

## THE UNITED STATES GOVERNMENT AND POST-CONFLICT ECONOMIC RECONSTRUCTION

*Carl B. Kress\**

### TABLE OF CONTENTS

I.	INTRODUCTION .....	75
II.	BACKGROUND .....	76
	<i>A. Purposes of Reconstruction</i> .....	76
	<i>B. The Marshall Plan</i> .....	77
	<i>C. Overview of Current Mechanisms</i> .....	78
III.	U.S. GOVERNMENT AGENCIES AND THEIR FUNCTIONS.....	79
	<i>A. U.S. Department of Defense</i> .....	79
	1. U.S. Military Combat Units .....	80
	2. U.S. Army Corps of Engineers.....	81
	3. Coalition Provisional Authority .....	84
	<i>B. U.S. Department of State</i> .....	85
	<i>C. U.S. Agency for International Development</i> .....	87
	<i>D. U.S. Department of the Treasury</i> .....	89
	<i>E. U.S. Trade and Development Agency</i> .....	91
	<i>F. U.S. Department of Commerce</i> .....	93
	<i>G. The Overseas Private Investment Corporation</i> .....	94
	<i>H. The Export-Import Bank of the United States</i> .....	95
IV.	CONCLUSION .....	97

### I. INTRODUCTION

Because post-conflict economic reconstruction assistance is a form of foreign assistance, United States Government (“USG”) agencies and mechanisms that deliver ongoing foreign assistance also provide

---

\* Regional Director for the Middle East, North Africa and South Asia, and Senior Advisor to the Director at the U.S. Trade and Development Agency; LL.M., University of Hamburg, Germany, 1996; J.D., University of California, Los Angeles, 1995; B.A., University of California, Berkeley, 1987. The author would like to thank all of those who assisted with this article and expresses particular appreciation to Donna J. Thiessen, Communications Policy Advisor at the U.S. Trade and Development Agency, and Ethan G. Ostroff, third-year law student at the American University, Washington College of Law, for their extensive assistance. The views expressed in this article do not necessarily represent the views of the U.S. Trade and Development Agency or the United States.

reconstruction assistance. A number of departments and agencies provide foreign assistance and reconstruction aid; this article is intended as a brief guide to their different and complementary roles. Given the theme of this Symposium,<sup>1</sup> a general description of each USG entity's role will be supplemented with examples from Iraq, as well as from Afghanistan.<sup>2</sup>

## II. BACKGROUND

### A. *Purposes of Reconstruction*

Foreign assistance, including post-conflict economic reconstruction, has been a fundamental tool of U.S. foreign policy. However, since September 11, 2001, foreign assistance has assumed an even more prominent role. Following those attacks, the President elevated development to one of the three pillars of U.S. National Security Strategy, along with diplomacy and defense.<sup>3</sup>

---

<sup>1</sup> Symposium, *Rethinking Reconstruction After Iraq*, 11 U.C. DAVIS J. INT'L L. & POL'Y 1 (2004).

<sup>2</sup> While their roles are beyond the scope of this article, international agencies such as the World Bank and United Nations also typically play a substantial role in economic reconstruction efforts. See, e.g., Michael J. Matheson, *United Nations Governance of Postconflict Societies*, 95 AM. J. INT'L L. 76 (2001); Daniel D. Bradlow, *The Role of the World Bank In Postconflict Situations*, "The Role of International Financial Institutions in Postconflict Situations," Proceedings of the Ninety-Fifth Annual Meeting of the American Society of International Law, 95 AM. SOC'Y INT'L L. PROC. 236 (Apr. 4-7, 2001); ALCIRA KREIMER, JOHN ERIKSSON, ROBERT MUSCAT, MARGARET ARNOLD, & COLIN SCOTT, *THE WORLD BANK'S EXPERIENCE WITH POST-CONFLICT RECONSTRUCTION* (1998), available at [http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2000/02/23/000178830\\_98111703551072/Rendered/PDF/multi\\_page.pdf](http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2000/02/23/000178830_98111703551072/Rendered/PDF/multi_page.pdf). See also, e.g., Treasury Secretary John W. Snow Testimony before House Appropriations Subcommittee on Foreign Operations, Export Financing and Related Programs 2, (Apr. 30, 2003), at <http://www.treas.gov/press/releases/js334.htm>.

<sup>3</sup> THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA (Sept. 2003), available at <http://www.whitehouse.gov/nsc/nss.pdf>. See also Press Release, Dr. Condoleezza Rice Discusses President's National Security Strategy 4 (Oct. 1, 2002), at <http://www.whitehouse.gov/news/releases/2002/10/20021001-6.html>; U.S. DEPARTMENT OF STATE AND U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT STRATEGIC PLAN: FISCAL YEARS 2004-2009, MESSAGE FROM THE SECRETARY (Aug. 2003) ("[D]iplomacy and development assistance are critically important tools for building a safer, freer, better world."), available at <http://www.state.gov/documents/organization/24299.pdf>. See also CENTER FOR GLOBAL DEVELOPMENT, COMMISSION ON WEAK STATES AND US NATIONAL SECURITY REPORT, ON THE BRINK: WEAK STATES AND US NATIONAL SECURITY 1-2 (June 8, 2004), available at [http://www.cgdev.org/docs/WeakState\\_Transcript\\_rev.pdf](http://www.cgdev.org/docs/WeakState_Transcript_rev.pdf).

Foreign assistance encompasses a wide array of activities and goals: delivering food to famine- and drought-stricken regions; providing disaster assistance; spurring environmental protection; combating health crises; and alleviating poverty. United States foreign assistance has always had a twofold purpose: both to further America's foreign policy interests in expanding democracy and free markets, and to improve the lives of citizens in developing countries.

Post-conflict economic and physical reconstruction activities are intended to stabilize and rebuild a war-torn country. As set forth by Secretary Marshall's quotation that opens this Symposium, reconstruction represents a basic step toward establishing (or restoring) democracy to a nation. The intent is to establish, as quickly as possible, a functioning, independent state that can serve its population and operate successfully in the world community. States that fail to emerge successfully from a war, such as Afghanistan after the Soviet withdrawal, can serve as breeding grounds for terrorists, or foster civil war or repressive regimes that mistreat their own populations.

#### *B. The Marshall Plan*

The European Recovery Plan, commonly known as the Marshall Plan, represents the United States' most visible and largest reconstruction effort to date.<sup>4</sup> It was established in 1948, three years after World War II ended, and lasted for four years.<sup>5</sup> A number of short-

---

<sup>4</sup> Imanuel Wexler, *The Marshall Plan in Economic Perspective: Goals and Accomplishments*, in *THE MARSHALL PLAN: FIFTY YEARS AFTER* 148 (Martin A. Schain ed., 2001) ("Not only was the Marshall Plan the first large-scale U.S. foreign aid program in the post-World War II period, it was, and still is, the only aid program that stipulated a set of economic objectives and a specific timeframe for their fulfillment."). Foreign aid as a percentage of Gross Domestic Product peaked at 2% under the Marshall Plan, but hovered for the most part in the 0.25 - 0.5% range thereafter, until FY2004 when it increased again to 0.9% with the inclusion of activities in Afghanistan and Iraq. Curt Tarnoff & Larry Nowels, *Foreign Aid: An Introductory Overview of U.S. Programs and Policy* 15, 18, CONG. RES. SERVICE REP. 98-916 (Apr. 15, 2004) [hereinafter CRS 98-916], available at <http://fpc.state.gov/documents/organization/31987.pdf>. Iraq now represents the largest reconstruction project that the United States has undertaken since the Marshall Plan.

