American University in Cairo

AUC Knowledge Fountain

Archived Theses and Dissertations

Winter 12-2007

The legal aspects of United States assistance to Egypt

Farid Nazih Tanagho

Follow this and additional works at: https://fount.aucegypt.edu/retro_etds

Part of the International Law Commons
THE LEGAL ASPECTS OF UNITED STATES ASSISTANCE TO EGYPT

FARID NAZIH TANAGHO

2007
The American University in Cairo

School of Humanities and Social Sciences

THE LEGAL ASPECTS OF UNITED STATES ASSISTANCE TO EGYPT

A Thesis Submitted to the
Department of Law

In partial fulfillment of the requirements for
the LL.M. Degree in International and Comparative Law

By

Farid Nazih Tanagho

December 2007
The American University in Cairo
School of Humanities and Social Sciences

THE LEGAL ASPECTS OF UNITED STATES ASSISTANCE TO EGYPT

A Thesis Submitted by
Farid Nazih Tanagho
to the Department of Law

November 2007

In partial fulfillment of the requirements for the
LL.M. Degree in International and Comparative Law

has been approved by

Professor Enid Hill
Thesis Supervisor
Affiliation Professor
Date 4-Dec 2007

Professor Chantal Thomas
Department Chair
Date 4-Dec 2007

Professor Ann Lesch
Dean of Huss
Date 9/12/07
ACKNOWLEDGMENTS

I am extremely grateful to Professor Enid Hill. Without her insightful comments, my thesis would have never been in the present form.

I would also like to thank Diana Van Bogaert, Director of Legal English Training Unit, Department of Law for her generous assistance.
United States foreign assistance has a far-reaching humanitarian, economic and political impact. The ambition of United States policy to utilize its foreign assistance to maintain international peace and security extends to the Middle East. In 1979, Egypt inaugurated a new era in the Middle East by concluding a peace treaty with Israel. In recognition of Egypt's pre-eminent leadership role in the Middle East, the United States significantly expanded its assistance program, making Egypt the second beneficiary of one of the largest American assistance programs worldwide. The Arab Republic of Egypt Economic, Technical and Related Assistance Agreement of 1978 is the principal assistance agreement, which governs the provision of American assistance to Egypt. That principal agreement sets forth the framework of American assistance to Egypt, leaving the details of every assistance program or project to subsequent specialist agreements. According to the principal agreement, the United States Agency for International Development Mission in Egypt is the special mission, which carries out the responsibilities of the U.S. in providing economic assistance to Egypt. The Egyptian judiciary has confirmed in its judgments that the USAID staff have immunity from the jurisdiction of Egyptian courts. This paper argues that the United States Agency for International Development Mission in Egypt, representing the U.S. in providing assistance to Egypt exercises a high level foreign policy function of a governmental nature serving the public interest of the U.S. and Egypt. USAID exercises no commercial activities. Therefore, USAID activities under American assistance agreements are purely governmental activities, covered by the sovereign immunity defense and not subject to Egyptian judicial jurisdiction under the restrictive theory of sovereign immunity. Immunity facilitates the streamlining of American assistance programs and projects in Egypt, and thus, enhances the progress and development of Egypt. This paper explores the resolution of conflicts between American assistance agreements and Egyptian laws and regulations through the decisions of the State Council.
# Table of Contents

I. Introduction ........................................................................................................ 1

II. The General Theory of Foreign Assistance Provided to the Developing Countries ........................................................................................................ 2
   A. The Tendency to Recognize a Human Right to Development.................... 2
      1. The United Nations General Assembly Resolutions ......................... 3
      2. The New International Economic Order ........................................ 5
   B. The Counter Attack: Denying the Legal Effect of the Charter .............. 7
   C. The Reinstatement of the Human Right to Development ..................... 8
   D. The Attitude of Egyptian Scholars ...................................................... 9
   E. The Real Human Right to Development and Its Real Source .............. 11

III. The Policy and Role of the American Assistance ....................................... 15
   A. Historical View .................................................................................... 15
      1. The Lend-lease Act in 1941 ............................................................... 15
      2. The Marshall Plan ............................................................................ 15
      3. The Point Four Program ................................................................ 17
   B. The Current Role and Policy of American Assistance ....................... 18
      1. The Five Principal Policy Goals ..................................................... 18
      2. The Predominant Objectives of U.S. assistance ............................ 19
      3. The Endeavor of U.S. to Keep International Peace and Combat Crimes Against Humanity Through its Assistance .................................................. 21
   C. The American Assistance Role in Egypt ......................................... 23
      1. The Political Dimension of U.S. Assistance to Egypt ..................... 23
      2. The Economic Development Dimension of U.S. Assistance to Egypt .. 24

IV. The Legal Instruments of American Assistance to Egypt ...................... 25
   A. The U.S. Foreign Assistance Act of 1961 ....................................... 25
1. The Power of the Congress to Provide Foreign Assistance................................................................. 25
2. The Essential Principles of Foreign Assistance Act ................................................................. 25
3. The Legislative Prohibition Against Violations of Human Rights.................................................. 27
4. The Military Assistance and Egypt ............................................................................................... 29
5. The Economic Support Fund Assistance for Egypt and the Middle East Peace Process..................... 31

B. Egypt and United States Economic Assistance Agreement............................................................... 33

1. The Principal Assistance Agreement................................................................................................. 33
2. The Impact of the Assistance Agreement on the Middle East Peace Process..................................... 34
3. The Essential Principles of the Principal Assistance Agreement...................................................... 35
4. The Legal Power of the Principal Assistance Agreement..................................................................... 36

V. The Legal Attitude of the Egyptian Judiciary toward the American Assistance ........................................... 37
   A. The Legal Status of USAID and its Staff......................................................................................... 37
      1. The Diplomatic Immunity of USAID Staff.................................................................................. 37
      2. The Attitude of the Egyptian Judiciary toward the Diplomatic Immunity..................................... 38
      3. The Attitude of the Egyptian Judiciary toward USAID Commodity Import Program.................. 40
      4. The Attitude of the Egyptian Judiciary toward the Sovereign Immunity of USAID....................... 45
   B. The Resolution of Conflicts between American Assistance Agreements and Egyptian Legislation........... 50

VI. Conclusion ......................................................................................................................................... 53
I. Introduction

The issue of United States foreign assistance is one of the most important issues affecting the economic development, peace, security and stability of developing countries, and their respective regions. U.S. foreign assistance, thus, has a far-reaching economic and political dimension. If U.S. foreign assistance is properly tackled and presented to developing countries, it may help these countries to achieve valuable goals such as economic prosperity, democracy and good governance. Therefore, achieving and building these goals will result in reducing the risk of terrorism and regional conflicts, and accordingly furthering the interests of the United States.

Because of the importance of U.S. foreign assistance to Egypt and its impact on Egypt's economic development and security, this thesis presents an exploration of this issue taking into consideration its effect on the much-needed peace in the Middle East. It explores first the general theory of foreign assistance towards developing countries, and the tendency of the United Nations General Assembly Resolutions to recognize a human right to development. It includes a discussion of the human right to development, which is a controversial issue. Second, the policy and role of U.S. assistance towards the developing countries including Egypt is also explored followed by the legal instruments of U.S. assistance to Egypt. Fourth, the legal attitude of the Egyptian judiciary toward the U.S. assistance to Egypt is presented. For the first time ever in a scholarly work, the existing small number of court of law judgments relating to this issue are discussed. It concludes with the legal opinions rendered by the Egyptian State Council to resolve the conflicts between U.S. assistance agreements and Egyptian laws taking into account that the State Council in Egypt is an independent judicial body.
II. The General Theory of Foreign Assistance Provided to the Developing Countries

A. The Tendency to Recognize a Human Right to Development:

There is a growing tendency to recognize a human right to development in favor of the developing countries and their peoples who are the recipient of foreign assistance. This tendency is apparent in international relations, the jurisprudence of developing countries and especially in the resolutions and declarations of the United Nations General Assembly.

The General Assembly declarations and resolutions, which provide for the right to development, have no force of law to obligate the developed countries to comply with these resolutions. However, there is a real human right to development which is not the imaginary right proposed by the claimants of the legal force of the General Assembly declarations and resolutions. Rather, it is the result of many pieces of foreign assistance legislation and the related international agreements.

President Truman was one of the early proponents of the right to development which was reflected in his attitude toward helping the devastated Western Europe and developing countries. President Truman, as president of the United States, initiated a new foreign assistance policy toward Western Europe that recognized that the United States was committed to extending its assistance to the devastated countries of Western Europe. World War II had left the continent physically devastated and its economies paralyzed. Therefore, President Truman supported the Marshall Plan as an integrated program for United States assistance to European recovery. Also, President Truman’s policy toward developing countries recognized the necessity to extend the United States assistance to developing countries. The President in his inaugural address on January 20, 1949, recognized the fact that “more than half the people of the world [were] living in miserable conditions. Their
food [was] inadequate. They [were] victims of disease. Their poverty [was] a handicap and a threat both to [themselves] and [to] more prosperous areas.”

President Truman stated that: “We must embark on a bold new program for making the benefits of our scientific advances and industrial progress available for the improvement and growth of underdeveloped areas.” The abovementioned policy of President Truman, as representing the United States, is supportive of a human right to development, since it recognizes the United States commitment to extend assistance to both devastated Europe and underdeveloped countries. This policy took into consideration the humanitarian factor as Western Europe after World War II was in need of foreign assistance to recover. At the same time President Truman took into consideration the same humanitarian factor regarding underdeveloped countries. However, the United States since its early adoption of the policy of extending foreign assistance and its support of a human right to development does not recognize this right as an absolute right. Rather, it treats this right as a limited right subject to the limitations and conditions prescribed by the donor legislation and related international agreements concluded by donor and recipient states. Even the Marshall Plan assistance and later assistance offered by the United States to developing countries was tied by conditions and limitations agreed upon by donor and recipient countries.

