



**Testimony before the
Senate Foreign Relations Subcommittee
on Western Hemisphere, Peace Corps and
Narcotics Affairs**

Hearing on

**The Impact on Latin America of the
American Service members' Protection Act**

March 8, 2006

Statement by

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The American Servicemembers' Protection Act (ASPA) that came into effect on July 1, 2003 and the subsequent "Nethercutt Amendment" to the 2005 Foreign Operations Appropriations act respectively call for the suspension of military and economic aid to countries that are parties to the Rome Statute establishing an International Criminal Court (ICC) but that have not signed a bilateral immunity agreement ("Article 98 Agreement") pledging not to seek the prosecution of U.S. citizens in the ICC. Currently twelve countries in the western hemisphere (Barbados, Bolivia, Brazil, Costa Rica, Ecuador, Mexico, Paraguay, Peru, St. Vincent and the Grenadines, Trinidad and Tobago, Uruguay, Venezuela) are subject to the sanctions established by ASPA and the Nethercutt Amendment, with Chile on the verge of ratifying the Rome Statute, which would make

¹ CSIS does not take specific policy positions. Accordingly, all views, positions and conclusions expressed in this testimony should be understood to be solely those of the author..

that country also subject to sanctions. The assistance suspended by ASPA includes International Military Education and Training (IMET), Foreign Military Financing (FMF), and Excess Defense Articles (EDA). The Nethercutt Amendment prohibits making available Economic Support Funds (ESF) to provide assistance to states party to the ICC and that have not signed an Article 98 Agreement. Canada, as a member of NATO, and Argentina, as a major non-NATO ally, are not subject to these sanctions.

Although the goal of ASPA and Nethercutt Amendment has been to encourage countries to sign Article 98 Agreements, unintended consequences arising from the sanctions imposed by ASPA/Nethercutt are affecting U.S. national interest in the region. On the military side, loss of IMET has been especially significant. IMET is a key, cost-effective vehicle for military-to-military engagement with future leaders of security institutions in the hemisphere. Hundreds of Latin American military officers will not receive U.S. training in 2006 because of recession of IMET in the 12 countries not ratifying Article 98 agreements. The dollar amount of these losses is difficult to calculate and in any case is not dramatic, but the effect in terms of U.S. interest is substantial and will be multiplied every year that IMET is suspended:

- The transition from authoritarian military regimes to democratic government which took place throughout the region during the 1980s and 1990s was marked by steadily improving civil-military relations. This process was encouraged by the training received by Latin American military officers through IMET.

Civilian control over the military in Latin America, with broad respect for human

rights, is now the norm and the threat to democracy in the region comes not from potential military coups but from authoritarian populism. Exposure to the U.S. example through IMET training aided this process and loss of IMET would sever an important linkage between future military leaders and the U.S. model of civilian control over the military.

- Military-to-military engagement with the Americas strengthens U.S. security. Mexico is the most obvious example of the importance of improved security cooperation. The Mexican army and navy are undergoing a dynamic process of change, evolving into more professional and transparent institutions under increased civilian control. The loss of IMET for Mexico at this important moment is especially inopportune, closing the door on potentially improved relations with institutions that have a direct effect on our borders and our security. In the Andean countries of Peru, Bolivia, and Ecuador – all of which have been cut off from IMET – the United States has a vital interest in preserving democracy, respect for human rights, and combating international security threats, such as drug trafficking, trafficking in persons, and arms smuggling – all areas where military-to-military cooperation with the U.S. is a key component.
- Efforts to promote regional and international security may be adversely affected by ASPA sanctions. The militaries of Brazil, Chile, and Peru are increasingly involved in international peace-keeping and coalition efforts. The ability of military officers from these nations to more closely integrate with U.S. and

coalition units would be adversely affected by loss of IMET, which provides them access to U.S. doctrine and tactics. Regional security efforts, such as those undertaken with the countries of the Organization of Eastern Caribbean States under the Regional Security System (RSS), could be hampered by ASPA sanctions imposed on Barbados, the key participant in that regional group. With Trinidad and Tobago, another key Caribbean nation, also under ASPA sanctions, effective cooperation with the defense and security forces making up the so-called “Third Border” of the United States is more difficult.