<sup>5</sup> See Curt Tarnoff, *The Marshall Plan: Design, Accomplishments and Relevance to the Present*, in *THE MARSHALL PLAN: FIFTY YEARS AFTER* 356 (Martin A. Schain ed., 2001) [hereinafter Tarnoff, *Design, Accomplishments and Relevance*]. The European Recovery Plan (ERP) began in April 1948, and was administratively terminated on December 31, 1951, when the Economic Cooperation Administration was terminated and its recovery programs were meshed with those of the newly established Mutual Security Program. Estimates regarding the amounts expended under the ERP range from \$10.3 to \$13.6 billion. CRS 98-916, *supra* note 4, at 18.

term assistance programs, focusing on providing food and fuel, operated between the end of the war and the start of the Plan.<sup>6</sup>

In 1947, Congress established the Economic Cooperation Administration, overseen by the Department of State, to administer the Marshall Plan.<sup>7</sup> The Plan, along with the complementary European Recovery Program, was intended to stimulate economic growth in Europe, prevent the spread of Communism, and encourage a more stable and healthy world economy.<sup>8</sup> To achieve those goals, it was essential to revitalize severely damaged structures in key areas such as the economy, trade, healthcare, taxation, and law. The Marshall Plan's objectives were to: expand European industrial and agricultural production; restore individual European countries' currencies, budgets and finances; and stimulate international trade, both among the European countries and with the rest of the world.<sup>9</sup> Success was intended to benefit not only the inhabitants of the countries involved, but their neighbors and the world community at large. This also required substantial effort and contributions on the part of the European nations themselves.<sup>10</sup> The successes of post-war Germany and its neighbors represent clear examples of those benefits.<sup>11</sup>

### C. Overview of Current Mechanisms

The United States does not have a specific agency dedicated to the cause of reconstruction, per se. Rather the federal government has a number of agencies with different missions and authorities that all contribute to such efforts. Some, like the U.S. Department of the Treasury, have significant relevant technical expertise. Others, such as the U.S. Army Corps of Engineers (USACE), the U.S. Agency for International Development (USAID), and the U.S. Trade and Development Agency (USTDA) have contracting authority and budget

---

<sup>6</sup> Curt Tarnoff, *The Marshall Plan: Design, Accomplishments, and Relevance to the Present* 5, CONG. RES. SERVICE REP. 97062 F (Jan. 6, 1997).

<sup>7</sup> Wexler, *supra* note 4, at 147, 148; *see generally* Tarnoff, *Design, Accomplishments and Relevance*, *supra* note 5, at 349-88.

<sup>8</sup> *See* Tarnoff, *Design, Accomplishments and Relevance*, *supra* note 5, at 349, 350-51.

<sup>9</sup> *See* Economic Cooperation Act of 1948 § 102(a), ch. 169, tit. 1, 62 Stat. 137 (amended 1951); *see also* Wexler, *supra* note 4, at 147-49.

<sup>10</sup> *See* Tarnoff, *Design, Accomplishments and Relevance*, *supra* note 5, at 349, 354.

<sup>11</sup> The Marshall Plan was not without its critics at the time. Arguments included that the program was too small to make a difference, that it would hurt U.S. businesses, and that it was inconsistent in its application. *See, e.g.*, Jacques J. Reinstein, *Germany: Solving Problems, in THE MARSHALL PLAN FROM THOSE WHO MADE IT SUCCEED* 180 (Constantine C. Menges ed., 1999).

2004]

*The United States Government*

79

resources, which allow them to access the considerably wider range of technical expertise and resources available in the private sector. In addition, the Export-Import Bank (Ex-Im Bank) of the United States and the Overseas Private Investment Corporation (OPIC) can provide financing and insurance to investors and exporters.

In a case such as Iraq, where reconstruction follows combat operations, the military is the first organization with assets on the ground. These assets consist of combat troops and those supporting them, including combat and construction engineers with the Army and Navy, and civil affairs units. Officers of the Department of State and the USAID may follow shortly thereafter. Representatives of other agencies, such as the Departments of the Treasury and Commerce, USTDA, OPIC, and the Ex-Im Bank, may then follow, as appropriate.<sup>12</sup>

### III. U.S. GOVERNMENT AGENCIES AND THEIR FUNCTIONS

#### A. *U.S. Department of Defense*

With assets deployed over a wide area in a post-conflict environment, the military is often well situated to assess reconstruction needs. In fact, the identification and resolution of reconstruction needs may represent an essential aspect of the military's mission.<sup>13</sup> Merely subduing enemy combatants is insufficient; support must be given to the local institutions necessary for self-governance. Reconstruction activities, which can range from smaller projects such as removing debris from a street to more substantial construction projects, constitute a key element of peacekeeping.<sup>14</sup> Increasing security

---

<sup>12</sup> See, e.g., U.S. GENERAL ACCOUNTING OFFICE REPORT TO CONGRESSIONAL COMMITTEES GAO-04-605, REBUILDING IRAQ: FISCAL YEAR 2003 CONTRACT AWARD PROCEDURES AND MANAGEMENT CHALLENGES 7, Table 1 (June 2004) [hereinafter GAO-04-605], available at <http://www.gao.gov/new.items/d04605.pdf> (identifying primary agencies involved in reconstruction in Iraq and their areas of responsibility). A less visible but nevertheless important role is also played by the Office of Management and Budget (OMB), which is a part of the Executive Office of the President. OMB ultimately approves all yearly agency budget requests and closely monitors spending of funds and the management of programs. See *The Mission and Structure of the Office of Management and Budget*, at <http://www.whitehouse.gov/omb/organization/mission.html> (last visited Nov. 6, 2004).

<sup>13</sup> See, e.g., Mark Martins, *No Small Change of Soldiering: The Commander's Emergency Response Program in Iraq and Afghanistan*, 2004 ARMY LAW. 1 (Feb. 2004).

<sup>14</sup> See *id.* at 3; Jackie Spinner, *Rebuilding What the Assault Turns to Rubble; Seabees, Other Units Began Planning Early for the Reconstruction of Fallujah*, WASH.

through means of military operations will create a more favorable environment for reconstruction activities to take place; at the same time, immediate and tangible reconstruction efforts can help improve security situations.<sup>15</sup>

Accordingly, in the course of their regular operations, combat units may undertake small-scale reconstruction activities on a local level. Specialized units, such as U.S. Army engineer construction units or Naval Mobile Construction Battalions (commonly known as the “Seabees”), will handle larger scale construction efforts. The U.S. Army Corps of Engineers or its naval equivalent will oversee very large construction projects and rely on civilian contractors to complete such work. In Iraq, it was necessary to establish additional structures to oversee reconstruction efforts because the scope of reconstruction needs was so extensive. The oversight role was first vested in the Office of Reconstruction and Humanitarian Assistance (ORHA) at the Department of Defense, but was subsequently transferred to the Coalition Provisional Authority (CPA).

#### 1. U.S. Military Combat Units

Combat units are capable of taking on specific projects, depending upon the circumstances. They may, for example, participate in clearing and rebuilding damaged streets or may take part in reconstructing damaged buildings, such as schools or hospitals.<sup>16</sup> For more specialized and/or larger scale work, Army units will likely turn to engineer construction units and Marine units will rely on the Seabees, both of which have technical expertise and heavy construction equipment at their disposal. These construction activities are often coordinated by civil affairs officers assigned to combat units who work with local populations to address their needs and concerns.<sup>17</sup>

The limited resources available to local military commanders, however, constrain such ad hoc reconstruction activities. Depending upon the circumstances, the number of engineers and other troops

---

POST, Nov. 10, 2004, at A20 (describing Seabee reconstruction activities in Fallujah, Iraq).

<sup>15</sup> Martins, *supra* note 13, at 17.

<sup>16</sup> See, e.g., Jackie Spinner, *Bringing Back a Dying Baghdad Street; In Effort to Restore Normalcy, U.S. Army Attempts to Rebuild a Once-Thriving Area*, WASH. POST, Aug. 23, 2004, at A11 (describing U.S. troops working side-by-side with Iraqi laborers to revitalize destroyed street in Baghdad).

