(e) Governance Board duties

The Governance Board shall have the following duties with respect to the DTS–PO:

(1) To approve and monitor the plans, services, priorities, policies, and pricing methodology of the DTS–PO for bandwidth costs and projects carried out at the request of a department or agency that uses the DTS Network.

(2) To provide to the DTS–PO Executive Agent the recommendation of the Governance Board with respect to the approval, disapproval, or modification of each annual budget request for the DTS–PO, prior to the submission of any such request by the Executive Agent.

(3) To review the performance of the DTS–PO against plans approved under paragraph (1) and the management activities and internal controls of the DTS–PO.

(4) To require from the DTS–PO any plans, reports, documents, and records the Governance Board considers necessary to perform its oversight responsibilities.

(5) To conduct and evaluate independent audits of the DTS–PO.

(6) To approve or disapprove the nomination of the Director of the DTS–PO by the Executive Agent with a majority vote of the Governance Board.

(7) To recommend to the Executive Agent the replacement of the Director of the DTS–PO with a majority vote of the Governance Board.

(f) National security interests

The Governance Board shall ensure that those enhancements of, and the provision of service for, telecommunication capabilities that involve the national security interests of the United States receive the highest prioritization.

(Pub. L. 106–567, title III, § 322, as added Pub. L. 111–259, title V, § 501(a)(1), Oct. 7, 2010, 124 Stat. 2736.)

PRIOR PROVISIONS

A prior section 7302, Pub. L. 106–567, title III, § 322, Dec. 27, 2000, 114 Stat. 2843; Pub. L. 107–306, title VIII, § 811(b)(5)(E), Nov. 27, 2002, 116 Stat. 2425, which related to personnel, was repealed by Pub. L. 111–259, title V, § 501(a)(1), Oct. 7, 2010, 124 Stat. 2735.

§ 7303. Funding of the Diplomatic Telecommunications Service

(a) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for the operations, maintenance, development, enhancement, modernization, and investment costs of the DTS Network and the DTS–PO. Funds appropriated for allocation to the DTS–PO shall remain available to the DTS–PO for a period of two fiscal years.

(b) Fees

The DTS–PO shall charge a department or agency that uses the DTS Network for only those bandwidth costs attributable to such department or agency and for specific projects carried out at the request of such department or agency, pursuant to the pricing methodology for such bandwidth costs and such projects approved under section 7302(e)(1) of this title, for which amounts have not been appropriated for allocation to the DTS–PO. The DTS–PO is authorized to directly receive payments from departments or agencies that use the DTS Network and to invoice such departments or agencies for the fees under this section either in advance of, or upon or after, providing the bandwidth or performing such projects. Such funds received from such departments or agencies shall remain available to the DTS–PO for a period of two fiscal years.

(Pub. L. 106–567, title III, § 323, as added Pub. L. 111–259, title V, § 501(a)(1), Oct. 7, 2010, 124 Stat. 2738.)

PRIOR PROVISIONS

A prior section 7303, Pub. L. 106–567, title III, § 323, Dec. 27, 2000, 114 Stat. 2845, which related to Diplomatic Telecommunications Service Oversight Board, was repealed by Pub. L. 111–259, title V, § 501(a)(1), Oct. 7, 2010, 124 Stat. 2735. See section 7302 of this title.

§ 7304. Definitions

In this chapter:

(1) DTS Network

The term ''DTS Network'' means the worldwide telecommunications network supporting all United States Government agencies and departments operating from diplomatic and consular facilities outside of the United States.

(2) DTS–PO

The term ''DTS–PO'' means the Diplomatic Telecommunications Service Program Office.

(3) Governance Board

The term ''Governance Board'' means the Diplomatic Telecommunications Service Governance Board established under section 7302(a)(1) of this title.

(Pub. L. 106–567, title III, § 324, as added Pub. L. 111–259, title V, § 501(a)(1), Oct. 7, 2010, 124 Stat. 2738.)

PRIOR PROVISIONS

A prior section 7304, Pub. L. 106–567, title III, § 324, Dec. 27, 2000, 114 Stat. 2846, which related to general provisions, was repealed by Pub. L. 111–259, title V, § 501(a)(1), Oct. 7, 2010, 124 Stat. 2735.

CHAPTER 81—INTERNATIONAL CRIMINAL COURT

SUBCHAPTER I—GENERAL PROVISIONS

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SUBCHAPTER I—GENERAL PROVISIONS

§ 7401. Restriction relating to United States accession to the International Criminal Court

(a) Prohibition

The United States shall not become a party to the International Criminal Court except pursuant to a treaty made under Article II, section 2, clause 2 of the Constitution of the United States on or after November 29, 1999.