1. The United Nations General Assembly Resolutions:

The first serious articulation of a worldwide concern with the subject of human rights, especially to a human right to development, was set forth in the Universal Declaration of Human Rights (UDHR) adopted by the General Assembly

---

2 *Id.*
of the United Nations on 10 December 1948. The UDHR has now assumed the
normative force of law, and is universally accepted as part of customary
international law. The UDHR purports to give the individual the entitlement to,
inter alia, equal protection under the law as well as the freedom of opinion,
expression, and peaceful assembly. The UDHR specifically addresses the right to
development as Article 22 of the UDHR states that: “Every one as a member of
society is entitled to realization of the economic, social and cultural rights
indispensable for his dignity and the free development of his personality.”
Further, Article 26 (2) states that “Education shall be directed to the full development of the
human personality and to the strengthening of respect for human rights and
fundamental freedoms.”

However, it is doubtful that the United Nations General Assembly through
this Declaration had the intention of creating a legal right to development for the
developing countries, as at the time of the passage of the Declaration in 1948, most
of the developing world was still under colonial rule. In addition, this Declaration
did not impose any legal commitments on the developed countries. Therefore, at
that stage one could not conclude that the right to development had emerged as an
effective legal right in the international community practices.

The UDHR has been combined with two other United Nations Covenants. The
two subsequent covenants, both promulgated by the United Nations General
Assembly in 1966, are the International Covenant on Civil and Political Rights
(ICCPR) and the International Covenant on Economic, Social and Cultural Rights
(ICESCR). The ICCPR reflects the values and tenets of the Western liberal tradition

4 Id.
by restating important prohibitions against government interference with the individual’s right to self-expression and the accumulation of private property. The ICESCR, on the other hand, reflects the values and priorities of the so-called Second World, stressing social and economic rights, which the state has a positive duty to provide to the individual. “The United States has characterized social and economic rights as aspirations rather than rights and has questioned the legal validity and separate existence of such rights.”

2. The New International Economic Order:

At the Sixth Special Session of the United Nations General Assembly on May 1, 1974, two important resolutions were adopted. The first was entitled the Declaration on the Establishment of a New International Economic Order (NIEO) and the second was the program of Action on the Establishment of a New International Economic Order. On the 12th of December 1974, the General Assembly adopted a subsequent resolution, the Charter of Economic Rights and Duties of States (CERDS). That Charter was adopted by a vote of 120 for and six against. These six were Belgium, Denmark, the German Federal Republic, Luxembourg, United Kingdom and the United States.

Article 4 of the NIEO states that “The developing countries enjoyed the right to the preferential and non-reciprocal treatment and the extension of development assistance by the international community free of political or military conditions.” The Charter of Economic Rights and duties of states, confirmed the NIEO principles. Article 18 of the Charter states that “Developed countries should grant generalized, preferential, non-reciprocal and non-discriminatory treatment to developing countries in order to meet the trade and development needs of the

developing world."\(^6\)

The overwhelming majority that adopted the NIEO and the above Charter urged some scholars to recognize the establishment of the right to development as a new right of International law derived from these new General Assembly Resolutions. For example, Professor Louis Sohn, has argued that the NIEO resolution created new customary international law, and should be recognized as such. He added that there is a wide consensus that these NIEO declarations actually established new rules of International law binding upon all states.\(^7\) This opinion supported the tendency to recognize the human right to development.

Another example, of support for the human right to development was when the draft Charter of Economic Rights and Duties of States was introduced by Ambassador Castaneda at the twenty-ninth regular session of the United Nations General Assembly. He said that “The draft Charter set down rights and duties; it was intended to govern relations between states by establishing an objective and universal order.”\(^8\) The above proponents of this Charter argued that all states clearly had a political duty to support and implement a legal universal order, such as that embodied in the draft Charter, which protected and helped the most vulnerable sector of the international community.\(^9\) In fact this attempt to characterize the right to development as having the force of law was met by a counterattack denying the legal character of the Charter.

\(^7\) See Louis Sohn, THE SHAPING OF INTERNATIONAL LAW, 16 (1978).
\(^9\) Id.
B. The Counter Attack: Denying the legal effect of the Charter:

During the ensuing discussion in the General Assembly on the proposed Charter, the Australian representative argued that the Charter could not itself create law; this was strongly affirmed by the United Kingdom representative who had decided to vote against the draft Charter as a whole because many of its provisions were designed to impose far-reaching obligations of a long-term character on developed countries without their agreement.\(^\text{10}\)

The opposition of some developed counties to the legal effect of that Charter had led some writers to deny its legal character. For example G.W. Haight held that "The six negative votes cast against the Charter as a whole and the many negative votes cast against many separate provisions clearly establish that it cannot have legal pretensions."\(^\text{11}\)

In fact, the General Assembly resolutions do not in any way have the force of law. "Under the United Nations Charter the General Assembly may discuss and make recommendations, but it is not a lawmaker body and its resolutions, no matter how solemnly expressed or characterized, nor how often repeated, do not make law or have binding effect."\(^\text{12}\)

The United States voted against that Charter. The provisions of that character were never fully accepted or implemented by developed nations. Even though the NIEO was adopted by the United Nations General Assembly, it has clearly not been accepted as an international customary norm by industrialized states. Rumu Starker denied the legal character of that Resolution stating that: "Even if a resolution is adopted by an overwhelming majority, negative votes cast by even a few powerful states may ultimately defeat consensus."\(^\text{13}\)

\(^{10}\) See id.
\(^{11}\) id. at 597.
\(^{12}\) id.
\(^{13}\) Sukar, supra note 5, at 222.
In fact, in light of the six votes against CERDS cast by industrialized nations including the United States, and the ten abstentions by other nations, that Charter (CERDS) can not be recognized as having the force of international law. Moreover, the United Nations General Assembly is not a lawmaking body, and its resolutions do not make law according to Articles 10, 11, 12, 13, 14 of the United Nations Charter. Thus the resolutions of the General Assembly cannot have the force of international law.

C. The Reinstatement of the Human Right to Development:

In 1986, the United Nations General Assembly began to link human rights and development together since the full dignity of the human person and the development and well being of the society have common ground leading to the social and economic development and promotion of the human rights. Therefore, on 4 December 1986, the United Nations General Assembly adopted the Declaration on the Right to Development (UNDRD). The United States was the sole nation to vote against, with eight abstentions namely Denmark, Finland, the Federal Republic of Germany, Iceland, Israel, Japan, Sweden and the United Kingdom. The UNDRD described the right to development as an inalienable human right by virtue of which all peoples are entitled to participate in development. 14 This bold language of the General Assembly supported by an overwhelming majority of states pushed some scholars to recognize that: “A human right to development has been established since the sole dissenting vote of the U.S. may not be sufficient to bar the creation of a legal norm.” 15 However, Western industrialized states continue to be unwilling to accept this statement as a self-evident proposition.

15 Sarkar, supra note 5, at 246.
In fact, although there are resolutions, charters and declarations issued by the United Nations General Assembly recognizing the right to development, as one of the human rights, there is a controversy between developing and developed countries. The developing countries consider the General Assembly Resolutions regarding this right as having the force of law, and are therefore enforceable in international relations. They impose obligations upon developed countries to conform to these resolutions. On the other hand, the developed countries are unwilling to recognize that these resolutions are legally effective and binding and having the force of law. This conflict between developed and developing countries results in the deprivation of the right to development from its legal binding force. The right to development and the development process itself need the cooperation of the whole international community, and especially the developed countries to help the underdeveloped countries and their peoples. Absence of this cooperation results in a lack of effectiveness of the right to development, because the agreement between donor and recipient countries is an integral part of the right to development, and depends upon the help presented by the developed countries to the developing countries.

D. The Attitude of Egyptian Scholars

The controversy between developed and developing countries regarding the creation of a human right to development as having the force of law by the General Assembly Resolutions has been transmitted to the Egyptian scholars. Some of them supported the developing countries opinion.

For example, Dr. Ahmed Abo Elala, in his PhD thesis to Ein-Shams University, holds that: "There is a human right to development recognized by the
said Resolutions of the General Assembly of the United Nations, which fit with the contemporary international society and systems.\textsuperscript{16}

Also, a group of Egyptian Professors of Law at Egyptian Universities supports the opinion of developing countries, considering under some conditions that the Resolutions of the United Nations General Assembly have the force of law. For example, Professor of Law Dr. Samy Abd Elhamid considers only the normative decisions of international organization as the real source of legal binding rules while Professor of Law Dr. Gavar Abd El Salam further considers all the United Nations’ General Assembly decisions which include legal rules as having mandatory force, whether issued in the form of declarations or recommendations. He points out that the adoption of such decisions with a huge majority from all over the world constitutes a kind of international legislation.\textsuperscript{17} Therefore, all the above scholars support with some conditions the position of the developing countries that the General Assembly Resolutions have the force of law. This opinion entails the recognition of the power of these resolutions to create the right to development as a legal right enforceable by international law.

On the other hand, some Egyptian scholars deny the legal force of the General Assembly Resolutions. For example, Professor of Law Dr. Abd Elwahed Elfar, maintains that “The United Nations’ General Assembly Resolutions relating to the international economic relations have no legal force to impose legal obligation on the members of the United Nations.”\textsuperscript{18}

This last opinion entails the denial of the General Assembly’s power to create


\textsuperscript{18} \textit{id}.
the right to development since its resolutions have no legal power in economic relations, which include economic development.

