**Evolution of the Belgian Law on Universal Jurisdiction**

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https://www.icrc.org/casebook/doc/case-study/belgium-universal-jurisdiction-case-study.htm

**Legislation**

The Law on “universal jurisdiction”, as it is called, was adopted on 16 June 1993 and addressed the repression of grave breaches of the Geneva Conventions of 12 August  1949 and the Additional Protocols I and II of 8 June 1977. Its scope of application was limited to war crimes, whether they are committed during an international or non-international conflict. To that extent, the Law broke new ground, in particular with regard to the international instruments that it set out to implement. It will be recalled that the notion of war crimes was restricted in the Geneva Conventions and the Additional Protocols to international armed conflicts.

That Law is also an innovation under Belgian law in that it enables legal action to be taken against an accused party regardless of whether the latter is on Belgian territory or not. This possibility is not referred to explicitly in the Law but appears in the parliamentary proceedings of the Senate on 30 April 1991.

On the basis of that Law, an investigation concerning Augusto Pinochet was initiated on 1 November 1998 [available in French on <http://competenceuniverselle.files.wordpress.com/2011/07/loi-du-5-aout-2003-texte-de-loi1.pdf>].

The Law was submitted to an initial revision on 10 February 1999. That revision made two important amendments: on the one hand, the universal jurisdiction of Belgian judges was extended to the crime of genocide and to crimes against humanity and, on the other hand, the perpetrators of criminal breaches were to cease to be able to plead any kind of immunity.

There were few lawsuits based on that Law at first. The trial at the crown court in Brussels in April 2001 of four persons accused of having taken part in the Rwandan genocide and their conviction led to an increase in the number of lawsuits [details on this process available on <http://trial-ch.org/>]. These were aimed at, among others, Fidel Castro, Saddam Hussein, Laurent Gbagbo, Hisséne Habré and Ariel Sharon. The charges proffered against Arial Sharon on 1 and 18 June 2001 gave rise to strong criticism from the Israeli authorities.

The Law, as amended in 1999, was again amended four years later. On 14 February 2002 Belgium was ordered by the International Court of Justice to annul the international warrant for the arrest of Abdulaye Yerodia when he was the Minister for Foreign Affairs of the Democratic Republic of Congo on the grounds that the warrant for arrest took no account of the immunity granted to heads of State and to the Foreign Affairs Ministers in office. [See [ICJ, Democratic Republic of the Congo v. Belgium](https://www.icrc.org/casebook/doc/case-study/icj-rdc-belgium-case-study.htm)] Following that ruling, a bill which took account of the adoption of the Statute of the International Criminal Court and which provided for bringing the Law into line with the existing rules of international law, was presented to the Senate on 18 July 2002. The text was approved by the Senate on 30 January 2003 and forwarded to the Chamber on 5 February 2003.

However, bringing charges against US political and military leaders, particularly after the intervention of the United States in Iraq, was to trigger increasingly harsh reactions by those leaders, which culminated in threats to move NATO headquarters and finally led to the 1993 Act being repealed. The first charge, relating to acts committed during the first Gulf War, was brought against George Bush Senior and former members of his team in March 2003. Colin Powell, who was targeted by that charge, considered that the Belgian Act presented a “serious problem”, particularly given the fact that NATO headquarters was in Brussels and issued a warning to Belgium.

Consequently, the bill was amended and stipulated that, in situations that are not linked to Belgium, the public prosecutor could refuse to instruct the examining magistrate in certain cases. Moreover, the bill also stipulated that the Justice Minister had the authority to issue a negative injunction, which in explicit terms meant the possibility of referring the charge back to the State on whose territory the breach was committed or of which the perpetrator is a national. The Law was passed on 23 April 2003.

Moreover, following the two rulings by the Chamber of Indictment in Brussels which deemed the lawsuits against Abdulaye Yerodia and against Ariel Sharon and Amos Yaron to be inadmissible on the grounds that those persons were not present on Belgian territory, a second bill interpreting the 1993 Law, according to which legal proceedings could be instituted regardless of the location of the accused, was also presented. That second bill was never adopted because the rulings were subsequently nullified by the Court of Cassation.

It was not to prevent a charge being lodged against US General Tommy Franks on 14 May 2003. On 13 May 2003, at a press conference at NATO headquarters, General Richard Myers, who had been informed by a journalist that the charge was about to be lodged, said that he considered the situation “very serious” and that it could have a significant bearing on where NATO held its meetings.

At the meeting of NATO defence ministers one month later, and despite the lawsuit filed against General Franks having been referred back to the United States in accordance with the new procedure, Donald Rumsfeld, after having called the lawsuit “absurd” and refusing to recognize Belgium’s authority to try American leaders, confronted it with its responsibilities as the country in which NATO has its headquarters and made the American contribution to the building of a new headquarters subject to assurance that Belgium would again be a “hospitable place for NATO to conduct its business”, while at the same time acknowledging that Belgium’s sovereignty had to be respected. [Speech available on <http://www.nato.int/docu/speech/2003/s030612g.htm>].

At the end of June 2003, the Belgium Minister for Foreign Affairs announced his intention to amend the Law again as soon as the new government had been formed.

The Law of 16 June 1993 was repealed on 5 August 2003. The Criminal Code, the Act of 17 April 1878 containing the first part of the Code of Criminal Procedure and the Code of Criminal Procedure were thus amended to allow serious breaches of international humanitarian law to be prosecuted. However, in the absence of connections authorizing the Belgian courts to take cognizance of it, the charge is upheld only if a rule of international law, deriving from treaty or customary law which is binding on Belgium, requires it to prosecute perpetrators of the breaches specified therein.

If universal jurisdiction really does subsist under Belgium law, its bearing is far more restricted (given that in the current state of international law, universal jurisdiction in absentia can no longer be exercised) and with an extensive system for filtering the charges (provided that the system set up at the time of the previous amendment of the law is upheld). According to several hypotheses, the federal prosecutor may thus close the case without further action, particularly if he considers that an international court or another national court has “more justified” competence. The only requirements are the competence and “guarantees of impartiality and independence” of the court. Consequently, the closure of the case is not conditional upon the existence of effective proceedings before that court. It should be noted that the legislator has chosen vague terms to define the qualities to be demonstrated by a court whose competence would take precedence over Belgian universal competence.

That sovereign assessment by the federal prosecutor is evidently a political safeguard to prevent Belgium from finding itself in another a difficult diplomatic situation.