

A Historian's View - The War Crimes Debate Down Under

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Not long ago I asked Yehuda Bauer, the doyen of Holocaust scholarship, whether he is considering writing his memoirs. Aged 82, he replied: "Never!" Adding with a smile: "When historians have nothing to say any more, they start talking about themselves".

I am going to talk about myself – at the request of Lorie and Judith – and with the permission of my wife. I am going to talk about the Nazi war crimes debate in Australia which is a thing of the past and, as such, the subject of historical discourse. I will attempt to depict the changing historical landscape within which efforts were made to trace and prosecute Nazi perpetrators, belatedly and unsuccessfully. Not one conviction was made. However, as I will argue, experienced Australian war crimes prosecutors and investigators played a vital role in the swift establishment and successful functioning of the *UN War Crimes Tribunal for the Former Yugoslavia* in The Hague. This helped create a new co-operative legal framework that permitted the prosecution of modern war criminals. Australia's poor record in dealing with war crimes, crimes against humanity and genocide was somewhat ameliorated in 2002 by its ratification of the *Rome Statute and the introduction into Australia's Criminal Code of provisions expressly outlawing genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court*. And yet, there is to date no political will in Australia to set up a specialist modern war crimes unit.

As the title of my paper suggests, my account is a historian's view and will combine historical findings with personal memory. My historical narrative is based on information scattered throughout literature. I also rely on results of a small-scale opinion poll which I have been

conducting atin regular intervals at the *University of Sydney* and the *Sydney Jewish Museum*. Its aim is to ‘measure’ the impact of the war crimes debate upon public awareness and memory. My personal insights are based on recollections, in particular on my experiences gathered as the former chief historian of the Australian *Special Investigation Unit*, Australia’s War Crimes Commission, as a historical consultant to other war crimes offices and as an expert witness in judicial proceedings in Australia, Canada and the United States. Though I personally find it hard to believe in lessons of history, I learnt some important lessons; working closely together over a period of ten years with representatives of both the legal and law enforcement communities fraternities and engaging arguing in courtrooms with defence lawyers and judges.

Whenever I have been asked to speak of my experiences as chief historian of the *SIU*, I recall in particular one episode that left an indelible mark on my memory. In 1992 I testified in the Polyukovich trial in Adelaide. I was stood for four days in the witness-box for four days, and was frequently reminded by the Supreme Court Judge of the strict rules of evidence. At a certain point he said to me:

“Professor Kwiet, you are not here to tell us the truth or what you perceive as historical truth. You are here to express an opinion, an opinion which has to comply with the rules of evidence operating in the state of South Australia”. Our dialogue continued.: “Are these strict limits in which I have to answer?” I asked. He replied: “Yes”. I responded: “Even If I disagree?” His answer: “Yes, you probably do disagree. You probably think the evidence shows more than that”. “That’s correct”, I said.

After this exchangeprimand my answers during cross -examination were more or less reduced to *yes* or

no. Relevant sections of my affidavit were declared non-inadmissable, in particular parts which documented the participation of forestry officials as a group in the murder of Jews as the accused had, you see, once served as a forest warden under Nazi rule.

It also became quickly apparent to me that it is n, that national and political interests determine the enactment of war crimes legislation. Not historical but rather technical legal

They were recruited from the army of *DPs* (— *the Displaced Persons*) throughout Central Europe. When in 1947 the immigration quotas were lifted, Australia welcomed both perpetrators and survivors of the Holocaust. While no comparative statistics exist, a disproportionately high number of migrants entering Australia were of Nazi or pro-Nazi killers. A entering Australia must have been disproportionately high: an estimated 4, 000 to 5, 000 of them found sanctuary in the Antipodes. Most of them came from Eastern Europe, in particular from Lithuania and Latvia, Belorussia, the Ukraine and Yugoslavia. During the screening process for entry, on official documents and in interviews, they lied about their war-time activities were suppressed. Most frequently popular were they claimed to have of having been subjected to "*forced labour*" and "*deportation to Germany*". In reality many of them had actively and enthusiastically assisted the Nazis in claims concealed in "police work", military service and participation in killing operations. As I also later discovered in secret files, State Security and intelligence organizations, on both sides of the Iron Curtain, for reasons of political expediency, had showed no scruples in recruiting war criminals as intelligence assets during the Cold War for their operative measures. It is almost certain that some of those recruited by Australia and other western countries were in fact Soviet double agents, a fitting price perhaps for so Faustian a bargain. Australia's practice of recruiting intelligence agents of doubtful loyalty from among war criminals from overseas conflicts probably I assume, this practice continues to this very day.

