Interview: Michael Verhaeghe

Some Think Violence Is Solution to Sharon Case

Mr. Verhaeghe is a Belgian attorney representing the victims of the 1982 massacre at the Sabra and Chatila Palestinian refugee camps in Lebanon. He was interviewed by Dean Andromidas in late January.

EIR: Belgium is one of the few countries whose judicial system allows for cases dealing with war crimes, crimes against humanity, and genocide, to come before its courts. The attorneys of Israeli Prime Minister Ariel Sharon have challenged Belgium's right to do so. Could you please explain the history of this law and its justification?

Verhaeghe: Originally, there was a proposition to incorporate the principles of the Geneva Conventions. And this original proposition was raised already in 1963, on the 27th of May, to be more precise (I know that, because that was the day I was born). Originally, the only purpose was to incorporate, or to put into Belgian law, the necessary legislation to comply with the obligations of the Geneva Conventions. Over time, it was modified. At the end of the 1980s and the beginning of the 1990s, it evolved from a mere incorporation of the Geneva Conventions toward a more comprehensive proposition of law, in which the Belgian legislature wanted to go further than just those obligations, to where the legislature wanted to install a real universal jurisdiction. Because of the fact that you only deal with cases when people, having committed these crimes, come into your territory, it is not yet universal jurisdiction in the proper sense of the term. Universal jurisdiction means that the only link that you need to have between your national legal system and the crime, is humanity as such. That is, where you come to the definition of crimes against humanity, where it is obvious that the only link is the fact of belonging to the same humanity, which enables a state to exercise its jurisdiction for any case which is a breach of that fundamental international law on crimes against humanity.

Then, the legislature, in 1999—and this was the most significant change, in the same line as the adoption of the statute of Rome with respect to the international criminal court—two more incriminations were added to the law, one for crimes against humanity and one for genocide. So, the legislature pointed out very clearly that it was not inventing a new type of crime, but that it was a law that merely stated the pre-existence of crimes against humanity, and genocide in particular, and that it was legislation to enable the Belgian courts to take such cases upon themselves.

So this was the evolution, more or less, from the original idea of applying the Geneva Conventions, toward a proper, a full universal jurisdiction for the three types of crimes we commonly denominate as crimes against international humanitarian law.

EIR: Is Belgium unique in this respect, or have other countries incorporated the Geneva Conventions and universal jurisdiction into their legal systems?

Verhaeghe: Other countries have also adopted legislation, and some countries did not even wait so long to incorporate. For instance, the genocide law of Israel of 1950: This was not linked to the Geneva Convention, because the Geneva Convention only deals with war crimes and grave breaches of the Geneva Conventions themselves. So, you already had legislation in Israel dealing with genocide in which the same principle, in fact, applied.

This was developed, in a very interesting fashion, by the Belgian Attorney General last week during our hearing here in Brussels, where he compared both laws—the 1950 Israeli law, and the 1993, as amended in 1999, Belgian law. Because the 1950 law of Israel deals with crimes committed during the Second World War, that is, before its formal entry into force, it dealt with crimes committed not on the territory of Israel, of course, but everywhere in Europe, and crimes committed not against Israeli nationals, for the simple reason that Israel didn't exist, and that the link there was that the people in Israel belong to the same Jewish people. And there is no fundamental philosophical or fundamental legal difference of a link made through belonging to the same Jewish people, or the link made through belonging to humanity as a whole.

Apart from that, which is, of course, of direct importance for our case, you have a lot of other countries that have adopted legislation, or have made declarations, with respect to the Geneva Conventions, such as France, saying that it was not necessary to make special legislation with respect to the Geneva Conventions. Belgium is definitely not the only country that has taken this step of adopting its legislation, but it is one of the only countries that went so far in adopting not just the Geneva Conventions' obligations, but also international humanitarian criminal law as a whole, with crimes against humanity and genocide with the scope of jurisdiction on a universal basis.

EIR: Could you please review the history of this case against Sharon?

Verhaeghe: The case started before I got involved. The case stated with an historian, Mrs. Rosemary Sayigh, doing investigative work in Lebanon, already three or four years ago. She interviewed many of the survivors of the massacre—who are still living in Sabra and Chatila, by the way—and she compiled a kind of group testimony, which struck her, in the sense

that there were new elements popping up that had not been known before: such as witnesses referring to an Israeli presence in the camps during the massacres, which is still a contested point. Later, there was also the matter of people who "disappeared," people who were abducted—taken away and never seen again. Rosemary Sayigh has made a full study of the issue on the basis of these testimonies, and was in contact with Chibli Mallat, who is now our colleague on the legal team.

