

107TH CONGRESS
1ST SESSION

S. 1610

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 party.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 1, 2001

Mr. HELMS (for himself and Mr. CRAIG) introduced the following bill; which was read twice and referred to the Committee on Foreign 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 party.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “American
5 Servicemembers’ Protection Act of 2001”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) On July 17, 1998, the United Nations Dip-
2 lomatic Conference of Plenipotentiaries on the Es-
3 tablishment of an International Criminal Court,
4 meeting in Rome, Italy, adopted the “Rome Statute
5 of the International Criminal Court”. The vote on
6 whether to proceed with the statute was 120 in favor
7 to 7 against, with 21 countries abstaining. The
8 United States voted against final adoption of the
9 Rome Statute.

10 (2) As of April 30, 2001, 139 countries had
11 signed the Rome Statute and 30 had ratified it. Pur-
12 suant to Article 126 of the Rome Statute, the stat-
13 ute will enter into force on the first day of the
14 month after the 60th day following the date on
15 which the 60th country deposits an instrument rati-
16 fying the statute.

17 (3) Since adoption of the Rome Statute, a Pre-
18 paratory Commission for the International Criminal
19 Court has met regularly to draft documents to im-
20 plement the Rome Statute, including Rules of Proce-
21 dure and Evidence, Elements of Crimes, and a defi-
22 nition of the Crime of Aggression.

23 (4) During testimony before the Congress fol-
24 lowing the adoption of the Rome Statute, the lead
25 United States negotiator, Ambassador David

1 Scheffer stated that the United States could not
2 sign the Rome Statute because certain critical nego-
3 tiating objectives of the United States had not been
4 achieved. As a result, he stated: “We are left with
5 consequences that do not serve the cause of inter-
6 national justice.”

7 (5) Ambassador Scheffer went on to tell the
8 Congress that: “Multinational peacekeeping forces
9 operating in a country that has joined the treaty can
10 be exposed to the Court’s jurisdiction even if the
11 country of the individual peacekeeper has not joined
12 the treaty. Thus, the treaty purports to establish an
13 arrangement whereby United States armed forces
14 operating overseas could be conceivably prosecuted
15 by the international court even if the United States
16 has not agreed to be bound by the treaty. Not only
17 is this contrary to the most fundamental principles
18 of treaty law, it could inhibit the ability of the
19 United States to use its military to meet alliance ob-
20 ligations and participate in multinational operations,
21 including humanitarian interventions to save civilian
22 lives. Other contributors to peacekeeping operations
23 will be similarly exposed.”.

24 (6) Notwithstanding these concerns, President
25 Clinton directed that the United States sign the

1 Rome Statute on December 31, 2000. In a state-
2 ment issued that day, he stated that in view of the
3 unremedied deficiencies of the Rome Statute, “I will
4 not, and do not recommend that my successor sub-
5 mit the Treaty to the Senate for advice and consent
6 until our fundamental concerns are satisfied”.

7 (7) Any American prosecuted by the Inter-
8 national Criminal Court will, under the Rome Stat-
9 ute, be denied procedural protections to which all
10 Americans are entitled under the Bill of Rights to
11 the United States Constitution, such as the right to
12 trial by jury.

13 (8) Members of the Armed Forces of the
14 United States should be free from the risk of pros-
15 ecution by the International Criminal Court, espe-
16 cially when they are stationed or deployed around
17 the world to protect the vital national interests of
18 the United States. The United States Government
19 has an obligation to protect the members of its
20 Armed Forces, to the maximum extent possible,
21 against criminal prosecutions carried out by the
22 International Criminal Court.