E. The Real Human Right to Development, and Its Real Source

In spite of the fact that there is a clear and growing tendency in the international community, spelled out by the above United Nations General Assembly Resolutions, to recognize a human right to development, this tendency has not yet created a set of binding legal rules that obliges the developed countries to enforce this right to development for the following reasons. First, the United Nations General Assembly is not a lawmaking body, and its resolutions do not make law or have binding effect according to Articles 10, 11, 13, and 14 of the United Nations Charter. Second, the developed countries, especially the United States and Western countries do not recognize the United Nations General Assembly Resolutions as having the force of law. The result of the attitude of these donor countries is that because of their lack of consent, there is no enforcement of the right to development. Third, as it is clear from practices of the international community, only when two countries or more conclude an international agreement for the purpose of development foreign assistance, can one say that this agreement has the force of law to create obligations and rights including the right to development. Therefore, the United Nations General Assembly Resolutions or Declarations alone do not have the force of law to create this right to development.

It can still be argued, however, that the human right to development has been created by the many international foreign assistance agreements concluded between developed and developing countries. These agreements are usually based on a donor’s legislation, which authorizes the provision of such foreign assistance to a
developing recipient country. These agreements result in the placement of legal obligations upon developed countries to provide developing countries with development assistance. These international agreements identify the donor country, which has to provide the development assistance, and the recipient country, which receives that assistance. These agreements, as well, specify the subject matter of the assistance, its value, and all the conditions and stipulations surrounding this assistance. For example, the Arab Republic of Egypt Economic, Technical, and Related Assistance Agreement signed on 16 August, 1978 between the United States and Egypt, states that the United States Government will furnish economic, technical and related assistance to Egypt in accordance with arrangements agreed upon between the representatives of the two Governments. The Agreement states also that: "furnishing of such assistance shall be subject to applicable United States laws and regulations." Therefore, this international assistance agreement concluded between the U.S. and Egypt is based on United States foreign assistance legislation, which specifies the amount of assistance, its limitations and conditions. For example, The Conference Committee of the House of Representatives and the Senate appropriated $735,000,000 for Egypt for the fiscal year ending September 30, 2002 "to be provided on a grant basis, and of which sum cash transfer assistance shall be provided with the understanding that Egypt will undertake significant economic reforms." Thus, such United States foreign assistance legislation and international assistance agreements, not the United Nations General Assembly Resolutions, are the real legal source of the right to development since these agreements, which are based on former legislation, set forth the obligations and rights of the donor and recipient countries concerning the development assistance that are guaranteed by both of them.

---

In conclusion, the human right to development is a real legal right which is created by the foreign assistance legislation and international agreements concluded between the developed donor countries and the developing recipient countries. This foreign assistance legislation and the international agreements result in the establishment of a right to development, since they are nationally enacted as legislation and concluded as international agreements, having the force of law with their subject matter the provision of assistance to developing countries. However, the created right to development in this circumstances is not an absolute right, but rather, it is a right to a specific degree of development assistance stipulated and tied by the provisions and conditions stated by the foreign assistance legislation and international assistance agreements. Thus, this is no imaginary right to development, which some defenders of the legal force of the General Assembly Resolutions claim. Rather, there is a real right to a specific degree of development assistance prescribed and tied by particular foreign assistance legislation and the accompanying international assistance agreements.

A clear example of these limitations and conditions prescribed by the donor's legislation, which governs the right of the recipient country to development is the following example. The United States Congress legislation, Section 518 of Foreign Assistance Act states that: "None of the funds made available in [the Foreign Assistance] Act may be available to any organization or program which supports or participates in the management of a program of coercive abortion or involuntary sterilization."21

A second example is the provision of Section 519 of the Foreign Assistance Act, which states that "None of the funds appropriated by this Act may be obligated

21 id. at 4, 5.
or expended to provide assistance to any project or activity that contributes to the violation of internationally recognized workers rights."

These two examples demonstrate that the provision of foreign assistance is usually tied in with the conditions and prohibitions stipulated by the donor country, which represent its values and public order. The recipient developing country has to abide by these conditions and prohibitions to be eligible for utilizing the development assistance.

Accordingly, this real legislatively based right to development requires the consent of the donor country. The extent of this right is subject to the conditions of the agreement concluded between the donor and recipient countries. This human right to development under these conditions and limitations has the force of law and is enforceable as a legal right, since it acquires the consent of donor and recipient countries, and abides by foreign assistance legislation and related international agreements.

\[22\] *Id. at 32.*
III. The Policy and Role of the American Assistance

A. Historical view:

1. The Lend-Lease Act in 1941:

The concepts which underlie the United States’ policies of assistance to foreign countries may in part be found in a specific measure adopted by the United States before it was a belligerent in World War II. That is the Lend-Lease Act of 1941. Although the United States was not militarily involved in the war, lend-lease was nonetheless a clear expression of the recognition of the United States Government at that time that its interests were vitally bound up with the fate of the Western democracies engaged in a war with the Axis powers. The United States Congress enacted the Lend-Lease Act, into law on March 11, 1941. The first lend-lease agreement concluded was with Great Britain in February 1942. It was referred to as the master agreement and served as the model for later agreements. In the Agreement the United States pledged to continue providing aid to Britain. There were also some obligations on the part of Britain, since “Britain agreed not to transfer any United States aid to any other country without the United States authorization and to pay American citizens whatever fees were requested by the United States Government to protect American patent rights.”23

It is obvious from the beginning of United States foreign assistance policy, that the political and strategic role of assistance has predominated. The United States offered the lend-lease assistance to the Western democracies to help them defeat the Axis powers, and safeguard democracy all over the world.

2. The Marshall Plan:

The political and strategic goals constitute an integral part of the policies,

23 Whiteman, supra note 1, at 879.
which govern the offering of American foreign assistance to the outside world. At the same time, the United States demonstrated its firm willingness to help defend the free and democratic world against military aggression. That was the reason which led the United States to enter World War II and to offer its assistance to Western European countries.

At the beginning of 1947, however, the people of Western Europe were still short of the goal of economic recovery. Their difficulties were greatly increased, chiefly by a bitter winter followed by floods and droughts, which cut Western Europe’s grain crop to the lowest figure in generations and hampered production of many other products. European recovery was a problem for the nations of Europe. These considerations led to the suggestion by Secretary of State [Marshall] on June 5, 1947, that further help from the United States should be given only after the countries of Europe had agreed upon their basic requirements and the steps which they would take in order to give proper effect to additional aid. In light of the European dramatic situation, an integrated program for United States aid to the European recovery [was] prepared for submission to the Congress. 24

The United States designed the Marshall Plan to help Western European countries’ economic recovery. “This program planned to make genuine recovery possible within a definite period of time. The program, as well, aimed at insuring that the furnished funds and goods would be used most effectively for European recovery, while minimizing the financial cost to the United States.” 25

Then, in 1950, United States assistance began to address another category of countries, which were the developing countries. The new approach for developing assistance to the developing countries was through the Point Four Program.

24 Id. at 891-892.
25 Id. at 892.
3. The Point Four Program:

The Foreign Economic Assistance Act of 1950 marked the beginning of the United States technical assistance program. Title IV of the 1950 Act was known as the Act for International Development and was popularly referred to as the Point Four Program. In section 403 (a) of title IV of that Act, the Congress declared that it was to be the policy of the United States to aid developing countries. “This aid was designed to develop their resources and improve their living conditions by encouraging the exchange of technical knowledge and skills and the flow of investment capital to those countries. Congress set conditions upon these developing countries, in order for them to be eligible to receive the allocated assistance.”26 Thus, these developing countries were required to “provide conditions under which such technical assistance and capital could effectively and constructively contribute to raising standards of living, creating new sources of wealth, increasing productivity and expanding purchasing power.”27 Since the legal instrument to present this assistance directly from the United States to every single state is through bilateral programs and agreements, Congress authorized the President to undertake bilateral technical cooperation programs with developing countries. In addition to the authorization of the bilateral assistance programs, Congress, also in the above Act of 1950, “authorized United States participation in multilateral technical cooperation programs under the auspices of the United Nations, the Organization of American States, and other international organizations.”28

26 Id. at 894.
27 Id.
28 See Id. at 894, 895.
B. The Current Role and Policy of American Assistance

In recent years under the Foreign Assistance Act of 1961, United States development assistance programs have expanded to include multiple domains, extended to reach many developing countries, and turned out to be an essential instrument of American foreign policy.

The Foreign Assistance Act of 1961 and its amendments, govern the foreign assistance programs of the United States. The objectives of the foreign economic development assistance programs have shown varying degrees of emphasis over time in the promoting of economic growth in developing countries, alleviation of economic hardship and deprivation, and the advancement of political, diplomatic and strategic goals. United States assistance programs are intended to emphasize five principal policy goals.

1. The Five Principal Policy Goals:

It is obvious from United States foreign assistance authorizations and activities that the main principal policy goals are:

(1) The alleviation of the worst physical manifestations of poverty among the world’s poor majority (2) The promotion of the conditions enabling developing countries to achieve self-sustaining economic growth with equitable distribution of benefits. (3) The encouragement of development processes in which individual civil and economic rights are respected and enhanced. (4) The integration of developing countries into an open and equitable international economic system. (5) The promotion of good governance through combating corruption and improving transparency and accountability.29

Two of the largest channels for U.S. economic development assistance have been the functional development assistance programs of the United States Agency for International Development (USAID) and the Economic Support Fund.

