

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.)

Statutory Notes and Related Subsidiaries

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.)

Editorial Notes

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—

(1) apply only to cooperation with the International Criminal Court and shall not apply to cooperation with an ad hoc international criminal tribunal established by the United Nations Security Council before or after August 2, 2002, 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 7427 of this title; 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 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 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 the tribunal, officer, or agency in the United States to whom it is addressed.

(d) 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 person from the United

States to the International Criminal Court, nor support the transfer of any United States citizen or permanent resident alien to the International Criminal Court.

(e) 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.

(f) 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.

(g) 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 International Criminal Court of any assistance provided by the United States under such treaties and letters rogatory.

(h) 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.

(Pub. L. 107-206, title II, §2004, Aug. 2, 2002, 116 Stat. 902.)

§ 7424. Restriction on United States participation in certain United Nations peacekeeping 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, members of the Armed Forces of the United States participating in such operation from criminal prosecution or other assertion of jurisdiction by the International Criminal Court for actions undertaken by such personnel in connection with the operation.