23 (9) In addition to exposing members of the
24 Armed Forces of the United States to the risk of
25 international criminal prosecution, the Rome Statute

1 creates a risk that the President and other senior
2 elected and appointed officials of the United States
3 Government may be prosecuted by the International
4 Criminal Court. Particularly if the Preparatory
5 Commission agrees on a definition of the Crime of
6 Aggression over United States objections, senior
7 United States officials may be at risk of criminal
8 prosecution for national security decisions involving
9 such matters as responding to acts of terrorism, pre-
10 venting the proliferation of weapons of mass destruc-
11 tion, and deterring aggression. No less than mem-
12 bers of the Armed Forces of the United States, sen-
13 ior officials of the United States Government should
14 be free from the risk of prosecution by the Inter-
15 national Criminal Court, especially with respect to
16 official actions taken by them to protect the national
17 interests of the United States.

18 (10) Any agreement within the Preparatory
19 Commission on a definition of the Crime of Aggres-
20 sion that usurps the prerogative of the United Na-
21 tions Security Council under Article 39 of the char-
22 ter of the United Nations to “determine the exist-
23 ence of any act of aggression” would contravene
24 the charter of the United Nations and undermine
25 deterrence.

1 (11) It is a fundamental principle of inter-
2 national law that a treaty is binding upon its parties
3 only and that it does not create obligations for non-
4 parties without their consent to be bound. The
5 United States is not a party to the Rome Statute
6 and will not be bound by any of its terms. The
7 United States will not recognize the jurisdiction of
8 the International Criminal Court over United States
9 nationals.

10 **SEC. 3. WAIVER AND TERMINATION OF PROHIBITIONS OF**
11 **THIS ACT.**

12 (a) **AUTHORITY TO INITIALLY WAIVE SECTIONS 5**
13 **AND 7.**—The President is authorized to waive the prohibi-
14 tions and requirements of sections 5 and 7 for a single
15 period of one year. A waiver under this subsection may
16 be issued only if the President at least 15 days in advance
17 of exercising such authority—

18 (1) notifies the appropriate congressional com-
19 mittees of the intention to exercise such authority;
20 and

21 (2) determines and reports to the appropriate
22 congressional committees that the International
23 Criminal Court has entered into a binding agree-
24 ment that—

1 (A) prohibits the International Criminal
2 Court from seeking to exercise jurisdiction over
3 the following persons with respect to actions
4 undertaken by them in any capacity:

- 5 (i) covered United States persons;
6 (ii) covered allied persons; and
7 (iii) individuals who were covered
8 United States persons or covered allied
9 persons; and

10 (B) ensures that no person described in
11 subparagraph (A) will be arrested, detained,
12 prosecuted, or imprisoned by or on behalf of the
13 International Criminal Court.

14 (b) AUTHORITY TO EXTEND WAIVER OF SECTIONS
15 5 AND 7.—The President is authorized to waive the prohi-
16 bitions and requirements of sections 5 and 7 for successive
17 periods of one year each upon the expiration of a previous
18 waiver pursuant to subsection (a) or this subsection. A
19 waiver under this subsection may be issued only if the
20 President at least fifteen days in advance of exercising
21 such authority—

- 22 (1) notifies the appropriate congressional com-
23 mittees of the intention to exercise such authority;
24 and

(2) determines and reports to the appropriate congressional committees that the International Criminal Court—

(A) remains party to, and has continued to abide by, a binding agreement that—

(i) prohibits the International Criminal Court from seeking to exercise jurisdiction over the following persons with respect to actions undertaken by them in any capacity:

(I) covered United States persons;

(II) covered allied persons; and

(III) individuals who were covered United States persons or covered allied persons; and

(ii) ensures that no person described in clause (i) will be arrested, detained, prosecuted, or imprisoned by or on behalf of the International Criminal Court; and

(B) has taken no steps to arrest, detain, prosecute, or imprison any person described in clause (i) of subparagraph (A).

