

WORKING PAPERS

COALITION FOR PEACE & ETHICS



NO. 9/1 (SEPTEMBER 2018)
BACKGROUND BRIEF

THOUGHTS ON JOHN BOLTON: ADDRESS TO THE FEDERALIST SOCIETY,
WASHINGTON, D.C. ON US POLICY TOWARD THE INTERNATIONAL
CRIMINAL COURT

LARRY CATÁ BACKER

ABSTRACT: On 10 September, John Bolton, who serves as the 27th National Security Advisor of the United States, delivered a speech to the Federal Society in Washington, D.C.: *Address to the Federalist Society, Washington, D.C. on US policy toward the International Criminal Court*. In it, he spoke to issues at the core of the projects of a generation or more of global elites who saw in the International Criminal Court a critically important component in the move toward the regulation of state and state based conduct and the judicialization of broad categories of conduct that, at least at a theoretical level, had been deemed beyond the bounds of civilized society (however that is defined). And Mr. Bolton offers an action plan, sweeping in its rejection of the positions of prior U.S. administrations. This *Background Brief* includes [Mr. Bolton's speech](#) and some brief reflections. It also includes the text of Mr. Bolton's remarks (via transcript published by Aljazeera), and a "Fact Sheet" circulated after the delivery of the speech through the White House.



COALITION FOR
PEACE AND ETHICS



John Bolton verbally attacked The Hague-based ICC as well the Palestinians on Monday [File: Denis Balibouse/Reuters]

(Pix credit: Aljazeera, [Full text of John Bolton's speech to the Federalist Society](#))

Thoughts on John Bolton: Address to the Federalist Society, Washington, D.C. on US policy toward the International Criminal Court

Larry Catá Backer

On 10 September, John Bolton, who serves as the 27th National Security Advisor of the United States, delivered a speech to the Federal Society in Washington, D.C. Mr. Bolton is a senior administration official and an influential advisor. He is also a senior leader among the factions within the U.S. and global intelligentsia now fighting a quite aggressive war for control of the narrative, agenda and context of orthodoxy in the "political line" of the West, even as the West confronts a number of challenges from other orthodoxies abroad. He spoke to issues at the core of the projects of a generation or more of global elites who saw in the International Criminal Court a critically important component in the move toward the regulation of state and state based conduct and the judicialization of broad categories of conduct that, at least at a theoretical level, had been deemed beyond the bounds of civilized society (however that is defined). And Mr. Bolton offers an action plan, sweeping in its rejection of the positions of prior U.S. administrations:

* We will negotiate even more binding, bilateral agreements to prohibit nations from surrendering US persons to the ICC. And we will ensure that those we have already entered are honoured by our counterpart governments.

* We will respond against the ICC and its personnel to the extent permitted by US law. We will ban its judges and prosecutors from entering the United States. We will sanction their funds in the US financial system, and we will prosecute them in the US criminal system. We will do the same for any company or state that assists an ICC investigation of Americans.

* We will take note if any countries cooperate with ICC investigations of the United States and its allies, and we will remember that cooperation when setting US foreign assistance, military assistance, and intelligence sharing levels.

* We will consider taking steps in the UN Security Council to constrain the court's sweeping powers, including ensuring that the ICC does not exercise jurisdiction over Americans and the nationals of our allies that have not ratified the Rome Statute. (Aljazeera, [Full text of John Bolton's speech to the Federalist Society](#))

It will come as now surprise, then, that this speech will produce a substantial amount of reaction (e.g., press reaction [here](#), [here](#), [here](#), [here](#), [here](#), and [here](#)). More will follow in the coming days, especially as states, international organizations, civil society, and aggregations of the intelligentsia on every side of this issue marshals their forces for their discursive fusillades.

This *Background Brief* includes [Mr. Bolton's speech](#) and some brief reflections. The Video of the speech may be accessed [HERE](#). The White House "Fact Sheet" may be accessed [HERE](#) and below.

Some brief thoughts on the speech and the underlying policy.

