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## **Introductory Note to the Department of State Rewards Program Update and Technical Corrections Act of 2012**

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INTRODUCTORY NOTE TO THE DEPARTMENT OF STATE REWARDS PROGRAM UPDATE  
AND TECHNICAL CORRECTIONS ACT OF 2012

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INTRODUCTORY NOTE TO THE DEPARTMENT OF STATE REWARDS  
PROGRAM UPDATE AND TECHNICAL CORRECTIONS ACT OF 2012  
BY MICHAEL A. NEWTON\*  
[January 14, 2013]  
+ Cite as 52 ILM 861 (2013) +

## Background

For nearly three decades, the United States has offered monetary rewards designed to facilitate the apprehension and transfer for trial of suspects when their trial would directly advance American national interests. In the 1990s, for example, posters and matchbooks appeared across the Balkans with contact information available to anyone who might be willing to assist in the transfer of Slobodan Milošević or Radovan Karadžić to face charges before the International Criminal Tribunal for the former Yugoslavia. In Congress's view, this rewards program has helped to generate actionable intelligence that has prevented terrorist attacks, aided convictions of key suspects charged with participation in other acts of international terror, and served as "one of the most valuable assets the U.S. Government has in the fight against international terrorism."<sup>1</sup> In his public comments introducing this legislation, the United States Ambassador-at-Large for War Crimes acknowledged that fourteen payments were made under existing legislation in the two years prior to passage of this bill, averaging \$400,000 per person.<sup>2</sup> Details remain classified of course, but the rewards have provided instrumental incentives in numerous high profile cases, *inter alia*, the arrest of the architect of the 1993 World Trade Center bombing and the deaths of Uday and Qusay Hussein at the hands of American military forces following the 2003 invasion of Iraq.

In light of the interconnected landscape of international law and global U.S. interests, the Department of State Rewards Program Update and Technical Corrections Act of 2012 (2012 Act) modernizes U.S. law in two important ways. First, it expands the ability of U.S. officials to offer rewards for information leading to the arrest or conviction of any individual participating in transnational organized crime. Second, it makes similar rewards available to support prosecution in domestic or hybrid international tribunals.

## The 2012 Act and Transnational Organized Crime

The text of the 2012 Act expands the ability of U.S. officials to offer rewards for information leading to the arrest or conviction in any country of any individual participating in "transnational organized crime" primarily outside the United States. This could include individuals that participate in any conspiracy related to transnational criminal activities, as well as attempts. These provisions grant the Secretary of State a wide range of discretion to authorize payments in response to evolving threats from growing forms of transnational criminality such as the erosion of intellectual property rights, organized piracy, money laundering, human trafficking, transnational arms trafficking, or threats from transnational cybercrime.<sup>3</sup> These reward provisions complement the web of multilateral legal assistance treaties that the United States has negotiated with many nations. These new categories of criminality also supplement the statutory provisions found in 22 U.S.C. § 2708 that permit payments for information that assists efforts to arrest the leaders of international terrorist organizations, interdict the flow of financing to terrorist organizations, or stem the tide of international narco-trafficking. The expansion of criminal activities that may be subject to rewards from the U.S. government reflects new modalities for committing international crimes even as it simultaneously permits more flexibility in responding to the changing tactics of international criminal organizations.

## The 2012 Act and International Criminal Tribunals

The second major modernizing effect of this legislation is a highly visible shift in U.S. policy towards the International Criminal Court (ICC) as it enters its second decade as a maturing international institution. The Rome Statute of the ICC represents a monumental development: a framework for a permanent supranational prosecutorial authority now exists, built on the principle that state sovereignty may be subordinated to achieve accountability for crimes that most directly challenge the commonality of values and order shared among nations.<sup>4</sup> The Rome Statute recognizes an integrated system of international criminal justice that is designed to operate synergistically between its own Chambers and functioning accountability mechanisms at the domestic and regional levels.<sup>5</sup>