(c) AUTHORITY TO WAIVE SECTIONS 4 AND 6 WITH RESPECT TO AN INVESTIGATION OR PROSECUTION OF A

1 NAMED INDIVIDUAL.—The President is authorized to
2 waive the prohibitions and requirements of sections 4 and
3 6 to the degree such prohibitions and requirements would
4 prevent United States cooperation with an investigation
5 or prosecution of a named individual by the International
6 Criminal Court. A waiver under this subsection may be
7 issued only if the President at least 15 days in advance
8 of exercising such authority—

9 (1) notifies the appropriate congressional com-
10 mittees of the intention to exercise such authority;
11 and

12 (2) determines and reports to the appropriate
13 congressional committees that—

14 (A) a waiver pursuant to subsection (a) or
15 (b) of the prohibitions and requirements of sec-
16 tions 5 and 7 is in effect;

17 (B) there is reason to believe that the
18 named individual committed the crime or
19 crimes that are the subject of the International
20 Criminal Court’s investigation or prosecution;

21 (C) it is in the national interest of the
22 United States for the International Criminal
23 Court’s investigation or prosecution of the
24 named individual to proceed; and

(D) in investigating events related to actions by the named individual, none of the following persons will be investigated, arrested, detained, prosecuted, or imprisoned by or on behalf of the International Criminal Court with respect to actions undertaken by them in any capacity:

(i) Covered United States persons.

(ii) Covered allied persons.

(iii) Individuals who were covered United States persons or covered allied persons.

(d) **TERMINATION OF WAIVER PURSUANT TO SUBSECTION (c).**—Any waiver or waivers exercised pursuant to subsection (c) of the prohibitions and requirements of sections 4 and 6 shall terminate at any time that a waiver pursuant to subsection (a) or (b) of the prohibitions and requirements of sections 5 and 7 expires and is not extended pursuant to subsection (b).

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

(a) **APPLICATION.**—The provisions of this section—

(1) apply only to cooperation with the International Criminal Court and shall not apply to cooperation with an ad hoc international criminal tri-

1 bunal established by the United Nations Security
2 Council before or after the date of the enactment of
3 this Act to investigate and prosecute war crimes
4 committed in a specific country or during a specific
5 conflict; and

6 (2) shall not prohibit—

7 (A) any action permitted under section 8;

8 or

9 (B) communication by the United States of
10 its policy with respect to a matter.

11 (b) PROHIBITION ON RESPONDING TO REQUESTS
12 FOR COOPERATION.—Notwithstanding section 1782 of
13 title 28, United States Code, or any other provision of law,
14 no United States Court, and no agency or entity of any
15 State or local government, including any court, may co-
16 operate with the International Criminal Court in response
17 to a request for cooperation submitted by the Inter-
18 national Criminal Court pursuant to the Rome Statute.

19 (c) PROHIBITION ON TRANSMITTAL OF LETTERS
20 ROGATORY FROM THE INTERNATIONAL CRIMINAL
21 COURT.—Notwithstanding section 1781 of title 28,
22 United States Code, or any other provision of law, no
23 agency of the United States Government may transmit for
24 execution any letter rogatory issued, or other request for
25 cooperation made, by the International Criminal Court to

1 the tribunal, officer, or agency in the United States to
2 whom it is addressed.

3 (d) PROHIBITION ON PROVISION OF SUPPORT TO
4 THE INTERNATIONAL CRIMINAL COURT.—Notwith-
5 standing any other provision of law, no agency or entity
6 of the United States Government or of any State or local
7 government, including any court, may provide support to
8 the International Criminal Court.

9 (e) PROHIBITION ON USE OF APPROPRIATED FUNDS
10 TO ASSIST THE INTERNATIONAL CRIMINAL COURT.—
11 Notwithstanding any other provision of law, no funds ap-
12 propriated under any provision of law may be used for
13 the purpose of assisting the investigation, arrest, deten-
14 tion, extradition, or prosecution of any United States cit-
15 izen or permanent resident alien by the International
16 Criminal Court.

