

# CRS Report for Congress

## Article 98 Agreements and Sanctions on U.S. Foreign Aid to Latin America

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# Article 98 Agreements and Sanctions on U.S. Foreign Aid to Latin America

## Summary

During 2006, the Administration and Congress began to reassess some aspects of U.S. policy towards the International Criminal Court (ICC) because of unintended negative effects of that policy on relations with some ICC member countries, especially in Latin America. In Congress, support for aid restrictions on foreign aid to ICC member countries that have not agreed to exempt U.S. citizens from the court's jurisdiction has diminished. This policy shift has occurred largely because of increasing concerns about the negative effects that ICC-related sanctions have had on U.S. relations with Latin America, particularly in the area of security cooperation.

In July 2002, the Rome Statute that created the ICC, the first permanent world court created to judge cases involving serious human rights abuses, entered into force. The United States is not a party to the ICC and does not recognize its jurisdiction over U.S. citizens. Since 2002, the Bush Administration has sought bilateral agreements worldwide to exempt U.S. citizens from ICC prosecution, so-called "Article 98 agreements."

There has been strong bipartisan support in Congress for legislation aimed at protecting U.S. soldiers and civilian officials from the jurisdiction of the ICC. In 2002, Congress passed the American Servicemembers' Protection Act or ASPA (P.L. 107-206, title II), which prohibits military assistance to countries that are party to the ICC and that do not have Article 98 agreements. The Nethercutt Amendment to the FY2005 Consolidated Appropriations Act (H.R. 4818/P.L. 108-447) and FY2006 Foreign Operations Appropriations Act (H.R. 3057/P.L. 109-102) prohibited some economic assistance to the governments of those same countries. Nethercutt aid restrictions continued in the FY2007 Continuing Appropriations Resolution (P.L. 109-289, as amended) and are likely to be included in the FY2008 Foreign Operations Appropriation bill.

The FY2007 Defense Authorization Act (H.R. 5122/P.L. 109-364), which President Bush signed into law on October 17, 2006, modifies ASPA to end the ban on International Military Education and Training (IMET) assistance to affected countries. Restrictions on Foreign Military Financing (FMF) remain in place. On November 28, 2006, pursuant to section 574 of P.L. 109-102, President Bush waived Nethercutt restrictions on FY2006 Economic Support Funds (ESF) to 14 countries, including Bolivia, Costa Rica, Ecuador, Mexico, Paraguay, and Peru.

While some Members of Congress advocate ending all ICC-related sanctions, others believe that some aid restrictions should remain in place in order to encourage other countries to sign Article 98 agreements. The issue of whether to continue these aid restrictions is likely to be considered during the 110<sup>th</sup> Congress. This report may be updated.

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# Article 98 Agreements and Sanctions on U.S. Foreign Aid to Latin America

## Introduction

In the past year, policy consequences of U.S. aid restrictions on International Criminal Court (ICC) member countries that have not signed agreements exempting U.S. citizens from ICC prosecution have prompted policy-makers to alter the policy somewhat. Latin America has been at the forefront of that reassessment.

In particular, some negative consequences for U.S. relations with Latin America have occurred as a result of ICC-related sanctions. Restrictions on military training aid have resulted in a dramatic decline in the number of Latin American military personnel receiving training in the United States. Similarly, restrictions on economic aid have hindered the ability of U.S. democracy and rule of law programs to work with governments in the region, especially in the Andean countries.

Although most Members of Congress still support efforts to shield U.S. citizens serving abroad from ICC prosecution, many are beginning to oppose the use of sanctions to attempt to persuade countries to sign bilateral immunity (so-called “Article 98” agreements). Some Members of Congress advocate ending all ICC-related aid restrictions, while others believe that at least some restrictions should remain in place in order to encourage other countries to sign Article 98 agreements. The issue of whether to continue these aid restrictions is likely to be considered by the 110<sup>th</sup> Congress.

