

COMMENTS BY US OFFICIALS ON THE NEGATIVE IMPACT OF BILATERAL IMMUNITY AGREEMENTS (BIAS) AND THE AMERICAN SERVICEMEMBERS' PROTECTION ACT (ASPA)

While attitudes toward the issue of the International Criminal Court (ICC) often divide along partisan lines in the US government, it seems that a bipartisan consensus may be forming around the negative impact of the United States' policy toward the ICC, in particular efforts to obtain bilateral immunity agreements (BIAs) and the effects of the American Servicemembers' Protection Act (ASPA). US Secretary of State Condoleezza Rice, US military commanders, State Department Officials, and US Senators on both sides of the aisle have concerns about the US policies that have sanctioned military aid to ICC States Parties.

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US Secretary of State Condoleezza Rice

*Trip Briefing, En Route to San Juan, Puerto Rico
10 March 2006*

<http://www.state.gov/secretary/rm/2006/63001.htm>

"[...] we do have certain statutory requirements concerning the ICC. I think you're probably aware of, as I testified yesterday, that we're looking at the issues concerning those situations in which we may have, in a sense, sort of the same as shooting ourselves in the foot, which is, I guess, what we mean. By having to put off aid to countries with which we have important counter-terrorism or counter-drug or in some cases, in some of our allies, it's even been cooperation in places like Afghanistan and Iraq.

And so I think we just have to look at it. And we're certainly reviewing it and we'll consult with Congress about it. But I think it's important from time that we take a look to make sure that we're not having a negative effect on the relationships that are really important to us from the point of view of getting our security environment - improving the security environment."

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General Bantz J. Craddock, Head of U.S. Southern Command

*(1) Excerpts from statement before the Senate Armed Services Committee
19 September 2006*

<http://armed-services.senate.gov/statemnt/2006/September/Craddock%2009-19-06.pdf>

"I believe there are negative unintended consequences that impact one half of the 92 countries in Europe and Africa through lost opportunities to provide professional military training with military officers and noncommissioned officers. I have and will continue to advocate for a 'delinking' of International Military Education and Training (IMET) funding from the ASPA sanction."

*(2) Excerpts from statement before the House Armed Services Committee
16 March 2006*

<http://www.house.gov/hasc/schedules/3-16-06SOUTHCOMTestimony.pdf>

"Eleven [Latin American] countries remain sanctioned under the American Service-members' Protection Act (ASPA) and are, therefore, barred from receiving IMET (International Military Education and Training) funds. As a result, in 2005, one-third of the countries in our AOR were unable to participate in U.S.-sponsored military education. In 2003, the final year of IMET before the ASPA sanctions took effect, 25 percent (771) of the total number of students (3,128) trained from the AOR came from the countries that are now sanctioned.

The Coalition for the International Criminal Court is a global network of over 2,000 civil society organizations supporting a fair, effective and independent International Criminal Court.

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Providing opportunities for foreign military personnel to attend school with U.S. service members is essential to maintaining strong ties with our partner nations. Decreasing engagement opens the door for competing nations and outside political actors who may not share our democratic principles to increase interaction and influence within the region.

It is well known that the Peoples Republic of China (PRC) has a long-term goal of partnering with the countries of Latin America. The PRC requires access to raw materials, oil, minerals, new markets, and diplomatic recognition. PRC imports from Latin America grew an average per year over the last four years. The PRC has been making headway into the region by using economic measures, employing diplomacy, building infrastructure, negotiating trade deals, and offering resources to cash-strapped militaries and security forces with no strings attached.”

[3] *Excerpts from statement before the Senate Armed Services Committee, “Combatant Commander’s Military Strategy and Operational Requirements in Review of the Fiscal Year 2007 Defense Budget”*
14 March 2006

http://armed-services.senate.gov/e_witnesslist.cfm?id=1750

“Although well intentioned, ASPA (American Service-Member’s Protection Act) continues to have unintended consequences. Eleven partner nations in our area of responsibility are unable to attend U.S. international military education and training programs. This loss of engagement prevents the development of long-term relationships with future military and civilian leaders. [...] Now, when I go throughout the region, the fact is foreign military financing is gone. IMET is gone. The leaders I talk to, my counterparts, tell me we really need this engagement. [...]