2. The Predominant Objectives of U. S. Assistance:

In addition to the humanitarian and developmental roles and objectives of United States foreign economic assistance, it has at the same time a predominant political role as an effective instrument of United States foreign policy. The political and strategic dimensions of foreign aid are reflected in the fact that although development assistance and economic support funds go to more than 75 countries, well over half are earmarked for less than a dozen countries in which the United States has strategic military or political interests. In 1984, for example, 62 percent of the nearly $4.5 billion allocated for development assistance and economic support went to Egypt, Israel, Sudan, Pakistan, Turkey, Lebanon, Costa Rica, El Salvador, and Honduras. In fiscal year 1988, nearly three quarters of economic security and development assistance was earmarked for Israel, Egypt, Pakistan, and four Central American Countries. ³⁰

Therefore, it is obvious that only a few countries in which the United States has strategic military or political interests, receive the majority of United States economic assistance. This fact demonstrates the overwhelmingly political nature of United States foreign assistance, and its utilization as a political weapon by the American Government to satisfy the political and strategic interests and objectives of the United States. The Congressional presentation of the United States Agency for International Development, addressed to the Congress on January 10, 1989 confirms this fact. The United States Agency for International Development's administrator, Mr. Alan Woods, pointed out to Congress the importance of the political and security role of foreign assistance, when he placed political and security objectives of foreign assistance ahead of the humanitarian and commercial

objectives. Furthermore, he associated the economic growth of the developing countries with the transformation of these countries into strong democracies having strong ties with the West, since there is a dynamic relationship between economic democracy and political democracy. In his conclusion, the administrator of the United States Agency for International Development confirmed the political motivation and effect of foreign assistance when he recognized that as the developing countries accept United States assistance to advance economically, their economic growth may be accompanied by democratic transformation: “As we work with developing nations to stimulate economic growth, we are mindful of the hope of all Americans that, as these countries advance, they will become strong democracies.”

That transformation to democracy creates new allies and friends for the United States.

The importance of the political role of the United States foreign assistance and its utilization as a political weapon and as an effective instrument of United States foreign policy is obvious in some of the United States Agency for International Development Budget Justification to the Congress. For example, the Budget Justification for fiscal year 2003, revealed this role as the justification for the appropriation and expenditure of foreign assistance. The United States Agency for International Development explained to the Congress that: “The Middle East and North Africa’s vast oil resources and potential for conflict make the subregion pivotal to the United States strategic interests, since the Middle East controls 70% of the world’s known oil reserves.”

The United States Agency for International Development suggested the solution to the problems of the area through the utilization of the requested assistance, which would “advance the United States

---

goals of creating the necessary conditions for peace and preserving American access
to petroleum resources in the Middle East."33

3. The Endeavor of U.S. to Keep International Peace and
Combat Crimes Against Humanity Through its Assistance

The House of Representatives Committee On Appropriations approved the
belief that foreign assistance must further the policies, principles, and interests of
the United States. Therefore, the Committee decided that the Administration should
take into account the willingness of each country to fully enforce the terms of the
United Nations sanctions on the former Yugoslav Republics of Serbia and
Montenegro when determining foreign assistance levels for United States aid
recipients.34

In fact, the United States utilized the foreign assistance not only to further its
policies and interests, but also to help maintain international peace and security and
combat crimes against humanity. The United States House of Representatives
Committee on Appropriation, when it took the above decision expressed its
agreement with the international community in condemning Serb nationalist
aggression, which included crimes against humanity, and disturbance of
international peace and security. These crimes included: "Ethnic cleansing, the use
of concentration camps, mass rape, the destruction of religious and cultural
institution, and the relentless bombardment of unarmed urban populations, and a
deliberate policy of genocide."35

Therefore, the House of Representatives' above decision and its justifications,
reveal the bold ambition of the United States to help keep international peace and

---
33 Id.
35 Id. at 31.
security and combat crimes against humanity, utilizing, inter alia, its foreign assistance programs. This conclusion is confirmed by many decisions of the House of Representatives. For example, the House of Representatives recommended that the United States Secretary of Treasury instruct limiting the availability of loans to countries that had not signed the Nuclear Non-Proliferation treaty and the international agreements related to the control of chemical and biological weapons. “The House of Representative Committee recommended also, $75,623,000 for voluntary contributions for International Peace Keeping Operations. The Committee as well, decided to provide $25,000,000 in fiscal year 1994 for assistance to the West Bank and Gaza.”36 The Committee confirmed the United States’ ambition to keep international peace and security, when it declared that: “The support by the United States for the economic and social development of Palestinians is an essential part of the peace process.”37

In fact, that bold ambition of the United States to maintain international peace and security and combat crimes against humanity through the utilization of foreign assistance is praiseworthy. Indeed the objectives of establishing peace and security in many volatile areas worldwide, saving human lives from the danger of wars, saving civilization from destruction and combating crimes against humanity deserve every possible assistance from the U.S. and other donor countries. Thus, the United States is encouraged to provide every possible foreign assistance to satisfy the expenditure of these objectives since the establishment of peace and security and combating the crimes against humanity need not only this financial assistance, but also the willingness and power to enforce these objectives through powerful sates such as the United Stats.

36 Id. at 70, 100.
37 Id. at 70.
C. The American Assistance Role in Egypt:

1. The Political Dimension of United States Assistance to Egypt:

The United States policy to use its foreign assistance as an instrument to maintain international peace and security covers the Middle East. The United States has supported and fostered the peace process in the Middle East, and urged all involved countries to conclude a peace agreement. Egypt responded positively, and concluded a peace treaty with Israel, in 1979. This peace treaty put an end to military actions and hostility between Egypt and Israel, paving the way for other Arab countries to enter into a peace settlement agreement with Israel. Jordan followed Egypt in concluding a peace agreement with Israel in 1994, while Syria, Lebanon, Palestine did not conclude a peace settlement with Israel, and they are still in a state of hostility with Israel. The United States Agency for International Development, which provides United States assistance to Egypt, explained to the United States Congress that the primary objective of the United States in the Middle East is to bring about regional peace, broaden the base of the present Egyptian-Israeli peace agreement, and bring all the principal countries of the Arab-Israeli dispute into a comprehensive peace settlement. The United States Agency for International Development recognized that: “Egypt is central to achieving this objective, and the renewed tensions in the Gulf have increased United States national interest in strategic cooperation with Egypt.”38

For this reason, the United States provides substantial economic assistance to Egypt to support its stability and growth as a pre-eminent power and leader in the Middle East. The United States Agency for International Development presented to the Congress its requested assistance for Egypt in fiscal year 2003. It provided to the Congress as well its justification for the requested assistance. The justification

described Egypt as a “strong moderating force in the Middle East, which has long been an important ally of the United States since Egypt and the United States share strategic interests that include achieving stability and peace in the region.” 39 The United States Agency for International Development recognized that: “The bilateral relationship that the United States has with Egypt serves the national security interests of both countries. It also promotes economic prosperity in Egypt to become a fully integrated and competitive participant in the global economy.” 40

2. The Economic Development Dimension of United States Assistance to Egypt:
With the launch of the U.S. development assistance to Egypt in 1975, the United States and Egypt addressed the most pressing challenges of economic development.

The key areas of focus in these early years included physical infrastructure, technical and scientific expertise, and expanding agricultural productivity, health care, and education. By the end of that decade, in recognition of Egypt’s pre-eminent leadership role in the Middle East, the United States significantly expanded its assistance program, making Egypt the beneficiary of one of the largest American Assistance programs worldwide. Among the first achievements of the program were restoring and reopening the Suez Canal. At the same time, Egypt’s infrastructure in electric power generation, telecommunications and clean water distribution expanded through the United States Agency for International Development assistance. 41

However, in the 1990s, “emphasis moved to accelerating economic growth through privatizing state owned enterprises and increasing exports. From 1975 until 2002/2003, the United States devoted $ 25.6 billion for its economic and developmental assistance to Egypt.” 42

39 USAID, Budget Justification to Congress, supra note 32, at 243.
40 Id.
42 Id.
IV. The Legal Instruments of American Assistance to Egypt

A. The U. S. Foreign Assistance Act of 1961

1. The Power of the Congress to Provide Foreign Assistance:

The framers of the Constitution of the United States of America created a strong Federal Government based on the principle of separation of powers between the legislative, executive and judicial branches. The Legislative Branch is created by Article I, Section 1 of the Constitution, which provides that: “All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.” 43 “The executive power shall be vested in a President of the United States of America.” 44 “The judicial power shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.” 45

Since the Congress exercises the legislative power, it may enact laws to withdraw money from the treasury of the United States for various purposes, including providing assistance to foreign countries. Therefore, the United States Congress has the power through enacting laws to make appropriations and expenditures to various foreign assistance programs.

2. The Essential Principles of the Foreign Assistance Act

The Foreign Assistance Act of 1961 set forth some essential principles for providing foreign assistance. The Congress declared that one of the principal principles of United States bilateral development assistance is to “help the poor majority of people in developing countries to participate in a process of equitable growth.” 46 At the same time, “the bilateral development assistance authorized by

43 U.S. Const. art. I, § 1.
44 U.S. Const. art. II, § 1.
45 U.S. Const. art. III, § 1.
46 Legislation on Foreign Relations, supra note 29, at 20.
this Act was to be carried out in accordance with some other essential principles. For example, there is an assumption that the development process is primarily the responsibility of the people of the developing countries.” 47 Those developing countries were required to make a maximum effort “to stimulate the involvement of the people in the development process through the encouragement of democratic participation in private and local governmental activities.” 48

The Congress also requested the recipient developing countries to adopt economic reform and “to establish institutions of democratic governance since the successful transition of a developing country is dependent upon the quality of its economic and governance institutions, rule of law, and security of person, property and investments.” 49 In addition to that, Congress requested the recipient developing countries as well, “to encourage the participation of women in the national economies and to improve women’s status as an important means of promoting the total development effort.” 50

The United States Congress was ambitious in its endeavor to utilize foreign assistance to combat worldwide deadly diseases such as HIV/AIDS. The spread of this disease is a worldwide crisis. Thus, Congress authorized the President to provide assistance, “to deal with HIV/AIDS disease, including preventing, treating, and monitoring, and carrying out related activities, in countries in sub-Saharan Africa, the Caribbean, and other developing countries and areas.” 51

The Congress gave developing countries an incentive to make the most effective use of development assistance by deciding to focus its development assistance to countries, which demonstrate their commitment and progress toward the Congress’ objectives. These objectives were for example, “increases in

47 Id. at 21.
48 Id.
49 Id. at 23.
50 Id. at 22.
51 See Id. at 42.
agricultural productivity, reduction in infant mortality, reduction of rates of
unemployment, progress in combating corruption and improving transparency and
accountability.”

