ABSTRACT. Herbert C. Pell served his nation as an Ambassador and member of the US House of Representatives, as well as US Representative on the United Nations War Crimes Commission (UNWCC). This article presents his struggle with the US State department and the bureaucratic and legalistic dispute that developed over the UNWCC particularly with respect to policy considerations surrounding whether or not to prosecute crimes against humanity committed by the Nazis in Germany and satellite territories. The article traces Pell’s initial difficulty engaging with the work of the UNWCC due to the State Department’s delaying techniques and the absence of clear instructions from either the State Department or the President. Moreover, it is shown how Pell struggled to convince the State Department and his fellow UNWCC members to include the above-mentioned crimes. This debate and Pell’s role has remained largely unknown to a public that considers the post-war Nuremberg war crimes trials an achievement in the advancement of international law and justice. To whatever extent those trials were such, particularly in advancing international human rights law by adjudicating Axis war criminals for crimes against humanity, it is singularly noteworthy that Axis war criminals might not have been prosecuted at all for these crimes were it not for the efforts of Herbert Pell.

I INTRODUCTION

Tuesday, 8 November 1960 – election night in the United States – Herbert C. Pell surged through the crowd at the Providence, Rhode Island, Sheraton-Biltmore Hotel, single-mindedly keen to congratulate his son, Claiborne, on his election to the US Senate. Intercepted by reporters, the senior Pell, noted as a former one-term congress-
man, ambassador to Portugal and Hungary, and seasoned political manager of Al Smith and Franklin Roosevelt announced, “I have run for public office and have handled campaigns, but no campaign in which I was interested has given me anything like the pleasure and happiness I have now”. 1 Asked if he had any role in his son’s success, Pell enthusiastically responded, “I certainly did!” Before his son’s wincing managers could interject, Pell, explained self-effacingly and with, no doubt, a wry smile that masked disappointment over the trajectory of his own career, “I stayed away”. 2 Although Pell had been removed from public service since January 1945, he would have liked nothing more than to have helped his son’s campaign. Since retirement, Pell had become quite circumspect about his own career. Upon turning seventy in 1954, Pell wrote Claiborne that he would “never in his life come across a man who has been freer...[and] on the whole...happier”. 3 Pell’s apparent contentment with the trajectory of his life, however, masked his deep disappointment over what he had at one time expected would become the proudest accomplishment of his career.

Although no one seemed to remember, Pell had not just served his nation as an Ambassador and member of the US House of Representatives, for a time, he was also US Representative on the United Nations War Crimes Commission (UNWCC). Established in October 1942, the UNWCC began its work late the following year, when representatives from seventeen nations 4 began the task of organizing themselves to investigate and gather evidence of war crimes. Early on, the UNWCC expanded its scope to include an advisory function regarding international war crimes law and the indictment, extradition, trial, and punishment of war criminals. 5 Among these tasks, perhaps no function was more important than their consideration of crimes against humanity. How, exactly, were the Allies to seek justice

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2 Ibid.
3 Ibid.
4 Australia, Belgium, Canada, China, Czechoslovakia, France, Greece, India, the Netherlands, Luxembourg, New Zealand, Norway, Poland, South Africa, the United States, Yugoslavia, and Ethiopia.