The other part of it is, if we are not there and we can’t provide this opportunity, someone else will. Other nations are moving in. Peoples Republic of China has made many offers, and now we are seeing those who formally would come to the United States, going to China to take part and take advantage of their offers for this. [...]”

[4] *Excerpts from statement before the House Armed Services Committee*
7 March 2005

<http://www.house.gov/hasc/testimony/109thcongress/FY06%20Budget%20Misc/Southcom3-9-05.pdf>

“[ASPA] has the unintended consequence of restricting our access to and interaction with many important partner nations. [...] Extra-hemispheric actors are filling the void left by restricted US military engagement with partner nations. We now risk losing contact and interoperability with a generation of military classmates in many nations of the region, including several leading countries [...]. An increasing presence of the People’s Republic of China (PRC) in the region is an emerging dynamic that must not be ignored. [...]

[U]sing IMET to encourage ICC Article 98 agreements may have negative effects on long-term U.S. security interests in the Western Hemisphere, a region where effective security cooperation via face-to-face contact is absolutely vital to U.S. interests. IMET is a low-cost, highly effective component of U.S. security cooperation that builds and expands regional security forces’ professionalism and capabilities, enables a cooperative hemispheric approach to meeting transnational threats to national sovereignty, and facilitates the development of important professional and personal relationships that provide U.S. access and influence to key players in the region. Once again, IMET provides SOUTHCOM with an invaluable tool that can be used to foster positive military-to-military relations with our partner nations. [...] Only by working together can the U.S. and our partner nations effectively address the common security challenges we face in this hemisphere [...]. The challenges facing Latin America and the Caribbean today are significant to our national security. We ignore them at our peril.”

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General James L. Jones, NATO Supreme Allied Commander (Europe)

Department of Defense News Briefing

6 March 2006

<http://www.globalsecurity.org/military/library/news/2006/03/mil-060306-dod01.htm>

Question: “[...]The American Servicemembers Protection Act prevents the U.S. military from engaging in a lot of military training and education of foreign militaries in places where they haven't signed a bilateral agreement with the United States to protect servicemembers from the International Criminal Court. A lot of countries in Africa haven't signed that bilateral agreement. So are there constraints on what you can do, and what would you like to see changed there?”

“I think, yes, there are constraints [in what we can do, particularly in Africa]. And we live with those, and we try to work through them. As an overall comment, I think that we should really do an in-depth look at how we empower our forces to make sure that they can actually get out there and do the things they need to do. Every now and then, some revision as to make sure that such and such a regulation or such and such a law that's been in existence for a long time, may, in fact, be no longer appropriate, and we need to make sure that we can clean these up, so that we can do the things we need to do in the way we need to do them. And I think we're making some headway on that score.”

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Vice Admiral James G. Stavridis, Nominee for Commander, United States Southern Command

Excerpts from statement before the Senate Armed Services Committee

19 September 2006

<http://armed-services.senate.gov/statemnt/2006/September/Stavridis%2009-19-06.pdf>

“[T]here are hundreds of military officers and noncommissioned officers from those 11 sanctioned countries that have missed out on the opportunity to attend [The Western Hemisphere Institute for Security Cooperation]. The United States has lost the opportunity to forge relationships with the military officers from those countries and to educate them on the democratic principles by which our military operates.”

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Maj. Gen. Jonathan S. Gration, Director, Strategy, Policy and Assessments, U.S. European Command

Quoted by UPI reporter Pamela Hess in “Ungoverned Areas Threaten North Africa”

17 February 2006

http://www.postchronicle.com/news/security/article_2127155.shtml

“We're severely restricted [by ASPA] in what we can do. The restrictions we're put on our ability to move in Africa may be hurting the very people we are trying to help.”

