

President of International War Crimes Tribunal may have Worked to Shield Israelis from Prosecution

By [Alison Weir](#)

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Theme: [Crimes against Humanity](#), [Law and Justice](#)

The *New York Times* [reports](#) that an Israeli diplomat turned U.S. citizen – and now president of the war crimes tribunal at the Hague – has been pressuring the court to acquit officials accused of war crimes.

The *Times* says that the Israeli-American judge, Theodor Meron, "... has led a push for raising the bar for conviction in such cases, prosecutors say, to the point where a conviction has become nearly impossible."

Some analysts feel that Meron's motivation may be to protect Israeli political and military leaders from prosecutions that could place them in legal jeopardy.

International attorney and analyst John Whitbeck comments that both Israel and the United States are "world leaders in the commission of war crimes, crimes against humanity and crimes against peace," and that their officials "would prefer to see the bar for criminal convictions raised to a level which offers them continued impunity."



Theodor Meron, President of the United National War Crimes Tribunal in the Hague

However, Whitbeck points out that the risk to American leaders is relatively insignificant, since the U.S. government would be able to use its UN Security Council veto to protect its leaders.

The situation for Israeli officials, on the other hand, is quite different. According to Whitbeck: "The threat of accountability is potentially imminent and urgent for Israel and Israelis."

Before immigrating to the U.S., [Meron](#) was a member of the Israeli Foreign Service and served as Israeli Ambassador to Canada and to the United Nations in Geneva. He also served as Legal Counsel to the Israeli Ministry of Foreign Affairs.

In 1967 Meron wrote a secret [memorandum](#) of law to Israeli Prime Minister Levi Eshkol stating that creating Israeli settlements on occupied territory would be a violation of the Fourth Geneva Convention, contrary to international law and, hence, a war crime.

The Israeli government ignored this memo (which neither the government nor Meron made public), and have been creating illegal settlements ever since. In January a UN panel [stated](#) that the settlements “contravened the Fourth Geneva Convention forbidding the transfer of civilian populations into occupied territory and could amount to war crimes that fall under the jurisdiction of the International Criminal Court (ICC).”

Below is the *New York Times* article about the discomfort felt by Meron’s fellow judges about his actions as head of the international tribunal and their efforts to replace him:

[Hague Judge Faults Acquittals of Serb and Croat Commanders](#)

By MARLISE SIMONS

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PARIS – A judge at the United Nations war crimes tribunal in The Hague has exposed a deep rift at the highest levels of the court in a blistering letter suggesting that the court’s president, an American, pressured other judges into approving the recent acquittals of top Serb and Croat commanders.

The letter from the judge, Frederik Harhoff of Denmark, raised serious questions about the credibility of the court, which was created in 1993 to address the atrocities committed in the wars in the former Yugoslavia.

Even before Judge Harhoff’s letter was made public Thursday, in the Danish newspaper Berlingske, the recent acquittals had provoked a storm of complaints from international lawyers, human rights groups and other judges at the court, who claimed in private that the rulings had abruptly rewritten legal standards that had been applied in earlier cases.

Experts say they see a shift in the court toward protecting the interests of the military. “A decade ago, there was a very strong humanitarian message coming out of the tribunal, very concerned with the protection of civilians,” said William Schabas, who teaches law at Middlesex University in London. “It was not concerned with the prerogatives of the military and the police. This message has now been weakened, there is less protection for civilians and human rights.”

Other lawyers agreed that the tribunal, which has pioneered new laws, is sending a new message to other armies: they do not need to be as frightened of international justice as they might have been four or five years ago.

But until now, no judge at the tribunal had openly attributed the apparent change to the court's current president, Theodor Meron, 83, a longtime legal scholar and judge.

Judge Harhoff's letter, dated June 6, was e-mailed to 56 lawyers, friends and associates; the newspaper did not say how it obtained a copy. In his letter, Judge Harhoff, 64, who has been on the tribunal since 2007, said that in two cases Judge Meron, a United States citizen who was formerly an Israeli diplomat, applied "tenacious pressure" on his fellow judges in such a way that it "makes you think he was determined to achieve an acquittal."

"Have any American or Israeli officials ever exerted pressure on the American presiding judge (the presiding judge for the court that is) to ensure a change of direction?" Judge Harhoff asked. "We will probably never know."

A spokesman at the court declined to comment on the letter. Other judges and lawyers were willing to speak, provided that their names were not used.

By their accounts, a mini-rebellion has been brewing against Judge Meron, prompting some of the 18 judges of the International Criminal Tribunal for the Former Yugoslavia to group around an alternative candidate for the scheduled election for tribunal president this fall. Until now, Judge Meron had been expected to be re-elected.

"I'd say about half the judges are feeling very uncomfortable and prefer to turn to a different candidate," said a senior court official. The official said he did not believe that American officials had pressured Judge Meron to rule a certain way in any case, "But I believe he wants to cooperate with his government," the official said. "He's putting on a lot of pressure and imposing internal deadlines that do not exist."

The legal dispute that is the focus of Judge Harhoff's letter and that has led to sharp language in dissents is the degree of responsibility that senior military leaders should bear for war crimes committed by their subordinates.

In earlier cases before the tribunal, a number of military or police officers and politicians were convicted of massacres and other war crimes committed by followers or subordinates on the principle that they had been members of a “joint criminal enterprise.”

In contrast, three Serbian leaders and two Croatian generals who played key roles during the war were acquitted recently because judges argued that the men had not specifically ordered or approved war crimes committed by subordinates.

Judge Meron has led a push for raising the bar for conviction in such cases, prosecutors say, to the point where a conviction has become nearly impossible. Critics say he misjudged the crucial roles played by the high-level accused and has set legal precedents that will protect military commanders in the future.

The United Nations Security Council created the tribunal, a costly endeavor, and has been pressing it for years to speed up work and wind down, with the United States and Russia at the forefront of those efforts.

By early this year, 68 suspects had been sentenced and 18 had been acquitted. But some of the highest ranking wartime leaders have been judged at a time when the tribunal is short-staffed and under continuing pressure to close down.

Today, as the tribunal winds down its work, pressure over time is among the complaints heard from judges’ chambers. Several senior court officials, while declining to discuss individual cases, said judges had been perturbed by unacceptable pressures from Judge Meron to deliver judgments before they were ready.

After the only session to deliberate the acquittal that Judge Meron had drafted in the case of the two Croatian generals, one official said, the judge abruptly declined a request by two dissenting judges for further debate.

In his letter, Judge Harhoff also said that Judge Michele Picard of France was recently rushed unduly and given only four days to write her dissent against the majority decision to acquit two Serbian police chiefs, Jovica Stanisic and Frank Simatovic.

“She was very taken aback by the acquittal and deeply upset about the fast way it had to be handled,” said an official close to the case.

Judge Harhoff's letter, which echoes protests by many international experts, seems likely to add a fresh bruise to the tribunal's reputation.

"The latest judgments here have brought before me a deep professional and moral dilemma not previously faced," he wrote in conclusion. "The worst is the suspicion that some of my colleagues have been behind a shortsighted political pressure that completely changes the premises of my work in my service to wisdom and the law."

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