

U.S. FOREIGN AID REFORM: CHANGING INSTITUTIONAL PROBLEMS IN ORDER TO MEET MODERN DAY NEEDS

I. INTRODUCTION

Since America's initial foreign aid effort following World War II, foreign aid has played an increasingly important part in shaping America's international role. Developing countries that rely on foreign aid play an integral role in our economic success. Americans increasingly see human suffering as an issue that transcends national boundaries and that can be alleviated with foreign aid. While the validity of using foreign aid for both of these issues has not been seriously challenged, people have recently raised concerns about the effectiveness of foreign aid. With well-publicized scandals, such as the United Nations Oil-for-Food program,¹ and unease over the possibility of foreign aid enriching dictatorial leaders at the expense of the intended recipients of the aid,² it is time to rethink how we allocate foreign aid and ensure its effectiveness.

This Note will attempt to trace the evolution of America's foreign aid policy to the modern day and offer solutions for the entrenched problems of our current foreign aid setup. First, it will explain the genesis of our current foreign aid setup in post-World War II reconstruction and how that changed through the Cold War. Second, it will provide the current legal framework in which our foreign aid operates. Third, it will explain the limitations and problems that result from our distribution of foreign aid. Finally, it will offer a solution: the creation of country-specific and regional coordinators who are responsible for distributing and overseeing foreign aid to ensure it meets our goals.

II. HISTORY OF AMERICAN FOREIGN AID: FROM POST-WORLD WAR II EUROPEAN RECONSTRUCTION TO POST-Y2K DEVELOPING COUNTRY DESTRUCTION

The first major attempt at foreign aid in America came as a result of World War II. While Europe was in shambles, America had a resurgent

1. Mark Gregory, *Companies In 'Oil-for-Food Scam'*, BBC NEWS, Nov. 19, 2004, http://news.bbc.co.uk/2/hi/middle_east/4025057.stm.

2. Sharon Lafraniere, *Donor Mistrust Worsens AIDS in Zimbabwe*, N.Y. TIMES, Aug. 12, 2004, available at <http://query.nytimes.com/gst/fullpage.html?res=9F0CE1D9163FF931A2575BC0A9629C8B63&n=Top/Reference/Times%20Topics/Subjects/F/Foreign%20Aid>.

economy and growing prosperity.³ In the shadow of the emerging Cold War, the United States sought to further its alliances with Europe by helping to rebuild the countries destroyed in World War II.⁴ On April 3, 1948, President Harry Truman signed the Foreign Assistance Act (“FAA”).⁵ This enacted legislation that put into force the Marshall Plan, a foreign assistance program that allowed Europe to reconstruct itself with American assistance.⁶ The Marshall Plan remained in place for nearly four years until December 31, 1951.⁷ Under the Marshall Plan, the United States gave \$13.3 billion to Europe for economic recovery.⁸

3. In fact, many business people thought the Marshall Plan, discussed *infra* notes 4–10 and accompanying text, would also reduce the possibility of another Great Depression because it would boost exports. Library of Congress, For European Recovery: The Fiftieth Anniversary of the Marshall Plan, Benefits for the U.S. Economy, <http://www.loc.gov/exhibits/marshall/mars11.html> (last visited Apr. 16, 2009).

4. Library of Congress, For European Recovery: The Fiftieth Anniversary of the Marshall Plan, Introduction, <http://www.loc.gov/exhibits/marshall/mars0.html> (last visited Apr. 16, 2009) [hereinafter Fiftieth Anniversary Introduction]. In signing the Foreign Assistance Act, Truman stated that the Act was “America’s answer to the challenge facing the free world today.” Library of Congress, For European Recovery: The Fiftieth Anniversary of the Marshall Plan, Truman Signs the Economic Assistance Act, <http://www.loc.gov/exhibits/marshall/mars3.html> (last visited Apr. 16, 2009) [hereinafter Truman Signs the Act]. Truman also stated, “Those who are skeptical of the effectiveness of a democratic system should ponder the lesson of the enactment of this measure. . . . It is an outstanding example of cooperative endeavor for the common good.” Statement by the President Upon Signing the Foreign Assistance Act, PUB. PAPERS 203 (Apr. 3, 1948). Ostensibly, the obvious undertone of this message was Truman responding to the Communist threat by saying that capitalism can also provide for the common good in a very effective manner. Opponents thought it would hinder the domestic economy, but the Communist revolution in Czechoslovakia ensured that Communist concerns overrode domestic concerns. Library of Congress, For European Recovery: The Fiftieth Anniversary of the Marshall Plan, Fears of Communist Domination, <http://www.loc.gov/exhibits/marshall/mars2.html> (last visited Apr. 16, 2009). In fact, the Marshall Plan initially involved the Soviet Union’s participation to avoid increasing tensions between it and the United States. Vince Crawley, *Marshall Plan Placed Europe on Path Toward Unity* (2007), <http://www.america.gov/st/develop-english/2007/May/20070522162259MVyelwarC0.7400019.html>. However, Stalin denounced the invitation as a trick and declined the invitation. The Marshall Plan (1947): U.S. Invested \$13 Billion Over Six Years to Revive Europe (2005), <http://www.america.gov/st/washfile-english/2005/April/200504291439291CJsamohT0.6520502.html>.

5. Truman Signs the Act, *supra* note 4. The Foreign Assistance Act was the legislation putting into place the Marshall Plan. *Id.*

6. Fiftieth Anniversary Introduction, *supra* note 4. The Marshall Plan was proposed by Secretary of State George Catlett Marshall with two major aims: (1) to prevent the spread of communism, and (2) to stabilize the post-World War II chaos in a manner favorable to democracy and capitalism. *Id.* The agency’s official name was the Economic Cooperation Administration, and the official name of the Marshall Plan was the European Recovery Program. THE NATIONAL ARCHIVES, RECORDS OF U.S. FOREIGN ASSISTANCE AGENCIES, 1948–1961, at 469.2, available at <http://www.archives.gov/research/guide-fed-records/groups/469.html> [hereinafter ARCHIVES 1948–1961].