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Anne W. Patterson, Assistant Secretary, Bureau of International Narcotics and Law Enforcement Affairs, Department of State

Western Hemisphere Subcommittee, House International Relations Committee meeting on Counternarcotics Strategies in Latin America

30 March 2006

http://www.house.gov/international_relations/109/26780.pdf

“Mr. Chairman... [cutbacks in military aid due to ASPA and Nethercutt are] going to have an impact. Sure, there are useful things being done in both Ecuador and Mexico and Brazil that are going to be affected by this. I was briefed last week in Mexico about some very promising justice programs that are going to be affected by this. So it's going to have an impact. But I can assure you that Assistant Secretary Shannon and other decision-makers are very much involved in looking at this.”

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Elizabeth A. Whitaker, Deputy Assistant Secretary, Western Hemisphere Affairs Department of State
Western Hemisphere Subcommittee, House International Relations Committee meeting on Mexico-US relations
26 April 2006

“USAID is also providing assistance in revamping the criminal justice system in six Mexican states, replacing the old inquisitorial system based on written procedure with an oral, adversarial system more in keeping with democratic practice and a modern society. We are gratified that a number of Mexican states are clamoring for such reform, recognizing that it will provide more swift and equitable justice for all, as well as a more level playing field for investors and businesspeople, thereby stimulating economic development. However, that assistance program will be curtailed this year due to the Foreign Operations, Export Financing, and Related Programs Appropriations Act for FY '05 and '06 (the "Nethercutt amendment") that prohibits the use of Fiscal Year 2006 Economic Support Funds for assistance to the government of a country that is party to the Rome Statute and has not entered into a bilateral Article 98 agreement with the United States. Mexico became a member of the International Criminal Court (ICC) in October of last year, and has told us it will not enter into an Article 98 agreement. Additionally, Mexico's accession to the ICC absent an Article 98 agreement subjects Mexico to the American Servicemembers' Protection Act (ASPA) of 2002, which prohibits certain forms of military assistance - International Military Education and Training Program (IMET), Foreign Military Financing (FMF), and grant Excess Defense Articles (EDA) - to countries that are parties to the Rome Statute. As a result of ASPA restrictions on security assistance, we have halted IMET assistance to Mexico's military.”

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Elizabeth A. Whitaker, Deputy Assistant Secretary, Western Hemisphere Affairs Department of State; Representative Eliot Engel (D-NY)
Western Hemisphere Subcommittee, House International Relations Committee meeting on Immigration Responding to a Regional Crisis
26 July 2006

MR. ENGEL: [...] Ms. Whitaker, when you testified this spring about U.S. and Mexican relations, we discussed the negative impact with the International Criminal Court sanction against countries that have not exempted U.S. citizens and today, 11 or so countries in the Western Hemisphere have not signed a bilateral unity agreement with the U.S., thereby triggering U.S. economic, political and military sanctions. Do U.S. sanctions impede our ability to assist Mexican law enforcement efforts to stem immigration? And, again, how do the sanctions impact our ability to support programs that address and we talked about the root causes of immigration such as poor government, poverty and issues like that?

MS. WHITAKER: Indeed, Mexico has made it clear that it will not sign an article 98 and I don't know that we have a final determination on what funding will be in terms of economic support funds. According to U.S. legislation, operations, export financing and related programs, Appropriations Act for '05 and '06, the Nedercutt (ph) amendment, economic support funds can no longer be provided to Mexico. Those funds indeed were used to support the reform of the criminal justice system in six Mexican states and to help implement anti- corruption, promote government transparency and competitiveness measures at the state level.

[...] [I]f suspended, it will cut off many of the sources of funds that we were using to support law enforcement criminal justice reform and a number of the anti- corruption measures that we discussed earlier.

MR. ENGEL: Let me just conclude by saying that in terms of the article 98, Secretary Rice has said that, in essence, we're cutting off our nose to spite our face and I would agree with that statement and I believe that Congress inevitably may have to step in to change the policy if we can't get it changed any other way. So I thank both of you and I thank the chairman.

