

American Servicemembers' Protection Act of 2000 (Introduced in House)

HR 4654 IH

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H. R. 4654

To protect United States military personnel and other elected and appointed officials of the United States Government against criminal prosecution by an international criminal court to which the United States is not a party.

IN THE HOUSE OF REPRESENTATIVES

June 14, 2000

Mr. DELAY (for himself, Mr. ARMEY, Mr. WATTS of Oklahoma, Mr. BLUNT, Mrs. FOWLER, Ms. PRYCE of Ohio, Mr. COX, Mr. DREIER, Mr. SPENCE, Mr. GILMAN, Mr. GOSS, Mr. HYDE, Mr. STUMP, Mr. SMITH of New Jersey, Mr. BARR of Georgia, and Mr. ADERHOLT) introduced the following bill; which was referred to the Committee on International Relations

A BILL

To protect United States military personnel and other elected and appointed officials of the United States Government against criminal prosecution by an international criminal court to which the United States is not a party.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `American Servicemembers' Protection Act of 2000'.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) On July 17, 1998, the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, meeting in Rome, Italy, adopted the `Rome Statute of the International Criminal Court.' The vote on adoption of the Statute was 120 in favor to 7 against, with 21 countries abstaining. The United States voted against final adoption of the Rome Statute.

(2) As of May 30, 2000, 96 countries had signed the Rome Statute and 10 had ratified it. Pursuant to Article 126 of the Rome Statute, the Statute will enter into force on the first day of the month after the 60th day following the date that the 60th country deposits an instrument ratifying the Statute.

(3) Since adoption of the Rome Statute, a Preparatory Commission for the International Criminal Court has continued to meet regularly to draft documents to implement the Rome Statute, including Rules of Procedure and Evidence, definitions of Elements of Crimes, and a definition of the Crime of Aggression.

(4) During testimony before the Congress, the lead United States negotiator, Ambassador David Scheffer stated that the United States could not sign the Rome Statute because certain critical negotiating objectives of the United States had not been achieved. As a result, he stated: 'We are left with consequences that do not serve the cause of international justice.'

(5) Ambassador Scheffer went on to tell the Congress that: '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. Other contributors to peacekeeping operations will be similarly exposed.'

(6) Any Americans prosecuted by the International Criminal Court will, under the Rome Statute, be denied many of the procedural protections to which all Americans are entitled under the Bill of Rights to the United States Constitution, including, among others, the right to trial by jury, the right not to be compelled to provide self-incriminating testimony, and the right to confront and cross-examine all witnesses for the prosecution.

(7) American servicemen and women deserve the full protection of the United States Constitution when they are deployed around the world to protect the vital national interests of the United States. The United States Government has an obligation to protect American servicemen and women, to the maximum extent possible, against criminal prosecutions carried out by United Nations officials under procedures that deny them their constitutional rights.

(8) In addition to exposing American servicemen and women to the risk of international criminal prosecution, the Rome Statute creates a risk that the President and other senior elected and appointed officials of the United States Government may be prosecuted by the International Criminal Court. Particularly if the Preparatory Commission agrees on a definition of the Crime of Aggression, senior United States officials may be at risk of criminal prosecution for national security decisions involving such matters

as responding to acts of terrorism, preventing the proliferation of weapons of mass destruction, and deterring aggression. No less than American servicemen and women, senior officials of the United States Government deserve the full protection of the United States Constitution with respect to official actions taken by them to protect the national interests of the United States.

SEC. 3. TERMINATION OF PROHIBITIONS OF THIS ACT.

The prohibitions and requirements of sections 4, 5, 6, and 7 shall cease to apply, and the authority of section 8 shall terminate, if the United States becomes a party to the International Criminal Court pursuant to a treaty made under article II, section 2, clause 2 of the Constitution of the United States.

SEC. 4. PROHIBITION ON COOPERATION WITH THE INTERNATIONAL CRIMINAL COURT.

