

## A U.S. Foreign Aid Bill Counterproductive to U.S. Foreign Policy Devil in the Details

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**Washington, D.C.** – On Friday, November 11, 2005 the United States Senate passed the Fiscal Year 2006 (FY 2006) Foreign Operations spending bill, which had been approved by the House of Representatives earlier in the month. The bill now goes to President Bush for his signature. While much analysis will be paid to the bottom line of the legislation (\$20.9 billion), equal attention should be given to a tiny amendment which jeopardizes \$76.6 million in U.S. economic assistance in FY 2006 to 12 nations.

**Citizens for Global Solutions** has conducted an in-depth analysis of this amendment in an effort to ascertain its impact on U.S. relations with its allies in strategic regions such as the Mediterranean, sub-Saharan Africa and Latin America. The amendment in question would cut Economic Support Funds (ESF) to all countries that have ratified the International Criminal Court (ICC) but have not signed a Bilateral Immunity Agreement (BIA) with the U.S.

At a time when the Bush Administration is attempting to expand free trade and democracy around the globe and lift the plight of people in the developing world, it is also punishing several key allies in these global endeavors simply because of their support for the ICC. Under the law, President Bush can waive this amendment and allow nations to receive ESF assistance. The question is: Will he?

### **Economic Support Funds:**

The Economic Support Fund (ESF) promotes America's foreign policy interests by providing assistance to key U.S. allies and countries in democratic transition. The fund assists peace negotiations and finances economic stabilization programs, often in a multi-donor context. The U.S. Agency for International Development (USAID), with overall foreign policy guidance from the Department of State, implements most ESF programs.

### **Bilateral Immunity Agreements (BIAs):**

Bilateral Immunity Agreements (BIAs) prohibit nations that have ratified the ICC from sending any U.S. personnel – including U.S. service members, nationals, or U.S. government employees (past or current, including non-national contractors) – to the Court.

- BIAs are also called “Article 98 agreements”, referring to the provision of the Rome Statute establishing the ICC. In general, this article is construed to prohibit the surrender of an individual located within an ICC member state if doing so would cause the member state to violate the terms of other bilateral or multilateral treaties to which it may be a party.

From a legal perspective BIAs violate international law. The EU has concluded that no EU member state can legally sign a BIA as proposed by the U.S, as it would violate the letter and spirit of the Rome Statute of the ICC. Nonetheless, the Bush Administration is pushing a BIA campaign, threatening countries that refuse to sign these agreements with ESF aid cuts.

### **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. The ICC is made operational only when national courts are destroyed or unable to handle a case, or are purposefully shielding the accused from justice. This Court embodies fundamental American values of accountability, equality and justice, and abides by the highest standards of judicial fairness due process and expedience.

## **The Bush Administration's Opposition to the ICC**

The main concern of the Bush Administration is that the International Criminal Court will be a venue for political vendettas and target U.S. servicemembers and peacekeepers abroad. Yet it is critical to note that there are already existing agreements between the U.S. and almost every country (ICC member states included) that address the Administration's concerns by granting immunity to U.S. servicemembers. These agreements are called Status of Forces Agreements, or SOFAs.

- SOFAs require a country to turn over U.S. servicemembers and other military personnel accused of war crimes, crimes against humanity, and genocide to the U.S. for prosecution, rather than prosecuting them in that country's domestic courts or an international tribunal.

SOFAs grant full protection to U.S. servicemembers thereby making the Administration's push for BIAs both unnecessary and extreme.

## **Country Examples of a Counterproductive U.S Foreign Policy**

Perhaps the most counterproductive aspect of the Bush Administration's opposition to the ICC is that it hurts many of America's closest friends and allies. Indeed, many of the ICC member states, including countries such as Cyprus, Ireland and South Africa, not only share multiple U.S. foreign policy goals, but are also either democratic or trying to consolidate democracy for the first time. For these countries, strong support of the ICC is a central pillar of their foreign policy (some of these countries' citizens make up the ICC's judges and administrators). Because of this, they risk the withholding of key support funds. Below is a look at how U.S. policy to the ICC is damaging not only to these countries but to U.S. global interests as well.

### **Mediterranean Nations Targeted**

#### **CYPRUS: "Cyprus...issues affect regional stability..."**

Cyprus stands to lose \$20 million in ESF aid in FY 2006. The funds slated for Cyprus would be used to support the peace process and eventual reunification of the island, support economic development, empower civil society, and promote good governance.

- According to the U.S. State Department, the U.S. has a *"longstanding interest in facilitating a comprehensive settlement on Cyprus. Since Cyprus issues involve Greece and Turkey—[U.S.] NATO allies—these issues affect regional stability for the entire Eastern Mediterranean region."*

### **European Nations Targeted**

#### **IRELAND: peaceful settlement in Northern Ireland "a priority foreign policy goal of the United States"**

Ireland stands to lose \$12 million in FY 2006 ESF aid. These funds are used for the International Fund for Ireland and the Walsh Visa Program, and are intended to further the Northern Ireland peace process.

- The State Department makes clear that a *"permanent political settlement in Northern Ireland remains a priority foreign policy goal of the United States."*

## Latin American Nations Targeted

Under the FY 2006 Foreign aid spending bill, Mexico, Brazil, Peru, Ecuador, Paraguay and Venezuela stand to lose \$30.3 million in U.S. ESF money combined.

### **MEXICO: the U.S.'s second largest trading partner**

Mexico recently became the 100<sup>th</sup> country to ratify the Rome Statute for the ICC, and, because of this ratification, it stands to lose \$11.5 million in FY 2006 ESF aid. This aid, according to the U.S. State Department, will specifically be used to “promote democracy and improved economic competitiveness by strengthening the rule of law and supporting greater transparency and accountability in government. Funds will be used for technical assistance and training to support civil and criminal justice reform, greater respect for human rights, and greater access to justice for disadvantaged populations in selected states.”

