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## Foreign Aid in Egypt: The Legality of Continued Financial Support to the Egyptian Military After Mohammed Morsi's Removal From Power

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FOREIGN AID IN EGYPT: THE LEGALITY OF CONTINUED FINANCIAL  
SUPPORT TO THE EGYPTIAN MILITARY AFTER MOHAMMED MORSI'S  
REMOVAL FROM POWER

ERIC SCHMITZ\*

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## I. INTRODUCTION

On March 21, 2012, Joseph Odhiambo, a Canadian citizen of Kenyan descent, was attending an international environmental conference in the Malian capital of Bamako.<sup>1</sup> Earlier that night, the military seized power from the democratically elected civilian government.<sup>2</sup> He found himself trapped in his hotel room with no power, forcing him to turn off his laptop and cell phone in order to conserve energy and wait for periodic news updates.<sup>3</sup> Supporters of the military's coup d'état had recently occupied the airport which barred his departure by air and he had neither the mastery of the language nor the terrain to cross the border into Senegal by land.<sup>4</sup> When Joseph looked outside he could see that the "dark horizon was backlit by flickers of red, yellow and orange" with the sound of gunfire in the background.<sup>5</sup> He barricaded the door with hotel furniture, which he knew to be an exercise in futility if armed men truly wanted to gain entrance.<sup>6</sup> All he could do then was wait for an end to the confusion and chaos.<sup>7</sup> It was three weeks before Joseph was able to go home.<sup>8</sup>

Chaos, instability, and other symptoms common to military coups and armed conflict have been pervasive in the developing world since the end of World War II.<sup>9</sup> During the time immediately after the war, a large part of U.S. foreign assistance was geared towards rebuilding Europe and forging valuable alliances for the impending fight against Communism.<sup>10</sup> Also during that time, many countries in

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<sup>1</sup> Joseph Odhiambo, *A First Hand Account of the Beginning of a Military Coup in Mali*, BUSINESS INSIDER, Dec. 26, 2012, <http://www.businessinsider.com/a-first-hand-account-of-the-beginning-of-a-military-coup-in-mali-2012-12>.

<sup>2</sup> *See id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Odhiambo, *supra* Note 1.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> USAID, USAID HISTORY (Oct. 04, 2013), *available at* <http://www.usaid.gov/who-we-are/usaid-history>.

<sup>10</sup> *See id.*

the developing world were becoming independent and, for the most part, left woefully bereft of infrastructure by their colonizers.<sup>11</sup>

In 1961, as an effort to substantiate the development of good governance, “at [President] Kennedy’s urging, Congress passed the Foreign Assistance Act (hereinafter “FAA”), which mandated the creation of an agency to promote long-term assistance for economic and social development.”<sup>12</sup> “The laws governing U.S. obligations when a military coup occurs provide sparse legal justification for continuing financial assistance to a country until a democratically elected government assumes office.”<sup>13</sup> USAID was created, by executive order, alongside the FAA in 1961 as the administrative agency to oversee the execution of the Act’s mandates.<sup>14</sup> USAID’s objectives have evolved over the decades from “technical and capital assistance” in the 1960’s to “war and rebuilding” more recently.<sup>15</sup>

USAID and other administrative agencies are not the only organs of the United States government that manages foreign aid disbursements. The State Department governs the administration of a tremendous amount of foreign aid, including programs that deal with international narcotics trafficking and fighting the spread of diseases like HIV/AIDs, etc.<sup>16</sup> Also, the State Department supervises programs that fall under a more military category, including Foreign Military Financing (“FMF”) and others, most of which are actually overseen by the Department of Defense, in their execution.

There are three traditional rationales for foreign aid: national security objectives, commercial interests and humanitarian concerns.<sup>17</sup> Foreign aid has been a mechanism to achieve national security objectives for decades, beginning with the Cold War and continuing through the War on Terror.<sup>18</sup> Foreign assistance benefits U.S. commer-

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Sahar Aziz, *U.S. Foreign Aid and Morsi’s Ouster*, MIDDLE EAST INSTITUTE (July 31, 2013), <http://www.mei.edu/content/us-foreign-aid-and-morsis-ouster>.

<sup>14</sup> USAID, *supra* note 9.

<sup>15</sup> *Id.*

<sup>16</sup> Curt Tarnoff & Marian Leonardo Lawson, *Foreign Aid: An Introduction into U.S. Programs and Policy*, Congressional Research Service (2011), available at [www.crs.gov](http://www.crs.gov).

<sup>17</sup> *See id.*

<sup>18</sup> *Id.*

cial interests by promoting U.S. products and opening new markets to the global economy through sustainable development.<sup>19</sup> In addition, humanitarian concerns “drive both short-term assistance in response to crises and disasters, as well as long-term development assistance aimed at alleviating poverty, hunger and other forms of humanitarian suffering...”<sup>20</sup> In 2010, the United States focused \$20 billion, or 53% of all U.S. assistance, to “alleviate human suffering” in impoverished countries with 12% going towards “military aid.”<sup>21,22</sup>

It is express in the FAA and subsequent legislation, as well as executive policy, that aid to a country should be immediately cut off in the case of a military coup d'état of a democratically elected leader.<sup>23</sup> This policy is meant to assure that aid is distributed in accordance with the three rationales mentioned above. When the Egyptian Army issued a statement giving President Mohammed Morsi, who was democratically elected a year prior, an ultimatum to vacate the presidency or face consequences there were conflicting legal and policy implications for both continuing foreign aid and cutting it off.<sup>24</sup> U.S. considerations ranged from the text of the relevant legislation, to broader regional interests, as well as the Obama Administration's strategic refusal not to recognize the Egyptian military's actions as a coup.<sup>25</sup> Additionally, the facts on the ground, such as the counter-democratic policies of Morsi himself and the mass revolts against his administration, played an important role.<sup>26</sup>

This note will examine United States foreign aid practices to determine whether the continued aid disbursements to the Egyptian interim government were consistent with U.S. law. Part II will be a brief analysis of the United States' legal and political relationship to

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<sup>19</sup> *Id.* at 3.

<sup>20</sup> *Id.*

<sup>21</sup> This statistic may be partially due to the fact that programs such as Foreign Military Financing, where the U.S. government loans money to foreign governments in order to buy weapons, is not recorded as “foreign aid,” national security related or otherwise.

<sup>22</sup> See Tarnoff & Lawson, *supra* note 16.

<sup>23</sup> See Aziz, *supra* note 13.

<sup>24</sup> See *id.*

<sup>25</sup> *Id.*

<sup>26</sup> Patrick Kingsley & Martin Chulov, *Mohamed Morsi Ousted in Egypt's Second Revolution in Two Years*, THE GUARDIAN (July 3, 2013), available at <http://www.theguardian.com/world/2013/jul/03/mohamed-morsi-egypt-second-revolution>.