(a) CONSTRUCTION- The provisions of this section apply only to cooperation with the International Criminal Court and shall not be construed to apply to cooperation with an ad hoc international criminal tribunal established by the United Nations Security Council before or after the

date of the enactment of this Act to investigate and prosecute war crimes committed in a specific country or during a specific conflict.

(b) PROHIBITION ON RESPONDING TO REQUESTS FOR COOPERATION- No agency or entity of the United States Government or of any State or local government, including any court, may cooperate with the International Criminal Court in response to a request for cooperation submitted by the International Criminal Court pursuant to Part 9 of the Rome Statute.

(c) PROHIBITION ON SPECIFIC FORMS OF COOPERATION- No agency or entity of the United States Government or of any State or local government, including any court, may undertake any action described in the following articles of the Rome Statute with the purpose or intent of cooperating with, or otherwise providing support or assistance to, the International Criminal Court:

(1) Article 89 (relating to arrest, extradition, and transit of suspects).

(2) Article 92 (relating to provisional arrest of suspects).

(3) Article 93 (relating to seizure of property, asset forfeiture, execution of searches and seizures, service of warrants and other judicial process, taking of evidence, and similar matters).

(d) RESTRICTION ON ASSISTANCE PURSUANT TO MUTUAL LEGAL ASSISTANCE TREATIES- The United States shall exercise its rights to limit the use of assistance provided under all treaties and executive agreements for mutual legal assistance in criminal matters, multilateral conventions with legal assistance provisions, and extradition treaties, to which the United States is a party, and in connection with the execution or issuance of any letter rogatory, to prevent the

transfer to, or other use by, the International Criminal Court of any assistance provided by the United States under such treaties and letters rogatory.

(e) PROHIBITION ON INVESTIGATIVE ACTIVITIES OF AGENTS- No agent of the International Criminal Court may conduct, in the United States or any territory subject to the jurisdiction of the United States, any investigative activity relating to a preliminary inquiry, investigation, prosecution, or other proceeding at the International Criminal Court.

SEC. 5. RESTRICTION ON UNITED STATES PARTICIPATION IN CERTAIN UNITED NATIONS PEACEKEEPING OPERATIONS.

(a) POLICY- Effective beginning on the date that the Rome Statute enters into force pursuant to Article 126 of the Rome Statute, the President should use the voice and vote of the United States in the United Nations Security Council to ensure that each resolution of the Security Council authorizing a peacekeeping operation pursuant to chapter VI or VII of the charter of the United Nations permanently exempts United States military personnel participating in such peacekeeping operation from criminal prosecution by the International Criminal Court for actions undertaken by such personnel in connection with the operation.

(b) RESTRICTION- United States military personnel may not participate in a peacekeeping operation authorized by the United Nations Security Council pursuant to chapter VI or VII of the charter of the United Nations on or after the date that the Rome Statute enters into effect pursuant to Article 126 of the Rome Statute, unless the President has submitted to the appropriate congressional committees a certification described in subsection (c) with respect to such peacekeeping operation.

(c) CERTIFICATION- The certification referred to in subsection (b) is a certification by the President that United States military personnel are able to participate in a peacekeeping operation without risk of criminal prosecution by the International Criminal Court because--

(1) in authorizing the peacekeeping operation, the United Nations Security Council permanently exempted United States military personnel participating in the operation from criminal prosecution by the International Criminal Court for actions undertaken by them in connection with the operation;

(2) each country in which United States military personnel participating in the peacekeeping operation will be present is either not a party to the International Criminal Court or has entered into an agreement in accordance with Article 98 of the Rome Statute preventing the International Criminal Court from proceeding against United States personnel present in that country; or

(3) the President has taken other appropriate steps to guarantee that United States military personnel participating in the peacekeeping operation will not be prosecuted by the International Criminal Court for actions undertaken by such personnel in connection with the operation.

SEC. 6. PROHIBITION ON DIRECT OR INDIRECT TRANSFER OF CERTAIN CLASSIFIED NATIONAL SECURITY INFORMATION TO THE INTERNATIONAL CRIMINAL COURT.