3. The Legislative Prohibition Against Violations of Human
Rights:

The ambition of the United States to maintain international peace and the
individuals’ personal security through the utilization of foreign assistance
expenditure and programs was obvious in the legislative prohibition against
providing development or security assistance to countries, which violate human
rights and legitimacy. The Congress “prohibited providing any assistance to the
government of any country which engages in a consistent pattern of gross violations
of internationally recognized human rights.” These violations include “torture or
cruel, inhuman, degrading treatment or punishment, or other flagrant denial of the
right to life, liberty and the security of person, unless such assistance will directly
benefit the needy people in such country.”

Congress confirmed its attitude to safeguard human rights by prohibiting any
provision of foreign assistance to “any government failing to take appropriate and
adequate measures, within their means, to protect children from exploitation, abuse
or forced conscription into military and paramilitary services.”

In fact, one can clearly observe that the United States Congress was
determined to combat violations against human rights including child exploitation
in military services. At the same time, Congress’ prohibition against providing
assistance is conditional upon the committing of a “consistent pattern of gross

52 See Id. at 21.
53 See Id at 59.
54 Id.
55 Id.
violations of human rights.” 56 This means that a few and inconsistent violations of human rights may be dropped. Also, these violations may be dropped when the assistance will directly benefit the needy people in that country. In that case, the United States Government may drop the prohibition and proceed to provide the assistance in favor of the needy people of the violator country. This solution is necessary and rational, based on practical reasons, and reflects the flexibility of United States foreign assistance policy since “this policy has as a principal goal to alleviate the worst physical manifestations of poverty among the world’s poor majority.” 57 Thus, it should not punish the poor needy people because of violations committed by their country. However, this prohibition against providing assistance in cases of consistent and gross violations of human rights constitutes a serious pressure on governments, which violate human rights. It may result in precluding these illegal practices gradually, since this foreign assistance policy place these violator countries under pressure, focusing on their illegal practices, denouncing their violations of internationally recognized human rights, and driving them to respect human rights.

Since 1998 The Congress has been trying to encourage adherence to civil, political and religious rights. For this purpose, Congress has authorized the President of the United States “to use $3,000,000 each fiscal year for carrying out programs and activities which will encourage increased adherence to civil and political rights, including the rights to free religious belief and practice.” 58

In fact, since the enactment of the International Religious Freedom Act of 1998, the United States Congress has been trying to address the problem of violations of religious freedom, which occur in many countries, “where there is not

56 Id.
57 Id. at 19.
58 Id. at 62-63.
sufficient statutory legal protection for religious minorities or there is not sufficient
cultural and social understanding of religious freedom. In fact, the United States,
which traditionally advocates the freedom of religious belief and practice as an
integral part of its history and quest for personal freedom, has found through foreign
assistance an appropriate instrument to encourage countries eligible for assistance to
adhere to civil and political rights including the right to free religious belief and
practice. This foreign assistance policy is placing countries eligible for assistance
under scrutiny to identify the legal, cultural and social protection for religious
freedom and the status of religious minorities. Furthermore, this assistance policy is
gradually driving the aforementioned countries to greater respect of religious
freedom and minorities under the Universal Declaration of Human Rights. This
policy will ensure social peace and individual freedom and security in many
developing countries, which suffer from sectarian disturbances, violence and
religious’ minority persecution. This environment of disturbances and unrest may
preclude the economic development of these societies, while respecting minorities
and religious freedom may reflect in enhancing economic development and social
progress in these countries.

4. The Military Assistance and Egypt:

The requirements of United States foreign policy, its strategic objectives, the
security of the United States and the maintenance of the international peace and
security necessitate the United States to provide friendly countries with military
assistance. United States tradition authorizes the President to conduct foreign
policy; Congress while retaining the amount of expenditure commits the
administration of military assistance to the President.

\[59\] Id. at 63.
The Foreign Assistance Act authorizes the President to furnish military assistance, "on such terms and conditions as he may determine, to any friendly country or international organization, the assisting of which will strengthen the security of the United States and promote world peace."60 The providing of military assistance is subject to conditions of eligibility. These conditions include one stating that "no military articles shall be furnished on a grant basis to any country at a cost in excess of $3,000,000 in any fiscal year unless the President determines that such military articles will be utilized by such country for the maintenance of its own defensive strength and that is important to the security of the United States."61

As the military assistance offered mainly to serve the security and strategic objectives of the United States, its allies and the maintenance of international peace and security, the United States government may terminate furnishing military assistance to any country "if such country uses military articles or services in substantial violation of any agreement concluded under Foreign Assistance Act."62

Egypt has long been an important ally of the United States in the Middle East since Egypt and the United States share strategic interests and objectives that include supporting the United States in the war against terrorism. Furthermore, the renewed tensions in the Gulf have increased United States national interest in strategic and military cooperation with Egypt. Therefore, the Foreign Operations, Export Financing and Related Programs Appropriations Act of 2003, provides under the foreign military financing program that "Not less than $1,300,000,000 shall be made available for grants only for Egypt."63

In 1996, the President of the United States designated Egypt as one of the major non-Nato allies of the United States for purposes of the Foreign Assistance

62 Legislation on Foreign Relations, supra note 29, at 239.
Act and the Arms Export Control Act.\textsuperscript{64} The other allies designated by the President at the same time were Australia, Israel, Japan, the Republic of Korea and New Zealand. The extreme importance of these allies, among which Egypt was listed, demonstrates the importance of Egypt as an ally of the United States and its pre-eminent strategic role to maintain peace and security in the Middle East. This political and strategic importance of Egypt in the Middle East justifies the United States remarkable military assistance to Egypt.

5. The Economic Support Fund Assistance for Egypt and the Middle East Peaces Process

This kind of American foreign assistance has been created to meet the requirements of special economic, political, and security conditions which necessitate providing economic assistance for some specific countries in greater amounts, which could not be, justified solely under development assistance justifications. In such cases, “the Congress authorizes the President to furnish assistance to countries and organizations, in order to promote economic and political stability.”\textsuperscript{65} However, the amounts of economic support fund assistance must be available for economic programs and may not be used for military or paramilitary purposes.

Egypt is one of the main recipients of aid from the economic support fund. The conclusion of the Egyptian-Israeli peace treaty and the participation of the Camp David Accords in 1979 entailed Congress' authorization of economic support to Egypt and Israel. “Congress authorized for Egypt $815,000,000 for fiscal year 1986 and not less than $815,000,000 for fiscal year 1987 on a grant basis.”\textsuperscript{66} In 1979, the government of Egypt and the government of Israel concluded a peace

\textsuperscript{64} Pub. L. 104-164 State. 1427.
\textsuperscript{65} 22 U.S.C. § 2346.
\textsuperscript{66} Pub. L. 99-591: 100 State. 3341.
treaty. As this treaty constitutes a significant step toward a full and comprehensive peace in the Middle East, the Congress authorized additional funds for economic assistance for Egypt to promote its economic stability and development and to support the peace process in the Middle East. Congress "appropriated $300,000,000 for Egypt for the fiscal year 1979."\(^{67}\)

The ambitious quest of the United States to foster the peace process in the Middle East resulted in, after Egypt and Israel peace treaty in 1979, a second peace treaty in the region between Jordan and Israel in 1994. Another significant step was the signing by Israel and the Palestine Liberation Organization a Declaration of Principles on Interim Self-Government Arrangements on September 13, 1993, at the White House. A subsequent step was the signing of an agreement between Israel and the Palestine Liberation Organization in 1994, which established a Palestinian Authority for the Gaza and Jericho areas. In 1995, the two parties signed the Israeli-Palestinian Interim Agreement on the West Bank and Gaza, which transferred the powers and responsibilities to an elected Palestinian Council with jurisdiction in the West Bank and Gaza. The Congress, under the Middle East Peace Facilitation Act of 1995 decided that: "The assistance provided to Palestinians shall be held to the same standard of financial accountability and management control as any other United States assistance."\(^{68}\)

The United States House of Representatives Appropriations Committee supported providing $ 25,000,000 in fiscal year 1994 for assistance to the West Bank and Gaza, which is the amount provided also in fiscal year 1993 and started in 1975. The House of Representatives Committee believes that: "United States

\(^{67}\) 22 U.S.C. § 3403.
\(^{68}\) Legislation on Foreign Relations through 1997, 236.
support for the economic and social development of Palestinians is an essential part of the peace process.” 69

In fact, this House of Representative Appropriations Committee resolution to offer this assistance to Palestinians in the West Bank and Gaza may be the beginning of a trust building process, which is essential for the Middle East peace process. Therefore, the bold ambition of the United States to maintain international peace and security, utilizing, inter alias, its foreign assistance programs, is extremely encouraged to help resolve the Middle East crisis and establish peace and development in the region.

