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Bohuslav Ečer, the UN War Crimes Commission, and the Intellectual History of the Nuremberg Charter

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Using previously uncited archival evidence from the US, the UK, and Czechia, we highlight Bohuslav Ečer's significant impact on the Charter of the International Military Tribunal held at Nuremberg from 1945 to 1946. A politically motivated jurist from Czechoslovakia, Ečer proved a key innovator in international criminal law, pushing for bold new precedents at Nuremberg. We highlight multiple legal arguments that Ečer innovated and championed. These include the prosecution of individuals for the crime of aggression, the forfeiting of sovereign immunity during wartime, a broader definition of war crimes that included "crimes against humanity," and the collective responsibility of certain "criminal" Nazi organizations as a means of streamlining individual-level prosecutions. We trace Ečer's political thought and activism, including how his arguments joined with those of other prominent legal thinkers outside the US, including Hersch Lauterpacht and Aron Trainin. The article thus adds an important, yet often overlooked, voice to Nuremberg's intellectual history and helps remedy the Anglo-American bias of dominant histories of international criminal law.

Introduction

The 1945–6 International Military Tribunal (IMT) in Nuremberg constituted a crucial turning point in the history of international criminal law and, indeed, a political "event of world-historical importance."¹ Following World War II, the victorious Allied powers elected not to summarily execute their former enemies, but rather to create the first international criminal tribunal of its kind, prosecuting twenty-four Nazi leaders for war crimes, as well as the newly created categories of crimes of aggression and crimes against humanity. The tribunal set multiple precedents for the nascent field of international criminal law that subsequently influenced the prosecution of war criminals in multiple fora, including at domestic German trials, the

¹Aaron Fichtelberg, "Fair Trials and International Courts: A Critical Evaluation of the Nuremberg Legacy," *Criminal Justice Ethics* 28/1 (2009), 5–24, at 5.

1946–8 Tokyo trials, multiple ad hoc international tribunals, and the International Criminal Court (ICC). For this reason, the Nuremberg Charter, also known as the Charter of the International Military Tribunal, signed on 8 August 1945, following the approximately six-week London conference between the four major powers (the US, the USSR, the UK, and France), has proven a foundational international legal document. The charter not only provided a framework for conducting the trials, but also transformed inchoate ideas about international justice into a viable basis for prosecutions.

Yet, while the charter's importance is clear, for decades historians and international legal scholars have debated its complex intellectual history. Where did the charter's core ideas come from and how were they synthesized? How should scholars understand the origins of Nuremberg's enduring legacy? Initially, scholarship attributed the charter's core ideas primarily to the US government. Specifically, scholars placed outsized attention on Lieutenant Colonel Murray Bernays, who drafted initial American plans, and US chief prosecutor Robert H. Jackson, who led the US delegation at the London conference and subsequently served as chief US prosecutor.² Gradually, as such portrayals proved inadequate in understanding the charter's ideational origins,³ particularly prior to initial US proposals in late 1944, scholarship has reached back to previous years to uncover pivotal strands of legal thought and activism that influenced the charter's drafting. This scholarship has placed the IMT in a broader intellectual history and highlighted the contributions of both the other major powers and prominent thinkers whose voices influenced wartime debates, including Hersch Lauterpacht, Aron Trainin, and Raphael Lemkin.⁴

Within this literature, scholars including Kerstin von Lingen, Dan Plesch, and Arieh Kochavi have leveraged the opening and subsequent digitalization of key archives to highlight the role of two pivotal wartime fora in London populated primarily by exiled legal and political theorists from occupied states—the 1942–3 London International Assembly (LIA) and the subsequent 1942–8 UN War Crimes Committee (UNWCC).⁵ While the LIA was an unofficial institution populated by eminent international legal thinkers, Allied governments established the UNWCC in 1942 as a documentation

²J. J. Lador-Lederer, "The Nuremberg Judgment Revisited: The Bernays Postulate," *Netherlands International Law Review* 30/3 (1983), 360–73, at 360; Henry King Jr, "Robert Jackson's Vision for Justice and Other Reflections of a Nuremberg Prosecutor," *Georgetown Law Journal* 88 (2000), 2421–38, at 2421; Bradley F. Smith, *The Road to Nuremberg* (London, 1981).

³Robert Wolfe, "Flaws in the Nuremberg Legacy," *Holocaust and Genocide Studies* 12/3 (1998), 434–53.

⁴Francine Hirsch, *Soviet Judgment at Nuremberg* (Oxford, 2020); A. Dirk Moses, *The Problems of Genocide* (Cambridge, 2021); Philippe Sands, *East West Street* (New York, 2016); Kirsten Sellars, "Crimes against Peace" and *International Law* (Cambridge, 2013).

⁵A third forum, the 1941 Cambridge Commission for Penal Reconstruction and Development, is often mentioned alongside these two. Though it included multiple influential figures, including Hersch Lauterpacht, it had a somewhat distinct intellectual history from the more deeply intertwined LIA and UNWCC. See Kerstin von Lingen, "Setting the Path for the UNWCC: The Representation of European Exile Governments on the London International Assembly and the Commission for Penal Reconstruction and Development, 1941–1944," *Criminal Law Forum* 28 (2014), 45–76; Wolfgang Form, "The Treasure Trove of the United Nations War Crimes Commission Archives, 1943–49," in Ornella Rovetta and Pieter Lagrou, eds., *Defeating Impunity* (New York, 2021), 91–108.

center for war crimes taking place in Nazi-occupied territories,⁶ gathering official representatives from seventeen states.⁷ Over time, however, due to persistent legal questions over the definition of war crimes, the commission developed a dual mandate. First, representatives compiled evidence on war crimes in both Europe and Asia for eventual prosecution—whether by an international tribunal, military courts, or the governments of liberated countries. Second, the UNWCC spawned a series of committees—including its often radical Legal Committee (Committee III)—that helped define the legal issues at stake. In turn, it forwarded recommendations to Allied governments and, occasionally, sought press coverage for its innovations.

Though multiple American policy makers failed to appreciate the UNWCC's importance, dismissing it at the time as “an office of record and a learned debating society”⁸ that played “no significant role in shaping the Nuremberg enterprise,”⁹ recent scholarship has challenged this account. For example, Kochavi illuminated the complexity of debates within the UNWCC, relating them to later debates among the American architects of the Nuremberg tribunal.¹⁰ Likewise, Plesch has demonstrated how UNWCC documentation supported the prosecution of thousands of Nazi war criminals in occupied European states,¹¹ while two recent special issues have highlighted the UNWCC's reach across both Europe and Asia.¹² For the purposes of this article, Lingen's work theorizing the LIA and UNWCC as a rich “epistemic community” stands out for adding considerable nuance to discussions of Nuremberg's origins.¹³ She highlights multiple representatives of occupied governments in exile who took advantage of the intellectual vacuum created by major powers' wartime ambivalence regarding war crimes prosecution to refine ideas that proved prescient of postwar thinking. Owing to this recent scholarship, a new consensus has emerged that the UNWCC was not, in fact, feckless, but rather had a “direct influence on the development of the Nuremberg Charter.”¹⁴

⁶Dan Plesch, Thomas G. Weiss, and Leah Owen, “UN War Crimes Commission and International Law,” in Giuliana Ziccardi Capaldo, ed., *The Global Community Yearbook of International Law and Jurisprudence 2015* (Oxford, 2016), 71–110.

⁷Notably, the USSR did not participate in the UNWCC to protest its union republics not being granted full membership, while the British dominions of Australia and New Zealand were.

⁸Murray Bernays, “Letter to Mrs. Murray C. Bernays,” 10 June 1945, Box 3 F4, Murray Bernays Papers (MBP), American Heritage Center (AHC), University of Wyoming, Laramie, WY.

⁹Telford Taylor, *The Anatomy of the Nuremberg Trials* (New York, 2013), 41.

¹⁰Arieh J. Kochavi, *Prelude to Nuremberg* (Chapel Hill, 1998).

¹¹Daniel Plesch, *Human Rights after Hitler* (Washington, DC, 2017).

¹²See, above all, Sabina Ferhadbegović, Kerstin von Lingen, and Julia Eichenberg, “The United Nations War Crimes Commission (UNWCC), 1943–1948, and the Codification of International Criminal Law: An Introduction to the Special Issue,” *Journal of the History of International Law* 24/3 (2022), 305–14; William Schabas *et al.*, “The United Nations War Crimes Commission and the Origins of International Criminal Justice,” *Criminal Law Forum* 25/1–2 (2014), 1–7.

¹³Kerstin von Lingen, “Epistemic Communities of Exile Lawyers at the UNWCC,” *Journal of the History of International Law* 24/3 (2022), 315–33; Lingen, “Legal Flows: Contributions of Exiled Lawyers to the Concept of ‘Crimes against Humanity’ during the Second World War,” *Modern Intellectual History* 17/2 (2020), 507–25; Lingen, “Crimes against Humanity”: Eine Ideengeschichte der zivilisierung von Kriegsgewalt 1864–1945 (Schöningh, 2018); Lingen, “Setting the Path for the UNWCC.”

¹⁴Morten Bergsmo, Cheah Wui Ling, and Yi Ping, *Historical Origins of International Criminal Law*, vol. 1 (n.l., 2014), 471.

Nevertheless, more work remains to unravel the skein of intellectual linkages both within this community and with outside governments to trace how ideas developed, traveled to key policy makers, and exerted their influence.

