

From Belgium to The Hague via Berlin and Moscow,
Documenting war crimes and the quest for international justice

FROM BELGIUM TO THE HAGUE VIA BERLIN AND MOSCOW. DOCUMENTING
WAR CRIMES AND THE QUEST FOR INTERNATIONAL JUSTICE

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INTRODUCTION

Being able to explore new sources on the Great War, a hundred years after it ended is a quite unique and exciting experience for any WWI historian. But the very nature of the documents that we are dealing with in the present case makes it even more thrilling. We are indeed facing hundreds of investigation and prosecution files, produced by both military and civil jurisdictions during and after the Great War in Belgium. These records offer new material for the study of WWI in Belgium, as well as of the history of international criminal law.

But why would such a rich, fascinating collection remain unexploited? All of it was in fact packed together with a vast amount of various documents, and kept more than 2.500 km away from Brussels for 57 years. It seems like the very existence of some of these documents fell into oblivion as time passed. Before diving into these amazing "sleeping beauties", let us briefly explain why they have traveled that far and have remained largely unheard of until recently.

1. THE "MOSCOW ARCHIVES": A STORMY JOURNEY FOR A UNIQUE ARCHIVAL ENSEMBLE

From Brussels to Moscow *via* Berlin and back

In 1940, German soldiers gathered and seized a considerable amount of unpublished archives and books in Belgium. Included among them were the records produced within the process of documenting and prosecuting war crimes that were committed in 1914-1918.

In 1944, under the pressure of the Allies' progression, the German troops decided to bring all the confiscated archives to Berlin, where it was in turn found by the Soviet Army in 1945. The Belgian archival collections, among many others, were then taken to Moscow by the Red Army as "war trophies". It is only after the fall of the USSR that Belgian researchers managed to locate these documents, after which a 10 years-long negotiation process took place. The failure of Russia to restitute not only Belgian, but also other countries' cultural goods seized in Germany in 1945 had become "one of the most thorny elements in Russia's foreign relations" (GRIMSTED, P. K., 2002, p. 1). Six years after Russia committed to the European Council to restitute all these cultural goods to its member-states, the Belgian archives were transferred back to Brussels. In May 2002, the documents arrived at the Royal Army Museum in Brussels.

An artificial archival ensemble

The looting of archives in Belgium was part of a broader operation, led by the "Reichsleiter Rosenberg Taskforce" (Einsatzstab Reichsleiter Rosenberg), which was charged with the

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appropriation of cultural property emanating from any potential opponent to the Nazi regime. In accordance with this cultural plundering policy, German units seized any cultural goods that were produced by “subversive” organizations and persons, among which socialists, communists, Jewish and Masons were predominant. This occurred in many countries across Western and Eastern Europe (GRIMSTED, P. K., 2007).

In Belgium, the archives seized were mostly public. Around 80% of the 6.2 tons of archives that were transferred back to Belgium originate from the Ministry of Defense and the Ministry of Justice. They include the records produced in regard with the investigation on- and prosecution of- war crimes after 1918. The other 20% are private documents, predominantly originating from what the Nazi regime considered as “subversive” organizations. In total, 1.8 linear kilometers of archives amounting to over 6.000 boxes were taken back to the Royal Army Museum in Brussels in May 2002 by escorted army trucks. (Needless to say, some documents and books are still in Moscow but have not been identified yet. On the restitution of the collections to Belgium and the negotiation process between Brussels and Moscow, see: STEENHAUT, W. & VERMOTE, M., 2002 ; VANDENBROUCKE, M., 2010).

The inventorization of all these documents is still a work in progress. Some of them have been sent back to their original producers (or their successors). Others are still waiting to be identified at the Royal Army Museum. The long journey they made and the successive “reorganizations” imposed on them by the Germans and Russians do not make this re-inventorization task any easier.

The collections that will retain our attention here (i.e. the documents produced within the process of documenting and first prosecuting war crimes that were committed in Belgium during WWI) have been transferred in several phases from the Royal Army Museum to the State Archives of Belgium, where they are now being sorted and inventorized.