7. Library of Congress, For European Recovery: The Fiftieth Anniversary of the Marshall Plan, Key Dates for the Marshall Plan, <http://www.loc.gov/exhibits/marshall/mars.html> (last visited Apr. 16, 2009) [hereinafter Fiftieth Anniversary, Key Dates]. In addition to the Foreign Assistance Act, the international community also established the International Monetary Fund (“IMF”) and the

The Marshall Plan was actually terminated six months prior to its projected end date because of the escalating Korean War conflict.⁹ Congress wanted to unite American military operations with economic programs and technical assistance.¹⁰ Thus, on October 31, 1951 Congress passed the Mutual Security Act,¹¹ which achieved these goals by establishing the Mutual Security Agency with a controller heading the operations in each country.¹² Soon thereafter, on August 1, 1953, a reorganization abolished the Mutual Security Agency and gave its functions to the Foreign Operations Administration.¹³ This new agency operated as an independent government agency outside the Department of State.¹⁴ Following this, on June 30, 1955, the International Cooperation Administration was created to take over the operations of the Foreign Operations Administration.¹⁵ However, unlike the Foreign Operations Administration, the International Cooperation Administration operated

International Bank for Reconstruction and Development (“World Bank”). USAID History, http://www.usaid.gov/about_usaid/usaidthist.html (last visited Feb. 14, 2008) [hereinafter USAID]. However, the World Bank and the IMF were intended to be permanent institutions, whereas the Marshall Plan was an emergency measure intended to have a limited duration ending when Europe stabilized. *Id.*

8. Fiftieth Anniversary, Key Dates, *supra* note 7.

9. *Id.* The Korean War began in June 1950. *Id.*

10. USAID, *supra* note 7.

11. *Id.*

12. Clark L. Simpson, *Controls In Mutual Security Agency Abroad*, 28 ACCT. REV. 79, 79 (1953). The controller of the Mutual Security Agency (“Controller”) had job responsibilities as controlling the amount expended and commodities furnished. *Id.* Notably, the Controller’s job was to “determine that the funds spent actually accomplish the purposes of the Act.” *Id.* Each country has a Controller who is under the technical supervision of a Controller in Paris, and all Controllers are under the authority of the Washington Controller. *Id.* Each Controller must determine the effectiveness of dollar aid using the categories of planning, payment, arrival, distribution, and end-use. *Id.* at 81. All allotments of funds are made in Washington. *Id.* A notable structural framework for accountability of funds exists because the Controller of each country must verify the arrival of goods in the country with the amount disbursed in Washington reports and ensure appropriate distribution of goods as well as proper use (e.g. making sure the recipient country does not re-export the goods). *Id.* at 81–82.

13. ARCHIVES, *supra* note 6. President Eisenhower stated:

[The] Director of the Foreign Operations Administration is responsible for coordinating all operations of the foreign assistance programs. He should establish appropriate machinery to achieve this coordination and to assure that all aspects of the mutual security program are consistent with and further the attainment of foreign policy, military policy, and financial and monetary policy objectives. This should include provisions for the Secretaries of State, Defense, and Treasury to receive adequate reports on the operations and projected plans with respect to each program under the Mutual Security Act.

Memorandum on the Administration of Foreign Aid Programs, PUB. PAPERS 1019 (Nov. 6, 1954) [hereinafter Eisenhower].

14. USAID, *supra* note 7. This organization also had a limited duration, and was intended to last through 1955 or until other foreign aid arrangements were made. Eisenhower, *supra* note 13.

15. ARCHIVES, *supra* note 6.

within the Department of State.¹⁶ A revised Mutual Security Act in 1957 created the Development Loan Fund in order to act as the International Cooperation Administration's lending arm.¹⁷

Because none of these organizations met the need for a long-term foreign development program, under the statutory authorization of the Foreign Assistance Act of 1961, the Kennedy Administration created the United States Agency for International Development ("USAID") on November 3, 1961.¹⁸ The creation of USAID was based on three assumptions: (1) the current state of foreign assistance had not developed to meet the current needs of the United States and developing countries, (2) it is in the United States' economic and security interests to avoid a collapse of developing countries, and (3) the post-World War shuffling of power structures across the world provided a unique opportunity for industrialized nations to create self-sustaining economies in under-developed countries.¹⁹

16. USAID, *supra* note 7.

17. *Id.* The Development Loan Fund gave loans that many other donors were not interested in, particularly loans repayable in local currency. *Id.*

18. THE NATIONAL ARCHIVES, RECORDS OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT [AID], at 286.1, available at <http://www.archives.gov/research/guide-fed-records/groups/286.html> [hereinafter RECORDS]. Because an increasing number of Americans were becoming dissatisfied with U.S. foreign assistance, foreign assistance reform was an issue in the 1960 presidential campaign. USAID, *supra* note 7. It was partially prompted by the book, *The Ugly American*, by Eugene Burdick and William Lederer. This book describes how the United States approach to foreign assistance arrogantly ignored the local culture, causing many developing countries to lean towards communism, contrary to the initial objective of the Marshall Plan. *Id.*

19. USAID, *supra* note 7. Kennedy's statements are worth reading at length, particularly:

For no objective supporter of foreign aid can be satisfied with the existing program—actually a multiplicity of programs. Bureaucratically fragmented, awkward and slow, its administration is diffused over a haphazard and irrational structure covering at least four departments and several other agencies. The program is based on a series of legislative measures and administrative procedures conceived at different times and for different purposes, many of them now obsolete, inconsistent, and unduly rigid and thus unsuited for our present needs and purposes. Its weaknesses have begun to undermine confidence in our effort both here and abroad.

Although our aid programs have helped to avoid economic chaos and collapse, and assisted many nations to maintain their independence and freedom—nevertheless, it is a fact that many of the nations we are helping are not much nearer sustained economic growth than they were when our aid operation began. Money spent to meet crisis situations or short-term political objectives while helping to maintain national integrity and independence has rarely moved the recipient nation toward greater economic stability.

The answer is that there is no escaping our obligations: our moral obligations as a wise leader and good neighbor in the interdependent community of free nations—our economic obligations as the wealthiest people in a world of largely poor people, as a nation no longer dependent upon the loans from abroad that once helped us develop our own economy—and our political obligations as the single largest counter to the adversaries of freedom.