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John Bellinger, Legal Adviser to the Secretary of State

Quoted by Wall Street Journal reporter, Jess Bravin in "U.S. Warms to Hague Tribunal: New Stance Reflects Desire to Use Court to Prosecute Darfur Crimes"

14 June 2006

"U.S. officials concede they can't delegitimize a court that now counts 100 member countries, including such allies as Australia, Britain and Canada. While insisting the Bush administration will never allow Americans to be tried by the court, 'we do acknowledge that it has a role to play in the overall system of international justice,' John Bellinger, the State Department's chief lawyer, said in an interview.

[...] In a May speech, Mr. Bellinger said 'divisiveness over the ICC distracts from our ability to pursue these common goals' of fighting genocide and crimes against humanity."

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Comments by US Senators during Hearing of the Senate Armed Services Committee

Hearing of the Senate Armed Services Committee, "Combatant Commander's Military Strategy and Operational Requirements in Review of the Fiscal Year 2007 Defense Budget"

14 March 2006

http://armed-services.senate.gov/e_witnesslist.cfm?id=1750

Sen. Carl Levin (D-Mich): Mr. Chairman, I would ask you, if you would, to consider sending a copy of General Craddock's testimony here this morning to the Department of Defense and the Department of State, and ask them if they would be in a position to give us some recommendations for amendment to that law. We know what the purpose of the law was, but we also are losing some important national security advantages as a result of this requirements, than those advantages that were just outlined by General Craddock. So I wonder if...

Sen. John Warner (R-Va): Senator, we'll do that, jointly in a letter. I share the general's views and indeed the importance of this program. I've seen it for all the many years I've been privileged to be associated with the department -- seen it work. [...]

Sen. Levin (D-Mich): It is an important program, indeed, and vital to our security. [...]

Sen. John McCain (R-Ariz): Chairman, maybe it would be appropriate to put that on the emergency supplemental [referring to a possible amendment easing the sanctions in a \$91 billion supplemental bill to finance hurricane assistance and the Iraq and Afghanistan wars]. [...] We have paid a very heavy price in countries where we have cut off these programs for various reasons. And these relationships, obviously, are very vital if we're going to effectively conduct a war on terror. [...]

Sen. James Inhofe (R-Okla.): Well, let me tell you, Mr. Chairman isn't going to notice that when they're unable to do it for us, the Chinese are standing by and I can't think of anything that is worse than having those people go over there and get indoctrinated by them. And I think maybe we should address that because that's a very serious thing. [...]

Sen. Hillary Rodham Clinton (D-NY): And I think we are neglecting our neighbors to the south in a way that is going to be very difficult to repair unless we begin moving immediately. [...] And I think this is one of the most serious problems we face and we're not addressing it in any comprehensive way and we need, perhaps in this committee, to not only sound the alarm, but try to demand or suggest a much more comprehensive approach, starting with the undoing of the IMET restrictions. Because I think that that's sending exactly the wrong signal and it's provided a big opening. I was encouraged when Secretary Rice seemed to at least signal some willingness to reconsider it when she was recently in Bolivia. But I hope that's on a fast track [...]. And the same thing is happening in Africa. [...] I mean, this is a serious threat."

Comments by Representatives Dan Burton (R-IN) and Elliot Engel (D-NY) and adjunct manager to USAID, Adolfo Franco

Quoted by EFE reporter César Muñoz Acebes in "Onderwerp: The US to stop reprisal sanctions to Latin American states"

22 June 2006

"Franco said to a small group of journalists that the White House 'is trying to solve this issue' and is considering ending the sanctions, but he noted that it is not clear yet if sanctions to all countries will be cancelled or just to some. The suspension 'will be a decision that will be made by the Secretary of State (Condolezza Rice) and by the President Bush,' said Franco.

These threats were clear in the hearing yesterday in the House of Representatives where the Republican Dan Burton, Chairman of the Subcommittee on Latin America, asked the White House to change its policy. 'Many of us are worried about the Chinese influence in the region,' said Burton, who said that Beijing does not have any problems with training Latin-American militaries if the US doesn't. In similar terms, Eliot Engel, leader of the Democrats in that Subcommittee, said, 'These sanctions are undermining seriously our interests in the region,' and argued this policy is a 'failed policy.'"