LAWYERS, GUNS, AND MONEY: WARLORDS AND RECONSTRUCTION AFTER IRAQ

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I.   INTRODUCTION

After every war, local elites – warlords – try to consolidate or expand their power. They struggle with international reconstruction missions, often co-opting, bypassing, or crushing the institutions those missions try to build. Too many missions either do not confront warlords or lose their struggles, leaving behind societies riven, weak, and likely to fall back into conflict. In Iraq, American policymakers failed to prepare adequately for struggles with warlords, turning away from lessons gained in missions conducted throughout the 1990s. This essay argues that American missions can succeed by confronting warlords, using a comprehensive strategy that involves the targeted use of coercion and violence, threats of prosecution, and restrictions on

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warlords' funding: lawyers, guns and money.

II. BACKGROUND

The basic rule of post-conflict reconstruction is this: do not plan for crowds that cheer when international help arrives; plan so that crowds will not jeer when help leaves.

This essay explores a common reason that reconstruction missions are jeered – warlords beat them. There is a cycle that is predictable, almost inevitable: the mission tries to create new governmental and economic structures; elites try to co-opt, crush, or bypass these new structures; the mission too often is unprepared or irresolute; and elites emerge as the society's power brokers.[1] Too often, missions limp to their end, leaving behind societies with entrenched and enriched elites, narrowed political space, and a proclivity to return to armed conflict. Discussions of post-conflict reconstruction ignore this struggle for power – politics, in other words – even though it can determine the mission's success or failure.

Fortunately, post-conflict missions have had some successes against warlords. In this essay I focus on three tools that have been used to reduce warlords' political and economic power:

- **Guns**: military and law enforcement units that can combat warlords. Coercion and violence – lawful and proportionate—must be tools of a post-conflict mission and cannot be left solely to warlords;
- **Lawyers**: prosecution or amnesty can remove warlords from public and political life; and
- **Money**: reducing warlords' funding, making what remains transparent, and providing alternative sources of financial support among potential supporters.

These tools are not a magic response. They must be applied with political skill on the basis of a comprehensive strategy and with careful attention to local situations**.** Success requires a willingness to acknowledge the problem, to decide to confront warlords decisively, and to make available the resources needed to win.

In fact, the world has learned a great deal about how to help societies as they emerge from war. Large international missions in

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[1] Christopher Coyne notes that the absence of politics in discussions of post-conflict missions. He starts to construct a model of success that reflects degrees of cooperation and conversely confrontation. Coyne focuses on a crucial struggle and is a valuable contribution. *See* Christopher Coyne, *After War: Understanding Postwar Reconstruction*, *at* http://www.mercatus.org/globalprosperity/article.php/833.html (last visited Nov. 19, 2004).

Cambodia, Mozambique, Somalia, Guatemala, El Salvador, Haiti, Bosnia and Herzegovina, Kosovo, West Africa, East Timor, Afghanistan, and now Iraq provide considerable material about what works and, too often, what does not. Insightful reviews of post-conflict missions offer sound advice with an emphasis on measurements of progress (miles of road built, currency or budget stability), on the wisdom of these markers (such as whether elections should be pursued early of late in missions), and on the inputs needed to achieve them (such as number of troops, amount of aid, time in country).[2]

Still, the record is mixed at best. The very idea of post-conflict reconstruction has been controversial. Conflicts begin again in many states,[3] and the odds of success seem to fluctuate with factors that are hard for missions to influence, such as population size or the intentions of neighbors. At the time this essay is written, the post-conflict missions in Iraq and Afghanistan, the two most recent, face difficult

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[2] Several excellent studies on post-conflict reconstruction set out the breadth of issues that must be confronted. *See, e.g.*, JAMES DOBBINS ET AL., AMERICA'S ROLE IN NATION-BUILDING: FROM GERMANY TO IRAQ (2003) [hereinafter Rand Study], *at* http://www.rand.org/publications/MR/MR1753/ (last visited Nov. 19, 2004). The Center for Strategic and International Studies (CSIS) and the Association of the United States Army prepared a matrix of issues and benchmarks early in 2002. *See also Post-Conflict Reconstruction: A Joint Project of the Center for Strategic and International Studies and the Association of the United States Army* (May 2002), *at* http://www.csis.org/isp/pcr/fram ework.pdf; F. Barton & B. Crocker, *A Wiser Peace: An Action Strategy for Post-Conflict Iraq*, Center for Strategic & International Studies (Jan. 23, 2003), *at* http://www.csis.org/ isp/wiserpeaceI.pdf. Scholars at the U.S. Institute of Peace, Brookings Institution, and the Council on Foreign Relations each have done valuable surveys of post-conflict needs. *See, e.g.*, Kenneth Pollack, *After Saddam: Assessing the Reconstruction of Iraq,* The Brookings Institution (Jan. 12, 2004) *at* http://www.brookings.edu/views/papers/poll ack/20040107.pdf ("[k]ey question is whether the Bush Administration adapts its policy to the needs of reconstruction or instead opts to phase out its engagement in Iraq"); Thomas R. Pickering, et al., *Iraq: The Day After, Report of a Task Force of the Council of Foreign Relations* (Mar. 2003), *at* http://www.cfr.org/pdf/Iraq_DayAfter_TF.pdf; U.S. Institute of Peace, *Establishing the Rule of Law in Iraq* (Mar. 2003), *at* http://www.usip.org (last visited Oct. 29, 2004). The U.S. Institute of Peace has a "Filling the Gaps" program, in which discussions among experts will look at subjects that continue to trouble post-conflict missions, such as the development of mass media, the role of women, and measurements of success. This effort may produce interesting interim findings in each area as well as, eventually, recommendations for re-thinking the organization of post-conflict missions. *See* U.S. Institute of Peace, *Post-Conflict Reconstruction: Filling the Gaps*, *at* http://www.usip.org (2004).

[3] *See* P. Collier, I. Elbadawi, and N. Sambanis, *Why Are There So Many Civil Wars in Africa? Preventing Future Conflicts and Promotion of Inter-Group Cooperation*, The World Bank (Dec. 1, 2000), *at* http://www.worldbank.org/research/conflict/papers/eca20 00c.pdf (between one-third and one-half of civil wars resume within a few years of peace).

and perhaps insurmountable challenges.[4]

Local elites who oppose international missions become global but ephemeral celebrities: Hun Sen in Cambodia, Mohammed Farah Aideed in Somalia, Radovan Karadzic and Ante Jelesic in Bosnia, Charles Taylor in western Africa, Ismail Khan in Afghanistan, and Moktada al-Sadr in Iraq. The underlying phenomenon is obscured, even though each of these men is cut from the same cloth. They can be called elites, hegemons, or obstructionists, but the most evocative and accurate label is "warlord." This term captures the essential quality of their resistance – a willingness to use coercion, even violence, to consolidate or expand their political and economic influence.[5]

The symposium at which these remarks were delivered focused on Iraq, and the struggles in Iraq reflect the importance of political leadership that confronts warlords properly.

