

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5351

To safeguard the sovereignty and right to self-defense of the United States and its allies, to prohibit United States participation in the International Criminal Court, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 20, 2010

Ms. ROS-LEHTINEN (for herself, Mr. McKEON, Mr. HOEKSTRA, Mr. KING of New York, Mr. SMITH of Texas, Mr. PENCE, Mr. McCOTTER, Mr. LAMBORN, and Mr. GARRETT of New Jersey) introduced the following bill; which was referred to the Committee on Foreign Affairs

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## A BILL

To safeguard the sovereignty and right to self-defense of the United States and its allies, to prohibit United States participation in the International Criminal Court, and for other purposes.

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 Self-Defense  
5       Protection Act of 2010”.

6       **SEC. 2. FINDINGS.**

7       Congress finds the following:

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) During testimony before the Congress fol-  
11           lowing the adoption of the Rome Statute, the lead  
12           United States negotiator, Ambassador David  
13           Scheffer, stated that the United States could not  
14           sign the Rome Statute because certain critical nego-  
15           tiating objectives of the United States had not been  
16           achieved. As a result, he stated: “We are left with  
17           consequences that do not serve the cause of inter-  
18           national justice.”.

19           (3) Ambassador Scheffer went on to tell the  
20           Congress that: “Multinational peacekeeping forces  
21           operating in a country that has joined the treaty can  
22           be exposed to the Court’s jurisdiction even if the  
23           country of the individual peacekeeper has not joined  
24           the treaty. Thus, the treaty purports to establish an  
25           arrangement whereby United States Armed Forces

1 operating overseas could be conceivably prosecuted  
2 by the international court even if the United States  
3 has not agreed to be bound by the treaty. Not only  
4 is this contrary to the most fundamental principles  
5 of treaty law, it could inhibit the ability of the  
6 United States to use its military to meet alliance ob-  
7 ligations and participate in multinational operations,  
8 including humanitarian interventions to save civilian  
9 lives. Other contributors to peacekeeping operations  
10 will be similarly exposed.”.

11 (4) Notwithstanding these concerns, President  
12 Clinton directed that the United States sign the  
13 Rome Statute on December 31, 2000. In a state-  
14 ment issued that day, he stated that in view of the  
15 unremedied deficiencies of the Rome Statute, “I will  
16 not, and do not recommend that my successor sub-  
17 mit the Treaty to the Senate for advice and consent  
18 until our fundamental concerns are satisfied.”.

19 (5) In a 2002 letter to the Secretary-General of  
20 the United Nations, Under Secretary of State John  
21 Bolton stated that “. . . in connection with the  
22 Rome Statute of the International Criminal Court  
23 . . . the United States does not intend to become a  
24 party to the treaty. Accordingly, the United States

1 has no legal obligations arising from its signature on  
2 December 31, 2000.”.

3 (6) On July 1, 2002, the Rome Statute entered  
4 into force, and the International Criminal Court was  
5 enacted.

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

12 (8) Members of the Armed Forces should be  
13 free from the risk of prosecution by the Inter-  
14 national Criminal Court, especially when they are  
15 stationed or deployed around the world to protect  
16 the vital national interests of the United States. The  
17 United States Government has an obligation to pro-  
18 tect the members of its Armed Forces, to the max-  
19 imum extent possible, against criminal prosecutions  
20 carried out by the International Criminal Court.

21 (9) In addition to exposing members of the  
22 Armed Forces to the risk of international criminal  
23 prosecution, the Rome Statute creates a risk that  
24 the President and other senior elected and appointed  
25 officials of the United States Government may be

1 prosecuted by the International Criminal Court for  
2 national security decisions involving such matters as  
3 responding to acts of terrorism, preventing the pro-  
4 liferation of weapons of mass destruction, and deter-  
5 ring aggression, particularly if the International  
6 Criminal Court Assembly of States Parties agrees on  
7 a definition of the Crime of Aggression over United  
8 States objections.

9 (10) No less than members of the Armed  
10 Forces, senior officials of the United States Govern-  
11 ment should be free from the risk of prosecution by  
12 the International Criminal Court, especially with re-  
13 spect to official actions taken by them to protect the  
14 national interests of the United States.