U.S. policy towards the ICC rests on the tension between the desire to build a functioning system capable of achieving justice for the most serious crimes known to mankind and historic American efforts to lead in the field without

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committing to the structure of the ICC. The extension of potentially unchecked international prosecutorial and judicial power over sovereign concerns is one of the primary reasons that the United States was originally unwilling to ratify the Rome Statute “in its present form.”<sup>6</sup> On December 31, 2000, which was the last day permitted by the treaty, then Ambassador-at-Large for War Crimes, David J. Scheffer, signed the Rome Statute at the direction of President Clinton.<sup>7</sup> The White House signing statement clarified that President Clinton ordered the signature because the United States sought to “remain engaged in making the I.C.C. an instrument of impartial and effective justice in the years to come,” and reaffirmed America’s “strong support for international accountability.”<sup>8</sup> Nevertheless, the President’s statement made clear that he would “not recommend that my successor submit the Treaty to the Senate for ratification until our fundamental concerns are satisfied.”<sup>9</sup>

In its official policy pronouncement timed to coincide with the entry into force of the Rome Statute on July 1, 2002, the Bush Administration emphasized that “[w]hile we oppose the ICC we share a common goal with its supporters—the promotion of the rule of law.”<sup>10</sup> It also stressed that the differences were “in approach and philosophy” and that “[t]he existence of a functioning ICC will not cause the United States to retreat from its leadership role in the promotion of international justice and the rule of law.”<sup>11</sup> Among its other commitments aimed at seeking justice for violations of international humanitarian law, the U.S. government promised to “support politically, financially, technically, and logistically any post-conflict state that seeks to credibly pursue domestic humanitarian law” and to “support creative ad-hoc mechanisms such as the hybrid process in Sierra Leone—where there is a division of labor between the sovereign state and the international community.”<sup>12</sup> This legislation provides the foundation for sustaining those commitments as Congress has authorized the use of American resources to support this global effort.

Prior to the 2012 Act, the most directly applicable U.S. legislation was the American Service-members’ Protection Act of 2002 (ASPA), which in its operative provisions sharply restricts U.S. cooperation with the ICC. Abandoning the quiet relationship of case-by-case diplomatic and technical assistance that dominated U.S. relations with the ICC from 2002 until 2012, the 2012 Act is the most recognizable landmark of an evolving U.S. relationship with the Court. The Secretary of State, after appropriate interagency coordination, may now authorize the payment of rewards for “the arrest or conviction in any country, or the transfer to or conviction by an international criminal tribunal (including a hybrid or mixed tribunal), of any foreign national accused of war crimes, crimes against humanity, or genocide, as defined under the statute of such tribunal.”<sup>13</sup> Similar to the provisions related to transnational organized crimes, the rewards available to support prosecution in domestic or hybrid international tribunals provide a powerful and flexible tool to advance U.S. interests. In years to come, there may well be efforts to bring peace to Syria by creating a hybrid regional tribunal. This legislation permits assistance to such future tribunals and indeed provides a clear basis for supporting domestic prosecutions for war crimes, crimes against humanity or genocide. The complementary operation of domestic courts capable of prosecuting the same substantive crimes as the ICC has been affirmed by the international community as the optimal design of a holistic system designed to endure. John Holmes, a Canadian diplomat deeply involved in the negotiations precedent to the Rome Statute, noted:

Throughout the negotiating process, States made clear that the most effective and viable system to bring perpetrators of serious crimes to justice was one which must be based on national procedures complemented by an international court. . . . The success in Rome is due in no small measure to the delicate balance developed for the complementarity regime . . . it remains clear to those most active throughout the negotiations that any shift in the balance struck in Rome would likely have unravelled [*sic*] support for the principle of complementarity and, by extension, the Statute itself.<sup>14</sup>