After that, Chibli, in a bit of a coincidence with Sharon's announced visit to Belgium, started to look in the direction of Belgium. And, since he is a professor at the University of Beirut, as well as in London and the United States, he started to interrogate his contacts. He got my name through a common friend at the university here in Belgium, and I got into contact with him that way. And hearing his input, from the factual side, I was immediately interested in bringing in the experience I already have in respect to the law of 1993. I filed a complaint in 1998 against [former Chilean dictator, Gen. Augusto] Pinochet, and I am also involved in a case involving Guatemala, where two Flemish priests were murdered—one murdered and one abducted in the beginning of the 1980s. So these parts came together, and I also asked my colleague and friend Luc Walleyn to step in, to form our team of three lawyers.

We hesitated a bit in respect to filing the complaint in Belgium, because it would put a lot of pressure on Belgian law. Nonetheless, after reading all the testimony of our clients, and looking at the fact that the massacre at Sabra and Chatila is comparable with Srebrenica [Bosnia] and other dark pages in the history of the last half-century, we decided to go ahead, notwithstanding the fact that one of the accused was Ariel Sharon, Prime Minister of Israel. So, we definitely knew what we were getting into. It took a lot of consideration before filing the complaint, which we did on the 18th of June. This immediately led to a lot of pressure both politically and legally.

We first had the intervention of Mrs. Hirsch as a lawyer for the State of Israel, which I felt reflected the cold water fear to go into the legal debate on the part of the State of Israel and Mr. Sharon. But they initially went in as the State of Israel, whereas, of course, the complaint was not at all directed against the State of Israel. So, it was still a political reflex, and not the legal debate we wanted. But this political reflex was eventually taken away with the intervention of the lawyers for Sharon and the withdrawal of Mrs. Hirsch, for the State of Israel has no longer intervened. So we eventually got down to where we wanted to have this case, basically: a legal debate on the basis of legal principles, where every argument is valid and can be advanced in a legal debate. Now we will see what the Court of Appeals will do, following the complete examination of all the arguments developed for and against Mr. Sharon.

EIR: Could you discuss the arguments put forward by Mr. Sharon's lawyers, and your counter-arguments?

Verhaeghe: Well, basically, there are three main arguments referred to last Wednesday [Jan. 23] in court. We received a written submission from Mr. Sharon's lawyer beforehand, and he received our submission beforehand. There are basically three arguments.

The first concerns immunity. Mr. Sharon is saying that he enjoys immunity, and that this is a rule of international law—not just international customary law, but also enforced international law, obligatory international law, and that even the Belgian law states there is to be given immunity for these types of cases.

Our reply to this argument is basically very simple: We said, the Belgian law is clear. It says no immunity can be raised against prosecution or investigation of crimes against humanity, genocide, and war crimes (Article 5, Paragraph 3 of the 1993 statute law). Furthermore, as a clear law, it can only be superseded by either another law, which is not the case, or an international convention such as the international convention for diplomatic officers, but there is no such convention in respect to immunity for heads of state. There isn't even an agreement on the level of international law that it is an absolute rule. On the contrary, even the French Supreme Court very recently ruled in a case that was launched against [Libyan President Muammar] Mr. Qaddafi, that although it is a principle—the principle of immunity for heads of state—that principle suffers exceptions in certain cases. Although they didn't specify it, it is obvious, that if there are exceptions, it therefore is not an absolute rule. And if it is not an absolute rule, one of the first exceptions that springs to mind is crimes against humanity, namely, because this exception has already been accepted in a number of cases. . . .

The second argument developed by the defense of Mr. Sharon was that he had already been judged by a commission that was presided over by Mr. Yitzhak Kahan, who was then-president of the Supreme Court of Israel. Kahan headed a three-member panel of commissioners who, under the 1968 Israeli law on inquiries, commissioned the famous Kahan Report on the massacres at Sabra and Chatila. That report stated that there was responsibility on the Israeli side, that it was personal, but indirect. It also ruled out active involvement of the Israeli Defense Forces in the massacre itself, which we contest. So, this Kahan Report was then used by the defense of Mr. Sharon as a kind of argument or shield against the inquiry here in Belgium, on the basis of the so-called principle of double jeopardy, that no one can be tried twice for the same offense.