15 (11) Efforts to subject senior United States of-  
16 ficials and members of the Armed Forces to criminal  
17 prosecution for official actions taken by them to pro-  
18 tect the national interests of the United States could  
19 undermine the security of the United States and the  
20 right and ability of the United States and other de-  
21 mocracies to defend themselves.

22 (12) Any agreement on a definition of the  
23 Crime of Aggression that usurps the prerogative of  
24 the United Nations Security Council under article  
25 39 of the charter of the United Nations to “deter-

1 mine the existence of any . . . act of aggression”  
2 would contravene the charter of the United Nations  
3 and undermine deterrence.

4 (13) In a letter dated November 29, 2000, a bi-  
5 partisan group of twelve former senior United States  
6 Government officials expressed concern regarding  
7 the “threat to American sovereignty and inter-  
8 national freedom of action posed by the Inter-  
9 national Criminal Court (ICC)”. The signatories  
10 were the following:

11 (A) Lawrence Eagleburger, former Sec-  
12 retary of State.

13 (B) Brent Scowcroft, former National Se-  
14 curity Advisor.

15 (C) Caspar Weinberger, former Secretary  
16 of Defense.

17 (D) Zbigniew Brzezinski, former National  
18 Security Advisor.

19 (E) James Woolsey, former Director of  
20 Central Intelligence.

21 (F) Jeane Kirkpatrick, former Permanent  
22 Representative of the United States to the  
23 United Nations.

24 (G) Henry Kissinger, former Secretary of  
25 State.

1 (H) Donald Rumsfeld, former Secretary of  
2 Defense.

3 (I) Richard V. Allen, former National Se-  
4 curity Advisor.

5 (J) George Shultz, former Secretary of  
6 State.

7 (K) James A. Baker, III, former Secretary  
8 of State.

9 (L) Robert M. Gates, former Director of  
10 Central Intelligence, and present Secretary of  
11 Defense.

12 (14) In their November 29, 2000, letter, the  
13 twelve bipartisan signatories added that “any Ameri-  
14 cans prosecuted by the ICC will be denied basic con-  
15 stitutional rights guaranteed them under our Bill of  
16 Rights”.

17 (15) In their November 29, 2000, letter, the  
18 twelve bipartisan signatories further added that  
19 “Naturally we think it is essential that our nation’s  
20 military personnel be safely beyond the reach of an  
21 unaccountable international prosecutor operating  
22 under procedures inconsistent with our Constitution.  
23 War crimes and other human rights violations have  
24 long been subject to criminal penalties under United  
25 States law, and the United States has a far better

1 record of enforcing its laws against human rights  
2 violations than some of the countries that support  
3 the ICC.”.

4 (16) In their November 29, 2000, letter, the  
5 twelve bipartisan signatories further added that “we  
6 think it equally important that the President, cabi-  
7 net officers, and other national security decision-  
8 makers not have to fear international criminal pros-  
9 ecution as they go about their work. The risk of  
10 international criminal prosecution will certainly chill  
11 decision-making within our government, and could  
12 limit the willingness of our national leadership to re-  
13 spond forcefully to acts of terrorism, aggression, and  
14 other threats to American interests. Indeed, we be-  
15 lieve that American leadership in the world could be  
16 the first casualty of the ICC.”.

17 (17) The United States has entered into bilat-  
18 eral agreements with over 100 countries pursuant to  
19 article 98 of the Rome Statute preventing the Inter-  
20 national Criminal Court from proceeding against  
21 United States personnel present in those countries.

22 (18) On August 2, 2002, the American  
23 Servicemembers’ Protection Act of 2002 was signed  
24 into law as title II of the 2002 Supplemental Appro-  
25 priations Act for Further Recovery From and Re-



1        sponse To Terrorist Attacks on the United States  
2        (Public Law 107–206).

3            (19) Among other things, the American  
4        Servicemembers’ Protection Act of 2002 prohibits  
5        United States cooperation with the International  
6        Criminal Court and specifies restrictions on—

7            (A) participation by covered United States  
8        persons in United Nations (UN) peacekeeping  
9        and peace enforcement operations; and

10          (B) transfer to the International Criminal  
11        Court of United States classified national secu-  
12        rity and law enforcement information.