17 (f) RESTRICTION ON ASSISTANCE PURSUANT TO MU-
18 TUAL LEGAL ASSISTANCE TREATIES.—The United States
19 shall exercise its rights to limit the use of assistance pro-
20 vided under all treaties and executive agreements for mu-
21 tual legal assistance in criminal matters, multilateral con-
22 ventions with legal assistance provisions, and extradition
23 treaties, to which the United States is a party, and in con-
24 nection with the execution or issuance of any letter roga-
25 tory, to prevent the transfer to, or other use by, the Inter-

1 national Criminal Court of any assistance provided by the
 2 United States under such treaties and letters rogatory.

3 (g) PROHIBITION ON INVESTIGATIVE ACTIVITIES OF
 4 AGENTS.—No agent of the International Criminal Court
 5 may conduct, in the United States or any territory subject
 6 to the jurisdiction of the United States, any investigative
 7 activity relating to a preliminary inquiry, investigation,
 8 prosecution, or other proceeding at the International
 9 Criminal Court.

10 **SEC. 5. RESTRICTION ON UNITED STATES PARTICIPATION**
 11 **IN CERTAIN UNITED NATIONS PEACE-**
 12 **KEEPING OPERATIONS.**

13 (a) POLICY.—Effective beginning on the date on
 14 which the Rome Statute enters into force pursuant to Ar-
 15 ticle 126 of the Rome Statute, the President should use
 16 the voice and vote of the United States in the United Na-
 17 tions Security Council to ensure that each resolution of
 18 the Security Council authorizing any peacekeeping oper-
 19 ation under chapter VI of the charter of the United Na-
 20 tions or peace enforcement operation under chapter VII
 21 of the charter of the United Nations permanently exempts,
 22 at a minimum, covered United States persons partici-
 23 pating in such operation from criminal prosecution or
 24 other assertion of jurisdiction by the International Crimi-

1 nal Court for actions undertaken by such personnel in con-
2 nection with the operation.

3 (b) RESTRICTION.—Covered United States persons
4 may not participate in any peacekeeping operation under
5 chapter VI of the charter of the United Nations or peace
6 enforcement operation under chapter VII of the charter
7 of the United Nations, the creation of which is authorized
8 by the United Nations Security Council on or after the
9 date that the Rome Statute enters into effect pursuant
10 to Article 126 of the Rome Statute, unless the President
11 has submitted to the appropriate congressional committees
12 a certification described in subsection (c) with respect to
13 such operation.

14 (c) CERTIFICATION.—The certification referred to in
15 subsection (b) is a certification by the President that—

16 (1) covered United States persons are able to
17 participate in the peacekeeping or peace enforcement
18 operation without risk of criminal prosecution or
19 other assertion of jurisdiction by the International
20 Criminal Court because, in authorizing the oper-
21 ation, the United Nations Security Council perma-
22 nently exempted, at a minimum, covered United
23 States persons participating in the operation from
24 criminal prosecution or other assertion of jurisdic-
25 tion by the International Criminal Court for actions

1 undertaken by them in connection with the oper-
2 ation;

3 (2) covered United States persons are able to
4 participate in the peacekeeping or peace enforcement
5 operation without risk of criminal prosecution or
6 other assertion of jurisdiction by the International
7 Criminal Court because each country in which cov-
8 ered United States persons participating in the oper-
9 ation will be present either is not a party to the
10 International Criminal Court and has not invoked
11 the jurisdiction of the International Criminal Court
12 pursuant to Article 12 of the Rome Statute, or has
13 entered into an agreement in accordance with Article
14 98 of the Rome Statute preventing the International
15 Criminal Court from proceeding against covered
16 United States persons present in that country; or

17 (3) the United States has taken other appro-
18 priate steps to guarantee that covered United States
19 persons participating in the operation will not be
20 prosecuted by the International Criminal Court for
21 actions undertaken by such personnel in connection
22 with the operation.

