

opinion

Hague Tribunal controversy hints at aims of U.S., Israel

WILLIAM PFAFF



Paris

The irresistible impulse to aggrandize power, which has been evident in American foreign policy since (at least) the fall of the East-West bipolar system in 1991, was demonstrated last week by the NSA revelations of Edward Snowden. Now there is a new manifestation of apparent illicit power assertion revealed by a devastating front-page report in the International Herald Tribune on June 15.

Marlise Simons of The New York Times revealed that the Danish member of the U.N. war crimes tribunal has made a "blistering" protest against U.S. pressure to bring about acquittals of several top Croat and Serb commanders accused of responsibility for war-crime atrocities during the Yugoslav succession wars of 1991-95. These acquittals were justified by the court with a verdict that the accused had not specifically ordered or approved war crimes committed by subordinates. Among those acquitted were two Croat wartime generals, the Serbian army chief of staff, and the chief and deputy chief of the Serbian secret police.

This was a departure from the principle established in previous war-crime trials that commanders were implicated in their subordinates' crimes as they had all been part of "joint criminal enterprises." It also seemed an abandonment of the principle asserted — with the specific support, even insistence, of U.S. authorities — at the Nuremberg trials of Nazi leaders after World War II, declaring the personal responsibility of Nazi political and military officials for crimes committed by Germany.

A Danish judge at the Hague Tribunal, Frederik Harhoff, has raised grave questions about the present credibility of the court. His letter, made public by the Berlingske newspaper, says that in the two cited cases, "tenacious pressure" was applied on fellow judges to obtain acquittals by the court president, Theodor Meron, 83, an American legal scholar and judge, who says he is merely applying the court's precedents, which some other judges contest.

They and outside international lawyers and human rights groups contend that the acquittals rewrote the standards of earlier decisions in a way that they suggest weaken

the court's previous insistence on the responsibility of officers in atrocity cases occurring within their areas of command. This is said by critics to open the possibility that, in the future, the Nuremberg Tribunal's stern insistence on command responsibility for the conduct of troops will not prevail in the Hague court's future decisions (and one could add, undermine the corresponding assertion of individual soldiers' responsibility to challenge unjust orders, as subsequently written into armies' rules of military conduct).

Simons quotes other unnamed judges at The Hague as saying they will not support Judge Meron's expected re-election as tribunal president this autumn because of their discomfort at "unacceptable" pressures they have felt from him concerning these recent acquittals, and in favor of preparing a permanent closure of the tribunal, as the U.S. government appears to want. A 2005 WikiLeaks document often cited by Judge Meron's critics, ostensibly originating in the U.S. Embassy at The Hague, is said to describe Judge Meron as "the Tribunal's pre-eminent supporter" of the U.S. official outlook.

This may reflect the long-standing American (and Israeli) concern that their officers or government figures might one day find themselves before the court on charges of breaking international law or as bearing responsibility for war crimes.

U.S. forces during the Vietnam War committed attacks that witnesses and correspondents considered clearly illegal, including the notorious Phoenix Program of selected assassinations, which I myself witnessed in operation, and attacks on civilians, as in the My Lai Massacre and other cases, and the effect on civilians of the widespread use of Agent Orange. Torture and imprisonment without trial have been frequent during the so-called war against terror. The U.S. Army's blitzkrieg-like "Shock and Awe" assaults on Baghdad and Fallujah during the Iraq War had as their purpose terrorization of populations; and its use of fragmentation and depleted uranium munitions, which by now has been well established by independent inquiries, have had devastating permanent effects on civilian victims.

The Israeli Army and Air Force have also used fragmentation munitions in Lebanon and concede having used white phosphorus in civilian neighborhoods during attacks on Gaza. In 2009, the former head of the international law department of Israel's military establishment, Daniel

Reisner, said: "International law progresses through violations. We invented the targeted assassination thesis and we had to push it. At first there were protrusions that made it hard to insert easily into the legal mold. Eight years later, it is in the center of the bounds of legitimacy."

