
From the Managing Editor

By Philip M. Langbroek

Editorial: The ICC and the American Service Members' Protection Act

The American Service-Members' Protection Act (ASPA) is a United States law introduced by Senator Jesse Helms as an amendment to the National Defense Authorization Act and passed in August 2002 by Congress. The stated purpose of the amendment was "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".

The Act prohibits federal, state and local governments and agencies (including courts and law enforcement agencies) from assisting the Court. For example, it prohibits the extradition of any person from the United States to the Court; it prohibits the transfer of classified national security information and law enforcement information to the Court; and it prohibits agents of the Court from conducting investigations in the United States.

The Act also prohibits U.S. military aid to countries that are party to the Court. However, exceptions are allowed for aid to NATO members, major non-NATO allies, Taiwan, and countries which have entered into "Article 98 agreements", agreeing not to hand over U.S. nationals to the Court. Furthermore, the President may waive this prohibition where he determines that to do so is "important to the national interest of the United States."

Section 2008 of ASPA authorizes the President to use "all means necessary and appropriate to bring about the release of any United States' or allied personnel being detained or imprisoned by, on behalf of, or at the request of the International Criminal Court". The International Criminal Court or ICC, created under the authority of the Rome Statute, is based in the Netherlands.

Because the United States, along with some other nations, is not a signatory to the Rome Statute, it does not recognize the jurisdiction of the ICC. This has led to the nickname The Hague Invasion Act, since such freeing of US citizens by force might only be possible through an invasion of The Hague, The Netherlands, the seat of several international criminal tribunals and courts. In other words, this act creates the competence of the President to order the armed forces of the United States to liberate any person of American nationality or ally detained in Scheveningen prison near The Hague to face prosecution before the International Criminal Court.

Apart from the affront for the Dutch government in maintaining its policy of furthering the development of international law, this American act does hinder the ICC in providing justice as it is intended to do by 109 supporting countries. Since its passage by the Congress of the United States in 2002, the Act has generated vigorous and extensive debate in the United States and abroad. This Act and other controversial laws, regulations, and presidential initiatives undertaken by the previous United States administration are currently under review by the new administration. Journal readers who are interested in learning more about the ICC and this as well as other controversies about it are encouraged to delve deeper into this topic.

We would recommend the political leadership in the USA to continue its review of the previous Administration's position vis-à-vis the International Criminal Court to fulfill its tasks under the Rome statute. The existence of the ICC may contribute to the development of the international legal order this world needs. Repealing this act will not cost the USA a lot of money but it should be an important point for President Obama's foreign policy, as it may increase the authority and effectiveness of the ICC. This will allow the ICC to function more even handed and objective than is has been able to do so far; to date, only Africans have been actively pursued by the ICC Prosecutor.

This issue

The Journal has received meaningful contributions by Gabriel van den Brink on the relations between the courts, the public and the media, Bert Maan, a former Dutch court president sharing his management experience with us, Kerry Connolly reporting on a case management project in Kenosha County (Wisconsin) and Andreas Lienhard with an article on administrative accountability for the functioning of the Swiss Federal Supreme Court. Markus Zimmer addresses the arguments for and against specialized courts from a national court management perspective.

Russell Weaver

The Journal extends special thanks to Russ Weaver, professor of [Louis D. Brandeis School of Law, University of Louisville, Kentucky USA](#). He has volunteered with his staff to correct the English of accepted submissions almost for free. Thank you so much Russell!