

DOCUMENTING AND JUDGING INTERNATIONAL CRIMES IN THE BELGIAN
JUDICIAL ARCHIVES (1914-2014):
DIGITIZATION CHALLENGES AND POSSIBILITIES

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Summary

This paper presents a digital database project that seeks to identify, to describe and to digitize Belgian judicial archives related to war crimes, crimes against humanity and genocide. It focuses on the records produced by Belgian jurisdictions in the contexts of post-conflict processes from 1914 to 2014. In particular, three specific moments are taken into account: the attempts to judge German war criminals in the 1920s and 1940s following the First and the Second World War and the occupation of Belgium; and the experiences with universal jurisdiction and international judicial cooperation through the 1990s. Created by diverse judicial bodies (criminal, assizes or military courts), these records are intrinsically international. Firstly by their contents and goals, namely by aiming to judge international crimes in the aftermath of war and genocide and to contribute to international law. Secondly, by the specific international context that forms the background to the development of these judicial processes. This is why the project seeks to integrate these records into a dynamic, interconnected and international archival environment, and to contribute to the International Criminal Court database project, therefore valorizing these collections beyond Belgian boundaries through web-based consultation.

The paper builds on current research developed within the Interuniversity Attraction Pole “Justice and Populations: The Belgian experience in international perspective, 1795-2015”¹ and on a research proposal co-authored with Professor Pieter Lagrou (Université Libre de Bruxelles). Therefore, it seeks to discuss a “work in progress”, with its objectives, challenges and possible perspectives.

Key words: Judicial archives; digital humanities; Belgian jurisprudence; war crimes; crimes against humanity.

Introduction

The central aim of this project is to integrate specific Belgian judicial records into a wider and interconnected archival context. More precisely, it seeks to cover the complete set of court records related to the judgment of international crimes in Belgium from 1914 to 2014. The purpose is to design an online tool that will allow the description and the disclosure of these judicial records, in particular through digitization and extended research possibilities. The possibility to connect this tool to the “Legal Tools” project of the International Criminal Court (ICC) is currently explored.

The Belgian National Archives hold very rich and numerous collections related to the documentation and the judgment of war crimes, crimes against humanity and genocide. The project focuses on three particular chronological moments: the aftermaths of the two World Wars (1918-1926; 1945-1952) and the development of international judicial cooperation since the nineties (for example: the four ‘Rwanda’ trials: 2001, 2005, 2007, 2009). These post-conflict records include very diverse types of sources, ranging from investigations and testimonies to jurisprudence. Through their identification, description and digitization, the aim is to design a tool that will allow for interdisciplinary research, including among others history, legal research or anthropology.

Presenting this “work in progress” at the ICA 2014 International Conference is important both in terms of concrete archival challenges and of the transnational dimension of the project. I would therefore like to thank the organizers for having accepted this paper proposal.

The project, started in January 2014, draws on the expertise of researchers involved in the ‘Interuniversity Attraction Pole’ – including the Belgian National Archives – and of the Research Unit ‘Modern and Contemporary Worlds’ and the ‘Center for International Law’ at the Université Libre de Bruxelles (ULB). Furthermore, my PhD research experience into the International Criminal Tribunal for Rwanda’s digital records participates in the designing of this archival tool. Finally, the project also benefits from the expertise of the International Research and Documentation Centre for War Crimes Trials at the Philipps Universität in Marburg.

What is the archival legacy of the judgment of international crimes in Belgium from 1914 to 2014? How can these records be described? How can an international archival context offer new perspectives for these collections? These are some of the questions this paper seeks to address. The first part presents the historical context of the records collections. The second part outlines the methodology, detailing the judicial and non-judicial data, the database framework and challenges.