George Bisharat of the University of California Hastings College of the Law, who quoted Reisner's words in the International Herald Tribune on Jan. 31, 2013, criticized this Israeli practice of "creating facts," citing as unjustifiable the Israeli claim that its army's clashes with Palestinian protesters are "armed conflict" justifying weapons of war, rather than the limited police measures international law authorizes in dealing with protesting residents of illegally occupied Palestinian territory.

Bisharat also took issue with Israel's definition of people who have not left a designated military strike area, after being warned, as "voluntary human shields," its attacks on civilian employees of the Hamas administration in Gaza as "terrorist infrastructure" and its use of banned munitions, hitherto considered war crimes. All this has remained without effective international condemnation since Israel began creating its "facts on the ground" with implicit American endorsement.

This would seem to explain current efforts to neutralize or close down the Hague Tribunal, unpalatable as this explanation may be to those of us who are citizens of the U.S. or Israel.

It constitutes another example of that craving for power and what might be called totalitarian national security (at others' expense) that characterizes the NSA program (apparently with some cooperation from Britain's GCHQ) for mass interception and exploitation of the content of international communications, including the communications of allied democratic societies. Most democracies are seen as threatening because they are the states that possess the legal and moral standing to challenge these American efforts to destroy the established norms of international conduct, as proclaimed by the Nuremberg Tribunal — which amounts to an effort to abolish one of the principal moral achievements of World War II.

Visit William Pfaff's website for more on his latest book, *The Irony of Manifest Destiny: The Tragedy of America's Foreign Policy*, at www.williampfaff.com. © 2013 Tribune Media Services

Going with the flow in the trade office for Japan

HIROAKI SATO



New York

Leaving the New York office of the Japanese trade agency JETRO after 44 years of employment is an occasion to look back.

I arrived here in the fateful 1968. The year started with Martin Luther King Jr. shot dead, and ended with three American astronauts flying around the moon and returning to Earth. In between, Robert F. Kennedy, running for president, was shot dead, and Chicago police violence at the Democratic Party Convention was televised.

Next spring I was hired by JETRO. A young American couple had sponsored me, and I'd come here on a tourist visa. But the rules on such things were not as upright as they are today. The immigration act that abolished racial and ethnic preferences and has since transformed America's demographic contour had become law just four years earlier.

The raging Vietnam War created an oppressive air, but Americans were laid back and kind. The Civil Rights Movement and Sexual Revolution were cresting.

When it comes to my employer's business, the U.S. sales of small cars "made in Japan" had just started to skyrocket, easily overtaking the top import car till then, the Volkswagen Beetle. One thing I remember in that regard is what my sponsor's mother said.

"Hiro, the name Toyota is unfortunate," she told me. "It reminds us of Japanese Christmas toys. A few days after you open the boxes, they break down and have to be thrown away."

The U.S. trade deficit with Japan quickly came to the fore. Congress held hearings in 1970. In retrospect, the funny thing is the size of the deficit at the time: \$1 billion. Today, it's \$60 billion, \$70 billion. Even taking into account inflation, the amount around 1970 was small.

And think of all the reasons thought up to explain the trade imbalance: cheap labor, cheap capital, dumping, predatory trade practices, Japanese refusal to buy foreign products, Japanese inability to understand consumerism.

Another funny thing: The Japanese product at the center of contention was textiles, not autos. It produced one of the most famous episodes in the annals of

translation/interpretation.

When Prime Minister Eisaku Sato came to Washington and met President Richard Nixon to discuss various matters, Nixon pressed him on textiles: Control your (expletive deleted) textiles.

In response, Sato apparently said what a Japanese politician under similar duress would: *Zensho shimasu*.

A year or so later Nixon expressed his (expletive deleted) displeasure. He told U.S. textile manufacturers that Sato had lied.