This paper discusses the evolving policy debate in the U.S. government concerning the use of ICC-related foreign aid restrictions. It focuses on the case of Latin America and the Caribbean, a region in which twelve countries (including Brazil, Bolivia, Ecuador and Mexico) have faced aid cutbacks for failing to sign an Article 98 agreement.

## Background

### The International Criminal Court (ICC)

In July 2002, the Rome Statute that created the International Criminal Court (ICC) entered into force. The ICC is the first permanent world court with jurisdiction

to try individuals accused of war crimes and other serious human rights abuses.<sup>1</sup> The United Nations, human rights groups, and most democratic nations supported the creation of the ICC. As of March 1, 2007, 104 countries have ratified the Rome Statute and are currently members of the ICC.<sup>2</sup> The United States is not a party to the court and does not recognize ICC jurisdiction over U.S. soldiers or civilians serving in other countries.<sup>3</sup>

The ICC, comprised of eighteen judges and based in The Hague, may hear cases referred to it by the U.N. Security Council or by the states that are parties to the court. The ICC's lead prosecutor may also initiate investigations. Before a case may be tried, the ICC must work with national law enforcement agencies that, with support from the international community, must make arrests and send defendants to The Hague. Since its creation, the ICC has received three referrals by state parties, and the U.N. Security Council also referred the situation of allegations of atrocities being committed in Darfur, Sudan to the prosecutor.<sup>4</sup> The prosecutor has opened investigations into the cases involving the Democratic Republic of the Congo, the Republic of Uganda, and Darfur, Sudan. In October 2005, the ICC issued its first arrest warrants to five individuals implicated in connection to the situation in Northern Uganda.

Some analysts have recently asserted that the Bush Administration has begun to soften its once vocal opposition to the International Criminal Court (ICC). They argue that strong opposition to the ICC within the Administration has been gradually dissipating, particularly since the U.S. government allowed the U.N. Security Council to refer the Darfur, Sudan situation to the ICC in March 2005.<sup>5</sup> According to State Department spokesman Sean McCormack, "We [the U.S. government] fully support bringing to justice those responsible for crimes and atrocities that have occurred in Darfur. We are at a point in the process where we could call upon the Sudanese government to cooperate fully with the ICC."<sup>6</sup> Other analysts remain skeptical about whether a fundamental shift in U.S. policy towards the ICC is occurring and believe that, regardless of the court's merits, the U.S. government is going to continue to do all that it can in order to protect its military and civilians serving abroad from ICC prosecution.

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<sup>1</sup> These include genocide, crimes against humanity, war crimes, and potentially the crime of aggression.

<sup>2</sup> See International Criminal Court, Assembly of State Parties. Available at [<http://www.icc-cpi.int/statesparties.html>].

<sup>3</sup> See CRS Report RL31495, *U.S. Policy Regarding the International Criminal Court*, by Jennifer Elsea.

<sup>4</sup> See International Criminal Court, Situations and Cases. Available at [<http://www.icc-cpi.int/cases.html>].

<sup>5</sup> "Washington Softens Stance on ICC," *All Africa*, Mar. 7, 2007.

<sup>6</sup> Sean McCormack, U.S. Department of State, Daily Press Briefing, Feb. 27, 2006.

## U.S. Policy on ICC Immunity

Although the United States initially supported the idea of establishing an international criminal court, fundamental objections to the proposed court's jurisdiction led the United States to vote against the Rome Statute. The United States' primary objections to the Rome Statute focus on the ICC's possible assertion of jurisdiction over U.S. soldiers who could be charged with "war crimes" resulting from legitimate use of force or U.S. civilians who could be charged for conduct related to carrying out U.S. foreign policy initiatives. Accordingly, the United States has sought immunity provisions through the U.N. Security Council for U.N.-authorized peacekeeping operations, and has pursued bilateral agreements with countries that are parties to the ICC in order to preclude extradition or surrender of U.S. citizens from each respective country to the ICC.