2. DOCUMENTING WAR CRIMES AND THE QUEST FOR INTERNATIONAL JUSTICE

A peculiar chronology (1914-1925)

As soon as in August 1914, the need to document the events that were taking place in Belgium was evident. A few days after the war broke out, the Belgian government set up an investigation commission (« Commission d'enquête sur la violation des règles du droit des gens, des lois et des coutumes de la guerre ») in order to document war crimes, with a twofold objective. First of all, it was meant to inform public opinion on the tragic events that were taking place. But it was also hoped to help prosecuting those responsible for such deeds once the war would end. Its remarkable investigation work was summed up in 23 volumes published in 1915. The work of the Commission d'enquête was then almost put to an end, due to the occupation and the inherent impossibility to collect information efficiently. In February 1919, the government reorganized the Commission and charged it with investigating the crimes committed not only during the invasion, but also during the occupation of Belgium. Most of the documents produced by these two successive inquiry commissions are kept in a specific fund at the State Archives of Belgium, in Brussels (VANNERUS, J. & TALLIER, P.-A., 2001, pp. 7-17).

From 1919 to 1921, the investigations were conducted by civil jurisdictions, under the coordination of the Commission d'enquête. After the relative failure of the Leipzig trials in 1921-1922, both France and Belgium withdrew their cases from the Reichsgericht (German Supreme Court). Considering that these trials had been a “travesty of justice”, both France and Belgium decided to take the matter into their own hands. Hundreds of war crimes trials

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then took place *in absentia*, the extradition of German war criminals having been proved impossible to obtain (HANKEL, G., 2014; HORNE, J. & KRAMER, A., 2005, pp. 365-403 ; MATTHÄUS, J., 2008).

The collections we found seem to suggest that in Belgium, war crimes prosecution only started again in 1924, more than 2 years after the Leipzig trials were declared an utter fiasco. The reasons why these cases were re-opened so long after Leipzig are thus far unknown. But the most plausible one is that the ten years limitation period was approaching, after which no legal action could have been taken. Considering that most crimes had been committed during the invasion phase, the year 1924 logically was a deadline not to be missed.

The documents we find testify of this peculiar chronology of the prosecution of German war criminals in Belgium. There is clearly a peak of activity in 1919, when the Commission d'enquête relaunched the investigations. The documents produced during this first post-war phase of investigations are dated mostly from 1919, and range until 1921. After 1921, the files were obviously left aside until 1924-1925, when military jurisdictions took charge of the cases.

From documenting to prosecuting war crimes, from civil to military jurisdictions

The “new” Commission d'enquête set by the Government after the war coordinated the investigations throughout Belgium. It relied on various actors in order to gather as many testimonies and information as possible regarding the crimes that had been committed during the invasion and the occupation of Belgium. These actors were the local authorities, local police offices, civil tribunals and the clergy. During this first phase of investigations, the cases were in the hands of civil jurisdictions.

The Belgian authorities tried to rationalize and systematize the process of information gathering. As soon as in December 1918, Mayors throughout Belgium received instructions from public prosecutors: they were to collect precise, usable information regarding the events which had taken place in their towns and villages. The mayors even were provided with a standardized list of questions they should answer, such as: “Did the German Army destroy or seize Belgian properties in cases where it was not imperatively required by war necessities?” or “Have towns or villages been looted?”. The questionnaire was accompanied by all relevant legislation for each type of crimes.

After the Armistice, the inquiries had to start as quickly as possible to lessen the risk of crimes falling into oblivion. The sooner it started, the better. A vast documentation campaign was hence initiated, during which all citizens were invited to report crimes they had been victims or witnesses of. In most cases, sessions of hearings were organized in public buildings, sometimes for several days in a row, during which a local judge would hear all the inhabitants who had any type of crimes to report. From 1919 to 1921, this quest for information went on and mobilized a multiplicity of actors in each affected locality.

As mentioned earlier, it took some time after the failure of Leipzig for Belgium to re-open the cases. But in this second phase of investigation, the civil jurisdictions would no longer be in charge. In accordance with the article 228 of the Versailles Treaty, the Belgian government charged military jurisdictions with the duty of judging German war criminals, in 1924.

The Military Tribunals (“Conseils de guerre”) across the country inherited all the documents produced by civil instances 3 to 5 years earlier. The military prosecutors went through a considerable amount of files in a very short amount of time. They had to promptly determine whether the cases were solid enough to go trial or not. Hundreds of investigation files were then closed, the military prosecutors retaining only those for which the facts were sufficiently documented and the culprit(s) clearly identified. For some cases, the military

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prosecutor's offices resumed the investigations and re-heard some witnesses who had already testified in 1919.