Egypt in recent decades and how such ties may have evolved. Part III will be a legal analysis of United States foreign aid distribution, from two of the three branches of government, with case examples.<sup>27</sup> This section will examine the FAA and subsequent legislation; the Departments of State and Defense as well as USAID and other agencies involved with aid disbursements; and there will be a legal analysis of recent cases where foreign aid was or “should have been” cut. Part IV will analyze how U.S. law governing foreign aid disbursements applies to current events surrounding the Egyptian military’s actions, comparing and contrasting to the other cases. Further, it will consider the three rationales for aid disbursement, mentioned in Part I.<sup>28</sup> Finally, Part V will make a final determination of the legality of continued funding of the Egyptian military under U.S law.

## II. UNITED STATES-EGYPT RELATIONS: HISTORY AND ANALYSIS

From the end of the Second World War, the United States’ strategic relationship with Egypt evolved, with historical checkpoints earmarking when major changes took place. In the years leading up to their second war with Israel, then Egyptian president Gamal Abdul Nasser embarked on a campaign of Arab nationalism and defiance of the West.<sup>29</sup> Still in need of military support, Nasser went to the Soviet Union which would define the nature of Egypt’s relationship to the United States for decades.<sup>30</sup> Then, in 1979, U.S. President Jimmy Carter brokered a peace treaty between Israel and Egypt, creating a fragile peace between the two countries and opening a diplomatic door between Egypt and the U.S. Further, the War on Terror created a pressing need for an Arab ally in the region, contributing to Egypt becoming a top recipient of United States foreign aid.<sup>31</sup> In 2011, the

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<sup>27</sup> The Foreign Assistance Act of 1961, 22 U.S.C. §§ 2151–2431 (2012).

<sup>28</sup> See Aziz, *supra* note 13.

<sup>29</sup> Israel winning independence, in 1948, was seen as a blow to most Arab countries, not just the Palestinian people. Tensions did not subside much between that first war and the second Arab/Israeli War in 1956. It was through rhetoric and policy such as nationalizing the Suez Canal, a waterway granting European trade access to a large portion of Africa that drove the West away from Nasser’s corner.

<sup>30</sup> LIBRARY OF CONGRESS, A COUNTRY STUDY: EGYPT (Helen Chapin Metz, 5th ed. 1991).

<sup>31</sup> See *id.*

Arab Spring destabilized the region and since then Egypt has seen one round of democratic elections, three presidents, and violent protests from different groups, all seemingly with different agendas. The United States has had to balance strategic regional interests with pushing for democratic reform, a task complicated by a volatility that still grips Egypt.<sup>32</sup>

Most aid flows to the Egyptian military, the element in the power structure that keeps peace with Israel, assists in maintaining the United States' interests in the region, and it currently holds absolute power.<sup>33</sup> Egypt was the recipient of over \$1.5 billion in foreign aid in 2012, making it the fifth largest beneficiary of the United States' yearly aid disbursements.<sup>34</sup> Presently, the Obama administration has requested \$1.55 billion for 2014.<sup>35</sup> Moreover, of that figure, approximately \$1.3 billion of the disbursements will be for military aid and a mere \$250 million is for humanitarian purposes.<sup>36</sup>

It is estimated that U.S. military aid "covers as much as 80% of the [Egyptian] Defense Ministry's weapon procurement costs" and finances many of their "acquisitions, upgrades to existing equipment, and maintenance contracts."<sup>37</sup> The roughly \$1.3 billion in Foreign Military Financing finds its way into many Egyptian weapons programs, which keep their military strong and modern.<sup>38</sup> Furthermore, it is not only "government aid" that provides Egypt with the crucial resources it needs, but also trade. For example, in 2010 Congress approved a \$2.5 billion sale of 20 F-16 "Fighter Falcons," between Egypt and defense contractor Lockheed Martin.<sup>39</sup>

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<sup>32</sup> Israel's peace-treaty with Israel was the first with an Arab country. There is only one more today with Jordan, brokered by President Clinton approximately 15 years later.

<sup>33</sup> Jeremy M. Sharp, *Egypt: Background and U.S. Relations*, Congressional Research Service (2014), available at [www.crs.gov](http://www.crs.gov).

<sup>34</sup> *Id.*

<sup>35</sup> Peter Baker, *A Coup? Or Something Else? \$1.5 Billion in U.S. Aid Is on the Line*, N.Y. TIMES (July 4, 2013), [http://www.nytimes.com/2013/07/05/world/middleeast/egypts-arrests-of-islamists-pose-test-to-us-over-military-aid.html?pagewanted=all&\\_r=1&\\_](http://www.nytimes.com/2013/07/05/world/middleeast/egypts-arrests-of-islamists-pose-test-to-us-over-military-aid.html?pagewanted=all&_r=1&_)

<sup>36</sup> See Sharp, *supra* note 33.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

Democratic and humanitarian interests also play a role in the decision to fund the Egyptian government.<sup>40</sup> Throughout the 1980's and 90's USAID funded major infrastructure projects in the industries of sanitation, education and telecommunication.<sup>41</sup> Funding democratic transition organizations has been a point of contention between the United States and Egypt since the years of Hosni Mubarak. Still Congress appropriated funds to Egyptian civil society that were not subject to approval by Mubarak's government.<sup>42</sup>

### III. UNITED STATES LAW AND FOREIGN RELATIONS

Foreign aid is a fundamental component of United States foreign policy, others being the U.S. defense establishment, the diplomatic corps, public diplomacy, and trade policy.<sup>43</sup> Title 22 of the United States Code governs foreign relations and contains exhaustive statutes, sculpting the legal infrastructure for United States foreign aid policy. The Foreign Assistance Act of 1961 is the "foundational legal framework" in designing foreign aid programs.<sup>44</sup> In addition, there is extensive subsequent legislation addressing foreign aid. Some provisions are more geographically specific and others are more specific to the type of aid: military, commercial and/or humanitarian. Further, Congress supplements the FAA and other relevant law with periodic appropriations bills that are more reflective of current interests.<sup>45</sup> Compared to the construction of a brick home, the FAA would be the frame and each subsequent bill is a brick. The various departments and agencies of the Executive branch then become responsible for discharging funds consistent with Congress' appropriations. Determining whether actions taken in a given case are in accordance with the laws of Congress requires analysis of the legal principles within the relevant legislation.

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<sup>40</sup> *Id.*

<sup>41</sup> *See* Sharp, *supra* note 33.

<sup>42</sup> *Id.*

<sup>43</sup> *See* Tarnoff & Lawson, *supra* note 16.

