and Bare Life*.

⁷ There is a voluminous literature on the marginalisation of the Holocaust in the wartime narrative. See inter alia Shapiro, *Press Shout, Leff, Buried*, Fleming, *Auschwitz*.

⁸ UNWCC, *History*, 12. Lauterpacht's and de Baer's definitions are discussed in Chapter 4. Lachs's definition is considered in Chapter 6.

⁹ The 'Versailles list' can be found in UNWCC, *History*, 34.

debated in (unofficial) Allied fora from the autumn of 1941, by representatives of exiled governments in the Inter-Allied Commission on the Punishment of War Crimes in 1942 and 1943, and in the UNWCC from autumn 1943.

Although total war posed formidable challenges to international law, responding to those challenges in order to ensure the establishment of an effective regime of post-war justice was not a pressing concern for Britain or the United States in the early war years. The experience of the post-First World War war crimes trials in Leipzig, the failure to bring the Kaiser to trial, and a political determination to ensure that Britain was not saddled with a commitment to try large numbers of Germans post-war, guided thinking within the British Foreign Office and beyond.¹⁰ A further complicating factor encouraging the British stance of reserve and caution in relation to war crimes was the strategic commitment not to estrange the second state that invaded Poland in September 1939, the Soviet Union. Britain may have entered the war on 3 September 1939 to honour its guarantee to Poland, but it was not prepared to sanction a power which in the fullness of time may come to serve the British determination to defeat Germany.

This political situation, in which Poland was at war with both Germany and the Soviet Union, and Britain and France were at war with only Germany, put strain on Anglo-French-Polish relations during the first years of the war.¹¹ It continued to impact on how the war was narrated in the West and, importantly, on the discussion of war crimes. Whereas the deportation of population from western Poland was clearly a war crime according to the 'Versailles list', the deportations of Polish citizens from eastern Poland were something that was best not discussed. In theory, war crimes were to be defined without reference to place and were free

¹⁰ See Schabas, *Trial*; Kochavi, *Prelude*.

¹¹ Neither Poland nor the Soviet Union formally declared war on each other. The Soviet invasion was denounced as a 'flagrant act of aggression' by Poland and resisted by force of arms. To rationalise its invasion, the Soviet Union falsely asserted that the Polish State had ceased to exist. In 1938, legal scholar Clyde Eagleton noted that 'the declaration of war seems to be regarded by some as an anachronism to be discarded' and that international lawyers seem to accept that the 'legal status of war may exist in the case of hostilities without a declaration'. In failing to declare war prior to invading, the Soviet Union violated Article 1 of the 1907 Hague Convention (III) (Convention Relative to the Opening of Hostilities). (But see Eagleton's criticism of Hague Convention (III).) Polish military action against the invading forces continued until early October 1939. See Eagleton, *Form and Function*, 19, 35; 'Red Army in Polish Territory', *The Times*, 18 September 1939, 6; Sanford, *Katyn*, 22, 39. Also, see Moorhouse, *First to Fight*. The 1907 Hague Convention (III) is available at <https://ihl-databases.icrc.org/ihl/INTRO/190?OpenDocument>

from geopolitical calculations. In practice, war crimes referred to those committed by the Axis powers alone.

The Polish Government in Exile recognised the political necessity of adhering to this convention, but it had a significant cost, which the Polish Government had no choice but to bear. First, it meant that Soviet war crimes, including deportation, murder, ill-treatment of civilians and prisoners of war, as well as currency debasement, were marginalised or unreported. As a result, when the Germans released news of the Katyn graves (the graves of thousands of Polish officers executed by the Soviet Union in 1940) in April 1943, pro-Soviet arguments denouncing the Polish Government's claims that the Soviet Union was responsible gained traction in Britain.¹² The Soviet Union sought maximum advantage and used its faux outrage to break diplomatic relations with Poland, which had only been re-established in the summer of 1941.

