



Bilateral Immunity Agreements and Economic Support Funds: *A U.S. Foreign Policy Mistake*

Background

At a time when the U.S. needs the international community to achieve our foreign policy and security goals, it continues to squander its influence and the goodwill of key friends and allies by punishing them for being members of the International Criminal Court (ICC).

Since the summer of 2002, the Bush administration has aggressively sought to conclude bilateral immunity agreements (BIA) with every country in the world that has ratified the International Criminal Court (ICC) treaty. These agreements force ICC member states to choose between risking violation of their obligations under the ICC's Rome Statute or risk losing millions of dollars in military and economic aid from the U.S. They are of no substantive benefit and the quest to secure them has been a source of considerable friction between the United States and its allies in Europe, Africa, and Latin America. In the meantime the ICC has opened cases in Sudan, Uganda, and the Democratic Republic of Congo in an attempt to bring to justice some of the world's most heinous criminals.

In 2004, Congress passed the Nethercutt Amendment which threatened to cut off vital Economic Support Funds to countries unwilling to sign BIA agreements. Former Rep. Jim Kolbe, then Republican chair of the Appropriations Subcommittee, spoke strongly against this amendment when it came to the House floor: "At a time when we are fighting the war on terrorism, reducing this tool of diplomatic influence is not a good idea...If we accept [this amendment], the U.S. will be hamstringing itself, placing a straitjacket on its diplomatic tools...."

Unfortunately, the House has once again adopted this language this past June when it passed its version of the State/Foreign Operations appropriations bill (H.R. 2764). Section 675 stipulated that:

"None of the funds made available in this Act under the heading "ECONOMIC SUPPORT FUND" may be used to provide assistance to the government of a country that is a party to the International Criminal Court and has not entered into an agreement with the United States pursuant to Article 98 of the Rome Statute preventing the International Criminal Court from proceeding against United States personnel present in such country."

Repeal Nethercutt

Fortunately the Nethercutt sanctions are not included in the Senate's appropriation bill. Our understanding is that House Democratic leadership chose to include this language in the bill to avoid a contentious floor fight, with the intention of removing it during the House/Senate conference process. However, this year the appropriations process is more politicized than usual. House leadership and members of the State/Foreign Operations appropriations sub-committee must not let this issue slip through the cracks. They should:

- 1) **Agree to the Senate version of the legislation that does not include the Nethercutt sanctions, and**
- 2) **Urge House leadership to not include this in the FY09 appropriations bill and if necessary debate the worthiness of this policy on the House floor.**

(over)

Economic Aid Cuts

Economic Support Funds (ESF) promote: trade capacity, competitiveness, democratic practices and institutions, strengthened municipal and regional governments, judicial reform, sustainable economic growth and regional stability, the control of international crime, terrorism and drug trafficking, poverty alleviation, environmental protection, and reduction of infectious disease, greater transparency and accountability in government, greater respect for human rights, training for post-conflict reconstruction and development, civil society, and an independent media.

Under the Nethercutt Amendment, ICC member states risk losing millions of dollars of critical support. At risk nations include:

Bolivia
Brazil
Croatia

Ecuador
Ireland
Kenya

Mexico
Montenegro
Paraguay

Peru
Serbia
South Africa

Conclusion

Conditioning economic aid on the execution of a Bilateral Immunity Agreement is an unnecessary and counterproductive policy. It burns political capital, alienates the U.S. from its closest allies, and, according to administration officials, limits the U.S. sphere of influence. Secretary of State Condoleezza Rice has acknowledged that invoking sanctions on key U.S. military allies may be “sort of the same as shooting ourselves in the foot.” Congress must choose between supporting efforts that directly impact national security and supporting a policy based on a flawed ideology.

The ICC is a reality: it has issued arrest warrants for war crimes in Darfur, Sudan and *is* undertaking its first trial against a Congolese national for gross human rights violations in the Democratic Republic of Congo. In addition, the ICC enjoys the support and dedication of the majority of the world’s countries. It is time for Congress to choose between punishing our allies based on a vindictive ideology, and deciding on a path that leads to the strengthening of key allies, of progress towards America’s goals of democratic stability, poverty eradication, and a diminished flow of drugs, and of an increase in the amount of “soft power” and goodwill that America is able to wield.

About the International Criminal Court

- The ICC is the only permanent international court to try individuals accused of the worst violations of genocide, war crimes and crimes against humanity.
- 105 countries, including the UK, Germany, Jordan, Japan and South Africa are members of the Court.
- The ICC is acts only when national courts are destroyed, unable to handle a case or are purposefully shielding the accused from justice.
- The ICC prosecutor has refused to investigate allegations of war crimes committed by U.S. and UK troops in Iraq, reasoning that, in addition to questions of jurisdiction, both the U.S. and UK have functioning judicial mechanisms that are able and willing to investigate such crimes.
- **This Court embodies fundamental American values of accountability, equality and justice and abides by the highest standards of fairness and due process.**

For more information and country-by-country analysis of BIAs, please contact Raj Purohit, Senior Fellow and Interim Director, at rpurohit@globalsolutions.org, or (202) 546-3950, ext. 108.

More information about the ICC is also available at:

http://www.globalsolutions.org/programs/law_justice/icc/icc_home.html.