

WICC UPDATE: Status of US ICC Legislation
June 21, 2002

~ American Servicemembers' Protection Act (S. 587, H.R. 1794, various amendments) -- Still Alive But Not Yet Law

Despite multiple attempts to attach the American Servicemembers' Protection Act (ASPA) to bills in the House and Senate, no version of this legislation has yet become law -- but it is still very much in play.

On June 6, 2002, Senator Warner (R-VA) proposed the ASPA as an amendment to the Supplemental Appropriations bill (H.R. 4775) in the Senate. The identical text had already been attached to the House Supplemental Appropriations bill on May 9. The ASPA prohibits US cooperation with the International Criminal Court, restricts US participation in UN peacekeeping, prohibits military assistance to most countries that ratify the ICC Statute, and authorizes the President to use "all means necessary and appropriate" to free from captivity any US or allied personnel held by or on behalf of the ICC -- a provision that has led European leaders to call it "The Hague Invasion Act." While the bill contains harsh rhetoric, in reality it does not require the President to actually enact any of its provisions, due to broad waivers that allow the President to disregard any part of it he wants.

On June 6 during floor debate, Senator Dodd (D-CT) offered a second degree amendment to the ASPA that said, "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," and limited the bill to one year. Click here for Senator Dodd's floor statement. Senator Warner offered to accept the former and rejected the sunset provision (one-year restriction), but Senator Dodd refused and called for a vote. The ASPA's proponents then made a motion to table the Dodd amendment, which would mean that the Senate would cease to consider it and not vote on it. This motion to table the Dodd amendment succeeded -- but Senator Warner then offered again to accept the first part of the Dodd Amendment by unanimous consent. Unanimous consent was granted, and the language was included, specifically authorizing US cooperation with efforts to hold individuals responsible for genocide, war crimes and crimes against humanity.

Because the two version of the ASPA are different, this issue is now negotiable in conference committee. It is likely that some version of the legislation may become law in the coming weeks, and it will be fortunate if the Dodd amendment is retained in conference. Senate and House conferees will be meeting the week of June 24 to discuss the ASPA amendment.

Another ASPA amendment is being considered in a House-Senate conference committee on the Foreign Relations Authorization Act (H.R. 1646, also know as the State Department Authorization Act). The House bill is being conferenced with the Senate-passed Security Assistance bill (S. 1803), which contains some overlap, because the Senate authorization

bill stalled in committee. The ASPA was originally attached by Representative DeLay to the House bill during a floor vote in May 2001. However, the version currently being negotiated in the House-Senate conference is a version with broader presidential waivers written by Senator Helms and originally offered in September 2001 in the Senate. This version has been accepted by the Bush administration. There is no indication when the conference will conclude.