

Act of 5 August 2003 on serious violations of international humanitarian law

CHAPTER I GENERAL PROVISION

Article 1

The present Act regulates a matter referred to in article 77 of the Constitution.

CHAPTER II AMENDMENTS TO THE CRIMINAL CODE

Article 2

Article 43 quater, paragraph 1(a) of the Criminal Code, added pursuant to the Act of 19 December 2002, shall be replaced by the following:

“(a) either of one of more of the criminal offences referred to in:

- (1) article 136 sexies and article 136 septies, (1);
- (2) articles 246 to 251 and article 323;
- (3) articles 504 bis and 504 ter and article 323;
- (4) article 2 bis, paragraph 1 of the Act of 24 February 1921 on trafficking in poisonous substances, sedatives and narcotics, and disinfection and antiseptic agents, insofar as the offences relate to the import, export, manufacture, sale or putting on sale of substances referred to in the present article, or in paragraph 3(b) or paragraph 4(b) of the same Act;
- (5) article 77 bis, paragraphs 2 or 3 of the Act of 15 December 1980 on the admission to the territory, residence, establishment and deportation of aliens;
- (6) article 10, paragraph 1(2) of the Act of 15 July 1985 on the administration to animals of substances with a hormonal, anti-hormonal, beta-andrenergic or production stimulating effect.”

Article 3

In article 70 of the same Code the words “No offence has been committed” shall be replaced by “No offence has been committed except where the offences as defined in Book II, Title I bis are concerned”.

Article 4

In article 91 of the same Code the words “Penalties under the criminal law shall be subject to a statute of limitations” shall be replaced by “Penalties under the criminal law shall be subject to a statute of limitations with the exception of the penalties imposed for the offences defined in articles 136 bis, 136 ter and 136 quater”.

Article 5

A Title I bis shall be inserted after Title I in Book II of the same Code which shall contain articles 136 bis to 136 octies and shall read as follows:

“Title I bis – Serious violations of international humanitarian law”

Article 6

An article 136 bis shall be inserted into Title I bis of Book II of the same Code and shall read as follows:

“Article 136 bis

The crime of genocide, as defined below, whether committed in peacetime or wartime, constitutes a crime under international law and shall be punished in accordance with the

provisions of this Title. In accordance with the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, and without prejudice to the provisions of criminal law applicable to offences of negligence, the crime of genocide shall mean any of the acts listed below, committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (1) killing members of the group;
- (2) causing serious bodily or mental harm to members of the group;
- (3) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (4) imposing measures intended to prevent births within the group;
- (5) forcibly transferring children of the group to another group.”

Article 7

An article 136 ter shall be inserted into the same Title and shall read as follows:

“Article 136 ter

Crimes against humanity, as defined below, whether committed in peacetime or wartime, constitute crimes under international law and shall be punished in accordance with the provisions of this Title. In accordance with the Statute of the International Criminal Court, crimes against humanity shall mean any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, and with knowledge of the attack:

- (1) murder;
- (2) extermination;
- (3) enslavement;
- (4) deportation or forcible transfer of population;
- (5) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (6) torture;
- (7) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (8) persecution of any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in articles 136 bis, 136 ter and 136 quater;
- (9) enforced disappearance of persons;
- (10) the crime of apartheid;
- (11) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”

Article 8

An article 136 quater shall be inserted into the same Title and shall read as follows:

“Article 136 quater

1. The war crimes enumerated below, as referred to in the Geneva Conventions of 12 August 1949 and in their First and Second Additional Protocols, adopted at Geneva on 8 June 1977, in the laws and customs applicable to armed conflict, as defined in article 2 of the Geneva Conventions of 12 August 1949, in article 1 of the First and Second Additional Protocols to

these Conventions, adopted in Geneva on 8 June 1977, and in article 8, paragraph 2(f) of the Statute of the International Criminal Court, constitute crimes under international law and shall be punished in accordance with the provisions of this Title, without prejudice to the provisions of criminal law applicable to offences of negligence, if by the action or omission such crimes infringe the protection guaranteed to persons and property under the said Conventions, Protocols, laws and customs:

- (1) wilful killing;
- (2) torture or inhuman treatment, including biological experiments;
- (3) wilfully causing great suffering, or serious injury to body or health;
- (4) committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence constituting a grave breach of the Geneva Conventions or a grave breach of article 3 common to these Conventions;
- (5) committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (6) compelling a prisoner of war or a civilian protected by the Convention relative to the Protection of Civilian Persons in Time of War, or a person protected in the same way by the First and Second Additional Protocols to the Geneva Conventions of 12 August 1949 to serve in the armed forces or groups of a hostile Power or an adverse party;
- (7) conscripting or enlisting children under the age of fifteen years into armed forces or groups or making them participate actively in hostilities;
- (8) depriving a prisoner of war or a civilian protected by the Convention relative to the Protection of Civilian Persons in Time of War, or a person protected in the same way by the First and Second Additional Protocols to the Geneva Conventions of 12 August 1949 of the rights of fair and regular trial in accordance with the provisions of the said instruments;
- (9) unlawful deportation, transfer, removal or confinement of a civilian protected by the Convention relative to the Protection of Civilian Persons in Time of War, or a person protected in the same way by the First and Second Additional Protocols to the Geneva Conventions of 12 August 1949;
- (10) intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
- (11) taking of hostages;
- (12) destroying or seizing the enemy's property in the event of an international armed conflict or of an opponent in the event of an armed conflict not of an international character, unless such destruction or seizure be imperatively demanded by military necessity;
- (13) extensive destruction and appropriation of property, not justified by military necessity as accepted by international law and carried out unlawfully and wantonly;
- (14) intentionally launching attacks against civilian objects, that is, objects which are not military objectives;
- (15) intentionally launching attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems designated by international humanitarian law in conformity with international law;
- (16) utilizing the presence of a civilian or other person enjoying protection under international humanitarian law to render certain points, areas or military forces immune from military operations;
- (17) intentionally launching attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance

- with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (18) unlawful acts or omissions that may endanger the health or physical or mental integrity of persons protected by international humanitarian law, particularly any medical procedure that is not justified by the state of health of the person concerned or is not in accordance with generally accepted medical standards;
 - (19) except where justified under the conditions laid down in (18), any act consisting of subjecting the persons referred to in (18), even with their consent, to physical mutilation, medical or scientific experiments, or the removal of organs or tissue for transplantation, unless the procedure concerned consists of the donation of blood for transfusion or of skin for transplantation undertaken voluntarily, without compulsion and for therapeutic aims;
 - (20) intentionally directing attacks against the civilian population or against individual civilians not taking direct part in hostilities;
 - (21) intentionally launching attacks against places where the sick and wounded are collected, provided they are not military objectives;
 - (22) intentionally launching an attack in the knowledge that such an attack will cause loss of life, or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be excessive in relation to the concrete and direct military advantage anticipated, without prejudice to the criminal nature of the attack whose harmful effects, even if proportionate to the anticipated military advantage, would be incompatible with the principles of international law arising from established custom, humanitarian principles and the demands of the public conscience;
 - (23) launching an attack on works or installations containing dangerous forces, in the knowledge that such an attack will cause loss of life, or injury to civilians or damage to civilian objects which would be excessive in relation to the concrete and direct military advantage anticipated, without prejudice to the criminal nature of the attack whose harmful effects, even if proportionate to the anticipated military advantage, would be incompatible with the principles of international law arising from established custom, humanitarian principles and the demands of the public conscience;
 - (24) attacking or bombarding, by whatever means, demilitarised zones, or towns, villages, dwellings or buildings which are undefended and which are not military objectives;
 - (25) pillaging a town or place, even when taken by assault;
 - (26) attacking a person in the knowledge that he or she is *hors de combat* if such an attack results in death or injury;
 - (27) killing or wounding treacherously individuals belonging to the hostile nation or army, or a combatant adversary;
 - (28) declaring that no quarter will be given;
 - (29) making improper use of the emblems of the Red Cross or Red Crescent or other protective emblems recognised under international humanitarian law, resulting in death or serious personal injury;
 - (30) making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, resulting in death or serious personal injury;
 - (31) the transfer, directly or indirectly, of parts of the occupying power's civilian population into the territory it occupies in the case of an international armed conflict, or the transfer of part of the occupying authority's civilian population in the case of an armed conflict that is not of an international nature;
 - (32) delaying, without justification, the repatriation of prisoners of war or civilians;