Despite restrictions, bureaucratic delays and the shortage of migrant ships, a considerable number of Holocaust survivors arrived in Australia, indeed more than 30, 000. Most of them succeeded in rebuilding their shattered lives at the edge of the diaspora. After Israel, Australia's Jewish population contains accepted, on a percentage rate population basis, more Holocaust survivors victims than any that of other country.

The acceptance and arrival of perpetrators and victims of Nazi terror sparked a heated, short-lived debate within both the Jewish and wider communities. Jewish communal leaders protested against the mass migration of Germans and their collaborators. In the early fifties the campaign was abandoned. There was neither the political will nor social drive to support what was widely regarded as a specifically "*Jewish cause*". As a consequence, the debate

surrounding Germans, Nazis and war criminals evaporated, only occasionally resurfacing when allegations against alleged war criminals were made in parliament or in the media or when foreign countries sought the extradition of former nationals on war crimes charges. Responding to a Soviet request in 1961 the Attorney General Sir Garfield Barwick announced in Parliament that "the time has come to close the chapter" on war crimes.

After the divorce of my parents, my father, a medical practitioner, re-married. The childless marriage ended some 20 years later when his wife left him. and upon my father committed suicide shortly afterwards. In 1945 my mother resumed her interrupted medical career and mixed in a circle of friends who had shared her experiences during the Holocaust. There are lengthy entries in the well known post-war diary of Victor Klemperer on my mother and my siblings. Unfortunately, I am only mentioned in passing, termed "*Der Kleine*" – "*The Little One*". To reduce my mother's enormous child caring responsibilities, I was sent to Holland, to the remnants of my mother's family who had survived in hiding and in Auschwitz. Growing up in this traumatized German – Dutch – Jewish survivor milieu, and at the same time encountering fierce anti-German sentiments displayed by post-war Dutch society, I was left with behind some unpleasant childhood memories. My formative years might help explain the career path I later undertook and the historical themes I selected for teaching and research.

In 1949 I returned to Germany, – to a divided country which was almost "free of Jews". My schooling and university studies were completed in West-Berlin, – one of the hot spots of the Cold War. Frequent, lengthy visits to Amsterdam continued to cement the Dutch connection. They also paved the way for the archival research for my doctoral dissertation that dealt with the Nazi occupational regime in the Netherlands. In researching the archives I met several young representatives of the legal fraternity, public prosecutors entrusted with the task of searching for the documentary evidence for the war crimes investigations and trials assigned to them. I still remember the complaints of some for not being trained to do this job and I still remember the concern of others - that such work would derail their legal career.

In 1966 my academic career commenced in West Berlin. I joined a handful of young German historians who were the first in Germany to research and to teach the history of the Jewish

people, antisemitism and the Holocaust. The mid-sixties was also the time of unrest and protests. Students and intellectuals launched their attacks against the '*established order*', calling for "*mastering the past*", demanding that Nazi crimes should be investigated and perpetrators brought to justice. I joined a small circle of radicals, who had re-activated the old ideas of the *Anarcho Syndicalists* and of Rosa Luxemburg. However, as I was only had the stomachache to throw eggs and tomatoes at university venues and on the streets, but not stones and other dangerous missiles, I was quickly expelled from the hard core of the group. Like so many of other young 'revolutionaries', I retreated into the cocooned secure world of the academic establishment.

In 1976 I left Germany again. In Australia I found a new home, to avoid the ambiguous German term of *Heimat*. I must confess that, as a permanent resident, I am entitled to and have retained my German citizenship, in other words, my *EURO* passport. I took up a position at the *University of New South Wales* in Sydney with the brief of assisting to build up *German and European Studies*, of introducing *Jewish Studies and Holocaust Studies*, and later *Genocide Studies*. From here it was only a small step to move into the history of Nazi war crimes, perpetrated in Europe in during World War Two.

In 1986 – ten years after my arrival - the war crimes debate resurfaced in Australia. A prominent investigative *ABC* journalist – Mark Aarons – reignited the debate. His radio series "*Nazis in Australia*" hit a raw nerve, attracting large audiences and considerable controversy. After many years of research, Aarons revealed that a considerable number of Nazi killers had not only found sanctuary down under but had also been protected and recruited as informants by *ASIO*, Australia's Intelligence Organisation.

