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148 Cong Rec S 5132

Amendment No. 3787 to Amendment No. 3597

Mr. DODD . Madam President, I call up amendment No. 3787.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Connecticut Mr. Dodd , for himself and Mr. Leahy, proposes an amendment numbered 3787 to amendment No. 3597.

The amendment follows:

At the appropriate place in the bill, add the following:

Sec. 2015. Nothing in this title shall prohibit the United states from rendering assistance to international efforts to bring to justice Saddam Hussein, Slobodan Milosovic and other foreign nationals accused of genocide, war crimes or crimes against humanity.

Sec. 2016. This title shall cease be effective at the end of September 30, 2002.

Amendment No. 3787, As Modified

Mr. DODD . Madam President, I send to the desk a modification of that amendment which my colleague from Virginia is looking at. It is a slight modification of the amendment. Hopefully this modification will be accepted.

The PRESIDING OFFICER. Is there objection to the modification? Without objection, the amendment is so modified.

The amendment, as modified, is as follows:

At the end, add the following:

Sec. 2015. 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 Qaeda, leaders of Islamic Jihad, and other foreign nationals accused of genocide, war crimes or crimes against humanity.

Sec. 2016. This title shall cease be effective at the end of September 30, 2002.

Mr. DODD. I thank the Chair. Madam President, why don't I allow my friend from Virginia to make his case on his amendment, and then I will respond to that by talking about what my second-degree amendment does. That way we can have some order to the debate.

I know the Senator from Georgia wants to be heard on this as well. There may be others who want to be heard. In fact, I invite my colleague to look at the second-degree amendment. He might be willing to accept it. We can have a short debate on the amendment_it is a long amendment, 29 pages. Nonetheless, we can focus on that amendment if the second-degree amendment is acceptable. I will let him look at the amendment and make his case for the first-degree amendment.

Mr. WARNER . Madam President, I think the normal way to proceed is for the principal amendment to be addressed by the sponsor, myself, and the cosponsors, Mr. Miller, Mr. Hatch, Mr. Kyl, Mr. Brownback, Mr. Allen, Mr. Hutchinson, Mr. Craig, Mr. Shelby, Mr. Hagel, Mr. Crapo, and Mr. Frist and Senator Sessions likewise.

This is a matter with which the Senate has considerable familiarity so I shall be brief in my remarks.

This amendment, the American Servicemembers' Protection Act, is necessary to protect_I repeat, protect_our servicemembers and certain Government officials from prosecution_or that is potential prosecution_by the **International Criminal Court**, hereinafter referred to as the ICC, an institution which comes into effect on July 1, 2002, over the objections of the United States of America.

This amendment would protect U.S. military personnel and other elected and appointed officials of the U.S. Government against potential criminal prosecution by an international tribunal court to which the United States is not a party.

In light of our ongoing global war on terrorism, it is vital that the Senate adopt this important amendment to protect our brave servicepersons and others who are now being dispatched daily to the farflung points of this globe in the battle against terrorism.

At the outset I would like to recognize the leadership of our distinguished [*S5139] colleague, Senator Helms, who by necessity is absent today; otherwise, he would be handling this. This is his legislation which I am privileged and, indeed, honored to bring forth on behalf of my distinguished longtime friend and colleague from North Carolina.

He has worked tirelessly on this issue for a number of years, and we all, every Member of this Senate, owe to him a debt of gratitude for keeping this matter before the Senate and to be the ever watchful eye on the steps this Senate must take to protect our servicepersons and others.

President Bush has consistently_I repeat, consistently_opposed this treaty. In May of 2002, a short time ago, President Bush notified the United Nations that the United States does not intend to become a party to the ICC.

However, since over 60 nations have ratified the treaty, the ICC will be established and become effective on July 1 of this year. The **International Criminal Court** will have the power at that moment to proceed to indict, prosecute, and imprison persons anywhere in the world accused by the Court of "war crimes," "crimes against humanity," and "genocide."

In 2000 and again last year, Senator Helms introduced, and I cosponsored, freestanding legislation similar to this amendment. Last December, the Senate approved by a vote of 78 to 21_and I encourage my colleagues to do their basic research on that vote to see how they cast their vote_a version of this legislation on the Defense appropriations bill. However, the provision was dropped in the conference. It is important to note that the administration supports this amendment. I repeat, the President supports the amendment brought by myself and other colleagues, and the Departments of State, Defense, and Justice have all been closely consulted and their views incorporated into this amendment.

Also, an identical provision is contained in the House-passed supplemental appropriations bill adopted by the House on May 24 of this year.

I received a call from the distinguished chairman of the Foreign Relations Committee, Congressman Hyde, early this morning, expressing his strong support of the Senate adopting favorably the amendment of the Senator from Virginia.

This amendment seeks to protect American servicemembers, embassy officials, and Government employees from the ICC, and preclude cooperation with the ICC so long as the Senate does not ratify the treaty. This body, I repeat, will again have the opportunity, if for some reason it is brought up, to ratify this treaty. However, the amendment does allow, on a case-by-case basis, cooperation with ad hoc courts provided_that is, ad hoc courts elsewhere in the world_they are created through the United Nations Security Council, examples being those courts created by Yugoslavia and Rwanda.

I shall now outline key provisions of this amendment. First, no Federal or State entity, including courts, may cooperate with the ICC in law enforcement matters such as arrest and extradition, searches and seizures, discovery, asset seizure, financial support, transfer of property, personnel details, intelligence sharing, or otherwise render services to the ICC.

No classified national security information can be transferred directly or indirectly to the ICC.

The United States must secure permanent immunity from ICC jurisdiction for American personnel before they can participate in any United Nations peacekeeping operation or other arrangements must be in effect to protect U.S. peacekeepers from the jurisdiction of this Court. The President may submit a national interest certification, however, effectively waiving this restriction if that is his judgment.

Another provision: No ICC treaty party can receive U.S. military assistance except for NATO countries and major non-NATO allies. The President again may waive this restriction for other countries that ratify the treaty but then conclude agreements with the United States to protect our personnel from the Court. The President may also waive this restriction if he determines that such waiver is important to the national interest.

The President is authorized to use all means necessary and appropriate to bring about the release from captivity of U.S. or allied personnel detained or imprisoned against their will by or on behalf of this Court.

The President is urged to analyze existing alliance command arrangements and develop plans to achieve enhanced protection from the ICC for U.S. military personnel subject to such arrangements.

Let me quote from testimony given before Congress in 1998 by the lead U.S. negotiator on the ICC, Ambassador David Scheffer, as he explained the danger posed by the Court:

Multinational peacekeeping forces operating in a country that has joined the treaty can be exposed to the court's jurisdiction even if the country of the individual peacekeeper has not joined the treaty. Thus, the treaty purports to establish an arrangement whereby United States armed forces operating overseas could be conceivably prosecuted by the international court even if the United States has not agreed to be bound by the treaty. Not only is this contrary to the most fundamental principles of treaty law, it could inhibit the ability of the United States to use its military to meet alliance obligations and participate in multinational operations, including humanitarian interventions to save civilian lives.