Second, in allocating a liminal status to a third of Poland which the Polish Government saw as an integral part of the Polish State, Polish politicians and jurists were obliged to maintain a dual sensibility. Crimes committed by one belligerent were of some interest to the international community. The crimes committed by the second belligerent were not. For some Polish jurists, this training in looking only at that which was deemed important by more powerful partners was a skill that became useful when they returned to Poland after the war. Britain, militarily, came late to the Second World War and, like France, limited engagement with the enemy during the so-called Phoney War.¹³ Similarly, Churchill's famous 'Sinews of Peace' speech at Fulton came almost three years after commencement of the Polish Government in Exile's Cold War, initiated by the Polish–Soviet split of April 1943.¹⁴ But throughout the war Polish–Soviet tensions shadowed the Polish pursuit of post-war justice.

This book makes two basic contentions. First, by supplying information (derived from the intelligence activities of the Polish Underground State), the Polish Government in Exile played an important role in putting war crimes on the Allies' political agenda. Through its publications and diplomacy, it sustained pressure, mainly on Britain, to respond to the outrages taking place. Second, Polish jurists contributed to, and helped shape, legal debates in a range of fora including the London International Assembly and the International Commission for Penal Reconstruction and Development (both established in the autumn of

¹² On Katyn, see Sanford, *Katyn*; Cienciala and Lebedeva, *Katyn*; Maresch, *Katyn 1940*.

¹³ France's Saar Offensive achieved little, with withdrawal complete by 17 October 1939.

¹⁴ Churchill's speech in which he refers to an 'Iron Curtain' descending across Europe is available at www.nationalchurchillmuseum.org/sinews-of-peace-iron-curtain-speech.html

1941), as well as within the United Nations War Crimes Commission (established in October 1943). In doing so, Polish jurists helped to lay the foundations for the regime of post-war justice.

In addition, the East–West tensions which characterised relations between the Allies in the fight against the Axis powers found expression in Allied debates about the future of Poland. Poland was the fulcrum both of the German imperial vision of *Lebensraum* and racial ordering and of the Soviet vision of communist hegemony in East-Central Europe. As debates in the UNWCC in 1944 and 1945 considered German ‘crimes against humanity’, ‘human rights’, ‘war of aggression’, and the corruption of the legal profession, Soviet Armies fought the Wehrmacht west across Poland, often arresting Poles who had resisted the German occupiers in the structures of the Polish Underground State. The bold promise of a new world of justice and peace rang increasingly hollow for many Poles in London as a Soviet-sponsored Polish proto-government was formed in Moscow, arriving in Lublin in July 1944. Those jurists connected with the Polish War Crimes Office were aware of developments in Poland, and of Soviet ambitions, but remained focused on the task of bringing German war criminals to justice. They were also cognisant that, at some point, they would be forced to make a decision: remain loyal to the Polish Government in Exile and its vision of a post-war Poland, or accept the emerging reality of Soviet Empire and, through it, attempt to secure justice for the millions murdered. The latter choice demanded that those who did return to Poland continued to develop the dual sensibility that had been encouraged in war-time London.

Poland and Debates on War Crimes

Hitherto, much scholarly attention has been paid to the International Military Tribunal at Nuremberg. This work, with few exceptions, most notably Francine Hirsch’s recent *Soviet Judgement at Nuremberg*, has privileged the activities of western states and jurists and their role in prosecuting the major German war criminals. Scholarship on the development and flow of legal knowledge, on the debates about war crimes in different Allied fora, and on the juridical concerns of the minor Allies prior to the trials of the major war criminals at Nuremberg has had only a limited impact on public understanding of post-war justice. The consequence of this has been a skewed view of the path to Nuremberg and a misapprehension of the contribution made by different jurists. Raphael Lemkin, Hersch Lauterpacht, Murray Bernays, and Aron Trainin were significant, but there were others who made important contributions to the shape of post-war justice whose names and work are little known,

including, among others, the Czechoslovaks Bohuslav Ečer and Egon Schwelb; the Belgian Marcel de Baer; and the Poles Stefan Glaser, Manfred Lachs, and Tadeusz Cyprian.¹⁵

Mapping the flows of legal knowledge and the networks that underpinned these flows helps contextualise the contribution of the more celebrated jurists (i.e. Lauterpacht, Lemkin).¹⁶ From the beginning of the war, the legal counsel to the Polish Ministry of Foreign Affairs, Michał Potulicki, sought, through the issuance of official Polish Government publications, to inform publics in Allied and neutral states about what was happening in Poland, and to frame the outrages with reference to international law. German decrees and laws were translated and republished, and the German policy of extermination of the Polish nation (i.e. the liquidation of the nation as a nation) was identified well before the physical annihilation of Polish Jewry.