Furthermore, in the official announcement of this new legislative authority, the current U.S. Ambassador-at-Large for War Crimes, Stephen J. Rapp, took the highly symbolic step of announcing that the Secretary of State has authorized rewards of up to \$5 million for information leading to the arrest, transfer, or conviction of some of the most notorious perpetrators sought by the ICC.<sup>15</sup> This includes the three top leaders of the Lord’s Resistance Army in the Uganda situation, Joseph Kony, Okot Odhiambo, and Dominic Ongwen,<sup>16</sup> as well as the leader of the Democratic Forces for the Liberation of Rwanda, Sylvestre Mudacumura in the situation related to the Democratic Republic of Congo.<sup>17</sup> In addition to these notable new rewards, Ambassador Rapp stressed that rewards would remain available for the remaining fugitives indicted by the International Criminal Tribunal for Rwanda. He noted that failure

to apprehend and prosecute these individuals endangers regional stability even as it precludes the moral goal of seeking justice for these horrendous crimes in the form of public trials.

The authorization of rewards to enforce ICC warrants of arrest could superficially be construed to violate the new legislation. Even as it authorizes direct support designed to enforce outstanding ICC arrest warrants, the 2012 Act makes plain that “[n]othing in this Act or the amendments made by this Act shall be construed as authorizing the use of activity precluded under the [ASPA].”<sup>18</sup> As noted above, the ASPA prohibits any agency or entity of the United States Government from providing support to the ICC without one of the executive branch waivers specifically included in its text.<sup>19</sup> “Support,” as defined by the statute, includes intelligence sharing and law enforcement cooperation.<sup>20</sup> To the extent that the other waiver provisions of ASPA do not allow the executive branch to support the ICC accountability efforts in such situations as Uganda or Libya by offering rewards, the final section of ASPA, 22 U.S.C. § 7433, is a permissive waiver provision covering the most severe types of international crimes. It states that “[n]othing 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 Qaeda, leaders of Islamic Jihad, *and other foreign nationals accused of genocide, war crimes or crimes against humanity.*”<sup>21</sup>

This provision, termed the “Dodd-Warner Amendment” to ASPA, makes plain that the U.S. may cooperate with the ICC to bring justice to foreign nationals despite the other provisions of ASPA.<sup>22</sup> Following Senate passage of section 7433, U.S. Senator Patrick Leahy (D-VT), who helped draft the provision and participated in its discussion in conference, felt compelled to clarify the meaning of the Amendment on the floor of the U.S. Senate:

[W]hen Senator Dodd and I were drafting this amendment, I specifically added the phrase “and other foreign nationals accused of genocide, war crimes or crimes against humanity” to ensure that this section would apply to the [ICC]. The ICC currently has jurisdiction over these three crimes. . . . Another important phrase in [section 7433] is: “Nothing in this title shall prohibit . . . .”, which makes unequivocally clear that no provision in ASPA prevents the U.S. from cooperating with the ICC in cases involving foreign nations.<sup>23</sup>

Thus, the inclusion of the phrase “of any foreign national accused of war crimes, crimes against humanity, or genocide, as defined under the statute of such tribunal” in the 2012 Act accords perfectly with the preexisting structure of ASPA. Insofar as the ICC, or any other domestic or international or hybrid forum, aspires to do justice for egregious war crimes, crimes against humanity, or acts of genocide, the U.S. may now lawfully offer monetary incentives to assist such efforts.

## Conclusion

Just as the U.S. supported the tribunals created for the former Yugoslavia, Rwanda and Sierra Leone, this legislation promotes accountability for the worst crimes known to humankind by helping to bring the world’s most notorious fugitives to trial irrespective of the forum. The Act accords perfectly with the tradition of American leadership in forming and supporting criminal accountability efforts that dates back to the Nuremberg and Tokyo tribunals. American economic support for arrests and transfers may now supplement legal expertise in support of domestic, hybrid, and international processes, to include the ICC. The authorization of this Act will only be realized, however, if there is a streamlined decision-making process for receiving and responding to reward requests. The legislative intent will be badly undermined if valuable information that could have led to the transfer and conviction of perpetrators remains unavailable due to a bureaucratic paralysis and undue delay in authorizing rewards. If augmented by a streamlined screening process, the Act may well provide the impetus for some of the most important developments in international criminal justice over the coming years.