<sup>44</sup> 22 U.S.C. §§ 2151–2431.

<sup>45</sup> *See* Aziz, *supra* note 13.



A. *Congress and Foreign Aid*

United States law directs foreign aid to assist developing countries in building long-term democratic institutions and economic growth, in accordance with U.S. interests. Beginning with the FAA, these goals are enforced through provisions that condition the furnishing of foreign aid on continued democratic governance and direct it to be suspended if the “military plays a decisive role” in removing the “duly elected head of state” from power.<sup>46</sup> This concept was express within the FAA under Section 508 until it was repealed in 1973.<sup>47</sup> Still, the notion is implicit within the FAA, embodied within the object and purpose of the law. Furthermore, Title 22 of the United States Code is filled to the proverbial brim with statutes that use the principles of the FAA, and apply them to more specific directives. The ADVANCE Democracy Act (“ADA”), The Arms Export Control Act (“AECA”) and the Enhanced Partnership with Pakistan Act of 2009 (“EPPA”) are three examples of laws that further the object and purpose of the FAA by using similar methods to accomplish shared goals.<sup>48</sup> Perhaps the most profound and modern demonstration of the FAA’s purported objective is the Consolidated Appropriations Bill for 2014.<sup>49</sup>

Numerous provisions of the FAA obligate foreign assistance to developing countries.<sup>50</sup> The FAA allocates funds for research on the differing needs of peoples across the developing world; to “use intellectual resources of such countries and areas ... to encourage the development of indigenous institutions...;” and support the civic education and training necessary to develop a political infrastructure.<sup>51</sup> The Act designates certain amounts of funding for each fiscal year to be held for emergency assistance.<sup>52</sup> It includes the “Enterprise for the

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<sup>46</sup> *See id.*

<sup>47</sup> *Id.*

<sup>48</sup> The ADVANCE Democracy Act, 22 U.S.C. §§ 8201–8262 (2007); The Arms Export Control Act, 22 U.S.C. §§ 2751–2799(aa); The Enhanced Partnership with Pakistan Act of 2009 §§ 8401–8442 (2009).

<sup>49</sup> H.R. 3547, 113th Cong. (2014).

<sup>50</sup> 22 U.S.C. §§ 2151–2431.

<sup>51</sup> 22 U.S.C. § 2271 (2012).

<sup>52</sup> Essentially this is referring to money to help developing countries rebuild infrastructure after conflict or natural disaster. 22 U.S.C. § 2346(b) (2012).

Americas Initiative,” which encourages financial investment and market-oriented reform throughout Latin America and the Caribbean.<sup>53</sup> And in the interests of national security, the FAA allots money for counter-terrorism technology to be supplied to our allies,<sup>54</sup> along with military training on how to use defense articles and services purchased from the United States.<sup>55</sup>

Section 508’s repeal did not leave the Act devoid of means to limit aid.<sup>56</sup> The FAA instructs that no foreign aid is to be disbursed to recipient governments that do not comply with the object and purpose of the Act.<sup>57</sup> Among those ineligible to receive aid are governments that use funds for paramilitary operations, those that engage the use of child soldiers, etc.<sup>58</sup> More specifically, military assistance programs must consider whether the contribution is to an arms race, regional instability or prejudice of “the development of bilateral or multi-lateral arms control arrangements.”<sup>59</sup>

Title 22 of the United States Code contains pages of statutes, which present similar goals as the FAA, only offered in alternative legislation, often more specific to a purpose and/or region.<sup>60</sup> The Enhanced Partnership with Pakistan Act of 2009 (“EPPA”) provides Pakistan with enough military financing and training so that they are able to maintain a functional defense establishment and reconstruct war torn regions of the country.<sup>61</sup> The EPPA also contains a provision restricting aid if, “the duly elected head of government is deposed by military coup or decree.”<sup>62</sup> The ADVANCE Democracy Act (“ADA”) directs support for ideals such as “to promote the rule of law, build the capacity of civil society, political parties, and legislatures, improve the independence of the media and the judiciary, enhance independent

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<sup>53</sup> 22 U.S.C. § 2430.

<sup>54</sup> 22 U.S.C. § 2349(aa-10) (2012).

<sup>55</sup> 22 U.S.C. § 2347(b) (2012).

<sup>56</sup> 22 U.S.C. §§ 2151–2431.

<sup>57</sup> *Id.*

<sup>58</sup> Foreign Assistance Act of 1961, 22 U.S.C. § 2370(c-1) (2014).

<sup>59</sup> Foreign Assistance Act of 1961, 22 U.S.C. § 2321(d) (2014).

<sup>60</sup> 22 U.S.C. § 2151 (2014); 22 U.S.C. § 2301 (2014).

<sup>61</sup> 22 U.S.C. § 8422 (The stated goals here are discerned from the portion of the statute called the “Sense of Congress”, which basically Congress stating its views on the object and purpose of the statute).

<sup>62</sup> 22 U.S.C. § 8422(b)(3).

auditing functions, and advance security sector reform ...," among others.<sup>63</sup> The Arms Export Control Act ("AECA") grants the President the authority to, "finance the procurement of defense articles, defense services, and design and construct services by friendly foreign countries and international organizations..."<sup>64</sup> Foreign military financing, within the AECA, is limited by provisions which allow the president to furnish such assistance so long as it comports with United States interests and world peace.<sup>65</sup>

The most recent embodiment of United States law on foreign assistance is "Division K" of the Consolidated Appropriations Bill for 2014.<sup>66</sup> Titles III & IV govern "Bilateral Economic Assistance" and "International Security Assistance" respectively. Furthermore, these Titles allocate certain amounts of money to specific policy goals.<sup>67</sup> Title III includes a "Democracy Fund," which sets aside more than \$130 million in order to promote the FAA's goal of global development of democratic institutions.<sup>68</sup> Section 7008 of Title IV directs that funds disbursed under Titles III and IV of the Act will be suspended for any State where a "duly elected head of government is deposed by military coup d'état or decree or, after the date of enactment of this act, a coup d'état in which the military played a decisive role."<sup>69</sup> It is up to Executive discretion to decide when democracy has been restored and foreign assistance can thus continue.<sup>70</sup> Moreover, all of this is instructed under the authority of the Foreign Assistance Act of 1961.<sup>71</sup>

The FAA, as well as the 2014 appropriations bill, pledges billions to global health initiatives, demonstrating the law's commitment to humanitarian causes. The EPPA and the AECA both deal with Foreign Military Sales and Foreign Military Financing programs in foreign countries where lack of infrastructure, military or otherwise, results in a national security threat to the United States. Pakistan, being the central focus of the EPPA, has an underdeveloped infrastructure

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<sup>63</sup> 22 U.S.C. § 8262 (2007).