In preparing for the invasion of Iraq – a war that America and its coalition would win, and win quickly – the Administration did not undertake basic preparations that observers of previous conflicts would have known were necessary. Publicly, at least, before the war, the Administration implied that there would be no post-conflict struggle.[6] Early post-conflict planning reportedly focused on humanitarian and oil field contingencies, and fewer troops were allocated to Iraq, per capita, than in other post-conflict missions.[7] Looting, lawlessness, and small-scale resistance were described as the

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[4] Senator Chuck Hagel, Remarks at Face The Nation (Sept. 19, 2004) ("[n]o, I don't think we're winning . . . we're in deep trouble in Iraq"), *at* http://www.cbsnews.com/stories/2004/09/19/ftn/main644281.shtml; Frederick Barton and Bathsheba Crocker, *Progress or Peril? Measuring Iraq's Reconstruction*, Report of the Center for Strategic and International (Sept. 1, 2004), *at* http://www.csis.org or http://www.reliefweb.int ("[i]raq is not yet moving on a sustained positive trajectory on reconstruction"); Douglas Jehl, *U.S. Intelligence Shows Pessimism on Iraq's Future*, N.Y. TIMES, Sept. 16, 2004, at A1 (July 2004 classified National Intelligence Estimate contains "dark assessment"); *but see* Iraqi Prime Minister Ayad Alawi, Remarks at Council on Foreign Relations (Sept. 23, 2004), *at* http://www.cfr.org (describing progress); Interview with Scott McClellan, Abroad Air Force One En Route Manchester, New Hampshire (Sept. 20, 2004), *at* http://www.whitehouse.gov/news/releas es/2004/09/20040902-7.html (Iraq making "significant progress"). Afghanistan is discussed *infra* notes 17 and 26.

[5] I use "his" intentionally. Warlords, at least in recent missions, have all been men.

[6] Vice President Richard Cheney, Remarks at Meet the Press (Mar. 16, 2003) ("[i] don't think it's likely to unfold that way [that 'the Iraqis begin resist . . . with significant American casualties'] . . . because I really do believe that we will be greeted as liberators").

[7] To replicate in Iraq the troop-population ratio of Kosovo (where there have been no fatalities due to hostile action) would require 500,000 troops through 2005, or more than three times the current number.

effort of holdovers from the Saddam regime, a finite number of opponents who would lose heart as many died and the former Iraqi leadership was captured.[8]   After a year of deepening, multiple insurgencies, the Administration has argued that the struggle is best left to Iraqis themselves, bolstered by international help.

It is of course premature to judge what will happen in Iraq and Afghanistan or to lay all problems on the failure to prepare adequately for warlords. It should have been clear from the start, however, that there would have been post-conflict opposition in each country and that it would take all available tools to oppose them. America's ability to stay the course in those countries and to pursue the right course in future post-conflict operations may depend on the willingness of its leaders to build the political consensus needed for success.

In this essay I offer a sketch of three tools that have been used to confront warlords. Section I discusses the problem of warlords. I describe why reconstruction missions typically have trouble confronting warlords and draw an example from the international post-war mission in Bosnia, which after several false starts began to function effectively against warlords. Section II introduces the tools and discusses post-conflict situations in which they have or have not worked well. Section III pulls together lessons for future missions.

III. THE WARLORD PROBLEM

The international experience in Bosnia provides a handy template for post-conflict reconstruction. What had once been Yugoslavia consumed itself in brutal wars and Bosnia lay in ruins. By the summer of 1995, more than a quarter of its population had been displaced, several hundred thousand had died, and hundreds of international soldiers had been killed in an effort to keep a peace that did not exist. In July 1995, Bosnian Serb forces seized the town of Srebrenica from under U.N. protection, murdering more than 7,000 men in Europe's worst genocide since the Holocaust.[9]

That fall, the warring factions of Bosnia and Herzegovina concluded the Dayton Agreement ("Agreement") under enormous

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[8] Secretary Donald Rumsfeld, Remarks at Town Hall Meeting in Baghdad (April 30, 2003) ("[w]e still have to find and deal with the remaining elements of the former regime. We have to root out and eliminate terrorist networks operating in this country"). *Cf.* Alawi, *supra* note 4 (insurgents are defenders of former regime, foreign fighters, and criminals).

[9] The best account of the wars of the former Yugoslavia remains that of Alan Little and Laura Silber. *See* A. LITTLE & L. SILBER, YUGOSLAVIA: DEATH OF A NATION (1995).

international pressure and as a result of skillful American diplomacy. The Agreement provided for a new democratic government supported by a NATO military force that started with more than 35,000 soldiers, an international civilian reconstruction mission, and pledges of massive international assistance.[10]

The Agreement created an interim local leadership supported by an international reconstruction team. As is now typical, a dignitary, such as a former government official, takes on the job of international mission head. The international team takes its instructions from a group of states,[11] an international organization,[12] or an occupying power.[13] Generally, the international effort has a civilian component and a military component, with command and control sometimes united, but more often split. International organizations with special expertise coordinate their activities with this international team.

Bosnia's warlord problem emerged in the negotiations at Dayton.

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[10] The Dayton Agreement is named after the Ohio city in which it was negotiated, *available at* http://www.ohr.int (last visited Nov. 19, 2004) (the website of the international office established in the Agreement). Several participants have written their perspectives on the negotiations. *See, e.g.*, RICHARD HOLBROOKE, TO END A WAR (1998) (focusing on efforts of American diplomats negotiating in the field); I. DAALDER, GETTING TO DAYTON (1999) (National Security Council expert focused on role of White House staff); C. BILDT, PEACE JOURNEY: THE STRUGGLE FOR PEACE IN BOSNIA (1999) (description by European envoy and first international representative for implementation).

[11] *See, e.g.*, Decision of the Peace Implementation Council (PIC), London (1995) (establishing PIC and Steering Board of donors and appointing High Representative to head civilian mission in Bosnia). The United Nations Security Council approved this arrangement, but the civilian reconstruction mission in Bosnia is not a UN mission. *See* S.C. Res. 1035, U.N. SCOR, 3613th mtg. at 1, U.N. Doc. S/RES/1035 (1995), *available at* http://www.un.org/Docs/scres/1995/scres95.htm (last visited Oct. 29, 2004).

[12] *See, e.g.*, S.C. Res. 1244, U.N. SCOR, 4011th mtg. at 1, U.N. Doc. S/RES/1244 (1999) (establishing U.N. Interim Mission in Kosovo and providing for appointment of Special Representative of Secretary General as head), *available at* http://www.un.org/D ocs/scres/1999/sc99.htm (last visited Oct. 29, 2004); S.C. Res. 1279, U.N. SCOR, 4076th mtg. at 1, U.N. Doc. S/RES/1279 (1999) (East Timor), *available at* http://www.un.org/D ocs/scres/1999/sc99.htm (last visited Oct. 29, 2004); S.C. Res. 1270, U.N. SCOR, 4054th mtg. at 1, U.N. Doc. S/RES/1270 (1999) (Sierra Leone), *available at* http://www.un.org/ Docs/scres/1999/sc99.htm) (last visited Oct. 29, 2004); S.C. Res. 1509, U.N. SCOR, 4830th mtg. at 1, U.N. Doc. S/RES/1509 (2003) (Liberia), *available at* http://www.un.org /Docs/sc/unsc_resolutions03.html (last visited Oct. 29, 2004); S.C. Res. 1401, U.N. SCOR, 4501st mtg. at 1, U.N. Doc. S/RES/1401 (2002) (Afghanistan), *available at* http://www.un.org (last visited Oct. 29, 2004).