The Japanese had promised him, "I'll take care of it," Nixon insisted.

Exactly how Sato's interpreter rendered the prime minister's response remains unknown. He kept his mouth shut until his death. The guess is "I'll do my best."

Two decades on, Japanese imports of U.S. textile products exceeded Japanese exports to the U.S. in the same category. The top item was used jeans.

In August 1971, Nixon removed the fixed exchange rates, the main part of the 1944 Bretton Woods Accord, and embargoed shipments of soybeans en route to Japan, throwing my office into turmoil: Japan as a trading nation was finished!

I learned later that Nixon's embargo forced Japan to seek other sources for soybeans, including Brazil, which was eager to help. One result: further destruction of Amazon rain forests — later, U.S. environmentalists' big concern.

It is remarkable to reflect on how U.S. pressure on Japanese trade did not let up until some years after the summer of 1995 when President Bill Clinton reached an auto agreement with Japan with great fanfare. In between Nixon and Clinton, there was Ronald Reagan, who clamped down on Japanese auto imports as soon as he became president, in 1981.

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During Reagan's campaign against Jimmy Carter, he had put himself forward as an ardent free trader. His numerical limits on Japanese cars would lead Japanese automakers to switch from small, cheap cars to big, expensive ones.

Four years later, there was Reagan's Treasury Secretary Jim Baker. He worked out the Plaza Accord, in 1985. He meant to rein in Japanese exports by forcing a sharp appreciation of the yen against the dollar. That purpose failed. Instead, the measure directly led to the Japanese Bubble — or so some have argued.

Fortunately or unfortunately, for more than a dozen years now, most of U.S. attention has been on China. Many may no longer remember the Japanese plain in the

1990s: Japan "bashing" turned into Japan "passing." The U.S. now runs a trade deficit with China of \$300 billion.

If you take a larger historical perspective, you may say that most of U.S. attention has been on China since Richard Nixon, following Henry Kissinger's Machiavellian machinations, flew to Beijing and met Mao Zedong, in the summer of 1972.

Or since 1949. The communist takeover of China that year spawned the harmful "Who Lost China?" recriminations in this country. Or since long before then. The Pacific War started because of the U.S. insistence that Japan move out of China.

The year of Clinton's auto accord, 1995, was the 50th anniversary of Japan's defeat in the Pacific War. To mark the occasion, I invited a couple of people to speak to the monthly lunch meetings I ran in my office at the time.

One was Faubion Bowers, Gen. Douglas MacArthur's aide-de-camp and personal interpreter. A year before the war started, Bowers, a fresh Julliard-trained pianist, went to Japan, accidentally saw kabuki and fell in love with it.

After returning to this country, he studied Japanese at the Military Intelligence Service Language School. His mastery of Japanese was such that he received two citations during the war. That's how, I imagine, he became MacArthur's personal interpreter. He was later called "the Savior of Kabuki" because he liberated kabuki from Occupation censorship. The Japanese government decorated him for it years later.

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He ended his talk by citing a haiku of his Japanese friend, the playwright, stage director and novelist Mantaro Kubota. The haiku described how Kubota felt when the war was over.

Nani mo kamo akkerakan to nishibi-naka.
All gone, nothing left to say,
in the westerly sun.

Hiroaki Sato is a translator and writer in New York. His most recent book is *Snow in a Silver Bowl: A Quest for the World of Yugen*.

Of course, the American foreign policy

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Rowhani victory buys time for Iran

Mehdi Khalaji

Washington

On June 17, at his first press conference as Iran's president-elect, Hassan Rowhani broke little new ground in the Islamic Republic's relations with the West.

On nuclear policy, he said the "era of suspension is over": Iran will not accept the suspension of uranium enrichment in upcoming negotiations but will seek to make its nuclear activities more transparent to build international confidence. Iran would welcome direct negotiations with the United States if the U.S. stopped attempting to meddle in Iran's internal affairs and abandoned its "bullying attitude."

