John Bolton is Right About the International Criminal Court.

September 14, 2018

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The Weekly Standard

https://www.weeklystandard.com/jeremy-rabkin/john-bolton-is-right-about-the-international-criminal-court

The Trump administration is often accused of swinging wildly—and sometimes with reason. But the speech delivered by national security adviser John Bolton on September 10 was very well aimed. It was a sustained warning to the officials of the International Criminal Court (ICC), delivered at Washington’s Mayflower Hotel, the same venue (as Bolton noted) where candidate Donald Trump gave his first major foreign policy speech in the spring of 2016.

If Trump is sometimes suspected of mouthing positions crafted by others, no one can doubt that Bolton had carefully considered the argument of his speech. Bolton helped organize the response of the George W. Bush administration to the ICC in its first term, when the new president “unsigned” the initial (though highly qualified) endorsement of the ICC treaty by President Bill Clinton.

The item in Bolton’s current speech that gathered the most attention was the threat to take legal action against ICC officials involved in prosecuting Americans or nationals of American allies such as Israel (which he mentioned by name). The United States, he said, may “ban [ICC] judges and prosecutors from entering” the country, “sanction their funds in the U.S. financial system,” and even “prosecute them in the U.S. criminal system.” And these sanctions extend to “any company or state that assists an ICC investigation of Americans.”

Some critics warned that such action would undermine respect for the rule of law around the world—since it threatens targeting actual *judges*! That is missing the point. As a nonparty to the ICC treaty, the United States has never agreed to submit its nationals to the court. Still less has the United States agreed that third-party states can extradite Americans to this court in The Hague.

It is one thing for national courts to prosecute Americans for offenses committed on their territory. We might bargain with the state involved in such a case and might well impose diplomatic sanctions if we thought the prosecution improper. It is something quite different for a court claiming to speak for humanity at large to try Americans without—as we see it—any serious legal ground for such action. The Trump administration is currently imposing sanctions on Turkey and Iran in part to protest what we regard as contrived charges against captive Americans. We have in the past tried to prosecute terrorists for kidnapping Americans. Why are the officials of the ICC entitled to a special privileged status? To say that Bolton’s blast against the ICC undermines “respect for the rule of law” implies that any official of any corrupt or tyrannical regime who is locally designated a “judge” must have a claim on our respect. That is not respect for law but for the mystique of the robe.

One of Bolton’s points was that the ICC is not a legitimate tribunal in American eyes because it is not anchored in a larger constitutional scheme, in which prosecution policy answers in some way to a separate executive—in the last resort by the availability of a pardon for egregious convictions. There is nothing of this sort with the ICC. If the prosecutor decides not to pursue a case, judges can order that it be reconsidered—as an ICC panel did when the prosecutor declined to pursue a case against the Israel Defense Forces for attacking a blockade-running ship in the Mediterranean. Under the terms of the ICC charter, not even the U.N. Security Council can order the court to terminate a politically questionable prosecution. It is a machine on autopilot, grounded on the fantastical supposition that a hodgepodge of international officials would never abuse their powers if designated “judges” and “prosecutors.”

A more sophisticated criticism of the speech was that it was premature, as the *Washington Post* complained in an editorial. But that is also implausible. The ICC prosecutor announced last fall that she would seek to pursue an investigation of alleged abuses by American troops in Afghanistan (though not so alleged by the government of Afghanistan). When the court was established, advocates insisted it was aimed at the most monstrous abuses by the most lawless states, so it was very unlikely to target a Western state with reliable rule of law.

Now the ICC is signaling that it’s ready to go there after all. It restrained itself from doing so in its early years (it started operations in 2002). Perhaps ICC officials then calculated it was better to hold off, in hopes of wooing American support or at least acquiescence. As the court now signals that it wants to take on the United States, why wait for the details to warn that we reject its authority altogether?