## ENDNOTES

- 1 The Department of State Rewards Program Update and Technical Corrections Act of 2012 Act, Pub. L. 112-283, 126 Stat. 2492 (2012) [hereinafter 2012 Act].
- 2 Stephen J. Rapp, Ambassador-at-Large for War Crimes Issues, Expansion of the War Crimes Rewards Program (Apr. 3, 2013), [http://www.state.gov/j/gcj/us\\_releases/remarks/2013/](http://www.state.gov/j/gcj/us_releases/remarks/2013/)

- 207031.htm [hereinafter Expansion of the War Crimes Rewards Program].
- 3 2012 Act, *supra* note 1, § 2(b)(1).
  - 4 Rome Statute of the ICC arts. 12-19, July 17, 1998, 2187 U.N.T.S. 90, <http://untreaty.un.org/cod/icc/statute/romeofra.htm> [hereinafter Rome Statute].
  - 5 Michael A. Newton, *The Quest for Constructive Complementarity*, in *THE INTERNATIONAL CRIMINAL COURT AND COMPLEMENTARITY: FROM THEORY TO PRACTICE* 304 (Carsten Stahn & Mohammed El Zeidy eds., 2011), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1585402](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1585402).
  - 6 David J. Scheffer, *The United States and the International Criminal Court*, 93 AM. J. INT'L L. 14, 21 (1999).
  - 7 See Rome Statute, *supra* note 4, at art. 125(1) (stipulating that states may accede to the Statute at a later time if their domestic processes permit, but that signature in the absence of accession was permissible only until December 31, 2000).
  - 8 Presidential Statement on the Rome Treaty on the International Criminal Court (Dec. 31, 2000), 37 WEEKLY COMP. PRES. DOC. 4 (Jan. 8, 2001), reprinted in S. D. Murphy, UNITED STATES PRACTICE IN INTERNATIONAL LAW: VOLUME 1, 1999-2001 384 (2002).
  - 9 *Id.*
  - 10 Marc Grossman, Under Secretary for Political Affairs, U.S. Dep't of State, Remarks to the Center for Strategic and International Studies (May 6, 2002), <http://2001-2009.state.gov/p/us/rm/9949.htm>.
  - 11 *Id.* In its most memorable tagline, the official U.S. policy position was summarized as follows: "the United States respects the decision of those nations who have chosen to join the ICC; but they in turn must respect our decision not to join the ICC or place our citizens under the jurisdiction of the court. So, despite this difference, we must work together to promote real justice after July 1, when the Rome Statute enters into force." *Id.*
  - 12 *Id.*
  - 13 2012 Act, *supra* note 1, at § 3(2)(E).
  - 14 John T. Holmes, *The Principle of Complementarity*, in *THE INTERNATIONAL CRIMINAL COURT AND THE MAKING OF THE ROME STATUTE: ISSUES, NEGOTIATIONS, AND RESULTS* 41, 73-74 (Roy S. Lee ed., 1999).
  - 15 See Expansion of the War Crimes Rewards Program, *supra* note 2. There was extensive debate during the drafting of the *Elements of Crimes for the International Criminal Court* over the relative merits of the terms "perpetrator" or "accused." Though some delegations were concerned that the term "perpetrator" would undermine the presumption of innocence, the delegates to the Preparatory Commission (PrepCom) ultimately agreed to use the former in the *Elements* after including a comment in the introductory chapeau that "the term 'perpetrator' is neutral as to guilt or innocence." See Preparatory Comm'n for the ICC, Rep. of the Prep. Comm'n for the ICC, U.N. Doc. PCNICC/2000/INF/3/Add.2 (Nov. 2, 2000), in KNÜT DORMANN *ELEMENTS OF WAR CRIMES UNDER THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: SOURCES AND COMMENTARY* 14 (2002).
  - 16 See *Uganda*, ICC, [http://icc-cpi.int/en\\_menus/icc/situations%20and%20cases/situations/situation%20icc%200204/related%20cases/icc%200204%200105/Pages/uganda.aspx](http://icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200204/related%20cases/icc%200204%200105/Pages/uganda.aspx) (last visited Sept. 11, 2013).
  - 17 See *Democratic Republic of the Congo*, ICC, [http://icc-cpi.int/en\\_menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20cases/icc01040112/Pages/icc01040112.aspx](http://icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20cases/icc01040112/Pages/icc01040112.aspx) (last visited Sept. 11, 2013).
  - 18 2012 Act, *supra* note 1, at § 5.
  - 19 American Service-members' Protection Act, 22 U.S.C. § 7423(e) (2013) ("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.").
  - 20 *Id.* at § 7432(12) ("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.").
  - 21 *Id.* at § 7433 (emphasis added).
  - 22 See 148 Cong. Rec. S7859 (2002).
  - 23 *Id.*