Mark Aarons worked closely together with Efraim Zuroff from the *Wiesenthal Centre*, another key player in bringing Nazi killers to justice. While Aarons instigated the public debate, Jewish communal leaders - such as Isai Liebler, Jochaim Schneeweiss and Leslie Caplan - moved into the political arena. Leslie Caplan, president of the *Executive Council of Australian Jewry*, embarked in early 1986, with his assistant secretary Jeremy Jones, on a journey to discuss with the *World Jewish Congress* and his counterparts in the USA, Canada and Israel the renewed

international efforts to bring Nazi war criminals to justice.

Upon his return to Australia Leslie Caplan started to lobby the Hawke government to take action. A few years later he pursued his keen interests in war crimes in a different domain. He returned to University and submitted – under my supervision – a thesis that shed light on the campaigns and decision- making process leading to the amendment of the Australian war crimes legislation in 1988. The thesis earned him a High Distinction and is currently in print. As he revealed – and told me many times - one specific consideration determined his strategy: prosecuting Nazi war criminals was not presented not as a "Jewish" but rather as an "Australian" issue, as a matter of current political concern. Briefed by Aarons and Caplan, the Labour government made haste to investigate the allegations and – in doing so – it followed the example of the Americans and the Canadians.

A parliamentary enquiry was set up under Andrew Menzies in 1986. It took six months to complete the *Menzies Report*. The results were summarized in 183 pages and published. The names of 70 suspected war criminals were placed on a separate list, classified as "secret". In 1987 the decision was made not to instigate denaturalization and deportations proceedings but to lay criminal charges. After much heated debate the Australian parliament passed the *War Crimes Amendment Act*, which - upon receiving Royal Consent - came into force in January 1989. By then the *SIU* had already commenced its operations. Established within the *Federal Attorney General's Department*, headed first by Robert Greenwood and later by Graham Blewitt, it was commissioned with the task of examining the war crimes allegations made against Australian citizens or residents and to prepare cases for trial. Today hardly any Australian remembers the name and the work of the *SIU*.

I joined the *SIU* in 1987, hand-picked by Robert Greenwood, as were all other staff members comprising lawyers, police officersmen, analysts, translators and office personnel, altogether some 80 people. Apart from me, they were all Australian citizens from many walks of life, unfamiliar with the history of the Nazi regime, its perpetrators and victims. They all distinguished themselves through a high degree of professionalism, dedication and commitment, sharing the belief that genocidal killers from Europe should be brought to justice

in Australia, however belatedly.

Robert Greenwood carried a tiny photo in his wallet showing the remnants of corpses in a mass grave excavated by the *SIU*. Whenever he was asked why he took over the helm of the *SIU*, he pointed at the photo and said: "That's, why I did it!". As prescribed by the law *Commonwealth Law*, strict confidentiality was preserved. Not a single piece of information was ever leaked to the media. When the unit was closed by the Keating government in 1992, members of *SIU* responded with disappointment, even anger, unhappy that they could not complete their work. They dispersed in many directions; most remained in contact. Close friendships continue to this very day. Regular reunions keep alive the memory of the *SIU* time alive and its work.

Let me say a few words about the work undertaken by the *SIU*.

The *SIU* investigated 843 cases over a period of five years. For each suspect a *PU file* was kept, a personal dossier, recording the progress of the investigation which in turn determined the priority given to the case. The folders of prominent, high profile "A" cases covered more than one running metre of shelves. Only once were investigations continued when the suspect had already passed away. Embarrassing in this particular case was that we received the news at the Prosecutors Office in Minsk where we were about to interview a potential witness. Today the personal files are kept under strict lock and key in the offices of the *Australian Federal Police*. The allegations assembled by the *SIU* came from manifold sources located in Australia and overseas. Among them were quite a few anonymous denunciations. It was assumed they came from hostile neighbours, work colleagues and disgruntled relatives.

The thorough and time-consuming investigations resulted in the successful preparation of only three cases for trial. The reasons for this are clear, - symptomatic of the difficulties surrounding belated war crimes investigations. The crimes in these cases were committed in remote locations in the Ukraine. The accused were local residents who had entered the service of the Nazi occupation force. The geographical limitations and the social structure of the village communities made it possible to find witnesses, often acquaintances or relatives, who were able to identify the defendants, to recall the events and to point the way to the near-by murder

and burial sides. Mass executions by mobile killing squads or murder in stationary or mobile gassing installations did not, as a rule, permit the survival of witnesses. The three *SIU* suspects stood before the courts in Adelaide in the early 1990's. They pleaded not guilty. The testimonies given by witnesses proved to be insufficient to satisfy the court. Today hardly anyone in Australia recalls the names of the accused or the outcomes of the legal proceedings.