In closing, let me also quote from a floor statement on this legislation given by Representative Henry Hyde, chairman of the House International Relations Committee, on May 10, 2001:

The ICC threatens the sovereignty of our Nation. This legislation has been endorsed by a who's who of the American foreign policy establishment_a bipartisan group of some of our wisest and most experienced experts on national security matters, men and women who held high office in every Administration since that of Richard Nixon. From Henry Kissinger, George Shultz and Brent Scowcroft to Donald Rumsfeld, Jeane Kirkpatrick, and Zbigniew Brzezinski, they all agree, and I quote from their letter, that This legislation is an appropriate response to the threat to America's sovereignty and international freedom of action posed by the **International Criminal Court**.

This is an important amendment that deserves the support of all our colleagues. We have a responsibility to protect our servicemembers and the adoption of this amendment is the right thing to do.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. MILLER . Madam President, I rise to support the American Servicemembers' Protection Act amendment. I am very pleased to join with my distinguished colleague from Virginia in support of this legislation, just as I was pleased to join with Senator Helms in working with him and his staff on its behalf.

It might be worth noting that Senator Helms made a determined effort and has been making a determined effort to pass this legislation. I think that is very admirable, and I would like to commend him again for his leadership and wish him well.

I will not restate the details of this amendment since Senator Warner has already articulated them so well, but I would like to make a few brief points.

As Senator Warner mentioned, the Senate passed legislation similar to this amendment as part of the 2002 Defense appropriations bill. The final vote was 78 to 21, which constituted a clear majority of this Senate. Unfortunately, the conference committee missed an opportunity to have this protective legislation in place before the **International Criminal Court** was ratified earlier this year. Now the **International Criminal Court** becomes effective on July 1, and American servicemembers, officials, and citizens will then potentially be subject to a court to which we are not a party.

That is why, in a nutshell, this legislation is so important. We need some degree of protection for our men and women in uniform and for other officials who sacrifice so much for our Nation.

This amendment is appropriately entitled the American Servicemembers' Protection Act because our war on terrorism could put our military at risk of politicized prosecutions by the **International Criminal Court**. Other brave Americans who serve this country are also at risk, and this legislation will protect them as well. I believe that as elected lawmakers we are obligated to safeguard them from this potential threat just as we would from threats on the battlefield. I also believe it is important for our military to know that Congress will not stand idly by while this questionable Court comes into existence.

Make no mistake about it, our servicemembers are very aware of the [*S5140] importance of this pending legislation. We must send them the clear message that they have our full support.

I can guarantee that if we do not get this done, and done soon, we will look back and regret our inaction. I, for one, do not want to look a parent in the eye and explain why their son or daughter is being subjected to an international court on a trumped up charge of war crimes.

The administration supports this amendment, as Senator Warner said, and so should we. Let us do the right thing again, as we did in December, and pass this amendment.

I yield the floor.

The PRESIDING OFFICER (Mr. Carper). The Senator from Connecticut.

Mr. DODD . Mr. President, first let me explain my second-degree amendment. In fact, I will read it because it is easier to read it than go through an explanation.

At the end of the amendment being offered by my friend from Virginia, we would add a new section that says:

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.

This title shall cease to be effective at the end of September 30, 2002.

The reason for that last section is because presently, pending in conference, is this very issue, in the Department of State-Justice authorization bill.

I do not understand why we are proceeding with this matter today. Currently, we have in conference a debate going on over this very matter, why should we now add it to an appropriations bill? If we pass the Warner amendment, those who sit on the committees of jurisdiction of this matter will be excluded from the debate. This is not the place for this amendment.

But first let me turn to my second-degree amendment. I hope my colleagues might accept this second-degree amendment because I cannot believe, I do not want to believe, that if we apprehend, through the international community, people I have just mentioned on my list, that under this bill we would be prohibited from assisting in the prosecution of Osama bin Laden, the Islamic Jihad, Saddam Hussein, and other members of the terrorist community in the world.

My amendment merely says that despite whatever else we have said, when it comes to prosecuting these people, we would participate and help, even though we are not a signatory or a participant in the **International Criminal Court**.

I hope my amendment is adopted and accepted. It seems to me, if not, we will have to have a vote on this amendment as the second-degree amendment to this bill.

And, now let me make a case against the underlying proposal. I remind my colleagues this amendment is 29 pages long. This is a bill. This is not an amendment. It deserves to be looked at.

Let me state what the bill does, and remember that our NATO allies have signed this treaty, I read from the bill: It bars intelligence of law enforcement sharing, bars the transfer of intelligence of law enforcement information which specifically relates to matters under investigation by the ICC, to the ICC, or any government which is a party to the Court.

That is stunning. We are going to bar intelligence sharing with the European Community and our NATO allies because they have signed this?

Two, it restricts U.S. participation in U.S. peacekeeping. It bars U.S. participation and U.S. peacekeeping or peace enforcement operations unless the President certifies the action.

Third, it prohibits military assistance to any country that is a party to the ICC. I have already mentioned NATO; and major non-NATO allies are exempted, as well as Taiwan, unless they have concluded an agreement to prevent proceeding against U.S. personnel.

Lastly, and this is one to pay attention to, this amendment authorizes the President to use "all means necessary and appropriate" to free any U.S. personnel of NATO and major non-NATO allies, including persons working on behalf of nonallied nations detained by the ICC.

We now send troops to free people from the ICC? The Philippines is an allied nation, but there are terrorists in the Philippines. Now, in the future the UN could bring Phillipine terrorists to The Hague and try them, and the United States, under this, you can make a case, would have to go in and free them because they are an allied nation.

Do we really want to do that? Please read this bill. This goes far beyond what may be a reasonable proposal of trying to guarantee the U.S. military personnel not be unfairly, unnecessarily, or unjustly prosecuted. The idea we are going to bar intelligence sharing, bar financial assistance, not going to participate in peacekeeping, and that we are actually going to go in, not on behalf of just U.S. personnel, but under this amendment, if adopted and agreed upon under the supplemental appropriations bill, go in and free criminals when allied personnel are subjected to the ICC.

This is a 29-page amendment. This goes way beyond what I think my colleagues believe we are trying to do. Please read this amendment. We are doing things quickly around here. It is a supplemental appropriations bill, and we are trying to rush it through.

If we are in conference dealing with this very same proposal or one like it, which is the place to be doing it and we wouldn't deal with defense matters here or other issues. That is the reason we have a Foreign Relations Committee. It is the reason we have a Commerce Committee. It is the reason we have a Judiciary Committee.

So we are going to turn this matter over to the Appropriations Committee and deny the other committees that have worked on this a chance to resolve it? That is not the way the Senate ought to be doing its business, in my view.