Lemkin's analysis was an important breakthrough because it was able to frame and name what was happening more effectively than had been done previously. His expansive concept of genocide, especially when prefixed by a qualifier such as 'cultural', 'political', or 'social', overcame the inevitable linguistic slippage of terms such as 'extermination' that tended to conflate the killing of people with the destruction of the imagined community of the nation.¹⁷ Through the concept of genocide, Lemkin also sought to overcome the limitations of the notion of 'denationalisation', which he considered to be inadequate as it failed to recognise the biological destruction of a nation, did not indicate the imposition of the 'national pattern of the oppressor' on subjugated people, and was generally used to describe the deprivation of citizenship.¹⁸

¹⁵ Herbert Pell also contributed to shaping post-war justice through his work at the UNWCC. See Cox, *Seeking Justice*.

¹⁶ See von Lingen, *Legal Flows*.

¹⁷ Given the shocking scale of killing during the September 1939 invasion and the frequency of executions during the German occupation, the lack of conceptual clarity was neither surprising nor of major significance. However, once the Germans turned to systematically killing Jews, the limits of the term 'extermination' were exposed. For example, when the Polish Foreign Minister August Zaleski condemned the 'German policy of extermination' in his Note to Allied and Neutral Governments on 3 May 1941, he was speaking of something quite different from when Anthony Eden condemned the Germans' 'bestial policy of cold-blooded extermination' on 17 December 1942 in the House of Commons. At least in a small part, this linguistic legacy has contributed to 'victim competition' and misunderstanding between Poles and Jews on the German occupation and the Holocaust. See Polish Ministry of Foreign Affairs, *German Occupation*, 55. Also see Hansard, House of Commons Debates 17 December 1942, volume 385, column 2082-7. Available at <https://api.parliament.uk/historic-hansard/commons/1942/dec/17/united-nations-declaration>

¹⁸ Lemkin, *Genocide*, 39; UNWCC, *History*, 197. Lemkin was familiar with how the concept of denationalisation was used in the early stages of the war by the Polish Government. *Axis Rule* drew on the Polish second White Book and the first Black Book (discussed in

In *Axis Rule*, Lemkin drew on similar material and described much the same phenomena as had featured in August Zaleski's 3 May 1941 Note addressed to Allied and Neutral Powers. The major difference was that, after June 1941, German policy towards Jews fixated on the physical extermination of Europe's Jews, first through the 'Holocaust by bullets' as Germany invaded Soviet-occupied and Soviet territory, and later, beginning in December 1941, with the mass gassing of Jews at death camps.¹⁹ Lemkin's broad notion of genocide was able to accommodate both the physical and non-physical extermination of groups. Yet, his idea took time to circulate among the legal community looking at war crimes, and it may have been as late as October 1945 that many of the representatives at the UNWCC were finally able to read his important book (the first printing in the United States was exhausted by May 1945).

In contrast, work by the Soviet jurist Aron Trainin was presented to the UNWCC by the Czechoslovak representative, Bohuslav Ečer, in October 1944, and its call to ensure that not only German army commanders and Nazi leaders faced justice, but also industrialists and financiers, seems to have contributed to further emboldening of representatives at the UNWCC to interpret the UNWCC's remit in a more expansive manner. Other ideas, such as 'crimes against humanity', which had been in circulation before the war, were employed to break the deadlock in relation to the legal challenge of prosecuting crimes committed by Germans against German citizens in Germany.²⁰ The American

Chapter 1), both of which refer to denationalisation. Denationalisation was discussed within the UNWCC in September and October 1945. The Czechoslovak jurist Bohuslav Ečer referred to the crime of denationalisation as 'killing the soul of the nation'. To some extent, this paralleled the way Lemkin formulated aspects of genocide (when pre-fixed by a qualifier such as 'social' or 'cultural'). This was recognised in the report the UNWCC submitted to the United Nations Economic and Social Council in May 1948. See UNWCC, Document C.148, 28 September 1945, 2. Available at www.legal-tools.org/doc/986ec4/. Also see ECOSOC, E/CN.4/W.19. 'Information Concerning Human Rights Arising from Trials of War Criminals', 15 May 1948, 50. Available at <https://digitallibrary.un.org/record/669294?ln=en>. The notion of 'denationalisation' can be traced to the Hague Convention of 1907. See Plesch, *Human Rights*, 173. I thank Dan Plesch for highlighting a degree of parallelity between aspects of the concept of genocide and that of denationalisation.