The 75 year old Ukrainian-born Ivan Polyukhovich was the first to be charged under the *War Crimes Act*. As already mentioned, he was a former gamekeeper, a forest warden accused of having participated in the liquidation of the small Jewish community of Serniki, a village situated in the Pripjet marshes. 850 Jews, predominantly women and children, were murdered here in autumn 1942, presumably on the eve of *Raosh Hashanah* (*Jewish New Year*). Polyukhovich was further charged with having hunted down and shot Jews who had escaped into the surrounding forests. After the Supreme Court judge had disallowed much of the prosecution's evidence, the jury took less than one hour to agree on a verdict of *not guilty*.

The second case was dismissed by a Magistrate due to contradictory evidence given by witnesses and historical experts. The 78-year old Mikolay Berezovsky, a former Ukrainian policeman, was charged with the murder of 102 Jews in the village of Gnivan.

Medical opinion ensured a premature ending to the third case. The 69-year old Heinrich Wagner was declared unfit to appear in court. The ethnic German had served in the Ukrainian auxiliary police force. Deployed in the village of Israelovska, he participated in the killing of 104 Jews and 19 children classified as *Mischlinge*.

I should like to mention an important by-product of the Wagner case. While interviewing a key witness in Germany, the German public prosecutor present at the interrogation warned the witness, a former colleague of Wagner, to be careful in his testimony. The witness did not follow the advice and admitted, freely and in great detail, having participated in the *Judenaktion* (*action against the Jews*). As a result, he was put on trial. A German juvenile court handed down a short prison sentence after convicting him for aiding and abetting

murder.

There was one particular case in Australia which remained without consequences for the accused. It was, in my view, the most important *SIU* case – *the Ozols case*. Karlis Ozols was a Latvian SS officer and a chess champion of international stature. He served as a Lieutenant with the *Arajs Kommando*, Latvia's infamous killing squad.. As commander of the *Latvian Company* of the *German Security Police* he guarded the ghetto of Minsk and the nearby gassing installations. He participated in the murder of some 30 000 Jews, Partisans and other victims. The investigations had to be abandoned in 1992, despite the advice of a renowned QC that a *prima facie* case had been established. The Australian government, headed by Prime Minister Paul Keating, insisted on the closure of the *SIU*, allowing only for ongoing functioning of a small *War Crimes Support Unit (WCPSU)* as long as the legal proceedings in Adelaide were still under way. New accusations of war crimes were directed to the *Australian Federal Police*, a decision which precluded the allocation to the unit of additional resources and gave a clear signal that the second chapter of the war crimes debate in Australia was closed.

In 1997 the Ozols case resurfaced – behind closed doors. The *Australian Federal Police* refused to complete the investigations – referring to expenses amounting to \$ 300,000 – regarded as an ‘unreasonable burden’ on the taxpayers and as a fund claimed by other competing units within the *Federal Police*. The *Federal Police* continued to table its annual war crimes report in Parliament and recorded new allegations. However, nothing was done to investigate these cases, which in turned meant that the service of historians was noany longer required.

War crimes legislation, investigations and court proceedings were controversial from the outset. Within the legal fraternity a critical and at times even damning attitude prevailed. Serious reservations were voiced about the retrospective nature of the law, the problem of jurisdiction, and above all the many obstacles to securing evidence, especially eye-witness accounts, after six decades. Doubts were expressed as to whether the adversarial system of the Australian trial procedure was in fact the most suitable one to deal with the problems of war

crimes trials.

In hindsight, it would have been much better to have followed the Canadian and American examples and to instigate NOT criminal but rather deportation and denaturalization proceedings. In all probability, if that had been done, at least a handful of the 4,000 Nazi killers who had murdered with impunity would have been expelled from Australia.. At any rate, upon the opening of the Polyukhovich Trial an appeal to the *High Court* of Australia was lodged to clarify the legal validity of the legislation. The *High Court* handed down its judgment in October 1991. By a majority of four to three, the voices its constitutional validity of the legislation was upheld.