The argument that U.S. opposition to the ICC will embolden murderous tyrants is, as Bolton pointed out, rather hard to reconcile with the court’s actual record—a mere eight convictions in over 15 years, none of them a major figure, none from outside Africa. As Bolton said: “The idea that faraway bureaucrats could strike fear into the hearts of the likes of Saddam Hussein, Hitler, Stalin, and Qaddafi is preposterous, even cruel.”

To say we undermine respect for Geneva Convention standards incorporated into the ICC Statute (regarding war crimes and “crimes against humanity”) is akin to saying we risk undermining respect for human rights by withdrawing from the U.N. Human Rights Council, a diplomatic pigpen that year after year has generated more condemnations of Israel than of any other state and often more than all other states combined. International institutions tend to reflect the priorities of member states, and standing up for human rights is not a priority for most U.N. member states.

Bolton’s charge that it’s “cruel” to consign victims to the ICC is the most telling. It is a retreat from any kind of serious global policy. Neither the United States nor any other country can ensure that murderous governments restrain their worst tendencies. Sometimes, though, there may be no alternative to force, especially when the challenge is thwarting international aggression.

But the ICC was established on the premise that all states may need backup from international authority. It makes no distinctions between democracies and tyrannies, rule of law states and murderous police states. The undeniable fact, however, is that it is precisely democratic and lawful states that are most vulnerable to the political sting of ICC accusations.

Some critics have said Bolton’s speech will make it harder for the ICC to pursue indictments against Taliban atrocities in Afghanistan. But the Taliban will ignore such indictments, while Western states may be deterred from helping to fight the Taliban there by exposure to legal liability. Qaddafi did not surrender when indicted by the ICC, but Britain’s attorney general kept assuring Parliament that all British airstrikes in the course of the 2011 intervention in Libya were carefully assessed for compliance with ICC standards. In consequence, the fighting went on for six months, wrecking any prospect for a peaceful transition of power.

Making the ICC the final judge of Western war measures is no contribution to any policy goal in facing rogue states. But all of our NATO allies have joined the ICC. So does Bolton’s hard line complicate our relations with potential partners in future military actions? After all, the ICC now has jurisdiction over the crime of “aggression,” defined in vague but wide-ranging terms. Perhaps it is all to the good to be candid with our partners.

President Trump has repeatedly complained that most NATO states shirk the costs of military preparedness. That’s a serious problem. But surely it is worse when our partners, lacking the resources to provide military assistance, still want to participate in legal second-guessing of what fighters have done. The European idea seems to be that Americans will do the fighting and Europeans assist with the judging. Meanwhile, Angela Merkel boasts that the security of Israel is a fundamental principle of German foreign policy ( *staatsraison*), but there is no sign that her government will lift a finger to resist ICC prosecution of Israeli soldiers for what officials in the safety of The Hague regard as excessive force in responding to missile attacks. The important thing, as Kant says, is to prove one’s good intentions by making no exceptions—which means, in practice, no serious judgments about circumstances and ground-level realities. Bolton’s warning was to the point: States that take the side of the ICC can’t be reliable partners.

Finally, there’s the complaint that Bolton was engaging in Trump-style bluster when he threatened individualized actions against ICC officials. The U.S. Code does not authorize the U.S. government to take such actions, says John Bellinger (former legal adviser to the State Department). I would not take his word for it, especially in a short, next-day blog post.

But if more legal authority is required, the Trump administration should ask Congress to provide it. In 2002, both Hillary Clinton and John Kerry voted in favor of the American Service-Members Protection Act—authorizing use of force to rescue Americans detained by the ICC. How many members of Congress would take sides against our armed forces to show their higher loyalty to the court in The Hague? Let’s find out.

There may be some members of Congress who think the International Criminal Court has a necessary role to play. Some critics complain that the Obama administration failed to do justice in its extended investigations of U.S. interrogation practices in Iraq and Afghanistan. They may think resorting to The Hague is the only way to assure ultimate justice. I doubt there are many people in Congress who think this way. It will be useful for voters to know their names.

John Bolton has focused the issue squarely. I don’t think his protest will be ignored, even in Europe.