

John Bolton Escalates Blackmail against ICC to Shield US War Criminals

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Once again, the United States is blackmailing countries that would send Americans to face justice in the [International Criminal Court](#). Trump's National Security Adviser John Bolton is leading the charge to shield US and Israeli war criminals from legal accountability.

On September 10, Bolton [told](#) the right-wing Federalist Society that the United States would punish the ICC if it mounts a full investigation of Americans for war crimes committed in Afghanistan or of Israelis for human rights violations committed in the Occupied Palestinian Territories.

ICC Prosecutor Has "Reason to Believe" US Military Committed Torture

Last fall, Fatou Bensouda, chief prosecutor of the ICC, recommended to the court's Pre-Trial Chamber that it open a full investigation into the possible commission of war crimes and crimes against humanity committed by parties to the war in Afghanistan, including US persons.

In 2016, Bensouda's preliminary examination [found](#) reason to believe, "at a minimum," that members of the US military "subjected at least 61 detained persons to torture, cruel treatment, outrages upon personal dignity," and CIA personnel "subjected at least 27 detained persons to torture, cruel treatment, outrages upon personal dignity and/or rape."

Torture and inhuman treatment constitute war crimes under the Rome Statute.

Bensouda [stated](#) in her 2016 report:

The information available suggests that victims were deliberately subjected to physical and psychological violence, and that crimes were allegedly committed with particular cruelty and in a manner that debased the basic human dignity of the victims. The infliction of "enhanced interrogation techniques," applied cumulatively and in combination with each other over a prolonged period of time, would have caused serious physical and psychological injury to the victims. Some victims reportedly exhibited psychological and behavioural issues, including hallucinations, paranoia, insomnia, and attempts at self-harm and self-mutilation.

Moreover, Bensouda concluded these actions were not isolated instances of misbehavior, noting:

The gravity of the alleged crimes is increased by the fact that they were

reportedly committed pursuant to plans or policies approved at senior levels of the US government, following careful and extensive deliberations.

After Bensouda determined an official investigation was warranted, Bolton [wrote in the Wall Street Journal](#), “The ICC constitutes a direct assault on the concept of national sovereignty, especially that of constitutional, representative governments like the United States.”

The countries of the world, including the United States, spent 50 years developing an international court to try genocide, war crimes, crimes against humanity and the crime of aggression. However, in 1998, when the world’s countries voted on the Rome Statute to establish the court, the United States was one of only seven countries that voted against it. There are 123 member states that are parties to the Rome Statute.

The court entered into force in July 2002. Judges on the court are respected for their impartiality and they represent regional diversity.

Bolton, Trump Threaten Sanctions Against ICC if It Investigates Americans

The United States isn’t a party to the Rome Statute, but Afghanistan is. Therefore, the court could take jurisdiction over individuals who allegedly committed crimes in Afghanistan.

In one of his final acts as president, Bill Clinton signed the Rome Statute [but recommended](#) to incoming President George W. Bush that he not submit the treaty to the Senate for advice and consent to ratification. When a country signs a treaty, it indicates an intent to ratify — and become party to — the treaty.

Bush didn’t just refuse to send the Rome Statute to the Senate. Through then-Under Secretary of State for Arms Control and International Security Affairs John Bolton, the Bush administration withdrew the US’s signature from the statute in May 2002. Bolton declared the unprecedented action “the happiest moment of my government service.”

Congress then enacted the [American Service-Members’ Protection Act](#) to prevent prosecution of US armed forces “to the maximum extent possible.” One clause, dubbed the “Hague Invasion Act,” authorized the use of force to extract any US or allied force detained by the ICC.

At Bolton’s behest, the Bush administration then extracted bilateral immunity agreements from 100 countries, in which the US government threatened to withhold foreign aid if they turned over US persons to the ICC.

Bolton told the Federalist Society that his mission to “prevent other countries from delivering US personnel to the ICC” was “one of my proudest achievements.”

Now the United States is escalating its threats against the ICC.

On September 10, the same day Bolton vilified the ICC before the Federalist Society, Donald Trump [issued a statement](#) saying that if the ICC formally opens an investigation, his administration would consider negotiating “even more binding, bilateral agreements to prohibit nations from surrendering United States persons to the ICC.” He threatened to ban “ICC judges and prosecutors from entering the United States, sanction their funds in the United States financial system, and, prosecute them in the United States criminal system,”

as well as “taking steps in the United Nations Security Council to constrain the Court’s sweeping powers.”

In his [address to the Federalist Society](#), Bolton called the ICC “illegitimate,” declaring,

“We will not cooperate with the ICC. We will provide no assistance to the ICC. We will not join the ICC. We will let the ICC die on its own. After all, for all intents and purposes, the ICC is already dead to us.”

The ICC Is a Court of Last Resort

Under the principle of “complementarity,” the ICC takes jurisdiction over a case only if the suspect’s home country has been unable or unwilling to effectively prosecute it.