1 **SEC. 6. PROHIBITION ON DIRECT OR INDIRECT TRANSFER**
2 **OF CLASSIFIED NATIONAL SECURITY INFOR-**
3 **MATION AND LAW ENFORCEMENT INFORMA-**
4 **TION TO THE INTERNATIONAL CRIMINAL**
5 **COURT.**

6 (a) IN GENERAL.—Not later than the date on which
7 the Rome Statute enters into force, the President shall
8 ensure that appropriate procedures are in place to prevent
9 the transfer of classified national security information and
10 law enforcement information to the International Criminal
11 Court for the purpose of facilitating an investigation, ap-
12 prehension, or prosecution.

13 (b) INDIRECT TRANSFER.—The procedures adopted
14 pursuant to subsection (a) shall be designed to prevent
15 the transfer to the United Nations and to the government
16 of any country that is party to the International Criminal
17 Court of classified national security information and law
18 enforcement information that specifically relates to mat-
19 ters known to be under investigation or prosecution by the
20 International Criminal Court, except to the degree that
21 satisfactory assurances are received from the United Na-
22 tions or that government, as the case may be, that such
23 information will not be made available to the International
24 Criminal Court for the purpose of facilitating an investiga-
25 tion, apprehension, or prosecution.

1 (c) CONSTRUCTION.—The provisions of this section
 2 shall not be construed to prohibit any action permitted
 3 under section 8.

4 **SEC. 7. PROHIBITION OF UNITED STATES MILITARY ASSIST-**
 5 **ANCE TO PARTIES TO THE INTERNATIONAL**
 6 **CRIMINAL COURT.**

7 (a) PROHIBITION OF MILITARY ASSISTANCE.—Sub-
 8 ject to subsections (b) and (c), and effective one year after
 9 the date on which the Rome Statute enters into force pur-
 10 suant to Article 126 of the Rome Statute, no United
 11 States military assistance may be provided to the govern-
 12 ment of a country that is a party to the International
 13 Criminal Court.

14 (b) NATIONAL INTEREST WAIVER.—The President
 15 may, without prior notice to Congress, waive the prohibi-
 16 tion of subsection (a) with respect to a particular country
 17 if he determines and reports to the appropriate congress-
 18 sional committees that it is important to the national in-
 19 terest of the United States to waive such prohibition.

20 (c) ARTICLE 98 WAIVER.—The President may, with-
 21 out prior notice to Congress, waive the prohibition of sub-
 22 section (a) with respect to a particular country if he deter-
 23 mines and reports to the appropriate congressional com-
 24 mittees that such country has entered into an agreement
 25 with the United States pursuant to Article 98 of the Rome

1 Statute preventing the International Criminal court from
 2 proceeding against United States personnel present in
 3 such country.

4 (d) EXEMPTION.—The prohibition of subsection (a)
 5 shall not apply to the government of—

6 (1) a NATO member country;

7 (2) a major non-NATO ally (including Aus-
 8 tralia, Egypt, Israel, Japan, Jordan, Argentina, the
 9 Republic of Korea, and New Zealand); or

10 (3) Taiwan.

11 **SEC. 8. AUTHORITY TO FREE COVERED UNITED STATES**
 12 **PERSONS AND CERTAIN OTHER PERSONS DE-**
 13 **TAINED OR IMPRISONED BY OR ON BEHALF**
 14 **OF THE INTERNATIONAL CRIMINAL COURT.**

15 (a) AUTHORITY.—The President is authorized to use
 16 all means necessary and appropriate to bring about the
 17 release of any person described in subsection (b) who is
 18 being detained or imprisoned by, on behalf of, or at the
 19 request of the International Criminal Court.

20 (b) PERSONS AUTHORIZED TO BE FREED.—The au-
 21 thority of subsection (a) shall extend to the following per-
 22 sons:

23 (1) Covered United States persons.

24 (2) Covered allied persons.

1 (3) Individuals detained or imprisoned for offi-
2 cial actions taken while the individual was a covered
3 United States person or a covered allied person, and
4 in the case of a covered allied person, upon the re-
5 quest of such government.

