

WRITTEN QUESTION E-2063/02
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to the Commission

Subject: Harmonised jurisdiction on genocide, crimes against humanity and war crimes

On 14 February 2002, the International Court of Justice in the Hague ruled that incumbent ministers of foreign affairs are immune from prosecution for crimes under international law, including crimes against humanity and war crimes. The ruling impeded Belgium from putting on trial, because of his immunity, a former foreign minister of the Democratic Republic of the Congo for allegedly killing hundreds of Tutsis in 1998.

I fear that such a view on immunity represents a step backward in the campaign for universal justice and also undermines the International Criminal Court's jurisdiction.

The immunity of State officials has already been excluded from international treaties, including the Genocide Convention. They are also excluded by the Statutes of the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the Rome Statute of the International Criminal Court, which is in force as of 1 July 2002. All of these instruments explicitly provide that a person's official capacity is not a bar to prosecution on the grounds of genocide, crimes against humanity and war crimes. The decision of 14 February is disappointing because it effectively shields some state officials from prosecution for atrocities. Government ministers who commit crimes against humanity, genocide, or war crimes are not likely to be prosecuted at home, and the ruling means they will enjoy impunity abroad as well.

The existing Belgian anti-atrocities law is part of a growing trend towards accountability for the worst international crimes. Prosecutions based on universal jurisdiction, such as are now possible under the Belgian law, constitute essential parts 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.

On a global scale, there exists a clear trend in the international community to internationalise the grave violations of humanitarian law, in line with the recently established International Criminal Court, which will be able to investigate and prosecute those individuals (including state leaders) accused of crimes against humanity, genocide and war crimes when national courts are unwilling or unable to do so, and which expressly rejects any substantive or jurisdictional immunities. This trend is supported by the willingness of some countries, like Belgium, to try foreign leaders accused of human rights violations under their national jurisdiction. Two clear examples of this tendency are the arrest of former Chilean dictator Augusto Pinochet in the United Kingdom (1999), together with the discussion of a Belgian appeals court on whether its judges should hear a war crimes case against Israeli Prime Minister Ariel Sharon.

In view of this growing trend and backed by the general principles of law, which were recognised by the UN General Assembly in the 1973 'Principles of international cooperation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity', what does the European Commission think about the possibility of harmonising juridical practices in EU Member States? What does it think about strengthening judicial cooperation relating to cases of immunity when it comes to crimes against humanity, following the lead taken by Belgium?