Thanks to documents found at the Belgian Ministry of Foreign affairs archives, we know that at least 132 trials for war crimes took place in Belgium in 1924-1925, involving 191 German defendants. Thus far, we managed to locate amongst the Moscow fund 87 cases involving 138 German defendants. We have digitized and described them, and they are now progressively being uploaded on the International Criminal Court web portal "Legal Tools" (*cf. infra*). One should note that these numbers represent only a small proportion of all the investigation files that can be found in the "Moscow" collections, most of them having been closed for lack of evidence or uncertain identification of the perpetrators.

A trial through its archives: the von Giese case

The thorough analysis of one specific post-WWI trial can be revealing of the manner in which investigations on war crimes were handled after the Great War. The "Prosecutor v. von Giese" case is of peculiar interest in this regard. It is both representative of the conduct of war crimes trials in Belgium, and enlightening on some uncommon aspects of this process.

Von Giese was a Lieutenant-Colonel, Commander of the 1st Leib Cuirassier Regiment (Leib-Kürassier Regiment). He was accused of burning down the village of Bièvre (Namur province) and of murdering 17 civilians, including children, on the 23rd and 24th of August 1914. This case confirms that the identification of war crimes perpetrators could prove difficult. Furthermore, it shows that identifying the places where the crimes were committed could also be a challenge in itself. The unexpected use made by judicial authorities of German documents, including the German *White Book*, is also quite remarkable.

No less than three investigations were opened on the same case: in addition to the Belgian one, two investigations took place in France on the same events. Indeed, there are two French localities named Bièvres (one in the Ardennes and one in the Aisne). It took some time for the French authorities to determine that none of these two localities were actually concerned by the crimes at stake. In total, 100 witnesses were heard - 63 in Belgium and 37 in France.

The chronology of the Belgian judiciary process is quite typical: the case is first opened in April 1919 by civil justice, namely the local Tribunal of Gedinne ("Tribunal de première instance"). During five months, information is gathered and witnesses are heard by local authorities. The case then remains on hold until being taken charge of by the military prosecutor's office of Namur in May 1924. It is finally closed when the Military Tribunal of Namur sentences von Giese to the death penalty *in absentia*, on February 12th, 1925. On the French side, the chronology of the investigations differ. A first case is opened against X by the Military prosecutor's office of Metz in June 1923. The case is closed and transmitted to the Military prosecutor's office of Amiens in March 1925, which in turn closes and transmits it to the Belgian authorities in May 1925 (3 months after von Giese's death sentence was pronounced).

As in most towns of Belgium, the investigation on war crimes committed in Bièvre involved a variety of actors. These included: the mayor of the town (both as witness and as gathering agent of information), the Commission d'enquête, the National Gendarmerie of Bièvre, the Bishopric of Namur, etc. Both religious and civil authorities were contributing to the documentary effort and it seems like the information circulated smoothly among them. In Bièvre, the first session of hearings took place in the Town Hall in April 1919. 48 witnesses were heard by the local judge ("Juge de paix") and reported a series of exactions committed by German soldiers, which included looting, arson, murder and deportation. Many witnesses related the events that took place on the 23rd and 24th of August 1914. All their depositions are consistent: after opposing strong resistance by French troops, German soldiers burned down

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the whole village and murdered several civilians. Some witnesses insist on the fact that these exactions were totally unjustifiable on a military point of view.

The documents produced during this first phase of investigation show that there was a great confusion as to the identity of the perpetrators of the crimes reported. This was often the case when dealing with crimes committed during the invasion, as numerous regiments were passing through villages and the chronology of events was sometimes hard to piece together. Several German documents were kept by civilians during the whole war and then provided to the authorities in order to help identify those responsible. In the present case, even these documents were not sufficient to establish the identity of the offender during the first active phase of investigation.

Quite paradoxically, this confusion is put to an end thanks to an unexpected use of the German *White Book*, in which von Giese himself narrates the events that took place in Bièvre. According to his version of the facts, civilians had been shooting from their houses, killing German soldiers as well as the medical helpers who were assisting them. Still according to von Giese, this behavior called for an appropriate reaction on behalf of the German troops. Originally, von Giese's account was produced as a means of justifying the crimes that took place and depict them as legitimate reactions to the presence of "francs-tireurs". However, this very document is later used by the Belgian authorities as an undisputable proof of von Giese's guilt. The substitute military prosecutor Hellinckx explains this in his statement of the facts: both the identity of the perpetrator and "the pretext used for committing the crimes" are known thanks to the German *White Book*. Based on this document, von Giese is deemed guilty of 17 murders and 72 counts of arson and sentenced to the death penalty *in absentia* on 12 February 1925. As was customary then, the judgment was published in the local newspaper, announcing the forthcoming "public execution" of von Giese.