1. There really are no surprises here. Ironically, several of the arguments--especially those going to political bias, have been made by African leaders, who have also shown a healthy disrespect for the ICC and its processes when it has suited them (e.g., "[Why so many African leaders hate the International Criminal Court](#)"). So that the depth of surprise and outrage will to some extent be manufactured for the purpose of managing the responses of the people to whom such reactions are targeted. Yet it also reflects real outrage--one that sees in the reality of the operations of the ICC a potentially damaging draft away from the high theory which the ICC was to incarnate. The speech produces a set of opposing optics that will more sharply define the camps that have already formed, and within which, the action announced in the speech, must have been long anticipated. A point of substantial interest, then, is to identify who reacts and the tenor of the reaction (further refining an inventory of adherents to various camps). These include intelligentsia, civil society, enterprises, states and international organizations.

2. It is possible to understand this, in part, as a necessary reaction by the Trump Administration, rather than an aggressive first strike. The Administration pointed to two recent actions at the ICC that prompted the response. The first was to seek to extend jurisdiction of the ICC over the actions of American service personnel in Afghanistan. The second was the imminent addition of the quite contentious and hotly debated crime of aggression. ("The "crime of aggression" could become a pretext for politically motivated investigations"). The threatened move made it necessary for the United States to act, at least in part for some of the reasons stated--to counter the breadth of jurisdiction that appears to have been taken, to challenge the autonomy of the ICC as a governance unit to reach outside of its own membership, and to protect a very specific view of national sovereignty.

3. The views on sovereignty are not new to the U.S. (or to China, for example). And the narrow view of the application of treaties has been advanced by the United States often enough. It is important, as well, to consider the alignment of the views on sovereignty developed in the speech are close to those of Marxist Leninist states, especially China. Both the United States and China had expressed reservations about the Security Council reference of the situation in Darfur to the ICC by the security Council, though on slightly different grounds. China has also taken a strong position relating to the boundaries of traditional national sovereignty and sovereign rights. The extent to which such sovereign authority touches on conduct outside the national territory is of course a subject of intense debate. But still, the optics of sovereignty work well in this case. Of course, there is irony here; the United States, by going out front of the issue sit raises winds up doing China's dirty work for it. China can continue a policy of commiserating with smaller states offended by the American position--to their advantage in economic and political relations--while backing, in their ideology, the essentials of the American position. It is, however, a dangerous position for China as it also seeks to expand its military presence beyond its borders.

4. The timing of the speech was potentially quite favorable for the Trump Administration. It comes at a critical moment weeks before the mid term elections and provides a basis for taking a strong national position at a time when a divided electorate's votes might be up for grabs. But there was other timing, the optics of which were too good to avoid mention: "Today, on the eve of September 11th, I want to deliver a clear and unambiguous message on behalf of the president of the United States."

5. The U.S. now appears to be taking the position that the move toward the abolition of war through tight legal management overseen by judges at the international level (or at the national level by national courts applying international standards internationally interpreted) driven in part by a consensus among leading intellectuals and a large segment of officials in national and international organizations, threatens the United States. That threat is put in a most interesting way. The first involves *revisionism*. That is that under the evolving rules, it is inevitable that the action of the Allies during the Second World War ought to be recast as substantial war crimes ("Had the ICC existed during the Second World War, America's enemies would no doubt be eager to find the United States and its allies culpable for war crimes for the bombing campaigns over

Germany and Japan."). Revisionism is, of course, an issue of the moment in the West--as it reconsiders and defines its history, the official and orthodox view of its founders and other leaders and as the national myths on which Republics were built are re- and deconstructed. There is likely a set of dotted lines between the [events at Charlottesville Virginia](#) and the view animating this position. Perhaps it is hoped that those dotted lines will resonate with voters.

6. The Administration conflates what it views as the political agendas behind the move to adopt the current version of "aggression" and to apply the ICC provisions to U.S. service personnel in Afghanistan, with what it describes as the incompetence of the institution. But there is more here than that. Mr. Bolton appears to imply, in fact that there is a purpose to the incompetence--not to manage the violence of state otherwise unable to use their judicial processes to remedy wrongs within the national judicial orders. Rather, the implication is that the object of the ICC, at least as a tool of certain factions of the global governance elite, is to constrain the United States itself.