<sup>64</sup> 22 U.S.C. § 2763(a) (1996).

<sup>65</sup> 22 U.S.C. §§ 2751–2799(aa).

<sup>66</sup> *Supra* note 49.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

and there is plenty of incentive for the U.S. to continue funding. Further, the American Enterprise Initiative's attempts to advance market reforms in the Western Hemisphere addresses commercial interest by setting out to create a thriving market among the United States' neighbors within the Americas.

When Section 508 of the FAA was repealed, it made the FAA more malleable as this section was one of the few that were immune to Executive discretion.<sup>72</sup> It was a stalwart provision that disincentivized military recipients of United States foreign aid, of which there are many, from taking too heavy a hand in the overthrow of democratically elected leaders.<sup>73</sup> Despite the FAA's current malleability, concurrent and interchangeable legislation, such as the ADA, EPPA, AECA strengthen the broader theme of the law. That being United States foreign aid is meant to develop global democratic governance in a manner consistent with United States interests. Further, Section 7008 of the Appropriations Bill clarifies that Section 508's absence still allows democratic governance to be the linchpin in foreign finance programs.<sup>74</sup> It states in no uncertain terms that aid is to be suspended for as long as the President judges military rule to last.<sup>75</sup>

#### *B. Executive Action and Foreign Aid Disbursements*

The FAA, alternate legislation, and appropriations bills dating back decades all charge different departments within the Executive branch and relevant Administrative Agencies for the responsible disbursement of United States foreign aid funds. The preponderance of United States foreign relations legislation allocates funding specifically in the interest of democracy, conditioning disbursements on maintenance of those democratic institutions. The executive, chiefly the President, the Departments of State and Defense and the relevant agencies then must execute the laws by disbursing funds towards countries that are up to their standards. Other departments and initiatives are also involved in providing foreign assistance, such as the

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<sup>72</sup> See Aziz, *supra* note 13.

<sup>73</sup> *Id.*

<sup>74</sup> *Supra* note 49.

<sup>75</sup> *Id.*

Treasury Department and the Millennium Challenge Corporations, but their role is less expansive.<sup>76</sup>

Through the authority of the FAA, Section 7008 of the 2014 Consolidated Appropriations Bill grants the President discretion to choose the suitable time to reinstate suspended aid flows.<sup>77</sup> The President is also responsible for appointing the Secretary of State, Secretary of Defense, and the Administrator of USAID, all of whom head the organs of the United States government most responsible for crafting aid disbursement programs.

As one of the primary sculptors of U.S. foreign policy, the Department of State is charged with overseeing foreign assistance programs, which were budgeted \$12.03 billion in 2010.<sup>78</sup> A great deal of discretion is allocated to the Secretary of State and the appropriate Assistant Secretaries to determine the definition “nondemocratic” or “democratic transition” countries, thus qualifying reformers within the chosen States for economic assistance.<sup>79</sup> It is directly responsible for “administer[ing] activities dealing with international narcotics control and law enforcement, terrorism, weapons proliferation, democracy promotion, non-U.N. peace-keeping operations, refugee relief, and voluntary support for a range of international organizations such as UNICEF.”<sup>80</sup> One of the Department’s offices, the Bureau of Political-Military Affairs, controls policy for a \$4.7 billion group of military related initiatives, including Foreign Military Financing Programs.<sup>81</sup> In 2006, the position of “Director of Foreign Assistance” was created in order to “coordinate foreign assistance programs.”<sup>82</sup> Additionally, the State Department participates in joint projects with USAID.<sup>83</sup>

The Department of Defense also takes an active role in foreign aid programs from a military standpoint. Their role is mostly to administer aid based on the policy proffered by the State Department,<sup>84</sup> under the authority of legislation such as the FAA and

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<sup>76</sup> See Tarnoff & Lawson, *supra* note 16.

<sup>77</sup> H.R. 3547.

<sup>78</sup> See Tarnoff & Lawson, *supra* note 16.

<sup>79</sup> 22 U.S.C. § 8203 (2007).

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> See Tarnoff & Lawson, *supra* note 16.

subsequent appropriations bills. "In FY2010, funding for these assistance programs totaled \$4.7 billion."<sup>85</sup> These programs include the aforementioned Foreign Military Financing Programs, in addition to International Military Education and Training and the Pakistan Counterinsurgency Capability Fund.<sup>86</sup> Additionally, the Department of Defense funds programs not considered foreign aid, for nation building,<sup>87</sup> primarily in Afghanistan and Iraq.<sup>88</sup>

The United States Agency for International Development is the operative organ of the United States foreign aid apparatus. John F. Kennedy created USAID in 1961, in order to carry out the executive function delegated to it by the FAA.<sup>89</sup> USAID is primarily focused on the humanitarian rationale. In its mission statement it highlights its two primary goals as, "ending extreme poverty and promoting the development of resilient democratic society. ..."<sup>90</sup> Congress delegates authority to various agencies, although mostly USAID, in consultation with the appropriate congressional committees to build on existing programs for providing assistance.<sup>91</sup> For 2014, the President has requested \$20.4 billion for USAID's budget.<sup>92</sup> The budget's stated intention is to partner with the State Department in order to fund health initiatives, combat susceptibility to the negative effects of climate change, fund programs for building democratic institutions and more.<sup>93</sup>

### C. Case Studies

It is rare that there are clear-cut decisions to be made in most cases of military coup d'états. These decisions are made both from a legal and geopolitical perspective and the lines blur between the different kinds of rulers, democratic or autocratic, and the different

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<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> USAID Mission, Vision, and Values USAID (Oct. 04, 2013), <http://www.usaid.gov/who-we-are/usaid-history>.

<sup>90</sup> *Id.*

<sup>91</sup> 22 U.S.C. § 8262(b) (2007).

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

kind of aid, military and humanitarian.<sup>94</sup> In the case of Mali, where Joseph Odhiambo had barricaded himself in a hotel room and was unable to leave for three weeks,<sup>95</sup> the United States cut off military aid immediately after the democratically elected leader was deposed, but continued to supply humanitarian aid.<sup>96</sup> It was a year later that the State Department announced they were reinstating military support of the Malian government.<sup>97</sup>

### 1. Niger

In certain cases there is a clear course of action, as with Niger during the Clinton Administration.<sup>98</sup> On January 27, 1996, there was a military coup, and the democratically elected leaders were forcibly removed from power.<sup>99</sup> The State Department calculated that nearly \$25 million in development and military assistance went to Niger in the 1995 Fiscal year and proceeded to cancel further disbursements.<sup>100</sup> The announcement also noted that the United States not only planned to cut off direct assistance to Niger but also would stop supporting international financial programs that provided services to them.<sup>101</sup> The statement does suggest that aid disbursements would restart, pending the restoration of a legitimate government in Niger.<sup>102</sup>

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<sup>94</sup> See Aziz, *supra* note 13.