¹⁹ Christopher Browning demonstrated how 'ordinary men' of the German Order Police were involved in the mass killing, via shooting, of Jews. See Browning, *Ordinary Men*. The mass killing of Jews at Chelmno began on 8 December 1941. Also see Browning's discussion of the debate on when the decision for the 'Final Solution' was taken. Browning argues that 'the Final Solution emerged from a series of decisions taken between spring and autumn 1941'. Browning, *Decision-Making*, 179.

²⁰ An Allied declaration in May 1915 accused the Ottoman Empire of 'crimes against humanity and civilisation' in relation to atrocities against Armenians. See FRUS 1915, 981, Sharp to Secretary of State, 28 May 1915. Available at <https://history.state.gov/historicaldocuments/frus1915Supp/d1398>

representative Herbert Pell tabled a resolution on 16 March 1944 at the UNWCC asserting that:

It is clearly understood that the words ‘crimes against humanity’ refer, among others, to crimes committed against stateless persons or against any persons because of their race or religion; such crimes are judiciable by the United Nations or their agencies as war crimes.²¹

This radical statement claiming that the United Nations had the right to intervene in the domestic affairs of a sovereign state was not the considered position of the State Department. US officials did not need to look beyond the United States’ border to witness systemic and individual crimes committed against people because of their race. The resolution cut straight to the heart of the difficult matter of securing justice for German Jews and was conceived by Pell, who was not a lawyer, under the influence of work by Sheldon Glueck, a Harvard criminologist. Glueck’s article ‘Trial and Punishment of Axis War Criminals’ and an editor’s note relating to Glueck’s forthcoming book were passed by President Roosevelt to Pell prior to his departure from the United States to London in late 1943. It seems that Pell ‘relied on Glueck’s legal views regarding war crimes policy’.²² Glueck had advocated the establishment of an international criminal court that would prosecute crimes committed on Axis territory, and consider crimes against those ‘stateless’ and those who could not prove their nationality. Pell was supported in advancing his agenda by Bohuslav Ečer and Stefan Glaser, among others, who, like Pell, recognised the limits of the type of narrow legalism advocated by the British Foreign Office and the United States State Department on the question of war crimes. The journey that these jurists took to that position was informed by close engagement with Soviet legal thinking, and the experience of legal debate in the International Commission for Penal Reconstruction and Development and within the Polish Ministry of Justice respectively.

Glueck’s ideas were familiar to jurists at the UNWCC. Glueck had served on the London International Assembly and, in late 1942, had written a proposal on war crimes trials with Marcel de Baer.²³ De Baer chaired important committees both at the LIA and at the ICPRD, and would later assume a similar role at the UNWCC. The flow of legal knowledge, which was facilitated through journals and books, was

²¹ UNWCC, Committee II, ‘Resolution moved by Mr Pell on 16th March 1944’. Available at www.legal-tools.org/doc/2aa8b6/pdf/

²² Cox, *Seeking Justice*, 90. Also see Glueck, *Trial and Punishment*. Available at www.unz.com/print/FreeWorld-1942nov-00138/

²³ See Plesch, *Human Rights*, 161.

enhanced by jurists' engagement with unofficial Allied fora such as the LIA and the ICPRD as well as within the official UNWCC. These pre-Nuremberg entanglements provided a body of legal knowledge on war crimes that was different from understandings earlier in the war, and offered a departure point for innovative thinking about post-war justice once victory was in view. As legal scholar Kerstin von Lingen has noted, organisations like the UNWCC (but also the LIA and ICPRD) provided 'a unique opportunity for members of smaller nations to voice their concerns and concepts, and served as an agent to globalize legal concepts and thus trigger 'legal flows.'²⁴ The contribution of Polish jurists to the development of legal ideas and these legal flows was an integral part of the struggle to secure justice with respect to war crimes committed during the Second World War.

