Carney on Plesch, 'Human Rights after Hitler: The Lost History of Prosecuting Axis War Crimes'

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At the most basic level, Human Rights after Hitler describes the rise and fall of the United Nations War Crimes Commission (UNWCC). But Dan Plesch did not write this book simply to provide an organizational history; rather, he has issued a call to action. He believes that greater knowledge about the UNWCC could provide important precedents for criminal justice. In particular, during its short lifetime from October 1943 through March 1948, the commission helped define legal concepts that have relevance today, including war crimes and crimes against humanity. The commission did not put anyone on trial but instead lent support to national courts that sought to prosecute individuals for these crimes. Plesch argues that this setup, where a domestic court can use the resources of an international support system, would strengthen the pursuit of justice in the present.

This book is not the first time that Plesch has examined the UNWCC, having mentioned it, for example, in his 2011 book America, Hitler, and the UN: How the Allies Won World War II and Forged Peace. In addition, the existence of the commission is not unknown in academic scholarship. To begin with, the UNWCC itself “published a short but comprehensive official history in 1948” (p. 4). This source has served as a useful reference for decades, but greater insight into the commission has not been possible until recently due to a lack of access to documents. Over the objection of commission members, the UNWCC archives were closed in 1949, and access remained limited for the next six decades. The author was one of the people who opened a dialogue with UN, American, and British authorities in 2011 to request greater access. Plesch only briefly recounts his success in this endeavor, noting that “in 2014, the US government made a full copy of the UNWCC record open and available to all at the US Holocaust Memorial Museum” (p. 4). Obtaining greater access is a laudable achievement.

These newly available files are not the complete records: many documents remain sealed in the archives of the seventeen UNWCC member nations or they have not been inventoried yet. Still, while the records are “patchy and incomplete,” not to mention “dispersed around the world,” Plesch contends that the available documents are a rich resource (pp. 92, 142). To demonstrate their value, he has divided his book into nine thematic chapters. The first focuses on rape and forced prostitution. The UNWCC supported not only cases where sexual violence was one of many crimes but also cases where such charges were the only alleged crimes. “The fact that prosecutors believed crimes of sexual violence alone were sufficient to warrant prosecution,” Plesch argues, demonstrates “how the
commission was most dramatically ahead of its time” (pp. 18, 12). These UNWCC supported-trials provide precedents for later tribunals. One major challenge to prosecuting rape is the legal principle of *nullum crimen sine lege*, which is the idea that a person “cannot be held criminally accountable for conduct that did not constitute an offense at the time it took place” (p. 15). Past indictments for sexual violence in the context of war undermine this argument.

Chapter 2 explains the creation of the UNWCC. Plesch argues that this information should be incorporated into scholarly works for two reasons. First, the model for international justice is the International Military Tribunals (IMT) at Nuremberg and Tokyo along with successive Allied trials, such as the subsequent Nuremberg Trials. Plesch does not suggest that these trials were unimportant to the foundation of international criminal justice. He does argue, however, that the contributions of the UNWCC cannot be ignored. Second, there is a tendency to view the advent of human rights as an Anglo-American invention. The actions of UNWCC representatives from China, India, and Ethiopia, Plesch contends, demonstrate otherwise. The purpose of chapter 3 is to show how the Allies repeatedly and publicly condemned Nazi atrocities, culminating with the December 1942 United Nations Declaration on the Persecution of the Jews. Plesch describes this statement as “the first multinational recognition and condemnation of the fact that Hitler was implementing a program to exterminate the Jewish population in Europe” (p. 76). It took almost a year, until October 1943, for the UNWCC to be created to address the persecution of Jews within the larger scope of crimes against humanity.

