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.

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 2001”.

SECTION 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 whether to proceed with 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 April 30, 2001, 139 countries had signed the Rome Statute and 30 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 on which 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 met regularly to draft documents to implement the Rome Statute, including Rules of Procedure and Evidence, Elements of Crimes, and a definition of the Crime of Aggression.

(4) During testimony before the Congress following the adoption of the Rome Statute, 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) Notwithstanding these concerns, President Clinton directed that the United States sign the
Rome Statute on December 31, 2000. In a statement issued that day, he stated that in view of the unremedied deficiencies of the Rome Statute, “I will not, and do not recommend that my successor submit the Treaty to the Senate for advice and consent until our fundamental concerns are satisfied”.

(7) Any American prosecuted by the International Criminal Court will, under the Rome Statute, be denied procedural protections to which all Americans are entitled under the Bill of Rights to the United States Constitution, such as the right to trial by jury.

(8) Members of the Armed Forces of the United States should be free from the risk of prosecution by the International Criminal Court, especially when they are stationed or deployed around the world to protect the vital national interests of the United States. The United States Government has an obligation to protect the members of its Armed Forces, to the maximum extent possible, against criminal prosecutions carried out by the International Criminal Court.

(9) In addition to exposing members of the Armed Forces of the United States 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 over United States objections, senior
United States officials may be at risk of criminal
prosecution for national security decisions involving
such matters as responding to acts of terrorism, pre-
venting the proliferation of weapons of mass destruc-
tion, and deterring aggression. No less than mem-
bers of the Armed Forces of the United States, sen-
ior officials of the United States Government should
be free from the risk of prosecution by the Inter-
national Criminal Court, especially with respect to
official actions taken by them to protect the national
interests of the United States.

(10) Any agreement within the Preparatory
Commission on a definition of the Crime of Aggres-
sion that usurps the prerogative of the United Na-
tions Security Council under Article 39 of the char-
ter of the United Nations to “determine the exist-
ence of any . . . . act of aggression” would contravene
the charter of the United Nations and undermine
deterrence.
(11) It is a fundamental principle of international law that a treaty is binding upon its parties only and that it does not create obligations for non-parties without their consent to be bound. The United States is not a party to the Rome Statute and will not be bound by any of its terms. The United States will not recognize the jurisdiction of the International Criminal Court over United States nationals.

SEC. 3. WAIVER AND TERMINATION OF PROHIBITIONS OF THIS ACT.

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

(1) notifies the appropriate congressional committees of the intention to exercise such authority;

and

(2) determines and reports to the appropriate congressional committees that the International Criminal Court has entered into a binding agreement that—
(A) 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

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

(b) Authority To Extend Waiver of Sections 5 and 7.—The President is authorized to waive the prohibitions and requirements of sections 5 and 7 for successive periods of one year each upon the expiration of a previous waiver pursuant to subsection (a) or this subsection. A waiver under this subsection may be issued only if the President at least fifteen days in advance of exercising such authority—

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

(1) notifies the appropriate congressional committees of the intention to exercise such authority; and

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

(A) a waiver pursuant to subsection (a) or (b) of the prohibitions and requirements of sections 5 and 7 is in effect;

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

(C) it is in the national interest of the United States for the International Criminal Court’s investigation or prosecution of the 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-
bunal 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; and

(2) shall not prohibit—

(A) any action permitted under section 8; or

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

(b) Prohibition on Responding to Requests for Cooperation.—Notwithstanding section 1782 of title 28, United States Code, or any other provision of law, no United States Court, and no agency or entity 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 the Rome Statute.

(c) Prohibition on Transmittal of Letters Rogatory From the International Criminal Court.—Notwithstanding section 1781 of title 28, United States Code, or any other provision of law, no agency of the United States Government may transmit for execution any letter rogatory issued, or other request for cooperation made, by the International Criminal Court to
1. the tribunal, officer, or agency in the United States to whom it is addressed.

(d) Prohibition on Provision of Support to the International Criminal Court.—Notwithstanding any other provision of law, no agency or entity of the United States Government or of any State or local government, including any court, may provide support to the International Criminal Court.

(e) Prohibition on Use of Appropriated Funds To Assist the International Criminal Court.—Notwithstanding any other provision of law, no funds appropriated under any provision of law may be used for the purpose of assisting the investigation, arrest, detention, extradition, or prosecution of any United States citizen or permanent resident alien by the International Criminal Court.

(f) 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 Inter-
national Criminal Court of any assistance provided by the United States under such treaties and letters rogatory.

(g) 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 PEACE-KEEPING OPERATIONS.

(a) Policy.—Effective beginning on the date on which 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 any peacekeeping operation under chapter VI of the charter of the United Nations or peace enforcement operation under chapter VII of the charter of the United Nations permanently exempts, at a minimum, covered United States persons participating in such operation from criminal prosecution or other assertion of jurisdiction by the International Crimi-
nal Court for actions undertaken by such personnel in connection with the operation.