Since Arieh Kochavi's canonical *Prelude to Nuremberg* a generation ago, two important publications, Bergsmo et al.'s *Historical Origins of International Criminal Law* and a special issue of *Criminal Law Forum*, both issued in 2014, have highlighted the significance of the UNWCC.²⁵ Despite the promise of this important work, the general disinterest has continued, in part because of the difficulty that scholars have faced in accessing UNWCC material, as well as an under-appreciation by historians of Kochavi's implicit invitation for more focused scholarship on the organisation. Similarly, Kobierska-Motas's scholarship from the early to mid-1990s that engaged with UNWCC material in relation to Poland, and her work on extradition from Germany to Poland, and Elżbieta Rojowska's concise article on Poland and the UNWCC, have remained, until very recently, salutary exemptions to the general indifference in Poland, as elsewhere, to the work of the UNWCC.

Through a series of books and articles, Dan Plesch has played an important role in raising the profile of the UNWCC and elaborating its importance both historically and in relation to the pursuit of justice today. Through his intercessions, scholars have gained access to the documents of the UNWCC at various research centres around the globe, and this has contributed to efforts to situate the UNWCC within the broad context of the pursuit for post-war justice. However, little attention has been paid to the UNWCC as an institution which straddled the solidifying East–West divide at the beginning of the Cold War. This book addresses that lacuna.²⁶

²⁴ von Lingen, *Legal Flows*, 512.

²⁵ See Bergsmo et al., *Historical Origins*; *Criminal Law Forum*, 25.

²⁶ See Kochavi, *Prelude*; Kobierska-Motas, *Ekstradycje* and *Rząd Polski*; Rojowska, *Komisja*; Plesch, *Human Rights*.

It is a mistake to view the UNWCC simply as one of several stepping stones to the trials of the major war criminals at the International Military Tribunal at Nuremberg. Debates within the UNWCC (and in the LIA and ICPRD) certainly helped develop the discursive environment that enabled many of the judicial steps taken when the London Charter was negotiated in the summer of 1945. But the UNWCC also played a role as states liberated from Germany prosecuted war criminals according to their own domestic legislation. The UNWCC constituted an important link between the emerging Soviet bloc and the West, and remained a forum for debate as political tensions between East and West increased. Today, consideration of the UNWCC offers a fresh vantage point from which to survey the early years of the Cold War.

At the centre of the East–West tensions was Poland. There, ‘liberation’ was double-edged. The Germans may have been defeated, but Poles’ freedom to choose their own future was denied by Soviet troops on the ground, a rigged referendum in 1946 and a rigged election in 1947.²⁷ It was no accident that the domestic legislation used to prosecute German war criminals was also used to prosecute those that the new authorities in Warsaw deemed as hostile, quislings, or collaborators.²⁸ The definition of quislings and collaborators was flexible enough to capture many of those who were loyal to the Polish Underground State and the Polish Government in Exile.²⁹

The UNWCC was called on to review Charge Files (indictments) to ascertain whether a *prima facie* case against an accused had been established. In establishing such a case, and if the accused was extradited and faced trial in Poland, the UNWCC provided those war crimes

²⁷ Without assuming equivalence between the interventions of the US/UK and USSR in the affairs of European states in the immediate post-war period, it is worth noting that American and British actions in Italy (1948 election) and in the Greek civil war helped to ensure that those countries remained within the Western ‘sphere of influence’. Defeated communists from Greece found refuge in eastern Europe, including in Poland. See Fleming, *Greek ‘heroes’*. At the Moscow Conference, on 9 October 1943, Winston Churchill presented Stalin with his ‘naughty document’ (percentage agreement) that allocated 90 per cent of influence in Greece to Britain/United States. NA.FO 800/414.