13          (20) Secretary of State Hillary Rodham Clinton  
14        stated on August 6, 2009, that “[It] is a great re-  
15        gret that we are not a signatory” of the Rome Stat-  
16        ute of the International Criminal Court.

17          (21) Ambassador Susan Rice, Permanent Rep-  
18        resentative of the United States to the United Na-  
19        tions, stated at a meeting of the United Nations Se-  
20        curity Council on January 29, 2009, that the Inter-  
21        national Criminal Court “looks to become an impor-  
22        tant and credible instrument”. She further stated on  
23        August 12, 2009, that “We have changed course.  
24        . . . We no longer oppose mentions of . . . the  
25        International Criminal Court”.

1           (22) In November of 2009, the United States  
2 for the first time sent an observer delegation to the  
3 Assembly of States Parties of the International  
4 Criminal Court.

5           (23) Stephen J. Rapp, Ambassador-at-Large  
6 for War Crimes Issues, has expressed the willingness  
7 of the United States to participate in the Review  
8 Conference of the Rome Statute of the International  
9 Criminal Court, which is scheduled to be held from  
10 May 31 to June 11, 2010, in Kampala, Uganda.

11           (24) Ambassador Rapp has stated that the  
12 United States “will return to engagement at the  
13 ICC”.

14           (25) On December 1, 2009, the President an-  
15 nounced his determination “that it is in our vital na-  
16 tional interest to send an additional 30,000 United  
17 States troops to Afghanistan” in his “Address to the  
18 Nation on the Way Forward in Afghanistan and  
19 Pakistan”, delivered at the United States Military  
20 Academy at West Point, New York.

21           (26) During their testimony before the Com-  
22 mittee on Foreign Affairs of the United States  
23 House of Representatives on December 10, 2009,  
24 General Karl W. Eikenberry (retired), United States  
25 Ambassador to Afghanistan, and General Stanley A.

1        McChrystal, Commander, International Security As-  
2        sistance Force and Commander, United States  
3        Forces Afghanistan, were both asked, “Are you on  
4        record as saying that you are absolutely opposed,  
5        under any circumstances, to men and women in uni-  
6        form being arrested anywhere in the world and tried  
7        before the ICC court as a result of their actions in  
8        either Iraq or Afghanistan?”. They both responded  
9        in the affirmative.

10            (27) The Prosecutor of the International Crimi-  
11            nal Court, Luis Moreno-Ocampo, has reportedly  
12            stated that he considers all soldiers operating on the  
13            territory of Afghanistan—even those from nations  
14            who have not ratified the Rome Statute—to fall  
15            under the jurisdiction of the International Criminal  
16            Court, and that he is conducting a “preliminary in-  
17            vestigation” into whether NATO troops, including  
18            American soldiers, have committed “war crimes”.

19            (28) Those seeking to prevent the democratic,  
20            Jewish State of Israel from defending itself from  
21            violent militant groups and their state sponsors have  
22            frequently attempted to use the International Crimi-  
23            nal Court in furtherance of this objective.

24            (29) From December 2008 to January of 2009,  
25            in response to thousands of rocket and mortar at-

1 tacks spanning eight years from Hamas and other  
2 violent militant groups in the Gaza Strip, Israel con-  
3 ducted Operation Cast Lead in order to defend its  
4 citizens from such attacks.

5 (30) The Prosecutor of the International Crimi-  
6 nal Court, Luis Moreno-Ocampo, has reportedly  
7 stated that he is considering a request by the Pales-  
8 tinian Authority to exercise jurisdiction over the  
9 West Bank and Gaza in order to investigate Israel’s  
10 defensive Operation Cast Lead.