<sup>95</sup> Odhiambo, *supra* note 1.

<sup>96</sup> Max Fisher, *U.S. Has a Spotty Record on Law Requiring it to Cut Aid After Coups*, WASHINGTON POST (July 5, 2013 at 1:04 pm), <http://www.washingtonpost.com/blogs/worldviews/wp/2013/07/05/u-s-has-spotty-record-on-law-requiring-it-to-cut-aid-after-coups/>.

<sup>97</sup> The United States State Department, *U.S. Relations with Mali* (Apr. 30, 2013) <http://www.state.gov/r/pa/ei/bgn/2828.htm>.

<sup>98</sup> White House Press Secretary, U.S. Suspends Assistance to Niger Following Military Coup (Jan. 31, 1996).

<sup>99</sup> See *id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

## 2. Algeria

In the early 1990's, Algeria was about to experience what was supposed to be the first free and fair election in the Arab world.<sup>103</sup> The Islamists parties were polling with very high numbers and likely to win.<sup>104</sup> Then, the military, which had a long-standing power struggle with the radical Islamists, cancelled elections and took power, driving the country into a war that would last for the remainder of the decade.<sup>105</sup> It claimed nearly 150,000 lives and can be cited as a source of sectarian violence that still plagues the country's fragile stability.<sup>106</sup> President George H.W. Bush immediately ceased all foreign aid set to be disbursed in Algeria, pursuant to the Foreign Assistance Act.<sup>107</sup> The decision to apply the FAA was clear because Algeria was deprived of democratic elections directly by the military. President George W. Bush later revived the financial relationship between Algeria and the United States in the wake of the War on Terror,<sup>108</sup> the objective being to create another cooperating government in the region.<sup>109</sup> National security interests were heightened some years had passed since the worst of the violence, making reinstatement of aid easier to justify under the terms of the FAA.

## 3. Pakistan

During the 1990's Nawaz Sharif had been an elected leader of Pakistan, in varying capacities, numerous times.<sup>110</sup> While he was Prime

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<sup>103</sup> Fisher, *supra* note 96.

<sup>104</sup> *See id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Algeria Profile*, BBC NEWS, (Dec. 18, 2013, 11:52), <http://www.bbc.com/news/world-africa-14118852>.

<sup>107</sup> *See* Fisher, *supra* note 96.

<sup>108</sup> Keith Somerville, *U.S. Military Aid for Algeria*, BBC NEWS (2002), available at <http://news.bbc.co.uk/2/hi/africa/2561163.stm>.

<sup>109</sup> The first of the rationales for comprehensive foreign aid is national security. This is not the only case where national security played a part in authorizing continued aid, however, Pakistan is the only case in this note where Congress authorized a waiver of the FAA for purely Commercial Interests, as they did in their 2000 bill, reopening agricultural and commercial trade. *See infra* Section III(c)(3).

<sup>110</sup> *Pakistan Profile*, BBC NEWS, (June 5, 2013, 11:58), <http://www.bbc.com/news/world-south-asia-12966786>.



Minister in 1999, the Pakistani military installed Army General Pervez Musharraf, replacing Sharif and resulting in his exile to Saudi Arabia.<sup>111</sup> The Clinton Administration then suspended aid, pursuant to “[p]re-existing provisions contained within Section 508 of the Foreign Assistance Act [], which mandated that ‘none of the funds appropriated’ for foreign assistance ‘shall be obligated or expended to finance directly’ any government ‘deposed by military coup or decree.’”<sup>112</sup> Section 508 states that aid disbursements must be suspended until a democratic government is restored.<sup>113</sup>

Congress authorized President Clinton to restart sending aid to the government, in the form of agricultural loans and private commercial loans by passing the “FY 2000 Defense Appropriations Act.”<sup>114</sup> Essentially this law, specifically Title XI, acted as a waiver of the FAA for certain types of aid.<sup>115</sup> Then, after the attacks on September 11th, 2001, President Bush enacted Title XI for “full waiver authority” in the national security interests of the United States.<sup>116</sup> There was congressional action taken in order to effect President Bush’s waiver.<sup>117</sup>

#### 4. Honduras

In 2009 Honduras experienced internal conflict that resulted in both a military coup and the freezing of United States foreign aid programs pursuant to the FAA.<sup>118</sup> The military escorted the President of Honduras, Manuel Zelaya, to the airport where they forced him to board a plane to Costa Rica and then named the President of the

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<sup>111</sup> *Id.*

<sup>112</sup> Colin Cookman & Bill French, *The Pakistan Aid Dilemma: Historic Efforts at Conditionality and Current Disputes Converge in the U.S. Congress*, CENTER FOR AMERICAN PROGRESS (2011), available at <http://www.americanprogress.org/issues/security/report/2011/12/16/10823/the-pakistan-aid-dilemma/> (Referencing § 508 of the FAA).

<sup>113</sup> *Id.*

<sup>114</sup> *See id.* (Referencing FY 2000 Defense Appropriations Act (Public Law 106-79)).

<sup>115</sup> *See id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *See* Fisher, *supra* note 96.

Honduran Congress as the new President of the country.<sup>119</sup> Zalaya – a leftist leader aligned with Hugo Chavez of Venezuela – was attempting to revise the Honduran Constitution to extend the limit of one four-year term for the president, a move regarded by many as illegal.<sup>120</sup> President Zalaya was, however, democratically elected.<sup>121</sup>

Until this time, the United States and Honduras had a “close military relationship” and the U.S. kept various bases in Honduras, mostly for training Honduran soldiers for “counter-narcotics operations, search and rescue, and disaster relief missions throughout Central America.”<sup>122</sup> In the days immediately preceding the event, as controversy over this proposed Constitutional referendum ramped up, U.S. officials began to work to avoid military action.<sup>123</sup> Once the matter exploded, care was taken in the language in order to not specifically refer to the situation as a coup.<sup>124</sup> There was no congressional waiver of the FAA as there had been in Pakistan. In the end, the Obama Administration did recognize the military’s conduct as a coup, and cut off \$30 billion in aid, which is only part of what Honduras receives.

