# Funding Post-Conflict Reconstruction[1]

## I. Introduction

In the wake of the attacks on the United States on September 11, 2001, the Bush administration, and indeed the American people, has recognized the need to adequately support a broad range of international programs to address the threatening new environment Americans face. As the President himself has said, "We have a great opportunity to extend a just peace, by replacing poverty, repression, and resentment around the world with hope of a better day...In our development aid, in our diplomatic efforts, in our international broadcasting, and in our educational assistance, the United States will promote moderation and tolerance and human rights. And we will defend the peace that makes all progress possible."[2] Delivering on this inclusive vision costs money. And as Secretary Colin Powell has noted: "we cannot do any of this -- we cannot conduct an effective foreign policy or fight terrorism -- without the necessary resources."[3]

And yet even though the public constituency in support of increasing foreign aid is high, the challenge is not only, or even principally, a question of increasing resources to foreign affairs budgets.[4] It is even more about *how* we fund foreign affairs. This question of "how" was recognized to be a problem well before 9/11.[5] Foreign assistance monies are authorized in the Foreign Assistance Act of 1961 (FAA), a law that has been amended multiple times, and is encumbered by its origination as tool of foreign policy within the Cold War paradigm. Post conflict reconstruction is a particularly problematic area of foreign assistance, from both military and civilian perspectives, because it involves such overlap between security and development—areas that were much more easily divided during the Cold War.

Both the previous Bush and Clinton administrations, to varying degrees, attempted to substantially rework foreign assistance legislation, but they met with little success.[6] The current President Bush has also begun the process of re-evaluating and retooling our foreign affairs funding machinery, this time by proposing an important initiative with respect to development funding. In March, the President proposed the creation of a new Millennium Challenge Account that will increase U.S. core development assistance by

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[2] Remarks by President George W. Bush at the 2002 Graduation Exercise of the United States Military Academy. West Point, New York, 1 June 2002.

[3] Testimony of Secretary of State Colin L. Powell before the Senate Appropriations Subcommittee on Foreign Operations, Export Financing. Washington, DC. April 24, 2002.

[4] According to a survey conducted by The Pew Research Center for The People and The Press, in conjunction with the Council on Foreign Relations and the International Herald Tribune, 53% of Americans approve of an increase in the U.S. foreign aid budget. Interestingly, the report states that younger Americans express particularly strong support for increasing foreign assistance. Approximately 65% of Americans under 30 approve of an increase in foreign aid. See "Bush Ratings Improve But he's Still Seen as Unilateralist: Americans and Europeans Differ Widely on Foreign Policy Issues," The Pew Research Center for The People and The Press, Council on Foreign Relations, and International Herald Tribune (April 17, 2002)

[5] Richard N. Gardner, *The One Percent Solution: Shirking the Cost of World Leadership,* Foreign Affairs, July/August 2000, pp. 2-11.

[6] In 1991 the Bush Administration attempted to rewrite the FAA, and in 1994 the Clinton Administration wanted to repeal the FAA and replace it with a new account structure. While failing in their ultimate goals, the limited successes of these attempts were establishment of special accounts for the former Communist countries of central and eastern Europe and the newly independent states of the former Soviet Union, as well as the establishment of funding for the Office of Transition Initiatives at USAID. For an overview of the history of US foreign assistance, see "A History of Foreign Assistance," USAID available at www.usaid.gov.

50 percent over the next three years, resulting in a $5 billion annual increase over current levels.[7] In announcing this fund, President Bush noted that "persistent poverty and oppression can lead to hopelessness and despair. And when governments fail to meet the most basic needs of their people, these failed states can become havens for terror." [8]

While the proposal for a Millennium Challenge Account is a very promising development, one that could help introduce an important element of competition into development assistance if it is passed by Congress, it is unlikely to affect the countries that are most likely to spawn or provide safe haven for terrorism. Indeed, the failed states cited by the president, and weak states emerging from conflict, do represent an opportunity for terrorists who thrive in the cracks of the international system. The problem is that these same weak and failed states emerging from war have myriad problems and little or no institutional capacity that might enable them to meet the prerequisite benchmark criteria for receiving funding.[9] These countries, the ones that have the most potential to threaten U.S. interests by creating vacuums that will be exploited by terrorists, suffer from a range of conditions and face an array of needs that will make competing for Millennium Challenge Account funds almost impossible.

If the new Millennium Challenge Account funds and funding mechanisms are unlikely to have a significant impact on U.S. capacity to effectively support countries emerging from conflict, we should therefore examine those funds and funding mechanisms we currently have at our disposal for addressing post conflict reconstruction needs.

## II. The Current Challenges of Funding Post Conflict Reconstruction

Five major challenges stand out as needing to be addressed if the United States government is to improve its ability to successfully fund post-conflict operations: coherence; speed; relative volume of resources; flexibility; and contracting and procurement mechanisms.

### *Coherence*

In order to have even the beginnings of coherence of effort in any undertaking, one needs a vision of an end goal or product, an understanding of the tools available and necessary to reach that goal, and unity of effort (i.e. coordination) to move toward that goal. These steps are especially difficult to accomplish in the area of post-conflict reconstruction due to the great number and complexity of tasks involved in these operations. The wide range of issues that need to be addressed in a post conflict environment means that there are many different pieces to fund and to coordinate even under the best of circumstances.[10] U.S. efforts in post-conflict reconstruction are disabled from the start due to the implementation of the U.S. budgeting process and the lack of a modern vision for foreign assistance, as codified in the Foreign Assistance Act.