11 (31) On September 15, 2009, pursuant to a  
12 one-sided, anti-Israel mandate from the notoriously  
13 biased United Nations Human Rights Council, the  
14 “United Nations Fact Finding Mission on the Gaza  
15 Conflict” released its report (known as the  
16 “Goldstone Report”), which—

17 (A) repeatedly made sweeping and unsub-  
18 stantiated determinations that the Israeli mili-  
19 tary had deliberately attacked civilians during  
20 Operation Cast Lead;

21 (B) in effect denied the State of Israel the  
22 right to self-defense;

23 (C) never noted the fact that Israel had  
24 the right to defend its citizens from the re-  
25 peated violent attacks committed against civil-

1           ian targets in southern Israel by Hamas and  
2           other Foreign Terrorist Organizations operating  
3           from Gaza;

4           (D) largely ignored the culpability of the  
5           Government of Iran and the Government of  
6           Syria, both of whom sponsor Hamas and other  
7           violent militant groups; and

8           (E) recommended that the report be re-  
9           ferred for further action to the Prosecutor of  
10          the International Criminal Court.

11          (32) On November 3, 2009, the United States  
12          House of Representatives adopted House Resolution  
13          867, which “consider[ed] the” Report of the United  
14          Nations Fact Finding Mission on the Gaza Conflict  
15          “[the] Goldstone Report to be irredeemably biased  
16          and unworthy of further consideration or legitimacy”  
17          and “reaffirm[ed] its support for the democratic,  
18          Jewish State of Israel, for Israel’s security and right  
19          to self-defense, and, specifically, for Israel’s right to  
20          defend its citizens from violent militant groups and  
21          their state sponsors”.

22          (33) As a non-party to the Rome Statute, the  
23          United States is not bound by its terms, and does  
24          not recognize any claimed jurisdiction of the Inter-

1 national Criminal Court over United States nation-  
2 als.

3 **SEC. 3. SENSE OF CONGRESS.**

4 It is the sense of Congress that—

5 (1) the United States should not ratify the  
6 Rome Statute of the International Criminal Court;

7 (2) the President should not submit for ratifica-  
8 tion the Rome Statute of the International Criminal  
9 Court;

10 (3) the President and the Secretary of State  
11 should not undertake further actions that could le-  
12 gitimize the International Criminal Court;

13 (4) the President and the Secretary of State  
14 should lead a high-level diplomatic effort to encour-  
15 age additional countries to enter into agreements  
16 with the United States, pursuant to article 98 of the  
17 Rome Statute, preventing the International Criminal  
18 Court from proceeding against United States per-  
19 sonnel present in such countries, and to strengthen  
20 existing article 98 agreements;

21 (5) the President and the Secretary of State  
22 should lead a high-level diplomatic effort to defend  
23 the right to self-defense of the United States and  
24 other democracies, including the United States indis-  
25 pensable ally Israel, against efforts such as the

1 Goldstone Report that seek to deny democracies that  
2 very right via entities like the International Criminal  
3 Court; and

4 (6) the President and the Secretary of State  
5 should explore credible, alternative forums to combat  
6 impunity for war crimes and other atrocities, while  
7 respecting the sovereignty and right to self-defense  
8 of democracies with robust, autonomous, and effec-  
9 tive judicial systems.

10 **SEC. 4. PROHIBITION ON USE OF FUNDS FOR PARTICIPA-**  
11 **TION IN THE INTERNATIONAL CRIMINAL**  
12 **COURT.**

13 (a) **IN GENERAL.**—Notwithstanding any other provi-  
14 sion of law, no funds made available to any department,  
15 agency, or entity of the United States Government or to  
16 any State or local government, including any court, may  
17 be used for United States participation in the Inter-  
18 national Criminal Court or its attendant activities, includ-  
19 ing any review conference or meeting of the Assembly of  
20 States Parties.

21 (b) **RULE OF CONSTRUCTION.**—The prohibition  
22 under subsection (a) shall be construed to strengthen and  
23 supplement, not to weaken or supplant, the prohibitions  
24 stated in section 2004 of the American Servicemembers’  
25 Protection Act of 2002 (title II of the 2002 Supplemental

1 Appropriations Act for Further Recovery From and Re-  
2 sponse To Terrorist Attacks on the United States (Public  
3 Law 107–206)).

4 **SEC. 5. DEFINITIONS.**

5 In this Act:

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

9 (2) ROME STATUTE.—The term “Rome Stat-  
10 ute” means the Rome Statute of the International  
11 Criminal Court, adopted by the United Nations Dip-  
12 lomatic Conference of Plenipotentiaries on the Es-  
13 tablishment of an International Criminal Court on  
14 July 17, 1998.

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