- The State Department describes Mexico as lending “*unprecedented cooperation in such areas as immigration, law enforcement and counter narcotics, hemispheric affairs, and trade and investment expansion.*” Mexico is the United States’ second largest trading partner.

### **BRAZIL: the “largest economy in South America”**

In FY 2006, Brazil stands to lose \$750,000 in ESF aid. Brazil has the largest economy in South America and is home to significant U.S. investment. The U.S. and Brazil frequently cooperate effectively on numerous issues, including promoting democratic values and stability in the region, as well as combating international crime.

- According to the U.S. State Department, “*U.S. national interests in Brazil include the promotion of sustainable economic growth and regional stability, expansion of free trade, control of international crime, terrorism and drug trafficking, poverty alleviation, environmental protection, and reduction of infectious disease.*”

### **PERU: critical human rights funding at stake**

Peru stands to lose \$8 million in FY 2006 ESF aid. These funds are critical for the country’s efforts to decrease coca production, as well as promote democracy by enhancing local governance. Most importantly, a part of the ESF slated for Peru is to assist the country’s Truth and Reconciliation Commission for human rights abuses committed under its former regime.

- The State Department states that the U.S.’s “*ability to see eye to eye on such issues as counterterrorism, economic reform, democratic integration and counter narcotics has led to one of the highest points*” in the Peru-U.S. relationship.

### **ECUADOR: “a staunch counter-drug ally”**

Ecuador stands to lose \$7 million in FY 2006 ESF aid. This is a country with a per capita annual income of \$1,600. Ecuador needs this assistance to combat drug trafficking, strengthen its democratic institutions, fight corruption and foster economic development.

- Ecuador is described by the U.S. State Department as “*a staunch counter-drug ally of the United States.*”

### **PARAGUAY: a partner in the fight against terrorism**

Aside from consolidating democracy and fortifying the open market system, Paraguay is an important U.S. partner in the fight against terrorism. Paraguay, however, stands to lose \$2.55 million in FY 2006 ESF aid.

- This aid, according to the U.S. State Department is intended to “*strengthen the capacity of private and public sectors, fight corruption, and demand reforms. ESF will promote democracy by strengthening civil society, encouraging anti-corruption reforms, and supporting democratic political parties.*”

#### **VENEZUELA: “a leading supplier of foreign oil”**

Venezuela stands to lose \$500,000 in FY 2006 ESF aid. Venezuela would use these funds to strengthen democratic institutions, promote the rule of law and respect for human rights, and ensure free, fair and transparent presidential elections in 2006.

- According to the State Department, “*Venezuela is a leading supplier of foreign oil to the United States and host to considerable U.S. investment.*”

### **African Nations Targeted**

Kenya, South Africa and Nigeria are all key U.S. allies in Africa and have demonstrated their support for the U.S. through a variety of cooperative measures. Nonetheless, under the FY 2006 Foreign Aid spending bill, these countries would lose \$14.3 million in ESF aid.

#### **SOUTH AFRICA: “a cornerstone of regional stability”**

South Africa stands to lose \$1.3 million in FY 2006 ESF aid, despite making exceptional progress in economic growth as well as the promotion of human rights, and having a judge on the ICC.

- It is a country that the U.S. State Department commends as “*a cornerstone of regional stability and the essential foundation of growth in southern Africa.*”

#### **NIGERIA: “a staunch supporter of the global war on terrorism”**

Nigeria’s President signed a BIA with the U.S. in 2003. Since then, however, the Nigerian Senate has rescinded the agreement, and the status of the BIA remains unclear at best. As a result, Nigeria could lose \$5 million in FY 2006 ESF aid, despite being the dominant economic and political power in West Africa. Furthermore, Nigeria is the fifth largest source of U.S. oil imports, and currently chairs the African Union.

Nigeria’s ESF aid, as the U.S. State Department notes, is intended for “efforts to increase security and stability in the vulnerable oil-producing Niger Delta region, strengthen Nigeria’s governmental and nongovernmental institutions, engage with an increasingly disaffected Muslim population, and promote credible elections.”

- The State Department describes Nigeria as “*a staunch supporter of the global war on terrorism and [an] indispensable partner in addressing the crises in Darfur, Liberia and Zimbabwe.*”

#### **KENYA: a “linchpin of East African stability and security”**

Kenya stands to lose \$8 million in FY 2006 ESF aid. These funds would go toward crucial programs to promote the country’s economy, infrastructure, development projects and political stability.

- The State Department strongly praises Kenya, stating that “*Kenya is the linchpin of East African stability and security. Kenyan support for the war on terrorism has been solid and wholehearted...Kenya remains a principle point of access for U.S. military and relief operations within the region. A vital partner in the global war on terrorism, Kenya also demonstrates regional leadership in peacekeeping and diplomacy.*”

## **Where Do We Go From Here?**

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In conclusion, Citizens for Global Solutions' analysis clearly illustrates the amendment to the FY 2006 Foreign Operations spending bill is much more than bad policy. It would prohibit nations supporting the ICC from receiving critical U.S. economic assistance. This would have negative affects on these nations and would be counterproductive to a U.S. foreign policy that is committed to battling terrorism, drug trafficking, hunger, poverty and disease while promoting democracy abroad.

Fortunately, the FY 2006 foreign aid spending bill contains waivers that the President can invoke to prevent countries from losing their ESF aid. In light of the damaging effects of this provision, President Bush should use his presidential power and waive all affected countries.