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- (33) practising apartheid or other inhuman or degrading practices based on race discrimination and constituting an attack on human dignity;
- (34) directing attacks against clearly recognisable historic monuments, works of art or places of worship constituting the spiritual or cultural heritage of a people and on which special protection has been conferred through a special arrangement, where there is no evidence of a breach by the hostile party of the prohibition on using such objects to support military activity and provided such objects are not situated in the immediate vicinity of military objectives;
- (35) intentionally launching attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments and hospitals, provided they are not military objectives;
- (36) employing poison or poisoned weapons;
- (37) employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- (38) employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
- (39) declaring abolished, suspended or inadmissible in a court of law the rights and actions of the persons of the hostile party;
- (40) employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to the Statute of the International Criminal Court.

2. Grave breaches of article 3 common to the Geneva Conventions of 12 August 1949 committed in the case of an armed conflict as defined in the said article 3 and enumerated below, if by the act or omission these violations infringe the protection guaranteed to persons under the said Conventions constitute crimes under international law and shall be punished in accordance with the provisions of this Title, without prejudice to provisions of criminal law applicable to offences of negligence:

- (1) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (2) committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (3) taking of hostages;
- (4) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

3 The serious violations as defined in article 15 of the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, adopted at The Hague on 26 March 1999, and as enumerated below, when committed in the case of an armed conflict as defined in article 18, paragraphs 1 and 2 of the Hague Convention of 1954 and in article 22 of the said Protocol, if these violations infringe, by their act or omission, the protection of property guaranteed by this Convention and Protocol, constitute crimes under international law and shall be punished in accordance with the provisions of this Title, without prejudice to the provisions of criminal law applicable to offences of negligence:

- (1) making cultural property under enhanced protection the object of attack;
- (2) utilising cultural property under enhanced protection or its immediate surroundings in support of a military action;
- (3) destroying or appropriating cultural property protected by the Convention and Protocol on a large scale.”

Article 9

An article 136 quinquies shall be inserted into the same Title and shall read as follows:

“Article 136 quinquies

The offences enumerated in articles 136 bis and 136 ter shall be punishable by life imprisonment.

The offences enumerated in article 136 quater, paragraph 1(1), (2), (15), (17), (20) to (24), and (26) to (28) shall be punishable by life imprisonment.

The offences enumerated under (3), (4), (10), (16), (19), (36) to (38) and (40) in the same paragraph of the same article shall be punishable by a term of imprisonment of twenty to thirty years. They shall be punishable by life imprisonment if they led to the death of one or more persons.

The offences enumerated under (12) to (14) and (25) in the same paragraph of the same article shall be punishable by a term of imprisonment of fifteen to twenty years. The same offence, and the offences referred to under (29) and (30) in the same paragraph of the same article shall be punishable by a term of imprisonment of twenty to thirty years if they led to an apparently incurable illness, a permanent incapacity for personal work, complete loss of the use of an organ or a serious mutilation. They shall be punishable by life imprisonment if they led to the death of one or more persons.

The offences enumerated under (6) to (9), (11) and (31) in the same paragraph of the same article shall be punishable by a term of imprisonment of ten to fifteen years. If the aggravating circumstances referred to in the previous paragraph apply, they shall be subject, depending on the case in question, to the penalties prescribed therein.

The offences enumerated under (5) and (32) to (35) in the same paragraph of the same article shall be punishable by a term of imprisonment of ten to fifteen years, subject to the application of heavier penalties in the case of serious violations of human dignity.

The offence referred to under (18) in the same paragraph of the same article shall be punishable by a term of imprisonment of ten to fifteen years. If the offence led to serious consequences for public health it shall be punishable by a term of imprisonment of fifteen to twenty years.

The offence referred to under (39) in the same paragraph of the same article shall be punishable by a term of imprisonment of ten to fifteen years.

The offence referred to in article 136 quater, paragraph 2(1) shall be punishable by life imprisonment.