The Foreign Assistance Act created two primary developmental programs: the Development Loan Fund to stimulate capital, and a Development Grant Fund to develop human resources.²⁰ It also created three other important programs: insurance to protect businesses operating abroad from the risks involved in foreign investment, a program to promote economic and political stability, and an appropriated contingency fund.²¹ The main improvement of USAID over the previous foreign assistance efforts was that it allowed for country-specific planning and long-term development planning.²²

Because the Foreign Assistance Act contained few restrictions on how aid could be disbursed and failed to delineate specific factors to determine aid recipients, in the early 1970s the public again began to call for reform.²³ Throughout the 1970s, the Foreign Assistance Act was renewed in various forms, often unenthusiastically signed into law by the President.²⁴ A key reform in 1973 basically turned the Foreign Assistance Act to the state in which it remains today.²⁵ The main change in the 1973 reform was to replace the technical assistance and developmental loans

To fail to meet those obligations now would be disastrous; and, in the long run, more expensive. For widespread poverty and chaos lead to a collapse of existing political and social structures which would inevitably invite the advance of totalitarianism into every weak and unstable area. Thus our own security would be endangered and our prosperity imperiled. A program of assistance to the underdeveloped nations must continue because the Nation's interest and the cause of political freedom require it.

Id.

20. *Id.*

21. USAID, *supra* note 7. The insurance program is now called the Overseas Private Investment Corporation, and the stability program is currently called the Economic Support Fund. *Id.*

22. *Id.* One of the first programs offers an interesting look at the intentions of the newly created USAID. The Alliance for Progress was essentially a Marshall Plan for South America, except that it required government, land, and tax reform for countries that received funding. Department of State, Alliance for Progress and Peace Corps, 1961–1969, <http://www.state.gov/r/pa/ho/time/ea/17453.htm> [hereinafter Alliance for Progress]. The U.S. government distributed nearly \$10 billion of aid in the first six years of the program. *Alliance for Urgency*, TIME, Apr. 21 1967, available at <http://www.time.com/time/magazine/article/0,9171,843582-,00.html>. However, the end result of the plan was a deterioration in the U.S.-Latin American relationship and a minimal impact of economic growth on the living conditions of the poor, a problem that persists to this day. Alliance for Progress, *supra*.

23. USAID, *supra* note 7.

24. See Statement on Signing the Foreign Assistance Act of 1974, 2 PUB. PAPERS 778 (Dec. 30, 1974), available at <http://www.presidency.ucsb.edu/ws/index.php?pid=4660>; Statement on Signing the Foreign Assistance Act of 1971, PUB. PAPERS 166 (Feb. 7, 1972), available at <http://www.presidency.ucsb.edu/ws/index.php?pid=3727>. In his signing statement, Nixon declared: “Viewed against the vital national objectives which our foreign assistance programs are designed to pursue, the act is a great disappointment. It severely cuts the amounts requested by the Administration for development assistance and security assistance and is below minimum acceptable levels.” *Id.*

25. USAID, *supra* note 7.

and grants with loans and grants targeted at specific categories, such as agriculture or education.²⁶

President Jimmy Carter instituted the next reform in 1979, creating the International Development Cooperation Agency (“IDCA”).²⁷ This changed the chain of authority from the previous system in which authority for all FAA programs was delegated by the President to the Secretary of State.²⁸ After the reform, the President delegated economic assistance programs to the Director of the IDCA, who then re-delegated them to the Director of USAID.²⁹ Security assistance programs remained under the authority of the Secretary of State.³⁰ The IDCA lacked the punch that Carter desired because it could only coordinate USAID, which included no more than seventy-five employees, and no other foreign aid efforts.³¹ The IDCA’s funding lapsed under the Reagan administration, and the last general foreign aid act was passed in 1985.³² Finally, in 1995, the Foreign Affairs Reform and Restructuring Act abolished the IDCA, while at the same time transforming USAID into a statutory agency from a statutorily authorized agency.³³

III. CURRENT FOREIGN AID FRAMEWORK: SYMBOLIC, BUT NOT STRUCTURAL, CHANGE

On March 14, 2002, President George W. Bush delivered an address calling for a “new compact for global development” with the purpose of creating accountability in foreign countries that receive aid.³⁴ His speech trumpeted a message that has persisted in foreign aid discourse since Kennedy in 1961, namely that foreign aid must be “defined by new accountability for both rich and poor nations alike. Greater contributions

26. *Id.*

27. *Id.* This was created by Executive Order 12147 on July 19, 1979. *See* Exec. Order No. 12,147, 44 Fed. Reg. 42,957 (July 19, 1979), *available at* <http://www.presidency.ucsb.edu/ws/index.php?pid=32618>. Carter’s reform was very similar to a reform proposed, but never enacted into law, by Hubert Humphrey. USAID, *supra* note 7.

28. USAID, *supra* note 7.

29. *Id.*

30. *Id.*

31. *Id.*

32. NOAM UNGER, THE BROOKINGS INSTITUTION, FOREIGN ASSISTANCE REFORM: THEN, NOW AND AROUND THE BEND 6 (2007), *available at* http://www.brookings.edu/~media/Files/rc/articles/2007/07/foreignassistance_unger/200707unger.pdf. The last foreign assistance act was called The International Security and Development Cooperation Act. *Id.*

33. *Id.*

34. OECD, THE MILLENNIUM CHALLENGE ACCOUNT FACT SHEET 2 (2002) [hereinafter FACT SHEET], <http://www.oecd.org/dataoecd/44/38/33692015.pdf>.

from developed nations must be linked to greater responsibility from developing nations.”³⁵ Bush promised an increase of 50 percent (\$5 billion) in its core development assistance by 2006,³⁶ with funds placed into a Millennium Challenge Account (“MCA”) and controlled by the Millennium Challenge Corporation (“MCC”).³⁷

The MCC looks to sixteen indicators in determining which of the eligible countries will receive funding.³⁸ The indicators are intended to

reward nations that root out corruption, respect human rights, and adhere to the rule of law . . . invest in better health care, better schools and broader immunization . . . [and] have more open markets and sustainable budget policies, nations where people can start and operate a small business without running the gauntlets of bureaucracy and bribery.³⁹

However, the MCA remains only a part of the overall foreign aid system in the United States. In general, foreign aid can be categorized into five groups: bilateral development aid, economic assistance for the purposes of furthering U.S. political and security goals, humanitarian aid, multilateral economic contributions, and military aid.⁴⁰ As a whole,

35. *Id.*

36. *Id.* The Treasury Department is responsible for disbursing all funding, as well as for the United States’ participation in the World Bank. CURT TARNOFF & LARRY NOWELS, FOREIGN AID: AN INTRODUCTORY OVERVIEW OF U.S. PROGRAMS AND POLICY, CRS REPORT FOR CONGRESS (Apr. 15, 2004), at CRS-22, available at <http://fpc.state.gov/documents/organization/31987.pdf>.