Foreign affairs are principally financed through four different Congressional bills, each of which has to go under a lengthy and complex appropriations process. [11] The essential problem of the budgeting process,

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[7] Office of the Press Secretary, The White House. "Fact Sheet: A new compact for development." 22 March 2002.
[8] Remarks by President George W. Bush on Global Development at the Inter-American Development Bank, 14 March 2002.
[9] In his speech in Monterrey, the President laid out three major criteria for evaluating countries' requests for new funding: "ruling justly, investing in their people, and encouraging economic freedom." Benchmarks are currently being designed to evaluate requests, and many officials close to the process acknowledge that conflict stricken, impoverished countries may have a difficult time in meeting them.
[10] A matrix of tasks to be addressed in post-conflict reconstruction can be found in the "Post-Conflict Reconstruction Task Framework," available at www.pcrproject.org.
[11] As pertains to foreign affairs, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies (CJS) bill funds the operations of the State Department, U.S. diplomacy, and assessed contributions to international organizations and United Nations peacekeeping.

however, is not its bureaucratic complexity, but instead that it is not favorable to long-term planning. A comprehensive approach to post-conflict reconstruction, aimed to produce sustainable results, must have a multi-year program commitment, yet annual funding appropriations limit use of monies in most accounts to a single year with few guarantees for future funding. There is neither a secure time horizon in which to plan and operate nor freedom to expend funds in a situation-appropriate time frame.

A further result of the funds being limited by annual appropriations is that they may run out by the end of the fiscal year and not be compensated for my supplemental appropriations. For example, most Department of Defense monies are used for increasing military readiness, which is well suited to a long planning lead-time that is fits with the budget cycle, but the few contingency monies available to DoD are not so well suited. Crises occurring within the first quarter of the fiscal year are the least well timed for action under the Overseas Humanitarian, Disaster, and Civic Aid fund, DoD's primary post-conflict account, because funds from the previous fiscal year will have expired and new funds may not yet be appropriated or disbursed. Reliance by DoD, State, and USAID on supplemental appropriations for unexpected operations even exaggerates the budget cycle problem because supplementals generally focus on one-off, short-term needs and have relatively slow disbursement. Moreover, supplemental appropriations are not easy to attain for smaller-scale contingencies that have not been provided for in the regular budget.

Another problem resulting from the budget process stems from the division of monies between accounts. Tasks of post-conflict reconstruction include both military and civilian activities, however, funding for the military side of reconstruction may not have parallel funding from the foreign assistance account. Moreover, military monies are primarily intended to increase U.S. military readiness, not for foreign assistance. This can create a gap in capacity to respond, while also a gap in the quality of programming that can be offered to societies who usually need everything, and need it immediately.

A lack of retooling foreign aid mechanisms and anemic funding levels in several accounts translates into lack of coordination, resulting in an incoherence of effort in several ways. One such problem is that post-conflict reconstruction operations are funded out of a wide range of authorities, including many within the patchwork of the Foreign Assistance Act of 1961 as amended many times over the years. This patchwork has led to fiefdoms within agencies and within the Congress, which impede coherent funding for complex operations. Also, within agencies, the budgets of State and USAID have not adapted as effectively or quickly for complex contingencies as that of the Department of Defense. By the early 1990s, for example, DOD had included resources for a variety of operations in all theatres of engagement that it called "military operations other than war," whereas major changes to State and USAID were either limited geographically to the former communist and newly independent states or were very small-scale, as with the Office of Transition Initiatives at USAID.

Further, interagency strategy and planning for PCR operations is done in an ad hoc manner, making it hard for Congress and the various agencies involved in the funding process to anticipate what might be called for generally or in a given operation.[12] This, and the large number of executive branch agencies involved, leads to bureaucratic politics that impede a rational funding process. In lieu of rationalized, coherent direction from the top, the various parts of each agency are left to pursue their own funding

The Foreign Operations, Export Financing, and Related Programs (Foreign Ops) bill funds most foreign aid programs, such as development and humanitarian assistance except food aid, bi-lateral military assistance, and contributions to voluntary UN programs and multilateral development banks. The Agriculture Appropriations bill funds food aid programs. Finally, the Department of Defense Appropriations bill includes funding for U.S. military involvement overseas.

[12] On the need for a new interagency strategy and planning process, see the "Interagency Strategy and Planning for Post-Conflict Reconstruction" white paper in this series available at www.pcrproject.org.

objectives and processes. This problem extends to the armed services, which experience intense infighting over operations that are funded by more than one service. [13]

Finally, the wide range of authorities means that funding decisions and oversight are managed by a wide range of Congressional committees and sub-committees, not all of whom agree on the specifics of a given mission. At each level of decision-making, therefore, U.S. efforts are fragmented by the very legal and regulatory structures that are supposed to facilitate a government response in the national interest. This initially incoherent foundation for action, both in the budgeting process and lack of vision, produces a wave of fragmentation within the entire U.S. system of funding post-conflict reconstruction.

### *Speed*

Whereas the U.S. military may draw upon pre-deployed resources while waiting for additional emergency funding, U.S. civilian agencies generally have little ability to fund foreign crisis operations in a timely manner. The slow speed with which the U.S. government can act in the critical window of opportunity after the end of conflict is one of the greatest challenges facing post-conflict reconstruction today, second only to lack of coherence. In part, this is because foreign assistance was not set-up to respond to contingencies, with very narrowly tailored rapid response mechanisms only evolving in certain areas over time.[14] As a result, the U.S. government is able to use some accounts on short notice, but is not able to bring its full range of capabilities to bear at the same time in any given situation.