**B. Egypt and United States Economic Assistance Agreement**

**1. The Principal Assistance Agreement**

This agreement, which is named the “Arab Republic of Egypt Economic, Technical, and Related Assistance Agreement,” 70 is the principal assistance agreement concluded between the governments of the United States and Egypt. The representatives of the two governments at that time, the American Ambassador in Egypt Mr. Hermann Eilts and the Egyptian Minister of Foreign Affairs Mr. Mohamed Ibrahim Kamel, signed this agreement on August 16, 1978 in Cairo. The Egyptian People’s Assembly, which is the main legislative body and has the power to enact laws and agree on international treaties, supported this agreement. Then, the President of the Republic, Anwar El Sadat, ratified that agreement on October 15, 1978. The main objective of this agreement is to declare the consensus of its parties, the United States and Egypt, on the provision of economic and technical assistance by the United States to Egypt. Thus, the agreement decided the principles of providing the American foreign assistance to Egypt, leaving the details of every

---

69 See H.R.Rep, supra note 34, at 70.
70 Official Journal, supra note 19, at 1394.
assistance program or project to subsequent agreements relating only to a specific program or project within the periphery of the principal assistance agreement of 1978.

2. The Impact of the Assistance Agreement on the Middle East Peace Process:

One may notice that the signature of this agreement on August 16, 1978, preceded the signature of the peace treaty concluded between Egypt and Israel on Mars 26, 1979 in Washington D.C. In fact, the signature of both agreements was on the threshold of a new era for Egypt economic development and the Middle East peace process. The two agreements consolidated each other, since there is no economic development without peace, which enables the country to devote its resources and workforce to economic growth and progress. At the same time, Egypt’s economic development and political stability helps it to maintain the peace and security in the region vis-à-vis the opponents of the peace process and their terrorist allies. Indeed, the relationship between the aforementioned two agreements has been confirmed. There is a clear relationship as well between fostering the peace process in the Middle East and alleviating the worst physical manifestations of poverty and psychological frustration of the Palestinians in the Middle East. The success of the United States efforts to establish a peace settlement between Egypt and Israel and to support the economic development of Egypt, at the same time, encourages the prospects of following the same policy. The commitment of the Palestinians to the peace process should be associated with supporting their economic development, taking into consideration that their counterpart Israel is enjoying American assistance.
3. The Essential Principles of the Principal Assistance Agreement:

The principal assistance agreement of 1978 places obligations on both parties, the United States and Egypt. "The United States will furnish such economic, technical, and related assistance as may be requested by Egypt and approved by the Government of the United States."

"The aforementioned assistance is to be made available in accordance with arrangements agreed upon between the two parties."

The agreement places as well obligations on Egypt. For example, Egypt must "make the full contribution permitted by its manpower, resources and facilities in furtherance of the assistance purposes. Also, Egypt must permit observation and review by United States representatives of assistance programs and operations," and provide the United States with information concerning such programs and operations.

The two parties agreed that Egypt would receive an American "special mission to carry out the responsibilities of the Government of the United States under this agreement." The special mission was to enjoy the same "diplomatic immunity of premises as the diplomatic mission of the United States in Egypt."

The application of this provision revealed that the special mission, which carries out the responsibilities of United States under that agreement is the United States Agency for International Development (USAID). This Agency is the representative of the United States regarding the application of that assistance agreement. It designs and conducts assistance programs and projects in conjunction with the Egyptian government.

---

71 id. at 1394.
72 id.
73 id.
74 id. at 1395.
75 id.
4. The Legal Power of the Principal Assistance Agreement:

The Arab Republic of Egypt Economic, Technical and Related Assistance Agreement, was signed by the representatives of the United States and Egypt, and approved by the Egyptian legislative body the Peoples Assembly, and ratified by the President of the Arab Republic of Egypt. The Egyptian President issued the agreement by a presidential decree No. 458 of 1978, and thus, the official journal of Egypt published the agreement on November 30, 1978.

Therefore, the agreement as an international agreement meets all the requirements of the Egyptian Constitution according to Article 151 of the constitution to have “the force of law.”\textsuperscript{76} That entails the application of this agreement in Egypt as an effective and binding agreement.

\textsuperscript{76} Egyptian Const. art. 151.
V. The Legal Attitude of the Egyptian Judiciary toward American Assistance

A. The Legal Status of USAID and its Staff

1. The Diplomatic Immunity of USAID Staff:

The Arab Republic of Egypt Economic, Technical and Related Assistance Agreement governs the provision of United States economic and technical assistance to Egypt. The agreement places obligations on the two parties. The U.S. has to provide the contemplative assistance while Egypt agrees to receive a special mission to carry out the provision of the assistance to Egypt and other responsibilities of the United States. Egypt agrees as well that: “This mission would enjoy the same diplomatic immunity of premises as the diplomatic mission of the United States in Egypt.”\(^77\)

The United States Agency for International Development carries out the responsibilities of the United States under that agreement, and thus, its premises have the same diplomatic inviolability as is extended to the diplomatic mission of the United States in Egypt. In addition to that, the agreement accords all United States Government employees, and their families, who are United States citizens in Egypt and perform work in connection with that agreement, “the same diplomatic immunity as is accorded to the personnel of the Embassy of the United States in Egypt.”\(^78\)

Therefore, the staff of United States Agency for International Development enjoys the same privileges and immunities as diplomatic agents, and thus, in accordance with Article 31 of the Vienna Convention on Diplomatic Relations, to which Egypt is party,\(^79\) enjoys judicial immunity from the criminal, civil and administrative jurisdiction of Egyptian courts. This immunity entails that the

---

\(^77\) Official Journal, supra note 19, at 1395.

\(^78\) Id.

\(^79\) See Egyptian adherence to this Convention, Official Journal, No. 271. at 2077, (1964).
personnel of the United States Agency for International Development and their families, in Egypt, are not subject to the jurisdiction of Egyptian criminal, civil and administrative courts, except in certain limited cases enlisted in Article 31 of the Vienna Convention on Diplomatic Relations relating to the private real estate property or commercial activity practiced by the diplomatic agent outside his official duties.

In fact, the U.S. and Egypt Governments agreed that USAID Mission personnel, who are American citizens and performing work in Egypt in connection with the American assistance, enjoy judicial immunity from the jurisdiction of Egyptian courts. This immunity is identical to the immunity of diplomatic agents under the Vienna Convention on Diplomatic Relations to which Egypt is a party. The rationale of this immunity is to ensure the effective performance of the diplomatic mission as representative of their sovereign states.

2. The Attitude of the Egyptian Judiciary toward the Diplomatic Immunity:

The Egyptian Judiciary’s attitude toward the diplomatic and judicial immunity of the staff of the United States Agency for International Development is obvious in the judgments of the South Cairo Primary Court and Court of Appeals in the Delgado case. This case is Case No. 265 of 1998 of South Cairo Primary Court. Ms. Nawal El Kadi, the plaintiff, filed this case and asked the South Cairo Primary Court to obligate the defendants to pay her L.E. 200,000 damages because of a car accident in which she sustained injuries. There were four defendants: the driver of the car, Aron David Delgado and his father David Delgado who was USAID staff, the U.S. Ambassador in Cairo, and El Shark Insurance Company.

The South Cairo Primary Court rendered its judgment on January 30, 2000
and decided that it had no jurisdiction over the first three defendants Delgado, the father who was USAID staff, his son and the United States Ambassador in Cairo as they enjoy diplomatic immunity. The South Cairo Primary Court decided to dismiss the case regarding the insurance company since the car accident occurred after the termination of the insurance policy.

The plaintiff filed appeal No. 2990 of judicial year No. 117 before the Cairo Court of Appeals. The appellant limited her claim only to the insurance company and she did not contest the South Cairo Primary Court’s judgment regarding the judicial immunity of the USAID member’s staff, his son and the U.S. Ambassador in Cairo. The Cairo Court of Appeals rendered its judgment on April 30, 2001 and decided to overturn the primary court judgment relating only to the insurance company. The Court of Appeals obligated the insurance company to pay the appellant L.E. 40,000 in damages. At the same time, the Court did not touch the aforementioned first-degree judgment relating to diplomatic immunity of the three first defendants.

In fact, the first degree judgment, in which South Cairo Primary Court declared that it had no jurisdiction over the USAID employee, his son and the United States Ambassador in Egypt complies with the Arab Republic of Egypt Economic, Technical and Related Assistance Agreement, which accords judicial immunity to USAID American staff and their families in Egypt. 80 That judgment complies as well with the Vienna Convention on Diplomatic Relations, which accords the same immunity to diplomatic agents. 81 The Cairo Court of Appeals judgment also maintained this part of the South Cairo Primary Court judgment relating to immunity, while overturning the other part of that judgment relating to

80 See Official Journal, supra note 19, at 1395.
81 See Official Journal, supra note 79, at 2081.
the insurance company since the car accident occurred within the extension period of the insurance policy, which was one month after the insurance termination date according to Law No. 652 of 1955.

3. The Attitude of the Egyptian Judiciary Toward the USAID Commodity Import Program:

a) The Commodity Import Program is a series of grant agreements concluded between the United States and Egypt starting in 1979. Under these grant agreements the United States provides Egypt with foreign currency costs of imported commodities. For example, the Commodity Import Program Grant Agreement of 1979 states that: “It has as an objective to assist Egypt to cover foreign currency shortage and to achieve the economic development objectives.”

This program has been instrumental in helping Egypt to reduce its sizeable balance of payments deficits and in ameliorating Egypt’s negative foreign exchange position. In addition to that, the program provides the participating private sector companies with interest-free grace periods and special loan financing terms.