<sup>17</sup> See, e.g., Master Sgt. Jack Gordon, *The Magic Bus – Army Reserve Civil Affairs Soldiers Help to Rebuild Iraq and Connect with the Iraqi People* (July 17, 2004), available at [http://www4.army.mil/USAR/news/2004-07-22\\_001.php](http://www4.army.mil/USAR/news/2004-07-22_001.php).

available to engage in reconstruction activities may be severely limited, particularly where hostilities continue, since reconstruction is not their primary role. Employing local residents to engage in such work can be advantageous, both in providing employment to the local population and in substantially increasing available manpower. However, combat units' ability to tap these resources is often limited; regular combat units are normally equipped neither with contracting authority nor with the monetary resources necessary to hire substantial numbers of local workers.<sup>18</sup>

Accordingly, it became clear in Iraq that field commanders needed to be able to commission reconstruction activities quickly, with an eye to addressing immediate needs.<sup>19</sup> A new program, the "Commanders' Emergency Response Program" (CERP), was established to address specific local needs quickly. CERP provides military civil affairs officers access to seized Hussein Regime cash, Development Fund for Iraq (DFI) monies, Iraqi oil profits, and Department of Defense operational funds for local reconstruction activities.<sup>20</sup> This program has facilitated the completion of a variety of reconstruction activities at the local level, including painting schools, digging wells, and renovating health clinics.<sup>21</sup> As a result, military personnel, who are more widely dispersed around the country than are aid workers, are able to respond to local needs quickly.

In Afghanistan, where military personnel are not as widely disbursed around the country as in Iraq, the U.S. Government has established Provisional Reconstruction Teams (PRTs) to support reconstruction activities. PRTs, which combine military security elements with aid agency representatives, allow aid to be administered with the benefit of military protection in outlying areas.<sup>22</sup>

## 2. U.S. Army Corps of Engineers

The U.S. Army Corps of Engineers has the technical expertise and contracting authority necessary to engage in more substantial reconstruction activities than individual combat and engineer cons-

---

<sup>18</sup> Martins, *supra* note 13, at 4-5.

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

<sup>20</sup> *Id.* at 3-6. Curt Tarnoff, *Iraq: Recent Developments in Reconstruction Assistance* 18, CONG. RES. SERVICE REP. RL 31833 (Oct. 2, 2003) [hereinafter RL 31833], available at <http://fpc.state.gov/documents/organization/25434.pdf>.

<sup>21</sup> Martins, *supra* note 13, at 18.

<sup>22</sup> See Donna Miles, *Terrorists Can't Compete With Provincial Reconstruction Teams* (Apr. 21, 2004), available at [http://www.dod.gov/news/Apr2004/n04212004\\_200404211.html](http://www.dod.gov/news/Apr2004/n04212004_200404211.html).

truction units. USACE relies upon its contracting authority to complete the majority of its large construction activities, using private sector resources for most design and all construction work.<sup>23</sup>

USACE is made up of two primary components. The first provides combat engineers that are involved in day-to-day combat operations. This includes combat support operations such as facilitating river crossings, engaging in emergency road and airfield construction, constructing temporary shelters, and executing demolition projects. The second component supports public works projects, which include more permanent construction and other civil works tasks, both within the United States and overseas. These include domestic civil works projects and substantial military projects not necessarily directly related to combat operations, such as the dredging of a harbor, the revitalization of destroyed infrastructure, and expanding or restoring power generation and transmission capacity. Both elements of this structure can be applied in a combat or post-combat situation.<sup>24</sup>

As with all other U.S. Government agencies, contracting actions undertaken by USACE are governed by the large and complex set of rules set forth in the Federal Acquisition Regulations (FAR). These regulations are designed to ensure that the USG engages in transparent, consistent, and fair contracting processes, thereby allowing market forces to provide the USG with necessary goods and services at fair and reasonable prices. The law requires that, to the extent possible, contracting actions be undertaken via “full and open competition,” which entails soliciting bids from all companies seeking to provide the government with their goods and services for a particular need.<sup>25</sup> However, there are exceptions to this requirement. These exceptions allow for limited competition or “sole source” selection of a particular company, in certain circumstances such as where full and open competition would be impracticable due to unforeseen or urgent needs, or when only one source for the necessary good or service exists.<sup>26</sup> In such cases, appropriate justifications and approvals are

---

<sup>23</sup> See, e.g., *How the Corps is Organized*, at <http://www.usace.army.mil/who.html#Organized> (last visited Nov. 19, 2004).

<sup>24</sup> The Navy has a similar structural division, with the Naval Facilities Engineering Command having responsibility for construction engineering work and the Naval Mobile Construction Battalion, commonly known as the “Seabees,” having responsibility for combat engineering support for the Navy, Marines and other military forces. See *Naval Mobile Construction Battalions (NMCB)*, at <http://www.seabee.navy.mil/index.cfm/4135> (last visited Nov. 6, 2004); see e.g., Spinner, *supra* note 14, at A20.

<sup>25</sup> 10 U.S.C. § 2304 (2004) applies to the Department of Defense; 401 U.S.C. § 253 (2004) applies to all other federal agencies.

<sup>26</sup> 10 U.S.C. § 2304(e) (2004) and 41 U.S.C. § 253(c) (2004). See also GAO-04-605,



required.<sup>27</sup> Even with the use of limited or no competition, however, the time between needs identification and the actual start of work can be substantial.<sup>28</sup>

In approaching reconstruction needs in Iraq, USACE identified the restoration of oil and electricity production and of transmission capacity as two of its major missions.<sup>29</sup> USACE also devoted considerable attention to water supply and sewage treatment needs. USACE began arranging for reconstruction work by contracting with U.S. and local companies that could address such immediate needs as opening the port at Um Qasr and repairing damaged and aging oil production facilities.<sup>30</sup> Ports, airports, roads, bridges, schools, and health clinics continue to be built and improved under USACE oversight.<sup>31</sup>

---

*supra* note 12, at 11, 12 (concluding that using other than full and open competition procedures immediately prior to, during and after the war in Iraq complied with legal requirements).

<sup>27</sup> 10 U.S.C. § 2304(f) (2004); 41 U.S.C. § 253(f) (2004). For example, the GAO investigated a range of other than full and open competition contracting procedures pertaining to initial contracts let for reconstruction activities in Iraq. GAO reported that it found that the initial contracting procedures were generally followed properly, although it identified some problems with respect to follow-on task orders to existing contracts. GAO-04-605, *supra* note 12, at 3, 8. This investigation included two contracts let by USACE concerning oil sector and electricity provision infrastructure. *Id.* at 3.

<sup>28</sup> See *infra* Part III.C.

<sup>29</sup> See U.S. Army Corps of Engineers, *USACE in Iraq* (May 26, 2004), at <http://www.hq.usace.army.mil/cepa/iraq/newsinformation.htm> (The other three priorities are: securing captured enemy ammunition, building temporary bases for U.S. forces, and building training centers and camps for the Iraqi National Defense Force.). See also Richard Dowling, *Corps Establishes Provisional Division to Direct Continued Efforts in Iraq*, at <http://www.grd.usace.army.mil/news/stories/CEGRD%20press%20release.htm> (last visited Oct. 28, 2004). To address Iraq's larger scale and more substantial public works needs, USACE activated the Gulf Region Division (Provisional) on January 25, 2003. GULF REGION DIVISION BROCHURE, available at [http://www.grd.usace.army.mil/divisioninfo/GRDbrochure4\\_26.pdf](http://www.grd.usace.army.mil/divisioninfo/GRDbrochure4_26.pdf). The Afghanistan Engineer District oversees operations in Afghanistan and neighboring countries. *Afghanistan Engineer District*, at <http://www.aed.usace.army.mil/mission.html> (last visited Nov. 20, 2004).