²⁸ This is not to suggest that post-war justice can be reduced to the political and be seen simply as a tool of the communists and their fellow travellers against opponents. Historian Andrew Kornbluth explores different forms of collaboration and rightly distinguishes ‘Polish on Polish crime’ from ‘Polish on Jewish crime’ during the war. He argues that while Polish on Polish crime was ‘atomizing’, Polish on Jewish crime was ‘solidarizing’. Kornbluth notes substantial variation in the conviction rate for anti-Jewish crime across different regions in the post-war period. See Kornbluth, *Poland on Trial*, 13, 121.

²⁹ At the 4 December 1946 meeting of the UNWCC, Tadeusz Cyprian indicated that the trials of ‘quislings’ in Poland was almost complete. See UNWCC, Minutes of Meeting 118, 4 December 1946, 8. Available at www.legal-tools.org/doc/813da4/pdf

prosecutions in Polish courts with additional international legitimacy and recognition. The trials of significant German war criminals prosecuted both by the Supreme National Tribunal and district courts were a triumph of international co-operation. Finder and Prusin, in their landmark analysis of war crimes trials in Poland, note that the Supreme National Tribunal 'did not become a blind instrument of postwar retributive justice in a country in political turmoil' and its adjudications of German war criminals mirrored juridical processes in Western courts.³⁰ The accused, including the former commandant of Auschwitz Rudolf Hoess, were extradited, sent to Poland, tried, and found guilty. However, when the same legislation and some of the same courts were used to prosecute the state's 'political' enemies, there was a danger that those processes were glossed with legitimacy derived from the trials of German war criminals. There was no easy solution for the UNWCC on this issue, but it highlights that the pursuit of justice on either side of the Iron Curtain had very different implications.

Information, Knowledge, and the Pursuit of Justice

The development of post-war justice takes on an altered appearance when attention is focused on Poland and the UNWCC rather than on Anglo-American activities and the trials of the major war criminals at Nuremberg. Though a conception of the future weighed heavy on the activities of the LIA, ICPRD, and UNWCC – they were, after all considering post-war justice, their activities merit consideration without *just* being seen as a prelude to something else. In short, in relation to these organisations, it is important to determine how information about atrocities was transformed into knowledge about war crimes, and how, exactly, did that knowledge motivate juridical reflection, learning, and innovation.³¹

It cannot be assumed that reports of outrages inevitably led to concern about war crimes. Initially, information about atrocities had to be transformed into knowledge. This process was not straightforward. Revisionist accounts of the First World War, such as Arthur Ponsonby's 1928 book *Falsehood in War-Time*, which argued that news of atrocities in that conflagration was propaganda, had a substantial following and influenced reception of the terrible news from occupied Europe in the early stages of the Second World War.³² For British officials with access to a wide variety of source

³⁰ Finder and Prusin, *Justice*, 130.

³¹ For a discussion of the problems of transforming information about the Holocaust into knowledge, see Bauer, *The Holocaust*, 18.

³² For a discussion of news of atrocities in the First World War and the problems with Ponsonby's account, see Gregory, *Last Great War*, 44.

material, news of atrocities raised troubling policy issues regarding a response, especially since the possibility of actually stemming German violence militarily was not in Britain's gift. As the war progressed, strategic scepticism towards information about atrocities, especially atrocities against Jews, was a stance adopted by officials in order not to act.³³

In this context, it was profoundly difficult for news of German outrages, and outrages against Jews in particular, to gain sufficient traction among different publics and officials in Britain, but also in the United States, to motivate action. As late as 1944, Arthur Koestler's essay on disbelieving atrocities was relevant when it was first published in January of that year in New York, despite an abundance of information about German outrages circulating.³⁴ The fundamental problem was that the framing of that news in newspapers (usually buried in the inside pages), and the failure of Allied leaders to fully imprint their authority on such news, allowed different constituencies to ignore or reject the information.

From its arrival in France, and later in Britain, the Polish Government in Exile sought to overcome two challenges – scepticism about news of atrocities and scepticism about the wisdom of trying war criminals. This book gives due consideration to the three modalities of Polish efforts to communicate German atrocities to the Allies, neutrals, and different publics, and to motivate the Allies to act. The actions demanded included the issuance of Allied statements condemning the atrocities, calls for retaliation, and the application of pressure to secure post-war justice.