### Bilateral Immunity ("Article 98") Agreements

Since 2003, the Bush Administration has sought bilateral agreements worldwide to exempt Americans from ICC prosecution, so-called "Article 98 agreements." On May 2, 2005, Angola became the 100<sup>th</sup> country to sign an Article 98 agreement.<sup>7</sup> The State Department has not publicly announced the signing of any other Article 98 agreements since that time, but a few more agreements may have been concluded.

Article 98 agreements involve each state promising that it will not surrender citizens of the other signatory to the ICC, unless both parties agree in advance to the surrender. Supporters of the policy say that these agreements are not unlike the status of forces agreements (SOFAs) routinely negotiated to protect U.S. soldiers serving abroad from prosecution in foreign courts and are consistent with Article 98 of the Rome Statute. Critics have dismissed Article 98 agreements as unnecessary and accused the U.S. government of "blackmailing" developing countries, many of which are heavily dependent on U.S. assistance, into adopting them.<sup>8</sup>

### Article 98 Agreements with Latin America

The United States has concluded Article 98 agreements with fifteen countries in Latin America and the Caribbean, thirteen of which are in force. **Table 1** depicts the status of each country in the region with respect to the ICC and Article 98. Countries that are subject to sanctions under legislation are those that are both parties to the ICC and that have not entered into an Article 98 agreement with the United States. Those countries include Barbados, Bolivia, Brazil, Costa Rica, Ecuador, Mexico, Paraguay, Peru, St. Vincent and the Grenadines, Trinidad, Uruguay and Venezuela. Although it has not signed an Article 98 agreement, Argentina is exempt from sanctions as it was declared a "major non-Nato ally" in 1998. Bolivia initially received a six-month waiver from cuts in U.S. military assistance that began in July

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<sup>7</sup> "U.S. Signs 100<sup>th</sup> Article 98 Agreement," U.S. Department of State, Press Release, May 2, 2005. Available at [<http://www.state.gov/r/pa/prs/ps/2005/45573.htm>].

<sup>8</sup> Nicholas Kristof, "Schoolyard Bully Diplomacy," *New York Times*, Oct. 16, 2005.

2003 because it had signed, but not ratified, an Article 98 agreement. The waiver expired in early 2004.

Most of the Article 98 agreements for Latin America that are currently in force were signed in 2003. In the past two years, only four additional countries in Latin America and the Caribbean are known to have signed Article 98 agreements. Some countries have vocally opposed U.S. efforts to persuade them to sign Article 98 agreements. In June 2005, then-president of Ecuador, Alfredo Palacios, said that Washington “is free” to defend its policies with respect to the ICC, “but not at the expense of Ecuador’s sovereignty and legal standing.”<sup>9</sup> Other politicians in the region have accused the United States of “blackmailing Latin American governments into signing an agreement they oppose in principle.”<sup>10</sup> The Article 98 campaign has been particularly unpopular in South America, a region in which a majority of the citizens support accountability for past human rights abuses, international law, and the ICC.

In October 2005, Mexico became the 100<sup>th</sup> country to ratify the Rome Statute, despite the prospect of losing military and economic assistance from the United States.<sup>11</sup> At that time, a Mexican government spokesman said that Mexico “will be irrefutable in supporting the protocols of the international court, whatever the cost.”<sup>12</sup> Chile is considering ratifying the Rome Statute and is also unlikely to conclude an Article 98 agreement.

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<sup>9</sup> “Ecuador Refuses to Sign ICC Immunity Deal for U.S. Citizens,” *Agence France-Presse*, June 22, 2005.

<sup>10</sup> “U.S. Could Cut Aid to Latin American Countries Over ICC,” *EFE News Service*, Nov. 18, 2005.

<sup>11</sup> “Cut in Military Aid Fails to Budge Fox on ICC,” *Latin American Weekly Report*, February 14, 2006; “U.S. Could Cut Off Aid to Latin American Countries Over ICC,” *EFE News Service*, Nov. 19, 2005.