This article contributes to this effort by highlighting what we demonstrate were outsize and previously overlooked contributions of a single outspoken member of this epistemic community—Bohuslav Ečer, UNWCC representative from Czechoslovakia. Drawing on previously uncited archival sources from Czechia, the US, and the UK, we demonstrate that Ečer's writings not only swayed colleagues in London, but also reached the US Secretaries of State and War, and eventually influenced the proposals of Murray Bernays, the architect of the US position at the London conference. To date, much of Ečer's work and influence have been lost to history, neglected by most American-dominated accounts of the Nuremberg process, and subsequently suppressed by the communist Czechoslovak government that came to power in 1948. Even after the fall of communism in 1989, the few Czech scholars who engaged Ečer's legacy highlighted his later career as a "Nazi hunter," involved in the interrogations of leading Nazi figures like Karl Hermann Frank and Hermann Göring,¹⁵ rather than his prior work as a legal thinker and political activist. Yet, as our evidence demonstrates, Ečer's legal thought proved consequential both in shaping opinion within the LIA and UNWCC and by spreading outside these fora to key Allied leaders. Among the ideas Ečer helped champion were the criminality of aggressive war (later codified in the Nuremberg Charter's Article 6), the idea of collective responsibility of certain Nazi organizations and, relatedly, the inadmissibility of the defense of superior orders in such cases (Articles 9 and 8 respectively), and the illegitimacy of the doctrine of sovereign immunity during wartime (contained in Article 7). Though his influence on each point varied, highlighting his intellectual biography reveals the Western bias of existing scholarship on international law, which can mask pivotal contributions of international thinkers who did not hail from great powers.

We proceed in four sections. First, drawing on correspondence that his family deposited in the Central Military Archive after 1989, as well as his 1942 graduate thesis, we provide a brief biographic sketch of Ečer to highlight his motivations, legal thought, and objectives. The second section turns to Ečer's participation in the LIA, a forerunner to the UNWCC, which helped incubate his ideas. In the third section, we outline Ečer's contributions to the UNWCC, including his pivotal debate with British legal scholar Arnold McNair. The fourth section traces Ečer's influence beyond these fora, including his writings' impact on US policy makers. We conclude by briefly reviewing Ečer's postwar career, which was tragically cut short by Czechoslovakia's repressive communist regime.

Origins and motivations

Ečer was born in 1893 to the large family of a traveling salesman in a small town called Moravská Hranice ("Moravian border"), then part of Austria–Hungary. His

¹⁵Michal Dudáš, *Bohuslav Ečer* (Prague, 2019); Stanislav Motl, *Oběti a jejich vrazi* (Prague, 2008); Vojtěch Kyncl, *Bestie: Československo a stíhání nacistických zločinců* (Prague, 2019); Eduard Stehlík, "Bohuslav Ečer and the Prosecution of War Crimes," in Neela Winkelmann-Heyrovská and Martin Mejstřík, eds., *European Conscience and Communism* (Prague, 2009), 53–63.

working-class background, which included his undertaking manual labor to support his family during his youth, helped inspire early Marxist sympathies.¹⁶ There are scant records of his whereabouts during World War I, but some evidence indicates he enlisted in the Austro-Hungarian military and was stationed in Italy and Galicia.¹⁷ After the war, he obtained law degrees from Vienna and Prague, before returning to Brno to start both his legal practice and his political career in the Communist Party.¹⁸ By 1921, he had become a prominent member of Czechoslovakia's Left Front faction that maintained communist beliefs, but criticized the Czech communists' close alignment with the Soviet Union. The Communist Party expelled Ečer for this reason in 1928 and he joined the Social Democrats.¹⁹ He rose within that party's ranks to become Brno's deputy mayor in 1935.²⁰ His contemporaries during this period commented on his professional drive, grit, and relentlessness. His personal secretary, Karel Křepelka, who was later imprisoned by the postwar Czechoslovak communist regime, described him as "an extraordinarily diligent and tenacious" person who thrived on routine and order.²¹ In spite of his intense schedule, Ečer learned five foreign languages, including Russian and French, which allowed him to read from a variety of legal traditions.

Beyond his leftist politics, Ečer's primary motivation after World War I was defending the new Czechoslovak state's sovereignty. He was a vigorous defender of Czechoslovak democracy and of both presidents Tomáš Garrigue Masaryk and Edvard Beneš. In addition to being a lawyer and politician, Ečer also saw himself as an activist. As the Nazi threat loomed larger in the mid-1930s, he openly criticized Germany and evinced deep skepticism of Czechoslovakia's ethnic Germans, who represented over a fifth of the country's population at the time, concentrated in the country's borderlands (the Sudetenland).²² He feared that Western countries would underestimate German expansionism in Central Europe and that Czechoslovakia would fall prey to Hitler's ambitions. Expressing deep distrust about Germany, he later wrote that the world of the 1930s had failed to see that Nazism constituted a "great criminal epidemic, which threatened to kill the whole of Europe and infect the whole world."²³

In mid-September 1938, Ečer traveled to the UK and delivered eight lectures arguing that Hitler must be stopped, not appeased.²⁴ His fear materialized shortly after with the 30 September 1938 Munich Agreement, which paved the way for the Nazi takeover of the Sudetenland. The agreement confirmed Ečer's fears about Germany and shook his confidence in Czechoslovakia's Western allies—France and the UK in

¹⁶Motl, *Oběti*.

¹⁷Karel Křepelka, *Dr Bohuslav Ečer, Bojovník za Právo a Spravedlnost* (Brno, 1946), 14.

¹⁸Edvard Cenek and Bohuslav Ečer, *Jak Jsem Stíhal: Reportážní Písmo Edvarda Cenka* (Prague, 1946), 15–16.

¹⁹Křepelka, *Dr Bohuslav Ečer*, 7.

²⁰"List A c. 47. Report about Ečer's Activities," 27 May 1953, R-198 8974, "The Lawyer," Archive of the State Security Services (ABS), Prague, Czechia.

²¹Cenek and Ečer, *Jak Jsem Stíhal*, 125.

²²See "Zasahne 'druhe Nemecko'?", fall 1939, Box 11, Bohuslav Ečer Papers (BEP), Central Military Archives: Archive of Military History (VHU), Prague, Czechia; see also Bohuslav Ečer, *Právo v Boji s Nacismem* (Brno, 1946), 8.

²³Bohuslav Ečer, *Vývoj a Základy Mezinárodního Trestního Práva* (Prague, 1948), 8.

²⁴Cenek and Ečer, *Jak Jsem Stíhal*, 22.

particular.²⁵ In later writings he warned of “another Munich under a different name” that would further undermine Czechoslovakia’s independence.²⁶ He made another trip to the UK after the Munich Agreement, on 27 October 1938. On this trip he was joined by R. W. Seton-Watson (a British activist for Czechoslovak independence) and he employed maps and charts in his speeches to argue that the deal was the beginning of Germany’s plans to conquer the rest of Czechoslovakia.²⁷ Ečer’s fears were realized in March 1939, when Nazi Germany invaded and turned Czechoslovakia into a protectorate. Reflecting on this experience after the war, he accused French and British leaders of both cowardice and failing to understand the nature of the “German barbarians,”²⁸ including the “gangster” and “mafia” nature of the Nazi regime. These depictions of Nazi Germany as replete with criminality and barbarity would resonate in his wartime legal thought.²⁹

Due to his leftist politics, after the Nazi invasion Ečer was quickly summoned by the Gestapo and interrogated. After a second summoning, Ečer fled.³⁰ On 4 April 1939 he left Czechoslovakia with his wife and two daughters for what would ultimately be the duration of the war, escaping via Prague and Vienna. The family stayed in Belgrade for three months, at which point Ečer began corresponding with the Czechoslovak government in exile in London, including both President Edvard Beneš and Zdeněk Fierlinger, a future Czechoslovak prime minister who was then serving as ambassador to the USSR.³¹ These connections eventually inspired Ečer’s relocation to Paris, where he was tasked by Štefan Oususký of the Czechoslovak National Council to prepare a legal basis for both a peace conference and the prosecution of war criminals. Also while in Paris, he worked for the journal *Československý boj* (Czechoslovak Fight),³² where he published articles on the illegality of the Munich Agreement, the retrieval of lost territory, and the need to document German crimes taking place in Czechoslovakia.³³ After the Nazi occupation of France, Ečer fled south to what was then the free port of Marseille, where he assisted the Czechoslovak consulate until the port’s closure.³⁴

In parallel, while in the south of France, Ečer studied for a graduate degree in international law in Nice, which he received in the summer of 1942. His handwritten thesis, titled “L’évolution de la justice internationale vers le permanence et l’obligation” and dated 15 August 1942, focused on what Ečer saw as three key barriers to international

²⁵ Křepelka, *Dr Bohuslav Ečer*, 22.

²⁶ Bohuslav Ečer, *Poučení Norimberského Soudu pro Slované* (Brno, 1947), 2, 70.

²⁷ A list of his lectures and visits is available in Box 1, 1939–1941, BEP, VHU; see also Cenek and Ečer, *Jak Jsem Stíhal*, 25.

²⁸ Cenek and Ečer, *Jak Jsem Stíhal*, 150.

²⁹ Ečer, *Právo v Boji s Nacismem*, 8.

³⁰ “Letter by Ečer, presumably to Dr. Beneš,” Dec. 1939, Box 2, BEP, VHU.

³¹ “Příloha č. 11’ to Ečer’s habilitation,” undated, Box 4, BEP, VHU.

³² A series of his articles are available in Box 1, 1939–1941, BEP, VHU.

³³ The Czech Security Services Archive (ABS) provides testimonies from the political trials of Ečer’s associates that confirm these biographical details. For example, “Testimony of Karel Křepelka (27411/54),” 15 April 1954, R-198-2, ABS; “Testimony of Jarmila Horáková (no 121),” 9 Dec. 1954, R-198-3, ABS; see also Cenek and Ečer, *Jak Jsem Stíhal*, 55.