(a) DIRECT TRANSFER- Not later than the date on which the Rome Statute enters into force, the President shall ensure that appropriate procedures are in place to prevent the transfer of classified national security information to the International Criminal Court.

(b) INDIRECT TRANSFER- Not later than the date on which the Rome Statute enters into force, the President shall ensure that appropriate procedures are in place to prevent the transfer of classified national security information relevant to matters under consideration by the International Criminal Court to the United Nations and to the government of any country that is a party to the International Criminal Court unless the United Nations or that government, as the case may be, has provided written assurances that such information will not be made available to the International Criminal Court.

SEC. 7. PROHIBITION OF UNITED STATES MILITARY ASSISTANCE TO PARTIES TO THE INTERNATIONAL CRIMINAL COURT.

(a) PROHIBITION OF MILITARY ASSISTANCE- Subject to subsections (b), (c), and (d), no United States military assistance may be provided to the government of a country that is a party to the International Criminal Court.

(b) WAIVER- The President may waive the prohibition of subsection (a) with respect to a particular country if the President determines and reports to the appropriate congressional committees that such country has entered

into an agreement with the United States pursuant to Article 98 of the Rome Statute preventing the International Criminal Court from proceeding against United States personnel present in such country.

(c) SPECIAL AUTHORITIES- The prohibition of subsection (a) shall be subject to the special authorities of section 614 of the Foreign Assistance Act of 1961 and the applicable conditions and limitations under such section.

(d) EXEMPTION- The prohibition of subsection (a) shall not apply to the government of any country that is--

- (1) a NATO member country,
- (2) a major non-NATO ally (including, inter alia, Australia, Egypt, Israel, Japan, the Republic of Korea, and New Zealand), or
- (3) Taiwan.

SEC. 8. AUTHORITY TO FREE UNITED STATES MILITARY PERSONNEL AND CERTAIN OTHER PERSONS HELD CAPTIVE BY OR ON BEHALF OF THE INTERNATIONAL CRIMINAL COURT.

(a) **AUTHORITY-** The President is authorized to use all means necessary and appropriate to bring about the release from captivity of any person described in subsection (b) who is being detained or imprisoned against that person's will by or on behalf of the International Criminal Court.

(b) **PERSONS AUTHORIZED TO BE FREED-** The authority of subsection (a) shall extend to the following persons:

(1) United States military personnel, elected or appointed officials of the United States Government, and other persons employed by or working on behalf of the United States Government.

(2) Military personnel, elected or appointed officials, and other persons employed by or working on behalf of the government of a NATO member country or major non-NATO ally (including, inter alia, Australia, Egypt, Israel, Japan, the Republic of Korea, and New Zealand), or Taiwan, if that country or ally is not a party to the International Criminal Court, upon the request of such government.

(3) Individuals detained or imprisoned for official actions taken while the individual was a person described in paragraph (1) or (2), and in the case of such individuals described in paragraph (2), upon the request of such government.

(c) **CONSTRUCTION-** Subsection (a) shall not be construed to authorize the payment of bribes or the provision of other incentives to induce the release from captivity of a person described in subsection (b).

SEC. 9. STATUS OF FORCES AGREEMENTS.

(a) **REPORT ON STATUS OF FORCES AGREEMENTS-** Not later than 6 months after the date of the enactment of this Act, the President shall transmit to the appropriate congressional committees a report evaluating the degree to which each existing status of forces agreement with a foreign government, or other similar international agreement, protects United States military and other personnel from extradition to the International Criminal Court under Article 98 of the Rome Statute.

(b) **PLAN FOR ACHIEVING ENHANCED PROTECTION OF UNITED STATES MILITARY PERSONNEL-** Not later than 1 year after the date of the enactment of this Act, the President shall transmit to the appropriate congressional committees a plan for amending existing status of forces agreements, or negotiating new international agreements, in order to achieve the maximum protection available under Article 98 of the Rome Statute for United States military and other personnel in those countries where maximum protection under article 98 has not already been achieved.

(c) **SUBMISSION IN CLASSIFIED FORM-** The report under subsection (a), and the plan under subsection (b), or appropriate parts thereof, may be submitted in classified form.

