

DECEMBER 2006

**DEVELOPMENTS ON U.S. BILATERAL IMMUNITY AGREEMENTS (BIAS)****U.S. REMOVES MILITARY TRAINING SANCTIONS FROM BIA CAMPAIGN  
AND ISSUES ECONOMIC AID WAIVERS TO SOME ICC MEMBER STATES**

*Information below highlights recent developments regarding the United States' campaign to obtain Bilateral Immunity Agreements (BIA) exempting U.S. citizens and military personnel (including non-national sub-contractors working for the U.S.) from the jurisdiction of the International Criminal Court (ICC).*

*In October 2006, there were simultaneous actions by the United States Congress and the White House waiving restrictions under the 2002 American Servicemembers' Protection Act (ASPA) on International Military Education Training (IMET) funding to countries that have not concluded a BIA. Though limited in scope, these actions represent the first time the U.S. has acted to reverse the negative effects of its BIA campaign on relationships with key U.S. allies. In addition, on 28 November 2006, President Bush waived restrictions on Economic Support Funds (ESF) under the 2004 Nethercutt Amendment to 14 ICC States Parties (out of a total of 17) who had refused to conclude a BIA.*

*There is also pending legislation introduced in the U.S. House of Representatives in July 2006 which would fully repeal all of the anti-ICC aid cuts provided for by ASPA and the related Nethercutt Amendment (see Related Congressional Development below).*

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Congressional Amendment on IMET Restrictions: On 30 September 2006, U.S. Congress approved the "John Warner National Defense Authorization Act for Fiscal Year 2007", an amendment which aims to repeal the section of ASPA that restricts IMET funding to ICC States Parties that have refused to sign a BIA. On 17 October, President Bush signed this amendment into law. In addition to releasing IMET funds to ICC States Parties that had been previously penalized under ASPA, this law also applies to any country that becomes an ICC State Party in the future; no countries – whether ICC States Parties or not – will be threatened by IMET cuts if they resist entering into a BIA with the U.S. It is important to note, however, that this Congressional amendment **did not reinstate** Economic Support Funds (ESF) cut under the Nethercutt Amendment, which dates back to 2004 (and cuts a range of non-military aid), or Foreign Military Financing (FMF)<sup>1</sup> funds under ASPA, both of which remained threatened.

Presidential Waivers on IMET Restrictions: In a separate but simultaneous move, on 2 October 2006, President Bush directed the Secretary of State to waive IMET aid prohibitions to 21 ICC States Parties that have refused to conclude a BIA and whose IMET funding had been threatened for 2006. Waivers were provided to: Barbados, Bolivia, Brazil, Costa Rica, Croatia, Ecuador, Kenya, Mali, Malta, Mexico, Namibia, Niger, Paraguay, Peru, Samoa, Serbia, South Africa, St. Vincent and the Grenadines, Tanzania, Trinidad and Tobago, and Uruguay. Similar to the ASPA amendment described above, these limited waivers only restore the 21 countries' IMET funding. However, since the Warner Amendment described above, which President Bush signed into law on 17 October, covers *all* countries and guarantees that IMET funding will not be cut in the future under ASPA, these limited waivers are actually redundant.

Presidential Waivers on ESF Restrictions: On 28 November 2006, President Bush waived restrictions on Economic Support Funds (ESF) under the Nethercutt Amendment to 14 ICC States Parties - Bolivia, Costa Rica, Cyprus, Ecuador, Kenya, Mali, Mexico, Namibia, Niger, Paraguay, Peru, Samoa, South Africa, and Tanzania - who had all refused to conclude a BIA with the United States. Nevertheless, ESF aid cuts threatened under the Nethercutt Amendment still remain in place for three ICC States Parties - Ireland, Brazil and Venezuela. These three countries are still facing ESF aid cuts approximately \$30 million for 2006. Moreover, restrictions on FMF aid (which facilitates the purchase of American military weapons) under ASPA remain in place.

*For a comprehensive CICC analysis of countries that oppose BIAs and details on U.S. aid cuts and threats for each country, please visit [http://www.iccnw.org/documents/CountriesOpposedBIA\\_AidLoss\\_current.pdf](http://www.iccnw.org/documents/CountriesOpposedBIA_AidLoss_current.pdf).*

<sup>1</sup> FMF funding covers equipment, training assistance, and sustaining operations.