³⁴ See correspondence in Box 1, 1939–1941, BEP, VHU.

justice: scope, obligation, and permanence.³⁵ Ečer argued that existing international law's scope needed to be expanded, that new binding obligations would need to be specified in conventions, and that a set of permanent institutions would be required for judgment and enforcement.³⁶ Ečer then turned to his thinking on the current war. He argued that World War II was a criminal aggressive war, for which its leaders should be prosecuted, because its start and its nature ran against the spirit of the two Hague Conventions' efforts to "humanize" war and limit atrocities.³⁷ In particular, Ečer justified his thinking with reference to the Martens clause of the 1899 Hague Convention, which stated that until a codified set of rules was set in place, "populations and belligerents remain under the protection and empire of the principles of international law as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience."³⁸

At the time of its adoption, most nations considered the Martens clause sufficient to regulate wartime rules of engagement, even arguing that further clarifications would have been considered "unsporting" given general faith that "civilized nations" would oblige.³⁹ For Ečer, the brutality of World War I proved such beliefs foolhardy, emphasizing the need for radical change. The thesis reviewed a series of interwar international efforts to expand the Martens clause's reach. These included Article 227 of the Versailles Treaty holding the German emperor responsible for "a supreme offence against international morality and the sanctity of treaties" and the 1928 Kellogg–Briand Pact, signed eventually by sixty-two states, which "condemn[ed] recourse to war for the solution of international controversies, and renounce[d] it, as an instrument of national policy in their relations with one another."⁴⁰ While Ečer treated both as advances in international law, he argued that they required still further innovation. German Emperor Wilhelm II, for example, ultimately evaded punishment, finding refuge in the Netherlands, while the Kellogg–Briand Pact failed to specify punishments or enforcement mechanisms—a shortcoming made clear upon the Japanese invasion of Manchuria in 1931. Noting that Nazi Germany's crimes represented "crimes against humanity as a whole," Ečer's thesis argued for new innovations in international criminal law that could be used to retroactively hold Nazi Germany and its leaders responsible for launching the war in front of either domestic courts or an international tribunal.⁴¹

Though Ečer's handwriting is difficult to read in places and the ink has faded, it's clear that the "Three Problems" specified in his thesis became core tenets of Ečer's subsequent arguments in London. Further, the thesis included citations of many of the

³⁵"L'évolution de la justice internationale vers le permanence et l'obligation," 15 Aug. 1942, Box 1, BEP, VHU.

³⁶Ibid., 1–15.

³⁷Ibid., 29–38, 41.

³⁸"Hague Convention (II)," 29 July 1899, Human Rights Library, University of Minnesota, at <http://hrlibrary.umn.edu/instree/1899b.htm>.

³⁹Helen Kinsella, *The Image before the Weapon* (Ithaca, 2011), 108.

⁴⁰"The Versailles Treaty," Yale Law School: The Avalon Project (YLSAP), 28 June 1919, at https://avalon.law.yale.edu/subject_menus/versailles_menu.asp; 'Kellogg–Briand Pact of 1928,' YLSAP, at https://avalon.law.yale.edu/20th_century/kbpact.asp.

⁴¹"L'évolution de la justice internationale," 42.

diverse legal scholars he would later cite as inspiration, including both French thinkers such as Emer de Vattel, Henri Donnedieu de Vabres, Robert Pelloux, Georges Scelle, and Hugh Bellot, and Czechoslovak scholars like Antonín Hobza, Jaroslav Kallab, Vladimír Solnař, and Jaroslav Žourek. The thesis also exhibits his characteristically colorful language—referring, for example, to the war as an unprecedented “monstrosity”—and contains the first of multiple calls for setting radical new legal precedents to be enforced retroactively against Nazi Germany and its leaders.⁴²

In the summer of 1942, as he completed his thesis, news of the assassination of the leading Nazi official in Czechoslovakia, Reinhard Heydrich, reached Ečer, as did reports of the Germans’ retaliatory massacres in Lidice and Ležáky. His letters indicate that these events reinvigorated his political drive to remedy the injustice committed on “small” nations, and to exact “revenge” for Munich, for the 1939 executions of students in Prague, and for the 1942 massacres. International law, in his mind, needed to finally expand definitions of war crimes and prosecute the largest possible number of responsible Germans, regardless of whether they claimed to have followed superiors’ orders.⁴³ To him, World War II was uniquely illegal from the start. Ečer welcomed the St James Declaration of 13 January 1942, in which nine Allied governments, including Czechoslovakia, declared their intention to prosecute war crimes.⁴⁴ Nevertheless, he argued that the declaration was not bold enough, as it relied on the limited scope of available legal precedents, including the Hague Conventions with their unclear enforcement mechanisms.⁴⁵ These developments only reinforced his belief that international legal innovation was required and that it would need to be enforced retroactively to bring Nazi Germany and its leaders to justice.

Development at the London International Assembly

On 6 October 1942, Ečer travelled with his family to London via Lisbon, invalidating their US visas to join the Czechoslovak government in exile.⁴⁶ Coincidentally, Ečer arrived on the eve of parallel declarations by President Roosevelt and the UK’s Lord Chancellor, Viscount Simon, outlining the creation of a UN body to investigate and document Axis war crimes—which would eventually become the UNWCC.⁴⁷ Again, Ečer deemed the declaration a “poor” document, which did not capture the “scale of German criminality” through innovations in international criminal law beyond existing precedents. He compared the plan to document Nazi war crimes according to existing definitions in the Hague Conventions as akin to using “aspirin on typhus” and subsequently wrote that this shortcoming was a problem that motivated his work for the Czechoslovak government in exile.⁴⁸

⁴²See, for example, Bohuslav Ečer, “L’illegalité du ‘Protectorat,’” *L’Europe centrale* 5/15 (1940), 19–20, at 19.

⁴³See correspondence in Box 1, BEP, VHU.

⁴⁴The UK and the US participated as observers but did not sign the final declaration.

⁴⁵Ečer, *Vývoj*, 62.

⁴⁶“Succinct CV of B. Ečer,” 1948, Box 4, BEP, VHU.

⁴⁷M. E. Bathurst, “The United Nations War Crimes Commission,” *American Journal of International Law* 39/3 (1945), 565–70.

⁴⁸Ečer, *Právo v Boji s Nacismem*, 15.

During their first meeting after his arrival, President Beneš asked Ečer to engage in political affairs. Ečer, however, saw his activism as best channeled via international law and therefore asked to assist Justice Minister Jaroslav Stránský in formulating legal responses to the war.⁴⁹ In this capacity, he was appointed to the Czechoslovak delegation to the LIA, serving as deputy to Václav Beneš (the president's nephew). Despite its unofficial status, the LIA served as “the central hub of exchange at the intersection of governmental politics, academic expertise and knowledge transfer, and internationalist activism.”⁵⁰ It included eminent legal minds from the major powers, including Dame Adelaide Livingstone, future Nobel laureate René Cassin, former UK Lord Chancellor Viscount Maugham, and, remotely, Harvard professor Sheldon Glueck.⁵¹ Likewise, Ečer was joined by representatives of other small nations' governments in exile, including Marcel de Baer of Belgium, Stefan Glaser of Poland, and Johannes M. de Moor of the Netherlands—all of whom would become sparring partners at the UNWCC.

Contemporaneous letters—and later correspondence with US UNWCC representative Herbert Pell (a friend of President Roosevelt)—show that Ečer made an instant impression on colleagues.⁵² In less than a year at the LIA, he authored five reports and delivered several lectures, many of which drew on his recently completed dissertation. The LIA proved a friendly, yet contentious, environment. While members unanimously shared the goal of holding Nazi leaders accountable, many accepted that the dearth of existing international legal precedents limited their ability to do so. Indeed, the more conservative of the LIA's members resigned themselves to the fact that the dominant legal doctrines of *nullum crimen sine lege* (“there is no crime without law”) and *nulla poena sine lege* (“there is no punishment without law”), coupled with the norm of sovereign immunity, meant that many Nazis would escape prosecution. While Hitler and his deputies could avoid prosecution via claims of sovereign immunity, their subordinates in both the government and the military could similarly evade responsibility by claiming that they merely followed superior orders. This situation threatened to limit the number of Nazis eligible for war crimes tribunals to a vanishing few exceptional cases.

Ečer took a more radical approach. He argued that it was the job of international lawyers to think outside these constraints, developing new precedents that could be enforced retroactively. He often dismissed what he saw as the narrow-mindedness of the London legal circles as reminiscent of “old Munich reactionary elements.”⁵³ Ečer saw the LIA as a space for innovation. He clashed with the forum's chairman, De Baer, offering proposals that would pull members in radical directions. Among the ideas

⁴⁹Cenek and Ečer, *Jak Jsem Stíhal*, 146.

⁵⁰Julia Eichenberg, “Crossroads in London on the Road to Nuremberg,” *Journal of the History of International Law* 24/3 (2022), 334–53, at 335.

⁵¹Despite working remotely, Glueck would likely have been privy to all key LIA documents, including those submitted by Ečer. On Glueck's role in shaping US policy see John Hagan and Scott Greer, “Making War Criminal,” *Criminology* 40/2 (2002), 231–64.

⁵²See correspondence in Box 1, BEP, VHU.

⁵³“Letter to Zdeněk Nejedlý from London,” 21 May 1944, 373–10, Edvard Beneš II, Masaryk Institute and Archive of the Czech Academy of Sciences (MUA), Prague, Czechia.

Ečer championed during his time at the LIA, four stand out as particularly influential, reverberating among his peers and beyond the epistemic community in London: individual criminal responsibility for launching wars of aggression, the idea that some Nazi organizations should be prosecuted collectively, the inadmissibility of the defense of superior orders, and the idea that sovereign immunity did not apply during wartime.

Four days after arriving in London, Ečer authored his first memo for the LIA, entitled “The Punishment of War Criminals,” where he focused on his first major idea—that Nazi leaders should be held criminally responsible as individuals for launching an aggressive war.⁵⁴ He began the piece by describing the craving for justice in continental Europe, which he described as “perhaps even stronger than the desire for food.” He used figurative language to describe a beaten, maimed, and outraged people who wanted not only liberation, but also to see their wrongdoers punished. Against this backdrop, Ečer condemned the prevailing position among Allied powers that Hitler should not stand trial, singling out the United States, whose position was “unclear.” He argued against this “confusion” by stating that the Kellogg–Briand Pact unequivocally outlawed aggressive warfare, making the current war and its orchestrators criminal. To support this argument, Ečer cited international legal experts, including Édouard Descamps, Georges Scelle, and Emer de Vattel, clearly drawing on his graduate studies.