Let me give my colleagues a bit of history. It was the United States at the end of World War II, people like George Marshall and Harry Truman and Douglas MacArthur and Dwight Eisenhower and Arthur Vandenberg, who stood in this Chamber and outside of it and argued for rebuilding Japan, rebuilding Europe with the Marshall Plan, setting up the U.N. system, the World Bank, the IMF. And they did it in spite of huge opposition. Only about 18 percent of the American public believed we ought to have a Marshall Plan. But we had a leader with the guts of a George Marshall and an Arthur Vandenberg and a Harry Truman who said it is the right thing to do. It may not be popular, but it is the right thing to do.

When you have 133 nations, and 67 others who have ratified an international court which we argued for, we ought to be trying to do something to make it work right.

I quickly add, if that treaty as written were before the Senate today, I would have a hard time voting for it. And my colleague from Virginia is right. When President Clinton signed that treaty, he recommended it not be ratified as written. However, to say we should not ratify it does not mean we should not work at it. And it does not mean you go around and penalize every one of your allies because they have. We do protect service people. Each day we protect them. We have agreements, where our servicemen are located all over the world, on how they would be handled should a matter arise, such as it has in Japan with allegations of rape by servicemen. And we deal with those matters.

But the idea that we would walk away at the very hour we are trying to build support internationally for dealing with terrorists is absurd. I also note that we have been told flatly there will be no further ad hoc trials, the ICC is a U.N. system that has been set up so as not to go through it on an ad hoc basis. It means for all the future efforts our recourse only is military action.

There are many who believe if we had an **international criminal court** in the early part of the 20th century, we might have been able to avoid some of the tragedies that occurred. Listening to people such as Elie Wiesel, today's proceedings are an insult to the Holocaust victims. Elie Wiesel says this bill is an outrage, it is wrong. The people who went through what they did as a result of the Nazis ought to understand that we are trying to set up a system so that we might avoid that kind of atrocity being repeated.

This bill is poorly written. It is poorly crafted. It does great damage to the [*S5141] United States at a critical time when we are trying to build support in dealing with the issues of terrorism.

It should be fresh in our minds the fact that at the end of the cold war, an explosion of ethnic brutality led to the necessity of creating ad hoc tribunals in Rwanda and in Yugoslavia, but there was no means available during those days to try the Idi Amins and Saddam Husseins of the world and others who evade their nation's justice and avoid the response of the international community. With very few exceptions, the world has stood helpless and silent in the face of such crimes against humanity.

Finally, the world stands up. We have been begging to do it for half a century, and they finally do it. They finally adopt the Rome treaty_133 countries, and 67 sign it. It goes into effect in a matter of days. They are finally doing what we asked them to do for years. What do we do? We walk away from it, and we threaten them. We tell them we will not share intelligence. We tell them they do not get foreign aid or military assistance, that we will deal with them in a harsh way. I don't think that is wise. These are our NATO allies, European allies.

We should be rejoicing that finally_finally_at our insistence, with the entry into force of this Court, any individual who commits genocide, war crimes and crimes against humanity, will be

on notice that they will be prosecuted for those crimes.

So these thugs around the world who are doing what they are doing_ we are finally getting the world to recognize we have to stand up to them. Now we are going to go after our allies and penalize them because they signed the Rome treaty and because they believed that finally this may be a way to proceed on some of these issues. We attack the Court and those who have chosen to join it? We have nothing to fear from this Court. We have nothing to fear about strengthening the rule of law.

That is what people such as Harry Truman, George Marshall, and Douglas MacArthur stood for. They believed it. We ought to be joining them historically by opposing this amendment and encouraging the improvement of this **International Criminal Court**, becoming a party to a great effort and not walking away from it.

I do not understand in many cases why our allies continue to support our efforts when we react to them as we are doing with these amendments.

Last month, in fact, the Bush administration took the unprecedented step of unsigning the International Criminal Court. Ironically, I offered an amendment at that time when we were debating the issue to say I will accept this but give the President the authority to waive all of this. He only got 48 votes in this Chamber. This President_ not the past President, this President_ got 48 votes in this Chamber, deferring to the President to decide whether or not to invoke the provisions of this particular bill. Here we are now even walking away from that.

I point out that when the President decided to unsign this treaty it was an unprecedented act in the history of this Nation. I cannot find a single example in our more than 200 years of great history where an American President of either party ever unsigned something like this. What does that say to the countries around the world that we get to sign treaties with us when they decide to unsign them in the future? What kind of precedent is that? You didn't have to ratify that treaty. But for an American President to unsign it, while we encourage people to live up to their agreements when an American President signs them, is going to create real problems for us down the road, I predict.

On May 6, 2002, Under Secretary of State Grossman announced that the United States would make its objections to the ICC clear through nullification of its signature on the ICC's Rome statute and said the United States would seek agreements with other countries to remove American servicemen.

Mr. Grossman also said:

Notwithstanding our disagreements with the Rome treaty, again, the Rome treaty was our idea the United States respects the decisions of those nations who have chosen to join the ICC.

Is this respecting these other nations, when we go down that list of the provisions of this bill? Is this respecting those who have signed it? We bar intelligence or law enforcement sharing. We are not going to participate in U.N. peacekeeping in their countries. We are going to prohibit

military assistance. And we threaten to use military force to go in. That is respecting the decision of those who signed on to this agreement?

Ambassador Pierre Prosper, who is head of the War Crimes Office, said:

The President has made clear that what he wanted to do today was make our intentions clear and to not take aggressive action or wage war, if you will, against the ICC or the supporters of the ICC.

Read that statement and then read this bill that you are going to vote on shortly and ask whether that is consistent with the administration's position. Read what we do here under this amendment if adopted.

I wonder if our colleagues know the amendment that is being offered is called The Hague Invasion Act by our allies because of its extreme provisions authorizing the use of armed force.

All but one other NATO nation completely and strongly backs the ICC, and the entire European Union has ratified the ICC and strongly demarched the United States, indicating disappointment with the U.S. signature nullification.

The amendment by the Senator from Virginia forces the United States into a dangerous and counterproductive game of diplomatic chicken with our closest allies at a time when the alliance is already under great strain, and throws salt in the open wounds of our closest allies in the war on terror, and I think it is dangerous.

The amendment is a very complex amendment. It is 29 pages. There are waivers within waivers which turn out not to be waivers at all because the conditions of the waivers are unattainable in many instances. This is not an issue we should be considering as part of an emergency supplemental appropriations bill, but as I said earlier, it truly belongs in the conference where it is, with the members of the committees of jurisdiction debating it. This matter is in that conference. That is the place it ought to be considered.

The Warner amendment would prevent the United States from participating in peacekeeping or peacemaking activities pursuant to the United Nations in countries that happen to be members of the Court. There is a significant amount of assistance in this bill for Colombia on which we are voting here. I wonder if our colleagues know that Colombia ratified this treaty on June 5 and is now a party with the Court. President Pastrana said ratification with the ICC would send a message to the FARC, the revolutionary group in Colombia, that it would be held accountable for the murder of 119 civilians who took refuge in a church in that country. The Warner amendment would prevent the President from sharing national security information with a court or any country which is a party to the Court, absent assurance the information would not go directly or indirectly to the Court.

