

Human Rights Watch

BELGIUM: QUESTIONS AND ANSWERS ON THE “ANTI-ATROCITY” LAW

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What does the Belgian anti-atrocity law provide?

The 1993 law, amended in 1999 and again in 2003, gives Belgian courts the authority to prosecute persons accused of genocide, crimes against humanity or war crimes regardless of where the crimes took place or whether the suspect or the victims are Belgian. Amendments adopted in April 2003 create “filters” that limit the ability of victims to directly file cases with no connection to Belgium and also authorize the government to refer certain cases to other countries.

What is the legal basis for this law?

The Belgian law puts into practice the international law principle of “universal jurisdiction” which holds that every state has an interest in bringing to justice the perpetrators of particular crimes of international concern, no matter where the crime was committed, and regardless of the nationality of the perpetrators or their victims. A principal reason why international law provides for universal jurisdiction is to ensure that there is no “safe haven” for those responsible for the most serious crimes.

Why is this law important?

Prosecutions based on universal jurisdiction are an essential part of the emerging system of international justice. They help to break down the wall of immunity with which tyrants and torturers protect themselves in their own countries.

Who may file complaints under the Belgian law?

The state prosecutor may present charges to a court. In addition, as in most French-inspired civil law countries, in Belgium victims have the right to file criminal complaints directly before an investigating judge (*juge d'instruction*). However, amendments to the law adopted in 2003 limit the right of victims to file complaints directly to cases in which there is some link between Belgium and the crime (see below).

Which other countries have universal jurisdiction laws?

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by 132 countries, obliges states to prosecute -- or extradite for prosecution -- persons on their territory accused of torture, no matter where the torture was committed. Similarly, the Geneva Conventions, ratified by almost all

countries, prescribe that states parties must search for persons alleged to have committed grave breaches of the Geneva Conventions (that is, war crimes), and bring such persons, regardless of their nationality, before their own courts. According to a study by Amnesty International, most states have given their courts universal jurisdiction over at least some crimes. Amnesty International, *Universal jurisdiction: The duty of states to enact and implement legislation*, http://web.amnesty.org/web/web.nsf/pages/legal_memorandum.

In addition to universal jurisdiction, many countries, such as France, give their courts competence to investigate and even try a crime committed abroad against one of their nationals (the "passive personality" basis of jurisdiction) whether or not the suspect is in the country.

Until recently, Belgium was one of the rare countries (together with Spain) which had a practice of undertaking investigations into charges of atrocities committed abroad even when none of its citizens was a victim and the suspect was not in the country. In the last two years, however, a number of countries, such as Australia, Germany, New Zealand and South Africa, have amended their laws, after joining the International Criminal Court (ICC), to provide for the opening of investigations without any such nexus requirement.

What cases have been tried under the Belgian law?

There has been only one trial thus far. Four Rwandans were convicted in June 2001 by a Belgian jury on charges of involvement in the 1994 genocide in their country. Most observers considered the trial exemplary.

What are some other recent prosecutions under universal jurisdiction?

Following the genocides in the former Yugoslavia and Rwanda, a number of European countries, including Austria, Denmark, Germany, the Netherlands and Switzerland, brought alleged perpetrators to trial on the basis of universal jurisdiction. A Danish prosecutor on November 19, 2002 initiated an investigation of Nizar al-Khazraji, former chief of staff of Iraq's armed forces, for his suspected involvement in war crimes perpetrated in Iraq against Kurdish civilians during the 1980-88 Iran-Iraq war.

The classic recent case of an attempted universal jurisdiction prosecution was Spain's indictment of Gen. Augusto Pinochet. Spain charged Pinochet for crimes committed mostly in Chile and mostly against Chileans and then sought to obtain his presence for trial via extradition from Great Britain. (Belgium also indicted Pinochet and also sought his extradition to stand trial, as did France and Switzerland).

Who has been sued under the Belgian law?

Cases have been filed in Belgium against Mauritanian President Maaouya Ould Sid'Ahmed Taya, then-Iraqi President Saddam Hussein, Israeli Prime Minister Ariel Sharon, Ivory Coast President Laurent Gbagbo, Rwandan President Paul Kagame, Cuban President Fidel Castro, Central African Republic President Ange-Felix Patassé, Republic of Congo President Denis Sassou Nguesso, Palestinian Authority President Yassir

Arafat, former Chadian President Hissène Habré, former Chilean President Gen. Augusto Pinochet, former Iranian president Hashemi Rafsanjani former Moroccan interior minister Driss Basri, former Foreign Minister Abdoulaye Yerodia Ndombasi of the Democratic Republic of the Congo, among others. Many of these cases have not been actively pursued, however, and a recent rulings on state immunity bar states from prosecuting certain sitting foreign officials. The cases against Gbagbo, Yerodia Ndombasi and Sharon have been dismissed.