None of these statements is new. Does that mean that the world should not expect meaningful change in Iran's official behavior following Rowhani's victory?

The general impression before the election was that Iran's Supreme Leader, Ayatollah Ali Hosseini Khamenei, supported either Saeed Jalili or Mohammad Baqer Qalibaf. In recent years, Jalili has been the leading Iranian representative in international negotiations over the country's nuclear program. That made him the main target of criticism by Rowhani and another candidate, Ali Akbar Velayati. Khamenei's adviser on international affairs.

According to Rowhani and Velayati, while Iran in recent years has increased the number of centrifuges in use in its nuclear research program, the cost has been an economically devastating array of international sanctions. Rowhani promised to sustain progress on the nuclear program while adopting stronger and wiser diplomatic measures to prevent the imposition of new sanctions and pave the way for lifting the existing ones.

Jalili had not been a high-profile figure within the country. For the first time, average Iranians saw him at events discussing not only nuclear policy but also its ultra-conservative policy agenda for women, youth and cultural issues. He ended up appearing even more radical on these topics than outgoing President Mahmoud Ahmadinejad.

As for Qalibaf, the mayor of Tehran, he proudly confessed that he was directly involved in the violent crackdown on student protesters. Indeed, he described sitting on the back of a motorcycle with a stick to command police forces to suppress

Iranians who had held until now.

Whether Khamenei seriously planned for Rowhani's victory, or simply calculated that

the massive demonstrations, Rowhani used this against him very effectively. Conservatives tried to convince their candidates to unite behind a single figure, but weaker candidates did not drop out in favor of a unity candidate.

In particular, there is strong evidence that the Islamic Revolutionary Guard Corps (IRGC) split into two major factions, with one supporting Jalili and the other backing Qalibaf. Qassem Suleimani, the commander of the Quds Force, a branch of the IRGC, endorsed Qalibaf, who he hoped would receive Khamenei's full support.

The infighting among conservatives and within the IRGC increased in the last few days before the election. And with Rowhani's surprising first-round victory — and Khamenei's refusal to endorse either

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candidate — both IRGC factions lost.

Khamenei was probably wise to step aside and let popular opinion prevail. Had either Jalili or Qalibaf been elected, the tension within the IRGC might have worsened, becoming difficult for Khamenei to control.

By remaining on the sidelines, Khamenei may have been seeking to show the IRGC that there are limits to its power.

Though well connected to the military and security community, Rowhani was clearly considered an outsider. Indeed, he was not a political figure until now, serving in the military during the Islamic Republic's first decade and spending the last two mostly in the Supreme National Security Council. When Ahmadinejad came to power, Rowhani lost his position as the Council's secretary, but became Khamenei's personal representative to it — a post that he has held until now.

Whether Khamenei seriously planned for

Rowhani's victory, or simply calculated that

the cost of preventing it would be too high, Rowhani can serve Khamenei's agenda at least as well as any other candidate.

Rowhani's victory created the impression of a democratic process and relieved the popular anger that has accumulated during the last eight years, especially since the rigged presidential election in 2009. Indeed, his triumph exposed a rift among Iran's democratic forces, which were divided over whether to participate in the election, and rendered irrelevant the Green Movement born in 2009.

Rowhani's efforts to portray Iran's foreign policy in a democratic light are less convincing. For example, his call for Syrian President Bashar Assad to remain in power until the scheduled 2014 elections is risible, given that Assad typically "wins" Syria's presidential elections by Soviet-like margins, with more than 95 percent of the popular vote.

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Second, even if Khamenei hands the nuclear portfolio to Rowhani (which is not certain, given that he retained it under Ahmadinejad), the new president must come to terms with the IRGC, whose support — at least tacit — is necessary for any nuclear deal.

To date, Iran's nuclear program and regional policies have been run by the IRGC and the nation's hardliners. They didn't win the election, but they haven't gone away.