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The offences enumerated under (2) and (4) in the same paragraph of the same article shall be punishable by a term of imprisonment of ten to fifteen years, subject to the application of heavier penalties in the case of serious violations of human dignity.

The offence referred to under (3) in the same paragraph of the same article shall be punishable by a term of imprisonment of ten to fifteen years. The same offence shall be punishable by a term of imprisonment of twenty to thirty years if it led to an apparently incurable illness, a permanent incapacity for personal work, complete loss of the use of an organ or a serious mutilation. It shall be punishable by life imprisonment if it led to the death of one or more persons.

The offences enumerated in article 136 quater, paragraph 3(1) to (3) shall be punishable by a term of imprisonment of fifteen to twenty years.”

Article 10

An article 136 sexies shall be inserted into the same Title and shall read as follows:

“Article 136 sexies

Whosoever manufactures, possesses or transports an instrument or device or any other object, erects a structure or alters an existing structure, in the knowledge that the instrument, device, object, structure or alteration is intended for the commission or to assist the commission of one of the offences referred to in articles 136 bis, 136 ter or 136 quater, shall be liable to the same penalty as that laid down for the offence whose commission they have enabled or facilitated.”

Article 11

An article 136 septies shall be inserted into the same Title and shall read as follows:

“Article 136 septies

The following shall be subject to the penalty laid down for the completed offence:

- (1) an order, even if it is not put into effect, to commit one of the offences laid down in articles 136 bis, 136 ter and 136 quater;
- (2) a proposal or offer to commit such an offence and the acceptance of such a proposal or offer;
- (3) incitement of another to commit such an offence, even without practical effect;
- (4) participation, within the meaning of articles 66 and 67, in such an offence, even without practical effect;
- (5) a failure, on the part of those with knowledge of an order given to commit such an offence, or of facts constituting the beginning of such commission, and who were in a position to prevent such commission or to bring it to an end, to do everything in their power to prevent or end the commission of the offence;
- (6) an attempt, within the meaning of articles 51 to 53, to commit such an offence.”

Article 12

An article 136 octies shall be inserted into the same Title and shall read as follows:

“Article 136 octies

1. Notwithstanding the exceptions referred to in article 136 quater, paragraph 1(18), (22) and (23), no interest, nor any political, military or national necessity can justify the offences

defined in articles 136 bis, 136 ter, 136 quater, 136 sexies and 136 septies, even when committed as a form of reprisal.

2. The fact that the accused acted on the orders of his or her government or of a superior does not exempt him or her from responsibility if in the given circumstances the order could clearly have entailed the commission of one of the offences referred to in articles 136 bis, 136 ter and 136 quater.

CHAPTER III AMENDMENTS TO THE ACT OF 17 APRIL 1878 CONTAINING THE PRELIMINARY TITLE OF THE CODE OF CRIMINAL PROCEDURE

Article 13

An article 1 bis shall be inserted into Chapter I of the preliminary Title of the Code of Criminal Procedure and shall read as follows:

“Article 1 bis

1. In accordance with international law, the following persons are immune from criminal prosecution:

- foreign heads of state, heads of government and ministers of foreign affairs, while in office, and other persons whose immunity is recognised by international law;
- persons who enjoy full or partial immunity on the grounds of a treaty which is binding on Belgium.

2. In accordance with international law, no coercive measures related to criminal proceedings may be taken during their stay against any person who has been officially invited to enter the territory of the Kingdom by the Belgian authorities or by an international organisation established in Belgium with which Belgium has concluded a Headquarters Agreement.”

Article 14

The following amendments shall be made to article 6 of the same preliminary Title, which was amended by the Acts of 4 August 1914, 12 July 1932 and 4 April 2001:

- (1) the words “any Belgian national” shall be replaced by “any Belgian national or person whose principal place of residence is in the Kingdom”;
- (2) a point (1) bis shall be inserted between points (1) and (2) and shall read as follows:

“(1) bis. a serious violation of international humanitarian law as defined in Book II, Title I bis of the Criminal Code.”

Article 15

In article 7, paragraph 1 of the same preliminary Title, which was replaced by the Act of 16 March 1964, the words “any Belgian national” shall be replaced by “any Belgian national or person whose principal place of residence is in the Kingdom”.