Once the *SIU* had been set up, the Australian government showed no interest in extending its jurisdiction by further amending again the war crimes legislation. When in the early 1990's the civil war in Yugoslavia erupted, Australian citizens and residents of Croatian, Serbian or Bosnian origin hastened to participate in the programs of 'ethnic cleansing' characterized by destruction, incarceration, torture, rape and murder. Graham Blewitt urged the government to be permitted to investigate the allegations. The response was swift: no war crimes unit was required. Serving as mercenaries abroad or as regular soldiers in foreign armies were offences under Australian domestic law, and it was thus it was left to the Federal Police to investigate their crimes, without the specialist skills or resources to do so.

In the public domain the war crimes debate had, in my view, little, if any impact on public awareness and memory. The reactions varied. Many Australians voiced their anger at what they viewed to be an irresponsible waste of public money, some 18 million dollars. The opposite view was taken by individuals or groups who were mindful of the victims and stressed the moral and social obligation to let justice prevail, however belatedly, and not allow murder to go unpunished.

Not all Jews welcomed the debate in 1986. There were some survivors who warned against the opening of old wounds or providing antisemites with new ammunition. Fierce criticism was articulated by the ethnic communities to which the suspected war criminals belonged. Their

spokespersons chose to speak of injustice or an act of revenge, of the defamation against innocent people. The disapproval found its most vehement expression in the form of a warning that the war crimes debate would stir up animosities and ethnic tensions, in particular between the Jewish and the East European communities. This in turn, it was claimed, could threaten the fabric of Australia's exemplary multicultural society.

The uproar was short-lived. At the opening of the Polyukhovich trial noisy demonstrations staged by a few professional Holocaust deniers and anti-Semites caused some head lines but the media soon lost interest in the issue. Even the Jewish press preferred only occasional references to the trials, largely to be found off n the frontback pages. The public proceedings in Adelaide took place in front of empty galleries. Quite popular in the scant media coverage were references to the accused as "nice neighbours" or "old" and "sick pensioners". For the overwhelming majority of Australians, the news of the closure of the *SIU* went almost unnoticed.

What exactly was my role in all of this?

Seconded from the University, and leaving the academic principles of freedom of teaching and research behind, I followed clear instructions given by the *SIU* and the *Department of Public Prosecutions*, the - by representatives of the legal professionfraternity. I searched for and evaluated *historical records* kept in Aarchives as well as *judicial material* transmitted in post-war Nazi war crimes investigations and trials for each case under investigation. In other words: I was now engaged in applied history.

I joined the tiny circle of *internal, or in-house* historians. Not more than 40 have served in this capacity in Western war crimes units. The *American Office for Special Investigation (OSI)* commenced its operations in the late 1970s with two historians. This number increased later to 10. The Canadians appointed up to 15. To my knowledge, the British war crimes unit, attached to Scotland Yard, required 2. The West German investigations – amounting to more than 110, 000 cases – were carried out without any *in-house* historians. The *SIU* recruited two additional full-time historians: Juergen Matthaeus and Martin Dean. Both have emerged as eminent

Holocaust scholars now working at the *US Holocaust Memorial Museum in Washington*

As did all *in-house* historians, I submitted reports and compiled historical profiles of suspects. As chief historian I coordinated the research conducted by historical consultants, the so-called *external* historians, entrusted with special tasks. The *SIU* hired up to 10 of them. In close cooperation with my colleagues, I prepared the historical-archival evidence to be submitted to court. As a rule, relevant documents, classified as *A*, were referenced in footnotes of the affidavits. If they were not challenged by the defence, they became exhibits of the prosecution. The evaluation and selection process of key documents did not only require the guidance or, if you like, the supervision of the prosecution teams but also the close cooperation of with the historical expert witnesses testifying in court. The *SIU* recruited three world-renowned American historians – Raul Hilberg, Christopher Browning and Jonathan Steinberg. Their affidavits were designed to shed light on Nazi war crimes policies and their implementation in the specific crime scene in question. The affidavits of the *in-house* historians centred on the career of the suspect, the operations of units and the role he played within the machinery of mass destruction.

Nazi war crimes historians encountered some barriers when seeking other jobs. Highly specialized, not to say ‘overqualified’, they were often regarded as ‘unsuitable’ candidates for academic positions. A few succeeded in continuing their careers in research centres or museums. As there was scarce demand for historians in modern war crimes investigations, only a handful moved from Nazi war crimes units to modern War Crimes Commissions and Tribunals. The prosecutor's office of the *UN Tribunal* in the Hague comprised several hundred staff members. Only one historian was appointed, an OSI historian who had once investigated investigating alleged Yugoslavian war criminals residing in the USA. In The Hague he was entrusted with the task of providing investigators with political and military analyses (briefing papers). Canada – the world leader in modern war crimes investigations - redeployed 5 of its *in-house* historians. They were assigned to 5 territorial war crimes areas.