I don't think you could ever give that assurance. If faced with an effort to prosecute the FARC and Colombian request for assistance to go after the people who murdered those 119 innocent civilians, under the provisions of this amendment, if adopted, the United States would refuse

cooperation.

I think that is outrageous, I think that is sad, if it is adopted.

Mr. WARNER. Will the Senator yield for a quick question? Is there not incorporated in the amendment of the Senator from Virginia sufficient Presidential waiver to take care of every point the Senator has made?

Mr. DODD. I say to my colleague, you have to give assurance that none of this information either indirectly or directly would go to the Court in allowing for the prosecution of those people. I don't think the President could get that assurance. If you are going to be prosecuted in the Court and you are going to share information with the country that wants them prosecuted, how can you give a waiver doing that? That is what I mean about this bill.

Mr. WARNER. Why would the Secretary of Defense have indicated__

Mr. DODD. It is my time. I will be finished in a minute, and then I will give my colleague all the time.

Mr. President, may I finish?

The PRESIDING OFFICER. The Senator from Connecticut. [*S5142]

Mr. DODD. This is outrageous, this amendment. I urge my colleagues to read this. Read this, please, what we are about to do, here.

This has waivers within waivers. It is 29 pages of complex contradictory provisions, in my view, that make it virtually impossible in many instances for any kind of waivers to be applied here. Further, the amendment would also prohibit the United States from providing military assistance to many countries that are parties to the Court, including such countries as Colombia, unless the President first takes the step of waiving the provisions of that particular provision.

I would say what is going to happen, if our allies respond to this prohibition by barring the sharing of information they may have, which we have a strong national security interest in having—we are sort of provoking this kind of tit for tat, back and forth.

I don't believe that is the way to go. There are ways of improving this treaty. This is not the way. This is about politics and votes in here. This is not about making this a stronger agreement and doing something that would make our Nation proud.

I can only imagine what would have happened if this Senate had been operating in the days after the end of World War II, when only a few of Americans supported the Marshall Plan, when it wasn't popular to do so, using taxpayer money to rebuild Japan and rebuild Europe. In a sense, that is what we are trying to do here; it is to rebuild an international community to deal with the issues of justice in the world. We are now going to walk away from it entirely.

It has been further said you can set up ad hoc courts. No, you can't. The U.N. system has established the ICC. That is it. Not ad hoc courts. The ad hoc courts worked when there was no ICC. Now in the establishment of an ICC, whether we like it or not, it is going to go into effect in July. That is a fact. So the ad hoc courts are not going to be set up.

So when we go after these other people, or try to anyway, the only place you can bring them is to the ICC. But by not being a part of that, we take ourselves out of the game and leave ourselves only the option of militarily going after these people.

That may be a viable option if nothing else works, but I don't think you want to exclude the option of taking these people to court under the rule of law.

The ICC is now the only game in town. The bottom line is that the Security Council is unlikely to approve any new ad hoc tribunals when once the ICC is established. When international efforts attempt to bring Saddam Hussein or Osama bin Laden or the Islamic Jihad to justice, what is the United States going to be doing? What about slave traders and war criminals around the globe?

We will exclude ourselves from assisting in those efforts. That is what this amendment says. We will not be a party to it.

The Warner amendment gives the administration a war powers blank check. Section 3008 of the Warner amendment authorizes "use all means necessary and appropriate" just as the Gulf of Tonkin Resolution authorized all necessary means to release persons arrested by the ICC.

This is a huge giveaway of congressional war powers authority.

Do we really want to be giving open-ended authority to the executive branch to put American servicemen at odds with the forces of some of our closest allies? Are we prepared to send troops, in a sense, to The Hague? This extraordinary grant of authority in section 3008 just doesn't apply to U.S. servicemen. It extends "to any person working on behalf of" many foreign nations, including Egypt, Argentina, Jordan, South Korea, and the like. That goes way beyond what we are being told this amendment accomplishes.

This amendment breaks faith with the Holocaust victims. Elie Weisel has warned that this bill "would erase the legacy of U.S. leadership on international justice." Further, he said, for the memory of the victims of the genocide and the war crimes, this bill must be defeated. This comes from Elie Weisel. These are the people we ought to be listening to when it comes to establishing an international criminal justice court to deal with crimes against humanity and genocide.

This amendment is bad for Israel. Israel signed the Rome Treaty, which is supported by the American Jewish Committee and the Religious Action Center to Reform Judaism. Most of Israel's concerns have already been favorably resolved through negotiations. But Israel is going to need the United States as a fully engaged partner in future negotiations over the definition of aggression and other issues. No matter what one thinks of the ICC, it is clear that U.S.

disengagement from the Court is bad for our ally in the Middle East at a critical time, the State of Israel.

For all those reasons, I hope the second-degree amendment I have offered will be agreed to. That would at least provide us an opportunity to go after the people I have mentioned should they be apprehended by the Court, and we could be a part of pursuing them.

It seems to me that in the absence of that we are going to look rather ridiculous in making a claim about seeking support for antiterrorism.

Mr. REID . Mr. President, if the Senator will yield for a question, if the amendment of the Senator from Connecticut is agreed to, the Warner amendment still stands. Will the Senator explain to the Senate the finality of that, if both amendments are agreed to by the Senate?

Mr. DODD. If the Warner amendment is agreed to, I still have a problem with it. However, I will read my amendment again.

It says:

Nothing in this title would prohibit the United States from rendering assistance to the international efforts to bring to justice Saddam Hussein, Slobodan Milosovic, Osama bin Laden, and other members of Al Qaeda, leaders of Islamic Jihad, and other foreign nationals accused of genocide, war crimes or crimes against humanity.

Mr. REID. I also ask my friend, if both amendments are agreed to, the matter of the Senator from Virginia would still be before the body, and he could still go forward in the manner he anticipated with the exception that the Senator from Connecticut added. Is that right?

Mr. DODD. That is correct.

Mr. WARNER . Mr. President, I wasn't able to hear the distinguished leader.

Mr. DODD. If I may reclaim the floor_ and I will finish_ the question of the Senator from Nevada was if my second-degree amendment is adopted as part of the Warner underlying amendment, does the Warner amendment go forward?

I want to be honest with my colleagues. I think it is a better amendment; that is, the Warner amendment is a better amendment if my adaptation is adopted as a second-degree amendment. Yet, I will still have a problem with his amendment for the reasons I have outlined beyond the adoption of it. It goes too far.

I will tell my colleagues that they could vote for the Warner amendment with at least some comfort here should my second-degree pass.