## 5. Trends

What is important to understand from these cases are the trends that exist between the different situations and to determine when the proper and legal moment is for the United States to freeze funding. What these four cases, spanning over four presidential administrations, point out is that:

- (1) Congress can authorize waiver, freeing the United States from legal obligation to halt aid upon the ousting of a democratically elected leader. This allows the continued flow of aid in order to

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<sup>119</sup> Elisabeth Malkin, *Honduran President is Ousted in Coup*, N.Y. TIMES (2009), available at <http://www.nytimes.com/2009/06/29/world/americas/29honduras.html?pagewanted=all>.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> See Fisher, *supra* note 96.

accomplish U.S. interests, whether they be National Security or Commercial as in Pakistan,<sup>125</sup> or Humanitarian as in Mali.<sup>126</sup>

- (2) The second main trend coming from these cases is the language used by officials. In both the case of Honduras<sup>127</sup> and Egypt<sup>128</sup> commenters were very careful to avoid the word “coup”, so as not to invoke the FAA’s freeze on financial assistance.<sup>129</sup>
- (3) Finally, and in accordance with Trend 2, “context is king.” The Honduran Coup is distinctly different from the Pakistani one, as there the President was attempting to force a Constitutional Revision, one the Supreme Court of the country rejected.<sup>130</sup> The facts on the ground become immensely important to understand the context behind Congressional waiver and/or strategic language.

In Egypt, all three of these factors come into play. The U.S. has cut off \$1.3 billion in military aid but has not cut off \$250 million in humanitarian aid.<sup>131</sup> Directly after the military removed Mohammed Morsi there was no mention of the word, “coup” and there was a complex series of events leading up to and following Morsi’s ousting, which continue today.<sup>132</sup>

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<sup>125</sup> See Cookman & French, *supra* note 113.

<sup>126</sup> See Fisher, *supra* note 96.

<sup>127</sup> Paul Richter, *U.S. Cuts of \$30 Million in Aid to Honduras*, LOS ANGELES TIMES (2009), available at <http://articles.latimes.com/2009/sep/04/world/fg-us-honduras4>.

<sup>128</sup> See Aziz, *supra* note 13.

<sup>129</sup> 22 U.S.C. §§ 2151–2431.

<sup>130</sup> See Richter, *supra* note 125.

<sup>131</sup> Jeremy M. Sharp, *Egypt in Crisis: Issues for Congress*, CONGRESSIONAL RESEARCH SERVICE (2013), available at [www.crs.gov](http://www.crs.gov).

<sup>132</sup> Peter Baker, *A Coup? Or Something Else? \$1.5 Billion in U.S. Aid is on the Line*, N.Y. TIMES (July 4, 2013), [http://www.nytimes.com/2013/07/05/world/middleeast/egypts-arrests-of-islamists-pose-test-to-us-over-military-aid.html?pagewanted=all&\\_r=1&](http://www.nytimes.com/2013/07/05/world/middleeast/egypts-arrests-of-islamists-pose-test-to-us-over-military-aid.html?pagewanted=all&_r=1&).

IV. LEGAL ANALYSIS OF CONTINUED FOREIGN ASSISTANCE TO THE EGYPTIAN MILITARY

When the Egyptian military removed Mohammed Morsi from power and replaced him with Judge Adly Mansour of the Supreme Constitutional Court, Egypt was on track to receive over \$1.6 billion of aid for the year.<sup>133</sup> In the most recent Foreign Appropriations bills, the standard for whether the President and State Department are designated to suspend aid contains two elements;<sup>134</sup> whether the person removed from power was actually a “democratically elected head of state”<sup>135</sup> and whether the military played a decisive role in his or her removal.<sup>136</sup> As with previous foreign aid dilemmas there are a host of factors to be considered around this test. Then United States’ actions can be analyzed to make a final determination of whether there was a breach in legal obligation.

A. *Whether Morsi Was the Democratically Elected Leader and Egyptian Military’s Decisive Role in His Removal*

Elections brought Mohamed Morsi to power on June 24, 2012.<sup>137</sup> A closer look at the election itself and the actions of the former president immediately following them are also important considerations in determining the United States’ legal obligation to suspend foreign aid. This obligation hangs on whether the election that he won was conducted freely and fairly and whether or not Morsi’s actions after the election were too characteristic of an authoritarian regime.<sup>138</sup>

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<sup>133</sup> Susan B. Epstein & Marian Leonardo Lawson & Alex Tiersky, *State, Foreign Operations, and Related Programs: FY2013 Budget and Appropriations*, CONGRESSIONAL RESEARCH SERVICE (2012), available at [www.crs.gov](http://www.crs.gov).

<sup>134</sup> Steven Aiello, *In Egypt, Coup or Not Coup: the 1.5 Billion Dollar Question*, JURIST - Dateline, July 24, 2013, <http://jurist.org/datetime/2013/07/steven-aiello-egypt-aid.php>.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Supra* note 49.

<sup>138</sup> *Id.*

Samuel Huntington defines democracy as “a regime in which political leaders are selected through free and fair elections.”<sup>139</sup> The right to free and fair elections is present throughout an entire body of international law and “is fast becoming an integral part of the elaborately woven human rights fabric.”<sup>140</sup> Article twenty-five of the International Covenant on Civil and Political Rights (“ICCPR”), one of the most paramount and widely ratified human rights treaties, mentions the right to “vote and be elected at genuine periodic elections. . . .”<sup>141</sup> The requisite criteria for free and fair elections are:

“(1) the right of all voters to participate in the electoral process without hindrance; (2) freedom to campaign for all political parties; (3) secrecy of the ballot; (4) reasonable speed in the counting of ballots; (5) accountability and openness of the electoral process to the competing parties and (6) an acceptable electoral law.”<sup>142</sup>

When applying the standard above to the election of Mohamed Morsi, conditions become circumspect. 52% of the Egyptian population voted in that election.<sup>143</sup> There were delays in the polls opening and some accounts of voter intimidation.<sup>144</sup> There was said to be good accessibility to the polling stations,<sup>145</sup> so the hindrances did not extend to physical barriers blocking voters from access. Still, people were witnessed to be turned away because their names were not listed, nor were they able to provide proof of identity.<sup>146</sup>

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<sup>139</sup> Jose Colon-Rios, *Can There Be a Democratic Coup d'Etat?*, HILJ SYMPOSIUM (Sept. 26, 2012, 4:00 PM).

<sup>140</sup> Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86, A.J.I.L. 46 (1992).

<sup>141</sup> The International Covenant on Civil and Political Rights, art. 25, Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>142</sup> Muna Ndulo, *The United Nations and the Monitoring of National Elections*, 23 CORNELL L. FORUM 13, 15 (1996) (citing to NAT'L DEMOCRATIC INST. FOR INT'L AFFAIRS, *NATION BUILDING: U.N. AND NAMIBIA* 26 (1990)).

<sup>143</sup> THE CARTER CENTER, *PRESIDENTIAL ELECTION IN EGYPT: FINAL REPORT* (2012) available at [http://www.cartercenter.org/resources/pdfs/news/peace\\_publications/election\\_reports/egypt-final-presidential-elections-2012.pdf](http://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/egypt-final-presidential-elections-2012.pdf).