37. FACT SHEET, *supra* note 34. The MCA will be administered by a Millennium Challenge Corporation. *Id.* The MCC will be governed by a Board of Directors composed of cabinet-level officials, with the Secretary of State as Chairman of the Board. *Id.* The CEO of the MCC will be nominated by the President and confirmed by the Senate. *Id.* Personnel will be experts hired from both governmental and non-governmental positions for a limited duration. *Id.* MCC’s mission is to reduce global poverty through the promotion of sustainable economic growth. Millennium Challenge Corporation, About MCC, <http://www.mcc.gov/about/index.php> (last visited Feb. 14, 2008). The statutory authorization for these agencies comes from Public Law 108-199.

38. FACT SHEET, *supra* note 34 (internal quotation omitted). The criteria for eligible countries changed each of the first three years. *Id.* In 2004, all countries eligible to borrow from the International Development Association (“IDA”) with per capita incomes under \$1,435 were eligible to receive funds from the MCC. *Id.* In 2005 the IDA requirement was dropped. *Id.* In 2006 the per capita income minimum was raised to match that of World Bank, which is \$2,975. *Id.*

39. FACT SHEET, *supra* note 34. The sixteen indicators fall into three categories. Under “governing justly” are civil liberties, political rights, voice and accountability, government effectiveness, rule of law, and control of corruption. Under “investing in people” are public primary education spending as a percentage of GDP, primary education completion rate, public expenditures on health as a percentage of GDP, and immunization rates for DPT and measles. Under “promoting economic freedom” are country credit rating, inflation, three-year budget deficit, trade policy, regulatory quality, and days to start a business. *Id.*

40. TARNOFF & NOWELS, *supra* note 36. Bilateral assistance is the largest category of foreign aid, with Congress appropriating \$6.2 billion in 2004, and most of the funds in this category are

foreign aid comes from over twenty different sources from the federal government, with USAID being the most prominent.⁴¹

USAID is managed by the Director of U.S. Foreign Assistance (“DFA”), who, as of 2009, is Randall Tobias. He also has the task of “directing the transformation” of America’s approach to foreign aid.⁴² This position was created as part of a 2006 reform of America’s foreign aid structure, an attempt to centralize and rationalize our foreign aid with the needs of the twenty-first century.⁴³ The new Director of Foreign Assistance created five core objectives for U.S. foreign aid: (1) peace and security, (2) governing justly, (3) investing in people, (4) economic growth, and (5) humanitarian assistance.⁴⁴ He also created five categories in which to place countries: (1) restrictive countries, (2) rebuilding countries, (3) developing countries, (4) transforming countries, and (5) sustaining partnership countries.⁴⁵ The end goal of the United States for countries in each category is to advance them to the subsequent category, with sustaining partnership countries being the final goal before removal from the foreign aid program altogether.⁴⁶

managed by USAID. *Id.* Economic aid supporting political and security objectives is the next largest category, with \$5.4 billion worth of assistance in 2004. *Id.* Most (\$3 billion) of these funds are administered through the Economic Support Fund, which primarily supports countries deemed important in the War on Terror. *Id.* Congress appropriated \$2.55 billion for humanitarian assistance, \$1.7 billion for multilateral assistance, and \$4.8 billion for military assistance in 2004. *Id.*

41. THE BROOKINGS INSTITUTION, US FOREIGN ASSISTANCE LEGISLATION, OBJECTIVES AND ORGANIZATIONS (2006), available at http://www3.brookings.edu/global/foreign_reform_chart.pdf.

42. U.S. Department of State, Director of Foreign Assistance, <http://www.state.gov/f/> (last visited Feb. 14, 2008). The Director of U.S. foreign assistance holds a rank equivalent to Deputy Secretary of State and has authority over all Department of State and USAID foreign assistance funding and programs. *Id.*

43. Condoleezza Rice, U.S. Sec’y of State, New Direction for U.S. Foreign Assistance, Jan. 19, 2006 [hereinafter New Direction], available at http://www.usaid.gov/press/speeches/2006/sp060119_1.html. In announcing the reform, Condoleezza Rice stated:

The current structure of America’s foreign assistance risks incoherent policies and ineffective programs and perhaps even wasted resources. We can do better and we must do better. We must align our activities more fully across the State Department and USAID and within the State Department itself. Increasing this alignment will enable us to be better stewards of public resources. We are dedicating record amounts of the American people’s money to our international efforts and it is incumbent upon us to spend that money responsibly and effectively. America’s taxpayers must know that we are using their hard-earned dollars efficiently and effectively to improve our own security, but also to improve people’s lives around the world.

Condoleezza Rice, U.S. Sec’y of State, Remarks on Foreign Assistance (Jan. 19, 2006) [hereinafter Remarks on Foreign Assistance], available at <http://merln.ndu.edu/archivepdf/nss/state/59408.pdf>.

44. DEPARTMENT OF STATE, FOREIGN ASSISTANCE FRAMEWORK, available at <http://www.state.gov/documents/organization/79748.pdf> [hereinafter FRAMEWORK].

45. *Id.* The Director also created a “regional” category for issues that transcend a single country’s borders. *Id.*

46. *Id.*

IV. GLOBALIZATION OF A WELFARE MENTALITY AND OTHER FOREIGN AID ISSUES

Despite the persistent and recurring reforms in foreign aid, many problems remain with the U.S. foreign assistance setup. The 2006 reform attempts to bring coherence to U.S. foreign aid, but neglects one of the most important aspects that U.S. foreign aid has consistently had: alleviation of poverty. In Secretary Condoleezza Rice's announcement of the 2006 reform, she failed to even mention poverty alleviation as a goal of the U.S. foreign aid program; instead, she outlined the benefits that democracy (stimulated via foreign aid) would have for the United States and its security.⁴⁷ Concededly, Secretary Rice had a point: the security interests of the United States are in fact promoted by having stable societies.