DEPARTMENT OF STATE REWARDS PROGRAM UPDATE AND TECHNICAL  
CORRECTIONS ACT OF 2012

[January 3, 2012]

+ Cite as 52 ILM 865 (2013)+



**S.2318**

**One Hundred Twelfth Congress  
of the  
United States of America**

**AT THE SECOND SESSION**

*Begun and held at the City of Washington on Tuesday,  
the third day of January, two thousand and twelve*

**AN ACT**

To authorize the Secretary of State to pay a reward to combat transnational organized crime and for information concerning foreign nationals wanted by international criminal tribunals, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Department of State Rewards Program Update and Technical Corrections Act of 2012”.

**SEC. 2. FINDINGS; SENSE OF CONGRESS.**

(a) FINDINGS.—Congress makes the following findings:

- (1) The Department of State’s existing rewards programs permit the payment of reward for information leading to the arrest or conviction of—
  - (A) individuals who have committed, or attempted or conspired to commit, certain acts of international terrorism;
  - (B) individuals who have committed, or attempted or conspired to commit, certain narcotics-related offenses; and
  - (C) individuals who have been indicted by certain international criminal tribunals.
- (2) The Department of State considers the rewards program to be “one of the most valuable assets the U.S. Government has in the fight against international terrorism”. Since the program’s inception in 1984, the United States Government has rewarded over 60 people who provided actionable information that, according to the Department of State, prevented international terrorist attacks or helped convict individuals involved in terrorist attacks.
- (3) The program has been credited with providing information in several high-profile cases, including the arrest of Ramzi Yousef, who was convicted in the 1993 bombing of the World Trade Center, the deaths of Uday and Qusay Hussein, who United States military forces located and killed in Iraq after receiving information about their locations, and the arrests or deaths of several members of the Abu Sayyaf group, believed to be responsible for the kidnappings and deaths of United States citizens and Filipinos in the Philippines.

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- (b) SENSE OF CONGRESS.—It is the sense of Congress that the rewards program of the Department of State should be expanded in order to—
- (1) address the growing threat to important United States interests from transnational criminal activity, such as intellectual property rights piracy, money laundering, trafficking in persons, arms trafficking, and cybercrime; and
  - (2) target other individuals indicted by international, hybrid, or mixed tribunals for genocide, war crimes, or crimes against humanity.