7. This last point, the the ICC is to be used as a weapon against the United States and its traditional freedom of military engagement globally, is amplified by Mr. Bolton's connection between the use of the complementarity principle. "The ICC prosecutor's November 2017 request of course proves that this notion, and thus the principle of complementarity is completely farcical." This ties together, in the minds of senior Administration officials, the ideas of the legalization of conflict, and its juridification, turns law into an instrument of politics without the constraints of law--though true enough to its forms. It makes a mockery of rule of law even as it becomes prissy in its compliance with the formal of rule of law patterns of behavior.

8. Lastly, Mr. Bolton conflates what is characterized as the political agenda against the United States with that against the State of Israel. There is an interesting suggestion that the project of national delegitimization leveled and refined against the State of Israel might well be a dress rehearsal for a substantial "lawfare" against the United States itself. Again irony, with the suggestion that having conflated the fates of the United States and of Israel together, then it is more than likely that the United States will protect the State of Israel to protect itself and its long term position within the world order. To that end Mr. Bolton cannot resist a little bit of delegitimization himself--using the occasion of the speech to announce the closure of the offices of the PLO (note the refusal to reference anything that might be construed as a state of Palestinian) in the United States.

9. Whatever one thinks of the arguments advanced, they have become important elements of the discourse. More importantly, they serve as a set of principles that then underlie and guide the "action plan" proposed at the end of the speech. Those proposed action are important not merely as a manifestation of a revival of a new "international nationalism", but also because it represents the political elements of the America First Program whose economic aspects (bilateralism, agreements that may not sacrifice American interests for any sort of "greater good," and targeted retaliation) are equally represented in this Action Plan. And thus perhaps the most curious element of Mr. Bolton's speech--*its importance lies less in its attack on the ICC itself than as an expression of the political element of the America First Initiative applied now for the first time to a multilateral*

institution.

10. Given the underlying principles--the political aspects of America First--the remedial framework makes some sense. First the U.S. has made it clear (for the moment at least) that it will not go after the ICC or the project of creating a global law of criminal activities politically motivated. But it has confirmed that it will not be part of that project either. And it feels comfortable taking this position that mirrors that of its great competitor, China. This reaffirms the rejection of early 21st century multilateral globalization that the Trump Administration has been at pains to reject and aligns with its trade policies as well. And yet, the remedial framework, ironically enough, also reaffirms the new template for globalization--*bilateral multilateralism*. This produces a system from out of the coordinated intermeshing of individual agreements that will tend to be aligned to the interests of both parties around a core set of principles and objectives. The ICC provides a useful longer term vehicle to more deeply embed this alternative template for developing globalization in the political as well as the economic sphere. At the same time, the United States has announced a far more aggressive defensive position--one that also aligns with the Chinese principle of mutually beneficial relations. The U.S. intimates that the defensive position it will adopt will actually be offensive (in every sense) should the U.S. feel threatened by the global criminal project of the ICC with respect to which it has detached itself. But it is likely useful, in this case, to take the not veiled threats seriously. It would not be unrealistic to think that the U.S. would welcome aggressive acts precisely so that it could unleash what it hopes will be a damaging retaliation. And, the last, of course, is a suggestion that, among other things, the U.S. will use its power within the U.N. to block further resort to the ICC. Here a last irony, though who might have shared the fate of Sudan's Bashir might now have a small cause to celebrate. Should they be punished, however, it will likely not be at the end of a long judicial process--and that should also give him pause. When one combines Mr. Trump's bilateral multilateralism within and America First policy with Mr. Obama's policy on targeted killing, then the world assumes a very different complexion.

Below is John Bolton's speech on Monday to the Federalist Society in Washington, DC:

I am here to make a major announcement on US policy toward the International Criminal Court, or ICC.