Thus, the program assists the Egyptian private sector companies by providing them with attractive short to medium-term financing of their importation of raw materials, intermediate goods and capital equipment from the United States. Under the program, Egyptian importers pay off their Egyptian local currency loans to the Egyptian participating banks. The Egyptian participating banks request their United States correspondent banks to issue an irrevocable letter of credit in favor of the United States’ suppliers or exporters. Then, under the request of the Egyptian Government to obtain disbursements of American currency to American bank or banks, USAID reimburses the American bank or banks on behalf of the Egyptian Government for payments made to American suppliers or exporters under letter of

---

credit. The Egyptian participating banks deposit the Egyptian local currency payments collected from Egyptian importers in the special account with the Central Bank of Egypt. "This special account of local currency bears the Government of Egypt name."\(^{63}\) The two parties of the Commodity Import Program Grant Agreement, the United States and Egypt, may prescribe the purposes of utilizing the Egyptian local currency of the special account.

The typical uses of that special account under the Commodity Import Program Grant Agreements is prescribed in the Agreement of 1995 which includes: "General budget support to the Government of Egypt and sector budget support to individual Ministries or Agencies of the Government of Egypt and other development activities agreed upon by the Government of Egypt and USAID."\(^{84}\)

b) The attitude of the Egyptian judiciary toward the Commodity Import Program and the responsibility of the United States Agency for International Development for the damages resulting from the performance of this program is the subject matter of the Ghanaam Cases. The first Ghanaam Case was case No. 610 of the year 1989, before the Commercial Circuit, South Cairo Primary Court. The plaintiff, Mr. Ghanaam filed this case against the following defendants: the United States Agency for International Development, represented by its Director, the President of Untied States of America, the Minister of International Cooperation, and the Central Bank of Egypt. The plaintiff asked the court to obligate the defendants to return to him the sum of L.E. 1,350,000, which he had deposited in the Misr Bank, one of the participating banks under the Commodity Import Program Grant Agreement. The plaintiff added that the imported commodity sent by the American supplier was defective and the United States Agency for

\(^{63}\) Official Journal, supra note 19.

International Development was a guarantor of the program. The plaintiff declared to
the court that he requested no damages; rather he requested the return of the money
he paid for the transaction.

On February 28, 1992, South Cairo Primary Court dismissed the case. It held
that the United States Agency for International Development is not a guarantor of
the Commodity Import Program according to Egyptian law, since Article 279 of the
Civil law states that: “Guarantee cannot be assumed, rather it will be according to
an express agreement or a provision of law.”\textsuperscript{85} The court held as well that the
plaintiff got from United States Agency for International Development American
currency equal to the Egyptian currency he deposited for the performance of the
importation transaction according to the commodity import program grant
agreement. The court also held that there was no evidence that USAID managed to
get back the money paid to the supplier. The plaintiff’s request to get back the
money he deposited had no legal ground since he got it in the form of American
currency, and thus, he could not get this money twice. For all of the aforementioned
reasons the court dismissed the case.

In 1994, the plaintiff filed an appeal before Cairo Court of Appeals No. 1281
of the court judicial year 111. On August 6, 1996, the Court of Appeals decided not
to accept the appeal because the appellant had presented new demands for the first
time before the Court of Appeals, which were different from his demands before the
primary court. The Court of Appeals held that Article No. 235 of the Civil
Procedural Law prohibits the presentation of new demands for the first time before
the Court of Appeals.

In fact, the United States Agency for International Development, according to

\textsuperscript{85} Civil Code, art. 279.
the Commodity Import Program Grant Agreements is a financier. It funds and finances the American currency required to purchase the commodities. Thus, it is a financier and not a guarantor. It does not guarantee the American supplier or the commodities, since the Egyptian importer chooses the American supplier by himself and the commercial transaction between the importer and supplier is based on the letter of credit made by the participating banks, such as the case in any other commercial transaction. The importer may request inspection services if it is specified in the purchase contract to ensure that the commodity conforms to the contract. Therefore, under the commodity import programs the United States Agency for International Development is not a guarantor or responsible for the non-conformity of the Commodity. Rather, it is the responsibility of the supplier, who exports this defective commodity.

c) The second Ghanaam case was case no. 12901 of the year 1996 before the Damages Circuit, South Cairo Primary Court. The plaintiff Mr. Ghanaam filed this case against the following defendants: the President of the United States in his capacity as the legal representative of the United States Agency for International Development: the Minister or Secretary of State for International Cooperation as responsible for the United States Agency for International Development the Director of the United States Agency for International Development the Egyptian Minister of Economy and International Cooperation.

The plaintiff asked the court to obligate the defendants to pay him $1,032,500 as material and moral damages. He claimed that the defendants did not help him to enforce the judgments that the Egyptian and the American courts had rendered against Baraka Company, which was the American supplier responsible for exporting the defective commodity under the Commodity Import Program Grant.
Agreement. The plaintiff maintained that the American court obligated Barka to pay him $562,500 in damages, but the defendant gave him no help to enforce the judgment.

The South Cairo Primary Court dismissed the case and held that the defendants were not a party in the contract concluded between the plaintiff and the American supplier Baraka and they were not as well a party in the cases filed by the plaintiff against the American supplier. Furthermore, the court held that defendants were under no legal obligation to enforce these judgments against the American supplier since they are not judgment enforcement entities charged with the enforcement of judicial decisions.

In fact, as the court held, the United States Agency for International Development is not responsible before the importer for enforcing the judgment rendered in his favor against the American supplier. However, the South Cairo Primary Court in this second Ghanaam case did not address the defense of sovereign immunity of the United States Agency for International Development and the other two American defendants. This topic will be examined later under the title sovereign immunity defense.

d) The Commodity Import Program was the subject matter of another case No. 18 of the year 2001, of the Commercial Circuit Assiut Primary Court. The case was filed by Mr. Abu Hemid against the Director of USAID and the Director of American supplier Hardy Company. The Egyptian Minister of International Cooperation asked the court to let him intervene in the case to support the legal position of USAID in the performance of the commodity import program, since the Egyptian Government has interest and partnership in this program, which justifies its intervention in the case as a co-defendant to USAID.

The Assiut Primary Court decided on May 18, 2004 not to accept the
intervention of the Egyptian Minister of International Cooperation in the case as a co-defendant to support USAID. The court held that the Egyptian Minister of International Cooperation did not serve its requests to the parties of the case.

On June 24, 2004, the Minister of International Cooperation filed an appeal No. 103 of the court judicial year 79 before the Commercial Circuit No. 7, Assiut Court of Appeals. The Court of Appeals rendered its judgment on May 30, 2007. It decided to overturn the judgment of the Assiut Primary Court and to accept the intervention of the Minister of International Cooperation in the case, as he served his intervention properly to the other parties.

In fact, this Court of Appeals judgment having accepted the intervention of the Egyptian Minister of International Cooperation in the case as co-defendant to the United States Agency for International Development, confirms the mutual interests and the partnership of the United States Government and the Egyptian Government in the performance of the Commodity Import Program and other American assistance programs and projects under the Economic Assistance Agreement of 1978. This partnership between the two governments justifies the intervention of the Egyptian Government in cases involving the American assistance to Egypt since the main objective of this assistance is the economic development of Egypt and the public and mutual interests of the two governments.

4. The Attitude of the Egyptian Judiciary toward the Sovereign Immunity of USAID:

The Commercial Circuit, South Cairo Primary Court, expressed its attitude toward the sovereign immunity defense of the United States Agency for International Development in its judgment in the first Ghanaam case No. 610 of 1989. The court held that foreign states enjoy judicial immunity from the
jurisdiction of national courts. However, there is no absolute immunity. Rather, immunity is limited to sovereign acts while commercial acts are subject to the national judicial jurisdiction. The South Cairo Primary Court concluded that the subject matter of the case is a commercial transaction between an Egyptian importer and an American supplier or exporter through the Commodity Import Program Grant Agreement concluded between Egypt and the United States. The court added that the dispute is the result of a commercial transaction performed by the United States Agency for International Development, and thus, rejected the defense of sovereign immunity.

In fact, the restrictive theory of sovereign immunity is accepted by nearly all states. Under this theory, “a state is immune from any exercise of judicial jurisdiction by another state in respect of claims arising out of governmental activities.” However, a state is subject to the judicial jurisdiction of another state for its private, notably commercial activities.

The United States Agency for International Development is the mission, referred to by the Arab Republic of Egypt Economic, Technical and Related Assistance Agreement of 1978. That principal assistance agreement points out that the United States and Egypt Governments agree that: “A special mission will be received by Egypt to carry out the responsibilities of the United States Government under this agreement.” That agreement accorded diplomatic immunity to the premises of this mission and its personnel as is extended to the American Embassy and its personnel in Egypt.

87 Official Journal, supra note 19, at 1395.
88 Id.
In fact, the United States Agency for International Development Mission in Egypt has comparable legal status to the United States Embassy in Egypt, since the former represents the United States in providing American economic and technical assistance to Egypt while the latter represents the United States in political affairs in Egypt. Furthermore, the United States Agency for International Development Mission in Egypt carries out and conducts the responsibilities of the American Government under the aforementioned agreement. It exercises a high foreign policy function of a public government character, and for the public interest of the United States and Egypt. It clearly exercises no commercial activities and it has no commercial profit or profit gaining intention. On the contrary its objective is the economic development of Egypt. It provides Egypt with American assistance under the U.S. Foreign Assistance Act of 1961 and the principal Economic Assistance Agreement of 1978 and other subsidiary agreements for various projects and programs of American assistance in Egypt. It follows up the performance of these agreements to ensure their proper execution.