1914-2014: a historical overview of an extensive archival legacy

Who is judged? Who is judging? And, where is the trial held? These are crucial questions that have obtained very different answers in the judicial experiences conducted all along the Twentieth Century. As a result, diverse and sometimes contentious political responses to international crises have produced a variety of documentary and judicial legacies. The Belgian case in itself offers an interesting ground to explore the elaboration of justice in the aftermath of war and genocide. Furthermore, by its specific location and history, close connections can also be established between the Belgian case and contemporary proceedings managed by France, Great Britain or the United States, and, more recently, international criminal courts. Indeed, from what historian Peter Maguire calls “episodic histories” (Maguire, 2001, p. 6) before the Second World War, to the increasing number of international and national trials judging international crimes in more recent years, a vast record has been produced and preserved.

In the aftermath of the First World War, several documentation processes have been developed. Almost as soon as the war started, Belgium set up an inquiry commission to collect documents and testimonies on the violation of the rules of war in Belgium (*Commission d'enquête sur la violation des règles du droit des gens, des lois et des coutumes de la guerre en Belgique*). Several reports were published during the war, four volumes were published in 1922 and the Commission continued to work until 1926 (the archives are held at the State Archives). Participating in the Peace Conference in Paris, Belgian delegates also were part of an international Commission on the responsibilities of the war and sanctions (Belgian Ministry of Foreign Affairs archives²). In this context, while no international court was set up to judge German war criminals, and while the Leipzig trials in 1921 failed to act upon the Belgian indictments, Belgian war councils held hundreds of trials *in absentia* in 1925 (Gerd Hankel, 2003; John Horne and Alan Kramer, 2001; Pieter Lagrou, 2013). From 1919 to 1924, several trials of Germans have been held before civil, criminal and military courts and demand further exploration for precise identification of the cases. The vast majority of trial records that have been identified at this stage are related to the trials *in absentia* of German war criminals by Belgian military courts in 1925. This record collection would represent around 170 cases, but this number might reach around 300 cases (Jules Wolf, 1946). Beside trial files, archives of the provincial public prosecutor's departments related to these inquiries and to the preparation of the Leipzig trials (15 cases) could be included, but have to be identified. Finally, the possible integration of the archives of the inquiry commission and of the "Guerre 1914-1918" records of the Ministry of Foreign Affairs would offer a broader context to these judicial files (these archives also include materials related to the judgments *in absentia*, see endnote 3).

During and after World War II, the national and international judgment of war criminals has been prepared and debated by a variety of actors (Maxime Brébant, 2014; Peter Maguire, 2001; Bradley F. Smith, 1981; Marie-Anne Weisers, 2014). In Belgium, 37 trials, involving 103 accused were held between 1948 and 1952 (Pieter Lagrou, 2013; Marie-Anne Weisers, 2014). These records have been produced by the Belgian military jurisdictions (AA1882-G-5-42-1). An inquiry commission (*Commission d'enquête concernant la violation du droit des peuples, des lois et usages de la guerre*) was also established in Belgium for the crimes committed during the Second World War. The inquiry commission archives are held at the Centre for Historical Research and Documentation on War and Contemporary Society (CEGESOMA).

Between 2001 and 2009, Belgium held four "Rwanda" trials (8 defendants), putting into practice its 1993 law on universal jurisdiction (Damien Vandermeersch and Philippe Meire, 2011)³. Taking the Rwanda proceedings as a starting point – but not limiting the research to these cases – the project will offer an insight into Belgian international judicial cooperation. Decisions, indictments, transcriptions of proceedings (when available⁴) and jurisprudence will have to be identified. The Rwanda case study offers an interesting example of today's circulation of judicial records and of the fragmentation of the judgment of international crimes in the wake of the Tutsi genocide of 1994. Indeed, several international (International Criminal Tribunal for Rwanda) and national jurisdictions have judged the 1994 genocide (such as Belgium, France, Germany, Switzerland, Sweden...). Finally, here too, an inquiry commission was set up and the Belgian Senate issued a report in 1997 on the events in Rwanda in 1994.