6 (c) AUTHORIZATION OF LEGAL ASSISTANCE.—When
7 any person described in subsection (b) is arrested, de-
8 tained, investigated, prosecuted, or imprisoned by, on be-
9 half of, or at the request of the International Criminal
10 Court, the President is authorized to direct any agency
11 of the United States Government to provide—

12 (1) legal representation and other legal assist-
13 ance to that person (including, in the case of a per-
14 son entitled to assistance under section 1037 of title
15 10, United States Code, representation and other as-
16 sistance in the manner provided in that section);

17 (2) exculpatory evidence on behalf of that per-
18 son; and

19 (3) defense of the interests of the United States
20 through appearance before the International Crimi-
21 nal Court pursuant to Article 18 or 19 of the Rome
22 Statute, or before the courts or tribunals of any
23 country.

24 (d) BRIBES AND OTHER INDUCEMENTS NOT AU-
25 THORIZED.—This section does not authorize the payment

1 of bribes or the provision of other such incentives to induce
2 the release of a person described in subsection (b).

3 **SEC. 9. ALLIANCE COMMAND ARRANGEMENTS.**

4 (a) REPORT ON ALLIANCE COMMAND ARRANGE-
5 MENTS.—Not later than 6 months after the date of the
6 enactment of this Act, the President should transmit to
7 the appropriate congressional committees a report with re-
8 spect to each military alliance to which the United States
9 is party—

10 (1) describing the degree to which members of
11 the Armed Forces of the United States may, in the
12 context of military operations undertaken by or pur-
13 suant to that alliance, be placed under the command
14 or operational control of foreign military officers
15 subject to the jurisdiction of the International Crimi-
16 nal Court because they are nationals of a party to
17 the International Criminal Court; and

18 (2) evaluating the degree to which members of
19 the Armed Forces of the United States engaged in
20 military operations undertaken by or pursuant to
21 that alliance may be exposed to greater risks as a
22 result of being placed under the command or oper-
23 ational control of foreign military officers subject to
24 the jurisdiction of the International Criminal Court.

1 (b) DESCRIPTION OF MEASURES TO ACHIEVE EN-
2 HANCED PROTECTION FOR MEMBERS OF THE ARMED
3 FORCES OF THE UNITED STATES.—Not later than one
4 year after the date of the enactment of this Act, the Presi-
5 dent should transmit to the appropriate congressional
6 committees a description of modifications to command and
7 operational control arrangements within military alliances
8 to which the United States is a party that could be made
9 in order to reduce any risks to members of the Armed
10 Forces of the United States identified pursuant to sub-
11 section (a)(2).

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

16 **SEC. 10. WITHHOLDINGS.**

17 Funds withheld from the United States share of as-
18 sessments to the United Nations or any other inter-
19 national organization during any fiscal year pursuant to
20 section 705 of the Admiral James W. Nance and Meg
21 Donovan Foreign Relations Authorization Act, Fiscal
22 Years 2000 and 2001 (as enacted by section 1000(a)(7)
23 of Public Law 106–113; 113 Stat. 1501A–460), are au-
24 thorized to be transferred to the Embassy Security, Con-

1 struction and Maintenance Account of the Department of
2 State.

3 **SEC. 11. APPLICATION OF SECTIONS 4 AND 6 TO EXERCISE**
4 **OF CONSTITUTIONAL AUTHORITIES.**

5 (a) IN GENERAL.—Sections 4 and 6 shall not apply
6 to any action or actions with respect to a specific matter
7 taken or directed by the President in the exercise of the
8 President’s authority as Commander in Chief of the
9 Armed Forces of the United States under article II, sec-
10 tion 2 of the United States Constitution or in the exercise
11 of the executive power under article II, section 1 of the
12 United States Constitution.

