

# Symposium on the UNWCC: Ethiopia, Italy and the Archives of Selective Justice

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May 5, 2022



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[*This post draws on a draft entry for the Max Planck Encyclopedia of International Procedural Law (Donaldson 2022), available on [request](#).*]

Although Ethiopia had been deliberately excluded from membership of the UN War Crimes Commission (UNWCC), Ethiopia sought to submit cases against figures responsible for atrocities during the Italian invasion and occupation (1935–41). The UNWCC archive is thus an obvious source from which to probe Ethiopia’s attempts at post-WWII prosecutions. It proves rich in technical legal discussions about the jurisdiction of the UNWCC, whether the Italo-Ethiopian war fell within it, and Ethiopia’s legal status 1936–41 (points on which Ethiopian arguments enjoyed some success). It does not, however, capture the real reason no trials were ever held. In order to prosecute, Ethiopia needed Allied support for extradition of Italian nationals. Allied states’ civilizational preconceptions, own implication in colonial violence, and *realpolitik* need to negotiate peace with Italian perpetrators made such support unthinkable ([De Lorenzi 2018](#); [Prosperi 2018](#); [Donaldson 2022](#)); indeed the Allies supported a resumption of Italy’s role in the Horn of Africa as a trustee power post-WWII. In the circumstances, UNWCC

deliberations disguise rather than reveal the real causes of impunity. Nevertheless, they offer something of value, in opening for scrutiny rival characterizations of Italian violence which still shape thinking about this period today.

### **Grasping the Italo-Ethiopian War: Framing and Sources**

The Italian invasion of Ethiopia in 1935, in flagrant violation of the League Covenant, and European states' responses to it, reflected a longstanding imperialist dynamic ([Bahru Zewde 2001](#); [Parfitt 2019](#); [Becker Lorca 2014](#); [Donaldson 2020](#)). The Italian campaign saw use of mustard gas contrary to the 1925 Gas Protocol (to which Italy and Ethiopia were both parties); and bombing of civilian sites and Red Cross ambulances and hospitals. Italy purported to annex Ethiopia in 1936, but there remained considerable armed resistance. After a grenade attack on Rodolfo Graziani, then Governor General of the putative Italian East Africa, in 1937, thousands of Ethiopians were killed in massacres known as 'Yekatit 12' (by the Ethiopian calendar): a three-day long rampage in Addis Ababa, followed by trial, execution and deportation of educated 'Young Ethiopians' across the country, and systematic extermination of Amhara chiefs ([Campbell 2017](#), 277–299, 324, 278).

Ethiopia protested the invasion itself as aggression; the use of gas and bombing of civilian and Red Cross targets as contrary to the law of war, and as crimes (in a general sense, individual criminal responsibility having not then been fully articulated). Haile Selassie denounced Yekatit 12 and related killings as violations of the Fourth Hague Convention, and requested a League commission of enquiry. Britain and France, with the League's Secretary General, worked to stifle the League's response to aggression, and actively muffled public disclosure of the Yekatit 12 killings ([Campbell 2017](#), 5–6, 333–8). The ICRC was also muted in response to the known Italian use of gas ([Baudendistel 2006](#), 261–302).

The public legal framing of the conflict was thus shaped early, and profoundly, by inequalities of influence between Ethiopia, on one hand, and European powers, on the other. Our understanding of postwar strategy is similarly skewed: we have ample sources on European states' internal deliberations, but limited insight into exactly what Haile Selassie or others sought to achieve in engaging with the UNWCC through Ethiopia's Swedish legal adviser, Erik Leijonhufvud ([Donaldson 2022](#)) (recent oral history interviews might assume too much concern with prosecutions in the larger scheme of postwar diplomacy (e.g. [Imru Zelleke 2012](#), 16–17)).