LIA chairman De Baer disagreed strongly on this point, having previously noted that the Kellogg–Briand Pact did not outline any punishment for the start of an aggressive war and noted that international law had no real definition of a crime.⁵⁵ Ečer saw this as an opening. To him, although it was problematic that no sanctions existed in international law, the pact outlawed war-making and understood domestic law as a suitable avenue to provide sanctions. He saw the pact as an impetus to forge further international precedents criminalizing aggressive war that could be enforced retroactively—a contentious (though not unheard-of) notion for its time. He singled out the current war as so “outrageous” that it merited “*ex post*” trials borrowing “analogies” from the domestic jurisdictions of countries, like Czechoslovakia, that had been attacked. He advocated for the creation of a “high international tribunal composed of judges representing all the countries at war with Germany” and stated that Hitler’s responsibility was beyond “any doubt” due to the “total” nature of the war and the heinousness of the committed crimes.⁵⁶

Ečer’s first memo should be read in conjunction with a lecture from 27 November 1942, titled “Three Key Problems of International Justice,” that he delivered to the Czechoslovak Association of International Law in London.⁵⁷ The lecture developed the points of his first memo in conjunction with the issues of scope, permanence, and obligation he had highlighted in his graduate thesis. This lecture, however, articulated a more developed understanding of how prosecutions would take place. He argued that the jurisdiction of the occupied states where Nazi crimes were committed justified the

⁵⁴Bohuslav Ečer “The Punishment of War Criminals,” Oct. 1943, TS 26-873, TS-Records Created or Inherited by the Treasury Solicitor and HM Procurator General’s Department, National Archives of the United Kingdom (NAUK).

⁵⁵Marcel de Baer, “Suggestions for Scope of Commission,” April 1942, TS 26-873, NAUK.

⁵⁶Ečer “The Punishment of War Criminals.”

⁵⁷Bohuslav Ečer, “Tři problémy mezinárodního práva,” 27 Nov. 1942, Box 2, BEP, VHU.

transfer of authority for trials to hybrid courts and an Inter-Allied tribunal. He specifically argued that Hitler and other high-ranking Nazi leaders should be held responsible in front of an international court for the crime of aggression, while other German war criminals in occupied territories would be subject to a multilevel prosecutorial strategy of national, hybrid, and international courts. In the lecture, he defined war crimes more broadly than existing international legal precedents, emphasizing the need to “include all acts that have breached norms of so-called war justice which humanizes wars.”⁵⁸ He also included crimes that were perpetrated before the war and after its end, extending the idea of war crimes to outside the start of hostilities. These views made Ečer particularly radical among contemporary legal thinkers—a contrast especially clear when he is read alongside his interlocutors at the LIA.

In his next writings for the LIA, Ečer made bold proposals regarding the collective responsibility of Nazi organizations for war crimes and the inadmissibility of the plea of superior orders. Indeed, the plea of superior orders later became known as the “Nuremberg defense,” as it was employed by high-ranking Nazis at the IMT, though with little success. Ečer formulated these proposals in direct response to impasses within the LIA. As early as 1942, many LIA members expressed fears that Nazi war criminals would defend themselves by arguing that they were merely following superior orders, citing precedents in military law across the Allied powers. Yet, despite widespread concerns, there was little consensus on how to avoid the issue. De Moor and De Baer both submitted memos offering proposals, grounding their analysis in existing precedents of European states. De Moor focused on the prior work of the 1941 Cambridge commission, which attempted to document the existing policies of Allied militaries to identify consensus.⁵⁹ De Baer, by contrast, proposed a complex approach to circumvent this issue, arguing that Allied courts should consider the degree of unlawfulness of the act, the defendant’s knowledge of its criminality, the difference in rank between the commander and the subordinate, and the punishments involved in disobeying the order.⁶⁰

Again, Ečer favored a more radical approach. Still polishing his English, on 29 March 1943 he submitted a memo in French entitled “*Lordre supérieur et les criminelles de guerre allemande*” that argued that the plea of superior orders should be treated as fundamentally illegitimate in most war crimes prosecutions. He justified this radical departure, first and foremost, with reference to the total nature of the current war. He stressed that existing legal precedents cited by his colleagues failed to capture the premeditated and strategic nature of atrocities committed by Nazis not because of what victims had done, but rather because of their ethnic, religious, social, political, and national identities—a principle to which he had referred in his master’s thesis as crimes against the laws of humanity. To Ečer, the Nazis “created a moral situation unheard of and unanticipated by classic penal codes and by the classic penal doctrine, a situation in which it is not solely criminal individuals, but larger categories entirely of people that

⁵⁸ Ečer, “*Tři problémy mezinárodního práva*,” 12.

⁵⁹ J. M. de Moor, “Introduction and Preliminary Note,” 1943, TS 26-873, NAUK.

⁶⁰ Marcel de Baer, “Additional Note,” 1943, TS 26-873, NAUK.

are in advance accord with all of the crimes.” This new moral situation, Ečer argued, required a fundamentally new approach to prosecution.⁶¹

After these preliminaries, Ečer’s memo turned to the criminal nature of certain Nazi organizations.⁶² In particular, he cited the organizational bylaws of the Nazi Party (NSDAP), SA, SS, Waffen-SS, and Gestapo, to argue that each was a *voluntary* organization. Therefore these members should be understood as “gangsters,” akin to members of any other gang or criminal organization, and they should be subject to “collective responsibility of organized gangstership.” His organizational analysis supported his conclusion that the plea of superior orders must “absolutely” be denied for these organizations’ members, as they volunteered for these organizations and thus to subject themselves to criminal orders. He argued that the assumption that “the superior and the inferior are in a moral disagreement about the order” was fundamentally wrong for the “voluntary criminals” of the NSDAP, Gestapo, SS, and SA.⁶³ By contrast, Ečer’s memo did recognize the fundamentally different position of civil servants, judges, and conscripted soldiers, arguing that they could defend themselves against accusations of war crimes by arguing that their lives were in danger if they did not obey. In such cases, he argued, the plea of superior orders should only apply “relatively,” as it could be outweighed by the “heinous” nature of certain crimes (such as killing children). Though controversial within the LIA, Ečer’s position was later supported by the Soviets and the French, rhyming with later US efforts to try Nazi leaders using conspiracy laws. Indeed, given the later inclusion of the Nuremberg Charter’s Article 9 enabling prosecution of members of “a criminal organization,” Kerstin von Lingen referred to Ečer as the “spiritual father” of the idea of collective responsibility for Nazi atrocities.⁶⁴

Finally, Ečer’s fourth consequential argument at the LIA was that the doctrine of sovereign immunity should not apply during wartime, enabling prosecution of Axis heads of state. On 28 April 1943, he submitted a memo entitled “Penal Responsibility of Heads of State,” one of only two submitted to the LIA on the subject (the other, by Sheldon Glueck, did not draw firm conclusions).⁶⁵ Sovereign immunity represented another deeply contentious issue at the LIA. Though he did not write specifically on the subject, De Baer rejected any calls to punish statesmen for violating the Kellogg–Briand Pact.⁶⁶ Most LIA members agreed for multiple reasons, including the belief that it might prove practically impossible to directly link heads of state to war crimes committed at the front.

Ečer again pursued a radical departure, offering arguments grounded in what he described as a failure to hold Wilhelm II responsible for any war crimes after World War I. He argued that World War II put “[t]he notion of sovereignty ... in a new light,” and argued that, given these changes, a “jurist must infer the legal consequence: he must

⁶¹ Bohuslav Ečer, “Superior Orders and German War Criminals” (in French, translation by the authors), March 1943, TS 26-873, NAUK.

⁶² Ibid.

⁶³ Ečer, “Superior Orders and German War Criminals”; see also Ečer, “Vývoj a základy mezinárodního trestního práva,” 73.

⁶⁴ Lingen, “*Crimes against Humanity*”, 225.

⁶⁵ Bohuslav Ečer, “The Penal Responsibility of Heads of Axis States,” 28 April 1943, TS 26-873, NAUK.

⁶⁶ De Baer, “Additional Note.”

try to master this new reality by law.” Given Axis leaders’ paramount role in launching a war in breach of existing international agreements, Ečer argued that they had fundamentally forfeited their right to sovereign immunity, which he saw as based on “mutuality in respect of rights and duties.” He continued, “The State can insist on the respect by other States towards its head—and consequently on his immunity—only if it respects itself the other State and its Head. The respect cannot be a unilateral one.” Further, he concluded that, “Because of the plurality of the competence of courts of several states and because of the importance of such trial and judgment for international justice and for the new international community, an International Criminal Court shall be established for these cases.” In particular, he singled out Adolf Hitler and Japanese emperor Hirohito as suitable defendants, recognizing that other Axis heads of state may be suitably tried in front of a similar international body or by Allied states upon their liberation.⁶⁷

While, on multiple other points, Ečer’s proposals did not gain the approval of the entirety of the LIA, on these final points relating to Axis leaders’ forfeiture of sovereign immunity and the need for an international court, Ečer proved particularly persuasive. In its final June 1943 sessions, the LIA voted to approve joint recommendations to Allied governments that “an International Criminal Court, and not a political body,” should have jurisdiction to try the heads of Axis states.⁶⁸ These points were later codified in the Nuremberg Charter’s Article 7.

Ečer at the UNWCC: ideational refinement and advocacy

The LIA’s official successor, the United Nations War Crimes Committee (UNWCC), was launched in October 1942 by UK Lord Chancellor John Simon, but did not begin meeting until October 1943. Bohuslav Ečer served as Czechoslovakia’s representative from the outset, joined, at times, by Egon Schwelb and Václav Beneš. Later, other Czechoslovak officials would join the delegation, including Ečer’s replacements after his departure in 1945.