Lack of speed in response can be traced to the many problems already identified in this paper. Just as the Foreign Assistance Act presents some problems for coherence, so too does it for speed of response. As it has evolved over 41 years, the FAA is a sprawling web of authorities with many competing priorities and restrictions. A general lack of trust between the executive and legislative branches has led to the imposition of a wide range of constraints and notification requirements, which can be addressed, but only with a lot of time and energy. The reliance on supplemental appropriations also slows the response time, especially when these appropriations are loaded with notification requirements and an expiration date.[15] Moreover, bureaucratic problems also slow the movement of funds. Tussles between and within Departments over who should fund what often makes funding in a timely manner impossible. Within the State Department, funding has become so snarled that every expenditure of funds from three key accounts (ESF, FMF, and PKO) all must be personally approved by the Deputy-Secretary of State. Even once legal and bureaucratic agreement has been established within Washington, speed of disbursal to the field and use of the monies in the field are often slow as well.[16]

### *Funding Balance*

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[13] A similar incoherence in the US capacity to respond to emergencies at home led to the creation of the Federal Emergency Management Agency in 1979. It was not until 1993, however, that this agency was able to create a workable plan that would deliver the needed inter-agency coordination and capacity that any type of national disaster requires. Yet the model, with a strong focus on identifying and utilizing existing capacity within the broad range of USG and local agencies, has led to a much stronger response to emergencies. Such a model has been discussed for international response to emergencies and post-conflict reconstruction, but has yet gone beyond the planning phases.

[14] The Office of Transition Initiatives was one example that demonstrated the recognition of this timing problem, but with a mere $20 million at its creation, and with only $55 million requested in FY 2003 it can hardly begin to touch the myriad of reconstruction tasks that post-conflict countries face.

[15] U.S. government response to reconstruction after Hurricanes Mitch and Georges ripped through the Caribbean and Latin America was funded by a supplemental appropriation approved in March 1999. It took seven months for the monies to reach the field because of legislative and administrative restrictions. Use of these monies was also constrained by their December 31, 2001, expiration date. As the GAO reported: "USAID and the other agencies almost unanimously agreed that the December 31, 2001, deadline was a major factor in how the planned, designed, and implemented disaster recovery activities, and it also affected the extent to which sustainability could be built into the program." See "Foreign Assistance: Disaster Recovery Program Addressed Intended Purposes, but USAID Needs Greater Flexibility to Improve Its Response Capability," GAO Report to Congressional Committees. July 2002.

[16] Some of the obstacles to speed in funding disbursal are discussed in the "implementation" section of this paper. Impediments to speed resulting in interagency coordination and U.S. government civilian capacities are discussed in the white papers "Interagency Strategy and Planning for Post-Conflict Reconstruction" and "Discussion Paper: Post-Conflict Rapid Civilian Response," respectively, both are available at www.pcr.project.org.

While the overall volume of funding for foreign affairs in general is a significant issue,[17] perhaps one of the most difficult problems in the post-conflict reconstruction arena is not the absolute shortage of funds, but rather the *relative* shortage of funds in certain agencies and parts of agencies. The disparity between budgets is particularly acute in post-conflict reconstruction operations because there is significant overlap between tasks to perform and a blurred distinction between relief and development as operations progress over time. Indeed, because the State Department and USAID have such small pots of money to address the issues for which their funds are authorized, often far less than immediate needs require, they often seek to involve DoD in various operations so that its significantly larger budget might be brought into play.[18] Unfortunately, this often leads to using, and overusing, certain funding options, such as equipment drawdowns and forcing the military to undertake operations best suited to civilian agencies. Rising tensions resulting from the asymmetry in budgets makes for neither effective, unified reconstruction efforts in the field nor for a positive environment for cooperation in Washington.

Funding balance within agencies is problematic as well. Politically popular accounts and earmarked funds proportionally receive much greater amounts than funds in less popular accounts. There is ample support for humanitarian assistance, but much smaller amounts available for transition and development programs. For example, USAID's Office of Transition Initiatives, which is charged to bring countries from war to sustainable peace, received only $50 million in fiscal year 2002, compared to the International Disaster Assistance fund's $236 million. Development assistance to support democracy and governance, rule of law and anti-corruption efforts pale by comparison with some of the special programs that different constituencies want funded through the foreign assistance appropriation. For example, Congress has basically turned much of USAID into a health agency through the Child Survival Funds.[19] Even with the ongoing demand to work on post-conflict matters there is little ability for moving resources to different parts of the agency in the event of a major reconstruction effort without supplemental funding.

