

**American Citizens' Protection and War Criminal Prosecution Act of 2001**

107th CONGRESS  
1st Session  
**S. 1296**

To provide for the protection of the due process rights of United States citizens (including United States servicemembers) before foreign tribunals, including the International Criminal Court, for the prosecution of war criminals, and for other purposes.

**IN THE SENATE OF THE UNITED STATES**

**August 1, 2001**

Mr. DODD introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

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**A BILL**

To provide for the protection of the due process rights of United States citizens (including United States servicemembers) before foreign tribunals, including the International Criminal Court, for the prosecution of war criminals, and for other purposes.

*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 Citizens' Protection and War Criminal Prosecution Act of 2001'.

**SEC. 2. FINDINGS.**

Congress makes the following findings:

- (1) Since the Nuremberg and Tokyo Tribunals were convened following World War II, the United States has been the world's leading proponent of international justice. Today, the United States is pursuing justice for the architects of genocide and other gross crimes in Cambodia, East Timor, Rwanda, Sierra Leone, and the former Yugoslavia.
- (2) Bringing the perpetrators of genocide, war crimes, and crimes against humanity to justice is consistent with United States national interests and fundamental values.
- (3) Such crimes cause massive humanitarian tragedies, and refugee emergencies, that often significantly affect United States national interests.

(4) The International Criminal Court will be a permanent court designed to investigate and bring to justice individuals who commit war crimes, crimes against humanity, and genocide. The International Criminal Court will be established under the Rome Statute, a treaty adopted in Rome on July 17, 1998, at a United Nations diplomatic conference.

(5) On December 31, 2000, the United States signed the Rome Statute. As of June 28, 2001, 139 countries have signed the treaty and 36 countries have ratified it. Every member of the European Union and 18 of 19 members of the North Atlantic Treaty Organization have signed the Rome Statute.

(6) United States servicemembers and United States officials involved in national security affairs deserve the full protection of the United States Government and should not be the subject of frivolous or politically motivated prosecutions by the International Criminal Court or any other foreign tribunal.

(7) United States negotiators succeeded in ensuring that the Rome Statute contains numerous safeguards designed to protect United States citizens, including due process rights that former State Department Legal Adviser Monroe Leigh has called 'more detailed and comprehensive' than those contained in the United States Bill of Rights. The Department of Justice has never objected to the Rome Statute on constitutional grounds.

(8) Under the Rome Statute, the International Criminal Court must defer to United States jurisdiction in cases involving United States citizens or service personnel. The International Criminal Court may proceed in such cases only if it determines that the United States has decided not to prosecute the person concerned and that the decision resulted from the unwillingness or inability of the United States genuinely to prosecute the matter.

(9) Upon signing the Rome Statute, President Clinton stated he did not intend to submit the Rome Statute in its present form to the Senate for advice and consent to ratification. The Bush Administration has also stated that it will not seek the Senate's advice and consent to ratification of the Rome Statute.

(10) Many issues important to United States interests are still being negotiated by signatories to the Rome Statute. Continued United States engagement with the International Criminal Court can help protect United States interests.

### **SEC. 3. DEFINITIONS.**

In this Act:

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

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

(4) 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.

(5) 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.

(6) UNITED STATES SERVICEMEMBER- The term 'United States servicemember' means any person that is subject to the provisions of chapter 47 of title 10, United States Code (relating to the Uniform Code of Military Justice).

#### **SEC. 4. STATEMENT OF POLICY.**

It is the sense of Congress that the United States should--

(1) maintain a policy of fully supporting the due process rights of all United States citizens before foreign tribunals, including before the International Criminal Court;

(2) continue to participate in negotiations of the Preparatory Commission of the International Criminal Court and as an observer in the Assembly of States Parties in order to--

(A) ensure that the rules of procedure and evidence and elements of crimes adopted by the International Criminal Court conform to United States standards of due process, are formally adopted by the Assembly, and fairly applied by the International Criminal Court's judges and prosecutors;

(B) seek a definition of the crime of aggression under the Rome Statute that is consistent with international law and fully respects the right of self-defense of the United States and its allies; and

(C) ensure that United States interests are protected in the negotiations over the remaining elements of the International Criminal Court regime;

(3) provide appropriate diplomatic and legal assistance to United States citizens, especially United States servicemembers and their dependents, who face prosecution without full due process in any forum, including, if applicable, before the International Criminal Court; and

(4) undertake, in all diplomatic negotiations related to international legal matters, to ensure that no United States citizen, especially United States

servicemembers and their dependents, will face frivolous prosecutions or prosecutions without full due process of law.

## **SEC. 5. POLICY OF JUDICIAL ASSISTANCE AND PROTECTION FOR UNITED STATES CITIZENS AND SERVICEMEMBERS; STUDY AND REPORT.**

(a) PROHIBITION- The United States shall not take any action to extradite or otherwise make available any United States citizen or United States servicemember to the International Criminal Court--

(1) if the United States is exercising its right under the Rome Statute to investigate or prosecute the crime under title 18, United States Code, or chapter 47 of title 10, United States Code (relating to the Uniform Code of Military Justice); or

(2)(A) if, after any such investigation, no reasonable basis has been found to proceed with a prosecution of such person; or

(B) if, after prosecution for such crime, such person has been acquitted.

