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Belgium Rethinks Its Prosecutorial Zeal

By RICHARD BERNSTEIN

BRUSSELS, March 28 — "The News from Absurdistan" was the headline on a commentary here the other day, written by Luc Van der Kelen, the chief editor of the Flemish newspaper Het Laatste Nieuws.

"A former president and the vice president are indicted for what happened during a war of liberation against a monstrous dictator who had invaded a small country," Mr. Van der Kelen wrote. "This is the totally absurd and inevitable consequence of grotesque legislation."

The former president to whom Mr. Van der Kelen was referring was George Bush, the father of President Bush, and the vice president was the current vice president of the United States, Dick Cheney. Both have been charged in Belgium with war crimes in connection with the bombing of a civilian shelter in Baghdad that killed 403 people in the Persian Gulf war of 1991.

The accusations were filed under a Belgian law that gives this small country "universal jurisdiction," to try the perpetrators of war crimes, crimes against humanity and genocide, even if there is no Belgian connection with the alleged crimes, the victims or perpetrators.

In fact, the effort to use the law against former President Bush, which provoked angry complaints from Secretary of State Colin L. Powell (who is also named in the suit), has now led to an abrupt change here. On Thursday, a parliamentary commission rewrote the law to insert "filters" that will essentially enable the government to dismiss the case against Mr. Bush.

"There will be enough changes to prevent all these ridiculous cases," Mr. Van der Kelen said in an interview. "Hopefully, we will be out of these problems."

Yet, pending a vote of the full Parliament on the changes in the law, the Belgian effort to make itself a place where the victimized of the world can get a hearing seems a case study in good intentions gone awry. It is also the story of a small country seeking a special moral role but, in the view now beginning to prevail, has overstepped the margins of good sense.

The Belgian law of universal jurisdiction was adopted in 1993, when the Parliament, horrified by mounting civil strife in Rwanda — a former Belgian colony — wanted to act against what the law called "grave violations of international human rights" wherever they occurred.

Other countries also have laws that enable them to reach beyond their borders when it comes to war crimes or crimes against humanity. Israeli law grants its authorities power to arrest and try those responsible for the Holocaust, as happened with Adolf Eichmann in 1961. In 1998, a Spanish magistrate relied on Spanish law and the international law of universal jurisdiction to seek the extradition of former Chilean dictator Augusto Pinochet from Britain, where he was living in exile. After holding Mr. Pinochet in prison for a year, a British court denied the demand for extradition and instead returned him to Chile.

But the Belgian law is unusual in that it requires no connection with Belgium at all for a case to be brought. In its first years, many people who had suffered grave abuses of human rights did come here to file their cases. Saddam Hussein was accused by Iraqi Kurds in the chemical attacks of Kurdish areas; exiled Cubans accused Fidel Castro of human rights violations. Israeli victims of suicide bombings filed suit against Yasir Arafat.

None of these suits meant very much in practical terms. The accused leaders ignored them, and Belgium clearly has no capacity to pursue anybody indicted of war crimes. But supporters of the law of universal jurisdiction felt there was an important element of symbolism.

"We shouldn't forget that people who have undergone extraordinary suffering have been able to find a country in the world capable of hearing their pain and following up on their demands, even if it is in a purely theoretical way," Eric David, a professor of law and a strong advocate of the Belgian law told a French-language newspaper.

In 2001, a group of Lebanese Palestinians filed a suit against Ariel Sharon, charging him with war crimes because of Israel's failure to prevent the 1982 Sabra and Shatila massacres in Israeli-occupied Lebanon. Israel protested vigorously, and Belgians questioned what business they had subjecting any Israeli to prosecution.

Israel became the first country to defend a case here, arguing successfully in lower courts that Belgium had no jurisdiction to try an Israeli leader. But a few weeks ago the Belgian Supreme Court issued a ruling that left open the possibility that Mr. Sharon could be prosecuted. The court ruled that Mr. Sharon is immune from prosecution because he is now a serving prime minister, but upheld the principle of universal jurisdiction, meaning that once Mr. Sharon becomes a private citizen, a new suit could be filed against him.

Meanwhile, other Israelis named in the suit are still subject to Belgian prosecution. It is more than technically possible that if one of them came to Belgium for, say, an international conference, or even went to a country with an extradition treaty with Belgium, he could be arrested.

Then, on March 18, seven Iraqi families filed suit against Mr. Bush, Mr. Cheney, Mr. Powell and H. Norman Schwarzkopf, the American commander in the gulf war.

"The objective of the Iraqi families, who together lost four or five children in that bombing, was to bring up the question of responsibility for their losses," said Raymond Coumont, president of an antiwar group called Meetings for Peace that filed suit with the Iraqis.

"They also knew from their own experience that it is simply not true that precision weapons prevent civilian deaths," Mr. Coumont said. "And when they learned that President Bush had decided to go to war against Iraq, they felt that it was the moment to present their case."

Mr. Powell retorted with a stern warning that Belgium was risking its status as an international meeting place and the headquarters of NATO, a warning that the government seems to have taken seriously. More generally, as Mr. Van der Kelen wrote, there seemed something absurd in filing charges against a former president of the United States, even if the feelings of the Iraqi families were easily understood.

"This case proved that there is something wrong with the genocide law," Didier Seeuws, the spokesman for the Belgian Foreign Ministry, said in an interview. "The government wants to change the law."

The government of Prime Minister Guy Verhofstadt has engaged in intense discussions to persuade parliament to accept the "filters" in the law that will essentially enable the government to reject cases where the accused person comes from a democratic country.