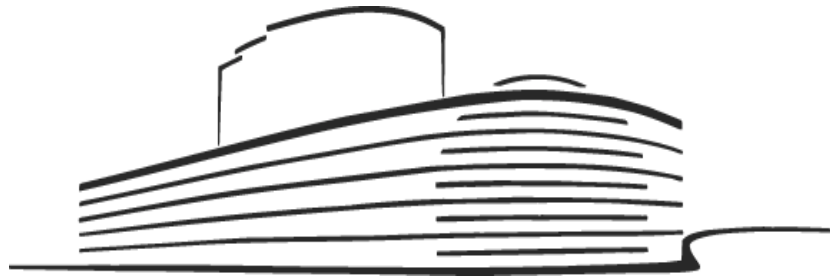


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Consequences for transatlantic relations of law on the protection of US personnel

European Parliament resolution on the draft American Servicemembers' Protection Act (ASPA)

The European Parliament,

- having regard to its previous resolutions, in particular that of 19 November 1998¹, supporting the establishment of the permanent International Criminal Court, requesting concrete EU action to facilitate its early functioning, and asking the US Administration to take a positive approach to the Court, particularly after the events of 11 September 2001,
 - having regard to the entry into force on 1 July 2002 of the Rome Statute establishing the International Criminal Court, less than four years after the statute's adoption in Rome on 17 July 1998,
 - having regard to the recent adoption of the American Servicemembers' Protection Act (ASPA) by the US Senate and House of Representatives,
 - having regard to the EU Troika démarche of 19 June 2002,
 - having regard to the US veto on the prolongation of the UN mandate for the NATO troops in Bosnia,
- A. welcoming the entry into force of the Rome Statute establishing the International Criminal Court; stressing that up to now the Statute has been signed by 139 states and ratified by 76 states, with Brazil being the latest,
- B. welcoming the EU's Action Plan on the ICC as published and adopted in the Spanish Presidency's conclusions following the European Council in Seville,
- C. strongly supporting the words of the UN Secretary-General, Mr Kofi Annan, during the Closing Plenary of the IXth Preparatory Commission on the ICC in April 2002, stating that 'now, with the unusually rapid entry into force of the Statute, we are witnessing a great victory for justice and for world order ... a turn away from the rule of brute force, and towards the rule of law',
- D. noting that, in Rome in 1998, 120 nations voted to create the Court, while only seven nations opposed it, including China, Israel and the US,
- E. whereas the then President Clinton signed the Rome Statute, thus allowing for substantial US participation in secondary legislation under the Statute, but recommended that his

¹ OJ C 379, 7.12.1998, p. 265.

successor should not forward the Treaty to the Senate for advice and consent for ratification,

- F. noting that both Houses of the US Congress have now passed legislation which seeks, inter alia, to:
- prohibit US participation in UN or other peacekeeping missions unless US personnel are exempted from ICC jurisdiction;
 - insist that any Security Council resolution authorising peacekeeping should give US personnel permanent exemption from ICC jurisdiction;
 - prohibit cooperation by any US public body in ICC investigations;
 - prohibit intelligence cooperation with any country that has signed the Rome Statute;
 - prohibit military assistance to any country (except NATO members and seven others) which has ratified the Rome Statute;
 - authorise the US President to use all necessary and appropriate means to free US or allied personnel detained by or on behalf of the ICC,
- G. noting that, by already taking national judicial action itself, the US can prevent its citizens from being brought before the International Criminal Court,
- H. deeply deploring the fact that on 30 June 2002 the US vetoed in the Security Council the extension of the mandate of the UN Mission in Bosnia and Herzegovina (UNMIBH) beyond 3 July 2002, arguing that peacekeepers should be exempted from prosecution by the ICC,
- I. believing that those guilty of war crimes or crimes against humanity should know that they will be brought to justice no matter who they are or which nationality they have,
- J. whereas the Netherlands Parliament adopted a resolution on 13 June 2002 expressing its concern over ASPA, which would give the US President the right to authorise the use of force against the Netherlands to free members of the US armed forces, civilians and allies held captive by the ICC,
1. Recalls that the International Criminal Court is the first permanent body with international jurisdiction able to judge individuals, including terrorists, responsible for war crimes, genocide and crime against humanity;
 2. Considers that the ASPA goes well beyond the exercise of the US's sovereign right not to participate in the Court, since it contains provisions which could obstruct and undermine the Court and threatens to penalise countries which have chosen to support the Court;
 3. Recognises that the ASPA was strongly criticised by senior US legislators and commentators and welcomes the wide powers of waiver which were introduced by congressional opponents;

4. Notes that the legislation explicitly denies the US itself two of the principal weapons - military and intelligence cooperation - of the global coalition against terrorism and deals a damaging blow to a third element of that coalition - international goodwill;
5. Calls on the US Congress to reject the unilateralism which the ASPA represents, and to embrace in deeds as well as rhetoric the reality that only the common endeavour of the international community will bring to justice tyrants and perpetrators of genocide or other crimes against humanity, including terrorists;
6. Points out that the new bill strongly contrasts with the founding treaties of NATO and the WEU, which have been built on unreserved partnership and solidarity between the partners in case of armed attack on one of the signatories, and on abstention from violence in resolving conflicts between the partners; calls on NATO to add this issue to the agenda of its summit to be held in Prague in November 2002;
7. Welcomes the common position of the Council of 20 June 2002 supporting the ICC Action Plan finalised on 15 May 2002, and calls for the early establishment and effective functioning of the Court and for the advancement of universal support for it by promoting the widest possible participation in the Statute; is convinced that in the current situation the European Union should fully take on its leadership role to enable the International Criminal Court to succeed;
8. Calls on the Council and Commission nevertheless to use all opportunities to continue political dialogue with the US; points out that this should be done both inside and outside the Transatlantic Partnership Dialogue, with the purpose of persuading the US government to change its attitude on the International Criminal Court;
9. Invites all EU institutions to make the ICC issue a permanent item on the agenda of political contacts with the US, and calls for the same from the interparliamentary delegation for relations with the United States;
10. Calls on the current Member States, the candidate countries and all UN member countries to abstain from activities or agreements which could undermine the effective functioning of the ICC;
11. Calls upon the US Government and Congress to withdraw their veto on extending the mandate for NATO in Bosnia;
12. Stresses that in the absence of an agreement on UNMIBH in Bosnia, the long-planned handover of the UN Police Mission to the European Union, scheduled for the end of 2002, will be severely compromised;
13. Calls on the Council and the Member States to do their utmost to continue UNMIBH and SFOR, if necessary without the participation of the US;
14. Invites the Danish Presidency to publish a progress report on the International Criminal Court at the time of the European Council to be held in Copenhagen in December 2002;

15. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States and the candidate countries, the President and Congress of the United States, the UN Secretary-General and the ICC.