Therefore, the activities of the United States Agency for International Development in providing American assistance to Egypt are purely governmental activities as representing the Government of the United States and performing a high foreign policy function. According to the prevailing restrictive theory of sovereign immunity, USAID is immune from the national judicial jurisdiction as an instrumentality of the United States as a sovereign state. Thus, the Commercial Circuit, South Cairo Primary Court erred in rejecting the defense of sovereign immunity in the first Ghanaam case since the United States Agency for International Development Mission, in supervising the performance of the Commodity Import Program, is not a party to the commercial transaction concluded.
between the American supplier and Egyptian importer for the purchase of
commodities. It gains no profit from this transaction, and bears no commercial risk
or loss if one of the parties of this transaction violates its obligations or
commitments under the purchase contract.

The supervision of USAID of the performance of that commercial transaction
within its supervision of the whole commodity import program under the American
assistance to Egypt grant agreements and international law is similar to the
supervision of government agencies of some commercial activities to ensure their
compliance with laws and regulations under administrative national laws. This
government supervision of commercial activities to ensure compliance with laws is
an integral part of government function, and thus, does not transform the purely
governmental activities to commercial activities. Therefore, the whole activities of
the United States Agency for International Development Mission in Egypt, in
carrying out the responsibilities of the United States under Foreign Assistance Act
of 1961 and U.S./Egypt principal Assistance Agreement of 1978 and other projects
and programs assistance agreements, including Commodity Import Program, are
governmental activities. Thus, these activities covered by the defense of sovereign
immunity are not subject to domestic judicial jurisdiction. The recognition and
application of the sovereign immunity for the United States Agency for
International Development activities in carrying out these responsibilities in Egypt
complies with the “rules of international law the disregard of which involves
international responsibility.”89 These rules have been consistently recognized and
applied by “different domestic courts worldwide whether of common law or civil
law systems.”90

Therefore, one can conclude that the acts and activities of the United States Agency for International Development in carrying out the responsibilities of the United States under the American assistance agreements are of a governmental nature, performing a high foreign policy function, and thus, are immune from the jurisdiction of domestic national courts under the restrictive theory of sovereign immunity.

The judgment of the Cairo Court of Appeals in appeal No. 10423 of the judicial year 116, rendered on August 12, 2001, confirms the recognition and application of the sovereign immunity rule in favor of USAID. This appeal relates to the aforementioned second Ghanaam case No. 12901 of the year 1996, in which the Damages Circuit of South Cairo Primary Court dismissed the case on its merits. The plaintiff filed the above appeal. The Cairo Court of Appeals held that the plaintiff based his case on the default of USAID and the United States President and the United States Secretary of State in enforcing the American judgment rendered in his favor, obligating the American supplier to pay him damages. The Court of Appeals held as well that the enforcement of courts judgments is one of the governmental sovereign acts, which the state exercises in its sovereign capacity, and thus, is covered by sovereign immunity. It results in the immunity of one state and the representatives of its public authorities from the judicial jurisdiction of the courts of another state. The Court of Appeals overturned the judgment of Damages Circuit, South Cairo Primary Court, and decided that the Egyptian courts have no jurisdiction over the case.

In fact, this Court of Appeals judgment conforms to the reality that the USAID Mission in Egypt represents the United States Government in performing
the foreign assistance policy of the United States toward Egypt. This policy concerns a government-to-government relationship and has as an objective to achieve the supreme interests of the two states. Thus, USAID activities in that context are purely governmental activities covered by the defense of sovereign immunity, according to which the Egyptian courts have no jurisdiction. That immunity of USAID from the jurisdiction of Egyptian Courts may result in positive impact on the assistance process. It may remove the prospect of conflicts between the two sovereign states regarding the performance of American assistance programs in Egypt. Also, it may facilitate the streamlining of the American assistance programs and projects in favor of the economic development and ongoing progress of Egypt.

B. The Resolution of Conflict between American Assistance Agreements and Egyptian Legislation

The first and primary conflict between American Assistance Agreements and Egyptian legislation occurred regarding the awarding of a sewerage contract funded by USAID under the Alexandria Sewerage System Expansion Grant Agreement. According to the provisions of that Grant Agreement, United States consultants prepared the bidding conditions and specifications which were contrary to provisions of Egyptian law No. 9 of the year 1983 of Government Tenders and Bids. The Egyptian General Sewerage Authority requested that the conditions and specifications of the bid and award of the contracts comply with the provisions of Egyptian law No. 9 of 1983. However, USAID maintained that the projects under that Grant Agreement are not subject to that law. Rather, they are subject to that Agreement and American standards. The General Authority of Sewerage submitted the conflict to the State Council Advisory Section in Alexandria, which referred it
to the State Council General Assembly of the Advisory and Legislative Sections in Cairo, which according to law No. 47 of 1972 has jurisdiction to provide government entities with legal opinions.

On April 30, 1985 the State Council General Assembly decided that: “The provisions of Alexandria Sewerage System Expansion Grant Agreement concerning selecting of the winning bid and contracting procedures should be applied despite their conflict with provisions of Egyptian law No. 9 of 1983.”91 The State Council General Assembly held that the Alexandria Sewerage System Expansion Grant Agreement concluded between the Government of the Arab Republic of Egypt and the Government of the United States of America satisfied the required constitutional procedures since it was ratified by the President of the Republic, agreed to by the Peoples Assembly and published in the Official Journal. Thus, this American Grant Agreement has the force of law. Its provisions concerning selecting of the winning bid and conditions and procedures of contracting govern even if contrary to the provisions of Law No. 9 of 1983 according to the legal principle that specific law takes precedence over general law.92

In fact, the aforementioned State Council General Assembly legal opinion of 1985 recognizes that USAID Grant Agreements take precedence over conflicting Egyptian laws and regulations, thereby establishing a legal rule, which has been crucial in resolving conflicts between American and Egyptian legal systems involved in the performance of American assistance programs and projects in Egypt. That State Council General Assembly legal opinion of 1985 complies with the provisions of the principal assistance agreement namely, the Arab Republic of

92 See Id, at 365-366.
Egypt Economic, Technical and Related Assistance Agreement of 1978, which states that: “The furnishing of American assistance shall be subject to applicable United States laws and regulations.” Therefore, the provisions of programs and projects of American Grant Agreements, which express the joint willingness of the American and Egyptian Governments, are eligible to supersede the conflicting Egyptian laws and regulations. Furthermore, the American Assistance Grant Agreements is especially designed to apply to the new assistance projects and programs in Egypt. The precedence of these Grant Agreements over conflicting Egyptian laws facilitates the streamlining of these American programs and projects, which are reflected in enhancing the economic development and progress of Egypt.

In this context one can conclude that in addition to the legal soundness of the State Council General Assembly decision of 1985, this decision has been helpful in resolving conflict between American and Egyptian legal systems and facilitated the performance of American assistance projects and programs, in favor of the goals of Egyptian development.

53 Official Journal, supra note 19.
VI. CONCLUSION

United States foreign assistance has a far-reaching humanitarian, economic and political dimension. It positively affects the economic development, peace, security and stability of developing countries and their respective regions, including Egypt and the Middle East. The signature of the principal assistance agreement between U.S. and Egypt in 1978 and the signature of the peace treaty between Egypt and Israel in 1979 inaugurated a new era in the Middle East and put an end to military hostility between Egypt and Israel. "In recognition of Egypt’s pre-eminent leadership role in the Middle East, the United States significantly expanded its assistance program, making Egypt the beneficiary of one of the largest American assistance programs worldwide."94 "From 1975 until 2002/2003, the United States devoted $25.6 billion for its economic and development assistance to Egypt."95 The Arab Republic of Egypt Economic, Technical and Related Assistance Agreement of 1978 is the principal assistance agreement. The representatives of U.S. and Egypt signed that agreement on August 16, 1978 in Cairo. The People's Assembly, which is the main legislative body, supported the agreement. The Egyptian President ratified the agreement and issued it by presidential decree No. 458 of 1978, and thus, the official journal published it.96 Therefore, the agreement meets all the requirements of the Egyptian Constitution for having the force of law and to be applied as an effective and binding international agreement. It determines the fundamental elements of providing American assistance to Egypt, leaving the details of every program to subsequent agreements within the periphery of the agreement of 1978.

94 USAID/ Egypt, Status Report, supra note 41, at 4.
95 Id.
96 See Official Journal, supra note 19, at 1394.
On April 30, 1985, the State Council General Assembly of the Advisory and Legislative Sections, a judicial body, held that the provisions of the American assistance agreements took precedence over conflicting Egyptian laws and regulations. The State Council decision has been crucial in resolving conflicts between American assistance agreements and Egyptian laws. The resolution of this conflict has facilitated the performance of American assistance projects and programs in favor of Egyptian development and progress.

According to the principal American Assistance Agreement of 1978, "the United States Agency for International Development Mission in Egypt is the special mission, which carries out the responsibilities of the United States in providing assistance to Egypt under that agreement." The Egyptian Judiciary confirmed in its judgments that the USAID staff have judicial immunity from the jurisdiction of Egyptian courts. In fact, the United States Agency for International Development Mission in Egypt carries out the responsibilities of the U.S. in providing Egypt with economic and technical assistance. It exercises a function of a public government character and for the public interest of U.S. and Egypt. USAID is not involved in commercial activities in providing this assistance or in supervising the assistance programs and projects under assistance grant agreements in Egypt. Therefore, USAID activities in that context are purely governmental activities covered by the defense of sovereign immunity. The immunity of these activities reflects on the performance of the American assistance projects in Egypt, and results in supporting the development process of Egypt.

97 See Official Journal, supra note 19, at 1394-1395.