If the United States had prosecuted individuals in the Bush administration for the commission of war crimes in Afghanistan, the ICC would not be examining the case. But shortly after taking office, Barack Obama [said](#),

“[G]enerally speaking, I’m more interested in looking forward than I am in looking backwards.”

Indeed, [Bensouda noted](#), the Obama administration’s review was “limited to investigating whether any unauthorized interrogation techniques were used by CIA interrogators, and if so, whether such conduct could constitute violations of any applicable statutes.” She noted Obama Attorney General Eric Holder’s proclamation that his Justice Department “will not prosecute anyone who acted in good faith and within the scope of the legal guidance given by the Office of Legal Counsel [OLC] regarding the interrogation of detainees.”

But in the infamous “Torture Memos” that John Yoo wrote while working in Bush’s OLC, he [defined torture](#) much more narrowly than the law allows. And notwithstanding the Torture Convention’s unequivocal prohibition of torture, Yoo erroneously claimed that self-defense and national security are defenses that can be used to justify torture.

Holder limited his investigation to two of the most heinous instances of torture: the deaths of Gul Rahman and Manadel al-Jamadi. Ultimately, however, Holder’s Justice Department [“determined that an expanded criminal investigation of the remaining matters is not warranted.”](#)

Rahman froze to death in 2002 after he was stripped and shackled to a cold cement floor in the secret Afghan prison called the Salt Pit. Al-Jamadi died after being suspended from the ceiling by his wrists bound behind his back. Military police officer Tony Diaz, who witnessed al-Jamadi’s torture, said that blood gushed from al-Jamadi’s mouth like “a faucet had turned on” when he was lowered to the ground. A military autopsy determined al-Jamadi’s death was a homicide.

Nonetheless, Holder refused to prosecute those responsible for the torture and deaths of those two men.

In 2014, the Senate Select Committee on Intelligence released a 499-page [executive summary](#) of its 6,700-page classified torture report. It says that several detainees were

waterboarded — one 183 times, another 83 times. It is well-established that waterboarding constitutes torture, which is a war crime.

The executive summary states that the CIA utilized “rectal feeding,” in which a mixture of pureed hummus, pasta and sauce, nuts and raisins was forced into the rectum of one detainee. “Rectal rehydration” was used to establish the interrogator’s “total control over the detainee.”

Other examples of “enhanced interrogation techniques” documented in the summary include slamming into walls, hanging from the ceiling, being kept in total darkness, being deprived of sleep — sometimes with forced standing — for up to seven-and-a-half days, being forced to stand on broken limbs for hours, being threatened with mock execution, being confined in a coffin-like box for 11 days, as well as being bathed in ice water and dressed in diapers. One detainee “literally looked like a dog that had been kenneled,” according to the report.

But those who perpetrated this torture and cruel treatment have not been held to account in a court of law. For that reason, Bensouda is recommending a full investigation by the ICC.

US Tries to Shield Israeli Leaders From War Crimes Liability

Besides endeavoring to protect Americans from accountability for war crimes, the Trump administration is also explicitly attempting to shield Israelis from war crimes liability.

The ICC prosecutor is conducting a preliminary investigation of war crimes committed in Gaza in 2014. She should expand it to include [crimes committed by Israel](#) during the 2018 Great March of Return, when it killed unarmed protesters week after week.

In his speech to the Federalist Society, Bolton criticized the possibility of an ICC investigation into alleged international crimes committed by Israelis in Gaza and the West Bank. [He said](#),

“We will not allow the ICC, or any other organization, to constrain Israel’s right to self-defense.”

As an occupying force, Israel does not have [a right to self-defense](#) against the occupied Palestinians. Moreover, self-defense is not a defense against [the commission of torture](#), which is a war crime.

Bolton referred to Israel’s construction of illegal settlements as “housing projects” and stated that the US’s recent decision to close the Palestinian Liberation Office in Washington, DC, was partly due to the Palestine Liberation Organization’s pursuit of a criminal investigation at the ICC. Bolton [stated](#),

“If the court comes after us, Israel or other US allies, we will not sit quietly,” and he threatened retaliation.

“America’s Exceptionalism” Animates Bolton’s Assault on ICC

Bolton [revealed](#) that American exceptionalism motivated him to vilify the ICC. He wrote,

“Proponents of global governance ... know that America’s exceptionalism and commitment to its Constitution were among their biggest obstacles.”

Bensouda responded to Bolton’s Federalist Society speech, [stating](#) the ICC is “an independent and impartial judicial institution” based on the principle of complementarity. She stated, “The ICC, as a court of law, will continue to do its work undeterred, in accordance with those principles and the overarching idea of the rule of law.”

No one, not even Americans and Israelis, enjoy impunity for the commission of war crimes. In spite of the Bolton-Trump assault on the ICC, its prosecutor promises to hold firm and do her job. Her efforts must be supported.

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