After years of effort by self-styled "global governance" advocates, the ICC, a supranational tribunal that could supersede national sovereignties and directly prosecute individuals for alleged war crimes, was agreed to in 1998. For ICC proponents, this supranational, independent institution has always been critical to their efforts to overcome the perceived failures of nation-states, even those with strong constitutions, representative government, and the rule of law.

In theory, the ICC holds perpetrators of the most egregious atrocities accountable for their crimes, provides justice to the victims, and deters future abuses. In practice, however, the court has been ineffective, unaccountable, and indeed, outright dangerous. Moreover, the largely unspoken, but always central, aim of its most vigorous supporters was to constrain the United States. The objective was not limited to targeting individual US service members, but rather America's senior political leadership, and its relentless determination to keep our country secure.

The ICC was formally established in July 2002, following the entry into force of the Rome Statute. In May, 2002, however, president George W Bush authorised the United States to "un-sign" the Rome Statute because it was fundamentally illegitimate. The ICC and its prosecutor had been granted potentially enormous, essentially unaccountable powers, and alongside numerous other glaring and significant flaws, the International Criminal Court constituted an assault on the constitutional rights of the American people and the sovereignty of the United States.

In no uncertain terms, the ICC was created as a free-wheeling global organization claiming jurisdiction over individuals without their consent.

According to the Rome Statute, the ICC has authority to prosecute genocide, war crimes, crimes against humanity, and crimes of aggression. It claims "automatic jurisdiction," meaning that it can prosecute individuals even if their own governments have not recognized, signed, or ratified the treaty.

Thus, American soldiers, politicians, civil servants, private citizens, and even all of you sitting in the room today, are purportedly subject to the court's prosecution should a party to the Rome Statute or the chief prosecutor suspect you of committing a crime within a state or territory that has joined the treaty.

To protect American service members from the ICC, in 2002 Congress passed the American Service members' Protection Act, or ASPA, which some have branded "The Hague Invasion Act."

This law, which enjoyed broad bipartisan support, authorises the president to use all means necessary and appropriate, including force, to shield our service members and the armed forces of our allies from ICC prosecution. It also prohibits several forms of cooperation between the United States and the court.

I was honoured to lead US efforts internationally to protect Americans from the court's unacceptable overreach, starting with un-signing the Rome Statute. At president Bush's direction, we next launched a global diplomatic campaign to protect Americans from being delivered into the ICC's hands. We negotiated about 100 binding, bilateral agreements to prevent other countries from delivering US personnel to the ICC. It remains one of my proudest achievements.

Unfortunately, we were unable to reach agreement with every single nation in the world, particularly those in the European Union, where the global governance dogma is strong. And last fall, our worst predictions about the ICC's professed and overly broad prosecutorial powers were confirmed.

In November of 2017, the ICC prosecutor requested authorisation to investigate alleged war crimes committed by US service members and intelligence professionals during the war in Afghanistan - an investigation neither Afghanistan nor any other state party to the Rome Statute requested. Any day now, the ICC may announce the start of a formal investigation against these American patriots, who voluntarily went into harm's way to protect our nation, our homes, and our families in the wake of the 9/11 attacks.

The ICC prosecutor has requested to investigate these Americans for alleged detainee abuse, and perhaps more - an utterly unfounded, unjustifiable investigation.

Today, on the eve of September 11th, I want to deliver a clear and unambiguous message on behalf of the president of the United States. The United States will use any means necessary to protect our citizens and those of our allies from unjust prosecution by this illegitimate court.

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 United States bases this policy on five principal concerns about the court, its purported authority, and its effectiveness.

First, the International Criminal Court unacceptably threatens American sovereignty and US national security interests. The prosecutor in The Hague claims essentially unfettered discretion to investigate, charge, and prosecute individuals, regardless of whether their countries have acceded to the Rome Statute.

The court in no way derives these powers from any grant of consent by non-parties to the Rome Statute. Instead, the ICC is an unprecedented effort to vest power in a supranational body without the consent of either nation-states or the individuals over which it purports to exercise jurisdiction. It certainly has no consent whatsoever from the United States.