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**Scope of Congressional Amendment and Presidential Waivers:** Although these recent measures on part of the U.S. legislative and executive branches are unprecedented and have restored \$3.5 million in IMET aid to 21 countries and \$73.35 million in ESF aid to 14 countries, a total of **almost \$30 million** in FMF and ESF aid still remains threatened for 2006 to 9 countries, including important allies like Ireland, Kenya, and Mexico.

**Related Congressional Development:** On 28 July 2006, U.S. Representative Eliot L. Engel (D-NY) introduced a bill (H.R. 5995) that seeks to “repeal the prohibitions on U.S. assistance to countries that are parties to the International Criminal Court.” With its broad language and scope, this bill, if passed, would entail the repealing of both ASPA *and* the Nethercutt Amendment, thereby restoring all currently threatened FMF and ESF aid. The bill has only been introduced to the Sub-Committee on the Western Hemisphere (a Sub-Committee of the House of Representatives’ International Relations Committee) but is expected to be taken up in the 110<sup>th</sup> Congress, which begins in January 2007.

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**TOTALS OF AID THREATENED FOR FY06 (PRE- AND POST-WAIVERS)**

	Threatened IMET under ASPA (waived) (FY06)	Threatened FMF under ASPA (not waived) (FY06)	Threatened ESF under NA (waived) (FY06)	Threatened ESF under NA (not waived) (FY06)	Total Threatened (pre-waiver) (FY06)	Total Still Threatened (post-waiver) (FY06)
Total Number of Countries Affected	21	6 <sup>2</sup>	7 <sup>3</sup>	3 <sup>4</sup>	22	9
Total Funding to ICC States Parties	\$3.5 million	\$12.5 million	\$73.35 million	\$14.62 million	\$103.97 million	\$27.12 million

Comprehensive CICC analysis of countries that oppose BIAs and details on U.S. aid cuts and threats: [http://www.iccnw.org/documents/CountriesOpposedBIA\\_AidLoss\\_current.pdf](http://www.iccnw.org/documents/CountriesOpposedBIA_AidLoss_current.pdf)

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**OFFICIAL DOCUMENTS AND ADDITIONAL INFORMATION**

- President Issues Memorandum for the Secretary of State Regarding Waiving the Prohibition on US Economic Support Funds, 28 November 2006: <http://www.whitehouse.gov/news/releases/2006/11/20061128-12.html>
- President Issues Memorandum for Secretary of State Regarding Waiving Prohibition on US Military Assistance, 2 October 2006: <http://www.whitehouse.gov/news/releases/2006/10/20061002-7.html>
- State Department Daily Press Briefing, 3 October 2006: <http://www.state.gov/r/pa/prs/dpb/2006/73500.htm>
- President's Statement on H.R. 5122, the "John Warner National Defense Authorization Act for Fiscal Year 2007", 17 October 2006: <http://www.whitehouse.gov/news/releases/2006/10/20061017-9.html>
- Citizens for Global Solutions (CGS), Press Release, "U.S. Recognizes Counterproductive BIA Policy: Congress and President Bush to allow military aid to member states," 4 October 2006: [http://www.globalsolutions.org/press\\_room/press\\_releases/press\\_releases06/icc\\_military.html](http://www.globalsolutions.org/press_room/press_releases/press_releases06/icc_military.html)
- Citizens for Global Solutions (CGS), Press Release, "U.S. Recognizes Counterproductive Foreign Policy: Bush waives aid cuts for ICC member states," 29 November 2006: [http://www.globalsolutions.org/press\\_room/press\\_releases/press\\_releases06/counterprod\\_foreign\\_policy.html](http://www.globalsolutions.org/press_room/press_releases/press_releases06/counterprod_foreign_policy.html)

<sup>2</sup> Countries with FMF aid still threatened post-waivers: Kenya, Bolivia, Ecuador, Mexico, Peru, and Uruguay.

<sup>3</sup> While the IMET waivers concerned 14 countries, only 7 on the waiver list actually received ESF funding.

<sup>4</sup> Countries with ESF aid still threatened post-waivers: Ireland, Brazil and Venezuela.