[13] *See* Press Release, White House Press Secretary, President Bush Names Envoy to Iraq (May 6, 2003), *available at* http://www.whitehouse.gov/news/releases/2003/05/200 30506-5.html; *Establishment of the Coalition Provisional Authority CPA* (June 1, 2003), *available at* http://www.cpa-iraq.org/.

The leaders of Bosnia's factions sought to convert their military power into political authority and wealth. They negotiated governmental arrangements that both protected their control over government, industry, and the media, and ensured jobs for their followers.[14]

At first, Bosnia's post-conflict mission handled this situation poorly. For several months the civilian mission was busy just getting itself organized and fully staffed. It therefore ceded the streets to the warlords. The mission began with a deadline of one year to complete all its tasks. This gave it little time to confront warlords, and there was little international support for such a strategy. The international mission tried to co-opt the warlords who abused their position in order to further cement their leadership. The structure of the mission exacerbated problems as each specialized agency pursued its own mandate. The United Nations took responsibility for people returning to their homes, the Organization for Security and Cooperation in Europe was responsible for media reform and elections, NATO had authority over military aspects of the Agreement, and the World Bank, with (over time) the European Union took responsibility for economic reconstruction. The stovepipes made it difficult to develop a coordinated strategy.

Eventually, the artificial one-year deadline was removed and the international mission focused its efforts on confronting these leaders. As often happens, the mission at first needed Bosnia's warlords to keep the peace, but over time it would need to remove them. The head of the civilian mission began to remove recalcitrant public officials. Investigations of factional leaders uncovered abuses of public funds and security forces. The international military mission began to arrest fugitives from the International Tribunal, a move that brought some to justice and drove others underground.

Bosnia faces real struggles and the wartime nationalist parties still occupy dominant political positions. Yet, the factional leaders have

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[14] James C. O'Brien, *The Dayton Constitution for Bosnia and Herzegovina* (forthcoming 2004); Edward C. Meyer & William L. Nash, et al., Balkans 2010, Report of a Center for Preventive Action Commission Report (2002), *available at* http://www.cfr.org/pub5290/edward_c_meyer_William_L_Nash/balkans_2010.php (last visited Oct. 29, 2004) ("syndicates" of politics, crime, and nationalism threaten development in Bosnia and the western Balkans). The best work on Bosnia's warlord problem has been done by the European Stability Initiative, a think tank based in Berlin. *See, e.g.,* European Stability Initiative, *Taking On the Commanding Heights: Integration Of Network Industries As A Tool Of Peace Building* (May 3, 2000), *available at* http://www.esiweb.org/pdf/esi_document_id_9.pdf (Dayton-created, central government cannot govern until control of utilities, media, and core industries taken from elites).

lost substantial resources, and political opponents have emerged and even won high offices. Bosnia's peace has remained intact and armed factions are withering. Ninety percent of the country's infrastructure has been rebuilt and the economy now operates at seventy percent of the pre-war level, a result that the World Bank calls "remarkable" only nine years after wars end.[15] A million people have returned home.[16] The country may soon start serious discussions on the conditions for its joining the European Union.

The progress that Bosnia has made came because the international community focused on obstructionist elites – the warlords – and used the right tools – guns, lawyers, and money.

IV. TOOLS TO CONFRONT WARLORDS: GUNS, LAWYERS, AND MONEY

A. *Guns*

Guns matter. A post-conflict mission actually is a low-intensity conflict, often featuring unruly crowds, roadblocks, rent-a-mobs, or even private armies. Would-be-warlords test the will and capacity of a mission by using violence to demonstrate their own power. They may target the mission and its personnel directly or attempt to intimidate domestic voices, especially those who may emerge as the warlords' rivals. Whether the threat is direct or indirect, the international presence is the only institution with the capacity to provide security. An irresolute or unarmed reconstruction mission will lose control of the streets, and soon any neighborhood thug with a few armored pickup trucks will demand and receive attention, emerging as an important figure. Once that happens, the warlord becomes a political force and a more daunting test for the mission.

First impressions matter. The testing begins the day a post-

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[15] Franz Kaps, Special Representative of the World Bank Group for Southeast Europe, Remarks at Europe's Middle East? Bosnia-Herzegovina and the Dayton Agreement in Perspective, 9th Conference in the Trialogue of Cultures (Berlin, Oct. 4-5, 2004) (copy on file with editors).

[16] The returns figures come from the UN High Commissioner for Refugees Office in Bosnia, *available at* http://www.unhcr.ba (last visited Oct. 29, 2004). A sensitive interpretation of the statistics appears in G. Toal & C. Dahlman, *Reversing the Ethnic Cleansing? The International Community and the Limits of Returns in Bosnia Herzegovina*, EURASIAN GEOGRAPHY & ECON. (forthcoming 2004). Toal and Dahlman note that returns are difficult to maintain and that the role of returns in Bosnia changes as the rural socialist economy of pre-war Bosnia gives way to an urban, European-oriented market economy.

conflict mission starts. Pre-existing police forces collapse, international police do not arrive, and military forces are occupied with other tasks. The vacuum creates chaos that leaves the mission looking feckless or unconcerned about ordinary citizens. In Iraq, looters occupied the streets and headlines for days after the mission started; in East Timor, militia controlled camps for displaced persons and attacked aid workers; in Bosnia, Sarajevo's suburbs burned on orders from Serb leaders; in Afghanistan, American policy makers rejected suggestions to confront warlords and instead agreed to international help only in the capital. While U.S. policy has become much better in confronting warlords, the initial mis-steps have often left the missions facing a steep climb.[17]

Reconstruction missions try to cobble together forces to fill the vacuum, usually a patchwork of local police, international police, military forces, and international specialized units modeled after the French gendarmerie.[18] The hodgepodge of reconstruction security forces has yet to be wholly effective anywhere. There aren't enough people, they are not trained for the job, and they do not get to the country soon enough. Even as more arrive, the pattern continues like a patchwork quilt – under different commands, with different instructions, different styles, and different levels of training – all forced to work together against warlords.

The long-term answer is to provide indigenous police; but recruiting, vetting, training, equipping, and deploying local police is a slow process. International police are recruited from around the world and often arrive slowly, in handfuls, without training, language capability, or the legal authority to do more than monitor or train the local police. Military peacekeepers arrive quickly but have priorities

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[17] *See* Karl F. Inderfurth, *Afghanistan: A Job Half-Done*, St. Louis Post-Dispatch (Sept. 7, 2004) ("[a]s many as 60,000 fighters across the country [under warlord control] – remains a continuing challenge to security in Afghanistan and the authority and viability of the Karzai government"); *cf.* Anthony H. Cordesman, *The Post Conflict Lessons of Iraq and Afghanistan*, Address at the Committee on Foreign Relations of the U.S. Senate (June 13, 2003), *in* The Center for Strategic and International Studies (May 19, 2004) at ii ("[t]he aftermath of conventional conflict is going to be . . . armed nation building that will last months or years . . . . ").

[18] A valuable pre-Kosovo survey of public security in post-conflict missions is ROBERT OAKLEY, MICHAEL DZIEDZIC & ELLIOT GOLDBERG, POLICING THE NEW WORLD DISORDER: PEACE OPERATIONS AND PUBLIC SECURITY (1998). This essay does not address other tactics that missions may use to reduce security threats from warlords, such as disarmament campaigns; efforts to "demilitarize" forces into, for example, unarmed disaster response units; or gun buy-backs. These have limited success.