<sup>30</sup> See RL 31833, *supra* note 20, at 19, 20; see also, e.g., Alex Young, *Task Force 4400: Mission Accomplished*, POWER 57, (Mar. 2004), at <http://www.platts.com/Magazines/POWER/2004/march/Task%20Force%204400.html> (chronicling Corps successful efforts to increase Iraq's power generation capacity); Army News Service, Nani Gould, *Army Engineers Helping Restore Iraqi Wetlands* (Aug. 4, 2004), available at [http://www4.army.mil/ocpa/read.php?story\\_id\\_key=6226](http://www4.army.mil/ocpa/read.php?story_id_key=6226) (detailing coordinated efforts between USAID, USACE and the Iraqi Ministry of Water Resources in working to restore marshlands destroyed by the previous regime).

<sup>31</sup> See, e.g., *USACE in Iraq*, *supra* note 29. In Afghanistan, USACE has had a less prominent role. See, e.g., Tom Ichniowski, Andrew G. Wright & Tom Sawyer, *Corps Battling at Home, Abroad*, ENGINEERING NEWS-REC. 10 (May 27, 2002), available at

### 3. Coalition Provisional Authority

Initial responsibility for overseeing reconstruction work in Iraq was held by the Office of Reconstruction and Humanitarian Assistance (ORHA) at the Department of Defense.<sup>32</sup> This responsibility was subsequently transferred to the Coalition Provisional Authority, whose Program Management Office (PMO) was formed to oversee reconstruction in major sectors, taking over responsibility for some areas that had been under USACE or USAID supervision.<sup>33</sup> The CPA was the temporary governing body designated as the lawful government of Iraq until sovereignty was transferred to an Iraqi government.<sup>34</sup> It operated under the direction of the Department of Defense,<sup>35</sup> and ceased functioning on June 28, 2004, when sovereignty was transferred to the Iraqi Interim Government.<sup>36</sup>

---

<http://enr.construction.com/news/bizlabor/archives/020527.asp> (In support of action in Afghanistan, USACE built “semi-permanent” facilities and provided power and water for U.S. troops in Afghanistan and other Central Asian countries.).

<sup>32</sup> L. Elaine Halchin, *The Coalition Provisional Authority (CPA): Origin, Characteristics, and Institutional Authorities* 1, CONG. RES. SERVICE REP. RL 32370 (Apr. 29, 2004), available at <http://fpc.state.gov/documents/organization/32338.pdf>.

<sup>33</sup> The PMO has the responsibility for monitoring contracts funded by the Emergency Supplemental Appropriations Act for Defense and the Reconstruction of Afghanistan and Iraq for FY2004. Pub. L. No. 108-106, 117 Stat. 1209 (2004). See Press Releases, The Coalition Provisional Authority (Jan. 29, 2004), available at [http://www.iraqcoalition.org/pressreleases/20040129\\_PMO-reconstruct.html](http://www.iraqcoalition.org/pressreleases/20040129_PMO-reconstruct.html). The Iraq Project and Contracting Office has assumed the functions formerly carried out by the PMO, including contacting for and delivering services, supplies, and infrastructure identified within the \$18.44 billion Iraq Relief and Reconstruction Fund (IRRF), allocated by the U.S. Government and taxpaying public, for the rebuilding of Iraq. See [http://www.rebuilding-iraq.net/portal/page?\\_pageid=35,62934&\\_dad=portal&\\_schema=PORTAL](http://www.rebuilding-iraq.net/portal/page?_pageid=35,62934&_dad=portal&_schema=PORTAL) (last visited Nov. 6, 2004).

<sup>34</sup> S.C. Res. 1483, U.N. SCOR, 58th Sess., 4761st mtg., U.N. Doc. S/RES/1483 (2003) (recognizing the occupation of Iraq by the coalition forces and encouraging the formation of a representative government based on the rule of law) (May 22, 2003); 42 I.L.M. 1016 (July 2003).

<sup>35</sup> See Jeremy M. Sharp, Melanie Caesar, and Adam Frost, *Post-War Iraq: A Table and Chronology of Foreign Contributions* 10, CONG. RES. SERVICE REP. RL 32105 (2004); see also U.S. OFFICE OF MANAGEMENT AND BUDGET, REPORT TO CONGRESS PURSUANT TO SECTION 1506 OF THE EMERGENCY WARTIME SUPPLEMENTAL APPROPRIATIONS ACT, 2003 (PUBLIC LAW 108-11), at 2 (June 2, 2003), available at [http://www.whitehouse.gov/omb/legislative/Emergency\\_Wartime\\_Supp\\_Daniels\\_Ltr.pdf](http://www.whitehouse.gov/omb/legislative/Emergency_Wartime_Supp_Daniels_Ltr.pdf).

<sup>36</sup> See COALITION PROVISIONAL AUTHORITY BAGHDAD, ADMINISTRATOR’S WEEKLY REPORT: GOVERNANCE (June 19-28, 2004), available at [http://www.iraqcoalition.org/government/weekly\\_updates/conso/June28\\_Gov.doc](http://www.iraqcoalition.org/government/weekly_updates/conso/June28_Gov.doc). For more detailed discussion of the nature of the CPA, see <http://fpc.state.gov/documents/organization/32338.pdf>.

*B. U.S. Department of State*

The Department of State is the U.S. Government's lead foreign policy agency.<sup>37</sup> Accordingly, it sets overall policy for U.S. foreign assistance in a given country or region and coordinates the actions of other USG agencies that administer the assistance. The State Department itself does not generally take on an implementation role; rather it directs and coordinates the actions of other USG agencies, particularly the foreign assistance agencies.

Agencies such as USAID, USTDA, and OPIC follow the State Department's policy direction in their activities.<sup>38</sup> In certain instances, the State Department will direct other agencies not to engage with a particular country, or with certain individuals or entities. Alternatively, the Department of State may designate a specific country or region as a particular priority and encourage or direct individual agencies to take active roles in the country or region. For example, the State Department has been intimately involved with how USG agencies have provided assistance over the past fifteen years in Eastern Europe since the fall of Communism. The engagement in Eastern Europe was similar to post-conflict reconstruction, given the depressed economic conditions present in Eastern Europe and the countries within the former Soviet Union.<sup>39</sup>

In 2004, a new reconstruction planning entity was established within the State Department—the “Stabilization and Reconstruction Office.”<sup>40</sup> The office is intended “to lead and coordinate U.S. Government planning, and institutionalize U.S. capacity, to help stabilize and reconstruct societies in transition from conflict or civil strife so they can reach a sustainable path toward peace, democracy, and a market

---

<sup>37</sup> 22 U.S.C. § 2656 (2004).

<sup>38</sup> See, e.g., 22 U.S.C. § 2151 (enacted in 1961) (USAID); 22 U.S.C. § 2191 (2003) (OPIC); 22 U.S.C. § 2421 (enacted in 1981) (USTDA).

<sup>39</sup> A key mechanism for the provision of such assistance has been the Support for Eastern European Democracy (“SEED”) program, which was put in place in 1989 and establishes a framework for funding for assistance programs in Eastern and South-Eastern Europe. 22 U.S.C. § 5401(a) (2004). State administers the SEED budget, dividing it among various programs and agencies according to its assessment of how the funds can best be utilized in that region. *Id.*

<sup>40</sup> See *Office of the Coordinator for Reconstruction and Stabilization*, at <http://www.state.gov/s/crs/> (last visited Nov. 6, 2004). This office has been established in part in response to the Stabilization and Reconstruction Civilian Management Act, S. 2127, 108th Cong. (2004), which calls for such an office, though has not yet at this time become law. S. 2127 would establish a permanent reconstruction-oriented office within the Department of State and a permanent “Response Readiness Corps.”

economy.”<sup>41</sup> The office has formed inter-agency working groups to begin planning strategies for approaching potential future reconstruction needs.