Chapter 1 explores official Polish publications, including the important White Books and Black Books that highlighted the fact that German actions transgressed international law, in particular the Hague

³³ Strategic scepticism was a stance which provided the Foreign Office with flexibility and enabled it to delay any proactive response to information which it felt would have an adverse impact on British foreign policy. News of German atrocities, which at the moral level called for the most determined response, was a particular case in point, especially if atrocities were committed against Jews specifically. In relation to such atrocities, the Foreign Office was keen not to give the impression that it recognised a Jewish nationality, not to provoke problems in the Middle East by being seen as a staunch defender of Jews and, like the Home Office, was concerned that attention given to Jews could stimulate antisemitism in Britain. No doubt, among some officials, there was real scepticism – a position encouraged by a series of publications published in the late 1920s and 1930s critical of 'atrocious stories' in the First World War, but for those officials at the nexus of information flow – senior Foreign Office officials, such as Frank Roberts, the volume of information from trusted allies that they had access to and the sophistry employed not to act indicates that their scepticism was strategic. For a discussion of the way the Foreign Office sought to inhibit Geoffrey Mander asking a parliamentary question in September 1942 that referred to the use 'of gas to murder a large number of Jews in Poland in mobile gas chambers', see Fleming, 'Intelligence'.

³⁴ Koestler, *The Nightmare*, 5. The essay was later published as 'Disbelieving Atrocities' in Koestler's 1945 book *Yogi and the Commissar*.

Convention IV of 1907 (Laws and Customs of War on Land). Chapter 2 discusses Polish diplomacy in the strict sense and demonstrates the significance of Polish interventions in transforming discussion of German outrages into a discussion of German war crimes. The Polish Government in Exile achieved two particularly significant diplomatic successes. The first saw the minor Allies sign the St James's Palace Declaration on Punishment for War Crimes on 13 January 1942; the second led to the important 17 December 1942 United Nations Declaration which condemned Germany's policy of exterminating Europe's Jews. The Polish Government was also instrumental in fostering co-operation between exiled governments in war-time London through its championing of three inter-Allied bodies, including the Inter-Allied Commission on the Punishment of War Crimes.³⁵

Chapter 3 completes the analysis of Polish information strategy by exploring the operation of Polish soft diplomacy. This diplomacy included attempts to influence different constituencies and organisations, including the Churches, women's organisations, and the Left. The broad aim of soft diplomacy was to help shape the discursive environment so that Polish messaging, in different forms, was more effective. If support for Polish goals could not be secured, soft diplomacy worked to limit the traction that views opposed to Polish policy could gain. The bid to transform information about atrocities into knowledge about war crimes and knowledge about war crimes into inter-Allied commitments to post-war justice was part of a broader discursive struggle about the narrating of the war, the conduct of the war (demands for retaliation), and the shape of post-war Europe.

Chapter 4 focuses on how war crimes were considered in different fora, including the ICPRD and the LIA, but also in other organisations such as the International Committee of the Central Institute of Art and Design, the Conference of Allied Ministers of Education, and the Inter-Allied Commission on the Punishment of War Crimes. The chapter also examines debates within the Polish Government in Exile on war crimes legislation, which resulted in the issuance of the War Crimes Responsibility Decree in March 1943. The work done in these fora, *inter alia*, provided a firm foundation for discussions about war crimes in the UNWCC.

³⁵ In addition to the Inter-Allied Commission on the Punishment of War Crimes, the Polish Government in Exile supported the Inter-Allied Group for the Study of the Activities of the Germans and their Satellites, and the Inter-Allied Committee for the Study of the Armistice. Through the Inter-Allied Commission on the Punishment of War Crimes, the signatories to the 13 January 1942 Declaration at St James's Palace continued their co-operation on the question of war crimes.

Many of those who debated in the ICPRD and LIA continued their deliberations in the official forum of the UNWCC.

Chapter 5 focuses on the development of the UNWCC from late 1943 and its position at the nexus of inter-Allied debates on war crimes and demands for post-war justice. The chapter considers the flow of legal ideas through the organisation, and how those ideas, Allied inter-relations, and knowledge of war crimes encouraged several representatives at the UNWCC to adopt a more expansive conception of the organisation's role than that initially conceived by the Foreign Office.