In addition to holding general meetings of representatives, the UNWCC established three committees (Facts and Evidence, Enforcement, and Legal Affairs), as well as a subcommittee on the Far East, responsible for the two core functions of the body: documenting war crimes across Europe and Asia and debating the legal issues inherent to prosecuting them. For the most part, Ečer focused on the latter objective, using his position within Committee III to debate other states’ representatives and, in turn, spread his ideas to Allied governments (as well as the media, in select circumstances). During his tenure, Ečer’s writings and arguments would distinguish him as a primary advocate for the four ideas he’d developed at the LIA, as well as an important early advocate for prosecuting Nazis for “crimes against humanity”—an emerging concept during the period. Indeed, Ečer proved an outspoken participant in the UNWCC, noting that, by January 1945, he had personally attended 150 meetings, given six presentations, delivered fourteen lectures, and authored seven key memos.⁶⁹

⁶⁷ Ečer, “The Penal Responsibility.”

⁶⁸ “Conclusions of the Commission,” 21 June 1943, TS 26-873, NAUK.

⁶⁹ Bohuslav Ečer, “Letter to PPI Ressel,” 23 Jan. 1945, Box 4, BEP, VHU.

Though he recognized the opportunity afforded him by participating in the UNWCC, Ečer also saw it as a frustrating forum. The LIA had, for the most part, attracted like-minded experts committed to finding novel ways to prosecute war criminals—though perhaps not as radical as Ečer would have preferred. By contrast, the UNWCC’s official intergovernmental status meant that it would also feature the voices of representatives of the major powers that were more ambivalent about the prospect of using international criminal law to prosecute Nazis. Notably, Winston Churchill had argued for summary executions of Nazi leaders, while, in October 1943, the US, the UK, the USSR, and China jointly released the Moscow Declaration stating that Nazi war criminals would be brought back to occupied states after liberation to stand trial in front of domestic civilian or military courts.⁷⁰ Ečer was frustrated by this conservative approach and wanted the UNWCC to serve as a more revolutionary body that pioneered bold changes in international criminal law. He blamed the “maneuvers of the powerful people of the Munich past and the Munich mentality” for circumscribing the commission’s mandate and powers, singling out its first chairman, Sir Cecil Hurst, for desiring “to see the whole commission fail.” He accused those opposed to his views within the UNWCC of being linked to the legacy of Munich, afraid that war crimes prosecution would reveal “their complicity” in the start of the war.⁷¹ He summarized these debates as follows:

Since the beginning two directions, two concepts and two groups of lawyers clashed in the commission. The first, small, group interpreted the Allied declarations about punishing war crimes of the Axis and their allies in the narrowest possible sense so that allied retribution would pertain only to the smallest sections of German criminality; that is, acts breaching “laws and customs of war”. The second, and much larger, group of lawyers where representatives of Czechoslovakia had an honorable—or even—leading position, interpreted these declarations according to their true aim and significance; that is, to address the full material and time extent of German criminality and that of their allies, meaning also the preparation and start of the Second World War and crimes against humanity.⁷²

While he resisted what he viewed as British narrow-mindedness, Ečer found himself drawn to Soviet thinking. He saw the USSR’s absence from the UNWCC as unfortunate, as he came to believe that the Soviets shared more of his views on war crimes prosecution.⁷³ By 1944, while in London, he had begun reading Russian legal experts and updating the UNWCC on developments in the USSR, informed by correspondence with the Czechoslovak ambassador to Moscow.⁷⁴ In particular, during this period he drew inspiration from Soviet thinker Aron Trainin’s 1937 *Zashchita mira i ugovolny*

⁷⁰“Joint Four-Nation Declaration,” the Moscow Conference, Oct. 1943, YLSAP, at <https://avalon.law.yale.edu/wwii/moscow.asp>.

⁷¹Bohuslav Ečer, “Letter to (presumably) Minister Stránský, 1-1-256-113-1/4,” 11 Dec. 1943, Collection of CZ Rep. to UNWCC, Collection 615, Czechia National Archives (CNA).

⁷²Ečer, *Vývoj*, 96–7, translation by the authors.

⁷³“Letter to Zdeněk Nejedlý.”

⁷⁴Correspondence with CZ ambassador to USSR from 1939 to 1946 can be found in Box 1, BEP, VHU.

zakon (Defence of Peace and Criminal Law) (with a foreword by Stalin's infamous show-trial prosecutor Andrey Vyshinsky), which echoed his argument at the LIA that launching a war of aggression should be understood as criminal.⁷⁵ Later, in October 1944, at the request of Hurst, Ečer provided the UNWCC with a summary and review of Trainin's July 1944 *Criminal Responsibility of the Hitlerites*, which was then published only in Russian.⁷⁶ In the review, Ečer wrote that Trainin's approach was "one of the most creative and progressive contributions to the problem which is called 'punishment of war criminals.'" ⁷⁷ Trainin, like Ečer, argued that members of Nazi criminal organizations should be understood as responsible for the crimes initiated by Nazi leaders. While Trainin introduced the legal idea of "complicity" to try "participants in the Hitlerite crimes," Ečer understood this approach as complementary to the idea of collective responsibility that he had developed for the LIA.⁷⁸ Trainin would later prove an influential participant in the 1945 London conference as a chief architect of the Soviet position in Nuremberg.⁷⁹

Despite their clear commonalities, it is important to stress that Ečer only discovered and began referring to Trainin in late 1944, after he had already formulated his key ideas at the LIA. None of his writings from the LIA referenced Trainin, nor did his master's thesis, and his most influential reports to the UNWCC similarly kept Trainin's writings at arms' length.⁸⁰ Though Ečer appreciated the overlap in their thinking,⁸¹ his long-standing skepticism of Soviet influence and recognition of the UNWCC's primary audience in the Western Allies might have pushed him to situate his ideas more closely in French and later US and UK legal traditions. Indeed, while Trainin's 1937 book (as well as Vyshinsky's introduction), written in Russian, cited the Kellogg–Briand Pact as inspiration and endorsed the idea that "criminal law ... must be mobilized against war and against the instigators of war," their understanding of crimes against peace was far more politicized than that which Ečer later endorsed.⁸² As Gleb Bogush writes, Trainin believed that any "crime that targeted 'international communication' actually endangered peace" and, further, that peace should be understood through the prism of the USSR's global ambitions. Following the 1939 Nazi–Soviet nonaggression pact, Trainin kept silent on Germany's invasions of Poland, Czechoslovakia, and other European

⁷⁵Ečer, *Vývoj*, 41.

⁷⁶Sellars, "Crimes against Peace", 55.

⁷⁷"Minutes of 37th Meeting," 31 Oct. 1944, M.37 (Reel 33), Meeting Minutes M.1-M.135, UNWCC Archive, at <https://unwcc.org/unwcc-archives>.

⁷⁸See Aron Trainin, *Criminal Responsibility of the Hitlerites*, 1944, ed. A. Y. Vishinsky, Ike Skelton Combined Arms Research Library Digital Library, at <https://cgsc.contentdm.oclc.org/digital/collection/p4013coll8/id/2364>.

⁷⁹See Michelle Penn, "Genocide Is Fascism in Action": Aron Trainin and Soviet Portrayals of Genocide," *Journal of Genocide Research* 22/1 (2020), 1–18. Sellars, "Crimes against Peace"; Hirsch, *Soviet Judgment at Nuremberg*.

⁸⁰The first reference Ečer made to Trainin in the documents we reviewed came in October 1944—when Ečer included a quotation from Trainin's September article in *Soviet War News*. See Bohuslav Ečer, "Minority Report," C.56, UNWCC Archive.

⁸¹Ečer, *Vývoj a Základy Mezinárodního Trestního Práva*, 41.

⁸²Cited in Gleb Bogush, "Aron Trainin," in Frédéric Mégret and Immi Tallgren, eds., *The Dawn of a Discipline* (Cambridge, 2020), 260–79, at 268.

states, only beginning to refer to them as criminal aggression in newspaper articles, written in Russian, from 1942–3.⁸³ Indeed, as Sellars writes, it was not until 1944 that Trainin's views were taken up by Western officials and even Trainin himself was ambivalent on whether "Hitler and his clique" might be more suitably punished by "the political verdict of the victorious democratic States."⁸⁴ Thus Ečer's core arguments had distinct roots and, as we demonstrate, distinct influences.

Yet, while Trainin's writings only began influencing Ečer in 1944, the 15–18 December 1943 Kharkov trial proved a key event reinforcing Ečer's conviction of the need to pioneer new approaches to prosecute war criminals. In Kharkov, the Soviet government prosecuted three Nazis and one Russian collaborator, employing not only existing Soviet law, but also the recently published Moscow Declaration as precedents. Ečer devoured Ilya Ehrenburg's reporting on the trial and, in January 1944, summarized the Soviet procedures for the English-speaking world in his pamphlet *The Lessons of the Kharkov Trial*, published in English in January 1944 by a pro-Soviet publisher. The document noted approvingly the rejection of the Nazis' plea of superior orders because the crime of murdering civilians was deemed too "revolting."⁸⁵ The trial reinforced Ečer's belief that political initiative could achieve swift prosecution of war crimes, despite the limitations in existing international criminal law.

The year 1944 proved particularly productive for Ečer at the UNWCC, as he was able to draw on ample prior writings from the LIA and elsewhere to shape debate around his core arguments. For example, in June 1944 Ečer authored a memo for the UNWCC drawing on his previous analysis of Nazi organizations' bylaws to argue that the SA, SS, Waffen-SS, and Gestapo were voluntary organizations, thus invalidating the plea of superior orders.⁸⁶ In a subsequent, March 1945, memo, he drew on the Kharkov trial as an example for how the idea of collective responsibility could be employed to try both Nazi leaders and soldiers on the ground for mass murder.⁸⁷ These ideas would prove influential both within the UNWCC and beyond. On 4 May 1945, French UNWCC representative André Gros reworked Ečer's points into a set of recommendations for member governments that the full UNWCC endorsed on 17 May.⁸⁸ The text advised Allied governments to "commit for trial, either jointly or individually, all those who, as members of these criminal gangs, have taken part in any way in the carrying out of crimes committed collectively by groups, formations or units." That summer, as a participant in the London conference, Gros was able to advocate these to the major powers for inclusion in the Nuremberg Charter. Indeed, beyond Gros's conveyance, several UNWCC documents were forwarded to member governments and Ečer's analysis of the SA, SS, and Gestapo was circulated by the UK Foreign Office to member

⁸³ Bogush, "Aron Trainin," 268–9.