### *Flexibility*

A chief complaint of many implementers of foreign assistance is the lack of flexibility in funding mechanisms. A general breakdown of trust between Congress and the executive branch has led to a inflexible, uncoordinated, raft of legal limitations, earmarks and directives. What were legitimate concerns decades ago, largely a result of U.S. involvement in Vietnam and Central America, are now serious impediments to broadly accepted needs. Section 660 of the FAA, for example, prohibits FAA funds from being used to train, advise, and financially support foreign law enforcement forces even though there is a clear need to do so to secure most post-conflict settings.[20] At the same time, however, the Department of Defense has been able support the training and deployment of civilian police for post-conflict settings. The decline in the amount of earmarks imposed on State and USAID since Colin Powell became Secretary of State has been more than offset by a rise in restrictions resulting from formal and informal directives by Congress. In the fiscal year 2001-2002 alone USAID operates with 274 directives

[17] Following the passage of Foreign Assistance Act of 1961, U.S. foreign aid levels in 1962 were 0.58 percent of GDP. In fiscal year 2002, foreign aid is just 0.11 percent of GDP. Even if a $5 billion annual increase under the Millennium Challenge Account is added to a constant level of current monies, foreign aid has been estimated to be just 0.135 percent of GDP in 2006 (the year in which the MCA will reach full levels). See Isaac Shapiro and David Weiner, "The Administration's Proposed Millennium Fund — While Significant — Would Lift Foreign Aid to Just 0.13 Percent of GDP," Washington, D.C.: Center for Global Development and Center on Budget and Policy Priorities. March 2002.
[18] Anne C. Richard discusses funding problems confronting the State Department and other international affairs agencies in a forthcoming policy paper prepared for the French Center on the United States, part of the Institut Francais des Relations Internationales (IFRI). The paper will be available at www.cfe-ifri.org."
[19] In fiscal year 2002, approximately $1.43 billion went to the Child Survival and Disease/Health Programs fund, compared to $1.18 billion into the Development Assistance fund. Similar amounts are to be earmarked in the fiscal year 2003 appropriation, which collapses the two funds.
[20] FAA of 1961, §660(b)(6) provides a waiver for limited programs to reconstitute civilian police forces in post-conflict countries. However, this exception is seldom relied upon, and USAID has tended to interpret it narrowly. The exception has also fallen victim to politically-charged decision-making processes. For a further discussion of the need to better utilize the waiver and replace section 660, see the white paper in this series "Discussion Paper: Supporting Post-Conflict Justice and Reconciliation," available at www.pcrproject.org.

and earmarks reported out of the Appropriations process, resulting in a staggering lack of flexibility that leaves a small fraction – some estimate well below seven percent – of the roughly $7 billion managed by that agency annually un-earmarked or not tied down by specific directives and available for discretionary use.

DoD is known to have the most flexibility of any U.S. government agency, but even it suffers from major constraints. First and foremost, in the context of post-conflict reconstruction, the main inflexibility comes from the fact that most DoD monies are intended for increasing military readiness, not for foreign aid. Supplemental appropriations offer greater flexibility than regular appropriations because they are usually so large, but they are not provided for small-scale contingencies, such as East Timor, and take too long in reaching military theaters. Second, the Defense Emergency Response Fund has been pared down from being a contingency fund that allowed for proactive and immediate response in post-conflict settings into being residual mission money that is used reactively to off-set costs of named operations. This change has damaged the "go-to" edge of the U.S. military. A further constraint to the DoD are the hazy lines drawn among the Operations and Maintenance (O&M), Military Construction (MC), Procurement Programs accounts as well as between the services, which results in an exercise of competition similar to that found within and between civilian agencies over what resources should be used for any given stage of an operation. For example, if the U.S. military is involved in a post-conflict country, such as Afghanistan, it needs to construct various forms of infrastructure (buildings, roads, etc.); the O&M account can be used for short-term temporary construction and the MC account for permanent works projects. What may seem black and white on paper can be a constrictive nightmare in the field.

Substantial political will on behalf of the Executive Branch and the Congress can overcome the inflexibility of today's funding authority machinery, but the will is usually lacking for most post-conflict states. The primary and easiest way to get needed flexibility for foreign assistance monies, therefore, is through "notwithstanding authority," or other special authorities, which authorize the use of foreign assistance monies for activities otherwise prohibited by law.[21] Understandably, this authority is generally only granted to either narrowly defined accounts with finite needs or politically popular accounts, e.g. Emergency Refugee and Migration Assistance and Support for East European Democracy, respectively. Practical use of notwithstanding authorities within specific accounts can be limited, however, by reluctance to use it for certain geographic areas or in particular activities or programs that are known to be politically unpopular. USAID's Office of Foreign Disaster Assistance, for example, avoids reliance on notwithstanding authority by employing its own contracting agents to ensure that resources move quickly from proposal to the field. The President also has extraordinary "notwithstanding authority" under section 614 of the FAA, although it is not broadly effective due to its dependence on political will, the often slow pace of the attendant bureaucratic processes, and the annual limit on overall funds that may be provided in any given fiscal year pursuant to section 614.[22]

Finally, a certain level of inflexibility is due to self-imposed restrictions coming from an overly cautious bureaucratic culture. Strict statutory interpretations within each of the agencies, particularly USAID, both protect pots of money and help avoid Congressional scrutiny of more "risky" programs. For example, the International Disaster Assistance (IDA) account statute allows for "relief, rehabilitation, and

[21] Another tool often thought to gain flexibility is the use of transfer authorities. The broadest transfer authority is the "Economy Act," 31 U.S.C. 1535, which allows the transfer of monies for services or goods between any U.S. government agencies. This act is generally used because one agency has a standing capacity in a particular area lacking in the agency to which funds were appropriated. The Department of State and USAID more commonly use FAA §632(a) and §632(b), which are specific transfer authorities for FAA funds. Transfer authorities, however, are not all that helpful in gaining flexibility because monies transferred are supposed to be used for purposes stated in their appropriation.