SEC. 10. ALLIANCE COMMAND ARRANGEMENTS.

(a) REPORT ON ALLIANCE COMMAND ARRANGEMENTS- Not later than 6 months after the date of the enactment of this Act, the President shall transmit to the appropriate congressional committees a report with respect to each military alliance to which the United States is party--

(1) describing the degree to which United States military personnel may, in the context of military operations undertaken by or pursuant to that alliance, be placed under the command or operational control of foreign military officers subject to the jurisdiction of the international criminal court because they are nationals of a party to the international criminal court, and

(2) evaluating the degree to which United States military personnel engaged in military operations undertaken by or pursuant to that alliance may be exposed to greater risks as a result of being placed under the command or operational control of foreign military officers subject to the jurisdiction of the international criminal court.

(b) PLAN FOR ACHIEVING ENHANCED PROTECTION OF UNITED STATES MILITARY PERSONNEL- Not later than one year after the date of the enactment of this Act, the President shall transmit to the appropriate congressional committees a plan for modifying command and operational control arrangements within military alliances to which the United States is a party to reduce any risks to United States military personnel identified pursuant to subsection (a)(2).

(c) SUBMISSION IN CLASSIFIED FORM- The report under subsection (a), and the plan under subsection (b), or appropriate parts thereof, may be submitted in classified form.

SEC. 11. WITHHOLDINGS.

Funds withheld from the United States share of assessments to the United Nations or any other international organization pursuant to section 705 of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (as enacted by section 1000(a)(7) of Public Law 106-113; 113 Stat. 1501A-460), are authorized to be transferred to the Embassy Security, Construction and Maintenance Account of the Department of State.

SEC. 12. DEFINITIONS.

As used in this Act and in sections 705 and 706 of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, the following terms have the following meanings:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES- The term 'appropriate congressional committees' means the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate.

(2) CLASSIFIED NATIONAL SECURITY INFORMATION- The term 'classified national security information' means information that is

classified or classifiable under Executive Order 12958 or a successor Executive order.

(3) EXTRADITION- The terms `extradition' and `extradite' include both `extradition' and `surrender' as those terms are defined in article 102 of the Rome Statute.

(4) INTERNATIONAL CRIMINAL COURT- The term `International Criminal Court' means the court established by the Rome Statute.

(5) MAJOR NON-NATO ALLY- The term `major non-NATO ally' means a country that has been so designated in accordance with section 517 of the Foreign Assistance Act of 1961.

(6) PARTY TO THE INTERNATIONAL CRIMINAL COURT- The term `party to the International Criminal Court' means a government that has deposited an instrument of ratification, acceptance, approval, or accession to the Rome Statute, and has not withdrawn from the Rome Statute pursuant to Article 127 thereof.

(7) PEACEKEEPING OPERATION AUTHORIZED BY THE UNITED NATIONS SECURITY COUNCIL PURSUANT TO CHAPTER VI OF VII OF THE CHARTER OF THE UNITED NATIONS- The term `peacekeeping operation authorized by the United Nations Security Council pursuant to chapter VI of VII of the charter of the United Nations' means any military operation to maintain or restore international peace and security that--

(A) is authorized by the United Nations Security Council pursuant to chapter VI of VII of the charter of the United Nations, and

(B) is paid for from assessed contributions of United Nations members that are made available for peacekeeping activities.

(8) ROME STATUTE- The term `Rome Statute' means the Rome Statute of the International Criminal Court, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on July 17, 1998.

(9) SUPPORT- The term `support' means assistance of any kind, including material support, services, intelligence sharing, law enforcement cooperation, the training or detail of personnel, and the arrest or detention of individuals.

(10) UNITED STATES MILITARY ASSISTANCE- The term `United States military assistance' means--

(A) assistance provided under chapters 2 through 6 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2311 et seq.);

(B) defense articles or defense services furnished with the financial assistance of the United States Government, including through loans and guarantees; or

(C) military training or education activities provided by any agency or entity of the United States Government.

Such term does not include activities reportable under title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.).