Can you imagine the irony of this bill if my amendment is not adopted? If someone catches bin Laden and brings him to the International Criminal Court, the adoption of this amendment would

prohibit us from assisting in that prosecution. I can't believe that we would want on record that kind of a judgment.

Mr. WARNER . Mr. President, will the Senator yield for a question on that point? Is there any way we can have a colloquy so we can inform the Senate of what is taking place?

Mr. DODD. I want to make my point about this, and then I will be happy to engage my friend in a colloquy.

Mr. WARNER. I am exhausted from listening.

Mr. DODD. The Senator from Virginia has a 29-page amendment. I didn't read the whole thing. If I did, that could take more time than my remarks. This is a bill; this isn't an amendment. I have an amendment. This is a bill of 29 pages. It goes on and on. But read the bill. Don't come over with this nice title, the American Servicemembers' Protection Act. How am I going to vote against that?

Read it, and then ask yourself whether or not you really want to be in a situation where ironically, in the same bill we are voting for aid to Colombia, who is a member of the ICC.

Under the provisions of this, barring some waiver, maybe as long as Colombia didn't share any information either [*S5143] directly or indirectly with the ICC, we then would have to cut off the aid to them.

Remember that this proposal is presently in conference. What do you have a Foreign Relations Committee for? What do you have a Commerce Committee for? What do you have a Judiciary Committee for? If we are just going to adopt things on the appropriations bill, why not get rid of the authorizing committees?

What is the point? If I have to watch things being thrown on a supplemental appropriations bill, why do we spend the hours in committee trying to work these things out if we come in and just wipe it out and adopt it on a supplemental appropriations bill, when negotiators have no knowledge of the work that has gone into drafting the language that is sitting in a conference, trying to resolve it?

Unless you are on the Appropriations Committee, you have nothing to do with this stuff. Why bring up all of the authorizing controversies and throw them on here_to satisfy Tom Delay and the House leadership who want to jam this thing through? That is what they want to do. There is no mistake about it.

This isn't a serious debate about where the United States ought to be on a critical issue facing our country at a time when we were attacked, only 9 months ago, by terrorists.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER . Mr. President, I have listened very carefully in a very quiet and dispassionate way to my friend from Connecticut. I have studied his amendment. I have an observation, and then a question to put to my friend.

The first is, his amendment has two sections: Section 2015, and section 2015 relates to any prohibition of the United States rendering assistance to international efforts to bring to justice Hussein, Milosevic, bin Laden, and so forth.

I say to my good friend that if you will look at my amendment, we have a provision that begins actually on page 8, and I shall read it: Authority to waive sections, and so and so, with respect to an investigation or prosecution of a named individual, and the President is authorized to waive the prohibitions and requirements of section 3004 and 3006 to the agreed section prohibitions, and so forth.

This was carefully crafted in consultation with the Department of State to do precisely what the Senator from Connecticut desires to do in section 2015.

I think our amendment has taken care of section 2015.

Mr. DODD . Mr. President, will the Senator yield?

Mr. WARNER. I yield only for the purpose of a response to my question.

Mr. DODD. You have to understand that, if you go on to page 9, line 14, a waiver pursuant to subsection (a) or (b) of the prohibitions and requirements of section 3005 and 3007, and I refer back to page 6, 3005 and 3007.

There it says, "authority to initially" waive these sections. It says, "notifies the appropriate congressional committees"; and "determines and reports to the appropriate congressional committees that the International Criminal Court has entered into a binding agreement."

You have to get a waiver. You have to go back to the earlier waiver, and you have to get agreement by the ICC.

That is what I mean by this.

Mr. WARNER . Mr. President, in order to save the Senate time, I think the amendment cares for the concerns that the Senator from Connecticut has about 2015. But I make an offer to the Senator from Connecticut that I amend my amendment to incorporate verbatim his section 2015. Would he have any objection if I put it in? I think that would alleviate his concerns. Then we have but one provision left in his amendment to consider.

Mr. DODD. The only thing, 2016__

Mr. WARNER . Mr. President, I am directing a question to 2015. Let us stay on that for a

minute.

Mr. DODD. I want to respond as well. I appreciate that. The reason 2016 is there is to say at least give the authorizers a chance to complete our work.

Mr. WARNER. That is a separate argument. Could we address them one at a time? I put to my colleague the question: Would he have an objection if the Senator from Virginia sought to amend his amendment to include verbatim the provisions of the Senator designated as 2015?

Mr. DODD. My point is_I appreciate that_I want to also talk about 2016.

Mr. WARNER. Fine. Can we do them seriatim?

Mr. DODD. No. Let's do them together.

Mr. WARNER. Well, we are not, Mr. President. The question is not: May I amend it to include 2016?

Mr. DODD. Section 2015__

Mr. WARNER. To facilitate the Senate moving ahead on this matter and on the bill_you have raised this question_I am prepared to amend my amendment to include 2015.

Mr. DODD. Let me suggest the absence of a quorum.

Mr. WARNER . Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WARNER . Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. Now, Mr. President, I formally put to the Senate the unanimous consent request that the Senator from Virginia may modify his amendment to include verbatim section 2015 of the second-degree amendment offered by the Senator from Connecticut.

The PRESIDING OFFICER. Is there objection?

Mr. DODD. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD . Mr. President, the second part of my second-degree amendment is critically important because it gives us a chance to complete our work as authorizers. By not including this_ and my friend from Virginia has been candid enough to say they would not accept that as part of this agreement_ then I, reluctantly, have to object to this unanimous consent request.

I am prepared to vote on the second-degree amendment, that we just vote on it. Members can decide whether or not they think this provision ought to be a part of this amendment or not. But as an authorizer who has worked hard at this, along with others_ we are in conference_ we have a chance to come out of a committee with a product for which the Senate can be proud. I hope that is the case. To just sort of disregard that and throw this on the appropriations bill is something I reluctantly have to object to.

So I urge we just have a vote on this second-degree amendment and complete the debate here and allow us to go to the Durbin amendment.

The PRESIDING OFFICER. Objection is heard.

Mr. WARNER . Mr. President, the Senator from Virginia moves to table the second-degree amendment and asks for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

Mr. BYRD . Mr. President, I share the serious concerns of the sponsors of this amendment about the potential for the International Criminal Court to be used as a political weapon against our members of the Armed Forces. This court, a permanent, international institution, is unprecedented in history. The International Criminal Court holds the power to indict and try individuals for war crimes, even if the person is a citizen of a country that is not a signatory to the treaty that creates the Court. It is not difficult to see that rogue states may seek to indict Americans on frivolous charges simply as a means to grind a political axe.

On May 6, 2002, the Bush administration renounced the United States' signature on the Treaty of Rome, which creates the International Criminal Court. But because the treaty has been ratified by 60 other countries, the Court will come into existence on July 1. Proponents of this amendment are correct in saying that the United States should take some action to protect our military personnel who serve abroad from unjustified prosecution by the Court.