[22] FAA 1961, as amended, §614(a)(1): "The President may authorize the furnishing of assistance under this Act without regard to any provision of this Act, the Arms Export Control Act, any law relating to receipts and credits accruing to the United States, and any Act authorizing or appropriating funds for use under this Act, in furtherance of any of the purposes of this Act, when the President determines...that to do so is important to the security interests of the United States."

reconstruction,"[23] but activities have tended to stay closer to the more politically accepted meeting of basic humanitarian needs rather than forming a basis for a transition to sustainable development in post-conflict societies. A recent example comes from the case of Nigeria. Use of IDA funds to support the promotion of democratic policing in Nigeria after the fall of the authoritarian regime was denied because Nigeria was not considered "post-conflict," but rather in a state of transition. This problem is not limited to USAID, however. A lost opportunity can lay the foundation for potential trouble in not addressing a critical need in a country's democratic development trajectory. Like so many of the problems discussed in this paper, these self-imposed restrictions are somewhat understandable, but ultimately they add just one more layer to an already inflexible system.

***Contracting and Procurement***

If speed and flexibility are essential elements for delivering resources to societies in transition, then a major roadblock remains in the contracting and procurement problems that plague the U.S. government. While the Department of State has some issues in moving quickly, the amount of money that moves out the door is much smaller than that of USAID or DoD, and the number of transactions is far fewer. Most of State's contracting and procurement problems actually arise in reconciling their statute interpretation with that of the other agencies. For example, State may transfer money to DoD for procurement of equipment under the Foreign Military Financing program. DoD often adds the equipment onto existing contracts, the fulfillment of which is first allocated to DoD, or undergoes its normal, lengthy competitive bidding process, which State asserts is unnecessary under the terms of the FAA. Interpretive reconciliation between the agencies is needed. Although the DoD has some bottlenecks in its own contracting system, it also has quick deployment mechanisms for fielding contracting officers that temper its problems. USAID, on the other hand, suffers from severe difficulties.

USAID's role in foreign assistance is essentially that of a bank from which most foreign assistance resources flow into the private sector and then into the field. Therefore, its contracting and procurement problems merit renewed scrutiny. Over the last decade, each new USAID administrator vows to overhaul the system and unfortunately, each leaves frustrated in his failure to accomplish this basic reform. The urgency of remedying the contracting bottleneck becomes more apparent when one sees that that there are thousands of transactions per year, often moving only small amounts of money. In total, however, USAID contracted $1.9 billion out of Washington and an equal amount in the field. This is significant given the total USAID budget of just over $5 billion.

Three central problems plague USAID's contracting system. First, it processes on average over 2,000 transactions per year, in spite of having far too few bonded contract officers—only 126 to handle all of those transactions. This is, in part, because of the lack of career incentives offered to contracting officers, which creates a continuous personnel turnover. This is further complicated by USAID's use of individuals from other federal agencies who may know government procurement rules, but who are not knowledgeable about the needs of a development or emergency environment. This can slow the contract process by days if not months. As one senior official lamented, "We get contracting officers from the Pentagon who may know how to procure widgets, but are totally lost when it comes to supporting post-conflict needs." Second, outdated information technology plagues efficient contracting within USAID. Today USAID relies on two separate software systems, the NMS (New Management System) and Phoenix. Lack of integration between the two deprives the field missions and Congress of a full picture of spending. Moreover, the accounting system and the procurement system are separate entities, creating impossible situations for tracking money. The situation is so dismal that the Office of Foreign Disaster Assistance uses a private contractor to help them move their emergency money through the system.

[23] FAA 1961, as amended, §491 & 492(a).

Third, use of larger contracting vehicles, known as Indefinite Quantity Contracts, may provide an easier means of moving large sums of money, but also tends to limit the choices that field missions have to obtain technical assistance. Because a few companies have a hold on providing technical support to the field, choosing the best possible types of services is often compromised to the need for speed. For many years different offices at USAID have developed several ad hoc mechanisms to move resources from their bank accounts to the neediest populations, finding ways around the plodding Office of Procurement machinery. But such a system, without any standardization, does not solve the larger problem of a broken procurement system.

## III. The Way Ahead

Over the past year the President, with great support from Congress and the American public, has time and again made a strong case for raising foreign assistance as a tool for securing a safe world, yet this call has not yet been matched by adequate funding authority recommendations. The problems facing the funding of post-conflict reconstruction are complex. The solutions, however, are quite straightforward. We recommend an approach that would expand and integrate post-conflict funding vehicles, and also address the different parts of the contracting and procurement process that require immediate remediation. For these recommendations to be successful, the Administration and the Congress must articulate a clearly defined vision of post-conflict reconstruction.[24] This vision must include a comprehensive approach to rebuilding countries that integrates security with political and economic development, with an eye to preventing further conflict.

### *Establishing a Post Conflict Reconstruction Account*

First and foremost, when the President decides that a mission is in the interests of the United States, he must have the ability to bring the full force of wide-ranging U.S. capabilities to bear on the situation in a timely manner, while at the same time enabling U.S. programs to respond to needs as they evolve on the ground.

Creating a Post Conflict Reconstruction Account (PCRA) is the key to improving coherence, speed, and flexibility. This new account would be structured along the lines of the highly successful Emergency Refugee and Migration Assistance (ERMA) account,[25] but would be mandated to address an integrated package of top reconstruction needs in four priority areas: security; justice and reconciliation; urgent social and economic needs; and governance and participation. Many of the activities funded would be ones that are currently inadequately covered, if they are funded at all. In the security realm, for example, funds could be used to support early and voluntary disarmament, demobilization, and reintegration efforts (DDR) as well as provide short-term support for non-American troops or police who might be deployed in lieu of American troops or police (as with Turkey's deployment in Afghanistan). In the area of justice and reconciliation, where little money is available for emergencies, funds could be used to field an emergency justice package, deploy human rights monitors, or support reconciliation efforts at the national or local level. In the economic and social arena, PCRA funds could be used to jumpstart economies,

[24] The sum total of the various white papers in this series outline a policy and capacity vision for the U.S. government to undertake post conflict reconstruction. See especially the white papers "Constructing a Cohesive and Strategic International Response" and "Interagency Strategy and Planning for Post-Conflict Reconstruction." The series of papers is available at www.pcrproject.org.