(b) Prohibition on use of funds

None of the funds authorized to be appropriated by this or any other Act may be obligated for use by, or for support of, the International Criminal Court unless the United States has become a party to the Court pursuant to a treaty made under Article II, section 2, clause 2 of the Constitution of the United States on or after November 29, 1999.

(c) International Criminal Court defined

In this section, the term ''International Criminal Court'' means the court established by the Rome Statute of the International Criminal Court, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on July 17, 1998.

(Pub. L. 106–113, div. B, § 1000(a)(7) [div. A, title VII, § 705], Nov. 29, 1999, 113 Stat. 1536, 1501A–460.)

CODIFICATION

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

SHORT TITLE

Pub. L. 107–206, title II, § 2001, Aug. 2, 2002, 116 Stat. 899, provided that: ''This title [enacting subchapter II of this chapter] may be cited as the 'American Servicemembers' Protection Act of 2002'.''

§ 7402. Prohibition on extradition or transfer of United States citizens to the International Criminal Court

(a) Prohibition on extradition

None of the funds authorized to be appropriated or otherwise made available by this or any other Act may be used to extradite a United States citizen to a foreign country that is under an obligation to surrender persons to the International Criminal Court unless that foreign country confirms to the United States that applicable prohibitions on reextradition apply to such surrender or gives other satisfactory assurances to the United States that the country will not extradite or otherwise transfer that citizen to the International Criminal Court.

(b) Prohibition on consent to extradition by third countries

None of the funds authorized to be appropriated or otherwise made available by this or any other Act may be used to provide consent to the extradition or transfer of a United States citizen by a foreign country to a third country that is under an obligation to surrender persons to the International Criminal Court, unless the third country confirms to the United States that applicable prohibitions on reextradition apply to such surrender or gives other satisfactory assurances to the United States that the third country will not extradite or otherwise transfer that citizen to the International Criminal Court.

(c) Definition

In this section, the term ''International Criminal Court'' has the meaning given the term in section 7401(c) of this title.

(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 juris-

diction 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) of this section 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 this section 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 this section 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 this section of the prohibitions and requirements of section 7424 of this title expires and is not extended pursuant to subsection (b) of this section.

(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—

(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 Gov-

ernment 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.

(b) Restriction

Members of the Armed Forces of the United States 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) of this section with respect to such operation.

(c) Certification

The certification referred to in subsection (b) of this section is a certification by the President that—

(1) members of the Armed Forces of the United States 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, members of the Armed Forces of the United States 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) members of the Armed Forces of the United States 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 members of the Armed Forces of the United States 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 members of the Armed Forces of the United States present in that country; or

(3) the national interests of the United States justify participation by members of the Armed Forces of the United States in the peacekeeping or peace enforcement operation.

(Pub. L. 107–206, title II, § 2005, Aug. 2, 2002, 116 Stat. 903.)

§ 7425. 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) of this section 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 enforce-

ment 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 7427 of this title.

(Pub. L. 107–206, title II, § 2006, Aug. 2, 2002, 116 Stat. 904.)

§ 7426. Repealed. Pub. L. 110–181, div. A, title XII, § 1212(a), Jan. 28, 2008, 122 Stat. 371

Section, Pub. L. 107–206, title II, § 2007, Aug. 2, 2002, 116 Stat. 905, prohibited United States military assistance to parties to the International Criminal Court.

§ 7427. Authority to free members of the Armed Forces of the United States 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) of this section 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) of this section 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) of this section 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, 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) of this section.

(Pub. L. 107–206, title II, § 2008, Aug. 2, 2002, 116 Stat. 905.)

§ 7428. Alliance command arrangements

(a) Report on alliance command arrangements

Not later than 6 months after August 2, 2002, the President should transmit to the appropriate congressional committees a report with respect 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 pursuant to that alliance, be placed under the command or operational control of foreign military officers subject to the jurisdiction of the International Criminal 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 operational 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 1 year after August 2, 2002, 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) of this section.

(c) Submission in classified form

The report under subsection (a) of this section, and the description of measures under subsection (b) of this section, or appropriate parts thereof, may be submitted in classified form.

(Pub. L. 107–206, title II, § 2009, Aug. 2, 2002, 116 Stat. 906.)

§ 7429. 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 7401 of this title are authorized to be transferred to the Embassy Security, Construction and Maintenance Account of the Department of State.

(Pub. L. 107–206, title II, § 2010, Aug. 2, 2002, 116 Stat. 906.)