As stated at the beginning, testifying in court is not an easy task for historians. Initially, in the early 1980's, some expert witnesses experienced vicious attacks launched by the defence. They

were confronted with the views of Holocaust deniers or with allegations that they were relying on historical records fabricated by the *KGB*. More commonly, they were asked ambiguous and provocative questions to which they often had no convincing answers. As I was told, such questions are legitimate defence strategies designed to confuse or discredit the expert witness for the prosecution. I never experienced such incidents in Australia, only occasionally in Canadian and American court rooms. I should like to add a tiny detail. I was not only reprimanded by a Supreme Court judge but also by the prosecution. In the collegial spirit of an academic, and unfamiliar with legal rules, I dared to talk to the 'other side' – to the friendly defence lawyer – during the 4 days of my cross examination while it was incumbent upon me to keep silent.

The work I did was exciting and rewarding. I was one of the first Westerners to gain access to "Secret Archives" located in the Soviet Block, by this time already on the brink of collapse. I have not recorded the number of '*business trips*' – in *Business Class* – to *State-* and *Regional Archives*, to *Party-* and *Military Archives*, to *KGB-* and *Stasi Archives*. I will never forget the hospitality received, the 'lively evenings' - after long hours of work – in restaurants with fine food and drinks. Presents were exchanged. As it happened too, at some places much-converted technical equipment was offered in order to speed up the delivery of the material requested.

The trips to Prague were of particular importance. Turning up for the first time, we were assured that there were no secret archives in Czechoslovakia. We drove to Kolin, a historic town close to Prague, in an attempt to find the legendary castle of *Zasmuky*, the place where the *SS* had deposited large parts of its WWII time records. What we found was a run-down farming estate. Robert Greenwood hammered against the door. After a while, a farmer opened the door and then disappeared with a shrug of his shoulder. On our second visit to Prague, we were told that there might be some Nazi records of interest to us. When we returned a few weeks later, we entered the *Secret Military Archives*. I can assure you that – opening the dusty and sealed record boxes and discovering a plethora of *SS* records which had until then been regarded as lost – was one of the most memorable moments of my professional career. Graham Blewitt, sitting next to me and keeping to a protocol, nevertheless found my

excitement contagious.

Among the records were *German Police* reports, telegraphic messages sent from the summer of 1941 onwards to Berlin Headquarters. They transmitted the dates and places, the units and personnel relating to the first killing operations in the newly conquered territories of the Soviet Union. As some of you might know, they were intercepted and deciphered by skilful code breakers in *Bletchley Park*, the war time headquarters *HQ* of *British Signals Intelligence*. Copies were sent to the Americans, stamped "Most Secret" and specially marked: "To be kept Under Lock and Key: Never to Be removed from Office".

The American Professor Richard Breitman, the longest serving historical consultant of the SIU, discovered the transcripts at the *National Archives* in Washington in 1996. Comparing with him the German originals with the Allied decodes was another highlight of my career and one which confirmed a disturbing insight. Even after the war, the British and American governments had showed no interest in handing over the decodeds material to any of the war crimes commissions and trials.

The so-called "*Ultra System*" or "*Ultra Success*" - the deciphering with the help of the *Enigma* machine - had been vital to Allied victory. National and political interests dictated keeping secret the code-breaking success. The West maintained its decipher superiority over the East, this time as a weapon in the emerging Cold War. To put it differently: Keeping the "*Official Secrets*" from the Soviets and others was more important than bringing Nazi killers to justice. As Richard Breitman put it: "There always seem to be higher priorities for governments and their defenders than swift action against genocide and its perpetrators. That may be one reason why some people continue to believe that they can get away with mass murder in the pursuit of political goals".

At any rate, the opening of the "*Secret Archives*" provided a fresh and decisive impetus for research on the Nazi Rregime and its genocidal policies. I would also argue: Both the old Nazi war crimes debate and the new modern war crimes debate had a great impact on jurisprudence, especially *International Criminal Law* At many universities teaching and

research programs have been introduced which are centred on the study of *war crimes*, *crimes against humanities* and *genocide*. Some 20 years ago such programs hardly existed – and a conference such as this one – could not have been held staged.