<sup>12</sup> “U.S. Blocks Aid to Mexico,” *Associated Press*, Mar. 8, 2006.

**Table 1. Status of ICC and Article 98 Agreements in Latin America and the Caribbean as of March 2007**

Country	Rome Statute	Party to ICC	Article 98 Agreement	Subject to U.S. Aid Cut off?
Antigua and Barbuda	X	X	X	No
Argentina	X	X		Exempt
Bahamas	X			No
Barbados	X	X		<b>Yes</b>
Belize	X	X	X	No
Bolivia	X	X	Signed, not ratified	<b>Yes</b>
Brazil	X	X		<b>Yes</b>
Chile				No
Colombia	X	X	X	No
Costa Rica	X	X		<b>Yes</b>
Dominica		X	X	No
Dominican Republic	X	X (a)	X	No
Ecuador	X	X		<b>Yes</b>
El Salvador			X	No
Grenada			X	No
Guatemala			Signed, not ratified	No
Guyana	X	X	X	No
Haiti	X		X	No
Honduras	X	X	X	No
Jamaica	X			No
Mexico	X	X		<b>Yes</b>
Nicaragua			X	No
Panama	X	X	X	No
Paraguay	X	X		<b>Yes</b>
Peru	X	X		<b>Yes</b>
Saint Kitts and Nevis	X	X	X	No
Saint Lucia	X			No
Saint Vincent and the Grenadines	X	X		<b>Yes</b>
Suriname				No
Trinidad and Tobago	X	X		<b>Yes</b>
Uruguay	X	X		<b>Yes</b>
Venezuela	X	X		<b>Yes</b>

a. Indicates accession to the ICC for those countries that were not original signatories of the Rome Statute.



## Legislation

There has been strong bipartisan support in Congress for legislation aimed at protecting U.S. soldiers and civilian officials from the jurisdiction of the ICC. Until recently, there had also been strong support for sanctioning some foreign assistance to governments of countries that are parties to the ICC and that do not have Article 98 agreements with the United States.

### **The American Servicemembers' Protection Act (ASPA)**

The American Servicemembers' Protection Act or ASPA (P.L. 107-206, Title II) prohibits military assistance to countries that have not signed Article 98 agreements. On July 1, 2003, pursuant to the ASPA, the Bush Administration terminated military assistance to governments of countries that had not signed Article 98 agreements. Under the legislation, NATO countries or major non-NATO allies are exempted from those military aid restrictions.<sup>13</sup> ASPA also gives the President the authority to waive the prohibition on military assistance without prior notice to Congress if he determines and reports to the appropriate committees that such assistance is important to the national interest. ASPA has affected International Military Education and Training (IMET) and Foreign Military Financing (FMF) assistance.

### **The Nethercutt Amendment**

The Nethercutt Amendment to the FY2005 Consolidated Appropriations Act (H.R. 4818/P.L. 108-447) prohibited Economic Support Funds (ESF) assistance to the governments of countries that have not entered into an Article 98 agreement with the United States. Some countries, including NATO members and major non-NATO allies, are exempted from that aid restriction. The President could also waive the prohibition on economic assistance for selected countries without prior notice to Congress if he determined and reported to the appropriate committees that such assistance was important to the national interest. The language also stipulated that countries that have been deemed eligible for Millennium Challenge Account grants will not lose MCA eligibility status due to the Article 98 issue.

The Nethercutt Amendment was re-enacted by the 109<sup>th</sup> Congress as part of the FY2006 Foreign Operations Appropriations Act (H.R. 3057/P.L. 109-102). Unlike the FY2005 appropriation, however, the FY2006 act requires that the President give Congress notice before he invokes a waiver, but that waiver may apply for any country that he deems to be of strategic interest to the United States. It also stipulates that, since ESF may be obligated over a two-year period, any leftover funds from FY2005 may now be made available for democracy and rule of law programs notwithstanding the provisions of Sec. 574 of P.L. 108-447.