This is followed, in Chapter 6, by a detailed exploration of the engagement of the Polish War Crimes Office under the authority of the Polish Government in Exile with the UNWCC. It is shown that through the Office's Charge File submissions, the establishment of a special section dealing with German war crimes against Jews specifically, and the involvement of the Polish representative in debates within the UNWCC, the Office made a significant contribution to the work of the UNWCC during 1944 and the first half of 1945. The submission of Charge Files was coordinated and strategic with the aim of capturing the scale and scope of German war crimes, including the German programme of mass extermination of Jews. Indicatively, a Charge File naming the accused submitted on 2 June 1944 referred to the mass slaughter at Oświęcim (Auschwitz). Submitted indictments also referred to sexual violence and gender-based war crimes, the destruction of cultural heritage, and crimes against the clergy and intellectuals.³⁶

Chapter 7 provides an examination of the period of transition following the withdrawal of American and British diplomatic recognition of the Polish Government in Exile in July 1945 and the recognition of the government in Warsaw. In late June 1945, the major Allies convened in London and, in August, signed the London Charter establishing the International Military Tribunal in Nuremberg. During the summer of 1945, however, Poland was unrepresented at the UNWCC, an absence which Polish jurists believed led to insufficient attention being paid to Poland in the major Allies' indictment against the major war criminals in Nuremberg. Consideration is given to the attempts to ensure that a Polish voice was heard at Nuremberg through the composition of an indictment, provision of information, and liaison with the Soviet prosecutor. The

³⁶ Dan Plesch notes that until recently it had been thought that 'the first-ever prosecution for rape as a war crime occurred during the tribunal in the former Yugoslavia'. The 'rediscovery' of the UNWCC material relating to sexual violence can inform debate on the prosecution of such crimes that take place in contemporary conflicts. See Plesch, *Human Rights*, 5.

chapter also discusses Charge File submissions to the UNWCC during 1946.

Following the rigged election of January 1947 and the consolidation of power by the Soviet-backed Polish Workers' Party, the work of the Polish War Crimes Office in London (under the authority of the government in Warsaw) intensified. Chapter 8 shows that the rate of Charge File submissions increased exponentially as the Polish War Crimes Office sought to ensure that as many war criminals as possible were prosecuted and, importantly, to make sure that the authoritative lists of war criminals produced by the UNWCC reflected, to some degree, the breadth and depth of German criminality in occupied Poland. The chapter also discusses the War Crimes Office's pursuit of 'collaborators' and how rising East–West tensions impacted on the work of the Office. In late 1947 and early 1948, the number of suspected war criminals extradited to Poland from Allied-occupied Germany and elsewhere reduced drastically, and, as is shown, the practices of Allied authorities in Germany did not always align with the guidance provided by the UNWCC.

In regard to sources, the book draws on material from a range of archives, including the Hoover Institution (Stanford), the United States Holocaust Memorial Museum (Washington, DC), the National Archives (London), the Polish Institute and Sikorski Museum (London), the Wiener Holocaust Library (London), the Institute of National Remembrance (Warsaw), Yad Vashem (Jerusalem), among others. As a result of the efforts of scholar Dan Plesch, the Legal Tools Database provides access to a great deal of UNWCC documentation, including minutes of the plenary and sub-committee meetings, research reports, and bulletins. UNWCC documents are also available on a website developed as part of a research project on the UNWCC led by Plesch.³⁷ Some of this material is available at the National Archives in London in the Foreign Office and Treasury Solicitor files. Where documentary material is available online, the stable URL, rather than the National Archives reference, is provided.³⁸ Some significant documentation, including the Charge Files submitted by the Polish War Crimes Office is currently only available in situ in archives. Nevertheless, the accessibility of much material on the UNWCC should assist scholars and the interested public to better appreciate the role that this organisation played in the development of international justice.

³⁷ See www.legal-tools.org/ and www.unwcc.org/unwcc-archives/. The Legal Tools database was developed with the assistance of the European Union.

³⁸ Indicatively, the minutes of UNWCC meetings can be found at NA.TS 26/67, 68, 74, NA.TS 74. Additionally, meeting minutes for 1946 can be found at NA.FO 371/59597, 59598, 59599.