In Afghanistan, the State Department coordinated with its counterparts in Germany and other key countries to convene the Bonn Conference and other high-level meetings to ensure an appropriate political transition after the defeat of the Taliban. Following the military victory, it reopened the long-dormant U.S. Embassy in Kabul and took on a coordination and oversight role through the newly installed U.S. Ambassador to Afghanistan. The State Department also established an ambassador position to oversee the coordination of assistance coming from the many donor states involved with rebuilding in Afghanistan.<sup>42</sup> Additionally, through its Ambassador to the United Nations, it plays a role in the direction of how U.N. funds and programs are disbursed in Afghanistan and other reconstruction locales.

Similarly, in Iraq, during the early stages following the fall of the Hussein Regime, the State Department addressed strategic matters regarding reconstruction by working with the Treasury Department to encourage all U.N. members to comply with the requirement of UNSCR 1483 to freeze and transfer to the Development Fund for Iraq all assets of the former Iraqi Government.<sup>43</sup> Likewise, in convening the Donor’s Conference in Madrid in October 2003, it provided an opportunity for Iraqi ministers and business leaders to present their needs to the government and business leaders of the world.<sup>44</sup>

The State Department also worked within the United Nations Security Council to establish the CPA, which, as discussed above, was

---

<sup>41</sup> See *About S/CRS*, at <http://www.state.gov/s/crs/c12936.htm> (last visited Nov. 6, 2004).

<sup>42</sup> See Under Secretary of Treasury for International Affairs John B. Taylor, Making Reconstruction Work in Afghanistan, Remarks at the Council on Foreign Relations, Washington, D.C. 3 (Oct. 9, 2002), available at <http://www.treasury.gov/press/releases/po3524.htm>.

<sup>43</sup> Washington File, Judy Aita, *Iraqi Development Fund Seeks Control of Saddam Regime’s Assets*, (Aug. 6, 2003), available at <http://usembassy.state.gov/posts/pk1/www/03080602.html>; see also Under Secretary for Political Affairs Marc Grossman, New Priorities for U.S. Assistance Under the Iraq Relief and Reconstruction Fund (IRRF), On-The-Record Briefing, Washington, D.C. (Sept. 14, 2004), at <http://www.state.gov/p/36186.htm>.

<sup>44</sup> See Washington File, Wendy Lubetkin, *Annan Calls for “Urgent Attention” to Iraq Reconstruction* (Oct. 30, 2003), available at <http://usinfo.state.gov/xarchives/display.html?p=washfile-english&y=2003&m=October&x=20031023110909zemogb0.6140558&t=usinfo/wf-latest.html>.

responsible for administration of Iraqi affairs until sovereignty was transferred to the Iraqi Interim Government in June 2004. Following that transfer of sovereignty, the State Department has taken over responsibility for oversight of U.S.-led reconstruction through the Iraq Reconstruction Management Office, which is located within the U.S. Embassy in Baghdad.

*C. U.S. Agency for International Development*

The U.S. Agency for International Development is the USG's lead agency for disbursing and administering U.S. foreign assistance.<sup>45</sup> It operates in countries that are "recovering from disaster, trying to escape poverty, and engaging in democratic reforms." The primary areas USAID targets are: economic growth, agriculture and trade, global health, democracy, conflict prevention and humanitarian assistance.<sup>46</sup> This portfolio also includes the responsibility for addressing reconstruction needs in war-torn areas.

Throughout the 1950s, U.S. foreign assistance was administered through a number of different programs and agencies, often in conjunction with political and military assistance programs. However, with the passage of the Foreign Assistance Act of 1961, USAID was formed with the specific mandate to focus on "long-range economic and social development assistance efforts."<sup>47</sup> The Act also specifically separated political and military assistance programs from development programs.<sup>48</sup> Specific reconstruction and emergency assistance mechanisms within USAID include: the Office of Foreign Disaster Assistance; the Office of Transitional Initiatives; the Office of Food for Peace; the Economic Growth, Agriculture and Trade Bureau; and the Asia Near East Bureau.

Similar to how USACE operates, as discussed above,<sup>49</sup> USAID relies to a large extent upon private entities, including both private companies and non-governmental organizations (NGOs), to deliver the bulk of its assistance. Rather than maintaining internally a full complement of assistance distribution specialists, USAID relies upon the private sector to provide goods and services to accomplish

---

<sup>45</sup> See Foreign Assistance Act of 1961, 22 U.S.C. § 2151 (2004).

<sup>46</sup> See *About USAID*, at [http://www.usaid.gov/about\\_usaid/](http://www.usaid.gov/about_usaid/) (last visited Oct. 28, 2004).

<sup>47</sup> See *USAID History*, at [http://www.usaid.gov/about\\_usaid/usaidhist.html](http://www.usaid.gov/about_usaid/usaidhist.html) (last visited Nov. 6, 2004).

<sup>48</sup> *Id.*

<sup>49</sup> See *supra* Part III.A.2.

particular tasks.<sup>50</sup>

In contracting with other entities to deliver the bulk of its assistance, USAID, just like USACE, must operate in accordance with federal contracting regulations.<sup>51</sup> The rules are designed to provide a reliable, fair, and transparent process. However, they also involve substantial costs in terms of time and effort; where complex services and goods are involved, a full and open competition will take at least six to eight or more months to complete, from drafting a scope of work to awarding a final contract.<sup>52</sup> Accordingly, for time-sensitive needs, such as those involving natural disaster and war, speedier mechanisms are included in the regulations. USAID commonly uses such “urgency” exceptions in emergency situations, such as the hurricanes and earthquakes in Central and South America, and during and after conflicts in Bosnia, Afghanistan, and Iraq.<sup>53</sup>

In Afghanistan, USAID has undertaken a wide range of activities in support of the country’s physical reconstruction and transition to democracy after twenty-five years of war, anarchy, and dictatorship. The United States had been the largest supplier of assistance to Afghanistan prior to September 11, 2001, largely via USAID programs.<sup>54</sup> This included more than \$500 million in emergency aid between 1996 and 2001, mostly via United Nations and NGO mechanisms.<sup>55</sup> USAID support in Afghanistan encompassed a wide

---

<sup>50</sup> See e.g., ALLAN GERSON & NAT J. COLLETTA, *PRIVATIZING PEACE: FROM CONFLICT TO SECURITY* (Transnational Publishers) (2002) (indicating trend toward private sector involvement in rebuilding shattered economies/societies and arguing for more of such as most effective way of providing long-term growth/improvement).

<sup>51</sup> See *supra* Part III.A.2.

<sup>52</sup> Jeffrey Marburg-Goodman, *USAID’s Iraq Procurement Contracts: Insider’s View*, ABA PROCUREMENT LAWYER 10 (Fall 2003), available at <http://www.usaid.gov/iraq/contracts/jmgarticle.pdf>.

<sup>53</sup> *Id.* Specifically, companies that had previously shown the capability to perform the work expected to be required, were placed on “short lists” and final awards were made from these lists. *Id.* In all cases, selections were made by USAID career employees under procedures specifically designed to block political influence in contractor selection. *Id.* at 11-12. See also GAO-04-605, *supra* note 12, at 11-12 (concluding that use of other than full and open competition procedures immediately prior to, during and after the war in Iraq complied with legal requirements).

<sup>54</sup> From 1950 to 1979, U.S. foreign assistance provided Afghanistan with more than \$500 million in loans, grants, and surplus agricultural commodities to develop transportation facilities, increase agricultural production, expand the educational system, stimulate industry, and improve government administration. During the period of Soviet occupation of Afghanistan, the U.S. provided about \$3 billion in military and economic assistance to Afghans and the resistance movement. See *Background Note: Afghanistan*, at <http://www.state.gov/r/pa/ei/bgn/5380.htm> (Nov. 2004).