The issue, however, is whether using foreign aid as an explicit national security tool will create stable governments. A report by Stewart Patrick from the Center for Global Development succinctly explains the issue:

[D]evelopment is . . . a worthwhile end in . . . itself It also requires long-term engagement with entire societies Indeed, too close an alignment with U.S. national security policy, or too explicit an intent to change governing structures of host nations, can undermine the perceived neutrality, credibility and generosity of U.S. development efforts⁴⁸

Additionally, there remains the question of whether the 2006 reforms in fact reduced the amount of incoherence in our foreign aid reform. Notably, although the DFA position was designed to bring coherence and consistency to our foreign aid setup, it lacks the capacity to do so under the current reform. There are four main limitations to the Director's

47. Remarks on Foreign Assistance, *supra* note 43. Secretary Rice stated:

Foreign assistance is an essential component of our transformational diplomacy. In today's world, America's security is linked to the capacity of foreign states to govern justly and effectively. Our foreign assistance must help people get results. . . . [O]n September 11th, we were attacked by terrorists who had plotted and trained in a failed state, Afghanistan. Since then, we have cycled tens of thousands of troops through that country, spent billions of dollars and sacrificed precious lives to eliminate the threat and to liberate the brutally repressed people of Afghanistan. But Afghanistan is an example. We know, too, that we must use our foreign assistance in places like Afghanistan not only to complete the job that we have begun there, but to prevent future failed states like Afghanistan was.

Id.

48. STEWART PATRICK, CENTER FOR GLOBAL DEVELOPMENT, US FOREIGN AID REFORM: WILL IT FIX WHAT IS BROKEN 10 (2006), http://www.cgdev.org/files/10497_file_Foreign_Aid_Reform.pdf.

authority. The Director cannot: (1) shift funds between USAID and the State Department, (2) roll back outdated Congressional earmarks on funds, (3) coordinate the independent MCA, and (4) assert authority over any of the other sources of foreign aid in our government.⁴⁹

Furthermore, the relationship between the MCC and USAID remains unclear. An example of the problems caused by this ambiguous relationship are seen with U.S. aid to Tanzania. USAID used to be the leader in development efforts in Tanzania.⁵⁰ But now MCC has taken the lead, and there is not adequate communication between USAID and MCC in order to provide guidance during the transition process.⁵¹ This experience has been duplicated in many developing countries during the early years of the MCC.⁵² In particular, in many countries the MCC restricted the ability of USAID to provide proposals for development, and the MCC relied on USAID for logistical support but not for planning purposes.⁵³ This not only creates problems in delivering foreign assistance, but it creates tension between the two organizations—inevitable anytime someone’s job and power is given to someone else to whom they are then subservient.⁵⁴

49. *Id.* at 6. The Director technically has the ability to reallocate funds between the State Department and USAID, but is limited by the multitude of accounts within these bureaucracies, as the Director needs Congressional approval to move funds out of a specific account and will face enough red tape and political games that make it practically impossible to do so. *Id.* at 6–7. The Director also lacks the power to control 21% of foreign aid funds because they fall out of his authority, and the increasing role of the Department of Defense in counterterrorism, reconstruction, and humanitarian assistance correspondingly takes power away from the Director and the State Department. *Id.* at 7.

50. THE CENTER FOR GLOBAL DEVELOPMENT, MCA MONITOR: TANZANIA FIELD REPORT 8 (2006), available at <http://www.cgdev.org/doc/MCA/Tanzaniafieldreport.pdf> (last visited Feb. 14, 2008) [hereinafter TANZANIA FIELD REPORT]. Additionally, there was no clear discussion among USAID, MCC, or Washington of how the roles were changing. Without a clear discussion of the change in responsibilities, there will either be overlapping efforts or areas which both organizations neglect, thinking the other one will take care of it. *Id.* at 7–8.

51. *Id.* A government official in Tanzania said that USAID provided invaluable guidance to the government during a previous foreign aid program because USAID “understands Washington better than we do and they understand Tanzania better than Washington does.” He went on to say that USAID would provide invaluable guidance to MCC during the transition phase, but “no clear or formal structure” is in place to help MCC. *Id.* at 8.

52. *Id.* at 8.

53. *Id.* It would be beneficial for both to work together. USAID has the experience necessary to implement many programs, in terms of “the delicacies of working with a given set of government officials, navigating donor relations, and identifying reliable civil society partners.” *Id.* at 8. The MCC brings a new mindset to the process, which emphasizes efficiency, monitoring, evaluation, and fostering self-reliance. USAID has reported that these underlying viewpoints have fostered creative ideas in their organization as well. *Id.* at 8.

54. Apparently, after three years of working together, the “animosity” in the relationship between USAID and MCC is abating. However, they do not have a clearly defined relationship on which to build for the future. *Id.*

Mr. Patrick also suggests several other problems with the reform. In particular, he asserts that the reform fails to express a strategy in many failing states, it fails to reinforce civilian leadership, it increases the difficulty of partnering with other donors and local actors, and it fails to establish a framework for monitoring and evaluation of foreign aid programs.⁵⁵

There are also many questions regarding the inherent effectiveness of aid. For example, a study by the Joint Economic Committee of the House of Representatives determined that International Monetary Fund (“IMF”) assistance can actually increase corruption.⁵⁶ It listed several reasons for this contrary result: foreign aid can strengthen the government relative to the private sector, it can strengthen existing corruption, and it can delay pressures for reform.⁵⁷

There is ample anecdotal evidence to support the proposition that much of the aid does not actually reach its intended recipients. The United

55. PATRICK, *supra* note 48, at 2. The report puts most fragile states into the category of “developing” countries for diplomatic reasons. *Id.* at 11–12. The author of the report describes the first issue:

Besides being inconsistent with the administration’s espoused strategic concern with weak and failing states, this lacuna suggests that the United States has a reactive policy toward war-torn countries and a punitive one toward rogue states, while lacking a preventive strategy to stop struggling states from sliding toward either abyss.

Id. at 12. Demonstrating the lack of civilian leadership, Bush issued National Security Presidential Directive Forty-Four, with Iraq in mind, to give the Secretary of State the power to “stabilize and reconstruct” war-torn countries via civilians. *Id.* However, Congress refused to provide appropriate resources, so the Department of Defense took over these duties despite the fact that military aid in this respect encourages “unsustainable, externally imposed interventions and tar[s] reconstruction efforts with a military brush.” *Id.* at 12. The third problem exists because American foreign aid still suffers from a top-down mentality, thus making it difficult to institute local priorities. *Id.* at 13–14. Additionally, because the United States tends to act unilaterally, a large American effort in one area, highly concentrated due to the potential of increased coherence in U.S. foreign aid, will undermine and alienate other international donors who may have other goals. *Id.* The inability to exercise oversight and monitor funds will be discussed *infra*.