On the French side, the whole investigation was triggered by a German soldier's diary, in which he merely writes: "23 August: *The enemy had occupied the territory of Bièvre (...). We took the village and we looted and burned down almost every house*". This very brief account sufficed to make the Military prosecutor's office of Metz open a case against X. The locality mentioned was thought to be Bièvres in the Ardennes region, where similar crimes had been committed in 1914. After investigating, the military prosecutor's office of Metz came to the conclusion that it was not the one cited in the diary and sent the case to its counterpart in Amiens. Why? Simply because there was another village named Bièvres in the Aisne, where crimes had also been committed during the invasion.

In May 1925, the military prosecutor's office of Amiens reached the same conclusion: the town of Bièvres, Aisne, was not the one mentioned in the diary either. After two investigations, French military jurisdictions determined that the crimes reported in the German diary could not have happened in France: both "Bièvres" had indeed been looted, but only in September 1914, and no arson had been reported there. There was only one option left: it must have been the Belgian town of Bièvre. The file was accordingly transmitted to the Belgian competent authorities in May 1925, 3 months after they sentenced von Giese to the death penalty.

The von Giese case shows that there was a will to spontaneously cooperate between former Allies in regard with war crimes prosecution after the Great War. However, this nascent international judicial cooperation was obviously far from efficient.

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3. THE WAR THAT NEVER ENDS? A HUNDRED YEARS LATER, NEW VOICES TO BE HEARD

The documents one can find in the collections that came back from Moscow 16 years ago are of utmost interest in many regards. If they do not fundamentally change our factual knowledge of the invasion and occupation of Belgium during WWI, they certainly shed new light on it. They also significantly broaden our understanding of the history of international criminal law.

In the context of their remarkable documentary effort, Belgian authorities gathered testimonies from countless witnesses throughout the country. Among these witnesses, some originated from social backgrounds which usually keeps them absent from the archives. But we, for once, can “hear” their voices. Servants, housewives, factory workers, farmers, students, unemployed, etc. tell us about their own wartime experiences. Of course, in most cases these testimonies were transcribed by a clerk or a police officer, and we know of the impact intermediaries can have on narratives. Nonetheless, these collections undoubtedly allow us to access “new” first-hand accounts on the Great War, a hundred years after it ended.

The prosecution and investigation files also contain countless treasures, too numerous to be listed here. Among them: a small fragment of the bullet that killed a 13 year old kid, René Amel. It was fired by a German soldier two days after the Armistice... Plans that were drawn in order to determine the direction of a shooting, rudiment of ballistics... Certificates written by German officers in August 1914, treasured by civilians for years in hope they would help identify the offenders... But also, new elements on the “francs-tireurs” controversy, which we thought had been closed by Horne and Kramer in 2001 but was recently and brutally re-opened by Ulrich Keller (see: HORNE, J. & KRAMER, A., 2001 ; KELLER, U., 2017).

From Brussels to The Hague, the journey goes on? The Jusinbellgium project

The digitization and uploading online of these post-WWI trials are part of a broader, interdisciplinary project named Jusinbellgium. Its central aim is to identify, describe and digitize judicial records produced by Belgian jurisdictions in the context of post-conflict processes from 1914 to 2014. By doing so, it seeks to contribute to a critical history of the role of justice after mass violence and war. The collections that are digitized are progressively made available online on the ICC web portal “Legal Tools” (for the post-WWI trials, see: https://www.legal-tools.org/en/browse/lfolder/0_36188/#results).

After traveling from Brussels to Moscow, transiting in Berlin, and coming back to Brussels, the post-WWI trial records are thus now (digitally) traveling to The Hague. By making it accessible online, we hope to raise interest from historians, but also legal practitioners, or any other person willing to study post-war, transitional justice, or mass violence and how it was documented and prosecuted by Belgium throughout a century. These records, together with those produced after WWII and those produced within the scope of the universal jurisdiction in the 1990s-2000s, are hoped to contribute to a better understanding of the long process which led to the constitution of a permanent International Criminal Court in The Hague. The post-WWI trials, in particular, should allow researchers to shed new light on facts that took place a century ago. But they are also a brilliant reminder of the fact that the path leading to the - still-evolving and fragile - international criminal justice we now know goes way back in time.

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