(b) RIGHT TO INVESTIGATE AND PROSECUTE UNDER UNITED STATES LAW- If a United States citizen or United States servicemember is accused of a crime under the Rome Statute, the United States shall in all cases fully exercise its right under the Rome Statute to investigate and, if appropriate, to prosecute the crime under title 18, United States Code, or chapter 47 of title 10, United States Code (relating to the Uniform Code of Military Justice), unless the President determines that it is not in the national interest to do so.

(c) STUDY AND REPORT-

(1) STUDY- The Attorney General, the Secretary of Defense, and the Secretary of State shall jointly conduct a study consisting of a review of the crimes defined under the Rome Statute and consideration of what amendments to title 18, United States Code, and chapter 47 of title 10, United States Code (relating to the Uniform Code of Military Justice) may be necessary to ensure that the United States can fully exercise its rights under Part 2 of the Rome Statute.

(2) REPORT- Not later than 180 days after the date of enactment of this Act, the Attorney General, the Secretary of Defense, and the Secretary of State shall jointly submit to the appropriate congressional committees a report setting forth the findings of the study conducted under paragraph (1), including any recommendations for the enactment of legislation making the amendments described in that paragraph.

(d) PROTECTIONS FOR UNITED STATES DEFENDANTS BEFORE THE INTERNATIONAL CRIMINAL COURT- If a case involving a United States citizen or United States servicemember is found admissible by the International Criminal Court (within the meaning of Article 17 of the Rome Statute), then the President shall--

(1) use all appropriate diplomatic and legal resources to ensure that such person receives due process (including, in the case of a person entitled to

assistance under section 1037 of title 10, representation and other assistance in the manner provided in that section); and  
(2) provide for the defendant whatever exculpatory evidence may be available.

## **SEC. 6. REPORTING REQUIREMENT.**

(a) REQUIREMENT- Not later than one year after the date of enactment of this Act, the President shall submit a report to the appropriate congressional committees--

(1) comparing the due process protections afforded under the Rome Statute to those due process protections afforded United States servicemembers and their dependents under Status of Forces Agreements, temporary Status of Forces Agreements, temporary Status of Mission Agreements and Letters of Assist in effect between the United States and foreign nations or international organizations as of the date of the report; and

(2) comparing the due process protections afforded under the Rome Statute to those due process protections afforded United States citizens under bilateral extradition treaties to which the United States is a party, or multilateral treaties to which the United States is a party and which contain a provision authorizing extradition.

(b) ELEMENTS OF THE REPORT- The report required by subsection (a) shall describe, in particular, the

extent to which United States citizens or United States servicemembers accused of crimes overseas currently are provided--

- (1) the right to a jury trial;
- (2) the presumption of innocence;
- (3) the privilege against compelled self-incrimination;
- (4) the right to confront witnesses;
- (5) the protection against double jeopardy;
- (6) the freedom from unreasonable searches and seizures;
- (7) the right to be present at trial;
- (8) the right to effective assistance of counsel; and
- (9) the exclusion of unlawfully obtained evidence.

## **SEC. 7. POLICY OF ASSISTANCE FOR THE PROSECUTION OF WAR CRIMINALS.**

(a) SUPPORT AND ASSISTANCE AUTHORIZED- Notwithstanding any other law, while the United States is not a party to the Rome Statute, the United States may provide support and assistance, as appropriate, on a case-by-case basis to the International Criminal Court for the prosecution of accused war criminals, particularly those accused of crimes against United States servicemembers,

United States citizens, or citizens of countries friendly to, or allied with, the United States when the President determines that doing so would serve important United States interests.

(b) SUPPORT AND ASSISTANCE DEFINED- In this section, the term 'support and assistance' includes financial support, compliance with extradition requests, provision of appropriate intelligence information, legal assistance, and such other assistance that is ordinarily provided under treaties and executive agreements for mutual legal assistance.

## **SEC. 8. PROHIBITION ON DIRECT OR INDIRECT TRANSFER OF CERTAIN CLASSIFIED NATIONAL SECURITY INFORMATION TO THE INTERNATIONAL CRIMINAL COURT.**

(a) DIRECT TRANSFER- Except as provided in section 7, and not later than the date of entry into force of the Rome Statute, 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- Except as provided in section 7, and not later than the date of entry into force of the Rome Statute, 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. 9. 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 members of the Armed Forces of the United States 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 members of the Armed Forces of the United States 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) DESCRIPTION OF MEASURES TO ACHIEVE ENHANCED PROTECTION FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES- Not later than one year after the date of the enactment of this Act, the

President shall transmit to the appropriate congressional committees a description of modifications to command and operational control arrangements within military alliances to which the United States is a party that could be made in order to reduce any risks to members of the Armed Forces of the United States identified pursuant to subsection (a)(2).

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

## **SEC. 10. CERTIFICATION PRIOR TO SUBMISSION OF ROME STATUTE TO THE SENATE AS A TREATY.**

Prior to submission of the Rome Statute to the Senate for its advice and consent to ratification, the President should certify that the International Criminal Court has established a demonstrated record of fair and impartial prosecution of genocide, war crimes, and crimes against humanity.