



## **THE AMERICAN SERVICEMEMBERS' PROTECTION ACT OF 2002**

### **SECTION-BY-SECTION SUMMARY**

*Contained in PL 107-206, signed by President George W. Bush on August 2, 2002*

**Section 2001 Short Title:** Provides that the Act may be cited as the "American Servicemembers' Protection Act of 2002."

**Section 2002 Findings:** Sets forth legislative findings in support of the Act, many of which are incorrect or misleading.

**Section 2003 Waiver And Termination of Prohibitions of This Title:**

- (a) Grants the President authority to waive Sections 2005 (prohibition on US participation in UN peacekeeping) and 2007 (prohibition on assistance to States Parties) for a single period of 1 year if he notifies congressional committees and reports that the International Criminal Court (ICC) has entered into a binding agreement with the U.S. not to exercise jurisdiction over U.S. and allied personnel. (See also waivers in sections 2005 and 2007)
- (b) Grants the President authority to extend the waiver in (a).
- (c) Grants the President authority to waive sections 2004 (prohibition on cooperation with the ICC) and 2006 (prohibition on transfer of national security information) with respect to the investigation or prosecution of a named individual, subject to the binding agreement referenced in (a). (See also sections 2011 and 2015.)
- (d) Makes the waiver in (c) terminate if the binding agreement expires.
- (e) Specifies that Sections 2004, 2005, 2006, 2007 and 2008 will no longer be in effect if the U.S. ratifies the Rome Statute.

**Section 2004: Prohibition on Cooperation with The International Criminal Court:**

- (a) States that the section applies only to the ICC and not the ad-hoc tribunals; specifically permits action under Section 2008 and the communication of U.S. policy.
- (b) Prohibits any U.S. court, or state or local government, from responding to a request for cooperation from the ICC.
- (c) Prohibits U.S. agencies from transferring letters rogatory [a formal written request by a court to a court in a foreign jurisdiction to summon and examine a witness in accordance with that jurisdiction's procedures] or any other request for cooperation by the ICC to the tribunal, officer, or agency in the United States to whom it is addressed.
- (d) Prohibits any federal, state or local government from extraditing any person from the US to the ICC and from transferring any US citizen or permanent resident alien to the ICC.
- (e) Prohibits any federal, state or local government from providing support to the ICC.

- (f) Prohibits the use of U.S. government funds to assist the investigation, arrest, detention, extradition, or prosecution of any US citizen or permanent resident alien by the ICC.
- (g) States that the U.S. will exercise its rights to limit the use of assistance provided under various treaties and international agreements by the ICC.
- (h) Prohibits investigative activity of ICC on US territory.

**Section 2005 Restriction on United States Participation in Certain United Nations Peacekeeping Operations**

- (a) States that it is the policy of the U.S. to seek permanent exemption from the ICC for U.S. troops in every UN peacekeeping operation authorization.
- (b) Bars U.S. military participation in UN peacekeeping unless the President submits to Congress the certification in (c).
- (c) Waiver - The certification referred to in subsection (b) is a certification by the President that one of the three following conditions has been met:
  - (1) the UN Security Council exempted US armed forces members in the authorizing resolution;
  - (2) the ICC does not have jurisdiction over the countries in which troops will operate or these countries have entered into Article 98 agreements, OR
  - (3) the national interests of the US justify participation.

**Section 2006 Prohibition on Direct or Indirect Transfer of Classified National Security Information and Law Enforcement Information to the International Criminal Court:**

Requires the President to ensure that procedures are in place to prevent the transfer of classified national security information to the ICC.

**Section 2007 Prohibition of United States Military Assistance to Parties to the International Criminal Court**

- (a) Bars US military assistance to States Parties one year after entry into force.
- (b) Waiver - allows the President to waive (a) with respect to a particular country if important to the national interest of the US; requires report to Congress.
- (c) Waiver - allows the President to waive (a) if there is an Article 98 agreement with a particular country; requires report to Congress.
- (d) Exempts from (a) NATO members, major non-NATO allies (including Australia, Egypt, Israel, Japan, Jordan, Argentina, the Republic of Korea, and New Zealand); and Taiwan.

**Section 2008 Authority to Free Members of The Armed Forces of the United States and Certain Other Persons Detained or Imprisoned by or on Behalf of the International Criminal Court:** Grants the President the authority " to use all means necessary and appropriate to bring about the release" of specific U.S. and allied personnel and authorizes legal assistance for such persons.

**Section 2009 Alliance Command Arrangements:** Requires the President to report to Congress on the extent to which U.S. servicemembers serving under the command or operational control of foreign military officers pursuant to U.S. military alliances could find themselves subject to

ICC jurisdiction; and modifications that could be made to command and control arrangements within U.S. military alliances to reduce these risks.

**Section 2010 Withholdings:** States that any funds withheld from international organizations shall be used in another account.

**Section 2011 Application Of Sections 2004 And 2006 To Exercise Of Constitutional Authorities:** States that the prohibitions on cooperation and on military assistance shall not apply to any actions taken by the President in the Constitutional exercise of his authorities as Commander in Chief or of his executive power; requires a report to Congress on such actions..

**Section 2012 Nondelegation:** Prohibits the President from delegating his authorities to other individuals.

**Section 2013 Definitions:** Defines various terms used in the Act

**Section 2014 Repeal Of Limitation:** Repeals the section of an earlier bill prohibiting funds to the ICC.

**Section 2015 Assistance to International Efforts:** Permits U.S. assistance to all international efforts, not excluding the ICC, to bring offenders who are foreign nationals to justice . Full text: "Nothing in this title shall prohibit the United States from rendering assistance to international efforts to bring to justice Saddam Hussein, Slobodan Milosovic, Osama bin Laden, other members of Al Queda, leaders of Islamic Jihad, and other foreign nationals accused of genocide, war crimes or crimes against humanity."