But the amendment proposed to the supplemental appropriations bill goes beyond protecting the members of our Armed Forces. It also authorizes the President to "use all means necessary [*S5144] and appropriate" to bring about the release of a "covered person" that is being held for trial before the International Criminal Court.

Who is a "covered person"? The amendment defines him to be an American, or a foreign national of one of our allies. Is Congress really prepared to issue a blanket authorization to allow

the President to use "all means necessary" to rescue from prosecution a person from countries like Argentina, Jordan, or Egypt?

There is no way that we could predict the circumstances under which a person from one of these countries could be accused of war crimes. But this amendment gives the President a congressional authorization to use our military to compel the release of a prisoner of the International Criminal Court before Congress even has a chance to examine if the use of force is justified. This is a dangerous and unwise delegation of the constitutional powers of the legislative branch.

I must also question why this amendment is being proposed to the supplemental appropriations bill. This very same amendment is included in the State Department authorization bill passed by the House of Representatives. This provision is now being deliberated in a conference committee. Further consideration of legislation relating to the International Criminal Court would best be left to the conferees from committees of jurisdiction, including the Foreign Relations Committee, rather than the members of the Appropriations Committee who will be appointed to the conference on the supplemental appropriations bill.

To that end, I support the Dodd-Leahy amendment, which will limit the duration of the American Servicemembers' Protection Act to fiscal year 2002 only. If the proponents of the American Servicemembers' Protection Act believe that there is an urgent need to pass this legislation, then there should be no problem in accepting the Senators' amendment. The Dodd-Leahy amendment would provide for a stopgap protection against the International Criminal Court until such time as the conferees to the State Department authorization bill complete their work. This is a reasonable limit to an intrusion into an issue that is being debated in a conference committee.

While we must seek to preserve the sovereignty of the United States by protecting our citizens against prosecution in front of the International Criminal Court, a body which will operate without any checks or balances from any branch of our government, this amendment goes too far in delegating the constitutional responsibilities of Congress over authorizing the use of force. Furthermore, the supplemental appropriations bill is not an appropriate legislative vehicle for addressing this issue. I urge my colleagues to support the Dodd-Leahy amendment.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID . Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. It is my understanding the Senator from Virginia has moved to table the Dodd amendment, and the yeas and nays have been ordered.

The PRESIDING OFFICER. That is correct.

The question is on agreeing to the motion. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from New Mexico (Mr. Bingaman), the Senator from South Dakota (Mr. Daschle) and the Senator from Minnesota (Mr. Dayton), are necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. Helms), and the Senator from Colorado (Mr. Campbell), are necessarily absent.

The PRESIDING OFFICER (Mr. Nelson of Florida). Are there any other Senators in the Chamber desiring to vote?

The result was announced_yeas 55, nays 40, as follows:

Rollcall Vote No. 139 Leg.
YEAS - 55

Allard
Allen
Bennett
Bond
Brownback
Bunning
Burns
Cleland
Clinton
Cochran
Collins
Conrad
Craig
Crapo
DeWine
Domenici
Dorgan
Ensign
Enzi
Fitzgerald
Frist
Gramm
Grassley

Gregg
Hagel
Hatch
Hollings
Hutchinson
Hutchison
Inhofe
Kyl
Landrieu
Lincoln
Lott
Lugar
McCain
McConnell
Miller
Murkowski
Nelson (FL)
Nelson (NE)
Nickles
Roberts
Santorum
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Stevens
Thomas
Thompson
Thurmond
Voinovich
Warner

NAYS - 40

Akaka
Baucus
Bayh
Biden
Boxer
Breaux
Byrd
Cantwell
Carnahan
Carper
Chafee
Corzine

Dodd
Durbin
Edwards
Feingold
Feinstein
Graham
Harkin
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Leahy
Levin
Lieberman
Mikulski
Murray
Reed
Reid
Rockefeller
Sarbanes
Schumer
Specter
Stabenow
Torricelli
Wellstone
Wyden

NOT VOTING - 5

Bingaman
Campbell
Daschle
Dayton
Helms

The motion was agreed to.

Mr. WARNER. I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Virginia.

Modification to Amendment No. 3597

Mr. WARNER . Mr. President, at this time, the Senator from Virginia renews his unanimous consent request to incorporate verbatim_ and I do so on behalf of my distinguished colleague and cosponsor from Georgia, Mr. Miller_ to offer verbatim section 2015 of the second-degree amendment offered by the Senator from Connecticut.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The modification is as follows:

At the end, add the following:

Sec. 3015. 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 Qaeda, leaders of Islamic Jihad, and other foreign nationals accused of genocide, war crimes or crimes against humanity.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD . Mr. President, I appreciate my colleague's offer, and I did not object. I want to make clear to people why we ended up voting on the second-degree amendment.

There is in Congress, on the State-Justice authorization bill, a conference on this very matter. Many of us have spent weeks trying to get the House to join us to resolve this matter. They have refused to meet. We included language that would force the House to meet with us or, under the supplemental, this language would die.

There is still a Defense appropriations bill and there is still a foreign operations appropriations bill to which this language can be added. It is sad in a way that authorizers cannot meet on the authorizing track to resolve policy matters; that policy matters have to be included on a supplemental appropriations bill. It is regrettable that efforts are not made to force the authorizers to meet and work.

Maybe this Senate is so collapsed that there is no longer any need to authorize. Every member of any authorizing committee: Henceforth know that when similar provisions come up, I will join with my friend from Virginia and let it be done on appropriations bills, not authorizing bills.

I do not know why I serve on authorizing committees. I am half tempted to get off them. I do not know why I spend all these hours working on these matters and staff working on these matters to have it included in a supplemental appropriations bill. Why does anyone serve on these committees at all?

We are about to adopt a very delicate and important matter_29 pages_ which I promise no one here has read. There are not two people who have read it. They are going to vote on it because it

has a nice title.

It looks good in a 30-second spot. It is dangerous, and it is wrong. It is terrible the Senate has come to this.

Mr. BIDEN . Mr. President, I will vote against the Warner amendment. Let [*S5145] me state at the outset my view on several issues that this amendment raises.

First, I want to make clear that I do not support the **International Criminal Court** as it is constituted. The Rome Statute which creates the Court is flawed, and it would be a mistake for the United States to become a party to the Court under the Statute. The President made clear last month that the United States will not do so.

I do support protecting American servicemen and women. The Court statute purports to provide jurisdiction over individuals from nations which have not become party to it. That is wrong as a matter of treaty law and of basic fairness. We can and must protect our servicemen from the jurisdiction of this tribunal. I believe the President and Secretary Rumsfeld will do what is necessary to do so. We do not need this amendment to allow a President to use "a necessary force" to force any American servicemen from the custody of any international court.

I do not want to harm U.S. interest overseas. Many of our closest allies in Europe are strong supporters of this Court. This legislation will further complicate our relationship with those friends. Moreover, it takes aim at allies outside of Europe with punitive measures.