<sup>55</sup> See *U.S. Agency for International Development: Afghanistan Recovery and*

variety of tasks such as: strengthening governance (including logistical support for the Emergency Loya Jurga in 2001 and the subsequent parliamentary elections); rehabilitating agriculture; improving education, job access, and legal rights for women; increasing access to and improving the quality of healthcare opportunities; restoring basic infrastructure (including roads,<sup>56</sup> tunnels, bridges, and irrigation systems); and supporting increased access to quality education.<sup>57</sup>

Similarly, in Iraq, USAID has provided support for a wide variety of projects in the areas of education, healthcare, food security, infrastructure reconstruction, airport and seaport management, economic growth, community development, local governance, and transition.<sup>58</sup> USAID also facilitated the introduction of new currency, assisted with the modernization of the Iraqi Central Bank's procedures and functions, supported the CPA in expanding Iraqi employment through the CPA-funded National Employment Program, and assisted in reforming and updating commercial laws to encourage private sector participation, including foreign investment.<sup>59</sup>

#### *D. U.S. Department of the Treasury*

The United States Department of the Treasury—primarily through the Office of the Under Secretary for International Affairs—is responsible for formulating and executing U.S. international policies in areas such as international monetary affairs, international debt strategy, trade and investment policy, and U.S. participation in international financial institutions.<sup>60</sup> The Treasury Department can play a critical role in economic reconstruction, particularly with respect to moderniz-

---

*Reconstruction Strategy*, at 4, available at [http://www.usaid.gov/locations/asia\\_near\\_east/afghanistan/USAID\\_Afghanistan\\_Strategy.pdf](http://www.usaid.gov/locations/asia_near_east/afghanistan/USAID_Afghanistan_Strategy.pdf).

<sup>56</sup> A centerpiece of USAID efforts in Afghanistan has been the rehabilitation of the Kabul-Kandahar highway, which has dramatically improved the transportation link between those key Afghan cities. USAID had originally supported construction of the road in the 1960s, but two and a half decades of use, warfare and neglect had left it in a state of serious disrepair. See *Phase I: Kabul-Kandahar Highway*, at [http://www.usaid.gov/locations/asia\\_near\\_east/afghanistan/road.html](http://www.usaid.gov/locations/asia_near_east/afghanistan/road.html) (last visited Nov. 2, 2004).

<sup>57</sup> See *USAID Fact Sheet: USAID in Afghanistan*, available at [http://www.dec.org/pdf\\_docs/PDABZ991.pdf](http://www.dec.org/pdf_docs/PDABZ991.pdf); see also *U.S. Agency for International Development*, *supra* note 55.

<sup>58</sup> See *Iraq Reconstruction Accomplishments: A Brief Overview*, at <http://www.usaid.gov/iraq/accomplishments/> (last visited Oct. 28, 2004).

<sup>59</sup> *Id.*

<sup>60</sup> See *Office of Technical Assistance: Overview*, at <http://www.treasury.gov/offices/international-affairs/assistance/> (last visited Oct. 28, 2004); see also 31 U.S.C.A. § 325 (2004).

ing public and private banking systems, creating modern and transparent budgetary structures, establishing effective tax policy and collection, and supporting sound monetary policy.<sup>61</sup> Effective structures in each of these areas are essential to the operation of a modern economy. The Treasury Department's Office of Technical Assistance (OTA) is the primary vehicle for providing such support. OTA can provide technical experts who have a wide range of experience around the world in these areas.

Immediately following the fall of the Taliban Regime, in December 2001, the Treasury Department sent an advisor to Afghanistan to assess budgetary, financial, and economic conditions.<sup>62</sup> Additional advisors and technical assistance followed to assist in the replacement of the prior three currencies with a single, national currency, the Afghani.<sup>63</sup> The Treasury Department also worked with the Multilateral Development Banks and other donor nations to obtain financing for reconstruction needs, with a particular focus on securing grants rather than loans.<sup>64</sup> Concurrently, the Treasury Department supported the establishment of strong financial controls within the new government's budgeting, financial accountability, and auditing systems. Such controls both improve the functioning of a new government and enhance donor state confidence that contributed funds will be managed and used appropriately.<sup>65</sup>

In Iraq, the Treasury Department worked quickly with the international community to involve international financial institutions with reconstruction efforts, providing needs assessments and technical assistance and working to remove sanctions on the sale of Iraqi oil.<sup>66</sup> The latter was essential to guarantee that a revenue stream could become available to fund both day-to-day government operations and reconstruction efforts. The Treasury Department deployed OTA advisors in the spring of 2003 to help Iraqi officials and government employees ensure that Iraq had a functioning Finance Ministry and other essential financial institutions.<sup>67</sup> The Treasury Department also

---

<sup>61</sup> See *Office of Technical Assistance*, *supra* note 60.

<sup>62</sup> Snow Testimony, *supra* note 2, at 2.

<sup>63</sup> *Id.*

<sup>64</sup> See Taylor, *supra* note 42.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> See Under Secretary of the Treasury for International Affairs John B. Taylor, Reconstruction in Iraq: Economic and Financial Issues, Testimony Before Senate Foreign Relations Committee 2 (June 4, 2003), available at <http://www.treas.gov/press/releases/js452.htm>. See also Under Secretary of the Treasury for International Affairs John B. Taylor, Financial Reconstruction in Iraq, Testimony Before Senate Banking &



was responsible for working with other countries around the world to address issues surrounding Iraqi debt.<sup>68</sup> Treasury Secretary John Snow and Secretary of State Colin Powell led the U.S. efforts at the Iraq Donor's Conference in Madrid in October 2003 to mobilize international support for reconstruction efforts.<sup>69</sup>

Most prominently, the Treasury Department led the effort to replace the two prior Iraqi currencies with a new, unified national currency.<sup>70</sup> Equally important, however, has been the Treasury Department's support of Iraqi efforts to reform and modernize the country's banking sector. Under the prior regime, banking was government-run, with lending completely centralized. Modernization of the banking sector is essential to allow Iraqis to save money and to access the capital necessary to operate and modernize existing businesses and to establish new ones.

#### *E. U.S. Trade and Development Agency*

The U.S. Trade and Development Agency is a foreign assistance agency with a dual mission in developing and middle-income countries: to advance both economic development and the export of U.S. goods and services.<sup>71</sup> Accordingly, USTDA is able to mobilize private sector resources in order to accomplish developmental goals. USTDA funds various forms of technical assistance, feasibility studies, training, orientation visits, and business workshops that support the development of modern infrastructure and fair and open trading environments. Stated broadly, the agency serves as a facilitator, providing funding for activities that help countries identify their needs and accomplish particular goals. To name but a few examples, such goals might include modernizing a port or air traffic control system, building a new power plant, or revising a telecommunications regulatory structure.<sup>72</sup>

USTDA supports economic development activities at the request of foreign project sponsors, whether public or private sector. Typical

---

Finance Committees 2-3 (Feb. 11, 2004), available at <http://www.treas.gov/press/releases/js1165.htm>.

<sup>68</sup> See Reconstruction in Iraq: Economic and Financial Issues, *supra* note 67, at 5.

<sup>69</sup> See Remarks on Financial Reconstruction in Iraq, *supra* note 67.

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

<sup>71</sup> See *USTDA Director's Welcome*, at <http://www.ustda.gov/USTDA/About%20USTDA/directorswelcome.htm> (last visited Oct. 28, 2004); see also The Foreign Assistance Act of 1961 § 661 (codified as amended at 22 U.S.C. § 2421 (2004)).