Methodology

The project can schematically be divided in three phases. Firstly, it requests a precise identification of the existing records and a selection of the relevant archives. The competent jurisdictions, the cases that have been brought to court and the records produced in these contexts will be identified. Secondly, these archives will be described according to international archival standards. Alongside this description phase, the tool to research (database) and to access (web-based) the records will be designed. Indeed, the aim is not to massively digitize files without prior description, but rather to offer the possibility to research the record through very diverse entries (see database framework below). Finally, the files will be digitized and made available through the Belgian National Archives website and through the “Legal Tools”⁵ database of the ICC. Integrating the metadata and the archival files to the ICC database would connect these sources beyond the Belgian perimeter. Indeed, not only does the ICC collect its proper jurisprudence, but it also focuses on “international(ised) criminal decisions”, “human rights decisions”, the United Nations War Crimes Commission archives, or, central to this project: “National cases involving core international crimes”⁶.

Although some finding aids do exist, the vast majority of these Belgian judicial files lack proper filing and classification, two aspects that the proposed database will overcome, with the integration of the records into a dynamic, interconnected and international archival environment. Recent finding aids and a digitization project have been developed around these sources but without offering web-based consultation or detailed research tools (Drossens 2010; Picron 2013; the CEGESOMA project⁷). The proposed project aims to participate in and to complement recent developments in the archival management of judicial records in Belgium and to fit into existing international judicial databases. There are indeed numerous online databases created by the various international criminal tribunals such as the Tribunals for the former Yugoslavia, Rwanda, Cambodia, Sierra Leone or the International Criminal Court (with distinct archival repositories)⁸. Very few, however, offer crossed research possibilities and present detailed descriptions of the digitized files, which sometimes makes research difficult. Beside these initiatives, various projects supported by research centers or archival institutions offer online consultation of records of “historical” trials such as the Nuremberg or the Eichmann trials (Nuremberg trials project – Harvard; Avalon Project – Yale; Nizkor Project; Yad Vashem). All these initiatives form the stimulating context in which this project is developed and offer models and examples of archival management for judicial records.

The specificity of this project is to propose a detailed description of the digital archive and to build on concrete research on these sources. Therefore, three sets of documents will be considered for the entire period: pre-trial files, trial files (structured by case/defendant) and jurisprudence/case law, mostly unpublished. Taking into consideration the complete variety of trial files during the identification phase, the description of the records will be designed in connection with existing methodologies (ICC database and metadata) on the one hand, and with the specific needs of interdisciplinary uses of such trial files on the other hand. Indeed, the project relies on the hypothesis that micro-level multidisciplinary approaches to judicial archives help us understanding how trials are constructed, how documents are circulated and how jurisprudence is drafted and used. The database will respond to these methodological concerns by focusing on primary sources, often of heterogeneous nature and origin, and by building up the database by case/defendant (see database framework below).

The possibility to implement Optical Character Recognition (OCR) technology, including for handwritten documents (using ICR – Intelligent Character Recognition), could be explored and might increase research functions.

Judicial Data

These judicial records are held at the State Archives and at the *Palais de Justice*, except for the more recent period. The college of General Prosecutors and the respective provincial General Prosecutors are competent to deliver consultation authorizations for the majority of the files.

Concretely, the following data will be considered:

- *Date range*: 1918 to 1924.

Description: Various judicial proceedings have involved German defendants before military, civil and criminal Belgian jurisdictions. The exact number of cases will have to be assessed.

Creator: Cours d'assises, Conseils de guerre et Conseils de guerre en campagne, Tribunaux correctionnels.

- *Date range*: 1920-1921.

Description: In 1920, Belgium prepared and transmitted 15 cases to the Leipzig Court in Germany. The court dismissed the Belgian evidence, but the project will seek the inclusion into the database of the archives of the Public Prosecutor's Department related to these cases and German rogatory letters. These files have to be identified.

Creator: Public Prosecutor's Office in Brussels.

- *Date range*: 1924-1925.

Description: In 1925, Belgian War Councils have held numerous trials *in absentia* of German war criminals. In May 1927, this specific set of files related to German defendants has been handed over to the Military Court by the War Councils. These archives include the following proceedings files: inquiry items, correspondence, various documents (such as warrants of arrests, opening speeches, closing arguments), hearing files and decisions (jurisprudence). Around 180 defendants (single and multiple accused trials) have already been identified, and this number might reach over 300.