### **Debates in London**

Ethiopian efforts to submit cases to the UNWCC gave rise to a preliminary question: was the Italo-Ethiopian conflict even within the UNWCC's jurisdiction? Though China had been keen to ensure Manchuria could be considered, the UNWCC's assumed focus had been 1939 and beyond. Whether Ethiopia came within this depended on the view one took of what had occurred in Ethiopia. Italy had purported to annex Ethiopia into the Italian empire on 9 May 1936; and Italian sovereignty had been recognized *de facto* and ultimately *de jure* by many states in the late 1930s (though Britain later withdrew *de jure*

recognition on Italy's declaration of war, in June 1940). When British forces and Haile Selassie liberated Addis Ababa in May 1941, Britain treated the country as occupied *enemy* territory. A treaty between Ethiopia and Britain in 1942 recognized that Ethiopia was *now* an independent state and ally, but left open its precise status at earlier points (and in fact sought to impose extensive British oversight of Ethiopian rule).

On Italian and British views, then, the Italo-Ethiopian 'war' had ended in *debellatio* and annexation in 1936, or at least at some point before 1939, perhaps with *de jure* recognition of Italy's authority. On these views, Italian violence after this endpoint was, if reprehensible, merely part of colonial administration; war crimes prior to this point had occurred in a conflict other than that on which the UNWCC was focused. The UNWCC thus resolved in July 1946 to consider war crimes during the Italo-Ethiopian war outside its remit.

However, on the Ethiopian view, Ethiopian military resistance had been continuous (if patchy), so 'war' (as belligerent occupation or otherwise) had been ongoing until at least the liberation of Addis Ababa and proclamation of Ethiopian victory in 1941. On this account, partial contemporaneity of the Italo-Ethiopian war with the conflict beginning in Europe in 1939, and continuity in the underlying ideology of fascist expansionism, brought Italian crimes in Ethiopia since 1935 within the purview of the UNWCC. This stance, supported by other early victims of Nazi expansion like Czechoslovakia, Poland, and Yugoslavia, was strengthened by the terms of the peace treaty ultimately agreed by the Allies with Italy in February 1947. That treaty included Ethiopian claims of *postliminium*, and required Italy to take steps to ensure apprehension and surrender of war criminals, together with a stipulation that 'The date from which the provisions of the present Treaty shall become applicable as regards all measures and acts ... entailing the responsibility of Italy ... shall be held to be October 3, 1935.' This phrasing suggested, albeit obliquely, a basic continuity of Ethiopian sovereign status, and of a state of war. Further representatives not party to earlier decisions, particularly that of India, supported the Ethiopian position. After Leijonhufvud undertook that an Ethiopian tribunal would have a majority of foreign judges, and operate under rules and law similar to the Nuremberg IMT, a majority of representatives agreed to consider Ethiopian cases ([De Lorenzi 2018](#); [Prosperi 2018](#); Donaldson 2022). Some explicitly accepted that the Italo-Ethiopian conflict and WWII were part of one continuous war.

### **What the Archive Obscures and Reveals**

Intriguing questions arise on the margins of the UNWCC archive, about the extensive work of the Ethiopian War Crimes Commission under President Ambaye Wolde Mariam in preparing dossiers for the UNWCC, as well as about internal Ethiopian strategy. On the interstate discussions at the heart of the UNWCC, the archive ostensibly showcases the power of international legal reasoning to undo self-serving narratives of dominant states. Critically, though, whatever the position taken by the UNWCC on individual cases, prosecution would require extradition of suspects, and Allied pressure on Italy to achieve this. The fact that this was never going to be forthcoming makes UNWCC debates tangential to the real reasons no trials occurred.