<sup>72</sup> For more information, see, e.g., *About USTDA*, at <http://www.ustda.gov/abouttda/primer.html> (last visited Oct. 28, 2004).

host country project sponsors include a country's national telecommunications or transportation ministry, a municipal government, a public or private utility, or a private company. The agency's tools fall into two categories: 1) project definition and investment analysis; and 2) trade capacity building and sector development.<sup>73</sup>

The agency operates worldwide on an ongoing basis, including in post-conflict reconstruction situations. USTDA has worked extensively in the Balkans in the 1990s, in East Timor and Afghanistan since 2002, and, most recently, in Iraq.

USTDA's program in Afghanistan began with sending contractors and USTDA staff to the country in 2002 to meet with Afghan officials, U.S. Embassy personnel, and other local experts to explore opportunities in the aviation and telecommunications sectors.<sup>74</sup> These initial investigations and subsequent contractor and staff visits led to activities such as the provision of technical assistance to Afghan ministries seeking to reform outdated regulatory structures; feasibility studies for higher education, aviation, and telecommunications projects; and support for visits by officials in the aviation, oil and gas, and telecommunications sectors to meet with U.S. officials and business leaders.<sup>75</sup> Additionally, USTDA, in cooperation with the U.S. Department of Commerce, sponsored a conference in Chicago, Illinois in June 2003 that brought Afghan Ministers and other officials to the United States to have an opportunity to showcase their needs to U.S. businesses.<sup>76</sup> USTDA has focused in particular on supporting development in the key sectors of telecommunications, oil and gas, and aviation.

In Iraq, USTDA worked through 2003 and 2004 with the CPA, Iraqi officials, and technical experts to identify and pursue opportunities in key sectors, including information and communications technology (ICT), banking, education, and railways. This has led to

---

<sup>73</sup> See *Introduction to USTDA Programs*, available at <http://www.ustda.gov/USTDA/About%20USTDA/abouttda1.htm> (last visited Nov. 2, 2004). USTDA typically begins its work with a Definitional Mission, which is a short-term visit by a private sector expert in the relevant field, who travels to a region or country to work with the local entity to identify particular potential projects to support. 2003 USTDA ANN. REP. 1, 7, available at <http://www.ustda.gov/USTDA/About%20USTDA/eventspubs.htm> (last visited Nov. 28, 2004). USTDA support can then take such forms as technical assistance, feasibility studies and training grants. *Id.* at 5-6.

<sup>74</sup> 2002 USTDA ANN. REP. 1, 35-36, available at <http://www.ustda.gov/USTDA/About%20USTDA/eventspubs.htm> (last visited Nov. 28, 2004).

<sup>75</sup> *Id.* at 34, 36.

<sup>76</sup> This conference, entitled "Afghanistan: Rebuilding a Nation," like others that USTDA sponsors, provided an opportunity for Afghan government leaders to present potential projects to U.S. Government entities, international donors, and U.S. private sector representatives. 2003 USTDA ANN. REP. at 19-20.

the awarding of contracts for activities in the area of ICT training, international accounting standards training, and railways modernization.<sup>77</sup>

*F. U.S. Department of Commerce*

The United States Department of Commerce (“Commerce”) has a broad portfolio encompassing such diverse areas as export promotion, trade dispute resolution, weather prediction, coastal and marine fisheries protection, and standards promotion.<sup>78</sup> The Commerce Department, through the Commercial Service within the International Trade Administration, has a large role in promoting U.S. exports and in providing assistance for U.S. firms seeking to do business overseas.<sup>79</sup> In addition to its extensive operations within the United States, the Commercial Service has offices around the globe that actively support U.S. firms seeking to do business overseas and foreign firms seeking to partner with U.S. companies. While the Commerce Department does not have a specific reconstruction mandate, its export-support activities can be directed toward assisting commerce between the United States and areas undergoing reconstruction.

The Commerce Department provides information, technical assistance, and matchmaking and other services in support of businesses seeking opportunities to export goods and services around the world, including to Iraq and Afghanistan. To support businesses seeking to enter both of those challenging markets, the Commerce Department established specific task forces to support efforts to do business there.<sup>80</sup> Under the auspices of these task forces, the Commerce Department collects and disseminates information regarding opportunities in the countries via websites, newsletters, “road shows” within the United States and abroad, and matchmaking seminars. The Commerce Department has also supported the establishment of Business

---

<sup>77</sup> For example, in February 2004, USTDA sponsored an orientation visit to the United States for six Iraqi Railways officials to meet with U.S. firms, USG officials, and financing institutions. Over ten days they met with U.S. company representatives and government officials in Nebraska, Illinois, and Washington, D.C. This provided them with an opportunity to explore possible approaches to modernizing their ageing railway system. Press Release, U.S. Firms Explore Opportunities in Iraqi Rail Sector (Feb. 2, 2004), at [http://www.ustda.gov/trade/press/Feb02\\_04.html](http://www.ustda.gov/trade/press/Feb02_04.html).

<sup>78</sup> See 5 U.S.C. § 591 (2004); *Milestones* at <http://www.commerce.gov/milestones.html> (last visited Nov. 4, 2004).

<sup>79</sup> See, e.g., <http://www.export.gov> (last visited Sept. 25, 2004).

<sup>80</sup> See *Iraq Investment and Reconstruction Task Force*, at <http://www.export.gov/iraq/> (last visited Oct. 28, 2004); *Afghanistan Investment and Reconstruction Task Force*, at <http://www.export.gov/afghanistan/> (last visited Oct. 28, 2004).

Centers in Baghdad and Kirkuk, which provide local support to U.S. and other businesses seeking to enter the Iraqi market and to Iraqis seeking access to U.S. goods and services.<sup>81</sup>

*G. The Overseas Private Investment Corporation*

The Overseas Private Investment Corporation is a foreign assistance arm of the U.S. Government that fosters investment by U.S. companies in projects in less-developed countries and areas, as well as in countries transitioning from non-market to market economies.<sup>82</sup> OPIC's mission is "[t]o mobilize and facilitate the participation of United States private capital and skills in the economic and social development of less developed countries and areas, and countries in transition from non-market to market economies . . . ."<sup>83</sup> Like USAID and USTDA, OPIC has a developmental mission, fostering economic development in new and emerging markets. OPIC supports U.S. foreign policy objectives and complements the private sector in managing the risks associated with foreign direct investment. By expanding economic development in host countries, OPIC-supported projects can encourage political stability, free market reforms, and U.S. best practices.<sup>84</sup>

OPIC can use three primary tools to advance its mission: provide political risk insurance; provide project financing for overseas investments; and establish investment funds for particular countries, regions, or sectors.<sup>85</sup> OPIC's political risk insurance and financing are only available in situations where financing or insurance is not available from private sources.<sup>86</sup> Investment funds are created where OPIC identifies a particular geographic or sectoral need.<sup>87</sup>

OPIC's role in reconstruction situations is to facilitate conditions whereby U.S. investment can enter a country as quickly as possible. For example, in Afghanistan, shortly after the fall of the Taliban Regime, OPIC made a \$50 million line of credit available for investment in the country.<sup>88</sup> Additionally, OPIC pursued hotel development

---

<sup>81</sup> See *Iraq Investment*, *supra* note 80.

<sup>82</sup> 22 U.S.C. § 2191 (2004).

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

<sup>84</sup> See OPIC Website, at <http://www.opic.gov/> (last visited Oct. 28, 2004).

<sup>85</sup> OPIC PROGRAM HANDBOOK, *available at* <http://www.opic.gov> (last visited Sept. 25, 2004). OPIC also has programs specifically targeted at supporting small businesses. *Id.* at 36-39.

<sup>86</sup> *Id.* at 2.

<sup>87</sup> *Id.* at 33.

