

## Legislative Update January 2002

As you know, last month in conference committee Senator Helms' fourth version of the American Servicemembers Protection Act (ASPA) was removed from the Defense Appropriations bill in favor of Representative Hyde's amendment language (see text below). This came as a surprise to many since ASPA passed the Senate by a vote of 78-21. Many have wondered why, after this seemingly stinging defeat in the Senate and the 282-137 House vote in favor of ASPA last May, the Helm's language was not included in the final law.

First, it is important to note that the 48-51 loss on the Dodd amendment (see text below), proceeding the Helms vote, indicates that there is a lot of potential ICC support in the Senate. Obviously there are some Senators who voted for both the Dodd amendment and the Helms amendment. It appears that once the Dodd amendment failed, Senators were reluctant to vote against the Helms bill during wartime, especially since the immediate effect would be largely symbolic due to the inclusion of broad waivers for all major provisions. Thus, Senate support for the Helms language in conference was weak to begin with. Critically, key Senators with an enormous amount of influence on the DOD bill and in the House-Senate Conference on it were strongly opposed to its inclusion, including Inouye, Leahy and Biden. Senator Inouye is the Chair of the Defense Appropriations Subcommittee (and was Chair the conference committee), Senator Leahy was on the conference committee and is Chair of the Foreign Operations Appropriations Subcommittee, and Senator Biden is Chair of the Foreign Relations Committee. This Senate support was aided by the failure of House opponents of the ICC to mobilize the Republican House leadership in time to make a major push to overcome Inouye's opposition and keep the provision in.

Although ASPA was thus defeated through this good fortune and the hard work of our Washington colleagues, the Craig amendment to the Commerce, Justice, State Appropriations Act (see text below) and the Hyde amendment to the Department of Defense Appropriations Act are now law. Even though the President's signing statement said that the Craig amendment "must be applied consistent with [his] constitutional authority in the area of foreign affairs, which, among other things, will enable [him] to take actions to protect U.S. nationals from the purported jurisdiction of the treaty," and it is likely that the Administration will take the same attitude toward the similarly worded Hyde amendment, this does not mean that these provisions will have no impact-especially if the Court is up and running during the 2002 fiscal year. Moreover, although we expect the Administration to continue to participate in PrepCom negotiations, these laws could bolster the anti-ICC opposition to put pressure on the Administration not to attend or to scale down it's already minimal level of participation.

Furthermore, we expect that with the coming into force of the Statute this spring or early summer it is inevitable that ASPA-and perhaps a version with less generous waiver provisions-will be introduced again. We will keep you updated about these attempts and encourage you to be prepared to mobilize quickly to prevent it from becoming law.

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- **Hyde amendment language**, now part of the Defense Appropriations Act of 2002 and effective for one year:

DIVISION C--ADDITIONAL GENERAL PROVISIONS SEC. \_\_. None of the funds made available in Division A of this Act may be used to provide support or other assistance to the International Criminal Court or to any criminal investigation or other prosecutorial activity of the International Criminal Court.

- **Dodd amendment language**, failed in Senate by 48-51:

SEC.(b) REPORT. —The President shall report to Congress on any additional legislative actions necessary to advance and protect U.S. interests as it relates to the establishment of the International Criminal Court or the prosecution of crimes against humanity.

- **Craig amendment language**, part of the Commerce, Justice, State and Justice Appropriations Act of 2002 and effective for one year

**SEC. 623.** None of the funds appropriated or otherwise made available by this Act shall be available for cooperation with, or assistance or other support to, the International Criminal Court or the Preparatory Commission. This subsection shall not be construed to apply to any other entity outside the Rome treaty.