(such as enforcing ceasefires) different than warlords.[19] Also, although the U.S. Army made tremendous strides through the 1990s in preparing its soldiers for peacekeeping, many soldiers are not trained to manage mobs, arrest warlords, or engage in the long-running, low-intensity, political struggle that is part of reconstruction. In the late 1990s, a senior Army officer once commented on plans to arrest a fugitive, "Sure, we can surprise him. But what do we do then? My guys on the ground right now would know how to shoot, not pick one guy out of a convoy."[20]

As a result, security problems start early in missions and hamper performance throughout. In Bosnia, the forced departure of Serbs from Sarajevo reinforced the grip of hardliners on parts of Bosnia. In Iraq, persistent security problems range from what appear to be ordinary crimes of violence against Iraqis, who lose confidence in the mission, to insurgencies around the country. Both can be traced in part to delays in post-conflict security planning.[21]

The problems ultimately lie with senior policymakers who design the missions in ways that do not promote success. To start, policymakers must acknowledge that forces will be needed after the conflict and that the mission will face resistance. An assumption that local forces can emerge quickly will delay needed preparations,[22] and can

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[19] For example in Bosnia the force was authorized to undertake any action needed to ensure a safe and secure environment. It was required to do very little and interpreted this mandate narrowly in the first crucial year of the investigation. In Liberia, a U.N.-mandated force has rules of engagement that inhibit its ability to use force. *See* Africa Report*, Rebuilding Liberia: Prospects and Perils,* No. 79 (Jan. 30, 2004), *at* http://www.icg.org//library/documents/africa/west_africa/075_rebuilding_liberi a_prospects.pdf.

[20] Conversation with the author.

[21] Ambassador L. Paul Bremer, Head of the Coalition Provisional Authority in Iraq, argued that the failure to provide an adequate number of troops allowed the early looting and promoted "an atmosphere of lawlessness" that hampered the mission throughout his time there. *See* Robin Wright and Thomas E. Ricks, *Bremer Criticizes Troop Levels*, WASH. POST, Oct. 5, 2004, at A1. The shortage of troops also appears to have left munitions depots unsecured, possibly allowing warlords access to weaponry. *See* James Glanz, William J. Broad, and David E. Sanger, *Huge Cache of Explosives Vanished from Site in Iraq*, N.Y. TIMES, Oct. 25, 2004, at A1. As this essay goes to press, offensives are showing progress in targeted Iraqi cities. This is welcome news and it is to be hoped that the progress is sustained. It is interesting that these recent successes are attributed by the Iraqi Interim Prime Minister to a strategy that combines the use of force, attention to insurgents' political allies, and focus on insurgents' financial support, in short, to a strategy much like that advocated in this article. *See* Alawi, *supra* note 4.

[22] *See* Associated Press, *Iraq Police Training A Flop* (June 10, 2004), *at* http://www.civpol.org/portal/html/modules.php?name=News&file=article&sid=431

turn a post-war vacuum into a void.[23] Policymakers first must provide the resources needed, both for individual missions and to ensure that future missions will have adequate forces available. The world does not have enough forces to fulfill its commitments. The United States and its allies – already overstretched—will need perhaps as many as 75,000 to 100,000 troops to cope with civil wars and likely follow-on missions; this is an increase of 50 to 100 percent over the forces now committed.[24]

Most importantly, missions must have the right objective, a quick and responsive command and control system, and the mandate to use force.   Too often, separate military and civilian channels of communication, information sharing, and planning make it difficult for militaries to respond to requests for support from civilian officials who are confronting warlords.

It is prudent to have separate military and civilian chains of command in many circumstances,[25] but policymakers should make sure that the separation does not prevent effective action. First, both military and civilian sides of a mission should have a common objective – warlords – as a priority. If international military forces do not have the will and the might to use force effectively, they will become bystanders, victims, and hostages. For the first year of the Bosnian mission, the international military preferred not to support missions against warlords. In Afghanistan, the U.S. military focuses on operations against al-Queda in part of the country, and the international community has only now begun to confront warlords who have gained

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(U.S. General in charge of training Iraqi security forces reports "almost one year of no progress"). The penultimate CPA status report shows that only 5,587 out of 88,039 Iraqi Police had academy training as of June 25, 2004, with 2,387 in the training pipeline; Anthony H. Cordesman, *Inexcusable Failure: Progress in Training the Iraqi Army and Security Forces as of Mid-July 2004* (July 20, 2004), *at* http://www.csis.org/features/iraq_inexcusablefailure.pdf.   Currently, police training consists of eight weeks of classroom instruction compared to the four to six month long programs which normally are mandatory. Classes are overly crowded and follow-on training is minimal. New recruit training can last as little as two weeks. *See* Joseph R. Biden Jr., Statement of Senator Joseph R. Biden, Jr. to the Democratic Caucus (June 22, 2004) (copy on file with author).

[23] This can be true both for police and military components. *See* Eric Schmitt, *Effort to Train New Iraqi Army is Facing Delays*, N.Y. TIMES, Sept. 20, 2004, at A1.

[24] *See* M. O'Hanlon and J. Prendergast, *The Urgent Need to Save Lives With Force*, FINANCIAL TIMES (London Edition 1), Aug. 26, 2004, at 17.

[25] In Somalia and Bosnia before 1995, persons outside the chain of command were seen as interfering in tactical decisions, reducing military effectiveness and putting forces at risk.

supremacy in much of the country's territory.[26] In missions in Sierra Leone, Sudan, and Congo, international peacekeepers have pursued policies of mediation (sometimes called "tact and diplomacy") with warlords. The result of these policies is missions near collapse.

Second, both military and civilian units should have the ability to gather sensitive information, together and separately. Western military units have sophisticated intelligence capability. Understandably, however, these units focus on threats to the military, oriented toward high-tech, not low-tech communications, and often too highly classified to be shared with civilians (especially those not from the United States or United Kingdom). Civilian reconstruction missions could learn enormous amounts of valuable information through unclassified, even mundane means, such as listening to gossip, providing local staff with mobile phones, and otherwise focusing on the informal networks that inform, and reveal, warlords.

Third, military and civilian chains should be required to communicate and plan together, regularly. Too often, plans are developed in one chain and only shared when operations are close to ready. By then, it is common to find inadequate support, delays while the two groups share information, and even a lack of operational security. This hurts the reconstruction and even the military mission, which may face increased violence and may even see its time in country extended.

An additional solution would be to include specialized armed units into post-conflict reconstruction efforts. For example, gendarmerie (or the Spanish Guardia Civil, or the Italian carabinieri) are police trained to investigate crimes, heavily armed, and able to operate as a unit. This is vital in confronting angry crowds; the rent-a-mob is a favored tactic of warlords. The gendarmerie provide a greater level of security than a police force, but are better able to work in crowded, low-intensity conflict environments than are combat forces. Units from France, Spain, and Italy have served with great distinction at different times and various combinations, including in Haiti, the Balkans, and Iraq.[27] Units with special training to confront unique local problems

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[26] Inderfurth, *supra* note 17 (American strategy toward the Afghan warlords has improved); *see also* James C. O'Brien, *Innovative Methods Can Thwart Afghan Warlords*, U.S.A. TODAY, Aug. 12, 2002, at 13A.