⁸⁴ Sellars, "Crimes against Peace", 57.

⁸⁵ B. Etcher, *The Lessons of the Kharkov Trial* (London, 1943), 10.

⁸⁶ Bohuslav Ečer, "Report on the German SA, SS, and Gestapo," 22 June 1944, C.32 (Reel 34), C Documents, UNWCC Archive.

⁸⁷ Bohuslav Ečer, "The Criminal and Personal Responsibility of the Members of the German Nazi Government," 13 March 1945, C.88 (Reel 34), UNWCC Archive.

⁸⁸ André Gros, "Collective Responsibility for War Crimes: Draft Recommendation to the Governments," 4 May 1945, C.105, TS 26-69, NAUK.

governments “as a justification of the Commission’s recommendations for internment” policies in July 1944.⁸⁹ The Nuremberg Charter ultimately allowed for the declaration of certain organizations as criminal and individuals to be tried as members.⁹⁰

However, beyond the idea of collective responsibility, Ečer’s most important contributions to the UNWCC came via a debate that developed out of his first report to the commission, submitted on 27 April 1944, on how the UNWCC should understand the scope of its mandate. This report set aside the question whether prior international agreements like the Kellogg–Briand Treaty criminalized aggressive war (though Ečer noted at the outset his belief that it did) and instead focused on the implications of Allied statements given prior to the formation of the UNWCC. “[W]e have not a precise, exhaustive and clear expression of the will of the United Nations as to ‘war crimes,’ but a collection of declarations like a mosaic in which each stone bears the trace of its own individuality,” he wrote. Inspired by what he referred to as the “dictates of the public conscience”—a concept he adapted from the 1907 Hague Convention’s preamble—he concluded that Allied governments and Allied public opinion indicated that the UNWCC should investigate and devise punishment for “the fundamental crime of preparing and launching this second World War as a total war.” This “fundamental” crime implicated Axis leaders, who had forfeited their right to sovereign immunity, and provided a pivotal foundation for understanding downstream crimes as already understood within the UNWCC—including efforts to prevent the restoration of peace and violations of existing laws of war.⁹¹

Notably, within this latter category of existing laws of war, Ečer included “crimes against humanity,” a concept he had also adapted from the reference to “laws of humanity” in the Hague Convention’s preamble.⁹² Though Ečer had previously written on such crimes in his master’s thesis, he began advocating it anew at the UNWCC. In his reflections on the UNWCC’s history, Ečer wrote that it was Pell (the only non-lawyer at UNWCC) who advocated crimes against humanity as a new category of war crimes.⁹³ Pell also mentioned the phrase’s usage in the UNWCC Legal Committee in a personal letter to President Roosevelt a month prior to Ečer’s report, in March 1944. Pell wrote that the phrase “crimes against humanity” reflected Roosevelt’s desire that Nazi Germany should be held accountable for its “atrocities against the Jews.”⁹⁴ After the Nuremberg Charter’s publication, Ečer wrote to Pell stating that he believed Pell was “the first who, after having heard my report on this problem, as to what constitutes war

⁸⁹See the Annex to “Minutes of Twenty-Fourth Meeting,” 11 July 1944, M.24 (Reel 33), UNWCC Archive.

⁹⁰“Charter of the International Military Tribunal,” 8 Aug. 1945, YLSAP, at <https://avalon.law.yale.edu/imt/imtconst.asp>.

⁹¹Bohuslav Ečer, “Scope of the Retributive Action of the United Nations According to Their Official Declarations,” 27 April 1944, III/4 (Reel 34), UNWCC Archive.

⁹²Ibid. Notably, Lingen demonstrates that Ečer was a key voice advocating prosecuting “crimes against humanity” as a means of implementing the Martens clause prior to Lauterpacht’s consultation with Robert Jackson. See Lingen, “Epistemic Communities,” 326–7.

⁹³See Bohuslav Ečer, “Contribution to the History for the UNWCC,” 19 Jan. 1948, Box 12, BEP, VHU, 31.

⁹⁴Herbert Pell, “Letter to President Franklin Roosevelt about ‘Crimes against Humanity,’” 16 March 1944, War Crime Commission, Subject Files, 1933–1945, Collection FDR-FDRPSF: President’s Secretary’s File, Franklin D. Roosevelt Library, Hyde Park, NY, at www.docsteach.org/documents/document/pell-fdr. See also Lingen, “Crimes against Humanity”, 297.

crimes, suggested the inclusion into the programme of retributive action of the United Nations, especially crimes against humanity.”⁹⁵ This indicates that discussions with Ečer might have inspired Pell’s letter to Roosevelt. Ečer later wrote that what “lawyers initially struggled to tackle was the fact that Nazis through some of their crimes directly endangered the very basis of human society.” To him, these crimes were not the result of the “moral decay” caused by the effects of war on soldiers, but rather were planned programmatically before and during the war as part of the Nazis’ theory of German racial superiority. Nazis, Ečer wrote, “killed people ... because they were communists, socialists, pacifists, or Christian believers or Jews, or Czechs, Poles, Russian etc. These crimes can be called crimes against humanity; that is, against humankind or humanity as a whole, because they were directed against the entire civilized human society.”⁹⁶ Though evidence suggests that the phrase “crimes against humanity” was included in the Nuremberg Charter on the suggestion of Hersch Lauterpacht, these debates, a year prior, indicate that the UNWCC also played a role in its adoption.⁹⁷

On 12 May 1944, the UNWCC Legal Committee voted in favor of Ečer’s conclusions,⁹⁸ forwarding recommendations two days later to the entire UNWCC that “the scope of its work, its methods and principles must be brought into line with the principles expressed in the Allied declarations.”⁹⁹ The resolution stated that “the crimes committed for the purpose of preparing or launching the war” would fall within the UNWCC’s mandate, as would crimes committed on the basis of nationality, race, religious, or political beliefs—the category Ečer referred to as “crimes against humanity.” Ečer authored an additional explanatory note on the same day, arguing that the UNWCC did not need additional permissions from Allied governments, as this work was implicit in its formation.¹⁰⁰ However, when put up for debate, the broader UNWCC questioned Ečer’s conclusions that preparing and launching a war of aggression were criminal, as well as efforts to prevent the restoration of peace. Hurst, the UNWCC chairman, sent these issues back to the Legal Committee for reevaluation, forming a subcommittee consisting of Ečer, US deputy representative Hodgson, De Moor, and Sir Arnold McNair, an outside academic from the University of Liverpool whom Hurst tasked with authoring a new report.

The subcommittee ultimately became the scene of a pivotal debate between McNair and Ečer. On 18 August 1944, McNair submitted a report that rebutted the majority of Ečer’s original arguments. He began with an implicit jab at Ečer, noting that he wrote from “the position of a lawyer sitting on a court” and thus understood “the

⁹⁵Bohuslav Ečer, “Letter to Herbert Pell,” 11 Nov. 1945, Box 14, BEP, VHU.

⁹⁶Ečer, *Vývoj a Základy Mezinárodního Trestního Práva*, 11.

⁹⁷M. Koskeniemi, “Hersch Lauterpacht and the Development of International Criminal Law,” *Journal of International Criminal Justice* 2/3 (2004), 810–25. See also Egon Schwelb, “Material for the Preparation of a Definition of ‘Crimes against Humanity,’” 22 March 1946, III/33 (Reel 36), Committee III Documents, UNWCC Archive; Lingen, “Legal Flows,” 520.

⁹⁸“Conclusions Proposed by Drafting Committee,” 12 May 1944, III/5 (Reel 36), UNWCC Archive.

⁹⁹“Resolution Proposed by Committee III,” 16 May 1944, C.20 (Reel 34), UNWCC Archive.

¹⁰⁰Bohuslav Ečer, “Explanatory and Additional Note by B. Ečer,” 12 May 1944, III/4(a) (Reel 36), UNWCC Archive.

word ‘criminal’ as a legal term and not as a vituperative epithet.” He further argued that he was “dealing with the *lex lata* [existing law] and not with the *lex ferenda* [future law]”—another indirect criticism. His report rejected Ečer’s idea that Allied governments should base their interpretation of war crimes on speculations about public conscience. He instead argued that interstate agreements like the Kellogg–Briand Pact did not create individual criminal liabilities. Rather, their violation was best understood as a delict breach of contract, leading perhaps to payment of damages, but not to criminal penalties. He advised the UNWCC not to pursue a novel and retroactive interpretation of war crimes that would prove inviable in court, including one that found the plea of superior orders inadmissible or violated sovereign immunity.¹⁰¹ Hodgson and De Moor, the other two subcommittee members, endorsed McNair’s core arguments.¹⁰²

Though devastated by what he saw as a “wrangle between an excellent British expert of international renown and a Czechoslovak delegate of a very little-known name,” Ečer persisted.¹⁰³ He consulted President Beneš and received support for his “radical views” in the face of opposition.¹⁰⁴ On 26 September 1944, in protest of his undermining, Ečer resigned from both Committee I and Committee III.¹⁰⁵ However, he did not leave McNair’s report uncontested. The following day he submitted to the broader UNWCC his “minority report.”¹⁰⁶ Polished and succinct, this report focused specifically on the idea that the present, total war should be understood as a crime according to the “public conscience”—a point that he argued was inadequately addressed by McNair. Reviewing the historical development of the Covenant of the League of Nations to the Kellogg–Briand Pact, as well as statements of Allied leaders and eminent international lawyers, he argued, “‘Public Conscience’[,] an important source of law in general and international law in particular ... is unanimous in regarding the preparation and launching of the present total war as a crime.” He added, “Chiefs of the Axis States, members of their Governments and High Commands” had committed crimes against occupied states and that their jurisdiction could be transferred to an “Inter-allied criminal court.” If there were any remaining doubts on the subject, Ečer added, he suggested the UNWCC recommend that the United Nations enlarge its mandate.