Creator: Auditorat Militaire – Conseils de guerre du Hainaut, de Namur, Antwerp, du Brabant, de Ghent et de Liège.

- *Date range*: 1940 to 1952.

Description: 37 trials involving German War Criminals (single and multiple accused trials) held in Belgium, totalizing 103 defendants and involving hundreds of witnesses. The collections of records include a great variety of documents: inquiry items (witness statements, defendant's interrogations, indictments, diverse reports), various documents (warrants of arrests, correspondence, opening speeches, closing arguments), hearing files (transcriptions, exhibits) and decisions (jurisprudence).

Creator: Auditorat militaire (AA1882-G-5-41) – Jugements par les Conseils de guerre de Liège, Bruxelles, Ghent, Antwerp and Namur, by the Cour militaire of Brussels and of Liège and by the Cour de Cassation.

- *Date range*: 1940 to 1948.

Description: Preparation files for the Nuremberg trials and participation in the United Nations War Crimes Commissions will be considered (Records held at Cegesoma, AA120).

- *Date range*: 1914-2014.

Description: Several collections of records related to war crimes, German prisoners, judicial decision-making in war crimes cases, issued by Public Prosecutor's offices will be integrated.

Creator: Public Prosecutor's offices among others of Ghent, Dendermonde, Antwerp.

- *Date range*: 1993-2014.

Description: The four Belgian "Rwanda" trials (2001, 2005, 2007 and 2009) will form one of the core materials of this third crucial chronological episode with the inclusion of decisions, indictments, transcriptions of proceedings (when available) and jurisprudence.

Furthermore, sources related to the contribution of Belgium (through international judicial cooperation) to the trials before the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former-Yugoslavia (ICTY) might also be analyzed and integrated.

Creator: Public Prosecutor, Assizes court.

Non-judicial data

Beside the central aim to digitize judicial files, non-judicial archives are also part of the project. Indeed, for each chronological angle (1914-1926; 1940-1952; 1993-2014) an inquiry commission has been set up. Not only are the archives of these commissions related to the facts considered in court, but they also have strong links with the judicial documentation processes in terms of testimonies or actors. The political and legal preparation of these trials could also be integrated in a later stage.

— *Date range:* 1914-1926; 1945-1946; 1996-1997.

Description: Archives of the three inquiry commissions subsequent to the two World Wars and to the Tutsi genocide in Rwanda in 1994.

Creator: The two “Commission d'enquête sur la violation des règles du droit des gens, des lois et des coutumes de la guerre”; Commission d'enquête parlementaire concernant les événements du Rwanda⁹.

Database framework and challenges

The global structure of the database will be based on a division by cases and defendants¹⁰. This corresponds to the practice of contemporary international tribunals and to the classical filing of judicial records. In the case of multiple defendants, the defendants will be linked to the general trial file. This methodology will allow a precise overview of existing archives and produce a “tree view” of the different cases by period and jurisdictions.

This part of the project has not started yet, as is the case with the digitization process, but possible entries (metadata) will be: Judicial actors (prosecutors, defense lawyers, judges, witnesses, victims, defendants and investigators), situation descriptions (places where the crimes have been committed, dates), defendant's profiles, legal qualifications, nature and origins of exhibits, jurisdictions.

While offering a structured approach of these trial files, the tool to be designed will allow crossed research, through the connection of the three levels of identified data (jurisprudence, trial and pre-trial files). These research possibilities will always allow the identification of the original archival record group. Finally, the research tool will be multilingual, according to the international nature of the records and to the aim to make them available for international researchers. English, French, German and Dutch will be the main languages used for the description of the archival files. Wrong and/or diverse spellings of names in the original sources will be a challenge for the metadata descriptions.

