

**General Assembly**  
**Economic and Social Council**Distr.  
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14 May 1986

ORIGINAL: ENGLISH

GENERAL ASSEMBLY  
Forty-first session  
Items 12 and 135 of the preliminary list\*  
REPORT OF THE ECONOMIC AND SOCIAL COUNCIL  
REPORT OF THE SPECIAL COMMITTEE ON THE  
CHARTER OF THE UNITED NATIONS AND ON  
THE STRENGTHENING OF THE ROLE OF THE  
ORGANIZATION

ECONOMIC AND SOCIAL COUNCIL  
First regular session of 1986  
Agenda item 9  
HUMAN RIGHTS

Letter dated 12 May 1986 from the Permanent Representative of Israel  
to the United Nations addressed to the Secretary-General

In reference to your letter of 9 May 1986 about the Archives of the United Nations War Crimes Commission (UNWCC), I would like to examine further the matter of the Archives' confidentiality.

1. Let me first address the question of who has the power to alter the rules of access. When the Archives were transferred to the United Nations, these rules were established not by the Commission but by the United Nations Secretariat. True, the United Nations consulted with the former Chairman and the former Legal Adviser of the Commission, both in their personal capacity. But this does not change the fact that the United Nations Secretariat was the body that ultimately established all the rules governing access to the files.

All the correspondence between the Commission and officials at the United Nations Secretariat show this unmistakably. Indeed, it is plainly stated in the memorandum dated 17 November 1949 concerning the Rules of Access to Archives of UNWCC by A. Pelt, Assistant Secretary-General for Conference and General Services. Mr. Pelt writes (see attached copy of the original memorandum): "I have approved these rules on behalf of the Secretary-General, and they are to be placed into immediate effect". As if to drive the point home, there is a handwritten note on this very same document signed by a United Nations official, J.A.O. (who I am sure can be easily identified), which reads as follows:

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\* A/41/50/Rev.1.

"Mr Pelt: The Legal Department (Schachter) states that there is no question of your authority to promulgate these rules on the Secretary-General's behalf. I suggest you sign all copies of the rules, as well as the original of the covering memo. (signed) J.A.O."

This point has been reaffirmed most recently on page 5 of the document you circulated on 9 May 1986 entitled: "Annex II, History and Organization (of the UNWCC): 'The Rules for Access to records of the United Nations War Crimes Commission established in 1949 by the then Assistant Secretary-General for Conference and General Services are still in effect today'" (emphasis mine).

The United Nations Secretariat therefore has the power to determine the access rules. This power is vested in the Secretariat, and in the Secretariat alone.

2. A demonstration of how the United Nations has exercised that power is the case of the Lists of War Criminals (i.e., the Archives index). Initially, these lists were not deemed secret. Indeed, "On 6 November 1946, the Commission decided, with retroactive effect, to remove them from the 'secret' category" (Memorandum from Bertil A. Renborg, Chief of Communications and Records Division, to Adrian Pelt, Assistant Secretary-General of Conference and General Services, 1 September 1949).

It was the United Nations Secretariat that decided on 17 November 1949 to restore the secret status to these lists (Rules for Access to Archives of the United Nations War Commission approved by A. Pelt; CGA 71/8/02). Significantly, this step contravened the Commission's wish that the "lists will be a valuable record for future historians" (History of the United Nations War Crimes Commission, London, 1948, p. 6). How can the lists be used by historians if they are not widely distributed? Clearly, the Commission did not intend to have the lists stored away in perpetuity. The United Nations Secretariat decided otherwise.

The power of the United Nations Secretariat to alter the status of the lists was spelled out in the Legal Counsel given on 30 January 1960 by the United Nations legal adviser, C. A. Stavropoulos: "There is no legal impediment deriving either from the policy of the War Crimes Commission itself or from any arrangements between the United Nations and the Commission to a change in our policy respecting the war criminals list" (United Nations memorandum AD 233/3 WCC).