[25] The key points making the Emergency Refugee and Migration Assistance Fund successful are: its use is authorized by the President, it has notwithstanding authority, it is to be maintained at a consistent funding level, and monies remain available until expended. 22 U.S.C. 2601(c) states: "Whenever the President determines it to be important to the national interest he is authorized to furnish on such terms and conditions as he may determine assistance under this chapter for the purpose of meeting unexpected urgent refugee and migration needs...There is authorized to be appropriated to the President from time to time such amounts as may be necessary for the fund to carry out the purposes of this section, except that no amount of funds may be appropriated which, when added to amounts previously appropriated but not yet obligated, would cause such amounts to exceed $100,000,000. Amounts appropriated hereunder shall remain available until expended."

provide temporary employment, reverse brain drain, or address critical social needs. In the area of governance and participation, PCRA funds could be used during the short-term window amenable to reform to could support national "constituting processes" (such as the *loya jirga* in Afghanistan), anti-corruption efforts, civil administration needs (including funding recurrent costs during the transition period), and civil society strengthening efforts.

The Administration and Congress should work together to craft legislation that would create a new PCRA account with the following characteristics:

- Funds would be used solely for activities designed to secure peace in the wake of conflict, and to prevent a re-occurrence of conflict. They could be used only in extraordinary circumstances – in conjunction with a U.S. military intervention or in lieu of one – and would not be used for normal development activities.
- Use of funds would require a Presidential determination that a given country or region in crisis qualified for such funds.
- Requests for such a determination would be made by a Director of Reconstruction (DR) appointed by the President.[26] Said Director would be responsible for assessment of needs, drafting of requests, deciding how allocated funds would be used, and full accounting of all funds disbursed through regular reports to the Chairmen of the SFRC and HIRC as well as the Appropriations Committees.
- In order to prepare a budget request, an inter-agency assessment team with representatives from State, USAID, Defense, Justice, Treasury, and other relevant agencies – under the direction of the DR – would be fielded in order to evaluate the needs for reconstruction, provide realistic funding estimates, and identify potential funding sources.
- The DR's requests would be considered by a standing sub-committee of the Deputies' Committee, co-chaired by the Deputy National Security Advisor and the Deputy Director of the Office of Management and Budget. This committee would be responsible for adjudicating amounts of money from which accounts would be used and to determine the necessity of a supplemental budget request. Their conclusions would recommend to the President the ultimate amount of money to be authorized for a given contingency (under such terms and conditions as he may determine).
- The PCRA account would be composed of two separate authorities – the bulk of the account would consist of monies under a set of short-term "emergency" authorities, while a smaller part of the account would be under longer-term authorities that would help to fill the transition gap until "normal" programs could resume.
- No operational time limit would be placed on the mission (as was the case with the Transition Initiatives account to great detriment for U.S. effectiveness).
- Authorities would be flexible, represent money that could be spent over several years, rather than on the traditional "use it or lose it" arrangement, allowing funds to be quickly disbursed to U.S. or other governments' agencies, international organizations, or non-governmental organizations.
- The funds in the account would be available until expended ("no year") and "notwithstanding any other provision of law."

[26] Directors of Reconstruction would be appointed by the President for a specific crisis, and would not be a standing position. For details of the proposal, see the "Meeting the Challenges of Governance and Participation in Post-conflict Settings" white paper in this series, available at www.pcrproject.org.

- As the funds in the account are depleted in any given year, they should be replenished up to a set level though the normal budget process.
- Supplemental requests or annual appropriations would be expected to pick up ongoing activities over time. Specific arrangements for designing smooth hand offs to existing accounts – such as that between ERMA and the MRA – should be designed as part of the creation of this account.

In order to operationalize this proposal, the Office of Management and Budget, along with the National Security Council, should co-chair an interagency process to review all existing accounts that provide funding in post-conflict reconstruction-related areas. This process should identify those functions and those monies that should be taken from existing accounts to provide a base funding level. In addition, this process should cost out the likely needs for activities not funded by current existing accounts, such as in the area of building civil administration capacity. Based on the outcome of that study, the Administration should submit a proposal to the Congress for the new account, the required funding level, and recommendations on the sources of financing it. Notionally, this account will probably need to have between $100 million to $200 million available annually.

***Establishing Funding Symmetry***

The State Department and USAID budgets will never be as large as that of the Department of Defense, nor should they. The need to balance funds is not a blanket call to raise foreign assistance, nor is it an assumption that simply adding money to the current pots will increase post-conflict reconstruction effectiveness. Balancing funds as described here is a call to put money where one wants the policy authority and oversight to lie. A first step toward remedying these programmatic asymmetries would be to appropriate more money for specific accounts on the State and USAID side that would enable them to address the tasks in post-conflict reconstruction for which they are authorized without having to "raid" DoD monies.