Finally, I do not, as a constitutional matter, want to give carte blanche to any President to rescue even American individuals detained by the Court who are not citizens.

The amendment contains a sweeping authorization to the President to use force to rescue not only Americans detained by the **International Criminal Court**, but also nationals of several allied countries.

The authority to rescue U.S. nationals, I submit, is probably unnecessary: most scholars would agree that the President has the authority to rescue Americans abroad who are in serious danger from a foreign power or circumstance. If an American is detained by the Court, the President will surely have the support of the Congress to take whatever action necessary to rescue that servicemember.

The authority to rescue foreign nationals, such as an accused war criminal from Australia or Egypt, is unwise. As a constitutional matter, I am unwilling to give the President such a blank check to invade the Netherlands_ where this Court will be located. Only the Congress has the power to authorize such use of force, and we should not do so in advance, without knowing all the circumstances.

I am also concerned about a provision which bars military assistance to countries which join the Court. This would apply, as the Senator from Connecticut noted, to our assistance to Colombia, a country we have been strongly supporting with substantial military assistance. This restriction

may be waived on two alternative grounds, but I ask my colleagues: why would we even consider cutting off aid to our ally in Colombia because it made the sovereign choice to join the **International Criminal Court**?

This provision does not apply to our NATO partners, and certain non-NATO allies like Egypt, Israel and Japan. How can we tell our NATO allies or others that they are free to join the Court without fearing an aid restriction, but then turn around and tell other countries that they could face penalties if they join the Court?

This provision is directly contrary to the position of the Bush Administration. When the Administration announced its position on the **International Criminal Court** last month, Under Secretary of State Marc Grossman made it clear that the United States was going to "respect the decision of those nations who have chosen to join the ICC." This provision to cut off military aid would violate that principle.

My bottom line is this: we should not join the Court as it is currently constituted. Its provisions purporting to extend jurisdiction to non-parties and the inclusion in the Statute of the crime of aggression and sufficient reason to do so.

But this legislation is not necessary to protect our interests. President Bush has adequate powers to do that. It adds very little to the powers he now possesses. But it could complicate our foreign policy with friends in Europe and elsewhere. And it gives future Presidents a blank check to rescue foreign nationals detained by the Court. I think that is a mistake, and therefore will vote no.

Mr. BROWNBACK . Mr. President, as you know, on December 31, 2000, former President Clinton signed the UN's Rome Statute that would obligate the United States to comply with the **International Criminal Court**. I was disappointed in this action, and until President Bush formally notified the United Nations on May 6 that the U.S. would not become a party to the Rome Statute, I was prepared to fight the ratification of this treaty if it was brought before the United States Senate.

The ICC contains fundamental flaws that we cannot ignore and jeopardizes our service and diplomatic personnel. Whether conducting engagement activities, support operations, stability operations or combat operations, we must ensure the protection of our servicemembers and officials of the United States involved in such matters as responding to acts of terrorism, preventing the proliferation of weapons of mass destruction, and deterring aggression. Many of these issues and the official actions taken by servicemembers and others involve protection of the national interests of the United States. We should have every right to pursue those interests as a sovereign Nation.

In order to accomplish this, we must pass the American Servicemembers' Protection Act, ASPA, which has been offered as an amendment to the pending bill by the ranking member of the Senate Armed Services Committee, Senator John Warner. I would like to commend my colleague for his initiative and leadership on this issue. As he and others would agree, failure to pass this Act will have a chilling effect on our ongoing commitments to peace, democracy and

prosperity throughout the world.

This amendment is necessary because U.S. withdrawal from the treaty, which we have already done, is not enough. Other countries may still attempt to force the United States to comply with the treaty's provisions. As you may know, the treaty will go into effect on July 1 because the requisite number of countries have ratified the Rome Statute, notwithstanding our withdrawal from the treaty. What this means is that the **International Criminal Court** could exercise jurisdiction over action crimes committed in the territory of a state party, including those by citizens and servicemen of non-parties.

Thus, under Article 12 of the Rome Statute, the court would have jurisdiction for enumerated crimes alleged to have been committed by U.S. citizens, including the U.S. servicemen, in a country like Afghanistan. Clearly this is an important protection for our soldiers currently engaged in missions in that country.

Additionally, Article 5 allows parties to the treaty to define vague crimes like "aggression," but Article 121 also allows parties to the treaty to opt-out of certain crimes. Article 121 does not afford that same "opt-out" right to non-parties, including the United States. As a result, U.S. servicemen and diplomats as well as other U.S. citizens could be charged, tried, and jailed for crimes the U.S. had no part in defining and crimes that parties to the treaties themselves are not bound by.

The American Servicemen's Protection Act, ASPA seeks to protect the United States from these coercive elements of the treaty, and precludes cooperation with the **International Criminal Court** so long as the United States is not a Rome Statute party. ASPA still permits cooperation with ad hoc courts created through the UN Security Council, such as the Yugoslav and Rwanda tribunals, and prosecution of future war criminals. Such a tribunal created by the Security council at least provides the U.S. with a veto option where we have a say in its mandate and are therefore about to ensure that war criminals will not escape justice.

From Sudan to China, Eastern Europe to South Asia, many of my colleagues and I have devoted considerable time in the Senate to protecting human right, democracy, and religious freedom. This treaty would undermine the U.S. ability to promote and protect the ideals that we have fought for: the values of democracy, freedom and open societies for the people of the world.

[*S5146]

While this treaty may be well-intentioned, its vague language gives UN officials unchecked authority, and it imposes an unbearable burden upon the U.S.

This country's commitment to pursuing accountability for war crimes, genocide and crimes against humanity is an important part of our foreign policy objectives and one that serves as a model for others. It was through U.S. leadership that Nazi war crimes were prosecuted. It was through U.S. leadership that Balkan war criminals in Bosnia-Herzegovina and Kosovo were brought to justice. If my fellow members want to maintain America's ability to keep its international commitments abroad, then we must protect our soldiers and our civilian leaders by

passing the American Servicemembers' Protection Act.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER . Mr. President, I ask for the yeas and nays on the Warner amendment, but before the vote is taken, I understand there is at least one colleague, my colleague from Virginia, who would like to have 5 minutes. Are there others who wish to indicate to the managers a desire to speak before that vote?

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. If the Senator will yield.

Mr. WARNER. Yes.

Mr. REID. For the information of Senators, Senator Allen from Virginia wishes to speak on this underlying amendment for 5 minutes. I do not know of anyone else who wants to speak on this amendment. We will have a vote in the next few minutes on the underlying amendment.

Following that, next in order, by virtue of a unanimous consent agreement, is Senator Durbin. He has indicated he will speak for perhaps half an hour. There may be others who wish to speak. We will have a vote sometime after that. We are going to have a series of votes in the near future. Members should remain close to the Chamber because we are moving pretty well. It is yet to be seen whether we can complete our work tonight.