[27] *See* Peter H. Gantz, *European Constabulary Police Needed to Improve UN Peace Operations*, Refugees International (May 27, 2004), *at* http://www.refintl.org/content/art icle/detail/966/. In Haiti, French gendarmerie arrived several months in the operation but left early. In Bosnia, gendarmerie units arrived almost two years into the mission gendarme units arrived in Bosnia but were commanded exclusively by the military. As a result, their use for law enforcement required negotiation, which sometimes slowed

are helpful, such as drug trafficking in Afghanistan.

Unfortunately, there are not many gendarmerie units around the world, and they generally are needed at home. The time needed to persuade their home countries to contribute them can delay effective action in country for far too long. Moreover, in Bosnia, these units were often unavailable for tasks such as confronting warlords because they were placed exclusively in the military chain of command. In Kosovo, where the armed units were under international civilian control, they were used for border control, protection of VIPs, and security for currency shipments, leaving little time to target warlords.

One solution would be to establish specialized units dedicated to post-conflict missions. These could come from existing law enforcement or military establishments in interested countries, or they might be stand-by forces created exclusively for this purpose. They would be deployed quickly after an agreement is struck, and they would be under control of officials able to respond to warlords.[28]

In short, the will to use force is a condition for success, although not enough of course. Any use of force must be targeted at warlords and seen by the population to be so targeted, proportionate, and above all effective. If it does not leave a population feeling more able to participate in new institutions created by the mission, or if leaves them angry at the mission, the use of force will be a strategic failure.

B. Lawyers

Post-conflict reconstruction is ultimately, an intense period of political turmoil and creativity. In those times, politics need law, and the law needs politics.

Lawyers play crucial, often unremarked, roles in post-conflict situations. They help negotiate and draft the peace treaties and mandates that establish post-conflict missions. They can, therefore,

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action. In Kosovo the civilian U.N. administrator had control over special police units (SPUs, formerly called MSUs) that included Italian, French, and Spanish units. *See* Rand Study, *supra* note 2, at 120. In Iraq the Italian carabinieri have been successful in crowd control and making arrests, but the failure to use a sufficient number of gendarmerie has led to looting and the claim that U.S. forces have responded to civil disturbances and rioting with excessive (military) force. *See Law and Order in Post-War Iraq Council on Foreign Relations* (Apr. 16, 2003), *at* http://www.cfr.org/backgroun d/background_iraq_police.php.

[28] The leaders of the Group of 8 sounded a helpful in June 2004. They pledged to pay for and organize training for about 75,000 troops by 2010, including training for gendarmes or heavy police to control crowds, prisons, and borders in African conflicts. *See* G8 Action Plan, *Expanding Global Capability for Peace Support*, Office of the State Secretary, Sea Island, Georgia (June 10, 2004), *at* http://fpc.state.gov/fpc/33450.htm.

directly influence the authorities of these missions. Through programs such as those run by the American Bar Association and many universities, they help write legal codes for societies making the transition from conflict and dictatorship.[29] They can help instill Anglo-American traditions of an independent bar and of a public watchdog.

Two aspects of justice deserve special prominence in post-conflict missions. First, a reconstruction mission must adhere to the rule of law in its own conduct. Corruption or brutality by international officials will undermine its work and encourage disdain from the local population. Corruption scandals within the Kosovo mission hurt international efforts there and there are persistent reports from missions around the world about soldier misbehavior.

Iraq raises a special problem because it appears that policy played a role in a scandal. At the least, American policy makers erred grievously by failing to exert every effort to ensure that human rights were respected throughout the occupation, especially among the populations must vulnerable to abuse.[30] Public reports suggest that the Administration looked carefully to determine what conduct was permitted by law.[31] In addition to the legal considerations, policymakers had to consider factors including the need to set an example that would encourage humane treatment of American and coalition forces, the importance of gathering information on terrorist threats,[32]

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[29] The U.S. Institute of Peace is directing an effort by leading scholars of international law to codify criminal codes for use in post-conflict situations. This has enormous promise, especially in societies emerging from civil war. It can be very controversial to apply the pre-war law; this law may be a symbol, possibly a cause, of the war's causes. A code based on the best international practice would be very useful, at least for a transition. An introduction to this effort is Institute for Comparative and International Law, *Report of Roundtable Discussion on Transitional Codes for Post-Conflict Criminal Justice* (April 2004), *at* http://www.apcml.org/documents/ReportofRo undtable18AprTransitionalCodesforPostConflictCriminalJustice.doc.

[30] The abuses flowed directly from failure to plan adequately for post-war needs. Two particular gaps in the planning were the unwillingness to provide sufficient forces to confront Iraqi resistance and to provide personnel able to run detention facilities professionally. Both points are made by the Defense Department's own special review panel headed by former Secretary James Schlesinger. *See Final Report of the Independent Panel to Review DoD Detention Operations* (Aug. 8, 2004), *at* http://www.dod.mil/news/Aug2004/d20040824finalreport.pdf [hereinafter DOD Independent Panel].

[31] *See* Working Group on Detainee Interrogations in the Global War on Terrorism to Secretary of Defense Donald Rumsfeld, *Working Group Report On Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations* (Mar. 6, 2003), *available at* http://www.truthout.org/cgi-bin/artman/exec/view.cgi/10/4811.

[32] The DoD Independent Panel Report says that the new interrogation tactics

and the goal of encouraging respect for, and adherence to, values and norms embodied in law-abiding institutions. The lawyers charged with analyzing legal requirements deserved reassurance that their political clients would in fact put legal advice into this broader context. Furthermore, the political leadership deserved lawyers brave and experienced enough to note forcefully that the legal conclusions were a wholly inadequate basis for the policy decisions to be made. Instead, the lawyers appear to have provided their clients with broad discretion and the clients failed to narrow their options much beyond the wide latitude that their lawyers told them they had. This produced guidance to the field that facilitated grotesque deviations from standards of decency. Lower-ranking officials were told what they could do, but were not given the broad guidance or strategic perspective that would tell them what they should not do. At least a generation of American civilian and military representatives, especially across the Arab world, will be confronted with the photographs from Abu Ghraib prison. The effects on America's ability to lead globally, and an increased antipathy toward America among Islamic populations, are incalculable.[33]

Lawyers also help determine what justice the victims of human rights violations may receive. In the immediate aftermath of war, not surprisingly, pitched debates can be expected about whether justice should be pursued. It is very hard to offer universal rules other than to start with a simple belief that the victims of atrocities should have a day in court. Practically, there is growing experience with models for gathering information about atrocities and holding violators to account. In general, it appears that justice can be pursued without jeopardizing peace.[34]

For present purposes, it is important not to overlook the practical, political benefits of pursuing accountability. Simply put, the threat of

gained "important and time-urgent information" at Guantanamo but provides no further information. *See* DoD Independent Panel Report, *supra* note 30, at 36.

[33] *See, e.g.,* The Pew Research Center, *Year After Iraq War: Mistrust of America in Europe Even Higher, Muslim Anger Persists* (Mar. 16, 2004), *available at* http://people-press.org/reports/display.php3?ReportID=206 (based on poll of more than 66,000 people in 49 countries and Palestinian Authority); *see also* Zogby International, *Impressions of America* (Apr. 11, 2002)*, available at* http://www.zogby.com/search/ReadNews.dbm?ID=561.