While the proposed new Post-Conflict account will cover the gaps in U.S. capacity, there are already standing authorities in certain areas of reconstruction that should be bolstered to be effectively used in conjunction with the new PCRA. These standing accounts should not be so strapped for funds that their implementers must "raid" DoD's or other accounts, via drawdowns or political wrangling, to meet their operational needs. Nor should the legitimate programs these accounts are, and should be funding be cut in order to meet an inappropriately small budget. Existing authorized accounts must be funded at a level to allow their use for appropriate and authorized purposes as have already been legislatively agreed upon. The key accounts that require attention are actually quite limited. They include:

- *Transition Initiatives (TI)* The TI account, operationalized by the Office of Transition Initiatives (OTI) at USAID, is charged to bolster "democratic institutions and processes, revitalize basic infrastructure, and foster peaceful resolution of conflict."[27] The success of OTI's programming is not only vital to state recovery after conflict, it is an expression of how much Americans value democracy and peace. The current $50 million budget should be doubled to allow for comprehensive, well-planned and coordinated, and targeted programs.[28]
- *International Disaster Assistance (IDA).* The IDA account authorizes assistance for the "relief, rehabilitation, and reconstruction" of "people and countries" affected by natural and man-made disasters.[29] With the authority to go beyond traditional humanitarian assistance,

[27] Foreign Assistance Act of 1961, 492(a), as amended in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 (sec. 101(a) of P.L. 106-429).
[28] A new Conflict Mitigation and Prevention office at USAID has been set up and is being developed, currently with a budget of $50 million. Once the new office's mandate and operations are clearly established, appropriations to both it and the TI account should be adjusted accordingly.
[29] Foreign Assistance Act of 1961 (as amended), Section 491 and 492(a). The language "reconstruction" was added in Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 (sec. 101(a) of P.L. 106-429), which also divided the account into two line items:

the IDA account has been, and can be more so with a broader interpretation of the statute, an important tool for bridging the gap between humanitarian intervention and development assistance. The need for the substantial $40 million supplemental request in March 2002 to pay for USAID work in Afghanistan demonstrates that the current level of IDA funds at $236 million does not provide enough contingency reaction flexibility.[30] As already discussed, supplemental appropriations request is too a slow a process to meet the needs of the critical window of opportunity directly after conflict. IDA should be given an additional $90 million annually, especially given the need for expansion of IDA into "reconstruction" as a bridge to development. However, it will be important to thoroughly review IDA programming to ensure that the line between IDA and Development Assistance monies is properly drawn. Further, the IDA account should be raised by an additional $5 million to cover an increase in the Ambassador's Disaster Assistance authority, which is drawn from IDA after a declaration of emergency, from $25,000 to $100,000 annually. These monies are increasingly important for signaling U.S. commitment to its allies for obtaining their early participation in relief support.[31]

- *Peacekeeping Operations (PKO).* The PKO account authorizes assistance for non-United Nations assessed peacekeeping operations and other programs in furtherance of the U.S. national security interests. The great value in this account is the great flexibility it gives the President to act with the U.S.' allies without overtaxing the U.S. military. It also funds programs, such as currently being done in Africa, designed to build foreign capacity in peacekeeping operations, which ultimately relieves future burden on the U.S. Further, having substantial funds readily available also enables the U.S. to leverage its allies to provide proportionate funding to peace operations. The PKO request for fiscal year 2003 is just $108 million, reduced from 2002. Especially considering the need to increase African peacekeeping capacity, the account should be appropriated roughly an additional $60 million annually.
- *Emergency Refugee and Migration Assistance (ERMA).* The ERMA fund is narrowly defined to meet, with Presidential declaration, "unexpected and urgent refugee and migration" needs.[32] This fund is crucial in meeting the urgent humanitarian needs of both refugees and internally displaced persons because of its rapid disbursement ability. The cap on this account is $100 million -- far above what is generally spent annually. However, as outflows have been greater than appropriations in recent years, the account is in danger of being maintained at a low level, making it ineffective for all but a few emergencies annually. Congress should ensure that ERMA stays at $100 million annually, which on average will increase appropriations approximately $35 million per year.
- *Nonproliferation, Antiterrorism, Demining and Related Programs (NADR).* The "Demining" portion of the NADR budget is particularly important to post-conflict reconstruction as the presence of mines, most recently seen in Angola and Afghanistan, impedes refugee and IDP return, humanitarian assistance, infrastructure reconstruction, agricultural sustainability, and a variety of other essential tasks.[33] The NADR account currently contributes $40 million

"International Disaster Assistance" and "Transition Initiatives". This paper refers to the two account as distinct even though they draw upon the same section of the FAA of 1961.

[30] It is reported that USAID requested from the administration a $150 million supplemental appropriation, however, only $40 million was submitted to Congress. See Elizabeth Turpen and Victoria K. Holt, "Following the Money: The Bush Administration FY03 Budget Request and Current Funding for Selected Defense, State, and Energy Department Programs," April 2002. Given this, and possibility of future large-scale reconstruction needs (in the Democratic Republic of the Congo, the Middle East, etc.), the recommended increase is a low estimate and additional supplemental appropriations will need to be sought.

[31] See: "Discussion Paper: Post-Conflict Rapid Civilian Response," white paper in this series, available at www.pcrproject.org.

[32] 22 U.S.C. 2601(c).

[33] For a fuller discussion of demining in a wider security context, see in this series "Building Security Capacity for Post-Conflict Reconstruction" white paper available at www.pcrproject.org.

annually to the U.S. Humanitarian Demining Program. Given recent experience with the paralyzed efforts at rapid demining, an additional $35 million should be appropriated for demining activities, as well as an additional $15 million to build regional demining capacity in Africa and South and East Asia.