We immediately reacted by saying that an inquiry commission like the Kahan commission is not the same as a court. Moreover, the Kahan commission made its decision on the basis of a political motivation and with a political use, and did not even have the power or authority to sanction anyone,

Lawyers' Statement on Hobeika Assassination

The following statement on the assassination of Elie Hobeika was issued by the attorneys representing the Palestinian victims of the Sabra and Chatila massacre. It is dated Jan. 24, 2002, and is signed by Luc Walleyn, Michael Verhaeghe, and Chibli Mallat.

The dramatic news which has just reached us from Lebanon this morning about the death of Mr. Elie Hobeika and his companions in a car-bomb attack has shocked us profoundly. Mr. Hobeika had expressed several times his wish to collaborate with the Belgian enquiry on the massacres of Sabra and Chatila. The determination was again reported widely on the eve of his assassination.

The elimination of a key protagonist, who had offered to assist with the enquiry, appears as an evident attempt to undermine the case, and reinforces the international campaign which seeks to prevent any examination before a neutral forum of a crime against humanity which has remained unpunished.

As lawyers for the victims, we firmly denounce this assassination. In closing our pleadings yesterday before the Court of Appeal, we repeated that the victims are engaged in a judicial procedure which jars with the tradition of violent settlement of the conflicts in the region. Those behind the assassination clearly follow the logic of war which seeks to prevent the pursuit of an alternative of non-violence, law, and justice.

but was merely to provide information to the government to allow that government to draw its conclusions from it, which it did. So it cannot be considered a judgment, and therefore it does not form a basis for a possible application of the double jeopardy rule. . . .

Now, they are not so much insisting on the Kahan Report as on the so-called decision of the Attorney General in Tel Aviv not to prosecute after the Kahan Report was issued. What they want to say with that is the fact—and they can only produce the fact, since there is no written document in respect to this—that the Attorney General did not commence prosecution after being given the Kahan Report. This is supposed to mean that the Attorney General implicitly decided not to make any prosecution, and since, under Israeli law, he is the only authority able to do so, this decision must be considered the same as a decision not to prosecute by a court, and therefore is also an obstacle to further prosecution. This argument, which at least clarifies the position of Mr. Sharon, is rather easy to refute.

Very recently, on the 9th of January this year, the Supreme Court of Belgium decided in a case—although a bit different, it was even stronger than this one—that the fact of being released without prosecution being commissioned, does not prevent a court from subsequently pursuing an inquiry or going over to prosecution and conviction. The 9th of January ruling of the Supreme Court was in fact the ruling in the case of the four Rwandese who were also prosecuted and tried on the basis of the 1993 statute law, and convicted in June of last year at the level of the Court of Appeals, by the court in Brussels. They were all four convicted of war crimes and of acts of genocide.

One of these convicted persons, Mr. Higaniro, had previously been released by the international tribunal of Rwanda. . . . Now, given the primacy of the international criminal tribunal there, which was set up by a United Nations Security Council resolution, over internal Belgian law, and given that it is an explicit decision—it was a decision by a court in writing—one can easily make the comparison with the argument developed by Mr. Sharon. Now, Mr. Sharon cannot even produce a written decision, and he can certainly not produce a written decision by a court. He explicitly states it is a written decision by the Attorney General. But in Israel, the Attorney General is not independent; he is part of the cabinet. He also consults the government, and he takes a seat within cabinet meetings. So, he is not a part of the judicial system. Second, he definitely is not a court, and third, it is under a national legislative system. It is not a system which would have primacy over our system. . . .

So, in this sense, we are very confident that the double jeopardy argument is now finished off with that Supreme Court ruling.

And then there is Mr. Sharon's third argument, that universal jurisdiction always implies a link with the country. Either by the presence of the perpetrator, or by the presence of the victim, or either by the fact that the country would be in any way connected to or interested in or actively involved in the conflict. With respect to that argument, we think that this is not truly in compliance with the very nature of universal jurisdiction. Coming back again to the comparison that was made by the Attorney General between the Belgian statute law of 1993 and the Israeli genocide law of 1950, indeed, the only link that is needed is the fact that we all belong to the same human race. Nothing more and nothing less. This is the order that has been violated if you talk about crimes against humanity. Since this is the order that is being violated, therefore it is possible for any organization of

human beings, such as the Belgian state or whatever, to take the prosecution, and possibly also the conviction, of these types of crimes into their own hands. So the argument of Mr. Sharon in this sense, on the philosophical and also the fundamental legal basis, we think does not hold. As far as the more formal legal discussion goes, there is no argument to interpret the law of 1993 in this sense. The law of 1993 states universal jurisdiction, without any condition. There is no condition put forward, and if the law does not put any condition forward, it is not up to the judges to restrain or to limit the law afterwards by filling in the conditions themselves. In this sense, also, we feel rather confident that there will not be a problem on that level.