Dealing with access policies

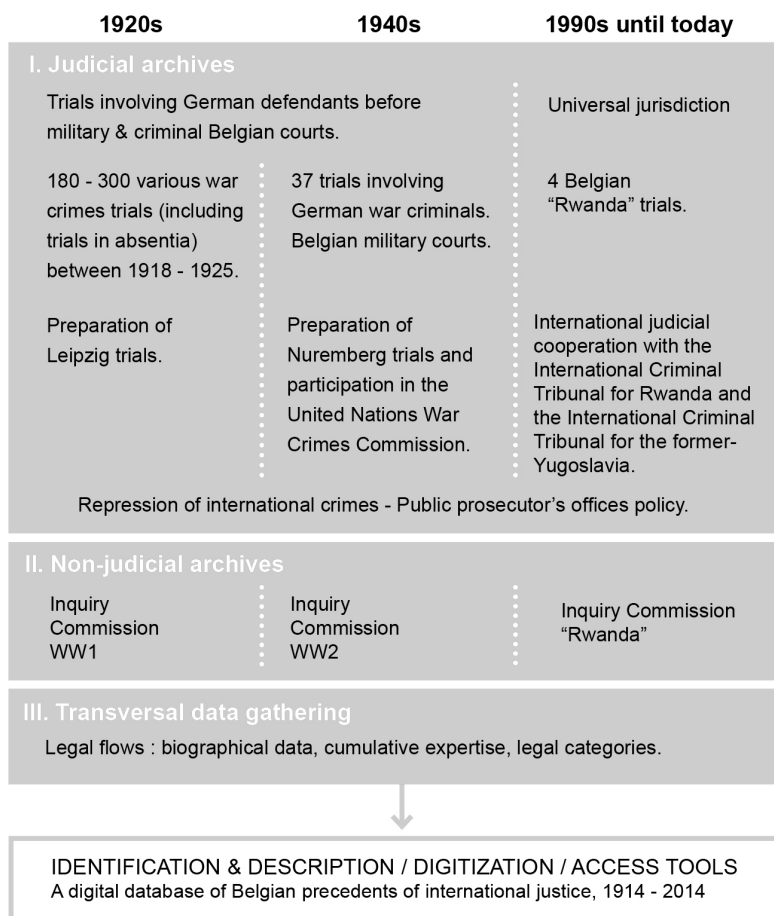
In accordance with the contemporary practice of the international tribunals, the project seeks full disclosure of unpublished jurisprudence and of public trial proceedings through digitization and web-based consultation. The digitization will offer increased consultation possibilities for foreign researchers.

However, since the vast majority of the sources are judicial records, a special attention must be

given to differentiated access policies. Almost all court proceedings have been public, but other, related documents, especially witness accounts during the investigation, do raise the issue of the protection of privacy. For instance, most Belgian trial records are subject to an authorization by the College of General Prosecutors or by the competent territorial General Prosecutors. The database should take into account the necessity to provide differentiated access to researchers, especially to pre-trial files, as is the case for “paper-based” consultation. Any such access would only be granted after a contractual agreement signed by the researcher on the authorized use of the files and privacy protection, possibly by anonymizing the names of individuals for non-public information.

Conclusion

The following diagram summarizes the data to be collected.



The database and the inventory of these records will spring from and develop upon a dialogue between archival needs and research perspectives. Since the late eighties, micro-historical approaches of war crimes trials have produced a rich historiography on societies in the aftermath of mass violence, memory processes and post-conflict narratives. Historical landmark studies (such as the work of Henry Rousso 1987, Christopher R. Browning 1992, Rebecca Wittmann 2005, Yuma Totani 2008, Hilary Earl 2009 or Insa Meinen 2009) have built on little known or neglected judicial archival collections. At the same time, this post-conflict research

area has also witnessed digitization projects and the creation of documentary networks that underline the international and interdisciplinary interest in such sources.