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<sup>13</sup> Major non-NATO allies of the United States include Argentina, Australia, Bahrain, Egypt, Israel, Japan, Jordan, Kuwait, Morocco, New Zealand, Pakistan, the Philippines, South Korea, and Thailand.

Nethercutt aid restrictions continued in the FY2007 Continuing Appropriations Resolution (P.L. 109-289, as amended) and are likely to be included in the FY2008 Foreign Operations Appropriation bill.

## **FY2007 Defense Authorization Act Modifies ASPA**

On September 30, 2006, the Senate unanimously consented to a conference report on the FY2007 Defense Authorization, H.R. 5122/S. 2766, which was passed by the House on September 29. The conference agreement, following the Senate version of the bill, modifies ASPA to end the ban on International Military Education and Training (IMET) assistance to countries that are members of the ICC and that do not have Article 98 agreements in place. The President signed the bill into law, P.L. 109-364, on October 17. Restrictions on Foreign Military Financing (FMF) remain in place under ASPA.

**Other Relevant Legislative Proposals.** During the 109<sup>th</sup> Congress, another bill was introduced, H.R. 5995 (Engel), that would have ended all restrictions on U.S. aid to countries that are members of the ICC and that do not have Article 98 agreements in place. If it had passed, the bill would have required the repeal of both ASPA and the Nethercutt Amendment.

## **Article 98 and U.S. Aid to Latin America**

The ASPA and the Nethercutt Amendment have had an impact on U.S. foreign assistance to Latin America and the Caribbean.

### **Military Assistance**

Pursuant to the American Servicemembers' Protection Act or ASPA (P.L. 107-206, title II), the Bush Administration terminated military assistance to governments of countries that had not signed Article 98 agreements as of July 1, 2003. The military assistance prohibition has included International Military Education and Training (IMET) and Foreign Military Financing (FMF). The IMET program provides training on a grant basis to students from allied and friendly nations. FMF provides grants to foreign nations to purchase U.S. defense equipment, services, and training. In FY2003, prior to ASPA, the United States provided some \$4.65 million in IMET among the 12 countries sanctioned by ASPA. This funding enabled 771 military officers and civilian officials from those countries to receive training in the United States. In FY2004, aside from Bolivia, which received a temporary waiver from ASPA provisions, none of those countries participated in IMET. ASPA-related sanctions resulted in a loss of \$1.9 million in IMET funding in FY2005. Although military assistance losses may not be significant when viewed from a regional perspective, they have resulted in some acute aid cuts for particular countries, including Bolivia, Ecuador, and Peru.

Some analysts also assert that FMF cutbacks, totaling some \$4.4 million in FY2005 and \$3 million in FY2006, have made some military modernization projects

difficult for the affected countries to continue. Others have responded that the effects of IMET and FMF funding restrictions have not been that significant when one considers that they have been divided among several countries and have only been in effect for a few years.

## **Economic Assistance**

Through the security-related ESF program, the United States provides economic aid to countries of strategic interest to U.S. foreign policy. Funding decisions on the ESF program are made by the State Department; programs are managed by USAID and the State Department. Strategic countries of interest to the United States are generally located in the Middle East or South Asia, but 11 Latin American countries have received some ESF funding in recent years, with Bolivia, Ecuador, Mexico, and Peru among the largest recipients. In FY2004, ESF assistance to countries that are now subject to Nethercutt aid restrictions totaled at least \$42.6 million, including some \$11.4 million for Mexico and \$10.5 million for Ecuador. ESF funds were spent on a variety of projects including democracy, rule of law, and economic growth programs.

## **Shifting Policy Debate Over Latin America**

In the last year, policy consequences of the ASPA-mandated aid restrictions have prompted debates within the Administration and in Congress. In particular, consequences of aid cutbacks for U.S. security cooperation in Latin America have begun to be examined and have led to some policy shifts. This shift became evident in Administration policy, congressional hearings, and in new legislation.