[34] The topic of accountability for past human rights abuses is too large for this essay. I focus on its practical role in post-conflict missions. An interesting recent review of experience is provided by U.N. Secretary General Kofi Annan. *See* Report of the Secretary General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, S/2004/616 (Aug. 23, 2004), *available at* http://www.un.org.

prosecution provides leverage for pushing out obstructionist leaders or pushing to the margins leaders who are likely to obstruct peace. For example, Liberia's Charles Taylor, who is widely held responsible for a series of destructive conflicts in western Africa, left the region for Nigeria on the clear understanding that he would be prosecuted if he remained.[35] Similarly, in 1995 American negotiators refused to meet with obstructionist Bosnian Serb leaders on the ground that those leaders had been indicted by an international tribunal. A Serb negotiating team, reconstituted to exclude the indicted leaders, concluded the peace arrangement.[36]

Just as politics may need justice, so justice needs politics. For example, in Serbia today it is important that fugitives from the International Tribunal be delivered to The Hague.[37] Demands by the international community (coupled with conditions on assistance) have produced some results, in particular the delivery of former president Slobodan Milosevic. This approach, however, has not delivered several important fugitives and cooperation on information. Increasingly, democrats in power argue that they lose face domestically when they comply with the international demands. This places the democrats and the Tribunal in unnecessary opposition. The people who aid the fugitives also oppose democrats in domestic politics. This convergence of interests suggests that a different approach might be more effective.

A smart strategy for the Tribunal would be to work with democrats to undermine those who support and hide fugitives, perhaps by investigating their activities or finding them in contempt of court. It is asking too much for the Tribunal to develop and carry out this strategy; its mandate is focused on legal issues, not political ones. Politicians or diplomats should take on this essentially political role. In the case of Serbia, such a strategy would strengthen the democrats by weakening their opponents, a result that benefits justice and international interests in seeing a democratic Serbia. Instead, the democrats are left alone, unable to deliver fugitives or to show their

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[35] *See, e.g., Taylor Accepts Nigerian Asylum Offer, Calls for U.S. Peacekeeping Force* (July 7, 2003), *available at* http://www.foxnews.com/story/0,2933,91158,00.html.

[36] Holbrooke, *supra* note 10, at 107 (using indictment to bar fugitives from negotiations); *id.* at 190 (tribunal "valuable instrument of policy"). *See also* O'Brien, *The Dayton Agreement,* United States Institute of Peace (forthcoming; copy on file with editors). The failure after nine years to have arrested the two major Bosnian Serb fugitives, Radovan Karadzic and Ratko Mladic, undermines public confidence in the Bosnian mission.

[37] The Tribunal was established in 1993 by the U.N. Security Council, which required all states to cooperate with Tribunal orders. *See* S.C. Res. 827, U.N. SCOR, 48th Sess., U.N. Doc S/RES/827 (1993).

people that they are delivering adequate international assistance. They look impotent and cowardly. This is bad politics and no justice.[38]

C. Money

Money is the lifeblood of resistance. For example, West Africa's horrific wars and the failure of peace agreements flowed from the determination of Liberia's Charles Taylor to control the diamonds and timber trade. In the deadliest war in the world, in the Democratic Republic of the Congo, mineral exports controlled by warlords fueled low-level but lethal conflict. Many civil wars begin and peace agreements fail because of money.[39]

Failure to address warlords' flow of funds can allow a society to splinter, as in Afghanistan from 1992 to the present, or stagnate, as in Haiti. The peace agreement itself may fail.[40] Eventually, there is a greater risk of renewed conflict if warlords retain independent sources of capital, especially from the export of goods such as timber or diamonds.[41]

Reconstruction missions do a poor job of addressing the resources that support warlords. They lack the resources to learn how local

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[38] This position is developed further in James O'Brien, Testimony Before the Committee on Foreign Relations of the U.S. Senate (July 14, 2004), *available at* http://foreign.senate.gov/testimony/2004/O%27BrienTestimony040714.pdf.

[39] Grievances are sparked into war by access to flows of capital, especially in the trade of diamonds, timber, metals, and other commodities. Many wars, especially civil wars, come from opportunity. *See* Paul Collier & Anke Hoeffler, *Greed & Grievance in Civil War* (Oct. 21 2001), *at* http://www.worldbank.org/research/conflict/papers/greedan dgrievance.htm [hereinafter Collier & Hoeffler, GREED]; Paul Collier & Anke Hoeffler, *On Economic Causes of Civil War* (Jan. 1, 1999), *at* http://www.worldbank.org /research/conflict/papers/civilconflict.htm; James D. Fearon, *Why Do Some Civil Wars Last So Much Longer Than Others*?, J. PEACE RES. 3 (Nov. 12, 2003), *available at* http://www.prio.no/page/preview/9429/45318.html (rebellions with access to contraband last longer than others).

[40] Africa Report, *Rebuilding Liberia: Prospects and Perils,* No. 79 (Jan. 30, 2004), *available at* http://www.icg.org//library/documents/africa/west_africa/075_rebuilding_lib eria_prospects.pdf ("[t]he main spoilers are politicians associated with armed factions"); *see* Global Witness, *Taylor Made* (Sept. 2001), *available at* http://www.globalwitness.org/reports/show.php/en.00021.html.

[41] Paul Collier, *Policy for Post-Conflict Societies: Reducing the Risks of Renewed Conflict* (Mar. 17, 2000), *available at* http://www.worldbank.org/research/conflict/papers /postpol.htm [hereinafter Reducing Risks] (exports of commodities are the single greatest determinant of renewed conflict). Other scholars dispute Collier's emphasis on the opportunity created by money. This dispute does not affect my argument: those responsible for post-conflict missions should look for and gain control over independent flows of capital to warlords.

elites finance themselves and the capabilities to interdict these flows. For example, in the divided town of Mostar, the city of Bosnia's Herzegovina region famed for its 16th Century bridge, Croat and Muslim nationalist parties took control of the electric and water utilities, using the funds to finance their agendas and control the new government. The international civilian mission lacked the capacity to identify the flows of funding. Even when it ordered them to turn those funds over,[42] it took more than four and a half years before enforcement actions began. In the Democratic Republic of the Congo, warlords fought over control of the diamond trade from Bunia. The European Union identified that the conditions were leading toward genocide and intervened. The problem however, remains.

Without the ability to act directly, reconstruction missions try measures that are marginally successful. Most often, they offer assistance only to people whose behavior meets certain conditions. The problem is that warlords are able to resist this pressure because they can turn to their own resources. Warlords may even prefer isolation, which can increase their followers' dependence on the resources the warlords control.

