

on the Senate floor last week, FPI will retain advantages such as: paying inmates between \$.23—\$1.15 per hour; not having to pay Social Security or Unemployment compensation; not having to pay for employee benefits; exemption from paying Federal and State income tax, excise tax, and State and local excise taxes; and utilities being provided by the host prison.

Under this amendment FPI will continue to enjoy these, and other, competitive advantages. In no way does this amendment shut down FPI. In fact, FPI will continue to produce products for DOD contracts because the private sector cannot compete against not having to pay market wages, employee benefits, and Federal and State taxes.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I commend the chairman, Senator THOMAS, and the senior Senator from Texas for reconciling differences on an issue which was of great importance to all parties. I urge adoption of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

Without objection, the amendment is agreed to.

The amendment (No. 1834) was agreed to.

Mr. LEVIN. Mr. President, I move to reconsider the vote.

Mr. WARNER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

AMENDMENT NO. 1805

Mr. DURBIN. Mr. President, last week I offered an amendment that would allow a needed land transfer agreement to take place in North Chicago among the Navy, the Department of Veterans Affairs, and the Finch Medical School.

The managers of this bill accepted my amendment and I thank them for their help. I want to take this opportunity to explain what the amendment does.

The Navy's only boot camp facility is at the Great Lakes Naval Training Center in North Chicago, IL. Its Recruit Training Center area is a very long, thin stretch of land hemmed in by railroad tracks and by land that the Navy transferred to the Department of Veterans Affairs, VA, many years ago. This layout forces recruits to do so much marching simply in the course of moving about the area in a normal day of training that these 19-year-olds have been suffering from overuse injuries.

Both the barracks and the large drilling facilities used by recruits were built hastily during World War II and are in desperate need of replacement. These military construction projects have been endorsed by the Navy and by Congress, but the layout of the Recruit Training Center must be modified before all the buildings needing replacement can be built.

The VA land adjacent to the Recruit Training Center was leased to the

Finch Medical School, which is affiliated with the North Chicago Department of Veterans Affairs Medical Center. The VA also has more land and buildings than it needs for veterans health care delivery today.

The Navy, the VA, and the Finch Medical School have been in negotiations to set up a land swap that would benefit all concerned. The Finch Medical School is amenable to giving up the land on which it carries a 99-year lease so that the Navy can use that land. The VA is willing to transfer the land the medical school has leased for other VA property that the VA no longer needs. I commend all the parties for their willingness to work together, compromise, and find a solution that benefits all parties. The details of this agreement are still being worked out, and a public hearing will be held on it as well.

This amendment simply authorizes the Navy to use up to \$2 million of Operations and Maintenance funds to fulfill its obligations, once a final agreement is reached.

I appreciate the support from the bill's managers on this amendment. The rebuilt Recruit Training Center area will allow a major improvement in the training environment as well as the quality of life for new recruits. This amendment is absolutely necessary for the Navy to carry out the plans for its new Recruit Training Center.

Mr. LEVIN. It is now the understanding that we will recess until 2:15 and that we will be back at that time. We hope to be able to work out a pending amendment or two so we can complete consideration of this bill, hopefully before the briefing which has been scheduled for, I believe, 2:30. It would be our goal that we can use that 15 minutes to resolve these pending amendments, that we can then go to final passage right after the 2:30 briefing. That would be my goal.

Mr. WARNER. Mr. President, I share that goal. After carefully offering opportunity to my colleagues, I understand, if we resolve the matters with Senator ALLARD, that may conclude the amendments. It won't seal them off, but we have made a great deal of progress.

Mr. LEVIN. Senator ALLARD, Senator NELSON of Florida and others, Senator DODD, are working hard to see if we can come up with something which moves in the direction we all want to move in terms of voting rights for our military personnel and that does so in a way that we can protect against any unintended consequences. That is our hope over the lunch period. We will come back at 2:15 with high hopes and, if not, we will have to resolve it in other ways.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 having arrived, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:32 p.m., recessed until 2:17 p.m. and reassem-

bled when called to order by the Presiding Officer (Mr. CLELAND).

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2002—Continued

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I ask unanimous consent that it be in order for me to make my remarks seated at my desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I thank the Chair.

Mr. President, parliamentary inquiry, please. Is there an amendment pending?

The PRESIDING OFFICER. There is no amendment pending.

Mr. HELMS. I thank the Chair.

AMENDMENT NO. 1724

(Purpose: 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)

Mr. HELMS. Mr. President, I call up amendment No. 1724 and ask that it be stated.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS], for himself, Mr. MILLER, Mr. ALLEN, Mr. BOND, Mr. HATCH, and Mr. MURKOWSKI, proposes an amendment numbered 1724.

