

U.S. to Penalize War Crimes Investigators Looking Into American Troops

The International Criminal Court has collected evidence of what it says is torture, rape and other crimes by American forces during the war in Afghanistan.



By Lara Jakes and Michael Crowley

June 11, 2020

WASHINGTON — International investigators looking into charges of war crimes by Americans in Afghanistan will face economic penalties and travel restrictions, the Trump administration warned on Thursday, accusing a Hague-based court of corruption and maintaining that the United States can prosecute its own military and intelligence personnel.

The sanctions come more than two years after the International Criminal Court announced an inquiry into allegations of crimes against humanity — including torture and rape — by U.S. forces in Afghanistan and at C.I.A. interrogation facilities abroad.

President Trump ordered the new penalties on Wednesday, and dispatched four of his most senior advisers to announce them on Thursday as a rebuke to what the administration described as an affront to American sovereignty, despite the risk of appearing to dismiss attention to possible human rights abuses.

“When our own people do wrong, we lawfully punish those individuals, as rare as they are, who tarnish the reputation of our great U.S. military and our intelligence services,” said Secretary of State Mike Pompeo, who was flanked at the State Department by Defense Secretary Mark T. Esper, Attorney General William P. Barr and Robert C. O’Brien, the White House national security adviser.

“We hold our own accountable better than the I.C.C. has done for the worst perpetrators of mass criminal atrocities,” Mr. Pompeo said.

The court called the new restrictions “an escalation and an unacceptable attempt to interfere with the rule of law and the court’s judicial proceedings.”

“They are announced with the declared aim of influencing the actions of I.C.C. officials in the context of the court’s independent and objective investigations and impartial judicial proceedings,” the court said a statement. “An attack on the I.C.C. also represents an attack against the interests of victims of atrocity crimes, for many of whom the court represents the last hope for justice.”

Leaders of the American military and the intelligence community have struggled with accusations of battlefield and detainee abuse in the two decades since the Sept. 11 attacks, after U.S. troops invaded Afghanistan in 2001 and Iraq in 2003. Both wars strained American credibility around the world, stretching the ability of U.S. troops to deploy to combat year after year.

In 2017, the court’s chief prosecutor, Fatou Bensouda, concluded that there was enough information to prove that U.S. forces had “committed acts of torture, cruel treatment, outrages upon personal dignity, rape and sexual violence” in Afghanistan in 2003 and 2004, and later at clandestine C.I.A. facilities in Poland, Romania and Lithuania.

The United States is not a signer to the international court, which went into effect in 2002 to investigate crimes against humanity and genocide, and is based in The Hague, in the Netherlands. But Washington has cooperated with the court on past cases, and American citizens can be subject to its jurisdiction in investigations of crimes that are committed in countries that have joined.

Afghanistan is a party to the court, but its government has objected to the inquiry as Afghan officials independently investigate possible war crimes. Poland, Romania and Lithuania are also member states.

Last year, Mr. Pompeo revoked the visa of Ms. Bensouda after she signaled her intent to pursue the allegations. He also vowed to revoke visas for other officials at the court involved in investigating American citizens.

Initially, a lower court had ruled against allowing the war crimes inquiry to proceed, but it was overruled by an appeals panel of judges in March.

through the spin and delivering clarity from the chaos. [Get it sent to your inbox.](#)

Updates on Afghanistan Sign up for a daily email with the latest news on the Taliban takeover in Afghanistan. [Get it sent to your inbox.](#)

In between, the United Nations concluded that American and Afghan security forces were killing more civilians in Afghanistan than were the Taliban and other insurgents. And several high-profile prosecutions of American troops accused of atrocities during conflict were dismissed — including one by Mr. Trump, who in November pardoned a Green Beret charged with the murder of an Afghan man in 2010.

Richard Dicker, the international justice director at Human Rights Watch, said the Trump administration was “putting the U.S. on the side of those who commit and cover up human rights abuses, not those who prosecute them.”

“Asset freezes and travel bans are for human rights violators, not prosecutors and judges seeking to bring justice for victims of serious abuses,” Mr. Dicker said after the new penalties were announced.

Another critic, William W. Burke-White, a law professor at the University of Pennsylvania, predicted that the sanctions and visa restrictions would not stop the international court’s investigation. Instead, he said, the penalties “may undermine one of the most powerful tools in the U.S. foreign policy arsenal.”

“This new sanctions regime draws strong parallels to those imposed by the U.S. in the past against terrorist groups, dictators and human rights abusers,” said Mr. Burke-White, a former State Department official during the Obama administration who has studied the international court closely.

The Trump administration has long reviled the court.

Mr. Trump’s previous national security adviser, John R. Bolton, who has been a fervent opponent of the legal body since 2002, delivered a fiery speech in September 2018 that first put the court on notice that it could be subject to American sanctions.

Understand the Taliban Takeover in Afghanistan

Who are the Taliban? The Taliban arose in 1994 amid the turmoil that came after the withdrawal of Soviet forces from Afghanistan in 1989. They used brutal public punishments, including floggings, amputations and mass executions, to enforce their rules. Here’s more on their origin story and their record as rulers.

The Clinton administration signed the treaty that established the court in 1998, but President George W. Bush later called it invalid and never sought to join it. The Obama administration cooperated with the court on some of its investigations, including into human rights abuses in Darfur, a region of Sudan, but did not renew a push for American membership.

At Thursday’s announcement, Mr. Barr said the court was vulnerable to manipulation by “foreign powers, like Russia” but did not elaborate or give examples.

Mr. Pompeo castigated it as a “mockery.” He said the court had won only four convictions in major criminal cases since 2002, despite spending \$1 billion and demanding hefty pay raises for its judges.

Mr. Pompeo said that reflected ineptitude and the “highly politicized nature” of a court that he said allowed hearsay as evidence, failed to guarantee a speedy trial and denied accountability to the U.S. legal system.

He warned other allies that fought with American forces in Afghanistan that “your people could be next.”

Legal concerns aside, however, the tableau of the government’s most senior national security officials also represented a show of support for the American military at a time of tension between the Trump administration and troops.

Mr. Trump's threat to deploy active-duty troops into American cities to control mostly peaceful demonstrations last week brought public rebukes from a number of retired senior military officers — and private calls for restraint from current Pentagon leaders. Just minutes before Thursday's announcement, Gen. Mark. A. Milley, the chairman of the Joint Chiefs of Staff, said "it was a mistake" to participate in a photo op with Mr. Trump that was staged shortly after authorities forcibly cleared away peaceful protesters outside the White House with tear gas and rubber bullets.

The Pentagon is also torn over the issue of removing Confederate-era names from military installations. After the Marine Corps and the Navy banned Confederate flags from their facilities, the Army said it was open to stripping the names of Confederate generals from its bases. On Wednesday, Mr. Trump said he would "not even consider" it.

Both Mr. Pompeo and Mr. O'Brien made mention of their previous military service at Thursday's announcement in vowing to protect American forces who had served in combat. Mr. Esper is also a former Army officer.

"Rest assured," Mr. Esper said, "that the men and women of the United States Armed Forces will never appear before the I.C.C."

Edward Wong, Richard Pérez-Peña and Marlise Simons contributed reporting.