The fourth chapter provides “a statistical overview [that] demonstrates the global reach of the commission” (p. 87). Nationally based trials founded on indictments supported by the UNWCC began in late 1945, and by spring 1948, “the commission had approved a total of 8,178 cases” (p. 91). These trials spanned the globe, sustaining the point that Plesch raises in chapter 2 that non-Western nations contributed to the development of an international justice system. Chapter 5 focuses on the charges filed with the UNWCC to indict Germans for the extermination of Jews. Some indictments were secured while the Holocaust was taking place, with postwar charges filed with the commission until its closure. The purpose of chapter 6 is to show how the trials supported by the UNWCC were fair. The commission established criteria that advised member states how to submit charges for it to review. “The administration of this uniform system for the presentation and consideration of the cases,” Plesch asserts, “was implemented in thousands of pretrial dossiers and rebuts any notion that it was a random, arbitrary process.” In addition, the statistics show that the UNWCC did not approve every submission. They also establish that not all people who were charged were indicted in court: “overall the high proportion of acquittals is evidence of the quality of the process” (p. 139). Plesch also presents other elements that he maintains demonstrate that the system was fair: public trials, a presumption of innocence, and a foundation in preexisting legal standards, such as the 1907 Hague Convention and the 1929 Geneva Convention.

Chapter 7 addresses the decision to prosecute states as well as individuals for crimes against humanity. Plesch recognizes the work of the Nuremberg IMT for establishing this crime in international jurisprudence. But here, too, the efforts of the UNWCC must be acknowledged, he argues, especially with the issue of whether a government leader can be held accountable for crimes against humanity. “This issue ... is still controversial in the present century,” Plesch points out, but as in the case of rape, there is precedent in the work of the UNWCC (p. 162). The most notable precedent is the seven indictments against Hitler for war crimes endorsed by the UNWCC by March.
Chapter 8 examines the closure of the commission in March 1948, the cessation of trials, and the release of convicted criminals. Many European UNWCC representatives were displeased with all three actions but had no power to stop them from happening due to emerging Cold War tensions. That said, Plesch makes it clear that these tensions worked in tandem with preexisting hostility to an international justice system in both the US and Britain. The final chapter delves into “the relevance of the UNWCC to international criminal law in the twenty-first century” (p. 192). The past can serve as a model for the present, Plesch argues. That does not mean an exact replica of the UNWCC as circumstances are different today. Yet the primary purpose of the UNWCC, the author contends, is that it served “as a bridge between national and international law” (p. 198). The commission provided its members with international support for their trials. Plesch believes that the International Criminal Court (ICC) could do more along these lines and offer international legitimation and technical assistance to domestic courts.

No book is without its flaws, although in this case, they are minimal and mainly organizational. Chapter 2, about the creation of the UNWCC, should have been the first chapter followed by chapter 4, an overview of the trials. Chapters 3 and 5, respectively about Allied acknowledgment and prosecution of wartime atrocities, would have worked well if placed one after the other. Another minor issue is engagement with secondary sources. Plesch does a great job in chapters 5, 6, 8, and 9 briefly engaging with scholarship in the text and the endnotes. But there are a few places in earlier chapters where such engagement is weaker. For example, the United Nations Declaration on the Persecution of the Jews, Plesch states, “is often ignored in scholarly discourse that examines when and how much the Allies knew about the Holocaust” (p. 76). Several examples of scholarship would have strengthened this point. A related issue is the lack of a bibliography and list of archives. Appendix B does outline the content of the UNWCC archives, and as seen throughout the endnotes, Plesch makes good use of online resources. However, a complete list of the archival holdings that he consulted would be invaluable to scholars who seek to build on his research.

And having others build on his work is crucial. Plesch undeniably shows that the UNWCC documents are a valuable resource. His book, as a call to action to use this resource, is important. But how much these documents can add to our understanding of the development of human rights during and after the Second World War remains to be seen. The same can be said for setting precedents in contemporary law. As shown in Appendix C, the ICC has used rulings from UNWCC-supported tribunals in cases involving the former Yugoslavia. Additional legal scholarship would provide courts with further insight into how to grapple with human rights violations. The documents are there, with more potentially available in the archives of former UNWCC member states. It is now up to other scholars to use them.


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