As Americans, we fully understand that consent of the governed is a prerequisite to true legal legitimacy, and we reject such a flagrant violation of our national sovereignty.

To make matters worse, the court's structure is contrary to fundamental American principles, including checks and balances on authority and the separation of powers. Our founders believed that a division of authority among three separate branches of government would provide the maximum level of protection for individual liberty.

The International Criminal Court, however, melds two of these branches together: the judicial and the executive. In the ICC structure, the executive branch - the Office of the Prosecutor - is an organ of the court. The framers of our constitution considered such a melding of powers unacceptable for our own government, and we should certainly not accept it in the ICC. Other governments may choose systems which reject the separation of powers, but not the United States.

There are no adequate mechanisms to hold the court and its personnel accountable, or curtail its unchecked powers when required.

ICC proponents argue that corrupt or ineffective judges can be removed by a two-thirds vote of parties to the Rome Statute, and that a prosecutor can be removed by a majority vote.

However, I ask everyone in the room [today](#): would you consign the fate of American citizens to a committee of other nations, including Venezuela and the Democratic Republic of the Congo, and entities that are not even states, like the Palestinian Authority?

You would not. I would not. And this Administration will not.

The ICC's Assembly of States Parties cannot supervise the court any more than the United Nations General Assembly can supervise the UN bureaucracy.

Recent allegations of mismanagement and corruption among ICC personnel make this perfectly clear. The first prosecutor elected by the Assembly of States Parties attempted to protect a high-ranking government official from prosecution, assisted a businessman with links to violations in Libya, and shared confidential court documents with Angelina Jolie.

In short, the International Criminal Court unacceptably concentrates power in the hands of an unchecked executive, who is accountable to no one. It claims authority separate from and above the constitution of the United States.

It is antithetical to our nation's ideals. Indeed, this organisation is the founders' worst nightmare come to life: an elegant office building in a faraway country that determines the guilt or innocence of American citizens.

Second, the International Criminal Court claims jurisdiction over crimes that have disputed and ambiguous definitions, exacerbating the court's unfettered powers.

The definitions of crimes, especially crimes of aggression, are vague and subject to wide-ranging interpretation by the ICC. Had the ICC existed during the Second World War, America's enemies would no doubt be eager to find the United States and its allies culpable for war crimes for the bombing campaigns over Germany and Japan.

The "crime of aggression" could become a pretext for politically motivated investigations. Was the mission of US Navy SEALs that killed Osama bin Laden in Pakistan a crime of aggression? What about the US and coalition strikes in Syria to protect innocent children from chemical weapons? How about US military exercises with allies and partners around the world? Or Israel's actions to defend itself on countless occasions?

In the years ahead, the court is likely only to further expand its jurisdiction to prosecute ambiguously defined crimes. In fact, a side event at the Assembly of States Parties recently included a panel discussion on the possibility of adding "ecocide", environmental and climate-related crimes, to the list of offenses within the court's jurisdiction.

And here we come directly to the unspoken but powerful agenda of the ICC's supporters: the hope that its essentially political nature, in defining crimes such as "aggression," will intimidate US decision makers and others in democratic societies.

As we know, the ICC already claims authority over crimes committed in States Parties, even if the accused are not from nations that have acquiesced to the Rome Statute.

The next obvious step is to claim complete, universal jurisdiction: the ability to prosecute anyone, anywhere for vague crimes identified by The Hague's bureaucrats.

Third, the International Criminal Court fails in its fundamental objective to deter and punish atrocity crimes. Since its 2002 inception, the court has spent over \$1.5bn while attaining only eight convictions.

This dismal record is hardly a deterrent to dictators and despots determined to commit horrific atrocities. In fact, despite ongoing ICC investigations, atrocities continue to occur in the Democratic Republic of the Congo, Sudan, Libya, Syria, and many other nations.

