

In 05 Foreign Aid Bill, Bush Faces Big Test On Commitment to Law, Multilateralism

by Jim Lobe

November 29, 2004

OneWorld.net

WASHINGTON -- The Bush administration is facing an early test of its interest in easing tensions with traditional U.S. allies in the 2005 foreign-aid bill which bans some US\$2.5 billion in economic assistance for friendly governments that have not ratified a bilateral immunity agreement (BIA) with Washington to shield U.S. nationals from the jurisdiction of the International Criminal Court (ICC).

The ban, which was adopted by the House of Representatives last summer, has been opposed by the State Department and several prominent Republicans, including the chairman of the House Foreign Operations Subcommittee, Rep. Jim Kolbe, who warned during debate that it could further alienate U.S. allies in the war on terrorism.

But Congressional aides predict that, given the strong anti-ICC sentiment among Republicans and their sense of vindication coming out of the November 2 elections, the provision will remain in the bill unless the White House, which has not yet voiced a firm position on the matter, lobbies against it.

The fact is, most Republicans want to see the ICC killed and see this as another nail in its coffin, one aide told OneWorld last week.

The ICC, whose mandate is to investigate and prosecute war crimes, crimes against humanity, genocide and similar atrocities, was established under the 1998 Rome Statute which has been ratified by 97 countries - - including all of Washington's NATO allies and members of the European Union (EU) - - of the 139 countries that have signed it.

The ICC began operations at the Hague and its chief prosecutor, Luis Moreno Ocampo, an Argentine jurist who has taught in the United States, has so far pursued investigations of crimes against humanity in the Democratic Republic of Congo and Uganda.

Although the United States signed the Statute under President Bill Clinton, the Bush administration, in an unprecedented manoeuvre, formally renounced it in May 2002, launching a major diplomatic offensive to persuade countries that adhered to the treaty to sign BIAs with Washington that would commit them not to transfer any U.S. soldier or civilian official to the ICCs jurisdiction.

It also sought and initially obtained a UN Security Council resolution that provided blanket exemption from the ICC for soldiers and officials serving in UN peace-keeping operations whose home country has not signed the treaty.

The administration has insisted that the ICC threatens U.S. sovereignty and that, given Washington's global military predominance and the unique responsibilities for maintaining international peace that go with it, U.S. peacekeepers would be particularly vulnerable to politically-inspired prosecutions by the ICC. During the just-concluded election campaign, Bush himself repeatedly denounced the ICC which he insisted would be dominated by unaccountable judges and prosecutors.

ICC supporters, including Bush's closest foreign ally, British Prime Minister Tony Blair, have argued that Washington has nothing to fear from the tribunal so long as the U.S. government is willing to investigate and prosecute serious crimes that might otherwise be the ICCs jurisdiction. Under the Rome Statute, the

ICC can only take jurisdiction if the country involved is either unable or unwilling to pursue prosecutions on its own.

Indeed, Moreno has already rejected petitions to bring U.S. and British officials to the ICC for alleged crimes committed in Iraq.

Nonetheless, the Bush administration has so far proven deaf to these arguments. Pursuant to an initial anti-ICC law passed by Congress in 2002, the administration has over the past year cut off military aid to about three dozen countries almost all of them poor nations -- that had ratified the Rome Statute and rejected BIAs. Most of them claimed that signing a BIA would violate their legal commitments under the Rome Statute.

Under this kind of pressure, however, more than 80 countries, including several dozen that have not ratified the Rome Protocol, have signed BIAs.

Under the pending provision, which was sponsored by Washington State Rep. George Nethercutt, the president could waive the ban for national-security reasons for Washingtons NATO or non-NATO allies which include Australia, New Zealand, Egypt, Israel, Japan, Jordan, Argentina, and South Korea. It may also permit waivers for recipients of the new Millennium Challenge Account (MCA).

But even if he waived for all of those countries, that would still leave a number of other key U.S. partners in the developing world and hundreds of millions of dollars in economic assistance -- unprotected from the bans reach, including South Africa, Costa Rica, Ecuador, Jordan, Mali, Liberia, Benin, Niger, Peru, Trinidad and Tobago and several other Caribbean island-states, Uruguay, and Venezuela.

The specific aid program affected by the ban would be the Economic Support Fund (ESF) which has traditionally been used by Washington to provide general economic support to help countries that can play a key role in achieving strategic U.S. objectives, such as anti-terrorism or anti-narcotics trafficking.

Jordan, for example, is supposed to receive \$250 million in ESF funds to help promote economic growth and support healthcare, education, and governance reforms at a time when Washington desperately needs Ammans cooperation in providing training for Iraqi security forces and critical political and diplomatic support for the ongoing transition in Iraq and in the Palestinian territories. Jordans UN ambassador is currently the president of the ICCs Assembly of States Parties.

In Latin America and the Caribbean, ESF funds are also provided for development purposes but, at the same time, are related to the countries support for U.S. anti-drug and anti-terror operations in the region.

Many of these countries have already lost millions in U.S. military assistance over their position, according to Brian Thompson, program manager for the International Law and justice program at Citizens for Global Solutions (CGS).

Cutting more aid will not change their minds, but will undermine our diplomatic relations and weaken our ability to cooperate with them in the in the global effort against terrorism and other U.S. priorities, he added.

ESF also provides a total of more than \$20 million to support peace processes in Northern Ireland and Cyprus. Since neither Ireland nor Cyprus is a NATO member and hence may not be eligible for a national-security waiver, those funds could be cancelled under the Nethercutt provision.

Some of the countries that could be targeted by the amendment already have bilateral Status of Forces Agreements (SOFAs) with the United States that effectively gives Washington exclusive jurisdiction over U.S. troops stationed there

In recent months, the Bush administration has shown some flexibility in its campaign against the ICC. Last June, it backed down from demands that the Security Council approve another extension of the

exemption for U.S. officials and troops serving in UN peacekeeping missions after it became clear that a majority of the Council would not approve it.

And just ten days ago, it agreed to shelve an effort to delete the ICC from the UN General Assembly's formal agenda or to have the ICC pay for all costs related to a General Assembly discussion about the Court after receiving strong protests from its European allies.

After the June vote, however, it removed a number of U.S. personnel from two UN operations.

And in a somewhat related action, it announced Friday that it would not take part in a UN conference in Nairobi this week to review the implementation of the 1997 treaty on anti-personnel land mines or pay its usual share (20 percent) of the cost of putting on the conference. The United States never signed on to the so-called Ottawa Convention, although Clinton said Washington would try to comply with major parts of it. Bush, however, has retreated on Clintons pledge.