13 (b) NOTIFICATION TO CONGRESS.—

14 (1) IN GENERAL.—Subject to paragraph (2),
15 not later than 15 days after the President takes or
16 directs an action or actions described in subsection
17 (a) that would otherwise be prohibited under section
18 4 or 6, the President shall submit a notification of
19 such action to the appropriate congressional commit-
20 tees. A notification under this paragraph shall in-
21 clude a description of the action, a determination
22 that the action is in the national interest of the
23 United States, and a justification for the action.

24 (2) EXCEPTION.—If the President determines
25 that a full notification under paragraph (1) could

1 jeopardize the national security of the United States
 2 or compromise a United States law enforcement ac-
 3 tivity, not later than 15 days after the President
 4 takes or directs an action or actions referred to in
 5 paragraph (1) the President shall notify the appro-
 6 priate congressional committees that an action has
 7 been taken and a determination has been made pur-
 8 suant to this paragraph. The President shall provide
 9 a full notification under paragraph (1) not later
 10 than 15 days after the reasons for the determination
 11 under this paragraph no longer apply.

12 (c) CONSTRUCTION.—Nothing in this section shall be
 13 construed as a grant of statutory authority to the Presi-
 14 dent to take any action.

15 **SEC. 12. PROHIBITION ON EXTRADITION TO THE INTER-**
 16 **NATIONAL CRIMINAL COURT.**

17 Notwithstanding any other provision of law, no agen-
 18 cy or entity of the United States Government or of any
 19 State or local government may extradite any covered
 20 United States person to the International Criminal Court,
 21 nor support the transfer of any covered United States per-
 22 son to the International Criminal Court.

23 **SEC. 13. NONDELEGATION.**

24 The authorities vested in the President by sections
 25 3 and 11(a) may not be delegated by the President pursu-

1 ant to section 301 of title 3, United States Code, or any
 2 other provision of law. The authority vested in the Presi-
 3 dent by section 5(c)(3) may not be delegated by the Presi-
 4 dent pursuant to section 301 of title 3, United States
 5 Code, or any other provision of law to any official other
 6 than the Secretary of Defense, and if so delegated may
 7 not be subdelegated.

8 **SEC. 14. SENSE OF CONGRESS.**

9 It is the sense of Congress that the President should
 10 rescind the signature made on behalf of the United States
 11 to the Rome Statute.

12 **SEC. 15. DEFINITIONS.**

13 As used in this Act and in section 706 of the Admiral
 14 James W. Nance and Meg Donovan Foreign Relations Au-
 15 thorization Act, Fiscal Years 2000 and 2001:

16 (1) APPROPRIATE CONGRESSIONAL COMMIT-
 17 TEES.—The term “appropriate congressional com-
 18 mittees” means the Committee on International Re-
 19 lations of the House of Representatives and the
 20 Committee on Foreign Relations of the Senate.

21 (2) CLASSIFIED NATIONAL SECURITY INFORMA-
 22 TION.—The term “classified national security infor-
 23 mation” means information that is classified or clas-
 24 sifiable under Executive Order 12958 or a successor
 25 Executive order.

1 (3) COVERED ALLIED PERSONS.—The term
2 “covered allied persons” means military personnel,
3 elected or appointed officials, and other persons em-
4 ployed by or working on behalf of the government of
5 a NATO member country, a major non-NATO ally
6 (including Australia, Egypt, Israel, Japan, Jordan,
7 Argentina, the Republic of Korea, and New Zea-
8 land), or Taiwan, for so long as that government is
9 not a party to the International Criminal Court and
10 wishes its officials and other persons working on its
11 behalf to be exempted from the jurisdiction of the
12 International Criminal Court.

13 (4) COVERED UNITED STATES PERSONS.—The
14 term “covered United States persons” means mem-
15 bers of the Armed Forces of the United States,
16 elected or appointed officials of the United States
17 Government, other persons employed by or working
18 on behalf of the United States Government, and
19 other United States citizens for so long as the
20 United States is not a party to the International
21 Criminal Court.