There are two other ways in which the *SIU* differed from other *War Crimes Commissions*. The *SIU* tendered only original documents in court. Archivists, the custodians of historical records, brought the original in folders to Adelaide. Their affidavits confirmed the authenticity and archival transmission of the exhibit-document. This procedure, unchallenged by the defence, caused considerable astonishment in archival circles around the world. The only document which we had to table as a certified copy was the infamous *Wannsee Protokoll*. Kept at the *Political Archive of Foreign Affairs*, the German government refused to authorise its removal, arguing that it was only copy left.

I did not interview witnesses. This was left to lawyers and policemen. I assisted them in tracing potential witnesses and by providing historical background information for their interrogations. I quickly learnt that testimonies provided by living witnesses are more important than historical documentation. I also encountered the problems and limitations of eye witness accounts given after a period of fifty years after the event in a foreign court room and under the strict rules of cross examination. These experiences of insufficient testimonial evidence resulting in and the acquittal of the accused has encouraged me to adopt a more critical approach to “Oral History”, a burgeoning field within the discipline of history your fraternity. From the growing number of ‘memoirs’ I have started to collect episodes and accounts which fall into the realm of historical legends and fairy tales, which can only serve as distractions from the hard evidence of criminality.

The second pioneering work the *SIU* undertook was to excavate the mass graves and to present to present archaeological and forensic evidence for the crimes committed in Serniki, Gnivan and Israelovska. I was not involved in this work. It was carried out by a team of Australian archaeologists, headed by Professor Richard Wright. The findings, recorded in diaries and reports, photographic images and video recordings helped to determine the point of time of the execution, the killing techniques employed, the number of victims, their age, sex and type of

injury, their possessions and final movements before death.

For me personally this method of “Unearthing the Holocaust” proved much more intriguing, instructive and educational than any historical documentation. Some of the objects found in the graves have become artefacts of the Sydney Jewish Museum – shoes and watches, coins and combs, articles of clothing, glasses and dentures – all belongings to the victims, as well as bullets and a *Schnappsflasche* (*alcohol flask*) left behind by the murderers. The public display of these memorabilia reminds the Museum's visitors, in particular school classes, of the Nazi war crimes debate in Australia and, at the same time confronts them with ongoing genocidal campaigns which have become essentials features of the 20th and 21st Centuries.

Once my services in war crimes matters were no longer required, I resumed my jobs at the University and the Sydney Jewish Museum.

From the side lines, I watched an Australian *war of words*, a historians' dispute, sparked by the call “to master the past” - that is – an Australian past besmirched by shameful policies directed against Aborigines. I share the view of those who argue that dispossession and enslavement, killings, forced assimilation and removal of children, also known as “*the stolen generations*”, were components of a genocidal strategy intended by those at the apex of power to bring about the eventual disappearance of Aboriginal people as an identifiable group in Australia. Today there is much talk in Australia about “*reconciliation*”. One important step was taken not long ago, when the current Prime Minister Kevin Rudd offered in Parliament an apology, stating clearly and repeatedly: “*We are sorry*”. *We have yet to get to the real specifics of what Australia is sorry for.*

As I a Jewish historian, I should like to add a personal insight. Between the marginalised *Aborigines* and the well-established *Australian Jews*, no close relations have ever developed, [Konrad, this is simply not true. There have been quite a number of projects and organisational links established between the two communities over the last 15 years. I think you need to amend this.] with few exceptions, such as Colin Tatz whose work in *Genocide Studies* and *Aborigines Affairs* have been determined by his Jewish and South African upbringing. Four years ago, I

attended a remarkable, unique commemoration. *Aborigines* and *Jews* assembled in the *Holocaust Centre* in Melbourne to unveil a memorial plaque. After "*Kristallnacht*", the Jew-pogrom unleashed in November 1938, a group of *Aborigines* protested in Melbourne in front of the German Consulate against the persecution against German Jews.

From the side lines, I watched the third and final chapter of the Nazi war crimes debate downunder: the attempts made to extradite the remaining war criminals.

In 2001, Mark Aarons attempted again to re-ignite the debate, revealing what that some of most prominent *SIU* suspects had served as informers for *ASIO* and that a considerable number of modern war criminals had found sanctuary in Australia. They came from Chile and Yugoslavia, Cambodia and Afghanistan, East Timor and Rwanda, Sierra Leone and Ethiopia, Somali and Darfur. Aaron's plea to install a modern war crimes unit went unheard.