Article 16

The following amendments shall be made to article 10 of the same preliminary Title, which was amended by the Acts of 12 and 19 July 1932, 2 April 1948, 12 July 1984 and 13 March 2002:

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- (1) the first sentence of the article shall be replaced by “Except in the cases referred to in articles 6 and 7, paragraph 1, a foreign national may be prosecuted in Belgium for an offence committed outside the territory of the Kingdom:”.
- (2) a new point (1) bis shall be inserted between (1) and (2) and shall read as follows:

“(1) bis. a serious violation of international humanitarian law as defined in Book II, Title I bis of the Criminal Code, committed against a person who, at the time of commission, was a Belgian national or a person whose actual, habitual and legal place of residence had been in Belgium for a period of at least three years.

A prosecution, including the criminal investigation, may only be instituted on the application of the federal prosecutor who assesses any complaints. There shall be no legal remedy against such a decision.

If the federal prosecutor has been seized of a complaint in application of the preceding paragraphs, he or she shall request the investigating judge to institute an investigation of the complaint, unless:

- (1) the complaint is manifestly unfounded; or
- (2) the facts referred to in the complaint do not correspond with the definition of the offences laid down in Book II, Title I bis of the Criminal Code; or
- (3) the complaint cannot lead to an admissible prosecution; or
- (4) it emerges from the specific circumstances of the case that, in the interests of the proper administration of justice and in the light of Belgium’s international obligations, the matter should be heard by the international courts, or by the courts of the place where the crimes were committed, or the courts of the State of which the accused is a national or the place where he or she may be found, provided the court in question meets the requirements of independence, impartiality and fairness, as can be established in particular from the relevant international instruments binding Belgium and the State in question.

If the federal prosecutor decides not to prosecute a case, he or she shall notify the Minister of Justice, making reference to the points, as listed in the preceding paragraph, on which this decision is based.

If the decision not to prosecute is solely based on points (3) and (4) above, or solely on point (4) above, and relates to crimes committed after 30 June 2002, the Minister of Justice shall inform the International Criminal Court of these crimes.”

Article 17

In article 12, paragraph 1 of the same preliminary Title, which was amended by the Act of 14 July 1951, the words “article 6(1) and (2), article 10(1) and (2)” shall be replaced by the words “article 6(1), (1) bis and (2), article 10(1), (1) bis and (2) and article 12 bis.”

Article 18

The following amendments shall be made to article 12 bis of the same preliminary Title, inserted by the Act of 17 April 1986 and replaced by the Act of 18 July 2001:

- (1) The words “The Belgian courts shall be competent” shall be replaced by the words “Except in the cases referred to in articles 6 to 11, the Belgian courts shall also be competent”.

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- (2) The words “international treaty” shall be replaced by “a rule of international treaty or customary law”.
- (3) The words “this treaty” shall be replaced by the words “this rule”.
- (4) The following paragraphs shall be added to the article:

“A prosecution, including the criminal investigation, may only be instituted on the application of the federal prosecutor who assesses any complaints. There shall be no legal remedy against such a decision.

If the federal prosecutor has been seized of a complaint in application of the preceding paragraphs, he or she shall request the investigating judge to institute an investigation of the complaint, except if:

- (1) the complaint is manifestly unfounded; or
- (2) the facts referred to in the complaint do not correspond with the definition of the offences laid down in Book II, Title I bis of the Criminal Code; or
- (3) the complaint cannot lead to an admissible prosecution; or
- (4) it emerges from the specific circumstances of the case that, in the interests of the proper administration of justice and in the light of Belgium’s international obligations, the matter should be heard by the international courts, or by the courts of the place where the crimes were committed, or the courts of the State of which the accused is a national or the place where he or she may be found, provided the court in question meets the requirements of independence, impartiality and fairness, as can be established in particular from the relevant international instruments binding Belgium and the State in question.

If the federal prosecutor decides not to prosecute a case, he or she shall notify the Minister of Justice, making reference to the points, as listed in the preceding paragraph, on which this decision is based.