The hard men of history are not deterred by fantasies of international law such as the ICC. The idea that faraway bureaucrats and robed judges would strike fear into the hearts of the likes of

Saddam Hussein, Hitler, Stalin, and [Gaddafi](#) is preposterous, even cruel. Time and again, history has proven that the only deterrent to evil and atrocity is what Franklin Roosevelt once called "the righteous might" of the United States and its allies - a power that, perversely, could be threatened by the ICC's vague definition of aggression crimes.

Thus we see paradoxically that the dangers of the International Criminal Court stem from both its potential strength and its manifest weakness.

Fourth, the International Criminal Court is superfluous, given that domestic US judicial systems already hold American citizens to the highest legal and ethical standards. US service members in the field must operate fully in accordance with the law of armed conflict. When violations of law do occur, the United States takes appropriate and swift action to hold perpetrators accountable. We are a democratic nation with the most robust system of investigation, accountability, and transparency in the world. We believe in the rule of law, and we uphold it. We don't need the ICC to tell us our duty, or second-guess our decisions.

ICC proponents argue that robust domestic judicial systems are fully consistent with the court because of the so-called complementarity principle. According to its supporters, the ICC functions only as a "court of last resort". If nations have taken appropriate steps to prosecute perpetrators of crimes, the ICC will take no further action.

And yet, there is little precedent for the ICC to determine how to apply the complementarity principle. How is the ICC prosecutor to judge when this principle has been met? Under what circumstances will the ICC be satisfied? How much sensitive documentation would the ever-toiling bureaucrats in The Hague demand from a sovereign government? And, who has the last word? If it's the ICC, the United States would manifestly be subordinated to the court.

If the ICC prosecutor were to take the complementarity principle seriously, the court would never pursue an investigation against American citizens, because we know that the US judicial system is more vigorous, more fair, and more effective than the ICC. The ICC prosecutor's November 2017 request of course proves that this notion, and thus the principle of complementarity is completely farcical. The ICC prosecutor will pursue what investigations it chooses to pursue, based upon its own political motives, and without any serious application of the complementarity principle.

Fifth, the International Criminal Court's authority has been sharply criticised and rejected by most of the world. Today, more than 70 nations, representing two-thirds of the world's population, and over 70 percent of the world's armed forces, are not members of the ICC.

Several African nations have recently withdrawn or threatened to withdraw their membership, citing the disproportionate number of arrest warrants against Africans. To them, the ICC is just the latest European neocolonial enterprise to infringe upon their sovereign rights.

Israel too has sharply criticised the ICC. While the court welcomes the membership of the so-called "State of Palestine", it has threatened Israel - a liberal, democratic nation - with investigation into its actions to defend citizens from terrorist attacks in the West Bank and Gaza. There has also been a suggestion that the ICC will investigate Israeli construction of housing projects on the West Bank.

The United States will always stand with our friend and ally, Israel. And today, reflecting congressional concerns with Palestinian attempts to prompt an ICC investigation of Israel, the State Department will announce the closure of the Palestine Liberation Organization office here in Washington, DC.

As president [Ronald] Reagan recognised in this context, the executive has "the right to decide the kind of foreign relations, if any, the United States will maintain", and the Trump administration will not keep the office open when the Palestinians refuse to take steps to start direct and meaningful negotiations with Israel. The United States supports a direct and robust peace process, and we will not allow the ICC, or any other organisation, to constrain Israel's right to self-defence.

In sum, an international court so deeply divisive and so deeply flawed can have no legitimate claim to jurisdiction over the citizens of sovereign nations that have rejected its authority.

Americans can rest assured that the United States will not provide any form of legitimacy or support to this body. We will not cooperate, engage, fund, or assist the ICC in any way. This president will not allow American citizens to be prosecuted by foreign bureaucrats, and he will not allow other nations to dictate our means of self-defence.

We take this position not because we oppose justice for victims of atrocities, but because we believe that perpetrators should face legitimate, effective, and accountable prosecution for their crimes, by sovereign national governments.

In April of 2016, it was right here, at the Mayflower Hotel, that President Trump gave his first major foreign policy address during his campaign. At that time, candidate Trump promised he would "always put the interests of the American people and American security above all else".

Today, it is fitting that we reassert this fundamental promise within these walls. This afternoon, we also make a new pledge to the American people.