- Abrogation of IMET and other forms of U.S. military assistance plays into the hands of anti-U.S. ultra-nationalists on the left and right in Latin America. While in many of the countries of the region there may be broad support for the ICC or for not signing an Article 98 Agreement with the U.S., the ultra-nationalists achieve an important goal when relations between their own militaries and the U.S. are severed. In Ecuador, the U.S. must re-negotiate the bilateral agreement due to expire in 2009 allowing for use of the Ecuadorian air base at Manta as a Forward Operating Location in tracking drug flights in the region. Extension of this agreement could be negatively affected by weakened military-to-military relations.
- Nations whose training options with the United States are cut off will look elsewhere: Europe perhaps, but China, Russia, Cuba, and Venezuela are other possibilities. Young officers gain much more than martial knowledge from their

military training. Like their civilian counterparts who study at foreign universities or technical schools, they acquire a cultural experience that may stay with them a lifetime. Just as the several generations of Latin American politicians and economists who carried out the transition to democracy and free-market economies in the region benefited from their training in the United States thanks to a wide assortment of exchanges programs, so did their fellow citizens in the military learn from the U.S. example. One military colleague compared IMET to U.S. savings bonds – the payoff is years away – when the lieutenant commanders and majors become admirals and generals. If IMET is eliminated, that payoff will never come.

- As in the case of IMET, the figures for potential losses of Foreign Military Financing (FMF) in the Americas are not particularly significant in dollar terms but do play a part in establishing linkages to the United States, especially for smaller countries. Loss of FMF and access to possible Excess Defense Articles turns countries away from reliance on the United States and toward closer relationships elsewhere.
- Chile is likely to become a prime showcase of the negative effects of ASPA. No country in the hemisphere has been more successful in consolidating democratic governance, in establishing an environment conducive to entrepreneurial competitiveness, and in improving the lives of its citizens by shrinking poverty and unemployment. Chile signed a free trade agreement with the United States

and plays a positive, visible role in international peace-keeping and in support of regional security. Civil-military relations in Chile have vastly improved since the dark days of the Pinochet dictatorship and the U.S. – Chilean military-to-military relationship has never been better. If the Chilean congress ratifies adherence to the Rome Statute, which it is likely to do in the near future, and when ASPA sanctions kick in, this relationship will be set back. The imposition of sanctions will send a negative message to the Chilean military and civilian elites regarding the reliability of the United States as a partner, and public opinion will question why the United States would take such steps against a friendly country.

The unintended effects of the Nethercutt Amendment prohibiting Economic Support Funds (ESF) from benefiting governments that have not signed Article 98 Agreements are similar to those resulting from loss of IMET in terms of their negative impact on U.S. policy interest. ESF is the lifeblood of U.S. funding for structural reform in Latin America, for encouraging improved governance, strengthening the rule of law, fighting corruption, and promoting sound economic policies, including the enforcement of labor laws. It is a precious resource for U.S. policymakers, one which over the years has been in increasingly short supply. While Nethercutt does not eliminate ESF spending in countries not ratifying Article 98 Agreements, it does deny ESF funds for the benefit of governments, a definition that is broadly applied.

In Andean countries like Bolivia, Peru, and Ecuador that cry out for reforms in governance, ESF cannot be used to fight corruption, strengthen justice systems, or

improve governance if the state is a beneficiary of these funds – the purpose, in fact, of such reforms. ESF may go to NGOs and other good use may be made of it, but not necessarily to the best advantage of the United States or the host country. Regional efforts may also be hamstrung by limitations on ESF spending. For example, the United States is redoubling its efforts to promote trade capacity building in Central America in the wake of the Central American Free Trade Agreement (CAFTA/DR) but ESF expenditures for regional projects cannot be made if Costa Rica, which has not signed an Article 98 Agreement, is deemed to be a beneficiary. Likewise, the United States cannot support regional anti-corruption efforts promoted by the Organization of American States if funding goes to nations under ASPA sanctions. Projects under the State Department’s “Third Border Initiative” with the Caribbean funded by ESF must exclude the key states of Barbados and Trinidad and Tobago.

The effect of the Nethercutt Amendment in dollar terms may not seem dramatic. But over time, ESF now being reprogrammed within countries to comply with Nethercutt regulations is likely to be redistributed to other countries or regions. Nethercutt limitations on ESF spending also limit the flexibility of U.S. policymakers who seek to encourage stronger governance and economic development in the region. In a subtle way, this process, like the loss of IMET, strengthens the hand of the ultra-nationalists who resent calls by the United States and the international community for structural reform. Those in governments who promote reform and seek to work with the United States to bring it about are in turn cut off from support.

The well-intentioned but nonetheless negative results arising from ASPA sanctions beg the question of other possible options available to the United States. Traditional means of providing U.S. service members with needed legal protection, such as status of forces agreements (SOFAs) or by providing them with temporary administrative/technical (A&T) status in country via the exchange of diplomatic notes, are options – but only for military personnel and not for all U.S. citizens. The challenge to lawyers and policymakers alike will be to find a means to protect American citizens without recurring to a sanctions regime that undercuts, however unintentionally, U.S. national interest in key countries of the Americas.