<sup>88</sup> Press Release, OPIC Establishes \$50 Million Credit Line for U.S. Investment in

opportunities there, building upon a USTDA-funded study on hotel development requirements. The study identified a tremendous need for expanded lodging opportunities for business representatives, government employees, aid workers, and others visiting the country. OPIC subsequently worked with U.S. hotel companies, other investors, and Afghan officials to identify and proceed with a hotel project.<sup>89</sup> OPIC has focused particular attention on supporting companies working to build schools and a local housing manufacturing facility, and on providing insurance for various business ventures.

In Iraq, OPIC is modeling its efforts after its approach in Eastern Europe and Eurasia following the breakup of the former U.S.S.R. In these areas, the agency worked to address the problems associated with the lack of access to credit and capital, which affected companies of all sizes. OPIC is focused on establishing mechanisms for local sub-contractors who are working on larger U.S. contracts to obtain much-needed credit.<sup>90</sup>

#### *H. The Export-Import Bank of the United States*

The Export-Import Bank of the United States is the official export credit agency (ECA) of the United States.<sup>91</sup> It provides loan guarantees, export credit insurance, working capital guarantees, and direct loans to U.S. exporters, principally those exporting to emerging markets around the globe.<sup>92</sup> The Ex-Im Bank supports transactions with both private and governmental entities.<sup>93</sup> One of its primary forms of assistance to U.S. exporters is in assuming credit and country risks that the private sector is unable or unwilling to accept.<sup>94</sup> This role is valuable to U.S. companies both in allowing them to enter markets

---

Afghanistan (Mar. 28, 2002), at <http://www.opic.gov/pressreleases/printerfriendly.asp>. One year later, this amount was doubled. Press Release, Watson Meets with Karzai, OPIC Pledges Additional \$50 Million for Afghanistan (Mar. 4 2003), at <http://www.opic.gov/pressreleases/printerfriendly.asp>.

<sup>89</sup> See Press Release, OPIC Agreement Marks Start of Hotel Project in Afghanistan (June 9, 2003), at <http://www.opic.gov>.

<sup>90</sup> See, e.g., Judith Richards Hope & Edward N. Griffin, *The New Iraq: Revising Iraq's Commercial Law is a Necessity for Foreign Direct Investment and the Reconstruction of Iraq's Decimated Economy*, 11 CARDOZO J. INT'L & COMP. L. 875 (2004) (discussing need for FDI and the changes to Iraq's commercial law that are necessary to facilitate such investment).

<sup>91</sup> Export-Import Bank Reauthorization Act of 2002, 12 U.S.C. § 635 (2004).

<sup>92</sup> See *Export-Import Bank of the United States Mission*, at <http://www.exim.gov/about/mission.html> (last visited Sept. 25, 2004).

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

<sup>94</sup> *Id.*

that would otherwise represent too great a risk to do business, and by supporting U.S. exporters competing against foreign exporters from countries with aggressive ECA programs.<sup>95</sup> The Ex-Im Bank also benefits local economies beyond the benefit of facilitating imports, because access to credit is a critical element to the functioning of a healthy, modern economy.<sup>96</sup>

In contrast to USTDA, OPIC, and USAID, the Ex-Im Bank does not have a developmental mandate.<sup>97</sup> The Ex-Im Bank is a USG agency and takes policy concerns into consideration in its strategic decision-making regarding the countries in which it is open to transact business and under what terms. Nevertheless, like a commercial bank, its decisions regarding whether to support individual transactions in a given country are based upon the need for a reasonable assurance of repayment, including the creditworthiness of the buyer.<sup>98</sup> This requirement may preclude or limit its ability to operate in a country with little or no resources and/or infrastructure, which is often the case in post-conflict situations.<sup>99</sup>

In Iraq, the Ex-Im Bank worked with the ECAs of fifteen other nations to support the Trade Bank of Iraq (“Trade Bank”),<sup>100</sup> which was established by the CPA as an independent Iraqi government entity designed to facilitate reconstruction efforts within Iraq.<sup>101</sup> The partic-

---

<sup>95</sup> *Id.*

<sup>96</sup> See, e.g., Timothy B. Mills, *Reconstructing Iraq: An Analysis of, and Proposed Solutions to, the Financing Challenges Facing Iraqi Small and Mid-Size Businesses*, 32 GA. J. INT’L & COMP. L. 125 (2004).

<sup>97</sup> See Ex-Im authorizing statute, *supra* note 91.

<sup>98</sup> This may take the form of sovereign or sub-sovereign guarantees.

<sup>99</sup> In Afghanistan, Ex-Im is closed for ordinary business due to the country’s risk profile. *Ex-Im Bank Country Limitation Schedule*, available at [http://www.exim.gov/tools/country/country\\_limits.html](http://www.exim.gov/tools/country/country_limits.html) (last visited Nov. 15, 2004). However, in countries where it is closed for reasons other than a legal prohibition, Ex-Im may nevertheless operate where a transaction represents a situation outside of the country’s basic risk profile. For example, Ex-Im may underwrite a loan that is secured by the cash flow of a particular transaction (as opposed to being based on the balance sheet of the company or nation in question) in Afghanistan if a reasonable assurance of repayment is present. *Id.* However, to date no transactions in Afghanistan have been entered into.

<sup>100</sup> See Press Release, Ex-Im Bank Signs Agreement to Support Trade Bank of Iraq (Dec. 5, 2003), at <http://www.exim.gov/pressrelease.cfm/47CA2AAE-EAF4-AA78-4655879789C765F2/>. To reflect the assumption of sovereignty by the Interim Government of Iraq in June 2004, the Ex-Im Bank, the Iraqi Ministry of Finance, and the Trade Bank of Iraq signed a framework agreement on October 5, 2004 to replace the prior agreement. See Press Release, Ex-Im Bank, Iraqis Sign Trade Financing Agreement (Oct. 5, 2004), at <http://www.exim.gov/pressrelease.cfm/69BF4337-EFEA-3A9E-587005A4BA52EC6E/>.

<sup>101</sup> See Press Release, The Trade Bank of Iraq: Iraq Fact of the Day (Feb. 6, 2004),

ipating ECAs collectively provided for more than \$2.5 billion in support for Trade Bank activities.<sup>102</sup> The Ex-Im Bank's portion of the support was the creation of a \$500 million short-term insurance facility to support U.S. goods and services exports financed by the Trade Bank.<sup>103</sup> The other \$2 billion represents similar support from the ECAs from other countries, such as Italy and the United Kingdom. As a practical matter, this means that Iraqi entities can finance the purchase of goods through the Trade Bank from each country that has provided support to the Trade Bank.<sup>104</sup>

#### IV. CONCLUSION

To understand and effectively evaluate USG post-conflict economic reconstruction efforts, it is essential to have at least a basic familiarity with the specific arms of the government involved in the process. As we have seen, the tools available to the United States Government to accomplish post-conflict economic reconstruction are located throughout the USG among a number of specialized departments and agencies, all of which work in tandem to accomplish the overall goal.

---

at <http://www.whitehouse.gov/news/releases/2004/02/20040206-1.html>; Press Release, Ex-Im Bank Provides \$500 million in support of Trade Bank of Iraq (Dec. 8, 2003), at <http://usinfo.state.gov/xarchives/display.html?p=washfile-english&y=2003&m=December&x=20031208135233atarukp0.9264185&t=xarchives/xarchitem.html> (distributed by the Bureau of International Information Programs, U.S. Department of State).

<sup>102</sup> See Ex-Im Bank Signs Agreement, *supra* note 100.

<sup>103</sup> *Id.*

<sup>104</sup> Third country entities also now have similar access to credit from those countries. For example, if an Egyptian construction company seeks to purchase U.S. goods for use in Iraq, assuming the company is creditworthy, the Ex-Im Bank facility will make it possible for the company to finance such purchases from the United States through the Trade Bank.