That said, the formal focus of the UNWCC proceedings makes them a revealing index of the fragility of the Italian and Allied framing of Italian violence. UNWCC debates make clear how the peace treaty unsettled the narrative of *debellatio* and/or subsequent loss of Ethiopian sovereignty, and in turn called into question any divide between the Italo-Ethiopian war and WWII, and, in Ethiopia, between a punctual period of war and a subsequent period of colonial administration. Uncertainty about the latter divide is also apparent in the approach to specific crimes. The understanding of 'war crimes' from which the UNWCC worked drew on a list prepared after WWI (Kochavi 1998, 95–97) but included also 'crimes against humanity' as defined in the London Agreement (UNWCC 1948, 177). Itself a fluid category, this included, crucially, a requirement that acts be in execution of or in connection with crimes against peace, or war crimes: i.e. have some connection to war. Ethiopia seems to have been conscious of this requirement in some respects, focusing allegations regarding use of gas and bombing to 1935–36 (whereas gas was in fact used well after this) (Letter Ephrem Tewelde Medhen to UNWCC Sec-Gen, 28 Oct 1947). But some acts alleged, notably 1937 massacres, fell well *after* the notional point of *debellatio*. Even if Ethiopian charge sheets referred to 1935–6 as 'war' and a period thereafter as, e.g., Graziani's 'governorship', to treat massacres in 1937 as either war crimes or crimes against humanity, the UNWCC committee must have accepted that the war in a substantive sense continued to at least some point post-1936.

### **Afterlives of Conflict**

The decades since the Italian invasion have been tumultuous, including violence associated with Ethiopia's own complex and arguably imperialistic relationship with Eritrea (Weldemichael 2012); and the 'Red Terror' unleashed by the Soviet-backed Derg regime (1974–87), key members of which were convicted of genocide and torture in Ethiopian proceedings in 2008 (Firew Kebede Tiba 2013; Tadesse Simie Metekia 2021). Despite this intervening history, the Italo-Ethiopian war remains present, and symbolic, in the national self-understanding. An Italian municipality's 2012 decision to name a war memorial for Graziani, which sparked controversy and prosecution in Italy for a domestic crime of apology for fascism, prompted the Ethiopian government to denounce any celebration of an individual who ought to be condemned for war crimes, genocidal activity and crimes against humanity (Embassy of Ethiopia, Sweden, 2013).

Excavating the uncertainty in the UNWCC around the framing of Italian violence offers a counterpoint to legal discussions of responsibility today. As new historical atrocities are brought to light, the response from lawyers is often to fall back on the Italian or British narrative of events: after a certain point, war had ceased; and violence thereafter was *prima facie* not capable of giving rise to individual criminal responsibility. Public discussions of the 'Zeret cave/'Amesegna Washa' massacre of 1939 is illustrative. A considerable column from the rearguard of Abebe Aregai (a leader of the resistance forces), comprising mostly the elderly, women and children, had withdrawn along with armed fighters into a cave system; after a few days of siege and negotiation failed to draw resistants out, Italian forces used arsenic-filled artillery shells and mustard gas. As

survivors emerged in the following days, men and boys among them were machine-gunned. There is no precise count of victims from the episode overall but they likely number at least in the hundreds (Rumiz 2006).

Evidence of the massacre had already featured in a collation of documents by Ethiopian Ministry of Justice to the UNWCC (MOJ Ethiopia 1949–50), but the episode was studied more closely by Italian and Ethiopian historians, and further publicized in 2006. Asked to comment, Antonio Cassese, a leading Italian expert on IHL and ICL, concluded that ‘The law has little to say’, although he argued that the Italian state was nevertheless obliged to confront its past and provide ‘moral expiation’ (Cassese 2006; my translation). On Cassese’s analysis, the 1929 Geneva Convention on Prisoners of War and 1925 Gas Protocol applied only to international wars, and he qualified the conflict in Ethiopia at this time as a ‘civil war’. By extension, the massacre could not have constituted a war crime, for which individuals could be responsible. A close reading of the UNWCC deliberations might put this understanding in question.

Of course, arguing that atrocities across 1936–41 *could* constitute war crimes is unlikely to be of direct legal significance today. Prosecution of the most obvious cases proved unachievable even with UNWCC support, and perpetrators are now dead. Nor would fine-grained legal characterization of atrocities necessarily strengthen any reparations claim (beyond limited payments already made under the 1947 peace treaty). Nevertheless, it is thought-provoking to recall the fragility of the factual–legal narratives which separate what passed for colonial administration from war crimes, and continue to inform our legal and historical responses today.