- *Trade Development Agency (TDA).* The TDA is an independent commercially oriented foreign assistance agency that promotes economic development and facilitating trade with U.S. companies. It has its own line item of $45 million in the FY03 request. Another paper in this series calls for the expansion of TDA to post-conflict countries.[34] While it is unlikely that U.S. companies will invest in the immediate post-conflict environment, with an additional $15 million the TDA could fund feasibility studies, provide consultancy, give training to local entrepreneurs, and advise project planning efforts to establish a baseline for instituting markets and for quick U.S. private investment, guaranteed through the Overseas Private Investment Corporation and the Export-Import Bank, to revitalize the local economy.

Needed support for these existing authorities totals only $315 million dollars a year. While a good portion of this will need to be new money, the remaining could be drawn from other less productive sources following an OMB review of their programs and mandates. In any case, a $315 million is an outstanding investment to avoid future calamities, such as in Afghanistan.

### *Fixing the Broken Machinery*

Creation of the PCRA and balancing of funds should be a top priority. However, there are also immediate remedies available to address the problems in process and procedure. If the USG is serious about transforming its foreign assistance objectives for the world we live in today then it is urgent that executive agencies, working together with Congress, be given the resources to fix what is clearly broken in a timely fashion. The following recommendations are meant to bridge the gap until structural reform is possible:

A. Extend time horizon of emergency funding authorities
   - Extend deadlines for dedicating monies in Overseas Humanitarian Disaster Assistance and Civic Aid account, within the Department of Defense, to be available until expended. With responsible management, this will give program managers more flexibility to respond to unexpected needs without regard to when an emergency falls in the budget cycle. OHDACA funds should be appropriated to maintain a constant level, such as is done with the ERMA account.
   - Authorize monies provided to all agencies in emergency supplemental appropriations to be dedicated in multi-year time frames. This will allow for more efficient use of monies and implementation of more sustainable projects.

B. Enhance use of Contracting Authority for reconstruction
   - The President should further amend Executive Order 10789 to include the Department of State and USAID as agencies authorized to utilize Contracting Authority in 50 U.S.C. 1431.[35] This Contracting Authority allows certain departments and agencies to enter into contracts for

[34] See in this series: "Achieving Socio-Economic Well-Being in Post-Conflict Settings" white paper available at www.pcrproject.org.
[35] 50 U.S.C. 1431 states: "The President may authorize any department or agency of the Government which exercises functions in connection with the national defense…to enter into contracts or into amendments or modifications of contracts heretofore or hereafter made and to make advance payments thereon, without regard to other provisions of law relating to the making performance, amendment, or modification or contracts, whenever he deems that such action would facilitate the national defense." The statute further puts monetary caps on use of this authority and maintains certain contracting regulations. Executive Order 10789, as amended, authorizes the following departments and agencies to use this authority in the national defense: Defense, Treasury, Interior, Agriculture, Commerce, Transportation, Atomic Energy Commission, General Services Administration, NASA, Tennessee Valley Authority, Government Printing Office, and the Federal Emergency Management Agency (FEMA). Most recently, in October of 2001, President Bush authorized the Department of Health and Human Services to use Contracting Authority.

which Congress has not yet appropriated funds when the President has declared that doing so will facilitate national defense. The President should also clarify his interpretation of "national defense" in this context in light of his views of foreign aid as part of the war on terrorism and protecting the homeland. Agencies should then make better use of the Contracting Authority as bridge money to fill the gap in funds created from the budget process and the transition period between relief and development.

- Congress should amend 50 U.S.C. 1431 to exclude, with the President's authorization, contracts entered or amended under the Contracting Authority from regular contracting statutes.

C. Relieve contracting and procurement processes at USAID
- Provide adequate bonded contracting personnel to support the large volume of work that USAID performs and ensure that they are appropriately trained for foreign aid and development work.
- Reconcile the information technology required to track USG resources for foreign assistance by incorporating both accounting and procurement systems for USAID on one, easily accessible system.

D. Reconcile procurement at the Department of Defense
- General counsels of the Departments of State, Defense, and USAID should meet to come to an understanding of legal interpretation of the various procurement statutes and regulations that apply to transferred monies. They should then report to the principals for administrative implementation.

E. Streamline funding authorities at the Department of State
- Revise the State's funding process such that the Deputy Secretary does not have to sign off on all monies from certain accounts.
- In consultation with Congress, adapt the annual Congressional Budget Justification to take the place of having separate Congressional Notifications for every program under various accounts.

### *Conclusion*

Even as the U.S. rethinks its long-term foreign aid strategy in light of 9/11, measures can be taken in the short-term that will address the problems made apparent by the lack of effective post-conflict reconstruction assistance. The cost of the proposed new PCRA, combined with a replenishing of the other current post-conflict related accounts, will most likely total less than $500 million annually. This is a small investment considering that Afghanistan alone will cost the American taxpayers at least $1 billion over fiscal years 2002 and 2003 in foreign assistance without even considering continuing military operations. In addition, ongoing commitments in the Balkans, the hope of maintaining and building upon ceasefire in Africa, and the possible needs of a future Iraq operation all militate for sufficient capacity to meet the expected and unexpected challenges ahead. As the U.S. faces new and continued involvement in post-conflict countries, it must be equipped with the proper tools and its agencies must be able to collaborate without competing over resources.