The UNWCC debated McNair and Ečer’s rival reports two weeks later.¹⁰⁷ In his comments to the commission, Ečer cited his law professor in Vienna to warn that “[t]his law could really kill justice if it were interpreted in a narrow sense.” He continued,

We must create this great precedent now, and not wait for the next war ... Preparation and launching of the present war must be punished as a crime against peace. This punishment would not only be an act of moral retribution

¹⁰¹“Note by Sir Arnold McNair,” 18 Aug. 1944, C.43 (Reel 34), UNWCC Archive.

¹⁰²“Report of the Sub-committee,” 15 Sept. 1944, III/9 (Reel 36), UNWCC Archive.

¹⁰³Ečer, *Právo v Boji s Nacismem*, 36.

¹⁰⁴Ečer, *Vývoj a Základy Mezinárodního Trestního Práva*, 115.

¹⁰⁵“Minutes of Thirty-Third Meeting,” 26 Sept. 1944, M.33 (Reel 33), UNWCC Archive.

¹⁰⁶Ečer, “Minority Report”; Ečer, “Supplement to the Minority Report,” 6 Oct. 1944, C.56(a) (Reel 34), UNWCC Archive.

¹⁰⁷“Minutes of Thirty-Fifth Meeting,” 10 Oct. 1944, M.35 (Reel 33), UNWCC Archive.

but as well a serious warning for the future. If there are gaps in law, it is our duty to fill them.¹⁰⁸

Unexpectedly, Lord Wright, the Australian representative and future UNWCC chairman, supported Ečer, noting that common law had always evolved and developed, as could international law. Wright concluded that an international tribunal was needed to punish the perpetrators as Ečer suggested.¹⁰⁹ Subsequently, Wunsz King of China stated that, though McNair's conclusions were legally sound, they were too narrow to match prevailing public opinion. As the representatives sought advice from their home governments, the debate between McNair and Ečer continued over three meetings from October to December 1944. Ultimately, Yugoslavia, Belgium, New Zealand, Poland, and the Netherlands sided with Ečer (against the UK and Norway), while multiple other states (including the US) remained undecided. Despite feeling like going to his "own execution" on the morning of the first debate,¹¹⁰ Ečer's minority report prevented McNair's conclusions from being adopted by the committee and, ultimately, both sides of the debate were forwarded to UNWCC member governments, breathing new life into Ečer's ideas.¹¹¹

Ečer's influence beyond the UNWCC

After his "wrangle" with McNair, Ečer continued to vigorously participate in UNWCC, benefiting from the appointment of his ally, Lord Wright, as the commission's next chairman on 31 January 1945. Surprisingly, however—and likely unbeknownst to Ečer—his most pivotal avenue of influence would not come via UNWCC debates, but rather via unlikely channels to US policy makers.

To understand Ečer's contributions to US debates, it is worth beginning in the summer of 1944, as Lieutenant Col. Murray C. Bernays, head of the War Department's Special Projects Office, was tasked with formulating the US approach to war crimes prosecution.¹¹² The US government had not yet settled on a policy, reflecting considerable disagreement among the Allied powers over how to handle the issue. In a June 1945 letter to his wife, Bernays reflected on constraints facing him that summer parallel to those Ečer had faced. "The trouble was that the lawyers in this field were thinking traditionally, whereas international law, which is statesmanship taking form in law, can only be handled by men who think creatively."¹¹³ Bernays's first memo on war crimes prosecution, dated 15 September 1944, proposed an approach to war crimes prosecution that echoed Trainin's: charging the Nazi government and its state agencies with "conspiracy to commit murder, terrorism and the destruction of peaceful populations in violation of the laws of war." Bernays believed that this conspiracy charge would enable each identified war crime to "be imputable to all other members" of these

¹⁰⁸"Minutes of Thirty-Sixth Meeting," 17 Oct. 1944, M.36 (Reel 33), UNWCC Archive.

¹⁰⁹"Minutes of Thirty-Fifth Meeting."

¹¹⁰Ečer, *Právo v Boji s Nacismem*, 40.

¹¹¹UNWCC, *History of the United Nations War Crimes Commission and the Development of the Laws of War* (London, 1948), 184–5.

¹¹²Lador-Lederer, "The Nuremberg Judgment Revisited," 362.

¹¹³Bernays, "Letter to Mrs. Murray C. Bernays."

organizations.¹¹⁴ Though this proposal received the endorsements of the Secretaries of State, War, and the Navy,¹¹⁵ it generated pushback from other key advisers to Roosevelt, including Judge Green H. Hackworth, Assistant Attorney General Herbert Weschler, and Ambassador Joseph E. Davies, for failing to specify the crimes which Nazis were conspiring to commit.¹¹⁶ It was tabled and Bernays went searching for an alternative formulation.

The McNair–Ečer debate surfaced for US policy makers at this pivotal moment. On 2 November 1944, Pell wrote to Secretary of State Cordell Hull seeking advice on how to vote between the rival reports, noting considerable support for Ečer’s position.¹¹⁷ Upon receipt, Ečer’s minority report began circulating among US policy makers. Hull forwarded the issue to Secretary of War Henry Stimson on 15 November, and twelve days later Stimson responded, instructing Pell to postpone a final vote as the US formulated its position. Stimson wrote in a postscript that he regarded the debate as “so important,—that I request an opportunity for the expression of my personal views by the Sec’y.”¹¹⁸

While this postponement ultimately tabled the issue in London, Ečer’s ideas continued to circulate among US policy makers. Though the exact number of US officials who read Ečer’s minority report is uncertain, it included Secretaries of State Hull and Stettinius, Secretary of War Stimson, Bernays, William Chanler of the War Department’s Civil Affairs Division, and multiple people within the Judge Advocate General’s office.¹¹⁹ In his reflections a year later to his wife, Bernays wrote that this debate over Ečer and McNair’s ideas led to “progress being made in a backhanded sort of way.” It inspired “the larger question [being] thrown open for consideration, namely, whether the launching of the present war was a crime. I thought it was, and said so.”¹²⁰

Bernays became a champion of Ečer’s core arguments, including treating the launching of the Second World War as criminal under international law. Ultimately, he was able to translate this idea into the US’s official policy position and, eventually, the Nuremberg Charter. On 4 January 1945, Bernays and D. W. Brown, his subordinate, submitted a revised plan for war crimes prosecution centred around the question “whether the launching of the present war by the Axis powers is a crime for which the Axis leaders are liable to trial and punishment.” Though the memo did not cite Ečer directly, the documentary record strongly indicates that this question’s origins were the Ečer–McNair debate. Bernays and Brown noted that, according to existing US policy, launching the war “does not constitute a ‘war crime’ in the strict legal sense.”

¹¹⁴Bradley F. Smith, *The American Road to Nuremberg: The Documentary Record, 1944–1945* (Stanford, 1982), Document 16, 36–7; see also Sellars, “Crimes against Peace”, 68.

¹¹⁵Smith, *The American Road to Nuremberg*, Document 19, 41–4.

¹¹⁶Smith, *The American Road to Nuremberg*, 50, Document 22.

¹¹⁷“The American Representative on the UNWCC (Pell) to the Secretary of State,” 2 Nov. 1944/18981, Diplomatic Papers, 1944, General, Volume 1, Foreign Relations of the United States (FRUS), at <https://history.state.gov/historicaldocuments/frus1944v01/d894>.

¹¹⁸Smith, *The American Road to Nuremberg*, 69–70, Document 23.

¹¹⁹“Letter from McCloy to Stimson,” 24 Nov. 1944, Box 4, F3, MBP, AHC; Murray Bernays, “Letter from Bernays to Chanler,” 18 Dec. 1944, Box 4, F3, MBP, AHC.

¹²⁰Bernays, “Letter to Mrs. Murray C. Bernays.”

Nevertheless, they concluded that, though the war may not be a “war crime” as traditionally understood, it does constitute a crime “for which its instigators may be tried and punished.” Bernays and Brown’s evidence in the memo overlapped substantially with Ečer’s minority report, which they had encountered two months prior. Though they dropped Ečer’s reference to the League of Nations Covenant as precedent (the US was not a member), they included his citation of the Geneva Protocol of 1924 and the same quote from Stimson, made during his previous appointment as Secretary of State, that the Kellogg–Briand pact made war illegal. Ultimately, Bernays and Brown concluded, “the law of today condemns aggressive war as an international crime, triable and punishable as such.”¹²¹

On 8 January 1945—four days after the memo’s submission—McCloy, Bernays, Hackworth, and Wechsler met with Samuel Rosenman, a top Roosevelt adviser.¹²² They endorsed a joint plan, based on Bernays and Brown’s draft, to prosecute Nazi leaders for preparing and launching a war of aggression—which, like Ečer, they referred to as a “total war.” They also planned to prosecute the SA, SS, and Gestapo with “joint participation in the formulation and execution of a broad criminal plan of aggressive warfare ... a multitude of specific violations of the laws of war, and a conspiracy to achieve domination of other nations and people by the foregoing unlawful means.”¹²³ Though this included a conspiracy-like charge, echoing Trainin’s complicity formulation, their proposal also rested on Ečer’s argument that Nazi Germany’s fundamental crime was launching a total war. Though US policy would continue to be tweaked up until the London conference that took place from June to August 1945, the basic contours of this plan—which Bernays and Brown had authored in response to Ečer’s minority report—proved remarkably influential.

In the spring of 1945, Supreme Court Justice Robert Jackson was selected as the US chief prosecutor for an upcoming trial. He subsequently traveled to London in June 1945, where he and his team (including Bernays) met with the UNWCC, “thanking [it] for its work and citing specific issues debated by the UNWCC and subsequent decisions on legal matters that he planned to adopt at Nuremberg.”¹²⁴ Though Ečer was absent from that meeting of the UNWCC, that summer he met independently with Jackson on multiple occasions, primarily to discuss his new role as an Allied interrogator of Nazi prisoners at Buchenwald. Jackson wrote in his diary from the period that prior to his first trip to London in June 1945, he was warned that Ečer was “very difficult emotionally, unable to bear disagreement, and quick to take offense.”¹²⁵ His diary, unfortunately, does not include details on their conversation, though they developed a relationship that would continue through Jackson’s 1946 visit to Prague.

