

War crimes case against General Franks: Interview with Belgian lawyer Jan Fermon

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Richard Tyler spoke with the Belgian lawyer Jan Fermon, who filed the war crimes lawsuit against US General Tommy Franks last week.

What is the basis of the case?

The legal basis is, on the one hand, the four Geneva Conventions, then on the other hand the Belgian law of universal jurisdiction of 1993. This foresees that anyone can have recourse to Belgian justice if he or she is the victim of war crimes, crimes of genocide or crimes against humanity. A combination of these two forms the basis of this case.

How many specific charges are there, and could you describe the most serious ones?

One of the main groups of charges is that US forces fired at and bombed civilian targets. We are not speaking here about what is generally called “collateral damage.” It doesn’t involve people who were simply too close to a military target. It involves deliberate attacks on civilians, as distinct from what is generally called collateral damage.

Another charge is that US forces attacked the press, and specifically the offices of Al Jazeera. The case clearly shows this was a deliberate attack. There were several attacks on press offices and on the Palestine Hotel, where journalists were staying. It was a coordinated attack on the press. The attack on the Al Jazeera offices was carried out by a tank-buster plane; it was very deliberate and specifically aimed at the Al Jazeera offices.

What do you think about the government’s intervention to try to quash the case?

It would be illegal to do so. The law as it now stands says very clearly that the Belgian government can only send the case to the court of the country of origin of the crime (i.e., the US) if the country of origin recognises the crime aimed at by the lawsuit. A problem is that part of the lawsuit is based on the additional protocols

to the Geneva Convention, which have not been ratified by the US. That means that part of the legal basis on which we base the lawsuit simply does not exist in the US. Therefore, it would be illegal in that situation to send the case to the US courts.

Secondly, it is a requirement of the law of universal jurisdiction that all parties, the victims and the perpetrators, should be able to receive a fair trial in the country where the case is referred. We think this presents a big problem with the US courts for several reasons. It would be a military court. Also, if you look at the pressure the US is putting on the Belgian government, it is clear the US executive is trying to influence the Belgian courts through the Belgian government. If you look at an American court and judge, then it is clear the same type of pressure would be used.

It is clear that Iraqi civilian victims complaining about US military action, and more specifically about the way the military command handled the US military action, could not get a fair trial in a US court at this time.

Does the law of universal jurisdiction permit Belgium to send the case to an international court, such as the International Criminal Tribunal at The Hague?

Yes, but only under the condition that the countries involved, and particularly of the perpetrator, in this case the US, has ratified the statutes of the International Criminal Court. And that is not the case in America.

What do you think will happen next?

I think the Belgian government will try to refer the case to the US courts, since it is clear the government intends to capitulate to US pressure. We will fight this by all legal means in the Belgian courts.

How would you respond to accusations that the case is a “political abuse” of the universal

jurisdiction law? Or that you are taking on the case for political reasons?

Most of those making this accusation have not read the lawsuit. They are making a general comment, without knowing what specific crimes are detailed in the case. This is rather a peculiar way to handle such a problem.

We are talking about crimes committed in the course of a war, and a war is always a highly politically sensitive question. So in this regard, yes, you could say it is a political case. But all the court cases related to international events like war or international terrorism are political in that way.

The problem is to find some way to get accountability and justice for the victims, that is the main aim of the lawsuit.



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