Other missions have tried a converse approach, giving warlords unilateral control over revenues. For example, in Sierra Leone, rebels were given government positions in charge of diamond mining, but the agreement lacked safeguards adequate to ensure that the resources were shared with other parties to the peace agreement.[43] In Somalia, warlords were given contracts for housing, transport, and other services, thereby entrenching their positions.[44]

The reasons for pursuing this approach are understandable. The idea is to give the warlord what he wants so that he will not fight to get it. A negotiator who cannot coerce the parties to stop fighting may have no other choice. But this approach is unsustainable; warlords use the new resource base to grasp at more, as has happened in West Africa and to some extent in Congo.[45] Also, warlords who are cut out

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[42] Statement on Mostar agreed in Rome (Feb. 1996), *available at* http://www.ohr.int. Despite strides since 2000, ethnic divisions in Mostar, including in the payment mechanisms for utilities, continue to bedevil the city administration. *See Decision Establishing the Commission for Reforming the City of Mostar* (Sept. 17, 2003), *available at* http://www.ohr.int/archive/report-mostar.

[43] A provocative discussion of the Sierra Leone agreement is Diane Amann, *Medium as Message in Sierra Leone,* 7 ILSA J. INT'L & COMP. L. 237 (2001).

[44] JOHN PRENDERGAST, FRONTLINE DIPLOMACY: HUMANITARIAN AID AND CONFLICT IN AFRICA 28 (1996).

[45] Offices of the Spokesman for the Secretary-General and the Spokeswoman for the General Assembly President, Brief on Sierra Leone Court and the "Red Notice" on

of the deal will confront those who benefit, thus starting a new cycle of violence.[46] The moral and practical hazards of rewarding warfare make it unsuccessful and repulsive. A negotiator faced with this as his or her only option should try to get more options.

Two approaches can work:
- Follow the money;
- Create alternative funding streams to those controlled by warlords.

Follow the Money. A first step is to look for the money that supports warlords. Few missions have the capacity to gather this information. They do not know enough about the local economy, lack sophisticated law enforcement capacity, and do not always have timely access to intelligence that national forces may gather in the country. In the Balkans the Bosnia and Kosovo missions slowly began to address these obstacles. In Kosovo, the U.N. Mission received briefings on information gathered by the military force and also developed its own organized crime squad, using experienced personnel contributed by European countries. In Bosnia, the international body responsible for elections audited political party accounts starting in 2000, an action that uncovered massive corruption among the Bosnian Croat leadership. Other missions have not done as well. In Iraq, for example, the insurgencies must have material support, especially if as the Administration argues many foreign fighters have been recruited. There have been no reported successes, however, in identifying and interdicting finances for warlords.

Another step is to restrict trade in commodities that fuel conflicts. The most well-known effort in recent years has concerned the conflict over diamonds. The diamond conflict illustrates how these efforts can start, as well as their limitations. Global Witness, a small non-governmental organization, publicized trading in conflict diamonds. The group worked with limited funding, but in the late 1990s, began receiving increasing support from key governments, especially the United Kingdom and United States. As a result of this public-private partnership, the U.N. Security Council imposed sanctions on locations known for diamond smuggling and called attention to violations. A public campaign encouraged the diamond industry to create its own

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former President Charles Taylor of Liberia, U.N. Daily Press Briefing (Dec. 4, 2003), *available at* http://www.un.org/News/briefings/docs/2003/db120403.doc.htm.

[46] *See* Reducing Risks, *supra* note 41, at 6-7; Jean-Paul Azam, *Looting and Conflict between Ethno-Regional Groups: Lessons for State Formation in Africa* (July 2001), *available at* http://econ.worldbank.org/files/3103_Azam_Looting.pdf (minority group warlords disrupt peace agreements over revenue sharing arrangements).

certification scheme, the so-called Kimberly Process. This allowed diamond merchants to market diamonds certified to have originated from non-conflict areas. It has had mixed success.

Similar efforts are underway with regard to other natural resource exports. Timber exports are used to finance regional hegemons and conflicts around the world, including Cambodia[47] and western Africa.[48] An international effort to encourage oil and mining companies to publish what they pay and what they receive globally has also started.

Banking is an area that deserves special attention. In Bosnia, wartime leaders assumed control of the banking and currency exchange system, using it to fund their own activities and starve new, legitimate governing entities. Nightly deposits were a slush fund for nationalists. The international community took several years to address this. When it did, it produced two very good effects. The nationalist warlords lost control of currency reserves and a substantial alternative channel for capital was created in Bosnia.

A reconstruction mission cannot succeed alone in an effort to track funds, but multilateral support is critical. Neighbors with predatory designs are able to preserve rebellions by providing resources. This was the case in western Africa through the late 1990s, when Charles Taylor and Liberia fueled fighting in Sierra Leone. The same is true in Congo, where the U.N. Mission has little capacity to track Rwandan, Ugandan, and Zimbabwean economic interests that fuel intervention. Neighbors may bow to international pressure, which requires cooperation among interested countries, as finally happened when Nigeria persuaded Taylor to leave the region.

The investigation of money flows should be carried out as well. Recent tools developed to prevent money laundering, to enforce economic sanctions, and to track funds suspected of supporting terrorist networks can be adapted to this purpose.[49]

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[47] Michael Doyle & Nicholas Sambanis, *Building Peace: Challenges and Strategies After Civil War* (Dec. 27, 1999), *available at* http://econ.worldbank.org/view.php?type=5 &id=13206.

[48] Global Witness, *The Usual Suspects* (Mar. 2003), *available at* http://www.globalwitness.org/reports/show.php/en.00026.html.

[49] Collier & Hoeffler, GREED, *supra* note 39, at 4. Diasporas also can finance warlords. Effort should be made to persuade diaspora leaders that funds be directed to legitimate economic or humanitarian activities and funding be done transparently. *Id*. The Coalition for International Justice posts on its website a set of resources that community groups can use in following the funding used by fugitives from Tribunals and presumably, by warlords. It depends heavily on public information and on corporate registrations. Thus, it may be useful in addressing the abuse of legitimate companies by warlords, but not smuggling or other resource flows that will require

   Create Alternative Funding Sources. Economic frustration forces dependence on local elites who have money to spread around, and fuels anger. It is beyond the scope of this paper to comment on job creation programs of reconstruction missions, except to note that there is often too little. To starve warlords, it is critical to keep young men busy; jobs and school offer hope and fill time. These opportunities are directly related to the prevention of violence.[50]

   In Iraq, there was apparently no serious planning for the creation of jobs, and an early significant initiative disbanded the Army without providing quickly for alternative employment. Nearly eighteen months into the mission, approximately one billion dollars in promised assistance has been spent,[51] and less than a third of the money spent reaches Iraqis.[52] In Liberia, demobilization has been beset by problems. In the Democratic Republic of the Congo, there is almost no money for demobilization and retraining; most resources go to transport observers, who have no authority and little opportunity to make an impact. In Kosovo, economic pessimism grew from 2002 to 2004,[53]

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investigation in the field and often law enforcement or intelligence resources. *See* Coalition for International Justice, *Following the Money* (Feb. 2004), *at* http://www.cij.org/pdf/Following_the_Money.pdf.

   [50] Reducing Risks, *supra* note 41; Collier & Hoeffler, GREED, *supra* note 39, at 16.

   [51] Senator Richard Lugar, Remarks at Hearing on Accelerating U.S. Assistance to Iraq, Committee on Foreign Relations, U.S. Senate (Sept. 15, 2004). The State Department recently has replaced the Department of Defense as the agency with responsibility for assistance to Iraq. It has announced a new strategic plan that increases spending on security, justice, oil production, and private sector job creation, with less emphasis on large scale infrastructure projects in areas such as water, sanitation, and electricity. *See* Report Pursuant to section 2207 of the Emergency Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, FY-2004 (P.L. 108-106) (Oct. 2004), *available at* http://www.state.gov/documents/organization/36911.pdf.