More specifically, the integration into a broader and international archival environment (the ICC “Legal Tools” database) not only responds to technical and archival considerations (life-span, diffusion), but also to the necessity to take the “international” content of these records into account. Moreover, web-based access to a digital database of these trial files would transform this much under-used heritage into a precious resource for international lawyers, historians and social scientists. Finally, the implementation of an interdisciplinary approach is crucial to the fulfillment of another aim of the project: to be interesting both for academic and non-academic users.

The project’s main objectives are conservation and diffusion and, it is hoped, transnational and transversal research on these sources. Trial files offer an original insight into the facts, as they have been investigated, reported by witnesses and judged, but also on the history of “transitional” justice and of political reconstruction. Working at the trial scale for the elaboration of the database both respects the original organization of the archives and offers a “tree-view” of the available sources. At the same time, research entries will allow for crossed thematic and chronological research. Although three chronological moments have been chosen to structure the research and description phases, the project does not seek to isolate these three “aftermaths”, but rather to open potential perspectives on continuities and discontinuities during these periods.

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² See Ministry of Foreign Affairs Archives, "Guerre 1914-1918" collection, Cl. B.324, files i to ix and xviii. The files xii to xviii contain archives related to the judgments *in absentia* of Germans (listed as "coupables de guerre") in Belgium.

³ The first trial involved four accused (A.H., J. K., V. N. and C. M., 2001), the second trial was held in 2005 (E.N. and S.N.), the third in 2007 (B. N.), the fourth in 2009 (E.N.).

⁴ The first Belgian "Rwanda trial" has been (audio)recorded by the Non Governmental Organization "RCN Justice et Démocratie". The transcriptions of the proceedings have been published online by the same NGO. <http://assisesrwanda2001.org> (last accessed on 1st September 2014) The Belgian trials were held before Assizes Courts, where there are no official written transcripts. However, apart from the recordings of the first trial, large parts of the last trial in 2009 have been filmed.

⁵ The Legal Tools are a database focusing on international criminal law and providing for national as well as international sources related to international crimes. See for further information: <http://www.legal-tools.org/en/what-are-the-icc-legal-tools/> (last accessed on 1st September 2014)

⁶ See for further information the "Current status of the Database" of the ICC.

<http://www.legal-tools.org/en/current-status-of-the-database/> (last accessed on 1st September 2014)

⁷ The Centre for Historical Research and Documentation on War and Contemporary Society (CEGESOMA) has developed a project of contemporary judicial digitized records with the creation of a digital finding aid including five trials (1947-1951) of German officials during the occupation in Belgium during World War II, but does not allow web-based consultation.

http://www.cegesoma.be/cms/archivage2013_en.php?article=660&truv=falkenhausen (last accessed on 1st September 2014)

⁸ These institutions have, since the creation of their online databases, offered almost "real-time" (although not exhaustive) access to unclassified materials such as court transcripts, exhibits, indictments and judgments or motions. See for example for the International Criminal Tribunal for Rwanda: <http://trim.unict.org>. For the International Criminal Tribunal for the former Yugoslavia: <http://icr.icty.org/default.aspx> (last accessed on 1st September 2014)

⁹ Commission d'enquête sur la violation des règles du droit des gens, des lois et des coutumes de la guerre et Belgique (1947), *Les crimes de guerre commis sous l'occupation de la Belgique, 1940-1945* (Archives held at Cegesoma); Commission d'enquête sur la violation des règles du droit des gens, des lois et des coutumes de la guerre et Belgique (1922), *Rapport et documents d'enquête. Rapports sur les attentats commis par les troupes allemandes pendant l'invasion et l'occupation de la Belgique*, vol. 1, Bruxelles: Albert De Wit, Veuve Larcier, Georges Thone; Commission d'enquête sur la violation des règles du droit des gens, des lois et des coutumes de la guerre et Belgique (1922), *Rapports et documents d'enquête*, 4 vol., Bruxelles: Albert De Wit, Veuve Larcier, Georges Thone (Archives held at Belgian State Archives); Sénat de Belgique (1997), *Commission d'enquête parlementaire concernant les événements du Rwanda*, 2 vol., Bruxelles (611/7-15) (Archives held at the Belgian Senate).

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