56. U.S. CONGRESS JOINT ECONOMIC COMMITTEE STUDY, CAN IMF LENDING PROMOTE CORRUPTION? 1 (1999) (containing the expert opinion of Robert Keleher, Chief Macroeconomist to the Vice Chairman of the JEC, Jim Saxton (R-NJ)), available at <http://www.house.gov/jec/imf/corrupt.pdf>.

57. *Id.* The paper stated:

[F]oreign aid can create incentives to maintain existing institutions and inhibit reform; foreign aid can work to further entrench the *status quo*. Foreign aid, for example, may inhibit efforts to reform for several reasons. As countries come to expect economic aid from external sources, the impetus to develop the necessary preconditions for advancement may dissipate. Necessary efforts to reform attitudes, institutions, and incentive structures, and to minimize corruption may become subordinate to efforts to obtain such aid. The availability of foreign aid therefore may spawn efforts to obtain this external aid instead of efforts to develop the necessary, essential ingredients for corruption-free internally driven growth.

Id. at 4.

Nations Oil-for-Food scandal was meant to provide humanitarian aid to the people of Iraq, but Saddam Hussein's regime took an estimated \$10 billion from the program.⁵⁸ Also, warlords repeatedly stole food donated by foreign aid organizations such as USAID, which was destined for Afghan refugees in 2002.⁵⁹ More recently, the adoption scandal in Chad⁶⁰ and the sexual abuse scandal in Haiti⁶¹ have involved even the workers on the ground. This is not to say that most of the workers or aid programs are corrupt, but that the large number of high-profile abuses can be indicative of more problems and can undo positive work by turning local opinion against the aid agencies. These high-profile foreign aid abuses can also change the American perception of the good that foreign aid provides.

One final and important problem with our foreign aid setup is the lack of oversight after funds are disbursed. For example, the United States gives over \$100 million to the United Nations Relief Work Agency ("UNRWA") with absolutely no oversight on the funds.⁶² The UNRWA does not even allow the United States to look at its books to see where the money goes.⁶³ This is a common problem, but one that has serious repercussions. For example, several UNRWA staff ran for political office in Parliament in the Palestinian territory as Hamas candidates.⁶⁴ Not only is this plainly bad foreign policy, it is in direct contravention of United

58. Nile Gardiner & James Phillips, *Investigate the United Nations Oil-for-Food Fraud*, BACKGROUNDERS (The Heritage Foundation, Washington, D.C.), Apr. 21, 2004, at 1, available at http://www.heritage.org/Research/InternationalOrganizations/upload/62155_1.pdf.

59. C.J. Chivers, *A Nation Challenged: Aid Groups; Aid Groups Say Warlords Steal as Needy Wait*, N.Y. TIMES, Jan. 4, 2002, at A1.

60. *French Held Over Chad 'Adoptions'*, BBC NEWS, Oct. 26, 2007, <http://news.bbc.co.uk/2/hi/africa/7063324.stm>.

61. *UN Troops Face Child Abuse Claims*, BBC NEWS, Nov. 30, 2006, <http://news.bbc.co.uk/2/hi/americas/6195830.stm>.

62. Press Release, The Online Office of Congressman Steve Rothman, Demanding Stricter Oversight of Foreign Aid (Sept. 28, 2006) [hereinafter Rothman], available at http://www.rothman.house.gov/index.php?option=com_content&task=view&id=213&Itemid=84. This report was a bipartisan effort created by Representatives Steve Rothman (D-NJ) and Mark Kirk (R-IL), members of the House Appropriations Committee's Subcommittee on Foreign Operations. *Id.* This Subcommittee makes all decisions about U.S. foreign aid, thus placing Mr. Rothman and Mr. Kirk in a unique position to understand the implications of blindly doling out money. *Id.* The report was sent to Condoleezza Rice, who, as Secretary of State, has responsibility for all Foreign Aid Assistance programs. *Id.*

63. *Id.* Although the United States was not allowed to audit the books of UNRWA, the United Nations' internal auditors reported inconsistencies in a study that has not yet been made public. *Id.* The inconsistencies included "unaccounted for expenditures," "records that do not correspond to actual payments made by UNRWA," and \$46.5 million in loans to UNRWA staff. *Id.* There is no record on how the loans are being repaid, or even "exactly how much is owed." *Id.*

64. *Id.*

States law, which prohibits taxpayer dollars from supporting listed terrorist organizations.⁶⁵

The lack of oversight goes hand-in-hand with our inability to monitor results after the foreign aid is disbursed.⁶⁶ This is a perpetual problem with American foreign aid because our government tends to “measure[] inputs and outputs rather than impacts or outcomes.”⁶⁷ Although the newly created Director of Foreign Assistance is mandated to evaluate our foreign aid program against our objectives, there appears to be no shift away from merely measuring inputs and outputs.⁶⁸ This problem is magnified when there appears to be no consensus among local NGOs, the newly created Director of Foreign Assistance (“DFA”), academia, and the public about what an effective measuring stick would be.⁶⁹ One obvious solution would

65. *Id.* Hamas is listed as a terrorist organization by the United States Department of State. OFFICE OF THE COORDINATOR FOR COUNTERTERRORISM, FACTSHEET: FOREIGN TERRORIST ORGANIZATIONS (FTOS) (2005), available at <http://www.state.gov/s/ct/rls/fs/37191.htm>. The UNRWA does not even check its donees against a list of known terrorists. Rothman, *supra* note 62. Thus, although this still needs to be investigated further to be verified, it demonstrates the problems accompanied by blindly distributing money to organizations and foreign countries.

66. OFFICE OF THE DIRECTOR FOR U.S. FOREIGN ASSISTANCE, FREQUENTLY ASKED QUESTIONS ABOUT U.S. FOREIGN ASSISTANCE REFORM (2006), available at http://pdf.usaid.gov/pdf_docs/PCAAB573.pdf. The issue of oversight is simply dismissed in this question and answer exchange:

Will the public be able to measure the success of foreign assistance? Yes, in fact, one of the major aims of this reform is to strengthen our ability to measure and communicate the impact of our foreign assistance funding to the American People, Congress, and those we seek to assist. We expect to put forth indicators that will allow us to compare performances across countries, programs, and partners.”