"If the court comes after us, Israel or other US allies, we will not sit quietly. We will take the following steps, among others, in accordance with the American Servicemembers' Protection Act and our other legal authorities:

- We will negotiate even more binding, bilateral agreements to prohibit nations from surrendering US persons to the ICC. And we will ensure that those we have already entered are honoured by our counterpart governments.

- We will respond against the ICC and its personnel to the extent permitted by US law. We will ban its judges and prosecutors from entering the United States. We will sanction their funds in the US financial system, and we will prosecute them in the US criminal system. We will do the same for any company or state that assists an ICC investigation of Americans.
- We will take note if any countries cooperate with ICC investigations of the United States and its allies, and we will remember that cooperation when setting US foreign assistance, military assistance, and intelligence sharing levels.
- We will consider taking steps in the UN Security Council to constrain the court's sweeping powers, including ensuring that the ICC does not exercise jurisdiction over Americans and the nationals of our allies that have not ratified the Rome Statute.

This administration will fight back to protect American constitutionalism, our sovereignty, and our citizens. No committee of foreign nations will tell us how to govern ourselves and defend our freedom. We will stand up for the US constitution abroad, just as we do at home. And, as always, in every decision we make, we will put the interests of the American people first.

Fact Sheets

Protecting American Constitutionalism and Sovereignty from the International Criminal Court

[National Security & Defense](#)

Issued on: September 10, 2018

"America is a sovereign Nation and our first priority is always the safety and security of our citizens."

President Donald J. Trump

SAFEGUARDING AMERICAN SOVEREIGNTY: President Donald J. Trump is committed to defending our national sovereignty and security interests.

- The International Criminal Court (ICC) is an international court established in July 2002, upon the entry into force of a multilateral treaty known as the Rome Statute.
- Though the United States originally signed the Statute in 2000, the Senate failed to ratify it.
- In May 2002, President George W. Bush authorized then-Under Secretary of State John Bolton to “unsign” it based on the United States’ view that it was fundamentally illegitimate.
 - The United States’ view was grounded in concerns over the broad, unaccountable powers granted to the ICC and its Chief Prosecutor by the Rome Statute, powers that posed a significant threat to United States sovereignty and our constitutional protections.
- The United States is not a party to the Rome Statute and has consistently voiced its strong objections to any assertion of ICC jurisdiction over American personnel.
 - The United States is not an outlier – more than 70 nations, representing two-thirds of the world’s population and over 70% of the world’s armed forces, are not parties.

- Some of our closest allies, including Israel, have pointed out the ICC's flawed approach as constraining liberal, democratic nations in exercising their right of self-defense.
- It is a fundamental principle of international law that a treaty is binding only on its parties, and that it does not create obligations for non-parties without their consent.
 - The Rome Statute cannot dispose of rights of the United States as a non-Party without United States consent.

PROTECTING UNITED STATES SERVICE MEMBERS: The Trump Administration will use any means necessary to protect our citizens, and those of our allies, from unjust prosecution by the ICC.

- On November 3, 2017, the Chief Prosecutor of the ICC released a statement regarding her request to begin an investigation into the situation in the Islamic Republic of Afghanistan.
- The Chief Prosecutor indicated this investigation would focus on Afghan National Security Forces, the Taliban, and the Haqqani network, alongside war crimes allegedly committed by United States service members and intelligence professionals during the war in Afghanistan since May 1, 2003.
- If the ICC formally proceeds with opening an investigation, the Trump Administration will consider the following steps:
 - We will negotiate even more binding, bilateral agreements to prohibit nations from surrendering United States persons to the ICC.
 - To the extent permitted by United States law, we will 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.
 - We will consider taking steps in the United Nations Security Council to constrain the Court's sweeping powers, including to ensure that the ICC does not exercise jurisdiction over Americans and the nationals of our allies that have not ratified the Rome Statute.
- This Administration will fight back to protect American constitutionalism, our sovereignty, and our citizens. As always, in every decision we make, we will put the interests of the American People first.