¹²¹“Memorandum from Murray C. Bernays and D. W. Brown,” 4 Jan. 1945, Harry Truman Library, at www.trumanlibrary.gov/library/research-files/memorandum-murray-c-bernays-and-dw-brown?documentid=NA&pagenumber=1.

¹²²Smith, *The American Road to Nuremberg*, 54–5.

¹²³“Memorandum from Murray C. Bernays.”

¹²⁴Bergsmo, Ling, and Ping, *Historical Origins of International Criminal Law*, 471.

¹²⁵“Unnamed Diary Entry from June 16, 1945,” Nuremberg Diary, Robert H. Jackson Papers, Library of Congress.

The London conference would ultimately build on Bernays's revised plan, which itself was inspired by Ečer's ideas.¹²⁶ Though the four powers excluded Czechoslovakia and its representatives from the conference, the Nuremberg Charter, signed on 8 August 1945, bears a remarkable resemblance to the points Ečer and his contemporaries had debated and advocated over the prior three years—indicative of the multiple avenues of influence on wartime legal thinking where Ečer played an outsize role. The first crime the charter listed for which Nazi leaders would be tried was "CRIMES AGAINST PEACE: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances." Further, it permitted the tribunal to try individual Nazis "as members of organizations or groups" deemed criminal. The charter also included Article 7, disallowing the doctrine of sovereign immunity, and Article 8, barring the plea of superior orders except to mitigate punishment in exceptional cases.¹²⁷

Though he might not have been aware of his influence on Bernays, in a personal letter to Herbert Pell from 31 August 1945, Ečer wrote,

When I read that the Four Powers decided to punish not only war crimes stricto sensu but crimes against peace and crimes against humanity, namely crimes committed because of race, political or religious belief, I thought back to our discussion in your office in March and April ... I certainly do not exaggerate when I state that this agreement of the Four Powers is, to a great extent, a result of our work and our efforts to which you contributed so much.¹²⁸

Robert H. Jackson seems to have agreed. On 17 June 1946, Jackson wrote a letter to Ečer's biographer, Edvard Cenek, outlining his appreciation of his influence on the Nuremberg process:

After my arrival in London to represent the United States in negotiating the Agreement for the trial of war criminals, one of the first persons I met was General Ecer ... As a member of the War Crimes Commission, he already had given the problems detailed and scholarly attention. His efforts to make certain that the war criminals were brought to trial were untiring. He contributed not only to the determination to try them, but he cooperated enthusiastically in our efforts to devise a workable procedure. He made important contributions to the plan for adjudging the criminality of the Nazi organizations. In any appraisal of the trial of war criminals, General Ecer is entitled to high credit.¹²⁹

As the London conference was underway, Ečer resigned from the UNWCC, three years prior to its completion, to focus on interrogating and tracking Nazi war criminals for the Allied occupation forces. During his stays in Germany (especially in Wiesbaden), he frequently met future US president General Dwight Eisenhower, and

¹²⁶"Report of Robert H. Jackson," 1945, YLSAP, at https://avalon.law.yale.edu/subject_menus/jackson.asp.

¹²⁷"Charter of the IMT."

¹²⁸"Přednášky v r. 1947."

¹²⁹Cenek and Ečer, *Jak jsem Stihal*, preface.

other leading military personnel, resulting in his receiving an honorific title of acting general in the Czechoslovak military.¹³⁰ He later became the Czechoslovak chief delegate to Nuremberg, though he did not participate in the proceedings. Nevertheless, this position enabled Ečer to prepare a report for the Nuremberg Tribunal in September 1945, entitled “German Crimes against Czechoslovakia.” This document outlined the Nazis’ plans to take over Czechoslovakia, beginning with the Munich Agreement, and provided evidence of numerous war crimes committed on Czechoslovak territory.

Conclusion: postwar obscurity

After the war, Ečer returned to Brno, but continued his work on international law.¹³¹ He first focused on subsequent trials of lower-ranking Nazi war criminals in Germany following Nuremberg, acting as the key Czechoslovak representative. In April 1946, he hosted a US delegation that included Robert Jackson and Geoffrey Lawrence in Prague—a visit triumphantly documented in the Czechoslovak press.¹³² For his role in bringing Nazi war criminals to justice, President Truman awarded Ečer the Legion of Merit.¹³³ He continued his public lectures—including tours of the UK in 1947 and 1948 on the “Mentality and Punishment of War Criminals.”¹³⁴ Instead of a political career or legal practice, Ečer began lecturing on international criminal law at Masaryk University, becoming professor and head of the department of international criminal law in 1948.¹³⁵ His correspondence from the period reveals a rich global network, exchanging ideas and publications on international criminal justice even after Nuremberg with Herbert Pell, Joseph Hodgson, Burton C. Andrus, Willard Cowles, Lord Wright, and Vernon McKenzie, among others.¹³⁶

After the communist takeover of Czechoslovakia in February 1948, Ečer’s international stature became a political threat. While the newly minted Czechoslovak state did not want to risk an immediate international scandal by prosecuting a man of his world renown, Ečer was surveilled from the start.¹³⁷ Remaining files in the Secret Service Archive (in a folder entitled “Lawyer”) include meticulous details on his trips abroad, his daily contacts, and his correspondence, all of which were monitored. When he travelled to The Hague in 1949, the Secret Service suspected defection.¹³⁸ Evidence shows that Ečer and his family considered emigration but ultimately decided to remain in Czechoslovakia, hoping for political change. Instead, his law department was closed in March 1950, and he was forced to retire prematurely “due to health reasons” in 1953.

¹³⁰Ibid., 176.

¹³¹“Succinct CV of B. Ečer”; “Letter by Karel Křepelka” 11 June 1945, R-198-1 and 2, “The Lawyer,” ABS.

¹³²The crowd apparently recognized Ečer, shouting, “Long live General Ečer!” See “R. H. Jackson-Mily Host”, *Právo lidu*, 12 April 1946, 2.

¹³³Křepelka, *Dr Bohuslav Ečer*, 36.

¹³⁴“Succinct CV of B. Ečer.”

¹³⁵“Letter by Ečer, presumably to Dr. Beneš.”

¹³⁶“Prednasky v r. 1947”; “Letter by Ečer, presumably to Dr. Beneš.”

¹³⁷Motl, *Oběti*, 52.

¹³⁸See Doc. 23643, 25 Feb. 1949, R-198-2, ABS.

Ečer's expansive international networks came with a high cost for his family, with his colleagues and daughters being surveilled and followed.

During the communist show trials of the early 1950s, a case was prepared to charge Ečer with high treason, espionage, and conspiracy against the republic. He was labeled a political threat to the regime and rumored to be a potential candidate for prime minister by the Social Democrats.¹³⁹ The day before his planned arrest, Ečer died in mysterious circumstances, allegedly suffering a heart attack on 14 March 1954.¹⁴⁰ The autopsy report noted that part of his heart was missing, suggesting foul play.¹⁴¹ In Ečer's place, his daughter Jarmila and his closest collaborator, Karel Křepelka, were put on trial, with Jarmila sentenced to twelve years' imprisonment and Křepelka to nineteen.¹⁴²

Despite his celebrity status after the war, Ečer remains a largely unknown figure in contemporary Czechia. The scant literature on him has largely focused solely on his role in interrogating war criminals and bringing them to Czechoslovakia for punishment.¹⁴³ After the fall of communism, he began to receive some recognition for his work—becoming an honorary citizen of Brno in 2002 and being awarded the highest Czech national medal, the Order of the White Lion, in 2019.¹⁴⁴ However, his innovative legal arguments have, to date, received little attention in his homeland.

Two years before the communist takeover and Ečer's erasure from his country's history, the wartime Czechoslovak minister of justice Jaroslav Stránský wrote, "It was him [Ečer] who convinced the reluctant Anglo-American legal public that, for example, aggressive war needs to be treated as an international crime as such ... The contribution that Dr Ečer has made is not only to Czechoslovakia but also to a great international progress whose impact we shall see only in the far-away future."¹⁴⁵ While this may be the view of a biased compatriot, our research supports the conclusion that Ečer played a substantial behind-the-scenes role in shaping the ideas that would inform the Nuremberg Tribunal and, in turn, the course of international criminal law. Ečer was intelligent, driven, dedicated, and outraged—all important qualities for legal innovation. Though the major powers marginalized smaller states from the London conference and during the IMT itself, Ečer's tireless wartime efforts enabled a largely unknown lawyer from humble beginnings in Central Europe to nonetheless have a significant impact on this foundational moment in the development of international criminal law.

¹³⁹"Testimony of Karel Křepelka (27411/54)"; "Testimony of Jarmila Horáková (no 121)."

¹⁴⁰"Folder: Křepelka et al.," 1954, R-198-1 and 2, "The Lawyer," ABS.

¹⁴¹"Stvrzenka č. 1," 18 Dec. 1954, R-198-3-Brno, "The Lawyer," ABS.

¹⁴²"Folder: Jarmila Horáková," 1954, R-198-3 Brno, "The Lawyer," ABS; Jarmila emigrated in 1968 to Switzerland. Ečer's great-granddaughter Nada noted that the trials broke up the family. Authors' interview in Czech with Nada Trenčanská, 26 May 2023.

¹⁴³Kyncl, *Bestie*.

¹⁴⁴*Seznam vyznamenaných*, official website of the Czech president, at www.hrad.cz/cs/ceska-republika/statni-vyznamenani/rad-bileho-lva/seznam-vyznamenaných.

¹⁴⁵In Cenek and Ečer, *Jak jsem Stíhal*, Foreword, 8.

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