Id.

67. PATRICK, *supra* note 48, at 15. An example will help clarify this distinction. Hypothetically, USAID donates \$100,000 to Nepal to build a dam in order to harness hydroelectric power for the purpose of bringing electricity to very poor rural villages. The input is \$100,000 donated to a local strongman who happens to run an NGO, which facially looks legitimate. The dam is then built by the strongman, perhaps a Maoist who fought in Nepal’s civil war to overthrow the government. He puts \$60,000 towards the dam, and the dam produces enough electricity to power the village each night. The output measured is the electricity. Thus, under the current United States evaluation, everything would look all right: we give money, a dam is built, and the village has electricity. But this ignores the overall impact of the aid. The local strongman uses the other \$40,000 to purchase arms and buy up local villagers’ land. He begins extracting extravagant rents and uses the guns to subdue uncooperative villagers. Thus, the overall impact of the foreign aid is that a village has electricity, but the villagers have lost a certain amount of freedom in exchange for the electricity. And given that the local strongman is a Maoist, it threatens the stability of the central government, which is attempting to shift from a monarchy to a democracy. The possibility of instability is completely contrary to the goals of our foreign aid.

68. *Id.* The DFA did create five core objectives: peace and security, governing justly and democratically, investing in people, economic growth, and humanitarian assistance. FRAMEWORK, *supra* note 44. But the DFA has not released what indicators it will use to monitor and evaluate progress towards the goals.

69. PATRICK, *supra* note 48, at 4. DFA officials have started to make a greater effort to find appropriate measures by asking NGOs and policy experts. *Id.*

be for the United States to simply send aid workers to evaluate the books and projects of aid recipients to ensure the money goes where it ought to. But this would be overbearing, inefficient, and prone to corruption.⁷⁰

Thus, the MCA and other recent reforms are a step in the right direction. They both address and keep the problems surrounding foreign aid disbursement in the public consciousness. These reforms attempt to solve some of the problems that foreign aid programs have continuously encountered. Many of the problems, however, are institutional and inherent in any foreign aid program. Thus, an institutional overhaul of our foreign aid program is necessary to truly achieve its objectives.

V. A LEGITIMATE REFORM REQUIRES SYSTEMIC CHANGE

One of the most common proposals for foreign aid reform calls for the establishment of a cabinet-level department that would run development programs.⁷¹ However, not only would this not solve many of the institutional problems of foreign aid, it would create many more. The only saving graces of a cabinet-level department for foreign development would be that it would increase the visibility of foreign aid efforts and it would streamline those efforts. Visibility would be increased because a cabinet-level position would be closer to the president and thus subject to more media scrutiny. Thus, a cabinet-level position would entail more responsibility and more criticism.

But the problems of oversight, corruption in foreign countries, harmonization with foreign donors, and creating sustainability in local communities, among other problems, would still exist.⁷² Furthermore, a cabinet-level position would make foreign aid an extremely political issue

70. *See id.* at 15 (“[There are] inherent disincentives to objective in-house monitoring and evaluation.”). The article goes on to suggest that the Secretary of State establish an independent evaluation authority in order to monitor and oversee our foreign aid. *Id.* However, this would suffer from the same institutional problems that we currently have. If it is based in Washington, it will be too far away from the locale of aid recipients to have an idea of the impact it is having. If it travels to the geographic areas that receive much aid, it will impose some of the overbearing characteristics that our program is designed to avoid.

71. *See, e.g.,* Videotape: Reforming U.S. Foreign Aid (2007), http://www.brookings.edu/multimedia/video/2007/1210_brainard_HELP.aspx; PATRICK, *supra* note 48, at 16. The Center for Global Development author, Stewart Patrick, calls for the creation of the “Department for International Development,” which he says would “place development on a stronger footing within the U.S. executive branch, befitting its growing importance to U.S. foreign policy.” *Id.* at 16. Apparently the British have created this department already. THE BROOKINGS INSTITUTION, U.S. FOREIGN AID: THE NEED FOR FUNDAMENTAL REFORM 47 (2007), <http://www.brookings.edu/~media/Files/events/2007/0727development/0727development.pdf>.

72. *See supra* notes 48–70 and accompanying text.

and increase the possibility that only political allies would get aid.⁷³ By giving only political allies aid, we would further alienate countries that lack a good relationship with the United States. In addition, given that our goal of foreign assistance is, among other things, to eliminate poverty and increase stability of developing countries, political alliances should not factor into any sort of foreign aid equation.⁷⁴

The solution for foreign aid must ensure that there is accountability for the funds disbursed,⁷⁵ and that the funds are being used effectively.⁷⁶ Moreover, our foreign assistance program must be amended to improve reaction time in humanitarian crises.⁷⁷ Finally, the United States must remove the condition that countries receiving foreign must also accept policies that the United States deems acceptable.⁷⁸

73. United States Commission on Helping to Enhance the Livelihood of People, <http://www.helpcommission.gov/> (last visited Feb. 14, 2008).

74. See *supra* note 44 and accompanying text.

75. This is to say that the funds should not be enriching dictators, warlords, gangs, or others that will use them to oppress others. See, e.g., *supra* notes 59–61 and accompanying text.

76. Although this is similar to accountability, I have used it distinctly here. Accountability means that the funds reach their intended target. Effectiveness means that, when the aid reaches its intended target, it produces the desired effect. For example, suppose \$250,000 is intended to provide improved medical care to residents of San Jose, Costa Rica. If the funds are used to actually build and staff a medical facility, then the accountability test is satisfied. If, instead, \$100,000 is used to build a shoddy, understaffed facility and \$150,000 is used for a residential project designed to enrich the funds recipient then there is no accountability in the funds' use unless the recipient is punished. To look at effectiveness, one needs to look at the effect the hospital has on the medical care of its target community. If the appropriate facility is built, but the child mortality rate, for example, in the surrounding area increases, then the funds are not effective. If a quality facility is constructed and the child mortality rate, or other appropriate indicators of health, improve, then the funds are both accountable and effective.