I will say to my friend from Connecticut, this was not in the Senate bill that is before this body. I just want to make sure the Appropriations Committee in the Senate is not blamed. This was put in on an amendment from the floor. The Appropriations Committee did not do it.

I say to my friend, this was not put in by any member of the Appropriations Committee. It was put in by an authorizer. I say to all Senators, the Senator from Connecticut is an exemplary Senator who does a great job on every authorizing committee he is on, but I want to say do not blame the Appropriations Committee, because it did not put this matter in the bill. It was offered separate and apart.

The PRESIDING OFFICER. The Senator from Virginia has the floor.

Mr. BIDEN. Will the Senator yield for a question?

Mr. WARNER. Were the yeas and nays ordered?

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. BIDEN. Parliamentary inquiry.

The PRESIDING OFFICER. Does the Senator yield to the Senator?

Mr. BIDEN. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his parliamentary inquiry.

Mr. BIDEN. Has the Dodd amendment, which reads, "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, and other leaders of al-Qaida, leaders of Islamic Jihad, and other foreign nationals accused of genocide, war crimes or crimes against humanity," been made a part of what we are about to vote on?

The PRESIDING OFFICER. It has been modified.

Mr. WARNER . Mr. President, I assure the Senator it is. The Senator from Virginia made two attempts, failed on the first attempt for the vote, but succeeded on the second attempt just a minute or two ago.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID . Mr. President, I understand the Senator from Virginia put forth a unanimous consent agreement that there would be a vote following 5 minutes from the other Senator from Virginia. Is that right?

Mr. WARNER. That is correct.

The PRESIDING OFFICER. No, the request was not made as a unanimous consent.

Mr. REID. Then I would propound that as a unanimous consent request.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Virginia.

Mr. ALLEN . Mr. President, I rise in support of the amendment that my good friend, Senator Warner of Virginia, has offered. I am a cosponsor of this act and a cosponsor of this amendment, along with my friend, Senator Miller of Georgia. I continue to believe that the **International Criminal Court** poses a threat to the sovereignty of the United States and the individual freedoms of America.

Americans do care about the rest of the world. The rest of the world, though, can make their own decisions. The Europeans, if they want to merge their currencies, can do so. It does not mean we have to put our dollar in with their currency. We have a right to control our own destiny and the

sovereignty and fair justice administered in our country.

This **International Criminal Court** would have the jurisdiction to punish individual American officials for foreign policy and military actions of the U.S. Government. The laws and the rules of this treaty do not offer fair and equal justice, nor do they offer the due process rights guaranteed and protected under our Bill of Rights.

The mechanism used to introduce and try cases in this Court is an independent prosecutor, who would be one who is not really accountable but would be given the autonomy to enforce justice as that prosecutor sees fit. Placing such power in the hands of one individual is not only ill advised, it runs contrary to the very foundation of justice upon which our country was built upon.

For example, if the international prosecutor believes a U.S. court's decision was inadequate or incorrect, then this prosecutor is authorized to indict the alleged human rights abuser and demand a new trial in the International Criminal Court. This is all contrary to the laws of the constitutions of our States and the Constitution of our country for the last 225 years. Elected officials ought to protect and uphold our rights. In reality, this ICC, or Rome Treaty, would erect an institution superior to our courts in this country and in our States.

In considering whether to enact an amendment that would protect Americans from this international treaty, we need to consider the values and goals of the international prosecutors and the international judges. It is unlikely persons given such authority will hold the same values as the United States. Consider the fact that the Rome Treaty was signed by Iran, Iraq, Sudan, and Syria, among others. All of these nations have extremely questionable records when it comes to justice, due process, and equality. I believe we should consider the parties involved when considering any international treaty.

Senator Dodd mentioned Elie Wiesel and Israel. Israel mostly has its troops focused in its homeland. The United States has its spread across the world.

The amendment of Senator Warner, the American Servicemembers' Protection Act, is supported by the following organizations: The National Guard Association of the United States, the Air Force Sergeants Association, the Army Aviation Association of America, the Association of the U.S. Army, the National Military Family Association, Enlisted Association of the National Guard of the United States, Fleet Reserve Association, the Gold Star Wives of America, Jewish War Veterans of the USA, the Marine Corps League, the Marine Corps Reserve Officers Association, the Military Order of the Purple Heart, the Navy League of the United States, the Retired Officers Association, the United Armed Forces Association, the Veterans of Foreign Wars of the United States, and others.

I believe the former President, Mr. Clinton, made a serious mistake when he signed the Rome Treaty in the last days of his administration. President Bush wisely rejected the Rome Treaty
[*S5147]

and notified the United Nations that the United States would not be ratifying or participating in the accord. Unfortunately, the number of ratifying nations is rising and the ICC will come into existence on July 1 of this year. It is why we must pass this amendment.

We are all working in unity to fight corruption, hatred, and dictatorships around the world. With the amendment that has been added, our position is clear and we will fight war criminals.

In closing, I will quote Mr. Jefferson when he stated:

It is the right of every nation to prohibit acts of sovereignty from being exercised by any other within its limits . . .

I urge my colleagues to exercise that right, protect our sovereignty and our men and women in the military in supporting this amendment.

I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3597, as modified.

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from New Mexico (Mr. Bingaman), the Senator from South Dakota (Mr. Daschle), and the Senator from Minnesota (Mr. Dayton) are necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. Helms), the Senator from Colorado (Mr. Campbell), and the Senator from Ohio (Mr. Voinovich) are necessarily absent.

I further announce that if present and voting the Senator from Ohio (Mr. Voinovich) would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced_yeas 75, nays 19, as follows:

Rollcall Vote No. 140 Leg.
YEAS - 75

Allard
Allen
Baucus
Bayh
Bennett
Bond
Breaux
Brownback
Bunning

Burns
Carnahan
Chafee
Cleland
Clinton
Cochran
Collins
Conrad
Corzine
Craig
Crapo
DeWine
Domenici
Dorgan
Edwards
Ensign
Enzi
Feinstein
Fitzgerald
Frist
Graham
Gramm
Grassley
Gregg
Hagel
Harkin
Hatch
Hollings
Hutchinson
Hutchison
Inhofe
Inouye
Johnson
Kerry
Kyl
Landrieu
Levin
Lincoln
Lott
Lugar
McCain
McConnell
Mikulski
Miller
Murkowski
Nelson (FL)

Nelson (NE)
Nickles
Reid
Roberts
Rockefeller
Santorum
Schumer
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Stabenow
Stevens
Thomas
Thompson
Thurmond
Torrice
Warner
Wyden

NAYS - 19

Akaka
Biden
Boxer
Byrd
Cantwell
Carper
Dodd
Durbin
Feingold
Jeffords
Kennedy
Kohl
Leahy
Lieberman
Murray
Reed
Sarbanes
Specter
Wellstone

NOT VOTING - 6

Bingaman
Campbell
Daschle

Dayton
Helms
Voinovich

The amendment (No. 3597), as modified, was agreed to.