At the beginning of 2006, the Bush Administration appeared to be divided over whether to continue linking U.S. assistance to Article 98 agreements. Secretary of State Condoleezza Rice acknowledged that invoking ASPA sanctions on key U.S. military allies may be “sort of the same as shooting ourselves in the foot” and that waivers of military aid restrictions are being considered on a case-by-case basis.<sup>14</sup> In addition, the Defense Department’s Quadrennial Defense Review called for a possible de-linking of military training programs from ASPA. Although the Defense Department, and particularly the U.S. Southern Command, opposed ASPA sanctions on military aid, the Bureau of Political-Military Affairs of the State Department reportedly strongly supported keeping the sanctions in place.<sup>15</sup>

On June 22, 2006, Adolfo Franco, Assistant Administrator for Latin America and the Caribbean at the U.S. Agency for International Development, suggested that the Bush Administration was considering lifting ICC-related sanctions against Latin

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<sup>14</sup> Pablo Bachelet, “U.S. Sanctions Could Be Waived,” *The Miami Herald*, Mar. 15, 2006.

<sup>15</sup> U.S. Department of Defense, *Quadrennial Defense Review*, Feb. 6, 2006. Available at [<http://www.forscom.army.mil/reeng/1-PMD/2006QDR.pdf>]; Jackson Diehl, “A Losing Latin Policy: Are We About to Punish Democratic Allies?” *Washington Post*, Mar. 10, 2006.

American countries. He stated that the Administration had not yet decided whether to lift the sanctions on all countries affected in the region or only for a select few. Some analysts asserted that the Administration might lift the sanctions in order to improve the United States' image in the region.<sup>16</sup>

Similar policy debates occurred during congressional hearings held early in 2006 that mentioned the effects of Article 98 sanctions on U.S. relations with Latin America.

On March 8, 2006, the Subcommittee on Western Hemisphere Affairs of the Senate Foreign Relations Committee held a hearing on the "Consequences for Latin America of the American Servicemembers' Protection Act." Subcommittee Chair, Senator Norm Coleman, expressed concern that, as a result of the ASPA sanctions, the United States is "missing key opportunities to engage officers ... from the sanctioned countries" and that this could lead to "a loss of U.S. diplomatic influence in the region."<sup>17</sup> Witnesses focused their testimonies on describing the political and military effects that ASPA and Nethercutt sanctions have had on countries in Latin America and the Caribbean. One analyst asserted that the loss of IMET is severing "an important linkage between future military leaders [from the region learning about]...the U.S. model of civilian control of the military." Reduced opportunities in the United States, he added, may lead countries in the region to look elsewhere, including China, Russia, or Venezuela for training. Similarly, ESF restrictions may hamstring both U.S. bilateral and regional efforts to push desperately needed structural reforms, especially in the Andean countries.<sup>18</sup> Another analyst asserted that the implementation of ASPA has damaged U.S. standing in the region and that "the effort to punish countries that don't sign Article 98 agreements has been perceived ... as bullying or arm-twisting."<sup>19</sup>

The witnesses suggested several ways to mitigate the possible negative consequences of ASPA on Latin America and the Caribbean. Those suggestions included encouraging the Bush Administration to issue national interest waivers to key allies in Latin America or declare more countries in the region to be major non-NATO allies (thereby exempting them from the aid restrictions). Another suggested option would be to repeal section 2007 of the ASPA and omit the Nethercutt provision from 2007 Foreign Operations appropriations legislation.

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<sup>16</sup> "Linking of ICC-related Sanctions Seen as Linked to Opposing Venezuela's UN Bid," *Latin American Security and Strategic Review*, June 2006.

<sup>17</sup> Statement of the Honorable Norm Coleman, "Consequences for Latin America of the ASPA," Subcommittee on Western Hemisphere Affairs of the Senate Foreign Relations Committee, Mar. 8, 2006.

<sup>18</sup> Hearing testimony of Peter DeShazo, Center for Strategic and International Studies, Subcommittee on Western Hemisphere Affairs of the Senate Foreign Relations Committee, Mar. 8, 2006.

