

(Pub. L. 106–113, div. B, §1000(a)(7) [div. A, title VII, § 706], Nov. 29, 1999, 113 Stat. 1536, 1501A–461.)

CODIFICATION

Section was formerly set out as a note under section 262-1 of this title.

SUBCHAPTER II—AMERICAN
SERVICEMEMBERS' PROTECTION

§ 7421. 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, preventing the proliferation of weapons of mass destruction, and deterring aggression. No less than members of the Armed Forces of the United States, senior officials of the United States Government should be free from the risk of prosecution by the International 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 Aggression that usurps the prerogative of the United Nations Security Council under Article 39 of the charter of the United Nations to "determine the existence 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 nonparties 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.

(Pub. L. 107–206, title II, §2002, Aug. 2, 2002, 116 Stat. 899.)

SHORT TITLE

For short title of this subchapter as the "American Servicemembers' Protection Act of 2002", see section 2001 of Pub. L. 107–206, set out as a note under section 7401 of this title.

§ 7422. Waiver and termination of prohibitions of this subchapter

(a) Authority to initially waive section 7424

The President is authorized to waive the prohibitions and requirements of section 7424 of this title for a single period of 1 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 an official 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 section 7424

The President is authorized to waive the prohibitions and requirements of section 7424 of this title for successive periods of 1 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 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—

(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 an official 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 7423 and 7425 with respect to an investigation or prosecution of a named individual

The President is authorized to waive the prohibitions and requirements of sections 7423 and

7425 of this title 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 section 7424 of this title 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 an official 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 7423 and 7425 of this title shall terminate at any time that a waiver pursuant to subsection (a) or (b) of the prohibitions and requirements of section 7424 of this title expires and is not extended pursuant to subsection (b).

(e) Termination of prohibitions of this subchapter

The prohibitions and requirements of sections 7423, 7424, and 7425 of this title shall cease to apply, and the authority of section 7427 of this title shall terminate, if the United States becomes a party to the International Criminal Court pursuant to a treaty made under article II, section 2, clause 2 of the Constitution of the United States.

(Pub. L. 107-206, title II, § 2003, Aug. 2, 2002, 116 Stat. 901; Pub. L. 110-181, div. A, title XII, § 1212(b)(1), Jan. 28, 2008, 122 Stat. 371.)

AMENDMENTS

2008—Subsecs. (a), (b). Pub. L. 110-181, § 1212(b)(1)(A), (B), substituted “section 7424” for “sections 7424 and 7426” in heading and text.

Subsecs. (c)(2)(A), (d). Pub. L. 110-181, § 1212(b)(1)(C), (D), substituted “section 7424” for “sections 7424 and 7426”.

Subsec. (e). Pub. L. 110-181, § 1212(b)(1)(E), substituted “and 7425” for “7425, and 7426”.

§ 7423. Prohibition on cooperation with the International Criminal Court

(a) Application

The provisions of this section—