



From Mexico to Yemen: Counterintuitive U.S. BIA Policy Expands **By Golzar Kheiltash, Legal Analyst**

What do Kenya, Mexico, Yemen, and Bolivia all have in common? Each of these countries, representing key geo-strategic regions, are facing imminent cuts in millions of dollars of U.S. military (IMET, FMF) and economic support funds (ESF) under U.S. legislation if they do not comply with U.S. demands to execute a Bilateral Immunity Agreement (BIA).

The Bush administration currently boasts of one hundred BIAs in place—ironically the same as the number of countries that have become members of the International Criminal Court (ICC). Since 2002, the U.S. has aggressively sought to execute BIAs with every country in the world. While the texts of these BIAs vary from country to country, the underlying agreement aims to immunize all U.S. personnel (not just military servicemembers) from prosecution for the gravest war crimes, crimes against humanity, and genocide at the ICC. Not surprisingly, the U.S. is particularly forceful with ICC member states and those countries on the verge of joining the Court. Kenya, Mexico, Yemen, and Bolivia fall in these two categories, and have thus far been adamant about rejecting such an agreement with the U.S.

Kenya

Called the “linchpin of East African stability” by our own State Department, Kenya has long bared the U.S.’ strong-arm tactics to sign a BIA. The 98th country to ratify the Rome Statute of the ICC last spring, Kenya was almost immediately subjected to pressure to execute a BIA with the U.S. In the absence of a BIA, Kenya stands to lose \$8 million in ESF aid. These funds would go toward crucial programs to promote the economy, infrastructure, development projects, and political stability.

The U.S.’ BIA policy is not restricted to Kenya alone. The Bush Administration is also targeting other key African states and U.S. allies such as Nigeria and South Africa, threatening to withhold crucial military and ESF funds to these countries. Military aid cuts are particularly dangerous in Africa, given the region’s vulnerability to terrorism and political instability. Echoing these concerns, Maj. Gen. Jonathan S. Gration, the director of strategy, policy and assessments for U.S. European Command has criticized the U.S. legislation that calls for these cuts, stating that “We’re severely restricted 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.”

Mexico

Mexico recently became the 100th country to ratify the Rome Statute for the ICC, and, because of this ratification, it stands to lose \$11.5 million in Fiscal Year 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.”

Notwithstanding the U.S. government’s realization that ESF funds are critical to Mexico’s programs, it has already commenced a campaign of pressure to force Mexico to execute a BIA and grant immunity to U.S. personnel. Thus far, however, Mexico has resisted the pressure with the Mexican Parliament’s Lower Chamber stating that immunity is not allowed under the Rome Statute that establishes the ICC—a position long held by the European Union.



Yemen

While it deposited its signature for the ICC in December 2000, Yemen has yet to ratify the Rome Statute and is thereby not a full member of the ICC. However, the Yemeni Parliament is set to vote on whether the country will become a member, and ratification is strongly favored by both Parliamentarians and Yemen's growing civil society. Sinan al-Ajji, the ruling party MP and rapporteur of the Constitutional Committee which is reviewing ratification said that "it's only a matter of time until Yemen ratifies the ICC agreement. We [the Constitutional Committee] have been reviewing the Rome Statute, and now it's within the agenda of the house and will be discussed in its next meetings."

Yet even before Yemen ratifies, the U.S has made the execution of a BIA a priority in its foreign policy toward the Gulf state. Rumors of an executed BIA circulated in early February, prompting al-Ajji to deny reports that Yemen's government has concluded a BIA with the U.S. Al-Ajji said that "[Our] government has not signed such an agreement and it will never sign it." Some MPs went even further, such as the opposition party's MP Abdul Razaq al-Hagri, who claimed that "even if the government has already signed, we, along with all our colleagues in the parliament, will demand it be revoked".

Yemen's ratification is critical for not only the country but the Gulf and Middle East region as well. Aside from Jordan, which ratified the ICC in April 2002, no other Arab or Middle Eastern country has ratified the Rome Statute, leaving countries in these regions visibly absent from both the Assembly of States Parties (ASP), the ruling body of the ICC, and the make-up of Judges sitting on the Court.

Bolivia

Bolivia was the 71st to ratify the Rome Statute of the ICC in June 2002. With Mexico as the 100th ratification, this puts the current number of Latin American countries that are members of the Court at eleven. Since Bolivia's ratification, the U.S. administration has increased its focus on this country and has declared this year that it will cut Bolivia's military aid by 96 percent because of the lack of a BIA in place. Bolivia is geo-strategically critical as it works to decrease illegal cocoa production and trafficking.

The U.S. decision to cut aid comes at time when relations between the two countries are not as friendly as in the past. Bolivia's new socialist President, Evo Morales is openly anti-American and the military aid cuts will only fuel tensions. At a time when the U.S. administration is struggling with Latin America, and in particular with Venezuela—another ICC member state—cutting aid to Bolivia because they refuse to grant U.S. personnel immunity from the ICC is both bad timing and bad foreign policy.

The latest attempts by the Bush Administration to undermine the ICC by pressuring ICC member states and/or signatories to grant U.S. personnel total immunity from the Court's jurisdiction is both unnecessary and counterintuitive foreign policy. Countless officials and foreign policy elites have made clear that under its principle of complementarity, the ICC cannot investigate or prosecute U.S. personnel where national legal mechanisms are able and willing to do so, which the U.S. arguably is. Thus the Bush Administration's incessant push for BIAs not only doesn't protect U.S. personnel, but also delivers a damaging blow to U.S. relations with key allies around the world. The U.S. must act quickly and mend these deteriorating relationships by rethinking its BIA policy and opting for a constructive policy of engagement and dialogue instead.