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John Bolton is dead wrong. The U.S. has every reason to cooperate with the International Criminal Court.



By Wesley K. Clark
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National security adviser John Bolton **issued** a searing condemnation this week of the International Criminal Court. Not only did he declare that the U.S. government would refuse to cooperate with it, but — extraordinarily — **he also threatened** its leadership and those working with it.

He was responding to an announcement made late last year by ICC prosecutor Fatou Bensouda, who filed a request with the court's judges to authorize her to investigate the United States' actions in Afghanistan 15 years ago, along with actions of the Taliban and Afghan national security forces. Bolton — and many others — argue that such an investigation would threaten our service members and our ability to prosecute our war on al-Qaeda, the Islamic State and other terrorist groups.

That view couldn't be more wrong. In fact, this is the perfect opportunity to use the court to strengthen our fight against terrorists as well as our overall national security. And we can do this while still protecting our national sovereignty and military and intelligence personnel.

International law protects not only noncombatants, but also our own military forces. We, the United States, helped strengthen it after World War II and the Vietnam War. Even in the 1990s we participated in outlawing blinding laser weapons and torture. During the **Yugoslav wars**, we saw how fear of prosecution deterred even more hideous war crimes, and **how the indictment of Serbian President Slobodan Milosevic** by the International Criminal Tribunal for the former Yugoslavia in 1999 was one of the decisive blows ending the conflict in Kosovo. I know, because I was part of this effort.

It was only natural that many nations would come together to seek a permanent investigatory and judicial arm that could further deter and restrain the horrors of warfare between or within nations. This was the International Criminal Court. After agonizing internal debate, the Clinton administration refused to embrace the final text of the **Rome Statute**, its treaty framework, in 1998. **But in 2000 we signed the Rome Statute** because progress had been made and we believed in the potential of the Court. Although the United States never ratified the treaty, 123 nations, including most of our major allies, have joined the court. It has been operating since 2002.

We have **cooperated with it in a number of cases**, including **Darfur, Libya, the Congo Republic, the Central African Republic and Uganda**. **And there is no doubt that the reach of the court's jurisdiction has restrained conflict**, whatever the difficulties that emerged in applying clean legal procedures to the nasty violence and ugly strategies of warfare.

Bensouda announced that her "preliminary examination" focused largely on the Taliban and Afghan national security forces and might include al-Qaeda and other terrorist groups if a formal investigation is launched. At stake are crimes against humanity and war crimes of great magnitude orchestrated by these groups and directed toward the innocent. The impact would be felt beyond Afghanistan and into the future, as other would-be war criminals, often tied to terrorist groups, and the nations that support them would have to increasingly reckon with the practical consequences of illegal actions.

The prosecutor will need our help in this, too, for we have some of the most valuable evidence against the suspects. And by cooperating, we can help strengthen the power of international action against terrorists and their supporters, in particular.

But what about Bensouda's investigations of the United States personnel, and actions, as part of this? First, the incidents cited are only a small and minor aspect of the preliminary examination, however large they loom here. The truth is that the United States has always tried to act within the bounds of international laws and expectations, as we have interpreted them.

Second, the Rome Statute **allows** prosecutors to refrain from indictments if “there are ... substantial reasons to believe that an investigation would not serve the interests of justice.” In other words, the court does not have to act if it believes that the countries implicated can take their own measures to deliver justice.

In line with this, the United States should agree to establish its own “**truth commission**,” operating under highly credible procedures under U.S. law, but using international observers and protecting our classified sources and procedures. The truth commission would provide a channel for admitting mistakes where they occurred and providing restitution to victims where it is warranted. It would also be a marker to future generations of American leaders, who will have to wrestle with these same or similar questions of life, death and the national interest.

It may surprise some that the International Criminal Court challenge in the Afghan situation provides us with precisely the means we need to strengthen our security, our American values and our march forward on the right side of history — and to enlist other nations more effectively in the work of making the world a better and safer place.