### SEC. 3. ENHANCED REWARDS AUTHORITY.

Section 36 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2708) is amended—

- (1) in subsection (a)(2), by inserting “serious violations of international humanitarian law, transnational organized crime,” after “international narcotics trafficking,”;
- (2) in subsection (b)—
  - (A) in the matter preceding paragraph (1), by striking “Attorney General” and inserting “heads of other relevant departments or agencies”;
  - (B) in paragraphs (4) and (5), by striking “paragraph (1), (2), or (3)” both places it appears and inserting “paragraph (1), (2), (3), (8), or (9)”;
  - (C) in paragraph (6)—
    - (i) by inserting “or transnational organized crime group” after “terrorist organization”; and
    - (ii) by striking “or” at the end;
  - (D) in paragraph (7)—
    - (i) in the matter preceding subparagraph (A), by striking “, including the use by the organization of illicit narcotics production or international narcotics trafficking” and inserting “or transnational organized crime group, including the use by such organization or group of illicit narcotics production or international narcotics trafficking”;
    - (ii) in subparagraph (A), by inserting “or transnational organized crime” after “international terrorism”; and
    - (iii) in subparagraph (B)—
      - (I) by inserting “or transnational organized crime group” after “terrorist organization”; and
      - (II) by striking the period at the end and inserting a semicolon; and
  - (E) by adding at the end the following new paragraphs:
    - “(8) the arrest or conviction in any country of any individual for participating in, primarily outside the United States, transnational organized crime;
    - “(9) the arrest or conviction in any country of any individual conspiring to participate in or attempting to participate in transnational organized crime; or
    - “(10) the arrest or conviction in any country, or the transfer to or conviction by an international criminal tribunal (including a hybrid or mixed tribunal), of any foreign national accused of war crimes, crimes against humanity, or genocide, as defined under the statute of such tribunal.”;
- (3) in subsection (g), by adding at the end the following new paragraph:



- “(3) ADVANCE NOTIFICATION FOR INTERNATIONAL CRIMINAL TRIBUNAL REWARDS.—Not less than 15 days before publicly announcing that a reward may be offered for a particular foreign national accused of war crimes, crimes against humanity, or genocide, the Secretary of State shall submit to the appropriate congressional committees a report, which may be submitted in classified form if necessary, setting forth the reasons why the arrest or conviction of such foreign national is in the national interests of the United States.”; and
- (4) in subsection (k)—
- (A) by redesignating paragraphs (5) and (6) as paragraphs (7) and (8), respectively; and
  - (B) by inserting after paragraph (4) the following new paragraphs:
- “(5) TRANSNATIONAL ORGANIZED CRIME.—The term ‘transnational organized crime’ means—
- “(A) racketeering activity (as such term is defined in section 1961 of title 18, United States Code) that involves at least one jurisdiction outside the United States; or
  - “(B) any other criminal offense punishable by a term of imprisonment of at least four years under Federal, State, or local law that involves at least one jurisdiction outside the United States and that is intended to obtain, directly or indirectly, a financial or other material benefit.
- “(6) TRANSNATIONAL ORGANIZED CRIME GROUP.—The term ‘transnational organized crime group’ means a group of persons that includes one or more citizens of a foreign country, exists for a period of time, and acts in concert with the aim of engaging in transnational organized crime.”.

#### SEC. 4. TECHNICAL CORRECTION.

Section 36(e)(1) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2708) is amended by striking “The Secretary shall authorize a reward of \$50,000,000 for the capture or death or information leading to the capture or death of Osama bin Laden.”.

#### SEC. 5. RULE OF CONSTRUCTION.

Nothing in this Act or the amendments made by this Act shall be construed as authorizing the use of activity precluded under the American Servicemembers’ Protection Act of 2002 (title II of Public Law 107-206; 22 U.S.C. 7421 et seq.).

#### SEC. 6. FUNDING.

The Secretary of State shall use amounts appropriated or otherwise made available to the Emergencies in the Diplomatic and Consular Services account of the Department of State to pay rewards authorized pursuant to this Act and to carry out other activities related to such rewards authorized under section 36 of the State Department Basic Authorities Act (22 U.S.C. 2708).

*Speaker of the House of Representatives.*

*Vice President of the United States and  
President of the Senate.*