Mr. HELMS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. HELMS. Mr. President, I have worked with our colleague from Georgia, Senator MILLER, to craft legislation to protect our soldiers and officials from illegitimate prosecutions by the International Criminal Court. Senator MILLER and I and Senators LOTT, WARNER, HATCH, SHELBY, and MURKOWSKI together introduced the American Service Members Protection Act on May 9 of this year. We have worked since that time with the administration to craft the pending amendment, and the administration favors this amendment quite strongly.

Our soldiers and decisionmakers will be all the more exposed to the risk of illegitimate prosecution as they proceed with "Operation Enduring Freedom," as it has been named, against those who on September 11 committed mass murder against innocent American civilians.

The pending amendment ensures that countries, or overzealous prosecutors and judges, will never be able to use this court to persecute American military personnel carrying out war against terrorism.

At this time of national mobilization to fight terrorists who killed thousands of American citizens in New York and Pennsylvania and right near us at the Pentagon, there is a consensus in Congress that we should give the President the tools he needs to carry out the mission.

Chairman HENRY HYDE, of the House International Relations Committee, and I have painstakingly negotiated refinements to the American Service Members Protection Act with the Bush administration, and this revised version of the bill gives the President the flexibility and authority to delegate provisions in the legislation to Cabinet Secretaries and their deputies in this time of national emergency.

As a result of these careful negotiations, I have a letter dated September 25, 2001, from the Assistant Secretary of State for Legislative Affairs. His name is Paul V. Kelly. He indicates in his letter that the administration supports enactment of the precise language in my amendment to the Defense authorization bill. By the way, I submitted that letter for the RECORD last week, specifically on September 26.

So it will be a matter of record again, I ask unanimous consent that the letter from Assistant Secretary of State for Legislative Affairs Paul V. Kelly be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF STATE,
BUREAU OF LEGISLATIVE AFFAIRS,
Washington, DC, September 25, 2001.

Hon. HENRY J. HYDE,
Chairman, Committee on International Relations, House of Representatives.

DEAR MR. CHAIRMAN: This letter advises that the Administration supports the revised text of the American Servicemembers' Protection Act (ASPA), dated September 10, 2001, proposed by you, Senator Helms and Mr. DeLay.

We commit to support enactment of the revised bill in its current form based upon the agreed changes without further amendment and to oppose alternative legislative proposals.

We understand that the House ASPA legislation will be attached to the State Department Authorization Bill or other appropriate legislation.

Sincerely,

PAUL V. KELLY,
Assistant Secretary, Legislative Affairs.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina has the floor. Does the Senator from North Carolina yield the floor?

Mr. HELMS. If the Senator will indicate why he is seeking recognition, I will be glad to consider it.

The PRESIDING OFFICER. The gentleman from North Carolina has the floor.

Mr. LEVIN. As manager of the bill, I say to my friend from North Carolina I did not hear that last unanimous consent request. I am sorry.

Mr. HELMS. I just inserted a letter in the RECORD.

Mr. LEVIN. I thank the Senator.

The PRESIDING OFFICER. The Senator from North Carolina is speaking. The Senator will continue speaking, and the Senate will be in order.

Mr. HELMS. I thank the Chair.

We have a responsibility as Senators to enact an insurance policy for our troops and our officials—such as Secretary of State Powell—to protect them from a U.N. Kangaroo Court where the United States has no veto. That is precisely what this amendment is all about. Let me state for the record, to be absolutely certain there is no mistake made about it, (1) this amendment will prohibit U.S. cooperation with the court, including use of taxpayer funding or sharing of classified information; (2) it will restrict a U.S. role in peacekeeping missions unless the United Nations specifically exempts U.S. troops from prosecution by this international court; (3) it blocks U.S. aid to allies unless they too sign accords to shield U.S. troops on their soil from being turned over to the court; and (4) it authorizes the President to take any necessary action to rescue U.S. soldiers, any service man or woman, improperly handed over to that Court.

Now, then, my very good friend from Connecticut, and he is my friend—we have worked together on a number of things—Senator DODD, has made comments about this legislation which I feel obliged to address. This past Wednesday, September 26, the distinguished Senator from Connecticut, here on the Senate floor, said:

“This amendment is called, ironically [Senator DODD said], the American Servicemen's Protection Act. It is anything but [said Senator DODD]. The establishment of this amendment places our men and women in uniform in greater jeopardy than they would be if we were to participate in trying to develop the structures of this court to minimize problems.

Now that is quoting Senator DODD, my friend, a friend of all of ours.

But that's not the case. I hope I might persuade Senator DODD to withdraw that statement because it is not the case. Let me repeat for emphasis, it is not the case at all. The pending amendment does nothing whatsoever to preclude the Bush administration from taking any action it deems necessary to address our concerns during the Preparatory Commission meetings of the International Criminal Court.

