

**Letter to Senators Urging Opposition to
The American Servicemembers' Protection Act of 2001**

June 18, 2001

Dear Senators:

We are writing to urge you to oppose bill S. 857, the American Servicemembers' Protection Act of 2001. This bill was introduced by Senator Helms on May 9th in the Senate and on May 8th in the House of Representatives by Representative DeLay as an amendment to the Foreign Relations Authorization Act.

While we understand the concerns many members share about the International Criminal Court, the American Servicemembers' Protection Act of 2001 would produce immediate negative consequences for the United States without substantial benefits. This bill would prohibit any form of interaction by the United States with the International Criminal Court after it is established, which will happen as early as 2002, regardless of whether the United States ratifies its statute. The best way for the United States to promote its interests and ensure all due protections for its citizens is by preserving a relationship with the Court and working to shape its culture.

In addition to severely limiting United States' participation in the further shaping of the International Criminal Court, The American Servicemembers' Protection Act will further damage America's relations with its allies at this particularly sensitive time. America's allies strongly support the International Criminal Court. Nine of nineteen NATO members have already ratified the statute and all but one of the rest are expected to follow suit. In fact, on the same afternoon that the U.S. House of Representative passed this legislation, the United Kingdom's Parliament approved the British Bill of Ratification for the ICC. This clears the way for the U.K. government to deposit the instrument of ratification with the United Nations, at which time the United Kingdom will become a party to the statute.

Moreover, this bill is unnecessary. So long as the United States remains a non-party, the Rome Statute imposes no obligation on it to cooperate with the Court. Nor does the U.S. signature require cooperation with the Court. Such cooperation therefore now rests solely with the President. The Act does not authorize him to do anything he cannot currently do, and restricts his ability to determine when it may be in the national interest to cooperate with the Court, whether it be a trial of Saddam Hussein for crimes against humanity he may commit in the future, or the leaders of countries like Sudan for egregious abuses against innocent citizens.

As for the safety of American servicemembers abroad, there are already strong safeguards in place for their protection. The International Criminal Court may only act when countries fail utterly to investigate credible allegations against their citizens and prosecute when appropriate. If a U.S. servicemember were to commit a war crime, the U.S. military justice system is widely considered to have the best safeguards of any such system, and we can not imagine that the ICC would claim jurisdiction. Moreover, the ICC has jurisdiction over only the most heinous crimes, in accordance with existing international law, and only when the crimes are widespread or committed as part of a plan or policy. The U.S. does not assert any plan or policy to commit war crimes, and we are confident that it never will. Therefore any isolated incidents would not fall under the Court's jurisdiction.

At present time, if an American servicemember were arrested in a foreign country, he or she could be tried in that country's national legal system. The International Criminal Court, with its due process protections based largely on U.S. law, serves as a much better alternative venue than that of a possibly anti-American, biased national court. The referral of cases to the ICC would also allow the United States to start its own investigation, which would prevent the ICC from taking action for up to six months or longer. Finally, were the servicemember covered by an extradition or status-of-forces agreement, the Rome Statute would require the foreign country to honor that agreement rather than an arrest warrant from the ICC.

The United States' friends and allies from NATO and the European Union will dominate the Assembly of States Parties, which will run the Court. Working with them, the U.S. can play a role in ensuring that the Court's bench will be composed of respected judges who will uphold the due process and the rule of law fully provided for in the Rome Statute. The U.S. can also play a role in making sure that prosecutors are held accountable by the Assembly of States Parties and the judges, as the Statute requires.

The American Servicemembers' Protection Act undermines the United States' efforts to promote human rights and end impunity for the most heinous crimes and criminals. Putting criminals like Slobodan Milosevic and Radovan Karadzic behind bars would truly help to protect our servicemen and servicewomen. This misnamed and deceptive piece of legislation will not.

Sincerely,

Jim Wyerman
Executive Director
20/20 Vision

June Willenz
Executive Director
American Veterans Committee

Dr. William F. Schulz
Executive Director
Amnesty International USA

Carlos A Walker
Program Officer
Arias Foundation for Peace and Human Progress

Daniel S. Mariaschin
Executive Vice President
B'nai B'rith

Don Kraus
Executive Director
Campaign for UN Reform

Rabbi David Saperstein
Co-Director
Commission of Social Action of Reform Judaism

Gary Baldrige
Co-coordinator Global Missions
Cooperative Baptist Fellowship

Rev. Lonnie Turner
Washington Office
Cooperative Baptist Fellowship

John D. Isaacs
Executive Director
Council for a Livable World

Lois Barber
Executive Director
EarthAction

Erik K. Gustafson
Executive Director
Education for Peace in Iraq Center (EPIC)

Eleanor Smeal
President
Feminist Majority

Edward W. Stowe
Legislative Secretary
Friends Committee on National Legislation

Loretta Bondi
Advocacy Director
The Fund for Peace

Gregory Stanton
Executive Director
Genocide Watch

Kathryn Cameron Porter
President
Human Rights Alliance

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Washington Advocacy Director
Human Rights Watch

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Co-Chair
Independent Student Coalition for an International Criminal Court

Kurt Biddle

Washington Coordinator
Indonesia Human Rights Network

Peter and Gail Mott
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Office of the Americas

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Peace Action Education Fund

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