77. Humanitarian crises can include natural disasters. See, e.g., Stephanie Strom, *After Tsunami, a Rarity: Donated Dollars Remain*, N.Y. TIMES, Nov. 27, 2005, at Sec. 1, Column 5. They can also be manmade calamities, such as conflict or war. See, e.g., Lydia Polgreen, *Attacks Pushing Darfur Refugees Into Chad, U.N. Says*, N.Y. TIMES, Feb. 11, 2008, at A3.

78. For example, the United States has determined that particular drugs should be illegal within its national borders. Without considering the validity of this domestic policy, it is wrong to force the U.S. "war on drugs" onto other countries that may or may not have the same problems as the United States. This is at best a kind of forced hegemony, and at worst sleight-of-hand imperialism, forcing U.S. laws and policies onto other countries. It is probably somewhere in between, but the United States simply cannot eliminate a problem within its borders by mandating that everyone else must stop it, too. See, e.g., IAN VÁSQUEZ, THE CATO INSTITUTE, POLICY RECOMMENDATIONS FOR THE 108TH CONGRESS, available at <http://www.cato.org/pubs/handbook/hb108/hb108-56.pdf> (advocating elimination of the Anti-Drug Abuse Acts of 1986 and 1988 which condition foreign aid on the "adoption of narcotics control initiatives in foreign countries"). Although this may seem like a wedge issue, the United Nations reports that drugs and terrorism have a strong link, with America's refusal to eliminate the black market for drugs profiting drug gangs, including terrorist organizations, \$400 billion a year. See *Terrorism*, DRUG POLICY ALLIANCE NETWORK (last updated July 19, 2004), <http://www.drugpolicy.org/global/terrorism>.

Increasing effectiveness and accountability, however, is more easily said than done. I propose that each embassy, or consulate in countries that do not have an embassy, receive an employee in charge of distributing foreign aid for that country. For purposes of this Note, I will call that position “foreign aid country coordinator” (“FACC”).⁷⁹ All foreign aid disbursed by the United States government would have to go through the FACC.⁸⁰ The FACC would be responsible for selecting aid recipients and approving projects.⁸¹ The coordinator would also have the responsibility of periodically inspecting these projects and their budgets to ensure that the funds are being used appropriately; that is, the FACC would ensure accountability for the funds. The coordinator would also be in a good position to notice misuse of the funds.⁸²

The FACC would report to the Director of Foreign Aid in Washington. The Director would be responsible for disbursing funds to each country.⁸³

79. This position would be similar to that of the MSA Controller, discussed *supra* note 12, except with expanded powers. Rather than simply auditing books and coordinating distribution of goods, he would have a role in deciding what projects are funded by United States foreign aid. See *infra* notes 80–82 and accompanying text.

80. That is to say that aid funded by private organizations would not be covered by this person, at least initially. There would probably be a backlash among NGOs and private organizations if this were to occur. Additionally, there would be significant coordination difficulties in trying to determine what exactly is foreign aid. For example, Merck selling drugs in Africa at no profit could easily be determined to be foreign aid. But if Unilever sold basic health care products, which can prevent much disease, at a very small profit, it would probably not be considered foreign aid. However, the difference between the two is marginal: both are American corporations selling products at a price of their choosing to impoverished foreign countries. In addition, Merck’s decision not to make a profit on the drugs could be profitable in the long run by giving them market recognition and creating barriers to entry for other companies. Military aid would also have to be excluded from the coordinator’s control for obvious reasons.

81. The way the process often works is that USAID will put out a notice that there are available foreign aid funds. The funds have criteria or objectives attached to them. Then local or international NGOs will submit plans meeting the criteria for the funds to USAID in an attempt to receive the funds. USAID will review the plans before selecting who will receive the money. For example, USAID will issue a notice that it has money available to help improve disadvantaged communities’ standard of living in Kenya. Three NGOs might submit plans calling for, respectively, construction of women’s shelters in villages across the community to receive battered women, construction of schools to educate minority tribes in remote villages, and education of public officials on the importance of respecting the rights of minorities. USAID might then decide that the battered women’s shelters plan is the most feasible and deliver the funds to that NGO.

82. For example, the DFA would have a working relationship with many of the aid recipients, and thus, would be in a position to notice significant changes in the standard of living of the recipients. If an NGO director previously went to work in Hanoi on a bicycle but, after receiving funds to improve drinking water, suddenly had an automobile, the coordinator would have a legitimate suspicion that the funds were being misused.

83. Some countries need more aid than others, and the DFA would have to make these decisions. Although it would be difficult to insulate the DFA from political pressures, a mandate should be issued declaring the position to be non-partisan, which would allow the DFA to ignore much pressure.

Furthermore, the Director would strategically place regional coordinators who supervise the country-specific coordinators.⁸⁴

This setup would provide oversight for our funding, which is necessary to ensure its proper use and create sustainable communities. It would also allow for international and regional cooperation in tackling problems that transcend national boundaries. A regional director would also have the effect of eliminating duplicative efforts in countries when a regional effort would more effectively solve problems.

VI. FOREIGN AID: CAN'T LIVE WITH IT, CAN'T LIVE WITHOUT IT

In conclusion, America has a moral duty to provide foreign aid to poor and developing countries. As the standard of living in the United States relies on consuming cheap goods and services provided by many developing countries, such as India, Poland, and Mexico, it also has an economic incentive to create stability by ensuring a minimum standard of living. As such, the United States cannot simply eliminate its foreign aid program.

However, the United States also has a duty to ensure that its foreign aid does not create more problems than it solves by enriching warlords, or by ineffectually and inefficiently responding to humanitarian crises when such response is critical. As it is, the United States' current ad hoc foreign aid setup does not meet these needs.

Creation of national foreign aid coordinators coupled with regional coordinators would be a tremendous step towards ensuring accountability and effectiveness of America's foreign aid dollars, while ensuring prompt responses to humanitarian crises and eliminating duplicative efforts for international and regional issues.

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84. A regional coordinator is necessary because some aid is best used by coordinating beyond political boundaries. For example, Darfur refugees are spilling into Chad. *See A Regime Saved, for the Moment*, *ECONOMIST*, Feb. 9, 2008, at 53. In order to adequately handle the situation, the coordinator from Sudan and Chad would need to synchronize their efforts. A regional coordinator would facilitate this. The DFA would place the regional coordinator in a stable country, preferably centrally located, within a particular region. Ghana would be a good location for a Western African regional coordinator. Costa Rica would be a good location for a Central American regional coordinator.

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