<sup>19</sup> Hearing testimony of Adam Isaacson, Center for International Policy, Subcommittee on Western Hemisphere Affairs of the Senate Foreign Relations Committee, Mar. 8, 2006.

On March 14, 2006, General Bantz Craddock, then-Commander of the U.S. Southern Command, while testifying before the Senate Armed Services Committee, stated that the ASPA continues to have “unintended consequences” for Latin America, and that without IMET funding, countries have been unable to afford the unsubsidized cost of courses offered in the United States. He stated that “this loss of engagement prevents the development of long-term relationships with future [Latin American] military and civilian leaders.” Senator John McCain agreed with General Craddock’s concerns about ASPA sanctions. He asserted that the United States was paying “a very heavy price” in countries where military aid programs have been cut. His concerns about military aid cuts were echoed by Senators John Warner, Carl Levin, Hillary Clinton, and James Inhofe.<sup>20</sup>

On June 21, 2006, Representative Dan Burton, former chair of the House International Relations Committee’s subcommittee on the Western Hemisphere, publicly asked the Bush Administration to change its policy regarding ASPA sanctions, citing congressional concerns about China’s expanding influence in the region.<sup>21</sup>

By the fall of 2006, the Bush Administration was ready to use waivers to waive restrictions on FY2006 IMET and ESF funds. On October 2, 2006, President Bush directed the Secretary of State to waive FY2006 IMET restrictions for 21 countries. Barbados, Bolivia, Brazil, Costa Rica, Ecuador, Mexico, Paraguay, Peru, St. Vincent and the Grenadines, Trinidad and Tobago, and Uruguay were among the countries that received presidential waivers.<sup>22</sup> On November 28, 2006, pursuant to Section 574 of P.L. 109-102, President Bush also deemed that it was in the U.S. national interest to waive Nethercutt restrictions on FY2006 ESF assistance for Bolivia, Costa Rica, Cyprus, Ecuador, Kenya, Mali, Mexico, Namibia, Niger, Paraguay, Peru, Samoa, South Africa, and Tanzania.<sup>23</sup>

As previously mentioned, the 109<sup>th</sup> Congress took action to end the ban on IMET restrictions but has left Nethercutt aid restrictions in the Foreign Operations Appropriations bills. On September 30, 2006, the Senate unanimously consented to a conference report on the FY2007 Defense Authorization, H.R. 5122/S. 2766, which was passed by the House on September 29. The conference agreement, following the Senate version of the bill, modifies ASPA to end the ban on International Military Education and Training (IMET) assistance to countries that are members of the ICC and that do not have Article 98 agreements in place. The President signed the bill

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<sup>20</sup> “Combatant Commander’s Military Strategy and Operational Requirements in Review of the FY2007 Defense Budget,” Hearing of the Senate Armed Services Committee, Mar. 14, 2006; CQ Transcriptions.

<sup>21</sup> “Chile-U.S.: Talks Underway to Avoid ICC-Related Sanctions,” *Latin News Weekly Report*, July 4, 2006.

<sup>22</sup> “President Issues Memorandum For Secretary of State Regarding Waive Prohibition on U.S. Military Assistance,” Oct. 2, 2006. Available at [<http://www.whitehouse.gov/news/releases/2006/10/20061002-7.html>].

<sup>23</sup> “President Issues Memorandum For Secretary of State Regarding Waive Prohibition on U.S. Economic Support Funds,” Nov. 28, 2006. Available at [<http://www.whitehouse.gov/news/releases/2006/11/20061128-12.html>].

into law, P.L. 109-364, on October 17. Restrictions on Foreign Military Financing (FMF) remain in place under ASPA.

Although some Members of Congress advocate ending all ICC-related sanctions, others believe that some aid restrictions should remain in place in order to encourage other countries to sign Article 98 agreements. The issue of whether to continue these aid restrictions is likely to be considered during the 110<sup>th</sup> Congress.