(b) RESTRICTION.—Covered United States persons may not participate in any peacekeeping operation under chapter VI of the charter of the United Nations or peace enforcement operation under chapter VII of the charter of the United Nations, the creation of which is authorized by the United Nations Security Council 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 operation.

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

(1) covered United States persons are able to participate in the peacekeeping or peace enforcement operation without risk of criminal prosecution or other assertion of jurisdiction by the International Criminal Court because, in authorizing the operation, the United Nations Security Council permanently exempted, at a minimum, covered United States persons participating in the operation from criminal prosecution or other assertion of jurisdiction by the International Criminal Court for actions
undertaken by them in connection with the operation;

(2) covered United States persons are able to participate in the peacekeeping or peace enforcement operation without risk of criminal prosecution or other assertion of jurisdiction by the International Criminal Court because each country in which covered United States persons participating in the operation will be present either is not a party to the International Criminal Court and has not invoked the jurisdiction of the International Criminal Court pursuant to Article 12 of the Rome Statute, or has entered into an agreement in accordance with Article 98 of the Rome Statute preventing the International Criminal Court from proceeding against covered United States persons present in that country; or

(3) the United States has taken other appropriate steps to guarantee that covered United States persons participating in the 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 CLASSIFIED NATIONAL SECURITY INFORMATION AND LAW ENFORCEMENT INFORMATION TO THE INTERNATIONAL CRIMINAL COURT.

(a) IN GENERAL.—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 and law enforcement information to the International Criminal Court for the purpose of facilitating an investigation, apprehension, or prosecution.

(b) INDIRECT TRANSFER.—The procedures adopted pursuant to subsection (a) shall be designed to prevent the transfer to the United Nations and to the government of any country that is party to the International Criminal Court of classified national security information and law enforcement information that specifically relates to matters known to be under investigation or prosecution by the International Criminal Court, except to the degree that satisfactory assurances are received from the United Nations or that government, as the case may be, that such information will not be made available to the International Criminal Court for the purpose of facilitating an investigation, apprehension, or prosecution.
(c) CONSTRUCTION.—The provisions of this section shall not be construed to prohibit any action permitted under section 8.

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

(a) PROHIBITION OF MILITARY ASSISTANCE.—Subject to subsections (b) and (c), and effective one year after the date on which the Rome Statute enters into force pursuant to Article 126 of the Rome Statute, no United States military assistance may be provided to the government of a country that is a party to the International Criminal Court.

(b) NATIONAL INTEREST WAIVER.—The President may, without prior notice to Congress, waive the prohibition of subsection (a) with respect to a particular country if he determines and reports to the appropriate congressional committees that it is important to the national interest of the United States to waive such prohibition.

(c) ARTICLE 98 WAIVER.—The President may, without prior notice to Congress, waive the prohibition of subsection (a) with respect to a particular country if he 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.

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

(1) a NATO member country;

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

(3) Taiwan.

SEC. 8. AUTHORITY TO FREE COVERED UNITED STATES PERSONS AND CERTAIN OTHER PERSONS DETAINED OR IMPRISONED 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 of any person described in subsection (b) who is being detained or imprisoned by, on behalf of, or at the request of the International Criminal Court.

(b) Persons Authorized To Be Freed.—The authority of subsection (a) shall extend to the following persons:

(1) Covered United States persons.

(2) Covered allied persons.
(3) Individuals detained or imprisoned for official actions taken while the individual was a covered United States person or a covered allied person, and in the case of a covered allied person, upon the request of such government.

(c) Authorization of Legal Assistance.—When any person described in subsection (b) is arrested, detained, investigated, prosecuted, or imprisoned by, on behalf of, or at the request of the International Criminal Court, the President is authorized to direct any agency of the United States Government to provide—

(1) legal representation and other legal assistance to that person (including, in the case of a person entitled to assistance under section 1037 of title 10, United States Code, representation and other assistance in the manner provided in that section);

(2) exculpatory evidence on behalf of that person; and

(3) defense of the interests of the United States through appearance before the International Criminal Court pursuant to Article 18 or 19 of the Rome Statute, or before the courts or tribunals of any country.

(d) Bribes and Other Inducements Not Authorized.—This section does not authorize the payment
of bribes or the provision of other such incentives to induce
the release of a person described in subsection (b).

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 should transmit to
the appropriate congressional committees a report with re-
spect 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 pur-
suant to that alliance, be placed under the command
or operational control of foreign military officers
subject to the jurisdiction of the International Crimi-
nal 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 oper-
ational 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 should 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. WITHHOLDINGS.