In 2002, a Magistrate in Melbourne issued an extradition order against the Latvian-born Konrads Kaljes, Australia's most prominent Nazi killer of international stature. Like Karlis Ozols he had been an SS-officer in the *Arjas Commando*. I met Kaljes in Canada, when giving evidence in his deportation case. Like so many perpetrators, he maintained his innocence, showing no remorse, protesting against the cancellation of his temporary Canadian residents visa. In Melbourne he lodged an appeal against his extradition to Latvia. He died before it was heard. He died in a country in which he had never felt at home, indeed, a Kafkaesque ending to his the Kalejs saga.

In 2003, Efraim Zuroff toured Australia, again trying to encourage the government, political parties, as well as the Jewish communities, to bring Nazi killers to justice within the *Simon Wiesenthal Centre* worldwide framework, "Operation Last Chance". His plea fell on deaf ears.

In 2005, one extradition case was closed when the Hungarian suspect passed away. In 2006, another case commenced. It took some time, before the *High Court of Australia* gave the green light in April 2008 to deport another alleged Hungarian murderer. To this very day the

extradition order still lies on the desk of a minister – unsigned. Medical evidence submitted suggests that the 85 year suspect is close to death. It looks like the last Australian Nazi war crimes case will proceed no further and be closed – on humanitarian grounds.

From the side lines, I observed that the work of the *SIU* bore some fruit – not in the domestic domain but in the international domain. Experienced Australian Nazi war crimes prosecutors and investigators were the first to take up leadership positions at the *UN War Crimes Tribunal* in The Hague. Graham Blewitt was appointed Deputy Prosecutor, serving in this capacity for ten years. Grant Nieman, head of the prosecution team in Adelaide, accepted the job of a Senior Counsellor. Several *SIU* investigators were assigned senior investigative positions. The *Prosecutors Office* commenced its work in April 1994. Six months later the first indictment was issued. It also did not take long before the experience and expertise of Richard Wright were required to present the archaeological and forensic evidence for the heinous crimes perpetrated within the programs of ‘ethnic cleansing’. After the “*Unearthing*” of the Holocaust in the Ukraine, he continued his work with the “*Unearthing*” of the killing fields in Srebreniza and other murder and burial sites.

Finally, from the side lines, I observed the Australian efforts to remove the domestic barriers for the prosecution of modern war criminals. In 2002, Australia ratified the *Rome Statute*. The *Commonwealth Criminal Code Law* was amended by integrating and classifying *war crimes*, *crimes against humanity* and *genocide* as criminal offences. Though the legal framework has been established, to my knowledge, to date no one has been charged, and to date no war crimes unit has been created/installed.

The structure and the aim of such a unit can easily be defined. A small but effective specialist unit is required. It should be integrated into the *Australian Federal Police* and be directly responsible to the *Police Commissioner*. It has to be equipped with experienced staff and sufficient resources to conduct investigations – both in Australia and abroad – in cooperation with other war crimes commissions and tribunals as well as with intelligence and immigration agencies.

It remains to be seen whether and when the Australian government will change its political agenda. As in the past, the lack of political will is largely determined by concerns about ethnic tensions and electoral backlashes. A research report from the Sydney-based *Lowry Institute*, will soon be submitted to the government. Compiled by Fergus Hanson, it calls for the establishment of a modern war crimes unit. At *Melbourne University* Professor Tim McCormack and his team are conducting a large-scale research project designed to document and analyse - in report series - "Australia's Post World War II War Crimes Trials". Within the leadership of Australia's Jewish community, which includes senior lawyers who are veterans of the war crimes debate and legal cases against Holocaust deniers, there remains a commitment to ensure that Australia does not continue to be a dumping ground of criminals from the world's conflicts.

Let me finish on a personal note. As I stated at the beginning, I personally no longer believe in lessons of history. Yet, one lesson I learnt encourages me to speculate on the future. If Australia's obligation to trace, charge or extradite war criminals remains an empty phrase then a chapter of Australian history will be repeated. At some time in the future another Mark Aaron, Leslie Caplan or Graham Blewitt will appear, reminding the Australians that genocidal killers have again found sanctuary down under. Belated efforts to bring them to justice may well prove in vain. By then, I assume, I will be already buried in a Jewish cemetery, leaving no 'memoirs' behind, only my wife, five children and a growing number of grand children.