22 (5) EXTRADITION.—The terms “extradition”
23 and “extradite” mean the extradition of a person in
24 accordance with the provisions of chapter 209 of
25 title 18, United States Code, (including section

1 3181(b) of such title) and such terms include both
 2 extradition and surrender as those terms are defined
 3 in Article 102 of the Rome Statute.

4 (6) INTERNATIONAL CRIMINAL COURT.—The
 5 term “International Criminal Court” means the
 6 court established by the Rome Statute.

7 (7) MAJOR NON-NATO ALLY.—The term “major
 8 non-NATO ally” means a country that has been so
 9 designated in accordance with section 517 of the
 10 Foreign Assistance Act of 1961.

11 (8) PARTICIPATE IN ANY PEACEKEEPING OPER-
 12 ATION UNDER CHAPTER VI OF THE CHARTER OF
 13 THE UNITED NATIONS OR PEACE ENFORCEMENT OP-
 14 ERATION UNDER CHAPTER VII OF THE CHARTER OF
 15 THE UNITED NATIONS.—The term “participate in
 16 any peacekeeping operation under chapter VI of the
 17 charter of the United Nations or peace enforcement
 18 operation under chapter VII of the charter of the
 19 United Nations” means to assign members of the
 20 Armed Forces of the United States to a United Na-
 21 tions military command structure as part of a peace-
 22 keeping operation under chapter VI of the charter of
 23 the United Nations or peace enforcement operation
 24 under chapter VII of the charter of the United Na-
 25 tions in which those members of the Armed Forces

1 of the United States are subject to the command or
 2 operational control of one or more foreign military
 3 officers not appointed in conformity with article II,
 4 section 2, clause 2 of the Constitution of the United
 5 States.

6 (9) PARTY TO THE INTERNATIONAL CRIMINAL
 7 COURT.—The term “party to the International
 8 Criminal Court” means a government that has de-
 9 posited an instrument of ratification, acceptance, ap-
 10 proval, or accession to the Rome Statute, and has
 11 not withdrawn from the Rome Statute pursuant to
 12 Article 127 thereof.

13 (10) PEACEKEEPING OPERATION UNDER CHAP-
 14 TER VI OF THE CHARTER OF THE UNITED NATIONS
 15 OR PEACE ENFORCEMENT OPERATION UNDER CHAP-
 16 TER VII OF THE CHARTER OF THE UNITED NA-
 17 TIONS.—The term “peacekeeping operation under
 18 chapter VI of the charter of the United Nations or
 19 peace enforcement operation under chapter VII of
 20 the charter of the United Nations” means any mili-
 21 tary operation to maintain or restore international
 22 peace and security that—

23 (A) is authorized by the United Nations
 24 Security Council under chapter VI or VII of the
 25 charter of the United Nations; and

1 (B) is paid for from assessed contributions
2 of United Nations members that are made
3 available for peacekeeping or peace enforcement
4 activities.

5 (11) ROME STATUTE.—The term “Rome Statute”
6 means the Rome Statute of the International
7 Criminal Court, adopted by the United Nations Dip-
8 lomatic Conference of Plenipotentiaries on the Es-
9 tablishment of an International Criminal Court on
10 July 17, 1998.

11 (12) SUPPORT.—The term “support” means as-
12 sistance of any kind, including financial support,
13 transfer of property or other material support, serv-
14 ices, intelligence sharing, law enforcement coopera-
15 tion, the training or detail of personnel, and the ar-
16 rest or detention of individuals.

17 (13) UNITED STATES MILITARY ASSISTANCE.—
18 The term “United States military assistance”
19 means—

20 (A) assistance provided under chapter 2 or
21 5 of part II of the Foreign Assistance Act of
22 1961 (22 U.S.C. 2151 et seq.); or

23 (B) defense articles or defense services fur-
24 nished with the financial assistance of the
25 United States Government, including through

- 1 loans and guarantees, under section 23 of the
- 2 Arms Export Control Act (22 U.S.C. 2763).