However, we should not be misled: the negotiators of this Court have no intent to amend the treaty creating the Court to meet our objections. In fact, negotiators voiced a loud cheer when they finished negotiation of the treaty in 1999—over the objections of the United States of America.

Senator DODD himself acknowledged that the Rome Treaty creating the Court is fatally flawed, when he stated:

In fact, if, for some reason, miraculously the proposal were brought to this Senate Chamber this afternoon, and I were asked to vote on it as is, I would vote against it because it is a flawed agreement.

Also, when President Clinton signed the Rome Treaty on December 31, 2000, he stated that he would not send the treaty to the Senate for ratification and recommended that President Bush not transmit it either, given the remaining flaws in the Court.

So let me be, as the saying goes, perfectly clear. The pending amendment would shield American service people, men and women, from a court run amok. U.N. bodies often run amok. For instance, filled with dictatorships, the U.N. Human Rights Commission condemned the only democracy in the Middle East, Israel, in multiple resolutions earlier this year.

And just five weeks ago, the United Nations Conference on Racism in Durban South Africa, became an agent of hate rather than against hate. If U.N. commissions and conferences run amok, a permanent court, not subject to Security Council approval—and immune to a U.S. veto—could well turn on us, and on our democratic allies (the most likely one being Israel).

We need only to look back to the Kosovo War when the Bosnian Tribunal's chief prosecutor attempted to undertake an investigation of NATO for war crimes abuses.

Mr. President, despite the importance of this pending amendment with my sponsorship and that of others, opponents may want to hide behind procedural objections in an effort to just make our amendment go away. Unfortunately, this kangaroo court is not going away, it will be there, and the risk to our service men and women will exist as long as it is there unless we do something, as described in this amendment.

In the meantime, our Secretaries of State and Defense are telling us and the American people at the same time to get ready for a long campaign against global terrorists. We owe it, don't we, to our men and women representing this country, both in the military and in civilian agencies, to ensure their actions are not the subject of second-guessing by United Nations judicial bodies?

Mr. WARNER. Mr. President, would the Senator kindly yield for me to make this observation?

It had been the intention of the leadership of the Senate, and the managers, in order to accommodate Senators desiring to attend the briefing, to go into recess subject to the call of the Chair. Is that correct?

Mr. REID. I appreciate very much the Senator from North Carolina allowing us to interrupt. We have a number of people attending from the administration.

Mr. HELMS. Of course. I understand.

Mr. REID. We would be happy to allow the Senator to complete his statement, and as soon as that statement is completed, we ask the Senate be in recess subject to the call of the Chair, and at some subsequent time after we come back, I understand some people may want to raise a point of order against this amendment.

Mr. HELMS. I understand the same thing. I have about 2 minutes more. I will stop now.

Mr. REID. No, no. We thought the Senator from North Carolina was going to speak much longer. We would be happy to wait until—

Mr. HELMS. I wouldn't think of putting you in that position.

Mr. President, let me yield to the Senator on condition that I will have the floor when the Senate reconvenes.

Mr. REID. It is my understanding the Senator would want the floor when the Senate comes back in session?

Mr. HELMS. I think that was my unanimous consent request.

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. REID. Mr. President, I ask unanimous consent the Senate stand in recess subject to the call of the Chair on the condition that when the Senate does reconvene the Senator from North Carolina will resume the floor.

There being no objection, the Senate, at 2:32 p.m., recessed subject to the call of the Chair and reassembled at 3:37 p.m. when called to order by the Presiding Officer (Mr. CARPER).

The PRESIDING OFFICER. Who seeks recognition?

The Senator from North Carolina.

Mr. HELMS. Forgive me for not standing, but who has the floor?

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I thank the Chair.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2002—Continued

AMENDMENT NO. 1724

Mr. HELMS. Mr. President, I will finish my statement in a moment, but, first of all, I ask unanimous consent that the Senator from Nebraska, Mr. HAGEL, be added as a cosponsor to amendment No. 1724, now pending.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I do not know how many people were listening breathlessly when I made the first part of my statement earlier today, but I will not repeat it. I will have mercy upon you.

This is a very important amendment. I want to serve notice to the managers of the bill that I shall not contest or try to contest any motion that may be made on this amendment. I do hope the managers will give some thought as to whether they will support my offering this amendment freestanding as a bill, but that is up to them.

