Judge claims US and Israel pressed for release of Yugoslav war criminals

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A top Danish judge sitting on the International Criminal Tribunal for the former Yugoslavia (ICTY), Frederik Harhoff, claims that the US and Israel pressed for the release of top-ranking Croatian and Serbian officers accused of war crimes.

Harhoff alleges that ICTY President Theodor Meron, a former legal counsel to the Israeli Foreign Ministry and former Counsellor on International Law in the US State Department, exerted "persistent" and "intense" pressure on other judges to recently acquit Croatian general Ante Gotovina and Assistant Interior Minister Mladen Markac, Yugoslav general Momcilo Perisic and Serbian intelligence officials Jovica Stanisic and Franko Simatovic. Harhoff said their release was contrary to the tribunal's standard practice of holding military commanders responsible for crimes committed by their subordinates.

Western powers are concerned that if the standard became enshrined in international law, future military operations would be put in jeopardy and commanders would run the risk of being hauled in front of human rights courts accused of war crimes.

In a private memo addressed to 56 people, published in the Danish newspaper *BT* last month, Harhoff explained that the ICTY had created a "fairly firm legal practice" in relation to the responsibilities of top military chiefs.

"Right up until autumn 2012, it has been a more or less set practice at the court that military commanders were held responsible for war crimes that their subordinates committed during the war in the former Yugoslavia from 1992-95, when the Dayton Agreement brought an end to the war in December 1995."

"Now apparently the commanders must have had a direct intention to commit crimes—and not just knowledge or suspicion that the crimes were or would be committed," he continued.

"It would seem that the military establishment" in leading states such as Israel and the US "felt that the tribunal was getting too close to top-ranking military commands."

Harhoff pondered, "Has an Israeli or American official influenced the American President of the tribunal to effect a change of course?"

"I am left with the distinctly unpleasant impression that the tribunal has shifted course as a result of the pressure from 'the military establishment' of certain powerful countries."

By authorising the release of convicted criminals it would "in future and in the majority of cases allow the top-ranking person to go free. This means that American (and Israeli) commanders in chief can breathe a sigh of relief…"

Harhoff concluded, "The latest judgements here have brought me before a deep professional and moral dilemma, not previously faced. The worst of it is the suspicion that some of my colleagues have been behind a short-sighted political pressure that completely changes the premises of my work in my service to wisdom and the law.

US diplomatic cables from 2003 published by WikiLeaks appear to support Harhoff's claims. They show that Meron was in constant contact with Pierre-Richard Prosper, who served as Ambassador-at-Large for War Crimes Issues under President George W. Bush from 2001 to 2005, discussing in depth the work of the ICTY and handing over confidential tribunal documents.

One describes Meron as "the tribunal's pre-eminent supporter of United States government efforts," and how he "responded positively to Prosper's detailed explanation of US policy". Meron was particularly

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critical of Chief Prosecutor Carla del Ponte, who had condemned recent statements made by US officials as "a direct interference in the work of the Tribunal and unacceptable," and was asking US help in preventing her reappointment.

In another cable, the US was concerned that del Ponte was intending to indict 30 individuals, "all at the highest levels," meaning that "that the indictees will be at the general or ministerial level or their equivalents (i.e. with respect to the KLA)." The CIA and European intelligence agencies backed the KLA and used it as a proxy to facilitate the plans of the US, using NATO as its military umbrella, to complete the dismemberment of Yugoslavia.

The publication of Harhoff's email has created a crisis in the ICTY.

Last week, current ICTY chief prosecutor Serge Brammertz declared, "I understand the disappointment felt by many, especially survivor communities following the series of recent acquittals mentioned in Judge Harhoff's letter. My office shares that disappointment." Brammertz announced that his office is to appeal against the acquittal of Stanisic and Simatovic, and may also request a review of the Gotovina and Markac cases. He refused to comment on Harhoff's email, saying he was "concerned about the destructive elements in the debate that has followed the letter's publication" and that "it is not appropriate or helpful for this office to enter into the debate."

Harhoff's revelations have also led lawyers for the deceased Bosnian army commander Rasim Delic to request that his three-year jail sentence for the cruel treatment of Serb prisoners be "revised". They said, "The publication of Judge Harhoff's letter has unilaterally brought the reputation of the tribunal into significant disrepute and risks losing public confidence in the tribunal's work…It is therefore the responsibility of the appeal's chamber to rectify the fallout committed as a result of Judge Harhoff's appearance of bias."

A number of Balkan human rights organisations have also written to United Nations General Secretary Ban Ki-moon calling for an investigation into Harhoff's claims, declaring, "Without such an enquiry... doubts about the fairness of ICTY judgments will permanently mar the work of this important institution of international law."

The WSWS warned, "The 2001, atte present the ICTY as a 'first step' towards a permanent court to punish the perpetrators of war crimes and human rights abuses does not stand up to examination." It explained that the main instigator of the ICTY was the US, which consistently opposed the universal application of human rights laws, refusing to recognise the creation of the International Criminal Court unless its military forces were exempted from the jurisdiction of the proposed body.

It explained how US and European policy of dismembering Yugoslavia set the stage for a series of bloody civil wars, whose legacy was the creation of a series of mini-states, in which the Western powers exercise untrammelled economic and political control. The function of the ICTY was to provide a legal veneer for this predatory imperialist policy.

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