But there is one point on which we could have a small delay. And that is a question the lawyer of Mr. Sharon wants to put before the Court of Arbitration in Belgium. This court can deal with some violations, or alleged violations of the Belgian Constitution. He wants to have the question asked and answered by this court, as to whether there is a possible discrimination between a Belgian minister and a minister of a foreign country, since Sharon is a Prime Minister and had been Defense Minister at the time of these events. Given the fact that a Belgian minister has what we call a priority of jurisdiction, has a kind of special treatment in that you need some authorizations by the House of Representatives, and that he is judged by another court than the court which is normally reserved for criminal cases or crimes against humanity.

We replied to this, saying that there is no need to ask such a question, inasmuch as the law of 1993 itself does not have any discriminating disposition. On the contrary, when excluding immunity, it excludes immunity for anyone. . . . But you never know that the question will be asked, and if that question is asked, it would mean that the Court of Arbitration will have to render a ruling also within the scope of this case. The Attorney General has gone along with the defense of Mr. Sharon insofar as he accepted one question only amongst the different questions that were proposed by Mr. Sharon, but insisting at the same time on the fact that this should not have any suspensive effect on the case itself, and the case itself should be continued without any further delay. We can see at a later point what the Arbitration Court will think of it, and only at that time should a decision be taken.

EIR: When will the Appeals Court make its decision?
Verhaeghe: This decision will be taken on March 6, and on all the other issues. Just a word on the procedure. It is a new procedure that was installed in 1998, mainly with the purpose of avoiding problems like these—with respect to jurisdiction, with respect to admissibility of a certain case—from popping up at the end of the investigation or at the trial itself. Let's posit the hypothesis that one of these reasons would be well-founded. Then, of course, it would be very embarrassing to see you have conducted an inquiry for a number of years, and put a lot of resources into it, and then see the case go down, when one could have taken the precaution of dealing with these kinds of arguments at the beginning of the case. And this was also the reason why the Attorney General wanted the court to take a decision on it. He wanted all of these arguments advanced by the State of Israel, and then taken up by Mr. Sharon's defense, to be brought before the court so they could be refuted and therefore allow the case to go on. So, it was to clear out the case of all these possible obstacles.

EIR: How far has the actual investigation gone?
Verhaeghe: The investigation had only started. For instance, coming back to Mr. Hobeika's situation [see accompanying article], it is unfortunate that the magistrate conducting the inquiry wanted to clear out all those big theoretical and philosophical questions first, before at least doing some kind of research on the case itself. If he had sent an invitation to Mr. Hobeika—as we had suggested to him in writing already in July of last year, including giving him the address and fax number of Mr. Hobeika—who knows that perhaps Mr. Hobeika would have given suit to that request of the magistrate and perhaps sent him documents or made some statements. Now he will no longer be able to do that, that is obvious.

EIR: Do you want to add anything to your official statement on the Hobeika assassination?
Verhaeghe: There is little to add. There is a lot of speculation. The only thing we feel, of course—and again, it is a feeling, and we have no evidence of it—is, that it is obvious that his assassination, in one way or another, is related to the case, related to the inquiry into Sabra and Chatila, even if it would be in an indirect fashion. For instance, someone might have feared that if Mr. Hobeika spoke in the case, he would have spoken of other cases and other secrets which it were better that he not say. There is much speculation, but we are convinced that in one way or another it is linked, it is related to the case, because two days before his assassination, Mr. Hobeika received two Belgian Senators, and expressed again his intention—if it is true or not, I don't know—to bring forward evidence in the Sabra and Chatila case and even his own declaration.

The basic line for us, remains. I spoke a while ago about the necessity of the legal logic stepping in. We went to great efforts to force the Israeli state to step into the legal logic, which eventually they did because we refused any debate that was political or diplomatic. So, we only accepted a legal debate, and eventually we got a legal debate. And now, with the violence popping up, and if indeed, as we feel, it is related to the case, this is the most sorry element. Now, we see that, apparently, some people think that violence instead of the rule of law could be a kind of solution to the case.