Mr. President, to complete my statement that I began earlier, the Veterans of Foreign Wars of the United States has sent me a letter in support of my amendment. I want to read part of it. It is from Robert E. Wallace, the Executive Director. It is addressed to all Members of the Senate, dated October 2. It says:

On behalf of the 2.7 million members of the Veterans of Foreign Wars of the United States and its Ladies Auxiliary, I want to express our strong support for amendment number 1690 to the National Defense Authorization Act, S. 1438, the "American Service Members' Protection Act of 2001." We think this legislation brought forward by Senators Jesse Helms (R-NC) and Zell Miller (D-GA) is an appropriate response to the threat to American sovereignty and international freedom of action posed by the International Criminal Court. Also, we believe it is essential that our nation's military personnel be protected against criminal prosecution under procedures inconsistent with our Constitution.

We oppose the International Criminal Court (ICC) in its present form. We believe it poses a significant danger to our soldiers, sailors, airmen, and Marines, who are deployed throughout the world. U.S. military personnel and other U.S. Government officials could be brought before this court even though the United States is not a party to the treaty. The court will claim jurisdiction to indict, prosecute, and imprison persons accused of "war crimes," "crimes against humanity," "genocide," and other "crime of aggression" (not yet defined by the ICC.)

I ask unanimous consent the entire letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

VETERANS OF FOREIGN WARS OF THE UNITED STATES,

Washington, DC, October 2, 2001.

To: All Member of the U.S. Senate.

From: Robert E. Wallace, Executive Director.

On behalf of the 2.7 million members of the Veterans of Foreign Wars of the United States and its Ladies Auxiliary, I want to express our strong support for amendment number 1690 to the National Defense Authorization Act, S. 1438, the "American Service Members' Protection Act of 2001." We think this legislation brought forward by Senators Jesse Helms (R-NC) and Zell Miller (D-GA) is an appropriate response to the threat to American sovereignty and international freedom of action posed by the International Criminal Court. Also, we believe it is essential that our nation's military personnel be protected against criminal prosecution under procedures inconsistent with our Constitution.

We oppose the International Criminal Court (ICC) in its present form. We believe it poses a significant danger to our soldiers, sailors, airmen, and Marines, who are deployed throughout the world. U.S. military personnel and other U.S. Government officials could be brought before the court even though the United States is not a party to the treaty. The court will claim jurisdiction to indict, prosecute, and imprison persons accused of "war crimes," "crimes against humanity," "genocide," and the "crime of aggression" (not yet defined by the ICC). These crimes are expansively defined by the treaty and would be interpreted by the court's judges, who will be appointed with no input from the United States. The ICC will not be required to provide Americans the basic legal protections of the constitution. We think it is wrong to expect our servicemen and women to serve their country under this threat.

Also, it is equally important the President, cabinet members, and other national security decision-makers not have to fear international criminal prosecution as they go about their work. Congress has a responsibility to ensure that Americans are not brought before an international criminal tri-

bunal for simply performing their duty to their country.

The Veterans of Foreign Wars of the United States supports enactment of this amendment to S. 1438 as written. Therefore, we strongly urge you to support this amendment offered by Senator Helms and others, and vote for the amended bill when it comes to the floor of the Senate for vote.

Mr. HELMS. Mr. President, I hope Senators will support this legislation, to protect soldiers and their civilian leaders from this new U.N. court. The President and his national security team support the legislation and have raised no concerns about acting on it now. In fact, there is greater need to enact this legislation now. We must not send our troops out to fight terrorists, or any other aggressors, without protection from trumped-up claims that they committed "war crimes", "crimes against humanity" or some new, undefined, catch-all "crime of aggression" before the Court.

I urge support for this legislation.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I will momentarily make a parliamentary inquiry as to germaneness. I say to my friend, who has been by my side in the Senate the 23 years I have been here, I was a cosponsor from day one. Should the Senator elect to pursue this as a freestanding or in other measures legislatively, I would like to be a cosponsor.

At the appropriate time—I see another colleague who wishes to address the issue—I will make the inquiry with regard to germaneness. The distinguished chairman and myself have made clear, in order to manage this bill, I will have to move for those amendments on my side, and he is going to move accordingly on germaneness for amendments on his side.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I understand the postcloture situation we are now in and the germaneness argument that the Senator from Virginia has just placed.

I stand in support of the concept and the intent that Senator HELMS brings to the floor as it relates to the International Criminal Court.

I, along with Senator HELMS and a good many others, have worked for some time to clarify this Nation's position in relation to the Rome treaty and the International Criminal Court. We became signatories to that in the final days of the Clinton administration and even then President Clinton spoke about it with concern. We are now faced with participating or not participating in something that we believe, as the Senator has just spoken to, puts our men and women in uniform at risk and the possibility that an international body, as adjunct of the United Nations, might choose to prosecute them, even though they were under the direct orders of our Commander in Chief in the execution of their duties.