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

The legal requirements to campaign and electoral law are interrelated. The electoral laws that took effect after the revolution were what allowed candidates to campaign for the presidency.<sup>147</sup> Both include constitutional requirements that involve citizenship, citizenship of parents, and lack of criminal history.<sup>148</sup> There were also certain possibilities for how a candidate becomes nominated, involving parliamentary endorsement being from a party that holds at least one seat in the last election's people's council and a popular referendum from thirty-thousand people, one thousand from each governorate.<sup>149</sup> In the run up to the 2012 election, there were candidates supported by the military and the Muslim Brotherhood. There was some doubt as to how candidates were selected as two were precluded from the elections on the basis that each had a criminal history, charges that were politically motivated results of the Mubarak era.<sup>150</sup> The transparency of the electoral process, or the openness and the accountability to the differing parties was gauged as an improvement, with more to go.<sup>151</sup> Still, the final candidates represented the two opposite ends of the political spectrum and there were secular candidates as well, albeit far less known.

The certainty of the ballot's secrecy was not firm either and breaches were recorded at substantial polling stations.<sup>152</sup> Some judges and officials provided illiterate voters with assistance, while others claimed that this was illegal.<sup>153</sup> Further, there was found to be "procedural irregularities in counting and aggregation."<sup>154</sup>

If the key to Mohamed Morsi being a democratic leader was that he was the winner of a free and fair election, then his status as such may be murky. From hindrances to actual to problems with ballot secrecy and counting, there were issues that disrupted the electoral process.<sup>155</sup> There seemed to be improvements in that there was an

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<sup>147</sup> Sahar Aziz, *Revolution Without Reform? A Critique of Egypt's Election Laws*, 45 GEO. WASH. INT'L L. REV. 101 (2012).

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> See CARTER CENTER, *supra* note 143.

<sup>151</sup> See Aziz, *supra* note 147.

<sup>152</sup> See CARTER CENTER, *supra* note 143.

<sup>153</sup> *Id.*

<sup>154</sup> See Aziz, *supra* note 147.

<sup>155</sup> See CARTER CENTER, *supra* note 143.

opportunity for all of the parties to fairly participate in campaigning. Nevertheless, the country had just emerged from a revolution and had been living under hotly contested military rule. Their readiness for an actual election, or lack thereof, is demonstrated by the very low turnout. Moreover, former President Morsi's actions in the immediately following his election further blurred his credentials. There was wide displeasure with his lack of success in improving the economy and the eerie resemblance of his actions to authoritarian leader, Hosni Mubarak.<sup>156</sup>

The military's "decisive role" in Morsi's ousting is the second element of a potential legal obligation for the United States to discontinue providing them with funds. The reaction after Morsi was ousted were mass protests by Muslim Brotherhood supporters and they were met with harsh violence, as scores of people were killed.<sup>157</sup> Another pivotal consideration is the quickness with which the military restores power to the people via a new election. Finally there is the issue of whether any of these conditions really matter or does the plain meaning of the Foreign Assistance Act hold and the actions of the United States is a prima facie case of unlawful support of a military coup.

Section 7008 of the 2014 Consolidated Appropriations directed that the military needed to have had a substantial role in the coup or decree,<sup>158</sup> and the Egyptian military likely did play that level of a role. Political scientists, international lawyers, and other experts have been attempting to define the term coup d'état for centuries. It can be defined as a political and/or military elite attempting to unseat the existing heads of state by both coercive and unconstitutional means.<sup>159</sup>

#### *B. U.S Action in Egypt*

The actions of Egypt's people, military, and government are not the only ones that must be considered in the instant inquiry. In order to ascertain whether the U.S acted in accordance with its own

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<sup>156</sup> See Sharp, *supra* note 131.

<sup>157</sup> *Id.*

<sup>158</sup> *Supra* note 49.

<sup>159</sup> Ozan Varol, *Egypt's Non-Democratic Coup d'Etat*, OPINION JURIS (July 16th, 2013, 5:59 p.m.), <http://opiniojuris.org/2013/07/16/guest-post-egypts-non-democratic-coup-detat/>.

laws, the FAA, the AECA, and the 2014 Consolidated Appropriations bill, one must take into account U.S. foreign aid policy considerations and the typical execution of these laws in similar dilemmas. Rationales for foreign aid, if divided into three broad categories are national security, commercial and humanitarian.<sup>160</sup>

National Security interests play a significant role in United State foreign aid policy and have done so since the United States emerged from World War II as a global superpower.<sup>161</sup> From the end of the Cold War, and especially since the attacks on September 11<sup>th</sup>, 2001, U.S. foreign aid has been focused in the Middle East, in fact the top five recipients of U.S. foreign aid, in recent years have all been Middle Eastern or South Asian countries, with some relationship to the War on Terror. Egypt is one of the only two countries with a peace treaty with Israel, our strongest ally in the region. Further, Morsi was a member of the Muslim Brotherhood, an ally of Hamas, and is on record denouncing Israel.

Commercial interests in Egypt are also fairly extensive. Egypt is not only the recipient of a fair amount of aid they buy military equipment from United States arms dealers as well.<sup>162</sup> In 2010 Egypt entered into an arms deal with U.S. contractor Lockheed Martin for the purchase of 20 F-16 "Fighter Falcons", a \$2.5 billion deal.<sup>163</sup>

Humanitarian concerns also justify continuing and freezing foreign aid. The very notion of halting assistance if a coup ousts a democracy is a form of humanitarian consideration. Morsi, shortly after taking power, attempted to form a constitution on ideological grounds and immunize himself from the judiciary. Critical journalists were being arrested, religious and ideological minorities were suppressed, and crime and poverty remained high. Additionally reports have been emerging of Egypt being the country in the Middle East where women have the worst quality of life. All of this triggered the Tamerod movement's protests, which were even larger than those taking place during the Mubarak era. These protests were responded to with force and a few died before the military removed Morsi from power.

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<sup>160</sup> See Tarnoff & Lawson, *supra* note 16.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*



### C. Comparative Study

Section 7008 of the Consolidated Appropriations Bill for 2014, in accordance with the FAA, remains constant no matter the context surrounding foreign aid disbursements. When the formula includes the three rationales for foreign aid, context becomes very important in understanding justifications for foreign aid policy. Comparatively, the United States' relationship, in the context of to Egypt is closest to that of Algeria and Pakistan. The United States response, however, was closest to that which it had in Honduras. In all four of the above-mentioned cases, a military interfered with the democratic process, and United States had to balance doctrinal law and pragmatic policy in order to take definitive action.