Funds withheld from the United States share of assessments to the United Nations or any other international organization during any fiscal year 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, Con-
SEC. 11. APPLICATION OF SECTIONS 4 AND 6 TO EXERCISE
OF CONSTITUTIONAL AUTHORITIES.

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

(b) NOTIFICATION TO CONGRESS.—

(1) IN GENERAL.—Subject to paragraph (2), not later than 15 days after the President takes or directs an action or actions described in subsection (a) that would otherwise be prohibited under section 4 or 6, the President shall submit a notification of such action to the appropriate congressional committees. A notification under this paragraph shall include a description of the action, a determination that the action is in the national interest of the United States, and a justification for the action.

(2) EXCEPTION.—If the President determines that a full notification under paragraph (1) could
jeopardize the national security of the United States or compromise a United States law enforcement activity, not later than 15 days after the President takes or directs an action or actions referred to in paragraph (1) the President shall notify the appropriate congressional committees that an action has been taken and a determination has been made pursuant to this paragraph. The President shall provide a full notification under paragraph (1) not later than 15 days after the reasons for the determination under this paragraph no longer apply.

(c) CONSTRUCTION.—Nothing in this section shall be construed as a grant of statutory authority to the President to take any action.

SEC. 12. PROHIBITION ON EXTRADITION TO THE INTERNATIONAL CRIMINAL COURT.

Notwithstanding any other provision of law, no agency or entity of the United States Government or of any State or local government may extradite any covered United States person to the International Criminal Court, nor support the transfer of any covered United States person to the International Criminal Court.

SEC. 13. NONDELEGATION.

The authorities vested in the President by sections 3 and 11(a) may not be delegated by the President pursu-
ant to section 301 of title 3, United States Code, or any
other provision of law. The authority vested in the Presi-
dent by section 5(c)(3) may not be delegated by the Presi-
dent pursuant to section 301 of title 3, United States
Code, or any other provision of law to any official other
than the Secretary of Defense, and if so delegated may
not be subdelegated.

SEC. 14. SENSE OF CONGRESS.

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

SEC. 15. DEFINITIONS.

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

(1) Appropriate congressional committees.—The term “appropriate congressional com-
mittees” means the Committee on International Re-
lations of the House of Representatives and the
Committee on Foreign Relations of the Senate.

(2) Classified national security information.—The term “classified national security infor-
mation” means information that is classified or clas-
sifiable under Executive Order 12958 or a successor
Executive order.
(3) COVERED ALLIED PERSONS.—The term “covered allied persons” means military personnel, elected or appointed officials, and other persons employed by or working on behalf of the government of a NATO member country, a major non-NATO ally (including Australia, Egypt, Israel, Japan, Jordan, Argentina, the Republic of Korea, and New Zealand), or Taiwan, for so long as that government is not a party to the International Criminal Court and wishes its officials and other persons working on its behalf to be exempted from the jurisdiction of the International Criminal Court.

(4) COVERED UNITED STATES PERSONS.—The term “covered United States persons” means members of the Armed Forces of the United States, elected or appointed officials of the United States Government, other persons employed by or working on behalf of the United States Government, and other United States citizens for so long as the United States is not a party to the International Criminal Court.

(5) EXTRADITION.—The terms “extradition” and “extradite” mean the extradition of a person in accordance with the provisions of chapter 209 of title 18, United States Code, (including section
3181(b) of such title) and such terms include both extradition and surrender as those terms are defined in Article 102 of the Rome Statute.

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

(7) 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.

(8) PARTICIPATE IN ANY PEACEKEEPING OPERATION UNDER CHAPTER VI OF THE CHARTER OF THE UNITED NATIONS OR PEACE ENFORCEMENT OPERATION UNDER CHAPTER VII OF THE CHARTER OF THE UNITED NATIONS.—The term “participate in any peacekeeping operation under chapter VI of the charter of the United Nations or peace enforcement operation under chapter VII of the charter of the United Nations” means to assign members of the Armed Forces of the United States to a United Nations military command structure as part of a peacekeeping operation under chapter VI of the charter of the United Nations or peace enforcement operation under chapter VII of the charter of the United Nations in which those members of the Armed Forces
of the United States are subject to the command or
operational control of one or more foreign military
officers not appointed in conformity with article II,
section 2, clause 2 of the Constitution of the United
States.

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

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

(A) is authorized by the United Nations
Security Council under chapter VI or 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 or peace enforcement activities.


(12) SUPPORT.—The term “support” means assistance of any kind, including financial support, transfer of property or other material support, services, intelligence sharing, law enforcement cooperation, the training or detail of personnel, and the arrest or detention of individuals.

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

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

(B) defense articles or defense services furnished with the financial assistance of the United States Government, including through...
loans and guarantees, under section 23 of the Arms Export Control Act (22 U.S.C. 2763).