If the decision not to prosecute is solely based on points (3) and (4) above, or solely on point (4) above, and relates to crimes committed after 30 June 2002, the Minister of Justice shall inform the International Criminal Court of these crimes.”

Article 19

In article 21, paragraph 1 of the same preliminary Title, which was replaced by the Act of 30 May 1961 and amended by the Act of 24 December 1993, the words “Prosecution shall be subject to a statute of limitations” shall be replaced by “With the exception of the offences defined in articles 136 bis, 136 ter and 136 quater of the Criminal Code, prosecution shall be subject to a statute of limitations”.

CHAPTER IV AMENDMENTS TO THE CODE OF CRIMINAL PROCEDURE

Article 20

In article 86 bis, paragraph 2 of the Code of Criminal Procedure, which was inserted by the Act of 8 April 2002, the words “or a contravention of the Act of 16 June 1993 on the punishment of serious violations of international humanitarian law” shall be deleted.

Article 21

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In article 86 quinquies of the same Code, which was inserted by the Act of 8 April 2002, the words “or a contravention of the Act of 16 June 1993 on the punishment of serious violations of international humanitarian law” shall be deleted.

Article 22

The following amendments shall be made to article 90 ter, paragraph 2 of the same Code, which was inserted by the Act of 30 June 1994 and amended by the Acts of 13 April 1995, 10 June 1998, 28 November 2000, 29 November and 11 December 2001, 7 July 2002 and 6 January 2003:

- (1) (1) bis to (1) sexies shall be replaced by the following provisions:
 - “(1) bis Articles 136 bis, 136 ter, 136 quater, 136 sexies and 136 septies of the same Code;
 - (1) ter Article 210 bis of the same Code;
 - (1) quater Articles 246, 247, 248, 249, 250 and 251 of the same Code;
 - (1) quinquies Article 259 bis of the same Code;
 - (1) sexies Article 314 bis of the same Code;
 - (1) septies Articles 324 bis and 324 ter of the same Code.”
- (2) Point (21) shall be repealed.

Article 23

In article 104, paragraph 2 of the same Code, which was inserted by the Act of 7 July 2002, the words “an offence as referred to in article 90 ter, paragraphs 2, 3 or 4, an offence committed as part of a criminal organisation as referred to in article 324 bis of the Criminal Code or an offence as referred to in the Act of 16 June 1993 on the punishment of serious violations of international humanitarian law” shall be replaced by “an offence as referred to in article 90 ter, paragraphs 2, 3 or 4, or an offence committed as part of a criminal organisation as referred to in article 324 bis of the Criminal Code”.

CHAPTER V AMENDMENTS TO THE JUDICIAL CODE

Article 24

The words following the fourth dash in article 144 ter, paragraph 1(1) of the Judicial Code, which was inserted by the Act of 26 June 2001, shall be deleted.

Article 25

In the same Code, a new article 144 quater shall take the place of the old article 144 quarter. The latter shall become article 144 sexies. The new article 144 quater shall read as follows:

“Article 144 quarter

Only the federal prosecutor shall be competent to conduct a prosecution in respect of the offences referred to in Book II, Title I bis of the Criminal Code.”

CHAPTER VI MISCELLANEOUS PROVISIONS

Article 26

In article 77 of the Act of 10 April 2003 governing the abolition of military courts in peacetime and their maintenance in wartime, the words “sanctioned by the Act of 16 June

1993 on the punishment of serious violations of international humanitarian law” shall be replaced by “referred to in Book II, Title I bis of the Criminal Code”.

Article 27

The Act of 16 June 1993 on the punishment of serious violations of international humanitarian law, which was amended by the Acts of 10 February 1999, 10 April and 23 April 2003, shall be repealed.

Article 28

Without prejudice to the application of the Act of 22 March 1996 on the recognition of the International Tribunal for the former Yugoslavia and the International Tribunal for Rwanda, and cooperation with those tribunals, the Minister of Justice may acquaint the International Criminal Court with the facts relative to offences specified in Book II, Title I bis of the Criminal Code which have been referred to the judicial authorities, following a decision discussed by the Cabinet.

Once the Prosecutor has given the notification provided for in article 18, paragraph 1 of the Statute in respect to the facts brought to the attention of the Court by the Minister of Justice, the Court of Cassation, on application by the Principal Crown Prosecutor, shall pronounce the deferral of the Belgian court seized of the same facts.