The facts on the ground in both coups were very similar. In Algeria, there was a blatant interference by the Algerian military in the electoral process, resulting from a monopolization of power by Islamist factions, which had historically been at odds with the military.<sup>164</sup> If the events that conspired in Egypt, since July, 2013, were summed up into one sentence it would likely look very similar to that of events in Algeria in the 1990s. In accordance with the FAA, and Section 7008 for Egypt, foreign aid was cut to Algeria. However, once the United States had vital national security interests in Algeria and Egypt for re-establishing and continuing foreign aid, respectively. In Algeria it was not until the United States needed an ally in the region until President Bush chose to reinstate foreign aid disbursements. Similarly, Egypt is the in the center of the Arab world, has a valuable peace treaty to maintain, and has thus far been an ally in the War on Terror.

While in Pakistan the facts on the ground can be differentiated to those in Egypt, the FAA and the EPPA directed that the executive to halt all assistance. United States' interests in reinstating, or continuing aid programs, to the two countries were similar. Pakistan's near borders Afghanistan, the site of America's longest war to date, is home to the Pakistani Taliban, one of the United States' most prominent international adversaries. The U.S. also has similar commercial interests in Pakistan as it does in Egypt. Between 2002 and 2010,

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<sup>164</sup> See Fisher, *supra* note 96.

Foreign Military Sales, between 2002 and 2010.<sup>165</sup> Further, as of 2012, the United States has provided Pakistan with \$2.5 Billion in Foreign Military Financing.<sup>166,167</sup> Egypt has similarly been a part of the U.S.' Foreign Military Financing programs.

In the case of Honduras, the similarities lie in both the action of Honduras and the reactions of the United States. This is of course not surprising as events in both Egypt and Honduras unfolded during the Obama administration. Here, the application of the FAA is less certain due to the facts on the ground. Honduras and Egypt both had elected leaders that were seen to be abusing their official power and trying to unilaterally alter their constitutions in order to expand that power. Additionally, the United States and Honduran government had a cooperative national security relationship, as Egypt was an asset in the Middle East, Honduras was an ally in the Western Hemisphere for policing narcotics traffickers.<sup>168</sup> In a similar manner, the Obama administration was careful not to characterize either of the incidents as a coup, so as not to implicate Section 7008. And again, eventually both of these countries did have some of its aid cut off.

#### V. CONCLUSION AND IMPLICATIONS

The United States' continued support of the Egyptian military subsequent to Mohamed Morsi's ouster is likely to be considered lawful by courts from the Supreme Court of the United States to the International Court of Justice. The gaps in the text of the Foreign Assistance Act are filled by policy driven subsequent legislation and executive action, allowing for its malleable interpretation. In this way, U.S. foreign aid can be both lawful and serve United States interests based on the relevant circumstances. And perhaps more importantly the United States did eventually freeze most Egyptian foreign aid until a time that the President determines free and fair elections have taken place.<sup>169</sup>

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<sup>165</sup> *Major U.S. Arm Sales and Grants to Pakistan in 2001*, CONGRESSIONAL RESEARCH SERVICE (July 25, 2012) <http://fpc.state.gov/documents/organization/196190.pdf>.

<sup>166</sup> *Id.*

<sup>167</sup> Foreign Military Financing entails U.S. loans to a government to purchase weapons.

<sup>168</sup> See Malkin, *supra* note 116.

<sup>169</sup> See Sharp, *supra* note 131.

The mandate of the FAA is to promote democratic institutions and even with the repeal of Section 508, provisions about directing the President and relevant institutions to freeze aid should recipient countries show a lack of complicity with those aims.<sup>170</sup> Statutes, throughout Title 22 fill in the gaps left by the broad and grandiose terms of the FAA, some designating aid for humanitarian purposes, some commercial and some for national security. Any doubt as to the purpose of the FAA and United States foreign aid programs, is extinguished by Section 7008 of the 2014 Consolidated Appropriations Bill, mandating the suspension of foreign aid upon a military playing a substantial role in the coup' d'état of a democratically elected leader.<sup>171</sup>

Mohamed Morsi was likely not the democratic leader that would implicate an immediate suspension of foreign aid, rendering anything less, on the part of the Obama administration, unlawful. His democratic mandate was hazy at best due to low voter turnout, hindrances to those who did vote, and ballot difficulties.<sup>172</sup> What is more, once in office Morsi acted as an authoritarian leader and the country saw renewed protests larger than those under Mubarak, with many deeming the revolution not to have ended.<sup>173</sup> This made it seem as though the military was carrying out the will of the people. In this respect, the closest similarities to the Egyptian coup is to Honduras rather than Algeria, Niger, and Pakistan. That being due to the clear military incursion on the democratic will of Algerians, Nigeriens, and Pakistanis, whereas in Honduras the President had been acting unilaterally to subvert the Constitution in a way that was similar to Morsi. And, this allowed for the continuance, in both situations, of aid disbursements.

Those opposed to continued aid, likely sympathetic to the Muslim Brotherhood, would point to the language of the FAA, claiming Morsi was democratically elected, thus precluding continued financial assistance. The "Tamarod Movement" would strongly consider the events of July 3rd, 2013 a second revolution, with the military supporting the popular will. Morsi's actions in manipulating the constitution, and deteriorating civil conditions, including an escalating

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<sup>170</sup> 22 U.S.C. § 2151 (2014).

<sup>171</sup> *Supra* note 49.

<sup>172</sup> *See Aziz, supra* note 147.

<sup>173</sup> *See Sharp, supra* note 131.

crime rate<sup>174</sup> breathe a lot of life into this claim. Further, the United States did suspend aid to the Egyptian military as conditions deteriorated,<sup>175</sup> thus lending credence to the claim that the United States acted according to the law, and was merely attempting to decipher the complex situation.

The continued funding to Egypt presents curious implications for foreign aid programs in the future and the aims that these laws attempt to accomplish. It is largely beyond dispute that continued assistance to Egypt, as well as other States, is affected more by policy considerations rather than the legal ones. Through subsequent appropriations bills and unilateral executive action, the United States government can accomplish quick changes in the law, to suit the present need. Practically, in a world that is constantly evolving, this is largely an inescapable outcome of geopolitics. However, if one buys into the theory of international relations that democratic governments share interest and thus have more mutually beneficial political and economic relationships, a comprehensive "foreign aid" bill may serve more long term purposes for the United States. Legislation should enshrine in law both the responsibility to promote democracy around the world and discourage military dictatorships. It should include reservations, such as only suspending government-to-government aid so, if possible, money can still reach populations that need it and provisions that address national security risks as well. Sovereignty and democracy to are two values that the United States claims to support; and that support could grow stronger if protected in comprehensive legislation.

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<sup>174</sup> See Sharp, *supra* note 33.

<sup>175</sup> See Sharp, *supra* note 131.