How did the 2003 amendments change the Belgian law?

The April 2003 amendments to the Belgian anti-atrocity law limit the ability of victims to file complaints directly and grant the Belgian government the power to transfer some cases out of Belgium. They also contain provisions designed to harmonize the Belgian law with the Rome Statute of the ICC and international law on immunity.

Victims can now file suits directly only if there is a link between the crime and Belgium. Such a link exists if the suspect is on Belgian soil, if the crime took place in Belgium, or if the victim is Belgian or has lived in Belgium for at least three years. If this link does not exist, cases may now only be brought by the state prosecutor. However, the prosecutor must go forward with a case presented by victims unless one of four criteria is met: the complaint is manifestly without merit; the complaint does not allege a violation of the anti-atrocity law; the complaint does not fall within the competence of the Belgian courts; or, in the “interests of justice” and respect for Belgium’s international obligations, the case should be transferred to another court, so long as that jurisdiction upholds the right to a fair trial. The victims may appeal the prosecutor’s decision not to move forward.

In addition, the Belgian government can now step in to send many cases elsewhere. One amendment allows the Belgian government to refer pending cases to the accused’s home state or the state in which the accused is present if that state upholds the right to a fair trial. If that state does in fact take the case up, then the Belgian courts will dismiss the case. Another amendment provides that if the victim is not Belgian, the government can transfer the case to the accused’s home state, so long as that state upholds the right to a fair trial and has laws that criminalize the grave human rights violations covered by the Belgian law. (For cases filed before the 2003 amendments, the government must first seek the non-binding advice of an appeals court regarding the four criteria described above.) The case is then dismissed even if the other state decides not to act on the complaint. This provision is very controversial because it allows the government to interfere with pending cases and opens the door to political and diplomatic negotiations over every case that is filed.

Finally, the amendments allow for cooperation between Belgian courts and the newly established ICC and align the Belgian definitions of crimes with those in the ICC statute. They also recognize state immunity to the extent established by international law.

What about the case against Tommy Franks?

In May 2003, Iraqi victims alleging U.S. war crimes filed charges with the state prosecutor against U.S. Gen. Tommy Franks and other military officials. Before the prosecutor made a final decision as to whether to press charges, the Belgian government announced that, under the new amendments, it was referring the case to the United States. The victims are seeking to appeal this decision.

What happened to the case against Ariel Sharon?

In the case brought against Ariel Sharon, former Israeli General Amos Yaron and others for their alleged role in the 1982 Sabra and Shatilla massacres, the Belgian Court of Cassation, ruling in February 2003, dismissed the charges against Sharon pursuant to principles of customary international law regarding immunity for sitting heads of government, but held that the case could go forward against Yaron. In June 2003, an appeals court rejected the defense's other arguments against admissibility. The case will thus go forward unless the government steps in.

What other cases now stand a good chance of being tried before the Belgian courts?

The case against Chad's exiled former president, Hissène Habré, may be the next in line after a Belgian judge and police team visited Chad last year to investigate the charges. The Belgian government has said that it will not seek to block this case. Habré lives in exile in Senegal, where he was indicted two years ago on charges of torture and crimes against humanity before the Senegalese courts ruled that he could not be tried there. The president of Senegal has agreed to hold Habré pending an extradition request from Belgium and the government of Chad has told Belgium that it would waive any immunity that Habré might seek to assert. More information on this case can be found at <http://www.hrw.org/justice/habre>.

Why is the Belgian law needed now that the International Criminal Court (ICC) has come into being?

The establishment of a permanent ICC is among the most significant events in the global fight against impunity. The ICC has jurisdiction over cases of genocide, war crimes, and crimes against humanity when national courts are unable or unwilling to prosecute. While the ICC will be a powerful tool to attack the worst atrocities, it will not eliminate the need to bring prosecutions based on universal jurisdiction. First, the ICC's jurisdiction is prospective only - addressing crimes committed after its statute went into effect on July 1, 2002. Second, the ICC will only be able to handle a limited number of cases. Finally, the ICC suffers from a jurisdictional regime which requires that, in the absence of a Security Council referral, either the state on whose territory the crimes were committed or the state of nationality of the accused be a party to the statute or consent to jurisdiction. Many future atrocities may thus be outside of the court's reach.