Where the Court, at the request of the Minister of Justice, after the deferral of the Belgian court, states that the Prosecutor of the Court has decided not to produce an indictment or that the Court has not confirmed an indictment, or has deemed it does not have jurisdiction or that the case is inadmissible, the Belgian courts shall once again have jurisdiction.

CHAPTER VII TRANSITIONAL PROVISIONS AND ENTRY INTO FORCE

Article 29

1. Without prejudice to the provisions of paragraph 2, this Act shall enter into force on the date of its publication in the *Moniteur belge* (official gazette).
2. Article 136 quater, paragraph 3, and the last paragraph of article 136 quinquies of the Criminal Code, which was inserted by articles 8 and 9 respectively of this Act, shall enter into force on the date on which the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, adopted at The Hague on 26 March 1999, enters into force for Belgium.
3. Cases into which a criminal investigation is underway on the date of the entry into force of this Act and which relate to offences referred to in Book II, Title I bis of the Criminal Code shall be dismissed by the federal prosecutor within thirty days of the entry into force of this Act if they do not meet the criteria laid down in articles 6(1) bis, 10(1) bis and (12) bis of the preliminary Title of the Code of Criminal Procedure.

Cases into which a preliminary judicial investigation is underway on the date of the entry into force of this Act and which relate to offences referred to in Book II, Title I bis of the Criminal Code shall be transferred by the federal prosecutor to the Principal Crown Prosecutor at the Court of Cassation within thirty days of the entry into force of this Act, with the exception of cases regarding which an investigative measure has taken place as at the date on which this Act enters into force, on the proviso that either at least one plaintiff was of Belgian nationality at the time that proceedings were instituted, or at least one suspected perpetrator has his or her principal residence in Belgium on the date of entry into force of this Act.

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Within the same time limit, the federal prosecutor shall send a report on each of the cases transferred, indicating the absence of conformity with the criteria laid down in articles 6(1) bis, 10(1) bis and (12) bis of the preliminary Title of the Code of Criminal Procedure.

Within fifteen days of the transfer of such a case, the Principal Crown Prosecutor shall apply to the Court of Cassation for the deferral of the case from the jurisdiction of the Belgian courts within thirty days of hearing the federal prosecutor, and, at their request, the plaintiffs and those against whom charges have been brought by the investigating judge seized of the case. The Court of Cassation shall give judgment on the basis of the criteria laid down in articles 6(1) bis, 10(1) bis and (12) bis of the preliminary Title of the Code of Criminal Procedure.

The Belgian courts shall remain competent to hear cases that have not been dismissed pursuant to the first paragraph of paragraph 3 of this article, or whose withdrawal from Belgian jurisdiction has not been pronounced pursuant to the preceding paragraph.

We promulgate this Act and order that it be stamped with the seal of State and be published in the *Moniteur belge*.

Done at Galaxidi, 5 August 2003

Albert

By the King:

For the Prime Minister (absent):

L. Michel

Deputy Prime Minister and Minister of Foreign Affairs

For the Deputy Prime Minister and Minister of Justice (absent):

J. Van de Lanotte

Deputy Prime Minister and Minister for the Budget and Public Enterprises

Stamped with the seal of State:

For the Minister of Justice (absent)

J. Vande Lanotte

Deputy Prime Minister and Minister for the Budget and Public Enterprises

Note

(1) Extraordinary session 2003

House of Representatives

Parliamentary Papers – Bill No. 51-103/1 – Amendments No. 51-103/2 – Report No. 51-103/3 – Text adopted in committee No. 51-103/4 – Text adopted in plenary session and sent to the Senate No. 51-103/5.

Parliamentary Proceedings – Full report: 29 July 2003.

Senate

Parliamentary Papers – Bill received from House of Representatives No. 3-136/1 – Amendments No. 3-136/2 – Report No. 3-136/3 – Amendments No. 3-136/4 – Text adopted in plenary session No. 3-136/5

Belgium Law on Serious Violations, 2003

Parliamentary Proceedings – Proceedings of the Senate: 1 August 2003.