§ 7430. Application of sections 7423 and 7425 to exercise of constitutional authorities

(a) In general

Sections 7423 and 7425 of this title shall not apply to any action or actions with respect to a specific matter involving the International Criminal Court taken or directed by the Presi-

dent on a case-by-case basis 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) of this section that would otherwise be prohibited under section 7423 or 7425 of this title, 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.

(Pub. L. 107–206, title II, § 2011, Aug. 2, 2002, 116 Stat. 907.)

§ 7431. Nondelegation

The authorities vested in the President by sections 7422 and 7430(a) of this title may not be delegated by the President pursuant to section 301 of title 3 or any other provision of law. The authority vested in the President by section 7424(c)(3) of this title may not be delegated by the President pursuant to section 301 of title 3 or any other provision of law to any official other than the Secretary of Defense, and if so delegated may not be subdelegated.

(Pub. L. 107–206, title II, § 2012, Aug. 2, 2002, 116 Stat. 907.)

§ 7432. Definitions

As used in this subchapter and in section 7402 of this title:

(1) Appropriate congressional committees

The term ''appropriate congressional committees'' means the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate.

(2) Classified national security information

The term ''classified national security information'' means information that is classified or classifiable 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, and other persons employed by or working on behalf of the United States Government, 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 (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 [22 U.S.C. 2321k].

(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 deposited an instrument of ratification, acceptance, approval, or accession to the Rome Statute, and has not withdrawn from the Rome Statute pursuant to Article 127 thereof.

(10) 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 ''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 military 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.

(11) Rome Statute

The term ''Rome Statute'' means the Rome Statute of the International Criminal Court, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on July 17, 1998.

(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.

(Pub. L. 107–206, title II, § 2013, Aug. 2, 2002, 116 Stat. 907; Pub. L. 109–364, div. A, title XII, § 1222, Oct. 17, 2006, 120 Stat. 2423; Pub. L. 110–181, div. A, title XII, § 1212(b)(2), Jan. 28, 2008, 122 Stat. 371.)

REFERENCES IN TEXT

Executive Order 12958, referred to in par. (2), which was set out as a note under section 435 of Title 50, War and National Defense, was revoked by Ex. Ord. No. 13526, § 6.2(g), Dec. 29, 2009, 75 F.R. 731.

AMENDMENTS

2008—Par. (13). Pub. L. 110–181 struck out par. (13) which defined ''United States military assistance''.

2006—Par. (13)(A). Pub. L. 109–364 struck out ''or 5'' before ''of part II''.

CHANGE OF NAME

Committee on International Relations of House of Representatives changed to Committee on Foreign Affairs of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

§ 7433. Assistance to international efforts

Nothing in this subchapter shall prohibit the United States from rendering assistance to international efforts to bring to justice Saddam Hussein, Slobodan Milosovic, Osama bin Laden, other members of Al Queda, leaders of Islamic Jihad, and other foreign nationals accused of genocide, war crimes or crimes against humanity.

(Pub. L. 107–206, title II, § 2015, Aug. 2, 2002, 116 Stat. 909.)

CHAPTER 82—AFGHANISTAN FREEDOM SUPPORT

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7501. Definition.

SUBCHAPTER I—ECONOMIC AND DEMOCRATIC DEVELOPMENT ASSISTANCE FOR AFGHANISTAN

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7531. Support for security during transition in Afghanistan.
7532. Authorization of assistance.
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SUBCHAPTER III—MISCELLANEOUS PROVISIONS

7551. Requirement to comply with procedures relating to the prohibition on assistance to drug traffickers.
7552. Sense of Congress regarding protecting Afghanistan's President.
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7554. Reports.
7555. Formulation of long-term strategy for Afghanistan.
7556. Benchmarks to evaluate the progress being made toward the transition of security responsibilities for Afghanistan to the Government of Afghanistan.

§ 7501. Definition

In this chapter, the term ''Government of Afghanistan'' includes—

(1) the government of any political subdivision of Afghanistan; and

(2) any agency or instrumentality of the Government of Afghanistan.

(Pub. L. 107–327, § 1(c), Dec. 4, 2002, 116 Stat. 2797.)

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–458, title VII, § 7104(a), Dec. 17, 2004, 118 Stat. 3780, provided that: ''This section [enacting sections 7536a and 7555 of this title, amending sections 7513, 7514, 7518, 7536, 7537, 7538, and 7554 of this title, repealing section 2374 of this title, and enacting provisions set out as notes under sections 7511, 7513, 7514, and 7536 of this title] may be cited as the 'Afghanistan Freedom Support Act Amendments of 2004'.''