In other words, the case of the lists illustrates the fact that the United Nations custodial role has from the very beginning included the right to establish, and consequently to alter, access rules. If this was done to the lists, which summarize the most crucial and incriminating findings in the files (names, description, and classification of crimes), there is no reason to keep the rest of the material confidential.

3. Does the confidentiality rule therefore make any sense? Clearly not. The lists, as we have shown, were made public by the Commission. Further, the Commission, in its official history published in 1948, presented over a dozen case studies of war crimes. These cases, considered by the Commission but not yet

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brought to trial, were discussed in detail - names, ranks, description and categorization of crimes (mostly 'A's), places dates, etc. (History of the United Nations War Crimes Commission, London, 1948, pp. 485-497).

Yet all this does not address the most crucial point. The opening of the Archives is at heart not a matter of procedure. It is rather a supreme moral and historical imperative. Vital information concerning the greatest crimes in history has remained unexposed for close to 40 years. Many of the criminals are still alive and are shielded from investigation and prosecution by a self-imposed confidentiality. Commitment to truth and justice requires that the files be opened to public scrutiny as soon as possible. Such scrutiny is the best assurance that the files will no longer be dormant as they have been since 1948. Confidentiality is neither appropriate nor acceptable. Removing it will help correct a major lapse in the international system of justice.

I should be grateful if you would have this letter circulated as an official document of the General Assembly, under items 12 and 135 of the preliminary list, and of the Economic and Social Council, under item 9 of the agenda of its first regular session of 1986, in connection with the topic on measures to be taken against Nazi, Fascist and neo-Fascist activities and all other forms of totalitarian ideologies and practices based on racial intolerance, hatred and terror.

(Signed) Benjamin NETANYAHU  
Ambassador

ANNEX I

CCS 71/8/02 - Confidential

27/30

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UNITED NATIONS • NATIONS UNIES

ACTION

INTEROFFICE MEMORANDUM

TO: Mr. Byron F. Wood, Director  
Bureau of General Services

FROM: A. Pelt, Assistant Secretary-General  
Conference and General Services

SUBJECT: Rules for Access to Archives of  
United Nations War Crimes Commission

TO	Mr. Wood
<input checked="" type="checkbox"/>	- Action Completed
<input type="checkbox"/>	- Acknowledged
<input type="checkbox"/>	- No Action Required
INITIALS <i>EP</i>	
7/14/02 44000	

Date 17 November 1949

The attached Rules for Access to Archives of the United Nations War Crimes Commission have been established in accordance with the provisions of the Secretary-General's Bulletin No. 63/Rev. 1, dated 14 July 1948. I have approved these rules on behalf of the Secretary-General, and they are to be placed into immediate effect.

*A. Pelt.*

cc Mr. Brodnax  
Mr. Claus

Encl

*Noted:  
Rules in effect as of 18 Nov. 49.  
A. Claus  
17 Nov. 49*

*Mr. Brodnax*

*Please put these rules  
into effect immediately*

*BSW  
Nov 21/49*

*Mr. Claus:*

*Re. Mr. Wood's note, the  
Rules of Access are effective  
immediately.*

ANNEX II

CGS 71/8/02 - Confidential

28/30

Mr. Byron F. Wood, Director  
Bureau of General Services

A. Pelt, Assistant Secretary-General  
Conference and General Services

17 November 1949

Rules for Access to Archives of  
United Nations War Crimes Commission

The attached Rules for Access to Archives of the United Nations War Crimes Commission have been established in accordance with the provisions of the Secretary-General's Bulletin No. 63/Rev. 1, dated 14 July 1948. I have approved these rules on behalf of the Secretary-General, and they are to be placed into immediate effect.

cc Mr. Brodner  
Mr. Claus

Encl

Mr Pelt:  
The legal Dept. (Schachtel) states  
that there is no question of your  
authority to promulgate these rules  
on S.G.'s behalf. I suggest you  
sign all copies of the rules, as  
well as the original of the  
covering memo.  
J.A.O.