   [52] Frederick Barton, Remarks at Iraqi Prime Minister's Visit: A Preview, Center for Strategic and International Studies (Sept. 22, 2004), *at* http://www.csis.org/features/040922IraqMinisterVisit.pdf ("[Y]ou could comfortably say that around three quarters of every dollar that we are spending in Iraq does not reach the Iraqi people"); *see also* Jonathan Weisman and Robin Wright, *Funds to Rebuild Iraq are Drifting Away from Target*, WASH. POST, Oct. 6, 2004, at A18 (analysis by Barton called "credible" by senior administration officials). The breakdown is hard to come by, but the Center for Strategic and International Studies estimates that approximately a third of each dollar spent goes for security, 6% is for contractor profit, 10% finances U.S. Government overhead, and more than 25% is lost due to "mismanagement, corruption, insurance costs, and the soaring salaries for non-Iraqi workers." *Id*. The profit, security, administrative, and overhead costs are higher than they might be because the Administration chose to work through large American contractors.

   [53] United Nations Development Program, Kosovo Early Warning Report #6 (Jan. – Apr. 2004), 34-36, *available at* http://www.kosovo.undp.org/publications/publications.asp.

with a spike in pessimism in the six months that preceded an explosion of violence.

International donors usually finance demobilization programs. These programs should be used to build constituencies among those who favor peace-building efforts. For example, funds should be routed through institutions outside the control of warlords, and international donors should maintain strict accounting requirements and should enforce transparency. This could be established through a new coalition government or through civic associations that represent constituencies for peace.[54] In this way, assistance can help increase the influence of constituencies for peace and reduce the influence of constituencies for war.[55]

V. LESSONS

This quick survey of warlords and post-conflict missions produces a few lessons. First, post-conflict missions should expect to face resistance from warlords. Second, peace agreements should give international missions the authority and ability to confront warlords: lawyers, guns, and money. Third, it would help to have the best practices studied and, to the extent possible, codified. Some of this practice will comprise rules of thumb for practitioners in the field. But some might amount to norms for transitional, post-conflict situations. For example, it might become normal to establish internationally monitored trust funds to disburse assistance or to account for export revenues. The more standard such arrangements are, the better prepared the international community will be to administer them, and the less room warlords will have to negotiate special arrangements that preserve their power.

But the most important lesson is to be realistic. Success in reconstruction flows from many factors, most of which are not easily susceptible to quick policy fixes. These include experience at democratic self-government, ethnic homogeneity, the intentions of powerful neighbors, population density, and short-term economic opportunity.[56] It is foolish to base American credibility on the premise that the United States, with or without partners, can transform a society in the near term.

Realism should mean that America commits to post-conflict missions only with a determination to stay until the job is finished, and

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[54] I am grateful to John Prendergast for this suggestion.

[55] Doyle & Sambanis, *supra* note 47, at 8.

[56] *See* Collier & Hoeffler, GREED, *supra* note 39.

with enough resources to do the job. The most important single determinant of success, according to the Rand Corporation, is "the level of effort – measured in time, manpower, and money."[57] Reconstruction requires at least five years of extensive international engagement on the ground. Shorter deadlines, once common as part of an exit strategy, invite delay and obstruction.[58]   Additional determinants are people, especially in the security sector, and money. Also, multilateral support matters. Speed and convenience increase with unilateral action, but it is difficult for any single donor to sustain political will and assistance over the time required. This is especially true for a country, like the United States, with global responsibilities that will bring new crises and new demands. Typically in international crises, the United States provides approximately one-third of the international funds. In recent post-war efforts the U.S. share has been much lower. In the first Gulf War, Iraq's neighbors paid over ninety percent of the cost. In the two major Balkan operations, the United States has provided less than twenty percent of either the military or civilian resources.

Politically, multilateral support can bring encouragement and restraint where it is needed. Dissident international voices may stimulate domestic opposition to a reconstruction mission and neighbors may become predatory, providing help to warlords. This has been the pattern in the Balkans and western Africa, and there are signs of it in Iraq as well. It is better to engage and bring these neighbors into a cooperative effort, even if they will never be wholehearted supporters. They can at least be held accountable, and if they are invested in success they may also help restrain warlords or their regional sponsors.

But these general lessons do not focus on the problem that can consume a mission – how to address local resistance. Success may depend on how well the mission works with guns, lawyers, and money.

VI. CONCLUSION

International reconstruction efforts will happen again, soon, and

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[57] Rand Study, *supra* note 2, at 165.

[58] In Bosnia, international forces arrived with an original deadline of one year. The Bush Administration had the right formulation in Iraq. Secretary Donald Rumsfeld, Remarks at DoD News Briefing (Apr. 25, 2003), *available at* http://www.defenselink.mil /transcripts/2003 ("[o]ur policy in Iraq is simple. It is to stay as long as necessary to finish our work and then to leave Iraq to the Iraqi people as soon as that work is done").

America will play a central role.[59] This is in one of America's finest, and most prudent, traditions. Post-conflict reconstruction can promote American security by helping societies that otherwise might become breeding grounds and launching platforms for terrorists and organized criminals. It can promote our values by sharing experiences and expertise in building the rule of law and respect for human rights.

But post-conflict missions should begin with one simple truth: every post-conflict mission will face resistance from powerful forces in the society. The test of success is whether the reconstruction effort can succeed in co-opting or removing those forces.

The central failure in Iraq thus far has been the unwillingness – a deliberate unwillingness, flying in the face of history in Iraq and of every other post-conflict mission – to anticipate, to identify, to prepare for, and to respond to warlords among the country's three groups. This was exacerbated by an unwillingness to learn what American troops and policymakers learned from Cambodia to Somalia to Haiti to Bosnia to West Africa to Kosovo to East Timor – that the people on the ground need lawyers, guns, and money to beat the warlords who oppose reconstruction missions.

There is still time, and enough that is positive in Iraq, that this mission may recover. It is beyond this piece to discuss how that might be done, but we should recognize the risks posed to the next mission by the stumbles thus far in this one. America will lead the world into another post-conflict reconstruction mission soon. That mission must establish its own credibility, of course, but it will start with diminished moral authority, a reputation for poor planning, and a desire to expedite artificial benchmarks – such as a transfer of authority – even when conditions on the ground do not merit it. This will invite resistance from warlords. In the next reconstruction effort, the United States must be even better prepared to confront warlords than in the past.

We can hope that better American diplomacy and more open-minded American preparation will let us do better in Iraq and elsewhere. The American people – and the people we will intend to help – deserve no less.

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[59] In preparation for the next post-conflict reconstruction effort, the State Department has established an Office of Reconstruction and Stabilization to coordinate U.S. Government responses. *See* Statement of Richard Boucher, Establishment of the Office of Reconstruction and Stabilization (Sept. 28, 2004), *at* http://www.state.gov/r/pa/ prs/ps/2004/36558.htm. This office, now headed by an able diplomat with experience in development assistance and democratic transitions, should improve the U.S. Government's approach to the benchmarks identified as important from recent experience. It is unclear what role this office will play in deciding policy in each mission, including strategy toward warlords.