

control access to information bearing on national security flows from the Constitution and does not depend upon a legislative grant of authority. Although 30-day advance notice can be provided in most situations as a matter of comity, situations may arise, especially in wartime, in which the President must promptly establish special access controls on classified national security information under his constitutional grants of the executive power and authority as Commander in Chief of the Armed Forces. The executive branch shall construe section 8007 in a manner consistent with the constitutional authority of the President.

Section 8072 of the Act provides that, notwithstanding any other provision of law, no funds available to the Department of Defense for fiscal year 2002 may be used to transfer defense articles or services, other than intelligence services, to another nation or international organization for international peacekeeping, peace-enforcement, or humanitarian assistance operations, until 15 days after the executive branch notifies six committees of Congress of the planned transfer. The provision does not affect transfers using funds available to the Department of Defense if the recipient is other than a nation or an international organization or if the transfer is of intelligence services, such as provision of or accommodation procurements for imagery intelligence, geospatial information, or cryptological support. The provision also does not affect transfers of defense articles or services using funds contained in the Act that are available to the Central Intelligence Agency rather than the Department of Defense. To the extent that protection of the U.S. Armed Forces deployed for international peacekeeping, peace-enforcement, or humanitarian assistance operations might require action of a kind covered by section 8072 sooner than 15 days after notification, section 8072 shall be construed in a manner consistent with my constitutional duty as Commander in Chief of the Armed Forces.

Provisos in section 8098 of the Act purport to limit during fiscal year 2002 the number of Department of Defense military and civilian personnel assigned to legislative affairs or legislative liaison functions and to mandate the percentage distribution of such personnel among various offices of the Department. While limitation of the number of Department of Defense personnel assigned to legislative affairs and legislative liaison functions is a laudable goal, the executive branch shall construe section 8098 in a manner consistent with the President's constitutional authority to supervise the executive branch and as Commander in Chief of the Armed Forces. In particular, section 8098 cannot constitutionally restrict the authority of the President to control the activities of members of the armed forces, including whether and how many members of the Armed Forces assigned to the office of the Chairman of the Joint Chiefs of Staff, the combatant commands, or any other element of the Department of Defense shall perform legislative affairs or legislative liaison functions.

Section 8173 prohibits the use of appropriated funds for assistance or other support to the International Criminal Court (ICC). While section 8173 clearly reflects that the Congress agrees with my Administration that it is not in the interests of the United States to become a party to the ICC treaty, I must note that this provision must be applied consistent with my constitutional authority in the area of foreign affairs, which, among other things, will enable me to take actions to protect U.S. nationals from the purported jurisdiction of the treaty.

Sections 911 and 912 in Division B of the Act provide for assistance by executive departments and agencies, including the Armed Forces, to the U.S. Capitol Police in the performance of its duties. Safeguarding the Congress and its ability to carry out its constitutional role is vital to the continuity of our constitutional Government, and the executive branch will assist